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{ REPORT  
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### GREEN MOUNTAIN LOOKOUT HERITAGE PROTECTION

MARCH 31, 2014.—Ordered to be printed

Ms. LANDRIEU, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 404]

The Committee on Energy and Natural Resources, to which was referred the bill (S.404) to preserve the Green Mountain Lookout in the Glacier Peak Wilderness of the Mount Baker-Snoqualmie National Forest, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

On page 2, after line 23, add the following:

#### SEC. 4. ALASKA NATIVE VETERAN ALLOTMENT.

(a) DEFINITIONS.—In this section:

(1) APPLICATION.—The term “application” means the Alaska Native Veteran Allotment application numbered AA-084021-B.

(2) FEDERAL LAND.—The term “Federal land” means the 80 acres of Federal land that is—

(A) described in the application; and

(B) depicted as Lot 2 in U.S. Survey No. 13957, Alaska, that was officially filed on October 9, 2009.

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

(b) ISSUANCE OF PATENT.—Notwithstanding section 41 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g) and subject to subsection (c), the Secretary shall—

(1) approve the application; and

(2) issue a patent for the Federal land to the person that submitted the application.

(c) TERMS AND CONDITIONS.—

(1) IN GENERAL.—The patent issued under subsection (b) shall—

(A) only be for the surface rights to the Federal land; and

(B) be subject to the terms and conditions of any certificate issued under section 41 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g), including terms and conditions providing that—

(i) the patent is subject to valid existing rights, including any right of the United States to income derived, directly or indirectly, from a

lease, license, permit, right-of-way, or easement on the Federal land; and

(ii) the United States shall reserve an interest in deposits of oil, gas, and coal on the Federal land, including the right to explore, mine, and remove the minerals on portions of the Federal land that the Secretary determines to be prospectively valuable for development.

(2) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require any additional terms and conditions for the issuance of the patent under subsection (a) that the Secretary determines to be appropriate to protect the interests of the United States.

#### PURPOSE

The purpose of S. 404, as ordered reported, is to preserve the Green Mountain Lookout in the Glacier Peak Wilderness of the Mount Baker-Snoqualmie National Forest in Washington, and to direct the Secretary of the Interior to issue a patent for an Alaska Native Veteran Allotment located in the Yukon-Delta National Wildlife Refuge in Alaska

#### BACKGROUND AND NEED

The Green Mountain Lookout is located at the summit of 6,500-foot Green Mountain, positioned in the western portion of the 573,000-acre Glacier Peak Wilderness in Washington State. The Civilian Conservation Corps built the lookout in 1933 as part of a fire detection system in the North Cascade Mountains. The lookout is located on National Forest lands and maintained by the Forest Service. The spectacular view and relatively easy four-mile-long trail to the summit has made it a popular destination for Northwest hikers for decades.

The lookout was reconstructed and rehabilitated many times since its initial construction. In 2002, the Forest Service decided that the lookout would need to be removed and reconstructed in order to prevent its ultimate collapse due to the damage it suffered from heavy snowfall. The Forest Service disassembled the lookout and removed it by helicopter, salvaging original materials where possible. Although the agency originally intended to return the rebuilt lookout to Green Mountain as soon as possible, because of funding constraints, it was not until 2009 that the Forest Service returned the disassembled reconstructed components of the lookout back to Green Mountain using over 65 helicopter trips.

Wilderness Watch filed suit against the Forest Service, alleging that the agency violated the National Environmental Policy Act and the Wilderness Act by rebuilding the lookout within the Glacier Peak Wilderness without having undertaken the required environmental analysis. In March 2012, the Federal District Court for the Western District of Washington granted summary judgment for the plaintiffs. *Wilderness Watch v. Iwamoto and United States Forest Service*, 853 F. Supp. 2d 1063 (2012). The Forest Service subsequently published a notice of intent to remove the lookout.

S. 404 would block the removal of the Green Mountain Lookout and would allow the Forest Service to continue to operate and maintain it within the Glacier Peak Wilderness.

#### LEGISLATIVE HISTORY

Senators Murray and Cantwell introduced S. 404 on February 28, 2013. The Subcommittee on Public Lands, Forests, and Mining

held a hearing on S. 404 on July 30, 2013 (S. Hrg 113–85). At its business meeting on December 19, 2013, S. 404 was reported favorably with an amendment.

A companion measure, H.R. 908, was reported by the House Committee on Natural Resources on January 23, 2014 (H. Rept. 113–328), and was included as title VI of H.R. 2954, which passed the House of Representatives on February 15, 2014.

In the 112th Congress, Senators Murray and Cantwell introduced similar legislation, S. 3683, although no action was taken on the bill.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on December 19, 2013, by a voice vote of a quorum present, recommends that the Senate pass S. 404, if amended as described herein.

#### COMMITTEE AMENDMENT

During its consideration of S. 404, the Committee adopted an amendment which directed the Secretary of the Interior to approve an Alaska Native Veteran Allotment application and to issue a patent for the Federal land covered by the application. The land in question is located within the Andrefsky Wilderness in the Yukon-Delta National Wildlife Refuge in southwestern Alaska.

The application for the land was approved in 2008 by the U.S. Fish and Wildlife Service and the Bureau of Land Management, and following the approval, the applicant built a subsistence cabin on the land. However, in 2011 the approval was revoked because the land was located within a wilderness area, and although the applicant had by that time built a subsistence cabin, the agencies directed that the cabin be removed. The amendment directs the Secretary of the Interior to approve the application and issue a patent to allow for the continued use of the cabin.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* contains the short title, the “Green Mountain Lookout Heritage Protection Act.”

*Section 2(a)* amends section 4(b) of the Washington State Wilderness Act of 1984 to clarify that the designation of the Glacier Peak Wilderness does not preclude the operation and maintenance of the Green Mountain Lookout.

Subsection (b) states that the amendment made by this section shall take effect as if included in the original enactment of the Washington State Wilderness Act of 1984.

*Section 3* prohibits the Forest Service from moving the Green Mountain Lookout from its current location on Green Mountain unless the Chief of the Forest Service determines that moving the lookout is necessary for its preservation or to ensure the safety of individuals on or around Green Mountain. If the Forest Service determines that the lookout should be moved, it must be located outside of the wilderness.

*Section 4* pertains to the approval by the Secretary of the Interior of a Alaska Native Veterans Allotment patent within the Yukon-Delta National Wildlife Refuge in Alaska.

Subsection (a) defines key terms used in the section.

Subsection (b) directs the Secretary of the Interior, notwithstanding section 41 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g), to approve the referenced Alaska Native Veteran Allotment application and issue a patent for the Federal land covered by the application.

Subsection (c) lists the terms and conditions for the patent. Paragraph (1) states that the patent shall only be for the surface rights to the Federal land and shall be subject to the terms and conditions of a certificate issued under section 41 of the Alaska Native Claims Settlement Act, including provisions that the patent is subject to valid existing rights. The patent shall be subject to the right of the United States to income directly or indirectly derived from the land covered by the patent, and the United States reserves an interest in oil, gas, and coal deposits on such land, including the right to explore, mine, and remove minerals.

Paragraph (2) provides that the Secretary may require any additional terms and conditions for the issuance of the patent that the Secretary determines 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:

##### *S. 404—Green Mountain Lookout Heritage Protection Act*

S. 404 would prevent the Forest Service from removing a building from the Glacier Peak Wilderness Area in Washington State unless the agency determines that the structure is unsafe for visitors. Based on information provided by the Forest Service, CBO estimates that implementing the legislation would have no significant net impact on the federal budget. Enacting S. 404 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

In 2012, a federal court ordered the Forest Service to remove a lookout structure from Green Mountain, located in the wilderness area. Under the bill, the agency would be authorized to remove the structure only if it poses a risk to public safety. Because the lookout was recently reconstructed, CBO expects that, under the bill, the agency would allow the structure to remain on the mountain for several years. As a result, CBO estimates, the Forest Service would not need to spend about \$200,000 in appropriated funds to remove the structure; the amounts required to maintain the structure over the next five years would be minimal.

The bill also would require the Secretary of the Interior to restore a land grant issued to an individual under the Alaska Native Veterans Allotment Act. The Department of the Interior (DOI) voided the original land grant when the agency determined that the affected lands were located within the Yukon Delta National Wildlife Refuge. Because the affected lands are located within the refuge, CBO expects that any activities that could generate offsetting receipts from those lands over the next 10 years would be prohibited, and we estimate that issuing the land grant would not affect the federal budget.

S. 404 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On September 3, 2013, CBO transmitted a cost estimate for H.R. 908, the Green Mountain Lookout Heritage Protection Act, as ordered reported by the House Committee on Natural Resources on July 31, 2013. S. 404 contains provisions similar to those in H.R. 908 and additional provisions that would require DOI to issue a land grant in Alaska. The estimated costs of implementing the bills are the same.

The CBO staff contact for this estimate is Jeff LaFave. 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. 404.

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. 404, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 404, 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 testimony provided by Forest Service at the July 30, 2013, Subcommittee on Public Lands, Forests, and Mining hearing on S. 404 follows:

##### STATEMENT OF LESLIE WELDON, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE, DEPARTMENT OF AGRICULTURE

S. 404, "To Preserve the Green Mountain Lookout in the Glacier Peak Wilderness of the Mount Baker-Snowqualmie National Forest", would amend the Washington State Wilderness Act of 1984 (Public Law 98-339; 98 Stat. 300; 16 U.S.C. 1131 note) by inserting language that would allow for the operation and maintenance of Green Mountain Lookout. The Department supports the bill.

The Green Mountain Lookout represents a slice in time of the history of the area, and is a feature that is appreciated by many visitors. S. 404 would provide the opportunity for future wilderness visitors to see how human influence has shaped our wildlands. This legislation provides sufficient latitude to the Secretary of Agriculture to con-

sider appropriate management strategies for the future, including removal of the lookout to a different location if the condition of the facility or use in the area warrants such action.

The Lookout was built in 1933 for fire detection on Green Mountain in what is now known as the Mt. Baker-Snoqualmie National Forest. In 1968 the Glacier Peak Wilderness Area was expanded by Congress to include a portion of the lookout site. In 1984 Congress passed the Washington Wilderness Act which designated the remainder of the peak as wilderness. In 1988 Green Mountain lookout was listed on the National Register of Historic Places. The Forest Service regularly staffed the lookout through 1984, and subsequently it was used for fire detection on an as-needed basis. It was closed in 1995 due to its deteriorating condition which posed a safety hazard to the public.

The 1990 Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (Forest Plan) designated Green Mountain Lookout as a special wilderness allocation that accepted the non-conforming use of the lookout along with direction to “stabilize and preserve” the structure. An analysis using a categorical exclusion which did not analyze alternatives for dealing with the lookout was prepared under the National Environmental Policy Act (NEPA) and a decision memo was completed in September 1998 which authorized the use of a helicopter and mechanized tools to rehabilitate the lookout. Rehabilitation efforts, including replacement of the deteriorated substructure, occurred from 1999 to 2001 with the help of grant money and the contribution of thousands of volunteer hours. Heavy snow during the winter of 2002 resulted in damage to the new foundation. Later that year, after consultation with the Washington State Historic Preservation Officer, the Forest Service authorized the dismantling and removal of the structure to a temporary site outside of Wilderness on the Mt. Baker-Snoqualmie National Forest. In doing so, each piece was identified and individually tagged so that it could be reassembled and restored to its exact original location and position, retaining those features which convey its historical significance. All work on the lookout was done in conformance with the Secretary of the Interior’s Standards and Guidelines for Rehabilitation of Historic Properties.

Many volunteer workshops over the years repaired and custom-manufactured missing parts to the original specifications. The lookout foundation was prepared on-site in 2009 and the disassembled lookout was flown back to Green Mountain and reassembled on the new substructure.

A complaint was filed in the United States District Court by Wilderness Watch during the fall of 2010, alleging the repairs violated the NEPA and the Wilderness Act. In March, 2012, the District Court issued a decision in favor of the plaintiff. The Court determined that the For-

est Service failed to justify an exception to prohibited conduct in a wilderness area with the 2002 decision to rehabilitate and reconstruct the lookout using helicopters and mechanized tools. The Court also found a NEPA violation based on the failure to conduct an Environmental Assessment, an Environmental Impact Statement, or, at a minimum, a reassessment of whether a categorical exclusion intended for repair and maintenance of recreation sites and facilities was applicable to the plans to dismantle, restore, and reconstruct the lookout in a wilderness area. In September 2012, the Court directed the Forest Service to determine how to move forward.

The Forest Service is currently implementing the Court's order. The initial steps have been taken to prepare the plan and draft an Environmental Impact Statement that will determine the specific action to be taken. A final decision is expected by June 2014. Should the bill become law, the Forest Service will use the planning and EIS process to consider appropriate management strategies for the future, including removal of the lookout to a different location if the condition of the facility or use in the wilderness area warrants such action.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 404, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### **WASHINGTON STATE WILDERNESS ACT OF 1984**

Public Law 98-339 (98 Stat. 299) Approved July 3, 1984

AN ACT To designate certain National Forest System lands in the State of Washington for inclusion in the National Wilderness Preservation System; and for other purposes.

Section 1. This Act may be referred to as the Washington State Wilderness Act of 1984".

\* \* \* \* \*

Sec. 4. (a) As soon as practicable after this Act takes effect, the Secretary of Agriculture shall file the maps referred to in section 3 of this Act and legal descriptions of each wilderness area designated by section 3 of this Act with the Committee on Energy and Natural Resources, United States Senate, and the Committee on Interior and Insular Affairs, House of Representatives, and each such map and legal description shall have the same force and effect as if included in this Act: Provided, That correction of clerical and typographical errors in such legal descriptions and maps may be made. Each such map and legal description shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.

(b) Subject to valid existing rights, each wilderness area designated by section 3 of this Act shall be administered by the Sec-

retary of Agriculture in accordance with the provisions of the Wilderness Act of 1964 governing areas designated by that Act as wilderness, except that with respect to any area designated in section 3 of this Act, any reference in such provisions to the effective date of the Wilderness Act of 1964 shall be deemed to be a reference to the effective date of this Act[.] *and with respect to the lands described in section 3(5), the designation of such lands shall not preclude the operation and maintenance of Green Mountain Lookout.*

\* \* \* \* \*

