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RAILROAD RIGHT-OF-WAY CONVEYANCE VALIDATION ACT OF 2003

JULY 13, 2004.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 1658]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1658) to amend the Railroad Right-of-Way Conveyance Validation Act to validate additional conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to facilitate the construction of the transcontinental railway, 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:

On page 2, line 17, strike "104" and insert "401".

PURPOSE OF THE MEASURE

The purpose of H.R. 1658 is to validate the conveyance of two parcels of land, which were originally part of a public land grant to the Central Pacific Railroad Company for the first transcontinental railroad in 1862.

BACKGROUND AND NEED

The Pacific Railroad Act of 1862, 12 Stat. 489, granted thousands of acres of public land to the Union Pacific Railroad Company and the Central Pacific Railroad Company to aid in the construction of the first transcontinental railroad. The Act made two different types of land grants. Section 2 of the Act granted a "right of way through the public lands * * * to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands * * *." Section 3 made so-called "checkerboard" grants

of "every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of ten miles on each side of said road * * *." Congress later doubled the checkerboard grants to ten alternate sections per mile of track within twenty miles on each side of the railroad. 13 Stat. 356, c. 216 (1864).

These two types of land grants were made for different purposes and they conveyed different property interests. The checkerboard grants were made to the railroad companies for the companies to sell to the public to finance the cost of building the railroad. They conveyed fee title. The right-of-way grants were made for the companies to construct the railroad, and were made with the condition "necessarily implied * * * that the road shall be constructed and used for the purpose designed." *St. Joseph & Denver City R.R. Co.* v. *Baldwin,* 103 U.S. 426, 429–430 (1881). The Supreme Court held that "the grant was of a limited fee, made on an implied condition of reverter in the event that the company ceased to use or retain the land for the purpose for which it was granted." *Northern Pacific Railway Co.* v. *Townsend,* 190 U.S. 267, 271 (1903).

On at least one hundred occasions over the years, the Central Pacific Railroad Company's successors, the Central Pacific Railway Company and the Southern Pacific Transportation Company, have attempted to convey parcels of the 1862 right-of-way land grant to others, even though the companies did not have the legal authority to make the conveyances and the conveyances were made without regard to the Federal Government's reversionary interest in the land. The Department of the Interior has not objected to validating these otherwise unauthorized conveyances so long as: (1) the parts of the right-of-way in question do not traverse public land; (2) the width of the remaining right-of-way is 50 or more feet on each side of the center line of the main track; and (3) all oil, coal, or other minerals are reserved to the United States. S. Rept. 95–1287 at 12 (1978); S. Rept. 99–455 at 4–5 (1986); S. Rept. 103–277 at 5 (1994). The Department has consistently held this view since the Carter Administration.

Accordingly, on three prior occasions, Congress has enacted legislation to validate conveyances made by the Central Pacific Railway Company or the Southern Pacific Transportation Company. These Acts can be found at Public Law 95–586, 92 Stat. 2485 (6 conveyances in San Joaquin Co., California); Public law 99–543, 100 Stat. 3040 (37 conveyances in San Joaquin Co. and 5 others in other counties in California); and Private Law 103–2, 108 Stat. 5057 (42 conveyances in Nevada Co., California, and 8 others in San Joaquin Co., California). Each of these Acts "legalized, validated, and confirmed" the conveyances, "as far as any interest of the United States in such lands is concerned." Each included savings clauses to avoid any implied diminishment of the right-of-way to less than 50 feet on each side of the center of the tracks. Each reserved mineral interests in the parcels to the United States.

H.R. 1658 amends Private Law 103–2, which validated 50 right-of-way conveyances in 1994. H.R. 1658 adds two more conveyances in San Joaquin County, California, one to the Bank of America, as trustee of the last will and testament of Aaron Herschel, which was recorded in 1945, and one to the Tri-Valley Packing Association,

which was recorded in 1957, to the either other conveyances in San Joaquin County validated by section 4 of Private Law 103–2. The savings clauses and mineral reservation in section 5 of Private Law 103–2 will apply to these two new conveyances to the same extent as to those previously validated by that Act.

The Department of the Interior testified that the parcels in question are at the northern end of the city of Stockton, California, that they have been in private ownership for nearly a century, and that the Administration had no objection to the enactment of H.R. 1658 to clear title to the parcels.

LEGISLATIVE HISTORY

H.R. 1658 was introduced by Representative Pombo on April 7, 2003. The bill passed the House by unanimous consent on November 18, 2003. The Subcommittee on Public Lands and Forests held a hearing on H.R. 1658 on May 5, 2004. At the business meeting on June 16, 2004, the Committee on Energy and Natural Resources ordered H.R. 1658, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 16, 2004, by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 1658, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of H.R. 1658, the Committee adopted an amendment that makes a technical correction to the legal description of one of the properties.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title.

Section 2 amends section 4 of Private Law 103–2 by adding two additional properties to the list of properties in San Joaquin County.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 17, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared and enclosed cost estimate for H.R. 1658, the Railroad Right-of-Way Conveyance Validation Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 1658—Railroad Right-of-Way Conveyance Validation Act of 2003

H.R. 1658 would amend Private Law 103–2 to clarify that the federal government has no claim to two parcels of privately owned land in California. Those parcels were originally granted by the federal government to the Central Pacific Railroad in 1862 and subsequently conveyed to private landowners. Based on information from the Bureau of Land Management, CBO estimates that enacting H.R. 1658 would have no impact on federal spending or revenues.

On August 6, 2003, CBO transmitted a cost estimate for H.R. 1658 as ordered reported by the House Committee on Resources on July 9, 2003. The two versions of this legislation are similar, and our cost estimates are the same.

The CBO staff contact for this estimate is Megan Carroll. 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 H.R. 1658. 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 H.R. 1658, as ordered reported.

EXECUTIVE COMMUNICATIONS

On May 3, 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 H.R. 1658. These reports had not been received at the time the report on H.R. 1658 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows:

STATEMENT OF BOB ANDERSON, DEPUTY ASSISTANT DIRECTOR, MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT

Thank you for inviting me to testify.

H.R. 1658 is a private bill which amends the Railroad Right-of-Way Conveyance Validation Act. The administration has no objection to H.R. 1658.

In 1994, the Congress passed H.R. 1183, Private Law 103–2. The Act validated the conveyances of 50 small tracts of land in Nevada County and San Joaquin County, California. The lands involved were originally part of the right-of-way grant of the United States to the Central Pacific Railroad by an 1862 Act of Congress. The Southern Pacific Railroad (the successor to Central Pacific) appears to have made conveyances of small tracts of land in some of these cases, and in others, adjacent landowners have made inadvertent encroachments. Under the original Act of 1862, a Federal reversionary interest existed if these rights-of-way were abandoned by the railroad. The 1994 Act was necessary to remove any cloud on the title of these small landowners.

The bill before us today amends the underlying 1994 Act by adding two additional small parcels in San Joaquin County, California. The parcels in question are at the northern end of the city of Stockton, California. According to the master title plat, maintained by the BLM, these parcels have been in private ownership for nearly a century. We see no conflict in clearing title for these lands through this legislation. As with the underlying Act, the mineral estate of these lands will continue to be reserved to the Federal government, and the lands will continue to be unavailable to all forms of mineral entry.

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 act H.R. 1658, 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):

Private Law 103–2

AN ACT To validate conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to the Central Pacific Railway Company

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Railroad Right-of-Way Conveyance Validation Act".

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SEC. 4. CONVEYANCES OF LAND IN SAN JOAQUIN COUNTY, STATE OF CALIFORNIA.

The conveyances of land in San Joaquin County, State of California, referred to in section 2 are as follows:

(1) The conveyance entered into between the Southern Pacific Transportation Company, grantor, and Ronald M.

Lauchland and Lillian R. Lauchland, grantees, recorded October 1, 1985, as instrument number 85066621 in the official records of the county of San Joaquin.

* * * * * * *

(9) The conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Transportation Company and the Bank of America, as trustee of the last will and testament of Aaron Herschel, recorded September 27, 1945, in volume 942 at page 401 of the official records of the county of San Joaquin.

(10) The conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Transportation Company and the Tri-Valley Packing Association, recorded November 13, 1957, in volume 2016 at page 149 of the official records of the county of San Joaquin.

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