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# LAKE TAHOE BASIN MANAGEMENT UNIT, NEVADA

JULY 11, 2003.—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. 490]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 490) to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

On page 1, strike line 4 and all that follows through page 2, line 19, and redesignate subsequent subsections accordingly.

### PURPOSE OF THE MEASURE

The purpose of S. 490 is to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit to the Secretary of the Interior to be held in trust for the Washoe Indian Tribe.

### BACKGROUND AND NEED

S. 490 is intended to provide the Washoe Tribe of Nevada and California access to the shore of Lake Tahoe to support traditional and cultural uses. The Washoe Tribe's ancestral homeland includes over 5,000 square miles in the vicinity of the Lake Tahoe basin. The Tribe historically gathered along the shore of Lake Tahoe for activities such as spiritual renewal, land stewardship, traditional learning, and reunification of tribal and family bonds.

The concept of providing the Washoe Tribe with access to the shore of Lake Tahoe was ratified by a group of Federal, State and local government leaders who gathered at a 1997 Presidential

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Forum to discuss the future of Lake Tahoe. Goals and an action plan developed during the Lake Tahoe Forum became known as "Presidential Forum Deliverables." These Deliverables include a commitment to provide the Washoe Tribe access to the shore of Lake Tahoe for traditional and cultural purposes.

## LEGISLATIVE HISTORY

S. 490 was introduced by Senator Reid and Senator Ensign on February 27, 2003. The Subcommittee on Public Lands and Forests held a hearing on S. 490 on June 12, 2003. The Committee ordered S. 490 favorably reported, with an amendment in the nature of a substitute on July 25, 2003. Similar legislation, S. 691, was introduced by Senators Reid and Ensign in the 107th Congress. The Subcommittee on Public Lands and Forests held a hearing on S. 691 on November 27, 2001 (S. Hrg. 107–373). The Committee favorably reported S. 691 on June 28, 2002 (S. Rept. 1707–191), and the Senate passed it by unanimous consent on August 12, 2002. A similar bill, S. 2751, passed the Senate during the 106th Congress.

## COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on July 25, 2002, by unanimous consent of a quorum present, recommends that the Senate pass W. 490, if amended as described herein.

## COMMITTEE AMENDMENT

During its consideration of S. 490, the Committee adopted an amendment striking the findings in the original bill.

## SECTION-BY-SECTION ANALYSIS

Section 1(a) states the purposes of the Act.

Subsection (b) directs the Secretary of Agriculture, subject to valid existing rights, an access easement and other use limitations, to transfer 24.3 acres of lands administered by the Forest Service within the Lake Tahoe Basin Management unit to the Washoe Tribe.

Subsection (c) reserves an easement to the United States over a portion of the conveyed land for public and nonexclusive access over a Forest Development Road, and provides for a reciprocal easement to the Tribe for vehicular access along the road for administration and safety purposes.

Subsection (e) requires the Tribe to limit the use of the land to traditional and customary uses and to prohibit development or commercial use of the site, including gaming. The Tribe is also required to comply with environmental requirements that are no less protective than those which apply under the Tahoe Regional Plan. Finally, the subsection includes a reversal to the Secretary of Agriculture if the Tribe has used the land in violation of the restrictions listed in this Act.

## COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, June 27, 2003.*

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 the enclosed cost estimate for S. 490, a bill to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California.

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

Sincerely,

PETER H. FONTAINE
(For Douglas Holtz-Eakin, Director).

Enclosure.

*S. 490—A bill to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California.*

Based on information from the Forest Service, CBO estimates that implementing S. 490 would have no significant impact on the federal budget. Enacting the legislation would not affect direct spending or revenues. S. 490 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.

S. 490 would direct the Secretary of Agriculture to convey, without consideration, about 24 acres of national forest system land within the Lake Tahoe Basin Management Unit to the Secretary of the Interior, to be taken into trust on behalf of the Washoe Indian Tribe of Nevada and California. According to the Forest Service, the lands to be conveyed currently generate no receipts and are not expected to do so over the next 10 years. The Secretary of Agriculture would retain an easement to provide for access to federal lands adjacent to those that would be conveyed. S. 490 outlines conditions for the tribe's use of the conveyed lands and specifies that ownership of the lands would revert back to the Secretary of Agriculture if the tribe violates those conditions.

On June 16, 2003, CBO transmitted a cost estimate for H.R. 74, similar legislation, as ordered reported by the House Committee on Resources on June 11, 2003. The two bills are very similar, and our 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 S. 490. The bill is not a regulatory measure in the sense of impos-

ing Government-established standards or significant 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. 490.

EXECUTIVE COMMUNICATIONS

On June 3, 2003, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth Executive agency recommendations of S. 490. These reports had not been received at the time that report on S. 490 was filed. The testimony provided by the Department of Agriculture at the Subcommittee hearing follows:

STATEMENT OF TOM THOMPSON, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

S. 490 directs the Secretary of Agriculture to convey 24.3 acres of National Forest System land within the Lake Tahoe Basin Management Unit to the Secretary of the Interior to be held in trust for the Washoe Indian Tribe of Nevada and California. The conveyance would be subject to a reservation of a non-exclusive easement on a forest road to continue public and administrative access to other adjacent National Forest System land. In addition, the bill would grant vehicular access over a forest road to the parcel by tribal members under certain circumstances. The transfer would occur without consideration. The Department believes the bill would defeat public expectations of continued access to this lakefront parcel. The Department has concerns with S. 490 and would like to work with the Committee on alternatives that would meet tribal needs as discussed in our testimony.

The Department understands and appreciates the goals of the Washoe Tribe to acquire land in the Lake Tahoe Basin for the purpose of exercising recurring exclusive use of Lake Tahoe shoreline property for traditional and customary cultural purposes. The Forest Service has taken extensive actions to meet the needs of the Tribe within the limits of its authority. At present, the Washoe Tribe holds a special use permit with the Forest Service for the uses described in Section 1(b)(2). These uses have been analyzed and approved through the Forest Service special use permitting process and appear to meet the needs of the Tribe.

The 24.3-acre parcel identified in S. 490 for transfer to the Department of the Interior was originally acquired by the Forest Service as part of a larger purchase using funds authorized by the Land and Water Conservation Fund Act to provide public access to recreational resources in the Lake Tahoe Basin. Transfer of this parcel to the Department of the Interior to be held in trust for exclusive use

by the Washoe Tribe is not consistent with the public purposes for which this land was purchased. The Lake Tahoe Basin Management Unit has placed a high priority on the acquisition and retention of lakefront property for public access and watershed protection. Any land conveyance should be with consideration to ensure the public obtains market value. The Department also has concerns with the reversionary interests identified in 1(e)(2).

In lieu of transferring the parcel to the Secretary of the Interior, the Department recommends the bill be amended to authorize the Secretary of Agriculture, upon the Tribe's request, to close the parcel to general public use on a temporary basis to protect the privacy of the traditional and customary cultural uses of the land by the Tribe. We note that Congress has provided similar statutory authority to the Secretary of the Interior in section 705(a) of the California Desert Protection Act (16 U.S.C. 410aaa–75(a)) and section 507(c) of Public Law 100–225) (16 U.S.C. 460uu–47(c)), and to the Secretary of Agriculture in section 2(d)(1) of Public Law 103–014 (16 U.S.C. 460jjj–1(d)(1)), an act establishing the Jemez National Recreation Area. Additionally, to meet the Tribe's goal of using the parcel for cultural horticulture and ethnobotany purposes, a provision could be added to the bill to authorize the Secretary of Agriculture to issue a permit to the Washoe Tribe for these uses. The Department believes this approach would accommodate both the goals of the Washoe Tribe and the objective of maintaining public access to the parcel.

This concludes my statement. I would be happy to answer your questions.

## 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. 490, as ordered reported.

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