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SAND CREEK MASSACRE NATIONAL HISTORIC SITE ESTABLISHMENT ACT OF 2000

SEPTEMBER 25 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[To accompany S. 2950]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2950) to authorize the Secretary of the Interior to establish the Sand Creek Massacre National Historic Site in the State of Colorado, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 1, line 9, strike "Northern and Southern".
2. On page 1, lines 9 and 10, strike "Indians" and insert in lieu thereof "Indians under the leadership of Chief Black Kettle,".
3. On page 2, line 10, strike ",".
4. On page 3, line 22, strike "for tribes" and insert in lieu thereof "for the tribes and the State".
5. On page 4, line 19, strike "Cheyenne Tribe" and insert in lieu thereof "Cheyenne and Arapaho Tribes".
6. On page 4, line 20, strike subsection "(B)" in its entirety and redesignate the following subsections accordingly.
7. On page 7, line 20, strike "with the" and insert in lieu thereof "with and solicit advice and recommendations from the".
8. On page 8, strike subsection "(b)" in its entirety and redesignate the remaining subsections accordingly.
9. On page 10, line 14, strike "Special".
10. On page 10, line 15, strike "special" and insert "reasonable".
11. On page 10, line 21, strike "special" and insert "reasonable".
12. On page 11, line 11, strike all of subsection (b) through page 11, line 24, and replace with:

"(b) CONDITIONS OF ACCESS.—In granting access under subsection (a), the Secretary shall temporarily close to the general public one or more specific portions of the site in order to protect the privacy of tribal members engaging in a traditional, cultural, or historical observance in those portions; and any such closure shall be made in a manner that affects the smallest practicable area for the minimum period necessary for the purposes described above.".

13. On page 12, line 21, strike "tribes located in the vicinity of the site." and insert in lieu thereof "the tribes.".

PURPOSE OF THE MEASURE

The purpose of S. 2950 is to authorize the Secretary of the Interior to establish the Sand Creek Massacre National Historic Site in the State of Colorado.

BACKGROUND AND NEED

On November 29, 1864, a village of about 500 Cheyenne and Arapaho Indians along Sand Creek in southeastern Colorado was attacked by approximately 700 volunteer soldiers commanded by Colonel John M. Chivington. More than 150 Cheyenne and Arapahos were killed in the attack, mostly women, children, and the elderly. During that afternoon and the following day, the soldiers followed up the massacre by committing atrocities on the dead before withdrawing from the field.

The massacre remains a matter of great historical, cultural and spiritual importance to the Cheyenne and Arapaho Tribes, and is a pivotal event in the history of relations between the Plains Indians and Euro-American settlers.

The Sand Creek Massacre National Historic Site Study Act (Public Law 105–243) directed the National Park Service, in consultation with the State of Colorado, the Cheyenne and Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe, and the Northern Arapaho Tribe, to complete two tasks. First, the Act directed the Park Service to "identify the location and extent of the massacre area." Second, the Act directed the Park Service to prepare a report that assessed the national significance of the Sand Creek Massacre site, the suitability and feasibility of designating it as a unit of the National Park System, and a range of alternatives for the management, administration, and protection of the area.

The first of these tasks was addressed in a separate report entitled Sand Creek Massacre Project, Volume 1: Site Location Study. In the Site Location Study, the National Park Service, the State of Colorado, the Northern Cheyenne Tribe, the Northern Arapaho Tribe, and the Cheyenne and Arapaho Tribes of Oklahoma agreed on the location and extent of the massacre. The area lies in Kiowa County, Colorado. It encircles a running engagement and extends approximately 5½ miles in length and 2 miles in width. Included within this boundary are key features of the massacre, including the Cheyenne and Arapaho village site, the "sandpits" area where the fiercest fighting took place, the area of Indian flight, and the point from which Colonel Chivington and his troops launched their attack upon the Indian encampment.

The Special Resource Study/Environmental Assessment addresses the national significance of the Sand Creek Massacre site and the suitability and feasibility of designating it as a unit of the National Park System. The study also identified alternatives for the management of the site, and the impacts of those alternatives. The study found that the Sand Creek Massacre site meets all of the criteria used to determine the national significance of a natural, cultural, or recreational resource with the respect to inclusion within the National Park System. Furthermore, the study found that the site is both suitable and feasible for inclusion as a unit of the National Park System, and identified a range of alternatives under which the site could be managed.

S. 2950 authorizes the establishment of the Sand Creek Massacre National Historic Site as a unit of the National Park System, consisting of approximately 12,480 acres in Kiowa County, Colorado. The measure provides descendants of the massacre and members of specific tribes with special access and use rights for commemorative activities and for the purpose of carrying out traditional, cultural, or historic observances. In addition, the measure requires that a certain portion of the land within the site be dedicated for the repatriation of Native American human remains and other items associated with the Sand Creek Massacre.

LEGISLATIVE HISTORY

S. 2950 was introduced by Senator Campbell on July 27, 2000. The Subcommittee on National Parks, Historic Preservation and Recreation held a hearing on S. 2950 on September 14, 2000. At the business meeting on September 20, 2000, the Committee on Energy and Natural Resources ordered S. 2950 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on September 20, 2000, by a unanimous vote of a quorum present, recommends that the Senate pass S. 2950, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 2950, the Committee adopted several amendments to make technical and clarifying changes, and also adopted several amendments making substantive changes to the bill.

An amendment was adopted clarifying the role of the State of Colorado and the tribes in developing the park's management plan and educational programs. Another amendment was adopted to delete a provision in the bill that would have required the Secretary of the Interior to permit the continuation of traditional agricultural and ranching activities on privately owned lands within the boundaries of the site. Since the Secretary does not have the authority to prohibit such activities on privately owned land, the provision was unnecessary.

Finally, an amendment was adopted deleting language in the bill that would have required the Secretary to consult only with tribes located in the vicinity of the site when addressing the access needs

and rights of descendants regarding traditional, cultural, or historical observances. Since there are no tribes located in the vicinity of the site, the language was corrected to simply refer to the tribes that are defined in the bill.

SECTION-BY-SECTION ANALYSIS

Section 1 designates the bill's short title.

Section 2(a) contains Congressional findings.

Subsection (b) defines the purposes of the legislation, which are: (1) to recognize the importance of the Sand Creek Massacre; (2) to authorize the establishment of the Sand Creek Massacre National Historic Site; and (3) to provide opportunities for tribes to be involved in the formulation of general management plans and educational programs for the site.

Section 3 provides definitions for key terms used in the legislation, including the term "tribe" which means the specific tribes connected with the Sand Creek Massacre site. The term "descendant" means a member of a tribe, an ancestor of whom was injured or killed in, or otherwise affected by, the Sand Creek Massacre.

Section 4(a) authorizes the Secretary of the Interior (Secretary) to establish the Sand Creek Massacre National Historic Site (site) when he has determined that lands containing a sufficient quantity of resources to provide for the preservation, memorialization, commemoration, and interpretation of the Sand Creek Massacre have been acquired by the National Park Service.

Subsection (b) describes that the site will consist of approximately 12,480 acres in Kiowa County, Colorado as generally depicted on the specified map reference.

Section 5(a) requires the site to be managed in accordance with the laws applicable to the National Park System.

Subsection (b) requires the Secretary to protect and preserve the site's resources, interpret and provide for public understanding of its natural and cultural resources values, and to memorialize, commemorate, and provide information to visitors to enhance cultural understanding about the site and assist in minimizing the chances of similar incidents in the future.

Subsection (c) requires the Secretary to consult with and solicit advice and recommendations from the tribes and the State in preparing the site's management plan and educational material, and authorizes the Secretary to enter into cooperative agreements.

Section 6(a) authorizes the acquisition of land or interests in land within the boundaries of the site by purchase from willing sellers, donation, or exchange. Lands owned by the State may only be acquired through donation.

Subsection (b) requires the Secretary to give priority to acquisition of the land that includes the existing Sand Creek Battleground marker.

Subsection (c) requires the Secretary to use cost-effective alternatives to fee ownership of the land where practical, including conservation easements and other means of acquisition. A support facility for the site that is not within the designated boundaries may be located in Kiowa County, Colorado, subject to an agreement between the County and the Secretary.

Section 7 requires a management plan for the site to be prepared within five years after funds are made available to carry out the legislation.

Section 8 provides descendants with reasonable rights of access and use of the site, and requires that commemorative activities of descendants be considered in park planning and operations.

Section 9(a) requires the Secretary to grant any descendant or member of a tribe reasonable access to the site for the purpose of carrying out a traditional, cultural, or historical observance. No fees may be charged for such access.

Subsection (b) authorizes the Secretary to temporarily close specific portions of the site to the general public in order to protect the privacy of the traditional, cultural, or historical observances under subsection (a). The closures must be made in a manner that affects the smallest practicable area for the minimum period necessary.

Subsection (c) requires the Secretary to dedicate a portion of the site for the repatriation of human remains and other items associated with the Sand Creek Massacre.

Subsection (d) requires the Secretary to consult with descendants and tribes in exercising any authority under this section.

Section 10 authorizes the appropriation of such sums as are necessary to carry out the legislation.

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, September 22, 2000.

Hon. FRANK H. MURKOWSKI,
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. 2950, the Sand Creek Massacre National Historic Site Establishment Act of 2000.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 2950—Sand Creek Massacre National Historic Site Establishment Act of 2000

S. 2950 would authorize the Secretary of the Interior to establish the Sand Creek Massacre National Historic Site in Colorado once the National Park Service (NPS) has acquired sufficient resources at the site to provide for its preservation and interpretation. The NPS could acquire lands and other property interests within the 12,480-acre site by donation, purchase, or exchange. The bill would require the NPS to dedicate a portion of the site to the preservation of human remains, funerary objects, and other items that might be found on or returned to the site. Within five years of receiving funding for this purpose, the agency would prepare a general man-

agement plan for the site. Finally, the bill would authorize the appropriation of whatever amounts are necessary for these activities.

CBO estimates that the NPS would spend $14.5 million over the next five to seven years to implement S. 2950, including $2 million to acquire land for the new historic site, $12 million to construct visitor and administrative facilities, and $0.5 million to prepare a management plan. Once sufficient land has been acquired to establish the site, the agency would spend about $1.3 million a year to operate and maintain it, including making payments in lieu of taxes to local governments. CBO estimates that providing space within the site for human remains and tribal objects would not add significantly to start-up or annual operating costs. These estimates are based on information provided by the NPS and assume appropriation of the necessary amounts.

The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 2950 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. State and tribal governments might incur some costs if they choose to participate in the activities authorized by this bill, but these costs would be voluntary.

The CBO staff contact for this estimate is Deborah Reis, who can be reached at 226–2860. The 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. 2950. 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. 2950, as ordered reported.

EXECUTIVE COMMUNICATIONS

On September 15, 2000, 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 of S. 2950. These reports had not been received at the time the report on S. 2950 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 national park Service at the Subcommittee hearing follows:

STATEMENT OF DONALD J. HELLMANN, DEPUTY ASSISTANT DIRECTOR, LEGISLATIVE AND CONGRESSIONAL AFFAIRS, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you to present the position of the Department of the Interior on S. 2950, a bill

to establish the Sand Creek Massacre National Historic Site as a unit of the National Park System.

The Department strongly supports protection of this site through S. 2950 with the amendments outlined in this testimony. We appreciate the continued interest and support of Senator Campbell, and look forward to working with him and the subcommittee to protect this site.

Since the day it happened, the Sand Creek Massacre has been regarded as one of the most emotionally charged and controversial events in American history. On November 29, 1864, Col. John M. Chivington, leading about 700 soldiers of the First and Third Colorado Volunteers, attacked a village of about 500 Cheyenne and Arapaho people. These people were under the overall leadership of Black Kettle, and had camped on Sand Creek at the direction of Major Scott Anthony, who commanded Fort Lyon, about 40 miles to the south. By day's end, the soldiers had killed at least 150 people, including women and children.

The massacre resulted in almost instant controversy, which ultimately led to three federal investigations, all of which condemned Chivington's actions. By the 1865 Treaty of Little Arkansas with the Cheyenne and Arapaho, victims of Sand Creek received minor compensation for their suffering and loss of property. While some efforts were made to understand the massacre, place blame on the responsible parties, and compensate the tribes, little was actually done.

Many people, including Gen. William Tecumseh Sherman, visited the site and collected artifacts of all kinds. The land was used for large-scale cattle operations, and eventually small private landowners farmed and grazed the property. As time passed, evidence of the massacre slowly disappeared. Although the event continued to be remembered, mostly by the tribes and historians, the only commemoration of the massacre was a simple granite marker placed near the site by the local community in 1950.

In 1998, P.L. 105–243 authorized the Secretary to identify the location and extent of the Sand Creek Massacre, determine the suitability and feasibility of designating the site as a unit of the National Park System, and present those findings in 18 months.

Starting in 1998 a variety of techniques and methods were used to locate the site of the Sand Creek Massacre. These included a thorough research of written records, archeology, geomorphology, aerial photographic analysis, traditional tribal methods and recording the oral traditions of the Cheyenne and Arapaho Tribes of Oklahoma, the Northern Cheyenne and the Northern Arapaho.

Once the location of the site was identified, the next task was to determine national significance and suitability and feasibility of the site as a unit of the system. To be eligible for consideration, National Park Service Management Policies state that an area must possess nationally significant natural, cultural or recreational resources; be a suitable

and feasible addition to the system; and require direct NPS management instead of protection by some other governmental agency or private sector. The Special Resource Study for the Sand Creek Massacre site, completed in July 2000, concluded that the area is nationally significant.

The Sand Creek Massacre site possesses exceptional value in illustrating and interpreting the history of U.S.-Indian relations in the American West. The massacre at Sand Creek of nearly 150 Cheyenne and Arapaho people who believed they were under the protection of the U.S. Government was a major turning point in the relationship between whites and Indians. Virtually all Indian and army conflicts that ensued were rooted, at least partly, in the massacre.

A National Park System unit at Sand Creek would provide an opportunity for Americans to better understand the significance of the massacre, the chain of events that led to it, the relationship between Indians and whites during the mid-to late-19th Century, the devastating effects of the massacre upon the Cheyenne and Arapaho peoples, and its far reaching repercussions, many of which linger today. The site also retains a high degree of physical integrity, and its isolated setting will give visitors an opportunity to contemplate the complexities of the human tragedy that unfolded there.

The Special Resource Study also concluded that Sand Creek is both suitable and feasible as a unit of the National Park System. The site is suitable because it represents a cultural theme that is not already adequately represented in the system. As described on the map referenced in S. 2950, the proposed national historic site is also a feasible addition in that the area taken as a whole is of sufficient size and configuration to ensure long-term resource protection and accommodate public use. As outlined in the Special Resources Study, acquisition of up to 12,480 acres of land and development of the site will cost approximately $13,600,000. The preliminary annual cost of administering the site is approximately $1,260,000.

S. 2950 would authorize the establishment of Sand Creek National Historic Site. The unit would be established once the Secretary of the Interior determines that sufficient lands have been acquired to provide for the protection and commemoration of the Sand Creek Massacre. Lands are identified on a map date July 1, 2000 and would be acquired through donation, purchase from willing sellers or exchange. Priority for acquisition is given to the site containing the historical marker. Keys to managing the site would be protection of the natural and cultural features that are critical to telling the story of Sand Creek; and cooperation and consultation with the tribes in the development of management plans and educational programs.

S. 2950 calls for the Secretary to consider locating support facilities in Kiowa County. The legislation also contains important provisions that would provide for special

needs of the descendants and other members of the identified tribes to access and use federally acquired land for the purpose of traditional, cultural and historical observances, and consultation with respect to commemorative activities. S. 2950 also calls for the dedication of a portion of the site for the purposes of repatriation of human remains.

One of the major strengths of this project has been the extensive consultation and inclusion of the interested individuals and organizations, especially tribes, landowners, the State of Colorado and Kiowa County. A critical result of this effort was the agreement that protection of the site is essential. It is essential in part so that we may all learn how to deepen our understanding of other cultures.

We believe some minor amendments are needed in Sections 8 and 9 that would clarify the intent of the legislation. These sections address the special needs of the descendents and tribal members of those affected by the Sand Creek Massacre. We believe that the two sections should be made consistent with recent Congressional direction regarding reasonable accommodation of the religious and cultural needs of American Indians in units of the National Park System. We would be pleased to provide draft language to that effect.

We also recommended deleting on page 12, line 21, "located in the vicinity of the site", as there are no tribes located in the vicinity of the site.

We look forward to working with the subcommittee and Senator Campbell to ensure that the final bill language protects this important site and the story it has to tell.

That concludes my remarks. I would be happy to answer any questions you may have.

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. 2950, as ordered reported.

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