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GREAT SAND DUNES NATIONAL PARK ACT OF 2000

OCTOBER 3 (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. 2547]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2547) to provide for the establishment of the great San Dunes National Park and the Great Dunes National Preserve in the State of Colorado, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Great Sand Dunes National Park and Preserve Act of 2000".

SEC. 2. FINDINGS.

Congress finds that—

(1) the Great Sand Dunes National Monument in the State of Colorado was established by Presidential proclamation in 1932 to preserve Federal land containing spectacular and unique sand dunes and additional features of scenic, scientific, and educational interest for the benefit and enjoyment of future generations;

(2) the Great Sand Dunes, together with the associated sand sheet and adjacent wetland and upland, contain a variety of rare ecological, geological, paleontological, archaeological, scenic, historical, and wildlife components, which—

(A) include the unique pulse flow characteristics of Sand Creek and Medano Creek that are integral to the existence of the dunes system;

(B) interact to sustain the unique Great Sand Dunes system beyond the boundaries of the existing National Monument;

(C) are enhanced by the serenity and rural western setting of the area; and

(D) comprise a setting of irreplaceable national significance;

(3) the Great Dunes and adjacent land within the Great Sand Dunes National Monument—

(A) provide extensive opportunities for educational activities, ecological research, and recreational activities; and

(B) are publicly used for hiking, camping, and fishing, and for wilderness value (including solitude);

(4) other public and private land adjacent to the Great Sand Dunes National Monument—

(A) offers additional unique geological, hydrological, paleontological, scenic, scientific, educational, wildlife, and recreational resources; and

(B) contributes to the protection of—

(i) the sand sheet associated with the dune mass;

(ii) the surface and ground water systems that are necessary to the preservation of the dunes and the adjacent wetland; and

(iii) the wildlife, viewshed, and scenic qualities of the Great Sand Dunes National Monument;

(5) some of the private land described in paragraph (4) contains important portions of the sand dune mass, the associated sand sheet, and unique alpine environments, which would be threatened by future development pressures;

(6) the designation of a Great Sand Dunes National Park, which would encompass the existing Great Sand Dunes National Monument and additional land, would provide—

(A) greater long-term protection of the geological, hydrological, paleontological, scenic, scientific, educational, wildlife, and recreational resources of the area (including the sand sheet associated with the dune mass and the ground water system on which the sand dune and wet-land systems depend); and

(B) expanded visitor use opportunities;

(7) land in and adjacent to the Great Sand Dunes National Monument is—

(A) recognized for the culturally diverse nature of the historical settlement of the area;

(B) recognized for offering natural, ecological, wildlife, cultural, scenic, paleontological, wilderness, and recreational resources; and

(C) recognized as being a fragile and irreplaceable ecological system that could be destroyed if not carefully protected; and

(8) preservation of this diversity of resources would ensure the perpetuation of the entire ecosystem for the enjoyment of future generations.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADVISORY COUNCIL.—The term "Advisory Council" means the Great Sand Dunes National Park Advisory Council established in section 8(a).

(2) LUIS MARIA BACA GRANT NO. 4.—The term "Luis Maria Baca Grant No. 4" means those lands as described in the patent dated February 20, 1900 from the United States to the heirs of Luis Maria Baca recorded in book 86, page 20, of the records of the Clerk and Recorder of Saguache County, Colorado.

(3) MAP.—The term "map" means the map entitled "Great Sand Dunes National Park and Preserve", numbered 140/80,032 and dated September 19, 2000.

(4) NATIONAL MONUMENT.—The term "national monument" means the Great Sand Dunes National Monument, including lands added to the monument pursuant to this Act.

(5) NATIONAL PARK.—The term "national park" means the Great Sand Dunes National Park established in section 4.

(6) NATIONAL WILDLIFE REFUGE.—The term "wildlife refuge" means the Baca National Wildlife Refuge established in section 6.

(7) PRESERVE.—The term "preserve" means the Great Sand Dunes National Preserve established in section 5.

(8) RESOURCES.—The term "resources" means the resources described in section 2.

(9) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(10) USES.—The term "uses" means the uses described in section 2.

SEC. 4. GREAT SAND DUNES NATIONAL PARK, COLORADO.

(a) ESTABLISHMENT.—When the Secretary determines that sufficient land having a sufficient diversity of resources has been acquired to warrant designation of the land as a national park, the Secretary shall establish the Great Sand Dunes National Park in the State of Colorado, as generally depicted on the map, as a unit of the National Park System. Such establishment shall be effective upon publication of a notice of the Secretary's determination in the Federal Register.

(b) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(c) NOTIFICATION.—Until the date on which the national park is established, the Secretary shall annually notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives of—

(1) the estimate of the Secretary of the lands necessary to achieve a sufficient diversity of resources to warrant designation of the national park; and

(2) the progress of the Secretary in acquiring the necessary lands.

(d) ABOLISHMENT OF NATIONAL MONUMENT.—(1) On the date of establishment of the national park pursuant to subsection (a), the Great Sand Dunes National Monument shall be abolished, and any funds made available for the purposes of the national monument shall be available for the purposes of the national park.

(2) Any reference in any law (other than this Act), regulation, document, record, map, or other paper of the United States to "Great Sand Dunes National Monument" shall be considered a reference to "Great Sand Dunes National Park".

(e) TRANSFER OF JURISDICTION.—Administrative jurisdiction is transferred to the National Park Service over any land under the jurisdiction of the Department of the Interior that—

(1) is depicted on the map as being within the boundaries of the national park or the preserve; and

(2) is not under the administrative jurisdiction of the National Park Service on the date of enactment of this Act.

SEC. 5. GREAT SAND DUNES NATIONAL PRESERVE, COLORADO.

(a) ESTABLISHMENT OF GREAT SAND DUNES NATIONAL PRESERVE.—(1) There is hereby established the Great Sand Dunes National Preserve in the State of Colorado, as generally depicted on the map, as a unit of the National Park System.

(2) Administrative jurisdiction of lands and interests therein administered by the Secretary of Agriculture within the boundaries of the preserve is transferred to the Secretary of the Interior, to be administered as part of the preserve. The Secretary of Agriculture shall modify the boundaries of the Rio Grande National Forest to exclude the transferred lands form the forest boundaries.

(3) Any lands within the preserve boundaries which were designated as wilderness prior to the date of enactment of this Act shall remain subject to the Wilderness Act (16 U.S.C. 1131 et seq.) and the Colorado Wilderness Act of 1993 (Public Law 103–767; 16 U.S.C. 539i note).

(b) MAP AND LEGAL DESCRIPTION.—(1) As soon as practicable after the establishment of the national park and the preserve, the Secretary shall file maps and a legal description of the national park and the preserve with the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(2) The map and legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in the legal description and maps.

(3) The map and legal description shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(c) BOUNDARY SURVEY.—As soon as practicable after the establishment of the national park and preserve and subject to the availability of funds, the Secretary shall complete an official boundary survey.

SEC. 6. BACA NATIONAL WILDLIFE REFUGE, COLORADO.

(a) ESTABLISHMENT.—(1) When the Secretary determines that sufficient land has been acquired to constitute an area that can be efficiently managed as a National Wildlife Refuge, the Secretary shall establish the Baca National Wildlife Refuge, as generally depicted on the map.

(2) Such establishment shall be effective upon publication of a notice of the Secretary's determination in the Federal Register.

(b) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the United States Fish and Wildlife Service.

(c) ADMINISTRATION.—The Secretary shall administer all lands and interests therein acquired within the boundaries of the national wildlife refuge in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 688dd et seq.) and the Act of September 28, 1962 (16 U.S.C. 460k et seq.) (commonly known as the Refuge Recreation Act).

(d) PROTECTION OF WATER RESOURCES.—In administering water resources for the national wildlife refuge, the Secretary shall—

(1) protect and maintain irrigation water rights necessary for the protection of monument, park, preserve, and refuge resources and uses; and

(2) minimize, to the extent consistent with the protection of national wildlife refuge resources, adverse impacts on other water users.

SEC. 7. ADMINISTRATION OF NATIONAL PARK AND PRESERVE.

(a) IN GENERAL.—The Secretary shall administer the national park and the preserve in accordance with—

(1) this Act; and

(2) all laws generally applicable to units of the National Park System, including—

(A) the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (16 U.S.C. 1, 2–4) and

(B) the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461 et seq.).

(b) GRAZING.—

(1) ACQUIRED STATE OR PRIVATE LAND.—With respect to former State or private land on which grazing is authorized to occur on the date of enactment of this Act and which is acquired for the national monument, or the national park and preserve, or the wildlife refuge, the Secretary, in consultation with the lessee, may permit the continuation of grazing on the land by the lessee at the time of acquisition, subject to applicable law (including regulations).

(2) FEDERAL LAND.—Where grazing is permitted on land that is Federal land as of the date of enactment of this Act and that is located within the boundaries of the national monument or the national park and preserve, the Secretary is authorized to permit the continuation of such grazing activities unless the Secretary determines that grazing would harm the resources or values of the national park or the preserve.

(3) TERMINATION OF LEASES.—Nothing in this subsection shall prohibit the Secretary from accepting the voluntary termination of leases or permits for grazing within the national monument or the national park or the preserve.

(c) HUNTING, FISHING, AND TRAPPING.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall permit hunting, fishing, and trapping on land and water within the preserve in accordance with applicable Federal and State laws.

(2) ADMINISTRATIVE EXCEPTIONS.—The Secretary may designate areas where, and establish limited periods when, no hunting, fishing, or trapping shall be permitted under paragraph (1) for reasons of public safety, administration, or compliance with applicable law.

(3) AGENCY AGREEMENT.—Except in an emergency, regulations closing areas within the preserve to hunting, fishing, or trapping under this subsection shall be made in consultation with the appropriate agency of the State of Colorado having responsibility for fish and wildlife administration.

(4) SAVINGS CLAUSE.—Nothing in this Act affects any jurisdiction or responsibility of the State of Colorado with respect to fish and wildlife on Federal land and water covered by this Act.

(d) CLOSED BASIN DIVISION, SAN LUIS VALLEY PROJECT.—Any feature of the Closed Basin Division, San Luis Valley Project, located within the boundaries of the national monument, national park or the national wildlife refuge, including any well, pump, road, easement, pipeline, canal, ditch, power line, power supply facility, or any other project facility, and the operation, maintenance, repair, and replacement of such a feature—

(1) shall not be affected by this Act; and

(2) shall continue to be the responsibility of, and be operated by, the Bureau of Reclamation in accordance with title I of the Reclamation Project Authorization Act of 1972 (43 U.S.C. 615aaa et seq.).

(e) WITHDRAWAL.—

(1) On the date of enactment of this Act, subject to valid existing rights, all Federal land depicted on the map as being located within Zone A, or within the boundaries of the national monument, the national park or the preserve is withdrawn from—

(A) all forms of entry, appropriation, or disposal under the public land laws;

(B) location, entry, and patent under the mining laws; and

(C) disposition under all laws relating to mineral and geothermal leasing.

(2) The provisions of this subsection also shall apply to any lands—

(A) acquired under this Act; or

(B) transferred from any federal agency after the date of enactment of this Act for the national monument, the national park or preserve, or the national wildlife refuge.

(f) WILDERNESS PROTECTION.—

(1) Nothing in this Act alters the Wilderness designation of any land within the national monument, the national park, or the preserve.

(2) All areas designated as Wilderness that are transferred to the administrative jurisdiction of the National Park Service shall remain subject to the Wilderness Act (16 U.S.C. 1131 et seq.) and the Colorado Wilderness Act of 1993 (Public Law 103–77; 16 U.S.C. 539i note). If any part of this Act conflicts with the provisions of the Wilderness Act or the Colorado Wilderness Act of 1993 with respect to the wilderness areas within the preserve boundaries, the provisions of those Acts shall control.

SEC. 8. ACQUISITION OF PROPERTY AND BOUNDARY ADJUSTMENTS.

(a) ACQUISITION AUTHORITY.—

(1) Within the area depicted on the map as the "Acquisition Area" or the national monument, the Secretary may acquire lands and interests therein by purchase, donation, transfer from another Federal agency, or exchange: Provided, That lands or interests therein may only be acquired with the consent of the owner thereof.

(2) Lands or interests therein owned by the State of Colorado, or a political subdivision thereof, may only be acquired by donation or exchange.

(b) BOUNDARY ADJUSTMENT.—As soon as practicable after the acquisition of any land or interest under this section, the Secretary shall modify the boundary of the unit to which the land is transferred pursuant to subsection (b) to include any land or interest acquired.

(c) ADMINISTRATION OF ACQUIRED LANDS.—

(1) GENERAL AUTHORITY.—Upon acquisition of lands under subsection (a), the Secretary shall, as appropriate—

(A) transfer administrative jurisdiction of the lands to the National Park Service—

(i) for addition to and management as part of the Great Sand Dunes National Monument, or

(ii) for addition to and management as part of the Great Sand Dunes National Park (after designation of the Park) or the Great Sand Dunes National Preserve; or

(B) transfer administrative jurisdiction of the lands to the United States Fish and Wildlife Service for addition to and administration as part of the Baca National Wildlife Refuge.

(2) FOREST SERVICE ADMINISTRATION.—

(A) Any lands acquired within the area depicted on the map as being located within Zone B shall be transferred to the Secretary of Agriculture and shall be added to and managed as part of the Rio Grande National Forest.

(B) for the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9), the boundaries of the Rio Grande National Forest, as revised by the transfer of land under paragraph (A), shall be considered to be the boundaries of the national forest.

SEC. 9. WATER RIGHTS.

(a) SAN LUIS VALLEY PROTECTION, COLORADO.—Section 1501(a) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4663) is amended by striking paragraph (3) and inserting the following:

"(3) adversely affect the purposes of—

"(A) the Great Sand Dunes National Monument;

"(B) the Great Sands Dunes National Park (including purposes relating to all water, water rights, and water-dependent resources within the park);

"(C) the Great Sand Dunes National Preserve (including purposes relating to all water, water rights, and water-dependent resources within the preserve);

"(D) the Baca National Wildlife Refuge (including purposes relating to all water, water rights, and water-dependent resources within the national wildlife refuge); and

"(E) any Federal land adjacent to any area described in subparagraphs (A), (B), (C), or (D).".

(b) EFFECT ON WATER RIGHTS.—

(1) IN GENERAL.—Subject to the amendment made by subsection (a), nothing in this Act affects—

(A) the use, allocation, ownership, or control, in existence on the date of enactment of this Act, of any water, water right, or any other valid existing right;

(B) any vested absolute or decreed conditional water right in existence on the date of enactment of this Act, including any water right held by the United States;

(C) any interstate water compact in existence on the date of enactment of this Act; or

(D) subject to the provisions of paragraph (2), state jurisdiction over any water law.

(2) WATER RIGHTS FOR NATIONAL PARK AND NATIONAL PRESERVE.—In carrying out this Act, the Secretary shall obtain and exercise any water rights required to fulfill the purposes of the national park and the national preserve in accordance with the following provisions:

(A) Such water rights shall be appropriated, adjudicated, changed, and administered pursuant to the procedural requirements and priority system of the laws of the State of Colorado.

(B) The purposes and other substantive characteristics of such water rights shall be established pursuant to State law, except that the Secretary is specifically authorized to appropriate water under this Act exclusively for the purpose of maintaining ground water levels, surface water levels, and stream flows on, across, and under the national park and national preserve, in order to accomplish the purposes of the national park and the national preserve and to protect park resources and park uses.

(C) Such water rights shall be established and used without interfering with—

(i) any exercise of a water right in existence on the date of enactment of this Act for a non-Federal purpose in the San Luis Valley, Colorado; and

(ii) the Closed Basin Division, San Luis Valley Project.

(D) Except as provided in subsections (c) and (d) below, no Federal reservation of water may be claimed or established for the national park or the national preserve.

(c) NATIONAL FOREST WATER RIGHTS.—To the extent that a water right is established or acquired by the United States for the Rio Grande National Forest, the water right shall—

(1) be considered to be of equal use and value for the national preserve; and

(2) retain its priority and purpose when included in the national preserve.

(d) NATIONAL MONUMENT WATER RIGHTS.—To the extent that a water right has been established or acquired by the United States for the Great Sand Dunes National Monument, the water right shall—

(1) be considered to be of equal use and value for the national park; and

(2) retain its priority and purpose when included in the national park.

(e) ACQUIRED WATER RIGHTS AND WATER RESOURCES.—

(1) IN GENERAL.—(A) If, and to the extent that, the Luis Maria Baca Grant No. 4 is acquired, all water rights and water resources associated with the Luis Maria Baca Grant No. 4 shall be restricted for use only within—

(i) the national park;

(ii) the preserve;

(iii) the national wildlife refuge; or

(iv) the immediately surrounding areas of Alamosa or Saguache Counties, Colorado.

(B) USE.—Except as provided in the memorandum of water service agreement and the water service agreement between the Cabeza de Vaca Land and Cattle Company, LC, and Baca Grande Water and Sanitation District, dated August 28, 1997, water rights and water resources described in subparagraph (A) shall be restricted for use in—

(i) the protection of resources and values for the national monument, the national park, the preserve, or the wildlife refuge;

(ii) irrigation necessary to protect water resources.

(2) STATE AUTHORITY.—If, and to the extent that, water rights associated with the Luis Maria Baca Grant No. 4 are acquired, the use of those water rights shall be changed only in accordance with the laws of the State of Colorado.

(f) DISPOSAL.—The Secretary is authorized to sell the water resources and related appurtenances and fixtures as the Secretary deems necessary to obtain the termination of obligations specified in the memorandum of water service agreement and the water service agreement between the Cabeza de Vaca Land and Cattle Company, LLC and the Baca Grande Water and Sanitation District, dated August 28, 1997. Prior to the sale, the Secretary shall determine that the sale is not detrimental to the protection of the resources of Great Sand Dunes National Monument, Great Sand Dunes National Park, and Great Sand Dunes National Preserve, and the Baca National Wildlife Refuge, and that appropriate measures to provide for such protection are included in the sale.

SEC. 10. ADVISORY COUNCIL.

(a) ESTABLISHMENT.—The Secretary shall establish an advisory council to be known as the "Great Sand Dunes National Park Advisory Council".

(b) DUTIES.—The Advisory Council shall advise the Secretary with respect to the preparation and implementation of a management plan for the national park and the preserve.

(c) MEMBERS.—The Advisory Council shall consist of 10 members, to be appointed by the Secretary, as follows:

(1) one member of, or nominated by, the Alamosa County Commission.

(2) one member of, or nominated by, the Saguache County Commission.

(3) one member of, or nominated by, the Friends of the Dunes Organization.

(4) 4 members residing in, or within reasonable proximity to, the San Luis Valley and 3 of the general public, all of who have recognized backgrounds reflecting—

(A) the purposes for which the national park and the preserve are established; and

(B) the interests of persons that will be affected by the planning and management of the national park and the preserve.

(d) APPLICABLE LAW.—The Advisory Council shall function in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and other applicable laws.

(e) VACANCY.—A vacancy on the Advisory Council shall be filled in the same manner as the original appointment.

(f) CHAIRPERSON.—The Advisory Council shall elect a chairperson and shall establish such rules and procedures as it deems necessary or desirable.

(g) NO COMPENSATION.—Members of the Advisory Council shall serve without compensation.

(h) TERMINATION.—The Advisory Council shall terminate upon the completion of the management plan for the national park and preserve.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

2. Amend the title so as to read: "A bill to provide for the establishment of the Great Sand Dunes National Park and Preserve and the Baca National Wildlife Refuge in the State of Colorado, and for other purposes.".

PURPOSE OF THE MEASURE

The purpose of S. 2547, as ordered reported, is to provide for the establishment of Great Sand Dunes National Park and Preserve and the Baca National Wildlife Refuge in the State of Colorado.

BACKGROUND AND NEED

Great Sand Dunes National Monument was established as a unit of the National Park System by presidential proclamation on March 17, 1932, ". . . for the preservation of the great sand dunes and additional features of scenic, scientific, and educational interest." The national monument covers approximately 38,000 acres of the high elevation San Luis Valley in south central Colorado.

The current monument boundary includes only the dunes themselves, which, at over 700 feet in height, are the tallest in North America. The dunes, however, are only one part of a highly complex system that includes the extremely fragile and vulnerable sand sheet, the surrounding watershed, and the underground aquifer, all of which are integral to the flow of water and replenishment of sand that created and maintains the dunes. These critical elements of the system are located mostly outside of the monument boundaries, on Federal, State, and private lands. Expanding the boundaries of the national monument to include the entire natural system, as provided for in S. 2547, will help to ensure the long-term preservation of the dunes.

Expansion of the monument's boundaries would also help to address long-standing concerns surrounding protection of the water

resources of the San Luis Valley. A large ranch, known as the Luis Maria Baca Grant No. 4, is located to the west of the existing national monument and contains key lands in the sand sheet and water resources that support the dune system, as well as other wetlands, rich wildlife habitat, and a diversity of ecosystem types. In 1986, the private owners of the Baca property attempted to obtain a water right to pump as much as 200,000 acre-feet per year from the unconfined aquifer beneath the land to communities along Colorado's Front Range. The effort failed when the courts dismissed their claims, and the owners subsequently sold the property. The potential for development and export of the water, however, is still a major concern for residents of the valley because of the potential for such a project to affect the availability of water for irrigation and other local uses. S. 2547 would authorize the Federal acquisition of the Baca property, incorporating parts of the property into a national park, national wildlife refuge, and the existing national forest. The legislation requires the Department of the Interior to work with the State of Colorado to protect the water dependent resources of the dunes while not jeopardizing valid existing water rights held by others.

S. 2547 authorizes the Secretary of the Interior to establish the Great Sand Dunes National Park when the Secretary determines that land having a sufficient diversity of resources has been acquired to warrant its designation as a national park. The national park will include the existing national monument (which will be abolished when the national park is established), as well as adjacent lands located generally to the west, including the Baca property and other State, private, and Federal lands which would be acquired by or transferred to the National Park Service. In addition, S. 2547 establishes the Great Sand Dunes National Preserve from lands that are currently included in the Rio Grande National Forest. Administrative jurisdiction over these lands is transferred from the Secretary of Agriculture to the Secretary of the Interior to be managed as a unit of the National Park System. Finally, S. 2547 authorizes the Secretary to establish the Baca National Wildlife Refuge after determining that sufficient lands have been acquired to constitute an area that can be efficiently managed as a National Wildlife Refuge. The refuge would be comprised of the western portion of lands acquired from the Luis Maria Baca Grant No. 4, as well as adjacent State and private lands, and land currently managed by the Bureau of Land Management.

The measure includes provisions to permit hunting in the preserve, and maintains the jurisdiction and responsibilities of the State of Colorado with respect to fish and wildlife on Federal land covered by the Act. The legislation would allow grazing on private or State-owned lands within the boundaries of the national park. Grazing may also be permitted on Federally acquired State or private lands, and on other Federal lands unless it is determined to be harmful to the resources or values of the park or preserve.

The legislation also creates an advisory council to advise the Secretary with respect to preparation and implementation of a management plan for the park and preserve.

LEGISLATIVE HISTORY

S. 2547 was introduced by Senators Allard and Campbell on May 11, 2000. The Subcommittee on National Parks, Historic Preservation and Recreation held a hearing on S. 2547 on June 22, 2000. At the business meeting on September 20, 2000, the Committee on Energy and Natural Resources ordered S. 2547 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on September 20, 2000, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 2547, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 2547, the Committee adopted an amendment in the nature of a substitute and an amendment to the title. In addition to making a number of technical and clarifying changes, the amendment made several substantive changes which are described in detail in the Section-by-Section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 designates the bill's short title as the "Great Sand Dunes National Park and Preserve Act of 2000."

Section 2 contains congressional findings.

Section 3 defines key terms used in the bill.

Section 4(a) authorizes the Secretary of the Interior (Secretary) to establish the Great Sand Dunes National Park in the State of Colorado, as generally depicted on the map identified in section 3 (map). The Secretary may establish the park when he determines that sufficient land having a sufficient diversity of resources has been acquired to warrant designation of the land as a national park.

Subsection (b) requires the map to be available for public inspection in the appropriate offices of the National Park Service.

Subsection (c) requires the Secretary to provide annual notification to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives of the acreage necessary to warrant the designation of the national park and the progress made by the Secretary in acquiring the necessary lands.

Subsection (d) abolishes the Great Sand Dunes National Monument on the date that the national park is established. All funds made available for the national monument are transferred to the national park.

Subsection (e) transfers administrative jurisdiction to the National Park Service over any Department of the Interior lands that are depicted on the map as being within the boundaries of the national park or preserve and are not under the jurisdiction of the National Park Service on the date this legislation is enacted.

Section 5(a) establishes the Great Sand Dunes National Preserve in the State of Colorado as a unit of the National Park System. Administrative jurisdiction over lands in the Rio Grande National

Forest that are within the boundaries on the national preserve are transferred from the Secretary of Agriculture to the Secretary of the Interior to be administered as part of the preserve. Any lands within the boundaries of the preserve that were designated as wilderness shall remain wilderness.

Subsection (b) requires the Secretary to file maps and a legal description of the park and preserve.

Subsection (c) requires the Secretary to complete an official boundary survey.

Section 6(a) authorizes the Secretary to establish the Baca National Wildlife Refuge within the area depicted on the map when he determines that sufficient land has been acquired to constitute an area that can be efficiently managed as a National Wildlife Refuge.

Subsection (b) requires that the map be on file and available for inspection in the appropriate offices of the U.S. Fish and Wildlife Service.

Subsection (c) requires the Secretary to administer all acquired lands within the boundaries of the national wildlife refuge in accordance to the laws governing the National Wildlife Refuge System.

Subsection (d) requires the water resources of the national wildlife refuge to be administered by the Secretary in a manner that protects and maintains irrigation water rights necessary for the protection of the national monument, national park, national preserve, and the refuge resources and uses; and to minimize, to the extent consistent with protection of national wildlife refuge resources, adverse impacts on other water users.

Section 7(a) requires the Secretary to administer the national park and preserve in accordance with the laws pertaining to units of the National Park System.

Subsection (b) authorizes the Secretary to allow grazing to continue on any acquired State or private lands on which grazing was authorized to occur prior to the date of enactment of this legislation. The Secretary may permit existing grazing activities to continue on Federal lands that are within the boundaries of the national monument or the national park and preserve, unless he determines that grazing would be harmful to the resources of the park or preserve.

Subsection (c) requires the Secretary to permit hunting, fishing, and trapping within the preserve. The Secretary may establish limited periods when such activities are prohibited for reasons of public safety, administration, or compliance with applicable law. Except in emergencies, the Secretary must consult with the appropriate agency of the State of Colorado in making such closures. Nothing in this Act affects any jurisdiction or responsibility of the State of Colorado with respect to fish and wildlife on Federal land and water covered by this Act.

Subsection (d) requires that any feature or facility of the Closed Basin Division, San Luis Valley Project, be unaffected by this Act and continue to be the responsibility of, and operated by, the Bureau of Reclamation.

Subsection (e) states that on the date of enactment of this Act, subject to valid existing rights, all Federal land depicted on the park and preserve map as being located within Zone A, or within

the boundaries of the national monument, national park or the preserve is withdrawn from: (1) all forms of entry, appropriation, or disposal under the public land laws; (2) location, entry, and patent under the mining laws, and; (3) disposition under all laws relating to mineral and geothermal leasing. These provisions also apply to any lands acquired under this Act or transferred from any Federal agency.

Subsection (f) states that nothing in this Act alters the wilderness designation of any land within the boundaries of the national park and preserve, and that all areas designated as wilderness will remain subject to the Wilderness Act (16 U.S.C. 1131 et seq.) and the Colorado Wilderness Act of 1993 (Public Law 103–77; 16 U.S.C. 539i note).

Section 8(a) authorizes the Secretary to acquire lands and interests in lands within the national monument or the area depicted on the map as the "Acquisition Area" by donation, purchase, transfer from another Federal agency, or exchange. Lands owned by the State of Colorado may only be acquired by donation or exchange.

Subsection (b) authorizes the Secretary to modify the boundaries of any conservation unit to which lands are added or transferred.

Subsection (c) requires the Secretary, upon acquisition of any lands under subsection (a), to transfer administrative jurisdiction to the National Park Service or the United States Fish and Wildlife Service, as appropriate. Any lands acquired within the area depicted on the map as Zone B are to be transferred to the Secretary of Agriculture to be administered as part of the Rio Grande National Forest.

Section 9(a) amends section 1501(a) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4663) to add the national park, national preserve, national wildlife refuge, and adjacent Federal lands to the list of lands covered by the Act.

Subsection (b) affirms that the use, allocation, ownership, or control of any water or existing water rights are not affected by this Act. Also unaffected are any interstate compacts, and State water law and jurisdiction. In carrying out this Act, any water rights obtained or exercised by the Secretary are required to be appropriated, adjudicated, and administered pursuant to the procedural requirements and priority system of the laws of the State of Colorado. The purposes and other substantive characteristics of such water rights will be governed by the State law, except that the Secretary is specifically authorized to appropriate water for the purpose of maintaining ground water levels, surface water levels, and stream flows on, across, and under the national park and preserve. Such water rights must be established and used without interfering with the exercise of any water rights previously established in the San Luis Valley for non-Federal purposes, and without interference with the Closed Basin Division of the San Luis Valley reclamation and pumping project. Except as provided in subsections (c) and (d), no Federal reservation of water may be claimed or established for the national park or preserve.

Subsections (c) and (d) recognize that water rights may have been previously acquired or established for the national forest and monument lands that will be added to the park and preserve, such as Federally reserved water rights that have been decreed for

instream flows along Medano and Sand Creeks within the monument. These water rights will be considered of equal use and value for the park and preserve, and will retain their priority and purposes when included in the part and preserve.

Subsection (e) limits the potential for exportation of any water resources that are associated with the Luis Maria Baca Grant No. 4 ranch property. If the ranch is acquired, any water rights or water resources associated with it may only be used within the national park and preserve, the national wildlife refuge, and the immediately surrounding areas of Alamosa or Saguache Counties. The use of such acquired water rights and water resources is restricted to the protection of the resources and values of the national monument, national park, and national preserve, fish and wildlife management and protection, and irrigation necessary to protect water resources. These water rights and resources may also be used to meet the obligations provided for in the memorandum of water service agreement and the water service agreement between the Cabeza de Vaca Land and Cattle Company and Baca Grande Water and Sanitation District, dated August 28, 1997 (hereinafter referred to as the "water service agreement").

Subsection (f) authorizes the Secretary to obtain the termination of obligations specified in the water service agreement by selling the water resources and related appurtenances and fixtures. The Secretary must first determine that such a sale will not be detrimental to the protection of the resources of the national monument, national park, national preserve, or the national wildlife refuge.

Section 10 directs the establishment of an advisory council to advise the Secretary with respect to the preparation and implementation of a management plan for the national park and preserve. The advisory council will consist of 10 members, appointed by the Secretary, and will terminate upon completion of management plan for the national park and preserve.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate report had not been received at the time the report was filed. When the report becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

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. 2547. 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. 2547, as ordered reported.

EXECUTIVE COMMUNICATIONS

On June 23, 2000, the Committee on Energy and Natural Resources requested legislative reports from the Department of the

Interior, the Department of Agriculture, and the Office of Management and Budget setting forth Executive agency recommendations on S. 2547. These reports had not been received at the time the report on S. 2547 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 BY STEPHEN SAUNDERS, DEPUTY ASSISTANT SECRETARY FOR FISH, WILDLIFE, AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to present the views of the Department of the Interior on S. 2547, a bill to establish Great Sand Dunes National Park and Great Sand Dunes National Preserve.

Secretary Babbitt strongly supports legislation to authorize the expansion and redesignation of Great Sand Dunes National Monument as a national park, to fully protect the largest inland system of sand dunes in North America. With some redrafting of some of the legislative language, we believe this legislation will make an important contribution to the preservation of our nation's special natural places.

Before turning to the particulars of the legislation, I would like to emphasize two general points.

First, this legislation is an excellent example of what we can do when we work together.

In December 1999, Secretary Babbitt Secretary traveled to Colorado and met with Senators Allard and Campbell, Congressman McInnis, Colorado Attorney General Ken Salazar, and other Coloradans to explore the threats to the sand dunes and the opportunities to preserve them. In that meeting—which some in the Colorado press immediately called the Summit at the Dunes—we found broad agreement about what needs to be done, and about the need to work together to make it happen. Since then, the Secretary and others in the Department have worked closely with the Colorado Congressional delegation, the state government, and others in reaching agreement on the broad outlines of the legislation that is before the Subcommittee today. Through that process, and the give-and-take that it requires, we have developed a proposal that might not be exactly what any of us would have crafted on our own. We believe the outlines of the legislation are good, and we are pleased with the spirit of common purpose and cooperation with which we have worked together. We want to continue working together in the same way as the legislative process goes forward.

Second, the essential feature of this legislation is to authorize the acquisition of lands next to the monument, primarily those known as the Baca Ranch, and associated water rights, without which we cannot guarantee the protection of a unique, valuable ecosystem, Colorado's Great

Sand Dunes. The ranch's acquisition is supported by the Administration, which requested $8.5 million for an initial payment for this purchase in FY 2001. It is supported by Senators and Representatives of both parties in the Colorado Congressional delegation. It is supported by Colorado Governor Bill Owens, a Republican, and by the Attorney General of Colorado, Ken Salazar, the highest ranking Democrat in the state government, who, as a native of this part of the State, understands this issue especially well. And it is supported by people throughout Colorado.

Let me turn now to the particulars of the legislation.

Great Sand Dunes National Monument was established in 1932 to protect the largest inland system of sand dunes in the United States, covering some 38 square miles in Colorado's San Luis Valley, at the foot of the Sangre de Cristo mountains. When the monument was established, little was known about the changes and movement of sand, much less just how these dunes were created and sustained. We did know that the dunes were the most visible and defining characteristic of a natural process, the result of sand transported by wind and water. Since then, we have learned that the monument contains only one-quarter of the ecosystem that sustains the dunes, and that the continued life of the dunes depends on sand deposits, groundwater, and streams that are outside of the monument's boundaries.

Ultimately, it is the water that may be most important here. In recent years, there have been efforts to use the water rights associated with the Baca Ranch, which are among the most senior in the State, for a transmountain diversion to carry as much as 200,000 acre-feet of groundwater from the ranch to the population centers of Colorado's Front Range. Removing the water from this ecosystem, however, would destroy the system that has created and sustained the sand dunes, and ultimately would destroy the dunes themselves. Acquiring these water rights, as authorized by this legislation, would assure the permanent protection of the dunes, for the enjoyment of this and future generations.

The acquisition of the Baca Ranch would be an acquisition of much more than water. The ranch includes portions of the Sangre de Cristo mountain range, including Kit Carson Peak, one of two privately-owned mountains over 14,000 feet in Colorado. The lands that would be added to the monument and made part of the new national park under this legislation—the Baca Ranch and other lands—have been identified in the State of Colorado's Natural Heritage Program as among the most important lands in the State in terms of their global biodiversity significance. The lands also contain important wetlands that are essential to one of the most significant intra-mountain migratory bird flyways in the west.

To protect the ecosystem of the Great Sand Dunes and achieve other important national benefits, the Department has encouraged the Colorado congressional delegation to

build upon some key principles in the development of this legislation, including:

The legislation should authorize the acquisition of land and water, or interests therein, adjacent to Great Sand Dunes National Monument, to be added to the national monument (and ultimately become part of a new national park), to be added to the National Wildlife Refuge system, transferred to the Forest Service, or used for other land exchanges.

The Secretary of the Interior should be authorized to redesignate the Great Sand Dunes National Monument as Great Sand Dunes National Park when sufficient additional lands have been acquired.

Any transfer of lands under the legislation to the Forest Service in exchange for lands from the Rio Grande National Forest being added to the new national park should be authorized, but not mandated, and should require the approval of both the Secretary of the Interior and the Secretary of Agriculture.

The legislation should provide for Federal water rights sufficient to protect the purposes of the expanded national monument and new national park.

The Nature Conservancy, which has a bison ranch on property that would be within the expanded boundary of the monument and new national park, should be allowed to continue that grazing, so long as it does not significantly adversely affect the resources of the monument/park.

The legislation should designate as wilderness the current Bureau of Land Management wilderness study areas that would be added to the monument.

The Bureau of Reclamation's Closed Basin water project should not be adversely affected by the legislation.

The law governing Federal approval of transbasin water diversions from the San Luis Valley (section 1501 of Public Law 102–1992) should be amended to clarify that it applies to diversions affecting the purposes of the expanded monument and new national park, not just the current monument.

S. 2547 fully reflects most of these principles.

There are, however, some areas in which we believe the language of S. 2547 needs clarification or other changes.

First, section 4(c)(2) of the bill appears to make the possible transfer of lands between the Forest Service and the National Park Service a discretionary matter, while section 6(b)(2)(B) appears to make it mandatory. We strongly urge the committee to clarify that any transfer would only occur if agreed to by both the Secretaries of the Interior and Agriculture.

Second, we would like the opportunity to work with the committee and the bill's sponsors to see if we can reach a consensus on an appropriate boundary for the preserve that would allow for hunting while also protecting the area's resources to the greatest extent possible.

Third, the language of the bill could be read to limit acquisition of lands to only those non-Federal lands suitable

for inclusion in the park or the preserve, or to acquisition of the Luis Maria Baca Grant No. 4. However, there are other lands that constitute what is commonly known as the "Baca Ranch" that fall outside the Luis Maria Baca Grant No. 4. There are also non-Federal lands that appear on the map that would not necessarily be suitable for inclusion in the park or the preserve, but would be suitable for refuge or forest purposes. We suggest removing the reference to the particular land grant lands in the bill to insure that the Secretary has the authority to acquire any of the lands within the proposed acquisition area on the map.

Fourth, the bill is unclear about what happens to acquired lands intended to be part of the national park, but prior to the designation of the park. We believe the intent is that acquired land would either be added to an expanded national monument prior to designation of the park, would be transferred to the U.S. Fish and Wildlife Service in order to create a new national wildlife refuge, or would be available for transfer to the U.S. Forest Service to be added to the existing national forest. Additionally, the bill is unclear about which agency would be responsible for managing the land available for transfer to the Forest Service prior to an agreement for the transfer between the Secretary of the Interior and the Secretary of Agriculture. Language needs to be included in S. 2547 to state that lands acquired for the park would be added to and administered as part of the Great Sand Dunes National Monument prior to the Secretary's designation of the park. We also propose that language be added that gives the Secretary of the Interior flexibility for management of the lands available for transfer to the Forest Service during the interim period prior to an agreement for its transfer.

Fifth, the bill does not include a specific requirement for how the Secretarial designation of the park would be effected. We recommend including in the bill a requirement for publication of the notice of park designation in the Federal Register, which will also be the date the existing national monument would be extinguished.

Sixth, it should be clear that the Secretary's creation of a national preserve adjacent to the national park is discretionary, in that it would only occur if an agreement is reached with the Secretary of Agriculture that provides for the transfer of existing national forest lands that would become the preserve. We also recommend section 4(b)(2) be deleted since it could be interpreted to authorize acquisition of any forest or other public lands for the proposed national park instead of the limited forest lands shown on the map.

Seventh, the extent of the Secretary's acquisition authority in the bill needs to be clarified. The Secretary is given general authority to acquire lands through donation, purchase, or exchange. However, this authority does not mention acquiring land through transfer from other federal

agencies. Perhaps the transfer language that is included in other portions of the bill is intended to address this method of acquisition, but the bill is unclear exactly when the transfer authority would operate. We believe this ambiguity could be addressed by only including the acquisition authority in one section of the bill and by eliminating redundant authorities elsewhere.

Eighth, we believe the withdrawal language needs to be clarified. The bill states that on the date of enactment all federal lands within the boundaries of the national park and preserve are withdrawn from mineral entry. This language should also apply to non-Federal lands and lands that are acquired after the date of enactment for inclusion within the national park and preserve boundaries or for inclusion within a national wildlife refuge. The language should also apply to any Federal land subsequently included with the national park or preserve boundaries, such as through transfer from the Forest Service.

Ninth, S. 2547 does not designate wilderness. There are four Bureau of Land Management (BLM) Wilderness Study Areas that would be transferred to the national monument (that would later become a national park). These four parcels, totaling 1,284 acres, adjoin existing wilderness within the national monument's boundaries. We are aware of no possible other uses for these tracts of land, and are unaware of any controversy regarding their designation as wilderness. We strongly believe we should use this opportunity to designate these tracts as wilderness and recommend the bill be amended to designate them.

Tenth, while we would prefer to have a simple federal reserved water right for the expanded monument and new national park, we believe it is possible to reach agreement on an alternative approach to water rights. We are pleased that the bill grants the Secretary authority to obtain and exercise water rights under state and federal law to the extent necessary for purposes identified in the legislation. We are also pleased that the bill preserves all valid existing water uses and rights established under state law. We are pleased to see that S. 2547 allows the Secretary to pursue a water right defined by federal substantive law to protect park purposes, while not adversely affecting valid existing rights. However, we do not understand why the Baca Grant water grant was singled out for special consideration. We are concerned that the bill appears to allow these water rights to be used solely for purposes outside the boundaries of the park and preserve. We believe this was not the intent as this use could threaten the existence of the dune system that we are all striving to protect. And, while the bill preserves the existing agreement for water service to the Baca Grande Water and Sanitation District, we would like to explore other ideas with the committee for securing a permanent solution for the district and for minimizing the National Park Service's involvement. We look forward to working with you to assure that maximum

flexibility exists to allow the National Park Service to examine the administration and assignment of water rights provided to NPS in order to assure they are administered in the most efficient way possible.

Finally, the Department believes that the duties assigned by S. 2547 to the advisory council can be accomplished through established local and regional forums in which the National Park Service already participates. These groups include the San Luis Valley County Commissioner's Association, the San Luis Valley Wetlands Focus Group, Friends of the Dunes, and the Rio Grand Water Conservation District. Involving these groups, and other bodies, as already required under NEPA, can accomplish the goals assigned to the advisory council with significant cost and time savings.

Additionally, the National Park Service has already spent a substantial amount of time working with groups of interested individuals, organizations, and state, local and federal government agencies in an effort to reach consensus on as many issues as possible. These groups included the U.S. Forest Service, Bureau of Land Management, the Alamosa and Saguache County Commissioners, The Nature Conservancy, and other land owners.

There are a few other matters that we believe are relatively minor drafting issues, which we would like to work with the Committee and the bill's sponsors to address.

In conclusion, Mr. Chairman, we would like to work with you and others in Congress to take advantage of this opportunity to preserve resources important to the nation, by protecting an entire natural process that is the core for one of the more unique units of the National Park System. I would be happy to answer any questions you might have.

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. 2547, 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):

PUBLIC LAW 102–575—OCT. 30, 1992

AN ACT to authorize additional appropriations for the construction of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming.

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

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TITLE XV—SAN LUIS VALLEY PROTECTION, COLORADO

SEC. 1501. PERMIT ISSUANCE PROHIBITED.

(a) No agency or instrumentality of the United States shall issue any permit, license, right-of-way, grant, loan or other authorization

or assistance for any project or feature of any project to withdraw water from the San Luis Valley, Colorado, for export to another basin in Colorado or export to any portion of another State, unless the Secretary of the Interior determines, after due consideration of all findings provided by the Colorado Water Conservation Board, that the project will not:

(1) increase the costs or negatively affect operation of the Closed Basin Project;

(2) adversely affect the purposes of any national wildlife refuge or Federal wildlife habitat area withdrawal located in the San Luis Valley, Colorado; or

[(3) adversely affect the purposes of the Great Sand Dunes National Monument, Colorado.]

(3) adversely affect the purposes of—

(A) the Great Sand Dunes National Monument;

(B) the Great Sand Dunes National Park (including purposes relating to all water, water rights, and water-dependent resources within the park);

(C) the Great Sand Dunes National Preserve (including purposes relating to all water, water rights, and water-dependent resources within the preserve);

(D) the Baca National Wildlife Refuge (including purposes relating to all water, water rights, and water-dependent resources within the national wildlife refuge); and

(E) any Federal land adjacent to any area described in subparagraph (A), (B), (C), and (D).

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