

Calendar No. 285

111TH CONGRESS
2d Session

SENATE

REPORT
111-135

RIO GRANDE DEL NORTE NATIONAL CONSERVATION AREA ESTABLISHMENT ACT

MARCH 2, 2010.—Ordered to be printed

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

R E P O R T

[To accompany S. 874]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 874) to establish El Rio Grande Del Norte National Conservation Area in the State of New Mexico, 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 “Rio Grande del Norte National Conservation Area Establishment Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONSERVATION AREA.—The term “Conservation Area” means the Rio Grande del Norte National Conservation Area established by section 3(a)(1).

(2) LAND GRANT COMMUNITY.—The term “land grant community” means a member of the Board of Trustees of confirmed and nonconfirmed community land grants within the Conservation Area.

(3) MANAGEMENT PLAN.—The term “management plan” means the management plan for the Conservation Area developed under section 3(d).

(4) MAP.—The term “map” means the map entitled “Rio Grande del Norte National Conservation Area” and dated November 4, 2009.

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

(6) STATE.—The term “State” means the State of New Mexico.

SEC. 3. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the Rio Grande del Norte National Conservation Area in the State.

- (2) AREA INCLUDED.—The Conservation Area shall consist of approximately 235,980 acres of public land in Taos and Rio Arriba counties in the State, as generally depicted on the map.
- (b) PURPOSES.—The purposes of the Conservation Area are to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the cultural, archaeological, natural, ecological, geological, historical, wildlife, educational, recreational, and scenic resources of the Conservation Area.
- (c) MANAGEMENT.—
- (1) IN GENERAL.—The Secretary shall manage the Conservation Area—
- (A) in a manner that conserves, protects, and enhances the resources of the Conservation Area; and
- (B) in accordance with—
- (i) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);
- (ii) this Act; and
- (iii) any other applicable laws.
- (2) USES.—
- (A) IN GENERAL.—The Secretary shall allow only such uses of the Conservation Area that the Secretary determines would further the purposes described in subsection (b).
- (B) USE OF MOTORIZED VEHICLES.—
- (i) IN GENERAL.—Except as needed for administrative purposes or to respond to an emergency, the use of motorized vehicles in the Conservation Area shall be permitted only on roads designated for use by motorized vehicles in the management plan.
- (ii) NEW ROADS.—No additional road shall be built within the Conservation Area after the date of enactment of this Act unless the road is needed for public safety or natural resource protection.
- (C) GRAZING.—The Secretary shall permit grazing within the Conservation Area, where established before the date of enactment of this Act—
- (i) subject to all applicable laws (including regulations) and Executive orders; and
- (ii) consistent with the purposes described in subsection (b).
- (D) COLLECTION OF PINON NUTS AND FIREWOOD.—Nothing in this Act precludes the traditional collection of firewood and pinon nuts for noncommercial personal use within the Conservation Area—
- (i) in accordance with any applicable laws; and
- (ii) subject to such terms and conditions as the Secretary determines to be appropriate.
- (E) UTILITY RIGHT-OF-WAY UPGRADES.—Nothing in this Act precludes the Secretary from renewing or authorizing the upgrading (including widening) of an existing utility right-of-way through the Conservation Area in a manner that minimizes harm to the purposes of the Conservation Area described in subsection (b)—
- (i) in accordance with—
- (I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (II) any other applicable law; and
- (ii) subject to such terms and conditions as the Secretary determines to be appropriate.
- (F) TRIBAL CULTURAL USES.—
- (i) ACCESS.—The Secretary shall, in consultation with Indian tribes or pueblos—
- (I) ensure the protection of religious and cultural sites; and
- (II) provide access to the sites by members of Indian tribes or pueblos for traditional cultural and customary uses, consistent with Public Law 95–341 (commonly known as the “American Indian Religious Freedom Act”) (42 U.S.C. 1996).
- (ii) TEMPORARY CLOSURES.—In accordance with Public Law 95–341 (commonly known as the “American Indian Religious Freedom Act”) (42 U.S.C. 1996), the Secretary, on request of an Indian tribe or pueblo, may temporarily close to general public use 1 or more specific areas of the Conservation Area in order to protect traditional cultural and customary uses in those areas by members of the Indian tribe or the pueblo.
- (d) MANAGEMENT PLAN.—
- (1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall develop a management plan for the Conservation Area.

(2) OTHER PLANS.—To the extent consistent with this Act, the plan may incorporate in the management plan the Rio Grande Corridor Management Plan in effect on the date of enactment of this Act.

(3) CONSULTATION.—The management plan shall be developed in consultation with—

- (A) State and local governments;
- (B) tribal governmental entities;
- (C) land grant communities; and
- (D) the public.

(4) CONSIDERATIONS.—In preparing and implementing the management plan, the Secretary shall consider the recommendations of Indian tribes and pueblos on methods for—

- (A) ensuring access to religious and cultural sites;
- (B) enhancing the privacy and continuity of traditional cultural and religious activities in the Conservation Area; and
- (C) protecting traditional cultural and religious sites in the Conservation Area.

(e) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land that is within the boundary of the Conservation Area that is acquired by the United States shall—

- (1) become part of the Conservation Area; and
- (2) be managed in accordance with—
 - (A) this Act; and
 - (B) any other applicable laws.

(f) SPECIAL MANAGEMENT AREAS.—

(1) IN GENERAL.—The establishment of the Conservation Area shall not change the management status of any area within the boundary of the Conservation Area that is—

- (A) designated as a component of the National Wild and Scenic Rivers System under the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.); or
- (B) managed as an area of critical environmental concern.

(2) CONFLICT OF LAWS.—If there is a conflict between the laws applicable to the areas described in paragraph (1) and this Act, the more restrictive provision shall control.

SEC. 4. DESIGNATION OF WILDERNESS AREAS.

(a) IN GENERAL.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), the following areas in the Conservation Area are designated as wilderness and as components of the National Wilderness Preservation System:

(1) CERRO DEL YUTA WILDERNESS.—Certain land administered by the Bureau of Land Management in Taos County, New Mexico, comprising approximately 13,420 acres as generally depicted on the map, which shall be known as the “Cerro del Yuta Wilderness”.

(2) RIO SAN ANTONIO WILDERNESS.—Certain land administered by the Bureau of Land Management in Rio Arriba County, New Mexico, comprising approximately 8,000 acres, as generally depicted on the map, which shall be known as the “Rio San Antonio Wilderness”.

(b) MANAGEMENT OF WILDERNESS AREAS.—Subject to valid existing rights, the wilderness areas designated by subsection (a) shall be administered in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that with respect to the wilderness areas designated by this Act—

- (1) any reference to the effective date of the Wilderness Act shall be considered to be a reference to the date of enactment of this Act; and
- (2) any reference in the Wilderness Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary.

(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land or interest in land within the boundary of the wilderness areas designated by subsection (a) that is acquired by the United States shall—

- (1) become part of the wilderness area in which the land is located; and
- (2) be managed in accordance with—
 - (A) the Wilderness Act (16 U.S.C. 1131 et seq.);
 - (B) this Act; and
 - (C) any other applicable laws.

(d) GRAZING.—Grazing of livestock in the wilderness areas designated by subsection (a), where established before the date of enactment of this Act, shall be administered in accordance with—

- (1) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and

(2) the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101-405).

(e) **BUFFER ZONES.**—

(1) **IN GENERAL.**—Nothing in this section creates a protective perimeter or buffer zone around any wilderness area designated by subsection (a).

(2) **ACTIVITIES OUTSIDE WILDERNESS AREAS.**—The fact that an activity or use on land outside any wilderness area designated by subsection (a) can be seen or heard within the wilderness area shall not preclude the activity or use outside the boundary of the wilderness area.

(f) **RELEASE OF WILDERNESS STUDY AREAS.**—Congress finds that, for purposes of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)), the public land within the San Antonio Wilderness Study Area not designated as wilderness by this section—

(1) has been adequately studied for wilderness designation;

(2) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)); and

(3) shall be managed in accordance with this Act.

SEC. 5. GENERAL PROVISIONS.

(a) **MAPS AND LEGAL DESCRIPTIONS.**—

(1) **IN GENERAL.**—As soon as practicable after the date of enactment of this Act, the Secretary shall file the map and legal descriptions of the Conservation Area and the wilderness areas designated by section 4(a) with—

(A) the Committee on Energy and Natural Resources of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) **FORCE OF LAW.**—The map and legal descriptions filed under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct errors in the legal description and map.

(3) **PUBLIC AVAILABILITY.**—The map and legal descriptions filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(b) **NATIONAL LANDSCAPE CONSERVATION SYSTEM.**—The Conservation Area and the wilderness areas designated by section 4(a) shall be administered as components of the National Landscape Conservation System.

(c) **FISH AND WILDLIFE.**—Nothing in this Act affects the jurisdiction of the State with respect to fish and wildlife located on public land in the State, except that the Secretary, after consultation with the New Mexico Department of Game and Fish, may designate zones where, and establishing periods when, hunting shall not be allowed for reasons of public safety, administration, or public use and enjoyment.

(d) **WITHDRAWALS.**—Subject to valid existing rights, any Federal land within the Conservation Area and the wilderness areas designated by section 4(a), including any land or interest in land that is acquired by the United States after the date of enactment of this Act, is withdrawn from—

(1) entry, appropriation, or disposal under the public land laws;

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

(3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(e) **TREATY RIGHTS.**—Nothing in this Act enlarges, diminishes, or otherwise modifies any treaty rights.

SEC. 6. 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 establish the Rio Grande del Norte National Conservation Area in the State of New Mexico, and for other purposes.”.

PURPOSE

The purpose of S. 874 is to establish the approximately 235,980-acre Rio Grande del Norte National Conservation Area and to designate the 13,420-acre Cerro del Yuta Wilderness and 8,000-acre Rio San Antonio Wilderness in New Mexico.

BACKGROUND AND NEED

S. 874, as ordered reported, would designate as the Rio Grande del Norte National Conservation Area approximately 235,980 acres of public land managed by the Bureau of Land Management in northern New Mexico, including two wilderness areas—the 8,000-acre Rio San Antonio Wilderness, currently administered as a Wilderness Study Area, and the 13,420-acre Cerro del Yuta Wilderness.

The National Conservation Area contains high mesa sagebrush-grasslands interspersed with extinct volcanic cinder cones covered by pinon juniper woodlands. It also incorporates the upper reaches of the Rio Grande Gorge, previously designated as a Wild and Scenic River. The plateau provides habitat for bighorn sheep, deer, elk, and antelope, and breeding ground for raptors that hunt throughout the area, including peregrine falcons, golden eagles, and bald eagles. The riparian area along the Rio Grande provides habitat for brown trout and the federally-listed endangered southwestern willow flycatcher.

The Conservation Area contains archeological, cultural, and historic resources relating to the settlement of the region by both indigenous populations and later by early Hispanic settlers. Today, residents and visitors alike use this area for hunting, fishing, river rafting, hiking, and other recreational activities.

LEGISLATIVE HISTORY

S. 874 was introduced on April 23, 2009, by Senators Bingaman and Udall of New Mexico. On June 17, 2009, the Subcommittee on Public Lands and Forests held a hearing on the bill (S. Hrg. 111–65). At its business meeting on December 16, 2009, the Committee on Energy and Natural Resources ordered S. 874 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on December 16, 2009, by voice vote of a quorum present, recommends that the Senate pass S. 874, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 874, the Committee adopted an amendment in the nature of a substitute. The amendment modifies the name of the Conservation Area to the Rio Grande del Norte National Conservation Area, updates the map to reflect the name change, clarifies a provision relating to utility rights-of-way within the Conservation Area, and makes several other technical and conforming amendments. The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title.

Section 2 defines key terms used in the bill.

Section 3(a) establishes the Rio Grande del Norte National Conservation Area (Conservation Area) on approximately 235,980 acres of public land managed by the Bureau of Land Management in

Taos and Rio Arriba counties in the State of New Mexico. No tribal land is included within the boundary of the Conservation Area, and where the Conservation Area is adjacent to land that is held in trust for the Taos Pueblo, the boundary of the Conservation Area is the centerline of the Rio Grande.

Subsection (b) describes the purposes for which the Conservation Area is established, which are to conserve, protect, and enhance the area's cultural, archaeological, natural, ecological, historical, wildlife, educational, recreational, and scenic resources.

Subsection (c)(1) directs the Secretary of the Interior (Secretary) to administer the Conservation Area in a manner that protects the resources of the Conservation Area and in accordance with the laws and regulations applicable to public land, this Act, and other applicable laws.

Paragraph (2) directs the Secretary to allow only such uses that further the purposes of the Conservation Area and provides the Secretary with direction with regard to the management of motorized vehicles, grazing, the collection of pinon nuts and firewood, utility right-of-way upgrades, and tribal cultural uses. The Committee notes that the Bureau of Land Management currently authorizes the collection of medicinal plants and herbs and conducts sales of surplus firewood from restoration projects consistent with the Federal Land Policy and Management Act of 1976 and the Rio Grande Corridor Management Plan, and the BLM retains that authority, consistent with the purposes of this Act.

Subsection (d) requires the Secretary to develop a management plan for the Conservation Area within three years after the date of enactment of this Act and allows the Secretary to incorporate the Rio Grande Corridor Management Plan, to the extent consistent with this Act.

The subsection further requires the Secretary to develop the management plan in consultation with state and local governments, tribal governments, land grant communities, and the public, and to consider the recommendation of Indian tribes and pueblos with respect to access and protection of religious and cultural sites, and enhancing the privacy and continuity of cultural and religious activities within the Conservation Area.

The Committee recognizes that the Bureau of Land Management and Taos Pueblo currently work cooperatively with regard to recreation and natural resource management along the shared boundary of the Rio Grande. In preparing and implementing the management plan, the Committee encourages the Bureau of Land Management to continue to work cooperatively to the maximum extent possible with tribes and pueblos in the vicinity of the Conservation Area.

Subsection (e) states that any land that is acquired within the boundary of the Conservation Area shall become part of the Conservation Area and managed accordingly.

Subsection (f) clarifies that the establishment of the Conservation Area does not alter the management status of areas within the boundaries designated as a component of the Wild and Scenic Rivers System or as an area of critical environmental concern, and if there is a conflict between this Act and those designations, the more restrictive provision controls.

Section 4(a) designates approximately 13,420 acres and 8,000 acres of land managed by the Bureau of Land Management as the Cerro del Yuta Wilderness and Rio San Antonio Wilderness, respectively.

Subsection (b) states that the wilderness areas shall be administered in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.).

Subsection (c) states that any land that is acquired within the boundary of the wilderness areas shall become part of the wilderness area in which the land is located and managed accordingly.

Subsection (d) provides for the administration of livestock grazing in the wilderness areas where established before the date of enactment of the Act, in accordance with section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)) and the wilderness grazing guidelines.

Subsection (e) states that the designation of the wilderness areas shall not create a protective perimeter or buffer zone around the area or limit authorized land uses or activities outside the wilderness areas.

Subsection (f) releases from Wilderness Study Area status land within the San Antonio Wilderness Study Area that is not designated as wilderness by this Act.

Section 5(a) directs the Secretary to develop a map and legal description of the Conservation Area and wilderness areas and to make it available to the public as soon as practicable after the date of enactment of this Act.

Subsection (b) states that the Conservation Area and wilderness areas shall be administered as components of the National Landscape Conservation System.

Subsection (c) clarifies that nothing in the Act affects the State of New Mexico's jurisdiction with respect to fish and wildlife, except that zones may be established where hunting is not allowed for reasons of public safety, administration, or public use and enjoyment.

Subsection (d) withdraws, subject to valid existing rights, the Conservation Area and wilderness areas from: entry, appropriation, or disposal under the public land laws; location, entry, and patent under the mining laws; and operation of the mineral leasing, mineral materials, and geothermal leasing laws.

Subsection (e) states that nothing in this Act enlarges, diminishes, or otherwise modifies any treaty rights.

Section 6 authorizes the appropriation of such sums as are necessary to implement the Act.

COST AND BUDGETARY CONSIDERATIONS

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

S. 874—Rio Grande del Norte National Conservation Area Establishment Act

S. 874 would establish the Rio Grande del Norte National Conservation Area (NCA) on land administered by the Bureau of Land Management (BLM) in New Mexico. Based on information provided by BLM, CBO estimates that enacting S. 874 would have no effect

on revenues or direct spending and no significant effect on discretionary spending.

The bill 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.

Under S. 874, nearly 236,000 acres of public land would be designated as the Rio Grande del Norte NCA, and about 21,000 acres of that area would be designated as part of the National Wilderness Preservation System. BLM, which manages the affected acreage, would be required to update existing management plans for the area. Finally, the acreage would not be available for the development of natural resources but would still be available for grazing under existing agreements.

Because the affected acreage is already protected for conservation or wilderness values, CBO estimates that implementing the bill would have no significant effect on the cost of administering the area. We further estimate that any costs to update the management plan for the property or modify existing maps and other materials would be minimal. Finally, because the affected land currently produces no income (and is not expected to do so in the future), we estimate that enacting the bill would not affect revenues or direct spending.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 874.

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. 874.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Land Management at the June 17, 2009 subcommittee hearing on S. 874 follows.

STATEMENT OF NED FARQUHAR, DEPUTY ASSISTANT SECRETARY, LAND & MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on S. 874, El Rio Grande Del Norte National Conservation Area Establishment Act. The Department of the Interior supports S. 874, which designates the nearly 236,000-acre El Rio Grande Del Norte National Conservation Area (NCA) in northern New Mexico as well as two wilderness areas within the NCA.

. BACKGROUND

The proposed El Rio Grande del Norte NCA lies north of Taos on the border with Colorado and straddles Taos and Rio Arriba Counties. The area includes the Cerro de la Olla, Cerro San Antonio and Cerro del Yuta volcanic cones jutting up from the surrounding valley—reminders of the area's turbulent geologic past. Between these mountains is the Rio Grande Wild & Scenic River gorge, carving through the landscape and revealing the basalt rock beneath the surface.

The human history of the landscape is as diverse as its features. Early prehistoric sites attest to the importance of this area for hunting and as a sacred site. Today the area is home to members of the Taos Pueblo, as well as descendants of both Hispanic and American settlers. Wildlife species—including bighorn sheep, deer, elk and antelope bring both hunters and wildlife watchers, while the Rio Grande and its tributaries provide blue ribbon trout fishing and other river recreation. Above it all soar the golden and bald eagles, prairie falcons, and other raptors.

S. 874

S. 874 designates nearly 236,000 acres of land administered by the Bureau of Land Management (BLM) as El Rio Grande del Norte NCA. Each of the NCAs designated by Congress and managed by the BLM is unique. For the most part, however, they have certain critical elements, which include withdrawal from the public land, mining and mineral leasing laws; off-highway vehicle use limitations; and language that charges the Secretary of the Interior with allowing only those uses that further the purposes for which the NCA is established. Furthermore, NCA designations should not diminish the protections that currently apply to the lands. Section 3 of the bill honors these principles, and we support the NCA's designation.

Section 4 of the S. 874 designates two wilderness areas on BLM-managed lands within the NCA—the proposed 13,420-acre Cerro del Yuta Wilderness and the 8,000-acre Rio San Antonio Wilderness. Both of these areas meet the definitions of wilderness. They are largely untouched by humans, have outstanding opportunities for solitude and contain important geological, biological and scientific features—criteria outlined in the Wilderness Act of 1964. We support both of these wilderness designations as well.

CONCLUSION

Senator Bingaman's bill is the product of many years of discussions and collaboration with the local community, stakeholders, and other interested parties. It protects both the valuable resources of the area and the way of life in this unique area of northern New Mexico.

Thank you for the opportunity to testify in support of S. 874.

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. 874, as ordered reported.