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GRAND CANYON BISON MANAGEMENT ACT

DECEMBER 16, 2015.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 782]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 782) to direct the Secretary of the Interior to establish a bison management plan for Grand Canyon National Park, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 782 is to direct the Secretary of the Interior to establish a bison management plan for Grand Canyon National Park.

BACKGROUND AND NEED

In the early 1900s, Charles “Buffalo” Jones brought bison to northern Arizona to breed with cattle in an attempt to create a more robust breed of livestock. The effort proved to be unsuccessful; however, some of the descendants survived. Since 1950, the State of Arizona Game and Fish Department has managed the hybrid, dubbed “beefalo,” as a game species in the House Rock Wildlife Area on the Kaibab National Forest through an interagency agreement with the U.S. Forest Service and the Bureau of Land Management. During the late 1990s, the bison started expanding their range by way of the Kaibab Plateau into the North Rim of Grand Canyon National Park. Over the last several years, few

bison have returned to the national forest. Most now spend a majority of their time inside the park, and many no longer leave the park at all.

Even though bison hunting is allowed on national forest lands, hunting on those lands has not been effective in reducing the size of the herd because the herd generally resides within the national park boundaries. Hunting is not permitted in the national park, and the herd has few natural predators other than humans. As a result, the population is growing by as much as 50 percent a year according to the Arizona Game and Fish Department. The current movement, distribution, and abundance of bison are negatively impacting park resources, such as fragile soils, vegetation, archeological sites, and limited water resources. The Grand Canyon Superintendent described the destruction to the AP on April 3, 2014, "The massive animals have reduced vegetation in meadows to nubs, traveled into Mexican spotted owl habitat, knocked over walls at American Indian cliff dwellings below the North Rim, defecated in lakes, and left ruts in wetlands."

Additionally, the current situation precludes the Arizona Game and Fish Department from providing bison hunting opportunities outside the park and meeting the bison management goals of the state and the Forest Service.

In 2014, the National Park Service (NPS) initiated public scoping to start the process of developing a management plan for bison that takes into account the current and future impacts of bison on Grand Canyon National Park natural and cultural resources, and supports the Forest Service and Arizona Game and Fish Department's goals for management of a free-ranging bison population on the Kaibab National Forest.

A Draft Environmental Impact Statement is not expected until at least the winter of 2016. There are significant concerns with the current timeline, as it is not clear when an actual management plan for the herd will be in place. In the meantime the herd will continue to expand and destroy park resources.

In order to address the bison problem in Grand Canyon National Park as quickly as possible, S. 782 requires a management plan to be published within 180 days following enactment of the bill. As part of the plan, NPS would be required to use skilled public volunteers to help cull the herd on parklands (something NPS already has the authority to do) and bring the size of the herd down to ecologically appropriate levels. Using skilled public volunteers rather than contracted, professional sharpshooters is expected to reduce the cost of culling and help the park save funds.

LEGISLATIVE HISTORY

A companion bill to S. 782, H.R. 1443, was introduced in the House of Representatives by Representatives Gosar, Kirkpatrick, Salmon, Schweikert, Franks, Lummis, Zinke, and Sinema on March 18, 2015. The text of H.R. 1443 was included in an amendment to H.R. 2406 at a business meeting of the House Natural Resources Committee on October 8, 2015. H.R. 2606, as amended, was ordered reported on October 8, 2015 on a vote of 21-15.

S. 782 was introduced by Senators McCain and Flake on March 18, 2015. The Subcommittee on National Parks held a hearing on S. 782 on June 10, 2015. On November 19, 2015, the Committee

on Energy and Natural Resources met in open business session and ordered S. 782 favorably reported without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on November 19, 2015, by a majority voice vote of a quorum present, recommends that the Senate pass S. 782. Five Senators requested that their votes be recorded as follows:

NAYS

Ms. Cantwell
 Ms. Stabenow
 Mr. Franken
 Ms. Hirono
 Ms. Warren*

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, "Grand Canyon Bison Management Act."

Section 2 contains definitions.

Section 3 directs the Secretary of the Interior to produce a bison management plan within 180 days following enactment of the bill. The plan should reduce the number of bison living within Grand Canyon National Park through culling by skilled volunteer hunters and through other nonlethal means. Skilled volunteer hunters are authorized to remove a full bison harvested from within the park. The Secretary is also directed to coordinate the development and implementation of the plan with the Arizona Game and Fish Commission, while still complying with all federal environmental laws.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to 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. 782. 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. 782, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 782, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

*Indicates vote by proxy.

EXECUTIVE COMMUNICATIONS

The testimony provided by the NPS at the June 10, 2015, hearing on S. 782 follows:

STATEMENT OF VICTOR KNOX, ASSOCIATE DIRECTOR, PARK PLANNING, FACILITIES AND LANDS, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today to present the views of the Department of the Interior on S. 782, a bill to direct the Secretary of the Interior to establish a bison management plan for Grand Canyon National Park.

The Department opposes S. 782 because it would disrupt an ongoing planning effort for managing bison at Grand Canyon National Park, and may cause confusion about the National Park Service's existing authorities to manage wildlife populations through a variety of means, including the use of skilled volunteers.

S. 782 would direct the Secretary of the Interior (Secretary) to publish a bison management plan for Grand Canyon National Park (park) no later than 180 days after the enactment of this legislation. The bill would require the plan to include reduction, through humane lethal culling by skilled public volunteers and by other nonlethal means, of the population of bison in the park that the Secretary determines are detrimental to the use of the park. The bill provides that notwithstanding the Act of March 2, 1929 (16 U.S.C. 198c), which is applicable only to Rocky Mountain National Park, or any other provision of law, a skilled public volunteer may remove a full bison harvested from the park. The bill also requires the Secretary to coordinate with the Arizona Game and Fish Commission regarding the development and implementation of the management plan, and that the Secretary comply with all applicable Federal environmental laws (including regulations), including the National Environmental Policy Act of 1969 (NEPA). And, the bill clarifies that nothing in the Act applies to the taking of wildlife in the park for any purpose other than the implementation of the management plan.

The National Park Service (NPS) has several tools available for directly managing ungulates to meet resource management objectives. These tools include both lethal and non-lethal methods for removing ungulates when the NPS determines that population numbers are too high. Under existing authorities, lethal removal of ungulates can be accomplished by using National Park Service employees, contractors, or skilled volunteers, or a combination of the above. Public hunting can also be used in parks where Congress has expressly authorized it, although hunting is not authorized at Grand Canyon National Park and S. 782 does not propose to do so. The appropriate means of culling is selected based the type of park unit, location, resource

issue, conditions at the park, funding, public input, logistics and other concerns. For these reasons, the NPS has not established one method as preferred over any of the others, and analyzes the full suite of tools available for each situation. The preferred action is selected through a planning process that is accompanied by a NEPA review of reasonable and available alternatives.

The NPS has typically used professional sharp shooters to cull whitetail deer in parks in the eastern United States, including at Rock Creek Park in Washington, D.C., and Catoctin Mountain Park in Maryland. Professional sharp shooters were also used at Channel Island National Park in California to cull elk on Santa Rosa Island. In other cases, including Rocky Mountain National Park in Colorado and Theodore Roosevelt National Park in South Dakota, skilled volunteers have been used to cull elk.

With regard to Grand Canyon National Park, the NPS is currently in the process of developing the alternatives for the Grand Canyon Bison Management Plan Draft Environmental Impact Statement (DEIS). We expect to have the DEIS out for public review and comment in the winter of 2016. As part of the alternatives development process with our cooperating agencies, including Arizona Game and Fish Department (AGFD), we are considering lethal removal, or “culling”, of bison as an option for reducing bison density in the park. The use of skilled volunteers in the culling operation would be part of the analysis. If the final plan includes the use of skilled volunteers in a culling operation, we would collaborate with AGFD on implementation including the requirements and protocols for selecting volunteers, and would follow applicable federal law and regulation with regard to disposition of carcasses. S. 782 would disrupt this planning effort.

Further, although S. 782 requires the Secretary to comply with NEPA in developing the bison management plan, the legislation is contrary to NEPA to several ways. For example, by directing the Secretary to put into place a plan to reduce bison using skilled volunteers, the bill appears to circumvent the NEPA process by predetermining a specific outcome or alternative. This approach is counter to NEPA, which requires Federal land managers to consider a range of reasonable alternatives, including no action, and to provide opportunities for public engagement during the NEPA process. Additionally, attempting to complete a plan in 180 days as proposed in the legislation also runs counter to NEPA, and our efforts to work collaboratively with our partners and neighbors, as it complicates our ability to adequately involve the public, tribes, other stakeholders, and cooperating agencies, including the AGFD.

Finally, the Department is also concerned that by attempting to provide this duplicative authority to use skilled volunteers in culling operations, S. 782 may cause confusion about the NPS's existing authority to carry out culling operations using skilled volunteers. While the

NPS's authority to manage ungulate populations through lethal reduction has been upheld in court, S. 782 seems to call that authority into question, which could cause unnecessary confusion and be counterproductive to wildlife management efforts across the National Park System.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions you or the other members of the subcommittee may have.

ADDITIONAL VIEWS FROM SENATOR FLAKE

Contrary to the Minority Views, this legislation is necessary to preserve the natural and cultural resources found within Grand Canyon National Park (the “Park”) from being destroyed by an invasive hybrid bison-cattle herd. What’s more, this legislation does not open the Park to hunting as viewed by some members opposed to this legislation. In fact, the National Park Service testified, “Public hunting can also be used in parks where Congress has expressly authorized it, although hunting is not authorized at Grand Canyon National Park and S. 782 does not propose to do so.”¹

Rather, the culling of overpopulated invasive species inside park boundaries is not an uncommon practice for the National Park Service (“NPS” or the “Park Service”). The NPS and several conservation organizations have long acknowledged that the bison-cattle population must be reduced at Grand Canyon National Park for the sake of visitor safety and to prevent further damage to park resources.

In 2008, the Department of the Interior initiated efforts to improve bison management within the Park. Later, in 2014, NPS began the public scoping process, working with the Arizona Game and Fish Department (“AGFD”) to consider management alternatives including the lethal removal, or “culling” of bison. Despite the ongoing resource degradation and the continuing herd growth, NPS still has not released a draft plan, even though it committed to do so by the fall of 2015. Deferring, as the minority would suggest, to the Secretary’s unreasonable delay in addressing this issue, is more akin to slowly managing resource destruction rather than controlling invasive wildlife.

At a cost to the American taxpayer, the federal government will occasionally engage with specialized marksman vendors to remove deer, elk, and other ungulates from National Parks. In the case of the Grand Canyon, this legislation proposes instead that the National Park Service coordinate with the AGFD to utilize licensed hunters as volunteers to remove a limited number of bison as a service to the federal government free-of-charge. In exchange, such qualified volunteers would be allowed to take the bison meat with them. This legislation also eases federal regulations that restrict the removal of an animal carcass from inside a National Park, which is a key feature of this bill that is not found in the Sportsmen’s Act of 2015 (S. 556) as reported by the committee.

The bill supports the idea of “coordination” among AGFD and the NPS regarding bison management within the Park. In fact, NPS

¹Statement of Victor Knox, Associate Director, Park Planning, Facilities and Lands, National Park Service, Department of the Interior, Before the Senate Subcommittee on National Parks, Committee on Energy and Natural Resources, Concerning S. 782, to Direct the Secretary of the Interior to Establish a Bison Management Plan for Grand Canyon National Park (June 10, 2015) (Emphasis added).

has conceded for years that it has been working with AGFD as a cooperating agency to address this issue. Furthermore, NPS has stated that “[i]f culling becomes part of the plan, we would collaborate with AGFD on implementation, including the requirements and protocols for selecting volunteers, and would follow applicable federal laws and regulations with regard to disposition of carcasses.”² In light of the foregoing, we disagree with the minority’s view that the state fish and game department should not be involved in any wildlife management decisions within national parks, or that it is unreasonable to require certain conditions for those volunteers, such as having a valid hunting license. That view simply does not comport with the NPS’s own statements relative to managing the hybrid bison-cattle herd in the Park.

This legislation received bipartisan support during its consideration in the committee. It is also supported by the Arizona Game and Fish Commission, the Arizona Attorney General, the Congressional Sportsmen’s Foundation, and the Arizona Sportsmen for Wildlife Conservation on behalf of 14 other sportsmen and conservation organizations in Arizona. A similar bipartisan proposal was favorably reported by the House Committee on Natural Resources by voice vote as an amendment to Sportsmen’s Heritage and Recreation Enhancement (SHARE) Act (H.R. 2406).

The bison-cattle hybrid problem continues to grow at the Grand Canyon National Park and this legislation offers a solution that would cost-effectively remove excess bison under carefully regulated conditions.

JEFF FLAKE.

²Letter from Jonathan B. Jarvis, National Park Service Director, to Senator Murkowski, Chairman of the Committee on Energy and Natural Resources (Apr. 13, 2005); *see also* Statement of Victor Knox, *supra* note 1.

MINORITY VIEWS

I oppose S. 782 because it would open Grand Canyon National Park to hunting, contrary to long-standing precedent. The bill is unnecessary to address the management of bison within the national park and would overturn the National Park Service's determination about how to best manage the national park, consistent with the laws and policies applicable to the National Park System.

The National Park Service provided testimony at the committee hearing that the agency is currently in the process of developing a draft environmental impact statement for its Grand Canyon Bison Management Plan, and that it would consider, as part of the alternatives to reduce the bison population within the park, the use of volunteers to cull the herd population that S. 782 would mandate.

Instead of allowing the plan to be developed in accordance with applicable environmental laws, S. 782 would disrupt the ongoing bison management plan and require the National Park Service to use Arizona-licensed hunters and coordinate with the Arizona Game and Fish Commission for bison management within the national park.

During the committee's consideration of the Sportsmen's Act of 2015 (S. 556), the committee included language authorizing the Secretary of the Interior to use qualified volunteers to assist in carrying out wildlife management on National Park System lands. However, the committee wisely included a requirement that the use of any volunteers be at the discretion of the Secretary of the Interior and be subject to any training requirements or qualifications established by the Secretary and subject to any other terms and conditions the Secretary might require.

Significantly, the wildlife management language adopted by the committee did not require a qualified volunteer to have a state hunting license or involve the state fish and game department in any wildlife management decisions within national parks.

Because S. 782 imposes state-licensed hunting as an unprecedented wildlife management requirement within Grand Canyon National Park and because the bill mandates policies which are opposed by the National Park Service and run contrary to long-standing national park system laws and policies, I strongly oppose the bill.

MARIA CANTWELL.

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 as ordered reported.

