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RIO GRANDE NATURAL AREA

JULY 13, 2004.—Ordered to be printed

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

R E P O R T

[To accompany S. 1467]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1467) to establish the Rio Grande Outstanding Natural Area 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 "Rio Grande Natural Area Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term "Commission" means the Rio Grande Natural Area Commission established by section 4(a).

(2) NATURAL AREA.—The term "Natural Area" means the Rio Grande Natural Area established by section 3(a).

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

SEC. 3. ESTABLISHMENT OF RIO GRANDE NATURAL AREA.

(a) IN GENERAL.—There is established the Rio Grande Natural Area in the State of Colorado to conserve, restore, and protect the natural, historic, cultural, scientific, scenic, wildlife, and recreational resources of the Natural Area.

(b) BOUNDARIES.—The Natural Area shall include the Rio Grande River from the southern boundary of the Alamosa National Wildlife Refuge to the New Mexico State border, extending ¼ mile on either side of the bank of the River.

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall prepare a map and legal description of the Natural Area.

(2) EFFECT.—The map and legal description of the Natural Area shall have the same force and effect as if included in this Act, except that the Secretary may correct any minor errors in the map and legal description.

(3) PUBLIC AVAILABILITY.—The map and legal description of the Natural Area shall be available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 4. ESTABLISHMENT OF THE COMMISSION.

(a) ESTABLISHMENT.—There is established the Rio Grande Natural Area Commission.

(b) PURPOSE.—The Commission shall—

(1) advise the Secretary with respect to the Natural Area; and

(2) prepare a management plan relating to non-Federal land in the Natural Area under section 6(b)(2)(A).

(c) MEMBERSHIP.—The Commission shall be composed of 9 members appointed by the Secretary, of whom—

(1) 1 member shall represent the Colorado State Director of the Bureau of Land Management;

(2) 1 member shall be the manager of the Alamosa National Wildlife Refuge, ex officio;

(3) 3 members shall be appointed based on the recommendation of the Governor of Colorado, of whom—

(A) 1 member shall represent the Colorado Division of Wildlife;

(B) 1 member shall represent the Colorado Division of Water Resources; and

(C) 1 member shall represent the Rio Grande Water Conservation District; and

(4) 4 members shall—

(A) represent the general public;

(B) be citizens of the local region in which the Natural Area is established; and

(C) have knowledge and experience in the fields of interest relating to the preservation, restoration, and use of the Natural Area.

(d) TERMS OF OFFICE.—

(1) IN GENERAL.—Except for the manager of the Alamosa National Wildlife Refuge, the term of office of a member of the Commission shall be 5 years.

(2) REAPPOINTMENT.—A member may be reappointed to the Commission on completion of the term of office of the member.

(e) COMPENSATION.—A member of the Commission shall serve without compensation for service on the Commission.

(f) CHAIRPERSON.—The Commission shall elect a chairperson of the Commission.

(g) MEETINGS.—

(1) IN GENERAL.—The Commission shall meet at least quarterly at the call of the chairperson.

(2) PUBLIC MEETINGS.—A meeting of the Commission shall be open to the public.

(3) NOTICE.—Notice of any meeting of the Commission shall be published in advance of the meeting.

(h) TECHNICAL ASSISTANCE.—The Secretary and the heads of other Federal agencies shall, to the maximum extent practicable, provide any information and technical services requested by the Commission to assist in carrying out the duties of the Commission.

SEC. 5. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—For purposes of carrying out the management plan on non-Federal land in the Natural Area, the Commission may enter into a cooperative agreement with the State of Colorado, a political subdivision of the State, or any person.

(2) REQUIREMENTS.—A cooperative agreement entered into under paragraph (1) shall establish procedures for providing notice to the Commission of any action proposed by the State of Colorado, a political subdivision of the State, or any person that may affect the implementation of the management plan on non-Federal land in the Natural Area.

(3) EFFECT.—A cooperative agreement entered into under paragraph (1) shall not enlarge or diminish any right or duty of a Federal agency under Federal law.

(c) PROHIBITION OF ACQUISITION OF REAL PROPERTY.—The Commission may not acquire any real property or interest in real property.

(d) IMPLEMENTATION OF MANAGEMENT PLAN.—

(1) IN GENERAL.—The Commission shall assist the Secretary in implementing the management plan by carrying out the activities described in paragraph (2) to preserve and interpret the natural, historic, cultural, scientific, scenic, wildlife, and recreational resources of the Natural Area.

(2) AUTHORIZED ACTIVITIES.—In assisting with the implementation of the management plan under paragraph (1), the Commission may—

(A) assist the State of Colorado in preserving State land and wildlife within the Natural Area;

(B) assist the State of Colorado and political subdivisions of the State in increasing public awareness of, and appreciation for, the natural, historic, scientific, scenic, wildlife, and recreational resources in the Natural Area;

(C) encourage political subdivisions of the State of Colorado to adopt and implement land use policies that are consistent with—

(i) the management of the Natural Area; and

(ii) the management plan; and

(D) encourage and assist private landowners in the Natural Area in the implementation of the management plan.

SEC. 6. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 4 years after the date of enactment of this Act, the Secretary and the Commission, in coordination with appropriate agencies in the State of Colorado, political subdivisions of the State, and private landowners in the Natural Area, shall prepare management plans for the Natural Area as provided in subsection (b).

(b) DUTIES OF SECRETARY AND COMMISSION.—

(1) SECRETARY.—The Secretary shall prepare a management plan relating to the management of Federal land in the Natural Area.

(2) COMMISSION.—

(A) IN GENERAL.—The Commission shall prepare a management plan relating to the management of the non-Federal land in the Natural Area.

(B) APPROVAL OR DISAPPROVAL.—

(i) IN GENERAL.—The Commission shall submit to the Secretary the management plan prepared under subparagraph (A) for approval or disapproval.

(ii) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves the management plan submitted under clause (i), the Secretary shall—

(I) notify the Commission of the reasons for the disapproval; and

(II) allow the Commission to submit to the Secretary revisions to the management plan submitted under clause (i).

(3) COOPERATION.—The Secretary and the Commission shall cooperate to ensure that the management plans relating to the management of Federal land and non-Federal land are consistent.

(c) REQUIREMENTS.—The management plans shall—

(1) take into consideration Federal, State, and local plans in existence on the date of enactment of this Act to present a unified preservation, restoration, and conservation plan for the Natural Area;

(2) with respect to Federal land in the Natural Area—

(A) be developed in accordance with section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712);

(B) be consistent, to the maximum extent practicable, with the management plans adopted by the Director of the Bureau of Land Management for land adjacent to the Natural Area; and

(C) be considered to be an amendment to the San Luis Resource Management Plan of the Bureau of Land Management; and

(3) include—

(A) an inventory of the resources contained in the Natural Area (including a list of property in the Natural Area that should be preserved, restored, managed, developed, maintained, or acquired to further the purposes of the Natural Area); and

(B) a recommendation of policies for resource management, including the use of intergovernmental cooperative agreements, that—

(i) protect the resources of the Natural Area; and

(ii) provide for solitude, quiet use, and pristine natural values of the Natural Area.

(d) PUBLICATION.—The Secretary shall publish notice of the management plans in the Federal Register.

SEC. 7. ADMINISTRATION OF NATURAL AREA.

(a) IN GENERAL.—The Secretary shall administer the Federal land in the Natural Area—

(1) in accordance with—

(A) the laws (including regulations) applicable to public land; and

(B) the management plan; and

(2) in a manner that provides for—

(A) the conservation, restoration, and protection of the natural, historic, scientific, scenic, wildlife, and recreational resources of the Natural Area;

(B) the continued use of the Natural Area for purposes of education, scientific study, and limited public recreation in a manner that does not substantially impair the purposes for which the Natural Area is established;

(C) the protection of the wildlife habitat of the Natural Area;

(D) a prohibition on the construction of water storage facilities in the Natural Area; and

(E) the reduction in the use of or removal of roads in the Natural Area and, to the maximum extent practicable, the reduction in or prohibition against the use of motorized vehicles in the Natural Area (including the removal of roads and a prohibition against motorized use on Federal land in the area on the western side of the Rio Grande River from Lobatos Bridge south to the New Mexico State line).

(b) CHANGES IN STREAMFLOW.—The Secretary is encouraged to negotiate with the State of Colorado, the Rio Grande Water Conservation District, and affected water users in the State to determine if changes in the streamflow that are beneficial to the Natural Area may be accommodated.

(c) PRIVATE LAND.—The management plan prepared under section 6(b)(2)(A) shall apply to private land in the Natural Area only to the extent that the private landowner agrees in writing to be bound by the management plan.

(d) WITHDRAWAL.—Subject to valid existing rights, all Federal land in the Natural Area 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 the mineral leasing laws (including geothermal leasing laws).

(e) ACQUISITION OF LAND.—

(1) IN GENERAL.—The Secretary may acquire from willing sellers by purchase, exchange, or donation land or an interest in land in the Natural Area.

(2) ADMINISTRATION.—Any land or interest in land acquired under paragraph (1) shall be administered in accordance with the management plan and this Act.

(f) APPLICABLE LAW.—Section 5(d)(1) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(d)(1)) shall not apply to the Natural Area.

SEC. 8. EFFECT.

Nothing in this Act—

(1) amends, modifies, or is in conflict with the Rio Grande Compact, consented to by Congress in the Act of May 31, 1939 (53 Stat. 785, ch. 155);

(2) authorizes the regulation of private land in the Natural Area;

(3) authorizes the imposition of any mandatory streamflow requirements;

(4) creates an express or implied Federal reserved water right;

(5) imposes any Federal water quality standard within or upstream of the Natural Area that is more restrictive than would be applicable had the Natural Area not been established; or

(6) prevents the State of Colorado from acquiring an instream flow through the Natural Area under the terms, conditions, and limitations of State law to assist in protecting the natural environment to the extent and for the purposes authorized by State law.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 10. TERMINATION OF COMMISSION.

The Commission shall terminate on the date that is 10 years after the date of enactment of this Act.

2. Amend the title so as to read: "A bill to establish the Rio Grande Natural Area in the State of Colorado, and for other purposes.".

PURPOSE OF THE MEASURE

The purpose of S. 1467 is to establish a 33-mile stretch of the Rio Grande River between the Alamosa Wildlife Refuge and the Colorado and New Mexico state line as a Natural Area, to be administered by the Bureau of Land Management, to promote the protection and restoration of the riparian zone of the Rio Grande.

BACKGROUND AND NEED

Federal, State, and local officials have looked for a way to restore and protect the riparian zone of the Rio Grande River in southern Colorado without creating a management structure that would conflict with the long-standing water uses upstream and the agricultural uses in the San Luis Valley. This group has worked together collaboratively to develop a proposal for federal designation that protects the resources of concern and that protects property rights and existing uses.

LEGISLATIVE HISTORY

S. 1467 was introduced by Senator Campbell on July 25, 2003. The Subcommittee on Public Lands and Forests held a hearing on S. 1467 on November 18, 2003. At the business meeting on June 16, 2004, the Committee on Energy and Natural Resources ordered S. 1467, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 16, 2004, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1467, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 1467, the Committee adopted an amendment in the nature of a substitute. The amendment designates the area as the "Rio Grande Natural Area" and clarifies the roles of the Department of the Interior and the Rio Grande Natural Area Commission in developing and administering management plans for the area. The amendment is explained in detail in the section by section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the "Rio Grande Natural Area Act".

Section 2 provides definitions used in the bill.

Section 3 provides for the establishment of the Rio Grande Natural Area, defines its boundaries as including the river from the Alamosa National Wildlife Refuge to the Colorado-New Mexico State line and extending ¼ mile on either side of the river.

Section 4 establishes the Rio Grande Natural Area Commission which is to be made up of 9 members, consisting of 2 officials of the Department of the Interior, 2 officials of the State of Colorado, 1 representative of the Rio Grande Water Conservation District, and 4 individuals representing the general public. The section also provides guidance on how the Commission will operate.

Section 5 establishes the powers and duties of the Commission.

Section 6 provides guidance on the preparation of management plans, one for the non-Federal lands within the Natural Area, prepared by the Commission, and one for the Federal lands within the Natural Area, prepared by the Secretary of the Interior. The section directs that the Secretary and the Commission are to cooperate to ensure that the two plans are consistent.

Section 7 provides self-explanatory direction for the administration of the Natural Area. Paragraph 7(a)(2)(D) prohibits the construction of water storage facilities in the Natural Area. This paragraph is not intended to preclude the continuing use and operation, repair, rehabilitation, expansion, or new construction of water supply facilities, water or wastewater treatment facilities, stormwater facilities, public utilities, or common carriers along the Rio Grande River and its tributaries upstream of the Natural Area.

Section 8 describes the effects on water rights, changes to stream flow, and private lands.

Section 9 authorizes appropriation of funds.

Section 10 directs the termination of the Commission after a period of 10 years.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1467, the Rio Grande Natural Area Act.

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

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 1467—Rio Grande Natural Area Act

CBO estimates that S. 1467 would not significantly affect the federal budget. The bill could affect direct spending, but we estimate that any such effects would be negligible. S. 1467 would not affect revenues. S. 1467 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 1467 would establish the Rio Grande Natural Area on roughly 10,000 acres of federal and nonfederal land surrounding a 33.3-mile segment of the Rio Grande River in Colorado. The Bureau of Land Management (BLM) would manage federal land within the proposed natural area. S. 1467 would establish a commission to develop and implement a plan to manage nonfederal land within the proposed area. Based on information from BLM, CBO estimates that increased costs to operate that commission and manage fed-

eral land within the area would total less than $500,000 annually, assuming the availability of appropriated funds.

The bill would withdraw federal land within the proposed area from programs to develop natural resources. According to BLM, that land currently generates no significant receipts and is not expected to do so over the next 10 years. Hence, we estimate that the proposed withdrawal could have a negligible effect on offsetting receipts (a credit against direct spending).

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1467. 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. 1467, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 1467 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, December 18, 2003.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter sets forth the views of the Department of the Interior on S. 1467, the Rio Grande Outstanding Natural Area Act. The Administration could support the legislation with a number of modifications.

From its headwaters in Colorado's San Juan Mountains, the Rio Grande flows south through Colorado, bisecting New Mexico, then crossing into Texas where it forms the U.S./Mexico border until emptying into the Gulf of Mexico. At 1,885 miles long, the Rio Grande is the fifth longest river in North America (and among the 20 longest in the world). Its flowing waters have been essential to survival for prehistoric, historic, and present day populations.

North from the New Mexico border into Colorado is a 33-mile stretch of the Rio Grande River that is outstanding for many reasons. Natural and undeveloped, this free flowing river is home to extensive wildlife, Significant for its recreational, scientific and educational uses, the area is dominated by sweeping views and a long history. Through multiple land acquisitions from willing sellers, the BLM has acquired a continuous 20-mile stretch of lands along the western bank of the Rio Grande now designated as the Rio Grande Corridor Area of Critical Environmental Concern.

The people who live in the San Luis Valley have come together in a collaborative fashion to find ways to further protect and enhance this stretch of this historic river. Discussions about protection of the corridor began following completion of the BLM's 1991 San Luis Resource Management Plan. As part of the plan, BLM conducted a wild and scenic rivers eligibility and suitability analysis and ultimately recommended that stakeholders interested in the river create "some enduring form of protection." The legislation being considered today is a result of that stakeholder process.

S. 1467, the Rio Grande Outstanding Natural Area Act, was introduced on July 28th of this year. The bill's stated purpose is to conserve, restore, and protect this special resource. It does this by establishing the Rio Grande Outstanding Natural Area along a 33.3 mile segment of the Rio Grande from the New Mexico border north to the Alamosa National Wildlife Refuge in a corridor about ¼ mile wide on either side of the river. The overall area includes over 10,000 acres, approximately 35% of which is BLM-managed public land. The remainder is private land.

The bill establishes a commission whose purpose is to work with Federal, State and local authorities to develop an integrated resource management plan for the area. We support this type of collaborative effort. The Secretary's 4Cs envision just this type of endeavor. However, as currently drafted, we have concerns about the bill's use of a commission as a means of advising the Secretary on land management decisions affecting this area. Specifically, the bill does not address the funding source for the commission, and does not make clear the nature of the commission's advisory role, or its impact on affected private property interests. Given these concerns, we believe an advisory council is a more appropriate vehicle for this collaboration. Chartered under the Federal Advisory Committee Act (FACA), an advisory council would be able to fill many of the same roles as the proposed commission. The BLM currently works with 39 advisory councils. They range from our 23 Resource Advisory Councils (RACs), which provide advice on multiple use management of public lands within a state or region of a state, to area-specific advisory councils, such as the Steens Mountain Advisory Council or the Canyons of the Ancients National Monument Advisory Committee in southwestern Colorado. All recommendations by advisory councils are considered by the BLM's State/field offices and by the Washington office when making decisions about the management of public lands.

In addition, we would like to work on clarifications to this section to ensure that the BLM continues to have final responsibility for planning for the Federal lands. A single plan covering the entire river corridor is still viable, provided it is clear that the BLM has ultimate planning authority for the Federal lands. It is our understanding that the focus of this process would be restoration of the historic riparian community along the river. Specifically, issues of livestock movement through the largely unfenced river corridor, designation of vehicle access routes to minimize impact on riparian vegetation, and management of riparian habitat on BLM lands are likely to be addressed.

Undertaking a management plan is a time-consuming task requiring extensive resources and expertise. We believe the time deadlines and other specifics of the planning sections established in

the bill may be overly optimistic. In order to ensure a fully cooperative, collaborative, and consultative process that is consistent with the National Environmental Policy Act (NEPA) and other laws and regulations, we would urge longer timeframes. We would be pleased to work with the sponsor and the Committee to address this concern.

While the southern Colorado stretch of the Rio Grande is truly outstanding, we would recommend that the sponsor of the bill consider whether a different designation for this area might be preferred. Currently, the BLM manages only one "Outstanding Natural Area" (ONA), the Yaquina Head ONA, located on the Oregon coast. Yaquina Head ONA is a tourist destination with an emphasis on visitation. Because visitation is not a stated goal in this area, we are concerned that using the same terminology could result in confusion. Possible alternatives would be a "cooperative management and protection area," such as exists in eastern Oregon in the Steens Mountains, or "cooperative river management area." We would be pleased to work with the sponsor and the Committee to resolve this concern.

There are additional technical issues we would like to work on as well. For example, we would like the opportunity to work with the sponsor and the Committee on an accurate map of the proposed area.

Additionally, Section 11(a) of the bill calls for the revocation of any existing reservations on the public lands within the area. There are two such reservations. The first is a 1949 administrative withdrawal of approximately 2,700 acres for the purpose of future hydroelectric development (this withdrawal covers lands both in southern Colorado and northern New Mexico). The second is a 1939 Executive Order creating public water reserves for the purpose of livestock and domestic access. These reservations are no longer necessary, because in the former case, hydroelectric development has been rejected as a viable option for this section of the river and in the later case because access to the Rio Grande now exists due to subsequent BLM land acquisitions. As written, the language only revokes the portion of the reservation within the quarter mile river corridor, and could result in unnecessary management confusion. As all of these reservations are river-based, we advocate a complete revocation of the reservations in lieu of a partial revocation.

Section 11(c) of the bill withdraws the public lands within the newly designated area from a host of public laws and provisions. To avoid confusion, we would recommend a standard withdrawal from location, entry, appropriation and/or patent under the public land laws and mining laws as well as from operations of the mineral leasing, mineral materials, and geothermal leasing laws. Such a standard withdrawal will foster clear understanding and, we believe, reflects the intent of the sponsor.

The Administration supports sections 9(c), 13, and 14 regarding water rights. This language makes clear that the designations in this Act shall not be construed to constitute an express or implied water right.

We believe the goals of this legislation are worthy and we support them wholeheartedly. The local support for this proposal is just the kind of effort that this Department and this Administra-

tion encourages. We believe that by working together cooperatively, this area of the Rio Grande can be a model for responsible stewardship of the land.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

REBECCA WATSON,
Assistant Secretary for Land and Minerals Management.

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. 1467, as ordered reported.

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