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GREAT SAND DUNES NATIONAL PARK AND PRESERVE ACT OF 2000 AMENDMENTS ACT

APRIL 10, 2008.—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. 127]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 127) to amend the Great Sand Dunes National Park and Preserve Act of 2000 to explain the purpose and provide for the administration of the Baca National Wildlife Refuge, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

On page 3, strike lines 12 through 14 and insert the following:

“(3) subject to any agreement in existence as of the date of enactment of this paragraph, and to the extent consistent with the purposes of the Refuge, use decreed water rights on the Refuge in approximately the same manner that the water rights have been used historically.”.

PURPOSE

The purpose of S. 127 is to amend the Great Sand Dunes National Park and Preserve Act of 2000 to explain the purpose and provide for the administration of the Baca National Wildlife Refuge.

BACKGROUND AND NEED

Public Law 106-530 required the Secretary of the Interior to establish the Great Sand Dunes National Park. In addition, the law required the Secretary, upon determining that sufficient land has been acquired to constitute an area that can be efficiently managed

as a National Wildlife Refuge, to establish the Baca National Wildlife Refuge. Subsequently, in 2004, the Secretary established the refuge.

Although Public Law 106–530 gave the Secretary the authority to establish the refuge, it did not set forth specific purposes for doing so. It would be helpful to the Fish and Wildlife Service to have Congress enact such a provision so that it could guide management direction and a management plan.

LEGISLATIVE HISTORY

S. 127 was introduced by Senator Allard and Senator Salazar on January 4, 2007. Rep. Salazar introduced a companion measure in the House of Representatives (H.R. 1658) on March 22, 2007. The Subcommittee on National Parks held a hearing on S. 127 on September 11, 2007. (S. Hrg. 110–213.) The Committee on Energy and Natural Resources ordered it favorably reported on January 30, 2008.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by a voice vote of a quorum present, recommends that the Senate pass S. 127, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 127, the Committee adopted an amendment to the bill. The amendment makes it clear that the provision in the bill requiring the Secretary, in administering water resources on the refuge, to use decreed water rights on the refuge in approximately the same manner that the water rights have been used historically, is subject to existing agreements and must be consistent with the purposes of the refuge.

SECTION-BY-SECTION ANALYSIS

Section 1 amends section 6 of the Great Sand Dunes National Park and Preserve Act of 2000 by adding a purpose for the Baca National Wildlife Refuge. This section also requires the Secretary, in administering water resources on the refuge, to use decreed water rights on the refuge in approximately the same manner that the water rights have been used historically, subject to any agreement in existence and to the extent consistent with the purposes of the refuge.

COST AND BUDGETARY CONSIDERATIONS

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

S. 127—A bill to amend the Great Sand Dunes National Park and Preserve Act of 2000 to explain the purpose and provide for the administration of the Baca National Wildlife Refuge

S. 127 would specify that the purpose of the Baca National Wildlife Refuge in Colorado is to restore and maintain habitats for na-

tive wildlife, plants, and fish in the San Luis Valley. The bill also would clarify that the Department of the Interior shall continue to use water rights for the refuge as it has in the past.

CBO estimates that enacting S. 127 would have no effect on refuge operating costs or other discretionary spending because the legislation clarifies existing law and refuge practice. Enacting S. 127 would not affect direct spending or revenues.

S. 127 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.

The CBO staff contact for this estimate is Deborah Reis. This 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. 127. 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. 127, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 127, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined by rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the National Park Service at the September 11, 2007 hearing follows:

STATEMENT OF DANIEL N. WENK, DEPUTY DIRECTOR,
NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on behalf of the Administration on a number of bills.

S. 127 TO AMEND THE GREAT SAND DUNES NATIONAL PARK
AND PRESERVE ACT OF 2000

S. 127 would amend the Great Sand Dunes National Park and Preserve Act of 2000 to explain the purpose and provide for the administration of the Baca National Wildlife Refuge in Colorado. The Administration supports this bill if amended. The bill amends earlier legislation by affirmatively establishing a purpose statement for the Refuge.

The Fish and Wildlife Service is currently managing the refuge under a Conceptual Management Plan finalized in 2005. The Plan noted that the refuge's authorizing legisla-

tion did not state a purpose and proposed language similar to that of S. 127. Specifically, S. 127 would explicitly define the purpose of the refuge as, “. . . to restore, enhance, and maintain wetland, upland, riparian, and other habitats for native wildlife, plant, and fish species in the San Luis Valley.” The Service would also be required to emphasize migratory bird conservation and manage the refuge in concert with broader landscape scale conservation efforts.

The bill also includes a language requiring the Service to manage water on the refuge in approximately the same manner as has occurred historically. While this is the current intent of the Fish and Wildlife Service, such a requirement could be read to run counter to the purpose of the refuge and the sustainability of the wildlife, plant, and fish species and their habitat for which the refuge was established. As discussed below, for this reason we recommend a clarifying amendment to this language.

BACKGROUND ON BACA NATIONAL WILDLIFE REFUGE

The Baca National Wildlife Refuge is located in Saguache and Alamosa Counties in the San Luis Valley of south-central Colorado. The approved acquisition boundary includes 92,500 acres of wetlands, desert shrub grasslands, and riparian lands and abuts lands managed by other conservation agencies and organizations, including the National Park Service, the U.S. Forest Service, and The Nature Conservancy. Other land features included within the refuge include stabilized sand dunes, intermittent streams, and approximately 20,000 acres of wetland basins, many of which are maintained through irrigation practices with decreed water rights. The refuge is administered as a unit of the San Luis Valley National Wildlife Refuge Complex, which includes the Alamosa and Monte Vista refuges, and other smaller units throughout the Valley.

The refuge’s wetlands are an integral part of a larger wetlands complex that constitutes the largest and most diverse assemblage of wetlands in the State of Colorado. Several bird species of conservation concern, such as White-faced ibis, rely on the Baca’s wetlands for key foraging areas during the breeding season. Waterfowl and other water birds heavily utilize wetlands and other habitats on the refuge at various times of year, especially during the nesting season. Native fish species, including a recently discovered population of Rio Grande chub, which is listed by the State of Colorado as species of concern, and the Rio Grande sucker, listed by the State as endangered, live on the refuge in small streams draining from the Sangre de Cristo Range. Elk, mule deer, and pronghorn also use the refuge.

To date, the Service has acquired 57,000 acres of fee-title land, and, in cooperation with neighboring landowners, is managing an additional 27,000 acres within the acquisition boundary.

The refuge was authorized by Congress in 2000 as part of the larger creation of the Great Sand Dunes National

Park and Preserve. While Congress did direct the Secretary of the Interior, acting through the Service, to administer the refuge in accordance with the National Wildlife Refuge System Administration Act of 1966 and the Refuge Recreation Act of 1962, and specified certain water management requirements, no formal purpose for the refuge was provided.

Typically, national wildlife refuges, when established by Congress or by Executive action, are assigned a primary purpose that gives the Service clear management direction for the refuge. For example, many refuges have as their purpose the conservation of migratory birds. Others were established primarily for big game, or the conservation of species protected by the Endangered Species Act. In recent years, an increasing number of refuges have been established in urban areas to promote environmental education. Numerous refuges have multiple purposes.

It is important to note that these primary purposes do not necessarily preclude other management activities, including public use. Rather, they give refuge managers a framework for planning and implementing management activities, including long-range conservation planning to compatibility determinations, both of which were key provisions of the 1997 amendments to the 1966 Refuge Administration Act.

Designating purposes for the Baca National Wildlife Refuge is also necessary because the refuge is part of a larger public lands complex, comprised of multiple federal jurisdictions, which is in turn situated on a landscape with diverse land ownership status. Because refuges, by definition, are unique in their "wildlife first" approach to land management, it is important for the Service to be able to communicate with other area landowners, both public and private, as well as the general public about the purposes for which the Service will manage the Baca, as well as the overarching mission of the National Wildlife Refuge System.

WATER USE REQUIREMENT

The only change the Administration recommends to the bill as currently written does not involve the purpose statement of the refuge but the provision at section 1(3), which would require the Secretary of Interior, in administering water resources on the refuge to "use decreed water rights on the Refuge in approximately the same manner that the water rights have been used historically." As noted above, historically, water has been used to irrigate lands now included in the Baca National Wildlife Refuge. The Service expects to continue to manage the land in such a fashion, however, the document that will guide the future of the refuge is a Comprehensive Conservation Plan (CCP). While this plan will not be finished for a number of years, the refuge will be operating under the current Plan and provide for "compatible" uses as provided by the National Wildlife Refuge System Improvement Act. The re-

quirement of S. 127 to use “decreed water in approximately the same manner” as it has been used historically could restrict the options for future management actions available to the Service in developing the CCP.

Additionally, there is a pre-existing water service agreement between the Service and the Baca Grande Water and Sanitation District associated with the refuge. This agreement obligates the Service to lease up to 4,000 acre-feet of water rights—which the Service acquired along with the refuge—to the District. Currently, there are several wells on the refuge that are decreed for irrigation. Under the terms of the agreement, if the District requests the full amount of water to which they are entitled, the Service will need to change the decreed use of these wells from irrigation to municipal to fulfill the District’s request. Because the Service must file in State water court to change the decreed use of these wells from irrigation to municipal, we wish to avoid any potential conflict between 5.127 and future state water court proceedings.

For these reasons, we recommend amending the bill to include the following italicized language:

(3) in subsection (d)—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period at the end and inserting “; *and*”; and

(C) by adding at the end the following:

“(3) subject to existing agreements and to the extent it does not interfere with refuge purposes, use decreed water rights on the Refuge in approximately the same manner that the water rights have been used historically.”.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared testimony on S. 127. I would like to extend our appreciation to you and the rest of the Subcommittee, especially Senator Salazar, for your leadership and support for the National Wildlife Refuge System and for landscape conservation efforts in the San Luis Valley. I would be happy to respond to any questions you may 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. 127 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):

**GREAT SAND DUNES NATIONAL PARK AND PRESERVE
ACT OF 2000**

(Public Law 106–530)

AN ACT 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.

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

SECTION 1. SHORT TITLE.

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

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SEC. 6. BACA NATIONAL WILDLIFE REFUGE, COLORADO.

[(a) ESTABLISHMENT.—(1) When] (a) *ESTABLISHMENT AND PURPOSE.—*

(1) *ESTABLISHMENT.—*

(A) *IN GENERAL.—*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] (B) *EFFECTIVE DATE.—*The establishment of the refuge under subparagraph (A) shall be effective upon publication of a notice of the Secretary’s determination in the Federal Register.

(2) *PURPOSE.—*The purpose of the Baca National Wildlife Refuge shall be to restore, enhance, and maintain wetland, upland, riparian, and other habitats for native wildlife, plant, and fish species in the San Luis Valley.

(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]** (1) *IN GENERAL.—*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. 668dd et seq.) and the Act of September 28, 1962 (16 U.S.C. 460k et seq.) (commonly known as the Refuge Recreation Act).

(2) *REQUIREMENTS.—*In administering the Baca National Wildlife Refuge, the Secretary shall, to the maximum extent practicable—

(A) *emphasize migratory bird conservation; and*

(B) *take into consideration the role of the Refuge in broader landscape conservation efforts.*

(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~~].~~; *and*

(3) subject to any agreement in existence as of the date of enactment of this paragraph, and to the extent consistent with the purposes of the Refuge, use decreed water rights on the Refuge in approximately the same manner that the water rights have been used historically.

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