

Darrell Raschke, James River Water Development District.

Genevieve Thompson, National Audubon Society.

Jeanie Chamness, Sierra Club, East River Group.

John Davidson, Sierra Club, Living River Group.

Gerald Thaden, South Dakota Association of Conservation Districts.

Ron Olson, South Dakota Corn Growers Association.

Darrell Cruea, South Dakota Department of Agriculture.

Nettie Myers, South Dakota Department of Environment and Natural Resources.

John Cooper, South Dakota Department of Game, Fish, and Parks.

Michael Held, South Dakota Farm Bureau.

Dennis Wiese, South Dakota Farmers Union.

Ron Ogren, South Dakota Grassland Coalition.

Don Marquart, South Dakota Lakes and Streams Association, Inc.

Mari Beth Baumberger, South Dakota Pork Producers Council.

Lawrence Novotny, South Dakota Resources Coalition.

Delbert Tschakert, South Dakota Soybean Association.

Bart Blum, South Dakota Stockgrowers.

Rick Vallery, South Dakota Wheat, Inc.

Chris Hesla, South Dakota Wildlife Federation.

Ron Schauer, Wildlife Society, South Dakota Chapter.

Dennis Johnson, Turner County Conservation District.

Carl Madsen, U.S. Fish and Wildlife Service.

Amond Hanson, Vermillion Basin Water Development District.

Lester Austin, Vermillion River Watershed Authority.

David Hauschild, Central Planes Water Development District and South Dakota Water Congress.

Mr. JOHNSON. Mr. President, given that over thirty groups and several more individuals were active participants in this historic agreement in South Dakota—it is impossible to aptly recognize every single one that deserves credit for this achievement. However, I cannot overlook the efforts of two real champions of this agreement and pilot project—two individuals who worked closely with me to make sure their idea developed from a South Dakota agreement to a six-state pilot project that the 106th Congress enacted and that the President will sign into law.

Paul Shubeck, a Centerville, South Dakota farmer and Carl Madsen, a Brookings, South Dakota private lands coordinator for the Fish and Wildlife Service developed this plan and helped negotiate its path through Congress.

Paul Shubeck greatly impressed me with his ability to shepherd this proposal, not only within a diverse coalition of South Dakota groups who normally do not tend to agree on wetlands matters, but also at the national level where he consistently advocated on behalf of the American family farmer who just wants a chance to produce a crop on his land and protect the envi-

ronment all at the same time. Paul's drive and ability to compromise were key to the success of our pilot project.

Carl Madsen was a real source of passion for this project and provided us with a sense for the big picture—how our pilot would and could work in South Dakota and other parts of the United States. Carl's deep knowledge of wetlands and conservation policy provided us with critical technical assistance to ensure this pilot project was a credible, practical program.

Many, many more individuals and groups in South Dakota and the United States provided direct assistance to this effort Mr. President, and I want them all to know I am deeply grateful.

Earlier this year Mr. President, Senator DASCHLE and I urged Secretary Dan Glickman and the United States Department of Agriculture (USDA) to implement the South Dakota agreement in principle on an administrative basis. While USDA was supportive of the concept, they were reluctant to implement such a program without a clearer understanding of the purpose and implications of the program.

In response, on July 7, I brought a top USDA official to a farm near Renner, South Dakota where we met with several groups and individuals to discuss how to conserve these critical wetlands yet compensate farmers for taking the wetlands out of crop production. It was there that some suggested a pilot project would be the best route to take. Then, on July 27, Senator DASCHLE and I introduced S. 2980 to create a South Dakota pilot project permitting up to 150,000 acres of farmable wetlands into CRP.

Once S. 2980 was introduced, national conservation, wildlife, and farm organizations took interest and requested that we expand the pilot to cover more than South Dakota. The proposal adopted by Congress is the result of weeks of negotiations between Senator DASCHLE, myself, USDA, Senator LUGAR who serves as the Chairman of the Senate Agriculture Committee, and several national groups who now support the pilot. The changes resulted in expanding this program to the Prairie Pothole Region of the United States, including South Dakota, North Dakota, Minnesota, Nebraska, Iowa, and Montana. It is limited to 500,000 acres in those states, with an assurance that access be distributed fairly among interested CRP participants.

I truly believe this pilot project will provide landowners an alternative to farming these highly sensitive wetlands in order to achieve a number of benefits including; improved water quality, reduced soil erosion, enhanced wildlife habitat, preserved biodiversity, flood control, less wetland drainage, economic compensation for landowners for protecting the sensitive wetlands, and diminished divisiveness over wetlands issues.

Moreover, the pilot project is consistent with the purpose of CRP, and, if successful, could serve as a model for future farm policy as we look toward the next farm bill. I believe Congress will be unable to develop a future farm bill without the support of those in the conservation and wildlife community. I am a strong supporter of conservation programs that protect sensitive soil and water resources, promote wildlife habitat, and provide farmers and landowners with benefits and incentives to conserve land. I have introduced the Flex Fallow Farm Bill Amendment to achieve some of these objectives. It is my hope that the success on our pilot project can serve as a model to once again bring conservation groups together with farm interests in order to develop a well-balanced approach to future farm policy that protects our resources while promoting family-farm agriculture.

Finally, I fully understand the successful adoption of this wetlands pilot project—no matter how important—will not put an end to the ongoing debate over the management of wetlands on farmland. Yet, I really hope that everyone engaged in the debate considers how effective we can be when we cooperate and compromise on this important issue.

HERITAGE HARBOR MUSEUM NATIVE AMERICAN HISTORY

Mr. L. CHAFEE. Mr. President, today I rise to thank the chairman of the Senate Appropriations Subcommittee on Treasury and General Government, Senator CAMPBELL, for including funds for the National Historical Publications and Records Commission to provide a grant to the Heritage Harbor Museum in Providence for the development of the museum's Native American Story exhibit.

The funds will be used by the Museum and the local Native American community to research and catalog the history of the area's Native Americans in a cross-cultural context. As the chairman knows, Heritage Harbor revolves around the telling of our nation's history in an integrated environment. The museum will not focus on one ethnic or religious group but strive to present the independent and coexisting histories of many of our nation's peoples.

The task ahead for Heritage Harbor is a complex one, and I appreciate the committee underscoring the federal interest in the project by providing these funds. In order for the Native American perspective to be presented effectively, the museum will not only research records, data and artifacts, but it will also catalog the research and present it in formal exhibit fashion.

Is it the understanding of the Chairman that these funds are intended to be used for research and cataloging as well as exhibit presentation?

Mr. CAMPBELL. That is my understanding.

Mr. L. CHAFEE. Again, I thank the Senator for his interest in this project, and I look forward to inviting you to Rhode Island to see the results of the museum's effort.

PASSAGE OF S. 1854

Mr. LEAHY. Mr. President, last Thursday, the Senate passed the Hatch-Leahy-DeWine-Kohl substitute amendment to S. 1854, the "Hart-Scott-Rodino Antitrust Improvements Act," that will make significant improvements to this important antitrust law. Section 7 of the Clayton Act, as amended by the Hart-Scott-Rodino Act of 1976 (HSR), requires companies that plan to merge to notify the Justice Department's Antitrust Division and the Federal Trade Commission of their intention and submit certain information. HSR pre-merger notifications provide advance notice of potentially anti-competitive transactions and allow the antitrust agencies to block mergers before they are consummated, which is easier than undoing them after-the-fact.

Since passage of the Hart-Scott-Rodino Act, this law has worked well to help the American economy flourish, despite larger and more complex mergers and consolidations within and among different industries. The Hatch-Leahy-DeWine-Kohl substitute amendment to S. 1854, the "Hart-Scott-Rodino (HSR) Antitrust Improvements Act," will update this law and make it work even better.

Specifically, the substitute would raise the minimum threshold for the "size of the transaction" required to provide HSR notifications from \$15,000,000 to \$50,000,000. Thus, no pre-merger filing will be required if the transaction is valued at less than \$50,000,000. A pre-merger filing would always be required if the size of the transaction is valued at more than \$200,000,000. With regard to transactions valued at between \$50,000,000 and \$200,000,000, the amendment would require pre-merger filing if the total assets or net annual sales of one party are over \$100,000,000 annually while the other party's total assets or net annual sales are over \$10,000,000 annually. The thresholds may be adjusted by the FTC every three years to reflect the percentage change in the gross national product for that period. These threshold changes are supported by the antitrust agencies.

The remaining part of the substitute directs the Federal Trade Commission and the DOJ's Antitrust Division to implement regulations to improve the manner in which these agencies obtain information as part of the review of a proposed merger. The antitrust agencies do not object to these parts of the substitute amendment.

As explained in more detail below, this substitute addresses the most significant flaws in the original bill.

To appreciate the issues addressed in the bill, the pre-merger review procedures currently in effect must be understood. Upon receipt of the merger notification, the agency takes a "quick look" and determines whether to open a Preliminary Investigation, PI. A PI may take from a few weeks to several months to determine whether to close the PI or proceed with a Second Request or Civil Investigative Demand, CID, for additional information. Second Requests were issued in only 2.5 percent of reported transactions in 1999.

Under statutory time limits, the Second Request must be made within 30 days from the initial filing. In addition, only a single Second Request is allowed so it must be complete. This Second Request extends the waiting period before the merger may be completed for up to 20 days from the time that all responsive documents are submitted to the agency. Second requests for voluminous documents, combined with the requirement that "all responsive documents" have been supplied by the companies to the agency, can cause substantial delays in the waiting period and the time when a merger may be completed.

To address business concerns over broad second requests and the delay such requests may cause, the original bill substantially limited the scope of agencies' second requests and authorized judicial review of both the scope of and compliance with these critical requests, as detailed below.

First, the original bill would have limited the scope of second requests to information or documents "not unreasonably cumulative or duplicative" and that "do not impose a burden or expense that substantially outweighs the likely benefit of the information to the agency." The antitrust agencies raised significant, valid questions about whether these limitations were workable. In particular, at the time a second request is issued, an agency generally cannot evaluate the cost/benefit tradeoff because it does not know the costs of production, and has only limited knowledge about the potential benefits of the information for the investigation (in part because the anti-competitive issues are often still indefinite). The documents themselves provide this information.

The bill would also have required the antitrust agency to provide, with each second request, a specific summary of the competitive concerns presented by the proposed acquisition and the relation between such concerns and the second request specifications. The antitrust agencies questioned this requirement because anticompetitive concerns are still often general and evolving at the time a second request is issued.

Consequently, a specific summary may not be possible at that time and would likely be incomplete since additional competitive concerns may be discovered during the investigation. Furthermore, according to the agencies, this requirement was unnecessary since they ordinarily provide a general explanation of their concerns and provide more specific information as it develops, in face-to-face conferences between parties (or their counsel) and investigating staff.

Second, the original bill would have limited the agencies' ability to claim that the production of documents in response to a second request is deficient only if the deficiency "materially impairs the ability of the agency to conduct a preliminary antitrust review." This proposed standard for claiming deficiency (that is, for requiring further document production) is higher than the ordinary standard for discovery and would limit the agency's ability to investigate, especially given HSR's stringent time frames and the fact that the second request is the single opportunity to seek information in a premerger review. This could have seriously harmed the agency's posture in court, as courts often examine the entire substance of the agency's case even in a preliminary injunction action.

Finally, the original bill would have authorized a merging company to seek review by a magistrate judge of both the scope of the second request and any claim of deficient production. The magistrate was required to apply the scope and deficiency standards described above, which impose more limits on antitrust agencies than general civil discovery rules. Moreover, magistrates were unlikely to be familiar with the types of information that form the basis for the complex antitrust analysis required in predicting likely future competitive effects of a proposed transaction—a shortcoming with possible adverse consequences for antitrust agencies seeking relevant information for an investigation since this experience is particularly important in light of HSR's special time constraints and the agencies' single opportunity to seek documents prior to the merger.

The substitute amendment eliminates these three problematic procedural limitations on the second request investigation process contained in the original bill. Instead, the Hatch-Leahy-DeWine-Kohl substitute amendment directs the agencies to reform the merger review process to eliminate unnecessary delay, costly duplication and undue delay. In addition, the agencies are directed to designate senior officials within the agencies to review the second requests to determine whether the requests are burdensome or duplicative and whether the request has been substantially complied with by the merging companies.