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104TH CONGRESS, *1st Session* | SENATE | REPORT 104–192

UTAH PUBLIC LANDS MANAGEMENT ACT OF 1995

DECEMBER 19, 1995.—Ordered to be printed

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

REPORT

together with

MINORITY VIEWS

[To accompany S. 884]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 884) to designate certain public lands in the State of Utah as wilderness, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

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 "Utah Public Lands Management Act of 1995".

SEC. 2. DESIGNATION OF WILDERNESS.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), the following lands in the State of Utah are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

(1) Certain lands in the Desolation Canyon Wilderness Study Area comprised of approximately 254,478 acres, as generally depicted on a map entitled "Desolation Canyon Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Desolation Canyon Wilderness.

(2) Certain lands in the San Rafael Reef Wilderness Study Area comprised of approximately 47,786 acres, as generally depicted on a map entitled "San Rafael Reef Proposed Wilderness" and dated September 18, 1995, and which shall be known as the San Rafael Reef Wilderness.

(3) Certain lands in the Horseshoe Canyon Wilderness Study Area (North) comprised of approximately 24,966 acres, as generally depicted on a map entitled "Horseshoe/Labyrinth Canyon Proposed Wilderness" and dated October 3,

1995, and which shall be known as the Horseshoe/Labyrinth Canyon Wilderness.

(4) Certain lands in the Crack Canyon Wilderness Study Area comprised of approximately 20,322 acres, as generally depicted on a map entitled "Crack Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Crack Canyon Wilderness.

(5) Certain lands in the Muddy Creek Wilderness Study Area comprised of approximately 37,244 acres, as generally depicted on a map entitled "Muddy Creek Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Muddy Creek Wilderness.

(6) Certain lands in the Sids Mountain Wilderness Study Area comprised of approximately 41,154 acres, as generally depicted on a map entitled "Sids Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Sids Mountain Wilderness.

(7) Certain lands in the Mexican Mountain Wilderness Study Area comprised of approximately 34,107 acres, as generally depicted on a map entitled "Mexican Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mexican Mountain Wilderness.

(8) Certain lands in the Phipps-Death Hollow Wilderness Study Area comprised of approximately 42,437 acres, as generally depicted on a map entitled "Phipps-Death Hollow Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Phipps-Death Hollow Wilderness.

(9) Certain lands in the Steep Creek Wilderness Study Area comprised of approximately 21,277 acres, as generally depicted on a map entitled "Steep Creek Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Steep Creek Wilderness.

(10) Certain lands in the North Escalante Canyons/The Gulch Wilderness Study Area comprised of approximately 103,324 acres, as generally depicted on a map entitled "North Escalante Canyons/The Gulch Proposed Wilderness" and dated October 3, 1995, and which shall be known as the North Escalante Canyons/The Gulch Creek Wilderness.

(11) Certain lands in the Scorpion Wilderness Study Area comprised of approximately 16,692 acres, as generally depicted on a map entitled "Scorpion Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Scorpion Wilderness.

(12) Certain lands in the Mt. Ellen-Blue Hills Wilderness Study Area comprised of approximately 62,663 acres, as generally depicted on a map entitled "Mt. Ellen-Blue Hills Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mt. Ellen-Blue Hills Wilderness.

(13) Certain lands in the Bull Mountain Wilderness Study Area comprised of approximately 11,424 acres, as generally depicted on a map entitled "Bull Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Bull Mountain Wilderness.

(14) Certain lands in the Fiddler Butte Wilderness Study Area comprised of approximately 22,180 acres, as generally depicted on a map entitled "Fiddler Butte Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Fiddler Butte Mountain Wilderness.

(15) Certain lands in the Mt. Pennell Wilderness Study Area comprised of approximately 18,620 acres, as generally depicted on a map entitled "Mt. Pennell Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mt. Pennell Wilderness.

(16) Certain lands in the Mt. Hillers Wilderness Study Area comprised of approximately 14,746 acres, as generally depicted on a map entitled "Mt. Hillers Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mt. Hillers Wilderness.

(17) Certain lands in the Little Rockies Wilderness Study Area comprised of approximately 48,928 acres, as generally depicted on a map entitled "Little Rockies Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Little Rockies Wilderness.

(18) Certain lands in the Mill Creek Canyon Wilderness Study Area comprised of approximately 7,838 acres, as generally depicted on a map entitled "Mill Creek Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mill Creek Canyon Wilderness.

(19) Certain lands in the Negro Bill Canyon Wilderness Study Area comprised of approximately 7,432 acres, as generally depicted on a map entitled "Negro Bill Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Negro Bill Canyon Wilderness.

(20) Certain lands in the Floy Canyon Wilderness Study Area comprised of approximately 28,290 acres, as generally depicted on a map entitled "Floy Canyon Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Floy Canyon Wilderness.

(21) Certain lands in the Coal Canyon Wilderness Study Area and the Spruce Canyon Wilderness Study Area comprised of approximately 56,760 acres, as generally depicted on a map entitled "Coal/Spruce Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Coal/Spruce Canyon Wilderness.

(22) Certain lands in the Flume Canyon Wilderness Study Area comprised of approximately 37,506 acres, as generally depicted on a map entitled "Flume Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Flume Canyon Wilderness.

(23) Certain lands in the Westwater Canyon Wilderness Study Area comprised of approximately 25,383 acres, as generally depicted on a map entitled "Westwater Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Westwater Canyon Wilderness.

(24) Certain lands in the Beaver Creek Wilderness Study Area comprised of approximately 24,531 acres, as generally depicted on a map entitled "Beaver Creek Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Beaver Creek Wilderness.

(25) Certain lands in the Fish Springs Wilderness Study Area comprised of approximately 36,142 acres, as generally depicted on a map entitled "Fish Springs Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Fish Springs Wilderness.

(26) Certain lands in the Swasey Mountain Wilderness Study Area comprised of approximately 34,803 acres, as generally depicted on a map entitled "Swasey Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Swasey Mountain Wilderness.

(27) Certain lands in the Parunuweap Canyon Wilderness Study Area comprised of approximately 19,122 acres, as generally depicted on a map entitled "Parunuweap Canyon Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Parunuweap Wilderness.

(28) Certain lands in the Canaan Mountain Wilderness Study Area comprised of approximately 32,297 acres, as generally depicted on a map entitled "Canaan Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Canaan Mountain Wilderness.

(29) Certain lands in the Paria-Hackberry Wilderness Study Area comprised of approximately 57,641 acres, as generally depicted on a map entitled "Paria-Hackberry Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Paria-Hackberry Wilderness.

(30) Certain lands in the Escalante Canyon Tract 5 Wilderness Study Area comprised of approximately 756 acres, as generally depicted on a map entitled "Escalante Canyon Tract 5 Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Escalante Canyon Tract 5 Wilderness.

(31) Certain lands in the Fifty Mile Mountain Wilderness Study Area comprised of approximately 121,434 acres, as generally depicted on a map entitled "Fifty Mile Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Fifty Mile Mountain Wilderness.

(32) Certain lands in the Howell Peak Wilderness comprised of approximately 14,518 acres, as generally depicted on a map entitled "Howell Peak Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Howell Peak Wilderness.

(33) Certain lands in the Notch Peak Wilderness Study Area comprised of approximately 17,678 acres, as generally depicted on a map entitled "Notch Peak Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Notch Peak Wilderness.

(34) Certain lands in the Wah Wah Mountains Wilderness Study Area comprised of approximately 41,311 acres, as generally depicted on a map entitled "Wah Wah Mountains Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Wah Wah Wilderness.

(35) Certain lands in the Mancos Mesa Wilderness Study Area comprised of approximately 48,269 acres, as generally depicted on a map entitled "Mancos Mesa Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mancos Mesa Wilderness.

(36) Certain lands in the Grand Gulch Wilderness Study Area comprised of approximately 51,110 acres, as generally depicted on a map entitled "Grand

Gulch Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Grand Gulch Wilderness.

(37) Certain lands in the Dark Canyon Wilderness Study Area comprised of approximately 67,099 acres, as generally depicted on a map entitled "Dark Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Dark Canyon Wilderness.

(38) Certain lands in the Butler Wash Wilderness Study Area comprised of approximately 24,888 acres, as generally depicted on a map entitled "Butler Wash Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Butler Wash Wilderness.

(39) Certain lands in the Indian Creek Wilderness Study Area comprised of approximately 6,769 acres, as generally depicted on a map entitled "Indian Creek Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Indian Creek Wilderness.

(40) Certain lands in the Behind the Rocks Wilderness Study Area comprised of approximately 13,728 acres, as generally depicted on a map entitled "Behind the Rocks Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Behind the Rocks Wilderness.

(41) Certain lands in the Cedar Mountains Wilderness Study Area comprised of approximately 25,645 acres, as generally depicted on a map entitled "Cedar Mountains Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Cedar Mountains Wilderness.

(42) Certain lands in the Deep Creek Mountains Wilderness Study Area comprised of approximately 71,024 acres, as generally depicted on a map entitled "Deep Creek Mountains Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Deep Creek Mountains Wilderness.

(43) Certain lands in the Nutters Hole Wilderness Study Area comprised of approximately 3,647 acres, as generally depicted on a map entitled "Nutters Hole Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Nutters Hole Wilderness.

(44) Certain lands in the Cougar Canyon Wilderness Study Area comprised of approximately 4,370 acres, including those lands located in the State of Nevada, as generally depicted on a map entitled "Cougar Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Cougar Canyon Wilderness.

(45) Certain lands in the Red Mountain Wilderness Study Area comprised of approximately 9,216 acres, as generally depicted on a map entitled "Red Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Red Mountains Wilderness.

(46) Certain lands in the Deep Creek Wilderness Study Area comprised of approximately 3,063 acres, as generally depicted on a map entitled "Deep Creek Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Deep Creek Wilderness.

(47) Certain lands within the Dirty Devil Wilderness Study Area comprised of approximately 75,854 acres, as generally depicted on a map entitled "Dirty Devil Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Dirty Devil Wilderness.

(48) Certain lands within the Horseshoe Canyon South Wilderness Study Area comprised of approximately 11,392 acres, as generally depicted on a map entitled "Horseshoe Canyon South Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Horseshoe Canyon South Wilderness.

(49) Certain lands in the French Spring-Happy Canyon Wilderness Study Area comprised of approximately 12,343 acres, as generally depicted on a map entitled "French Spring-Happy Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the French Spring-Happy Canyon Wilderness.

(b) MAP AND DESCRIPTION.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") shall file a map and a legal description of each area designated as wilderness by subsection (a) with the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map and description shall have the same force and effect as if included in this Act, except that corrections of clerical and typographical errors in each such map and legal description may be made. Each such map and legal description shall be on file and available for public inspection in the office of the Director of the Bureau of Land Management, and the office of the State Director of the Bureau of Land Management in the State of Utah, Department of the Interior.

SEC. 3. ADMINISTRATION OF WILDERNESS AREAS.

(a) IN GENERAL.—Subject to valid existing rights, each area designated by this Act as wilderness shall be administered by the Secretary in accordance with this Act, the Wilderness Act (16 U.S.C. 1131 et seq.), and section 603 of the Federal Land Policy and Management Act of 1976. Any valid existing rights recognized by this Act shall be determined under applicable laws, including the land use planning process under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712). Any lands or interest in lands within the boundaries of an area designated as wilderness by this Act that is acquired by the United States after the date of enactment of this Act shall be added to and administered as part of the wilderness area within which such lands or interests in lands are located.

(b) MANAGEMENT PLANS.—The Secretary shall, within five years after the date of the enactment of this Act, prepare plans to manage the areas designated by this Act as wilderness.

(c) LIVESTOCK.—(1) Grazing of livestock in areas designated as wilderness by this Act, where established prior to the date of the enactment of this Act, shall—

(A) continue and not be curtailed or phased out due to wilderness designation or management; and

(B) be administered in accordance with section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)) and the guidelines set forth in House Report 96–1126.

(2) Wilderness shall not be used as a suitability criteria for managing any grazing allotment that is subject to paragraph (1).

(d) STATE FISH AND WILDLIFE.—In accordance with section 4(d)(7) of the Wilderness Act (16 U.S.C. 1131(d)(7)), nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Utah with respect to fish and wildlife management activities, including water development for fish and wildlife purposes, predator control, transplanting animals, stocking fish, hunting, fishing and trapping.

(e) PROHIBITION OF BUFFER ZONES.—The Congress does not intend that designation of an area as wilderness by this Act lead to the creation of protective perimeters or buffer zones around the area. The fact that nonwilderness activities or uses can be seen, heard, or smelled from areas within a wilderness shall not preclude such activities or uses up to the boundary of the wilderness area.

(f) OIL SHALE RESERVE NUMBER TWO.—The area known as "Oil Shale Reserve Number Two" within Desolation Canyon Wilderness (as designated by section 2(a)(1)), located in Carbon County and Uintah County, Utah, shall not be reserved for oil shale purposes after the date of the enactment of this Act and shall be under the sole jurisdiction of and managed by the Bureau of Land Management.

(g) ROADS AND RIGHTS-OF-WAY AS BOUNDARIES.—Unless depicted otherwise on a map referred to by this Act, where roads form the boundaries of the areas designated as wilderness by this Act, the wilderness boundary shall be set back from the center line of the road as follows:

(1) 300 feet for high standard roads such as paved highways.

(2) 100 feet for roads equivalent to high standard logging roads.

(3) 30 feet for all unimproved roads not referred to in paragraphs (1) or (2).

(h) CHERRY-STEMMED ROADS.—(1) The Secretary may not close or limit access to any non-Federal road that is bounded on one or both sides by an area designated as wilderness by this Act, as generally depicted on a map referred to in section 2, without first obtaining written consent from the State of Utah or the political subdivision thereof with general jurisdiction over roads in the area.

(2) Any road described in paragraph (1) may continue to be maintained and repaired by any such entity.

(i) ACCESS.—Reasonable access, including the use of motorized equipment where necessary or customarily or historically employed, shall be allowed on routes within the areas designated wilderness by this Act in existence as of the date of enactment of this Act for the exercise of valid-existing rights, including, but not limited to, access to existing water diversion, carriage, storage and ancillary facilities and livestock grazing improvements and structures. Existing routes as of such date may be maintained and repaired as necessary to maintain their customary or historic uses.

(j) LAND ACQUISITION BY EXCHANGE OR PURCHASE.—The Secretary may offer to acquire from non-governmental entities lands and interests in lands located within or adjacent to areas designated as wilderness by this Act. Lands may be acquired under this subsection only by exchange, donation, or purchase from willing sellers.

(k) MOTORBOATS.—As provided in section 4(d)(1) of the Wilderness Act, within areas designated as wilderness by this Act, the use of motorboats, where such use was established as of the date of enactment of this Act, may be permitted to continue subject to such restrictions as the Secretary deems desirable.

(l) DISCLAIMER.—Nothing in this Act shall be construed as establishing a precedent with regard to any future wilderness designation, nor shall it constitute an interpretation of any other Act or any wilderness designation made pursuant thereto.

SEC. 4. WATER RIGHTS.

(a) NO FEDERAL RESERVATION.—Nothing in this Act or any other Act of Congress shall constitute or be construed to constitute either an express or implied Federal reservation of water or water rights for any purpose arising from the designation of areas as wilderness by this Act.

(b) ACQUISITION AND EXERCISE OF WATER RIGHTS UNDER UTAH LAW.—The United States may acquire and exercise such water rights as it deems necessary to carry out its responsibilities on any lands designated as wilderness by this Act pursuant to the substantive and procedural requirements of the State of Utah. Nothing in this Act shall be construed to authorize the use of eminent domain by the United States to acquire water rights for such lands. Within areas designated as wilderness by this Act, all rights to water granted under the laws of the State of Utah may be exercised in accordance with the substantive and procedural requirements of the State of Utah.

(c) EXERCISE OF WATER RIGHTS GENERALLY UNDER UTAH LAWS.—Nothing in this Act shall be construed to limit the exercise of water rights as provided under Utah State laws.

(d) CERTAIN FACILITIES NOT AFFECTED.—Nothing in this Act shall affect the capacity, operation, maintenance, repair, modification, or replacement of municipal, agricultural, livestock, or wildlife water facilities in existence as of the date of enactment of this Act within the boundaries of areas designated as wilderness by this Act.

(e) WATER RESOURCE PROJECTS.—Nothing in this Act or the Wilderness Act shall be construed to limit or to be a consideration in Federal approvals or denials for access to or use of the Federal lands outside areas designated wilderness by this Act for development and operation of water resource projects, including (but not limited to) reservoir projects. Nothing in this subsection shall create a right of access through a wilderness area designated pursuant to this Act for the purposes of such projects.

SEC. 5. CULTURAL, ARCHAEOLOGICAL, AND PALEONTOLOGICAL RESOURCES.

The Secretary is responsible for the protection (including through the use of mechanical means) and interpretation (including through the use of permanent improvements) of cultural, archaeological, and paleontological resources located within areas designated as wilderness by this Act.

SEC. 6. NATIVE AMERICAN CULTURAL AND RELIGIOUS USES.

In recognition of the past use of portions of the areas designated as wilderness by this Act by Native Americans for traditional cultural and religious purposes, the Secretary shall assure nonexclusive access from time to time to those sites by Native Americans for such purposes, including (but not limited to) wood gathering for personal use or collecting plants or herbs for religious or medicinal purposes. Such access shall be consistent with the purpose and intent of the Act of August 11, 1978 (42 U.S.C. 1996; commonly referred to as the "American Indian Religious Freedom Act").

SEC. 7. MILITARY OVERFLIGHTS.

(a) OVERFLIGHTS NOT PRECLUDED.—Nothing in this Act, the Wilderness Act, or other land management laws generally applicable to the new areas of the Wilderness Preservation System (or any additions to existing areas) designated by this Act, shall restrict or preclude overflights of military aircraft over such areas, including military overflights that can be seen or heard within such units.

(b) SPECIAL USE AIRSPACE.—Nothing in this Act, the Wilderness Act, or other land management laws generally applicable to the new areas of the Wilderness Preservation System (or any additions to existing areas) designated by this Act, shall restrict or preclude the designation of new units of special use airspace or the use or establishment of military flight training rules over such areas.

(c) COMMUNICATIONS OR TRACKING SYSTEMS.—Nothing in this Act, the Wilderness Act, or other land management laws generally applicable to new areas of the Wilderness Preservation System (or any additions to existing areas) designated by this Act shall be construed to require the removal of existing communication or electronic tracking systems from areas designated as wilderness by this Act, to prohibit the maintenance of existing communications or electronic tracking systems within such new wilderness areas, or to prevent the installation of portable electronic communication or tracking systems in support of military operations so long as installa-

tion, maintenance, and removal of such systems does not require construction of temporary or permanent roads.

SEC. 8. AIR QUALITY.

(a) IN GENERAL.—The Congress does not intend that designation of wilderness areas in the State of Utah by this Act lead to reclassification of any airshed to a more stringent Prevention of Significant Deterioration (PSD) classification.

(b) ROLE OF STATE.—Air quality reclassification for the wilderness areas established by this Act shall be the prerogative of the State of Utah. All areas designated as wilderness by this Act are and shall continue to be managed as PSD Class II under the Clean Air Act unless they are reclassified by the State of Utah in accordance with the Clean Air Act.

(c) INDUSTRIAL FACILITIES.—Nothing in this Act shall be construed to restrict or preclude construction, operation, or expansion of industrial facilities outside of the areas designated as wilderness by this Act, including the Hunter Power Facilities, the Huntington Power Facilities, the Intermountain Power Facilities, the Bonanza Power Facilities, the Continental Lime Facilities, and the Brush Wellman Facilities. The permitting and operation of such projects and facilities shall be subject to applicable laws and regulations.

SEC. 9. WILDERNESS RELEASE.

(a) FINDING.—The Congress finds and directs that all public lands in the State of Utah administered by the Bureau of Land Management have been adequately studied for wilderness designation pursuant to sections 202 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1782).

(b) RELEASE.—Except as provided in subsection (c), any public lands administered by the Bureau of Land Management in the State of Utah not designated wilderness by this Act shall not be subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1783(c)) but shall be managed for the full range of nonwilderness multiple uses in accordance with land management plans adopted pursuant to section 202 of such Act (43 U.S.C. 1712), including (but not limited to) Areas of Critical Environmental Concern, Outstanding Natural Areas, National Natural Landmarks, Research Natural Areas, Primitive Areas, Visual Resource Management Class I areas, and the full range of administrative management designations provided under such Act. Such lands shall not be managed for the purpose of protecting their suitability for wilderness designation or their wilderness character and shall remain available for nonwilderness multiple uses, subject to the requirements of other Federal laws.

(c) CONTINUING WILDERNESS STUDY AREAS STATUS.—The following wilderness study areas which are under study status by States adjacent to the State of Utah shall continue to be subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)):

(1) Bull Canyon; UT–080–419/CO–010–001.

(2) Wrigley Mesa/Jones Canyon/Black Ridge Canyon West; UT–060–116/117/CO–070–113A.

(3) Squaw/Papoose Canyon; UT–060–227/CO–030–265A.

(4) Cross Canyon; UT–060–229/CO–030–265.

SEC. 10. EXCHANGE RELATING TO SCHOOL AND INSTITUTIONAL TRUST LANDS.

(a) FINDINGS.—The Congress finds that—

(1) approximately 209,000 acres of school and institutional trust lands are located within or adjacent to areas designated as wilderness by this Act, including 15,000 acres of mineral estate;

(2) such lands were originally granted to the State of Utah for the purpose of generating support for the public schools through the development of natural resources and other methods; and

(3) it is in the interest of the State of Utah and the United States for such lands to be exchanged for interests in Federal lands located outside of wilderness areas to accomplish this purpose.

(b) EXCHANGE.—If, not later than seven years after the date of the enactment of this Act and in accordance with this section, the State of Utah offers to transfer all its right, title, and interest in and to the school and institutional trust lands described in subsection (c)(1) to the United States, the Secretary shall accept the offer and, within 180 days after the date of such acceptance, in exchange for such lands initiate transfers to the State of Utah of all right, title, and interest of the United States in and to the Federal lands described in subsection (c)(2) and (d). The exchange of lands under this section shall be subject to valid existing rights, including (but not limited to) the right of the State of Utah to receive, and distribute pursuant to State law, 50 percent of the revenue, less a reasonable administrative fee, from

the production of minerals that are leased or would have been subject to leasing pursuant to the Mineral Leasing Act (30 U.S.C. 191 et seq.). All transfers of lands under this section shall be completed within two years after the date of such acceptance, but within such two-year period, transfers of portions of such lands may be made.

(c) STATE AND FEDERAL EXCHANGE LANDS DESCRIBED.—

(1) SCHOOL AND INSTITUTIONAL TRUST LANDS.—The school and institutional trust lands referred to in this section are those lands generally depicted as "Surface and Mineral Offering" on the map entitled "Proposed Land Exchange Utah (H.R. 1745)" and dated November 9, 1995, which—

(A) are located within or adjacent to areas designated by this Act as wilderness; and

(B) were granted by the United States in the Utah Enabling Act to the State of Utah in trust and other lands which under State law must be managed for the benefit of the public school system or the institutions of the State which are designated by the Utah Enabling Act.

(2) FEDERAL LANDS.—The Federal lands referred to in this section are the lands located in the State of Utah which are generally depicted as "Federal Exchange Lands" on the map referred to in paragraph (1).

(d)(1) LAND EXCHANGES FOR EQUAL VALUE.—The lands exchanged pursuant to this section shall be of approximate equal value, as determined by nationally recognized appraisal standards. If the values are not approximately equal, the Secretary and the State of Utah shall either agree to modify the lands to be exchanged, or shall provide for a cash equalization payment, to equalize the values. Any cash equalization payment shall not exceed 25 percent of the value of the lands to be conveyed. If the Secretary and the State of Utah agree to modify the lands to be exchanged, the State shall determine the lands to be acquired from the Federal Government from the lands listed in subsection (c)(2), and indicate its choice to the Secretary. The Secretary shall accept the State's determination.

(2)(i) DEADLINE AND DISPUTE RESOLUTION.—If after two years from the date of enactment of this Act, the Secretary and the State of Utah have not agreed upon the final terms of some or all of the exchanges authorized by this section, including the values of the lands involved, notwithstanding any other provisions of law, the United States District Court for the District of Utah, Central Division, shall have jurisdiction to hear, determine, and render judgment on the value of any and all lands, or interests therein, involved in the exchange.

(ii) No action provided for in this subsection may be filed with the court sooner than two years and later than six years after the date of enactment of this Act. Any decisions of a district court under this section may be appealed in accordance with applicable laws and rules.

(e) DUTIES OF THE PARTIES AND OTHER PROVISIONS RELATING TO THE EXCHANGE.—

(1) MAP AND LEGAL DESCRIPTION.—The State of Utah and the Secretary shall each provide to the other legal descriptions of the lands under their respective jurisdictions which are to be exchanged under this section. The map referred to in subsection (c)(1) and the legal descriptions provided under this subsection shall be on file and available for public inspection in the office of the Director of the Bureau of Land Management, and the office of the State Director of the Bureau of Land Management in the State of Utah, Department of the Interior.

(2) HAZARDOUS MATERIALS.—The Secretary and the State of Utah shall inspect all pertinent records and shall conduct a physical inspection of the lands to be exchanged pursuant to this Act for the presence of any hazardous materials as presently defined by applicable law. The results of those inspections shall be made available to the parties. The responsibility for costs of remedial action related to such materials shall be borne by those entities responsible under existing law.

(3) PROVISIONS RELATING TO FEDERAL LANDS.—(A) The enactment of this Act shall be construed as satisfying the provisions of section 206(a) of the Federal Land Policy and Management Act of 1976 requiring that exchanges of lands be in the public interest.

(B) The transfer of lands and related activities required of the Secretary under this section shall not be subject to National Environmental Policy Act of 1969.

(C) The value of Federal lands transferred to the State under this section shall be adjusted to reflect the right of the State of Utah under Federal law to share the revenues from such Federal lands, and the conveyances under this section to the State of Utah shall be subject to such revenue sharing obligations as a valid existing right.

(D) Subject to valid existing rights, the Federal lands described in subsection (c)(2) are hereby withdrawn from disposition under the public land laws and from location, entry, and patent under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, from operation of the Geothermal Steam Act of 1970, and from the operation of the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).

(4) PROCEEDS FROM LEASE AND PRODUCTION OF MINERALS AND SALES AND HARVESTS OF TIMBER.—

(A) COLLECTION AND DISTRIBUTION.—The State of Utah, in connection with the management of the school and institutional trust lands described in subsections (c)(2) and (d), shall upon conveyance of such lands, collect and distribute all proceeds from the lease and production of minerals and the sale and harvest of timber on such lands as required by law until the State, as trustee, no longer owns the estate from which the proceeds are produced.

(B) DISPUTES.—A dispute concerning the collection and distribution of proceeds under subparagraph (A) shall be resolved in accordance with State law.

(f) ADMINISTRATION OF LANDS ACQUIRED BY THE UNITED STATES.—The lands and interests in lands acquired by the United States under this section shall be added to and administered as part of areas of the public lands, as indicated on the maps referred to in this section or in section 2, as applicable.

SEC. 11. LAND APPRAISAL.

Lands and interests in lands acquired pursuant to this Act shall be appraised without regard to the presence of a species listed as threatened or endangered pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 12. SAND HOLLOW LAND EXCHANGE.

(a) DEFINITIONS.—As used in this section:

(1) DISTRICT.—The term "District" means the Water Conservancy District of Washington County, Utah.

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

(3) BULLOCH SITE.—The term "Bulloch Site" means the lands located in Kane County, Utah, adjacent to Zion National Park, comprised of approximately 1,380 acres, as generally depicted on a map entitled "Washington County Water Conservancy District Exchange Proposal" and dated July 24, 1995.

(4) SAND HOLLOW SITE.—The term "Sand Hollow Site" means the lands located in Washington County, Utah, comprised of approximately 3,000 acres, as generally depicted on a map entitled "Washington County Water Conservancy District Exchange Proposal" and dated July 24, 1995.

(5) QUAIL CREEK PIPELINE.—The term "Quail Creek Pipeline" means the lands located in Washington County, Utah, comprised of approximately 40 acres, as generally depicted on a map entitled "Washington County Water Conservancy District Exchange Proposal" and dated July 24, 1995.

(6) QUAIL CREEK RESERVOIR.—The term "Quail Creek Reservoir" means the lands located in Washington County, Utah, comprised of approximately 480.5 acres, as generally depicted on a map entitled "Washington County Water Conservancy District Exchange Proposal" and dated July 24, 1995.

(7) SMITH PROPERTY.—The term "Smith Property" means the lands located in Washington County, Utah, comprised of approximately 1,550 acres, as generally depicted on a map entitled "Washington County Water Conservancy District Exchange Proposal" and dated July 24, 1995.

(b) EXCHANGE.—

(1) IN GENERAL.—Subject to the provisions of this Act, if within 18 months after the date of the enactment of this Act, the Water Conservancy District of Washington County, Utah, offers to transfer to the United States all right, title, and interest of the District in and to the Bulloch Site, the Secretary of the Interior shall, in exchange, transfer to the District all right, title, and interest of the United States in and to the Sand Hollow Site, the Quail Creek Pipeline and Quail Creek Reservoir, subject to valid existing rights.

(2) WATER RIGHTS ASSOCIATED WITH THE BULLOCH SITE.—The water rights associated with the Bulloch Site shall not be included in the transfer under paragraph (1) but shall be subject to an agreement between the District and the Secretary that the water remain in the Virgin River as an instream flow from the Bulloch Site through Zion National Park to the diversion point of the District at the Quail Creek Reservoir.

(3) WITHDRAWAL OF MINERAL INTERESTS.—Subject to valid existing rights, the mineral interests underlying the Sand Hollow Site, the Quail Creek Reservoir, and the Quail Creek Pipeline are hereby withdrawn from disposition under the public land laws and from location, entry, and patent under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, from the operation of the Geothermal Steam Act of 1970, and from the operation of the Act of July 31, 1947, commonly known as the "Materials Act of 1947" (30 U.S.C. 601 et seq.).

(4) GRAZING.—The exchange of lands under paragraph (1) shall be subject to agreement by the District to continue to permit the grazing of domestic livestock on the Sand Hollow Site under the terms and conditions of existing Federal grazing leases or permits, except that the District, upon terminating any such lease or permit, shall fully compensate the holder of the terminated lease or permit.

(c) EQUALIZATION OF VALUES.—The value of the lands transferred out of Federal ownership under subsection (b) either shall be equal to the value of the lands received by the Secretary under subsection (c) or, if not, shall be equalized by—

(1) to the extent possible, transfer of all right, title, and interest of the District in and to lands in Washington County, Utah, and water rights of the District associated thereto, which are within the area providing habitat for the desert tortoise, as determined by the Director of the Bureau of Land Management;

(2) transfer of all right, title, and interest of the District in and to lands in the Smith Site and water rights of the District associated thereto; and

(3) the payment of money to the Secretary, to the extent that lands and rights transferred under paragraphs (1) and (2) are not sufficient to equalize the values of the lands exchanged under subsection (b).

(d) MANAGEMENT OF LANDS ACQUIRED BY UNITED STATES.—Lands acquired by the Secretary under this section shall be administered by the Secretary, acting through the Director of the Bureau of Land Management, in accordance with the provisions of law generally applicable to the public lands, including the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(e) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—The exchange of lands under this section is not subject to section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

PURPOSE OF THE MEASURE

S. 884, as ordered reported, would designate 1,813,944 acres in Utah managed by the Bureau of Land Management as wilderness and would provide direction to the Secretary of the Interior related to the exchange of wilderness inholdings with the State of Utah for Federal lands outside designated areas.

BACKGROUND AND NEED

Pursuant to requirements contained within section 603 of the Federal Land Policy and Management Act of 1976 the Bureau of Land Management was directed to identify roadless areas of five thousand acres or more as it inventoried all of the public lands under its jurisdiction. Utah's public lands, along with those of all the other states, were covered by this statutory requirement. These roadless areas were to be evaluated for their wilderness character as described in the Wilderness Act of 1964. Congress instructed the Secretary to make recommendations to the President as to those areas identified as having wilderness character along with the Secretary's recommendations as to the lands suitable for preservation as wilderness. During the period of review of such areas, and until Congress has determined otherwise, the Secretary was instructed to manage the lands identified in a manner so as not to impair the suitability of such areas for preservation as wilderness.

In 1991 President Bush forwarded to Congress Secretary Lujan's recommendations for Utah. Of the 3.2 million acres identified for

possible inclusion in the system, Secretary Lujan recommended 1.9 million acres for designation as wilderness. In 1995 legislation was introduced in the House and Senate to designate 1.8 million acres of BLM land for inclusion in the Nations wilderness system. Lands contained within designated areas represent spectacular examples of those rugged and sweeping vistas associated with Utah's unique landscape. Also captured within the designations are beautiful multi-hued geologic formations and breathtaking examples of water, wind, and time's sculptures on these rock strata. These unique areas include Grand Gulch; Desolation Canyon and the Book Cliffs area: the Little Grand Canyon, the Black Box, and Mexican and Sid's Mountains of the San Rafael Swell; the Dirty Devil, the Escalante, and East Fork of the Virgin Rivers; the red rock character of Red Mountain Canaan Mountain, and Crack Canon; and the west desert area of Utah represented by Notch Peak, Fish Springs, and Cedar Mountains.

LEGISLATIVE HISTORY

S. 884 was also introduced in the Senate on June 6, 1995 by Senators Hatch and Bennett. The bill was referred to the Energy and Natural Resources Committee, and subsequently, to the Subcommittee on Forests and Public Lands Management. On July 13, 1995, Subcommittee hearings were held in Washington, D.C. At the business meeting on December 6, 1995, the Committee on Energy and Natural Resources ordered S. 884 favorably reported as amended.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Senate Committee on Energy and Natural Resources, in open business session on December 6, 1995, by voice vote of a quorum present, recommends that the Senate pass S. 884 if amended as described herein.

COMMITTEE AMENDMENT

During consideration of S. 884, the Committee adopted an amendment in the Nature of a Substitute. In addition to numerous minor and clarifying amendments the substitute made the following major changes to the bill as introduced.

A section authorizing the Sand Hollow land exchange was added; and

Language was added which directed land exchanges to be based on equal values as determined by nationally accepted appraisal methods.

The substitute is described in detail in the Section-by-Section Analysis portion of this report.

SECTION BY SECTION ANALYSIS

Short title

Section 1 entitled the bill the "Utah Public Lands Management Act of 1995".

Designation of wilderness

Section 2 designates 1,813,944 acres of land managed by the Bureau of Land Management in Utah as wilderness to be included as components of the National Wilderness Preservation System. The acreage is contained within 49 separate units listed and named within this section.

Administration of wilderness lands

Section 3 provides direction to the Secretary regarding the administration of areas designated as wilderness in the Act.

Subsection 3(a) states that subject to valid existing rights, the Secretary is directed to manage all lands identified within the Act in accordance with this Act, the Wilderness Act, section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA). This subsection ensures that all valid existing rights recognized by the bill will be determined under applicable law, including section 202 of the FLPMA planning process.

Subsection 3(b) gives the Secretary 5 years to prepare plans to manage the areas designated as wilderness.

Subsection 3(c) authorizes the continuation of livestock grazing in designated wilderness areas where it occurred prior to passage of this Act.

Subsection 3(d) states that nothing in this Act effects the jurisdiction or the responsibility for the management of fish and wildlife under the jurisdiction of the State of Utah.

Subsection 3(e) prohibits the creation of buffer zones.

Subsection 3(f) terminates "Oil Shale Reserve Number Two and directs that these lands be under the sole management jurisdiction of the Bureau of Land Management.

Subsection 3(g) provides specific language designating boundary set backs for roads and right-of-ways that form the boundaries of designated wilderness areas.

Subsection 3(h) prohibits the Secretary from closing any non-Federal road that is bounded on one or both sides by a designated wilderness area, unless written consent is obtained from the State of Utah or the political subdivision with jurisdiction over roads in the area. Such non-Federal roads covered by this subsection that are maintained by an entity other than the United States shall be allowed to continue to be maintained and repaired by that entity.

Subsection 3(i) provides for reasonable access to developed water storage or carriage facilities, to inholdings, to valid existing rights on Federal lands (i.e., water diversions, livestock grazing improvements, and structures, etc.), and to existing routes. Access under this subsection includes motorized use that is necessary and customarily or historically employed on existing routes at the time of enactment of this Act.

Subsection 3(j) authorizes the Secretary to acquire (from willing sellers) through purchase, exchange, or donation any non-Federal lands within or adjacent to areas designated as wilderness by this Act.

Subsection 3(k) states that the use of motorboats in wilderness areas may be permitted to continue, subject to Secretarial restrictions.

Subsection 3(l) prevents the Act from establishing a precedent for any future wilderness designation or interpretation of any other Act or wilderness designation made pursuant thereto.

Water rights

Subsection 4(a) states that nothing in this Act shall create a Federal water right or reservation for any purpose arising from the designation of wilderness by this Act.

Subsection 4(b) allows the Secretary to acquire and exercise water rights as deemed necessary for the management of lands designated as wilderness by this Act; and, directs that those rights must be acquired and exercised according to Utah law. This subsection also prohibits the use of eminent domain by the United States to acquire water rights on lands designated by this Act.

Subsection 4(c) states that nothing in the Act may limit the exercise of water rights under Utah state law.

Subsection 4(d) makes it clear that nothing in the Act shall effect the capacity, operation, maintenance, modification, or replacement of water facilities within areas designated as wilderness by this Act that are in existence as of the date of enactment.

Subsection 4(e) states that the Act shall not limit nor be a consideration in Federal approvals for water resource projects located outside and upstream of designated wilderness areas.

Cultural, archaeological, and paleontological resources

Section 5 provides that the Secretary is responsible for the protection and interpretation of cultural, archaeological, and paleontological resources located within areas designated wilderness by the bill. The Secretary is allowed to protect these resources through the use of mechanical means if necessary, and to interpret these resources by using permanent improvements where necessary.

Native American cultural and religious uses

Subsection 6 recognizes the past use by Native Americans of sites within areas to be designated wilderness for cultural and religious purposes (i.e., wood gathering for personal use, the collection of plants and herbs for religious or medical purposes). This section further directs the Secretary to assure nonexclusive access from time to time to these sites for those purposes.

Military overflights

Section 7 of the Act prevents wilderness designation from restricting or precluding low-level military overflights over designated lands. This section also preserves the ability to establish new airspace units for training and allows the existence and maintenance of communication and tracking systems that support the military overflights.

Air quality

Section 8 deals with air quality management within and adjacent to areas designated as wilderness by this Act.

Subsection 8(a) states that it is not the intent of Congress, through the passage of this act, to cause reclassification of any airshed within Utah to a more stringent category.

Subsection 8(b) directs that areas designated by this shall continue to be managed as PSD Class II. If any reclassification of airsheds designated by this Act is to occur, it shall be at the prerogative of the State of Utah and in accordance with the Clean Air Act.

Subsection (c) states that nothing in this act shall restrict or preclude construction, operation, and expansion of certain industrial facilities located outside areas designated as wilderness by the Act. In addition, this subsection directs that permitting and operation of facilities shall be subject to applicable laws and regulations.

Wilderness release

Section 9 addresses the future management alternatives available to the Secretary concerning the wilderness study "not" designated as wilderness by this Act.

Subsection 9(a) is a Congressional finding that lands managed by the Bureau of Land Management have been adequately studied for wilderness designation pursuant to Sections 202 and 603 of FLPMA.

Subsection 9(b) contains language that releases wilderness study lands not designated as wilderness by this Act from management under section 603 of FLPMA. This section further directs that BLM manage these nondesignated lands in accordance with land management plans adopted pursuant to section 202 of FLPMA.

Subsection 9(c) retains four areas as wilderness study areas under section 603(c) of FLPMA.

Exchanges relating to school and institutional trust lands

Section 10 sets up the process whereby State of Utah school and institutional trust lands contained within designated wilderness areas can be exchanged for Federal lands laying outside wilderness areas. The lands to be exchanged pursuant to this section shall be of approximate equal value.

Subsection 10(a) finds that approximately 209,000 acres of school and institutional trust lands lie within or adjacent to areas designated as wilderness by this Act; these lands were originally granted to the State of Utah for the purposes of generating income for the public schools; and that it is in the interest of the State of Utah and the United States to exchange these lands out of the wilderness areas and to accomplish the purposes of the school trust lands.

Subsection 10(b) provides the State of Utah with up to seven years to offer to transfer all its interest to identified State lands to the Secretary. The Secretary is instructed to accept the offer and within 180 days initiate the exchange of the identified Federal lands. The exchange of lands is subject to valid existing rights and shall be completed within two years of the State's offer.

Subsection 10(c) identifies the lands to be exchanged on official maps.

Subsection 10(d) states that the lands to be exchanged shall be of approximate equal value as determined by nationally recognized appraisal standards. If the value of Federal lands identified in Sec. 10(d)(2) is such that all of them can not be obtained, the State of Utah shall determine which lands it desires up to the value estab-

lished for the properties being obtained by the United States. This subsection establishes through the United States District Court, a process to resolve disagreements between the State and the Secretary over values associated with this exchange of lands. In this process the courts can not be petitioned sooner than two years and not later than six years after the date of enactment of this Act.

Section 10(e) directs the State of Utah and the United States to provide each other legal descriptions of their respective lands. The maps and legal descriptions shall be made available to the public. Both parties are to inspect their respective lands for the presence of hazardous materials and are directed to remediate any problems identified. The transfer is found to be in the public interest and is exempted from any National Environmental Policy Act requirements. The value of federal lands transferred to the State shall be adjusted to reflect the fact that Utah would be entitled to share the revenues generated from such lands. Subject to valid existing rights, the lands identified for State acquisition are withdrawn from disposition, location, entry and patent under existing land and mineral laws under the federal mining laws.

Section 10(f) directs the Secretary to administer the lands acquired by the United States under this Act as wilderness.

Land appraisal

Section 11 directs that lands acquired pursuant to this Act shall be appraised without regard to the presence of threatened or endangered species under the Endangered Species Act.

Sand Hollow land exchange

Section 12 establishes procedures whereby the Water Conservancy District of Washington County Utah can exchange on an equal value basis, lands and water rights to the Secretary for lands outside and noncontingent to wilderness areas defined in this Act. These lands are described in subsection (a) (3), (4), (5), (6), (7).

Subsection 12(a) defines terms and parcels associated with the Sand Hollow exchange.

Subsection 12(b) directs the Secretary to accept Washington County's offer to exchange if made within eighteen months. Water rights associated with the land coming to the Secretary are to remain with the Water Conservancy District, but shall be subject to an agreement between the District and the Secretary which establishes a point of diversion down stream of Zion National Park. In addition, this subsection withdraws the Federal lands identified in Sec. 12(a) from operation of the mining laws and mineral leasing laws of the United States, the Geothermal Steam Act of 1970, and the Minerals Materials Act of 1947. 12(b) further specifies that by agreement with the District, grazing on the Sand Hollow Site shall continue under the terms and conditions of existing Federal permits. If the District chooses to terminate those rights, they must fully compensate permit holders for the value of the rights taken.

Subsection 12(c) establishes procedures to ensure equalization of values in trades between the federal government and the Water Conservancy District through the exchange of additional acreage and water rights. If exchanged lands and water rights are not of sufficient value to equalize the trade, the Secretary is authorized

to receive cash from the District in the amount necessary to achieve equality.

Subsection 12(d) directs the Secretary to manage all lands acquired in the Sand Hollow Exchange under laws generally applicable to the management of public lands.

Subsection 12(e) provides that the Sand Hollow exchange is not subject to section 102 of the National Environmental Policy Act of 1969.

COST AND BUDGETARY CONSIDERATION

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 15, 1995.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 884, the Utah Public Lands Management Act of 1995, as ordered reported by the Senate Committee on Energy and Natural Resources on December 6, 1995. CBO estimates that enacting S. 884 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill. We estimate that the resulting increase in federal outlays would average less than $500,000 per year. CBO also estimates that the bill would increase the federal government's land management costs by about $1 million per year, assuming appropriation of the necessary funds.

S. 884 would designate as wilderness approximately 1.8 million acres in Utah that are currently under the control of the Bureau of Land Management (BLM). The bill would release about 1.4 million acres of other land in the agency's Wilderness Study Area and provide that BLM manage it for non-wilderness multiple uses. The bill also would authorize the exchange of Utah school trust lands in and adjacent to the designated wilderness area for federal lands elsewhere. The lands to be exchanged are to be of approximately equal appraised values and based on a land exchange map dated November 9, 1995.

S. 884 also would authorize the Secretary of the Interior to transfer approximately 3,520 acres of federal lands known as the Sand Hollow Site, the Quail Creek Pipeline, and the Quail Creek Reservoir to the Water Conservancy District of Washington County, Utah. The Water Conservancy District seeks to acquire these lands for its reservoir operation. In exchange, the Secretary would receive approximately 1,380 acres of a water storage reservoir site known as the Bulloch Site in Kane County, Utah, adjacent to Zion National Park.

Federal Budgetary Impact: Based on information from the Department of the Interior and the state of Utah, CBO estimates that the federal land proposed for exchange with the state of Utah will generate, on average, less than $1 million of offsetting receipts each year during the 1996–2000 period. (The amount of bonus bids and royalty income for each year is uncertain and depends on both

development of existing leases and the extent to which new leases are entered into.) The federal government pays half of such receipts to the state of Utah. These federal receipts, less payments to the state, would be forgone if S. 884 is enacted. Because the budget records the receipts as offsetting receipts (that is, negative outlays), their loss would result in a net increase in federal spending. Thus, we estimate that the transfer of land to Utah would increase federal outlays by amounts averaging almost $500,000 annually over the next five years.

The loss of federal receipts under S. 884 from the land transferred to Utah would be partially offset because the government would obtain new lands from the state that also generate income. CBO estimates that the state lands that would be transferred to the federal government currently generate about $65,000 per year from mineral leases held by the state of Utah, and those receipts would likely continue at about the same level if the land exchange is enacted. Once the land is transferred to the federal government, however, half of the gross receipts would still be paid to Utah. Therefore, new federal receipts (net of the state's share) from the land currently owned by the state would total about $33,000 per year.

New oil and gas development could occur on the 1.4 million acres of federal land that S. 884 would release for non-wilderness multiple use, resulting in small increases in offsetting receipts from bonus bids and rental payments over the 1996–2000 period. However, CBO cannot estimate the likelihood or magnitude of such development.

S. 884 would require the proposed exchanges with the Water Conservancy District of Washington County, Utah, to be of equal value. If, after appraisals are completed, the District needs to transfer additional land in order to equalize the value of the lands to be exchanged, the bill would require that, to the extent possible, the Department of the Interior acquire lands in Washington County that are within desert tortoise habitat, acquire approximately 1,550 acres known as the Smith Site in Washington County adjacent to Zion National Park, and equalize the exchange with cash payments. CBO estimates that any cash payments made to equalize the value of lands exchanged would be negligible.

According to information from the Bureau of Land Management, the parcels of federal land to be exchanged with the Washington County Water Conservancy District generate less than $1,000 annually in offsetting receipts from grazing permits and rights-of-way rent. BLM expects that the lands received in exchange would generate about the same small amounts of offsetting receipts.

Based on information from BLM, CBO estimates that enacting S. 884 would increase BLM's administrative costs by about $1 million annually, subject to appropriation of the necessary amounts. Most of these costs would be incurred to manage the 1.8 million acres designated as wilderness by the bill, primarily for the preparation of management plans, for mapping, and for boundary identification and changes in boundary markers. Some of the additional costs would be incurred for modifying maps and plans for the 1.4 million acres of land released for non-wilderness multiple use.

By decreasing the amount of federally owned land in Utah, S. 884 would decrease the potential payments in lieu of taxes (PILT) made to counties in Utah, as determined by the PILT formula. The change in such payments, which are subject to appropriations, would not be significant.

State and Local Government Budgetary Impact: Based on the above estimates of federal receipts, CBO expects that federal payments to the state of Utah would increase by the same amount as the decrease in net federal receipts—less than $500,000 per year.

The land exchange with the Washington County Water Conservancy District authorized by this bill would be entered into voluntarily by the district and would be an equal value exchange. Therefore, CBO estimates that the provisions in S. 884 regarding the land exchange with the water conservancy district would impose no costs on state or local governments.

Because enacting S. 884 would decrease the total number of acres of federal land in Utah, payments in lieu of taxes would also decrease, subject to appropriation by the Congress. The losses of such payments, however, would not be significant.

If you wish further details on this estimate, we will be pleased to provide them. The staff contacts are Victoria V. Heid, and, for state and local impacts, Majorie Miller.

Sincerely,

JUNE E. O'NEILL, *Director.*

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. 884. 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 the administering of the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from enactment of S. 884, as ordered reported.

EXECUTIVE COMMUNICATIONS

On December 14, 1995, the Committee on Energy and Natural Resources requested a legislative report from the Department of the Interior setting forth executive views on S. 884 as amended. This report had not been received at the time the report on S. 884 was filed. When the report becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate. The following testimony from the administration was received by the Committee on S. 884, as introduced:

TESTIMONY OF SYLVIA BACA, DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for inviting us here today to testify on S. 884, the Utah Public Lands Management Act of 1995.

The Department understands that this legislation comes after five months of intensive activity, including meetings, field visits and public hearings held throughout Utah by Governor Leavitt and the Congressional delegation. We know that a great deal of time and effort have gone into preparing this legislation and the Secretary congratulates all concerned for taking a major step toward addressing the longstanding and nationally important issue of protecting Utah's wilderness values.

The issue is highly controversial, and we know there are strongly held views on all sides. We recognize there is opposition in some quarters to the designation of any Bureau of Land Management (BLM) lands in Utah as wilderness. We also understand that many Utahns have expressed their strong support for sizable wilderness designation. There is much interest outside the state, too, with a great deal of support for strong wilderness protection of public lands in Utah.

The reason for these strong feelings lies with the land itself. Utah contains some of the most beautiful and spectacular areas in all of America. This legislation addresses the management of public lands with some of the greatest wilderness, scenic, and recreational values in the country but which currently enjoy no permanent protection. S. 884 includes some of these lands, but releases the rest for development in a way that would forever preclude their reconsideration for wilderness designation. Many provisions of the bill represent a major departure in the way wilderness lands are managed, some in ways that are contrary to the 1964 Wilderness Act.

The Administration cannot support this bill as presently written. The unprecedented "hard release" mandate, the new wilderness management language, and the number of unprotected acres and areas are each major problems. While the Secretary has expressed the hope that the Congress might pass Utah wilderness legislation that the President could sign, this bill is far off the mark. If the bill were presented to the President in its current form, Secretary Babbitt would recommend that he veto it.

HISTORY

As you know, Mr. Chairman, the review of public lands in Utah for wilderness potential has a long and contentious history. The Bureau of Land Management's initial inventory to implement the wilderness review mandated in the Federal Land Policy and Management Act of 1976 (FLPMA) identified 5.5 million acres as having potential wilderness values. Decisions to reduce that acreage in subsequent stages of the process resulted in 2.6 million acres being designated as wilderness study areas (WSAs). Acting on challenges by Utah environmental interests, the Interior Board of Land Appeals remanded about 700,000 acres for reinventory, ultimately providing WSA status to approximately 3.2 million acres. Following further study, in

1991 the Bush Administration recommended to Congress that 1.9 million acres be designated as wilderness.

The controversy generated by the final inventory decision and the intensity of the pro- and anti-wilderness sides led this Committee to conduct oversight hearings that identified serious concerns regarding the criteria BLM used to exclude acreage from wilderness study status. The Utah inventory and subsequent recommendations were the most controversial of the entire BLM wilderness review process. Pitched debate over the validity of that work and those actions has continued to hamper the Utah wilderness process to this day.

Other proposals for resolving the Utah wilderness debate, including H.R. 1500, have been made. We are pleased that S. 884 recognizes that some areas outside the WSAs deserve consideration for wilderness designation. But we are sure other areas, both inside and outside the existing WSAs, deserve such status.

We come before you today, Mr. Chairman, ready to work with you to get a bill that could become law. We think it will take time, and a more deliberative and careful look at what areas and what protections are appropriate. We do not come with a specific area or acreage proposal. We have drawn no line in the sand concerning any particular number.

We do note, however, that we are not bound by positions developed and taken during the past two Administrations. Specifically, the Bush Administration's recommendation of 1.9 million acres is inadequate to protect Utah's great wilderness resources. We hope that when you consider all the testimony, the public input, the intent behind the 1964 Wilderness Act, and the spectacular public lands found in Utah, you will modify this legislation in a way we could support.

S. 884

The Department of the Interior's concerns regarding the bill's provisions include the "hard release" language, insufficient acreage protection, mandated unequal exchanges, automatic approvals of new developments in wilderness, the use and construction of roads in wilderness areas, failure to protect archaeological and paleontological resources, and several other issues.

Lands designated wilderness under S. 884 would be managed in a manner inconsistent with the mandates of the Wilderness Act. This bill mandates that roads and routes in wilderness areas remain open to use by motorized vehicles to a much greater extent than provided for in the Wilderness Act. Roads inside the proposed wilderness may be maintained and even replaced or realigned by any entity that claims to have maintained them in the past. Access by motorcycles, cars, trucks, sports utility vehicles and heavy equipment at any time of the year is guaranteed for water diversion, pipelines, irrigation facilities,

transmission lines, communication sites, agricultural facilities, or any facility or structure located within a wilderness. Any route or road, no matter how poorly located or how much erosion damage it may be creating, used to reach virtually any facility in a wilderness, remains open to motorized use. This sort of unrestricted vehicular use is not permitted on lands now managed by the BLM, whether or not they are in a designated wilderness.

On this point, and elsewhere, the bill would create the ironic situation that management inside wilderness could be less protective than management of public lands not designated as wilderness. To the extent this is true, it calls into serious question the value of designation as wilderness.

Management of cultural and paleontological resources inside wilderness designated by this bill could be compromised. This bill appears to allow anyone to go into a designated wilderness to obtain cultural and paleontological resources, and use backhoes, bulldozers or any other mechanical means to do it. The BLM has worked hard to permit legitimate researchers to have necessary access, and to prevent illegal looting and vandalism of such sites. Wilderness designation and the lack of mechanical access helps to protect cultural and paleontological resources.

The bill would explicitly permit the construction, maintenance, or expansion of reservoirs, transmission lines, communications sites, and even a natural gas pipeline, inside wilderness areas without regard for impacts on wilderness values. In some wilderness areas any facility deemed in the public interest may be constructed without regard to wilderness designation. Access across wilderness lands to reservoir projects outside wilderness would be permitted without regard to the damage such access may cause to the wilderness.

Cherry-stem roads within wilderness areas (where wilderness boundaries are drawn to exclude roads ending inside the wilderness, with wilderness on both sides of the road) should be delineated on the official map describing the wilderness areas and not left as this bill does, to subsequent claims or assertions of road rights-of-way. In addition, we believe the management of fish and wildlife resources, inside and outside wilderness, must be a cooperative State/Federal effort in order to attain compatible wilderness, ecological, and wildlife management functions. We believe the list of activities exclusively reserved to the state is too broad and would benefit from a more cooperative approach that would consider wilderness values.

In general, we are troubled by the possible implications of the term "nonwilderness multiple uses" as used in the bill. The agency, the public, and other state and local governments are familiar with "multiple use" as defined in Section 103(c) of FLPMA. We recommend the term be deleted from the bill and replaced with multiple use as defined by FLPMA. We are also concerned that the provi-

sions dealing with water rights and buffer zones go beyond what is necessary.

LAND EXCHANGES

S. 884 would mandate that state lands within or immediately adjacent to designated wilderness areas be exchanged for BLM-administered lands in other locations. The Department agrees that removal of State section inholdings will benefit both the long-term protection of wilderness characteristics and the opportunities for improved State trust land use. We strongly oppose, however, the specific provisions of the exchange as described in the bill, both in the text and on the map provided by the delegation.

The text of the bill claims that the values of the lands to be exchanged are of ''approximate equal value,'' but this clearly is not the case when the specific tracts shown on the map are reviewed. The tracts proposed to be obtained by the state have high economic value for mineral, residential, or industrial development. The fair market value of these lands may be 5 to 10 times or more than the value of the lands that would be transferred to the Federal government. Despite the imbalance in favor of the State, the bill provides for increased compensation to the State if encumbrances on Federal lands being transferred result in an imbalance, but not the other way around. This would only add to the inequality of values in this proposed exchange.

Furthermore, the text states that it will ''be construed as satisfying the provisions of Section 206(a) of the Federal Land Policy and Management Act of 1976 (FLPMA) requiring that exchanges of lands be in the public interest.'' Under section 206(b) of FLPMA, however, this can only be true if the lands to be exchanged are, in fact, of ''approximate equal value,'' or that the values are equalized by the payment of money.

We emphasize that the Department would support a flexible exchange authorization that would result in a fair and equitable solution for both the state and federal interests; this bill does not provide one.

We have other concerns as well. The loss of receipts from mineral leasing on the Federal lands to be exchanged could have pay-as-you-go costs that would need to be offset. We are also concerned about the exemption from the National Environmental Policy Act of 1989 (NEPA). There is no apparent rationale for such an exemption.

HARD RELEASE

Perhaps our greatest concern with this legislation regards what would happen to those BLM lands with wilderness character not designated as wilderness in this legislation. For the lands not designated as wilderness in this bill, the ''hard release'' provides would forever remove the protection now being provided to the wilderness study

areas. Furthermore, under the terms of the bill, no additional public lands managed by BLM in the state, including future acquired lands, could be managed for their wilderness values. Instead, they could only be managed for "nonwilderness multiple uses." The bill's language is very broad, and conceivably could prohibit any BLM management action or technique that had the incidental effect of protecting any characteristic or quality of an area that resembled designated wilderness. Such a total and permanent release of all lands not designate within this bill is unprecedented and inappropriate.

More than 100 wilderness laws have been passed by Congress since the passage of the Wilderness Act in 1964. Although hard release language has been advocated by various industry groups in testimony on wilderness legislation for more than fifteen years, to date no law of which we are aware has included anything comparable to the hard release language of this bill.

The precedent that would be established by hard release of lands with wilderness potential extends far beyond Utah. The majority of BLM lands with wilderness potential have yet to be considered by Congress. The elimination of wilderness consideration in future BLM land management plans throughout the West could have major impacts. Mandated "nonwilderness multiple use" on all of these lands could severely and inappropriately constrain future management options. Finally, the BLM is not alone in managing wilderness on the Federal lands. Land managers in other Federal and State land management agencies could also be affected if this precedent were to be followed.

CONCLUSION

BLM Utah has begun an evaluation of the several alternative wilderness proposals, including the recommendations of the Bush Administration. Initial review of these lands shows that many anticipated developments which led to the exclusion of some areas from previous recommendations have never come to pass. In addition, resource conditions on the ground have changed over the last 15 years, and some areas which might not have qualified then would qualify today. Previously, boundaries were drawn wherever possible to avoid inclusion of state lands, even where the logical boundary, based on topography, would have included them. Today, both the State and Federal governments agree that such exclusions are inappropriate.

We feel it is important to deal with the situation as it exists today, and to understand whether wilderness values are present today, whatever management boundaries presently exist.

These are world-class lands. They encompass the varied landscapes and vistas of the Great Basin, the Colorado Plateau, and the Mojave Desert. The ancient remains of

prehistoric animals and peoples lie in this country. The spectacular plateaus, arches, bridges, slot canyons, mountain ranges and badlands are crossed by a thousand small waterways feeding into the mighty rivers of the Colorado, the Green, and the San Juan.

Given the permanence of the decision, the limited degree of protection this bill would afford to some of America's greatest treasures, and the other problems we have identified, the Interior Department strongly opposes the legislation in its present form and Secretary Babbitt would recommend that the President veto this bill if both houses of Congress pass S. 884 as currently written.

We and our wilderness staff are prepared to sit down with you and your staff to review in detail the full range of management concerns raised by this legislation. We stand ready to work with you, Mr. Chairman, if you feel the possibility exists to craft legislation which accommodates the concerns we have expressed here today.

MINORITY VIEWS OF SENATORS BUMPERS AND BRADLEY

While we appreciate the efforts of the Utah Senators to craft a statewide Utah BLM wilderness bill, we cannot support the version reported from the Committee.

The Committee reported bill would designate too little of Utah's spectacular landscape as wilderness. Of the almost 22 million acres of BLM land in Utah, only about 1.8 million—less than 10 percent—would be designated as wilderness. While we believe more of these spectacular areas should be designated, we also believe that considerable deference should be given to the views of the two Senators from the affected State. If the issue was only the amount of acreage to be designated, we would probably not oppose S. 884. However, this bill includes many other unprecedented provisions which would significantly weaken the protections afforded by the Wilderness Act of 1964.

For example, with respect to those lands that are included in the National Wilderness Preservation System, the bill includes provisions that allow unprecedented and almost unfettered motorized access to them, notwithstanding the fact that they are, in the words of the Wilderness Act, places "untrammeled by man * * * protected and managed so as to preserve [their] natural conditions * * *". This access is granted to all areas covered by the bill rather than on an area-by-area basis as is usually the case.

In addition, the bill includes language never before included in a wilderness bill enacted by the Congress, that would prohibit the land managing agency (in this case the BLM) from managing those lands not designated as wilderness by this Act in a manner that would protect their wilderness suitability and character. In other words, after this bill is enacted, all BLM lands in Utah not designated as wilderness in this bill will, by law, forever be managed for nonwilderness uses. We think this so-called "hard release" language is short sighted and not in the interest of future generations. Others on the Committee, on both sides of the aisle, share our view in this regard as evidenced by the fact that two amendments offered in Committee to revise this release language were narrowly defeated by votes of 10–10.

Finally, the Committee reported bill includes a major land exchange involving almost a quarter of a million acres of State and federal land in Utah that is, in our view and the view of the Department of the Interior, weighted heavily in favor of the State to the detriment of the United States and the taxpayers. While some positive changes were made to the land exchange provisions in Committee, much remains to be done before the exchange is fair and mutually beneficial to both parties—a test the Committee and the Congress have consistently applied to other land exchanges.

It is the cumulative effect of these deficiencies that leads us to reluctantly oppose this bill in its current form. Too little wilderness

is designated; the wilderness that is designated is managed in a manner contrary to the Wilderness Act; and opportunities for future wilderness review and management for millions of acres of BLM lands non-designated as wilderness in this bill are effectively eliminated.

We are hopeful that these shortcomings can be resolved on the Senate floor and that a Utah wilderness bill can be passed by the Congress and signed by the President.

DALE BUMPERS.
BILL BRADLEY.

VIEWS OF SENATOR BINGAMAN

Though I appreciate the efforts of the Utah Senators to craft a statewide Utah BLM wilderness bill, I cannot support the version reported from the Committee. This bill includes many unprecedented provisions which would significantly weaken the protections afforded by the Wilderness Act of 1964.

For example, there are provisions in this bill that allow unprecedented and essentially unrestrained motorized access to those lands that are included in the National Wilderness Preservation System, even though in the words of the Wilderness Act, they are supposed to be places "untrammeled by man * * * protected and managed so as to preserve [their] natural conditions * * *". This access is granted to all areas covered by the bill rather than on an area-by-area basis as is usually the case.

The bill also contains language that would prohibit the land managing agency (in this case the BLM) from managing those lands not designated as wilderness by this Act in a manner that would protect their wilderness suitability and character. Such language has never before been included in a wilderness bill enacted by the Congress. If enacted, this bill would affect all BLM lands in Utah not designated as wilderness, requiring by law that they be managed in perpetuity for non-wilderness uses. I find this so-called "hard release" language short-sighted and not in the interest of future generations.

Finally, there is a major land exchange included in the Committee-reported bill involving nearly a quarter of a million acres of State and federal land in Utah. In my view and in the view of the Department of the Interior, the land exchange provision is weighted heavily in favor of the State to the detriment of the United States and the taxpayers. Some constructive changes were made to the land exchange provisions in Committee. Nevertheless, this bill does not quite meet the criteria the Committee and the Congress have consistently applied to other land exchanges—that it be fair and mutually beneficial to both parties.

It is the cumulative effect of these deficiencies that lead me to reluctantly oppose this bill in its current form. I am hopeful that these shortcomings can be resolved on the Senate floor and that a Utah wilderness bill can be passed by the Congress and signed by the President.

JEFF BINGAMAN.

MINORITY VIEWS OF SENATOR PAUL DAVID WELLSTONE

While I would very much like to support the legislation from my friends, the Senators from Utah, I am concerned that it would set a number of dangerous precedents for public lands management.

There are currently about 22 million acres of public land in Utah managed by the Bureau of Land Management. This bill designates 1.8 million acres as wilderness, releasing the rest of the acreage. The bill's provisions run contrary not only to what has become customary treatment of wilderness land but also the spirit of the 1964 Wilderness Act.

The bill would allow many exceptions to the usual, careful treatment of wilderness. For instance, it would not allow Federal land managers to consider wilderness designation when granting permits on upstream lands for water projects. Thus, wilderness lands might be left without adequate water.

Perhaps most disturbing is the hard release language of the bill, requiring most of the remaining acres to be released without even the possibility of wilderness protection. Section 9(b) of the bill states, "Such lands shall not be managed for the purpose of protecting their suitability for wilderness designation or their wilderness character and shall remain available for nonwilderness multiple uses, subject to the requirements of other federal laws." Such "hard release" language has never been included in a wilderness bill.

I am a firm believer in the unspoken Senate rule that in land management cases standard practice should be to defer to the Senators from the affected state. However, in this case, I cannot support the Utah delegation's proposal. I hope it can be improved to the point where my support is possible.

PAUL D. WELLSTONE.

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. 884 as reported.

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