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### JAMES PEAK WILDERNESS AND PROTECTION AREA ACT

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JUNE 28, 2002.—Ordered to be printed  
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Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany H.R. 1576]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1576) to designate the James Peak Wilderness and Protection Area in the Arapaho and Roosevelt National Forests in the State of Colorado, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

#### PURPOSE

The purpose of H.R. 1576 is to designate the James Peak Wilderness and the James Peak Protection Area in the Arapaho and Roosevelt National Forests in the State of Colorado.

#### BACKGROUND AND NEED

The 13,294-foot James Peak is the predominant feature in a 26,000-acre roadless area within the Arapaho-Roosevelt National Forest, just north and east of Berthoud Pass. The James Peak roadless area straddles the Continental Divide in four counties (Gilpin, Clear Creek, Boulder and Grand).

The area is known for its recreational opportunities for hiking, skiing, fishing, and backpacking, including the popular South Boulder Creek trail and the Continental Divide National Scenic Trail. The area also includes the historic Rollins Pass Road, which provides access for mechanized and motorized recreation. James Peak is one of the highest rated areas for biological diversity in the Arapaho National Forest, including valuable habitat for wildlife, miles of riparian corridors, stands of old growth forests and threatened and endangered species.

Previous congressional proposals to designate 22,000 acres in the James Peak area as wilderness were opposed by Grand County.

H.R. 1576 represents a compromise agreement that designates 14,000 acres as the James Peak Wilderness Area and approximately 3,195 acres as additions to the Indian Peaks Wilderness area. These lands are all on the east side of the Continental Divide.

On the west side of the Divide, in Grand County, the bill creates a 16,000 acre James Peak Protection Area. With a few exceptions, the area would be governed by the management area prescriptions for the lands involved in the 1997 revision of the Land and Resource Management Plan for the Arapaho/Roosevelt National Forest and the Pawnee National Grasslands. Limited motorized and mechanized use could continue, including, for example, Roger's Pass Trail and the Continental Divide Trail to be looped for the use of mountain bikers. Timber harvesting would be prohibited with the exception of hazardous fuels reduction (plus other exceptions for the control of insects or disease or provision for public safety); the area is withdrawn from mineral or geothermal exploration and development.

#### LEGISLATIVE HISTORY

H.R. 1576, was introduced by Representative Mark Udall on April 24, 2001, and passed the House by voice vote on December 11, 2001. S. 1711, a companion measure, was introduced by Senator Campbell on November 15, 2001. The Subcommittee on Public Lands and Forests held a hearing on H.R. 1576 on May 9, 2002. The Committee on Energy and Natural Resources ordered H.R. 1576 favorably reported at its business meeting on June 5, 2002.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on June 5, 2002, by a voice vote of a quorum present, recommends that the Senate pass H.R. 1576.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provides a short title for the bill, the "James Peak Wilderness and Protection Area Act."

*Section 2* amends two statutes, the Colorado Wilderness Act of 1993 (Public Law 103-77) and the Indian Peaks Wilderness Area and Arapaho National Recreation Act and the Oregon Islands Wilderness Area Act (Public Law 95-450). The amendments designate about 14,000 acres in Boulder, Clear Creek, and Gilpin Counties, Colorado, and the "James Peak Wilderness" and enlarge the Indian Peaks Wilderness by 3,195 acres.

*Section 3(a)* contains findings and a purpose for designating the James Peak Protection Area.

Subsection (b) designates approximately 16,000 acres of land in the Arapaho/Roosevelt National Forest generally depicted on the identified map.

Subsection (c) requires the Secretary, after the date of enactment of this Act, to file with the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a map and boundary description of the Protection Area. This subsection also states that the map and bound-

ary description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors.

Subsection (d)(1) states that, except as otherwise provided in this section, the Protection Area shall be managed by the Secretary in the same manner as the management area prescription designations identified for these lands in the 1997 Revision of the Land and Resource Management Plan for the Arapaho/Roosevelt National Forest and the Pawnee National Grasslands. This paragraph further states that nothing in this act shall affect grazing. It also withdraws, subject to valid existing rights, the Protection Area from all forms of appropriation or disposal under the public land laws and mining laws. Finally, this paragraph requires the Secretary to review and inventory existing roads and trails in the Protection Area to determine which ones are open to motorized and mechanized travel and prohibits new roads or trails with the following exceptions: (1) roads and trails that have become non-serviceable; (2) nonpermanent roads needed for hazardous fuels reduction or control of fire, insect or disease control; and (3) a trail for non-motorized use designated as the Continental Divide Trail.

Paragraph (2) requires the Secretary to allow for maintenance of rights-of-way and access roads within the Protection Area to the extent necessary to operate the identified natural gas pipeline in a manner that avoids negative impacts on public safety and allows for compliance with Federal pipeline safety requirements.

Paragraph (3) states that all right, title, and interest of the United States, held on or acquired after the date of the enactment of this Act, to lands within the boundaries of the Protection Area shall be retained by the United States.

Subsection (e) specifies that the bill: (1) does not constitute an express or implied reservation of any water or water rights with respect to lands in the Protection Area; (2) requires the Secretary of Agriculture to follow Colorado law to obtain any new water rights with respect to the Protection Area, and (3) will have no effect on existing water facilities or infrastructure, or associated water-related property, interests, and uses, in the portion of the Protection Area not subject to the "special interest area" management prescriptions.

*Section 4(a)* states that if the Colorado State Land Board informs the Secretary that the Board is willing to transfer to the United States some or all of the lands owned by the Board located within the Protection Area, the Secretary shall promptly seek to reach agreement with the Board regarding terms and conditions of acquisition of such lands.

Subsection (b) requires the Secretary to enter into negotiations with the owner of lands located within the Jim Creek drainage for the purpose of acquiring the lands; however, this subsection prohibits the United States from acquiring such lands without the consent of the owner. The subsection also guarantees the landowner in the Jim Creek drainage reasonable access by motorized or other means consistent with applicable law.

Subsection (c) requires the Secretary to submit a report to Congress concerning any agreement reached pursuant to this section or the status of negotiations within one year after the date of enactment of this Act.

Subsection (d) states that any lands within the James Peak Wilderness or the Protection Area acquired by the United States after the date of enactment of this Act shall be added to the James Peak Wilderness or Protection Area, respectively, and managed accordingly.

*Section 5* directs the Forest Service to locate a new trailhead and appropriate attendant facilities in the Fall River basin area southeast of the James Peak Wilderness Area. The Forest Service is to consult with Clear Creek County, local communities and the interested public on the location and establishment of this trailhead.

*Section 6* directs the Secretary to undertake a study to determine if it would be both feasible and desirable to establish within the Protection Area a loop trail for non-motorized recreational use that would connect the existing Rogers Pass trail and the existing Rollins Pass road. This study is to be done in consultation with interested parties.

*Section 7(a)* specifies that the ability to see or hear nonwilderness activities or uses from within the wilderness area or Protection Area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area or Protection Area.

Subsection (b) provides for technical assistance with respect to repair of the Rollins Pass road, if requested by one or more of the affected counties.

*Section 8(a)* clarifies that nothing in the bill will preclude or restrict the authority of the Secretary of Agriculture to evaluate the suitability of lands in the Protection Area for future wilderness designation or to make recommendations to Congress for such designation at any time.

Subsection (b) specifies that such evaluation of the part of the Protection Area subject to "special interest area" management prescriptions shall be done in connection with the first revision of the relevant forest plan after the date of enactment of the bill.

#### COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 14, 2002.*

Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1576, the James Peak Wilderness and Protection Area Act.

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

Sincerely,

BARRY B. ANDERSON,  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 1576—James Peak Wilderness and Protection Area Act*

H.R. 1576 would reclassify about 33,195 acres of lands within the Arapaho and Roosevelt National Forests located in Colorado and administered by the Forest Service. CBO estimates that implementing H.R. 1576 would cost about \$600,000 over the next two years. The act could affect direct spending (including offsetting receipts); therefore, pay-as-you-go procedures would apply, but we estimate that any such effects would not exceed \$15,000 per year. H.R. 1576 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

H.R. 1576 would designate as wilderness about 17,195 acres of federal lands within the Arapaho and Roosevelt National Forests in Colorado. The legislation also would designate 16,000 acres of other lands within those forests as the James Peak Protection Area and would authorize the Secretary of Agriculture to acquire non-federal lands within that area. Subject to valid existing rights, H.R. 1576 would withdraw federal lands within the proposed protection area from programs to develop mineral and geothermal resources and would prohibit timber harvesting within the area except under certain circumstances. Finally, the legislation would direct the Forest Service to establish a new trailhead and related facilities near the Fall River basin in Colorado, study the feasibility of connecting two existing trails, and implement the results of that study.

Based on information from the Forest Service, CBO estimates that designating the wilderness and protection areas would not significantly affect the agency's costs to manage those areas. We estimate that acquiring nonfederal lands within the proposed protection area would cost less than \$200,000 in 2003, assuming the availability of appropriated funds. We also estimate that building the new trailhead and related facilities would cost \$300,000 over the next two years, and that completing the trails feasibility study and implementing its recommendations would cost about \$100,000 in 2003.

Withdrawing lands within the proposed protection area from leasing and development and prohibiting timber harvesting on those lands could reduce offsetting receipts if, under current law, the lands are expected to generate income from those activities. Based on information from the Forest Service, we estimate that any such forgone receipts would not exceed \$15,000 a year.

On November 7, 2001, CBO transmitted a cost estimate for H.R. 1576 as ordered reported by the House Committee on Resources on October 3, 2001. The two versions of H.R. 1576 are identical. Differences in the timing of spending reflect a change in our assumption regarding when the legislation will be enacted.

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

## REGULATORY IMPACT EVALUATION

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

H.R. 1576. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 1576.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the Forest Service at the Subcommittee hearing follows:

STATEMENT OF GLORIA MANNING, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today. I am Gloria Manning, Associate Deputy Chief for National Forest System, USDA Forest Service. I am here today to provide the Department's views on H.R. 1576, to designate the James Peak Wilderness and James Peak Protection Area in the Arapaho and Roosevelt National Forests.

The Department does not object to S. 1711 and H.R. 1576, bills that would designate the James Peak Wilderness and the James Peak Protection Area in the Arapaho and Roosevelt National Forests in Colorado.

In summary, S. 1711 and H.R. 1576 designate a wilderness area and a protection area. In addition, S. 1711 and H.R. 1576 address acquisition of State and private lands within the protection area, direct the Forest Supervisor to construct a trailhead in the Fall River basin, and provide for technical assistance to local governments in repairing Rollins Pass Road.

Both bills would designate approximately 14,000 acres of land within the Arapaho and Roosevelt National Forests as the James Peak Wilderness and add approximately 2,232 acres of the Arapaho and Roosevelt National Forests known as the Ranch Creek Addition to the Indian Peaks Wilderness.

Another 963 acres of the Arapaho and Roosevelt National Forests, known as the Fourth of July Addition, would also be added to the Indian Peaks Wilderness.

The bills would designate 16,000 acres of the Arapaho and Roosevelt National Forests as the James Peak Protection Area. Except as otherwise provided in the legislation, this area would be managed consistent with the direction established in the 1997 Revised Land and Resource Management Plan (LRMP) for the Arapaho and Roosevelt National Forests.

In addition, the bills require the Secretary to:

- Review and inventory all roads and trails in the Protection Area, no later than 2 years after the date of enactment, and restrict the use of motorized and mechanized travel to designated routes within the Protection Area.

- Make recommendations to Congress concerning the suitability of lands within the Special Interest Area for inclusion in the National Wilderness Preservation System.
- Conduct a study, not later than three years after funding, of the suitability and feasibility of establishing a loop trail for mechanized and other non-motorized recreation connecting Rogers Pass and Rollins Pass road. If the study indicates suitability and feasibility, the Secretary shall establish the loop trail;
- Prepare a report concerning the status of negotiations and acquisition of inholdings within the Protection Area. The Secretary may only acquire inholding within the Protection Area on a willing seller basis.
- Establish a trailhead in the Fall River basin and assign personnel to manage the use of National Forest System land in the Fall River basin south of the communities of Alice and St. Mary's Glacier, and prepare a report to Congress identifying the funding need to implement this section.

S. 1711 and H.R. 1576 further state that the designation of wilderness areas and the Protection Area shall not establish buffer zones around those areas. The bills also direct the Secretary, upon request, to provide counties technical assistance and otherwise cooperate with respect to repairing Rollins Pass road. If repairs are completed, the Secretary is to close to motorized travel the roads and trails shown on the Rollins Pass road and trail closure map.

The 1997 Revised Land Management Plan recommended wilderness designation for the Ranch Creek Addition and Fourth of July Addition to the Indian Peaks Wilderness. The proposed James Peak Wilderness was not recommended for wilderness designation in the forest plan.

In addition, the forest plan provides direction under which concerns regarding travel management and dispersed recreation use can be addressed in the Rollins Pass, Rogers Pass, and Fall Creek basin areas.

While we believe the LRMP sufficiently protects the resource values in the proposed James Peak Wilderness and Protection Areas, we do not object to the additional designations contained in the bills.

#### *Conclusion*

This concludes my statement; I would be happy to answer your questions.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act H.R. 1576, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 103-77

AN ACT To designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes

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

**SECTION 1. SHORT TITLE AND DEFINITIONS.**

\* \* \* \* \*

**SEC. 2. ADDITIONS TO THE WILDERNESS PRESERVATION SYSTEM.**

(a) \* \* \*  
(1) \* \* \*

\* \* \* \* \*

*(21) Certain lands in the Arapaho/Roosevelt National Forest which comprise approximately 14,000 acres, as generally depicted on a map entitled 'Proposed James Peak Wilderness', dated September 2001, and which shall be known as the James Peak Wilderness.*

\* \* \* \* \*

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Public Law 95-450

AN ACT To create the Indian Peaks Wilderness Area and the Arapaho National Recreation Area, to authorize the Secretary of the Interior to study the feasibility of revising the boundaries of the Rocky Mountain National Park, and to add certain lands to the Oregon Islands Wilderness

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

SHORT TITLE

SECTION 1. \* \* \*

\* \* \* \* \*

INDIAN PEAKS WILDERNESS AREA

SEC 3. (a) \* \* \*

\* \* \* \* \*

*(c) The approximately 2,232 acres of Federal lands in the Arapaho/Roosevelt National Forest generally depicted on the map entitled 'Ranch Creek Addition to Indian Peaks Wilderness' dated September 2001, are hereby added to the Indian Peaks Wilderness Area.*

*(d) The approximately 963 acres of Federal land in the Arapaho/Roosevelt National Forest generally depicted on the map entitled 'Fourth of July Addition to Indian Peaks Wilderness' dated September 2001, are hereby added to the Indian Peaks Wilderness Area.*

\* \* \* \* \*