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SAND CREEK MASSACRE NATIONAL HISTORIC SITE TRUST ACT OF 2004

AUGUST 25, 2004.—Ordered to be printed

Filed, under authority of the order of the Senate of July 22, 2004

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

R E P O R T

[To accompany S. 2173]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2173) to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000, 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 "Sand Creek Massacre National Historic Site Trust Act of 2004".

SEC. 2. DEFINITIONS.

In this Act:

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

(2) FACILITY.—The term "facility" means any structure, utility, road, or sign constructed on the trust property on or after the date of enactment of this Act.

(3) IMPROVEMENT.—The term "improvement" means—

(A) a 1,625 square foot 1-story ranch house, built in 1952, located in the SW quarter of sec. 30, T. 17 S., R. 45 W., sixth principal meridian;

(B) a 3,600 square foot metal-constructed shop building, built in 1975, located in the SW quarter of sec. 30, T. 17 S., R. 45 W., sixth principal meridian;

(C) a livestock corral and shelter; and

(D) a water system and wastewater system with all associated utility connections.

(4) TRIBE.—The term "Tribe" means the Cheyenne and Arapaho Tribes of Oklahoma, a federally recognized Indian tribe.

(5) TRUST PROPERTY.—The term "trust property" means the real property, including rights to all minerals, and excluding the improvements, formerly known as the "Dawson Ranch", consisting of approximately 1,465 total acres presently under the jurisdiction of the Tribe, situated within Kiowa County, Colorado, and more particularly described as follows:

(A) The portion of sec. 24, T. 17 S., R. 46 W., sixth principal meridian, that is the Eastern half of the NW quarter, the SW quarter of the NE quarter, the NW quarter of the SE quarter, sixth principal meridian.

(B) All of sec. 25, T. 17 S., R. 46 W., sixth principal meridian.

(C) All of sec. 30, T. 17 S., R. 45 W., sixth principal meridian.

SEC. 3. CONVEYANCE OF LAND TO BE HELD IN TRUST FOR THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA.

(a) LAND HELD IN TRUST FOR THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA.—Immediately upon conveyance of title to the trust property by the Tribe to the United States, without any further action by the Secretary, the trust property shall be held in trust for the benefit of the Tribe.

(b) TRUST.—All right, title, and interest of the United States in and to the trust property, except any facilities constructed under section 4(b), are declared to be held by the United States in trust for the Tribe.

SEC. 4. IMPROVEMENTS AND FACILITIES.

(a) IMPROVEMENTS.—The Secretary may acquire by donation the improvements in fee.

(b) FACILITIES.—

(1) IN GENERAL.—The Secretary may construct a facility on the trust property only after consulting with, soliciting advice from, and obtaining the agreement of, the Tribe, the Northern Cheyenne Tribe, and the Northern Arapaho Tribe.

(2) OWNERSHIP.—Facilities constructed with Federal funds or funds donated to the United States shall be owned in fee by the United States.

(c) FEDERAL FUNDS.—For the purposes of the construction, maintenance, or demolition of improvements or facilities, Federal funds shall be expended only on improvements or facilities that are owned in fee by the United States.

SEC. 5. SURVEY OF BOUNDARY LINE; PUBLICATION OF DESCRIPTION.

(a) SURVEY OF BOUNDARY LINE.—To accurately establish the boundary of the trust property, not later than 180 days after the date of enactment of this Act, the Secretary shall cause a survey to be conducted by the Office of Cadastral Survey of the Bureau of Land Management of the boundary lines described in section 2(5).

(b) PUBLICATION OF LAND DESCRIPTION.—

(1) IN GENERAL.—On completion of the survey under subsection (a), and acceptance of the survey by the representatives of the Tribe, the Secretary shall cause the full metes and bounds description of the lines, with a full and accurate description of the trust property, to be published in the Federal Register.

(2) EFFECT.—The description shall, on publication, constitute the official description of the trust property.

SEC. 6. ADMINISTRATION OF TRUST PROPERTY.

(a) IN GENERAL.—The trust property shall be administered in perpetuity by the Secretary as part of the Sand Creek Massacre National Historic Site, only for historical, traditional, cultural, and other uses in accordance with the Sand Creek Massacre National Historic Site Establishment Act of 2000 (16 U.S.C. 461 note; Public Law 106–465).

(b) ACCESS FOR ADMINISTRATION.—For purposes of administration, the Secretary shall have access to the trust property, improvements, and facilities as necessary for management of the Sand Creek Massacre National Historic Site in accordance with the Sand Creek Massacre National Historic Site Establishment Act of 2000 (16 U.S.C. 461 note; Public Law 106–465).

(c) DUTY OF THE SECRETARY.—The Secretary shall take such action as is necessary to ensure that the trust property is used only in accordance with this section.

(d) SAVINGS PROVISION.—Nothing in this Act supersedes the laws and policies governing units of the National Park System.

SEC. 7. ACQUISITION OF PROPERTY.

Section 6(a)(2) of the Sand Creek Massacre National Historic Site Establishment Act of 2000 (16 U.S.C. 461 note; Public Law 106–465) is amended by inserting "or exchange" after "only by donation".

PURPOSE OF THE MEASURE

The purpose of S. 2173 is to authorize the Secretary of the Interior to hold certain lands in trust for the benefit of the Cheyenne and Arapaho Tribes of Oklahoma in furtherance of the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000 by holding.

BACKGROUND AND NEED

On November 29, 1864, Colonel John M. Chivington led approximately 700 U.S. volunteer soldiers to a village of about 500 Cheyenne and Arapaho people camped along the banks of Big Sandy Creek in southeastern Colorado. Although the Cheyenne and Arapaho people believed they were under the protection of the U.S. Army, Chivington's troops attacked and killed abut 150 people, mainly women, children, and the elderly. Ultimately, the massacre was condemned following three federal investigations.

The Sand Creek Massacre National Historic Site was authorized in 2000 by Public Law 106–465 to recognize the national significance of the massacre in American history and its ongoing significance to the Cheyenne and Arapaho people and descendants of the massacre victims. The Act authorizes establishment of the national historic site once the National Park Service has acquired sufficient land from willing sellers to preserve, commemorate, and interpret the massacre. The National Park Service has acquired approximately 920 acres, but the majority of land within the authorized boundary is privately owned and is not open to the public. The National Park Service has been working in partnership with The Conservation Fund, the Cheyenne and Arapaho Tribes, and the State of Colorado towards establishment of the Sand Creek Massacre National Historic Site. S. 2173 would authorize the Secretary of the Interior to acquire approximately 1,465 acres owned by the Cheyenne and Arapaho Tribes of Oklahoma, to be held in trust for the tribes. Once these lands are acquired, the National Park Service will be able to formally establish the National Historic Site.

LEGISLATIVE HISTORY

S. 2173 was introduced by Senator Campbell on March 8, 2004. The Senate Subcommittee held a hearing on S. 2173 on May 20, 2004. The Committee on Energy and Natural Resources ordered S. 2173, as amended, favorably reported on July 14, 2004.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in an open business session on July 14, 2004, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 2173, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 2173, the Committee adopted an amendment in the nature of a substitute. In addition to making several technical, clarifying, and conforming changes the amendment clarifies that the property taken into trust does not include improvements and shall be administered by the Secretary of the

Interior in perpetuity as part of the Sand Creek Massacre National Historic Site and only for historical, traditional, cultural and other uses in accordance with the enabling Act for the National Historic Site. The amendment also authorizes the Secretary to acquire land for the National Historic Site by exchange. The amendment is described in detail in the section-by-section analysis below.

SECTION BY SECTION ANALYSIS

Section 1 entitles the bill the "Sand Creek Massacre National Historic Site Trust Act of 2004."

Section 2 defines key terms used in the bill. The definition of "trust property", which describes the Dawson Ranch property to be conveyed by the Cheyenne and Arapaho tribes of Oklahoma to the United States to be held in trust for the benefit of the tribes, does include any improvements on the property.

Section 3(a) provides that, immediately upon conveyance of title to the trust property to the United States, without any further action by the Secretary of the Interior (Secretary), the trust property shall be held in trust for the benefit of the tribes.

Subsection (b) states that all right, title and interest of the United States in and to the trust property is declared to be held by the United States in trust for the tribes.

Section 4(a) authorizes the Secretary to acquire the improvements to the property by donation.

Subsection (b) provides that the Secretary may construct a facility on the trust property only after consulting with and obtaining agreement from the Cheyenne and Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe and the Northern Arapaho Tribe. The subsection further provides that facilities built with Federal funds or funds donated to the United States shall be owned by the United States.

Subsection (c) restricts the use of Federal funds for the construction, maintenance or demolition of improvements or facilities to improvements or facilities owned in fee by the United States.

Section 5(a) directs the Secretary to cause a survey to be conducted within 180 days after the date of enactment to accurately establish the boundary of the trust property.

Subsection (b) directs the Secretary to publish the full legal description of the property in the Federal Register upon completion of the survey.

Section 6(a) states that the trust property shall be administered in perpetuity by the Secretary as part of the Sand Creek Massacre National Historic Site only for historical, traditional, cultural and other uses in accordance with the Sand Creek Massacre National Historic Site Establishment Act of 2000.

Subsection (b) provides that the Secretary shall have access to the trust property, including improvements and facilities, as necessary for administration and management of the National Historic Site.

Subsection (c) directs the Secretary to take such action as is necessary to ensure that the trust property is used only in accordance with this section.

Subsection (d) clarifies that nothing in this Act supercedes the laws and policies governing units of the National Park System.

Section 7 amends section 6(a)(2) of the Sand Creek Massacre National Historic Site Establishment Act of 2000 to allow the Secretary to acquire land owned by the State of Colorado by exchange. Currently the Secretary may only acquire State-owned land by donation.

COST AND BUDGETARY CONSIDERATIONS

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2173—Sand Creek Massacre National Historic Site Trust Act of 2004

S. 2173 would authorize the Secretary of the Interior to take certain property into trust for the Cheyenne and Arapaho Tribes of Oklahoma and to construct facilities (including structures, utilities, roads, or signs) on such land. Any facility constructed with federal funds would be owned by the federal government and not taken into trust for the tribes. Based on information obtained from the National Park Service, CBO does not expect the Secretary to construct facilities on the tribes' land over the 2005–2009 period. Therefore, CBO estimates that implementing S. 2173 would have no significant effect on the federal budget.

S. 2173 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not significantly affect the budgets of state, local, or tribal governments.

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

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2173.

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

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

Little, if any, additional paperwork would result from the enactment of S. 2173.

EXECUTIVE COMMUNICATIONS

On May 13, 2004, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 2173. These reports had not been received when this report was filed. The testimony provided by the Department of the Interior at the Subcommittee hearing on S. 2173 follows:

STATEMENT OF PAUL HOFFMAN, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the subcommittee, thank your for the opportunity to appear before you today to present the Department of the Interior's views on S. 2173, a bill to further the purpose of the Sand Creek Massacre National Historic Site Establishment Act of 2000. We would like to thank Senator Campbell for his continued interest and support of this site.

The Department supports S. 2173 if amended as described at the end of this testimony. S. 2173 would convey title to a section of land formerly known as the "Dawson Ranch" and existing structures on that land to the United States to be held in trust by the Secretary of the Interior and managed by the National Park Service strictly for the purposes for which Sand Creek Massacre National Historic Site was authorized by P.L. 106–465. The purposes of that Act are to recognize the national significance of the massacre in American history, its ongoing significance to the Cheyenne and Arapaho people and descendants of the massacre victims, and the opportunity to involve the tribes and the State of Colorado in the development of plans and educational programs for the site. Under the bill, the property could only be used for historic, religious and cultural purposes that are compatible with the use of the land as a national historic site. S. 2173 also would require the completion of a survey of the "Dawson Ranch" to accurately establish the boundary of the proposed tribal trust lands. Finally, the bill would declare that the trust property become a part of the Indian reservation of the Cheyenne and Arapaho Tribes of Oklahoma.

Sand Creek Massacre National Historic Site is located in Kiowa County on the eastern plains of Colorado. Within the boundary of the site there are approximately 12,500 acres of private and State land that has changed little since 1868. On November 29, 1864, a group of some 700 volunteer Colorado militiamen under the command of Colonel John Chivington, a Civil War hero, entered the Sand Creek camp occupied by about 500 people of the Cheyenne and Arapaho tribes. At the same time, Cheyenne Chief Black Kettle was conducting peace negotiations with the U.S. government on behalf of his people. Although the Cheyenne and Arapaho people believed they were under the protection of the U.S. Army, Chivington's troops attacked and killed about 150 people, mainly women, children, and the elderly.

The massacre resulted in almost instant controversy, which ultimately led to three federal investigations, all of which condemned Chivington's actions. In 1865, the Treaty of Little Arkansas provided victims of Sand Creek minor compensation for their suffering and loss of property.

As time passed, evidence of the massacre slowly disappeared. Although the event continued to be remembered,

the only commemoration of the massacre was a simple granite marker placed near the site by the local community in 1950. Following the provisions of P.L. 105–243, the National Park Service completed a study of the area that determined the location and extent of the Sand Creek Massacre, and the feasibility of designating the site as a unit of the National Park System. Those findings were presented to Congress, and the national historic site was authorized by P.L. 106–465.

The law authorizing Sand Creek Massacre National Historic Site required that "sufficient" land be acquired from willing sellers "to provide for the preservation, memorialization, commemoration, and interpretation of the Sand Creek Massacre" before the area would be established as a national historic site. Since February 2001, the Conservation Fund has purchased and conveyed to the NPS a total of 920 acres from three willing sellers. The total cost of these purchases is $136,100.

With the transfer of the Dawson Ranch, authorized in S. 2173, the NPS believes it would have sufficient land for establishment of the national historic site and would forward a recommendation to the Secretary to formally establish the park. The Dawson Ranch, which includes approximately 1,465 acres and four existing buildings, lies within the core area of the authorized site. It was purchased by Southwest Entertainment, Inc., in December 2002 for approximately $1.5 million. Southwest Entertainment, Inc., has conveyed the property and the buildings in fee to the Cheyenne and Arapaho Tribes of Oklahoma. The tribes have expressed an interest in having the NPS manage the site and the authorizing legislation provides for substantial tribal input into the management and planning process. The Dawson Ranch, combined with the existing 920 acres, would be of sufficient size and interest to provide opportunities for visitors and protect the area of the site containing the most sensitive and critical historic resources.

Until the site is established, the NPS does not have authority to enforce federal laws and regulations on any of the lands within the site boundary, including the 920 acres currently in NPS ownership. The NPS has surveyed the boundary and has posted signs, however no public access is permitted. The NPS has entered into a cooperative agreement with Kiowa County for wildland fire management and other assistance. We also have agreements with all four associated tribes to continue consultation in the development and management of the site and to provide for reasonable access for commemorative purposes and traditional cultural and historical observances.

Research is being conducted so that management plans can be developed as quickly as possible should a national historic site be formally established. Sand Creek Massacre NHS has submitted a request to begin a general management plan (GMP). Until funding is available for the GMP,

the Intermountain Region and park staff will develop an interim operation plan by the end of this year.

The site currently receives $287,000 for operations in FY04. If S. 2173 is enacted, NPS would request an additional amount of $547,000 to operate the site ($104,000 for initial law enforcement and an additional $442,000 for operations and FTE). Additional costs may be required for the structures including four buildings, that would be placed into trust status under S. 2173. One of the buildings, a ranch house, is not in good condition and would cost $426,000 for rehabilitation. Discussions between NPS, the Tribal owners, and the Northern Cheyenne and the Northern Arapaho Tribes indicate a strong interest in removing this structure, which would cost approximately $106,000. Two buildings are sheds that would be used for storage, and one building is a large garage and ranch office that NPS and the Tribe could use as a maintenance building, office or temporary visitor contact station. NPS would need to make minimal repairs, if any, to these buildings at this time.

One of the hallmarks of the history of the creation of Sand Creek Massacre National Historic Site has been the cooperation and dedication of all interested parties. The tribes, descendants organizations, the local communities in Kiowa and other surrounding counties, the State of Colorado and other Federal agencies have developed excellent relationships and established lines of communication that have allowed us to be here in less than 10 years, on the brink of establishing a site that will tell an important story in this country's history.

We have three important amendments to offer that would clarify the purposes of the bill and the roles and responsibilities of the Secretary. The first two amendments are reflected in the amendment to Section 6, attached at the end of this testimony. We would like to work with the Committee and the Tribe to develop the third amendment before the bill moves forward.

First, we suggest deleting the provision in Section 6(a), which declares the property to be a part of the Indian reservation of the Tribe. Declaration of a reservation is an action that is independent of transfer into trust status and seems unnecessary for the administration of the trust land as part of a national historic site.

Second, we are concerned that S. 2173 does not specify what duties are required of the Secretary. We believe that Congress, when it mandates land be taken into trust, should specifically define the expectations of the beneficiary and the obligations of the Federal government. Both the Executive and the Judicial Branches, as well as the beneficiary, are faced with the question of Congress' intent when it puts land into trust status.

While S. 2173, as introduced, contains a provision indicating that the trust property shall be administered "in accordance with the law generally applicable to property held in trust by the United States for the benefit of Indian

tribes", this provision is so potentially broad that it makes the duties of the Secretary with regard to the land and the structures that are to be held in trust even less clear. We suggest an amendment in Section 6 of the bill that would eliminate this confusing provision. The amendment also would consolidate existing provisions that require that the Secretary administer the property in accordance with the law establishing the national historic site and that the property be used only for historic, religious, or cultural uses and only if those uses are compatible with the national historic site. The amended provision would clarify the scope of the trust responsibility.

Even with this amendment, guidance in the bill with regard to the duties of the Secretary is limited, particularly with respect to the structures taken into trust status. As you know, the president had made a commitment to addressing the deferred maintenance backlog in our national parks. Toward this effort, the NPS has, for the first time ever, developed a comprehensive system to grade the condition of facilities. With this system, the NPS can set targets each year to improve facility grades and achieve an overall acceptable condition for facilities. To ensure that these management decisions can be made in a timely manner, we would like to work with the Tribe and the Committee on a possible amendment to the bill which would convey the existing buildings in fee title to the Secretary, while placing the real property into trust status. We also would like to include a provision that would require the Secretary to consult with the Tribe concerning the uses of the buildings. Given the strong interest expressed by both the Tribe and the NPS to remove the ranch house, the terms of the conveyance would require further discussion. We would like to work with the Committee and the Tribe on such an amendment that would be acceptable to all parties.

We appreciate the committee's interest in this legislation. That concludes my remarks and I would be happy to respond to any questions that you may have.

PROPOSED AMENDMENTS

On page 4, strike lines 11 through 24 and insert,

SEC. 6. ADMINISTRATION AND USE OF TRUST PROPERTY.

"(a) IN GENERAL.—The trust property shall be administered in perpetuity by the Secretary only for historic, religious, or cultural uses and only those uses that are compatible with the use of land in accordance with the Sand Creek Massacre National Historic Site Establishment Act of 2000 (16 U.S.C. 461 note; Public Law 106–465).".

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 S. 2173, 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 106–465

AN ACT To authorize the Secretary of the Interior to establish the Sand Creek Massacre National Historic Site in the State of Colorado

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sand Creek Massacre National Historic Site Establishment Act of 2000".

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SEC. 6. ACQUISITION OF PROPERTY.

(a) IN GENERAL.—The Secretary may acquire land and interests in land within the boundaries of the site—

(1) through purchase (including purchase with donated or appropriated funds) only from a willing seller; and

(2) by donation, exchange, or other means, except that any land or interest in land owned by the State (including a political subdivision of the State) may be acquired only by donation *or exchange*

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