

Calendar No. 603

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-317

CHIMNEY ROCK NATIONAL MONUMENT ESTABLISHMENT ACT

SEPTEMBER 27, 2010.—Ordered to be printed

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

R E P O R T

[To accompany S. 3303]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 3303) to establish the Chimney Rock National Monument in the State of Colorado, 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 “Chimney Rock National Monument Establishment Act”.

SEC. 2. DEFINITIONS.

In this Act:

- (1) NATIONAL MONUMENT.—The term “national monument” means the Chimney Rock National Monument established by section 3(a).
- (2) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.
- (3) STATE.—The term “State” means the State of Colorado.

SEC. 3. ESTABLISHMENT OF CHIMNEY ROCK NATIONAL MONUMENT.

(a) ESTABLISHMENT.—There is established in the State the Chimney Rock National Monument—

- (1) to preserve, protect, and restore the archeological, cultural, historic, geologic, hydrologic, natural, educational, and scenic resources of Chimney Rock and adjacent land; and
- (2) to provide for public interpretation and recreation consistent with the protection of the resources described in paragraph (1).

(b) BOUNDARIES.—

- (1) IN GENERAL.—The national monument shall consist of approximately 4,726 acres of land and interests in land, as generally depicted on the map entitled

“Boundary Map, Chimney Rock National Monument” and dated January 5, 2010.

(2) **MINOR ADJUSTMENTS.**—The Secretary may make minor adjustments to the boundary of the national monument to reflect the inclusion of significant archeological resources discovered after the date of enactment of this Act on adjacent National Forest System land.

(3) **AVAILABILITY OF MAP.**—The map described in paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Forest Service.

SEC. 4. ADMINISTRATION.

(a) **IN GENERAL.**—The Secretary shall—

(1) administer the national monument—

(A) in furtherance of the purposes for which the national monument was established; and

(B) in accordance with—

(i) this Act; and

(ii) any laws generally applicable to the National Forest System; and

(2) allow only such uses of the national monument that the Secretary determines would further the purposes described in section 3(a).

(b) **TRIBAL USES.**—

(1) **IN GENERAL.**—The Secretary shall administer the national monument in accordance with—

(A) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); and

(B) the policy described in Public Law 95–341 (commonly known as the “American Indian Religious Freedom Act”) (42 U.S.C. 1996).

(2) **TRADITIONAL USES.**—Subject to any terms and conditions the Secretary determines to be necessary and in accordance with applicable law, the Secretary shall allow for the continued use of the national monument by members of Indian tribes—

(A) for traditional ceremonies; and

(B) as a source of traditional plants and other materials.

(c) **VEGETATION MANAGEMENT.**—The Secretary may carry out vegetation management treatments within the national monument, except that the harvesting of timber shall only be used if the Secretary determines that the harvesting is necessary for—

(1) ecosystem restoration in furtherance of section 3(a); or

(2) the control of fire, insects, or diseases.

(d) **MOTOR VEHICLES AND MOUNTAIN BIKES.**—The use of motor vehicles and mountain bikes in the national monument shall be limited to the roads and trails identified by the Secretary as appropriate for the use of motor vehicles and mountain bikes.

(e) **GRAZING.**—The Secretary shall permit grazing within the national monument, where established before the date of enactment of this Act—

(1) subject to all applicable laws (including regulations); and

(2) consistent with the purposes described in section 3(a).

(f) **UTILITY RIGHT-OF-WAY UPGRADES.**—Nothing in this Act precludes the Secretary from renewing or authorizing the upgrading of a utility right-of-way in existence as of the date of enactment of this Act through the national monument—

(1) in accordance with—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) any other applicable law; and

(2) subject to such terms and conditions as the Secretary determines to be appropriate.

(g) **EDUCATION AND INTERPRETIVE CENTER.**—The Secretary may develop and construct an education and interpretive center to interpret the scientific and cultural re-Sources of the national monument for the public.

SEC. 5. MANAGEMENT PLAN.

(a) **IN GENERAL.**—Not later than 3 years after the date of enactment of this Act, the Secretary, in consultation with Indian tribes with a cultural or historic tie to Chimney Rock, shall develop a management plan for the national monument.

(b) **PUBLIC COMMENT.**—In developing the management plan, the Secretary shall provide an opportunity for public comment by—

(1) State and local governments;

(2) tribal governments; and

(3) any other interested organizations and individuals.

SEC. 6. LAND ACQUISITION.

The Secretary may acquire land and any interest in land within or adjacent to the boundary of the national monument by—

- (1) purchase from willing sellers with donated or appropriated fluids;
- (2) donation; or
- (3) exchange.

SEC. 7. WITHDRAWAL.

(a) **IN GENERAL.**—Subject to valid existing rights, all Federal land within the national monument (including any land or interest in land acquired after the date of enactment of this Act) is withdrawn from—

- (1) entry, appropriation, or disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) subject to subsection (b), operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(b) **LIMITATION.**—Notwithstanding subsection 1(a)(3), the Federal land is not withdrawn for the purposes of issuance of gas pipeline rights-of-way within easements in existence as of the date of enactment of this Act.

SEC. 8. EFFECT.

(a) **WATER RIGHTS.**—

(1) **IN GENERAL.**—Nothing in this Act affects any valid water rights, including water rights held by the United States.

(2) **RESERVED WATER RIGHT.**—The designation of the national monument does not create a Federal reserved water right.

(b) **TRIBAL RIGHTS.**—Nothing in this Act affects—

- (1) the rights of any Indian tribe on Indian land;
- (2) any individually-held trust land or Indian allotment; or
- (3) any treaty rights providing for nonexclusive access to or within the national monument by members of Indian tribes for traditional and cultural purposes.

(c) **FISH AND WILDLIFE.**—Nothing in this Act affects the jurisdiction of the State with respect to the management of fish and wildlife on public land in the State.

(d) **ADJACENT USES.**—Nothing in this Act—

- (1) creates a protective perimeter or buffer zone around the national monument; or
- (2) affects private property outside of the boundary of the national monument.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

PURPOSE

The purpose of S. 3303 is to establish the 4,726-acre Chimney Rock National Monument in the San Juan National Forest in the State of Colorado.

BACKGROUND AND NEED

The Chacoan people lived in what is now northwestern New Mexico and southern Colorado within the San Juan Basin from the mid 800s A.D. through approximately 1200 A.D. The cultural hub of this ancestral Puebloan culture was located in Chaco Canyon in New Mexico, and the archeological remains are protected in Chaco Culture National Historical Park. The Chacoan people built massive stone buildings, known as Great Houses, which were several stories high, and contained hundreds of rooms. Several Great Houses were built in the immediate vicinity of Chaco Canyon, but there are dozens of Chacoan outlier sites as well.

The Chimney Rock archeological area in southwestern Colorado is the northernmost and highest elevation of these Chacoan sites. The Chimney Rock site includes two twin rock spires. The archeological area contains many homes and ceremonial buildings high above the valley floor, which are believed to have been built to be near the sacred twin rock pinnacles. Among the identified buildings

is the Great House Pueblo. The site was designated as a National Historic Landmark in 1970.

Like many Chacoan sites, the Great House was built near a site of astronomical importance. Approximately every 18 years, as seen from the Great Pueblo, the moon rises between the twin spires during an event known as the Northern Lunar Standstill. The site remains of cultural significance to many descendent tribes.

To protect the resources at Chimney Rock, S. 3303 would designate the area as a national monument, to be administered by the Forest Service.

LEGISLATIVE HISTORY

S. 3303 was introduced by Senators Bennet and Udall of Colorado on May 4, 2010. The Subcommittee on National Parks held a hearing on the bill on May 19, 2010. At its business meeting on July 21, 2010, the Committee on Energy and Natural Resources ordered S. 3303 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 21, 2010, by a voice vote of a quorum present, recommends that the Senate pass S. 3303, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 3303, the Committee adopted an amendment in the nature of a substitute. The amendment strikes the Congressional findings, references an updated map depicting the boundaries of the national monument, makes several minor modifications to make the management language for the national monument consistent with other similar designations, and makes other technical and conforming changes. The amendment is described in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the “Chimney Rock National Monument Establishment Act”.

Section 2 defines key terms used in the bill.

Section 3(a) establishes the Chimney Rock National Monument (Monument) to protect, preserve, and restore the resources of the Monument and to provide for public education and recreation.

Subsection (b) defines the boundaries of the Monument and allows the Secretary of Agriculture (Secretary) to make minor adjustments to include significant archeological resources discovered after enactment on adjacent Forest Service lands.

Section 4(a) directs the Secretary to administer the Monument in furtherance of the purposes for which it is established and in accordance with applicable laws.

Subsection (b) provides for tribal uses and requires the Secretary to administer the Monument in accordance with the referenced laws.

Subsection (c) allows the Secretary to carry out vegetation management activities within the Monument necessary to provide for the ecosystem restoration, fire, disease, and insect control.

Subsection (d) restricts motor vehicle and mountain bike access to roads and trails identified by the Secretary as appropriate for such use.

Subsection (e) directs the Secretary to permit grazing within the Monument where it was previously established, consistent with the purposes of the Monument and in accordance with all applicable laws.

Subsection (f) provides for utility right-of-way upgrades in accordance with applicable laws and subject to terms and conditions determined appropriate by the Secretary.

Subsection (g) authorizes the development and construction of an education center.

Section 5 directs the Secretary to develop a management plan for the Monument in consultation with Indian tribes with a cultural or historic tie to Chimney Rocky, with an opportunity for public comment.

Section 6 authorizes the Secretary to acquire land and interests in lands within and adjacent to the Monument by purchase from willing sellers, donation, or exchange.

Section 7 withdraws Federal lands within the Monument, subject to valid existing rights, from mining operations or claims while allowing for gas pipeline right-of-ways within existing easements.

Section 8 contains several savings provisions addressing water rights, tribal rights and lands, state jurisdiction of fishing and hunting, and lands adjacent to the Monument.

Section 9 authorizes such sums necessary to carry out the bill.

COST AND BUDGETARY CONSIDERATIONS

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

S. 3303—Chimney Rock National Monument Establishment Act

S. 3303 would establish the Chimney Rock National Monument in southern Colorado. The legislation would require the Forest Service to complete a management plan for the Monument and would authorize the agency to construct an education and interpretive center. The bill also would withdraw Federal lands that make up the Monument (about 5,000 acres) from disposal, mining, or mineral leasing.

Based on information from the Forest Service and assuming appropriation of the necessary amounts, CBO estimates that implementing the legislation would cost about \$4 million over the 2011–2015 period. Enacting S. 3303 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO expects that the Forest Service would begin constructing the education and interpretive center after completing a management plan for the Monument. Based on information provided by the agency, CBO estimates that constructing the center would cost about \$4 million over the 2014–2015 period and that operating the facility would cost \$350,000 annually after 2014. CBO does not expect that, under current law, the affected lands would generate any offsetting receipts from disposal, mining, and mineral leasing ac-

tivities over the next 10 years. Thus, we estimate that implementing the legislation would not affect direct spending.

S. 3303 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 3303.

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. 3303, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 3303, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The views of the Department of Agriculture were included in testimony received by the Committee at a hearing on S. 3303 on May 19, 2010, which is printed below:

STATEMENT OF JOEL HOLTROP, DEPARTMENT OF AGRICULTURE, FOREST SERVICE

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to provide the views of the Department of Agriculture on S. 3303, the Chimney Rock National Monument Act of 2010. While the Department supports S. 3303, I would like to offer modifications that would address some technical concerns with the bill and which would improve our ability to manage resources in the area.

Designated as an Archaeological Area and National Historic Landmark in 1970, Chimney Rock lies on 4,100 acres of San Juan National Forest land surrounded by the Southern Ute Indian Reservation. Between A.D. 900 and 1150, the ancestors of modern Pueblo Indians occupied the lands surrounding Chimney Rock, and the site remains of archaeological and cultural significance to many descendant tribes. At 7,600 feet, Chimney Rock is also the most northeasterly and highest Chacoan site known. Chacoan culture refers to the way of life of ancient ancestors of

modern Pueblo Indians and continues to be important to the native people in the region.

The Forest Service values archaeological and cultural resources and considers it part of the agency's mission to preserve and interpret them for the public. We believe the rich history, spectacular archaeological, cultural, scientific, watershed, and scenic resource values, as well as community support, merits the designation of the area as a National Monument.

Section 4(a) of S. 3303 would establish the Chimney Rock National Monument in the State of Colorado by designating 4,726 acres surrounding the Chimney Rock Archaeological Area within the San Juan National Forest as a National Monument. The purpose of the monument would be to preserve, protect, and restore the nationally significant archaeological, cultural, scientific, watershed, and scenic resources in the area, as well as enable the public to fully utilize the resources in the area. Section 7(c) of the bill would also provide for continued access by Indian tribes to sites within the National Monument for traditional and cultural uses.

Section 4(b)(2)(A) would authorize the Secretary to make minor boundary adjustments to the monument to include significant archeological resources discovered on adjacent public land. We recommend that the bill be amended to substitute "National Forest System land" for "public land" to make clear that the only public land adjacent to the proposed monument boundary is Forest Service land. Section 4(c) would require the Secretary to designate an individual as manager of the National Monument. To implement this provision, the organizational structure of the San Juan National Forest would have to be amended to accommodate the new position. We would prefer to be provided the opportunity to assess staffing and management needs during the early phases of our planning process, allowing us to base our initial staffing and management decisions on identified resource management needs and issues, and public concerns and demands.

Section 6(a) would require the monument to be managed as a unit of the San Juan National Forest. We recommend making a technical amendment to this section to add language that would require the Secretary to manage the monument in accordance with any other applicable provisions of law. This change would make it clear that laws applicable to management of the forest would also apply to management of the monument.

Under section 6(b) and (c), the Secretary would be authorized to allow uses of the monument consistent with the purposes of its establishment including the following uses: vegetative management treatments; timber harvest and the use of prescribed fire only if the Secretary deems it necessary to address the risk of wildfire, insects, or diseases; the construction of a visitor's center and related exhibit and curatorial facilities; scientific research; acquisition consolidation, and display of artifacts found within the

monument; the recreational and administrative use of mountain bikes and motorized vehicles; installation, construction and maintenance of a public utility right of way under certain circumstances; and grazing uses through permits.

We believe that an interpretation and educational center, instead of a visitor's center, would be more in line with the bill's purposes of providing educational and interpretive programs to communities, and allowing for academic scientific investigation of Chimney Rock. Although the bill would authorize construction of a curatorial facility, the Anasazi Heritage Center, a BLM facility, is one of the largest curation centers in the Southwest and should be used for this purpose. In fact, many materials from Chimney Rock are already curated at this facility.

Section 6(d) of the bill would withdraw the affected lands from location, entry, and patent under the United States mining laws; and would withdraw those areas from the laws governing mineral leasing, geothermal resource leasing and mineral materials. A problematic aspect of section 6(d) is it does not preserve valid existing rights to the land that the bill would designate as the Chimney Rock National Monument. There are currently mining claims, mineral leases, and mineral material contracts which encumber the lands to be included in the monument. The bill, as written, would prohibit the exercise of rights which may be associated with these existing mining claims and are associated with these mineral leases and mineral materials contracts. For these reasons, we recommend inclusion of language in this section providing that the proposed withdrawal would be subject to valid existing rights, or that some other appropriate language be added that addresses this concern.

Section 7 would require the development of a management plan, not later than 3 years after the date of enactment, and in consultation with Indian Tribes with a cultural or historic connection to the monument. The management plan must identify the authorized uses for the monument. In developing the management plan, the Secretary would provide an opportunity for comment to the public and such entities as State, Tribal government, local, and national organizations with an interest in the management and use of the monument. The San Juan National Forest land management plan would have to be amended to incorporate the management plan for the monument. Because of the importance of creating a successful management plan in collaboration with the community, Tribes, and the public, and the time needed to achieve this, the Department recommends the bill language be changed to state that the management plan shall be completed no later than five (5) years after the date of enactment.

In conclusion Mr. Chairman, the Forest Service looks forward to working with you and the subcommittee to carry out the intent of the bill. I would be happy to answer any questions you may have. Thank you.

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 Act S. 3303, as ordered reported.

APPENDIX

