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REPORT
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ROCKY MOUNTAIN NATIONAL PARK WILDERNESS AND INDIAN PEAKS WILDERNESS EXPANSION ACT

JUNE 16, 2008.—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. 1380]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1380) to designate as wilderness certain land within the Rocky Mountain National Park and to adjust the boundaries of the Indian Peaks Wilderness and the Arapaho National Recreation Area of the Arapaho National Forest 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 "Rocky Mountain National Park Wilderness and Indian Peaks Wilderness Expansion Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) MAP.—The term "map" means the map entitled "Rocky Mountain National Park Wilderness Act of 2007" and dated September 2006.

(2) PARK.—The term "Park" means Rocky Mountain National Park located in the State of Colorado.

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

(4) TRAIL.—The term "Trail" means the East Shore Trail established under section 5(a).

(5) WILDERNESS.—The term "Wilderness" means the wilderness designated by section 3(a).

SEC. 3. ROCKY MOUNTAIN NATIONAL PARK WILDERNESS.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), there is designated as wilderness and as a component of the National Wilderness Preservation System approximately 249,339 acres of land in the Park, as generally depicted on the map.

(b) MAP AND BOUNDARY DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall—

(A) prepare a map and boundary description of the Wilderness; and

(B) submit the map and boundary description prepared under subparagraph (A) to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives.

(2) AVAILABILITY; FORCE OF LAW.—The map and boundary description submitted under paragraph (1)(B) shall—

(A) be on file and available for public inspection in appropriate offices of the National Park Service; and

(B) have the same force and effect as if included in this Act.

(c) INCLUSION OF POTENTIAL WILDERNESS.—

(1) IN GENERAL.—On publication in the Federal Register of a notice by the Secretary that all uses inconsistent with the Wilderness Act (16 U.S.C. 1131 et seq.) have ceased on the land identified on the map as a "Potential Wilderness Area", the land shall be—

(A) included in the Wilderness; and

(B) administered in accordance with subsection (e).

(2) BOUNDARY DESCRIPTION.—On inclusion in the Wilderness of the land referred to in paragraph (1), the Secretary shall modify the map and boundary description submitted under subsection (b) to reflect the inclusion of the land.

(d) EXCLUSION OF CERTAIN LAND.—The following areas are specifically excluded from the Wilderness:

(1) The Grand River Ditch (including the main canal of the Grand River Ditch and a branch of the main canal known as the Specimen Ditch), the right-of-way for the Grand River Ditch, land 200 feet on each side of the center line of the Grand River Ditch, and any associated appurtenances, structures, buildings, camps, and work sites in existence as of June 1, 1998.

(2) Land owned by the St. Vrain & Left Hand Water Conservancy District, including Copeland Reservoir and the Inlet Ditch to the Reservoir from North St. Vrain Creek, comprising approximately 35.38 acres.

(3) Land owned by the Wincenstsen-Harms Trust, comprising approximately 2.75 acres.

(4) Land within the area depicted on the map as the "East Shore Trail Area".

(e) ADMINISTRATION.—Subject to valid existing rights, any land designated as wilderness under this section or added to the Wilderness after the date of enactment of this Act under subsection (c) shall be administered by the Secretary in accordance with this Act and the Wilderness Act (16 U.S.C. 1131 et seq.), except that—

(1) any reference in the Wilderness Act (16 U.S.C. 1131 et seq.) to the effective date of that Act shall be considered to be a reference to the date of enactment of this Act, or the date on which the additional land is added to the Wilderness, respectively; and

(2) any reference in the Wilderness Act (16 U.S.C. 1131 et seq.) to the Secretary of Agriculture shall be considered to be a reference to the Secretary.

(f) WATER RIGHTS.—

(1) FINDINGS.—Congress finds that—

(A) the United States has existing rights to water within the Park;

(B) the existing water rights are sufficient for the purposes of the Wilderness; and

(C) based on the findings described in paragraphs (A) and (B), there is no need for the United States to reserve or appropriate any additional water rights to fulfill the purposes of the Wilderness.

(2) EFFECT.—Nothing in this Act—

(A) constitutes an express or implied reservation by the United States of water or water rights for any purpose; or

(B) modifies or otherwise affects any existing water rights held by the United States for the Park.

(g) FIRE, INSECT, AND DISEASE CONTROL.—The Secretary may take such measures in the Wilderness as are necessary to control fire, insects, and diseases, as are provided for in accordance with—

(1) the laws applicable to the Park; and

(2) the Wilderness Act (16 U.S.C. 1131 et seq.).

SEC. 4. GRAND RIVER DITCH AND COLORADO-BIG THOMPSON PROJECTS.

(a) CONDITIONAL WAIVER OF STRICT LIABILITY.—During any period in which the Water Supply and Storage Company (or any successor in interest to the company with respect to the Grand River Ditch) operates and maintains the portion of the Grand River Ditch in the Park in compliance with an operations and maintenance

agreement between the Water Supply and Storage Company and the National Park Service, the provisions of paragraph (6) of the stipulation approved June 28, 1907—

(1) shall be suspended; and

(2) shall not be enforceable against the Company (or any successor in interest).

(b) AGREEMENT.—The agreement referred to in subsection (a) shall—

(1) ensure that—

(A) Park resources are managed in accordance with the laws generally applicable to the Park, including—

(i) the Act of January 26, 1915 (16 U.S.C. 191 et seq.); and

(ii) the National Park Service Organic Act (16 U.S.C. 1 et seq.);

(B) Park land outside the right-of-way corridor remains unimpaired consistent with the National Park Service management policies in effect as of the date of enactment of this Act; and

(C) any use of Park land outside the right-of-way corridor (as of the date of enactment of this Act) shall be permitted only on a temporary basis, subject to such terms and conditions as the Secretary determines to be necessary; and

(2) include stipulations with respect to—

(A) flow monitoring and early warning measures;

(B) annual and periodic inspections;

(C) an annual maintenance plan;

(D) measures to identify on an annual basis capital improvement needs; and

(E) the development of plans to address the needs identified under subparagraph (D).

(c) LIMITATION.—Nothing in this section limits or otherwise affects—

(1) the liability of any individual or entity for damages to, loss of, or injury to any resource within the Park resulting from any cause or event that occurred before the date of enactment of this Act; or

(2) Public Law 101–337 (16 U.S.C. 19jj et seq), including the defenses available under that Act for damage caused—

(A) solely by—

(i) an act of God;

(ii) an act of war; or

(iii) an act or omission of a third party (other than an employee or agent); or

(B) by an activity authorized by Federal or State law.

(d) COLORADO-BIG THOMPSON PROJECT AND WINDY GAP PROJECT.—

(1) IN GENERAL.—Nothing in this Act, including the designation of the Wilderness, prohibits or affects current and future operation and maintenance activities in, under, or affecting the Wilderness that were allowed as of the date of enactment of this Act under the Act of January 26, 1915 (16 U.S.C. 191), relating to the Alva B. Adams Tunnel or other Colorado–Big Thompson Project facilities located within the Park.

(2) ALVA B. ADAMS TUNNEL.—Nothing in this Act, including the designation of the Wilderness, prohibits or restricts the conveyance of water through the Alva B. Adams Tunnel for any purpose.

(e) RIGHT-OF-WAY.—Use of water transported by the Grand River Ditch for 1 or more purposes other than irrigation shall not terminate or adversely affect the right-of-way of the Grand River Ditch if the Secretary determines that the change in purpose or use does not adversely affect the Park.

(f) NEW RECLAMATION PROJECTS.—Nothing in the first section of the Act of January 26, 1915 (16 U.S.C. 191), shall be construed to allow development in the Wilderness of any reclamation project not in existence as of the date of enactment of this Act.

(g) CLARIFICATION OF MANAGEMENT AUTHORITY.—Nothing in this section reduces or limits the authority of the Secretary to manage land and resources within the Park under applicable law.

SEC. 5. EAST SHORE TRAIL AREA.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish within the East Shore Trail Area in the Park an alignment line for a trail, to be known as the "East Shore Trail", to maximize the opportunity for sustained use of the Trail without causing—

(1) harm to affected resources; or

(2) conflicts among users.

(b) BOUNDARIES.—

(1) IN GENERAL.—After establishing the alignment line for the Trail under subsection (a), the Secretary shall—

(A) identify the boundaries of the Trail, which shall not extend more than 25 feet east of the alignment line or be located within the Wilderness; and

(B) modify the map of the Wilderness prepared under section 3(b)(1)(A) so that the western boundary of the Wilderness is 50 feet east of the alignment line.

(2) ADJUSTMENTS.—To the extent necessary to protect Park resources, the Secretary may adjust the boundaries of the Trail, if the adjustment does not place any portion of the Trail within the boundary of the Wilderness.

(c) INCLUSION IN WILDERNESS.—On completion of the construction of the Trail, as authorized by the Secretary—

(1) any portion of the East Shore Trail Area that is not traversed by the Trail, that is not west of the Trail, and that is not within 50 feet of the centerline of the Trail shall be—

(A) included in the Wilderness; and

(B) managed as part of the Wilderness in accordance with section 3; and

(2) the Secretary shall modify the map and boundary description of the Wilderness prepared under section 3(b)(1)(A) to reflect the inclusion of the East Shore Trail Area land in the Wilderness.

(d) EFFECT.—Nothing in this section—

(1) requires the construction of the Trail along the alignment line established under subsection (a); or

(2) limits the extent to which any otherwise applicable law or policy applies to any decision with respect to the construction of the Trail.

(e) RELATION TO LAND OUTSIDE WILDERNESS.—

(1) IN GENERAL.—Except as provided in this subsection, nothing in this Act affects the management or use of any land not included within the boundaries of the Wilderness or the potential wilderness land.

(2) MOTORIZED VEHICLES AND MACHINERY.—No use of motorized vehicles or other motorized machinery that was not permitted on March 1, 2006, shall be allowed in the East Shore Trail Area except as the Secretary determines to be necessary for use in—

(A) constructing the Trail, if the construction is authorized by the Secretary; or

(B) maintaining the Trail.

(3) MANAGEMENT OF LAND BEFORE INCLUSION.—Until the Secretary authorizes the construction of the Trail and the use of the Trail for non-motorized bicycles, the East Shore Trail Area shall be managed—

(A) to protect any wilderness characteristics of the East Shore Trail Area; and

(B) to maintain the suitability of the East Shore Trail Area for inclusion in the Wilderness.

SEC. 6. NATIONAL FOREST AREA BOUNDARY ADJUSTMENTS.

(a) INDIAN PEAKS WILDERNESS BOUNDARY ADJUSTMENT.—Section 3(a) of the Indian Peaks Wilderness Area, the Arapaho National Recreation Area and the Oregon Islands Wilderness Area Act (16 U.S.C. 1132 note; Public Law 95–450) is amended—

(1) by striking "seventy thousand acres" and inserting "74,195 acres"; and

(2) by striking ", dated July 1978" and inserting "and dated May 2007".

(b) ARAPAHO NATIONAL RECREATION AREA BOUNDARY ADJUSTMENT.—Section 4(a) of the Indian Peaks Wilderness Area, the Arapaho National Recreation Area and the Oregon Islands Wilderness Area Act (16 U.S.C. 460jj(a)) is amended—

(1) by striking "thirty-six thousand two hundred thirty-five acres" and inserting "35,235 acres"; and

(2) by striking ", dated July 1978" and inserting "and dated May 2007".

SEC. 7. AUTHORITY TO LEASE LEIFFER TRACT.

(a) IN GENERAL.—Section 3(k) of Public Law 91–383 (16 U.S.C. 1a–2(k)) shall apply to the parcel of land described in subsection (b).

(b) DESCRIPTION OF THE LAND.—The parcel of land referred to in subsection (a) is the parcel of land known as the "Leiffer tract" that is—

(1) located near the eastern boundary of the Park in Larimer County, Colorado; and

(2) administered by the National Park Service.

PURPOSE

The purpose of S. 1380, as ordered reported, is to designate approximately 249,339 acres of land in Rocky Mountain National Park as wilderness and to add approximately 1,000 acres to the Indian Peaks Wilderness in the Arapaho National Forest.

BACKGROUND AND NEED

Rocky Mountain National Park was established by Congress on January 26, 1915, to protect the natural and scenic beauty of the Rocky Mountains in north central Colorado. The park currently encompasses approximately 265,769 acres and each year draws more than 3 million visitors. The park's lower elevations include large stands of ponderosa pines, Douglas fir, and juniper. At higher elevations, over 9,000 feet, forests of Englemann spruce and subalpine fir predominate. The park provides important habitat for a wide variety of wildlife, including black bears, bighorn sheep, elk, deer, and beaver.

In 1974 President Nixon recommended that almost 95 percent of Rocky Mountain National Park be designated as wilderness. The original recommendation proposed 239,835 acres to be designated as wilderness, and 479 acres to be managed as potential wilderness. Because the National Park Service manages areas recommended for wilderness the same as designated wilderness areas, enactment of S. 1380 will not change present Park Service management of the lands.

The proposed wilderness in Rocky Mountain National Park excludes the Grand River Ditch, a water supply canal that runs 14 miles through the park and predates its establishment.

LEGISLATIVE HISTORY

S. 1380 was introduced by Senators Salazar and Allard on May 14, 2007. The Subcommittee on National Parks held a hearing on S. 1380 on July 12, 2007 (S. Hrg. 110–158).

At its business meeting on May 7, 2008, the Committee on Energy and Natural Resources ordered S. 1380 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 May 7, 2008, by a voice vote of a quorum present, recommends that the Senate pass S. 1380, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1380, the Committee adopted an amendment in the nature of a substitute. The amendment deletes the purposes section and makes several other clarifying and conforming changes. The amendment modifies liability language related to the operation of the Grand River Ditch. As ordered reported, the Water Supply and Storage Company, the operator of the Grand River Ditch, would have the strict liability stipulations in its right-of-way suspended as long as the company operated the Ditch in compliance with an operations and maintenance agree-

ment agreed to with the National Park Service, and the amendment establishes parameters for the agreement. The provisions of the National Park Service Resource Protection Act (16 U.S.C. 19jj et seq.) would continue to apply, including any defenses available under that Act. The amendment also provides for a change in purpose of water transported through the Grand River Ditch, if the Secretary of the Interior determines that the change in purpose or use does not adversely affect the park. In addition, the amendment makes clarifying changes to the savings language for the operation and maintenance and conveyance of water through Colorado-Big Thompson facilities located within the park, including the Alva B. Adams Tunnel. The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the "Rocky Mountain National Park Wilderness and Indian Peaks Wilderness Expansion Act".

Section 2 defines key terms used in the Act.

Section 3(a) designates approximately 249,339 acres of land in Rocky Mountain National Park as wilderness, as depicted on the referenced map.

Subsection (b) directs the Secretary of the Interior to prepare a map and boundary description for the wilderness as soon as practicable after the date of enactment of this Act, and to submit the map and legal description to the House and Senate authorizing committees.

Subsection (c) designates approximately 5,169 acres of lands within the park as potential wilderness and provides for their designation as wilderness once the Secretary determines that all uses inconsistent with the Wilderness Act have ended.

Subsection (d) excludes certain lands from the Wilderness, including the Grand River Ditch, land owned by the St. Vrain & Left Hand Water Conservancy District, land owned by the Wincenstsen-Harms Trust and land within the area depicted on the referenced map as the "East Shore Trail Area".

Subsection (e) directs the Secretary to administer the lands designated as wilderness in accordance with this Act and the Wilderness Act (16 U.S.C. 1131 et seq.).

Subsection (f) states that the designation of wilderness shall not create an express or implied reservation of water by the United States or modify or otherwise affect any water rights held by the United States for the park.

Subsection (g) authorizes the Secretary to take such measures as are necessary to control fire, insects, and diseases in accordance with the laws applicable to the park and the Wilderness Act.

Section 4(a) provides that the Water Supply and Storage Company (the operator of the Grand River Ditch) shall be granted a suspension of the strict liability stipulation in its right-of-way through the park so long as the company is in compliance with an operation and maintenance agreement with the National Park Service.

Subsection (b) requires that the agreement referred to in subsection (a) must ensure that park resources are managed in accordance with applicable laws, that park land outside of the right-of-way corridor remain unimpaired (except on a temporary basis, if

determined necessary by the Secretary) and that the agreement includes stipulations with respect to flow monitoring, inspections, and an annual maintenance plan, among others.

Subsection (c) makes clear that nothing in this Act affects the National Park System Resource Protection Act (16 U.S.C. 19jj et seq.), including the defenses available under that Act.

Subsection (d) is a savings cause to clarify that current and future operation and maintenance activities related to the Alva B. Adams Tunnel or other Colorado-Big Thompson Project facilities located in the Park are not affected by this Act.

Subsection (e) allows the use of water transported by the Grand River Ditch for purposes other than irrigation, if the Secretary determines that the change in purpose does not adversely affect the Park.

Subsection (f) prohibits the development of any reclamation project within the park not in existence as of the date of enactment of this Act, notwithstanding section 1 of the Act of January 26, 1915 (16 U.S.C. 191).

Subsection (g) clarifies that nothing in this section reduces or limits the authority of the Secretary to manage land and resources within the park under applicable laws.

Section 5(a) directs the Secretary to establish an alignment line for a trail within the park known as the "East Shore Trail," within one year after the date of enactment, in the area designated on the map.

Subsection (b) directs the Secretary to identify the boundaries of the trail which shall not extend more than 25 feet east of the alignment line or be located within the designated wilderness area.

Subsection (c) provides for lands within the East Shore Trail Area that are not traversed by the trail to be included in the designated wilderness.

Subsection (d) is a savings clause clarifying that nothing in this section requires construction of the trail on the specific alignment line identified in subsection (a) or otherwise affects laws that would be applicable to the construction of the trail.

Subsection (e) clarifies that except as provided in this subsection, nothing in this Act affects the management or use of lands outside of the wilderness boundaries. The use of motorized equipment that was not permitted on March 1, 2006, shall be prohibited in the East Shore Trail Area, except as the Secretary determines necessary for construction or maintenance of the East Shore Trail. The Secretary is directed to manage the East Shore Trail Area, until such time as the Secretary authorizes construction of the trail and the use of the trail for non-motorized bicycles, to protect any wilderness characteristics and to maintain its suitability for future inclusion in the wilderness.

Section 6(a) amends Public Law 95–450 to update the acreage and map reference for the Indian Peaks Wilderness to reflect the transfer of approximately 1,000 acres of land from the Arapaho National Recreation Area.

Subsection (b) updates the acreage and modifies the boundary for the Arapaho National Recreation Area to reflect the transfer of the land to the Indian Peaks Wilderness under subsection (a).

Section 7 authorizes the Secretary to lease the 12-acre parcel of land known as the "Leiffer Tract" in accordance with Public Law 91–383 (16 U.S.C. 1a–2(k)).

COST AND BUDGETARY CONSIDERATIONS

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

S. 1380—Rocky Mountain National Park Wilderness and Indian Peaks Wilderness Expansion Act

S. 1380 would designate nearly 250,000 acres of lands within the Rocky Mountain National Park in Colorado as wilderness and would adjust the boundaries of other federal holdings within the Arapaho National Forest by about 4,000 acres. CBO estimates that implementing the boundary changes and wilderness designations made by S. 1380 would have no significant effect on federal spending and no effect on revenues.

The bill 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.

Under S. 1380, nearly 95 percent of the Rocky Mountain National Park would be designated as wilderness. Because that land is already managed as wilderness by the National Park Service (NPS), CBO estimates that the cost of that provision would be minimal. Changes to other federal areas, including the Indian Peaks Wilderness Area and the Arapaho National Recreation Area managed by the Forest Service, also would have no significant effect on the operations of any of the affected sites.

S. 1380 could affect future costs incurred by the NPS (to repair park resources) by relaxing the liability standard imposed on the operator of the Grand River Ditch inside the boundaries of Rocky Mountain National Park. Under the bill, the standard of liability imposed on the water facility's operator (currently the Water Supply and Storage Company) would be less than the absolute standard imposed under its existing contract with the NPS—if the company meets certain operating conditions. Imposing a lesser standard of liability could make it more difficult for the NPS to recover the costs of repairing possible future damages that may occur as a result of future flooding of the ditch. CBO cannot predict whether the current operator of the ditch would be able to meet the operating conditions necessary to reduce its future liability under the bill or whether any breaches would occur in the future. A previous breach resulted in a $9 million settlement with the company. That money will be available, without appropriation, to restore park resources. If the NPS had not been able to recover that amount (or had not pursued its claim because proving liability had been too expensive), the agency would have needed discretionary appropriations to restore the damaged resources.

The CBO staff contact for this estimate is Deborah Reis. 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. 1380. 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. 1380, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1380, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined by rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the National Park Service at the July 12, 2007, subcommittee hearing on S. 1380 follows:

STATEMENT OF KATHERINE H. STEVENSON, ACTING ASSISTANT DIRECTOR, BUSINESS SERVICES, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present the Administration's views on S. 1380, a bill to designate as wilderness certain land within the Rocky Mountain National Park and to adjust the boundaries of the Indian Peaks Wilderness and the Arapaho National Recreation Area of the Arapaho National Forest in the State of Colorado.

The Administration cannot support S. 1380 unless amended to address our concerns regarding the provisions related to the Grand River Ditch as described in this testimony. The Department of the Interior testified in support of a similar bill, S. 1510, at a hearing held before this subcommittee on April 6, 2006. That bill did not contain the Grand River Ditch provisions.

S. 1380 would designate approximately 249,339 acres of Rocky Mountain National Park's backcountry in the National Wilderness Preservation System. This represents approximately 95% of the park's total acreage, lands that currently are managed as wilderness. In addition, S. 1380 would exclude lands occupied by the Grand River Ditch from wilderness, change the liability standard for future damage to park resources resulting from operation and maintenance of the ditch, enable the Water Supply and Storage Company to convert its Grand River Ditch water rights to other uses, make adjustments to the Indian Peaks Wilderness and Arapaho National Recreation Area, both administered by the U.S. Forest Service, and give the National Park Service (NPS) the authority to lease the Lieffer tract.

In 1964, Congress designated Rocky Mountain National Park as a wilderness study area. In 1974, President Nixon recommended to Congress 239,835 acres for immediate designation and 5,169 acres for potential designation as wilderness in the park. The increased acreage amount included in S. 1380 is based on modifications brought about by land acquisition and boundary adjustments since 1974.

Present road, water, and utility corridors, and all developed areas, are excluded from recommended wilderness. Wilderness designation would not alter any current visitor activities or access within the park, and would allow visitors to utilize the park in the same ways and locations that they presently enjoy.

Federal reserved water rights for park purposes are not an issue related to wilderness designation as water rights for the park have been adjudicated through the State of Colorado water courts. Consequently, no water rights claims for wilderness purposes are needed or desired by the NPS.

After holding public meetings on the proposed designation in June 2005, the gateway communities of Estes Park and Grand Lake, and the counties of Grand and Larimer, endorsed wilderness designation for Rocky Mountain National Park, subject to specific boundary modifications on the west boundary of the park. These modifications, which have been incorporated in S. 1380, would provide an area of non-wilderness around the Town of Grand Lake in order to ensure that the park could continue to actively manage hazardous fuels and other uses that might affect the Town. The proposed modifications would also reserve a corridor along the east shore of Shadow Mountain and Granby reservoirs for the possible construction of a non-motorized hike/bike trail, which would be subject to normal NPS planning processes including analysis under the National Environmental Policy Act.

In addition to excluding lands occupied by the Grand River Ditch from wilderness, S. 1380 would allow for a change in the liability standard for future damage to park resources resulting from operation and maintenance of the ditch, as long as the ditch is operated and maintained in accordance with an operations and maintenance agreement between the NPS and the ditch's owners. This provision would alter the protections to park resources under the Park System Resource Protection Act (16 U.S.C 19jj) which holds any person who causes injury to park resources liable to the United States for response costs and damages, except in certain circumstances such as an act of God or actions by a third party.

In 1907, and again in 2000, the owners of the ditch, the Water Supply and Storage Company, agreed to a stipulation, in return for a valuable right-of-way across public land and a stipulated water rights agreement, that requires them to pay the United States for any and all damage sustained by use of the right-of-way regardless of the cause and circumstances.

Altering these protections to a more lenient negligence standard for the Grand River Ditch, as proposed by S. 1380, could have serious implications for future damage causing events resulting from the operation of the Grand Ditch within park boundaries. Changing that standard to a general liability standard would require the NPS to expend scarce financial resources to prove negligence. In cases where negligence could not be proven, the United States would pay for response and repair costs associated with damage caused by operation of the ditch. This could set a dangerous precedent for all national parks and other public lands with implications far beyond the boundaries of Rocky Mountain National Park. Also, to retroactively change the 1907 stipulation would negate a century-old agreement that the ditch's owners have twice agreed to in exchange for valuable consideration it has received, the right-of-way itself and the 2000 stipulated water rights agreement.

As proposed in S. 1380, an operations and maintenance plan for the ditch is clearly needed. However, it must be comprehensive in scope and enforceable and should not be tied to a change in the liability standard for the ditch. We believe that an effective plan must contain provisions that reduce the risk of catastrophic failure of the ditch (as occurred in 2003) that could injure park visitors and staff and harm critical park resources. The plan should also establish clear expectations regarding maintenance and operational issues that impact park operations. Such a plan, if fully implemented by the operators of the ditch, should reduce the likelihood of future breaches or damage causing events, which we believe is in the interest of all parties and should negate the perceived need for a change in liability protection for the park.

S. 1380 also proposes to grant an exemption to the Water Supply and Storage Company from the requirement in its original right-of-way grant that the primary purpose of the ditch is for irrigation or drainage. This proposed change would enable the Company to convert its Grand River Ditch water rights to other uses, such as municipal use, without risking forfeiture of the ditch right-of-way, which could represent a significant increase in the value of the water rights for the shareholders of the Water Supply and Storage Company.

The provisions of S. 1380 related to the Grand Ditch go beyond ensuring that ditch operations are not affected by the designation of wilderness and grant the owners of the ditch significant privileges and exemptions from existing law and prior agreements with the United States and a potential windfall by allowing a change in use of the water. We would be happy to work with the Committee on amendments to the bill to address our concerns related to the operations of the Grand Ditch.

The legislation would also remove 1,000 acres of the Arapaho National Recreation Area in the Arapaho-Roosevelt National Forest and designate the land as an addi-

tion to the existing Indian Peaks Wilderness Area. The Administration supports the designation of the 1,000 acre addition to the Indian Peaks Wilderness.

Finally, S. 1380 would give the NPS the authority to lease the Lieffer tract. This 12 acre tract is located outside the boundary of Rocky Mountain National Park, was donated to the park, and lends itself to leasing to educational institutions or other similar entities.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions that you or other members of the subcommittee might have.

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 bill S. 1380 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):

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

(Public Law 95–450; Approved October 11, 1978)

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

SECTION 1. This Act may be cited as the "Indian Peaks Wilderness Area, the Arapaho National Recreation Area and the Oregon Islands Wilderness Area Act."

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SEC. 3. INDIAN PEAKS WILDERNESS AREA.

(a) An area of land comprising approximately [seventy thousand acres] *74,195 acres* located in Boulder and Grand Counties, Colorado, within the Arapaho and the Roosevelt National Forests (as generally depicted as the "Indian Peaks Wilderness Area" on a map entitled "Indian Peaks Wilderness Area and Arapaho National Recreation Area", dated [July 1978] *and dated May 2007*) is designated for purposes of the Wilderness Act (16 U.S.C. 1131–1136) as a wilderness area and shall be known as the Indian Peaks Wilderness Area.

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SEC. 4. ARAPAHO NATIONAL RECREATION AREA.

(a) An area of land comprising approximately [thirty-six thousand two hundred thirty-five acres] *35,235 acres* located in Grand County, Colorado, within the Arapaho and the Roosevelt National Forests and the Colorado Big Thompson project (as generally depicted as the "Arapaho National Recreation Area" on a map entitled "Indian Peaks Wilderness Area and Arapaho National Recreation

Area", [dated July 1978] *and dated May 2007) is established as the Arapaho National Recreation Area.*

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