

COMMITTEE REPORTS

107th Congress, 2d Session

House Report 107-416

107 H. Rpt. 416

DEEP CREEK-YAMPATIKA UTE WILDERNESS ACT R E P O R T

DATE: April 23, 2002. Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

SPONSOR: Mr. Hansen submitted the following

COMMITTEE: From the Committee on Resources

REPORT

(To accompany H.R. 2963)

TEXT:

The Committee on Resources, to whom was referred the bill (H.R. 2963) to establish the Deep Creek Wilderness Area, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Deep Creek-Yampatika Ute Wilderness Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings. Congress finds the following:

(1) Certain areas located in the White River National Forest and the Bureau of Land Management, Glenwood Springs Resource Area, in Colorado along Deep Creek should be protected and enhanced for the benefit and enjoyment of present and future generations, including the areas making up the rugged and remote limestone gorge formed by Deep Creek on the White River Plateau of the White River National Forest in Garfield and Eagle Counties, Colorado, which have wilderness values and offer unique and valuable scenic, geological, scientific, and recreational opportunities.

(2) The unique high elevation riparian areas and natural and wildlife components, enhanced by the rural western setting of the area, provide extensive opportunities for primitive recreational activities, are publicly used for hiking, cave exploration, and solitude, and are worthy of

additional protection as a wilderness area.

(3) Deep Creek carves a rugged and remote limestone gorge, forming a dramatic pristine canyon over 2,500 feet deep and 13 miles long.

(4) The limestone strata have created ideal conditions for the formation of caves, many of which are among Colorado's most outstanding.

(5) There are both absolute and conditional decreed water rights appertaining to waters upstream and downstream from the Wilderness Area. These rights are private property rights and are entitled to protection.

(6) It is possible to provide for proper management and protection of the wilderness values of the Wilderness Area in ways that provide for the reasonable development of the upstream and adjacent water rights.

(7) Out of respect for the native Ute people who frequented the area near Trappers Lake and the Deep Creek headwaters for centuries, the Wilderness Area shall be known as the Deep Creek-Yampatika Ute Wilderness.

(8) Colorado law authorizes the Colorado Water Conservation Board to hold instream flow rights in order to protect the natural environment. Establishment and/or augmentation of such an instream flow right for Deep Creek, abandonment of existing conditional rights appertaining to waters upstream from the Wilderness Area, and/or conversion to such instream flow rights of existing absolute water rights appertaining to such waters would be beneficial to the protection of the resources and values of the Wilderness Area.

(9) There are no known water resource facilities or projects, or rights-of-way or access routes serving water resource facilities or projects, within the Wilderness Area. Therefore, it is not necessary to include provisions in this Act for access, operation, routes, maintenance, or repair for water resource facilities or projects.

(b) Purpose. The purpose of this Act is to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the unique and nationally important values of the Federal lands depicted on the Map, including wilderness, geological, natural, scientific, recreational, environmental, biological, and scenic resources of such Federal lands, by establishing the Deep Creek-Yampatika Ute Wilderness Area in the State of Colorado.

SEC. 3. DEFINITIONS.

In this Act:

(1) Wilderness area. The term "Wilderness Area" means the Deep Creek-Yampatika Ute Wilderness Area established by section 4.

(2) Map. The term "Map" means the map entitled "Proposed Deep Creek-Yampatika Ute Wilderness Area" and dated February 25, 2002.

(3) Secretary. The term "Secretary" means

(A) the Secretary of Agriculture, acting through the Chief of the Forest Service, with regard to lands over which that Secretary has jurisdiction; and

(B) the Secretary of the Interior, acting through the Director of the Bureau of Land Management, with regard to lands over which that Secretary has jurisdiction. SEC. 4. DEEP CREEK-YAMPATIKA UTE WILDERNESS AREA DESIGNATION.

(a) In General. In furtherance of the Wilderness Act, there is established the Deep Creek-Yampatika Ute Wilderness Area in the State of Colorado.

(b) Areas Included. The Wilderness Area shall consist of approximately 7,350 acres of Federal land as generally depicted on the Map.

(c) Effective Date.

(1) Determination. Subsections (a) and (b) shall take effect upon a determination by the Secretary of Agriculture that

(A) conditional water rights described in section 6(e)(3)(A)(i) have been canceled or abandoned;

(B) absolute water rights described in section 6(e)(3)(A)(ii) have been conveyed to the Colorado Water Conservation Board for conversion to instream flows under Colorado law; or

(C) the Colorado Water Conservation Board has made a final determination regarding whether or not instream flow levels in Deep Creek are adequate.

(2) Notice. As soon as practicable after making a determination under paragraph (1), the Secretary of Agriculture shall publish notice of that determination in the Federal Register. SEC. 5. MANAGEMENT.

(a) Wilderness Area. After making a determination under section 4(c), the Secretary, shall manage the Wilderness Area in a manner that

(1) conserves, protects, and enhances the resources of the Wilderness Area; and

(2) is in accordance with

(A) the Wilderness Act (16 U.S.C. 1131 et seq.), except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of the enactment of this Act;

(B) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(C) other applicable law, including this Act.

(b) Withdrawals. Subject to valid existing rights, all Federal lands within the Wilderness Area are

withdrawn from

(1) all forms of entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) the operation of the mineral leasing, mineral materials, and geothermal leasing laws, and all amendments thereto.

(c) Aerial Navigation Training Exercises.

(1) In general. The Colorado Army National Guard, through the High Altitude ARNG Aviation Training Site, shall continue to be allowed to conduct aerial navigation training maneuver exercises over and upon the lands within the Wilderness Area in a manner consistent with the memorandum of understanding dated August 4, 1987, among the Colorado Army National Guard, the Bureau of Land Management, and the United States Forest Service as interpreted and implemented prior to the date of the enactment of this Act.

(2) Review and modification of memorandum of understanding. The memorandum of understanding referred to in paragraph (1) may be modified subject to the agreement of all parties thereto. The parties to the memorandum of understanding shall review the memorandum and associated annual operating plan not later than 180 days after the date of the enactment of this Act, and annually thereafter while the memorandum of understanding is in effect. The review shall include consideration of alternative locations over National Forest System lands and lands administered by the Bureau of Land Management outside of the Wilderness Area for the conduct of activities identified in the memorandum. If the Colorado Army National Guard identifies such an alternate location outside of the Wilderness Area that meets its aerial training needs, the memorandum of understanding shall be modified accordingly, subject to the agreement of all parties thereto.

(d) Hunting and Fishing. Nothing in this Act shall affect the authority of the Colorado Division of Wildlife to regulate hunting or fishing in the Wilderness Area.

(e) Grazing.

(1) In general. Except as provided by paragraph (2), the Secretary shall issue and administer any grazing leases or permits in the Wilderness Area in accordance with the same laws (including regulations) and Executive orders followed by the Secretary in issuing and administering grazing leases and permits on other land under the jurisdiction of the Forest Service and Bureau of Land Management, respectively.

(2) Grazing in wilderness area.

(A) Forest service lands. Grazing of livestock in the Wilderness Area on lands that are under the jurisdiction of the Forest Service shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), in accordance with the guidelines set forth under the heading "Grazing in National Forest Wilderness" in House Report 96-617 of the 96th Congress.

(B) BLM lands. Grazing of livestock in the Wilderness Area on lands that are under the jurisdiction of the Bureau of Land Management shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), in accordance with the guidelines set forth in Appendix A of House Report 101-405 of the 101st Congress.

(f) No Buffer Zones. Congress does not intend for the establishment of the Wilderness Area to lead to the creation of protective perimeters or buffer zones around the Wilderness Area. The fact that there may be activities or uses on lands outside the Wilderness Area that would not be allowed in the Wilderness Area shall not preclude such activities or uses on such lands up to the boundary of the Wilderness Area consistent with other applicable laws.

SEC. 6. WATER RIGHTS AND MANAGEMENT.

(a) Definition. As used in this section, the term "water resource facility" means irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures.

(b) Restrictions on Rights and Disclaimer of Effect.

(1) Restrictions on rights. Neither the Secretary of Agriculture nor the Secretary of the Interior, nor any other officer, employee, representative, or agent of the United States, nor any other person, shall assert in any court or agency, nor shall any court or agency consider, any claim to or for water or water rights in the State of Colorado, which is based on any construction of any portion of this Act, or the designation of any lands as wilderness by this Act, as constituting an express or implied reservation of water or water rights.

(2) Disclaimer of effect. (A) Nothing in this Act shall

(i) be construed as a recognition, disclaimer, relinquishment, or reduction of any water rights of the United States in the State of Colorado existing before the date of the enactment of this Act; or

(ii) be construed as constituting an interpretation of any other Act or any designation made by or pursuant thereto.

(B) Nothing in this section shall be construed as establishing a precedent with regard to any future wilderness designations.

(c) New or Expanded Projects. Notwithstanding any other provision of law, on and after the date of the enactment of this Act, neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new water resource facility within lands designated wilderness pursuant to this Act.

(d) Interstate Compacts. Nothing in this Act, and nothing in any previous Act designating any lands as wilderness, shall be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and

between the State of Colorado and other States. Except as expressly provided in this section, nothing in this Act shall affect or limit the development or use by existing and future holders of vested water rights of Colorado's full apportionment of such waters.

(e) Stream Flows.

(1) Recommendations. The Secretary of Agriculture shall consult with the Colorado Water Conservation Board regarding instream flow protection recommendations on Deep Creek within the Wilderness Area and shall do so in accordance with Colorado law and in consultation with interested parties and local elected officials.

(2) Restatement of current law. As provided by Federal and Colorado State law, the Secretary may continue to enter into enforcement agreements with the Colorado Water Conservation Board for monitoring and protecting instream flows.

(3) Grants for compensation relating to water rights.

(A) In general. The Secretary of Agriculture may make a grant to the Department of Natural Resources of the State of Colorado for the following purposes:

(i) Conditional water rights. Compensating willing parties for canceling or otherwise abandoning conditional water rights within or upstream of the Wilderness Area which would protect the natural environment within the Wilderness Area.

(ii) Absolute water rights. Compensating willing parties for conveying absolute water rights within or upstream of the Wilderness Area to the Colorado Water Conservation Board for conversion to instream flows under Colorado law.

(B) Enforceable agreement. Compensation under clauses (i) and (ii) of subparagraph (A) shall be given pursuant to an enforceable agreement between the Department of Natural Resources of the State of Colorado and the willing party setting out the fair market value for the conditional water rights to be canceled or abandoned, or the absolute water rights to be conveyed, as applicable. The fair market value shall be determined by an independent appraisal, performed by an appraiser to be mutually agreed upon by the Secretary of Agriculture, the Department of Natural Resources of the State of Colorado, and the willing party.

(C) Authorization of appropriations. There is authorized to be appropriated for the purposes of this paragraph \$300,000.

SEC. 7. MAP AND LEGAL DESCRIPTION.

(a) In General. As soon as practicable after the date of the enactment of this Act, the Secretary shall submit to Congress a copy of the Map and a legal description of the Wilderness Area.

(b) Force and Effect. The Map and legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in the Map and the legal description.

(c) Public Availability. Copies of the Map and the legal description shall be on file and available for public inspection in the following:

(1) The Office of the Director of the Bureau of Land Management.

(2) The Office of the Chief of the Forest Service.

(3) The Office of the State Director of the Bureau of Land Management in Colorado and the Glenwood Springs Resource area Office in Glenwood Springs, Colorado.

(4) The Office of the Regional Forester of the Forest Service in Colorado, and of the White River National Forest, Forest Ranger Office in Glenwood Springs, Colorado.

(d) Map Controlling. In the case of a discrepancy between the Map and the descriptions, the Map shall control.

SEC. 8. WILDERNESS POTENTIAL.

Nothing in the Act shall preclude or restrict the authority of the Secretary to evaluate the suitability of roadless and unroaded areas adjacent to the Wilderness Area for inclusion in the National Wilderness Preservation System or to make recommendations to Congress for such inclusions.

PURPOSE OF THE BILL

The purpose of H.R. 2963 is to establish the Deep Creek Wilderness Area.

BACKGROUND AND NEED FOR LEGISLATION

Carved in multiple layers of limestone, shale and other sedimentary formations dating back to the Cambrian age, the Deep Creek area of Colorado is a rugged and remote wooded canyon that plunges 2,500 feet along a 13-mile path. The Deep Creek landscape plays host to subterranean streams, caverns, sinks and over 40 prehistoric caves, including Groaning Cave, which is the longest in the State of Colorado. Wending its way through the majestic canyon is the area's namesake, Deep Creek, a perennial stream with flows originating from snow run-off in the upper elevations of its watershed. The waterway is largely unmodified by water diversions, and empties directly into the Colorado River.

Since 1990, resource managers, local officials and concerned citizens in the surrounding communities have had an extensive dialogue about how best to manage this magnificent resource. In 1995, the Forest Service and the Bureau of Land Management (BLM) jointly determined that Deep Creek was eligible for Wild and Scenic River designation. The 7350-acre area proposed for designation is managed in part by both these agencies.

Congressman Scott McInnis (R-CO) introduced H.R. 2963 in September after wide-ranging conversations with local officials, local environmentalists and other interested citizens and citizen groups. Congressman McInnis, who grew up near Deep Creek and spent considerable time hiking there as a boy, drew the wilderness boundaries in H.R. 2963 along the canyon rim of Deep

Creek, the same boundaries recommended by a consortium of Colorado-based environmental advocates in 1998. While some local environmental groups have since modified their 1998 Deep Creek position by advocating an expansion of the boundaries beyond the canyon rims, the Garfield and Eagle County Commissions, the two counties immediately impacted by the designation, have endorsed the bill and its rim-to-rim boundary.

COMMITTEE ACTION

H.R. 2963 was introduced on September 25, 2001. The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Forests and Forest Health and the Subcommittee on National Parks, Recreation and Public Lands. On March 20, 2002, the Resources Committee met to consider the bill. The two Subcommittees were discharged from further consideration of the bill by unanimous consent. Congressman McInnis offered an amendment in the nature of a substitute to (1) mandate that the Forest Service and the Colorado Army National Guard meet within 180-days following enactment to review the Memorandum of Understanding governing the conduct of high altitude aerial training exercises within the designated area and consider alternative locations outside the wilderness area if an alternative location is identified and agreed upon by the relevant parties; (2) authorize the Forest Service to purchase from willing sellers water rights upstream of the wilderness area to protect the riparian values of the wilderness area, and that these rights would be held by the State of Colorado as part of the Colorado Instream Flow Program; and (3) trigger formal wilderness designation only after one of the following occur: (A) upstream conditional rights described in the legislation are canceled or abandoned; (B) upstream absolute water rights described in the legislation are conveyed to the Colorado Water Conservation Board for conversion to instream flows under Colorado water law; or (C) the Colorado Water Conservation Board has made a final decision as to the adequacy of instream flows in Deep Creek. Congressman Mark Udall (D-CO) offered an amendment to the amendment in the nature of a substitute to establish an alternative trigger mechanism, under which the Secretaries of Agriculture and the Interior could formally designate the wilderness area only after (1) all upstream conditional rights described in the legislation have been abandoned; and (2) the Colorado Water Conservation Board has augmented the existing State-held instream flow right to a level equal to either all of the upstream conditional rights or all unappropriated waters on Deep Creek, whichever is larger. The Udall Amendment was not adopted by a roll call of vote 8 yeas to 18 nays, as follows: gs,d533

HR416.001

The McInnis amendment in the nature of a substitute was adopted by a voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS OF BILL AS AMENDED

Section 1. Short title

Section 1 provides a short title for the bill, the "Deep Creek-Yampatika Ute Wilderness Act."

Section 2. Findings and purpose

Section 2 acknowledges that certain areas located in the White River National Forest and the Bureau of Land Management, Glenwood Springs Resource Area, in Colorado along Deep Creek should be protected and enhanced for the benefit and enjoyment of present and future generations and are worthy of protection as a wilderness area. This section notes that the primitive recreational opportunities available in the area include hiking and solitude, as well as cave exploration. The Committee recognizes that the map of the wilderness designation was drawn to exclude the entrance to the Groening Cave, which is managed by the Forest Service.

Section 2(a)(5) identifies the existence of both absolute and conditional decreed water rights appertaining to waters upstream and downstream from the wilderness area that are entitled to protection under Colorado law. Section 2(a)(8) restates Colorado State law by authorizing the Colorado Water Conservation Board to hold instream flow rights to protect the natural environment. The Committee recognizes that establishment and/or augmentation of such an instream flow right for the Deep Creek wilderness area, abandonment of existing conditional rights, and/or conversion of existing absolute water rights to instream flow rights would be beneficial to the protection of the resources and values of the wilderness area. The Colorado State instream flow program is considered by the Committee as capable of providing adequate protection to the biological health and hydrology of Deep Creek through the mechanism set forth in section 6(e)(3) of the bill, and no federal reserve water right is expressed or implied pursuant to the wilderness designation.

Section 2(a)(7) recognizes use of the name Yampatika out of honor and respect for the native Ute Indians who lived on the flat tops around the canyon for centuries. For the last decade archeologists and historians have worked with the Ute elders to identify the prehistoric and historic Ute Trail that crosses from the Colorado River drainage to the White River drainage over the Flat Tops Mountains. This may be the oldest, longest, highest Indian trail left in the United States and it runs very close to Deep Creek.

Section 2(a)(9) notes that there are no known water resource facilities, rights-of-way, or access routes serving water facilities or projects within the wilderness area. In fact, all water facilities in the vicinity of the proposed wilderness area were intentionally omitted from the boundary so as to avoid conflicts. Consequently, the Committee does not find it necessary to include provisions to allow for entry into the wilderness area for maintenance or repair of such facilities.

Section 3. Definitions

Section 3 defines "wilderness area" and "map", delineating the boundary of the Deep Creek-Yampatika Ute Wilderness Area as established by Section 4. It also defines "Secretary" to include both the Secretary of Agriculture and the Secretary of the Interior.

Section 4. Deep Creek-Yampatika Ute Wilderness Area designation

Section 4 delineates the approximate acreage of the wilderness area at 7,350 acres. The Committee notes that there are no private inholdings within the boundary of the area; however, the legislation does not preclude the Secretaries from purchasing private property abutting the wilderness area for the purpose of incorporating such property into the wilderness area, provided it meets wilderness designation criteria. Any additions to the wilderness area would require an act of Congress.

Section 4 also describes a conditional mechanism under which the Secretaries will formally designate the wilderness area only after certain specified steps are taken to protect the instream flow values of Deep Creek. The intent of the mechanism is to ensure that the hydrology in the wilderness area is adequately protected by the Colorado State Instream Flow Program, through the Colorado Water Conservation Board, without a federal reserve water right, prior to the wilderness designation. The bill requires the Secretary of Agriculture to publish notice of the wilderness determination in the Federal Register as soon as practicable.

Section 5. Management

Section 5 directs that the wilderness area be managed in accordance with the Wilderness Act (16 U.S.C. 1331 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and other applicable law. The legislation withdraws the wilderness area, subject to valid existing rights, from public land laws, mining laws, and mineral leasing, mineral materials, and geothermal leasing laws.

Section 5(c) deals with the continued aerial navigation training maneuver exercises over and on the lands within the wilderness area by the Colorado Army National Guard for training exercises. This section recognizes the existence and continuation, as implemented and interpreted, of a Memorandum of Understanding (MOU) among Colorado Army National Guard, through the High Altitude ARNG Aviation Training Site, the Forest Service, and the Bureau of Land Management.

Section (5)(c)(2) directs the parties to the MOU to review the agreement for continued operations and the associated operating plan not later than 180 days after the date of the enactment of this legislation, and annually thereafter. These provisions are intended to encourage the Colorado Army National Guard to identify areas outside of the wilderness area where the High Altitude ARNG Aviation Training Site could be relocated, subject to agreement of all parties to the MOU. The Committee recognizes that while aerial training exercises are a pre-existing use in the wilderness area and that the Wilderness Act expressly allows for such pre-existing uses to continue following wilderness designation the Committee supports the relocation of the training site if a suitable location is determined and agreed on.

Section (5)(d) specifies that the Colorado Division of Wildlife shall have continued jurisdiction over hunting and fishing in the wilderness area. Sections (5)(e)(1) and (5)(e)(2) address grazing and allow for the issuance of grazing leases or permits in the wilderness area by the Secretaries in accordance with the Executive Orders followed for other lands under the jurisdiction of the Forest Service or the Bureau of Land Management. The Committee intends that existing grazing permits will continue.

Section (5)(f) specifies that Congress does not intend the establishment of the wilderness area to create protective perimeters or buffer zones around the wilderness area. The Committee recognizes that recreational activities that would not be allowed in the wilderness area go on around the boundary of the designation. Nothing in H.R. 2963 is intended to affect the continuance of these activities.

Section 6. Water rights and management.

Section 6 addresses water protection in the wilderness area. This section prohibits new or expanded water resource facilities within the wilderness area and modification of interstate compacts, and prohibits anyone from making a claim for an express or implied reservation of water or water rights based on enactment of this legislation.

Section (6)(e)(1) deals with the stream flows within the wilderness area and directs the Secretary of Agriculture to consult with the Colorado Water Conservation Board regarding instream flow protection recommendations. This is in accordance with Colorado law and is not to be interpreted to permit more consultative authority to the Secretary of Agriculture than what currently exists. By also directing consultation with interested parties and elected officials, the Committee intends that input from several sources will result in the adequate protection of the natural hydrography. Section (6)(e)(2) restates current federal and Colorado State law by authorizing the Secretary and the Colorado Water Conservation Board to enter into enforcement agreements for monitoring and protecting instream flows to protect Deep Creek's natural values.

Section (6)(e)(3)(A) is referenced in Section 4 where the conditional mechanism for the wilderness determination is described. In Section (6)(e)(3)(A), the Secretary of Agriculture is given authority to make a grant to the Department of Natural Resources to compensate willing parties for canceling or abandoning conditional water rights within or upstream to the wilderness area, or compensating willing parties for conveying absolute water rights within or upstream to the wilderness area to the Colorado Water Conservation Board for conversion to instream flows under Colorado law. Section (6)(e)(3)(B) establishes that compensation shall be given pursuant to an enforceable agreement between the Department of Natural Resources of the State of Colorado and the willing party. The fair market value shall be determined by an independent appraisal. Section (6)(e)(3)(C) authorizes an appropriation of \$300,000 to be granted to the Colorado Department of Natural Resources for allocation to willing owners of the water rights described above to accomplish the intent of this section. The Committee recognizes this section as an innovative approach to protect the biological health of the Deep Creek waterway within the wilderness area.

Section 7. Map and legal description

Section 7 directs that the map and legal description shall have the same force and effect as if included in the legislation, and that in case of discrepancy, the map is controlling.

Section 8. Wilderness potential

Section 8 makes clear that this legislation does not preclude or restrict the authority of the Secretary of Agriculture to evaluate the suitability of roadless and unroaded areas adjacent to the wilderness area for inclusion in the National Wilderness Preservation System in the future. The Committee recognizes that the boundary as drawn around the canyon rim is sufficient at this time to protect Deep Creek's wilderness character. However, H.R. 2963 does not restrict the consideration of these roadless and unroaded areas around the canyon rim for wilderness designation in the future. The Committee finds that such designations may prove appropriate in the future, should support for such designations emerge within the affected agencies, locally elected officials, and interested citizens. committee oversight findings and recommendations

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of

Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report. constitutional authority statement

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill. compliance with house rule xiii

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office (CBO) enactment of H.R. 2963 could affect direct spending by withdrawing federal lands from leasing and development and thus any accompanying receipts. CBO concluded that any such change in receipts would be "negligible".

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to establish the Deep Creek-Yampatika Ute Wilderness Area.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. Congress, Congressional Budget Office,

Washington, DC, April 9, 2002.

Hon. James V. Hansen, Chairman, Committee on Resources,

House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2963, the Deep Creek-Yampatika Ute Wilderness Act.

Sincerely, Barry B. Anderson

(For Dan L. Crippen, Director). Enclosure.

H.R. 2963 Deep Creek-Yampatika Ute Wilderness Act

CBO estimates that H.R. 2963 would have no significant impact on the federal budget. The bill

could affect direct spending; therefore, pay-as-you-go procedures would apply, but we estimate that any such impact would be negligible. H.R. 2963 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.

H.R. 2963 would designate as wilderness approximately 7,350 acres of federal lands located along Deep Creek in Colorado and administered by the Forest Service and the Bureau of Land Management (BLM). Lands within the proposed wilderness would be withdrawn from programs to develop mineral and geothermal resources. Before the designation would take effect, however, the Secretary of Agriculture would have to determine that certain water rights within or upstream of the proposed wilderness have been canceled or conveyed to the Colorado Water Conservation Board. H.R. 2963 would authorize the appropriation of \$300,000 for a grant to Colorado to allow the state to compensate willing parties for canceling or conveying such rights.

Based on information from the state of Colorado, CBO expects the proposed designation would take effect in 2003. Based on information from the Forest Service and BLM, we estimate that designating the lands as wilderness would not significantly affect the agencies' costs and that the grant authorized under H.R. 2963 would cost \$300,000 in 2003, assuming the availability of appropriated funds. Withdrawing the lands from leasing and development could result in forgone offsetting receipts if, under current law, the lands would generate receipts from those activities. According to the Forest Service and BLM, however, the lands currently generate no significant receipts and are not expected to over the next 10 years. Hence, we estimate that any changes in offsetting receipts under H.R. 2963 would be negligible.

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

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

I regret that I cannot support H.R. 2963 as approved by the Committee on March 20th.

I greatly appreciate the cooperative approach taken by the bill's sponsor, Representative McInnis. We have worked together to try to resolve the concerns of the Administration and other parties, and the bill as approved by the Committee is a great improvement over the bill as introduced.

Nonetheless, the bill as reported still falls short not only of the best that could be achieved but also of what I think is necessary to merit support.

The bill could and should be improved in several respects, including the total area to which it would apply and the extent to which it would address potential conflicts between wilderness designation and continued use of the area for aerial navigation and training. However, its most serious defect is the way in which it addresses threats to the water-related resources and values of the proposed wilderness.

As approved by the Committee, the bill includes a provision delaying the effective date of the wilderness designation. The purpose of the delay is to allow the State of Colorado to resolve the threat that upstream water rights, if developed, could greatly reduce the water flowing through Deep Creek Canyon and so degrade the ecology of the area.

I support that approach, because I think it is important to resolve this problem before the wilderness is designated the same point that the Administration made in its testimony at the hearing on the bill back in October. I also support the idea of relying on Colorado water law, including a State-owned instream flow right, as a way to resolve this problem with respect to this area. But I cannot support the specific wilderness-designation "trigger" included in section 4(c) of the bill as approved by the Committee.

In effect, that part of the bill says that the water problem will be considered "solved," and the "trigger" will be pulled for wilderness designation if either one of two things happen either elimination (through voluntary cancellation or abandonment) of existing upstream water rights that threaten the future integrity of the proposed wilderness area; or a "final determination" by the Colorado Water Conservation Board "regarding whether or not instream flow levels in Deep Creek are adequate." In other words, the problem would be considered "solved" any time that state agency decides one way or another about the adequacy of the stream flows even if the decision is that the flows are not adequate, and without even spelling out what "adequate" means.

I cannot support that because I think that just won't do the job. I don't think it would be accurate or appropriate to deem the problem solved and the threat to the wilderness removed solely because the state agency makes a determination especially since the determination could be that there is inadequate water flowing in Deep Creek.

To remedy this fatal flaw, during the Committee's deliberations I proposed an amendment that would have replaced this defective "trigger" with one that would be pulled only when the water problem really was resolved. Under my amendment, the wilderness "trigger" would be pulled when both of two things happen first, conditional upstream water rights are eliminated, and, second, the Colorado Water Conservation Board, under Colorado law, has obtained an instream flow right to all the water in the creek not now claimed by parties with senior rights.

My amendment would have let the State solve the problem just like the bill as reported. It respected Colorado water law just like the bill as reported. And it would not have provided for any federal water right or any federal action to force the state to act just like the bill as reported.

But, unlike the bill as reported, my amendment would have assured that wilderness status for

this area will wait until there is a real solution and real, adequate protection protection under Colorado law for its water resources. And without such protection, whether in the form of my amendment or in another form that does the job, I cannot support this legislation.

Mark Udall.