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SENATE

{ REPORT
105-244

SAND CREEK MASSACRE NATIONAL HISTORIC SITE PRESERVATION ACT OF 1998

JULY 11, 1998.—Ordered to be printed

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

REPORT

[To accompany S. 1695]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1695) to establish the Sand Creek Massacre Historic Site in the State of Colorado, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Sand Creek Massacre National Historic Site Study Act of 1998”.

SEC. 2. FINDINGS.

(a) FINDINGS.—Congress finds that—

(1) on November 29, 1864, Colonel John M. Chivington led a group of 700 armed soldiers to a peaceful Cheyenne village of more than 100 lodges on the Big Sandy, also known as Sand Creek, located within the Territory of Colorado, and in a running fight that ranged several miles upstream along the Big Sandy, slaughtered several hundred Indians in Chief Black Kettle’s village, the majority of whom were women and children;

(2) the incident was quickly recognized as a national disgrace and investigated and condemned by 2 congressional committees and a military commission;

(3) although the United States admitted guilt and reparations were provided for in article VI of the Treaty of Little Arkansas of October 14, 1865 (14 Stat. 703) between the United States and the Cheyenne and Arapaho Tribes of Indians, those treaty obligations remain unfulfilled;

(4) land or near the site of the Sand Creek Massacre may be available for purchase from a willing seller; and

(5) the site is of great significance to the Cheyenne and Arapaho Indian descendants of those who lost their lives at the incident at Sand Creek and to

their tribes, and those descendants and tribes deserve the right of open access to visit the site and rights of cultural and historical observance at the site.

SEC. 3. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Interior acting through the Director of the National Park Service.

(2) SITE.—The term “site” means the Sand Creek massacre site described in section 2.

(3) TRIBES.—The term “Tribes” means—

(A) the Cheyenne and Arapaho Tribe of Oklahoma;

(B) the Northern Cheyenne Tribe; and

(C) the Northern Arapaho Tribe.

SEC. 4. STUDY.

(a) IN GENERAL.—Not later than 18 months after the date on which funds are made available for the purpose, the Secretary, in consultation with the Tribes and the State of Colorado, shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a resource study of the site.

(b) CONTENTS.—The study under subsection (a) shall—

(1) identify the location and extent of the massacre area and the suitability and feasibility of designating the site as a unit of the National Park System; and

(2) include cost estimates for any necessary acquisition, development, operation and maintenance, and identification of alternatives for the management, administration, and protection of the area.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

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

2. Amend the title so as to read: “A bill to authorize the Secretary of Interior to study the suitability and feasibility of designating the Sand Creek Massacre National Historic Site in the State of Colorado as a unit of the National Park System, and for other purposes.”.

PURPOSE OF THE MEASURE

The purpose of S. 1695, as ordered reported, is to authorize the Secretary of the Interior to study the suitability and feasibility of designating the Sand Creek Massacre National Historic Site in the State of Colorado as a unit of the National Park System.

BACKGROUND AND NEED

On November 29, 1864, approximately 450 Southern Cheyenne following Black Kettle, and 40 Southern Arapahos under Left Hand, camped at Sand Creek, Colorado. At dawn, Colonel John M. Chivington’s Colorado volunteers, along with 125 regular army troops, attacked the unsuspecting villagers. These Plains Indians thought themselves under U.S. Army protection, but the deaths of over 200 Indians, and the horrible mutilation of many of their bodies, proved otherwise. Chief Black Kettle raised an American flag before his tent to indicate the peaceful nature of the camp, and Cheyenne Peace Chief White Antelope stood with his arms folded in a peaceful gesture as the troops advanced. The soldiers slaughtered the defenseless Indians in a most brutal manner, killing men, women, and children indiscriminately. Black Kettle and others escaped but many died, including White Antelope, in the Sand Creek Massacre.

Recently, researchers from the Colorado Historical Society (Society) conducted a search of two sites in Kiowa County but were unable to locate evidence to confirm either site as the exact location of the massacre. The Society's search results in Kiowa County were inconclusive, but did not completely eliminate these sites from consideration. Historical records of troop movements indicate additional potential sites exist in Cheyenne, Prowers, or Bent Counties. The Society proposes additional research in order to accurately identify the actual site of the Sand Creek Massacre.

LEGISLATIVE HISTORY

S. 1695 was introduced by Senator Campbell and Senator Hutchison on March 2, 1998 and referred to the Committee on Energy and Natural Resources. Since the bill's introduction, Senator Allard and Senator Thomas have been added as cosponsors. The Subcommittee on National Parks, Historic Preservation, and Recreation held a hearing on S. 1695 on March 24, 1998.

At its business meeting on June 24, 1998, the Committee on Energy and Natural Resources ordered S. 1695, as amended, favorably reported.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on June 24, 1998, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1695 if amended as described herein. The rollcall vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Murkowski	
Mr. Domenici ¹	
Mr. Nickles ¹	
Mr. Craig	
Mr. Campbell	
Mr. Thomas	
Mr. Kyl ¹	
Mr. Grams	
Mr. Smith	
Mr. Gorton	
Mr. Burns	
Mr. Bumpers ¹	
Mr. Ford	
Mr. Bingaman ¹	
Mr. Akaka ¹	
Mr. Dorgan	
Mr. Graham ¹	
Mr. Wyden ¹	
Mr. Johnson	
Ms. Landrieu	

¹ Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of S. 1695, the Committee adopted an amendment in the nature of a substitute, which authorizes a re-

source study to identify the location of the massacre and to determine the suitability and eligibility of the site for inclusion in the National Park System.

Specifically, the amendment directs the Secretary of the Interior, in consultation with the Tribes and the State of Colorado, to complete this study within 18 months after receiving appropriations. The study will include cost estimates for land acquisition, development, and operation of the site. The study will also identify a variety of alternatives for the administration and management of the site.

The title of the bill was amended to reflect the provisions of the amendment in the nature of a substitute.

SECTION-BY-SECTION ANALYSIS

Section 1 designates the short title as the “Sand Creek Massacre National Historic Site Study Act of 1998”.

Section 2 provides Congressional findings for the bill. The findings are: (1) Colonel John M. Chivington led a group of 700 armed soldiers who slaughtered several hundred Indians, the majority of whom were women and children; (2) the incident was quickly recognized as a national disgrace and was investigated and condemned by 2 congressional committees and a military commission; (3) the treaty of Little Arkansas in 1865 provided for reparations and other obligations to the Indians that were never fulfilled; (4) land at or near the site may be available for purchase from a willing seller; and (5) the site is of great significance to the Cheyenne and Arapaho Indians who deserve the right of open access to the site.

Section 3 defines certain key terms in the Act.

Section 4 directs the Secretary of the Interior to complete the study, in consultation with the Tribes and the State of Colorado, within 180 days on which funds are made available. The study will identify the exact location and determine suitability and feasibility of the site as a unit of the National Park System. Acquisition, development, and operation costs along with management alternatives shall be included in the study.

Section 5 authorizes the appropriation of such sums as may be necessary to carry out this Act.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 1998.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1695, the Sand Creek Massacre National Historic Site Preservation Act of 1998.

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

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1695—Sand Creek Massacre National Historic Site Preservation Act of 1998

CBO estimates that implementing S. 1695 would cost the federal government about \$200,000 over the next 18 months, assuming appropriation of the necessary amounts. The bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply. S. 1695 contains no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

S. 1695 would direct the National Park Service (NPS) to conduct a resource study of the Sand Creek massacre site in Colorado. The study, which would be carried out in consultation with the state of Colorado and local tribal governments, would help NPS to locate the exact site of the massacre and to evaluate the suitability and feasibility of designating it as a unit of the National Park System.

Based on information provided by NPS and assuming appropriation of the necessary sums, we estimate that the agency would spend about \$200,000 over the next two fiscal years to complete the study required by the bill.

The CBO staff contact is Deborah Reis. This estimate was approved by Paul N. Van de Water, 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. 1695. The bill is not a regulatory measure in the sense of imposing Government-established standards of 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 enactment of S. 1695, as ordered reported.

EXECUTIVE COMMUNICATION

On April 30, 1998, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 1695. These reports had not been received at the time the report on S. 1695 was filed. When these reports became available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony of the Department of the Interior at the Subcommittee hearing follows:

STATEMENT BY KATHERINE H. STEVENSON, ASSOCIATE DIRECTOR, CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIPS, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, it is my pleasure to appear before you today to provide the Department of the Interior's views on S. 1695, a bill to create the Sand Creek Massacre National Historic Site in the State of Colorado.

The goal of this legislation is extremely worthy, and we congratulate Senator Campbell for his leadership in advancing this bill, and the subcommittee for holding these hearings. However, we do have some concerns and recommend that S. 1695 be amended to require the National Park Service to conduct a study before designation to confirm the exact location of the Sand Creek Massacre, and determine if the site is feasible and suitable for designation as a National Historic Site.

The bill would provide for preservation and interpretation by the National Park Service of the site where, on November 29, 1864, the village of Cheyenne Peace Chief Black Kettle was attacked by the Third Colorado Volunteers. This group of 100-day militia led by Colonel John Chivington went beyond anything required by military necessity; first in attacking a village whose principal chief assiduously sought peace and believed he was under the protection of the military, and second in the wanton killing of innocent people, including many children. History has generally judged Chivington not as victor in a battle but as perpetrator of a massacre. The effects continue today, especially in the memories of the descendants of the victims.

The Sand Creek Massacre remains a matter of great historical, cultural, and spiritual importance to the Cheyenne and Arapaho Tribes and both Congress and the Executive Branch recognize the importance of working with Indian tribes on a basis of government-to-government relations concerning such matters. The National Park Service works with Indian tribes on a basis of government-to-government in matters affecting their interests and we would work closely with the Cheyenne and Arapaho tribal governments as we proceed in this matter.

History continues to shape the present day in the lessons we learn by studying, reading, visiting museums, and seeing the actual places where historical events took place. In modern times, our country has used history to inspire patriotism and to motivate people in the national interest. Additionally, we have used it to learn the mistakes of the past that must be corrected in the present and avoided in the future.

It is within this context that we believe the Sand Creek Massacre Site is nationally significant. Indeed the National Park Service has considered designation of the site as a National Historic Landmark. If the location can be

ascertained, and if the site is well preserved and suitable and feasible for designation as a National Historic Site, we would be pleased to recommend its addition to the National Park System.

S. 1695 focuses upon a location in Kiowa County with a willing seller. We assume this refers to the land commonly known as the Dawson property. A historic marker pertaining to the massacre has been placed there and the area has been open sometimes to the public, but is now closed and barricaded. Unfortunately, previous National Park Service reviews and a rather extensive study led by the Colorado Historical Society have not produced convincing evidence that the Dawson property is the actual location of the event. A 1997 archaeological survey yielded only five artifacts that might have been used by the militia or the Indian people at that time. None was ordnance. It is well known that artillery was used by the Colorado Volunteers, and it is virtually inconceivable that substantial amounts of shot, shrapnel, and other material do not remain at the actual location.

It is possible that geomorphological changes, such as silt deposited by water and wind, might have buried the archaeological evidence deeply enough to prevent detection by the metal detectors used in the survey. It is also possible that the massacre occurred on some other site not far away. At least one other location resembling the topography of the massacre site as described in historical documents is known to exist. It has not been surveyed in a manner that could confirm or deny it as the correct location. Archaeologists involved in the 1997 study believe that more intensive efforts at both the Dawson property and at other potential sites will definitely locate the site of the massacre.

Funding for the National Historic Site would be subject to budgeting constraints and NPS priorities.

Mr. Chairman, Americans often follow Abraham Lincoln's lead in calling their historic places "hallowed ground." This is especially true of places where people have given their lives. The victims of a massacre are at least as worthy of respect as those who died in battles. Such sites function best when they invoke reverence and quietude, where visitors learn not merely from exhibits, films, and interpreters, but when the history that resides in the actual place—the spiritual qualities—speak directly to the heart of each visitor. To commemorate the event on the wrong spot would dishonor the victims, distort the history, and deceive the visitor. Nothing about your consideration of this legislation could be more important than to make certain we have the correct location.

We believe it is worth the effort to find the place in which the history resides. Consequently, we recommend that the legislation authorize the National Park Service, together with other appropriate partners, to conduct an intensive study of archives, oral histories of the Cheyenne

Tribe, the Arapaho Tribe, and others, and archaeological resources in order to determine the correct location. The Dawson property needs more intensive investigation to determine whether it might be the correct site, but buried under sand. Other nearby properties need equally intensive investigation. The cooperation of landowners will be very important, and it is hoped they will welcome this worthy effort. A complete study would not only confirm the location of the massacre, but would identify appropriate boundaries of the site, evaluate management alternatives that might involve cooperation with landowners and the tribes, provide cost estimates for acquisition and operations, and assure that the proposal meets all established NPS criteria for inclusion in the National Park System. Until such a study is completed we cannot be confident that creation of the National Historic Site administered by the National Park Service is the best way to assure appropriate commemoration of this important story.

From familiarity with Dawson property and its vicinity we can say that the countryside in general is not drastically changed from its 1864 appearance, and there is reason for optimism that when the correct location is ascertained, it may be preserved well enough to meet National Park System criteria.

Mr. Chairman, we are willing to work with you, Senator Campbell, and members of the subcommittee to amend S. 1695. This concludes my testimony. I would be happy to answer any questions you may have.

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 S. 1695, as ordered reported.

