

Calendar No. 204

108TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ 108-96

BLACK CANYON OF THE GUNNISON NATIONAL PARK AND GUNNISON GORGE NATIONAL CONSERVATION AREA BOUNDARY REVISION ACT OF 2003

JULY 11, 2003.—Ordered to be printed

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

R E P O R T

[To accompany S. 677]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 677) to revise the boundary of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area in the State of Colorado, and for other purposes, 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 “Black Canyon of the Gunnison Boundary Revision Act of 2003”.

SEC. 2. BLACK CANYON OF THE GUNNISON NATIONAL PARK BOUNDARY REVISION.

(a) BOUNDARY REVISION.—Section 4(a) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff-2(a)) is amended—

- (1) by striking “There” and inserting “(1) There”; and
- (2) by adding at the end the following:

“(2) The boundary of the Park is revised to include the addition of approximately 2,530 acres, as generally depicted on the map entitled ‘Black Canyon of the Gunnison National Park and Gunnison Gorge NCA Boundary Modifications’ and dated April 2, 2003.”

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION.—On the date of enactment of this Act, the Secretary shall transfer the land under the jurisdiction of the Bureau of Land Management identified as “Tract C” on the map described in subsection (a)(2) to the administrative jurisdiction of the National Park Service for inclusion in the Black Canyon of the Gunnison National Park.

(c) CONFORMING AMENDMENT.—Section 5(a)(1) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16

U.S.C. 410fff-3(a)(1) is amended by striking “Map” and inserting “Map or the map described in section 4(a)(2)”.

SEC. 3. GUNNISON GORGE NATIONAL CONSERVATION AREA BOUNDARY REVISION.

Section 7(a) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410offf-5(a)) is amended—

- (1) by striking “There” and inserting “(1) There”; and
- (2) by adding at the end the following:

“(2) The boundary of the Conservation Area is revised to include the addition of approximately 7,100 acres, as generally depicted on the map entitled ‘Black Canyon of the Gunnison National Park and Gunnison Gorge NCA Boundary Modifications’, and dated April 2, 2003.”.

SEC. 4. GRAZING PRIVILEGES.

(a) TRANSFER OF PRIVILEGES.—Section 4(e)(1) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff-2(e)(1)) is amended by adding at the end of the following:

“(D) If land within the Park on which the grazing of livestock is authorized under permits or leases under subparagraph (A) is exchanged for private land under section 5(a), the Secretary shall transfer any grazing privileges to the land acquired in the exchange.”.

(b) PRIVILEGES OF CERTAIN PARTNERSHIPS.—Section 4(e)(3) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff-2(e)(3)) is amended—

- (1) by striking “and” at the end of subparagraph (A);
- (2) by redesignating subparagraph (B) as subparagraph (D);
- (3) by inserting after subparagraph (A) the following:

“(B) with respect to the permit or lease issued to LeValley Ranch Ltd., for the lifetime of the last surviving limited partner as of October 21, 1999; “(C) with respect to the permit or lease issued to Sanburg Herefords, L.L.P., for the lifetime of the last surviving general partner as of October 21, 1999; and”;

- (4) in subparagraph (D) (as redesignated by paragraph (2))—

(A) by striking “partnership, corporation, or” each place it appears and inserting “corporation or”; and
 (B) by striking “subparagraph (A)” and inserting “subparagraphs (A), (B), or (C)”.

SEC. 5. ACCESS TO WATER DELIVERY FACILITIES.

The Commissioner of Reclamation shall retain administrative jurisdiction over the Crystal Dam Access Road and land, facilities, and roads of the Bureau of Reclamation in the East Portal area, including the Gunnison Tunnel, and the Crystal Dam area, as depicted the map entitled “Black Canyon of the Gunnison National Park and Gunnison Gorge NCA Boundary Modifications”, dated April 2, 2003, for the maintenance, repair, construction, replacement, and operation of any facilities relating to the delivery of water and power under the jurisdiction of the Bureau of Reclamation.

PURPOSE OF THE MEASURE

The purpose of S. 677 is to authorize the addition of approximately 2,530 acres to the Black Canyon of the Gunnison National Park and approximately 7,100 acres to Gunnison Gorge National Conservation Area in the State of Colorado, and to clarify the period for which grazing will be allowed to continue under specified permits or leases.

BACKGROUND AND NEED

The Black Canyon of the Gunnison was designated as a National Monument on March 2, 1933 by Presidential Proclamation to protect the unique and spectacular landscape formed by the Gunnison River in western Colorado. The park has been expanded several times over the past seventy years by Presidential Proclamations and Acts of Congress. In 1999, Public Law 106-76 further expanded the monument’s boundaries to include approximately 30,000 additional acres and redesignated the monument as a Na-

tional Park. That Act also established the adjacent Gunnison Gorge National Conservation Area under the management of the Bureau of Land Management.

The Black Canyon of the Gunnison combines the narrow opening, sheer walls and startling depths found in no other canyon in North America. Located on the western slope of Colorado, approximately 250 miles southwest of Denver, the park hosts approximately 180,000 recreational visitors each year.

Protection of the canyon rim from development prompted the passage of the 1999 legislation. Enactment of S. 677 will better enable the National Park Service to protect additional lands near the canyon and allow for land exchanges with the owners of certain adjacent lands to improve the management of the park's boundary.

LEGISLATIVE HISTORY

S. 677 was introduced by Senators Campbell and Allard on March 20, 2003. The Subcommittee on National Parks held a hearing on S. 677 on June 10, 2003. At the business meeting on June 25, 2003, the Committee on Energy and Natural Resources ordered S. 677, as amended, favorably reported.

During the 107th Congress, similar legislation, S. 1944, was introduced by Senator Campbell on February 13, 2002. The Subcommittee on National Parks held a hearing on S. 1944 on June 12, 2002. The Committee ordered S. 1944 favorably reported with amendments on September 9, 2002. The text of S. 1944, as reported, was adopted as an amendment to S. 1894, which passed the Senate by unanimous consent on November 20, 2002.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 25, 2003, by unanimous vote of a quorum present, recommends that the Senate pass S. 677, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 677, the Committee adopted an amendment in the nature of a substitute. The amendment makes clarifying and technical corrections.

The substitute amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 titles the bill the "Black Canyon of the Gunnison Boundary Revision Act of 2003."

Section 2(a) amended section 4(a) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (Gunnison Act) by adding approximately 2,530 acres to the Park as depicted on a referenced map.

Subsection (b) transfers land specified under the jurisdiction of the Bureau of Land Management to the administrative jurisdiction of the National Park Service.

Subsection (c) includes a conforming amendment to the Gunnison Act.

Section 3 amends section 7(a) of the Gunnison Act by adding approximately 7,100 acres to the Conservation Area as depicted on a referenced map.

Section 4(a) amends section 4(e)(1) of the Gunnison Act to direct the Secretary of the Interior to transfer grazing privileges, where land within the park on which grazing is authorized is exchanged for private land.

Subsection (b) includes conforming amendments to section 4(e)(3) of the Gunnison Act and provides lifetime grazing privileges to the last surviving limited partner of LeValley Ranch Ltd., and the last surviving general partner of Sanburg Herefords, L.L.P.

Section 5 clarifies that the Commissioner of Reclamation shall retain administrative jurisdiction over certain areas in the park related to the delivery of water and power under the jurisdiction of the Bureau of Reclamation.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 27, 2003.

Hon. PETE V. DOMENICI,
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. 677, the Black Canyon of the Gunnison Boundary Revision Act of 2003.

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

Sincerely,

PETER H. FONTAINE
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 677—Black Canyon of the Gunnison Boundary Revision Act of 2003

CBO estimates that implementing S. 677 would not significantly affect the federal budget. Enacting the bill would not affect direct spending or revenues. S. 677 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

S. 677 would authorize the Secretary of the Interior to revise the boundaries of the Black Canyon of the Gunnison National Park in Colorado to include three parcels of privately owned land that would be acquired by the Secretary. The Secretary would exchange federal lands in order to acquire two of those parcels. According to the Department of the Interior (DOI), the federal lands to be exchanged currently generate no significant receipts and are not expected to do so in the near future; hence, CBO estimates that exchanging them would not significantly affect the federal budget. The Secretary would acquire, by purchase or donation, a conserva-

tion easement on the third parcel of land. According to DOI, sufficient funding already has been appropriated for that purpose; thus, CBO estimates that completing the transaction would not significantly increase federal spending.

S. 677 also would authorize the Secretary to expand the boundaries of the Gunnison Gorge National Conservation Area to include 7,100 acres of federal lands administered by the Bureau of Land Management (BLM). Based on information from BLM, we estimate that adding those lands to the conservation area would not affect offsetting receipts or the agency's costs to manage them.

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

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 677. 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. 677, as ordered reported.

EXECUTIVE COMMUNICATIONS

On May 29, 2003, 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. 677. These reports had not been received at the time the report on S. 677 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the National Park Service at the Subcommittee hearing follows:

STATEMENT OF D. THOMAS ROSS, ASSISTANT DIRECTOR,
RECREATION AND CONSERVATION, NATIONAL PARK SERVICE,
DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to present the Department of the Interior's views on S. 677, a bill to revise the boundary of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area in the State of Colorado, and for other purposes.

The Department of the Interior supports S. 677 with minor amendments to the legislation. The bill authorizes additions to both Black Canyon of the Gunnison National Park ("Park"), through three separate easement or exchange transactions, and Gunnison Gorge National Conservation Area ("NCA"). The revision of the national park boundary would not contribute to the National Park Service ("NPS") maintenance backlog because the management and operation of the land added to the boundary would not

result in any additional facilities, increased operating costs, or additional staffing. Costs involved with the land transactions are expected to be minimal. One transaction would involve the purchase of a conservation easement on 26.5 acres, estimated to cost \$100,000; however, there is the possibility the owner might donate all or a portion of the value. A second transaction would include an equal value exchange. The third involves the transfer of 480 acres of isolated Bureau of Land Management (BLM) land to the NPS and then the exchange of this parcel for a conservation easement on approximately 2,000 acres. The landowner has stated he is willing to donate any difference in value.

S. 677 amends the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (Public Law 106-76). The boundary of the park would be revised to include the addition of not more than 2,530 acres and the National Conservation Area (NCA) would be expanded by approximately 7,100 acres. These additions are reflected on a new map, dated April 2, 2003, which supplements the boundary map referenced in P.L. 106-76.

The bill authorizes the transfer of 480 acres land to the jurisdiction of NPS. The Secretary is authorized to acquire lands or interests in lands in accordance with P.L. 106-76 (by donation, transfer, purchase with donated or appropriated funds, or exchange) and lands cannot be acquired without the consent of the owner.

S. 677 also amends P.L. 106-76 to clarify grazing privileges within the park. If land authorized for grazing within the park is exchanged for private land, then any grazing privileges would transfer to the private land that is acquired. Also, the bill clarifies the length of time that grazing may be conducted on parks lands by partnerships.

BLACK CANYON OF THE GUNNISON NATIONAL PARK

The boundary of the park would be expanded in three transactions. The first, locally referred to as Sanburg II, is located just south of Red Rock Canyon, one of the most scenic hiking opportunities into the Black Canyon of the Gunnison. The landowner agrees with the NPS that maintaining the rural character adjacent to the Red Rock Canyon trailhead is an important part of the wilderness experience. The landowner has previously sold conservation easements in this area (authorized by P.L. 106-76 and a minor boundary revision) to The Conservation Fund, who subsequently sold to NPS. Once acquisition of a conservation easement on this 26.5 acre parcel is conveyed, the rural character of the Red Rock Canyon gateway will be insured.

The second, the proposed Bramlett transaction, would authorize the exchange of a 200-acre parcel of the Bramlett Ranch located on Grizzly Ridge, which overlooks the North Rim Road and North and South Rim overlooks. Although the landowner has proposed building cabins on

the ridge top, he is willing to exchange this 200-acre parcel for land of equal value within the park and adjacent to his ranch headquarters. The equal value exchange would give the landowner land with easier access, and would add the ridgeline parcel to the park, thus protecting the natural landscape in that portion of the park.

The third boundary adjustment, the Allison exchange, is located along the East Portal Road, on the park's south rim. The landowner would exchange a combination of fee simple ownership and a conservation easement on up to 2,000 acres in return for fee simple ownership of up to 480 acres of the BLM parcel that would be transferred to NPS. The landowner has indicated that he would protect this parcel with a conservation easement should he acquire it. He has also indicated that he would donate any value above and beyond the value represented in the exchange.

The Department believes these acquisitions are important for several reasons. Combined with the land authorized by P.L. 106-76, the present and future land requirements for the park would be met. The present landowners are all willing sellers and in addition to them, this effort enjoys the support of the Montrose County Commissioners, the Montrose Chamber of Commerce, and local and national land trusts involved in the project.

S. 677 would also amend P.L. 106-76 regarding grazing within the park. P.L. 106-76 allowed for the continuation of grazing on the former BLM lands transferred to the NPS. Permits held by individuals can be renewed through the lifetime of the individual permittees. However, P.L. 106-76 requires that partnerships and corporations be treated alike regarding the termination of grazing permits. Partnerships and corporations now lose their permits upon the termination of the last remaining individual permit.

S. 677 would amend P.L. 106-76 to treat partnerships similarly to individual permit holders, allowing permits to be renewed through the lifetime of the partners as of October 21, 1999. Since the two partnerships affected are essentially family run ranching operations, the Department feels that they should be treated consistently with individual permit holders.

S. 677 would also allow grazing on land acquired in an exchange if the land being given up in the exchange currently has authorized grazing. This appears to be consistent with the intent of Congress when it authorized grazing in Public Law 106-76.

GUNNISON GORGE NATIONAL CONSERVATION AREA

S. 677 also provides for the expansion of the Gunnison Gorge NCA managed by the BLM. A 5,759-acre parcel of land on the north side of the existing NCA was acquired in January 2000 from a willing seller through a land exchange. This acquisition was not completed in time to include the lands within the original NCA boundary. This parcel includes approximately five miles of the Gunnison River and provides important resource values and rec-

reational opportunities. In addition, 1,349 acres of pre-existing BLM-managed public lands adjacent to the acquisition would also be added to the NCA. The addition of these BLM lands will create a more manageable NCA boundary and provide appropriate protection and management emphasis for this area's resources.

The legislation also makes some minor boundary adjustments to the NCA. In the process of completing surveys of the lands designated as the NCA by P.L. 106-76, the BLM discovered a few inadvertent trespass situations on the NCA land. In order to resolve these issues with the local landowners in a fair and equitable manner, slight boundary modifications need to be made so that exchanges can be effected. Without the benefit of this legislation, the BLM would be forced to take extreme punitive measures which are not in the best interest of the federal government or local landowners who previously were unaware of the encroachment issues.

WATER DELIVERY FACILITIES

With the passage of Public Law 106-76 the Uncompahgre Valley Water Users Association expressed concern that access to water and related facilities might be limited. S. 677 clarifies that the Bureau of Reclamation will retain jurisdiction over and access to all land, facilities, and roads in the East Portal and Crystal Dam areas for the maintenance, repair, construction, replacement, and operation of any facilities relating to the delivery of water and power.

We believe that the bill, as introduced, has a couple of confusing and unneeded sections. We have recommended some language to clarify these sections and request that S. 677 be amended to reflect these changes. Specifically, Section 4(b) of the bill is repetitive of Section 5(a)(2) of Public Law 106-76. P.L. 106-76 states the methods by which the NPS may acquire lands and already requires that acquisition may only occur with willing sellers. We believe Sec. 4(b) of the bill will result in confusion when the language is enacted and codified. Therefore, we recommend eliminating this duplicative language. The proposed amendments are attached to the testimony.

That concludes my testimony. I would be glad to answer any questions that you or the members of the subcommittee may have.

TECHNICAL AND CLARIFYING AMENDMENTS TO S. 677

On page 2, line 13, strike "2,725 acres" and insert "2,530 acres"

On page 2, line 16, strike "dated January 21, 2003" and insert "dated April 2, 2003"

On page 2, strike lines 21 and 22, and insert "(1) by striking 'Upon enactment of this title, the Secretary shall transfer' and inserting the following:"

On page 2, strike line 24, and "(A) IN GENERAL.—On enactment of this title, the Secretary shall transfer".

On page 2, strike lines 25 and 26, and insert “(2) by adding after the first sentence of subsection (b)(1)(A), as amended by paragraph (1), the following:”

On page 3, strike line 11, and insert “(3) by striking “The Secretary shall administer” and inserting “(2) AUTHORITY.—The Secretary shall administer”.

On page 5, line 5, by strike “(a) Authority to Acquire Lands.”—and

and On page 5, by striking lines 10 through 18.

On page 6, line 9, strike “dated January 21, 2003” and insert “dated April 2, 2003”

On page 6, by striking lines 11 through 22 and insert:

“The Commissioner of Reclamation shall have access to and retain administrative jurisdiction over the Crystal Dam Access Road and land, facilities, and roads of the Bureau of Reclamation in the East Portal area, including the Gunnison Tunnel, and the Crystal Dam area, as depicted on the maps identified in section 4 of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 and section 2(a)(2) of this Act for the maintenance, repair, construction, replacement, and operation of any facilities relating to the delivery of water and power under the jurisdiction of the Bureau.”

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. 677, as ordered reported, as shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 106–76

An Act to redesignate the Black Canyon of the Gunnison National Monument as a national park and establish the Gunnison Gorge National Conservation Area, and for other purposes

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

SECTION 1. SHORT TITLE.

* * * * *

SEC. 4. ESTABLISHMENT OF BLACK CANYON OF THE GUNNISON NATIONAL PARK.

(a) ESTABLISHMENT.—**[There]** (1) *There* is hereby established the Black Canyon of the Gunnison National Park in the State of Colorado as generally depicted on the map identified in section 3. The Black Canyon of the Gunnison National Monument is hereby abolished as such, the lands and interests therein are incorporated within and made part of the new Black Canyon of the Gunnison National Park, and any funds available for purposes of the monument shall be available for purposes of the park.

(2) *The boundary of the Park is revised to include the addition of approximately 2,530 acres, as generally depicted on the map entitled “Black Canyon of the Gunnison National Park*

and Gunnison Gorge NCA Boundary Modifications” and dated April 2, 2003.

* * * * *

(e) GRAZING.—(1)(A)

* * * * *

(D) If land within the Park on which the grazing of livestock is authorized under permits or leases under subparagraph (A) is exchanged for private land under section 5(a), the Secretary shall transfer any grazing privileges to the land acquired in the exchange.

* * * * *

(3) With respect to the grazing permits and leases referenced in this subsection, the Secretary shall allow grazing to continue, subject to periodic renewal—

(A) with respect to a permit or lease issued to an individual, for the lifetime of the individual who was the holder of the permit or lease on the date of the enactment of this Act; **[and]**

(B) with respect to the permit or lease issued to LeValley Ranch Ltd., for the lifetime of the last surviving limited partner as of October 21, 1999;

(C) with respect to the permit or lease issued to Sanburg Herefords, L.L.P., for the lifetime of the last surviving general partner as of October 21, 1999; and

[(B)] *(D) with respect to a permit or lease issued to a [partnership, corporation, or] corporation or other legal entity, for a period which shall terminate on the same date that the last permit or lease held under subparagraph [(A)] (A), (B), or (C) terminates, unless the [partnership, corporation, or] legal entity dissolves or terminates before such time, in which case the permit or lease shall terminate with the [partnership, corporation, or] corporation or legal entity.*

* * * * *

SEC. 5. ACQUISITION OF PROPERTY AND MINOR BOUNDARY ADJUSTMENTS.

(a) ADDITIONAL ACQUISITIONS.—

(1) **IN GENERAL.**—The Secretary may acquire land or interests in land depicted on the **[Map]** *Map or the map described in section 4(a)(2) as proposed additions.*

* * * * *

SEC. 7. ESTABLISHMENT OF THE GUNNISON GORGE NATIONAL CONSERVATION AREA.

(a) **IN GENERAL.**—**[There]** *(1) There is established the Gunnison Gorge National Conservation Area, consisting of approximately 57,725 acres as generally depicted on the Map.*

(2) The boundary of the Conservation Area is revised to include the addition of approximately 7,100 acres, as generally depicted on the map entitled “Black Canyon of the

Gunnison National Park and Gunnison Gorge NCA Boundary Modifications”, and dated April 2, 2003.

