

EMIGRANT WILDERNESS HISTORICAL USE
PRESERVATION ACT

SEPTEMBER 15, 2014.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3606]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3606) to permit certain activities to be conducted on Federal land within the Emigrant Wilderness of Stanislaus National Forest in the State of California at the level at which such activities were conducted on such land before the wilderness designation, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Emigrant Wilderness Historical Use Preservation Act”.

SEC. 2. PURPOSES.

The purposes of this Act are to ensure that—

(1) an increasing population within the vicinity of the Emigrant Wilderness of Stanislaus National Forest in the State of California may continue to enjoy the traditional variety of appropriate wilderness uses and practices, including a wilderness equestrian experience of pack and saddle stock use, consistent with protecting untrammeled and unimpaired wilderness character;

(2) the Federal land comprising the Emigrant Wilderness retains wilderness character consistent with the time of designation and that changes in use levels and social preferences are not allowed to displace historical and traditional

uses, including recreational commercial services provided by pack stock stations, which existed at the time of designation; and

(3) future generations of Americans continue to have the opportunity to enjoy the variety of traditional wilderness experiences, including a true wilderness equestrian experience, consistent with what existed when the Emigrant Wilderness was designated.

SEC. 3. PRESERVATION OF HISTORICAL EQUESTRIAN ACTIVITIES AND ACCESS TO CERTAIN FEDERAL LAND.

(a) **PRESERVATION OF HISTORICAL EQUESTRIAN ACTIVITIES AND LEVEL OF USE.**—The Secretary shall take such actions as may be necessary to ensure that, within the area designated as the Emigrant Wilderness, all pack and saddle stock use, including commercial pack and saddle stock services, are recognized as appropriate wilderness activities, along with their associated effect on soil, water, and vegetation. Conditions of camps, trails, and grazing areas, at the time of designation, should be considered an acceptable benchmark level for monitoring the preservation of wilderness character. No action shall be taken to limit or exclude pack and saddle stock without an appropriate environmental analysis with an express finding that it is necessary to limit or exclude pack and saddle stock, or modify stock practices, in order to preserve the wilderness character of the area to that which existed at the time of the designation of the Emigrant Wilderness.

(b) **TYPES OF ACTIVITIES AND IMPACT.**—The historical use and activities in the Emigrant Wilderness, including commercial outfitting and guiding, camping, pack stock grazing, and associated campsites, campfires, tent locations, and social trails, are traditional uses that are consistent with and part of an unconfined recreational experience, and the signs of use created by these historical uses are to be considered substantially unnoticeable and acceptable as long as they do not exceed the level present at the time of wilderness designation. The Secretary shall take such actions to ensure that these traditional uses do not result in impacts that are greater than those experienced at the time the Emigrant Wilderness was designated.

(c) **EMIGRANT WILDERNESS PLAN.**—Not later than 3 years after the date of the enactment of this Act, the Secretary shall complete an updated wilderness plan to incorporate management direction for the preservation of pack and saddle stock use and all legally acceptable recreational uses within the Emigrant Wilderness, including establishing the following:

(1) Desired future conditions that recognize normal and expected pack and saddle stock use impacts as an accepted component of the wilderness character of the area.

(2) Standards, and guidelines for pack and saddle stock that use “leave no trace” or gentle use principles for pack and saddle stock in the future consistent with past historical pack and saddle stock use practices and impacts.

(3) Indicators, thresholds, and triggers for managing future pack and saddle stock use commensurate with other uses and that recognize the acceptability of historical use and impacts of pack and saddle stock.

(4) A user capacity for pack and saddle stock use, including commercial pack and saddle stock services, commensurate with minimum levels necessary to ensure continued opportunity for a wilderness equestrian experience while preserving the overall wilderness character of the Emigrant Wilderness. Such user capacity shall recognize the number of stock necessary to support the typical extended family group size that frequent the Emigrant Wilderness, including commercial service support, and shall not limit group sizes to fewer than 15 people and 25 head of stock, inclusive of commercial service outfitters and guides.

(5) A needs assessment that sets as a baseline the level of commercial services that existed at the time of designation.

(d) **COMMERCIAL PACK AND SADDLE STOCK SERVICES.**—

(1) **IN GENERAL.**—The Secretary of Agriculture shall—

(A) continue to authorize commercial pack and saddle stock services within the Emigrant Wilderness consistent with commercial use within that area that existed as of the date of the original designation of the Emigrant Wilderness on January 3, 1975;

(B) specify the level of use, allotted user days, and activities by commercial outfitters and guides within that area in the Wilderness Plan; and

(C) continue to issue authorizations to provide commercial services for commercial stock operations within the Emigrant Wilderness at historic levels consistent with this Act.

(2) **LEVELS OF USE.**—Historical levels of commercial use, as established at the time of the designation of the Emigrant Wilderness, are considered within the normal range of acceptability for stock numbers and impacts and are considered the minimum extent necessary for realizing the recreational and other purposes

of the area. Pack and saddle stock commercial use may be allowed to increase above current authorized use levels, and at levels consistent with increases in other traditional uses, after a finding in an appropriate environmental analysis that the wilderness character of the area is being protected. Current outfitter and guide special use permits may be reauthorized without environmental analysis to incorporate direction from the wilderness plan developed pursuant to subsection (c).

(e) LIMITATIONS.—Nothing in subsections (a) through (e) shall be construed to—

(1) authorize the Secretary to issue or refuse to issue a permit for a new use of pack and saddle stock animals, including use by a commercial outfitter or guide, without complying with applicable resource management plans and planning processes required under this Act or any other provision of law;

(2) limit the authority of the Secretary to impose a temporary emergency closure of a trail, route, or area to pack and saddle stock animals or issue special permits; or

(3) create a preference for one recreational use over another for the Emigrant Wilderness, without consideration of the stated purpose of this area as stated in the Wilderness Act, PL88–577, and specific legislation establishing the Emigrant Wilderness.

(f) DEFINITIONS.—For the purposes of this Act:

(1) EMIGRANT WILDERNESS.—The term “Emigrant Wilderness” means the Emigrant Wilderness of Stanislaus National Forest in the State of California, as originally designated by section 2(b) of Public Law 93–632 (88 Stat. 2154; 16 U.S.C. 1132 note) and expanded by section 101(a)(9) of Public Law 98–425 (98 Stat. 1620; 16 U.S.C. 1132 note).

(2) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

Amend the title so as to read: A bill to preserve the opportunity for pack and saddle stock that are part of the history and character of traditional uses, practices and access within the Emigrant Wilderness of Stanislaus National Forest in the State of California as appropriate within the wilderness designation, and for other purposes.

PURPOSE OF THE BILL

The purpose of H.R. 3606, as ordered reported, is to preserve the opportunity for pack and saddle stock that are part of the history and character of traditional uses, practices and access within the Emigrant Wilderness of Stanislaus National Forest in the State of California as appropriate within the wilderness designation.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3606 would permit certain equestrian and related recreational activities to be conducted on federal land within the Emigrant Wilderness of the Stanislaus National Forest in the State of California at the level at which such activities were conducted when the area received was designated as a wilderness. The bill requires the Secretary of Agriculture to ensure that within the Emigrant Wilderness the level of use, allotted user days, and activities by commercial outfitters and guides does not rise above or fall below the use at the time of the original wilderness designation on January 3, 1975.

The act also defines outfitting and guiding, camping, pack stock grazing, and campfires as traditional uses that are consistent with and part of an unconfined recreational experience, and the signs of such uses are to be considered substantially unnoticeable and acceptable as long as they do not exceed the level at the time of the wilderness designation.

The historical use of trails, roads, paths, grazing sites, campsites, and campfires meadows, and cross-country areas in the Emigrant

Wilderness by recreational and commercial pack and saddle stock would be allowed to continue.

H.R. 3606 also provides that the use of drift fences that are in existence on the date of the enactment of the Act or were previously in existence at the time of designation would be allowed and maintained.

An amendment in the nature of a substitute based on changes requested by the Forest Service was adopted when the Committee marked up H.R. 3606. The amendment provides that the level of equestrian and related use that existed at the time of wilderness designation would be the benchmark for monitoring the preservation of wilderness, and that more restrictive limitations could be imposed only pursuant to an express finding based on an environmental analysis that further restrictions are necessary.

COMMITTEE ACTION

H.R. 3606 was introduced on November 21, 2013, by Congressman Tom McClintock (R-CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Public Lands and Environmental Regulation. On March 6, 2014, the Subcommittee held a hearing on the bill. On May 29, 2014, the Natural Resources Committee met to consider the bill. The Subcommittee on Public Lands and Environmental Regulation was discharged by unanimous consent. Congressman McClintock offered an amendment in the nature of a substitute designated .085; the amendment was adopted by voice vote. No further amendments were offered and the bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by voice vote.

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 Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) 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)(2)(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. 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:

H.R. 3606—Emigrant Wilderness Historical Use Preservation Act

H.R. 3606 would require the Secretary of Agriculture to authorize the use of horses and pack animals by commercial outfitters within the Emigrant Wilderness at a level similar to the level that

existed in 1975. The bill also would require the Forest Service to complete an updated wilderness plan for the Emigrant Wilderness. Based on information provided by the Forest Service, CBO estimates that implementing the bill would have no significant effect on the federal budget. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO expects that, under the bill, the authorized level of horse and pack animal use by commercial outfitters in the Emigrant Wilderness would be similar to the level authorized under current law. Based on information provided by the Forest Service, CBO estimates that updating the wilderness plan for the Emigrant Wilderness would cost less than \$20,000, assuming the availability of appropriated funds.

H.R. 3606 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

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

2. Section 308(a) of 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 revenues or tax expenditures. The Congressional Budget Office estimates that implementing the bill would have no significant effect on the federal budget.

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, as ordered reported, is to preserve the opportunity for pack and saddle stock that are part of the history and character of traditional uses, practices and access within the Emigrant Wilderness of Stanislaus National Forest in the State of California as appropriate within the wilderness designation.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the

most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

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

H.R. 3606 requires the Forest Service to ensure that levels of permitted outfitting and guiding in the Emigrant Wilderness do not fall below the levels which existed prior to the establishment of the wilderness area. This means that no matter what the agency determines, or what conditions on the ground dictate, the level of access for commercial horse packing must be frozen in time in 1975.

There are two outfitting operations operating in the Emigrant Wilderness Area and all concerned want these businesses to continue to thrive. However, it does not appear that either operation faces any problem with access. According to hearing testimony from one of the owners, the outfitters have never had to turn away customers in the Emigrant Wilderness due to lack of permits. At the same hearing, the Forest Service testified that supply of available outfitter permits has never outstripped demand since the Wilderness area was created in 1975. H.R. 3606 is simply a solution searching for a problem.

Furthermore, H.R. 3606 sets a terrible precedent for the management of wilderness areas by elevating commercial activities above all other uses of the area and by having Congress micro-manage a specific use in a specific area.

The bill dictates the levels of commercial outfitting, guiding, camping, pack stock grazing, campfires, tent locations, and trails, no matter what the conditions on the ground or determination of the local land managers might be. Congress is telling the Forest Service to manage for wilderness conditions and keep the area untrammelled by man as determined by the Wilderness Act, but is also dictating the appropriate level of commercial use.

Agencies must have the discretion to make informed, resource-based decisions about the management of specific uses in specific wilderness areas. When Congress takes away that authority, we run into conflicts that could end up damaging the wilderness values the area was designated to protect.

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