

STATEMENT OF KATHERINE H. STEVENSON, ACTING ASSISTANT DIRECTOR, BUSINESS SERVICES, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE SUBCOMMITTEE ON NATIONAL PARKS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 1380, TO DESIGNATE AS WILDERNESS CERTAIN LAND WITHIN THE ROCKY MOUNTAIN NATIONAL PARK AND TO ADJUST THE BOUNDARIES OF THE INDIAN PEAKS WILDERNESS AND THE ARAPAHO NATIONAL RECREATION AREA OF THE ARAPAHO NATIONAL FOREST IN THE STATE OF COLORADO.

JULY 12, 2007

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

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

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

National Recreation Area, both administered by the U.S. Forest Service, and give the National Park Service (NPS) the authority to lease the Lieffer tract.

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

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

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

After holding public meetings on the proposed designation in June 2005, the gateway communities of Estes Park and Grand Lake, and the counties of Grand and Larimer, endorsed wilderness designation for Rocky Mountain National Park, subject to specific boundary modifications on the west boundary of the park. These modifications, which have been incorporated in S. 1380, would provide an area of non-wilderness around the Town of Grand Lake in order to ensure that the park

could continue to actively manage hazardous fuels and other uses that might affect the Town. The proposed modifications would also reserve a corridor along the east shore of Shadow Mountain and Granby reservoirs for the possible construction of a non-motorized hike/bike trail, which would be subject to normal NPS planning processes including analysis under the National Environmental Policy Act.

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

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

Altering these protections to a more lenient negligence standard for the Grand River Ditch, as proposed by S. 1310, could have serious implications for future damage causing events resulting from the operation of the Grand Ditch within park boundaries. Changing that standard to a general

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

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

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

the Water Supply and Storage Company.

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

The legislation would also remove 1,000 acres of the Arapaho National Recreation Area in the Arapaho-Roosevelt National Forest and designate the land as an addition to the existing Indian Peaks Wilderness Area. The Administration supports the designation of the 1,000 acre addition to the Indian Peaks Wilderness.

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

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