

Calendar No. 719

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-427

ORGAN MOUNTAINS-DESERT PEAKS CONSERVATION ACT

DECEMBER 11, 2018.—Ordered to be printed

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

R E P O R T

[To accompany S. 441]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 441) to designate the Organ Mountains and other public land as components of the National Wilderness Preservation System in the State of New Mexico, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Organ Mountains-Desert Peaks Conservation Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) MONUMENT.—The term “Monument” means the Organ Mountains-Desert Peaks National Monument established by Presidential Proclamation 9131 (79 Fed. Reg. 30431).

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

(3) STATE.—The term “State” means the State of New Mexico.

(4) WILDERNESS AREA.—The term “wilderness area” means a wilderness area designated by section 3(a).

SEC. 3. DESIGNATION OF WILDERNESS AREAS.

(a) IN GENERAL.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), the following areas in the State are designated as wilderness and as components of the National Wilderness Preservation System:

(1) ADEN LAVA FLOW WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 27,673 acres, as generally depicted on the map entitled “Potrillo Mountains Complex”

and dated September 27, 2018, which shall be known as the “Aden Lava Flow Wilderness”.

(2) BROAD CANYON WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 13,902 acres, as generally depicted on the map entitled “Desert Peaks Complex” and dated October 1, 2018, which shall be known as the “Broad Canyon Wilderness”.

(3) CINDER CONE WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 16,935 acres, as generally depicted on the map entitled “Potrillo Mountains Complex” and dated September 27, 2018, which shall be known as the “Cinder Cone Wilderness”.

(4) EAST POTRILLO MOUNTAINS WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana and Luna counties comprising approximately 12,155 acres, as generally depicted on the map entitled “Potrillo Mountains Complex” and dated September 27, 2018, which shall be known as the “East Potrillo Mountains Wilderness”.

(5) MOUNT RILEY WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana and Luna counties comprising approximately 8,382 acres, as generally depicted on the map entitled “Potrillo Mountains Complex” and dated September 27, 2018, which shall be known as the “Mount Riley Wilderness”.

(6) ORGAN MOUNTAINS WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 19,916 acres, as generally depicted on the map entitled “Organ Mountains Area” and dated September 21, 2016, which shall be known as the “Organ Mountains Wilderness”, the boundary of which shall be offset 400 feet from the centerline of Dripping Springs Road in T. 23 S., R. 04 E., sec. 7, New Mexico Principal Meridian.

(7) POTRILLO MOUNTAINS WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana and Luna counties comprising approximately 105,085 acres, as generally depicted on the map entitled “Potrillo Mountains Complex” and dated September 27, 2018, which shall be known as the “Potrillo Mountains Wilderness”.

(8) ROBLEDO MOUNTAINS WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 16,776 acres, as generally depicted on the map entitled “Desert Peaks Complex” and dated October 1, 2018, which shall be known as the “Robledo Mountains Wilderness”.

(9) SIERRA DE LAS UVAS WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 11,114 acres, as generally depicted on the map entitled “Desert Peaks Complex” and dated October 1, 2018, which shall be known as the “Sierra de las Uvas Wilderness”.

(10) WHITETHORN WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana and Luna counties comprising approximately 9,616 acres, as generally depicted on the map entitled “Potrillo Mountains Complex” and dated September 27, 2018, which shall be known as the “Whitethorn Wilderness”.

(b) MAPS AND LEGAL DESCRIPTIONS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file maps and legal descriptions of the wilderness areas with—

(A) the Committee on Energy and Natural Resources of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) FORCE OF LAW.—The maps and legal descriptions filed under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct errors in the maps and legal descriptions.

(3) PUBLIC AVAILABILITY.—The maps and legal descriptions filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(c) MANAGEMENT.—Subject to valid existing rights, the wilderness areas shall be administered by the Secretary—

(1) as components of the National Landscape Conservation System; and

(2) in accordance with—

(A) this Act; and

(B) the Wilderness Act (16 U.S.C. 1131 et seq.), except that—

(i) any reference in the Wilderness Act to the effective date of that Act shall be considered to be a reference to the date of enactment of this Act; and

- (ii) any reference in the Wilderness Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary of the Interior.
- (d) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land or interest in land that is within the boundary of a wilderness area that is acquired by the United States shall—
 - (1) become part of the wilderness area within the boundaries of which the land is located; and
 - (2) be managed in accordance with—
 - (A) the Wilderness Act (16 U.S.C. 1131 et seq.);
 - (B) this Act; and
 - (C) any other applicable laws.
- (e) GRAZING.—Grazing of livestock in the wilderness areas, where established before the date of enactment of this Act, shall be administered in accordance with—
 - (1) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and
 - (2) the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101 405).
- (f) MILITARY OVERFLIGHTS.—Nothing in this section restricts or precludes—
 - (1) low-level overflights of military aircraft over the wilderness areas, including military overflights that can be seen or heard within the wilderness areas;
 - (2) the designation of new units of special airspace over the wilderness areas;
 or
 - (3) the use or establishment of military flight training routes over the wilderness areas.
- (g) BUFFER ZONES.—
 - (1) IN GENERAL.—Nothing in this section creates a protective perimeter or buffer zone around any wilderness area.
 - (2) ACTIVITIES OUTSIDE WILDERNESS AREAS.—The fact that an activity or use on land outside any wilderness area can be seen or heard within the wilderness area shall not preclude the activity or use outside the boundary of the wilderness area.
- (h) PARAGLIDING.—The use of paragliding within areas of the East Potrillo Mountains Wilderness designated by subsection (a)(4) in which the use has been established before the date of enactment of this Act, shall be allowed to continue in accordance with section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)), subject to any terms and conditions that the Secretary determines to be necessary.
- (i) CLIMATOLOGIC DATA COLLECTION.—Subject to such terms and conditions as the Secretary may prescribe, nothing in this Act precludes the installation and maintenance of hydrologic, meteorologic, or climatologic collection devices in wilderness areas if the facilities and access to the facilities are essential to flood warning, flood control, or water reservoir operation activities.
- (j) FISH AND WILDLIFE.—Nothing in this Act affects the jurisdiction of the State with respect to fish and wildlife located on public land in the State, except that the Secretary, after consultation with the New Mexico Department of Game and Fish, may designate zones where, and establish periods during which, no hunting or fishing shall be permitted for reasons of public safety, administration, or compliance with applicable law.
- (k) WITHDRAWALS.—
 - (1) IN GENERAL.—Subject to valid existing rights, the Federal land within the wilderness areas and any land or interest in land that is acquired by the United States in the wilderness areas after the date of enactment of this Act is withdrawn from—
 - (A) entry, appropriation, or disposal under the public land laws;
 - (B) location, entry, and patent under the mining laws; and
 - (C) operation of the mineral leasing, mineral materials, and geothermal leasing laws.
 - (2) PARCEL B.—The approximately 6,498 acres of land generally depicted as “Parcel B” on the map entitled “Organ Mountains Area” and dated September 21, 2016, is withdrawn in accordance with paragraph (1), except that the land is not withdrawn for purposes of the issuance of oil and gas pipeline or road rights-of-way.
 - (3) PARCEL C.—The approximately 1,297 acres of land generally depicted as “Parcel C” on the map entitled “Organ Mountains Area” and dated September 21, 2016, is withdrawn in accordance with paragraph (1), except that the land is not withdrawn from disposal under the Act of June 14, 1926 (commonly known as the “Recreation and Public Purposes Act”) (43 U.S.C. 869 et seq.).
 - (4) PARCEL D.—

(A) IN GENERAL.—The Secretary of the Army shall allow for the conduct of certain recreational activities on the approximately 2,035 acres of land generally depicted as “Parcel D” on the map entitled “Organ Mountains Area” and dated September 21, 2016 (referred to in this paragraph as the “parcel”), which is a portion of the public land withdrawn and reserved for military purposes by Public Land Order 833 dated May 21, 1952 (17 Fed. Reg. 4822).

(B) OUTDOOR RECREATION PLAN.—

(i) IN GENERAL.—The Secretary of the Army shall develop a plan for public outdoor recreation on the parcel that is consistent with the primary military mission of the parcel.

(ii) REQUIREMENT.—In developing the plan under clause (i), the Secretary of the Army shall ensure, to the maximum extent practicable, that outdoor recreation activities may be conducted on the parcel, including hunting, hiking, wildlife viewing, and camping.

(C) CLOSURES.—The Secretary of the Army may close the parcel or any portion of the parcel to the public as the Secretary of the Army determines to be necessary to protect—

(i) public safety; or

(ii) the safety of the military members training on the parcel.

(D) TRANSFER OF ADMINISTRATIVE JURISDICTION; WITHDRAWAL.—

(i) IN GENERAL.—On a determination by the Secretary of the Army that military training capabilities, personnel safety, and installation security would not be hindered as a result of the transfer to the Secretary of administrative jurisdiction over the parcel, the Secretary of the Army shall transfer to the Secretary administrative jurisdiction over the parcel.

(ii) WITHDRAWAL.—On transfer of the parcel under clause (i), the parcel shall be—

(I) under the jurisdiction of the Director of the Bureau of Land Management; and

(II) withdrawn from—

(aa) entry, appropriation, or disposal under the public land laws;

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

(cc) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(iii) RESERVATION.—On transfer under clause (i), the parcel shall be reserved for management of the resources of, and military training conducted on, the parcel in accordance with a memorandum of understanding entered into under subparagraph (E).

(E) MEMORANDUM OF UNDERSTANDING RELATING TO MILITARY TRAINING.—

(i) IN GENERAL.—If, after the transfer of the parcel under subparagraph (D)(i), the Secretary of the Army requests that the Secretary enter into a memorandum of understanding, the Secretary shall enter into a memorandum of understanding with the Secretary of the Army providing for the conduct of military training on the parcel.

(ii) REQUIREMENTS.—The memorandum of understanding entered into under clause (i) shall—

(I) address the location, frequency, and type of training activities to be conducted on the parcel;

(II) provide to the Secretary of the Army access to the parcel for the conduct of military training;

(III) authorize the Secretary or the Secretary of the Army to close the parcel or a portion of the parcel to the public as the Secretary or the Secretary of the Army determines to be necessary to protect—

(aa) public safety; or

(bb) the safety of the military members training; and

(IV) to the maximum extent practicable, provide for the protection of natural, historic, and cultural resources in the area of the parcel.

(F) MILITARY OVERFLIGHTS.—Nothing in this paragraph restricts or precludes—

(i) low-level overflights of military aircraft over the parcel, including military overflights that can be seen or heard within the parcel;

(ii) the designation of new units of special airspace over the parcel;

or

(iii) the use or establishment of military flight training routes over the parcel.

(l) ROBLEDO MOUNTAINS.—

(1) IN GENERAL.—The Secretary shall manage the Federal land described in paragraph (2) in a manner that preserves the character of the land for the future inclusion of the land in the National Wilderness Preservation System.

(2) LAND DESCRIPTION.—The land referred to in paragraph (1) is certain land administered by the Bureau of Land Management, comprising approximately 100 acres as generally depicted as “Lookout Peak Communication Site” on the map entitled “Desert Peaks Complex” and dated October 1, 2018.

(3) USES.—The Secretary shall permit only such uses on the land described in paragraph (2) that were permitted on the date of enactment of this Act.

(m) RELEASE OF WILDERNESS STUDY AREAS.—Congress finds that, for purposes of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)), the public land in Doña Ana County administered by the Bureau of Land Management not designated as wilderness by subsection (a) or described in subsection (l)——

(1) has been adequately studied for wilderness designation;

(2) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)); and

(3) shall be managed in accordance with—

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

(B) this Act; and

(C) any other applicable laws.

(n) PRIVATE LAND.—In accordance with section 5 of the Wilderness Act (16 U.S.C. 1134), the Secretary shall ensure adequate access to non-Federal land located within the boundary of a wilderness area.

SEC. 4. BORDER SECURITY.

(a) IN GENERAL.—Nothing in this Act—

(1) prevents the Secretary of Homeland Security from undertaking law enforcement and border security activities, in accordance with section 4(c) of the Wilderness Act (16 U.S.C. 1133(c)), within the wilderness areas, including the ability to use motorized access within a wilderness area while in pursuit of a suspect;

(2) affects the 2006 Memorandum of Understanding among the Department of Homeland Security, the Department of the Interior, and the Department of Agriculture regarding cooperative national security and counterterrorism efforts on Federal land along the borders of the United States; or

(3) prevents the Secretary of Homeland Security from conducting any low-level overflights over the wilderness areas that may be necessary for law enforcement and border security purposes.

(b) WITHDRAWAL AND ADMINISTRATION OF CERTAIN AREA.—

(1) WITHDRAWAL.—The area identified as “Parcel A” on the map entitled “Potrillo Mountains Complex” and dated September 27, 2018, is withdrawn in accordance with section 3(k)(1).

(2) ADMINISTRATION.—Except as provided in paragraphs (3) and (4), the Secretary shall administer the area described in paragraph (1) in a manner that, to the maximum extent practicable, protects the wilderness character of the area.

(3) USE OF MOTOR VEHICLES.—The use of motor vehicles, motorized equipment, and mechanical transport shall be prohibited in the area described in paragraph (1) except as necessary for—

(A) the administration of the area (including the conduct of law enforcement and border security activities in the area); or

(B) grazing uses by authorized permittees.

(4) EFFECT OF SUBSECTION.—Nothing in this subsection precludes the Secretary from allowing within the area described in paragraph (1) the installation and maintenance of communication or surveillance infrastructure necessary for law enforcement or border security activities.

(c) RESTRICTED ROUTE.—The route excluded from the Potrillo Mountains Wilderness identified as “Restricted—Administrative Access” on the map entitled “Potrillo Mountains Complex” and dated September 27, 2018, shall be—

(1) closed to public access; but

(2) available for administrative and law enforcement uses, including border security activities.

SEC. 5. ORGAN MOUNTAINS-DESERT PEAKS NATIONAL MONUMENT.

(a) **MANAGEMENT PLAN.**—In preparing and implementing the management plan for the Monument, the Secretary shall include a watershed health assessment to identify opportunities for watershed restoration.

(b) **INCORPORATION OF ACQUIRED STATE TRUST LAND AND INTERESTS IN STATE TRUST LAND.**—

(1) **IN GENERAL.**—Any land or interest in land that is within the State trust land described in paragraph (2) that is acquired by the United States shall—

(A) become part of the Monument; and

(B) be managed in accordance with

(i) Presidential Proclamation 9131 (79 Fed. Reg. 30431);

(ii) this Act; and

(iii) any other applicable laws.

(2) **DESCRIPTION OF STATE TRUST LAND.**—The State trust land referred to in paragraph (1) is the State trust land in T. 22 S., R 01 W., New Mexico Principal Meridian and T. 22 S., R. 02 W., New Mexico Principal Meridian.

(c) **LAND EXCHANGES.**—

(1) **IN GENERAL.**—Subject to paragraphs (3) through (6), the Secretary shall attempt to enter into an agreement to initiate an exchange under section 2201.1 of title 43, Code of Federal Regulations (or successor regulations), with the Commissioner of Public Lands of New Mexico, by the date that is 18 months after the date of enactment of this Act, to provide for a conveyance to the State of all right, title, and interest of the United States in and to Bureau of Land Management land in the State identified under paragraph (2) in exchange for the conveyance by the State to the Secretary of all right, title, and interest of the State in and to parcels of State trust land within the boundary of the Monument identified under that paragraph or described in subsection (b)(2).

(2) **IDENTIFICATION OF LAND FOR EXCHANGE.**—The Secretary and the Commissioner of Public Lands of New Mexico shall jointly identify the Bureau of Land Management land and State trust land eligible for exchange under this subsection, the exact acreage and legal description of which shall be determined by surveys approved by the Secretary and the New Mexico State Land Office.

(3) **APPLICABLE LAW.**—A land exchange under paragraph (1) shall be carried out in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(4) **CONDITIONS.**—A land exchange under paragraph (1) shall be subject to—

(A) valid existing rights; and

(B) such terms as the Secretary and the State shall establish.

(5) **VALUATION, APPRAISALS, AND EQUALIZATION.**—

(A) **IN GENERAL.**—The value of the Bureau of Land Management land and the State trust land to be conveyed in a land exchange under this subsection—

(i) shall be equal, as determined by appraisals conducted in accordance with subparagraph (B); or

(ii) if not equal, shall be equalized in accordance with subparagraph (C).

(B) **APPRAISALS.**—

(i) **IN GENERAL.**—The Bureau of Land Management land and State trust land to be exchanged under this subsection shall be appraised by an independent, qualified appraiser that is agreed to by the Secretary and the State.

(ii) **REQUIREMENTS.**—An appraisal under clause (i) shall be conducted in accordance with—

(I) the Uniform Appraisal Standards for Federal Land Acquisitions; and

(II) the Uniform Standards of Professional Appraisal Practice.

(C) **EQUALIZATION.**—

(i) **IN GENERAL.**—If the value of the Bureau of Land Management land and the State trust land to be conveyed in a land exchange under this subsection is not equal, the value may be equalized by—

(I) making a cash equalization payment to the Secretary or to the State, as appropriate, in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)); or

(II) reducing the acreage of the Bureau of Land Management land or State trust land to be exchanged, as appropriate.

(ii) **CASH EQUALIZATION PAYMENTS.**—Any cash equalization payments received by the Secretary under clause (i)(I) shall be—

(I) deposited in the Federal Land Disposal Account established by section 206(a) of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(a)); and

(II) used in accordance with that Act.

(6) LIMITATION.—No exchange of land shall be conducted under this subsection unless mutually agreed to by the Secretary and the State.

PURPOSE

The purpose of S. 441 is to designate the Organ Mountains and other public land as components of the National Wilderness Preservation System in the State of New Mexico.

BACKGROUND AND NEED

In May 2014, President Obama designated the Organ Mountain-Desert Peaks National Monument (Monument), which is managed by the Bureau of Land Management (BLM) in Doña Ana County in southern New Mexico. S. 441 would designate approximately 241,554 acres of public land within the Monument as wilderness. The wilderness would provide protection for large expanses of the Chihuahuan Desert ecosystem, including mountain ranges and grasslands, mesas and canyons, and lava flows and ancient volcanic cinder cones. The majority of the proposed wilderness areas are currently managed by the BLM as Wilderness Study Areas (WSAs), and the majority of the Monument is currently managed as an Area of Critical Environmental Concern.

S. 441 would also require the Secretary to manage approximately 100 acres in the Robledo Mountains for its wilderness characteristics and release any WSAs administered by the BLM in Doña Ana County to multiple-use. The bill also provides for equal value land exchanges with the State of New Mexico and the Secretary of the Interior so that State Trust lands within the boundary of the Monument can be acquired by the Secretary and the State can receive lands it can use to generate revenue for the school trust.

LEGISLATIVE HISTORY

S. 441 was introduced by Senators Udall and Heinrich on February 17, 2017. The Subcommittee on Public Lands, Forests, and Mining, held a hearing to consider the bill on February 7, 2018.

In the 114th Congress, a similar bill, S. 3049, was introduced by Senators Udall and Heinrich on June 16, 2016. A hearing was held on S. 3049 on September 22, 2016. In the House of Representatives, Rep. Pearce introduced companion legislation, H.R. 2467, on May 20, 2015.

In the 113th Congress, Senators Bingaman and Udall of New Mexico introduced similar legislation, S. 1805, on December 12, 2013.

The Senate Committee on Energy and Natural Resources met in open business session on October 2, 2018, and ordered S. 441 favorably reported as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on October 2, 2018, by a majority voice vote of a quorum present, recommends that the Senate pass S. 441 if

amended as described herein. Senators Barrasso, Risch, and Lee asked to be recorded as voting no.

COMMITTEE AMENDMENT

During its consideration of S. 441, the Committee adopted an amendment in the nature of a substitute.

The substitute amendment separates the Potrillo Mountains Wilderness, as described in S. 441 as introduced, into three separate wilderness areas: the East Potrillo Mountains Wilderness, the Mount Riley Wilderness, and the Potrillo Mountains Wilderness; and decreases the total wilderness area designation by approximately 232 acres of land.

The substitute amendment makes clear that the authorization to continue paragliding applies to the East Potrillo Mountains Wilderness, not the Potrillo Mountains Wilderness.

The substitute amendment strikes the designation of the approximately 100 acres of land at the Lookout Peak Communication Site as potential wilderness, and instead requires the Secretary to manage the land in a manner that preserves its wilderness characteristics. The substitute amendment also strikes the clause authorizing the Secretary to designate that land as wilderness, subject to providing public notice through the Federal Register.

The substitute amendment adds a new section 3(n), which makes clear that private land owners who have inholdings within the new wilderness areas, shall be provided adequate access to their land.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

Section 1 provides a short title for the bill.

Sec. 2. Definitions

Section 2 provides key definitions.

Sec. 3. Designation of wilderness areas

Subsection (a) designates 27,673 acres of BLM land as the Aden Lava Flow Wilderness; 13,902 acres of BLM land as the Broad Canyon Wilderness; 16,935 acres of BLM land as the Cinder Cone Wilderness; 12,155 acres of BLM land as the East Potrillo Mountains Wilderness; 8,382 acres of BLM land as the Mount Riley Wilderness; 19,916 acres of BLM land as the Organ Mountains Wilderness; 105,085 acres of BLM land as the Potrillo Mountains Wilderness; 16,776 acres of BLM land as the Robledo Mountains Wilderness; 11,114 acres of BLM land as the Sierra de las Uvas Wilderness; and 9,616 acres of BLM land as the Whitethorn Wilderness.

Subsection (b) requires the Secretary of the Interior (Secretary) to submit maps of the new wilderness areas to the Committees of jurisdiction and to make them publically available.

Subsection (c) requires the land to be administered in accordance with the Wilderness Act and as components of the National Landscape Conservation System, subject to valid existing rights.

Subsection (d) makes clear that any land that is acquired by the Federal government within the boundaries of the new wilderness areas, will be added to the wilderness areas.

Subsection (e) makes clear that any grazing that exists prior to enactment of this legislation, can continue subject to section 4(d)(4) of the Wilderness Act and Appendix A of H. Rept. 101–405.

Subsection (f) makes clear that military flights over the airspace of the wilderness can continue.

Subsection (g) makes clear that buffer zones cannot be established around the boundaries of the new wilderness areas.

Subsection (h) authorizes paragliding that existed prior to enactment of this legislation, to continue.

Subsection (i) authorizes the installation and maintenance of hydrologic, meteorologic, and climatologic monitoring systems.

Subsection (j) makes clear that nothing in this legislation impacts the jurisdiction of the State of New Mexico to manage fish and wildlife located on public land in the State.

Subsection (k) withdraws the new wilderness areas from entry, appropriation, and disposal under public land laws; location, entry, and patent under mining laws; and mineral and geothermal leasing laws. Subsection (k) clarifies that 6,498 acres in the Organ Mountains Wilderness is not withdrawn for purposes of the issuance of oil and gas pipeline or road rights-of-way; and that 1,297 acres of land in the Organ Mountains Wilderness is not withdrawn from disposal under the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.). It further requires the Secretary of the Army to develop a management plan to authorize recreational access and uses on 2,035 acres of land in the Organ Mountains Wilderness, but authorizes the Secretary of the Army to close any piece of the land if necessary for public safety or military exercises. Once the Secretary of the Army determines that the land is no longer needed for military purposes, the Secretary of the Army is required to transfer jurisdiction of the land to the Secretary of the Interior. It directs the Secretaries to enter into a memorandum of understanding to allow for military training and exercises on the land.

Subsection (l) directs the Secretary to manage 100 acres of land at the Lookout Peak Communication Site in the Robledo Mountains in a manner that preserves its wilderness characteristics and authorizes uses that were in existence prior to enactment of this legislation.

Subsection (m) finds that Federal land in Doña County that was not designated as wilderness in subsection (a), has been adequately studied and releases it from being a WSA.

Subsection (n) requires the Secretary to provide adequate access to any privately owned inholdings within the boundaries of the new wilderness areas.

Sec. 4. Border security

Subsection (a) makes clear that nothing in this legislation impacts or diminishes the authority of the Secretary of Homeland Security to undertake law enforcement and border security activities, nor does it impact cooperative agreements between the Secretaries of the Interior and Homeland Security regarding national security and counterterrorism activities.

Subsection (b) withdraws the areas identified as “Parcel A” in the Potrillo Mountains subject to Section 3(k)(1); directs the Secretary to administer that land to preserve its wilderness characteristics; prohibits the use of motorized vehicles, except for border security;

and makes clear that this legislation does not prevent the Secretary from authorizing the installation and maintenance of communication or surveillance infrastructure.

Subsection (c) closes the route identified as “Restricted—Administrative Access” on the “Petrillo Mountains Complex” map to public access, except for administrative and law enforcement uses.

Sec. 5. Organ Mountains-Desert Peaks National Monument

Subsection (a) requires the Secretary to conduct a watershed health assessment during the preparation and implementation of the land management plan for the Organ Mountains-Desert Peaks National Monument.

Subsection (b) requires that any land acquired by the Federal government from State trust land that is within the boundaries of the Monument, be incorporated into the Monument.

Subsection (c) requires the Secretary to attempt to enter into an agreement with the Commissioner of Public Lands for the State of New Mexico to initiate a land exchange; requires the Secretary and Commissioner to jointly identify land for exchange; requires the exchange to be carried out in accordance with the Federal Land Policy and Management Act (43 U.S.C. 1716); makes clear that the exchange is subject to valid existing rights; requires an independent appraisal of the land and that there be an equal value exchange; authorizes the Secretary and the State to use cash equalization if the land to be conveyed is determined not to be equal values; and requires that the land exchange be mutually agreeable to the Secretary and the State.

COST AND BUDGETARY CONSIDERATIONS

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

S. 441 would designate roughly 240,000 acres of federal land in New Mexico as part of the National Wilderness Preservation System. Because the affected land is already managed by the federal government, CBO expects that there would be no significant costs associated with those designations. The bill also would require the Secretary of the Army to develop a recreation plan for a tract of federal land located in the state. Based on the costs of similar tasks, CBO estimates that developing the plan would cost less than \$500,000; such spending would be subject to the availability of appropriated funds.

The bill would authorize a land exchange between the Bureau of Land Management (BLM) and the state of New Mexico. Under the bill, the state and BLM would jointly identify the federal and non-federal parcels of land to be exchanged. CBO has no information on which parcels would be exchanged, or whether the federal land generates any offsetting receipts (which are recorded in the budget as reductions in direct spending) from mineral production, grazing, or other activities. If the land that would be exchanged does generate receipts, the bill would reduce those receipts, relative to current law.

In addition, if the parcels are not of equal value, the values would be equalized through an adjustment in acreage or a cash equalization payment. If the federal parcel to be exchanged is more valuable, any cash equalization payment to BLM (which would be

recorded in the budget as an offsetting receipt) would be available to spend without further appropriation, the net effect on direct spending would be negligible. If the federal parcel to be exchanged is less valuable, any cash equalization payment to the state would increase direct spending. On net, CBO expects that enacting S. 441 would increase direct spending by an insignificant amount.

Because enacting S. 441 could affect direct spending, pay-as-you-go procedures apply. The bill would not affect revenues.

CBO estimates that enacting S. 441 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 441 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, 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. 441. 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. 441, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 441, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the February 7, 2018, hearing on S. 441 follows:

STATEMENT OF BRIAN STEED, DEPUTY DIRECTOR FOR POLICY & PROGRAMS, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

S. 441, ORGAN MOUNTAINS-DESERT PEAKS CONSERVATION ACT

Thank you for inviting the Department of the Interior (Department) to testify on S. 441, the Organ Mountains-Desert Peaks Conservation Act. The bill designates eight new wilderness areas and includes direction for future management on additional public lands managed by the Bureau of Land Management (BLM) in Doña Ana County, New Mexico. Secretary Zinke, through Secretarial Order 3347, has pledged to expand access to America's public lands and increase hunting, fishing, and recreational opportunities nationwide. In addition, Secretary Zinke is focused on restoring full collaboration and coordination with

local communities and making the Department a better neighbor. The Department supports the goals of S. 441 that are consistent with the Secretary's priorities and would like to work with Congress to make sure the Secretary's priorities are appropriately considered.

In addition, the Department supports Congressional action to resolve issues of wilderness designation and release of wilderness study areas (WSAs) on public lands across the West, and we welcome opportunities to further those efforts. However, we want to ensure that designating public lands outside of existing WSAs as wilderness is the most appropriate management tool and that it does not unnecessarily impede public access or limit outdoor recreational opportunities. Furthermore, the Department is concerned that the sponsor's language regarding our Nation's security needs along the southern border with Mexico does not adequately address the Administration's priority of making America safe through effective management of the borderlands. We recommend a number of important modifications to the bill to address these critical issues.

Background

Doña Ana County, New Mexico, covers just over 3,800 square miles and is home to Las Cruces, one of the fastest-growing cities in the country. BLM-managed public lands in this part of New Mexico provide significant opportunities for economic development and jobs, outdoor recreation, traditional uses, and conservation. The Organ Mountains, east of the city of Las Cruces, dominate the landscape. Characterized by steep, angular, barren rock outcroppings, the Organ Mountains rise to nearly 9,000 feet in elevation and extend for 20 miles, running generally north and south. The Organ Mountains feature mixed desert shrubs and grasslands in the lowlands transitioning to pinyon and juniper woodlands, and finally to ponderosa pines at the highest elevations. These lands are an important recreation area, with multiple hiking trails, a popular campground, and opportunities for hunting, mountain biking, and other dispersed recreation.

On the west side of Las Cruces are the mountain ranges and peaks of the Robledo Mountains and Sierra de las Uvas, which make up the Desert Peaks area. These desert landscapes feature numerous mesas and buttes interspersed with deep canyons and arroyos and serve as habitat for mule deer, mountain lions, golden eagles, and other raptors. This area also provides varied dispersed recreational opportunities.

To the southwest of Las Cruces, near the Mexican border, is the Potrillo Mountains Complex, which is characterized by cinder cones, volcanic craters, basalt lava flows, and talus slopes. These lands are noted for their abundant wildlife and fossil resources. A well-preserved giant ground sloth skeleton, now housed at Yale University, was discovered in this area. The Potrillo Mountains offer excellent

opportunities for hiking, hunting, photography, and other forms of outdoor recreation.

S. 441

S. 441 designates eight wilderness areas in Doña Ana County. The bill provides for the management and future transfer of land from the Department of the Defense (DOD) to the BLM, withdraws certain additional lands from disposal, mining, and mineral leasing, and includes provisions related to border security, the management plan for the Organ Mountains-Desert Peaks National Monument (Monument), and acquisition of specified State trust land adjacent to the Desert Peaks area of the Monument.

Wilderness

Section 3 of S. 441 designates eight wilderness areas totaling approximately 242,000 acres. Of these lands, approximately 197,000 acres are within existing WSAs and approximately 45,000 acres have not previously been identified as suitable for wilderness by the BLM. This section also releases approximately 30,200 acres from WSA status. The Department notes that the lands proposed for wilderness designation by S. 441 generally serve as habitat for a diversity of plant and animal life and provide important opportunities for hiking, hunting, rock climbing, horseback riding, and other forms of outdoor recreation in the New Mexico desert near Las Cruces.

Only Congress can determine whether to designate WSAs as wilderness or to release them for other multiple uses. The WSAs included in the proposed wilderness designations have been pending final resolution by Congress since 1991. The Department, therefore, supports Congress settling the status of these lands, which would provide certainty to public land users in this part of Doña Ana County.

Pursuant to the priorities outlined by Secretary Zinke, we would like the opportunity to work with the sponsors and the Subcommittee to ensure that wilderness designation on public lands outside of existing WSAs is the most appropriate mechanism to adequately protect these areas. Alternative management approaches could conserve sensitive resources while still accommodating the full range of uses and activities permitted on other BLM-managed lands within the Monument.

In addition, we would like to work with the sponsors on minor and technical amendments to this section, including boundary modifications for enhanced manageability and to provide access to public trails and private inholdings. In addition, as currently drafted, we do not believe that the bill provision authorizing paragliding to continue in this area after wilderness designation would achieve what we understand to be the sponsors' intended objective. As a result, we would like to work with the sponsors and Subcommittee on amendments to the paragliding management

language that aid implementation and ensure consistency with the Wilderness Act.

Within the proposed Robledo Mountains Wilderness, a small corridor of approximately 100 acres has been designated as “potential wilderness” by section 3(l) of S. 441. The lands included in this potential wilderness contain a communications right-of-way. It is our understanding that it is the intention of the sponsors to allow the continued use of this site, which is important to the Elephant Butte Irrigation District, U.S. Border Patrol, New Mexico State Police, and others. However, in the event that the communications right-of-way were relinquished and the lands were reclaimed in the future, they would become part of the wilderness area. The Department does not necessarily object to this provision, but we believe there are alternative approaches that would preserve this important use.

Fillmore Canyon

Section 3(k)(4) of the bill authorizes hunting, hiking, wildlife viewing, camping, and other outdoor recreational activities on approximately 2,035 acres of land. This land is currently part of the Army’s Fort Bliss and includes the scenic Fillmore Canyon, as well as the western slopes of Organ Peak and Ice Canyon. This section requires the DOD to develop an outdoor recreation plan for the area that is consistent with its primary military mission and permits the DOD to close all or a portion of the area to protect public or military member safety. In the event that the DOD determines that military training capabilities, personal safety, and installation security would not be hindered, the DOD would be required to transfer administrative jurisdiction of the area to the BLM. After such a transfer of jurisdiction, the bill immediately withdraws the area from the public land, mining, and mineral leasing laws. At the DOD’s request, the BLM would be required to enter into a Memorandum of Understanding (MOU) providing for the conduct of military training within the area and, to the maximum extent practicable, for the protection of natural, historic, and cultural resources. The Department supports this section as it would improve access to an area popular with the public. We would, however, like to work with the sponsors and the Department of the Army on language that we believe would enhance implementation.

Additional Withdrawals

Section 3(k) of the legislation provides for the withdrawal of two parcels of BLM-managed lands from the public land, mining, and mineral leasing laws. The parcel designated as “Parcel C” is approximately 1,300 acres of BLM-managed lands on the eastern outskirts of Las Cruces. This parcel is a popular hiking and mountain biking site and provides easy access to the peak of the Tortugas Mountains. The larger 6,500-acre parcel, designated as “Parcel B,” lies on the southern end of the

Organ Mountains area of the Monument and provides a number of current uses, including oil and gas pipelines (mainly natural gas), fiber optic lines for telecommunications, and transportation (State Route 404). The Department also notes that the Sierra Vista National Recreation Trail traverses Parcel B and connects to the Franklin Mountains in Texas. We would like the opportunity to work with the sponsors and the Subcommittee to ensure that withdrawal is the best mechanism for ensuring that these important uses continue. Alternative management approaches could protect recreational opportunities and conserve resources while still accommodating the full range of uses and activities permitted on other BLM-managed lands. Under the Federal Land Policy and Management Act (FLPMA), for example, the BLM currently manages public lands within the Monument for a variety of uses, such as conservation, watershed protection, hunting, fishing, and other forms of recreation, and livestock grazing. If Congress chooses to proceed with the proposed withdrawal, the Department would like to work with the sponsors on language accommodating potential maintenance of and improvements to State Route 404.

Border Security

The Department is strongly committed to securing our Nation's borders and promoting a safe and secure environment for the public, employees, and users of lands managed by the BLM, National Park Service, U.S. Fish and Wildlife Service, and Bureau of Indian Affairs. The BLM and other Department bureaus regularly coordinate and collaborate with local, State, Tribal, and Federal partner agencies on border safety, security, and environmental protection, including protecting public land resources from the impacts of crimes such as smuggling.

S. 441 includes a number of provisions regarding border security to provide flexibility to the Department of Homeland Security (DHS) and other law enforcement agencies. First, the legislation releases approximately 30,200 acres from WSA status along the southern boundary of the proposed Potrillo Mountains Wilderness. Within an approximately 16,500-acre area along that southern border, designated as "Parcel A", the bill charges the Secretary with protecting the wilderness character, to the extent practicable, while at the same time allowing for the installation of communications and surveillance facilities that may be necessary for law enforcement and border security purposes. Finally, the bill keeps open for administrative and law enforcement uses an east-west route bisecting the proposed Potrillo Mountains Wilderness.

While the Department is encouraged to see the WSA release along the southern boundary of the Potrillo Mountains, we believe it is not the appropriate time to permanently encumber Federal borderlands with restrictive designations. The Department recommends that the entire Potrillo Mountains area be removed from WSA until such

time as DHS has achieved operational control. Furthermore, the Department will coordinate with DHS and the Subcommittee to develop language that ensures access for the U.S. Border Patrol to conduct routine patrols, perform road maintenance, and position equipment to proactively deter illegal border crossings. The limitation to enter wilderness only during pursuit as described in the legislation, but already permitted by law, puts our Border Agents at a disadvantage in completing their statutory mission.

Monument Management Plan & Land Exchange

Section 5(a) of the bill requires that the Monument management plan include a watershed health assessment to identify opportunities for watershed restoration. The BLM, along with many partners, has undertaken restoration efforts on nearly two million acres in New Mexico, with the goal of restoring grasslands, woodlands, and riparian areas to their original healthy conditions. The BLM will continue to implement appropriate land restoration activities that will benefit watershed and wildlife health.

Section 5(c) of S. 441 requires the Secretary, within 18 months, to “attempt to enter into an agreement” with the Commissioner of Public Lands of New Mexico to exchange approximately 11,000 acres of State trust land within the Desert Peaks area of the Monument to the BLM and an unspecified acreage of BLM-managed public lands to the State. The BLM-managed lands to be exchanged to the State would be jointly identified by the Secretary and Commissioner of Public Lands of New Mexico. While the Department appreciates the use of standard appraisal and equalization of values language, we believe that this section as currently drafted could inadvertently affect land exchanges elsewhere in New Mexico where significant biological, cultural, and recreational values are present. The Department would like the opportunity to work with the sponsors and Subcommittee on time frames and language ensuring that the BLM retains the flexibility to accomplish other important land exchanges.

Conclusion

The Department supports the goals of S. 441 that are consistent with the Secretary’s priorities and would like to work with Congress to make sure the Secretary’s goal of enhancing recreational opportunities on Federal lands is appropriately considered. The Department also supports Congressional action to resolve wilderness designation and WSA release issues, but would like to ensure that designating public lands outside of existing WSAs as wilderness is the most appropriate management tool. We recommend a number of important modifications to the bill to address these critical issues.

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. 441 as ordered reported.

