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SKI AREA RECREATIONAL OPPORTUNITY ENHANCEMENT ACT

SEPTEMBER 27, 2010.—Ordered to be printed

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

R E P O R T

[To accompany S. 607]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 607) to amend the National Forest Ski Area Permit Act of 1986 to clarify the authority of the Secretary of Agriculture regarding additional recreational uses of National Forest System land that are subject to ski area permits, and for other purposes, having considered the same, reports favorably thereon with an amendment, and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ski Area Recreational Opportunity Enhancement Act of 2010”.

SEC. 2. PURPOSE.

The purpose of this Act is to amend the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b)—

(1) to enable snow-sports (other than nordic and alpine skiing) to be permitted on National Forest System land, subject to ski area permits issued by the Secretary of Agriculture under section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b); and

(2) to clarify the authority of the Secretary of Agriculture to permit appropriate additional seasonal or year-round recreational activities and facilities on National Forest System land, subject to ski area permits issued by the Secretary of Agriculture under section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).

SEC. 3. SKI AREA PERMITS.

Section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) is amended—

(1) in subsection (a), by striking “nordic and alpine ski areas and facilities” and inserting “ski areas and associated facilities”;

(2) in subsection (b), in the matter preceding paragraph (1), by striking “nordic and alpine skiing operations and purposes” and inserting “skiing and other snow sports and recreational uses authorized by this Act”;

(3) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(4) by inserting after subsection (b) the following:

“(c) OTHER RECREATIONAL USES.—

“(1) AUTHORITY OF SECRETARY.—Subject to the terms of a ski area permit issued pursuant to subsection (b), the Secretary may authorize a ski area permittee to provide such other seasonal or year-round natural resource-based recreational activities and associated facilities (in addition to skiing and other snow-sports) on National Forest System land subject to a ski area permit as the Secretary determines to be appropriate.

“(2) REQUIREMENTS.—Each activity and facility authorized by the Secretary under paragraph (1) shall—

“(A) encourage outdoor recreation and enjoyment of nature;

“(B) to the extent practicable—

“(i) harmonize with the natural environment of the National Forest System land on which the activity or facility is located; and

“(ii) be located within the developed portions of the ski area;

“(C) be subject to such terms and conditions as the Secretary determines to be appropriate; and

“(D) be authorized in accordance with—

“(i) the applicable land and resource management plan; and

“(ii) applicable laws (including regulations).

“(3) INCLUSIONS.—Activities and facilities that may, in appropriate circumstances, be authorized under paragraph (1) include—

“(A) zip lines;

“(B) mountain bike terrain parks and trails;

“(C) frisbee golf courses; and

“(D) ropes courses.

“(4) EXCLUSIONS.—Activities and facilities that are prohibited under paragraph (1) include—

“(A) tennis courts;

“(B) water slides and water parks;

“(C) swimming pools;

“(D) golf courses; and

“(E) amusement parks.

“(5) LIMITATION.—The Secretary may not authorize any activity or facility under paragraph (1) if the Secretary determines that the authorization of the activity or facility would result in the primary recreational purpose of the ski area permit to be a purpose other than skiing and other snow-sports.

“(6) BOUNDARY DETERMINATION.—In determining the acreage encompassed by a ski area permit under subsection (b)(3), the Secretary shall not consider the acreage necessary for activities and facilities authorized under paragraph (1).

“(7) EFFECT ON EXISTING AUTHORIZED ACTIVITIES AND FACILITIES.—Nothing in this subsection affects any activity or facility authorized by a ski area permit in effect on the date of enactment of this subsection during the term of the permit.”;

(5) by striking subsection (d) (as redesignated by paragraph (3)), and inserting the following:

“(d) REGULATIONS.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall promulgate regulations to implement this section.”; and

(6) in subsection (e) (as redesignated by paragraph (3)), by striking “the National Environmental Policy Act, or the Forest and Rangelands Renewable Resources Planning Act as amended by the National Forest Management Act” and inserting “the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.)”.

SEC. 4. EFFECT.

Nothing in the amendments made by this Act establishes a legal preference for the holder of a ski area permit to provide activities and associated facilities authorized by section 3(c) of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b(c)) (as amended by section 3).

2. Amend the title so as to read: “A bill to amend the National Forest Ski Area Permit Act of 1986 to clarify the authority of the Secretary of Agriculture regarding additional recreational uses of National Forest System land that is subject to ski area permits, and for other purposes.”.

PURPOSE

The purpose of S. 607 is to amend the National Forest Ski Area Permit Act of 1986 to authorize the Secretary of Agriculture to permit additional recreational activities and associated facilities on National Forest System land through ski area permits.

BACKGROUND AND NEED

The National Forest Ski Area Permit Act of 1986 (Public Law 99-522) authorizes the Secretary of Agriculture “to issue permits . . . for the use and occupancy of suitable lands within the National Forest System for nordic and alpine skiing operations and purposes.” 16 U.S.C. 497b. The Forest Service’s regulations implementing that Act define a “ski area” as “a site and attendant facilities expressly developed to accommodate alpine or nordic skiing and from which the preponderance of revenue is generated by the sale of lift tickets and fees for ski rentals, for skiing instruction and trail passes for the use of permittee-maintained ski trails. A ski area may also include ancillary facilities directly related to the operation and support of skiing activities.” 36 C.F.R. 251.51 (2009).

The Forest Service has permitted more than 120 ski areas on National Forest System land in 13 States. Many of these areas provide for uses other than nordic and alpine skiing, such as snowboarding and sledding, and some have been permitted to provide for summer activities such as mountain biking, disc-golf (or “frisbee golf”) courses, and zip lines. The interest in such non-skiing activities by the permit holders and the public has grown significantly over the years, and the interest in expanding summer uses is expected to grow in the future.

S. 607 would provide clear authority for the Secretary to issue ski area permits that authorize a broader range of winter and summer activities on National Forest System land, along with direction regarding which activities would be appropriate.

LEGISLATIVE HISTORY

S. 607 was introduced by Senator Udall of Colorado on March 17, 2009, and is cosponsored by 15 Senators. The Subcommittee on Public Lands and Forests held a hearing on the bill on October 29, 2009 (S. Hrg. 111-223). At its business meeting on July 21, 2010, the Committee on Energy and Natural Resources ordered the bill favorably reported with an amendment in the nature of a substitute and an amendment to the title.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 21, 2010, by a voice vote of a quorum present, recommends that the Senate pass S. 607, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 607, the Committee adopted an amendment in the nature of a substitute and an amendment to the title. The substitute amendment removes the findings from the bill, adds illustrative lists of seasonal activities that could be permitted and a list of activities that could not be permitted under the new authority, and makes other technical and conforming changes. The amendment is explained in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title for the bill.

Section 2 provides the purpose for the bill.

Section 3 of the bill amends section 3 of the National Forest Ski Area Permit Act of 1986 (“Ski Area Act”) (16 U.S.C. 497b).

Paragraphs (1) and (2) of section 3 of the bill amend subsections (a) and (b) of section 3 of the Ski Area Act to provide the Secretary of Agriculture with general authority to issue permits for ski areas and associated facilities on National Forest System land not only for nordic and alpine skiing, but also for skiing and other snow sports and recreational uses.

Paragraphs (3) and (4) provide for the addition of a new subsection (c) in section 3 of the Ski Area Act. The new subsection (c) provides specific authority to the Secretary to authorize ski area permittees to provide to the public certain seasonal and year-round natural resource-based recreational activities and associated facilities on National Forest System land. Each activity authorized under the new subsection would have to meet specified requirements designed to ensure that the new activities are appropriate for National Forest System land, that they do not expand the developed footprint of the ski area, and that they remain an ancillary use under the permit. The amendment includes illustrative lists of activities that may—and would not—be permissible. For example, the Secretary is precluded from permitting amusement parks, but may, in appropriate circumstances that meet the requirements of the amendment, permit a collection of features such as zip lines, mountain-bike trails, and other recreational activities. The new subsection also includes a provision clarifying that it does not affect any activities or facilities authorized in a current ski area permit during the term of that permit. For example, an activity that currently is authorized in a ski area permit but that would not be permissible under the proposed amendment would not be precluded by the amendment from continuing for the remainder of the term of that permit.

Paragraph (5) amends section 3 of the Ski Area Act to direct the Secretary to promulgate regulations for ski area permits.

Paragraph (6) makes conforming changes to a number of citations of existing laws in the Ski Area Act.

Section 4 of the bill clarifies that the new authority provided to the Secretary to permit additional recreational activities under the new subsection (c) of the Ski Area Act does not create a legal preference for the permittee to provide those activities to the public on the National Forest System land subject to the permit.

COST AND BUDGETARY CONSIDERATIONS

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

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S. 607 would clarify the authority of the Forest Service to allow ski concessioners to offer additional recreational services on public lands. Based on information provided by the agency, CBO estimates that enacting the legislation would have no significant effect on the federal budget. The Forest Service already has authority to allow its concessioners to provide off-season and other recreational services at ski resorts. Clarifying that authority could facilitate the agency's collection of fees from ski concessioners (currently yielding offsetting receipts to the Treasury of about \$30 million a year).

Because enacting the legislation could result in additional offsetting receipts (a credit against direct spending), pay-as-you-go procedures apply, but CBO estimates that any increase would total less than \$500,000 a year.

The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On February 1, 2010, CBO transmitted a cost estimate for H.R. 2476, the Ski Area Recreational Opportunity Enhancement Act of 2010, as ordered reported by the House Committee on Natural Resources on December 16, 2009. On July 8, 2010, CBO transmitted a cost estimate for H.R. 2476 as ordered reported by the House Committee on Agriculture on June 30, 2010. S. 607 and the two versions of H.R. 2476 are similar, as is CBO's estimate of their costs.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Theresa Gullo, 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. 607.

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. 607, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 607, 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 Forest Service at the October 29, 2009, Subcommittee hearing on S. 607 follows:

STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Chairman Wyden and Members of the Subcommittee, thank you for inviting the U.S. Department of Agriculture to appear before you today to present our views on S. 607, the "Ski Area Recreational Opportunity Enhancement Act of 2009." The Administration supports this legislation with technical amendments. We would appreciate the opportunity to work with the Committee to refine the bill to provide the appropriate natural resource-based experience for visitors to the National Forests while ensuring the protection of the natural environment.

The bill would amend the National Forest Ski Area Permit Act of 1986 to authorize the Secretary to permit seasonal and year-round natural resource-based, outdoor-developed recreational activities and associated facilities at ski areas, in addition to those that support Nordic and alpine skiing and other snow sports that are currently authorized by the Act.

The Act authorizes issuance of permits for Nordic and alpine ski operations and appropriate ancillary facilities (16 U.S.C. 497b(b)(3)). Congress intended the term "appropriate ancillary facilities to include "only those facilities directly necessary for the operation and support of a winter sports facility . . ." (S. Rep. No. 99-449, 99th Cong., 2d Sess. 5 (1986)).

The additional seasonal and year-round recreational activities and associated facilities authorized by the bill would encourage outdoor recreation and have to harmonize with the natural environment. The bill would make clear that the primary purpose of the authorized use and occupancy would continue to be skiing and other snow sports.

BACKGROUND AND NEED FOR LEGISLATION

Current law does not authorize activities other than Nordic and alpine skiing, snow sports, and their ancillary facilities at ski areas. Ski areas serve as portals to national forest recreation. There are 121 ski areas operating under permit on national forests. These ski areas occupy a fraction of 1 percent of the total National Forest System land base. Nevertheless, about one-fifth of all recreation on national forests occurs at these ski areas. For many Americans, ski areas are gateways to our national forests and a means to greater appreciation of the natural world. Further, these recreational opportunities provide a great avenue for visitors to reconnect to the land, a core tenet of Secretary Vilsack's vision for forests.

We have become concerned about trends showing a decline in appreciation and understanding of the natural en-

vironment among our youth. However, we still see strong visitation by youth and families at ski areas. The Forest Service has developed strong partnerships with many ski area operators that enhance visitors' understanding and appreciation of the environment through interpretive signing, programs, and exhibits. Expanding opportunities for year-round use will encourage more of the public to experience and appreciate the national forests. Ski areas introduce the national forests to our increasingly urban population.

Ski areas are some of the most developed sites on the national forests. Focusing more of the developed outdoor recreational activities in these areas could reduce negative impacts in other areas of the national forests. One example of a popular developed outdoor recreational activity is freestyle mountain biking. By focusing this activity at ski areas, ski area operators would be able to increase utilization of existing infrastructure, and the impacts on surrounding National Forest System lands caused by freestyle biking may be minimized.

Across the country we have received numerous proposals by ski areas to add off-season recreational activities. Some we have approved, perhaps without fully understanding the current limitations of the 1986 Ski Area Permit Act, while others we have denied, or not acted upon. We're aware that summer activities at a number of ski areas that operate summer facilities on non-National Forest Service land are very popular. Whistler-Blackcomb Ski Area in British Columbia has become a very popular destination for biking. In the Northeast, Bretton Woods Ski area offers an array of summer activities which reportedly "sell out" at times. We believe we'd see the most interest for summer uses at ski areas that are either located near large population centers or are near communities with large hotel capacities that tend to be underutilized in the summer.

Because of longer summers and higher temperatures due to climate change, it is possible that ski areas in some locations may see somewhat shorter winter operating seasons. Increasing the scope of activities and facilities that may be authorized under a ski area permit, where appropriate and in conformance with environmental law, could help ski areas remain economically viable by more fully utilizing their significant investment in infrastructure, such as ski lifts, in the off-season or year-round.

RECOMMENDED CHANGES TO S. 607

We would like to work with the committee to develop amendments in two areas:

- While we support allowing additional activities and infrastructure for year-round activities, activities should be appropriate to the natural resource setting and should contrast with an urban environment. Excluding facilities such as amusement and water parks,

golf courses, tennis courts, and skateboard parks is consistent with Forest Service policy.

- Ski area boundaries should continue to encompass only the acreage the Secretary deems sufficient and appropriate to accommodate the permit holder's needs for snow sports and appropriate ancillary facilities for winter operations. Permit boundaries should not be expanded to accommodate recreational activities and facilities that are not related to skiing and snow sports, which are the primary purpose of these resorts.

In addition, consistent with the discretion afforded the Secretary in the bill, we would develop directives that would establish criteria for implementing the expanded authority, based on case-specific review of proposals from ski areas in accordance with applicable regulations and environmental law. The criteria would likely include (1) availability and suitability of private lands as alternative sites for the activities; (2) the proposed location within the permitted area, including proximity to existing areas of concentrated development; (3) consistency with the applicable land management plan and applicable federal, state, and local law; (4) impacts on soil, water, wildlife, aesthetics, and other national forest resources; (5) effects on the primary purpose of the resort for alpine and Nordic skiing; (6) tribal interests; and (7) visitor safety.

If the bill is enacted, we would envision that more highly developed summer facilities would be focused in areas which already support extensive resort infrastructure, while lesser developed parts of ski areas would primarily be for hiking, mountain biking, and other activities that require more limited facilities.

The legislation does not provide a blanket approval for any particular summer facility or use. Proposals would be subject to the Agency's requirements for site-specific environmental review and public involvement. In those environmental reviews we would look very carefully at the sometimes sensitive nature of high elevation ecologic conditions before approving a proposal. While we might approve an activity or facility at one location at a given ski area, we might not at a different location at another ski area or even at a different location within the same ski area.

In summary, this legislation would concentrate highly developed recreation in those areas that are currently the most developed sites on the national forests and enhance the long term viability of these ski areas and the adjoining rural economies. For these reasons, the legislation is a positive step and one which the Administration supports, with the suggested clarifications.

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. 607 as ordered reported, are 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):

NATIONAL FOREST SKI AREA PERMIT ACT OF 1986

(Public Law 99-522; Approved October 22, 1986)

[16 U.S.C. 497b]

AN ACT to establish a ski area permit system on national forest lands, 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.

This Act may be cited as the “National Forest Ski Area Permit Act of 1986”.

* * * * *

SEC. 3. SKI AREA PERMITS.

(a) **LAW APPLICABLE TO PERMITS.**—The provisions of the Act of March 4, 1915 (16 U.S.C. 497) notwithstanding, the term and acreage of permits for the operation of [nordic and alpine ski areas and facilities] *ski areas and associated facilities* on National Forest System lands shall henceforth be governed by this Act and other applicable law.

(b) **AUTHORITY.**—The Secretary of Agriculture (hereinafter referred to as “the Secretary”) is authorized to issue permits (hereinafter referred to as “ski area permits”) for the use and occupancy of suitable lands within the National Forest System for [nordic and alpine skiing operations and purposes] *skiing and other snow sports and recreational uses authorized by this Act*. A ski area permit—

(1) may be issued for a term not to exceed 40 years;

(2) shall ordinarily be issued for a term of 40 years (unless the Secretary determines that the facilities or operations are of a scale or nature as are not likely to require long-term financing or operation), or that there are public policy reasons specific to a particular permit for a shorter term;

(3) shall encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee’s needs for ski operations and appropriate ancillary facilities;

(4) may be renewed at the discretion of the Secretary;

(5) may be cancelled by the Secretary in whole or in part for any violation of the permit terms or conditions, for non-payment of permit fees, or upon the determination by the Secretary in his planning for the uses of the national forests that the permitted area is needed for higher public purposes;

(6) may be modified from time to time by the Secretary to accommodate changes in plans or operations in accordance with the provisions of applicable law;

(7) shall be subject to such reasonable terms and conditions as the Secretary deems appropriate; and

(8) shall be subject to a permit fee based on fair market value in accordance with applicable law.

(c) **OTHER RECREATIONAL USES.**—

(1) *AUTHORITY OF SECRETARY.*—Subject to the terms of a ski area permit issued pursuant to subsection (b), the Secretary may authorize a ski area permittee to provide such other seasonal or year-round natural resource-based recreational activities and associated facilities (in addition to skiing and other snow-sports) on National Forest System land subject to a ski area permit as the Secretary determines to be appropriate.

(2) *REQUIREMENTS.*—Each activity and facility authorized by the Secretary under paragraph (1) shall—

(A) encourage outdoor recreation and enjoyment of nature;

(B) to the extent practicable—

(i) harmonize with the natural environment of the National Forest System land on which the activity or facility is located; and

(ii) be located within the developed portions of the ski area;

(C) be subject to such terms and conditions as the Secretary determines to be appropriate; and

(D) be authorized in accordance with—

(i) the applicable land and resource management plan; and

(ii) applicable laws (including regulations).

(3) *INCLUSIONS.*—Activities and facilities that may, in appropriate circumstances, be authorized under paragraph (1) include—

(A) zip lines;

(B) mountain bike terrain parks and trails;

(C) frisbee golf courses; and

(D) ropes courses.

(4) *EXCLUSIONS.*—Activities and facilities that are prohibited under paragraph (1) include—

(A) tennis courts;

(B) water slides and water parks;

(C) swimming pools;

(D) golf courses; and

(E) amusement parks.

(5) *LIMITATION.*—The Secretary may not authorize any activity or facility under paragraph (1) if the Secretary determines that the authorization of the activity or facility would result in the primary recreational purpose of the ski area permit to be a purpose other than skiing and other snow-sports.

(6) *BOUNDARY DETERMINATION.*—In determining the acreage encompassed by a ski area permit under subsection (b)(3), the Secretary shall not consider the acreage necessary for activities and facilities authorized under paragraph (1).

(7) *EFFECT ON EXISTING AUTHORIZED ACTIVITIES AND FACILITIES.*—Nothing in this subsection affects any activity or facility authorized by a ski area permit in effect on the date of enactment of this subsection during the term of the permit.

[(c) *RULES AND REGULATIONS.* Within one year after the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act, and shall, to the extent practicable and with the consent of existing permit holders, convert all existing ski area permits or leases on National For-

est System lands into ski area permits which conform to the provisions of this Act within 3 years of the date of enactment of this Act.] (d) *REGULATIONS.*—*Not later than 2 years after the date of enactment of this subsection, the Secretary shall promulgate regulations to implement this section.*

[(d)] (e) Nothing in this Act shall be deemed to amend, modify or otherwise affect the Secretary's duties under [the National Environmental Policy Act, or the Forest and Rangelands Renewable Resources Planning Act as amended by the National Forest Management Act] *the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.),* including his duties to involve the public in his decisionmaking and planning for the national forests.

