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STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

January 23, 1990

REFERENCE: Vol. 136, No. 1**SECTION:** Senate**SPEAKER:** Mr. SANFORD; Mr. GRAHAM; Mr. GLENN; Mr. ROTH; Mr. LIEBERMAN; Mr. CRANSTON; Mr. LEAHY; Mr. DeCONCINI; Mrs. KASSEBAUM; Mr. HATCH; Mr. BRYAN; Mr. BINGAMAN; Mr. DODD; Mr. MOYNIHAN; Mr. EXON; Mr. PELL; Mr. DOLE; Mr. LAUTENBERG; Mr. SYMMS; Mr. WIRTH; Mr. HUMPHREY; Mr. WILSON; Mr. SPECTER; Mr. SARBANES**TEXT:** [*99]

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By Mr. ARMSTRONG:

S. 2001. A bill to designate certain areas in the State of Colorado as wilderness areas and recreation areas, and for other purposes; to the Committee on Energy and Natural Resources.

colorado heritage preservation act

Mr. ARMSTRONG. Mr. President, from the majestic beauty of snow-covered mountains to sunburnt sandstone cliffs, the greatness of Colorado is seen in the land. We live in a vast preserve of beauty that inspires awe and pure wonder. Anyone who has seen above the plain a vivid western sunset of reds and golds, or witnessed the perfect rainbow of a remote waterfall, or walked under a forest canopy of fir and pine, knows we are charged with saving for posterity that which surely is the work of God.

I am pleased to begin my final year in the Senate by introducing the Colorado Natural Heritage Preservation Act. This legislation will give special protection to 594,175 acres of Colorado's most beautiful and pristine land. Of this acreage, 471,875 acres will be designated as wilderness, 122,300 acres as national recreation areas. The remaining portions of the study areas will be released for multiple-use management by the Forest Service. When this bill becomes law, Colorado will have more than 3 million acres of wilderness, the bulk of which has been designated from National Forest lands.

In every wilderness discussion about 1 percent of the people want everything west of the Mississippi declared wilderness, 1 percent declare we have far too much wilderness already, but 98 percent of our people recognize the claims

of extremists on both sides as exaggerations. Most people recognize the necessity to strike a reasonable balance between preserving our great natural assets and, at the same time, protecting private rights, jobs and economic opportunity.

Over the past 5 years my staff and I have discussed and worked with thousands of individual citizens and groups in Colorado to develop a balanced wilderness bill. To some, this may appear as an impossible dream, but as Carl Sandburg said, "Nothing happens unless first a dream." We can achieve a balance that serves the public interest. I believe this bill achieves that worthy end by designating all remaining National Forest lands that meet wilderness standards, creating a new national recreation area designation to protect beautiful, unique areas which cannot qualify as wilderness and by solving the water issue which has stalled the process for the past 5 years.

This legislation will clear the way for the designation of additional wilderness from areas now under study by the Bureau of Land Management. It is a vital step toward the ultimate completion of Colorado's wilderness system and the fulfillment of our obligation to serve as good stewards of the natural beauty and environment with which our State has been so richly blessed.

background

Colorado has been a leader among the States in the designation of wilderness. In 1979, the Forest Service completed its second roadless area review and evaluation--RARE II--of all National Forest lands considered to have potential for designation as wilderness. The Colorado congressional delegation promptly responded by passing the Colorado Wilderness Act of 1980. This legislation added 1.4 million acres to the National Wilderness Preservation System bringing the total in Colorado to 2.6 million acres; 684,250 acres could not be agreed on and Congress mandated that it remain in study status. The remaining 4.4 million acres of RARE II lands were deemed unsuitable for wilderness designation and released for multiple-use management by the 1980 act.

The 684,250 acres remaining in further planning or wilderness study status have been managed as wilderness and given extensive additional study by the Forest Service. These study areas are the subject of this legislation. While many States are still developing their first wilderness legislation in response to the RARE II studies, Colorado has been working on a second round of RARE II designations encompassing areas which are more marginal from a wilderness standpoint and contain numerous conflicts.

By 1984, the Forest Service completed its research of the mandated study areas and recommended 401,593 acres as suitable for wilderness designation. In response, legislation was introduced by several members of the Colorado delegation reflecting their individual views on how the final designation of forest lands should proceed.

In 1984, the Sierra Club filed a suit in U.S. District Court asserting that Congress, in the designation of wilderness, intended to create Federal water rights to serve wilderness purposes--by implication. The suit challenged an historic understanding in Congress that wilderness designation had no effect on water rights. As a result, the most eminent water authorities in Colorado requested that I include a provision in my legislation to guard against an adverse court decision. At the time this possibility seemed remote, but at their urging, I included a provision in my 1984 bill which clearly denied the creation of any new Federal water right, either express or implied, by virtue of wilderness designation.

In November 1985, the worst fears of Colorado's water leaders were realized when Judge John L. Kane handed down a decision in *Sierra Club v. Block*, 615 F.Supp. 44 (1984) which essentially supported the Sierra Club's position and ordered the Federal agencies to assert Federal water claims. Judge Kane augmented the decision with two others, *Sierra Club v. Block*, 622 F.Supp. 484 (1985), and *Sierra Club v. Lying*, 661 F.Supp. 1490 (1987). These decisions are at odds with the legislative history of wilderness designation. Moreover, a court of equal jurisdiction in New Mexico has concluded the opposite. [*State of New Mexico v. Molybdenum Corp. of America*, CV9780C (D.N.M.) Report of Special Master filed March 27, 1987, Report of Special Master affirmed by the court February 2, 1988, motion for reconsideration denied June 2, 1988.] The Kane decision is being strongly challenged by the Department of Agriculture acting on behalf of the Federal Government and is now under appeal in the 10th Circuit Court of Appeals. The State of Colorado and the Colorado Water Congress are among the intervenors supporting the appeal.

The water issues raised by the Sierra Club suit and the Kane decision have stalled wilderness designation in Colorado since 1985. The congressional delegation has made several attempts to break the impasse and has demonstrated by negotiations that agreement could be reached on all issues except water.

In 1987, Senator Wirth and I created a negotiating team of 16 outstanding Colorado leaders to explore all possibilities for compromise of the water issue. The group included: Harold Miskel of the Colorado Water Congress, Denver Water Providers, Metro Denver Water Authority, Southeastern Water Conservation District and the Cities of Pueblo,

Colorado Springs, and Aurora; William H. Miller of the Denver Water Board; Sam Maynes of the Southwestern and Rio Grande Water Conservation Districts; William McDonald of the Colorado Water Conservation Board; Keith Propst of the Colorado Farm Bureau; Rollie Fischer of the Colorado River Water Conservation District; Carl Trick of the Colorado Cattlemens Association; Greg Hobbs of the Northern Colorado Water Conservation District and lead attorney for the appeal of the Kane decision; Maggie Fox of the Sierra Club; David Getches of the University of Colorado Law School; Francis Green of the Holy Cross Wilderness Defense Fund; Darrell Knuffke of the Wilderness Society; Chris Meyer of the National Wildlife Federation and the Natural Resources Clinic; Glenn Porzak of the Colorado Mountain Club; Lori Potter of the Sierra Club Legal Defense Fund; and Charles B. White, Denver attorney.

It was our hope and intention to develop legislation we could jointly introduce and pass. The water negotiating group has worked diligently for 2 years but has not yet been able to resolve the issue. On July 18, 1989, Senator Wirth decided to move independently and introduce his own legislation, declaring, "Negotiations have gone as far as they can go, it's deadlocked." Colorado's leading water attorneys have closely analyzed the water language in the Wirth bill and have determined that it clearly endangers our State's water system and, at the same time, undermines Colorado's appeal of the Kane decision. As a result, a large number of major organizations and governmental entities have entered the debate with resolutions expressing the critical need to protect Colorado's water rights system.

Those who do not understand how water issues could snag wilderness designation simply do not understand the West. In the Western States, there is no issue more fundamental and far-reaching than water. In arid States, with annual rainfall of 12 inches or less, life is literally dependent on water development. From earliest settlement, we have been haunted by the twin spectres of flood and drought. Our ancestors experienced the heartbreak of spring floods washing away their homes followed by withering crops as the last of mountain snows melted and streams dried up. Because far-sighted leaders developed extensive water management systems keyed to dams and reservoirs for storage of the limited water supply, most modern inhabitants of the West have been spared the worst ravages of flood and drought.

Fundamental to this essential water development has been the evolution of a legal framework to encourage beneficial water development and protect the water rights of those who successfully carried it out. Colorado has pioneered a system of water law over the last century under which all claims are adjudicated in State water courts. Each claim is quantified and given priority standing in relation to other claims based on the date the water was actually put to beneficial use. Supremacy of Western State water law is a critical issue because there are no property rights more important than western water rights. Virtually all property values, jobs and economic activity, including recreation, are hinged upon water rights, as is the future of one of the fastest growing regions in the Nation. To superimpose new Federal water rights on these State water systems would create legal and economic chaos with extremely damaging results.

The issue is not whether we should create wilderness areas to protect wilderness values. We should. The issue is how to create wilderness without permanently disrupting State water systems and destroying private water rights.

An additional difficulty is that a wilderness water right would be a new kind of right, completely foreign to western water systems. It would give Federal agencies the right and obligation to maintain streams in wilderness areas in their "natural condition" requiring historic flow patterns. Once established, the Federal Government would have the legal basis for stopping any development of any kind which would alter natural flows within a wilderness.

The West has been built on the foundation of stabilization of stream flows by storing flood water and releasing it back to streams when needed. But, if the right to maintain "natural stream flows" is achieved by the Federal Government, any needed development or change in a stream which altered flow characteristics, would be blocked. The West cannot cede its ability to meet future needs to the Federal Government by granting it the power to throttle all future changes in water management.

Establishment of new Federal water rights for wilderness purposes could also endanger the interstate water compacts. These pivotal agreements divide the water between the States in every major watershed; and each one required decades of negotiation. In the aftermath of the Kane decision we must guard against any possibility of the Federal Government's using wilderness rights to demand water flows across our State lines above and beyond compact requirements. This issue is particularly critical to Colorado where we have six major rivers flowing out of the State. Colorado still has unused entitlements to water under the compacts which would be vulnerable to demands to maintain "natural flows" in downstream wilderness areas in other States. The compacts guarantee our right to use our share of water arising in our State against the claims of large and politically powerful downstream States. Even so, these agreements also serve a highly beneficial environmental purpose by guaranteeing substantial stream flows from one State to another to meet the compact obligations.

I have decided to proceed with introduction of this bill to demonstrate how the water issue can logically be solved to balance the interests of all concerned. The water language in this legislation is the result of over 5 years of dialog and debate with the leading water experts in our State and throughout the West. It does not superimpose Federal water rights on the State water system, it requires the Federal Government to acquire water rights for wilderness purposes through Colorado's existing in-stream flow law. This visionary system is now a well-established means for protecting essential minimum flows within Colorado without disrupting or destroying the water rights of others. Over 7,000 miles of Colorado streams are now guaranteed basic minimum flow as a result of this system.

Most of the areas designated by this legislation encompass headwaters of streams where wilderness will have limited direct impact on water rights. However, action by Congress on this legislation will send a powerful signal to the courts on creation or denial of federal wilderness water rights and establish a precedent for future designations.

The BLM lands, now under study for wilderness, are generally at lower elevations. These proposed wilderness areas span rivers and streams with literally thousands of adjudicated water rights utilizing a vast system of irrigation ditches, storage dams, municipal water supplies and hydro-generation plants above them. It would be grossly irresponsible to proceed with this legislation without thoroughly understanding the devastating consequences of establishing Federal wilderness water rights.

It is not only fair, but absolutely essential, for the Federal Government to continue to play by the same rules as all other entities competing for scarce water supplies. The bill's water provisions will protect Colorado's water rights system, preserve our options to develop Colorado's allotment of water under the interstate compacts, and utilize a proven method for assuring reasonable stream flows in wilderness areas. All of these requirements must be met before we can proceed with wilderness designation. This legislation meets them.

balancing the uses of public land

The bill is also the culmination of years of information gathering and debate on a wide range of other issues involved in wilderness designation. We in Colorado are now in a position to proceed with confidence that we are extending our wilderness system to the utmost within the framework of protecting Colorado's water system, safeguarding private property rights and balancing all of the interests involved in the use of our public lands.

Public land belongs to everyone and is not the province of the few, either to lock away or exploit. This bill is an honest effort to balance the goal of preserving major tracts of land in their natural state with an increasing demand for outdoor recreational benefits offered by the public lands. It is also a conscientious effort to balance public demands with the protection of private property and with established rights to economic uses of public land.

Because public-use policies of Federal land have such long-term fundamental effects, we cannot afford to go to extremes. Wilderness is a form of nonmanagement—a conscious decision to leave an area to the ravages of nature and to preclude any and all activities which could leave the imprint of man's presence. Thus, all designation of wilderness must be in the context of the effect on surrounding areas and the interests of the public at large.

While it is vital to preserve major tracts of land in a natural state, we need not designate all public land as wilderness to protect it. Outdoor recreational uses are managed in an enlightened way to give millions of Americans great pleasure from the public lands. Activities such as cross-country skiing, snowmobiling, hunting and fishing, camping, hiking, canoeing, and various forms of motorized recreation can be carefully managed to protect the basic land resource in perpetuity.

With over one-third of Colorado owned by the Federal Government, the economic well-being of a large number of our people is directly dependent upon continued multiple-use of public lands—whether for water storage, commercial recreation, grazing, timbering, or energy. Scientific harvest of renewable resources on nonwilderness public lands can, if carefully carried out, improve the natural environment while providing essential products to our people.

But, we will never again allow economic uses to despoil the public lands. The new environmental ethic, now widely accepted, is reinforced by Federal, State, and local laws to ensure environmental protection of our public lands. Consequently, most private businesses recognize the imperative of carrying our economic uses of public resources in a manner designed to protect and enhance the environment.

wilderness designation

The 14 areas proposed for wilderness designation are all worthy additions to Colorado's wilderness system. All meet the wilderness standards outlined in the National Wilderness System Act of 1964 which require the areas to be "with the imprint of man's work substantially unnoticeable," to "have outstanding opportunities for solitude," and "of sufficient size as to make practicable its preservation and use in an unimpaired condition."

These new areas are located in Colorado's beautiful high country and will offer outstanding opportunities for wilderness experience. The largest and most spectacular addition is the 20,000 acre area encompassing the Sangre de Cristo range and includes several 14,000 foot peaks popular with mountain climbers. One downstream area, the Piedra, is included, but the water rights that exist upstream from the wilderness are protected by the carefully crafted water language. Taken as a whole, the new additions will round out a system with wilderness areas well distributed throughout Colorado's mountainous areas.

The boundaries of each proposed area have been drawn after an extensive effort to understand and resolve the many conflicts created by wilderness designation. Experience has demonstrated the folly of encompassing significant conflicts in wilderness areas. Such action leaves an aftermath of thorny problems which are expensive and laborious-and sometimes impossible-to solve. Congress has never appropriated sufficient funds to buy preexisting inholdings and private rights in wilderness areas and the exchange process has very slow and laborious. Too often, private property owners face the quandary of enduring preemption of rights by the Government or undertaking costly legal redress.

There are a number of difficult problems created by inholdings in existing wilderness. It is far better to avoid as many of these conflicts as reasonably possible at the time of the designation than to spend scarce Federal resources in dealing with endless administrative problems and lengthy litigation.

This bill would also direct the Forest Service to make an immediate study of the problem of conflicts within existing wilderness areas in Colorado, including private inholdings, rights of way, and other valid private rights. The Forest Service would be directed to report back to Congress within 1 year of the enactment of this bill on the extent of the problems and costs now incurred by the agency in dealing with them. Further, the Forest Service would be required to develop a proposed program and budget to resolve these existing conflicts within a reasonable timeframe and with adequate protection for the rights of those involved.

national recreation areas

This legislation also creates four national recreation areas, comprised of five of the study areas, none of which can objectively qualify as wilderness. National recreation areas have been created through the years for the preservation and enhancement of recreational opportunities on public lands. It is another level of management which has been used primarily in the past as a means of expanding recreational opportunities in and around major Federal water projects. There is no basic organic national recreation area law comparable to the National Wilderness Act. Each area carries its own definition tailored to the specific resources involved.

I am proposing to use this established designation for the furtherance of outstanding backcountry recreational opportunities in Colorado and the protection of the natural environment. The legislation outlines general management guidelines for these areas while preserving essential latitude for the Forest Service to prescribe the most appropriate uses for each individual area.

This designation has the advantage of allowing recreational uses and facilities not allowed in wilderness areas and accommodating preexisting uses which are not compatible with wilderness designation. The management of these areas would differ from multiple-use management in that the priority objective is the creation and enhancement of backcountry recreational opportunities. Other uses are permitted if compatible with the purposes of the designation. It also provides that active management techniques be used to provide and enhance the recreational opportunities of the areas.

The public land use increasing most rapidly is outdoor recreation. Much of the demand is keyed to a wide variety of off-highway vehicles which enable a broad spectrum of people a chance to experience the back country. Creation of national recreation areas to meet this demand will provide an outlet within a well-managed context and help protect our fragile high-country from unauthorized off-road travel. It also provides a way to give areas like the magnificent Spanish Peaks a protective status which is compatible with extensive inholdings and establish a national designation which many of the local citizens seek as a way to promote their local area.

There are large numbers of people in our society who have to rely on motorized access. Our country's demographics are changing, particularly by dramatic increases in life expectancy. The way we utilize our public lands must change to meet the outdoor recreational needs of increasing numbers of older people. Likewise, we need to become more sensi-

tive to the needs of handicapped citizens by extending their opportunities for back-country experiences. These needs can be met if we maintain sufficient motorized and mechanized access.

We also must respond to the changing needs of American families. It is important to provide practical opportunities for back-country recreation to families that must juggle leave time of working members. Families in this situation often have to schedule short vacations which preclude taking the time required for hiking long distances into the back country. Families with children also have special access needs which should not be overlooked.

Utah's Canyonlands National Park is an example where a unique back-country experience is provided, through all-wheel-drive motorized access, to thousands of Americans who would otherwise be unable to see any significant part of this spectacular area. At the same time, a powerful use ethic has evolved by visitors who zealously respect the admonition to use only designated trails. This approach enables Americans of all ages and circumstance to enjoy unique natural areas and still preserve and protect the natural environment.

the wilderness debate

It is to everyone's benefit to achieve a reasonable balance between competing public interests in designating wilderness and nonwilderness lands. Many of the issues are controversial with valid points of view on both sides. The protection of our environment and the wisest use of public land are crucial issues and merit the most rigorous adherence to truth and the assembly of the most factual and scientific data available.

It is incumbent upon all who participate in this process to do their part to preserve the integrity of the debate. That is why have devoted so much time to trying to find the basis for a broad consensus and have insisted on gathering as much factual information as possible before finally drafting and introducing this legislation.

I invite all Coloradans to review this legislation with a view to the long-term future of our great State and a fair and reasonable balancing of the important values involved. Our children, grandchildren, and all generations to come will be the beneficiaries of our efforts to protect their increasingly precious natural heritage of wild and scenic lands. It is equally important for us to protect a proud heritage of civil debate, preservation of individual rights, protection of private property and a healthy economic climate in which to grow and prosper. All of these fundamental values are essential to the survival of a great nation committed to the ideals of democracy and freedom.

I ask unanimous consent to include in the Congressional Record a section-by-section description of this legislation, and an area-by-area summary of the areas proposed for designation.

There being no objection, the material was ordered to be printed in the Record, as follows:

Section-by-Section Description

title i-additions to the wilderness preservation system

Sec. 101. Designation of Wilderness Areas-adds fourteen new wilderness areas to Colorado, adding 471,875 acres to the Wilderness Preservation System.

Name of study area	Acres studied	Proposed acres	Name of wilderness area
American Flats	4,710	1,200	Addition-Big Blue.
Buffalo Peaks	56,950	29,400	Buffalo Peaks.
Cannibal Plateau/Powderhorn	72,470	62,300	Powderhorn.
Davis Peak	8,100	9,800	Addition-Mt. Zirkel.
Greenhorn Mountain	22,300	22,000	Greenhorn Mountain.
Lost Creek	23,000	7,000	Lost Creek.
Piedra	41,500	41,500	Piedra.
Sangre de Cristo	222,742	195,100	Sangre de Cristo.
Service Creek	39,860	33,600	Sarvis Creek.
South San Juan/V-Rock/Montezuma Peak	32,800	10,800	Addition-South San Juan.
Spruce Creek	8,000	8,000	Addition-Hunter-Fryingpan.
Vasquez	12,800	11,300	Vasquez Peak.
Weminuche Additions	33,660	28,744	Addition-Weminuche, and West Needle.