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SENATE

{ REPORT
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CONTINENTAL DIVIDE NATIONAL SCENIC TRAIL COMPLETION ACT

MAY 16, 2024.—Ordered to be printed

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

R E P O R T

[To accompany S. 594]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 594) to require the Secretary of Agriculture and the Secretary of the Interior to prioritize the completion of the Continental Divide National Scenic Trail, 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.

AMENDMENT

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the “Continental Divide National Scenic Trail Completion Act”.

SEC. 2. DEFINITIONS.

In this Act:

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

(2) TRAIL.—The term “Trail” means the Continental Divide National Scenic Trail.

(3) TRAIL COMPLETION TEAM.—The term “Trail Completion Team” means the joint Forest Service-Bureau of Land Management Trail completion team established under section 4(a).

SEC. 3. COMPLETION OF CONTINENTAL DIVIDE NATIONAL SCENIC TRAIL.

Subject to the availability of appropriations, the Secretary and the Secretary of the Interior shall seek to complete the Trail as a continuous route not later than the 50th anniversary of the date of designation of the Trail as a national scenic trail.

SEC. 4. TRAIL COMPLETION TEAM.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of the Interior shall establish a joint Forest Service-Bureau of Land Management Trail completion team to work in coordination with the administrator of the Trail—

- (1) to facilitate the completion and optimization of the Trail, consistent with the purposes of the Trail; and
- (2) to assist in the development of the comprehensive development plan for the Trail under section 5.

(b) **CONSULTATION.**—As appropriate, the Trail Completion Team shall consult with other Federal agencies, affected State, Tribal, and local governments, landowners, affected land-grant mercedes owners and users, acequias, and other interested parties in—

- (1) the completion and optimization of the Trail; and
- (2) the development and completion of the comprehensive development plan for the Trail under section 5.

SEC. 5. COMPREHENSIVE DEVELOPMENT PLAN FOR THE CONTINENTAL DIVIDE NATIONAL SCENIC TRAIL.

(a) **IN GENERAL.**—Not later than 3 years after the date of establishment of the Trail Completion Team under section 4(a), the Secretary shall complete a comprehensive development plan for the Trail.

(b) **PLAN INCLUSIONS.**—The comprehensive development plan under subsection (a) shall—

- (1) identify any gaps in the Trail for which the Secretary and the Secretary of the Interior have not been able to acquire land;
- (2) identify opportunities for the use of easements acquired from willing sellers to facilitate completion of the Trail; and
- (3) include general and site-specific Trail development plans, including anticipated costs of the plans.

SEC. 6. PARTNERSHIPS.

The Secretary and the Secretary of the Interior shall seek to enter into agreements with volunteer and nonprofit organizations, as appropriate, to facilitate the completion and administration of the Trail.

SEC. 7. EFFECT.

Nothing in this Act—

- (1) provides any authority to acquire land or interests in land for inclusion in the Trail beyond the authorities provided for the Trail in the National Trails System Act (16 U.S.C. 1241 et seq.), including acquisition by eminent domain; or
- (2) makes the acquisition of land or interests in land for the Trail a priority over other land acquisition authorizations.

PURPOSE

The purpose of S. 594 is to direct the Secretary of Agriculture and the Secretary of the Interior to seek to complete the Continental Divide National Scenic Trail (Trail) as a continuous route by November 10, 2028, the 50th anniversary of the trail's designation.

BACKGROUND AND NEED

In 1978, Congress designated the Continental Divide National Scenic Trail as a unit of the National Trails System (Public Law 95–625). The Trail extends approximately 3,100 miles from the Montana-Canada border to the New Mexico-Mexico border, following a designated route. Although National Scenic Trails are intended to be continuous hiking trails, several gaps in the Trail remain.

To facilitate the completion of the Trail by 2028, the 50th anniversary of the Trail's designation, S. 594 directs the Forest Service and the Bureau of Land Management to jointly establish a Trail Completion Team to complete and optimize the Trail and to assist

in the development of a comprehensive management plan for the Trail.

LEGISLATIVE HISTORY

S. 594 was introduced by Senators Heinrich and Daines on March 1, 2023. The Subcommittee on National Parks held a hearing on S. 594 on June 21, 2023.

Similar legislation, S. 4995, was introduced in the 117th Congress by Senators Heinrich and Daines on September 28, 2022. The Committee held a hearing on S. 4995 on December 1, 2022.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on December 14, 2023, by a majority voice vote of a quorum present, recommends that the Senate pass S. 594, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 594, the committee adopted an amendment in the nature of a substitute. The amendment clarifies that the Secretary shall seek to complete land acquisition for the Trail, subject to the availability of appropriations, and extends the timeframe in which the Comprehensive Development Plan is required to be established from 2 years to 3 years after the establishment of the Trail Completion Team. The amendment is summarized in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides the short title for the bill, the “Continental Divide National Scenic Trail Completion Act.”

Section 2. Definitions

Section 2 defines key terms used in the bill.

Section 3. Completion of Continental Divide National Scenic Trail

Section 3 requires the Secretary of Agriculture and the Secretary of the Interior to seek to complete the Continental Divide National Scenic Trail (Trail) as a continuous route by the 50th anniversary of the date of designation of the national scenic trail, subject to the availability of appropriations.

Section 4. Trail Completion Team

Section 4(a) requires the Secretary of Agriculture and the Secretary of the Interior, not later than one year after date of enactment of this Act, to establish a joint Forest Service and Bureau of Land Management Trail Completion Team to work in coordination with the administrator of the Trail to facilitate the completion of the Trail and to assist in the development of the comprehensive development plan required under section 5.

Paragraph (b) requires the Trail Completion Team to consult with other Federal agencies, states, Tribes, local governments, landowners, land-grant mercedes owners and users, acequias, and other interested parties in the completion and optimization of the

Trail as well as the development of the comprehensive development plan.

Section 5. Comprehensive development plan for the Continental Divide National Scenic Trail

Paragraph (a) requires the Secretary of Agriculture to complete a comprehensive development plan not later than 3 years after the date of establishment of the Trail Completion Team required under section 4(a).

Paragraph (b) requires that the comprehensive development plan identify any gaps in the Trail for which the Secretary of Agriculture and the Secretary of the Interior have not been able to acquire land; identify opportunities for the use of easements acquired from willing sellers; and include general and site-specific Trail development plans, including anticipated costs of the plans for completion of the Trail.

Section 6. Partnerships

Section 6 requires the Secretary of Agriculture and the Secretary of the Interior to seek to enter into agreements with volunteer and non-profit organizations, as appropriate, to facilitate the completion and administration of the Trail.

Section 7. Effect

Section 7 clarifies that nothing in this Act provides authority to acquire land or interests in land for inclusion in the Trail beyond the authorities provided by the National Trails System Act, including acquisition by eminent domain; or makes the acquisition of land or interests in land for the Trail a priority over other land acquisition authorities.

COST AND BUDGETARY CONSIDERATIONS

The Committee has requested, but has not yet received, the Congressional Budget Office's estimate of the cost of S. 594 as ordered reported. When the Congressional Budget Office completes its cost estimate, it will be posted on the Internet at www.cbo.gov.

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. 594. 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. 594, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 594, 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 statement for the record provided by the Forest Service and the Bureau of Land Management at the June 21, 2023, Subcommittee on National Parks hearing on S. 594 follows:

STATEMENT OF UNITED STATES DEPARTMENT OF
AGRICULTURE—FOREST SERVICE

Chairman Manchin, Ranking Member Barrasso, and Members of the Committee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) on S. 594, the “Continental Divide Trail Completion Act.” The objective of the bill is to prioritize completion of the Continental Divide National Scenic Trail (CDNST or Trail).

Designated in 1978, the CDNST stretches 3,100 miles from the deserts of New Mexico to the alpine peaks of the northern Rockies and traverses stunning and diverse landscapes. The Trail connects many of the defining moments and movements in our nation’s history along the spine of the continent.

USDA supports the goals of S. 594 and would like to work with the Committee and bill sponsors to address the concerns identified in this testimony. Completing land acquisition for the CDNST meets Congress’s intent in designating the Trail in 1978. USDA is committed to working with its partners to achieve this goal. USDA defers to the U.S. Department of the Interior regarding provisions in the bill affecting management of lands administered by the Bureau of Land Management and the National Park Service.

SECTION 3(a)—COMPLETION OF THE TRAIL

This section of the bill would require the Secretaries of Agriculture and the Interior to substantially conclude acquisition of land or interests in land necessary to complete the Trail by the 50th anniversary (November 10, 2028) of its designation. The intended acquisitions of land or interests in land under this bill would focus on meeting the nature and purposes of the CDNST, which are to provide for high-quality, scenic, and primitive hiking and horseback riding and to conserve natural, historic, and cultural resources along the CDNST corridor. No additional funding would be authorized by the bill to substantially complete the Trail.

USDA supports the need to substantially complete the CDNST but has concerns with meeting the proposed timeline to meet this goal by the 50th anniversary of the Trail. Progress towards this goal is in large part determined by private landowners’ willingness to sell or lease their property or put it under a conservation easement. Approximately 95% of the CDNST is protected on lands in public or tribal ownership or through easements across private lands. The 5% of the Trail that is incomplete and on which this bill is focused is primarily co-located on

major highways or secondary roads that do not provide for the safety of hikers or meet the nature and purposes of the CDNST. This work has not been completed due to lack of dedicated staff and funding, as well as a lack of willing sellers in some areas. Once the optimal location review for the Trail is completed, we expect to have a better idea of the workload for acquisition of land and interests in land and could then establish a manageable timeline for completion.

SECTION 3(b)—TRAIL COMPLETION TEAM

This section of the bill would establish an interagency team to work with the Trail Administrator (USDA's Forest Service) to facilitate optimal location of additional segments for completion of the Trail. USDA supports establishment of an interagency team consisting of USDA's Forest Service and the U.S. Department of the Interior's Bureau of Land Management to work on conveyances of land and interests in land for completing the Trail. The work described in section 3(b)(2) under "Duties of the Team" would best be suited to the Trail Administrator, specialists with skills such as geographic information system mapping, lands and reality management, cadastral surveying, landscape architecture, and natural resource management, and key partners such as the Continental Divide Trail Coalition.

USDA is concerned about the consultation requirement for the Trail Completion Team in section 3(b)(2)(C). This subsection would require the Team to consult with other federal agencies, affected Indian Tribes, Governors of affected States, local governments, affected landowners, land grant-mercedes, acequias, applicable owners or users of a land grant-merced or acequia, the Continental Divide Trail Coalition, and other volunteer and nonprofit organizations. "Consultation" as it pertains to federal agencies has a specific meaning when relating to federally recognized Indian Tribes. Tribal consultation is a government-to-government process between sovereigns that involves receiving input from Indian Tribes regarding proposed federal actions or policies that have Tribal implications. USDA is committed to collaboration and transparency that address the unique needs of all the entities listed in section 3(b)(2)(C), but seeks to avoid misinterpretation or dilution of its obligation to federally recognized Tribes as sovereign nations through use of the term "consult" in the bill. USDA would like to work with the bill sponsors and the Committee to differentiate work with non-Tribal entities from work with federally recognized.

SECTION 3(c)—COMPREHENSIVE DEVELOPMENT PLAN

This section would require the Secretary of Agriculture to submit to Congress a comprehensive development plan for the CDNST within two years. This plan would have to identify gaps in the CDNST where the Secretaries have been unable to acquire land or interests in land, a plan for

closing the gaps, and general and site-specific development plans, including anticipated costs, for closing the gaps.

USDA supports addressing gaps in the Trail in a planning document but has concerns with the term “comprehensive development plan,” as it may be confused with the CDNST comprehensive plan, which is already in place, as well as concerns with the requirement for site-specific development plans, which would be difficult to complete in the required timeframe due to the need for interagency and partner coordination and anticipated environmental reviews.

SECTION 3(d)—METHODS OF ACQUISITION OF LAND OR INTERESTS IN LAND

This section would specify methods of acquisition of land or interests in land for the Trail. USDA supports these methods of acquisition of land or interests in land from willing sellers, lessors, or grantors.

SECTION 3(e)—MAINTAINING PARTNERSHIPS

This section would require the Secretary of Agriculture and the Trail Completion Team to maintain partnerships with volunteer and nonprofit organizations that assist with development, maintenance, and management of the CDNST. USDA supports this section, although it is redundant with existing cooperative authority in the National Trails System Act.

SECTION 3(f)—REPORTS

This section would require the Secretary of Agriculture to submit an annual progress report to Congress until the acquisition of land or interests in land for the CDNST is complete. USDA supports submission of an annual progress report to Congress but requests flexibility to deliver this report as a briefing rather than as a written report.

CONCLUSION

USDA supports the goals of S. 594 and would like the opportunity to work with the Committee and bill sponsors to address the concerns identified by the Department.

STATEMENT FOR THE RECORD, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on S. 594, Continental Divide Trail Completion Act. S. 594 directs the Secretaries of Agriculture and Interior to complete the 3,100-mile Continental Divide National Scenic Trail (CDNST) by November 10, 2028—the 50th anniversary of the trail’s designation. The bill also establishes a joint U.S. Forest Service (Forest Service) and Bureau of Land Management (BLM) Trail Completion Team to facilitate the voluntary acquisitions, rights-of-ways and conservation easements needed to complete the trail.

On January 27, 2021, President Biden signed Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, which launched a government-wide effort to confront climate change and restore balance on public lands and waters. The President's directive recognizes the opportunities America's lands and waters offer and outlines a historic and ambitious challenge to the nation to conserve at least 30 percent of our lands and waters by 2030. The CDNST provides a place to reconnect with nature by offering high quality hiking, horseback-riding, and other recreational opportunities along the Continental Divide. The Department of the Interior (Department) supports S. 594 as it aligns with our priorities to provide safe and equitable access to outdoor recreation opportunities for all Americans. We believe the bill has the potential to address some longstanding challenges, and we look forward to working with the sponsors and the Committee on minor modifications. We defer to the Department of Agriculture regarding provisions affecting the management of lands administered by the Forest Service.

BACKGROUND

In 1968, Congress established the National Trails System Act to create trails in both urban and rural settings for people of all ages, interests, skills, and physical abilities. Today, there are 30 congressionally designated National Scenic and Historic Trails, many within an hour's drive from most urban areas. The lands these trails traverse often have complex jurisdictions, which requires substantial partnering among Federal agencies, non-profit organizations, and dedicated volunteers.

In 1978, Congress added the CDNST to the National Trails System and identified a corridor straddling along the backbone of the North American continent—the Divide—for the future placement of the CDNST. The entire CDNST corridor is approximately 3,100 miles long, extending from the Canadian border in Montana to the border of Mexico in New Mexico. Today, the completed portions of the CDNST traverse approximately 2,100 miles of Forest Service managed lands, 400 miles of BLM-managed lands, 260 miles of National Park Service-managed lands, 60 miles of State lands, and 2 miles of Tribal lands. The trail was designated for its scenic significance and is considered the "King of Trails," more difficult than its sister long distance trails, the Appalachian and Pacific Crest Trails. It navigates dramatically diverse ecosystems through mountain meadows, granite peaks, and high-desert surroundings.

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S. 594 requires the Secretaries of Agriculture and the Interior to ensure the completion of the CDNST as a contiguous route, to the maximum extent possible, by November 10, 2028. To complete and optimize the trail, the bill establishes the Trail Completion Team composed of Forest

Service and BLM employees. The Trail Completion Team is directed to carry out land and right-of-way acquisitions, easement acquisitions, relocations, and trail construction activities required for completion. Lastly, S. 594 requires the Secretary of Agriculture to submit a Comprehensive Development Plan to Congress that identifies and plans the elimination of trail gaps, and submit annual reports to Congress.

The Department supports the completion of the CDNST and has consistently worked towards this goal since its designation. Today, only 5 percent of the trail remains incomplete. The Department supports the creation of the Trail Completion Team to resolve long-standing barriers to completing the remainder of the trail. The Department notes that success of achieving the Sponsor's intent to complete the CDNST, on or before the 50th anniversary of its designation, is dependent on strong community-led efforts to work with willing landowners to connect the lands through means such as of a rights-of-ways, access and conservation easements, and acquisition of land. The Department acknowledges the challenges in completing the final portion of the trail given the presence of private lands within the trail corridor and is committed to completing the trail to the maximum extent possible, as provided by the bill.

Finally, the Department defers to the Department of Agriculture on provisions of the bill related to the Comprehensive Development Plan and reporting requirements.

CONCLUSION

The Department supports S. 594, and we would welcome the opportunity to work with the sponsor and the Committee on minor modifications to the bill.

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. 594 as ordered reported.