

APPENDIX D

SHELDON LEGAL HISTORY

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During the late 1800's and early 1900's ranchers, hunters, businessmen, tourists, naturalists, and other residents of the area now know as the Sheldon National Wildlife Refuge, became concerned over decreasing numbers of pronghorn antelope. Two groups in particular, the Boone and Crockett Club of New York City and the National Association of Audubon Societies, expressed dismay with the situation and believed urgent action was needed. In the fall of 1912, a campaign was initiated by the two organizations to raise funds for land acquisition. By 1918, \$35,000 had been raised and the Last Chance Ranch, about 30,000 acres of what was considered critical antelope wintering habitat, was purchased.

Purchase of the Ranch was an important impetus for issuance by Herbert Hoover in 1931 of Executive Order (EO) No. 5540 creating the Charles Sheldon Wildlife Refuge. The area was set apart to be managed by the Department of Agriculture as a reserve, and hunting, trapping, capturing, willfully disturbing, or killing of any wild animal or bird was declared unlawful.

By EO No. 7522 in 1936, Franklin D. Roosevelt established the Charles Sheldon Antelope Range by revoking portions of EO No. 7178 of 1935 that established the Hart Mountain Game Refuge, and by withdrawing an aggregate of approximately 539,000 acres in Nevada from settlement, location, sale, or entry. The area was reserved and set apart for the conservation and development of natural wildlife resources and for the protection and improvement of public grazing lands and natural forage resources. However, use for prospecting, locating, development, mining, entering, leasing, or patenting the mineral resources of the lands remained unrestricted. Management for the conservation and development of wildlife was placed under the joint jurisdiction of the Secretaries of Interior and Agriculture, and they were given power to jointly make such rules and regulations for its protection, administration, regulation, and improvement, and for the removal and disposition of surplus game animals, as necessary to accomplish its purposes. Management of the public grazing lands and natural forage resources was placed under the exclusive jurisdiction of the Secretary of the Interior. (In 1936, the Bureau of Biological Survey, a forerunner of the U.S. Fish and Wildlife Service, existed within the Department of Agriculture, and the Division of Grazing, a forerunner of the Bureau of Land Management, existed within the Department of the Interior.) The Executive Order also established priorities regarding range management for particular animal species by noting that "the natural forage resources ... shall be first utilized for the purpose of sustaining in a healthy condition a maximum of three thousand five hundred (3,500) antelope, the primary species, and such nonpredatory secondary species in such numbers as may be necessary to maintain a balanced wildlife population but in no case shall the consumption of forage by the combined population of the wildlife species be allowed to increase the burden of the range dedicated to the primary species: Provided further, that all forage resources within this range or preserve shall be available, except as herein otherwise provided with respect to wildlife, for domestic livestock"...under provisions of the Taylor Grazing Act of 1934.

Since 1931, the Sheldon National Antelope Refuge was administered by the FWS. From 1936 until 1976, the Charles Sheldon Antelope Range was managed under the dual administration of the FWS and BLM. On February 27, 1976, the Game Range Act (P.L. 94-223) was passed as an amendment to the National Wildlife Refuge System Administration Act of 1966. The Game Range Act gave sole jurisdiction of the Charles Sheldon Antelope Range to the FWS. More specifically, the Act consolidated "...the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas" into the "National Wildlife Refuge System" to "be administered by the Secretary through the United States Fish and Wildlife Service." Additionally, the Act restricted transfer or disposal of lands in the System. By Public Land Order 5634, in May 1978, the Refuge and Range were consolidated into one administrative unit, and the name was changed to the Sheldon National Wildlife Refuge.

In 1974, in response to requirements of the Wilderness Act, a joint FWS-BLM legislative proposal was prepared for designation of approximately 341,500 acres on both the Sheldon National Antelope Refuge and the Charles Sheldon Antelope Range as a unit of the National Wilderness System (see map III-14). However, on December 4, 1974, the President asked Congress to delay action on Wilderness designation until a mineral survey of the Range was conducted by the U.S. Bureau of Mines and U.S. Geological Survey (USGS). On February 27, 1975, with the concurrence of the FWS, the BLM filed a request to withdraw Federally-owned lands and interest in the lands of the Charles Sheldon Antelope Range from location under the mining laws. The withdrawal was designed to protect mineral and wilderness values pending completion and evaluation of the mineral survey (40 FR 8368, Feb. 27, 1975). The withdrawal affected the entire Charles Sheldon Antelope Range except for 68,000 acres in the northeast corner. The USGS and Bureau of Mines completed their mineral report and made it available for review in December 1978. The Secretary of the Interior received this report in 1979 and has resubmitted the original 341,500 acre wilderness recommendation to Congress. Until Congress acts, the FWS will manage the proposed areas as de facto Wilderness.

APPENDIX D (Cont.)

Copies of Selected Legislation, Executive
Orders, and public Land Orders

Executive Order

Charles Sheldon Wild Life Refuge

Nevada

It is hereby ordered that the following described area in Washoe County, Nev., be, and the same is hereby, reserved and set apart for the use of the Department of Agriculture as a refuge and breeding ground for wild animals and birds, subject to existing valid rights:

MOUNT DIABLO MERIDIAN

- T. 45 N., R. 21 E., secs. 1 to 5, and secs. 8 to 17, inclusive;
- T. 46 N., R. 21 E., secs. 20 to 29, and secs. 32 to 36, inclusive;
- T. 45 N., R. 22 E., secs. 4 to 9, inclusive, and secs. 16, 17, and 18;
- T. 46 N., R. 22 E., secs. 19, 20, 21, and secs. 28 to 33, inclusive.

It is unlawful within this reservation (a) to hunt, trap, capture, willfully disturb, or kill any wild animal or bird of any kind whatever, to take or destroy the nests or eggs of any wild bird, to occupy or use any part of the reservation, or to enter thereon for any purpose, except under such rules and regulations as may be prescribed by the Secretary of Agriculture; (b) to cut, burn, or destroy any timber, underbrush, grass, or other natural growth; (c) willfully to leave fire or to suffer it to burn unattended near any forest, timber, or other inflammable material; (d) after building a fire in or near any forest, timber, or other inflammable material, to leave it without totally extinguishing it; and (e) willfully to injure, molest, or destroy any property of the United States.

Warning is given to all persons not to commit any of the acts herein enumerated, under the penalties prescribed by sections 106, 107, and 145 of chapter 4, title 18, United States Code, or by section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224).

This refuge shall be known as the Charles Sheldon Wild Life Refuge.

HERBERT HOOVER

THE WHITE HOUSE,

January 26, 1931.

[No. 5540]

EXECUTIVE ORDER

CHARLES SHELDON ANTELOPE RANGE

NEVADA

By virtue of and pursuant to the authority vested in me as President of the United States and by the act of August 24, 1912, ch. 369, 37 Stat. 497, it is ordered as follows:

Section 1. Executive Order No. 7178 of September 6, 1935, which reserved and set apart certain lands in Oregon and Nevada as the Hart Mountain Game Range, is hereby revoked as to the following-described lands in Nevada:

Mount Diablo Meridian

- T. 45 N., R. 22 E., secs. 1, 2, and 3; secs. 10 to 15, inclusive; and secs. 19 to 36, inclusive;
- T. 46 N., R. 22 E., secs. 1 to 18, inclusive; secs. 22 to 27, inclusive; and secs. 34, 35, and 36;
- T. 47 N., R. 22 E., all;
- Tps. 43 to 47 N., inclusive, R. 23 E., all;
- Tps. 46 and 47 N., R. 23½E., unsurveyed, all;
- Tps. 43 to 45½N., inclusive, R. 24E., all;
- Tps. 46 and 47 N., R. 24E., partly unsurveyed, all;
- Tps. 43 and 44 N., R. 24½E., all;
- Tps. 43 to 47 N., inclusive, Rs. 25 and 26 E., partly unsurveyed, all;
- Tps. 46 and 47 N., R. 27 E., partly unsurveyed, all;
- T. 46 N., R. 28 E., secs. 5 to 8, inclusive; secs. 17 to 20, inclusive; and secs. 29 to 32, inclusive;
- T. 47 N., R. 28 E., secs. 19 and 20, and secs. 29 to 32, inclusive, unsurveyed; aggregating approximately 539,000 acres.

Section 2. Subject to the conditions expressed in the above-mentioned acts and to all existing valid rights, the lands described in section 1 of this order are hereby withdrawn from settlement, location, sale, or entry and reserved and set apart for the conservation and development of natural wildlife resources and for the protection and improvement of public grazing lands and natural forage resources; Provided, That nothing herein contained shall restrict prospecting, locating, developing, mining, entering, leasing, or patenting the mineral resources of the lands under the applicable laws; Provided further, That any lands within the described area that are otherwise withdrawn or reserved will be affected hereby only so far as may be consistent with the uses and purposes for which such prior withdrawal or reservation was made: And provided further, That upon the termination of any private right to,

or appropriation of, any public lands within the exterior limits of the area included in this order, or upon the revocation of prior withdrawals unless expressly otherwise provided in the order of revocation, the lands involved shall become a part of this preserve.

Section 3. This range or preserve, so far as it relates to conservation and development of wildlife, shall be under the joint jurisdiction of the Secretaries of the Interior and Agriculture, and they shall have power jointly to make such rules and regulations for its protection, administration, regulation, and improvement, and for the removal and disposition of surplus game animals, as they may deem necessary to accomplish its purposes, and the range or preserve, being within a grazing district duly established pursuant to the provisions of the act of June 28, 1934, ch. 865, 48 Stat. 1269, as amended by the act of June 26, 1936, Public No. 827, 74th Congress, shall be under the exclusive jurisdiction of the Secretary of the Interior so far as it relates to the public grazing lands and natural forage resources thereof; Provided, however, That the natural forage resources therein shall be first utilized for the purpose of sustaining in a healthy condition a maximum of three thousand five hundred (3,500) antelope, the primary species, and such nonpredatory secondary species in such numbers as may be necessary to maintain a balanced wildlife population, but in no case shall the consumption of forage by the combined population of the wildlife species be allowed to increase the burden of the range dedicated to the primary species: Provided, further, That all the forage resources within this range or preserve shall be available, except as herein otherwise provided with respect to wildlife, for domestic livestock under rules and regulations promulgated by the Secretary of the Interior under the authority of the aforesaid act of June 28, 1934, as amended: And provided further, That land within the exterior limits of the area herein described, acquired and to be acquired by the United States for the use of the Department of Agriculture for conservation of migratory birds and other wildlife, shall be and remain under the exclusive administration of the Secretary of Agriculture and may be utilized for public grazing purposes only to such extent as may be determined by the said Secretary to be compatible with the utilization of said lands for the purposes for which they were acquired as aforesaid under regulations prescribed by him.

Section 4. This preserve shall be known as the Charles Sheldon Antelope Range.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,

Dec. 21, 1936.

(No. 7522)

(R.F. Doc. 3932 - Filed December 22, 1936; 3:23 p.m.)

Public Law 94-223
94th Congress

An Act

To amend the National Wildlife Refuge System Administration Act of 1966,
and for other purposes.

Feb. 27, 1976
[H.R. 5512]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 4 of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)) is amended to read as follows:

National Wildlife
Refuge System
Administration
Act of 1966,
amendments.

“(a) (1) For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the ‘National Wildlife Refuge System’ (referred to herein as the ‘System’), which shall be subject to the provisions of this section, and shall be administered by the Secretary through the United States Fish and Wildlife Service. With respect to refuge lands in the State of Alaska, those programs relating to the management of resources for which any other agency of the Federal Government exercises administrative responsibility through cooperative agreement shall remain in effect, subject to the direct supervision of the United States Fish and Wildlife Service, as long as such agency agrees to exercise such responsibility.

“(2) No acquired lands which are or become a part of the System may be transferred or otherwise disposed of under any provision of law (except by exchange pursuant to subsection (b)(3) of this section) unless—

Transfer or
disposal of lands,
restriction.

“(A) the Secretary of the Interior determines with the approval of the Migratory Bird Conservation Commission that such lands are no longer needed for the purposes for which the System was established; and

“(B) such lands are transferred or otherwise disposed of for an amount not less than—

“(i) the acquisition costs of such lands, in the case of lands of the System which were purchased by the United States with funds from the migratory bird conservation fund, or fair market value, whichever is greater; or

“(ii) the fair market value of such lands (as determined by the Secretary as of the date of the transfer or disposal), in the case of lands of the System which were donated to the System.

The Secretary shall pay into the migratory bird conservation fund the aggregate amount of the proceeds of any transfer or disposal referred to in the preceding sentence.

“(3) Each area which is included within the System on January 1, 1975, or thereafter, and which was or is—

“(A) designated as an area within such System by law, Executive order, or secretarial order; or

“(B) so included by public land withdrawal, donation, purchase, exchange, or pursuant to a cooperative agreement with any State or local government, any Federal department or agency, or any other governmental entity, shall continue to be a part of the System until otherwise specified by Act of Congress, except that nothing in this paragraph shall be construed as precluding—

“(i) the transfer or disposal of acquired lands within any such area pursuant to paragraph (2) of this subsection;

“(ii) the exchange of lands within any such area pursuant to subsection (b) (3) of this section; or

“(iii) the disposal of any lands within any such area pursuant to the terms of any cooperative agreement referred to in subparagraph (B) of this paragraph.”.

Approved February 27, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-334 (Comm. on Merchant Marine and Fisheries).

SENATE REPORT No. 94-593 (Comm. on Commerce).

CONGRESSIONAL RECORD:

Vol. 121 (1975): Nov. 14, considered and passed House.

Vol. 122 (1976): Feb. 4, considered and passed Senate, amended.

Feb. 17, House concurred in Senate amendment.

[4310-84]

(Nev. 051742; Public Land Order 55034)

NEVADA

Prior Amendment of Executive Order No. 7522; Prior Revocation of Public Land Order No. 5497; Consolidation of Charles Sheldon Antelope Range and Charles Sheldon Wildlife Refuge; Change of Name to Sheldon National Wildlife Refuge; Clarification of Administration and Management Under National Wildlife Refuge System Administration Act

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This public land order changes the names of the Charles Sheldon Antelope Range and the Charles Sheldon Wildlife Refuge and combines them as the Sheldon National Wildlife Refuge. Also, it affords notice of prior statutory action taken to revoke or revise public land orders or Executive orders, as necessary, to change the administration and management of the area in accordance with Pub. L. 94-223.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-7831.

By virtue of the authority that is vested in the Secretary of the Interior by law, including the authority that is vested in him by section 204 of the Act of October 21, 1976 (Pub. L. 94-579, 90 Stat. 5751), and in accordance with the Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd(a)), it is ordered as follows:

1. The Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), provides that units of the National Wildlife Refuge System, including the Charles Sheldon Antelope Range, shall be administered by the Secretary of the Interior exclusively through the United States Fish and Wildlife Service. Accordingly, notice is hereby given that effective as of February 27, 1976 and by virtue of Pub. L. 94-223, *supra*:

(a) Public Land Order No. 5497 of April 25, 1975 (40 FR 18967), as amended by Public Land Order 5503 of June 23, 1975 (40 FR 27659), which provided for the transfer of all the Secretary's delegated authority for the operation and administration of the Charles Sheldon Antelope Range, as described in the aforesaid orders, to the Bureau of Land Management, was revoked; and such authority was, and is now, vested solely in the United States Fish and Wildlife Service;

(b) The operation and administration of the Charles Sheldon Antelope Range, including grazing, was to be administered, and is now being administered, in accordance with the National Wildlife Refuge System Administration Act, as amended, except that, those holding grazing privileges validly issued by the Bureau of Land Management and in effect on February 27, 1976, are permitted to continue such privileges under terms and conditions imposed by the Taylor Grazing Act, and implementing regulations, until those privileges expire. The renewal or initiation of grazing privileges subsequent to February 27, 1976, is in accordance with the National Wildlife Refuge System Administration Act, as amended, and implementing regulations.

(c) Executive Order No. 7522 of December 21, 1936 (1 FR 2184), which established the Charles Sheldon Antelope Range, was modified to the extent necessary for it to conform to the provisions of (a) and (b), above.

2. For increased administrative efficiency, the lands and interests in land comprising the Charles Sheldon Wildlife Refuge, as established by Executive Order No. 5540, of January 23, 1931, and the adjoining Charles Sheldon Antelope Range, as established by Executive Order No. 7522 of December 21, 1936, are hereby consolidated into one administrative unit. Insofar as it combines these two units of the National Wildlife Refuge System, this order is not intended to alter or modify in any respect either of the aforementioned Executive Orders. As consolidated, the Charles Sheldon Wildlife Refuge, the name of which was so designated by Executive Order No. 5540, and the Charles Sheldon Antelope Range, the name of which was so designated by Executive Order No. 7522, shall hereafter be designated and known as the Sheldon National Wildlife Refuge.

3. This order does not affect or alter in any respect the Notice of Proposed Withdrawal, Nev-051742, relating to the Charles Sheldon Antelope Range, as published at 40 FR 8368.

APRIL 25, 1978.

GUY R. MARTIN,
Assistant Secretary
of the Interior.

(FR Doc. 78-12033 Filed 5-2-78; 8:45 am)