

Legislation Designating Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness Area

Omnibus Public Land Management Act of 2009, Subtitle E— Dominguez-Escalante National Conservation Area Public Law 111-11

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SEC. 2401. DEFINITIONS. (16 USCS 460zzz)

In this subtitle:

- (1) Conservation area.--The term “Conservation Area” means the Dominguez-Escalante National Conservation Area established by section 2402(a)(1).
- (2) Council.--The term “Council” means the Dominguez-Escalante National Conservation Area Advisory Council established under section 2407.
- (3) Management plan.--The term “management plan” means the management plan developed under section 2406.
- (4) Map.--The term “Map” means the map entitled “Dominguez-Escalante National Conservation Area” and dated September 15, 2008.
- (5) Secretary.--The term “Secretary” means the Secretary of the Interior.
- (6) State.--The term “State” means the State of Colorado.
- (7) Wilderness.--The term “Wilderness” means the Dominguez Canyon Wilderness Area designated by section 2403(a).

SEC. 2402. DOMINGUEZ-ESCALANTE NATIONAL CONSERVATION AREA. (16 USCS 460zzz-1)

- (a) Establishment.--
 - (1) In general.--There is established the Dominguez-Escalante National Conservation Area in the State.

(2) Area included.--The Conservation Area shall consist of approximately 209,610 acres of public land, as generally depicted on the Map.

(b) Purposes.--The purposes of the Conservation Area are to conserve and protect for the benefit and enjoyment of present and future generations--

- (1) the unique and important resources and values of the land, including the geological, cultural, archaeological, paleontological, natural, scientific, recreational, wilderness, wildlife, riparian, historical, educational, and scenic resources of the public land; and
- (2) the water resources of area streams, based on seasonally available flows, that are necessary to support aquatic, riparian, and terrestrial species and communities.

(c) Management.—

(1) In general.--The Secretary shall manage the Conservation Area—

- (A) as a component of the National Landscape Conservation System;
- (B) in a manner that conserves, protects, and enhances the resources and values of the Conservation Area described in subsection (b); and
- (C) in accordance with—
 - (i) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);
 - (ii) this subtitle; and
 - (iii) any other applicable laws.

(2) Uses.—

(A) In general.--The Secretary shall allow only such uses of the Conservation Area as the Secretary determines would further the purposes for which the Conservation Area is established.

(B) Use of motorized vehicles.—

- (i) In general.--Except as provided in clauses (ii) and (iii), use of motorized vehicles in the Conservation Area shall be allowed—
 - (I) before the effective date of the management plan, only on roads and trails designated for use of motor vehicles in the management plan that applies on the date of the enactment of this Act to the public land in the Conservation Area; and
 - (II) after the effective date of the management plan, only on roads and trails designated in the management plan for the use of motor vehicles.
- (ii) Administrative and emergency response use.--Clause (i) shall not limit the use of motor vehicles in the Conservation Area for administrative purposes or to respond to an emergency.
- (iii) Limitation.--This subparagraph shall not apply to the Wilderness.

SEC. 2403. DOMINGUEZ CANYON WILDERNESS AREA. (16 USCS 460zzz-2; 16 U.S.C. 1132 note.)

(a) In General.--In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), the approximately 66,280 acres of public land in Mesa, Montrose, and Delta Counties, Colorado, as generally depicted on the Map, is designated as wilderness and as a component of the National Wilderness Preservation System, to be known as the “Dominguez Canyon Wilderness Area”.

- (b) Administration of Wilderness.--The Wilderness shall be managed by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this subtitle, except that—
- (1) any reference in the Wilderness Act to the effective date of that Act shall be considered to be a reference to the date of enactment of this Act; and
 - (2) any reference in the Wilderness Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary of the Interior.

SEC. 2404. MAPS AND LEGAL DESCRIPTIONS. (16 USCS 460zzz-3)

- (a) In General.--As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and a legal description of the Conservation Area and the Wilderness with—
- (1) the Committee on Energy and Natural Resources of the Senate; and
 - (2) the Committee on Natural Resources of the House of Representatives.

(b) Force and Effect.--The Map and legal descriptions filed under subsection (a) shall have the same force and effect as if included in this subtitle, except that the Secretary may correct clerical and typographical errors in the Map and legal descriptions.

(c) Public Availability.--The Map and legal descriptions filed under subsection (a) shall be available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 2405. MANAGEMENT OF CONSERVATION AREA AND WILDERNESS. (16 USCS 460zzz-4)

(a) Withdrawal.--Subject to valid existing rights, all Federal land within the Conservation Area and the Wilderness and all land and interests in land acquired by the United States within the Conservation Area or the Wilderness is withdrawn from—

- (1) all forms of entry, appropriation, or disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(b) Grazing.—

(1) Grazing in conservation area.--Except as provided in paragraph (2), the Secretary shall issue and administer any grazing leases or permits in the Conservation Area in accordance with the laws (including regulations) applicable to the issuance and administration of such leases and permits on other land under the jurisdiction of the Bureau of Land Management.

(2) Grazing in wilderness.--The grazing of livestock in the Wilderness, if established as of the date of enactment of this Act, shall be permitted to continue—

(A) subject to any reasonable regulations, policies, and practices that the Secretary determines to be necessary; and

(B) in accordance with—

- (i) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and
- (ii) the guidelines set forth in Appendix A of the report of the Committee on Interior and Insular Affairs of the House of Representatives accompanying H.R. 2570 of the 101st Congress (H. Rept. 101-405).

(c) No Buffer Zones.—

(1) In general.--Nothing in this subtitle creates a protective perimeter or buffer zone around the Conservation Area.

(2) Activities outside conservation area.--The fact that an activity or use on land outside the Conservation Area can be seen or heard within the Conservation Area shall not preclude the activity or use outside the boundary of the Conservation Area.

(d) Acquisition of Land.—

(1) In general.--The Secretary may acquire non-Federal land within the boundaries of the Conservation Area or the Wilderness only through exchange, donation, or purchase from a willing seller.

(2) Management.--Land acquired under paragraph (1) shall—

(A) become part of the Conservation Area and, if applicable, the Wilderness; and

(B) be managed in accordance with this subtitle and any other applicable laws.

(e) Fire, Insects, and Diseases.--Subject to such terms and conditions as the Secretary determines to be desirable and appropriate, the Secretary may undertake such measures as are necessary to control fire, insects, and diseases—

(1) in the Wilderness, in accordance with section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)); and

(2) except as provided in paragraph (1), in the Conservation Area in accordance with this subtitle and any other applicable laws.

(f) Access.--The Secretary shall continue to provide private landowners adequate access to inholdings in the Conservation Area.

(g) Invasive Species and Noxious Weeds.--In accordance with any applicable laws and subject to such terms and conditions as the Secretary determines to be desirable and appropriate, the Secretary may prescribe measures to control nonnative invasive plants and noxious weeds within the Conservation Area.

(h) Water Rights.—

(1) Effect.--Nothing in this subtitle—

(A) affects the use or allocation, in existence on the date of enactment of this Act, of any water, water right, or interest in water;

(B) affects any vested absolute or decreed conditional water right in existence on the date of enactment of this Act, including any water right held by the United States;

(C) affects any interstate water compact in existence on the date of enactment of this Act;

(D) authorizes or imposes any new reserved Federal water rights; or

(E) shall be considered to be a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State on or before the date of enactment of this Act.

(2) Wilderness water rights.—

(A) In general.--The Secretary shall ensure that any water rights within the Wilderness required to fulfill the purposes of the Wilderness are secured in accordance with subparagraphs (B) through (G).

(B) State law.—

(i) Procedural requirements.--Any water rights within the Wilderness for which the Secretary pursues adjudication shall be adjudicated, changed, and administered in accordance with the procedural requirements and priority system of State law.

(ii) Establishment of water rights.—

(I) In general.--Except as provided in subclause (II), the purposes and other substantive characteristics of the water rights pursued under this paragraph shall be established in accordance with State law.

(II) Exception.--Notwithstanding subclause (I) and in accordance with this subtitle, the Secretary may appropriate and seek adjudication of water rights to maintain surface water levels and stream flows on and across the Wilderness to fulfill the purposes of the Wilderness.

(C) Deadline.--The Secretary shall promptly, but not earlier than January 2009, appropriate the water rights required to fulfill the purposes of the Wilderness.

(D) Required determination.--The Secretary shall not pursue adjudication for any instream flow water rights unless the Secretary makes a determination pursuant to subparagraph (E)(ii) or (F).

(E) Cooperative enforcement.—

(i) In general.--The Secretary shall not pursue adjudication of any Federal instream flow water rights established under this paragraph if—

(I) the Secretary determines, upon adjudication of the water rights by the Colorado Water Conservation Board, that the Board holds water rights sufficient in priority, amount, and timing to fulfill the purposes of the Wilderness; and

(II) the Secretary has entered into a perpetual agreement with the Colorado Water Conservation Board to ensure the full exercise, protection, and enforcement of the State water rights within the Wilderness to reliably fulfill the purposes of the Wilderness.

(ii) Adjudication.--If the Secretary determines that the provisions of clause (i) have not been met, the Secretary shall adjudicate and exercise any Federal water rights required to fulfill the purposes of the Wilderness in accordance with this paragraph.

(F) Insufficient water rights.--If the Colorado Water Conservation Board modifies the instream flow water rights obtained under subparagraph (E) to such a degree that the Secretary determines that water rights held by the State are insufficient to fulfill the purposes of the Wilderness, the Secretary shall adjudicate and exercise Federal water rights required to fulfill the purposes of the Wilderness in accordance with subparagraph (B).

(G) Failure to comply.--The Secretary shall promptly act to exercise and enforce the water rights described in subparagraph (E) if the Secretary determines that—

(i) the State is not exercising its water rights consistent with subparagraph (E)(i)(I); or

(ii) the agreement described in subparagraph (E)(i)(II) is not fulfilled or complied with sufficiently to fulfill the purposes of the Wilderness.

(3) Water resource facility.—

(A) In general.--Notwithstanding any other provision of law and subject to subparagraph (B), beginning on the date of enactment of this Act, neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new irrigation and pumping facility,

reservoir, water conservation work, aqueduct, canal, ditch, pipeline, well, hydropower project, transmission, other ancillary facility, or other water, diversion, storage, or carriage structure in the Wilderness.

(B) Exception.--Notwithstanding subparagraph (A), the Secretary may allow construction of new livestock watering facilities within the Wilderness in accordance with—

(i) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and

(ii) the guidelines set forth in Appendix A of the report of the Committee on Interior and Insular Affairs of the House of Representatives accompanying H.R. 2570 of the 101st Congress (H. Rept. 101-405).

(4) Conservation area water rights.--With respect to water within the Conservation Area, nothing in this subtitle—

(A) authorizes any Federal agency to appropriate or otherwise acquire any water right on the mainstem of the Gunnison River; or

(B) prevents the State from appropriating or acquiring, or requires the State to appropriate or acquire, an instream flow water right on the mainstem of the Gunnison River.

(5) Wilderness boundaries along Gunnison river.—

(A) In general.--In areas in which the Gunnison River is used as a reference for defining the boundary of the Wilderness, the boundary shall—

(i) be located at the edge of the river; and

(ii) change according to the river level.

(B) Exclusion from wilderness.--Regardless of the level of the Gunnison River, no portion of the Gunnison River is included in the Wilderness.

(i) Effect.--Nothing in this subtitle—

(1) diminishes the jurisdiction of the State with respect to fish and wildlife in the State; or

(2) imposes any Federal water quality standard upstream of the Conservation Area or within the mainstem of the Gunnison River that is more restrictive than would be applicable had the Conservation Area not been established.

(j) Valid Existing Rights.--The designation of the Conservation Area and Wilderness is subject to valid rights in existence on the date of enactment of this Act.

SEC. 2406. MANAGEMENT PLAN. (16 USCS 460zzz-5)

(a) In General.--Not later than 3 years after the date of enactment of this Act, the Secretary shall develop a comprehensive management plan for the long-term protection and management of the Conservation Area.

(b) Purposes.--The management plan shall—

(1) describe the appropriate uses and management of the Conservation Area;

(2) be developed with extensive public input;

(3) take into consideration any information developed in studies of the land within the Conservation Area; and

(4) include a comprehensive travel management plan.

SEC. 2407. ADVISORY COUNCIL. (16 USCS 460zzz-6)

(a) Establishment.--Not later than 180 days after the date of enactment of this Act, the Secretary shall establish an advisory council, to be known as the “Dominguez-Escalante National Conservation Area Advisory Council”.

(b) Duties.--The Council shall advise the Secretary with respect to the preparation and implementation of the management plan.

(c) Applicable Law.--The Council shall be subject to—
(1) the Federal Advisory Committee Act (5 U.S.C. App.); and
(2) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(d) Members.--The Council shall include 10 members to be appointed by the Secretary, of whom, to the extent practicable—
(1) 1 member shall be appointed after considering the recommendations of the Mesa County Commission;
(2) 1 member shall be appointed after considering the recommendations of the Montrose County Commission;
(3) 1 member shall be appointed after considering the recommendations of the Delta County Commission;
(4) 1 member shall be appointed after considering the recommendations of the permittees holding grazing allotments within the Conservation Area or the Wilderness; and
(5) 5 members shall reside in, or within reasonable proximity to, Mesa County, Delta County, or Montrose County, Colorado, with backgrounds that reflect—
(A) the purposes for which the Conservation Area or Wilderness was established; and
(B) the interests of the stakeholders that are affected by the planning and management of the Conservation Area and Wilderness.

(e) Representation.--The Secretary shall ensure that the membership of the Council is fairly balanced in terms of the points of view represented and the functions to be performed by the Council.

(f) Duration.--The Council shall terminate on the date that is 1 year from the date on which the management plan is adopted by the Secretary.

SEC. 2408. AUTHORIZATION OF APPROPRIATIONS. (16 USCS 460zzz-7)

There are authorized to be appropriated such sums as are necessary to carry out this subtitle.