

**Statement of
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Senate Committee on Energy & Natural Resources

S. 4542, Dolores River National Conservation Area & Special Management Area Act

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Thank you for the opportunity to testify on S. 4542, the Dolores River National Conservation Area and Special Management Area Act. S. 4542 establishes the Dolores River National Conservation Area (NCA) on approximately 45,455 acres of public lands managed by the Bureau of Land Management (BLM) and the Dolores River Special Management Area (SMA) on approximately 15,664 acres of National Forest System lands managed by the U.S. Department of Agriculture Forest Service (Forest Service) across Dolores, Montezuma, and San Miguel Counties in southwest Colorado. The bill also generally withdraws these newly designated areas from the public land and mining laws, subject to valid existing rights. Finally, the bill provides for the Bureau of Reclamation's (Reclamation) continued operation of the Dolores Project and McPhee Reservoir in cooperation with the Dolores Water Conservancy District.

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 ensure balance on public lands and waters. The President's directive recognizes the opportunities America's lands and waters offer to be part of the climate solution and outlines a historic and ambitious challenge to the nation to conserve them. The Biden Administration's America the Beautiful initiative calls for collaborative, locally led conservation efforts of diverse landscapes that provide habitat for fish and wildlife, and supports Tribally led conservation and restoration priorities. The Department welcomes the Sponsor's efforts to support designations to improve conservation and appreciation of our nation's public lands, and we support S. 4542.

The Department notes the bill states that all provisions of the bill, including the withdrawal, are subject to valid existing rights, which means that nothing in its provisions affects uranium leases issued by the Department of Energy. The Department defers to the Department of Energy and Forest Service concerning the bill's provisions which pertain exclusively to the jurisdictions of their agencies.

Background

The Dolores River originates near San Miguel Peak in Colorado and runs approximately 241 miles before it flows into the Colorado River in Grand County, Utah. The Dolores River is a popular recreation destination for hiking, camping, hunting, fishing, wildlife viewing, off-highway vehicle use, and other outdoor activities. The technical rapids of the river are well known among whitewater rafting enthusiasts. Additionally, the proposed NCA supports a variety of wildlife and plant species including canyon tree frogs, the Roundtail Chub fish, and Kachina

daisy, among others. Some of these species are particularly sensitive and have suffered population declines throughout their native range.

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Dolores River National Conservation Area

S. 4542 establishes the Dolores River NCA on approximately 45,455 acres of BLM-managed public lands in southwestern Colorado and requires the BLM to develop a management plan for the NCA within three years of the bill's enactment. Under the bill, all Federal land in the NCA, including land acquired within the NCA after the bill's enactment, would be withdrawn from operation of the public land, mining, mineral leasing, geothermal leasing, and mineral materials disposal laws, subject to valid existing rights. The bill also releases portions of the Dolores River and certain tributaries within the NCA from potential designation or study under the Wild and Scenic Rivers Act.

The BLM supports the designation of the NCA as it aligns with the Administration's conservation goals. The designation would enhance the BLM's ability to manage and protect the many existing conservation and recreation values within the area, particularly sensitive native fish species and whitewater rafting opportunities supported by the Dolores River.

The BLM would appreciate the opportunity to work with the Sponsor on some technical aspects of the bill, such as ensuring consistent use of terminology between Departments and modifications to the legislative map referenced in the bill. In addition, the BLM recommends that the bill's definition of public land be expanded to ensure inclusion of lands managed by the Forest Service.

Dolores River National Conservation Area Advisory Council

S. 4542 requires the BLM to establish the Dolores River National Conservation Area Advisory Council ("Council") within 180 days of the bill's enactment to advise the BLM on the preparation, implementation, and monitoring of the NCA management plan. Under the bill, the BLM is to appoint thirteen members to the Council, representing agricultural, conservation, and recreation interests, in addition to members representing local counties, Colorado Parks and Wildlife, an owner of private land in immediate proximity to the NCA, a holder of a grazing allotment in the NCA, and a representative of the Ute Mountain Ute Tribe.

The BLM notes that the Southwest District Resource Advisory Council (RAC) is active in the area, and we would appreciate the opportunity to work with the Sponsor to clarify their intent regarding the potentially overlapping roles of the existing RAC and the new Council. The BLM recommends that the Sponsor also include representation on the new Council for additional affiliated Tribes.

Dolores River National Conservation Area Management

Section 401 of the bill outlines management direction for the proposed Dolores River NCA. The bill provides for motorized vehicle access within the NCA along designated routes, except in cases where motorized vehicles are needed for administrative purposes or to respond to an emergency. The bill also prohibits the construction of new permanent or temporary roads within

the NCA, except for administrative purposes, protection of public health and safety, or to provide reasonable access to private property. County-managed roads and the Dolores River Road are exempted from the bill's restrictions on use and maintenance, provided that the Federally managed portions of the Dolores River Road are not to be improved beyond its existing primitive condition.

S. 4542 provides for continued grazing in the Dolores River NCA. The bill permits the BLM to take any measures determined necessary to control fire, insects, and diseases in the Dolores River NCA. It also allows the BLM to issue new permits and rights-of-way less than 150 feet wide within the Dolores River NCA for servicing transmission lines in existence on the date of enactment, on the condition that the BLM relocates the right-of-way in a manner that furthers the purposes of the bill. Additionally, the bill permits the installation and maintenance of hydrologic, meteorological, or climatological collection devices in the NCA if essential to public safety, flood warning, flood control, water reservoir operation, or collection of hydrologic data for water resource management. Lastly, S. 4542 allows for the continued use of the lands within the NCA by members of Indian Tribes for traditional ceremonies and as a source of traditional plants and other materials.

The bill requires the BLM to manage the Ponderosa Gorge within the Dolores River NCA in a manner that maintains its wilderness character. To this end, the bill prohibits the construction of new permanent or temporary roads within the Ponderosa Gorge area, as well as the renovation of existing non-system roads. The use of motorized vehicles or equipment are prohibited within the Ponderosa Gorge, except as necessary to meet the minimum requirements for the administration of the land, protection of health and safety, or carrying out ecological restoration activities to improve the aquatic habitat of the Dolores River. Under the bill, commercial timber harvest would not be permitted in the Ponderosa Gorge, other than the harvest of merchantable products that are the byproducts of ecological restoration activities or activities furthering the purposes of the bill. However, the bill exempts the operation, maintenance, or location of an existing utility right-of-way in the Gorge.

The bill's management provisions will enhance the BLM's efforts to protect the remote nature of the area. The BLM would like to work with the Sponsor on some technical modifications to the management section of the bill. The BLM recommends that the Sponsor provide clarification on the term "motorized vehicle," as the BLM and the Forest Service define the term differently. We would like to work with the sponsor on the appropriate terminology to maintain "wilderness character" within the context of an NCA. Additionally, the BLM recommends that the Sponsor clarify whether the construction of temporary roads to respond to wildfire is intended to be included within the allowable measures necessary to control fire, insects, and diseases in the NCA. The BLM also recommends the addition of language allowing for construction and maintenance of motorized routes and parking areas to mitigate potential adverse impacts to natural resources. Finally, the BLM would also like to work with the Sponsor to clarify their intent for the bill's conditions governing rights-of-way serving transmission lines in section 401(i).

The Dolores Project, McPhee Dam / Reservoir, & Water Management

Section 402 provides that Reclamation remains the owner and operator of McPhee Reservoir and the Dolores Project (Project), in cooperation with the Dolores Water Conservancy District. The Dolores Project includes one dam, a dike, and nearly two hundred miles of canals, tunnels, pipelines, and laterals and provides water for recreation, fish, wildlife, flood control and production of hydroelectric power. Under this section, the creation of the NCA and SMA would allow for the Project to continue to be operated as it is currently.

Section 402(a) maintains existing operations of the Project pursuant to its authorization and governing agreements. Reclamation's interpretation of this provision is that the establishment of the NCA and the SMA would not change current or future operation of the Project unless such changes would be consistent with current Project authorities and agreements.

Section 402(b) requires Reclamation to continue regular and meaningful consultation and collaboration with interested stakeholders and to prepare an annual report, to be made publicly available, regarding progress on the conservation, protection, and enhancement of native fish in the Dolores River.

Sections 402(c)(1)(A) places restrictions on the Federal government participating in the construction or modification of water resource projects within the NCA or the SMA that could impact the free-flowing character of any stream, or from participating in water resource projects outside the NCA or the SMA that would unreasonably diminish the resource values within those areas.

Reclamation appreciates the work to protect the free-flowing nature of the river within these areas while retaining the use and benefits provided by the Project. Reclamation anticipates that its existing annual report on flow management of the Dolores River would address this annual reporting requirement of Section 402(b). Reclamation would like to work with the bill sponsor and the Committee on technical modifications to ensure the continued operation of the Project and consistency with potential future operations and agreements, and to address concerns by the Dolores Water Conservancy District.

Conclusion

The BLM recognizes the importance of locally crafted recreation and conservation areas on public lands and waters, and believes the most effective and enduring conservation strategies are those considering the priorities, needs, and perspectives of the families and communities that live and work among the public lands and waters. The Sponsor's efforts to develop S. 4542 follow this approach, and we appreciate the opportunity to testify in support of the bill.