

111TH CONGRESS
1ST SESSION

S. 183

To establish the Dominguez-Escalante National Conservation Area and the
Dominguez Canyon Wilderness Area.

IN THE SENATE OF THE UNITED STATES

JANUARY 8, 2009

Mr. SALAZAR (for himself and Mr. UDALL of Colorado) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To establish the Dominguez-Escalante National Conservation
Area and the Dominguez Canyon Wilderness Area.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Dominguez-Escalante
5 National Conservation Area and Dominguez Canyon Wil-
6 derness Area Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) CONSERVATION AREA.—The term “Con-
10 servation Area” means the Dominguez-Escalante

1 National Conservation Area established by section
2 3(a)(1).

3 (2) COUNCIL.—The term “Council” means the
4 Dominguez-Escalante National Conservation Area
5 Advisory Council established under section 8.

6 (3) MANAGEMENT PLAN.—The term “manage-
7 ment plan” means the management plan developed
8 under section 7.

9 (4) MAP.—The term “Map” means the map en-
10 titled “Dominguez-Escalante National Conservation
11 Area” and dated September 10, 2008.

12 (5) SECRETARY.—The term “Secretary” means
13 the Secretary of the Interior.

14 (6) STATE.—The term “State” means the State
15 of Colorado.

16 (7) WILDERNESS.—The term “Wilderness”
17 means the Dominguez Canyon Wilderness Area des-
18 ignated by section 4(a).

19 **SEC. 3. DOMINGUEZ-ESCALANTE NATIONAL CONSERVA-**
20 **TION AREA.**

21 (a) ESTABLISHMENT.—

22 (1) IN GENERAL.—There is established the
23 Dominguez-Escalante National Conservation Area in
24 the State.

1 (2) AREA INCLUDED.—The Conservation Area
2 shall consist of approximately 209,600 acres of pub-
3 lic land, as generally depicted on the Map.

4 (b) PURPOSES.—The purposes of the Conservation
5 Area are to conserve and protect for the benefit and enjoy-
6 ment of present and future generations—

7 (1) the unique and important resources and val-
8 ues of the land, including the geological, cultural, ar-
9 chaeological, paleontological, natural, scientific, rec-
10 reational, wilderness, wildlife, riparian, historical,
11 educational, and scenic resources of the public land;
12 and

13 (2) the water resources of area streams, based
14 on seasonally available flows, that are necessary to
15 support aquatic, riparian, and terrestrial species and
16 communities.

17 (c) MANAGEMENT.—

18 (1) IN GENERAL.—The Secretary shall manage
19 the Conservation Area—

20 (A) as a component of the National Land-
21 scape Conservation System;

22 (B) in a manner that conserves, protects,
23 and enhances the resources and values of the
24 Conservation Area described in subsection (b);
25 and

1 (C) in accordance with—

2 (i) the Federal Land Policy and Man-
3 agement Act of 1976 (43 U.S.C. 1701 et
4 seq.);

5 (ii) this Act; and

6 (iii) any other applicable laws.

7 (2) USES.—

8 (A) IN GENERAL.—The Secretary shall
9 allow only such uses of the Conservation Area
10 as the Secretary determines would further the
11 purposes for which the Conservation Area is es-
12 tablished.

13 (B) USE OF MOTORIZED VEHICLES.—

14 (i) IN GENERAL.—Except as provided
15 in clauses (ii) and (iii), use of motorized
16 vehicles in the Conservation Area shall be
17 allowed—

18 (I) before the effective date of
19 the management plan, only on roads
20 and trails designated for use of motor
21 vehicles in the management plan that
22 applies on the date of the enactment
23 of this Act to the public land in the
24 Conservation Area; and

1 (II) after the effective date of the
2 management plan, only on roads and
3 trails designated in the management
4 plan for the use of motor vehicles.

5 (ii) ADMINISTRATIVE AND EMER-
6 GENCY RESPONSE USE.—Clause (i) shall
7 not limit the use of motor vehicles in the
8 Conservation Area for administrative pur-
9 poses or to respond to an emergency.

10 (iii) LIMITATION.—This subparagraph
11 shall not apply to the Wilderness.

12 **SEC. 4. DOMINGUEZ CANYON WILDERNESS AREA.**

13 (a) IN GENERAL.—In accordance with the Wilderness
14 Act (16 U.S.C. 1131 et seq.), the approximately 66,280
15 acres of public land in Mesa, Montrose, and Delta Coun-
16 ties, Colorado, as generally depicted on the Map, is des-
17 ignated as wilderness and as a component of the National
18 Wilderness Preservation System, to be known as the
19 “Dominguez Canyon Wilderness Area”.

20 (b) ADMINISTRATION OF WILDERNESS.—The Wilder-
21 ness shall be managed by the Secretary in accordance with
22 the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act,
23 except that—

1 (1) any reference in the Wilderness Act to the
2 effective date of that Act shall be considered to be
3 a reference to the date of enactment of this Act; and

4 (2) any reference in the Wilderness Act to the
5 Secretary of Agriculture shall be considered to be a
6 reference to the Secretary of the Interior.

7 **SEC. 5. MAPS AND LEGAL DESCRIPTIONS.**

8 (a) **IN GENERAL.**—As soon as practicable after the
9 date of enactment of this Act, the Secretary shall file a
10 map and a legal description of the Conservation Area and
11 the Wilderness with—

12 (1) the Committee on Energy and Natural Re-
13 sources of the Senate; and

14 (2) the Committee on Natural Resources of the
15 House of Representatives.

16 (b) **FORCE AND EFFECT.**—The Map and legal de-
17 scriptions filed under subsection (a) shall have the same
18 force and effect as if included in this Act, except that the
19 Secretary may correct clerical and typographical errors in
20 the Map and legal descriptions.

21 (c) **PUBLIC AVAILABILITY.**—The Map and legal de-
22 scriptions filed under subsection (a) shall be available for
23 public inspection in the appropriate offices of the Bureau
24 of Land Management.

1 **SEC. 6. MANAGEMENT OF CONSERVATION AREA AND WIL-**
2 **DERNESS.**

3 (a) WITHDRAWAL.—Subject to valid existing rights,
4 all Federal land within the Conservation Area and the Wil-
5 derness and all land and interests in land acquired by the
6 United States within the Conservation Area or the Wilder-
7 ness is withdrawn from—

8 (1) all forms of entry, appropriation, or disposal
9 under the public land laws;

10 (2) location, entry, and patent under the mining
11 laws; and

12 (3) operation of the mineral leasing, mineral
13 materials, and geothermal leasing laws.

14 (b) GRAZING.—

15 (1) GRAZING IN CONSERVATION AREA.—Except
16 as provided in paragraph (2), the Secretary shall
17 issue and administer any grazing leases or permits
18 in the Conservation Area in accordance with the
19 laws (including regulations) applicable to the
20 issuance and administration of such leases and per-
21 mits on other land under the jurisdiction of the Bu-
22 reau of Land Management.

23 (2) GRAZING IN WILDERNESS.—The grazing of
24 livestock in the Wilderness, if established as of the
25 date of enactment of this Act, shall be permitted to
26 continue—

1 (A) subject to any reasonable regulations,
2 policies, and practices that the Secretary deter-
3 mines to be necessary; and

4 (B) in accordance with—

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

7 (ii) the guidelines set forth in Appen-
8 dix A of the report of the Committee on
9 Interior and Insular Affairs of the House
10 of Representatives accompanying H.R.
11 2570 of the 101st Congress (H. Rept.
12 101-405).

13 (c) NO BUFFER ZONES.—

14 (1) IN GENERAL.—Nothing in this Act creates
15 a protective perimeter or buffer zone around the
16 Conservation Area.

17 (2) ACTIVITIES OUTSIDE CONSERVATION
18 AREA.—The fact that an activity or use on land out-
19 side the Conservation Area can be seen or heard
20 within the Conservation Area shall not preclude the
21 activity or use outside the boundary of the Conserva-
22 tion Area.

23 (d) ACQUISITION OF LAND.—

24 (1) IN GENERAL.—The Secretary may acquire
25 non-Federal land within the boundaries of the Con-

1 servation Area or the Wilderness only through ex-
2 change, donation, or purchase from a willing seller.

3 (2) MANAGEMENT.—Land acquired under para-
4 graph (1) shall—

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

7 (B) be managed in accordance with this
8 Act and any other applicable laws.

9 (e) FIRE, INSECTS, AND DISEASES.—Subject to such
10 terms and conditions as the Secretary determines to be
11 desirable and appropriate, the Secretary may undertake
12 such measures as are necessary to control fire, insects,
13 and diseases—

14 (1) in the Wilderness, in accordance with sec-
15 tion 4(d)(1) of the Wilderness Act (16 U.S.C.
16 1133(d)(1)); and

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

20 (f) ACCESS.—The Secretary shall continue to provide
21 private landowners adequate access to inholdings in the
22 Conservation Area.

23 (g) INVASIVE SPECIES AND NOXIOUS WEEDS.—In
24 accordance with any applicable laws and subject to such
25 terms and conditions as the Secretary determines to be

1 desirable and appropriate, the Secretary may prescribe
2 measures to control nonnative invasive plants and noxious
3 weeds within the Conservation Area.

4 (h) WATER RIGHTS.—

5 (1) EFFECT.—Nothing in this Act—

6 (A) affects the use or allocation, in exist-
7 ence on the date of enactment of this Act, of
8 any water, water right, or interest in water;

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

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

15 (D) authorizes or imposes any new re-
16 served Federal water rights; or

17 (E) shall be considered to be a relinquish-
18 ment or reduction of any water rights reserved
19 or appropriated by the United States in the
20 State on or before the date of enactment of this
21 Act.

22 (2) WILDERNESS WATER RIGHTS.—

23 (A) IN GENERAL.—The Secretary shall en-
24 sure that any water rights within the Wilder-
25 ness required to fulfill the purposes of the Wil-

1 derness are secured in accordance with sub-
2 paragraphs (B) through (G).

3 (B) STATE LAW.—

4 (i) PROCEDURAL REQUIREMENTS.—

5 Any water rights within the Wilderness for
6 which the Secretary pursues adjudication
7 shall be adjudicated, changed, and admin-
8 istered in accordance with the procedural
9 requirements and priority system of State
10 law.

11 (ii) ESTABLISHMENT OF WATER
12 RIGHTS.—

13 (I) IN GENERAL.—Except as pro-
14 vided in subclause (II), the purposes
15 and other substantive characteristics
16 of the water rights pursued under this
17 paragraph shall be established in ac-
18 cordance with State law.

19 (II) EXCEPTION.—Notwith-
20 standing subclause (I) and in accord-
21 ance with this Act, the Secretary may
22 appropriate and seek adjudication of
23 water rights to maintain surface water
24 levels and stream flows on and across

1 the Wilderness to fulfill the purposes
2 of the Wilderness.

3 (C) DEADLINE.—The Secretary shall
4 promptly, but not earlier than January 2009,
5 appropriate the water rights required to fulfill
6 the purposes of the Wilderness.

7 (D) REQUIRED DETERMINATION.—The
8 Secretary shall not pursue adjudication for any
9 instream flow water rights unless the Secretary
10 makes a determination pursuant to subpara-
11 graph (E)(ii) or (F).

12 (E) COOPERATIVE ENFORCEMENT.—

13 (i) IN GENERAL.—The Secretary shall
14 not pursue adjudication of any Federal
15 instream flow water rights established
16 under this paragraph if—

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

24 (II) the Secretary has entered
25 into a perpetual agreement with the

1 Colorado Water Conservation Board
2 to ensure the full exercise, protection,
3 and enforcement of the State water
4 rights within the Wilderness to reli-
5 ably fulfill the purposes of the Wilder-
6 ness.

7 (ii) ADJUDICATION.—If the Secretary
8 determines that the provisions of clause (i)
9 have not been met, the Secretary shall ad-
10 judicate and exercise any Federal water
11 rights required to fulfill the purposes of
12 the Wilderness in accordance with this
13 paragraph.

14 (F) INSUFFICIENT WATER RIGHTS.—If the
15 Colorado Water Conservation Board modifies
16 the instream flow water rights obtained under
17 subparagraph (E) to such a degree that the
18 Secretary determines that water rights held by
19 the State are insufficient to fulfill the purposes
20 of the Wilderness, the Secretary shall adju-
21 dicate and exercise Federal water rights re-
22 quired to fulfill the purposes of the Wilderness
23 in accordance with subparagraph (B).

24 (G) FAILURE TO COMPLY.—The Secretary
25 shall promptly act to exercise and enforce the

1 water rights described in subparagraph (E) if
2 the Secretary determines that—

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

6 (ii) the agreement described in sub-
7 paragraph (E)(i)(II) is not fulfilled or com-
8 plied with sufficiently to fulfill the pur-
9 poses of the Wilderness.

10 (3) WATER RESOURCE FACILITY.—

11 (A) IN GENERAL.—Notwithstanding any
12 other provision of law and subject to subpara-
13 graph (B), beginning on the date of enactment
14 of this Act, neither the President nor any other
15 officer, employee, or agent of the United States
16 shall fund, assist, authorize, or issue a license
17 or permit for the development of any new irri-
18 gation and pumping facility, reservoir, water
19 conservation work, aqueduct, canal, ditch, pipe-
20 line, well, hydropower project, transmission,
21 other ancillary facility, or other water, diver-
22 sion, storage, or carriage structure in the Wil-
23 derness.

24 (B) EXCEPTION.—Notwithstanding sub-
25 paragraph (A), the Secretary may allow con-

1 construction of new livestock watering facilities
2 within the Wilderness in accordance with—

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

5 (ii) the guidelines set forth in Appen-
6 dix A of the report of the Committee on
7 Interior and Insular Affairs of the House
8 of Representatives accompanying H.R.
9 2570 of the 101st Congress (H. Rept.
10 101–405).

11 (4) CONSERVATION AREA WATER RIGHTS.—

12 With respect to water within the Conservation Area,
13 nothing in this Act—

14 (A) authorizes any Federal agency to ap-
15 propriate or otherwise acquire any water right
16 on the mainstem of the Gunnison River; or

17 (B) prevents the State from appropriating
18 or acquiring, or requires the State to appro-
19 priate or acquire, an instream flow water right
20 on the mainstem of the Gunnison River.

21 (5) WILDERNESS BOUNDARIES ALONG GUNNI-
22 SON RIVER.—

23 (A) IN GENERAL.—In areas in which the
24 Gunnison River is used as a reference for defin-

1 ing the boundary of the Wilderness, the bound-
2 ary shall—

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

4 and

5 (ii) change according to the river
6 level.

7 (B) EXCLUSION FROM WILDERNESS.—Re-
8 gardless of the level of the Gunnison River, no
9 portion of the Gunnison River is included in the
10 Wilderness.

11 (i) EFFECT.—Nothing in this Act—

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

14 (2) imposes any Federal water quality standard
15 upstream of the Conservation Area or within the
16 mainstem of the Gunnison River that is more re-
17 strictive than would be applicable had the Conserva-
18 tion Area not been established.

19 (j) VALID EXISTING RIGHTS.—The designation of
20 the Conservation Area and Wilderness is subject to valid
21 rights in existence on the date of enactment of this Act.

22 **SEC. 7. MANAGEMENT PLAN.**

23 (a) IN GENERAL.—Not later than 3 years after the
24 date of enactment of this Act, the Secretary shall develop

1 a comprehensive management plan for the long-term pro-
2 tection and management of the Conservation Area.

3 (b) PURPOSES.—The management plan shall—

4 (1) describe the appropriate uses and manage-
5 ment of the Conservation Area;

6 (2) be developed with extensive public input;

7 (3) take into consideration any information de-
8 veloped in studies of the land within the Conserva-
9 tion Area; and

10 (4) include a comprehensive travel management
11 plan.

12 **SEC. 8. ADVISORY COUNCIL.**

13 (a) ESTABLISHMENT.—Not later than 180 days after
14 the date of enactment of this Act, the Secretary shall es-
15 tablish an advisory council, to be known as the
16 “Dominguez-Escalante National Conservation Area Advi-
17 sory Council”.

18 (b) DUTIES.—The Council shall advise the Secretary
19 with respect to the preparation and implementation of the
20 management plan.

21 (c) APPLICABLE LAW.—The Council shall be subject
22 to—

23 (1) the Federal Advisory Committee Act (5
24 U.S.C. App.); and

1 (2) the Federal Land Policy and Management
2 Act of 1976 (43 U.S.C. 1701 et seq.).

3 (d) MEMBERS.—The Council shall include 10 mem-
4 bers to be appointed by the Secretary, of whom, to the
5 extent practicable—

6 (1) 1 member shall be appointed after consid-
7 ering the recommendations of the Mesa County
8 Commission;

9 (2) 1 member shall be appointed after consid-
10 ering the recommendations of the Montrose County
11 Commission;

12 (3) 1 member shall be appointed after consid-
13 ering the recommendations of the Delta County
14 Commission;

15 (4) 1 member shall be appointed after consid-
16 ering the recommendations of the permittees holding
17 grazing allotments within the Conservation Area or
18 the Wilderness; and

19 (5) 5 members shall reside in, or within reason-
20 able proximity to, Mesa County, Delta County, or
21 Montrose County, Colorado, with backgrounds that
22 reflect—

23 (A) the purposes for which the Conserva-
24 tion Area or Wilderness was established; and

1 (B) the interests of the stakeholders that
2 are affected by the planning and management
3 of the Conservation Area and Wilderness.

4 (e) REPRESENTATION.—The Secretary shall ensure
5 that the membership of the Council is fairly balanced in
6 terms of the points of view represented and the functions
7 to be performed by the Council.

8 (f) DURATION.—The Council shall terminate on the
9 date that is 1 year from the date on which the manage-
10 ment plan is adopted by the Secretary.

11 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated such sums
13 as are necessary to carry out this Act.

○