

111TH CONGRESS
1ST SESSION

H. R. 170

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. SALAZAR introduced the following bill; which was referred to the
Committee on 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. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—Congress finds that—

9 (1) certain areas located in Mesa, Montrose,
10 and Delta Counties, Colorado, should be protected

1 and enhanced for the benefit and enjoyment of
2 present and future generations;

3 (2) the land that comprises the Dominguez-
4 Escalante National Conservation Area established by
5 section 4(a)(1)—

6 (A) contains unique and valuable paleon-
7 tological, natural, and wildlife components,
8 which are enhanced by the rural western setting
9 of the area;

10 (B) provides extensive opportunities for
11 recreational activities, including along the na-
12 tionally renowned Tabeguache Trail;

13 (C) is publicly used for hiking, bicycling,
14 camping, and grazing; and

15 (D) is worthy of additional protection as a
16 national conservation area; and

17 (3) the land that comprises the Dominguez
18 Canyon Wilderness Area designated by section
19 5(a)—

20 (A) has wilderness value; and

21 (B) offers unique geological, archae-
22 ological, paleontological, fish and wildlife, ripar-
23 ian, water, scientific, and recreational resources.

24 (b) PURPOSE.—The purpose of this Act is to estab-
25 lish the Dominguez-Escalante National Conservation Area

1 and the Dominguez Canyon Wilderness Area in the State,
2 to be administered as part of the National Landscape Con-
3 servation System to conserve and protect for the benefit
4 and enjoyment of present and future generations—

5 (1) the unique and nationally important values
6 of certain public land in the Mesa, Montrose, and
7 Delta Counties, Colorado (including the geological,
8 cultural, archaeological, paleontological, natural, sci-
9 entific, recreational, environmental, biological, wil-
10 derness, wildlife, riparian, historical, educational,
11 and scenic resources of the public land); and

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

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) CONSERVATION AREA.—The term “Con-
19 servation Area” means the Dominguez-Escalante
20 National Conservation Area established by section
21 4(a)(1).

22 (2) COUNCIL.—The term “Council” means the
23 Dominguez-Escalante National Conservation Area
24 Advisory Council established under section 9.

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

4 (4) MAP.—The term “Map” means the map en-
5 titled “Dominguez-Escalante National Conservation
6 Area” and dated May 22, 2008.

7 (5) SECRETARY.—The term “Secretary” means
8 the Secretary of the Interior, acting through the Di-
9 rector of the Bureau of Land Management.

10 (6) STATE.—The term “State” means the State
11 of Colorado.

12 (7) WILDERNESS.—The term “Wilderness”
13 means the Dominguez Canyon Wilderness Area des-
14 ignated by section 5(a).

15 **SEC. 4. DOMINGUEZ-ESCALANTE NATIONAL CONSERVA-**
16 **TION AREA.**

17 (a) ESTABLISHMENT.—

18 (1) IN GENERAL.—There is established the
19 Dominguez-Escalante National Conservation Area in
20 the State.

21 (2) AREA INCLUDED.—The Conservation Area
22 shall consist of approximately 210,677 acres of pub-
23 lic land, as generally depicted on the Map.

24 (b) MANAGEMENT.—

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

3 (A) as a component of the National Land-
4 scape Conservation System;

5 (B) in a manner that conserves, protects,
6 and enhances the resources of the Conservation
7 Area described in section 2(b); and

8 (C) in accordance with—

9 (i) the Federal Land Policy and Man-
10 agement Act of 1976 (43 U.S.C. 1701 et
11 seq.);

12 (ii) this Act; and

13 (iii) any other applicable laws.

14 (2) USES.—

15 (A) IN GENERAL.—The Secretary shall
16 allow only such uses of the Conservation Area
17 as the Secretary determines would further the
18 purposes for which the Conservation Area is es-
19 tablished.

20 (B) USE OF MOTORIZED VEHICLES.—

21 (i) IN GENERAL.—Except as provided
22 in clause (ii), use of motorized vehicles in
23 the Conservation Area shall be allowed—

24 (I) before the effective date of
25 the management plan, only on roads

1 and trails designated for use of motor
2 vehicles in the management plan that
3 applies on the date of the enactment
4 of this Act to the public land in the
5 Conservation Area; and

6 (II) after the effective date of the
7 management plan, only on roads and
8 trails designated in the management
9 plan for the use of motor vehicles.

10 (ii) ADMINISTRATIVE AND EMER-
11 GENCY RESPONSE USE.—Clause (i) shall
12 not limit the use of motor vehicles in the
13 Conservation Area for administrative pur-
14 poses or to respond to an emergency.

15 **SEC. 5. DOMINGUEZ CANYON WILDERNESS AREA.**

16 (a) IN GENERAL.—Approximately 66,280 acres of
17 public land in Mesa, Montrose, and Delta Counties, Colo-
18 rado, as generally depicted on the Map, are designated as
19 wilderness and as a component of the National Wilderness
20 Preservation System, to be known as the “Dominguez
21 Canyon Wilderness Area”.

22 (b) ADMINISTRATION OF WILDERNESS.—Subject to
23 valid existing rights, land designated as wilderness by this
24 Act shall be managed by the Secretary in accordance with
25 the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act,

1 except that any reference in the Wilderness Act to the ef-
2 fective date of the Wilderness Act shall be considered to
3 be a reference to the date of enactment of this Act.

4 **SEC. 6. MAPS AND LEGAL DESCRIPTIONS.**

5 (a) IN GENERAL.—As soon as practicable after the
6 date of enactment of this Act, the Secretary shall submit
7 to Congress—

8 (1) a copy of the Map; and

9 (2) legal descriptions of the Conservation Area
10 and the Wilderness.

11 (b) FORCE AND EFFECT.—The Map and legal de-
12 scriptions submitted under subsection (a) shall have the
13 same force and effect as if included in this Act, except
14 that the Secretary may correct clerical and typographical
15 errors in the Map and legal descriptions.

16 (c) PUBLIC AVAILABILITY.—The Map and legal de-
17 scription of the Conservation Area shall be available for
18 public inspection in the appropriate offices of the Bureau
19 of Land Management.

20 **SEC. 7. MANAGEMENT OF CONSERVATION AREA AND WIL-**
21 **DERNESS.**

22 (a) WITHDRAWALS.—Subject to valid existing rights,
23 all Federal land within the Conservation Area and the Wil-
24 derness and all land and interests in land acquired by the
25 United States for the Conservation Area or the Wilderness

1 after the date of enactment of this Act is withdrawn
2 from—

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

5 (2) location, entry, and patent under the mining
6 laws; and

7 (3) operation of the mineral leasing, mineral
8 materials, and geothermal leasing laws.

9 (b) GRAZING.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the Secretary shall issue and administer
12 any grazing leases or permits in the Conservation
13 Area in accordance with the laws (including regula-
14 tions) and Executive orders applicable to the
15 issuance and administration of leases and permits on
16 other land under the jurisdiction of the Bureau of
17 Land Management.

18 (2) GRAZING IN WILDERNESS.—The grazing of
19 livestock in areas of the Wilderness that are admin-
20 istered by the Bureau of Land Management and in
21 which grazing is established as of the date of enact-
22 ment of this Act shall be allowed to continue—

23 (A) subject to any reasonable regulations,
24 policies, and practices that the Secretary deter-
25 mines to be necessary; and

1 (B) consistent with—

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

4 (ii) the guidelines set forth in Appen-
5 dix A of House Report 101–405.

6 (c) NO BUFFER ZONES.—

7 (1) IN GENERAL.—Nothing in this Act creates
8 a protective perimeter or buffer zone around the
9 Conservation Area.

10 (2) ACTIVITIES OUTSIDE CONSERVATION
11 AREA.—The fact that an activity or use on land out-
12 side the Conservation Area can be seen or heard
13 within the Conservation Area shall not preclude the
14 activity or use outside the boundary of the Conserva-
15 tion Area.

16 (d) ACQUISITION OF LAND.—

17 (1) IN GENERAL.—The Secretary may acquire
18 non-Federal land within the boundaries of the Con-
19 servation Area or the Wilderness only through pur-
20 chase from a willing seller, exchange, or donation.

21 (2) MANAGEMENT.—Land acquired under para-
22 graph (1) shall be managed as part of the Conserva-
23 tion Area or the Wilderness, as applicable, in accord-
24 ance with this Act.

1 (3) CERTAIN CONSERVATION AREA EX-
2 CHANGES.—

3 (A) IN GENERAL.—In order to protect and
4 consolidate Federal land within the boundary of
5 the Conservation Area and subject to subpara-
6 graph (B), the Secretary may enter into an
7 agreement with any owner of private land with-
8 in the boundaries of the Conservation Area to
9 exchange the private land for Federal land in
10 the Conservation Area, if the Secretary deter-
11 mines that the exchange would enhance the val-
12 ues for which the Conservation Area is estab-
13 lished.

14 (B) CONDITIONS.—An exchange of land
15 under subparagraph (A) shall—

16 (i) be carried out consistent with any
17 applicable laws (including regulations), in-
18 cluding laws relating to appraisals and
19 equal value exchanges; and

20 (ii) be subject to—

21 (I) valid existing rights; and

22 (II) any terms and conditions
23 that the Secretary may require.

24 (e) FIRE, INSECT, INVASIVE SPECIES, AND DISEASE
25 MANAGEMENT ACTIVITIES.—The Secretary may under-

1 take such measures in the Conservation Area and Wilder-
2 ness as are necessary to control and prevent fire, insects,
3 invasive species, and diseases, in accordance with section
4 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)) and
5 any other applicable laws (including regulations) and Ex-
6 ecutive orders.

7 (f) INTERPRETIVE FACILITIES OR SITES.—

8 (1) IN GENERAL.—The Secretary, in coopera-
9 tion with any other public or private entities as the
10 Secretary determines to be appropriate, may estab-
11 lish minimal interpretive facilities or sites in or near
12 the Conservation Area.

13 (2) REQUIREMENTS.—Any facilities or sites es-
14 tablished under paragraph (1) shall be designed to
15 protect the resources described in section 2(b).

16 (g) PUBLIC ACCESS.—The Secretary shall continue
17 to provide private landowners reasonable access to
18 inholdings in the Conservation Area.

19 (h) WATER RIGHTS.—

20 (1) FINDINGS.—Congress finds that—

21 (A) as of the date of enactment of this
22 Act, no private conditional water rights are lo-
23 cated in the Wilderness; and

24 (B) the boundaries of the Wilderness are
25 drawn in a manner that does not include any

1 portion of the Gunnison River in the Wilder-
2 ness.

3 (2) EFFECT ON WATER RIGHTS.—Nothing in
4 this Act—

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

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

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

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

16 (E) unreasonably limits access for mainte-
17 nance, operation, modification, repair, or re-
18 placement of facilities that are—

19 (i) in existence as of the date of en-
20 actment of this Act; and

21 (ii) associated with any water rights
22 referred to in subparagraph (A) or (B); or

23 (F) shall be considered to be a relinquish-
24 ment or reduction of any water rights reserved
25 or appropriated by the United States in the

1 State on or before the date of the enactment of
2 this Act.

3 (3) EFFECT ON WATER QUALITY DESIGNA-
4 TIONS.—The designation of the Conservation Area
5 and Wilderness by this Act shall not impose or cause
6 to be imposed on any stream in, or upstream of, the
7 Conservation Area or Wilderness any water quality
8 designation that is more stringent than the water
9 quality designation applicable to the stream in exist-
10 ence on the date of enactment of this Act.

11 (4) WILDERNESS WATER RIGHTS.—

12 (A) IN GENERAL.—The Secretary shall en-
13 sure that any water rights within the Wilder-
14 ness required to fulfill the purposes of the Wil-
15 derness are secured in accordance with sub-
16 paragraphs (B) through (G).

17 (B) STATE LAW.—

18 (i) PROCEDURAL REQUIREMENTS.—
19 Any water rights for which the Secretary
20 pursues adjudication shall be appropriated,
21 adjudicated, changed, and administered in
22 accordance with the procedural require-
23 ments and priority system of State law.

24 (ii) ESTABLISHMENT OF WATER
25 RIGHTS.—

1 (I) IN GENERAL.—Except as pro-
2 vided in subclause (II), the purposes
3 and other substantive characteristics
4 of the water rights pursued under this
5 paragraph shall be established in ac-
6 cordance with State law.

7 (II) EXCEPTION.—Notwith-
8 standing subclause (I) and in accord-
9 ance with this Act, the Secretary may
10 appropriate and seek adjudication of
11 water rights to maintain surface water
12 levels and stream flows on and across
13 the Wilderness to fulfill the purposes
14 of the Wilderness.

15 (C) DEADLINE.—The Secretary shall
16 promptly, but not earlier than January 2009,
17 appropriate the water rights required to fulfill
18 the purposes of the Wilderness.

19 (D) REQUIRED DETERMINATION.—The
20 Secretary shall not pursue adjudication for any
21 instream flow water rights unless the Secretary
22 makes a determination pursuant to subpara-
23 graph (E)(ii) or (F).

24 (E) COOPERATIVE ENFORCEMENT.—

1 (i) IN GENERAL.—The Secretary shall
2 not pursue adjudication of any Federal
3 instream flow water rights established
4 under this paragraph if—

5 (I) the Secretary determines,
6 upon adjudication of the water rights
7 by the Colorado Water Conservation
8 Board, that the Board holds water
9 rights sufficient in priority, amount,
10 and timing to fulfill the purposes of
11 this Act; and

12 (II) the Secretary has entered
13 into a perpetual agreement with the
14 Colorado Water Conservation Board
15 to ensure full exercise, protection, and
16 enforcement of the State water rights
17 within the Wilderness to reliably fulfill
18 the purposes of this Act.

19 (ii) ADJUDICATION.—If the Secretary
20 determines that the provisions of clause (i)
21 have not been met, the Secretary shall ad-
22 judicate and exercise any Federal water
23 rights required to fulfill the purposes of
24 the Wilderness in accordance with this
25 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 this Act, the Secretary shall adjudicate and exercise Federal water rights required to fulfill the purposes of this Act 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 this Act.

(5) WATER RESOURCE FACILITY.—

(A) IN GENERAL.—Notwithstanding any other provision of law and subject to subparagraph (B), beginning on the date of enactment

1 of this Act, neither the President nor any other
2 officer, employee, or agent of the United States
3 shall fund, assist, authorize, or issue a license
4 or permit for development of any new irrigation
5 and pumping facility, reservoir, water conserva-
6 tion work, aqueduct, canal, ditch, pipeline, well,
7 hydropower project, transmission, other ancil-
8 lary facility, or other water, diversion, storage,
9 or carriage structure in the Wilderness.

10 (B) STOCK WATERING PONDS.—The Sec-
11 retary may allow construction of new livestock
12 watering facilities within the Wilderness if the
13 facilities—

14 (i) would result in no impairment to
15 the characteristics, values, and purposes of
16 the Wilderness greater than that described
17 in the Final Wilderness Environmental Im-
18 pact Statement for the Grand Junction
19 Resource Area dated November 1989; and

20 (ii) would provide for the protection
21 and improved management of Wilderness
22 resources.

23 (6) CONSERVATION AREA WATER RIGHTS.—

24 With respect to water within the Conservation Area,
25 nothing in this Act—

1 (A) authorizes any Federal agency to ap-
2 propriate or otherwise acquire any water right
3 on the mainstem of the Gunnison River; or

4 (B) prevents the State from appropriating
5 or acquiring, or requires the State to appro-
6 priate or acquire, an instream flow water right
7 on the mainstem of the Gunnison River.

8 (7) WILDERNESS BOUNDARIES ALONG GUNNI-
9 SON RIVER.—

10 (A) IN GENERAL.—In areas in which the
11 Gunnison River is used as a reference for defin-
12 ing the boundary of the Wilderness, the bound-
13 ary shall—

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

15 and

16 (ii) change according to the river
17 level.

18 (B) EXCLUSION FROM WILDERNESS.—Re-
19 gardless of the level of the Gunnison River, no
20 portion of the Gunnison River is included in the
21 Wilderness area.

22 (i) HUNTING, TRAPPING, AND FISHING.—Nothing in
23 this Act diminishes the jurisdiction of the State with re-
24 spect to fish and wildlife management, including regula-

1 tion of hunting and fishing, on public land within the Con-
2 servation Area.

3 (j) LITTLE DOMINGUEZ CREEK ACCESS.—Nothing in
4 this Act affects—

5 (1) the letter of agreement between the Bureau
6 of Land Management and Mr. Billyie Rambo, dated
7 September 28, 1988; or

8 (2) the life estate described in the letter of
9 agreement.

10 **SEC. 8. MANAGEMENT PLAN.**

11 (a) IN GENERAL.—Not later than 3 years after the
12 date of enactment of this Act, the Secretary shall develop
13 a comprehensive management plan for the long-range pro-
14 tection and management of the Conservation Area.

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

16 (1) describe the appropriate uses and manage-
17 ment of the Conservation Area;

18 (2) be developed with extensive public input;

19 (3) take into consideration any information de-
20 veloped in studies of the land within the Conserva-
21 tion Area; and

22 (4) include a comprehensive travel management
23 plan.

1 **SEC. 9. ADVISORY COUNCIL.**

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

7 (b) DUTIES.—The Council shall advise the Secretary
8 with respect to the preparation and implementation of the
9 management plan.

10 (c) APPLICABLE LAW.—The Council shall be subject
11 to—

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

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

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

19 (1) 1 member shall be appointed after consid-
20 ering the recommendations of the Mesa County
21 Commission;

22 (2) 1 member shall be appointed after consid-
23 ering the recommendations of the Montrose County
24 Commission;

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

4 (4) 1 member shall be appointed after consid-
5 ering the recommendations of the permittees holding
6 grazing allotments within the Conservation Area or
7 the Wilderness; and

8 (5) 5 members shall reside in, or within reason-
9 able proximity to, Mesa County, Delta County, or
10 Montrose County, Colorado, with backgrounds that
11 reflect—

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

14 (B) the interests of the stakeholders that
15 are affected by the planning and management
16 of the Conservation Area and Wilderness.

17 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated such sums
19 as are necessary to carry out this Act.

○