

111TH CONGRESS
1ST SESSION

S. 190

To designate as wilderness certain land within the Rocky Mountain National Park and to adjust the boundaries of the Indian Peaks Wilderness and the Arapaho National Recreation Area of the Arapaho National Forest in the State of Colorado.

IN THE SENATE OF THE UNITED STATES

JANUARY 8, 2009

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

A BILL

To designate as wilderness certain land within the Rocky Mountain National Park and to adjust the boundaries of the Indian Peaks Wilderness and the Arapaho National Recreation Area of the Arapaho National Forest in the State of Colorado.

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 “Rocky Mountain Na-
5 tional Park Wilderness and Indian Peaks Wilderness Ex-
6 pansion Act”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to include in the National Wilderness Pres-
4 ervation System certain land within the Rocky
5 Mountain National Park, Colorado, to protect—

6 (A) the enduring scenic and historic wil-
7 derness character and unique wildlife values of
8 the land; and

9 (B) the scientific, educational, inspira-
10 tional, and recreational resources, values, and
11 opportunities of the land; and

12 (2) to adjust the boundaries of the Indian
13 Peaks Wilderness and Arapaho National Recreation
14 Area of the Arapaho National Forest.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) MAP.—The term “Map” means the map en-
18 titled “Rocky Mountain National Park, Colorado
19 Wilderness Boundaries” and dated September 2006.

20 (2) PARK.—The term “Park” means the Rocky
21 Mountain National Park in the State.

22 (3) POTENTIAL WILDERNESS LAND.—The term
23 “potential wilderness land” means—

24 (A) the land identified on the Map as po-
25 tential wilderness; and

1 (B) any land acquired by the United
 2 States on or after the date of enactment of this
 3 Act that is—

4 (i) located within the boundaries of
 5 the Park; and

6 (ii) contiguous with any land des-
 7 ignated as wilderness by section 4(a).

8 (4) SECRETARY.—The term “Secretary” means
 9 the Secretary of the Interior.

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

12 (6) TRAIL.—The term “Trail” means the East
 13 Shore Trail established under section 5(a).

14 (7) WILDERNESS.—The term “Wilderness”
 15 means the Rocky Mountain National Park Wilder-
 16 ness designated by section 4(a).

17 **SEC. 4. ROCKY MOUNTAIN NATIONAL PARK WILDERNESS.**

18 (a) DESIGNATION.—In furtherance of the purposes of
 19 the Wilderness Act (16 U.S.C. 1131 et seq.), there is des-
 20 ignated as wilderness and as a component of the National
 21 Wilderness Preservation System approximately 249,339
 22 acres of land in the Park, as generally depicted on the
 23 Map, which shall be known as the “Rocky Mountain Na-
 24 tional Park Wilderness”.

25 (b) MAP AND BOUNDARY DESCRIPTION.—

1 (1) IN GENERAL.—As soon as practicable after
 2 the date of enactment of this Act, the Secretary
 3 shall submit to the Committee on Resources of the
 4 House of Representatives and the Committee on En-
 5 ergy and Natural Resources of the Senate a map
 6 and boundary description of the Wilderness.

7 (2) AVAILABILITY.—The map and boundary de-
 8 scription submitted under paragraph (1) shall be on
 9 file and available for public inspection in the Office
 10 of the Director of the National Park Service.

11 (3) CORRECTIONS.—The Secretary may correct
 12 clerical and typographical errors in the map and
 13 boundary description submitted under paragraph
 14 (1).

15 (4) EFFECT.—The map and boundary descrip-
 16 tion submitted under paragraph (1) shall have the
 17 same force and effect as if included in this Act.

18 (c) INCLUSION OF POTENTIAL WILDERNESS
 19 LAND.—

20 (1) IN GENERAL.—On publication in the Fed-
 21 eral Register of a notice by the Secretary that all
 22 uses of a parcel of potential wilderness land incon-
 23 sistent with the Wilderness Act (16 U.S.C. 1131 et
 24 seq.) have ceased, the parcel shall be—

25 (A) included in the Wilderness; and

1 (B) managed in accordance with this sec-
2 tion.

3 (2) MAP AND BOUNDARY DESCRIPTION.—The
4 Secretary shall modify the map and boundary de-
5 scription prepared under subsection (b) to reflect the
6 inclusion of the parcel in the Wilderness.

7 (d) EXCLUSION OF CERTAIN LAND.—The boundaries
8 of the Wilderness shall specifically exclude:

9 (1) The Grand River Ditch (including the main
10 canal of the Grand River Ditch and a branch of the
11 main canal known as the “Specimen Ditch”), the
12 right-of-way for the Grand River Ditch, land 200
13 feet on each side of the marginal limits of the Ditch,
14 and any associated appurtenances, structures, build-
15 ings, camps, and work sites in existence as of June
16 1, 1998.

17 (2) Land owned by the St. Vrain & Left Hand
18 Water Conservancy District, including Copeland
19 Reservoir and the Inlet Ditch to the Reservoir from
20 the North St. Vrain Creek, comprising approxi-
21 mately 35.38 acres.

22 (3) Lands owned by the Vincentsen-Harms
23 Trust, comprising approximately 2.75 acres.

(4) Land within the area depicted as the “East Shore Trail Area” on the map prepared under subsection (b)(1).

(e) ADMINISTRATION.—

(1) IN GENERAL.—Subject to valid existing rights, any land designated as wilderness under subsection (a) or added to the Wilderness after the date of enactment of this Act under subsection (c) shall be administered by the Secretary in accordance with—

(A) the Wilderness Act (16 U.S.C. 1131 et seq.); and

(B) this Act.

(2) EFFECTIVE DATE OF WILDERNESS ACT.—

With respect to the land designated as Wilderness by subsection (a) or added to the Wilderness after the date of enactment of this Act under subsection (c), any reference in the Wilderness Act (16 U.S.C. 1131 et seq.) to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act or the date of enactment of the Act adding the land to the Wilderness, respectively.

(3) WATER RIGHTS.—

(A) FINDINGS.—Congress finds that—

1 (i) according to decisions of the State
 2 courts, the United States has existing
 3 rights to water within the Park;

4 (ii) the existing water rights are suffi-
 5 cient for the purposes of the Wilderness;
 6 and

7 (iii) based on the findings described in
 8 clauses (i) and (ii), there is no need for the
 9 United States to reserve or appropriate
 10 any additional water rights to fulfill the
 11 purposes of the Wilderness.

12 (B) NO RESERVATION OF WATER
 13 RIGHTS.—Nothing in this Act or any action
 14 carried out pursuant to this Act shall constitute
 15 an express or implied reservation by the United
 16 States of water or water rights for any purpose.

17 (4) GRAND RIVER DITCH.—

18 (A) LIABILITY.—Notwithstanding any
 19 other provision of law, or any stipulation or ap-
 20 plicable agreement, during any period in which
 21 the Water Supply and Storage Company (or
 22 any successor in interest to the Water Supply
 23 and Storage Company with respect to the
 24 Grand River Ditch) operates and maintains the
 25 portion of the Grand River Ditch within the

1 Park in compliance with an operations and
2 maintenance agreement between the Water
3 Supply and Storage Company and the National
4 Park Service entered into on
5 _____, no individual or
6 entity who owns, controls, or operates the
7 Grand River Ditch shall be liable for any re-
8 sponse costs or for any damages to, loss of, or
9 injury to the resources of the Park resulting
10 from any cause or event (including, but not lim-
11 ited to, water escaping from any part of the
12 Grand River Ditch by overflow or as a result of
13 a breach, failure, or partial failure of any por-
14 tion of the Grand River Ditch, including the
15 portion of the ditch located outside the Park),
16 unless the damages to, loss of, or injury to the
17 resources are proximately caused by the neg-
18 ligence or an intentional act of the individual or
19 entity.

20 (B) LIMITATION.—Nothing in this section
21 limits or otherwise affects any liability of any
22 individual or entity for damages to, loss of, or
23 injury to any resource of the Park resulting
24 from any cause or event that occurred before
25 the date of enactment of this Act.

1 (C) EXISTING ACTIVITIES.—Nothing in
2 this Act, including the designation of the Wil-
3 derness under this section, shall restrict or oth-
4 erwise affect any activity (including an activity
5 carried out in response to an emergency or cat-
6 astrophic event) on, under, or affecting the Wil-
7 derness or land excluded under subsection
8 (d)(1) relating to the monitoring, operation,
9 maintenance, repair, replacement, or use of the
10 Grand River Ditch that was authorized or ap-
11 proved by the Secretary as of the date of enact-
12 ment of this Act.

13 (D) NO EFFECT.—Notwithstanding any
14 other provision of any previous or existing law,
15 any stipulation, or any agreement, or interpre-
16 tation thereof, use of water transported by the
17 Grand River Ditch for a main purpose or main
18 purposes other than irrigation shall not termi-
19 nate or adversely affect the right-of-way of the
20 Grand River Ditch, and such right-of-way shall
21 not be deemed relinquished, forfeited, or lost,
22 solely because such water is used for a main
23 purpose or main purposes other than irrigation.

24 (5) COLORADO-BIG THOMPSON PROJECT AND
25 WINDY GAP PROJECT.—

1 (A) EXISTING ACTIVITIES.—Activities (in-
2 cluding activities that are necessary because of
3 emergencies or catastrophic events) on, under,
4 or affecting the Wilderness relating to the mon-
5 itoring, operation, maintenance, repair, replace-
6 ment, or use of the Alva B. Adams Tunnel at
7 its designed capacity and all other Colorado-Big
8 Thompson Project facilities located within the
9 Park that were allowed as of the date of enact-
10 ment of this Act under the Act of January 26,
11 1915 (16 U.S.C. 191)—

12 (i) shall be allowed to continue; and

13 (ii) shall not be affected by the des-
14 ignation of the Wilderness under this sec-
15 tion.

16 (B) EFFECT.—Nothing in this Act or the
17 designation of the Wilderness shall prohibit or
18 restrict the conveyance of any water through
19 the Alva B. Adams Tunnel for any purpose.

20 (C) NEW RECLAMATION PROJECTS.—Noth-
21 ing in the first section of the Act of January
22 26, 1915 (16 U.S.C. 191), shall be construed to
23 allow development in the Wilderness of any rec-
24 lamation project not in existence as of the date
25 of enactment of this Act.

1 (6) NO BUFFER ZONE.—

2 (A) IN GENERAL.—Nothing in this Act
3 creates a protective perimeter or buffer zone
4 around the Wilderness.

5 (B) ACTIVITIES OUTSIDE WILDERNESS.—

6 The fact that a nonwilderness activity or use
7 can be seen or heard from within the Wilder-
8 ness shall not preclude the conduct of the activ-
9 ity or use outside the boundary of the Wilder-
10 ness.

11 (7) FIRE, INSECT, AND DISEASE CONTROL.—In
12 accordance with section 4(d)(1) of the Wilderness
13 Act (16 U.S.C. 1133(d)(1)), the Secretary may take
14 such measures in the Wilderness as are necessary to
15 control fire, insects, and diseases, including the use
16 of mechanized tools, subject to such conditions as
17 the Secretary determines to be desirable.

18 (8) MANAGEMENT AUTHORITY.—Nothing in
19 this Act shall be construed as reducing or restricting
20 the authority of the Secretary to manage the lands
21 and other resources within the Park pursuant to the
22 Act of January 26, 1915 (16 U.S.C. 191), and other
23 laws applicable to the Park as of the date of enact-
24 ment of this Act.

1 **SEC. 5. EAST SHORE TRAIL AREA IN ROCKY MOUNTAIN NA-**
2 **TIONAL PARK.**

3 (a) IN GENERAL.—Not later than 1 year after the
4 date of enactment of this Act, the Secretary shall establish
5 within the East Shore Trail Area in Rocky Mountain Na-
6 tional Park an alignment line for a trail, to be known as
7 the “East Shore Trail”, to maximize the opportunity for
8 sustained use of the Trail without causing—

9 (1) harm to affected resources; or

10 (2) conflicts among users.

11 (b) BOUNDARIES.—

12 (1) IN GENERAL.—After establishing the align-
13 ment line for the Trail under subsection (a), the
14 Secretary shall—

15 (A) identify the boundaries of the Trail,
16 which shall not extend more than 25 feet east
17 of the alignment line or be located within the
18 wilderness area; and

19 (B) modify the map of the Wilderness pre-
20 pared under section 4(b)(1) so that the western
21 boundary of the Wilderness is 50 feet east of
22 the alignment line.

23 (2) ADJUSTMENTS.—To the extent necessary to
24 protect National Park System resources, the Sec-
25 retary may adjust the boundaries of the Trail, if the

1 adjustment does not place any portion of the Trail
 2 within the boundary of the Wilderness.

3 (c) INCLUSION IN WILDERNESS.—On completion of
 4 the construction of the Trail, as authorized by the Sec-
 5 retary—

6 (1) any portion of the East Shore Trail Area
 7 that is not traversed by the Trail, that is not west
 8 of the Trail, and that is not within 50 feet of the
 9 centerline of the Trail shall be—

10 (A) included in the Wilderness; and

11 (B) managed as part of the Wilderness in
 12 accordance with section 4; and

13 (2) the Secretary shall modify the map and
 14 boundary description of the wilderness prepared
 15 under section 4(b)(1) to reflect the inclusion of the
 16 East Shore Trail Area land in the Wilderness.

17 (d) EFFECT.—Nothing in this section—

18 (1) requires the construction of the Trail along
 19 the alignment line established under subsection (a);
 20 or

21 (2) limits the extent to which any otherwise ap-
 22 plicable law or policy applies to any decision with re-
 23 spect to the construction of the Trail.

24 (e) RELATION TO LAND OUTSIDE WILDERNESS.—

1 (1) IN GENERAL.—Except as provided in this
2 subsection, nothing in this Act shall affect the man-
3 agement or use of any land not included within the
4 boundaries of the Wilderness or the potential wilder-
5 ness land.

6 (2) MOTORIZED VEHICLES AND MACHINERY.—
7 No use of motorized vehicles or other motorized ma-
8 chinery that was not permitted on March 1, 2006,
9 shall be allowed in the East Shore Trail Area except
10 as the Secretary determines to be necessary for use
11 in—

12 (A) constructing the Trail, if the construc-
13 tion is authorized by the Secretary; or

14 (B) maintaining the Trail.

15 (3) MANAGEMENT OF LAND BEFORE INCLU-
16 SION.—Until the Secretary authorizes the construc-
17 tion of the Trail and the use of the Trail for non-
18 motorized bicycles, the East Shore Trail Area shall
19 be managed—

20 (A) to protect any wilderness characteris-
21 tics of the East Shore Trail Area; and

22 (B) to maintain the suitability of the East
23 Shore Trail Area for inclusion in the Wilder-
24 ness.

1 **SEC. 6. INDIAN PEAKS WILDERNESS AND ARAPAHO NA-**
 2 **TIONAL RECREATION AREA BOUNDARY AD-**
 3 **JUSTMENT.**

4 (a) INDIAN PEAKS WILDERNESS BOUNDARY AD-
 5 JUSTMENT.—Section 3(a) of the Indian Peaks Wilderness
 6 Area, the Arapaho National Recreation Area and the Or-
 7 egon Islands Wilderness Area Act (16 U.S.C. 1132 note;
 8 Public Law 95–450) is amended—

9 (1) by striking “seventy thousand acres” and
 10 inserting “74,195 acres”; and

11 (2) by striking “dated July 1978” and inserting
 12 “dated May 2007”.

13 (b) ARAPAHO NATIONAL RECREATION AREA BOUND-
 14 ARY ADJUSTMENT.—Section 4(a) of the Indian Peaks
 15 Wilderness Area, the Arapaho National Recreation Area
 16 and the Oregon Islands Wilderness Area Act (16 U.S.C.
 17 460jj(a)) is amended—

18 (1) by striking “thirty-six thousand two hun-
 19 dred thirty-five acres” and inserting “35,235 acres”;
 20 and

21 (2) by striking “dated July 1978” and inserting
 22 “dated May 2007”.

23 **SEC. 7. AUTHORITY TO LEASE LEIFFER TRACT.**

24 (a) IN GENERAL.—Section 3(k) of Public Law 91–
 25 383 (16 U.S.C. 1a–2(k)) shall apply to the parcel of land
 26 described in subsection (b).

1 (b) DESCRIPTION OF THE LAND.—The parcel of land
2 referred to in subsection (a) is the parcel of land known
3 as the “Leiffer tract” that is—

4 (1) located near the eastern boundary of Rocky
5 Mountain National Park in Larimer County, Colo-
6 rado; and

7 (2) administered by the National Park Service.

○