

111TH CONGRESS
1ST SESSION

S. 2762

To designate certain lands in San Miguel, Ouray, and San Juan Counties,
Colorado, as wilderness, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 2009

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

A BILL

To designate certain lands in San Miguel, Ouray, and San Juan Counties, Colorado, as wilderness, and for other purposes.

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 “San Juan Mountains
5 Wilderness Act of 2009”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COVERED LAND.—The term “covered land”
9 means—

1 (A) lands designated as wilderness under
2 section 3 or section 4; and

3 (B) lands designated as a special manage-
4 ment area under section 4.

5 (2) NONCONFORMING USE.—The term “non-
6 conforming use” means any commercial helicopter-
7 assisted skiing or snowboarding activities within the
8 lands designated as a special management area
9 under section 4 that have been authorized by the
10 Secretary as of the date of enactment of this Act.

11 (3) SECRETARY.—The term “Secretary” means
12 the Secretary of the Interior or the Secretary of Ag-
13 riculture, as appropriate.

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

16 **SEC. 3. ADDITIONS TO THE WILDERNESS PRESERVATION**
17 **SYSTEM.**

18 (a) DESIGNATION.—In accordance with the Wilder-
19 ness Act (16 U.S.C. 1131 et seq.), the following areas in
20 the State are designated as wilderness areas and as com-
21 ponents of the National Wilderness Preservation System:

22 (1) Certain lands in the Grand Mesa,
23 Uncompahgre, and Gunnison National Forests com-
24 prising approximately 3,170 acres, as generally de-
25 picted on a map titled “Proposed Wilson, Sunshine,

1 Black Face and San Bernardo Additions to the Lizard
2 Head Wilderness”, dated May 2009, and which
3 are hereby incorporated into the Lizard Head Wil-
4 derness area.

5 (2) Certain lands in the Grand Mesa,
6 Uncompahgre, and Gunnison National Forests com-
7 prising approximately 8,375 acres, as generally de-
8 picted on a map titled “Proposed Liberty Bell and
9 Last Dollar Additions to the Mt. Sneffels Wilder-
10 ness”, dated May 2009, and which are hereby incor-
11 porated into the Mt. Sneffels Wilderness area.

12 (3) Certain lands in the Grand Mesa,
13 Uncompahgre, and Gunnison National Forests com-
14 prising approximately 13,224 acres, as generally de-
15 picted on a map titled “Proposed Whitehouse Addi-
16 tions to the Mt. Sneffels Wilderness”, dated May
17 2009, and which are hereby incorporated into the
18 Mt. Sneffels Wilderness area.

19 (4)(A) Certain lands in the San Juan Resource
20 Area of the Bureau of Land Management com-
21 prising approximately 8,614 acres, as generally de-
22 picted on a map titled “Proposed McKenna Peak
23 Wilderness”, dated May 2009, and which shall be
24 known as the McKenna Peak Wilderness.

1 (B) The lands designated under subparagraph
2 (A) shall be administered as a component of the Na-
3 tional Landscape Conservation System.

4 (b) MAP AND DESCRIPTION.—

5 (1) IN GENERAL.—As soon as practicable after
6 the date of the enactment of this Act, the Secretary
7 shall file a map and a legal description of each wil-
8 derness area designated by this Act with—

9 (A) the Committee on Natural Resources
10 of the House of Representatives; and

11 (B) the Committee on Energy and Natural
12 Resources of the Senate.

13 (2) FORCE OF LAW.—A map and legal descrip-
14 tion filed under paragraph (1) shall have the same
15 force and effect as if included in this Act, except
16 that the Secretary may correct clerical and typo-
17 graphical errors in the map and legal description.

18 (3) PUBLIC AVAILABILITY.—Each map and
19 legal description filed under paragraph (1) shall be
20 filed and made available for public inspection in the
21 Office of the Director of the Bureau of Land Man-
22 agement and in the Office of the Chief of the Forest
23 Service, as appropriate.

1 **SEC. 4. SHEEP MOUNTAIN SPECIAL MANAGEMENT AREA.**

2 (a) DESIGNATION.—Certain lands in the Grand
3 Mesa, Uncompahgre, and Gunnison and San Juan Na-
4 tional Forests comprising approximately 21,697 acres as
5 generally depicted on a map titled “Proposed Sheep Moun-
6 tain Special Management Area” and dated May 2009, are
7 hereby designated as the Sheep Mountain Special Manage-
8 ment Area.

9 (b) MAPS AND DESCRIPTIONS.—

10 (1) IN GENERAL.—As soon as practicable after
11 the date of enactment of this Act, the Secretary
12 shall file maps and legal descriptions of the Federal
13 land described in subsection (a) with—

14 (A) the Committee on Energy and Natural
15 Resources of the Senate; and

16 (B) the Committee on Natural Resources
17 of the House of Representatives.

18 (2) FORCE OF LAW.—The maps and legal de-
19 scriptions filed under paragraph (1) shall have the
20 same force and effect as if included in this Act, ex-
21 cept that the Secretary may correct typographical
22 errors in the maps and legal descriptions.

23 (3) PUBLIC AVAILABILITY.—Each map and
24 legal description filed under paragraph (1) shall be
25 on file and available for public inspection in the ap-
26 propriate offices of the United States Forest Service.

1 (c) MANAGEMENT.—

2 (1) IN GENERAL.—Until Congress determines
3 otherwise, activities within the area designated in
4 subsection (a) shall be managed by the Secretary of
5 Agriculture so as to maintain the area’s presently
6 existing wilderness character and potential for inclu-
7 sion in the National Wilderness Preservation Sys-
8 tem.

9 (2) PROHIBITIONS.—The following shall be pro-
10 hibited on the Federal land described in subsection
11 (a):

12 (A) Permanent roads.

13 (B) Except as necessary to meet the min-
14 imum requirements for the administration of
15 the Federal land and to protect public health
16 and safety—

17 (i) the use of motorized or mechanized
18 vehicles, except as described in paragraph
19 (3); and

20 (ii) the establishment of temporary
21 roads.

22 (3) ALLOWABLE ACTIVITIES.—The Secretary
23 may allow activities, including helisking, that have
24 been authorized as of the date of the enactment of
25 this Act to continue within the area designated in

1 subsection (a). The designation under subsection (a)
2 shall not impact future permit processes relating to
3 such activities.

4 (4) APPLICABLE LAW.—Any uses of the Fed-
5 eral land described in subsection (a), including ac-
6 tivities described in paragraph (3), shall be in ac-
7 cordance with applicable law.

8 (d) WITHDRAWAL.—Subject to valid existing rights,
9 the Federal land described in subsection (a) is withdrawn
10 from—

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

13 (2) location, entry, and patent under the mining
14 laws; and

15 (3) disposition under all laws relating to min-
16 eral and energy leasing.

17 (e) DESIGNATION AS WILDERNESS.—Lands de-
18 scribed in subsection (a) shall be designated as wilderness
19 on the date on which the Secretary publishes in the Fed-
20 eral Register notice that the nonconforming use has termi-
21 nated.

22 (f) ADMINISTRATION AS WILDERNESS.—Upon its
23 designation as wilderness under subsection (e), the Sheep
24 Mountain Special Management Area shall be—

1 (1) known as the Sheep Mountain Wilderness;
2 and

3 (2) administered in accordance with the Wilder-
4 ness Act (16 U.S.C. 1133 et seq.) and section 3.

5 **SEC. 5. ADMINISTRATIVE PROVISIONS.**

6 (a) IN GENERAL.—

7 (1) Subject to valid rights in existence on the
8 date of the enactment of this Act, land designated
9 as wilderness under section 3 or section 4 shall be
10 administered by the Secretary in accordance with—

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

13 (B) this Act.

14 (2) The Secretary may continue to authorize
15 the competitive running event permitted since 1992
16 in the vicinity of the boundaries of the Sheep Moun-
17 tain Special Management Area designated by section
18 4(a) and the Liberty Bell addition to the Mt.
19 Sneffels Wilderness designated by section 3(a)(2) in
20 a manner compatible with the preservation of such
21 areas as wilderness.

22 (b) EFFECTIVE DATE OF THE WILDERNESS ACT.—

23 With respect to land designated as wilderness under sec-
24 tion 3 or section 4, any reference in the Wilderness Act
25 (16 U.S.C. 1131 et seq.) to the effective date of the Wil-

1 derness Act shall be deemed to be a reference to the date
 2 of the enactment of this Act or the date of the Secretary
 3 designating the land as wilderness.

4 (c) FISH AND WILDLIFE.—Nothing in this Act shall
 5 affect the jurisdiction or responsibility of the State with
 6 respect to wildlife and fish.

7 (d) NO BUFFER ZONES.—

8 (1) IN GENERAL.—Nothing in this Act shall
 9 create a protective perimeter or buffer zone around
 10 covered land.

11 (2) ACTIVITIES OUTSIDE WILDERNESS.—The
 12 fact that a nonwilderness activity or use can be seen
 13 or heard from within covered land shall not preclude
 14 the conduct of the activity or use outside the bound-
 15 ary of the covered land.

16 (e) WITHDRAWAL.—Subject to valid rights in exist-
 17 ence on the date of the enactment of this Act, covered
 18 land is withdrawn from all forms of—

19 (1) entry, appropriation, or disposal under pub-
 20 lic land laws;

21 (2) location, entry, and patent under mining
 22 laws; and

23 (3) disposition under all laws pertaining to min-
 24 eral and geothermal leasing or mineral materials.

1 (f) ACQUIRED LAND.—Any land or interest in land
2 located inside the boundaries of covered land that is ac-
3 quired by the United States after the date of the enact-
4 ment of this Act shall become part of the relevant wilder-
5 ness or special management area and shall be managed
6 in accordance with this Act and other applicable law.

7 (g) GRAZING.—Grazing in covered land shall be ad-
8 ministered in accordance with section 4(d)(4) of the Wil-
9 derness Act (16 U.S.C. 1133(d)(4)), as further inter-
10 preted by section 108 of Public Law 96–560, and the
11 guidelines set forth in appendix A of the Report of the
12 Committee on Interior and Insular Affairs to accompany
13 H.R. 2570 of the 101st Congress (H. Rept. 101–405).

14 (h) AMES HYDROELECTRIC PROJECT.—The inclu-
15 sion in the National Wilderness Preservation System or
16 designation under section 4 of this Act as a Special Man-
17 agement Area as described in section 4 of this Act, shall
18 not be construed to interfere with the operation and main-
19 tenance of the Ames Hydroelectric Project, as currently
20 licensed by the Federal Energy Regulatory Commission,
21 or as reauthorized in the future, including reasonable use
22 of National Wilderness Preservation System lands or Spe-
23 cial Management Area for any necessary repair or replace-
24 ment of existing facilities, transport of water and aerial
25 or land access. All means of access to the project that are

1 currently permitted by the Secretary on the date of enact-
2 ment of this Act shall be maintained.

3 **SEC. 6. WATER.**

4 (a) FINDINGS, PURPOSE, AND DEFINITION.—

5 (1) FINDINGS.—Congress finds that—

6 (A) the lands designated as wilderness or
7 a Special Management Area by this Act are lo-
8 cated at the headwaters of the streams and riv-
9 ers on those lands, with few, if any, actual or
10 proposed water resource facilities located up-
11 stream from such lands and few, if any, oppor-
12 tunities for diversion, storage, or other uses of
13 water occurring outside such lands that would
14 adversely affect the wilderness values of such
15 lands;

16 (B) the lands designated as wilderness or
17 Special Management Area by this Act are not
18 suitable for use for development of new water
19 resource facilities, or for the expansion of exist-
20 ing facilities; and

21 (C) therefore, it is possible to provide for
22 proper management and protection of the wil-
23 derness value of such lands in ways different
24 from those utilized in other legislation desig-
25 nating as wilderness lands not sharing the at-

1 tributes of the lands designated as wilderness or
2 Special Management Area by this Act.

3 (2) PURPOSE.—The purpose of this section is
4 to protect the wilderness values of the lands des-
5 ignated as wilderness or Special Management Area
6 by this Act by means other than those based on a
7 Federal reserved water right.

8 (3) DEFINITION.—As used in this section, the
9 term “water resource facility” means irrigation and
10 pumping facilities, reservoirs, water conservation
11 works, aqueducts, canals, ditches, pipelines, wells,
12 hydropower projects, and transmission and other an-
13 cillary facilities, and other water diversion, storage,
14 and carriage structures.

15 (b) RESTRICTIONS ON RIGHTS AND DISCLAIMER OF
16 EFFECT.—

17 (1) WATER RIGHTS CLAIMS.—Neither the Sec-
18 retary of Agriculture nor the Secretary of the Inte-
19 rior, nor any other officer, employee, representative,
20 or agent of the United States, nor any other person,
21 shall assert in any court or agency, nor shall any
22 court or agency consider, any claim to or for water
23 or water rights in the State of Colorado, which is
24 based on any construction of any portion of this Act,
25 or the designation of any lands as wilderness or Spe-

1 cial Management Area by this Act, as constituting
2 an express or implied reservation of water or water
3 rights.

4 (2) NO AFFECT ON WATER RIGHTS.—Nothing
5 in this Act shall be construed as a creation, recogni-
6 tion, disclaimer, relinquishment, or reduction of any
7 water rights of the United States in the State of
8 Colorado existing before the date of enactment of
9 this Act.

10 (3) NO INTERPRETATION OR DESIGNATION.—
11 Except as provided in subsection (g), nothing in this
12 Act shall be construed as constituting an interpreta-
13 tion of any other Act or any designation made by or
14 pursuant thereto.

15 (4) NO PRECEDENT.—Nothing in this section
16 shall be construed as establishing a precedent with
17 regard to any future wilderness designations.

18 (c) NEW OR EXPANDED PROJECTS.—Notwith-
19 standing any other provision of law, on and after the date
20 of enactment of this Act neither the President nor any
21 other officer, employee, or agent of the United States shall
22 fund, assist, authorize, or issue a license or permit for the
23 development of any new water resource facility within the
24 areas described in sections 3 and 4 or the enlargement

1 of any water resource facility within the areas described
2 in sections 3 and 4.

3 (d) ACCESS AND OPERATION.—

4 (1) ACCESS TO WATER RESOURCE FACILI-
5 TIES.—Subject to the provisions of this subsection,
6 the Secretary shall allow reasonable access to water
7 resource facilities in existence on the date of enact-
8 ment of this Act within the areas described in sec-
9 tions 3 and 4, including motorized access where nec-
10 essary and customarily employed on routes existing
11 as of the date of enactment of this Act.

12 (2) ACCESS ROUTES.—Existing access routes
13 within such areas customarily employed as of the
14 date of enactment of this Act may be used, main-
15 tained, repaired, and replaced to the extent nec-
16 essary to maintain their present function, design,
17 and serviceable operation, so long as such activities
18 have no increased adverse impacts on the resources
19 and values of the areas described in sections 3 and
20 4 than existed as of the date of enactment of this
21 Act.

22 (3) USE OF WATER RESOURCE FACILITIES.—
23 Subject to the provisions of subsections (c) and (d),
24 the Secretary shall allow water resource facilities ex-
25 isting on the date of enactment of this Act within

1 areas described in sections 3 and 4 to be used, oper-
2 ated, maintained, repaired, and replaced to the ex-
3 tent necessary for the continued exercise, in accord-
4 ance with Colorado State law, of vested water rights
5 adjudicated for use in connection with such facilities
6 by a court of competent jurisdiction prior to the date
7 of enactment of this Act. The impact of an existing
8 facility on the water resources and values of the area
9 shall not be increased as a result of changes in the
10 adjudicated type of use of such facility as of the date
11 of enactment of this Act.

12 (4) REPAIR AND MAINTAINENCE.—Water re-
13 source facilities, and access routes serving such fa-
14 cilities, existing within the areas described in sec-
15 tions 3 and 4 on the date of enactment of this Act
16 shall be maintained and repaired when and to the
17 extent necessary to prevent increased adverse im-
18 pacts on the resources and values of the areas de-
19 scribed in sections 3 and 4.

20 (e) EXISTING PROJECTS.—Except as provided in
21 subsections (c) and (d), the provisions of this Act related
22 to the areas described in sections 3 and 4, and the inclu-
23 sion in the National Wilderness Preservation System of
24 the areas described in section 3 and 4, shall not be con-
25 strued to affect or limit the use, operation, maintenance,

1 repair, modification, or replacement of water resources fa-
2 cilities in existence on the date of enactment of this Act
3 within the boundaries of the areas described in sections
4 3 and 4.

5 (f) MONITORING AND IMPLEMENTATION.—The Sec-
6 retaries of Agriculture and the Interior shall monitor the
7 operation of and access to water resource facilities within
8 the areas described in sections 3 and 4 and take all steps
9 necessary to implement the provisions of this section.

10 (g) INTERSTATE COMPACTS.—Nothing in this Act,
11 and nothing in any previous Act designating any lands as
12 wilderness, shall be construed as limiting, altering, modi-
13 fying, or amending any of the interstate compacts or equi-
14 table apportionment decrees that apportion water among
15 and between the State of Colorado and other States. Ex-
16 cept as expressly provided in this section, nothing in this
17 Act shall affect or limit the development or use by existing
18 and future holders of vested water rights of Colorado's full
19 apportionment of such waters.

20 **SEC. 7. NATURITA CANYON MANAGEMENT PROVISIONS.**

21 (a) WITHDRAWAL.—Subject to valid rights in exist-
22 ence on the date of the enactment of this Act, land de-
23 scribed in subsection (b) is withdrawn from all forms of—

24 (1) entry, appropriation, or disposal under pub-
25 lic land laws;

1 (2) location, entry, and patent under mining
2 laws; and

3 (3) disposition under all laws pertaining to min-
4 eral and geothermal leasing or mineral materials.

5 (b) LAND DESCRIBED.—The land to be protected
6 under subsection (a) is the approximately 6,596 acres de-
7 picted on the map titled “Naturita Canyon Mineral With-
8 drawal Area” and dated May 2009.

○