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A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
MESA COUNTY, COLORADO SUPPORTING CONGRESSIONAL
LEGISLATION TO ESTABLISH THE DOMINGUEZ-ESCALANTE
NATIONAL CONSERVATION AREA AND DOMINGUEZ CANYON
WILDERNESS AREA

WHEREAS, the Mesa County Board of County Commissioners has previously affirmed its support for the establishment of certain National Conservation Areas and Wilderness Areas within our County in MCA 2001-17.

WHEREAS, National Conservation Areas (NCAs) are designated by Congress to conserve, protect, enhance and manage public land areas for the benefit and enjoyment of present and future generations. NCAs feature exceptional natural, recreational, cultural, wildlife, aquatic, archeological, paleontological, historical, educational or scientific resources. Wilderness Areas are designated by Congress to protect areas of public land that retain their primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions.

WHEREAS, the Dominguez-Escalante area of Mesa, Montrose and Delta Counties in western Colorado features exceptional scenic, natural, recreational, cultural, wildlife, riparian, archeological, paleontological, historical, educational and scientific resources and should be conserved, protected, enhanced and managed for the benefit and enjoyment of present and future generations.

WHEREAS, the Natural Resources and Land Policy Institute (NRLPI) of Mesa State College and the Public Lands Partnership (PLP) were commissioned to conduct a series of public forums in order to determine the level of public support for a proposal to establish the Dominguez-Escalante National Conservation Area and the Dominguez Canyon Wilderness Area.

WHEREAS, the Dominguez-Escalante NCA Proposal was published in August 2007, and concluded with five policy recommendations. First, that there should be an NCA designation for the Dominguez-Escalante area. Second, the existing boundaries of the current proposal should be maintained, excluding any private land on the external boundaries of the NCA proposal. Third, the Wilderness Study Area within the NCA proposed boundaries should become Wilderness with the boundary of the Wilderness moved to the edge of the rim along the river corridor. Fourth, a management plan created by a public process is needed to resolve many use issues identified in the process of completing the proposal. Fifth, there is a significant need to increase resources for management, particularly in the areas of enforcement, dedicated staff and trail improvements.

WHEREAS, the public process did not reach consensus on the need to legislatively direct management for what is referred to as the “Dominguez North Special Management Area.”

WHEREAS, as our population grows and additional pressures come to impact this region, a need exists to conserve the unique character of the Dominguez-Escalante area and ensure the land is managed for the benefit and enjoyment of present and future generations.

WHEREAS, the protections provided to the land must be enacted with recognition of the importance of private property interests and traditional land uses, including livestock grazing, and must also recognize that the scarcity of water in this arid region has led to the development of an established system of water rights.

WHEREAS, these specific lands were explored and described by the Franciscan missionary-explorers Atanasio Dominguez and Silvestre Velez de Escalante in their 1776 expedition, in recognition of the significance of these missionary-explorers to the history of these lands, it is appropriate to continue to refer to these lands as the “Dominguez-Escalante National Conservation Area” and the “Dominguez Canyon Wilderness Area”

NOW, THEREFORE, BE IT RESOLVED that the Mesa County Commissioners urge the inclusion into the Congressional Legislation of the five policy recommendations from the NCA proposal, as well as the following provisions:

- No federal water right will be granted or implied and the provisions of the attached Exhibit “A” are urged for inclusion into the proposed legislation.
- Existing private water rights are recognized and protected for private use.
- Access to private properties within or adjacent to the designated lands will be granted to the private property owner where necessary and physically possible.
- Livestock grazing shall continue as traditionally provided for under law.
- Professionally accepted range management science protocol shall be used for grazing management practices.
- Range improvement projects, including but not limited to vegetation modification, fencing, noxious weed control and water development may occur when conducted under the supervision of the BLM.
- The use of motorized vehicles for livestock grazing and range management purposes can occur as provided for in the appropriate management plan.
- It is appropriate to continue to refer to these lands as the “Dominguez-Escalante National Conservation Area” and the “Dominguez Canyon Wilderness Area”

- The future management of the Dominguez North Special Management Area should be determined by the public process in the development of the NCAs management plan and recognize the existing motorized use and backcountry primitive values.

With the above provisions included into the Congressional Legislation, the Mesa County Commissioners stand in support of Congressional Legislation to establish the Dominguez-Escalante National Conservation Area and the Dominguez Canyon Wilderness Area.

PASSED AND ADOPTED this _____, day of _____, 2008.

Mesa County Board of Commissioners

Janet Rowland, Chair

ATTEST:

Clerk and Recorder

Dominguez Canyon Wilderness (and NCA) legislation
water language
Final (13b)
March 2008

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that--...

(3) The land that comprises the Dominguez Canyon Wilderness Area designated by Section 5(a)—

(A) has wilderness value; and

(B) offers unique geological, archaeological, paleontological, fish and wildlife, riparian, water resources, scientific, and recreational resources.

(b) PURPOSE.—The purpose of this Act is to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the unique and nationally important values of certain public land in the Mesa, Montrose, and Delta Counties, Colorado, including the geological, cultural, archaeological, paleontological, natural, scientific, recreation, environmental, biological, wilderness, wildlife, riparian, historical, educational, and scenic resources of the public land, by establishing the Dominguez-Escalante National Conservation Area and the Dominguez Canyon Wilderness Area in the State of Colorado, to be administered as part of the National Landscape Conservation System.

SEC. 10. EFFECT.

(a) WATER

(1) FINDINGS.--

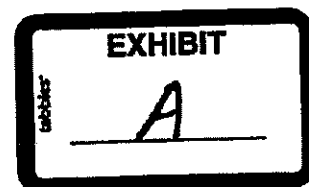
(A) As of the date of enactment of this Act, no private conditional water rights are located in the land designated as wilderness by this Act.

(B) The boundaries of the wilderness area designated by this Act are drawn such that no portion of the Gunnison River is included in the wilderness.

(2) EFFECT ON WATER RIGHTS.—Nothing in this Act shall:

(A) Affect the use or allocation, in existence on the date of enactment of this Act, of any water, water right, or interest in water;

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



- (C) Affect any interstate water compact in existence on the date of enactment of this Act;
- (D) Authorize or impose any new reserved federal water rights;
- (E) Unreasonably limit access for maintenance, operation, modification, repair, or replacement of facilities in existence as of the date of enactment of this Act and associated with water rights referenced in (A) and (B).

(3) EFFECT ON WATER QUALITY DESIGNATIONS.—The designation of areas by this Act shall not, in itself, impose or cause to be imposed, on streams either within or upstream of areas designated by this Act, any water quality designations more stringent than were in existence on the date of enactment of this Act.

(4) RELINQUISHMENT OR REDUCTION.—Nothing in this Act shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Colorado on or before the date of the enactment of this Act.

(5) WILDERNESS WATER RIGHTS.—With respect to the wilderness area designated by this Act:

(A) The Secretary shall ensure that any water rights within the wilderness required to fulfill the purposes of the wilderness are secured in accordance with the following provisions:

(i) Any water rights for which the Secretary pursues adjudication shall be appropriated, adjudicated, changed, and administered pursuant to the procedural requirements and priority system of the laws of the State of Colorado;

(ii) The purposes and other substantive characteristics of such water rights shall be established pursuant to State law, except that the Secretary is specifically authorized to appropriate and seek adjudication of water rights, in accordance with this Act, exclusively for the purpose of maintaining surface water levels and stream flows on and across the wilderness in order to accomplish the purposes of the wilderness;

(iii) The Secretary shall promptly, but no sooner than January 2009, appropriate water rights required to fulfill the purposes of the wilderness; and

(iv) The Secretary shall not pursue adjudication for any instream flow water rights unless the Secretary makes a determination pursuant to (6)(B) or (C).

(6) COOPERATIVE ENFORCEMENT.—

(A) The Secretary shall not pursue adjudication of federal instream flow water rights established as provided in (5), so long as:

(i) the Secretary has determined that the State of Colorado's Colorado Water Conservation Board holds water rights sufficient in priority, amount, and timing to fulfill the purposes of this Act, *Provided* that such determination shall be made upon adjudication of such water rights; and

(ii) the Secretary has entered into a perpetual agreement with the Colorado Water Conservation Board to ensure full exercise, protection, and enforcement

of the State's water rights within the wilderness in order to reliably fulfill the purposes of this Act.

(B) If the Secretary determines that the provisions of (6)(A)(i) and (ii) are not accomplished, the Secretary shall adjudicate and exercise federal water rights required to fulfill the purposes of the wilderness, as provided in (5);

(C) In the event that the Colorado Water Conservation Board modifies its instream flow water rights obtained as provided in (6)(A)(i) to such a degree that the Secretary determines that water rights held by the State of Colorado 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, as provided in (5).

(D) In the event that the Secretary determines that the State of Colorado is not exercising its water rights consistent with (6)(A)(i) or that the agreement described in (6)(A)(ii), once established, is not fulfilled or complied with sufficiently to fulfill the purposes of this Act, the Secretary shall promptly act to exercise and enforce the water rights described in (6)(A)(i).

(7) WATER RESOURCE FACILITY.—With respect to the wilderness area designated by this section, notwithstanding any other provision of law, on and after the date of the enactment of this Act, neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for development of any new irrigation and pumping facility, reservoir, water conservation work, aqueduct, canal, ditch, pipeline, well, hydropower project, transmission, other ancillary facility, or other water, diversion, storage, or carriage structure within the wilderness, *Provided that*, the construction, use, and maintenance of up to seven stock watering ponds, as described in the Bureau of Land Management 1989 Wilderness Review and environmental impact statement and 1991 Wilderness Recommendations, will be allowed, subject to final review and approval by the Bureau of Land Management and subject to the requirements and constraints outlined in those wilderness review and recommendations documents.

(8) NATIONAL CONSERVATION AREA WATER RIGHTS.—With respect to waters within the National Conservation Area, nothing in this Act shall:

(A) Authorize any Federal agency to appropriate or otherwise acquire any water right on the mainstem of the Gunnison River.

(B) Either prevent the State of Colorado from appropriating or acquiring, or require it to appropriate or acquire, an instream flow water right on the mainstem of the Gunnison River.

(9) WILDERNESS BOUNDARIES ALONG GUNNISON RIVER.—In locations where the Gunnison River is used as reference for defining the boundary of the wilderness area designated by this Act, the boundary shall be located at the edge of the river, changing according to river level. No portion of the Gunnison River is included in the wilderness area, irrespective of the river's stage.