

erally to chapter 23 (§1131 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1131 of this title and Tables.

CODIFICATION

Section is comprised of section 2403 of Pub. L. 111-11. Section 2403 also enacted provisions listed in a table of Wilderness Areas set out under section 1132 of this title.

§ 460zzz-3. Maps and legal descriptions

(a) In general

As soon as practicable after March 30, 2009, the Secretary shall file a map and a legal description of the Conservation Area and the Wilderness with—

- (1) the Committee on Energy and Natural Resources of the Senate; and
- (2) the Committee on Natural Resources of the House of Representatives.

(b) Force and effect

The Map and legal descriptions filed under subsection (a) shall have the same force and effect as if included in this subchapter, except that the Secretary may correct clerical and typographical errors in the Map and legal descriptions.

(c) Public availability

The Map and legal descriptions filed under subsection (a) shall be available for public inspection in the appropriate offices of the Bureau of Land Management.

(Pub. L. 111-11, title II, §2404, Mar. 30, 2009, 123 Stat. 1103.)

§ 460zzz-4. Management of Conservation Area and Wilderness

(a) Withdrawal

Subject to valid existing rights, all Federal land within the Conservation Area and the Wilderness and all land and interests in land acquired by the United States within the Conservation Area or the Wilderness is withdrawn from—

- (1) all forms of entry, appropriation, or disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(b) Grazing

(1) Grazing in Conservation Area

Except as provided in paragraph (2), the Secretary shall issue and administer any grazing leases or permits in the Conservation Area in accordance with the laws (including regulations) applicable to the issuance and administration of such leases and permits on other land under the jurisdiction of the Bureau of Land Management.

(2) Grazing in Wilderness

The grazing of livestock in the Wilderness, if established as of March 30, 2009, shall be permitted to continue—

- (A) subject to any reasonable regulations, policies, and practices that the Secretary determines to be necessary; and

(B) in accordance with—

- (i) section 1133(d)(4) of this title; and
- (ii) the guidelines set forth in Appendix A of the report of the Committee on Interior and Insular Affairs of the House of Representatives accompanying H.R. 2570 of the 101st Congress (H. Rept. 101-405).

(c) No buffer zones

(1) In general

Nothing in this subchapter creates a protective perimeter or buffer zone around the Conservation Area.

(2) Activities outside Conservation Area

The fact that an activity or use on land outside the Conservation Area can be seen or heard within the Conservation Area shall not preclude the activity or use outside the boundary of the Conservation Area.

(d) Acquisition of land

(1) In general

The Secretary may acquire non-Federal land within the boundaries of the Conservation Area or the Wilderness only through exchange, donation, or purchase from a willing seller.

(2) Management

Land acquired under paragraph (1) shall—

- (A) become part of the Conservation Area and, if applicable, the Wilderness; and
- (B) be managed in accordance with this subchapter and any other applicable laws.

(e) Fire, insects, and diseases

Subject to such terms and conditions as the Secretary determines to be desirable and appropriate, the Secretary may undertake such measures as are necessary to control fire, insects, and diseases—

- (1) in the Wilderness, in accordance with section 1133(d)(1) of this title; and
- (2) except as provided in paragraph (1), in the Conservation Area in accordance with this subchapter and any other applicable laws.

(f) Access

The Secretary shall continue to provide private landowners adequate access to inholdings in the Conservation Area.

(g) Invasive species and noxious weeds

In accordance with any applicable laws and subject to such terms and conditions as the Secretary determines to be desirable and appropriate, the Secretary may prescribe measures to control nonnative invasive plants and noxious weeds within the Conservation Area.

(h) Water rights

(1) Effect

Nothing in this subchapter—

- (A) affects the use or allocation, in existence on March 30, 2009, of any water, water right, or interest in water;
- (B) affects any vested absolute or decreed conditional water right in existence on March 30, 2009, including any water right held by the United States;
- (C) affects any interstate water compact in existence on March 30, 2009;
- (D) authorizes or imposes any new reserved Federal water rights; or

(E) shall be considered to be a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State on or before March 30, 2009.

(2) Wilderness water rights

(A) In general

The Secretary shall ensure that any water rights within the Wilderness required to fulfill the purposes of the Wilderness are secured in accordance with subparagraphs (B) through (G).

(B) State law

(i) Procedural requirements

Any water rights within the Wilderness for which the Secretary pursues adjudication shall be adjudicated, changed, and administered in accordance with the procedural requirements and priority system of State law.

(ii) Establishment of water rights

(I) In general

Except as provided in subclause (II), the purposes and other substantive characteristics of the water rights pursued under this paragraph shall be established in accordance with State law.

(II) Exception

Notwithstanding subclause (I) and in accordance with this subchapter, the Secretary may appropriate and seek adjudication of water rights to maintain surface water levels and stream flows on and across the Wilderness to fulfill the purposes of the Wilderness.

(C) Deadline

The Secretary shall promptly, but not earlier than January 2009, appropriate the water rights required to fulfill the purposes of the Wilderness.

(D) Required determination

The Secretary shall not pursue adjudication for any instream flow water rights unless the Secretary makes a determination pursuant to subparagraph (E)(i) or (F).

(E) Cooperative enforcement

(i) In general

The Secretary shall not pursue adjudication of any Federal instream flow water rights established under this paragraph if—

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

(II) the Secretary has entered into a perpetual agreement with the Colorado Water Conservation Board to ensure the full exercise, protection, and enforcement of the State water rights within the Wilderness to reliably fulfill the purposes of the Wilderness.

(ii) Adjudication

If the Secretary determines that the provisions of clause (i) have not been met, the

Secretary shall adjudicate and exercise any Federal water rights required to fulfill the purposes of the Wilderness in accordance with this 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 the Wilderness, the Secretary shall adjudicate and exercise Federal water rights required to fulfill the purposes of the Wilderness 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 the Wilderness.

(3) Water resource facility

(A) In general

Notwithstanding any other provision of law and subject to subparagraph (B), beginning on March 30, 2009, 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 the development of any new irrigation and pumping facility, reservoir, water conservation work, aqueduct, canal, ditch, pipeline, well, hydro-power project, transmission, other ancillary facility, or other water, diversion, storage, or carriage structure in the Wilderness.

(B) Exception

Notwithstanding subparagraph (A), the Secretary may allow construction of new livestock watering facilities within the Wilderness in accordance with—

(i) section 1133(d)(4) of this title; and

(ii) the guidelines set forth in Appendix A of the report of the Committee on Interior and Insular Affairs of the House of Representatives accompanying H.R. 2570 of the 101st Congress (H. Rept. 101-405).

(4) Conservation area water rights

With respect to water within the Conservation Area, nothing in this subchapter—

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

(B) prevents the State from appropriating or acquiring, or requires the State to appropriate or acquire, an instream flow water right on the mainstem of the Gunnison River.

(5) Wilderness boundaries along Gunnison River

(A) In general

In areas in which the Gunnison River is used as a reference for defining the boundary of the Wilderness, the boundary shall—

- (i) be located at the edge of the river; and
- (ii) change according to the river level.

(B) Exclusion from Wilderness

Regardless of the level of the Gunnison River, no portion of the Gunnison River is included in the Wilderness.

(i) Effect

Nothing in this subchapter—

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

(2) imposes any Federal water quality standard upstream of the Conservation Area or within the mainstem of the Gunnison River that is more restrictive than would be applicable had the Conservation Area not been established.

(j) Valid existing rights

The designation of the Conservation Area and Wilderness is subject to valid rights in existence on March 30, 2009.

(Pub. L. 111-11, title II, §2405, Mar. 30, 2009, 123 Stat. 1104.)

§ 460zzz-5. Management plan

(a) In general

Not later than 3 years after March 30, 2009, the Secretary shall develop a comprehensive management plan for the long-term protection and management of the Conservation Area.

(b) Purposes

The management plan shall—

- (1) describe the appropriate uses and management of the Conservation Area;
- (2) be developed with extensive public input;
- (3) take into consideration any information developed in studies of the land within the Conservation Area; and
- (4) include a comprehensive travel management plan.

(Pub. L. 111-11, title II, §2406, Mar. 30, 2009, 123 Stat. 1107.)

§ 460zzz-6. Advisory Council

(a) Establishment

Not later than 180 days after March 30, 2009, the Secretary shall establish an advisory council, to be known as the “Dominguez-Escalante National Conservation Area Advisory Council”.

(b) Duties

The Council shall advise the Secretary with respect to the preparation and implementation of the management plan.

(c) Applicable law

The Council shall be subject to—

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

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

(d) Members

The Council shall include 10 members to be appointed by the Secretary, of whom, to the extent practicable—

(1) 1 member shall be appointed after considering the recommendations of the Mesa County Commission;

(2) 1 member shall be appointed after considering the recommendations of the Montrose County Commission;

(3) 1 member shall be appointed after considering the recommendations of the Delta County Commission;

(4) 1 member shall be appointed after considering the recommendations of the permittees holding grazing allotments within the Conservation Area or the Wilderness; and

(5) 5 members shall reside in, or within reasonable proximity to, Mesa County, Delta County, or Montrose County, Colorado, with backgrounds that reflect—

(A) the purposes for which the Conservation Area or Wilderness was established; and

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

(e) Representation

The Secretary shall ensure that the membership of the Council is fairly balanced in terms of the points of view represented and the functions to be performed by the Council.

(f) Duration

The Council shall terminate on the date that is 1 year from the date on which the management plan is adopted by the Secretary.

(Pub. L. 111-11, title II, §2407, Mar. 30, 2009, 123 Stat. 1107.)

Editorial Notes

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c)(1), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Federal Land Policy and Management Act of 1976, referred to in subsec. (c)(2), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, which is classified principally to chapter 35 (§1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

§ 460zzz-7. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subchapter.

(Pub. L. 111-11, title II, §2408, Mar. 30, 2009, 123 Stat. 1108.)

SUBCHAPTER CXXXVIII—NELLIS DUNES OFF-HIGHWAY VEHICLE RECREATION AREA

§ 460aaaa. Nellis Dunes Off-Highway Vehicle Recreation Area

(1) Definitions

In this section: