

Union Calendar No. 249

107TH CONGRESS
2^D SESSION

H. R. 2963

[Report No. 107-416]

To establish the Deep Creek Wilderness Area, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2001

Mr. McINNIS introduced the following bill; which was referred to the
Committee on Resources

APRIL 23, 2002

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on September 25, 2001]

A BILL

To establish the Deep Creek Wilderness Area, 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 “Deep Creek-Yampatika*
5 *Ute Wilderness Act”.*

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) *FINDINGS.*—Congress finds the following:

3 (1) *Certain areas located in the White River Na-*
4 *tional Forest and the Bureau of Land Management,*
5 *Glenwood Springs Resource Area, in Colorado along*
6 *Deep Creek should be protected and enhanced for the*
7 *benefit and enjoyment of present and future genera-*
8 *tions, including the areas making up the rugged and*
9 *remote limestone gorge formed by Deep Creek on the*
10 *White River Plateau of the White River National For-*
11 *est in Garfield and Eagle Counties, Colorado, which*
12 *have wilderness values and offer unique and valuable*
13 *scenic, geological, scientific, and recreational opportu-*
14 *nities.*

15 (2) *The unique high elevation riparian areas*
16 *and natural and wildlife components, enhanced by*
17 *the rural western setting of the area, provide extensive*
18 *opportunities for primitive recreational activities, are*
19 *publicly used for hiking, cave exploration, and soli-*
20 *tude, and are worthy of additional protection as a*
21 *wilderness area.*

22 (3) *Deep Creek carves a rugged and remote lime-*
23 *stone gorge, forming a dramatic pristine canyon over*
24 *2,500 feet deep and 13 miles long.*

1 (4) *The limestone strata have created ideal con-*
2 *ditions for the formation of caves, many of which are*
3 *among Colorado's most outstanding.*

4 (5) *There are both absolute and conditional de-*
5 *creed water rights appertaining to waters upstream*
6 *and downstream from the Wilderness Area. These*
7 *rights are private property rights and are entitled to*
8 *protection.*

9 (6) *It is possible to provide for proper manage-*
10 *ment and protection of the wilderness values of the*
11 *Wilderness Area in ways that provide for the reason-*
12 *able development of the upstream and adjacent water*
13 *rights.*

14 (7) *Out of respect for the native Ute people who*
15 *frequented the area near Trappers Lake and the Deep*
16 *Creek headwaters for centuries, the Wilderness Area*
17 *shall be known as the Deep Creek-Yampatika Ute*
18 *Wilderness.*

19 (8) *Colorado law authorizes the Colorado Water*
20 *Conservation Board to hold instream flow rights in*
21 *order to protect the natural environment. Establish-*
22 *ment and/or augmentation of such an instream flow*
23 *right for Deep Creek, abandonment of existing condi-*
24 *tional rights appertaining to waters upstream from*
25 *the Wilderness Area, and/or conversion to such*

1 *instream flow rights of existing absolute water rights*
2 *appertaining to such waters would be beneficial to the*
3 *protection of the resources and values of the Wilder-*
4 *ness Area.*

5 *(9) There are no known water resource facilities*
6 *or projects, or rights-of-way or access routes serving*
7 *water resource facilities or projects, within the Wil-*
8 *derness Area. Therefore, it is not necessary to include*
9 *provisions in this Act for access, operation, routes,*
10 *maintenance, or repair for water resource facilities or*
11 *projects.*

12 *(b) PURPOSE.—The purpose of this Act is to conserve,*
13 *protect, and enhance for the benefit and enjoyment of*
14 *present and future generations the unique and nationally*
15 *important values of the Federal lands depicted on the Map,*
16 *including wilderness, geological, natural, scientific, rec-*
17 *reational, environmental, biological, and scenic resources of*
18 *such Federal lands, by establishing the Deep Creek-*
19 *Yampatika Ute Wilderness Area in the State of Colorado.*

20 **SEC. 3. DEFINITIONS.**

21 *In this Act:*

22 *(1) WILDERNESS AREA.—The term “Wilderness*
23 *Area” means the Deep Creek-Yampatika Ute Wilder-*
24 *ness Area established by section 4.*

1 (2) *MAP.*—*The term “Map” means the map enti-*
2 *tled “Proposed Deep Creek-Yampatika Ute Wilderness*
3 *Area” and dated February 25, 2002.*

4 (3) *SECRETARY.*—*The term “Secretary”*
5 *means—*

6 (A) *the Secretary of Agriculture, acting*
7 *through the Chief of the Forest Service, with re-*
8 *gard to lands over which that Secretary has ju-*
9 *risdiction; and*

10 (B) *the Secretary of the Interior, acting*
11 *through the Director of the Bureau of Land*
12 *Management, with regard to lands over which*
13 *that Secretary has jurisdiction.*

14 **SEC. 4. DEEP CREEK-YAMPATIKA UTE WILDERNESS AREA**
15 **DESIGNATION.**

16 (a) *IN GENERAL.*—*In furtherance of the Wilderness*
17 *Act, there is established the Deep Creek-Yampatika Ute Wil-*
18 *derness Area in the State of Colorado.*

19 (b) *AREAS INCLUDED.*—*The Wilderness Area shall*
20 *consist of approximately 7,350 acres of Federal land as gen-*
21 *erally depicted on the Map.*

22 (c) *EFFECTIVE DATE.*—

23 (1) *DETERMINATION.*—*Subsections (a) and (b)*
24 *shall take effect upon a determination by the Sec-*
25 *retary of Agriculture that—*

1 (A) conditional water rights described in
2 section 6(e)(3)(A)(i) have been canceled or aban-
3 doned;

4 (B) absolute water rights described in sec-
5 tion 6(e)(3)(A)(ii) have been conveyed to the Col-
6 orado Water Conservation Board for conversion
7 to instream flows under Colorado law; or

8 (C) the Colorado Water Conservation Board
9 has made a final determination regarding
10 whether or not instream flow levels in Deep
11 Creek are adequate.

12 (2) NOTICE.—As soon as practicable after mak-
13 ing a determination under paragraph (1), the Sec-
14 retary of Agriculture shall publish notice of that de-
15 termination in the Federal Register.

16 **SEC. 5. MANAGEMENT.**

17 (a) WILDERNESS AREA.—After making a determina-
18 tion under section 4(c), the Secretary, shall manage the Wil-
19 derness Area in a manner that—

20 (1) conserves, protects, and enhances the re-
21 sources of the Wilderness Area; and

22 (2) is in accordance with—

23 (A) the Wilderness Act (16 U.S.C. 1131 et
24 seq.), except that, with respect to any wilderness
25 areas designated by this Act, any reference in the

1 *Wilderness Act to the effective date of the Wilder-*
2 *ness Act shall be deemed to be a reference to the*
3 *date of the enactment of this Act;*

4 *(B) the Federal Land Policy and Manage-*
5 *ment Act of 1976 (43 U.S.C. 1701 et seq.); and*

6 *(C) other applicable law, including this Act.*

7 *(b) WITHDRAWALS.—Subject to valid existing rights,*
8 *all Federal lands within the Wilderness Area are with-*
9 *drawn from—*

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

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

14 *(3) the operation of the mineral leasing, mineral*
15 *materials, and geothermal leasing laws, and all*
16 *amendments thereto.*

17 *(c) AERIAL NAVIGATION TRAINING EXERCISES.—*

18 *(1) IN GENERAL.—The Colorado Army National*
19 *Guard, through the High Altitude ARNG Aviation*
20 *Training Site, shall continue to be allowed to conduct*
21 *aerial navigation training maneuver exercises over*
22 *and upon the lands within the Wilderness Area in a*
23 *manner consistent with the memorandum of under-*
24 *standing dated August 4, 1987, among the Colorado*
25 *Army National Guard, the Bureau of Land Manage-*

1 *ment, and the United States Forest Service as inter-*
2 *preted and implemented prior to the date of the en-*
3 *actment of this Act.*

4 (2) *REVIEW AND MODIFICATION OF MEMO-*
5 *RANDUM OF UNDERSTANDING.*—*The memorandum of*
6 *understanding referred to in paragraph (1) may be*
7 *modified subject to the agreement of all parties there-*
8 *to. The parties to the memorandum of understanding*
9 *shall review the memorandum and associated annual*
10 *operating plan not later than 180 days after the date*
11 *of the enactment of this Act, and annually thereafter*
12 *while the memorandum of understanding is in effect.*
13 *The review shall include consideration of alternative*
14 *locations over National Forest System lands and*
15 *lands administered by the Bureau of Land Manage-*
16 *ment outside of the Wilderness Area for the conduct*
17 *of activities identified in the memorandum. If the*
18 *Colorado Army National Guard identifies such an al-*
19 *ternate location outside of the Wilderness Area that*
20 *meets its aerial training needs, the memorandum of*
21 *understanding shall be modified accordingly, subject*
22 *to the agreement of all parties thereto.*

23 (d) *HUNTING AND FISHING.*—*Nothing in this Act shall*
24 *affect the authority of the Colorado Division of Wildlife to*
25 *regulate hunting or fishing in the Wilderness Area.*

1 (e) *GRAZING.*—

2 (1) *IN GENERAL.*—*Except as provided by para-*
3 *graph (2), the Secretary shall issue and administer*
4 *any grazing leases or permits in the Wilderness Area*
5 *in accordance with the same laws (including regula-*
6 *tions) and Executive orders followed by the Secretary*
7 *in issuing and administering grazing leases and per-*
8 *mits on other land under the jurisdiction of the Forest*
9 *Service and Bureau of Land Management, respec-*
10 *tively.*

11 (2) *GRAZING IN WILDERNESS AREA.*—

12 (A) *FOREST SERVICE LANDS.*—*Grazing of*
13 *livestock in the Wilderness Area on lands that*
14 *are under the jurisdiction of the Forest Service*
15 *shall be administered in accordance with the*
16 *provisions of section 4(d)(4) of the Wilderness*
17 *Act (16 U.S.C. 1133(d)(4)), in accordance with*
18 *the guidelines set forth under the heading “Graz-*
19 *ing in National Forest Wilderness” in House Re-*
20 *port 96–617 of the 96th Congress.*

21 (B) *BLM LANDS.*—*Grazing of livestock in*
22 *the Wilderness Area on lands that are under the*
23 *jurisdiction of the Bureau of Land Management*
24 *shall be administered in accordance with the*
25 *provisions of section 4(d)(4) of the Wilderness*

1 *Act (16 U.S.C. 1133(d)(4)), in accordance with*
2 *the guidelines set forth in Appendix A of House*
3 *Report 101–405 of the 101st Congress.*

4 *(f) NO BUFFER ZONES.—Congress does not intend for*
5 *the establishment of the Wilderness Area to lead to the cre-*
6 *ation of protective perimeters or buffer zones around the*
7 *Wilderness Area. The fact that there may be activities or*
8 *uses on lands outside the Wilderness Area that would not*
9 *be allowed in the Wilderness Area shall not preclude such*
10 *activities or uses on such lands up to the boundary of the*
11 *Wilderness Area consistent with other applicable laws.*

12 **SEC. 6. WATER RIGHTS AND MANAGEMENT.**

13 *(a) DEFINITION.—As used in this section, the term*
14 *“water resource facility” means irrigation and pumping fa-*
15 *cilities, reservoirs, water conservation works, aqueducts, ca-*
16 *nals, ditches, pipelines, wells, hydropower projects and*
17 *transmission and other ancillary facilities, and other water*
18 *diversion, storage, and carriage structures.*

19 *(b) RESTRICTIONS ON RIGHTS AND DISCLAIMER OF*
20 *EFFECT.—*

21 *(1) RESTRICTIONS ON RIGHTS.—Neither the Sec-*
22 *retary of Agriculture nor the Secretary of the Interior,*
23 *nor any other officer, employee, representative, or*
24 *agent of the United States, nor any other person,*
25 *shall assert in any court or agency, nor shall any*

1 *court or agency consider, any claim to or for water*
2 *or water rights in the State of Colorado, which is*
3 *based on any construction of any portion of this Act,*
4 *or the designation of any lands as wilderness by this*
5 *Act, as constituting an express or implied reservation*
6 *of water or water rights.*

7 (2) *DISCLAIMER OF EFFECT.—(A) Nothing in*
8 *this Act shall—*

9 (i) *be construed as a recognition, dis-*
10 *claimer, relinquishment, or reduction of any*
11 *water rights of the United States in the State of*
12 *Colorado existing before the date of the enact-*
13 *ment of this Act; or*

14 (ii) *be construed as constituting an inter-*
15 *pretation of any other Act or any designation*
16 *made by or pursuant thereto.*

17 (B) *Nothing in this section shall be construed as*
18 *establishing a precedent with regard to any future*
19 *wilderness designations.*

20 (c) *NEW OR EXPANDED PROJECTS.—Notwithstanding*
21 *any other provision of law, on and after the date of the*
22 *enactment of this Act, neither the President nor any other*
23 *officer, employee, or agent of the United States shall fund,*
24 *assist, authorize, or issue a license or permit for the develop-*

1 *ment of any new water resource facility within lands des-*
2 *ignated wilderness pursuant to this Act.*

3 (d) *INTERSTATE COMPACTS.*—*Nothing in this Act, and*
4 *nothing in any previous Act designating any lands as wil-*
5 *derness, shall be construed as limiting, altering, modifying,*
6 *or amending any of the interstate compacts or equitable ap-*
7 *portionment decrees that apportion water among and be-*
8 *tween the State of Colorado and other States. Except as ex-*
9 *pressly provided in this section, nothing in this Act shall*
10 *affect or limit the development or use by existing and future*
11 *holders of vested water rights of Colorado’s full apportion-*
12 *ment of such waters.*

13 (e) *STREAM FLOWS.*—

14 (1) *RECOMMENDATIONS.*—*The Secretary of Agri-*
15 *culture shall consult with the Colorado Water Con-*
16 *servaion Board regarding instream flow protection*
17 *recommendations on Deep Creek within the Wilder-*
18 *ness Area and shall do so in accordance with Colo-*
19 *rado law and in consultation with interested parties*
20 *and local elected officials.*

21 (2) *RESTATEMENT OF CURRENT LAW.*—*As pro-*
22 *vided by Federal and Colorado State law, the Sec-*
23 *retary may continue to enter into enforcement agree-*
24 *ments with the Colorado Water Conservation Board*
25 *for monitoring and protecting instream flows.*

1 (3) *GRANTS FOR COMPENSATION RELATING TO*
2 *WATER RIGHTS.*—

3 (A) *IN GENERAL.*—*The Secretary of Agri-*
4 *culture may make a grant to the Department of*
5 *Natural Resources of the State of Colorado for*
6 *the following purposes:*

7 (i) *CONDITIONAL WATER RIGHTS.*—
8 *Compensating willing parties for canceling*
9 *or otherwise abandoning conditional water*
10 *rights within or upstream of the Wilderness*
11 *Area which would protect the natural envi-*
12 *ronment within the Wilderness Area.*

13 (ii) *ABSOLUTE WATER RIGHTS.*—*Com-*
14 *pensating willing parties for conveying ab-*
15 *solute water rights within or upstream of*
16 *the Wilderness Area to the Colorado Water*
17 *Conservation Board for conversion to*
18 *instream flows under Colorado law.*

19 (B) *ENFORCEABLE AGREEMENT.*—*Com-*
20 *ensation under clauses (i) and (ii) of subpara-*
21 *graph (A) shall be given pursuant to an enforce-*
22 *able agreement between the Department of Nat-*
23 *ural Resources of the State of Colorado and the*
24 *willing party setting out the fair market value*
25 *for the conditional water rights to be canceled or*

1 *abandoned, or the absolute water rights to be*
2 *conveyed, as applicable. The fair market value*
3 *shall be determined by an independent ap-*
4 *praisal, performed by an appraiser to be mutu-*
5 *ally agreed upon by the Secretary of Agriculture,*
6 *the Department of Natural Resources of the State*
7 *of Colorado, and the willing party.*

8 (C) *AUTHORIZATION OF APPROPRIA-*
9 *TIONS.—There is authorized to be appropriated*
10 *for the purposes of this paragraph \$300,000.*

11 **SEC. 7. MAP AND LEGAL DESCRIPTION.**

12 (a) *IN GENERAL.—As soon as practicable after the*
13 *date of the enactment of this Act, the Secretary shall submit*
14 *to Congress a copy of the Map and a legal description of*
15 *the Wilderness Area.*

16 (b) *FORCE AND EFFECT.—The Map and legal descrip-*
17 *tion shall have the same force and effect as if included in*
18 *this Act, except that the Secretary may correct clerical and*
19 *typographical errors in the Map and the legal description.*

20 (c) *PUBLIC AVAILABILITY.—Copies of the Map and the*
21 *legal description shall be on file and available for public*
22 *inspection in the following:*

23 (1) *The Office of the Director of the Bureau of*
24 *Land Management.*

25 (2) *The Office of the Chief of the Forest Service.*

1 (3) *The Office of the State Director of the Bu-*
2 *reau of Land Management in Colorado and the Glen-*
3 *wood Springs Resource area Office in Glenwood*
4 *Springs, Colorado.*

5 (4) *The Office of the Regional Forester of the*
6 *Forest Service in Colorado, and of the White River*
7 *National Forest, Forest Ranger Office in Glenwood*
8 *Springs, Colorado.*

9 (d) *MAP CONTROLLING.—In the case of a discrepancy*
10 *between the Map and the descriptions, the Map shall con-*
11 *trol.*

12 **SEC. 8. WILDERNESS POTENTIAL.**

13 *Nothing in the Act shall preclude or restrict the au-*
14 *thority of the Secretary to evaluate the suitability of*
15 *roadless and unroaded areas adjacent to the Wilderness*
16 *Area for inclusion in the National Wilderness Preservation*
17 *System or to make recommendations to Congress for such*
18 *inclusions.*

Union Calendar No. 249

107TH CONGRESS
2^D SESSION

H. R. 2963

[Report No. 107-416]

A BILL

To establish the Deep Creek Wilderness Area, and
for other purposes.

APRIL 23, 2002

Reported with an amendment, committed to the Com-
mittee of the Whole House on the State of the Union,
and ordered to be printed