

112TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To designate certain Federal land in the San Juan National Forest in the State of Colorado as wilderness, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## A BILL

To designate certain Federal land in the San Juan National Forest in the State of 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 “Hermosa Creek Water-  
5 shed Protection Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COVERED LAND.—The term “covered land”  
9 means land in the Special Management Area, includ-  
10 ing land designated as wilderness under section 3.

1           (2) MAP.—The term “Map” means the map en-  
2           titled “Hermosa Creek Proposed Special Manage-  
3           ment Area, 2011” and dated May 20, 2011.

4           (3) SECRETARY.—The term “Secretary” means  
5           the Secretary of Agriculture.

6           (4) SPECIAL MANAGEMENT AREA.—The term  
7           “Special Management Area” means the Hermosa  
8           Creek Special Management Area designated by sec-  
9           tion 4(a).

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

12 **SEC. 3. ADDITIONS TO THE NATIONAL WILDERNESS PRES-**  
13 **ERVATION SYSTEM.**

14          (a) DESIGNATION.—In accordance with the Wilder-  
15          ness Act (16 U.S.C. 1131 et seq.), certain Federal land  
16          in the San Juan National Forest comprising approxi-  
17          mately 37,236 acres, as generally depicted on the Map and  
18          entitled “Hermosa Creek Wilderness Area”, is designated  
19          as a wilderness area and a component of the National Wil-  
20          derness Preservation System, to be known as the  
21          “Hermosa Creek Wilderness”.

22          (b) ADMINISTRATION.—Subject to valid rights in ex-  
23          istence on the date of enactment of this Act, the land des-  
24          ignated as wilderness by subsection (a) shall be adminis-  
25          tered by the Secretary in accordance with the Wilderness

1 Act (16 U.S.C. 1131 et 6 seq.) (94 Stat. 3265) and this  
2 Act, except that any reference in the Wilderness Act (16  
3 U.S.C. 1131 et seq.) to the effective date of that Act shall  
4 be considered to be a reference to the date of enactment  
5 of this Act.

6 **SEC. 4. HERMOSA CREEK SPECIAL MANAGEMENT AREA.**

7 (a) DESIGNATION.—Certain Federal land in the San  
8 Juan National Forest comprising approximately 107,886  
9 acres, as generally depicted on the Map and entitled  
10 “Hermosa Creek Special Management Area”, is des-  
11 ignated as the “Hermosa Creek Special Management  
12 Area”.

13 (b) PURPOSE.—The purpose of the Special Manage-  
14 ment Area is to conserve and protect for the benefit of  
15 present and future generations the geological, cultural,  
16 natural, scientific, recreational, wildlife, riparian, histor-  
17 ical, educational, and scenic resources of the Special Man-  
18 agement Area.

19 (c) MANAGEMENT PLAN.—

20 (1) IN GENERAL.—In accordance with the Fed-  
21 eral Land Policy and Management Act of 1976 (43  
22 U.S.C. 1701 et seq.), not later than 3 years after  
23 the date of enactment of this Act, the Secretary  
24 shall develop a comprehensive management plan for

1 the long-range protection and management of the  
2 Special Management Area.

3 (2) PURPOSES.—The management plan shall—

4 (A) describe the appropriate uses and  
5 management of the covered land;

6 (B) be developed with extensive public  
7 input;

8 (C) take into consideration any informa-  
9 tion developed in studies of the land within the  
10 Special Management Area; and

11 (D) include a comprehensive travel man-  
12 agement plan for motorized and mechanized  
13 off-highway vehicle recreation for the land man-  
14 aged by the Forest Service in the covered area.

15 (3) INVENTORY.—Before preparing the plan  
16 under paragraph (1), the Secretary shall carry out  
17 resource and route inventories of the area covered by  
18 the plan.

19 (4) LIMITATION TO DESIGNATED ROUTES.—

20 (A) IN GENERAL.—Except as provided in  
21 subparagraph (B), the plan shall limit rec-  
22 reational motorized and mechanized off-highway  
23 vehicle use to a system of designated roads and  
24 trails established by the plan.

1 (B) EXCEPTION.—Subparagraph (A) shall  
2 not apply to snowmobiles.

3 **SEC. 5. MANAGEMENT OF COVERED LAND.**

4 (a) IN GENERAL.—The Secretary shall manage the  
5 covered land in a manner that—

6 (1) conserves, protects, and enhances the re-  
7 sources and values of the covered land described in  
8 section 4(b); and

9 (2) is in accordance with—

10 (A) the National Forest Management Act  
11 of 1976 (16 U.S.C. 1600 et seq.);

12 (B) this Act; and

13 (C) any other applicable laws.

14 (b) MAP AND DESCRIPTION.—

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

19 (A) the Committee on Energy and Natural  
20 Resources of the Senate; and

21 (B) the Committee on Natural Resources  
22 of the House of Representatives.

23 (2) FORCE OF LAW.—A map and legal descrip-  
24 tion filed under paragraph (1) shall have the same  
25 force and effect as if included in this Act, except

1 that the Secretary may correct clerical and typo-  
2 graphical errors in the map and legal description.

3 (3) PUBLIC AVAILABILITY.—Each map and  
4 legal description under paragraph (1) shall be filed  
5 and made available for public inspection in the Of-  
6 fice of the Chief of the Forest Service.

7 (c) AUTHORIZED ACTIVITIES.—

8 (1) IN GENERAL.—Subject to paragraphs (2)  
9 and (3), the travel management plan developed  
10 under section 4(c)(2)(D), and section 6, the Sec-  
11 retary may allow any activities (including motorized  
12 recreation and mountain biking) that have been au-  
13 thORIZED by permit as of the date of enactment of  
14 this Act to continue on any portion of the covered  
15 land that is not designated as wilderness by section  
16 3.

17 (2) HERMOSA ROADLESS AREA.—Within certain  
18 Federal land in the covered land comprising approxi-  
19 mately 43,217 acres, as generally depicted on the  
20 Map and entitled “Hermosa Roadless Area”, the fol-  
21 lowing uses shall be prohibited:

22 (A) New permanent road construction.

23 (B) Except as necessary to meet the min-  
24 imum requirements for the administration of  
25 the Federal land and to protect public health

1           and safety, the establishment of temporary  
2           roads.

3           (3) DURANGO MOUNTAIN RESORT SKI AREA.—

4           Nothing in this Act alters or limits the permit held  
5           by the Durango Mountain Resort Ski Area or the  
6           implementation of the activities governed by that  
7           permit.

8           (d) TIMBER HARVESTING.—The Secretary may au-  
9           thorize the harvesting of timber for commercial sale on  
10          the covered land, excluding the land designated as wilder-  
11          ness under section 3 and the land designated as the  
12          Hermosa Roadless Area under subsection (c)(3) in a man-  
13          ner that—

14               (1) is consistent with the purposes described in  
15          section 4(b); and

16               (2) protects the watershed quality of the cov-  
17          ered land, including the maintenance of the viability  
18          and quality of fisheries.

19          (e) WITHDRAWAL.—

20               (1) IN GENERAL.—Subject to paragraph (2)  
21          and to valid rights in existence on the date of enact-  
22          ment of this Act, the covered land is withdrawn  
23          from—

24                       (A) all forms of entry, appropriation, or  
25          disposal under the public land laws;

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

3 (C) operation of the mineral leasing, min-  
4 eral materials, and geothermal leasing laws.

5 (2) EXEMPTION.—

6 (A) IN GENERAL.—The areas described in  
7 subparagraph (B) on the covered land shall be  
8 exempt from the withdrawal under paragraph  
9 (1).

10 (B) DESCRIPTION OF AREAS.—The areas  
11 described in this subparagraph are:

12 (i) certain Federal land comprising  
13 approximately 1,397 acres, as generally de-  
14 picted on the Map and entitled “La Plata  
15 Area”; and

16 (ii) certain Federal land comprising  
17 approximately 607 acres, as generally de-  
18 picted on the Map and entitled “Graysill  
19 Area”.

20 (f) FISH AND WILDLIFE.—Nothing in this Act af-  
21 fects the jurisdiction or responsibility of the State with  
22 respect to wildlife and fish.

23 (g) NO BUFFER ZONES.—

1           (1) IN GENERAL.—Nothing in this Act creates  
2           a protective perimeter or buffer zone around the cov-  
3           ered land.

4           (2) ACTIVITIES OUTSIDE WILDERNESS.—The  
5           fact that a nonwilderness activity or use can be seen  
6           or heard from within covered land shall not preclude  
7           the conduct of the activity or use outside the bound-  
8           ary of the covered land.

9           (h) GRAZING.—The grazing of livestock on covered  
10          land shall be permitted to continue subject to such reason-  
11          able regulations as are considered necessary by the Sec-  
12          retary with jurisdiction over the covered land, in accord-  
13          ance with—

14                 (1) section 4(d)(4) of the Wilderness Act (16  
15                 U.S.C. 1133(d)(4)); and

16                 (2) the guidelines set forth in Appendix A of  
17                 the report of the Committee on Interior and Insular  
18                 Affairs of the House of Representatives accom-  
19                 panying H.R. 2570 of the 101st Congress (H.  
20                 Rept.101–405) and H.R. 5487 of the 96th Congress  
21                 (H. Rept. 96–617).

22          (i) STATE AND FEDERAL WATER MANAGEMENT.—  
23          Nothing in this Act alters any Federal or State manage-  
24          ment authority, rule, or law (including a regulation) in ex-  
25          istence on the date of the enactment of this Act that af-

1 fects the site for potential water storage on the covered  
2 land identified by the State in the Statewide Water Supply  
3 Initiative Studies issued by the State in 2004 and 2007.

4 (j) FIRE, INSECT, INVASIVE SPECIES, AND DISEASE  
5 MANAGEMENT ACTIVITIES.—The Secretary may carry out  
6 such activities on the covered land as are necessary to con-  
7 trol and prevent fire, insects, invasive species, and dis-  
8 eases, in accordance with section 4(d)(1) of the Wilderness  
9 Act (16 U.S.C. 1133(d)(1)) and any other applicable laws  
10 (including regulations) and Executive orders.

11 **SEC. 6. WATER RIGHTS.**

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

13 (1) FINDINGS.—Congress finds that—

14 (A) the land designated as wilderness by  
15 this Act is located at the headwaters of the  
16 streams and rivers on that land, with few, if  
17 any—

18 (i) actual or proposed water resource  
19 facilities located upstream from that land;  
20 and

21 (ii) opportunities for diversion, stor-  
22 age, or other uses of water occurring out-  
23 side that land that would adversely affect  
24 the wilderness values of that land;

1 (B) the land designated as wilderness by  
2 this Act is not suitable for use for the develop-  
3 ment of new water resource facilities or the ex-  
4 pansion of existing facilities; and

5 (C) therefore, it is possible to provide for  
6 proper management and protection of the wil-  
7 derness value of the land in ways different from  
8 those used in other legislation designating as  
9 wilderness land that does not share the at-  
10 tributes of the land designated as wilderness by  
11 this Act.

12 (2) PURPOSE.—The purpose of this section is  
13 to protect the wilderness values of the land des-  
14 ignated as wilderness by this Act by means other  
15 than those based on a Federal reserved water right.

16 (3) DEFINITION OF WATER RESOURCE FACIL-  
17 ITY.—As used in this section, the term “water re-  
18 source facility” means irrigation and pumping facili-  
19 ties, reservoirs, water conservation works, aqueducts,  
20 canals, ditches, pipelines, wells, hydropower projects,  
21 transmission and other ancillary facilities, and other  
22 water diversion, storage, and carriage structures.

23 (b) RESTRICTIONS ON RIGHTS AND DISCLAIMER OF  
24 EFFECT.—

1           (1) WATER RIGHTS CLAIMS.—Neither the Sec-  
2           retary of Agriculture nor the Secretary of the Inte-  
3           rior, nor any other officer, employee, representative,  
4           or agent of the United States, nor any other person,  
5           shall assert in any court or agency, nor shall any  
6           court or agency consider, any claim to or for water  
7           or water rights in the State of Colorado, which is  
8           based on any construction of any portion of this Act,  
9           or the designation of any land as wilderness by this  
10          Act, as constituting an express or implied reserva-  
11          tion of water or water rights.

12          (2) NO AFFECT ON WATER RIGHTS.—Nothing  
13          in this Act shall be construed as a creation, recogni-  
14          tion, disclaimer, relinquishment, or reduction of any  
15          water rights of the United States in the State of  
16          Colorado existing before the date of enactment of  
17          this Act.

18          (3) NO INTERPRETATION OR DESIGNATION.—  
19          Except as provided in subsection (g), nothing in this  
20          Act shall be construed as constituting an interpreta-  
21          tion of any other Act or any designation made by or  
22          pursuant to any other Act.

23          (4) NO PRECEDENT.—Nothing in this section  
24          shall be construed as establishing a precedent with  
25          regard to any future wilderness designation.

1           (c) NEW OR EXPANDED PROJECTS.—Notwith-  
2 standing any other provision of law, on and after the date  
3 of enactment of this Act, neither the President nor any  
4 other officer, employee, or agent of the United States shall  
5 fund, assist, authorize, or issue a license or permit for the  
6 development of any new water resource facility within the  
7 areas described in section 3 or the enlargement of any  
8 water resource facility within the areas described in sec-  
9 tion 3.

10           (d) ACCESS AND OPERATION.—

11                 (1) ACCESS TO WATER RESOURCE FACILI-  
12 TIES.—Subject to the provisions of this subsection,  
13 the Secretary shall allow reasonable access to water  
14 resource facilities in existence on the date of enact-  
15 ment of this Act within the areas described in sec-  
16 tion 3, including motorized access where necessary  
17 and customarily employed on routes existing as of  
18 the date of enactment of this Act.

19                 (2) ACCESS ROUTES.—Existing access routes  
20 within such areas customarily employed as of the  
21 date of enactment of this Act may be used, main-  
22 tained, repaired, and replaced to the extent nec-  
23 essary to maintain their present function, design,  
24 and serviceable operation, so long as such activities  
25 have no increased adverse impacts on the resources

1 and values of the areas described in section 3 than  
2 existed as of the date of enactment of this Act.

3 (3) USE OF WATER RESOURCE FACILITIES.—

4 (A) IN GENERAL.—Subject to the provi-  
5 sions of subsections (c) and (d), the Secretary  
6 shall allow water resource facilities existing on  
7 the date of enactment of this Act within areas  
8 described in section 3 to be used, operated,  
9 maintained, repaired, and replaced to the extent  
10 necessary for the continued exercise, in accord-  
11 ance with Colorado State law, of vested water  
12 rights adjudicated for use in connection with  
13 such facilities by a court of competent jurisdic-  
14 tion prior to the date of enactment of this Act.

15 (B) EXISTING FACILITIES.—The impact of  
16 an existing facility on the water resources and  
17 values of the area shall not be increased as a  
18 result of changes in the adjudicated type of use  
19 of such facility as of the date of enactment of  
20 this Act.

21 (4) REPAIR AND MAINTENANCE.—Water re-  
22 source facilities, and access routes serving such fa-  
23 cilities, existing within the areas described in section  
24 3 on the date of enactment of this Act shall be  
25 maintained and repaired when and to the extent nec-

1        essary to prevent increased adverse impacts on the  
2        resources and values of the areas described in sec-  
3        tion 3.

4        (e) EXISTING PROJECTS.—Except as provided in  
5        subsections (c) and (d), the provisions of this Act relating  
6        to the areas described in section 3, and the inclusion in  
7        the National Wilderness Preservation System of the areas  
8        described in section 3, shall not be construed to affect or  
9        limit the use, operation, maintenance, repair, modification,  
10       or replacement of water resources facilities in existence on  
11       the date of enactment of this Act within the boundaries  
12       of the areas described in section 3.

13       (f) MONITORING AND IMPLEMENTATION.—The Sec-  
14       retary of Agriculture shall monitor the operation of and  
15       access to water resource facilities within the areas de-  
16       scribed in section 3 and take all steps necessary to imple-  
17       ment the provisions of this section.

18       (g) INTERSTATE COMPACTS.—

19             (1) IN GENERAL.—Nothing in this Act, and  
20       nothing in any previous Act designating any land as  
21       wilderness, shall be construed as limiting, altering,  
22       modifying, or amending any of the interstate com-  
23       pacts or equitable apportionment decrees that appor-  
24       tion water among and between the State of Colorado  
25       and other States.

1           (2) VESTED WATER RIGHTS.—Except as ex-  
2           pressly provided in this section, nothing in this Act  
3           affects or limits the development or use by existing  
4           and future holders of vested water rights of the full  
5           apportionment of the State of Colorado of such  
6           waters.