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Arden Anderson

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**FIELD LEVEL CONFLICT MANAGEMENT
IN OUTDOOR RECREATION**

Arden Anderson
Recreation and Wilderness Specialist
Bureau of Land Management - Gunnison, Colorado

Outdoor Recreation:
Promise And Peril in The New West

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Natural Resources Law Center
University of Colorado
School of Law
Boulder, Colorado

Recreation and Tourism are like fire - they can cook your food but they can also burn your house down.

The steady increase in free time and disposable income since World War II has encouraged a steady increase in the recreational use of our country's public lands. At first, that use was focused on the National Parks - the gems of public land. But as those areas became better known, more crowded and more regulated, recreationists spread out to the larger holdings of the U.S. Forest Service (FS) and the Bureau of Land Management (BLM).

At that time the mission of both of these agencies, as mandated by Congress, was focused on the production of natural commodities such as timber, forage, water and minerals. Recreational visitors were more often tolerated than encouraged or managed. Probably the earliest conflicts related to recreation arose between recreationists and those commodity uses - the rancher whose gate was left open by hunters having to gather his cows again or the fisherman complaining that mining activity was polluting the stream. Such conflicts were almost always decided in favor of the traditional users.

As more and more people visited and became attached to their public lands though, more and more questions were being asked about why these lands were managed with such a narrow focus on commodities. This sentiment coupled with the growing environmental movement of the 60s and 70s finally pressured Congress enough that in 1976 they fundamentally changed the direction of management for these two agencies which together covered about 550 million acres. Now, rather than just focusing on commodities, Congress recognized the many other values of these vast public holdings. They tasked the BLM and FS to develop a multiple use management philosophy which demanded that all the values and resources of these lands be considered when devising

management strategies.

This was an easy thing to say but a much harder thing to put into practice. Older managers who grew up with commodities as king found it hard to change their ways. Most management decisions still boiled down to opinions on what was most important - the dollars, jobs and marketable materials that came from the production side or the scenery, wildlife, recreation opportunities and clean water that came from the protection side. Economics usually carried the day.

When the environmental community understood that this was the case they did a very practical thing. They started to quantify the economic benefits of the things they valued. The giant that arose from that analysis was outdoor recreation and tourism. Not only was tourism a relatively clean and renewable industry but it generated a huge amount of money. Worldwide, tourism is the world's largest industry employing 100 million people, generating \$3.5 Trillion annually and accounting for 13% of all consumer spending. Human powered outdoor recreation (hiking biking, skiing, rafting, camping etc.) in the US in 1996 generated \$16 Billion in retail spending, accounted for 768,000 full time jobs and over \$13 Billion in annual wages. When economic multipliers are considered the economic impact of this segment alone of the outdoor recreation industry was estimated at \$40 Billion (ORCA - 1997). The Forest Service estimates that the economic contribution from activities on FS lands to the Gross Domestic Product will reach \$130 Billion per year by the year 2000. A large percentage of that will come from recreation and tourism. The percentage contribution of each program was as follows:
(USFS - 1995)

Recreation -	75%
Fish and Wildlife	10%
Minerals	8%
Timber	3%
Range	<1%

With numbers like these it is hard for even the most development oriented constituent to deny the importance of paying attention to recreation and tourism.

With more and more people recreating on public land new conflicts have arisen. We have more conflicts between different types of recreationists, conflicts resulting from increased resource impacts caused by recreation use and more conflicts between recreationists and federal land managers about how these resources should be managed.

As people demand more of a voice in how public land issues are decided the agencies are focusing on more collaboration in their decision making processes. In the past, we typically had our specialists come up with management strategies and actions then let the public comment on them (usually from the very narrow perspective of their special interest). This fostered an adversarial atmosphere where it was easy for the various interests to focus tenaciously on their special issues and leave it up to the agencies to craft the compromises. If they weren't happy with the result, it became a standard tactic for one interest or the other to tie decisions up in interminable protests, appeals and lawsuits. The result was sometimes paralysis - a disincentive for managers to deal with consequential issues for fear of getting tied up in the tar baby of endless battles.

Now, for the most difficult issues, we are much more likely to bring together representatives of affected interest groups and grind through a lengthy process of educating the working group, defining the issues, identifying possible management alternatives and deciding on the proper management strategy and actions. While collaboration is enjoying the limelight of being the current buzzword it is by no means easy. It can take more time and money. It requires uncommon dedication from the public to meaningfully participate in the process. Most people are not accustomed to working in a collaborative setting where it is important to listen to, understand and

consider the views of others who may look at the world in a very different way than you do. It requires people to make the difficult step of looking beyond their narrow special interest and consider the best mix of competing interests for the benefit of society as a whole. It requires a significant commitment to educate the participants in the principles and science of land use planning, at least with regards to the issue before them. Even with this process there is no guarantee that those who have not participated or dislike the outcome can't tie decisions up as before. The one thing that collaborative planning has going for it is that it usually generates more acceptance from the public than past processes. It helps the public understand the variety and complexity of issues that must be considered in making land use decisions and the difficulty of choosing a path that makes everyone happy.

There is little doubt that a general distrust of the government and its actions has led to many of the adversarial battles we face. Some of that distrust may be justified but I feel that much of it is the result the anti-government sentiment that characterizes much of our political discourse today. When people sit down at a table with land managers and take the time to learn about the various issues we must consider in managing public land they often find that their preconceived notions of uncaring, overpaid, under worked, devious, power hungry, tax dollar wasting government employees are not well founded. So perhaps this is one of the other benefits of collaborative decision making - putting a human face on the abstract concept of government of the people, by the people and for the people. It positions us not as faceless bureaucrats in far away Washington but as members of the community willing to sit down with the rest of the community to wrestle with and decide on difficult issues that affect us all. Yes, the process takes more time but the agencies are going to have to consider that the cost of doing business. Yes, the process tends to be biased toward local participants while our constituency is all citizens of the U.S. but that is a perspective that land managers must ensure is considered in the discussion. It is hoped that as people work more with collaborative planning and management the process will become quicker and easier.

It is not always easy for people who are trained as natural scientists to develop the people skills that are necessary in managing and resolving conflict in natural resource issues. Perhaps our agencies will be hiring a few more people whose training and experience lies in collaborative planning, group processes, conflict resolution and mediation. In the meantime, we continue to do the best we can with the resources we have available. No one ever promised it was going to be easy.

Brief Case Studies of Conflicts in Recreation Management.

1) Recreation vs. Traditional Land Uses - Sheep in the High Country

A simple example of recreation in conflict with traditional commodity uses can be seen in the high country of the San Juan mountains. The commodity use is sheep grazing. Each year 7,000 to 8,000 sheep graze the alpine tundra of the northern San Juan mountains from mid July to mid Sept. This number is down from historic highs of 200,000 head that occurred in the early 1900s. Based on the BLM's studies the current numbers are much more appropriate for this rich but fragile ecosystem. Herders keep the animals moving according to a strict schedule to avoid overgrazing. The area is also used by several hundred thousand recreationists each year who come to enjoy a variety of activities amid the spectacular mountain scenery. One of the highlights is the spectacular wildflower display in American Basin during late July and early August. Some folks find the bands of sheep an interesting part of their visit but many complain that the sheep are apparently overgrazing the tundra and leaving a smelly mess in their wake. They were particularly upset when the sheep ate up the wildflowers in American Basin.

Resolution of these conflicts came in several actions. First, we changed the grazing schedule for American Basin to be sure that sheep were not hitting that area during peak flowering. The herder allowed them to graze the side slopes early in the season and the valley floor in Sept. after the bloom had passed. The level of grazing did not change significantly but a change in the timing eliminated a lot of the perceived conflicts. For other areas, we created a map in the visitor center that kept track of the location of sheep bands so any hikers that came in looking for an experience that didn't include sheep could see where to go. We have eliminated sheep grazing in some drainages to cut down on potential impact to endangered species habitat. This has also offered recreationists a sheep free zone. Finally, we have included grazing management as a topic in the interpretive and environmental messages we convey to the public. This helps them understand the management actions we take to ensure that sheep grazing is done in a way that doesn't damage the ecosystem. As a result of these actions the number of complaints we get from visitors has decreased significantly. The actions are a bit inconvenient for the sheep rancher and some visitors still have unpleasant experiences with sheep but the two activities continue side by side.

2) Recreation vs. Private Landowners - Boating along the Lake Fork and Taylor River.

Whitewater boating with rafts and kayaks is a popular and rapidly growing outdoor activity. Small rivers like the Lake Fork of the Gunnison and the Taylor River swell with spring and summer runoff to provide boating opportunities ranging from tame to treacherous. Some stretches of these rivers are public land but many patches of private land also occur along these waters. In Colorado, the law recognizes private ownership of the bed and banks of streams & rivers but an opinion of the Attorney General maintains that the water flowing in a stream is the state's jurisdiction. Thus, a rafter can cross private land along a river, even fish while crossing that land, as long as they are floating on the water. Once they set foot on the bed or the bank on private land, though, they are considered to be criminally trespassing.

Landowners are sometimes uncomfortable with that interpretation of the law. They would prefer their privacy not be compromised by the general public floating through their backyard. Some put money and effort into improving the fish population in their stretch of the river and aren't anxious to share them with the public. This has led to some actions meant to discourage boaters. Barbed wire fences have been strung across the river, ostensibly for livestock control, but clearly designed to make the passage of boats dangerous or impossible. Bridges are sometimes constructed with the same effect. Along rivers with trees that occasionally fall into the stream the landowner may simply choose not to clear the obstruction and boaters are effectively blocked. Such actions have created conflicts along many rivers in the west and sparked interest in legislation that mandates even more public rights to waterways that cross private land.

These conflicts came to a head along the Lake Fork when irresponsible boaters (including commercial outfitters) anxious to assert their right to float and fish through private land had physical confrontations with landowners or their employees. The landowners responded by blocking the river in a variety of ways and an outstanding recreation opportunity was lost to the public. I don't know of any court cases where a landowner has been sued for efforts to block boaters from crossing their land. The decision on such a case will be interesting indeed since the interpretation of the law (C.R.S. 1973, 18-4-504.5) is based on the Attorney General's opinion rather than case law. The boaters that used the Lake Fork were not in a financial position to bring a court case against the well heeled landowners so they basically had to live with the retaliatory closures.

The BLM was anxious to keep the recreation activity open to the public but was not in a good position to mediate between the boaters and landowners because the conflict was focused on private land. Still, we talked to the boaters and suggested ways they might understand the landowners concerns and approach them with solutions that

accommodated those concerns. We sent letters to the landowners explaining the interpretation of the state law and explaining the possible liability they may be opening themselves to by creating hazards for boaters along the river. We changed our public information to downplay or discourage public rafting along that section of river until things calmed down a bit. We restricted commercial boating along that stretch unless the companies could prove they had discussed their use with affected landowners and received 'permission' to float through (usually with the concession that they would not fish while floating through private land). Finally, the BLM has negotiated the acquisition of several large properties along the Lake Fork based partly on the desire to improve recreation opportunities for boating and fishing. Today, a portion of the river is still blocked to boaters. If a flood comes through and clears out the obstructions it is hoped that boaters who once again float that stretch will learn from the past and try not to anger the private landowners.

A similar conflict has recently arisen along the Taylor River where a landowner is trying to make the case that boaters, if not guilty of criminal trespass, are guilty of civil trespass for floating through his private land. The issue has not been taken to trial. Instead, this argument has been made before the county commissioners as they consider a proposed land use change for a rafting company's base of operations. The County didn't buy the landowner's contention and negotiations are ongoing.

Clearly, most recreationists are interested in at least maintaining their historic use areas. In some cases, they would like to expand their recreational opportunities to include state, county and even private land. The primacy of private property rights is a strong impediment to such expansion. Still, you can bet that interests on both sides of the issue will continue probing for legal arguments that will help them realize their goals.

3) Recreationists (& Private Landowners) vs. Other Recreational Uses - Hartman Rocks

Many towns have an open area nearby that is used for a variety of recreation and utilitarian purposes such as shooting, dumping, extracting gravel, riding motorcycles or 4 wheel driving, walking the dog, high school or college beer parties etc. That place near Gunnison is called Hartman Rocks. The area consists of 160 acres jointly owned by the City and County (the base) which abuts a large parcel of BLM land. The topography is rolling sagebrush hills sprinkled with some impressive rock outcrops. For many years, the base was neglected. It was used for gravel extraction, as a dump for old stumps or broken concrete, locals took trash and appliances out there when they didn't feel like paying dump fees and it was chewed up by heavy vehicle recreation and target practice. In contrast, the BLM ground was not nearly so impacted. It had a few roads and a little trash but things were generally in good shape. It also had sensitive wildlife species, threatened plant species and numerous archeological sites.

Mountain biking came into the picture about 12 years ago, practiced by folks who were sometimes interested in taking better care of public lands. Concerns started to be raised about whether use at the base was appropriate. Homeowners who were starting to build on private lands near the base added their concern that the noise and dust of vehicle recreation, particularly motocross riding, was making it hard to enjoy their homes. A mountain bike race using trails in this area, which is included in the national pro circuit and drew 800 riders last year, focused even more attention on the integrity of the area. The mountain bikers started to organize an Earth Day cleanup for the area each year and encouraged the City and the County to start managing the area less like a dump and more like a recreation area. A Hartman Rocks User's Group was formed that included the BLM, City, and County as well as representatives from the various recreation groups and homeowners that used or had an interest in the area. Our goal was to put our heads together and try to come up with appropriate management actions for the area that would continue to allow a variety of recreational opportunities but reduce some of the resource impacts caused by recreation and other uses. The BLM

was involved from the start because we knew that whatever happened at the base area would affect resources on adjacent BLM.

The group's efforts were unorganized for awhile as folks typically took stances focused on their special interest and complained about everyone else who used the area. With time, though, they started to see they wouldn't get anywhere by just endlessly complaining and pointing the finger at everyone else. We started to focus on the things we had in common and the things we could agree on. Participants started to listen to other people's point of view and consider them when we talked about how to resolve problems. We focused our efforts on a few simple projects to start that were relatively easy to accomplish. This helped build trust, a sense of common purpose and a sense of accomplishment among the group. It also gave us the confidence to tackle the most contentious issue on our agenda - motocross.

Motocross is the sport of riding motorcycles around a track circuit that includes a variety of natural bumps, curves, and hills. Typically it is practiced on a privately owned track that charges fees to riders and maintains the course for the experiences the riders are seeking. Gunnison has about 20 or 30 motocross enthusiasts and another 30 or 40 that dabble in the sport. This isn't enough to support a private track so riders have used the base at Hartmans for the last 30 years or so to practice their sport. This wasn't a problem when the area was managed like a dump but now that other folks were interested in using the area and houses were springing up all around, their tolerance of motocross was growing less and less.

The user group wanted to resolve the issue. It would have been easy to lobby the City and the County to simply close the base to repetitive motorcycle use and some folks wanted to do this. That would have solved some problems but created others. Without

giving them an alternative, the riders would most likely shift their activity to relatively natural and undisturbed BLM land. We cast about for alternatives and the only one that seemed feasible was to look for a small area on BLM, design and develop a good, safe motocross track and require that all motocross activities be confined to that area.

This sort of dedicated, single use, high impact activity is not very compatible with typical public land recreation management but the prospect of unregulated motocross use on a variety of sites on BLM had the potential of causing much greater impact. A dedicated track would allow us to concentrate that impact to a small area selected for its lack of sensitive resources. Twenty sites were examined and evaluated looking for the best combination of riding conditions and resource values. The top 4 sites were analyzed in detail in an environmental assessment. Public input was extensive and sometimes strident. In the end, the decision was made not to locate a track on BLM land primarily because of liability concerns.

Liability is a concern for many folks in our society due to the prevalence and occasional success of even the most ludicrous of liability lawsuits. Federal land managers tend to not let liability drive many of their decisions because the law does not hold us very responsible when people hurt themselves while enjoying the great outdoors. But the minute we start pushing dirt around to create a good motocross track, our level of responsibility and liability increases dramatically. The City and the County, our partners in this proposed project, have a legal limit of liability of \$150,000 for such a facility. This was a risk that their insurance companies were willing to cover at no additional cost. The federal government, however, has no such limit of liability. If someone was hurt or killed on this track the plaintiffs would be able to ask for anything they thought they could get. This was not a satisfactory solution to the conflict but we were not willing to place the government in such a tenuous exposure to liability claims. We have yet to see what the resource impacts for this decision will be.

4) The Free For All - Transportation Planning and Regulation

Few topics in recreation are more riddled with conflict than vehicle restrictions and transportation planning. Almost everyone has a different idea about what the proper mix of access is for public lands. On one end of the spectrum are vehicle recreation enthusiasts who feel that they should be able to drive anywhere they want and could care less about any resource impacts they might cause. This group views any vehicle restrictions as a personal attack on their freedom. On the other end of the spectrum are those who blame vehicle recreation for countless impacts on soil, water, air, wildlife, fisheries, wilderness and peace & quiet. This group would argue for severe restrictions on vehicle access and expect folks to walk, bike or stay out of many natural areas. The majority of folks are somewhere in between these two extremes. There seems to be an increasing trend as the baby boomers reach retirement age. Many of them have grown up with a strong appreciation of outdoor recreation. As they get older though, they are less likely to walk and more likely to want to drive in to their favorite recreation spots.

The job of the resource management agencies is to manage for a wide variety of recreational opportunities and to do it in such a way that we do not cause unacceptable impacts on the land and resources. Many folks fail to appreciate the challenge of balancing these two mandates. A key concept that still escapes many users is that the responsibility they exercise while recreating has a lot to do with the level of regulation and restriction that the federal agencies must impose to meet this mandate. If users are responsible and seek to reduce or eliminate the impact of their activity then there is less of a need to impose rules and regulations to achieve management goals. If the visiting public does not work to reduce their impact then more rules and regulations are the typical outcome and everyone's lives are more complicated.

The practical reality of the situation is that we cannot rely on rules, regulations, tickets and enforcement to get the public to take good care of their public lands. We don't have enough money of staff to have a ranger behind every bush. We need to work hard to educate the public about the importance of responsible use of public resources so they develop an internal desire to do the right thing. Some national efforts such as Tread Lightly and Right Rider are trying to help us with this education project but the agencies themselves, unfortunately, put very little money toward or priority on environmental education. Education is a slow process and the changes it produces are usually gradual rather than dramatic but that does not diminish its importance. It may take a generation or more to change the way people use vehicles on public land so the sooner we start, the sooner we will finish.

We typically classify all the land we manage as either Closed (closed to all motorized vehicles year round), Limited (open to vehicle traffic with some restrictions such as designated routes only, seasonal closures etc.) or Open (open to vehicle traffic on or off the road as long as no resource damage is caused). Transportation planning is done every 10 to 20 years, usually in conjunction with our general management plan updates. Twenty years ago we would have put together a transportation plan that made sense to the professional managers, sent it out in draft for public comment and review made a few changes and called it good. Much has changed since then.

New technology has brought us the ATV which is capable of driving into many more places than previous vehicles. Open areas that were designated as such because most vehicles couldn't drive very far off the road are now suffering impacts from increased off road traffic (particularly during hunting season). Mountain bikes are another relatively recent addition to the recreation spectrum that are, in some cases, creating impacts and trail proliferation similar to those caused by motorized vehicles. More vehicle commercials depict people using vehicles irresponsibly on public lands to add to the excitement and appeal of their product. TV and movies do their part to convince

people that vehicles are our means of conquering nature with little concern for the impacts. Finally, people are asking for a stronger say in how land use decisions are made. As a result, the transportation plan update we are planning in Gunnison will look very different from the work we did 20 years ago.

First of all, the BLM and FS will be working together on a coordinated transportation plan for the whole valley with little concern for the boundaries between the two. In the hopes of getting broad public support our process will offer the opportunity for extensive public participation. The best way to do that is a topic of heated debate. Looking at other areas that have recently done transportation plan updates we can see a range of strategies. The Grand Mesa National Forest tried to do things the old way with very little public participation and were buried in protests and appeals. The Uncompahgre National Forest, not wanting to repeat the same mistake, organized a lengthy series of regular public meetings (over a 2 year period) to give the public more than enough opportunity to have their say on a road by road basis. The down side of this strategy is that it was costly in terms of time, money, and personnel. The discussion at times was dominated by the strongest or most persistent personalities rather than the wisest management strategies. There were also some interests or parties that did not want to take the time or effort to participate in the process but still felt free to complain about the decisions reached by the group. In the end, the decisions reached were fairly similar to those that the managers would have come up with in the old process but this way ensured more of a sense of ownership and buy in by the public. In Gunnison, we are hoping to have a strong public input process but are hoping to find a strategy that is less time and cost intensive.

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