SLIDES: What's in a Name? The Story of the Utah Wilderness Reinventory

James R. Rasband

Follow this and additional works at: http://scholar.law.colorado.edu/future-of-natural-resources-law-and-policy

Part of the Administrative Law Commons, Animal Law Commons, Biodiversity Commons, Climate Commons, Constitutional Law Commons, Courts Commons, Dispute Resolution and Arbitration Commons, Energy Law Commons, Energy Policy Commons, Environmental Law Commons, Environmental Policy Commons, Ethics and Professional Responsibility Commons, Forest Management Commons, Jurisdiction Commons, Land Use Planning Commons, Law and Society Commons, Legal Education Commons, Litigation Commons, Natural Resource Economics Commons, Natural Resources and Conservation Commons, Natural Resources Law Commons, Natural Resources Management and Policy Commons, Oil, Gas, and Energy Commons, Oil, Gas, and Mineral Law Commons, Peace and Conflict Studies Commons, President/Executive Department Commons, Property Law and Real Estate Commons, Science and Technology Commons, State and Local Government Law Commons, Sustainability Commons, Torts Commons, Urban Studies and Planning Commons, Water Law Commons, and the Water Resource Management Commons

Citation Information

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.
What’s In a Name? The Story of the Utah Wilderness Reinventory

James R. Rasband
The Evolution of Natural Resources Law and Policy, Natural Resources Law Center, University of Colorado, June 6, 2007
Planning mandates are pervasive in natural resources law.
* The National Forest Management Act
* The Federal Land Policy Management Act Policy
* The Coastal Zone Management Act
* The National Wildlife Refuge Improvement Act of 1997
* The Magnuson-Stevens Fishery Conservation and Management Act

Three Stages in the Planning Process:
1. Inventory
2. Preparation of Resource Management Plan
3. Site-specific analysis for particular permit proposals.
CHAPTER 2—DESCRIPTION OF THE ALTERNATIVES

Map 2-1  Visual Resource Management Classes – No Action Alternative
Map 2-2  Visual Resource Management Classes – Alternative A
Map 2-3  Visual Resource Management Classes – Alternative B
Map 2-4  Visual Resource Management Classes – Alternative C
Map 2-5  Visual Resource Management Classes – Alternative D
Map 2-6  Wild Horse and Burro Herd Management Areas – No Action Alternative
Map 2-7  Wild Horse and Burro Herd Management Areas – Alternative A
Map 2-8  Wild Horse and Burro Herd Management Areas – Alternative B
Map 2-9  Wild Horse and Burro Herd Management Areas – Alternatives C and D
Map 2-10  Forests and Woodlands – No Action Alternative
Map 2-11  Forests and Woodlands – Alternatives A, B and D
Map 2-12  OHV Area Designations – No Action Alternative
Map 2-13  OHV Area Designations – Alternative A
Map 2-14  OHV Area Designations – Alternative B
Map 2-15  OHV Area Designations – Alternative C
Map 2-16  OHV Area Designations – Alternative D
Map 2-17  Special Recreation Management Areas – No Action Alternative
Map 2-18  Special Recreation Management Areas – Alternative A
Map 2-19  Special Recreation Management Areas – Alternative B
Map 2-20  Special Recreation Management Areas – Alternative C
Map 2-21  Special Recreation Management Areas – Alternative D
Map 2-22  High Use Areas – Alternative A
Map 2-23  High Use Areas – Alternative B
Map 2-24  High Use Areas – Alternative C
Map 2-25  High Use Areas – Alternative D
Map 2-26  Large Group Areas – Alternatives A, B, C and D
Map 2-27  Fluid Minerals – No Action Alternative
Map 2-28  Fluid Minerals – Alternative A
Map 2-29  Fluid Minerals – Alternative B
Map 2-30  Fluid Minerals – Alternative C
Map 2-31  Fluid Minerals – Alternative D
Map 2-32  Locatable Mineral Withdrawals – No Action Alternative
Map 2-33  Locatable Mineral Withdrawals – Alternative A
Map 2-34  Locatable Mineral Withdrawals – Alternative B
Map 2-35  Locatable Mineral Withdrawals – Alternative C
Map 2-36  Locatable Mineral Withdrawals – Alternative D
Map 2-37  Areas Closed to Mineral Materials Disposal – No Action Alternative
Map 2-38  Areas Closed to Mineral Materials Disposal – Alternative A
Map 2-39  Areas Closed to Mineral Materials Disposal – Alternative B
Map 2-40  Areas Closed to Mineral Materials Disposal – Alternative C
Map 2-41  Areas Closed to Mineral Materials Disposal – Alternative D
Map 2-42  Areas of Critical Environmental Concern – No Action Alternative
Map 2-43  Areas of Critical Environmental Concern – Alternative A
Map 2-44  Areas of Critical Environmental Concern – Alternative B

Fluid Mineral Leasing Alternative D

- Areas open to leasing, subject to terms and conditions of the lease form; 1,163,476 Acres
- Areas open to leasing, subject to minor constraints (Timing Limitations, Controlled Surface Use, Lease Notices); 574,335 Acres
- Areas open to leasing, subject to major constraints (No Surface Occupancy); 149,306 Acres
- Areas closed to leasing; 564,128 Acres
Section 201 of FLPMA

“The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.”

Multiple Use Management

“management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; . . . a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values . . . .” FLPMA, 43 U.S.C. § 1702(c).
“Within fifteen years after October 21, 1976, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) of this title as having wilderness characteristics, . . . and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness . . . .” 43 U.S.C. § 1782(a).
Wilderness Inventories and Reviews

* Wilderness Act created 9.1 million acres of instant wilderness

* Wilderness Act called for an review of the wilderness potential of all the areas within the national forests that had previously been designated as “primitive areas,” as well as a review of “every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within, the national wildlife refuges and game ranges.” 16 U.S.C. § 1132(c).

* Forest Service ends up inventorying all areas as part of RARE I and RARE II.

* Wilderness Act ignored BLM lands—the lands no one wanted.
Section 603 of FLPMA

**Wilderness Inventory Requirement.** “Within fifteen years after October 21, 1976, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section [201] as having wilderness characteristics . . . and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness . . . .” 43 U.S.C. § 1782(a).

**Non-Impairment Management Requirement.** “During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness.” 43 U.S.C. § 1782(a).
BLM’s 603 Wilderness Inventory

* Approximately 174 million acres surveyed.
* BLM identified 919 WSAs covering approximately 24 million acres

* 22 million acres of BLM land in Utah inventoried
* BLM initially identified 2.5 million acres of WSAs

* Controversy over the acres identified as having wilderness quality.
* BLM finds 700,000 more acres, resulting in 3.2 million acres of WSAs
* BLM recommended 1.9 million acres of wilderness
The Utah Wilderness Coalition (UWC), comprised of over 200 local, regional and national organizations, was organized in 1985. The Coalition facilitates communication and consensus building among its member organizations and serves a grassroots organizing role when activities transcend the work of an individual member organization.

LEARN MORE ABOUT THE UWC >

FREQUENTLY ASKED QUESTIONS

What is a wilderness area?

A wilderness area is designated land set aside by Congress to preserve its wild state . . .

LEARN MORE >

Click here to learn about Utah's Zion Mojave Wilderness

Take Action!

Citizen's Proposal for Wilderness in Utah

The coalition seeks to protect wilderness values on public lands in Utah, concentrating efforts on the protection of wilderness quality Bureau of Land Management (BLM) lands. For over a decade, the UWC has promoted the Citizen's Proposal which would protect over 9 million acres of public land in Utah by placing them in the Wilderness Preservation System.

INTERACTIVE CITIZEN'S PROPOSAL MAP SITE >
Competing Utah Wilderness Bills in the 1990s
* Representative Hansen: 1.4 and then 1.9 million acres (relying upon BLM recommendation)
* Representatives Owen & Hinchey: 5.7 million acres (supported by Clinton administration)
* Any solution to the stalemate?
Most of 1.7 million acres proclaimed as Grand Staircase had been identified as potential wilderness in the 5.7 million acre bill before Congress.
Mr. Hansen. . . . Mr. Secretary, various entities fought with us out in Utah on H.R. 1745, which is the wilderness bill. You recently were quoted by Vice President Gore as saying it had to be 5 million acres. We both know what the definition of wilderness is under the 1964 Wilderness Act.

With that in mind, I would appreciate somebody finally acknowledging the things that we have said that are asking where is the additional acreage? Your man on the ground at the time that BLM did what the law provided was Mr. Jim Parker, who has since retired.

Mr. Parker stated the figure, after 15 years, after $10 million of the taxpayers’ money, came up with 1.945 million. You have gone up to 5 million acres. All I am respectfully asking is where is it that fits it?

I have been on this for 19 years now. I have been on every inch of that ground. I think I am very acquainted with the definition of wilderness, and I would be very desirous of hearing from you or your designee as to where is that ground that the Vice President talked about, that you talked about, that the extreme environmentalists talk about? Where is it?

I would ask you respectfully if you could furnish me with that information.

Mr. Babbitt. Mr. Hansen, I do not support, this administration does not support, and I disavow, the opinion of Mr. Parker. 1.945 million acres was the figure submitted in a previous administration. I respect their right to do that, but it does not and has never represented the position of this administration.

Now, what is the right number? That is obviously the subject of a give-and-take debate. I do believe that there are in fact 5 million acres that are suitable for wilderness, and I would be happy to respond in writing, because I believe that from my own experience, from my knowledge, from the work of the land specialists in this Department that there are in fact 5 million acres.

Mr. Hansen. I have no argument with your opinion. All I am saying to re-inventory it, tell us where you are coming from . . . .

Mr. Babbitt. Mr. Hansen, would you like the Department to re-inventory it?

Mr. Hansen. I would have no heartburn with that.

Mr. Babbitt. Well, I have not taken that step, but if you have no objection to it, I would certainly consider formally rescinding the prior inventory and beginning a new one . . . .

Mr. Hansen. As the Secretary of the Interior, you surely have the right to disavow it, and you have the right to do it. I am just saying that I keep hearing these comments about all this additional acreage, but I have yet to see the criteria; I have yet to see the first acre of ground, Mr. Secretary, that says here is where it is.

Mr. Babbitt. I will consider that as a request to revoke the prior study and begin anew. I will proceed to do that.

Mr. Tausin. The gentleman’s time has expired.

Mr. Hansen. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

See Interior Department Review and Budget: Oversight Hearing before the Committee on Resources, 104th Cong., 2d Sess. 27 (April 24, 1996).
Utah’s Lawsuit Against the Reinventory

* Issue #1: Could a wilderness reinventory be conducted after the 15-year period specified under Sec. 603 had expired?

* Issue #2: If not, was a wilderness inventory appropriate under Section 201 of FLPMA with its continuous inventory requirement? Did a Section 201 reinventory require public participation?

* Issue #3: If the inventory was valid, could the newly discovered wilderness be managed as wilderness study areas (WSAs)?
Utah v. Babbitt, 137 F.3d 1193 (10th Cir. 1998)

* Accepts DOI’s concession that its reinventory authority flows wholly from Section 201 and not from Section 603.

* Concludes that authority to perform the reinventory exists under Section 201 and does not require public participation in the reinventory because a reinventory doesn’t “make any decisions concerning the management or use of the public lands.” 137 F.3d at 1209.

* Concludes Utah lacked standing to sue to stop a section 201 inventory. After all, the inventory just labeled lands as potential wilderness. It didn’t actually decide how the lands were to be managed.

* Concludes that Utah had standing to pursue its claim that the BLM was improperly affording WSA-type, non-impairment management to lands identified by the Utah Wilderness Coalition and in the 5.7 million acre bill in Congress because under § 302 of FLPMA, the BLM is required to manage the public lands in accordance with its land use plans. 43 U.S.C. § 1732(a).


**Competing Wilderness Proposals:**

* Utah Wilderness Coalition = 5.7 million acres (now 9.4 million acres)
* Existing WSAs = 3.2 million acres
* Reinventory = 2.6 million more acres for ~ 5.8 million acres
* The light pink areas are called “Wilderness Inventory Areas” or WIAs.

---

**Citizen’s Proposal Map Legend**

- Utah Wilderness Coalition BLM Wilderness Proposal
- BLM Wilderness Study Areas (WSAs)
- BLM 1999 Utah Wilderness Inventory and Wilderness Inventory Areas (WIAs) (BLM inventoried areas found to possess and retain wilderness character)
- BLM Reasonable Probability Determination Areas (RPDs) (areas determined to have a likelihood of possessing and retaining wilderness characteristics)
How would WIAs be managed in light of existing Resource Management Plans?

* April 1999 directive to give “careful attention”

* January 10, 2001 BLM adopts new Wilderness Inventory and Study Procedures Handbook
  * § 201 WIAs could be designated as WSAs through the § 202 land use planning process, after which they would be managed for non-impairment, unless the land use plan changed again.
  * Lands in “proposed legislation, or land within externally generated proposals” that were determined to have wilderness characteristics in the land use planning process could also be designated WSAs.

* August 20, 2001, Utah BLM Director instructs all field offices to manage WIAs to protect their wilderness characteristics.

* BLM field officers decline leases and road work within WIAs.
The Utah Settlement

* Rescinds new Wilderness Inventory and Study Procedures Handbook.

* “Defendants will not establish, manage or otherwise treat public lands, other than Section 603 WSAs and Congressionally designated wilderness, as WSAs or as wilderness pursuant to the Section 202 [planning] process absent congressional authorization. . . .”

“[N]othing herein is intended to diminish BLM’s authority under FLPMA to prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values, as described in FLPMA Section 201. These resources and other values may include, but are not limited to characteristics that are associated with the concept of wilderness. . . .”

“[Nothing herein shall be construed to diminish the Secretary’s authority under FLPMA to utilize the criteria in Section 202(c) to develop and revise land use plans, including giving priority to the designation and protection of areas of critical environmental concern (Section 202(c)(3)).]”
Areas of Critical Environmental Concern (ACECs)

“[A]reas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.” FLPMA, 43 U.S.C. § 1702(a).
Did the Settlement Agreement Alter the Authority of the BLM to manage its lands to protect their wilderness characteristics?

**Before**
* BLM could offer oil and gas leases within WIAs as long as it acted in compliance with the existing land use plan and other applicable laws such as NEPA.
* BLM could amend its land use plan to designate WIAs as WSAs and manage those WSAs for non-impairment of their wilderness characteristics, unless the land use plan was amended again.

**After**
* BLM could offer oil and gas leases within WIAs as long as it acted in compliance with the existing land use plan and other applicable laws such as NEPA.
* BLM could amend its land use plan to designate WIAs as ACECs and manage those ACECs to protect their wilderness characteristics, unless the land use plan was amended again.
So What Did the Settlement Agreement Change?

* It rescinded the 2001 Wilderness Inventory Procedures Handbook. I.e., It announced a change in administrative policy.

* It decided that areas protected as wilderness under the land use planning process could not be labeled “WSAs.” They had to be labeled ACECs or given some other multiple-use label, such as “Special Recreation Management Area.”

* Does this labeling change matter?
What’s In a Name?
* Swamp or Wetland?
* Area of Critical Environmental Concern or Wilderness Study Area?
* BLM Lands or National Landscape Conservation System?
* Multiple Use?

Who Cares About Capturing Rhetorical Flags?
* Impact on bureaucratic decision making
* Impact on courts
* Impact on perception and therefore on policy