

Utah Wilderness Wars: A Look at the Historical Background, Present Situation, and Future Possibilities for Public Land in Utah

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Utah's vast federal lands provide citizens with incredible beauty, solitude, and recreational opportunities, but they also generate extreme controversy among groups who disagree as to how these lands should be managed. Throughout the 1980s and 1990s, the arguments for and against wilderness designation have become more emotional, as they have continued to pit local citizens against environmentalists and wilderness advocates. This article gives a history of the wilderness debate, discusses applicable laws regarding the designation of wilderness, and analyzes the current politically charged climate of wilderness and public lands issues. The author analyzes the potential for collaborative solutions between opposing groups in the wilderness debates and draws conclusions about the eventual way in which public land issues will have to be resolved in an environment of perpetual competition between opposing interest groups.

INTRODUCTION

For years the debate has raged from the rural counties of southern Utah to the floors of the United States Congress over how much of Utah's vast public lands should receive wilderness designation. The debate is complex and diverse. It is the ranchers, miners, hunters, off-roaders, county commissioners, and country bumpkins versus the tree-huggers, flower sniffers, Sierra Club, SUWA, Al Gore, and Robert Redford. It's the Easterners versus the Westerners, liberals versus conservatives, and the cities versus the small towns. It's Senator Hatch (R-UT) versus Senator Durbin (D-IL), Representative Jim Hansen (R-UT) versus Representative Maurice Hinchey (D-NY). What happened to make an obscure state with only three members in the House of Representatives a focal point of national debate on how we should manage our public lands? How can we effectively and fairly manage our public lands? Like the debate, explaining how we got to this point is not simple, nor is it easy to come up with a solution. Each stakeholder comes to the controversy from an entirely different viewpoint and has goals that differ markedly from those of others involved in the debate. Reconciliation between the different sides seems

nearly impossible in the current climate. This paper will examine existing law and its subsequent application with regard to wilderness and public land issues. I will especially focus on Revised Statute 2477 of the Mining Act of 1864, the Wilderness Act of 1964, the Federal Lands Policy Management Act (FLPMA) of 1976, and the impact these statutes have had on the way we have dealt with public land issues. I will also discuss the Grand Staircase-Escalante National Monument, formed in 1996 by order of President Clinton. The formation of the monument merits discussion because like wilderness, it drastically changes the way in which the land has traditionally been used. Furthermore, the controversy and bad feelings generated by the Monument have had a significant impact on the political climate of the public lands debate. Finally, this paper will provide insight into the politics of the debate as well as analyze what needs to occur in order for each group to reach a resolution in the impasse we currently observe.

I will focus on the three actors who are perceived by the public to be most involved in this debate. They are local government officials, the Southern Utah Wilderness Alliance (SUWA), and the Bureau of Land Management (BLM). Of course, I will discuss other stakeholders, but generally the actions of others regarding the wilderness debate in Utah results from the influence and lobbying efforts of these three organizations. This assertion is based upon my personal observations of the press coverage and public visibility afforded to these players.

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This paper is somewhat unique in that it does not rely much on traditional sources. Because of the dynamic nature of the wilderness debate, I have chosen to focus more on current events and perspectives to accurately portray the issues at hand. I used brochures and websites of various organizations involved, as well as newspaper articles and editorial commentary. However, I gathered most of the information while observing firsthand events during an internship in the United States Senate from January to May 2000. Such events included meetings, committee testimony, interviews, and other interactions between the various groups. Although I have attempted to analyze the issues fairly and objectively, descriptions of the positions of various players and the outcomes of some events are ultimately based upon my perceptions; therein lies the fallibility of this type of research.

BEGINNINGS

In 1866, Congress amended the 1864 Mining Act by passing Revised Statute 2477 (R.S. 2477). They stated, "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted" (San Juan County, 10). By doing this, Congress divested itself of a portion of the public domain that it had previously controlled, and passed that control to states, local governments, and the people (San Juan County, 10). Over one hundred years later, the Department of Interior and the Clinton Administration claimed that the BLM has authority to set standards for and validate these right-of-way claims. While not controversial at its inception in 1866, this law has proven to be a subject of extreme disagreement as the wilderness battle has picked up steam in the 1980's and 1990's.

In 1964, Congress took unprecedented action that changed the way in which some of our public lands are conserved and managed. The Wilderness Act of 1964 declared the policy of Congress to, "secure for the American people of present and future generations the benefits of an enduring resource of wilderness." Under this law the federal government created a national wilderness preservation system. Wilderness was defined as:

1. An area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain.
2. An area of undeveloped federal land retaining its primeval character and influence, without permanent improvements of human habitation.
3. An area that generally appears to have been affected primarily by the forces of nature.
4. The imprint of man's work is substantially unnoticeable.
5. An area that provides an outstanding opportunity for solitude or primitive or unconfined recreation.
6. A roadless area having at least 5,000 acres.

7. May have other ecological or geological features of scientific, educational, scenic, or historic value. (United States Congress, 16 USC Sec. 1131)

Congress clearly established its intent to preserve some of our public lands from the growing mechanization and development of the twentieth century. One of those involved in the creation of the Wilderness Act was Senator Frank Church (D-ID). In a speech to the University of Idaho College of Forestry, Wildlife and Range Sciences, and the Wilderness Research Center on March 21, 1977, he said that Congress anticipated creating a national wilderness system consisting of 40 to 50 million acres taken from national forest, national park, and wildlife refuge lands (San Juan County, 5). Today, the wilderness preservation system contains more than one-hundred million acres and some advocates want to take that number to more than two-hundred million acres (San Juan County, 5).

The next major step in the evolution of the current Utah wilderness debates occurred in 1976 under the newly created Federal Land Policy and Management Act (FLPMA). This law directed the BLM to review public lands under its control and make an inventory of potential wilderness-quality lands so that Congress could then designate as wilderness whatever portion of the inventory it felt met wilderness standards as set forth in the Wilderness Act. These potential wilderness areas were to be designated as Wilderness Study Areas (WSAs) and managed as de facto wilderness until Congress acted to either accept or reject them as official wilderness.

FLPMA also did away with the R.S. 2477 right-of-way grant to the public that first began in 1866. However, Congress recognized all claims prior to 1976 as "valid existing rights" that would be upheld (United States Congress 43 USC, Sec, 1973). Many of these claimed R.S. 2477 roads cut through WSAs. As will be shown later, local leaders in Utah have attempted to provide evidence that thousands of these right-of-way claims are legitimate, while environmentalists have attempted to portray them as useless paths that go nowhere, and that do not meet the standard set by the original R.S. 2477 provision.

The BLM inventory mandated by FLPMA eventually recommended that approximately two million acres of land in Utah be designated as wilderness. In accordance with this recommendation, President George Bush Sr. forwarded a request to Congress in 1991 and the Utah delegation subsequently introduced a bill to declare 1.8 million acres as part of the National Wilderness Preservation System in Utah (San Juan County, 6). However, environmentalists quickly called into question the validity and thoroughness of the inventory and some BLM employees and officials criticized the inventory process as sloppy, arbitrary, and inaccurate (Southern Utah Wilderness Alliance, 2000a).

Prior to this, Utah's first BLM wilderness bill, advocates had joined forces and formed the Utah Wilderness Coalition (UWC), with the Southern Utah Wilderness Alliance

(SUWA) at the forefront. UWC did their own inventory and came up with a “citizens” proposal of first 5.3, then 5.7 million acres of wilderness as an alternative to the BLM recommendation. Because wilderness advocates believed that this much greater amount of land was eligible for wilderness designation, they fought vigorously to defeat the first bill, and succeeded in doing so because of a filibuster by Senator Bill Bradley (D-NJ).

The decision by the BLM to conduct a wilderness re-inventory, along with the decision by the Clinton Administration to designate a new national monument will be explored in the next two sections. Both serve as prime examples of policies that created animosity and distrust on the part of local officials.

REINVENTING WILDERNESS: THE BLM UNDERTAKES A MORE POLITICALLY CORRECT INVENTORY

In the mid 1990s, the BLM began the process of conducting a re-inventory because of the controversy over the first inventory (Southern Utah Wilderness Alliance, 2000b). The Utah Association of Counties (UAC), State Institution of Trust Lands Association, and the State of Utah sued to stop the re-inventory, alleging that it was unnecessary and illegal, because the inventory period of 15 years authorized by section 603 of FLPMA had expired (Southern Utah Wilderness Alliance, 2000b). UAC won an injunction against the re-inventory in court, but the case was overturned on appeal, and the BLM continued with the re-inventory (Southern Utah Wilderness Alliance, 2000b). Local officials who didn't want more WSAs claimed that the BLM was giving in to pressure from environmental groups who wanted more wilderness, while environmentalists continued to claim that the original inventory was poorly done. Recently, the BLM re-inventory came up with 5.7 million acres of new potential wilderness. At about the same time the BLM introduced its new numbers, SUWA released a reworked “citizens” proposal of 9.1 million acres that they claimed was the first thorough and extensive inventory of wilderness-quality lands in Utah. Subsequently, this proposal was introduced in Congress as “America's Redrock Wilderness Act,” sponsored in the House by Maurice Hinchey (D-NY) and in the Senate by Richard Durbin (D-IL).

As the BLM Notice of Intent for the wilderness re-inventory in 1996 provoked celebration among environmentalists and infuriated local leaders and residents, this section will focus on the way in which the BLM has carried out that inventory.

Locals charge that the re-inventory process has been biased and subjective from the beginning. In a letter to Representative Jim Hansen, former Interior Secretary Bruce Babbitt wrote, “My own experience and knowledge of this area led me to believe that five million is the right number...”

(San Juan County, 8). In another letter, Babbitt said, “Restoration is about having the power to visualize, to say that we can imagine a landscape that we don't see today, that we can create, or recreate, a landscape that was seen by Lewis and Clark, Kit Carson, and our forebears” (San Juan County, 8). Some have questioned the purpose of a re-inventory if Secretary Babbitt had already decided what number the BLM would reach. Furthermore, they criticize the idea that the BLM can undertake to “recreate a landscape” if it was explicitly instructed to only take an inventory of existing wilderness-quality land. It is clear that somewhere between the first inventory and the second, the BLM's direction and mission changed. The obvious explanation points to the election of an administration supported by wilderness advocates. Wilderness advocates have stated that the BLM has finally become more environmentally friendly with regard to wilderness issues; locals charge the BLM with engaging in mission creep: an unauthorized expansion of bureaucratic scope and power. Despite the new attitude of the BLM, SUWA and others have still attacked the BLM for not going far enough and for allegedly refusing to look at the 9.1 million acres in the “citizens proposal.”

The re-inventory itself was much more liberal in what it would consider for protection. Land quickly rejected in the first inventory was given much more consideration in the second. The BLM demonstrated that it had a goal of finding more wilderness from the beginning. Furthermore, the BLM demonstrated disregard for local concerns and an attitude of disdain towards local residents. For example, on an assessment of a road asserted by San Juan County as a valid existing right, one BLM evaluation team wrote that the road was, “pioneered by one group of idiots – checked out by a few others” (San Juan County, 54).

In an effort to refute what they believe are false BLM wilderness claims, San Juan County has sent their own team to evaluate land that the BLM classified as wilderness in its re-inventory. The San Juan County teams have submitted over 3000 pages of photos, maps, and other evidence that the areas the BLM says are wilderness are full of roads, livestock corrals, mining scars, radio towers, and oil drilling wells. Wilderness advocates believe that these oft times faint, narrow roads are so insignificant that they can be reclaimed back to nature and still meet the requirements for wilderness. Rural residents, however, argue that the law should be followed to the letter; if a road existed before 1976, wilderness cannot nullify the public's right to use it, even if it is only barely visible today. Furthermore, locals argue that mining scars, oil wells, and other manmade changes that affect the landscape violate the fundamental purpose of wilderness: to provide solitude and shelter from man and his nature-altering presence.

Currently, the battle continues over acreage, R.S. 2477 road claims, and the definition of wilderness. The differences between the proposals are striking: local leaders want 1.8 million acres, the BLM wants 5.7, and SUWA wants 9.1 million

acres. These groups have been so far apart that compromise has been almost nonexistent.

GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT

Rural residents of Utah and their elected officials have often viewed SUWA, UWC, other environmentalists, and more recently, the BLM with more than a little mistrust due to what they have claimed is a history of misrepresenting public land issues for political gain. On September 18, 1996, many people in Utah (particularly the residents of Kane and Garfield Counties) believed their worst expectations had come to pass. Understanding what happened will contribute to an understanding of the current climate of the wilderness debate and the ways in which the different sides disagree on many fundamental principles.

In the 1980s Andalex, a Dutch-owned mining company began to express interest in developing its coal leases on the Kaiparowits Coal Field near Kanab. The Utah Office of Budget predicted that Andalex would provide 900 jobs in that part of southern Utah. They also predicted that over the life of the mine, \$1 billion would be added to the School Trust Fund when at the time there was only \$100 million in the fund (Brown, 2000). The BLM was in the process of conducting an environmental impact study, as required by the National Environmental Protection Act. During that same time, SUWA and UWC members began wearing buttons promoting 5.7 million acres of wilderness, and the “citizens” wilderness proposal went from 5.3 million acres to 5.7 million acres (Brown, 2000). Some observers have since charged that SUWA’s original proposal left out the area where the coal mine would have been because it was not considered worthy of wilderness designation; its wilderness characteristics were only “discovered” in order to try to kill the proposed mine (Brown, 2000). SUWA had also been filing lawsuits and appeals to challenge every step of the legal process that was underway. Environmental advocates (including SUWA) began to pressure the Department of the Interior and the White House to create a monument, and White House officials soon responded by beginning to work behind the scenes on plans to create a monument (Brown, 2000).

Before long, news of the Grand Staircase-Escalante National Monument (GSENM) was leaked to the press (Brown, 2000). When Utah Senators Hatch and Bennett called Secretary of the Interior Bruce Babbitt to ask about such rumors, they were assured that nothing would happen without talking to Utah officials first (Brown, 2000). Later, natural resource staffers from the Utah delegation met with members of the Council on Environmental Quality, Solicitor General John Leshy, and the BLM; all of who said there were no plans to go forward with a monument, claiming they didn’t even have a map (Brown, 2000). After the meeting was over, the Utah delegation staff members turned on their TV

monitors and watched breaking news reports on CNN that the Grand Staircase-Escalante National Monument would be proclaimed the next morning (Brown, 2000). CNN showed a graphic of the map that White House officials had said did not exist. Under authority of the Antiquities Act, President Clinton had proclaimed a monument of 1.8 million acres — bigger than some eastern states — without notifying local officials.

The mistrust that rural Utahns had towards environmental groups and the government ballooned considerably because of the perception that wilderness advocates had secretly influenced the creation of an enormous monument in order to kill a coalmine and lock up the surrounding land. By declaring Grand Staircase-Escalante a monument, President Clinton scored political points with powerful environmental constituency groups in an election year. Adding to the furor was the fact that the federal government had lied about it (Brown, 2000). J.J. Brown, Legislative Advisor to Senator Orrin Hatch on the issues of natural resources and environment, showed me pictures of the proposed mine site. He was convinced that the area was not worthy of wilderness designation for the simple fact that it possessed no outstanding features for recreation or scenic value; the majority of the rural residents affected by this monument seem to agree with that assessment. While the proposed mine made up only a small portion of what was included in the monument, citizens felt they had been lied to and were tired of what they viewed as wilderness advocates and government leaders dictating how they had to manage the land that was so much a part of their everyday lives (Brown, 2000). They felt that at the very least, local leaders should have been notified of plans to create a monument. Additionally, local advocates argued that they should have been heavily involved in the planning and organization of the monument in order to minimize negative impacts on the residents in the surrounding areas. Louise Liston, County Commissioner of Garfield County said in reference to the monument’s formation, “Today’s decisions are being made by outlaws with pens who are more fearful than outlaws with guns” (Kemp, 2000).

SUWA, on the other hand, was ecstatic, and even claimed some of the credit. In their own words, they said they had “laid the groundwork for the establishment of the monument” (SUWA, pamphlet). The area to be mined had never even been considered by SUWA, the BLM, or anyone for designation (Brown, 2000). However, the fact that the proposed mine was on the Kaiparowits Plateau was enough for SUWA and other wilderness advocates to try to stop any attempt to gain access to the plateau. They believed that such access would only open the door to more development. SUWA Grassroots Coordinator, Keith Hammond said, “I think the way Clinton did it was wrong — they lied to the Utah delegation” (Hammond, 2000). He went on to say, however, that while he disagreed with the methods, he was happy about the result — permanent protection for the Grand Staircase-Escalante area. More recently, Liz Thomas, a staff attorney for

the Southern Utah Wilderness Alliance in Cedar City said, "I do understand the betrayal local communities feel, but these lands belong to everyone" (Kemp, 2000).

ONE PERSON'S WILDERNESS, ANOTHER PERSON'S ROAD

Rural residents claim SUWA uses the 1864 Mining Law to deceive others and misrepresent the actual facts at hand. At a press conference on June 4, 1997, Emery County Commissioner Randy Johnson said:

I am reminded of Abe Lincoln's astute observation that it is possible to fool some of the people all of the time and all of the people some of the time, but it is not possible to fool all of the people all of the time. I hope all of you are aware that SUWA is fooling some of the people all of the time. These are primarily their members, but it also includes anyone else who reads their newsletter and other internal publications, such as action alerts, and believes what they read (Utah Association of Counties 1997, 2).

Johnson went on to state that SUWA has "habitually and constantly" misled people with regard to R.S. 2477. For example, he said that SUWA tries to sell people the idea that as many as 5000 new roads could be bulldozed in Utah because of R.S. 2477, when in fact no additional roads can be built because R.S. 2477 was repealed in 1976 (Utah Association of Counties 1997, 2). According to Johnson, it is also deceiving to claim that R.S. 2477 is an antiquated, outdated statute that is ruining our last pristine lands, when in fact the statute was reaffirmed and upheld only 24 years ago (Utah Association of Counties, 3).

SUWA claims, on the other hand:

The one-sentence, 131-year-old statute is being used as a loophole by southern Utah counties to assert the right to build a spider web of roads.... Why is this obsolete statute such a problem? Because even though the Federal Land Policy and Management Act (FLPMA) repealed it in 1976, the repeal was subject to valid existing rights. Southern Utah counties are claiming that they have valid existing rights-of-way that entitle them to grade and pave trails, and they are targeting places included in the citizens' proposal for wilderness. These wilderness foes will argue that these rough, unmaintained "roads" disqualify surrounding public lands for wilderness protection (Southern Utah Wilderness Alliance 2000c).

When FLPMA was enacted 24 years ago, all R.S. 2477 claims prior to 1976 were recognized and reaffirmed by Congress. It is true, therefore, that no new roads can be built under this law. The question becomes; what constitutes a legitimate road? The counties argue that the R.S. 2477 statute simply gave right-of-way for construction of "highways" to the public; the term "road" was never used. One may assume that a "highway" is the same thing as a road, but in 1866, modern transportation systems were a distant develop-

ment of the future, and a highway may well have been a two-track wagon trail. These rights-of-way existed from 1864 to 1976 and are still valid under FLPMA, according to state and local officials (San Juan County, 10). Revised Statute 2477 of The Mining Law of 1864 does not say that a right-of-way has to be a paved highway, a maintained road, or an area that does not cross a wash or riparian habitat. Much to the dismay of SUWA, locals continue to press the idea that even a small two-track trail going "nowhere" is a valid existing right if it was present before 1976. As long as a claim existed prior to that date, counties argue, most forms of these rights-of-way are valid. Furthermore, maintaining existing roads that do qualify as valid existing rights is legal and will continue to be legal – even if the road is in the middle of wilderness.

In the last few years, the BLM has attempted to close roads going into Wilderness Study Areas (WSAs) and other potential areas that they feel merit protection. These actions have greatly irritated local Utahns who strongly believe they have a legal right to use all R.S. 2477 roads. The counties contend the BLM has attempted to use "ex post facto standards" to define rights-of-way, despite the fact that they have no direction from Congress or legal authority to approve some roads and outlaw others. FLPMA instructed the BLM to inventory wilderness, but it never gave them any instruction or guidance in defining what constitutes a valid right-of-way and what does not (San Juan County, 11).

Conversely, SUWA and the Sierra Club contend that in the absence of additional congressional legislation, the federal circuit court has given a definition of R.S. 2477 roads in the case of *Sierra Club v. Hodel*. In that case, R.S. 2477 roads were defined as "major components of the transportation systems in most western states" (*Sierra Club v. Hodel*, 1988, 1078).

SUWA's concern is that local interests may cut new roads and claim they are legal rights-of-way under R.S. 2477. They also contend that wilderness opponents have attempted and continue to attempt to use this tactic to disqualify land from wilderness consideration. Politically, it is to SUWA's advantage to continue to portray R.S. 2477 as a law that is outdated and past its time. It is much easier to convince members of the general public that grading little-used backcountry roads is an "attack" on wilderness that cannot be tolerated if we are to "save what is left." It is much more difficult for rural residents to persuade the public that they need the roads for their livelihood and have a legal right to them. The battle for Utah wilderness is national in scope, and SUWA and other groups have a distinct advantage in garnering support among urban and suburban dwellers who do not relate to the rural lifestyle.

The legal showdown over what constituted R.S. 2477 roads began in late September and early October of 1996, when counties began grading on six roads in San Juan County, five roads in Kane County, and four roads in Garfield county. The routes were located in Hart's point, east of Canyonlands National Park, in the Moquith Mountain

WSA, and in the Grand Staircase-Escalante. SUWA and the Sierra Club immediately sued to stop the grading.

The stakes in this case were high for the counties, the state of Utah, and environmental groups. In addition to recreational uses, rural Utahns claim they depend heavily on these roads to access lands for mining, grazing, and other uses they depend on for their livelihood (Hatch, 2000). Rural residents contend that the system of backcountry roads in the counties is comparable to the freeway and highway system connecting the Wasatch Front and is vital to economic stability and ultimately, survival. Alternatively, environmental groups looked for a favorable decision in this case to strengthen their arguments for a broader definition of wilderness.

Previously the federal courts had ruled that the counties' maintenance and use of legitimate R.S. 2477 rights-of-way would not constitute trespass onto federal lands (*SUWA vs BLM*, 1998). The court stayed that case until the BLM could make an administrative determination as to the validity and scope of the claimed R.S. 2477 rights-of-way. Accordingly, the BLM began an informal administrative adjudication process with a public notification. The Bureau considered a number of forms of evidence, including information submitted by the parties, along with interviews, field inspections, and federal and local land records.

Before a decision was reached, the BLM published notice of its draft determination and accepted public comment. The process did not include a hearing featuring testimony of cross-examination. On July 9, 1999 the BLM found that with one exception (the Skutumpah Road in Kane County) the rights-of-way claimed by the counties were not valid 2477 rights-of-way. After the BLM's decision, SUWA and the Sierra Club sought injunctive relief barring any further construction on the roads.

Among the issues in the case of *Southern Utah Wilderness Alliance and the Sierra Club vs Bureau of Land Management: San Juan County, Utah Ty Lewis San Juan County Commissioner: Kane County, Utah; Garfield County, Utah* were:

- Did the counties have previously perfected rights-of-way for the roads, and thus were legally entitled to maintain the roads?
- Did the BLM properly interpret the term "construction" in R.S. 2477 when it stated the term requires some form of "purposeful, physical building of improving" rather than the counties' contention that the term requires only "continued use" of a road?
- Can "highways" be formed by "the passage of wagons, horses, or pedestrians" as the counties claimed, or should a highway right-of-way be defined as being "public in nature" and "connecting the public with identifiable destinations or places"?
- Did the process followed by the BLM meet the requirements of administrative law? Specifically, did the lack of a hearing featuring testimony and cross-

examination deny the citizens of Garfield, Kane and San Juan Counties "due process of law"?

District Court Judge Tena Campbell found that the plain meaning of the term "construction" as used in Webster's dictionary, or in legal dictionaries, favored the BLM definition. As to the term "highway," the court found the BLM did not err in that definition either. Addressing the issue of whether the BLM had followed proper administrative procedure, Judge Campbell applied the two tests most commonly used: that the BLM's actions not be "arbitrary and capricious," and that their decisions must be supported by facts found in the administrative record as a whole. She ruled that the BLM's process did meet these tests, and that the Administrative Procedures Act did not require a hearing featuring testimony.

While environmental groups prevailed in the first of the legal battles, the decision further alienated southern Utahns. San Juan County Commissioner Bill Redd called the decision "a (bump) in the road," and promised an immediate appeal, even if he had to bring the appeal himself (Spangler, 2001).

The county governments have defied attempts by the BLM to close roads, and have continued grading many of their roads, prompting lawsuits against the counties by the BLM. The counties, in turn, have also sued the BLM for illegal road closure (Hatch, 2000)

Michael Leavitt, Governor of Utah, announced in 2000 that the state would join a lawsuit against the BLM that was initiated by the counties. The Utah State Legislature also passed bills giving the state equal jurisdiction with counties over roads, and creating a \$2 million fund to sue the federal government over land management issues. Although predicted to be a long, arduous court fight of ten years or more, Interior Secretary Bruce Babbitt agreed that the suit would bring resolution to the dispute (Hatch, 2000). The state has notified the federal government of its plan to sue over R.S. 2477 rights-of-way, but as of July 2002 the suit has not been filed and is still in the works. However, Mark Walsh of the Utah Association of Counties has said that research and preparation is ongoing and that the counties, along with the state, have every intention of filing the lawsuit (Walsh, 2002). Because estimates place the number of R.S. 2477 road claims in Utah at between 5,000 and 10,000, this lawsuit will be critical in resolving the wilderness debate (Hatch, 2000). As I have previously stated, formal wilderness by law must be roadless. If the counties win the road battle in court, there will be a smaller amount of wilderness eligible for formal designation, thus, giving legitimacy to the smaller amounts of wilderness that have already been proposed by the Utah delegation. Many of the roads that dissect federal land are well-documented prior to 1976 and Utah counties have been working to document these roads through photos, and written and oral history. State and local officials say that they will fare well in the court battle. However, it is difficult to predict the outcome because the courts have increasingly sided with

environmentalists who sue because they claim management of public lands is not carried out in a manner that is consistent with current law designed to protect the land from abuse and misuse. When Governor Leavitt and the Utah Congressional delegation announced the lawsuit against the BLM, the *Deseret News* said in an editorial, "Ten years may seem like a long time, but it's a lot better than the alternative – unproductive wrangling that pits the state against the federal government with no resolution in sight. Let the legal process begin" ("Take Road Dispute to Court" 2000).

TO COMPROMISE OR NOT TO COMPROMISE?

As I have shown so far, SUWA, local officials, and the BLM have all disagreed over how to best manage Utah public lands. The actions of each of these three groups have generally proven to be unsatisfactory to one or the other, or both. For example, while the counties believe that the BLM re-inventory is far too much, SUWA holds that it is not enough, and the BLM thinks it is just right. In this case, none of the groups have come close to each other in reaching an agreement. However, in other ways we have seen traditionally opposing factions work together for what is seen as a mutually beneficial end.

Volunteers from the Sierra Club recently built a pole fence across a dirt track in Emery County that had been closed by BLM officials with the support of Emery County leaders. As the activists built the fence, local rancher Lee Jeffs stood by and watched approvingly. He said:

"I'm glad to see the BLM doing something about these damn four-wheelers. They are riding the things everywhere. They're kind of like lice on a cow. You can take a healthy beautiful cow and introduce one [louse] and pretty soon she starts losing weight, then her hair falls out, and in six months she looks like she's ready to die" (Miller, 2000).

Although ranchers and wilderness groups share the common goal of curbing OHV use, both have antagonized and alienated each other to the point that they can't work together. Rural residents who depend on the land for their living have particularly felt threatened by environmentalists because they think they will take away their ability to support themselves. The same article that quotes Jeffs said that BLM officials were surprised at the support that members of the community had given to some road closures. However, the article ended, "but many members of the environmental community are opposed to [the closure] because they believe it doesn't go far enough" (Miller, 2000).

At a Senate hearing on a bill being supported by local officials that would protect public lands in the San Rafael Swell, Emery County Commissioners told how in coming up with the plan they invited members of the environmental community only to be met with the response that SUWA was not interested in working with them. The parameters of the opposing groups, or better said, the parameters of the more

extreme members within those groups, may be what is holding them back from working together. For example, local leaders, and Emery County officials in particular, have stuck their necks out to curb OHV abuse, and take steps to preserve the land. However, when many county officials go out on a limb to condemn these abuses, they sometimes lose favor with their electorate because of their stand. Joe Judd, a Kane County Commissioner who originally opposed GSENM, then worked with monument managers when he saw it was inevitable, recently said, "I'm about as popular as the plague. But that's OK because I think I'm right" (Kemp, 2000). Unlike Joe Judd, many local leaders are unwilling to risk losing popular support by working with environmentalists even though there is some common ground. Furthermore, there are some members of the OHV community who disregard rules designed to protect pristine land as evidenced by new tracks in a number of previously untouched areas.

Inability to compromise comes also comes from environmentalists. In an editorial, the *Deseret News* said, "SUWA has never met a compromise it could support.... That seeming inability to compromise has damaged SUWA's credibility" ("Five Year OHV Plan Has Merit," 2000). Recently, federal and state land managers agreed to begin a five-year process to better manage OHV use. SUWA attorney Steve Bloch merely dismissed the agreement as "a meaningless exercise" ("Five Year OHV Plan Has Merit," 2000). In this case, the BLM and local interests were trying to work together to make progress on OHVs but SUWA was unwilling to work with them. SUWA and other groups may be missing an opportunity to engage in quality land preservation. The counties are beginning to offer to give up things they are not legally required to do for the sake of reaching some kind of agreement. For example, in the San Rafael bill mentioned above, local leaders have agreed that they will close a number of roads, some of which have valid existing rights.

One point that must be made in regard to compromise is the fact that it may not be in the best interest of SUWA and other wilderness groups. We have begun to see a greater willingness on the part of local leaders to move further to the center on public land issues. Perhaps environmentalists think that if they keep up the pressure and don't give in to calls to compromise, they will be able to achieve all or most of what they want. They might even sense vulnerability on the other side, which explains why local interests are more interested in compromise. It is possible that with a change in the political climate in this country, SUWA could get everything it wants and more. Therefore, lack of compromise on their part may be a viable political strategy.

Finally, it can also be observed that by holding out and making sure nothing happens, SUWA is effectively winning the game. To this point, SUWA and other groups have been able to work at the public opinion level and at the policy level to stop many actions they have disagreed with. Since WSAs are managed as *de facto* wilderness, there will essentially be at

least 5.7 million acres of wilderness for a long time until some kind of action occurs at a public policy level. So, if SUWA can continue to cause gridlock, it can be argued that its goals have been met. If, however, politics shift in favor of state and local control, SUWA may find itself with only 1.8 million acres of wilderness, as previously proposed by Utah lawmakers in Congress.

FUTURE

A wedge is still being driven between rural residents, urban environmental groups, and other wilderness advocates, who represent new trends and outlooks on old issues. Up to now, wilderness advocates have been highly successful on a national level through grassroots action and lobbying in Congress. Not only have they fought off proposals for wilderness areas that they thought were too small, but they have also won the protection of at least 5.7 million acres as WSAs for a long time. In doing so, however, they have generated mistrust and animosity from the other side. No one knows how long their success will continue, and whether or not political circumstances will be as favorable to the environmentalists in ten years as they are now. Alternatively, advocates for an elevated role for local residents have been highly successful in sending representatives for Utah to Congress that are sympathetic to their plight, and who have shut down environmentalists attempts to declare wilderness in the state.

The Wilderness Wars are mostly characterized by an interchange of small victories among the opposing sides. Occasionally, as with Grand Staircase-Escalante, one side scores a major coup and advances its agenda by a large degree. Generally, however, opposing sides seem to neutralize each other enough to maintain the status quo. Working towards compromise and common ground do not appear to be a realistic option for achieving resolution in the current climate because of the polarity of the two sides. So the question becomes: How will the Wilderness Wars be resolved in the future? The apparent answer will not satisfy those who believe our political controversies should be solved by democratic action and majority decision. Instead, resolution of the current impasse will come about when one interest group is able to unilaterally achieve its goal through Congress, the Courts, or the Executive Branch. This occurred in the case of GSENM, which, while not a resolution in the sense that a problem or issue was laid to rest, the environmentalists achieved their goal of protecting the land, – something not likely to be undone.

It appears that since President Clinton has left office, and the election of George W. Bush, state and local officials have won a small victory as politics have decidedly tilted in their favor. Secretary Norton, BLM director Kathleen Clarke (a Utah native), and other political appointees have been much more open to the arguments of local and state officials, who are working with urgency to resolve such issues as R.S. 2477

road claims, and to bring back the practice of multiple use through behind the scenes negotiations.

In early 2002 one major development did occur which will impact the future of some wilderness in Utah. In his State of the State address, Governor Mike Leavitt called on President Bush to create a 620,000-acre San Rafael Western Heritage National Monument. About forty percent of the proposed monument would include Wilderness Study Areas. Leavitt stated that the community in Emery County would have a year or more to influence the proposal. President Bush subsequently forwarded a letter to the Secretary of the Interior Gale Norton. At that point a 90-day study of the issue was begun. Upon the study's completion, the Secretary will make a recommendation about the monument to the President.

Unlike the GSENM, the Bush Administration is pursuing monument designation at the request of local officials. These officials are grateful to resolve for now some of the issues important to them in the San Rafael Swell with the help of what they view as a friendly administration. So, in this case, local officials have out-maneuvered the environmentalists to protect the land in a way more favorable to their own interests. Despite this, some local residents still criticize the monument as ill conceived and accuse Leavitt of springing it on them like Clinton did with the Grand Staircase-Escalante. However, many who want to limit federal control point out that those opposed to the process set in motion by Leavitt are living in a fantasyland if they think they are going to get a better deal down the road. They urge those who value local control and input to make their voice heard now and take the best deal possible with the Bush Administration.

This victory for local officials in the San Rafael Swell, and the victories of the environmentalists do not come about as a direct result of public hearings or votes in Congress. Rather, these small resolutions and victories come about because of behind-the-scenes negotiations, a little arm-twisting, and calling-in of favors due. This happens in Congress, in the executive branch, the courts, and in bureaucratic agencies like the BLM as there is some influence and power to be sought at all levels. Like it or not, the reality is that the Wilderness Wars will be won through the exercise of raw political power. I am not implying that illegal activity is necessary to reach one's goals for public policy; however, we have seen and will continue to see tactics that many purists would call unethical or undue influence. The pluralist political system in which we live creates an atmosphere of competition between interest groups and there are many avenues that politically savvy groups may follow in order to reach their goals. The groups that are most successful at achieving their goals for public land policy in Utah will be those that are able to influence government in ways that the general public cannot.

It is clear therefore that wilderness advocates and local officials are following paths that by their very nature run in opposite directions. The best hope for those who want to

limit wilderness and preserve traditional land use patterns is to work to influence the current Bush administration and strike deals that will be favorable to them. Wilderness advocates for now will find the friendliest ear in the courts and among sympathetic bureaucrats who can continue to promote the current gridlock that locks up land in Wilderness Study Areas. Both groups, as well as all others who have a stake in the debates outlined in this paper would do well to support those who will be sympathetic to their cause in the future. This may be achieved through elections, political appointments, or favor trading. The lesson of Utah's Wilderness Wars is that the differences of the two sides come down to a fundamental and bitter disagreement in ideologies over the scope of government, the role of man in nature, and the use of natural resources. In short, politics matter.

REFERENCES

- "5-year OHV Plan Has Merit." 2000. *Deseret News*. 15 April.
- Brown, J.J. 2000. Legislative Advisor to Senator Orrin Hatch on natural resources and environment. Personal interview. January.
- Hammond, Keith. 2000. Speech to BYU Washington D.C. interns. 31 March.
- Hatch, Orrin. 2000. <<http://www.senate.gov/~hatch/answers.html>>
- Kemp, Donna M. 2000. "4 Years Pass; Discord Hasn't." *Deseret News*. 16 September.
- Miller, Layne. 2000. "Volunteers Fence Off Delicate Salt Wash; Sierra Club Hopes to Protect Area From Off-roaders." *Salt Lake Tribune*. 26 March.
- Sierra Club vs. Hodel*. 1988
- Southern Utah Wilderness Alliance and the Sierra Club vs. Bureau of Land of Land Management; San Juan County, Utah; Ty Lewis, San Juan County Commissioner; Kane County, Utah; Garfield County, Utah*. 2001. 2-96-CU-836 C
- Southern Utah Wilderness Alliance. 2000. <<http://www.suwa.org/WATE/review.html>>
- Southern Utah Wilderness Alliance. 2000. <<http://www.suwa.org/timeline.html>>
- Southern Utah Wilderness Alliance. 2000. <<http://www.suwa.org/1866/1866.html>>
- Spangler, Donna Kemp. 2001. "Court Sides with SUWA in Road Rift." *Deseret News*. June 27.
- SUWA vs. BLM*. 1998. NO 98-836
- SUWA. "SUWA, *Southern Utah Wilderness Alliance*" pamphlet
- "Take Road Dispute to Court." 2000. *Deseret News*. 5 March.
- United States Congress. 1964. *Wilderness Act of 1964*. 16 USC Sec. 1131.
- United States Congress. 1976. *Federal Land Policy Management Act*. 43 USC Sec. 1763
- Utah, San Juan County. *Politically Motivated, Technically Flawed. A Review of the BLM Wilderness "Re-inventory in the State of Utah."* Monticello.
- Utah Association of Counties. 1997. *The SUWA Watch!! Media Source Book: Analysis and Critique of SUWA Brochure on R.S. 2477 Rights of Way*. Salt Lake City.
- Walsh, Mark. 2002. Utah Association of Counties. Telephone interview. July.