To say that the proposed Washington County Growth and Conservation Act of 20061 (“Growth Act”) was a controversial piece of legislation would be an understatement of considerable magnitude. Though the Growth Act’s full title contained nothing likely to generate controversy—it claimed the act was intended to “establish wilderness areas, promote conservation, improve public land, and provide for high quality economic development in Washington County, Utah, and for other purposes”2—critics were not mollified by the bill’s innocuous-sounding name. Local critics like Southern Utah Wilderness Alliance Executive Director Scott Groene called the bill “a miserable piece of legislation,”3 and editorials in local newspapers attacked the bill’s sponsors, Republican Senator Bob Bennett and Democratic Congressman Jim Matheson, both from Utah, as “misguided.”4 The local chapter of the Sierra Club decried the bill as “woefully inadequate.”5 Some municipalities within Washington County even passed resolutions opposing the bill.6 Supporters, on the other hand, were enthusiastic about what the bill

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2 Id.; see also Peter Metcalf, Bill Will Endanger Our Western Lands, DENVER POST, Sept. 13, 2006, at B7 (an opponent of the Growth Act acknowledges that “its name suggests an enlightened melding of smart growth and conservation,” but then goes on to lambast the bill).
would accomplish. Beaver County, Utah, Commissioner Mark Whitney called the bill a “landmark” and “a great model for how to deal with public lands.”

The political discord and hyperbole that the bill generated was not confined to Utah. Newspapers across the country expressed opposition to the bill. One livid entry in the *Los Angeles Times* called the bill a “heist” and a “crackpot scheme” while upbraiding it for “both its greed and its shamelessness.” A *Denver Post* piece claimed that the Growth Act had “no justification” and set a “dangerous precedent.” Even the far-off *Hartford Courant* weighed in, calling the Growth Act a “wrongheaded” scheme that would be used to “subsidize sprawl.”

The thrust of the criticisms levied at the Growth Act focused on major issues that have long stymied the Western United States. As *The Salt Lake Tribune* indicated, critics allege that despite the Growth Act’s title, it does not encourage “high quality development” but rather “downright destructive” growth in Washington County. Opponents also claim that the bill does little in the way of environmental conservation, and would in fact “harm many public lands adjacent to Zion National Park and in the Mojave Desert . . . .” Together with issues surrounding access to water, development and conservation of federal land are perennial hot-button issues in the West.

Despite, or perhaps because of, the firestorm the Growth Act generated in Utah and in some media outlets across the country, the bill garnered scant attention at all in Washington D.C. After its introduction on July 12, both House and Senate subcommittees held brief hearings on the Growth Act. However, the committees took no further action after those hearings and, as far as Congress was concerned, the Growth Act quietly faded away at the end of the 109th session of Congress. Though the Growth Act of 2006 is dead, the issues it sought to address remain nettlesome in Utah and throughout the West. The aggressive reaction to the Growth Act highlights an important question in contemporary Western politics: the proper role, if any, for legislated land exchanges as a tool

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8 Wade Graham, *Stop This Land Grab*, L.A. TIMES, June 17 2006, at 17.
12 Joe Bauman, *Group Blasts Land Bill*, DESERET NEWS MORNING NEWS, Nov. 4, 2006, at B2 (quoting a letter from 47 Democratic members of Congress to the House Committee on Resources).
13 At the time of this writing there are significant rumors that many interested parties hope to see the Growth Act, or legislations similar to it, re-introduced.
14 Although some observers would not classify the Growth Act as a land exchange, the legislation contained provisions, described below, that could allow land managers to exchange federal land for private land. Thus, the Growth Act can be categorized as a land exchange, albeit not a determinate type of exchange where the government disposes one
for Congress to use when addressing the issues of development and environmental conservation in the West.

Throughout the history of the West, the federal government has used land exchanges with states, local governments, and private individuals to address various land management issues. Early land exchanges were largely the result of a bureaucratic process administered by the Bureau of Land Management ("BLM") or the Forest Service. However, these types of exchanges, which this Comment refers to as agency administered land exchanges, have been prone to abuse and have been criticized by both the federal government and private groups. In recent years, Congress has increasingly addressed land management issues through legislation. The legislated solutions Congress has adopted include exchanges of discrete parcels of federal land for discrete parcels of private land, public sales of federal land that generate revenue that federal agencies can use to acquire private land, and combinations of these two methods.

This Comment will describe the historical development of land exchanges and the problems they were intended to address. The Comment will then note the benefits derived from legislated land exchanges. Next, the Comment will use a series of recent laws focusing on Southern Nevada to examine a trend toward using legislated land exchanges to address multiple land use issues. This Comment will suggest that the Southern Nevada legislation is emblematic of a new paradigm in western land management policy. The Comment will examine legal challenges to legislated land exchanges, and assesses their impact. It suggests that in the future, environmental groups are more likely to find success in advocating their goals through participation in the drafting of land exchange legislation than by challenging that legislation in court. Finally, this Comment will examine the Washington County Growth and Development Act of 2006. It will evaluate the degree to which the Growth Act followed the paradigm established by recent Southern Nevada legislation. The Comment suggests that the controversy surrounding the Growth Act arose because its drafters varied from the pattern that had been successful in the Southern Nevada context. Because this Comment takes the position that the Growth Act was flawed, but that future land exchange legislation addressing Washington County can be successful, the Comment will recommend modifications to the legislation that will help any

determinate and indeterminate land exchanges are discussed below.

17 See id. at 86-89.
19 The use of the phrase “new paradigm” is not original with this Comment. See Paul, supra note 15, at 113; Vaskov, supra note 16, at 79.
future versions of the bill to garner more political support, and more importantly, to better address the development and wilderness conservation concerns facing Washington County and other areas of the West.

II. THE HISTORY OF LAND EXCHANGES

Historically, the chief reason that the federal government engaged in land exchanges was to consolidate federal landholdings. Consolidation was, and continues to be, necessary because in many Western states federal land holdings are pockmarked by inholdings of state or private ownership. This is largely the result of the “checkerboard” land grants that the federal government gave to the railroads during the nineteenth century to encourage railroad construction. It was hoped that private ownership of land would encourage development of the vast areas which the railroads made accessible. The problem of inholdings also arises because some states, like Utah, received sections of land from the federal government, isolated from other parcels of state land, “to be held in trust for the benefit of the State’s public school system and other public institutions.” In both cases, the erratic distribution of ownership makes the management of federal public lands inefficient.

Congress has traditionally delegated power to federal agencies, allowing them to correct the adverse effects of checkerboard ownership through administrative land exchanges. The Weeks Act of 1911 gave the Secretary of Agriculture, who oversees the Forest Service, authority to acquire and exchange federal lands. Eleven years later, the General Exchange Act provided the Secretary of the Interior, who oversees the BLM, the National Park Service, and other federal land management agencies, with authority to enter into land exchanges. Additional authority to enter into land exchanges came from the Taylor Grazing Act in 1934.

In *La Rue v. Udall*, the Court of Appeals for the D.C. Circuit acknowledged the Secretary of Interior’s authority to engage in land exchanges because the court found that “in carrying out his functions in the administration and management of the public lands” the Secretary was entitled to “a wide area of discretion.” Today, the agencies’ authority to conduct land exchanges is found in the Federal

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22 *Id.*
26 *Id.*
27 Vaskov, *supra* note 16 at 84-85.
28 324 F.2d 428, 432 (D.C. Cir. 1963) (*quoting* Safarik v. Udall, 304 F.2d 944, 950 (D.C. Cir. 1962)).
Land Policy and Management Act of 1976 ("FLPMA"). Amendments to FLPMA declared that “land exchanges are an important tool” for the federal agencies to wield as they manage the federal estate. However, these agency administered exchanges, which some scholars refer to as “statutory exchanges” or “FLPMA land exchanges,” are discretionary and agency land managers are under no obligation to exchange any parcels through the agency administered exchange process.

FLPMA requires that the agencies make several determinations regarding the land before they can exercise the discretion to engage in an administrative land exchange. First, the secretary shall determine “that the public interest shall be well served by making that exchange.” In assessing whether the public interest is well served, the secretary must ascertain that “the values and objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.” Second, the lands to be exchanged must be of equal value. However, FLPMA provides that in some circumstances lands of unequal value may be exchanged after “payment of money to the grantor or to the Secretary concerned as the circumstances require” provided the equalization payment doesn’t exceed twenty-five percent of the total value of the land in question.

These procedures, particularly the value determination, can be onerous and time consuming. Indeed, agency-administered exchanges can take up to three years. For example, determining whether the lands are of equal value can be a substantial process. At a minimum, the process requires an appraisal prepared by a BLM-approved appraiser who must base his or her findings on extensive standards promulgated by the Justice Department. Moreover, any exchange that

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31 See generally Paul, supra note 15, 115-16.
33 Government Accountability Office: BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest, GAO/RCED-00-73 at 7-9, http://www.gao.gov/archive/2000/rc00073.pdf [hereinafter GAO REPORT]. In addition to the requirements listed in the text, FPLMA requires that land exchanged must be in the same state, that titles must be transferred simultaneously, and that land acquired within the boundaries of a national forest, national park or any other land system immediately becomes a part of that system.
35 Id.
36 Id. at § 1716(b).
37 Id.
38 Tang, supra note 18, at 62.
40 Tang, supra note 18, at 61.
could be considered a “major Federal action significantly affecting the quality of the human environment” will trigger analysis under the National Environmental Policy Act (“NEPA”). In addition to adding time to the exchange process, the NEPA analysis usually requires the preparation of an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS"). These documents evaluate the environmental consequences of the potential action, which could include a land exchange, and can run hundreds of pages in length. NEPA’s requirement that the agencies conduct such an environmental review “helps force every federal agency to put its reasons, reasoning, and conclusions regarding such actions into writing and make them subject to judicial review.” Challenges to the adequacy of NEPA review, or the failure to conduct a NEPA analysis, are “frequently litigated” by both environmentalists and development groups.

Despite their inefficiencies, the BLM continues to use agency administered land exchanges. In 2006, the BLM disposed of 55 parcels and acquired 20 parcels through agency administered exchanges. These figures, however, represent a significant decrease from the rate at which agencies formerly engaged in land exchanges. Prior to 2000, the agency engaged in as many 300 exchanges per year. The significant decrease in the number of exchanges is most likely due to the harsh criticism that agency administered exchanges have received.

Criticism of agency administered land exchanges has come from a broad cross section of society; “environmental groups, journalists, private business owners, politicians, and governmental agencies” have alleged that the parties to agency administered exchanges have “ignored or violated” FLPMA’s statutory requirements. In 1999, the Court of Appeals for the Ninth Circuit condemned a Forest Service administered exchange because the agency failed to conduct adequate NEPA analysis, as required by FLPMA. The court found that the “general and one-sided” nature of the EIS “fall[s] far short of a ‘useful analysis’” which NEPA requires. The next year, the United States Government Accountability Office (“GAO”) issued a report that was highly critical of the agency administered land exchange process used by both the Forest Service and

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44 Id. at 392; see generally id. at 389-427.
47 Tang, supra note 18, at 62.
48 See Muckleshoot Indian Tribe v. United States Forest Service, 177 F.3d 800 (9th Cir. 1999).
49 Id. at 811.
the BLM. The report found that the “agencies did not ensure that the land being exchanged was appropriately valued or that exchanges served the public interest.” In a particularly egregious example, the GAO found that the BLM overvalued the non-federal land it received in a series of three 1998 exchanges by a combined total of $8.8 million. The report also found that in some cases the BLM had engaged in land exchanges that exceeded the scope of its statutory authorization under FLPMA. The GAO concluded its report by suggesting that “Congress may wish to consider directing both agencies to discontinue their land exchange programs.”

A. Legislated Land Exchanges as Management Tools

Although Congress has not formally adopted the GAO report’s suggestion that it remove the agencies’ authority to enter into agency administered land exchanges, Congress has played a highly visible role in Western land exchanges in recent years. At the same time, the agencies’ direct involvement has decreased dramatically. Only a few years ago, it was reported that “public land agencies have pursued an increasingly aggressive land exchange agenda,” but this trend has reversed and the flow of agency administered land exchanges has slowed to a trickle. This pattern of the decreasing number of agency administered land exchanges, together with recent examples of prominent legislated land exchanges, may suggest an emerging trend for managing federal lands in the West. Congress seems to view legislated land exchanges, like the Southern Nevada legislation described below, as a way to provide land managers with the tools to address thorny issues such as development and wilderness conservation while at the same time avoiding the problems for which agency administered exchanges were criticized.

Because the property clause of the Constitution gives Congress considerable power and discretion “to dispose of and make all needful rules and regulations” concerning federal lands, modern legislated land exchanges take many forms. Some legislation authorizes determinate land exchanges, which are narrow in scope and exchange a determined amount of federal holdings for a determined amount of non-federal holdings. Other legislation provides for indeterminate land exchanges that authorize the sale of certain public lands with the proceeds being

50 GAO Report, supra note 33, at 4-5.
51 Id. at 4.
52 Id. at 17.
53 Id. at 23.
54 Id. at 34.
56 BLM STATISTICS, supra note 45, at Table 5-8a.
57 U.S. CONST. ART. IV, § 3, cl. 2; see also COGGINS, WILKINSON, & LESHY, supra note 43, at 183-85.
used to purchase environmentally sensitive lands. Recently, legislation has tied the formal designation of wilderness areas to land exchanges.

Legislated land exchanges are not free from criticism. For example, some environmental groups view any legislation which links wilderness designation to land sales as an unacceptable “compromise.” They assert that such legislation links wilderness designation to “issues that go far beyond the wilderness boundaries,” such as development and water issues.58 Some claim that these “balancing” provisions have “devastating consequences” for wilderness because they facilitate “development, privatization, and intensified land use” of areas near proposed wilderness.59

Although Congress clearly possesses the power to engage in legislated land exchanges, and has done so repeatedly in recent years, legislated land exchanges are not a universal solution for the issues facing Western land managers. And because Western public lands are used by groups with diverse interests, not all interested parties will be happy with every provision of a legislated land exchange. Despite these limitations, however, legislated land exchanges can be one effective tool for land managers to use.

B. Advantages of Legislated Land Exchanges

1. Flexibility

The ability to tailor the exchange to the precise issue facing land managers, or to use the exchange to address a broad category of issues, is the one of the shining virtues of legislated land exchanges. Scholars recognize that legislated exchanges provide “a degree of flexibility that [is] not available under the existing FLPMA exchange provisions.”60 That contrasts sharply with a finding in the GAO report which noted that agency administered exchanges are an inherently difficult way to convey and acquire land.61 The GAO reached this conclusion because of the considerable difficulty involved in the appraisal and comparison process.62 In addition, the GAO report criticized the agency administered process for failing to “take advantage of a very competitive market for this federal land.”63

By contrast, legislated land exchanges can use market forces to their advantage. For example, some of the legislation focusing on Southern Nevada, discussed below, authorizes the secretary to sell certain parcels of land, retain the proceeds directly, and use those proceeds to acquire other parcels of environmentally sensitive lands in the state. This type of sell-then-buy flexibility is not available under traditional agency land exchanges.

59 Id.
60 Keiter, supra note 55, at 316.
61 GAO REPORT, supra note 33, at 30.
62 Id.
63 Id.
Legislated land exchanges also allow for more flexibility than the process adopted by the Land and Water Conservation Fund ("LWCF"). The LWCF is financed by revenues the government extracts from off-shore oil and gas operations. The funds are used by the federal government to purchase lands that benefit wildlife and outdoor recreation.\(^64\) However, unlike the process authorized by some legislated land exchanges, each expenditure of funds from the LWCF requires specific Congressional appropriation. Land exchanges like the Southern Nevada Public Lands Management Act allow agencies to sell certain parcels of land through a competitive bidding process.\(^65\) The proceeds are then deposited into a special account in the treasury which the agency can access for land acquisitions without further input from Congress.\(^66\)

2. Efficiency

Legislated land exchanges are more efficient than agency administered exchanges because legislated exchanges can address a specific land management issue or geographic area without having to work through the agency’s administrative bureaucracy. This stands in stark contrast to the GAO report’s statement that agency administered exchanges are “inherently difficult.”\(^67\) The GAO countered the BLM’s contention that agency administered exchanges “are a highly efficient way to restructure land ownership,” by noting that agency administered exchanges have “inherent difficulties that make them noticeably inefficient.”\(^68\) Some of these inefficiencies, as noted above, include the complex land valuation process and the extensive environmental review.\(^69\)

3. Direct Political Involvement

Critics have argued that legislated land exchanges “have always injected an overly political component into the exchange process.”\(^70\) Nevertheless, agency administered exchanges are not entirely free from political intrigue. Indeed, scholars have acknowledged that the “highly politicized climate” within agencies can also lead to problems with agency administered exchanges including problems with land valuations.\(^71\) Thus, it seems likely that any process the federal

\(^{64}\) Keiter, supra note 55, at 310-11.


\(^{66}\) 112 Stat. 2343 at § 4(e).

\(^{67}\) GAO REPORT, supra note 33, at 30.

\(^{68}\) Id.

\(^{69}\) Id.

\(^{70}\) Congress can, and has, passed legislated land exchanges that do not require compliance with NEPA and other environmental laws. However, as noted below, retaining the compliance requirement is often politically expedient and reduces the risk of legal challenges.

\(^{71}\) Paul, supra note 15, at 122.
government uses to address land management issues will be touched to some extent by politics.

However, politicized issues often have the advantage of being magnets for increased involvement by the public. Additionally, it seems likely that issues associated with management of federal lands in the West will continue to be highly politicized, regardless of what process the government uses to address them. Additionally, there is some evidence that groups representing a wide spectrum of interests, including those not traditionally considered political action groups, have become politically active because of the issues raised by land exchange legislation. Thus, public participation in the debate about land exchange legislation, either to support or oppose the issue or proposed action, results from the fact that the process is indeed political. The controversy associated with the Growth Act supports this conclusion. That bill, which certainly contained a “political component,” saw substantial public involvement. Indeed, the considerable and sustained public opposition likely contributed to the bill’s demise at the end of the 109th Congress.

4. Compliance FLPMA, NEPA, and the Other Environmental Legislation

Some environmental groups note that legislated exchanges “can be used … to override key environmental laws.” Some writers even made that blanket claim that only agency administered exchanges require full compliance with NEPA. It is true that the power over the federal lands which the Constitution vests in Congress is virtually “without limitations.” Thus, Congress is free to require, or not require, compliance with the provisions of FLPMA, NEPA, and other environmental laws when undertaking a legislated exchange. For example, a land exchange bill that was passed by the same session of Congress that rejected the Growth Act explicitly stated that the Secretary of the Interior was authorized to violate certain FLPMA provisions, “[n]otwithstanding section 206(b) of the Federal Land Policy and Management Act.”

However, Congress’ power to waive compliance with environmental laws may lead to unsatisfactory results, both ecologically and politically. The controversy surrounding the Growth Act, for example, illustrates the political

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73 As noted below, however, one criticism of the Growth Act was that the public involvement occurred entirely after the bill was already drafted rather than during the drafting process itself.

74 Keiter, supra note 55, at 316.

75 Paul, supra note 15, at 124.


dangers that can arise when Congress chooses not to require compliance with the environmental laws. Moreover, Congress is free to require compliance with environmental laws in the text of legislated land exchanges.

5. Retention of Federal Land

Critics charge that because they often operate on a sell-then-buy basis, legislated land exchanges may result in a net decrease of federal lands. Many examples of legislated land exchanges provide that some of the revenue generated from the sale of federal lands will be returned to state and local entities, or will be used for purposes other than acquiring land. Thus, because less money is available for federal acquisition of private lands than was actually generated by the sale of the federal lands, the total public land acreage may decrease as a result of legislated land exchanges. Critics point out that such a state of affairs seems to conflict with the statement in FLPMA that “Congress declares that it is the policy of the United States that . . . public lands be retained in federal ownership.” This critique fails to acknowledge that FLPMA actually contemplates disposal of certain parcels of land where “it is determined that disposal of a particular parcel will serve the national interest.” As noted above, serving the national interest is one of the requirements that agency administered exchanges must meet.

Moreover, the possibility that the total federal acreage will decrease also exists with agency administered exchanges. FLPMA requires that lands exchanged in the agency process be of equal value, not necessarily equal size. Thus, any land exchange process risks a decrease in the federal estate. Additionally, in many areas of the rural West, where the percentage of land owned by the federal government is as high as eighty percent, it is not entirely clear that FLPMA’s general retention guideline continues to represent a viable land management policy.

III. Southern Nevada Legislation

Southern Nevada has been the focus of much of Congress’s recent land exchange legislation. This seems appropriate given that Nevada contains the

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81 Southern Nevada is the only location that Congress has addressed with land exchange legislation. Other bills have targeted Oregon, Steens Mountain Cooperative Management and Protection Act of 2000, H.R. 4828, 106th Cong., 114 Stat. 1655 (2000), and Idaho, Central Idaho Economic Development and Recreation Act, H.R. 2414, 109th Congress (2005). Nevertheless, the Southern Nevada experience is instructive to a discussion about the Growth Act because of its proximity to Utah, the amount of legislation targeting that specific geographic area, and because of the similarity between land management issues in Southern Utah and Southern Nevada.
highest percentage of federally owned land of any state in the union.\textsuperscript{82} The pieces of legislation addressing land exchanges in Southern Nevada examined in this Comment illustrate many of the advantages of legislated land exchanges described above. Though the specific provisions of the bills vary considerably, they share several similarities.

First, each bill is an indeterminate legislated land exchange. In other words, these bills do not authorize the Secretaries of Interior or Agriculture to dispose of certain parcels of federal land in exchange for discrete parcels of private land. Instead, they authorize the sale of certain federal parcels and then direct that the revenue from those sales be used to purchase private land.\textsuperscript{83} This ability to deposit funds and use them as necessary amplifies the flexibility of legislated land exchanges.

Second, the examples of legislation described in this section are intended to assist development. In recent years, the West has been the fastest growing region in the country.\textsuperscript{84} In fact, for most of the past twenty years Nevada has been the fastest growing state.\textsuperscript{85} At the same time, Nevada has the highest percentage of federal ownership, 82.9 percent.\textsuperscript{86} Other Western states also have considerable federal ownership: in Utah, Oregon, Idaho, and Alaska the federal government owns more than half the land.\textsuperscript{87} Additionally, in Arizona, California, and Wyoming, the federal government owns more than forty percent of the land.\textsuperscript{88} The combination of rapid population growth and limited private land has resulted in development pressures unique to the West. By contrast, Texas has the second largest area of any state in the Union, but the federal government owns only one and one half percent of the land.\textsuperscript{89}

Third, each bill addresses wilderness preservation. The protection of wilderness has long been a contentious issue in the West. Indeed, as one court recently noted in \textit{Southern Utah Wilderness Alliance v. Bureau of Land Management}, federal land management policy under FLPMA, which emphasizes “retention and conservation,” has increasingly brought divergent interest groups into conflict.\textsuperscript{90} The West and its beautiful topography can support an astounding

\textsuperscript{82} COGGINS, WILKINSON, & LESHY, \textit{supra} note 43, at 10.

\textsuperscript{83} Some critics have suggested that this type of legislation is not truly a “land exchange.” While it is true that these bills do not authorize the types of land exchanges contemplated by FLPMA, \textit{see} 43 U.S.C. § 1716, they are land exchanges in the sense that they authorize the disposal of federal land and the acquisition of private land. Thus, semantic nuances notwithstanding, the author feels very confident describing the examples of sell-then-buy legislation described in this section as land exchanges.


\textsuperscript{85} Id.

\textsuperscript{86} COGGINS, WILKINSON, & LESHY, \textit{supra} note 43, at 10.

\textsuperscript{87} Id.

\textsuperscript{88} Id.

\textsuperscript{89} Id.

\textsuperscript{90} 425 F.3d 735, 741-42 (10th Cir. 2005).
array of uses, from hiking and bird watching to off-road vehicle use to mining and oil exploration. These uses are not always compatible, as the Southern Utah Wilderness Alliance court pointed out. In that case, conflict arose between users of primitive roads and wilderness advocates. The “[c]onservationists . . . worry that vehicle use in inappropriate locations can permanently scar the land, destroy solitude, impair wilderness, endanger archeological and natural features, and generally make it impossible for land managers to carry out their statutory duties to protect the land from ‘unnecessary or undue degradation.’” On the other hand, off-road vehicle operators and others asserted a right to use the federal land and argued that limitations on use would have “serious ‘financial and other impacts’ on the people of Utah.” Although the holding in that case was generally favorable to the interests of the road users, conflicts between those who want to use the West’s vast natural resources and those who want to conserve them continues in many contexts. The provisions found in the Southern Nevada legislation that directly address wilderness conservation represent one way that Congress has sought to respond to this divisive issue.

These three common points—flexible means of exchanging land, concern for development, and provisions for wilderness conservation—represent what seems to be a new paradigm in the way that Congress is addressing land management issues in the West. The drafters of the Growth Act adopted that paradigm to address the land management issues facing Southern Utah. Before evaluating the degree to which the Growth Act adopted the principles of the new paradigm, it will be instructive to examine more thoroughly the acts that established the paradigm.

A. Santini-Burton

This law from the 1980s is an uncomplicated example of a legislated land exchange that addresses wilderness conservation and development. Nevada Congressman James Santini, a Democrat, crafted the bill in 1980. Rather than authorize a direct exchange of certain parcels, the Santini-Burton Act authorized the sale of designated federal lands and authorized use of the proceeds to acquire environmentally sensitive land elsewhere in the state. This bill’s sell-then-buy provisions illustrate the flexibility that is available with legislated land exchanges. Santini-Burton allowed the land managers to sell land in Southern Nevada’s Clark County, home of Las Vegas, and use the proceeds to purchase environmentally sensitive land in the Lake Tahoe region—located more than 350 miles from Las Vegas.

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91 Id. at 742.
92 Id.
94 Id. at § 3(a)(1).
Though the sell-then-buy framework does provide for flexibility, it is also susceptible to criticism. For example, Santini-Burton established a strict timetable for the disposal of lands—the Secretary of the Interior was directed to “make the first land sale offering . . . no later than one year after the date of the enactment of this Act”\(^{95}\)—however the bill provided no similar mandate for acquisition of the environmentally sensitive lands which were purportedly its focus. Supporters could argue that this enhances flexibility because it allows land managers to accumulate funds for use when a particular need arises. Critics could point out that the bill’s plain language could allow land managers to sell off federal land without any obligation to ever purchase any additional land for protection.

Another criticism is that while the bill appears to require that the land sales “be consistent with the provisions of the Federal Land Policy and Management Act and other applicable law,” such as NEPA review and ESA consultation, compliance with those laws is excused “to the extent necessary to expeditiously carry out the provisions of [the] Act.”\(^{96}\) This seems to provide the BLM with a legal loophole to avoid thorough environmental review of the potential impact of the land sales. However, Congress may have felt that less extensive review was appropriate considering that the land to be sold was found in the “urban areas” in and near Las Vegas.

Santini-Burton’s goals were to acquire “environmentally sensitive lands in the Lake Tahoe Basin”\(^{97}\) by selling federal land found in “small parcels interspersed with or adjacent to private lands in urban areas of Clark County,”\(^{98}\) thereby promoting “orderly development of the communities in that county.”\(^{99}\) To date, sales under Santini-Burton have provided $100 million for land acquisition.\(^{100}\) The Forest Service reports that since the Act was passed in 1980, 13,000 acres have been acquired in the Lake Tahoe Basin.\(^{101}\) While this may not seem significant compared to the hundreds of thousands of acres designated as wilderness by the legislation described below, the significance of the number increases when one considers that the entire Lake Tahoe Basin is only 160,000 acres.\(^{102}\)

\(^{95}\) Id. at § 2(f).

\(^{96}\) Id. at § 2(a).

\(^{97}\) Id. at § 1(b).

\(^{98}\) Id. at § 1(a)(1).

\(^{99}\) Id. at § 1(a)(2).

\(^{100}\) Mark T. Imperial & Derek Kanueckis, *Moving From Conflict to Collaboration: Watershed Governance in Lake Tahoe*, 43 NAT. RESOURCES J. 1009, 1014 (Fall 2003).


\(^{102}\) Id.
B. Southern Nevada Public Lands Management Act (SNPLMA). 103

Subsequent Southern Nevada legislation was necessary because the Santini-Burton Act apparently did not solve the problem of federal inholdings in Las Vegas. Moreover, the development and wilderness preservation issues in Southern Nevada were too large and dynamic to be completely resolved by one piece of legislation. In 1998, Congress again acted to “promote responsible and orderly development in the Las Vegas Valley” through “disposal and exchange” of certain federal parcels. 104 Thus, though the SNPLMA followed the same basic framework as Santini-Burton, a flexible land exchange designed to address development and wilderness preservation issues, the SNPLMA operating procedure differed significantly from that of Santini-Burton.

Like Santini-Burton, the SNPLMA authorized proceeds from the sales of federal land to be used for “the acquisition of environmentally sensitive land in the State of Nevada.” 105 However, unlike Santini-Burton, when acquiring those lands, “priority [is] given to lands located within Clark County.” 106 Note the significant differences between the SNPLMA and Santini-Burton. One of the biggest, and the reason that the SNPLMA has come to play a major role in land management policy in Nevada, arises from the means of collection and deposit of the land sale proceeds. Unlike Santini-Burton, where proceeds from land sales were deposited directly into the general Treasury of the United States, the SNPLMA created a special account specifically to hold the proceeds of the new land sales. 107 One of the most important features of the SNPLMA is that the funds deposited in the special account remain there until spent. 108 Another important feature is that the funds are available to the Secretary of the Interior without further appropriation from Congress. 109

To date, the sales have occurred at a more rapid pace than acquisitions, and the result is that at the end of fiscal year 2006, the BLM reports having a balance in the unbelievable amount of $1,343,466,984.72 in the special account. 110 Thus, for the foreseeable future there will be funds available, at the secretary’s discretion, to acquire additional lands and engage in other conservation projects. However, this is not to say that SNPLMA has been wholly unsuccessful in

104 Id. at §§ 2(a)(2), 4.
105 Id. at § 4(e)(3)(A)(i).
106 Id. at § 4(e)(1).
107 Id. at § 4(e)(1). Generally, after returning funds to state and local entities, eighty-five percent of the proceeds from the land sales would be deposited into the fund.
108 Id. at § 4(e)(1).
109 Id.
110 BLM STATISTICS, supra note 45, at 181.
acquiring new public lands. In fiscal year 2006 alone, 18,690 acres were added to the public estate, more than Santini-Burton has added its entire 26 years of existence.\textsuperscript{111}

Despite the progress the SNPLMA has made in acquiring environmentally sensitive lands, the legislation is susceptible to criticism from environmentalists several grounds. The SNPLMA, as originally passed,\textsuperscript{112} actually listed five ways that proceeds of the special account could be spent, only one of which was the acquisition of environmentally sensitive land.\textsuperscript{113} Thus, SNPLMA did not envision that all of the proceeds generated by the land sales would be used to acquire environmentally sensitive lands.

Additionally, although the SNPLMA does require FLPMA compliance, that requirement is mitigated somewhat by language in the bill stating that the SNPLMA supersedes certain of FLPMA’s planning provisions.\textsuperscript{114} Also similar to Santini-Burton, SNPLMA returns some of the proceeds from the land sales to the state and local entities; five percent to the state for “the general education program,” and ten percent to the Southern Nevada Water Authority “for water treatment and transmission facility infrastructure in Clark County.”\textsuperscript{115}

Like Santini-Burton, the SNPLMA had a fairly narrow scope—promoting orderly development by exchanging or selling urban federal inholdings and supporting environmental conservation by using the proceeds from the sales to acquire environmentally sensitive lands in Nevada. Subsequent legislation has also used this basic framework, but the means subsequent laws have used to promote development or support wilderness conservation have been considerably more complex.

\section*{C. Lincoln County Land Act of 2000\textsuperscript{116}}

Having passed legislation that focused on Clark County, Congress next turned its attention to other areas of Southern Nevada and, applying the framework of the earlier legislation, passed the Lincoln County Land Act of 2000. Similar to the earlier bills, the Lincoln County Act of 2000 is a flexible legislated land exchange that addresses development and wilderness concerns.

\begin{itemize}
\item \textsuperscript{111} \textit{Id.} at 226.
\item \textsuperscript{112} Subsequent has modified the purposes for which funds in special account can be spent. The result is that the acquisition of environmentally sensitive lands is further deemphasized.
\item \textsuperscript{113} 112 Stat. 2343 § 4(e)(3(A).
\item \textsuperscript{114} \textit{Id.} The SNPLMA allows FLPMA sections 202 and 203, 43 U.S.C. §§ 1711 and 1712, to be circumvented in the disposal process. This loophole proves to be fairly considerable because it allows land managers to avoid complying with land use plans when disposing of land.
\item \textsuperscript{115} 112 Stat. 2343 § 4(e).
\item \textsuperscript{116} H.R. 2752, 106th Cong., 114 Stat. 1046 (2000). This bill was subtitled “An Act To direct the Secretary of the Interior to sell certain public land in Lincoln County through a competitive process.”
\end{itemize}
Lincoln County is directly north of Clark County in Nevada’s southeast corner. The US Census Bureau estimates that as of July 1, 2006, Lincoln County had a population of only 4,738 people.\textsuperscript{117} However, in 2000, roughly 98 percent of the county’s nearly 6.5 million acres belonged to the federal government.\textsuperscript{118} Congress found that the sale of some public lands would promote development by benefiting schools and other community services in Lincoln County.\textsuperscript{119} In addition, Congress also found that the sale of public lands in Lincoln County would permit the city of Mesquite, Nevada, to have “an organized approach for expansion to the north.”\textsuperscript{120} Although Mesquite is located in Clark County, it sits near the county line and, like most other cities in Clark County, expects continued growth.\textsuperscript{121}

Like other Southern Nevada legislation, the Lincoln County Act is subject to the criticism that it will result in a net loss of federal lands because it only places eighty-five percent of the land-sale proceeds into the fund for acquisition of lands. Like SNPLMA, the Lincoln County Act returns five percent of the revenues from the land sales to the state of Nevada for “the general education fund,” and ten percent to Lincoln County.\textsuperscript{122} The remainder of the funds become available to the Secretary of the interior, “without further Act of appropriation,” for a number of purposes.\textsuperscript{123} Although the Secretary is authorized to use the money for the “acquisition of environmentally sensitive land . . . in the State of Nevada, with priority given to land outside of Clark County,” the Lincoln County Act also authorizes the Secretary to use the proceeds for other purposes as well.\textsuperscript{124} Moreover, the Lincoln County Act does not mandate that the Secretary spend any specific amount of the proceeds on land acquisition. Thus, the Lincoln County Act is susceptible to criticism that it favors development interests by disposing of federal land and does not adequately support environmental conservation because it does not require the actual acquisition of any environmentally sensitive land.

A more substantial criticism of the bill, and one which led to the litigation described below, is the fact that unlike SNPLMA, the Lincoln County Act contained a rigid timetable for disposal of certain lands.\textsuperscript{125} Moreover, the Lincoln County Act did not contain any express provision waiving compliance the

\textsuperscript{118} 114 Stat. 1046 § 2(a)(2).
\textsuperscript{119} Id. at § 2(a)(4).
\textsuperscript{120} Id. at § 2(a)(3).
\textsuperscript{121} Indeed, Clark County is one of the fastest growing counties in the country. According to the US Census Bureau, the population of the county grew by over 400,000 from 2000 to 2006. See, U.S. Census Bureau, Population Estimates by County, http://www.census.gov/popest/counties/CO-EST2006-01.html (last visited Jan. 21, 2008).
\textsuperscript{122} 114 Stat. 1046 § 5(a).
\textsuperscript{123} Id. at § 5(b).
\textsuperscript{124} Id.
\textsuperscript{125} Id. at § 4(a)(2).
FLPMA provisions that require environmental review. When considered together, these two features resulted in land being sold without adequate NEPA review.

Despite its shortcomings, the Lincoln County Act represented an attempt on the part of Congress to address development and wilderness conservation concerns through a flexible legislated land exchange.

D. Clark County Conservation of Public Land and Natural Resources Act of 2002.

In 2002, Congress turned its attention back to Clark County and once again used a legislated land exchange to confront development and wilderness conservation issues. Though it did not contain a sell-then-buy land exchange mechanism, this Act still can be considered a flexible land exchange because it contains a provision for the traditional acreage for acreage exchange. Unlike Santini-Burton, the SNPLMA, or the Lincoln County Act of 2000, the Clark County Act of 2002 was a very complex piece of legislation. It contained nine different titles and its provisions touched on a diverse array of land management issues.

Whereas previous legislated land exchanges had addressed development concerns in a general way—such as selling public land to facilitate the growth of a community or returning proceeds from a land sale to local government for use in discretionary development projects—the Clark County Act of 2002 addressed development issues with considerable specificity. For example, the Act provided for a number of conveyances of public lands to local governmental entities for specific purposes. These included a conveyance of land to the University of Nevada at Las Vegas for “the construction of a research park and technology center,” a conveyance to the Las Vegas Police Department “for use as a shooting range,” and a conveyance to the City of Henderson “for use as a campus” for the Nevada State College at Henderson.

The Clark County Act of 2002 directly addressed wilderness conservation in two ways not found in the earlier legislation. First, the Act contained a provision for a determinate land exchange that added to the Red Rock Canyon National Conservation Area. Through these provisions, the BLM received 1,082 acres of

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126 Id. at § 4(a)(1).
127 Western Land Exchange Project v. United States Bureau of Land Mgmt., 315 F.Supp.2d 1068, 1098 (D.Nev. 2004). This case is also discussed in Section V, infra.
129 Id.
130 Id. at §702(a)(2)(A).
131 Id. at § 703.
132 Id. at § 704(b)(1).
private land in exchange for 998 acres of public land. The 1082 acres of land that the BLM received was adjacent to the Conservation Area and were used to “conserve, protect, and enhance for the benefit and enjoyment of present and future generations the area in southern Nevada containing the Red Rock Canyon and the unique and nationally important . . . wilderness . . . therein.” The Act also created a new National Conservation Area (“NCA”) at Sloan Canyon. The new NCA consisted of 48,438 acres which were to be managed by the BLM “in a manner that conserves, protects, and enhances the resources of the Conservation Area.”

Second, the Act directly addressed wilderness conservation by containing provisions for formal wilderness designation. Formal wilderness designation is an extraordinary step designed to protect “an area where the earth and its community of life are untrammeled by man, where man is a visitor who does not remain.” Designation as wilderness allows the area to be managed in a way that “preserve[s] the wilderness character of the area.” The Act designated seventeen different wilderness areas. These designations constituted 451,915 acres of additional wilderness.

Despite the creation of a substantial amount of new wilderness, the Clark County Act faced scrutiny from environmental critics on a number of grounds. For example, in addition to creating new wilderness areas, the Act released 224,564 acres of land that Congress had previously designated as Wilderness Study Areas (“WSAs”). Also, the provision creating the NCA also contained a provision for the sale of 500 acres of federal land. Additionally, the Act specifically exempts that sale from FLPMA constraints, and directs the Secretary of the Interior to complete the sale within one year after “the date of enactment of this Act.” These provisions have led some critics to label the Clark County Act of 2002 “Quid Pro Quo” legislation because in return for “getting” the benefits of additional wilderness, the bill “gives” concessions in the form of provisions that are not compatible with wilderness conservation.
E. Lincoln County Conservation, Recreation, and Development Act of 2004.145

Though the principal purpose of this legislation was to effectuate the land sales required under the Lincoln County Act of 2000, it also contained provisions demonstrating a congressional intent to address development and wilderness issues.

As noted above, environmental groups had successfully challenged certain of the land sales mandated by the Lincoln County Act of 2000, arguing that the BLM had not performed an adequate NEPA analysis.146 The court held that before the land sales required under the Lincoln County Act of 2000 could take place, the BLM had to undertake the required NEPA review. Congress nullified the court’s order by specifically exempting the sales from the provisions of FLPMA requiring environmental analysis.147 The Lincoln County Act of 2004 expressly required the Secretary of the Interior to conduct the sales authorized by the Lincoln County Act of 2000 within seventy-five days of the passage of the Act, and the sale of an additional 90,000 acres as soon as practicable.148 While proceeds from the sale of the former parcel could be used for the acquisition of environmentally sensitive land under the Lincoln County Act of 2000,149 the Lincoln County Act of 2004 did not authorize use of the proceeds from the latter parcel to acquire additional land.150 Thus, the Lincoln County Act of 2004 is only a land exchange in the sense that it facilitates the previously authorized sales.

The Lincoln County Act of 2004 contains specific development provisions. For example, the Act conveys to the Southern Nevada Water Authority and Lincoln County Water District the right to construct “pipelines, pump stations, storage facilities, or other facilities and systems that are necessary for the construction and operation of a water conveyance system.”151 In addition, the Act conveyed land to both Lincoln County and the state of Nevada for “the conservation of natural resources” or use as “public parks.”152

Like the Clark County Act of 2002, the Lincoln County Act of 2004 addressed wilderness conservation concerns by providing formal wilderness designation to certain public lands. Congress noted “unique and spectacular natural resources” found in Lincoln County, preservation of which “would benefit

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146 See Western Land Exchange Project, 315 F.Supp. 2d at 1098.

147 118 Stat. 2403 § 102(a).

148 Id.

149 114 Stat. 1046 § 5(b)(1)(D).

150 118 Stat. 2403 § 103(b)(3).

151 Id. at § 301(b)(1).

152 Id. at §§ 501(d)(1), 502(d)(1).
the County and all of the United States.” The bill provided formal wilderness designation for 14 new wilderness areas comprising a total of 768,294 acres. 

Nevertheless, some environmental groups—even some who ultimately supported the legislation—criticized the Lincoln County Act of 2004 as a compromise. Environmental groups were disappointed that this legislation, like the Clark County Act of 2002, “released” some WSAs from further federal protection. The bill is also susceptible to criticism because it waives compliance with certain FLPMA provisions with regard to the water development rights described above. The Western Lands Project, for example, feeling the sting of the Lincoln County Act of 2004’s blatant nullification of their hard-earned District Court victory in *Western Land Exchange Project v. Bureau of Land Management*, described the Act as “a blatant land and water give away.”

Despite the criticism of the Act as a Compromise, it may be emblematic of a modification of the basic paradigm described above. Whereas earlier legislation like Santini-Burton and the SNPLMA addressed wilderness conservation concerns by generating revenue to acquire environmentally sensitive land, recent Congressional action has addressed the issue through formal wilderness designations. The former has the advantage of acquiring new acreage from private sources for federal protection but the disadvantage of being entirely discretionary. The latter has the advantage of providing immediate and additional protection to certain areas of public land but has the disadvantage of not providing federal protection to any land that didn’t already belong to the federal government. Nevertheless, the shift toward making wilderness designation a component of the basic paradigm for legislated land exchanges has been supported by some environmental groups. For example, acknowledging that the Lincoln County Act of 2004 is not a true “wilderness bill,” the Nevada Wilderness Project says that “though it is a tough pill to swallow . . . we recognize that some of what is proposed in these bills in unavoidable and that to ignore congressional intent and the demographic and cultural changes sweeping the West puts our wilderness lands at risk.”

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153 *Id.* at § 201.
154 *Id.* at § 203.
155 *Id.* at § 208.
156 *Id.* at § 301(a)(1). However, the Act does require compliance with NEPA, “including the identification and consideration of potential impacts to fish and wildlife resources and habitat.” *Id.* at § 301(b)(3).
Congress attached this Act as a rider to the omnibus Tax Relief and Health Care Act of 2006, a mammoth piece of legislation which was passed in the waning days of the 109th Congress. Like the Lincoln County Act of 2004, this Act is an example of Congress addressing the land management concerns facing the West through complex legislation that touches various land-related issues. It follows the paradigm established by earlier pieces of legislation in that it is a flexible legislated land exchange that directly deals with development and wilderness conservation concerns.

This Act authorized the sale of 45,000 acres of federal land in White Pine County, just north of Lincoln County. And, though the Act does not itself contain any direct provision for acquisition of non-federal land, it does contain an important amendment to the land acquisition provision of the SNPLMA. The Act changes the SNPLMA’s discretionary spending provision, funds “may be expended,” to a mandatory spending directive, funds “shall be expended.” And though it is true that the White Pine County Act of 2006 also amends the SNPLMA to include additional projects on which the SNPLMA funds can be spent, the SNPLMA now contains a mandatory provision requiring the use of proceeds from land sales for “the acquisition of environmentally sensitive land in the State of Nevada.”

The White Pine County Act of 2006 directly addresses development concerns in Nevada. For example, the Act contains a conveyance of land for the expansion of a local airport and the White Pine County Industrial Park.

Like the Lincoln County Act of 2004, the White Pine County Act of 2006 addressed wilderness preservation concerns through the formal designation of additional wilderness areas. The Act designated fourteen areas within White Pine County as wilderness for a total of 558,133 additional wilderness acres. The volume of formal wilderness designations made under this bill led some environmental groups to enthusiastically support “the passage of this important legislation.”

Nonetheless, like other pieces of Southern Nevada legislation, this Act is subject to criticism on several grounds. Like the Lincoln County Act of 2004, the White Pine County Act of 2006 contained a hard deadline for carrying out the sale of public land and waived certain provisions of environmental review under

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160 Id. at § 311.
161 Id. at § 382.
162 Id.
164 120 Stat. 2922, Division C, Title III, § 352(c).
165 Id. at § 323(a).
FLPMA in connection with that sale. In addition, the act released from non-impairment protection all WSAs in White Pine County not formally designated by the Act as wilderness areas. Interestingly, the Act faced opposition not just from environmental groups, but from some industry groups as well. The Northwest Mining Association sent a letter to Senator Larry Craig, the chairman of the Senate Public Lands and Forests Subcommittee, urging him to oppose the Act. The group claimed that the Act was a “back door attempt to add additional wilderness in White Pine County” that ran contrary to the “policies, principles, procedures and requirements set forth in the Wilderness Act of 1964.” The fact that some environmental groups thought the bill did not contain enough wilderness designation and some industry groups felt it contained too much wilderness designation suggests that Congress used a balanced approach in addressing this important Western issue.

IV. LEGISLATED LAND EXCHANGES TODAY

A. The State of the New Paradigm

The discussion of the Southern Nevada legislation establishes that Congress has adopted a paradigm for addressing Western land management issues through legislated land exchanges. The elements of the paradigm include flexible legislated land exchanges that seek to address development and wilderness conservation. The flexibility of this type of legislation allows Congress to engage in either determinate land exchanges of discrete parcels, or use land sales to generate revenues that can then be used to purchase private land. Congress can use the exchange to foster development either by donating certain portions of land sale revenue to state and local governments for use in local development projects or can identify certain development projects to be benefited by the legislation. Finally, Congress can address wilderness conservation in a number of different ways. It can set aside funds for the purchase of environmentally sensitive lands, formally designate new wilderness areas or provide funding for projects that enhance wilderness projects.

In addition to representing a distinct trend in the form of legislation, Congress’s experience in Southern Nevada demonstrates other factors that contribute to the development of a paradigm in Congressional management of

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167 120 Stat. 2922, Division C, Title III, § 303.
168 Id. at § 328(b).
171 Id.
Western public land through legislated land exchanges. First, most of the legislation noted above had bipartisan support in Congress. Both of the current senators from Nevada, Harry Reid, a Democrat, and John Ensign, a Republican, supported the legislation. Second, the drafters of the legislation sought input from a diverse array of interest groups during preparation of the legislation. For example, Senator Reid stated that “[t]he White Pine County bill represents the great art of compromise. I’m proud that so many Nevadans came together to both protect our precious public lands and serve the needs of our growing communities.”172 In drafting the White Pine County Act of 2006 “Nevada’s congressional delegation asked all interested parties including local elected official, ranchers, sportsmen, off-road enthusiasts, and wilderness advocates to develop and forward proposals for legislation dealing with public lands in White Pine County.”173 Extensive participation by this broad coalition of interested groups over a four year period led to the creation of the legislation that was ultimately introduced and passed by Congress.174

Thus, it seems both the structure of the legislation and the means by which it was created are elements of the new paradigm of western land exchanges.

B. Are Other Types of Land Exchange Legislation Obsolete?

To be sure, the paradigm described above does not mean that other types of land exchanges no longer occur. As noted above, the BLM still conducts agency-administered exchanges—albeit on scale significantly reduced from traditional levels.175 Moreover, Congress continues to pass conventional legislated exchanges of designated parcels. For example, the 109th Congress, which passed the White Pine County Act of 2006 and rejected the Growth Act, passed several conventional legislated land exchanges. The examples below indicate, however, that conventional land exchanges are primarily used to deal with specific small-scale issues and are not generally tools that Congress uses to address the West’s broad development and wilderness conservation issues.

The goal of the Pitkin County Land Exchange Act of 2006176 was to consolidate National Forest Lands that contain historic structures that the United States Army’s 10th Mountain Division used for training purposes during World War II.177 That act authorized the exchange of roughly fifty acres of federal land

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174 Id.
175 BLM STATISTICS, supra Note 45, Table 5-8a.
for approximately fifty-three acres of non-federal land. The Sierra National Forest Land Exchange Act of 2006 authorized the exchange of 160 acres of federal land for eighty acres of non-federal land. The federal land conveyed was adjacent to a camp of the Boy Scouts of America and the Act was intended to transfer the land to the Scouts for their use. The Holman Air Force Base Land Exchange Act authorized the Secretary of the Interior to exchange 320 acres of federal land for 241 acres of non-federal land. The non-federal land was contiguous to Holman Air Force Base and was used to enhance the safety zone surrounding the installation. The Rocky Mountain National Park Boundary Adjustment Act of 2005 authorized the exchange of seventy acres of federal land for 5.9 acres of non-federal land in order to enhance the boundaries of the national park.

Similarly, the 110th Congress has also introduced legislated land exchanges designed to address particular small-scale land use issues. For example, a provision was introduced in September 2007 that would authorize an exchange of land “to be used for turning railroad trains around near Denali Park Station.” A wilderness bill affecting Oregon contains a provision that would exchange 120 acres of federal land in Clackamas County, Oregon, for 770 acres of non-federal land in order to “protect the north side of Mount Hood.”

Though certainly not an exhaustive list of all recent conventional land exchange legislation, these examples from the 109th and 110th sessions highlight differences between conventional legislated land exchanges and the new paradigm of legislated land exchanges typified by the Southern Nevada legislation. The message Congress seems to be sending is that in the future it will address individual land use problems with conventional land exchanges and will use the new paradigm of legislated land exchanges to address the sweeping development and wilderness preservation concerns that are unique to the West.
V. RECENT LEGAL CHALLENGES TO LAND EXCHANGE LEGISLATION

A. A Successful Challenge in District Court

Although many environmental groups oppose the broad sweep of land exchanges typified by the Southern Nevada legislation, only one lawsuit has been successful in challenging those acts. After Congress passed the Lincoln County Land Act of 2000, the Western Lands Exchange Project, the Committee for Idaho’s High Desert, and the Center for Biological Diversity brought suit in federal district court in Nevada.186 Rather than mount a full-scale constitutional challenge to the legislation itself, the environmental groups challenged the individual land sales that the Act authorizes the BLM to conduct.

The plaintiffs in Western Land Exchange Project v. United States Bureau of Land Management alleged that the BLM had inadequately conducted the analysis that NEPA requires before the federal government undertakes any major federal action, such as selling federal land.187 Specifically, the groups claimed that the BLM had improperly segmented its environmental analysis in order to avoid preparing an EIS, that the BLM had failed to analyze reasonable alternatives to selling the proposed acreage, and that the BLM had failed to adequately address mitigation measures in the limited analysis that it did undertake.188 Indeed, the plaintiffs’ attorney Christopher Krupp charged that “BLM acts as though its role is to expedite the rapid development of southeastern Nevada.”189

In response, the BLM argued that the sale of lands by itself does not disturb the status quo on the lands, and consequently there is no significant impact to trigger NEPA analysis. In light of their own conclusion, the “BLM thus reasons that any environmental analysis it chose to do in its EA already went above and beyond the call of NEPA, and that further analysis of environmental impacts may be deferred” until specific plans for development are actually proposed.190 However, the district court flatly rejected the BLM’s argument, holding that “it is abundantly clear from the record that the use of the [lands to be sold] is highly likely to change following privatization.”191 In support of its decision, the court quoted language from the Lincoln County Act of 2000 showing that the land sales would benefit the county by allowing “commercial and residential development.”192 Thus, the court found that the impacts the land sales would have

187 Id. at 1075.
188 Id.
189 Henry Brean, Lincoln County: Land sale put on hold, LAS VEGAS REVIEW-JOURNAL, Mar, 25, 2004, at 1A.
190 Western Land, 315 F.Supp.2d at 1088.
191 Id.
192 Id.
on the environment “were not just ‘reasonably foreseeable’ but actually intended.”193

The court found that although the BLM did conduct an Environmental Assessment, that analysis was insufficient to address environmental issues raised by the proposed land sale.194 Among other things, the court held that the EA did not adequately address the potential impacts on the desert tortoise, which the Fish and Wildlife Service lists as “threatened”; that the BLM did not adequately consider the cumulative effects of the proposed land sale and other sales authorized by the Southern Nevada legislation; and that the BLM did not adequately consider adequate alternatives to the particular land sale proposed by the BLM.195 In addition, the court granted an injunction preventing the BLM from conducting the land sales authorized by the Lincoln County Act of 2000 until it prepared an EIS.196

Nevertheless, the plaintiffs’ legal victory was short-lived. As noted above, Congress immediately responded to Western Lands by passing the Lincoln County Act of 2004, which mandated that the land sales take place within seventy-five days of the Act’s passage without regard to NEPA analysis.197

B. A look to the future

After having its legal victory completely nullified by Congress, the Western Lands Project (descendent of the Western Land Exchange Project) again filed suit in federal district court in Nevada. Again, the plaintiffs alleged that the BLM violated the provisions of a legislated land exchange.198 This time the plaintiffs’ target was the Nevada-Florida Land Exchange Authorization Act, a 1988 law that authorized the Secretary of the Interior to convey and lease certain lands to a private corporation in exchange for private lands held by that corporation in Florida.199 The lands were to be restricted to use for construction and maintenance of utility corridors. Years later, the lands were conveyed to a Nevada real estate development company. In 2005, the BLM approved a patent that officially conveyed to the developer title to certain lands covered by the 1988 legislation.200

The plaintiff’s complaint alleged that when the BLM issued the 2005 patent they violated NEPA by failing to conduct an Environmental Impact Statement. The plaintiffs also alleged that the BLM violated FLPMA by failing to determine that the exchange of land was in the public interest, failing to determine that the lands exchanged were of equal value, and failing to appraise the lands conveyed

193 Id. at 1089.
194 Id. at 1092.
195 Id. at 1090-97.
196 Id. at 1099.
200 Western Lands Project, First Amended Complaint.
by the patent. Although not ruling on the merits, a court recently denied the defendants’ motion to dismiss. The court reasoned, similar to the decision in *Western Land*, that “a plausible set of facts” could support the claim that “the EA prepared [by the BLM] was too narrow in scope to properly assess the impacts of the exchange in general [and that] . . . the conveyance was not in the public interest.”

Despite this incremental victory for the plaintiffs, both the instant case and the 2004 victory in the *Western Land* decision show that legal challenges to legislated land exchanges are difficult and intensively fact-dependent. Moreover, even where challenges are successful, the land sales or land exchanges can still proceed, albeit after enhanced environmental scrutiny and with whatever modifications such scrutiny may require. Alternatively, as the Lincoln County Act of 2004 showed, Congress can always nullify the results of a particular court victory with subsequent legislation.

**C. Participation is Better than Litigation**

Groups opposed to provisions of land exchange legislation may find that the best way to advocate their interests is during the drafting stages of the legislation. Because multiple groups with varying interests all seek to use the public lands, compromises affecting the use of public land may be inevitable. And, as the series of Southern Nevada acts suggest, Congress will likely continue to address the controversial issues associated with development and wilderness conservation by means of legislation authorizing land exchanges or land sales. As one organization points out, when environmental groups choose not to participate in the drafting process, the failure to do so “will only result in losses for wilderness.” Thus, although those challenging land exchange legislation can prevail in court, environmental groups advocating on behalf of wilderness and public land retention will likely find more lasting success by working with Congress to draft legislation that advances their interests, or at least minimizes harm to those interests.

**VI. THE WASHINGTON COUNTY GROWTH AND CONSERVATION ACT OF 2006**

Given the Growth Act’s extremely controversial history, it is not surprising that there are many who continue to view this as a fatally flawed legislative concept. For example, the Western Lands Project, which considers the bill “harmful” to wilderness and wildlife management, remains “strongly opposed” to

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201 *Id.*


203 *Id.*

the bill. On the other hand, other groups, even those opposed to the original bill, foresee modifications that could make legislation affecting Washington County palatable. For example, SUWA, part of a coalition that vigorously opposed the initial bill, believes that the concept could be revived in future sessions. Indeed, SUWA is currently working toward the goal of “turning [the Growth Act] into legislation that all parties could agree to.” Regarding the future status of Washington County legislation, Representative Matheson reports at the time of this writing that “Senator Bennett and I continue to work towards the enactment of legislation that allows the county to grow, while still meeting important conservation goals.”

The Growth Act, as Senator Bennett acknowledged, is built “on the success of Nevada public land bills authored by Senators Reid and Ensign.” Senator Bennett noted that “[t]he Nevada bills passed unanimously and set a precedent on how wilderness debates should be dealt with.” Despite Senator Bennett’s attempts to characterize the Growth Act as a successor to the Southern Nevada legislation, significant differences exist between the Growth Act and the paradigm established by the Southern Nevada legislation. Moreover, the manner in which the Growth Act was apparently drafted differs significantly from the pattern established in Nevada.

This section of the Comment analyzes what the Growth Act would have done if passed, compares the Growth Act with the paradigm established by the Southern Nevada Legislation, and then makes recommendations for future iterations of Growth Act or other legislated land exchanges deals in the West.

A. What the Bill Purported to Do

Because the Growth Act was based on the Southern Nevada legislation, it also attempted to follow the paradigm established by those acts. The Growth Act is essentially a flexible, legislated land exchange that seeks to address development and wilderness conservation issues.

205 Conversation with Janine Blaeloch, Director of the Western Lands Project (Oct. 18, 2007). The Western Lands Project, formerly known as the Western Land Exchange Project (the plaintiff in the successful 2004 lawsuit), is a watchdog group whose mandate is to “monitor federal land exchanges” and “scrutinize . . . the myriad efforts that are underway to privatize public lands,” and whose goal is to “keep public lands public.” Western Lands Project, http://www.westernlands.org (last visited Jan. 21, 2008).

206 Conversation with Scott Groene, Executive Director of the Southern Utah Wilderness Alliance (Oct. 12, 2007).


208 Senator Bob Bennett, Bennett Tells Subcommittee that the Washington County Bill is a Must to Control Growth, http://www.senate.gov/~bennett/press/record.cfm?id=265975 (last visited Jan. 21, 2008).

209 Id.
The Growth Act authorized a limited form of the sell-then-buy type of exchange found in Santini-Burton and the SNPLMA. It authorized the sale of 4,300 acres of federal land in Washington County and the sale or exchange, at the discretion of the Secretary of the Interior, of at least 20,000 additional acres of federal land. The bill authorized the proceeds from the land sales to be used, in part, for the “acquisition . . . of non-Federal land” to be used to create a new NCA. Similar to some of the Southern Nevada legislation, the Growth Act exempted the sales from certain elements of NEPA compliance by requiring the sales begin “no longer than 1 year after the date of enactment of this Act.” However, the Growth Act does require that any land exchanges be conducted in compliance of FLPMA section 206. That section, among other things, requires that the exchange be in the public interest and that the land exchanged be of approximately equal value.

The Growth Act sought to address development concerns in a number of ways. It provided that a certain amount of the proceeds from the land sales would go to the local government and to the Washington County Water Conservancy District for “water treatment, transmission facility infrastructure and water conservation in the County.” Additionally, the Growth Act provided for development rights in a utility corridor to be granted to local government “for any reservoirs, canals, channels, ditches, pipes, pipelines, wells, well fields, pump stations, storage facilities, and other facilities and systems” necessary to bring water to the county. Critics object to these appropriations on the grounds that they create a “piggy bank for local projects.” At the Senate hearings on the Growth Act, one opponent expressed that “this legislation sets a dangerous precedent of selling federal lands owned by all Americans to fund local and federal government projects.” Whatever the merits of this criticism, it should be noted that the each of the examples of the Southern Nevada legislation contained appropriations to state and local government, and these types of appropriations are now an established element of the new paradigm.

The Growth Act addressed wilderness conservation by a number of means. First, like some of the later examples of the Southern Nevada legislation, the Growth Act would have formally designated several hundred thousand acres of

211 Id. at § 103(a)(4)(B)(i).
212 Id. at § 102(b)(1)(A)(i).
213 Id.
216 Id. at § 401(b)(1).
217 Conversation with Scott Groene, Executive Director of the Southern Utah Wilderness Alliance (Oct. 12, 2007).
218 Growth Act Hearing, supra note 6, at 57 (statement of Peter Metcalf, President, Black Diamond Equipment, Ltd.).
federal land located within Washington County as wilderness areas.\textsuperscript{219} Many of the parcels to be formally designated as wilderness areas are managed by the Forest Service or the BLM. However, the Growth Act would have also provided wilderness status to certain lands located within Zion National Park. In addition, the Growth Act would have created a new NCA called the Red Cliffs National Conservation Area.\textsuperscript{220} The Growth Act claimed that the purpose of establishing the NCA was “to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological resources, wildlife, endangered species, and recreational resources” of the area.\textsuperscript{221} Finally, the Growth Act would have designated several rivers as “Scenic and Wild Rivers.”\textsuperscript{222} This designation ensures that the effected rivers will be protected “in their free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of the present and future generations.”\textsuperscript{223}

In short, the Growth Act’s provisions essentially followed the paradigm established by the Southern Nevada legislation. However, the details of the Growth Act’s provisions differ significantly from the Southern Nevada legislation and led to severe public criticism and ultimately to congressional inaction.

\textbf{B. Comparing the Growth Act with the Southern Nevada Legislation}

The Growth Act’s framework, a flexible legislated land exchange, was roughly similar to the Southern Nevada legislation, although differences do exist. For example, unlike the circumscribed scope of land acquisition that the Growth Act authorized, the Southern Nevada legislation contained more open-ended acquisition policies. The Growth Act only authorized acquisition of land for use in the proposed Red Cliffs National Conservation Area.\textsuperscript{224} Santini-Burton, by contrast, authorized the acquisition of any “environmentally sensitive lands” in the Lake Tahoe basin.\textsuperscript{225} The SNPLMA also authorized the acquisition of “environmentally sensitive land in the State of Nevada.”\textsuperscript{226} Thus, even though the acquisition policies of the Southern Nevada legislation resulted in the critique that they would result in a net loss federal acreage, the extremely narrow category of land that the Growth Act authorizes the Secretary of the Interior to acquire accentuates that critique.

Even more significant differences arise in the way that the Growth Act addressed development and wilderness conservation issues. The Growth Act’s formal wilderness designations also differed from those found in the Southern Nevada legislation in a way that made them the subject of much criticism from

\textsuperscript{219} S.3636; H.R.5769, 109th Congress (2006) § 201(a).
\textsuperscript{220} Id. at § 602.
\textsuperscript{221} Id.
\textsuperscript{222} Id. at § 301(a).
\textsuperscript{225} 94 Stat. 3381 § 3(a)(1).
\textsuperscript{226} 112 Stat. 2343 § 3(e)(3)(A)(i).
environmental groups. As noted above, criticism of the Southern Nevada legislation arose whenever an act released WSAs from further non-impairment management.

However, in addition to criticizing the release of WSAs, some environmental groups actually opposed the areas chosen to receive wilderness designation under the Growth Act. Some environmental groups criticized the Growth Act by pointing out that more than half of the proposed wilderness is located inside Zion National Park, and therefore already has a considerable degree of federal protection. Thus, the Growth Act was susceptible to the complaint that it gave the appearance of conserving wilderness while actually containing inadequate substantive protection. Because the formal designations were viewed as inadequate, the releases were viewed as especially acute. This criticism stands in contrast to the reaction of environmental groups to the Southern Nevada legislation. For example, while acknowledging that the White Pine County Act of 2006 was “not perfect,” leaders in the environmental movement supported that bill because it “represented[ed] significant gains” for wilderness areas.

A Growth Act provision that has been the source of criticism is the creation of an off-highway vehicle trail. This differs considerably from a similar provision in the Southern Nevada legislation. The White Pine County Act of 2006 also contained a provision authorizing the creation of off-highway vehicle trail but that legislation had contained a caveat that no trail would be established if doing so would have “significant negative impacts on wildlife, natural, or cultural resources.” The Growth Act contains no caveat, but requires the Secretary of the Interior to designate an off-highway vehicle trail within two years and thirty days of the passage of the act, without regard to potential environmental consequences.

More significant than the differences in the content of the Growth Act and the Southern Nevada legislation are differences in the manner in which they were prepared. The Southern Nevada legislation was “built upon five years of local

227 Julie Cart, Growth Pits Nature vs. Neighborhoods, KANSAS CITY STAR, June 10, 2006, at A5. Designating land within National Parks as wilderness areas is not wholly without effect. National Parks are managed according to a “non-impairment” standard. 16 U.S.C. § 1 (2006). In other words, the only permitted uses are those that will leave the Parks “unimpaired for the enjoyment of future generations.” Id. As anyone who has visited a National Park knows, these uses can include roads, buildings, lodging and other light infrastructure. Wilderness areas, on the other hand, are managed according to a higher standard. The only uses allowed in a wilderness area are those which “preserve its wilderness character.” 16 U.S.C. § 133(b) (2006). Thus, even in a National Park wilderness designation does provide an additional degree of protection.

228 Growth Act Hearing, supra note 6, at 42 (statement of Jerry Greenberg, Vice President of the Wilderness Society).


230 120 Stat. 2922, Division C, Title III § 352.

citizen efforts.”232 That public involvement was a key to the success of the Southern Nevada legislation.233 There was no similar record of public involvement before the Growth Act was presented to Congress.

Proponents of the Growth Act claimed that there had been “ample process” associated with the bill’s drafting but acknowledged that Washington County’s commissioners had been the driving force behind the bill’s creation.234 Environmental groups countered the assertion that public participation had been adequate, and stated that the prior to being introduced in Congress the bill had “not gone through the needed public review.”235 They further noted that while the bill was pending in Congress “eighty-nine percent of Utahns think public hearings should be held” in Utah before any Congressional action.236 The BLM’s opposition to the bill also indicates a lack of adequate participation at the drafting stage. Although the bill directed the BLM to dispose of roughly 20,000 acres of federal land, “the BLM has not yet identified 20,000 acres suitable for disposal in this area and believes it may be difficult to identify that many acres” of suitable land.237

The Southern Nevada legislation appears to have succeeded in part because of the support of environmental groups. Indeed some environmental groups that have opposed the Southern Nevada legislation claim that those acts “might not have made it to the floor if there had been unified opposition by environmentalists.238 The Growth Act, on the other hand, appears to have failed in part precisely because of the unified opposition of environmental groups.

C. Recommendations for Improvement

1. Public Participation

The history of the Southern Nevada legislation shows that land exchange and land sale bills are more likely to meet with local and national support when they are the result of a collaborative effort that involves environmental interests. The Nevada Wilderness Project boasts of working closely with Senators Harry Reid and John Ensign on the White Pine County Act of 2006. Senator Bennett and

232 Growth Act Hearing, supra note 6, at 42 (statement of Jerry Greenberg, Vice President of the Wilderness Society).
233 Environment News Service, supra note 6, at 57 (statement of Peter Metcalf, President, Black Diamond Equipment, Ltd.).
234 Growth Act Hearing, supra note 6, at 52 (statement of Alan Gardner, Member, Washington County, Utah Board of Commissioners).
235 Growth Act Hearing, supra note 6, at 57 (statement of Peter Metcalf, President, Black Diamond Equipment, Ltd.).
236 Id.
237 Id.
238 BLAELOCH AND FITZ, supra note 57, at 7.
Congressman Matheson appear to have excluded environmental groups from the drafting process. The Growth Act, according to SUWA’s Scott Groene, “was drafted behind closed doors.”\(^{239}\) Because environmental groups carry increasing political clout, sponsors of legislation have a better chance of insuring public support by including representatives of environmental groups in the drafting process. Even an opponent of the Growth Act expressed hope that increased public participation “may ultimately lead to a bill that could be more fully supported by Utah citizens and all citizens who care about our public lands.”\(^{240}\)

2. **Legitimate Reason for Exchange or Sale**

Although it is true that much of the land in the West is federally owned, conveyance of federal land solely for privatization does not seem to be a reason that has generated public support. Undoubtedly, the conveyances in the Southern Nevada legislation that allowed for growth in Clark County were prompted by a legitimate need for additional land for growth. However, despite the fact that much of Washington County is federally owned, many observers claim that there is adequate private land in the county to support rapid growth for the foreseeable future.

A taskforce established to study growth in the county, Vision Dixie, conducted several studies involving Washington County residents.\(^{241}\) Each of these studies, conducted at roughly the same time the Growth Act was presented to Congress, showed that a vast majority of Washington County residents favored growth patterns that allowed for “significant” or “maximum” preservation of open lands.\(^{242}\) This suggests that in Washington County, the public supports conservation of federal land more than land exchanges or land sales solely for the sake of privatization. Most of the participants in the Vision Dixie process think that the proper course of growth in Washington County is to promote “[h]igher density development to preserve scenic lands.”\(^{243}\) Thus, data from the Vision Dixie planning process support the conclusion that at present disposition of significant amounts of federal land in Washington County is unwarranted.

\(^{239}\) Christopher Smart, *Washington County Land Bill is Pushed Hard in D.C.*, SALT LAKE TRIBUNE, Nov. 16, 2006.

\(^{240}\) *Growth Act Hearing*, supra note 6, at 55 (Statement of Peter Metcalf, President, Black Diamond Equipment, Ltd.).

\(^{241}\) *VISION DIXIE, MAKING A BETTER WASHINGTON COUNTY* 2 (2007) http://www.-vision-dixie.org/pdf/Vision-Dixie-Book-SM.pdf. Vision Dixie was a collaborative county-wide process of “workshops, technical research, and analysis” designed to allow residents “to voice their preferences for how the county should grow.” *Id.*


\(^{243}\) *Id.* at 20.
3. Disposal of Suitable Lands

Environmental groups opposed to the Growth Act expressed concern that the lands to be sold were not “suitable for disposal.” However, environmental groups are not alone in this criticism. The Bush Administration, a group not always known to have interests completely aligned with the environmental movement, stated they cannot support the Growth Act’s “requirements to dispose of a specific amount of public lands that may not be suitable for disposal.” As noted above, FLPMA contains several criteria for determining which lands are appropriate for sale. Any future iteration of the Growth Act should contemplate disposing of only those lands that meet FLPMA’s standards of suitability for disposal.

4. Wilderness

It is likely that future legislated land exchanges will contain formal wilderness designations as a key component. Although any legislation that provides for release of WSAs in conjunction with formal designation of wilderness areas is likely to be controversial with environmental groups, and some groups will not regard any release as acceptable, the controversy can be mitigated by consulting with environmental groups to determine which parcels of land are most deserving of formal designation. The Southern Nevada legislation shows that Congress can draft legislation that includes formal wilderness designations for hundreds of thousands of acres of public and is acceptable to a broad cross-section of public land users including ranchers and motorized vehicle users. Any future version of the growth act should seek to adequately protect wilderness worthy areas, particularly those outside of Zion National Park.

5. Compliance with Environmental Laws

The Southern Nevada legislation indicates that when drafting legislated land exchanges and land sales, Congress can require compliance with FLPMA and other environmental laws, or excuse that compliance. A new version of the Growth Act should expressly state that any authorized exchanges or sales must comply with these laws. When engaging in their land management duties, complying with FLPMA procedures is the BLM’s default course of action.
Thus, continuing to require compliance imposes no additional burden on the land management agencies. In addition, requiring compliance with FLPMA ensures that the procedures authorized by a legislated land exchange do not unnecessarily harm the West’s natural resources. Finally, requiring compliance with FLPMA and other environmental laws makes legislated land exchanges easier for environmental groups to support.

VII. CONCLUSION

Senator Bob Bennett and Congressman Jim Matheson unleashed a firestorm of criticism when they introduced the Washington County Growth and Conservation Act of 2006. The legislation prompted a vigorous debate and resulted in media outlets across the country deriding the legislation. Although the particular elements of the Growth Act were controversial, the form that it took was not. The structure of the Growth Act was similar to several pieces of successful legislation that address land management issues in Southern Nevada.

The government has used land exchanges throughout the nation’s history to consolidate federal landholdings and make administration of federal lands more efficient. Throughout the twentieth century, the government relied heavily on land exchanges administered by the land management agencies such as the Forest Service and Bureau of Land Management. Congress has also relied on exchanges of discrete parcels of federal land for roughly equivalent parcels of private land to address particular land management concerns. For issues related to development and wilderness protection concerns that are particular to the West, however, Congress has increasingly relied on flexible legislated land exchanges.

While they are not a catch-all solution and will not please everyone, legislated land exchanges have several advantages over agency administered land exchanges. They are very flexible. They can be adapted to any purpose that Congress confronts—from adjusting the boundaries of a national park to facilitating orderly growth in a major metropolitan area. Legislated land exchanges can be very efficient because they do not operate within the confines of a land management agency. Thus, while they are imperfect, legislated land exchanges can be a very effective tool to address public land issues.

Recent legislation focusing on Southern Nevada is emblematic of the evolution in legislated land exchanges. Rather than focus on discrete problems that can be resolved by the exchange of two particular parcels, this legislation sought to promote orderly development throughout Southern Nevada while at the same time providing protection for wilderness throughout the state. Though not immune to criticism and challenge, these bills have had the support of a wide range of interested parties. They represent a new paradigm in land management legislation that Congress will likely continue to use when addressing the West’s unique land management issues.

The Growth Act tried to use the new paradigm to address development and wilderness preservation issues in Southern Utah. However, significant differences in the details of the Growth Acts provisions, and more importantly in the manner
in which the Growth Act was drafted, meant that the Growth Act failed to find that same broad support that the pieces of Southern Nevada legislation had enjoyed. The Growth Act was met with violent opposition. Ultimately, the 109th Congress allowed the Growth Act to die at the end of the legislative session. That does not mean, however, that the bill will not resurface.

Land exchange legislation has a way of finding its way onto legislative calendars year after year.\textsuperscript{248} Indeed, Senator Bennett and Representative Matheson may already have plans to reintroduce the Growth Act.\textsuperscript{249} In order to become more effective and more politically attractive, any future versions of the Growth Act should be substantially modified. First, the drafters should consult with a wider spectrum of interested parties. In particular, they should follow the example of Senators Reid and Ensign who consulted with environmental groups early in the process of drafting the Southern Nevada legislation. The drafters should base any proposals for disposition of federal lands on the Vision Dixie planning process. Indeed, given the fact that most residents of Washington County support wilderness preservation, the scope of the land sales authorized in the original Growth Act is likely unnecessary. The sponsors should consult with environmental groups and other land users to make sure that all the wilderness-quality lands are adequately protected by formal wilderness designation. Finally, the sponsors should ensure that the bill requires compliance with FLPMA and other environmental laws. The Southern Nevada legislation suggests that by taking these steps, drafters of legislated land exchanges can enjoy broad-based support. Senator Bennett and Congressman Matheson should embrace the substance, not just the form, of the new land exchange paradigm to create a bill that Utahns can enthusiastically support.
