

WHERE THE WILD LANDS ARE



Salazar does Babbitt's wilderness do-over over.

By Dave Skinner

On Dec. 23, 2010, Interior Secretary Ken Salazar and BLM Director Bob Abbey sent westerners a Christmas package—Secretarial Order 3310 “Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management.” The meat of the order is found in Section 4, Policy: “All BLM offices shall protect these inventoried wilderness characteristics when undertaking land-use planning...avoiding impairment of [such] unless BLM determines that impairment of wilderness characteristics is appropriate.”

Furthermore, “BLM should develop recommendations, with public involvement, regarding possible congressional designation of lands [as big-W Wilderness].” Finally, “all lands with wilderness characteristics outside of the areas designated as Wilderness Study Areas” or existing wilderness shall be “managed according to this order and applicable law”—roughly 220 million acres.

Order 3310 was followed on February 25

by three guidance manuals on how to deal with these so-called “lands with wilderness characteristics”—a completely new land classification never before seen.

Feel a touch of déjà vu? The timing and language of the Wild Lands order clearly borrow from not only the Clinton-era Roadless Initiative and preceding emergency rule, but appear a direct result (even copy) of a prior, similar “gift” to westerners from Interior Secretary Bruce Babbitt: his so-called Wilderness Handbook (H-6310-1). Same deal, different name.

Reaction to Wild Lands was polarized. Wilderness lobbyists did handsprings and cartwheels, loudly praising Salazar for the gracious gift. Others were not so effusive, including 48 mostly western congressmen and all nine flyover-West Republican U.S. senators. Led by Utah’s Rob Bishop and Wyoming’s John Barasso, they sent a letter to Secretary Salazar urging that he repeal his “underhanded attempt by DOI to circumvent Congress.”

The question on everyone’s mind is, does Ken Salazar have the authority to implement Wild Lands on Bureau of Land Management holdings? He might...or, he might not.

Utah, The Sacrifice Zone

While Secretary Salazar’s order affects all the “BLM West,” including Alaska, we’ll focus on Utah because of Utah’s impressive history of being targeted by edicts from on high, crafted in secret.

First and foremost of these bombshells was the 1.9-million-acre Grand Staircase/-Escalante Monument in southern Utah. Set up secretly, with no input from Utah’s elected officials, President Bill Clinton announced the monument from a safe spot across the Grand Canyon—in Arizona.

Second is the seemingly immortal, multimillion-acre America’s Red Rocks Wilderness Act (say it, ARROW). Originally created and sponsored in 1989 by the late Wayne Owens (D-UT), after Owens lost his 1992 bid for the Senate to Bob Bennett, it has been repeatedly introduced to Congress by the resolute Rep. Maurice Hinchey (D). Hinchey is a “leading progressive” representing the great wilderness bastion of New York’s Southern Tier rust belt.

Third, Utah is not merely in the crosshairs of the present Wild Lands, but was previously dead-centered by Clinton administration Interior Secretary Bruce Babbitt for

two administrative initiatives of debatable (and hotly contested) legality and intent. One was a 1996-1999 wilderness “inventory.” The second came in early 2001, when Babbitt issued his Wilderness Handbook 10 days before leaving office.

Utah has therefore been most active in the courts, suing and losing against the 1996 Babbitt inventory, but subsequently winning a 2003 settlement from Bush administration Interior Secretary Gale Norton that voided Babbitt’s handbook and put the 1999 inventory on ice. Wild Lands, of course, threw out the Norton settlement and revived the handbook, Interior’s third total wilderness policy flip-flop (and counting) since 1992.

The Law

Why the insane flip-flops? They’re allowed, maybe or maybe not, by federal law. In 1976, Congress passed (barely) the Federal Lands Policy and Management Act (FLPMA). For our purposes, the important bits are Sections 201, 202, and 603.

Section 201 mandates that BLM develop and maintain continuous inventories of “all public lands and their resource and other values (including, but not limited to, outdoor

recreation and scenic values)”—basically everything from grass to minerals to scenery to wilderness.

Section 202 controls BLM’s planning process. Under this section, nothing is sacred, but can be changed at the next planning cycle using the inventories conducted in accordance with Section 201.

Section 603 deals specifically with wilderness. Using the 1964 Wilderness Act as a framework, Congress mandated that within 15 years “after the date of approval of this Act” (that is, 1991), BLM should conduct a targeted review of all roadless areas over 5,000 acres identified “during the inventory required by Section 201(a) of this Act” for “characteristics described in the Wilderness Act” of 1964. The Interior secretary would then report to the president, who in turn would make recommendations to Congress regarding wilderness designation.

The Perpetual Paralysis Machine

Environmentalists rejected the results of BLM’s Section 603 wilderness studies, exactly as they had rejected the results of the 1964 Wilderness Act review of Forest Service land.

They then embarked on a strategy of suing and lobbying for more, more, more—every possible acre by any political means possible.

Helping the environmentalist cause on BLM are two loopholes in Section 603: First, Section 603 set an explicit deadline for BLM’s review, but the law is silent regarding a deadline for Congress to either designate—or “determine otherwise.” This lack of a deadline comes from the principle that a sitting Congress must not bind the hands of a future Congress.

Second, Section 603(c) mandates that “during the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands [...] so as not to impair the suitability of such areas for preservation as wilderness.”

The net result of these loopholes is: (a) Congress can dither forever; and (b) While Congress dithers, the affected lands hang in a political limbo as de facto wilderness-in-all-but-name. It is therefore no surprise that—as the original Wilderness Act language resulted in a many-fronted 46-year war over Forest Service wilderness—FLPMA’s similar language has enabled a 35-

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The Great Basin has a huge inventory of land with wilderness characteristics, but there are people living and working here, and they have been for generations.



It may be open country, beautiful and sparse, but it isn't wilderness. This is the Wilder Ranch in Humboldt County, Nev., and it butts up to land managed by the Bureau of Land Management and the U.S. Forest Service. Of BLM's 264 million acres, only 23 million acres met "wilderness characteristics" in 1976.

year battle over the wilderness issue on BLM lands.

The Big Question

The main question surrounding Wild Lands today is: Does BLM have the authority under Section 201 to prioritize Wild Lands on top of all the "resource and other values" on public lands?

Consider this: Of all BLM holdings of 264 million acres, only 23 million acres met initial criteria for the mandated Section 603 wilderness study in 1976. Today, under Secretary Salazar's Wild Lands, the potential exists for "wilderness characteristics" to override all other management options on 220 million acres—all BLM lands not already wilderness, wilderness study areas, or included in the so-called National Landscape Conservation System.

Trouble is, our answer depends on who is in charge. When Babbitt ordered the 1996 inventory in Utah, the state sued to stop it and lost in court. Score one for Babbitt. When Babbitt issued his "Wilderness Handbook" in 2001, Utah again sued. In response, Gale Norton, Interior secretary to President George W. Bush, negotiated an April 2003 out-of-court settlement with Utah Gov. Michael Leavitt that rescinded Babbitt's handbook.

Score one for Utah? Not necessarily, as this was a negotiated settlement between friendly parties, not a judge "laying down the law." In an explanatory letter to Sen. Pete Domenici (R-NM), Norton stated the Department of Interior had agreed to "suspend review of new wilderness areas" outside those already identified through the Section 603 process or other congressional statutes. But she also pointed out that Interior "will continue to consider wilderness characteristics" under Section 201 inventory authority.

Utah's Response

After 35 years of such foolishness, no wonder passions are high in Utah. BLM Director Bob Abbey was invited to address a special meeting of Utah Gov. Gary Herbert's Balanced Resource Council on January 14. Among other things, Mr. Abbey stated, "We're not creating de facto wilderness" through Wild Lands.

As reported by Mary Bernard of the *Verona (UT) Express*, when council chair Ted Wilson (an environmentalist) relaxed usual meeting protocol in order to allow retired U.S. Rep. Jim Hansen (R-UT) to address the panel, "[Pat] Shea—director of the BLM for a brief time under President Bill Clinton and current defense attorney for Tim DeChristopher, the man charged with monkey wrench-

ing a 2008 BLM oil and gas lease auction in Salt Lake City—stormed out of the proceeding."

None of the other media reporting on Shea's huffy departure chose to point out that DeChristopher was Shea's client—not even the *Salt Lake Tribune*, which on February 7, pooh-poohed the import of Memo 3310, calling Salazar's edict a "low-key adjustment" while describing the 2003 Norton/Leavitt agreement as "an illegal usurpation of federal authority."

Move along please, nothing to see here....

Finally, throw into the mix the fact that the entire state of Utah has just gone through BLM's Resource Management Plan (RMP) revision and, as Abbey explained to the Balanced Resource Council, of 2.8 million acres with wilderness characteristics (apparently from the 1996-99 do-over) only 400,000 were found suitable for congressional designation in the new RMPs. So—do the do-over.

Utah politicians have had enough. State Rep. Carl Wimmer proposed legislation that would require Utah law enforcement to ensure access to areas declared off-limits by the federal government. "It's a pure nullification bill," Wimmer told *Tribune* reporter Robert Gehrke. While Wimmer's bill seems to have been sidetracked, there's another



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DOG'S BREAKFAST

No story on federal politics and bureaucracy is complete without a dog's breakfast of abbreviations and acronyms. Because nobody can understand the story without understanding the mumbo jumbo, well, here's breakfast...Enjoy!

ARRWA—America's Red Rocks Wilderness Act, introduced in Congress every year since 1992. Various versions call for the designation of from 5.7 up to 9.7 million acres of Utah BLM lands as wilderness. While ARRWA has apparently never gotten out of its first committee, the fact remains that Congress can, and does, pass just about anything if votes can be had.

BLM—Bureau of Land Management.

CR—Continuing Resolution, what Congress does when it can't cut through the garbage and pass a real budget.

FLPMA—Federal Lands Policy and Management Act, Public Law 94-579. The major governing policy law for BLM, what the agency does and how. FLPMA was enacted in 1976 by the first post-Watergate Congress, which might matter just a little.

LWC—Land with Wilderness Characteristics, a completely new land category acronym created from whole cloth by Secretarial Order 3310.

Order 3310—Secretarial Order 3310, issued by Interior Secretary Ken Salazar in December 2010.

RARE—Roadless Area Review and Evaluation, a Forest Service process mandated by the 1964 Wilderness Act for the purpose of selecting lands to present to Congress for designation as federal wilderness areas.

RMP—Resource Management Plan,

BLM's equivalent to the Forest Service's forest plans.

RS 2477—Revised Statute 2477, enacted in 1866. "The right-of-way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted." In short, the public had a right to establish appropriate infrastructure (from a trail to a railroad) across unreserved public lands to get where it needed to go. Among other things, FLPMA "reserved" federal lands and repealed RS 2477, but supposedly protected existing uses: "*Nothing in this Act [or any amendment] shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land-use right or authorization existing on the date of approval of this Act.*" (italics added)

USDA—United States Department of Agriculture.

USFS—United States Forest Service.

UTAH—A state with a big lake and nice people, not an acronym.

WSA—Wilderness Study Area, land in a formal "study" process as a result of congressional mandate. Congress may either vote to designate WSAs as wilderness, or vote to release lands from further study. However, Congress has no action deadline, so until Congress votes either way, and the president signs the bill, mostly or all-natural WSA lands are managed under a "nonimpairment" standard in which no activities that may "impair" its condition in terms of wilderness are allowed. WSAs are wilderness in all but name, commonly called "de facto wilderness."

Wilderness—Best described as Lands of No, as in: No roads, no motors, no wheels, no electricity, period. Think of all the things you can't do without at least one, and that's wilderness, period.

approach gaining steam. In a move the *Tri-bune* deemed "strident," Iron County (Utah) commissioners asked their county planning commission to amend the county plan to oppose Wild Lands.

In 2009, Iron County hired USDA retiree Mike Worthen as its Natural Resource Management Specialist, and prepared an Iron County Resource Management Plan. The amendment memorandum refers to "how Iron County and the public land agencies will cooperate, coordinate and review federal land-use plans for consistency with local plans."

"Yes, Iron County is pursuing coordination" as well as cooperating-agency status, confirms County Commission chair Alma Adams. He explained to *RANGE* that Iron County leaders "learned about coordination while at a Utah Association of Counties meeting where Fred Kelly Grant [the coordination guru] was the guest speaker." Adams warned that "coordination requires much effort" and "is not a miracle approach," but "more an avenue we will pursue at any time" necessary and appropriate.

Will it work? "We will know if coordination actually works after we get further into the RMP update and revision process for the Cedar City field office which is currently underway," and Adams and his fellow commissioners "see how well the BLM adheres to the county plan."

Coordination also appears to be gaining

traction at the state level. In late February, State Sen. Ralph Okerlund introduced a bill (SB 221) to create a state land-use planning program to help local governments that participated in BLM's recent plan-revision cycle. Specifically, "BLM must work through a planning process that is coordinated with other federal, state, and local planning efforts." SB 221 officially a "State Resource Management Plan for BLM Lands," was signed into law by Gov. Herbert, setting a possible precedent for other states. Using the new law, Uinta County filed suit March 23 against Wild Lands.

Ironically, the federal language that requires federal agencies to coordinate with state, local and tribal plans "to the extent consistent with the laws governing the adminis-

tration of the public lands" is written right there in Section 202(b) and 202(b)(9) of—surprise, surprise—FLPMA.

Not Just Utah

Wild Lands has plenty of potential impact in other states. In Wyoming, *Wyofile* freelancer Eryn Gable reported that BLM had already identified almost 250,000 acres of badlands east of Cody as "potential wilderness." An 11,350-acre McCullough Peaks Wilderness Study Area (WSA) already exists, set aside since 1980 by the Section 603 program. Linked to Gable's story is a striking stack of documents from Wyoming BLM's website, a series of two-page Documentation of Current Wilderness Inventory Conditions CYFO checklists completed in early 2010. Taken at

face value, the checklists are a routine Section 201 inventory.

Under a possible Wild Lands scenario, however, they aren't so routine. BLM's Cody Field Office (CYFO) manages 1.1 million acres of land in Wyoming. The inventory covered 59 parcels. On 13 parcels totaling 243,550 acres, "the area or a portion of the area has wilderness character." A third to half of the other parcels are furthermore in "a natural condition."

Given Order 3310's language about "public involvement," at least two parcels studied (50,235 acres) are of special interest, reason being they were wholly or partly "considered by the Biological [sic, it's Biodiversity] Conservation Alliance as addition to the [McCullough Peaks WSA]," and "through the planning and interdisciplinary process, BLM finds that this area does have wilderness characteristics."

Newly elected Wyoming Gov. Matt Mead (R) has expressed his justifiable concerns to Salazar over an "obvious motive—to remove multiple-use possibilities from public land through the designation of lands as 'Wild.'" The Wyoming County Commissioners Association also resolved to oppose Wild Lands.

Yet the administration shows no signs of backing away. On February 1 in Jackson, Steve Black, counselor to Secretary Salazar, addressed a meeting of the Wyoming Infrastructure Authority (concerned mainly with electric transmission lines). Black declared, "What has not been made clear in the press is it's a straightforward order that restores authority to BLM that was granted to it in 1976," and then went on to say Wild Lands would not impede energy development, nor would it "materially delay" power line projects.

But a month later, events next door in the Gem State proved Black, um, wrong. Over a year ago, when the city of Kuna, Idaho, learned the preferred route of the 500,000 volt Mountain States Intertie Power Line from Montana crossed several farms, city property and residential areas, the city proposed to instead move the line over to BLM ground south of town. Now Idaho Power people are saying Salazar's Wild Lands order will hold up final routing decisions for up to a year.

The line could be forced back to the original route if a Wild Lands nonimpairment template is imposed on BLM's land and, as new Manual 6303 states, a "manager always has the discretion to complete or update a

WILDERNESS BY THE NUMBERS

FLPMA Section 603 mandated targeted nationwide wilderness study from 1977 to 1991.

National results

Total BLM acres	264 million acres
Initial official 603 WSA lands	23 million acres (9% studied)
BLM-recommended wilderness	9.6 million acres (41% "pass" study)

Utah results

Total land area	55 million acres
BLM in Utah	24 million acres
Utah BLM official 603 WSA lands	3.2 million acres (13% studied)
BLM-recommended for Utah (1992)	1.9 million acres (59% "pass" study)

Unhappy with the "603" review outcome, environmentalists set about to circumvent the original process through legislation and bureaucratic chicanery. In Utah, the legislative trickery is represented by the America's Red Rocks Wilderness Act. The "bureaucratricks" include a 1996-1999 "wilderness characteristics" inventory in Utah (that originally was to be led by Robert Abbey) as well as a rewriting of road analysis standards in 2001, both ordered by Bruce Babbitt.

Red Rocks wilderness bills (1989-2011)	5.7 up to 9.7 million acres
Babbitt/Abbey "inventory" (1996-1999)	3.1 million new acres "inventoried"
Babbitt/Abbey "found"	2.6 million (84% "pass" study)

Keep in mind that the Babbitt/Abbey inventory in Utah looked at lands that failed to meet the initial review standards 20 years before. Nonetheless, the inventory resulted in a much higher "pass" rate than either the national or Utah Section 603 reviews.

Finally, Utah has just gone through a statewide Resource Management Plan update and revision. Part of the update was deciding if inventoried potential wilderness did in fact warrant recommendation to Congress as wilderness.

BLM RMP potential lands	2.8 million acres
BLM RMP-recommended lands	400,000 acres (14% "pass" study)

In 2009 Director Abbey declared to Congress that Utah has 6.8 million acres of BLM land with wilderness characteristics, a total higher even than the sum of all Section 603 study lands *plus* the Babbitt inventory.

Abbey's testimony 2009	6.8 million acres
Grand total of 603 plus 1999 study	6.3 million acres

wilderness characteristics' inventory."

Undoing the Do-Over of the Do-Over

On the surface, Secretary Salazar's issuance of Order 3310 seems like more of former Interior Secretary Bruce Babbitt's credo: "It is plainly no longer in the public interest to wait for Congress to enact legislation."

It may very well be that Order 3310 was released because the 2010 election went badly for Democrats. As we wrote about the secret

"Our Vision, Our Values" [*RANGE*, Winter 2011, and www.rangemagazine.com] fiasco last year, Interior politicals were operating under the consensus (at least inside the Beltway and in the mainstream press) that Democratic control of the administration and Congress was a durable, long-term condition.

That incorrect belief led to twin assumptions that: (1) Congress would not soon act to change the Antiquities Act; and (2) Congress would happily convert the Land and

Water Conservation Fund into a permanent entitlement. Furthermore, remember in 2009 that Congress passed a kitchen-sink Public Lands Omnibus bill that designated two million acres of wilderness in about 50 parcels in nine states. A durable majority implied a good chance of passage for future wilderness bills (including ARROW) regardless of any agency inventories, resource management plans, or local political support.

But the durable majority wasn't.

The 2010 election changed the U.S. House from Democratic to Republican, along with seven governorships (to 30) and 11 state legislatures. The switch in the U.S. House has meant, among other things, new leadership for the Natural Resources Committee that oversees Department of Interior and its funding. Doc Hastings (Washington) is the new chairman and Rob Bishop (Utah) chairs the National Parks, Forest Lands & Public Lands subcommittee. Both enjoy earned reputations as prickly defenders of

resource producers and multiple use.

As a first step, Idaho Rep. Mike Simpson (R) inserted language to strip any money "to implement, administer or enforce" Wild Lands from the Continuing Resolution (CR) to keep our government running.

Simpson's provision will only last until Congress writes a real budget for FY 2011, but there seems to be more to come. On March 1, the same day Congress voted on the CR, the full Natural Resources Committee held a hearing on Wild Lands starting with the governors of Idaho and Utah, and ending with BLM Director Abbey. In opening the hearing, Chairman Hastings declared, "This administration should be on notice that unilateral decisions and orders to impose restrictive, job-destroying policies will be met with firm resistance."

The high (or low) point of the hearing came when Chairman Hastings cut to the guts, asking Director Abbey if Salazar's order prioritizing Wild Lands over other multiple

uses is authorized in law. Abbey answered, "I'm not sure it exists statutorily." The full committee grilled Secretary Salazar at Interior's budget hearing on March 3. The blather apparently didn't help Salazar's cause, as the final 2011 budget contained, among other things, Section 1769, which defunds any work to "implement, administer or enforce" Wild Lands—until Sept. 30, 2011.

What lies ahead? Well, while Rep. Bishop declared in February, "I look forward to fighting the Wild Lands policy all the way to its ultimate extinction," there is always the new 2012 budget...and 2013, 2014. Unless and until Congress substantively reforms or clarifies the law that gives Wild Lands life—the Federal Lands Policy and Management Act—Wild Lands is not dead.

Even though he doesn't own a single cowboy hat, bolo tie, or pair of Acmes, Montana writer Dave Skinner thinks he would be a much better secretary of Interior for the West than Ken Salazar.

WHEN A ROAD AIN'T NO ROAD

Also critical to "Wild Lands" is the question, "Who has the authority to say when a road is not a road?" For the purposes of determining wilderness characteristics, roads existing within a parcel disqualify it as wilderness. While the common wisdom is, if you can drive on it, it's a road, that wasn't necessarily Congress' wisdom.

From 1866 to 1976, Revised Statute 2477 (RS 2477) granted an automatic right-of-way for "highways"—anything from a donkey trail to a railroad—on "unreserved" public lands. Anyone needing to get somewhere had Uncle Sam's permission to pick the way and means of doing so.

FLPMA "repealed in its entirety" RS 2477's blanket grant of rights. Regarding existing rights-of-way, Section 509 reads "Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted." Granted? Hmmm, that's pretty clear, right? Um, no....

To justify Wild Lands as valid policy, Secretary Salazar (as Babbitt did before him) cites a 1976 U.S. House committee report (94-1163): A road is not really a road unless "improved and maintained by mechanical means to insure relatively regular and contin-



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uous use." Vehicle passage doesn't count.

So who wrote that? The Library of Congress explains that "committee staff writes a committee report," and furthermore, courts and historians rely on the report for "intent."

The Norton/Leavitt settlement of 2003 also established a framework for dealing with RS-2477 issues and, sure enough, Salazar's new guidance on roads blows the settlement terms out of the water, reinstating Babbitt's "mechanical" standard regardless of actual need for maintenance.

So, when is a road not a road? When it is something else: Salazar's new guidance defines "route" as: "Any linear feature located within areas that have been identified as having wilderness characteristics and not meeting the wilderness inventory definition." Read

closely, that sentence applies to all BLM lands other than legitimate Section 603 ground.

Furthermore, routes "established solely by the passage of vehicles would not be considered a road." Even better, "vehicle routes constructed by mechanical means but that are no longer being maintained by mechanical methods are not roads." And even better, the new 6301 final inventory manual (released February 25) states that for "any roadless island of the public lands," no matter the size, "inventory will" be conducted.

And best of all, on February 25, Director Abbey released spanking new Manual 6303, which imposes nonimpairment and a wilderness characteristics inventory on all project-level decisions in areas "when wilderness characteristics are not clearly lacking."