

Collaborative Conservation Strategies: Legislative Case Studies from Across the West



***A Western Governors' Association
White Paper***

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Executive Summary

As the 2005-06 Chair of the Western Governors' Association, Arizona Governor Janet Napolitano placed special emphasis on issues surrounding sustainable development. As part of that initiative, she directed WGA staff to develop a white paper on the use of negotiated compromise federal legislation as a tool both to protect unique and sensitive lands in the West and to address growth and economic development issues faced by local communities.

Western states contain the vast majority of publicly owned lands. Management of these lands impact the social and economic fabric of adjacent rural Western communities. As much of the West continues experiencing unprecedented population growth, the traditional tension between growth and preservation has escalated for these lands and the communities.

This white paper traces the history of land conservation in the West and the seeds of collaborative approaches reaching back to federal statutes enacted in the 1960s. The case studies show how traditional adversaries in three Western communities were able to avoid impasse and come together to hammer out difficult compromises to accommodate most interests. Success has not been fully realized in all cases, but the difficult work continues.

There are those on both sides who believe compromising with “the enemy” on conservation and development is tantamount to surrender. However, as the West keeps growing, the pressure will mount to negotiate solutions on the conservation and development of land and water supplies for traditional and new uses. Negotiated, omnibus legislation for public lands is one of the new tools that can help. This approach requires undaunted leadership, (a strong motivating factor to get parties to the table), a level playing field during the collaborative process, and an outcome that has enough support to weather the federal legislative process. Western Governors are uniquely poised to identify opportunities in their respective states, help initiate a truly collaborative process, and stand with their Congressional counterparts if a bill moves through Congress. It is a leadership role that they have played in other arenas and would likely be welcomed by communities and advocates alike.

Introduction

More than four of every 10 acres of land in the West is owned and managed by the federal government. In four Western states, the federal government owns between 52 to 82 percent of the land. These federal lands include those managed for multiple use by the Bureau of Land Management and the Forest Service, as well as lands set aside for protection from most development, including designated wilderness areas, wildlife refuges, national parks, national monuments, national conservation areas and national scenic areas.

In 1980, the population of the Western states stood at a little more than 60 million people. By the year 2000, that number had climbed to nearly 90 million. Another 40 million people are expected to live in the West by 2030. With the increase in people over the last 25 years has come increased use of federal lands and lands adjacent to them for both development and recreation. The population increase has strained many growing Western communities, some of which cannot incorporate land for development, because it is federally owned.

Two countervailing movements have emerged over the years from the converging forces of an increased population, increased use and development on federal lands, and federally land-locked Western communities. On one side are those that want to put more lands under federal protection, such as wilderness areas. On the other side are those who want to move lands out of federal ownership to accommodate growing communities and commercial uses.

The traditional battleground for these opposing forces has been Congress and the Administration, regardless of the party in control. Each side in these battles has had an occasional victory, but more often than not there has been one bruising and bloody stalemate after another.

As a result of this polarization, local interests in several Western states have chosen to bring all the parties to the table to hammer out a compromise of competing interests. Not until a tentative compromise has been agreed to, do these parties jointly move their proposals to the Congressional arena. This new approach is often referred to as "omnibus public lands legislation."

Arizona Governor Janet Napolitano, 2005-06 Chair of the Western Governors' Association, directed WGA to develop a white paper on the use of omnibus public lands legislation as a tool to both protect unique and sensitive lands in the West, while accommodating the desires of local governments and commercial and recreational interests.

WGA enlisted the assistance of Timothy Brown, Ph.D. with the Center of the American West at the University of Colorado to write a historical and legal overview of the protection of public land in the West. Also assisting WGA in the development of the

three case studies were a number of individuals involved in omnibus public lands legislation: Andy Kerr of The Larch Company (Steens Mountain Cooperative Management and Protection Act); Kai Anderson, former staff to Senator Harry Reid (Clark County and Lincoln County, Nevada legislation); Rick Johnson, Executive Director of the Idaho Conservation; and Lindsay Slater, staff for Congressman Mike Simpson (Central Idaho Economic Development and Recreation Act).

Following the case studies is a discussion of both the obstacles and opportunities for Western Governors in these efforts.

Omnibus Conservation Law: Historical and Legal Context

By Timothy Brown, Ph.D. of the Center of the American West

“Western Lands”

The tension between federal and state governments over public lands is as old as the country itself. After the ratification of the Articles of Confederation in 1781, Congress coaxed the reluctant states to cede their “Western” lands—anything between the Appalachians and the Mississippi River—to federal control and regulation. By the time of the final acquisition of U.S. soil in 1848, the federal government exercised absolute control in the creation of territories, states and the disposal of public lands to homesteaders, ranchers and miners. From the earliest public land statutes, a perception existed that the eastern political center considered the Western lands as national public property, while Westerners viewed lands as crucial to the economic development and viability of their region.

Early conservation

In second half of the nineteenth century and well into the twentieth, the federal government transferred hundreds of millions of acres of land to private and state ownership. Even in the period of rapid land disposal, the seeds of a new policy of retention and land management began to germinate. The idea emerged that certain lands possessed unique natural qualities or resources values that should be retained in the federal estate. In 1872, President Ulysses S. Grant signed legislation establishing the first national park at Yellowstone for recreational purposes. The federal government also began in this period to set aside national forests, largely motivated by the fear that the country might experience a “timber famine” if it did not more carefully oversee the consumption of the nation’s wood reserves.

Controversy in designations

During the 1960s and 1970s, the adoption by much of the public and by key government officials of a conservation ethic coincided with the shift in federal land policy from disposal to retention of public lands. The emphasis on conservation during the Johnson, Nixon, Ford, and Carter administrations produced landmark environmental legislation as well as the reclassification of much public land to a protected status. These “set aside” designations, however, were not without controversy, as seen in federal actions taken in the state of Alaska. In 1969, Secretary of the Interior Stuart Udall halted the process whereby the state of Alaska identified federal lands for transference into state ownership, angering then-Alaska Governor Walter Hickel. Udall in this case sought to ensure that native peoples of Alaska partook in the mineral wealth of that state, a legitimate principle, but imposed nonetheless. Later, President Carter set aside 125 million acres for preservation and wilderness in Alaska. Said a chagrined Hickel, “They had a right to take it, but it was a taking.”¹

¹ Interview by Patty Limerick with Walter Hickel, October 15, 2003.

The Wilderness Act

In response to a growing national consensus for the preservation of exceptional natural areas, Congress passed the Wilderness Act in 1964. This law ensured that certain “untrammeled” national forests and other public lands, uninhabited and unimproved, and with “outstanding opportunities for solitude or primitive and unconfined recreation,” be maintained in their natural state for the enjoyment of future generations.² Except by special provision, commercial activity such as mining, grazing or logging, permanent roads, use of motor vehicles, or structures were prohibited on such lands. Initially, the Forest Service, National Park Service, and the Fish and Wildlife Service administered wilderness areas until 1976 when legislation extended wilderness jurisdiction also to the Bureau of Land Management. As of 2005, the National Wilderness Preservation system comprised over 105 million acres in 44 states.

The Wilderness Act itself designated nine million acres of public land for wilderness status, and established an administrative protocol for the recommendation to Congress for the creation of more. The law directed the Secretaries of Agriculture and the Interior to produce within 10 years (by 1974) an inventory of all public lands (except BLM lands) that met the criteria for wilderness protection. This work was substantially completed by the end of the Carter administration. Having reserved for itself the power to enact such designations, Congress has acted to reclassify much of the eligible acreage to wilderness, although some is still under consideration.

The criteria by which the federal land management agencies identified public lands for wilderness designation in the 1970s and 1980s were largely confined to those natural attributes and qualities outlined in the 1964 Wilderness Act. They did not include considerations of the larger economic or social context in which potential wilderness areas were located. Inevitably, the potential federal prohibition of commercial and recreational uses of these public lands generated opposition among certain state governments and local interests who resisted a further loss of access to and effective control over millions of acres. In 1980, California was largely successful in fighting 44 Forest Service designations, and other opponents of wilderness protections found support with the election of Ronald Reagan in 1980. To the displeasure of Congress, Reagan ordered a review of Forest Service inventories, sparking intense debate and forcing compromises on designation procedures. The issue of what qualifies as roadless forest land continues today.

Seeds of cooperation

The recent history of discord and dissatisfaction, irrespective of the source, in some measure accounts for the search for alternative methods and processes for the management of public lands. Finding little reward in contention and acrimony, some public land stakeholders hope that their goals might be better served through cooperative, collaborative methods.

² P.L. 88-577, Sec. 2 (c).

Resolution to today's seemingly intractable debates over federal land use may have precedent in earlier cooperative principle in land-use laws.³ An early example is the 1960 Multiple Use and Sustained Yield Act (MUSYA). This act envisioned the need for the involvement of non-governmental entities in the management of national forests by authorizing the Secretary of Agriculture to "negotiate and enter into cooperative agreements with public or private agencies, organizations, institutions, or persons." In 1948, Congress passed the Administrative Procedures Act (APA) which provided for public notice, comment and appeal processes in the drafting or amending of regulations. The National Environmental Policy Act of 1970 (NEPA) prescribed the cooperation of any party environmentally affected by a federal action. The Federal Advisory Committee Act of 1972 (FACA) outlines procedures for the creation and function of groups that inform federal agency decisions. Finally, the Federal Land Planning and Management Act (1976), the same legislation that spurred the Sagebrush rebels, required the Secretary of the Interior to ensure that land management programs are informed by public participation. While good governance principals drove the enactment of each individual piece of legislation, the history of implementation has created opportunities for the public, both rural and urban, to debate land use issues through a local bureaucratic process – often with mixed results.

Embrace of cooperative processes

Western Governors adopted cooperative principles in 2003. Dubbed "Enlibra," these principles sought "greater participation and collaboration in decision-making, a focus on outcomes rather than just programs, and recognition of the need for a variety of tools beyond regulation that will improve environmental and natural resource management."⁴ Increasingly, governors and other stakeholders understand that they can exercise greater self-determination over public lands in their states if they assume a leadership position in efforts to craft local land-use and conservation agreements as a preemptive measure to non-consultative federal action. In the past decade, we have also seen an evolution in the language used from land management agencies. At least rhetorically, there appears to be some trending towards including cooperative principles in land management decisions at various landscape scales.

Conservation community embrace of principles

The cooperative process is also gaining adherents in the conservation community. Certainly not every environmentalist is won over. But the polarization that has so characterized public discourse on the environment is now mitigated by the emergence of organizations dedicated to furthering collaboration among stakeholders, notably The Quivira Coalition in New Mexico; the Sonoran Institute in Arizona; Sustainable Northwest of Portland, Oregon; the Red Lodge Clearinghouse in Montana; and the

³ I summarize here the fuller discussion of these laws found in The Public Policy Research Institute at the University of Montana report "The Legal Framework for Cooperative Conservation," 2006.

⁴ Western Governors' Association, <http://www.westgov.org/wga/initiatives/enlibra/>. Accessed 2/15/2006.

Center for the Rocky Mountain West, also in Montana. Even groups that have a history of litigation and conflict are acknowledging the benefits of collaboration. In a recent article in the online publication *Grist*, Conservation Northwest Executive Director Mitch Friedman, opines that collaboration can be more effective in on-the-ground conservation than continual attempts to reform the Forest Service through appeals and litigation. Reflecting on the polarization of the development/conservation debate in recent years, Rick Johnson, executive director of The Idaho Conservation league and key participant in a recent set of compromises over land use in Custer County, Idaho, stated that "The environmental movement has gotten very good at fighting and we've lost touch with a lot of people. Collaboration, in the big sense, means getting things done instead of simply fighting. People are hungry for that."⁵

Congressional embrace of cooperative principles

The emergence of cooperative principles in state and federal initiatives, whether in the agencies or in the executive offices, has inevitably informed congressional approaches to public land legislation. One such example is the Secure Rural Schools and Community Self-Determination Act of 2000, which requires the Forest Service to take advice and input from Resource Advisory Committees (RACs) constituted by citizens, other government agencies, organizations and tribes. RACs have been instrumental, for example, in rangeland management.⁶ In another instance, the Coastal Zone Management Act prescribes a process for the Secretary of Commerce to "seek to mediate differences" pertaining to development between federal and state governments, and much of the pioneering work in cooperative conservation has occurred around coastal and fishery issues, both in the U.S. and internationally.⁷

Early examples of cooperative conservation legislation

Redwoods Bill, California (1978)

State and federal agencies, along with private entities, can adopt cooperative conservation practices, but it is only the Congress that has the power to act in regard to the most important questions respecting public lands: which to place in a protective status such as a national park or wilderness area. A congressional pioneer in compromise omnibus legislation was Representative Phil Burton, a democrat from the Bay Area of California. In the 1970s, Burton cobbled together an unlikely alliance of loggers and environmentalists that resulted in the National Parks and Recreation Act of 1978. With this legislation, Burton expanded the Redwoods National Park. It was Burton's special skill, according to his biographer John Jacobs, to build "improbable

⁵ Jeff Oliver, "A New Tack In West's Land Battles," *The Christian Science Monitor* (January 25, 2006).

⁶ Dover A. Norris-York, "The Federal Advisory Committee Act: Barrier or Boon to Effective Natural Resource Management," *Environmental Law*, Vol. 26, 1996.

⁷ See, for example, Evelyn Pinkerton, 1989, Co-operative Management of Local Fisheries, Vancouver: University of British Columbia Press.

coalitions." In doing so, Burton succeeded in increasing the acreage of protected public lands in California by five percent.⁸

Grand Canyon Protection Act (1992)

In 1992, Congress responded to public concern over the condition of the Grand Canyon with the Grand Canyon Protection Act. This legislation required that the health of the watercourse and canyon ecosystem come before the operation of the dam itself. The law directed park managers to operate the Glen Canyon dam "in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use."⁹

This act is notable for the requirement that the Secretary of Interior administer dam operations in consultation with not only the many Interior land and wildlife agencies, but also with the "Secretary of Energy; The Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming; Indian Tribes; and the general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry and contractors for the purchase of Federal power produced at Glen Canyon Dam."¹⁰ This extended list of parties in the management of the dam recognizes the recreational, cultural and resource values to diverse interests across many Western states, and that any management plan for the Colorado River must be one of negotiation and cooperation.

Headwaters Forest, California (1996)

Omnibus compromise agreements are sometimes brought to Congress for approval and an appropriation of necessary funding. Such was the case with the Headwaters Forest transaction of 1996. After lengthy and highly public negotiations, the federal government, the State of California, and the Pacific Lumber Company reached an agreement allowing the public purchase and protection of some 7,500 acres of old-growth redwood forest in Humboldt County. 4,500 additional acres were acquired as a buffer zone. California and the federal government combined funds to pay \$380,000,000 to Pacific Lumber for the lands. In this case, the Secretary of the Interior, Bruce Babbitt, was the principal negotiator for the conservation interest. The Forest "Reserve" is managed jointly by the BLM and the State of California. The agreement included additional restrictions on Pacific Lumber as it logged 210,000 of nearby lands, such as a ban on 12 designated groves encompassing 8,000 acres of old-growth trees, and a logging ban on riparian and slide-prone areas.

⁸ John Jacobs, *A Rage for Justice: The Passion and Politics of Phillip Burton* (Berkeley and Los Angeles: University of California Press, 1995), p. 352.

⁹ Title XVIII—Grand Canyon Protection, sec. 1801a.

¹⁰ Title XVIII—Grand Canyon Protection, sec. 1802, 1-5.

The Steens Mountain Cooperative Management and Protection Act of 2000 (Oregon)

By Andy Kerr, The Larch Company

The Act

In the fall of 2000, Congress enacted the “Steens Mountain Cooperative Management and Protection Act” (“Steens Act”).¹¹ The protection afforded by the Steens Act includes more than one million acres of mineral withdrawal, half of which became the Cooperative Management and Protection Area with 174,744 acres set aside as wilderness with a livestock-free zone. Approximately 30 miles of National Wild and Scenic Rivers were created, along with a Redband Trout reserve that required the removal of a dam.

The complex number of land exchanges in the Steens Act resulted in a net loss of 85,788 acres of public lands. Nonetheless, Congress believed that the resulting configuration and habitat and scenic quality of the land was a net gain for conservation, the public and taxpayers. For example, the total acreage of designated wilderness and wilderness study areas increased by 33,830 acres.

The cooperation afforded by the Steens Act included the establishment of a multi-stakeholder advisory council and a Wildlands Juniper Management Area authority to cooperatively manage agreements between BLM and private landowners, and an authority for conservation and non-development easements.

Unfortunately for those who sought “cooperation” more than “protection,” the Steens Act requirements for protection were built-in and up-front, while its intent for cooperation was not firmly established in statute. It is far easier to prescribe protection than coerce cooperation by statute.

The Acting Out

In the late summer of 1999, Interior Secretary Bruce Babbitt announced his intent to protect the Steens Mountain area in southeast Oregon for present and future generations of Americans. As the second term of the Clinton Administration was winding up, Babbitt was contemplating national monument designations, not only for Steens Mountain, but also for several other “objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States,” as authorized by the Antiquities Act of 1906.¹² Eventually, Clinton did establish several new national monuments -- to be managed by the BLM, rather than the National Park Service -- totaling several million acres.

¹¹ 16 U.S.C §460nnn—460nnn-122

¹² 16 U.S.C. §431

In 1996, the Clinton Administration designated the Grand Staircase-Escalante National Monument in Utah. Clinton drew the wrath of Utah politicians by announcing the controversial designation at a campaign stop — relatively nearby, but in Arizona. Thereafter, Babbitt was committed to “no surprises,” and from then on, he broadcast loud and clear the Administration’s intentions.

The Clinton Administration wanted to engage Congress in several protective public lands’ designations during the last years of the second term. However, most Western states’ congressional delegations were not interested in additional designations in their states. It was different for Steens Mountain in Oregon, as the political stars aligned for legislation. First, the Steens has been recognized for years as an area worthy of a conservation designation. In fact, Steens Mountain had been considered national park-quality since the 1920s.

Second, with the concept of either national park or national monument designation swirling, BLM officials wanted more recognition (if not protection) for the area under BLM control so it would not be “lost” to the National Park Service. The bureaucracy also figured special designations that fit in the nascent National Landscape Conservation System (special congressional or presidential designations on BLM lands all in one “system”) would get more money, as their budgets were otherwise getting tightened.

Third, increased recreation on the public lands of Steens Mountain, as well as substantial un-posted private inholdings traditionally used by the public, were increasingly in conflict with livestock grazing on the mountain. The grazing was particularly valuable because it was excellent late season forage located near base ranches, making trucking unnecessary. Nonetheless, the six large land and livestock owners on Steens Mountain knew their time was limited on the High Steens.

Fourth, the Donner und Blitzen River and some of its tributaries, which arise on Steens Mountain, had been designated a Wild and Scenic River in 1988. The unit of the National Wild and Scenic Rivers System was classified as “wild,” the most protective and restrictive classification. Ongoing litigation was likely to find livestock grazing in the wild river management corridor was inconsistent with the purposes of the Wild and Scenic Rivers Act and the outstandingly remarkable values for which the stream segment was designated. Though the management corridor extended an average one-quarter of a mile on each side of the stream, the practical effect in this steep country would be no livestock in the watershed.

Fifth, the Oregon Congressional delegation engaged on this issue. And last, but not least, the large land and livestock owners’ fears of a national monument designation were far larger than the conservation community’s hopes for one, making both prefer a legislative solution.

Developing and Cutting the Deal

Over the course of approximately 16 months, four distinct efforts were convened to develop a politically viable piece of legislation for Steens Mountain.

Secretary Babbitt tried to get the local BLM Resource Advisory Committee (RAC) to develop a legislative proposal acceptable to all interests. The RAC was unable to do so. Then, Oregon Governor John Kitzhaber (D) and Rep. Greg Walden (R) convened a group of people representing special interests who achieved as much success as the RAC. Finally, staff from the Babbitt, Kitzhaber, Wyden, Walden, DeFazio, Blumenauer and Smith offices met often.

The first two efforts failed because: (1) too many special interests were at the table; and (2) the right special interest representatives were not at the table. The third effort failed because the staff members were all representing the interests of their bosses, who were representing the positions of their political bases.

As time was running out for legislative action, the local field representative of Sen. Ron Wyden and staff to Rep. Walden, decided that four people—two from each side—that might be able to actually cut a deal were:

- *Stacy Davies*, rancher for the largest ranch in the area;
- *Andy Kerr*, former executive director of Oregon Natural Resources Council and then a consultant to The Wilderness Society on Steens Mountain issues;
- *Bill Marlett*, Executive Director of Oregon Natural Desert Association; and
- *Fred Otley*, local rancher and state livestock industry leader.

Through a two-day marathon of negotiations at Davies' house, overseen by Wyden and Walden's staff, a deal among the four was developed.

It was said of the negotiations that they were successful because:

- *Each participant wanted a deal and each identified opportunities to improve conditions on the mountain.*
- *No one sought the religious conversion of the other side, and both sides demonstrated unique love and compassion for the landscape, and for preserving the physical and cultural feel of the place.*
- *Issues were addressed and resolved quickly and constructively.*
- *Each had a detailed understanding of their constituency needs and had sufficient influence to negotiate; the group enjoyed the meeting because for the first time creative ideas could be developed, shaped and usually adopted.*

- *With an understanding that prior wilderness legislation – the vast majority of which involved national forest lands where grazing was not nearly as significant as it was on Steens – included committee report guidelines governing the administration of grazing, and the net effect of these guidelines was to make life easier for the permittee, the ranchers gained a certain enthusiasm for resolving wilderness study areas in favor of creating new wilderness. Because the guidelines would apply in wilderness, and not in a study area, a permittee and the BLM would have greater latitude to manage the allotment effectively.*

Other large land and livestock owners attended part of the sessions to work out details of land exchanges, wilderness boundaries, etc. Local BLM managers were also present to provide information. A few issues the four negotiators could not resolve were left for members of the House and Senate, the committees of jurisdiction and the secretary of the Interior to resolve.

The initial proposal was introduced by Rep. Greg Walden, whose district included Steens Mountain, and was co-sponsored by Rep. Earl Blumenauer (D-3-OR), whose district included many individuals and interests supportive of Steens Mountain protection. The bill went through several iterations before gaining the acceptance of a critical mass of the Congress and the Administration. At one point, Rep. Peter DeFazio (D-4-OR), a member of the House Resources Committee, was frustrated with the Walden language and circulated his own language. This made Walden more accommodating to DeFazio's concerns. One hearing was held in the House Resources Committee. The final language was sent to the floor and passed without controversy, as the major deals had been cut. The Senate later concurred and President Clinton signed it.

Key Players and Impacts

While a number of interest groups were not major players on the legislation that became law, they were greatly affected by the Steens Act:

- First, the Steens Act withdrew 1.1 million acres of federal lands from location (hardrock minerals), leasing (other minerals or geothermal) or sale (gravel, etc.), obviously impacting mining interests.
- Second, the half-million acre special management area prohibits off-road vehicle use. The definition of what actually is a "road," off which one cannot drive, is still in dispute. However, the designation did impact off-road vehicle interests.
- Third, despite efforts to engage them in the process, the designation did impact the Burns Band, Paiute Indian Tribe. In addition to the tribe, there were a number of minor private land owners with inholdings in the area that were impacted by the legislation.
- Finally, the elected county commission was impacted by the designation. While county commissioners often are the "go-to" individuals in public land

negotiations, in the case of Steens, these local county officials deferred to the predominant ranchers to represent the counties' interests.

Implementation

The Steens Act established a Steens Mountain Advisory Council (SMAC) composed of specified special interests. Of the four key negotiators, only ranch manager Davis has served on SMAC. It apparently has been a frustrating experience, as he's resigned at least once. Neither Kerr nor Marlett, the two conservation negotiators, have yet served on the SMAC.

The Steens Act resulted in tangible conservation protection (that which was specifically legislated by Congress) and some additional conservation protection with the development of the comprehensive management plan specified by the statute. However, for some in the conservation community, the plan itself fell short of expectations and is currently in litigation.

As for the goal of the Steens Act to foster cooperation, such has not occurred. There is no more communication today between conservationists and ranchers than prior to the Act, and a general ambivalence, if not disdain, towards the BLM by some stakeholders continues. While there have been individual acts of cooperation between BLM and some players, a general feeling of mistrust prevails over SMAC meetings, where people continue to huddle with like-minded persons.

There are several major (and still festering) issues resulting from the Steens Act:

Access to Private Inholdings -- There were significant amounts of private inholdings in the Steens Mountain Cooperative Management and Protection Area and/or the Steens Mountain Wilderness. As this was a contentious issue in the development of the legislation, there was a tendency to avoid specifics in statutory language, so as to gloss over differences and leave the matters for implementation by BLM—and more importantly, appropriations by Congress. It was hoped that conversion of private inholdings to public lands would alleviate most problems (see below).

Public Acquisition of Private Inholdings and Interests -- Though the Steens Act resulted in major exchanges of public and private land to result in a more manageable situation to both the government and large land and livestock owners, there are still many private inholdings in the Steens Mountain Wilderness. The Act authorized \$25 million for “acquisition of land and interests in land... and to enter into non-development easements and conservation easements.” No money has been appropriated, and the net result is private inholders have not been bought out and other landowners have not been bought in.

Conservation of Private Lands -- The Steens Act authorized BLM to enter into cooperative management agreements with private landowners that could include both federal and non-federal land. Further, non-development (no further development) or

conservation (proactive conservation measures) easements were authorized. None have been funded.

Grazing Permittee Access and Activities in Designated Wilderness -- For the portion of the Steens Mountain Wilderness that was not legislated to be livestock-free, Congress specified traditional direction (the so-called “Congressional Grazing Guidelines”) that existing livestock grazing would not be significantly affected by wilderness designation. The original Wilderness Act authorized “reasonable regulations.” The Congressional Grazing Guidelines more firmly grandfathered existing grazing in wilderness and specified that it may continue essentially as it has. BLM has sought to interpret and implement this provision by specifying precisely what grazing permittees can and cannot do when and where. Grazing permittees chafe under these restrictions. The livestock-free portion of the wilderness was included as part of the larger political deal the Steens Act formalized and implemented. Ranchers were compensated for ending grazing in that portion of the wilderness.

Running Camp -- A seasonal training facility had established occasional runs through what would become the Steens Mountain Wilderness. The numbers of runners were in excess of what is normally allowed under wilderness management policies. While identified as an issue, the four key negotiators underestimated its significance (BLM failed to inform anyone of the magnitude of use), and its continued operation became a huge issue and a distraction after the law was enacted. It has finally been resolved.

Western Juniper Management -- One of the creative solutions to come out of the marathon negotiations was the establishment of a “Wildlands Juniper Management Area” to educate the public on Western Juniper management issues. Western Juniper, a native species, is rapidly encroaching into the sagebrush steppe. Conservationists and ranchers agree it is due to a lack of fire in the ecosystem, while ranchers generally reject the contention of conservationists and scientists as to the role that historic and current livestock grazing plays. The WJMA has never been implemented, due to a lack of consensus in the SMAC on how to proceed.

Wilderness Study Areas -- No agreement could be reached regarding a large amount of wilderness study area within the Cooperative Management and Protection Area. They will remain in limbo until Congress acts. After enactment of any site-specific public lands legislation, there is a period of time during which a congressional delegation has no interest in revisiting the issue or the landscape.

Conclusion

To those who feared a Clinton Administration designation of Steens as a national monument, the legislation was a success. To those who sought protection of Steens Mountain, the legislation was a success, although conservationists desired far more protection than was achieved. To those who sought to implement cooperation between the BLM and various “stakeholder” interests, the legislation is a disappointment. Cooperative management—defined in this context as giving the SMAC and local interests more control in management direction—has not taken off as envisioned by its

proponents. It was never embraced by conservationists, who saw it as a price to be paid to achieve protection.

Although the Steens Act clearly specified that the SMAC is merely advisory to the BLM, some local stakeholders have put great faith in the SMAC for advancing their agendas. These individuals have convinced themselves that the BLM can ignore its duty to adhere to federal laws, and believe the Steens Act vested them with authority to tell BLM what to do. This false expectation has created hard feelings with some SMAC members towards the BLM.

The Steens Act achieved a political outcome that was satisfactory to “both” sides, but it has not resulted in all stakeholders agreeing to a common vision. Conservationists want more wilderness and less livestock on public lands. Ranchers want to maintain, if not increase, livestock numbers and their “way of life.” Certain inholders in the special management area and/or wilderness wish to develop commercial activities or vacation homes. While off-road vehicle use is statutorily prohibited in the special management area, the definition of what is a “road” is still in hot debate.

The role of Governor John Kitzhaber was very helpful in creating a positive climate for negotiations. Kitzhaber was the lead policy advocate for the protection of private lands from development on the mountain. However, there was not a consensus on a proper federal role in such matters, save for authorizing conservation and non-development easement, which have never been funded. Kitzhaber’s greatest contribution was to leverage his popular image and relationship with Secretary Babbitt to encourage President Clinton to proclaim a national monument, even if Congress didn’t do what the governor wanted.

The Steens Act has served as political incentive for other legislation, in particular the pending Central Idaho Economic Development and Recreation Act, advocated by Rep. Mike Simpson (R-2-ID). Simpson’s chief of staff, Lindsay Slater, was the Walden legislative assistant who worked on Steens.

In short, the Steens Act does not represent a new model for cooperative management of public lands. A model implies an ability to replicate. If there is a take-home message from the Steens Act, one cannot legislate cooperation. Nonetheless, such “omnibus” bills can often be politically viable and often can be in the public interest. It boils down to this: *Can omnibus legislation resolve controversy by giving a critical mass of stakeholders what they care most about by taking away what they care least about?*

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***Clark County Conservation of Public Lands
and Natural Resources Act of 2002 (Nevada)
and
The Lincoln County Conservation
Recreation and Development Act of 2004 (Nevada)
By Kai Anderson, Staff for Senator Harry Reid***

A New Paradigm? – Western Public Land Legislation

During each two-year Congress, congressmen and senators from the West entertain dozens of legislative and administrative proposals related to public lands. These requests vary in complexity and scope from the transfer of a few acres for a community cemetery from the U.S. Forest Service to a county, to reserving more than 5,000 acres of Bureau of Land Management (BLM) property for the creation of a new international airport. Although the more complicated bills can be difficult to move through the legislative process, the relationship between the complexity of a bill and time to passage is not proportional. Indeed, under certain circumstances, controversial, multi-faceted bills can win faster approval than simple but less-compelling bills.

Because legislators, particularly those who do not serve on the appropriate committees of jurisdiction (e.g., House Resources or Senate Energy and Natural Resources), can expect to pass only a few public lands bills in a given Congress, they have a strong incentive to bundle multiple provisions into single bills. In addition, significant federal land ownership in Western states, the presence of polarized stakeholder groups, and the success of Nevada-style omnibus bills make comprehensive bills attractive vehicles for meeting the needs of fast-growing, public land-rich communities in the West.

The political context, debate, drafting, review and successful passage of the Clark County Conservation of Public Lands and Natural Resources Act of 2002 and Lincoln County Conservation Recreation and Development Act of 2004 are the focus of this case study.

The Context – The Driving Forces

Early in 2001, at the beginning of the 107th Congress, the Nevada Congressional delegation faced a full menu of public lands issues left over from the 106th Congress. The political table was set in late 2000 by the passage of two dissimilar, but equally controversial, Nevada bills: The Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act and the Ivanpah Airport Act.

The Black Rock Desert bill, which was included as a legislative “rider” on a year-end omnibus appropriations bill (P.L. 106-554), provided protected status for 1.2 million acres in Humboldt, Washoe and Pershing counties. The acreage included 10

wilderness areas, totaling roughly 750,000 acres, and a National Conservation Area, encompassing 120 miles of the Emigrant Trail from Rye Patch Reservoir to Vya, Nevada and much of trail's viewshed crossing the Black Rock playa. The environmental community praised the bill as a visionary step forward for resource protection, while sportsmen and local leaders vilified it as a federal land lock up. Supporters and opponents alike agreed that the bill was a nearly pure victory for the environmental community; it was neither a compromise nor a consensus.

In contrast, the Ivanpah Airport bill (P.L. 106-362), which directed the BLM to sell roughly 6,000 acres of federal land adjacent to Mohave National Preserve (about 25 miles south of Las Vegas) at fair market value to Clark County, Nevada, represented a nearly total victory for the pro-development community. The legislation required that the land conveyed be used strictly for developing a new international airport. Many southern Nevada leaders touted the bill as the key to the future of travel, tourism and economic growth in southern Nevada, because it would add capacity to complement McCarran International Airport, which nearly doubled its passenger load between 1990 and 2000. The environmental community, which fought to derail the Ivanpah bill, managed only to earmark the revenue generated by the sale of the land for the purchase of inholdings within Mohave National Preserve in California and for the protection of cultural resources in Clark County. In short, conservation advocates, who proposed wilderness designations toward the end of the legislative process, secured very little in the way of environmental protection.

The political make-up of the Nevada Congressional delegation changed in 2001, as Senator John Ensign succeeded Senator Richard Bryan, who retired in December of 2000. The 107th Congress team included two Democrats (Senator Harry Reid and Congresswoman Shelly Berkley) and two Republicans (Ensign and Congressman Jim Gibbons). At the time, one might have predicted that the diverse political philosophies of Nevada's elected federal officials combined with the lingering fallout from the Black Rock Desert NCA and Ivanpah Airport bills would lead to gridlock on Nevada public land issues. Instead, five years later, the Nevada delegation has distinguished itself on public land issues as an effective and cohesive, small-state Congressional team.

The Process – The Clark County Bill

Clark County, Nevada has consistently ranked among the fastest growing municipal areas in America over the past 15 years. Rapid growth, coupled with the relative scarcity of privately-held land, has fueled strong demand for the privatization of federally owned lands in and around the Las Vegas Valley. The majority of land conveyed into private ownership pursuant to the Southern Nevada Public Lands Management Act of 1998 (P.L. 105-263) has been auctioned in master-plan scale blocks.

Many of the prominent issues in southern Nevada in 2001 reflected the tension between growing pressure for additional privatization of federal land for residential and commercial building and concern about the environmental effects of further development. Included among the many requests made of the Nevada delegation were

proposals to expedite the development of specific utility corridors on public lands, calls to set aside land for the newly established Nevada State College at Henderson, and an agreement to end a public land trespass issue for the Las Vegas Metropolitan Police Department. Other specific requests ran the gamut, from direct federal land sale proposals to land exchanges, and from wholesale wilderness study area release to more than 4 million acres of wilderness designation.

In light of the complex and difficult nature of competing requests, the Nevada senators established three significant ground rules: 1) all Clark County public land provisions would be resolved in a single, holistic land bill; 2) specific provisions would move forward only after internal resolution between the senators; and 3) substantial changes to the bill after introduction would maintain the overall balance of conservation, recreation and development. (The entire delegation later adopted this approach for the development of the Lincoln County bill).

These decisions were communicated widely and directly to stakeholders across the political spectrum in public and private meetings. The message was clear: the senators were working together and with all interested parties to draft and enact a comprehensive public lands bill. Given the results of the Ivanpah Airport and Black Rock Desert NCA bills the year before, few doubted the senators' sincerity, commitment or ability to achieve their common goal. As a result, diverse groups participated actively in town hall scoping meetings in the communities of Blue Diamond, Lake Las Vegas and Overton. In each case, more than 100 Nevadans participated in the public meetings.

Delegation staff subsequently convened small group negotiating sessions to reconcile specific outstanding issues. For example, extensive debate and negotiations between the Governor of Nevada, Nevada sportsmen, local and national environmentalists and Congressional committee staff led to the development of a provision to allow wildlife water developments (i.e., guzzlers) within newly designated wilderness. This agreement allowed for more wilderness designation than would otherwise have been politically feasible. This compromise was rooted in the recognition that anthropogenic modifications of the Mohave Desert ecosystem have irreparably modified certain bighorn sheep habitat so that man-made water holes are necessary for the survival of the species and natural functioning of the ecosystem. In the South McCullough range, for example, bighorn sheep can no longer migrate down to the Colorado River during times of drought due to non-stop traffic on U.S. Highway 95 between Searchlight and Boulder City. As a result, guzzlers play a critical role periodically in maintaining the health of bighorn herds in southern Nevada.

Extensive review and modification of provisions prior to introduction of the bill combined with the senators' agreement that changes to the bill would be carefully balanced, created a positive atmosphere for constructive discussions regarding potential amendments to the bill. Stakeholders typically raised only their most important issues, recognizing that gains they might achieve would be balanced by losses elsewhere in the bill. Off-highway vehicle advocates knew that pressing for exemption of an abandoned

jeep trail from wilderness designation, for example, might lead to greater wilderness designation elsewhere in Clark County. On the other hand, the environmental community knew that gaining additional wilderness acreage would likely be balanced by more expansive exclusion of rarely traveled jeep trails.

The Deal – Clark County

Although negotiations and public scoping for the bill began early in 2001, the Senate version of the bill (S. 2612) was not introduced until June 2002, and the House bill (H.R. 5200) was introduced in July 2002. The Senate Energy and Natural Resources Committee held a hearing on the bill at the end of July and reported and placed the bill on the Senate calendar in early October. The House Resources Committee and full House approved the bill in early October. The Senate passed the House version of the bill by unanimous consent.

Enacted provisions that made the final cut included:

Red Rock Canyon Land Exchange – A provision that completed an equal value land exchange between the BLM and Howard Hughes Corporation, which led to enhanced protection of the Las Vegas Valley viewshed, the expansion of Red Rock Canyon National Conservation Area, and the creation of a County open-space park.

Wilderness Areas – Expansion of the Mount Charleston Wilderness and designation of 16 new BLM, National Park Service and Forest Service wilderness areas totaling about 450,000 acres, as well as the release of portions of wilderness study areas (WSAs) not designated by the bill. One area, the Wee Thump Joshua Tree Wilderness, was designated, although it had not been studied by the BLM. Two BLM wilderness study areas in Clark County were not addressed in the bill: Million Hills WSA north of Lake Mead near the Nevada-Arizona boundary and the Mt. Stirling WSA, which is partially in Nye County.

Jurisdictional Transfers – Two jurisdictional swaps, one between the BLM and the Fish and Wildlife Service and the other between the BLM and National Park Service, were included in the bill in an effort to rationalize federal land ownership issues and improve the manageability of such lands.

Southern Nevada Public Land Management Act of 1998 (SNPLMA) Amendments – Expanded the law to allow for land sale revenues to be used for conservation activities on federal land in Clark County; made regional governmental entities eligible for SNPLMA proceeds; and expanded the so-called land disposal boundary to allow for additional development within the Las Vegas Valley.

Ivanpah Airport Corridor – Provided for the conveyance of land around the proposed Ivanpah Airport to Clark County (contingent upon the approval of construction of the airport); established a half mile-wide transportation and utility corridor between the

proposed airport and the Las Vegas Valley; and prohibited mining in areas of critical environmental concern in Clark County for a period of up to five years.

Sloan Canyon National Conservation Area – Created the Sloan Canyon NCA to “conserve protect and enhance for the benefit and enjoyment of present and future generations the cultural, archaeological, natural, wilderness, scientific, geological, historical, biological, wildlife, educational and scenic resources of the Conservation Area.” This provided for the endowment of the NCA through the sale of approximately 500 acres, which later sold for more than \$60 million.

Public Interest Conveyances – Directed the conveyance of 115 acres to the University of Nevada-Las Vegas Research Foundation for the establishment of a research park; transferred title of an 80-acre firearms training facility from the BLM to the Las Vegas Metropolitan Police Department; conveyed 500 acres from the BLM to the City of Henderson for the State College at Henderson; and conveyed 10 acres to the City of Las Vegas for an assisted living, affordable housing development.

Humboldt Project Conveyance – A northern Nevada irrigation project conveyance involving the Bureau of Reclamation to the Pershing County Irrigation District, Lander County, Pershing County and the State of Nevada which was included in the House version of the bill.

Mesquite Land Sale -- Amended the Lincoln County Lands Act of 2000 and the Mesquite Lands Act (P.L. 99-548) to accelerate land privatization and to reimburse the BLM for their costs associated with implementing the law and for the development of a multispecies habitat conservation plan for the Virgin River in Clark County.

The Clark County package included more than a dozen provisions that might have merited introduction as individual bills. However, only one or two of the provisions would likely have won passage as stand-alone bills during the 107th Congress. Together, however, the carefully balanced package of provisions became the highest priority for the Nevada delegation, passed Congress in October, and was signed into law by President George W. Bush on November 6, 2002.

Lessons Learned

The list of provisions enacted in the Clark County bill represents part of the story – the provisions that were dropped from the bill between introduction and final passage and those that never made it into the bill represent the rest of the story. Analysis of these three categories provides insights into the realm of the politically possible and the environment needed for future omnibus land bills.

Some provisions were dropped from the bill due to opposition from the Administration and/or due to the inability of the delegation to finalize legislative language that would satisfy the House Resources and Senate Energy and Natural Resources committees or Nevada stakeholder interests. For example, the conveyance of land adjacent to

Henderson Executive Airport to the City of Henderson for development purposes was dropped because it represented a new type of conveyance that could not be properly vetted by Congress in the short window of time between introduction and passage. Another provision that failed to win inclusion was a conveyance of BLM land to Clark County for the siting of an air-tour heliport. The heliport provision died due to controversy in Nevada among various municipal interests and other local stakeholders. A provision to move a utility right-of-way from private to federal property was dropped because no agreement could be reached on how best to compensate the federal government. Designation of wilderness in the Desert National Wildlife Refuge was not included in the bill from the outset because the delegation was unable to reach a consensus.

The lack of unanimity between the Congressman Gibbons and Senators Ensign and Reid prior to initial introduction of the two versions of the Clark County bill and imperfect bicameral coordination reflected philosophical differences, competing House and Senate committee prerogatives, and the delegation's lack of experience in cooperating together on complex, controversial bills. Substantial differences, such as the inclusion in the House bill of the Humboldt Project Title Transfer title and so-called "hard release language" for the portions of Clark County WSAs not designated as wilderness, sparked controversy within the environmental community in particular. In the end, the differences were patched over and the bill moved forward. The delegation collectively learned the value of resolving controversial issues internally prior to introduction.

The experience led to an improved process during the development of the Lincoln County bill beginning in 2003. Shortly after the passage of the Clark County bill, Congressman Gibbons and Senators Reid and Ensign began working together to develop an omnibus land bill for Lincoln County. The delegation staff traveled repeatedly together to Lincoln County to discuss the Clark County bill model and options for doing similar legislation in Lincoln County. The delegation adopted the approach of resolving major issues in a bicameral, tripartite review process, similar to one forged by the two senators for the Clark County bill. Congressional staff led town halls in coordination with the Lincoln County Commissioners, participated in stakeholder field trips and generally maintained a high level of inter-office communication. This team effort culminated in the introduction of nearly identical bills.

The ultimate test of the partnership was a town hall held to review the bill in Panaca, Nevada, during which Senators Ensign and Reid and Congressman Gibbons each advocated for the totality of the bill despite their personal misgivings about particular provisions. Changes made in response to legitimate issues raised during the review period were carefully balanced to maintain the general tenor of the delegation agreement. In short, each member of the delegation agreed to and defended the deal.

The Deal – Lincoln County

After nearly 18 months of work on the draft bill, the delegation introduced the Lincoln County bill in June of 2004. The relevant subcommittees in the House and Senate held hearings on the bill in July and September, respectively. The House Resources Committee and full House approved the bill in early October and sent it to the Senate. The Senate returned an amended version of bill to the House a week later, and it was passed for a final time by the House in mid-November and signed by the President on November 30, 2004.

Provisions that made the final cut and were enacted as P.L. 108-424 included:

Land Disposal – One provision required the prompt completion of the Mesquite land sales (totaling more than 13,000 acres). Another provision directed the sale of up to 90,000 acres consistent with the Ely Resource Management Plan through a joint selection process involving Lincoln County, municipalities in Lincoln County and the BLM. Land identified for sale through the joint selection process must be sold to the highest qualified bidder at annual auctions. The bill established a fund, modeled on the SNPLMA “Special Account” to reinvest proceeds from the sales according to the following distribution:

- 5% -- State of Nevada Education Fund;
- 10% -- Lincoln Co. for fire protection, law enforcement, public safety, housing, social services and transportation;
- 85% -- special account available for use by the Secretary of the Interior for: inventory, evaluation, protection, and management of archeological resources; development of a multispecies habitat conservation plan for the County; reimbursement to the BLM for expenses associated with land sales; management of the Silver State Off-Highway Vehicle Trail and wildernesses designated by the bill.

Wilderness Areas -- Designated 14 areas encompassing approximately 770,000 acres as wilderness and released 245,000 acres from wilderness study consideration. Wilderness management and release provisions were similar to those used for BLM wilderness areas in the Clark County. Included the designation of two wilderness areas not previously studied for wilderness suitability.

Utility Corridors – Provisions to establish utility corridors for the Southern Nevada Water Authority and the Lincoln County Water District, contingent upon the successful compliance with requirements of the National Environmental Policy Act of 1969. The bill designated rights-of-way for the roads, wells, pipelines and other infrastructure needed for the construction and operation of a water conveyance system in Clark and Lincoln counties. The bill also relocated a utility corridor from the east to the west side of Highway 93, between the Highway 93 and Highway 168 junction and the Kane Springs Road and Highway 93 junction, and stipulated that the private property owners to the east of Highway 93 would pay the federal government fair market value for the subsequent appreciation of their property.

Silver State Off-Highway Vehicle Trail – A section that created and provided for the management of the 260-mile-long Silver State Off-Highway Vehicle Trail in central Lincoln County on existing, open back-country roads. The bill required the development of a Silver State Trail Management Plan to minimize impacts on natural resources and to protect cultural and archeological resources and authorized the temporary closure of the trail in the event of unanticipated degradation caused by trail use.

Open Space Parks – Conveyance of BLM land to the State of Nevada and Lincoln County for use as parks and open space. The conveyance of slightly less than 5000 acres to the state is contingent upon a written agreement between the state and county supporting the transfer of ownership. The conveyances to the county was nearly 15,000 acres and included deed restrictions prohibiting the use of the land for anything other than parks or open space.

Jurisdiction Transfer – A transfer of administrative jurisdiction for 8,382 acres associated with the utility corridor relocated in Title IV from the Fish and Wildlife Service to the BLM. The bill also transferred jurisdiction for 8,503 acres of land from the BLM to the FWS at the northeast corner of the Desert National Wildlife Range.

Conclusion

The development, consideration and passage of the Lincoln County bill benefited substantially from both the specific agreements and general relationships forged in the Clark County bill process. The balanced bipartisan nature of the Nevada delegation helped ensure even-handed committee reviews and the substantial parochial stakes kept the delegation motivated to win passage of the bill.

The biggest obstacle to passage of the bill came when, despite the ardent advocacy of Senators Ensign and Reid, the Senate refused to sign off on the delegation's formula for distributing Lincoln County land sales proceeds (5% for the Nevada State Education fund; 45% to Lincoln County for economic development; and 50% to the Secretary of the Interior for purposes of implementing the bill) and insisted instead upon the 5%-10%-85% land disposal distribution in SNPLMA.

The delegation viewed the Senate imposed formula change as a loss of several million dollars to Lincoln County. The Lincoln County Commissioners believed that the delegation was engaged in a bait and switch maneuver and began to mobilize opposition to the bill. In the closing days of the 108th Congress, the delegation quickly crafted a deal with the committees and interested stakeholders (including the Lincoln County Commission) to take the Senate formula but to make Lincoln County newly eligible for SNPLMA "Special Account" projects. In the end, this provision made Lincoln County eligible for hundreds of millions of dollars in funding (rather than a few million), satisfied the Lincoln County Commission, and paved the way for final passage of the bill.

Although the specific components of omnibus land bills will vary dramatically based on local and regional circumstances, the Clark and Lincoln County bills examples demonstrate that controversial public land issues can be resolved in a timely fashion through a collaborative legislative process. Such resolution is best achieved by working in a bipartisan, bicameral fashion with a wide range of stakeholders to resolve the pressing needs of communities in the West.

Central Idaho Economic Development and Recreation Act of 2005

By Rick Johnson, Executive Director of the Idaho Conservation and Lindsay Slater,
Office of Congressman Mike Simpson

Now the third-fastest growing state in the nation, Idaho is changing fast, yet one thing remains constant: the outdoors is an anchor to core Idaho values. Idaho's people have strong feelings about how Idaho's public lands are managed, and with over 60 percent of the state under US Forest Service or Bureau of Land Management control, Idaho, like most Western states, has complex relationships with its public land, the federal agencies who manage it and who controls what.

Origins of the Effort

The Central Idaho Economic Development and Recreation Act (CIEDRA) originated from discussions regarding wilderness designation for the Boulder and White Cloud Mountains of central Idaho, an area of soaring peaks, majestic valleys and headwaters for four rivers. While the legislation's "omnibus" approach results from a desire on the part of the sponsor, Rep. Mike Simpson (R-ID), to resolve multiple issues, it also results from a practical need to create politics in Idaho of sufficient breadth to make it possible to do what others have been unable to do: pass the first wilderness bill in a quarter century.

While the bill has been criticized for "having something for everyone," this is also how it gained the diverse support of the Custer County Commission, former Governor and Secretary of the Interior Cecil Andrus, former U.S. Sen. James McClure, the Idaho Conservation League and The Wilderness Society.

History of Conservation Designations in Idaho

Wilderness bills have not fared well in Idaho over the past 26 years, even though the state's population is increasingly appreciative of Idaho's outdoors; its economy is diversifying and becoming considerably less reliant on resource extraction; and its status as having the most unprotected roadless land outside Alaska. Wilderness bills aimed at protecting Idaho's outdoors passed in 1964, 1970, 1972, 1975, 1978 and 1980, yet no bill has passed since then, despite many attempts.

Part of the reason for over two decades of stalemate is the magnitude of the challenge. Following the 1980 passage of the River of No Return bill, Idaho wilderness discussions moved from particular places to broader, statewide attempts to "resolve" the issue over millions of acres.

Introduced statewide bills for Idaho, most notably in 1984 and 1988, failed to move forward, in part, because it was simply too difficult to craft a politically viable legislative compromise impacting scores of areas over Idaho's 9.3 million roadless acres, stretching from the Canadian border to Boise, and across central Idaho to Yellowstone

Park. There were just too many “special places” with too many interests conflicted about them to craft a single legislative vehicle.

Legislative attempts to move forward were often reduced to an acreage number, doing little justice to unique values found in each area or the real needs of communities adjacent to them. Other attempts to craft Idaho wilderness bills included mediated negotiations funded by the Idaho State Legislature and work by members of Congress on proposals specific to Idaho’s two congressional districts.

A Changing State

Rep. Mike Simpson was elected to Congress in 1998 after serving as Speaker of the Idaho House of Representatives. While he was well aware of the historic wilderness debates of the district, he was also sensitive to the considerable new challenges facing Idaho’s rural communities. These challenges were all the more poignant when compared to the increasing populations and vibrant economies found in Idaho’s urban areas, particularly Boise, one of the nation’s fastest growing urban areas.

Amidst these changes, conservation politics were changing, as well. The Idaho Conservation League, a statewide organization working on a variety of conservation issues, including long involvement in wilderness protection, began in the late 1990s to advocate wilderness protection for a single area -- the Boulder and White Cloud Mountains. The organization focused on this place because it is relatively well known, is the state’s largest unprotected roadless area, and does not have a commercial timber base, allowing the area to avoid one of the most historically challenging public land issues for Idaho. They built cross-party, grassroots support for the Boulder-White Clouds over several years by focusing on those things they considered to be politically realistic and doable.

The Art of the Possible

As Rep. Simpson focused his attention over many months on what might actually be possible in the context of the Boulder-White Clouds, a number of issues evolved into the substantive framework for the bill:

- Ranchers in the immediate area are highly impacted by litigation and management challenges, including those related to endangered species. The bill offers compensation and will retire key public-land grazing allotments.
- Motorized recreation issues have become the dominant user conflict for the area, and while designating wilderness closes trails, the bill permanently protects many motorized routes that are open today outside the wilderness.
- Custer County is 95 percent public land, has a very limited tax base, and has severely limited financial resources with mining and agriculture declining and demands on services increasing. The bill provides lands to the local governments for public uses and for private sale to developers, resulting in an increased tax base.

- Wilderness advocates will see a designation of more than 300,000 acres, details of which reflect traditional give and take over particular boundaries, and protect the valued high peaks and lakes, as well as strongly advocated wildlife habitat areas. The wilderness is over twice what other Idaho-introduced legislation has proposed in the past.

Discussions and agreements over wilderness that may have seemed impossible in this part of Idaho evolved into the “art of the possible,” because the substantive issues were addressed comprehensively and all the key political constituencies were engaged. Simpson identified the constituencies that could kill the bill, and then created a bill that allowed them to focus on what they got rather than what the others got. Another element of Simpson’s strategy was to not be the advocate for any one interest above the others. Rather, he was a broker between interests, often providing a political reality check, and crafted a bill based on what he believed would ultimately stand in Idaho and pass the U.S. Congress.

Finding Support

As for standing in Idaho, it has worked: polling by a respected firm demonstrates majority support for the package, from all political affiliations, and from all key interest groups. Editorial support is strong. While the bill has been described as having “something for everyone to hate” the breadth of support is arguably drawn from the breadth of the package.

There is, of course, opposition and this, too, comes from both sides. Certain motorized recreation interests simply oppose wilderness so oppose this bill. There is serious concern from majority congressional leadership about the grazing provisions. From the conservation community, there are those who oppose any form of land conveyance or legislation protecting motorized routes. Some conservationists oppose packaging wilderness with other provisions, believing that wilderness bills should be free-standing, separate from other provisions, above such obvious compromise or “political deal making.”

The basic elements of the package have remained consistent though the legislative process, formulated early through many meetings with key interests, though there have been many changes since public release of a legislative “framework” in 2003: the bill’s introduction in the closing days of the 108th Congress in October 2004; reintroduction in the 109th Congress in spring 2005; and reflecting further changes, reintroduction in the summer of 2005. As it was described in the House subcommittee hearing in October 2005, the bill continues to be “a work in progress.”

That said, changes to the bill continue to be based on discussions with key interests, most often in Idaho, rather than through a formal amendment process, and involving the parties who have been engaged, generally speaking, from the beginning.

The Future

The bill is not yet law, but appears to be reasonably on the way, and it has already reshaped how public land discussions take place in Idaho. Having had a subcommittee hearing in October, 2005, the bill is poised for markup in the full House Committee on Resources. Despite broad political support for the bill, politics in the committee present challenges, and these are being proactively addressed at this time. A committee markup is expected in 2006, and assuming passage, CIEDRA would move to a House vote still providing adequate time for Senate consideration by the end of the year.

Concurrent with the Boulder-White Cloud process, in the Owyhee Canyonlands of southwest Idaho, there has been another collaborative process, also involving wilderness and other issues. The Owyhee Initiative is an around-the-table process based on face-to-face negotiations.

While the Owyhee Initiative has come far, it has yet to result in introduced legislation. It has, however, also contributed to a sense in Idaho that new approaches may just work, that in the changing West, it is possible for people to come together and craft packages that work for the majority of the public.

Discussion

As the background hints and the case studies articulate, there is an emerging trend to meld conservation designations with local economic development efforts. As aptly pointed out in the Boulder White Clouds Case Study above, efforts surrounding large, state-wide wilderness designations have been largely unsuccessful in the past 10 years.

In the past, debates over wilderness designations have centered first on whose maps to use and evolved into very public debates over what areas “deserve designations.” The political trade-offs came in several different forms. The easiest of wilderness designations were areas that had low development values – the “rock and ice” designations. Less controversial designations also included areas that were already dominated and recognized for their value as places to recreate. Finally, when conflicts arose over portions of potential designations, the common political compromise was simply to carve-out the area in dispute by granting federal land managers exemptions for wilderness management standards or literally carving out the area from the designation. All of these trade-offs have produced over 105 million acres of land that are permanently protected for future generations.

Today, however, battle-scarred Western lawmakers and communities face a different set of challenges and opportunities with federal land management issues. The case studies indicate how each has found a path to addressing their challenges in a new light. The case studies also show different approaches for developing and marketing the proposed conservation designations. What is clear is that the collaborative approach has changed the nature of the debate.

On a related note, some stakeholders are looking at the economic potential of public land restoration as a result of reduced risk (i.e. forest thinning), increased jobs (i.e. mine reclamation), and increased revenue (i.e. increase in tourism). The Western Governors’ Association has played a key role in promoting this concept through its Ten-Year Forest Health Implementation Strategy.

Common Themes in Each Case Study

While the case studies represent quite different scenarios, there were three themes common to each.

Congressional Leadership

First, in every case, there was strong and determined leadership by at least one member of Congress. This leadership brought different parties together, facilitated negotiations, and developed a compromise that was then pushed through the legislative process. As discussed earlier, previous wilderness designations were driven by conservation campaigns, sometimes paired with a land management planning process that sought to identify key conservation lands. In each case study, it was the legislator

that commanded the power of the agenda and process, not federal land management agencies or interest groups.

Lengthy Conflicts

Second, in each case study, there was a history of resource conflicts with the resolution of the conflict driven by forces outside of the control of the legislative branch. In other words, federal legislators inherited a history of conflict that was finding resolution either through the judicial system or through executive branch actions – two forms of resolution that likely don't parallel what could be accomplished through legislation.

In the case of the Steens Mountain, the negotiated compromises would never have been possible through either an administrative process or the designation as a national monument. An act of Congress was necessary to find solutions given the complex nature of the land ownership patterns, federal grazing laws and deep-seated animosity among various stakeholders. The same is true for the Central Idaho process. Current law, regulations and federal funding simply do not give land managers and stakeholders the ability to systematically and comprehensively address their often disparate concerns. While the challenges facing Nevada were quite different, the combination of land transfers and conservation designations required legislation.

Early Collaborative Process

Finally, the third theme common to all of the case studies was a commitment by all parties to deliberate a compromise well in advance of the traditional legislative process. This investment in collaboration early in the process enabled the legislative process to move forward in an expedited fashion. In the case of Steens and Clark County, the legislation was introduced and enacted within one session on Congress. While CIEDRA remains a “work in progress” the universe of trade-offs have been defined to sufficient detail that it enjoys a critical mass of support from key outside interest groups. Part of the success of the collaborative approach rests with a certain level of trust and confidence in the process. While different factors and desired outcomes motivated each interest to the table, in the end, each interest had to believe it was treated fairly and earnestly in the process.

Divergence – Where the Case Studies Differ

While public land management issues were common to each case study, the specific resource conflict differed. In the case of Steens Mountain, the changing economics of public land grazing and the impacts of these activities on key resources in the area are what drove stakeholders to the table. However, it is recreation-use conflicts and local economic development concerns that are driving the process in Idaho. Finally, both the Clark County and Lincoln County case studies were motivated by a history of conflict over the dominance of federal land ownership itself. The land disposals associated with the Nevada case studies have, on the one hand, drawn the interest of other local officials, while causing a discernable discomfort among many conservationists when applied elsewhere.

The process for finding consensus also differed in each case study. While each effort sought to bring together interests that traditionally have been in conflict, it might be an overstatement to call any of the processes truly collaborative. Certainly they produced consensus legislation. However, it was the forceful leadership of lawmakers insistent on finding solutions that drove interests to hammer out details. A truly collaborative approach would likely have included many more stakeholders to first develop the process and goals of the process before beginning to craft trade-offs that would benefit those involved. In terms of continuing a collaborative approach in the management of the areas, only the Steens legislation included provisions to promote this concept which, to date, has apparently met with limited success.

Overcoming Inertia

The three case studies certainly demonstrate a path towards resolving contentious issues. However, the inertia of entrenched positions in land disputes is formidable. Regardless of whether one approaches the issues from the perspective of a land user or a conservationist, there continues to be certain rewards in maintaining conflict. For example, some BLM lands that continue to be managed as a Wilderness Study Area might guard against a conservation threat, as well as congressionally designated wilderness. Further complicating matters are lingering disputes over the initial catalog of BLM Wilderness Study Areas. For conservation groups focused on these areas, there is little incentive to compromise on wilderness legislation if it involves giving up the status-quo management that is providing the desired level of conservation.¹³ Likewise, for many motorized recreation groups, legislation could result in the closure of certain routes, which may be heavily used but nonetheless are unrecognized by land management plans.

In addition to the status quo rewarding continued conflict, there is inevitably a continual political calibration that takes place on the part of all interests. Some believe it is better to hold out until there is a friendlier Congress or Administration, while others want to use the current political situation as a catapult to gaining ground either through regulations or legislation. One can be certain that each case study, but in particular the land disposals associated with the Nevada case studies, have spawned numerous internal discussions among interests groups weighing the relative merits and drawbacks of this new approach. Many of these calculations and decisions are far beyond the reach of policymakers. However, as the case studies illustrate, there are often factors which alter the stakes and either open or close the door to cooperation and compromise.

The Role of Governors

As mentioned earlier, the three case studies all indicate that strong leadership from a key lawmaker is necessary for this type of legislative strategy to be successful. The role

¹³ See *Quid Pro Quo Wilderness -- A New Threat To Public Lands* by Janine Blaeloch, Western Lands Project and Katie Fite, Western Watersheds Project June 2005 (www.westlx.org/assets/quid-pro-quo.pdf)

of the individual Governors differed in each case study. The relationship between former Governor John Kitzhaber of Oregon and Secretary of the Interior Bruce Babbitt positioned the governor as an important player in the enactment of the Steens bill. In the case of Clark and Lincoln County in Nevada, Governor Kenny Guinn was critical in negotiations related to site-specific matters and generally helped create the critical support in key parts of the state. Finally, in the case of the Idaho legislation, Governor Dirk Kempthorne, while maintaining a strong interest in the process, kept some distance from engaging directly in the negotiations.

Given that more efforts will be undertaken to apply the omnibus concept in other states, Governors should consider what role they can play. One must recognize that federal land policy inherently favors Congress in these matters. However, based on the lessons learned from the case studies, it appears that Governors could play a pivotal role in initiating and moderating a collaborative process that seeks to develop consensus legislation. However, the feeling of ownership by the legislation's sponsor is also key to the success of a bill making it through the legislative process. Given an understanding of the source and history of the conflict combined with a clear appreciation of the politics involved, Governors are uniquely positioned to begin discussions and build trust among stakeholders before an effort enters a legislative phase. Governors also can be honest brokers, when negotiations among stakeholders hit inevitable stalemates.

Conclusion

The omnibus approach to addressing persistent public land conflicts offers a new approach to overcome the stalemate regarding development and conservation of public lands in the West. It also can provide a venue for interested Governors to exercise their influence.

While the omnibus concept has enjoyed a certain amount of success, it is important to recognize there were factors outside of the political process that drove stakeholders to craft a legislative solution. In other words, a certain level of discord and a pending crisis had to form before policymakers and interest groups were willing to commit to a negotiated compromise. It is unclear whether Governors or other elected officials can engage in developing consensus through collaboration if stakeholders are achieving their definition of success in the status quo.

Finally, one cannot underestimate the importance of public land managers in either stoking the flames of controversy or finding solutions before the conflicts become too charged. While there are clearly systemic differences of opinion regarding the value of federal lands in the West, it is clear that Western communities are increasingly seeking local solutions to vexing local issues. The opportunity facing Western Governors is their vision and leadership can help find the way.