

# UTAH PUBLIC LAND USE MANAGEMENT

## REPORT OF FINDINGS & RECOMMENDATIONS



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## PREAMBLE

Public lands managed by federal agencies comprise over 67 percent of the State of Utah. The question of land use management includes issues significantly broader than designating some portion of those public lands as wilderness. Decisions by federal management agencies such as reducing the number of animals permitted to graze on the public lands, opening or closing areas to mineral exploration and development, or designation of park or wilderness areas all have a direct economic, social, and personal effect on all Americans, all Utahns, and particularly those who live in the immediate area. It is the intent of this "Report of Findings and Recommendations" to expand the public debate beyond the question of how many million acres will be wilderness, to include the resolution of numerous collateral issues. The end result will be the submission of The Utah Public Land Use Management Act (UPLUMA) early in the first session of the 103rd United States Congress, hopefully with the unanimous cooperation and co-sponsorship of all members of the Utah Congressional delegation.

Upon completion, this Act shall include minor boundary adjustments to Forest Service wilderness areas, designation of wilderness within the National Park system, designation of wilderness within the Bureau of Land Management system, creation of three new National Conservation Areas including Canyons of the Escalante, San Rafael Swell, and Cedar Mesa, authorization of a land exchange of state school trust lands inside federal reservations, designation of segments of Utah rivers to the Wild and Scenic Rivers System, and designation of Utah trails to the National Trails System.

**WILDERNESS DESIGNATION:** The proposed designation of wilderness on BLM lands has generated a great deal of emotion on both sides of the issue, and clearly it is the most controversial portion of this report. Therefore, wilderness designation will be the principle focus of this document.

Through enactment of the Wilderness Act of 1964, and subsequently the Federal Land Policy and Management Act, the Congress sought to "secure for the American people of present and future generations the benefits of an enduring resource of wilderness." Those acts required federal management agencies to inventory all lands within their jurisdiction and identify areas which are "untrammeled by man," "undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation," which is suitable for wilderness designation to be "protected and managed so as to preserve its natural conditions." However, it is certain that it was not the intent of Congress to use the Wilderness Act to attempt to completely stop the increasing population, expanding settlement, or growing mechanization of the United States. Rather, it was the intent to

preserve some representative portions of lands within the United States in their primitive condition for future generations of Americans. It is not required or even contemplated that every parcel of public lands which meet the statutory qualifications for wilderness would actually be set aside as wilderness. Not all lands eligible are suitable. In determining appropriate areas for designation, it is necessary to apply reason and judgement to reach the decision which provides the best balance of the needs and concerns of both present and future generations of Utahns and Americans.

**Separate consideration of each Wilderness Study Area.** The purposes and intent of the Wilderness Act are most adequately fulfilled if, rather than clustering wilderness into one portion of the state, wilderness areas are scattered throughout the state thus including a variety of ecosystems, representative areas, and recreational opportunities in all portions of Utah. In evaluating federal lands in Utah for wilderness consideration, each and every Wilderness Study Area must be considered separately. The principal considerations must be the resources on the public lands, the most appropriate method of management of those resources, the wilderness values, and the conflicts presented in managing those resources while preserving the wilderness values. One factor in consideration of wilderness designation must be the location of the property, its uniqueness, and its contribution to the overall wilderness system.

A close analysis of the Bureau of Land Management recommendation of wilderness in Utah clearly indicates that Utah's west desert is vastly under-represented geographically and the southwest slickrock area of Utah is significantly over-represented in the proposed wilderness system. Consequently, this analysis and recommendation has reconsidered Wilderness Study Areas located in the west desert and re-evaluated the study areas in the southwest slickrock region. The final result is a more representative and geographically distributed representation of Utah within the National Wilderness Preservation System.

**WILDERNESS INVENTORY DATABASE:** The primary sources of data and information used in the analysis of this Report of Findings and Recommendations are:

1. Utah BLM Statewide Final Environmental Impact Statement, prepared by the Bureau of Land Management.
2. Mineral Summaries - Bureau of Land Management Wilderness Study Areas In Utah, compiled by the United States Geological Survey and the U.S. Bureau of Mines.
3. Various other geological reports issued by the U.S.G.S., U.S. Bureau of Mines, State of Utah, and others.
4. Summary and Recommendation of the Department of Interior to the President including Utah Statewide Wilderness Report by the BLM.
5. Wilderness At The Edge, publication by the Utah Wilderness Coalition.
6. "Resource Development Coordinating Committee Report to Governor Bangerter on the BLM Statewide Draft Environmental Impact Statement."
7. HR 1500, Owens Wilderness Bill.

8. HR 1508, Hansen Wilderness Bill.
9. H.C.R. No. 13, Resolution of Utah State Legislature regarding wilderness in Utah.
10. "Defending the Desert," Analysis and Recommendation developed by the Utah Wilderness Association.
11. Utah Wilderness Designation? The BLM Lands Controversy. Guide to the Issues, by Coalition for Utah's Future/Project 2000.
12. Policy and Analysis Study of the Salt Lake Chamber of Commerce and the Multiple-Use Coalition.
13. Wilderness studies and recommendations prepared by several Associations of Government (AOG's).
14. Hundreds of individual communications from citizens, resource companies, local government officials and others with expertise in wilderness and resource management.
15. Field notes developed during extensive survey of all proposed wilderness areas.
16. Public Hearings on wilderness designation held jointly by Congressman Orton and Congressman Hansen throughout Utah.

It is the conclusion of this Report of Findings and Recommendations that the inventory and review of public lands in Utah, including the Final Environmental Impact Statement, prepared by the Bureau of Land Management, have been legally and factually sufficient and are adequate for Congressional review and designation of Utah wilderness. Further, it is determined that no further statewide roadless area reviews are necessary by the Bureau of Land Management. All public lands in Utah not designated wilderness under this act will be released and returned to non-wilderness multiple-use, and the decision releasing the public lands for non-wilderness uses shall not be subject to judicial review.

**PROCESS OF REVIEW:** The process of analyzing the database and designating wilderness involves more than merely applying the statutory criteria for wilderness qualification. Judgement must be applied both objectively and subjectively and competing interests must be balanced to identify areas most appropriate for wilderness designation. This analysis applied the following process in an area-by-area and issue-by-issue consideration.

1. Determine qualification for wilderness designation based on statutory criteria.
2. Identify resources located on lands under wilderness consideration.
3. Identify and analyze present and future uses of lands and resources.
4. Identify conflicting uses of lands and resources.
5. Balance conflicting uses and determine the highest and best use of lands and resources presently and in the future.

6. Compare wilderness management with other management schemes such as Areas of Critical Environmental Concern (ACEC's) and National Conservation Areas (NCA's).

7. Determine management practices most suitable to optimum management of resources in the present and future.

In applying judgement to identify the highest and best use of lands and resources, numerous conflicts arise which must be resolved. Those conflicts are primarily in two basic categories: 1) factual, or issues conflicts; and 2) use conflicts.

Factual conflicts include legal classification and access to roads and right-of-ways, ownership and development of water rights, impact of wilderness designation on adjacent lands through buffer zones, integral vistas and air quality zones, and access to and use of state and private lands inside the perimeter of wilderness. Use conflicts include primitive verses developed recreation; resource management, including grazing, oil and gas, mining, and mineral development; wildlife management; and conservation and use of cultural, historic and religious resources.

It is not the intent of Congress to use wilderness designation to eliminate or impact the lawful ownership or use of roads, right-of-ways, water rights, adjacent public or private lands, or state or private lands within the perimeter of designated wilderness. Therefore, as outlined within this report, specific language must be included in the legislation designating wilderness in Utah which will resolve these conflicts.

The balancing of conflicting uses requires more subjective reasoning. One major purpose of wilderness is to reserve areas for primitive recreation and solitude, which may only be accessed by foot or horseback. Developed facilities such as access roads, improved paths, camping areas, rest rooms, boat docks, etc. are prohibited. By limiting access and facilities, most citizens including the elderly, children, handicapped, and the poor are almost entirely excluded from use and enjoyment of public lands designated as wilderness. A value judgement is necessary in balancing the interests of the fractional percentage of the public, mostly young, healthy and affluent who use wilderness, and the vast majority of the public who will not use these areas after designation as wilderness.

Many wilderness proponents have argued that the purpose of wilderness designation is much broader than providing for solitude and primitive recreation, that wilderness is necessary to manage and protect the environment, ecosystems, wildlife, habitat, and natural resources. However, numerous other environmental protection statutes, including the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Federal Land Policy Management Act, the Fish and Wildlife Coordination Act, and others were enacted for specific management and protection purposes. In fact, with one possible exception, there is nothing which is mandated or can be accomplished under the Wilderness Act which cannot be accomplished through a typical resource management plan

under the current BLM regulations. While the BLM has authority to withdraw public lands from mineral exploration for a period of several years, only if land is designated as wilderness is it permanently withdrawn from exploration and development of natural resources. A value judgement must be made in evaluating the wisdom of permanently prohibiting future exploration and development of natural resources which may be vital to our nation's economy and security.

It is also argued that pristine natural areas must be permanently withdrawn and "protected" as wilderness now, because "once wilderness is gone, it is gone forever." During the decades of the 1940's and 1950's our nation was engaged in a world war, a cold war and a nuclear arms race. In the 1970's we were held hostage in a worldwide oil embargo. Most of the environmental damage located on the public lands included in the wilderness inventory is from exploration and development of critical resources during those periods. Subsequently, environmental laws and regulations have been implemented and revised and current resource development is subject to much more stringent reclamation requirements.

A value judgement must be made in choosing between solitude and primitive recreation and development of natural resources. If resource development resulted in permanent destruction of pristine natural conditions, it would be a much more difficult choice. However, even the environmental abuses of the 1940-50's exploration period are disappearing through natural reclamation. Even the most ardent wilderness proponents, the Utah Wilderness Coalition, have stated in dozens of references that these impacts are reclaiming naturally. For example, Wilderness At The Edge, Page 279 referring to the UWC's Shafer Canyon Unit states, "Moreover, most of these impacts are not noticeable to the wilderness visitor. The drill sites are more than a decade old and are no longer evident, and the gully plugs are small and appear natural. In many places one must look long and hard to find the vehicle track, since it has been maintained only by the passage of vehicles." Refer to Appendix II for dozens of additional similar quotes.

Minerals and other natural resources are not mobile, they are permanently located in specific places. On the other hand, solitude and opportunities for primitive recreation can be enjoyed in a variety of places. This report recommends additions to the national wilderness system which will provide adequate opportunities for solitude, primitive recreation and other wilderness values without unnecessarily restricting future resource development. Areas with mineral, oil and gas, or other resource potential are generally not recommended for wilderness designation. In the future, after responsible resource development and reclamation, these public lands could again be eligible for wilderness designation if the nation found it necessary to expand wilderness.

The final result of this judgement process is reflected in the recommendations submitted herein. Congressman Orton welcomes any written comments regarding the analytical process, sufficiency of the database, logic of the reasoning, or the objective and subjective judgements, conclusions, and recommendations of this report. All written comments received by November 15, 1992 will receive full consideration in the process of finalizing legislation to be filed in January, 1993.

## Overview of New Legislation

Utah Public Land Use Management Act. In the State of Utah, approximately 67 percent of the land is owned by the federal government and managed by various federal agencies. Over the decades, numerous issues have developed which require Congressional action. Rather than submitting each issue independently for adoption by Congress, one omnibus bill will be submitted to resolve all of the principle land use management issues under consideration. The issues in the legislation will be divided by title, and may be separated and considered independently or en bloc with any other title in the event one or more titles become controversial and bogged down.

### TITLE I

National Forest System Wilderness. There are approximately 779,600 acres of national forest lands in Utah presently designated as wilderness. Management of these wilderness areas over the past ten years since designation has highlighted some conflicts and need for minor boundary adjustments to these areas in order to enhance their management by the Forest Service.

Although there are proposals to dramatically increase the percentage of National Forest lands in Utah designated as wilderness, it is not the purpose of this section of the bill to do so. The boundary adjustments contemplated are those designed to improve management of existing wilderness areas. As a result of minor boundary adjustments, it is possible that some lands currently designated as wilderness would be removed and some lands not currently designated as wilderness would be added to the wilderness system. However, it is anticipated that the net increase or decrease of wilderness within National Forests in Utah will be negligible.

Congressman Orton's office is currently soliciting data and recommendations from the Forest Service, and solicits any additional data or written comments from the public or interested groups regarding boundary adjustments to wilderness designated within National Forests in Utah. Prior to filing legislation, a "Report of Findings and Recommendations" on Title I National Forest System Wilderness will be available for public review and comment.

## TITLE II

**National Park System Wilderness.** The National Park Service manages approximately 1.7 million acres of land in Utah within the boundaries of five national parks, six national monuments, and two national recreation areas. The Park Service has inventoried all lands within the system and recommended that approximately 1,264,000 acres be designated as part of the National Wilderness System.

Within the boundaries of the parks, monuments, and recreation areas recommended for wilderness, there are approximately 90,000 acres of Utah State School Trust lands which, at the option of the State of Utah, should be exchanged and included in the wilderness designation. Including the state lands to be exchanged, the total acreage within the National Park System to be designated as wilderness within Utah would be approximately 1,354,000 acres.

## TITLE III

**Bureau of Land Management Wilderness.** The Bureau of Land Management manages approximately 22 million acres of public lands within the State of Utah. The BLM has conducted an extensive inventory of all public lands under its control within the state and identified approximately 3.2 million acres as Wilderness Study Areas. Following an adequate and sufficient review of each study area, it recommended that approximately 1.9 million acres be designated as part of the National Wilderness System.

Within the perimeter of the areas recommended as suitable for wilderness designation, there are approximately 80,000 acres of Utah State School Trust lands which, at the option of the State of Utah, should be exchanged and included in the wilderness designation. Not including state lands to be exchanged, the total acreage of public lands managed by the Bureau of Land Management to be designated as wilderness within Utah would be approximately 1,176,000 acres.

There are numerous issues and possible conflicting uses of public lands recommended for wilderness designation including but not limited to; water rights, roads and right-of-ways, buffer zones, resource management, and grandfathering of historic uses. The legislation will include specific language to resolve each issue and conflict.

## TITLE IV

**National Conservation Areas.** National Conservation Areas (called NCA's) are special designations created by Congress to protect and conserve nationally significant natural and cultural resources while allowing compatible uses to continue. The NCA concept was developed as a viable alternative to more intensive single use management alternatives.

Three National Conservation Areas are recommended in Utah (see attached maps). The Canyons of the Escalante NCA will comprise approximately 860,000 acres, the San Rafael Swell NCA will comprise approximately 625,000 acres, and the Cedar Mesa NCA will encompass approximately 400,000 acres. Each of these NCA's will be managed under a detailed management plan to be developed by the BLM with public input and following the overall guidance given to the agency by Congress. None of the presently designated Wilderness Study Areas included within the boundaries of the NCA's will be designated as wilderness. However, the BLM will be directed to determine administratively the mix of land uses which will best meet the goals established by Congress for each of these individual areas, and it is anticipated that some portions of these areas will be maintained under roadless or similar designations under the resource management plan.

Congressman Orton's office is currently considering the data and recommendations on NCA's presented by individuals, local elected officials, and interested groups, and solicits any additional data or written comments from the public or interested groups regarding boundary adjustments or management of these new National Conservation Areas. Prior to filing legislation, a "Report of Findings and Recommendations" on Title IV National Conservation Areas will be available for public review and comment.

## TITLE V

**State Lands Exchange.** Hundreds of thousands of acres of Utah State school trust lands are located within the perimeter of National Parks, National Monuments, National Recreation Areas, Indian Reservations, National Forest wilderness areas, Bureau of Land Management wilderness areas, and other federal reservations. The restrictions placed upon the use of surrounding adjacent federal lands results in an effective taking of the state land inholdings which must be compensated.

The legislation will authorize a land exchange of all state lands sections in National Forests, units of the National Park System, Indian Reservations, and designated BLM wilderness areas. The lands will be exchanged, at the option of the state, for other non-reserved public lands of approximate equal value, on an acre-for-acre basis, or sold to the federal government for cash or a revenue stream from developed natural resources such as oil and gas production. In addition, there will be a requirement that a portion of the lands received by the State of Utah in the exchange be located within the same county as the lands traded to the federal government, and the Federal Payment in Lieu of Taxes (PILT) will apply to all lands acquired by the federal government from the state in this exchange.

## TITLE VI

**Wild and Scenic River System.** There are several segments of rivers within the State of Utah which have been proposed for designation under the Wild and Scenic Rivers Act. Among them are:

- Colorado River - Westwater
- Colorado River - Cataract Canyon
- Green River - Flaming Gorge Dam to Browns Park
- Paria River

Congressman Orton's office is currently soliciting any additional data or written comments from the public or interested groups regarding these proposed designations or any others. Prior to filing legislation, all comments submitted in writing will be reviewed and considered and a Report of Findings and Recommendations will be available for public review and comment.

## TITLE VII

**National Trails System.** The National Trails System is an expanding and increasingly important part of public land use management and recreation. These trails, which cross a great variety of public lands are managed by several federal agencies, and are designed to provide an integrated recreational experience which highlights geographic, scenic, and/or historical interpretations with the traditional hiking, riding or driving experience. The following trails are proposed and under consideration for designation as National Historic or Scenic Trails:

Pony Express Trail  
Great Western Trail  
Hole-in-the-Rock Trail  
Trail of the Ancients  
Escalante - Dominguez Trail  
American Discovery Trail  
Union Pacific Rail Trail  
Southern Pacific Rail Trail  
D&RGWRR Trail - Thistle to Marysvale  
Provo - Jordan River Parkway

Congressman Orton's office is currently soliciting any additional data or written comments from the public or interested groups regarding the above proposed designations and any other nominations for addition to the National Trails System. Prior to filing legislation, all comments submitted in writing will be reviewed and considered and a Report of Findings and Recommendations will be available for public review and comment.

## **Specific Findings and Recommendations**

### **TITLE II**

**National Park System Wilderness.** The National Park Service manages approximately 1.7 million acres of land in Utah within the boundaries of five national parks, six national monuments, and two national recreation areas. The principle purposes for establishment of these parks, monuments, and recreation areas are conservation and recreation. Public use of lands within these federal reservations is typically more restricted than public use within wilderness areas, except for mechanized vehicle access and developed public recreational facilities. Therefore, the only conflict to be considered in designating wilderness within the National Park system is between mechanized access to developed recreational facilities versus roadless areas reserved for primitive recreation and solitude.

The National Park Service has inventoried all lands within the system and recommended that approximately 1,264,000 acres be designated as part of the National Wilderness System and managed in the future to preserve the opportunities for primitive recreation and solitude. Within the boundaries of the parks, monuments, and recreation areas recommended for wilderness, there are approximately 90,000 acres of Utah State School Trust lands which, at the option of the State of Utah, should be exchanged and included in the wilderness designation. Including the state lands to be exchanged, the total acreage within the National Park System to be designated as wilderness within Utah would be approximately 1,354,000 acres.

Congressman Orton recommends that the Utah state lands located within the National Park System be exchanged for other public lands within Utah outside the National Park System or other federal reservations. Further, Congressman Orton accepts the recommendation that approximately 1,354,000 acres (including state lands to be exchanged) within the National Park System be designated wilderness and included in the National Wilderness System pursuant to the Wilderness Act of 1964.

Congressman Orton's office is currently soliciting any additional data or written comments from the public or interested groups regarding wilderness designation within the National Park System located in Utah. Prior to filing legislation, all comments submitted in writing will be reviewed and considered.

| NAME               | TOTAL     | RECOM<br>WILDN'S | STATE &<br>PRIVATE<br>INHOLD'S | TOTAL   | %    |
|--------------------|-----------|------------------|--------------------------------|---------|------|
| Arches             | 73,379    | 54,450           | 9,050                          | 63,500  | 86.5 |
| Bryce Canyon       | 35,835    | 16,303           | -0-                            | 16,303  | 45.5 |
| Canyonlands        | 337,571   | 260,150          | 18,720                         | 278,420 | 82.5 |
| Capitol Reef       | 241,904   | 178,815          | 4,050                          | 182,865 | 75.6 |
| Cedar Breaks       | 6,155     | 4,370            | -0-                            | 4,370   | 71.0 |
| Dinosaur N.<br>M.  | 49,637    | 40,348           | 1,093                          | 41,441  | 83.5 |
| Glen Canyon<br>NRA | 1,196,545 | 588,855          | 48,955                         | 637,810 | 53.3 |
| Zion Nt. Park      | 146,597   | 120,620          | 9,040                          | 129,660 | 88.4 |

### TITLE III

**Bureau of Land Management Wilderness.** The Bureau of Land Management manages approximately 22.1 million acres of land in Utah. The Wilderness Act of 1964 and the Federal Land Policy Management Act (FLPMA) directed the BLM to inventory all federal lands within its jurisdiction and determine its suitability for inclusion in the National Wilderness Preservation System. Through an exhaustive process spanning over ten years, the BLM inventoried the entire 22 million acres identifying 3.2 million acres as Wilderness Study Areas qualified for more intensive study, ultimately recommending 1.9 million acres for wilderness designation. Of that 1.9 million acres, the BLM determined that approximately 1.4 million acres was of "paramount" quality and was the best of the land recommended for inclusion when all factors were taken into consideration.

The Utah State Legislature, Governor, and Congressman Jim Hansen either adopted the BLM "paramount" recommendation of 1.4 million acres of wilderness or said this was the maximum acreage which should be designated. The Secretary of Interior recommended to the President and the President recommended to Congress that the BLM recommendation of 1.9 million acres be designated part of the Wilderness Preservation System. Congress is not bound to designate all areas which meet the basic statutory requirements or any minimum or maximum amount of wilderness. In determining the ultimate wilderness designation in Utah, the Congress must exercise both objective and subjective judgement in balancing all competing interests. There are, as discussed below, numerous controversial issues which must be resolved and included in the legislation.

Based upon an extensive review of the data available, and all comments received, Congressman Orton recommends that approximately 1.18 million acres under BLM management be designated for inclusion in the Wilderness Preservation System. Most of the remaining acreage included in the 1.9-million-acre BLM wilderness recommendation is included in Congressman Orton's recommendation for alternative designations other than wilderness in the three National Conservation Areas (Title IV).

A more detailed discussion of the various policy questions and issues follows:

**Roads and Right-of-Ways.** Section 4(c) of the Wilderness Act of 1964 specifically states that there shall be "no permanent road within any wilderness area" and except for the purpose of administration, "no temporary road," and "no use of motor vehicles" within any such area. Section 2(c) of the act, defines wilderness as, "Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (2) has outstanding opportunities for solitude." The concept of "cherry stemming" (simply excluding a roadway from a wilderness area as if it does not exist) or drawing the wilderness boundaries right to the very edge of a roadway, is certainly contrary to the basic intent of the Wilderness Act. To the maximum extent possible, the practice of "cherry stemming" should be avoided.

In order to preserve the original intent of the Wilderness Act and the integrity of the National Wilderness Preservation System, to the greatest extent possible, boundaries should conform to natural boundaries and terrain such as mountain ranges, ridges, hills, valleys, cliffs, and rivers. In compliance with the original intent that areas designated wilderness must be of primeval character and offer opportunities for solitude, and to eliminate conflicts with wilderness values, all wilderness area boundaries should have a minimum standard set-back of 1/8 mile from any road. This set-back requirement could be waived on a case-by-case basis in situations where within 1/8 mile from a road, there is a natural barrier such as a cliff, hill, dense vegetative cover, etc. sufficient to screen or obstruct the sights and sounds of the roadway from the wilderness. The area between the road and the wilderness boundary could, where necessary, be managed by the Bureau of Land Management as an area of critical environmental concern. In addition to preservation of wilderness values, this set-back requirement will also facilitate the future maintenance and improvement of roads without infringing on wilderness or wilderness values.

Revised Statute 2477, 43 U.S.C. Sec. 932 (replaced by 43 U.S.C. Sec 1701 et.sec.) sets forth ownership rights of states and counties for roads and right-of-ways. Nothing in the Wilderness Act of 1964, or the designation of wilderness within Utah, is intended to effect or restrict in any way the rights of the state, county or local governments in use and maintenance of roads and right-of-ways established under this statute. To the greatest extent possible, wilderness area boundaries must be established to avoid right-of-way conflicts. Where an RS-2477 right is established, boundaries

must be set to exclude roads. Where a question exists as to the validity of an asserted RS-2477 right, and the right in question has not been adjudicated prior to Congressional designation of wilderness, if the right is subsequently upheld the wilderness boundary must be adjusted to exclude the right-of-way and the 1/8 mile setback. The legislation will specifically provide that the boundary adjustment will be accomplished administratively and will not require additional Congressional action.

**Water Rights.** Section 4(d)(7) of the Wilderness Act of 1964 states, "nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws." Analysis of the legislative history of the Act indicates that it was not the intent of Congress to supersede or preempt state water laws with passage of the Wilderness Act. Nor was it Congressional intent to take privately owned water rights as part of wilderness. And it is clear, as a general rule, that solitude and primitive recreation are not dependent upon federal water rights. However, recent wilderness bills differ on treatment of state and federal water rights.

To avoid future conflicts between the State of Utah, county and local municipalities, private water users, and the federal government, the Utah Wilderness bill must set forth three absolute provisions. (1) Utah State Water Laws are supreme and there shall be no federal preemption of water rights appropriated under Utah law. The federal government has the right to file on unappropriated water rights under Utah law (just like any other water user), or it may acquire water rights from willing sellers but it cannot simply take water rights appropriated under Utah law without condemnation and payment of adequate compensation. (2) The legislation must contain an affirmative declaration that there is no intent to create a preemptive federally reserved water right. And, (3) to avoid the issue and challenge in the future, in any case where a river or stream with upstream appropriated water rights runs through a wilderness area, the wilderness boundary will be automatically set back to the historic high water mark. The river or stream itself will be outside the wilderness boundary and the area between the bank and the high water mark boundary may be designated as an area of critical environmental concern and managed to preserve the opportunity for primitive recreation. This approach will still ensure the preservation of wilderness and accomplish the purposes of wilderness designation. So long as the intent of wilderness designation is not the taking of upstream appropriated water rights, this limitation should not be objectionable to wilderness proponents.

**Buffer Zones, Integral Vistas, and Overflights.** Thus far Congress has expressly denied legislation creating buffer zones around federally protected areas, and most federal agencies have also specifically refuted the concept of buffer zones. The Bureau of Land Management manual Section 8560, *Management of Designated Wilderness Areas*, at Subsection 8560.19 states:

Buffer Zones and Adjacent Lands. No buffer zones are created around wilderness areas to protect them from the influences of

activities on adjacent land. The fact that non-wilderness activities or uses can be seen or heard from areas within the wilderness does not, of itself, preclude such activities or uses up to the boundary of the wilderness area. When activities on adjacent lands are proposed, the specific impacts of those activities upon the wilderness resource and upon public use of the wilderness area must be addressed in environmental impact statements, as appropriate. Mitigation of impacts from outside wilderness must not be so restrictive as to preclude or seriously impede such activities.

However, there are other regulations and appeals which have been used to create substantial de facto buffer zones around federally protected areas such as parks and wilderness on the basis of line of sight. For example, federal regulations at 43 CFR(10-1-89 Edition) Part 2800 *Right-of-Way Principles and Procedures* at 2800.0-5(x), which apply to all federal lands, (not just wilderness areas) states in part as follows:

Unnecessary or undue degradation means .... that takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity.

The above regulation has been invoked to establish a buffer zone and prohibit otherwise legitimate activities on adjacent land on the basis of aesthetics, not on the basis of biological or scientific criteria or concern. In 1990 the Interior Board of Land Appeals (IBLA 88-373) denied a mining plan of operations in the Mojave Desert in part on the grounds that "the proposed operations would result in undue and unnecessary impairment of the wilderness characteristics of WSA 355..." an adjacent Wilderness Study Area. Although this case indicates that there may have been unnecessary or undue degradation whether or not there was an adjacent Wilderness Study Area, there is concern that an attempt is being made to establish buffer zones around wilderness areas similar to National Parks.

In Utah, Secretary Donald Hodel denied a mining permit to a coal land lessee on the grounds that if the permit were granted, resulting mine operations may be visible from the southern most promontory of Bryce Canyon National Park and, thereby, diminish the park visitor's recreational experience. In excess of nine townships were affected by this decision, including over 12,000 acres of Utah school trust land and vast amounts of state and federal coal which was rendered uneconomic or unavailable.

It is clear that Congress did not intend to artificially extend wilderness management beyond the boundaries of designated wilderness areas. However, it is equally clear that some wilderness advocates are attempting to do just that through

administrative appeals. Therefore, the Utah wilderness bill will include an affirmative declaration that wilderness does not include buffer zones, integral vistas, or air quality zones, and that the presence of wilderness is not intended to restrict the multiple-use or management of adjacent public or private lands.

Federal Aviation Regulations 91.79 state in part: "All aircraft are requested to maintain a minimum altitude of 2,000 feet above the surface of the following: ...Wilderness and Primitive areas administered by the U.S. Forest Service, FAA Advisory Circular (AC)91.36C." "Pilots operating fixed and rotary wing aircraft under VFR over noise-sensitive areas should make every effort to fly not less than 2,000 feet above the surface, weather permitting, even though flight at a lower level may be consistent with the provisions of Federal Aviation Regulation 91.79, Minimum Safe Altitudes." This regulation is sufficient to preserve wilderness values from disturbance by civil aircraft use. However, section 4(d)(1) of the Wilderness Act of 1964 grandfathered the use of aircraft where uses have already become established. Therefore, historic private, commercial and military aircraft uses may continue under wilderness designation, including low altitude military overflights. In light of recent complaints and appeals involving military overflights, the Utah wilderness bill must affirmatively state the continued allowance of such historic uses.

**State and Private Lands within Wilderness Areas.** Ownership and multiple-use of private and state lands within the boundaries of wilderness areas is clearly incompatible with wilderness designation since use of those lands cannot be restricted and will not necessarily be managed to preserve wilderness values. Section 5(a) of the Wilderness Act guarantees that state and private land which is surrounded by public lands designated as wilderness shall be assured adequate access or shall be exchanged for federally owned land of approximately equal value. Section 5(c) authorizes the federal government to acquire from willing sellers private lands within the perimeter of any designated wilderness area.

The federal reservation of adjacent and surrounding lands as wilderness and withdrawal from multiple-use of federal lands effectively prohibits the unrestricted beneficial use of state and private inholdings, and therefore, is a constructive taking of the property by the federal government. The two options for state and private land inholdings provided in the statute are: 1) to retain the lands with guaranteed access; or 2) to exchange or sell the lands to the federal government.

The primary obstacle to resolution of the land inholdings problem is the federal government's reluctance to agree upon the value of land to be exchanged. Wilderness advocates have often defined the lands considered for designation within the National Wilderness Preservation System as of "inestimable value," but when it comes to valuing land inholdings, those same advocates also maintain that state and private lands have negligible value. Further, wilderness designation is the sole prerogative of the Congress and cannot be effected by the owner of land within the designated areas.

Therefore, to resolve the issue of value, the Utah Wilderness bill shall include among others the following provisions: 1) state inholdings may be exchanged at the option of the State of Utah on an acre-for-acre basis for any other public lands not otherwise reserved of approximate equal value within the State of Utah; 2) Private inholdings may be sold or exchanged for equal value at the option of the owner. In the event the federal government does not agree with the owner on value, the owner may request independent arbitration to determine the value.

The Utah Wilderness bill shall define "within the perimeter" to mean bordered on at least two sides by designated wilderness areas.

**Protection and Management of Resources.** The original Wilderness Act of 1964 contemplated and provided for the impact of wilderness designation upon the management of fixed resources. Sections 4 and 5 of the Act specifically grandfathered grazing, and provided for development of mineral resources by grandfathering mining of existing claims and mandating future exploration (as discussed in [G] below). However, the Act does not address management or conflicts with other resources such as cultural and scientific resources or wildlife and vegetation.

Wilderness designation and management specifically to preserve primitive wilderness values is inherently incompatible with most applications of modern scientific management techniques. Therefore, conflicts are certain and the Utah Wilderness Act must clearly identify priorities where such conflicts exist.

**Paleolithic, Scientific, and Ancient & Modern Cultural Resources.** Mechanical exploration, excavation, and transportation of fossils or artifacts would be prohibited in wilderness. Likewise, security patrol and protection from vandalism or theft by mechanized vehicles or aircraft either could be complicated by or would be inconsistent with wilderness and may be prohibited, as could be hardening of sites for preservation. Under wilderness designation and management, even if such resources were discovered, the mechanized access to, excavation of, and research upon fossils or artifacts by scientists would be inhibited as would be development of and access by the public to such sites. For example, Dinosaur National Monument and Quarry could not exist in a wilderness area. A similar discovery of dinosaur and other prehistoric fossils, the Cleveland Lloyd Quarry, is located near the San Rafael Swell area under consideration for wilderness. The largest known concentration of ancient Anasazi archaeological resources is located in Grand Gulch and the Cedar Mesa area also under consideration for wilderness designation.

**Wildlife Resources.** The Wilderness Act section 4(d)(8) states "Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several states with respect to wildlife and fish ...." However, modern wildlife management techniques include vegetation and habitat manipulation, disease

control, winter feeding, population management, patrol and protection, and predator control, all of which are contradictory to if not prohibited by wilderness management. Even when special permission for such management activities is granted within wilderness, the requirement that the "least tool" be used may render application of scientific management practices impractical.

Basic wilderness values of solitude and primitive recreation are not dependent upon wildlife, cultural or scientific resources. Wilderness management is not designed to protect, nor is wilderness necessary to preserve these resources. In fact, the combination of modern management techniques and other designations such as "areas of critical environmental concern" available to BLM under comprehensive resource management plans can most efficiently preserve, protect, and manage these resources and adapted to changing resource conditions.

The presence of such resources is one factor to consider in weighing the highest and best use of public lands. The issue becomes a comparison between the value of solitude and primitive recreation, versus the value of modern wildlife management or the value of modern technology for the protection, preservation, scientific research, education, access to, and enjoyment of cultural and prehistoric resources.

**Preservation of Historic Uses.** The intent of Congress is clear in the Wilderness Act to preserve historic uses of public and private lands. Section 4 specifically grandfathered numerous historic uses such as; 4(d)(1) aircraft and motorboats, (2) prospecting, (3) mining, (4)(1) water and public utilities, (4)(2) grazing, and, (6) commercial services. And under section 5(b) access is permitted "by means which have been customarily enjoyed with respect to other such areas." The Utah Wilderness Act must affirmatively acknowledge historic uses and guarantee access and management under historic and traditional means.

**Grazing.** One activity which the Act specifically directs "shall" continue is grazing. Section 4(d)(4)(2) states, "the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture." The Utah bill will restate affirmatively that grazing will be permitted to continue, and historic means of access and management shall be allowed including maintenance and preservation of water and other facilities.

**Mining.** The continued access to and operation of existing mining claims within wilderness areas is guaranteed under sections 4(d)(3) and 5(b) of the Act. In addition, section 4(d)(2) specifically allows future "prospecting for the purpose of gathering information about mineral or other resources" inside wilderness areas, and requires the Secretary of the Interior and the Secretary of Agriculture to develop a program wherein the USGS and Bureau of Mines shall "survey such

areas on a planned, recurring basis to determine the mineral values, if any, that may be present and the results of such surveys shall be made available to the public and submitted to the President and Congress." Apparently none of the federal agencies managing wilderness have complied with this requirement of the Wilderness Act. The BLM, which has relatively little wilderness yet designated outside Alaska, plans to report under this provision on a twenty year cycle. The UPLUMA must affirmatively restate the rights of continued access and development of existing mining claims and provide that the surveys required by the Act be completed and included as part of each new ten-year resource management plan revision produced by the BLM and Forest Service.

**Cultural and Religious.** The Wilderness Act does not specifically grandfather historic cultural or religious uses of the public lands designated as wilderness. However, there is no indication that the Wilderness Act was intended by Congress to supersede or prohibit such uses. Many public lands under consideration for wilderness designation, such as the Cedar Mesa area, are sacred lands to Native Americans and have been historically used as worship places, or for gathering of herbs and wood. The Utah bill will preserve such historic access and use.

**Highest and Best Use.** The policy statement in section 2 of the Wilderness Act outlines that the purpose for establishment of a Wilderness System is to "assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States," and to "secure for the American people of present and future generations the benefits of an enduring resource of wilderness." In addition, section 4(b) states that "wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." It is not the policy or intent of Congress to use the Wilderness Act to totally stop the expansion of civilization or to prohibit the development and use of resources on the public lands. Nor is it required that all lands currently uninhabited or even all lands which meet the statutory requirements for consideration as wilderness actually be set aside as wilderness. It is clear that many of the most radical proponents of wilderness see it as a tool to micro-manage the public lands rather than, as intended by Congress, to preserve a representative sample of different geographic and biologic areas as they were before they were heavily impacted by the activities of man. In determining whether or not a particular area should be designated as wilderness, all factors and conflicts must be considered, and the balance must be weighed between the benefits of use for primitive recreation and solitude versus any other management and use of the resources on public lands. In short, the highest and best use of each parcel of public land must be determined.

While all public lands contribute in a variety of ways to the generic "public good," such as watershed, wildlife habitat, and etc., there are three broad categories of active human use of public lands; Economic, Recreational, and Scientific or Educational. In determining the highest and best use of any particular parcel, all factors must be weighed in the balance.

**Economic.** There is a broad variety of economic uses of land in private ownership, including but not limited to: residential, commercial, industrial, agricultural, and development of natural resources such as timber, minerals, coal, oil and gas. Each and every one of these activities generate benefits beyond the income to the owner. Most significantly, privately owned property contributes to the state and local tax base, thus providing tax revenues necessary to pay for governmental services including infrastructure and education. To compensate for lost tax revenues on public lands a PILT (payment in lieu of taxes) is mandated by federal and state statute. However, in many cases the PILT does not generate revenue equal to tax on private property and only replaces lost property tax revenues, not income from use of property. The income generated from economic activities on private property is spread throughout the economy as jobs, and goods and services. The impact of federal ownership of land upon state and local economies in western states, where federal ownership exceeds 50 percent and sometimes 70 percent of the state, cannot be comprehended in eastern states where federal ownership seldom exceeds 2 percent or 3 percent.

The economic uses of public lands are limited to leases, royalties on development of natural resources, and tourism. (Although tourism is an economic activity, it is primarily recreational and thus will be discussed separately.) Each of these activities are severely restricted if not prohibited in wilderness areas. The allowance of prospecting and the periodic survey and report by USGS and the Bureau of Mines regarding the existence and value of mineral and other resources as outlined in (G) above will provide information necessary for future re-consideration of areas designated as wilderness. However, since wilderness designation results in a permanent withdrawal of lands from exploration and development of natural resources, it is clear that designation of wilderness, depending upon the amount, will significantly deter future development of natural resources within the State of Utah.

The BLM and various wilderness interest groups have all studied the same data and lands under consideration for wilderness and should apply the same criteria in making their recommendations. However, it is clearly evident that wilderness proponents differ significantly from the BLM in their interpretation of the statutory phrase at Sec. 2(c)(1) "with the imprint of man's work substantially unnoticeable." This difference in interpretation is the primary reason for the tremendous disparity in the acreage recommended for wilderness between the BLM and the Utah Wilderness Coalition.

It is interesting to note that the "substantially unnoticeable" threshold applied by the BLM is considerably higher than that applied by the Utah Wilderness Coalition. Quotes selected from the publication Wilderness At The Edge, which includes the Coalition's description and justification of its wilderness recommendations, are especially illustrative of this difference. In justifying the inclusion of its Nipple Bench Unit, for example, the UWC noted: "The BLM claimed that the unit was impacted by mineral exploration, but these activities took place more than 20 years ago and are difficult to see on the ground."

In its description of the Dirty Devil Wilderness proposal, UWC stated: "Gradually, after decades of erosion, the scattered mining impacts of the 1950's and 1970's are being reclaimed and revegetated. Mud slides and gullies are slowly obliterating the Cotter Corporation's illegal road work on Sam's Mesa, in Happy Canyon and along the Dirty Devil River gorge between Happy Canyon and Twin Corral Canyon." In justifying its Wild Horse Mesa Unit, which was dropped by the BLM, UWC observed: "Further, the vehicle ways described by the BLM are 25 years old and have grown over or simply disappeared due to erosion, making them practically invisible to anyone on the ground." Appendix II of this document contains almost three dozen such examples chosen to illustrate the Coalition's willingness to accept as "substantially unnoticeable" a wide range of impacts of man's activities within areas they propose for wilderness.

The extensive work of the Utah Wilderness Coalition compiled in Wilderness At The Edge proves the fallacy of the argument that "once wilderness is gone, it is gone forever." In fact, throughout the entire inventory, in almost every one of their recommended areas where impacts were noted, the UWC stated that the impacts were "not noticeable," "practically invisible," "reclaiming naturally," or similar characterizations. The evidence seems to reveal that wilderness is not the dwindling resource it is often considered to be, but rather can be recreated through proper reclamation activity or even through natural processes over time.

This conclusion is even more significant in view of the fact that the roads and mining intrusions, which the UWC points out are reclaiming naturally, occurred before we had even minimal environmental laws and regulations in place. These same activities conducted under today's environmental standards and reclamation requirements will return disturbed areas to their natural condition even more quickly than the UWC indicates is occurring through nature. It would be possible to responsibly explore and develop natural resources, reclaim the land, and designate wilderness in the future if the nation found it necessary to expand wilderness.

Since the desire for solitude and primitive recreation can be satisfied in a variety of places while the location of natural resources are "fixed," adopting a "sequential use" perspective could truly put wilderness into the context of a multiple-use of the public land.

In evaluating the wisdom of permanently prohibiting future exploration and development of natural resources which may be vital to our nation's economy and security in favor of setting aside wilderness to provide opportunities for solitude and primitive recreation, a subjective value judgement is required. Therefore, lands in Utah designated as wilderness must not include areas with "high potential" of mineral, coal, oil and gas, or other economically viable resources.

**Recreational.** Recreational use may or may not generate significant revenue for state and local economies. Studies prove that recreation with developed access and facilities unquestionably generates more revenue than primitive recreation. Also, both modern and primitive recreation may be enjoyed in both wilderness and non-wilderness areas. Clearly, recreation is not dependent upon wilderness. However, wilderness is established to provide opportunities for "primitive recreation and solitude." Therefore, the issue in connection with wilderness is "primitive" versus non-primitive recreation. Primitive recreation may only be accessed by foot or horseback, and may not include any developed or man-made facilities, such as rest rooms, camping areas, improved paths, boat docks, or etc. Use of recreational vehicles such as campers, trailers, off road vehicles, or mountain bikes is strictly prohibited by statute in wilderness areas.

By limiting access and facilities, most citizens including the elderly, children, most handicapped, and the poor are almost entirely excluded from use and enjoyment of wilderness areas.

Access and use by the public is but one factor which must be considered in weighing the highest and best use of public lands. Many of those areas which are most scenic, unique, and provide the greatest opportunity for public recreation have already been designated as National Parks, National Monuments, or National Recreation Areas, or should be considered as additions to the National Park System. Most of the National Park System units within Utah are currently managed either as wilderness or under a management plan more restrictive than wilderness. Those areas which do not meet the criteria for the National Park System, but which are located on federal lands should be considered for wilderness designation only when it has been determined that the highest and best use of the land is solitude and primitive recreation.

## ANNOTATED LISTING OF ORTON WILDERNESS RECOMMENDATIONS

1. WSA's recommended by BLM as paramount wilderness also recommended by Congressman Orton

The BLM has identified WSA's which, in its opinion, most closely meet the statutory requirements for wilderness and add the greatest diversity to the Wilderness Preservation System. BLM identifies these WSA's as paramount wilderness.

Following extensive analysis of the BLM data, Congressman Orton has also recommended the following:

| <u>WSA</u> | <u>WSA NAME</u>           | <u>ORTON RECOM</u> |
|------------|---------------------------|--------------------|
| 3          | Deep Creek Mountains      | 57,374             |
| 9          | Notch Peak                | 28,000             |
| 11         | North Wah Wahs            | 36,382             |
| 19         | Parunuweap Canyon         | 17,888             |
| 20         | Canaan Mountain           | 33,800             |
| 24         | Paria-Hackberry           | 59,670             |
| 36         | Mt. Ellen-Blue Hills      | 65,804             |
| 38         | Dirty Devil-French Spring | 61,000             |
| 44         | Little Rockies            | 38,700             |
| 45         | Mancos Mesa               | 46,120             |
| 51         | Dark Canyon               | 68,030             |
| 52         | Butler Wash               | 24,190             |
| 55         | Behind the Rocks          | 12,635             |
| 58         | Horseshoe Canyon (North)  | 20,500             |
| 66         | Desolation Canyon         | 224,850            |
| 72         | Westwater Canyon          | 26,000             |

2. WSA's not classified as paramount areas but still recommended by the BLM for wilderness and also recommended by Congressman Orton.

Beyond the paramount recommendation, the BLM included a number of other areas in its 1.9 million acre overall recommendation to the President. After reviewing the BLM's analysis and the other data and opinions available, Congressman Orton has also recommended areas the following in his proposal.

| <u>WSA</u> | <u>WSA NAME</u>           | <u>ORTON RECOM</u>   |
|------------|---------------------------|----------------------|
| 1          | North Stansbury           | 10,480               |
| 6          | Swasey Mountain           | 34,376               |
| 12         | Cougar Canyon             | (NV-2,180) 4,228-UT  |
| 13         | Red Mountain              | 12,842               |
| 14         | Cottonwood Canyon         | 9,853                |
| 25         | The Cockscomb             | 5,100                |
| 37         | Bull Mountain             | 11,800               |
| 42         | Mt. Pennell               | 25,800               |
| 43         | Mt. Hillers               | 16,360               |
| 53         | Bridger Jack Mesa         | 5,290                |
| 54         | Indian Creek              | 6,870                |
| H          | Arches-Lost Spring Canyon | 3,900                |
| Colorado   | Black Ridge Canyons       | (CO-49,142) 5,100-UT |
| Colorado   | Bull Canyon               | (CO-13,080) 620-UT   |
| Colorado   | Diamond Breaks            | (CO-32,620) 3,620-UT |
| Nevada     | White Rock Range          | (NV-20,245) 3,820-UT |

**3.** BLM areas not recommended for wilderness by the BLM, but which are recommended by Congressman Orton

In two cases, Congressman Orton's analysis and review of all of the data and his balancing of all public policy considerations outlined in the accompanying document, have led him to recommend for wilderness two areas which were not recommended by the BLM.

| <u>WSA</u> | <u>WSA NAME</u> | <u>ORTON RECOM</u> |
|------------|-----------------|--------------------|
| 2          | Cedar Mountains | 50,500             |
| 5          | Rockwell        | 9,150              |

The first of these areas is Cedar Mountains WSA, where he recommended the total 50,500 acres for inclusion in the Wilderness Preservation System. Orton found that the potential conflicts in this area are relatively insignificant and that the area met the minimum statutory requirement for wilderness.

The second area is the Rockwell WSA, where he found that the designation of the total 9,150 acre WSA would result in little significant conflict. In this particularly case, however, the wilderness bill will specifically state that the designation of wilderness shall have no impact on the operation of the nearby Intermountain Power Project or on the utilization of the Little Sahara area by off-road vehicle users and others.

4. BLM WSA's where the BLM recommends part of the WSA as wilderness but Congressman Orton recommends the entire WSA.

| <u>WSA</u> | <u>WSA NAME</u>    | <u>ORTON RECOM</u> |
|------------|--------------------|--------------------|
| 4          | Fish Springs Range | 52,500             |
| 7          | Howell Peak        | 24,800             |

In the case of both of these WSA's, Congressman Orton's analysis of the BLM data and that provided by others showed no apparent significant conflicts throughout the WSA. The entire WSA is recommended for wilderness designation.

5. Areas recommended by the Utah Wilderness Coalition, but which were not included even in part as WSA's but which are recommended by Congressman Orton.

| <u>WSA</u> | <u>WSA NAME</u>                      | <u>ORTON RECOM</u>             |
|------------|--------------------------------------|--------------------------------|
| None       | Notom Bench, South<br>Dogwater Creek | (Both areas Combined)<br>8,400 |

There appear to be few significant conflicts with these two areas.

| <u>WSA</u> | <u>WSA NAME</u> | <u>ORTON RECOM</u> |
|------------|-----------------|--------------------|
| None       | Ragged Mountain | 15,000 App.        |

Approximately 15,000 of the 23,300 acres recommended by the UWC appears to have few significant conflicts and meet the statutory minimum requirement for wilderness designation. Congressman Orton, therefore, is recommending this area even though the BLM did not.

| <u>WSA</u> | <u>WSA NAME</u>         | <u>ORTON<br/>RECOM</u> |
|------------|-------------------------|------------------------|
| None       | Silver Island Mountains | 20,000 App.            |

The eastern portion of the 27,200-acre area recommended by the UWC would be dropped and the remaining area of approximately 20,000 acres will be included in Congressman Orton's wilderness recommendation. Most of the conflicts appear to be located in the area he has dropped from the UWC proposal and there appear to be no significant conflicts in the remaining portion. It appears to meet the minimum statutory requirement for wilderness designation and meets the goal of disbursing designated wilderness areas geographically across the state.

| <u>WSA</u> | <u>WSA NAME</u>        | <u>ORTON<br/>RECOM</u> |
|------------|------------------------|------------------------|
| None       | Newfoundland Mountains | 15,000                 |

Of the 23,300 acre proposal of the UWC, about 15,000 acres appears to meet the minimum statutory requirement for wilderness. It also appears that there are no significant conflicts on these 15,000 acres. Congressman Orton also recommends this area.

## 6. Areas included in National Conservation Areas.

There are a number of areas which were recommended for wilderness status by the BLM but which Congressman Orton instead places in one of three National Conservation Areas which would be established by his bill. These areas would not be designated as wilderness areas within the NCA's. Instead, they would be included in the total land area of the NCA and managed according to the detailed and integrated plan for that area to be developed by the BLM under the guidelines set by Congress. While it is very likely that some of these areas would be administratively managed as wilderness areas, the BLM would have somewhat greater flexibility in their management than they have when an area is formally designated as wilderness by Congress.

Canyons of the Escalante NCA Proposal

The following BLM recommendations are included in this NCA:

| <u>WSA</u> | <u>WSA NAME</u>         | <u>ORTON<br/>NCA<br/>RECOM</u> | <u>ORTON<br/>W'NESS<br/>RECOM</u> |
|------------|-------------------------|--------------------------------|-----------------------------------|
| 29         | Phipps-Death Hollow     | 39,256                         | -0-                               |
| 30         | Steep Creek             | 20,806                         | -0-                               |
| 31         | North Escalante Canyons | 91,558                         | -0-                               |
| 33         | Scorpion                | 14,978                         | -0-                               |
| 34         | Hurricane Wash          | 760                            | -0-                               |
| 35         | Fiftymile Mountain      | 94,010                         | -0-                               |

Cedar Mesa National Archeological and Cultural Conservation Area

The following BLM WSA's would be included in this NCA:

| <u>WSA</u> | <u>WSA NAME</u>            | <u>ORTON<br/>NCA<br/>RECOM</u> | <u>ORTON<br/>W'NESS<br/>RECOM</u> |
|------------|----------------------------|--------------------------------|-----------------------------------|
| 46         | Grand Gulch                | 105,520                        | -0-                               |
| 47         | Road Canyon                | 52,240                         | -0-                               |
| 48         | Fish and Owl Creek Canyons | 40,160                         | -0-                               |
| 49         | Arch and Mule Canyons      | 5,990                          | -0-                               |

In addition, one wilderness area recommended by the Utah Wilderness Coalition (not a WSA) would be included in this NCA:

| <u>WSA</u> | <u>WSA NAME</u> | <u>ORTON<br/>NCA<br/>RECOM</u> | <u>ORTON<br/>W'NESS<br/>RECOM</u> |
|------------|-----------------|--------------------------------|-----------------------------------|
| None       | Comb Ridge      | 15,000 app.                    | -0-                               |

### San Rafael Swell National Conservation

The following WSA's recommended for wilderness by the BLM would instead be placed in the San Rafael Swell NCA:

| <u>WSA</u> | <u>WSA NAME</u>  | <u>ORTON<br/>NCA<br/>RECOM</u> | <u>ORTON<br/>W'NESS<br/>RECOM</u> |
|------------|------------------|--------------------------------|-----------------------------------|
| 59         | San Rafael Reef  | 59,170                         | -0-                               |
| 60         | Crack Canyon     | 25,335                         | -0-                               |
| 61         | Muddy Creek      | 31,400                         | -0-                               |
| 62         | Devils Canyon    | 9,610                          | -0-                               |
| 63         | Sids Mountain    | 80,084                         | -0-                               |
| 64         | Mexican Mountain | 46,750                         | -0-                               |

7. Areas recommended by the BLM for wilderness, but not recommended by Congressman Orton for wilderness or any other specialized status.

The BLM recommended a dozen areas for wilderness status which Congressman Orton does not. After analyzing all of the information assembled by the BLM, the information available from all other sources and balancing the highest and best use considerations as outlined elsewhere in this report, Congressman Orton has determined that the following areas should not be designated as wilderness.

| <u>WSA</u> | <u>WSA NAME</u>         | <u>ORTON<br/>RECOM</u> |
|------------|-------------------------|------------------------|
| 17         | North Fork Virgin River | -0-                    |
| 18         | Orderville Canyon       | -0-                    |

In these two cases, the importance of traditional access and recreational patterns, including hunting, outweighed the value of recommending these relatively small areas as wilderness.

| <u>WSA</u> | <u>WSA NAME</u>            | <u>ORTON<br/>RECOM</u> |
|------------|----------------------------|------------------------|
| 39         | Upper Horseshoe Canyon     | -0-                    |
| 40         | French Spring-Happy Canyon | -0-                    |
| 41         | Fiddler Butte              | -0-                    |

Billions of barrels of critically important oil are contained in tar sands located principally in several areas of Utah. These three WSA's are in the vicinity of a major tar sands deposit. Based on an increasing need for domestic sources of petroleum, and also based in part on proprietary information about how soon these resources could be developed, Congressman Orton has eliminated these three areas to prevent any future potential problems which wilderness designation could cause for the development of the tar sands resources in this area.

| <u>WSA</u> | <u>WSA NAME</u>   | <u>ORTON<br/>RECOM</u> |
|------------|-------------------|------------------------|
| 56         | Mill Creek        | -0-                    |
| 57         | Negro Bill Canyon | -0-                    |

Both of these areas appear to meet the minimum statutory requirements for wilderness designation. However, it is clear from the use patterns of the last several years and the continuing trends in recreational activities developing in the Moab area that wilderness designation for these two areas is not the highest and best use. The tremendous interest in mountain biking, specifically, was unforeseen even a few years ago. It is clear that the Moab area needs opportunities for recreation more diversified than wilderness provides. The needs of those who want a wilderness experience in the close vicinity of Moab can be adequately met by the proposed Behind the Rocks Wilderness and Arches National Park.

In addition, other land management agencies, such as the Forest Service, have found it difficult to manage wilderness in areas of high population density or where recreation demand is very high. The constraints of wilderness designation are so tight that it is very likely that entrance to such areas would have to be limited in the near future to maintain wilderness values. Most of the goals of wilderness designation can be established by the BLM administratively at the same time that some mechanized access, such as mountain biking, is allowed and some greater flexibility is given to develop infrastructure resources such as toilet facilities and drinking water to give more recreational users access to these areas. The legislation will specifically direct the BLM to develop a management plan for these areas which will meet all of these goals.

| <u>WSA</u> | <u>WSA NAME</u> | <u>ORTON<br/>RECOM</u> |
|------------|-----------------|------------------------|
| 68         | Floy Canyon     | -0-                    |
| 69         | Coal Canyon     | -0-                    |
| 70         | Spruce Canyon   | -0-                    |
| 71         | Flume Canyon    | -0-                    |

These WSA's, although included in the BLM's recommended wilderness areas, are not recommended by Congressman Orton because of the potential conflict with oil, gas and coal development. These areas must be left open to determine the extent to which natural resources are present and can be economically developed. The highest and best use of these areas, at least at this time, is to leave them open to multiple-use and development.

| <u>WSA</u> | <u>WSA NAME</u>     | <u>ORTON<br/>RECOM</u> |
|------------|---------------------|------------------------|
| B          | Spring Creek Canyon | -0-                    |

This area, less than 5,000 acres, is used as an important source of drinking water for Kanarraville. Although recommended by the BLM, the potential conflict with this use combined with a determination that it was not of the caliber of most of the area within Zion National Park led to Congressman Orton's recommendation against including it in the Wilderness System.

8. Areas recommended by the BLM as wilderness but which Congressman Orton will recommend be transferred to the National Park Service.

These areas appear to be logical additions to various units of the National Park System. There appears to be little local opposition to their transfer. Once transferred, the Park Service management plan may or may not include these areas within the NPS wilderness recommendation.

| <u>WSA</u> | <u>WSA NAME</u>        | <u>ORTON<br/>RECOM<br/>TO NPS</u> | <u>ORTON<br/>RECOM<br/>W'NESS</u> |
|------------|------------------------|-----------------------------------|-----------------------------------|
| 15         | La Verkin Creek Canyon | 567                               | -0-                               |
| 16         | Deep Creek             | 3,302                             | -0-                               |
| A          | Red Butte              | 804                               | -0-                               |
| C          | The Watchman           | 600                               | -0-                               |
| D          | Taylor Creek Canyon    | 35                                | -0-                               |
| E          | Goose Creek            | 89                                | -0-                               |
| F          | Beartrap Canyon        | 40                                | -0-                               |
| I          | Daniels Canyon         | 2,496                             | -0-                               |
| J          | South Needles          | 160                               | -0-                               |

## APPENDIX II

(This listing of quotes is representative and does not contain all similar statements contained in Wilderness at the Edge. Page number refers to that volume.)

NOTE: The BLM maintains that all areas designated as WSA's are "roadless." What virtually everyone else would recognize as roads or jeep trails in these areas, the BLM calls "ways." Based on extensive review, many of these "ways" are almost certainly RS 2477 right-of-ways under jurisdiction of the county in which the WSA is located.

### **Newfoundland Mountains Wilderness, P. 51**

" . . . but in most places the effects of past mining are not noticeable."

### **Silver Island Mountains Wilderness, P. 55**

"The BLM's inventory decision recognizes that existing vehicle ways do not detract significantly from the wilderness values, but asserts that 'ORV play has left its impression.' Of the eight vehicle ways in the area, seven show no evidence of regular use and no evidence of construction or maintenance. All of these ways are two-wheel ruts with vegetation between them. Those in North Campbell and Lost canyons and those east of Jenkins Peak and west of Lambs Peak are largely revegetated. Their overall impression on the wildness of the area is negligible."

### **Big Hollow Unit, P. 61**

"Our boundary takes in fewer than three miles of vehicle ways that occur in the unit, and these are largely reclaimed and unused."

### **Central Wah Wahs Unit, P. 87**

"About six miles of vehicle ways run into the proposed wilderness. We agree with the BLM that their impact on the naturalness of the area is insignificant."

### **Parunuweap Canyon Unit, P. 115**

"The BLM also allowed illegal road construction and damssite exploration and drilling to occur within the WSA without prosecuting the lawbreakers. The scars of these activities are now recovering, but the BLM nonetheless dropped parts of the affected area from its draft wilderness recommendations."

### **The Moquith Mountain Wilderness, P. 122**

"A sandy way leads to the top of Moquith Mountain and another to the South Fork of Indian Canyon. Vehicles branching off these routes have created ruts and scars in the sand dune areas, but these are slowly being reclaimed by cryptogamic soil and grasses."

### **Mud Spring Canyon Unit, P. 141**

" . . . primitive ways up Headquarters Valley and to an abandoned well in the southeastern part of the unit are substantially unnoticeable."



**Wahweap-Paradise Canyon Unit, P. 154**

"Primitive vehicle ways extend up Death Ridge and into Right Hand Collet Canyon and Escalante Canyon, but for most of their lengths, these ways are primitive, overgrown, and difficult to distinguish from the surrounding countryside."

**Nipple Bench Unit, P. 156**

"The BLM claimed that the unit was impacted by mineral exploration, but these activities took place more than 20 years ago and are difficult to see on the ground."

**Warm Creek Unit, P. 157**

"The BLM dropped Warm Creek from its wilderness inventory, claiming that coal exploration and engineering work for the Kaiparowits power project disqualified it for wilderness designation. But the old jeep tracks and drilling sites, located primarily in the northern and western parts of the unit are slowly returning to a natural appearance after two decades of disuse."

**Fiftymile Mountain Unit, P. 163**

"(The mining road into Rogers Canyon has been abandoned and is largely reclaimed.)"

**Studhorse Peaks Unit, P. 189**

". . . minor bulldozer scars are located within the unit and are slowly healing."

**Mt. Pennell Unit, P. 211**

"First, it claimed that 3,300 acres do not meet the naturalness criterion because of 12 miles of ways and 29.1 miles of roads (BLM, 1986, p. 19). These are, in fact, bulldozer tracks and vehicle ways which are largely unnoticeable in the context of the surrounding wild lands."

**Bullfrog Creek Unit, P. 214**

"In the mid-1950s, a jeep track was put down Bullfrog Creek from Eggnog on the north. This has not been passable for more than 10 years, and there is little evidence of the vehicle way today."

**The Dirty Devil Wilderness, P. 221**

"Gradually, after decades of erosion, the scattered mining impacts of the 1950s and the 1970s are being reclaimed and revegetated. Mudslides and gullies are slowly obliterating the Cotter Corporation's illegal road work on Sam's Mesa, in Happy Canyon, and along the Dirty Devil River gorge between Happy Canyon and Twin Corral Canyon."

**Dirty Devil-French Spring Unit, P. 225**

"Some old uranium exploration roads and landing strips from the 1950s are included, as is Cotter Corporation's illegal 'upgrading' of those scars in the 1970s. Those roads are returning to nature and are generally impassable by vehicles."

**Fiddler Butte Unit, P. 227**

"Significant mineral production from those lands is unlikely; the old roads should be allowed to continue their return to nature."

**Cheesebox Canyon and Harmony Flat Units, P. 232**

"We have included several thousand acres in the Cheesebox unit that the BLM excluded from study; the intrusions are minimal, consisting mainly of old, eroding mineral-prospecting roads and cattle driveways. Imprints in Harmony Flat consist of six miles of cleared fenceline running along Highway 95, an old, closed-off access road from the Highway to Owachomo Natural Bridge (now shown as a 'foot trail' on the USGS map), and a road leading to forest chainings in a state section on the east."

**Little Rockies Unit, P. 243**

"A vehicle way on Trachyte Bench was built in 1979 during the wilderness review. Now unused and returning to a natural condition, most of the route is over sandy scrub terrain, and there are no permanent scars."

**Nokai Dome Unit, P. 251**

"Mining exploration tracks and drill pads in the unit are largely overgrown, eroded, or blown over with sand and do not significantly affect the unit's wildness. If natural reclamation were given some assistance, these scars would continue to fade. Rather than cast out the entire unit because of past bulldozing and drilling in a few areas, we should allow the tremendous wild character of the region to reestablish itself."

**Shafer Canyon and Gooseneck Units, P. 279**

"The BLM dropped both units from wilderness study. The agency claimed that the Gooseneck unit lacked natural character; its inventory documents show two drill holes, two gully plugs, three seismic lines and 4.4 miles of vehicle track. Our field checks indicate that these occupy a total of 22 acres, not the 1,800 acres the BLM claims. Moreover, most of these impacts are not noticeable to the wilderness visitor. The drill sites are more than a decade old and are no longer evident, and the gully plugs are small and appear natural. In many places one must look long and hard to find the vehicle track, since it has been maintained only by the passage of vehicles."

**Mill Creek Unit, P. 302**

"Our boundary takes in some insignificant intrusions: three miles of seismic lines between the forks of Mill Creek, old placer mining near Wilson Mesa, an old vehicle track north of Rill Creek, and several other minor vehicle ways."

### **Mary Jane Canyon Unit, P. 306**

"Our proposal includes several old, unused vehicle ways that are largely reclaimed. Ways leading up from the Professor Valley Ranch, dating from the uranium exploration days of the 1950s, are largely revegetated or eroded away and are difficult to locate on the ground. A few small, abandoned uranium pits are found in the Chinle Formation north of the creek near the ranch. A vehicle . . . was created by repeated ORV use, mostly motorcycles. It serves no comprehensible purpose and should be blocked off and turned back over to nature, which would quickly reclaim it."

### **Fisher Towers Unit, P. P. 308**

"Only a few old seismic lines and drill holes are within our boundary and do not constitute a significant intrusion."

### **Sewemup Mesa Unit, P. 309**

"Our boundary takes in a number of abandoned, impassable, and improperly mapped roads along Sinbad Ridge (mostly in Colorado) and in the saddle separating Sewemup Mesa and Sinbad Ridge."

### **Beaver Creek Unit, P. 310**

"Old vehicle ways on Sevenmile Mesa are reclaiming naturally and are included in our proposal."

### **Granite Creek Unit, P. 312**

"The BLM's inventory unit boundary traced an old road south from the north rim down into the canyon to the site of the old homestead, then followed the creek east to the south fork, eventually leaving the canyon. These roads are overgrown, blocked by landslides, and are washed out in three places. Our boundary incorporates these eroded roads and follows the north rim of the canyon, thus protecting the outstanding features of the canyon."

### **Labyrinth Canyon Unit, P. 326**

"The Spring Canyon trail to the mouth of Hey Joe Canyon is rapidly eroding and is impassable to all but the most determined four-wheelers. It should be closed at the south rim of Spring Canyon and allowed to be reclaimed by nature."

### **Upper Horseshoe Canyon Unit, P. 328**

"Outside the WSA, but within our proposal, is a two-mile-long jeep track across blown sand and grasslands on the Head Spur with no evidence of construction or maintenance, a three-mile-long vehicle way on the High Spur, and a 3.5-mile-long jeep track extending from the Windy Point Spring cherrystem to Water Canyon near the Canyonlands National Park boundary. These intrusions do not significantly detract from the naturalness of the area, and should be included in the wilderness."

**San Rafael Reef Unit, P. 342**

"The intrusions that the BLM used to justify its inventory deletions have but a minor effect on the unit overall naturalness and solitude. For example, the BLM used two dirt jeep trails to drop over 3,000 acres of steep canyons just south of Interstate 70. The trails are less than 7 feet wide and total 5.5 miles in length; they occupy a total area of fewer than 6 acres. They are largely reclaimed since the construction of Interstate 70 which fenced them off and rendered them unusable to vehicles. The BLM deleted about 4,000 acres north of Temple Mountain, claiming that impacts separated this strip of land from the larger roadless area. But the impacts total fewer than 5 acres along a 4.5-mile-long reclaimed jeep trail."

**Wild Horse Mesa Unit, P. 344**

"Further, the vehicle ways described by the BLM are 25 years old and have grown over or simply disappeared due to erosions, making them practically invisible to anyone on the ground."

**Devils Canyon Unit, P. 352**

"Between the WSA boundary and Interstate 70, BLM maps show some routes which have been closed since the freeway was constructed and are no longer noticeable on the ground. Similarly, a route through Link Flats (cited by the BLM) is completely overgrown."

**Turtle Canyon Unit, P. 373**

"Vehicle tracks run a short distance up the canyon bottoms adjacent to Range Creek, and the remains of two seismic tracks, covering fewer than 30 acres, are returning to nature."