



POLICY BRIEF

The Arizona Wilderness Act of 1984: The Gold Standard of Stakeholder Consensus

Introduction

The historic 1984 Arizona Wilderness Act designated over 1.1 million acres of wilderness near the Grand Canyon and, at the same time, released 540,000 acres of federal land for multiple use, including mining and grazing, in adjacent non-wilderness areas. But that historic agreement and the bipartisan consensus it represents is about to come to an end. In 2011, the Department of the Interior withdrew over a million acres of land in Arizona dedicated to multiple use; now, the Obama Administration is sending signals that it plans to carve out another 1.7 million acres in that same area to designate the Grand Canyon Watershed National Monument. These two executive actions will upset the successful multiple-use framework between state and federal agencies that has been a hallmark of land management in Arizona for decades. By undermining the collaborative state and federal land management process, not only will a large part of Arizona be off-limits to multiple use, but also future land policy and planning will be more difficult, specifically when it comes to reaching consensus among disparate groups.

Here in Arizona, advocates for multiple use have always understood the concept of taking care

of the land today in order to have it tomorrow. Farmers, ranchers, miners and others who have lived and worked on the land for generations—many of whom were involved in the stakeholder process leading up to passage of the 1984 Wilderness Act—take seriously their role as stewards of Arizona’s land and natural resources. As such, the ability to reach consensus on land management and planning to preserve both our wilderness areas as well as areas designated for multiple use is essential here in Arizona, where the implications of limiting multiple use are far-reaching. Doing so can undermine not just use and access for Arizona’s cattlemen, sportsmen, and recreating public, but can also impact surface water and groundwater rights, forest health, and access to strategic mineral interests and State Trust land, which funds k-12 education.

Protecting the historic consensus embodied in the Arizona Wilderness Act of 1984 is essential. Without the ability to rely on past agreements or enter into new ones, it will be difficult—if not impossible—to manage our land and natural resources in a way that is in the best interest of all Arizonans.

I. Wilderness Act of 1984: The Gold Standard of Stakeholder Consensus

The Arizona Wilderness Act of 1984¹ designated over 1.1 million acres of wilderness on the Arizona Strip—a diverse section of northern Arizona that includes desert, canyons and mountains that stretches 60 miles from the Grand Canyon up to the Utah border—and released another 540,000 acres of federal land for multiple use development. The precise use of that land was left to the land management planning process, which at that time was overseen by a consensus management process of state and federal partners.

The Arizona Wilderness Act is rightfully called the gold standard of stakeholder consensus. The Act is the product of a historic agreement on wilderness designations and multiple use land policy that involved stakeholders from across the spectrum, including the Reagan Administration, the State of Arizona and Arizona's entire congressional delegation including members from both sides of the aisle, environmental groups, mining industry representation, the Bureau of Land Management, individual ranchers, the timber industry, utility groups, local and state governments, Native Americans, the Forest Service, and others. The group of stakeholders at the table was broad, bipartisan, and approached the issue from every imaginable standpoint. Even given this diversity, upon passage of the Act, stakeholders believed a "win win" had been struck for all interested parties.²

The Act itself allowed multiple use, including grazing, the harvesting of timber, and sustainable uranium mining to co-exist with the protection of some of Arizona's most treasured natural resources.³ All the stakeholders involved in the process, including the congressional delegation and environmental groups, understood that the low-impact method of breccia pipe uranium mining in the multiple use area did not threaten the newly created wilderness areas or the Grand

Canyon itself. For this reason, much of the Arizona Strip was excluded from wilderness designation, and all stakeholders involved fully expected that the future development of those lands would be governed by the land management planning process.

This was not the product of oversight or accident. The land designated as wilderness and the land released for multiple use were the result of finely wrought decisions and long hours of negotiating. Early negotiations featured so-called "unprejudiced maps," meaning that the maps had outlines of BLM wilderness study areas but no lines indicating the preferences of either side. Then-Senator Barry Goldwater, a member of Arizona's congressional delegation at the time of the negotiation, called this an "important" feature of these early discussions.⁴

In addition to the compromise on wilderness lands, the bill contained "negotiated release language," which laid out "the steps for proposing wilderness areas in future public land reviews."⁵ This was essential for future planning related to lands not designated as wilderness areas.

The legislative history of the Arizona Wilderness Act makes clear just how historic the compromise was. According to a House committee report accompanying the precursor bill to the Arizona Wilderness Act:

There is also a great desire on the part of the Bureau of Land Management and all the interest groups concerned to lay the wilderness issue to rest. This is particularly true for those companies engaged in uranium exploration and mining, as the current wilderness status of large acreages in the Arizona Strip constitutes an impediment to rational

*and coordinated exploration and development. Likewise, environmental groups feel that uranium activities should be excluded from certain key areas and that immediate wilderness designation for such areas is far preferable to relying on interim wilderness study protection.*⁶

Russell Butcher of the National Parks and Conservation Association, a private environmental group, was a key stakeholder in the negotiation and said of the process: "Considering the confrontational approach that has marked most wilderness issues, this was real pioneering."⁷ Indeed, Arizona Democrat Bob Stump was a leading sponsor of

the bill, a clear indication of the bipartisan nature since he had never before voted for a wilderness bill in his seven prior years in Congress.⁸

Both sides made concessions. Environmentalists acceded to less-than-full wilderness area designation, agreeing to the release for multiple use of thousands of acres. In exchange, mining industry stakeholders agreed to a more costly process of extracting uranium ore to minimize environmental impacts. But, as Sen. Goldwater said of the process, "[o]nce we got the environmentalists and the ranchers to talk with each other, they found they had a lot of the same goals for managing an area."⁹

II. Unraveling the Consensus: The Obama Administration's 2011 Withdrawal

In 2011, the Obama Administration, through Secretary of the Interior Ken Salazar, withdrew approximately 1 million acres of federal mineral estate in northern Arizona to set aside as wilderness area. The land subject to withdrawal is known for its substantial deposits of uranium, which has important military and commercial uses, especially domestic energy production. As of 2009, the U.S. was still purchasing about 90% of its uranium from other countries, primarily Russia.¹⁰

From the time the 1984 Wilderness Act was passed until the time of the moratorium, mining was conducted in the area "without impacting the Grand Canyon,"¹¹ which is already protected as a National Park.

"A reasonable and healthy balance between the environment and mining can be achieved under existing law without abandoning the collaborative agreement that allowed for the successful 25-year old Arizona Wilderness Act to become law. The Obama Administration's action administratively disrupts that balance, and without any input from Congress,"

Andrew Wilder, spokesman for Sen. Jon Kyl, said of the withdrawal.¹²

And, indeed, this moratorium is not even necessary to protect lands around the Grand Canyon. Unlike copper and coal mining, the mining of hard-rock minerals creates small, discreet mines that cause minimal damage to the surrounding area. A National Academy of Sciences study concluded that regulations governing the mining of hard-rock minerals had been generally effective at protecting the environment.¹³ In 2004, those regulations were further strengthened.¹⁴ And the draft Environmental Impact Statement on the 2011 withdrawal indicated that uranium mineral development would pose little, if any, threat to the park or water quality in the region.¹⁵

Despite this evidence, the Department of Interior proceeded with the withdrawal and moratorium, which covers some 10,000 mining claims. The moratorium did not affect mining exploration and extraction that had already been approved for permitting, but several uranium mining operations that were awaiting environmental permits from

the state at the time of the withdrawal were put on hold.¹⁶

In doing so, the Department of Interior undermined the long-standing agreement on multiple use that had characterized land management in Northern Arizona for the previous three decades.

In response to the withdrawal, Senators John McCain and Jon Kyl, along with a number of other senators and congressmen, wrote a letter to the Interior Department expressing their opposition to the withdrawal and the ban on new claims, warning that permanently banning mining on the land in question would undermine the spirit of the historic agreement that led to passage of the 1984 Wilderness Act. As they wrote, the withdrawal decision "erode[d] the trust needed for diverse stakeholders to reach agreement on how to protect and manage public lands in the future."¹⁷

The withdrawal—in effect a "de facto" wilderness designation—"unravels decades of responsible resource development on the Arizona Strip in a misguided effort to 'save' the Grand Canyon from the same form of uranium mining that environmental groups once agreed to."¹⁸ Worse, it calls into question the Department of Interior's interpretation of wilderness-release language, and it heightens the skepticism of all future wilderness proposals which will invariably face greater scrutiny in light of the message that negotiated agreements "are neither genuine nor enduring."¹⁹

As though the 2011 withdrawal weren't enough, President Obama is now considering a proposal to

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SEN. BARRY GOLDWATER

limit the multiple use mandate on Arizona's lands by using a more than 100 year old law to designate 1.7 million acres of northern Arizona as the Grand Canyon Watershed National Monument. Until 2012, the majority of those 1.7 million acres were successfully managed under a multiple use framework in partnership among state and federal agencies, resulting in effective and productive wilderness, resource, and wildlife management. The proposed monument designation, which was the subject of a January 2016 Arizona Chamber Foundation and Prosper Foundation study, will even further limit the lands available for multiple use, drastically reducing public access, impeding efficient land management, and representing unwarranted and unwanted federal overreach. Moving forward with monument designation now would cast aside that historic compromise and end the collaborative state and federal land management process that Arizona has long enjoyed.

Conclusion

The Grand Canyon is a national treasure that will always be protected. Fortunately, as a designated National Park, the Grand Canyon will be enjoyed and appreciated for generations to come. Unfortunately, the same cannot be said of the historic Wilderness Act. Although this beautiful

example of bipartisan stakeholder consensus was maintained for nearly three decades, the Obama Administration's withdrawal of 1.1 million acres, imposition of a uranium mining moratorium on the area, and move toward the designation of a new national monument in the area has caused

the consensus to unravel. With ever fewer acres available for multiple use and an inability to rely on existing land management agreements, the future of the land driving Arizona's economy is uncertain. The best course, for Arizona's citizens and beyond,

is a renewed respect for the land management and planning process and a return to a standard of bipartisanship and stakeholder consensus. Only that will guarantee a future where all of Arizona's lands—not just the Grand Canyon—are protected.

End Notes

1. Arizona Wilderness Act of 1984, P.L. 98-406, 98 Stat. 1485 (Aug. 28, 1984).
2. Letter to The Honorable Ken Salazar, Secretary, U.S. Department of the Interior from Senator Orrin Hatch et al., Oct. 12, 2011.
3. *Id.*
4. Sen. Barry M. Goldwater, "Conservation Through Consensus," National Parks Magazine, July/August 1984.
5. *Id.*
6. Letter to The Honorable Ken Salazar, *supra* note 2; see also Report 98-643, Part I, Committee on Interior and Insular Affairs, U.S. House of Representatives, March 30, 1984 at 35.
7. "Strip Poker, Agreeing to a wilderness pact," Time, Aug. 8, 1983.
8. *Id.*
9. Sen. Barry M. Goldwater, "Conservation Through Consensus," *supra* note 4.
10. Shaun McKinnon and Erin Kelly, "Mine ban at Canyon may fuel new fight," The Arizona Republic, July 2, 2009.
11. *Id.*
12. Valerie Richardson, "Interior calls 'time out' on mining," The Washington Times, July 21, 2009.
13. Hardrock Mining on Federal Lands, National Academy of Sciences, National Academy Press 1999 at 89-90.
14. 69 Fed. Reg. 131 (July 9, 2004) (notice of rulemaking for "Clarification as to When a Notice of Intent and/or Plan of Operations Is Needed for Locatable Mineral Operations on National Forest System Lands"); see also, generally, 36 CFR Part 228.
15. Northern Arizona Proposed Withdrawal Draft Environmental Impact Statement, Bureau of Land Management, Feb. 2011, available at http://www.blm.gov/style/medialib/blm/az/pdfs/withdraw/deis.Par.72509.File.pdf/03_ExecutiveSummary.pdf; see also Letter to The Honorable Ken Salazar, *supra* note 2.
16. Valerie Richardson, *supra* note 12.
17. Letter to The Honorable Ken Salazar, *supra* note 2.
18. *Id.*
19. *Id.*

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