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WHAT DOES THE GRAND STAIRCASE-ESCALANTE MEAN FOR LAND PROTECTION IN THE WEST? RESOURCE DEVELOPMENT AND ECOLOGICAL PROTECTION

One of the major issues that was raised in the May 1997 symposium, "Visions of the Grand Staircase-Escalante," was the legal obligations the Bureau of Land Management (BLM) owed to companies and individuals that possessed rights to develop resources within the newly created Grand Staircase-Escalante National Monument (Monument), and how the protection of those rights interacted with the protection of the environmental values that were at the heart of the establishment of the Monument. The BLM faces difficult challenges in balancing its traditional emphasis on multiple-use with the clear emphasis given to protection in the Antiquities Act¹ and the proclamation establishing the Monument.²

The primary statute governing the BLM's management of the Monument, the Federal Land Policy and Management Act (FLPMA),³ orders the agency to provide for "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations," including "recreation, . . . wildlife and fish, and natural scenic, scientific and historical values,"⁴ while prohibiting "unnecessary or undue degradation of the lands."⁵ FLPMA directs the BLM to manage public lands according to the multiple-use mandate, to "protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values."⁶ Multiple-use is defined as the "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment."⁷ The proclamation creating the Monument "governs how the provisions of (FLPMA) will be applied within the Monument" and instructs the BLM to manage the Monument "for the purpose of protecting the (scientific, geological, paleontological, archaeological, historical, and biological) objects *568 identified" and subordinates all other values to that goal.⁸

These broad instructions are to guide the agency's decisions concerning the management of the existing rights for mining, grazing, rights-of-way, and other activities. The proclamation provides that the "establishment of this monument is subject to valid existing rights."⁹ Valid existing rights (VERs) are authorizations given to private parties under various laws, leases, and land development filings that existed when the Monument was established in September 1996.¹⁰ The principle is found elsewhere in federal environmental law. FLPMA, for example, provides that the BLM identify lands that might be designated by Congress as wilderness, and manage those lands while they are reviewed for possible wilderness designation, subject to the "continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted" on the date the law took effect.¹¹ However, agency officials were given the authority to "take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection."¹²

Bob Keiter emphasized that the BLM faces several questions when confronted with land claims: 1) Does a valid right exist?, 2) What is the scope and duration of the right?, and 3) To what extent is the right subject to additional regulatory limitations to accomplish the goals of establishing the Monument?¹³ Keiter argued that the BLM is required to allow holders of valid leases to conduct exploration activities within the Monument “subject to reasonable regulation to accomplish Monument purposes.”¹⁴ If the agency prohibited any exploration or development, it would likely trigger a constitutional claim of a taking of private property.¹⁵

Thomas Bachtell and Michael Johnson emphasized that even unpatented mining claims are VERs and private property, subject to constitutional protection against taking without just compensation.¹⁶ Similarly, federal oil and gas leases are also private property interests, as are mineral and oil and gas leases on state *569 trust lands.¹⁷ State trust lands also enjoy an implied right-of-way access through surrounding federal lands, and the BLM cannot regulate federal lands in a way that denies access to state trust lands without effecting a taking of private property.¹⁸ James Rasband has argued that VERs “offe(r) less protection to the holder of a right in federal land than might initially appear” because these rights can be subject to a variety of restraints as long as they do not make economic development completely unprofitable,” and it is an arduous task to succeed in making a takings claim when the federal government is the landowner of a lease.¹⁹

In addition to these constitutional and statutory standards binding the BLM in its management of the Monument, was the express language of the proclamation and its mandate to the BLM to protect the unique resources identified in the proclamation. John Leshy emphasized that the proclamation, unlike others that have typically been quite terse, is “the most complete, exhaustive, and detailed Antiquities Act proclamation that has ever been signed by any president. It extensively described, with considerable care, the natural and historic objects being protected”²⁰ Scott Groene argued that the proclamation clearly articulated that the purpose of the Monument was to protect “natural and historical values” and not to promote tourism.²¹

How well has the BLM satisfied the criteria outlined in the proclamation? I focus on two intertwined issues--VERs and the state trust lands--and explore how the BLM addressed those two issues and how we might assess its efforts.

I. Valid Existing Rights

The establishment of the Monument withdrew all lands in the Monument from new claims, permits, and leases for mining, and provides that existing claims-- VERs--are to be assessed on a case-by-case basis.²² According to the BLM, when the management plan was issued, there were: sixty-eight federal mining claims covering some 2,700 acres, eighty-five federal oil and gas claims covering more than 136,000 acres, and eighteen federal coal leases on about *570 52,800 acres.²³

The plan calls for the BLM to verify whether each claim constitutes a VER and to periodically review the claims to ensure they are held in compliance with relevant laws.²⁴ The agency must validate claims as VERs before claimants can engage in activities that significantly disturb the surface, and may examine VERs in the field to ensure compliance with laws and regulations.²⁵ Once a VER is verified, claimants submit drilling applications to the BLM for an oil or gas lease or a plan of operations for a mining claim.²⁶ The agency then conducts a National Environmental Protection Act (NEPA)²⁷ analysis to assess the impact of the development on the Monument's resources. If the analysis shows no impact or impacts consistent with the proclamation and the plan, the proposal will be approved.²⁸ If impacts are not consistent with the proclamation or plan, the BLM will work with the claimant to find alternatives or modifications

that do not adversely impact, or at least minimize the impact on the Monument.²⁹ If impacts cannot be prevented or minimized, BLM will “disapprove the proposed action if disapproval is consistent with the applicants' rights.”³⁰

The conveyance of state lands to the BLM, which took effect on January 8, 1999, was “subject to all VERs, existing authorizations, and other interests outstanding in third parties . . . including: existing surface and mineral leases.”³¹ The BLM will act “in place of the State in administering all valid existing authorizations for the remainder of the applicable term in accordance with State laws and regulations,” and all federal laws “ordinarily attached to Federal decisions” such as NEPA and the Endangered Species Act³² will also apply.³³

Many of the leases within the Monument have been terminated. The eighteen undeveloped coal leases within the Monument had all been suspended before designation because of ongoing environmental assessments or because of their location in wilderness study areas (WSAs).³⁴ The Andalex Corporation held seventeen leases, covering nearly 35,000 acres, and Pacific-Corp held one lease *571 covering over 18,000 acres.³⁵ In 1989, Andalex proposed to develop a coal mine in the Smoky Hollow area, and spent some \$8 million in preliminary development of the Smoky Hollow mine.³⁶ The BLM was in the process of conducting an environmental impact assessment (EIA) on the proposal when the Monument was designated. The EIA process was suspended, Andalex withdrew its application for a mining permit from the state in January 1997, and the company began negotiating a land exchange with the Interior Department.³⁷ The Interior Department eventually paid Andalex \$14 million and PacificCorp \$5.5 million to relinquish their leases, and those leases were terminated by February 2000.³⁸ Conoco held one hundred eleven oil and gas leases on BLM and state trust lands when the Monument was designated--fifty-two leases on state trust lands and fifty-nine leases on federal lands.³⁹ Despite challenges from environmentalists, the BLM permitted Conoco to begin drilling on its leases within the Monument in 1997, but after drilling at least a couple of dry wells, Conoco assigned fifty-five of its leases to McCabe Petroleum, a Texas company. As of September 2000, eight McCabe leases had been suspended for nonpayment of rentals, and forty-seven remained in effect. Conoco maintained fifteen leases: five have been suspended under negotiations with the BLM and ten leases remain authorized.⁴⁰

Should the BLM continue to allow drilling in the Monument? The overall vision of the management plan provides that the Monument is to remain a “frontier”:

The remote and undeveloped character of the Monument is responsible for the existence and quality of most of the scientific and historic resources described in the Presidential Proclamation. Safeguarding the remote and undeveloped frontier character of the Monument is essential to the protection of the scientific and historic resources as required by the Proclamation.⁴¹

To achieve that goal, the plan creates four management zones: 1) sixty-five percent of the Monument is to “provide an undeveloped primitive and self-directed visitor experience without motorized or mechanized access;”⁴² 2) twenty-nine percent is to be managed to provide the same primitive and self-directed *572 experience “while accommodating motorized and mechanized access on designated routes;”⁴³ 3) two percent of the Monument is to provide throughways and recreation destinations;⁴⁴ and 4) four percent of the Monument is to serve as the “focal point for visitation by providing day-use opportunities.”⁴⁵

About forty-seven percent of the BLM acres within the Monument are to be managed as WSAs, requiring the agency to maintain their wilderness character until Congress takes action.⁴⁶ The Conoco leases are largely located in the first two zones, and clash with the primary purpose of these zones. The Southern Utah Wilderness Alliance (SUWA) has challenged the BLM's decision to allow drilling in these areas.⁴⁷ Rather than allowing those leases to continue to be

developed, the BLM, in order to adequately protect the wild nature of the Monument, needs to legally terminate these leases. Leases can be terminated by offering a cash payment or exchanging them for leases on other lands that represent the same probability of discovering oil and gas reserves.

II. Land Exchange with SITLA

A second challenge facing the BLM has been the state trust lands located within the Monument. When Utah joined the Union in 1896, every second, sixteenth, thirty-second, and thirty-sixth section in each township was reserved to the state as school trust lands to be managed for the exclusive benefit of the “common schools.”⁴⁸ State school trust lands were scattered throughout each township to ensure that states would have a share in whatever value the lands contained. State trust lands are unique; they are not public lands, but are lands set aside for the sole purpose of primarily benefiting the state's public schools. Administrators of the trust have a fiduciary relationship that imposes a duty to ensure they act solely with the interests of the beneficiaries in mind.⁴⁹ The State School and Institutional Trust Lands Administration (SITLA), an independent state agency created in 1994, manages the trust lands.⁵⁰

State and federal officials began negotiating decades ago to exchange state trust lands located within federally protected areas so that these lands could be developed and revenue generated for the trust fund. In 1993, Congress enacted ***573** Public Law 103-93 to facilitate exchanges of state trust lands within national parks, the Navajo reservation, national forests, the Glen Canyon National Recreation Area, and other federal lands in Utah.⁵¹ It authorized up to \$50 million in payment to the state to facilitate the exchange, and instructed the Interior Department to conduct appraisals of the relevant parcels of land.⁵² The process ground to a halt when the appraisals placed a dollar value on state trust lands in Arches National Park. The parties could not agree on the basis for making the appraisals. SITLA, because of its fiduciary responsibility to the trust funds, was obligated to pursue an exchange that reflected the highest value for the land, such as selling or leasing it for cabin sites or businesses that would be worth thousands of dollars an acre, given their location in a national park.⁵³ In contrast, the BLM argued that, in terms of an appraisal, the highest and best use of the land was for grazing, at \$35 per acre.⁵⁴ The negotiations collapsed because the parties could not agree on the basic assumptions to use in valuing the lands.

When the Monument was designated and President Clinton pledged that the federal government would work with the state to address the trust lands issues, the parties decided not to do formal appraisals, but to focus on the resources in the Monument and to find BLM lands outside the Monument that contained equivalent resources. These negotiations were part of a long-term effort by the state to identify lands that could be swapped, and it already had identified areas containing coal, coalbed methane, speculative oil and gas, other minerals, and surface land value.⁵⁵ Some possibilities for federal-state land exchanges had been identified by the Project Bold effort initiated in the 1970s by then governor Scott Matheson.⁵⁶ The state and Interior Department negotiations, built on decades of efforts to identify possible land exchanges, culminated in the agreement struck in 1998. The \$50 million cash payment that had been authorized in the 1993 law was given to the state in exchange for the national park and other lands identified in 1993 and not expressly for the Monument lands.⁵⁷

The land exchange between the federal government and the state of Utah completed in January 1999 was the largest land transaction in the continental United States since the Louisiana Purchase, and ended some sixty years of ***574** conflict over trust lands.⁵⁸ The federal government received some 377,000 acres of land, giving it authority to manage all the lands within the Grand Staircase Monument as well as lands in some of the other national monuments and parks within the state.⁵⁹ The state received about 139,000 acres of land and mineral rights, lands that are consolidated and have much greater financial potential for development than those within the national monuments and parks, plus \$13 million in the future from the proceeds of federal coal to be mined, and \$50 million in cash.⁶⁰

SITLA will become a major producer of coal in Utah, and coal production on trust lands may eventually account for fifty percent of Utah's total production.⁶¹ The total assets of the state school fund grew from \$84.5 million in 1994 to more than \$200 million in 1999.⁶²

The legislation authorizing the land exchange indicated that the state of Utah and the Interior Department agreed to avoid considering conveying federal lands that included “significant wildlife resources, endangered species habitat, significant archaeological resources, areas of critical environmental concern, coal resources requiring surface mining to extract the mineral deposits, wilderness study areas, significant recreational areas, or any other lands known to raise significant environmental concerns of any kind.”⁶³ The law included a congressional finding that the agreement, taken as a whole, conveys interests to the state of Utah and to the federal government that are “approximately equal in value.”⁶⁴

How well did the Department of the Interior and the state do in addressing this issue? Participants in the negotiations defended them as a fair deal, the result of both sides willing to negotiate and give up some things in order to get an agreement. Brad Barber, deputy director of Governor Leavitt's Office of Planning and Budget and the state's chief negotiator, argued that the agreement *575 was “absolutely” a “fair deal” because both sides negotiated a middle ground between what both sides believed the land was worth.⁶⁵ Negotiators considered both comparable sales--the prices paid in sales of similar parcels of land--and the value of state lands if developed for uses such as cabin sites, versus the value to the federal government if the lands were preserved in national parks or as wilderness areas.⁶⁶ Both sides apparently believed that the state did well in the negotiations.⁶⁷ Governor Leavitt projected that the deal might yield as much as \$1 billion in revenues to the trust fund, and Secretary Babbitt joked that he should fire his negotiators for giving the state such a generous exchange.⁶⁸

Land appraisals are like opinions, some are better, more convincing than others. It is impossible to produce objective assessments in situations such as the state trust lands within federally protected lands, since the purpose of appraisals is to mirror the prices that would be charged in a functioning market. Appraisals are so dependent on the assumptions made, and there is such a wide range of possible and plausible assumptions, that little agreement is likely. As a result, appraisals may contribute to conflict, rather than help resolve disputes. Appraisals as provided for under current laws, regulations, and agency policies do not give parties the flexibility to find agreement.⁶⁹ The controversy surrounding the BLM's appraisals appear to be classic examples of the dilemma; appraisers like Jack MacDonald believe appraisal standards are clear and should be applied, and critics argue that he and others need to be more “creative” and “flexible.”⁷⁰

Appraisals and the entire process of land exchanges--the system that has repeatedly bogged down in Utah--are irremediably flawed, according to some observers. The system of appraisals and negotiations are complex, time-consuming, and labor intensive. Lawsuits challenging exchanges are common. Little information is available to permit public scrutiny. Developers have frequently been able to manipulate the system to produce unfair returns. Instead of land exchanges, these critics argue that public land agencies should simply allow the direct sale and purchase of lands, with revenues placed in a trust fund, so that market prices, rather than appraisals, are used to exchange lands.⁷¹ A June 2000 report by the United States General Accounting Office (GAO) on land exchanges concluded that the United States Forest Service and BLM had “given more than fair market value for nonfederal lands they acquired and accepted less *576 than fair market value for federal land they conveyed,” and had failed to demonstrate that these exchanges “served the public interest.”⁷² Part of the problem, according to the GAO, was the reliance on land exchanges, rather than buying and selling the lands in question so that fair market prices could be determined, and the difficulties in assessing unique lands. It recommended that Congress consider ordering the agencies to discontinue land exchanges because of the inherent difficulties in such transactions. The report examined one exchange in Utah but did not address the Monument-related exchange enacted by Congress.⁷³

Critics of the Utah land exchange, such as former chief appraiser for the Utah office of the BLM, Jack MacDonald, charged that the state and the BLM conspired to give the trust lands assets worth fifty to a hundred times what they ceded to the federal government. MacDonald argues that the value of the trust lands involved in the exchange was from \$70-80 million, and that the Grand Staircase and other land exchanges were “not only unethical but probably illegal.”⁷⁴ He believes that the state gave up lands of minimal value for federal lands with significant development potential, and the deal simply failed to exchange lands of equal value.⁷⁵ Others, such as Janine Blaloch of the Western Land Exchange Project, a group in Seattle that monitors land exchanges, said the Utah exchanges “are the worst” of any in the nation and the state was “making out like a bandit” in this and other land deals.⁷⁶

Another critic of the land exchange argued that southern Utah counties were “sacrificed” in the process.⁷⁷ According to one local member of the state legislature, “We’d always hoped we could leverage those trust lands for the benefit of our local economies. What the governor has done is take that opportunity away forever.”⁷⁸

Despite these potential problems, the land exchange ought to be viewed as a success. In order to preserve the natural values in the Monument, the BLM must be able to manage the lands as a whole, and avoid the fragmentation that comes from having inholdings. The assumptions and conditions that led to the establishment of state trust lands in 1896 no longer hold. The lands in the Monument are valuable because of the scope and size of these largely roadless, isolated, undeveloped areas. The theory of state school trust lands was that they *577 should be distributed throughout federal lands so whatever value is present in the lands, including the value of preserving wild lands, the state schools get, on average, one ninth. The state gets what the federal government gets; if it does not extract the resources from the Monument and in so doing protects aesthetic, recreational, scientific, cultural, and biological values, then the state trust lands make a similar contribution to social welfare. That is an attractive option, because not only does it recognize the interest of the children (and all residents) of the state in preserving wild lands, it also avoids the problems inherent in tapping the federal treasury to solve state disputes where there may be little incentive to protect the interests of the nation’s taxpayers.

Another option is to recognize that preserving these wild lands is of benefit to the entire nation, and the state trust lands should be paid for their contribution to this public good. Some would reject any effort to place a dollar value on preserving desert or any other ecosystems, preferring instead to think of them as priceless natural endowments. But, for better or worse, in American society a price tag is usually attached to the things we value. If we value biodiversity, we should be willing to pay to preserve it. By negotiating a cash payment for the state trust land, the federal government affirms that preserving desert ecosystems is an important public purpose for which it, on behalf of all Americans, should offer compensation. There is growing interest in trying to identify the value of ecosystems to our economic wealth, and, while still underdeveloped, methodologies are being developed that provide a beginning point for negotiating a payment for state trust lands and their role in conserving desert biodiversity.⁷⁹

The second option is not only politically more popular than the first, but is also a rational way to proceed given the national importance and value of protecting wild lands. There is still the task of defining what constitutes fair land exchanges and buyouts of trust lands and valid existing mining and oil and gas rights, to ensure that benefits of the exchange do not outweigh the costs, and that financial resources are conserved so they are available wherever exchanges are needed.

III. Implications for Future Public Land Issues in Utah and Elsewhere

Decisions about how to manage VERs, land exchanges, and other issues *578 are still on the agenda as the state seeks to respond to the opportunity of protecting additional federal lands. The 1998 agreement did not resolve all

exchange issues, and SITLA and federal officials continue to explore options for land exchanges. These issues also appear in the bills proposed to designate wilderness areas on the BLM lands in Utah. While federal law provides for land exchanges of equivalent value or just compensation based on fair market value, these standards allow only a narrow consideration of the economic value of the state lands to be exchanged. Many are surrounded by WSA lands where little current development has occurred, so their economic value is minimal. For this analysis, the extent of the mineral resources, the problems in extracting them, their likely current market value, and the present value of future revenue-producing development are all relevant. But a much broader assessment is needed, along the lines of the land exchange. Federal land exchanges are to be for “equal value,” based on “fair market value”(FMV).⁸⁰ The most reliable way to determine the FMV of lands is to conduct a comparable sales analysis.⁸¹ But several conditions must be present in order to take a comparable sales approach. It requires a public market, so information necessary to make comparisons is available.⁸² Sales must be representative, requiring some historical data, but also current enough to provide contemporaneous comparisons.⁸³ There must be knowledgeable buyers and sellers who voluntarily buy and sell.⁸⁴ It requires market research on comparable sales, identification of a common measure such as the cost per ton of coal produced, comparison of the different properties and an assessment of their characteristics. But it is often difficult to find comparable transactions with truly comparable properties. There may be too few transactions to compare, or too distant in time or place.⁸⁵ Lands are so unique that strict comparisons are difficult.⁸⁶ Adjustments must be made for differences between the lands being compared, to account for the quantity and quality of the minerals. Analyses typically assess the quantity of the mineral and then make adjustments, based on the quality of the deposits.⁸⁷

An analysis limited to projections of income fails to identify the value of lands as wild, undeveloped areas. It also fails to provide a basis on which a *579 political compromise can be fashioned for resolving the disputes created by the designation of the Monument and for the other conflicts surrounding wilderness preservation in Utah. A broader political analysis is needed, as is a process to produce that kind of an analysis. The federal government's appraisal criteria needs to be expanded to include aesthetic, biological, cultural, recreational, scenic, and preservation values.

There is some legal precedence for broadening the assessment of the state trust lands in addition to the 1999 legislation. In a 1993 decision, the Utah Supreme Court ruled that the administrators of the trust lands could take actions to preserve unique archaeological, paleontological, and scenic characteristics of the land without violating their duty to beneficiaries.⁸⁸ The court concluded that, while the primary objective of managing the trust lands is to maximize their economic value, that did not require maximizing short-term economic returns, and invited the administrators to find ways to balance the values.⁸⁹ Administrators should recognize that some lands have unique scenic values and act to protect them through appropriate restrictions on development, but these restrictions should not diminish the economic value of the lands. If development is not compatible with preservation, administrators should consider exchanges of the trust lands with other state lands.⁹⁰

These actions have all raised perplexing questions about how to balance preservation, recreation, and resource development, and how to bring the relevant parties together to make these and other decisions. These policy choices can be framed in terms of cost-benefit analysis.⁹¹ When lands are proposed for preservation, the costs of protective designations are the foregone business profits, jobs, general tax revenues, royalties on resources, and other measures of the economic health of nearby communities. The benefits of protection are usually measured in terms of protection of biodiversity and habitat, preservation of historical and cultural artifacts and sites, providing the aesthetic and spiritual benefits of wilderness opportunities, and creating new tourism opportunities. These costs are usually assumed to be easily quantified and expressed as dollar values. The benefits are usually assumed to be, with the exception of tourism, very difficult or even impossible to quantify or express in dollar values. As a result, preservationists often resist the use of any kind of a cost-benefit analysis because it is inherently biased against the kinds of values they seek to protect.⁹² However, the intuitive appeal of some kind of cost-benefit analysis is difficult to *580 ignore. Policy makers regularly

make judgments based on a rough, practical analysis of costs and benefits. An assessment of the value of the state trust lands, and the lands in general in the Monument shows, I am convinced, that the costs of preservation--foregone resource extraction--are much less concrete and easily quantifiable and the benefits of preservation are more concrete and identifiable (although not easily quantifiable) than is commonly believed.

The problem is ultimately one of politics, and the challenge is to develop our capacity for democratic decision making, one that includes a wide range of interests rather than being dominated by economic ones. Such negotiations could focus on a broad discussion of the mineral and preservation values. Balancing preservation and mineral development is not an economic or geologic issue, it is a social, cultural, economic, and political issue and it therefore requires a political solution. The assessment of these factors is a political judgment that needs to reflect a broad range of concerns and interests, and be pursued in a way that is inclusive and participatory. This assessment of the costs and benefits of preservation does not reduce variables to dollar values, but seeks a full disclosure of values and true costs of development, including the subsidies to extractive industries and the environmental costs when natural resources are damaged. The progress made in finding a solution to the problems of inholdings in the Monument ought to be able to serve as a model, or at least a prod to move forward the efforts to protect wilderness lands in the state. Solutions like these will help to balance preservation with efforts to reinvigorate southern Utah economies as they move from extractive industries to other forms of economic activity that are more compatible with the state's unique natural resources.

IV. Conclusion

The issues raised by the mineral resources within the Monument, and particularly those located under state trust lands, are an important key to developing a political compromise surrounding the Monument and the broader debate over wilderness in Utah. Finding some common ground over the management of these lands is critical for their future, since federal agencies lack the resources and authority to protect the lands unilaterally, and require the cooperation and participation of state agencies. A compromise over state trust lands elsewhere, like the one in the Monument, can help soften local opposition to the creation of the Monument and perhaps even generate new support for protecting the lands. Agreement over how to deal with the state trust lands can also help deflect congressional attacks on the Monument and even provide a base on which subsequent negotiations concerning other proposed wilderness areas in Utah might be built.

Footnotes

- a1 Director, Natural Resources Law Center, University of Colorado School of Law.
- 1 The Antiquities Act of 1906, Pub. L. No. 209, 34 Stat. 225 (1906) (codified at 16 U.S.C. §§ 431-433).
- 2 Exec. Procl. 6920, 3 C.F.R. 64 (1997). The proclamation is reprinted at page 515.
- 3 43 U.S.C. §§ 1701-1784 (2000).
- 4 Id. § 1702(c).
- 5 Id. § 1732(b).
- 6 Id. § 1701(a)(8).
- 7 Id. § 1702(c).
- 8 Grand Staircase Escalante National Monument Approved Management Plan Record of Decision 1, 3 (U.S. Dept. of Int., Bureau of Land Mgt. 2000) (hereinafter Grand Staircase).
- 9 Exec. Procl. 6920, 3 C.F.R. at 67.

- 10 Grand Staircase, *supra* n. 8, at 50 51.
- 11 43 U.S.C. § 1782(a).
- 12 *Id.* § 1782(c).
- 13 Robert B. Keiter, Defining a Legal Framework for BLM Management, in *Visions of the Grand Staircase Escalante* 89, 93 (Robert B. Keiter, Sarah B. George & Joro Walker eds., Utah Museum of Nat. History & Wallace Stegner Ctr. 1998).
- 14 *Id.* at 95.
- 15 *Id.* at 94 95.
- 16 Thomas W. Bachtell & Michael S. Johnson, Private Industry and Its Access Rights, in *Visions of the Grand Staircase Escalante* 121, 122 (Robert B. Keiter, Sarah B. George & Joro Walker eds., Utah Museum of Nat. History & Wallace Stegner Ctr. 1998).
- 17 *Id.* at 123.
- 18 *Id.* at 123 24.
- 19 James R. Rasband, Utah's Grand Staircase: The Right Path to Wilderness Preservation, 70 U. Colo. L. Rev. 483, 518 20 (1999).
- 20 John D. Leshy, Putting the Antiquities Act in Perspective, in *Visions of the Grand Staircase Escalante* 83, 87 (Robert B. Keiter, Sarah B. George & Joro Walker eds., Utah Museum of Nat. History & Wallace Stegner Ctr. 1998).
- 21 Scott Groene, Protecting Environmental Values, in *Visions of the Grand Staircase Escalante* 127, 129 (Robert B. Keiter, Sarah B. George & Joro Walker eds., Utah Museum of Nat. History & Wallace Stegner Ctr. 1998).
- 22 Grand Staircase, *supra* n. 8, at 51.
- 23 *Id.*
- 24 *Id.*
- 25 *Id.*
- 26 *Id.*
- 27 42 U.S.C. §§ 4321 4334 (1994).
- 28 Grand Staircase, *supra* n. 8, at 52.
- 29 *Id.*
- 30 *Id.*
- 31 *Id.* at 54.
- 32 16 U.S.C. §§ 1510 1544 (1994).
- 33 Grand Staircase, *supra* n. 8, at 54.
- 34 U.S. General Accounting Office, Federal Land Management: Estimates of Mineral Values and of the Economic Effects of Developing Minerals in the Grand Staircase Escalante National Monument 1, 5 (GAO/RCED 98 5R, GAO (Oct. 31, 1997)) (hereinafter GAO/RCED 98 5R).
- 35 *Id.*
- 36 Editorial, *Feds: Consider Andalex Proposal*, *Deseret News* AA1 (Jan. 25, 1998).

- 37 GAO/RCDED 98 5R, *supra* n. 34, at 5 6.
- 38 Telephone Interview, not for attribution, BLM, in Salt Lake City, Utah (Sept. 12, 2000).
- 39 Robert Gehrke, Conoco Busy Inside Monument, *Deseret News* A8 (June 27, 1998).
- 40 Telephone Interview, *supra* n. 38.
- 41 Grand Staircase, *supra* n. 8, at 5.
- 42 *Id.* at 9.
- 43 *Id.*
- 44 *Id.*
- 45 *Id.* at 8.
- 46 *Id.* at 62.
- 47 Southern Utah Wilderness Alliance, *SUWA Bull.* (June 3, 1997).
- 48 Utah Enabling Act, § 6, 28 Stat. 107, 109 (July 16, 1894); Utah Const. art. X, § 5.
- 49 John A. Souder & Sally R. Fairfax, *State Trust Lands: History, Management, and Sustainable Use* 1,2 (U. Press of Kan. 1996).
- 50 Utah Code Ann. § 53 C 1 201 (2000).
- 51 Utah Schools and Lands Improvement Act of 1993, Pub. L. No. 103 93, 107 Stat. 995 (1993).
- 52 *Id.* at § 7(b)(3).
- 53 Jerry D. Spangler & Donna M. Kemp, Are Utah Land Deals Ripping Off the U.S., *Deseret News* A01 (May 14, 2000).
- 54 *Id.*
- 55 Telephone Interview with John Andrews, General Counsel, State of Utah School and Institutional Trust Lands Administration (Sept. 12, 2000).
- 56 Jerry Spangler, Historic Land Deal with U.S. Hailed as Huge Win for Utah, *Deseret News* A1 (May 9, 1998); Utah Legislative Survey 1983: Public Lands, Project BOLD Implementation, 1984 *Utah L. Rev.* 115, 202 (1984).
- 57 Pub. L. No. 103 93, § 7.
- 58 School and Trust Lands Administration 5th Annual Report 1, 15 17 (Utah SITLA 1999). The federal government received: 177,000 acres of trust lands in Grand Staircase Escalante National Monument; 80,000 acres of trust lands in Arches, Capitol Reef and other national monuments; 47,480 acres of trust lands in the Navajo and Goshute Indian Reservations; 70,000 acres of trust lands in National Forests; and 2,560 acres of miscellaneous captured trust lands. Total: 377,040 acres with an additional inheld mineral only acreage of 65,850 acres. Lands and payments given to the Utah Trust Lands Administration: 139,000 acres of lands and minerals; 3,000 acres near the Beaver Mountain ski area; 3 new telecommunication sites; 2,600 acres of tar sands resource lands; 2,000 acres of limestone resource lands; 4,000 acres of oil and gas resource lands; 58,000 acres of coalbed methane resource lands (185 million cu. ft.); 881 acres of coal land (156,300,000 tons of recoverable coal); \$13 million (plus interest) from federal coal yet to be mined; and \$50 million in cash. *Id.*
- 59 *Id.* at 16.
- 60 *Id.* at 17.
- 61 John T. Blake, Utah Schools and Federal Land Exchange 11, 13 *Landman* (Mar./Apr. 1999).

- 62 Id.
- 63 Utah School Lands Exchange Act of 1998, Pub. L. No. 105 335, 112 Stat. 3139 (1998).
- 64 Id.
- 65 Spangler & Kemp, *supra* n. 53.
- 66 Id.
- 67 Id.
- 68 Id.
- 69 Telephone Interview with Andrews, *supra* n. 55.
- 70 Spangler & Kemp, *supra* n. 53.
- 71 Id.
- 72 U.S. General Accounting Office BLM and the Forest Service Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest 4 6, 17 (GAO/RCED 00 73 (GAO June 2000)).
- 73 Id.
- 74 Spangler & Kemp, *supra* n. 53.
- 75 Id.
- 76 Id.
- 77 Lucinda Dillon, What's Bottom Line on Big Land Swap, *Deseret News* B1 (May 14, 1998).
- 78 Id.
- 79 See generally Herman E. Daly & Kenneth N. Townsend, *Valuing the Earth: Economics, Ecology, Ethic* (MIT Press 1993); *Valuing Nature: Economics, Ethics, and Environment* (John Foster ed., Routledge 1997).
- 80 107 Stat. at 997. (The Statute states the secretaries of interior and agriculture, and the Utah governor “shall provide for an appraisal . . . utiliz(ing) nationally recognized appraisal standards including, to the extent appropriate, the uniform appraisal standards for Federal land acquisition.”).
- 81 Thomas A. Loucks, *The Valuation of Hard Rock Mineral Property*, in *Rocky Mt. Mineral L. Inst.* 11 1, 11 9 (36th ed. Rocky Mt. L. Found. 1990).
- 82 Id.
- 83 Id.
- 84 Id. at 11 10.
- 85 Id.
- 86 Id.
- 87 Id.
- 88 *Natl. Parks and Conservation Assn. v. Bd. of St. Lands*, 869 P.2d 909, 921 (Utah 1993).
- 89 Id.

90 Id.

91 Matthew D. Adler & Eric A. Posner, Rethinking Cost Benefit Analysis, 109 Yale L.J. 165 (1999).

92 Id. at 171.

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