

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
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To: All State Directors

From: Assistant Director, Renewable Resources and Planning

Subject: Consideration of Wilderness Characteristics in Land Use Plans (Excluding Alaska)

Program Area: Land Use Planning

Purpose: This Instruction Memorandum (IM) provides guidance regarding the consideration of wilderness characteristics in the land use planning process. In addition the IM sets forth policy to comply with the settlement in *Utah v. Norton* and the decision to apply the terms of the settlement Bureau-wide, excluding Alaska. The IM applies to all other public lands, except approximately 6.5 million acres of public land designated by Congress as wilderness, 15.5 million acres of wilderness study areas (WSAs) already established by the Bureau of Land Management (BLM) or Congress, and any other lands not designated by Congress but subject to specific provisions of law that direct BLM to manage those lands as if they were congressionally designated wilderness or WSAs. The IM also modifies the Land Use Planning Handbook (H-1601-1) to delete a statement that land use plan decisions include designation of WSAs.

Background: The BLM submitted wilderness suitability recommendations to Congress pursuant to Section 603 of the Federal Land Policy and Management Act (FLPMA) by October 21, 1993. BLM, however, continued to inventory for wilderness characteristics under the authority of Section 201 of FLPMA and made formal determinations regarding wilderness character consistent with the definition of wilderness as described in Section 2 (c) of the Wilderness Act of 1964. The BLM assumed that Section 202 of FLPMA authorized designation, through the land use planning process, of additional WSAs. These Section 202 WSAs, according to the BLM's Interim Management Policy (IMP), as modified in 1995, would be managed to retain their suitability as wilderness (non-impairment provision) until Congress designated them as wilderness or they were made

available for other land uses by the decisions resulting from a new land use planning process.

In *Utah v Norton*, the State of Utah, Utah School and Institutional Trust Land Administration, and the Utah Association of Counties filed suit challenging the authority of the BLM to conduct wilderness inventories after completion of the Section 603 identification, study, and recommendation processes. The Department of the Interior and the plaintiffs agreed to a settlement in April 2003.

The settlement acknowledges: (1) that the BLM's authority to conduct wilderness reviews, including the establishment of new WSAs, expired no later than October 21, 1993, with the submission of the wilderness suitability recommendations to Congress pursuant to Section 603 of the FLPMA; and (2) that the BLM is without authority to establish new WSAs. The settlement did not, however, diminish the BLM's authority under Section 201 of the FLPMA to inventory public land resources and other values, including characteristics associated with the concept of wilderness, and to consider such information during land use planning.

Consistent with the settlement, the BLM rescinded the Wilderness Inventory and Study Procedures Handbook (H-1630-1). See IM-2003-195, dated June 20, 2003. It is, therefore, no longer BLM policy to continue to make formal determinations regarding wilderness character, designate new WSAs through the land use planning process, or manage any lands – except WSAs established under Section 603 of the FLPMA and other existing WSAs – in accordance with the non-impairment standard prescribed in the IMP.

Refer to IM 2003- 274 for general guidance regarding interpretation of the *Utah v. Norton* wilderness lawsuit settlement.

Policy/Action:

Nothing in this guidance changes current policy on the management of designated wilderness and existing WSAs. The BLM will continue to protect and manage congressionally designated wilderness and existing WSAs according to the provisions of applicable laws and the BLM's wilderness program policies. Those lands designated as WSAs in the BLM's land use plans after October 21, 1993, may continue to be managed consistent with the decisions contained in the approved land use plan.

The BLM will not designate new WSAs through the land use planning process. In addition, the BLM will not allocate any additional lands to be managed under the non-impairment standard prescribed in the IMP. Instead, the BLM may consider information on wilderness characteristics, along with information on other uses and values, when preparing land use plans. Wilderness characteristics are features associated with the concept of wilderness that may be considered in land use planning (see Attachment #1).

The BLM will involve the public in the planning process to determine the best mix of resource use and protection consistent with the multiple-use and other criteria established in the FLPMA and other applicable laws, regulations and policies. Lands with

wilderness characteristics may be managed to protect and/or preserve some or all of those characteristics. This may include protecting certain lands in their natural condition and/or providing opportunities for solitude, or primitive and unconfined types of recreation.

The BLM can make a variety of land use plan decisions to protect wilderness characteristics, such as establishing Visual Resource Management (VRM) class objectives to guide the placement of roads, trails, and other facilities; establishing conditions of use to be attached to permits, leases, and other authorizations to achieve the desired level of resource protection; and designating lands as open, closed, or limited to Off Highway Vehicles (OHV) to achieve a desired visitor experience.

The BLM also has authority to designate Areas of Critical Environmental Concern (ACEC) where special management attention is required to protect and prevent irreparable damage to important cultural, historic, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards. To qualify for consideration of the ACEC designation, such values must have substantial significance and value, with qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern. Where ACEC values and wilderness characteristics coincide, the special management associated with an ACEC, if designated, may also protect wilderness characteristics. See BLM Manual 1613, Areas of Critical Environmental Concern, for more information.

See the Land Use Planning Handbook, H-1601-1, Section II, Land Use Plan Decisions and Attachment #1 of this IM for more information about making land use plan decisions to accomplish goals and objectives for resource management.

Considering wilderness characteristics in the land use planning process may result in several outcomes, including, but not limited to: 1) emphasizing other multiple uses as a priority over protecting wilderness characteristics; 2) emphasizing other multiple uses while applying management restrictions (conditions of use, mitigation measures) to reduce impacts to some or all of the wilderness characteristics; 3) emphasizing the protection of some or all of the wilderness characteristics as a priority over other multiple uses (though the area will not be designated a WSA).

The BLM is authorized to implement current land use plans until those plans are revised or amended (if appropriate), provided the implementation actions conform to the approved plans and are supported by adequate National Environmental Policy Act (NEPA) documentation, usually an environmental assessment (EA), environmental impact statement (EIS), or Categorical Exclusion (CE).

If the BLM determines that an area has wilderness characteristics that warrant consideration in the land use planning process, the BLM may initiate a plan amendment (or revision) with an accompanying NEPA document (EIS or EA) to consider changes to the current land use plan decisions. A decision regarding the timing of the plan

amendment (or revision) is at the discretion of the State Director, and depends on the level of public interest, the position of State and local governments and cooperators, the adequacy of available information, funding, and other factors.

BLM Wilderness Inventories and Public Wilderness Proposals

Typically, the resource information contained in the BLM wilderness inventories was collected to support a land use planning process. Public wilderness proposals represent a land use proposal. In either case, the BLM is authorized to consider such information during preparation of a land use plan amendment or revision. For example, information contained in BLM wilderness inventories and public wilderness proposals may be considered when developing the affected environment section of the NEPA document that accompanies the land use plan. The information may also be used to develop the range of alternatives or to analyze the environmental impacts to the various natural, biological, and cultural resources – such as air, soil, water, vegetation, cultural, paleontological, visual, special status species, fish and wildlife – as well as resource uses – such as forestry, livestock grazing, recreation, lands and realty, coal, and fluid minerals. Refer to the Land Use Planning Handbook, H-1601-1, Appendix C, for guidance concerning the resources and resource uses to be considered in land use plans.

Alternatives are developed to reflect a reasonable range of management options considering all applicable information sources, such as the results of scoping, coordination with cooperating agencies, and practicality of management. The boundary of an area being considered in the land use plan for management of wilderness characteristics, therefore, is dependent on many factors and may or may not exactly follow the boundary of previous inventory areas.

Reviewing New Information

When implementing land use plans, the BLM must, as with any new information, determine if the BLM wilderness inventories or public wilderness proposals contain significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or impacts that have not previously been analyzed. Since every land use plan and supporting NEPA document is different, this determination will need to be done on a case-by-case basis. New information or changed circumstances alone, however, or the failure to consider a factor or matter of little consequence, is not a sufficient basis to require additional NEPA consideration prior to implementing a previously approved decision. If the new information is sufficient to show that the action will affect the quality of the human environment in a significant manner or to a

significant extent not already considered, then a supplemental NEPA document shall be prepared (43 CFR 1502.9).

To help determine whether the new information or circumstances is significant, the BLM should look at the definition of “significantly” at 43 CFR 1508.27, which requires consideration of both context and intensity. See Attachment #2 for more information regarding the review of new wilderness information during plan implementation.

The analysis of new information and the BLM’s determination regarding its significance should be documented, using, as an example, the Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA) worksheet.

It is important to note that the BLM must review the new information only when it is relevant to a pending decision or its environmental effects. When no action is being considered, the BLM may defer the reviews until a more appropriate time, such as when preparing a land use plan amendment or revision.

Using New Information on Lands with Wilderness Characteristics to Implement Approved Land Use Plans

The BLM wilderness inventories and public wilderness proposals may contain new information on land and resource conditions that can be used in a variety of day-to-day operations. Examples of using the new information in day-to-day operations include applying new mitigation measures to on-the-ground projects; establishing reclamation standards; updating the BLM’s resource databases; refining previously approved plan decisions (plan maintenance) to correct data, typographical, or mapping errors in the planning records; or implementing the decisions of the land use plan, such as when selecting routes in areas designated as limited to OHV travel.

When preparing NEPA documents for actions that implement the approved plan, the BLM may also use the information on lands and resources contained in BLM wilderness inventories and public wilderness proposals to describe the affected environment, and environmental impacts to the various natural, biological, and cultural resources. For example, information on naturalness may help describe the condition and trend of important wildlife habitat and could be included in the affected environment discussion if applicable. Similarly, information on the presence of roads and other facilities may be used to describe the current status of visual resources as well as the potential for the proposed action to affect those resources. Provided relevant new information is considered in the NEPA document in this fashion, it is not necessary to analyze impacts to the area identified by BLM wilderness inventories or public wilderness proposals as having wilderness characteristics.

If a NEPA document is being prepared for an action affecting lands with wilderness characteristics, and those characteristics are currently being considered in an on-going land use planning process, the BLM may acknowledge the status of the planning process and describe how the proposed action might affect future management considerations.

This may be accomplished in the discussion of the no action alternative or in the section of the NEPA document on plan conformance. The fact that the BLM is considering alternative management goals for the affected lands in a pending land use plan revision or amendment, however, does not change the management or use of those lands during the interim. The BLM is authorized to implement current land use plans until those plans are revised or amended, if appropriate, and may acknowledge on-going planning efforts to ensure that the decision-maker and the public are fully informed of the consequences of the proposed action.

Effect on On-going plans

This policy may require some BLM Field Offices to modify current Resource Management Plan (RMP) efforts. For RMPs where a Draft RMP/EIS has not been issued, Field Offices must ensure that the Draft RMP/EIS is consistent with this IM. If the BLM has already discussed or identified possible WSA designations with the public, BLM must explain the change in policy. There is no requirement, however, to reinitiate scoping or provide an additional comment period before releasing the Draft RMP/EIS since the public will be provided an opportunity to comment on the draft, including the range of alternatives and proposed management prescriptions.

For Draft RMP/EISs already issued that include designation of new WSAs in an alternative, it will be necessary to modify the Proposed RMP/Final EIS. If the effects of an alternative modified to comply with this policy are within the range of alternatives already analyzed in the Draft RMP/EIS, preparing a supplement to the Draft RMP/EIS is not necessary. Each affected Field Office must determine the need for a supplement in consultation with WO-210.

After receiving this guidance, State and Field Offices have 45 days to consider the implications of this IM in coordination with WO-210. In addition, within 45 days, State Directors will review and update their existing State and field office policies and other guidance and make necessary modifications to comply with the terms of this IM.

Timeframes: This policy is in effect immediately.

Budget Impact: This policy is expected to increase slightly the costs of ongoing planning efforts as modifications are made to planning documents to comply with this IM. For all other land use plans the policy should result in diminished costs.

Manual/Handbook Sections Affected: That sentence in the Land Use Planning Handbook (H-1601-1, Appendix C, Part III.B.1.a, Page 18) that directs BLM to “Designate WSAs to be managed under the interim management policy (H-8550-1),” is hereby deleted. No other portions of H-1601-1 are affected.

The Wilderness Inventory and Study Procedures Handbook (H-6310-1) was rescinded in “Rescission of National Level Policy Guidance on Wilderness Review and Land Use Planning” (IM-2003-195).

Coordination: This guidance was coordinated with WO-170, WO-200 and WO-300.

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2 Attachments

- 1- Definitions of Wilderness Characteristics for the Purpose of Land Use Planning and Management Considerations to Accomplish Plan Goals and Objectives (1 p)
- 2- Review of New Wilderness Information During Plan Implementation (1 p)

Definitions of Wilderness Characteristics for the Purpose of Land Use Planning and Management Considerations to Accomplish Plan Goals and Objectives

Definitions :

Wilderness Characteristics. Features of the land associated with the concept of wilderness that may be considered in land use planning when BLM determines that those characteristics are reasonably present, of sufficient value (condition, uniqueness, relevance, importance) and need (trend, risk), and are practical to manage.

Naturalness. Lands and resources exhibit a high degree of naturalness when affected primarily by the forces of nature and where the imprint of human activity is substantially unnoticeable. BLM has authority to inventory, assess, and/or monitor the attributes of the lands and resources on public lands, which, taken together, are an indication of an area's naturalness. These attributes may include the presence or absence of roads and trails, fences and other improvements; the nature and extent of landscape modifications; the presence of native vegetation communities; and the connectivity of habitats.

Solitude and Primitive/Unconfined Recreation. Visitors may have outstanding opportunities for solitude, or primitive and unconfined types of recreation when the sights, sounds, and evidence of other people are rare or infrequent, where visitors can be isolated, alone or secluded from others, where the use of the area is through non-motorized, non-mechanical means, and where no or minimal developed recreation facilities are encountered.

Management Considerations:

A decision to protect or preserve certain lands in their natural condition, if appropriate, or provide outstanding opportunities for solitude, or primitive and unconfined types of recreation may be made at the conclusion of the land use planning process. Land use plan decisions may include establishing goals and objectives that describe the desired future condition of the land and resources, desired outcome of the recreation experience, and allowable uses. BLM may also identify the management actions necessary to achieve the intended goals and objectives, including the conditions of use that would be attached to permits, leases, and other authorizations to avoid or minimize impacts to the affected natural, biological, and cultural resources and other land uses. In some cases, when BLM determines that certain uses of the land could be incompatible with the achievement of other desired goals and objectives, those uses could be conditioned to the extent necessary to reach the necessary level of resource protection.

Review of New Wilderness Information During Plan Implementation

The Land Use Planning Handbook (H-1601-1) provides some criteria to use when reviewing new information. Other factors to consider when reviewing new information contained in BLM wilderness inventories or public wilderness proposals that may be relevant to an implementation action are:

1. Was the information on land and resource conditions available to the BLM and adequately considered within the range, scope and analysis of the alternatives in the plan/EIS or other NEPA document, and is there adequate documentation to that affect?
2. Does the new information suggest significant changes in land and resource conditions have occurred since the plan/EIS or other NEPA document was completed?
3. Though BLM may not have formally disclosed in existing NEPA documents the impacts to the wilderness characteristics that have been identified in new inventories or public wilderness proposals, did BLM reasonably consider the environmental effects to the lands and resources that contribute to the wilderness characteristics in relevant NEPA documents?
4. Does the new information suggest that the impacts to those lands, if analyzed today, would be significantly different than the impacts already disclosed in the plan EIS or other NEPA document(s)?
5. Can BLM condition use of the lands for which new information exists in such a way that the effects of the action would not be significantly different from the effects already described?
6. Is the information at such a scale that BLM would ordinarily use the new information to make land use plan level decisions or is it more appropriate to consider for implementation level decisions?

New information or changed circumstances alone, however, or the failure to consider a factor or matter of little consequence, may not be sufficient basis to require additional NEPA consideration prior to implementing a previously approved decision. For example, the fact that roads and trails have become overgrown since previous inventories were completed represents a changed circumstance. Such change is most likely the result of natural environmental processes and, alone, may not be sufficient to require the preparation of additional NEPA documentation. The fact that BLM did not specifically analyze impacts of the proposed action on wilderness characteristics identified since the current land use plan or NEPA document was prepared is not an omission that, alone, would indicate that additional NEPA consideration is required. In all cases then, BLM should evaluate: 1) the extent to which the new information presents potential significant environmental consequences associated with the proposed action that were not analyzed in the previous NEPA analysis; and 2) whether those consequences are of significant gravity in context or intensity.

Case Law on Supplementation of NEPA

The lead case from the United States Supreme Court on supplementation is Marsh v Oregon Natural Resources Council, 490 U.S. 360 (1989). It provides that “an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decision-making intractable, always awaiting updated information only to find the new information outdated by the time the decision is made.” Id. at 373.

Rather, to trigger supplementation obligations, the new information must be sufficient to show that the proposed action will affect the quality of the human environment “in a significant manner or to a significant extent not already considered.” Id. at 374.