

## Wyoming Public Lands Initiative

### Background

#### Background Information

With the passage of the Federal Land Policy and Management Act of 1976 (FLPMA), the Secretary of the Department of Interior was tasked with reviewing all roadless areas of five thousand acres or more through an inventory process to determine if they had wilderness characteristics.<sup>1</sup> During the inventory phase, the BLM was directed to identify areas that were found to have the characteristics of wilderness as defined in the Wilderness Act of 1964: "... (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and sue in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, education, scenic of historical value."<sup>2</sup> When these characteristics were found within a defined boundary, the area was considered for review as a wilderness study area (WSA).<sup>3</sup>

As directed under FLPMA, the Secretary was to complete this inventory within 15 years, and to then provide a report to the President by July 1, 1980 containing any recommendations for the designation of the inventoried areas as wilderness.<sup>4</sup> FLPMA then required the President to advise Congress of his recommendations with respect to the designation of particular areas as wilderness, this step occurred in 1991.<sup>5</sup> FLPMA further dictated that for BLM lands "designated [by Congress] for preservation as wilderness, the provisions of the Wilderness Act that apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area."<sup>6</sup>

#### Wyoming

In Wyoming, the BLM conducted an inventory of potential wilderness areas in the late 1970s to early 1980s.<sup>7</sup> In 1991 the Wyoming BLM recommended to the Secretary of Interior that 240,364 acres within 21 study areas be designated as wilderness, while at the same time recommending that 337,140 acres in 30 study areas be released for uses other than wilderness.<sup>8</sup> In the end, the

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<sup>1</sup>Federal Land Policy and Management Act of 1976 (as amended), 43 U.S.C 1782(a).

<sup>2</sup> The Wilderness Act of 1964 (as amended), 16 U.S.C. 1131(c).

<sup>3</sup> FLPMA at 1782(a).

<sup>4</sup> *Id.*

<sup>5</sup> 43 U.S.C. 1782(b); Sherry Roche, BLM Wyoming and Wilderness Presentation.

<sup>6</sup> FLPMA at 1782(c)

<sup>7</sup> Roche, *Id.*

<sup>8</sup> *Id.*

Secretary recommended to the President, and the President then recommended to Congress, that there be 42 WSAs in Wyoming, totally 577,504 acres.<sup>9</sup> To date Congress has not taken action to either designate a WSA in Wyoming as a wilderness area, or release any of the 42 WSAs in the state back to multiple-use.

### Interim Management: Non-Impairment Standard

Until Congress takes action to either officially designate a WSA as a wilderness area, or to release it back to multiple-use, the BLM is required under FLPMA to continue to manage the land within the WSA so as to “not impair the suitability to of such areas for preservation of wilderness.”<sup>10</sup> This is known as the non-impairment standard. Under the BLM’s 6330 Management of Wilderness Study Areas Manual, the BLM states that its policy is to “protect the wilderness characteristics of all WSAs in the same or better condition than they were on October 21, 1976 ... until Congress determines whether or not they should be designated as wilderness.”<sup>11</sup> Further, it is the BLM’s policy not to establish new discretionary uses in WSAs that would impair the suitability of such areas for wilderness designation.<sup>12</sup> There are seven classes of allowable exceptions to the non-impairment standard: 1. emergencies, 2. public safety, 3. Restoration of impacts from violations and emergencies, 4. valid existing rights, 5. grandfathered uses, 6. to protect or enhance wilderness characters or values, 7. other legal requirements.<sup>13</sup>

### Valid Existing Rights

Under the BLM’s WSA Management Manual, any valid existing right existing on the date of approval of FLPMPA (October 21, 1976) will be recognized.<sup>14</sup> Valid existing rights include a valid mining claim, a mineral lease, or a right-of-way authorization.<sup>15</sup> The scope to the valid existing right is not unlimited however, it depends upon any conditions, stipulations, or limitations stated in the law or approval document that created the right.<sup>16</sup> If it is determined that the right can be exercised only through activities that will impair wilderness suitability, the activities will be regulated to the extent allowable to prevent unnecessary impacts to wilderness characteristics.<sup>17</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> FLPMA 1782(c).

<sup>11</sup> U.S. Department of the Interior, Bureau of Land Management, BLM Manual 6330 – Management of Wilderness Study, (July, 13, 2012), page 1-6.

<sup>12</sup> *Id.* at 1-9.

<sup>13</sup> *Id.* at 1-11 to 1-13.

<sup>14</sup> *Id.* at 1-12

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

### Grandfathered Uses

Grazing, mining, and mineral leasing uses and facilities that were allowed on the date of approval of FLPMA are grandfathered or allowed as a preexisting right.<sup>18</sup> These uses may continue in the same manner and degree as on that date, even if this impairs wilderness suitability.<sup>19</sup> Grandfathered uses only include grazing, mining, and mineral leases, and do not include other uses such as recreational activities.<sup>20</sup> Grandfathered uses may be acquired by a new operator, but cannot be transferred to a different location.<sup>21</sup>

### Minerals

The degree and types of development allowed for various mineral uses depends upon the date of the mineral right or activity associated with the WSA designation.<sup>22</sup>

Grandfathered locatable and leasable mineral uses, those that were being carried out as enactment in 1976, may continue in the same manner and degree in which they were being conducted on that date, even if they would impair wilderness suitability.<sup>23</sup>

New mineral uses, those initiated after 1976, associated with a valid existing right will be honored in the WSA however all reasonable efforts to meet the non-impairment criteria will be made as long as it does not reasonably interfere with the non-impairment criteria.<sup>24</sup> Absent a valid existing right, new mineral uses are allowed only to the extent that wilderness characteristics are no impaired.<sup>25</sup> However, new leasing of oil and gas minerals, including leasing with a “no surface occupancy” situation, is prohibited within the WSA under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 181).<sup>26</sup>

Pre-existing mineral leases will be allowed to be developed according to the valid existing rights conveyed by the specific terms and conditions of each lease but maybe subject to terms and conditions to minimize the impairment of wilderness characteristics.<sup>27</sup> In many instances a suspension of lease terms has been granted to a lease holder with an undeveloped valid existing oil and gas lease contained within the boundary of a WSA.<sup>28</sup> A suspension of the lease terms will likely be in place until congressional decision on the wilderness status of the area is made.<sup>29</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1-21.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 1-22.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1-23.

<sup>29</sup> *Id.*

New leasing of coal is also prohibited within a WSA.<sup>30</sup> Pre-existing coal leases will be allowed to be developed according to the valid existing rights conveyed by the specific terms and conditions of each lease.<sup>31</sup> Coal exploration licenses may be allowed only if they satisfy the non-impairment criteria.<sup>32</sup>

Exploration, prospecting and location of new mining claims for locatable minerals are permitted in all WSAs unless withdrawn under other provisions of law.<sup>33</sup> All new location, access and assessment of mining claims must satisfy the non-impairment standard.<sup>34</sup> Mining on pre-existing claims may occur, the degree to which impairment may occur depends on whether or not the mining claim was a valid discover as of the enactment of FLPMA and even if it is valid, it may not cause unnecessary or undue degradation.<sup>35</sup>

### Grazing Management

As a grandfathered use, grazing management practices (i.e. level of use and season of use) authorized during the 1976 grazing fee year, including level of use, may not be changed solely because the use may impair a WSA's suitability of preservation as wilderness.<sup>36</sup> Further Section 603(c) of FLPMA provides for the continuation of grazing on lands under wilderness review, "provided that in managing the public lands, the BLM shall be regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources to afford environmental protection."<sup>37</sup> If existing grazing management practices are found to be a significant factor in the failure to achieve rangeland standards, new grazing management practices may be established as needed to improve the rangeland health.<sup>38</sup> Grazing increases may be allowed if the impacts of such increases meet the non-impairment standard.<sup>39</sup>

### Recreation

Most forms of recreation (hiking, horseback riding, fishing, hunting, trapping, camping and other forms or primitive recreation) may continue to occur in a WSA, however some activities may be prohibited or restricted if they do not meet the non-impairment standard (those that require permanent structures, the off-road use of motor vehicles or mechanized transport).<sup>40</sup>

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<sup>30</sup> *Id.* at 1-24.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 1-25.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 1-18.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 1-26.

Motorized and mechanized transport may be used if on a primitive route identified by the BLM to be in existence prior to FLPMA's enactment.<sup>41</sup> No new motor vehicle or mechanical transport routes will be permitted in WSAs and no improvement or maintenance of any primitive route will be permitted to facilitate motorized or mechanized vehicle use in a WSA if it does not meet the non-impairment standard.<sup>42</sup> Further, the BLM must take action to ensure that the primitive route does not exceed the approximate condition of impact to the wilderness characteristics (including opportunity for solitude) as it existed in 1976.<sup>43</sup> Primitive camping is generally allowed in a WSA as long as it meets the non-impairment standard.<sup>44</sup>

### **WSA Designation/Release Action by Congress**

Since 1991, Congress has taken action to both designate and release WSAs in a number of states. For example, the Omnibus Public Lands Act of 2009 contained a number of WSA wilderness designations as well as WSA release provisions.<sup>45</sup> Additionally, in 2011 the Wyoming Congressional Delegation sponsored legislation in both the Senate and the House to release all WSAs administered by the BLM nationwide that are not suitable for wilderness designation from the continued management as de facto wilderness areas.<sup>46</sup> However to date, Congress has not taken action to either release or designate any of the 42 WSAs in Wyoming.

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<sup>41</sup> *Id.* at 1-27.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 30.

<sup>45</sup> Omnibus Public Lands Act of 2009, H.R. 146, 111<sup>th</sup> Cong. § 1 (2009) (enacted).

<sup>46</sup> Wilderness and Roadless Release Act of 2011, S. 1087, 112<sup>th</sup> Cong. § 1 (2011); Wilderness and Roadless Release Act of 2011, H.R. 1581, 112<sup>th</sup> Cong. § 1 (2011).



## **Wyoming Public Lands Initiative Principles and Guidelines**

The Wyoming Public Lands Initiative (WPLI) is a collaborative, county-led process intended to result in one, state-wide legislative lands package that is broadly supported by public lands stakeholders in Wyoming. The ultimate goal is final designation or release of Wyoming's 42 Bureau of Land Management (BLM) Wilderness Study Areas (WSA) in Wyoming. While WSA designations will serve as the core mission and the launching pad for the WPLI, county recommendations are not limited to WSA recommendations alone.

Boards of County Commissioners in all 23 counties will receive a formal invitation from the Wyoming County Commissioners Association (WCCA) to participate in the WPLI. While each county that has WSAs within their county boundary is strongly encouraged to submit a WSA recommendation, it is at the discretion of each individual county whether or not to participate in the WSA recommendation process. Counties that share WSAs with neighboring counties are expected to work together to develop a joint recommendation. Counties may choose to work together as a region even if they do not share a common WSA. Finally, counties that do not have a WSA within their border are encouraged to participate in the event other, non-WSA related land-use, land transfers, or land management designations could be included in the final legislative package.

Once a county has opted to participate in the WPLI, each Board of County Commissioners is encouraged to appoint a WPLI Advisory Committee to conduct a collaborative review process of the WSAs in their county and to develop and submit a WSA management recommendation to the Board of County Commissioners for approval. Once approved, the WCCA, in cooperation with the office of the Governor and the offices of the federal delegation, will review the county or regional Advisory Committee recommendations and to the maximum extent practicable, include them in a legislative draft to be introduced in Congress.

In order to ensure the successful enactment of federal legislation addressing Wyoming WSAs, a consistent statewide approach that maximizes stakeholder involvement, through an open and transparent process, is necessary. County WPLI Advisory Committees will be expected to encompass a broad cross-section of public lands stakeholders. With passage of a public lands bill the ultimate goal, the WCCA reserves the right to not include an individual county recommendation into the final Congressional recommendation if the process followed by the county was not collaborative or open and transparent.

## County WPLI Guidelines:

In order to maintain statewide consistency, the following procedural structure for developing a county recommendation should be followed:

- I. The Board of County Commissioners should appoint members to a WPLI Advisory Committee. The specific make-up of the committee will be left to the discretion of the Commissioners, however, it is expected that the committee include participation by all major stakeholders interested in the subject of public lands designations, including but not limited to: agricultural/ranching, hunting/fishing, energy, motorized and non-motorized recreation, environmental/conservation, local conservation district, and the general public. A county commissioner should also sit on the WPLI Advisory Committee.
  
- II. The WPLI Advisory Committees shall:
  - a. Select a committee chairman.
  - b. Conduct all meetings in public, in an open and transparent manner.
  - c. Allow for public comment opportunities at all of the committee's meetings.
  - d. Take minutes from the committee's meetings and make those minutes available to the public by providing a copy to the county clerk and preferably posting the minutes online if possible.
  - e. The committee should gather background information and current data<sup>1</sup> on the WSAs within the county and consider and evaluate this information in the development of the committee's WSA recommendation. This information should also be made available to the public by providing a copy with the county clerk and preferably posting the information online if possible. In addition, the WCCA will create a specific WPLI page on the WCCA's website to house all related documents for public review. At a minimum the committee should consider the following information when developing a WSA recommendation:
    - i. The initial recommendation made by the BLM during their FLPMA WSA review;
    - ii. Any changes in the wilderness characteristics since the initial BLM recommendation (including boundary changes);
    - iii. Current uses of the WSA including but not limited to:
      1. Livestock grazing and stock trails
      2. Recreational use (including hunting, fishing, developed recreational trails, camp sites, etc.)
      3. Mineral prospecting
      4. Pipeline corridors

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<sup>1</sup> The local and state offices of the BLM should be able to help provide much of this information.

- 5. Wildlife use;
  - iv. The presence of any and all valid existing rights;
  - v. Any historical or unique cultural considerations;
  - vi. Presence or absence of potentially developable minerals;
  - vii. Any unique, supplemental or other features including: ecological, geological, or other features of scientific, educational, scenic, or historical value.
- f. Conduct a public field trip to each individual WSA in order to personally observe the WSA and its wilderness characteristics or lack thereof. During the field trip, document the committees perceptions if the presence or absence of the 5 wilderness characteristics:
  - i. Untrammled. The Wilderness Act states that wilderness is “an area where the earth and its community of life are untrammled by man”;
  - ii. Natural. The Wilderness Act states that wilderness is “protected and managed so as to preserve its natural conditions”;
  - iii. Undeveloped. The Wilderness Act states that wilderness is an area “of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation,” “where man himself is a visitor who does not remain,” and “with the imprint of man’s work substantially unnoticeable”;
  - iv. Solitude or Primitive and Unconfined Recreation. The Wilderness Act states that wilderness has “outstanding opportunities for solitude or a primitive and unconfined type of recreation”;
  - v. (Optional) Unique, Supplemental, or Other Features. The Wilderness Act states that wilderness areas “may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.”
- g. While not a mandatory requirement, the committee, with the official consent of the Board of County Commissioners, can consider conducting an independent inventory of the WSA/s.
- h. Develop a proposed management recommendation for the WSAs within the county. Each WSA recommendation should be accompanied with sufficient rational for the recommendation made. Refer to the section below regarding “Guidelines on Wilderness Designations or Release.”
- i. The committee may also consider other areas of concern within the county for potential inclusion in its recommendation including other land use designations, rights of way, permitting, transfers, Forest Service WSAs, or other management actions not necessarily related to BLM WSA designation or release.
- j. The committee should consult with the planning and land use board if such a board exists in the county.



- k. A draft of the committees proposed management recommendations should be distributed for public comment and the public comment should be adequately considered by the committee.
        - l. After consultation with the land use planning board, if a board exists, and consideration of the public comments, the committee shall present the WSA recommendations to the Board of County Commissioners at a regularly scheduled commissioner meeting.
- III. The Board of County Commissioners shall review the WPLI Advisory Committee's recommendations. The commissioners shall not be bound by the committee's recommendation, but if changes are made to the recommendation, the commissioners must resubmit the recommendation to the public for comment.
  - a. The commissioners shall host at least one additional public meeting to discuss changes.
  - b. The commissioners shall allow a minimum of 30 days for written responses to changes.
  - c. The commissioners shall review public comments and take them under consideration for final approval.
- IV. The Board of County Commissioners shall take official action to establish a final WPLI recommendation for the county at a regularly scheduled commissioner meeting. The final county recommendation should include the recommended management for the WSA/s as well as sufficient rationale for the recommendation, and any additional recommendations not related to WSAs.
- V. The Board of County Commissioners shall forward their final recommendation and rationale for the recommendation to the Wyoming County Commissioners Association. In addition to the final recommendation, the Commissioners shall also provide to the WCCA during development of the recommendation the following documents that will be posted on the WCCA's website:
  - a. A copy of the minutes from all of the WPLI Advisory Committee meetings;
  - b. All relevant background information gathered by the committee;
  - c. Any information pertaining to the public field trip and impressions noted regarding the wilderness characteristics of the individual WSA/s;
  - d. A copy of the draft committee WPLI recommendation; and
  - e. A copy of public comments received on the draft recommendation, and the WPLI committee recommendation as it was initially presented to the commissioners.
- VI. Following receipt of county recommendations, the WCCA in conjunction with the office of the Governor and the federal congressional delegation, will review the

recommendations for consistency and develop one legislative bill for introduction in the U.S. House and Senate.

### **Timeline and Oversight:**

Counties participating in the WPLI should strive to put in place the Advisory Committee during the winter/spring of 2015/2016. Field trips to WSAs and other lands of interest should commence in the spring/summer/fall of 2016. Recommendations should be developed and advanced to the WCCA during the winter/spring of 2017.

Counties and the appointed WPLI Advisory Committees will have wide latitude to determine meeting times, topics, and deadlines. The WCCA staff and any third-party consultant hired by the WCCA may attend meetings and field trips, and work with the committee and county to ensure timely consideration of the issues in the county, and to assist in coordination with other counties in a regional effort. While the goal is to advance one legislative package, the WCCA must be cognizant of legislative calendars so as to maximize opportunities for success.

### **Guidelines on Wilderness Designations or Release:**

#### **I. Wilderness Designation or Release Considerations**

In determining whether to make a recommendation to designate a WSA as a wilderness area or not, it is important to consider Congress' definition of a wilderness area, as defined in the Wilderness Act, as well as consideration of the prohibitions and special provisions contained in the Wilderness Act.

**Wilderness Characteristics:** The Wilderness Act defines wilderness character with the following four mandatory qualities and a fifth optional quality<sup>2</sup>:

**Untrammeled.** The Wilderness Act states that wilderness is "an area where the earth and its community of life are untrammeled by man."

**Natural.** The Wilderness Act states that wilderness is "protected and managed so as to preserve its natural conditions."

**Undeveloped.** The Wilderness Act states that wilderness is an area "of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation," "where man himself is a visitor who does not remain," and "with the imprint of man's work substantially unnoticeable."

**Solitude or Primitive and Unconfined Recreation.** The Wilderness Act states that wilderness has "outstanding opportunities for solitude or a primitive and unconfined type of recreation."

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<sup>2</sup> 16 U.S.C. 1131(c).

**(Optional) Unique, Supplemental, or Other Features.** The Wilderness Act states that wilderness areas “may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.”

**Prohibitions** The Wilderness Act includes the following prohibitions<sup>3</sup>:

- No commercial enterprises;
- No permanent roads except as necessary to meet the minimum requirements for the administration of the area for the purpose of the Wilderness Act (including measures required in emergencies involving the health and safety of persons within the area);
- No temporary roads;
- No use of motor vehicles, motorized equipment or motorboats;
- No landing of aircraft;
- No mechanical transport (including bicycles and game carts);
- No structures;
- No installations.

**Special Provisions:** The Wilderness Act also includes the following special provisions:

- Valid existing rights – any of the ten prohibited uses may be allowed where a valid right exists. Valid existing rights must have been: in existence on the date of the wilderness designation and have been either: created by a legally binding conveyance, lease, deed, contract or other document; or otherwise provided for by Federal law.<sup>4</sup>
- The use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary deems desirable.<sup>5</sup>
- Such measure may be taken as may be necessary in control of fire, insects, and disease, subject to such conditions as the Secretary deems desirable.<sup>6</sup>
- Activities including prospecting, for the purpose of gathering information about mineral or other resources, if carried out in a manner compatible with the preservation of the wilderness environment is permitted.<sup>7</sup>
- The wilderness area will be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the USGS and the US Bureau of Mines to determine if valuable minerals are present, the

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<sup>3</sup> *Id.* at 1133(c)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1133(d)(1)

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1133(d)(2)

results of the surveys shall be made available to the public and submitted to the President and Congress.<sup>8</sup>

- The President may authorize prospecting for water resources, the establishment and maintenance of reservoirs, water conservation works, power projects, transmission lines, and other facilities needed in the public interest including road construction and maintenance essential to the development and use thereof, upon his termination that sue uses will better serve the interest of the United States.<sup>9</sup>
- Livestock grazing, where established prior to 1964, shall be permitted to continue to such reasonable regulations as are deemed necessary.<sup>10</sup>
- Commercial services may be permitted within the wilderness area to the extent necessary for activities which are proper for realizing the recreational or other wildness purposes of the area.<sup>11</sup>

## II. Wilderness Designation

There are two options that exist within the category of a wilderness designation: 1) designate a WSA as a wilderness area in strict conformity with the Wilderness Act (all prohibitions and special provisions contained in the Wilderness Act would apply); or 2) in designating the WSA as a wilderness area, allow for additional uses that aren't allowed under the Wilderness Act.

### **Option 1: Designation of a wilderness area in conformity with the Wilderness Act.**

FLPMA states that “[o]nce an area has been designated for preservation as wilderness, the provisions of the Wilderness Act (16 U.S.C. 1131 et seq.) which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act, [16 U.S.C. 1133(d)(2)] and mineral development, access, exchange of lands and ingress and egress for mining claimants and occupants.”<sup>12</sup>

If Congress designates a WSA as a wilderness area without including additional language in the enacting statute, management of the wilderness area will be controlled by the Wilderness Act per the language in FLPMA.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 1133(d)(4).

<sup>11</sup> *Id.* at 1133 (d)(5).

<sup>12</sup> 43 U.S.C. 1782(c).

**Option 2: Provide for additional uses in the recommended wilderness area that are not provided for under the Wilderness Act.**

The language establishing each wilderness area may include management provisions in addition to the basic management authority in the Wilderness Act. In some cases, special provisions have been incorporated into the legislation that provides specific direction to manage an activity in a way that would not normally be allowed under the Wilderness Act. For example, the Oregon Badlands Wilderness gave a named individual special mechanized access on a specific trail that is prohibited to others. Such provisions override the general management provisions in the Wilderness Act and could be a tool of compromise for WPLI Advisory Committees to explore.

III. WSA Release Recommendation

In determining whether a WSA should be released to multiple use, WPLI Advisory Committees should consider multiple options for releasing WSA's including:

- a. Hard release: full and permanent release for multiple use management without further restrictions or evaluation of the areas wilderness characteristics.
  - i. For an example of "hard release" language, see the language below that was included in Senator Barrasso's Wilderness and Roadless Area Release Act of 2011 which was introduced and forwarded to the Senate Committee on Energy and Natural Resources in 2011: "(c) Management. Public lands released by subsection (a) shall be managed by the Bureau of Land Management in accordance with the land use plan applicable to the lands developed pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712). (d) Prohibition. The Secretary of the Interior may not promulgate or issue any system-wide regulation, directive, or order that would direct management of the public lands released by subsection (a) in a manner contrary to the applicable land use plan."<sup>13</sup>
- b. Soft release: the area would be released from management as a WSA, it would be managed for multiple use, but consideration of the areas wilderness characteristics would be allowed in the future. The agency would be allowed to consider protection of special values of the area in future land use planning processes.
  - i. For an example of "soft release" language, see the language below that was included in Senator Tester's Forest Jobs and Recreation Act of 2011 which was introduced and forwarded to the Committee on Energy and

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<sup>13</sup> S. 1087, 112th Cong. § 1 (2011).

Natural Resources in 2011: “c) Release. Any study area described in subsection (b) that is not designated as a wilderness area by section 203 (1) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)); and (2) shall be managed in accordance with the applicable land management plans adopted under section 202 of that Act (43 U.S.C. 1712).”<sup>14</sup>

- c. Directed management release: direction can also be provided to the BLM on how to specially manage the released WSA in the future – for example, direction to designate the area as an ACEC or a special management area.

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<sup>14</sup> S. 268, 112th Cong. § 1 (2011).