

# **REGIONAL LAND MANAGEMENT: A COMMUNITY RESPONSE**



**FINDINGS  
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# Table of Contents

## Section 1

Introduction

Summary of Pertinent Legislation and Documentation

Background in Doña Ana County

Discussion

Conclusion

Appendices

Appendix 1 Doña Ana County Land Status Map

Appendix 2 Wilderness Act of 1964

Appendix 3 Congressional Grazing Guidelines

Appendix 4 National Conservation Area Criteria

Appendix 5 Map of Wilderness Study Areas in Doña Ana County

Appendix 6 Stakeholder Positions Summary & Tabulation

Appendix 7 Stakeholder Positions Summary Map

## Section 2

Community Action Groups & Neighborhood Associations Position

Conservationists Position

Developers & Homebuilders Position

Mechanized Recreationists Position

Non-Mechanized Recreationists Position

Ranchers Position

Realtors, Business & Economic Development Groups Position

Sportsmen Position

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Page 4 Baylor Canyon Ranch Organ Mountains by Jodi Denning

Page 6 Aden Lava Flow by Carol McCall

Page 7 Broad Canyon by Nathan Small

Page 9 Broad Canyon by Fred Huff

Page 11 Sierra Alta Ranch Las Uvas Mountains by Tom Mobley

Page 12 George Washington Rock Baylor Pass by Robert Pennington

Page 13 Baylor Canyon Ranch Organ Mountains by Jodi Denning

## Introduction

Doña Ana County is the second-most populated county in the state and comprises 3,804 square miles. Las Cruces has been ranked as one of the fastest-growing communities in the United States for the past decade. The majestic Organ Mountains, meandering Rio Grande, fertile Mesilla Valley and delicate Chihuahuan desert provide expansive environments in which to enjoy a quality of life characterized by peace and quiet and terrific weather in a somewhat rural setting where you can still see the stars.

The population of the county has risen dramatically in the last few years and is expected to continue to grow at a rapid pace during the next 20 years. The primary areas of growth will be in the Las Cruces metropolitan area and in the southern sector of Doña Ana County.

Of the total 2.44M acres in the county, only 315,000 acres are privately owned. The remainder is managed by a variety of entities: Bureau of Land Management (1.13M acres); Military (500,000 acres); State of New Mexico (300,000 acres); National Park Service (53,000 acres); and other Withdrawals (NASA, Bureau of Reclamation, and public lands withdrawn for specific purposes by other Federal agencies, 156,000 acres). (For map, see Appendix 1)

With so little land held in the private sector, the need for well-thought out land use planning is critical. On the one hand: how much land needs to be protected? On the other: where and how much land should be developed? In order to protect prime farmland, what is the best path for growth? These decisions require careful consideration by local governments, land management agencies and private developers. A large percentage of BLM land has some kind of special protective designation: Special Recreation Management Areas; Areas of Critical Environmental Concern (ACEC); Research Natural Areas; or National Natural Landmarks. But these designations are administrative, and as such, may be changed administratively as well. For permanent protection of public lands and resources, primarily as Wilderness and National Conservation Areas (NCAs), Congressional action is necessary.

Last winter, resolutions were passed in Mesilla, Hatch, Sunland Park, Las Cruces, and Doña Ana County that called for Wilderness or NCA protection of certain Bureau of Land Management (BLM) lands and made specific recommendations for methods of land disposal and use of funding by the BLM. These resolutions were sent to Senator Pete Domenici, who subsequently asked the City of Las Cruces and Doña Ana County to undertake a public input process and get more detail about what specific user groups want.



This process, named “Regional Land Management: A Community Response,” targeted interested members of the public, mechanized and non-mechanized recreationists, sportsmen, farmers, ranchers, developers, realtors, homebuilders, conservationists, community action groups, neighborhood associations, business and economic development groups, and federal and state agencies.

In a series of eleven public meetings, attendees were asked about their concerns regarding proposals for Congressional designations and land management decisions. Next, a work group of stakeholder representatives was formed to review the public input and analyze issues pertinent to the protection of certain BLM lands. The stakeholder representatives met in a series of work sessions through late January 2007, and each submitted Position Papers for their individual stakeholder group. This Final Report contains these positions, as well as a brief explanation of the complexity of issues and range of needs revealed through this effort.

### **Summary of Pertinent Legislation and Documentation**

In order to fully understand the complexities in determining how best to protect the County’s public lands, it is important to be knowledgeable of the legislative and legal history that has shaped the discussion. The effort to protect open space is not new: Theodore Roosevelt, Aldo Leopold and others began the work of protecting America’s public lands and wildlife around the beginning of the 20<sup>th</sup> century. The first comprehensive federal legislation, however, was the Wilderness Act of 1964. The Wilderness Act created the National Wilderness Preservation System, defined wilderness characteristics, and outlined procedures for creating wilderness areas in the U.S.

The Wilderness Act defines wilderness as, “an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (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 use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.” (For text, see Appendix 2)

Another important piece of legislation is the Federal Land Policy Management Act of 1976 (FLPMA), the principal law guiding the BLM in management, protection, development, and enhancement of the public lands. FLPMA specifically requires the agency to manage for the multiple use and sustained yield of public land resources for both present and future generations. For many years, the BLM managed public lands under a number of different, and sometimes conflicting, statutes. Passage of the FLPMA in 1976 was very important in that it created a single, unified statutory scheme for management of these lands. (For complete text, go to: [www.blm.gov/flpma/FLPMA.pdf](http://www.blm.gov/flpma/FLPMA.pdf))

Under FLPMA, the BLM must periodically inventory public lands and their resources, and develop Resource Management Plans (RMPs). In managing its lands, BLM must consider the relative value of resources without necessarily promoting the uses with the greatest economic return or greatest unit output, and must not permanently impair the productivity of the land.

Section 603 of FLPMA directed the BLM to study the agency's roadless areas and identify those that may have wilderness characteristics. These were designated as Wilderness Study Areas (WSAs) and they are currently managed to protect their wilderness values until such time as Congress either designates them as wilderness or releases the WSA identification.

FLPMA also requires BLM land use plans to identify disposal lands and allows for acquisition of inholdings, but it is the Federal Land Transaction Facilitation Act of 2000 (Title 2 of Public Law 106-248), also known as the Baca Bill, that linked public land sales and acquisitions by making the money from sales available to BLM for land acquisitions.



Through 2010, the Baca Bill allows BLM to sell lands classified for disposal under resource management plans and keep the proceeds in a special fund. BLM can then use fund proceeds to purchase inholdings and other lands from willing sellers. But in 2010, if these funds have not been expended, a “sunset” takes effect and the funds will go to the General Treasury. At that point, they would no longer be available for land acquisitions. (For complete text, go to: [www.blm.gov/style/medialib//blm/ca/pdf/pdfs/pa\\_pdfs/row\\_lands.Par.8900ed91.File.pdf/Act.pdf](http://www.blm.gov/style/medialib//blm/ca/pdf/pdfs/pa_pdfs/row_lands.Par.8900ed91.File.pdf/Act.pdf))

Section 4(d) (4) (2) of the Wilderness Act states that the grazing of livestock, where established prior to the establishment of the wilderness area, shall be permitted to continue. However, administering the policies of the Wilderness Act over the years led to varying interpretations that Congress felt were not in accordance with the intent of the Act. So in 1980, Congressional Grazing Guidelines were developed to curtail administrative actions that were contrary to the provisions of the Wilderness Act. These guidelines have generally been included in subsequent wilderness legislation. The Guidelines make clear that wilderness designation should not prevent the establishment of normal range allotments and allotment management plans, maintenance or management improvements, nor the construction and maintenance of new improvements which are consistent with allotment management plans and or which are necessary for the protection of the range. (For complete text, see Appendix 3.)

Wilderness Management – BLM Final Rule, 43 CFR Parts 6300 and 8560: This document revises and updates the 1985 regulations for management of designated wilderness areas.

Since the original issuance of the regulations, BLM had developed new policies, Congress had required new procedures, and technologies had changed. The final rule met the need for updated regulations by adding new requirements based on changes in legislation or agency objectives, clarifying what uses BLM allows and authorizes in wilderness areas, what acts BLM prohibits, and explaining special uses the Wilderness Act explicitly allows, and how BLM allows access to non-Federal lands located within BLM wilderness areas. (For complete text, go to: [www.blm.gov/nhp/news/regulatory/6300eta1/6300f.pdf](http://www.blm.gov/nhp/news/regulatory/6300eta1/6300f.pdf))

The BLM Mimbres Resource Management Plan (December 1993) formally records BLM decisions for managing approximately 3 million surface acres of public land and 4.1 million subsurface acres in the Mimbres Resource Area (Doña Ana, Luna, Hidalgo, and Grant counties). The Mimbres RMP is the current resource plan for Dona Ana County, and in addition to management guidelines, it also identifies parcels of public land for acquisition and disposal. A revision of the Mimbres Plan, called the TriCounty Resource Management Plan, is currently under way.

(For complete text, go to [www.nm.blm.gov/lcfo/mimbres\\_rmp/mimbres\\_rmp.htm](http://www.nm.blm.gov/lcfo/mimbres_rmp/mimbres_rmp.htm) or [www.nm.blm.gov/lcfo/tri\\_county/tricounty.html](http://www.nm.blm.gov/lcfo/tri_county/tricounty.html))

A National Conservation Area is designated by Congress to conserve, protect, and enhance resources and values of the public lands while allowing livestock grazing and recreation to continue in appropriate areas. NCAs do not have a prescribed set of protection measures. Instead, the defining legislation describes broadly how the NCA will be managed and site specific management decisions are generally made in the NCA management plan following Congressional designation. (For text, see Appendix 4.)



Various concepts and definitions are also relevant to any discussion of public land protection, particularly wilderness designation. Over the years, these have been called into question as highly subjective, and as a result, the BLM has published clarifications upon which any interpretation of pertinent legislation relies. These are as follows:

For the purposes of the BLM's wilderness inventory, the following definition of a "Road" has been adopted and is published in the BLM Wilderness Inventory Handbook <sup>1</sup>:

The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road." This language is quoted from the legislative history of FLPMA, the House of Representatives Report 94-1163, page 17, May 15, 1976. It is the only statement regarding the definition of a road in the law or legislative history.

The BLM also adopted and uses the following sub-definitions of certain words and phrases in the BLM road definition stated above:

'Improved and maintained' -- actions taken physically by man to keep the road open to vehicular traffic. 'Improved' does not necessarily mean formal construction. "Maintained' does not necessarily mean annual maintenance.

'Mechanical means' – use of hand or power machinery or tools.

'Relatively regular and continuous use' – vehicular use which has occurred and will continue to occur on a relatively regular basis. Examples are: access roads for equipment to maintain a stock water tank or other established water sources; access roads to maintained recreation sites or facilities; or access roads to mining claims.

The Handbook goes on to explain several Key Factors of Wilderness Characteristics. In the inventory process to identify areas with wilderness characteristics, the key factors to be used are:

1. Size. At least 5,000 contiguous roadless acres of public land.
2. Naturalness. The imprint of man's work must be substantially unnoticeable.
3. Either:
  - a. An outstanding opportunity for solitude, or
  - b. An outstanding opportunity for a primitive and unconfined type of recreation.

To qualify for wilderness study identification an area of public land must be shown to meet both factors 2 and 3. An island may be of any size. For an area of public land of less than 5,000 contiguous roadless acres to be considered for WSA identification, it must also be either:

1. Contiguous with land managed by another agency which has been formally determined to have wilderness or potential wilderness values; or
2. Contiguous with an area of less than 5,000 acres of other Federal lands administered by an agency with authority to study and preserve wilderness lands, and the combined total is 5,000 acres or more; or

<sup>1</sup> BLM Wilderness Inventory Handbook: Policy Direction and Procedures and Guidance for Conducting Wilderness Inventory on the Public Lands. Published by the US Department of the Interior, September 1978.

3. Subject to strong public support for such identification and it is clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired condition, and of a size suitable for wilderness management.

Other definitions have been referenced as part of this consensus-building effort. They are derived from the Glossary found in the 1993 Mimbres Resource Management Plan<sup>2</sup> :

Land Disposal: BLM identifies all public lands for either retention or disposal at the RMP stage. Changing land disposal decisions generally requires a RMP amendment.

Retention Lands. These are lands BLM intends to retain in Federal ownership. These are generally large blocks of Federal land containing high resource values.

Disposal Lands. These are lands BLM can dispose of through sales or exchanges. These are generally scattered parcels or parcels in the path of development that are needed for community expansion. Sales and exchanges must be at fair market value as determined by appraisal. BLM can also dispose of land for public purposes such as schools, community centers and parks at less than fair market value. Typically only a small percentage of the land identified for disposal at the RMP stage is actually transferred out of Federal ownership.



Withdrawal: An action that restricts the use of public land and segregates the land from some or all of the public land or mineral laws. Lands can be withdrawn from only one use such as the 1872 mining law or from a multitude of uses such as the public land laws. Withdrawal from the mining law would prevent the staking of mining claims and any subsequent mining. Withdrawal from the land laws generally means no disposals or ROW authorizations.

The process of land disposal is described in FLPMA and directs the BLM to identify disposal lands and have a plan for their disposal. This process is described in the Mimbres Resource Management Plan (RMP), in which about 65,000 acres of disposal lands in Doña Ana County are identified. From these 65,000 acres, the BLM will occasionally target smaller pieces and sell or exchange them. If land is listed as disposal, it won't necessarily be sold. But if the land is not listed as disposal, it cannot be sold without a revision in the RMP or a land use plan amendment, processes which both require extensive public input. As noted earlier, the Resource Management Plan is in the process of being revised as the Tri-County Resource Management Plan and the list of disposal lands may change as a result of that revision.

<sup>2</sup> Mimbres Resource Management Plan. Published by the U.S. Dept. of the Interior Bureau of Land Management, Las Cruces District Office, December 1993. Pages GL 2-9.

After disposal lands are sold, the proceeds are available for further conservation purposes. As noted in the Baca Bill, proceeds are to be divided among the four federal land conservation agencies (National Park Service, US Fish & Wildlife Service, US Forest Service and the BLM) and are to be used in New Mexico for acquisition of other conservation land, with a small percentage allowed for the administration needed to sell the land. These agencies have until 2010 to utilize these funds.

### **In Doña Ana County**

As directed by Congress through Section 603 of FLPMA, the BLM developed a land inventory in the 1980's. The result was a list of areas that had wilderness qualities and could potentially be designated as Wilderness in the future. These inventories were documented in the 1991 New Mexico Wilderness Study Report.<sup>3</sup> Six Wilderness Study Areas (WSAs) were identified in Doña Ana County at that time. They were:

Robledo Mountains WSA  
Las Uvas Mountains WSA  
Aden Lava Flow WSA

West Potrillo Mountains WSA  
Mt. Riley WSA  
Organ Mountain WSA

In the Report, the BLM recommended that four of those six be designated as wilderness. The Robledo Mountains and Las Uvas WSAs were recommended as not suitable, but have also remained classified as WSA's since that time. In 1993, the BLM identified two additional areas, Peña Blanca and Organ Needles, with wilderness characteristics in their Mimbres RMP. They were designated as WSAs and recommended for wilderness as well.<sup>4</sup> Today, Doña Ana County has eight WSAs, totaling over 200,000 acres. (For map, see Appendix 5.)

Two other areas have been selected and recommended as wilderness by citizen groups, Broad Canyon and the East Potrillo Mountains. These areas were identified as the result of an ongoing field inventory of BLM lands throughout the state by the New Mexico Wilderness Alliance (NMWA). The inventory identified lands with wilderness characteristics and assessed their suitability for Wilderness designation.

In addition, the Citizens' Task Force for Open Space (CTF) 2005 document, *A Vision: Open Space and Trail System for Doña Ana County, New Mexico*, identified important areas for open space, trails, and wildlife corridors in Doña Ana County, and a potential National Conservation Area (NCA) in the Organ Mountains was identified. The West Mesa Escarpment was also identified as an area warranting permanent protection (for Map, see Conservationists Position Paper). [Note: This area was not discussed by stakeholder representatives in detail; however, some groups noted a recommendation for protection.]

<sup>3</sup> New Mexico Wilderness Study Report Volume 2 WSA Recommendations, U.S. Dept. of the Interior Bureau of Land Management, 1991. Pages 1-8, 91-96, 97-105, 115-121, 123-132.

<sup>4</sup> Mimbres RMP. Appendix I-1 thru 3, Appendix I-5 thru 8.

“The Citizens' Wilderness and NCA Proposal,” a joining of these efforts over the past several years, calls for the protection of some 115,395 acres, including Broad Canyon and the East Potrillo Mountains, in addition to the eight Wilderness Study Areas already identified by the BLM. (For map, see “Conservationists Position Paper.”)

## Discussion

Public lands are important for the wildlife habitat, grazing forage, watershed integrity, and scenic value they provide. As noted in the Sonoran Institute’s “Potential Economic Impacts of Wilderness in Doña Ana County, New Mexico”, Doña Ana County possesses a rare mix of attributes that has helped it become the rapidly growing and changing place it is today. They are a resource other communities cannot acquire no matter how much capital they might have.

The Report also points out that public lands account for nearly 69 percent of the land base in the county.<sup>5</sup> In addition to traditional activities like grazing and mining, residents benefit from the open space and environmental services provided by these lands. The public lands in Doña Ana County constitute a significant competitive advantage in today’s market where a growing number of people are making business location decisions based on quality of life considerations. Protecting Doña Ana County’s competitive economic advantage includes well-planned preservation of the area’s open spaces. (For text, go to: [www.sonoran.org](http://www.sonoran.org))

Since “Regional Land Management: A Community Response” began, the sixteen stakeholder representatives have struggled to comprehend the complexities of the decisions they were asked to make. Presentations by the stakeholder representatives gave many their first glimpse into professions and pastimes they had no prior knowledge of. It soon became clear that there is much more to learn. Given the time allowed for this effort, the stakeholder representatives were unable to reach greater agreement because specific details about how user groups would be affected by wilderness or NCA designation were not sufficiently identified.



<sup>5</sup> Potential Economic Impacts of Wilderness in Doña Ana County, New Mexico. Sonoran Institute, Tucson AZ. 2006

Comprehensive public lands legislation must include language to address the impacts of these protective measures on stakeholders. The following is a partial list of topics requiring detailed discussion prior to making recommendations for draft legislation:

- Identify paths of growth and specific boundaries for development.
- Examine and determine appropriate boundaries for wilderness areas.
- Identify specific roads and other improvements to be retained or eliminated.
- Regardless of type of permanent protection, develop grazing guidelines to allow:
  - Existing roads to remain open for regular access to livestock waters and other improvements;
  - Regular and routine access by ranchers on existing roads for distribution of feed supplements, checking cattle, maintenance of improvements, trailering cattle, etc.;
  - The potential for revision in permitting process to access wilderness for ranching operations.
- Determine boundaries of NCA in Organ Mountains.
- Detailed criteria for management plan of proposed NCAs.
- Specific needs of law enforcement and homeland security agencies.
- Further clarification of “Permanent Withdrawal from Disposal.”
  - Identify features to be protected to prevent further degradation of existing wilderness qualities.
  - For all areas, specify allowable and prohibited uses.
- Clarification from affected agencies on the impacts of protective designations (State Land Office, DAC Sheriffs Department, NASA, U.S. Army, etc.).
- Indepth analysis of public input (expected to be completed Summer '07).
- Evaluate specific data on the economic impact of outdoor recreation, ranching, tourism, etc.
- Create means to fund operation and maintenance of newly created protected areas.
- Create means to fund additional law enforcement needs on newly created protected areas.



## Conclusion

One fact stands out: the citizens of Doña Ana County want permanent protection for all of the areas under consideration:

Robledo Mountains WSA  
Las Uvas Mountains WSA  
Aden Lava Flow WSA  
West Potrillo Mountains WSA  
Mt. Riley WSA  
Organ Mountain WSA  
Robledo Mountains WSA

Las Uvas WSA  
East Potrillo Mountains  
Broad Canyon  
Greater Organ Mountain area  
San Andres/Dona Ana Mountain area  
West Mesa Escarpment

The range of suggestions made by the stakeholder groups in their Position Papers illustrates the diversity of our community and the need for careful consideration of the potential impact on all users of public lands as legislation is drafted and decisions are made.



**Appendices:**

Appendix 1 Doña Ana County Land Status Map

Appendix 2 Wilderness Act of 1964

Appendix 3 Congressional Grazing Guidelines

Appendix 4 National Conservation Area Criteria

Appendix 5 Doña Ana County Wilderness Study Areas Map

Appendix 6 Stakeholder Positions Summary & Tabulation

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