



Wyoming Public Lands Initiative

Principles and Guidelines

November, 2015

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) and 3 U.S. Forest Service (USFS) Wilderness Study Areas (WSAs) in Wyoming. While WSA designations will serve as the launching pad and anchor for the WPLI, county advisory teams are encouraged to look more broadly at long-standing land use challenges and build consensus based agreements using whatever tools at their disposal to reach agreement.

Boards of County Commissioners in all 23 counties are receiving 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 participate in the WPLI process, it is at the discretion of each individual county whether or not to participate. Counties that share WSAs with neighboring counties are expected to work together to develop a joint recommendation. Further, 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 and other potential land use interests 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.

Diverse representation on the County Advisory Committee is imperative for the ultimate success of the WPLI. While every officially organized group need not be represented given the scope of the potential work, individuals who legitimately represent diverse interests is critical.

- II. The WPLI Advisory Committees shall:
 - a. Select a committee chairman or co-chairmen.
 - b. Conduct all meetings in public, in an open and transparent manner.
 - c. Seek, to the maximum extent practicable, to make consensus based decisions.
 - d. Allow for public comment opportunities at all of the committee's meetings.
 - e. Take minutes from the committee's meetings and make those minutes available to the public by providing a copy to the county clerk and to the WCCA for posting on the WCCA's WPLI hub to be located at www.wyo-wcca.org.
 - f. The committee should gather background information and current data¹ on the WSAs within the county, and if warranted, consider additional resource uses, inventories, and management for the given landscape and consider and evaluate this information in the development of the committee's recommendations. This information should also be made available to the public by providing a copy to the county clerk and the WCCA's WPLI hub. 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;

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

- 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
 - 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.
- g. Conduct a public field trip to each individual WSA in order to personally observe the WSA and its wilderness characteristics or lack thereof. During and after the field trip, the committee should focus on and discuss the present use and anticipated future use of the given landscape by itself, but also relative to other lands in the county, region or state.
 - h. While not mandatory, the committee, with the official consent of the Board of County Commissioners, may consider conducting an independent inventory of the WSA/s, as well as any other areas for consideration within an identified landscape.
 - i. Develop a proposed management recommendation for the WSAs within the county, as well as any other areas for consideration. Each recommendation should be accompanied with sufficient rationale for the recommendation made. Refer to the section below regarding “Guidelines on Wilderness Designations or Release.”
 - j. As previously noted, the committee may also consider other areas of interest within the county for potential inclusion in its recommendation, including other land use designations, transfers, or other management actions not necessarily related to BLM WSA designation or release.
 - k. The committee should consult with the planning and land use board if such a board exists in the county.
 - l. A draft of the committee's proposed management recommendations should be distributed for public comment and the public comment should be adequately considered by the committee.
 - m. 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 and take official action to establish a final WPLI recommendation for the county at a regularly scheduled commissioner meeting. Should the BOCC not-approve the recommendation or have further instructions for the Advisory Committee, the BOCC shall remand the recommendation back to the Advisory Committee for further work to reach consensus approval.
- IV. The Board of County Commissioners shall forward its approval of the 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 for posting on WCCA's WPLI hub:
 - 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.
- V. 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. Further work on recommendations and specific agreements should be developed, with additional field trips established in 2017. Final recommendations should be advanced to the WCCA in early 2018.

Counties and the appointed WPLI Advisory Committees will have wide latitude to determine meeting times, topics, and deadlines. The WCCA staff, the office of the Governor, the offices of the federal delegation, 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 Designations, Release, or other management decisions:

The designation or release of the WSAs in a county or region serves as the anchor to the WPLI. However, counties should not limit discussions solely to full designation or release. Many management and designation tools are available and can be employed.. The remainder of these guidelines is intended to define the ends of the spectrum (full wilderness designations or full release) as well as potential middle of the road approaches.

I. Wilderness Designation for WSAs or areas with wilderness character

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 something short of a wilderness area, allow for additional uses that are not otherwise 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.”²

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.

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

The language establishing each management area may include management provisions and uses not typically afforded under the Wilderness Act. For example, in some cases special provisions have been incorporated into the

² 43 U.S.C. 1782(c).

legislation providing specific direction to manage for multiple uses, which may also include wilderness character, on an identified landscape. Such provisions could be a tool of compromise for WPLI Advisory Committees to explore.

In determining whether to make a recommendation to designate a wilderness area, 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 quality³:

- 1) **Untrammeled**. The Wilderness Act states that wilderness is “an area where the earth and its community of life are untrammeled by man.”
- 2) **Natural**. The Wilderness Act states that wilderness is “protected and managed so as to preserve its natural conditions.”
- 3) **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.”
- 4) **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.”
- 5) **(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 prohibitions⁴:

- 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);

³ 16 U.S.C. 1131(c).

⁴ *Id.* at 1133(c)

- 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.⁵
- 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.⁶
- 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.⁷
- 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.⁸
- 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 results of the surveys shall be made available to the public and submitted to the President and Congress.⁹
- 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 such uses will better serve the interest of the United States.¹⁰
- Livestock grazing, where established prior to 1964, shall be permitted to continue to such reasonable regulations as are deemed necessary.¹¹
- Commercial services may be permitted within the wilderness area to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the area.¹²

⁵ *Id.*

⁶ *Id.* at 1133(d)(1)

⁷ *Id.*

⁸ *Id.* at 1133(d)(2)

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1133(d)(4).

II. 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."¹³
- 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 or other resource 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 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)."¹⁴

¹² *Id.* at 1133 (d)(5).

¹³ S. 1087, 112th Cong. § 1 (2011).

¹⁴ S. 268, 112th Cong. § 1 (2011).

III. Directed Management:

Direction can also be provided to the BLM and Forest Service on how to specially manage the released WSAs, as well as any other areas for consideration within an identified landscape in the future. There are several options available including national conservation areas and special management areas that can protect conservation values while allowing specified land uses to continue. Additionally, directed management could include targeted transfers, exchanges, or conveyances and/or other options that improve off-highway vehicle, mountain bike, or other activities.