

SETTLING THE WILDERNESS

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INTRODUCTION

As an easterner by birth and upbringing, I never would have imagined that issues such as the validity of agency handbooks, bureaucratic inventories, and definitions of rights-of-way across public lands would be the burning ones of my time. Yet throughout my adopted region of the interior West, where public lands comprise a low of 27% (Montana) to a high of 83% (Nevada) of the lands within state boundaries, these issues, which are all questions about the scope of the authority of federal public lands agencies, touch off deep feelings in many quarters, and for good reason. What happens on these lands impacts local communities as well as communities of interest throughout the nation. The country's national ecological health and heritage, resource and recreation demands, and democratic principles are all at stake here, regardless of whether the Founding Fathers would ever have anticipated that highly differentiated bureaucracies would play such a crucial role in the governance of their free country.

This paper addresses two instances of agency action on public lands, both of which originated in Utah, but that have implications wherever federal agencies wield authority. The first is a settlement between the state of Utah and the Department of Interior ("DOI") concerning the authority of the DOI to inventory and manage lands as potential wilderness areas (hereafter the "Wilderness Settlement"). The second is a Memorandum of Understanding ("MOU") between Utah and the DOI concerning recognition of claims to rights of way across public lands pursuant to an old mining statute known as R.S. 2477 (hereafter the "R.S. 2477 MOU"). In both of these cases, the DOI entered into an agreement with the State purportedly to put to rest disputed issues concerning uses of public lands. Underlying both of these settlements is a fight about what kind of wilderness, and how much of it, the federal government should protect.

* Associate Professor, University of Colorado School of Law. Hal Bruff, Melissa Hart, David Getches, Hal Krent, and Ted Zukoski provided helpful feedback on an earlier draft. I am grateful to Seth Lucia for his indispensable research assistance and to the members of the University of Colorado Law Review for their patience and dedication.