

The Steens Mountain Cooperative Management and Protection Act of 2000

The Act

In the fall of 2000, Congress enacted the “Steens Mountain Cooperative Management and Protection Act” (“Steens Act”).¹ The “protection” afforded by the Act included:

- 1,148,158-acre mineral withdrawal, within which is a;
- 496,135-acre Cooperative Management and Protection Area, within which is a;
- 174,744-acre Wilderness, within which is a;
- 99,859-acre livestock-free zone; and also
- 28.65 miles of National Wild and Scenic Rivers; and
- a Redband Trout Reserve (required removal of a dam).

A complex number of land exchanges resulted in net loss of 85,788 acres of public lands. Nonetheless, the resulting configuration and habitat and scenic quality of the land was a net gain for conservation, the public and the taxpayer. For example, after the legislation passed the total acreage of the wilderness resource (designated Wilderness and remaining Wilderness Study Areas) increased 33,830 acres.

The “cooperation” afforded by the Act included:

- establishment of a multi-stakeholder advisory council;
- establishment of a Wildlands Juniper Management Area;
- authority for cooperative management agreements between BLM and private landowners; and
- authority for conservation and non-development easements.

Unfortunately for those who sought “cooperation” more than “protection,” the bill’s requirements for protection were built-in and up-front, while its intent for cooperation was not firmly established in statute. It is far easier to prescribe protection than coerce cooperation by statute.

The Acting Out

In the late early summer of 1999, Interior Secretary Bruce Babbitt announced his intent to protect the Steens Mountain area in southeast Oregon for the present and future generations of Americans. As the second term of the Clinton Administration was winding up, Babbitt was thinking about his legacy and that of his boss who—having recently avoided conviction by the Senate after being impeached by the House of Representatives—certainly could use some polishing of his image and legacy.

Babbitt was contemplating national monument designations, not only at Steens Mountain but for several other “objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States” as authorized by the Antiquities Act of

¹ 16 U.S.C §460nnn—460nnn-122

1906,² Eventually, Clinton did establish several new national monuments—to be managed by the Bureau of Land Management, rather than the National Park Service—totaling several million acres.

In 1999, the Clinton Administration was still stinging from the political fallout of how it designated the Grand Staircase-Escalante National Monument in Utah in 1996. Clinton surprised Utah politicians by announcing it at a campaign stop—relatively nearby, but in Arizona. Thereafter, Babbitt was committed to “no surprises” and he’d be telegraphing the Administration’s intentions from then on.

The Administration wanted to engage Congress in several protective public lands designations during their waning years, but for most western states, the affected state’s congressional delegation wasn’t interested. It was different for Steens Mountain in Oregon. The political stars that aligned for Steens Mountain legislation included:

- Clinton would soon leave office and was willing to use authority granted to him by Congress under the Antiquities Act of 1906.
- Steens Mountain is truly spectacular and has been considered national park-quality since the 1920s.
- Local, state and national Bureau of Land Management officials want more recognition (if not protection) for the area under BLM control, so it wouldn’t be “lost” to the National Park Service. The bureaucracy also figured that special designations that fit in the nascent National Landscape Conservation System (special congressional or presidential designations on BLM lands all in one “system”) would get more money as their budgets were otherwise getting tightened.
- Increased recreation use of public lands on Steens Mountain, as well as substantial un-posted private inholdings traditionally used by the public, were increasingly in conflict with livestock grazing on the mountain. The grazing was particularly valuable because it was excellent late season forage located near the base ranches, so trucking was unnecessary. Nonetheless, the six large land and livestock owners on Steens Mountain knew their time was limited on the High Steens.
- The Donner und Blitzen River and some tributaries, which arise on Steens Mountain, had been designated a Wild and Scenic River in 1988. The unit of the National Wild and Scenic Rivers System was classified as “wild,” the most protective and restrictive classification. Ongoing litigation was likely to find that livestock grazing in the wild river management corridor was inconsistent with the purposes of the Wild and Scenic Rivers Act and the outstandingly remarkable values for which the stream segment was designated. Though the management corridor extended an average one-quarter mile each side of the stream, the practical effect in this steep country would be no livestock in the watershed.

² 16 U.S.C. §431

- The Oregon Congressional Delegation engaged on this issue. It's a generally blue state with only two (one senator, one congressperson) Republicans out of seven. Democrats held all other statewide offices. Steens Mountain was in the congressional district of Rep. Greg Walden (R-2-OR).
- The large land and livestock owners on the mountain fears of a Clintonian national monument were far larger than the conservation community's hopes for one, making both prefer a legislative solution.

Developing and Cutting the Deal

Over the course of approximately 16 months, four distinct efforts were convened to achieve a political viable legislation for Steens Mountain.

First, Babbitt tried to get the local Bureau of Land Management Resource Advisory Committee (RAC) to develop a legislative proposal acceptable to all interests. The RAC was unable to do so.

Second, Governor John Kitzhaber (D) and Rep. Greg Walden (R-OR) convened a group of people representing special interests who achieved as much success as the RAC.

Third, staff from the Babbitt, Kitzhaber, Wyden, Walden, DeFazio, Blumenauer, and Smith offices intensively met.

The first two efforts failed because: (1) too many special interests were at the table; and (2) the right special interest representatives were not at the table. The third effort failed because the staff members were all representing the interests of their bosses, who were representing the positions of their political bases.

As time was running out for legislative action, the local field representative of Senator Ron Wyden, David Blair, and legislative assistant to Rep. Walden, Lindsay Slater, decided that the four people—two from each side—that might cut the deal were:

- *Stacy Davies*, rancher for the largest ranch in the area;
- *Andy Kerr*, former executive director of Oregon Natural Resources Council and then a consultant to The Wilderness Society on Steens Mountain issues;
- *Bill Marlett*, Executive Director of Oregon Natural Desert Association; and
- *Fred Otley*, local rancher and state livestock industry leader.

During the previous attempts to create a legislative deal by convening special interests, ranching and other special interests blackballed Kerr and Marlett. No conservationists tried to blackball any ranching or other special interest.

Though a two-day marathon of negotiations that at Davis' house, overseen by Blair and Slater and attended by the local BLM District Manger and Area Manager (who merely provided technical advice when asked), a deal among the four was created.

One reviewer of this paper as a “remarkable two-day discussion at Roaring Springs Ranch.” The reviewer went on to note:

- *Each participant wanted a deal, each identified opportunities to improve conditions on the mountain;*
- *No one sought the religious conversion of the other side, and both sides demonstrated unique love and compassion for the landscape, and for preserving the physical and cultural ‘feel’ of the place.*
- *Issues were addressed and resolved quickly and constructively.*
- *Each had a detailed understanding of their constituency needs, and had sufficient influence to negotiate; the group enjoyed the meeting because for the first time creative ideas could be developed, shaped, and, usually, adopted.*
- *With an understanding that prior wilderness legislation – the vast majority, if not all, involving National Forest lands where grazing was not nearly as significant as it was on Steens – included committee report “guidelines” governing the administration of grazing, and that the net effect of these guidelines was to make life easier on the permittee, the ranchers gained a certain enthusiasm for resolving [Wilderness Study Areas] in favor of creating new Wilderness. Because the guidelines would apply in Wilderness, and not in a WSA, a permittee and the BLM would have greater latitude to manage the allotment effectively under a Wilderness designation.*

Other large land and livestock owners attended part of the sessions to work out details of land exchanges, Wilderness boundaries, etc. A few issues the four negotiators could not resolve and left for Members, Senators and the Secretary and their staffs to resolve among themselves and with the staffs of the committees of jurisdiction. There is a political tendency for local Members and Senators to seek local exceptions to The Wilderness Act and it often befalls the committees of jurisdiction (Members and staffs) to oppose such.

The initial proposal was introduced by Rep. Greg Walden, whose district included Steens Mountain, and co-sponsored by Rep. Earl Blumenauer (D-3-OR), whose district included a lot of Steens Mountain lovers. The bill went through several iterations before gaining the acceptance of a critical mass of the Congress and the Administration. At one point, Rep. Peter DeFazio (D-4-OR), a member of the House Resources Committee, was frustrated with the Walden language and had his legislative assistant Amelia Jenkins circulate his own language, which he was prepared to introduce. This made Walden more accommodating to DeFazio’s concerns. One hearing was held in the House Resources Committee. The final language was sent to the floor and passed without controversy, as the major deals had been cut. The Senate later concurred and Clinton signed it.

Key Players and How They Gained and/or Lost

While not major players on the legislation that became law, the following were nonetheless affected greatly by the Steens Mountain Act:

- **Mining Industry.** The Act withdrew 1.1 million acres of federal lands from location (hardrock minerals), leasing (other minerals or geothermal) or sale (gravel, etc.). The mining industry wasn't paying any attention to this legislation.
- **Off-Road Vehicle Interests.** The ~0.5 million-acre special management area prohibits off-road vehicle use. The definition of what actually is a "road" off which one cannot drive is still in dispute.
- **Burns Band, Paiute Indian Tribe.** The tribes were consulted and attempts were made to engage them more in the process, but unsuccessfully.
- **Minor Private Inholders.** There were other owners of private inholding on Steens Mountain (not the large land and livestock owners), but who had a stake in the legislation.
- **County "Court" (elected Commission).** To a large degree the local county elected officials deferred to Davis, Otley and the other large land and livestock owners, as the elected officials assumed the ranchers were the best hope to avoid a Clintonian national monument. Also at play was the traditional deference given to the iconic rancher by politicians in the West.

The table below summarizes the key players in the legislation and how they won.

Key Player	How Gained
Conservationists	Strong conservation protections (see above).
Large Land and Livestock Owners	Consolidated private holdings in areas they could control public access and compensated for doing so (more than equal value land exchange). Move some of their grazing allotments from Wilderness Study Area status to Wilderness status, which (ironically) is less restrictive of livestock grazing.
Rep. Greg Walden (R)	Avoided a Clintonian national monument. Politically positioned as dealmaker in his own district and appeared "greener" than he actually is to suburban Oregonian swing voters, which will be helpful when he seeks statewide office.
Rep. Peter DeFazio (D)	Was able to actually help enact conservation legislation though in the minority party. Burnished his credentials as consistently in favor of the environment.
Rep. Earl Blumenauer (D)	Was able to actually help enact conservation legislation though in the minority party. Burnished his credentials as a dealmaker.
Sen. Ron Wyden (D)	Appeared as the leader on the issue in the Senate.
Governor John Kitzhaber (D)	Was able to actually help enact legislation though from the minority party in Congress. Burnished his credentials as a dealmaker.
Sen. Gordon Smith (R)	Avoided a Clintonian national monument. Could appear slightly more "green" than he is to suburban Oregonian swing voters.

Implementation

The Steens Mountain Act established a Steens Mountain Advisory Council (SMAC) comprised of specified special interests. Of the four key negotiators, only ranch manager Davis has served

on the advisory committee. It apparently has been a frustrating experience, as he's resigned at least once. Neither Kerr nor Marlett, the two conservation negotiators, have served on the advisory committee, though Marlett has gone to several meetings and is presently an applicant.

The Steens Mountain Act resulted in tangible conservation protection (that which was specifically legislated by Congress) and, some additional conservation protection with the development of the comprehensive management plan specified by the statute. However, for some in the conservation community, the plan itself fell short of expectations and is currently in litigation. As for the goal of the Act to foster cooperation, such has not occurred. There is no more communication today between conservationists and ranchers than prior to the Act, and a general ambivalence, if not disdain, towards the BLM by some stakeholders. While there have been individual acts of cooperation between BLM and some players, a general feeling of mistrust prevails over SMAC meetings where people continue to huddle with like-minded persons.

There are several major (and still festering) issues resulting from the Steens Mountain Act:

- **Access to Private Inholdings.** There were significant amount of private inholdings in the Steens Mountain Cooperative Management and Protection Area and/or the Steens Mountain Wilderness. As this was a contentious issue in the development of the legislation, there was a tendency to avoid specifics in statutory language, so as to gloss over differences and leave the matters for implementation by BLM—and more importantly, appropriations by Congress. It was hoped that conversion of private inholdings to public lands would alleviate most problems (see below).
- **Public Acquisition of Private Inholdings and Interests.** Though the Act resulted in major exchanges of public and private land to result in a more manageable situation to both the government and large land and livestock owners, there are still many private inholdings in the Steens Mountain Wilderness. The Act authorized \$25 million for “acquisition of land and interests in land... and to enter into non-development easements and conservation easements.” No money has been appropriated, resulting private inholders not being bought out nor or other landowners being bought in. The failure to appropriate lies primarily with the Oregon Congressional Delegation, as well as a new Administration hostile to conservation in general, more public lands and other spending priorities.
- **Conservation of Private Lands.** The Steens Act authorized BLM to enter into cooperative management agreements with private landowners that could include both federal and non-federal land. Further, non-development (no further development) or conservation (proactive conservation measures) easements were authorized. None have been funded.
- **Grazing Permittee Access and Activities in designated Wilderness.** For that portion of the Steens Mountain Wilderness that was not legislated to be livestock-free, Congress specified traditional direction (the so-called “Congressional Grazing Guidelines”) that existing livestock grazing would not be significantly affected by Wilderness designation. The original Wilderness Act authorized “reasonable regulations.” The Congressional Grazing Guidelines more firmly grandfathered existing grazing in Wilderness and specified that it may continue essentially as it has. BLM has sought to interpret and implement this provision by specifying precisely what

grazing permittees can and cannot do and when and where. Grazing permittees chafe under these restrictions. The livestock-free portion of the Wilderness became so as part of the larger political deal the Steens Mountain Act formalized and implemented. Ranchers were compensated for ending grazing in that portion of the Wilderness.

- **Running Camp.** A seasonal training facility had established occasional runs through what would become the Steens Mountain Wilderness, in numbers in excess of what is normally allowed under Wilderness management policies. While identified as an issue, the four key negotiators underestimated its significance (BLM failed to inform anyone of the magnitude of use) and it's continued operation became a huge issue (actually, a huge distraction) after the law was enacted. It has finally been resolved.

- **Western Juniper Management.** One of the creative solutions to come out of the marathon negotiations was the establishment of a "Wildlands Juniper Management Area" to educate the public on western juniper management issues. Western juniper, a native species, is rapidly encroaching into the sagebrush steppe. Conservationists and ranchers agree it is due to a lack of fire in the ecosystem, while ranchers generally reject the contention of conservationists (and scientists) as to the role that historic and current livestock grazing plays. The WJMA has never been implemented, due to a lack of consensus in the SMAC on how to proceed.

- **Wilderness Study Areas.** No agreement could be reached regarding a large amount of Wilderness Study Area, within the Cooperative Management and Protection Area. They remain in "limbo" (not the worse thing for conservationists) until Congress acts. After enactment of any site-specific public lands legislation there is a period of time, during which there is no interest in a congressional delegation in revisiting the issue or the landscape.

Conclusion

To those that feared a Clintonian national monument, the legislation was a success. To those that sought *protection* of Steens Mountain, the legislation was a success, although conservationists desired far more protection than was achieved. To those that sought to implement *cooperation* between the BLM and various "stakeholder" interests, the legislation is a disappointment. Cooperative management—defined in this context as giving the SMAC and local interests more control in management direction—has not taken off as envisioned by its proponents (primarily Harney County, Rep. Walden, and Davis and Otley). It was never embraced by Kerr and Marlett, who saw it as a price to be paid to achieve protection and never said otherwise.

Although the Act clearly specified that the SMAC is merely *advisory* to the BLM, some local stakeholders have put great faith in the SMAC for advancing their agendas. These individuals have convinced themselves that the BLM can ignore its duty to adhere to federal laws, and believe that the Act vested them with authority to tell BLM what to do. This false expectation has created hard feelings with some SMAC members towards the BLM.

The Steens Act achieved a political outcome that was satisfactory to "both" sides, but it has not resulted in all stakeholders agreeing to a common vision. Conservationists want more Wilderness and less livestock on public lands. Ranchers want to maintain, if not increase, livestock numbers

and their “way of life.” Certain inholders in the special management area and/or Wilderness wish to develop commercial activities or vacation homes. While off road vehicle use is statutorily prohibited in the special management area, the definition of what is a “road” is still in hot debate.

The role of Governor John Kitzhaber (through his assistant Peter Green) was very helpful in creating a positive climate for negotiations. Kitzhaber was the lead policy advocate for the protection of private lands on the mountain from development. However, there was not a consensus on a proper federal role in such matters, save for authorizing conservation and non-development easement (which have never been funded). Kitzhaber’s greatest contribution was to leverage his popular image and relationship with Secretary Babbitt to encourage Clinton to proclaim a national monument if Congress didn’t do what the governor wanted.

The Steens Act has served as political incentive for other legislation, in particular the pending Central Idaho Economic Development and Recreation Act, advocated by Rep. Mike Simpson (R-2-ID). (Simpson’s Chief of Staff Lindsay Slater was the Walden legislative assistant who worked on Steens.)

In short, the Steens Act does not represent a new model for cooperative management of public lands. A model implies an ability to replicate. How often do you have a departing president inspired by a conservation-minded Interior Secretary to create a legacy for future generations?

If there is a take-home message from the Steens Act, one cannot legislate cooperation. Nonetheless, such “omnibus” bills can often be politically viable and can also often be in the public interest. It boils down to this: *Can omnibus legislation resolve controversy by giving a critical mass of stakeholders what they care most about by taking away what they care least about?*

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Reviewers: David Blair (Wyden staff), Stacy Davies (rancher), Peter Green (former Kitzhaber staff), Amelia Jenkins (former DeFazio staff), Bill Marlett (conservationist), Fred Otley (rancher), Lindsay Slater (former Walden staff), and Mollie McUsic (former Babbitt staff) were all offered an opportunity to review a draft of this paper. A majority responded—for which I am very grateful—but since a minority wished their comments and suggestions to remain anonymous, those who did respond won’t be identified. Their perspectives are different than mine and sometimes our recollections differed significantly. Therefore, this paper represents my recollections and views, and not necessarily theirs.