

THE STATE OF MONTANA WILDERNESS

A MONTANA FISH, WILDLIFE AND PARKS
MANAGEMENT PERSPECTIVE.

SEPTEMBER 1, 1999

Briefing Paper submitted by;
Thomas B Flowers

Pages: 1 - 10 Survey results
11 - 14 Survey discussion
15 - 19 Review of policy,
guidelines, law
20 - 21 Issues defined
22 Concluding thoughts

Results of the survey: Review of FWP management and participation within wilderness.

Towards the end of April 1999, 116 Montana Fish, Wildlife and Parks (FWP), employees were surveyed particular to their respective roles in FWP management within the sixteen Federally designated Wilderness Areas found in Montana. The field personnel were selected by their supervisors on the basis of involvement in the respective wilderness areas found within six Regions (Region 7 elected not to participate). The Regional Division Managers and respective Regional Supervisors were surveyed based on their apparent wilderness involvement. Helena Staff was identified as either having direct responsibility for, or a genuine interest in, FWP's management role in wilderness.

Of the 116 surveys mailed out, 50 were returned, for a return of 43%. There was a good distribution of response by field, supervisor and Helena Staff to yield a broad Department perspective relative to the individuals personal and professional involvement. The results of each of the sixteen questions will be noted individually, to be followed by a discussion of each and of the effort as a whole. Clarification of the interpretation of the results should be mentioned as follows: some individuals responded to a single question with more than one answer and some did not respond at all, the percentages and the total numbers will not always add up to 100% and 50, respectively. As the specific answers seemed to relate to each other, they were categorized accordingly (obviously there is much room for subjective interpretation in this arena). All the original, completed and returned surveys will kept on file for those who wish to review them.

2) What are the current FWP policies particular to your involvement in wilderness management?

- Of the 50 respondents 14 or 28%, answered either none or not aware of any.

- 58%, 29 out of 50, answered with examples relative to their Division, i.e. fish stocking, elk management, grizzly bear, native species concerns, snowmobile trails program, etc.

- The remaining 14%, 7 out of 50, answered with reference to the particular Federal land managing agency and their relative legislative mandates, i.e. Wilderness Act, IGBC Guidelines, etc.

It appears from the answers to this question that the wording could have been more accurate i.e. "policies" directly related to our participation and wilderness management are few and far between. FWP operates under some Federal law and guidelines viz. United States Fish and Wildlife Service (USFWS), Grizzly Bear Recovery, restrictions as to management practices - helicopter use in wilderness for fish stocking or sampling methods, etc. Consequently FWP must manage under a philosophy which is consistent with the values ascribed to the 1964 Wilderness Act. The majority of answers to this question made reference to threatened and endangered species, species of special concern and native species protection. This may indicate, as with our management direction and philosophy regarding fisheries management in wilderness waters, a subtle shift from recreation to resource based management or at least the realization that our mission can be at times conflicting. Providing for recreation and providing for stewardship of the land may not always be in the same direction.

3) Do you have a copy of the 1964 Wilderness Act and do you use this for management direction?

- 24%, 12 out of 50, of the respondents have a copy of the Wilderness Act, with 20%, 10 out of 50, using this document for management direction.

- 74%, 37 out of 50, did not have a copy of the Act and consequently 76%, 38 out of 50, did not use the Act for management direction.

Federal land designation relative to the wilderness areas and the management thereof is tied to the National Wilderness Preservation System Act of 1964. Fisheries, to include wildlife and recreation are identified as key components and values as seen important to the wilderness areas and to why they are preserved. Other than the respective handbooks, manuals and guidelines specific to wilderness management, the Federal land managing agencies routinely refer to, debate and seek out the implications and guidelines as set forth in the Wilderness Act. As an agency operating in this arena, should we not also be concerned and informed as our Federal counterparts are relative to the management actions that we undertake in Montana's wilderness areas?

4) The International Association of Fish and Wildlife Agencies (IAFWA), have adopted some guidelines for both State and Federal management within wilderness. Do you have a copy of this 1986 Guidelines for Fish and Wildlife Management in Wilderness Areas? Do you use these for direction?

- 4%, 2 out of 50, answered in the affirmative to both of these questions.

- 92%, 46 out of 50, did not have this document, so consequently were not using this for management direction.

- One individual was not aware of this 1986 agreement but found it in the files and will now use this for direction.

Other than specific management guidelines spelled out by Federal law or recovery efforts and the Management Framework specific to the Bob Marshall Wilderness Complex (BMWC), FWP has little to seek direction from other than the 1986 IAFWA Guidelines for Fish and Wildlife Management in Wilderness Areas. Unfortunately it appears that this one document, which we are a signatory to, is not being used. Why is this? If for some reason we had to defend, i.e. litigate, our actions relative to management actions within wilderness, certainly we could fall back on the spirit of this one set of guidelines. As with the Wilderness Act, the Federal land managing agencies regularly refer to this document particular to State management actions in wilderness and more importantly have expected us to do the same. (Three years ago when I tried to find this document within the department, Helena had to send back to D.C. for a copy.)

5) Do you operate under any Memorandums of Understanding (MOUs), between our agency and the respective Federal agency? If so, with whom?

- 54%, 27 out of 50, were not aware of any MOUs, and consequently operated under no such agreements.

- The remaining 46% were aware of either formal or informal MOUs relative to their area of responsibility and with the particular land managing agency i.e. United States Forest Service (USFS) or USFWS.

As with the "policy" question in #2, there were a majority of these answers particular to our involvement with grizzly bear recovery, relocation, etc. Of course we really are mandated to follow the recovery plan, consequently our flexibility can be somewhat diminished by our partners in this effort. Other than a few answers specific to individual species most of the remaining affirmative answers were specific to the USFWS, Charles M. Russell (CMR) National Wildlife Refuge MOU, the USFS Limits of Acceptable Change (LAC) Document and finally the BMWC Management Framework. It was clear that our participation in the CMR MOU, the LAC process and implementation of the BMWC Management Framework gave the respondents some confidence and standing in answering this question. Surprisingly one wildlife manager and one field biologist associated with the BMWC, were not aware of and did not possess this document. Given our in-depth involvement with the development and the press surrounding the implementation of this document, this circumstance seems odd.

In this instance it appears that informal communication and cooperative involvement is evident and in place where formal MOUs may not exist.

6) Are there any other concurrent management responsibilities between FWP and the Federal land managing agency particular to the wilderness area you participate in? If yes, what are they?

- 36%, 18 out of 50, were not aware of any.

- The remaining 64% were aware of concurrent responsibilities, with the majority of these seemingly informal.

The range of answers to this question spanned almost all the possibilities that our agency deals with. Most indicated some form of informal cooperation at the field level. As earlier, species of special concern were mentioned most regularly followed by Parks concerns relative to the snowmobile program, USFS food storage issues and general enforcement activities. This question, as put forth, no doubt generated more confusion than answers among those responding.

7) Characterize your level of cooperation with your Federal counterpart, particular to the management in your respective wilderness areas?

- 16%, 8 out of 50, either had no cooperation or no counterpart.
- 26%, 13 out of 50, characterized their cooperation as marginal.
- 36%, 18 out of 50, expressed a good cooperative level.
- 22%, 11 out of 50, showed an excellent or very good working relationship.

As shown, more than half of the respondents had good to excellent working relationships with their respective Federal counterparts. This speaks well to the level of professionalism in FWP and their commitment to the resource they are charged with managing. Of those that answered marginal or below, some of this can be attributed to the fact that they share no mutually agreed on management plan or that they feel overrun by the Federal guidelines which they have no ownership in. (Author's interpretation)

8) For your area of responsibility are there any current or long term FWP management goals for wilderness? Did the Federal land managing agency have any input into the goals and implementation?

- 42%, 21 out of 50, did not know or were not aware of any.
- 10%, 5 out of 50, were aware of the long term goals relative to their work but acknowledged that these were not specific to wilderness.
- 48%, 29 out of 50, answered in the affirmative and of those, 30% felt that the Federal agencies did have input.

One might assume that since FWP has few long term goals specifically directed towards wilderness (with the exception of the BMWC), that the long term goals of the Department in general might come into play here. Since this option was not spelled out in the question may explain why over 40% felt there were no long

term goals particular to the wilderness area that they operate within. This is re-enforced by the few that acknowledged the fact that FWP long term goals existed but were not specific to land classification. Of those that answered in the affirmative, a majority felt that the Federal agencies had input either through the BMWC Management Framework or the public comment process viz. State wide Elk Management Plan, black bear EIS, etc.

9) Does the Federal land managing agency have any long term management goals particular to the wilderness area that you operate in? And did you have any input into their development and subsequent implementation?

- 44%, 22 out of 50, indicated that they were not aware of any.
- 16%, 8 out of 50, were not aware of any but admitted that they probably existed.
- 38%, 19 out of 50, were aware of the long term goals and a comparable number 36%, felt that FWP did have input.

Every Forest must go through the Forest Planning Process. By law, as spelled out in the 1976 National Forest Planning Act, this is intended to happen every ten to fifteen years. This process is under review in Montana Forests now. The public as well as our agency are invited to participate in this process. There is now a protocol for wilderness stewardship adopted by USFS Region One. Of those which answered in the affirmative a majority used the forest planning process, BMWC Management Framework and the LAC process, as examples of the long term goals and how FWP might participate.

10) If the wilderness area under your responsibility is managed by more than one FWP Region, characterize the level of cooperation between the Regions and do they share the same goals?

- 28%, 14 out of 50, stated that this was not applicable to their area.

- 6%, 3 out of 50, felt they had excellent cooperation.
- 38%, 19 out of 50, stated they had good cooperation.
- 6%, 3 out of 50, had some cooperation, a non-qualified answer.
- 10%, 5 out of 50, expressed marginal cooperation.

As expected, slightly more than one quarter of the answers stated that cooperation was not an issue because they did not share their particular wilderness area with another Region. Of those remaining, a majority had good to excellent cooperation. And of these, two thirds felt they shared the same goals with their neighboring Region. Once again consistency of goals could be tied somewhat into specific Departmental efforts addressing issues pertinent to those Regions involved i.e. snowmobile program, elk plan, BMWC, etc.

11) Are your management actions within wilderness and outside wilderness different? If so, how?

- 16%, 8 out of 50, felt this question did not apply to their management actions.
- 56%, 28 out of 50, stated yes their actions were different in and outside of wilderness.
- 28%, 14 out of 50, stated no difference.

Of the more than fifty percent that answered in the affirmative, the vast majority cited motorized vs non-motorized travel as the main difference. Of these, helicopter use relative to fish stocking along with monitoring, surveying and sampling made up the most pronounced area of contention. This is not uncommon throughout the Western States, as some of the respective Fish and Game agencies feel that management of publicly owned wildlife and fisheries resources precludes subscription to the sideboards prescribed by the Wilderness Act. The pre-existing conditional uses that FWP exercises, although not held very favorably by some of the Federal agencies, are nonetheless respected.

12) Have you ever attended or been offered professional training particular to wilderness management? Have you ever been exposed to the wilderness values that guide the Federal managing agencies?

- 30%, 15 out of 50, have attended some form of wilderness management training.

- 68%, 34 out of 50, have not attended any management training particular to wilderness management.

- However, 60% of FWP personnel that responded were familiar with the respective Federal wilderness values used for management guidance, while 22% were not familiar with any of these values.

Fully two thirds of the respondents indicated that they had received no specialized training relative to wilderness management. This may not be so surprising when one realizes that most of FWP management actions are not tied to land classification and that only in the last few years have the respective Federal agencies made formal training available to State Fish and Game agency personnel. Fortunately, almost two thirds of FWP personnel are acquainted with the management values associated with the Federal management of wilderness. This was acquired either through formal training or an informal association with the respective Federal agencies.

13) List any species of special concern, sensitive species and Threatened or Endangered species that are found within the wilderness areas you work in.

- Pallid sturgeon was noticeably absent, all others of FWP concern were accounted for.

The Montana Natural Heritage Program lists over 330 plant and over 140 animal species as species of special concern. There was very little mention of any of these, which may not be beyond the scope of this inquiry, however it does indicate a certain focus that could be construed as narrow. Certainly one can argue that each of the species of special concern will interact with State fish and game species, making the survival and viability of all an important goal.

14) Can you identify any issues/conflicts that exist between you and the Federal land managing agency particular to your wilderness area of responsibility?

- 36%, 18 out of 50, were not aware of any conflicts, with another 10% not answering the question at all.

- 54%, 27 out of 50, did have issues and conflicts that they were concerned with.

Even though one third cited no conflicts, without a doubt this question generated the most comments. Of those that cited conflicts, fully one third mentioned the examples of restricted helicopter use related to some management action by FWP. Grizzly Bear management concerns also were brought up to a good degree as was the enforcement level (perceived lack of), from the Federal agencies relative to food storage orders. Habitat concerns relative to prescribed burns in the wilderness as well as concerns over native vs non-native fishes were also brought up. The snowmobile trail program and its apparent conflict with wilderness study areas and incursion into wilderness was also a concern. The differing professional values and the lack of acceptance by some in the Federal agencies as to FWP mission particular to recreation (hunting and fishing) in wilderness, finally reared its head.

15) If any, what causes these conflicts to arise? Are they administrative, legislative, biological or personal?

- 36%, 18 out of 50, felt this was not applicable or did not provide an answer.

- The balance of the respondents were: 40% administrative, 10% social (to include values), 8% personal, 4% each legislative and all of the above, and 2% each political and biological.

In holding with the response to the above question (#14), one third listed no answer. The majority of the remainder cited administrative reasons for the conflicts and of these most cited philosophical and value differences that would lead to conflicting management strategies. There was a recognition, that at the field level there seems to be good working relationships that may forgo any administrative inconveniences.

16) If issues/conflicts arise, is there a mechanism to resolve these?

- 50%, 25 out of 50, answered; no, not sure or unknown.
- 46%, 23 out of 50, answered yes and most provided an example.

Of the almost half that responded in the affirmative, fifty percent of these would have informal meetings between the affected field personnel and attempt to reach some compromise. A few expected Staff level personnel to resolve the issue. The remainder either relied upon the BMWC Management Framework or the MOU with CMR to resolve the differences.

17) What wilderness area do you have responsibilities for?

- Noticeably absent was Red Rocks Lake Wilderness (USFWS), otherwise all were listed.

There are approximately 6 million roadless acres of Federal land - USFS, Bureau of Land Management (BLM) and USFWS, in Montana. Within these there are currently 41 Federally designated Wilderness Study Areas. Twenty five are Forest Service, fifteen are BLM and one is USFWS. These wilderness study areas require different management actions compared to non wilderness designation by their respective Federal land managing agency. With the possible exception of the snowmobile trail program, FWP may not focus management activities in Wilderness Study Areas any different than other land designations.

After reviewing the survey material, overall it would appear that FWP participation and management within the State's Federally designated Wilderness Areas is good. Our involvement to date has been characterized as, "reasonably enlightened". On the surface this may sound a bit arrogant coming from the perspective of a Federal land managing agency, but taken in context with the uncomfortable working relationships that exist between some of our neighboring states and the Federal land managing agencies, we should take this as it was meant, a compliment. Throughout the material returned there were some recurring concerns and themes. As to the discussion of these some will be direct and some will be interpretation, supposition, conjecture, etc.

Without a doubt the most contentious issue (and it just happens to be from the Federal perspective also), relative to our involvement in wilderness management, is fish stocking and related activities. There was expressed frustration at the difficulty with which some of our fishery goals needed to be carried out (methods in particular). This shouldn't be to surprising however when one takes time to remember that the land managing agency (habitat), and the agency charged with filling the habitat (with fish and game), are housed under separate roofs.

Section 4(d)(8), of the Wilderness Act and under Special Provisions, states; "... Nothing in this act shall be construed as affecting the jurisdiction or responsibilities of several States with respect to wildlife and fish in the national forest." This is interpreted to allow the States certain "rights", managing the fish and wildlife contained within. With these rights comes the notion of pre-existing conditions. Good examples of this are aerial stocking, stocking of historically fishless lakes and stocking of non-native species. The present FWP wilderness fish stocking guidelines and management philosophy are making this activity more palatable to the Federal agencies. However some in our department see this as a failure in the respect of not providing maximum recreational fishing opportunity (differing values). There is no mention of fish stocking in the Wilderness Act. Increasingly we will feel pressure from those groups outside of the government realm viz. Montana Wilderness Association, Trout Unlimited, Wilderness Watch, Wilderness Society, to rethink our management practices. There may come a time when we shall also be required to defend them in court.

Along with the fisheries issue, grizzly bears; their recovery and particularly relocation, was of a definite concern. There seems to be the feeling that our actions are dictated by influences far outside our control. This is the case for a Federally designated Threatened or Endangered species and should not be a surprise. This concern was not directed so much towards the effort in general but to the restrictions that wilderness areas put on the methods that we may employ. We should expect this concern to grow as more species receive the attention and constraints of the Threatened and Endangered Species Act when they are located within wilderness. Found throughout these two concerns (fish and bear), is the feeling that restrictions on aerial, especially helicopter, use was inappropriate. As our agency evolved so did the technology available to accomplish the management actions needed to reach our goals. With the passage of time, 1964, came the Wilderness Act and it has caused us to step back (as it did with the Federal agencies), and reassess what methods are really necessary. Preexisting conditions has allowed us some flexibility in motorized use within wilderness, however we must except the fact that this use goes contrary to the values of the act itself, of some of the Federal agencies as well as some of our own constituents.

Along this same line, another concern throughout the survey results was the realization that our involvement with Threatened and Endangered Species will only increase with time. This poses a problem in and of itself, in the fact that many of the species which will demand more of our attention are found within wilderness areas. This implied "restriction" of management methods causes FWP to expend more time, effort and consequently monies, to accomplish the same goals as outside wilderness. One could argue that for some species our chances of success will be greater within wilderness, so the extra effort will be well worth the extra expense. What about funding? Will the FWP Fish and Wildlife Foundation or the Federal Land and Water Conservation Fund/Teaming with Wildlife Initiative, give us monies that we can direct towards this effort?

Funding and values seem to be inextricably intertwined in the wilderness issue as it pertains to the State-Federal interaction. As the Federal agencies evolved, their mandate was tied to habitat protection (for the purposes of this discussion). In the simplest form, their Federal monies were not tied to a

particular constituency, only the general fund. Consequently, other than Congress, they had no customers to please. Conversely Montana FWP (in a brief simple form), is in the business of conservation for the purposes of extraction. We have a customer to please and are directly tied to the funding that our constituents provide. These differing funding sources do not necessarily make the State and Federal agencies contrary but they can lead to very divergent values towards wilderness.

One could argue that the Federal perspective is for wilderness in its own right and the States perspective is for recreation within that right. Even though both are values, the problem arises when the land managing agency and its direction may over ride our goals and objectives. This to may change with time. If our funding sources change (as previously mentioned) to reflect less dependency on user fees - and the user fees as collected by some of the land managing agencies (as a pilot program), to include recreation in wilderness, become more of a reality, - then we could expect that the user will drive both State and Federal management and consequently the values held by both agencies could converge. (Of course the opposite could also happen.) With more training particular to wilderness management being made available to State Fish and Game personnel - so that we may more fully appreciate their values - and as we continue (hopefully) to enter into more cooperative agreements with the Federal land managing agencies relative to joint wilderness management - so that they may too more fully appreciate our values. This to could bring both our values more in line with each other. We should continue on this track.

The Federal land managing agencies have very specific guidelines and parameters for their management actions in wilderness. With the exception of the BMWC, Interagency Grizzly Bear Committee (IGBC) Guidelines and the MOU with the USFWS on the CMR, FWP (at least on the surface) appears to have no fundamental guidelines for our management actions in wilderness. Moreover three quarters of those surveyed did not have or use the Wilderness Act for FWP actions on Federal land with a specific mandated land classification. An overwhelming majority of the FWP respondents did not have or use the 1986 IAFWA Guidelines for managing Fish and Wildlife in Wilderness. However, all is not lost. The cooperative management agreements that we do have in place have proven to be a good foundation for further development

towards this end. This manifest itself in some of the answers provided in the survey. Those FWP personnel that do not have the advantage of proper direction gave answers without authority, they seemed more hesitant and wandering. These respondents lacked confidence, not only in their answers but probably (this would be subjective interpretation) in their respective management actions. Contrary to this, those FWP personnel that did have direction supplied answers that were straight forward, confident and without hesitation. From experience, the management actions taken by these individuals will prove much more decisive and defensible. In the same light, the acceptance of these management actions by the respective Federal agencies will be more favorable.

Taken as a whole Montana FWP management actions and philosophy in wilderness are viewed in a positive light by our Federal counterparts. Our willingness and ability to enter into substantive cooperative agreements will only further our cause to be involved in wilderness management in the future. We should strive to continue on this path. Our participation to date has been sufficient to keep us involved, respected and a model (this would be hopeful conjecture) for other State agencies to aspire towards. Given what the future may hold; issues of biodiversity, conservation biology, shrinking available quality habitat, increase demand on the resources, human population growth, sustainable local economies - by necessity we may have to increase our involvement.

Montana Fish, Wildlife and Parks has, at its disposal, several documents which give direction for management within wilderness. These have been developed either as in house documents or cooperatively with the respective Federal land management agencies. However, only two (with possibly a third), are specific to the land classification of wilderness.

The International Association of Fish and Wildlife Agencies recognized the need for cooperative management of fish and wildlife within wilderness. In 1986 The Guidelines for Fish and Wildlife Management in Wilderness Areas were developed to give direction to both the State and Federal agencies that participated in this effort. Although not policy or law these guidelines brought together, at least in spirit, a unified vision of what this management should be for the agencies involved and provided a good foundation for what was to follow.

With respect to the idea and consequent practice of Ecosystem Management, in 1987 the Forest Service recognized the need to collectively manage the Bob Marshall, The Great Bear and the Scapegoat Wilderness areas as The Bob Marshall Wilderness Complex. At this time, this was a unique concept covering four forests: the Helena, Lewis and Clark, Lolo and Flathead National Forests. As with the relative resource and recreational management activities, it became apparent that the management of the resident fish and wildlife also needed to fall under one roof. 1994 brought the signing of a MOU between the respective Forests and Montana FWP particular to cooperative fish and wildlife management within this wilderness complex. In April of 1995, the Fish, Wildlife and Habitat Management Framework for the Bob Marshall Wilderness Complex was signed and adopted by both agencies. To date this document is unique in the Nation and continues to give solid management direction to both agencies, all the while fostering cooperation.

In August of 1997, the USFWS Charles M. Russell National Wildlife Refuge, signed a MOU with Montana FWP for cooperative management of fish and wildlife. Although this document was not specific to management within wilderness, it was inclusive of this land classification. Could it be that the 1996 Executive Order #12996 and the 1997 National Wildlife Refuge System Improvement Act, more particularly defined the role of the National Wildlife Refuge System and thus precipitated this MOU. As far as Montana's role of wildlife management within these lands it appears that we may have taken a step backwards i.e.

Draft Policy, 1995 Administrative Manual, USFWS
Natural and Cultural Resources Mngt. Part 610,
Wilderness Area Mngt., Chapter 1 Policy and
Responsibilities, 1.4 Authorities,

specifically omits Section 4(d)(8), Special Provisions, of the Wilderness Act. However, (I was told) the intent of the new Refuge policy was to transfer back to the States, fish and wildlife management authority. Intent or not, the Executive order #12996 may have nullified all this and initiated the current MOU agreement. Fortunately (or unfortunately depending on perspective), Montana has very limited lands with USFWS Refuge designation. The point being, that depending on the interpretation of the Executive order, Montana's management authority over fish and wildlife on USFWS lands has been seriously eroded (or arguably has disappeared).

Although the FWP Wildlife Programmatic EIS does not address specific management activities particular to wilderness, it nonetheless recognizes the importance these lands play in wildlife management. The State wide Elk Management Plan does recognize the importance of the BMWC to the overall health of the elk found in this area and consequently calls for cooperative management between FWP Regions

The relative success of some of the recovery efforts underway in Montana viz. Grizzly Bear, Bull Trout, Black Footed Ferret, Fluvial Arctic Grayling, specific West Slope Cutthroat projects, etc. can be very much dependent on the land classification of wilderness. Although the habitat security (both in actual and lawful terms), afforded by this land classification is recognized as critical to the recovery efforts, the restrictions on management methods is seen by some as detrimental to the effort as a whole.

The Fisheries Management Plan for the Absaroka-Beartooth Wilderness (A-B) was initially developed in 1980. This was updated in 1991, so that by major drainage, each lake was surveyed, historical and current stocking records reviewed, thus creating a very thorough management plan for this heavily used area. The current Montana Fish Stocking plan addresses some management guidelines and a philosophy towards fisheries activities within wilderness in general. Although not all is intended as policy, it is seen by some as a step in the right direction relative to stocking, native fish and recreational issues associated with fisheries inside wilderness.

By comparison, what FWP may lack in specific wilderness policy is more than made up for in the convoluted interpretation of The U.S. Constitution, Federal Case Law and Legislation. A very brief review of this will reveal this potential confusion.

The States argument follows that because the Tenth Amendment to the U.S. Constitution reads "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Since this "power" to regulate wildlife was not specifically given (or left with), the Federal government, this has been interpreted by the States as their authority to manage wildlife on Federal lands.

However, there are four other clauses of the Constitution which can and have been used to contradict this State argument.

- Article IV, 3, cl. 2, The Property Clause of the Constitution, states that Congress has the power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States", and this argument has been used as justification for Federal management of wildlife on public lands. i.e. "Hunt v. United States" (1928)[Supreme Court]

- Article I, 10, cl. 1, The Treaty Clause of the Constitution, states that the Federal government has the sole authority to engage in treaties of any kind and this has been used to protect wildlife from abuses of international trade. i.e. "Missouri v. Holland" (1920)[Supreme Court]

- Article I, 8, cl. 2, The Interstate Commerce Clause of the Constitution, states that the Federal government has the right to regulate commerce between the states and has been used to restrict movement of game across state lines. i.e. "Hughes v. Oklahoma" (1979)[Supreme Court]

- Article VI, cl. 2, The Supremacy Clause of the Constitution, states that when State and Federal laws conflict, that Federal law will always superseded State law. i.e. "Kleppe v. New Mexico" (1976)[Supreme Court]

Particular to case law, the States have traditionally rested (at least some of) their laurels on "Geer v. Connecticut" (1896)[Supreme Court]. Since there was no Federal wildlife

legislation until the Lacey Act of 1900, "Geer" gave the states the power to regulate and manage wildlife. However, and since then, the U.S. Supreme Court has ruled more often than not in favor of Federal management of wildlife on Federal land.

Unfortunately, in "Hughes v. Oklahoma" (1979)[Supreme Court], where we see the Court express a concern for the "fiction" of States ownership of resident wildlife. And they say, "The fiction of state ownership may no longer be used to force those outside of the State to bear the full cost of "conserving" the wild animals within its borders....Geer v. Connecticut was decided relatively early in [the] evolutionary process [of wildlife management case law]. We hold that time has revealed the error of the early resolution reached in this case, and accordingly Geer is today overruled." It would appear that based on the opinion and composition of the Court, both ownership and management of wildlife on Federal land may be in serious question. And if this is not confusing enough....

Language in the Multiple Use Sustained Act of 1960, Congress declared that, "...Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forest." As we have seen before the language found in the 1964 Wilderness Act Section 4(d)(8), under special provisions, "...nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of several States with respect to wildlife and fish in the national forest." The National Wildlife System Act of 1966 states that, "... the Provisions of this Act shall not be construed as affecting the authority, jurisdiction or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulation in any area within the System." In the Federal Land Policy and Management Act of 1976, Section 302(b) Congress again declares, "...nothing in this Act shall be construed as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife..."

So (clearly?), one can see a distinct difference between the Congressional intent and the Judicial opinion. One does overrule the other however, and this should be a concern for us, as the implications for State management of fish and wildlife on Federal lands, regardless of designation, could be in question.

Since 1979 with "Hughes v. Oklahoma", there have been a few other Federal documents that seem to rest management authority with the States, with some exceptions. In 1986 both the USFS and BLM were co-signors of the International Association of Fish and Wildlife Agencies, Guidelines for Fish and Wildlife Management in Wilderness. These two agencies have been fairly clear and consistent regarding language/policy for State management of fish and wildlife within wilderness. In May of 1997 the Chief of the Forest Service, Mike Dombeck, in his letter to Charles Gauvin, President and Chief Executive Officer of Trout Unlimited, reaffirmed the role and authority of the States to manage fish and wildlife in wilderness.

In 1995, an Interagency Wilderness Strategic Plan was developed. This was done cooperatively with the BLM, USFS, USFWS, National Park Service (NPS) and the National Biological Service. Of the five management actions defined and the particulars thereof, there is no mention of fish and wildlife management. Can we (FWP) assume that by neglecting to address this issue, either by default or design, this management authority is left up to the respective States? (I have since been assured, more than once, that this omission was a simple oversight and the implications made above are therefor not applicable. At the time this document was produced, wildlife management in wilderness was not considered a topic of national merit. It appears that it very well may be now.)

The National Park Service has no land in Montana that is Federally designated as wilderness. This fact, combined with the particulars of the enabling legislation, The National Park Service Organic Act and lack of any concurrent management authority (save enforcement), keeps our involvement with fish and wildlife management quite clear. The USFWS and in particular the National Wildlife Refuge System, had until 1997, been a willing partner in fish and wildlife management. This may no longer prove to be the case. To date the USFS and the BLM have been willing partners (and continue to be), in FWP's effort to effectively manage the State's fish and wildlife as they occur within the Federally designated wilderness areas.

Over the (last three), years some of the issues that have been brought to FWP's attention through the MOU process or through meetings/conferences, have mirrored the same concerns that were expressed by FWP employees in the survey. Other than the survey results, concerns expressed are mostly anecdotal as some were certainly born out of frustration from the Federal agencies and non governmental wilderness advocacy groups towards FWP. The order as they appear in no way indicates importance or relative occurrence. These issues have been present for some time now, and one would expect that as the demands for the resource become greater, so to will the controversy surrounding each issue. A good many of these concerns can be related to dual management responsibilities that FWP shares (or conflicts) with the respective Federal land managing agency. The following list is by no means inclusive of all the concerns brought forth but denotes a representative cross section of the issues which seem to generate the most interest.

- Native American treaty rights with regards to Federal land designation and State control over wildlife and fisheries.
- Federal Travel Plan in general and in particular how it interacts with the FWP Trails and Snowmobile program relative to Wilderness Study Areas.
- Wilderness Study Areas, should FWP be more involved i.e. more protective of wildland resources vs. motorized recreation.
- Fish and Game management within wilderness in particular, who has the authority. This debate was only briefly touched on in the previous pages, but continues to be demanding concern.
- Historical uses, Pre 1964 Wilderness Act. Are these accepted management actions consistent with the spirit of the Act or simply one of many concessions for passage. How long will they be tolerated before a challenge in court?
- Difference in State vs Federal values for wilderness viz. extractive (certain forms of recreation) vs. the idea of wilderness.
- Separation of management authority, the Federal being charged with the habitat and the State with the fish and game.

- Funding differences leading towards divergent management strategies or goals. Federal monies being tied to the general fund and appropriation from Congress vs. State funding being tied to a particular user group.
- User fees and permits for recreational use in wilderness as it relates to carrying capacity and visitor use. How will this impact FWP license holders?
- Fish stocking within wilderness in general and in particular; continued stocking of historically fishless lakes, non native species, aerial stocking.
- Wildland fires, prescribed natural fire and the relationship with present habitat conditions (for ungulates) vs. desired habitat conditions.
- Economics; local vs. national concerns.
- Issues of sustainability, biodiversity, genetic refugia.
- Ability of FWP to enforce Federal regulations particular to wilderness use; concurrent enforcement authorities.
- Big Game management differences with the USFWS on Refuge lands.

On the whole this endeavor has certainly been challenging, both professionally and personally. Quite frankly I had no idea that the issue of FWP management in wilderness would be so convoluted and complex - not to mention potentially controversial.

Certainly there is value in FWP participating at this level. The communication with the various wilderness advocacy groups, such as The Wilderness Society, Montana Wilderness Association, Wilderness Watch, and others, has removed some barriers that had previously been detrimental to our relationships. The direct participation with the USFS Region 1 Wilderness coordinator, the Arthur Carhart National Wilderness Training Center, The Aldo Leopold Wilderness Research Institute, the University of Montana, School of Forestry Wilderness Institute, and in combination with the respective Federal land managers, has fostered a closer working relationship and better understanding of our direction than existed before. The combination of increased (and arguably new) communication and participation has provided us with the opportunity to interact on a scientific, academic, philosophical and managerial level, which previous to this effort did not exist.

As to whether or not this endeavor was productive, I would most certainly agree in the affirmative. As stated to in the above paragraph, FWP has made substantive progress towards not only understanding the other perspectives but more importantly having our voice heard where it has not been heard before. We will certainly still agree to disagree on many issues concerning our participation in wilderness management, however our perspective is more evident than in the past. This, I predict, will become more important as time passes and as the demands on the resources become greater. Consequently our affect on the outcomes, relative to the management challenges brought forth by these increase demands, will be of more substance and direct involvement, than one of just looking on.

Thank you for the opportunity to pursue this effort.

Respectfully,

Thomas B Flowers