

Inholding Access and Land Acquisition in the Sabinoso Wilderness

When the New Mexico Congressional delegation began to explore crafting a Bill to designate the Sabinoso WSA as the Sabinoso Wilderness, BLM staff carefully evaluated the WSA to identify any issues that may not have been considered in earlier suitability reports. One issue that emerged was access to an undeveloped private parcel adjacent to the wilderness. A route constructed by bulldozer during oil exploration prior to wilderness inventory, and not maintained since that time, provided rugged 4WD access through the Sabinoso unit to the private property on the other side. Vehicle access from the other side, thus avoiding the Sabinoso unit, would require construction of a new road up steep slopes, and be expensive. In examining the issue, BLM concluded that the Wilderness Act's provision for access in Section 5(a) applied only to lands completely surrounded by federal land designated as wilderness. A Federal District Court had previously come to that conclusion. The issue was brought to the attention of the Bill's sponsor, who determined he did not want to alter the degree of access existing to the parcel via the 4WD route. The Bill's sponsor asked BLM for its opinion on how to address the issue, and the BLM suggested the enabling legislation include a provision that would apply the Section 5(a) allowance to this property, even though it did not meet the "completely surrounded" criteria. The Sabinoso unit became wilderness, and the statute included that provision.

About a year after designation, the landowner contacted the BLM, seeking a permit for access to the parcel, but also expressed interest in selling it. In addition to the subject parcel, the entire property included a larger parcel and several smaller parcels all unattached, but these had established access from other points, so only the subject parcel was discussed. The owner had purchased the property as an investment, and was considering operating a hunting lodge on the subject parcel from which guided and unguided hunts into the surrounding wilderness could be staged. In conjunction with a grazing permit on adjacent BLM land, the owner also ran a limited herd of cattle. Primarily, the owner was interested in selling the parcel, believing the adjoining wilderness designation had increased its value since the time he had purchased it.

The BLM was interested in purchasing the subject parcel, and on two occasions received the help of a land trust organization to complete a third party purchase and re-sell to the BLM. However, in both attempts the owner did not agree with the appraisal price, citing sale prices of irrigated pasture in the county (this property was remote non-irrigated range) and so turned down the sale, instead favoring to pursue an access permit.

The owner was asked to submit an application, in which he would specify the route of travel, modes of travel, the amount of use he sought, the character and degree of use that occurred prior to designation, and the use of the parcel. The application submitted was for "unfettered access" and BLM asked he re-submit with the details previously requested. The revised application was again for unfettered access, but specified access on the existing route, that he wished to improve it with a bulldozer, that the access was to be for all modes of vehicles, the amount of use to be unlimited, the character and degree of pre-wilderness use exercised was unlimited, and the use of the parcel was for grazing and recreational activities. In discussions, the owner asserted that prior to wilderness designation he could have used any vehicle at any time, at any volume of activity. That position wasn't fully accurate, but BLM focused on the regulations at 43 CFR 6305.10(a)(1) which specify that decisions of access be based (in part) on actual existing use upon designation, not on potential use. Not wanting to self-identify his previous use because he felt it would limit his permitted access, the owner would provide no further information. Likewise, the BLM was unwilling to cede the wilderness to a standard it did not believe was consistent with the Wilderness Act, regulations, or policy. Consequently, the process stalled.

During this time the owner had the entire property (the subject parcel and all other parcels) listed for sale. The listed price continued to be based on sale prices for irrigated pasture in the county. He was not able to negotiate a sale. After being on the market for over a year, a third land trust, the Wilderness Land Trust, approached the owner, and after several attempts and many months of waiting, was able to broker a sale for appraised value, rather than the sale prices of irrigated pasture. The WLT secured a donor to fund the purchase of the entire property, and then donated this property under 6(a) of the Wilderness Act to be added to the wilderness, increasing its size by 3,576 acres, and eliminating any future need to consider permitting motor vehicle use of the 4WD route.