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Examination of the Wilderness Act : Policies and Legal Issues Faced by Federal Land Managers

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EXAMINATION OF THE WILDERNESS ACT
POLICIES AND LEGAL ISSUES FACED BY
FEDERAL LAND MANAGERS

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CHAPTER ONE

INTRODUCTION

Ability to see the cultural value of wilderness boils down, in the last analysis, to a question of intellectual humility...It is only the scholar who understands why the raw wilderness gives definition and meaning to the human enterprise.

Aldo Leopold, 1949

From the forests and wilderness come the tonics and barks which brace mankind.

Henry David Thoreau, 1851

INTRODUCTION

Wilderness, a concept often attributed to the insight of Americans in providing for future generations, is actually as old as the world. At the dawn of civilization, when our ancient ones “overcame” the environmental hostilities and wildness, weren’t they, after all, overcoming wilderness? Once civilization began, there also began a measure of wilderness.¹ In biblical times, and throughout the European birth of America, wilderness was viewed as something to “overcome.” It was treacherous and dark, evil and unwanted. Progress and civilization, and the conquering of wilderness, occurred as the country was “settled.”

As the country and society evolve and the population increases with all its resultant demands on the environment, the last of the wild spaces in America continue to receive increasing pressures. Almost a half of a century ago, our country recognized the need for preserving this nation’s treasures and wild places for future generations. This recognition, after much debate and public involvement, resulted in Congress passing the Wilderness Act of 1964. Specifically, Congress acknowledged a “wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man,

¹ Civilization provided a context of measure for wilderness.

where man himself is a visitor who does not remain... An area of Wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements to human habitation, which is protected and managed so as to preserve its natural conditions....²

Today, more than 100 million acres of Federal land are managed as wilderness, primarily by the U. S. Forest Service, National Park Service, Fish and Wildlife Service and Bureau of Land Management.³ Federal land managers are faced with increasingly complex public policy questions and decisions regarding a myriad of issues, including wilderness management. Litigation and its resultant consequences are becoming common place as environmental groups look to the courts as opposed to the legislative branch for redress.⁴ As these complexities face today's land manager in managing wilderness, this project has been proposed to address the following:

1. This project will analyze the trends in wilderness designations and management over the last 40 years. The first step is to determine the demographics of public use and examine how the public uses wilderness, historically and in the present.
2. Wilderness can only be designated by Congress, typically, but not universally, upon recommendations of federal agencies. The second element of this project is

² The Wilderness Act of 1964

³ This statistic is maintained by the Arthur Carhart National Wilderness Training Center

⁴ In interviewing individuals for this project, the author learned that numerous environmental groups (National Parks and Conservation Association, Professional Environmental Employees with Ethical Responsibility (PEER), etc. were preparing to sue the National Park Service for failure to fulfill requirements of the Wilderness Act of 1964.

to trace and analyze the direction of Congress in designating wilderness and the analysis of precedent legal decisions affecting wilderness management. This element will examine private property rights and access, as well as commercial operations, within wilderness.

3. Clearly the Wilderness Act protects the designated land; however, it is less clear whether view sheds, air quality, natural quiet, vista protection and "open space" is also protected. This work will research and determine whether those values are also protected. If they are not, there will be an analysis of the potential for future protection.

4. The future of wilderness protection and management will be assessed, along with a historical perspective. Would the Wilderness Act pass in today's society? Is there an intrinsic value to wilderness? How can conservationists gain support for wilderness? Will accessibility become more of an issue as the population ages? In there the potential for the Wilderness Act to elicit an emotional debate similar to the Endangered Species Act? The project will include an analysis of the strengths and weaknesses of the current policy and interaction between state or local governments and federal agencies will be included.

HISTORY OF THE WILDERNESS ACT OF 1964

American writers and philosophers such as Henry David Thoreau and John Muir were probably the first Americans to bring the issue of wilderness protection into the mainstream of American Society. By the middle of the 20th century, the country began to recognize the value of wilderness and need for protection and management. In 1957⁵, the first Wilderness Bill was introduced into the U. S. Congress. The next eight years brought sixty-five revisions and, on September 3, 1964, President Lyndon Johnson signed the Wilderness Act into law. The Wilderness Act was groundbreaking—for the first time the nation legally defined wilderness, its qualities and requirements for management.

From the beginning of the debate there were allegations that wilderness users were a “privileged few” determined to “lock up” wilderness for their own enjoyment.⁶ The wilderness opponents expressed the following arguments:

- There was no need for wilderness legislation
- Wilderness was already well protected by the National Park Service and U. S. Forest Service
- It was not fair to lock up the natural resources and deny economic development to the majority for the aesthetics of a few.
- Locking up natural resources would be detrimental to the national defense.

⁵ Senator Hubert Humphrey of Minnesota supported by organizations such as the Wilderness Society, National Parks Association, Izaak Walton League, League of Conservationists, Federation of Western Outdoor, introduced the first wilderness bill, Senate Bill 4013 on June 7, 1956.

- Areas classified as wilderness only had a limited use.

Wilderness advocates put forth their arguments, which included:

- Administrative designations⁷ were not a permanent solution, legislation would provide permanent protection.
- Economic impact would be minimal; wilderness acreage would only represent a small amount of public land.
- Wilderness would provide an extreme class of federal land, providing a contrast to development.
- Those who opposed wilderness preservation (ranchers, grazers, loggers, miners, etc.) were ignoring wilderness values; those values were supported by a large percentage of the public.

On August 20, 1964, the Senate and the House⁸ agreed on the final version of the bill and, on September 3, 1964, President Lyndon Johnson signed the Wilderness Act, officially making it Public Law 88-577. The specifics of the Act include:

- ❖ Establishment of the National Wilderness Preservation System (NWPS)

⁶ Legislative history of Wilderness Act. Interestingly, after more than 47 public meetings in the California desert over a 5 year period in which I have participated, this sentiment is still being expressed.

⁷ Management by the U. S. Forest Service and National Park Service

⁸ The House passed the bill by a roll call vote of 374 to 1.

- ❖ Section 2 provides a broad statement of policy, defining wilderness and declares that each land management agency will continue to have its own jurisdiction over its lands designated as wilderness.
- ❖ Section 3 describes the NWPS and provides for additions to system
- ❖ Section 4 outlines acceptable uses and prohibitions on wilderness activities.
- ❖ Section 5 discusses state and private land in holdings and provides “adequate access.”
- ❖ Section 6 and 7 provide for public involvement.

Probably the most controversial aspects of the Act involve access, structures, private in holdings or rights, and the use of motorized vehicles or mechanized equipment. The use of motorized vehicles or mechanized equipment is specifically prohibited except when determined to be the minimal tool necessary for administration of the wilderness area.

CHAPTER TWO

EXPLORATION OF WILDERNESS ISSUES

*You know that I have not lagged behind in the work of exploring our grand wildernesses,
and in calling everyone to come and enjoy the thousands of blessings they have to offer.
John Muir, 1895*

CHAPTER TWO - EXPLORATION OF THE WILDERNESS ISSUES

In developing the foundation for this project, I envisioned the need to determine the demographics of public use and how the public uses wilderness as the first step for further exploration of this critical land management policy issue. This, coupled with an understanding of the trends in wilderness designations and management over the last 40 years, would allow the author to further research and analyze this policy issue.

LEGISLATIVE AND MANAGEMENT ISSUES

Congress has passed more than 120 wilderness allocation laws beginning in 1964. In my research of congressional legislation and designations of wilderness areas within the United States I found the following significant milestones:¹

- Wilderness Act of 1964² - Created the National Wilderness Preservation System (NWPS); designated 9 million acres of U.S. Forest Service public lands as wilderness; established procedures for adding additional areas to the system; and provided managers guidelines for managing wilderness.³

¹ Browning, James A., John C. Hendee and Joe W. Roggenbuck. 1988. Wilderness Legislation Today Trends and Totals, pp. 1-3, Wilderness Classification and Wilderness-related Laws, pp. 15-21, IN, 103 Wilderness Laws Milestones and Management Direction in Wilderness Legislation, 1964-1987, Bulletin No., 51 of the Idaho Forest, Wildlife and Range Experiment Station. College of Forestry, Wildlife and Range Sciences, University of Idaho, Moscow, Idaho

² Public Law 88-577

³ Note: This Act has only been amended once, in 1978, when Congress repealed Section 4(d)(5) related to the Boundary Waters Canoe Wilderness Area in Minnesota

- Eastern Wilderness Act of 1975⁴ - Designated 16 areas in the eastern United States as wilderness; allowed for condemnation of private land in wilderness areas; and expanded wilderness values to include “inspiration” and “physical and mental challenge.”
- Federal Land Management Policy and Management Act (FLPMA) of 1976 – Although this is the law that provides overall guidance to the Bureau of Land Management (BLM), it also was the first law to recognize that BLM lands might be suitable for wilderness designation. The FLPMA gave BLM 15 years to inventory and assess roadless areas for wilderness designation.
- Endangered American Wilderness Act of 1978 – This Act was intended to send a strong message to the US Forest Service criticizing their strict and conservative criteria for recommending additional roadless areas into the NWPS. Congress put the USFS on notice that their stance on wilderness was insufficient. The Act designated 16 new areas to the system and directed the Forest Service not to exclude areas simply because they have been impacted by man.
- Alaska National Interest Lands Conservation Act (ANILCA) of 1980 – This Act created the “new” national parks and preserves in Alaska⁵. It designated more wilderness at one time than has ever historically been done (before or since); and addressed issues unique to Alaska such as subsistence use, public use, access, energy development, timber, mining, wildlife and cultural resource management. Unique to Alaska, ANILCA permits the use of snow machines, motor boats and other traditional vehicles.

⁴ Public Law 93-622

- Colorado Wilderness Act of 1980⁶ - In addition to designating areas of Colorado State as wilderness, this Act is notable for addressing the issue of grazing in wilderness. The Act specifically directed land managers to manage grazing consistent with wilderness and ecosystem management values, not multiple use or economic values. The Act also prohibited the use of buffer zones around wilderness areas.
- California Desert Protection Act of 1994⁷ - This is the largest public and park lands and wilderness bill ever passed for the Lower 48. It created Mojave National Preserve⁸, and redesignated and expanded Joshua Tree National Park and Death Valley National Park. This Act added 7.7 million acres to the NWPS and designated 66 wilderness areas on BLM land.

Tracking the history of Congress in relation to wilderness clearly demonstrates, despite the objections of many western congressional officials, a trend toward designating areas as wilderness and reinforcing the preservation aspect of the Wilderness Act. Most notable, there has only been one action weakening the Wilderness Act⁹ with a series of statutes designating additional areas and the Colorado Wilderness Act addressing the issue of grazing in wilderness from a preservation perspective. Even ANILCA, which provides language unique to circumstances in Alaska, reaffirms the authority and principles of the Wilderness Act of 1964.

⁵ Wrangell St. Elias NPP, Yukon Charley NPP, Kenai Fjords NPP, Gates of the Arctic NPP, and the Northwest Areas parks

⁶ Public Law 96-560

⁷ Public Law 103-4333, Signed October 31, 1994

⁸ A 1.6 million acre National Park Service area.

⁹ The deletion of the Boundary Water Canoe Wilderness Area described above

Today, there are additional bills pending before Congress that will add even more land to wilderness. These include Senator Boxer's wilderness bill for California and Senator Reid's wilderness bill for Nevada.

PUBLIC USE AND TRENDS

Little research has been conducted on wilderness use and wilderness trends. In the last several decades specific agencies have conducted surveys or studies at different places over different times, to date however, no holistic review of these studies have taken place. The following studies with significance to this project were found and analyzed:

- Cole, Watson and Roggenbuck¹⁰, in 1990, provided a detailed analysis of how wilderness recreation use has changed since 1964. The Cole, Watson and Roggenbuck study follows work done in the Desolation Wilderness Area in California by Lucas¹¹ and Stankey¹²; in Shining Rock Wilderness and in the Boundary Waters Canoe Area. These studies found most of the variables were in the way people use wilderness; the type of person using wilderness, etc. changed somewhat as noted below, but, remained largely unchanged in the years since the passage of the Wilderness Act. Variables that changed included an increase in the number of women, minorities, handicapped and non-traditional wilderness users;

¹⁰ Cole, D., A. Watson, and J. Roggenbuck. In press. Trends in Wilderness Visitors and Visits, Boundary Waters Canoe Area, Shining Rock and Desolation Wilderness, Ogden, Utah: U.S. Department of Agriculture, Forest Service, Intermountain Research Station

¹¹ Lucas, R., 1980, Use patterns and visitor characteristics, attitudes and preferences in nine wilderness and other roadless areas. Research paper INT-253, Ogden, Utah: U. S. Department of Agriculture, Forest Service, Intermountain Forest and Range Experiment Station

visitors were older in the more recent studies than in the Lucas and Stankey studies; and educational levels, but not income levels, were higher. While litter was not the problem it was in the earlier studies, it was, nonetheless, the biggest problem cited in wilderness areas.

- In 1986, Burke and Curran¹³ conducted some of the earliest and overarching wilderness studies of recreation uses in the National Park Service at Great Smoky Mountains National Park. The studies measure expectations of wilderness users including an analysis of whether those expectations had been met, length of wilderness stay, profile of user, and similar management issues.
- Cole, Watson, Hall and Spildie studied six high use destination areas¹⁴ in the Alpine Lakes, Mount Jefferson and Three Sisters Wilderness Areas in Washington and Oregon. This study included recreation day use in these high-density wilderness areas and, interestingly, found little difference in the expectations and type of users in day vs. overnight use. Day users did have a higher tolerance level for crowded conditions which, from personal experience as a wilderness user and backpacker/camper, would be expected. Both users placed a high level of importance on wilderness values.

¹² Stankey, G., 1971. The perception of wilderness recreation carrying capacity: a geographic study in natural resources management. Michigan State University, East Lansing, Michigan

¹³ Burde, J.H., and K.A. Curran, 1986, User perception of backcountry management policies at Great Smoky Mountains National Park. In *Wilderness and Natural Areas in the Eastern United States: A Management Challenge*. D. L. Kulhavy and R. N. Conner, eds. Naogdoches, Texas: Center for Applied Studies, School of Forestry, Stephen F. Austin State University, pp.223-228

¹⁴ Cole, David N., Watson, Alan E., Hall Troy E., Spildie, David R., 1997. High use destinations in wilderness in wilderness, social and biophysical impacts, visitor responses and management options. INT-496, Ogden, Utah, U. S. Department of Agriculture, Forest Service, Intermountain Research Station

These studies demonstrate a real need for land managers to have reliable information about the amounts, types and distribution of wilderness use before making policy management decisions. In response to this need Watson, et al¹⁵ developed a handbook for managers of National Wilderness Preservation System Areas to be used in developing and conducting surveys, conducting inventory and monitoring activities, assimilating data and statistics into information that can then be used to make management decisions. The need for an overall clearinghouse of essential wilderness management information is demonstrated by the fact that myself, as a manager responsible for over 700,000 acres of wilderness and many of my peer managers, are not aware of this resource. In fact, it was not until I conducted extensive research for this project, that I became aware of this document.

In better understanding the needs and perceptions of visitors to Mojave National Preserve¹⁶ we conducted a Visitor Survey. The survey was designed to rate the visitor's experience with the facilities, services and recreational opportunities in the park, including in wilderness areas. This survey found the following ratings related to wilderness and recreation:

Learning about nature, history of culture

Very good	-	39%
Good	-	40%
Average	-	14%
Poor	-	8%
Very poor	-	0%

¹⁵ Watson, Alan E., Cole, David N. Turner, David L., Reynolds, Penny S, 2000, Wilderness recreation estimation: a handbook of methods and systems. General Tech. Rep. RMRS-GTR-56, Ogden, Utah, U. S. Department of Agriculture, Forest Service, Rocky Mountain Research Station

Outdoor Recreation

Very good	-	57%
Good	-	36%
Average	-	2%
Poor	-	5%
Very Poor	-	0%

Sightseeing

Very good	-	56%
Good	-	35%
Average	-	5%
Poor	-	8%
Very poor	-	0%

These results were from survey cards distributed to visitors at certain locations within a two-week timeframe. In addition to the quantitative ratings, visitors were encouraged to provide narrative feedback. A sampling of the comments related to wilderness and recreation include:

Natural features to view, just as it was over a hundred years ago. Unspoiled {Mojave is important because of} it's natural significance in preserving open spaces.

Unspoiled beauty for future generations.

This is a unique environment and should be preserved for the enjoyment and understanding of all.

This is a unique and fragile landscape that needs to be preserved.

The unusual rock formations need a lower hike (sic) path for everyone to use the Rings Trail through Banshee Canyon. My husband couldn't see it because the dog couldn't climb the rings.

¹⁶ The National Park Service unit for which I am responsible.

The Mojave Desert holds a special place within the country's history and lore.

This is a park?

To a foreign visitor (Irish) a very different landscape.

As a park manager, the information gained from this visitor survey is important in understanding the needs and perceptions of those enjoying their nation's heritage.

Although the comments listed are but a sampling of the narrative information supplied by visitors and just that related to the resource and wilderness. Additional comments provided substantive feedback on the quality of our facilities and helpfulness of our employees.

PRECEDENT LEGAL DECISIONS AND ISSUES AFFECTING WILDERNESS

The second "subproblem" identified for this project was the analysis and direction of Congress in designating wilderness (explored above) and the analysis of precedent legal decisions affecting wilderness management. Property rights, access and commercial operations were also a part of this element.

As in any political process, the crafting of the Wilderness Act involved negotiations and

"horse trading," resulting in "non-conforming uses" being incorporated into the law.

These uses create somewhat of a philosophical challenge between

anthropocentric/utilitarian and a biocentric wilderness management. The Act clearly

provides for preservation as an overarching principle; however, nonconforming but

accepted uses are allowed even though they conflict with the preservation principle.¹⁷

Section 4 (c) of the Act discusses prohibited uses in wilderness, but provides a subtle but important “subject to existing private rights.” Section 4(d) expressly allows the following uses:

- Established uses of aircraft and motorboats.
- Actions taken to control fire, insects and disease outbreaks.
- Any activity, including prospecting for the purposes of gathering information about minerals or other resources, if carried out in a manner compatible with preservation of the wilderness environment.
- Continued application of the U. S. mining and mineral leasing laws for the U. S. Forest Service until December 31, 1983.
- Water resource development (authorized by the President if determined that such use will better serve the national interest than would its denial).
- Management of the Boundary Waters Canoe Area under regulations laid down by the Secretary of Agriculture which were generally less restrictive than those imposed by the Wilderness Act.
- Commercial enterprises for those activities that are compatible with wilderness (i.e. outfitting and guiding).

Probably the most controversial use in wilderness areas, absent a large open pit mine based on existing rights, is livestock grazing. Grazing, when it exists prior to the designation of wilderness, is generally allowed to continue either for a specific timeframe or into perpetuity. In researching the history¹⁸ of providing for grazing in Wilderness, Congress¹⁹ clearly intended to protect the rights of the grazing permittees.²⁰ The Act specifically states “the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.” Interestingly, most litigation

¹⁷ Section 4(d) and 5(a) of the Wilderness Act provides for these uses.

¹⁸ Congress clarified that the Wilderness Act guidance on grazing applies to all wilderness areas in House Report 96-617, “Grazing in National Forest Wilderness Areas, (U.S. Congress 1979). New wilderness designations routinely carry language provided for the continuation of grazing and reference the 1964 Wilderness Act. BLM’s FLPMA (Section 603) directs BLM to manage grazing in wilderness under the same provisions of the Wilderness Act as the USFS.

¹⁹ Zahniser, Edward. 1984. Howard Zahniser: father of the Wilderness Act. National Parks. 58(1-2): 12-14

involving grazing in wilderness, focuses on the Endangered Species Act, rather than the Wilderness Act, which provides greater relief for organizations such as the Center for Biological Diversity, Sierra Club, etc.

There have been a number of judicial interpretations of the Wilderness Act. A sampling of these decisions includes:

- *United States of America v. Vean R. Gregg*. Mr. Gregg was cited for an unauthorized landing of an aircraft in a national forest wilderness. The court cited Section 4(d)(1) of the Wilderness Act where the landing of an aircraft “may” be authorized, noting that Mr. Gregg was not authorized to land the aircraft and the “may” in the Act was discretionary. The judge decided the USFS did not have to authorize its landing and concluded the government acted appropriately in citing Mr. Gregg.
- *National Association of Property Owners v. United States, State of Minnesota v. United States, State of Minnesota v. Block* These cases involved the issue of state v. federal jurisdiction over the waters of the Boundary Waters Canoe Area Wilderness (BWCAW) in the State of Minnesota. The state contended that the Wilderness Act usurped the state’s jurisdiction over the waters by allowing the federal government to prohibit motorboat restrictions on nonfederal lands or on all waters of the state-owned BWCAW lakes. The state lost in district and appeals court, the U. S. Supreme Court refused to hear the case.

²⁰ The original framer of the Wilderness Act, Howard Zahniser, recognized the inability to pass a Wilderness Act if the National Cattleman’s Association was feverishly opposed to its passage.

- *Sierra Club v. Andrus*²¹ The Sierra Club contended that the Secretary of the Interior (Andrus) did not do all he could to protect the park (Redwood National Park) from erosional effects of logging. The Court concluded, even though the logging was occurring outside the park, the Secretary had an affirmative responsibility to protect the resources of Redwood NP. Today, this decision applies not just to parks, but to wilderness areas, and managers clearly are responsible for protecting the resources with which they are entrusted, even if that impact is coming from outside of the park boundary or wilderness area.
- *Sierra Club v. Block*²² This case involved wilderness water rights and the courts determination that Congress intended a federal water right to apply to wilderness areas to ensure the protection of the resources of the wilderness area. In essence, no water development could occur in a wilderness area if that development would impact the wilderness values or resources. After the judicial decision, in 1988, the Solicitor for the Department of the Interior issued a legal decision stating the Congress did not intend to reserve water rights for wilderness areas. Today, this issue remains largely unresolved (further court action did not ensue). Recent wilderness legislation has addressed this issue rather than leaving it open for interpretation and has provided explicit federally reserved water rights.²³

²¹ *Sierra Club v. Department of the Interior*, 376 F. Supp 90 (No. Cal. 1974) , 398 F Supp 284 (1975), 424 F. Supp 172 (1976)

²² USDC Colorado Civil Action Number 84-K-2.

²³ For instance, the California Desert Protection Act provides a federally reserved water right for all wilderness areas created by the Act.

DIFFERENCES IN AGENCY MANAGEMENT PRACTICES

Historically, interpretations of the Wilderness Act have varied with the land management agency and agency mission. After the passage of the Wilderness Act, the National Park Service viewed us as “above” the Act. After all, weren’t we already managing parks to the highest preservation standards? The U. S. Forest Service and the Bureau of Land Management are multiple use agencies, therefore, demands on their resource and management is multi-faceted. The U. S. Forest Service claims they have served in a wilderness leadership role; others would take exception to this claim based on the USFS wilderness grazing and use management practices. Today, however, all agencies have specific federal regulations²⁴, manuals²⁵, and handbooks²⁶ by which to manage wilderness.

Overall I could not find major discernable differences in the policies for managing wilderness in the four different agencies/bureaus. I also interviewed the Wilderness Society²⁷ who could not quantify a real difference between the agencies, but, rather, could articulate specific organizations or units within the agencies that are not fulfilling their requirements under the Wilderness Act. In fact, Mr. Barry informed me that the Wilderness Society and the National Parks and Conservation Association were currently

²⁴ U. S. Forest Service, 36 CFR 261; Bureau of Land Management, 43 CFR 8560, 43 CFR 3809 and 43 CFR 36; National Park Service, 36 CFR, and 43 CFR 3100, 3500 and 36; and the Fish and Wildlife Service, 50 CFR 35, 43 CFR 36 and 50 CFR 36.

²⁵ U. S. Forest Service, Chapter 2320 Wilderness Management in Title 2300; Bureau of Land Management 8560 Management of Designated Wilderness Areas and 8561 Wilderness Management Plans; National Park Service, Management Policies, Part 1, Chapter 6; and the Fish and Wildlife Service, Refuge Manual Chapter 8

²⁶ U. S. Forest Service, FSH 2309, Wilderness Management Handbook; Bureau of Land Management, 8560-1, Wilderness Management; and the National Park Service, DO-77 and RM-77, Natural Resource Management Guidelines and Draft Wilderness Planning Document

²⁷ Executive Vice President Don Barry, personal conversation on November 1, 2002

finalizing the foundation of a lawsuit against 9 specific units of the National Park Service for failing to adhere to the provisions of the Wilderness Act. These include failure to complete legal descriptions and file those descriptions with Congress; failure to complete Wilderness plans; failure to document minimum tool decisions for the use of mechanized equipment or motorized vehicles in wilderness or failure to meet the minimum tool requirement; and failure to adequately review research proposals in wilderness areas.

DOES THE WILDERNESS ACT PROTECT RESOURCES IN ADDITION TO LAND?

The premise of the author in developing this project was that the Wilderness Act protected the “land” or the wilderness. Clearly, my research has found that to be true. However, it was less clear whether the Act extended beyond the land. For instance, does the protection aspects of the Wilderness Act also include air, water, natural quiet, solitude, and view sheds?

Management principles, stemming from the Wilderness Act, ensures that wilderness is preserved and protected as an “enduring resource.” As the Act discusses wilderness being a place “untrammled” by man, this philosophy has evolved to wilderness being a place not controlled by man, but where nature and natural systems are allowed to exist. Years of active fire suppression, as we have seen in the last few summers, have produced a devastating impact on the natural fire regimen found in western wilderness areas. The management of fires within wilderness and return to a more natural fire regimen is an

example of fire being used as a tool to restore and protect the naturally functioning ecosystem, not just the "land."

Congress specifically provided for natural insect and disease management in the Wilderness Act, but emphasized the need to manage in a natural condition to retain primeval character and influence. Therefore, insect and disease management must be treated similar to fire. Managers must understand the trade-off of control and err on the side of managing for the natural system.

Natural fish and wildlife management is slowly returning to the west, led first by wilderness areas. Fish stocking is generally not allowed in wilderness areas, exotic species²⁸ are being removed from the ecosystem, and native species are being reintroduced²⁹.

The management of soil resources, or as one prominent scientist³⁰ told me in response to inquiries for this project "it's all about the dirt, man" is largely agency dependent. Soil is not specifically mentioned in the Wilderness Act, nor have all land management agencies recognized its importance in the preservation of the ecosystem. In fact, the BLM has no policies related to the management of soil resources. The remainder³¹ have soil protection and restoration policies, however, they are not specific to wilderness areas.

²⁸ Such as burros in the California desert national parks and mountain goats in Olympic National Park.

²⁹ Wolves in Yellowstone National Park, Pronghorn Antelope in Mojave National Preserve, Bighorn Sheep in Yosemite National Park, etc.

³⁰ Jane Belknap, Canyonlands National Park, personal conversation

The provisions of the Clean Air Act³² and the Clean Water Act³³ are tools available to all the agencies for use in managing the air and water resources of wilderness areas or park units. Wilderness areas in the United States are either Class I or Class II for purposes of the Clean Air Act. This means that managers cannot allow any more than moderate deterioration of the air. Any Class I area cannot be impacted beyond a minor level. Clean water is essential to the protection of the wilderness areas and to the health of the American public. Wilderness areas are generally found in remote, high elevation, mountainous areas, and headwaters of many water sources. Further protection for wilderness water resources is provided by the Wild and Scenic Rivers Act of October 2, 1968. Many rivers within wilderness areas have also been designated "wild and scenic."

National Park Service wilderness areas received further protection by the Organic Act³⁴ which prohibits any impact to park resources. This Act has been effectively used to prevent outside sources³⁵ from impacting park resources. In fact, the only case to be taken by the Department of Justice on behalf of the National Park Service to the Supreme Court involves the protection of the Devil's Hole Pupfish at Death Valley National Park. The farmers in the Amargosa Valley of Nevada were pumping so much water the Devil's Hole water table had been dramatically declining potentially impacting the pupfish population. The court determined the pumping had to cease and desist because of the impact to park resources.

³¹ National Park Service, U. S. Forest Service, and Fish and Wildlife Service

³² 42 USC 7401 et seq.

³³ 33 USC 1344

³⁴ 16 USC 1 et seq.

FUTURE OF WILDERNESS PROTECTION AND MANAGEMENT

Perhaps the most controversial aspect of the Wilderness Act involves the prohibition on the use of mechanized equipment or motorized vehicles in wilderness. These modern day conveniences can only be used when they are the "minimum tool" necessary for the administration of the wilderness. I believe this is where the notion, in the early days of the wilderness debate³⁶ and continuing to present day, of "locking up" the wilderness originates. As the population ages and people are no longer physically able to backpack for long distances or individuals with disabilities have more of a voice in our government, this issue takes on a new debate. In fact, it was just within the last month that the Director of the National Park Service issued a wilderness directive reinforcement the "permissibility" of allowing wheelchairs in wilderness areas.

The debate over oil development vs. wilderness and resource preservation on the Arctic National Wildlife Refuge (ANWR) in Alaska is an example of some of the future challenges for wilderness preservation. This country's political divide is so even that either side is unlikely to push through an extreme agenda. If the balance of power were to tip comfortably with the conservative western congressional representatives, it is likely that the Endangered Species Act (ESA) could be ripe for "review." Could the Wilderness Act reach the same level of debate and political "hot potato?"

³⁵ Such as power plants, water extraction, etc.

³⁶ During the 1950s

As a land manager who just completed a park General Management Plan³⁷, after a six-year public process, I'd suggest the answer for avoiding the negative ESA road might lie in the wilderness planning process. The purpose of the planning process would be to establish a management program for the specific wilderness area ensuring the Wilderness Act protections, while exploring specific issues at the park/wilderness area. The National Park Service just issued a draft template for Wilderness Management Plans and completion of the Environmental Assessment process under NEPA. NEPA (National Environmental Policy Act³⁸) provides, at its core, the inclusion of the public into the management process of federal agencies.

Involving the public in the land management decision process provides an opportunity for education as well as the ability to seek public input. Too often, individuals gain their information or strongly held positions without all pertinent and relevant facts. NEPA requires public involvement; however, the strategic land manager will have more public scoping sessions and meetings than is fundamentally required. Structuring the meeting so that all members of the public are comfortable with providing input is important and prevents the meeting being overtaken by a few "grandstanders."

Several of the land management agencies are experimenting with different tools for establishing standards of wilderness preservation in their planning process. The LAC or Limits of Acceptable Change or management zones are approaches to defining the

³⁷ The General Management Plan for Mojave National Preserve was completed on September 21, 2001, after beginning in 1995. The process involved 43 public meetings and was carried out as an Environmental Impact Statement under the auspices of the National Environmental Policy Act (NEPA). The Plan sets the management vision for Mojave for the next 10-15 years.

standards by which the wilderness will be managed. For instance, in Sequoia and Kings Canyons National Parks in California³⁹ management is struggling with the issue of limits of stock allowed in the backcountry at any one time. Alpine meadows are extremely fragile resources, easily damaged by overgrazing. Involving the public, stakeholders, wilderness users, etc. in the process of determining the acceptable group limits will also help educate and provide support for the final decision.

³⁸ Public Law 91-190

³⁹ Personal conversation with park staff

CHAPTER THREE

METHODOLOGY OF THE RESEARCH
PROJECT

Chapter Three - Methodology of Research Project

This project involved the data mining of numerous research studies in the area of wilderness management, use and policy; the research and review of many literary works related to wilderness and wilderness management; and the search for documents and works related to wilderness management and policy. The later involved primarily federal land management agency documents¹ and relied on the Cahart Wilderness Training Center, a center for wilderness training designed primarily for the land management agencies, associated in conjunction with the University of Montana.

The U. S. Forest Service's research centers and websites were extremely helpful as a repository for wilderness research documents, in particular those related to wilderness use, fire management, and trends of wilderness management and use since the passage of the Wilderness Act in 1964. Throughout my research for this project I found little that equaled the Forest Service's emphasis on research in this area. The National Park Service, coupled with the Cahart Center and various universities, provided the next level of available research.

Inspirational concepts of wilderness and nature were also researched to provide the foundation for understanding the importance of policies, regulations and legislation

¹ Such as policies documents of the National Park Service, Bureau of Land Management, U. S. Forest Service and U. S. Fish and Wildlife Service

related to wilderness management. These included some of the earliest works by Muir, Thoreau, Leopold and others.

The legislative history of the Act, as well as documents supporting the developing of the legislation, aided in understanding Congressional intent. Bills, accompanied by legislative histories, passed subsequent to the Wilderness Act were also consulted.

A quantitative analysis of wilderness users was provided by a survey done at my park, with my participation and that of my staff. Mojave National Preserve² conducted a Visitor Survey to assess visitor satisfaction and impressions of a variety of management issues related to the park. This survey was carried out with a methodology developed by the University of Idaho and with the assistance of Dr. Gary Machlis. Both I and the park staff personally distributed the survey at selected points throughout the park. This distribution process also allowed interaction with individuals completing the survey. Although not completed in time for inclusion in this project, myself and the park's management team, have worked with Dr. Machlis to develop a more comprehensive study which will be conducted next spring. The study that was used for this report included controlled distribution (each fourth visitor) at designated locations discussed above. A personal letter from me to each survey participant discussed the importance of the survey and a follow-up was sent to individuals who did not return the survey in a timely manner, again, asking for their participation.

² Under my supervision as Superintendent and with significant personal involvement this survey was developed and conducted.

The survey contained 13 questions in which park visitors were asked to rate their impression of the visit, facility, resource, etc. on a scale of 1 – 5 (very good to very poor) with average being the median. In addition to the questions, there were two questions soliciting a narrative response.³ The narrative responses provided the opportunity to gauge the impression of the visitor's importance of the resource and allowed input beyond a quantitative rating,

Mojave National Preserve is a remote park, with fairly limited visitation; therefore, the sample size of the survey was somewhat limited. The questionnaire/survey currently under design for the spring will include eliciting information on the wilderness experience, use⁴ and will plan to distribute it over a greater timeframe, thereby having a larger sample size.

In collecting the information, documents, research papers, agency policies I contacted various agencies at various levels that provided me with documents or internet address for the pertinent information. Agency websites, the Cahart Center's website and the Wilderness Network's website were extensively used in gathering documents and information.

A variety of personal interviews were conducted including an agency representative from the Cahart Wilderness Training Center, the Executive Vice President of the Wilderness

³ These questions were "The Park was established because of its significance to the nation. In your opinion, what is the national significance of this park?" and "Is there anything else you'd like to tell us about the park's services, facilities or recreational opportunities?"

⁴ Including the type of wilderness activity (i.e. hiking, backpacking, camping, etc.)

Society, the highest level agency wilderness policy coordinator for both the National Park Service and Bureau of Land Management, and a variety of managers and staff officials involved with wilderness policy development and management.

A focus group⁵ was convened at the beginning of the project to assess the questions or areas of research for the project. The group demonstrated the emotion associated with the issue and defined both extremes that might be addressed in relation to this issue of the issue. The issue of use of cell phones or computers in wilderness drew considerable debate and discussion.

The research process focused heavily on documents related to wilderness policies. Many documents were somewhat redundant and measuring the differences between the agencies relied heavily upon interviews of individuals who had worked in the agencies. The difficulty in this process was deciding when enough information was gathered, since one source would often lead to another interesting aspect of the policy question.

In addition, Professor Gonzalez aided in focusing the project and added suggestion for structuring the research and framing the questions.

⁵ The group was comprised of Sean McGuinness, Chief Ranger, Kelly Hawk, Ecologist, Welford Garner, Interpretive Park Ranger, Larry Whalon, Chief of Resources Management, and Danette Woo, Compliance Specialist

EXAMINATION OF THE WILDERNESS ACT
POLICIES AND LEGAL ISSUES FACED BY
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CHAPTER FOUR

FINDINGS

I'd rather be a forest than a street.

Arthur Garfunkel and Paul Simon, 1970

Wilderness places are among the few places on earth where we have allowed nature, for the most part, to operate on her terms. Desirable behavior is more likely to occur if people understand how their actions affect the way nature operates.

Dr. George N. Wallace

CHAPTER FOUR - FINDINGS

I. Brief Summary of Methodology

The methodology for this research project originated with a review of a wide range of relevant literature and included a preliminary focus group to identify the issues and questions. In addition, the focus group framed arguments on both side of the issue. Research questions emerged from this process and additional literature and government documents were identified as essential in framing and researching the questions. Both qualitative and quantitative methods were used for this project. The public perceptions on the use of wilderness were gained through a literature and survey search as well as through a survey of visitors conducted at Mojave National Preserve.

II. Wilderness Public Use and Trends – Before initiating this project I expected to find a peak of wilderness use in the mid-1970s, since it was my perception that backpacking was at a height of interest during this period. As discussed in detail in Chapter 2, research concluded that wilderness recreation use had, indeed, changed, somewhat, since the passage of the Wilderness Act in 1964. Cole, Watson, and Roggenbuck found an increase in the number of women, minorities,

people with physical challenges and non-traditional wilderness users in 1990¹.

They also found wilderness users were older and education levels, but not income levels, were higher than found in previous studies by Lucas and Stankey². This begs the question, for a future research project, is wilderness still relevant to the younger generation?

In a survey conducted in Mojave National Preserve, we found that 79% of our visitors rated the park as a good or very good place to learn about nature (wilderness) and culture (history). 93% of the visitors surveyed rated the park good or very good on outdoor recreation (the park is 67% designated wilderness). Sightseeing was rated at 91% good or very good.

III. Analysis of Congressional Actions in Designating Wilderness (Includes Private Property Access, Commercial Operations and Precedent Legal Decisions). Are there measure differences in the management of wilderness by the various land management agencies? - Chapter Two traces, in detail, the precedent legal decisions and issues affecting wilderness. In summary, the political process remains fairly constant over the 38 years since the original passage of the Wilderness Act. Debates about "locking up land" were as vocal

¹ Cole, D. A., Watson, and J. Roggenbuck. In Press. Trends in Wilderness Visitors and Visits, Boundary Waters Canoe Area, Shining Rock and Desolation Wilderness, Ogden, Utah: U. S. Department of Agriculture, U. S. Forest Service, Intermountain Research Station

² Lucas, R., 1980 Use Patterns and visitor characteristics, attitudes and preferences in nine wilderness and other roadless areas. Research paper INT-253, Ogden, Utah: U. S. Department of Agriculture, U. S. Forest Service, Intermountain Research Station

then as they are today.³ Compromises, specifically compromises on grazing, were as common then as they are today.⁴

The courts have interpreted, but have made little change to, the original intent of the Wilderness Act of 1964. The clear legal precedent I found lacking involved water rights within designated wilderness areas. Although the issue does not have clear legal criterion, Congress has added language protecting water rights in most recent wilderness legislative acts.

Little measurable differences that could not be attributed to the varying missions of the various agencies were found in the management of wilderness areas.

Interviews with management officials at the agencies and the Vice President of the Wilderness Society also found no major differences. Differences that were noted tended to be within the specific units of the agencies where managers did not abide by the agency policies and regulations or the specifics of legislation.

IV. Does the Wilderness Act Protect Resources in Addition to the Land (i.e. air, natural quiet, vista, etc.) If not, what is the potential for future protection?

Chapter Two describes the full detail of research found in regard to current protections, in addition to the land resources, for wilderness. The Clean Air Act⁵,

³ It is interesting to note that, as a manager of one of the largest wilderness areas in California, I thought this was a new debate. In researching this issue, I expect to find the country fully behind the creation of wilderness in 1964. As demonstrated by the length of time it took Congress to pass the Wilderness Act (7 years), the Act and issues were controversial in the 1950s and 1960s.

⁴ The California Desert Protection Act passed in 1994 and the last large wilderness act passed by Congress, provided for grazing into perpetuity in Mojave National Preserve and Death Valley National Park.

⁵ 42 USC 7401 et seq.

Clean Water Act⁶ and agency's enabling legislation can be applied to wilderness areas in addition to the Wilderness Act.

My research failed to demonstrate any real protection for night sky, natural quiet, solitude, or vistas. The matrix that follows in the next chapter further analyzes this matter.

V. Would the Wilderness Act pass in today's society? Is there an intrinsic value to wilderness? Will accessibility become more of an issue as the population ages? Is there the potential for the Wilderness Act to elicit an emotional debate similar to the current debate of the Endangered Species Act?

Wilderness, like national parks, started as a uniquely American concept.

Wilderness designations preserve land for future generations. Yet it is the policymakers and land managers of today that determine tomorrow's fate.

Hendee, Stankey, and Lucas⁷ have identified a wide variety of possibilities for wilderness of tomorrow, including:

- Greater regulation and control over use.
- Loss of public interest in preserving wilderness
- Increasing importance of wilderness as an information repository for the world around us.

⁶ 33 USC 1344 et seq.

⁷ Hendee, John C. Stankey, George H. and Lucas, Robert C. Future Issues and Challenges of Wilderness Management 1990, Wilderness Management, International Wilderness Leadership Foundation

- Source of materials valued to humankind, such as medicines and genetic stock.

Their work identified the growing notion of wilderness on an international scale; thereby making it unlikely that wilderness will become less important to the American public.

On a local level, the individual land manager is key in seeking support for local wilderness. Societal changes such as the Americans with Disabilities Act (ADA) and the aging of the population increasingly demand equal access to wilderness; yet, the Wilderness Act prohibits motorized vehicles or mechanized equipment⁸.

Will this weaken support for future wilderness protection and designations?

Wilderness advocates like Robert Marshall, Joseph Sax and Garrett Hardin have argued for aggressively protecting wilderness, even though many people cannot access it. In fact, Hardin⁹, a victim of polio since the age of four, supported managers making wilderness “as difficult and dangerous as possible” though he knew he “could not pass the test I propose.” Zoning, carrying capacity or use limits, access, etc., are all decisions that should be carried out in a public planning process. The public, in particular typically the “local” public, have little support for Hardin’s notion. Unless wilderness is relevant to the future generations, it will not be supported or saved by those generations.

⁸ All land management agencies have policies allowing for the use of wheelchairs in wilderness.

⁹ Hardin, *The Economics of Wilderness*, *Natural History*, 78 (1969) 20-27

Land managers are recognizing the need for the public to be involved in management planning processes¹⁰. In answer to critics who claim new wilderness areas don't meet the criteria set forth for wilderness designations, the late Senator Frank Church¹¹ noted that the "great promise of the Wilderness Act" provides opportunities for land restoration. Today's newly designated wilderness may be tomorrow's critical resources, a respite from the hectic pace of society.

In fact, the designation of Mojave National Preserve¹² came at a critical time in today's society. Established in 1994, the development pressures from the growing metropolis of Las Vegas on the east and Los Angeles on the west are proof that preserving this sensitive ecosystem was critical for the children of tomorrow. Where else will children be able to see Joshua Trees blooming in all their splendor, uninterrupted carpets of violet, yellow and blue wildflowers, majestic bighorn sheep on steep cliffs, a meandering desert tortoise?

¹⁰ Church, Frank, 1977, *Wilderness in a balanced land use framework*, Moscow, ID University of Idaho Wilderness Research Center, Wilderness Resource Distinguished Lectureship 1. 18 p.

¹¹ Ibid.

¹² The majority of which is designated wilderness

CHAPTER FIVE

ANALYSIS OF WITNESS ACT

The art of land doctoring is being practiced with vigor, but the science of land health is yet to be born.

Aldo Leopold

The "control of nature" is a phrase conceived in arrogance, born of the Neanderthal age of biology and philosophy, when it was supposed that nature exists for the convenience of man.

Rachel Carson

CHAPTER FIVE – ANALYSIS OF WILDERNESS ACT

The following matrix provides an analysis of the various aspects of the Wilderness Act, its protection for resources and varying applications within the three large federal land management agencies¹ responsible for its administration.

(1) Issue/Resource (2) Need for further policy, statute, etc./Author's suggestions	National Park Service ²	U.S. Forest Service ³	Bureau of Land Management ⁴
(1) Preservation of areas "untrammelled by man" ⁵ (2) Congressional reinforcement of the importance of restoration for recently designated wilderness is vital. In local communities, counties and private citizens	The National Park Service Management Policies and Wilderness Report of 2000-2001 specifically reinforced this premise. Research indicated that with only 20 out of 387 units recommending proposed wilderness additions, more work is indicated in	The U. S. Forest Service has the largest land mass of designated wilderness areas; however, due to pressure of extractive and consumptive industries, coupled with grazing privileges or private property rights in wilderness, additional protection	The Federal Land Policy Management Act provides the Bureau of Land Management its overarching direction on wilderness protection. The BLM is the most recent land management agency to have designated wilderness as a part of its mission. It is

¹ The U. S. Fish and Wildlife Service was omitted from this analysis, since very little data can be found regarding their administration of wilderness and they administer the third smallest amount of wilderness areas of any land management agency.

² A bureau of the U. S. Department of the Interior

³ A bureau of the U. S. Department of Agriculture

⁴ A bureau of the U. S. Department of the Interior

⁵ The Wilderness Act of 1964 specifically states that "wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area when the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.... An area of Wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval characters and influence, without permanent improvements to human habitation.... which is protected and managed so as to preserve its natural conditions..."

opposed to wilderness cite the provisions of the Wilderness Act ⁶ in arguing that certain areas are not "wilderness worthy."	this area. Further, in a survey conducted for this project, the majority of parks had not developed park specific wilderness policies.	for designated wilderness could be warranted.	also, the bureau/agency with the greatest pressure for multiple use management.
(1) Wilderness Planning/Public Involvement (2) Land managers should include the full spectrum of the public in the planning processes; however, the final management direction for managing wilderness needs to comply with existing laws. ⁷	The policies of the NPS require a separate wilderness plan for each unit with designated wilderness. A 2000-2001 report found few units complying with this requirement.	The USFS leads the federal government with research in the areas of public planning and involvement, including the concept of LAC (limits of acceptable change) as a factor in the planning process.	The BLM's enabling legislation (FLPMA) prescribes significant public involvement in all aspects of the planning processes. Wilderness planning is done as a portion of their larger land management plans, which involves competing, ⁸ interests and often does not result in a plan for failure of the various parties to agree. ⁹
(1) Mining rights in designated wilderness units (2) In designated wilderness areas, Congress should provide for the acquisition of	Most national park units prohibit mining activities. Those NPS units, which have pre-existing, mining claims, have specific regulations governing mining in	The U. S. Forest Service has a number of pre-existing mining claims in wilderness units. The mining claims include oil and gases rights and are too numerous to	The Bureau of Land Management is the land management agency with the majority of mining claims in wilderness. Little protection is given to mining claims in

⁶ The Wilderness Act of 1964 provides that to be designated as "wilderness" at least 5000 acres must be "untouched" by man. In recent wilderness designations, either less than 5000 acre areas or areas that have been impacted by man (but could be restored) are being designated as "wilderness," leaving local opponents fuel for their opposition fire.

⁷ Based on my research for this project and the precedent legal decisions, a number of land managers fail to place the high level of protection on wilderness anticipated by the Act.

⁸ For instance, oftentimes, in the planning process BLM establishes advisory commissions which include off-road enthusiasts, environmentalists, ranchers, miners, etc. who simply don't agree on a course of action.

⁹ As an example, the West Mojave land management plan has been in development for almost two decades, without reaching a decision.

<p>mining claims, similar to withdrawal of public lands for use as military bases.</p>	<p>national park units¹⁰. Currently, no mining operations are being conducted in any national park unit.</p>	<p>acquire through Land and Water Conservation Funds. Interviews with USFS managers found little support for federal mining claim acquisition since priority is generally given to private fee land acquisition.</p>	<p>wilderness areas. In fact, claimants are guaranteed the right to access their claim/property.</p>
<p>(1) Grazing in wilderness areas (2) In designating wilderness, Congress could exempt the application of the Taylor Grazing Act for the USFS and BLM¹¹. The Act does not apply to the NPS and, through private donations, the NPS is able to retire grazing through a "willing seller" acquisition. Congress could modify the Taylor Grazing Act to allow grazing permit retirement on public lands.¹²</p>	<p>The NPS Management Policies provide for the "non impairment" of grazing activities in park system units. Ranchers do not have a right of access to their grazing developments in wilderness with motorized vehicles or mechanized equipment. Local park superintendents applying the "minimum tool" make those determinations standard.</p>	<p>The U. S. Forest Service is the land management agency with the majority of litigation in relation to endangered species and grazing. Most of the grazing occurs in riparian or wilderness areas and has involved a plant or animal species on the USFWS threatened or endangered list.</p>	<p>Increased focus is being placed on the Bureau of Land Management and its grazing practices. Through litigation¹³ the BLM has addressed issues related to grazing; however, the application of the Taylor Grazing Act¹⁴ the agency is limited in its flexibility.</p>

¹⁰ 36 CFR Part 9

¹¹ The provisions of the Act do not apply to the National Park Service

¹² "Public lands" are those managed by the U. S. Forest Service and Bureau of Land Management and do not include National Park Service land.

¹³ Primarily by the Center for Biological Diversity from Tucson, AZ.

¹⁴ A 1930s era statute, which provides for protection for public lands ranchers.

<p>(1) Stock use in wilderness areas</p> <p>(2) The public confusion over stock use is growing. Wilderness recreation parties, crossing administrative jurisdictions, can encounter differing standards. The agencies, in particular those with contiguous boundaries need to work together and establish consistent requirements for stock users.</p>	<p>In the National Park Service, individual units are independently responsible for determining the acceptable use of stock in wilderness areas through the wilderness planning process. This planning process is required to include all aspects of public input (stock users, hikers, environmentalists, etc.)</p>	<p>The U. S. Forest Service has adopted the concept of LAC (limits of acceptable change) where an analysis of the impact of stock uses and acceptable use is determined. The USFS research arm has done significant work in analyzing stock use in alpine, sub-alpine, meadows and forested areas.</p>	<p>The Bureau of Land Management uses their rangeland standards and guidelines for assessing recreational stock use in wilderness areas as well as for grazing activities in wilderness and riparian areas. These standards are recently developed and have not been implemented throughout the agency.</p>
<p>(1) Access to private property or private property rights</p> <p>(2) In designating wilderness areas, Congress should provide for specific LWCF (Land and Water Conservation Fund) monies for acquiring private property from willing sellers.</p>	<p>The NPS Management Policies only allow traditional access, and then with specific limits, for the landowner to "reasonably enjoy" his or her property. Land acquisition is aggressively pursued.</p>	<p>Significant private property exists within forest units. Land acquisition is pursued on a willing seller basis; however, there is a backlog of millions of acres identified for acquisition.</p>	<p>Generally, statutes providing for Bureau of Land Management designated wilderness allow for access to private property or special interests¹⁵.</p>
<p>(1) Law enforcement motorized access into</p>	<p>Allowed in serious or extreme situations. Not routinely allowed.</p>	<p>Covered by overall agency policy and administered by individual forest</p>	<p>Typically provided for in the designation of wilderness area.</p>

¹⁵ Such as the provision in the California Desert Protection Act providing for motorized access by California Department of Fish and Game to BLM designated wilderness areas.

<p>designated wilderness</p> <p>(2) It is imperative that each unit's law enforcement official work with cooperating agencies to ensure wilderness compliance and protection.</p>	<p>Specific authorization is dependent upon individual park units/superintendent and typically involves a "minimum tool" determination.</p>	<p>unit. Not routinely allowed.</p>	<p>Generally, the Bureau of Land Management permits law enforcement motorized access in wilderness areas.</p>
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The following are areas identified for further research:

- ❖ Assessment tools for restoration of various ecosystems or wilderness areas.
- ❖ Potential of public/private partnerships for preserving "wild" areas.¹⁶
- ❖ Determination of carrying capacities in differing types of wilderness areas. This should include resource impacts (tundra, desert, alpine, etc.)
- ❖ Assessment of public priority for preserving wilderness and analysis of gaining public "ownership" of wilderness areas.
- ❖ Exploration of paths for federal, state, county, and local land management partnerships.

¹⁶ In fact, the initial scoping meeting for exploring this element is scheduled, in conjunction with the David and Lucile Packard Foundation, for December 11, 2002 in Ontario, CA.

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ATTACHMENT ONE
NATIONAL WILDERNESS PRESERVATION SYSTEM
FACT SHEET

NATIONAL WILDERNESS PRESERVATION SYSTEM FACT SHEET

National Wilderness Preservation System

<u>AGENCY</u>	<u>UNITS</u>	<u>FEDERAL ACRES</u>	<u>(%)</u>
Forest Service, USDA	398	34,751,592	33.2
National Park Service, DOI	44	43,917,068	42.0
Fish and Wildlife Service, DOI	71	20,686,134	19.8
Bureau of Land Management, DOI	<u>131</u>	<u>5,216,550</u>	<u>5.0</u>
GRAND TOTAL	624*	104,571,344	100

National Wilderness Preservation System (excluding Alaska)

<u>AGENCY</u>	<u>UNITS</u>	<u>FEDERAL ACRES</u>	<u>(%)</u>
Forest Service, USDA	379	28,999,371	62.5
National Park Service, DOI	36	10,163,985	21.9
Fish and Wildlife Service, DOI	50	2,009,222	4.3
Bureau of Land Management, DOI	<u>131</u>	<u>5,216,550</u>	<u>11.3</u>
GRAND TOTAL	596*	46,389,128	100

National Wilderness Preservation System (Alaska)

<u>AGENCY</u>	<u>UNITS</u>	<u>FEDERAL ACRES</u>	<u>(%)</u>
Forest Service, USDA	19	5,752,221	9.9
National Park Service, DOI	8	33,753,083	58.0
Fish and Wildlife Service, DOI	21	18,676,912	32.1
Bureau of Land Management, DOI	0	0	0
GRAND TOTAL	48*	58,182,216	100

*NOTE: Overlapping jurisdictions account for lack of additive information

ATTACHMENT TWO
THE PROBLEM AND ITS SETTING

THE PROBLEM AND ITS SETTING

Statement of Problem

I propose to understand and evaluate the public, statutory and evolution of wilderness in the United States. This work will examine current trends and anticipate future direction of wilderness protection and management.

Subproblems

1. The First Subproblem Congress passed the Wilderness Act in 1964. This project will analyze the trends in wilderness designations and management over the last 40 years. The first subproblem is to determine the demographics of public use and examine how the public uses wilderness.
2. The Second Subproblem Wilderness can only be designated by Congress, typically, but not universally, upon recommendations of federal agencies. The second subproblem is to trace and analyze the direction of Congress in designating wilderness and the analysis of precedent legal decisions affecting wilderness management. This element will examine private property rights and access, as well as commercial operations, within wilderness.
3. The Third Subproblem Clearly the Wilderness Act protects the designated land; however, it is less clear whether view sheds, air quality, natural quiet, vista protection and "open space" is also protected. This work will research and determine whether those values are also protected. If they are not, there will be an analysis of the potential for future protection.
4. The Fourth Subproblem The future of wilderness protection and management will be assessed. Is there an intrinsic value to wilderness? How can conservationists gain support for wilderness? Will accessibility become more of an issue as the population ages? In there the potential for the Wilderness Act to elicit an emotional debate similar to the Endangered Species Act?

The Hypothesis

The first hypothesis is that the American public supports wilderness and values wilderness whether or not they backpack, camp, etc. Future wilderness protection and designations will be important to the public.

The second hypothesis is that, while there may be some limited differences in application of the provisions of the Wilderness Act, all land management agencies are managing wilderness and applying the Act consistently.

The third hypothesis is that wilderness is largely found in the western United States and is generally in high elevation (mountain) areas.

The fourth hypothesis is that the Wilderness Act only protects a limited aspect of the resource – the land.

The Delimitations

This student will not decide which land management agency does a “better” job of managing wilderness.

This study will not presuppose or assess Congressional wisdom in the designation of any particular wilderness areas.

This study will be limited to Wilderness as defined, as administered, by the Wilderness Act of 1964.

Definition of Terms

Wilderness Act – A law passed by Congress in 1964 which provides specific management requirements for designated areas of federal land.

Minimum Tool – The lowest level or most primitive tool need to administered the wilderness. For instance, in eliminating a hazard tree on a trail a hand saw might be used as opposed to a chain saw.

Abbreviations

NPS - National Park Service

BLM – Bureau of Land Management

USFS – United States Forest Service

LNT – Leave No Trace

The Importance of the Study

Many questions continually surface within federal agencies about the intent of the Wilderness Act, in particular when the issue of the use of motorized vehicles or mechanized equipment in designated wilderness. In addition, “appropriate” activities in wilderness areas draw debate. In fact, a group of six of us recently had an hour before a meeting began and I brought up this issue. A lively discussion over cell phones, computers, geographic positioning systems, and similar devices in wilderness took place. The definition of “mechanized” and the intent of Congress, coupled with public expectations, almost ran the full spectrum of the debate. The debate was philosophical

with the contention of picture taking for private purposes being acceptable, yet picture taking for commercial operations (for instance, postcard photography) being unacceptable.