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**ELKHORN WILDLIFE MANAGEMENT UNIT:
PAST, PRESENT AND FUTURE
OF A FOREST SERVICE PLANNING PROTOTYPE**

by
Frank C. Crowley
B. A., Holy Cross College, 1969
J. D., Boston College Law School, 1973

Presented in partial fulfillment
of the requirements for
degree of

Master of Science
UNIVERSITY OF MONTANA
1984

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Approved by:

Chairman, Board of Examiners

Dean of Graduate School

Date

Rich
Many thanks
for all your
encouragement
and assistance
Best of luck in
the Elkhorn
Frank C.
8/84

ELKHORN MOUNTAINS WILDLIFE MANAGEMENT UNIT: PAST, PRESENT
 AND FUTURE OF A FOREST SERVICE PLANNING PROTOTYPE

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INTRODUCTION

The allocation of America's wildlands and roadless areas has received increasing attention during the second half of the twentieth century from those who desire to use their myriad resources: hiking, timber, range, mineral exploration, hunting, primitive recreation, and so on.

Until recently, roadless areas on National Forest lands generally were placed in one of two large planning categories. If an area met very strict requirements it was eligible for the near absolute protection of the National Wilderness Preservation System, remaining indefinitely in its virtually undeveloped natural state. If the area did not so qualify, it typically went into the relatively unprotected multiple-use sustained-yield category.

As interest has grown in the fate of the unallocated wildlands on the national forests, pressure has mounted to make the wildland allocation process more refined. The increasing demand for both consumption of forest resources and recreation/natural areas has created the need for decisions more precise than simply "wilderness vs multiple-use". This push for some middle ground is largely due to the existence of many "not-quite-wilderness" areas which either lack one or two wilderness attributes or have other resource potentials which make wilderness trade-offs difficult.

Crowley, Frank C., M.S., May 1984

Environmental Studies

Elkhorn Mountain Wildlife Management Unit: Past, Present, and Future of a Forest Service Planning Prototype

Director: Dr. Bob Ream

As an alternative to Congressional wilderness legislation, administrative designations such as the 160,000 acre Elkhorn Mountains Wildlife Management Unit near Helena, Montana represent an exciting new development in USDA Forest Service planning and management.

The cooperative achievement of the Forest Service, the Montana Department of Fish, Wildlife and Parks and the public in establishing the Elkhorn Wildlife Management Unit was intended to, and should, serve as an innovative planning prototype for the national forests. However, assuring the wildlife management unit concept a role in the existing planning process as a recognized classification will not be easy.

Well balanced forest planning depends importantly on public participation. The intense public involvement which helped create the Elkhorn Wildlife Management Unit has demonstrated that the Forest Service will respond to well-informed and persistent public demand for preservation of non-timber resources.

Chapter 1

EVOLUTION OF THE ELKHORN WILDLIFE MANAGEMENT UNIT

The Elkhorn Mountain Range

Located southeast of Helena, Montana, the Elkhorn Mountains lie within both the Helena and Deerlodge National Forests. (Appendix 1). Characteristic of the island type mountain ranges found east of the Continental Divide, the Elkhorn Range is an ecosystem complex and diverse in its geology, climate, soils and topography thereby providing numerous habitats supporting a variety of flora and fauna.

The lower elevations are transitional grassland areas from the prairie with Douglas fir at the mid-elevations followed at higher levels by a spruce-fir zone. Lodgepole pine occurs at both mid and upper elevations. These timbered areas which provide essential security for elk, deer and moose, are intermingled with highly productive lush meadows serving as important summer range for elk. The variety of habitat (such as timber, moist meadows, grassland/shrub, talus and rock outcropping, subalpine and riparian) combined with minimal resource use and roading, produce a wide variety and abundance of wildlife species.*

* U.S.D.A. Forest Service, Courtesy to Elkhorn Examiner, p. 7 (1981).

The Elkhorns are one of the most popular and productive elk hunting areas in the State of Montana. The roadless and undeveloped state of the area allow for excellent wildlife habitat, semi-primitive hunting opportunities and non-motorized dispersed recreation.

In addition to the diversity of habitat and lack of development, the Elkhorns are unique for two other reasons. First, the Forest Service ownership extends over most of the foothills down to the surrounding valley floors. This almost total public ownership allows near complete management of the mountain range, including that over the periphery of the range which is more susceptible to human activities. Second, unlike most other ranges where winter range for ungulates is largely on private land, in the Elkhorns almost 80% of the elk winter on Forest Service land. For these reasons, the Elkhorn Wildlife Management Unit, covering approximately 250 square miles, provides a rare opportunity for comprehensive management of land use practices to achieve wildlife management objectives. This is not to suggest that an area must have all the qualities of the Elkhorns to qualify for WMU designation. However, the Elkhorns do present a compelling case, if not for wilderness, then at least for a special management designation.

Chronological Development of the Elkhorn Wildlife Management Unit

For a period of several years, the Elkhorns were simultaneously undergoing two kinds of planning review. From 1960 to approximately 1975, the Helena National Forest, (HNF), including the Elkhorns, was managed under the guidance of the Multiple Use-Sustained Yield Act and, after 1969, also under the National Environmental Policy Act (NEPA). In 1974 the HNF released a Draft Multiple Use Plan and EIS for the southern portion of the Elkhorns.

Also in 1974, the statewide Montana Wilderness Study Act (S.393) was introduced in Congress by Montana's Senator Lee Metcalf. The bill contained 10 National Forest roadless areas, including the Elkhorns, identified for possible inclusion in the Wilderness Preservation System.

In June of 1976 the HNF released its final EIS setting forth the Elkhorn Unit Plan for the southern portion of the Elkhorns. The plan divided up the Elkhorns into five units. Like all forest planning efforts for this area, the plan recognized the high wildlife values and placed a management emphasis on wildlife (especially elk wintering and calving areas). However the plan also allowed for mining and timber harvest (and associated road access) in the heart of the Elkhorns, the Tizer Basin-Upper Crow Creek area and proposed

a transmountain road which would have hastened development.

The release of this Elkhorn Unit Plan precipitated a public outcry over the potential loss of exceptional primitive recreation and wildlife values in the area. Public awareness of the allocation process was significantly heightened and thus began the long process of settling the question over the Elkhorns.

At about the same time the Elkhorn Unit Plan was released by the HNF, Senator Metcalf escorted the Wilderness Study Act (S.393) through the Senate and it went before then-Congressman John Melcher, chairman of the Public Lands Subcommittee in the House. Because considerable public concern and media attention had already focused on the Elkhorn Unit Plan, Congressman Melcher conducted a Congressional hearing on the Elkhorns in Helena on Labor Day, September 6, 1976.

Due to the significant pro-wilderness sentiment expressed at that hearing, Congressman Melcher, in October 1976, segregated the Elkhorns out of S.393 and introduced legislation establishing a separate wilderness study area for the Elkhorns. By this legislation, subsequently enacted as P.L. 94-557,* Congress directed the Forest Service to evaluate approximately one-half of the Elkhorn Mountains for

* Excerpts from P.L. 94-557 are included as Appendix B of this paper.

possible wilderness designation.*

In accordance with P.L. 94-557, the Forest Service organized a study team and began collecting data on the area for evaluation. Substantial public input was solicited and received and workshops were held in Helena and Butte. On July 15, 1978, the Elkhorn Draft Study Report and EIS was released proposing a preferred plan of a 25,000 acre wilderness area, a 20,000 acre wildlife protection area and a 40,000 acre multiple use area. Over 1,400 copies were distributed and once again, public hearings were held in Helena and Butte. Substantial public comment was again received with substantial opposition to the alternative selected by the Forest Service, either because those commenting wanted more wilderness or no wilderness at all.**

Back in Washington D.C. President Jimmy Carter, elected in 1976, had appointed several conservation-minded individuals to serve in his administration. Among them was

* While the official study area was roughly 86,000 acres, the ultimate Forest Service recommendation in 1981 established a management direction "for the Elkhorns", i.e. a roughly 160,000 acre area lying on parts of the Helena and Deerlodge National Forests. From 1976 through 1981 management direction for the remaining 74,000 acre (largely roaded) portion of the Elkhorns outside of the study area was that contained in the 1976 Elkhorn Unit Plan.

** While there was disagreement over the wilderness question, there was nearly unanimous agreement that the special wildlife values of the Elkhorns should be recognized and retained.

M. Rupert Cutler, Assistant Secretary of Agriculture. Between 1978, and 1980, Cutler became interested in the Elkhorn controversy and visualized the area as a suitable location to introduce a creative management approach which would take the Elkhorns outside of the Wilderness Act while preserving the area's abundant wildlife values.

In April, 1980, the Forest Service (Region I) and the Montana Department of Fish, Wildlife and Parks (DFWP), in response to the emerging wildlife management unit direction for the Elkhorns, executed an Intergovernmental Personnel Act agreement (IPA) to provide the Helena Forest with a wildlife biologist who would help complete that portion of the Helena Forest Plan dealing with the Elkhorns.

On September 29, 1981 the Final Report on the Elkhorn Wilderness Study under P.L. 94-557, including the final EIS on the Elkhorn wilderness study area, was released. After analyzing seven alternatives, the Forest Service (Region I) recommended to Max Peterson, Chief of the Forest Service, that the Elkhorn study area not be designated wilderness but rather a management unit which emphasized the very high wildlife values in the area. (See Appendix C)

On November 24, 1981 Chief Peterson issued his record of decision accepting the recommendation in the Final Report. On November 25, 1981, Agriculture Secretary John Block officially directed the Forest Service to establish a

special wildlife management unit (WMU) for the Elkhorns and recommended to Congress that the 86,000 acre Elkhorn Wilderness Study Area not be designated as wilderness. Having received the President's recommendation, Congress, specifically the Committee on Interior and Insular Affairs, Public Lands Subcommittee, is considering the recommendation and has up to four years (September, 1986) to act on it.* Should Congress fail to take official action by then, the recommendation will automatically be implemented. Meanwhile, the Forest Service is to continue managing the study area to maintain its existing wilderness potential.

At present (1984), national forest land management planning is continuing under the direction of the National Forest Management Act of 1976 (NFMA) and Forest Service regulations promulgated pursuant to the NFMA (36 CFR Part 219). The Elkhorn WMU component of the Helena and Deerlodge Forest Plans is part of this overall planning effort.**

* Due to House Speaker Tip O'Neil's rejection of the recommendation on the grounds that it should come directly from the President, (See Appendix D) the official transmittal of the recommendation was delayed until September, 1982. Therefore, Congress' four-year period of consideration will expire in September, 1986, rather than in November, 1985.

** Most of the Elkhorn WMU lies within the boundary of the Helena National Forest, but the very Southwest part of the WMU is within the Deerlodge National Forest. References to management of the WMU by the Helena National Forest should be read to include the Deerlodge National Forest.

While final management policies, standards and guidelines for the Elkhorn WMU will not appear until issuance of the Draft Forest Plans for the Helena and Deerlodge National Forests, the area is currently being managed in accordance with its designation as a wilderness study area and with the Forest Service's own recommendation of WMU status.

Public Support of Elkhorn Wilderness and Wildlife Values

Any summary or analysis of the evolution of the Elkhorn WMU must refer both to the remarkably active role played by the public and to the Forest Service's response to such vocal involvement. Undoubtedly, it is the unique physical features of the Elkhorns combined with their proximity to Helena, the state capitol and Butte, another population center, which account for the degree of continuing public involvement in allocation decisions affecting the Elkhorns. A list of the most interested parties and a summary of their involvement follows.

Elkhorn Citizens Organization

Following the Labor Day hearing in September 5, 1976, the Elkhorn Citizens Organization (ECO) was formed to follow up on the substantial pro-wilderness support presented at

Significant ⁸ (pg 4)

the hearing and to pursue formal Congressional wilderness designation for the area.

With the Montana Wilderness Association, the ECO has attended numerous workshops and meetings, submitted countless pieces of testimony, comments and correspondence, published newsletters and for several years has engaged in a continuing dialogue with Forest Service officials and Congressional members on decisions affecting the Elkhorns.

While ECO has strongly favored a formal wilderness designation for the Elkhorns, it has maintained a posture of cautious acceptance of the WMU concept as an alternative to wilderness and continues to monitor closely the Helena Forest's implementation of the WMU. More recently in 1982, the ECO became part of the Helena Forest Conservation Coalition (HFCC), an alliance of nine Helena area conservation organizations formed to encourage active participation in the Helena National Forest Ten Year Plan. The HFCC is particularly concerned with the disposition of the roadless areas within the Helena National Forest. The HFCC actively supports the Elkhorn WMU and has joined the ECO in encouraging the HNF to adopt an aggressive management direction favoring wildlife values in the Elkhorns.

The exhaustive efforts of this core group of local citizens have clearly been a driving force in the creation and pursuit of the wildlife management unit.

The American Wilderness Alliance

Based in Denver, the Alliance is a Western-based, national non-profit organization devoted to the conservation and wise use of the nation's decreasing wildlands, wildlife habitat and wild river resources. From 1978 to 1980 the Alliance, which published Wild America magazine out of Helena, Montana, actively co-ordinated the local events on Elkhorn planning with the national picture, particularly with Assistant Secretary Rupert Cutler. The Alliance worked closely with the Montana Wilderness Association until the final WMU recommendation was issued for the Elkhorns.

The Montana Wilderness Association

Assisted by the American Wilderness Alliance, the Montana Wilderness Association (MWA), an independent affiliate of the National Wilderness Society, has also devoted substantial time and resources over the years to the Elkhorns. The MWA has struggled over the acceptability of an administrative (i.e. non-statutory) wildland designation since it was first proposed by Assistant Secretary Cutler in 1978. While in favor of administratively designated wildlife management areas within the national forests, the MWA has continually questioned whether such an untested, non-

statutory designation would afford sufficient protection for the unique wildland resources of the Elkhorns. Consequently the MWA has consistently maintained that at least part of the Elkhorns deserves statutory wilderness protection, perhaps in combination with an adjacent wildlife management area. The MWA continues to participate in monitoring the HNF's implementation of the Elkhorn WMU.

U.S. Forest Service

Initially under the direction of Assistant Secretary Cutler, the Forest Service has willingly undertaken the novel task of creating and establishing the first major wildlife management unit within the national forests. While many have not agreed with the Forest Service recommendation against wilderness, the Forest Service has long recognized the high wildlife values in the Elkhorns. The WMU is, in some sense, a continuation of previous Forest Service planning direction which emphasized wildlife, although to be sure the current WMU direction is both conceptually and in practice more directed towards enhancement and maintenance of wildlife habitat than ever before.

The commitment of the current Helena National Forest Supervisor, Robert Gibson, to the WMU was graphically demonstrated by Gibson's appearance in 1983 before a Montana

state legislative appropriations committee where he supported the appointment of a State Elkhorn Coordinator who would continue the State's active participation in the future management of the Elkhorns. Such appearances by Forest Service officials are rare and his testimony apparently had a significant impact on the committee's decision to approve the DFWP funding request.

Montana Department of Fish, Wildlife and Parks (DFWP)

In July of 1978, the DFWP submitted comments on the Forest Service Draft Wilderness Study Report. The DFWP had supported "Alternative B", the Forest Service original 79,000 area wilderness proposal, and subsequently gave active support to the WMU concept. After the Forest Service recommended a WMU for the Elkhorns, DFWP contributed a wildlife biologist and partial funding for the WMU's development and continues to do so. Its coordination with the Forest Service on the Elkhorn WMU exemplifies Federal/State cooperation.

M. Rupert Cutler

As Assistant Secretary for Conservation, Research and Education (USDA), and later Assistant Secretary for Natural

Resources and Environment (USDA),* Cutler was a driving force in the move to utilize administrative designation of wildlands to supplement the statutory wilderness system.

In 1978 Cutler took a horseback trip through the Elkhorns and while he recognized the abundant wildlife and wildland values of the area, he also observed many "nonconforming" characteristics of the Elkhorns. This trip led him to concur in the Forest Service recommendation against wilderness but also inspired him to issue a directive to the Forest Service "to begin immediately with the development of master plan for the Elkhorn Mountains which restricts public use, commodity extraction, and all other activities to only those known to be compatible with the long term well being and survival of the elk, mountain goats, and other wildlife species of this productive area".**

Transition From Wilderness to Wildlife Management Unit

Given the mix of parties interested in the Elkhorns allocation process, especially the initially strong pro-wilderness sentiment for the area, the evolution of the WMU

* Soon before the Reagan administration took office, Cutler became Executive Vice President of the Audubon Society.

** Cutler, M.R., letter of December 28, 1978 to Clifton Merritt, President, American Wilderness Alliance. (See Appendix E).

and the transition from wilderness potential to administrative designation was a gradual and, at times, a frustrating process. This process involved innumerable meetings, phone calls, discussions, and the circulation of scores of documents and pieces of correspondence.

As one might expect, controversies arose, particularly between the Forest Service and those who favored a wilderness designation. One particularly bitter dispute arose over the method by which the Forest Service assigned weight to certain types of public comment received on its Draft EIS and Wilderness Study Report in 1978.

Complaints of "foul play" were raised by the Elkhorn Citizens Organization and the Montana Wilderness Association about the conduct of the Forest Service in apparently counting each name on anti-wilderness petitions the same as a 2 or 3 page personal letter in support of wilderness. This method of weighting public comment was contrary to the Forest Service's own statements early in the EIS process that personal letters would be given greater consideration than petitions. Relying on this logical policy, the conservation groups did not circulate and submit petitions but rather encouraged their members to send personal letters. Many such letters were sent. However, the strong pro-wilderness sentiment received by the Forest Service in the form of personal letters was not reflected in the Final EIS.

The result of this method of weighting public opinion was a finding by the Forest Service of 86% of opinion against wilderness and hence a conclusion of "no public mandate" for wilderness. The CODINVOLVE public opinion results were combined with findings that wilderness designation would preclude other beneficial uses such as mining. To be sure, many persons signed petitions and form letters opposing wilderness, favoring the use of timber, mineral and range resources to provide broader based recreation, more jobs and an enhanced tax base for local communities. However the public opinion finding of "no public mandate" for wilderness was made despite the fact that the "substantive" comments submitted in personal letters was heavily pro-wilderness.*

The apparent validity of these complaints** by the conservation organizations prompted a formal response by the Forest Service. Assistant Secretary Cutler's successor at USDA, Ned Bayley, wrote to the Elkhorn Citizens on

* Of 3,075 signatures, 2,768 were on documents other than personal letters. Of the 2,768 signatures, 2,569 were on seven anti-wilderness petitions.

** Cunningham, W., letter of July 3, 1980 from Montana Wilderness Association to M. Rupert Cutler, USDA, Forest Service; Meloy, M., letter of July 21, 1980 from Elkhorn Citizens Organization to M. Rupert Cutler, USDA, Forest Service; (See Appendix F).

October 29, 1980, and attempted to clarify the methodology by which the Forest Service weighted petitions as opposed to personal letters.*

Nonetheless, the conservation groups consider themselves never to have received a satisfactory explanation from the Forest Service and consider their public comment to have been ignored to accommodate an internal preordained decision against wilderness. This episode eroded the trust which the conservation community had placed in the Forest Service and has contributed to the close scrutiny over the HNF's implementation of the WMU.

As for those segments of the public who were opposed to wilderness designation for the Elkhorns, the Forest Service recommendation against wilderness effectively ended their active involvement. Except for individuals whose personal activities in the Elkhorns must be approved by the Forest Service, the pro-development citizens have not been actively involved in the implementation of the WMU. Presumably they have acquiesced in the current management direction for the Elkhorns.

Despite the controversies, the WMU planning process slowly evolved and during 1980 began to take on a definite form. As the first phase in the development of the Helena

* Bayley, N.D., letter of October 29, 1980 to Elkhorn Citizens' Organization (See Appendix G).

National Forest Plan began in 1980, meetings on the WMU were held and schedules and procedures were established. An Interdisciplinary Planning Team (IPT) was formed within the Forest Service and with a wildlife biologist loaned to the Forest Service by the Montana Department of Fish, Wildlife and Parks. A validation group consisting of several biologists not directly related to either the Forest Service or the DFWP was organized to review periodically the information gathered by the Interdisciplinary Planning Team. In addition the HNF allowed the Elkhorn Citizens and the Montana Wilderness Association to review, and comment on, the Team's information on the WMU before such information was reviewed by the validation group.

In short, by the end of 1980, the planning process for this innovative wildlife management unit was well underway and is continuing into 1984 and beyond. The next part of this paper examines the procedural tools or the rubric under which the Elkhorn WMU is being developed.

Chapter 2

BASIC STRUCTURE OF THE WILDLIFE MANAGEMENT UNIT

The wildlife management unit was an innovative and as yet untested "management direction" which emerged from the debate over the Elkhorn Mountains Wilderness Study. To use an anatomical analogy, the WMU was a skeleton to be fleshed out over time with administrative clay fashioned by the Forest Service with the help of public input. Obviously this was and is a challenge for all parties concerned.

"Designation" of the Elkhorn Wildlife Management Unit

The designation of the Elkhorns as a WMU was not a formally promulgated designation since it came neither through statute or an exercise of authority under any specific administrative regulation.* Rather, the "designation" took the form of letters from Assistant Secretary Cutler followed by a simple recommendation in the Final Report on the Elkhorn Wilderness Study under Public Law 94-557:

* The Forest Service clearly has the authority to make administrative designations (see Chapter 5 below) but the Elkhorn WMU was created by a management direction to guide the development of a forest plan under NFMA and not by administrative designation under Title 36 CFR.

The Elkhorn Study Area has been evaluated considering public comments and the criteria of suitability, availability, manageability, and need. Based on this evaluation, the Forest Service does not recommend wilderness in the Elkhorn Study Area.

This Study recommends criteria which will guide Forest Land Management Plans that will be developed as required by the National Forest Management Act (NFMA). These criteria will be implemented or modified dependent on the action of Congress.

In the Forest Plans, a management unit with management direction explicit to wildlife will be developed, administratively under NFMA, in the Elkhorns. Wildlife habitat will be the principal resource value.

It is no wonder that pro-wilderness advocates and others approached the WMU concept with caution. In essence, a WMU was to evolve primarily as a "management direction" under the National Forest Management Act (NFMA) planning process. This is a long way from full statutory protection under the Wilderness Act. On the other hand, the WMU was not a figment of someone's imagination. In fact its basic components or, in Forest Service jargon, its "side boards" were substantially nailed down in written form by 1979. The management direction was to derive generally from the interdisciplinary NFMA process as narrowed by the eight criteria established in the Final Elkhorns Wilderness Study Report completed in 1981.

National Forest Management Act (NFMA) Planning Process

An amendment to the Forest and Rangeland Renewable Resources Planning Act of 1974 ("Resources Planning Act"), the NFMA was enacted in 1976 and imposed a specific obligation on the Forest Service to develop, as part of the Resources Planning Act, interdisciplinary land and resource management plans for units of the National Forest System. The NFMA was enacted to provide more precise guidelines for Forest Service planners in shaping the futures of the various national forests. Plans were required (1) to show clearly the ecological integration of multiple-use sustained yield objectives, (2) to facilitate and expand public involvement in the planning process, and (3) to clarify how guidelines and standards were applied in interdisciplinary fashion to achieve the goals of the Resources Planning Act.

The Forest Service implemented the objectives of the NFMA in the form of federal regulations promulgated in 1979. In 1982, in response to President Reagan's Task Force on regulatory relief, the regulations were substantially revised and reorganized to promote management efficiency and maximize net public benefits. These regulations are the nuts and bolts of the broad national planning effort currently going on within all levels of the U.S. Forest Service. Planning is in various stages within the different

regions, forests, and planning units of the Forest Service. Some draft plans were issued one or two years ago while other forests have yet to release their draft plans. The Helena and Deerlodge National Forests expect to release their draft plans in the fall of 1984.

As is the case with all forests, the Helena and Deerlodge Forests are developing their forest plans, including the Elkhorns, under the NFMA regulations. However in the case of the Elkhorns, management criteria have already been selected in the Final Report on the Elkhorn Wilderness Study under Public Law 94-557. Therefore the Elkhorns is the only management area of the Helena and Deerlodge National Forest Plans for which a management direction has already been selected and, in a sense, is already in the process of being implemented by Forest Service decisions.

Helena National Forest Criteria for the Elkhorn Planning Unit

The Final Report on the Elkhorn Wilderness Study set forth eight criteria to guide the development of a forest plan for the Elkhorns where wildlife habitat would be the principal resource value.* The criteria were first put

* These criteria are to guide the development of the Forest Plan for the Elkhorns, but the HNF is already making its decisions in accordance with these criteria.

forth formally on August 19, 1980 in a letter from Rupert Cutler's successor at USDA, Ned Bayley. Bayley's list of criteria apparently derived from a list of recommendations made to the Regional Forester by Clif Merritt of the American Wilderness Alliance on February 14, 1979. The eight criteria are as follows:

(a) Wildlife habitat will be managed to maintain viable populations of species associated with existing ecosystems, with emphasis on selected species that have seclusion as one of their habitat requirements.

(b) Vehicular access will be restricted as necessary to maintain wildlife habitat values and to provide seclusion for selected species, particularly within the key habitat areas outlined in [Figure 11].

(c) Management controls over use of motorized vehicles will be implemented whenever necessary to protect the wildlife habitat and other natural resources. This will include the closure and restoration of roads that are under Forest Service control, or that can be placed under Forest Service control, which are not necessary to the use and management of the area.

(d) A transmountain road will not be considered.

(e) Land management activities for other resource values will be considered when wildlife habitat can be

maintained or enhanced.

(f) The Elkhorn Study has evaluated wilderness for the Study Area. Therefore, the Forest Plans will not consider a wilderness alternative for the Elkhorn Study Area.

(g) To the degree possible, the High Visual Resource Area [Figure 6] and the two areas proposed for wilderness in Alternative E will be managed so as to maintain existing roadless and visual resource values and to minimize the impact of human activities.

(h) To the extent that manpower, funding, and legal limitations allow, interim management pending congressional action will include steps to remove structures and signs of human activity that are not of historical significance.*

These eight criteria overlay the management criteria, standards and guidelines found in general form in the NFMA regulations. With the basic management direction and management criteria for the Elkhorns already established, HNF managers are currently in the process of establishing management guidelines and practices based on the eight criteria in the Final Report on the Elkhorn Wilderness

* USDA, Forest Service, Final Report, Elkhorn Wilderness Study, (1981) p. 5.

Study. That is, in formulating a comprehensive Forest Plan for the Elkhorns, they intend to further develop the eight criteria into a more refined set of constraints and activities to achieve the management direction of the Elkhorns. The Forest Plan will provide direction for the management of each resource activity: timber, range, minerals, oil and gas, recreation, roads, water quality, fire, insect and disease control, etc.

To summarize, the Elkhorn WMU will be administered in accordance with a Forest Plan developed under (1) general requirements of the NFMA regulations, (2) the eight criteria in the Final Report on the Elkhorn Wilderness Study, and, (3) specific management practices derived from the eight criteria.

Wildlife Monitoring Program

It seems self-evident that management of the Elkhorns as a WMU would be impossible without a thorough understanding of how the roughly 160,000 acre area functions as a habitat for its bountiful wildlife.

At the time the Forest Service designated the Elkhorns a WMU in 1981, some information was already available about the area's wildlife aspects (particularly its big game hunting component) and since April of 1980, the Montana

Department of Fish, Wildlife and Parks (DFWP) has actively cooperated with the Forest Service in developing the Elkhorn management plan.

After the Elkhorns were formally designated a WMU, the DFWP and the Forest Service initiated a wildlife monitoring program as the first major step toward moving the WMU from the drawing board into the field. Initiating the collection of information needed to understand the wildlife habitat and land uses in the Elkhorns was an encouragement to the public and to all who had devoted efforts to the WMU.

The objective of the monitoring program was succinctly stated as follows:

This proposal describes field activities and the information required to understand the relationship between wildlife populations, wildlife habitat use and land use activities in the Elkhorn Mountains. This information will allow biologically sound evaluation of the management plan for the Elkhorns which will be presented in the Helena and Deerlodge Forest Plans. Monitoring information will provide the basis to prescribe modifications or additions to the current level of land use activi-

ties now occurring in the area.*

Although the goal of the program was to manage for all wildlife species in the Elkhorns, specific guidelines were focused on "management indicator species". The primary basis for selection of indicator species was to choose species which were representative of large groups of wildlife and manage those species for the benefit of all others.

With these objectives in mind, since 1978 Region I of the U.S. Forest Service and the Montana DFWP have been parties to a Memorandum of Understanding establishing a cooperative wildlife monitoring program for the Elkhorns. The Memorandum of Understanding established a coordinated monitoring program providing for (1) monitoring trends in wildlife abundance and relationship to habitat and land uses; (2) evaluating the wildlife response to existing and prescribed land management practices; (3) updating recommendations and work plans to implement wildlife habitat improvement measures, and (4) issuing annual progress reports.**

* Montana Department of Fish, Wildlife and Parks, Helena National Forest and Deerlodge National Forest, Proposed Wildlife Monitoring Program, Elkhorn Mountain Wildlife Management Unit, (1982) p. 2.

** The monitoring program also fulfills the obligation of the Forest Service under the NFMA regulations [36 CFR 214.13(k)] to monitor and evaluate planned actions, practices and effects.

The first of these annual reports covering the period from December 1981 through December 1982 was released in April of 1983. The 45-page report noted the necessity for a continuation and refinement of monitoring efforts so that limiting factors could be identified and appropriate remedial management actions could be prescribed.* Since the Forest Service and DFWP have recently executed another extension of the Memorandum of Understanding (see Appendix H), it appears that this vital aspect of the Elkhorn WMU will receive the ongoing commitment of both federal and state governments.

Costs of a Wildlife Management Unit -

In this day of ever leaner agency funding, anticipated administrative and technical costs of a special management area such as a WMU could discourage forest managers from either considering a WMU or from faithfully implementing a WMU selected by the NFMA planning process. It is difficult to say whether a WMU will increase existing wildlife management costs because many variables determine the impact which a WMU may have on a particular forest. Cost factors need

* Montana Department of Fish, Wildlife and Parks, in cooperation with Helena National Forest, Elkhorn Mountains Wildlife Monitoring Program, Progress Report, December 1981 through December 1982.

not necessarily operate as a disincentive for the preservation of wildlife values through the creation of WMU's.

First, costs may decline over time. Once initial field data is gathered to establish a sound biological basis for management, lower resource expenditure would be needed for monitoring and evaluation.

Secondly, participation of state (and possibly) federal wildlife agencies is usually a possibility. Either through direct contributions, manpower/technical assistance, or coordination of information and data, the costs to the forest manager can be significantly reduced by state participation in the long term management of a WMU.

Thirdly, the experience of the Helena Forest has been precedent-setting and the groundwork laid by the Helena Forest could go a long way to reducing costs for similar programs on other forests, particularly those focusing on elk or other ungulate populations.

Finally it should be noted that the NFMA regulations make allowance for some costs for programs like the WMU since the 1982 revisions retained the notion that planning decisions shall not be made solely on the basis of net dollars received by the forest for its resource outputs.

Chapter 3

THE FOREST SERVICE COMMITMENT TO THE WILDLIFE MANAGEMENT UNIT

Clearly, with the establishment of criteria and a management direction explicit to wildlife and with the continuation of a monitoring program, the framework for the Elkhorn WMU has been erected. However the realization of the goals of the WMU (maintain and enhance wildlife habitat as the principal resource) depends upon the day-in day-out decisions of the HNF managers.

Although some affirmative habitat management may be involved, ~~the chief~~ and most controversial task of the HNF ~~will be to~~ "arbitrate" conflicts between wildlife values and ~~other land use~~ activities. Such disputes are inevitable since under the Elkhorn wilderness study legislation (P.L. 94-557) and under a non-wilderness NFMA forest plan, administration of ~~the Elkhorns is subject to~~ existing ~~private rights.~~

This section of the paper will consider the issues central to the "fleshing out" of the WMU by the HNF managers in conjunction with the public. As will be seen, the issues are complex and will require sustained communication and cooperation among the parties interested in the future of the Elkhorns.

Land Use Conflicts

As noted earlier, there are many land use activities with the potential to affect adversely the wildlife resource within the Elkhorns. Among these activities, hardrock mining and associated vehicular access are clearly emerging as the most important sources of conflict with wildlife values.

Within the Elkhorn WMU there are presently forty-eight existing mines and prospects, 19 patented mining claims* and as many as 400 unpatented claims. In addition several large new claim blocks have recently been staked.** While only a few of these mines and claims are active, the increasing interest in the Elkhorns' potential mineral resource raises the potential for conflict with wildlife. Furthermore, the experience to date indicates that road access associated with mining is as important a factor as the mining itself. The significance of mining-related road construction is not surprising since it is the roadless

* A patented mining claim is one in which the government has made a grant to an individual, conveying to him fee simple title to public lands making it essentially private land.

** USDA, Forest Service, Final Report, Elkhorn Wilderness Study, pp 64-69 (1981).

character of the Elkhorn WMU which provides high levels of habitat security accounting largely for the area's abundant wildlife resources.

The HNF has already ventured into the issue of road access since it has received several proposals for access to private lands and to mining claims within the Elkhorn WMU. A brief summary of the legal aspects of road access and a brief review of the Forest Service actions upon these proposals will provide an idea of the complexity of the issues and of how the Forest Service intends to implement the WMU in the field.

Access: The Need to Balance

The position of the Forest Service concerning access to private property within the national forest is quite simple. An owner of private property has a right to reasonable access commensurate with the intended use. Reasonableness is determined on a case-by-case consideration of essentially two factors: (1) the intended use of the owner, and (2) the need to protect forest resources. In other words the Forest Service cannot deny access to any person owning private land or claims within the national forests but may impose conditions on access which are necessary and appropriate.

Although certain legal questions remain about such access*, the position of the Forest Service (summarized above) is generally valid and a detailed discussion of the issue is beyond the scope of this paper. Suffice to say that the principal legislation under which the Forest Service operates, the Mining Laws of 1872, the Organic Act of 1897, the Multiple Use-Sustained Yield Act of 1960, The Wilderness Act of 1964, The Elkhorn Wilderness Study Act of 1976, the Alaska Lands Act of 1980 and Forest Service regulations on mining (36 CFR 228) all provide at least generally for access to nonfederally owned land within the Forest.

By the same token, such statutes and regulations authorize the Forest Service to impose appropriate conditions on such access to preserve other Forest Service values. This latter authority is the key to the HNF's management of the Elkhorn WMU and allows, indeed requires, a balancing of competing interests to achieve the planning objectives of a specific management area.**

* Note. "Wilderness Values and Access Rights": Troubling Statutory Construction Brings the Alaska Lands Act into Play. 54 U. of Colorado L. Rev., 593 (1983).

** The Elkhorn Citizens Organization has frequently argued the "mitigation vs prohibition" question with forest managers, asserting that the Helena Forest also has the legal authority to prohibit access to mining claims within the Elkhorns, either under their status as a WMU or as a wilderness study area. The Forest Service continues to disagree.

As the following summary of decisions indicates, the HNF appears to be taking quite seriously its obligation to balance the entitlement to access against the primary management objective of the Elkhorn WMU. With each decision, the forest managers are establishing legal precedent and setting a management policy, both of which are true to the founding principles of the Elkhorn WMU.

Decision Trends

Since the 1981 designation of the Elkhorns as a wildlife management unit, the HNF has reviewed several proposed developments involving access to mining operations within the WMU. These proposals have involved either new access over existing trails or roads, or improvement of roads in poor condition for use by motorized vehicles and equipment for exploration, mineral extraction and ore hauling. In one other case the HNF itself proposed and later approved the use of Forest Service monies to improve two roads used primarily for recreation (hunting).

The decisions made so far by the Helena Forest suggest the manner in which the HNF will exercise its administrative discretion to key all land use activities within the Elkhorns to the explicit wildlife management direction. This approach, if faithfully followed by the HNF and

continually assisted by public input, is likely to achieve the goals of the Elkhorn WMU. The following are all procedural or substantive actions already taken by the HNF in resolving private property questions. A continuing adherence to these types of actions should assure the success and longevity of the Elkhorn WMU.

(1) Procedural

(a) Environmental Assessments

Decisions of any significance will be made only after a systematic interdisciplinary review and evaluation of issues and alternatives. Major issues, particularly cumulative impacts, should be discussed in an environmental impact statement prepared under NEPA.

(b) Public Input

Public opinion should be solicited and thoroughly considered before authorization of any activity potentially disruptive to the wildlife resource. The HNF is highly sensitized to the intense public interest in the successful implementation of the WMU. Current arrangements to apprise interested citizens and groups of all proposed activities should remain in effect. Public involvement objectives of the NFMA and regulations at 36 CFR Part 219 should be fully carried out.

(c) Automatic disclosures

The HNF has extensive records of mining claims, grazing and other activities within the WMU. Status reports should be automatically provided on a periodic basis to keep the interested public abreast of current and upcoming land use decisions in which the HNF may be involved.

(d) Appeals

Decision notices may be appealed in accordance with 36 CFR 211.18. To date no appeals have been filed by conservationists as the HNF managers have held frequent meetings with the concerned public to clarify positions and receive comment.*

(2) Substantive

(a) Monitoring data

The HNF must remain committed to the all-important collection, analysis and application of field data, both for wildlife populations and patterns and for other land use activities. The more the forest managers know and understand about wildlife in the Elkhorns, the more refined will be their evaluation of the relationships between wildlife

* Only one appeal has been filed. A miner objected to the Helena Forest's strict limitations on access to his mineral claim. The conditions were upheld by both U.S. Forest Service Region I and the Chief of the Forest Service.

and other land use activities and the more precise they can be in imposing appropriate constraints upon such activities.

--(b) Phased Development

Particularly as to mining claims, authorized access should be commensurate with the level of development of the operation. The burden is on the applicant to demonstrate that the type of road access or road improvement is justified by proven resources (e.g. discoveries of commercially recoverable ore). By limiting road access to that which will in fact be used during exploration or operations, the forest managers will prevent the development of unnecessary or under-utilized roads within the wildlife management unit.

(c) Temporary Permits

Access permits should not be open ended but should be limited to a reasonable period for carrying out the operation and then expire.

(d) Seasonal Access,

Perhaps the most directly related to wildlife values, conditions restricting access to certain times of the year should be frequently used to protect wildlife security and habitat from intrusive land use activities during critical wildlife

periods. Since winter is a critical time for ungulate populations, restrictions on winter access to both public and private lands should always be considered in light of available wildlife monitoring data.

(e) Road Closures*

Where access or road improvements are authorized, associated road closures may often be appropriate to mitigate the impact of such access. Amendments to the Helena Forest Travel Plan will reflect conditions attached to operating plans and special use permits and should be considered in conjunction with public use patterns, the use of gates, trailhead facilities, individual permits, over snow vehicles and weekend and holiday restrictions.

(f) Road Construction Standards

Designed to minimize erosion, preserve water quality and promote public safety, road standards, (e.g. culverting, turnouts, width requirements, warning signs, use of crushed gravel, road maintenance, grading, plowing, etc.) must be tailored to

* Both road closures and seasonal restrictions on access appear to be necessary for the implementation of the Final Report's three management criteria concerning vehicular access (See p. 22).

specific road sites.

(g) Performance and Reclamation Bonds

By assuring the availability of funds to carry out road improvements and to close and reclaim operation sites and roads, the forest managers can prevent degradation of the Elkhorns' wildland quality caused by permitted abandonment. In point of fact, 36 CFR 228.10 requires miners to take such measures upon cessation of activities.

(h) Enforcement

Instances of illegal road construction and unauthorized access must be pursued administratively by the Forest Service or criminally by the Justice Department. Periodic staff inspections and citizen complaints should be promptly followed up since the Helena Forest has virtually no enforcement staff and must go through difficult administrative channels to obtain the services of enforcement personnel from the regional office.

It is through the use of these management practices that the HNF can, and apparently intends, to discharge its administrative commission to manage the Elkhorns with wildlife as the principal resource. Other actions not yet taken by the HNF but which seem

quite appropriate would be the strict enforcement of the mining regulations in 36 CFR 228 (or other more specific criteria for mining), withdrawal of critical wildlife areas from future mineral entry, and removal of structures and other signs of human activity which are not of historical significance.*

Given the magnitude of the initial controversy surrounding the creation of the Elkhorn WMU the question naturally arises as to whether the HNF managers are properly carrying out their responsibility to establish the WMU. The next section examines whether the HNF is on the right track.

Success of the Elkhorn Wildlife Management Unit

To judge whether the HNF is on the right track in bringing to life the wildlife management unit, one must return to the question of ~~"What is a wildlife management unit?"~~ As was noted previously, the Elkhorn WMU is ultimately the list of "do's" and "don'ts" which the HNF, after public input and focusing on wildlife, lays down to govern the array of resource-related activities within the

* Removal of nonhistorical structures and signs of human activity is actually a duty imposed upon the Forest Service by the Final Report under P. L. 94-577 (See p. 23).

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Elkhorns. The concept is fungible and largely case-by-case. Moreover its success cannot yet be measured against that of any other wildlife management unit.

There are two ways to gauge the success of the WMU. The first is quantitative - to monitor continually whether the wildlife resource is being maintained and enhanced by the management policies of the HNF managers. Statistics on population and diversity of animals as well as habitat types will reveal whether the Forest Plan is centered on wildlife. This is one principal objective of the wildlife monitoring program. Early results suggest success in this area. *for elk only*

The second measure of success is more qualitative - whether the HNF is managing the area to provide a high quality, semi-primitive recreational resource centered on wildlife while carefully allowing other compatible uses. This after all was the consensus of opinion which gave birth to the WMU in the Elkhorns. If not the originator of the concept, the chief architect of the Elkhorn WMU was Rupert Cutler, then Assistant Secretary of Agriculture. It was Cutler who forged the consensus and created the blueprint for the new planning experiment. It was his influence which moved the Forest Service to official designation of the area as a WMU and his enthusiasm which gradually earned the cautious support of the conservation groups.

In view of Cutler's involvement it seems appropriate to measure the correctness of the HNF approach against his own view of the Wildlife Management Unit. That view is embodied in the eight criteria which Cutler's successor Ned Bayley conveyed by letter to Max Peterson, Regional Forester in 1980. Given the roadless/wildland character of the area, the three criteria concerning land use and road access must be the true barometer of whether the HNF is on the right track.

Even though only a few decisions have been made, it is already apparent that the HNF is devoting substantial technical and administrative resources to the biologically sound management of the WMU. Any objective observer would acknowledge that the HNF is closely examining competing land uses and any vehicular access associated with those uses. At a minimum, the decisions on mining related access, which have contained stringent conditions on road use and construction, evidence a commitment to the success of the WMU.

Unfortunately, the very nature of these balancing decisions will always leave room to argue whether the HNF is doing "the best it can" to maintain and enhance the wildlife resources in the Elkhorns. The issue is one of degree. How much of a buffer zone should exist between a mining operation and a key habitat? What is a "proven" mineral discovery that will justify a \$50,000 road improvement? How close

must separate mining activities be before the Forest Service finds a cumulative major intrusion into a wildlife area that justifies additional constraints on the mining activities or the preparation of an EIS? Unfortunately, the answers to such questions always will, to some extent, depend on one's perspective.

Forest managers have rarely managed an area primarily for wildlife. In fact, wildlife has traditionally been a very minor and ancillary aspect of forest management.* In this light, three active mining operations within a 3 square mile area might not be perceived by a forest manager to be "disruptive" to wildlife without some direct measurable intrusion into known key habitat. On the other hand, such a concentration of mining operations might be viewed by an Audubon member as an obvious and gross disturbance of a wildlife area.

Nonetheless, the extent of analysis, the commitment to the monitoring program, the solicitation of public input and the restrictive conditions imposed on mining operation plans are the types of conduct which were contemplated under the WMU concept. It would be difficult to assert that HNF officials are not making a substantial and good faith

* See e.g. Coggins, G.C. and Ward, M.E., Law of Wildlife Management on Federal Public Lands, 60 Oregon L. Rev. p. 133 (1981); Huffman, A History of Forest Policy in the United States, 8 Env. Aff. 239, 275-280 (1978).

effort to create the WMU as conceived by Assistant Secretary Cutler and as set forth in the Final Report on the Elkhorn Wilderness Study.

The bottom line appears to be the absolute importance of a biologically sound monitoring and evaluation program - to minimize the debate over whether certain activity will in fact reduce the quality of habitat or the viability and enhancement of wildlife populations. If the HNF can continue to point to enhanced wildlife populations and high quality wildlife/wildland recreational experience in the Elkhorns, then who is to say it has not turned a consensus into a reality in the field.

Chapter 4

THE WILDLIFE MANAGEMENT UNIT AS A PLANNING PROTOTYPE

Let us assume that the Elkhorn Mountains become an accepted, functioning wildlife management unit under the administrative tutelage of the Helena and Deerlodge National Forest managers. With the implementation of the Elkhorn WMU, a land allocation will have evolved which provides appropriate resource use and high local benefits for at least one unit of the National Forest System.

Potential as a Recognizable Planning Classification

Certainly, the successful birth of the Elkhorn WMU should have a significance beyond the few Montana counties adjacent to the Elkhorns. The Elkhorn WMU, as a landmark case, as a demonstration project, will serve as a model to other planners and publics trying to allocate lands of a similar nature. The experience and hard lessons of the HNF in translating a management direction into a reality in the field can be shared and applied to other locations. This in fact was one of the major visions of Rupert Cutler and others when the WMU was originally conceived. Cutler spoke

openly of "blazing some new wildland management history".*

Cutler's vision was shared at the local level. As the following 1980 position statement from the HNF indicates, there was more at stake in the Elkhorns than the resolution of a local controversy over land allocation:

The rationale in selecting a portion of a National Forest to explicitly manage fish and wildlife stems, in part, from the realization that National Forest lands are playing a critically important role in the continued viability of the nation's fish and wildlife resource. Managing the Elkhorns for wildlife will not only accrue immediate benefits for this area's wildlife, but the unit will serve as a model for progressive management throughout the National Forest System. The Elkhorn Mountains were chosen for development of a wildlife management unit because the area has a history of public interest and concern in its fish and wildlife values and because both State wildlife managers and Forest Service habitat managers agree that the area has exceptional wildlife resources.**

However, the Elkhorn WMU will be valuable as a model for other areas if and only if it is in fact a model with definite features and components that can be grasped and identified by the public and by planners and used in the

* Cutler, M. R., letter of September 13, 1979 to Montana Wilderness Association (See Appendix I).

** Montana Department of Fish, Wildlife and Parks, Helena National Forest and Deerlodge National Forest, Proposed Wildlife Monitoring Program, Elkhorn Mountain Wildlife Management Unit, p. ii (1981).

land allocation process. To become a valuable tool in the forest planning process, the wildlife management unit must be a recognizable planning category so that people involved in forest planning know what they're talking about when they refer to a "wildlife management unit".

The Elkhorn WMU is an alternative to the traditional standoff between multiple-use vs wilderness. Nonetheless, to have any significance beyond the Elkhorn Mountains, this alternative must be at least generally defined and it must have a tag on it. It must somehow be concretized into a term of art. It must become an official or de facto part of the lexicon of forest planning to benefit both the public and forest planners.

If the WMU has no shape or minimum definition, the public will merely know that "they did something with wildlife over in the Elkhorns" but the "something" won't be available to be considered as a usable strategy for any other area. The Elkhorn WMU could then be simply a one-shot experiment that worked in one location but never became a blueprint for creative management across the national forests at large. To lose this value of the Elkhorns as a model for other similar planning units would be a substantial waste, particularly since the "Rare II Release" legislation pending in Congress will release millions of acres of roadless lands (many of them with high wildlife values) to

the NFMA planning process. The time is ripe for the emergence of an innovative and readily available planning category such as the wildlife management unit.

Defining the Wildlife Management Unit

With the benefit of the Helena National Forest's effort in developing the Elkhorn WMU, it seems quite possible to define a wildlife-oriented* category that would serve as a recognizable classification and a useful reference in discussing alternatives in the land allocation process. A definition of a WMU could be along the lines of the following:

"Wildlife management unit". An area (or contiguous areas) especially productive of wildlife and suitable for public recreational use of wildlife through integrated land use and harvest management policies that maintain and enhance existing wildlife values and associated habitat.

In essence, once an area met certain quantitative and/or qualitative qualifications, it could be considered for designation as a WMU. If, during the development of a forest plan, resource managers and the public reached a con-

* Although wildlife is the key resource within the Elkhorns, other non-timber resources of forest planning units could merit specific management directions, examples of such values might be scenic, watershed, hiking, etc.

sensus that an area receive a WMU designation, then the area would be allocated with a management direction explicit to wildlife. Once designated a WMU, certain basic management criteria would guide the administration of the area. These criteria could be modeled after the eight criteria governing the Elkhorn WMU. All that is needed are some basic constituents or management practices which would be the hallmark of a WMU.

In short a WMU must have certain minimum characteristics to merit the designation. Once so designated, a WMU must be subject to certain minimum management criteria which are keyed to the wildlife resource. More specific management practices would be developed in response to local considerations and field conditions.

Once there is a consensus as to what characteristics are the hallmarks of a wildlife management unit, the consensus must be actualized and reduced to written form. Where should that list of characteristics be set down? Where are these WMU characteristics laid out for all to see? How and where should the WMU category be plugged into the existing planning structure? The next three chapters consider classification possibilities for the WMU category.

Chapter 5

THE WILDLIFE MANAGEMENT UNIT AS AN OFFICIAL ADMINISTRATIVE CATEGORY

Once the WMU is sufficiently defined to serve as a recognizable planning category, what is the best way to assure the WMU a role as a usable planning option in the national forest planning process?

Logic would suggest a look at whether the WMU could simply be inserted into the existing administrative framework. There are several non-timber, multiple-use land use categories which the Forest Service has already created by administrative regulation. Adopted under the federal Administrative Procedure Act (Title 5, United States Code) and found in Title 36 of the Code of Federal Regulations, there are seven existing categories which attempt to accomplish objectives similar to the wildlife management unit - management of an area to preserve and enhance significant non-timber values.

These categories are not only an untapped source of more effective and refined management but also could offer a promising and existing format for the wildlife management unit concept. Unfortunately, although these categories have been "on the books" for several years, they have barely if at all been used by forest managers as a basis to manage

selected areas for unique or special values such as wildlife, recreation or watershed. As the following discussion reveals, formal promulgation of a special management category in Title 36 CFR is by no means a guarantee that it will be used. These categories are briefly summarized as follows:

Wildlife Management, 36 CFR Part 241

This section provides clear authority for the establishment of wildlife management units:

241.2 Cooperation in wildlife management. The chief of the Forest Service, through the Regional Foresters and Forest Supervisors, shall determine the extent to which national forests or portions thereof may be devoted to wildlife protection in combination with other uses and services of the national forests and [in cooperation with states] he will formulate plans for securing and maintaining desirable populations of wildlife species . . .

(emphasis added)

Despite the requirement in this regulation that forest managers select areas for management with wildlife as the primary resource, there have been extremely few such designations on the national forests (e.g. The Copper/Rude River Addition to the Chugach National Forest). Rather, wildlife has been accounted for as an ancillary resource within multiple-use management activities on individual forests.

National Recreation Areas, 36 CFR Part 292

This classification originally was set aside in the Code of Federal Regulations as a separate land use category in March of 1973. The National Recreation Area (NRA) category is not an actual classification used by the Forest Service but only reflects NRA designations which Congress has made and directed the Forest Service to implement. Currently, 36 CFR Part 292 lists only two such areas, the Whiskeytown-Ghosts-Trinity NRA in California and the Sawtooth NRA in Idaho, although a few more have since been designated by Congress. In these areas, administration is to be coordinated to provide for public outdoor recreation benefits, conservation, and resource development compatible with recreation and conservation.

What is significant about the NRA regulation is that no general provisions have ever been promulgated to establish a system or network of NRA's on the national forest. Indeed Sub-part A of 36 CFR 292 is labeled "General [Reserved]". In other words, as early as 1973 the Forest Service may have intended to promulgate general procedures for the creation of NRA's but never has done so. Perhaps the Forest Service has tacitly delegated the establishment of NRA's to the Department of Interior which administers many NRA's established by Congress under Title 16, United States Code,

section 460. On the other hand, the Forest Service simply may be content to use multiple-use as the primary means of addressing recreation on the national forests. In any event, there are currently only a handful of Congressionally designated NRA's on the national forests.

Since there is great similarity between the concept of NRA and a wildlife management unit (focus on non-timber resources with flexibility to allow other compatible land uses), the fact that Forest Service itself has taken little initiative in utilizing the NRA category gives little hope that a WMU category would be utilized even if officially promulgated.

Recreation Management, 36 CFR Part 290

Similar to the case of NRA's, the Forest Service has reserved but never used the authority to promulgate regulations on recreation management. While the Forest Service Manual addresses recreation, not one regulation has ever been promulgated in the Code of Federal Regulations where the Recreation Management section is simply labeled "Reserved", merely indicating the Forest Service at one time intended to address through regulation this component of forest resources in the future.

Special Areas, 36 CFR Part 294

Another longstanding administrative category created by the Forest Service is the "Special Area". The regulation authorizes the classification of (1) natural recreation areas to remain essentially in their natural condition, and (2) public recreation areas to be improved with public facilities such as picnic grounds, resorts, etc.

This first category of natural recreation areas closely approaches the WMU since it could operate to preserve an area's natural wildlife habitat thereby optimizing public enjoyment of wildlife resources. However, few if any areas have ever received such a designation.* One possible administrative explanation for such infrequent use is the requirement that the Chief of the Forest Service make such designations for areas over 50,000 acres and, for areas over 100,000 acres, the Secretary of Agriculture must act.

Primitive Areas, 36 CFR Part 293.17

Prior to 1963, primitive areas were simply classified

* The Forest Service apparently considered using this category to create the Elkhorn WMU but discarded it when it appeared that a second EIS might be required.

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by the Chief of the Forest Service.* In 1963, the primitive area classification was acknowledged in the Forest Service regulations and all primitive areas classified prior to September 20, 1939 were to be managed the same as wilderness. The 1963 regulations also provided that no new primitive areas were to be established.

In 1977, well after enactment of The Wilderness Act of 1964, the Forest Service revised the land use provisions of its primitive area regulation. Such restrictions render the primitive area category very similar to the WMU since they share the objectives of a high quality natural or primitive recreation and the minimization of human intrusion into natural settings.

While the prohibition against the future creation of primitive areas was removed in 1977, there are still no criteria, procedures, or general provisions regarding this classification and it seems unlikely that additional designations of primitive areas will be made by the Forest Service.

* It appears that the category of "primitive area" is the same category as "back country", a term occasionally found in the Elkhorn documents.

Research Natural Areas, 36 CFR Part 219.25

Found in section 4063 of the Forest Service Manual and in the Code of Federal Regulations (36 CFR 219.25), the Research Natural Areas (RNA's) are relatively small areas set aside for their unique vegetative, aquatic, geologic or other characteristics of scientific interest and importance. RNA's are generally to be left in an unmodified natural state.

Among all of the special non-timber categories at the disposal of the Forest Service, the RNA appears to be the most frequently used. As examples, the proposed Lolo National Forest Plan (Montana) proposes 19 RNA's and the proposed Beaverhead Forest Plan (Montana) proposes 13 RNA's.* The reason for this more frequent use is undoubtedly due to the fact that these areas are small and that the NFMA regulations require the establishment of Research Natural Areas.

* U.S.D.A., Forest Service, The Proposed Lolo National Forest Plan, p. 16 (1982); U.S.D.A. Forest Service, Proposed Land Management Plan, Beaverhead National Forest p. 21 (1982).

Area Prohibition Orders, 36 CFR Part 261, Subpart B:

In addition to the foregoing management categories, section 36 CFR 261, Subpart B, authorizes a Forest Supervisor (and other officials) to issue orders closing or restricting the use of roads of specific areas by applying any or all of the prohibitions listed in 36 CFR Part 261, Subpart A.

It is by this authority that the HNF has already issued Road Closure Orders as part of its implementation of the Elkhorn WMU. While in theory such orders could be expanded to designate broad areas as special management units, there is little likelihood that the Forest Service would depart from its traditional local or site-specific application of these orders.

Conclusion

At first glance a formally promulgated administrative category for a Wildlife Management Unit (or a specific authority to establish a similar area) would seem a reliable method of assuring the WMU an integral role in the classification process of forest land, particularly roadless lands. However, with the exception of the RNA's, there is nothing to suggest that a formally promulgated WMU in Title 36 CFR

would not experience the same atrophy as the other special management categories discussed in this Chapter. It is probable that the Forest Service, accustomed as it is to wide discretion, abhors designations which would limit that discretion. Operating within the broad and well-established rubric of "multiple-use" allows forest managers both to meet internal objectives and to respond to exterior pressures with a minimum of obstacles. Because special designations would constitute obstructions to the otherwise fluid process of multiple-use forestry, they are rarely used.

Chapter 6

THE WILDLIFE MANAGEMENT UNIT UNDER ROUTINE NFMA PLANNING

One simple means of making the WMU a recognizable planning category would be to simply turn to the existing NFMA planning process as embodied in the planning regulations in 36 CFR Part 219. It was after all, M. Rupert Cutler who, as an aide-de-camp to the conservation-minded Carter administration, believed that the innovative use of administratively designated special areas would spark a new era of creative and efficient forest planning. Therefore, putting aside the Forest Service's demonstrated disinterest in using the many existing special categories, let us examine the potential of the NFMA planning process to acknowledge and create areas such as the wildlife management unit.

NFMA Planning Process

The NFMA planning regulations were promulgated by the Forest Service in 1979 and revised in 1982. Since these regulations allow for a wide range of land management options within a planning area, it is possible for an area to be "planned" as a wildlife management unit simply by applying the criteria in 36 CFR Part 219.

True, these regulations do not in any way require the establishment of wildlife management units and management plans are supposed to provide for all resources recognized within the multiple-use sustained yield concept. However, the broad language of both the NFMA the the NFMA regulations combined with the requirement of an interdisciplinary planning approach clearly contemplate that a management plan for an area may (should) emphasize a unique or key resource where one exists and may include management standards and guidelines to promote such resource(s). Data, public opinion and in-service knowledge of an area may well persuade forest managers to explicitly recognize the high wildlife values in an area.

As mentioned above, the utilization of the NFMA planning process to create wildlife management areas (and other special management areas) was an approach favored by Rupert Cutler. Writing as the Senior Vice President of the Audubon Society, Cutler reaffirmed his faith in the ability of administrative agencies to plan and carry out land management strategies for specific forest units. Rejecting the notion that permanent statutory designations of specific areas (e.g. Rattlesnake National Education and Recreation Area near Missoula, Montana) are generally preferable to land management plans, Cutler writes:

Land management strategies vary by locality, type and extent of resources present, level of use, emerging public needs, and other factors. Therefore professional resource managers and the public need to look continually for creative management approaches. . . Careful and detailed analysis is needed to devise workable, site-specific land allocations. . .*

In stressing the importance of allowing resource managers to "fine tune" management directions, Cutler points to both the Elkhorn WMU and the Jewel Basin Hiking Area (Flathead National Forest in Montana) as exciting examples of non-statutory administrative directions where one key resource acts as a controlling factor or constraint on management practices in a particular planning area.

However, Cutler's hope for the creative expansion of administrative designations seems unduly optimistic. First, Cutler's excitement over the Elkhorn WMU glosses over the tremendous technical and political resources expended over a 5-year period to thrash out an alternative to wilderness in the Elkhorns. While the Elkhorns did set an important precedent for administrative designation, the WMU designation of the Elkhorns, recommended personally by an Assistant Secretary of Agriculture after a specifically sponsored

* Cutler, M.R., Statutory Designation and Administrative Planning: Complementary Approaches to Achieving Wilderness Objectives, 16 Idaho L. Rev. pp. 468-473 (1980).

Congressional study, is not the allocation process contemplated under the NFMA planning process.

Second, the NFMA regulations do not (as in the case of Research Natural Areas) require the establishment of wildlife management units. Rather, section 36 CFR 219.19 merely requires maintenance of viable populations of existing native vertebrate and desired non-native vertebrate species. A viable population is defined as one where the continued existence of a species "is well distributed in the planning area". In addition, there must be maintenance and improvement of habitat for indicator species "to the degree consistent with overall multiple-use objectives".* The critical missing component is the express limitation that other uses will be allowed only when wildlife values can be maintained or enhanced. This is the essence of a WMU.

Third, despite the clear grant of authority to create WMU's and other special management areas, it is difficult to share Cutler's confidence that forest planners will in fact use this authority. It is well recognized that in managed forests wildlife habitat has been merely a by-product of

* This requirement might be met simply by applying a habitat model consisting of a cover/forage function and/or a road density function. See, e.g., Lyon, L. Jack, Field Tests on Elk/Timber Coordination Guidelines, Res. Paper INT-325, U.S. Department of Agriculture, Forest Service, Intermountain Forest and Range Experiment Station (1984), p.1.

timber management. A fundamental assumption of forest planners has been that good timber management is good wildlife management.* Therefore, given the need to work wildlife around the timber plan, the Forest Service will not easily give up the wide discretion it enjoys under "multiple-use" allocation. Administrative designation of wildlife management areas on a meaningful scale would limit that discretion and would necessitate breaking away from the multiple-use mentality.

Lastly, special management designations would be likely to precipitate significant conflicts with traditional notions of what areas should be available for timber harvest, mining and other activities. Even if forest planners wanted to exercise their NFMA authority in this novel and bold manner (by proposing a WMU), commodity interests would likely offer substantial resistance during the planning process.

In short the fact that the NFMA authorizes and encourages the Forest Service to carve out special management areas does not mean that administrative designations will be forthcoming to substantially preserve existing wildlife/wildland values. In fact as discussed above in Chapter 5,

* U.S.D.A., Forest Service, Agricultural Handbook No. 553, Wildlife Habitats in Managed Forests (1979) p. 11.

the Forest Service has rarely used its array of special management classifications already on the books.

This is not to say that no planning units will receive administrative designations designed to protect and enhance non-timber values. In fact all Forest Plans, in accordance with the NFMA planning regulations, will be making specific provision for wildlife resources and some may even set aside specific areas for wildlife management.* However, the regulations contain many phrases and adverbs which allow for either a high or a low level of protection of wildlife depending on the inclination of the forest managers. In the past, such managerial latitude usually has been exercised in favor of timber harvest over wildlife habitat.**

It is therefore doubtful that NFMA designations of planning units for non-timber values will achieve the scale or afford the protection envisioned by Cutler. Given the broad language and heavily "multiple-use" intent of the NFMA regulations and the disinclination of Forest planners to "lock up" planning areas for non-timber uses, the NFMA

* Areas set aside for wildlife in the past have typically been random, and/or non-productive parcels unsuitable for timber harvest. The fact often is that areas most suitable for timber harvest are also the most productive wildlife areas. W. Leslie Pengelly, Director, Wildlife Biology Program, University of Montana, personal communication (May 11, 1983).

** Coggins, G. C. and Ward, M.E., Law of Wildlife Management on Federal Public Lands, 60 Oregon L. Rev. 59, 132 (1981).

regulations cannot be relied upon with any consistency to present the WMU as an alternative for wildlife-qualified planning units on national forest lands.

Chapter 7
OTHER CLASSIFICATION FORMATS FOR THE
WILDLIFE MANAGEMENT UNIT

Having determined that neither an official administrative category in CFR nor the routine NFMA planning process may be relied upon to present the WMU as an alternative or actually to create such areas within forest plans, this chapter explores other means of accomplishing those objectives.

Congressional WMU Designations: Site Specific

Under this format, Congress could entertain individual pieces of legislation for specific areas (as in the case of wilderness) and could direct the Forest Service to review all roadless areas with significant wildlife values and then, upon its own investigation, designate an area as a WMU to be managed for one or more key wildlife resources. Much information useful to such a process has already been collected and evaluated under the Rare II process.

There are several examples of this type of Congressional action. One is found in the 1980 addition of four areas to the Chugach National Forest in Alaska. As to one of these areas, the Copper/Rude River addition, Congress

recited that "the conservation of fish and wildlife and their habitat shall be the primary purpose" and required that multiple use activities be managed in a manner consistent with such purpose.*

Similarly, in 1981, Congress set aside some 80,000 acres in the Bull Run National Forest as a watershed protection unit for the water supply of the City of Portland, Oregon.**

In 1980 Congress found that only 33,000 acres of the proposed Rattlesnake Wilderness near Missoula, Montana was appropriate for wilderness (to be managed by the Forest Service) while the remainder of the area had high values for watershed, recreation, wildlife habitat, and ecological and educational purposes. This latter area was designated a National Recreation Area to be managed by the Department of Agriculture (Forest Service).***

Another recent example of a site-specific Congressional designation on an area for wildlife/ recreation management is contained in the Lee Metcalf Wilderness and Management

* P.L. 96-487, Title V, sec. 501, 94 Stat. 2398, Dec. 2, 1980.

** P.L. 95-200, 91 Stat. 1425, Nov. 23, 1977.

*** Rattlesnake National Recreation Area and Wilderness Act of 1980, P.L. 96-476 sec. 1, 94 Stat. 2271, Oct. 19, 1980; codified as 16 U.S.C. 460ee. (See Appendix J).

Area legislation for Montana.* The Act created a 259,000 acre wilderness area and, in a compromise with snowmobiling interests, the Act segregated out from wilderness some 38,000 acres near Monument Mountain and established an explicit management direction for wildlife and recreation values of the area to be detailed in the Gallatin National Forest Plan.

The Act also withdrew this management area from future mining claims and directed the Forest Service to maintain the wilderness character of the area with no commercial timber harvest or additional road construction. However, the Act allows snowmobiling (during adequate snow cover) as is compatible with the protection and propagation of wildlife within the area. It remains to be seen whether winter snowmobiling is a land activity which is "compatible with the protection and propagation of wildlife". It is doubtful that snowmobiling would be an activity which allows for the "maintenance and enhancement of wildlife" which is the criterion established for the Elkhorn WMU.

These four examples demonstrate that under very limited circumstances (e.g. as part of Congressional determinations on wilderness areas), Congress is both willing and able to set specific management directions for specific pieces of

* Lee Metcalf Wilderness and Management Act of 1983, P.L. 98-140, 97 Stat. 901, Oct. 31, 1983. (See Appendix K).

real estate in the national forests. However, it is simply not realistic to turn to Congress to address the myriad issues of wildland preservation on a continuing case-by-case basis.* Obvious considerations of time and resources rule out any significant Congressional role in the designations of WMU's and other special management areas on the national forest. It is evident that such designations must occur at another level of authority where both administrative and technical resources are available.

Changing the NFMA Planning Process

It is impractical for Congress itself to identify and specify management objectives for areas with significant wildlife values. Therefore the WMU concept, if it is to survive, must be used administratively by the Forest Service, preferably as part of the NFMA planning process.

If the WMU were integrated into Forest Service planning, then the public could look at each forest plan and see whether there were any areas with exceptional wildlife-related values and then agree or disagree with the Forest Service plan for capturing or foregoing those values. In

* Most of the state Rare II release bills soon to be considered by Congress will not set management direction for roadless areas but will merely decide the issue of wilderness vs non-wilderness.

theory this is what the existing NFMA/NEPA process should accomplish without a specific WMU category.

However the Forest Service's second-class treatment of wildlife makes one skeptical that potential WMU's will ever be presented to the public for consideration unless the Forest Service is required to do so. Such a requirement could be imposed by revising the NFMA planning regulations or by amending the NFMA itself as the following proposals suggest.

Insertion of WMU Criteria in NFMA Regulations

The current regulations (36 CFR 219.14) require that during the forest planning process, "lands which are not suited for timber production shall be identified . . ." A similar regulation could be included for potential wildlife management areas, requiring the identification of potential WMU lands and the presentation of such potential WMU's as alternatives in the NFMA/NEPA planning process. These alternatives would generally prescribe management policies and practices that would be applied to such areas. The requirement would apply even if such area also had potential for timber harvest.

The revision could take the form of a new section (a)(3) in 36 CFR 219.19 (Fish and wildlife resource):

In developing planning alternatives, each forest shall identify all areas with exceptional or significant wildlife values and shall either propose an alternative designating such areas as wildlife management units or shall demonstrate why such areas are unsuitable for consideration as designated wildlife management units.

Imposing such an obligation on forest planners would seem to be a surefire means of gaining initial recognition for areas with high wildlife values and of insuring that the public was offered at least a chance to secure part or all of those values.

A requirement to scan planning areas for potential wildlife management units would clearly be a step beyond simple reliance on the current NFMA planning regulations. Current regulations, specifically the management requirements in 36 CFR 219.27(6), simply call for the maintenance of existing fish and native vertebrate species and then only "to the degree consistent with multiple-use objectives established in the plan". Areas with high wildlife values would have a much greater chance of being recognized if forest planners were required to identify and propose such areas as wildlife-oriented alternatives or to demonstrate why no such alternatives were proposed in the forest plan.

The procedure for inserting such a revision in the NFMA regulations could take the form of either Forest Service-

initiated revision or a formal petition for rulemaking filed by citizens. In either case the proposed revision would be considered under the formalized rulemaking procedures of the Federal Administrative Procedure Act, Title 7, United States Code, Chapter 5. Public comment and testimony would be accepted and the Forest Service would then decide whether to grant or deny the petition to revise the regulations. Once final agency action was taken on the petition, those disappointed with the decision could appeal to U.S. District Court. There, the Court would determine whether the Forest Service's decision was consistent with the NFMA.*

While this procedure is available, it must be remembered that forcing the Forest Service to exercise its discretion in a specific manner is bound to be unpalatable to the Forest Service. Consequently, in addition to commodity interests, the Forest Service itself would be likely to resist any amendment to the NFMA planning regulations that would focus attention on potential wildlife management units or on any type of special management areas.

* Although there is an initial presumption that an agency's decision is valid, there are several bases for judicial reversal of agency action. The reviewing court may find the action arbitrary, or inconsistent with legal authority, or unsupported by substantial evidence, etc. [See 7 U.S.C. Section 706(2)].

Congressional Amendment of the NFMA to Include WMU

Criteria

If site specific Congressional action is impractical and if the Forest Service is not inclined to accept revision of its planning regulations, then perhaps a somewhat stronger medicine is needed to assure that the WMU is integrated into the NFMA planning process. Congress itself could accomplish the same objective by amending the NFMA to require the Forest Service to include in its NFMA regulations a procedure for identifying and considering potential WMU's.

NFMA already has such a mechanism for timber values. Section 1604(k) requires the Forest Service,

"to identify all lands within the management area which are not suited for timber production, considering physical economic, and other pertinent factors"

Congress could similarly require the Forest Service to identify all lands within the planning areas which satisfy a threshold for wildlife values and to propose an alternative in the NEPA/NFMA process which would apply to such areas a management direction explicit to wildlife. The public could then consider and comment upon the WMU alternative.

In fact it could be argued that the NFMA already contains a requirement that each forest plan must identify potential Wildlife Management Units. Within Section 16 U.S.C. 1604(g) there are three subsections requiring the Forest Service to adopt planning regulations,

"specifying guidelines which—

- require the identification of the suitability of lands for resource management;
- provide for obtaining inventory data on the various renewable resources, and soil and water, including pertinent maps, graphic material, and explanatory aids;
- provide for diversity of plant and animal communities based upon the suitability and capability of the specific land area in order to meet overall multiple-use objectives . . ."

In addition to timber, these provisions seem to apply to other resources within the forest, including wildlife. However the current planning regulations require identification of land suitability for only one resource - timber - and that identification requirement derives verbatim from another section, 1604(k), which obliges the identification of lands not suitable for timber production.

Given the language in Section 1604(g), it appears that, if it so desired, the Forest Service could promulgate

specific regulations requiring the identification of lands suitable for wildlife or wildland management areas. However, the Forest Service has not done so and perhaps would not perceive the term "resource management" to include wildlands or the term "renewable resources" as specific enough to include wildlife. Therefore, in order to insure that some of the national forest areas with unique wildlife/wildland values are identified and presented as alternatives in the NFMA planning process, the following new Section (B) could be added to Section 1604(g)(2):

(g) . . . the regulations shall include, but not be limited to-

(2) specifying guidelines which-

(A) require the identification of the suitability of lands for resource management;

(B) require identification of areas with exceptional values in wildlife and/or wildland recreation and the presentation of such areas as alternatives in the development of management plans;

(C) etc.

In other words, Congress could make explicit what is now implicit in NFMA and the NFMA regulations. By forcing the Forest Service (1) to identify lands suitable for WMU designation and (2) to propose a WMU alternative for such areas, Congress could furnish the incentive where none seems to exist. Forest planners would not be required to designate any area a WMU but would only be under an express

duty to conduct a good faith search within their respective forests for these areas and to propose such areas if any are found (and to explain why none were found if that were the case).^{*}

Difficulty of Changing the NFMA Planning Process

The track record of the Forest Service on wildlife makes one skeptical that potential WMU's will ever be presented to the public for consideration unless the Forest Service is required to do so. However, changing the NFMA planning process either by a rulemaking petition to the Forest Service or by Congressional revision of the NFMA is likely to be an uphill battle.

There are several probable objections which, taken together, could be sufficient to defeat any effort to gain official recognition for a WMU category in the NFMA planning process. The following objections and possible responses to them suggest the nature of the debate likely to attend a proposal to change the NFMA process:

* Indeed, the recognition of special wildlife or recreation values is merely a means of truly "maximizing net public benefits" as recited at 36 CFR 219.3 by cashing in on the economic value of non-commodity resources within the forests.

Objection The NFMA regulations already provide for the recognition of wildlife values and such a special interest revision to the regulations is inconsistent with the multiple-use principle by which optimal resource mixes are determined.

Response The concept of a WMU includes wildland recreation, hunting, hiking, maintenance of plant diversity and overall high quality dispersed recreation and so does not represent a special single resource. Many non-commodity resources may be captured within a designated wildlife management unit.

Objection The Forest Service must be guided by the principles of multiple-use and of maximizing net public benefits. Singling out potential WMU's in the draft forest plan, especially in areas with high timber values, may well interfere with the process of maximizing public benefits.

Response The Forest Service's commodity-oriented interpretation of multiple-use must now take into account the specific requirements in the revised NFMA regulations to acknowledge so-called non-market or qualitative values (e.g. wildlife, recreation, etc.) in the determination of net

public benefits.* A requirement to review planning areas for potential WMU's would simply make explicit the recognition of non-commodity values required under the NFMA planning process. Stated otherwise, such a requirement would simply force the forest planners to consider exercising their discretion in a specified manner for areas with high wildlife values.

Moreover, it is both the Forest Service and the public who determine what constitutes net public benefits and such decisions can only be made upon the basis of a reasonably wide range of available alternatives. Unless specifically required, it is likely that few if any true potential wildlife management units would be presented as alternatives.

Objection The NFMA planning process is only in its early stages and one should not presume that the Forest Service will fail to recognize and provide for areas with high wildlife values.

Response There may be some merit to this argument and yet there is little basis to expect that the NFMA process

* See e.g. 36 CFR 219.3 (Definitions of "net public benefits"); 36 CFR 219.12(f)(3) and 36 CFR 219.12(g)(i) and (iv) (Formulation and effects of alternatives).

will witness a departure from the traditional treatment of wildlife and wildland recreation as second class resources of the national forest lands. There is ample evidence that the Forest Service will resist special management areas which limit the wide discretion it enjoys under the well-established concept of multiple-use.

Objection The NFMA regulations were just amended in 1982 and the WMU concept should have been suggested at that time.

Response It is only in the past two to three years that the success of the Elkhorn WMU was becoming apparent. In addition the diversion of millions of acres of RARE II roadless lands to the NFMA process has greatly increased the significance of the WMU as a valuable and necessary planning category.

It is impossible to say whether the effort to change the NFMA process would succeed. Proponents of such a change presumably would have to overcome substantial opposition by commodity interests and the Forest Service itself. Moreover, whether Congress is in the mood to strike a blow for wildlife (and related values) is questionable, particu-

larly since the longstanding wilderness/RARE II issues finally seem ready to be resolved in Congress.

The real difficulty in convincing the Forest Service or Congress to make such a change is that the language of both the NFMA and the NFMA regulations already appears to require the Forest Service to provide adequately for all the resources within the national Forests, including wildlife.

What does not appear in the NFMA or the regulations is that forest management by its nature, is largely discretionary and the Forest Service has traditionally exercised this discretion in favor of timber with little attention paid to wildlife. Hence, to justify any wildlife-oriented change in the NFMA process, the proponents have the burden of showing that "interdisciplinary, multiple-use planning" is often a euphemism for working non-commodity resources around the timber plan.* This is a difficult burden, given the discretionary, complex, and qualitative nature of forest management.

In view of the complexity of these issues, this writer declines to speculate on the chances for changing the NFMA

* See e.g. Heyman and Twiss, Environmental Management of the Public Lands, 58 Cal. L. Rev. 1364, 1398 (1970). The Elkhorn WMU is a refreshing contrast to this situation. Ironically, while the Forest Service takes pride in the Elkhorn WMU as an example of wildlife protection on the National Forests, it is unlikely that other forests will be eager to create other WMU's.

process. Only persons with an informed and national perspective on Forest Service issues could assess the odds at changing the NFMA process to include identification and consideration of potential WMU's.

Even if such efforts failed, however, they would at least heighten the awareness of the Forest Service and the public concerning the value of the wildlife resource on national forest lands. As discussed in the next chapter, it is public awareness focused on the NFMA planning process which is the key to maintaining and enhancing the wildlife resources managed by the Forest Service.

Chapter 8

THE IMPORTANCE OF PUBLIC INVOLVEMENT IN FOREST PLANNING

Apart from its potential value as a planning prototype, the Elkhorn WMU graphically demonstrates the importance of public participation in land allocation and management decisions on the national forest.

The extensive and sustained concern of the local conservation interests has been critical in both the creation and implementation of the Elkhorn WMU. Such public support has provided Helena National Forest managers with a solid technical and political basis for a management direction focused on wildlife. The strong continuing mandate for preservation and enhancement of wildlife and wildland recreation in the Elkhorns allows the Helena National Forest to be straightforward and determined in its imposition and enforcement of stringent limitations on competing land uses.

In a sense, the continuing public interest in the Elkhorns is unique. Traditionally, once a proposed wilderness area has received an official non-wilderness recommendation, wilderness advocates have "abandoned" the area and transferred their efforts to fight for other proposed wilderness areas. Such has not been the case with the Elkhorns where both the Montana Wilderness Association and

the Elkhorn Citizens Organization, having cautiously accepted the administrative alternative to wilderness, have maintained their interest and support in seeing that the WMU becomes a reality. By "hanging in there", the local conservation community has in large part achieved its objectives in preserving the essential wildland character of the Elkhorns.

While many factors contributed to the establishment of the Elkhorn WMU, one of the principal forces in its creation and implementation was the Elkhorn Citizens Organization. Their intense, enduring and well informed public participation in the Elkhorns has set a high standard for public involvement in forest planning and their success merits examination.

Effectiveness of Public Involvement In Elkhorn WMU

Very few citizens groups have the cohesion and sheer stamina to remain involved in the very technical and complex process of allocating a controversial plot of national forest lands. The Forest Service, by its nature and tradition, is an imposing bureaucracy. An agency whose processes can easily consume several years developing a single timber sale usually outlasts the opposition of local citizens who typically organize and confer on an ad hoc basis.

For almost ten years the Elkhorn Citizens Organization has exhibited great tenacity in fighting for a high-quality recreational resource and has done so with little outside help, funding itself through spaghetti dinners, bake sales and citizen contributions of time and money. What accounts for influence which the ECO has had in allocation decisions affecting the Elkhorns? The following considerations appear to underlie ECO's success:

Exceptional Recreation Values Most importantly, the ECO had something tangible to start with. The Elkhorns has long been an area widely recognized for its excellent hunting and wildland recreation resources.

Proximity to Population Centers Located between Helena and Butte, the Elkhorns had been used regularly by many people for a long time, thus providing a large number of interested "constituents" for the wildlife recreation resources within the mountain range.

Long History of Public Involvement Starting in the 1960's and heightening in the 1970's, public concern with the future of the Elkhorns became widespread and the Forest Service actively pursued public

opinion in resolving the controversy over allocation.

Broad Support for Wildlife Values Conservationists were not alone in their support for wildlife values in the Elkhorns. Active support also came from a broad cross-section of the community (e.g. farmers, smelter workers, sportsmen, state employees), particularly those accustomed to hunting abundant elk in a semi-primitive setting.

State Agency Cooperation The Montana Department of Fish, Wildlife and Parks (DFWP) provided constant and critical support for the creation and evolution of the Elkhorn WMU. The fact that the ECO and other conservation groups worked together with the DFWP both "legitimized" ECO's position and provided the Forest Service with an especially solid footing for pursuing the WMU. The active involvement of the DFWP also accomplished the Forest Service's ever present mandate to promote federal/state cooperation.

Personalities The conservation-minded M. Rupert Cutler seized the Elkhorns as an opportunity to initiate administrative designations of special management areas. Cutler's efforts have been followed up by

the personal commitment of Helena National Forest Supervisor Robert Gibson who continues to pursue the objectives of the WMU. Mark Meloy of the ECO and Bill Cunningham of the MWA have devoted countless hours over several years to the issues surrounding the Elkhorns. Individuals of lesser commitment might have acquiesced in a less satisfactory resolution of the Elkhorn question.

Publicity Through early engagement of the press, through publication of its own newsletter (The Elkhorn Examiner) and through repeated contacts with various levels of the Forest Service, the conservation interests gained wide recognition of the issues at stake in the Elkhorns. In effect, the ECO and MWA "institutionalized" the controversy and became a force with which the Forest Service had to reckon.

Persistent Involvement As methods both of gaining and keeping the official recognition of the Forest Service, ECO members attended all meetings and hearings, sent letters, post cards and petitions, made inquiries by phone and in person, requested meetings, requested documents and, in general, remained visible throughout the decisionmaking process. In addition, a

core group continues in 1984 to monitor the development of the plan even though the basic decision to create the WMU was made in 1981.

Supporting the Forest Service Although the initial objective of the ECO was wilderness designation for the Elkhorns, the directive to establish a management area explicit to wildlife was supported by the ECO and the MWA. Letters of support were sent to the Regional Forester, The Chief of the Forest Service and to Rupert Cutler. The local conservation community did not repudiate the Forest Service for failing to recommend wilderness but rather struck a balance between constructive criticism and continuing support.

Coordination With Other Interests Although difficult at times, the ECO, MWA and other conservation interests were able to maintain a united front grounded in the maintenance and enhancement of the Elkhorns' wildlife resources. Many times potential points of disagreement were anticipated and resolved outside of the Forest Service decisionmaking process. For example, the reduction of timber harvesting on the Elkhorn WMU was going to force timber cuts in another area. Residents of that area were nonetheless convinced not to withdraw their support for the Elkhorn WMU.

National Level Interests The local conservation community received substantial assistance from the National Wilderness Society and the American Wilderness Alliance which were particularly helpful in dealing with the higher levels of the Forest Service. In addition, local groups solicited and got the attention of the Montana congressional delegation, particularly from Congressman Melcher. (See p. 13).

Proximity of Forest Service Offices Located at the Federal Building in Helena, the Forest Service offices were extremely accessible to persons interested in communicating by phone or in person with the office staff and Forest Supervisor. Representatives of the ECO and MWA became very familiar with the Forest Service staff and their specific responsibilities, boned up on procedures and had frequent meetings, thereby remaining up-to-date and well-informed as the Elkhorn decisionmaking process developed.

Organization of the ECO Overcoming the usually short life cycle of citizens organizations, the ECO was able to sustain an active membership who attended meetings, wrote letters, and generally maintained an interest in the Elkhorns. A core group of individuals

from the ECO and the MWA, aided by the proximity of the Forest Service offices, kept up a continual line inquiry and a continuous dissemination of information.

Although wilderness designation was the original objective of the ECO, its active involvement in the Elkhorn allocation process ended up greatly assisting the Forest Service in developing a creative alternative in the form of the WMU. The ECO has proven that persistent and well-informed public opinion will affect Forest Service decision making and the factors listed above should be considered by any citizens group wishing to influence the Forest Service.

The Need for Public Participation

Public participation under NFMA will be based upon the National Environmental Policy Act (NEPA) model. Under the direction of section 1604 of NFMA, the Forest Service has expressly incorporated NEPA procedures into the NFMA planning process (36 CFR 219.6). Under NEPA the Forest Service must put forth a broad range of reasonable alternatives presenting the public with a clear basis for choice and must seek and consider public input.

Despite criticism that the 1982 "streamlining" revisions of the NFMA regulations weakened the commitment to

public participation under NFMA* there can be no doubt that the decisions of forest managers still will be significantly influenced by the nature and amount of public comment received. The following is an excerpt from a December, 1983 progress report from the Flathead National Forest in Kalispell, Montana, summarizing comments to the Forest's draft EIS and proposed forest plan:

"We heard from several state, local, tribal and Federal officials and from representatives of 11 energy companies, 15 environmental groups, 12 wood product companies and 5 recreational organizations . . . Half of the responses were form letters. Most of these form letters (79 percent) focused on the timber harvest levels and preferred that the amount of timber cut stay at or above existing levels, while the proposed Forest Plan called for a decrease."

With this type of public response Flathead forest managers may find it difficult to adhere to their initial plans to decrease the timber harvest on the Flathead National Forest.

It may be presumed that traditional commodity-related interests will strongly support alternatives allowing maximum availability of forest lands for commodity development. Similarly, members of the public desirous of

* The 1982 "streamlining" revision of the NFMA regulations has been criticized as obliterating the commitment to public participation envisioned under NFMA. See Fortenbery, T.R., and Harris, H.R., Public Participation, the Forest Service, and NFMA: Hold the Line, 4 Pub.Land Law Review 51 (1983).

management policies which retain non-commodity values of forest lands must encourage and support those alternatives.

The significance of public participation in the NFMA process has taken on ever greater proportions since the 62 million acres of RARE II roadless and undeveloped areas on the national forests will be reevaluated through NFMA forest planning. In response to the decision of the Ninth U.S. Circuit Court of Appeals in California v Block^{*}, the Forest Service on September 7, 1983, amended its regulations on wilderness (36 CFR 219.17) to include a reevaluation of roadless areas in current and future planning cycles. (48 Federal Register 40381.)

While wilderness determinations for many of these acres will be accomplished by acts of Congress (so-called state "release" bills), substantial roadless acreage will be folded into NFMA planning. Where draft EIS and proposed Forest plans have already been issued, supplemental or amended documents will likely be issued to include roadless areas within the respective forests. Many of these areas have significant non-timber values similar to the wildlife/recreation values in the Elkhorns. Whatever public interest there is in preserving the roadless and wild character of these lands, it must be demonstrated forcefully both at the

* 690 F.2d 753 (9th Cir., 1982). The decision found the RARE II EIS inadequate.

congressional level and in the local forest planning process. The NFMA accords public participation an important role and so, "it is not the Forest Service but the public and the Forest Service that now stand between use and abuse of National Forests . . . Thus the public participation right carries a corresponding responsibility to future generations".* The existence of the Elkhorns Wildlife Management Unit should be a source of encouragement and inspiration to those interested in preserving the increasingly scarce resources of wildlife and roadless lands on the national forests.

* Mulhearn, T.P., The National Forest Management Act of 1976: A Critical Examination, 7 Env. Aff. L. Rev. 99, 123 (1978).

CHAPTER 9
CONCLUSION

The Federal government, the State of Montana, and the concerned public have molded together, in the Elkhorn Mountains, a workable plan for preserving wildlife and dispersed recreation while carefully allowing other land practices.

The precedent setting establishment of the Elkhorn WMU offers an exciting opportunity for other national forest lands, with similar resource values. Unfortunately, for its own reasons, the Forest Service is not likely to seize this new opportunity presented by administrative designations of special management areas.

Therefore the public must become thoroughly involved in the NFMA planning process. The concerned public should consider filing a petition to amend the NFMA planning process to require the identification of areas suitable for WMU designation and the presentation of such areas as planning alternatives. Regardless of the success of such an effort, the public must follow the example set in the Elkhorn decision and pressure the Forest Service for recognition of wildlife and related values on the national forests.

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- Alaska National Interest Lands Conservation Act of 1980. Pub. L. 96-487, 94 Stat. 2371, 16 U.S.C. 3101 et seq.
- Elkhorn Wilderness Study Act of 1976. Pub. L. 94-557, 90 Stat. 2633, 16 U.S.C. 1132.
- Forest and Rangeland Renewable Resources Planning Act. Pub. L. 93-378, 16 U.S.C. 1601 et seq.
- General Mining Laws of 1872. Ch. 152, 17 Stat. 91, 30 U.S.C. 21 et seq.
- Lee Metcalf Wilderness and Management Act of 1983. Pub. L. 98-140, 97 Stat. 901. 16 U.S.C. 1132.
- Multiple-Use Sustained-Yield Act of 1960. Pub. L. 86-517, 74 Stat. 215, 16 U.S.C. 528-531.
- National Environmental Policy Act. Pub. L. 91-190, 83 Stat. 852, 42 U.S.C. 4321-4347.

National Forest Management Act of 1976. Pub. L. 94-588, 90 Stat. 2949, 16 U.S.C. 1604.

Organic Act of 1897. Ch. 2, 30 Stat. 34, 16 U.S.C. 473-482.

Rattlesnake National Recreation Area and Wilderness Act of 1980. Pub. L. 96-476, 94 Stat. 2271.

Wilderness Act of 1964. Pub. L. 88-577, 78 Stat. 890, 16 U.S.C. 1131-1136.

Administrative Regulations

Code of Federal Regulations (CFR)

36 CFR Part 216 (Forest Service: Public Involvement)

36 CFR Part 219 (Forest Service: Planning)

36 CFR Part 228 (Forest Service: Minerals)

36 CFR Part 241 (Forest Service: Wildlife)

36 CFR Part 261 (Forest Service: Prohibitions)

36 CFR Part 290 (Forest Service: Recreation Management)

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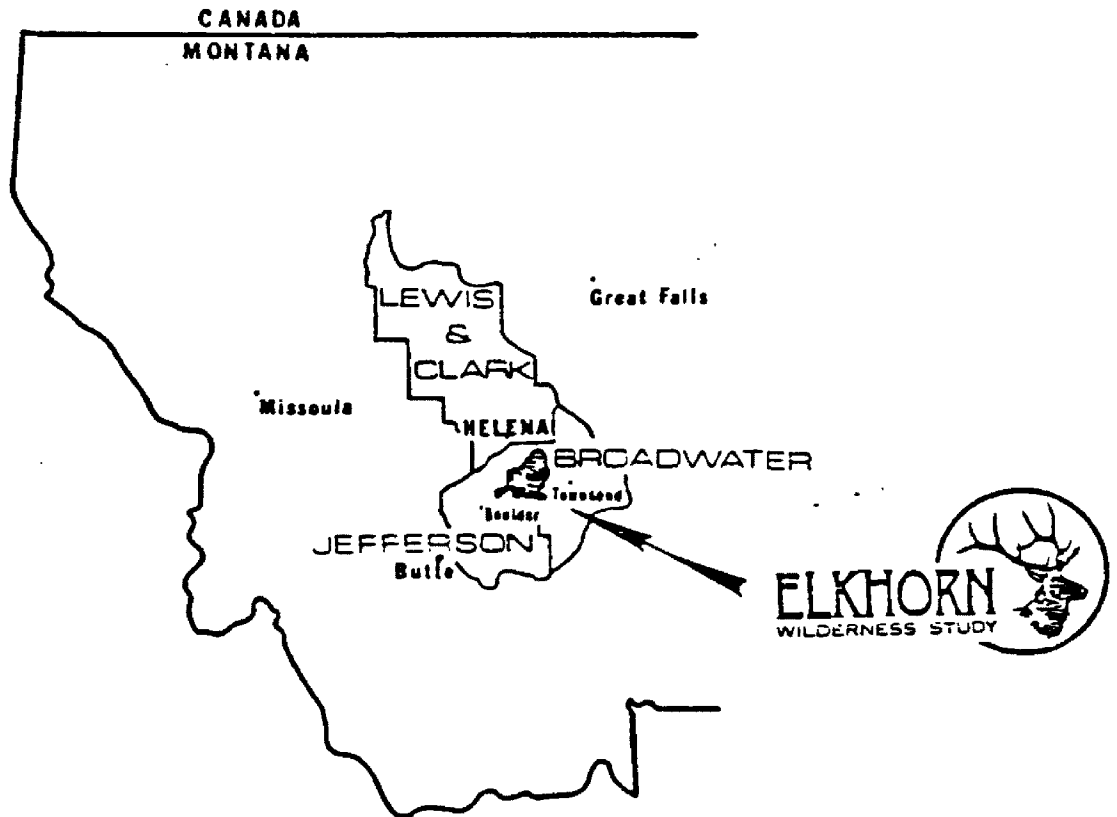
W. Leslie Pengelly, Director, Wildlife Biology Program, University of Montana (May, 1983).

Richard DeSimone, Wildlife Biologist, Montana Department of Fish, Wildlife and Parks, Elkhorn Coordinator with Helena National Forest (December 4, 1983, February 23, 1984, April 4, 1984).

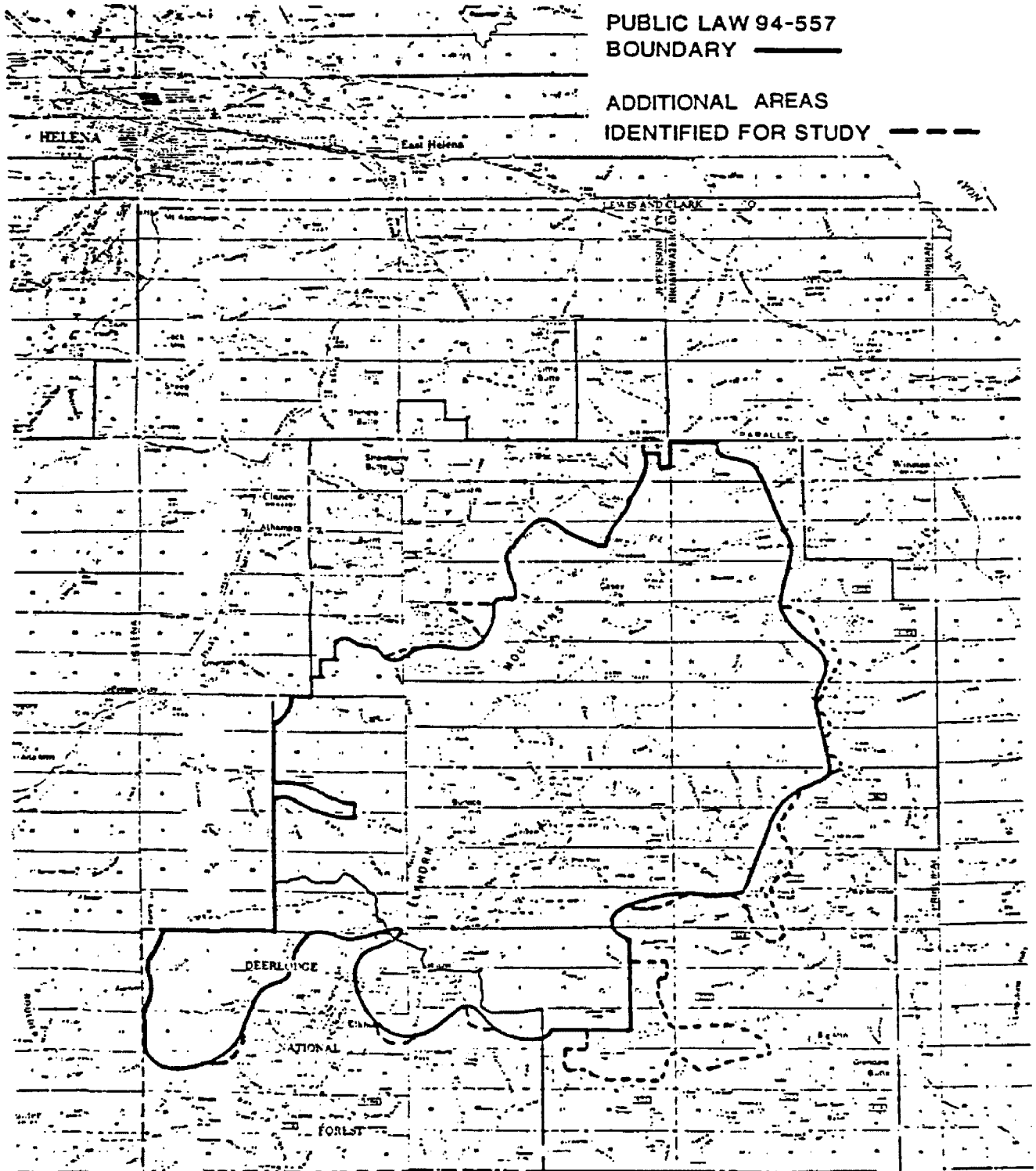
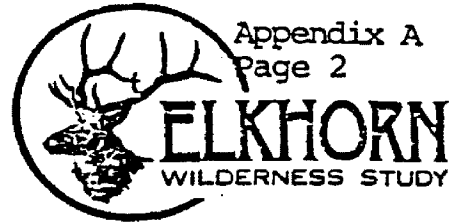
Mark Meloy, Director, Elkhorn Citizens' Organization, (June, 1983, March 15, 1984, May 3, 1984).

APPENDICES

Figure 1
VICINITY MAP



STUDY AREA



PUBLIC LAW 94-557—OCT. 19, 1976

Public Law 94-557
94th Congress

An Act

To designate certain lands as wilderness.

Oct. 19, 1976

[S. 1026]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*Wilderness
areas.DESIGNATION OF WILDERNESS AREAS WITHIN THE NATIONAL WILDLIFE
REFUGE SYSTEM

SECTION 1. In accordance with subsection 3(c) of the Wilderness Act (78 Stat. 892), the following lands are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System: 16 USC 1132.

(a) certain lands in the Simeonof National Wildlife Refuge, Alaska, which comprise approximately twenty-five thousand one hundred and forty-one acres, which are depicted on a map entitled "Simeonof Wilderness Proposal", dated January 1971, and which shall be known as the Simeonof Wilderness;

(b) certain lands in the Big Lake National Wildlife Refuge, Arkansas, which comprise approximately two thousand six hundred acres, which are depicted on a map entitled "Big Lake Wilderness Proposal", dated June 1976, and which shall be known as the Big Lake Wilderness;

(c) certain lands in the Chassahowitzka National Wildlife Refuge, Florida, which comprise approximately twenty-three thousand three hundred and sixty acres, which are depicted on a map entitled "Chassahowitzka Wilderness Proposal", dated March 1975, and which shall be known as the Chassahowitzka Wilderness;

(d) certain lands in the J. N. "Ding" Darling National Wildlife Refuge, Florida, which comprise approximately two thousand eight hundred and twenty-five acres, which are depicted on a map entitled "J. N. 'Ding' Darling Wilderness Proposal", dated March 1975, and which shall be known as the J. N. "Ding" Darling Wilderness;

(e) certain lands in the Lake Woodruff National Wildlife Refuge, Florida, which comprise approximately one thousand one hundred and forty-six acres, which are depicted on a map entitled "Lake Woodruff Wilderness Proposal", dated June 1976, and which shall be known as the Lake Woodruff Wilderness;

(f) certain lands in the Crab Orchard National Wildlife Refuge, Illinois, which comprise approximately four thousand and fifty acres, which are depicted on a map entitled "Crab Orchard Wilderness Proposal", dated January 1973, and which shall be known as the Crab Orchard Wilderness;

(g) certain lands in the Lacassine National Wildlife Refuge, Louisiana, which comprise approximately three thousand three hundred acres, which are depicted on a map entitled "Lacassine Wilderness Proposal", dated June 1976, and which shall be known as the Lacassine Wilderness;

(h) certain lands in the Agassiz National Wildlife Refuge, Minnesota, which comprise approximately four thousand acres,

PUBLIC LAW 94-557—OCT. 19, 1976

acres as generally depicted on a map entitled "Glacier Wilderness Proposed", dated March 1975 (revised August 1976), is hereby designated as the "Fitzpatrick Wilderness" and, therefore, as a component of the National Wilderness Preservation System.

(b) In furtherance of the purposes of the Wilderness Act (78 Stat. 890), the following lands are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System: 16 USC 1131
note.

(1) certain lands in the Sierra National Forest in California, which comprise about twenty-two thousand five hundred acres, as generally depicted on a map entitled "Kaiser Wilderness-Proposed", dated August 1976, and shall be known as Kaiser Wilderness;

(2) certain lands in the Mark Twain National Forest in Missouri, which comprise about twelve thousand three hundred and fifteen acres, as generally depicted on a map entitled "Hercules-Glades Wilderness, Proposed", dated March 1976, and shall be known as the Hercules-Glades Wilderness;

DESIGNATION OF WILDERNESS STUDY AREAS WITHIN THE
NATIONAL FOREST SYSTEM

Sec. 3. (a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890) and in accordance with the provisions of subsection 3(d) of that Act (78 Stat. 892, 893), relating to public notice, public hearings, and review by State and other agencies, the Secretary of Agriculture shall review, as to its suitability or unsuitability for preservation as wilderness, each wilderness study area designated by or pursuant to subsection (b) of this section and report his findings to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to the designation as wilderness of each such area on which the review has been completed, together with a map thereof and a definition of its boundaries. 16 USC 1132.

(b) Wilderness study areas to be reviewed pursuant to this section include—

(1) certain lands in the Angeles and San Bernardino National Forests in California, which comprise approximately fifty-two thousand acres, and which are generally depicted on a map entitled "Sheep Mountain Wilderness, Proposed", and dated February 1974. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendations with respect to the designation of the Sheep Mountain Wilderness Study Area as wilderness not later than two years after the date of enactment of this Act;

(2) certain lands in the Mendocino National Forest in California, which comprise approximately thirty-seven thousand acres, and which are generally depicted on a map entitled "Snow Mountain Wilderness Proposed", and dated June 1971. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendations with respect to the designation of the Snow Mountain Wilderness Study Area as wilderness not later than two years after the date of enactment of this Act;

Report to
President
submitted
to Congress.

contiguous to the study area, review any adverse effects such corridors may have on the wilderness character of such area, determine whether any such corridor is necessary, and, if a determination of necessity is made, select a route and design which will minimize such effects. Nothing in this section shall be construed as prohibiting the siting of any such corridor within the boundaries of any area recommended by the President for wilderness preservation pursuant to this Act or designated as wilderness by the Congress and:

(8) certain lands in the Deer Lodge and Helena National Forests, in Montana, which comprise approximately seventy-seven thousand three hundred and forty-six acres and which are generally depicted on a map entitled "Elkhorn Wilderness Study Area" and dated April 1976. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendation with respect to the designation of the Elkhorn Wilderness Study area as wilderness not later than two years after the date of enactment of this Act.

Report to
President
submitted
to Congress.

(c) Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of any wilderness study area or recommending the addition to any such area of any contiguous area predominately of wilderness value. Any recommendation of the President to the effect that such area or portion thereof should be designated as "wilderness" shall become effective only if so provided by an Act of Congress.

(d) Subject to existing private rights, the wilderness study areas designated by this Act shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System, except that such management requirement shall not extend beyond a period of four years from the date of submission to the Congress of the President's recommendation concerning the particular study area. Already established uses may be permitted to continue, subject to such restrictions as the Secretary of Agriculture deems desirable, in the manner and degree in which the same was being conducted on the date of enactment of this Act.

Administration.

ADMINISTRATIVE PROVISIONS

SEC. 4. Except as otherwise provided in this Act, all primitive area classifications of areas herein designated as wilderness are hereby abolished.

SEC. 5. As soon as practicable after this Act takes effect, a map of each wilderness study area and a map and a legal description of each wilderness area shall be filed with the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives, and each such map and description shall have the same force and effect as if included in this Act: *Provided, however*, That correction of clerical and typographical errors in each such legal description and map may be made. Each such map and legal description shall be on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture.

Map and
description,
filing with
congressional
committees.

90 STAT. 2638

PUBLIC LAW 94-557—OCT. 19, 1976

16 USC 1131
note.

Sec. 6. Wilderness areas designated by this Act shall be administered in accordance with the applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary who has administrative jurisdiction over the area.

Approved October 19, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-1562 accompanying H.R. 15446 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 94-1032 and No. 94-1032 Pt. 2 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 122 (1976):

July 21, considered and passed Senate.

Sept. 27, considered and passed House, amended, in lieu of H.R. 15446.

Sept. 30, Senate agreed to House amendment.

Note.—A change has been made in the slip law format to provide for one-time preparation of copy to be used for publication of both slip laws and the United States Statutes at Large volumes. Comments from users are invited by the Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

A REPORT

Appendix c
Page 1

ELKHORN WILDERNESS STUDY

HELENA AND DEERLODGE
National Forests MONTANA



FINAL

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE



SUMMARY

The 85,760-acre Elkhorn Wilderness Study Area is located in the Elkhorn Mountains 18 miles southeast of Helena, Montana. The study area lies in Broadwater and Jefferson counties.

Elevations within the study area range from 4,600 feet to 9,400 feet. The divides are characterized by rocky slopes supporting a sparse cover of whitebark pine and alpine fir. Lodgepole pine interspersed with grassland parks becomes more prevalent lower on these slopes. Douglas-fir is found scattered throughout the lower drainages and north slopes.

Man's impact in the study area began in the 1850's with extensive placer and lode exploration and mining activities. Since that time, associated road construction and timber cutting for cabins, mills, mine timbers, and firewood have taken place. Lands were patented both for mining and homesteading and remain non-Federal land today.

More recently, man's activities include timber harvesting, mineral exploration, and mining activities with associated road construction. There are also numerous occupancies scattered throughout the study area.

The study area has proven mineral resources of gold, silver, copper, molybdenum, lead, zinc, iron, and possibly uranium and thorium. All of these minerals, with the exception of molybdenum, are considered nationally significant. The probability for continued search and development of the mineral resources in the study area is high.

Partly because of the imprint of human activity in portions of the study area, the wilderness quality is marginal when compared to other roadless areas in Montana and the Nation.

During public response to the Draft Report, a mandate for wilderness did not materialize. Of the 3,075 people responding, 2,644 favored no wilderness while 431 favored all or portions of the study area as wilderness. Eighty-four percent of the public responses were on petitions.

The Elkhorn Study Area has been evaluated considering public comments and the criteria of suitability, availability, manageability, and need. Based on this evaluation, the Forest Service does not recommend wilderness in the Elkhorn Study Area.

This study recommends criteria which will guide Forest Land Management Plans (as required by the National Forest Management Act). These criteria will be implemented or modified dependent on the action of Congress. Meanwhile, the Elkhorn Study Area will be managed so as to maintain its present character, as provided in Public Law 94-557.

In the Forest Plans, a management unit with management direction explicit to wildlife will be developed. Wildlife habitat will be the principal resource value.

The Speaker's Rooms
U.S. House of Representatives
Washington, D.C. 20515

December 15, 1981

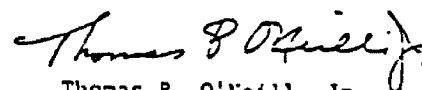
The Honorable John R. Block
Secretary of Agriculture
Department of Agriculture
Washington, D.C. 20250

Dear Mr. Secretary:

This will acknowledge receipt of your letter of November 25, 1981, and the accompanying document entitled "A Report, Elkhorn Wilderness Study, Helena and Deerlodge National Forests, Montana," which was prepared by the Forest Service.

Your letter states that this study and report were prepared pursuant to Public Law 94-557 of October 16, 1976, which, among other things directs the Secretary of Agriculture to review the Elkhorn Wilderness Study Area for its suitability or non-suitability for preservation as wilderness and report his findings to the President, who shall then advise the House of Representatives and the Senate of his recommendations. However, although your letter indicates that you are "pleased to submit ... the President's recommendation on the Elkhorn Wilderness Study Area," neither the letter nor the accompanying report includes any recommendation identifiable as being made by the President. The letter indicates that you "support the Forest Service conclusions" and that you "believe the proposed management for wildlife and scenic values without statutory wilderness designation would best meet the public needs and preference," but there is no indication that the President has reviewed the proposal or that he intends to recommend that the Congress endorse these "Forest Service conclusions." The wilderness review process contained in P.L. 94-577 is founded on the Wilderness Act of 1964 and I would note that wilderness recommendations since 1964 (including the RARE II recommendations) have been accompanied by a letter or statement of transmittal from the President. Accordingly, while I have referred your letter and the accompanying wilderness study report to the Committee on Interior and Insular Affairs, I await receipt of the President's recommendations concerning this area, pursuant to Public Law 94-557. The Congress cannot consider this recommendation until the President reports to us directly as required by law.

Sincerely,



Thomas P. O'Neill, Jr.
The Speaker

dc



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

December 28, 1978

Mr. Clifton R. Merritt
4748 South Washington
Englewood, Colorado 80110

Dear Cliff:

First, with regard to the 2x2 color transparencies which Gladys sent you from our trip into the Elkhorn Mountains, please keep those--they are duplicates of some I have and you don't need to return them.

Secondly, with respect to the Department's final recommendation on the proposed Elkhorn Wilderness, I have asked Chief McGuire to have the Region develop a plan for that area which is focused primarily on the protection, management, and use of the wildlife resources of that area. As you and I saw, on our horseback pack trip into the area last summer, the off-road vehicle traffic is creating unacceptable levels of trail erosion in many places and other signs of ORV overuse or misuse also are evident. It became clear to me that the area is critically important as a big game habitat.

On the other hand, the deeply rutted roads, extensive evidence of mining activity, including many structures and other left-over "junk" from mining operations and similar nonconforming characteristics of the Elkhorn area have led me, upon further consideration, to agree with the Region that it should not be recommended by us for immediate statutory wilderness designation.

By copies of this letter to the Chief and the Regional Forester, I am transmitting written direction to them to begin immediately with the development of a master plan for the Elkhorn Mountains which restricts public use, commodity extraction, and all other activities to only those known to be compatible with the long term wellbeing and survival of the elk, deer, mountain goats, and other wildlife species of this productive area. I will expect the Forest Service to keep you advised of their progress in this regard and to communicate with you as an informal consultant on the project of developing the management plan.

I think we can achieve our mutual objective of preserving the scenic and wildlife resources of this fine area through such an administrative process which does not make us include in our RARE II Wilderness package

Mr. Clifton R. Merritt-2

an area with so many signs of recent developmental activity. Of course, the legislative route is still available to those who believe the Elkhorn should be included in the wilderness system, and this proposal could be made to the Committees of Congress at the time our RARE II wilderness program is under consideration on Capitol Hill.

I expect you will be hearing from Regional Forester Bob Torheim or a member of his staff on this project in the near future.

Best regards.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rupe", written in black ink.

M. RUPERT CUTLER
Assistant Secretary for
Conservation, Research, and Education

The Wilderness Society

107 West Lawrence, Helena, Montana 59601 (406) 443-7350
Mail to: P.O. Box 1184

July 3, 1960

Dr. M. Rupert Cutler
Assistant Secretary of Agriculture
for Natural Resources and Environment
U.S. Department of Agriculture
Washington, D.C. 20250

Dear Rupe:

I want to again congratulate you on your new appointment as Executive Vice-President of the Audubon Society--even if it does mean moving to the "Big Apple". Seriously, although we're sorry to see you leave your Assistant Secretary position we welcome your return to the advocacy field.

I had hoped that our phone conversation yesterday would not be necessary. We've cautiously accepted your challenge to work toward a special wildlife management area for the Elkhorns in good faith hoping that it would accomplish our shared goals of protecting indigenous wildlife in a natural setting while demonstrating that firm administrative protection for appropriate areas is possible under the National Forest Management Act. But the sad truth is that the Helena Forest is not responding to your mandate in good faith. Repeatedly, during the past few months we've encountered an extremely negative attitude against wilderness on the part of some Forest Service officials without any countervailing commitment to insure the long-term protection of wildlife and wildlife habitat in the Elkhorns.

Certain Helena Forest officials have been less than honest in the use of data, such as public input on the draft EIS, in order to demonstrate "no public mandate" for wilderness in the Elkhorns. In fact, the record shows that the overwhelming majority of those who know the issue and who took the time to write a personal letter do in fact support wilderness for all or most of the Elkhorns WSA. Our strong belief is that some local Forest Service officials view the Elkhorns not as a national prototype for special wildlife management but to prove that logging "benefits" wildlife.

It is thus little wonder that we are nervous about substituting the kind of administrative discretion we see at the forest and regional levels for the permanent statutory protection of the Wilderness Act. Our clear preference is and always has been for wilderness in the Elkhorns. But we are still willing to help fulfill your mandate for an Elkhorns special wildlife management unit provided that it has a reasonable chance of working; that is of protecting the key wildlife values in an essentially natural environment.

Frankly, we've slowly reached the conclusion that this plan won't work unless we begin with administrative designation of the Elkhorns, thereby establishing firm sideboards within which the Forest Service can then develop a wildlife management plan. We recommend that the Elkhorns be designated as a special wildlife management unit under 294.1 CFR at the earliest possible date. The designation should apply to the entire national forest portion of the Elkhorns with roads, timber harvest and motorized recreation prohibited within the wilderness study boundary while allowing commercial livestock grazing and horse use. Except for ingress and egress by private landowners the existing low standard roads within the WSA should be closed and allowed to gradually return to a natural condition. This will eliminate a great

"In wildness is the preservation of the world." - Thoreau

amount of resource damage presently caused by ORV use.

If immediate administrative designation is not possible we urge you to clarify your intent to the Forest Service with regard to the protection of wildlife in the Elkhorns. If this route is chosen we recommend that the following points be emphasized:

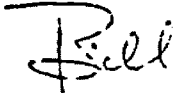
(1) The study area should include all of the national forest portion of the Elkhorns since most of the big game winter range is located on national forest land outside of the WSA. Management constraints should be more lenient outside of the WSA.

(2) no land management activities for other resources will be considered unless it is proven that wildlife and wildlife habitat in the Elkhorns will be maintained or enhanced.

(3) no resource management activities should be allowed until we have adequate baseline data on wildlife in the Elkhorns. Adequate data cannot be obtained within the present 9-month time period provided in the Forest Service study plan.

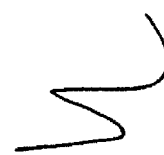
Rupe, this bold new experiment can either become a model for the Nation or a dismal failure. We believe that the next month will be critical in establishing a positive direction. Please let me know if I can supply additional information or if you would like to discuss this further. In the meantime, congratulations again on your new position in the conservation movement.

Sincerely,



Bill Cunningham
Regional Representative

cc: Marion Connolly
Barry Flamm
Clif Merritt
Bill Schneider
Mark Meloy ✓



July 21, 1980
312 Pine Street
Helena, MT 59601

Dr. M. Rupert Cutler
Assistant Secretary of Agriculture for Nature & Environment
United States Department of Agriculture
Washington, D. C. 20250

Dear Dr. Cutler:

I am chairman of a wilderness advocacy group, the Elkhorn Citizens' Organization, based in Helena, Montana. Our group from its creation in 1976 has supported the proposal of the late Senator Lee Metcalf for creation of a new Congressionally designated wilderness area in the Elkhorn Mountains southeast of Helena. The commitment of the people in our organization has been demonstrated by an incredible work load of fund raising, research and publication in the past four years--all volunteer work. Our commitment to the issue of an Elkhorn Wilderness has been strong and consistent.

The trail along the polemical forest of the Elkhorn Wilderness study and the ensuing proposal for a wildlife management unit has been an uphill climb. The local Forest Service personnel have been cordial but determined to dispose of the wilderness alternative every step of the way.

This letter is written in support of a letter written to you by Bill Cunningham on July 3 of this year. His letter very well summarizes the sentiments concerning the current status of the issue. I wish to further elaborate on one of the points of Bill's letter which is of primary importance to ECO: Reference to public input on the draft Elkhorn EIS. As we all know, the Forest Service is nearly two years late in producing its final recommendation for an Elkhorn Wilderness. It seems to be common knowledge that a no wilderness recommendation is in process for the entire study area. Former Helena Forest Supervisor William Gee suggested this outcome when he released the wilderness study public input statistics with a calculated 86% anti-wilderness response. Gee and others have effectively used this figure to co-opt any further discussion of wilderness in the Elkhorns despite the fact that neither the study report nor sufficient breakdown of input statistics have been made available to us.

Suspecting that local Forest Service officials had manipulated calculation of input statistics to support a predetermined anti-wilderness position, I did my own count of the letters and petitions in the files of the Helena Forest headquarters. My sampling of the input record supports a different view of public opinion in the Elkhorn controversy. First, I will review the compilation provided by the Forest Service in a March 3, 1980, letter to Bill Cunningham (letter enclosed). Of the 3,075 responses to public input received by the Forest Service, 431 were classified by the Forest Service as pro-wilderness and 2,644 were classified anti-wilderness; thus the 86% anti-wilderness touted by the local officials to quash further wilderness debate.

p. 2

My sample of input pursued compilation of preference only of personal letters; indicator of the sentiments of those who were really involved with the issue enough to formulate and record their own comments. Examination of the records revealed 202 letters favoring Congressional wilderness designation for the Elkhorns while only 46 letters were written to go on record against designation. When we get to the meat of the issue, we discover an astonishing 81% of the letter writers in favor of wilderness for the Elkhorns. The bulk of the anti-wilderness opinion was tallied from petitions, the sheer weight of which seems to have blotted out the instruction of the letters in the minds of local forest officials. Petitions and form letters must, under reasonable estimation, be segregated and assigned a proper value relative to the more informative personal letters. Need I add that most people sign petitions in ignorance of the issue, while a personal letter demonstrates a more sophisticated understanding and should be weighed accordingly?

In the past the Forest Service has repeatedly stated that letters were more important than petitions (I have heard of occasions when whole petitions were assigned a value no higher than one personal letter), so none were circulated from our organization. With 200 personal letters, you can imagine one whale of a petition drive from our side, if that's what the Forest Service wants. I sincerely doubt a deluge of pro-wilderness petitions would be well received at this point. But we are prepared to circulate them if this record isn't set straight.

Included with this letter is the position statement of the petition assigned an anti-wilderness preference. I underlined the statement: ". . .any portion (of the Elkhorns) that warrants wilderness management will be managed, but not designated such." Is this really anti-wilderness or would it more properly be read as anti-Congress. Taken literally this petition might lend support to the idea of preservation through administration of a wildlife management unit-- food for thought; at any rate I wish someone would make the Forest Service stop trying to feed us the same old anti-wilderness dish and take a more active interest in the alternatives.

I hope in my attempt to set the record straight, I haven't complicated your understanding of the loose ends of this matter. I just wanted to inform you that an administrative designation for preservation of wildlife and wilderness values in the Elkhorns would be well received in Helena, despite reports to the contrary from within the Forest Service. Please let me know what I can do to assist in the creation of the kind of protection we need for the Elkhorns. As you see fit, forward copies of this letter to the proper Forest Service authorities. Good luck with your new job.

Sincerely,

Mark Meloy

Mark Meloy

ELKHORN CITIZEN ORGANIZATION

312 PINE ST.

HELENA, MT. 59601



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

OCT 2 1990

Mr. Mark Meloy
Elkhorn Citizens' Organization
312 Pine Street
Helena, Montana 59601

Dear Mr. Meloy:

This is in further response to your letter of July 21 concerning the management of the Elkhorns.

I know the Elkhorns have been the topic of many conversations between Dr. Cutler and others in Montana including yourself during the last three years. During this period, within the framework of public input, Dr. Cutler has worked with the Forest Service in developing management direction that he felt was appropriate for the Elkhorns. This direction as you have encouraged emphasizes the protection of wilderness type values with particular attention to the protection and enhancement of wildlife species requiring seclusion and a buffer from human activities.

You and others have proposed the classification of the Wilderness Study Area and possibly some contiguous area as a Wildlife Management Area under the Chief's authority granted under 36 CFR 294.1. This is in lieu of wilderness which remains your first preference. This would place special emphasis on the concern that wildlife values be recognized and honored. However, such a classification would require an Environmental Impact Statement (EIS) and we believe it is unlikely that we could successfully defend a challenge to a final decision on the management of this area that has not been developed under the National Forest Management Act (NFMA) process. As you know, PL 94-557 directed us to determine suitability for wilderness designation, not to develop a management plan.

The Forest Supervisor is currently preparing the Helena National Forest Plan under the provisions of the NFMA and the National Environmental Policy Act (NEPA). We are convinced that the NFMA planning process including the broad public input that it requires, will assure sound management direction and effective constraints against lightly considered or injudicious administrative changes in the future.

Mr. Mark Maloy

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Meanwhile, the Elkhorn Study Area will be managed so as to protect and maintain the existing wildlife habitat and, as provided in PL 94-557, to maintain its presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System. To the extent that manpower, funding, and legal limitations allow, interim management pending congressional action will include steps to remove structures and signs of human activity that are not of historical significance.

We hope you will find this approach acceptable. We feel it is important that we move ahead to file the Final Environmental Impact Statement and our report to the President on the wilderness study area so he may give his recommendations to the Congress.

You expressed a concern about the analysis of the public input received on the Draft Environmental Statement. Our review of the compilation table provided in the March 3, 1980, letter suggests that the figures from your evaluation of the personal letters are quite possible. The table indicates that of 3,075 signatures, 2,768 are on 203 documents that are other than personal letters. Of these, 2,559 are on seven petitions. The table also indicates petitions or other types of multi-signature documents have been received both for and opposed to designated wilderness. Enclosed is our detailed tabulation of the public input as it will appear in the Final Environmental Impact Statement.

We have reviewed the petition statement which you sent. Recognition of the wildlife resource values in the Elkhorns does appear to be compatible with this petition statement, as you suggest. Correspondingly, the proposed management direction supplemented by the results of the wildlife study now underway, we believe, will lead to the protection of the wildlife and fish habitat you seek in the Elkhorns. We look forward to your support of this endeavor.

Sincerely,



Active:

Assistant Secretary for
Natural Resources and Environment

Enclosure

SUPPLEMENT NO. 3 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE MONTANA FISH AND GAME COMMISSION AND THE REGIONAL FORESTER, REGION 1, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE DATED SEPTEMBER 21, 1978.

ELKHORN MOUNTAINS WILDLIFE MANAGEMENT UNIT-COOPERATIVE USDA FOREST SERVICE -
MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS - MONITORING PROGRAM

WITNESSETH:

WHEREAS, Region 1 of the USDA-Forest Service, and the Montana Department of Fish, Wildlife and Parks are mutually responsible for the management of fish and wildlife resources of Montana, and

WHEREAS, the Integrated Forest Plans for the Helena National Forest and Deerlodge National Forest will provide management direction for National Forest lands in the Elkhorn Mountains with wildlife as the principal resource value and establish the Elkhorn Wildlife Management Unit, and

WHEREAS, the Department has actively cooperated and participated with the Forest Service during the last three years through Intergovernmental Personnel Act (IPA) agreements in the development of management guidelines for the Elkhorn Mountains for inclusion in Forest Plans, and

WHEREAS, the Department and the Forest Service mutually agree that the cooperative relationship developed because of the Elkhorn project has allowed each agency to better understand the other's functions, responsibilities and problems, and

WHEREAS, both agencies agree that continuing this partnership in management will result in coordinated wildlife management assuring the maintenance and enhancement of wildlife values in the Elkhorn Mountains, and

WHEREAS, National Forest Management Act (NFMA) regulations (36 CFR 219), require that planned actions, practices and effects described in Forest Plans be monitored and evaluated, and

WHEREAS, NFMA regulations (36 CFR 219) further require that trends in wildlife be monitored and relationships to habitat changes determined and that this monitoring be done in cooperation with State Fish and Wildlife agencies, and

WHEREAS, the final Elkhorn Wilderness Study Report directs that a management unit with management direction explicit to wildlife be developed in Forest Plans administratively under NFMA in the Elkhorns and that wildlife habitat will be the principal resource value, and

WHEREAS, the Montana Legislature has recognized the significance of the Elkhorn project through appropriations to be used specifically for continued involvement of the Department in management of the Elkhorn Mountains, and

WHEREAS, the need exists to implement a cooperative Elkhorn Wildlife Monitoring Program to evaluate management direction provided in Forest Plans; to prescribe recommendations to maintain and improve wildlife habitat; and continue to monitor habitat conditions and wildlife populations to determine the effectiveness and applicability of existing and prescribed management, and

WHEREAS, Section III, a, b, d, and j, of the Master Agreement authorizes cooperative work of this nature.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- A. It is mutually agreed and understood by and between the said parties that they:
 1. Will inform each other of their proposed changes in actions, programs, projects and other activities affecting management in the Elkhorn Mountains.
 2. Will on an annual basis enter into a contract that will specify work plans, personnel and equipment needs and costs necessary to implement and maintain the Elkhorn Wildlife Monitoring Program.
 3. Will, as a result of the annual contract, prepare an annual report that discusses the progress of the Elkhorn Wildlife Monitoring Program including wildlife population information relative to habitat and land uses; evaluating existing and prescribed land management; and updating recommendations and work plans to implement wildlife habitat improvement measures.
 4. Will, dependent upon appropriated funds, jointly share in the annual cost of implementation and maintenance of the Elkhorn Wildlife Monitoring Program.
- B. The Forest Service shall:
 1. Manage wildlife habitat and be responsible for design and implementation of wildlife habitat improvement projects in the Elkhorn Mountains.
 2. Designate the Helena National Forest and Deerlodge National Forest - - Forest Biologists as being responsible for assisting in the development and implementation of the Elkhorn Wildlife Monitoring Program. The Helena Forest Biologist will be the primary liaison with the Department relative to the Elkhorn Wildlife Monitoring Program.
 3. Supply office space and facilitating service on the Helena National Forest for the Department's Elkhorn Coordinator.
- C. The Department shall:
 1. Manage wildlife and be responsible for monitoring trends in wildlife abundance and relationships to habitat and land management practices in the Elkhorn Mountains.

2. Designate a Department Biologist as an Elkhorn Coordinator responsible for field activities necessary to understand wildlife, habitat and land use relationships in the Elkhorns. The Department's Elkhorn Coordinator will be the primary liaison with the Helena National Forest relative to the Elkhorn Wildlife Monitoring Program.

D. This supplement shall become effective as soon as signed by the parties hereto and shall continue in force unless terminated by either party upon 30 days notice in writing to the other party.

All other clauses contained in the Master Memorandum of Understanding dated September 21, 1978 will apply to this supplement.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed this _____ day of September, 1983.

MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS

DATE _____ By _____
Director

UNITED STATES FOREST SERVICE

DATE _____ By _____
Regional Forester



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

September 13, 1979

Mr. William Cunningham
Regional Representative
The Wilderness Society
107 West Lawrence
Helena, Montana 59601

Dear Bill:

Thanks for your letter of September 7. It's a fact that our recent reorganization has given me more time to concentrate on natural resources issues. As a result, I am much more comfortable with my responsibilities; I can get into appropriate depth on key issues which often eluded me in the past when I was spread so thinly over the Science and Education Administration as well as the Forest Service and the Soil Conservation Service.

I am sure you will find Marian Connolly a good person to communicate with on a routine basis; she will be the one you can keep in touch with to keep abreast of happenings here.

Bill, your only question of me at the Jefferson Auditorium public meeting on the RARE II program results dealt with whether or not we would pursue the option of recommending administrative "back country" to supplement the statutory wilderness system. While the Forest Service is skittish about the use of the term "back country" for a good reason--we cannot appear to be establishing wilderness areas administratively--your point was well taken, and we will proceed under the National Forest Management Act to designate tracts of undeveloped land in the National Forests, outside of statutory wilderness areas, where vehicular use will be restricted or prohibited and where management activities will be extensive, subtle and in some cases, practically invisible. Obviously, this category includes administratively established research natural areas, but has the potential to include areas set aside administratively for other primary purposes such as wildlife management.

At some point, I hope you and Cliff will permit us to test the potential of such an administrative designation as an alternative to wilderness. Although I know you both disagree, I think the Elkhorns can be an appropriate place to try this approach. I've talked to Regional Forester Coston about what you and I both have in mind in this regard: an area established with specific boundaries, managed on the basis of a plan permitting only those activities which will positively enhance the key resource--in the case of the Elkhorns, the mountain goats, elk and associated wilderness wildlife species. Such a management plan--and I have directed that it appear in

Mr. William Cunningham-2

detail in the plan/environmental statement for the Elkhorn area--would stipulate that, within certain boundaries, public vehicular use would be prohibited and that all public access whatsoever might be prohibited during particular times of the year when any human disturbance might be detrimental to the resident wildlife.

What we ought to be able to come up with is a management scheme which makes it clear to all concerned that the Forest Service, administratively, can create wildlife management units which provide optimal protection and management of the resident wildlife population--that areas do not have to be transferred from the National Forest System to either the National Park System or the National Wildlife Refuge System to assure such special, sharply focused management direction.

If you and Cliff would work with the regional office in Missoula to help develop the stipulations associated with the management direction for the Elkhorns, which on the one hand would permit some habitat enhancement but on the other hand would preclude any human activity which would adversely affect the resident wildlife population, we ought to be able to come up with a mutually satisfactory plan which would constitute a model for other such units which, for one reason or another, do not achieve wilderness status and might be better managed for the wildlife objective outside of the wilderness system than inside it.

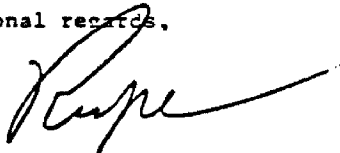
Are you willing to take that chance?

I think we can blaze some new wildland management history if you are.

Take a look at the research natural area guidelines. Take a look at the optimal habitat and protection guidelines for wilderness wildlife as developed by State and Federal Wildlife researchers. Develop what you think would be the best possible management scheme for the Elkhorns, and see if we can't implement it administratively.

If you give us your support, I'll bet we can do a first-class job of initiating a new kind of wildlife program within the National Forest System.

Best personal regards,



M. RUPERT CUTLER
Assistant Secretary for
Natural Resources and Environment

cc: Tom Coston Max Peterson
Cliff Merritt Barry Flamm

RATTLESNAKE RECREATION AREA

16 USCS § 46011-2

HISTORY: ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Nov. 10, 1978, P. L. 95-625, 91 Stat. 3467, popularly known as the "National Parks and Recreation Act of 1978". For full classification of this Act, consult USCS Tables volumes.

Explanatory notes:

Act Mar. 5, 1950, P. L. 96-199, Title 1, § 113, 94 Stat. 71, purported to substitute "9" for "5" in cl. (E) of subsec. (q)(2); however, in such clause, prior to its amendment, the word "five", rather than the numeral, appeared. This amendment has been effectuated to carry out the probable intent of Congress to substitute the word "nine".

Amendments:

1979, Act Oct. 12, 1979, in subsec. (f), substituted "January 1, 1978" for "January 1, 1976" following "was begun before".

1980, Act Mar. 5, 1980, in subsec. (q)(2)(E), substituted "9" for "5".

RATTLESNAKE NATIONAL RECREATION AREA

§ 46011. Statement of findings and policy

(a) The Congress finds that—

(1) certain lands on the Lolo National Forest in Montana have high value for watershed, water storage, wildlife habitat, primitive recreation, historical, scientific, ecological, and educational purposes. This national forest area has long been used as a wilderness by Montanans and by people throughout the Nation who value it as a source of solitude, wildlife, clean, free-flowing waters stored and used for municipal purposes for over a century, and primitive recreation, to include such activities as hiking, camping, backpacking, hunting, fishing, horse riding, and bicycling; and

(2) certain other lands on the Lolo National Forest, while not predominantly of wilderness quality, have high value for municipal watershed, recreation, wildlife habitat, and ecological and educational purposes.

(b) Therefore, it is hereby declared to be the policy of Congress that, to further the purposes of the Wilderness Act of 1964 (16 U.S.C. 1131) [16 USCS §§ 1131 et seq.] and the National Forest Management Act of 1976 (16 U.S.C. 1600) [16 USCS §§ 1600 et seq.], the people of the Nation and Montana would best be served by national recreation area designation of the Rattlesnake area to include the permanent preservation of certain of these lands under established statutory designation as wilderness, and to promote the watershed, recreational, wildlife, and educational values of the remainder of these lands.

(Oct. 19, 1980, P. L. 96-476, § 1, 94 Stat. 2271.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Short titles:

Act Oct. 19, 1980, P. L. 96-476, 94 Stat. 2271, provided: "This Act [16 USCS §§ 46011 et seq.] may be cited as the 'Rattlesnake National Recreation Area and Wilderness Act of 1980'."

§ 46011-1. Designation and management of Rattlesnake Wilderness Area

(a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131) [16 USCS §§ 1131 et seq.], certain lands within the Rattlesnake National Recreation Area as designated by this Act, which comprise approximately 33,000 acres as generally depicted as the "Rattlesnake Wilderness" on a map entitled "Rattlesnake National Recreation Area and Wilderness—Proposed", and dated October 1, 1980, are hereby designated as wilderness and shall be known as the Rattlesnake Wilderness.

(b) Subject to valid existing rights, the Rattlesnake Wilderness as designated by this Act [16 USCS §§ 46011 et seq.] shall be administered by the Secretary of Agriculture, hereinafter referred to as the Secretary, in accordance with the provisions of the Wilderness Act [16 USCS §§ 1131 et seq.] governing areas designated by that Act [16 USCS §§ 1131 et seq.] as wilderness: Provided, That any reference in such provisions to the effective date of the Wilderness Act [16 USCS §§ 1131 et seq.] shall be deemed to be a reference to the effective date of this Act [enacted Oct. 19, 1980].

(Oct. 19, 1980, P. L. 96-476, § 2, 94 Stat. 2271.)

§ 46011-2. Designation and management of Rattlesnake National Recreation Area

An area of land as generally depicted as the "Rattlesnake National Recreation Area" on a

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PUBLIC LAW 98-140—OCT. 31, 1983

Public Law 98-140
98th Congress

An Act

To establish the Lee Metcalf Wilderness and Management Area in the State of Montana, and for other purposes.

Oct. 31, 1983
(S. 26)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Lee Metcalf Wilderness and Management Act of 1983".

Lee Metcalf
Wilderness and
Management
Act of 1983

DESIGNATION AND MANAGEMENT OF LEE METCALF WILDERNESS AND
MANAGEMENT AREA

Sec. 2. (a) In furtherance of the purposes of the Wilderness Act (78 Stat. 960; 16 U.S.C. 1131), certain lands within the Beaverhead and Gallatin National Forests and certain lands in the Dillon Resource Area, Montana, administered by the Bureau of Land Management which comprise approximately two hundred and fifty-nine thousand acres as generally depicted as the "Lee Metcalf Wilderness" on a map entitled "Lee Metcalf Wilderness—Proposed", and dated October 1983 are hereby designated as wilderness and shall be known as the Lee Metcalf Wilderness.

16 USC 1132
note
16 USC 1131
note.

(b) Subject to valid existing rights, the Lee Metcalf Wilderness as designated by this Act shall be administered by the Secretary of Agriculture, hereinafter referred to as "the Secretary", in accordance with the Wilderness Act governing areas designated by that Act as wilderness: *Provided*, That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act: *Provided further*, That the Bear Trap Canyon portion of the Lee Metcalf Wilderness shall be administered by the Secretary of the Interior.

Administration
of lands.
16 USC 1131
note.

(c) The Congress finds that certain lands within the Gallatin National Forest near Monument Mountain have important recreational and wildlife values, including critical grizzly bear and elk habitat. In order to conserve and protect these values, the area lying adjacent to the Monument Mountain and Tivoli Hilliard units of the Lee Metcalf Wilderness as designated by this Act and comprising approximately thirty-eight thousand acres, as generally depicted on the map entitled "Lee Metcalf Wilderness—Proposed", dated October 1983, shall be managed to protect the wildlife and recreational values of these lands and shall be hereby withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and geothermal leasing, and all amendments thereto. The area shall further be administered by the Secretary of Agriculture to maintain presently existing wilderness character, with no commercial timber harvest nor additional road construction permitted. The Secretary shall permit continued use of the area by motorized equipment only for activities associated with existing levels of livestock grazing, administrative purposes including snowmobile trail maintenance, and for snowmobiling during periods of adequate snow cover but only where such

Motorized
equipment
activities

uses are compatible with the protection and propagation of wildlife within the area: *Provided*, That the Secretary may, in his discretion, also permit limited motor vehicle access by individuals and others within the area where such access is compatible with the protection and propagation of wildlife and where such access was established prior to the date of enactment of this Act. Management direction for the area that recognizes these values shall be included in the forest plan developed for the Gallatin National Forest in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976.

Forest plan.

1604
1000

DESIGNATION AND MANAGEMENT OF CERTAIN NATIONAL FOREST LANDS
IN THE STATE OF MONTANA

Forest and
range plans.

1132

1500

Wilderness-
studied areas.

1132

1782

Sec. 3. (a) The Congress hereby determines and directs that—
(1) the areas listed in subsection (b) of this section have been adequately studied for wilderness pursuant to Public Law 95-150 or in the RARE II Final Environmental Statement (dated January 1979);

(2) such studies shall constitute an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option for such areas prior to revision of the initial plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976 (Public Law 94-388) and in no case prior to the date established by law for completion of the initial planning cycle;

(3) such areas need not be managed, unless otherwise specified in this Act, for the purposes of protecting their suitability for wilderness designation pending revision of the initial plans.

(b) The areas covered by subsection (a) of this section are as follows:

(1) the Mount Henry Wilderness Study Area as designated by Public Law 95-150;

(2) those portions of the Taylor-Hiltzard Wilderness Study Area as designated by Public Law 95-150 but not designated as wilderness by this Act;

(3) certain lands on the Gallatin National Forest and Beaverhead National Forest identified as area 1549 in the Forest Service Roadless Area Review and Evaluation (II) Final Environmental Statement, Executive Communication Numbered 1504, May 3, 1979, not designated as wilderness by this Act;

(4) certain lands on the Custer National Forest known as the proposed Tongue River Breaks Wilderness, which comprise approximately sixteen thousand five hundred acres, as identified in Executive Communication Numbered 1504, Ninety-sixth Congress (House Document Numbered 96-112).

(c)(1) The lands described in subsection (a)(2) of this section have been adequately studied for wilderness pursuant to section 603 of the Federal Land Policy and Management Act (Public Law 94-379) and are no longer subject to the requirement of section 603(c) of the Federal Land Policy and Management Act pertaining to management in a manner that does not impair suitability for preservation as wilderness.