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PRESERVING AN *ENDURING* WILDERNESS: CHALLENGES AND THREATS TO THE NATIONAL WILDERNESS PRESERVATION SYSTEM

GEORGE NICKAS*

INTRODUCTION

In 1964, the United States Congress passed the Wilderness Act “to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.”¹ The Act established 9.1 million acres of instant wilderness areas.² Today, the National Wilderness Preservation System (NWPS) has grown to include 104 million acres,³ a land mass slightly larger than the state of California. Four different federal agencies and two cabinet-level departments administer these lands.⁴ Though the size of the wilderness system has already exceeded the dreams of its founders, some now talk of a future wilderness system of 300 million acres.⁵

Designating wilderness is only the first, albeit essential, step toward its *enduring* preservation. George Marshall, former president of the Sierra Club and brother of wilderness advocate Robert Marshall, noted shortly after passage of the Wilderness Act: “At the same time that wilderness boundaries are being established and protected by Acts of Congress, attention must be given to the quality of wilderness within these boundaries, or we may be preserving empty shells.”⁶ Of more recent vintage, and expressing more pressing alarm, are statements made by the two Cabinet-level officials most responsible for the enactment of the 1964 Wilderness Act. Stewart Udall, Secretary of Interior under Presidents Kennedy and Johnson, recently wrote:

* Executive Director, Wilderness Watch.

1. Wilderness Act of 1964, Pub. L. No. 88-577, § 2(a), 78 Stat. 890, 890 (codified as amended at 16 U.S.C. § 1131(a) (1994)).

2. See PETER LANDRES & SHANNON MEYER, U.S. FOREST SERV., U.S. DEP'T OF AGRIC., NATIONAL WILDERNESS PRESERVATION SYSTEM DATABASE: KEY ATTRIBUTES AND TRENDS, 1964 THROUGH 1998, at 1 (1998) (Rocky Mountain Research Station Document No. RMRS-GTR-18).

3. See *id.*

4. The four agencies and two departments include the United States Forest Service in the Department of Agriculture, and the Bureau of Land Management, the National Park Service, and the United States Fish and Wildlife Service in the Department of Interior. See DAVID N. COLE, INTERMOUNTAIN RESEARCH STATION, WILDERNESS RECREATION USE TRENDS, 1965 THROUGH 1994, at 2 (1996).

5. See The Wilderness Society, *The Future of Wilderness* (visited Oct. 20, 1998) <<http://www.wilderness.org/standbylands/wilderness/future.htm>>.

6. J. HENDEE ET AL., PRINCIPLES OF WILDERNESS MANAGEMENT 1 (1990) (citing WILDERNESS AND QUALITY OF LIFE 13-15 (Maxine E. McCloskey et al. eds., (1969)).

[Thirty] years ago many of us involved in the Act expected to retire with the ability to look across the country at the legacy we labored to leave for our grandchildren, and to find it secure and intact. Instead, I find myself now 75 years old and unable to relax as I see that intended inheritance seriously threatened.⁷

Orville Freeman, who served alongside Udall as Secretary of Agriculture, has expressed similar concerns.⁸

Threats to wilderness are many and varied. Undoubtedly our "increasing population, accompanied by expanding settlement and growing mechanization"⁹ is making the job of those who are responsible for administering and protecting our wilderness heritage more difficult, but certainly not impossible. The list of issues discussed in this article is not exhaustive, nor does it include world-wide environmental problems such as acid rain, global warming, human population growth and large-scale wildlife habitat destruction that affect the health of our wilderness lands. Instead, this article will focus on those issues over which wilderness managers and local citizens have some control and/or for which management actions can be taken—for example, wilderness managers have little control over population growth, but can effect how increased user demand impacts the wilderness. Of course, any such list must be presented with a caveat: just as many of the technological and environmental challenges facing wilderness today could not be foreseen just three decades ago, the next thirty years will undoubtedly include many new threats.

I. ADMINISTRATIVE CHALLENGES

One has to wonder, as the list of challenges grows and the resolve of the managing agencies to confront those problems weakens, whether our current institutional structure is adequate to protect wilderness in the long run. It seems somewhat incongruous that both the citizen and congressional supporters of the 1956–1964 wilderness bills believed that the administration of wilderness areas should remain with the agencies that oversaw these areas prior to designation.¹⁰ After all, it was a fear that the Forest Service and National Park Service were not committed to the long-term protection of wild areas that led to the push for a legislative solution.¹¹ Still, there was virtually no consideration given during the eight years of debate leading up to the passage of the law to create a new agency or strip the existing agencies of their control over these lands, a

7. *From Stewart Udall . . .*, WILDERNESS WATCHER (Wilderness Watch, Missoula, Mont.), Winter 1995, at 3, 7.

8. *See Introducing Mr. Orvill Freeman*, WILDERNESS WATCHER (Wilderness Watch, Missoula Mont.), Summer 1995, at 4, 11.

9. Wilderness Act § 2(a), 16 U.S.C. § 1131(a) (1994).

10. *See, e.g.*, MICHAEL FROME, BATTLE FOR THE WILDERNESS 138 (1997).

11. *See id.* at 136–38.

principle that has basically gone unchallenged to this day.¹² To be sure, there has been substantial congressional concern over degradation of lands within the NWPS, and at least one serious effort to overhaul the wilderness programs of the four agencies charged with their administration.¹³ The idea, however, that the system should be placed in the care of another entity has not gained much favor.

A. Recreation Use

Wilderness visitation has grown steadily since 1964.¹⁴ While part of the growth is due to the increase in wilderness areas and acres, at least one-half of all areas saw their highest use levels during the 1990s.¹⁵ Along with an increase in use comes an increase in impacts.¹⁶ Managers have implemented limited entry permit systems in some areas, but in most areas there is little direct control. This is in spite of a recent survey of managers finding recreation overuse to be the most commonly stated problem.¹⁷

Users often resist any effort to limit use or impacts, and in many cases are resorting to legislative attempts to thwart managers' actions. For instance, hiking groups in the Pacific Northwest argue that limiting access to wilderness will interfere with "green bonding," in turn reducing the constituency for more wilderness designations.¹⁸ When the Forest Service attempted to remove material caches from commercial outfitter camps in the Frank Church-River of No Return Wilderness, the outfitters

12. The one notable challenge comes from Frome, who calls for the formation of a National Wilderness Service. *See id.* at 199-202.

13. In the 102d Congress, Rep. Bruce Vento introduced H.R. 4325, H.R. 4326, and H.R. 4327 "to strengthen the [wilderness] management programs of the Forest Service, the Park Service and the Bureau of Land Management, as well as the Fish and Wildlife Service." *Wilderness Management: Hearing on H.R. 4325, 4326, 4327 Before the Subcomm. on Nat'l Parks and Pub. Lands of the House Comm. on Interior and Insular Affairs*, 102d Cong. 2 (1992) (statement of Bruce Vento, Chairman, Subcomm. on Nat'l Parks and Pub. Lands). Vento stated:

The proposed Wilderness Management Acts I have introduced substantially deal with how our land management agencies are managed and how they take care of the existing wilderness areas today and tomorrow. They will not designate a single new acre of wilderness, but instead will create strong, new management program initiatives to protect the wilderness that we already have designated. Such legislation is urgently needed.

Id.

14. *See* COLE, *supra* note 4, at 3. These recent research findings differ from reports in the late 1980s, which indicated that wilderness use was declining, leading many managers to believe that recreation impacts would heal themselves. *Cf.* Joseph W. Roggenbuck, *Wilderness Use and User Characteristics: Ending Some Misconceptions*, 14 W. WILDLANDS 1, 8 (1988).

15. *See* COLE, *supra* note 4, at 9.

16. *See* David N. Cole, *Wilderness Recreation Management: We Need More Than Bandages and Toothpaste*, 91 J. FORESTRY 22, 22 (1993); *see also* DAVID N. COLE, INTERMOUNTAIN RESEARCH STATION, CAMPSITES IN THREE WESTERN WILDERNESSES: PROLIFERATION AND CHANGES IN CONDITION OVER 12 TO 16 YEARS 1 (1993) (documenting visitor impact on campsites).

17. *See Summary*, WILDERNESS EDUC. & TRAINING NEEDS ASSESSMENT SURVEY (Arthur Carhart Nat'l Wilderness Training Ctr., Hudson, Mont.), 1997, at 1, 1.

18. *Cf. Comments on Wilderness Solitude: A Special Report of Guest Editorials*, in SIGNPOST FOR NORTHWEST TRAILS 12 (1997).

sued the agency resulting in an out-of-court settlement that was later overturned by a federal judge who ruled that the caches and other permanent improvements at the camps violated the Wilderness Act.¹⁹ The outfitters now have turned to legislation to regain their permanent camps.²⁰ Most recently, Forest Service Chief Michael Dombeck ruled that the installation of permanent ("fixed") anchors by climbers violated the law.²¹ Climbing groups exclaimed that the permanent anchor ban would effectively eliminate most wilderness climbing and, along with their industry counterparts, convinced a U.S. senator to add a provision to the agency's funding bill that prevents the Forest Service from implementing the ban.²²

Even when legislation is not invoked, administrative challenges are virtually guaranteed any time an agency attempts to limit visitor use. Group size limits, restrictions on pack stock use, or campfire closures draw immediate objections.

Wilderness advocates are accustomed to responding to charges from off-road vehicle users, mountain bike riders, ranchers, loggers, and others who complain that wilderness designation restricts their ability to use public lands. Now, the shoe is on the other foot. Many of the groups opposing restrictions on wilderness use are the ones who supported wilderness designation, but are now having difficulty accepting limitations on their own use.

B. Access to Private Inholdings

The Wilderness Act provides that owners of private land within wilderness shall be given "adequate access" or such lands shall be exchanged for lands of equal value.²³ Thus, the Act preserved the agencies' ability to protect the wilderness from projects requiring access that would compromise wilderness character. A 1980 Opinion from the United States Attorney General affirmed that if a private landowner refused an exchange, the government could deny access that was incompatible with preserving wilderness character.²⁴ If, for example, an inholder proposed to build a road to his/her property, the agency could offer to exchange the inholding for lands outside the wilderness. If the offer to exchange was

19. See *Wilderness Watch v. Robertson*, No. 92-0740 (April 16, 1993, D.D.C.).

20. See *Outfitter Policy Act of 1997*, S. 1489, 105th Cong. § 3.

21. See Letter from Darrel L. Kenops, Reviewing Officer for the Chief, U.S. Forest Service, to George Nickas, Executive Director, Wilderness Watch (May 27, 1998) (Discretionary Review of April 13, 1998, Appeal Decision on Sawtooth Wilderness Management Direction) (on file with author). This constitutes the final administrative determination of the Department of Agriculture on 36 C.F.R. 217.17(f) (1998)).

22. See S. 2237, 105th Cong. § 331 (1998); see also 144 CONG. REC. S9965 (daily ed. Sept. 8, 1998) (presentation of Amendment No. 3548 by Sen. Slade Gorton, Wash.).

23. Wilderness Act § 2(a), 16 U.S.C. § 1131(a) (1994).

24. See 43 Op. Att'y Gen. 243, 269 (1980).

rejected, the agency would not be obligated to approve the inholder's requested access. Indeed, the agency would be obligated to deny access if it would impair wilderness character.²⁵

A different interpretation of access rights based on a provision in the Alaska National Interest Lands Conservation Act (ANILCA)²⁶ is now espoused by managing agencies. This new view subscribes to the notion that section 1323 of ANILCA effectively amended the Wilderness Act.²⁷ As a result, federal agencies behave as if they no longer have the option to offer access *or* exchange. Instead, they must guarantee reasonable access even if the access results in harm to the wilderness resource.²⁸ This resulted in recent approvals for vehicle access to a proposed strip mine in the Mt. Nebo Wilderness (Utah), a proposed lodge in the Kalmiopsis Wilderness (Oregon), and to a planned recreation cabin in the South Sierra Wilderness (California). These decisions, while troubling, are just the proverbial tip of the iceberg. The amount of nonfederal land within units of the wilderness system is staggering. There are literally hundreds of inholdings totaling nearly one-half million acres scattered throughout national forest wilderness, while some BLM administered wilderness has nearly as much nonfederal land as public land within their borders. The threat posed by increasing requests for vehicle access is enormous.

C. *Manipulating Ecosystems in Wilderness*

The Wilderness Act defines wilderness "as an area where the earth and its community of life are untrammelled by man . . . retaining its primeval character and influence . . . which is protected and managed so as

25. See *id.* at 265-74.

26. Pub. L. No. 96-487, 94 Stat. 2371 (1980) (codified as amended, in pertinent part, at 16 U.S.C. §§ 3101-3233 (1994)).

27. Section 1323 reads:

(a) Reasonable use and enjoyment of land within boundaries of National Forest System

Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.

(b) Reasonable use and enjoyment of land surrounded by public lands managed by the Secretary

Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of the Interior may prescribe, the Secretary shall provide such access to nonfederally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-82) as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to access across public lands.

ANILCA § 1323(a)-(b), 16 U.S.C. § 3210(a)-(b).

28. See David A. Price, *Wilderness Values and Access Rights: Troubling Statutory Construction Brings the Alaska Lands Act into Play*, 54 U. COLO. L. REV. 593, 602-04 (1983) (discussing ANILCA's section 1323 impacts on wilderness areas).

to preserve its natural conditions."²⁹ Indeed, on the continuum of land protection systems, wilderness has the greatest statutory protection from human influence of all public lands.

One of the public purposes of wilderness areas is their benefit for scientific study, an opportunity to learn how unmodified environments respond to natural conditions. Wilderness represents the "control" in our great experiment called *land management*. The law's intent, however, that natural processes should operate freely and management should be directed toward controlling human impacts rather than natural processes, continues to be a very elusive goal in wilderness ecosystems. In part, this is because virtually no wilderness is immune to outside influences. Even the largest wilderness cannot escape the consequences of disrupted wild-life migration routes, fire suppression, acid rain, or human-caused global climate change.

Thus, the case is often made that some intentional ecological manipulation within wilderness is necessary to offset the unintended consequences of actions outside the area. This point of view suggests that managers are forced to choose either to attempt to create "pristine" conditions (i.e., what these areas would be if there were no internal or external human influence), or to maintain "unmanipulated" conditions (i.e., let natural processes respond to any and all factors which will result in something different than "pristine"), or both.³⁰

A different view suggests that Congress did not set up any such dichotomy. The Act does not mandate a "pristine" condition, rather there is a mandate to allow natural processes to operate freely.³¹ Fire behavior, for example, might be different had fire suppression never been practiced in a particular wilderness or in the surrounding terrain, but by designating an area as wilderness we have decided that from that point forward the natural processes will determine the conditions within that area. Even the effects of outside influences do not alter the basic charge of wilderness managers—that inside the line, natural processes must be allowed to operate without management interference. This recognizes that some unnatural changes will occur. Wilderness, however, must be allowed to respond to the cards it is dealt.

As the debate over the proper role of "management" within wilderness is engaged, there are a number of controversial practices that must be addressed. These ongoing practices all challenge the ideal that wilderness will be "untrammled by man."³²

29. Wilderness Act § 2(c), 16 U.S.C. § 1131(c).

30. See David N. Cole, *Ecological Manipulation in Wilderness—An Emerging Management Dilemma*, 2 INT'L J. WILDERNESS 15, 16–18 (1996).

31. See Bill Worf, *Response to "Ecological Manipulation in Wilderness" by Dr. David N. Cole*, 3 INT'L J. WILDERNESS 30, 31 (1997).

32. Wilderness Act § 2(c), 16 U.S.C. § 1131(c).

1. Introducing Exotic Fish and Wildlife Species

Introducing exotic fish and wildlife species is not a new phenomena. The practice of stocking naturally fishless lakes, for example, dates back over one hundred years in many western high mountain wilderness areas. Indeed, fishing in wilderness remains a popular pursuit and many wilderness visitors first entered the backcountry with a fishing rod in hand.

Fishing's popularity does not change the fact that fish stocking has substantially altered aquatic ecosystems, even in the most remote areas of the forty-eight contiguous states. It is estimated that ninety-five percent of the 16,000 lakes in high mountain regions of the eleven western states were naturally fishless, but ninety-five percent of the lakes deeper than ten feet now contain trout.³³ Recent studies show that fish stocking in the High Sierras contributes to widespread decline in native fish species, dramatic changes in zooplankton and invertebrate species composition, and to the endangerment of the mountain yellow-legged frog.³⁴

Introducing exotic species is not limited to fish. The Utah Division of Wildlife Resources has long been engaged in introducing Rocky Mountain goats into federal wilderness where no evidence exists that goats historically occurred.³⁵

The dubious ecological rationality of these exotic species introductions is generally subordinated to the debate over "states' rights." The Wilderness Act did not alter the jurisdiction or responsibilities of the states or the federal government with respect to fish and wildlife management. Therefore, federal policies managing wilderness so that "the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist"³⁶ are pitted against state wildlife policies emphasizing recreational fishing and hunting opportunities. To date, there is scant evidence that either the Forest Service or the BLM will protect wilderness from the exploitative tendencies of state wildlife departments, or that state agencies intend to modify their management objectives.

2. Exotic Plant Invasions

"Weed" is a term generally used to describe a plant growing in an area where it did not naturally occur. While the introduction of alien

33. See P. Bahls, *The Status of Fish Populations and Management of High Mountain Lakes in the Western United States*, 66 NW. SCIENCE 12, 12 (1992).

34. See Roland A. Knapp, *Non-Native Trout in Natural Lakes of the Sierra Nevada: An Analysis of Their Distribution and Impacts on Native Aquatic Biota*, in SIERRA NEVADA ECOSYSTEM PROJECT: FINAL REPORT TO CONGRESS 363, 372-378 (1996); see also Connie Gill & Kathleen Matthews, *Frogs or Fish???*, FORESTRY RESEARCH W., Aug. 1998, at 1, 1-4.

35. See Dick Carter, *Maintaining Wildlife Naturalness in Wilderness*, 3 INT'L J. WILDERNESS 17, 19 (1997).

36. U.S. FOREST SERV., U.S. DEP'T OF AGRIC., U.S. FOREST SERVICE MANUAL § 2323.31(1) (1990) [hereinafter FSM].

wildlife is often viewed with indifference or sometimes even support by wilderness managers, the spread of weeds is considered a major threat to wilderness ecosystems. Most wilderness administrators and users can agree that the presence of alien plants has and will continue to lead to undesirable affects, but growing conflict over the appropriate response to this threat remains.

Two of the most popular treatments are, on their face, contradictory to the principles of wilderness. They involve the use of herbicides and, increasingly, the use of biological controls (i.e., insects that are themselves alien, but that also inhibit the spread of alien plants). Are the use of poisons and the introduction of alien biological controls appropriate in wilderness? Can the spread of weeds even be controlled? Should natural processes be the force of choice for "managing" alien plants in wilderness? These are important questions that receive only cursory consideration in most weed management programs. In addition to philosophical and legal questions surrounding their use, herbicides are controversial because they impact nontarget species (native plants and animals) and, potentially, human visitors. Biological controls, while sometimes effective, pose serious concerns over whether the alien insects might change host species, thus eliminating native plants as well. When it comes to weeds, whether the cure is worse than the disease will be intensely debated in coming years.

3. Fire Management

Fire has been a major influence for shaping the structure, composition, and function of many wilderness ecosystems, yet it may also be the natural force most manipulated by land managers.³⁷ Fire suppression, the dominant management response for the past century, led to a host of undesirable effects. Fortunately this policy is evolving, albeit slowly, as our view of fire changes from one of a destructive force to one of an essential natural process.

As more is learned about the natural role of fire in maintaining these ecosystems, the tendency for managers to want to manipulate fire to achieve management objectives also grows. This view is strengthened by the recently approved national fire policy, stressing that all natural fires should be controlled unless there is a specific fire management plan in place for the wilderness area and, even then, that natural ignitions will be allowed to burn only under narrowly defined prescriptions.³⁸ While the policy requires a comprehensive plan before natural fires will be allowed to burn, there is no such plan required before administrators engage in a

37. See FROME, *supra* note 10, at xlv-xlvi.

38. See generally NAT'L INTERAGENCY FIRE CTR., WILDLAND FIRE MANAGEMENT POLICY, IMPLEMENTATION PROCEDURE REFERENCE GUIDE (1998).

program of prescribed burns. Fire is destined to become a means to an end, a manipulative tool rather than a natural process in wilderness.

Adding to the difficulty of managing fire within wilderness is that an escaped fire can affect public and private resources outside the wilderness. An important question managers must wrestle with is determining to what degree fire within wilderness will be manipulated in order to protect or serve "outside" interests. Is it appropriate to attempt to suppress a fire that might burn for weeks in a twenty thousand acre wilderness drainage in order to protect a private cabin on a twenty acre inholding? Is it okay to control a fire in wilderness to reduce the likelihood it will burn up an adjacent timber stand, and should it make a difference if the timber stand is on private or public land? What responsibilities, both legal and ethical, do land managers have to protect private interests from natural events? How do those responsibilities stack up against the mandate to administer wilderness as an area *untrammelled* by humans? The Wilderness Act, broadly defined, grants managers a good deal of discretion in responding to fire.³⁹ An approach favoring outside interests will surely result in wilderness ecosystems that are more culturally constructed than natural systems. At the same time, a management approach that favors untrammelled conditions will test the will of managers and the public to live in a *wilder* environment.

D. *Water Impoundments*

It might seem odd to discuss dams in an article dedicated to designated wilderness. After all, the purpose for building a dam is to bring under human control a wild and uncontrolled natural system. "Yet, because there are some 200 dams found in wildernesses across the nation, all built before designation, their management can have profound impacts on the wilderness system and thus requires the closest scrutiny of managers and wilderness advocates alike."⁴⁰ Most of the dams were built at existing lakes to enhance water storage capacity and control the timing of downstream flows.

Creating a reservoir completely alters the existing ecosystem. Upstream migration of fish and other aquatic organisms is blocked. Unnatural water releases impair riparian vegetation and damage stream morphology. Riverine environments are replaced by lacustrine (lake) systems. In short, dams directly contradict the basic ideal of wilderness as places "where the earth and its community of life are untrammelled by man,"⁴¹ even though they are legally permitted as existing private rights.

39. The Wilderness Act states that "such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable." Wilderness Act § 2(d)(1), 16 U.S.C. § 1133(d)(1) (1994).

40. *Tin Cup Dam Disaster*, WILDERNESS WATCHER (Wilderness Watch, Missoula, Mont.), Fall 1997, at 1, 1.

41. Wilderness Act § 2(c), 16 U.S.C. § 1131(c).

Protecting wilderness values is complicated by a host of other concerns that result from the presence of dams. Approval to use motorized equipment for routine maintenance is becoming commonplace. The Tin Cup Dam in the Selway-Bitterroot Wilderness, for example, was maintained with motorized equipment at least six times in the past decade and heavy construction equipment was airlifted to the site twice in the past two years. In 1996, a ten-foot wide, 60,000 pound tracked excavator was driven up a pack trail leading to the Bass Lake Dam in the same wilderness.⁴² Requests for heavy equipment access spread to dams in the High Uintas Wilderness in Utah. In addition to requests for motorized vehicle access and motorized equipment use, many of the water companies also claim private property rights based on a number of antiquated easements and rights-of-way statutes.⁴³ If water interests succeed in their quest to obtain easements and rights-of-way it could seriously erode the ability of managers and the public to safeguard wilderness values.

E. *Grazing by Domestic Livestock*

Many people are surprised to learn that commercial livestock grazing is allowed in wilderness where it was established prior to wilderness designation.⁴⁴ The impacts from grazing on vegetation and soils is well documented, as are the impacts of competition and disease transmission on wildlife. Grazing has been identified as one of the top two management issues by BLM managers.⁴⁵

While allowing for grazing, the Wilderness Act also charges managers with preserving wilderness character. In response to livestock industry concerns that the Forest Service was attempting to phase out livestock grazing in wilderness, Congress, in 1980, drafted new guidelines for grazing management.⁴⁶ These "congressional grazing guidelines" allow livestock operators to construct and maintain facilities (i.e., corrals and fences) not otherwise allowed in wilderness. The guidelines also allow ranchers to use motor vehicles in some situations. In writing the guidelines, however, Congress also made it clear that it was not amending the Wilderness Act. The Act and the clarifying guidelines present a real

42. See FOREST SERV., U.S. DEP'T OF AGRIC., RECORD OF DECISION 1 (1995) (discussing the need to drive heavy equipment up Bass Creek Trail #4 for Bass Lake Dam reconstruction).

43. See, e.g., Federal Land Policy and Management Act of 1976, "Ditch Bill" provision, Pub. L. No. 94-579, § 501, 90 Stat. 2743, 2776 (codified at 43 U.S.C. § 1761(c) (1994)); General Right of Way Act of March 3, 1891, ch. 561, 26 Stat. 1101 (codified at 16 U.S.C. § 471 (1986)) (repealed in part by Pub. L. No. 94-579, 90 Stat. 2793 (1976)); General Mining Act of 1866, ch. 166, § 5, 14 Stat. 86 (codified at 30 U.S.C. § 21 (1994)) (amended by General Mining Act of 1872, ch. 152, § 1, 17 Stat. 91 (codified at 30 U.S.C. §§ 21-54 (1994))).

44. "[T]he grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture." Wilderness Act § 2, 16 U.S.C. § 1133(d)(4)(2).

45. See *Summary*, *supra* note 17, at 1.

46. See FSM, *supra* note 36, § 2323.22.

challenge for managers given that domestic livestock have such an obvious impact on ecological conditions and visitor perceptions. Managers must strive to control grazing impacts so natural vegetative succession is unobstructed, wildlife species composition and populations are determined by natural conditions, and visitors can experience wilderness free of the intrusive evidence of humankind.

F. Aircraft Use

The Wilderness Act gives land managers the discretion to allow aircraft use to continue in those areas where its use was established at the time of wilderness designation. In the forty-eight contiguous states, the use of aircraft is restricted to three wilderness areas.⁴⁷ Where it is allowed, aircraft use has grown to the point that it poses serious impacts to wilderness quality. According to a study on reconstructing a popular flood damaged airstrip in the Frank Church-River of No Return Wilderness, the number of airplane landings has increased significantly in recent years. A full one-third of all landings there are for pilot training, "touch and goes," or "bagging an airstrip."⁴⁸ This begs the questions whether these are wilderness dependent activities and whether their continuance runs counter to the agency's charge to protect wilderness character.

Because federal land managers do not control the airspace over wilderness, flightseeing and other aircraft overflights present a particularly perplexing issue. Many of our nation's premier wildernesses and national parks are experiencing an increase in overflights and flightseeing. Ironically, when federal officials restricted overflights of the Grand Canyon, many of the planes were rerouted over the nearby Saddle Mountain Wilderness on the Kaibab National Forest. Restrictions proposed for Rocky Mountain National Park caused Forest Service officials to petition the Federal Aviation Administration (FAA) to restrict overflights of the adjacent Indian Peaks Wilderness. Flightseeing over Glacier National Park has expanded to include the Bob Marshall, Scapegoat, and Great Bear Wilderness. Controlling the impacts of aircraft use on wilderness will require a coordinated and cooperative approach between wilderness managers and the FAA.

Special provisions in ANILCA allow for a great deal of aircraft use in Alaska wilderness. Even there, the aircraft industry is not satisfied with its special privilege; efforts are underway to expand the types of aircraft use allowed. In the spring of 1996, the Forest Service released a proposal to

47. The three wilderness areas allowing aircraft use are the Great Bear Wilderness, Selway-Bitterroot Wilderness, and Frank Church-River of No Return Wilderness. See Shannon S. Meyer, *Wilderness Airstrips: A Case Study for Using Legislative History to Inform Wilderness Management* 50 (1998) (unpublished Master's thesis, University of Montana (Missoula)) (on file with author).

48. FOREST SERV., U.S. DEP'T OF AGRIC., ENVIRONMENTAL ASSESSMENT 30 (1997) (Repair of Cabin Creek Airstrip, Payette National Forest, McCall, Idaho).

establish 129 helicopter landing zones in twelve wilderness areas in the Tongass National Forest.⁴⁹ The proposal met a storm of public opposition, eventually causing the Regional Forester for Alaska to rule against the helicopter plan. Not to be dissuaded, the helicopter tourism industry succeeded in getting two U.S. senators to introduce legislation that would authorize helicopter use throughout all wilderness in that state.⁵⁰

II. WILDERNESS LEGISLATION: LOSING GROUND

From 1964 until 1994, wilderness legislation was of a singular bent—adding areas and acreage to the wilderness system. It was wildly successful as evidenced by the eleven-fold increase in wilderness acres over thirty years.⁵¹ Equally important, the Wilderness Act itself remained virtually inviolate as the system grew.

The elections in the fall of 1994 caused a sea-change in wilderness politics. No longer were wilderness champions in Congress controlling the legislative debate. Instead, the new leaders controlling key natural resource committees were folks whose conservation voting records, on a scale of one hundred, generally register in the single digits. Bipartisanship, a hallmark of early wilderness legislation, seemed dead. This was an interesting turn for wilderness politics given that it was a Republican, Representative John Saylor, who sponsored the original wilderness bill and was its champion in the House of Representatives, and a Democrat, Senator Hubert Humphrey, who introduced the first Senate bill.⁵² In fact, the 1964 Wilderness Act enjoyed nearly unanimous bipartisan support, passing the House with only one negative vote.⁵³

Antiwilderness legislation in both the 104th and 105th Congresses has attempted to either weaken protection for individual wilderness areas or reduce wilderness protection as a whole. To be sure, no one has yet tried to “undesignate” a wilderness, nor has anyone explicitly stated their intention to amend the Wilderness Act. In the words of a top Department of Agriculture official, however, the cumulative effect of various bills now debated in Congress “represent[s] an assault on the Wilderness Act [and] on long-standing wilderness management policy.”⁵⁴

49. See FOREST SERV., U.S. DEP'T OF AGRIC., DRAFT ENVIRONMENTAL IMPACT STATEMENT 21 (1996) (Helicopter Landings in Wilderness, Alaska Region, Tongass National Forest).

50. See S. 967, 105th Cong. § 13(5) (1997) (introduced by Sens. Frank H. Murkowski and Ted Stevens, Alaska). This amendment would add the following provision to section 1315 of ANILCA: “Within National Forest Wilderness Areas . . . as designated in this and subsequent Acts, the Secretary of Agriculture may permit or otherwise regulate helicopter use and landings, except that he shall allow for helicopter use and landings in emergency situations where human life or health are in danger.” *Id.*

51. Cf. LANDRES & MEYER, *supra* note 2, at 1.

52. See *id.* at 139.

53. See 20 CONG. Q. ALMANAC 485, 491 (1964).

54. Memorandum from James R. Lyons, Under Secretary, Natural Resources and Environment, to Mike Dombeck, Forest Service Chief (Aug. 14, 1998) (on file with author).

The Boundary Waters Canoe Area Wilderness is the first casualty of this new brand of legislation. For nearly four years, bills were debated and beaten back that would have allowed trucks to haul boats across three wilderness portage trails and would have repealed the phase-out of motorboats on wilderness lakes. Eventually, a scaled-back version of the portage bill was attached as a "rider" to a conference report on a federal transportation bill, and the proponents of greater motorized access to wilderness areas counted their first legislative coup.⁵⁵

The next blow is likely to fall on the Emigrant Wilderness, located on the northern boundary of Yosemite National Park. Legislation passed the House allowing the reconstruction and maintenance of eighteen rock and mortar dams constructed between 1920 and 1951.⁵⁶ The bill's sponsor claims it was the intent of Congress for the dams to be maintained for their fishery and cultural values.⁵⁷ Senator Alan Cranston, who sponsored legislation to designate the Emigrant Wilderness, refuted these claims.⁵⁸ Despite Cranston's and environmentalists' protests, the Emigrant bill stands on the verge of passing.

Other bills could dramatically alter the balance between the use of wilderness and the protection of wilderness character. The Outfitter Policy Act of 1997⁵⁹ seeks to overturn court rulings and long established agency policies that found that permanent structures used by commercial outfitters violate the Wilderness Act. The bill would grant commercial outfitters the right to construct private camps with permanent structures (lodging, water systems, livestock-handling, etc.) and would also allow for traditional modes of transport, which in many areas could include aircraft and motorboats.

Numerous provisions were also attached to Interior and Transportation appropriations bills in the 105th Congress. These so called "riders" include a provision that would overturn a recent Forest Service decision banning the installation of permanent anchors for climbing,⁶⁰ because the anchors violate the Act's prohibition on installations.⁶¹ Another special provision would authorize helicopter landings for tourism in wilderness throughout Alaska.⁶² A third rider would authorize constructing a seven-

55. For an extensive discussion of the caselaw and legislative activity surrounding the Boundary Waters Canoe Area Wilderness, see Richard A. Duncan & Kevin Proescholdt, *Protecting the Boundary Waters Canoe Area Wilderness: Litigation and Legislation*, 76 DENV. U. L. REV. 621 (1999).

56. See H.R. 1663, 105th Cong. (1997).

57. See Letter from Rep. John T. Doolittle, to Sen. Dianne Feinstein (Feb. 23, 1998) (on file with author).

58. See Letter from Sen. Alan Cranston, to Sen. Dianne Feinstein (Nov. 3, 1997) (on file with author).

59. S. 1489, 105th Cong. (1997).

60. See S. 2237, 105th Cong. § 331 (1998); see also 144 CONG. REC. S9965 (daily ed. Sept. 8, 1998) (presentation of Amendment No. 3548 by Sen. Slade Gorton, Wash.).

61. See Wilderness Act § 2(c), 16 U.S.C. § 1133(c) (1994).

62. See S. 967, 105th Cong. § 13(5) (1997); see also *supra* note 50 and accompanying text.

mile road through the Izembek National Wildlife Refuge Wilderness, a 300,000 acre area near the tip of the Aleutian Chain.⁶³ And yet another special provision added to the Interior Appropriations bill expresses congressional dismay that the Forest Service considers providing "opportunities for solitude"⁶⁴ to be an important component of wilderness planning and administration. The congressional committee's direction attempts to overturn three decades of wilderness regulations recognizing solitude as a critical element for realizing the benefits of wilderness.

While most of the public lands environmental community focuses its efforts on protecting roadless wildlands and pushing legislation to enlarge the NWPS, Congress has turned its attention toward undoing the gains of the past. The Boundary Waters bill represented the first time that protection afforded a designated wilderness area was relaxed; the Emigrant dams bill may be the second. Whereas for the first thirty years, conservationists focused almost singularly on building a larger wilderness system, the new reality is that we are at risk of losing what we have created.

CONCLUSION

In 1964, the American people embarked on a mission to protect for all time what remained of the vanishing North American wilderness. The starting point for that mission was the Wilderness Act, and over the next three decades the journey gained tremendous momentum, reaching goals beyond its originators' wildest dreams. Designating wilderness, however, is only the first step toward its long-term protection. The demands on our wilderness system are growing and so, too, are the threats.

More people are seeking a wilderness experience each year. Commercial interests demand exceptions for livestock grazing, water developments, recreation structures, and aircraft use. Wilderness administrators search for opportunities to manipulate wilderness ecosystems, convinced they know how wild nature should behave. Private landowners demand motor vehicle access across wilderness to reach their lands. Add them all up and wilderness might not look much like wilderness anymore.

In his preface to the 1997 reissuance of *Battle for the Wilderness*, Michael Frome quotes Max Peterson, former Chief of the Forest Service, who sums up the challenge this way:

We have to ask very hard questions . . . and be quite conservative in allowing entries into wilderness which, one at a time, don't seem to bring much impact; but when I add those up over my short career of 35 years, I wonder where the wilderness will be 35 years from now if the door is opened to making those exceptions.⁶⁵

63. See S. 2237, 105th Cong. § 126.

64. See FSM, *supra* note 36, § 2320.1(1).

65. FROME, *supra* note 10, at xxxviii.

Amidst this landscape of challenges, is there reason for hope? I believe there is. Public support for wilderness protection is as strong as ever and a recent survey indicates wilderness visitors support stronger safeguards than in the past. Two recent appeal decisions by the Chief of the Forest Service—one banning permanent climbing anchors and the other keeping helicopters out of wilderness in Alaska—makes me think that the Forest Service may be ready to reassert leadership in managing wilderness use. In the end, however, just as it took citizen activism to build the wilderness system, it will take even greater citizen support to ensure that wilderness endures. The next thirty-five years will determine if we are up to the task.

