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McCabe: A Wilderness Primer
A WILDERNESS PRIMER

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I. INTRODUCTION

Montana is one of the last states in the continental United States containing the most essential ingredient to a terrestrial frontier, Wilderness Country. Here and there, usually in mountainous terrain, are areas which roughly approximate in condition, the West as Lewis and Clark saw it. Frontier and wilderness have haunted American development from the beginning. As the frontier and the wilderness have resisted our systematic intrusions into them, so have we disliked and feared them. Some of our most violent history has been the result. At the same time, wilderness and frontier have caught our imaginations, kindling a love and fervor for the land unparalleled elsewhere on earth. Our attitudes toward the land have been and are at once constructive-destructive, and certainly almost never consistent. Now the frontier and the wilderness exist as scattered, unrelated Vestiges in Montana and a few other western states.¹ The areas left exist mostly upon the federal public domain.² Therefore, Montana and its companion western states are the locations for the last collision of our constructive-destructive impulses. Upon these locations the contradiction in attitude is to be finally resolved. The following is a brief progress report concerning this struggle.

II. AMERICA AND THE PUBLIC DOMAIN

The federal public domain in American history has been the source of American economic development. All lands brought within the boundaries of the United States except the original thirteen colonies, Kentucky, Tennessee, Texas, and some smaller areas reserved in the deeds of cession were once part of the public domain.³ The nucleus of the original public domain was the land west of the original thirteen colonies claimed by them under their original charters and through other claims of right.⁴ This land was ceded to the United States in a series of acts *within* the states between 1781 and 1802.⁵ The cessions

¹Study Report 3 OUTDOOR RECREATION RESOURCES REVIEW COMMISSION (ORRRC), WILDERNESS AND RECREATION—A REPORT ON RESOURCES, VALUES, AND PROBLEMS 5 (1962).

²*Id.*

³HIBBARD, PUBLIC LAND POLICIES 7, 8 (1965).

⁴*Id.*

⁵*Id.* at 9.

comprised an area of approximately 221,987,787 acres.⁶ To this nucleus were added over time, the Louisiana Purchase, the Florida Purchase, the acquisition of the Oregon territory, the acquisition of California and related territories, the Gadsen Purchase, and the Alaska Purchase.⁷ Some land was added in the annexation of Texas, but Texas itself became part of the Union as a state.⁸ Its unappropriated lands were state lands.⁹ This phenomenal land area, comprising about 84% of the current total land area of the United States, was all at one time public domain.¹⁰

Congress early adopted as its policy, disposal of this public land into private ownership.¹¹ As a policy, disposal of the public domain predated the Constitution.¹² The first ordinance pertaining to the sale of public domain was passed in 1784.¹³ For almost 100 years thereafter little or no thought was given to retention of any of the public domain in public ownership.¹⁴ It was early hoped that the United States treasury might profit from the sale of the lands of the United States, but experience proved this hope to be illusory.¹⁵ The land was thereafter sold or given away without regard for the revenues produced.¹⁶ From these very early ordinances through the various homestead acts to the phenomenal school and railroad land grants, the United States markedly dispossessed itself of its land holdings.¹⁷

This land is the source of the American abundance and the American dream as that dream is an economic one. The land and its resources permitted a man on short capital to take large risks in investment with a reasonable chance for success. The western railroad and mining magnates were the predominant symbols of the men who took advantage of the public domain and who subsequently prospered. Taking from the public domain for private gain became an American habit, and in our mercantile and industrial culture almost a private right.

In the latter part of the nineteenth century, the policy of disposal became increasingly disfavored.¹⁸ As the frontier diminished and became settled, the demand for land changed and some desire for retention of public lands was expressed.¹⁹ In 1872, Yellowstone Park was set aside.²⁰ Then, in 1890 Yosemite National Park was reserved from dis-

⁶*Id.* at 13.

⁷*Id.* at 14, 17, 18-23.

⁸*Id.*

⁹*Id.*

¹⁰*Id.* at 31.

¹¹*Id.* at 35, 36; ROBBINS, *OUR LANDED HERITAGE* 8 (1942).

¹²HIBBARD, *supra* note 3 at 35, 36.

¹³*Id.*

¹⁴ROBBINS, *supra* note 11 at 290-98.

¹⁵HIBBARD, *supra* note 3 at 67-69, 75-80, 89-91, 97-99.

¹⁶*Id.*

¹⁷*Id.* at 570.

¹⁸ROBBINS, *supra* note 11 at 290-98; HIBBARD, *supra* note 3 at 472-75.

¹⁹*Id.*

²⁰NASH, *WILDERNESS AND THE AMERICAN MIND* 112 (1967); 16 U.S.C. § 21.

posal.²¹ In 1891, the first forest reserve act was passed, laying the groundwork for the development of our present National Forest system.²² The 1872 mining laws were revised so that certain minerals were no longer discoverable.²³ Fossil fuel areas on the public domain were made available for lease rather than outright disposal.²⁴ Other reservations of public land were enacted.²⁵ Over a period of years disposal as a policy was largely reversed.

Despite this reversal in the policy of disposal, the uses to which the public lands were put did not change materially. In most instances, while the land was retained in federal ownership, the resources contained in the land were made available for disposal.²⁶ National Forests provided timber for the lumber industry.²⁷ Oil and coal were available on public lands for private development.²⁸ The land as a source of abundance and wealth for entrepreneurial purposes remained relatively undisturbed.

Americans have viewed their land almost solely as a source of wealth. The abundance in the land and the abundance of land had a good deal to do with the shaping of the American character, as that character is particularly concerned with production and acquisition.²⁹ Other attributes of the land have been thrust traditionally into very minor roles in the shaping of the American "land ethic."

As with the development of any national policy or of any national attitude, there is neither evenness of development nor total consensus. Although Americans have largely looked to the public domain as a source of wealth, a counterculture developed paralleling the dominant culture.³⁰ Land has had broader significance within this counterculture.³¹ The members of the counterculture are best identified as the wilderness advocates. The counterculture appears first in the development of the Romantic movement in America as it was translated from its European sources.³² Prominent literary figures of the 19th century began to visit the American wilderness and to write of its beauty and spiritual virtues.³³ From a literary movement it has developed into an influential force in the shaping of national land policies.³⁴ Three figures dominate it in the time it has progressed from a literary movement into a policy influencing force. These men are Henry David Thoreau, John Muir, and Aldo Leopold.

²¹16 U.S.C. § 41.

²²26 Stat. 1103.

²³30 U.S.C. §§ 181, 182.

²⁴*Id.*

²⁵HIBBARD, *supra* note 3 at 536.

²⁶16 U.S.C. § 476; 16 U.S.C. §§ 601, 602; 30 U.S.C. §§ 181, 182.

²⁷16 U.S.C. § 476.

²⁸30 U.S.C. §§ 181, 182.

²⁹For a complete exploration of this proposition, POTTER, *PEOPLE OF PLENTY* (1954).

³⁰³¹NASH, *supra* note 20.

³²³³*Id.* at 45-49, 74-78, 84-87.

Thoreau laid the basic intellectual foundations for the development of the counterculture. He was part of a group known as the Transcendentalists.³⁵ Core to transcendentalist thinking was the principle that a parallel realm of higher spiritual truth accompanied the material realm of man.³⁶ By reflection upon material existence, one could transcend it into the more exalted spiritual plane.³⁷ Nature in its untrammelled state was considered the most fruitful source for the transcending experience.³⁸ Mercantile man was viewed as adhering most closely to a distinctly lower material existence.³⁹

Thoreau was the most forceful exponent of nature as the principal source of divine experience, "man cannot afford to be a naturalist to look at nature directly. . . . He must look through and beyond her."⁴⁰ In this vein, he became the leading spokesman for wildness:⁴¹

Let me live where I will, on this side is the city, on that the wilderness, and ever I am leaving the city more and more, and withdrawing into the wilderness. . . . in wildness is the preservation of the world.

His popular works are all of this spirit. In writing of a boat trip on the Concord River he noted:⁴²

Everyone finds by his own experience, as well as in history, that the era in which men cultivate the apple, and the amenities of the garden, is essentially different from that of the hunter and forest life, and neither can displace the other without loss. We have all had our daydreams, as well as more prophetic nocturnal vision; but as for farming, I am convinced that my genius dates from an older era than agricultural. I would at least strike my spade into the earth with such careless freedom but accuracy as the woodpecker his bill into a tree. There is in my nature, methinks, a singular yearning toward all wildness. I know of no redeeming qualities in myself but a sincere love for some things, and when I am reproved I fall back on to this ground. What have I to do with ploughs?

In this same book is a short sentence which most accurately exemplifies the direction of Thoreau's thought, "The Nashua, which is one of the largest tributaries, flows from Wachusett Mountain, through Lancaster, Groton, and other towns, where it has formed well-known elm-shaded meadows, but near its mouth it is obstructed by falls and factories, and did not tempt us to explore it."⁴³

Walden is Thoreau's most popular work.⁴⁴ It is the record of his retreat from a busier society to his hand-built cabin on the shore of Walden Pond.⁴⁵ We retain his retreat today in our intellectual tradition as the culture's most prominent symbol of protest to a commercial existence.⁴⁶ In his opening chapter on Economy, he tells us how little we really need in the way of shelter, clothing, and nourishment.⁴⁷ Once these basic needs are satisfied, further acquisition of material goods is

^{35,36}*Id.* at 45-49, 74-78, 84-87.

⁴⁰THOREAU, *THE JOURNALS OF HENRY DAVID THOREAU* 45 (1906).

⁴¹THOREAU, *THE WRITINGS OF HENRY DAVID THOREAU* 267, 275 (1893).

⁴²THOREAU, *A WEEK ON THE CONCORD AND MERRIMACK RIVERS* 55 (1961 printing).

⁴³*Id.* at 142.

^{44,46}THOREAU, *THE WALDEN* (1962 printing).

^{47,48}*Id.* at 1-58.

to Thoreau superfluous.⁴⁸ The chapter is a telling critique of life devoted to the pursuit of material luxury. Rather, he urges us to seek wisdom in the untrammelled portions of nature.⁴⁹ Walden reflects the counterculture at its origins, and provides its intellectual underpinnings.

John Muir's life overlapped Thoreau's, and his influence may be seen as an extension of the work Thoreau had begun.⁵⁰ Muir was of poor Scotch ancestry.⁵¹ He early distinguished himself as an inventor of machine tools.⁵² He did not have much formal education, but his talents led him to the University of Wisconsin.⁵³ There botany and transcendentalism siezed his interest in almost equal proportions.⁵⁴ He did not obtain a degree at the university, but responded to a restlessness in his nature by walking from Wisconsin to Florida, "botanizing" all along the way.⁵⁵ He was unable to carry out an original plan to go as far as South America to continue his walk into the Orinoco Plain.⁵⁶ Instead, he booked passage to San Francisco.⁵⁷ From there he pressed his wanderings into the Sierras which were to become his home country.⁵⁸

The counterculture, as the frontier waned and civilization spread out, attracted more and more people.⁵⁹ Muir published records of his wanderings, and these became minor best sellers.⁶⁰ On the whole, his publications were transcendental in nature.⁶¹ Muir wrote with less of Thoreau's introspection and spare analysis, but with a greater primitive enthusiasm. Wildness with Muir took on a distinctly mystical, panthiestic face, which helped Muir to become an attractive literary figure.⁶² Muir's contact also was with real wilderness, the *Sierra, Alaska*.⁶³ His country was more authentically wild than Walden Pond. There was more to capture the imagination of a civilized populace. Muir was thus a more robust figure than Thoreau ever was, and the robustness in his writing and in the country he described added to his appeal.

All of this placed Muir in a position to promote and lead an active, wilderness preservation movement. Muir in his wanderings became aware that wilderness was diminishing rapidly.⁶⁴ He began to advocate in print that the King's Canyon section of the Sierras be reserved as wilderness.⁶⁵ Shortly thereafter, in collaboration with Century Magazine and its editor, Muir proposed the same treatment for the Yosemite Valley.⁶⁶ "Century" and Muir lobbied for the creation of the Park.⁶⁷ Their efforts succeeded, for the public accepted the idea.⁶⁸ Yosemite shortly thereafter became a national park.⁶⁹

^{47, 48}*Id.* at 1-58.

⁵⁰NASH, *supra* note 20 at 125.

^{51, 54}*Id.* at 123-24.

⁵²MUIR, A THOUSAND-MILE WALK TO THE GULF 1-2 (1916).

⁵³*Id.* at 169.

⁵⁷*Id.* at 170-72, 186-88.

⁵⁸*Id.* at 188-212.

⁵⁹NASH, *supra* note 20 at 143.

⁶⁰*Id.* at 128-30.

^{61, 69}*Id.* at 125-28.

^{61, 70}*Id.* at 130-33.

These initial efforts attracted to Muir others concerned with diminishing wilderness. In 1892, in San Francisco, Muir and other wilderness advocates formed the Sierra Club for the purpose of preserving the Sierras in their natural state.⁷⁰ The counterculture was indeed coming alive as an active wilderness movement.

Muir's influence in his own lifetime probably attained its height in what was a defeat for the advocates of wilderness preservation. San Francisco experienced severe water shortages in 1907.⁷¹ The most logical site for a reservoir was the Hetch Hetchy valley within the confines of Yosemite National Park.⁷² The proposal for a dam at Hetch Hetchy immediately created a powerful issue for Muir and the wilderness advocates.⁷³ They made the question of Hetch Hetchy a national issue.⁷⁴ From this controversy wilderness advocates would emerge with new unity.⁷⁵ Efforts were coordinated to block the passage of the Hetch Hetchy bill in Congress.⁷⁶ Wilderness advocates from the entire country deluged Congress with letters in opposition.⁷⁷ Congress passed the bill, and Hetch Hetchy was built.⁷⁸ However, the wilderness movement was immeasurably strengthened, and it would from then on be a force in the formulation of national land policy.⁷⁹

Muir had added to his literary influence, a talent for organization and political activism. This was a step beyond Thoreau. In a lifespan overlapping Muir's, as Muir's overlapped Thoreau's, was that of Aldo Leopold.⁸⁰ Leopold added to literary and political talent an exceptional scientific mind. His scientific acumen prepared the wilderness movement for the twentieth century.

Leopold, by any estimation, was one of our great pioneer ecologists.⁸¹ He was one of the first to discover how complex and interdependent are the various and diverse forms of life.⁸² He noted that men over time have subjected this complexity and interdependence to a series of traumatic interruptions.⁸³ Such interruptions were impairing processes that had evolved over even longer periods of time.⁸⁴ He postulated that these interdependencies are exceedingly important because life at any level in a given set of interdependent lives sustains life at all levels.⁸⁵ Successive interruptions then, he felt, created simplification of life pro-

^{64.}⁷⁰*Id.* at 130-33.

^{71.}⁷²*Id.* at 161.

^{73.}⁷⁴*Id.* at 162-63.

^{75.}⁷⁷*Id.* at 176, 180.

⁷⁶*Id.* at 178.

⁷⁷*Id.* at 180.

^{80.}⁸¹*Id.* at 182.

⁸²LEOPOLD, *The Land Ethic* in SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE 214-15 (1949).

⁸³*Id.* at 217-18.

⁸⁴*Id.* at 217-20.

⁸⁵*Id.* at 216.

cesses and the constant danger that life itself would be irreversibly damaged.⁸⁶ Man, as a living species, then was risking his own survival.⁸⁷

Leopold also pointed out the direct relationship between diversity of habitat and diversity of human culture.⁸⁸ He viewed the constant movement towards a world-wide human monoculture as inimical to the quality of human existence.⁸⁹ The danger he found in the civilizing processes thus had both biological and social implications. Wilderness or untrammled country is important in his writings both as area for the continuity of essential biological diversities, and for man as a relief from his own standardization of human existence.⁹⁰ What Muir and Thoreau had been saying about nature then began to make scientific sense. Scientific data started to accumulate in support of the wilderness movement.

Aldo Leopold was a graduate of the Yale Forestry School.⁹¹ Upon graduation he was sent to New Mexico as a Forest Assistant with the U. S. Forest Service.⁹² There he became early recognized for his efforts in behalf of wildlife conservation.⁹³ In that period of his life he advocated that the Gila National Forest be reserved as a roadless area of wilderness.⁹⁴ Ultimately, his advocacy bore fruit, and his supervisor set a large part of the Gila National Forest aside as wilderness.⁹⁵ This action provided a precedent for other regions. Under Leopold's influence, the Forest Service stirred to develop a wilderness policy. The agency finally promulgated the L-20 regulations which permitted designation of primitive areas throughout the National Forest system.⁹⁶ The L-20 regulations opened a new era for wilderness preservation. From then on wilderness preservation would have a continuing place in federal land policies, no matter what else would be done with federal lands.

III. THE COMPONENTS OF MODERN WILDERNESS

When the L-20 regulations were promulgated, most of the public domain was gone.⁹⁷ The remainder was being used at a rapid rate for disposal of the resources contained.⁹⁸ There was very little untrammled land left in the continental United States.⁹⁹ Even the more wilderness-like areas exhibited the effects of some human usage.¹⁰⁰ This was no longer the land that Lewis and Clark had penetrated. Rather than vast

⁸⁶*Id.* at 217.

⁸⁷*Id.*

^{88, 89}LEOPOLD, *Wilderness in SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE* 188 (1949).

^{91, 92}NASH, *supra* note 20 at 183.

⁹³*Id.* at 184-85.

^{94, 95}*Id.* at 186-87.

⁹⁶*Id.* at 192.

⁹⁷HIBBARD, *supra* note 3 at 570.

⁹⁸CLAWSON AND HELD, *THE FEDERAL LANDS* 57-60, 62-68, 80, 84-88, 94-101 (1957).

⁹⁹ORRRC, *supra* note 1.

¹⁰⁰*Id.* at 9, 16, 27.

areas of an unknown, dangerous country, the untrammelled lands left were islands in the general sea of settlement.

There were no more pioneers either, and wilderness had importance to people as a place to spend leisure time. The intent of the L-20 regulations and all subsequent developments, therefore, have been to preserve to the American people some areas in which recreational time may be spent simulating a few of the experiences common to the original pioneers in the great American wilderness.¹⁰¹ The recreational component of wilderness policy predominates all others.

Certain qualities have been held in this context to be important in the development of the wilderness concept. The land must be virtually uninhabited.¹⁰² It must be desolate, and the area must be vast.¹⁰³ If a body of land can be described as uninhabited, desolate, and vast, within it assumedly a wilderness experience may be achieved. The varieties of definitions which have been proposed and/or enacted have struggled with finding these values in the American landscape, given the negligible availability of land left for the achievement of a wilderness experience.

Initial attempts at identifying the type of country suitable as wilderness were quite primitive and grandiose in conception. In 1921, Aldo Leopold suggested setting aside 500,000 roadless acres in each western state.¹⁰⁴ L. F. Kneipp, the Assistant Chief of the Forest Service responsible for the adoption of the L-20 regulation, initially suggested as a definition any roadless tract not less than 230,400 acres.¹⁰⁵ Bob Marshall, in 1936, prepared an inventory of opportunities for wilderness preservation.¹⁰⁶ His criteria were roadless areas of a minimum of 500,000 acres for arid-semiarid land, and 300,000 acres for forest and mountain terrain.¹⁰⁷

The L-20 regulation was less than succinct in establishing any standards for wilderness.¹⁰⁸ It simply stated that:¹⁰⁹

The Chief of the Forest Service shall determine, define, and permanently record . . . a series of areas to be known as primitive areas, and within which, to the extent of the Department's authority, will be maintained primitive conditions of environment, transportation, habitation, and subsistence, with a view to conserving the value of such areas for purposes of public education, inspiration, and recreation.

There was little consideration given to possible incompatible uses.¹¹⁰ Within primitive areas other uses were permitted, including timber cutting, forage and grazing, and water resource development for industrial use.¹¹¹ It became evident after a time that the L-20 regulation could not protect wilderness values in the face of competing uses, and that further specification of standards was necessary.

^{101, 108}*Id.* at 29.

^{104, 107}*Id.* at 18-19.

^{106, 111}*Id.* at 20-21.

Amendments to the original L-20 regulation were established. A greater effort was made to define wilderness in what became the so-called U-regulations.¹¹² This was a more sophisticated effort at determining the qualities essential to the wilderness experience. Among other things, these regulations specified some incompatible, prohibited uses.¹¹³

Under U-1, the Chief of the Forest Service could designate single tracts of not less than 100,000 acres in the National Forests as "wilderness."¹¹⁴ Such areas had to be roadless.¹¹⁵ Commercial timber cutting, occupancy for special use permits, airplanes, and motorboats were prohibited.¹¹⁶ The U-2 regulation permitted the designation of "wild areas" on continuous tracts of 5,000 to 100,000 acres.¹¹⁷ Other than the size difference, the "wild area" was identical to the "wilderness" area, and was managed in the same fashion.¹¹⁸ Also in the U regulations was provision for "recreation areas" on tracts of land suitable principally for recreation uses.¹¹⁹ The management standards for "recreation areas" were less rigorous than for either "wild areas" or "wilderness."¹²⁰

The progress in these efforts at definition indicates the varying perceptions of the kind of land area which can provide a wilderness experience. It also indicates the magnitude of the problem when a wilderness preservation effort struggles with competing uses. In the formative stage, advocates simply thought in terms of large roadless areas. As they became aware of how quickly the quality and quantity of suitable land was shrinking, their perceptions changed. Where once they thought in terms of 500,000 acre tracts, before long they were willing to accept areas of at least 5,000 acres in size. How vast is vast? It all depends on how much land there actually is. Too, they ultimately had to take into account the prohibition of certain competing uses. This too reflects their perception of the shrinkage of suitable areas. To retain wilderness, further encroachments had to be discontinued.

Under the U regulations reclassification of all primitive areas as designated under the L-20 regulations was undertaken.¹²¹ The reclassification was never completed due to a number of factors.¹²² Not the least of these was the advent of World War II which changed national priorities with respect to public land just as it did with most other national concerns.¹²³ After the war and because of the inadequacies of the existing regulations, the wilderness advocates began to appeal to Congress for a legislative mandate for wilderness.¹²⁴ Another factor in this phase of the movement was the fact that much public land was managed by the Department of Interior.¹²⁵ It had made no effort internally to preserve any of its lands as wilderness.¹²⁶ Howard Zahneiser,

^{112,120}36 C.F.R. § 251. 20-22 (Sept. 19, 1939).

^{121,122}ORRRC, *supra* note 1 at 22.

¹²¹NASH, *supra* note 20 at 220-24.

¹²³ORRRC, *supra* note 1 at 6.

¹²⁶*Id.* at 19-20.

then president of the Wilderness Society, initiated this phase of the wilderness movement.¹²⁷

Recreation was becoming important in a booming America.¹²⁸ So was enthusiasm for the outdoors.¹²⁹ In an effort to assess these recreational desires, Congress created the Outdoor Recreation Resources Research Council (ORRRC).¹³⁰ Among the studies done under the auspices of the ORRRC was one completed by the Wildland Research Center of the University of California at Berkeley, entitled *Wilderness and Recreation—A Report on Resources, Values, and Problems*.¹³¹ It made a serious attempt to come to grips with the wilderness concept and to provide a meaningful definition.

The definition which the Wildlands Research Center proposed was an interesting elaboration upon past efforts:¹³²

A wilderness tract is defined as an area of public or Indian land available for overnight recreation use within the contiguous United States (1) at least 100,000 acres in extent, (2) containing no roads usable by the public, (3) within a reasonably unified boundary configuration, and (4) showing no significant ecological disturbance from on-site human activity—except that domestic livestock grazing is an accepted disturbance in the West and early day logging is accepted for eastern tracts.

The effects of fire suppression were also deemed acceptable.¹³³ The Center chose 100,000 acres because it provided "maximum opportunity for maintaining relatively undisturbed biologic conditions and ecologic interaction free from influence of peripheral developments and activities."¹³⁴ This inserts some new factors in considering the question of vastness. The area will have to be big enough to be insulated from ecologic disturbance outside its boundaries. The 100,000 acre figure is also simply an effort to arrive at a round figure somewhat relatable to past activities of the Forest Service.¹³⁵

Much more is specified in this definition than in any past definition considered. New content is given the concepts of desolation and lack of human habitation. As before, the definition specifies that no roads shall enter such an area; but for the first time, all factors are related to "significant ecological disturbance" from human activity.¹³⁶ The amount and quality of human disruption of the ecology will be the ultimate test. Two significant exceptions are made to the test of disruptive human activity.¹³⁷ These are livestock grazing in the West and old logging in the East.¹³⁸ Without these exceptions, very little wilderness would have been possible in the United States.¹³⁹ This is a reflection of the pervasiveness of human influence in the United States. Almost no western land remains ungrazed.¹⁴⁰ Almost no eastern forest

¹²⁷NASH, *supra* note 20 at 220-24.

¹²⁸CLAWSON, LAND AND WATER FOR RECREATION 2-5 (1963).

¹²⁹*Id.* at 7-9.

¹³⁰¹³¹ORRRC, *supra* note 1.

¹³²*Id.* at 3-4.

remains uncut.¹⁴¹ The exceptions also reflect a value judgment that these particular human activities are not sufficiently disruptive, if the land is allowed to recover from them, to defeat a wilderness experience. One must also note the concept of overnight usage in the definition.¹⁴² The proper wilderness experience has to include overnight camping away from roads as a minimum.

The report issued in 1962, is an obvious effort to compromise competing interests. There is little question that it had a large effect upon the development of wilderness legislation.¹⁴³ At that time, bills for wilderness had already been presented to Congress.¹⁴⁴ Congress acted finally in 1964.¹⁴⁵ The bill provided new heights of protection for wilderness country. This legislation did not go unopposed.¹⁴⁶ The opposition of mineral interests was particularly bitter.¹⁴⁷ Before the bill passed several significant compromises were necessary.

Congress, as a lasting tribute to the influence of the wilderness movement, stated:¹⁴⁸

In order to assure that an increasing population accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.

Of most interest here is the definition of wilderness:¹⁴⁹

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.

An area of wilderness is further defined to mean in this chapter an area of undeveloped federal land retaining its primeval character and influence without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least 5,000 acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Wilderness is first defined generally—simply as a contrast to areas in which man's works predominate.¹⁵⁰ A wilderness must be an area "untrammelled" by man, in which man appears as a mere visitor.¹⁵¹

The emphasis is upon the quality and quantity of human disturbance. The ecologic concerns first voiced in the Wildland Research Center's

^{142, 143}*Id.* at 3-4.

¹⁴⁰ORRRC, *supra* note 1.

^{144, 147}NASH, *supra* note 20 at 220-24.

^{145, 148}16 U.S.C. § 1131.

definition are to receive more attention and specification in the bill. The question of vastness is not dealt with in this general beginning.¹⁵²

Beyond the general beginning, the definition stipulates that a wilderness area is an area of undeveloped federal land retaining its primeval character and influence.¹⁵³ Primeval character and influence must be taken in the sense of absence of human influence. This approaches the question of human effect from a negative point of view. The land must not contain permanent improvements or human habitation. There are four other limiting stipulations.¹⁵⁴ Part (1) re-emphasizes the prior concern for human effect. [It adds the term "substantially unnoticeable."¹⁵⁵ The imprint of man's work must be "substantially unnoticeable."¹⁵⁶] This phrase provides, as we shall see, some ambiguity. Part (2) concerns the very subjective quality of solitude.¹⁵⁷ Wilderness must be a place where a man can be alone. This is a psychological quality related to the absence of human effect upon the land. Part (2) also refers directly to the nature of the recreational experience that must be available—primitive and unconfined.¹⁵⁸ Part (3) establishes acreage requirements.¹⁵⁹ 5,000 acres is considered vast enough, at this point in time, but there is language which permits the consideration of even smaller areas.¹⁶⁰ Any size "as to make practicable its preservation and use in an unimpaired condition" is permissible.¹⁶¹ Vastness can shrink to almost nothing. Part (4) seems to be a permissive requirement, relating to particular features of an area which have specific values.¹⁶² This section also raises some questions.

That the intent appears to be to make the human effect the primary determining factor is unmistakable. The definition in the Act resembles in this respect the Wildland Research Center's definition, except that it adds much detail. Size of area in the Act becomes almost of no consequence. . . . It is certain that any permanent improvements or habitation will disqualify an area from consideration. Some effects of human activity will probably not disqualify an area, however. It seems to be a question of how temporary the effects of human activity are. Certain obvious temporary effects such as those left behind by man as a visitor will be permissible. A trail, or campsite are assumedly such kinds of effects. What more will be allowed, however, is not specified for us.

These ambiguities are not cleared up by later provisions of the Act. Reflecting compromises made in Congress to pass the bill are provisions for permissible uses.¹⁶³ Generally, the Act prohibits uses incompatible with wilderness, such as timber cutting and road building.¹⁶⁴ Motor vehicles are also prohibited.¹⁶⁵ However, mineral exploration under the Mining Law of 1872 and the establishment of mining claims

^{145, 162} 16 U.S.C. § 1131.

^{163, 171} 16 U.S.C. § 1133.

is allowed in wilderness areas until 1984.¹⁶⁶ Also, grazing which is being permitted at the time an area becomes wilderness, is to be continued.¹⁶⁷ Certain water resource development is also allowed.¹⁶⁸ The effects of these uses, whether temporary or permanent, are apparently by legislative fiat compatible with wilderness. This does nothing more than confuse the question of other effects compatible with the wilderness experience.

The reference to the imprint of man also is not of much help in determining permissible human effects. The imprint must be "substantially unnoticeable."¹⁶⁹ These words tend to put emphasis on the appearance of an imprint, rather than upon the actual existence of human effects. The emphasis on appearance is reinforced by the statement that the country must be such that it generally "appears to have been affected primarily by the forces of nature. . . ."¹⁷⁰ Is an effect temporary, if its appearance can be erased and the land restored to its natural condition subsequent to the effect? Is reconstituted wilderness possible? Again, no answers to these questions are given.¹⁷¹ All that is known is that at some point human disturbance is going to counterbalance the character of the country so that it can no longer be called wilderness. Then it will no longer be desolate enough or uninhabited enough. What the exact parameters are, is not specified in the Act, and this determination is left to the agencies concerned and to the courts.

IV. THE WILDERNESS ACT IN PRACTICE

One of the important facets of the Wilderness Act lies in its directions to land management agencies for the consideration of various classifications of land as part of the wilderness system.¹⁷² An important portion of the Act classifies as wilderness all those areas which had been declared wilderness by the Forest Service under the U regulations.¹⁷³ Further, the Wilderness Act freezes all prior classifications of primitive areas.¹⁷⁴ Congress has ordered the Secretary of Agriculture to review by 1974 the suitability of all primitive areas for classification under the Act as Wilderness.¹⁷⁵ A timetable has been established for the accomplishment of this task.¹⁷⁶ A similar mandate has been given to the Secretary of Interior for "roadless areas of more than 5,000 acres located in national parks, monuments, and other units of the national park system."¹⁷⁷ The Secretary must consider also "every such area of, and every roadless island within, the national wildlife refuges and game ranges."¹⁷⁸ The agencies must carry out studies and make recommendations from area to area.¹⁷⁹ Public notice and hearing is required concerning any proposal.¹⁸⁰ The agencies must advise state officials of their proposed recommendations.¹⁸¹ A final report and recommendations are then to be made to the President.¹⁸² The President provides

^{166, 171} 16 U.S.C. § 1133.

^{172, 184} 16 U.S.C. § 1132.

Congress with his recommendation.¹⁸³ Actual declaration of Wilderness may occur only by act of Congress.¹⁸⁴ This is a cumbersome process, but it has absorbed the energies and efforts of both wilderness advocates and opponents since 1964. Despite some progress, there are numbers of areas yet to be considered.

What happens when this process is put into motion can be illustrated by the Mission Mountains controversy. The Mission Mountains, located in Montana, have been a primitive area since 1931.¹⁸⁵ It is interesting to note that this area would have been classified as a "wild area" under pre-Wilderness Act regulations, since it is an area of less than 100,000 acres.¹⁸⁶

The Forest Service espouses a populist philosophy with respect to its mandate under the Wilderness Act. It is continually seeking what it considers to be direct public participation in these particular decisions.¹⁸⁷ In 1969, it published a document entitled "Possible Management Alternatives, Mission Mountains Primitive Area."¹⁸⁸ This listed five possible management alternatives for the Mission Mountains, and solicited expressions of public opinion by letter concerning them.¹⁸⁹ The first alternative was wilderness classification under the Act.¹⁹⁰ The second was Back Country classification.¹⁹¹ Back Country classification provides for management of the area under the present U-3 regulation of the Forest Service.¹⁹² It also calls for maintenance of primitive conditions, but with slightly greater latitude in usages and improvements than the Wilderness Act permits.¹⁹³ Most important, this classification would be merely an agency classification.¹⁹⁴ It would be, therefore, easier to change than Wilderness classification by Congressional act. The third alternative provided for wilderness classification for significant parts of the Mission Mountains, with portions of it classified as back country.¹⁹⁵ The back country areas proposed were those parts of the current primitive area which the Forest Service felt would receive the greatest recreational use.¹⁹⁶ The fourth proposal was wilderness with major boundary changes.¹⁹⁷ The effect of this alternative would have been to put significant areas of the primitive area under usual multiple use management, with the core of the area put into the Wilderness System.¹⁹⁸ The fifth alternative was to put the total area under normal multiple use management for "maximum public management and optimum resource management."¹⁹⁹

The Act itself, it should be noted, requires only notice and hearing after a proposal has been prepared.²⁰⁰ Such pretesting of public opinion is not contemplated.²⁰¹ The Forest Service does not deem public com-

^{172, 184} 16 U.S.C. § 1132.

^{185, 186} UNITED STATES DEPARTMENT OF AGRICULTURE, SEARCH FOR SOLITUDE 26 (1970).

^{187, 189} UNITED STATES DEPARTMENT OF AGRICULTURE, POSSIBLE MANAGEMENT ALTERNATIVES, letter to readers introducing the pamphlet (1969).

^{190, 201} 16 U.S.C. § 1132.

ment quite so essential under its other statutory mandates.²⁰² Timber sales, for example, are made without elaborate efforts to determine the public reaction.²⁰³ The agency singles out wilderness for such special treatment.

Finally, in June 1970, the agency recommended the designation of the Mission Mountains as Wilderness.²⁰⁴ The proposal tells us much about the Forest Service's interpretations of the Wilderness Act. On the whole, states the proposal, the area fits within the definition of Wilderness in the Act.²⁰⁵ There are no permanent improvements in the area, and no human habitation.²⁰⁶ Men use the Missions only as visitors, and there are the opportunities for solitude as required by the Act.²⁰⁷ However, much of the proposal is concerned, not with the suitability of the area for Wilderness, but with resource inventory.²⁰⁸ Other than some merchantable timber, the proposal concludes that the resource value of the area is relatively low.²⁰⁹ Such a determination appears of material importance in the recommendation of the Forest Service that the area be declared Wilderness. Some review of other wilderness proposals indicates that this is a uniform aspect of them.²¹⁰ If there are potential other uses for parts of primitive areas, the agency will likely recommend exclusion of these parts from wilderness classification.²¹¹ In a similar report concerning the Mount Jefferson Wilderness in Washington, for example, the agency recommended exclusion of parts of the primitive area deemed suitable for the production of saw timber.²¹²

The Forest Service accomplishes the Secretary of Agriculture's task of evaluating primitive areas for him.²¹³ "The Secretary of Agriculture shall . . . review, as to its suitability or nonsuitability for preservation as wilderness, each area in the national forests classified . . . as 'primitive.'"²¹⁴ There can be argument concerning the meanings of "suitability" and "nonsuitability" in the Act, but a fair interpretation would be that these words refer to the qualities described in the definition of wilderness contained in the Act. Nowhere in the definition of wilderness or elsewhere is there a statement that an area is not suitable for wilder-

²⁰²16 U.S.C. §§ 475, 476.

²⁰³16 U.S.C. § 476 has a notice requirement of 30 days by publication in a local newspaper. The Forest Service will also put any interested party on a mailing list for notice of timber sales. This assumedly accommodates timber buyers.

²⁰⁴UNITED STATES DEPARTMENT OF AGRICULTURE, A PROPOSAL—MISSION MOUNTAINS WILDERNESS (1970).

^{205, 207}*Id.* at 6-7.

^{206, 209}*Id.* at 10-12.

^{210, 211}UNITED STATES DEPARTMENT OF AGRICULTURE, A PROPOSAL—HIGH UNITAS WILDERNESS (1966); UNITED STATES DEPARTMENT OF AGRICULTURE, A PROPOSAL—WASHAKIE WILDERNESS 12-15, 24-26 (1967); UNITED STATES DEPARTMENT OF AGRICULTURE, SPANISH PEAKS WILDERNESS 6-10 (1967); UNITED STATES DEPARTMENT OF AGRICULTURE, MT. JEFFERSON WILDERNESS 6-12, 20, 21 (1967).

²¹²UNITED STATES DEPARTMENT OF AGRICULTURE, MT. JEFFERSON WILDERNESS 20, 21 (1967).

^{213, 215}16 U.S.C. § 1132.

ness if it has resources valuable for commercial uses.²¹⁵ The Forest Service has taken the stand, nonetheless, that the value of the land for commercial uses is a factor in considering "suitability" for wilderness classification.²¹⁶

There are exclusions recommended in the proposal concerning the Mission Mountains.²¹⁷ There are areas of timber lands in the Mission Mountains which had been infested with spruce bark beetle.²¹⁸ In 1954 and 1955 timbercutting was permitted to curtail the insect infestation.²¹⁹ These are the areas which the Forest Service has recommended for exclusion from the Wilderness.²²⁰

The exclusions indicate another aspect of the Forest Service's attitude toward the definitional format under which it is operating. The agency favors strict construction in the application of definitional standards to specific land areas. This is in marked contrast to its attitude towards the question of commercial uses as a factor in determining suitability for inclusion in the wilderness system. These exclusions recommended in the Mission Mountains proposal do not, the proposal tells us, meet the criteria for Wilderness.²²¹ Even though the proposal states that the logged areas are healing well, and that roads were immediately closed after logging, these areas are not recommended for Wilderness because the imprint of man is substantially noticeable.²²² The Forest Service demonstrates in these recommendations that it is not going to consider primitive areas as a whole in applying the standards established in the definition. It will pick and choose the parts of a primitive area which it feels do not meet the definitional standards.²²³ It will recommend exclusion from wilderness, although the imprint of man that exists is the result of administrative decisions to remedy a natural disorder.²²⁴

The agency also indicates a disinclination in the proposal to take a liberal view of the temporary quality of any human disturbance. In the areas which the Forest Service recommends for exclusion, one instance of logging has taken place.²²⁵ No permanent improvements or habitation had been established.²²⁶ The agency reports that the excluded areas were achieving substantial natural recovery.²²⁷ It proposes to manage these areas in a wilderness-like condition under agency regulations.²²⁸ A liberal interpretation of the definitional section of the Act might allow, under these circumstances, inclusion of these particular parts of the primitive area in Wilderness. The agency, however, stands pat on the principle that any imprint of man's activity, at least when that activity is logging, disqualifies the area.

^{215, 216} 16 U.S.C. § 1132.

²¹⁶ See proposals cited, *supra* note 210.

²¹⁷ U.S.D.A., *supra* note 204 at 15.

²¹⁸ *Id.* at 12.

^{219, 220} *Id.* at 15.

^{221, 222} *Id.* at 12.

Such interpretations of the Act are not favorably received by wilderness advocates.²²⁹ They champion a more liberal view. In statements concerning the Mission Mountains, it is quite clear that wilderness advocates desire the primitive area to be treated as a whole when the standards of the Act are applied.²³⁰ Although the effects of man may be noticeable in localized areas, they may be minor defects when the area is considered all together. This is the view wilderness advocates wish the agency to take.²³¹ Wilderness advocates are particularly concerned over boundary protection for wilderness areas.²³² They perceive that management of boundary areas in a manner inconsistent with Wilderness may have destructive effects within the Wilderness boundary itself.²³³ In the Mission Mountains they see the exclusions proposed by the Forest Service as being inimical to good boundary protection.²³⁴ This aspect of wilderness protection is also a factor in the wilderness advocates' position.

Opposing interests, particularly the organizations representing the lumber and mining industries, are entirely opposed to establishing a wilderness in any area, including the Mission Mountains.²³⁵ The reaction of these groups is fairly standard in each situation. There are appeals to the needs of local economies and general disapproval of the exclusion of commercial uses.²³⁶ The disapproval exhibited is usually general and rooted in ideological orientations.²³⁷ Such interests could be expected to favor any position of an agency which would limit the application of the Wilderness Act.

The process provided by Congress thus becomes a contest of competing interests. In such a contest results are uncertain, and it is often unclear whether the intent of Congress will be served or not. The courts have not been of much help, since the controversies that arise do not readily become justifiable disputes. The politics of Wilderness, with competing interest groups seeking favorable political response from the administering agency, has characterized the action with respect to the Department of Agriculture's administration under the Wilderness Act. Resort to the courts, so far, has not.

Environmental groups as a whole have been turning more and more to the courts, however.²³⁸ Wilderness advocates seem now inclined to follow the trend. One case of recent origin is *Parker v. Hardin*, 309 F.Supp. 593.²³⁹ Colorado has a primitive area known as the Gore Range-Eagle's Nest Area.²⁴⁰ The Forest Service proposed logging in an area adjacent to and bordering the primitive area.²⁴¹ The logging pro-

²²⁹,²³⁴SIERRA CLUB, THE SIERRA CLUB HANDBOOK 16 (1969).

²³⁵MISSOULIAN, Sept. 10, 1970, p. 15, cols. 2-5.

²³⁶,²³⁸Hearings on S. 1121, Before the Subcom. on Public Lands of the Senate Comm. on Interior and Insular Affairs, 90th Cong., 2nd Sess. at 70, 94, 101, 107 (1968).

²³⁹Parker v. United States, 309 F. Supp. 593 (1970).

²⁴⁰Id. at 595.

²⁴¹Id. at 594.

posals met opposition from wilderness advocates on the basis that this adjacent area was of substantially the same quality as the primitive area, and that it should not be managed for other uses until such time as the area had been studied for possible inclusion in Wilderness with the Gore Range-Eagle Nest Area.²⁴² The Wilderness Act states that the President may alter the boundaries of any area proposed for Wilderness.²⁴³ This, the wilderness advocates contended, requires the agency to study and consider unclassified land with the characteristics of wilderness, adjacent to a primitive area, for inclusion as Wilderness also.²⁴⁴

The Meadow Creek area met all the criteria, except that a road had been established in the drainage in conjunction with insect control efforts made at an earlier time.²⁴⁵ After insect control had been accomplished, the road was closed to vehicular traffic.²⁴⁶ In some places the road had grown over so as to be nearly indistinguishable from surrounding landscape.²⁴⁷ However, it was still identifiable on the whole as a road within the area.²⁴⁸

The Forest Service maintained that the road per se disqualified Meadow Creek from consideration as part of the Wilderness.²⁴⁹ There was noticeable evidence of man's imprint.²⁵⁰ The court took an opposite view.²⁵¹ It upheld the contention that the area had to be included in the wilderness study.²⁵² The court found that there was sufficient evidence that the Meadow Creek area met the standards of primitivity as established in the Act, despite the existence of the road.²⁵³ The court stated that only the President by the Act has the power to consider whether a land area should be included as Wilderness.²⁵⁴ The Forest Service must report on the primitive area and upon any contiguous areas which would be "suitable" for inclusion according to the definitional standards of the Act.²⁵⁵ The court exercised no authority over the Forest Service with respect to the recommendations it might make.²⁵⁶ It prohibited management for other uses in the interim between the study and report, and the final action of Congress.²⁵⁷ With its limitations, the case represents a repudiation of the Forest Service in its application of the Wilderness Act.

It is apparent that the passage of the Wilderness Act has not settled all questions on the National Forests. The Forest Service has taken positions consistently towards the limitation of the application of the Wilderness Act. The wilderness advocates, on the other hand, seek more liberal interpretations of the Act. Always, the counterculture meets the opposition of the dominant culture and its representatives.

²⁴²*Id.* at 594-95.

²⁴³16 U.S.C. § 1132; Parker, *supra* note 239 at 598.

²⁴⁴Parker, *supra* note 239 at 595.

^{245, 250}*Id.* at 596.

^{251, 252}*Id.* at 601.

^{254, 256}*Id.* at 600.

²⁵⁷*Id.* at 601.

They continue to view the public domain solely as a source of commercial development. The macroconflict which preceded the passage of the Wilderness Act is re-enacted over every primitive area. It is a timeless kind of conflict, it seems, and resolution is far from occurring.

The Department of Interior exhibits a different face in accepting its mandate under the Act.²⁵⁸ The types of areas it must consider for inclusion perhaps is the reason. Wildlife refuges and national park areas are already beyond consideration for major commercial exploitation of resources.²⁵⁹ The question to be resolved, in the case of these areas, is whether declaration of an area as wilderness will impair the value of an area as a wildlife refuge, national park area, or whatever.²⁶⁰ Where no development for any of these purposes is contemplated, the Department of Interior readily proposes inclusion of an area in the wilderness system.²⁶¹ If there are conflicts in maintaining an area for its initial purpose, an adverse recommendation will result.²⁶² Thus, with respect to the Laguna Atacosa National Wildlife Refuge in Texas, the Department of Interior did not recommend wilderness, because it wished to put in inconsistent developments to enhance the area as a waterbird refuge.²⁶³ It felt a developed refuge would make up for loss of habitat for such species along the urbanizing Texas coast.²⁶⁴ Generally, if Interior feels that an area can benefit from Wilderness, it will recommend such classification even though the area to be considered has few acres.²⁶⁵ It will recommend wilderness even though some imprint of man is noticeable.²⁶⁶ In its "Izembek Wilderness Proposal," the Department states:²⁶⁷

These lands are of high wilderness quality with the exception of a few old, impassable military roads which are rapidly disappearing. A few quonset huts also remain, but these will be removed. Excellent scenic, scientific, and wildlife resources would be included in the proposed wilderness area.

There is not the effort in its administration of the Act, on the part of Interior, to restrict the application of the Act.

V. WILDERNESS IN THE FUTURE

A. THE PRESENT WILDERNESS ACT

It can be anticipated that much the same factors will go into the administration of the act well into the future. The proponents of wilder-

²⁵⁸16 U.S.C. § 1132.

²⁵⁹16 U.S.C. Chapter 6 in general.

²⁶⁰UNITED STATES DEPARTMENT OF INTERIOR, WEST SISTER ISLAND WILDERNESS PROPOSAL; UNITED STATES DEPARTMENT OF INTERIOR, CHAMISSO WILDERNESS PROPOSAL (1969); UNITED STATES DEPARTMENT OF INTERIOR, FLORIDA KEYS WILDERNESS PROPOSAL (1969).

²⁶¹*Id.*

^{262, 264}UNITED STATES DEPARTMENT OF INTERIOR, LAGUNA ATACOSA WILDERNESS STUDY AREA (1970).

²⁶³UNITED STATES DEPARTMENT OF INTERIOR, FARALLON WILDERNESS PROPOSAL (1969).

^{266, 267}UNITED STATES DEPARTMENT OF INTERIOR, IZEMBЕК WILDERNESS PROPOSAL 20 (1970).

ness will be seeking new areas for protection as wilderness.²⁶⁸ Many more localized conflicts can be predicted in situations parallel to the Mission Mountains controversy. If the Wilderness Act remains unchanged, at least, at a minimum this can be expected.

The Wilderness Act, even though it requires certain administrative actions with respect to areas classified before 1964 as primitive, wild-life refuge and so on, contains no language limiting its application to such areas.²⁶⁹ There is yet a great question concerning the establishment of wilderness areas in undeveloped public domain that has not been classified under prior authorities.

Wilderness advocates have interest in the inclusion of such areas in the wilderness system.²⁷⁰ A recent controversy of this nature, and one which may be representative of future wilderness activities, concerns the Lincoln Scapegoat area near Lincoln, Montana.²⁷¹ The area is roadless.²⁷² There are no permanent improvements, nor is there any human habitation in the area.²⁷³ In most ways it fits within the definition of wilderness in the Wilderness Act. The area borders on the Bob Marshall Wilderness Area, but Lincoln Scapegoat has never been given any classification subject to review under the Wilderness Act.²⁷⁴

The Forest Service initiated the controversy by publishing a proposal for development of the area.²⁷⁵ Included were plans for a road, recreational facilities such as campgrounds, and some limited logging.²⁷⁶ The proposal brought an almost immediate reaction from wilderness proponents.²⁷⁷ They marshalled their forces, and the classic conflict began to take shape.

Wilderness advocates sought classification of the area as wilderness.²⁷⁸ Spokesmen for the timber and mining interests supported the Forest Service proposal.²⁷⁹ The agency was inclined to stay with its original plan.²⁸⁰ Wilderness advocates then appealed directly to Congress.²⁸¹ A bill was introduced for the purpose of establishing a wilderness in the area.²⁸² In 1968 the Interior Committee of the Senate called hearings to determine the suitability of the area for inclusion in the wilderness system.²⁸³ The bill, to date, has been held in committee

²⁶⁸MONTANA WILDERNESS SOCIETY, WILDERNESS GUIDELINES AND AID FOR CITIZENS AND EVALUATIONS OF WILDERNESS (1970).

²⁶⁹16 U.S.C. § 1132.

²⁷⁰MONTANA WILDERNESS SOCIETY, *supra* note 268.

²⁷¹UNITED STATES DEPARTMENT OF AGRICULTURE, LONG RANGE PLAN, NORTHERN HALF LINCOLN RANGER DISTRICT, HELENA NATIONAL FOREST (1963).

²⁷²*Id.* at 8.

²⁷³*Id.* at 1.

²⁷⁴*Id.* at 9, 10, 13, 16.

²⁷⁵MONTANA WILDLIFE FEDERATION AND OTHERS, UTILIZATION OF THE LINCOLN BACK COUNTRY AND ADJOINING AREAS (1963).

²⁷⁶Hearings on S. 1121, *supra* note 236.

²⁸⁰MONTANA WILDLIFE FEDERATION AND OTHERS, *supra* note 277.

²⁸²Hearings on S. 1121, *supra* note 236.

until completion of a mineral survey of the area.²⁸⁴ Senator Mansfield noted recently that the survey would likely be completed in June 1971.²⁸⁵ Prospects for the bill's passage appear to be good.

B. POSSIBILITIES FOR CHANGE IN THE ACT

Major modifications in the Wilderness Act appear unlikely in the immediate future. The key to any possible changes probably lies within the report of the Public Land Law Review Commission.²⁸⁶ The Commission, established in 1966 to study the entire range of public land policies, published its report in June, 1970.²⁸⁷ The report has some general surprises such as a recommendation for refurbishing land disposal policies on the public domain.²⁸⁸ It is difficult to assess the feeling of the Commission towards Wilderness, however.

In Recommendation 78, of the Report, the Commission states that "An immediate effort should be undertaken to identify and protect those unique areas of national significance that exist on the public lands."²⁸⁹ All monuments, historic sites, wilderness areas, scenic and wild rivers, and national trails, the Commission tells us, have not been identified.²⁹⁰ These should be identified and classified under the applicable law as soon as possible.²⁹¹ The Commission also recommends that the timetables established by the Wilderness Act and the priorities established thereunder should be maintained.²⁹² To this point, little change in the current Wilderness status quo appears to be contemplated.

However, the recommendation pertains to "unique areas" of national significance on the public domain.²⁹³ The term "unique areas" needs some elaboration. In Recommendation 85, the Commission states that standards for establishing national parks and wilderness areas should be refined.²⁹⁴ A curious explanation of this recommendation is made in subsequent textual material.²⁹⁵ The major disputes in wilderness classification, it is stated, is over some standard of "wildness" as the criteria for inclusion in the wilderness system, as opposed to some standard relating also to other use potential.²⁹⁶ One assumes that the Commission means to refer to the definitional standards for wilderness as expressed in the present Act, but this is nowhere stated.²⁹⁷ Certainly, the definition of wilderness in the Act does establish some standard of "wildness," if "wildness" has anything to do with a lack of human effect upon the land.²⁹⁸ The Commission, however, makes no explicit reference to the text of the present Act.²⁹⁹

²⁸⁴Letter from Representative Wayne N. Aspinall to Senator Mike Mansfield, Oct. 30, 1969.

²⁸⁵Letter from Senator Mike Mansfield to Donald Aldrich, Aug. 20, 1970.

^{286, 287}PUBLIC LAND LAW REVIEW COMMISSION, REPORT ON ONE-THIRD OF THE NATION'S LAND (1970).

²⁸⁸*Id.* at 42.

^{289, 290}*Id.* at 198-99.

^{291, 292}*Id.* at 214.

Much allusion is made in the Report to the subjectivity of any standards.³⁰⁰ This, of course, is true. Any standard of "wildness" is extremely subjective. Subjective standards are no strange phenomenon in the law, however. The number of instances in which the words "reasonable," or "substantial" are used in the law is an indication of its experience with imprecision and subjectivity. However, the Commission's answer to the problem of refinement (elimination of subjectivity?) with respect to wilderness is the addition of a word, "unique."³⁰¹ The Commission recommends that wilderness be measured by some sort of combination of "wildness" and "uniqueness."³⁰² "Uniqueness" again is a term of art, not explained to us in the Report.³⁰³

A thing unique may be a thing not duplicated elsewhere.³⁰⁴ That is one possible definition. It may also be a thing that is irreplaceable.³⁰⁵ These are not definitions exclusive of one another, and they may simply be different expressions meant to signify the same thing. However, both ways of expressing the meaning of the term "unique" may be found in the law.³⁰⁶ How either meaning or any combination can be applied to wilderness is a matter of speculation, providing that the Commission has nothing totally different in mind.

If the Commission means by the term "unique" that some special feature of the land not found elsewhere, something individual, must be present before classification as Wilderness, the result may be a limitation upon areas to be considered as Wilderness. Any area with a measure of wilderness which has no special features would not qualify. If "unique" here means absolute irreplaceability, a limitation might also be worked. It can be argued that one mountain range can replace another in providing the wilderness experience, if there are two of them with similar conditions of wilderness. Adding the term unique to the qualifications might eliminate one of them from consideration as Wilderness.

Whether either definition of the term would be a limitation, would depend upon the scope of the view taken of the land. The Rockies themselves are a unique kind of mountain country on the face of the Continent. This broad a view of uniqueness might provide for considerable wilderness preservation. However, the smaller the view taken, the more country and habitat is duplicated. Commensurately, there is a chance that less country will qualify as Wilderness. Smaller views are the views likely to be taken. To add to the confusion, it must be remembered that in property law, all pieces of real property are considered "unique" in the sense of being both irreplaceable and undupli-

²⁹⁴*Id.* at 214.

³⁰⁴*Frederick Bros. v. Yates*, 186 Misc. 871, 61 N.Y.S. 2d 478 (1946).

³⁰⁵RESTATEMENT OF TORTS, § 946.

³⁰⁶*Id.*; *Frederick Bros.*, *supra* note 304.

cated.³⁰⁷ The addition of the term adds confusion and is not particularly a refinement of standards as the Commission desires.

The Act itself currently contains language which may be said to concern factors of uniqueness.³⁰⁸ Section (4) of the definition refers to "ecological, geological, and other features of scientific, educational, scenic, or historical value."³⁰⁹ The section, however, does not make one or another of these features a requirement for wilderness.³¹⁰ It states that land qualifying for wilderness "may" contain one or more of these features.³¹¹ Perhaps the Commission hoped to make more of this section than the language of the Act indicates was the original intent. If so, we have no positive indication that this is the case.

The Commission has some other proposals which would tend to offset any contemplated limitations, and which would tend to please wilderness advocates. In Recommendation 27, the Commission provides for the creation and preservation of a natural area system for scientific and educational purposes.³¹² About 900,000 acres of land are currently classified as "natural areas" in the United States.³¹³ They exist to permit natural biological and physical processes to take place with a minimum of interference.³¹⁴ Apparently, the Commission desires expansion of these areas into a system paralleling the wilderness system.³¹⁵ In these areas even recreation would be subordinated to the primary purposes of research and education.³¹⁶ Such a system would perform, on some undertermined scale, some of the functions of wilderness under the Wilderness Act.

On the public domain, the Commission also recommends that Congress adopt the recreational land classification system developed by the ORRRC.³¹⁷ Class 3 in this system is entitled Natural Environment Areas.³¹⁸ The Commission was not satisfied with Class 3.³¹⁹ It indicates that this class has ambiguities, although these are not specified.³²⁰ Even so, natural environment areas would provide some of the benefits now currently found in Wilderness.³²¹ The ORRRC originally inventoried 300,000,000 acres of class 3 land in the United States.³²²

Although these last recommendations do provide some latitude for those with concern for preservation of natural lands, the Report of the Commission is disquieting. The changes recommended for basic wilderness law leave too many questions unanswered. There is in the Report a basic aversion to any recreational uses.³²³ They are viewed as uneconomical.³²⁴ Such an attitude may be more indicative of the potential effect of such a Report than specific recommendations.

^{307, 310} WILLISTON AND THOMPSON, WILLISTON ON CONTRACTS, §§ 1419, 3953 (1936).

^{311, 16} U.S.C. § 1131.

^{312, 316} PUBLIC LAND LAW REVIEW COMMISSION, *supra* note 286 at 87-88.

^{317, 322} *Id.* at 213.

^{323, 324} *Id.* at 214.

C. SPECULATIONS FOR MUCH LATER

So far, in wilderness preservation, certain elements have been emphasized. Predominant in all preservation efforts and in the law has been the recreational element. The wilderness experience is the foundation of the wilderness concept. Wilderness is a place for modern, urbanized man to capture some of his historical past, and to find experience in content different from the urban experience. Wilderness is for release, both psychic and physical, depending upon the use to which wilderness is put. It is psychic and physical if one actually uses wilderness. It is psychic only if one feels enriched because of the existence of wilderness, even if no entry is contemplated.

Inevitably, the question must be asked, is the concept adequate? Is there a need for natural land which transcends the recreational aspect? Ecologists following Aldo Leopold may provide the answer. This science continues to concern itself with identifying the systems of interdependence which exist between varieties of life.³²⁵ In so doing it has some significant things to tell us about man's interference with natural processes.

A given life is dependent directly upon other forms of life for its food.³²⁶ Over the millions of years since the origin of organic life, this kind of dependency has grown more and more complex.³²⁷ Nature reaches towards biotic stability in this development of complex life dependencies.³²⁸ The complexity of dependencies can be described in terms of multiple food chains.³²⁹ Energy from the sun is stored in plants.³³⁰ The energy is passed on into a given food chain.³³¹ A plant eating animal consumes the plant.³³² It either dies or is consumed by some carnivorous animal further up the chain.³³³ Any animal may return some of this energy to the soil through its elimination processes.³³⁴ The energy so placed in the soil, or placed there by death, is reabsorbed by plants into a food chain.³³⁵ The result is a sustaining cycle of many smaller sustaining cycles.³³⁶ The circuit of energy is a sustained circuit with very little waste.³³⁷ Velocity and character of the upward flow of energy depend on the complexity of the circuits.³³⁸ Normal circulation depends on this complexity.³³⁹

Man has the disruptive power to short-circuit the cycles.³⁴⁰ He substitutes single plant types where once a number of dependent varieties grew.³⁴¹ He alters and simplifies the food chains by eliminating certain of the animal life.³⁴² He pollutes water and air further obstructing the life cycles.³⁴³ For his transportation and fuel sources, he taps stored energy sources at an immense rate.³⁴⁴ In short, his actions have all the potential to exhaust the earth as a source of life.³⁴⁵

^{325, 329}DASMAN, ENVIRONMENTAL CONSERVATION 9-20 (1968).

^{340, 342}DASMAN, A DIFFERENT KIND OF COUNTRY 42-58 (1968).

^{343, 345}LEOPOLD, *supra* note 82 at 217-18.

If there is to be continued survival, some thought shall have to be given to the perpetuation of biotic complexity and diversity.³⁴⁶ This is the key theme of environmental activities as a whole, and this will be the central concern for what can be called in the affairs of man the politics of survival. Wilderness development, the preservation of natural areas as it is now conceived, has the potential of becoming the cornerstone for the politics of survival. It is the only current on-going effort to preserve natural areas, whatever the current purpose. Probably, the recreational aspect of wilderness will lose its dominance. It may also be wise to forget the term wilderness altogether. The limits history places upon the concept may be too heavy a burden. New terminology to fit the new concern needs development. Man should be considering not the preservation of wilderness, but the preservation of "regions of biotic freedom", in which diverse life processes can be permitted to function unhindered by man. Such regions could be the beginning of environmental land policies the nation and world over. From these regions of biotic freedom, land use would be graded according to quality and quantity of permissible human interference.

Already, the need for such environmental land use policy is being researched, and solutions are being offered. The Public Land Law Review Commission recommends classification of public lands for environmental quality.³⁴⁷ It further recommends the establishment of a standard system grading all land use on the public domain in terms of allowable human interference with the ecology.³⁴⁸ An example or model is advanced in the Report. There are four components in the classification system offered: air, water, quality of experience, and biosystem maintenance.³⁴⁹ In each category are varying standards of management.³⁵⁰ For example, B-1 under biosystem maintenance is "Perpetuation of full natural biosystem for recreation, education, scientific study."³⁵¹ The interference to be permitted is the minimum of man-induced changes in species composition, biomass, food chains, habitat conditions, predator-prey relationships, and population dynamics.³⁵² B-2 in this example is a step towards permitting some more interference.³⁵³ This is the "limited modification of biosystem" classification.³⁵⁴ B-3 provides for major modification.³⁵⁵ This example in the Commission's Report, as primitive as it probably is technically, may well forecast future land use policy in the United States as the politics of survival develops. If so, Wilderness will have a new significance.

Much is stirring among those concerned with environmental matters. At least one writer has called for management of public lands

³⁴⁶LEOPOLD *supra* note 88 at 195-98.

³⁴⁷PUBLIC LAND LAW REVIEW COMMISSION, *supra* note 286 at 73.

³⁴⁸*Id.* at 75.

³⁴⁹*Id.* at 77.

from an ecosystem approach.³⁵⁶ A step in that direction is the proposed National Land Use Policy Act of 1970 submitted to Congress by Senator Jackson.³⁵⁷ There are other efforts and other ideas being submitted. Justice William O. Douglas has long advocated the establishment of a wilderness bill of rights, raising protection of the land in importance to a constitutional level.³⁵⁸ The Commission's recommendations on environmental classification, plus these other activities are the seminal steps in promoting an ecological land ethic, a longtime dream of Aldo Leopold.³⁵⁹ They are initial rumblings in these politics of survival. If there is success for the politics of survival, the groundwork will have been laid by the wilderness advocates and our developing wilderness policy. At that point in time we shall be glad for those initial visionaries and eccentrics who first pointed out the way.

³⁵⁶Caldwell, *The Ecosystem as a Criterion for Public Land Policy*, 10 NATURAL RESOURCES JOURNAL 203 (1970).

³⁵⁷*Id.* at 220.

³⁵⁸DOUGLAS, A WILDERNESS BILL OF RIGHTS (1965).

³⁵⁹LEOPOLD, *A Sand County Almanac* 22 (1949).

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