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THE USE OF "SPECIAL MANAGEMENT AREAS" AS ALTERNATIVES TO WILDERNESS DESIGNATION OR MULTIPLE USE MANAGEMENT OF FEDERAL PUBLIC LANDS

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I. INTRODUCTION

Views differ dramatically on how much land Congress should set aside to preserve as wilderness. Some argue that wilderness designation "locks-up" the federal public lands and prevents any type of nonwilderness use. Others argue that federal public lands with wilderness values must be protected now because of increasing pressure on the public lands and because wilderness is an ever diminishing resource that, once lost, cannot be regained.

In the past, Congressional choices in resource allocation issues were primarily limited either to designating land as wilderness, which forecloses any nonwilderness uses of the land, or releasing land to multiple use management, which may allow intensive development like mining and logging. Now, however, Congress is increasingly considering "special management areas" in which land is managed for a specific use as mandated by Congress. Creation of these special management areas blurs the distinction between the traditional roles of federal land management agencies and Congress by directly involving Congress in site-specific land management decisions. This article explores the use of special Congressional designations of public land, and the possible advantages and disadvantages of special management designations as an alternative to wilderness designation or multiple use management.

II. HISTORICAL BACKGROUND OF THE WILDERNESS ACT AND THE NATIONAL WILDERNESS PRESERVATION SYSTEM

As American society evolved from rural to urban-industrial, popular thought eventually changed from conquering the frontier to preserving some portion of it. The nation gradually came to recognize that the benefits of pristine wilderness—solitude, primitive recreation and ecological integrity—had to be protected or lost forever.[1] In 1964, Congress passed the

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1. Much has been written about the importance of wilderness to civilized society. *See, e.g.*,

Wilderness Act,[2] which for the first time provided statutory authority for selection and permanent resource protection for Congressionally designated federal public lands containing wilderness values.[3] To ensure the protection and preservation of the wilderness values in these areas, the Act established the National Wilderness Preservation System (NWPS).[4]

Originally, the NWPS was comprised of lands which had already been designated as wilderness through administrative action.[5] The Act also ordered the Secretary of Agriculture to conduct a ten year administrative review of areas which had been classified as "primitive areas" for possible inclusion in the NWPS.[6] Although the Wilderness Act gave the Forest Service responsibility for the study of potential wilderness areas, the decision to designate lands as wilderness ultimately rests with Congress.[7]

In the years following the enactment of the Wilderness Act, the wilderness movement continued to gain momentum and widespread support. The Forest Service eventually recognized that Congress was likely to include more lands in the wilderness system than those lands administratively classified as primitive areas.[8] In response, the Forest Service in 1967 began inventorying and evaluating all roadless areas within the national forest system for planning and management purposes.[9] This inventory and evaluation, more commonly known as the Roadless Area Review and Evaluation (RARE I), was completed in 1972 but was immediately challenged under the National Environmental Policy Act (NEPA).[10] A second attempt, RARE II, commenced in 1977. However, the Court of Appeals for the Ninth Circuit enjoined administrative action when the court found the Environmental Impact Statement (EIS) inadequate under

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NASH, WILDERNESS AND THE AMERICAN MIND (rev. ed. 1973); DOUGLAS, A WILDERNESS BILL OF RIGHTS (1965); McCabe, *A Wilderness Primer*, 32 MONT. L. REV. 19 (1971); Sax, *Freedom: Voices from the Wilderness*, 7 ENVTL. L. REV. 565 (1977). The following statutory definition of wilderness illustrates the social, philosophical and cultural underpinnings of the wilderness movement: "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 untrammeled by man, where man himself is a visitor who does not remain. . . ." 16 U.S.C. § 1131(c) (1982).

2. 16 U.S.C. §§ 1131-1136 (1982 & Supp. III 1985).

3. *Id.* § 1131(a).

4. *Id.*

5. *Id.* § 1132(a).

6. *Id.* § 1132(b).

7. *Id.*

8. Wilkinson & Anderson, *Land and Resource Planning in the National Forests*, 64 OR. L. REV. 1, 346 (1985).

9. *Id.* at 345.

10. 42 U.S.C. §§ 4321-4370 (1982 & Supp. III 1985). In Sierra Club v. Butz, 3 Envtl. L. Rep. (Envtl. L. Inst.) 20,071 (N.D. Cal. 1972), the Sierra Club sought an injunction against timbering and other development in the California roadless areas. This suit resulted in an out-of-court settlement which required the Forest Service to do an EIS on the local level prior to authorizing any future developments in roadless areas. Wilkinson & Anderson, *supra* note 8, at 347-48.

NEPA.[11]

During the mid-1970's, Congress enacted legislation directing the Forest Service to conduct detailed, long-range national forest planning on both national and local levels.[12] Part of this legislation, the National Forest Management Act (NFMA),[13] requires the Forest Service to develop local forest plans and manage the national forests in accordance with these plans.[14] As part of the planning process, each forest plan must include an evaluation of the roadless areas identified during the RARE II inventory for inclusion in the NWPS unless Congress has released the areas to multiple use management. If the forest plan proposes to dedicate unreleased roadless areas to uses other than wilderness management, the EIS done for each plan must provide a detailed, site-specific analysis adequate to evaluate the consequences of the proposed agency action and must provide alternatives.[15]

Since 1964, the NWPS has increased substantially in size. Many wilderness areas have been included in the NWPS by passage of wilderness bills for each individual state.[16] These state wilderness acts typically designate some land as wilderness and release areas not designated as wilderness to multiple use management.[17] However, the extent of wilderness preservation has become more controversial as roadless areas that were not previously set aside through administrative classification are evaluated and proposed for inclusion in the wilderness system. This controversy is reflected in the increasing complexity of present wilderness legislation. Attempting to deal with the controversial and complex wilderness issues, some state Congressional delegations have used or have attempted to use special use categories which allow nonwilderness uses and direct management on lands of wilderness quality.

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11. California v. Bergland, 483 F. Supp. 465, 498 (E.D. Cal. 1980), *aff'd in all material respects sub nom.* California v. Block, 690 F.2d 753, 760-69 (9th Cir. 1982).

12. The Forest and Rangeland Renewable Resources Planning Act of 1974, Pub. L. No. 93-378, 88 Stat. 476, *amended by* the National Forest Management Act of 1976, Pub. L. No. 94-588, 90 Stat. 2949 (codified at 16 U.S.C. §§ 1600-1614 (1982 & Supp. III 1985) and other scattered sections of 16 U.S.C.).

13. 16 U.S.C. §§ 1600-1614.

14. *Id.* § 1604.

15. Wilkinson & Anderson, *supra* note 8, at 353.

16. Many states have completed the initial stages of the Congressional wilderness review process. However, the Bureau of Land Management (BLM) is still in the process of reviewing its roadless areas for possible inclusion in the NWPS, as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1982). *See also* Harvey, *Exempt from Public Haunt: The Wilderness Study Provisions of the Federal Land Policy and Management Act*, 16 ID. L. REV. 481 (1980).

17. Many individual state wilderness acts also retain some areas in "hold" catagories, such as wilderness study or planning areas, to preserve the areas for wilderness consideration at a later time. *E.g.*, California Wilderness Act of 1984, Pub. L. No. 98-425, § 102, 98 Stat. 1619, 1624.

III. SPECIAL MANAGEMENT AREAS

"Special management areas"[18] are federal public lands designated by Congress for a specific use or uses. Typically, special management legislation is contained in individual wilderness acts and directs the responsible agency to manage the area in accordance with the Congressionally designated purposes. Included among the special management areas are back country areas, reserves, conservation areas, wildlife areas, fish management areas and national recreation areas. "National recreational areas" usually have their own enabling legislation,[19] which as the name implies, emphasizes recreation.[20] The Montana wilderness bills, introduced in Congress in 1984,[21] 1986[22] and 1987,[23] all propose special management areas and national recreation areas for extensive amounts of

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18. The term "special management area" is used to describe all types of alternative catagories to wilderness designation or multiple use management under the Multiple-Use Sustained-Yield Act, 16 U.S.C. §§ 528-531 (1982). Reference to all alternative catagories in this article allow some nonwilderness use or uses on land *eligible* for inclusion in the NWPS. *See infra* note 19.

19. The use of national recreation area designation has expanded and changed over time. National recreation areas were first used for lands surrounding federal reservoirs to allow the public to take advantage of the recreational potential of these sites. One example is the Bighorn Canyon National Recreation Area in Montana. 16 U.S.C. § 460t (1982). Established in 1966 to provide recreational use and enjoyment of the proposed Yellowtail Reservoir, Bighorn Canyon was the fourth national recreation area authorized by act of Congress in connection with federal water resource developments. H.R. REP. No. 1819, 89th Cong., 2d Sess., *reprinted in* 1966 U.S. CODE CONG. & ADMIN. NEWS 3301, 3302. Later national recreation area designations were used when attempts at designating some areas as National Parks failed. *E.g.*, Oregon Dunes National Recreation Area, 16 U.S.C. § 460z (1982). More recently Congress has used national recreation area designation to provide protection for areas which did not meet wilderness criteria. Probably the best example of this is the Rattlesnake National Recreation Area. *Id.* § 460*ll*. The Rattlesnake National Recreation Area includes a wilderness area and "certain other lands on the Lolo National Forest [which], *while not predominantly of wilderness quality*, have high value for municipal watershed, recreation, wildlife habitat, and ecological and educational purposes." *Id.* § 460*ll*(a)(2) (emphasis added). This area lies north of Missoula, Montana and serves as an important watershed for that community.

The creation of special management areas or national recreation areas where designation under the Wilderness Act is not likely because the area is not predominantly of wilderness quality may be referred to as "complementary designations" to wilderness. *See* Cutler, *Statutory Designation and Administrative Planning: Complementary Approaches to Achieving Wilderness Objectives*, 16 ID. L. REV. 469 (1980) [hereinafter Cutler]. This article addresses only "competing catagories" to wilderness designation and multiple use management. Complementary categories that do not preempt areas of wilderness character from inclusion in the NWPS are not considered. However, it should be recognized that even Congressional designations that are complementary to wilderness still preempt multiple use management by directing management statutorily instead of releasing lands to discretionary agency management.

20. *See, e.g.*, 16 U.S.C. § 460aa(a) (1982) (The statement of purposes for the Sawtooth National Recreation Area provides: "In order to assure the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreational values associated therewith . . . .").

21. S. 2850, 98th Cong., 2d Sess. (1984).

22. S. 2790, 99th Cong., 2d Sess. (1986).

23. H.R. 2090, 100th Cong., 1st Sess. (1987); S. 1478, 100th Cong., 1st Sess (1987).

federal public lands that are eligible for wilderness designation.[24]

When the Wilderness Preservation System was first established, many believed Congressional action would be limited to selecting areas for wilderness preservation or releasing them to multiple use management.[25] The emergence of Congressionally directed management of federal public lands through the creation of special management areas is a substantial departure from this original assumption—and it has some controversial consequences. One effect of Congressional designation of special management areas is to replace the multiple use system employed by the Forest Service and other agencies with a mandated dominant use management scheme, thereby removing or limiting agency discretion. Additionally, special management categories used in lieu of present wilderness designation often authorize uses that alter or destroy the wilderness characteristics of a particular area, which may result in excluding the area from future wilderness consideration. The advantages and disadvantages of using special management categories are discussed below.

IV. ADVANTAGES OF SPECIAL MANAGEMENT AREA DESIGNATION

The United States Constitution gives Congress power to control "property belonging to the United States."[26] Federal agencies are charged with administering those federal public lands which Congress chose to retain.[27] Historically, the controversies over resource allocation on the national forests have placed the Forest Service at the forefront of wilderness issues. Criticism of the Forest Service's exercise of management discretion in administering federal public lands is cited as one of the major reasons for passage of the Wilderness Act, and may be an impetus for using special management designations in current legislation.

Early in Forest Service history the agency recognized and incorpo-

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24. Of the roadless land considered for inclusion in the NWPS, the 1984 Montana Wilderness Bill proposed 749,000 acres be designated wilderness, 58,000 acres wilderness study, and 449,232 acres special management. The 1986 Montana Wilderness Bill proposed 1,079,080 acres wilderness, 23,400 wilderness study, and 338,500 acres special management. The 1987 Montana Natural Resources Protection and Utilization Bill, introduced by Representative Pat Williams, proposes 1,373,308 acres be designated wilderness, 386,000 acres watershed and land consolidation study, and 226,600 acres special management. The 1987 Montana Natural Resources Protection and Utilization Bill, introduced by Senator Max Baucus, proposes 1,323,800 acres wilderness, 269,000 acres special management, 120,000 watershed study area, 113,000 acres land consolidation area, 135,700 acres wildlife and mineral study area and 135,300 acres wilderness study area.

25. Robinson, *Wilderness: The Last Frontier*, 59 MINN. L. REV. 1, 14-16 (1974).

26. U.S. CONST. art. IV, § 3, cl. 2.

27. Federal land management agencies include the Forest Service, United States Department of Agriculture; the Bureau of Land Management, United States Department of Interior; the National Park Service, United States Department of Interior; and the United States Fish and Wildlife Service, United States Department of Interior.

rated recreational uses into forest planning.[28] Initially, the Forest Service developed a wilderness policy and established "primitive areas" through administrative action for the preservation of wild lands. Later, as the concept of wilderness preservation became widely supported, these primitive areas were to be studied and reclassified as "wild," "wilderness" or "canoe" and administratively preserved.[29]

However, ten years after reclassification was initiated, only two million acres of the fourteen million acres of primitive land had been reclassified.[30] Proponents of wilderness expressed a growing concern that the Forest Service was not acting to preserve additional wilderness. These conservationists feared that Forest Service classification could readily be changed administratively at a later date, and further noted that the Forest Service had limited control over mining activities or placement of federal reservoirs in areas administratively classified.[31] Proponents of wilderness sought and obtained permanent and comprehensive statutory preservation through the Wilderness Act of 1964.

Lack of trust in the federal land management agencies decisions continues today.[32] Many believe the present multiple use policies disproportionately favor commercial uses.[33] One way of limiting agency management discretion, and withdrawing land from entry without designating it wilderness, is to put the land into an alternative category of special use with Congressional management directives.

Therefore, one perceived advantage of special management designation is that it curtails a land management agency's discretion by prohibiting some uses of federal public lands that are normally allowed under the multiple use management system. For example, the Montana Wilderness Bill of 1984 proposed that large portions of land be designated national recreation areas. Proponents of the bill asserted such a designation would open these areas to all types of recreation, including motorized recreation, but would also provide the areas with Congressional protection against mineral entry and commercial development such as timber sales.[34]

Another alleged advantage of using alternative designations to wilderness and multiple use management is political compromise. In

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28. Robinson, *supra* note 25, at 7-8.

29. *Id.* at 7-8. *See also* 36 C.F.R. §§ 251.20, 251.21 (1939).

30. Robinson, *supra* note 25, at 10.

31. *Id.* at 13-14.

32. Comments of Montana Senator Max Baucus at the Montana Wilderness Association Annual Meeting, Bozeman, Montana (December 5, 1986).

33. Critics claim that Forest Service policies give preference to revenue producing actions, such as timber sales or oil and gas leases, and commercial uses which require more intensive management, in order to maximize its staff and budget. *See* O'Toole, *Reforming the Forest Service*, FOREST WATCH, Aug. 1987, at 18, 23.

34. *See infra* note 40.

California v. Bergland,[35] the federal district court determined that proposed development on land identified in the RARE II process was prohibited because the EIS process used by the Forest Service was inadequate.[36] The court held that NEPA required a more detailed site-specific analysis and chided the Forest Service for its nonwilderness bias.[37] Consequently, this decision inhibited potential development incompatible with possible future wilderness designation on Forest Service lands undergoing the inventory process. Because all roadless areas were required to be managed to preserve wilderness characteristics, a type of "de facto" wilderness was created for vast portions of the national forests.[38] This provided strong incentive for state Congressional delegations to pass individual wilderness bills, not only to protect designated wilderness areas in their state, but also to release the remaining lands to multiple use management.

Wilderness legislation introduced in Congress is frequently controversial. Individuals and interest groups with diverse and polar demands argue over allocation of the same public resources. The struggle over wilderness is not only a conflict over economic interests, but social values as well. Such conflicts are hard to resolve by consensus. Where Congressional choices between wilderness or multiple use seem politically undesirable, the ability to reject established patterns and fashion a management scheme to meet individual circumstances is cited as an advantage of special management.

V. Disadvantages of Special Management Area Designation

Wilderness proponents claim the most significant disadvantage of using alternative designations is that the designations compromise the wilderness attributes of pristine areas.[39] Because wilderness is a limited and diminishing resource, proponents argue that areas which still retain wilderness attributes should be included in the Wilderness Preservation

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35. 483 F. Supp. 465 (E.D. Cal. 1980), *aff'd sub nom.* California v. Block, 690 F.2d 753 (9th Cir. 1982).

36. 483 F. Supp. at 502.

37. *Id.* at 486-87. The court described the Forest Service's Wilderness Attribute Rating System (WARS), used for evaluating the wilderness characteristics of roadless areas, as follows: "The comments [on WARS worksheets] are of a brief, and very general nature. For example, one comment under the 'opportunity for solitude' attribute merely stated 'good topographical variation.' The type of land features or vegetation present in this area is undisclosed. Major features of an area are reduced to highly generalized descriptions such as 'mountain' or 'river.' One can hypothesize how the Grand Canyon might be rated: 'Canyon with river, little vegetation.' " *Id.* at 486 n.22.

38. Wilkinson & Anderson, *supra* note 8, at 335.

39. Statement of Peter D. Coppelman, representing the Wilderness Society before the Public Lands and Reserved Water Subcommittee of the Senate Energy and Natural Resources Committee on S. 2850, The Montana Wilderness Act of 1984 (August 9, 1984) [hereinafter Coppelman].

System rather than designated special management areas.[40] They claim special management does not and cannot protect wilderness values because it permits nonwilderness uses of the areas managed. Wilderness and special management have inherently conflicting goals: wilderness designation is designed to preserve resources while special management is use oriented. Thus, special management designation shifts the emphasis from preservation to dominant use management. Special management not only authorizes nonwilderness uses but often acts to intensify them.[41] Wilderness advocates claim, therefore, that any type of special management designation for lands qualifying for inclusion in the Wilderness Preservation System is necessarily in conflict with wilderness designation; it does not offer an alternative means of protection.

Another argument against special management designation stems from the history of the Wilderness Act. The Wilderness Act was born of controversy and compromise. Between the first introduction of wilderness legislation in 1956[42] and the eventual passage of the Wilderness Act in 1964, eighteen hearings were held, sixty-five different wilderness bills were introduced in Congress, and twenty versions of these bills passed one house or the other.[43] The result of this protracted debate was a definition of wilderness that embodied a comprehensive ecosystem land use approach to wildlands preservation.

Opponents to alternative designations claim that Congress made the hard choices in 1964 when it established the Wilderness Act's comprehensive land management scheme for wilderness selection and preservation, and embraced the multiple use management system for the administration of the remainder of national forest lands. Uses of federal public lands compatible with wilderness preservation were incorporated into the Wil-

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40. Wilderness advocates claim that areas of wilderness quality deserve the type of resource protection that only wilderness designation can provide. To illustrate, the Rocky Mountain Front in Montana lies along the eastern boundary of the Bob Marshall Wilderness and is presently undergoing wilderness consideration. Most of the Rocky Mountain Front is of outstanding wilderness character and, in conjunction with the Bob Marshall Wilderness/Glacier National Park complex, is a migration route and habitat for one of the healthiest large animal populations in the United States. The Forest Service rated the wilderness values for portions of the Rocky Mountain Front the highest possible in the nation. Montana Supplement of the Draft EIS, Roadless Area Review and Evaluation, U.S.D.A. Forest Service, Appendix B. However, legislation introduced has proposed extensive use of special management designations for the Rocky Mountain Front. *See* S. 2790, 99th Cong., 2d Sess. (1986).

41. National recreation areas are especially susceptible to intensified public use. The designation itself informs the public of recreational values and consequently results in increased public use. *Cf.* Foster, *Bureau of Land Management Primitive Areas—Are They Counterfeit Wilderness?*, 16 NAT. RES. J. 621, 629 (1976) (administratively designating primitive areas acts to inform the public about these areas, thus increasing and intensifying recreational usage which ultimately destroys the values sought to be protected).

42. S. 4013, 84th Cong., 2d Sess., 102 CONG. REC. 9772-77 (1956).

43. *See* Memorandum from James Conner, *infra* note 54, at 4.

derness Act.[44] Opponents of alternative classifications claim that directing additional uses of federal public lands not authorized in the Wilderness Act undermines both the wilderness and multiple use management concepts established over the years.

This philosophy finds judicial support. In *California v. Block*,[45] the Court of Appeals for the Ninth Circuit rejected the district court's finding that the Forest Service must examine classifications other than wilderness or nonwilderness in the RARE II environmental assessment process, stating that:

> The policy problem RARE II seeks to confront is how to allocate a scarce resource—wilderness—between the two competing and mutually exclusive demands of wilderness use and development. . . . The conditional use categories . . . all contemplate some type of development of nonwilderness use. The policy question which RARE II seeks to answer, however, is how much land should be opened to *any* type of development or non-wilderness use.[46]

Proponents of wilderness also express a concern that by using these alternative designations the concept of wilderness will be eroded. Proponents fear that using alternative categories to wilderness designation in some states as a solution to site-specific problems will create precedents that may be used in other states to minimize additions to the Wilderness Preservation System. As a result, wilderness preservation groups have successfully resisted special management in many states.[47]

Land management agencies also oppose special management because of the loss of agency discretion. For example, special management removes the Forest Service's management discretion under the Multiple-Use Sustained-Yield Act.[48] When wilderness legislation was first introduced, the Forest Service opposed the legislation because the agency feared the erosion of its management discretion by dominant use legislation.[49] The

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44. The various uses of wilderness include primitive and unconfined recreation, scenic, scientific, educational, conservation and historical uses. Wilderness is available for human use to the optimum extent consistent with the maintenance of primitive conditions, but in resolving conflicts in resource use, wilderness values will dominate. 36 C.F.R. § 293.2 (1986).

45. 690 F.2d 753 (9th Cir. 1982).

46. *Id.* at 767 (emphasis in original).

47. Coppelman, *supra* note 39.

48. 16 U.S.C. §§ 528-531.

49. Robinson, *supra* note 25, at 12-13.

> The Forest Service had special reason to fear the [Wilderness] Act. Quite apart from the fact that the Act would constrain its discretion in regard to wilderness areas, the Forest Service feared that if particular lands were dedicated by *statute* to some particular use, similar treatment of other uses could follow. The effect of this would be to replace the agency's multiple-use system with a dominant-use scheme. . . .

(emphasis in original).

Forest Service withdrew its opposition to statutory wilderness designation when Congress passed the Multiple-Use Sustained-Yield Act of 1960.[50] This Act sanctioned the multiple use principles of forest management and confirmed Forest Service management discretion for lands not placed within the Wilderness Preservation System.

Today the Forest Service faces the same problem it thought the Multiple-Use Sustained-Yield Act had resolved. Congress is now designating areas not included in the Wilderness Preservation System to a dominant use scheme instead of releasing these areas for multiple use management. As a result, the Forest Service's management discretion is again restricted or removed. Because of this erosion of management discretion, federal land management agencies have opposed special management designations.[51]

Another disadvantage cited by opponents to special management is the uncertainty created by the legislation which establishes the new statutory classifications. Opponents note that wilderness and multiple use management designations are "tried-and-true" methods of land use regulation with a long history of agency and judicial interpretation. Special management areas, however, are Congressionally prescribed categories requiring specific management based on statutory directives. The statutory language specifying the management directives is often open to various interpretations.[52] Executive agencies retain administrative control over lands subject to special management legislation. The agencies are thus responsible for interpreting and implementing the special management legislation. With respect to the Forest Service's management of special management areas, proponents of wilderness argue that if the statutory language used by Congress to create special management areas is too broad, the Forest Service will treat these areas essentially the same as lands managed under the multiple use system. Consequently, special management classification might give these lands the appearance of protection, but management of the lands would not necessarily provide such protection. Conversely, if the statutory language is too detailed, administrative flexibility may be diminished or eliminated.[53] The ability of the Forest Service to respond to situations requiring its management expertise would therefore be reduced. Congressional authorization would also be needed to make any management changes.[54] On the other hand, under the present

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50. *Id.* at 13. *See also* Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528-531.

51. H.R. REP. No. 405, 98th Cong., 1st Sess. 16 (1983); *see infra* notes 56-115 and accompanying text.

52. *See infra* notes 56-115 and accompanying text.

53. Cutler, *supra* note 19, at 473-74.

54. One suggestion to create workable and unambiguous statutory language is to have one or more of the interested parties draft the language. For example, wilderness advocates would draft

system, if an area instead is released to multiple use management, Forest Service management decisions are subject to public scrutiny and comment, technical challenge, and court review.[55]

This issue begs the question underlying the use of special management classifications—how involved should Congress be in specific land use management decisions? Wilderness designation is a comprehensive, well tested ecological land use classification derived through years of intense study and debate. Multiple use management is also a time tested system based on administrative expertise exercised together with public input. Special management classifications blur the traditional line between administrative and Congressional roles. Special management authorizes nonwilderness uses on land qualified for wilderness designation without the management expertise and procedural safeguards afforded through the multiple use system. Opponents to special management classification claim that Congress is not prepared to undertake the role of manager of these lands and that the use of special management areas will create more problems than it solves. The following discussion of the Cabin Creek Special Management Area in southwestern Montana illustrates the types of problems which can arise under these special management area designations.

VI. CABIN CREEK SPECIAL MANAGEMENT AREA—A CASE STUDY

Currently there are 3,431,458 acres of designated wilderness in Montana.[56] The Lee Metcalf Wilderness in southwest Montana is dedi-

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language to provide the most protection possible to land placed in special management. However, the following excerpt illustrates the fear that language agreed upon will not be adequate to prevent misinterpretation of management directives.

> Suppose for a moment that irrationality prevails, that special management is offered and that in a moment of weakness we accept it. Suppose further that the language is weak and vague, ambiguous and dangerous—that after agency and court fights, the other view of what should be prevails. We would be in a damned poor position to go to Congress asking for changes.
>
> The dialogue would go something like this:
>
> "Congressman, we want the special management language for the Imbecile Peak area changed to something more to our liking."
>
> Congressman: "But son, you agreed to the language."
>
> Conservationist: "I know, but we didn't really think it through. We didn't mean what we said."
>
> Congressman: "I see. Tell me, son, are you pleading dishonesty, or just stupidity?"
>
> Conservationist: "Both."
>
> Congressman: "So why should we listen to you now?"

Memorandum from James Conner, Chair, Flathead Group, Montana Chapter, Sierra Club to Montana Sierra Club Executive Committee, Wilderness v. Special Management (Special Management is Suicide) 3 (September 25, 1985).

55. *See generally* Wilkinson & Anderson, *supra* note 8, at 46-90.

56. THE WILDERNESS SOCIETY, WILDERNESS IN THE UNITED STATES (1984).

cated to the Montana Senator who advocated its preservation.[57] This area consists of lands adjoining the northwest boundary of Yellowstone National Park and is an integral part of the Greater Yellowstone ecosystem.[58]

The Lee Metcalf Wilderness and Management Act of 1983 (Metcalf Act) established four wilderness units and directed special management for 36,703 acres located between two of the wilderness units.[59] The Forest Service refers to the management area created under the Metcalf Act as the Cabin Creek Special Management Area.[60] This area is a critical habitat and migration route for the threatened grizzly bear, and for elk and other wildlife.[61] The Cabin Creek Special Management Area also contains the Big Sky Snowmobile Trail, the route of a popular snowmobile race from Bozeman, Montana to West Yellowstone, Montana.

The special management designation for the Cabin Creek area in the Metcalf Act represents a political compromise aimed at preserving important ecosystem values while allowing historic recreational use of the area.[62] However, since the passage of the Metcalf Act, a dispute has arisen

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57. Lee Metcalf Wilderness and Management Act of 1983, Pub. L. No. 98-140, 97 Stat. 901 [hereinafter Metcalf Act].

58. "These lands make up part of the so-called Greater Yellowstone ecosystem, and Senator Metcalf felt that Yellowstone's wildlife and wilderness values, perhaps unparalleled in the lower 48 states, would be hard pressed to survive in their present form absent statutory wilderness protection for the lands surrounding the Park." H.R. REP. NO. 405, 98th Cong., 1st Sess. 7 (1983).

59. *Id.* at 10.

60. Responsive Statement at 1, Montana Wildlife Federation, Montana Wilderness Association and Madison-Gallatin Alliance v. U.S.D.A. Forest Service, United States Department of Agriculture, Forest Service, Regional District Office, Bozeman, Montana (October 16, 1985).

61. Metcalf Act, Pub. L. No. 98-140, § 2(c), 97 Stat. 901, 901-02.

62. The Metcalf Act specifically provides:

> The Congress finds that certain lands within the Gallatin National Forest near Monument Mountain have important recreational and wildlife values, including critical grizzly bear and elk habitat. In order to conserve and protect these values, the area . . . comprising approximately thirty-eight thousand acres . . . shall be managed to protect the wildlife and recreational values of these lands and shall be hereby withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and geothermal leasing, and all amendments thereto. The area shall further be administered by the Secretary of Agriculture to maintain presently existing wilderness character, with no commercial timber harvest nor additional road construction permitted. The Secretary shall permit continued use of the area by motorized equipment only for activities associated with existing levels of livestock grazing, administrative purposes (including snowmobile trail maintenance) and for snowmobiling during periods of adequate snow cover but only where such uses are compatible with the protection and propagation of wildlife within the area: *Provided*, That the Secretary may, in his discretion, also permit limited motor vehicle access by individuals and others within the area where such access is compatible with the protection and propagation of wildlife and where such access was established prior to the date of enactment of this Act. Management direction for the area that recognizes these values shall be included in the forest plan developed for the Gallatin National Forest . . . .

Id.

over the interpretation of the recreational uses allowed within the Cabin Creek Special Management Area. Prior to enactment of the Metcalf Act, vehicle management in the area was regulated by the June 1, 1982 Gallatin National Forest Travel Plan[63] which permitted year-round use by motorized trail vehicles on nearly all trails, including on and off trail snowmobile use.[64] Following passage of the Metcalf Act, the Gallatin National Forest Travel Plan was revised to restrict the period of snowmobile use in the area.[65] Motorized vehicles other than snowmobiles were not permitted.[66]

The dispute over use of the area by motorized trail vehicles,[67] other than snowmobiles, arose in the summer of 1984 when the Forest Service began posting signs along the boundary of the Cabin Creek Special Management Area restricting travel to foot, horse or snowmobile.[68] Trail bikers protested, claiming the Forest Service had misinterpreted the law.[69]

On August 30, 1985, the Forest Service issued an Order permitting use of motorized trail vehicles on portions of ten trails in the Cabin Creek Special Management Area.[70] This Order amended the Travel Plan to allow unrestricted use of motorized vehicles under 40 inches wide during the hunting season from September 1 to December 1.[71] The Montana Wildlife Federation, the Montana Wilderness Association and the Madison-Gallatin Alliance (Conservation Groups) filed timely appeals to the August 30, 1985 Order with the Forest Service.[72] The Conservation Groups alleged that the August 30, 1985 Order did not consider the Congressional goals established for the area or comply with the limitations imposed by the Metcalf Act. Specifically, the Conservation Groups claimed the Forest Service decision violated the Administrative Procedure Act,[73] the Endangered Species Act[74] and NEPA.[75]

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63. United States Department of Agriculture, Forest Service, Gallatin National Forest (South Half), Travel Plan (June 1, 1982).

64. *Id.*

65. United States Department of Agriculture, Forest Service, Gallatin National Forest (South Half) Travel Plan (December 1, 1983).

66. *Id.*

67. Motorized trail vehicles referred to herein include motor bikes and off-road recreational vehicles under 40 inches wide. In this article, the discussion regarding motorized vehicles will not include snowmobiles.

68. Responsive Statement at 2, Bob Garner v. U.S.D.A. Forest Service, United States Department of Agriculture, Forest Service, Regional District Office, Bozeman, Montana (December 3, 1985).

69. *Id.* at 3.

70. Partial Removal of an Order Covering Travel Restrictions of the Gallatin National Forest (Forest Travel Plan) (August 30, 1985).

71. *Id.*

72. Notice of Appeal and Statement of Reasons, Montana Wildlife Federation (September 16, 1985), and Montana Wilderness Association and Madison-Gallatin Alliance (September 20, 1985).

73. Notice of Appeal and Statement of Reasons at 7, Montana Wilderness Association and Madison-Gallatin Alliance (Sept. 20, 1985) [hereinafter Conservation Groups' Appeal].

The Administrative Procedure Act (APA) provides that agency decisions subject to judicial review can be set aside if they are "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law."[76] The Conservation Groups argued that the August 30, 1985 Order was an abuse of discretion and not in accordance with applicable law because the exercise of agency discretion in issuing the order was "inconsistent with the plain language of the Metcalf Act."[77]

The statutory language and the legislative history of the Metcalf Act clearly specified that management for wildlife values is the fundamental objective of the Cabin Creek Special Management Area.[78] Every other use allowed under the statute must be compatible with the protection and propagation of wildlife.[79] The August 30, 1985 Order made no finding that the authorized motor vehicle use was compatible with wildlife protection and propagation. Thus, the Conservation Groups argued that issuing the August 30, 1985 Order without a searching and careful examination of its effects on the preservation and enhancement of wildlife values was not in accordance with the primary objective of the Metcalf Act.

The Conservation Groups also alleged that authorizing the blanket use of motor vehicles from September 1 to December 1 was an abuse of discretion. The groups contended that the statutory language and Congressional intent did not permit opening the Cabin Creek Special Management Area to trail bikers who did not historically use the area.[80]

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74. *Id.* at 5.

75. *Id.* at 8.

76. 5 U.S.C. § 706 (2)(A) (1982).

77. Conservation Groups' Appeal, *supra* note 73, at 7.

78. Metcalf Act, Pub. L. No. 98-140, § 2(c), 97 Stat. 901-02; *see also* 129 CONG. REC. S4542 (1983) (statement of Sen. Baucus).

79. Metcalf Act, Pub. L. No. 98-140, § 2(c), 97 Stat. 902. "Although the Committee's wilderness proposal is in 4 units, the Committee notes that the 'unified' wilderness concept is not as impaired as a superficial look at the 4 unit boundaries might imply. Specifically, the approximate 38,000 acres of land lying between and adjacent to the Monument Mountain and 'Taylor-Hilgard' wilderness units [Cabin creek] will be statutorily protected by virtue of the management prescriptions of subsection 2(c) of S. 96. *The main difference between these prescriptions and Wilderness designation will be that snowmobile uses, including snowmobile trail maintenance, will be allowed in the area if it is compatible with wildlife protection.. . .*" H.R. REP. No. 405, 98th Cong., 1st Sess. 10 (1983) (emphasis added).

80. The colloquy concerning this issue in the Congressional Record states:

> MR. WILLIAMS of Montana . . . I wish to ask the chairman of the Subcommittee on Public Lands [Mr. Seiberling] for some clarification concerning new language which has been added to this bill.
>
> As the gentleman from Ohio knows, we have added to this bill language permitting Forest Service management flexibility in motor vehicle access in the prescribed management area. Because this provision is addressed in neither the House nor the Senate report, I would like to clarify with the subcommittee chairman his understanding.
>
> Is it the understanding of the gentleman from Ohio that the Forest Service should not allow continual and casual four-wheeling, motorcycling, and other recreational vehicle use

The Metcalf Act provides that the Forest Service has the discretion, if compatible with wildlife values, to permit limited motor vehicle access "where such access was established prior to the date of enactment of this Act."[81] The Conservation Groups argued that agency discretion was restrained by this explicit statutory restriction on the use of motor vehicles in the Cabin Creek area, and that limiting the season of use did not address the question of historic use. Since many areas in the region previously open to off-road vehicle use were closed, and considering the increased popularity of off-road vehicles, Conservation Groups claimed that "continual and casual" motor vehicle use would increase over actual historic use. Asserting that the "historic use" restriction must be narrowly construed, the Conservation Groups argued that access should be limited to levels of actual motor vehicle use established prior to the establishment of the Cabin Creek Special Management Area.[82] They alleged that allowing all motor vehicles to use the area, even if limited to use from September 1 to December 1, violated the provisions of the Metcalf Act and was in excess of statutory authority and an abuse of discretion under the APA.[83]

The Conservation Groups also claimed that the August 30, 1985 Order violated the Forest Service's procedural and substantive duties under the Endangered Species Act (ESA).[84] Under the ESA, federal agencies have an affirmative duty not to jeopardize an endangered or

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in the area and that rather, the language of the provision is very narrowly drawn to allow historic wheeled vehicular use and access for those who have traditionally driven into the area for such practical reasons as retrieving big game and species legally killed during the hunting season, for search and rescue, for accessing or stocking hunting camps, or for permitted uses incidental to activities on private lands, such as clearing trails for outfitters?

Mr. SEIBERLING . . . that is the intent . . . .

129 CONG. REC. H8089 (1983).

81. Metcalf Act, Pub. L. No. 98-140, § 2(c), 97 Stat. 902.

82. Asserting the distinction between historic and limited use the Conservation Groups stated:

What we think is at issue in your interpretation of the law are the terms 'historic use' and 'limited use.' You cite the Congressional Record H8089 (October 6, 1983) which states that 'The Forest Service should not allow continual and casual four-wheeling, motorcycling and other recreation vehicle use in the area.' It also states that 'the language of the provision is very narrowly drawn to allow historic wheeled vehicle use and access for those who have traditionally driven in to the area for such practical reasons as retrieving big game species . . . etc.' You have interpreted these passages to mean that *anyone* may drive *any type* of motorized vehicle under 40 inches wide at *any time* between September 1 and December 1.

Letter from Montana Wildlife Federation, Montana Wilderness Association and the Madison-Gallatin Alliance to Robert Breazeale, Forest Supervisor, Gallatin National Forest (October 28, 1985) (emphasis in original).

The Conservation Groups asserted that the Forest Service should explore issuing special use permits to those individuals who could substantiate *actual* historic use of the area. *See id.* at 1. The Forest Service could also issue a limited number of special use permits based on a determination of the level of historic use of the area to avoid intensifying that use in the future.

83. Conservation Groups' Appeal, *supra* note 73, at 7.

84. *Id.* at 5.

threatened species through any authorized agency action.[85] The ESA contains procedural safeguards to ensure agency compliance with this duty.[86] When a federal agency knows that a threatened species inhabits an area affected by agency action and that implementation of such action will likely affect the species, the agency must enter into formal consultation with the United States Fish & Wildlife Service,[87] conduct a biological assessment,[88] and make a determination of whether the proposed action jeopardizes the species.[89]

The Cabin Creek Special Management Area is critical habitat for maintaining and improving the threatened grizzly bear populations in the Greater Yellowstone ecosystem.[90] The Conservation Groups argued that exercise of Forest Service discretion to permit unrestricted motorized access from September 1 through December 1 in the Cabin Creek Special Management Area was the type of agency action that triggered the procedural requirements of the ESA because the management directives influenced activities in critical grizzly bear habitat.[91] When the August 30, 1985 Order was issued, the Forest Service was in the process of conducting a Cumulative Effects Analysis on the grizzly bear ecosystem for the region, including the Cabin Creek area. However, this analysis was not completed and the Forest Service had not entered into formal consultation with the United States Fish & Wildlife Service prior to authorizing motor vehicle use in the Cabin Creek Special Management Area. The Conservation Groups alleged the determination of whether grizzly bear habitat was jeopardized could not have been made. Therefore, the Forest Service failed to follow the procedural standards required by the ESA.[92]

Federal agencies also have an affirmative duty under the ESA to conserve endangered and threatened species.[93] The Conservation Groups

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85. 16 U.S.C. §§ 1531(c)(1), 1532(20). Species which are identified as either threatened or endangered are listed at 50 C.F.R. § 17.11 (1986).

86. The courts have strictly construed the procedural requirements of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1543 (1982), and have held that the remedy for substantial procedural violation of the ESA must be an injunction pending compliance. Thomas v. Peterson, 753 F.2d 754, 764-65 (9th Cir. 1985).

87. 16 U.S.C. § 1536(a)(2).

88. *Id.* § 1536(c).

89. *Id.* § 1536(a)(2).

90. Metcalf Act, Pub. L. No. 98-140, § 2(c), 97 Stat. 901-02.

91. Conservation Groups' Appeal, *supra* note 73, at 5.

92. *Id.*

93. Under 16 U.S.C. § 1531(c)(1), all federal agencies must seek to conserve endangered and threatened species, and utilize their authorities in furtherance of this purpose. "Conserve" is defined to mean "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. . . ." *Id.* § 1532(3). *See* Tennessee Valley Auth. v. Hill, 437 U.S. 153, 184 (1978) (Congress intended the ESA to "halt and *reverse* the trend towards species extinction, whatever the

claimed the Forest Service had to manage not only to prevent mortality of endangered species but to enhance the area for their use. Additionally, pursuant to the Metcalf Act, the Forest Service had authority to exercise affirmatively its discretion to allow motor vehicle use in the area *only if* the use was consistent with wildlife preservation and propagation.[94] Therefore, the Conservation Groups argued that to comply with the ESA and the Metcalf Act, the Forest Service was required to prohibit trail bike use until a study was available on the compatibility of trail bike use with the preservation and propagation of wildlife.[95]

Finally, the Conservation Groups charged that the August 30, 1985 Order was not in compliance with the procedural requirements of NEPA, which specify that a federal agency must prepare an EIS when the agency proposes a major federal action significantly affecting the environment.[96] The Metcalf Act directed the Forest Service to develop management directives for the use of the Cabin Creek Special Management Area.[97] The Conservation Groups asserted that development of the directives, which allowed access by motor vehicles, was a major federal action significantly affecting the environment.[98]

Proposed management directives for the Cabin Creek area were included in the Draft Plan for the Gallatin National Forests.[99] The Conservation Groups did not argue that the Forest Service had to prepare a separate EIS for the Cabin Creek Special Management Area, but rather that the proposed management directives had to be considered individually within the draft plan and the accompanying draft environmental impact statement (DEIS), and that alternatives to the proposed action had to be considered.[100]

The draft plan proposed limited use of motor vehicles in the Cabin Creek area from October 1 through December 1.[101] Neither the draft plan nor the DEIS addressed compatibility of the proposed management directives with the protection and propagation of wildlife, the extent of historic motor vehicle use in the area, or presented any alternatives to the proposed action. The Conservation Groups contended, therefore, that the process employed by the Forest Service did not meet the basic procedural

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cost." (emphasis added)).

94. Metcalf Act, Pub. L. No. 98-140, § 2(c), 97 Stat. 901-02.

95. Conservation Groups' Appeal, *supra* note 73, at 5-6.

96. 42 U.S.C. § 4332(C).

97. Metcalf Act, Pub. L. No. 90-140, § 2(c), 97 Stat. 901-02.

98. Conservation Groups' Appeal, *supra* note 73, at 8.

99. United States Department of Agriculture, Forest Service, Proposed Forest Plan, Gallatin National Forest (March, 1985) and accompanying Draft Environmental Impact Statement [hereinafter Draft Plan].

100. Conservation Groups' Appeal, *supra* note 73, at 8.

101. Draft Plan, *supra* note 99, at III-69.

requirements of NEPA.[102]

After review of the Conservation Groups appeal, the Forest Supervisor rescinded the August 30, 1985 Order, stating that the issue of limited motor vehicle use would be addressed in the final forest plan.[103] Trail bikers appealed the rescission of the August 30, 1985 Order, arguing that the decision was contrary to the intent of the Metcalf Act and discriminatory against off-road vehicles. Specifically, the trail bikers alleged that the Forest Service had originally misinterpreted the Metcalf Act as being a "ban" on motor vehicle use in issuing the December 1, 1983 revised Travel Plan. Therefore, the August 30, 1985 Order merely corrected an original error and returned use of the area, at least partially, to the status quo in effect prior to the passage of the Metcalf Act.[104]

The trail bikers further asserted in the appeal that off-road vehicles had historically used the Cabin Creek area for perhaps as many as 30 years, and this use was for the entire summer season and not just for the hunting season.[105] They alleged that the Forest Service had no authority under the Metcalf Act to single out trail bike use as not a "historical use" of the area.[106] The trail bikers asserted that the intent of Congress was to allow continued use of all classes of historic uses,[107] and that the legislative history against "continual and casual four-wheeling, motorcycling and other recreational vehicle use"[108] was individual Congressmen "conspir[ing] to create a dialogue for the record which would specifically exclude trail bike riders from all definitions of 'historic use' of the area."[109] The trail bikers argued that no rational basis existed for allowing some forms of motor vehicle access and not others when all have historically used the area. Therefore, the trail bikers challenged the Forest Service "limitations" on the period of use which favored one group of motor vehicle users as being an unauthorized discriminatory action.[110]

The trail bikers further challenged the Conservation Groups' contention that allowing continued historic motor vehicle use in the Cabin Creek Special Management Area was a "proposed action" triggering the procedural requirements of the ESA. The trail bikers asserted that because

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102. Conservation Groups' Appeal, *supra* note 73, at 8.

103. Decision of Forest Supervisor, Gallatin National Forest, Montana Wildlife Federation, Montana Wilderness Association and Madison-Gallatin Alliance v. U.S.D.A. Forest Service (October 30, 1985).

104. Notice of Appeal and Statement of Reasons at 3, Bob Gardner (on behalf of Trail Bike Riders) (November 4, 1985) [hereinafter Trial Bike Riders' Appeal].

105. *Id.* at 2.

106. *Id.* at 1.

107. *Id.* at 3.

108. *Id.*; *see also supra* notes 80 and 82.

109. Trail Bike Riders' Appeal, *supra* note 104, at 3.

110. *Id.* at 1.

their use was historic, the Forest Service was not "opening" the area to motor vehicle use, and allowing continued use was not an "action" authorizing any new activity in the area.[111] They argued that the Forest Service decision would not likely affect any endangered species, because trail bikes had coexisted with wildlife for decades and "have passed the test of time and history with respect to their compatibility with the 'protection and propagation' of wildlife . . . ."[112]

Finally, the trail bikers also challenged the theory that only motor vehicle use must be prohibited pending preparation of management directives, arguing that all recreation uses must be compatible with wildlife values, and that if historic motor vehicle use was banned or restricted, then so must other nonmotorized recreation use.[113] This appeal was rejected by the Regional Forester and the Regional Forester's decision was upheld by the Chief of the Forest Service.[114]

The result of this dispute is that the Cabin Creek area is presently closed to motor vehicle use. However, the draft plan proposes motor vehicle use from September 1 through December 1. The issues of compatibility with the protection and propagation of wildlife, historic use of the area by motor vehicles, and the adequacy of the NEPA process[115] were merely deferred and will undoubtedly resurface later in the planning process.

VII. CONCLUSION

The creation of special management areas is often the result of political compromise, and like most political comprises it comes with a price. As an alternative category to wilderness designation, special

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111. *Id.* at 1, 5.

112. *Id.* at 5.

113. *Id.* at 6.

114. Responsive Statement, Bob Garner v. U.S.D.A. Forest Service, Forest Supervisor, Gallatin National Forest (October 30, 1985), *aff'd*, Regional Forester (March 26, 1986), *aff'd*, Forest Service Chief (July 16, 1986).

115. Bob Denney, Information Officer, Gallatin National Forest, stated the Forest Service has decided to address alternatives to the proposed action, analyze environmental impacts, incorporate the Grizzly Bear Cumulative Effects Analysis (discussing the impacts of recreation on wildlife values) and to enter into consultation with the U.S. Fish & Wildlife Service. At present this information is not available to the public and will not be made available prior to publishing the final Forest Plan and accompanying final EIS. The public will not be given the opportunity to comment on information used or the range of alternatives prior to adoption of the proposed agency action. Telephone interview with Bob Denney, Information Officer, Gallatin National Forest (April 16, 1987).

Meaningful opportunity to comment is essential to reasoned decision making, which is the objective of NEPA. New information and alternatives are likely to be viewed by the courts as not merely supplementing the draft Forest Plan and DEIS, but as substantially altering the plan and therefore requiring public comment. The Forest Service will not cure the Conservation Groups' alleged violation of NEPA by considering alternatives and data on compatibility if no meaningful opportunity for comment is provided. *See* Appalachian Mountain Club v. Brinegar, 394 F. Supp. 105 (D.N.H. 1975).

management designation is intended to protect some wilderness values but at the same time permit additional uses that may destroy the wilderness quality of these lands. Thus, special management designation may endanger the very wilderness values it was intended, in part, to protect. Wilderness designation and special management have inherently conflicting goals: wilderness management protects a wide range of values through an ecological approach to land use, while special management directs management of areas for one or more dominant uses, be they wildlife enhancement or off-road vehicle use. The result is a shift from resource protection to use oriented management.

This emergence of Congressionally directed dominant use management also represents a piecemeal erosion of the multiple use management system and the management discretion of the agencies charged with administering public lands. Congress has neither the expertise nor the time to play the role of land manager for specific areas. Any Congressional dissatisfaction with the multiple use management system or the way it is administered should be addressed through a systematic review of the current public land management system rather than by means of Congressionally directed, site-specific land use decisions.

Finally, as the Montana Cabin Creek experience illustrates, the statutory language creating special management areas may spark lengthy administrative and judicial battles over just what uses Congress intended to permit in the areas. The statutory language must be sufficiently detailed to make the Congressionally designated purposes clear, but it must also permit enough agency discretion to allow the agency to manage the areas according to the mandated goals. Where this balance is not achieved, the creation of special management areas may not resolve controversial land management issues but merely shifts them to the administrative agencies, the courts, and ultimately back to Congress.