Background Paper 85-3

# W I L D E R N E S S

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# WILDERNESS

## I. THE WILDERNESS ACT OF 1964

Beginning in the 1920's, and at the urging of a forester named Aldo Leopold, the United States Forest Service (USFS) began setting aside "primitive areas" of the national forests and giving them administrative protection. After many years of lobbying for legal protection of these and other primitive areas, wilderness advocates were successful in convincing Congress to pass the Wilderness Act of 1964 (Public Law 88-577, 78 Stat. 890, 16 United States Code 1131 et seq.).

Wilderness is defined in the following language in 16 United States Code Annotated § 1131 (c):

> 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. 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.

The Wilderness Act of 1964 applies only to land managed by the U.S. Forest Service, the National Park Service, and the Fish and Wildlife Service. Lands under the jurisdiction of the U.S. Bureau of Land Management (BLM) were not mentioned in the Wilderness Act because rangelands were not in the public eye, and the agency did not have a multiple-use mandate at the time. In addition to its creation of "instant wilderness" from certain previously protected areas, the act set in motion three separate 10-year studies of lands for wilderness suitability: the U.S. Forest Service lands labeled as primitive areas; all roadless areas in the national wildlife system; and all National Park Service roadless areas of more than 5,000 acres. [16 U.S.C.A. § 1133]

Although the Wilderness Act requires federal land management agencies to study areas for wilderness potential, only Congress is authorized to enact wilderness legislation.

Largely at the insistence of former Colorado Congressman Wayne Aspinall, the 1964 law kept national forest wilderness open for established livestock grazing and mineral exploration until December 31, 1983. It also authorized the U.S. Forest Service to fight fires, control insects and disease, and to use motorized equipment, within limits, to facilitate these activities.

## II. WILDERNESS STUDIES OF THE UNITED STATES FOREST SERVICE - RARE I

In 1967, the U.S. Forest Service voluntarily began a comprehensive wilderness study process beyond the requirements of the Wilderness Act. The study became known as the Roadless Area Review and Evaluation (RARE I). Although the federal law only mandated review of those lands designated as "primitive areas," the USFS undertook a review of all roadless areas in national forests, either greater than 5,000 acres in size or adjacent to existing wilderness or primitive areas.

When the RARE I study was released in 1972, an inventory of 1,449 primitive roadless areas totaling 56 million acres had been reviewed. The U.S. Forest Service classified land in three categories: (1) nonsuitable as wilderness and suitable for release to multiple use; (2) suitable for wilderness and recommended as such; or (3) "further study."

After concluding that many of the inventoried lands were not suitable as wilderness, the U.S. Forest Service offered timber contracts on some of them. The Sierra Club filed a suit asking for a preliminary injunction to prohibit any cutting on RARE I lands until an Environmental Impact Statement (EIS) was completed (Sierra Club v. Butz, 349 F.Supp. 934 (1972)). The U.S. Forest Service settled Sierra Club v. Butz by agreeing in late 1972 to issue no new timber contracts on RARE I land until it had completed an EIS.

The final EIS on RARE I lands was released in October 1973. It eliminated most roadless areas from the inventory and designated 274 areas totaling 12.3 million acres for detailed study for wilderness suitability.

The detailed study lagged after the 1973 EIS because the USFS chose to pursue a case-by-case wilderness evaluation as part of the local forest planning process. Because this process was

time-consuming, and to expedite the release of certain roadless areas for development, another wide-ranging study, known as RARE II, was begun in 1977.

## III. RARE II

The new inventory included 2,918 units of primitive roadless areas (more than twice as many as RARE I) totaling slightly more than 62 million acres. According to Terry Randolph, forest planner for the U.S. Forest Service's Toiyabe National Forest, the new inventory was expanded as a result of changing a criterion for creating boundaries around roadless areas. In the RARE I inventory, boundaries were drawn primarily around ridgetops. For RARE II, boundaries extended to road shoulders. This resulted in many "cherry-stemmed" or octopus-shaped roadless areas, as well as in a larger overall inventory. These boundaries were adjusted again during the study process.

Study was then undertaken to determine which areas should be declared nonwilderness and which should receive further analysis. As required by the National Environmental Policy Act (NEPA), the U.S. Forest Service prepared a lengthy environmental impact statement known as a "programmatic" EIS.

The draft environmental statement, issued in 1978, elicited 264,000 comments. The final statement, issued in 1979, proposed to allocate approximately 15 million acres to wilderness, 36 million acres to nonwilderness and 11 million acres to further planning. However, it too was challenged by the Sierra Club, and the State of California, on the ground that a case-by-case site evaluation of each area had not been performed. In a 1982 decision, California v. Block, 69 F.2d 753 (Ninth Cir. 1982), the Ninth Circuit Court of Appeals agreed with the plaintiffs that the U.S. Forest Service's EIS was too broad and sweeping. The agency was then directed to evaluate each wilderness study area separately as part of its ongoing "forest planning" process. Many states took this opportunity to support the passage of RARE II wilderness bills rather than wait for the completion of U.S. Forest Service plans (see Table I: Wilderness Legislation of the 98th Congress).

TABLE I: WILDERNESS LEGISLATION OF THE 98TH CONGRESS

| LEGISLATION | STATUS | COMMENT |
|---|---|---|
| **Wilderness** | | |
| California RARE II (HR 1437) | President Reagan signed into law September 28 as PL 98-425. | Designates 1.8 million acres of national forest wilderness. |

TABLE I: WILDERNESS LEGISLATION OF THE 98TH CONGRESS
(continued)

| LEGISLATION | STATUS | COMMENT |
|---|---|---|
| Wilderness | | |
| Oregon RARE II (HR 1149) | President Reagan signed into law June 26 as PL 98-238. | Designates 935,000 acres of national forest wilderness. |
| Wyoming RARE II (HR 1568) (S 543) | President Reagan signed into law October 30 as PL 98-550. | Designates 884,000 acres of national forest wilderness. |
| Utah RARE II (HR 4516) (S 2155) | President Reagan signed into law September 28 as PL 98-428. | Designates 750,000 acres of national forest wilderness. |
| Idaho RARE II (S 2547) (HR 5425) (HR 6062) | Bill failed when McClure and Seiberling could not agree. | Main bill would have established 526,000 acres of wilderness. Environmentalists wanted 3.4 million. |
| Arizona RARE II (HR 4707) | President Reagan signed into law August 28 as PL 98-406. | Designates 1.1 million acres of national forest and BLM wilderness. |
| Washington RARE II (S 837) | President Reagan signed into law July 3 as PL 98-339. | Designates 1.1 million acres of national forest as wilderness. |
| Colorado RARE II (HR 5426) (S 2032, 2916) | Compromise failed last minute over water rights issue. | House bill would have designated 589,000 acres of national forest and BLM wilderness. |
| Montana RARE II (S 2850) (HR 6001) | Misfired after first round of hearings held. | Bill would designate 725,000 acres of wilderness and establish a number of protected areas. |
| San Juan, Colorado, Wilderness (HR 6296) (S 285) | President Reagan signed into law October 30 as PL 98-603. | Designates two BLM WSA's as wilderness and keeps a third as a WSA. Fossil Forest protected. |

Alaska, Colorado and Montana all passed RARE II bills in 1980. These bills, as well as some of those passed in the last session of Congress, include "further study" areas when delegates cannot agree over the classification of selected areas. The Nevada congressional delegation has never introduced a wilderness bill because of lack of enough agreement among Nevada constituents.

## IV. U.S. FOREST SERVICE RECOMMENDATIONS FOR THE STATE OF NEVADA

The 64,700-acre Jarbidge "primitive area" was grandfathered into wilderness status with the passage of the Wilderness Act of 1964. Located in northeastern Nevada, this is the only officially designated wilderness area in the state.

As part of RARE II, the U.S. Forest Service inventoried 66 primitive roadless areas comprising approximately 2.5 million acres in Nevada. The agency recommended seven areas in Nevada (512,775 acres) as suitable for wilderness designation by Congress. Determined not suitable for wilderness were 1.8 million acres. Three areas, comprising approximately 171,000 acres, were recommended for further study. Determined suitable for wilderness designation in the 1979 RARE II study were:

1. The Arc Dome area in the Toiyabe Range (Nye County);

2. The Excelsior Mountains (Mineral County);

3. The Ruby Mountains (Elko County);

4. The Grant Range (Nye County);

5. The Quinn Canyon Range (Nye County);

6. The Jarbidge Additions (Elko County); and

7. The Boundary Peak area in the White Mountains (Esmeralda County).

Recommended for further study were:

1. The Sweetwater Mountains (Lyon and Mineral Counties);

2. The Mt. Moriah area in the Snake Range (White Pine County); and

3. The Wheeler Peak area in the Snake Range (White Pine County).

New recommendations, which could differ from the ones made in 1979, will be announced when the draft land use plans for the

U.S. Forest Service's two national forests in Nevada--the Humboldt and the Toiyabe--are released in May of 1985.

## V. RECOMMENDATIONS OF INTEREST GROUPS

The wilderness issue has been very controversial in Nevada partly because the Federal Government already manages and regulates the uses on much of the land within the state and partly because there are two strong and fundamentally opposed philosophies in Nevada regarding wilderness. The two most vocal groups concerned with this issue--mining interests and environmentalists--have made widely differing wilderness recommendations. Furthermore, the boards of county commissioners in eight Nevada counties have specifically opposed any wilderness.

### Position of Mining and Ranching Interests

The following chart illustrates certain Nevada RARE II areas. Positions concerning some of these areas have been developed by the Nevada Mining Association (NMA), the Nevada Miners and Prospectors Association (NMPA), and the Nevada Cattlemen's Association (NCA).

TABLE II: AREAS NOT OPPOSED BY MINING AND RANCHING INTERESTS FOR INCLUSION IN A NEVADA WILDERNESS BILL

| | INTEREST GROUP | | |
|---|---|---|---|
| RARE II AREA | NMA (9-84) | NMPA (2-85) | NCA (3-84) |
| Mt. Charleston Area | * | * | * |
| Boundary Peak | * | * | * |
| Mt. Moriah | * | * | * |
| Ruby Mountains | * | * | * |
| Jarbidge Additions | * | * | * |
| Arc Dome | ** | ** | |
| Wheeler Peak | ** | ** | |
| Part of E. Humboldt Range | ** | ** | |

* Do not oppose.
** Agree to further study.

The five areas not opposed for wilderness by the Nevada Mining Association comprise 245,740 acres. In addition, the mining association does not oppose wilderness designation for the 1.5 million-acre National Desert Wildlife Range, north of Las Vegas, which is managed by the U.S. Fish and Wildlife Service.

Position of the Environmental Community

Environmentalists, represented in Nevada primarily by the Toiyabe Chapter of the Sierra Club, support 18 areas for wilderness designation comprising slightly over 1 million acres or approximately 1.5 percent of the state. Some of these areas do not correspond to areas delineated in the U.S. Forest Service RARE II inventory. In a couple of cases, the Sierra Club has grouped two contiguous, but separate, USFS wilderness recommendations into a single area.

In addition to the seven areas recommended as suitable for wilderness designation by the USFS, the Sierra Club supports the following additions to the wilderness system:

- Mt. Charleston area (Clark County);
- Alta Toquima area in the Toquima Range (Nye County);
- Table Mountain in the Monitor Range (Nye County);
- Currant Mountain in the White Pine Range (White Pine and Nye Counties);
- Part of the South Snake Range (White Pine County);
- Mt. Moriah area (White Pine County);
- Part of Schell Creek Range (White Pine County);
- Part of the East Humboldt Range (Elko County);
- Part of the Santa Rosa Range (Humboldt County);
- Part of the Toiyabe Crest Trail (Lander and Nye Counties); and
- Part of the Mount Rose area (Washoe County).

## VI. MAJOR ISSUES AND QUESTIONS ASSOCIATED WITH THE DESIGNATION OF WILDERNESS AREAS

Many issues and questions have been raised in association with the possible designation of wilderness areas.

## Mineral Potential

A major dispute in Nevada is whether or not possible wilderness areas have any mineral potential. Mining interests assert that mineral potential cannot be determined without exploration, while environmentalists say that the state's geology is sufficiently well known to not require additional exploration and that there remains little in the way of major mineral discoveries. Mining interests also believe that the uneconomical mining ventures of today may become economical in the future and that wilderness designation "locks-up" this potential. Environmentalists counter by saying that these reserves will always be available in case of "true need," but that all other areas should be developed first.

## Air Quality

When the Clean Air Act Amendments of 1977 (Public Law 95-95, 91 Stat. 731, 42 U.S.C.A. §§ 7401 et seq.) were passed, any existing wilderness area was automatically given "Class I" air quality designation. This designation requires that strict controls be adopted to avoid air quality deterioration. Much controversy followed the Class I air quality designation in Nevada's Jarbidge Wilderness. Mining interests in Nevada fear the imposition of air quality standards in future areas designated as wilderness which could restrict mining development in areas adjacent to or near these wilderness areas. If strict air quality designations are made to protect "viewsheds" seen from wilderness areas, mining interests believe this could have severe repercussions on the industry.

The federal law further provides that air quality designation is primarily a state function and, in regard to future wilderness areas, states may select and write into wilderness legislation lower air quality standards subject to certain substantive and procedural constraints.

## Water Rights

In regard to whether water rights are affected, several questions exist. One question is the extent to which livestock operators have a right to make improvements on allotments within wilderness areas. Another is whether the U.S. Forest Service has "reserved" water rights within designated wilderness areas, as a pending lawsuit by the Sierra Club alleges (Sierra Club v. Block, No. 84-K-0002, United States Court, District of Colorado).

## Wilderness Characteristics

In the West, another often heard criticism of the wilderness recommendation process is that many of the areas being considered are not true wilderness at all. When the USFS first began its wilderness review, it adopted a strict definition of wilderness.

This led the agency to conclude that no wilderness existed in the East. Because of political backlash from easterners and lawsuits from environmentalists, the definition of wilderness was broadened. For example, the U.S. Forest Service now limits the definition of "roads" to those engineered in a "cut and fill" design. Thus, areas crossed by jeep trails and the like may be considered "roadless" and eligible for wilderness designation.

### Release of Nonwilderness Areas

Another issue which has been faced by states that have supported congressional action on wilderness is the question of "release" language. This concept is associated with the amount of time which must elapse before an area not designated as wilderness can again be considered for wilderness status.

Wilderness supporters wanted areas not officially designated as wilderness in the present round of legislation to be reconsidered for wilderness status in as little as 10 years. Opponents of wilderness wanted areas not designated as wilderness in this round of legislation to be dropped from any future reconsideration and to be managed for multiple-use. After lengthy testimony and debate, a compromise was reached in the last session of Congress. For six state bills then pending, periodic wilderness reviews were authorized in conjunction with the development of new forest plans at least every 15 years. Areas not designated as wilderness will be managed for multiple-use between evaluations.

### Interim Management of Possible Wilderness Areas

As a result of court and administrative decisions, the U.S. Forest Service manages potential wilderness areas so as not to impair their wilderness qualities. However, upon completion of a forest plan, the agency does not have to wait for Congress to enact wilderness legislation but may manage areas not recommended for wilderness status under multiple-use. In practice, all U.S. Forest Service plans to date have been appealed by environmental groups. Because the adjudication process places a freeze on the implementation of plans, areas determined not suitable for wilderness cannot be released into multiple-use until a settlement is reached. Opponents of wilderness claim that areas so managed are "de facto" wilderness areas.

## VII. THE POSSIBILITY OF A "NEVADA" WILDERNESS BILL IN THIS SESSION OF CONGRESS

If the Nevada congressional delegation can agree on how much, if any, U.S. Forest Service wilderness should be designated in Nevada, a bill will be introduced in this session of Congress.

The "politics" of wilderness, both inside and outside of Nevada, will have a great deal to do with the kind of wilderness legislation that ultimately may be passed for the State of Nevada. If the U.S. Forest Service plans for the Humboldt and Toiyabe National Forests are appealed, it is likely that none of the USFS land being studied for wilderness would be released into multiple-use until Congress takes action on a wilderness bill for the state.

Moreover, if the Nevada congressional delegation proposes a relatively small amount of wilderness, deliberations in Congress could last a long time because of the political strength of key members of the House of Representatives who strongly advocate wilderness. These negotiations could further delay the release of U.S. Forest Service land in Nevada into multiple-use. For these reasons, the Nevada congressional delegation is hoping to draft a compromise bill during the current session of Congress.

## VIII. BUREAU OF LAND MANAGEMENT WILDERNESS STUDIES

The 1964 Wilderness Act did not require any study of possible wilderness areas managed by the U.S. Bureau of Land Management (BLM), although the agency administratively designated several primitive areas after the legislation passed. The Federal Land Policy and Management Act of 1976 (Public Law 94-579, 90 Stat. 2743), however, imposed planning requirements upon the agency and required the review, by 1991, of all roadless areas of 5,000 acres or more for possible wilderness recommendation.

The wilderness review process within the BLM differs slightly from the one used by the U.S. Forest Service in that a two-tier evaluation is required under the Federal Land Policy and Management Act (FLPMA). The first tier involves a review of wilderness suitability. When areas suitable for wilderness designation have been identified, the second tier requires that a minerals survey be conducted by the United States Geological Survey and the Bureau of Mines to determine the mineral values, if any, of such areas. The U.S. Forest Service has no such requirement. The FLPMA also requires that wilderness study areas (WSA's) be managed "in a manner so as not to impair the suitability of such areas for preservation as wilderness," subject to certain existing uses.

In terms of defining wilderness characteristics, the BLM has had many of the same difficulties as the U.S. Forest Service. The BLM's wilderness study process has avoided some of the pitfalls experienced by the U.S. Forest Service, however, in that wilderness potential is evaluated at the same time that Resource Management Plans (RMP's) are developed.

In Nevada, the BLM intends to complete its wilderness recommendations by 1987, 4 years ahead of the statutory deadline. The

present round of BLM land use planning is almost complete in Nevada with only the draft Elko Resource Management Plan remaining to be released. After release of the final draft of the Elko RMP in 1986, the minerals survey will be conducted.

The agency identified 4.4 million acres of land in Nevada as wilderness study areas. As of present, 42 areas comprising 1.6 million acres have been recommended as suitable for wilderness, and 28 areas comprising 2.7 million acres have been dropped from further consideration.

## IX. CONCLUSION

The Wilderness Act is now 21 years old. The United States is the only nation in the world to have legislated broad protection for large land areas in their natural state. Land protection of this type in other countries has been limited to the preservation of natural areas for specific purposes such as scientific study, wildlife habitat, or parks.

As of the end of 1984, approximately 88 million acres nationwide had been given official wilderness status. The bulk of this amount--56 million acres--is found in Alaska, and the remaining 32 million acres are dispersed across the lower 48 states.

In the West, RARE II wilderness bills have been recently passed for all states except Colorado, Idaho, Montana and Nevada. Existing wilderness designations in Idaho comprise 3,868,979 acres or 7.3 percent of total state acreage, while those in Montana cover 3,469,458 acres or 3.7 percent of total state acreage. Colorado also has 2,640,307 acres of designated wilderness comprising roughly 4 percent of the state. Designated wilderness in Nevada, however, encompasses only 64,700 acres, making it the western state with the least amount of official wilderness. Because of this and because of Nevada's status as a "public lands state," the wilderness issue is expected to remain controversial for some time to come.

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