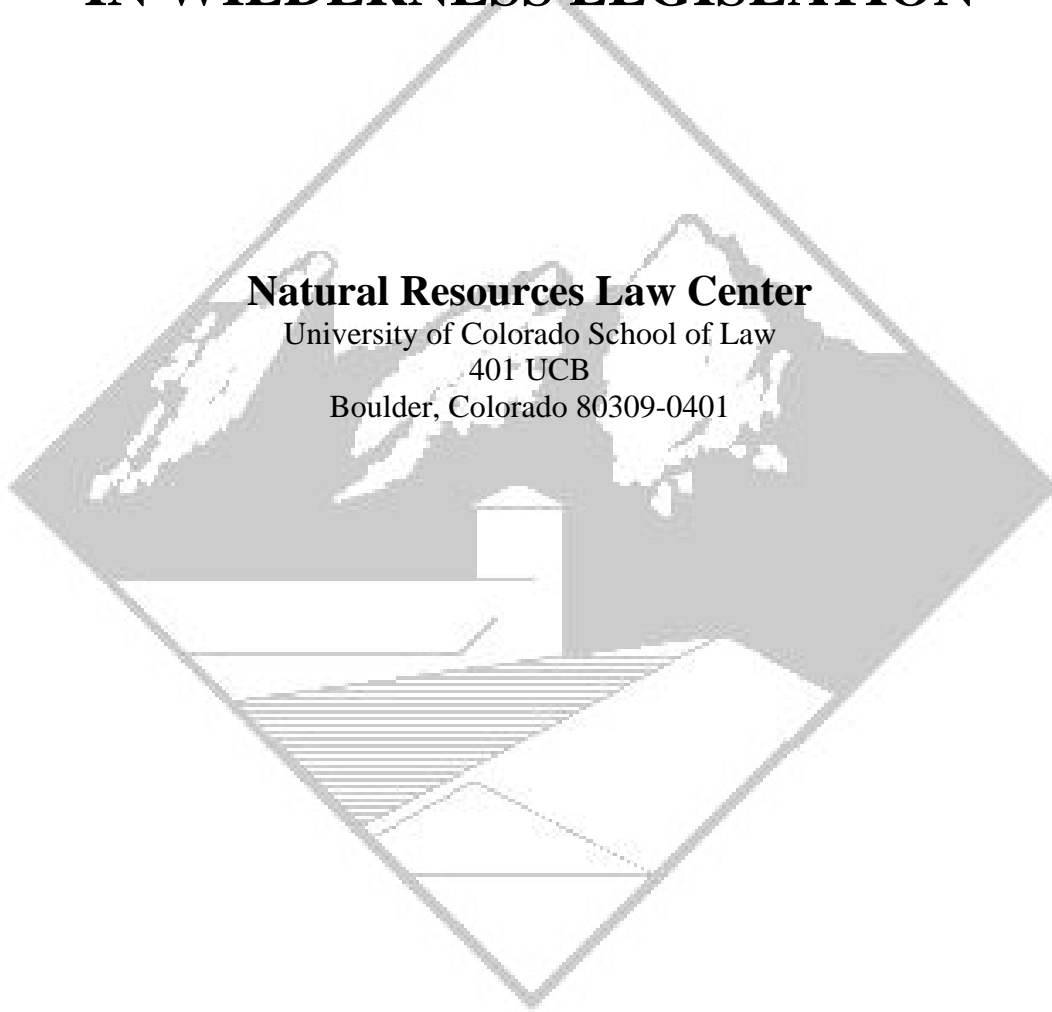


# **SPECIAL USE PROVISIONS IN WILDERNESS LEGISLATION**



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**2004**

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# **Special Use Provisions in Wilderness Legislation**

## **I. Overview**

In 2004 and 2005, the Natural Resources Law Center (the Center) at the University of Colorado completed research on special use provisions in Wilderness legislation. One aspect of that research was a survey of these special use provisions to determine if there is any pattern to their inclusion in Wilderness legislation. This report presents the findings of that study.<sup>1</sup>

The study reviewed the original Wilderness Act, as well as individual Wilderness designations through the 107<sup>th</sup> Congress<sup>2</sup> for language regarding the following activities in Wilderness Areas: mining and mineral leasing, motorized access to grazing allotments, inholdings, and for wildlife management, aircraft and motorboat use, commercial services, military activities, and operational facilities (i.e. power transmission lines and dams). The study did not consider compromises on Wilderness boundaries, which always occur in framing wilderness legislation.

To evaluate the special provisions, the Center acquired digital and hard copies of all legislation designating or expanding wilderness areas in the western states (excepting Alaska and Hawaii). From that library of wilderness legislation, the Center then identified and compiled the specific legislative language into **Special Use Provision Excel Tables** related to the following categories of special use provisions that have been included in wilderness legislation since 1964: hard rock mining; mineral leasing; water rights and water projects; grazing; aircraft and motorboat (non-military) access; access to inholdings; commercial services; and access.

## **II. Specific Special Use Provisions**

In this section, we describe the evolution of each of the special use categories and, to the extent we can, correlate those special use provisions with the results of the Center's survey of wilderness area managers.

### **A. Water Rights**

**1. Background.** The Wilderness Act of 1964 included two provisions related to water. First, the Congress specified that “[n]othing in this Act shall constitute an express or implied claim or denial on the part of the federal Government to exemption from State water laws.” Second, the original act also gave the President the power to authorize prospecting for water resources and the construction and maintenance of water projects and transmission lines within wilderness

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<sup>1</sup> The Center also conducted a survey of wilderness area managers to evaluate how special uses are implemented in the field. See, [Special Use in Wilderness Areas: Management Survey](#).

<sup>2</sup> Wilderness areas in Lincoln County Nevada added to the National Wilderness Preservation System in the 108<sup>th</sup> Congress through P.L. 108-424 are not included in this report.

areas if he were to determine that such use or uses would better serve the public than would denial. However, that presidential waiver provision has never been exercised.

For the next sixteen years, the Congress dealt only sporadically with the issue of water rights in wilderness. In 1969, the legislation designating the Desolation Wilderness grandfathered a pre-existing hydroelectric project, and access thereto. The Endangered American Wilderness Act of 1978 included language protecting the water rights of the Fryingpan-Arkansas Project in western Colorado.

1980 was a busier year on the water rights front. Legislation designating the Rattlesnake Wilderness Area in Montana included a section stating that nothing in the act was to be construed to affect or diminish any water right that was vested at the time of enactment. The Colorado Wilderness Act of 1980 included a special provision protecting the Homestake Water Project from being prejudiced, expanded, diminished, or affected by the legislation. That act also preserved the right of access to a water ditch in the Rawah Wilderness.

Four years later, the legislation designating a number of wilderness areas in Arizona included a provision stating that nothing in that act or in the original Wilderness Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from Arizona State water laws. That same year, in 1984, the Utah Wilderness Act said little about water except to include a number of provisions authorizing motorized access to hydrologic, meteorological, climatologic, and telecommunications facilities. The Wyoming Wilderness Act of 1984 took a similar tack. It repeated the language that had been used in the Arizona bill disclaiming any intent to exempt the federal government from state water laws, and also included language making clear that the designation of several areas would not affect a water project the state of Wyoming was contemplating at the time.

A major departure in Congress's treatment of water rights issues occurred in 1987, when the Congress designated the El Malpais Wilderness Area in New Mexico. In that legislation, the Congress said for the first time that it was expressly reserving sufficient water to carry out the purposes of the wilderness area, national monument, and conservation area designated by that act. A few years later, in 1990, the Congress was even more emphatic on the water issue as it designated a number of BLM areas in Arizona as wilderness. In that legislation, the Congress reserved a quantity of water sufficient to fulfill the purposes of the legislation. The Congress also took the unusual step of directing the Secretary to take those steps necessary to protect these new reserved rights, including the filing of claims for the quantification of such rights in appropriate proceedings.

Only three years later, the Congress took a different approach to dealing with water rights. In the Colorado Wilderness Act of 1993, the Congress effectively disclaimed both an express and implied reserved water right by precluding assertion of a wilderness reserve right. At the same time, the Congress expressly eliminated the president's authority to permit water resources development within any of the areas designated by this act. The Colorado legislation – which was tailored to address a number of headwaters areas – also included a number of provisions to prevent the expansion of existing projects. Then a year later, Congress reversed course again.

The California Desert Protection Act of 1994 includes a provision reserving an amount of water sufficient to fulfill the legislation's purposes.

In 1999, the Congress was again taking a minimalist approach to water in wilderness. In the legislation modifying the Cabeza Prieta Wilderness boundaries and expanding military use in that area (Arizona), the Congress disclaimed any intent to establish a reservation with respect to any water or water rights. That same year, legislation designating the Gunnison Gorge Wilderness disclaimed any express or implied water rights but (ostensibly) preserved any federal water rights that pre-dated the legislation.<sup>3</sup> A year later, the Congress was even more parsimonious in dealing with the Black Ridge Canyons area in western Colorado. Even though that area may not have qualified as a true headwaters area, the Congress used language modified from the non-assertion language of the 1993 Colorado Wilderness Act. This time, the Congress actually disclaimed a federal right and precluded a presidential waiver to authorize water resource development within the area.

Finally, in the Clark County (Nevada) Conservation of Public Lands and Natural Resources Act, Congress used a modified version of the modified Colorado language in dealing with a number of areas that are located in the Mojave Desert. In text analogous to the Colorado headwaters language, the legislation includes a number of findings alluding to the fact that there is little surface water in these areas, that the ground water regime is complex, and that injurious water development is unlikely. Then the Congress both disclaimed a federal water right and eliminated the presidential waiver authority found in the original Wilderness Act of 1964.<sup>4</sup>

2. Do statutory trends emerge? In evaluating the evolution of water rights language, it is certainly clear that the water rights issue has received much greater scrutiny in the last twenty years than in the first twenty years of wilderness designations. Overall, slightly less than half of all wilderness areas studied (46 percent), have been designated, at least in part, with special water language.<sup>5</sup> However, it is difficult to discern a clear trend in how Congress deals with water rights. Many bills included language neither claiming nor denying exemption from state water law while protecting individual water projects or their yield. Legislation for California and Arizona has clearly reserved rights. Other bills have been silent. Colorado pioneered a new approach for headwaters areas that has been modified in a subsequent Colorado bill and a more recent legislation in Nevada, albeit for desert areas.

Based on the sensitivity of the issue and the hostile reaction of many western members of Congress to the notion of reserved rights, it seems unlikely that Congress will seize upon reserved rights as a standard approach to addressing the water issue in wilderness bills, though

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<sup>3</sup> The House Report that accompanied this legislation stated that the provision preserving pre-existing rights included the conditional rights awarded to Black Canyon of the Gunnison National Monument by a state water court.

<sup>4</sup> The Nevada Wilderness Protection Act of 1989 was silent on water except for a provision on access for gauges and other technological devices. Similar legislation adopted in the year 2000 and designating a number of BLM areas as wilderness also was silent on the issue (perhaps because an abbreviated version of the legislation was wrapped into an appropriations bill). The Clark County legislation in 2002 then included a modified version of the 1Colorado Wilderness Act of 1993 water rights language.

<sup>5</sup> Many wilderness areas have had acreage added to them subsequent to their original designation (see the SUP tables). Some of these additions have included special water language and are included in this number.

individual congressional delegations might still use that approach (California is an example of where this approach might still be used). The one firm conclusion that the authors can draw from this very mixed bag is that the water language used in different bills is highly dependent upon which congressional delegation is leading the legislative effort.

3. Is there any precedent that prohibits the Secretary of the Interior from subordinating federal water rights in subsequent adjudication processes? In only two cases has the Congress used legislative language that would appear expressly to preclude the Secretary or any other federal officer from subordinating federal water rights. As noted above, in the Arizona Desert Wilderness Act of 1990, the Congress specifically reserved a quantity of water sufficient to fulfill the purposes of the act, but also directed the Secretary and all other officers of the United States to

take steps necessary to protect the rights reserved by paragraph 1, including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment.

The California Desert Protection Act of 1994 used virtually the same language. The authors of this report did not find any other overt legislative expressions that could easily be construed to prohibit a subordination in a water rights adjudication.

## **B. Grazing**

1. Background. The management of grazing within wilderness areas has been as complex and difficult to sort out as was the use of different water language in wilderness bills. The Wilderness Act of 1964 included a savings clause for grazers: “The grazing of livestock where established prior to the effective date of this Act shall be permitted to continue subject to such reasonable regulations as are deemed necessary.” That approach changed relatively little over the ensuing sixteen years. Some House and Senate reports noted (1) the presence or absence of grazing in individual areas, (2) that grazing was expected to continue, or (3) that grazing was a valid use. A number of bills essentially repeated the original act’s provisions.

However, a major change occurred in 1980, with the passage of the Colorado Wilderness Act of 1980. Based on anecdotal information that the Center has collected, it appears that ranchers complained long and hard to Congress about how wilderness legislation was being implemented by the Forest Service to restrict grazing. In response, the Congress included in the Colorado legislation a new provision on grazing, stating that for purposes of this legislation, the grazing provisions of the original Wilderness Act “shall be interpreted and administered in accordance with the guidelines contained under the heading ‘Grazing in National Forest Wilderness’” in House Report 96-617. Moreover, the Colorado legislation had the effect of giving these guidelines national effect, since the bill claimed it was merely an interpretation of section 4(d)(4)(2) of the original act. After the passage of the Colorado Wilderness Act, the Forest

Service inserted the guidelines verbatim in their agency manual; those guidelines were less stringent than the agency's previous prescriptions.<sup>6</sup> In brief, those guidelines provide that:

1. There shall be no curtailments of grazing in wilderness simply because the area is designated as wilderness. It is anticipated that the numbers of livestock would remain at approximately the same levels as when the area was designated as wilderness;
2. The maintenance of previously existing improvements is allowed and where practical alternatives do not exist, motorized equipment can be used;
3. The replacement or reconstruction of improvements does not have to be done with natural materials unless it would not impose unreasonable additional costs;
4. The construction of new improvements or replacement of deteriorated facilities is permissible; and
5. The use of motorized equipment for emergency purposes such as rescuing sick animals or placement of feed in emergency situations is permissible.

For the next ten years, the Congress included similar legislative language, and referred to House Report 96-617, on seven different occasions. In as many other bills, the Congress simply provided that grazing could continue, subject to reasonable regulation.

In 1990, when Congress took up the Arizona Desert Wilderness Act, it extended to BLM wilderness lands the same grazing guidelines that the Congress had applied to Forest Service lands a decade earlier. In that Arizona legislation, Congress provided that grazing, where established prior to designation, would be administered in accordance with section 4(d) of the original act and guidelines included in House Report 101-405. This House report contained language identical to that found in House Report 96-617 (from the 1980 Colorado Wilderness Act). In effect, the Congress simply applied the Forest Service guidelines to most BLM wilderness areas (in a few individual cases, the Congress addressed grazing with more particularity).<sup>7</sup>

2. Do statutory trends emerge? In dealing with grazers over the last forty years, the legislative language itself has not changed much, but two House reports have effectively set agency policy. It is also clear that this is an instance where what Congress did in two cases (House reports that accompanied the Colorado and Arizona bills) quickly established a precedent for how Congress generally dealt with the grazing issue in subsequent bills.

3. Alternatives? One alternative approach the Congress could take would be to purchase base properties or grazing permits and then retire the associated permits. The authors of this report did not find any instances where, in the legislation designating wilderness areas, Congress mandated the purchase and retirement of grazing permits, although the California Desert Protection Act directed the Secretary of the Interior to give a priority to the acquisition of any base property, if a person holding a grazing permit within the Mojave National Preserve (which

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<sup>6</sup> For useful references, see Mitchell McClaran, *Livestock in Wilderness: A Review and Forecast*, 20 *Env't'l L.* 857 (1990), and Comment, *Livestock Grazing in BLM Wilderness and Wilderness Study Areas*, 5 *J. Env't'l L. & Lit.* 61 (1990).

<sup>7</sup> In the Colorado Wilderness act of 1993, which included both Forest Service and BLM areas, the Congress referred to both House reports on grazing.

includes wilderness lands) expresses a desire to convey to the U.S. the associated base property. 16. U.S.C. § 410aaa-51.

In the recent legislation establishing the Steens Mountain Wilderness Area in Oregon, the Congress did not address base property or permit acquisition, but directed the Secretary of Agriculture permanently to retire all grazing permits in a significant part of the wilderness designated by that act. Similarly, in designating national park units (which sometimes include wilderness), the Congress typically terminates grazing, though it sometimes grants lifetime permits for ranchers who had been grazing in the area at the time of designation. Finally, the management agencies sometimes terminate grazing in wilderness areas even absent any legislative direction. The wilderness areas in the Hells Canyon and Sawtooth National Recreation Areas are two examples where grazing permits have been retired and grazing eliminated.<sup>8</sup>

### **C. Hardrock Mining**

1. Background and Current Status. As was the case with grazing, the original Wilderness Act of 1964 set the terms under which mineral prospecting and mining activity could occur within designated areas. However, unlike the case with grazing, the Congress narrowed the mining special use provision in a number of cases and expanded it only twice. Moreover, as time has passed, the window for mineral prospecting within wilderness areas has largely closed and in new designations the Congress almost automatically withdraws lands from appropriation under the mining laws.

The original act included a set of provisions dealing with mineral resources within wilderness areas. Section 4(d)(2) provided that nothing in the act prevented any activity, including prospecting, that would assist in developing information about the mineral resources within designated areas, so long as the activity could be conducted in a manner compatible with preservation of the wilderness environment. The Congress then went further and directed the Secretaries of the Interior and Agriculture to conduct recurring surveys of wilderness areas' mineral potential. In subsection 4(d)(3), the Congress specified that mining laws would continue to apply to wilderness areas until December 31, 1983. Although the act permitted access to be regulated, the Congress added that the regulations would have to be consistent with the use of the land for mineral exploration and development. The same subsection also allowed the Secretary to permit ancillary facilities for mineral development inside wilderness areas, but also called for restoration of the affected areas once mining was completed. Finally, in the same subsection the Congress specified that any claims within wilderness areas could be held solely for mining purposes, and prohibited the issuance of patents for any claims filed after the end of 1983.

Until 1978, Congress left that approach to mineral rights undisturbed. However, in 1978 the Congress took very different approaches to mining in two bills. In establishing a Hells Canyon National Recreation Area, and designating wilderness in the bargain, the Congress immediately

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<sup>8</sup> For example, in the Hells Canyon National Recreation Area, over a period of many years the agency reduced grazing in parts of the wilderness area to prevent conflicts between domestic and bighorn sheep, and in other cases purchased base properties. In a few cases, grazers simply stopped using allotments in the wilderness areas. The cumulative effect of these actions was that allotments within the wilderness area were not being used. In a recent management plan revision, the Forest Service decided to retire these inactive allotments.



withdrew all the affected federal lands from entry and patenting under the mining laws. But the same Congress extended the deadline for locating and patenting claims by five years in the legislation establishing the Gospel Hump Wilderness Area.

Two years later, the Congress continued to exhibit a measure of schizophrenia in this area. In designating the Sandia Mountain Wilderness, the Congress opted to immediately withdraw the area from operation of the mining laws. Yet in establishing the River of No Return Wilderness Area in Idaho, the Congress carved out the Clear Creek Special Management Area, in which the mining of cobalt and associated minerals was to be treated as the dominant use and subject only to such rules that would apply to non-wilderness Forest Service lands.

Since then, there has been little legislative activity on this front. In some cases, the Congress has seen fit to formally withdraw a designated area from operation of the mining laws; in other cases, the Congress has simply been silent, presumably because the Congress did not see any need to address the issue subsequent to the 1983 deadline.

2. Do statutory trends emerge? With the exception of the Gospel Hump and River of No Return Wilderness Areas, the Congress has largely stuck to the original bargain it made in 1964 for mineral resources in wilderness areas.<sup>9</sup> While mining claims continue to exist in some wilderness areas, and a very small number of areas could in future be threatened by mining operations, this threat has largely receded.

## **D. Mineral Leasing**

1. Background and Current Activities. Mineral leasing within wilderness areas is another area that received some attention early in the evolution of the wilderness system, but which has been largely quiescent for the last twenty-plus years. In the original act, the Congress permitted the mineral leasing laws to continue in effect until the end of 1983, but also permitted the Secretary to impose reasonable stipulations needed to protect the wilderness character of the land consistent with the use of the lands for the purposes for which they were leased.<sup>10</sup> In 1972, in designating the Sawtooth National Recreation Area (which included a wilderness area), the Congress authorized the Secretary to acquire mineral interests in lands with or without the consent of the owner. Eight years later, in 1980, the Congress had to deal with inholdings within the Rattlesnake Wilderness, and seized upon the option of allowing the Secretary to exchange those private lands for bidding rights for coals sales. That same year, the Congress set a modest precedent (as it had with hardrock mining) when it immediately withdrew all lands in the new Sandia Mountain Wilderness from operation of the mineral leasing laws.

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<sup>9</sup> In a few bills enacted before 1984, the Congress immediately withdrew designated lands from entry under the mining laws.

<sup>10</sup> G. Coggins, C. Wilkinson & J. Leshy, *FEDERAL PUBLIC LAND AND RESOURCES LAW* 1114 (5<sup>th</sup> ed. 2001) (hereinafter cited as *PUBLIC LAND LAW*). In their casebook, Coggins, *et al*, note that most Secretaries of the Interior exercised their discretion to refrain from issuing leases during the twenty-year period when wilderness areas would have been available for leasing. However, they also note that Secretary Watt departed from that tradition and announced his intent to issue leases in several wilderness areas. However, the House Interior Committee requested an emergency withdrawal under FLPMA (an action the Secretary reluctantly endorsed) and the Congress later attached a rider to an appropriations bill banning the expenditure of any appropriated funds for processing leases in wilderness areas before the end of 1983 (an action that effectively precluded the contemplated secretarial action).

Over the succeeding years, the Congress only occasionally dealt explicitly with mineral leasing as a part of wilderness legislation. In establishing the Bisti/De-Na-Zin Wilderness in New Mexico in 1996, the Congress had to deal with both preference right coal leases and existing oil and gas leases. In the case of the former, the Congress authorized the Secretary of the Interior to issue coal leases outside the wilderness area in exchange for the preference right coal leases. In the case of the oil and gas leases, the Congress directed the Secretary to impose conditions and terms necessary to avoid impairment to wilderness values while satisfying valid existing rights.

Only one of the wilderness area managers returning the Center's survey on special use provisions reported that active oil and gas leases are located within a wilderness area:<sup>11</sup> the Salt Creek Wilderness, which is managed by the Fish and Wildlife Service. The Center's research did not uncover any other western wilderness areas in which mineral leasing operations are ongoing.

2. Do statutory trends emerge? This is another instance where language for a special use was written into the original Wilderness Act with a time certain for its expiration, and the Congress made no attempt to salvage that special use language as the deadline came and went. Indeed, when Secretary Watt threatened to begin issuing leases inside wilderness areas, the Congress used several avenues to forestall that threatened action. Little, if any, mineral leasing activity occurs on western wilderness lands and little is anticipated.

## **E. Access to Inholdings and For Other Purposes**

Over the course of the last forty years, the Congress has dealt with access to private property interests within wilderness and for other purposes in a number of different ways.

1. Legislation. Section 5(a) of the original act included broad provisions to protect access rights for inholders:

In any case where State owned or privately owned land is completely surrounded by national forest lands within areas designated by this Act as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State or private owner and their successors in interest....<sup>12</sup>

In section 5(b) the Congress addressed the narrower question of access to mining claims and "other valid occupancies" by directing the Secretary to develop regulations that are consistent with the preservation of the area as wilderness but which "permit ingress and egress to such

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<sup>11</sup> See [Special Uses in Wilderness Areas: Management Survey](#).

<sup>12</sup> Section 5(a) also gives the Secretary of Agriculture the option of exchanging the inholding for "federal land of approximately equal value," though "it is not clear on whether the choice to provide access or an exchange is the Forest Service's or the inholder's." PUBLIC LAND LAW at 1125. An Attorney General's opinion suggests that the choice is the agency's, OP. ATTY. GEN (June 23, 1980), and a Ninth Circuit opinion is in accord, *Montana Wilderness Ass'n v. United States Forest Service*, 655 F.2d 951, 957 n. 12, (9<sup>th</sup> Cir. 1981), *cert. denied*, 455 U.S. 989 (1982), *all as cited in* PUBLIC LAND LAW at 1125, n.E..

In a telephone interview, a regional Forest Service employee with responsibility over a number of wilderness areas reported that he believed that the Secretary has in the past invoked his authority to provide a land exchange in lieu of access to a wilderness area. However, this individual could not document such an example and stated that an attempt at documentation likely would be labor intensive.

surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.”

In a number of ensuing bills, the Congress dealt specifically with the need to access hydroelectric facilities, transmission lines, water gauges and the like.<sup>13</sup> In 1983, the Congress cited to activities needed for the protection and propagation of wildlife as a reason to legislatively provide for access, when designating the Lee Metcalf Wilderness in Montana.

In the Utah Wilderness act of 1984, the Congress saw fit to deal broadly with a set of access issues. First, in a provision that applied to all of the areas designated by this legislation, the Congress preserved the ability of local municipalities to maintain watershed facilities that existed in the areas at the time of designation. Second, in all but two of the areas designated by this act the Secretary was also authorized to use helicopters to maintain pit toilets that had been placed in wilderness areas to protect watersheds. Third, the Congress also attached to all but three of the wilderness areas special use provisions allowing motorized access to hydrologic, meteorological, climatologic and telecommunications equipment when non-motorized access is not reasonably available or if time is of the essence.

The Nevada Wilderness Protection Act of 1989 took essentially that same provision relating to hydrologic, meteorological, climatologic and telecommunications equipment and made it applicable to all of the areas designated by that legislation. Four years later, the Colorado Wilderness Act of 1993 also included provisions assuring continued access to maintain, replace, and repair water facilities, “so long as such activities have no increased adverse effects on wilderness areas.”

But the California Desert Protection Act of 1994 probably included the broadest assurances of continued access for the most interests. In language applicable to all of the areas designated in that legislation, Congress directed the Secretary to provide “adequate access to non-federally owned land or interests in land within the boundaries of the conservation units and wilderness areas ... which will provide the owner of such land or interest the reasonable use and enjoyment

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<sup>13</sup> Prior to 1980, the Department of Agriculture and the Department of the Interior managed access to private in-holdings within wilderness differently. The Department of Agriculture allowed access across National Forest lands to in-holdings while the Department of the Interior interpreted Section 5 of the Wilderness Act as “expressly authorizing denial of access to such in-holders in wilderness areas.” A provision of the Alaska National Interest Lands Conservation Act and the accompanying Senate Report No. 96-413 further complicated the issue of access to inholdings that are surrounded by Forest Service or BLM lands. Section 3210(a) of ANILCA, 16 U.S.C. § 3210(a), directed the Secretary of Agriculture to provide access to non-federally owned lands within the national forest system as the Secretary deems adequate to secure the owner’s reasonable use thereof, while also providing the Secretary the authority to prescribe rules and regulations for such access. While ANILCA did not clearly address the question of whether this provision was intended to apply to forest system lands outside of Alaska, several courts have concluded that it does. *See, e.g., Montana Wilderness Association v. United States Forest Service*, 655 F.2d 951, 957 (9<sup>th</sup> Cir. 1981), *cert. denied*, 455 U.S. 989 (1982). Section 3210(b) of ANILCA, 16 U.S.C. § 3210(b), used similar language to address access issues for private lands surrounded by BLM lands. While there are no dispositive judicial decisions on whether this section is limited in its scope to Alaska, at least one court has suggested that it is so limited. *Id.* at 954.

thereof.”<sup>14</sup> Second, in another provision made applicable to all of the areas encompassed by the legislation, the Congress provided that “management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out ... and shall include the use of motorized vehicles by the appropriate state agencies.” Third, in that same section, the Congress also made clear that law enforcement and border patrol operations, “including the use of motor vehicles by appropriate law enforcement agencies, is also permitted, notwithstanding wilderness designation.” However, no legislation enacted since has included such broad and extensive access language.

2. Do statutory trends emerge? Congress typically has dealt with access to specific developments within wilderness with some particularity, and this project did not identify any trend to expand upon such access. The picture for access to generic nonfederal lands within wilderness areas is somewhat less clear. The Congress has, on several recent occasions, directed the respective Secretary to provide “reasonable” access to the owner of such lands, without simultaneously expressly providing the authority to regulate that access. The access provisions of the California Desert Protection Act are the best example of such arguably broader provisions (perhaps reflecting the multitude of uses and inholdings located within the large areas treated by this legislation). The legislation establishing the Steens Mountain wilderness spoke to providing “reasonable” access to nonfederal lands that provides the “reasonable” use thereof.<sup>15</sup> Similarly, the Black Ridge Canyon Wilderness legislation directed the Secretary to provide “reasonable” access to inholdings. But in 2000, the Congress provided the owners of private property within the Spanish Peaks with access in accordance with section 5 of the 1964 Wilderness Act, and a number of other recent bills have simply not addressed the access issue. Based on this record, it is hard to discern a trend in how Congress deals with access to nonfederal properties, except to say that the Congress deals with particularity with individual developments, but more generally in dealing with access to inholdings.

## **F. Aircraft and Motorboats**

1. Legislation. The Wilderness Act of 1964 dealt with access by motorboat and aircraft by grandfathering those uses where they already had been established, though the act also gave the Secretary authority to restrict such activities as he or she deemed desirable.<sup>16</sup> Since 1964, the Congress has dealt with aircraft and motorboat access in western wilderness areas relatively infrequently:

- As noted above, the Endangered American Wilderness Act of 1978 permitted the use of helicopters to service pit toilets in the Lone Peak Wilderness of Utah. The Utah

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<sup>14</sup> The ANILCA access provisions direct the Secretary to provide access that he or she deems adequate to secure the owner’s “reasonable use and enjoyment thereof,” and the California Desert Protection Act speaks to providing the owner of non-private land adequate access that will provide the owner of such land with the reasonable use and enjoyment thereof. 16 U.S.C. § 410aaa-78. However, the California Act does not, by its own terms, provide that the Secretary may prescribe rules and regulations to govern that access. While such authority may be implicit, the California Act access provision is at least arguably broader than the ANILCA access provision.

<sup>15</sup> We take the use of the term “reasonable” to imply the managing agency’s authority to regulate access, but the authors did not examine legislative history to confirm that supposition.

<sup>16</sup> In the same section, the Congress also authorized measures needed to control fire, disease and insects, subject to regulations the Secretary deemed desirable.

Wilderness Act of 1984 similarly allowed the use of helicopters for the same purpose in most of the areas designated by that act.

- In 1980, the Congress allowed the continued landing of aircraft at airstrips within the River of No Return Wilderness, in cases where that was a pre-existing use, subject to regulation by the Secretary. However, the act also prohibited the Secretary from closing airstrips, except as a result of extreme danger and with the state's written concurrence.
- The California Desert Protection Act of 1994 did not deal with commercial or private aviation, but it did provide that law enforcement and border patrol agencies could use airplanes in the areas designated by that act.
- Finally, the Clark County (NV) Conservation of Public Lands and Natural Resources Act of 2002 included a provision that allowed the state to use aircraft, including helicopters, to "survey, capture, transplant, monitor, and provide water for wildlife populations, including bighorn sheep and feral stock, horses and burro." The act also repeated that aircraft could be used in wildfire management.

2. Do statutory trends emerge? Arguably, in each case cited here the Congress appears to have been reacting to a set of pre-existing uses. The authors were not able to discern a trend in these enactments, and the legislative enactments are sufficiently few that it is difficult to draw a firm conclusion that the special use provisions in this regard are progressively becoming more permissive. However, the broad language used in the 2002 Nevada legislation does provide at least some reason for care in dealing with this issue in the future.

## **G. Commercial Services**

1. Legislation. Once again, the original act set the template for special use provisions dealing with services within wilderness areas. The act provided that such activities could be performed within wilderness areas "to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

2. Do statutory trends emerge? Since then, Congress has dealt with the issue only a few times. In designating the River of No Return Wilderness, Congress largely repeated the language of the original Wilderness Act. And in several instances the Congress has sanctioned the maintenance of potentially commercial services such as telecommunications facilities.

## **H. Military Activities**

1. Background and Status. The last set of special use provisions that we examined also presents a serious challenge for wilderness management. The original Wilderness Act did not deal with overflights, and thus did not affect either commercial, private, or military overflights. Moreover, the federal management agencies have never had, and do not have, any authority to regulate the use of airspace; that is the exclusive province of the Federal Aviation Administration.

Despite the federal land management agencies' lack of authority in this arena, in adopting the Nevada Wilderness Protection Act of 1989 the Congress adopted a belt-and-suspenders approach

to military overflights. In dealing with four of the areas designated by that act, the Congress specifically stated that the legislation should not be construed to “preclude low level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes....” A year later, in the Arizona Desert Wilderness Act of 1990, Congress used the same language but applied it to all of the wilderness areas designated in that legislation, save for national park and national refuge additions. In the same legislation, the Congress also made clear that it did not intend to preclude “or otherwise affect” continued low-level military overflights or the maintenance of existing ground instrumentation within the Cabeza Prieta Wilderness.<sup>17</sup>

Four years later, the California Desert Protection Act of 1994 dealt in a somewhat more expansive way with military overflights. It provided that neither that Act nor the original Wilderness Act of 1964 shall

restrict [earlier bills had used only the narrower term “preclude”] or preclude low-level overflights of military aircraft over new wilderness or additions thereto, including military overflights that can be seen or heard within such units, nor shall restrict or preclude the designation of new units of special airspace or the use or establishment of military flight training routes over such ... wilderness units.

The issue resurfaced again eight years later, in the Clark County (NV) Conservation of Public Lands and Natural Resources Act of 2002. In that bill, the Congress again applied a single special provision for military activities to all of the wilderness areas established in this legislation:

Nothing in this title restricts or precludes (1) low-level overflights of military aircraft over the areas designated by this title, including military overflights that can be seen or heard within the wilderness areas; (2) flight testing and evaluation; or (3) the designation or creation of new units of special use airspace, or the establishment of military flight training routes, over the wilderness area.

That same year, in a 2002 bill designating several wilderness areas in California, the Congress made applicable to all of the areas a special provision that was intended to prevent the designations from “precluding” low-level overflights (the term “restrict” did not reappear in this bill) and also permitted nonmotorized military training to continue in one of the areas (additions to the Big Sur Wilderness).

Finally, it is also worthy of note that a number of wilderness bills enacted during this time frame did not deal at all with military activities or overflights.

2. Do statutory trends emerge? It is difficult to discern trend lines in legislation on this issue, since the Congress has not adopted a consistent approach to overflights. The Arizona, California

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<sup>17</sup> At least one astute and long-time observer suggested that the Congress began including overflight language in wilderness bills when the Congress began considering areas that were being used by the military for training activities. While he conceded that the specific language on the subject may be unnecessary, it allowed the Congress to definitively eliminate any concern (or objection) that wilderness designation would hamper military readiness.

Desert, and Nevada wilderness bills all included expansive language that protects the military's ability to train over wilderness areas in these states. On the other hand, a number of wilderness bills have been enacted during this same time period without resort to this special use provision. The Center's tentative conclusion is that this special use issue is relatively site-specific, and that conservationists can expect to confront it in cases where military overflights are an existing use. However, Congressman McInnis's attempt in the 107<sup>th</sup> Congress (H.R. 2963) and in the 108<sup>th</sup> Congress to use a wilderness bill to grandfather motorized military training in a Colorado roadless area suggests that continued diligence is warranted. (That legislation has not proceeded far in the legislative process and is unlikely since Congressman McInnis has retired from public office.)

### **III. Conclusions**

When the Center began this research, we were surprised to discover that over the course of the Wilderness Act's forty years, the Congress has designated 438 wilderness areas just in the eleven western states encompassed by this research project. The sheer number of wilderness areas impressed us. So did the fact that these wilderness areas total more than 43.5 million acres of protected lands and that they encompass 12% of federal lands in this region. Moreover, we are reminded that several states with large BLM acreages have not yet done statewide BLM wilderness areas; thus, we expect the total protected acreage to grow, perhaps considerably. Thus, our first conclusion was that the Wilderness Act has been more successful in protecting wild lands in the West and elsewhere than we had anticipated.

Second, we also concluded that the principal determinant for which special uses any particular Congress addresses in a wilderness bill is the scope and intensity of a particular use (or uses) occurring in a proposed wilderness area prior to designation. For example, there are many instances where the same Congress that insisted on specifically dealing with a special use or a water project in one wilderness bill was silent on the same issue in a different wilderness bill. We infer from that consistent pattern that the composition and predilections of the congressional delegations for the state in which wilderness is being designated also is a critical factor in determining how specific uses will be accommodated.

Third, the Center found that it is very difficult to discern trends in how Congress uses special use provisions in legislation. For example, while water rights have been contentious for twenty years or more, the chronology suggests that the Congress has jumped from one approach to another and to yet another in the course of just a few years. While the future may not be bright for the use of reserved water rights in wilderness areas, the past does not suggest that the Congress has either fixed on any one alternative for dealing with water issues, or that the language is getting qualitatively better or worse over time. However, as is always the case, the predilections of the state's congressional delegation substantially influences the outcome.

Finally, some conservationists are concerned that a trend is developing with respect to Congress's willingness to prevent military overflights and related activities from being restricted by the operation of wilderness laws or other public lands laws. It is true that several recent bills included broad language to that effect. However, it also is true that other recent bills did not include that language, and that the federal land management agencies have never had the

authority to regulate these activities, in any event. As a result, it is difficult even in this area to draw conclusions about trends.



## **Appendix 1. Wilderness Milestones and Precedents**

This appendix lays out the milestones for special use provisions, precedents and subsequent legislative action in a chronological fashion (the focus is on western wilderness areas unless a precedent comes from another area of the country). Congress has repeatedly allowed for “special use provisions”, non-conforming uses and a less stringent (or pure) view of classification and management than a face value reading of the actual Wilderness Act itself might lead the average reader to presume.

### **1964**

The Wilderness Act of 1964<sup>18</sup> prohibited a number of uses and activities and also provided exceptions for those prohibitions. It generally prohibited permanent and temporary roads, most commercial enterprises, motorized equipment and mechanical transport, landing of aircraft, and structures and installations. The exceptions included special use provisions for mining on valid claims and mineral development on leases established before December 31, 1983; mineral prospecting and surveys that provide information on mineral resources; water developments with Presidential approval; in-holder rights of access (including motorized access); fire, disease and insect control; aircraft landings and motor boat use where previously established; and certain commercial uses deemed compatible with the wilderness concept such as livestock grazing, outfitting and guiding. There is no comprehensive database of what non-conforming uses actually exist on the ground or how they are being managed.

### **1969**

Early on Congress started adding special use provisions for wilderness areas beyond those in the original Wilderness Act. The Desolation Wilderness Act<sup>19</sup> gives the owners of the hydroelectric facilities within the wilderness the right of motorized access for the purposes of operating and maintaining the facilities. In Senate committee discussions about the hydroelectric facilities, the committee stated “the question was raised as to whether or not the inclusion within the boundaries of the wilderness area of the two dams might dilute the wilderness concept. The committee decided that due to the particular circumstances surrounding the use, establishment, and management of the dams, they were acceptable within the boundaries suggested by the Forest Service for the wilderness area.”<sup>20</sup>

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<sup>18</sup> Pub. L. No. 88-577.

<sup>19</sup> Pub. L. No. 91-82.

<sup>20</sup> S. Rep. No. 91-97 (Mar. 20, 1969).

Apparently similar circumstances have been found by Congress elsewhere since **water developments** have subsequently been authorized in twelve bills.<sup>21</sup>

Specific language addressing **motorized access**, first introduced in the Desolation Wilderness Act, also became a staple of future wilderness bills.<sup>22</sup> In some cases the language pertains to all wilderness areas designated by the bill and in others it pertains to a single wilderness within the bill.

## 1972

The first instance of **aircraft landing sites** legislatively specified in wilderness areas is the designation of the Pine Mountain Wilderness in 1972 where five helicopter landing spots were authorized.<sup>23</sup> Subsequent special use provisions for the use of helicopters for maintaining sanitary facilities appear in two bills designating wilderness in Utah.<sup>24</sup> There are three wilderness areas outside of Alaska with active airstrips on federal land with a total of sixteen airstrips in Idaho and Montana.<sup>25</sup> The Frank Church River of No Return wilderness has 31 operational airstrips within its boundaries, including twelve on federal land, which accommodate 5,500 aircraft landings annually.<sup>26</sup> The legislation designating the River of No Return wilderness<sup>27</sup> also states that airstrips may only be closed as a result of extreme danger to aircraft and with the concurrence of the State.

The Wilderness Act states that nothing in it shall “constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.”<sup>28</sup> Beginning in 1972, numerous acts also included water rights language that said the act neither claimed nor denied water rights **or** outlined that water rights were not affected or diminished by the act.<sup>29</sup>

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<sup>21</sup> Pub. L. No. 95-237; Pub. L. No.96-312; Pub. L. No. 96-476; Pub. L. No. 96-550; Pub. L. No. 96-560; Pub. L. No. 98-425; Pub. L. No. 98-550; Pub. L. No. 98-603; Pub. L. No. 100-668; Pub. L. No. 101-628; Pub. L. No. 103-77; Pub. L. No. 107-370.

<sup>22</sup> Pub. L. No. 95-237; Pub. L. No. 95-249; Pub. L. No. 96-312; Pub. L. No. 96-560; Pub. L. No. 98-140; Pub. L. No. 98-406; Pub. L. No. 98-425; Pub. L. No. 98-428; Pub. L. No. 98-550; Pub. L. No. 101-628; Pub. L. No. 102-301; Pub. L. No. 103-77; Pub. L. No. 103-433; Pub. L. No. 106-353; Pub. L. No. 106-399; Pub. L. No. 106-456.

<sup>23</sup> Pub. L. No. 92-230 and S. Rep. No. 92-329 (July 30, 1971).

<sup>24</sup> Pub. L. No. 95-237 and Pub. L. No. 98-428.

<sup>25</sup> Shannon S. Meyer, *International Journal of Wilderness*, August 1999, Vol. 5 No. 2, pg. 9.

<sup>26</sup> *Id.*

<sup>27</sup> Pub. L. No. 96-312.

<sup>28</sup> Pub. L. No. 88-577 §4(d)(7).

<sup>29</sup> Pub. L. No. 92-400; Pub. L. No. 94-199; Pub. L. No. 95-237 for the Hunter-Frying Pan wilderness; Pub. L. No. 96-476; Pub. L. No. 96-560 for Holy Cross wilderness; Pub. L. No. 98-406; Pub. L. No. 98-425 for San Joaquin wilderness; Pub. L. No. 98-428; Pub. L. No. 98-550 for Huston Park, Encampment River, Platte River and Savage Run wildernesses; Pub. L. No. 101-628; Pub. L. No. 106-399.

## 1975

The Eastern Wilderness Areas Act<sup>30</sup> added 16 wilderness areas in the eastern states including lands that had been historically **severely modified by previous human use**. Congress did consider whether lands in the East should be managed under a different set of standards from the National Wilderness Preservation System because the lands being considered were previously extensively modified by human use. In the end, however, no separate legislative standard or system was established.<sup>31</sup>

The Eastern Wilderness Areas Act was “path-breaking in its explicit recognition that wilderness exists relative to its surrounding.”<sup>32</sup> The act “establishes the philosophical underpinnings for the recognition of other federal and non-federal wild lands as wilderness. Wilderness no longer needs to be thought of only as vast tracts in a distant land, it may be found much closer to home in the wildest parts of any landscape.”<sup>33</sup>

“The Eastern Wilderness Areas Act also recognizes the temporal dimension to wildness. Many lands designated in the law had been highly modified agricultural landscapes a century earlier.”<sup>34</sup> Western lands highly modified by mining activities were later added to the National Wilderness Preservation System<sup>35</sup> in a similar recognition of the temporal dimension to impacts to naturalness.

## 1976

The Federal Land Policy and Management Act (FLPMA)<sup>36</sup> provided direction for the 257 million acres of public domain land. With the exception of FLPMA’s additional provisions for wilderness study and classification, these BLM managed lands, would follow the previous direction set for the Forest Service and other federal lands in how the Wilderness Act would be implemented. By including these lands as a source of future wilderness areas within the National Wilderness Preservation System, Congress was again acknowledging that wilderness areas could be more than the traditional “rocks and ice” areas originally set aside. Vast areas of desert, red rock country and sage covered range were now subject to wilderness inventory and review.

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<sup>30</sup> Pub. L. No. 93-622.

<sup>31</sup> James A. Browning, John C. Hendee and Joe W. Roggenbuck, *103 Wilderness Laws: Milestones and Management Direction in Wilderness Legislation 1964-1987*, University of Idaho, (Oct. 1988).

<sup>32</sup> Gregory H. Aplet, *On the Nature of Wildness: Exploring What Wilderness Really Protects*, 76 Denv. U. L. Rev. 347 (1999).

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Pub. L. No. 96-550.

<sup>36</sup> Pub. L. No. 94-579.

John Leshy notes that “On BLM lands, there is a greater potential for more intense conflicts between wilderness preservation and other, inconsistent uses. On some public lands there may already be such inconsistent uses; on others expectations of the ability to undertake such uses may be fixed.”<sup>37</sup> For example, BLM estimated that over 2.5 million acres within Wilderness Study Areas were under lease for oil and gas at the time FLPMA became law.<sup>38</sup>

## 1978

The Endangered American Wilderness Act<sup>39</sup> established 16 areas that did not meet the Forest Service’s “purity” requirement for wilderness, including the “sights and sounds doctrine” which held that the areas should be out of sight and sound of civilization.<sup>40</sup> “In passing the Endangered Wilderness Act, Congress further established that areas **previously influenced by man** should not be precluded from consideration for wilderness classification, nor should roadless areas near major cities, as they could provide much-needed primitive recreation for the nearby population.”<sup>41</sup>

Congress offered guidelines it hoped would “prove instructive in future deliberations on wilderness areas and legislation” and “eliminate much of the confusion and uncertainty surrounding alleged uses, or prohibitions of uses, within wilderness areas.”<sup>42</sup> These guidelines should be used to determine “how the Wilderness Act should now be interpreted as it relates to certain uses and activities.”<sup>43</sup> These included:

- hunting and fishing will continue in wilderness areas;
- trail construction and maintenance can utilize **mechanical equipment**;
- mechanical equipment** can be used for building fire roads, fire towers, fire breaks and pre-suppression facilities;
- existing cabins are “entirely appropriate” where necessary for administrative purposes or the protection of the public;
- sanitary facilities (such as pit toilets) are permissible and in many areas vital to protecting water quality and mechanical means including **helicopters** can be used to maintain them;
- “as a rule, there should be no altitude limits on **aircraft overflight** in wilderness areas”;<sup>44</sup>

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<sup>37</sup> John D. Leshy, *Wilderness And Its Discontents-Wilderness Review Comes to the Public Lands*, 1981 ARIZ. ST. L. J. 361 (1981).

<sup>38</sup> Id.

<sup>39</sup> Pub. L. No. 95-237.

<sup>40</sup> H.R. Rep. No. 95-540 (July 27, 1977).

<sup>41</sup> James A. Browning, John C. Handee and Joe W. Roggenbuck, *103 Wilderness Laws: Milestones and Management Direction in Wilderness Legislation 1964-1987*, University of Idaho, Oct. 1988.

<sup>42</sup> H.R. Rep. No 95-540 (July 27, 1977).

<sup>43</sup> James A. Browning, John C. Handee and Joe W. Roggenbuck, *103 Wilderness Laws: Milestones and Management Direction in Wilderness Legislation 1964-1987*, University of Idaho, Oct. 1988.

<sup>44</sup> Twelve years later language in wilderness bills begins to appear noting that wilderness designation does not preclude military overflights, see Pub. L. No. 101-195.

-fisheries enhancement, including aerial stocking, is highly desirable;  
-fire rings, hitching posts, non-permanent tent platforms or pads, and other temporary structures used by outfitters may be allowed and should not have to be removed each winter if they can be stored in an unobtrusive fashion; and  
-**weather modification special equipment** and other scientific devices are entirely appropriate.<sup>45</sup>

The Endangered American Wilderness Act expressly permitted **helicopter use** in the Lone Peak wilderness in Utah to service vault toilets; that apparently set the stage for the same special provision to be included in the Utah Wilderness Act of 1984<sup>46</sup> six years later. While House Report 95-540 supports the use of helicopters in Forest Service wilderness areas, House Report 96-1223 notes that “helicopter use for routine, non-emergency purposes associated with visitor use is a questionable activity in national park system wilderness areas and should be eliminated within designated national park wilderness.” In addressing the Utah Wilderness Act, House Report 98-1019 reiterates House Report 95-540 in support of motorized access for both sanitary facilities and for weather equipment and states that whether these are specifically addressed in the authorizing language or not, it is Congressional policy that motorized access is allowed.

The Lone Peak wilderness was also the first to allow motorized access and road maintenance by local municipalities for “watershed facilities.”<sup>47</sup> While watershed facilities are not defined in the act, the House Committee on Interior and Insular Affairs later states that watershed facilities would “not include major water developments such as reservoirs, irrigation projects or other large scale facilities.”<sup>48</sup> The Utah Wilderness Act of 1984 is the only other act to include language on “watershed facilities.”

In establishing the Gospel-Hump Wilderness, the Endangered American Wilderness Act specified that nothing in the act would preclude **mineral prospecting** if carried out in a manner compatible with the preservation of the wilderness environment and the Secretaries of the Interior and Agriculture were directed to conduct recurring mineral surveys.<sup>49</sup> Specific direction to conduct mineral surveys and assessments reappears in the Utah and Wyoming Wilderness Acts of 1984.<sup>50</sup>

The authorizing legislation for the Absaroka-Beartooth wilderness<sup>51</sup> permitted a **right of way** for a road and ten subsequent wilderness areas were created with authorization for other rights of ways including rights of ways for roads, transmission lines, pipes and ditches.<sup>52</sup>

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<sup>45</sup> Seven years later this became standard language starting with Pub. L. No. 98-406.

<sup>46</sup> Pub. L. No. 98-428.

<sup>47</sup> Pub. L. No. 95-237.

<sup>48</sup> H.R. Rep. No. 98-1019, (Sept. 13, 1984).

<sup>49</sup> Pub. L. No. 95-237 §4(g) which duplicated direction in §4(d)(2) of The Wilderness Act.

<sup>50</sup> Pub. L. No. 98-428 Title III, §304 and Pub. L. No. 98-550.

<sup>51</sup> Pub. L. No. 95-249.

<sup>52</sup> Pub. L. No. 96-560; Pub. L. No. 98-425; Pub. L. No. 100-668; Pub. L. No. 101-628; Pub. L. No. 103-77; Pub. L. No. 103-355; Pub. L. No. 103-433; Pub. L. No. 104-208; Pub. L. No. 106-456; Pub. L. No. 107-370.

## 1980

Prior to 1980, the Department of Agriculture and the Department of the Interior managed access to private in-holdings within wilderness differently. The Department of Agriculture allowed access across National Forest lands to in-holdings while the Department of the Interior interpreted Section 5 (c) of the Wilderness Act as “expressly authorizing denial of access to such in-holders in wilderness areas.”<sup>53</sup> The Alaska National Interest Lands Conservation Act<sup>54</sup> and Senate Report No. 96-413 clarified the intent of Congress to ensure reasonable use and enjoyment of private in-holdings surrounded by lands managed by the Forest Service and the Department of the Interior. Both Secretaries were directed to provide such access to in-holdings as the Secretaries determine is adequate to allow reasonable use of the in-holding. This direction applies to wilderness on all national forest lands, not just those in Alaska.

The Central Idaho Wilderness Act<sup>55</sup> established a “**special mining management zone**” in the Frank Church River of No Return Wilderness for cobalt exploration and mining where mining is considered the dominant use and subject to laws and regulations as are generally applicable to National Forest lands not designated as wilderness. To date, no other such zones have been designated. However, this concept probably set the precedent for cobalt **mining** in the North Fork Wilderness designated by the California Wilderness Act of 1984.<sup>56</sup> Title I Section 110 allows cobalt mining subject to such Federal laws and regulations as are generally applicable to National Forest lands designated as non-wilderness.

The New Mexico Wilderness Act<sup>57</sup> was the first to include “no buffer zone” language into the bill supporting Congress’ approach set forth in the Endangered Wilderness Act that wilderness areas can be adjacent to population centers. The concept of **buffer zones** was addressed in House Report 96-1126 and Senate Report 98-465. This language has become standard in western wilderness legislation showing up in a total of seventeen bills.<sup>58</sup>

The Colorado Wilderness Act<sup>59</sup> is noted for its referral to House Report 96-617 for direction on livestock grazing management.<sup>60</sup> These **grazing guidelines** were far more permissive than Forest Service management had been. “This management direction had

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<sup>53</sup> S. Rep. 96-413, 310, (1980)

<sup>54</sup> Pub. L. No. 96-487

<sup>55</sup> Pub. L. No. 96-312.

<sup>56</sup> Pub. L. No. 98-425.

<sup>57</sup> Pub. L. No. 96-550.

<sup>58</sup> Pub. L. No. 95-550; Pub. L. No. 95-560; Pub. L. No. 96-560; Pub. L. No. 98-328; Pub. L. No. 98-339; Pub. L. No. 98-406; Pub. L. No. 98-428; Pub. L. No. 98-550; Pub. L. No. 100-668; Pub. L. No. 101-195; Pub. L. No. 101-628; Pub. L. No. 102-301; Pub. L. No. 103-77; Pub. L. No. 103-433; Pub. L. No. 106-145; Pub. L. No. 106-353.

<sup>59</sup> Pub. L. No. 96-560.

<sup>60</sup> H.R. Rep. No. 96-617, 11, (1979). Although this report is not the first time the House Committee on Interior and Insular Affairs addressed this issue and grazing guidelines.

far-reaching effects, since the committee report required that livestock grazing in all national forest wildernesses should be managed according to the report's management provisions that were offered as interpretation of the Wilderness Act grazing provisions."<sup>61</sup> The Colorado Wilderness Act gave the guidelines nationwide effect by declaring the guidelines to be Congress' interpretation of Section 4(d)(4)(2) of the Wilderness Act. Congressional intent that these apply to all Forest Service lands, as well as to other federal lands including the Bureau of Land Management wilderness areas, was affirmed in House Report 98-643<sup>62</sup> and again in House Report 101-405 in 1990. **After the passage of P.L. 96-560, the Forest Service repeated the grazing guidelines verbatim in their agency manual.**

In summary, the grazing guidelines include:

1. There shall be no curtailments of grazing in wilderness simply because the area is designated as wilderness. It is anticipated that the numbers of livestock would remain at approximately the same levels as when the area was designated as wilderness;
2. The maintenance of previously existing improvements is allowed and where practical alternatives do not exist, motorized equipment can be used;
3. The replacement or reconstruction of improvements does not have to be done with natural materials unless it would not impose unreasonable additional costs;
4. The construction of new improvements or replacement of deteriorated facilities is permissible; and
5. The use of motorized equipment for emergency purposes such as rescuing sick animals or placement of feed in emergency situations is permissible.

The grazing guidelines have been specifically referred to in six additional wilderness bills for Forest Service lands.<sup>63</sup> **The guidelines are repeated in Appendix A of House Report 101-405 with specific direction for BLM administered lands.**

Also in 1980, Senator William Armstrong gave a nod to the precedent set by the Eastern Wilderness Areas Act five years earlier when he stated "There is also implicit recognition [in PL 96-560] that many of the areas being designated as wilderness by this bill have had roads, mines, dwellings, clearcuts and other human activities in them in the past, but because man and nature have reclaimed the areas, they are now suitable once again for wilderness designation. (Examples include the proposed Rawah, Maroon Bells, South San Juans, Holy Cross wilderness areas.)"<sup>64</sup>

Valid existing rights to **coal development** were first addressed in 1980 when Congress designated the Rattlesnake wilderness in Montana. Congress created a provision that allowed for an exchange of bidding rights for coal sales for title to private lands or

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<sup>61</sup> James A. Browing, John C. Handee and Joe W. Roggenbuck, *103 Wilderness Laws: Milestones and Management Direction in Wilderness Legislation 1964-1987*, University of Idaho, Oct. 1988

<sup>62</sup> "The Committee therefore fully intends that BLM lands designated as wilderness by this and other Acts be covered by the Grazing Guidelines..."

<sup>63</sup> Pub. L. No. 98-406; Pub. L. No. 98-425; Pub. L. No. 98-428; Pub. L. No. 98-550; Pub. L. No. 101-195; Pub. L. No. 103-77.

<sup>64</sup> 126 Cong. Rec. Part 21. 96<sup>th</sup> Cong. 2<sup>nd</sup> Sess. (Sept. 25, 1980).\*\*\*need page number

interests therein that were located within or adjacent to the wilderness area.<sup>65</sup> This concept of exchanges of interest in coal was picked up sixteen years later and included in the Bisti/De-Na-Zin wilderness where Congress allowed the Secretary to issue coal leases in New Mexico in exchange for any preference right coal lease applications within the wilderness.<sup>66</sup>

**Motorized access for wildlife management** began to be of interest in 1980. In House Report 96-1223<sup>67</sup> the Committee stated that “maintenance of existing water supplies is an accepted practice in most wilderness areas and development of additional water supplies is permitted, but only when essential to wildlife survival. The use of mechanical equipment by management agencies in this context is permissible, but should be the ‘minimum necessary’ as required by Section 4(c) of the Wilderness Act subject to common sense, budgetary, time, personnel or other practical considerations.” The Committee was particularly interested in maintaining federal and state agency motorized access to wilderness backcountry for wildlife management and they noted “occasional, temporary use by federal and state officials of motor vehicles, helicopter, aircraft and the like, in furtherance of the wildlife purposes of a specific wilderness area” was specifically authorized.

In 1980 the Central Idaho Wilderness Act<sup>68</sup> specifically permitted motorized access for wildlife management (for bighorn sheep). Motorized access for general wildlife management showed up in 1983 in the Lee Metcalf wilderness<sup>69</sup> which allowed motorized access for protection and propagation of wildlife where such access was previously established. Motorized access specifically for bighorn sheep shows up again in the designation of the Fitzpatrick wilderness in 1984.<sup>70</sup> Broader access language giving state agencies authority for motorized access for all wildlife management activities, even if not previously established, starts showing up in legislation in 1990 with the Arizona Desert Wilderness Act.<sup>71</sup> The Committee on Interior and Insular Affairs adopted the BLM’s wilderness management manual as it applies to wildlife management by including the guidance verbatim in Appendix B of House Report 101-405.<sup>72</sup> This broad access for wildlife management is picked up again in P.L. 103-433, P.L. 106-399 and P.L. 107-282. See 1990 for further description of the guidelines.

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<sup>65</sup> Pub. L. No. 96-476.

<sup>66</sup> Pub. L. No. 104-333.

<sup>67</sup> H.R. Rep. No. 96-1223, (Aug. 18, 1980).

<sup>68</sup> Pub. L. No. 96-312.

<sup>69</sup> Pub. L. No. 98-140.

<sup>70</sup> Pub. L. No. 98-550 §102(a)(11).

<sup>71</sup> Pub. L. No. 101-628.

<sup>72</sup> The Committee “has opted to include the statutory reference in this subsection only to remove any doubt as to the applicability of these guidelines and policy (or similar ones that also are consistent with the purposes and principles of the Wilderness Act) to the wilderness areas designated by this bill.”



## 1982

**Oil and gas development** within wilderness areas seems to occur more in areas outside the eleven western states. In creating the Charles C. Dean wilderness<sup>73</sup> in Indiana in 1982, Congress noted the existence of oil and gas leases in the area and stated “designation of this wilderness will not significantly affect the overall development of oil and gas on the Forest.”<sup>74</sup> In 1984 Congress designated the Indian Mounds wilderness in the Texas Wilderness Act<sup>75</sup> despite Forest Service objections to the active oil and gas production in the wilderness area. However, no precedent appears to have been set for wilderness in the West.

That same year, as Congress was considering designation of the Twin Peaks wilderness in Utah,<sup>76</sup> the Forest Service recommended boundary was pulled back to exclude areas of keen interest in oil and gas exploration. The Committee believed that exploration activities could be conducted in such a manner as to minimize environmental disruptions and that a future Congress may wish to reconsider the wilderness potential of those lands.<sup>77</sup> In response to the likelihood of compressor stations just outside of the Box-Death Hollow wilderness area, the Committee noted that “the presence of compressor stations which frequently are several stories tall and emit a great deal of noise, could be very disruptive to surrounding wilderness values” and contrary to the “no buffer zone” language in the bill, they encouraged the Forest Service to insure that “they are designed and located to minimize visual and noise intrusions in the wilderness.”<sup>78</sup>

Also in 1984, Congress considered and rejected oil and gas development in two wilderness areas in Wyoming.<sup>79</sup> In 1996 Congress encouraged exchanges of oil and gas leases to eliminate valid existing rights in a New Mexico wilderness and if these could not be exchanged, it encouraged the Secretary to make these leases subject to terms and conditions necessary to avoid impairment of the wilderness values in the area.<sup>80</sup>

## 1983

**Snowmobile use** is expressly allowed in the Lee Metcalf wilderness “during periods of adequate snow cover only where such uses are compatible with the protection and propagation of wildlife within the area.”<sup>81</sup> This special provision does not yet appear to have set precedent for other western wilderness areas.

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<sup>73</sup> Pub. L. No. 97-384.

<sup>74</sup> S. Rep. No. 97-557, (Sept. 20, 1982).

<sup>75</sup> Pub. L. No. 98-574.

<sup>76</sup> Pub. L. No. 98-428.

<sup>77</sup> H.R. Rep. No. 98-1019, (Sept. 13, 1984).

<sup>78</sup> Id.

<sup>79</sup> Pub. L. No. 98-550 and S. Rep. No. 98-54 (1983).

<sup>80</sup> Pub. L. No. 104-333 §1022 in regard to Bisti/De-Na-Zin wilderness area.

<sup>81</sup> Pub. L. No. 98-140.

## 1984

The Arizona Wilderness Act of 1984<sup>82</sup> sets out a review of Forest Service grazing policies, practices and regulations to insure full conformance with the intent of Congress regarding the grazing guidelines set out in House Report 96-617 four years earlier. The Secretary was to **report to Congress** within a year, and every five years thereafter, detailing progress made in carrying out the grazing guidelines. A similar check on Forest Service management was subsequently required in P.L. 98-428, P.L. 98-550 and P.L. 101-195 and the concept was picked up in 1990 when Congress asked the Secretary of the Interior to do a similar review of BLM management practices.<sup>83</sup>

An example of an act providing special use provisions allowing structures, motorized access and commercial enterprises is the Arizona Wilderness Act of 1984, which was the first act to include specific language supporting “installation and maintenance of **hydrologic, meteorologic, or telecommunications facilities**” as originally discussed in House Report 95-540. Three subsequent acts included similar language<sup>84</sup> even though House Report 98-1019 communicated that it was Congressional policy that installation and maintenance of such equipment was allowed even without specific language in the authorizing legislation.

The Oregon Wilderness Act<sup>85</sup> and its legislative history picks up where the Endangered American Wilderness Act left off regarding the Forest Service “sights and sounds” policy by putting an end to the Forest Service policy of curtailing or constraining uses on lands *adjacent* to wilderness areas to prevent “sights and sounds” from impacting the wilderness. “The fact that non-wilderness activities or uses can be seen or heard from the areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.”<sup>86</sup> This is another way of saying that there shall be no “**buffer zones**” around wilderness areas.

## 1987

Legislative language expressing Congressional intent to **reserve water rights** for wilderness areas first appeared in 1987 with the El Malpais wilderness.<sup>87</sup> Specific mention of reserved water rights has also been included in P.L. 100-668, P.L.101-195, P.L. 101-628, P.L. 102-301, P.L. 103-433 and 107-370.

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<sup>82</sup> Pub. L. No. 98-406.

<sup>83</sup> Pub. L. No. 101-628.

<sup>84</sup> Pub. L. No. 98-428; Pub. L. No. 101-195; Pub. L. No. 107-282.

<sup>85</sup> Pub. L. No. 98-328.

<sup>86</sup> S. Rep. No. 98-465, (May 14, 1984).

<sup>87</sup> Pub. L. No. 100-225.

## 1989

The military's concern about wilderness designation impacting their operations started to show up in legislative language in 1989 with the passage of the Nevada Wilderness Act<sup>88</sup> which states that nothing in the act shall preclude low level **overflights of military aircraft**, the designation of new units of special air space or the use or establishment of military flight training routes over the wilderness areas. This language, which can actually be traced back to 1978 and the Endangered American Wilderness Act, was repeated in subsequent wilderness acts in Arizona, California and Nevada.<sup>89</sup>

## 1990

The Arizona Desert Wilderness Act<sup>90</sup> and House Report 101-405, Appendix A picks up the **grazing guidelines** first introduced ten years earlier in P.L. 96-560. In order to emphasize that these grazing guidelines apply not only to Forest Service managed wilderness but to BLM as well, the guidelines are reiterated in Appendix A in their entirety. This becomes policy for BLM wilderness which subsequently was included in seven BLM wilderness bills.<sup>91</sup>

The BLM wilderness management manual section on wildlife management is picked up verbatim as Appendix B to House Report 101-405. This guidance states that the use of **motorized equipment for fish and wildlife management** is allowed when truly necessary, if the use is rare and temporary, if it is determined to be the minimum tool necessary, and with advance approval from the administering agency.<sup>92</sup> Fish and wildlife research and management surveys that temporarily infringe on the wilderness environment may be approved if alternative methods and locations are not available. Facility development and maintenance and habitat alteration may be allowed including flow-maintenance dams, water developments, water diversion devices, ditches and associated structures.

The Arizona Desert Wilderness Act<sup>93</sup> also created one of the most hazardous wilderness areas for visitors when it established the 803,418 acre Cabeza Prieta wilderness within the Cabeza Prieta National Wildlife Refuge. The area is overlain by the Barry M. Goldwater Air Force Range. Designation of the area as wilderness does not preclude low level military overflights (a precedent set previously by P.L. 101-195) and it does not preclude maintenance of existing associated ground instrumentation. Nine years later P.L. 106-65 expanded the purposes for which the wilderness area should be managed to include supporting current and future military aviation training needs. This included

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<sup>88</sup> Pub. L. No. 101-195.

<sup>89</sup> Pub. L. No. 101-628; Pub. L. No. 103-433; Pub. L. No. 107-282; Pub. L. No. 107-370.

<sup>90</sup> Pub. L. No. 101-628.

<sup>91</sup> Pub. L. No. 103-77; Pub. L. No. 103-433; Pub. L. No. 106-353; Pub. L. No. 106-399; Pub. L. No. 106-554; Pub. L. No. 107-282; Pub. L. No. 107-370.

<sup>92</sup> This guidance is similar to direction in H.R. Rep. No. 96-1223 ten years earlier.

<sup>93</sup> Pub. L. No. 101-628.

closing areas of the wilderness to public use as surface safety zones, adding new ground instrumentation and (to the extent funds are made available) decontaminating those parts of the wilderness that have been used for military training. The agency website warns potential visitors “to ensure you are aware of the dangers of unexploded military ordinance, a permit and your signature on a Hold Harmless Agreement is required to enter the wilderness.”<sup>94</sup>

This **on-the-ground presence of the military** in wilderness areas is repeated later on. The Big Sur Wilderness and Conservation Act<sup>95</sup> not only adds land to the Pinnacles, Silver Peak and Ventana wilderness areas but also makes these areas available for on-the-ground military training. Section 5(b) states that “nonmotorized access to and use of the wilderness areas designated by this Act for military training shall be authorized to continue in wilderness areas designated by this Act in the same manner and degree as authorized prior to enactment of this Act.”

The Arizona Desert Wilderness Act<sup>96</sup> was the first piece of legislation that specifically discusses the motorized law enforcement needs of the Homeland Security agencies along the United States-Mexico border. Other wilderness bills in the border states have subsequently included similar language.<sup>97</sup>

## 1993

The first time Congress **effectively rejects reserving water rights** for wilderness purposes is in the Colorado Wilderness Act of 1993.<sup>98</sup> The act does not explicitly deny Federal reserve rights, but precludes assertion of wilderness reserve rights after noting that the wilderness areas designated are at the headwaters of streams and rivers; the areas are not suitable for water resource facilities; and Congress’ intention is to protect wilderness values without relying on Federal reserved water rights. Section 8(b)(2)(D) states “Nothing in this section shall be construed as establishing a precedent with regard to any future wilderness designations.” However, nearly identical justification language and **outright rejection of Federal reserved water rights** shows up later in another Colorado wilderness area.<sup>99</sup> The California Desert Protection Act states that no rights to water of the Colorado River are reserved with respect to the Havasu and Imperial wilderness areas.<sup>100</sup> A Nevada wilderness bill states that nothing in the act constitutes a reservation of water, however, it goes on to say that the Secretary should follow state water law with regard to obtaining water rights.<sup>101</sup>

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<sup>94</sup> <http://www.wilderness.net/index.cfm?fuse=NWPS&sec=wildView&wid=90&tab=>, (last visited Oct. 9, 2003).

<sup>95</sup> Pub. L. No. 107-370.

<sup>96</sup> Pub. L. No. 101-628.

<sup>97</sup> Pub. L. No. 103-433; Pub. L. No. 106-145.

<sup>98</sup> Pub. L. No. 103-77.

<sup>99</sup> Pub. L. No. 106-353.

<sup>100</sup> Pub. L. No. 103-433.

<sup>101</sup> Pub. L. No. 107-282.

## Appendix 2. Grazing Chronology

<u>YEAR</u>	<u>STATUTE</u>	<u>STATUTORY LANGUAGE</u> <sup>102</sup>	<u>REPORT LANGUAGE</u>
1964	88-577 <sup>103</sup>	The grazing of livestock where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary.	Report language not included here.
1968	90-271		S. Rep. 199/H. Rep. 568 some areas suitable for grazing; grazing will not be affected
1968	90-318		S. Rep. 1008/H. Rep. 1321 currently is no grazing in the area
1968	90-548		S. Rep. 90-1532/H. Rep.1838 currently is no grazing in the area
1969	91-58		S. Rep. 91-115/H. Rep. 91-388 no commercial grazing in wilderness area
1969	91-82		S. Rep. 91-97/H. Rep. 91-473 grazing expected to continue
1972	92-230		S. Rep. 92-329/H. Rep. 92-765 grazing expected to continue
1972	92-241		S. Rep. 92-330/H. Rep. 92-766 grazing expected to continue
1972	92-395		S. Rep. 92-52/H. Rep. 92-1226 no grazing currently in area

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<sup>102</sup> Statutory and Report language is not verbatim

<sup>103</sup> The Wilderness Act

<u>YEAR</u>	<u>STATUTE</u>	<u>STATUTORY LANGUAGE</u>	<u>REPORT LANGUAGE</u>
1972	92-400		S. Rep. 92-797/H. Rep. 92-762 history of grazing in area
1972	92-476		S. Rep. 92-80 history of grazing in area
1972	92-493		H. Rep. 94-1421 lifetime grazing permit exists in area
1975	93-632		S. Rep. 93-1043 no forage or permit in Aqua Tibia, none expected.  S. Rep. 93-1043/H. Rep. 93-989 grazing expected to continue Emigrant wilderness  S. Rep. 93-1043/H. Rep. 93-989 no grazing allowed in Mission Mountain wilderness  S. Rep. 93-1043 grazing Expected to continue in Weminuche wilderness area
1975	94-146		S. Rep. 94-171/H. Rep. 94-685 no grazing allotments in wilderness area
1975	94-199	Requires report to Congress in 5 years on entire area including grazing	S. Rep. 94-171/H. Rep. 94-685 recognize grazing as valid existing use
1976	94-352		S. Rep. 93-1043 & S. Rep. 94-172/H. Rep. 94-939 grazing expected to continue
1976	94-557		S. Rep. 94-1032/H. Rep. 94-1562 grazing expected to continue in both Red Rock Lakes & San Juan wilderness areas

<u>YEAR</u>	<u>STATUTE</u>	<u>STATUTORY LANGUAGE</u>	<u>REPORT LANGUAGE</u>
1976	94-567		H. Rep. 94-1427 allows NPS to use motorized vehicles to maintain fence to keep livestock out of Great Sand Dunes Natl. Monument
1980	96-312	The grazing of livestock where established prior to the date of enactment of this Act, shall be permitted to continue subject to such reasonable regulations as the Secty deems necessary, as provided in paragraph 4 (d)(4) of the Wilderness Act.	S. Rep. 96-414 recognizes existing grazing and value of improvements; H. Rep. 96-838 & H. Rep. 96-1126 reference grazing in the wilderness areas
1980	96-550	Provided however, that the designation of the Cruces Basin area as wilderness shall not interfere with the construction of additional fencing authorized by the grazing allotment management plan for the area, and shall not be cause to require reductions in existing potential aum's under the applicable grazing allotment management plan for the area.	
1980	96-560 <sup>104</sup>	Section 108: Without amending 1964 Act, with respect to livestock grazing in Natl Forest wilderness areas the provisions of the Wilderness Act relating to grazing shall be interpreted and administered in accordance with the guidelines contained under the heading "Grazing in National Forest Wilderness" in H. Rep. 96-617 (see summary below)	H. Rep. 96-617 establishes Grazing Guideline sinterpreting the Wilderness Act special provision on grazing; also S. Rep. 96-914 and H. Rep. 96-1521

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<sup>104</sup> Colorado Wilderness Act of 1980

<u>YEAR</u>	<u>STATUTE</u>	<u>STATUTORY LANGUAGE</u>	<u>REPORT LANGUAGE</u>
1983	98-140	Lee Metcalf WA: The Secty shall permit continued use of the area by motorized equipment only for activities associated with existing levels of livestock grazing.	
1984	98-406 <sup>105</sup>	<p>Within wilderness areas designated by this title, the grazing of livestock, where established prior to the date of enactment of the Act, shall be permitted to continue subject to such reasonable regulations, policies &amp; practices as the Secty deems necessary, as long as they insure full conformance with and implementation of the intent of Congress regarding grazing in such areas as expressed in Wilderness Act.</p> <p>Grazing shall be administered in accordance with section 4(d)(4) of the Wilderness Act and section 108 of Public Law 96-560 (see H. Rep. 96-617). The Secty is directed to review all policies, practices and regulations to insure full conformance with and implementation of the intent of Congress regarding grazing in such areas as expressed in the Act. Within a year and every 5 years thereafter, the Secty shall submit a report to Congress detailing progress made in carrying out these provisions.</p>	H. Rep. 98-643 repeats the Grazing Guidelines from H. Rep. 96-617 and requires a report to Congress on grazing within 1 year and every 5 years thereafter

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<sup>105</sup> Arizona Wilderness Act of 1984 (Forest Service lands)



<u>YEAR</u>	<u>STATUTE</u>	<u>STATUTORY LANGUAGE</u>	<u>REPORT LANGUAGE</u>
1984	98-425 <sup>106</sup>	Grazing allowed to continue if established before enactment subject to reasonable regulations, policies and practices as the Secretary deems necessary.	
1984	98-425 (cont.)	<p>Provided however, that the designation of the Carson-Iceberg Wilderness shall not preclude continued motorized access to those previously existing facilities which are directly related to permitted livestock grazing activities in the Wolf Creek drainage on the Toiyabe NF in the same manner and degree in which such access was occurring as of the date of enactment of this title.</p> <p>Provided further that the designation of the San Joaquin wilderness shall not preclude continued motorized access to those previously existing facilities which are directly related to permanent livestock grazing activities.</p>	H. Rep. 98-40 provisions for motorized access to facilities related to grazing in the San Joaquin wilderness
1984	98-428 <sup>107</sup>	Grazing of livestock in wilderness areas established by this title where established prior to the date of the enactment shall be administered in accordance with section 4(d)(4) of the Wilderness Act and section 108 of PL 96-560 (see H. Rep. 96-617). The Secty is directed to review all policies, practices and regulations to insure full conformance with and implementation of the	S. Rep. 98-581 regulations and policies should be consistent with Grazing Guidelines established in P.L. 96-560

<sup>106</sup> California Wilderness Act of 1984

<sup>107</sup> Utah Wilderness Act of 1984

<u>YEAR</u>	<u>STATUTE</u>	<u>STATUTORY LANGUAGE</u>	<u>REPORT LANGUAGE</u>
		intent of Congress regarding grazing in such areas. Within a year and every 5 years thereafter the Secty shall submit a report to Congress detailing progress made in carrying out provisions of this Act.	
1984	98-550	The Secty is directed to review all policies, practices and regulations regarding livestock grazing in NF wilderness areas in WY to insure they fully conform with and implement the intent of Congress regarding grazing in such areas as interpreted by PL 98-406 (see H. Rep. 96-617 Grazing Guidelines).	S. Rep. 98-54 no curtailment of grazing in wilderness areas
1984	98-603	Within the wilderness areas designated by the Act the grazing of livestock where established prior to the date of this Act shall be permitted to continue subject to such reasonable regulations, policies and practices as the Secty deems necessary as long as they conform with and implement the intent of Congress.	
1987	100-225	Where grazing was established prior to the enactment of this Act it may be permitted to continue subject to reasonable regulations, policies and practices as the Secty deems necessary as long as they conform with the intent of Congress.	
1989	101-195	Grazing of livestock in wilderness areas under this act shall be in accordance with the Wilderness Act and Section 108 of PL 96-560.	H. Rep. 101-339 reaffirms provisions and Grazing Guidelines in PL 96-560

<u>YEAR</u>	<u>STATUTE</u>	<u>STATUTORY LANGUAGE</u>	<u>REPORT LANGUAGE</u>
		The Secty is directed to review all policies, practices and regulations regarding livestock grazing in NV WAs to insure full conform- ance with and implementation of the intent of Congress. Within 1 year and every 5 years thereafter the Secty shall submit to Congress a report detailing progress.	
1990	101-628 <sup>108</sup>	Section 101(f): Grazing permitted by the Act, where established prior to the enactment of this Act and subject to the Wilderness Act shall be administered in accordance with Section 4(d)(4) of the Wilder- ness Act and guidelines in Appendix A of H. Rep. 101-405. Secty is directed to review BLM Procedures and policies on grazing in wilderness areas to insure conform- ance with and implementation of intent of Congress.	S. Rep. 101-359 and <b>H. Rep.101-405 Appendix A Grazing Guidelines for BLM identical to H. Rep. 96-617 Grazing Guidelines</b>
1993	103-77	Grazing livestock in areas desig- nated by this Act shall be admin- istered in accordance with the Wilderness Act as further inter- preted by section 108 of PL 96- 560 and the Grazing Guidelines set forth in Appendix A of H. Rep. 101-405	S. Rep. 103-123 and H. Rep. 103-181 livestock grazing in wilderness shall be admin- istered in accordance with provisions in Wilderness Act
1994	103-433 <sup>109</sup>	Grazing allowed if established prior to this Act and is subject to reasonable regulations, policies and practices as long as they fully conform with and implement the intent of Congress as expressed in the Wilderness Act and section 101(f) of	S. Rep. 103-165 grazing live- stock where previously occurring can continue sub- ject to reasonable regulations and practices as long uniform with intent of Congress as expressed in the Wilderness Act

<sup>108</sup> Arizona Desert Wilderness Act of 1990

<sup>109</sup> California Desert Protection Act of 1994

<u>YEAR</u> <u>STATUTE</u>	<u>STATUTORY LANGUAGE</u>	<u>REPORT LANGUAGE</u>
	<p>PL 101-628 (referencing the H. Rep.101-405 Grazing Guidelines).</p> <p>The privilege of grazing livestock on lands within the Death Valley Natl. Park shall continue to be exercised at no more than the current level subject to laws and NPS regulations.</p> <p>The privilege of grazing livestock on lands within the Mojave Natl. Preserve shall continue to be exercised at no more than the current level subject to laws and NPS regulations. If permittee is willing to convey base property to the U.S., Secty shall make the acquisition a priority</p>	
1996 104-333	<p>Within WAs designated by this Act grazing of livestock where established prior to the date of enactment of this Act shall be permitted to continue subject to such reasonable regulations, policies and practices as the Secty deems necessary as long as they fully conform with and implement the intent of Congress.</p>	
1999 106-76	<p>Within areas of the Park<sup>110</sup> designated as wilderness the grazing of livestock, where authorized under permits in existence as of the date of this act shall be permitted to continue subject to such reasonable regulations, policies and practices as the Secty deems necessary consistent with this Act, the Wilderness Act and other applicable laws.</p>	<p>S. Rep. 106-69 allows the grazing of livestock within the park to continue where authorized under existing permits or leases at no more than the current level; subject to applicable laws and regs.; and subject to periodic renewal for the lifetime of the current permit holder. With respect to a specific grazing permit scheduled to expire</p>

<sup>110</sup> Black Canyon of the Gunnison National Park

<u>YEAR</u>	<u>STATUTE</u>	<u>STATUTORY LANGUAGE</u>	<u>REPORT LANGUAGE</u>
2000	106-353	Grazing of livestock in the wilderness shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act in accordance with guidelines in Appendix A of H. Rep. 101-405 (Grazing Guidelines).	under terms of a settlement by the US Claims Court, the permit is unaffected. Also recognizes current grazing in Gunnison Gorge wilderness.
2000	106-399 <sup>111</sup>	Except as provided in Section 113(e)(2) grazing of livestock shall be administered in accordance with 4(d)(4) of the Wilderness Act and in accordance with the guidelines set forth in Appendices A & B of H. Rep. 101-405. The Secty shall permanently retire all grazing permits applicable to certain lands as depicted on the map referred to in section 101(a) and livestock shall be excluded from these lands.	H. Rep. 106-929 cancel that portion of the permitted grazing on federal lands in the Fish Creek/Big Indian, East Ridge, and South Steens allotments located within the “no livestock grazing area”. Upon cancellation, future grazing in that area is prohibited. The Secty shall be responsible for installing & maintaining any fencing required for resource protection within the designated no livestock grazing area.
2000	106-554	The grazing of livestock, where established prior to the date of this act, shall be permitted to continue subject to such reasonable regulations, policies, and practices as the Secty deems necessary as long as they conform with & implement the intent of Congress as expressed in the Wilderness Act, and section 101(f) of PL 101-628 (H. Rep. 101-405 Grazing Guidelines).	

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<sup>111</sup> Steens Mountain Wilderness

<u>YEAR</u>	<u>STATUTE</u>	<u>STATUTORY LANGUAGE</u>	<u>REPORT LANGUAGE</u>
2002	107-216		S. Rep. 107-200 & H. Rep. 107-316 does not affect grazing in Indian Peaks wilderness.
2002	107-217		S. Rep. 107 & H. Rep. 107-316 does not affect grazing in James Peak wilderness.
2002	107-282	Within the WAs designated under this title administered by the BLM, the grazing of livestock in areas which grazing is established as of the date of this Act shall be allowed to continue subject to such reasonable regulations, policies and practices as the Secty considers necessary consistent with section 4(d)(4) of the Wilderness Act including the guidelines set forth in Appendix A of H. Rep. 101-405 (Grazing Guidelines).	
2002	107-370	Grazing of livestock in wilderness areas designated in this Act shall be in accordance with section 4(d)(4) of the Wilderness Act as further interpreted by section 108 of PL 96-560 and Appendix A of H. Rep. 101-405 (Grazing Guidelines).	

**H. Rep. 96-617 and H. Rep. 101-405 Grazing Guidelines summarized:**

1. There shall be no curtailments of grazing in wilderness simply because the area is designated as wilderness. It is anticipated that the numbers of livestock would remain at approximately the same levels as when the area was designated as wilderness;
2. The maintenance of previously existing improvements is allowed and where practical alternatives do not exist, motorized equipment can be used;

3. The replacement or reconstruction of improvements does not have to be done with natural materials unless it would not impose unreasonable additional costs;
4. The construction of new improvements or replacement of deteriorated facilities is permissible; and
5. The use of motorized equipment for emergency purposes such as rescuing sick animals or placement of feed in emergency situations is permissible.

## Appendix 3. Summary of Wilderness Special Use Provisions

In analyzing special uses in the 11 western states, the Center compiled a database of the statutory language in 75 bills that addressed wilderness.<sup>112</sup> See **Special Use Provision Table**. These bills designated new wilderness, changed boundaries, or otherwise addressed one or more of the 438 wilderness areas in the West. The data were sorted by special use provisions categorized into those dealing with grazing; mineral leasing; hardrock mining; non-military use of aircraft or motorboats; military activities; access to in-holdings; commercial services; water rights and projects; and access, power and projects needed for health and safety. Where grazing was of particular concern to Congress, the legislative history including House and Senate Reports, were compiled in addition to the legislative language.

The following tables, organized by special use provisions, summarize some of these data. For grazing, the number of individual wilderness areas that are guided by the special provision is noted along with the number of bills that contain the special provision and the percent of total bills which contain the special provision. For all other special use provisions the tables show the number of bills and the percent of total bills. Each table starts off with the original language in the Wilderness Act since many bills do not address the non-conforming use beyond how it was addressed in the 1964 act.

Because a single piece of legislation may have different provisions for the various wilderness areas affected by the legislation, the numbers of bills and the percentages do not necessarily add up to be 75 bills or 100%.

At the bottom of each table are notes interpreting some of the data thought to be of interest.

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<sup>112</sup> P.L. 108-424 was not included in the analysis and is not represented in the tables that follow.



## Grazing Language in Wilderness Statutes

<u>SPECIAL PROVISION</u>	<u># of WA's AFFECTED</u>	<u># of BILLS</u>	<u>% of BILLS</u>
1964 Wilderness Act Section 4(d)(4)(2)	233	51	68%
Restatement of 1964 Act	62	7	9%
Review of agency policies, practices, regulations To ensure consistency with 1964 Act	55	3	4%
Requirement to report to Congress on grazing	56	3	4%
HR 96-617 grazing provisions	80	8	11%
HR 101-405 grazing guidelines	144	8	11%
Additional fencing allowed	1	1	1%
No higher than current levels of grazing	3	2	3%
Retirement &/or exclusion on some areas	2	2	3%
Continued use of an area by motorized equipment	3	3	4%

### NOTES:

There have been 75 bills affecting 438 Wilderness Areas in the West.

77% of western wilderness bills either referred back to the original Wilderness Act grazing language or essentially restated it without change.

11% added to the original grazing language with the HR 96-617 grazing provisions for Forest Service administered wilderness and 11% added to the original language with the HR 101-405 grazing guidelines for BLM administered wilderness.

6% of the bills actually restricted grazing either by limiting the amount to no higher than current levels or by excluding grazing in some areas and retiring permits.

## Mineral Leasing Language in Wilderness Statutes

<u>SPECIAL PROVISION</u>	<u># of BILLS</u>	<u>% of BILLS</u>
1964 Wilderness Act Section 4(d)(3)	61	81%
Withdrawn from leasing subject to valid existing rights	9	12%
No mining in river bed subject to valid existing rights	1	1%
Exchange coal bidding rights & preference right lease applications	2	3%
Secretary to continue mineral potential assessments	1	1%

**NOTES:**

81% of the wilderness bills refer back to Section 4 (d)(3) of the Wilderness Act which allowed continued leasing until 12/31/1983, while 12% instituted immediate withdrawals from leasing at the time of designation.

3% of the bills directed the appropriate Secretary to exchange coal bidding rights or preference right lease applications in order to remove these conflicts from the Wilderness Area.

## Hardrock Mining Language in Wilderness Statutes

<u>SPECIAL PROVISION</u>	<u># of BILLS</u>	<u>% of BILLS</u>
1964 Wilderness Act Section 4(d)(2)	44	59%
Restatement of 1964 Act	2	3%
Lands immediately withdrawn from location, entry & patent subject to valid existing rights	8	11%
Allows development of specific mineral deposit	2	3%
Direction to acquire mineral rights	1	1%
Gathering info on mineral resources, including prospecting, allowed if compatible with preservation of wilderness environment	1	1%
Periodic assessments/surveys to determine mineral values/potential	13	17%

### NOTES:

62% of the bills follow 4(d)(2) or an equivalent restatement.

11% of bills affect an immediate withdrawal but only 2 acts affected an immediate withdrawal prior to 12/31/83.

3% allow development of specific mineral development (cobalt).

17% directed periodic assessments or surveys to determine if valuable minerals or mineral potential exists even though this duplicates direction already in the Wilderness Act.

Mineral provisions tend to be specific to a particular area rather than across all of the areas designated in the bill.

There is likely substantial guidance in House and Senate Reports that was not reiterated in the actual legislation.

## Use of Aircraft/Motorboats Language in Wilderness Statutes (Non-Military)

<u>SPECIALPROVISION</u>	<u># of BILLS</u>	<u>% of BILLS</u>
1964 Wilderness Act Section 4 (d)(1)	66	88%
Sanitary facilities may be installed & Serviced by helicopter	2	3%
Airstrips may only be closed due to extreme danger & with concurrence with State	1	1%
Does not preclude law enforcement & border operations including use of aircraft	1	1%
Does not preclude the state from using aircraft to survey, capture, transplant, monitor & provide water for wildlife	1	1%

### NOTES:

Although 88% of the bills do not specifically address use of aircraft or motorboats in the legislation the legislative history and House/Senate reports would need to be fully researched to explore this non-conforming use.

## Motorized Access Language in Wilderness Statutes

<u>SPECIAL PROVISION</u>	<u># of BILLS</u>	<u>% of BILLS</u>
Wildlife management using motorized access	7	9%
Law enforcement and border patrol	3	4%
Military on the ground motorized access	3	4%
Water or power facilities and transmission	11	15%
Hydrologic, meteorologic, telecommunications	6	8%
Watershed facilities	2	3%
Grazing motorized access*	19	25%
Roads and ROWs for transmission lines, pipes, ditches, etc. not covered above	14	19%

\*Includes bills that specifically identify motorized access for grazing plus bills that refer to the grazing guidelines. However, as noted under the Grazing table, it is the intent of Congress that permittees/lessees have motorized access when necessary regardless of whether the designating bill addresses it or not.

### NOTES:

15% of the bills associated with western wilderness areas authorize water or power facilities and their associated transmission lines to either continue operating or to be built and maintained (using motorized equipment).

19% of the bills identify specific roads and/or rights-of-ways for transmission lines, pipes, ditches, etc. within specific wilderness areas that either exist or will be built and maintained (using motorized equipment).

Extensive motorized access is authorized for private commercial enterprises such as power facilities, telecommunication facilities, livestock grazing, etc. The actual amount of motorized use is impossible to tell from the bill language.

## Military Use Language in Wilderness Statutes

<u>SPECIAL PROVISION</u>	<u># of BILLS</u>	<u>% of BILLS</u>
Does not preclude low-level military overflights, designation of new special airspace and use or establishment of military flight training routes.	5	6%
Authorizes r-o-w for road through wilderness to new space energy laser facility.	1	1%
Non-motorized access for military training.	1	1%

### NOTES:

6% of the bills authorize low-level military overflights.

## Appendix 4. Prohibitions and Exemptions

Section 4 (c) of the Wilderness Act lists several prohibitions such as no permanent roads, no commercial enterprises, no use of motorized equipment or vehicles, and no structures or installations. But the act goes on to provide numerous exemptions to these prohibitions in the form of “special use provisions.” Language in Senate and House Reports as well as language in authorizing legislation provide additional exemptions. These tables trace five prohibitions and the subsequent exemptions from these prohibitions.

SECTION 4(c) PROHIBITIONS	SECTION 4 & 5 SPECIAL PROVISIONS	SENATE/HOUSE REPORTS LEGISLATIVE HISTORY	AUTHORIZING ACT SPECIAL USE PROVISIONS
<b>No permanent roads</b>	<p>Except those serving facilities needed in the public interest authorized by the President</p> <p>Except as necessary to assure adequate access to state or private in-holdings</p> <p>Except as necessary to assure adequate access to valid mining claims or valid occupancies</p> <p>Except when needed for control of fire, insects and diseases</p>	<p>Note: we did not search for committee reports on this issue although there is likely extensive discussion on the issues of “cherry-stemmed roads” and of roads that divide wilderness areas into sections (of at least 5,000 acres)</p>	<p>PL 95-249, 102-301, 103-255, 103-433, 106-456 all have provisions allowing current or future roads</p>

SECTION 4(c)  
PROHIBITIONS

**No commercial enterprises**

SECTION 4 & 5  
SPECIAL  
PROVISIONS

Except the grazing of livestock where previously established

Except valid existing rights such as mining claims and mineral leases  
Except commercial services necessary for realizing the recreational or other purposes of the wilderness area such as outfitters and guides

SENATE/HOUSE  
REPORTS  
LEGISLATIVE  
HISTORY

HR 95-540, HR 96-617, HR 96-1223, HR 98-643, HR 95-620, HR 95-1321, HR 101-405 all address commercial enterprises (mostly grazing)

AUTHORIZING  
ACT

SPECIAL USE  
PROVISIONS

PL 91-82, 95-237, 96-312, 98-406, 98-425, 98-428, 98-550, 101-195, 107-282 all address a variety of commercial enterprises including mining, mineral leasing, telecommunications facilities, commercial water projects, power generation, transmission lines, etc. In addition, 23 acts specifically mention grazing



SECTION 4(c)  
PROHIBITIONS

**No motorboats or  
aircraft landings**

SECTION 4 & 5  
SPECIAL  
PROVISIONS

Except where  
already established

Except as  
necessary to  
assure adequate  
access to valid  
mining claims or  
valid occupancies  
Except as  
necessary to meet  
minimum  
requirements for  
the administration  
of the area  
(including human  
health and safety)  
Except when  
needed for control  
of fire, insects and  
diseases

SENATE/HOUSE  
REPORTS  
LEGISLATIVE  
HISTORY  
SR 92-329, HR 95-  
540, HR 98-1019  
authorize either  
motorboats or aircraft  
landings

AUTHORIZING  
ACT  
SPECIAL USE  
PROVISIONS  
PL 92-230, 95-237,  
98-428, 96-312  
authorize either  
motorboats or  
aircraft landings

SECTION 4(c)  
PROHIBITIONS

**No use of  
motorized vehicles,  
equipment or  
forms of  
mechanized  
transport**

SECTION 4 & 5  
SPECIAL  
PROVISIONS

Except when  
needed for control  
of fire, insects and  
diseases

Except when  
needed for  
exploration and  
production of  
mining and  
mineral leases  
Except as  
necessary to  
assure adequate  
access to state or  
private in-  
holdings

SENATE/HOUSE  
REPORTS  
LEGISLATIVE  
HISTORY

HR 95-540, HR 95-  
620, HR 95-1321,  
HR 96-617, HR 96-  
1223, HR 98-643,  
HR 98-1019, HR  
101-405 all address  
motorized access,  
mostly in connection  
with grazing

AUTHORIZING  
ACT

SPECIAL USE  
PROVISIONS

PL 91-82, 95-237, 95-  
249, 96-312, 96-560,  
98-140, 98-406, 98-  
425, 98-428, 98-550,  
98-603, 100-668, 101-  
628, 102-301, 103-77,  
103-433, 106-145,  
106-353, 106-399,  
106-456, 106-554,  
107-282, 107-370 all  
address motorized  
access for a variety of  
purposes including  
grazing, mining,  
mineral leasing, water  
developments,  
transmission lines,  
hydrologic,  
meteorological, and  
telecommunications  
facilities, sanitary  
facilities,  
administrative  
buildings, law  
enforcement/border  
patrol, and wildlife  
management

Except as  
necessary to  
assure adequate  
access to valid  
mining claims or  
valid occupancies

Except as  
necessary to meet  
minimum  
requirements for  
the administration  
of the area  
(including human  
health and safety)

Except as  
necessary for the  
establishment and  
maintenance of  
facilities serving  
the public interest  
and authorized by  
the President

SECTION 4(c)  
PROHIBITIONS

**No structures or  
installations**

SECTION 4 & 5  
SPECIAL  
PROVISIONS

Except those  
needed for  
exploration and  
production of  
mineral leasing  
and mining

Except facilities  
needed in the  
public interest and  
authorized by the  
President  
Except as  
necessary to meet  
minimum  
requirements for  
the administration  
of the area  
(including human  
health and safety)  
Except when  
needed for control  
of fire, insects and  
diseases

SENATE/HOUSE  
REPORTS  
LEGISLATIVE  
HISTORY

HR 95-540, HR 96-  
617, HR 98-1019,  
HR 101-405 all  
address structures

AUTHORIZING  
ACT

SPECIAL USE  
PROVISIONS  
PL 91-82, 95-237, 95-  
450, 96-312, 96-476,  
96-550, 96-560, 98-  
406, 98-425, 98-428,  
98-550, 98-603, 100-  
668, 101-195, 101-  
628, 103-77, 103-255,  
103-433, 106-65, 106-  
353, 106-399, 106-  
554, 107-282, 107-  
370 all address  
structures including  
improvements, mining  
and mineral leasing,  
water developments,  
transmission lines and  
pipes, hydrologic,  
meteorological &  
telecommunications  
facilities, sanitary  
facilities,  
administrative  
buildings, wildlife  
management

## Appendix 5. Wilderness Statistics for the 11 Western States

### **Legislation Creating New Wilderness Areas \***

44% of bills created just one new wilderness area

12% of bills created more than one new wilderness area but fewer than 10

20% of bills created over 10 new wilderness areas (with 9% creating over 20)

8% of the bills created new wilderness areas in multiple states

17% of the bills did not create a new wilderness area but either added onto existing areas, created boundary adjustments or changed the name of the wilderness area

(\*75 bills through the 107<sup>th</sup> Congress)

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Of the 662 wilderness areas in the United States, 438 (or 66%) are in the eleven western states (excluding AK and HI). These 438 total 43.5 million acres.

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<u>AGENCY</u>	<u>AREAS*</u>	<u>ACRES IN WILDERNESS**</u>
FS	263	26,960,673
BLM	163	6,505,099
NPS	33	8,624,366
FWS	17	1,461,047
TOTAL		43,551,185

\*There are 438 individual wilderness areas in the eleven western states; the numbers above add up to a higher number because of duplication. There are 28 wilderness areas split between two managing agencies (each area is counted by each managing agency) and ten wilderness areas that cross state lines (area counted in each state).

\*\*The number of acres is approximate but NOT duplicative due to the multiple agencies/states issue noted above.

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Source of data is [www.wilderness.net](http://www.wilderness.net)

## Wilderness Acres By State and Managing Agency

<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
AZ	FS	36	1,345,008
	BLM	47	1,396,039
	NPS	4	444,550
	FWS	4	1,343,444
TOTAL		90*	4,529,041

\*1 area split between agencies

<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
CA	FS	54	4,400,349
	BLM	75	3,598,146
	NPS	9	5,970,913
	FWS	3	9,172
TOTAL		130*	13,978,580

\*11 areas split between agencies

<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
CO	FS	36	3,139,918
	BLM	4	139,575
	NPS	4	60,066
	FWS	1	2,560
TOTAL		41*	3,342,119

\*4 areas split between agencies

<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
ID	FS	5	3,961,608
	BLM	1	802
	NPS	1	43,243
	FWS	0	0
TOTAL		6*	4,005,653

\*1 area split between agencies

<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
MT	FS	12	3,372,503
	BLM	1	6,000
	NPS	0	0
	FWS	3	64,535
TOTAL		15*	3,443,038

\*1 area split between agencies

<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
NV	FS	16	811,072
	BLM	24	995,968
	NPS	10	309,439
	FWS	0	0
TOTAL		42*	2,116,479

\*8 areas split between agencies

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<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
NM	FS	16	1,388,262
	BLM	3	146,865
	NPS	2	56,392
	FWS	2	39,908
TOTAL		23	1,631,427

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<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
OR	FS	36	2,086,438
	BLM	4	186,784
	NPS	0	0
	FWS	2	590
TOTAL		40*	2,273,812

\*2 areas split between agencies

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<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
UT	FS	13	774,892
	BLM	3	27,780
	NPS	0	0
	FWS	0	0
TOTAL		16	802,672

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<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
WA	FS	24	2,569,391
	BLM	1	7,140
	NPS	3	1,739,763
	FWS	2	838
TOTAL		30	4,317,132

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<u>STATE</u>	<u>AGENCY</u>	<u>AREAS</u>	<u>ACRES IN WILDERNESS</u>
WY	FS	15	3,111,232
	BLM	0	0
	NPS	0	0
	FWS	0	0
TOTAL		15	3,111,232

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**Acreage of Wilderness**  
(in thousands of acres; all acres are approximate and rounded)

	<b>AZ</b>	<b>CA</b>	<b>CO</b>	<b>ID</b>	<b>MT</b>	<b>NV</b>	<b>NM</b>	<b>OR</b>	<b>UT</b>	<b>WA</b>	<b>WY</b>	<b>TOTAL</b>
<b>FS</b>	1,345	4,400	3,140	3,962	3,373	811	1,388	2,086	775	2,569	3,111	26,961
<b>BLM</b>	1,396	3,598	140	1	6	996	147	187	28	7	0	6,505
<b>NPS</b>	445	5,971	60	43	0	309	56	0	0	1,740	0	8,624
<b>FWS</b>	1,343	9	3	0	65	0	40	1	0	1	0	1,461
<b>TOTAL WILDERNESS*</b>	4,529	13,979	3,341	4,005	3,443	2,116	1,631	2,274	803	4,317	3,111	43,551
<b>TOTAL FED LAND**</b>	32,389	43,713	24,239	33,079	25,783	58,226	26,626	32,315	34,005	12,152	31,071	353,596
<b>TOTAL SIZE OF STATE**</b>	72,688	100,207	66,486	52,933	93,271	70,264	77,766	61,599	52,697	42,694	62,343	752,948
<b>% FED LAND WILDERNESS</b>	14%	32%	14%	12%	13%	4%	6%	7%	2%	4%	10%	12%
<b>% OF STATE WILDERNESS</b>	6%	14%	5%	8%	4%	3%	2%	4%	1%	10%	5%	6%

\*Source: [www.wilderness.net](http://www.wilderness.net)

\*\*Source: Coggins, Wilkinson & Lesly, *Federal Public Land Law*, 5<sup>th</sup> edition

## Appendix 6. Wilderness Legislation

ACT	DATE	WILDERNESS AREA (STATE)
<b>88-577</b>	1964	Anaconda-Pintler (MT) Bob Marshall (MT)
The Wilderness Act		Bridger (WY) Cabinet Mountains (MT) Caribou (CA) Chiricahua (FS not NPS) (AZ) Cucamonga (CA) Diamond Peak (OR) Domeland (CA) Eagle Cap (OR) Galiuro (AZ) Gates of the Mountains (MT) Gearhart Mountain (OR) Gila (NM) Glacier Peak (WA) Goat Rocks (WA) Hoover (CA) Jarbridge (NV) John Muir (CA) Kalmiopsis (OR) La Garita (CO) Marble Mountain (CA) Maroon Bells-Snowmass (CO) Mazatzal (AZ) Minarets (re-named Ansel Adams) (CA) Mokelumne (CA) Mount Adams (WA) Mount Hood (OR) Mount Washington (OR) Mount Zirkel (CO) Mountain Lakes (OR) North Absaroka (WY) Pecos (NM) Rawah (CO) San Gorgonio (CA) San Jacinto (CA) San Pedro Parks (NM) Selway-Bitterroot (ID/MT) Sierra Ancha (AZ) South Absaroka (WY) South Warner (CA) Strawberry Mountain(OR) Superstition (AZ) Teton (WY) Thousand Lakes (CA) Three Sisters (OR) Washakie (WY) West Elk (CO) Wheeler Peak (NM)

White Mountain (NM)  
 Yolla Bolly-Middle Eel (CA)

**90-271** 1968 San Rafael (CA)

**90-318** 1968 San Gabriel (CA)

**90-544** 1968 Pasayten (WA)  
 Addition to Glacier Peak (WA)

**90-548** 1968 Mount Jefferson (OR)

**91-58** 1969 Ventana (CA)

**91-82** 1969 Desolation (CA)

**91-504** 1970 Craters of the Moon (ID)  
 Mount Baldy (AZ)  
 Oregon Islands (OR)  
 Petrified Forest (AZ)  
 Salt Creek (NM)  
 Three Arch Rock (OR)  
 Washington Islands (WA)

**92-230** 1972 Pine Mountain (AZ)

**92-241** 1972 Sycamore Canyon (AZ)

**92-395** 1972 Scapegoat (MT)

**92-400** 1972 Sawtooth (ID)

**92-476** 1972 Washakie (WY)

**92-493** 1972 Lava Beds (CA)

**92-510** 1972 Lassen Volcanic (CA)

**92-521** 1972 Addition to Eagle Cap (OR)

**93-550** 1974 Farallon (CA)

**93-632** 1975 Agua Tibia (CA)  
 Bosque del Apache (NM)  
 Emmigrant (CA)  
 Weminuche (CO)  
 Mission Mountains (MT)

**94-146** 1975 Flattops (CO)

**94-199** 1975 Hells Canyon (ID/OR)

**94-352** 1976 Eagles Nest (CO)

**94-357** 1976 Alpine Lakes (WA)

**94-544** 1976 Point Reyes (CA)

**94-557** 1976 Fitzpatrick (WY)  
 Kaiser (CA)  
 Red Rocks (MT)  
 Medicine Lake (MT)  
 UL Bend (MT)  
 San Juan (WA)

**94-567** 1976 Bandelier (NM)  
 Black Canyon of the Gunnison (CO)  
 Chiricahua National Monument (AZ)  
 Great Sand Dunes (CO)  
 Joshua Tree (CA)  
 Mesa Verde (CO)  
 Pinnacles (CA)  
 Saguaro (AZ)  
 Point Reyes (CA)

**95-237** 1978 Chama River Canyon (NM)  
 Golden Trout (CA)  
 Gospel-Hump (ID)  
 Hunter-Frying Pan (CO)  
 Lone Peak (UT)  
 Manzano Mountain (NM)  
 Pusch Ridge (AZ)  
 Santa Lucia (CA)  
 Savage Run (WY)  
 Welcome Creek (MT)  
 Wenaha Tucannon (OR/WA)  
 Wild Rogue (OR)  
 Addition to Kalmiopsis (OR)  
 Addition to Mount Hood (OR)  
 Addition to Three Sisters (OR)  
 Addition to Ventana (CA)

Endangered  
 American  
 Wilderness Act  
 of 1978

**95-249** 1978 Absarokeda-Beartooth (MT)

**95-450** 1978 Indian Peaks (CO)  
 Oregon Islands (OR)

**95-546** 1978 Great Bear (MT)  
 Addition to Bob Marshall (MT)

**95-625** 1978 Carlsbad Caverns (NM)

**96-248** 1980 Addition to Sandia Mountain (NM)

**96-312** 1980 River of No Return (ID)  
 Addition to Selway-Bitterroot (ID)

**96-476** 1980 Rattlesnake (MT)

**96-550** 1980 Aldo Leopold (NM)

		Apache Kid (NM)
		Blue Range (NM)
		Captain Mountains (NM)
		Cruces Basin (NM)
		Dome (NM)
		Latir Peak (NM)
		Withington (NM)
		Addition to Gila (NM)
		Addition to Pecos (NM)
		Addition to Wheeler Peak (NM)
		Addition to White Mountain (NM)
<b>96-560</b>	1980	Cache La Poudre (CO)
		Collegiate Peaks (CO)
Colorado		Comanche Peak (CO)
Wilderness Act		Holy Cross (CO)
of 1980		Lizard Head (CO)
		Lost Creek (CO)
		Mount Evans (CO)
		Mount Massive (CO)
		Mount Sneffels (CO)
		Neota (CO)
		Never Summer (CO)
		Raggeds (CO)
		South San Juans (CO)
		Uncompaghre (CO)
		Addition to Indian Peaks (CO)
<b>97-283</b>	1982	Boundary change to Sandia Mountain (NM)
<b>98-140</b>	1983	Lee Metcalf (MT)
<b>98-231</b>	1984	Rename River of No Return to Frank Church River of No Return (ID)
<b>98-328</b>	1984	Badger Creek (OR)
		Black Canyon (OR)
Oregon		Boulder Creek (OR)
Wilderness Act		Bridge Creek (OR)
of 1984		Bull of the Woods (OR)
		Columbia (Re-named Mark O. Hatfield) (OR)
		Cummins Creek (OR)
		Drift Creek (OR)
		Grass Knob (OR)
		Menagerie (OR)
		Mill Creek (OR)
		Middle Santiam (OR)
		Monument Rock (OR)
		Mount Thielsen (OR)
		Mount Washington (OR)
		North Fork John Day (OR)
		North Fork Umatilla (OR)
		Red Buttes (OR/CA)
		Rock Creek (OR)
		Rogue-Umpqua Divide (OR)

Salmon-Huckleberry (OR)  
Sky Lakes (OR)  
Table Rock (OR)  
Three Sisters (OR)  
Waldo Lake (OR)  
Addition to Diamond Peak (OR)  
Addition to Eagle Cap (OR)  
Addition to Gearhart Mountain (OR)  
Addition to Hells Canyon (OR)  
Addition to Mount Jefferson (OR)  
Addition to Strawberry Mountain (OR)

**98-339** 1984

Washington State  
Wilderness Act  
of 1984

Boulder River (WA)  
Buckhorn (WA)  
Clearwater (WA)  
Colonel Bob (WA)  
Glacier View (WA)  
Henry M. Jackson (WA)  
Indian Heaven (WA)  
Juniper Dunes (WA)  
Lake Chelan-Sawtooth (WA)  
Mount Baker (WA)  
Mount Skokomish (WA)  
Noisy-Diobsud (WA)  
Norse Peak (WA)  
Salmo-Priest (WA)  
Tatoosh (WA)  
The Brothers (WA)  
Trapper Creek (WA)  
William O. Douglas (WA)  
Wonder Mountain (WA)  
Addition to Glacier Peak (WA)  
Addition to Goat Rocks (WA)  
Addition to Mount Adams (WA)  
Addition to Pasayten (WA)

**98-406** 1984

Arizona  
Wilderness Act  
of 1984

Apache Creek (AZ)  
Aravaipa Canyon (AZ)  
Bear Wallow (AZ)  
Beaver Dam Mountains (AZ)  
Castle Creek (AZ)  
Cedar Bench (AZ)  
Chiricahua (AZ)  
Cottonwood Point (AZ)  
Escudilla (AZ)  
Fossil Springs (AZ)  
Four Peaks (AZ)  
Galiuro (AZ)  
Grand Wash Cliffs (AZ)  
Granite Mountain (AZ)  
Hellsgate (AZ)  
Juniper Mesa (AZ)  
Kachina Peaks (AZ)  
Kanab Creek (AZ)  
Kendrick Mountain (AZ)

Miller Peak (AZ)  
Mount Logan (AZ)  
Mount Trumbull (AZ)  
Mt. Wrightson (AZ)  
Munds Mountain (AZ)  
Paiute (AZ)  
Pajarita (AZ)  
Paria Canyon-Vermillion Cliffs (AZ)  
Red Rock-Secret Mountain (AZ)  
Rincon Mountain (AZ)  
Saddle Mountain (AZ)  
Salome (AZ)  
Salt River Canyon (AZ)  
Santa Teresa (AZ)  
Strawberry Crater (AZ)  
West Clear Creek (AZ)  
West Beaver (AZ)  
Woodchute (AZ)  
Addition to Mazatzal (AZ)  
Addition to Superstition (AZ)  
Addition to Sycamore Canyon (AZ)

**98-425** 1984

California  
Wilderness Act  
of 1984

Bucks Lake (CA)  
Carson-Iceberg (CA)  
Castle Crags (CA)  
Chanchelulla (CA)  
Cucamonga (CA)  
Dick Smith (CA)  
Dinkey Lakes (CA)  
Granite Chief (CA)  
Hauser (CA)  
Ishi (CA)  
Jenny Lakes (CA)  
Machesna Mountain (CA)  
Monarch (CA)  
Mt. Shasta (CA)  
North Fork (CA)  
Pine Creek (CA)  
Russian (CA)  
San Joaquin (CA)  
San Mateo Canyon (CA)  
Santa Rosa (CA)  
Sequoia-Kings Canyon (CA)  
Sheep Mountain (CA)  
Siskiyou (CA)  
Snow Mountain (CA)  
South Sierra (CA)  
Trinity Alps (CA)  
Yosemite (CA)  
Addition to Caribou (CA)  
Addition to Domeland (CA)  
Addition to Emmigrant (CA)  
Addition to John Muir (CA)  
Addition to Marble Mountain (CA)  
Addition to Minarets (CA)

- Addition to Mokelumne (CA)  
 Addition to Red Buttes (CA/OR)  
 Addition to San Geronio (CA)  
 Addition to San Jacinto (CA)  
 Addition to San Rafael (CA)  
 Addition to South Warner (CA)  
 Addition to Ventana (CA)  
 Addition to Yolla Bolly-Middle Eel (CA)
- 98-428** 1984 Ashdown Gorge (UT)  
 Box-Death Hollow (UT)  
 Dark Canyon (UT)  
 Deseret Peak (UT)  
 High Uintas (UT)  
 Mount Naomi (UT)  
 Mount Nebo (UT)  
 Mount Olympus (UT)  
 Mount Timpanogos (UT)  
 Pine Valley Mountain (UT)  
 Twin Peaks (UT)  
 Wellsville Mountain (UT)
- Utah  
 Wilderness Act  
 of 1984
- 98-550** 1984 Cloud Peak (WY)  
 Encampment River (WY)  
 Huston Park (WY)  
 Jededia Smith (WY)  
 Platte River (WY/CO)  
 Popo-Agie (WY)  
 Winegar Hole (WY)  
 Addition to Teton (WY)  
 Addition to Bridger (WY)  
 Addition to Fitzpatrick (WY)  
 Addition to Washakie (WY)  
 Addition to Absarokeda-Beartooth (WY)
- Wyoming  
 Wilderness Act  
 of 1984
- 98-603** 1984 Bisti (NM)  
 De-na-zin (NM)  
 Addition to Sandia Mountain (NM)  
 Boundary adjustment Wheeler Peak (NM)
- 99-68** 1985 Re-name Point Reyes to Phillip Burton (CA)
- 99-635** 1986 Boundary adjustment Buckhorn (WA)  
 Boundary adjustment Skokomish (WA)  
 Boundary adjustment The Brothers (WA)
- 100-225** 1987 Cebolla (NM)  
 West Malpais (NM)
- 100-668** 1988 Mount Rainier (WA)  
 Olympic (WA)  
 Stephen Mathers (WA)
- 101-195** 1989 Alta Toquima (NV)  
 Arc Dome (NV)



Nevada Wilderness Protection Act	<ul style="list-style-type: none"> <li>Boundary Peak (NV)</li> <li>Currant Mountain (NV)</li> <li>East Humboldts (NV)</li> <li>Grant Range (NV)</li> <li>Mt. Charleston (NV)</li> <li>Mt. Moriah (NV)</li> <li>Mt. Rose (NV)</li> <li>Quinn Canyon (NV)</li> <li>Ruby Mountains (NV)</li> <li>Santa Rosa-Paradise Peak (NV)</li> <li>Table Mountain (NV)</li> <li>Addition to Jarbridge (NV)</li> </ul>
<b>101-539</b> 1990	Land exchange in Ventana (CA)
<b>101-628</b> 1990	<ul style="list-style-type: none"> <li>Aravaipa Canyon (AZ)</li> <li>Arrastra Mountain (AZ)</li> <li>Aubrey Peak (AZ)</li> <li>Baboquivari Peak (AZ)</li> <li>Big Horn Mountains (AZ)</li> <li>Cabeza Prieta (AZ)</li> <li>Coyote Mountains (AZ)</li> <li>Dos Cabezas Mountains (AZ)</li> <li>Eagletail Mountains (AZ)</li> <li>East Cactus Plain (AZ)</li> <li>Fishhooks (AZ)</li> <li>Gibraltar Mountain (AZ)</li> <li>Harcuvan Mountains (AZ)</li> <li>Harquahala Mountains (AZ)</li> <li>Hassayampa River (AZ)</li> <li>Havasu (AZ)</li> <li>Hells Canyon (AZ)</li> <li>Hummingbird Springs (AZ)</li> <li>Imperial Refuge (AZ)</li> <li>Kofa (AZ)</li> <li>Mount Nutt (AZ)</li> <li>Mount Tipton (AZ)</li> <li>Mount Wilson (AZ)</li> <li>Muggins Mountain (AZ)</li> <li>Needle's Eye (AZ)</li> <li>New Water Mountains (AZ)</li> <li>North Maricopa Mountains (AZ)</li> <li>North Santa Teresa (AZ)</li> <li>Peloncillo (AZ)</li> <li>Rawhide Mountains (AZ)</li> <li>Redfield Canyon (AZ)</li> <li>Signal Mountain (AZ)</li> <li>Sierra Estrella (AZ)</li> <li>South Maricopa Mountains (AZ)</li> <li>Swansea (AZ)</li> <li>Table Top (AZ)</li> <li>Tres Alamos (AZ)</li> <li>Trigo Mountain (AZ)</li> <li>Upper Burro Creek (AZ)</li> <li>Wabayuma Peak (AZ)</li> </ul>
Arizona Desert Wilderness Act of 1990	

- Warm Springs (AZ)  
 White Canyon (AZ)  
 Woolsey Peak (AZ)  
 Addition to Aravaipa (AZ)
- 102-301** 1992 Chumash (CA)  
 Garcia (CA)  
 Matilija (CA)  
 Sespe (CA)  
 Silver Peak (CA)  
 Addition to Ventana (CA)  
 Addition to San Rafael (CA)
- 103-77** 1993 Buffalo Peaks (CO)  
 Byers Peak (CO)  
 Fossil Ridge (CO)  
 Greenhorn Mountain (CO)  
 Partmigan Peak (CO)  
 Powderhorn (CO)  
 Sangre de Cristo (CO)  
 Sarvis Creek (CO)  
 Vasquez Peak (CO)  
 Addition to and rename Big Blue to Uncompahgre (CO)  
 Addition to Hunter-Frying Pan (CO)  
 Addition to La Garita (CO)  
 Addition to Lost Creek (CO)  
 Addition to Mount Zirkel (CO)  
 Addition to Never Summer (CO)  
 Addition to Raggeds (CO)  
 Addition to South San Juan (CO)  
 Addition to Weminuche (CO)
- Colorado  
 Wilderness Act  
 of 1993
- 103-255** 1994 Addition to Collegiate Peaks (CO)  
 Addition to Holy Cross (CO)  
 Addition to Hunter-Frying Pan (CO)  
 Addition to Maroon Bells-Snowmass (CO)
- 103-365** 1994 Apache Creek (AZ)  
 Addition to Juniper Mesa (AZ)
- 103-433** 1994 Argus Range (CA)  
 Bigelow Cholla Garden (CA)  
 Bighorn Mountain (CA)  
 Big Maria Mountains (CA)  
 Black Mountain (CA)  
 Bright Star (CA)  
 Bristol Mountain (CA)  
 Cadiz Dunes (CA)  
 Carrizo Gorge (CA)  
 Chemehuevi Mountains (CA)  
 Chimney Peak (CA)  
 Chuckwalla Mountains (CA)  
 Cleghorn Lakes (CA)  
 Clipper Mountain (CA)  
 Coso Range (CA)
- California  
 Desert Protection  
 Act of 1994

Coyote Mountains (CA)  
Darwin Falls (CA)  
Dead Mountains (CA)  
Death Valley (CA/NV)  
El Paso Mountains (CA)  
Fish Creek Mountains (CA)  
Funeral Mountains (CA)  
Golden Valley (CA)  
Grass Valley (CA)  
Havasu (CA)  
Hollow Hills (CA)  
Ibex (CA)  
Imperial Range (CA)  
Indian Pass (CA)  
Inyo Mountains (CA)  
Jacumba (CA)  
Kelso Dunes (CA)  
Kiavah (CA)  
Kingston Range (CA)  
Little Chuckwalla (CA)  
Little Picacho (CA)  
Malpais Mesa (CA)  
Manly Peak (CA)  
Mecca Hills (CA)  
Mesquite (CA)  
Mojave (CA)  
Newberry Mountains (CA)  
Nopah Range (CA)  
North Algodones Dunes (CA)  
North Mesquite Mountains (CA)  
Old Woman Mountains (CA)  
Orocopia Mountains (CA)  
Owens Peak (CA)  
Pahrump Valley (CA)  
Palen/McCoy (CA)  
Palo Verde Mountains (CA)  
Picacho Peak (CA)  
Piper Mountain (CA)  
Piute Mountains (CA)  
Resting Spring Range (CA)  
Rice Valley (CA)  
Riverside Mountains (CA)  
Rodmand Mountains (CA)  
Sacatar Trail (CA)  
Saddle Peak Hills (CA)  
San Geronio (CA)  
Sawtooth Mountains (CA)  
Sheephole Valley (CA)  
South Nopah Range (CA)  
Stateline (CA)  
Stepladder Mountains (CA)  
Surprise Canyon (CA)  
Sylvania Mountains (CA)  
Trilobite (CA)  
Turtle Mountains (CA)

Whipple Mountains (CA)  
Addition to Domeland (CA)  
Addition to Joshua Tree (CA)  
Addition to Santa Rosa (CA)

**104-208** 1996 Boundary adjustment Bull of the Woods (OR)  
Re-name Columbia to Mark O. Hatfield (OR)  
Addition to Oregon Islands (OR)

**104-333** 1996 Opal Creek (OR)  
Combined Bisti & De-na-zin and additions (NM)  
Addition to Oregon Islands (OR)  
Boundary adjustment to Bull of the Woods (OR)

**105-75** 1997 Addition to Eagles Nest (CO)

**105-76** 1997 Boundary adjustment to Raggeds (CO)

**105-277** 1998 Addition to Alpine Lakes (WA)

**105-355** 1998 Boundary adjustment and addition to Mount Naomi (UT)

**106-65** 1999 Expanded military use of Cabeza Prieta (AZ)

**106-76** 1999 Gunnison Gorge (CO)  
Addition to Black Canyon of the Gunnison (CO)

**106-145** 1999 Otay Mountain (CA)

**106-291** 2000 Boundary adjustment to Argus range (CA)

**106-353** 2000 Black Ridge Canyons (CO/UT)

**106-399** 2000 Steens Mountain (OR)

**106-456** 2000 Spanish Peaks (CO)

**106-554** 2000 Black Rock Desert (NV)  
Calico Mountains (NV)  
East Fork High Rock Canyon (NV)  
High Rock Canyon (NV)  
High Rock Lake (NV)  
Little High Rock Canyon (NV)  
North Black Rock Range (NV)  
North Jackson Mountains (NV)  
Pahute Peak (NV)  
South Jackson Mountains (NV)

**107-216** 2002 James Peak (CO)  
Addition to Indian Peaks (CO)

**107-282** 2002 Arrow Canyon (NV)  
Black Canyon (NV)  
Bridge Canyon (NV)  
Eldorado (NV)

Clark County  
Conservation of

Public Lands and Natural Resources Act	<ul style="list-style-type: none"> <li>Ireteba (NV)</li> <li>Jimbilnan (NV)</li> <li>Jumbo Springs (NV)</li> <li>La Madre Mountain (NV)</li> <li>Lime Canyon (NV)</li> <li>Muddy Mountains (NV)</li> <li>Nellis Wash (NV)</li> <li>North McCullough (NV)</li> <li>Pinto Valley (NV)</li> <li>Rainbow Mountain (NV)</li> <li>South McCullough (NV)</li> <li>Spirit Mountain (NV)</li> <li>Wee Thump Joshua Tree (NV)</li> <li>Addition to Mt. Charleston (NV)</li> </ul>
<b>107-334</b> 2002	Boundary adjustment and addition to Mount Nebo (UT)
<b>107-370</b> 2002	<ul style="list-style-type: none"> <li>Addition to Pinnacles (CA)</li> <li>Addition to Silver Peak (CA)</li> <li>Addition to Ventana (CA)</li> </ul>
<b>108-95</b> 2004	Boundary adjustment to Mt. Naomi (UT)
<b>108-424</b> 2004	<ul style="list-style-type: none"> <li>Big Rocks (NV)</li> <li>Clover Mountains (NV)</li> <li>Delamar Mountains (NV)</li> <li>Far South Egans (NV)</li> <li>Fortification Range (NV)</li> <li>Meadow Valley Range (NV)</li> <li>Mormon Mountains (NV)</li> <li>Mt. Irish (NV)</li> <li>Parsnip Peak (NV)</li> <li>South Pahroc Range (NV)</li> <li>Tunnel Spring (NV)</li> <li>Weepah Spring (NV)</li> <li>White Rock Range (NV)</li> <li>Worthington Mountains (NV)</li> </ul>