

## *After the Election: Outlook for Wilderness in Congress*

By Kevin Proescholdt

**A**s the dust continues to settle from the 2018 mid-term election, Wilderness Watch shares this outlook for how Wilderness might fare going ahead.

### **2018 Lame-Duck Session:**

Possible Public Lands Omnibus Package. A lame-duck session of Congress is typically held in November and December after an election, but before newly-elected members of Congress take their seats in January. Lame-duck sessions can provide opportunities to both pass good bills, or see lots of bad bills (packaged together with a few “sweetener” bills) that otherwise wouldn’t pass on their own. Even before the election, there was much talk and speculation about a potential public lands omnibus bill that might be put together in the lame-duck session.



*Eagle Cap Wilderness. Leon Werdinger Photography.*

the argument that there was no way for the committee to thoughtfully consider and mark-up each bill with such a packed agenda, most bills passed by voice vote with no discussion. The purpose of this “mark-up” was really to roll out a list of bills from which Senators can try over the coming weeks to pull together an omnibus package that can pass the full Senate on a floor

vote. Which bills might or might not be included remains up in the air; even whether or not there will be a package remains up in the air. The idea from the Senate’s perspective will be to include non-controversial or bipartisan bills in a bigger package that can pass and be signed into law. Both parties, however, will try to include at least some bills that are controversial. Many DC-based environmental groups often eagerly jump onto the omnibus bandwagon, and accept the seemingly

On October 2, the Senate Energy and Natural Resources Committee held a “mark-up” session on and passed 47 separate bills. Included in this mass of legislation was S. 2809,

the bad San Rafael Swell/Desolation Canyon (Emery County, UT) bill being pushed hard by retiring Sen. Orrin Hatch (R-UT). Leaving aside

numerous bad bills in order to get a few good public lands bills. From Wilderness Watch’s perspective, however, these large omnibus packages are often vehicles for some very bad bills, akin to giving a thirsty man a drink of water laced with toxic poison. It makes much more sense to wait until the next Congress, which will be more favorable to Wilderness and public lands. The Senate Democrats have the ability to block a truly bad omnibus bill with the threat of a filibuster, so Senate Democrats must provide the critical backstop to prevent bad bills from passing as part of an omnibus.

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*... and More*

# Message from the Executive Director



## Election is over, now what?

Protecting public lands and Wilderness has never been easy, but the past two years have been unusually harsh. The Trump Administration's foxes have been marauding the public land henhouse, while special interest shills in Congress have raced to sell off whatever is left of the feathers, beaks, and bones. Fortunately, the recent election will break up if not end this tag-team effort to dismantle our natural legacy. It's not a new day for our public lands in America, but at least the sun is setting on the most destructive public lands' policy era in memory.

The good news is no longer will the likes of Rob Bishop (R-UT) and Tom McClintock (R-CA) set the agenda and tone for wilderness and public lands legislation in the People's House. Largely gone from public debate will be the tidal wave of terrible legislation that threatened to undo a half-century of Wilderness protection—like bills to open Wilderness to mountain bikes and other machines, or to strip wilderness protections from tens of millions of acres of Wilderness along our southern and northern borders. And there should be no more pseudo “oversight” hearings that served no purpose but to attack the Wilderness Act or the Endangered Species Act.

The more sobering news is that not much changed in the Senate, and we can expect the Trump Administration, which has shown zero respect for conservation traditions of the past, to continue to push the limits of administrative power to exploit our public domain.

That said, I believe there's a lot the new House majority can do to reverse the destructive course of current public lands policy, reverse the damage of the past two years, and lay the groundwork for a renaissance in wilderness protection. For starters, it can begin to hold public lands agencies accountable for the actions they take. Oversight hearings can shine a light on agency abuses and ultimately bring about positive change, as we saw in the early 1990s, the last time Congress took a serious look at the agencies' wilderness programs. Hearings can also lay the groundwork for legislation, should oversight alone fail to right the ship.

The House can also use the power of the purse to set policy and undo some of the most destructive actions of the current Administration and Congress. Foremost on its agenda should be preventing the spending of any federal dollars to pursue mineral exploration or leasing plans on the coastal plain of the Arctic Refuge. The Alaska delegation used a must-pass appropriations bill to open the Arctic Refuge to leasing and drilling, the House could use the same to stop it. Similarly, the House could use the budget process to prevent the Dept. of Interior from spending money to effectuate a land exchange with the State of Alaska that will lead to a road through the heart of the Izembek National Wildlife Refuge and Wilderness. This would buy time for our lawsuit challenging Secretary Zinke's unlawful end-run around the Wilderness Act and the 1980 Alaska Lands Act to work through the courts.

A pro-active House can also bring forth legislation to strengthen existing Wilderness laws and ensure those laws are enforced. For example, it's long past time for Congress to assess whether the exceptions in the Wilderness Act are justified, and to explore whether the agencies responsible for administering the Wilderness System are proving up to the task (spoiler alert—they aren't).

We can't expect a lot of good legislation to pass in the next two years, but a lot of good can still be done. Let's work to make sure the next two years aren't squandered, but are used to make progress where we can and, more importantly, set the table for even greater progress in the years ahead. 🍷

—George Nickas



**WILDERNESS WATCH**  
*Keeping Wilderness Wild*

The *Wilderness Watcher* is the quarterly newsletter of Wilderness Watch, America's leading conservation organization dedicated solely to protecting the lands and waters in the National Wilderness Preservation System.

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P.O. Box 9175  
Missoula, MT 59807  
Phone: (406) 542-2048  
www.wildernesswatch.org  
wild@wildernesswatch.org

Wilderness Watch will carefully monitor the discussions, and will work to protect Wilderness in any possible omnibus package.

### **2019 Congress: House.**

The Democrats gained control of the House of Representatives as a result of the 2018 mid-term election. Coming from the minority party status at a count of 193-235 (with seven seats vacant), the Democrats won more than the 23 seats they needed to re-capture the majority in the House. The Democrats will operate with a 235-200 majority in 2019. While not all Democrats are good for Wilderness (and not all Republicans are bad), this change in control is generally great news for Wilderness.

#### *Leadership:*

Rep. Raúl Grijalva (D-AZ) will most likely chair the House Natural Resources Committee, replacing anti-wilderness Republican Rob Bishop (R-UT). Rep. Grijalva has been a strong supporter of Wilderness. Virtually all wilderness-related bills go through this committee. The incoming chair of the House Appropriations Subcommittee on Interior, Environment, and Related Agencies is Rep. Betty McCollum (D-MN), who has been a champion for National Parks and Wilderness, including the Boundary Waters Canoe Area Wilderness in her home state of Minnesota. She replaces Rep. Ken Calvert (R-CA) as chair of this influential panel.

#### *Outlook:*

Even with a more favorable House, passing good legislation will remain a challenge as any bill must get through the Senate and be signed by the President. The best news is that bad wilderness bills that have been pushed relentlessly by the House Republicans in the past several Congresses, such as the Sportsmen's Heritage and Recreational Enhancement Act (SHARE Act) (which would have gutted the 1964 Wilderness Act), and the Wheels in Wilderness Bill (which would have opened every Wilderness in the nation to mountain bikes and other mechanized forms of transportation), are now unlikely to get a hearing in the House, let alone pass. Beyond that, the Democrats in the House will be in a position to use the power of the appropriations process to rein in some of the abuses of the Administration (think of some of those by Secretary of Interior Ryan Zinke) and prevent the many unrelated policy "riders" the Republicans have attached to recent spending bills. For example, the legislation that opened the Arctic Refuge to

oil and gas leasing was attached to a tax bill. And at least in the House we might be able to look forward to more oversight of the federal land management agencies and their wilderness programs.

### **2019 Congress: Senate.**

The Republicans retained control of the Senate as a result of the mid-term election, and picked up a few additional seats while doing so. Prior to the election, Republicans held a slim majority in the Senate at 51-49. The Republicans expanded that margin and will have a majority of 53-47 in the 116th Congress in 2019. This means that the Senate will probably treat Wilderness much the same as in the past couple of years of Republican control. Because the Senate operates differently from the House, and the majority needs some minority votes to reach the 60-vote filibuster-ending level, Democrats will still exercise some control (albeit limited) over the really bad wilderness bills promoted by Republicans.

#### *Leadership:*

Sen. Lisa Murkowski (R-AK) will likely continue to chair the Energy and Natural Resources Committee, the committee through which nearly all wilderness-related bills must pass. Sen. Maria Cantwell (D-WA), who is usually supportive of Wilderness and public lands, is currently the Ranking Minority Member on this committee and might choose to remain so, depending on shake-ups in other committees. The chair of the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies will also continue to be Sen. Murkowski, leaving this anti-wilderness legislator in two key positions of power over Wilderness. Sen. Tom Udall (D-NM), a good supporter of Wilderness, will continue as the ranking minority member of this appropriations subcommittee.

#### *Outlook:*

Even though Republicans will retain control of the Senate, the dynamic between the House and Senate will dramatically change as a result of the new Democratic control of the House. In the past, the Republican House kept passing and sending over to the Senate one bad wilderness bill after another. That pattern will change now. While gridlock is probably the best bet, there may be opportunities to pass some modest wilderness designation bills or reforms to agency programs. Senate wilderness champions like Sens. Tom Udall, Martin Heinrich (D-NM), and others will remain in the Senate. 🐾

*Kevin Proescholdt is the conservation director for Wilderness Watch.*

# On 40th Anniversary, Challenges Remain for BWCAW

By Kevin Proescholdt

Forty years ago this past fall, on October 21, 1978, President Jimmy Carter signed into law the 1978 Boundary Waters Canoe Area Wilderness (BWCAW) Act. His action ended a long and bitter political struggle for the future of the BWCAW, and finally set this storied Wilderness on the path to true wilderness protection.

The BWCAW is the nation's largest lakeland Wilderness, with over 1,000 lakes carved by the glaciers from the rocky Canadian Shield. Visitors travel primarily by canoe. The largest Wilderness east of the Rockies and north of the Everglades, the BWCAW also contains the largest block of natural, unlogged forest east of the Rockies. For decades it has been the most popular and heavily-visited Wilderness in the entire National Wilderness Preservation System.

The 1964 Wilderness Act included the BWCA as an original unit of the National Wilderness Preservation System, but special language (Sec. 4[d][5]) singled out just the canoe country wilderness to allow continued logging and motorboat use there. So the Boundary Waters was a Wilderness in name, but not in management. This paradox led to a series of court cases in the late 1960s through the mid-1970s over mining, logging, and motorized travel. Was the BWCA a Wilderness or not?

The BWCAW of the 1960s and early 1970s was a heavily compromised remnant of the vast canoe country that once stretched across northeastern Minnesota and northwestern Ontario. Early wilderness advocate Ernest C. Oberholtzer, for example, hoped in the 1920s to protect an international wilderness here of some six million acres. So the small and heavily compromised wilderness of the Boundary Waters prior to 1978 was but a fraction of that once more vast canoe country.

In 1975, newly-elected Rep. Jim Oberstar (D-MN) of northeastern Minnesota (whose district included the BWCAW) introduced a bill in Congress to try to resolve all the uncertainty. But his bill would have taken another huge bite out of the area, removed 400,000 acres from the million-acre Wilderness, and used that instead to create a National Recreation Area where logging, motorboats and snowmobiles, resort development, etc., would be allowed.

Wilderness advocates formed the Friends of the Boundary Waters Wilderness in May 1976 to fight for the protection

of the BWCA as a Wilderness. Led by retired Forest Service ecologist Miron "Bud" Heinselman, Chuck Dayton, Erika Sitz, Darby Nelson, Dan Engstrom, Jan Green, Dick Flint, Herb Johnson, and many others, they turned to Rep. Don Fraser (D-MN) of Minneapolis. Fraser introduced a wilderness bill for the BWCA in June 1976 to protect the area from logging, mining, motorized travel, and development.

Hearings were held in Minnesota and Washington, D.C., in 1977. A compromise bill emerged from the House Interior Committee in 1978, authored by subcommittee chair Rep. Phil Burton (D-CA) and Bruce Vento (D-MN). It passed the House in June with additional compromises on motorboat use. A Senate-sponsored negotiating session resulted in a compromise allowing even more motor use, and garnered the support of Sen. Wendell Anderson (D-MN). The revised bill passed in October 1978 and was signed by President Carter as Public Law 95-495.



**Bud and Fran Heinselman (center) celebrating passage of the 1978 law with Rep. Bruce Vento (left) and Rep. Phil Burton (right).** By Kevin Proescholdt

The new law moved the canoe country strongly in the direction of wilderness protection. It ended logging, greatly restricted mining within the Wilderness and within a new Mining Protection Area in some places outside the BWCAW, closed all but two short snowmobile routes, removed motorboat use from about 41 percent of the water surface area, added about 67,000 acres to the BWCAW in key additions, and officially renamed the area from BWCA to BWCAW to underscore Congress's affirmation of Wilderness.

The new law also amended the 1964 Wilderness Act and removed that special language dealing with the BWCAW. This is the only time in more than half a century that the landmark Wilderness Act has been amended.

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The 1978 BWCAW Act is also perhaps the only example where Congress has returned to a designated Wilderness and removed special provisions that previously weakened its protection. Doing so required a bitter political fight that divided Minnesota and affected all statewide political races in 1978, underscoring both the problems that special provisions in wilderness bills pose as well as the tiny likelihood that Congress will come back to Wildernesses at a later date and remove special provisions that weaken their protection.

Some might think that now, 40 years down the road, the BWCAW must be fully protected for all time. Unfortunately that is not the case. Here are some of the challenges ahead if

we are to truly realize a fully-protected wilderness future for the BWCAW:

- **New Sulfide Mining.** The Mining Protection Area created by the 1978 law does not protect the BWCAW from proposed new copper-nickel sulfide mining, with its threat of acid mine drainage into the Wilderness. The proposed Twin Metals mine would clearly threaten the BWCAW, and at least one study shows that the proposed PolyMet mine could also spill pollution into the watershed of the BWCAW.
- **Towboats and Commercial Services.** Commercial motorized towboats operate in several locations ferrying canoe parties to points further into the Wilderness, disrupting the experience of other visitors and depriving even their customers of a true wilderness experience. Yet the Wilderness Act generally prohibits commercial services in Wilderness unless they are necessary and proper for visitors to experience Wilderness. The Forest Service has begun a commercial needs assessment to help determine whether these commercial motorboat services will continue.
- **Truck Portages.** The 1978 law directed that the so-called “truck portage” operations end inside the Wilderness. These are commercial services that haul motorboats from one lake to another. But Rep. Oberstar engineered an amendment to a national transportation funding bill in 1998 to re-open two of these operations.
- **Motorboats.** Motorboats still roar across about one-fifth of the water surface area of the canoe country wilderness. Their presence diminishes the area’s wilderness character. Imagine if we could someday experience a completely motor-free BWCAW!
- **Snowmobiles.** Snowmobiles are still allowed inside the BWCAW on two access trails to Canada. In recent years the Forest Service expanded the area open to snowmobiles on the U.S. portion of Saganaga Lake. Snowmobiles and their noise also degrade the area’s wilderness character.

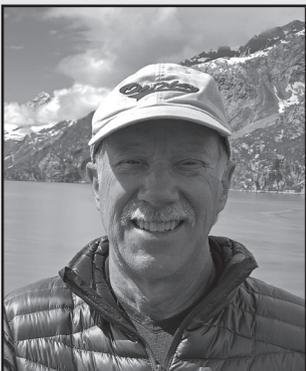
- **Wilderness Management/Manipulation.** This subject is an ongoing challenge. The Forest Service, for example, wants to intentionally ignite fires in the BWCAW along the Echo Trail in the Hi Lo Project. While allowing natural fire to play its role in the BWCAW is good, prescribed fire like that proposed has far different ecological effects and is the type of manipulation that the Wilderness Act seeks to prevent.
- **School Trust Lands.** About 83,000 acres of state school trust lands lie within the BWCAW, which don’t generate income for the state’s Permanent School Fund. Congress has just begun directing funds to the Forest Service to purchase these lands from the state. This option is preferable to a straight land exchange, where Minnesota would gain title to current National Forest lands outside the Wilderness. The land exchange option would benefit the proposed copper-nickel mining proposals.
- **Heavy Visitation.** The BWCAW remains the most visited Wilderness in the entire National Wilderness Preservation System. While the heavy visitation numbers help insure that there are many who love and defend the area, the crowds also make it hard to find solitude and experience a truly wild Wilderness. Quetico Provincial Park (adjacent to the BWCAW along the Canadian border and slightly larger) sees only about one-fifth the number of visitors as the BWCAW and its wild character is much better protected.

So let’s celebrate this 40th milestone of the landmark BWCAW law, but let’s also remember that lots of unfinished business remains if we are to truly protect this incredible area as the world-class wild wilderness it deserves to be.



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*Kevin Proescholdt of Minneapolis is the conservation director for Wilderness Watch. He helped pass the 1978 law, directed the Friends of the Boundary Waters Wilderness for 17 years, and was the lead author of the book, Troubled Waters: The Fight for the Boundary Waters Canoe Area Wilderness.*

## *Wilderness Watch Welcomes Mark Peterson to the Board*



Dr. Mark Peterson has camped, hiked, kayaked, sailed and skied his way throughout national parks and wilderness areas. He’s pursued his outdoor recreation passions on campus with a Ph.D. in park and wilderness management from Colorado State University and also in the workplace serving as the Rocky Mountain Regional Director for the National Parks Conservation Association, a Vice-President for the National Audubon Society, and the Executive Director of the Sigurd Olson Environmental Institute at Northland College. Peterson’s efforts to advocate for conservation measures span worldwide as he is a member of the World Commission on Protected Areas with the International Union for Conservation of Nature. He has served on a number of regional boards, including the Listening Point Foundation, St. Croix River Association, Friends of the Apostle Islands and the Minnesota Department of Natural Resources’ Council for Scientific and Natural Areas. 

# On the Watch

## *Wilderness Watch Supports Good Decision for Charles C. Deam Wilderness*



Steven Higgs via Flickr

Wilderness Watch recently helped support a good Forest Service (FS) decision dealing with road access to old cemeteries in the 12,472-acre Charles C. Deam Wilderness in Indiana. The 1982 legislation establishing the Charles C. Deam Wilderness dealt with old cemeteries there with, “Nothing in this Act shall affect the right of public access to cemeteries located within the Charles C. Deam Wilderness, including the Terrill Cemetery.” Under a 1999 policy, the FS not only allowed public access, but allowed public motor vehicle access on old former roads. Over time, interest in accessing these cemeteries has decreased to only about one yearly request to access the Hays 2 cemetery, but still requiring the FS to actively maintain the former road for that one request.

Earlier this year, the FS adopted a new pro-Wilderness policy that still allows public access, but by foot or horse, and dropped the requirement to clear and maintain old roads for motor vehicle access to these cemeteries. In late May, US News & World Report ran a story of an Indiana man who could no longer drive to the Hays 2 Cemetery where some of his family members are buried. Wilderness Watch investigated, checked in with the Forest Supervisor, discovered the new 2018 policy, and alerted allies in Congress should any attempt be made to re-open the former roads to motor vehicles via new legislation.

## *Leave the Cascades and Olympic Wildernesses Alone*

Wilderness Watch has submitted a formal Objection to a Forest Service plan to land hundreds of helicopters and employ heavy-handed wildlife gunning, collaring, translocation, and manipulation in multiple Wildernesses in Washington. The agency wants to move a few hundred mountain goats from the Olympics to the Cascades, and eventually kill another few hundred that can't be caught. **Read our Objection and learn more:** [bit.ly/2yAEKsV](https://bit.ly/2yAEKsV) 🐾

## *Arctic Refuge in Grave Peril*

Wilderness Watch is strongly opposing oil drilling in the Arctic National Wildlife Refuge in Alaska, our last great wilderness. An amendment to last year's tax bill opened the Coastal Plain of the Refuge to oil drilling and associated development, with the requirement that the Bureau of Land Management first prepare an EIS. **Read our comments:** [bit.ly/2D7jLls](https://bit.ly/2D7jLls). 🐾

## *Roads Cut Into Soda Mountain Wilderness*

Wilderness Watch and local groups have requested a formal investigation into extensive damage to the Soda Mountain Wilderness in Oregon, where the Bureau of Land Management allowed the state to build 20 miles of roads in the Wilderness. We'll keep you posted. 🐾

## *Part of the Pemigewasset Wilderness to be Re-Wilded*

The Forest Service recently announced its final decision to remove an unsafe log bridge over the East Branch of the Pemigewasset River in the Pemigewasset Wilderness in New Hampshire. The agency proposes to dismantle the Thoreau Falls Trail Bridge using primitive hand tools, and to leave the concrete abutments to decompose over time. However, the FS has retained the option for up to two helicopter trips to remove large material, despite WW urging the agency to instead use stock animals, dog sleds, or other nonmotorized means. **Learn more:** [bit.ly/2zEdTKw](https://bit.ly/2zEdTKw). 🐾

## *Owyhee Juniper Cutting Project Stopped*

The Bureau of Land Management (BLM) has withdrawn its misguided plan to cut junipers across more than 600,000 acres of the Owyhee Canyonlands in Idaho. Earlier this year, WW convinced the BLM to drop from its plan 47,000 acres in six Wildernesses. **Learn more:** [bit.ly/2SkrfWp](https://bit.ly/2SkrfWp). 🐾

# Wilderness in the Courts

## Road Construction through the Izembek Wilderness, AK

In the latest round of legal action to stop the construction of an 11-mile road through the heart of the Izembek Wilderness, Wilderness Watch and allies are once again awaiting a decision from the district court in Alaska. After losing its previous case before the district court, King Cove Corporation pulled its appeal and instead pursued a closed-door land exchange with Secretary Zinke to circumvent the court opinion and complete the road construction at the behest of commercial and private interests. We filed suit in January 2018 arguing the land exchange violates both the Alaska National Interest Lands

Conservation Act, which requires proposals for transportation systems through Wilderness to be recommended by the President and approved by Congress, and the Endangered Species Act, which provides stringent protections for imperiled species in the Wilderness such as the Steller's eider and northern sea otter. We are hopeful that the court will once again put a stop to this project, and we'll continue to do all we can to defend the integrity of this iconic Wilderness and the magnificent diversity of wildlife that call it home. ♪

## National Park Service Hovercraft Ban Before the Supreme Court (Again)

In the last issue of the *Watcher*, we announced that the Ninth Circuit Court of Appeals issued a second opinion upholding the National Park Service's authority to regulate navigable rivers, and thus ban hovercraft, within park boundaries in Alaska. While this was a victory for National Parks and Wilderness in Alaska, the case is once again before the Supreme Court putting major issues of water law, public lands law, subsistence rights, and state versus federal jurisdiction on the table. The Supreme Court heard oral argument on November 5, 2018, and the justices fired a broad array of questions at the litigants. Justice Sotomayor raised concerns about the Park Service's ability to manage parks and preserves if the agency does not have jurisdiction over the navigable waters in those areas. Other justices raised questions about federal subsistence fishing rights, the authorities of various federal agencies and the impact on state sovereignty, and the differences in property interests in land and water. While it is difficult to forecast where the Court will land, we expect to see an opinion in the next couple of months. You can listen to an audio recording of the oral argument, <https://bit.ly/2K3NxrD>, or read the transcript, <https://bit.ly/2RZDZRx>. ♪

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*Thank you!*



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Missoula, MT 59807  
p: (406) 542-2048  
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## *At Wilderness Watch, We Are Persisters . . .*

By Jeff Smith



**W**e are sustained by a vision of a wilderness system managed to honor and preserve wild nature. We take a great bolt of energy from those who fought for the Wilderness Act, which went through some 65 revisions, 18 public hearings, and eight years of debate in Congress, before passing in 1964 with only one lone dissenting vote in the House of Representatives.

We're playing the long game. The grim stories you've read in the previous pages of this newsletter are a siren's call for lovers of wilderness. Why isn't honoring and preserving wild nature very high on the list of management goals these days?

We hold to our vision of Wilderness without the helicopters flying overhead, with no bikes, ATVs, or machines on (or off) the trails, where you can walk and find your own way, for days preferably, where the critters are wild, not sheep and cows eating up the public domain, where the trees aren't logged, and where the air and water are as clean as anywhere on earth. We envision a well-trained Wilderness Service Corps in charge in all Wilderness areas with one mandate: maintain or, preferably, enhance the wilderness character of these lands.

I need Wilderness. You need Wilderness. The world needs Wilderness. We hope you can persist with us by renewing your membership, adding an extra donation now and again, or joining our "Wildest Crew" as a monthly donor. ♪