



WILDERNESS WATCHER

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The Need for Wilderness Litigation

— By Jon Dettmann

There is a good amount of cynicism about the legal system these days. Truth is, we have long been cynical about lawyers and lawsuits. “The first thing we do,” Shakespeare wrote in Henry VI, over four hundred years ago, “let’s kill all the lawyers.” The line has a certain humor, even allure, yet today. Just imagine a civilization without lawyers, without litigation. How good, how amicable, how non-litigious life would be!

As a lawyer myself, I am somewhat biased against Shakespeare’s approach. Maybe let’s spare the lawyers, but we could certainly confine them. We could choose to be non-litigious, to forget about lawsuits, to take a more civilized approach. If we have a dispute, let’s talk it through, resolve it like human beings, without the need for a messy lawsuit.

I have heard echoes of this view in the conservation community, and even among wilderness advocates. I have heard accusations that our community and cause, and the groups that represent it, are too litigious, are too willing to run



into court over the tiniest little thing. The argument goes that it puts the agencies that steward our public lands and wildlife in a tough spot. Make any move and run the risk of getting sued. Don’t make a move and get sued as well. Damned if you do, damned if you don’t.

In some measure, that may be right. In some cases, there may be too much reliance on the court system as the fix-all for the environment. But to be honest, I don’t worry about that problem. I trust that the remedies and realities of the legal system will address that concern just fine. What I worry about is our reaction to it. I worry about the view that we should shy away from lawsuits as a means of defending wilderness and the values that it represents, over any concern that we are being too acrimonious by doing so.

We have to keep in mind the basic tenets behind the legal system itself. The root of that system is, of course, the Constitution. This one, short document designed a government of three

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insights

From the Executive Director

— By George Nickas

I was recently in Washington, DC, working the halls of Congress trying to generate interest in protecting and funding the National Wilderness Preservation System.

By coincidence, it was the same week that the House Subcommittee on National Parks, Forests and Public Lands was holding a hearing on the budgets of the Forest Service and Bureau of Land Management (BLM). I slipped into the hearing room to hear what Forest Service Chief Gail Kimball and BLM Acting Director Jim Hughes had to say. Not surprisingly, neither mentioned their wilderness budgets nor the budgetary challenges those programs face. Though not surprised, I found it a rather sad commentary on both agencies, as nearly 10 percent of all BLM-administered lands are either designated Wilderness or wilderness study area, and 20 percent of all national forest lands are designated Wilderness.

By the time I left DC, I was even more disappointed to learn that after spending several years and several-hundred-thousand dollars developing a monitoring protocol for determining whether wilderness character is being protected, the Forest Service had decided not to budget any money to implement the effort.

Nearly eight years ago the Forest Service, BLM, National Park Service and US Fish and Wildlife Service (FWS) asked the Pinchot Institute for Conservation to review the quality of the agencies' wilderness programs. The Pinchot Institute formed a task force that included a number of experts with decades of experience around Wilderness and government.

Though the panel's report was written with a good deal of diplomacy, it was still an indictment of all four agencies' programs. It pointed to the "paucity of human resources" committed to Wilderness. It noted that little is known about whether wilderness character is being preserved due to the lack of monitoring in individual areas or throughout the system. It identified a lack of consistency between agencies policies and suggested the need to manage the NWPS as a single system rather than four separate systems. Significantly, the report revealed that several studies dating back to 1985 were critical of the agencies' stewardship, but that little has changed. While these efforts were met by promises of renewed commitment, the enthusiasm has been short-lived and the efforts have sputtered and died.

Like previous efforts, the agencies responded to the report with promises of a new day. They gave assurances that the newly formed Wilderness Policy Council (WPC), made up of top-level directors in each of the agencies, would bring stature, respect and resources to their wilderness programs. Not everyone was convinced, however. Stewart Udall, former Secretary of Interior and a member of the Pinchot panel, called the formation of the WPC a "typical bureaucratic response to a deeper, more fundamental problem," and argued that it was time to ask Congress to create a national wilderness service, an agency that would finally give Wilderness its due.

By all accounts Udall was right. Little has changed since the Pinchot Report was released. The WPC is moribund. The programs of each of the agencies have continued to decline, and most observers would agree that throughout the system wilderness character continues to degrade. The budget hearing I listened in on was simply further evidence that agency leadership has no interest in turning this around.

It's time to steer a new course. It wasn't written in stone that those who have so disregarded their stewardship responsibilities should be entrusted with the Wilderness system forever. It's time for Congress to step in and, following Udall's advice, develop an institutional structure that will do justice for America's Wilderness heritage.



The Wilderness Watcher is the quarterly newsletter of Wilderness Watch, a non-profit organization advocating the protection and responsible stewardship of the nation's designated Wildernesses and Wild & Scenic Rivers.

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branches, each one delicately balanced to keep the other two in check. Article I created Congress, vesting it with the legislative authority – the power to make law. Article II created the executive branch, charging it with the duty to faithfully execute the laws that Congress passed. Article III created the judicial branch, vesting it with the authority to hear cases arising under those laws.

This basic structure has an incredibly important implication for wilderness. The reason why begins with Article IV. After creating the three branches, the Constitution vested Congress with the power to regulate federal lands. The legislative power is so broad in this area that absent an unlikely breach of the Constitution, it cannot be challenged. The Supreme Court has held that “neither the courts nor the executive agencies [can] proceed contrary to an Act of Congress in this congressional area of national power.” Congress’s authority is “without limitation.”

While Congress cannot create wilderness any more than it can strike lightning, it can surely seek, through legislation, to protect federal land in its untrammelled, natural condition— as wilderness. To do this, there are any number of paths Congress could have taken. It could have, for example, passed a general mandate turning the issue of wilderness protection over to the executive branch, similar to what the Organic Act did with the National Park System. By so doing, Congress would have taken itself out of the business of wilderness preservation. The law would only have conveyed a general intent that there be lands preserved as wilderness, but would have otherwise left it up to the agencies to figure out what that means.

Such a legislative strategy would have had the compounding effect of mostly taking the judicial branch out of play. The reason for this is sovereign immunity – a doctrine that, in general, makes the government immune from lawsuits brought by citizens. No one can just sue the government out of hand. Instead, Congress must pass a law that waives sovereign immunity to whatever extent it sees fit. In the case of environmental litigation, that law is the Administrative Pro-

cedure Act, or APA, which allows citizens to sue governmental agencies in order to overturn administrative decisions that are arbitrary, capricious, or unlawful.

Take heed at that point: Congress wanted citizens to be able to enforce statutes like the Wilderness Act by initiating lawsuits against federal agencies in the federal court system.



As we litigate wilderness issues,
we are placing our trust in the
legitimacy of a system born
from the geographic and
philosophical roots of the very
lands we are seeking to
preserve.

With a statute like the Organic Act, this is difficult to do. More often than not, a court will view such a statute as only a general mandate that gives an agency a broad range of discretion to manage the lands under its jurisdiction as it sees fit. For this reason, there are very few cases in which a plaintiff has successfully enforced the Organic Act against the National Park Service.

But for wilderness, Congress took a wholly different approach. Instead of expressing its intent and deferring the nuts-and-bolts to the agencies, it got directly into the business of wilderness itself. The Wilderness Act of 1964 is an unusual federal lands statute in that it provides a series of specific and clear directives on what wilderness is and how a system of wilderness is to be created and maintained. Indeed, one federal judge has deemed it the “closest thing to a purist manifesto as exists in federal law.” The Act’s directives effectively take away much of the discretion that the agencies normally enjoy. For established areas, it imposes a statutory structure with detailed requirements – no vehicles, no structures, and no commerce – along with a strict, over-arching mandate to preserve wilderness character.

The benefit of this approach is that it puts wilderness squarely within the checks and balances of the three branches. Congress can and did pass a law to preserve lands as wilderness. The executive branch is to faithfully execute that law. To the extent that it fails to do so, the judicial branch has the authority to mend any breach of that law. Avoid that last step, and destroy the balance that makes the entire system work.

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Take out the judiciary and the balance goes away, as does the check on the agencies, leaving no mechanism by which to enforce the Wilderness Act against them.

I do not mean to derogate those that bear the responsibility for stewarding our wilderness areas. In fact, I mean exactly the opposite. Our government is, after all, an enterprise staffed by human beings, who by their nature are not perfect, have their own opinions, and can reasonably disagree. Prior to courts, for hundreds if not thousands of years, the resolution of conflict was a matter of the sword, a matter of might makes right. Our present system of government seeks to avoid that by creating a forum for intelligent, civilized debate moderated by a judge vested with the power of the sovereign. At its root, the idea of litigation is that it allows two disagreeing parties to come forward and speak their peace to a neutral authority, who then reviews the evidence and decides the issue, thereby resolving the conflict. To be blunt, the point of the judicial branch is to resolve conflict, not to create it.

What better opportunity is there to advocate the values of wilderness than that? What more reasoned approach exists by which wilderness advocates can air their disagreements with agencies to an authority that is obligated to follow and enforce the law exactly as it is written?

Indeed, such a forum lends itself particularly well to a statute like the Wilderness Act. It is hard to find a more clear, basic statutory command than, for example, there shall be no motor vehicles in wilderness. But the challenge of understanding the Act is that the rationale behind such statutory commandments is not so easy. The reason why it is important to have wild areas free of motorized vehicles is not obvious. It requires an understanding of not only the inter-workings of all of the Act's terms, but also the philosophies and ideals underlying those terms – as the author of the Act, Howard Zahniser, put it, the need for wilderness itself.

In fact, Zahniser himself recognized that part of the need for wilderness lay in its educational lessons, which in his words included “the lessons of history – a stimulus to patriotism of the noblest order – for in the wilderness the land still lives as it was before the pioneers fashioned in and from it the civilization we know and enjoy.” Such lessons of history include our political history, the values underlying our own system of government. On one level, the Wilderness Act seeks to preserve a system of lands that allowed the American democratic experiment to occur and flourish. Likewise, the Declaration of Independence holds that our self-evident rights are derived from the state of nature – wilderness itself. As we litigate wilderness issues, we are placing our trust in the legitimacy of a system born from the geographic and philosophical roots of the very lands we are seeking to preserve.

So too does litigation lend itself well to the oversight of different lands in a common system. No lawsuit is an island.



Supreme Court Justice William O. Douglas was a renowned Wilderness advocate.

Each judicial decision that is handed down creates and becomes a part of a greater body of law in and of itself.

While courts in different circuits and jurisdictions can disagree, all decisions, no matter how minor, have at least some weight. Whenever a lawyer steps to the podium to argue for wilderness, he or she is never doing so only with respect to the issue at hand, but is seeking an application of the Act that will exist in perpetuity, for as long as our government shall last. Litigation over the Wilderness Act is not only a check on the agencies that administer wilderness, but also acts as a continuous test of the Act itself. If courts find the Act to be infirm, or unclear, then there is no better signal that the Act is not doing its job and needs to be strengthened through legislative action.

As for the idea that wilderness advocates could somehow be too litigious, the practicalities of litigation offer an effective deterrent. Lawsuits are hard. They require a significant investment of time and resources, and no matter the amount of effort expended, they are always difficult to win. The judicial system must be used judiciously. A plaintiff must carefully consider the merits of every lawsuit in advance, to determine whether the issue at stake is worth fighting for, whether there are sufficient resources to see it through to the end, and whether a good or bad outcome will enhance or inhibit the greater aspects of the cause. No one who takes litigation lightly will advance their mission, either by rushing to the courthouse for any minor dispute, or refusing to do so for any dispute.

Be cynical towards litigation. Be wary of lawyers. But do so in the right way, a way that is careful in approach but bears in mind the incredible importance that this branch of government has. Anyone who has been in this line of work for any length of time realizes that effectively advocating for wilderness preservation demands effective advocacy in all three branches. Wilderness needs litigation. If we decide to ignore that, then the very resource we seek to protect is destined for the same fate as Henry VI. 🐉

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On the Watch

Kofa Wilderness, AZ

Reprieve for Cougars - For 56 years, from 1944 to 2000, there were no confirmed sightings of cougars on the Kofa National Wildlife Refuge in southwestern Arizona. Kofa contains the second largest refuge Wilderness outside Alaska. Based on recent cougar sightings, refuge staff estimate there may now be five lions living on the refuge. This news prompted local hunting groups and the Arizona State Fish & Game Department to call for a recreational cougar hunt. In October, the U.S. Fish and Wildlife Service proposed opening the refuge to cougar hunting, which would be the first ever cougar hunt on a national wildlife refuge. The proposal would allow one cougar to be killed annually.

“There are currently harvestable and sustainable populations of mountain lions found throughout the Refuge,” the FWS wrote in an environmental assessment, “although the sustainability of the hunt once one lion is taken is unknown.”

Wilderness Watch distributed an Action Alert and commented: “The sight or sound of radio-collared, unleashed dogs chasing wildlife could have a major detrimental affect on the wilderness experience of other refuge visitors, and sends a wrong message to the public about what wilderness is and how we are expected to interact and behave when in it.”

Fortunately, in January the refuge withdrew the hunt proposal.

Rainbow Mountain & La Madre Mountain Wildernesses, NV

Practice Landings? The Las Vegas Metropolitan Police Department has requested permission from the BLM to conduct search and rescue training within two Wildernesses near the city. The training would include dozens of helicopter landings within the areas.

The Rainbow Mountain and La Madre Mountain Wildernesses encompass very rugged terrain consisting of narrow, confined canyons and sandstone cliffs. The area is popular with rock climbers. On average, the police conduct 15-20 rescues in these areas each year, all with helicopters.

Rescue pilots must have 25 hours each year of training and practice under conditions similar to those they will face in real rescues. The police have been training in these particular



Carson-Iceberg Wilderness, CA.

canyons since 1970. According to BLM, there is no other similar terrain available in Clark County.

Training sessions would occur at night and also during the daytime on 20% of the weekends each year. Between the training sessions and actual rescues, helicopters would be landing in these Wildernesses on nearly 100 days every year.

Wilderness Watch distributed an Action Alert and submitted comments asking BLM to examine why helicopters are used for every rescue, explore a range of public use management techniques that might reduce the number of rescues needed annually, and examine the feasibility of joining in training sessions conducted by other regional search and rescue teams in non-wilderness.

While the Wilderness Act allows motorized use in real emergencies, it does not allow it for training sessions.

Carson-Iceberg Wilderness, CA

Grazing is Moooot - The Forest Service is considering reinitiating grazing in an ungrazed portion of the Carson-Iceberg Wilderness in the High Sierra. Although sheep grazing was occurring on the Red Peak Allotment at the time of wilderness designation, it ended in 1993 due to resource impacts and the allotment has remained vacant for fourteen years. Now the Forest Service is considering issuing a new permit to allow cattle grazing, although cattle have never grazed this area. Wilderness Watch submitted written comments urging the Forest Service to leave the area ungrazed.

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South San Juan Wilderness, CO

Appealing Sheep - In December 2006 Wilderness Watch joined with the San Juan Citizens Alliance and three other groups in filing an administrative appeal of a Forest Service decision to re-open eight sheep allotments for grazing in the South San Juan Wilderness. The grazing permits had been waived 12 years ago and the allotments have been vacant ever since. The Forest Service plans to issue permits to two new livestock permittees and resume sheep grazing in the high elevation lake basins along the Continental Divide. Although the Wilderness Act allows livestock grazing to continue in Wilderness where it was an established use prior to Wilderness designation, we argued that the Act does not allow grazing to resume once it has ceased for a significant period of time. Unfortunately, the Forest Supervisor recently upheld the district ranger's decision so we are considering our options.



Sequoia-Kings Canyon Wilderness, CA

Major Trails, Minimum Wilderness - In December Wilderness Watch sent a letter to the NPS describing several problems with Sequoia-Kings Canyon new general management plan (GMP) and requesting that the National Park Service (NPS) not sign the plan until those issues are resolved. One problem is that the new plan would zone the Wilderness into three zones and in the new Major Trails Zone an unlimited number of visitor use facilities can be constructed, including toilets, ranger cabins, and food storage lockers. To date, NPS has not signed off on the plan so we hope that means public comment has stirred some continued internal discussion.

Of Frogs & Fishes - In January Wilderness Watch provided NPS with written comments on a proposal to poison 85 high-elevation lakes in wilderness to remove non-native trout that had previously been stocked in the naturally fishless lakes. The purpose of the project is to protect the Mountain Yellow-legged Frog (MYLF), whose populations are in steep



A Mountain Yellow-legged Frog. Photo by Gary Nafis.

decline throughout the High Sierra, in part due to predation by non-native fish. While we support fish removal we have not supported poison as the means. We've urged that doing the least harm in the process should be the top priority, not time or convenience. The poisons would kill all gill-breathing species, including macro-invertebrates upon which MYLF depend for food, and MYLF tadpoles, which remain in tadpole stage for up to four years. We continue to follow this proposal closely.

California Desert Wildernesses

Guzzlers Galore! In 2001 Wilderness Watch submitted our first comment letter on a proposal to allow the California Department of Fish & Game (CDFG) to construct a new artificial water development, called a "guzzler," within the Sheephole Valley Wilderness. In 2003, after BLM issued a second environmental assessment on this guzzler, we worked in a coalition with several other groups to successfully halt the project on appeal. Now, in 2007, BLM has issued a third environmental assessment on this very same guzzler and we

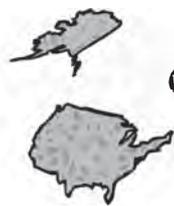


A water truck fills a guzzler in the Cabeza-Prieta Wilderness.

are once again preparing joint comments as a coalition. The CDFG are clearly determined!

No new guzzlers have been constructed in any Wilderness in the California Desert since 1994 when Congress designated 69 areas as Wilderness. This first guzzler in the Sheephole Valley Wilderness is therefore an important test. If CDFG succeeds, it then hopes to construct five more new guzzlers that would result in 37 miles of new vehicle routes in the Wilderness. BLM estimates there would be at least one motor vehicle in this Wilderness, on average, on one out of every four days of the year.

The CDFG is also requesting permission to construct two new guzzlers in the Orocopia Mountains and Indian Pass Wildernesses. Wilderness Watch is tackling those proposals as well. The CDFG wants to vastly increase its network of existing artificial waters on the unsubstantiated belief that this would open up new habitat for desert bighorns, a lucrative species for CDFG through sale of hunting permits. They want the Sheephole Valley Wilderness to serve as a centralized source for sheep that will then be transplanted to other areas as the guzzler network expands. ☹️



Out & About - Wilderness Watch on the Road

Changing Trends in Recreation

In January, WW executive director George Nickas participated in a three-day workshop "Wilderness Stewardship in the Rockies," sponsored by the Rocky Mountains Cooperative Ecosystem Studies Unit. The focus of the workshop was changing trends in recreation. The workshop was designed to bring agency managers together to learn, share and discuss changing users/societal issues, changing uses, and management strategies and tools. As part of the workshop, George spoke on a panel discussing appropriate management responses to current and future recreation challenges.

Wildlife & Wilderness

In February Wilderness Watch policy director TinaMarie Ekker was asked to speak to two Hellgate High School wildlife biology classes in Missoula about wildlife management in Wilderness. She discussed what Wilderness is, the intent of the Wilderness Act, and activities that are prohibited such as motor vehicles and placement of structures or installations. She also explained the roles of State and federal managers in regard to wildlife management, noting that while the Wilderness Act allows States to continue to regulate hunting and fishing, it does not give the States authority to manage or manipulate habitat such as vegetation or waterways.

Wilderness and the Courts

In March, WW executive director George Nickas was invited to speak to the University of Montana's Wilderness and Civilization wilderness policy course about how the courts have interpreted the Wilderness Act. He talked about



the structure of the Wilderness Act, its emphasis on preserving wilderness character, and how management actions designed to provide for various public uses of Wilderness need to comply with the law's preservation mandate. George used several recent court decisions to illustrate these points.

An evening with the Jackson Hole Conservation Alliance

Also in March, Wilderness Watch president Howie Wolke and executive director George Nickas were hosted by the Jackson Hole Conservation Alliance in Jackson, Wyoming for a presentation on challenges facing the National Wilderness Preservation System. Howie presented a slide show exhibiting Wilderness in various parts of the country, and spoke of management challenges in the Greater Yellowstone region, particularly in the backcountry of Yellowstone National Park, where he has guided backpacking trips for two decades. George described in words and pictures some of the key management challenges facing the Wilderness system. The evening discussion also gave us an opportunity to learn more about threats facing wildlife and wildlands in the Jackson area.

Wilderness Stewardship

Concepts & Principles



Purpose of the Wilderness Act

The purpose of the Wilderness Act is to preserve the wilderness character of the areas to be included in the wilderness system, not to establish any particular use.

— Howard Zahniser, author of the *Wilderness Act*, 1962.

Understanding the **purpose** of the Wilderness Act is essential to being a good wilderness advocate or steward. While it seems self-evident that the purpose of the law is—as Zahniser so clearly stated—to preserve wilderness character, this basic principle is often ignored when decisions affecting Wilderness are made. Misunderstanding this central point is the cause of many unnecessary controversies and of much of the impairment of Wilderness that we see today.

Most wilderness advocates are aware that the Wilderness Act prohibits motorized equipment, mechanical transport, structures and installations within Wilderness. We also know that the Act provides for an exception to these prohibitions in those rare cases where it is “necessary to meet minimum requirements for the administration of the area for the *purpose of the Act*.” (emphasis added). Thus, the exception only applies *if* the use of a motor vehicle or structure, for example, is necessary to preserve the area’s wilderness character. It is unquestionably a high standard, and rightfully so, since the Wilderness Act intended to keep these special places permanently free of mechanical devices and other evidences of modern society.

This article focuses on understanding the key distinction between the *purpose of the Act*, and the *public purposes* of Wilderness. Why is this such a central and important point? Because not understanding this difference results in misguided decisions such as those to rebuild dams in the Emigrant Wilderness, airlift trailside shelters into the Olympic Wilderness, land helicopters for vegetation surveys throughout southeastern Alaska Wildernesses, drive tourists through the Cumberland Island Wilderness, and the recent profusion in use of chainsaws, helicopters, bridges, cabins, corrals and other intrusions for recreation purposes across the Wilderness system.



Mt. Baker Wilderness, WA.

It’s worth noting that a complete understanding of the purpose of the Act requires an understanding of what is meant by “wilderness character.” Previous issues of the *Wilderness Watcher* have discussed the meaning of wilderness character in detail (see Vol. 14, No. 4 Nov. 2003; Vol. 17, No. 2 Oct. 2005), and won’t be repeated here. Suffice to say that wilderness character is understood as being a complex mix of both tangible and intangible qualities, and that preserving wilderness character is the overarching mandate of the law:

“... each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area....”

Wilderness Act, Section 4(b)

Understanding wilderness character is important, yet to avoid the kind of management mistakes and unnecessary controversies that plague Wilderness today it is usually enough to understand the difference between the purpose of the Act and the public purposes of Wilderness.



Administrative structures should be evaluated periodically to determine whether they are the minimum required to protect Wilderness.



Though the Forest Service claims that dams in the Emigrant Wilderness serve the recreational, scenic, scientific, educational and historical purposes of Wilderness, a federal court correctly found that rebuilding or operating the dams is unlawful because would be contrary to the purpose of the Wilderness Act.

Purpose of the Act versus Public Purposes of Wilderness

The purpose of the Wilderness Act, to preserve each area's wilderness character, is often confused with the "public purposes" of Wilderness referred to elsewhere in the Wilderness Act:

"Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use."

Wilderness Act, Section 4(b)

These "public purposes" are **not** the statutory purpose of the Act, they are the appropriate purposes for which the public may use Wilderness. The "public purposes" are permissible uses where and when appropriate and conducted in a manner that is compatible with Wilderness. However, the allowable public purposes or uses do not override the Act's statutory purpose to preserve wilderness character.

This is a key point: the Wilderness Act does not allow managers to exercise the administrative exception (i.e. using helicopters, snowmobiles, chainsaws etc.) in order to facilitate or promote the public purposes or uses of Wilderness. Instead, the exception is limited to those rare instances where such action is necessary to preserve the area's wilderness character.

Thus, when the National Park Service decided to install trailside shelters in the Olympic Wilderness in order to facilitate recreation and historical uses the courts had no trouble in striking down the plan. Similarly, when the Forest Service sought to rebuild a dozen dams in the Emigrant Wilderness because the dams—in the agency's view—provide recreational, scenic, scientific, educational and historical values the court easily turned down the plan. When the NPS began shuttling tourists in passenger vans through the Cumberland Island Wilderness to promote recreational and historical uses, a unanimous panel of judges had no trouble turning aside such a twisted reading of the law.

If the public purposes referenced in the Act were, indeed, the purpose of the Act, then it would be fine to undertake whatever actions might enhance those uses. For example, a manager could build overnight lodges for recreationists unwilling or unable to sleep in a tent or on the ground, run trams up to scenic overlooks to assist those who don't have time for other modes of travel, build dams to improve fishing, or construct telescope observatories on wilderness peaks to take advantage of dark night skies for research purposes. Clearly this is not what the Act intended.

Thus as wilderness stewards or citizen activists we have to take a hard look at any proposal that diminishes wilderness character through the use of motorized equipment, mechanical transport or any structures or installations. Keeping in the mind the singular **purpose** of the Act ensures that such plans are reviewed in the proper context: Is this project appropriately based on the minimum required to preserve the area's wilderness character, or is the reason for the project inappropriately tied to promoting or enhancing a particular use? Basing decisions on the proper test will help to ensure that an enduring Wilderness is passed along undiminished to future generations.

This is the third installment of a series examining key concepts and principles of wilderness stewardship.

Losing Perspective at Denali ~ Is the National Park Service altering the meaning of Wilderness?

— By Roger Kaye

In the August issue of Denali Citizens Council News, Sue Deyoe provides insight into the growing issue of technology and mechanization in Denali. “What belongs in national park wilderness, and what doesn’t,” she asks. “Has the meaning of wilderness changed?”

Apparently it has for the National Park Service, if the conclusions of two recent studies they cosponsored are any indication. “Diverse Recreation Experiences at Denali National Park and Preserve” and “Wilderness at Arms Length: On the Outside Looking in at Denali National Park and Preserve” report the findings and interpretations of a 2004-05 study on the experience of flightseers, euphemistically identified as “day users.”

The focus of the study was a set of interviews with 10 air service providers and 44 flightseers, many of whom were among the 9,800 who, for an additional fee, landed on one of the park’s glaciers in 2003. The significantly different nature of the experience of flightseers and “visitors actively engaged in the mountain environment” was duly noted, though the effect of the former upon the latter was hardly described. Receiving no mention were those, such as our family, who have been displaced. We used to camp at the Ruth Amphitheater, but the congestion of planes landing and taking off, and their constant drone overhead drove us away.

Not surprisingly, the reports’ many interview quotes show that such “day users” have an enjoyable, exciting experience. But are they having a park experience? Also not surprising was one of the conclusions: “. . . the air service providers tended to believe that [day use] visitors seldom think of the place as a national park.” Little wonder. The pervasive presence of machines and their noise is not something people associate with a national park. But perhaps for Denali the meaning of a park and wilderness are changing, or being changed.

Implicit in the reports’ focus on “making decisions about how best to protect and sustain these contrasting experiences” is the assumption that accommodating air tourists is as important as providing for those who come seeking, and respecting, traditional park values.



Olaus Murie, Howard Zahniser, and Adolph Murie atop Cathedral Mountain in McKinley Park, 1961. These wilderness movement leaders saw national parks as places of restraint, respect, and reverence.

But what bothered me most are the conclusions associating flightseeing with “wilderness recreation experiences,” and the assertion that air tourists experience “humility.”

Appropriating these terms to accommodate/promote use of the machines, not as a means of access, but as a means of conveniently and loudly “experiencing” wilderness subverts the concept. It especially profanes the meaning of humility, derived from the Latin *humus*, meaning of the Earth.

Consider what Wilderness Act author Howard Zahniser stated in his canonical essay, “The Need for Wilderness Areas.” “This need is for areas of the earth within which we stand without our mechanisms that make us immediate masters over our environment.”

“We need the humility to know ourselves as the dependent members of a great community of life,” he went on to say:

Without the gadgets, the inventions, the contrivances whereby men have seemed to establish themselves an independence of nature, without these distractions, to know



The pervasive presence of machines and their noise is not something people associate with a national park. But perhaps for Denali the meaning of a park and wilderness are changing, or being changed.

the wilderness is to know a profound humility, to recognize one's littleness, to sense dependence and interdependence, indebtedness and responsibility.

I'd argue that the NPS has the responsibility to respect the historic, venerable meanings of wilderness and humility and to fairly consider what's lost when they are contorted to accommodate those who sell and purchase packaged flightseeing excursions. The agency must recognize that the issue isn't simply about visitors using Denali in conflicting ways, but rather as Joseph Sax has written, its about the meaning a park comes to have when treated as a commodity to entertain vacationers. Those with more money than time or interest in truly experiencing the park. Such commercial tourism, he writes

in *Mountains Without Handrails*, "is depriving the parks of their central symbolism, their message about the relationship between man and nature, and man in industrial society."

Sue concludes her article by calling for more discussion on the unintended consequences of new technologies in the park. We need to consider the subtle but far-reaching consequences of using wilderness and humility to promote commercial activities that are at variance with their time-honored meanings.

Editor's note: Roger Kaye came to Alaska in 1974 to work at Camp Denali. This article originally appeared in the Denali Citizens Council News.

Couch Scouts & Internet Hunting?

The US Fish and Wildlife Service issued a press release in February announcing plans to install a satellite dish and video cameras at a remote watering hole within the Kofa Wilderness. The cameras would relay real-time streaming video over the Internet so people could enjoy watching wildlife coming to the tank to drink.

Located in southwestern Arizona, Kofa is the second largest refuge Wilderness in the continental U.S.

Despite its good intentions, there were four distinct problems with the plan. The first was the intrusion from unnecessary technology and installations inside Wilderness, and using motor vehicles and helicopters to service and maintain the equipment.

Second, advertising the high level of wildlife activity at the well, particularly the presence of trophy-size bighorn sheep and mule deer, would concentrate hunting pressure in that one area on the refuge, with hunters using the internet to "couch scout" during the months leading up to the hunt. The streaming video would enable poachers working in teams to monitor the web-cam and notify shooters via radio when a cougar or full-curl bighorn ram came to the waterhole.

Third, the Wilderness Act intended that Wilderness be an authentic experience, not a virtual reality show for armchair viewers. Wilderness is a place for exploration, adventure, and the uncertain. Even if many people will never visit the Kofa Wilderness to observe its wildlife, the sense of mystery and exploration should remain real and intact.

Fourth, the FWS press release mentioned the agency's interest in installing other hidden cameras in Wilderness to monitor visitors, perhaps hoping to catch lawbreakers. Being secretly videotaped during a Wilderness trip is deeply chilling, and it negates the very idea of wilderness as a sanctuary set apart from the technologies and heavy-handed control of modern civilization.



The Kofa National Wildlife Refuge, AZ.

Wilderness Watch immediately went to work urging people to contact the refuge and express concerns. Within a week a number of wilderness advocates and hunters had contacted the FWS and on March 1st refuge manager Paul Cornes did the right thing for Wilderness, withdrawing his decision to install a video system in the Kofa Wilderness. You can e-mail a thank you to Paul_Cornes@fws.gov.

National Park Wilderness Neglect

Citizen oversight is key for protecting wilderness character

— By *Howie Wolke*

When it comes to national parks, in many ways the U.S. government has failed its citizens. Except in Alaska, few national park backcountry areas have been designated wilderness. In my bioregion, our three great parks are Glacier, Yellowstone and Grand Teton – and there is not a single acre of designated wilderness in any of these gems. In my opinion, that's shameful.

When the Wilderness Act was enacted in 1964, it ordered the Park Service to study and report within ten years on the wilderness suitability of its backcountry domain. As a result, many national park backcountry areas have been recommended for wilderness designation since the early 1970's (except in Alaska, just a few have been designated). To its credit, many Park Service wilderness recommendations were excellent, and they still officially stand. For example, nearly all of Yellowstone and Glacier's expansive backcountry are recommended for wilderness designation.

Unfortunately, National Park Service wilderness stewardship is as shameful as Congress's failure to designate national park wilderness. Because it is official policy to manage recommended wilderness as wilderness, the Park Service must, by law or policy, manage both designated and proposed wilderness to protect wilderness character, without degradation. Unfortunately, though, degradation is rampant and wilderness character is being compromised throughout the national park system's wildlands.

For example, in Olympic National Park – which provides perhaps our most glaring example of bad stewardship – the Park Service proposes to carve a pasture out of wild rainforest in order to re-create a 19th century homestead. This is within designated wilderness! Also in Olympic, some wilderness trails are absurdly over-built monuments to human engineering, mocking the idea that in wilderness, “the imprint of man's work [is] substantially unnoticeable”. That rainy park has also seen a Park Service attempt to construct and place new wood camping shelters in the wilderness, though a Wilderness Watch lawsuit recently repelled that shenanigan.

Off road vehicles shatter the silence of Canyonlands National Park's backcountry. In Grand Teton National Park, local conservationists fight a plan for paved bicycle paths that would fragment parts of the backcountry. And throughout the national park system, ranger cabins, trail crews with chainsaws, low over-flights, helicopter landings, snow-machines and other insults to the wilderness idea all contribute to watered-down wilderness.



Trailside shelters in an NPS utility yard awaiting airlifting into the Olympic Wilderness.

Many park managers just don't get it. In Yellowstone, horse packers can sometimes take up to 25 (!!) head of live-stock per pack string. That's 100 heavy hooves in a single group digging into the earth and its vegetation. That's way too many. (For comparison, my backpacking company, Big Wild Adventures, voluntarily limits its groups to 10 hikers, including guides.) Also, Yellowstone trail crews routinely clear trails with chainsaws, shattering the wild sounds of silence while creating bee-line type trails that ram-rod through the topography, often with ugly cuts and fills that fill with exotic weeds, rather than gently laying the trail upon the existing contours with as little disturbance as possible. (In fairness to park administrators, at a recent meeting with the Yellowstone Superintendent and Chief Ranger, I was assured that trail crews were now being trained to use non-motorized primitive tools in the backcountry, and that chainsaw use was on the wane. Time will tell if this is indeed the case.)

Still, there are many other affronts to wilderness in Yellowstone. Snow-machines create noise and air pollution that degrade the backcountry. A power line slices through proposed wilderness in northwest Yellowstone's Gallatin Range, fragmenting habitat and opening the door to motorized maintenance. There is no plan to recognize the area's wilderness values by moving the power corridor to the front country. Motorboats, albeit with speed and power restrictions, are still allowed on portions of the remote and beautiful South and Southeast Arms of Yellowstone Lake, clear icy waters tucked into the verdant folds of remote proposed wilderness. And reconstruction of existing park roads is creating wider rights of way than before. So vehicles move faster, thus increasing both noise pollution and road-kill of precious park wildlife. This also de-wilds adjacent proposed wilderness.

The situation in Yellowstone is neither unique nor unusually egregious; it's simply that I'm more familiar with Yellowstone than with other national parks because I live seven miles from its northwest boundary, and because I guide so many backcountry trips in this magical wildland.

In other words, there is a national park system-wide failure to understand both the spirit and the letter of our nation's foremost conservation law, the Wilderness Act. Though this failure is by no means unique to the National Park Service, this agency has enjoyed relative immunity from public scrutiny, at least compared with the Forest Service and the BLM. That's partly the result of activist conservation groups that mistakenly believe the national parks to be adequately protected.

In summary, National Park Service stewardship of wilderness and proposed wilderness lands must improve dramatically. That will take time and determination, because agency cultures are notoriously resistant to change. The Park Service needs to develop a much better understanding of the Wilderness Act and its mandates, not to mention the wilderness idea. This change won't happen spontaneously. It will occur only when citizen conservation groups realize that even our designated and proposed wildernesses need constant citizen oversight, and when they stop pretending that only the Forest



An ever-widening trail in Yellowstone National Park backcountry.

Service and the BLM need to fear the wrath of knowledgeable and determined conservationists in order to be pressured into obeying the law and taking proper care of the land. ♪



Wilderness, Congress & the Courts

Backcountry Landing Strip Access Act

Backcountry Landing Strips - Congressman Denny Rehberg (R-MT) introduced the Backcountry Landing Strip Access Act (H.R. 461) in January. The bill would prohibit the federal government from closing or rendering inoperable primitive aircraft landing strips on federal lands, including within Wilderness. Ever since President Clinton proclaimed the Missouri Breaks as a national monument in 2001, the Montana Backcountry Pilots Association has been trying to assure that the BLM allows nine existing primitive air strips in the monument to remain open for public use. The legislation also specifically references an existing airstrip in the Great Bear Wilderness which currently remains open.

The Frank Church-River of No Return Wilderness in Idaho is currently the only Wilderness where pre-existing airstrips must remain open by law. Since wilderness designation in 1980, use of wilderness airstrips by private pilots has skyrocketed, with approximately 5,500 landings annually in the central Idaho Wilderness. Wilderness Watch is closely watching this new legislation that would undermine Wilderness.

Emigrant Wilderness, CA

The December 2006 issue of *Wilderness Watcher* reported that the Forest Service had filed a notice to appeal to the Ninth Circuit Court of Appeals the court ruling won by Wilderness Watch in June 2006 that forbids the Forest Service from repairing, maintaining, and operating 11 old dams within the Emigrant Wilderness (see Oct. 2006 *Wilderness Watcher* for more on the ruling). However, the agency recently dropped its appeal. Steve Brougher, Wilderness Watch's Central Sierra Chapter representative, told the Sonora, California *Union Democrat*, "I think the Forest Service understood they were going to lose the case and that's why they decided not to appeal." From 1985 to 1997 Brougher managed the Emigrant Wilderness as a Forest Service wilderness specialist on the Stanislaus National Forest, so is well acquainted with the history and politics of these old check dams. Our able attorney in the case was Pete Frost with the Western Environmental Law Center.

Welcome Back Roberta Cross Guns!

After a hiatus of 12 years, Roberta Cross Guns has returned to Wilderness Watch's board of directors. Back at the beginning, in 1989, she was one of the organization's founders, along with U.S. Forest Service veterans Bill Worf and Jim Dayton. She saw Wilderness Watch through the difficult gestational years and then took time out to raise two daughters and put her new law degree to work for the State of Montana in Helena.

Why is she back?

As an asthmatic child born in Utah and raised in the shadow of Wyoming's Big Horn Mountains, she had to spend time in the claustrophobia of oxygen tents and hospitals. She "craved for the outdoors," she said. When she did get out, as in a family camping trip rudely interrupted by an August snowstorm, she found the "wonder of it inspiring and emotionally thrilling." After high school, she pursued her interests by working for an outfitter on the edge of the Cloud Peak Wilderness and later as a camp cook in the Beartooths. "I was in wilderness (big and little 'W') for 10 days at a time beginning around September 15 through December 1," she said. "I miss it so."

She remembers cooking inside the camp tent in 20-below and opening the tent flap, which instantly took her breath away. She remembers a pair of Pennsylvania hunters who came back mid-morning empty-handed with huge smiles. They had seen a bull elk rise up in a meadow in first light and couldn't pull the trigger. "They loved being in Wilderness so much they couldn't shoot a part of it," she said. "People feel



Roberta Cross Guns and her father in Deer Lodge, Montana.

hungry for open space, and the true value of Wilderness is right there, in that response to wild nature."

She thinks Wilderness Watch can do more to educate its members and others about why Wilderness is important and why it's a uniquely American experience. She doesn't minimize the difficulty therein. "We have to educate people to make changes outside the Wilderness in order to protect what's inside the Wilderness."

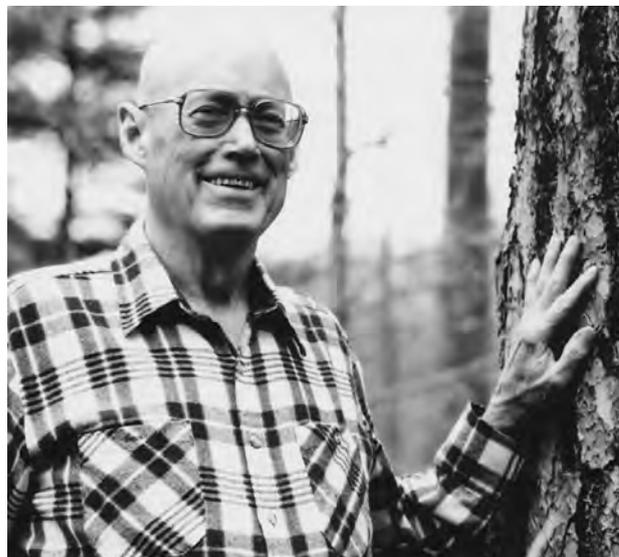
Now the kids are grown, she said, one teaching school in Hawaii and the other working as an *au pair* for a Helena family. It's time to get back in the Wilderness Watch saddle.

A Wild Endowment from Bill Worf

— By Jeff Smith, Membership & Development Director

After a few days in the wilderness, it sinks in that you're visiting a place with its own pace and rhythm, a place removed from the rush to development and change, a remnant of the American frontier, a place that's always been and always will be.

A journey into wilderness can skew a person's sense of time. It's not a question of a *division* of time, of minutes or hours or phone calls to be returned at the end of the day. It's a question of eons, of being immersed in a geology wholly shaped by natural forces, against which you can measure your own time on earth. There's something humbling, a sense that we don't, in fact, have dominion over each leaf and critter. We live connected to all living things. *(continued next page)*



Wilderness is an endowment for all Americans.

Long-time Wilderness Watch supporter and board member, Bill Worf recently reminded us of another important endowment, our own. "I wanted to raise the stature of Wilderness Watch's endowment and get people looking at it as a place worthy of their charitable giving," he said.



“ I wanted to raise the stature of Wilderness Watch’s endowment and get people looking at it as a place worthy of their charitable giving.”

With help from his investment advisor, Bill realized that he could reap significant tax benefits by donating appreciated stocks. At the same time, his stocks boosted our endowment by \$28,866.

“People who care about wilderness can leave something for the long-term,” he said. He’s thinking about wilderness

time, a contribution that will sustain this organization and wilderness protection for years and years.

Wilderness Watch’s endowment is a fund we’ve invested to generate a steady income. The organization must leave the principal intact, and we use the interest and dividends to pursue the organization’s mission. An endowment is built for the long-term, and, like the wilderness itself, it’s a way to measure an organization’s strength and character.

The endowment will grow with your gifts to create a fund of stability for Wilderness Watch. A gift to the endowment is a gift to Wilderness Watch and to Wilderness forever.

If you’d like more information about our endowment, give Jeff Smith a call, 406 542-2048, extension 1.



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