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Historical Structures in Designated Wilderness: A Review of Federal Case Law

by Wilderness Watch
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1. Cumberland Island Van Tours.

Legal Citation - Wilderness Watch v. Mainella, 375 F.3d 1085 (11th Cir. 2004).

Background – The court blocked the National Park Service’s use of motor vehicle tours through the Cumberland Island Wilderness in Georgia as part of the agency’s administration of historic structures. The National Park Service claimed that its responsibilities for preserving historic structures under the National Historic Preservation Act (NHPA) and other directives justified this use “because it has a separate duty to preserve the historical structures at the Settlement, [and] the ‘preservation of historic structures in wilderness (or, as here, potential wilderness) is in fact administration to further the purposes of the Wilderness Act.’”

Key Findings

- “Historical” use as mentioned in the Wilderness Act refers to natural features: “Given the consistent evocation of ‘untrammled’ and ‘natural’ areas, the previous pairing of ‘historical’ with ‘ecological’ and ‘geological’ features, and the explicit prohibition on structures, the only reasonable reading of ‘historical use’ in the Wilderness Act refers to natural, rather than man-made, features.”

- The use of motor vehicles for transporting visitors through the Wilderness violated the Wilderness Act: “The Park Service’s decision to ‘administer’ the Settlement using a fifteen-passenger van filled with tourists simply cannot be construed as ‘necessary’ to meet the ‘minimum requirements’ for administering the area ‘for the purpose of [the Wilderness Act].’”

- The maintenance or preservation of historic structures in

Wilderness is subordinate to the mandate of the Wilderness Act to preserve wilderness character: The Court “cannot agree with the Park Service that the preservation of historical structures furthers the goals of the Wilderness Act.”

“The need to preserve historical structures may not be inferred from the Wilderness Act nor grafted onto its general purpose.”

“Any obligation the agency has under the NHPA to preserve these historical structures must be carried out so as to preserve the ‘wilderness character’ of the area.”

2. Olympic Wilderness Shelters.

Legal Citation - Olympic Park Assocs. v. Mainella, No. C04-5732FDB, 2005 WL 1871114 (W.D. Wash. Aug 1, 2005).

Background – The court blocked the National Park Service plan to replace two collapsed historic trail shelters with pre-fabricated replica shelters in the Olympic Wilderness in Washington. The National Park Service proposed flying in the new shelters with helicopters.

Key Findings

• Replacing or reconstructing historic structures in Wilderness violates the Wilderness Act: “...[T]o reconstruct the shelters and place the replicas on the sites of the original shelters by means of a helicopter is in direct contradiction of the mandate to preserve the wilderness character of the Olympic Wilderness.”

• NHPA does not require reconstruction of historic structures: “Furthermore, the NHPA’s goal of preserving historic structures allows for ‘rehabilitation, restoration, stabilization, maintenance,’ (16 U.S.C. § 470w(8)), among other things, but it does not require reconstruction. Thus, where the former shelters at issue here have been destroyed by natural forces, NHPA does not require reconstruction.”

• The Park Service’s Organic Act does not require the Park Service to maintain or preserve man-made structures in Wilderness: “The Organic Act cannot be interpreted to require replacement of collapsed shelters ... where the Wilderness Act is a specific, protective statute militating against such intrusions.” This is because “[a] long established rule of statutory construction is that where there is a specific provisions that governs an issue, it takes superiority over any general provision. Here, the Wilderness Act under which the [] Wilderness was designated [] is the specific provision, while the [NHPA and Organic Act are] the general. This rule allows the NPS to administer the Olympic Wilderness for other purposes only insofar as to also preserve its wilderness character.”

• Historic preservation in Wilderness can be accomplished without reconstruction of historic structures: “The Park Service need not build replica shelters to be airlifted into locations where the original shelters once stood in order to preserve history. It is apparent from the record that photographs and other chronicles document the history of the usage

of Olympic National Park before the Olympic Wilderness was designated.”

- Wilderness designation requires a new perspective: “While the former structures may have been found to have met the requirements for historic preservation, that conclusion is one that is applied to a man-made shelter in the context of the history of their original construction and use in the Olympic National Park. Once the Olympic Wilderness was designated, a different perspective on the land is required. Regarding the Olympic Wilderness, that perspective means ‘land retaining its primitive character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions.’”

“The Park Service references the historic pattern of shelter construction and recreational use in concluding that the ‘setting, association, and feeling are significant aspects of historic use within the park,’ but while this may be true, this type of usage is in the past and a new value has been placed on the land by the creation of the [] Wilderness... a different ‘feeling’ of wilderness is sought to be preserved for future generations to enjoy, a place ‘where the earth and its community of life are untrammelled by man’ and which retains ‘its primitive character and influence, without permanent improvements.’”

3. Emigrant Wilderness Dams.

Legal Citation - High Sierra Hikers Ass’n v. U.S. Forest Serv., 436 F.Supp.2d 1117 (E.D. Cal. 2006).

Background – The court blocked the U.S. Forest Service from repairing, maintaining, or operating 11 dams in the Emigrant Wilderness on the Stanislaus National Forest in California. The agency claimed that repairing and maintaining the historic dams were allowed under the Wilderness Act because the dams served many of the so-called “public purposes” of Wilderness (i.e. recreation, scenery, education, conservation, and historic uses), and at least seven of the 11 dams qualified as historic properties under NHPA and were eligible for listing on the National Register of Historic Places.

Key Findings

- Repairing, maintaining, or operating structures within Wilderness is prohibited unless specifically authorized by the Wilderness Act or subsequent wilderness designation legislation or unless “necessary to meet minimum requirements for the administration of the area [as Wilderness]”: “[T]he plain and unambiguous text of the Wilderness Act speaks directly to the activity at issue in this case—repairing, maintaining and operating dam ‘structures’—and prohibits that activity.” And, “The Wilderness Act’s prohibition against structures is categorical so far as the court can determine, allowing only those exceptions that are specifically provided set forth in the Act or in Congress’s designation of a particular wilderness area.”

- The exception to the Wilderness Act’s ban on buildings and structures is a very

narrow exception: “Further, courts have construed the phrase ‘necessary to meet minimum requirements for the administration of the area’ narrowly....Here, there is no logical necessity in maintaining, repairing, or operating the dams in order to administer the area for purposes of the Wilderness Act. The area manifested its wilderness characteristics before the dams were in place and would lose nothing in the way of wilderness values were the dams not present. What would be lost is some enhancement of a particular use of the area (fishing), but that use, while perhaps popular, is not an integral part of the wilderness nature of that area.”

- The Wilderness Act requirement to preserve wilderness character is quite strong: “[S]ubjective characterizations aside, the Wilderness Act is as close to an outcome-oriented piece of environmental legislation as exists....As such, it is as close to a ‘purist manifesto’ as may be found in the area of environmental law.”

- Wilderness values are predominant over historic preservation goals: “[S]uch authority as exists indicates that where courts have considered the issue of whether man-made structures may be maintained in a wilderness area under either the general exception clause or for the purpose of preservation of historical values, the preservation of wilderness values had been predominant.”

- The Wilderness Act’s prohibition applies equally to minor maintenance and more extensive rehabilitation work: “[A] distinction based on rebuilding rather than maintaining or repairing [] is more one of semantics than substance. It is not the activity itself that is at issue, it is the object of the activity. Here [], the object of the activity is to perpetuate the existence of structures in a designated wilderness area.”

4. Green Mountain Lookout.

Legal Citation – Wilderness Watch v. Iwamoto, 853 F.Supp.2d 1063 (W.D. Wash. 2012).

Background – The court ruled that the U.S. Forest Service violated both the Wilderness Act and the National Environmental Policy Act in reconstructing the Green Mountain Lookout in the Glacier Peak Wilderness in Washington’s Mt. Baker-Snoqualmie National Forest in 2009. Both the reconstructed building itself and the use of motorized equipment and of over 65 helicopter trips into the Wilderness to accomplish the reconstruction violated the Wilderness Act. The Forest Service argued that its responsibilities under the NHPA justified the reconstruction of the building.

Key Findings

- There is no conflict between the Wilderness Act and the NHPA: “The court...agrees that the NHPA does not compel particular preservation-oriented outcomes. Accordingly, the Court rejects the notion that the Forest Service had any affirmative obligation to preserve the Green Mountain lookout pursuant to...NHPA that must be balanced against its

obligations under the Wilderness Act. In fact, there is no conflict between the Wilderness Act and the NHPA here since neither action nor inaction toward the Green Mountain lookout would have placed the Forest Service in violation of the NHPA, for the very reason that the NHPA itself does not compel any particular outcome....”

• The Wilderness Act’s more restrictive provisions control over the more general provisions of other statutes like the NHPA: “Furthermore, the Wilderness Act specifically establishes the preeminence of its requirements over other laws that may affect wilderness areas,” and “the [agency’s] principal responsibility is to the preservation of the wilderness, as wilderness.”

• Human structures degrade wilderness character: “The Court is satisfied that encountering such a structure in the wilderness area has harmed the interests of Plaintiff’s members and is harmful generally to the interests of those seeking to experience the primeval character, solitude, and natural conditions associated with wilderness.”

• The Wilderness Act prohibits structure rehabilitation and reconstruction absent its narrow exception: “[T]he Wilderness Act set out prohibitions on structures or installations and the use of motorized equipment and landing of aircraft. These prohibitions may be bypassed only ‘as necessary to meet minimum requirements for the administration of the area.’”

• The agency must consider and adopt measures that will meet historic preservation requirements while not offending the Wilderness Act: “Clearly, there are less extreme measures that could have been adopted, such as relocation of the lookout outside of the wilderness area, which would have had less impact on the ‘wilderness character’ of the area but still furthered the goal of historical preservation.” As another example, “in 2005, the Forest Service chose to allow a lookout in the Norse Creek Wilderness to deteriorate but sought to preserve its historic value by setting up an exhibit at a popular non-wilderness trailhead that accesses the wilderness area.”