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A Review and Forecast**

by

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# LIVESTOCK IN WILDERNESS: A REVIEW AND FORECAST

By  
MITCHEL P. McCLARAN\*

*In 1991, the Bureau of Land Management (BLM) is scheduled to complete a review of potential wilderness areas and make recommendations about which of its lands should be designated as wilderness and which should be released for other purposes. This Article explores whether livestock grazing will coexist with wilderness designation on BLM lands as it has on Forest Service lands where continued grazing and associated structures, facilities, and motorized equipment use were grandfathered during wilderness designation. Arguing that Congress has limited agency discretion and has treated grazing more favorably than the Forest Service would have, the author concludes that, absent a shift in interest group strength, Congress will not devise any innovative policies to reconcile the paradox of cows in wilderness. Grazing guidelines designed by Congress for the Forest Service wilderness areas are likely to be adopted for new BLM wilderness areas too.*

The Wilderness Act<sup>1</sup> transferred wilderness designation and management discretion from the Forest Service to Congress. Congress made this transfer primarily because of dissatisfaction with the impermanence and paucity of wilderness designated and managed by the Forest Service, and with the frequency of non-conforming uses.<sup>2</sup> Although the permanence and amount of wil-

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1. 16 U.S.C. §§ 1131-36 (1988).

2. See generally Roth, *The National Forests and the Campaign for Wilderness Legislation*, 28 J. FOREST HIST. 112, 122-23, 125 (1984); J. Gilligan, *The Development and Administration of Forest Service Primitive and Wilderness Areas*

derness have increased in the twenty-five years since passage,<sup>3</sup> the paradox of permitting nonconforming uses in wilderness has not been resolved. To a large degree the Wilderness Act guaranteed the continuation of nonconforming uses such as mining,<sup>4</sup> water and power development,<sup>5</sup> motorboat and aircraft use,<sup>6</sup> fire and pest control,<sup>7</sup> and livestock grazing.<sup>8</sup> In new wilderness areas, Congress has mandated livestock grazing management directives and allowed grazing management structures, facilities, and motorized equipment uses which are more lenient than those favored by the Forest Service.<sup>9</sup>

Some describe the permitting of grazing in wilderness as a necessary compromise to placate a politically powerful commercial use of potential wilderness.<sup>10</sup> This compromise has historical roots reaching back to the first national forest wilderness areas,<sup>11</sup> although some wilderness advocates found livestock and wilderness less contradictory.<sup>12</sup> Since statutory wilderness designation, the appeasement has taken the form of grandfathering most existing grazing management structures and practices as new wilderness areas are designated.<sup>13</sup> A short-lived proposal to eliminate existing grazing,<sup>14</sup> made during the initial legislative process, was only an anomaly in an otherwise continuous history of grandfathering most grazing management structures and practices as acceptable nonconforming uses in wilderness.

Until 1976, the Forest Service was the only agency with sig-

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in the Western United States 245 (1953) (unpublished Ph.D. dissertation); C. ALLIN, *POLITICS OF WILDERNESS PRESERVATION* 102-42 (1982).

3. As of 1988, nearly 89 million acres of wilderness have been designated; no acres have been removed from wilderness classification since passage of the Wilderness Act. CONGRESSIONAL RESEARCH SERV., U.S. CONG., *WILDERNESS: OVERVIEW AND STATISTICS* 19 (1988).

4. 16 U.S.C. § 1133(d)(2)-(3) (1988).

5. *Id.* § 1133(d)(4)(1).

6. *Id.* § 1133(d)(1).

7. *Id.*

8. *Id.* § 1133(d)(4)(2).

9. See *infra* notes 65, 66, 71-73 and accompanying text.

10. See Roth, *supra* note 2, at 122-23; Gilligan, *supra* note 2, at 245.

11. See *infra* notes 24-29 and accompanying text.

12. See *infra* notes 35-36 and accompanying text.

13. See *infra* notes 65-66 and accompanying text.

14. See *infra* note 37.

nificant livestock management responsibilities in wilderness.<sup>15</sup> Then the Federal Land Policy and Management Act (FLPMA) also vested wilderness management authority with the Bureau of Land Management (BLM).<sup>16</sup> The extent and intensity of livestock grazing on BLM lands are equal to or greater than Forest Service lands.<sup>17</sup> However, the amount of BLM-administered wilderness is currently both a fraction of Forest Service wilderness, and more importantly, a fraction of what the BLM will be administering the next ten years.<sup>18</sup> This predicted swell in BLM wilderness will be stimulated when the agency's system-wide wilderness review and recommendations to Congress near their scheduled completion in 1991.<sup>19</sup> In 1980, the Forest Service began to see a surge in the number of its wilderness areas after a similar review.<sup>20</sup> Significant grazing use and accompanying structures

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15. Livestock use is minimal on wilderness administered by the National Park Service and the Fish and Wildlife Service. As of September 30, 1988, livestock grazing was the most common accepted nonconforming use on wilderness administered by the Forest Service with nearly 50% of the wilderness areas having some livestock use. See GENERAL ACCOUNTING OFFICE, U.S. CONG., WILDERNESS PRESERVATION: PRESERVATION IN SOME FORESTS SHOULD BE ADDRESSED 75 (1989).

16. 43 U.S.C. § 1782 (1988).

17. Intensity of grazing use is measured by an animal unit month (AUM) which is the equivalent of one cow with a calf grazing for one month. In 1987, there were over 17 million AUMs of grazing use on over 160 million acres of BLM land. BUREAU OF LAND MANAGEMENT, U.S. DEP'T OF THE INTERIOR, PUBLIC LAND STATISTICS 24-27 (1988) [hereinafter PUBLIC LAND STATISTICS]. In 1987, there were over 8 million AUMs on over 100 million acres of Forest Service land. FOREST SERV., U.S. DEP'T OF AGRIC., GRAZING STATISTICAL SUMMARY: FY 1987, at 1 (1988) [hereinafter GRAZING SUMMARY]. The BLM AUMs were multiplied by 1.2 to be equivalent to a Forest Service AUM. FOREST SERV., U.S. DEP'T OF AGRIC., AN ANALYSIS OF THE RANGE FORAGE SITUATION IN THE UNITED STATES: 1989-2040, at 40 (1989) [hereinafter RANGE FORAGE SITUATION].

18. As of 1988, the Forest Service administered over 32 million acres of wilderness, whereas the BLM administered 368,739 acres of wilderness. See CONGRESSIONAL RESEARCH SERV., *supra* note 3 at 19.

19. 43 U.S.C. § 1782 (1988). Currently, over 27 million acres are under wilderness review status. See CRS, *supra* note 3, at 19. Estimates of 10 million acres will be recommended by the BLM for wilderness designation by Congress. See J. BROWNING, J. HENDEE & J. ROGGENBUCK, 103 WILDERNESS LAWS: MILESTONES AND MANAGEMENT DIRECTION IN WILDERNESS LEGISLATION, 1964-87, at 11 (U. Idaho, C. Forestry, Wildlife and Range Science, Bull. No. 51, 1988).

20. FOREST SERVICE, U.S. DEP'T OF AGRIC., FINAL ENVIRONMENTAL IMPACT STATEMENT, ROADLESS AREA REVIEW AND EVALUATION (1979) [hereinafter RARE II].

were allowed,<sup>21</sup> in part, because Congress developed more lenient guidelines for livestock management than preferred by the Forest Service.<sup>22</sup>

After diminishing agency discretion, how will Congress treat the paradox of wilderness preservation and livestock grazing when additional wilderness is designated on BLM lands? Will Forest Service guidelines suffice? Will new guidelines be developed? Or, will designations be designed to lessen the paradox by eliminating grazing use in new wilderness or limiting wilderness designations to areas with currently little grazing use?

To evaluate the potential status of livestock grazing in the forthcoming BLM wilderness designations, this Article traces the evolution of agency discretion and congressional direction for administering livestock grazing in national forest wilderness. This Article also describes the current status of grazing in BLM wilderness and reviews case law pertaining to the administration of nonconforming uses in wilderness.

## I. EVOLUTION OF LIVESTOCK MANAGEMENT IN NATIONAL FOREST WILDERNESS

### A. *Administrative Wilderness, 1924-1964*

Between 1924 and 1964, national forest wilderness areas were established and managed at the discretion of forest administrators rather than by statute. The first wilderness was established in 1924 after Aldo Leopold persistently and over a two-year span lobbied District Forester Pooler to control development on 500,000 acres at the headwaters of the Gila River in New Mexico.<sup>23</sup> Protection of a wilderness hunting experience was the primary reason for establishment, and permitted uses included livestock grazing, construction of primitive cabins for recreational use, and water developments; only commercial timber harvesting and road building were largely prohibited.<sup>24</sup>

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21. See *infra* note 65.

22. See *infra* notes 71-76.

23. See Roth, *supra* note 2, at 113.

24. The Forest Service explained as follows:

The Gila River drainage includes the last large body of undeveloped Forest from a forest management and recreational standpoint in New Mexico and there has been for a number of years strong sentiment for the retention of

In 1926, Chief Forester Horace Greeley promulgated the first system wide wilderness policy for the Forest Service. It allowed district foresters to establish wilderness areas and to direct road development and special use plans to safeguard against premature intrusions into these areas.<sup>25</sup> Grazing was considered a consistent use, but timber harvests, water developments and road construction were to be delayed if possible.

Inconsistent and limited application of the initial wilderness directive spawned the establishment of more formal (L-20) regulations in 1929.<sup>26</sup> Although referred to as primitive areas not wilderness areas, acceptable uses were essentially the same as in the 1926 directive, including grazing as an acceptable use. By 1933, sixty-three primitive areas were established under the L-20 regu-

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this region as a wilderness hunting area. This is the last big chance in D3 to retain a region of this kind in approximately primitive conditions since all other National Forests have been invaded by settlement and automobile roads to such an extent that only comparatively small areas remain off the beaten path.

Forest Serv., U.S. Dep't of Agric., Recreational Working Plan, Gila National Forest at 1 (Mar. 1924, rev. ed. Feb. 1928) (internal document) (also describing prohibited and permitted uses).

25. See J. Gilligan, *supra* note 2, at 104-05.

26. The L-20 regulations read as follows:

The Chief of the Forest Service shall determine, define, and permanently record a series of areas of national forest land to be known as experimental forests sufficient in number and extent to provide for the experimental work necessary as a basis for forest production or forest and range production in each forest region, these areas to be dedicated to and used for research; also where necessary a supplemental series of areas for range investigations to be known as experimental ranges and a series to be known as natural areas sufficient in number and extent adequately to illustrate or typify virgin conditions of forest and range growth in each forest region, to be retained in a virgin or unmodified condition for the purposes of science research, and education; and a series of areas to be known as primitive areas, and within which shall be maintained primitive conditions of environment, transportation, habitation, and subsistence, with a view to conserving the value of such areas for purposes of public education, and recreation. Within any areas so designated, except for permanent improvements needed in experimental forests and ranges, no occupancy under the special-use permit shall be allowed, or the construction of permanent improvements by any public agency be permitted, except as authorized by the Chief of the Forest Service or the Secretary.

Forest Service, U.S. Dep't of Agric., L-20 Regulations (1929) (internal document) (available from *Environmental Law*); see also J. Gilligan, *supra* note 2, at 125-27.

lations and, in all but ten areas, grazing was allowed to continue.<sup>27</sup>

Grazing was still an accepted use when the L-20 regulations were replaced with the more systematic U-regulations in 1939. These regulations required the drafting of management plans and placed greater restriction on timber cutting, mining, and road building than the L-20 regulations.<sup>28</sup> The term "wilderness" was used to describe U-1 areas which were 100,000 acres or more; "wild" was used for U-2 areas which were between 5000 and 100,000 acres.<sup>29</sup> Forest Service Manual directions for implementing grazing use in these areas allowed the Regional Forester to permit "construction or installation of fences and water developments essential for proper management of the range, when there is a clear showing of need."<sup>30</sup>

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27. See J. Gilligan, *supra* note 2, at 133-34.

28. *Id.* at 196-98.

29. The U-1 "wilderness area" regulations read as follows:

(a) upon recommendation of the Chief, Forest Service, national forest lands in single tracts of not less than 100,000 acres may be designated by the Secretary as "wilderness areas," within which there shall be no roads or other provision for motorized transportation, no commercial timber cutting, and no occupancy under special use permit for hotels, stores, resorts, summer homes, or organization camps, hunting or fishing lodges, or similar uses: *Provided*, That roads over national forest lands reserved from the public domain and necessary for ingress and egress to or from privately owned property shall be allowed under appropriate conditions determined by the forest supervisor, and upon allowance of such roads the boundary of the wilderness area may be modified without prior notice or public hearing to exclude the portion affected by the roads.

(b) Grazing of domestic livestock, development of water storage projects which do not involve road construction, and improvements necessary for the protection of the forest may be permitted subject to such restrictions as the Chief deems desirable. Within such designated wildernesses when the use is for other than administrative needs and emergencies the landing of airplanes and the use of motorboats are prohibited on national forest land or water unless such use by airplanes and motorboats has already become well established and the use of motor vehicles is prohibited unless the use is in accordance with the statutory right of ingress or egress. . .

36 C.F.R. § 251.20 (1946) (superseded). The U-2 "wild area" regulations read as follows:

Suitable areas of national forest land in single tracts of less than 100,000 acres but not less than 5,000 acres may be designated by the Chief of the Forest Service, as "wild areas," which shall be administered in the same manner as wilderness areas, with the same restrictions upon their use.

36 C.F.R. § 251.20-.21 (1946) (superseded).

30. FOREST SERV., U.S. DEP'T OF AGRIC., FOREST SERVICE MANUAL, § 2321.24,

Lackluster reclassification of L-20 primitive areas to the more securely protected U-regulation wilderness and wild areas, combined with frequent withdrawal of wilderness for development and increasing frequency of unacceptable uses within wilderness areas, generated discontent with the Forest Service's commitment to wilderness preservation.<sup>31</sup> This discontent stimulated the pursuit of statutory establishment of wilderness areas.<sup>32</sup> A campaign by the Executive Secretary of The Wilderness Society, Howard Zahniser, to have the Legislative Reference Service (now the Congressional Research Service) survey public opinion and determine the level of support for wilderness was successful in stimulating congressional support to shift responsibility for designating wilderness and identifying acceptable uses.<sup>33</sup> Although the seventy-two outdoor groups that were surveyed found Forest Service wilderness efforts insufficient, their collective stance on grazing as an acceptable nonconforming use closely mirrored the compromising behavior of the agency.<sup>34</sup>

Although many supported grazing in wilderness as merely a compromise to ensure wilderness designation, some advocates of wilderness designation maintained that wilderness and livestock

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(Dec. 1960) [hereinafter 1960 FOREST SERV. MANUAL]. See *infra* note 43 for the 1966 version that superseded the 1960 version. Manual directives permitted grazing "subject to such restrictions as the Washington office deems desirable to protect the inherent recreation values and the environment." 1960 FOREST SERV. MANUAL § 2321. 24. In addition, it suggested improvements be kept to a minimum, that they be constructed of native materials where feasible, and the use of barbed wire was discouraged. *Id.*

31. By 1952, 13 years after the enactment of the U-regulations, only 26% of all possible reclassifications had occurred; only 6 of 28 L-20 primitive areas exceeding 100,000 acres were reclassified to U-1 wilderness status, and only 13 of 46 L-20 primitive areas less than 100,000 acres were reclassified to U-2 wild areas. See J. Gilligan, *supra* note 2, at 117-18.

32. Howard Zahniser, Executive Secretary of the Wilderness Society, made one of the earliest formal suggestions at the Sierra Club's Second Biennial Wilderness Congress on March 30, 1951, that congressional designation was needed to protect wilderness areas. See Zahniser, *How Much Wilderness Can We Afford to Lose?*, SIERRA CLUB BULL., Apr. 1951, at 7-8; see also Roth, *supra* note 2, at 117-18.

33. See Roth, *supra* note 2, at 119.

34. LEGISLATIVE REFERENCE SERV., U.S. CONG., THE PRESERVATION OF WILDERNESS AREAS: AN ANALYSIS OF OPINION ON THE PROBLEM (1949). Frank Keyser, Regional Economist for the Service summarized the responses concerning grazing as an acceptable use as "only by sufferance and with a view to its eventual elimination." *Id.* at 53-55.



were compatible. They stressed the frontier qualities that livestock brought to the wilderness experience. When Aldo Leopold first articulated the wilderness concept, for example, he suggested that "cattle ranches would be an asset from the recreational standpoint because of the interest which attaches to cattle grazing operations under frontier conditions."<sup>35</sup> During the congressional debate about creating wilderness by statute rather than by Forest Service fiat, the preeminent writer Wallace Stegner maintained that livestock in wilderness, when properly managed, can "emphasize a man's feeling of belonging to the natural world."<sup>36</sup>

### B. Statutory Wilderness, 1964-1976

The campaign in Congress for statutory wilderness lasted eight years; Senator Humphrey introduced the first study bill in 1956 and President Johnson signed the final version in 1964. Livestock grazing was considered an accepted nonconforming use in national forest wilderness in all important versions of the Wilderness Act and all accompanying committee reports.<sup>37</sup> However, the permanence was not initially desired. The first four bills called for an equitable termination of grazing if the agency and

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35. Leopold, *The Wilderness and its Place in Forest Recreation Policy*, 19 J. FORESTRY 721 (1921). Leopold is often referred to as the father of the wilderness idea because this paper was the first call for the establishment of wilderness areas on federal land. He used the Gila Mountain area in New Mexico as his wilderness type specimen when describing the attributes and acceptable uses in a wilderness. He also speculated that ranchers in wilderness would benefit from protection against the intrusion of "settlers and the hordes of motorists" who invade an area after roads are built. *Id.* at 721.

36. Stegner, *The Wilderness Idea*, in WILDERNESS: AMERICA'S LIVING HERITAGE, 97-102 (D. Brower ed. 1961) (Stegner's 1960 letter to the Outdoor Recreation Resources Review Commission). Stegner elaborated:

I have known enough range cattle to recognize them as wild animals; and the people that herd them have, in the wilderness context, dignity and rareness; they belong on the frontier, moreover, and have a look of rightness. The invasion they make on the virgin country is sort of an invasion that is as old as Neanderthal man, and they can in moderation, even emphasize a man's feeling of belonging to the natural world.

*Id.* at 100.

37. For a list of the important bills, see McCloskey, *The Wilderness Act of 1964: Its Background and Meaning*, 45 OR. L. REV. 288, 298 n.40 (1966). The committee reports were S. REP. NO. 635, 87th Cong., 1st Sess. (1961); H.R. REP. NO. 2521, 87th Cong., 2nd Sess. (1962); S. REP. NO. 109, 88th Cong., 1st Sess. (1963); H.R. REP. NO. 1538, 88th Cong., 2nd Sess. (1964).

the grazing permittee could reach such an agreement, but these bills stalled in committee.

Instead of calling for termination, all subsequent bills and committee reports manifested an intent to protect grazing despite wilderness designation. Late in 1962, the first House committee report on a wilderness bill went so far as to include language that required all grazing regulations in wilderness "be consistent with the continued use of the lands for grazing."<sup>38</sup> While all Senate reports expressed a similar intent, such language was not included in subsequent bills.<sup>39</sup> At the time, the Forest Service apparently understood the congressional intent to secure no diminishment of grazing after wilderness designation. Agriculture Secretary Freeman commented on two occasions that existing grazing would not be terminated or reduced as a result of wilderness designation.<sup>40</sup> However, he clearly stated that this did not limit agency authority to regulate and control grazing in wilderness just as it was regulated outside of wilderness. He would, moreover, not allow grazing to start where it had not existed prior to wilderness designation. The final grazing language in the Wilderness Act grandfathered grazing use into congressionally designated wilderness, delegating regulatory authority to the Secretary of Agriculture.<sup>41</sup>

Although congressional intent not to diminish grazing was apparently made clear, the problem of interpreting this intent quickly arose relative to structures, facilities, and motorized equipment used to manage and distribute grazing.<sup>42</sup> Did "no

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38. H.R. REP. NO. 2521, *supra* note 37, at 8.

39. See S. REP. NO. 635 *supra* note 37, at 18-19; S. REP. NO. 109, *supra* note 37, at 14.

40. Each committee chairman asked Secretary Freeman to discuss the agency position on the wilderness legislation found in S. 174, 87th Cong., 1st Sess. (1961). The Secretary responded that in 1962 over 59,000 cattle and 309,000 sheep and goats were grazing on about half of the available acreage in the 83 administratively designated wilderness and wild areas in the national forests. See H.R. REP. NO. 2521, *supra* note 37, at 77; S. REP. NO. 109, *supra* note 37, at 26-28.

41. The "grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture." Wilderness Act, 16 U.S.C. § 1133(d)(4)(1) (1988).

42. Structures and facilities include fences, corrals, cabins, wells and earthen water catchments; motorized equipment includes trucks, bulldozers, diesel well pumps, and building construction equipment. See H.R. REP. NO. 617, 96th Cong.,

diminishment" apply to facilities that otherwise would be prohibited in wilderness, and was their maintenance and construction also exempt? Or, did Congress simply intend to protect the option of livestock to graze in wilderness, but not exempt those extant or future facilities? If the latter, how much of a decline in grazing due to restrictions on modern facilities would be tolerated?

Even though most existing grazing structures, facilities, and motorized equipment use were grandfathered in the initial field operating procedures,<sup>43</sup> much room was left for on-site interpretation. How, for example, should field personnel reconcile permission under subsection 7 to build or reconstruct livestock management facilities essential to the management of domestic livestock

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1st Sess. 12 (1979).

43. FOREST SERV. U.S. DEP'T OF AGRIC., FOREST SERVICE MANUAL, § 2320.3(6)-(8) (Oct. 1966) [hereinafter 1966 FOREST SERV. MANUAL] (wilderness policy). Subsections 6-8 read:

(6) Except as otherwise provided under this item and items 7 and 8, no commercial enterprises; no temporary or permanent roads; no aircraft landing strips; no heliports or helispots; no use of motor vehicles, motorized equipment, motorboats, or other form of mechanical transport; no landing of aircraft; and no structure or installation will be permitted within National Forest wilderness . . . .

(7) . . . Existing livestock management improvements will be maintained, reconstructed, or replaced so long as they are essential to the management of domestic livestock.

(8) Resource uses and activities which are of the type generally prohibited by the Wilderness Act, but which are specifically excepted by that act or subsequent establishing legislation, will be permitted and managed under multiple use principles. Where alternatives exist, wilderness values shall be dominant in reaching management decisions to the extent not limited by the Wilderness Act, subsequent legislation, or regulations of the Secretary of Agriculture.

(a) *Grazing of Domestic Livestock.* Established use by domestic livestock will be continued to the extent consistent with the objective of the maintenance or improvement of soil, vegetative cover, and wilderness values. Maintenance, reconstruction, or relocation of those livestock management improvements and structures which existed within a wilderness when it was incorporated into the National Wilderness Preservation System may be permitted. Additional improvements or structures may be built only when necessary to provide management which will protect wilderness values. When they are in need of heavy maintenance or reconstruction, existing improvements or structures which are in conflict with the characteristic values of the particular wilderness will be relocated and/or re-designed to minimize their effect on wilderness values.

with the requirement under subsection 8a that all new structures protect wilderness values and that those structures requiring maintenance or reconstruction be relocated or redesigned to protect wilderness values? And, to what extent would continuing established use by motorized vehicles or equipment to maintain or construct livestock management structures and installations be excepted under subsection 6? The manual guidelines did not say.

From the tone of the amendments to these general policy statements between 1966 and 1976, it became increasingly clear that the Forest Service planned to grandfather livestock presence, but not necessarily the associated structures, facilities, and motorized equipment use. In fact, the Forest Service discouraged maintenance and repair of many extant structures and facilities and sometimes required complete removal. Although the thrust of these amendments was to preserve wilderness values while allowing for grazing,<sup>44</sup> specific criteria for deciding how to balance wilderness against grazing were often lacking. Building, reconstructing, and maintaining livestock management improvements were permitted only after first considering less obtrusive non-structural practices of controlling animal distribution, but feasibility criteria for these considerations were not specified.<sup>45</sup> By

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44. "The primary objective [of grazing management] is to improve or maintain wilderness values." FOREST SERV., U.S. DEP'T OF AGRIC., FOREST SERVICE MANUAL, § 2323.2 (May 1969) [hereinafter 1969 FOREST SERV. MANUAL] (wilderness range resource). "The objective of livestock management in wilderness is utilization of the forage resource while maintaining wilderness values . . . . The range allotment plan . . . will specify the numbers of livestock, season of use, grazing system and management practices to be used, and will emphasize the special practices needed to achieve the objective of grazing while maintaining wilderness values." FOREST SERV., U.S. DEP'T OF AGRIC., FOREST SERVICE MANUAL, § 2323.2 (Aug. 1976) [hereinafter 1976 FOREST SERV. MANUAL] (wilderness range resource).

45. According to the Forest Service,

[t]he Regional Forester approves new improvements only on determination that they are necessary for proper management and/or protection of the wilderness resource . . . such practices as herding and broadcast salting are considered first in managing cattle and sheep. . . . When existing livestock management improvement is in need of heavy maintenance or replacement, consideration should be given to the following:

1. The possibility that the need can be met by other means.
2. The feasibility of relocating or redesigning so that it will be in harmony with natural features. Materials should be used which conform to the character of the particular Wilderness.

1969 FOREST SERV. MANUAL, *supra* note 44, § 2323.24(a) (structural range improvements). In 1976, the directives were essentially the same as in 1969, except

1976, use of motorized equipment for maintenance or construction of structures and installations was eliminated except under the most unusual of circumstances, and any improvement requiring motorized equipment was to be replaced.<sup>46</sup> The most definitive statement in these operating procedures required the removal of all stockmen cabins because their use as shelter and supply storage while working livestock was strictly for convenience and not necessary to continue grazing operations.<sup>47</sup>

### C. *The Clarification of Congressional Intent, 1977-1985*

Between 1977 and 1980, two major events in wilderness designation forced Congress to clarify its intent regarding the acceptability of grazing management structures, facilities, and motorized equipment use in national forest wilderness. First, the passage of the Eastern and Endangered Wilderness bills<sup>48</sup> in the

all non-essential structures were slated for removal. "Only those [improvements] considered essential will be removed according to the schedule given in the wilderness management plan." 1976 FOREST SERV. MANUAL, *supra* note 44, § 2323.24(a).

46. "The maintenance of existing and the construction of new improvements will ordinarily be accomplished without motorized equipment. However, some existing deep wells cannot feasibly be maintained without such equipment. The Regional Forester may provide for such exceptions on a documented case by case basis." 1969 FOREST SERV. MANUAL, *supra* note 44, § 2323.24(a). By 1976 the Manual read:

Improvements requiring motorized equipment will be carefully evaluated and will be retained only if there are no alternatives. They should be removed or replaced with improvements not requiring motorized equipment. Maintenance of any motorized improvements that are retained will be in a manner compatible with wilderness values. Construction of new improvements requiring motorized equipment will not be considered except in special circumstances.

1976 FOREST SERV. MANUAL, *supra* note 44, § 2323.24(a).

47. According to the Forest Service, [s]tockmen's cabins and tourists pastures are principally for the convenience of the user and not essential for management of the wilderness range resource. Those existing will not be replaced if destroyed by fire or other forces. The use of such cabins and pastures will be terminated; and the stockmen's cabins and tourist pasture fences will be removed within ten years following inclusion of an area in the National Wilderness Preservation System.

1969 FOREST SERV. MANUAL, *supra* note 44, § 2323.24(a). The 1976 directives remained essentially the same as the 1969 version except the term "pack and saddle stock used by visitors" was substituted for "tourist." 1976 FOREST SERV. MANUAL, *supra* note 44, § 2323.24(a).

48. Eastern Wilderness Act, Pub. L. No. 93-622, 88 Stat. 2096 (1975); Endan-

mid-1970s diluted the Forest Service's doctrines for designating and managing wilderness. Use of the so-called "purity" and "sight and sound" doctrines by the Forest Service as criteria for evaluating wilderness characteristics were dealt a resounding setback when Congress designated wilderness in which the hand of man was obvious and in which the sights and sounds of nearby human settlement and activity was evident.<sup>49</sup>

The second major event was the 1979 publication of the Forest Service's RARE II wilderness assessment.<sup>50</sup> Many potential wilderness areas identified in RARE II contained grazing management structures, facilities, and established motorized equipment use that would have been restricted under Forest Service administration. Between 1979 and 1984, Congress was pressed both to designate wilderness and to release the remaining roadless areas for consumptive resource management. Yet, the fate of over sixty million acres was in limbo following a district court's rejection of the agency's RARE II assessment because of noncompliance with the National Environmental Policy Act.<sup>51</sup>

Congress did not initially foresee that a decline in grazing would result from designating wilderness, because wilderness areas were to be limited to high elevation forested and alpine areas, precluding rangelands better suited to modern grazing management structures and facilities. However, the RARE II list of potential wilderness areas included numerous grazing management structures, facilities, and uses of motorized equipment that did not comply with Forest Service policy.<sup>52</sup> As a result, livestock in-

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gered Wilderness Act, Pub. L. No. 95-237, 92 Stat. 40 (1978) (both codified at 16 U.S.C. § 1132 note & note elim.) (section not restated in the revised title and not repealed).

49. The Eastern Wilderness Act did more to dilute the purity doctrine because the vegetation in many of these eastern areas was second growth forests, while the Endangered Wilderness Act did more to dilute the sight and sound doctrine because wilderness areas were designated that overlooked Tucson, Albuquerque, and Salt Lake City. See generally D. ROTH, *THE WILDERNESS MOVEMENT AND THE NATIONAL FORESTS: 1964-1980*, at 38-46, 49, 52-54 (Forest Service No. 391, Dec. 1984); C. WILKINSON & H. ANDERSON, *LAND AND RESOURCE PLANNING IN THE NATIONAL FORESTS* 348-49 (1987) J. BROWNING, J. HENDEE & J. ROGGENBUCK, *supra* note 19, at 11.

50. RARE II, *supra* note 20.

51. See generally D. ROTH, *supra* note 49, at 54-61; C. WILKINSON & H. ANDERSON, *supra* note 49, at 345-60.

52. Modern livestock management structures, facilities, and practices include

terests adamantly opposed wilderness designation in those areas.<sup>53</sup> In order to settle the status of the sixty million acres at stake, Congress had to decide on the acceptability of grazing management structures, facilities, and motorized equipment use. The decision was consistent with the past grandfathering of non-conforming uses expressed in the original Wilderness Act and the dilution of wilderness requirements expressed in the more recent Eastern and Endangered Wilderness Acts. Of equal importance, the decision further reduced agency discretion in regulating livestock grazing in wilderness.

In 1977 and 1978, two House reports, one pertaining to a Montana wilderness study bill<sup>54</sup> and the other to a bill expanding a Wyoming wilderness area<sup>55</sup>, attempted to clarify acceptable grazing structures, facilities, and motorized equipment use in wilderness.<sup>56</sup> Despite the absence of specific reference to wilderness grazing in the final Montana statute<sup>57</sup> and the failure of the Wyoming bill,<sup>58</sup> a rift was developing between congressional sentiment and existing Forest Service policies. After nearly fifteen months of debate, the 1980 Colorado Wilderness Act finalized formal congressional intent through a House report<sup>59</sup> that referred to mandatory grazing guidelines for managing livestock grazing in

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seeding, brush control, pest and weed control, fencing, water facilities, and soil conservation. See S. REP. No. 635, *supra* note 37, at 18-19.

53. See D. ROTH, *supra* note 49, at 68.

54. H.R. REP. No. 620, 95th Cong., 1st Sess. (1977).

55. H.R. REP. No. 1321, 95th Cong., 2d Sess. (1978).

56. During hearings on wilderness study bill S. 393, much uncertainty on the acceptability of grazing management structures was expressed. Congressional intent was finally expressed in the following language: "wilderness designation should not prevent the maintenance of existing fences or other livestock management improvements, nor the construction and maintenance of new fences or improvements which are consistent with allotment management plans and/or which are necessary for protection of the range." See H.R. REP. No. 620, *supra* note 54, at 5. Because the Forest Service was planning a 26% reduction in livestock use in the area being considered for wilderness designation, the committee was explicit that potential designation was not the reason for this reduction. To stress their point they restated the language from the above report. *Id.* quoted in H.R. REP. No. 1321, *supra* note 55, at 6-7.

57. Montana Wilderness Study Act, Pub. L. No. 95-150, 91 Stat. 1243 (1977) (codified at 16 U.S.C. § 1132 note elim. (1988)) (section not restated in the revised title and not repealed).

58. H.R. 12,349, 95th Cong., 2d Sess. (1978).

59. See *infra* notes 65-66.

wilderness.<sup>60</sup> Although Congress seriously considered amending the Wilderness Act to incorporate these guidelines,<sup>61</sup> it settled for the guideline language in the report.

Debate leading up to this formal statement of grazing policy in wilderness commenced in 1979 with the introduction of H.R. 5487,<sup>62</sup> a House Bill which grandfathered the use of motorized vehicles and equipment to maintain and operate grazing management structures and facilities in new wilderness areas in Colorado. At the subcommittee's first public hearing on H.R. 5487, the Forest Service expressed concern with the consistency of such exceptions with the Wilderness Act. Livestock groups called for more consideration of the added costs associated with wilderness restrictions and for greater consistency in livestock management decisions among wilderness areas.<sup>63</sup> On the second day of the hearing, committee members, their staff, agency personnel, and the contending parties struck a compromise, establishing guidelines for grazing and administering support facilities. But neither the livestock nor the agency interests were fully satisfied with the guideline language.<sup>64</sup>

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60. The Colorado Wilderness Act states:

The Congress hereby declares that, without amending the Wilderness Act of 1964, with respect to livestock grazing in national forest wilderness areas, the provisions of the Wilderness Act related to grazing shall be interpreted and administered in accordance with the guidelines contained under the heading 'Grazing in National Forest Wilderness' in House Committee Report [H.R. REP. NO. 617, *infra* note 61] accompanying this Act.

Pub. L. No. 96-560, § 108, 94 Stat. 3265, 3271 (codified at 16 U.S.C. § 1133, note (1988)), (Livestock Grazing in National Forest Wilderness Areas).

61. H.R. REP. NO. 617, 96th Cong., 1st Sess. 11 (1979).

62. H.R. 5487, 96th Cong., 1st Sess. § 5(b) (1979).

63. *Additions to the Wilderness Preservation System: Hearings on H.R. 5301, H.R. 5341, and H.R. 5487 Before the Subcomm. on Public Lands of the House Comm. on Interior and Insular Affairs*, 96th Cong., 2d Sess. (1979). David Unger, Deputy Assistant Secretary of Agriculture, testified that the agency held that the § 5(b) language allowing motorized vehicles and equipment was in conflict with § 4(c) of the 1964 Wilderness Act. *Id.* at 31-32. Lee Spann, Past President of Colorado Cattlegrowers Association, testified that while the Wilderness Act "permits grazing of wilderness areas, past experience of other stockmen faced with operating in wilderness areas has proven that the conditions under which they had to manage their livestock made it impossible to continue operating from an economic standpoint as well as a management standpoint" because structures and facilities were removed or not made available to manage livestock. *Id.* at 61-65.

64. A newsletter described it as follows:



The guidelines addressed five elements in wilderness grazing administration:

- 1) wilderness designation will not be used as criteria to reduce grazing animal numbers, and it is possible to increase animal numbers in wilderness;
- 2) a rule of practical necessity and reasonableness will be used to grandfather maintenance of structures and facilities with motorized equipment and vehicles;
- 3) use of natural materials when constructing or repairing structures and facilities will not be required unless it does not require unreasonable additional costs;
- 4) construction or replacement of structures and facilities will be permitted, but new construction should be primarily for resource management and protection rather than to accommodate increased livestock use; and
- 5) use of motorized equipment for emergency situations involving sick animals or emergency placement of feed will be permitted.<sup>65</sup>

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Finally, at a showdown session in a room off the House floor, in which [Congressmen] Seiberling, Johnson, Kogovsek, [Assistant Secretary of Agriculture] Cutler, Doug Leisz of the Forest Service, Tim Mahoney of the Wilderness Society, Ron Michieli [National Cattlegrowers and Public Lands Council], Jim Smits [Public Lands Council], and several Congressional staff persons participated, an approach was hammered out which eventually was incorporated in the final committee report. The final version was not what the Forest Service or Cutler wanted nor was it what the Cattlemen thought necessary.

Public Lands Council, Washington Highlight Newsletter, Oct. 1979 at 5-6; see also D. ROTH, *supra* note 49, at 68-69.

65. H.R. REP. No. 617, *supra* note 61, at 11-12. The guidelines state:

It is the intention of the Committee that these guidelines and policies be considered in the overall context of the purposes and direction of the Wilderness Act of 1964 and this Act, and that they be promptly, fully, and diligently implemented and made available to Forest Service personnel at all levels and to all holders of permits for grazing in National Forest Wilderness areas:

1. There shall be no curtailments of grazing in wilderness simply because an area is, or has been designated as wilderness, nor should wilderness designations be used as an excuse by administrators to slowly 'phase out' grazing. Any adjustments in the numbers of livestock permitted to graze in wilderness areas should be made as a result of revisions in the normal grazing and land management planning and policy setting process, giving consideration to legal mandates, range condition, and the protection of the range resources from deterioration.

It is anticipated that the numbers of livestock permitted to graze in

In essence, these guidelines grandfathered, indefinitely, nearly all grazing practices, structures, facilities, and motorized equipment

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wilderness would remain at the approximate levels existing at the time an area enters the wilderness system. If land management plans reveal conclusively that increased livestock numbers or animal unit months (AUMs) could be made available with no adverse impact on wilderness values such as plant communities, primitive recreation, and wildlife populations or habitat, some increases in AUMs may be permissible. This is not to imply, however, that wilderness lends itself to AUM or livestock increases and construction of substantial new facilities that might be appropriate for intensive grazing management in non-wilderness areas.

2. The maintenance of supporting facilities, existing in an area prior to its classification as wilderness (including fences, line cabins, water wells and lines stock tanks, etc.), is permissible in wilderness. Where practical alternatives do not exist, maintenance or other activities may be accomplished through the occasional use of motorized equipment. This may include, for example, the use of backhoes to maintain stock ponds, pickup trucks for major fence repairs, or specialized equipment to repair stock watering facilities. Such occasional use of motorized equipment should be based on a rule of practical necessity and reasonableness. For example, motorized equipment need not be allowed for the placement of small quantities of salt or other activities where such activities can reasonably and practically be accomplished on horseback or foot. On the other hand, it may be appropriate to permit the occasional use of motorized equipment to haul large quantities of salt to distribution points. Moreover, under the rule of reasonableness, occasional use of motorized equipment should be permitted where practical alternatives are not available and such use would not have a significant adverse impact on the natural environment. Such motorized equipment uses will normally only be permitted in those portions of a wilderness area where they had occurred prior to the area's designation as wilderness or are established by prior agreement.

3. The replacement or reconstruction of deteriorated facilities or improvements should not be required to be accomplished using 'natural materials', unless the material and labor costs of using natural materials are such that their use would not impose unreasonable additional costs on grazing permittees.

4. The construction of new improvements or replacement of deteriorated facilities in wilderness is permissible if in accordance with these guidelines and management plans governing the area involved. However, the construction of new improvements should be primarily for the purpose of resource protection and the more effective management of these resources rather than to accommodate increased numbers of livestock.

5. The use of motorized equipment for emergency purposes such as rescuing sick animals or the placement of feed in emergency situations is also permissible. The privilege is to be exercised only in true emergencies, and should not be abused by permittees.

use in existence at the time of wilderness designation<sup>66</sup> and largely revoked agency discretion.

The grazing guidelines were not specifically referred to in the version of H.R. 5487 passed by the House.<sup>67</sup> However, the Senate version was specific in requiring that the guidelines be used to interpret congressional intent, but only in national forest wilderness in Colorado.<sup>68</sup> The Conference Committee's language retained the Senate direction to use the guidelines and added two important provisions: it broadened guideline application to all national forest wilderness areas and resolved that these guidelines did not amend the Wilderness Act of 1964.<sup>69</sup>

The Forest Service initially resisted adopting the grazing guidelines because of a perceived inconsistency with the Wilderness Act of 1964. But by late summer 1980 the resistance subsided and the guidelines replaced previous Forest Service Manual operating procedures. As required in the House version of H.R. 5487, the Forest Service began with an in-house review of their existing policies, practices, and regulations to ensure that wilderness grazing administration was consistent with the intent that Congress expressed in the guidelines.<sup>70</sup>

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66. The guidelines concluded:

In summary, subject to the conditions outlined in this report, the general rule of thumb on grazing management in wilderness should be that activities or facilities established prior to the date of an area's designation as wilderness should be allowed to remain in place and may be replaced when necessary for the permittee to properly administer the grazing program. Thus, if livestock grazing activities and facilities were established in an area at the time Congress determined that the area was suitable for wilderness and placed the specific area in the wilderness system, they should be allowed to continue. With respect to areas designated by this Act, these guidelines shall not be considered as a direction to reestablish uses where such uses have been discontinued.

*Id.* at 12-13.

67. *Id.*

68. S. REP. NO. 914, 96th Cong., 2nd Sess. 5-7 (1980).

69. H.R. REP. NO. 1521, 96th Cong., 2d Sess. 8, 19-20 (1980).

70. The report directed the Secretary

to review all policies, practices, and regulations of the Department of Agriculture regarding livestock grazing in national forest wilderness areas in order to ensure that such policies, practices, and regulations fully conform with the intent of Congress regarding grazing in such areas, as such intent is expressed in the Wilderness Act and this Act.

H.R. 5487, 96th Cong., 1st Sess. § 5 (1979).

The review team<sup>71</sup> made several findings regarding the consistency of the guidelines with the Wilderness Act. First, guideline 1, not using wilderness designation to reduce grazing, was completely within the authority of the Forest Service as stated sections 4(b) and 4(d)(4)(2) of the Wilderness Act. Second, requiring use of natural materials in structures and facilities exceeded Forest Service authority. Implementation of guideline 3, requiring natural materials only if costs are reasonable, was within its authority as expressed in sections 4(b), 4(c), and 4(d)(4)(2). Third, although the use of motorized vehicles in emergency situations was available for persons, section 4(c) did not mention animals as called for in guideline 5. Nonetheless, the Forest Service regulations authorized use for animals on a case-by-case basis.<sup>72</sup> Fourth, section 4(c) prohibited reconstruction or maintenance of structures for livestock management and the use of motorized equipment for such work as called for in guideline 2 and prohibited the new construction of structural facilities as called for in guideline 4 unless grazing would otherwise be precluded. The review team concluded that the implementation of guidelines 2 and 4 would violate the Wilderness Act.

A leak of the in-house review conclusions prior to the first Senate committee hearing on H.R. 5487<sup>73</sup> so incensed House and Senate committee members that Department of Agriculture officials did not present the review findings in their oral testimony.<sup>74</sup>

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71. The three review team members were summoned from regional offices in January 1980, and by late February they had completed their task. See Forest Service, U.S. Dep't of Agric., Summary of Findings in Comparing Committee Guidelines with the Wilderness Act, Regulations, and Policy (internal document, no date) (confidential communication).

72. 36 C.F.R. § 293.13 (1978).

73. *Colorado National Forest Wilderness Act: Hearings on H.R. 5487 and S. 2123 Before the Subcomm. on Parks, Recreation, and Renewable Resources of the Senate Comm. on Energy and Natural Resources*, 96th Cong., 2d Sess. (1980) [hereinafter *Public Hearing*].

74. A letter from Representatives Kogovsek and Seiberling to Chairman Bumpers stated that "[w]e are strongly committed to this language and will actively work to insure that the Forest Service abides by this intent of Congress. Therefore, we ask your support in this regard and ask the committee to join the House in insuring these guidelines are upheld." *Public Hearing*, *supra* note 73, at 28. The only references to the grazing guidelines were made by Assistant Secretary of Agriculture M. Rupert Cutler in written testimony. *Id.* at 48-50. For further details of the event, see Public Lands Council, Washington Highlight Newsletter, Feb.-Mar. 1980, at 13.

In the following months, the Central Idaho Wilderness Act conference committee report incorporated the guidelines although the statute did not directly refer to them.<sup>76</sup> Moreover, as revealed in correspondence with respective committee chairs, the Forest Service started to accept guidelines 2 and 4.<sup>76</sup> By August 1980, the guidelines were the operating procedures for grazing management in all national forest wilderness areas.<sup>77</sup> Throughout and since the debate on grazing guidelines, the regulations for livestock grazing in national forest wilderness did not change.<sup>78</sup>

Even though the Colorado statute made explicit that the guidelines applied nationwide to the national forest system and the Forest Service Manual continued to print the guidelines,<sup>79</sup> Congress referred to the guidelines in subsequent wilderness designation statutes in areas with extensive grazing. Four bills from 1984 through 1985 referred directly to the guidelines; they all required the Secretary of Agriculture to review wilderness livestock grazing policies within the respective states.<sup>80</sup> The first two bills, Arizona and Utah, required the Secretary to report to Congress every five years on progress in implementing the guidelines and on the results of the policy reviews.<sup>81</sup> This redundancy suggests

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75. H.R. REP. NO. 1126, 96th Cong., 2d Sess. 4, 20-23 (1980).

76. "We will apply them [the guidelines] so as to permit activities and facilities identified in the guidelines to the extent that they are necessary for the continuation of livestock grazing operations." H. REP. NO. 1126, *supra* note 75, at 24 (letter from M. Rupert Cutler, Assistant Secretary of Agric., to John Seiberling, Chairman, Subcomm. on Public Lands, House Comm. on Interior and Insular Affairs (May 12, 1980)). "We believe it is possible to administer the guidelines with a good faith effort on the part of the permittee and Forest Service." S. REP. NO. 914, *supra* note 68 at 31 (letter from R. Max Peterson, Forest Service Chief, to Dale Bumpers, Chairman, Subcomm. on Parks, Recreation, and Renewable Natural Resources, Senate Comm. on Interior and Insular Affairs (July 29, 1980)).

77. The grazing guidelines were reprinted, verbatim, in this interim directive (amendment) to the Operating Manual. Forest Serv., U.S. DEP'T OF AGRIC., FOREST SERV. MANUAL, § 2321.24, (Aug. 1980) (interim directive No. 17).

78. See 36 C.F.R. § 293.13 (1978); 36 C.F.R. § 293.13 (1988).

79. See FOREST SERV., U.S. DEP'T OF AGRIC., FOREST SERVICE MANUAL, § 2321.22 (Mar. 1986) [hereinafter 1986 FOREST SERV. MANUAL].

80. Arizona Wilderness Act, Pub. L. No. 98-406, § 101(f)(1), 98 Stat. 1485, 1489 (1984); Utah Wilderness Act, Pub. L. No. 98-428, § 301(a), 98 Stat. 1657, 1660 (1984); Wyoming Wilderness Act, Pub. L. No. 98-550, § 501, 98 Stat. 2807, 2813 (1984); Nebraska Wilderness Act, Pub. L. No. 99-504, § 102(b)(1), 100 Stat. 1802 (1985) (all codified at 16 U.S.C. § 1132 note (1988)).

81. These reports describe (1) the number of permits authorizing grazing in wilderness; (2) the number of cattle and sheep permitted to graze in 1985 and

that Congress was not only fixed in its intent and adamant about agency compliance, but that the guidelines were expedient in appeasing livestock interests opposed to new wilderness designations.

## II. STATUS OF LIVESTOCK GRAZING MANAGEMENT IN BLM WILDERNESS

BLM's first designation of wilderness came nearly twenty years after passage of the Wilderness Act, but the majority of designation is yet to occur. Although the history of grazing management in BLM wilderness may be less bitter and eventful than in national forest wilderness, the amount of congressional attention as well as the substance of the current management directives are essentially identical.

Passage of the Federal Land Policy and Management Act in 1976 was the first formal direction for the BLM to include wilderness as one of its multiple use management objectives and to review roadless areas for future inclusion in the National Wilderness Preservation System.<sup>82</sup> The first wilderness management responsibilities were assigned to the BLM in a portion of the Lee Metcalf Wilderness in late 1983, and fourteen areas were added in four states in the following year.<sup>83</sup> In 1987, the BLM managed

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change in use between 1980 and 1985; (3) the status of grazing management structure and facility maintenance, extent of reconstruction, extent of new construction, extent of removal in 1985; and (4) the number and reason for motorized equipment and vehicle requests, and number and reason for denied requests in 1985. These details were also reported for Wyoming wilderness, even though they were not required by statute. Forest Service, U.S. Dep't of Agric., Wilderness Grazing Report: Arizona, Utah, Wyoming (Dec. 1985) (internal document) (available from *Environmental Law*). "It is our opinion that the policies, practices, and regulations fully conform with the intent of Congress regarding grazing in wilderness areas specifically located in these three states." Transmittal letter from R. Max Peterson, Chief, Forest Service, to Morris K. Udall, Chair of the House Comm. on Interior and Insular Affairs (Mar. 31, 1985). Although the reports suggest that, after one year, the Forest Service was implementing the grazing guidelines, the first five year reports that are due in 1989 will be more telling.

82. See sources cited *supra* note 19.

83. Lee Metcalf Wilderness and Management Act, Pub. L. No. 98-140, § 3(f)(1), 97 Stat. 901, 903 (1983); Oregon Wilderness Act, Pub. L. No. 98-328, § 3(21), 98 Stat. 272, 274 (1984); Washington State Wilderness Act, Pub. L. No. 98-339, § 6, 98 Stat. 299, 304 (1984); Arizona Wilderness Act, Pub. L. No. 98-406, §§ 201, 301, 98 Stat. 1485, 1491-93 (1984); San Juan Basin Wilderness Protection Act,

over twenty-three wilderness areas comprising over 350,000 acres, with over 27 million acres under review for potential designation.<sup>84</sup>

Although Congress overlooked BLM lands as potential wilderness in the 1964 Wilderness Act, presumably because these areas did not possess significant scenic beauty and were slated for transfer from federal ownership,<sup>85</sup> the Wilderness Act debate did include these lands. Of particular relevance, livestock grazing provisions were included for wilderness on BLM as well as Forest Service lands from 1961 until the final conference committee language, which removed all mention of BLM land from the Wilderness Act.<sup>86</sup>

Congress formally mentioned grazing management in BLM wilderness only in the Arizona Wilderness Act of 1984 and the El Malpais National Monument and Conservation statute of 1987.<sup>87</sup> The Arizona language pertaining to grazing management simply referred to the original Wilderness Act, despite the development of the grazing guidelines four years earlier and specification that grazing management on newly designated national forest wilderness in Arizona be consistent with the grazing guidelines within the same statute.<sup>88</sup> Three years later however, Congress expressly mandated that grazing management in El Malpais conform with the grazing guidelines.

In contrast to this somewhat confusing and lethargic congressional direction for grazing management, by 1983 the BLM issued grazing regulations<sup>89</sup> and operating procedures<sup>90</sup> predicated on

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Pub. L. No. 98-603, § 102, 98 Stat. 3155, 3155 (1984) (all codified at 16 U.S.C. § 1132 note (1988)).

84. See PUBLIC LAND STATISTICS, *supra* note 17, at 53-54.

85. Leshy, *Wilderness and its Discontents—Wilderness Review Comes to the Public Lands*, 1981 ARIZ. ST. L.J. 361, 362-63.

86. See S. 174, 87th Cong., 1st Sess. § 6(c)(2) (1961); S. 4, 88th Cong., 1st Sess. § 4(c)(2) (1963); H.R. 9070, 88th Cong., 1st Sess. § 4(d)(3) (1963); H.R. REP. NO. 2521, *supra* note 37 at 8; H.R. REP. NO. 1829, 88th Cong., 2nd Sess. 6 (1964).

87. Arizona Wilderness Act, Pub. L. No. 98-406, § 302(b), 98 Stat. 1485, 1493 (1984) (codified at 16 U.S.C. § 1132 note (1988)); Act of Dec. 31, 1987, Pub. L. No. 100-225, § 402(b), 101 Stat. 1539, 1542-43 (1987) (codified at 16 U.S.C. § 460uu-32 (1988)).

88. Arizona Wilderness Act, Pub. L. No. 98-406, § 101(f), 98 Stat. 1455, 1489 (1984) (codified at 16 U.S.C. § 1132 note (1988)).

89. 43 C.F.R. § 8560.4-1 (1989).

90. See BUREAU OF LAND MANAGEMENT, U.S. DEP'T OF THE INTERIOR, MANAGE-

the grazing guidelines. Consequently, the BLM and the Forest Service currently manage livestock in wilderness according to the congressional grazing guidelines<sup>91</sup> even though Congress only directed a blanket application to national forest land, not BLM wilderness.

### III. JUDICIAL REVIEW OF NONCONFORMING WILDERNESS USES

Compared to the amount of critical attention that Congress paid to grazing administration in national forest wilderness, judicial review is scant. Only four reviews of the nonconforming practices—mining, timber harvesting, and pest control—have been requested, all by preservation interests. The judgments in these cases affirm agency discretion in regulating these uses because congressional intent leaves room for interpretation. For grazing management, however, questions of discretion are largely moot in light of the grazing guidelines.

The court first reviewed Forest Service discretion to permit mineral extraction within the Boundary Waters Canoe Area Wilderness (BWCA).<sup>92</sup> The district court found that the wilderness objectives of the Wilderness Act prevailed over the contrary min-

MENT MANUAL, § 8560.37(A1), (A2) (1983) (rangeland management) [hereinafter BLM MANUAL].

(A1) *Continuation of Existing Grazing.* Section 4(d)(4)(2) of the Wilderness Act provides for continued livestock grazing where established prior to designating the area as wilderness. The objective of livestock management in wilderness is to utilize the forage resource in conformity with wilderness objectives for each area and the BLM grazing regulations (43 CFR 4100), and through practical reasonable and uniform application of congressional guidelines and policy.

(2) *Congressional Grazing Guidelines.* Further insight on the subject is in the Conference Report on S.2009 (House Report 96-1126) [see *supra* note 75] under the heading 'Grazing in National Forest Wilderness Areas.' These congressional guidelines and policy are to be considered in the overall context of the purposes of the Wilderness Act and are applied nationwide. They are printed verbatim as an excerpt from House Report 96-1126 [see *supra* note 75] in Appendix 2.

The H.R. Rep No. 1126 version of the grazing guidelines adopted in the BLM MANUAL is identical to the original guidelines. H.R. REP. No. 617, *supra* note 61.

91. See *supra* note 90 for BLM MANUAL; see *supra* note 79 for current FOREST SERV. MANUAL.

92. *Izaak Walton League v. St. Clair*, 353 F. Supp. 698 (D. Minn. 1973), *rev'd*, 497 F.2d. 849 (8th Cir. 1974), *cert. denied*, 419 U.S. 1009 (1974).



eral right provisions of the statute.<sup>93</sup> The court of appeals reversed and remanded the case to the district court. The appeals court described the defendant's obligation to provide evidence of mineral right claims and to complete the necessary Forest Service application. Until these obligations were met, the Forest Service could not permit mineral exploration and extraction and judicial review of that decision would be premature.<sup>94</sup> No such permit was ever filed.

Again within the BWCA, the federal courts reviewed a challenge to a Forest Service decision to harvest timber in areas of virgin forest.<sup>95</sup> The district court enjoined the harvest agreeing with plaintiffs that the harvest was inconsistent with the statutory mandate to preserve and protect the natural condition of wilderness areas.<sup>96</sup> The court of appeals reversed; it lifted the injunction and ruled that because timber harvesting in the virgin forests had been planned as early as 1948, the Forest Service could infer from Congress's exemption of timber harvesting in the BWCA in the Wilderness Act that the plan should be fulfilled.<sup>97</sup> Within two years of this ruling, Congress rescinded authority to log in any portion of the BWCA in what stands as the only amendment to the original Wilderness Act.<sup>98</sup>

The final cases challenged Forest Service authority to control southern pine beetle infestations by cutting infested trees and applying pesticides within national forest wilderness in Texas,<sup>99</sup> as well as in Arkansas, Louisiana, and Mississippi.<sup>100</sup> The Forest Service sought to create a buffer of uninfested trees to protect neighboring private forestland. In the Texas case, plaintiffs claimed that the irreparable loss of wilderness character from such cutting outweighed the benefits of beetle control. The court ruled in favor of tree cutting to control beetle infestation, but re-

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93. 353 F. Supp. at 713-15.

94. 497 F.2d at 853-54.

95. *Minnesota Pub. Interest Research Group v. Butz*, 401 F. Supp. 1276 (D. Minn. 1975) *rev'd*, 541 F.2d 1292 (8th Cir. 1976) (*Butz II*).

96. 401 F. Supp. at 1333.

97. 541 F.2d at 1296-98.

98. *Boundary Waters Canoe Area Wilderness*, Pub. L. No. 95-495, § 6(a), 92 Stat. 1649, 1652-53 (1978) (codified as 16 U.S.C. § 1133 amendment note (1988)).

99. *Sierra Club v. Block*, 614 F. Supp. 134 (E.D. Tex. 1985).

100. *Sierra Club v. Lyng*, 662 F. Supp. 40 (D.D.C. 1987), *reh'g denied*, 663 F. Supp. 556 (D.D.C. 1987).

quired that such cutting not exceed that intensity prescribed in agency guidelines.<sup>101</sup> In the other case, plaintiffs argued that science had not proven the methods to be effective and, therefore, would not qualify as "necessary" measures permitted by the Wilderness Act to control fire, insect, and diseases.<sup>102</sup> Before ruling, the district court required the Forest Service to complete an Environmental Impact Statement describing measures to control the pine beetle.<sup>103</sup> The agency's preferred alternative restricted cutting of infested trees to edges contiguous with neighboring private forest land and colonies of red-cockaded woodpeckers, an endangered species.<sup>104</sup> Subsequently, the court ruled that the Secretary of Agriculture was not restricted to scientifically proven methods for control, but was authorized to use reasonable measures designed to restrain or limit the beetle infestation.<sup>105</sup>

Two commentators, Rohlf and Honnold, incorrectly interpreted the BWCA and later pine beetle rulings as a judicial requirement for "minimum tool" management of accepted nonconforming uses in wilderness; managers could only employ measures having the least adverse effect on wilderness character.<sup>106</sup> This faulty argument is based on the overturned district court ruling in the BWCA case,<sup>107</sup> and an unsupported claim that the Forest Service's less intensive spot-cutting approach to control beetles in the southeast was in response to a court interpretation that required a "minimum tool" approach.<sup>108</sup> In fact, these rulings sug-

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101. 614 F. Supp. at 135, 139-40.

102. 662 F. Supp. at 41.

103. *Id.* at 43.

104. FOREST SERV., U.S. DEP'T OF AGRIC., FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE SUPPRESSION OF THE SOUTHERN PINE BEETLE 2-35, 2-44 (1987).

105. *Sierra Club v. Lyng*, 663 F. Supp. 556, 558-61 (D.C.C. 1987).

106. Rohlf & Honnold, *Managing the Balances of Nature: The Legal Framework of Wilderness Management*, 15 *ECOLOGICAL L.Q.* 249 (1988).

107. *Id.* at 265; see also *Minnesota Pub. Interest Research Group v. Butz*, 401 F. Supp. at 1333.

108. Two commentators have noted:

Close analysis of the final opinion in the *Lyng* litigation [663 F. Supp. at 556] suggests that the court imposed an affirmative burden on the Forest Service to justify its beetle suppression program because the court interpreted the Wilderness Act to require that, under section 4(d)(1), agencies employ the 'minimum tool' approach when carrying out fire, insect, or disease control programs in wilderness . . . The *Lyng* court, therefore, essentially adopted similar reasoning to that used by the district court in the *Butz II* decision [541 F.2d at 1292]: when the Wilderness Act authorizes

gest the opposite conclusion: the Secretary of Agriculture has broad discretion in determining the appropriate tools (structures, facilities, and equipment) for managing accepted nonconforming uses.

By developing and demanding implementation of the grazing guidelines, Congress defined the appropriate tools for managing livestock grazing in wilderness largely as those in place at the time of designation. Therefore, the guidelines leave relatively little room for agency discretion. This clarification of the guidelines occurred after Congress rescinded permission to harvest timber in BWCA, offering substantial evidence that the passage of statutory reference to the grazing guidelines was a deliberate affirmation of continued grazing in wilderness.

#### IV. THE STATUS OF GRAZING ON FORTHCOMING BLM WILDERNESS LANDS

With attention turning toward wilderness designation on BLM lands that currently have significant livestock grazing use,<sup>109</sup> how will Congress handle the inveterate paradox of wilderness preservation accompanied by this sanctioned nonconforming use? Will existing grazing guidelines suffice and remain unchanged, or will stricter or more lenient standards be adopted? Additionally, will Congress continue to address this issue with general directives, or will site specific provisions become more customary?

Policy design theory holds that policy innovation is least likely when problems and pressures are familiar and a precedent is available; innovation is more likely in novel situations.<sup>110</sup> This

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managers to take action within wilderness 'necessary' to accomplish purposes of the Wilderness Act but inconsistent with preservation of wilderness character, managers may employ only those methods that have the least adverse effect on wilderness character.

Rohlf & Honnold, *supra* note 106, at 270. However, the Boundary Water ruling (*Butz II*) actually affirmed authority to log in the virgin forest areas in question. *Butz II*, 541 F.2d at 1298. Moreover, the pine beetle ruling (*Lyng*) did not require a "minimum tool" approach; instead, the court concluded that the Secretary of Agriculture could use those measures that are "reasonably designed to restrain or limit the threatened spread of beetle infestations from wilderness land onto neighboring property." *Lyng*, 663 F. Supp. at 560.

109. See *supra* note 19 and accompanying text.

110. See generally Schneider & Ingram, *Systematically Pinching Ideas: A*

theory guides an analysis of how Congress might handle the paradox of livestock grazing in new BLM wilderness. The impending problem of designating or releasing areas that contain extensive livestock grazing structures, facilities, and established motorized equipment use following the BLM roadless area review parallels the situation that Congress faced with RARE II Forest Service areas in 1980.<sup>111</sup> Thus the situation is familiar, not novel. Moreover, formidable pressure from both wilderness advocates and opponents, including livestock interests, also resembles the 1980 situation.<sup>112</sup> Additionally, the precedent of a compromise solution, the grazing guidelines, suggests that there will be little innovation in Congress's handling of the grazing-in-wilderness paradox.

The relative political support between wilderness advocates and opponents is the most mercurial variable in the current situation. If the influence of wilderness advocates increases so that compromise with livestock interests is not critical to wilderness designation, then the probability of stricter guidelines increases. In this scenario, Rohlf and Honnold's "minimum tool" concept<sup>113</sup> of wilderness management might prevail to the extent that Congress would return grazing management to "purity" restrictions on structures, facilities, and motorized equipment use existing before the grazing guidelines.<sup>114</sup> With greater shift in the influence of wilderness advocates, where compromise with livestock interests is not only unnecessary but emerges as antithetical, revocation of livestock grazing as an acceptable nonconforming use becomes more likely. Revocation would require an overwhelming shift in influence because a system wide revocation of special provisions allowing nonconforming uses has no precedent. The only amendment to the Wilderness Act revoked the special provision permitting timber harvest, mining, and some motorized vehicle use solely within the Boundary Waters Canoe Area Wilderness.<sup>115</sup> Alternatively, if opposition to wilderness increases, so does the likelihood of more lenient guidelines which might rely more on economic criteria to determine the acceptability of structures, fa-

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*Comparative Approach to Policy Design*, 8 J. PUB. POL'Y 61 (1989).

111. See *supra* notes 50-51 and accompanying text.

112. See *supra* text accompanying notes 52-66; see *infra* notes 116-119.

113. See Rohlf & Honnold, *supra* note 106, at 265, 270.

114. See *supra* notes 44-47 and accompanying text.

115. P.L. No 95-495, §§ 4(c), 6(a), 11, 92 Stat. 1649, 1650-52 (codified at 16 U.S.C § 1133 note (1988)).

cilities, and motorized equipment use.

The importance of variation in the extent and intensity of livestock grazing and supporting structures, facilities, and motorized equipment use ranks second to political influence in assessing if and how Congress will designate new wilderness areas. If extent and intensity of livestock use are only locally constrained by the grazing guidelines, then special considerations for wilderness management become more likely than the system wide application of the guidelines. If opposition to designation focuses on grazing restrictions, the establishment of more liberal grazing policies in special management zones becomes more likely. Such special management zones for nonconforming uses have precedent in wilderness designation statutes; cobalt mining is the dominant use in a special mining management zone within the River of No Return Wilderness.<sup>116</sup> Alternatively, if pressure for designation increases, localized establishment of special management areas excluding livestock might be more likely.

If significant shifts in support or opposition to the status quo are necessary for innovative policy, then the absence of a clear shift suggests that innovation, and therefore resolution of the grazing-in-wilderness paradox, will not occur soon. Although strong support for wilderness continues,<sup>117</sup> recent designation stalemates in Montana and Idaho suggest that wilderness support has not surmounted its opposition.<sup>118</sup> Opponents to additional

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116. Central Idaho Wilderness Act, Pub. L. No. 96-312, § 4(d)(1), 94 Stat. 948, 949 (1980) (codified at 16 U.S.C. § 1133 note (1988)).

117. The level of wilderness support appears to have increased in the last 10 years, but wilderness use has declined. Paid subscriptions to the Wilderness Society organ, *Wilderness*, has nearly tripled from 59,041 in 1978, *Statement of Ownership, Management, and Circulation*, WILDERNESS, Winter 1978, at 46, to 213,793 in 1988, *Statement of Ownership, Management, and Circulation*, WILDERNESS Oct./Dec. 1988, at 66. In national forest areas that were established in 1964, visits in 1988 accounted for only 83% of visits in 1979. While the number of national park backcountry/wilderness units reporting use grew by 20% between 1970 and 1986, actual visits declined more than 35% between 1976 and 1986. Lucas, *A Look at Wilderness Use and Users in Transition*, 29 NAT. RESOURCES J. 41, 52-53 (1989).

118. In 1988, a Montana wilderness bill (S. 2751, 100th Cong., 2d Sess.) designating 1.4 million acres and releasing 4 million acres received an eleventh hour veto by President Reagan because of concerns over limiting potential mineral developments and jobs. See *Montana Wilderness Bill Vetoed; Reagan Hints Mineral Impact*, Pub. Land News, November 10, 1988, at 2. A RARE II bill designating 1.4 million acres in Idaho (S. 2025, 100th Cong., 2d Sess.) stalled in Congress

wilderness can claim victory in the above battles. But the designation of wilderness is at best delayed in these states; only by designating significant acreage as wilderness will Congress put the dispute to rest.

The balance of power may shift, however, as wilderness opponents start emulating the tactics of proponents. The Wilderness Impact Research Foundation, a recently formed umbrella organization for diverse anti-wilderness groups, is engaging in national lobbying tactics.<sup>119</sup> Nonetheless, wilderness opponents are probably not strong enough to overcome the public's attraction to wilderness. Furthermore, the issue of livestock grazing in wilderness does not show a clear changing of the guard. If the issue of livestock grazing on all public land is used as a surrogate for wilderness grazing, then grazing opponents can claim no significant victories in the past ten years. The formula used to calculate grazing fees has not changed dramatically since 1978, and livestock numbers have not declined more than ten percent in the past twenty years, despite concerted efforts by grazing opponents.<sup>120</sup> Grazing

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because agreements could not be reached on acreage, water rights, release language, and nonconforming uses. *See Montana Last of Wilderness Bills with a Chance*, Pub. Land News, Sept. 29, 1988, at 6, 10.

119. The Wilderness Impact Research Foundation, formed in 1986, currently includes representatives from timber, mining, hunting, livestock, and off-road-vehicle user groups.

120. The formula for calculating grazing fees on most public lands has not changed substantially since the passage of the Public Rangeland Improvement Act of 1978 (PRIA), 43 U.S.C. § 1905 (1982). At that time, the Forest Service and BLM began using the same formula. At the end of 1985, this formula expired. Between 1986 and 1988, the fee was frozen by Exec. Order No. 12,548, 3 C.F.R. 188 (1987). Finally in February 1988, formal rules, 36 C.F.R. § 2250-53, were promulgated jointly by the two agencies, making only slight modifications in the PRIA formula. Throughout this period, grazing fees were less than full market value relative to comparable private land fees.

Forest Service AUMs generally totaled 10 million between 1952 and 1986, while BLM AUMs generally totaled 11-13 million between 1969 and 1986. *See RANGE FORAGE SITUATION*, *supra* note 17, at 40. Environmental groups, including the Natural Resources Defense Council (NRDC) challenged rules setting grazing fees below fair market value and argued that the rules violated FLPMA. They lost, however, in *Natural Resources Defense Council, Inc. v. Hodel*, No. S-86-0548, slip op. at 2 (E.D. Cal. Oct. 15, 1978). NRDC was also unsuccessful in its challenge of a BLM decision to manage where forage was overused or of poor quality by improving facilities such as fences and waters combined with seedings of forage species and other vegetation manipulations instead of reducing the number of livestock grazing on the lands. *Natural Resources Defense Council, Inc. v. Hodel*,

proponents, although "running scared," have managed to retain their long-held favored status in Congress in the face of vociferous opposition. For example, the language establishing the Great Basin National Park indefinitely fixed grazing at the level prior to the transfer from the Forest Service to the National Park Service.<sup>121</sup> It had been more typical to eliminate or grandfather grazing use for the life of the permittee when transferring national forest lands to the National Park Service.

In contrast to the static or mixed signals in the accomplishments of rival wilderness and grazing interests, the status quo is likely to continue. The application of the grazing guidelines has been so uneventful that their tenure has been described as peaceful.<sup>122</sup> BLM adopted them without incident or direction from Congress.<sup>123</sup> The political expedience of the guidelines is obvious from their repeated insertion in wilderness statutes where livestock use was significant.<sup>124</sup> In addition, because the guidelines have been so widely accepted, more ominous issues of water rights, timber harvests, and mining<sup>125</sup> will probably wrest serious consideration from grazing in the forthcoming wilderness designation debate.

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624 F. Supp. 1045 (D. Nev. 1985). For examples of persistent attacks on the current system of administering livestock on public lands, see generally NATURAL RESOURCE DEFENSE COUNCIL, *OUR AILING RANGELANDS: CONDITION REPORT* (1985); H.R. REP. NO. 593, 99th Cong., 2d Sess. (1986); N. FERGUSON & D. FERGUSON, *SACRED COWS AT THE PUBLIC TROUGH* (1983).

121. "Subject to such limitations, conditions, or regulations as he may prescribe, the Secretary [of the Interior] shall permit grazing on lands within the park to the same extent as was permitted on such lands as of July 7, 1985. Grazing within the park shall be administered by the National Park Service." Great Basin National Park Act, Pub. L. No. 99-565, § 3(e), 100 Stat. 3181, 3182 (1986).

122. See D. ROTH, *supra* note 49, at 69.

123. See *supra* note 90.

124. See *supra* note 80.

125. Traditionally, wilderness battles have focused on boundaries, particularly in reference to inclusion of significant timber and mineral resources, as illustrated by the recent veto of the Montana wilderness bill. See *supra* note 118. Recently, however, resolution of federal reserved water rights in designated wilderness has shifted emphasis from boundaries to the designation itself. In 1989, discussion surrounding the Nevada (S. 974, 101st Cong., 1st Sess. (1989)) and Arizona (H.R. 2570, 101st Cong., 1st Sess. (1989)) wilderness bills have focused on water rights. See *Wilderness: Nevada RARE II, Arizona BLM Bill Moving*, Pub. Land News, Aug. 17, 1989, at 3-4; *Nevada RARE II Bill Signed; Water Rights Still Up in the Air*, Pub. Land News, Jan. 4, 1990, at 1-2; see generally, Leshy, *Water and Wilderness/Law and Politics*, 23 LAND & WATER L. REV. 389 (1988).

Assuming no fundamental shift in political influence between wilderness advocates and opponents during the upcoming BLM wilderness debates, Congress will most likely maintain the status quo through continued reliance on the grazing guidelines. The only variation on this approach may be the adoption of special management zones in new wilderness to delineate areas where grazing management will be either more liberal or conservative than the grazing guidelines. Hence, Congress will not resolve the paradox of maintaining livestock grazing and its accompanying structures, facilities, and motorized equipment use in wilderness. Instead, Congress will perpetuate the paradox in keeping with the tradition of compromise since 1924.<sup>126</sup>

## V. CONCLUSION

Through passage of the Wilderness Act, Congress wrested wilderness designation and management authority from Forest Service discretion to guarantee the permanence of areas "where the earth and its community of life are untrammelled by man . . . without permanent improvements . . . [and] the imprint of man's work [is] substantially unnoticeable".<sup>127</sup> Under Forest Service discretion, wilderness designation was considered insufficient in extent, insecure in permanence, and too permissive in allowing nonconforming uses. Livestock grazing is one such nonconforming use originally permitted by the Forest Service, continued under congressional authority, presumably to stave off potentially significant opposition to the Wilderness Act and designation of wilderness areas.

In the twenty-five years since passage of the Wilderness Act, Congress has been more accepting of livestock management structures, facilities, and motorized equipment use than the Forest Service would have preferred. Wilderness designation and permanence have prospered under twenty-five years of congressional authority, growing from under nine million to nearly ninety million acres. However, resolution of the paradox of permitting grazing management structures, facilities, and motorized equipment use in areas reportedly "untrammelled by man" has not occurred; instead it has become normalized. Designating wilderness in BLM

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126. See *supra* text accompanying note 24.

127. 16 U.S.C. § 1131(c) (1988).



lands where livestock use is equivalent or greater than Forest Service lands, will begin in the 1990s. The most likely forecast of congressional handling of livestock grazing and inherent structures, facilities, and motorized equipment use in new BLM wilderness will be the blanket application of the grazing guidelines developed for Forest Service wilderness because these guidelines have become politically expedient and opposition to their application is not significant.

## VI. POSTSCRIPT

After completing this manuscript, the first state BLM wilderness bill, the Arizona Desert Wilderness Act,<sup>128</sup> was introduced and approved by the full House and the Senate Energy and Natural Resources Committee,<sup>129</sup> and will likely be presented to the full Senate in the fall of 1990. As predicted in this Article, the Arizona bill uses the 1980 grazing guidelines to direct livestock management in new BLM wilderness.<sup>130</sup> Both the House and Senate committee reports for this bill explain that the reliance on the guidelines results from their having been successful in solving grazing administration problems in Forest Service wilderness.<sup>131</sup> If approved, this bill will reverse the omission of the guidelines for BLM lands in the Arizona Wilderness Act of 1984,<sup>132</sup> and will

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128. H.R. 2570, 101st Cong., 2d Sess. (1990).

129. H.R. 2570 passed the House by a vote of 356 to 45 on February 28, 1990; it passed the Senate Committee on Energy and Natural Resources on June 20, 1990. S. REP. NO. 359, 101st Cong., 2d Sess. 10 (1990).

130. The bill directs all livestock management to adhere to the grazing guidelines established in 1980, and for the Secretary of the Interior to review all policies, practices, and regulations regarding livestock grazing in Arizona wilderness areas administered by the BLM. S. REP. NO. 359, *supra* note 129. In addition, the House Report prints the grazing guidelines in Appendix A. H.R. REP. NO. 405, 101st Cong., 2d Sess. 41-43 (1990).

131. "[T]he Committee concluded that the 1980 guidelines have been successful in providing for proper implementation of relevant provisions of the Wilderness Act, and they should be explicitly made applicable to wilderness areas in this bill which are to be managed by the Bureau of Land Management." H.R. REP. NO. 405, *supra* note 130, at 27-28; The Senate language is less explicit than the House. See S. REP. NO. 359, *supra* note 129, at 11.

132. Arizona Wilderness Act, Pub. L. No. 98-406, § 302(b), 98 Stat. 1485, 1493 (1984) (codified at 16 U.S.C. § 1132 note (1988)); see *supra* text accompanying notes 87-88,

continue the tradition of restating grazing guidelines in wilderness legislation when significant livestock use is involved.