IMPLEMENTATION OF WILDERNESS ACT

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS

AND THE

SUBCOMMITTEE ON FOREST AND FOREST HEALTH

OF THE

COMMITTEE ON RESOURCES

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

EXPLORING THE IMPLEMENTATION OF THE 1964 WILDERNESS ACT BY THE FOREST SERVICE, THE BUREAU OF LAND MANAGEMENT, AND THE NATIONAL PARK SERVICE

APRIL 15, 1997—WASHINGTON, DC

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IMPLEMENTATION OF THE 1964 WILDERNESS ACT

TUESDAY, APRIL 15, 1997

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS, AND SUBCOMMITTEE ON FOREST AND FOREST HEALTH, COMMITTEE ON RESOURCES,

Washington, DC.

The Subcommittee met, pursuant to call, at 10:06 a.m. in room 1324, Longworth House Office Building, Hon. James V. Hansen (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. JAMES HANSEN, A U.S. REPRESENTATIVE FROM UTAH; AND CHAIRMAN, SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS

Mr. HANSEN. The committee will come to order.

The Subcommittee on National Parks and Public Lands and the Subcommittee on Forests and Forest Health convene this hearing to explore the implementation of the 1964 Wilderness Act, by the Forest Service, the Bureau of Land Management and the National Park Service. I welcome Chairman Chenoweth and appreciate her work on this issue and look forward to the testimony today.

The 1964 Wilderness Act established the National Wilderness Preservation System which "shall be administered for the use and enjoyment of the American people," section 2(a) of the 1964 Wilderness Act. In their zeal to protect and conserve our national heritage, our Federal national land management agencies forget about the fact these lands were set aside for the American people. These areas are not museums where we can only look and not touch. They are for the "gathering and dissemination of information regarding their use and enjoyment as wilderness."

The Federal Government currently manages over 104 million acres of wilderness in this country. Within these vast areas are preserved the greatest and most remote places on this Earth. As a veteran on this committee, I am proud to have played a role in designating millions of these acres in Utah, Montana, Colorado, Arizona, California and many other States. The Wilderness Act and its original intentions continue to be important tools in protecting our Federal lands, but we must remember that people are just as important to this equation.

We will hear testimony today which should amaze the members of this committee. We will hear of people being punished for trying to save their own lives, of property rights being violated, of Boy Scouts being excluded from wilderness areas, of wildlife being al-

lowed to perish and people simply being excluded from the "use and enjoyment" of our wilderness areas.

We have a number of witnesses today, and I would like to ask we keep our opening statements brief so we might move on to the witnesses and have an opportunity to explore the many issues before us. I welcome our witnesses and again appreciate the work of Chairman Chenoweth on this hearing and look forward to the testimony.

I will now turn to the Chairman of the Subcommittee on Forests and Forest Health, the gentlewoman from Idaho.

STATEMENT OF HON HELEN CHENOWETH, A U.S. REPRESENTATIVE FROM IDAHO; AND CHAIRMAN, SUBCOMMITTEE ON FOREST AND FOREST HEALTH

Mrs. CHENOWETH. Thank you, very much, Mr. Chairman, and I am pleased to be conducting this hearing with Chairman Jim Hansen. I want to thank him for his hard work on this issue and I appreciate having the opportunity to work with him on this hearing.

The Wilderness Act of 1964 is one of our principal environmental laws. Quoting from the Act, the purpose of the Wilderness Act is "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness."

Wilderness was created to allow American citizens the ability to enjoy nature in its purest sense. It has been created to ensure that future generations have the same opportunity to enjoy the beauty of the land that we do today. However, several incidents have been brought to the committee's attention that bring into question whether our land management agencies are implementing the Wilderness Act properly.

Today, we will have the opportunity to hear testimony from a number of citizens that have been harassed by our land management agencies in wilderness areas. Many of you are familiar with the case of the 14-year-old Boy Scout who was separated from his troop in the Pecos Wilderness area in New Mexico. After a helicopter located the boy, the Forest Service refused to permit the helicopter to land to bring him to safety.

And yet, in my State of Idaho, some ranch hands notified the rangers on the Boise National Forest that a gray wolf had been injured about 4 miles inside the Frank Church River of No Return Wilderness. The recovery biologist for the U.S. Fish and Wildlife Service determined that a helicopter would be needed to transport the wolf to safety. Permission was sought from and granted without question by the Forest Service to allow the helicopter to land and transport the wolf.

I do not question the seriousness of the injury of the wolf, but I do question the wisdom of an agency that allows for a helicopter to enter a wilderness area for a wolf, but refuses on the other hand to allow a helicopter to land to bring a young man to safety. As we will hear today, the implementation of the Wilderness Act by our Federal land management agencies is fraught with many similar stories.

What happened to common sense? What happened to compassion in our Federal land management agencies? Has the Wilderness Act gone wild? I say that the Act has not, but from the documentation

that we have received, the Federal agencies' implementation warrants much attention and continued oversight. It is my intention to introduce legislation that will guarantee that our Federal agencies will act—will not have the ability to harass American citizens that are simply enjoying the beauty of our wilderness areas.

Wilderness controversies are not confined to the West. I am particularly interested in hearing the testimony of Kathy Stupak-Thrall of Michigan to learn how the Forest Service interprets the legal term "valid existing rights" and the rights of the State of Michigan to control water within its borders.

I believe that as the public begins to understand the inflexible nature of how our Federal agencies implement the Wilderness Act, and as the public begins to learn of the horror stories, some of which we will hear today, we will be able to inject some common sense into the wilderness debate.

I want to be clear, I support the goals of the Wilderness Act. Preserving pristine areas for our children is a laudable purpose, but when the Act has been administered in such a way that human life and limb are at risk, I have to question whether we have gone too far. When property is taken without compensation, I have to ask whether that is the intent of the 1964 Act; and when a large segment of our population is unable to access wilderness, I am forced to wonder just why we are blocking off these beautiful lands to so many of our citizens.

I am hopeful that this hearing will help answer some of these questions. That being said, I am pleased to be conducting these hearings with Chairman Hansen and want to welcome our witnesses.

I look forward to receiving your testimony.

Mr. HANSEN. Thank you. We appreciate the testimony.

The gentleman from Michigan, Mr. Kildee, is sitting in for the gentleman from American Samoa, Mr. Faleomavaego, and we will now turn to Mr. Kildee.

STATEMENT OF HON DALE E. KILDEE, A U.S. REPRESENTATIVE FROM MICHIGAN

Mr. KILDEE. Thank you, Mr. Chairman, and Madam Chair. Thank you for holding this hearing today.

I would first like to welcome all of our witnesses here today who are testifying, particularly Mr. Ted Nugent and Ms. Kathy Stupak-Thrall, both from my home State of Michigan.

Mr. Nugent, I would like you to know many members of my staff, along with myself, are big fans of yours; and although our opinion may differ in how to manage our Nation's wilderness areas, we will probably find some areas of agreement, too. I appreciate your deep interest in this issue and your presence here today.

I have been a member of the committee for the past 15 years, and in that time, I have always believed we need to manage our public lands in a way that benefits the American people. We live in a country where people have diverse interests, tastes and beliefs; that is why I have always supported the concept of multiple use in the management of our Nation's public lands.

I have supported timber harvesting in our national forests. It is important to have the economy and the health of the forest in

mind, and I have advocated for a wide range of recreational activities on the forest, including hunting, fishing, snowmobiling, camping and hiking.

It is my belief the multiple-use philosophy, a law that led me to write the Michigan Wilderness Act, a law that set aside 92,000 acres of pristine forestland in Michigan so they can be managed much as they came from the hand of God.

In fact, this year marks, Mr. Chairman and Madam Chair, the tenth anniversary signing of the Michigan Wilderness Act, and in 10 years, these areas have become permanently protected, nothing has changed. And that is the beauty of the wilderness law: Nothing man has done has changed the lands.

In Michigan, there are 2.7 million acres of national forestland in Michigan's three national forests. Of that, only 92,000 acres are designated as wilderness areas. That means only 3 percent of the national forest land in Michigan is protected as wilderness area.

I know not everyone is going to visit a wilderness area, but it is nice to know in today's high-paced technological society, there will always be areas people can ski, snowshoe, or paddle a canoe in an absolutely motorless area. This is all possible because in 1964 Congress had the foresight and wisdom to understand that some parts of a forest are too precious to develop.

I know your interest in the outdoors, Mr. Nugent, and in Michigan, we have a long and very proud history, tradition of hunting and fishing. It is a tradition that my family has enjoyed for five generations in Michigan. In fact, my two sons, who are now lieutenants of the United States Army, are avid hunters and fishermen. My own son got hooked. The first 15 minutes of his first day of deer hunting in Michigan, he bagged a buck; and that has hooked him ever since, and he is a regular hunter. That is why when we wrote the Michigan Wilderness Act; we allowed hunting and fishing in the wilderness areas. We let that be regulated by the State ANR.

Wilderness areas allow for a variety of public uses of the land, ecological safety of the area. Many of our Nation's wilderness areas are really the crown jewels of our national patrimony. I believe we should be thanking our public land managers for the outstanding job they have done in protecting these lands, and I have been up there visiting the lands, visiting the managers, visiting the people up there. I have had two or three hearings up there on the wilderness areas. I only wish those managers had been invited to testify today so I could thank them in person.

And thank you, Madam Chair, Mr. Chairman. I look forward to the hearing today.

Mr. HANSEN. I appreciate the comments of the gentleman from Michigan.

We will proceed in this manner. The gentleman from New Mexico, and we will ask Mr. Skeen to join us on the dais, and then we will go to our first panel.

STATEMENT OF THE HON. JOE SKEEN, A U.S. REPRESENTATIVE FROM NEW MEXICO

Mr. SKEEN. Thank you very much, and I want to thank my good friends for holding this important hearing on the current policies

regarding management of our Nation's wilderness area areas, but I especially want to thank you for allowing me to come here today to pay my respects to an outstanding citizen of New Mexico, and that is Bobby Unser.

Bobby Unser and his family have become a living symbol of auto racing in America today. This three-time winner of the most famous race in America, the Indianapolis 500, 14-time winner of the Pikes Peak Hill Climb and 35-time winner of Indy Car races is today one of the premier spokespersons for auto racing in America. Millions of Americans know him from his career as a race broadcast analyst for ABC, and his background has given him the tremendous insight he passes on to viewers across America who have never been behind the wheel of a car going 200 miles an hour, except on the 14th Street Bridge.

Bobby has never forgotten his hometown of Albuquerque and, we will never forget him or his family; he has been a credit to his city, his family; and we are proud the Land of Enchantment is his home.

I only wish this hearing was focusing on honoring Bobby and the great sport of auto racing.

I want to remind people, the first wilderness in America was created in New Mexico. The Wilderness Act was a product of Senator Clinton Anderson of New Mexico. So suffice it to say, we know a little about wilderness in our State, and I will let Bobby tell you about his situation today.

What I want to relay to this committee is my concern that government agencies are spinning out of control. The Bobby Unser story you will hear today should never have happened. The other stories you will hear today should never have happened. The selective enforcement and prosecution of our resource laws are not what Senator Anderson intended or envisioned.

I will tell you what upsets me even more is when the cases are brought to public attention, then a curious thing happens. All of a sudden, mysterious stories start to appear in the news media questioning citizens that have been wronged by the government.

I don't understand why responsible people in the Forest Service or other agencies let situations like this get out of hand. Is that what Reinventing Government is all about? Just ask yourself, if this can happen to Bobby Unser, this can also happen to anyone out there. We basically are at the mercy of local bureaucrats. It is no wonder people have such a low opinion of government and its leaders.

Perhaps we have reached the dumbing down of government, not the downsizing of government. I sincerely hope that is not the case.

Mr. Schiff asked me to pass along his regrets for not being here today. I am certain he would have had many good thoughts to add.

So thank you, Mr. Chairman and Mrs. Chenoweth.

Mr. HANSEN. Thank you, Mr. Skeen.

Joe Skeen has been very active in the Western Caucus and taking a very big interest in the issues in front of us.

Would you like to join us?

Mr. SKEEN. I will join you.

Mr. HANSEN. Rod Grams just walked in, Rod from Minnesota. We are grateful to have you. He used to be a member of our body

until he defected and went to the House of Lords. And, Rod, we would like to turn to you. We are honored that you would join us.

STATEMENT OF THE HON. ROD GRAMS, A U. S. SENATOR FROM MINNESOTA

Senator GRAMS. Thank you, Mr. Chairman, Chairman Chenoweth and other distinguished members of this panel. I appreciate the time to come and talk to you this morning. I commend you for holding this very important oversight hearing and appreciate the opportunity to speak on wilderness before the panel today.

Wilderness protection and management is often perceived as a Western lands matter, but this issue is important within my home State of Minnesota. Nearly every Minnesotan, including myself, is proud of our State's pristine wilderness area.

In both 1964 and 1978, Congress designated portions of northeastern Minnesota as one of our nation's only lakeland-based Federal wilderness areas. First envisioned by Hubert Humphrey, whom many regard as the father of the wilderness system, this was to be a unique wilderness area, allowing for legitimate multiple recreational uses.

Specifically in 1964, when Senator Humphrey first included the Boundary Waters as part of the National Wilderness System, he made a promise to the people of northeastern Minnesota, saying, quote, "The wilderness bill will not ban motorboats." It is safe to say, without that commitment, this region would not be a wilderness area today.

In 1978, additional legislation was passed, making further enhancements such as a ban on logging and mining. The 1978 law also limited recreational uses. For instance, motorboat users could only enjoy 18 of the area's 1,078 lakes. Today, we recognize this one million acres as the Boundary Waters Canoe Area Wilderness.

Like many laws passed by Congress, the 1978 legislation was well intended and had unforeseen consequences. Indeed, many segments within the law were justified, but other provisions imposed significant economic and social costs in neighboring northeastern Minnesota.

The debate over the 1978 law has become a symbol of the difference between what the role of government should be and what it has become with many in northeastern Minnesota pointing to the ongoing struggle to restore the rights of citizens to have reasonable input and access into the cherished Boundary Waters.

Since 1978, the people have been subjected to ever-increasing forest regulation in the Boundary Waters. Many in the area have seen their customs, cultures and traditions uprooted by Federal regulations which have shut them out of the land they have responsibly cared for in the past and now continue to call home.

Definition changes and bans are just some of the administrative changes that have twisted the original intent of the Boundary Waters legislation. Many point to what they believe are unfair permit reductions, which effectively keep them out of the few motorized lakes in the Boundary Waters. Even the Forest Service admits the permit system needs some simplification. But even if the permit

system was reformed, it would not make a difference for those who are less physically fortunate.

Perhaps the most egregious example of how the 1978 law has been turned on its head is the court-mandated closure of three motorized portages which allowed the disabled, the elderly and those with young families to enter into the wilderness area. Under the legalistic trickery, radical environmentalists deceived the Congress and the people of northern Minnesota into believing these portages which connect motorized lakes would stay open. Unfortunately, that was not the case after 1993, when the Federal Court of Appeals ruled in favor of shutting out those less fortunate.

Now the Forest Service justifies the Court's action, saying accessibility is not being denied, but you can't tell that to those who can no longer access our public lands. For example, John Novak, a veteran from Ely, Minnesota, wrote me about his frustration with the closing of the portage, saying, I quote, "I was good enough to go into the armed services for our country for 3 years back in the 1940's, but now that I am disabled, I am not good enough to get into the Boundary Waters."

Another letter from a man named Joe Madden in Virginia, Minnesota, stated, "I went to visit the Boundary Waters with my grandfather. We wanted to go fishing in Trout Lake, but we couldn't get there because we could not get my grandfather's boat over the portage. Please open it up so Grandfather and I can go fishing." A simple request.

The culmination of all these restrictions has had a dramatic impact on the nearby community of Ely, Minnesota. During one of the Congressional hearings on this issue, the mayor of Ely spoke on how class enrollments are down 50 percent since 1978. Minnesota State Senator, Doug Johnson, who represents this area, stated how massive amounts of State money have helped prop up the Ely community.

So, my distinguished colleagues, there can be heavy costs to wilderness, especially to those who live nearby, and that shouldn't be the case. And for this reason, Congressman Oberstar, the dean of the Minnesota delegation, and I have introduced legislation in the last Congress to help restore the commitments made in 1964 and in 1978 and to give nearby communities a reasonable and legitimate voice in the Federal management process.

While our bill was effectively killed in the waning days of the last Congress, I look forward to working once again on behalf of legislation that will be aimed at restoring past recreational commitments.

I and many others have waited patiently while the mediation team struggled to find a solution to the Minnesota wilderness question, and while this effort failed to resolve the major items of disagreement, the time to act will be soon in order to give the same thing every American wants from our government—that is, accountability to the people.

Accountability means balancing the protection of our pristine wilderness, but balancing with the rights of people to legitimately enjoy natural resources, restoring the promises made in the past, and forming a partnership with the people to ensure those promises will be honored in the future. And it also means keeping the

Federal Government in check to guarantee it works for the best interests of the people and not just for a select few. And above all, it means keeping our public lands truly available to the public.

We who love the Boundary Waters canoe area are working toward those goals. I strongly believe those goals are worthy of every Federal wilderness area, and I would urge this panel to keep them in mind as it pursues its oversight responsibilities and its legislative actions.

That concludes my testimony, so please save any of the hard questions for those with me here today, who will be testifying later on the issue. And again I want to commend you for your leadership and your past help on this issue, and I look forward to working with you once again in the future on this very important legislation.

Mr. HANSEN. We appreciate your spending time with us.

We will turn to our first panel.

Mr. VENTO. Mr. Chairman, is the Senator not subject to questioning?

Mr. HANSEN. The Ranking Member and I agreed prior to this we would just have opening remarks from the three of us and those folks.

Mr. VENTO. If I could have unanimous consent to speak for 2 minutes out of order.

Mr. HANSEN. Is there objection?

We are really in a hurry, and I have to get to an Ethics meeting, so I would appreciate it if everyone would hold their questions for now. I will give the gentleman 2 minutes.

STATEMENT OF HON. BRUCE F. VENTO, A U.S. REPRESENTATIVE FROM MINNESOTA

Mr. VENTO. I just wanted to acknowledge, I wasn't aware that my colleague from Minnesota was going to be here to testify this morning. I wanted to welcome him. I was surprised to see him when I walked in. I would have been here in time to hear your entire statement, Senator, had I known.

But I would just like to point out, this hearing is one I have an intense interest in and helped write the 1978 law; and indeed, as the Senator knows, while there may only be 18 lakes, it is over 20 percent of the water surface. In fact, 25 percent that is open to motorized use, and while certainly the character of those that are able to use the portages has changed in terms of size of the boats, maybe, that can move across it, all the permits for moving boats are going, so there are boats going across that portage.

And I would further point out, the 1978 law has been successful in terms of the fact visitor days have increased from something like 1 million visitor days a year in the Boundary Waters to something like 1.6 million. It is the most extensively used wilderness in the eastern United States and obviously brings up all types of issues in terms of motorized use and how we manage the wilderness. In fact, most wildernesses do not have a permit system; we put that in place because we understood this important resource could be damaged.

I hope meditation works. I hope I can work with the Senator on trying to resolve some of the outstanding differences, but I can as-

sure him we appreciate and respect his points of view, although I think there are different points of view within our State, which obviously are strongly allied against some of the proposed changes that were made.

So hopefully we can resolve it. I think mediation has helped. It hasn't resolved it, but it has helped; and I thank the Senator for his presence and the Chairman for the opportunity to speak for 2 minutes.

Mr. HANSEN. Thank you. We appreciate the gentleman's comment, and we move on to the purpose of this hearing.

We have Bobby Unser with us, a professional race car driver from New Mexico; Ted Nugent, founder of Ted Nugent United Sportsmen of America, from Michigan; and we are honored to have former Senator Malcolm Wallop, Chairman of the Frontiers of Freedom Institute from Arlington, Virginia; and Kathy Stupak-Thrall, from Crooked Lake North Shore Association. We are grateful to all of you for being here.

And we also have Perry Pendley with us, and so we will—I guess, if it is all right, we will start with you, Mr. Nugent, and we will go right across. It is going to be a full hearing today, so we don't want to be tough on time, but if most of you could keep it close to 5 minutes, I would appreciate it. And if you go over a little bit, I understand.

This is the first panel. We are grateful to have you here. We know of your many accomplishments, and we appreciate you taking the time to come and spend some time with us.

So we are going to put that light on, and it will go green, yellow, and red and when it gets red, if you can wrap up, we would like you to wrap up. I don't know how that works with race car drivers, but I think the green light means go, and if we put a checkered light up, you will know you won.

So Mr. Nugent, we will start with you.

STATEMENT OF TED NUGENT, PRESIDENT AND FOUNDER, TED NUGENT'S UNITED SPORTSMEN OF AMERICA, JACKSON, MICHIGAN

Mr. NUGENT. Thank you very much, Chairmen Hansen and Chenoweth and my good neighbor, Mr. Kildee, in Michigan. It a pleasure to make a statement before you to examine the implementation of the 1964 Wilderness Act on Forest Service and Bureau of Land Management lands.

I come before you today as a father first, an American citizen, a proud hunter and the founder of Ted Nugent, United Sportsmen of America, with over 30,000 members since 1989. I am also on the National Rifle Association's Board of Directors, and I am the invited guest and a member of Native American Fish and Wildlife Service and guest of the Lakota Indians and the Assiniboine and Gravan Indian nations as a DARE officer teaching children that got high on my adventure beyond the pavement instead of the poisons that oftentimes represent an alternative to them.

Although it is certainly a pleasure to be here today, far more importantly, I consider it my duty to represent the hearts and souls of working-hard, playing-hard families across America, who I am privileged to connect with, over the 30 years of touring and meet-

ing face to face at personal campfires and round table think tanks about our great culture of connecting with mother Earth, via our proud culture of responsible resource stewardship in our hunting, fishing, trapping, multiuse great outdoors life-style and heritage that is alive and well and growing in many areas of America today.

It is these mothers and fathers and sons and daughters who respond to a glowing duty deep in our hearts, via hands-on participation, shoulder to shoulder with Mother Nature as an inextricable team player. It is the pulse of the truly environmentally aware community of this Nation that nature without man is unnatural, and the Wilderness Act is supposed to be an outline for truthful cause-and-effect accountability, safeguarding the precious wildlands from abuse, disregard in vandalism and the worst curse of mankind, disassociation.

It is a growing concern that ignorance, based on willful citified assumptions will extract caring people from the very reasoning and monitoring function that wild access facilitates. It is no more abusive or unnatural for a family to walk a designated trail in pure wilderness settings in modern, state-of-the-art hunting boots than for migrating elk to cut trails in their instinctual activities. It is no more offensive for a bull elk to trash young trees and wallow violently, disrupting flora and fauna during his annual rutting actions than for a family to construct a small camp using aluminum and Gortex supplies.

These wilderness relationships are powerful and essential for families throughout the land, who I am again privileged to have a dialog with on a daily basis throughout my career, who know that the spirit, body and soul are renewed with every physics of spirituality and adventure beyond the pavement. The pulse I get in my hundreds of meetings every year—I did over 100 concerts last year and 179 concerts in 1995—and each night includes a meeting with my membership and other conversation groups across the Nation. Members of Ted Nugent, United Sportsmen of America, and as well as thousands upon thousands of voices via my radio, television, phone, fax, e-mail correspondence, as I did this morning from Washington, D.C., from the Heritage Foundation, taking phone calls across Michigan, that reflect hurt that a Federal Government would deny these rights, angered that our heritage erodes accordingly, and fear that the land of the free and the home of the brave may not be.

As Kenya reawakens in Africa to the essential monitoring process of human utility of their resources, they are now reimplementing hunting practices, because they saw that disassociating the people from those elephants and rhinos and antelope caused the demise of those very populations they abandoned, via nonmanagement.

I urge all who care about the long overdue upgrade of environmental awareness tear-down and assist in tearing down the walls to wilderness in North America, welcoming We the People, encouraging young people to invest in the future of outdoor relationships, a sound and harmonious relationship with Mother Nature and our precious shared habitat with all living things for reasonable, beneficial utility. Even our beloved national parks management must wake up to the original Native Americans' Great Spirit and once

again guide the majestic elk, deer, bison, cougar, antelope, bear, moose, sheep and goats back into the asset column through regulated practical harvest, filling the near empty coffers with the central management revenues. The majestic American buffalo does not deserve to be a liability in this great land.

In conclusion, the Federal Government works for We the People, and we are not happy. My time in the American wilderness literally saved my life from the evils and death of drug control abuse in my rock and roll career because I refused throughout my life to get high on poison, because the spirit of the wild taught me to wallow like my brother, the elk, in the sensual stimuli and spirituality, as a blood brother to all things wild. After all, they named wildlife after my career, and little is it known that cat scratch fever has inspired many people to respect the American cougar.

I beg you to assist those of us who do care not to shut the door on a generation of adventurers who seek this access, and that it is our wilderness. We will manage it with care and affection, and we want in.

I appreciate very much the opportunity to present this pulse, not necessarily alone from the Nugent family, but from families across this land who somehow have shared their concerns with me in their frustration, not believing that they would be represented otherwise, and I thank you on behalf of all those people.

Mr. HANSEN. Thank you.

What we will do is, we will hear from the witnesses and we will open it up for questions from the members. Is that all right with everyone?

Mr. Unser, we will turn to you now, sir.

STATEMENT OF BOBBY UNSER, PROFESSIONAL RACE CAR DRIVER, ALBUQUERQUE, NEW MEXICO

Mr. UNSER. Well, I don't have anything written, but I thank everybody for letting me come. I think it is very nice and it is nice that the people of the United States will see that our elected officials do care about what is happening out in the country.

My story starts with a nice day of snowmobiling. A friend of mine—I have a ranch in northern New Mexico, a little town called Chama. A friend of mine took off, snowmobiling, and we drove into Colorado in the high country for a snowmobile ride, and it was the first time he had ever been in those mountains, which I had been in many times.

So we went up there, I unload the snowmobiles, a totally legal place to be in the national forest, and teach him how to ride; and we go up into some higher country and start climbing hills.

Am I too loud? OK. Sometimes I don't hear too well, so I sometimes get too loud. But at any rate, started snowmobiling up there and when we got up on top of these high hills we were climbing, the wind came up, and we found ourselves in a ground blizzard. We are really like up on top of the world.

Later on, if I have time, I will have a map and I can show somebody what it looks like up there.

But a ground blizzard comes up, not snow out of the sky, but wind, 60 or 70 miles an hour, causing the new snow to blow. A common thing in Cheyenne, Wyoming, people who come from that

part of the country know, you instantly go to a whiteout; so ultimately, we were trying to find our way out of that.

Robert, the guy that was with me, got his snowmobile stuck. He had to stay very close to me because if he loses me or I lose him, he is just going to die, it is just that simple. He doesn't know anything about this part of the country or this part of life.

So after he got his docked, it kind of went off in the embankment and he couldn't get it out; and I said, "The heck with it, I will get it another day," got him behind my machine, which—mine was ironically a brand-new sled, the brand spanking new trip on it.

As started happening, mine started giving problems in running. I am trying to go along and find the edge of the mountain, so I can look off and see a valley and discover where I am and, if necessary, possibly get down off of this plateau where the snow is blowing so hard. There is not anything I can do about it except that. Then my machine starts quitting.

Well, we worked on the things from roughly like about 2 o'clock in the afternoon. We started unloading snowmobiles about noon, and we got up there about 1:00; we started working on the machine about 2 o'clock, and this went on, I am shortening this up a whole bunch for everybody—but this goes on until it becomes dark.

Now I am lost worse because of the way the machine—I get it running for a little bit; it would run half a city block, maybe a block, and it would quit again, and each time it got to where it was harder to get started. We had taken the machine pretty much apart, as I had quite a few tools with me, and both of us are good mechanics, Robert as good as I am—holding the hood up, trying to work in 60- or 70-mile-an-hour wind is not too easy to do.

Ultimately, it will not run anymore, darkness comes and literally, we are in trouble, no question about it. So I just take whatever we have on the snowmobile off in the form of emergency rations, which is a little fold-out saw and a compass. A compass doesn't do much good unless you kind of know where you start from, incidentally.

But we start walking, and the main thing is, I have to go down and I have to get out of this wind. So we start down as much as we can. Wherever it goes down, it makes no difference, but the direction has to be down to get out of this wind because we can't live up there. For sure we would die if we stayed in the high country in the wind in the blowing snow.

So I go down, and of course, it is darkness immediately; it gets dark at 5 o'clock in the afternoon this time of year, which is December, December the 20th, to be exact, and so the only thing we can do in order to survive that night is a snow cave. Robert had lost one of—his left glove, so we only had my two gloves and his right glove, so you can guess who had to dig the snow cave, so I dug on the snow cave, Robert started cutting branches off the trees, both for fire wood, in case the wind goes down, 60- to 70-mile-an-hour wind. And that is in—at excess of 1,100 feet, you can't build a fire too easily, lack of oxygen, and wind, and the snowmobile had little gasoline, so we had nothing to start a fire with.

So we build a cave. The cave works, Robert cut a lot of branches, to lay both on the ground for him to sleep on. His uniform wasn't

as good as mine. I had real good clothing on; he had new clothing, but not as good as mine. I had new boots and everything going.

So, ultimately, we spent the night in the snow cave, didn't freeze to death, which, for sure, wasn't very comfortable, didn't get any sleep and no gripes about that, but we got up at daylight the next morning. I look at our tracks coming down. They were basically covered up, but you could see them down in the trees, so we started walking out.

I notice the light came on. I am sorry.

Mr. HANSEN. I will turn the light off. Go ahead.

Mr. UNSER. I will talk as fast as I can.

So at any rate, we make a determination and a decision to walk out of where we were; and I could see the valley, I knew generally where we were going. Eighteen hours of walking, we did in deep snow with no provisions. I was sick, not knowing that I was sick, had a virus, I vomited 20 to 30 times approximately, to the point of where I was vomiting blood.

Robert had prepared to die; he didn't think he was going to make it. He wouldn't eat the candy I had because he was sure that was what made me sick. Ultimately, I made him eat the candy and drink the water and also made him break some of the trail because the deep snow was rough to walk in without snowshoes.

Eighteen hours later, we found a barn, called for help. The help came up, and we went down and back to Chama and made it all right that way. And then, of course, I was happy we lived, and everybody else seemed to be.

And what was it—it was like I lost an awful lot of weight—it was 16 days, I believe it was, later, I go to the national Forest Service to say, just in case, that we were in the wilderness, don't think we weren't, don't know that we were. But I knew I needed to find my snowmobile, to get it out of the mountains. I paid over $7,000 for it, and it is brand-new. And so I went down there with the idea of getting the snowmobile out, getting the letter of permission, in case I had to go into the wilderness.

Instead, they met me with two officers from Colorado, and after spending all day with them, or all afternoon with them, from approximately 12 or 1 o'clock in the afternoon until approximately 5:30, they, instead of helping me or giving me permission to go look for my snowmobile, presented me with a citation, a ticket.

Now you must understand, I don't know that I was in the wilderness, don't think I was; they don't know my snowmobile was in the wilderness, they haven't even seen me ride a snowmobile. They don't know I have done anything wrong; I certainly don't think I have.

I backtracked with their help. I described where I had been. They had pictures. They determined from my description of me backtracking with them, under the pretense they are helping me. As soon as we finished with this, the lady police officer reaches down under the table in her briefcase, pulls out a ticket, handing it, says—this is it with a big smile—and said, if I hadn't been Bobby Unser, a celebrity, this would have just passed over and then told me it was caused directly from—this is, honest to goodness, what happened—told me it was caused by the Sierra Club in Washington getting hold of the Forest Service. And they were or-

dered that if they thought my snowmobile was in the wilderness, to give me a ticket.

Now, it isn't the American way to give somebody a citation or ticket for somebody they hadn't seen. In other words, nobody saw me ride a snowmobile, just me and Robert are the only two human beings that saw this happen, and I certainly didn't start out on the wilderness, as I will show you on the map later. I started off in a totally legal place where thousands and thousands of people—I have been snowmobiling up there. I would go snowmobiling without fear.

Another thing that is real important, real quick. There are no marks on where the wilderness starts; even the people giving me the citation, the police officers, didn't know where the wilderness starts. We get maps, they can't tell you, they can't describe it. They assumed I knew and that I was in the wilderness knowingly, and I was not; and if I was, I have been doing it for years and so has everybody else up there, which is not true.

After we got the maps, we found out where the wilderness area is—roughly, you can't do it—of which Mr. Pendley has pictures. I did videos, I did everything later on, of the area. There are no signs; there are no marks.

Now, in a ranch in Colorado, if you want to post your ranch, the State law says you have to post it every 150 feet. The wilderness is underposted; there are no markings. And yet if I go onto your posted ranch, I have to be prosecuted via the owner of the ranch. In this particular case, the government is prosecuting me, obviously, for something they don't even know that I did. They don't know—the newspapers and television—that I was even in the mountains. They certainly don't know I was on their pristine wilderness that they must think is theirs and not for my use.

Thank you, sir.

[The letter of Mr. Unser may be found at end of hearing.]

Mr. HANSEN. Thank you.

I get to exercise a prerogative of the Chair. I chair another meeting, it is called the Ethics Committee, so I am holding about 20 members, and I want to ask one question.

Did I hear you correctly that you got the ticket and the person presenting the ticket to you stated that they had received information from the Sierra Club, and that because you are a celebrity, that the Sierra Club demanded that you get a ticket? Did I hear that correctly?

Mr. UNSER. Absolutely, 100 percent. I could take a lie detector test and I will offer it. I could take sodium pentothal and would also offer that, that it, in fact, happened as I am saying—I am not here to tell lies—physically said that in front of me in the room, and said the Sierra Club called Washington. Washington told them that if they determined that I was in the wilderness, write me a ticket. Now, understand, they did not even see me ride a snowmobile.

Mr. HANSEN. Thank you. Unbelievable. Thank you for your interesting testimony.

Kathy Stupak-Thrall. We will turn to you for 5 minutes. Pull the mike a little closer, please.

Ms. STUPAK-THRALL. I will pull the mike a little closer.

I would like to defer to Senator Malcolm Wallop, who has a prepared statement, I believe, to this incident; and then I will take the 5 minutes, if you don't mind.

Mr. HANSEN. That is fine, if you would like to go in that order.

We are honored to have our distinguished colleague from the Senate, who is now a civilian, with us again.

STATEMENT OF FORMER SENATOR MALCOLM WALLOP, CHAIRMAN, FRONTIERS OF FREEDOM INSTITUTE, ARLINGTON, VIRGINIA

Senator WALLOP. Thank you, Mr. Chairman, and Chairman Chenoweth. My name is Malcolm Wallop, retired Senator from Wyoming, and now Chairman of Frontiers of Freedom Institute, an organization dedicated to defending constitutional liberty. I might add, because of the new rules of the House, that we not accept Federal grants, I am here today to introduce Mrs. Kathy Stupak-Thrall to the committee and to supplement and reinforce her testimony.

My qualifications are, as a rancher at the foot of the Big Horn National Forest, I have had a lifetime of personal experience with the Forest Service, and as a Member of the Senate, I served on the Energy and Natural Resources Committee for 16 years, where I could view the whole range of Forest Service and other agencies' conduct and behavior. I was in the Senate when the Michigan Wilderness Act of 1987 was considered and enacted.

A number of problems in managing wilderness areas have arisen since passage of the Wilderness Act of 1964. In my view, the false doctrine of nonmanagement, which amounts to little more than neglect, will ultimately produce in many designated wilderness areas a great deal of environmental degradation. But other sorts of problems, involving people and their rights and interests have arisen, as well, and it is to speak about one of these I am here today.

Members of the committee have no doubt heard, as I heard in my years on the Energy Committee, many stories of outrageous treatment of landowners and Federal land users by the land managing agencies. The case of Kathy Stupak-Thrall, the Gajewskis and 1,100 private property owners on the shores of Crooked Lake in Michigan's Upper Peninsula is perhaps not the most outrageous, but it brings into sharp relief several of the worst aspects of the Federal agencies' attitudes and approaches to wilderness management.

Let me begin with the Wilderness Act itself. The Congress made it clear in the 1964 act, from the first paragraph on, that only federally owned lands will be designated as wilderness areas; further prohibitions against roads and commercial enterprises are qualified by the clause, quote, "subject to existing private rights."

The Forest Service itself elaborated on these points in its January of 1979 final environmental statement, quote, "first, non-Federal lands included within boundaries of an area classified as wilderness are not themselves classified." And, secondly, quote, "Wilderness designation in itself imposes no restrictions on use of the private land within or adjacent to wilderness." Mr. Chairman, that is the Act.

These principles were applied in the final management plan adopted by the Ottawa National Forest just before enactment of

the Michigan Wilderness Act. The alternative that was eventually adopted stated, quote, "The management areas identified on this map and the management direction defined in the forest plan apply to national forest lands only. They do not apply to any lands in State, county, private, or other ownership."

The 1986 final environmental impact statement responded to comments about how management of the Sylvania recreation area as a primitive area would affect motor boat and other usage on several lakes, including Crooked Lake, by dismissing all such concerns. It said, quote, "Motor boat usage on Crooked, Big Bateau and Devil's Head Lakes would continue unless Congress specifically prohibits such use in the legislation, designating Sylvania as wilderness. The Forest Service cannot regulate use of motors on lakes; it can only regulate transportation of motors over national systems land. If there is private land on the lake shore, motor boats can continue to access the lakes through the land," closed quote.

Now this statement, Mr. Chairman, simply recognizes Michigan State law, which holds that all riparian owners along a body of water have rights in common to use that body of water. Thus, in the case of Crooked Lake, most of the shoreline is part of the Ottawa National Forest, but thirteen private landowners also own parcels along the lake and that means Crooked Lake itself is not part of the Ottawa National Forest. Instead, Ottawa National Forest is one of several riparian owners that possesses rights in common to use the lake.

When Congress considered the Michigan Wilderness Act, I recalled that this situation was a matter of concern, and the bill, as enacted, specifically addressed it. Section 5, titled Administration of Wilderness Areas begins with the qualification, quote, "subject to valid existing rights." Section 7 states, quote, "Congress does not intend that designation of wilderness areas in the State of Michigan lead to the creation of protective perimeters or buffer zones around each wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundaries of the wilderness."

To my mind these additional protections were useful but should not have been necessary. The language of the Wilderness Act itself and Michigan State law should have been sufficient to demarcate the limits of Forest Service authority. But beginning in 1990, officials of the Ottawa Forest started to restrict customary use on Crooked Lake by the landowners on the grounds that they were inconsistent with wilderness status. I first learned of their attempts to outlaw motor fishing boats and sailboats that had been traditionally used on Crooked Lake when Mrs. Stupak-Thrall and Mrs. Gajewski visited Energy and Natural Resources staff in 1991.

I will conclude, but there is one thing that I am saying, that there is an outlandish deference being paid by the Federal judiciary to Federal agency regulations, and it is an enormous problem which only Congress can confront at some point.

I am here today to suggest a more modest task. In this case, the Forest Service has prohibited customary uses on Crooked Lake by other riparian owners against the explicit intent of Congress. Con-

gress should spell out its intent one more time, but most importantly, the Congress should get the Ottawa National Forest employees to explain to it why they refuse to follow Michigan law, Congress's explicit intent and the intent and language of the Wilderness Act itself clearly written. Until the people who are Forest Service employees are held accountable, the reckless disregard of rights of the American public will continue. Thank you.

Mr. HANSEN. Thank you.

[The statement of Senator Wallop may be found at end of hearing.]

Mr. HANSEN. I am saddened. I have looked forward to this hearing for quite a while, but leadership has an Ethics Task Force going on, and they are going to start voting in 5 minutes, and they are waiting for me. I am going to turn the gavel over to the gentlewoman from Idaho, and I hope I can get back. This has been a fascinating hearing, and I am looking forward to hearing from other witnesses.

With that, Chairman Chenoweth, you take the gavel, and I want to thank all the witnesses who have been here, and those who will testify today. It has been a fascinating hearing for many of us working on legislation at this time.

Mrs. CHENOWETH. [Presiding.] Thank you, Chairman Hansen. We will certainly miss you, but I know the heavy responsibilities that you have chairing that Ethics Committee. So with regret, we let you go today.

Senator Wallop, do you, in your long and distinguished career in the Senate, do you remember any time when either the House or the Senate gave over to the Sierra Club the right to drive public policy on the Forest Service lands?

Senator WALLOP. No, Madam Chairman. I clearly do not. I find it outrageous. I find it outrageous that they have that kind of reach and that the Forest Service itself responds to those kinds of demands or any agency of government responds to those kinds of demands, whether they come from the Sierra Club or the Mountain States Legal Foundation. The business of government is to follow the law and not prescriptions of private and special interests.

Mrs. CHENOWETH. Thank you, Senator.

At this time, the Chair recognizes Kathy Stupak-Thrall, president of the Crooked Lake North Shore Association in Watersmeet, Michigan. Mrs. Thrall.

STATEMENT OF KATHY STUPAK-THRALL, PRESIDENT, CROOKED LAKE NORTH SHORE ASSOCIATION, WATERSMEET, MICHIGAN

Mrs. STUPAK-THRALL. Thank you. I most appreciate the ability to be here today and testify before you and your committee members.

I am Kathy Stupak-Thrall. I am the third generation to live at my home on Crooked Lake. I am the president of the North Shore Association. We are dedicated to the personal freedom of private property ownership. I have come before this committee to explain the arrogant and outrageous behavior I have experienced these past 7–1/2 years from the Forest Service. I will explain how the Forest Service works beyond that which Congress directs; how they

designate private property "wilderness" through regulation, not designation.

Did you put on display that picture?

I have on display here a picture of my Crooked Lake homesite. You will also find a smaller picture in your file. This is an example of what most of us recognize as the American dream, the pride of private property ownership, a homesite tucked away in the woods on the lake's edge. This is my home. It has been in my family for over 55 years. I am the third generation to fly the American flag on the dock's edge of Crooked Lake.

The outrageous factor here is that this flag-flying homesite is called visually offensive by those who visit the neighboring Sylvania Wilderness. My small neighborhood and our private properties on the north shore of Crooked Lake are adjacent to and intermingled with federally-owned Sylvania Wilderness.

This action of management by the Forest Service that empowers wilderness management onto private property violated the direct intent of Congress. It violates and usurps Michigan State law and ignores the direction of the Ottawa National Forest Plan, as Senator Wallop has described earlier. All of these things were written to protect State and private property rights from wilderness management.

Now, in designating Sylvania Wilderness, Congress relied on the statements of the Forest Service to be truthful, and yet all the Forest Service responses in regard to wilderness designation within that forest plan were later called a mistake by the forest supervisor. It all became very clear in 1990 that the statements of the forest plan seemed to be a bait and switch tactic because the forest supervisor called all those statements of the forest plan that protected the individual and private property rights and State rights—he then called them a mistake and were not to be used in this management planning process.

So, I contend that only one of two things happened here, that either those who prepared the 1986 forest plan lied to Members of the Congress and the public in order to gain support for wilderness designation, or the forest supervisor then lied to us in 1990 as to the accuracy of the forest plan.

Now, in 1990, when the Forest Service began the planning process, one of the first items to be placed on the scoping board that would be addressed from management was the surface regulation of motorboats on Crooked Lake. It was made very clear by the Forest Service and the Sierra Club members who were present at that time that our homesite was visually offensive, and although they may have to tolerate our homes, although they did prefer condemnation, they were not going to tolerate our continued motorboat usage of Crooked Lake. They explained that these activities did not fit their value system. And these statements by the Sierra Club were fortified and strengthened by the forest supervisor, who then did call all these statements of the forest plan a mistake.

And their office, the Forest Service Office of General Counsel, also protected the Forest Service by upholding those statements of the forest supervisor by explaining that even if valid existing rights language that is in the Michigan Wilderness Act applies to riparian rights, they could still regulate us.

And so we understood that this began the plan of the Forest Service to regulate non-Federal private property with wilderness management. To press into public service private property for the sake of wilderness values above that which Congress allowed, this is beyond the scope of the authority of the Forest Service.

Now, this was also then further upheld and enforced by the attorney for the Forest Service in the courts of law. When he explained to a panel of judges, 14 judges, that when Congress wrote the bill or the Michigan Wilderness Act, used the language "valid existing rights," that those Members of Congress did not understand what "valid existing rights" meant. I can't believe that. I don't believe that Members of Congress do not understand what they do. They understand what they write. I believe that you say what you mean and mean what you say.

Now, I would tell you that this action by the Forest Service is a major Federal action which must be answered to, because when an agency delegates to itself the powers of Congress and then uses those powers of Congress against the people by taking on the power of the property clause and using that against the people, against the direct intent of Congress, that then must be answered for. They must be held accountable.

I find myself as a private citizen against a great pyramid of power, and I just find it outrageous that the Forest Service is not held responsible for their actions.

The truth is the Forest Service has layers and layers of staff and attorneys that protect their rights, to explain themselves and justify their action, when I am just Kathy Stupak-Thrall, just an American citizen standing against the pyramid of power from Michigan to Milwaukee to Washington, D.C.

I ask you, members of this committee, to have the same courage that it takes for an individual citizen to stand against this huge bureaucracy, that took me 7–1/2 years to get here today. I ask you to have the courage to confront this bureaucratic agency, the Forest Service. Make them answer individually and as an agency to their actions.

Thank you for hearing me today.

Mrs. CHENOWETH. Thank you, Kathy Stupak-Thrall.

[The statement of Ms. Stupak-Thrall may be found at end of hearing.]

Mrs. CHENOWETH. I want to remind the committee that we will be limiting your questions individually to 5 minutes. I will open with some questions, and then I will recognize Mr. Kildee, our Ranking Minority Member.

I want to first ask Kathy.

Mrs. STUPAK-THRALL. Yes?

Mrs. CHENOWETH. And I noticed that Perry Pendley is here. And, Perry, welcome to the panel. I noticed in a publication entitled "The Litigator" that your case ran through the Sixth Circuit Court of Appeals.

Mrs. STUPAK-THRALL. Yes, it did.

Mrs. CHENOWETH. And that right before this was appealed to the Supreme Court, that Governor Engler from Michigan entered your case.

Mrs. STUPAK-THRALL. Yes, he did.

Mrs. CHENOWETH. Entered an amicus, and the Governor filed a brief that stated that the actions of the lower court or the Sixth Circuit Court of Appeals was an affront to the principles of federalism and to the protection of private property rights.

The Governor goes on to say that these rights have characterized his own administration and his efforts to restore the proper constitutional balance of power between Michigan and the Federal Government, and I think Governor Engler has said that very, very well, and I am very pleased that that was reported in "The Litigator".

Mrs. STUPAK-THRALL. As I am as well.

It must be made clear, Madam Chairman, that Governor Engler did not enter this case for Kathy Stupak-Thrall. The Governor entered this case to protect the sovereign rights of Michigan. All property rights against the State of Michigan have fallen prey to the regulation of the Federal Government.

Mrs. CHENOWETH. And so by this action, not only have your rights to have access and use of the surface waters been taken, but the right of ownership by the State of Michigan.

Mrs. STUPAK-THRALL. That is correct.

Mrs. CHENOWETH. When that was specifically protected in the wilderness bill.

Mrs. STUPAK-THRALL. That is correct.

Mrs. CHENOWETH. And, Senator Wallop, were you here when that bill was passed?

Senator WALLOP. I was, Madam Chairman.

Mrs. CHENOWETH. But "valid existing rights" means to you exactly what?

Senator WALLOP. It means that the Congress, the State, and the government all understand clearly, in their mind, those rights which exist by law. The property rights of the individual citizens, the riparian rights of the State of Michigan, and, in fact, the riparian right of the Ottawa Forest are all part of the same bundle of rights. And the Forest Service has deemed, by itself, that it alone possesses rights and essentially has said, the hell with the State of Michigan and in particular the hell with all the people who own property there.

Mrs. CHENOWETH. That is very chilling to me, a western Congressman, because it sets a precedent for water rights in the entire Nation. And we in the West, as you well know, would not be able to produce agricultural goods at all if we couldn't use our precious water.

Senator WALLOP. When this legislation was written, it being a wilderness area and eastern one, it passed through only the Senate Agriculture Committee. But I remember specifically the arguments were being made that these rights that existed needed to be protected because those who were there were fearful that they were going to be abused. The State of Michigan itself was fearful that its rights were going to be abused. And this language should not have had to be written into the law, but it was written into the law specifically because of those anxieties.

As I pointed out in my remarks, had they only followed—been willing to follow the Wilderness Act as it is written, this language should have been superfluous. But it was put in there because peo-

ple were worried that what was going to happen is exactly what did happen.

Mrs. CHENOWETH. Senator, this just brings to mind the fact that I am authoring legislation that will limit the terms of office of Federal judges, when we see the Sixth Circuit Court of Appeals make a decision like this that goes outside the clear intent of the legislation. And by the way, there will be hearings in May on judicial activism, and I have been pushing this ever since I got to the Congress.

I want to question you on one more thing. You made a very interesting statement at the close of your testimony, Senator, when you said government officials should be held accountable for these kinds of actions. Would you mind elaborating on that?

Senator WALLOP. Well, it is clear that the forest supervisor and those who are managing this forest are not following their own forest plan, their own Environmental Impact Statement, their final statement, the law of the land.

Now, what happens is that in the normal passage of these kinds of things, we will invite the Forest Service to come in here and say why is it that these events are taking place. And you will get some high—maybe even the chief will come in here, and he will blather on. But I am suggesting that you call here the forest supervisor and the attorney that represented them, and others, to explain why to this Congress—this committee—why it is they believe you don't know what the hell you were doing when you wrote "valid existing rights"; why it is they have taken it onto themselves to transgress the law as it was written in the Wilderness Act, as it exists in Michigan State law and as it exists in designating the Sylvania Michigan Wilderness.

Mrs. CHENOWETH. Senator, I would also like to call the Sixth Circuit and ask them why in the world they could justify it.

Senator WALLOP. That would be a cheering event. But what I think is important, really, is to have some people explain why it is that they have such a dismal view of American citizens. This is not about wilderness. This is about how people in government treat people that they govern.

When we grew up, we all thought that government was the servant of the people. It now views itself as its master. And the problem that we are facing out there—in my last dozen years in the Senate, I would go home to Wyoming and people tell me tales not unlike the ones that Kathy Stupak-Thrall has just mentioned, or Bobby Unser, and I would think, for God's sake, we have got to go do something. And they would say, Senator, don't. I just wanted you to know. But if you do something, they will get me.

And they can, because the mountain of regulations is so complete that there is always something that they can do to deny a grazing permit, a timber permit, an access of some kind or another. There is a way that they can get you, even if you confront them on the specific issue.

And when American citizens find themselves saying, I just wanted you to know, but don't do anything because they will get me, that is the wrong view of people to have of their government, and yet it is a view that is driven by the behavior of that government.

Mrs. CHENOWETH. Thank you, Senator. And I, for the record, I do want to clearly say that I agree with you entirely. The doctrine of separation of powers is one that is highly respected by me as well as expressed by you. Thank you very much.

And I would like to ask Mr. Nugent——

Mr. VENTO. Point of inquiry, Madam Chairman. Are we going to operate under the 5-minute rule or—we have been going now for 8 minutes, plus your earlier question between the witnesses. I mean, if we are under the 5-minute rule, it is fine with me. If we are not, I would like to know so.

Mrs. CHENOWETH. We just had one Chairman leave, and the Chairman is operating under the prerogatives of the Chairman right now.

So, Mr. Nugent, I would like to simply ask you, if you had the ability to state what you would like to see the wilderness policies to be, could you let us know for the record the improvements you would like to see made?

Mr. NUGENT. I am here just to represent an overview of, again, people that I am privileged to have a dialog with across America in my travels, that optimum, reasonable and proven access to wilderness-designated areas or areas that may be on the chopping block, so to speak, to become wilderness areas be reviewed for maximum value based on hands-on participation in those areas.

My son and I went to Wyoming last year and rode 8 hours on horseback into the Thoroughfare Wilderness area, and we wanted a quality wilderness experience, but we used state-of-the-art Gortex supplies and cooking utensils, and new saddles, and aluminum arrows and modern equipment that in actual application and function is no different than a sinew-stringed Osage orange longbow with cedar arrows from time before us.

And that if young people of this country that are currently being ostracized and denied the welcome mat into this heritage of nature relationship that is the answer to their dreams—young people are looking for stimuli. They are looking for adventure. They are looking for challenge. They are looking for laughter and excitement. And in my wonderful rock and roll career, I have found all of the above, in your wildest dreams, beyond the pavement.

I would like to think that it is our responsibility to open the door to, again, proven tread-lightly participation in wilderness areas, to encourage young people to invest their time, energy, education and finances into a continuing tradition of a hunting outdoor culture. And it is only going to be optimized if it is attractive enough because of that quality experience that will be offered to them in these millions and millions of acres of wilderness area.

I believe that the attrition rate in the outdoor conservation community is a direct result of our failure to offer these quality experiences in an increased fashion rather than in the decreased fashion that is currently the modus operandi of the sporting community.

Mrs. CHENOWETH. Thank you, Mr. Nugent.

And the Chair now recognizes Mr. Kildee from Michigan.

Mr. KILDEE. Thank you very much, Madam Chair.

Michigan riparian laws state that if one owns lakefront property, they are entitled to the use of the entire lake. But riparian laws

in Michigan do not state that they have the authority to use motorboats anywhere they please. That is very clear.

I was born in Michigan. I did write this law, so there are some restrictions on that. Now, on that first bay where you had your property, of course, you can use your motor boat. But when you go into the further bays, you cannot use the motorboats under the plan put in place by the Forest Service.

Now, the Michigan Wilderness Act in 1987 directs that Sylvania be managed pursuant to the provisions of the Wilderness Act of 1964. In there it says that the Wilderness Act poses a general ban on motorboat use within wilderness areas except for motorboat use as already has been established. It may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. It may be permitted to continue.

In the report language on the bill, which I helped write the report language, too, it says that motorboat use on these lakes may be permitted to continue insofar as this does not conflict with or adversely affect wilderness values. So you might object to the law, but I think the Forest Service has read the law and are following the law. Now, you may object to the law, and you can object then because I was the chief sponsor of that bill, but I don't think there is any conflict.

I am convinced there is no conflict between Michigan riparian laws, with which I am very familiar, helped write some of the new riparian laws when I was in the State legislature, nor does it conflict—motorboat restrictions conflict with the law of 1987.

Mr. Nugent, in the 92,000 acres of wilderness area established by the 1987 Wilderness Act, a person can enter on foot or on horseback to view the wonders of nature and commune with nature in those 92,000 acres. What problem does that create?

Mr. NUGENT. Well, it limits access. For example, during a wonderful winter water wonderland snow country of Michigan in the winter months, there should be no reason, in my estimation, why a family couldn't snowmobile and use a modern snowmobile machine to access this wilderness area because it will not leave any scarring. It will not disrupt the areas. And, once again, if it is not accessible this time of year via this modern equipment, the people will end up at the mall.

Mr. KILDEE. We have 2.7 million acres up there. Why can't we take 92,000 acres and have it where there is no pollution or even noise pollution; where people can enter in—my sons have gone up there, and they enjoy—in the wintertime—and have enjoyed the fact that you can commune with nature without even the noise pollution. There is another 2,700,000 acres where you can have snowmobiles. Why can't we have 92,000 acres set aside where you can have it just as it was when the Native Americans roamed up there?

Mr. NUGENT. As I am sure you and your family have witnessed, Mr. Kildee, we have an attrition rate in the hunting activities in many of the States of this Nation because of the erosion of the quality of the outdoor experience, the old wives' tale of a hunter behind every tree. If we don't expand the availability of all of these extensive tens of thousands of acres, in some instances millions of acres, that are currently wilderness area, those young people will not experience the quality experience; therefore they will pursue

the alternatives, thereby leaving the ranks of a conservation voice that will vote for the safeguard of an overall quality outdoor experience, wilderness or otherwise. I believe that by opening up this type of acreage to this type of activity, it expands the density factor—or reduces the density factor of the human activities, therefore giving a more optimum quality experience in this outdoor setting.

Mr. KILDEE. I think we have multiple use areas where you can use snowmobiles, vast areas. Snowmobiling is a very big business in Michigan and a very good recreational sport. We take 92,000 acres of the 2.7 and say, here, we are going to traverse that just as the Native Americans, the Chippewa and the Ottawa, traversed it over 100 years ago. What is wrong with that?

Mr. NUGENT. Ultimately there is nothing wrong with a balancing Act as long as we have the best interest of introducing and welcoming a new generation to the outdoors. In my experience—and I believe you have seen this in our State of Michigan, though it has been reversed in the last 5 or 7 years, the getting old of the outdoor community and the failure of new young people entering into the outdoor recreational sports because of what people believe is a limited access.

Just for example, we have had quite an argument in Michigan recently where on designated snowmobile trails mushers with sled dogs were denied use of these trails. Now, certainly if an outdoor experience is to be balanced for all multiple use, what is good for a snowmobiler or hiker or a cross country skier should certainly be available to a dog musher in a sled dog activity.

And I realize that is not directly responding to the separation of wilderness limitations versus otherwise, but I believe that once again the more acres that we open up to these activities, any reasonable tread-lightly, remain-on-designated-trail, responsible use is, once again, going to be a welcome mat for new participation who currently are declining those opportunities that seem to be limited otherwise.

Mr. KILDEE. You are a bow hunter, and I know my brother—older brother—was a bow hunter, and that is really going back to like the early Americans, too.

I just think that 92,000 acres, to set those aside where you have 2.7 million forest acres up there, that 92,000 where you can't use snowmobiles is not imprudent. I think it is quite prudent. And when I wrote this bill, I think I am a prudent legislator. I am one who has hunted and fished throughout Michigan, but I think it is important that we have certain areas where we can go back and reflect as to how this land was when the Chippewas were bow hunting.

Mr. NUGENT. Certainly, Mr. Kildee, but we also acknowledge, as I was privileged to hunt alongside the great warriors of the Assiniboine and the Grilvat Indians in northern Montana a few years back where I was honored with the invitation to hunt their ceremonious herd bull buffalo on their sacred hunting grounds, there are many admirable activities of the Native American hunting culture that we would adhere to today.

For example, the incredible experience of penetrating the majestic creatures of God's defense mechanisms to get within bow range, but certainly we wouldn't want to return to the days where we

herded the animals over the cliff in a mass slaughter to the tribe. So it is a matter of understanding those functions that optimize the outdoor experience from the past in conjunction with the incredible human population growth of today where we don't shut the door to young people.

In my correspondence, Mr. Kildee, the young people have said they would like to go outdoors, but this State recreation area or that State recreation area is loaded with people, and they would like to see new areas open up. So I am responding, after walking on these wonderful pieces of ground, that certainly their access increase would benefit the welcome mat for these new conservationists and new land appreciators.

Mr. KILDEE. Could I just ask one question to Mr. Unser?

Mrs. CHENOWETH. Yes. Let's give Mr. Kildee another 2 minutes, please.

Mr. KILDEE. I really appreciate it, Madam Chair.

Mr. Unser, you are quoted in the Denver Post as saying, I do want the Forest Service to know that if there is any way I can hurt them, I am going to do it. How do you intend to hurt the Forest Service?

Mr. NUGENT. Hire me.

Mr. UNSER. Ted said: Hire him. I didn't say that.

Mr. KILDEE. The Denver Post quotes you. The Denver Post is wrong then, this quote?

Mr. UNSER. I would have to say, Mr. Congressman, that I have been part of media all of my natural grown life. I have been misquoted many times.

Mr. KILDEE. I have, too.

Mr. UNSER. I don't want to hurt the Forest Service. I want to change things in the Forest Service.

I have spent a tremendous amount of time on this. A ticket such as I got, by the record of what the court system has done in Colorado, amounts to $50 or $75. The National Forest Service tells everybody that it is going to cost me 6 months in jail and $5,000, and I hardly see the correspondence between the two, the correlation between the two.

But hurt the Forest Service? For sure I am mad. Absolutely, I am mad, and I would tell anybody that. I am really upset. I have been hurt. Before I would have been happy to do commercial spots, charity things. I do it for many cancer organizations, many States, cities, many things. I am most happy to do it, and I would have done this for the Forest Service before. But they are really trying to hurt me for no reason. I haven't done anything wrong.

Mr. KILDEE. Well—thank you Madam Chair. I appreciate the indulgence.

Mr. PENDLEY. Chairman Chenoweth, could you indulge me to answer the question that the gentleman from Michigan asked but did not get an answer on?

Mrs. CHENOWETH. With no objection. Is there any objection on the part of the gentleman from Michigan?

STATEMENT OF PERRY PENDLEY, ESQ.

Mr. PENDLEY. What the Michigan Wilderness Act said was that with regard to lakes that are surrounded on all sides by Forest

Service lands, that is where the Forest Service has its discretion to regulate the motorboat use. However, Crooked Lake is a lake in which the northern half of the lake is owned by private parties, and the surface of Crooked Lake under Michigan law says that every owner along the lake has an equal use of the surface of the lake, whether it is the Forest Service or Kathy Stupak or the Gajewskis as the owner, and has the right to use the entire surface of the lake.

What the court held and the Forest Service maintained was that the property clause of the Constitution, which says that Congress has power over Federal land, the property clause may be interpreted such that it gives the Forest Service the power to regulate private property if it affects Federal property.

Now the Supreme Court has specifically rejected this theory, but this is the theory upon which the Forest Service has gone forward. This was the theory that was accepted by 7 of the 14 members of the Sixth Circuit Court of Appeals. So it was not on the basis that the Congress decided to prohibit motorboat use. In fact, it was specifically permitted and authorized. That was the valid and existing right that was protected.

The remarkable position of the Forest Service until the lower court overturned it was that the valid existing rights didn't apply to property rights; it only applied to mining claims. That is how askew and in conflict with the law the Forest Service is.

The update on where we are is we have gone back, after the Supreme Court declined to hear our case, to the district court on the motorboat issue. The district court agrees with Kathy Stupak-Thrall and the Gajewskis. It has enjoined the Forest Service from enforcing its motorboat regulations, and we will go to trial next month.

Mr. KILDEE. But——

Mrs. CHENOWETH. Mr. Kildee, if you wish to make a motion to have another round of questioning, the Chair will entertain that at the proper time. Now is not the proper time.

The Chair recognizes the gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Thank you, Madam Chairman.

I just got here, and so I didn't get to hear the testimony of the witnesses, so I am going to yield most of my time to Mr. Pombo.

But let me just say first briefly to Senator Wallop that I certainly appreciate the small portion of the comments that he made that I got to hear, because almost every single day I have a constituent who calls or writes or who comes to see me who tells me about some horrible arrogance of power or abuse of power by some Federal bureaucracy or some Federal agency, and I loved your words. And they are so accurate today, unfortunately, that our servants have become our rulers. And we have many good people within the Federal Government, but we have far too many people who seem to have forgotten that they are our employees and we are supposed to be their bosses. And they are supposed to be public servants, not rulers or dictators. And in too many ways in this country today we seem to have ended up with a government that is of, by and for the bureaucrats instead of of, by and for the people. That is why

so many people across this country are disgusted and fed up and even at times angry toward the Federal Government.

Secondly, I spent 7–1/2 years as a circuit court judge in Tennessee before I came to Congress, and you are exactly right, Senator, when you say the outlandish difference now being paid by the Federal judiciary to Federal agency regulations is an enormous problem. I tell you why it happens: It is because it is the easy way out. There are far too many Federal judges who will do almost anything to keep a case from going before a jury because they know that the Federal Government would almost always lose if they could get their case in front of a jury.

And thirdly, one thing I have noticed, and you can certainly make any comments about this that you wish, but we have these environmental extremists in this country today who have become the new radicals, the new leftists, the new socialists, and we need to realize how harmful these people are. They are destroying jobs, they are driving up the costs of products of all types, they are really hurting the poor and working people of this country. They are playing into the hands of extremely big business, but they are driving small farmers out of existence, they are driving small businesses out of existence, and I have noticed that almost all of these people seem to come from wealthy families or wealthy backgrounds and have sufficient money so that they are sort of insulated from the harm of their policies.

But we need to start speaking out about this. We need to start resisting this. Our forefathers did their jobs in protecting the freedom of this country, but if we sit around and allow these environmental extremists to socialize our country, what they really are going to end up doing in the end is hurting our environment, because the worst polluters in the world have been the socialists and communist countries, and we need not fall for that line in this country.

If you have any comments, I would be happy to hear them; otherwise I will go to Mr. Pombo.

Senator WALLOP. Mr. Duncan, thank you both for the kind words and understanding what it was that I was trying to get across. In fact, I did quote the original Wilderness Act, and Mr. Kildee seems to have forgotten that portion of it, which said that there are to be no buffer zones. Wilderness was to be wilderness. This is not an argument about whether or not it exists. It does exist. It is in the law. It is a question about whether or not the Forest Service, the Government of the United States, will follow the law as it is written.

Now, your other point about the environmental extremists, they are a very elitist group of people, and the thing that amuses me the most about it is that they are possessed of a sort of view that they are God's chosen administrators to protect God's creation on Earth. And they have a sort of romantic view of nature that it can be returned to some sort of static state. There will always be old-growth forest and new-growth forest, and that the old-growth forests won't grow up and die and burn, and the new-growth forest will grow, and there is going to be two of everything, and they will all live and die, and nothing will change.

In other words, they believe in creationism. And yet if anyone were to teach those people's children creationism in school, they would go crazy. But they do not believe in evolution because they are trying to create a state in nature that doesn't exist. There is no static state in nature. They want it there. They want to rule it there. It is a question of power, their power, and it is an inconsistency with them. That is the way they would have it. Thank you, sir.

Mr. DUNCAN. Thank you.

You might be interested to know that in the last 40 years in my State of Tennessee, the percentage of land in forest space has gone up from 36 to 45 percent. And I read recently the Christian Science Monitor that in the seven Northeastern States it has gone up even more than that, so that now two-thirds of the Northeastern States are now in forest land. And yet if you asked that question to almost any school child in this country, do we have more land in forests now than we did 40 or 50 years ago, I am sure that almost all of them would say no because of the very distorted picture of what is going on in this country that has been presented to the American people.

But with those comments I will yield back to the Chairman.

Mrs. CHENOWETH. Thank you Mr. Duncan.

The Chair recognizes Mr. Vento.

Mr. VENTO. Mr. Nugent, I am trying to understand your statement. Is it your view—you are opposed to the Wilderness Act? You think there is too much land designated as wilderness?

Mr. NUGENT. With limited access on that acreage, yes.

Mr. VENTO. Your concern is that the quality of hunting and sports experience is diminished because of wilderness? Is that your point?

Mr. NUGENT. Yes, I believe that what it does is it deters the desirability of new entry-level participants to seek that quality experience in more vast acreage so that the human density factor is not an overwhelming consideration.

Mr. VENTO. You would have—I guess about 190 million acres of forest and about 33 million is wilderness, about one out of six acres a little more than that, and you would like to see that modified so that it would not limit access with trucks, snowmobiles, whatever? Is that your point?

Mr. NUGENT. No.

Mr. VENTO. What are you talking about in access?

Mr. NUGENT. I would say that access should be regulated, certainly. I use the example of snowmobiles. On a snow base, there is no tracks or disruption of the topography via snowmobile use. I wouldn't open it up to scrambling or enduro races. The tread-lightly program that I am a member of is about staying on designated trails.

Mr. VENTO. One of the problems is that there are snowmobile trails that they banned dog sled teams from and cross country skiers. I do cross country skiing. There is a safety problem with putting cross country skiing and snowmobiles that are traveling 60 miles per hour on the same trails. Wouldn't you grant that?

Mr. NUGENT. No, I would not. I have reviewed the statistics in Michigan; and all the snowmobiles accidents, 90-plus percent, in-

volve drinking snowmobile operators; and I don't believe there has ever been a collision just between cross country skiers and snowmobile users.

Mr. VENTO. We are even talking about one-way snowmobile trails in Minnesota because that represents a hazard. I don't pretend to be an expert on it, but I would think that separation here at least might be sensible, even with dogs. I don't know what the problem is with dogs.

Mr. Unser, it is a little unusual to have someone that has a court date set in June or something to come before the committee. Most of us probably—I am sort of reluctant to ask any questions about it, although I appreciate your willingness to talk about it. Normally, if you are contesting something in court, the last place you want is to have it tried before a committee and make a judgment on it.

Mr. UNSER. I have nothing to hide.

Mr. VENTO. It is a concern that I have. I mean, you don't—you are obviously coming here and suggesting that you actually were—you didn't know you were in a wilderness area?

Mr. UNSER. No, sir, I don't believe I was in the wilderness area. I know I didn't ride my snowmobile in there when I had visibility.

Mr. VENTO. Do you think that snowmobiles ought to be able to go in wilderness areas?

Mr. UNSER. My opinion, aside from my court case, yes. Snowmobiles do not hurt a wilderness area at all.

Mr. VENTO. It may not help your court case. I am not an attorney.

Mr. PENDLEY. But he is giving his opinion here——

Mr. VENTO. I didn't ask you any questions. If I have a question, I will refer to you.

Mr. Unser——

Mr. UNSER. I am just telling you snowmobiling doesn't hurt anything underneath it. It rides on the snow. When it is melted, nobody other than the Good Lord would ever know that that snowmobile was there. I didn't come here to sell that; but, at the same token, I do believe that, sir.

Mr. VENTO. That is why I was asking you. That is exactly what I was asking.

But the issue is, your suggestion is that is there something wrong with the Sierra Club or any individual citizen pointing out that somebody else made a mistake or that they violated a law? Do you have any objection to that?

Mr. UNSER. One more time on that?

Mr. VENTO. Is there any objection to a citizen or a group, whether it be the Sierra Club or a sportsman group, pointing out that you violated a law? Do you have any objection that?

Mr. UNSER. I guess I don't understand. I am not objecting to anybody. I mean, I am just——

Mr. VENTO. You are saying that the penalty is so severe. Do you know why you think the penalty is going to be this severe? Is that simply the magnitude? You have no idea, for instance, if you are found to have violated this Wilderness Act, what the imposition of the penalty would be, do you?

Mr. UNSER. I know the history of people that have literally gone into the wilderness snowmobiling and been caught. I know what their penalties have been, and they have been $50 to $75. And I am not griping about that. I can afford that.

Mr. VENTO. The thing is, you implied that it was going to be $5,000 or 6 months in jail.

Mr. UNSER. That is what the Forest Service released.

Mr. VENTO. I think that is probably the magnitude of what can be applied.

Mrs. Thrall, your area, is the area that you live in in wilderness?

Mr. UNSER. No, sir.

Mr. VENTO. Different witness. Mrs. Thrall?

Mrs. STUPAK-THRALL. Yes, my private property extends into the wilderness. I am adjacent and intermingled with the wilderness.

Mr. VENTO. There is no objection to your use of the water surface in your bay?

Mrs. STUPAK-THRALL. Michigan law states very clearly that you cannot separate the waters and define a portion private from public.

Mr. VENTO. I understand your debate about Michigan law. I am not asking that. I am asking whether or not you can use the water surface in your bay?

Mrs. STUPAK-THRALL. The Forest Service has indicated that they have designated a portion of the lake as wilderness and another portion private, so that I can, in their view, use a small portion, 40 acres, as I see fit.

Mr. VENTO. I would point out that 94 percent of the area around this lake is Forest Service land, much of it which has been declared wilderness.

Mrs. STUPAK-THRALL. The land has been, but the lake wasn't.

Mr. VENTO. Malcolm, I don't know if you are recommending a major rewrite of the Wilderness Act, but it looks like that is maybe what is being proposed here.

Senator WALLOP. No, I am only asking that they follow the Wilderness Act. This is not the boundary. The boundary is the shoreline, not the lake.

Mr. VENTO. I understand this particular issue, Malcolm, and I don't know that it is inconsistent with any other decisions made in any other court cases regarding it. I know there is a case regarding the whole case law.

Mr. Chairman, when you have specific issues like this of wilderness issues before us, it is customary to have the professionals here then to explain the other side of the case.

I don't think we should be trying these cases. I don't think there is any need for us to do it. I appreciate, though, the witnesses who have come; and, hopefully, we can get a kinder and friendlier and a few more Forest Service people to do their job, would help in this matter, rather than the constant reductions that they faced in the 1980's.

Senator WALLOP. I agree with that, but it is a question of balance. When the Forest Service says that the reason they want to take Mr. Unser so severely to task is because he is a celebrity—they spent $100,000 looking for a snow machine.

Mr. VENTO. My time has expired, but I ask unanimous consent to proceed for 1 additional minute.

Mrs. CHENOWETH. Without objection, so granted.

Mr. VENTO. Thank you.

I think it is troubling. I don't think anyone should be made an example. Certainly, I don't think that a person as beloved as Mr. Unser—with regards to his role and his status and so forth, it would be a real mistake for the Forest Service to, in fact, do that.

So I think what the issue here, of course, is, is that none of us would ask that we get any special treatment in any case either. And I am sure he is not asking for that. And I think the severity of what has been represented—talking about the maximum extent—I think at the end of the day, however this comes down, I understand it was a life crisis and so forth, and I think it is insensitive, and I would like them to look to not apply it in that instance but rather to the violations that occur.

I think if Mr. Unser knows what the speed limit is, he wouldn't go in there. If you knew it was a wilderness area and it was a violation of law, you probably wouldn't have done that; right?

Mr. UNSER. You are absolutely right, sir. I didn't intend to go in. I didn't go in, and if I did, it was during an emergency.

Mr. VENTO. I would hope the end result would be that the penalty would fit the circumstance, rather than some sort of aggravated——

Mr. UNSER. I am really not complaining about the fact that I may go to jail for 6 months. I just don't think that is going to happen. That is what the Forest Service releases in their——

Mr. VENTO. I don't think that is going to happen either, Mr. Unser.

Mr. PENDLEY. Madam Chairman, can I respond?

Mrs. CHENOWETH. Without objection, we will grant 15 seconds.

Mr. PENDLEY. Here is the position of the Forest Service with regard to what Kathy Thrall can do. The U.S. Attorney before the 6th Circuit Court of Appeals said, the only right Kathy Thrall has with regard to Crooked Lake is to drink the water out of the lake. That is the Forest Service position.

Mr. VENTO. Why don't we write to the Forest Service and have them present their own positions rather than an adversary?

Mr. PENDLEY. I will give you the transcript, Madam Chairman.

Mrs. CHENOWETH. The comments of the gentleman are appreciated, and I would be happy to work with the Minority members on having the Forest Service before this committee on a continuation of this issue. Thank you for your suggestion.

The Chair recognizes the gentleman from California, Mr. Pombo.

Mr. POMBO. Mr. Pendley, you just stated that you had a copy of that and could provide it for the committee?

Mr. PENDLEY. Yes, sir. I will do so.

Mr. POMBO. I would appreciate it if you could supply that to the committee so it could be a part of the official record.

[The information may be found at end of hearing.]

Mr. POMBO. Mr. Wallop, I know that throughout your career, your previous career, you saw a number of pieces of wilderness legislation that came through this body and across—and one of the things that has always come across to me in my brief time here is

that what we always do is we say that we are going to set aside this land and that there is going to be an economic loss because we are doing that. We are no longer going to extract natural resources out of those areas, so we admit that there is going to be an economic loss. But the way that they make up for that is they always say we are going to increase the recreational opportunities that exist.

And we have heard people testify previously that they decrease the number of recreational opportunities that exist. How does that happen in the real world—I mean, after we pass the legislation that says we are going to increase that, at the same time we are decreasing recreational opportunities?

Senator WALLOP. Well, I have no doubt of the passion of people who like wilderness. I myself do. Grew up in it long before it was designated wilderness. I used to avail myself of it, camp in it and run in it.

But one of the things that happens is there is a limited number of people who are physically able to access wilderness. It takes a good deal of wealth. It takes a good deal of wealth in order to be able to procure the appropriate equipment, transportation to the boundaries, the guides, if you will, to go in it. And the ordinary citizen, the ordinary Joe fisherman, picnicker, overnight camper, family recreationist can avail himself of the boundaries of wilderness, providing he can get to them, but the rest of it is his, and it has become crowded.

Mr. POMBO. Are you familiar with any wilderness area that allows motorboats within that wilderness area?

Senator WALLOP. No, I cannot cite one. I am not sure whether they do or do not exist.

Mr. POMBO. I have never run across one in the time that I have looked into it. I have never——

Senator WALLOP. I doubt that there are.

Mr. VENTO. Will the gentleman yield?

Mr. POMBO. Yes.

Mr. VENTO. The Boundary Waters Canoe Area does allow motorboats into the interface of the wilderness.

Mr. POMBO. Inside the wilderness?

Mr. VENTO. Yes.

Mr. POMBO. Are they not trying to take that out?

Mr. VENTO. There is a controversy about it. I don't want to go into it now on the gentleman's time, but I would be happy to later.

Mr. POMBO. That is one of the things that strikes me about it, is Mr. Nugent talks about the wilderness experience and being able to go in and hunt and fish and experience that, but the law itself restricts access into that wilderness area. And if we are trying to preserve these areas, what exactly are we preserving them for? Is it not so that we can enjoy them?

Senator WALLOP. Its application is truly laughable. You wonder where Gilbert and Sullivan are when you need them.

Mrs. Chenoweth's tale of how they sent the helicopter into the Frank Church Wilderness to rescue a wolf but didn't even bother to go look for Mr. Unser when he was lost—and now we are spending $100,000 of Forest Service money—and they are always complaining that they are short funded—to hire helicopters to look for

a snow machine in the hopes of finding a transgression. I mean, you know, sick wolves can require the intrusion into the wilderness area by machinery, but not the life of a human? Something is really goofy about that kind of application.

I think what we are seeing is an instance of the Forest Service believing that somehow or another the only unnatural event on the face of this earth is man.

Mr. POMBO. Unfortunately. Mr. Unser, in light of what Chairman Chenoweth talked about, were they actively looking for you while you were lost in this area, whether it was in the wilderness area or not? Were they actively searching for you?

Mr. UNSER. No, sir, there were rescue people that were looking. Forest Service didn't partake in any rescue deals whatsoever. They do own snowmobiles that are equally as good as mine or——

Mr. POMBO. That was not very good. But they ran, though.

Mr. UNSER. I know that to be true, because I know the people that work on them and—et cetera. And they could have known a whole lot more about everything in the whole ordeal, but they didn't partake.

And it was 16 days later, which indicates that it is true what I say, that they did receive pressure from some source like the Sierra Club. Because why did they wait 16 days later into another year and all of a sudden decide, wow, it is time to give Bobby Unser a ticket, after the newspapers and all the television stations, more than 100 million people saw all the news of my ordeal.

So after that is when they decided we must give this man a ticket. And it just became very obvious that it is a message from the Sierra Club, don't screw with our wilderness. Sad to say, but that is the way everybody pretty much sees it.

Mr. POMBO. So it is your opinion that they were going to make an example of you?

Mr. UNSER. They said they were going to, sir. In other words, they told me if I hadn't been Bobby Unser, a celebrity, that it wouldn't have happened. It would have just passed over. Out of their own mouths.

Mr. POMBO. They told you that?

Mr. UNSER. Yes, sir.

Mr. POMBO. I think I would agree with Mr. Vento on that one. That is kind of stupid. Everybody did see and read about the case and about what happened to you. It just seems like that would generate an immense amount of negative publicity for the Forest Service and serve the point of pointing out just how absurd some of these rules and regulations really are.

Mr. UNSER. You know, Mr. Congressman, when they issued the ticket, we had long talks about this. I told these two officers, I said, first place, you did not see me do anything wrong. How do you give somebody a ticket just based on the fact that you want him to have one? They have to see you do something in order to give you a misdemeanor, according to law. They did not see that. I did not do anything wrong.

But, more importantly, I told them, I said, this is liable to get out to the press; and I said, you guys will lose the war. You cannot possibly win this. It is an unjustified thing.

And then I looked at the ticket, and I saw on there—and he is telling me such a minor ticket that it is and why don't I just pay it and don't worry about it. And I looked at the ticket, and it said I must appear. Not a question of paying somebody $75 to keep them happy, but that I must appear.

That is going to publicly ridicule me and that way I would admit that I was guilty. Not just giving them money because they wanted it. I could not do something like that. It is not my way.

I got in my airplane the next day and went to Phoenix the next day to do my job. While I was on the plane, they were in Denver, the Forest Service having a press conference, saying that they were going to charge Mr. Unser; and we are going to try to fine him $5,000 and 6 months in jail for having a motor vehicle in the wilderness. They got caught with that. How did the machine get there and is it there? Nobody knows.

Mr. POMBO. They have never found it?

Mr. UNSER. Well, I don't know if they have. They claim that they have not. So it is kind of like after the fact.

And then I am in Phoenix, and everybody is calling me. And it was not me that went to the press, it was the Forest Service that went to the press. So they started the war that Mr. Pendley is handling now.

Mr. POMBO. Unfortunately, my time has expired. Maybe we will have opportunity for another round of questions. Thank you.

Mrs. CHENOWETH. Thank you, Mr. Pombo. The Chair now recognizes the gentleman from California, Mr. Doolittle.

Mr. DOOLITTLE. Mr. Unser, I find your story very compelling. Essentially, you were lost. You apparently have lost your new $7,000 snowmobile. Was the other machine yours as well?

Mr. UNSER. Yes, sir.

Mr. DOOLITTLE. Did they find that one?

Mr. UNSER. The rescue people brought that one out, sir.

Mr. DOOLITTLE. You lost your $7,000 machine. You nearly lost your life. It must have been shocking indeed to find your government, that your President thinks is your friend, to have them issuing you a citation for essentially innocent activity. Were you shocked when that happened?

Mr. UNSER. I was more than shocked. That is a good way to put it. I was in shock. In other words, not just shocked the way it sounds, I was literally in shock. I mean—and when the lady handed me the ticket, I just told her—I said, I will not sign a ticket. I am under the assumption—I have had speeding tickets for sure all of my life. I am under the assumption that I must sign the ticket. I said, if it is jail, I said to them, let's go to jail right now. I will not sign something that I didn't do.

Mr. DOOLITTLE. That is the spirit of the American Revolution. I commend you for fighting it.

May I just inquire, what do you and your——

Mr. UNSER. The ticket, sir, was written before they ever established where we were.

Mr. DOOLITTLE. I think that is clear. What do you estimate this legal defense will end up costing you when you go to trial in June?

Mr. UNSER. Many——

Mr. PENDLEY. May I?

Mr. UNSER. This is my attorney. Can he respond?

Mr. PENDLEY. Legal Foundation is a private public interest law firm representing Mr. Unser for the reason that I think is clear, based on the testimony.

If the Forest Service can engage in this kind of conduct with regard to Mr. Unser, there is nobody out there who is capable of responding. And they will do it to anyone and everyone, and there are certain, very important legal issues involved here.

Is, for example, the presence in the wilderness, without an intent to be present in the wilderness, is that a violation? Here, as Mr. Unser has testified, there is no demarcation of where the boundary is. If one is inside by accident or in the case of emergency or blizzard, is that a violation? It shouldn't be a violation.

Every crime that we have in this country, practically, requires an intent to commit the crime, and if there is no intent, then there is no commitment of the crime, and——

Mr. DOOLITTLE. Let me just ask, is this an unresolved issue? I mean, it comes as news to me that you can be held strictly liable for presence in the wilderness, without reference to intent.

Mr. PENDLEY. That apparently is the Forest Service right now; that is correct.

Mr. DOOLITTLE. But that has not actually been tested?

Mr. PENDLEY. That has yet to be resolved.

Sir, the reason I bring that up is because it is an important national legal issue, and that is why Mountain States has agreed to represent Mr. Unser for free.

Mr. DOOLITTLE. Mr. Unser—it is free to Mr. Unser, but it is obviously costing the foundation. I am trying to get a sense of what does a citizen who has the finger of Big Brother pointing at him in the prosecution, what is that likely to cost?

Mr. UNSER. I have an attorney in Albuquerque, also, that represents me in this; and so far, we have spent in excess of $30,000 of his time, which is costing me.

Mr. DOOLITTLE. So that is $30,000 of his time, presumably that much or more out of the Mountain States Legal Foundation, and by the time you go to trial, you will have easily a $100,000 bill in legal fees; is that safe to say?

Mr. UNSER. More than that, sir.

Mr. DOOLITTLE. This gives contemporary illustration to something our first President said, George Washington, "The government is not reason, it is not eloquence, it is force by fire, as a troublesome servant and a fearful master."

You, sir, had the courage and the willingness to basically fight City Hall, so to speak, only in this case it is the Forest Service. We will all benefit from that service you are performing, but I think—it comes as news to me, certainly, I suspect the members of the committee, that the Forest Service has taken out these kinds of positions.

Let me ask, in the time that I have remaining, Ms. Thrall, your case, I guess, I heard someone say that seven judges of the 14 have concluded that somehow the property clause can regulate private property. Is that correct?

Ms. STUPAK-THRALL. That is correct, sir.

Mr. DOOLITTLE. So the other seven did not go along with that, and apparently the Supreme Court has not accepted the appeal of your case; is that correct?

Ms. STUPAK-THRALL. That is correct, sir, but we are proceeding in the Federal District Court this May, on the motor boat issue specifically.

Mr. DOOLITTLE. Well, is there—I will ask you or anyone who cares to answer, what is the situation? I am reading—I just read a little summary of this situation that was your case where apparently the circuit court concluded the Forest Service and exercise of police power, similar to that exercise, the State and local government; that surely has not been validated by the U.S. Supreme Court, has it?

Mr. PENDLEY. Let me respond to that.

Ms. STUPAK-THRALL. May my attorney?

Mr. DOOLITTLE. Certainly.

Mr. PENDLEY. That is absolutely correct and, in fact, on the property clause question, the Supreme Court has specifically rejected the Forest Service's contention the property clause gives them power over private property that affects Federal property.

Mr. DOOLITTLE. That is the basis on which they are attempting to regulate.

Mr. PENDLEY. That is right. Here is the opinion of the Federal District Court, that said, not only is it a property owner along here, it is also a sovereign, and as a sovereign, it stands in the shoes of the State of Michigan, which can regulate for health, safety and welfare. Therefore, under the property clause, it can regulate for other issues as well.

The Sixth Circuit Court of Appeals repudiated that opinion and found it without merit and substituted its own judge for that opinion; and that opinion, too, was stricken, so we are back with the District Court opinion that the Forest Service has that kind of power. The irony here is, the Forest Service is standing in the shoes of the State of Michigan, but ignoring Michigan law with respect to what those property rights are.

Mr. DOOLITTLE. I just want to clarify. I missed, was it a three-judge—was it a panel of the circuit that made this interpretation about the property clause? Did you say that was then overturned by the Federal Court?

Mr. PENDLEY. The district court first heard the case throughout the Forest Service the contention that valid existing rights did not apply to property, but then said the Forest Service can still regulate reasonable use. It went to a three-judge panel of the Sixth Circuit. The panel was unanimous in upholding the district court, but for a different rationale.

We asked the Sixth Circuit to hear it, and in an unprecedented action, in light of the fact it was a unanimous opinion, the Sixth Circuit agreed to hear the case. All 14 heard the case, seven agreed with the panel—interestingly, written by the author of the panel, that judge, just judge—and then Judge Danny Boggs, who, interestingly enough, served on the Senate Natural Resources Committee at the time this was written, came to the conclusion that this compromise with regard to valid existing rights was the indispen-

sable ingredient that permitted the Michigan Wilderness Act to go forward, and he held valid existing rights were protected.

And he made an interesting point that I think is important to a question that was asked earlier, why this is a threat to wilderness. It is a threat to wilderness because if these agreements made to protect private property, careful balancing such as Congress engages in is repudiated and rejected by the Forest Service, I dare say many Members of Congress cannot vote for forests knowing these protections will be upheld.

Mr. DOOLITTLE. It sounds like the State is in a complete muddle.

Mr. PENDLEY. It is a muddle only with regard to a couple of holdings. The Supreme Court is very clear on the fact that the property clause gives Congress power, only over Federal land, not private property.

Mr. DOOLITTLE. Unfortunately, as a Member of Congress, it concerns me the next time I have one of these bills, and we are supposed to feel assured it contains the phrase "subject to valid existing rights." I don't take great comfort in that phrase.

Mr. PENDLEY. Congressman, it guarantees nothing.

Ms. CHENOWETH. The Chair will recognize for a second round of questioning, the gentleman from California.

Mr. WALLOP. I wonder if I might be excused to attend a valid existing right. I have a new meeting.

Ms. CHENOWETH. Yes, Senator. Thank you for joining the panel. Without objection, the Chair would like to ask Mr. Chris Cannon, the gentleman from Utah, to join us on this panel.

Mr. CANNON. Thank you.

Ms. CHENOWETH. And we will call on you for questioning after we call on Jim Gibbons, the gentleman from Nevada, for questioning.

Mr. GIBBONS. Thank you, Madam Chairman, for recognizing me at this end of the dais here. I would like to assure these fine people, who have come all this way to talk to us in this committee, that we are not here trying any case. We are a public hearing to find out the problems that are existing with the application of the current wilderness bills; and I appreciate your testimony here before us.

I presume that some members of this committee might think differently if we were here testifying about the problems of some social bill and how that application should be adjusted. Nonetheless, what I would like to ask—of course, we have talked to Mr. Unser earlier about his costs.

Mrs. Thrall, what have been your costs with regard to this problem that you have experienced with the Forest Service? Can you tell us, in this committee?

Ms. STUPAK-THRALL. My costs have been immeasurable, as this has taken 7–1/2 years from my life and my family's life. In order to participate fully to protect my private property, to participate in the process with the Forest Service, I have had to separate myself from the family business and family activities to take this issue on full-time.

As Mr. Unser said, he spent 10 to 12 hours each day addressing this issue, and that is correct. Anywhere from 8 to 12 hours each day for 7–1/2 years, I have had to address this issue.

You must understand that when I as a individual am participating in the process with the Forest Service, I am not participating with a person of the Forest Service, I am participating against a whole system, which goes—starts in Michigan and finally finds itself here in Washington, D.C. I am trying to hold up this huge pyramid that is trying to come down upon me. It has cost me immeasurable amounts of dollars that I couldn't even begin to count.

Mr. GIBBONS. Now help me understand this issue. Crooked Lake is primarily a lake used for recreation and has been in the past. Is there public ramp access to this lake?

Ms. STUPAK-THRALL. There is a public access through the Federal boat landing, yes, sir. That was a boat landing that was installed in 1968. It replaced a very primitive-type access that was used by the public alongside the county road. They had used that access alongside the county road because it fell within the easement of the road where they were not then trespassing onto private property.

Mr. GIBBONS. You received a ticket by the Forest Service for some activity of having an open beer can. I don't know what it was, Coke can, or whatever it was in the boat. Was that given to you on the water or on your private property?

Ms. STUPAK-THRALL. Both, actually. And the ticket was given to my husband, not to Kathy Thrall, but to Ben Thrall, and I say both, sir, because I am on my private property when I am in my boat on the surface of Crooked Lake, or on the frozen surface when I am on my snowmobile. Michigan law identifies the surface of Crooked Lake as an extension of my riparian properties, and my riparian rights to the water may not be separated or divisible from my upland.

Mr. GIBBONS. Now the Forest Service provided that ticket?

Ms. STUPAK-THRALL. Yes, sir, they did.

Mr. GIBBONS. Do they have authorization to control activities on the water in this lake?

Ms. STUPAK-THRALL. They have assumed it, sir.

Mr. GIBBONS. Their Environmental Impact Statement says the Forest Service cannot regulate use of motorboats on a lake.

Ms. STUPAK-THRALL. I understand that is exactly what they have said, sir, and they gave that response to the direct question, what will happen to motorboat activity on the surface of Crooked Lake should there be wilderness designation.

Now let's also understand, we are asking the experts in wilderness management. The Forest Service is a recognizable expert in the area of wilderness managements, so when you have a question of wilderness, you go to the Forest Service.

We went to the Forest Service through the means of the Environmental Impact Statement, which is a legal document. They must, by law, be accurate and scientific in their answer. They told us that should there be wilderness designation, that motorboat activity on the surface of the lake would continue if there is private access to it, that they do not regulate motors on the surface of the lake. You are correct.

Mr. GIBBONS. Thank you.

I have two questions, and first I would like, in this very short time that I have remaining, Mr. Pendley, do you know of other in-

stances in the wilderness areas of this country where agencies of the Federal Government have used motorized vehicles of one kind, whether it is a helicopter, airplane, a tracked vehicle of some type, to access wilderness areas? We have heard the story of the Chairman and the wolf. That would be one question, if you could help this committee understand that.

The second goes to Mr. Unser. You brought this map. Following that would you tell this committee what that meant, represents, and what those red dots are? Thank you.

Mr. PENDLEY. I really don't have an answer for you, Congressman, as to uses that the Federal Government has made of motorized vehicles. There is the one famous story, of course, of the New Mexico wilderness in which a little Boy Scout was lost, and U.S. Forest Service used a helicopter to help locate him, but then made the decision not to rescue him on the site because they didn't think they could, and the next day they got permission to go in, and then they did go in.

Mr. UNSER. Could I just relate to that a little bit about the Forest Service about a case I happen to know of where there were some hunters in the same wilderness area, Congressman; that they got stranded by an early snow, horses and men, and they wanted to go in with snowmobiles and feed the horses so the horses wouldn't die. They allowed helicopters to go in and pick up the men and get them out so they wouldn't die. They were refused the horses. They were just going to let the horses die away deep in that wilderness.

Then a call was subsequently made to the Humane Society here in Washington, D.C., and the rumor out in my part of the country will tell you that within 15 to 30 minutes, there was an OK to haul the hay in and get the horses out. They sledded some of them out on hoods and stuff like that, but nonetheless they did allow it, and some of my friends that I associate with commonly work for the people that did this. They did allow it to go in and happen, but it was not until the Humane Society was called here that it went to the Forest Service and came back OK.

Mrs. CHENOWETH. Your time is up, and on my time, when we have a second round of questioning, I would like for us to continue with the question the gentleman from Nevada asked you about your map. But right now the Chair recognizes Mr. Cannon for questioning.

Mr. CANNON. Thank you, Madam Chair.

First let me say I deeply appreciate the fact you all would come to this meeting here today. More than that I appreciate the fact you are carrying on a difficult battle, each in a different way. I think the government, by nature, is a matter of force. If we don't resist that force, we lose our rights, and property rights are very important in that process.

Mr. Unser, do you—have you recovered your snowmobiles? Have they ever been found, and were they found on Federal wilderness property?

Mr. UNSER. One was recovered by a rescue crew and don't know where it was. Don't think it was in the wilderness, but nobody really—there has been too many conflicting stories on where it was, meaning there was a terrible blizzard going on, and the crew that

found it—I wasn't there, you have to understand. I was walking when this was all going on, but when the crew found the first snowmobile, and the only one that has been found, they were in a blizzard, almost didn't get out themselves. They ended up coming out late at night, and they were lost for a while and then tried to follow my tracks going in. They were unable to do that. As far as the wind blowing so hard, they can only pick up a track occasionally, and it appeared to them that I had been going around in circles, which is common, I guess, when you are lost.

So they found the snowmobile, took it part of the way out. The next morning, this would be the morning that I had walked out, and while I was in the hospital, this—a group had gone back and retrieved the one snowmobile, and they don't believe that it was anywhere near where the Forest Service contends that it was, and—which means it was probably out of the wilderness. And the second snowmobile is—has never been found as far as we know.

Mr. CANNON. Was the first still operating when you abandoned it; was it driven out or pulled out, and who comprised the group that found it or was looking for you when you found it?

Mr. UNSER. The group that got it out would be friends of mine that were part of the rescue group and part of my family. My brother went in and my son and my daughter. They brought it out.

Mr. CANNON. They were the ones who brought it out.

Can you tell us a little bit about the organization of the group that was looking for you; was it only family, did it include the local search and rescue, did it include the Forest Service?

Mr. UNSER. It was Colorado Search and Rescue, New Mexico Search and Rescue, and friends and people that know the country a lot better than the Search and Rescue from the Chama area. That is the town that is close up there that we live in.

Mr. CANNON. Were there any Forest Service search and rescue types? Was there anyone from the Forest Services helping?

Mr. UNSER. 100 percent none.

Mr. CANNON. And when you abandoned the first snowmobile, was it still operating?

Mr. UNSER. Yes, sir, it was still operating. But what had happened, my friend that was riding it, it was becoming a deficit rather than an asset, and when he got stuck, it was time for me to leave that snowmobile and put him on behind me. I was on a new snowmobile, and it really shouldn't have given me problems, but it did, and that is the one that is still up there. So I left it knowingly, but not knowing I was going to have the other one break down.

Mr. CANNON. How long was it between the time you abandoned the first snowmobile and the time you broke down on the second?

Mr. UNSER. Approximately—it got stuck, and I left it approximately 2:00 o'clock in the afternoon, and darkness comes at 5:00 up there, and that is when I abandoned the second snowmobile and started walking.

Mr. CANNON. OK. Just one other question. When you were issued a citation or violation, the notice of violation, whatever you call it, what was the factual basis alleged for the violation? How did they suggest that they knew you were in a wilderness?

Mr. UNSER. Only from taking maps and—remember, I am there under the pretense, sir, that they are going to help me find my

snowmobile so I can go retrieve it and take it out of the mountains, and I went through the Forest Service people in case that it was in the wilderness. I don't know where the wilderness is, I don't know where the boundaries are, but I went to get a letter, something saying for Bobby to be in there finding the snowmobile with myself and my group.

So after I sat with the two police officers, they never told me I was being investigated criminally or anything like that, we backtracked from where I walked out, and after we backtracked it up, in all sincerity they determined my snowmobile, which is still lost, must be in the wilderness by what I described. That is when the lady reaches down under the table and pulls out a ticket, which was the citation, and handed it to me.

Mr. CANNON. And on the citation itself, the citation, was it—did it say on its face that they found you had been in the wilderness based upon your statements, or was there another basis alleged?

Mr. UNSER. It is not based on anything, it is just merely they made out one thing, operating a vehicle in the wilderness, but they didn't see the vehicle there. They still haven't seen it, I haven't seen it, and I don't know that to be true. So it was a ticket that had to be a bad ticket to write because there is nothing that knowingly has happened.

Mr. CANNON. Thank you very much, Mr. Unser and the rest of our panel.

Mrs. CHENOWETH. Thank you, Mr. Cannon.

Before I recognize the Members for a second round of questioning, I want to say this particular hearing and this panel, as well as the panel members to come who will testify, have drawn a lot of interest from all over the Nation, and I do want to recognize a distinguished visitor in our audience, Representative Dan Mader from Lewiston, Idaho. He is serving on a national forest task force, and I appreciate his interest in this hearing.

With that, I would like to continue my time of questioning, and we will adhere very strictly to the 5-minute rule on this second round of questioning. But I did want to ask Bob the answer to follow through on the question that Mr. Gibbons asked you, by explaining what the red marks are on this map. I think we can all probably get a real good idea of what you went through by looking at the map, and I assume that is a USGS quadrangle map.

Mr. UNSER. It is a national forest map. We purchased it from the Forest Service office in Albuquerque. The stickers are on the back.

What this shows is the wilderness, if all of you can see it, is marked in blue. Now this is not to be exactly correct because a friend of mine made this up just so I could show Mr. Pendley and such attorneys where I went, at least where I know that I went that day. We unloaded over here at this red deal, which, all of this country, all of this country is national forest, not wilderness, everything at the blue line, and we didn't go on around with it because it wasn't important. That wasn't the part in question. The part in question would be this wilderness. Everything up in here would be the authorized wilderness.

Mr. DOOLITTLE. Madam Chairman, can I inquire? I can't see a blue line from here. Is there a blue line up close that delineates--

Mr. UNSER. Can you see it coming around here? Can you see that?

Mr. DOOLITTLE. Yes. Thanks.

Mr. UNSER. I know it is hard to see.

At any rate, right down here is where we unloaded our cars, and this is always referred to as Red Lake. If you are going to tell somebody you are going snowmobiling, you would say, we are going to Red Lake or Dipping Lakes, meaning that is where you unload, meaning that is where the trails head back in that direction.

But thousands of people snowmobile in this area, Jarosa Peak, which is all this area right in here, very, very commonplace, and, of course, a lot of snowmobiling in there, a lot of area to snowmobile, and there are no signs up in here to show where the wilderness starts.

I suppose over the years many thousands of people have been in there, but even if you are snowmobiling, when you get on top, it is really a rock. We call it a rock farm up there. The part that is fun in snowmobiling is going up the hills, the rim road. When it gets all full of snow, you can do some really nice climbing, which is fun, but when you get up on top of this rim road, you are not in the wilderness.

Now, honest to goodness, we didn't know this until this incident happened, and I have learned it since, but that is where I unloaded. We went up riding. This is where we climbed up and got up to the top, and this is where our location was when the blizzard happened.

Now the national forest officers claim that they found the first—they didn't find it—no, they said it was found way over there, a place called Dipping Lakes. Now respectfully, I would like to point out to everybody that lakes in the wintertime don't exist. It is just country full of snow. You can't tell lakes from anything. There is at least 100 lakes right here in the wilderness. I took pictures and showed them to Mr. Pendley, and he can't see one lake because it is winter, and there is snow. So nobody goes riding at a lake or a specific place, they just merely unload here. It is called Red Lake or Dipping Lakes. And up here is where they snowmobile, and very often you come right here down through Quemado Village Lake, a giant lake. Nobody knows when they go past the lake because it is frozen.

So that is where we were. Right there is the location, this red sticker here, where the blizzard hit us. That is where we got disoriented and lost. And this is where we think that they found my first snowmobile. We don't know. My walking ended up over here. The 18 hours that I did ended up down here, which is to the north and to the east. And the place where I spent the night would be somewhere right in here.

There is a giant, giant, giant canyon here. I wish all of you could see it, but I realize you are too far away. That canyon is something like 600 feet down, according to the map. We slid down the snow slide to get down there because it was the only place to see this valley this way. This would be the Outer Alamosa Valley, and when I was out of the wind and out of the blizzard, I could see that, and I know a place called Quemado, that is the river that comes out and comes down here. That is the Quemado River there.

I could see I needed to get down there because I knew that would be a friend down there; in other words, buildings, people, stuff like that. That took 18 hours of walking to.

Now, to this day, the Forest Service doesn't know where my other snowmobile is, and I don't know where it is, but the Forest Service managers, both the head people both in new Mexico and in Colorado, released statements to the press all the time that Bobby Unser is not going to get that snowmobile unless he takes it out by hand or by horse.

Now in all due respect, if I am lost, and if the snowmobile did end up, which the Forest Service thinks, a quarter mile into the wilderness, of their statement, if it does ends up there, how am I going to get the thing out? I didn't intentionally go in there with it, and in essence they are stealing it from me if they don't let me go in and take the thing out. I can't get a horse up in there in the winter to go get it, that is for sure, and come summertime, how would I get the tools up there to disassemble it and take it out? So in my opinion, they are stealing it if they find it there.

But what if they find that it isn't there; what if they find it is actually just outside the wilderness by 10 feet? Then look what they have done to me. But no matter what, they don't know where it is any more than I do.

Mrs. CHENOWETH. Thank you, Mr. Unser. I very much appreciate that answer and explanation.

The Chair now recognizes Mr. Kildee for 5 minutes.

Mr. KILDEE. Thank you very much, Madam Chair. While I have a chance, I would like to thank the witnesses. I come to these hearings because we can learn things, and I really appreciate your involvement on this. I think basically the Michigan Wilderness bill was a good bill. Matter of fact, you know, I take great pride in having put them together. I myself put the non-buffer language in the bill, even though that was not in the organic after 1964. I put it in. That would have been the policy, but after having hearings, particularly in the Upper Peninsula, people raised questions about that, and I said I will put it in the bill exactly, so we put it in there.

But I am convinced, having read the law, that neither Federal laws nor the State riparian right laws, with which I am also familiar, I am convinced it does not exclude the wilderness—the Forest Service from excluding motorboats on the wilderness area of the lake. You canoes the entire lake, Mrs. Thrall, and you canoes motorboats on the nonwilderness part of that lake, but on the wilderness part, you canoes, under the rules, only electrically powered motors, but on the nonwilderness part of the lake, you can still use motorboats.

I think that is a reasonable division between what is owned by all the people of the United States, about 95 percent of the lake, and what you have some rights on under riparian law, and you own land on that part of the lake. I do know even people who are in similar situations as yourself that there is a division.

I would like, Madam Chair, with consent, to include in the record a letter from Thomas V. Church from Water Street, Michigan, who is a cabin owner on Crooked Lake, and he feels basically the Forest Service has, as you put it, walked a path between streams. Some

of the general public wanted no motors at all, some wanted restrictions. He feels they have reached a balance there, and so there is a division even among the property owners. So I would like this for the record.

Mrs. CHENOWETH. Without objection, so granted.

[The information may be found at end of hearing.]

Mr. KILDEE. And I have no further questions, but I would like to thank the panel for its sincerity, enthusiasm, their input and knowledge. It is helpful to the Congressman.

Mrs. CHENOWETH. Thank you, Mr. Kildee.

The Chair recognizes the gentleman from California, Mr. Pombo.

Mr. POMBO. Thank you, Madam Chairman.

Ms. Thrall, just so I understand how this is situated, did you say that part of your property is within the wilderness area?

Ms. STUPAK-THRALL. Yes, sir. In fact, all of my private property is within—well, I cannot say that. The wilderness boundary does cross the lake, yes, at a certain point, and the Forest Service contends that a 40-acre parcel is outside the wilderness and is private, and the remaining 560 acres then is wilderness. That is contrary to Michigan law, where Michigan law does not allow fencing, whether it be visible or invisible, of a lake surface, to divide public from private rights. One riparian cannot fence off another riparian, and, well, I would have some remarks for Mr. Kildee, but I would save those for later.

Mr. POMBO. So your contention is that because you own lakefront property, that you own rights on to the lake, riparian rights onto the lake?

Ms. STUPAK-THRALL. The State of Michigan identifies those rights, sir, yes, and the Court cases from Michigan from the Supreme Court have identified those rights, yes, sir.

Mr. POMBO. Do you feel that the value of your home has been diminished or increased as a result of the wilderness?

Ms. STUPAK-THRALL. When my constitutional rights are diminished and my private property is not recognized as such, it is diminishing of my value, yes, and of my constitutional rights, yes.

Mr. POMBO. Do you feel it has restricted the use of your private property for what has been determined as a greater public good or a public policy?

Ms. STUPAK-THRALL. In fact, the courts have very clearly identified—and my attorney can correct me if I am wrong, but I believe that the court has identified that these regulations placed on the surface of Crooked Lake are not for even just the community of Watersmeet. But for the general public at large of the United States, am I correct, Mr. Pendley?

Mr. PENDLEY. That is correct.

Mr. Chairman, let me just add something. Under Michigan law, a riparian, somebody who owns property along the lake, has the right to use the entire surface of the lake subject to one condition, the reasonable use of other riparians along the lake. Every opinion written in this case does not disagree with the fact that this is private property, this is property that is owned both by the Forest Service and by the Thralls and Gajewskis and the other 11 property owners. There is absolutely no dispute.

When Mr. Kildee talks about the wilderness portion, this is not the wilderness portion, this is the private property portion, and what the courts have said is under the property clause of the Constitution, the Forest Service can regulate this private property for the national good because it affects Federal property, and that is where the system just simply breaks down, because that is in conflict with the Supreme Court opinion, and I think it is in conflict with what this Congress meant to do.

Mr. POMBO. I was just looking through the code on wilderness areas, and one of the provisions is that there be no permanent improvement or human habitation of the area, that is pulled into that; that the whole idea being that there not be any sign of human beings within the wilderness, and yet you have a picture of your house. How does that work?

Ms. STUPAK-THRALL. Well, as the wilderness user enters into the Sylvania area, they come in off the recreational portion where the boat landing is at, and they happen to see my homesite and the homesites of my neighbors, and many of these wilderness users will refer to us as visually offensive. But as they enter onto the surface of Crooked Lake at that point of entry, they are entering onto the surface of not only, from the Federal Government's point of view, their riparian rights, but also onto my riparian rights, a joint ownership of private property. And I must also remind you as well that Forest Service land status ownership records, which are included in my testimony, and letter from a Mr. Ken Myers from the Forest Service office, regional office in Wisconsin, very clearly states that these land status records are used to report to Congress what acres they own as a Forest Service, and the Forest Service has broken down the land acres, the upland acres from the water acres, and they identify all upland acres as forest system lands, and they will identify that there is a title held and PILT moneys are paid, PILT moneys being payment in lieu of taxes.

Now when it comes to the water acres, they exclude those subsurface water acres and the surface water from Forest Service ownership. They say they are not forest system lands, no title held, no moneys paid. So when it is convenient for them to not pay and return to the counties and the township PILT payments, they have no ownership rights, but now when they want to regulate, they suddenly have ownership rights and will not recognize private property rights established by the State. They are given title to their upland by the same entity I am given too, the State of Michigan. They are not willing to recognize State of Michigan laws when it does not suit their needs.

Mr. POMBO. Madam Chairman, I know my time has run out, but very quickly, looking at this picture that you gave us.

Ms. STUPAK-THRALL. Yes, sir.

Mr. POMBO. This is in viewpoint of the American flag, and everything is in view from the wilderness area.

Ms. STUPAK-THRALL. Yes, sir, it is. In fact, my property is the only property that flies the American flag on the shores of Crooked Lake. Not even the Federal Government.

Mr. POMBO. And what kind of comments have you received?

Ms. STUPAK-THRALL. I have had Sierra members sit across from me, sitting no further than you are, saying my private property

and that of my neighbors is visually offensive, and they may have to contend with my homesite, even though they prefer condemnation, but they will not tolerate my motorboat activity because it disturbs their quietude and their solitude. Regardless of what Congress directed in the language, a Federal land is only to be designated, not private property, and administration will be subject to valid existing rights.

Mr. POMBO. Thank you very much.

Thank you, Madam Chairman.

Mrs. CHENOWETH. Thank you, Mr. Pombo.

The Chair recognizes the gentleman from Minnesota, Mr. Vento.

Mr. VENTO. It is the law, and it is my understanding of the law, that, in fact, there is an exception with regards to motorized use for administrative and safety and health purposes by the Forest Service with regards to the Wilderness Act, and, in fact, it is in the law. Apparently there is some misunderstanding or some argument on the part of some here whether or not the Forest Service does have such authority.

Ms. STUPAK-THRALL. May I respond to that, sir?

Mr. VENTO. Well, wait until I finish my question. I have a question, and I would like you to, certainly. But my point is in terms of rescue operations, they certainly are. Whether or not they, in fact, have the resources in all instances to send planes, helicopters and other types of search parties out to use for lake and for safety purposes, to, in fact, do that, is, of course, a relative question. We know, for instance, land management agencies often are involved in mountain rescues where people are taking risks in terms of climbing mountains. It is an expensive proposition, obviously, but life is affected.

One of the instances brought up by a witness commented about a kid in a wilderness, and that, in fact, there was some limit or some question about whether equipment should be used in order to try and rescue that child. But it was found out upon reflection that, in fact, part of the reason he was in the wilderness is because he was apparently running away from home, or at least trying to avoid authority from parents or from other sources.

So, as I said, I think that is why it is important when you have allegations and statements made, that it is important to try and have in place the land manager so they can have an intelligent discussion. If we are going to be considering arguments that are going to take place before a court with regard to property rights, it is probably a good idea to have the Forest Service speak for themselves with regards to—or the BLM, for that matter, to speak for the wilderness themselves regarding the arguments, rather than have them portrayed by others. I think that something that is lost in translation. So these hearings end up being an interesting litany of problems, but they are not necessarily helpful in terms of trying to understand the Wilderness Act.

Ms. Thrall, do you have a comment with regards to the safety and rescue operations and the use of motorized vehicles for that purpose; do you have any response to that; do you have a comment you want to make with regards to that?

Ms. STUPAK-THRALL. The comment that I had to your statements on rescue and safety, all of those directions of management and

how there shall be rescue and safety operations, all of this is in direct relation to federally-owned lands. It is not directed to private properties. Crooked Lake is and has been established not only by State law, but also by recent court cases that it is private property.

Mr. VENTO. I appreciate your observation. My concern related to the statements made by Mr. Unser and others concerning the public lands and the wilderness areas. I would also suggest many of these arguments have something to do with wilderness, but they have something to do, generally, with the Federal Government, with the national forest land and the acts that predate the Wilderness Act. In fact, as I look at some of the testimony, it actually takes issue with some of the issues with regards to water rights and other matters. It seems to me to be a continuation of a long debate that predates, in fact, the Wilderness Act in terms of the Federal Government's sovereignty and what its role is with regard to States and with regards to private citizens and has little or nothing—or little to do, really, with the Wilderness Act.

You may disagree with the application of it with regards to this purpose, but I would point out that it has been used. There are some aspects of Federal law in property rights and laws that, in fact, do deal with whether it is applicable under the Mining Act, whether it is applicable under easement, whether it is applicable in terms of many other issues with regards to timber sales and other acts that exist within the Forest Service of the BLM.

So this effort to talk about the nuances in terms of how it affects wilderness is interesting and maybe the feeling is there should be some change. For instance, I note that the Forest Service, in its Organic Act, has a right for Eminent Domain, it remains there with regards to the Wilderness Act. It isn't taken away by virtue of that. In some cases, we may qualify it even, to not permit it to be used in these instances. A lot of people in BLM land and in public land, however, are concerned with trying to get along with the individuals who are there, but understanding there is a changing dynamic, as we learn more about the areas, the science of these areas, these ecosystems; as we learn more about it, to apply and try to manage them in an intelligent way, and that is an ongoing process.

And I realize that it means change for all of us, change if we want to attain certain goals. Clearly there are many that disagree with those goals, and that is all right. You can be more against the Wilderness Act. The question is if you don't want to attain that goal or have that type of land set aside for future generations, that is a legitimate point of view. Or if you think of a different way to accomplish that, that is OK. I am, frankly, trying to do the best we can to invent laws that preserve them and rehabilitate them.

Thank you. I thank the witnesses.

Mrs. CHENOWETH. Thank you.

The Chair recognizes Mr. Doolittle.

Mr. DOOLITTLE. Thank you, Madam Chairman.

I agree with Mr. Kildee, you do learn things from these hearings. One of the things I learned is that the Humane Society helps the Sierra Club. Mr. Unser, if we could have an alleged interest within the purview of the Humane Society, the Forest Service might actually have gone looking for you.

Mr. UNSER. I agree.

Mr. DOOLITTLE. Mr. Nugent, I think you raise an issue that probably should be the subject of hearings in and of itself, this issue of providing more quality wilderness-type area for people to use, because as I understand what you are saying, the available land for hunting and fishing is becoming so overused that the experience is really changing for people who wish to engage in that activity, and apparently the vast designated wilderness areas that we have are restricted in some ways for the hunting and fishing that you like to engage in. Would you care to comment on that?

Mr. NUGENT. Well, I am very fortunate in my radio programs and phone calls and meetings, hundreds of meetings a year, in meetings with families, the parents desperately trying to encourage young people to seek a conservation life-style, and I have seen over and over again that the quality of their outing—and, of course, we have to realize it is usually weekends for the vast majority of American families—and the inaccessibility of some of these more vast acreages that maybe are only accessible via horseback or on foot literally cause these families to settle for oftentimes a crowded experience, whereas expanding their recreation into off-limit areas, opening it up, would further encourage these young people to do it again. It is really quite as simple as that.

And when they call—I guess the best way I can put it is if I go to a lake, and my son doesn't see the bobber go down all afternoon, I am going to have a tough time getting him to go fishing the next time; whereas if we can open up some of the areas that currently—because of their accessibility they are not going to get in there, and in those larger tracts there is a better opportunity for a wildlife encounter, kill or no kill, game or no game taken, it is, in fact, the spiritually uplifting experience of just encountering this exciting wildlife beyond their schools and beyond their cities and beyond their normal lives that will encourage them to come back.

And I don't want anybody to confuse what this old guitar player readily identifies, the difference between the rape of the hills and a family walking or accessing a piece of—currently inaccessible property, whether it is on a four-wheel drive recreational vehicle or on a snowmobile. Certainly sticking to designated trails is once again—to repeat part of my testimony earlier, a designated trail, whether on foot, horseback, snowmobile or four-wheel drive, is no more offensive to my eyesight and my view of this extremely precious and valuable wild ground resource than that of an area that maybe was disrupted violently by two bull elk fighting. I like to see people invigorated that way, and I believe as a member of the Tread Lightly program that human tracks are no more offensive than the wildlife tracks if we are conscientious, as I find the vast majority of supporting people to be.

Mr. DOOLITTLE. Mr. Pendley, do you have an estimate off the top of your head, an estimate of court costs and attorneys' fee for this 7-year effort that Ms. Thrall has been waging? I think we ought to have some sense of what it costs to defend a constitutional right.

Mr. PENDLEY. The best estimate I have heard for private attorneys is the cost of being to the Supreme Court and back is about $500,000, and right now we have done all of that. We have gone through a District Court, we have gone through a three-panel

Court of Appeals, we made a petition to the Supreme Court. I mean, our petition costs just to print the record and make our petition to the Supreme Court was approximately $18,000.

Mr. DOOLITTLE. And you are not done yet. You are back in District Court.

Mr. PENDLEY. We are back in District Court with regard to the motorboat issue, absolutely.

Congressman, one of the points that needs to be made is no one here at this table disputes wilderness. No one says the Wilderness Act was wrong. In fact, we all believe the Michigan Wilderness Act was correct. Congress did everything humanly possible to protect Kathy Thrall's rights.

What we object to is the manner in which the Forest Service has implemented it, has ignored the will of Congress, and the incredible cost to Kathy Thrall and her family, and the zero cost to bureaucrats who have done it. And this is the troubling thing: There is absolutely no downside for the bureaucrat who wants to look the other way when Congress has made a pronouncement, and there is a terrible downside for people like Kathy and Ben Thrall.

Mr. DOOLITTLE. Thank you, and I thank all the witnesses for their excellent testimony.

Mrs. CHENOWETH. Thank you.

Mr. Cannon is recognized for 5 minutes.

Mr. CANNON. Thank you.

Mr. Kildee has introduced a letter from someone in your area there and talked about balance and balancing between a motorized and unmotorized or electric motors on boats. Do you have any light you could shed on the nature of that debate?

Ms. STUPAK-THRALL. Yes. Mr. Tom Church purchased property on the shore of Crooked Lake in 1989. Mr. Church came into our neighborhood unknowing to us—of course, it really didn't make any difference, we wouldn't have stopped him from purchasing the property. But he is a member of the Sierra Club, and they all vehemently support canoe effort only and will oppose all motorized use. Mr. Church is the only riparian on the shoreline of Crooked Lake that opposes the motorized use on Crooked Lake, yet he came and purchased property on Crooked Lake when that motorized access and accessibility to the entire surface of the lake had not yet been challenged by the Forest Service. He knew that motorized activity was there.

Mr. CANNON. So he is not exactly an impartial observer of a bureaucrat process?

Ms. STUPAK-THRALL. That is exactly right.

Mr. CANNON. I noticed in the picture of your cabin, you have a flag prominently displayed. This may become an issue in a later panel, but have you ever had any problem with people criticizing the flag?

Ms. STUPAK-THRALL. Never before, not until it was February 22, 1990, when the Sierra member made that comment to me and about 50 other people who were in the room that the properties of Crooked Lake were visually offensive, and please do keep in mind, my family and I have flown the flag on the edge of that dock since 1939.

Mr. CANNON. Was that directed to the flag or the whole setting?

Ms. STUPAK-THRALL. To the whole setting, sir.

Mr. CANNON. I suppose Mr. Unser has had the most pointed experience, but I think, Mr. Pendley, you probably had broader experience, so I direct the question to you, and other panelists may want to respond.

You talked earlier about the cost of search and rescue. Clearly in the new monument area, this is going to be a major problem because it is a vast area with tracks that go nowhere. In your experience do the managing agencies, the Federal agencies, have the resources to do significant search and rescue, or is that locally borne?

Mr. PENDLEY. I don't have the expertise to comment on that. My own experience in the State of Colorado, when we lost country skiers, that all the agencies have responded very, very well to those kinds of emergencies, but I can't comment with regard to whether or not they have a sufficient budget to engage in that work.

Mr. CANNON. Thank you, Madam Chairman.

Mr. KILDEE. You mentioned the flag and somebody finding the private property itself offensive?

Ms. STUPAK-THRALL. Yes, sir.

Mr. KILDEE. And I regret people saying things like that because the Organic Law for Wilderness in 1964—and I put that language back in the Michigan Wilderness bill saying that the Federal Government could not exercise the right of eminent domain for wilderness acquisition, and I am very sensitive, as you are, Kathy, to the right of private property owners. You are one. But I made sure after I had the hearings in the Upper Peninsula, particularly where the people had some concerns that the exercise of our eminent domain, I put the language specifically in the Michigan Wilderness bill that the Federal Government could not use the right of eminent domain to acquire private property. And I am glad I put that in there. I think that is a very important part of the bill, and people can make offensive statements, and I would find it offensive also that that person made that statement.

Ms. STUPAK-THRALL. I do find it offensive, and I find it further offensive that the Forest Service continues to uphold and fortifies those statements.

Mr. KILDEE. I will get into that, but I do think—I am trying to write a balanced bill, and we write bills here on Capitol Hill, and they are not perfect, but I did specifically, however, include language that we could not even use the right of eminent domain—the Federal Government does have under the Constitution right of eminent domain, but we put in that bill, acquisition and designation of wilderness, that they were forbidden to use the right of eminent domain, and I think that was a good provision of the bill, and thank you very much, Ms. Thrall.

Mr. CANNON. May I say this: I appreciate the fact that Congress and you put in the language that would limit that intrusion into private property rights, and that is very important. I think the issue here is what the Forest Service is doing with the language that Congress produced.

Mr. POMBO. Would the gentleman yield for just a second?

We have successfully put that language in a number of different places limiting the right of the government to use eminent domain to acquire private property. But one of the things we found over

the past few years is because they can't use condemnation, they then use adverse condemnation and take it through regulation, because they can't take it from an unwilling seller. So we are beginning to see cases, such as this one, where they take it through adverse condemnation and just take the property through their regulation, and that is one of the problems that we have been dealing with over the past several years.

But I thank the gentleman for yielding.

Mr. CANNON. Thank you.

In the rest of my time, let me say, there is no place in America for regulators to go around the law that way, and I think that is what we are hearing the problem here really is.

Thank you, Madam Chairman.

Mrs. CHENOWETH. I want to thank the panel, and I want to thank this committee. I think the questions were outstanding. We did all learn a lot. This has been a very long and arduous panel, 3 hours, but thank you for your perseverance, and as a member now of this government, I am looking forward to the day when we can help correct some of those misjudgments on the part of some of our people in the field.

Thank you all very much for your generosity.

The Chair now calls the second panel. The second panel will consist of Mr. Todd Indehar, president, Conservationists with Common Sense, from Ely, Minnesota; and Richard Conti, waterhole coordinator, Society for the Conservation of the Bighorn Sheep, Eagle Rock, California; David E. Brown, the executive director, America Outdoors, Knoxville, Tennessee; Edward Baumunk, co-owner, BBJ Mining, Tecopa, California.

Gentlemen, the Chair recognizes first Todd Indehar.

Mr. Indehar.

STATEMENT OF TODD INDEHAR, PRESIDENT, CONSERVATIONISTS WITH COMMON SENSE

Mr. INDEHAR. Thank you.

Distinguished Chairman, members of the committee, thank you for the opportunity to testify. I am president of Conservationists with Common Sense, a grassroots, all-volunteer organization based in Minnesota. We are dedicated to preserving public access to public lands, especially with Boundary Water Wilderness. We have been involved since 1989, including two court actions, appeals, and four congressional hearings relating to wilderness.

I will be blunt today. Forest Service wilderness policy is intellectually and morally bankrupt. Reinvention didn't fix it. New ideas must be tried, and they must be tried soon. Local people and wilderness users must be involved in any new plan. They alone bear the brunt of these policies, yet they have no voice in the decision-making process. They have been ignored, but they have much to share.

Today I will describe several examples of what is happening to American citizens at the hands of the arrogant and unaccountable Forest Service and suggest several reforms for you to consider. My first example involves Forest Service's 1992 draft BWCAW management plan in which they tried to ban Scouts from the wilderness, youth groups of all types, families and others.

During the public task force process, which we participated in, preservationists argued that Girl Scouts singing around a campfire interfered with wilderness solitude, and the group of five canoes on a lake was, quote, "visual pollution," unquote. The youth groups, on the other hand, spent months trying to explain why they needed a group size of 10 to keep kids in the woods. Forest Service wanted to cut it to six. The task force did reach a consensus to keep it to 10, but in a stunning display of arrogance, it consciously moved to eradicate the youth groups from the Boundary Waters.

It angers me to this day they deliberately chose to do that, and that is how I personally got involved in the issues because it personally impacted my family and their ability to recreate. Only after months of appeals, $100,000 and a lot of bad press was the Forest Service allowed to let the kids back in.

Another outrageous example took place on Memorial Day, 1995, when 62-year-old Dr. Ed Pavek, he was a Korean War vet, were flying an American flag over their boundary water camp site. Two uniformed officers approached and told him to take the flag down because, quote, "it didn't go with the wilderness concept," unquote. The Forest Service then lied. They tried to cover it up. They came up with several different versions of the story and tried to discredit Dr. Pavek, and since then Dr. Pavek informs me he has been unable to obtain a permit to go to the Boundary Waters. Whether that is a coincidence or on purpose, we don't know.

Also, it is denying public access to the Boundary Waters due to quota cuts and a dysfunctional system. The Duluth office, which created the system, has done nothing to fix it for years. Forest Service personnel are admitting forest permits that are being reserved and not used. Campsites are empty, but people cannot get a permit. Something doesn't add up.

The Wilderness Act states wilderness is to be used for quote, "the enjoyment of the American people," unquote. American people are being denied this use because of an inefficient government agency. It is clear the Forest Service needs this Congress's help to fix this problem.

In short, the Forest Service has been inefficient, unaccountable, dishonest, nonresponsive to local and regional concerns, and too easily influenced by Washington-based special interest groups. They are becoming more centralized, while many institutions in America and around the world are becoming less so. One-size-fits-all policy isn't working in the Boundary Waters.

Here is what we recommend. First, we recommend that Congress should immediately initiate studies of existing non-Federal managements structures that could be used as alternatives to Federal management of wilderness. Congress should immediately initiate pilot projects to test a wide spectrum of decentralized and private conservation management structures for wilderness areas.

In conclusion, there are serious problems with this Government's management of the Boundary Water Wilderness and other wildernesses, too. People and wilderness are suffering. Decentralization and privatization need to be tried. Of course, some people will argue that private and local interests can't be trusted, that they would rape and destroy the wilderness. I have heard that many times.

This is arrogant, illogical and fear-based. This disregards the public attitude toward the environment, especially wilderness. It also ignores the successful conservation record of local and State governments and the spectacular record of private initiatives, such as those of the Nature Conservancy, National Audubon Society and others.

The voices of status quo and fear must be rejected. This Congress must show leadership, creativity, compassion, and vision to save our wilderness areas. Better management of the land means better government for the people. Better government is smaller, less intrusive and closer to the people, which, in the end, means more freedom and liberty for everyone. Thank you.

Mrs. CHENOWETH. Thank you, Mr. Indehar, for that testimony.

[The statement of Mr. Indehar may be found at end of hearing.]

Mrs. CHENOWETH. The Chair recognizes Richard Conti, the waterhole coordinator for the Society for the Conservation of Bighorn Sheep.

Mr. Conti.

STATEMENT OF RICHARD A. CONTI, JR., WATERHOLE COORDINATOR, SOCIETY FOR THE CONSERVATION OF BIGHORN SHEEP

Mr. CONTI. Thank you, Madam Chairman.

My name is Dick Conti. I represent the Society for the Conservation of Bighorn Sheep, a California nonprofit organization. Since 1969, this society has cooperated closely with the California Department of Fish and Game to implement the State's Bighorn sheep management plan. We help the DFG to construct, inspect and maintain a desertwide series of man-made wildlife drinking devices called guzzlers.

Since 1988, I have been the Society's waterhole coordinator. I consult with the DFG in their planning efforts to return Bighorn sheep to their historic ranges throughout California. This program has been very successful and has resulted in a doubling of the Nelson desert Bighorn sheep populations in our deserts.

For 25 years, the DFG, BLM and this society have cooperated jointly to manage desert wildlife on public lands in California. However, with the passage of the California Desert Protection Act, much of our desert is now designated wilderness. The BLM is attempting to administer lands designated by the California Desert Protection Act as it does most wilderness lands covered by the Wilderness Act of 1964. However, the authors of the act understood this DFG program was beneficial to the resource, and they wanted it to continue. They included language in the act that specifically allows management activities to restore and maintain wildlife populations, and the act further states these activities shall include the use of motorized vehicles by the appropriate State agencies.

The BLM Wilderness Division does not recognize this language in the Act. A BLM wilderness specialist told the DFG and the society that any future request for guzzler development in wilderness will require an Environmental Impact Statement, the paperwork could take a year to complete, and their answer would still be no.

The Wilderness Division has made up their minds that no wildlife or guzzler development will take place in their wilderness.

BLM also consistently tried to deny or restrict the DFG's motorized vehicle access to wilderness areas for routine management purposes.

BLM has stated their major concern continues to be motorized vehicle usage and wilderness. That may be their concern for the general public who are now locked out of these public lands, but for them to use that restriction with State agencies in the performance of their duties is intolerable and not in accordance with the law written by Congress in the California Desert Protection Act.

Here are two examples of attempted restrictions by the BLM. In mid–1995, a DFG biologist notified the Bureau he would enter the Turtle Mountain Wilderness by motorized vehicle to retrieve a dead Bighorn carcass. The BLM contended motorized access was not to be used for this activity and dispatched a ranger to meet the biologist. The biologist argued the CDPA gave him authority to use a motorized vehicle in wilderness and, using an existing road, he drove 4 miles into the wilderness, retrieved the carcass, and drove 4 miles back to the wilderness boundary on the same road.

The ranger wrote an incident report, and the BLM wilderness specialist advocated a ticket be issued for using a motor vehicle in wilderness. No ticket was issued, but the BLM strongly protested this motorized access to the DFG regional manager and has indicated the Bureau would determine when vehicle access was necessary for DFG activities.

Second item. On July 20, 1996, the DFG notified the BLM we were going to replace a water storage tank at a big game guzzler in the Sheephole Wilderness. The Bureau dispatched a ranger to intercept the DFG because the notification letter did not specify that we would be using motorized vehicles to access the wilderness on an existing route. Before passage of the California Desert Protection Act, this route had been used for approximately 15 years to access this guzzler for inspection and maintenance. The ranger told arriving DFG employees no motor vehicle access had been approved by the BLM, and workers would have to walk to the guzzler, that is 10 miles round trip, in 114 degree July heat, up the mountain, carrying tools, water and other essentials, an impossible task without vehicle access.

After some debate, the ranger called the BLM area manager, who then called the district office manager, who agreed to allow one vehicle into the wilderness. Allowing only one vehicle to proceed under these weather conditions unnecessarily puts lives at risk should the vehicle break down.

DFG wildlife management is also being curtailed in the National Parks. Death Valley, Joshua Tree National Parks, and Mojave National Preserve have all refused to allow the use of motorized vehicles to inspect the guzzlers in their wilderness.

Motor vehicle access is essential to maintain these remote big game guzzlers because after you have driven as far as possible, you must hike the remainder of the way, sometimes 4 miles or more. To not have vehicle access and be required to hike from the wilderness boundary to the guzzler can be physically impossible. In most instances the terrain is so steep, even pack animals cannot get there.

These guzzlers may be the only source of year-round water available to our wildlife because man has already impacted the land so heavily. Any future wilderness legislation should be written to more clearly entitle the appropriate State agencies to manage that State's wildlife, whether it be on BLM or park lands. I wish the California Desert Protection Act could be so amended because our wildlife will surely suffer if it is not.

Thank you.

Mrs. CHENOWETH. Thank you, Mr. Conti, for that very interesting testimony.

[The statement of Mr. Conti may be found at end of hearing.]

Mrs. CHENOWETH. The Chair recognizes David Brown from America Outdoors.

Mr. Brown.

STATEMENT OF DAVID L. BROWN, EXECUTIVE DIRECTOR, AMERICAN OUTDOORS

Mr. BROWN. Thank you, Madam Chairman. I appreciate this opportunity to provide you with the views of America Outdoors and America's outfitters and guides. America Outdoors and its affiliate members represent more than 1,400 outfitting businesses operating in 40 States. Members provide diverse recreational experiences to the general public, including whitewater rafting, horse back trips, fishing, canoeing and kayaking. They operate in a number of wilderness areas managed by the Bureau of Land Management and the USDA Forest Service.

In the traditional sense, outfitters have been operating in wilderness since the days of Lewis and Clark. Outfitters in wilderness predate many of the modern forms of wilderness recreation embraced by agency managers and the public. We recognize that wilderness outfitters must be extremely sensitive to the environment and respect the rights of other users to operate successfully in wilderness.

At the outset, please let me say that in my discussions with outfitters in preparation of this testimony, there were many compliments to agency managers regarding their perspectives and practices. Region I of the Forest Service is identified often by outfitters as a model for wilderness management.

On the other hand, many outfitters see alarming trends emerging that threaten the viability of quality outfitted services, and I have four concerns I will briefly outline.

We believe a bias is emerging in many wilderness areas against that segment of the public who wishes to experience wilderness through outfitted services. This is manifested in revisions to managements plans, where party sizes and use levels are being reduced to levels that are not viable for successful outfitter and guide operations. Often these reductions are not the result of resource impacts, because the same activities are not prohibited for self-guided users.

Number two, in some wilderness areas, management appears to be more dependent on the values of the resource manager than the intent of Congress as established in the 1964 Act. In some areas outfitters praise the cooperation received from managers, and in others areas they are being forced out.

Number three, in some wilderness areas, use allocated to the outfitted public is no more than 5 to 7 percent of overall use. This use is tightly controlled and supervised; some might say micromanaged. We believe there are a number of wilderness areas where managers spend a disproportionate amount of time and resources managing outfitted use. Despite that low level of use, when cutbacks are called for, these managers often attempt to reduce or eliminate opportunities for the outfitted public.

Number four, historical and traditional uses that were recognized in wilderness designations should not be sacrificed once the ink is dry. It is important to maintain the web of legitimate activities that are culturally and historically significant that preexisted a wilderness designation. If these areas qualified for wilderness with those activities, then there is no reason they should not continue if that use is managed appropriately.

In general, I share the view of many that maintaining recreation opportunities for the use of and enjoyment of wilderness areas was clearly a purpose of the Wilderness Act. I also believe this purpose is being supplanted by another agenda in some areas. That agenda is a revision of the purpose of wilderness from that intended by Congress in the Wilderness Act.

Man has always been a part of wilderness. It is possible to protect and manage wilderness and maintain its natural character without eliminating man and recreation. I believe the survival of the wilderness system will depend on expanding the constituency for wilderness and not on the alienation of those who have long been a part of it.

I appreciate the opportunity to testify before this committee and ask my testimony be submitted for the record.

Mrs. CHENOWETH. Thank you, Mr. Brown, that is very interesting testimony.

[The statement of Mr. Brown may be found at end of hearing.]

Mrs. CHENOWETH. The Chair now recognizes Mr. Baumunk, co-owner of BBJ Mining.

Mr. Baumunk.

STATEMENT OF EDWARD T. BAUMUNK, CO-OWNER, BBJ MINING; ACCOMPANIED BY GERALD HILLIER

Mr. BAUMUNK. Good afternoon, Madam Chairman. I thank you for the opportunity to tell you about our 4-year authorization to a 45-year-old mine, in which misfortune has located it in the area and made wilderness included in the national park in 1994.

I am Ed Baumunk of Tecopa, California. I have lived and worked in and around mining in southern California for over 50 years. My partner A.G. Jackson and I own Rainbow and Caliente Mines within the newly expanded Death Valley National Park. They lie within the designated wilderness area despite existence of roads, past mining activity.

The claims are actually in the Saddle Peak Hills close to State Highway 127 between Baker and Shoshone, and not at all visible from either Death Valley or the highway. A 1996 letter to Congressman Lewis from the Park Service describes them deep in the park, and that is simply not true. We asked them, through Congressman Lewis, to be excluded from the park, and they refused.

We discovered this talc deposit in 1952. The mines have been in operation during the periods when the value of the talc has been sufficient to warrant the mining of the deposit. We built head frames shown in the pictures in 1953 and 1956, and over the past 45 years, we have estimated that we removed 60,000 tons from the mines. The main adit extends for over 1,400 feet into the mountain and shows the continuity, size and extent of the ore body.

We were never too much aware of the work going on in the so-called Desert Plan and the Desert Bill. No one ever came and talked to us about the various inventories and studies, nor notified us that operation of our claims might even be in jeopardy. We filed a plan of operation with BLM, with the Barstow BLM office, in 1993. They approved a minimum operation in July of 1994, allowing 100 tons per day of extraction.

This is only a start-up. We currently have purchase orders for the possibility of 800 tons a day after start-up, increasing to 1,600 tons per day and leveling off at 2,000 tons a day. These quantities would come entirely from the underground mine, with the material being hauled off-site on a road system that has existed for many years. At the current commercial value of $45, $50 a ton shipping costs and up to $120 a ton refined, we are talking significant money.

The value of the material would, I am told, generate a considerable boost to the economy in this remote area of San Bernardino and Inyo Counties through employment and support factors related to it.

We have been shown that the BLM, prior to 1992, did not think the area should be wilderness. They prepared a Wilderness Report, which was given to Congress in 1990. That document, which I have with me, indicates why the area was not believed to be appropriate for wilderness, but must have been ignored when Congress passed the bill in 1994, putting our mines in wilderness. Attached is a copy of this report.

Among statements in the section pertaining to our area, I call to your attention, "The value of known and potential mineral...deposits were determined to be of greater significance than the area's value as wilderness."

"Portions of the WSA have high potential for talc and moderate potentials for silver, gold and copper. Past producing mines are located within the WSA. The evidence of surface disturbance still remains. There is one active operation within the WSA. There are 28 mining claims within the WSA on record with the BLM in 1987."

It goes on.

The access to our mine, and the mine itself, has always been shown on the USGS and the Auto Club maps of the region. The road was prominent enough that it formed the dividing line between two BLM study areas, 219 and 220. The Desert Bill authors drew maps for the Desert Bill and ignored the road. The two units were put together, or perhaps they knew about the road and wanted to make it more difficult for us to operate our mine.

This has now resulted in the Park Service closing our access road or at least posting it for use by authorized vehicles only. Since then they have not approved our mining plan. We are not sure whether we are fully authorized, but we have still used the road and con-

tinue to do so. I guess verbally it is OK, but what about our contractors and our employees and our guests.

The road has now disappeared from the Triple A maps, in 1990 and 1995, which you can see there on the photograph board. Does the Park Service think they can make us go away by giving them the wrong information?

The Desert Act contains language protecting existing rights, and in our minds this is the question that we have valid right, and the government makes the determination. In 1995, we applied to Death Valley for permission to mine because of the 100-tons-a-day operation by BLM. It was not enough to cover the currently proposed development and demand. The Park Service has considered our application at a snail's pace.

Mrs. CHENOWETH. Mr. Baumunk, I wanted to let you know that your time is up. I would be glad to grant another 30 seconds if you want to tie it up. Your entire statement will be entered as part of the record, and we will have time to question you. Do you want to take another 30 seconds to wrap it up?

Mr. BAUMUNK. We have our own problems, and we hear there may be hundreds of those throughout the desert. Some of the big miners got taken care of. There are many of these little mines, many of which might not have been in regular operation, but which have potential for reopening and are now being stopped by BLM and the Park Service. Congress needs to fix our problem and take a look at what they did in 1994 when they created all this wilderness without considering all the data on mining and mineral values.

Thank you.

Mrs. CHENOWETH. Thank you very much, sir. That was very informative.

[The statement of Mr. Baumunk may be found at end of hearing.]

Mrs. CHENOWETH. I wanted to ask Todd Indehar, you made some very specific suggestions to the Congress, and I think very valuable, about studies and projects, but I wanted to take your testimony just a little bit further. You obviously disapproved of the Forest Service system of the boundary water, but I would like to get on record, what would you think would be a better management structure?

Mr. INDEHAR. Thank you.

Recently, the Forest Service has complained about budget cuts, that it can't manage it, for $1.4 million a year. I would just like to offer in the spirit of humor, I will take the $1.4 and manage it for them and see how it goes.

Mrs. CHENOWETH. It is duly noted.

Mr. INDEHAR. But seriously, how would I like to see it managed, and other people in my organization, we would like to see it managed as proposed by Congressman Oberstar last year and Senator Grams last year. We would like to see the Forest Service's absolute authority handcuffed a little bit. We would like to see them retain ownership. We would like to see them also be forced to not only take input from other levels of government—local, State, and tribal governments—into their plans, but also to have those units of gov-

ernment have some say, have a vote and a voice on how the area is managed.

And our reasoning is simple. The reason is the local people and the wilderness users are the ones that bear the brunt of all the policy-making that comes out of here and all the decisions, and yet we have the least voice, and I think that is absolutely upside down. I think it is wrong zoning as such is being done from Washington, D.C., and perhaps we wouldn't be making this supposedly radical suggestion if the Forest Service hadn't been so inaccessible over the years, but they have. It is kind of like the term limits or other things. People get fed up, and you have to say you have to try something new; what is happening now is not working.

We like the intergovernmental management approach that brings the power down closer to the levels of people that are the most impacted.

Mrs. CHENOWETH. Thank you very much.

Mr. Conti, what other wilderness restrictions have you encountered, question number one? Specifically what has been the response of the National Park Service to your work in the desert, and can you talk about the deaths that occur in the Mojave Preserve and whether the services applying the access provisions—what are the services applying access provisions to their units?

Mr. CONTI. The reaction from the Parks has been a complete denial of any motorized vehicle access. In a first correspondence with Death Valley National Park, I inquired about access along traditional routes we have used for years to access the guzzlers before it became part of the park and part of designated wilderness. Not only did they disallow motorized vehicles access, but their opening comment to me was that if an inspection person were to go in to open the valve to provide water to wildlife, that that would be an artificial manipulation of the resource, and they would frown upon that.

Joshua Tree National Monument several years ago proposed to remove the water collection device at an existing big game guzzler because it was an above-ground object, and they would like to remove man-made structures in the wilderness. I have made mention we could mitigate that. We would be happy to go in and remove the above-ground water collection system if we could put a system underground of perforated pipe that would collect residue water in the washes. Joshua Tree said, we will get back to you, and I found out 2 weeks later they got another team of folks from somewhere to remove the water collection device at an existing spring and guzzler.

In regards to the deaths in the Mojave National Preserve, it is my understanding that there was some aerial study work being done by a contract biologist for the Department of Fish and Game. It was related to me they were not able to land in the wilderness for some of their activities. Most of their activities did involve just flying, but in all the other issues I have been involved, or any other Fish and Game State employee, we would routinely land and check out every guzzler in the immediate area where we were doing any census or research. And at that point it is very hard to say, but possibly if we had been able to land the helicopter and just rou-

tinely check the guzzlers in that area, we could have determined the problem and saved the lives of upwards of 50 sheep.

Mrs. CHENOWETH. Thank you, Mr. Conti.

The Chair recognizes Mr. Kildee.

Mr. KILDEE. Thank you, Madam Chair. I have no questions, but I want to thank the witnesses for their testimony.

Mrs. CHENOWETH. Thank you, Mr. Kildee.

The Chair recognizes Mr. Pombo.

Mr. POMBO. Thank you.

Mr. Conti, during the debate on the Desert Protection Act, I introduced an amendment which would have left open a number of the roads, the historic roads throughout the area, and one of the reasons that was brought to my attention during that entire debate was exactly what you have testified here to today, that there were a number of water guzzlers that had been established throughout the years that acted as the only source of water for wildlife in the desert during the summer months, and that it was imperative that those be maintained. And during the debate on the Floor, I said that without access into those areas, that there were a number of them that would fall into disrepair, and what you are testifying to today is that that is exactly what has happened, that there are a number of guzzlers that have fallen into disrepair that are no longer operating, and the result is that the wildlife has suffered in the area because of that. How widespread has that become at this point?

Mr. CONTI. At this point, I would say upwards of 25 percent of the guzzlers are in danger of failure due to lack of access, particularly the five in Death Valley, three in Joshua Tree and six in the Mojave Preserve. Some of them require very long four-wheel drives and then additional lengthy hikes up the side of the mountain, because the sheep traditionally like the higher places, and access to those being restricted—you have to understand when someone goes in to inspect the guzzler, in their backpack they probably have two gallons of water for the day, two 24-inch pipe wrenches, as well as assorted valves or plumbing fittings, because if they run into something that happened over the winter, say a freeze break, they would like to get that up and operating as soon as possible, and with the length of hike required in many of these systems, it is going to be increasingly difficult to maintain these systems.

Mr. POMBO. In your experience over the years of trying to protect the wildlife in this area, do you think that there was any real reason to close down all of the access points into the desert?

Mr. CONTI. No, I don't feel that that was a wise decision. Man has impacted that desert heavily. It is really not a true wilderness because there are so many mine roads and exploratory roads that have been established there for the last hundred years.

Each system has, as it is built, in the environmental assessment, a proposed route of access that, including the driving and hiking areas is mentioned and described and adhered to, and with the BLM we do have latitude, we are working with them, because in title 1 of the bill covering the BLM lands, authorized access is allowed during the month of April and October for inspection.

That really isn't enough inspection time to do the job. Preferably we would like to go in every month to maintain these systems, but

the BLM has dictated that won't be the case. Access for maintenance to those in the parks and preserve do not fall under paragraph F, the fish and wildlife amendment that was added to the bill. At least that is how the parks and preserve are representing it to us, and at this point they are refusing any vehicle access.

Mr. POMBO. What do you think is going to happen with the wildlife? I mean, are they migrating to a different area now as a result of there not being water?

Mr. CONTI. Bighorn sheep in particular are a localized animal. They will stick around the known water sources, and they are pretty much a homebody considering a mountain range or wilderness. Rams will wander and change from range to range because—that is becoming difficult also because we have so many highways and roads out there, particularly the interstates, that are a barrier to sheep migration or even a mixing of the gene pool, which is so important to a healthy herd, and the fragmentation of the resource is so great that man has to go back and help correct some of the situation.

Traditionally the water sources that were available to wildlife have been used by miners, ranchers, farmers, groundwater pumping for the big cities, and they have lowered the water table or just usurped the historic water sources, and our effort is to restore water to historic ranges to augment wildlife populations.

Mr. POMBO. So if you don't have access to do that, which is currently the case, and the sheep won't migrate to another area, what is going to happen?

Mr. CONTI. The sheep will perish, as will all the wildlife that depends on those guzzlers, including mule deer, bobcat, and fox and reptiles. They are designed so all the wildlife can get a drink from them.

Mr. POMBO. Isn't that kind of contradictory with the stated purpose of establishing wilderness areas?

Mr. CONTI. I would think so, and I would think paragraph F of the fish and wildlife amendment would have allowed us more access.

The BLM is being very restrictive, but when I twist their arm, I usually can get some sort of results as an outside entity. The Department of Fish and Game has great difficulty at interagency cooperation, and eventually the systems will fail without maintenance from us, and the wildlife that depends on them will also perish.

Mr. POMBO. Thank you.

Mrs. CHENOWETH. The Chair recognizes Mr. Vento.

Mr. VENTO. Yes, Mr. Conti, I remember that the debate over the California Wilderness Act, there was a provisions added, I didn't favor it, that provided for motorized access to deal with the guzzlers. You are suggesting to me that that is not being permitted?

Mr. CONTI. That is correct.

Mr. VENTO. One of the issues you raised is there was an aerial survey that apparently located 50 Bighorn sheep that were dead, but wasn't that because one of the sheep fell into the water, and there was actually a problem with poisoning?

Mr. CONTI. That was the consequence. A system—the person that normally inspects that was under the impression that he—

well, he had no access to the wilderness, and the system managed to go dry.

Mr. VENTO. Yes, I think it is important because we keep mixing the park and wilderness in terms of Joshua Tree. But it is a real dilemma, I might say, in terms of how we manage or how we try to manage game in parks and/or wilderness, because for instance around Camp David north of here, we got too many deer in the park. We have too many Buffalo in Yellowstone. So there is a real dilemma in terms of how you preserve and do this. And the Tetons, they shoot the elk when they cross the line, you know, and shoot the Buffalo when they go outside the park in Montana.

The issue in terms of wilderness is very often the Forest Service today—not the BLM, I understand that—has the largest group of mules right now in the Nation. They actually preserve the maintenance of that cultural and historic tradition of Americans. As a Democrat, you might understand, I am sort of partial to mules and have sometimes been associated with them in other ways, not quite as affectionately, you might say. But I think in this particular issue, while there is a problem here, I think we need to explore that. So I don't know if it is so much the law in this case, because there is a specific provision as to how it is applied. Someone is doing studies. Things are going to change, but it would have been possible to use mules in that case, and of course we know from our other advertisements, mules seem to have made it through that type of terrain historically.

I have to, of course, recognize Mr. Indehar that is here as someone who we disagree pretty much on some of the boundary water issues, to put it mildly. But I did want to see if we could get through this today with a couple questions.

I know that Mr. Pavek you referred to in terms of the flag episode. I don't know the details of that. I don't know whether the Wilderness Act really prevents or limits flying flags. I expect you can have—I know one thing, in northern Minnesota one time when we had an incident occur in a park, actually someone decided they weren't getting the right price for it, so they started to paint the rocks and put up a giant plastic statue, trying to be as offensive as possible, because, in fact, they weren't getting what they wanted in terms of price. At the end of the day, they got a better price, and that solved the problem.

So I think there are limits in terms of what people can do. I might say in this case I looked at that as sort of obnoxious behavior, but you have to bounce that off against what the Park Service was offering the guy for the land. I must explain that, Todd, you probably weren't up there, you were living in Minneapolis then. That is why I was picking on urban guys. I was wondering which camp you consider yourself?

Mr. INDEHAR. I have seen it from both sides.

Mr. VENTO. But Mr. Pavek wasn't able to get a permit. That is important because a lot of wilderness areas don't have a permit system, and this is probably something alien to most of you. And we set that up, that is working with Representative Burton, Chairman Burton, at that time, and others, we set up the permit system because we realized there was a certain carrying capacity that this area could absorb. This was the most extensively used wilderness

in the eastern United States. And, Todd, are there any type of limits? Do you think we should have some regulatory way to deal with that, or do you think we ought to just take all the permits off?

Mr. INDEHAR. That is a good question. We see the reason for a permit system in the Boundary Waters. The question is, if I could answer your question, is not should there be a permit system, but should it be a well-managed permit system, and should the levels be set at levels that are reasonable for public access, and that is the zone that we are discussing.

Mr. VENTO. I think the other side is you want to set it not just where the access points are. We can always disagree about that, too. The other issue is how much use can that area we all want to protect—I guess how much use can it absorb?

That is the question, and this is a question we haven't asked ourselves with regards to most areas. But this area, actually a million acres, imagine, is used that extensively that we have to ask ourself how much can it use.

There are all sorts of problems that arose with it. I really regret the fact we ended up paying sort of the guinea pig in terms of this, but, you know, I think it is important that the Forest Service not discriminate against someone like Mr. Pavek. You point out in his statement, he says he applied for a permit on July 4. Well, that is one of the busiest times of the year, isn't it, today, in terms of the boundary waters?

Mr. INDEHAR. No, it is not. A lot of people stay home.

Mr. VENTO. One of the busiest times of the year.

Mr. INDEHAR. Of the whole year, but not of the summer months.

Mr. VENTO. I would assume it was. But he then points out he did get a day permit by going to the resort, so that was not issued by the Forest Service.

Mr. INDEHAR. There is no quota on the day permits. Anybody can go in for a day.

Mr. VENTO. And then he said that there is some sort of anecdotal information, that he didn't see anyone else in Baswit, but that does not demonstrate that there were permits available; is that right?

Mr. INDEHAR. In Dr. Pavek's case that is probably right, anecdotal. I have right here, Congressman, examples of permits that were supposed to be picked up and used by people that weren't, and we studied this and we found that depending on the type of permit that you are talking about, motor, paddle, overnight, day, between 20 to 50 percent of the permits that were reserved for entry to the Boundary Waters were never picked up, never used, and the vast majority of those because of Forest Service policy, we call them "no shows" when somebody doesn't show, are not put back into the system.

Mr. VENTO. I agree that if the area can absorb that use, they ought to be available to be used. I might point out when you are talking about local use or local interest, something like 70 percent of the users are from outside the area, so they should have a voice, and they obviously do through me and through other Members of this Congress.

Can I have consent to proceed for 2 additional minutes of questions?

Mrs. CHENOWETH. Without objection, each one of us will have an additional 5 minutes, Mr. Vento.

Mr. Indehar, I am struck with your testimony about Mr. Pavek, a veteran, who is unable to fly the flag, and I think this is carrying policy to an absolutely ridiculous degree. This man fought for the ability to fly the flag from sea to shining sea in America, and I think it is very telling. It is an unfortunate example of how policy has run awry, and I thank you very much for interjecting that into your very interesting testimony.

Mr. INDEHAR. Thank you.

Mrs. CHENOWETH. Your ideas have been very good, and I look forward to working with each and every one of you in the future.

Mr. Conti, I want to let you know the California Bighorn sheep has been transplanted into the southern Idaho area. We cherish them there, and we had the opportunity last year to transport into five different States California Bighorn sheep. So I appreciate the ability to work with your organization and the State of California in helping to propagate the existence of this magnificent animal.

Mr. CONTI. Thank you.

Mrs. CHENOWETH. Mr. Baumunk, I am very interested in your testimony. Can you tell the committee much more about the economic value of the claims that you were talking about, and when National Park Service did their study, how much material did they find in the claims?

Mr. BAUMUNK. In our mine we did a report stating that it is more than adequate to mine, is 1,775 feet wide, a mile long, and we just scratched the surface. Every time we go down 100 feet in that mine, we have over 6 million tons of reserve, and they have found 1,089,000 tons plus at the first level of our mine that we have not mined out, and they only took in about a third of the ore body, in fact even less than that, that they were looking at. They just looked at what we had exposed in the tunnel that is 1,400 feet long, back into the mountain.

Mrs. CHENOWETH. That 1,800,000 figure you used was raw ore?

Mr. BAUMUNK. Every time we have mined that, it's more extensive. You can see by the pictures there.

Mrs. CHENOWETH. Can you tell us about the two wilderness maps that you have up there? What do the colors mean, and why is it that there is any problem with your mine in this area when it was recognized the valid and existing rights would be preserved?

Mr. BAUMUNK. Well, we have a thank you note to Mr. Martin for what he done against Rainbow Mine, put it in the wilderness. Saddleback Hills were designated nonsuitable for wilderness twice by the government, in 1980 and 1994 is the last time. Then 1992 they were all designated, not wilderness areas.

Mrs. CHENOWETH. To put it generally, sir, these are very interesting maps, and your mine has not only had its rights preserved, but it is not inside the wilderness. Now apparently the problem is then access, right?

Mr. BAUMUNK. We are in the wilderness area, according to the park. We are showing the old boundary there on some of that and the new boundary together. I would like to have Mr. Gerald Hillier represent the maps and stuff. He can designate it better.

Mrs. CHENOWETH. This is the old mine up here.

Mr. BAUMUNK. Mr. Hillier will do that for you.

Mrs. CHENOWETH. I wonder if without objection Mr. Hillier could answer the question.

Mr. HILLIER. Thank you, Mrs. Chairman. I am Gerald Hillier and represent San Bernardino County.

The top map you are looking at is the old BLM study area, and it shows areas 219 and 20, which are surveyed and determined to be of higher mineral character. It is the area Mr. Baumunk referred to in the testimony as having the mining claims in them and having them be not suitable for inclusion in the wilderness system; represents what Congress finally passed and put that entire area and ignored the road that was the boundary between 218, 219 and 220.

And, well, on the other map, the picture right there behind your head shows that road, and it shows the Park Service post in the middle of it, denying access to any but authorized vehicles, and when Congress passed the 1994 act, that road ceased to exist.

Mrs. CHENOWETH. With the red post right in the middle of it, right?

Mr. HILLIER. Yes, ma'am.

Mrs. CHENOWETH. Thank you very much. I see my time is up, and the Chair yields to Mr. Kildee.

Mr. KILDEE. Thank you, Madam Chair.

I yield my time to Mr. Vento.

Mr. VENTO. I thank the gentleman for yielding to me. And, Mr. Indehar, I have to leave for another activity, and I didn't want to run away without talking about the issue of this permit system and the group size issue, which was a Forest Service recommendation made in the early 1990's. In your statements you imply that the Boy Scout groups who are from the Boy Scout canoe area, they weren't barred, were they?

Mr. INDEHAR. No, my specific statement specifically said after months of appeals and $100,000 in costs and a lot of bad press, the Forest Service was forced to allow the kids back in.

Mr. VENTO. Was that the rule and regulation procedure that you are talking about?

Mr. INDEHAR. The administrative appeals process.

Mr. VENTO. The issue is that there were group size limitations that you were talking about, is that not the case, group size limitations in the rules and guidelines that they were buzzing to change; is that right?

Mr. INDEHAR. That is right.

Mr. VENTO. And they didn't change them in the end.

Mr. INDEHAR. Yes, they did, and they limited the water craft, so they effectively got a group size of eight.

Mr. VENTO. But they didn't limit Boy Scouts, it was to all groups; is that correct?

Mr. INDEHAR. Anybody who wanted to travel in a party greater than six. But the reason I bring up the Boy Scouts and Girl Scouts and church groups and the families is because we all participated in the public task force process, which was supposed to be a consensus-based process. We went for months and explained the ramifications economically and socially on the groups. Everybody agreed the group size of 10 was not causing a resource problem, it was a

social problem, and the task force recommended a group size of 10, I have numerous supporting documents, yet the Forest Service came back and said six. They chose consciously to ignore our input.

Mr. VENTO. They actually changed it to a higher number, but I think there was a lot of controversy. The Forest Service has gone the other way.

You talk in here about the motorized portages, and in that case the word "feasible," I would disagree with you as to whether or not that is a well-understood term of art by any lawyer. I am not a lawyer, but I think it is well-understood in terms of what it means, applied no different in the Wilderness Act as in the whole host of legal matters.

Mr. INDEHAR. I didn't say that that was the—that was the lawyer of the preservationists that said that.

Mr. VENTO. But there is a representation that is not understood, and I think it was understood as to what it meant, and, of course, there is a disagreement about what is feasible. The Forest Service agreed with the fact that the truck should continue to be used. On the Supreme Court decision not to hear the case, the Court turned it over.

Mr. INDEHAR. Right at a critical moment they bailed out and left us hanging.

Mr. VENTO. Well, they turned it over, however you want to characterize it.

Mr. INDEHAR. That is what happened.

Mr. VENTO. They turned it over. They refused to hear the circuit court decision, and that became final.

Mr. INDEHAR. No. Our group, the city of Ely and others, took the case to the Supreme Court. We tried to get them to hear it. The Forest Service decided not to take it to the next level and then showed——

Mr. VENTO. The Forest Service actually was—there are times they agreed with you and times when they don't, and when they don't agree with you, you obviously are choosing to part company with them; and when they do, you are not.

I would just point out one other statement in here, and it is a quote from this book that you get into, but the characterization that I object to, Todd, and I would just call your attention to it, is a derogatory term in terms of referring to a former Member of Congress, and I would like you to take those words out of your statement. You are fully entitled to your own view, but I think representing that before this committee for someone that served is inappropriate.

Mr. INDEHAR. Why do you think it is an inaccurate characterization?

Mr. VENTO. I just think it is inaccurate. I would not be the first to admit that my colleague obviously was not—you know, had consumed alcohol, but I don't think that that in and of itself indicates—I think it is an inaccurate characterization.

Mr. INDEHAR. I stand by my characterization, and the costs that that type of policy-making you are putting on thousands of people——

Mr. VENTO. I am reclaiming my time. It is my time.

Mr. INDEHAR. I am sorry.

Mr. VENTO. You have had your time. The fact is that the law that occurred in 1978 that was passed was passed with the support of both Senator Muriel Humphrey and Wendell Anderson and Senators. It was passed with the support of the Governor at that point, it was passed with the support of the six or seven Members of the delegation, and to represent that this was simply the act of a Subcommittee Chairman who happened to be involved in some of the negotiations, and to characterize it as you have here is, I think, inaccurate, inappropriate and unfair.

Mr. INDEHAR. I stand by my testimony.

Mr. VENTO. Thank you.

Thank you, Mr. Chairman.

Mrs. CHENOWETH. The Chair recognizes Mr. Pombo.

Mr. POMBO. Thank you.

Mr. Indehar, you made the statement in your opening statement, in answer to the question, that you didn't think it was fair to have Washington, D.C., doing local zoning issues, and we have heard that a number of times on pieces of different legislation. But the response that we have always gotten from that kind of a statement is that these assets belong to the people of the United States, and that someone from New Jersey or Los Angeles should have every right to dictate what decisions happen, in your particular case with the Boundary Water. How do you respond to that kind of an argument?

Mr. INDEHAR. Without getting overly technical or philosophical, I mean, what you are talking about is the public good argument for the public provisions of wilderness, and I think other people have written and spoken to that. The conclusion a lot of people have drawn is the preservationists haven't justified the fact that many—you know, that everybody is supporting a benefit for a relatively small number of people who actually use wilderness; that we are engaged in a massive transfer activity.

I would also say the average person in L.A. or Chicago or Minneapolis is probably a decent American that believes in fairness and reasonableness, and if they really understood what burdens people who live near these areas are under because of Federal policy, that they would agree, and they would try to seek some balance between preservation and fairness.

And that is the title of my talk, Towards a Humane and Effective Policy. We have to put the people part of this wilderness back into the equation. We need to start talking about it, particularly in my area that was carved out of one of the most dense areas in any of the whole wilderness preservation system. The social costs were tremendous. The economic costs were tremendous. The people in my community are still suffering from that, and nobody talks about it, nobody acknowledges it, and I say, it is a small price that this country could pay, this big public interest, the rest of the country could pay to Grand Marais and Tower and the other small towns to say what can we do for you that we can help ease this burden a little bit and return just a bit of fairness back to you. That is all we are asking for.

That is all we are asking for. We are not asking to do away with the wilderness. We are asking for a small sense of human compassion and fairness.

Mr. POMBO. Because it is so widely used, that particular parcel, that wilderness area, because it is so widely used, in hindsight would it have been more appropriate that that be designated a national park or some other type of conservation status be bestowed on that area other than wilderness? Because from what you are describing to me, it does not actually fit the requirements of the Wilderness Act.

Mr. INDEHAR. You are right. Half of the areas, half of the area, 500,000 acres, have been entirely logged, resorts, all types of developments, roads, et cetera——

Mr. POMBO. There is development within the area——

Mr. INDEHAR. There was. People's resorts, cabins, homes, were bought out, dragged onto the ice, burned and left to sink. If you go scuba diving in some of our Boundary Waters today, you will go down there and you will find refrigerators, stoves, washing machines, and whatever else was there when the Forest Service got done littering the bottom of these lakes with this stuff.

But the first thing you said, if I could take a second here, there is a myth that it is heavily used. They like to point out a million recreational visitor days, but a visitor day is 8 hours in the wilderness by one person in a party. A more accurate way to look at it is there are 25,000 permits issued for this million acre area over a 5-month span of the year, and when you average that use out, plus taken into account that anywhere from 20 to 40 percent of the people that appear to be in the wilderness based on permit reservation numbers, aren't actually getting in, you are finding a highly underutilize region.

Mr. POMBO. How many people actually go into the wilderness area annually, individual people?

Mr. INDEHAR. About 25,000 permits with an average group size of four. So——

Mr. POMBO. One hundred thousand people——

Mr. INDEHAR. You are looking at 100,000, plus there is some disagreement about the level of day use, people going in to pick berries in the wilderness or paddling around on a lake. They are not camping, building fires, portaging and doing that stuff. So essentially, the overnight 25,000 parties per year into a 5,000 square mile area.

Mr. POMBO. You know, throughout the 4 years that I have been back here, one of the things that I have tried to do and a number of Members have tried to do is bring more local people into the decisionmaking process. When you establish a wilderness area or a park or some other Federal action, that more local people be brought in and allow to shape what it is going to look like and what the use is going to be. And I think that the testimony that we have heard from this panel, whether it is someone like Mr. Conti that is obviously concerned about the wildlife in the desert in California, whether it is someone like you who is a local activist, so to speak, someone who has gotten involved in the local problem, or Mr. Baumunk who has a right as a resource extractor from what is Federal lands. And bringing in the group as they would sit at this table, if you all represented the same wilderness area and you actually sat down together and said, how do we protect the environment, how do we allow people to have access, how do we allow

some resource extraction from this area that does not disrupt the other two, I think by doing that we would actually reach some kind of a solution that everybody could live with.

The problem that we have run into, though, is that a lot of people are afraid to allow that to happen, because that takes too much power away from Washington. And the decisions are no longer made here; it is actually being made by real people who would have to live with the results of that decision. And I don't think that a Member from Tracy, California, can legitimately dictate exactly what the use of the Boundary Waters should be.

Mr. INDEHAR. I agree.

Mr. POMBO. And I think that you do need to bring local people in. Because they have competing interests, competing desires, competing agendas, and most of the time that we have been able to do this and actually bring local people in, they can find solutions, they can find ways that we can all live with that meets the needs that they want, and I think that on cases like this, this is really where we need to move in that direction. But I thank the panel very much for your testimony.

Mr. INDEHAR. Thank you.

Mrs. CHENOWETH. Testimony from this panel has been absolutely outstanding, and Mr. Brown, I don't know whether you should consider yourself fortunate or not for not being peppered by this panel with the mood that we are in today.

But I do want to let you know that the four points that you made in your testimony were outstanding, and I do want to work further and I will be having a hearing on the impact of wilderness policy on outfitters and guides. I hope Knoxville, Tennessee, isn't too far to come back. I know it is a sacrifice, but we are working together to be able to craft and enforce better policy.

It is something—the issues that you brought out in your testimony are something I am keenly aware of in what is happening in Idaho, and it is a complete distortion of what Senator Frank Church, father of the 1964 Wilderness Act, who worked closely with outfitters and guides across the Nation, and I have studied all of the hearing testimony and the debate before Congress, as well as the act and ramifications, and he would be so utterly surprised to see what has happened to the outfitters and guides.

I thank you very much for your valuable testimony. And to all of you members, or participants in this panel. Thank you very, very much.

Mr. BAUMUNK. Thank you, ma'am.

Mrs. CHENOWETH. The Chair will recognize the final panel. The Chair recognizes George Nickas, a Policy Coordinator of Wilderness Watch in Missoula, Montana; and Darrell Knuffke, Western Regional Director of The Wilderness Society, International Falls.

Before we begin with the testimony of Mr. Nickas, I do want to say that the Chair was open to having more people with your persuasion and the input that you could bring to this committee, but it looks like you are going to be having to pack all these horses, just the two of you, because only you were willing to come and offer your point of view. But I thank you very much for sacrificing this day and all the time it has taken to prepare for this.

The Chair now recognizes George Nickas for your testimony.

STATEMENT OF GEORGE NICKAS, POLICY COORDINATOR, WILDERNESS WATCH

Mr. NICKAS. Chairman Chenoweth, Congressman Kildee, we appreciate your staying around to hear this testimony. I am George Nickas, Policy Coordinator for Wilderness Watch. I appreciate the opportunity to provide our views on the management of our Nation's priceless wilderness heritage.

Wilderness Watch is a national organization whose focus is the stewardship of lands within the national wilderness preservation system. We consider ourselves strict constructionists of the Wilderness Act. We do not seek to limit any rights explicitly granted in the law, nor do we attempt to find rights and privileges that don't exist in the legislation. Put another way, we believe the Wilderness Act means what it says.

The president of our organization, Mr. Bill Worf, who is in attendance today, was the first head of wilderness management in the U.S. Forest Service. Bill was a member of the task force that drafted the regulations in 1964 that implemented the Wilderness Act, and he directed the development of the Forest Service Manual policy for the day-to-day management of wilderness on the national forests. The regulations and policy remain largely intact, and that is as it should be, since the intent of the Wilderness Act is remarkably clear.

The issues discussed today aren't new. They were debated for 8 years leading to passage of the act, and in virtually every piece of wilderness legislation passed since that time. The complaints you have heard have nothing to do with overzealous managers or an unworkable law. Instead, for the most part, they represent the simple truth that some folks don't believe their personal use of the land should be restricted by wilderness designation, or who in some cases don't believe they should be bound by the law or held accountable for their actions. If we decide to grant exceptions for every special interest, we won't have a wilderness system.

Wilderness management isn't easy. As the pressures from an increasing population accompanied by growing mechanization come to bear on the wilderness system, the need for strong leadership in the agencies and the unequivocal support from Congress are essential. What is needed most of all is a commitment from the management agencies to adhere to the letter of the law and to insist that wilderness users do likewise.

The wilderness systems face significant challenges. Let me note just a few.

Wilderness ecosystems are being dramatically altered by the introduction of exotic plant and animal species. In some cases the introductions have been unintentional, as is the case with many of the weeds that now proliferate along trails, at trail heads and other human impact sites. Sometimes, exotics are intentionally introduced. This is true in the case of non-native game and fish species. Commercial interests are being granted de facto private rights through camp site reservations and are allowed to routinely violate the Wilderness Act's prohibition on structures and installations. Despite a Federal court ruling that this policy violates the act, the Forest Service continues to sanction this practice in a number of wildernesses.

Snowmobiles have become a major source of wilderness violations. The statistics are staggering. It is estimated there are thousands of violations in the Boundary Waters Canoe Area Wilderness each year. Last year, there were 472 violations confirmed in the Absaroka-Beartooth Wilderness, only 7 perpetrators were caught and cited. Significant trespass problems exist in other wilderness areas, in Colorado, Oregon, Montana, Utah, Wyoming, and California. Even with a strong law enforcement effort, it is extremely difficult to catch most violators. Severe penalties are a necessary deterrent when the risk of getting caught is so low.

Wilderness Watch applauds those wilderness managers who have had the courage and conviction to prosecute those who willfully violate the law. We also support and are participating in efforts to promote responsible riding and winter safety messages. We are convinced, however, that all the education in the world will do little to solve the problem without a strong law enforcement effort.

In some wildernesses, aircraft overflights and landings have increased to the point where wilderness values are nonexistent in some places in some times of the year. Yet there is very little regulation or monitoring of this use, nor is there any effort to assess the impacts of this use on wilderness visitors or wildlife.

Wilderness use is increasing while the number of wilderness rangers declines. Recreation use has increased continuously since the passage of the Wilderness Act. In the 54 original national forest wildernesses, visitation in 1994 was 86 percent higher than in 1965. It doesn't seem like very many people are being excluded. Clearly, Americans love their wilderness system and will continue to seek out its benefits in record numbers.

At the same time record numbers are entering wilderness, the management agencies seem to be downsizing their seasonal wilderness ranger staffs. These rangers are the backbone of the wilderness protection effort. While the wilderness budget for the Forest Service has decreased for each of the past 2 years, the downsizing can't be explained by reduced budgets alone.

Looking at a longer time line indicates that the amount of money spent on wilderness management doubled, after inflation, between 1987 and 1996. The bureaucracy is intact but the rangers are gone and with them the first line of wilderness defense.

Americans are rightly proud of their wilderness heritage and the commitment they have made to secure it for future generations. Congress must see to it that the wilderness system is given the attention it deserves from land managers. Congress must also see to it that those managers who work to preserve the sanctity of wilderness and uphold the strict guidance in the Wilderness Act get the support they need. Thank you.

Mrs. CHENOWETH. Thank you, Mr. Nickas.

[The statement of Mr. Nickas may be found at end of hearing.]

Mrs. CHENOWETH. The Chair now recognizes Mr. Knuffke.

STATEMENT OF DARRELL KNUFFKE, WESTERN REGIONAL DIRECTOR, THE WILDERNESS SOCIETY

Mr. KNUFFKE. Thank you, ma'am. Members of the panel, thank you for giving us the opportunity to be here today.

My name is Darrell Knuffke. I am the Western Outreach Director for The Wilderness Society, and we represent 320,000 members across the country.

After hearing the first panel, I believe I should quickly say I am an avid hunter and an avid angler, and I was last on a snow machine 3 weeks ago going ice fishing.

We are here today to talk about wilderness and how we manage these special places. I think that discussion needs a context, and the context must be the national wilderness preservation system. And I would like to make three points about that.

The national wilderness preservation system is the national treasure protecting some of the most rugged and beautiful landscapes as well as some of the most intact and productive biological systems left on the planet. Americans are drawn to our wilderness areas, many of which are fragile and can be damaged if they are not managed carefully and sensibly, protected from motorized use and other threats.

Third, the protection of our wilderness resources for the "American people of present and future generations," those last words from the Wilderness Act itself, will require strong, consistent enforcement applied fairly and equally to all persons regardless of rank or status.

It was 50 years ago this year that Aldo Leopold was completing work on his Sand County Almanac. That work has shaped a half century of conservation thought in this country. It was Sand County Almanac that gave us what we have come to call the land ethic. In one essay, entitled, "The Ecological Conscience," Leopold said this to us: "A thing is right only when it tends to preserve the integrity, stability and beauty of the community, and the community includes the soil, waters, fauna and flora as well as the people." The highest expression of that ideal in our mind is the national wilderness preservation system.

For all its apparent size and ruggedness, our wild land resource is a fragile one, the threats to it are many and varied, and our own love of wilderness and eagerness to use it are very near the top of that list. Wilderness popularity grows, and by that I mean both the number of Americans who support the idea of wilderness as well as those who choose to directly use the wilderness.

It is worth noting that we are here today at least partly in response to events that involve people going into their wilderness areas, perhaps inadvertently and ill-equipped, perhaps ill-advised or even illegally, but make no mistake, they were drawn to their wilderness; millions of Americans are.

It is also true that some don't love wilderness, think we have too much set aside and don't want more of it, and they also argue occasionally that wilderness is somehow antipeople. When the Congress passed the Wilderness Act of 1964, it didn't think so and we don't, either. The Congress explained its decision in 1964 using these words, "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness."

Wilderness, then, is for people, for us as an idea to embrace and use, but wilderness is not first and only for direct human use, and when we enter it we must do so on its terms, not ours, and in ways to protect and respect two things very specifically. The first is the

integrity of the wilderness itself, and the second is the ability of everybody else who wants to go there to have what we call a wilderness experience.

At the threshold, then, wilderness is a place without motors, deliberately and specifically without motors, but not slavishly without motors, not insanely and insensitively without motors. When human health and safety are at issue, that ideal must stand aside, and it does. There is sufficient flexibility in the Wilderness Act to allow this, sufficient flexibility in the agency's regulations to implement it, and I think it is worth noting, particularly on the heels of Mr. Unser's testimony, Mrs. Chenoweth, that the issue is not whether the Forest Service permitted a motorized search for Mr. Unser and his friend. It did so without delay.

The question in that case is whether or not Mr. Unser was in a wilderness area, with a motorized vehicle, deliberately or inadvertently. I think that is the issue. Unfortunately, I think we are hearing only one side of that, because the Forest Service is somewhat constrained because the issue is now before a Federal magistrate.

So what we know of it we know anecdotally, from press reports, we have Mr. Unser's account and it was a harrowing story, no doubt about that. I grew up in Colorado. I know something about mountain winters. I think the fear was real, the danger was real. We are glad he came out. The question is how did he go in.

I would be happy to answer questions, if I can.

Mrs. CHENOWETH. Thank you. Thank you very much for that good testimony, and I agree with you, I think we will just wait and see what the court comes up with.

[The statement of Mr. Knuffke may be found at end of hearing.]

Mrs. CHENOWETH. I noticed in the wilderness preservation, the Wilderness Act of 1964, it does exclude emergencies from the strict concepts of wilderness management or nonmanagement, and while the Unser story is dramatic, yes, and it made a point, my concern has been that there have been other incidents such as a Boy Scout who was lost and apparently ran away from home and got into mischief, but even though he ran away from home and was in mischief in the wilderness, his life is as valuable as any other human being's. I was appalled that the helicopter could not land and bring that boy back to his parents.

So as I listened very carefully to both of your testimony, I think that there are many areas that we can agree on in trying to focus the public policy implementation that we are both concerned about, and I want to personally thank you for your patience and perseverance in this 4-plus hour hearing so far. Thank you very much.

Mr. Nickas, you have come all the way from Missoula, Montana. Tell me what you feel. Did you serve in the armed forces at all?

Mr. NICKAS. No, I didn't.

Mrs. CHENOWETH. And that really doesn't make any difference to the substance in this hearing, but I did wonder about what your feelings would be with regard to a veteran being allowed to display the American flag. How would you feel about that personally?

Mr. NICKAS. I would feel the same for a veteran as anybody else who wanted to display the American flag. I don't know about the particulars in that instance, it may be that the flag was being used in a way or flown in a way that interfered with others' wilderness

experience. I can envision a huge flag sitting on the edge of a lake, and the other people who came to that lake perhaps came to the wilderness in order to get away from the sights and sounds of other people, and there was a concern that it might be interfering with other people's use.

There are programs called Leave No Trace and Soft Paths, and there are educational programs for wilderness users, and they talk about things like even trying to get away from buying brightly colored backpack equipment, because you get up in an alpine basin, and a bright green tent across the basin is seen by everybody. Most people want to go to the wilderness to get away. They want to be with the people they go with and don't want to encounter other groups. So you have to be sensitive to that when you are in the wilderness. And it may have been it was being done in a very insensitive manner.

I am sure if he was displaying a little American flag or had an American flag on his backpack or shoulder or something like that, I doubt there would be any issue involved here. So let's find out more about that one.

Mrs. CHENOWETH. Thank you, Mr. Nickas.

Do you agree that there should be a lot more common sense involved in any situations where life may be in danger or someone has been injured about giving an exemption to motorized vehicles to go in and do rescue?

Mr. NICKAS. My experience has been that the agencies have been extremely liberal in allowing the use of motorized equipment in the case of emergencies in the wilderness.

Mrs. CHENOWETH. How do you feel about the use of motorized equipment to rescue, say, a gray wolf?

Mr. NICKAS. The Wilderness Act allows for the use of motorized equipment when it is the minimum necessary for the administration of the area as wilderness. In the case of preserving an endangered species, you probably have Endangered Species Act issues as well, and in fact it might be justifiable. But I would have to know a little bit more about the specific case.

I would have to say in every case it would not be the right thing to do to be flying helicopters or taking other motorized equipment into wilderness to rescue an injured animal.

Mrs. CHENOWETH. Mr. Knuffke, you mentioned, both of you mentioned, the use of law enforcement inside the wilderness. Could you elaborate on that for the record, please?

Mr. KNUFFKE. I am sorry, ma'am. I didn't hear the question.

Mrs. CHENOWETH. You both in your testimony mentioned law enforcement activities inside the wilderness to make sure the values established under the act are maintained. Could you elaborate on that for the record?

Mr. KNUFFKE. Sure. By its definition, ma'am, wilderness is rugged, remote, in some cases big, in other cases not so big. We don't fence it. We can't always have signs posted around the perimeter. So a lot of an individual's responsibility toward wilderness begins with knowing where it is.

We can never afford to have enough rangers on the ground. As George said, we are having fewer these days, not more. Nor do I suggest that we should. Absent our ability to contact folks as they

might head into a wilderness, I think we have to be very careful to cite violations when we catch them, and I think that may have been at work in the Forest Service thinking in the case of Mr. Unser's situation. But again, I know no more about that than what I heard this morning and what I read in the papers about it.

I think that we have to appreciate these rules, respect these rules for the same reasons that, as I mentioned in my prepared statement, that able-bodied drivers are very careful not to park in disabled parking spaces even though they happen to be unoccupied at the moment. The fact is that if we occupy them improperly, those who have a greater need cannot. So we do that. So we sit at stop lights on deserted streets late at night and wait for them to turn green, even though no one is there. It is respect for the law. We cannot possibly patrol wildernesses as thoroughly as I have suggested. If I did indeed, I apologize for that suggestion.

Mrs. CHENOWETH. Thank you. The Chair recognizes Mr. Kildee.

Mr. KILDEE. Thank you, Madam Chair.

The present wilderness law permits the use of vehicles to go in for emergency purposes and to rescue people in difficulty, it is part of the Organic Act of 1964, and we generally put it into the specific wilderness, so it is there. Sometimes they might not feel the dangers and be aware of it but it is in the law and the Congress' intent that exceptions should be made, particularly when human life or other emergencies are taking place.

Let me ask both of you, gentlemen, if you could, do you have an opinion on the regulations which the Forest Service put on Crooked Lake in Sylvania in Michigan, regulations regarding the use of motor boats?

Mr. KNUFFKE. I do, and my understanding of that too, Congressman, is somewhat different than what I thought I heard this morning. And it is that those private landowners there, whose property rights matter, should matter to us all, are not being told they cannot bring boats, not even being told that they cannot bring motor boats. They are being told to remain consistent with the Wilderness Act they must use electric motors and observe some no-wake speed. So they still have access to the lake.

I guess they are also being told that they are not allowed to use sailboats by the Forest Service regulations. Sailboats have been defined as mechanical devices, and another concern there is the visual profile. That, I think, speaks to the Forest Service's proper concern for the experience of others using that wilderness, while still trying to balance that against private property owners' continued rights in that place.

Mr. NICKAS. If I could just add to that, I agree with what Darrell said. My understanding is that when the Forest Service was contemplating regulations of motorized use in that area, that by and large, the public asked that there be no motors allowed on Crooked Lake in the wilderness, and the Forest Service, to meet the concerns of the people who wanted to use motors, went ahead and allowed some motors to be used. So we hear a lot of talk about what local people want and those kinds of things, and it appeared in this case they didn't want the use of motors on Crooked Lake, but they are being allowed nonetheless.

Mr. KILDEE. It would seem that there may be some distinction between where the entire lake—I am just wondering out loud—the entire lake is owned, all the lake or part of the lake is owned by the Federal Government and it is a more difficult situation when only part of the lake is shrouded by wilderness area. So I am sure that requires discussion with the other landholders and property holders in the area there. But I am sure we have areas where there are lakes totally shrouded by wilderness areas where the Federal Government has exercised its right to exclude motor craft.

Mr. KNUFFKE. That is correct, Congressman. The only exception that I know, and we have heard that is the Boundary Waters Canoe Area in Minnesota, and we often refer to that wilderness in two different ways, one as the Nation's most popular, given the magnitude of use, and, second, our most motorized wilderness. Those are a contradiction in terms, but those were bargains that were struck in——

Mr. KILDEE. But that was put in the legislative language.

Mr. KNUFFKE. That is correct.

Mr. KILDEE. In the act when it was enacted by Congress.

Mr. KNUFFKE. But I personally know of no other situations where you have a lake wholly within a wilderness area that is public land where motorists are permitted.

Mr. KILDEE. Thank you very much, gentlemen.

Mrs. CHENOWETH. Thank you, Mr. Kildee. The Chair now recognizes Mr. Pombo.

Mr. POMBO. Thank you.

As the Chair rightfully pointed out, when we talk about bringing local people in to help make these decisions and to help draft what it will look like, there is a difference between doing that when you have private property owners that are involved and when you are talking about all Federal land. And I think that he rightfully pointed out that in this particular case, there is a difference.

In this case, you were dealing with a lake that is partially privately owned and partially federally owned, and in other cases, it may be all Federal ownership, all public ownership, and in that case, you do have to rely on local people and what their opinions are. But when you are dealing with private property owners, you have a different level that you have to obtain and that is to protect the property rights of those who are involved. And I didn't want that to be misunderstood as exactly what the difference is between those two.

In terms of testimony we heard earlier dealing with the California desert and the big horn sheep and the other wildlife in that area, knowing that access to those guzzlers in their remote area is the way it is, I am sure both of you are aware of that particular situation.

Would you in that case allow responsible individuals to have access into that wilderness area to take care of those?

Mr. KNUFFKE. Mr. Pombo, I think I would allow that if it were for me to say, only with the greatest reluctance and only to use a term that George used a moment ago, the minimum tool. If there is no other feasible way to do it, then we can talk about that. If there are other alternatives, then I would rather not talk about motors in the wilderness. And some of that comes from an experience.

While I have explicitly—while I enthusiastically support our public land managers, I would mention an example in southwestern Colorado.

We had a landslide there and it was on a trail, a rockfall more correctly, on a trail used fairly heavily by horsebackers, and the repositioning of the rocks posed a hazard and the Forest Service was mindful of that and wanted it out of there.

The land manager in that case resorted first to dynamite, which did not strike me as the minimum tool under the definition. We wondered why perhaps using a few more humans we couldn't go in there with single jacks and sledgehammers, the way old miners did, and bust them up and move them on down the slope. So my experience has been that Federal land managers have been perhaps too eager to resort to motorized intrusions in the land instead of slower, more time consuming alternatives to motors.

Mr. NICKAS. I would add to that that I think maybe sometimes we need to step back just a little bit from the supposed issue in front of us, whether or not they should be using motorized access, and ask whether or not those guzzlers are really appropriate in many instances.

My experience is a lot of times people come in proposing different sorts of wildlife habitat manipulation activities, simply to enhance a certain wildlife population. The Wilderness Act talks about wilderness being areas where earth and its community of life are untrammeled by man, retaining its primeval character and influence which is protected and managed so as to preserve its natural conditions.

Oftentimes, the whole purpose of things like that is to trammel the land, try to modify, to try to make that wilderness something we think it ought to be, rather than what it is. So I think that sometimes we have to sit back and say if we need to violate the basic tenet of the act against motorized use, maybe the activity itself needs to be brought into consideration.

Now, the earlier witness raised some good issues surrounding sometimes their native water sources have been usurped by other activities, but maybe we should look at those other activities. We are talking about a very, very, very small percentage of the land base in this country that has been set aside. And some of those areas, we need to give up our insistence of humans to dominate that land and dictate what species exist and at what levels. So I would say in that case, and I am not familiar with the specific instances, we need to look real hard whether guzzlers are the right thing or——

Mr. POMBO. Not referencing that specific case but in general, then would it—what you are saying is, and in that case, it is not a good case because you are talking about an area that has had heavy human involvement for over a century, so you can't say that this wilderness area is natural. It is natural in its current state, but it is not the way it would have been if man had never been on this earth. There is a huge difference there. But in other wilderness areas, are you saying that we ought to just leave the area alone and whatever lives, lives, and what dies, dies, and that is natural so we are just going to allow it to happen?

Mr. NICKAS. That is basically what the Wilderness Act says. As Howard Zahnisev said, we need to learn to be guardians, not gardeners. And so, yeah, generally, what lives, lives, and what dies, dies, in wilderness areas.

Mr. POMBO. Let me put this, and I understand my time has expired, but let me put this in a little bit different context, in terms of endangered species, and this was mentioned a little bit earlier with the gray wolf. What about the unnatural activity that occurs under the Endangered Species Act as a result of man's desire to not allow a species to become extinct or to slip into being more endangered than it currently is? Would that also fall into that category that you are talking about in terms of wilderness?

Mr. NICKAS. Well, the regulations that currently exist speak to endangered species and they allow for the introduction or reintroduction of endangered species into habitats where they existed prior to designation.

Mr. POMBO. But that is unnatural, so would that not be contradictory to the intent of the Wilderness Act as you just described it?

Mr. NICKAS. Well, you can—the intent of the act is that the areas will be managed to preserve their natural conditions. And I think if you are restoring an extirpated species to the wilderness, then what you are doing is working to preserve the natural conditions.

How you do that, Darrell mentioned the minimum pool sorts of tests and things like that. I think those all have to be part of the decision. There are also things in the regulations that talk about if wildernesses are needed for these kinds of efforts, they can be used, but suggest that other places be looked to for more manipulative types of activities that are required in some cases. So I think when you look at the act and look at the regulations dealing with endangered species, they work pretty well right now.

Mr. POMBO. Well, Madam Chairman, I think we all strive for consistency, and these issues that we are dealing with right now are oftentimes very difficult for us to deal with from Washington and, you know, when we look at the underlying reasons why we have wilderness areas, the intent of man when it comes to endangered species, I think we have conflicting needs when it happens that way, and, you know, if the Fish and Wildlife Service wants to go in to fix the guzzlers, if it is the fact that it is this other group that wants to come in and fix them, that makes it bad. And I think when we look at a number of these issues, it becomes more difficult.

I appreciate your testimony, and like the Chairman, I apologize for the long wait that both of you had today, but thank you.

Mr. KNUFFKE. Mr. Pombo, if I may, in response to one of your comments, I would be as quick to criticize the Fish and Wildlife Service for casually invading the wilderness as I would their giving permission to someone else to do it. We think that those rules ought to stand pretty firmly against every casual use of motors.

Mr. POMBO. Even if they are reintroducing gray wolves into the wilderness area.

Mr. KNUFFKE. Well, it seems to me the decision not to go in to snatch out that gray wolf was a decision by the land manager. And I think you mentioned the unhappy incident, ma'am, in New Mex-

ico with the Boy Scout. The folks on the ground nearest this young man found him to be OK, and generally well equipped, which was certainly not the case with Mr. Unser. He was capable of taking care of himself and they got him out without mishap. I don't know about the wolf. That may be a less fortunate ending. It is difficult. When we give land managers authority, that involves human errors and gives us the right to second guess them and makes their job difficult. But I prefer to leave it to them, reserving my right to criticize.

Mrs. CHENOWETH. Thank you, Mr. Knuffke.

I just wanted to ask one more question. It seems to me that because life itself is a dynamic, in and of itself, and that our wilderness system is dynamic because of the life and death cycle not only of the animal species but also the plant species there, I have always wanted to ask you, how can we preserve those systems based on the natural dynamics of life and death, inside and outside the wilderness? Could you help me out there?

Mr. KNUFFKE. Ma'am, I will do my best. It is not an easy question, you might as well ask me to explain the universe.

I think what we strive for in the Wilderness Act is to set aside places sufficiently varied and to let the natural processes that you describe occur with the least possible interference by humans and manipulation by humans. That does not mean that we don't use motors in there to rescue people who have got themselves into trouble and for a variety of other reasons, and we really can't in significant ways defend our wilderness areas, we are discovering, against the impact of air pollution that may originate 1,000 miles away. But to the extent possible, I think it is an ideal toward which we must strive, recognizing the limits of our abilities and our own imperfection.

Mrs. CHENOWETH. Thank you, Mr. Knuffke.

Mr. Nickas, did you have a comment?

Mr. NICKAS. Well, yes. I just wanted to say what we are doing in wilderness is trying to let those natural systems operate, and we don't always know where that is going to take us. We don't always know what is going to happen, but that is the beauty of wilderness, that is the laboratory of wilderness, that is the wildness of wilderness. So that is the best we can do is let those systems operate and we will see what happens.

Mrs. CHENOWETH. Thank you very much.

Mr. KNUFFKE. Ma'am, could I impose on the committee for one comment having to do with the comment you made in your opening statement, your concern about wilderness and whether or not it is accessible by folks with disabilities. That is a question we have all thought quite a bit about and, that is, through Chairman Hansen's leadership several years ago, the President's council, National Council on Disability, undertook a study of precisely that question, and subcontracted the study to an organization called Wilderness Inquiry. The findings of that report were that by a whopping margin, about 75 percent, disabled Americans don't want anything done in wilderness in the name of accessibility that will damage what wilderness is. Folks who bother to go in there with wheelchairs, which are fully allowable, go there for the same reasons the rest of us do and they want it to stay that way.

I would be happy to submit that study to the committee, if you would like.

Mrs. CHENOWETH. Without objection, I would be very interested in that. So ordered.

[The information may be found at end of hearing.]

Mrs. CHENOWETH. Mr. Kildee, did you have any other comments or questions?

Mr. KILDEE. Just a comment. I think you have conducted this hearing with good control and great courtesy, and I very much appreciate it.

Mrs. CHENOWETH. Well, thank you.

I want to thank the final panel, boy, you have endured a lot. Mr. Knuffke, you have endured my mispronunciation of your name, and I want to say, you ought to see how they mangle Chenoweth sometimes, accidentally and on purpose. Thank you, and I hope you can catch up on your lunch. This meeting is adjourned.

I do want to say, by the way, for the record, the record will remain open for 10 days should you wish to supplement your testimony. Thank you.

[Whereupon, at 2:43 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

Robert W. Unser
7700 Central S.W.
Albuquerque, NM 87121

RE: Incident on or about December 20, 1996 in the Rio Grande National Forest

Dear Members of Congress and Members of this Committee:

Please allow this letter to serve as my written Statement of the events leading up to, during and subsequent to my near tragic experience in the Rio Grande National Forest on or about December 20, 1996.

Prior to December 20, 1996 I intended to take my friend, Robert Gayton snowmobiling in the Rio Grande National Forest, North of my ranch in Chama, New Mexico. Mr. Gayton had never been snowmobiling before.

We intended to go to the Jarosa Peak area in the Rio Grande National Forest which is a popular location for snowmobilers. Hundreds of snowmobilers go up there on a regular basis. I have been snowmobiling in the area for over twenty (20) years.

When we left my ranch in Chama, New Mexico, the weather appeared to be pleasant. We parked in the area normally used by snowmobilers and rode off into the forest. Our intended destination was the Jarosa Peak area. While we were in route a terrible ground blizzard suddenly occurred. With the blowing snow and wind, visibility was practically zero. You could not see the snowmobile in front of you. We got lost and disoriented. Apparently we drove in a circular manner trying to find our way to safety. Because my friend was inexperienced in the operation of a snowmobile it got stuck. We could not get that snowmobile unstuck, especially due to the terrible weather condition created by the ground blizzard. It was getting late and very unpleasant. My friend got on the back of my snowmobile so we could escape. At this time I was also disoriented and lost. The snowmobile had numerous mechanical problems with it. We could only drive a little bit before it broke down and we had to try to repair it. Finally the second snowmobile completely broke down. We made the decision to abandon it and try to walk to safety. By now it was dark, late and the weather was still awful. Rather than walk in the dark we dug a snow cave and spent the night in it. Miraculously we survived the first night. I would never have imagined I would survive a second night. The next day we again walked. We were totally lost and really had no idea where we were going. We walked the entire second day and through the second night.

It was a miracle that in the early morning hours of the second night we located a barn. We got in to the barn and found a phone which worked. We called for help and it came.

My friend and I were taken to the hospital. I still suffer from the effects of spending two nights in the brutal forest weather.

After I was released from the hospital I was contacted by the Forest Service. Under the pretext of wanting to help me locate the second snowmobile they asked me many questions in their office. I answered them. They then produced a pre-written citation and gave it to me alleging that I used a motorized vehicle in a wilderness area. The ticket is attached to this Statement. I do not know where they got my driver's license number from but my State of residence and phone number are incorrect. It appears they always intended to cite which is the real reason they asked me to come in.

Please be assured that I never intended to go in to a restricted wilderness area. I have lived in that area for many years and I, like the rest of the people up there, do not even know where the wilderness area is. We have a general idea that it is somewhat North of where we usually snowmobile but the main reason why nobody knows where the wilderness boundaries starts and the forest ends is because there are no markings up there indicating when you enter a wilderness area. I never intended to go in to a wilderness area with a motorized vehicle. I do not believe I have ever been in the wilderness area.

It is unfortunate that I have been given a citation for this matter. I never intended to break a law. I only intended to survive. The emergency of the life and death situation which Mr. Gayton and I found ourselves in justified our attempt to be rescued.

At some point the value of human life has to be worth more than the enforcement of an alleged technical violation of a law. As of this date I truly believe I never entered in to the wilderness area. The allegations which form the basis of the citation are based on statements of members of the rescue party of where they thought I was going. The first abandon snowmobile was never observed or located by Forest Service employees. It is my understanding that the second snowmobile has still not been located.

I further believe that the publicity generated in the news media during the two days that I was lost contributed to the overreaction of the Forest Service in issuing me a citation which is not based on fact or personal observation of any law enforcement officer.

I am not sure what the policy objective is of the Forest Service in pursuing this matter or issuing such a citation. It appears to me to be an extremely unreasonable action to criminally prosecute me for attempting to save my life and that of my friend. Perhaps your investigation into this matter and other reported Forest Service abuses can help answer this mystery.

I look forward to answering any questions you have regarding this matter.

Respectfully Submitted,

Robert W. Unser

Malcolm Wallop
U.S. Senator (R-WY ret.)
Chairman

TESTIMONY OF
THE HONORABLE MALCOLM WALLOP,
CHAIRMAN, FRONTIERS OF FREEDOM INSTITUTE,

BEFORE THE
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH,
THE HONORABLE HELEN CHENOWETH, CHAIRMAN,
AND THE
SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS,
THE HONORABLE JAMES V. HANSEN, CHAIRMAN,
COMMITTEE ON RESOURCES,
U. S. HOUSE OF REPRESENTATIVES,

APRIL 15, 1997

Chairman Chenoweth and Chairman Hansen, thank you for inviting me to testify here today. My name is Malcolm Wallop, and I am chairman of the Frontiers of Freedom Institute, an organization dedicated to defending our constitutional liberties and one that does not accept federal grants. I am here today to introduce another witness, Mrs. Kathy Stupak-Thrall, and to supplement and reinforce her testimony. My qualifications are that as a rancher at the foot of the Big Horn National Forest, I have had a lifetime's personal experience with the Forest Service, and that as a member of the Senate, I served on the Energy and Natural Resources Committee for eighteen years, where I could view the whole range of the Forest Service and other federal land agencies' conduct and behavior. I was in the Senate when the Michigan Wilderness Act of 1987 was considered and enacted.

A number of problems in managing Wilderness Areas have arisen since passage of the Wilderness Act in 1964. Environmental problems have arisen and undoubtedly are going to become more acute over time as a result of the romantic misconception upon which the Act is based. Contrary to this romantic myth, the North American continent at the time of European discovery and settlement contained few places "untrammeled by man" and where "the imprint of man's work (was) substantially unnoticeable." The various tribes that inhabited the New World may have been stone age, but they managed their lands with the tools available to them. One of their principal management techniques, and not a subtle one, was fire. As the Wilderness system has been expanded by Congress far beyond what was originally envisaged, millions of acres have been turned over to non-management that can only be preserved in their pristine quality through careful human management. The illusion of wildness that has been created in these

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areas is in part man's handiwork and will be replaced by something less satisfying once the hand of man is banished. In my view, therefore, the false doctrine of non-management, which amounts to little more than neglect, will ultimately produce in many designated Wildernesses a great deal of environmental degradation.

Other sorts of problems involving people and their rights and interests have arisen as well, and it is to speak about one of these that I am here today. Members of the committee have no doubt heard, just as I heard during my years on the Energy and Natural Resources Committee, many stories of outrageous treatment of landowners and federal lands users by the federal land agencies. The case of Kathy Stupak-Thrall, Michael and Bodil Gajewski, and eleven other private property owners on the shores of Crooked Lake in Michigan's Upper Peninsula is perhaps not the most outrageous, but it brings into sharp relief several of the worst aspects of the federal agencies' attitudes and approach to Wilderness management.

Let me begin with the Wilderness Act itself. The Congress made it clear in the 1964 act from the first paragraph on that only federally owned lands will be designated as Wilderness Areas. Further, prohibitions against roads and commercial enterprises are qualified by the clause, "subject to existing private rights." The Forest Service elaborated on these points in its January 1979 RARE II Final Environmental Statement: "First, non-Federal lands included within boundaries of an area classified as wilderness are not themselves classified." And: "Wilderness designation in itself imposes no restrictions on use of the private land within or adjacent to wilderness."

These principles were applied in the final management plan adopted by the Ottawa National Forest just before enactment of the Michigan Wilderness Act. The alternative that was eventually adopted stated: "The management areas identified on this map and the management direction defined in the forest plan apply to National Forest lands only. They do not apply to any lands in state, county, private or other ownership." The 1986 Final Environmental Impact Statement responded to comments about how management of the Sylvania Recreation Area as a primitive area would affect motorboat and other usage on several lakes, including Crooked Lake, by dismissing all such concerns. "Motorboat usage on Crooked, Big Bateau, and Devil's Head lakes would continue unless Congress specifically prohibits such use in the legislation designating Sylvania as wilderness. The Forest Service cannot regulate use of motors on lakes; it can only regulate transportation of motors over National Forest System land. If there is private land on the lakeshore, motor boats can continue to access the lake through that land."

This statement simply recognized Michigan state law, which holds that all riparian owners along a body of water hold rights in common to use that body of water. Thus in the case of Crooked Lake, most of the shoreline is part of the Ottawa National Forest, but thirteen private landowners also own parcels along the lake. This means that Crooked Lake itself is not part of the Ottawa National Forest. Instead, Ottawa National Forest is one of several riparian owners that possess rights in common to use the lake.

When Congress considered the Michigan Wilderness Act, I recall that this situation was a matter of concern. And the bill as enacted explicitly addressed it. Section 5, titled Administration of Wilderness Areas, begins with the qualification, "Subject to valid existing rights...." Section 7 states: "Congress does not intend that designation of wilderness areas in the State of Michigan lead to the creation of protective perimeters or buffer zones around each wilderness area. The fact that non-wilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness." To my mind, these additional protections were useful, but should not have been necessary. The language of the Wilderness Act itself and Michigan state law should have been sufficient to demarcate the limits of Forest Service authority over Crooked and the other lakes.

But beginning in 1990, officials of the Ottawa National Forest started to try to restrict customary uses on Crooked Lake by the other landowners on the grounds that they were inconsistent with Wilderness status. I first heard about these attempts to outlaw motor fishing boats and sail boats that had traditionally been used on Crooked Lake when Mrs. Stupak-Thrall and Mrs. Gajewski visited Energy and Natural Resources Committee staff in 1991. I think that in imposing these restrictions, the Forest Service has persistently ignored the Wilderness Act, Michigan state law, the Michigan Wilderness Act, and their own forest management plan. It is incredible to me that they have gotten away with it, but they have. A federal judge held that the Forest Service could ban sail boats and house boats on Crooked Lake in order to protect the wilderness character of the Sylvania Wilderness Area. And in January, the Supreme Court refused to hear an appeal of this incomprehensible decision.

The outlandish deference now being paid by the federal judiciary to federal agency regulations is an enormous problem, which the Congress needs to confront at some point. But I am here today to suggest a more modest task. In this case, the Forest Service has prohibited customary uses on Crooked Lake by the other riparian owners against the explicit intent of Congress. The Congress should spell out its intent once more in language that even the Forest Service and federal judges will not be able to ignore.

In redressing the wrongs done to the private property owners along Crooked Lake, Congress can make a broader point as well. The attitude exemplified in the Ottawa National Forest's dealings with these thirteen landowners is not confined to this one National Forest, nor is it confined to the Forest Service. There is a pernicious belief to be found in all the federal land agencies, to a greater or lesser degree, that they have a right to manage not only the land under their jurisdiction, but everything they can see or hear or smell. (The same belief, of course, can be found in the way federal land agencies treat private rights on federal lands, such as water rights and rights of way, which is to deny that such rights exist.) While a Forest Service official might want to own someone else's property and might think he could do a better job of managing it, this does not give him the right to do so.

In my view, past Congresses have done a poor job of keeping in check these natural acquisitive urges of federal land managers. And so I would hope that you could use the Crooked Lake incident and others like it to send a strong message to the agencies that

grabbing what belongs to someone else will no longer be tolerated. A beginning could be made in this case by putting the officials responsible on the carpet and asking them by what authority they disregarded the clear intent of Congress, the laws of Michigan, and their own management plan. Making an example of officials in the Ottawa National Forest would have, I believe, strong and beneficial repercussions throughout the Forest Service.

Making an example of individual federal employees could have another beneficial effect as well. With increasing frequency during my last term in the Senate, fellow citizens of Wyoming would come up to tell me how their rights were being abused by the Forest Service or Park Service or Fish and Wildlife Service or Bureau of Land Management. After expressing my outrage, I would offer to look into it on their behalf, only to be told: "No Senator, don't. I'm afraid of what they could do to me if I complained. I just wanted you to know." It is deeply disturbing to me that we have reached the point where people fear their own government. If the American people could see that the Congress was determined to redress these wrongs, then I think you would begin to lessen this fear and restore trust in our constitutional system of limited and representative government.

Chairmen Chenoweth and Hansen, this concludes my testimony. I would be happy to answer any questions members of the committee may have.

CROOKED LAKE
North Shore Association

DEFENDING PROPERTY RIGHTS IN ASSOCIATION WITH BLUE RIBBON COALITION
Kathy Stupak-Thrall, President • Ben Thrall, Vice President

TESTIMONY OF KATHY STUPAK-THRALL
21897 Crooked Lake Road, Watersmeet, Michigan 49969
906 358 4268
President, Crooked Lake North Shore Association

SUBJECT MATTER
Problems with federal management of Wilderness Areas
and how it affects private property

BEFORE THE COMMITTEE'S OF
Forest and Forest Health - Chairman, Mrs. Helen Chenoweth
and
National Parks and Public Lands - Chairman, Mr. James Hansen
in the
UNITED STATES HOUSE OF REPRESENTATIVES
April 15, 1997

Dear Chairman Chenoweth and Chairman Hansen,

Thank you for inviting me to testify before you and your committee members. I am Kathy Stupak-Thrall. I am 3rd generation to live in my home on Crooked Lake in Watersmeet, in the Upper Peninsula of Michigan.

My husband Ben and I have been married 31 years and have 3 children and 2 grandbabies. We own a home and operate a small family business in Illinois, for which I am Vice President. Until 7 1/2 years ago I was also the secretary, bookkeeper and gofer for that business. I was also very involved with my widowed mother, who lived with us, with my children, and in the community and my church, donating several volunteer hours each week. But it all abruptly changed when in January of 1990 the Forest Service announced management planning for Sylvania Wilderness of Michigan. My Crooked Lake property is adjacent to and intermingled with Sylvania Wilderness, and the management suggestions of the Forest Service indicated a major impact on my private property. As the planning process continued it became clear that it needed a full time effort. It was necessary to hire someone to take my place in the Illinois business and I took on the full time job of protecting the long held family home in Michigan. The many management planning meetings and hours of research at the Forest Service office necessitated my full effort. Since the activity was in Michigan it was necessary to take up residency in what had otherwise been a summer home. That meant leaving my husband and children to work and school in Illinois while I was off to battle in Michigan.

The following pages will tell more of the story.

Thank you for your interest

Kathy

Kathy Stupak-Thrall

21897 Crooked Lake [illegible] • Watersmeet, Michigan • 49969
Phone 906.358.4268 • Fax 906.358.4240

TESTIMONY OF KATHY STUPAK-THRALL

I have been called before this committee to explain the arrogant and outrageous behavior I have experienced these last 7 1/2 years from the Forest Service. I will explain how the Forest Service works beyond that which Congress directs. I will show where the Forest Service regulates and allows behavior beyond the scope of their authority. How they designate private property "wilderness" by regulation. How they harass and intimidate the public. They do this because there has been little oversight to their actions and if ever called on for inappropriate behavior or other violations there is no penalty to them, for they oversee themselves. The Forest Service and the system have created a nightmare out of what was once living out my dream of owning and maintaining my grandparents lakefront property.

I have on display (picture in file) an example of what most of us recognize as the American Dream. The pride of private property ownership. A homesite tucked away in the woods on a lakes edge. This is my home, it has been in my family for over 55 years. I am the third generation to fly the American flag at the docks edge on Crooked Lake of Watersmeet in the Upper Peninsula of Michigan. I am passing this pride of ownership on to my children and grandchildren as it has been passed to me. The outrageous factor is that this flag flying homesite is called visually offensive by those who visit the neighboring Sylvania Wilderness. You see, my small neighborhood and our private properties on the north shore of Crooked Lake are adjacent to and intermingled with federally owned and designated Sylvania Wilderness (Michigan Wilderness Act [MWA] 1987, PA 100-184). Congress protected these private properties, but the Forest Service has interpreted your language differently and has imposed federally designated wilderness management (5.1) onto the private property of Crooked Lake. The legal history of Michigan has established that not only the subsurface of an inland lake is owned by the riparian (in proportion to his upland), but also, all riparians own equally the entire surface of the lake, no riparian may impair another riparians use (item #10).

DESIGNATION

When designating Sylvania as a wilderness, the records indicate Congress believed the Forest Service and NEPA regulated Environmental Impact Statements (EIS), when the Ottawa National Forest Plans declared that Wilderness management applied only to federal land, not State, County, private or other ownership (item #1). Congress believed the Forest Service when the Ottawa Forest Plan said valid existing rights was a major trade off to achieve wilderness designation, (item #3). Congress believed the Forest Service when the Ottawa Forest Plan said that the Forest Service cannot regulate motors on the surface of Crooked Lake, (item #2). Congress believed the Forest Service that RARE II (sec 6 of MWA) explained that private property (Crooked Lake) within a wilderness boundary was not itself designated or regulated (item #11), as set forth in RARE II-section 6 of the MWA. Congress believed the Forest Service when they said all Sylvania was federally owned. Congress believed and trusted the Forest Service would follow their direction and intent with the passage of the clearly written MWA. So did I and my neighbors of the

north shore of Crooked Lake.

It all became a "bait n'switch" tactic when in 1990 the Forest Supervisor explained that the statements of the Ottawa Forest Plan were all a MISTAKE and were no longer to be part of the planning process. Mistake was the wrong word, he should have said, LIED. The Forest Service lied to Congress, they lied to the general public, they lied to the people of the community most directly affected by their actions, the north shore of Crooked Lake. By lying the Forest Service violated the mandates, spirit and intent of NEPA, (1500.1-b 40CFR) which states, "the information given by the agency must be of high quality. Accurate scientific analysis and expert agency comments.." 40 CFR-1500.2 states, "EIS's are to be clear, precise and to the point...". Well, one of two things happened, either those who prepared the 1986 Ottawa National Forest Plan deliberately lied to gain cooperation and support for wilderness or in 1990 the Forest Supervisor lied about the accuracy of the Forest Plan in order to establish a desired agenda.

OPPORTUNITY ANALYSIS

In January of 1990 when the Forest Service began the planning process, Opportunity Analysis (OA), for the management of Sylvania Wilderness, one of the first items to be placed on the Scoping Board was regulation of the surface of Crooked Lake by the Forest Service. It was made clear by the Forest Service and attending Sierra Club members that our homesites were visually offensive, that we disturbed their "quietude" and solitude. Although they may have to tolerate the sight of our homes (condemnation was preferred) they were not going to tolerate our continued motorboat usage of Crooked Lake. Such use does not fit the management or scheme of wilderness values, they explained. Such statements were fortified by the Forest Service, when it was explained that wilderness related statements of the Ottawa Forest Plan were all MISTAKES. Their Office of General Council opinions (item #16) said, even if Congress protected private property they could still regulate that property. The office of the Chief of the Forest Service explained that "even if the VER language applied to riparian rights, Amendment #1 (which regulated non federal, private property) is permissible..." (Discretionary review, January 1993).

And so began the plan by the Forest Service to regulate non federal, private property with 5.1 wilderness management which is to be directed to federally owned and Congressional designated wilderness <u>only,</u> (item #1). This is a direct attack to the lawful, constitutional property rights, of the Crooked Lake Riparians. To press into public service our private property for the sake of wilderness values above that which Congress allowed is beyond the scope of the authority of the Forest Service.

INTIMIDATION

During the summer of 1990, Forest Service Rangers used intimidation tactics by visiting each Crooked lake homesite individually trying to negotiate lake surface regulations separately with each owner. We had requested to have one meeting with the Agency that all Crooked lake homeowners would attend, but the Forest Service declined. The Gajewski's, of Crooked Lake

Resort, and the Thrall's insisted on a combined meeting. We met with two Forest Rangers at the resort. The Rangers spent over an hour trying to convince us that it was necessary to conform our use to wilderness values. That it would be easier for everyone if the long established motorized fishing resort would convert to become a canoe livery, campers and canoers would surely fill their rental cabins. That if we did not cooperate and agree the wilderness favored outcome would still be the same, only more painful to us. This arrogance and intimidation only enraged us and made us more determined than ever to bring the truth and outrageous behavior of the Forest Service to light.

Intimidation is a tactic that the Forest Service practiced over and over. It was after OA management planning meeting early in 1990 that a Forest Ranger called us privately aside away from the large group. He explained that our motorboat use was certain to be affected by Forest Service management and if we would only agree to use only 10 to 25 HP motors he was sure that an agreement could be reached. But if we did not, we would stand to lose the right to use motorboats on the surface of Crooked Lake.

WILDERNESS ACTS vs PRIVATE PROPERTY

Even though the Wilderness Act of 1964 and the 1987 Michigan Wilderness Act, designate <u>only</u> federal lands and make designation and administration subject to <u>existing private and valid existing rights</u> (VER), the Forest Service insisted for four (4) years in public meetings and throughout the administrative appeals process, that VER was only in reference to mineral rights, not people or property rights. Furthermore, they would not concede that Crooked Lake was non federal, private property, as I was trying to establish by using not only the plain language of the law, but also the Forest Service handbook definition (2320.5-16 item #9) of Valid Existing Rights. The definition is clear... .."those property rights in existence on the date of wilderness designation....that were created by a legally binding conveyance, lease, deed, contract ....". Even with such clarity (and no language barrier) the Forest Service would not discuss the existence of private property or associated rights until in 1994 when a Federal Judge properly defined VER language as including riparian property rights. And even then the Forest Service discussion of property rights was very narrow. The Forest Service never explained to the public in NEPA documents, that Crooked Lake is, by law, an extension of riparian private property held in common by all riparians subject to State law.

It is outrageous that it took 4 years to convince the Forest Service of the plain language of Congress but also of their own handbook definitions. They are deaf and blind when it protects their purposes.

SUPERVISOR VISITS CABIN

It was March 1990, when Forest Supervisor, Dave Morton, by invitation came to my home for a meeting with the Thrall's and Gajewski's. After much discussion and many wilderness related questions from us, in response Mr. Morton stood up, looked out the window at the lake and said, "the boundary line was drawn across the lake to control the north shore of the lake." Such

arrogance is hard to swallow. I didn't believe then and I don't believe now that Congress drew a line across Crooked Lake, contrary to Michigan law, to control 13 homesites.

SEE ENCLOSURES

I present to you a list of Forest Service contradictions, letters that placate members of Congress, letters that suggest a predetermined agenda beyond Congress' clear direction and violations of Forest Service policy and of NEPA. All that I present to you is, in my opinion, a hard slap in the face to Congress, our constitution and to the American people. It does not matter what Congress directs, the Forest Service arrogantly manipulates and interprets it all to fit their agenda.

1. Alternative #7, that which the Ottawa National Forest Plan is based on, See disclaimer -Wilderness management prescription applies only to federal lands, not private property.

2. Ottawa Forest Plan EIS page XI 126 Forest Service can not regulate use of motors on lakes.....

3. Ottawa Forest Plan page C 65 Major Tradeoffs for wilderness... Motorized access from private lands on lake.. motorized use is important to the resort and private cottages on Crooked Lake. This and the above statements of the Ottawa Forest Plan are later called a MISTAKE by Forest Supervisor, Dave Morton.

4. June 1986, letter from Forest Supervisor to resort owner Mike Gajewski...supports the above statements of the Ottawa National Forest Plan and eases Mikes worries for the continued resort business.

5. November 1989, letter from Forest Supervisor to Congressman.... "Without the original Congressional compromise of accepting the established pre-existing valid right of motorized use on Crooked Lake... we feel that we would not have a Sylvania Wilderness today." Placating the Congressman with political correctness only to disregard the statement at a later date.

6. November 1989, letter from Forest District Ranger to Mr. Malmsten....the motorboat use issue lies under Section 5 of the MWA and can be considered as a "valid existing right" (item #8). The Ranger also gives reference to EIS XI 126 of the Ottawa Forest Plan (item #2). Less than 2 months later the Forest Service denied these statements.

7. April 1991, letter to Congressman Hastert, explaining the intention to follow the direction of the Ottawa National Forest Plan. It is the same directions from the Forest Plan that the same Forest Supervisor called a MISTAKE. Even when writing this letter the Forest Supervisor had no intention of following the direction of that Ottawa Forest Plan.

8. March 1990, letter from Forest Supervisor to Michigan Department Of Natural Resources Regional Director, which strongly suggests supervisor had a predetermined outcome in

mind and did not seem to care that he was limited by the MWA. He was determined to find a State or other Federal law to achieve his agenda.

9. Definition of Valid Existing Rights (VER) 2320.5-16, from Forest Service Wilderness Handbook, identifies property rights. This is the language of sec. 5 of the MWA.... administration subject to VER. Forest Service ignores its own definitions and policy, and directions of Congress.

10. Lawful Riparian Rights - This letter from the Michigan Attorney General outlines those property rights in existence on the date of wilderness designation.

11. Forest Service Land Status Reports declare that the subsurface acres of Crooked Lake are private, non forest system land. The Forest Service ignores these records. Forest Service attorney, Peter Apeal, told en banc panel of 14 judges in the 6th Court of Appeals, that the Forest Service had no idea of why these land status records are kept.

11A. Please see letter of explanation from Ken Meyers of the Forest Service Regional Office in Milwaukee, Wisconsin attached to this item, he explains that these records are kept to report to Congress.

12. Forest Service Document, RARE II page 78 (noted in section 6 of the MWA) "...non-federal lands included within boundaries of a wilderness are not themselves classified. Wilderness designation in itself imposes no restrictions on use of the private land within or adjacent to wilderness."
Forest Service interpretation is that designation imposes no restrictions but Forest Service management can and does impose those same restrictions.

13. Forest Service - Long Term Strategic Plan. Recognizes the more assertive State and local regulation of common property resources such as water. Such is the case of Crooked Lake which the Forest Service has again ignored in their own written policy in order to establish their agenda.

14. Court Decision of January 1994. Correctly interprets Congress and defines VER to be private riparian landowner rights. This private property ownership information was not made available to the public in future Forest Service documents, such as the Environmental Assessment of Crooked Lake issued in July of 1994. Withholding of this information from the public by the Forest Service falsified that NEPA regulated document which was mandated to be accurate and precise (40CFR 1500.1-2).

15. Ticket to Ben Thrall from Forest Service Ranger for possession of a can of pop in boat while on the surface of Crooked Lake. Similar tickets have been issued to resort guests by Forest Service, such as, no lake use permit, cans of pop in boat, and worms held in a styrofoam container rather than a reusable rubbermaid type container, all while boating on private property, which is the surface of Crooked Lake. **It is required that lakefront homeowners, and their guests obtain a permit from the Forest Service to travel on**

their private property which is the surface of Crooked Lake. Please keep in mind that the lake is non federally owned but currently regulated as a wilderness.

16. OGC - Office of General Council opinions on the issue of Sylvania. Here you will find that the discussion of Crooked Lake treats the lake as if it were federally owned. Lake is never identified as non federal, jointly owned common property, as stated in Forest Service land status records (item #10). Crooked Lake riparians were never given proper recognition as to the extent of their property and property rights. The Forest Service, throughout their documents, led the public to believe Crooked Lake is federally owned. This violates NEPA's full disclosure and accuracy mandates (40CFR 1500.1-2).

16A. Conclusion Statement of the Forest Service Chief, 1993, states, we can regulate private property anyway. Even in the face of the VER language specifically included in the MWA by Congress.

17. January 1994, federal judge legislated from the bench by expanding on the law of the MWA after he properly interpreted it. By doing so affected State of Michigan property laws. This decision allows and encourages creeping federalism.

18. Michigan Law Library, "Private riparian property is also subject to federal regulation". This is the result of a judge who legislated from the bench.

19. FSH 1909.17-30.5(1) "Area of Influence....area most affected by past, present or proposed actions of a Forest Service unit." This describes the community of the north shore of Crooked Lake.

20. FSH 1709.11-33.24 - Civil Rights Handbook - Office Of Management and Budget (OMB) approval is necessary for government sponsored survey where 10 or more people in the private sector receive the same set of questions. This approval was not received before issuing, collecting and processing data of survey given to users of Sylvania wilderness during the season of 1989.

20A. Civil Rights Handbook -1709.11-36.1(3) ..."it is less desirable if one group benefits but others pay most of the cost." Crooked Lake riparians relinquish their civil rights while the public enjoys private property that has been given up for public use.

21. FSH2309.19-21.12f "....dispose of all visitor permits. Do not release names and addresses from the forms to private individuals, groups or organizations...."

22. CRS Congressional Research Service shows how Congress has addressed wilderness boundaries and private property dilemma's within those boundaries.

23. Major Federal Action 1508.18 "Actions which are potentially subject to Federal Control." Item #18 explains that Forest Service actions have led to federal control of private riparian property. This issue deserved a formal EIS.

CONGRESSIONAL AIDE STATEMENT:

An outrageous statement was made six and a half years ago by a congressional aide, who was working closely with the Forest Supervisor, that the problems I was experiencing with the Forest Service is what I could expect when living in the forest. His exact words were, "that's the chance you take living in the forest." No apologies, just pure arrogance.

MULTIPLE SCLEROSIS VICTIM (MS)

It is outrageous that a federal agency knowingly affects the health and well being of one who is most directly affected by their actions. I am speaking of retired Major Mike Gajewski of Crooked Lake Resort. Mike has MS. He and his VA doctors had it under control in 1990 until this ACTION with the Forest Service began. Stress is the greatest factor in the acceleration of MS, and his condition started to deteriorate with the onset of these Forest Service ACTIONS that affect his resort business which supports his family. The Forest Service has failed to recognize the community of the north shore of Crooked Lake as the "area of influence" (FSH 1909.17-item #19) directly affected by Forest Service actions. They also deny their management will affect the resort business, yet 90% of the resort customers have indicated they will not return with continued Forest Service regulation of activities on Crooked Lake. There has already been a 30% drop in clientele. The reason given for not returning is the Forest Service harassment while visitors are on the surface of Crooked Lake. Visitors come for a vacation not a conflict.
All this information has been given to the Forest Service, still they report no significant impact of their actions.

SURVEY - NO OFFICE OF MANAGEMENT AND BUDGET APPROVAL (OMB)
CIVIL RIGHTS IMPACTED

During the summer of 1989 the Forest Service took it upon themselves to distribute a questionnaire survey to many, but not all of the Sylvania users. We know not all users were asked to participate because we tested their system by sending various resort and/or family members to the check in point called the A-frame. If they identified themselves as a hiker or canoeist they were asked to fill out a questionnaire. If they were a motor boater there was no mention of the questionnaire at all.

It was not until a motor boater asked to see the questionnaire he had heard about that he was given one. This questionnaire was biased against motorboater activity on Crooked Lake and no information of private property ownership on Crooked Lake and associated rights or that the lake is non federal property was given to the participant in the survey. They were led to believe that the Forest Service could regulate as they pleased in regard to the surface of Crooked Lake.

Most importantly there was no Office of Management and Budget approval (Civil Rights Handbook 1709.11-33.24; item #20A) for this Federal Government sponsored survey of 10 and more people of the private sector. The information "collected and processed" from this survey was used during the Scoping and Decision making process (OA) for the management of Sylvania Wilderness Area. This is a direct violation of Office and Management and Budget

that also violated Civil Rights (FSH 1709.11-36.1[3] item #20A). The survey used by the Forest Service mislead the public into thinking there was government ownership and control of the surface of Crooked Lake and then continued to use these biased opinions during the OA management decision process.
If participants of the survey had known of the lawful riparian property rights associated to the surface of Crooked Lake, their responses to the survey could have been different as they might have envisioned themselves as the riparian property owner whose rights were to be regulated.

To have not disclosed the entire truth to the riparian ownership of the surface of Crooked Lake to participants of the survey violated my civil rights as I am a riparian of Crooked Lake and it is my property rights to the surface of Crooked Lake that were withheld from the public. During the OA Scoping process for management of Sylvania Wilderness and of Crooked Lake, this violation, of previously collected survey information, against the Office of Management and Budget was brought to the attention of the Forest Service. They then sought and received approval for this survey but continued to use the material which gave no information of private property rights to the surface of Crooked Lake, yet discussed and requested how the Forest Service should regulate the lake surface.

UNLAWFUL DISBURSEMENT OF REGISTRATION FORMS

Late in 1990, the District Rangers office released all Sylvania user registration cards (names and addresses) to Upper Peninsula Environmental Coalition (UPEC) for UPEC'S own use and purposes. This is a violation of wilderness management and policy (FSH 2309.19 item #21) which does not allow for the release of names and addresses from Forest Service registration forms. UPEC used private information for their own gain. They falsely informed their readers of government ownership and ability to regulate Crooked Lake. They solicited wilderness favored letters to be sent to the Forest Supervisor and requested a donation of money for their "Protect Sylvania" project. When this violation had been brought to the attention of the Forest Service no disciplinary action was taken either against the agency or UPEC. No measure was taken to undo the harm this biased material sent by these UPEC readers would bring against the private property owners of Crooked Lake. (But why should they, no one was willing to recognize private property anyway.) The OA management process continued as if no violations had occurred.

COURT ACTION

In order to protect my property and business interests I was forced to file an action in federal court against the Forest Service and the Secretary of Agriculture. This action on my part would not have been necessary if the Forest Service had properly and correctly followed the plain intent of Congress in the MWA, including the VER language which Congress and the Forest Service clearly understood, I refer to three letters item's #5, 6 and 7. Instead I found myself in Federal District Court in January of 1994. This court properly interpreted the MWA, but then expanded the law by allowing the Forest Service to regulate private

property using the Reasonable Use Doctrine. I appealed to the 6th Circuit Court of Appeals; this 3 judge panel rejected the lower court decision, but allowed the use of the Police Powers of the Property Clause. Such craziness I appealed to the 6th Circuit court en banc. They not only agreed to hear us but vacated the panel opinion. This en banc court reached no decision as they split 7 to 7, which immediately reverted back to the only standing decision, the district court decision which was rejected by the appeals court. As it stands the Forest Service has been given the authority, by a court, to regulate, contrary to the clearly expressed intent and language of Congress and the MWA, private riparian property, See items #17 and #18.
All this, even though the reasoning of the district court had been rejected by the original panel of the 6th Court of Appeals.

COURT EN BANC (6th Circuit of Appeals case #94 1863)

During the hearing of the en banc court in June of 1996, Peter Appel, who is the acting attorney from the Justice Department for the Forest Service, made another remarkable statement. He said of the Valid Existing Rights language in the MWA, that Congress had no idea of what the VER language means. How is it that Congress had no idea of the language it uses when writing laws that affect the people of the United States?
I think that this attorney was "making up a story" trying to convince a judge or two that the VER language meant nothing in the MWA. The split decision of that court tells us that some members of the court believed such nonsense.

I contend that if the Justice Department has such a low opinion of the ability of Congress, Congressional Committees, such as this one, should exhibit to the Department the powers you do have. That you know exactly what you are doing when you cut their budget for the "Forest Service". If the Forest Service has no one who will defend to the end their right to manipulate Congressional law beyond recognition, then maybe, just maybe, the Forest Service will get the idea they must follow directions just as directions are given to them. And maybe the Justice Department will get the idea that they are not to go to any means necessary to protect their client. The people and the laws of the United States come first, and then consideration of the actions of the agency it is to represent.

MAJOR FEDERAL ACTION

It is a "major federal action" (item #23) when an agency delegates to itself the powers of Congress to then use the power of the Property Clause to regulate private property with federally designated wilderness management. The power of the Property Clause belongs only to Congress. Such powers are not "taken on" by an agency of the government or given to an agency by a court room judge.

Yet this is exactly what has happened in this instance of the private property interests of Crooked Lake and the Forest Service. Wilderness management, prescription 5.1, is to be applied to federal land only and only that federal land which has been designated wilderness by Congress, see item #1.
A major federal action is reason and cause to call for an Environmental Impact Statement (EIS)-(40 CFR 1508.11) item #23.

This is the relief which I requested from the Forest Service in my last appeal to their proposed 5.1 wilderness management of Crooked Lake. I did not feel it to be unreasonable or beyond the scope of their authority.

If granted an EIS specific to the issues that surround the Crooked Lake dispute a mandatory NEPA economic, social and civil rights impact analysis would have had to be completed. This would have exposed the Forest Service's past and present actions of working and regulating beyond the scope of their authority, and the impact these Forest Service actions would have on not only on the private and business riparian property of Crooked Lake, but their actions also set the precedent for future Forest Service management of all private riparian property everywhere. Is it any wonder that I was denied my request for an EIS by the Forest Service?

PYRAMID OF POWER

It is outrageous that the Forest Service feels no responsibility and is not held responsible for their actions. They blame all they do on Congress, declaring Congress makes them do what they do. The truth is the Forest Service are the experts at what they do with layers and layers of staff and attorneys and unlimited financial reserve from their Office of General Council and the Justice Department to justify their actions. I am Jane Doe citizen.. standing by myself against a pyramid of power, from Michigan to Milwaukee to Washington, DC. There are no scales of justice or fairness.

The deck is clearly stacked from the very start against the individual. How does an individual fight city hall? You feel so small and helpless. The intimidation of the agency can make you feel stupid and all seems hopeless. How can anyone protect themselves from the jaws of such a giant? Where does a person find the time and the resources to participate intelligently? How does one know the rules when those in power change the rules in the middle of the process? How does the average person sort their way thru the volumes and volumes of rules, regulations, policy and law's of the agency they are dealing with? John and Jane Doe only have the agency, who is undermining their stability, to look to and ask for help. **That's sort of like asking the fox to feed the chickens!**

I ask you to use me as an example of a person who participate's in the process, but let's tell the whole dirty story. Tell the public what must be sacrificed in order to protect yourself from an overzealous bureaucrat agency. What my husband Ben and I agreed to take on and what we have endured is not for the weak of heart. It is not for the very young as they are not yet experienced enough. It is not for the elderly as the heartache could kill them. It is not for those with family as the demand of participation tears a family apart. My husband Ben and I felt ourselves in a strangle hold by the Forest Service, aided by the Sierra Club. It was necessary to stand on principle and stand up to the bully's who would otherwise rule our lives. We have sacrificed all our financial reserves and our family life came to a roaring halt and this issue with the Forest Service became everything we did. Did I expect it would take 7 plus

years to accomplish the end? Heck no!! Would I do it again? Please, don't ask. I only know that I do not allow myself to be bullied, especially when I know the law is on my side. I have only needed someone like this committee to hear me to be able to come to my aide.

Why are there rules, regulations and mandates of law if there is no penalty for breaking these rules, regulations and mandates? I hate to even suggest that we create yet another layer to the system, but someone needs to oversee and continually watch the actions of the Forest Service, especially in those actions which affect private property.

I have been screaming for help for over seven years, until now who has heard me? My letters of complaint have been turned back to the very agency I complained about! How is it you expect the kid caught with his hand in the cookie jar to tell you exactly how many cookies he already has eaten? And if you expect this same "kid" to discipline himself, what are the chances there would be <u>any</u> punishment?

It is time, far overdue time, to discipline and oversee the actions of the Forest Service in their relationship and attitude towards private property matters.

CONCLUSION

It is not the actions of Congress that have caused me 7 1/2 years of anguish and financial hardship. It is not the designation of wilderness that has caused separation of husband from wife and mother from children in order to protect long held 3 generation family property and business interests. It has been individuals within the Forest Service who have an agenda beyond the authority given to them by Congress.

It has been the overzealous desire of the Forest Service to create a pure wilderness, where it does not exist, which has caused great hardship and financial cost to me and my family and greater cost to the American people by denying the civil right's of property ownership and the protection of that ownership which Congress recognized in the law of the MWA.

It has been the Forest Service who has taken on the colors of Congress by expanding wilderness designated acres with wilderness regulation illegally imposed onto **non federal, private property**. They have consistently violated their own Forest Service policy and written mandates of Congress including NEPA and the MWA. It is these individuals within the agency who must answer for their actions, and the agency who is responsible for the activity of their personnel beyond the scope of their authority. Do not let them excuse themselves by saying that they simply misunderstood. These people are educated, read and understand English. They have become an agency out of control who will say, POP!, and then go on to the next victim. Please put a muzzle on this bully and harness it's behavior.

This agency has forgotten the directive of their own Civil Rights Handbook, (1909.17-36.1(3), an alternative may be socially preferable when the individuals and groups that benefit from it

also pay most of the direct and indirect costs...while it is less desirable if one group benefits while others pay most of the costs. In this instance the public at large enjoys while a small group on Crooked Lake is forced to relinquish their property rights, without due process of law or just compensation.

RELIEF

The relief I request from this committee is this;

1. Overturn the standing decision of the federal judge which expanded on Congressional law which allows the federal government to regulate private riparian property.

2. I ask members of this committee to mitigate the injustice towards the riparians located on the north shore of Crooked Lake.

3. Require the Forest Service to repair the publics attitude toward the private property of the property owners on Crooked Lake.

4. Discuss the future attitude and actions of the Forest Service towards the Crooked Lake riparians.

5. Finally, I ask you to consider withholding funding from the Forest Service and the Justice Department to implement these illegal policies that seriously affected private and State lands.

Please do not leave me standing in the cold snow with only the Forest Service to reach out to. I've been there, done it and it's not a place anyone wants to be.

The actions of this committee are supported by the Michigan State Legislature as they have resolved to support the private property interests in the State of Michigan. They are also resolved to do what is necessary to settle this conflict in order to repair the damage done by the overzealous actions of the Forest Service and the district court judge's decision of January 1994. Governor Engler is also very concerned about the stability of Michigan Sovereign property laws. He also disagrees with the standing court decision of January, 1994 that has affected Michigan sovereign laws.

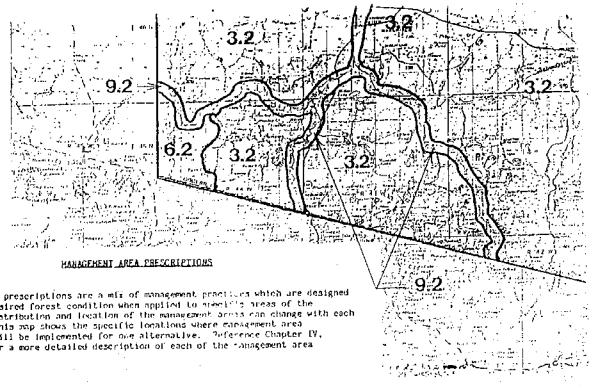
What I ask of you is not just for myself and my Crooked Lake neighbors. It is for all private property owners of Michigan and all other private property owners across the nation, where this action could set a precedent of creeping federalism into the very strength that built this country, the desire to own and enjoy private property.

ALTERNATIVE 7

PREFERRED ALTERNATIVE

land and resource management plan
draft environmental impact statement
1985

THE MANAGEMENT AREAS IDENTIFIED ON THIS MAP AND THE MANAGEMENT DIRECTION DEFINED IN THE FOREST PLAN APPLY TO NATIONAL FOREST SYSTEM LANDS ONLY. THEY DO NOT APPLY TO ANY LANDS IN STATE, COUNTY, PRIVATE OR OTHER OWNERSHIP



MANAGEMENT AREA PRESCRIPTIONS

Management area prescriptions are a mix of management practices which are designed to produce a desired forest condition when applied to specific areas of the Forest. The distribution and location of the management areas can change with each alternative. This map shows the specific locations where management area prescriptions will be implemented for one alternative. Reference Chapter IV, Forest Plan, for a more detailed description of each of the management area prescriptions.

U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE

OTTAWA NATIONAL FOREST
and
(Cyrus H. McCormick Experimental Forest)

MICHIGAN

MICHIGAN MERIDIAN
AND
FOURTH PRINCIPAL MERIDIAN

1985

LEGEND

Management Area	Management Area Direction
1.1	Emphasizes aspen vegetation in a motorized recreation environment. Provides habitat for deer, ruffed grouse, and other wildlife requiring young forests.
2.1	Emphasizes uneven-aged management of northern hardwoods to produce quality hardwood timber products and associated wildlife in a motorized recreation environment.
3.1	Emphasizes even-aged management of northern hardwoods, softwoods, and aspen vegetation in a motorized recreation environment. Provides habitat for deer, ruffed grouse and other wildlife by establishing a variety of vegetation cover types and age classes.
3.2	Emphasizes even-aged management of northern hardwoods. Provides habitat for deer, ruffed grouse and other associated wildlife in a motorized recreation environment.
4.1	Emphasizes even-aged management of long lived conifers and associated wildlife habitat in a motorized recreation environment.
4.2	Emphasizes even-aged management of short-lived conifers while maintaining habitat for associated wildlife in a motorized recreation setting.
5.1	Provides for management of congressionally designated wilderness.
6.1	Emphasizes uneven-aged management of northern hardwoods and less frequent harvesting of other vegetative types in a non-motorized recreation environment.
7.1	Provides for high density self-contained motorized and non-motorized recreation environment in the management of the Black River Recreation Area.
8.1(a)	Provides for management of the Cyrus H. McCormick Experimental Forest for the conduct of research in a semiprimitive non-motorized day-use only environment.
8.1(b)	Same as Management Area Prescription 8.1(a) except provides for expanding semiprimitive non-motorized recreation opportunities to include overnight camping.
8.2	Provides for management of the Sylvania Recreation Area (perimeter zone) in motorized recreation development.
8.3	Provides for management of the Sylvania Recreation Area (interior zone) in a semiprimitive non-motorized recreation environment.
8.4	Provides for minimum management requiring protection of established and proposed Research Natural Areas to preserve unique ecosystems for scientific purposes.
9.1	Provides for minimum management requiring protection and maintenance of existing environmental values in designated wilderness study areas.
9.2	Provides for minimum management requiring protection and maintenance of existing

United States
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Service

Eastern
Region

1986

Final Environmental Impact Statement

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OTTAWA NATIONAL FOREST

Comment D-2

Some respondents had specific concerns about how the management of the Sylvania Recreation Area would change under the proposed plan. Concerns included whether or not motorboat usage would still be permitted on Crooked, Big Bateau, and Devil's Head lakes and if the motorboat issue could be resolved by changes in the wilderness-study area boundary; whether the future business of the resort on Crooked Lake would be threatened by potential wilderness designation; whether commitments and promises made when Sylvania was established as a Recreation Area will still apply or will be ignored; whether noise from adjacent communities would be appropriate in the high quality National Wilderness Preservation System; whether additional rules and restrictions would apply such as restricting hunting and trapping; and whether special fishing regulations will be maintained.

(I.D. Nos.: 6, 171, 173, 178, 393, 419, 703, 1407, 1763, 1984, 2006, 2016, 2040, 2186, 2295, 2323, 2507, 2602, 2609, 2595, 2597, 2660, 2675, 2946, 2962)

Forest Service
Response

Motorboat usage on Crooked, Big Bateau, and Devil's Head lakes would continue unless Congress specifically prohibits such use in the legislation designating Sylvania as wilderness. The Forest Service can not regulate use of motors on lakes; it can only regulate transportation of motors over National Forest System land. If there is private land on the lakeshore, motor boats can continue to access the lake through that land. Changing the wilderness boundary would not significantly affect this issue.

The future business of the resort on Crooked Lake probably would not be threatened by potential wilderness designation. Often when an area is designated wilderness, visitor use increases and the local area experiences an increase in tourism. In fact, tourism is more likely to increase if Sylvania is designated wilderness than if it is managed as a wilderness study area.

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OTTAWA NATIONAL FOREST

Major Tradeoffs The major tradeoffs made in managing Roadless Areas for wilderness are loss of timber production, closure of roads except to provide access to private lands, exclusion of motorized boats except where the use has long-established access to lakes from adjacent private or public lands on the lake in question (unless the act designating the area wilderness closes the lake to motors), exclusion of snowmobiles and all-terrain vehicles, and curtailment of administrative use of motorized equipment.

The timber volume on all areas accounts for about 2 million board-feet of annual allowable timber sale quantity and about 4 million board-feet of long-term sustained timber yield which represents about 2.3 percent of the Forest total timber volume offered. However, the timber volume contained in these areas is not significant to meeting demand due to the surplus of timber on the Forest under all alternatives.

Roads currently open within portions of Sturgeon Gorge Roadless Area would have to be closed in Alternatives 1, 2, 4, 5, and 8 except for administrative purposes. In Alternative 7, roads in Sturgeon Gorge would also be closed to administrative use. Roads currently open within portions of the Norwich Plains Roadless Area would have to be closed in Alternatives 2 and 4 except for administrative purposes.

Motorized use of lakes within the Sylvania Roadless Area is important to the resort operations and private cottages on Crooked, Big Bateau, and Devils Head lakes. Mitigating options are recommended in alternatives 1, 2, 4, 5, 6, 7, and 8.

Motorized use including snowmobile and all-terrain vehicle use in the Norwich Plains Roadless Area under Alternatives 2 and 4 would be prohibited. Currently, snowmobile and all-terrain vehicles are the prime methods of transportation for hunters, trappers, and owners of private camps within the area.

UNITED STATES
DEPARTMENT OF AGRICULTURE
Forest Service
Ottawa National Forest
U.S. 2 East
Ironwood, Michigan 49938

Mr. Michael Gajewski
Star Rte. 1
Watersmeet, MI 49969

Reply to: 2300

Date: June 6, 1986

Dear Mike:

First, I want to thank you for the pleasant boat trip on Crooked Lake and your knowledgeable commentary.

Second, as promised, I need to bring you up to date on the Sylvania motorboat use issue. There are three lakes involved: Crooked Lake, part of which lies outside of the proposed wilderness area on which there is privately-owned riparian land; Big Bateau Lake which has an access point and private property on the portion of the lake lying in Vilas County, Wisconsin; and Devils Head Lake on which there is located a parcel of privately-owned riparian land.

Under current management, motorboat use is not regulated on Crooked and Long Lakes. By order issued under authority 36 CFR 261.50, the transportation of motors or motorboats over National Forest System land to the other lakes is prohibited. Therefore, the Forest Service regulates motorboat use on these lakes not by prohibiting the use on the waters, but by prohibiting their transportation over National Forest System land.

If a bill is enacted designating Sylvania as a wilderness and is silent with respect to any prohibitions on motorized uses on the lakes that are not completely surrounded by National Forest System land, such use may continue because the Forest Service would have no control over the water entry points. The Forest Service would have no control over persons using private entry points whether inside or outside of Sylvania without crossing any National Forest System land.

If an enacted bill contains specific provisions that prohibit motorized use with certain exceptions and specifically authorize the Secretary to regulate use on the waters or that part of the waters within the wilderness, then motorboat use could be controlled by the Forest Service.

In summary, if the law designating Sylvania as a Wilderness is silent with respect to motorized use on the lakes, the Forest Service would not be able to control or regulate motorized use on the lakes on which persons can enter the Wilderness by water without crossing National Forest System land or on which there are private lands that are used as access point.

I hope this answers your questions. Please let me know if you need additional information.

Sincerely yours,

JOSEPH ZYLINSKI
Forest Supervisor

cc: Bob Bodine - Watersmeet
Dave Anthony - Sen. Levin's staff (Escanaba)

Honorable Robert Davis
House of Representatives
2417 Rayburn House Office Building
Washington, D. C. 20515-0312

Reply to: 2320 (1510)

Date: November 21, 1989

Dear Congressman Davis:

I am responding to your letter of November 9th which was generated by correspondence that you had received from local citizens opposed to any restrictions on motorized use on Crooked Lake in the Sylvania Wilderness.

As you know, in December 1987, the Sylvania Wilderness was created by the Michigan Wilderness Act. Although the Act itself was silent regarding continued use of motorboats on Crooked, Big Bateau, and Devils Head Lakes, earlier Congressional hearings and testimony leading to the passage of the Wilderness Act indicated strong support for and recognition of motorized use on these lakes. (See enclosed copies of HR Report 100-29, Part I, page 7; HR Report 100-206, pages 4 and 7; and Public Law 100-184, page 2, Section 5.) The committee states in these reports that in accordance with Section 4 (d)(1) of the Wilderness Act of 1964, this motor boat use is a pre-existing valid right and may be allowed to continue subject to such restrictions (motor horse power limits, levels of use) as the Forest Service deems appropriate and desirable. Any changes would be incorporated into plans developed to guide future use.

This winter the Watersmeet Ranger District will be developing a Wilderness Management Program for Sylvania Wilderness. This is an interdisciplinary process which will include wide-spread public involvement to gain input from all segments of users and affected parties. Hopefully some of the concerned individuals who contacted you will want to participate and provide input. There are many aspects to continued use of motors on these three lakes within the Wilderness. There is only a small portion of Crooked Lake outside the Wilderness boundary. It has been argued by some that the use of motors should only be allowed on that small portion of the lake outside of the Wilderness where private ownership and the resorts are located. We have taken the more liberal view, supported by our Forest Land and Resource Management Plan and Congressional testimony, that motors can continue to be used but that our agency has the responsibility to monitor such use so as not to destroy wilderness values. That may mean some future limitations on size, numbers, and activities of boats with motors, or it may mean that we need a strong education and enforcement program. These are the details that will be developed over winter as we develop the Wilderness Management Program for the Sylvania Wilderness.

At this point, we have no intention of eliminating motors from Crooked Lake, but we may find in development of the Wilderness Management Program that there may be a need to reduce the level of motorized use, or at least to regulate it through some common sense regulations. However, this may also require some change in State of Michigan rules/regulations governing use of motors. Wilderness advocates will probably still argue strongly that motors must be prohibited in the Wilderness. Our feeling is that some sort of a compromise will be needed. Without the original Congressional compromise of accepting the established pre-existing valid right of motorized use on Crooked, Big Bateau, and Devils Head lakes, we feel that we would not have a Sylvania Wilderness today.

Please feel free to contact us for any more information.

Sincerely,

Judy Cook

for DAVE MORTON
Forest Supervisor

The Forest Supervisor is out of the office this week but has asked me to sign in his absence.

United States
Department of
Agriculture

Forest
Service

Ottawa National Forest
Watersmeet Ranger District
Watersmeet, MI 49969

CARING FOR THE LAND AND SERVING PEOPLE

William Malmsten
Rt. 1
23314 County Road CL
Ishpeming, MI 49849

Date: November 13,1989

Dear Mr. Malmsten:

Thank you for your comments about the Sylvania Wilderness and for voicing your concerns over the use of motorboats on Crooked Lake. We all share your interest in maintaining the wilderness setting and properly managing this very unique and sensitive area.

Use of motorboats on Crooked Lake began under previous owners prior to the Sylvania land acquisition by the Forest Service in 1966. Access was gained through a boat landing off Old County Road 535 and the several private landowners along the north bay of the lake. This use was allowed after purchase by the Ottawa National Forest and has continued to the present.

When the area was being considered for wilderness designation through H.R. 148 (Michigan Wilderness Act of 1987), both reports to the U.S. Senate and House of Representatives acknowledged this prior use (see attached). In addition, the report by the Agriculture Committee on the Wilderness Bill also mentioned "the Forest Service should consider that in accordance with section 4(d)(1) of the Wilderness Act, pre-existing motorboat use on Big Bateau, Devils Head, and Crooked Lake within the Sylvania wilderness, may be permitted to continue, insofar as this use does not conflict with or adversely affect wilderness values."

Because motorboat use had always been in existence and was recognized as such by the committees involved with the wilderness designation, it has been our interpretation that the issue of whether or not to allow the use to continue lies under Section 5 of the Michigan Wilderness Act of 1987 and can be considered as a "valid existing right."

It is up to the Forest Service, however, to determine whether motorboats "conflict with or adversely affect wilderness values". Up to this point, we have felt their use was legitimate (our Land Management Planning process in 1986 allowed it to continue without restrictions; reference Forest Plan Environmental Impact Statement - Response to Public Comments, page XI-126, attached).

With the preparation of an Implementation Plan based on an Opportunity Area Analysis to be completed this upcoming winter, we will be giving the entire concept of motorized boats inside the wilderness a second look. It is a very important issue that will be examined closely and we may end up reversing our present and past policies. We have already received dozens of comments both in favor and against motors and the lack of restrictions. I hope you can understand the sensitivity of this problem, the people it affects, and our willingness to do the right and proper thing for all concerned.

Again, we appreciate your comments and they will be used to aid us in this decision.

ROBERT BODINE
District Ranger

cc: Dave Morton
Chuck Bartlett

United States Department of Agriculture | Forest Service | Ottawa National Forest | 2100 E. Cloverland Drive Ironwood, Michigan 49938 (906) 932-1330

Reply to: 2320/1510

Date: April 4, 1991

Honorable Congressman Hastert
U.S. House of Representatives
515 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Hastert:

Thank you for inquiring about motor use on Crooked Lake in the Sylvania Wilderness. As you know, motor use on this lake has been a key issue during the development of the Wilderness Management Plan for the Sylvania Wilderness.

To keep you up-to-date regarding this plan and the above issue, we are still involved in the process of developing the management plan and seeking public input and guidance for this area.

When the management plan is complete, I will review the plan and if it meets the direction(s) of our current Forest Plan and national Wilderness designations, I will sign and approve it.

At this point the Ottawa National Forest Management Plan will be amended, and you will receive a copy of the wilderness plan for the Sylvania Wilderness Area.

Sincerely,

Dave Morton

Dave Morton
Forest Supervisor

TMM:ncl

United States Department of Agriculture | Forest Service | Ottawa National Forest | 2100 E. Cloverland Drive
Ironwood, Michigan 49938
(906) 932-1330

Reply to: 1920

Date: March 5, 1990

Mr. Frank Opolka
Regional Director
Michigan Department of Natural Resources
P.O. Box 190
Marquette, Michigan 49855

Dear Frank:

I thought our discussion last week about the Sylvania Wilderness planning effort was very productive. Not only did it reaffirm our mutual commitment to work together on the plan, it also affirmed we would use the "best" legal tools to accomplish the goals of the final plan, and not get hung up on whose authority we will use.

As I described to you, I believe we are making progress in moving toward a decision that the total range of publics will accept on the issue of motorized boat use of Crooked Lake within the Wilderness. Yes, it still is a polarized and highly emotional issue. And I'm sure some of the participants don't fully trust the process yet, to get to an "everybody wins" solution. Some may even be working behind the scenes of the open discussions attempting to "get their way" irrespective of others views. But some progress was shown at the February 22 meeting as we ended up with a list of alternatives that COULD yield solutions acceptable to all. And they were generated by the people who would have to live with them.

As we discussed, some folks are trying to develop "legal positions" that would establish their position. Frankly, I was very pleased in our agreement that we should approach the problem to find the desired future management through reasonable discussion--then look for the best law or regulation to achieve that management. And we agreed that law could be either State or Federal, whichever did the job the best.

I am strongly committed to this approach. We will work through our OA process constantly involving the public to get their views and advice. Then the Rangers and my decision will describe the management plan (standard and guidelines) we want in the Wilderness. Hopefully it will be one upon which all participants have consensus. But at least it will be with all points of views explored. THEN we will apply the "best" legal tool to achieve the management plan.

You suggested that the State Marine Safety Act might be the best tool to achieve whatever management we reach on the waters in the Wilderness. While I'd like to agree, given an ideal situation I'm very

concerned now that an objective use of this tool is not possible by the decisionmaking body, the local township board.

I have been provided with a resolution made by the Watersmeet Township Board dated February 14, 1990, that essentially says "The Watersmeet Township Board support the Watersmeet Township property owners to keep Crooked Lake as a no limitation of boats or motors on that water." This resolution was apparently stimulated by interests working outside our open public discussion group and the Board took it upon themselves to act before we had heard all sides of the issue or even before I had a chance to make any decision at all. With that kind of past precipitous action, I have grave doubts that the Board could objectively decide upon actions now that might implement needed controls on motor use on Crooked Lake even if we did get general concensus by all interested parties.

Possibly if the Watersmeet Board recinded the resolution or took some other action to demonstrate their willingness to objectively use the Marine Safety Act process, I could more comfortably agree the State Marine Safety Act is a usable tool to implement management actions within the Wilderness. But for now it appears to me they have taken that tool away from me with their premature action leaving me with only Federal regulations to apply management actions in the waters of the Wilderness (if that's the conclusion of the analysis and my decision).

I have enclosed with this letter a copy of advice from our Office of General Counsel. In this letter, OGC has answered District Ranger Bob Bodine's questions on what authorities (tools) the Federal Government has within proclaimed Wilderness. You'll see that we have been advised we have some.

That does not change my approach to this issue--to determine the best, most workable solution possible to manage the Wilderness with the help and advice of interested publics. THEN find a law or regulation, State or Federal, with which to apply the management action.

Again, Frank, it is gratifying that we continue to reinforce our "partnership" to managing the many resources of the Ottawa National Forest. I will work hard to make the successful cooperation we have enjoyed in the past continue into the future.

Sincerely,

Dave Morton

DAVE MORTON
Forest Supervisor

Enclosure
DM:nl
This letter which was written by Mr. Morton is being signed in his absence to avoid delay.

2320.5-

11. Native Species. Any species of flora or fauna that naturally occurs in the United States and that was not introduced by man.

12. Naturalized Species. Any non-indigenous species of flora or fauna that is close genetically or resembles an indigenous species and that has become established in the ecosystem as if it were an indigenous species.

13. Exotic Species. Any species that is not indigenous, native, or naturalized.

14. Prospecting for Water Resources. The act of drilling or digging to locate underground water supplies.

15. Adequate Access. The combination of routes and modes of travel ~~that the~~ Forest Service has determined will have the least-lasting impact on the wilderness resource and, at the same time, will serve the reasonable purposes for which State or private land or rights is held or used.

16. Valid Existing Rights. Those property rights in existence on ~~the date~~ of wilderness designation or on such date as provided for in the particular Act that designated an area as wilderness; that were created by a legally binding conveyance, lease, deed, contract, or other document; or as otherwise provided by Federal law.

17. Wildfire. Any wildland fire not designated and managed as a prescribed fire.

18. Prescribed Fire. A wildland fire burning under preplanned, specified conditions, to accomplish specific, planned resource management objectives.

19. Implementation Schedules. The schedules of projects and specific actions to implement the wilderness management direction found in the forest plan. They include the schedule design and execution information previously found in wilderness management, trail management, sign, fire management, and other plans for the wilderness.

2320.6 - The Wilderness Management Model and the Wilderness Act. The Wilderness Management Model (ex. 1) illustrates the wilderness resource, as defined by the Wilderness Act, and the basis for Forest Service wilderness management direction

The Wilderness Management Model (ex. 1) shows the relationship between the natural, undisturbed purity of a wilderness area and the human influence that affects it. The more human influence, the lower the purity of a wilderness is; the less human influence on a wilderness, the higher, or purer, the wilderness area could be.

In absolute wilderness there is no human influence preventing the area from retaining its purest natural form. It is unlikely, however, that this condition exists anywhere on earth. There are few places, if any, remaining where humans have neither set foot nor where human influences, through pollution, have not been felt. The Wilderness Act defines wilderness at some point below absolute wilderness.

From: THE MICHIGAN RIPARIAN, May 1988, page 11.

Riparian Rights on Michigan's Inland Lakes

The following letter from Frank J. Kelley, Attorney General of the State of Michigan to Robert Lindahl is the Attorney General's answ o Mr. Lindahl's request for information about "riparian rights in Michigan's inland lakes. Mr. Lindahl is a registered professional enginee n Michigan and lives in Trenton, Michigan.

Dear Mr. Lindahl:

In response to your recent inquiry, we provide you with the ollowing information.

The owner of lands riparian or littoral to an inland body of water s by virtue of such ownership vested with riparian or littoral rights. Those rights include: "(1) Use of the water for general purposes, s bathing, domestic use, etc.; (2) [the right] To wharf out to avigability; (3) Access to navigable waters . . .; (4) The right to ccretions." ***Hilt v Weber***, 252 Mich 198, 225 (1930).

To quote at length from ***Rice v Naimish***, 8 Mich App 698, 703 1967):

> *"Among the rights of a littoral owner is the right to use his upland property to gain access to the lake waters; the right to put out in a boat or on foot from his upland property where it touches the lake waters; the right, after so embarking, to go boating[swimming, water skiing, fishing, ice skating or sledding or to engage in other aquatic sports in or upon the lake waters] and the right to use the entire surface and subsurface lake waters for such purposes. [Citations Omitted] Each littoral owner shares such rights with all other littoral owners and none may interfere, unreasonably, with like rights of the others. [Citations Omitted]."*

As the Supreme Court opined in ***Thompson v Enz***, 379 Mich 567, 686 (1967):

> *"[R]iparian rights are not alienable, severable, divisible, or assignable apart from the land which includes there in, or is bounded, by a natural water course."*

The court opinion, however, further holds that easements, licenses and the like for right of way may be granted in nonriparian owners. Such grantees, in the exercise of the rights granted, however, are subject to the reasonable use test.

Lessees of riparian lands may exercise and enjoy the riparian rights which are pertinent to the upland tract leased to them. Unless the Lessee's use is unreasonable viz a viz, the other riparian owners, such use would not appear to be actionable. ***Thompson v Enz, supra.***

As our Supreme Court held in ***Swartz v Sherston***, 299 Mich 423 (1941):

> *"Where there are several riparian owners on an inland lake such proprietors and their lessees and licensees may use the surface of the whole lake for boating and fishing so far as they do not interfere with the reasonable use of the waters by the other riparian owners."*

An owner or his lessee may not, however, permanently moor his vessel or craft in front of another person's littoral property. ***Patterson v Dust***, 190 Mich 679 (1916); ***Swartz v Sherston, supra***; and ***Hall v Wantz***, 336 Mich 112 (1953).

While that portion of the submerged lands of an inland lake which a littoral owner owns by virtue of ownership of the upland may be approximated, it cannot be determined with any definity absent agreement of all owners or a judicial decree. As the Court of Appeals indicated in ***Rice v Naimish, supra***, 703:

> *"In a small inland lake, like this one, which is not navigable in any important commercial sense, the owner of uplands holds title to the submerged extension thereof to the center of the lake bed, apportioned, with other littoral owners, where indicated by the configuration of the lake and abutting land parcels."*

Ottawa Shores Home Owners Association, Inc. v Lechlak, 344 Mich 366 (1955); *Bauman v Barendregt*, 251 Mich 67 (1930); *Moore v Provost*, 205 Mich 687 (1919).

As a reading of these cases and others would indicate while one might approximate the boundaries of the submerged lands appurtenant to the littoral upland tract, absent agreement by all owners, only a court decree would establish beyond any question or dispute the boundaries of the submerged tract owned by the littoral owner.

With reference to any dispute you may currently have with another littoral owner or that owner's lessee, this office cannot provide you with any legal counsel. In property disputes between two private owners, each must obtain its own legal counsel. The Attorney General for the State of Michigan is limited by constitution and law to representation of the State of Michigan, its departments, agencies, officers, etc.

With respect to any pending criminal proceeding, this office as a matter of policy does not release any legal opinion during pendency of any litigation in which the questions propounded being litigated.

With respect to any requests you may have of the Department of Natural Resources under provisions of the Freedom of Information Act, those requests must of course be directed to that department.

Sincerely yours,

FRANK J. KELLEY
Attorney General

TERRENCE P. GRADY
Assistant Attorney General

Lands, Lakes & Leases
401 S. Washington Avenue
Plaza One, First Floor
Lansing, Michigan 48913
(517) 373-1130

/05/93

U.S.D.A. FOREST SERVICE
LAND STATUS RETRIEVE REPORTING SYSTEM
G107 LAND TITLE REPORT
SORTED BY NFFID, POL-TWP, OWNER, ENT, PM, TWP, RNG,
SECTION NUMBER & TAB LINE NO

PAGE

ENTITLEMENT REPORT

A D M	NFF ID NO	POL TWP	R / O	ST	CTY	P / M	TWP NO	RNG NO	CLO-SUBDIVISION	GLO SEC NO	TAB LINE NO	TITLE ACRES	ADM OR PVT	IN OR OUT	E N T	PAY-MENT	TITLE METHOD	AUTH NO.	ACTION DATE MMDDYYYY
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07	0221	10	06	MI	GOGEB	19	0450N	0380W	X	25	002	40.00	FS	IN	NU	25%	EX.ACQ'D	051	06131950
07	0221	10	06	MI	GOGEB	19	0450N	0380W	X	32	005	40.00	FS	IN	NU	25%	EX.ACQ'D	109	03021950

Total water area within Sylvania Wilderness
Note: Do not carried the same T.D. as Private land.

Item #11

BEN THRALL--

7/27/95

This responds to our telephone conversation, and to your FAX'ed material concerning Table GT07 - Land Title Report.

The "AUTH NO." you asked about - 993 - is a code for describing the land in the entry. 993 is "Eastern Private Waters." It defines private ownership that is water, and is parallel to code 418 - Eastern Private Lands, land in private ownership. There are several hundred Authority Numbers in the Land Status Reporting System and describe generally the authority under which the land became Federal. However, in the Eastern Region of the Forest Service (Region 9) it was determined that there was a need to identify private land within the National Forest Boundary. That is what the codes 993 and 418 allow. We are occasionally asked by the Congress or the Administration the number of acres of public and private land encompassed by a National Forest boundary.

The "ACTION DATE" column shows when the data was entered into the Lands Status Reporting System. You will notice in the table you provided that several of the private land data entries were entered on the same date. There is no particular relevance to the data for private lands.

You may be aware that this Reporting System provides the data upon which payments are made to the State and County governments are calculated. Twenty-five percent of the gross receipts from resource management activities on the NF's are paid to the States for distribution to the counties where the NF land is located for the benefit of public schools and roads. Also, the Bureau of Land Managment payments an amount annually directly to the counties for all Federal land in the county--under authority of the "Payment-In-Lieu-Of-Taxes Act."

Hope this helps in answering your questions.

KEN MYERS
Assistant Direct, Lands Staff

RARE II

Final Environmental Statement

Roadless Area Review and Evaluation

U.S. Department of Agriculture
Forest Service
FS-325

January 1979

Land Acquisition. Implementation of any alternative that proposes roadless areas for wilderness raises the question of what happens to included private land. Several factors are paramount in analyzing this issue. First, non-Federal lands included within boundaries of an area classified as wilderness are not themselves classified. Second, classification of area as wilderness is not a taking of private land. Third, acquisition of private land is not essential for management of wilderness.

In all National Forest Wilderness, except 16 classified by PL 93-622, the so-called Eastern Wilderness Act, the law does not permit the Secretary of Agriculture to acquire private lands without consent of owner. The Forest Service, therefore, gives high priority to funding acquisition of lands from willing sellers. If an owner wishes to continue to keep and manage his lands as he did when the area was classified as wilderness, and that management is compatible with management of the wilderness, there is no intent on the Forest Service's part to gain ownership of that land. If an owner changes use of his land to one no longer compatible with management of surrounding wilderness, the Forest Service may take active steps to either acquire title to the land or have Congress adjust the wilderness boundary. Each situation must be considered individually, for even though an incompatible use provides a basis for land acquisition, there is no assurance or obligation on the part of the Forest Service to acquire such lands. Wilderness designation in itself imposes no restrictions on use of the private land within or adjacent to wilderness.

United States
Department of
Agriculture

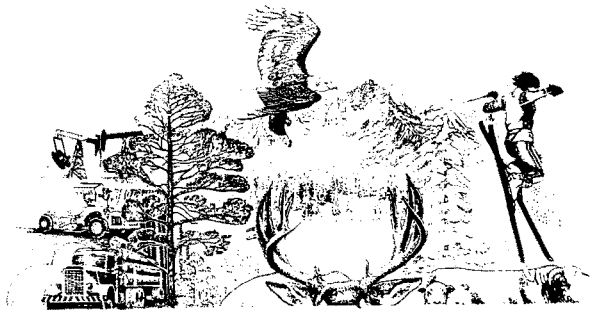
Forest Service

Washington, DC

May 1990

The Forest Service Program for Forest and Rangeland Resources:

A long-Term Strategic plan



Management in Mixed Ownerships

What coordinating role should the Forest Service play in situations where landownership is mixed, especially where common resources such as wildlife and the quality of air and water are involved?

Background—Where different ownerships, especially public and private land, intermingle, management conflicts are increasing. This is caused by three factors: more people are moving into forest environments, demand for resource-based goods and services is growing, and more people are concerned about environmental quality. Management on both private and Federal lands is becoming increasingly regulated by State and local governments, blurring somewhat the distinction between public and private ownership.

Management of adjacent private land, especially when coupled with more assertive State and local regulation of common resources, tends to limit management flexibility on National Forest System lands. Cumulative management actions sometimes create environmental impacts, especially on the common property resources of water, air, and wildlife. Actions taken by one landowner may limit the management flexibility of an adjacent owner. Furthermore, these concerns for cumulative effect and landowners' loss of flexibility are increasing and will likely continue to increase into the future. Interactions and conflicts are particularly strong where urban and wildland areas meet, where decisions about forest and rangeland management are influenced by the differing management objectives of adjacent owners.

In developing the Forest Service role in mixed-ownership conditions, the agency fully recognized that the regulation of forest management on private lands is the role of State and local governments, not the Federal Government.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KATHY STUPAK-THRALL,

Plaintiff,

vs. Case No. 2:93-CV-65

UNITED STATES OF AMERICA and MICHAEL ESPY, Secretary of Agriculture, individually and in his official capacity, HON. GORDON J. QUIST

Defendants.

MICHAEL A. GAJEWSKI and BODIL GAJEWSKI, husband and wife,

Plaintiffs,

vs. Case No. 2:93-CV-66

UNITED STATES OF AMERICA and MICHAEL ESPY, Secretary of Agriculture, individually and in his official capacity, HON. GORDON J. QUIST

Defendants.

ORDER

In accordance with the Opinion issued on this date,

IT IS HEREBY ORDERED that plaintiffs' motions for summary judgment (Case No. 2:93-CV-65, docket no. 28, and Case No. 2:93-CV-66, docket no. 29) are **DENIED**.

IT IS FURTHER ORDERED that defendant's motions for summary judgment (Case No. 2:93-CV-65, docket no. 30, and Case No. 2:93-CV-66, docket no. 31) are **GRANTED**.

Dated: January 25, 1994

GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

Certified As A True Copy
By Deputy Clerk
U. S. District Court
Western Dist. of Michigan
Date 1-26-94

Item 14

"valid existing rights" refers exclusively to mineral rights and does not protect riparian rights.

The Forest Service's construction of the statute is not a permissible construction. The "valid existing rights" clause in the MWA is a simple, straightforward savings clause that is not limited to a particular kind of right. There is no language in the statutes or the legislative history that expressly limits the protected rights to mineral rights. The fact that, in the only instance in which the phrase is used in the MWA, the reference is to mineral rights in the Nordhouse Dunes Wilderness does not mean that "valid existing rights" do not include riparian rights.

"When the intent of Congress is expressed in 'reasonably plain terms,' a court must ordinarily treat that language as conclusive." United States v. Underhill, 813 F.2d 105, 111 (6th Cir. 1987) (citing Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 570, 102 S. Ct. 3245, 3249 (1982)), cert. denied, 482 U.S. 906, 107 S. Ct. 2484 (1987). An interpretation contrary to the literal meaning of the words is warranted only when "'the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'" Id. (quoting Griffin, 458 U.S. at 571, 102 S. Ct. at 3250). In this instance, the MWA should be read to make administration of the Sylvania Wilderness subject to plaintiffs' valid riparian rights, as established under state law.

U.S. GOVERNMENT PRINTING OFFICE: 1989—231-170

UNITED STATES DISTRICT COURT
VIOLATION NOTICE

Please Print

Violation No. F1697072 [redacted]

CVB Loc. Code | Officer's No. | Officer's Signature

VIOLATION CHARGED

Date: Mo 08 Day 19 Yr 92 | Time: 1 40 am/pm | Arrest: Yes / No

Violation Code | Offense Code: 36 157d 1 | Place of Offense: 2 Cont Bay Crooked Lk

Offense Description

Possesing metal beverage Containers on Crooked Lk. in the Sylvania wilderness of the Ottawa N.F.

Parking: Overt / Hostile Zone
Speeding: Exceeding Speed Limit by Driving ____ mph in ____ Zone
Visibility: Good / Night / Dusk / Dawn
Traffic: Light / Heavy / Medium
Surface: Dry / Wet / Snow / Ice

AGAINST THIS PERSON

Last Name: TARALL | First Name: Benjamin | Middle Initial: S

Street Address: 4862 Reservation RD

City: Sylvania | State: OH | Zip Code: 43560

Birth Date: Mo 04 Day 13 Yr 74 | Sex: M | Race | Height: 5' | Weight

Driver's License No. or Other ID: T640-063-074-6 | State | Adult / Juvenile

VEHICLE DESCRIPTION

Tag No. | Vehicle Yr | Color | State | Make | Body

COURT APPEARANCE

Court Address: Marquette Mi. | Date | Hour

A ☐ Mandatory Appearance — If box A is checked, you must appear in court at the time and place shown above. If no court appearance date is shown above, you will be notified of your appearance date.

B ☐ Optional Appearance — If box B is checked, you must either:
1. Pay the collateral amount shown by mail within 7 days or
2. Appear in court at the time and place shown above. If no court appearance date is shown above, you will be notified of your appearance date.

Collateral: $ 125.00

Previous edition is obsolete | DEFENDANT'S COPY | FS-5300-4(9/87)

F1697072

United States Department of Agriculture
Office of General Counsel
310 West Wisconsin Avenue, Suite [illegible]
Milwaukee, Wisconsin 53203

MAR 14 1990

Attorney Work Product --- Intra-Agency Correspondence
NO FOIA RELEASE

TO: District Ranger
Watersmeet RD, Ottawa NF

FILE: F&L 19

FROM: Michael J. Danaher
Associate Regional Attorney

SUBJECT: Sylvania Wilderness Implementation Schedule
(Your letter of February 23, 1990)

This responds to your February 23, 1990, letter requesting an interpretation of the term "valid existing rights" as used in Section 5 of the Michigan Wilderness Act of 1987, Pub. L. No. 100-184 (hereafter "MWA"). Specifically, your letter states:

> The term "valid existing rights," as used in Sec. 5 of the 1987 Michigan Wilderness Act, needs further clarification. In all four of our public meetings to date, it seems everyone attending has a different interpretation as to its meaning. It is our contention that this does not necessarily relate to pre-existing motorboat (riparian) rights on Crooked Lake and may instead pertain to outstanding mineral rights (as FSM 2323.75 implies) or even guaranteed access to privately owned property. Please define if possible.

Your interpretation that the term "valid existing rights" refers to outstanding mineral rights is reasonable in light of the Wilderness Act of 1964 and the legislative history of the MWA. Alternatively, one could view the term more broadly as applying to any rights which, if taken, would be compensable under the Fifth Amendment to the U.S. Constitution. However, under either view, the pre-existing use of motorboats would not be considered a "valid existing right". The rationale for these conclusions is presented below.

Valid Existing Rights as Mineral Rights

Section 5 of the MWA states:

> Subject to valid existing rights, each wilderness area designated by this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act of 1964 governing areas designated by that Act as wilderness areas except that with respect to any area designated in this Act, any reference in such provision to the effective date of the Wilderness Act of 1964 shall be deemed to be reference to the effective date of this Act.

(7)

Section 5 of the MWA does not address a particular subject matter but refers to the management of wilderness areas in general. Since the extent of the meaning of "valid existing rights" is not clear from the words of the MWA, it is appropriate to turn to legislative history for guidance. (See OGC's letter to you dated February 15, 1990; see also, Aleknagik Natives Ltd. v. United States, 806 F.2d 924, 927 (9th Cir. 1986) (it is appropriate to resort to legislative history as guidance to determine the meaning of the term "valid existing rights" as used in the Alaska Native Claims Settlement Act) and American Nuclear Corporation v. Andrus, 434 F. Supp. 1035, 1037 (1977) (legislative history removes any doubt as to the meaning of "valid existing rights" as used in the Federal Coal Leasing Amendments Act of 1975).

The three Congressional committee reports relating to the MWA (House Report 100-29, Parts 1 & 2, and Senate Report 100-206) only discuss the term "valid existing rights" in the context of mineral rights. In particular, the term is discussed with respect to the Nordhouse Dunes wilderness designation of Section 3(a) of the MWA.

As with Section 5, Section 3(a) of the MWA uses the term "valid existing rights" without express reference to a particular subject matter. Yet, it is clear from the legislative history that the use of the term in Section 3(a) refers to mineral rights. Since the same term is used in Section 5, we can conclude that its meaning as used in Section 5 (which applies to all wilderness areas created under the MWA) is the same as when it is used in Section 3(a) (which applies only to the Nordhouse Dunes wilderness). Firestone v. Hoverton, 671 F.2d 317, 320 n.6 (1982) (when the same terms are used in different sections of a statute, they receive the same meaning).

Two committee reports (House Report 100-29, Part 2 and Senate Report 100-206) also directly refer to the provision of H.R. 148 which became Section 5 of the MWA when discussing "valid existing rights" as mineral rights. This further supports the conclusion that the term as used in Section 5 concerns mineral rights.

Finally, at the end of each committee report is a copy of a letter from the Congressional Budget Office which presents the expected economic impact of the legislation. Each version of that letter contains a statement which implies that the term "valid existing rights," as used generally in the MWA, refers to mineral rights.

Another argument lies in the link between the MWA and the Wilderness Act of 1964. Since Section 5 expressly refers to the Wilderness Act of 1964, the provisions of that act are relevant to an interpretation of the MWA. See, Jones v. St. Louis-San Francisco Railway Company, 728 F.2d 257, 262 (6th Cir. 1984) (when two or more statutes deal with the same subject, they are to be read together and harmonized if possible). The Wilderness Act of 1964 uses the terminology "subject to valid existing rights" only in the context of mineral rights. 16 U.S.C. 1133(d)(3). It must be noted, though, that the act also uses the

#11

phrase "subject to existing private rights" in Section 4(c) which addresses various use prohibitions within a wilderness area. 16 U.S.C. 1133(c).

The words of the MWA, itself, do not link the term "valid existing rights" to mineral rights. However, the MWA and its legislative history refer to the Wilderness Act of 1964 when addressing the term "valid existing rights". The Wilderness Act of 1964 only utilizes the term in the context of mineral rights. Therefore, the term, as used in Section 5 of the MWA, should also be construed as relating to mineral rights. See Oscar Mayer & Co. v. Evans, 441 U.S. 750, 60 L. Ed. 2d 609, 615 (1979) (when the language of one statute is the same as that in another, previously adopted statute and the legislative history of the subsequently adopted statute also refers to the previously adopted language, the language in the subsequently adopted statute should be construed in the same manner as the language in the previously adopted statute).

In summary, one could view the term "valid existing rights" as a term of art with an implicit, particular meaning -- relating to mineral rights.

Valid Existing Rights as Those Rights Compensable Under the Fifth Amendment

It is clear that the term "valid existing rights," as used in Section 5 of the MWA, refers to mineral rights. However, does the term include reference to other types of rights as well? Section 5 is not directed at a specific area of wilderness administration; rather, it addresses the administration of wilderness areas generally. This might indicate that the term "valid existing rights" would apply to rights involving subject matters other than just mining.

A broader interpretation of the term "valid existing rights" would include all rights which, if taken, would be compensable under the Fifth Amendment of the U.S. Constitution.

Riparian rights are rights which may not be taken without just compensation. 26 Am. Jur. 2d Eminent Domain Section 189 (1966); Hilt v. Weber 252 Mich 198, 233 N.W. 159, 168 (1930); Petraborg v. Zontelli, 15 N.W.2d 174, 180 (Minn. 1944). Cf. U.S. v. Rands, 389 U.S. 121, 19 L.Ed. 2d 329, 332 (1967) (riparian rights are subject to a navigational servitude held by the U.S., and as a result, any interference of riparian rights due to the exercise of this authority by the U.S. does not constitute a taking under the Fifth Amendment). The right to go boating is included among the rights of a riparian land owner. 12 Am. Jur. 2d Boats and Boating Section 24; Kurrle v. Walker, 56 Mich. App. 408, 224 N.W.2d 99, 101 (1974). However, we do not believe that the prohibition or restriction of motorboat use would constitute a taking of a compensable right.

The determination of whether a regulatory measure is a taking involves an ad hoc factually specific inquiry. Relevant considerations include: the economic impact of the regulation; its interference with reasonable investment-backed expectations; and the character of the government action. Land use regulations may be justified where the government's action is reasonably necessary to the effectuation of a substantial public purpose. Blue Water Isles v. Department of Natural Resources, 171 Mich. App. 526, 431 N.W.2d 53, 58 (1988). Restrictions on motorboat use would only be implemented for the preservation of wilderness values, which is certainly the public purpose behind wilderness designation. Such restrictions also would not prevent other types of boating on the lakes within the wilderness area. Given that and the limitations on commercial development which are otherwise imposed upon wilderness areas, the economic impact due to motorboat restrictions would not be significant. One could reasonably conclude that motorboat prohibition or restriction would not be considered a taking; hence, previous or existing motorboat use is not a "valid existing right".

In conclusion, motorboat use should not be considered a "valid existing right" under Section 5 of the MWA. This is true no matter if one construes the term as applying only to mineral rights or to those rights which are compensable under the Fifth Amendment to the U.S. Constitution.

cc: NRD-OGC, Attn: Jim Snow

JMV/kam

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KATHY STUPAK-THRALL,

Plaintiff,

vs.

UNITED STATES OF AMERICA and MICHAEL ESPY, Secretary of Agriculture, individually and in his official capacity,

Defendants.

Case No. 2:93-CV-65

HON. GORDON J. QUIST

Decision IN PART.

MICHAEL A. GAJEWSKI and BODIL GAJEWSKI, husband and wife,

Plaintiffs,

vs.

UNITED STATES OF AMERICA and MICHAEL ESPY, Secretary of Agriculture, individually and in his official capacity,

Defendants.

Case No. 2:93-CV-66

HON. GORDON J. QUIST

ORDER

In accordance with the Opinion issued on this date,

IT IS HEREBY ORDERED that plaintiffs' motions for summary judgment (Case No. 2:93-CV-65, docket no. 28, and Case No. 2:93-CV-66, docket no. 29) are **DENIED**.

IT IS FURTHER ORDERED that defendant's motions for summary judgment (Case No. 2:93-CV-65, docket no. 30, and Case No. 2:93-CV-66, docket no. 31) are **GRANTED**.

Dated: January 25, 1994

GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

Certified As A True Copy
Office Hyman, Clerk
By [illegible]
Deputy Clerk
U.S. District Court
Western Dist. of Michigan
Date 1-26-94

> Congress clearly has the power to dedicate federal land for particular purposes. As a necessary incident of that power, Congress must have the ability to insure that these lands be protected against interference with their intended purpose.

Id. at 1249.

The regulations the Forest Service has enacted for the Sylvania Wilderness are consistent with the Congressional mandate and directives for wilderness areas. It is within the power of Congress under the Property Clause to set aside federal land as wilderness and to protect, preserve and, if necessary, restore the wilderness quality of that land by regulating private as well as federal property on lakes within a wilderness area.

Reasonable Use

The MWA states that the administration of wilderness areas created by the Act are to be subject to "valid existing rights." To follow that requirement in this instance, with respect to riparian rights, requires consideration of whether the restriction is reasonable. Riparian rights are not absolute but come encumbered with the possibility of being limited or regulated under the "reasonable use" doctrine. The reasonable use doctrine provides that recreational riparian rights may be exercised only to the extent that they are "reasonable in light of the correlative rights of the other proprietors." Thompson v. Enz, 379 Mich. 667, 687, 154 N.W.2d 473, 484 (1967). Michigan courts have imposed limitations on riparian rights under the "reasonable use" doctrine

CONCLUSION

For the reasons set forth above, plaintiffs' motions for summary judgment are **DENIED** and defendant's motions for summary judgment are **GRANTED**. An Order consistent with this Opinion will be entered.

Dated: January 25, 1994

GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

United States Department of Agriculture | Forest Service | Washington Office | 14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

Reply to: 1570-1 (LMP) **Date:** 07 JAN 1993

Subject: Chief's Decision on Review of the Administrative Decisions by the Regional Forester on the Ottawa Plan Amendment #1 (#92-09-00-0023 and #92-09-00-0024)

To: Regional Forester, R-9

In accordance with 36 CFR 217.17(e), I have reviewed your decisions of October 23 and 26, 1992, concerning Forest Plan Amendment #1, Ottawa National Forest Land and Resource Management Plan (LRMP), dated April 20, 1992. This decision affirms both of your decisions with the exception of that portion of the October 26, 1992, decision dealing with the prohibition of motorized wheelchairs. Furthermore, due to questions raised in the appeal process concerning the Forest Service's authority to administer wilderness areas in such a way that might affect riparian rights of landowners outside the wilderness boundary and the importance of this issue for this and future amendments to the Ottawa National Forest LRMP, this decision expands upon and clarifies the Forest Service authority in this regard.

III. Conclusion

Decision: The phrase "subject to valid existing rights" in the 1987 Michigan Wilderness Act is a reference to subsurface mineral rights in the Nordhouse Dunes area. The Regional Forester is affirmed on his interpretation of the Act and the relevant legislative history and the applicability of that term to the Thralls' riparian rights in the Sylvania Wilderness. Even if the VER language applied to the Thralls' riparian rights, Amendment #1 is a permissible exercise of their authority to administer the Sylvania Wilderness. Finally, Amendment #1 does not effect a taking of the Thralls' property without just compensation.

Decision: Motorized wheelchairs, as defined in the ADA, are permitted in wilderness areas. The Regional Forester is directed not to restrict the use of motorized wheelchairs in the Sylvania Wilderness and to amend the Forest Plan to recognize motorized wheelchair use per section 507(c) of the ADA, P.L. 101-336. However, there is no requirement for special treatment or accommodation for wheelchairs, motorized or otherwise. The Regional Forester's decision to reject the appellant's demand for suitable surfaces for wheelchair use within the wilderness areas designated in the Act is affirmed. The Regional Forester's decision to uphold the Forest Supervisor's decision to further study how best to provide useable access, including access for wheelchairs, is appropriate.

This action constitutes the final administrative determination of the Department of Agriculture.

DAVID G. UNGER
Reviewing Officer for the Chief

1996
CUMULATIVE SUPPLEMENT
TO
WATERS
AND
WATER RIGHTS

1991 EDITION

Robert E. Beck
Editor-in-Chief

VOLUME SIX
1994 REPLACEMENT VOLUME

PART XI - RIVER BASIN AND STATE SURVEYS

PART XII - GLOSSARY

MICHIE
Law Publishers
CHARLOTTESVILLE, VIRGINIA

Place in pocket of bound volume and recycle previous supplement.

MICHIGAN

By Veryl N. Meyers
Attorney, Mika, Meyers, Beckett & Jones
Grand Rapids, Michigan

IV. Natural Watercourses — Streams, Inland Lakes and Artificial Ponds.

B. Extent of the Rights of the Riparian Owner.

Page 427. Add to fourth paragraph:

Rights of the riparian owner are also subject to federal regulation under the property clause of the United States Constitution. *Stupak-Thrall v. United States*, 843 F. Supp. 327 (W.D. Mich. 1994).

VIII. Governmental Regulation of Michigan Waters.

A. Regulation of Inland Lake Levels.

Page 429. Add to first paragraph:

Once a circuit court establishes the normal water level of a lake, the court has continuing jurisdiction over the lake's water level. *Anson v. Barry County Drain Comm'r*, 210 Mich. App. 322, 533 N.W.2d 19 (1995).

H. Clean Water.

Page 433. Replace the last sentence in the carryover paragraph with:

The Michigan Department of Natural Resources is also the designated agency for administering the Federal Water Pollution Control Act and the Clean Water Act.

FOREST SERVICE HANDBOOK
WASHINGTON

July 1988

RECEIVED
AUG 15 1988
OTTAWA NATIONAL FOREST

FSH 1909.17 - ECONOMIC AND SOCIAL ANALYSIS HANDBOOK

Amendment No. 1

30.5 - Definitions. The following are concepts used in this chapter. Other applicable definitions are in other chapters of this handbook; 40 CFR 1508; FSM 1905; FSH 1909.17, section 05; and FSH 1909.15, section 05.

1. Area of influence. A delineated geographic area that includes the population most affected by past, present, or proposed actions of a Forest Service Unit. Depending on circumstances, an area of influence may be local to international in its scale. An area of influence used in estimating economic and social effects of an action is also called an impact analysis area.

2. Community cohesion. The degree of unity and cooperation evident in a community as it defines problems and attempts to resolve them.

3. Community stability. A community's capacity to handle change without major hardships or disruptions to component groups or institutions. Measurement of community stability requires identification of the type and rate of proposed change and an assessment of the community's capacity to accommodate that level of change.

4. Comparison community. A community whose experiences with actions are similar to those presently proposed for another community and whose experiences may be helpful in predicting and mitigating possible adverse effects of the proposed actions.

Take the personal perspective of the observer into account. Observational data are usually rich in context and meaning and can increase the understanding of the possible effects of an action. Such data are important sources of information for understanding conditions and trends in rural areas where other data are limited.

Procedures for collecting observational data are similar to first-hand investigative reporting and require a degree of immersion in the community. Increase data credibility by keeping careful field notes on each event observed; specify time, place, occurrences, persons involved, and other pertinent details.

33.24 - Respondent Contacts. Seek and record respondent-contact data. Options include the results of interviews, surveys, or other direct contact methods used to learn more about people's attitudes, opinions, experiences, and preferences. Keep in mind the following attributes of such data:

1. Respondents sometimes provide valuable information or insights that are not available from other sources.

2. Most of the data collected consist of attitudes or self-reports of behavior rather than actual behavior.

3. Without use of a random sample, the responses are not representative of the total population.

4. Office of Management and Budget (OMB) approval is necessary for Federal Government-sponsored surveys where 10 or more people in the private sector receive the same set of questions (FSH 1309.14, ch. 30, sec. 38).

Consider conducting surveys when social information vital to the analysis is lacking and existing surveys by other Federal agencies or State and local governments cannot supply the desired information.

An interview or questionnaire survey is a good way to get a large number of responses from a cross-section of the population. Questionnaries are inexpensive to administer, and computers can tabulate them readily, whereas interviews provide more immediate and detailed information. Design and pilot test the survey instrument and obtain Office of Management and Budget (OMB) approval (if required) before collecting and processing the data. Consult a standard social science methods text for details on developing and administering surveys (or source 1, sec. 38.4).

Item 20

FOREST SERVICE HANDBOOK
WASHINGTON

July 1986

FSH 1709.11 - CIVIL RIGHTS HANDBOOK

36.1 - Civil Rights Criteria for Evaluating Alternatives. Civil rights impact analysis is a continuing process. As new information becomes available, review alternative evaluation criteria developed during the analysis and adapt or extend them, if necessary. Identified issues and concerns provide basis for developing these evaluation criteria. Use an alternative that would avoid or resolve adverse impacts and prolonged conflicts.

Alternative evaluation criteria are human values applied to Forest Service management; for example, nondiscrimination, equality of access, barrier removal, increased employment, or the protection of minorities and women. For evaluating civil rights effects, consider criteria that reflect widely shared values, such as democracy, economic opportunity, local autonomy, and "being fair." The following are examples:

1. Quality of Social Life. An alternative protects and enhances the quality of life preferred by affected residents. A high quality of life may include:

a. An economic structure compatible with locally preferred work and leisure patterns.

b. Management practices consistent with community beliefs and values.

c. An absence of serious conflicts within the organization.

d. Optimism about the advantages of working for the Forest Service.

2. Organizational Stability. Organizational stability depends on the type and rate of population change, the consistency of changes with local values, and the effectiveness of leadership. The best alternative meets local needs. Proposed changes are consistent with the local capacity to adapt facilities, service, and procedures. Clearly identified employee preferences, knowledge of existing trends, and evidence of the ability to adapt help to define acceptable rates and types of sociocultural and socioeconomic change.

3. Equitable Distribution of Effects. Not all individuals, groups, or communities share social effects equally, so any alternative is likely to benefit some people and negatively affect others.

An alternative may be socially preferred when the individuals and groups that benefit from it also pay most of the direct and indirect costs of implementing the alternative. Accordingly, it is less desirable if one group benefits but others pay most of the cost.

Item 20A

The analysis of the equitable distribution of effects requires careful study. A positive effect in one location may be perceived as negative in another.

proposal for a phase-down of motors on Crooked Lake, which we assert are damaging Sylvania's wilderness character. The USFS's own attorneys have strongly implied in their legal opinions that, under the Michigan Wilderness Act, it would be illegal for USFS *not* to consider banning motors from Crooked. We are planning to rally support for UPEC's position by doing a mass mailing to all the campers who have recently registered at Sylvania.

Race to Save the Planet MTU Student Pugwash will sponsor a 5k & 10k Race to Save the Planet on October 6 in Houghton. The race begins at Tech's Student Development Complex (the gym). Its purpose is to draw attention to the world's numerous environmental problems and to encourage area residents to tune in to the new PBS series "Race to Save the Planet" which starts airing that evening at 7 pm on Channel 13. Proceeds go to the Copper Country Citizens for Recycling. To register, send your name, address, phone number, age as of October 6, distance you'll run, and a check for $5 (made payable to MTU Student Pugwash) to Craig Waddell, Dept. of Humanities, MTU, Houghton 49931. You can get more info by calling Craig at 487-2381 or 482-1636.

Help us protect the U.P.!

Name _____

Address _____

_____ Zip _____

Phone _____ ☐ *Check here if this is a change of address.*

☐ I would like to support the goals of UPEC by becoming a member. My annual dues are enclosed (check one): __ Individual Member ($10); __ Low-income person ($5); __ Students ($4); __ Senior Citizen ($3). Additional contributions are, of course, greatly appreciated. Dues are good for the entire calendar year in which they are paid. Thank you!

☐ I belong to or represent an organization whose goals support UPEC's goals, and would like to get information on possible membership. Dues for organizations are $15 annually.

☐ I want to get to know UPEC better. Please send me a free 3-month subscription to UPEC's newsletter, the *Upper Peninsula Environment*.

UPEC, P.O. Box 34, Houghton, MI 49931

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Houghton, Michigan

includes no restrictions on motor use. Absurdly, the use of sailboats, including a canoe with a sail, will be illegal, while high powered speed boats will be legal on Crooked Lake. A high ranking Forest Service official had the audacity to tell UPEC that not only would the Forest Service not provide restrictions on motors, they also would not enforce existing laws which prohibit snowmobile use within the wilderness.

We believe that the Forest Service plan must be defeated. We can't let the Forest Service get away with ignoring their legal responsibility to protect the wilderness. Their plan is clearly in violation of the Wilderness Act of 1964 and the Michigan Wilderness Act of 1987. We can file a Forest Service administrative appeal, and if that fails, we can take them to federal court. But both actions will require legal counsel, which will require a substantial amount of money. UPEC can't do it alone, we need both your political and financial support. UPEC has established a special fund which is dedicated to the protection of the Sylvania Wilderness. Your tax deductible contributions to this fund will be used exclusively for the protection of the Sylvania Wilderness. Please contribute whatever you can to protect Sylvania for now and for future generations. Please write to Ottawa National Forest Supervisor, David Morton, at the address noted below to let him know what you think of his plan. Please send a copy of your letter to your federal legislators.

Sincerely,

William Malmsten

William Malmsten, Vice President

write to: David Morton, Forest Supervisor
Ottawa National Forest
East US-2
Ironwood, Michigan 49938

Please add my enclosed, tax deductable contribution of _____dollars to be used exclusively for the protection of the Sylvania Wilderness. (UPEC is a nonprofit 501C3 corporation.)

Help us protect the U.P.!

The Upper Peninsula Environmental Coalition was formed in December 1975 and is dedicated to the protection and maintenance of the unique environmental quality of the Upper Peninsula. Please consider joining us. As a member you will receive UPEC's newsletter, *The Upper Peninsula Environment*, which will help to keep you informed on issues concerning the U.P.

☐ I would like to support the goals of UPEC by becoming a member. My individual membership dues of $10 are enclosed.
check

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Please make checks out to Upper Peninsula Environmental Coalition

These are samples of two letters of solicitation sent by Upper Peninsula Coalition (UPEC) using names and addresses acquired from Forest Service registration forms. This violates FSH 2309.19-21.12f see following page.

Item 21

- 2309.19 - F.S.H

WILDERNESS MANAGEMENT HANDBOOK

21.12d - Processing Permit Data. Raw data from permits and registration codes are processed by Regions or Forests. The wilderness analysis permit system has been installed at the Fort Collins Computer Center for direct use.

21.12e - Administering Registration System. Most data needed for management purposes can be obtained from the registration system. Convenient self-service procedures can be utilized. Use Form FS-2300-32, Visitor Registration Card, since OMB approval is needed for any other form. Refer to "Improving Voluntary Registration through Location and Design of Trail Registration Stations" by M. E. Peterson (Research Paper INT-336, 1985).

21.12f - Disposal of Permits and Registration Forms. Promptly dispose of all Visitor Permit (FS-2300-30) and Visitor Registration (FS-2300-32) forms as soon as the current year data is extrapolated. Do not release names and addresses from the forms to private individuals, groups, or organizations but other data may be made available. See FSM 6271 for Freedom of Information Act requests.

21.13 - Outfitter-Guide Operations. See FSM 2323.13g and 2721.53 and the Outfitter and Guide Policy for policy and guidance. The Outfitter Operating Schedule which will contain the outfitter evaluation criteria and the special-use permit are the principle tools for managing outfitters.

21.13a - Camps. Outfitter camps must be temporary in nature and be located and designed to minimize impact on the wilderness and visitors to the area. Outfitters and guides should use natural materials and be self-contained. When it is essential to obtain materials for tent frames, meat poles or racks, table frames and other similar facilities, the operating plan will state where these materials can be obtained. All improvements must be dismantled at the end of each season. The District Ranger, through the Wilderness Implementation Schedule, may approve the storage of those dismantled facilities at approved locations. The Wilderness Implementation Schedule will also describe the size of the camp, as well as when it can be set up each season.

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

December 5, 1989

TO:

FROM: Betsy A. Cody
Analyst in Natural Resources Policy
Environment and Natural Resources Policy Division

SUBJECT: Wilderness areas that have been "undesignated"

In response to your request for examples of cases where wilderness areas have been "undesignated" by Congress, I have prepared a brief review of three such cases. In addition, I have enclosed copies of the public law and committee reports for each case. Although my search has uncovered at least three cases in which portions of a Congressionally designated wilderness area were subsequently "undesignated," or underwent boundary revisions, there may be other cases in which minor boundary adjustments were made. While this is not necessarily a complete listing of deleted wilderness, I believe it is fairly representative of the types of wilderness revisions that have taken place.

1) Washington State Wilderness Act of 1984 (P.L. 98-339, 98 Stat. 299-307)

In 1984, Congress deleted nearly 800 acres from the existing Goat Rocks Wilderness in Washington State. At the same time, Congress added approximately 23,143 acres to the Goat Rocks Wilderness Area. The deletion was made in order for the Secretary of Agriculture to consider using the area for ski development.

2) Lee Metcalf Wilderness and Management Act of 1983 (P.L. 98-140, 97 Stat. 901)

Minor boundary adjustments were made to two existing wilderness areas in the State of Montana under this Act: the Absaroka-Beartooth and the UL Bend wilderness areas. Approximately 67 acres of land were deleted from the Absaroka-Beartooth Wilderness and approximately 28 acres were deleted from the UL Bend Wilderness. The Absaroka-Beartooth boundary changes were made to exclude private lands, portions of an existing road, a parking area and public facilities "which were inadvertently included" when the wilderness area was established in 1978. The UL Bend deletion was made to reinstate access (through a wildlife refuge) to a popular sport fishing spot at nearby Fort Peck Reservoir. According to the Committee on Interior and Insular Affairs committee report on the bill, the purpose of the deletion was to "correct an error by the U.S. Fish and Wildlife Service when conducting field reviews nearly ten years ago."

Item 22

Major Federal Action.

...includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly ({1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals ({1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and federally assisted activities. (40 CFR 1508.18)

Environmental Impact Statement.

...a detailed written statement as required by section 102(2)(C) of the Act. (40 CFR 1508.11)

Item 23

Saturday, Dec. 16, 1995

THE DAILY GLOBE, Ironwood, MI

Opinion

Court's decision wasn't based on power of wilderness acts

The December (Associated Press) article, "Court Rules Against Property Owners," was not entirely correct.

Yes, the Cincinnati 6th U.S. Circuit Court of Appeals ruled against Crooked Lake, Watersmeet, Mich., property owners. But the court did not base the decision on the power of the 1964 or 1987 Michigan Wilderness Acts as The AP story told.

In fact, the court conceded that Michigan property rights are "probably" protected "anyway" under the provisions of the '64 and '87 Wilderness Acts, but they (the court) did not feel compelled to discuss or decide on that basis, rather the court agreed with the Forest Service that the service could empower itself over the people and the state of Michigan with its status as a *sovereign*.

Apparently, the bureaucrats view themselves as the king and we are the serfs who pay taxes and relinquish to the king whenever and wherever he pleases.

It is apparent from this court case that even when Congress makes the effort to include savings language in law to protect people, property and/or rights, if that language and direction does not fit the agenda of the Forest Service, they will pull out sovereign powers and overwhelm us all.

So why should we continue to try to save ourselves from the jaws of this ugly domineering beast? Because this is *our* country built on and fought for individual freedoms.

No one should live with the fear of having the rug pulled out from underneath them at any given moment. We are not finished yet with this beast and if necessary we will take it to the Supreme Court. The freedom to own and use one's own private property is worth fighting for!

Without property rights, there are no human rights!

Kathy Thrall,
Watersmeet

July 12, 1996 • Human Events • 19

Owners of Lake-Front Property Must Ask Permission to Use Lake

Forest Service Rides Roughshod Over Private Property Rights

By William Perry Pendley

On the banks of Crooked Lake, near Watersmeet, in Gogebic County, in the Upper Peninsula of Michigan, sits the tiny cabin of Ben and Kathy Thrall. In 1966, the U.S. Forest Service acquired property abutting the southern portion of Crooked Lake. Although the federal government's acquisition of the land aroused concerns, its commitment to recreation eased the minds of local residents.

Ben and Kathy Thrall

In the 1980s, when the Forest Service recommended th[illegible]ral land around Crooked Lake be desig[illegible] as a wilderness area, locals citizens worried. Once again the Forest Service assured them that federal action would not affect private property rights, noting "valid existing private rights" language in the 1964 Wilderness Act and the Michigan Wilderness Act. In 1987, Congress created the Sylvania Wilderness around Crooked Lake.

In 1992, the Forest Service changed its mind, deciding that property owners such as the Thralls could no longer use Crooked Lake as Michigan law said they could. Under Michigan law, an owner of lake-front property—a "riparian"—owns the surface of a lake in common with all other riparians and shares an equal right to a reasonable use of the entire surface of the lake. Despite the clear provision of Michigan law that no owner may interfere with other owners' reasonable use of the surface of their lake, the Forest Service adopted regulations restricting the Thralls' use of Crooked Lake. In fact, before the Thralls could use Crooked Lake, they had to get permission. They sued.

Remarkably, the Forest Service argued in federal district court that "valid existing private rights" only applied to mining claims. Though the court rejected that argument, it ruled for the Forest Service: "It is within the power of Congress under the Property Clause to set aside federal land as wilderness and to protect, preserve and, if necessary, restore the wilderness quality of that land by regulating private as well as federal property on lakes within a wilderness area."

6th Circuit Rules For Forest Service

The U.S. Court of Appeals for the 6th Circuit agreed, ruling that under the Property Clause the federal government may regulate private property by standing in the shoes of local government, albeit with a different objective. Said the court: "The federal government's [limits on the Thralls' use of their land] are similar to those of [local] townships in [various Michigan Supreme Court decisions], except that the 'general public' in [the Thrall] case is the nation at large instead of the local community, and the power now comes from a highly particularized source, the Property Clause, rather than from the state's inherent powers."

In light of 1) the court's disregard for the fact that only federal land can be made part of a wilderness and only if by Congress; 2) the court's evisceration of the "valid existing private rights" provision of the wilderness acts; and 3) the court's holding that the federal government can redefine state property rights and stands in the shoes of local government to regulate private property, the Thralls asked the judges of the 6th Circuit to rehear the case.

In a surprising move the 6th Circuit agreed, vacating the three-judge panel's earlier decision. A federal attorney called the decision "unprecedented," noting that it is the first time that a circuit court has vacated a panel's unanimous ruling. The decision is also a setback for the U.S. Government, which saw the Thrall case as a chance "to expand federal authority over split estates."

It is not just the Thralls who are at risk. Under the court's holding, the presence of federal land near private property gives federal bureaucrats the power to regulate that property under the Property Clause, not to serve local citizens, but "the nation at large." Just as important, federal bureaucrats can ignore state law in deciding what is a protected property right.

If the federal government wins regarding Crooked Lake, no property owner anywhere near federal land anywhere in the country will be safe and state property law will become irrelevant. ■

Mr. Pendley, author of War on the West, *president and chief legal officer of the Mountain States Legal Foundation.*

DETROIT FREE PRESS/THURSDAY, JANUARY 24, 1997

Crooked Lake

OTHER VOICES

Landowners' rights as thin as water

MIKE ROYKO

Now that President Bill Clinton and the Republican Congress have vowed to be pals and work on the people's business, it would be nice if someone in Washington did something about the problem of Kathy Stupak-Thrall and her neighbors.

Probably the best thing the federal government could do is just go away and leave her and her neighbors alone. But, of course, that isn't the way government works.

On the surface, the problem of Stupak-Thrall and her husband, Ben, is one that many people would envy.

They own a lakeside home in the Upper Peninsula. Originally, the home belonged to her grandfather, who bought 6 acres on Crooked Lake in 1939.

It was passed on to Stupak-Thrall's father, and in 1986, to her. On paper, the property is hers. But in reality, it isn't. Not in the sense that any property owner would appreciate.

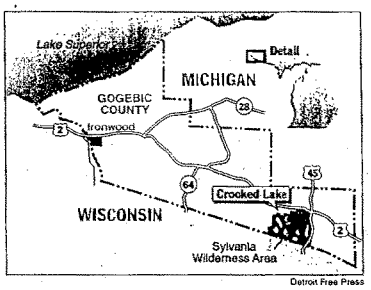
At the root of her problem is something that would probably gladden the heart of any conservationist or environmentalist.

In 1987, Congress enacted the Michigan Wilderness Act, and Crooked Lake became part of the Sylvania Wilderness Area because the federal government owned more than 90 percent of the land around the lake.

On the one hand, having a wilderness area next door seemed nice, because it meant there wouldn't be any creeping development to accommodate weekenders from cities.

On the other hand, the federal government can be a bossy neighbor. In this case, that is quite an understatement.

The U.S. Forest Service doesn't allow Stupak-Thrall to put a motorboat or even a sailboat in the water. If she or her guests want to swim, they have to have a permit.



Detroit Free Press

"They do not allow motorized vehicles," she said. "No cars, no mopeds. They didn't even want to allow motorized wheelchairs, but I challenged that because it violates the Americans with Disabilities Act. Now they allow the wheelchairs, but they don't allow putting in a suitable surface.

"They even control the airspace. No aircraft is allowed to fly lower than 2,000 feet over the area.

"Sailboats aren't permitted because a sailboat has a pulley system and that is mechanical.

"The permit is the kicker. We need a permit from a federal agency to go swimming. I refuse to recognize that they have this authority over me.

"They haven't issued a citation to me or any of the other property owners. But they have issued citations to our guests. They get a $25-$50 fine. By the third citation, you stand before a federal magistrate and can be fined $5,000.

"My husband got a $25 fine for having a can of pop in his boat. He also got a warning ticket for having a snowmobile on the lake when it was frozen."

Arguing that their property rights had been unconstitutionally taken from them, Stupak-Thrall and a neighbor along the lake filed a federal lawsuit.

But a federal judge ruled against them after hearing a lawyer from the Justice Department argue that the property owners had nothing to complain about "as long as they can drink from the lake."

Only the minds of bureaucrats work that way. You own a house on a lake, it's been in the family for almost 60 years, and some government lawyer — his salary coming out of your taxes — says your only constitutional right as a property owner is to drink the water in the lake.

They appealed, but the lower court was upheld.

So they went to the U.S. Supreme Court. Don't believe what you hear about the court being conservative. It declined to take the case.

So now Stupak-Thrall and the handful of other no-rights property owners on Crooked Lake have to hope that Michigan lawmakers or possibly someone in Congress will find Forest Service's attitude heavy-handed.

Stupak-Thrall is not going to give up.

"In the state of Michigan, when you own lakefront property, you are a riparian, a waterfront property owner. You are then owner of part of the subsurface of the lake. This applies only to inland lakes, not the Great Lakes.

"If you own 100 feet of lakefront property, then you own 100 feet in a pie-shaped manner of the lake's subsurface. And the riparians all own equally the surface of the lake and have equal access to the surface of the entire lake.

"These, under state law, are real property rights.

"We are fighting this to protect individual property rights but also to protect state rights.

"When something like this happens to one person in Michigan, it doesn't just affect that person. It affects everyone. When it violates one person's rights, it violates everyone else's rights, too. Come hell or high water, we are not going to let them overwhelm us. We're not going to let a federal agency violate the spirit of the law."

Maybe so, and good luck. But as Marie Antoinette, who would have made a good government lawyer had she not been beheaded in the French Revolution, might have [illegible] Let them drink water.

CROOKED LAKE
North Shore Association
Kathy Stupak-Thrall, Pres. • Ben Thrall, V. Pres.
21897 Crooked Lake Rd • Watersmeet MI 49969
Ph. (906) 358-4268 Fax (906) 358-4240

Testimony Before the House Resources Subcommittee on Forestry

By

Todd Indehar, President

Conservationists With Common Sense

Toward A Humane And Effective Wilderness Policy

The failure of federal wilderness policy in the Boundary Waters Canoe Area Wilderness

April 15, 1997

Introduction: Distinguished Chairman, Members of the Committee, thank you for the opportunity to testify today. My name is Todd Indehar. I am the president of Conservationists With Common Sense, a non-profit, grassroots, all-volunteer organization based in Minnesota. We are dedicated to preserving public access and promoting multiple recreational use on public lands, with a special focus on the Boundary Waters Canoe Area Wilderness.

Summary: There are many experts on wilderness. The Members of this and other committees, agency personnel, policy experts, environmental activists, the media and others. Each plays an important role in the development of wilderness policy, but none bear the consequences of the policies they promote and most are unaccountable to the public when they fail.

But there are two other critically important groups of wilderness experts that are missing from the list above – people who live near wilderness areas and wilderness users. They differ from the other groups in three significant ways: (1) They often have valuable ideas since they regularly experience wilderness, unlike many policy makers who may never set foot in the woods; (2) They have the least input into the wilderness policy making process of any group and they generally have no control over the final decisions; (3) They alone shoulder the negative effects of decisions made by others and they have little ability to change those decisions.

There are at least two major consequences of not including local people and wilderness users in the decision making process. First, if their first-hand knowledge and wisdom from a life time of living in close touch with the land is not used, the result will be a substandard management plan. Second without their 'buy-in' and a sense of ownership over the planning product, even the most carefully crafted policies will result in social and economic upheaval, polarization, ongoing conflict and poor resource management - in short - failure.

As I hope you are all well aware, federal land management is in a state of crisis and the citizens you represent are suffering because of it. Today you will hear about real people facing real problems - problems created in large part by you, the elected officials, and by bureaucrats and special interest groups. I will describe what we believe are the fundamental flaws with federal wilderness policy in the BWCAW:

(1) It is continuously changing which damages community stability.
(2) It imposes significant human costs on local people and wilderness users.
(3) It is based on well-intentioned but poorly written wilderness laws.
(4) It is sustained by preservationist dogma which is not supported by sound science.
(5) It is overly influenced by an ill-informed urban majority.
(6) It, by its political nature, causes social conflict.
(7) It is justified by weak public interest arguments.
(8) It has been poorly designed and implemented by the U.S. Forest Service.
(9) It fails to adequately address local and regional concerns and by its very nature excludes local and regional interests from the decision making process.

I will also suggest some ideas for remedying the problems such as supporting a period of research on existing alternatives to federal management of wilderness and engaging in a period of intense experimentation with various management strategies based on decentralization and privatization.

My testimony will focus on problems and recommendations that are specific to the BWCAW and the U.S. Forest Service. However, I think some of our ideas can be extrapolated across the National Wilderness Preservation System and across the various agencies charged with managing wilderness.

I want to emphasize that CWCS strongly supports having clean, beautiful and natural areas for human use and enjoyment. The issue that we are raising is not, "Should there be wilderness?" Rather, we are asking, "What is the best way or ways to provide wilderness?" I don't believe that there is a person in this hearing room today who doesn't want to pass on our rich natural heritage to future generations, and I hope today will mark the beginning of a new era of working together to fix our ailing system of federal land management.

Background Information: The BWCAW is the only federally designated wilderness area in Minnesota, encompassing about 1.1 million acres. It is one of two water-based wilderness areas in the NWPS with over 1,175 lakes, 1,500 portage trails, 183 miles of hiking trails and 2,000 campsites.[1]

Located on the northern edge of the rugged 3.0 million acre Superior National Forest in northeastern Minnesota, the BWCAW is adjacent to the Province of Ontario's 1.2 million acre Quetico Provincial Park, which until 1994, was a totally non-motorized wilderness area. Nearby is the 200,000 acre Voyageurs National Park.

Surrounding the BWCAW are millions of acres of federal, state and county forests, parks and wildlife refuges and which provide outstanding opportunities for primitive recreation and solitude.

While most people believe the BWCAW is a relatively small and unique area, in reality it is only a tiny portion on the southern end of the greater Canadian Shield or Laurentian Plateau, which is identical to the vast horseshoe-shaped geologic region that covers central and eastern Canada and small parts of the northern United States. The shield extends in a great semi-circle around Hudson Bay, ranging from the Arctic coast north of Great Bear Lake in the Northwest Territories to northern Québec and Labrador. It covers about 4.8 million square kilometers (about 1.9 million square miles) and occupies almost one-half of Canada's total area, which is largely uninhabited and undeveloped by man.

Description of Problems

1700-1930, A Very Brief History; The Emergence of Federal Land Management in Northern Minnesota: The best way to understand BWCAW issues is within a historical context. The following history is not meant to be comprehensive but should provide an adequate framework for this discussion.

Native Americans inhabited today's BWCAW area for about 8,000 years before the first white man arrived. The Voyageurs plied their fur trade through it in the 1700's. Waves of European immigrants settled the area and built roads, homes and businesses, cut trees, and mined ore in the late 1800's and early 1900's. In 1909 President Theodore Roosevelt established the Superior National Forest.

In 1930 President Hoover signed the Shipstead-Newton-Nolan Act which allowed for the expansion of the Superior National Forest and placed restrictions on logging and water level alterations. Along with the extractive resource activities taking place there was marked expansion in recreational activity. Early entrepreneurs built cabins and resorts and began outfitting fishing and camping trips.

1930-1977, Era of Continuous Federal Policy Changes: In 1948 the Thye-Blatnik Act was passed which provided for additional federal acquisition of lands. In 1949 President Truman, by executive order, imposed an air ban on BWCA overflights which eliminated access to and resulted in the closure of a number of resorts in the heart of the BWCA.

Then came the 1964 Wilderness Act which put most of what is now the BWCAW in the NWPS. The area was only included with the clear understanding that multiple uses of the area would, with restrictions, continue. These multiple uses included logging, mining, resort-based tourism, and motorized recreation. The late Senator Hubert H. Humphrey, who is considered to be the father of America's wilderness system stated unequivocally:

"Minnesotans who live near the Superior National Forest Roadless Area (previous name of BWCA) will benefit rather than be harmed in any way under the provisions of the Wilderness Bill now pending before Congress. The Wilderness Bill will not ban motorboats from the Superior National Forest and any such claim is just a scarecrow to frighten people. Nothing in this bill would stop present use of motorboats in the Caribou, Little Indian Sioux and Superior roadless areas of northern Minnesota."[2]

To underscore Humphrey's commitment to not harm the people of northern Minnesota and to protect multiple-use the 1964 Congressional Record shows that when the issue of special exceptions for limited multiple-use of the BWCA arose before Congress, some Members questioned their inclusion. Senator Clinton Anderson responded by saying.

"Well, I think, Mr. Secretary, that certain promises were made in this area...and this committee, as I understand it, wants to keep the promises...Senator Humphrey came to our committee and made a very eloquent plea that we live up to the commitments in the Acts governing that Minnesota area...The promises we made will be kept."[3]

In 1977 Senator Frank Church, who was considered one of the nation's top conservation legislators said:

"If any Senator were singled out, it is Hubert Humphrey who deserves the credit for being the father of the Wilderness System. If the Congress had intended that wilderness be administered in so stringent a manner, we would never have written the law as we did... We wouldn't have provided for the continuation of non-conforming uses where they were established - including the use motorboats in part of the Boundary Waters Canoe Area...In summary, if purity is to be an issue in the management of wilderness, let it focus on preserving the natural integrity of the

wilderness environment and to needless restriction of facilities necessary to protect the area while providing for human use and enjoyment."[4]

1978, Public Good and the Nature of Man-Made Wilderness: The trend of federal government imposed restrictions continued with the passage of the 1978 BWCA Wilderness Act which ended logging and mining, enlarged the area, and significantly further restricted motor use. The political battle was intense.

On one side were the predominately urban preservationists who had, and still have, an intense desire to eliminate man and his works from the BWCA region. They claimed that the creation of the BWCAW was in the public interest - that the benefits to the national interest outweighed the costs to a relatively small regional interest.

But the preservationists' public interest claims received little, if any, scrutiny. Perhaps they should have. Dr. William C. Dennis, the Senior Program Officer at the Liberty Fund explains why the public provision of wilderness is not in the best interests of the public or the wilderness:

"Wilderness protection yields major benefits for a few at the expense of the many. Whatever the general benefits of public wilderness protection, they are far outweighed by the private benefits. Public wilderness preservation, at least in part, is a transfer activity. Even if wilderness preservation is in the public interest, on net, the government has done more to destroy wilderness than to preserve it. Public action is an uncertain means to preserve wilderness and may well be counterproductive. Public means do not always produce public benefits. Finally, the proponents of wilderness protection disagree among themselves on such questions as the nature of wilderness, how best to manage wild lands, and how much preservation is desirable. Such disagreements make the promotion of the public interest through government protection of the wilderness even more unlikely. Indeed a brief look at the history of the public interest arguments on behalf of wilderness protection turns up what, from the perspective of today, can only be called some real embarrassments."[5]

The lack of validity of the preservationists' public good arguments, including the wilderness as a religion argument, raises concerns about the state's involvement in providing wilderness. This does not mean that wilderness is, in and of itself, not worthwhile. It simply raises the question of whether the federal government, or any level of government, should provide it.

On the other side of the 1978 battle were the descendants of the original white settlers who worked, played and raised their families on the land the urban-elite craved. They were ill-prepared to deal with the political holocaust that was raining down on them, and there was little they could do as they watched their jobs, cultures, traditions, and customs -- in short everything of value to any human community - get stolen from them in the name of a contrived wilderness.

Politically weak cultures like ours had to be eliminated or suppressed so that the urban refugees could have a place to temporarily flee from their self-imposed lifestyles or worship in their state-subsidized church. Dr. William Cronon, the Frederick Jackson Turner Professor at the University of Wisconsin at Madison, recently wrote about the idea of wilderness as an artificial man-made construct:

"Preserving wilderness has for decades been a fundamental tenet – indeed, a passion – of the environmental movement. For many Americans, wilderness stands as the last place where civilization, that all-too-human disease, has not fully infected the earth. It is an island in the polluted sea or urban-industrial modernity, a refuge we must somehow recover to save the planet. As Henry David Thoreau famously declared, In Wildness is the preservation of the World.'

"But is it? The more one knows of its peculiar history, the more one realizes that wilderness is not quite what it seems. Far from being the one place on earth that stands apart from humanity, it is quite profoundly a human creation – indeed, the creation of very particular human cultures at very particular moments in human history. It is not a pristine sanctuary where the last remnant of an endangered but still transcendent nature can be encountered without the contaminating taint of civilization. Instead, it is a product of that civilization…it is entirely a cultural invention."[6]

Thus the battle over the creation of the BWCAW was a cultural clash between a dominant urban-elite culture and a less powerful rural northern Minnesota one. It was a profoundly violent act of aggression, in many respects a holy war, which took a terrible toll on local people.

Congress Fails The People - Flaws in the 1978 BWCAW Act: As people begin to understand the human dimensions of what actually happened in 1978, they often ask: How could this happen with our system of government? Nobody tells it better than the preservationists who did it.

In their 1995 book *Troubled Waters*, preservationists Rip Rapson and Kevin Proecsholdt, detail how BWCAW public policy was made by the legendary chairman of the House Interior and Insular Affairs Committee, Phillip Burton. Burton was instrumental in passing the 1978 Act. Here is their own description of their late night meetings with Burton in which the boundaries of the BWCAW were established - boundaries which are the basis of today's conflicts:

"During Burton's first vodka he let the Forest Service and Heinselman (a leading preservationist) quarrel. With the second, he peppered each with questions. By the third, Burton would indicate his decision by outlining with his socked right big toe which boundaries were acceptable. Heinselman would then trace the path of the toe onto the master copy of the map. Two cigars, innumerable vodkas, and four hours later he (Burton) turned to Rapson and asked. "So tell me what all of this has to do with some duck ponds in northern Minnesota."[7]

Is it any wonder that the BWCAW is in crisis when the policy was made by a drunken autocrat, a preservationist and a federal bureaucrat in secret, smoke-filled, late-night meetings? There clearly are better ways to make public policy.

Social, Psychological and Cultural Costs of Wilderness: The 1978 BWCAW Act didn't have much to do with duck ponds, but it inflicted severe social and psychological costs on the local people and their communities. They lost most of their logging and resort jobs. Their traditional snowmobiling, hunting, camping, and fishing areas were placed off limits. People who for generations had toiled to scratch out a living from this harsh land were even denied on the area's few benefits: their outdoor recreational heritage.

Family resorts, homes and hunting shacks – many built by the backbreaking labor of their owners – were bought, dragged onto the ice, burned, and left to sink. People's legacies and dreams were torched in the name of wilderness. To this day many cannot bring themselves to visit their old homesteads.[9]

Never before had any wilderness area been carved out of a more densely populated and heavily used area. This is a critical point. It is critical because it resulted in tremendous social upheaval, loss and grief. Until this is acknowledged by the aggressors there will always be an open wound, and Minnesota will continue to be a divided state. Lynn Laitala, a historian and former resident of the area wrote of the 1978 battle:

"I am a refugee from the Boundary Waters Wilderness war of 1978. What happened in 1978 has haunted me for 15 years. Explaining my loss, and the grief of the community, is still the focus of my life...The battle was never, for most of us "locals", about the development versus protecting pristine nature. It was about defending the communities and traditions that had been nurtured from the environment we wanted to protect. Even more deeply, I think, the battle was about defending the very concept of community against forces of coercion and domination."[9]

Local people then, as now, were painted as despoilers of the environment. For the past several years letters in major Twin Cities newspapers described locals and motor users with words such as "real pigs", "brutal to the environment", "lazy and wasteful", "violators of the common will", "obnoxious", and "defilers of the wilderness".[10]

This is simply the process of dehumanizing your opponent, a process that has been practiced by master propagandists throughout history. It is a necessary and useful tool employed by one group of people to wipe out another. Historian Laitala noted of the 1978 battle:

"There are words, like sexism and racism that describe other kinds of prejudice that destroy the humanity of their victims. There is not yet a term for the dehumanizing assault we locals experienced. The shock and horror of living in Ely in 1978 was discovering how easily one group can wipe out the humanity of another."[11]

Not much has changed in this regard since then. In my town of Ely the social costs of the 1978 BWCAW Act have yet to be studied. I doubt they ever will. A 1992 study done on the human costs imposed by the Endangered Species Act by the Department of Interior could very easily describe what many BWCAW area residents have been quietly dealing with for many years:

"Sociological research shows that social costs in timber (substitute: *wilderness*) *dependent communities may be heightened by the stereotyping and stigmatizing methods that some groups advocating preservation of owl habitat* (substitute: *wilderness*) *have employed...particularly against loggers* (substitute: *local residents*). *The combination of*

economic stress and stigmatization can lead to...depression and passivity, drug and alcohol abuse, violence and family dysfunction...Sociologists regard such situations as life-threatening traumas that can cause maladaptive behavior patterns that can be transmitted through families for generations."[12]

Man Divorced From Nature By Law: The preservationist, bureaucrat, politician, and newspaper man never discuss their dirty little secret - the human costs of wilderness. It is no surprise that most discussions of the benefits of wilderness focus on its non-human biophysical and metaphysical aspects. Somehow the dangerous dualism that man is separate from nature has become ingrained in our society. As Fred L. Smith Jr. of the Competitive Enterprise Institute notes:

"The ecological apartheid view that we must segregate man from nature is foolish. For a powerful political-elite to enforce this eco-theocratic vision on America is morally reprehensible."[13]

Unfortunately the idea of man separate from nature was implicit in the 1964 Wilderness Act in which its authors attempted to write man out of nature:

"A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which; (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable;"[14]

One obvious flaw with this language is that there is no longer any part of the planet Earth that is untouched by man.[15] In the BWCAW Native Americans had lived and trammeled for thousands of years in the BWCAW. In 1918 a Spanish flu epidemic wiped out most of them and the rest were moved by the government to reservations. Thus the way was paved for the modern urban-elite voyageurs who couldn't believe their good fortunes at finding an area devoid of humans with ready made portage trails and campsites. Our Native American friends enjoy pointing out the fact that they have no word for 'wilderness' in their language, their closest approximation being 'home'. Many white people who grew up close to the land feel the same.

A second obvious flaw is that the BWCAW was significantly developed prior to its inclusion in the NWPS. To this day the signs of that development are readily apparent to anyone who is even partially aware of their surroundings.

A third flaw is that in the BWCAW there are substantial permanent improvements including portage trails, boat landings, developed and maintained campsites, firegrates, latrines, and portage rests.

A final major flaw is that no one has yet defined what the BWCAW's "natural conditions" are or how they are to be preserved. In fact Dr.Dan Botkin of the Center for Study of the Environment and one of the worlds premier resource scientists explains that the BWCAW's "natural conditions" vary depending on what time period is selected.

"The BWCA, which, from the end of the last ice age until the time of European colonization, passed from ice and tundra to spruce and jack pine forest. If natural means simply before human intervention, then all these habitats could be claimed as natural, contrary to what people really mean and really want. What people want in the BWCA is the wilderness as seen by the voyageurs and a landscape that gives the feeling of being untouched by people."[16]

Thus the 1964 Wilderness Act requires the Forest Service to preserve something that doesn't exist: the BWCAW in its 'natural conditions'.

Further, wilderness can serve many functions, but it is generally not possible to manage an area for all its functions at once. The BWCAW is not a 'no-action' wilderness reserved for scientists, nor is it a conservation area set aside primarily to conserve biological diversity. If we are to agree to manage it as a voyageur-era theme park then we are admitting that it is a cultural creation - not a pristine 'wildland' untouched by man - and we should not try to force it to be managed as such.[17]

Flawed Science, Flawed Dogma - Preservationism's Shaky Foundations: The idea that nature, if left alone, will take care of itself formed the basis of most early ecology and modern environmental thinking. It was wrong. In fact nature does not tend towards a balanced or preferred state. It is chaotic and non-equilibrial.[18] As the foundation for

scientific theory and popular belief it formed the basis for most laws and international agreements, including the 1964 Wilderness Act. As Botkin points out this causes problems for resource managers and preservationists:

"The idea that change is natural has created problems in natural-resource management. How do you manage something that is always changing? And of even more concern is the possibility that by admitting to some kinds of change, we may have opened a Pandora's box of problems for environmentalists. The difficulty is simple: once we have acknowledged that some kinds of change are good, how can we argue against any alteration of the environment?

"The failure to accept change leads to destructive, undesirable results. It is only by understanding how nature works and applying this understanding in our management of nature (or to speak more generally, understanding our proper role in nature) that we can successfully achieve our goal: people living within nature, neither poisoning it nor destroying its reproductive capabilities."[19]

Managing Wilderness = Managing People: Local people have deep ties with the land. Severing those ties is painful in a way that urbanites who are disconnected from nature cannot fathom. Sadly, many of the people who were and are making land-use decisions fail to realize that when you are managing the environment you are really managing people. (Of course some people understand this perfectly and it is precisely why they invest so much time and energy seeking to control land-use policy.) Dr. Luther P. Gerlach, a professor of anthropology and an adjunct professor of public affairs at the University Minnesota addressed the issue of human-environment interactions in a 1996 interview:

"If you are managing a resource then you are ultimately managing how people use that resource. You are shaping, managing and dealing with their cultural ideas and if you are changing the management system you are changing their ideas and managing their social relationships. We do it a lot through law, but there are other ways you can do it. You are managing those things which means you're managing people.

"But the interesting thing is that most of the people doing the managing are trained in biology. They have the idea that they are managing nature, but they're not. They're managing human-environment interactions. Humans interact with the environment through culture, its material adaptive strategies and meanings and identities. Humans interact with the environment through social organization – through society – that sets up relationships among people informed by culture. That's what they are managing, and now they know it, sort of.

"A few years ago I was always asked the question: 'An anthropologist? Why are you interested in looking at the Boundary Waters or Yellowstone Park? That's what biologists do.'
The key animal in the equation is the human animal. I mean that's the big actor. It may not be the most benevolent actor, but it's the big actor."[20]

The key animal is the human animal. Not only do the human costs of wilderness policy need to be discussed, this Congress needs to search for ways to effect a more humane and effective wilderness policy. There is no way to turn back the clock and I don't believe most people, even the victims, would want to do that now. But there are a number of fair and reasonable things that could be done that would help heal the wounds and insure that the mistakes of the past are not repeated.

1978 - 1994, Federal Policy Continues to Change: The passage of the 1978 BWCAW Act was hailed by preservationists as the salvation of the BWCAW - it now had its "W" (formal federal Wilderness designation) and it was supposed to be safe for all time. But apparently it wasn't. Even though the local people and multiple-use advocates retained a small amount of their traditional motorized recreational uses, the preservationists' continued their relentless drive for more control.

In 1992 the three motorized portages on which trucks were used to move boats from one motorized lake to another were closed by a preservationist led lawsuit. This action was based on intentionally deceptive language planted in Section 4(g) of the 1978 BWCAW Act. Once again the preservationists tell it best in this excerpt from *Troubled Waters*:

"There were two concealed traps in Dayton's language. First the burden of proof would lie with those who wanted to keep the portages open, not those who wanted them closed. Second, the term 'feasible' was a term of art in the environmental law field designating something that was possible from an engineering standpoint - it could take longer, be less convenient and even downright tortuous and still meet the court's definition.

"Dayton was relatively sure that Walls had attached a layman's interpretation to the language, not the narrower definition that would be imposed by the courts. "Candidly," Dayton recalled, "I doubt whether Ron as a general practitioner in a small town knew that. And I didn't tell him about it."[21]

Closing the portages was a blow economically and socially. Many of the people least-able to visit the BWCAW were negatively impacted by the decision, but especially hard hit were women, elderly and disabled persons, and families. It was also symbolic of the never ending trend of legislative, judicial and regulatory actions each aimed at further restricting use and destroying our heritage.

1994 - Present, Forest Service Wilderness Policy Intellectually, Morally Bankrupt: In 1994 the rules changed again with the new BWCAW management plan which was unveiled after months of public task-force hearings. Unfortunately the Forest Service appeared to have an agenda that didn't include responding to multiple use interests, local people or local governments. In a stunning display of institutional arrogance the Forest Service failed to invite county or tribal governments into the task-force process, and then they ignored the consensus decisions reached during the task force process in favor of instituting, almost letter for letter, the recommendations provided by preservationist groups [22,23]

Visitor Use Levels Slashed Without Cause: The draft plan reduced quotas by 27% and closed hundreds of campsites, entry points and hiking trails. Sailboats and sailboards were banned. Portage rests were removed which increased risks of visitor injury and accelerated resource damage. No new hiking or ski trails were to be developed. Day use permits were required as a prelude to future quotas. The maximum group size was to be slashed from ten to six, thus ending wilderness travel for Boy and Girl Scouts, church groups, Outward Bound programs, families and others. Changes to numerous, arcane, and deceitful to cover here dramatically reduced visitor use in the BWCAW.[24]

Forest Service Deliberately Tries to Ban Boy & Girl Scouts, Youth Groups, Church Groups and Families: The group size cut is a glaring example of the Forest Service being unresponsive to stakeholders other than the preservationists and is symptomatic of a deep rot in the agency.

Representatives from youth groups participated in good faith in the task force process and spent months patiently explaining the ruinous effects that a group size cut would have on their ability to provide youth programs. The preservationists said that Girl Scouts singing at night around a campfire interfered with wilderness solitude and that a group of five canoes on a lake constituted "visual pollution". Even in the face of such belligerent anti-youth sentiments a consensus was eventually reached to allow youth groups in the BWCAW.[25]

Shortly thereafter the Forest Service announced that they were recommending a group size of six! In essence they decided to eliminate youth groups and families from the BWCAW - not based on ignorance, but on a deliberate and calculated basis. Not only was this bad for kids, it had the added effect of destroying what little good will and public trust the USFS had left.[26]

Forest Service Attempts to Rewrite Part of 1978 BWCAW Act Without Congress: In an act of arrogance and deceit, the Forest Service decided to change the 1978 BWCAW Act without going to Congress. P.L. 95-495 Section 4(f) states:

"That on each lake homeowners and their guests and resort owners and their guests on that particular lake shall have access to that particular lake and their entry shall not be counted in determining such use." (Emphasis mine)

In other words, property owners and their guests did not need a BWCAW permit to use the lake on which they lived. This simple and clear provision was accepted and understood by property owners who chose not to sell their homes or business in 1978 and by the Forest Service for 16 years. But in the 1992 BWCAW Management Plan the Forest Service quietly changed the definition that had been operative for 16 years.

Buried in the back of their huge draft EIS and MP was a new definition which stated that to qualify as a guest a person had to lodge overnight. No longer could your friend or a family member come over for the day and go fishing or canoeing on your lake without first having to get a scarce permit. This devious maneuver on the part of the Forest Service will have a huge impact on the number of already very limited number of day use motor permits available for fishermen.[27]

Forest Service Sued by Counties, Disabled, Outfitters, and Grassroots Groups: A coalition of local governments, outfitting associations, CWCS, and a disabled person jointly appealed the Final 1994 BWCAW Management Plan in Federal District Court and are awaiting a decision. The lawsuit alleges:

Count I: The Forest Service violated the BWCAW Act and the Administrative Procedures Act, and acted arbitrarily, capriciously and abused its discretion in limiting visitor use levels in the BWCAW;
Count II: The Forest Service illegally redefined the term 'Guest' in order to reduce the number of available day-use motor permits.
Count III: The Forest Service violated the American's With Disabilities Act by making the BWCAW less accessible to disabled persons. Their plan calls for removing portage rests, reducing maintenance and not allowing motors to remain on boats in the non-motorized zone.
Count IV: The Forest Service violated the National Environmental Policy Act in numerous ways during the preparation of its Environmental Impact Statement.
Forest Service Harasses Korean War Veteran for Flying American Flag on Memorial Day:

During the spring of 1995 a 62 year old Korean War veteran, Dr. Ed Pavek, and his wife were camped on Lewis Narrows of Basswood Lake in the BWCAW. Since it was Memorial Day they were flying the American flag. A pair of uniformed Forest Service employees approached and told them to take the flag down because it didn't go with the wilderness concept. The Forest Service then lied and tried to cover it up. Ever since that incident Dr. Pavek has been denied BWCAW motor permits.[28]

Forest Service Entraps and Abducts Canadian Indian Fishing Guide: Rural communities, local home and business owners, multiple use supporters, loggers and miners, disabled and elderly people, children and families, youth groups and war veterans aren't the only victims of our federal government's wilderness policies.

The First Nation band of Indians in Ontario pleaded with preservationists and Congress for the ability to continue using motorboats to guide fisherman on the American side of the giant Lac La Croix -- their only means of survival. The American side is essential to summer fishing success because it is protected from heavy winds and is where most of the good fishing can be found. Even though Ontario had no restrictions on motor use the Band's pleas were ignored and a non-motorized wilderness was callously imposed on the American side.

There were two results. First, in the late 1970's and early 1980's the USFS and the Indians both began carrying guns and issuing threats. Eventually two U.S. officers, operating undercover booked a fishing trip and hired a Canadian Indian guide, Eugene Ashawe. After spending two days trying to get Mr. Ashawe to take them on the American side in his motorboat he finally consented and they arrested him. The officers handcuffed and flew him to Duluth, Minnesota. Apparently after realizing that they had illegally abducted him the Forest Service dumped him, penniless on the streets of Duluth to find his way 200 miles back home.[29]

Forest Service, Preservationists, U.S. Congress Destroy 300,000 Acres of Paddle-Only Canadian Wilderness: The second result was that the abduction of Ashawe so angered the Indians and the Canadian government that in 1994 they opened one third of the Quetico Provincial Park wilderness to motor use by the Band over the protests of the same preservationists who excluded the Indians to begin with. Float planes and speedboats now ply much of the Canadian side of the shared international border waters of the BWCAW, making a mockery of the idea that a non-motorized wilderness area remains on the border. The big preservationist groups and their elected officials who ignored the pleas of the First Nation Band in 1978 and smugly thought only they could protect wilderness are now solely responsible for the loss of 300,000 acres of pristine paddle-only wilderness.[30]

Outfitting and Guiding Industries Harassed and Lied to by Forest Service: Another group of people who are continually having to deal with an arrogant, unresponsive and oppressive Forest Service bureaucracy are local outfitters and guides. Most outfitting operations are small, family-owned businesses located in wilderness edge communities. Few other groups are as regularly harassed, lied to, threatened by, and exposed to more inefficiency and inflexibility from the federal government as are outfitters.[31]

While there are numerous examples a February 7, 1997 incident between outfitters Dan and John Waters and Forest Service District Ranger Bruce Slover serves as an illustration of the general problem. The Forest Service announced more changes that were unclear and that further complicated an already ridiculously complicated permit system. When Dan Waters asked for clarification he was denied information and threatened with the loss of his Cooperators agreement which is essential to their business.[32]

Forest Service's BWCAW Permit System Fatally Flawed: The Forest Service is wrongly denying public access to the Boundary Waters due to continuous quota cuts and a totally dysfunctional permit system. The Forest Service's Duluth office, which created the system, has done nothing to fix it.

Everyone, even local Forest Service personnel, knows that permits are being reserved and not used. Campsites and parking lots are empty but no one can get a permit. Something doesn't add up. We have records that show relatively large parties with multiple permits reserved for the same day and entry point, even though only one permit is needed for the entire party. Other times we have found that one individual has several permits each for different entry points on the same day. We have found individuals have bought up permits with no intention of ever using them, considering their nine dollars well spent as a means of "saving the wilderness".[33]

The general public, outfitters and guides depend on having an fair and reasonable permit system. The Wilderness Act requires that wilderness be administered for "the use and enjoyment of the American people". The American people are being denied use and enjoyment because of an inefficient government agency. Outfitters and guides, indeed the entire wilderness dependent sector of our economy, depend on having a functional and fair permit system. It is hard to believe that the Forest Service can't provide a functional system. It cries out for Congress to investigate and fix this problem.

1997 - Present, The Future -- More of the past? The relentless march for more restrictions on land-use and increases in the amount of land designated in northern Minnesota as wilderness, biosphere reserve, biodiversity corridors, buffer zones, heritage corridors, wild and scenic rivers, wetlands restrictions, international cooperative parks, and more is in full swing at this moment. Two programs that exemplify this on a grand scale are:

1.) Minnesota Ecosystems Recovery Project, Wildlands Project: A radical program which would restructure the entire socio-economic system of northern Minnesota is being implemented by the Minnesota Ecosystems Recovery Project (MERP). MERP wants to place 5.5 million acres of additional land under wilderness or biosphere reserve designations.[34] Known as the *Minnesota Biosphere Recovery Strategy* (MBRS) it will dislocate people living in their core areas.[35]

MERP has among its advisory board members the Director of Development of the Friends of the Boundary Waters Wilderness and Sierra Club Director Dave Foreman who founded the radical EarthFirst!. Foreman also co-founded The Wildlands Project, an extreme program for placing 50% of the U.S. land mass under wilderness or biosphere reserve designation.[36] To understand the threat posed to individual freedom and liberty by these organizations one only needs to read the Foreman's Wildlands Project Mission Statement:

"To achieve this end, human civilization must be radically restructured, vast stretches of land must be reprimitivized, roads must be ripped from the landscape, and human populations must be forcibly relocated."[37]

2.) Boundary Waters - Voyageur Waterway, A Canadian Heritage River: The Ontario Ministry of Natural Resources is now proposing to link three provincial parks, the BWCAW, various state parks and Indian reservations - a total of 17 different land use designations - along a 250 km stretch of the Minnesota-Ontario international border from Lake Superior to Lac La Croix. The project, known as the Boundary Waters -Voyageur Waterway (BWVW), is an attempt further centralize management of large land areas under international control.

"This plan looks at the opportunities and challenges that exist south of the international border. Management actions are aimed at...examining the potential for designating existing parks as an international cooperative park with agencies in the state of Minnesota."[38]

The BWVW is not an isolated project. It is part of a much larger scheme on the part of the international environmental and governmental communities to control land.

"The BWVW under the Canadian Heritage Rivers System establishes another link in a chain of national and international protection initiatives, such as: The Binational Program to Restore and Protect the Lake Superior Basin, the Alexander MacKenzie Voyageur Waterway, and The Lake Superior Water Trail."[39]

General Observations: This small sample of issues is part of a much bigger universe of similar ones. Here are several observations on the challenges posed by federal wilderness policy.

(1) Continuously changing federal policies hurt community stability: Since 1930 there has been literally hundreds of federal laws passed, major agency regulations, federal court decisions and even a Presidential Executive order affecting the BWCAW. This ever changing and more restrictive tide of government regulations has hurt communities which need stability to thrive.

(2) **Wilderness imposes huge human costs**: Never before has a wilderness been created out of a more heavily used and densely populated region than the BWCAW. The human costs have been staggering and no one has had the guts to talk about it or deal with it.

(3) **Well-intentioned but poorly written wilderness laws:** The 1964 Wilderness Act and the 1978 BWCAW Act , while well-intentioned, were severely flawed. The 1964 Act tried to write man out of nature by codifying a destructive philosophy of dualism - man apart from nature. The 1978 Act was the worst sort of example of the tyranny of the majority. Documented stories of political favoritism and late night, smoke-filled backroom dealmaking between a drunken autocrat, preservationists and bureaucrats paint an ugly picture of democracy gone awry and resulted in a social disaster for our community.

(4) **Wilderness preservation is based on faulty science:** The very concept of preservation presupposes that there is some preferred state of nature that is to be protected. New understandings from the science of ecology have destroyed the steady-state and balance-of-nature views and have shown that nature is in chaos and tends to no steady state.

(5) **Ill-informed urban populations having negative effect on natural resources policies:**
Lack of information among urban populations about the environmental, economic and social consequences of federal land-use policy makes it possible for well-funded organizations to engage in public relations campaigns to mold public opinion to their liking. This in turn effects the direction of public policy. This needs to be addressed or we will have a catastrophe on our hands as an urban population that is increasingly alienated from the realities of natural resource issues supports more irrational land-use policies.

(6) **Preservationists' public interest claims dubious at best:** Claims on behalf of the public interest for wilderness preservation are highly inflated while the concept of what actually constitutes the public interest is ill-defined.

(7) **Lack of local solutions to local problems created by wilderness:** Most wilderness issues are primarily state, regional or local in nature yet the people most directly affected have the least control over policy decisions. Local, state and tribal political processes and their outcomes will have a much greater chance of successfully resolving people's problems than will decisions handed down by unaccountable and often ill-informed bureaucrats and politicians in Washington D.C.

(8) **Poor quality federal management by Forest Service:** The Forest Service is inefficient, unaccountable, inflexible, dishonest, non-responsive to local and regional concerns, and too easily influenced by Washington-based special interest groups. They are becoming more centralized while many other institutions in America and around the world are becoming less centralized. Top-down, one-size-fits-all policy has failed in the Boundary Waters.

Recommendations: Given the failures of our past wilderness policies, today's new fiscal and political realities, and the American people's love for wild, healthy, and unpolluted landscapes (regardless of their statutory designation), we need to rethink our approach to designating and managing wilderness.

Regarding new wilderness designations, they should be much more carefully considered than in the past and the acceptance of local people must be obtained prior to any new designations. Regarding the ownership and management of existing wilderness areas, we first recommend that Congress initiate a study of existing management arrangements for complex and ecologically sensitive areas that are not owned and managed solely by the federal government. Some of these options have already been tried. This will help avoid having to reinvent the wheel when developing alternative resource management strategies.

Examples of these are the Upper Delaware Council, the privately owned R Ranch Wilderness, the privately owned Hawk Mountain Sanctuary, the Nature Conservancy's Kern River Preserve, and the National Audubon Society's Paul J. Rainey Wildlife Sanctuary which is off-limits everyone – even birders – but were the NAS does its own oil drilling. There are many other examples of highly successful non-federal management of sensitive ecological areas.

We would also recommend immediately initiating a number of pilot projects that would test alternative management strategies. An intermediate step may be to create a commission to categorize and recommend wilderness units for participation in the pilot project program. Which option or options will work best is hard to say and will probably vary by wilderness unit. But to ignore the present dismal state of wilderness management and fail to experiment with new options would be irresponsible.

Option 1: Decentralization of Wilderness Management: There are many possible configurations for decentralized management. If the political management of wilderness areas is to continue, as a general principle we recommend devolving ownership and control to the lowest level of government that has the desire and resources to handle the job.

(A) Local Government Ownership and Control: The BWCAW is completely contained in three northern Minnesota counties. These counties have a proven track record of successfully managing large environmentally sensitive natural resources. For example, in September 1995 researcher Donald Leal of the Political Economic Research Center (PERC) published the results of his study which compared timber management of county governments with that of the Forest Service. Of particular interest were his findings regarding the St. Louis County Land Department in Minnesota. Approximately 33% of the BWCAW is in St. Louis County.[40]

The Forest Service and St. Louis County each manage about 1,000,000 acres of timber in northeastern Minnesota. The forest lands are rated as having similar timber growing potential. Both are required to provide public recreation and protect wildlife habitat and water quality. Yet over the 1990-1993 period, the county earned more than $2,000,000 from timber sales while the Superior National Forest lost over $5,000,000 from its timber sales. An independent environmental audit rated the county slightly better in protecting water quality than the Forest Service.[41]

The northern counties have successfully completed eleven river management plans, effectively obviating the need for federal Wild and Scenic River designations. The management plans were developed by river management planning councils comprised of local residents, local governments, state government, Forest Service and other stakeholders. The plans were all completed on time, on budget and with virtually no controversy. Clearly, in some instances local citizens and governments can effectively manage their sensitive natural resources.

(B) State Ownership and Control: Congress has already considered legislation that would transfer authority for some types of federal lands to the states and undoubtedly it will consider more in the future. But we have some concern that replacing one version of a central planning authority (federal government) with another (state government) may just shift the problems and not actually resolve them.

(C) Federal Ownership and Joint Intergovernmental Management Control:
Representative Jim Oberstar and Senator Rod Grams each introduced innovative legislation in the 104th Congress that would have created an intergovernmental management council comprised of local, state, and tribal elected officials and the Forest Service to develop, implement and oversee the BWCAW management plan. A similar council, the Upper Delaware Council, has worked very well on the Upper Delaware Scenic and Recreational River.

Unfortunately their proposal was met with hysteria by the big national environmental groups and some politicians and bureaucrats. They all feared any shifting of power from Washington D.C. to state or local governments, mainly I believe, because they have more control at the federal level. These are the people who understand and practice the principle that managing resources really means managing and controlling people.

(D) Wilderness Trust Funds: Randal O'Toole of the Thoreau Institute recommends that Congress create separate trust funds for each state with large acreages of designated wilderness. All designated wilderness acres and all wild and scenic rivers would be managed by the appropriate fund, with the federal government retaining ownership. But management control would reside with Boards of trustees appointed by the Secretary or elected by wilderness users. The fund would keep all user fees collected from wilderness and river users.

O'Toole claims this would result in a number of benefits including higher quality recreation opportunities; higher revenues to counties; better environmental protection because land managers will have positive incentives to protect the wilderness resource; local residents will have more say over how public lands are managed because users – who in most cases will primarily be local – will elect the boards of directors who will oversee the wilderness. The only losers will be the bureaucracies that oversee public lands.[42]

(E) Local Input into Federal Resource Management Plans: Draft legislation being prepared by Senator Larry Craig encourages local solutions to federal land management issues developed by local citizens of diverse interests. It would require the Forest Service and the BLM to take special notice of planning alternatives proposed by independent committees of local interests, such as the Quincy Library Group or the Applegate Partnership. It directs agencies to include alternatives developed by these independent committees in the EISs or EAs which accompany the preparation, amendment, or revision of resource management plans.

Option 2: Private Conservation of Wilderness Areas: Some people argue that private ownership of wilderness areas may be the only way to truly preserve them in the long run. Roderick Nash, in his book *Wilderness and the American Mind* wrote:

"It has occurred to others that the need for the wild is a transitory, frontier-related enthusiasm that Americans will outgrow...Changing ideas and values replaced the wilderness hatred with wilderness preservation, and ideas could change again."[13]

Wouldn't it be preferable that when the fickle winds of political change blow against wilderness to have as much as possible in private ownership? Others, like Dr. William Dennis, believe that the state is not a good means to promote either religious or secular salvation as today's preservationists would have us do:

"Considering this brief history of the strange arguments for the public provision of wilderness, should we not expect the preservationists to be more modest in their claims today? Is it not at least plausible that the 'disestablishment' of wilderness might bring with many of the benefits that came to Connecticut with the disestablishment of religion?

Joseph Sax and his friends could promote wilderness preservation as one of the many good achievements of modern civilization and would no longer have to promote their position after the manner of true believers. The various sects of 'preservationists' and 'developers' would stop spending scarce resources on the unending and increasingly strident battle for the political control of the wilderness, but instead could cooperate in the discovery of new ways to provide wilderness through private means."[14]

Privatization could take place in at least a couple of ways:

(A) Competitive bid or auction

(B) Give away to qualified organization

Conclusion: In conclusion, there are serious problems with the federal government's management of the Boundary Waters wilderness. People and wilderness are suffering. Decentralization and privatization strategies need to be experimented with. Statists will argue that private and local interests can't be trusted, that they would rape and destroy the wilderness.

This arrogant, illogical, fear-based argument disregards the change in public attitude towards the environment, especially wilderness. It also ignores the successful conservation record of local and state governments and the spectacular record of private initiatives such as those of the Nature Conservancy and the National Audubon Society. The voices of status quo and fear must be rejected. This Congress must show leadership, creativity, compassion, and vision to save our wilderness areas.

Better management of land means better government for the people. Better government is smaller, less intrusive and closer to the people, which, in the end means more freedom and liberty for everyone.

Thank you.

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[1] U.S.D.A. Forest Service, Eastern Region, Superior National Forest, Proposed BWCA Wilderness Management Plan And Implementation Schedule, November, 1992, pp. 1.1 - 2.7.
[2] U.S. Senator Hubert H. Humphrey, Ely Echo, May, 1978.
[3] U.S. Senator Clinton Anderson, Ely Echo, May, 1978.
[4] U.S. Senator Frank Church, Ely Echo, May, 1978.
[5] William C. Dennis, The Freeman, May, 1987 pp. 7-18.
[6] William Cronon, New York Times Magazine, August 13, 1995.
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ADDITIONAL COMMENTS TO SUPPLEMENT
FIVE-MINUTE TESTIMONY BEFORE CONGRESS

Re: JOINT OVERSITE HEARING ON IMPLEMENTATION OF
1964 WILDNERNESS ACT
BY THE BUREAU OF LAND MANAGEMENT
AND FOREST SERVICE

APRIL 15, 1997

10:00 A.M.

COMMITTEE ROOM
1324 LONGWORTH HOB

BY

RICHARD A. CONTI, JR.

REPRESENTING

THE SOCIETY FOR THE CONSERVATION OF BIGHORN SHEEP

Following are examples of how the Bureau of Land Management (BLM) is using the Wilderness Act of 1964 to prevent the California Department of Fish and Game (CDFG) from conducting wildlife management activities on lands designated wilderness by the California Desert Protection Act (CDPA).

The Act states clearly in Title I, Section 103 (f):

> "**Fish and Wildlife Management** -- Management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title and shall include the use of motorized vehicles by the appropriate State agencies."

The BLM Wilderness Division does not acknowledge this paragraph and continues to insist motorized vehicle use should be prevented at all cost and that management activities, such as building or maintaining guzzlers, should not be allowed in wilderness.

The House floor debate over paragraph (f) was lengthy. Construction and maintenance of guzzlers, springs, tinajas, and other wildlife management activities were debated for hours. The result was a unanimous vote for paragraph (f): Ayes - 360; Noes - 0.

Why does the BLM continue to restrict the CDFG when Congress unanimously agreed the CDFG should continue this successful program of water development and maintenance in support of California wildlife?

(Items 1 and 2 reported in oral testimony on April 15, 1997.)

Item 3 Orocopia Wilderness- April 8, 1995

The Department of Fish and Game wanted to make a needed repair at the Fay Dee Big Game Guzzler in the Orocopia Wilderness. The Bureau told CDFG it could not use motorized vehicles in this wilderness. There is an existing dirt road to this guzzler and for years before the California Desert Protection Act was passed we routinely used this road for guzzler access both for maintenance and regular April and October inspections.

Since this particular repair would take place during April, a routine inspection month, and we would use a previously

approved access route, I argued there should be no reason to attempt to deny us access. The BLM relented somewhat by saying we could use the existing access route, but insisted the CDFG use only one vehicle and one trip with that vehicle to transport workers to the guzzler. Those CDFG employees not fitting in the one truck would have to walk to the work site. The BLM Riverside District Office told me a ranger may be dispatched and a citation could be issued if we exceeded the one vehicle limit.

The threat of citation worked and a CDFG employee said he would not drive a second vehicle into the Orocopia Wilderness because he did not want a ticket. We accessed the wilderness that day with only one vehicle. Eighteen (18) volunteer employees rode to the work site by standing up in the back of that one truck. By State law, all employees must be seated and belted when riding in a vehicle on the job. The BLM put CDFG employees at risk of unnecessary injury by dictating that only one vehicle be used to access wilderness.

Motorized vehicle use is specifically granted by Paragraph (f) of the CDPA. Why does the BLM feel it has to control CDFG access?

Item 4 Panamint Range Wilderness Research
From: Dr. Vernon Bleich of the CDFG Bishop Office

BLM Wilderness Specialists from the Ridgecrest office have commented on the negative impact of mechanical research cameras (solar/battery powered - infrared triggered) being present in wilderness areas and how wilderness users could be disturbed by the cameras. BLM made the same comment about the presence of an investigator studying mountain sheep in the Panamints. Ultimately, BLM decided cameras and an investigator were consistent with the research, but the depth to which BLM wilderness advocates pursue "impacts" is absurd.

Item 5 Replacement of Aging Water Storage Tanks or Major Repair at Existing Guzzlers

At a meeting in Barstow on June 25, 1996, the BLM stated that just to replace the water tanks at an existing guzzler could require an Environmental Assessment. When a system fails it needs immediate repair. Wildlife cannot wait

three months to a year while the paperwork gets put in the "hold" basket. Past experience indicates the Bureau doesn't have the manpower or drive to complete an Environmental Assessment in a timely manner. An Environmental Assessment was most likely written before the guzzler was constructed. Why would another paperwork struggle be needed to simply replace failing tanks?

Item 6 New Guzzler Construction

At the June 25, 1996, Bighorn Project Planning Meeting in Barstow the BLM El Centro Wilderness Unit stated: "New guzzlers may require a full Environmental Impact Statement and approval may be denied even then". A CDFG biologist inquired about construction approval for several guzzlers in wilderness and was told "that process would take at least a year and the answer would still be no." BLM said under no circumstances would there be any structures built in wilderness. **It appears the BLM wilderness specialists have made their decision not to consider wildlife management proposals from the CDFG.**

Item 7 June 25, 1996 - BLM Barstow Office

The BLM Wilderness Specialist from Needles told CDFG biologists that she would like to see CDFG employees park outside the wilderness and then hike into the wilderness to accomplish their wildlife tasks. She reasoned that this would allow the existing vehicle route to reclaim in time (even if it took a great many years) and then that wilderness access road would truly be wilderness again and the CDFG would have no access to the area.

This same Wilderness Specialist told a CDFG crew attempting to repair leaking plumbing at a guzzler that disturbing the vegetation that had grown around the plumbing would not be allowed because that would impair the resource. The only reason that plant grew there was because of the broken plumbing!

Item 8 Burro Access to Bighorn Watersources
From: Dr. Vernon Bleich, CDFG Bishop Office

Dr. Bleich requested that burro access be restricted from clearly documented traditional "Bighorn water" during our

> current severe drought conditions. This restriction would require building a temporary fence around the water source. The Ridgecrest BLM office stated to Dr. Bleich: "If the sheep die, so be it. It is the natural cycle of life and BLM manages wilderness areas as natural ecosystems."
>
> Burros are an exotic species that are certainly not natural to the California desert. They compete for food and water with bighorn sheep. They will urinate and defecate in a watersource. They pollute it for other wildlife and will destroy or devour the vegetation around that waterhole. To suggest that they are part of the natural ecosystem is absurd. We may have to make allowances for burros by law, but to let them destroy a historical bighorn watersource is criminal.

The BLM continues to threaten the CDFG regarding motor vehicle access and insists the CDFG must notify the Bureau of every daily management activity that will require CDFG vehicle access in wilderness. It seems every time the CDFG notifies the Bureau that it will be entering wilderness to conduct wildlife management, the Bureau finds a reason to deny or limit CDFG access.

The Bureau's consistent heavy-handed attempt at controlling the CDFG's wildlife management activities requiring the use of motorized vehicles is based upon interpretation of the Wilderness Act of 1964. While the Wilderness Act denies motorized vehicle use and the addition of man-made structures, the California Desert Protection Act in Title 1, sec. 103, (f) clearly intended for these activities to continue in wilderness designated by the CDPA.

I hope that someone from this Congressional body will help me explain the Fish and Wildlife Management provision of the CDPA to the Bureau of Land Management. I believe that if Congress does not help us explain the intent of the Fish and Wildlife provision to the Bureau, the Bureau's Wilderness Specialists will continue to deny future wildlife guzzler development and motorized vehicle access needed for these activities. I would be happy to consult with anyone willing to help me resolve these wilderness issues.

Thank you for your attention to this matter.

Richard A Conti Jr

Richard A. Conti, Jr.

Per House Rule XI, clause 2 (g): Neither I nor the Society for the Conservation of Bighorn Sheep have received any federal grant or contract during the current fiscal year or either of the two previous years.

Richard A Conti

Richard A. Conti, Jr.

SOCIETY *for the* **CONSERVATION** *of*
BIGHORN SHEEP
California Non-profit Corporation Registry #499685
PO Box 801 La Canada, CA 91012
(213) 256-0463

Information Sheet

The Society for the Conservation of Bighorn Sheep (SCBS) was founded in 1965 and is the only organization in California who is solely dedicated to restoring a natural resource that suffered a 98% population decline from the Gold Rush until 1877, when California's legislature declared bighorn sheep as a Protected Species.

Our mission is habitat improvement in the California deserts: On State lands, Federal lands, military bases, and mitigation areas. We build guzzlers, improve springs, clear tenajas, eliminate non-native tamarisk, and remove rubbish.

SCBS administers the Volunteer Desert Water and Wildlife Survey (VDWWS) for the California Department of Fish & Game (DFG) under a Memorandum of Understanding signed in 1969. We raise funds, plan projects, and work alongside DFG's Habitat Biologists and Wildlife Biologists on all major projects, such as construction, maintenance, and repair of over 70 Big Game Guzzlers, which cost an average of $10,000 in materials and services. These guzzlers catch, hold, and dispense up to 4500 gallons of water each to resident insects, birds, reptiles, and mammals.

SCBS has no paid staff. To perform our mission, we rely on an extensive volunteer network that ranges from Alaska to Maine and all points south. Our habitat improvement project mailing list for 1996 included 1300 volunteers and members. In the past 10 years, our volunteers have driven a minimum 1,000,000 miles and have logged at least 80,000 man-hours, all on weekends or spare time, for projects and for wildlife studies.

SCBS has been reversing Bighorn population decline by funding studies, improving habitat, and re-introducing them to their historic ranges in accordance with DFG's Bighorn Management Plan of 1968. Their population has increased almost 80% since then.

The Desert (Nelson) Bighorn population had recovered sufficiently by 1987 that SCBS promoted legislation to permit limited hunting of them while leaving the California and Peninsular subspecies on the State Protected Species List.

Today, major obstacles to bighorn recovery include:

- Low birth rate
- High infant mortality
- Increasing predation rate
- Domestic livestock diseases
- Feral burro competition in the same ecological niche
- Habitat loss
- Shrinking aquifer
- Interstate highway system
- Federal laws

01-27-97

Testimony of
David L. Brown, Executive Director,
America Outdoors,
before the Subcommittee on Parks, Forests, and Lands
of the Resources Committee
United States House of Representatives
April 15, 1997

Thank you for giving me the opportunity to provide you with the views of America Outdoors and America's outfitters and guides. America Outdoors and its affiliate members represent more than 1,400 outfitting businesses operating in forty states. Our members provide diverse recreation experiences to the general public including whitewater rafting, horse pack trips, fishing, canoeing and kayaking. Our outfitter members operate in a number of wilderness areas managed by the Bureau of Land Management and the USDA Forest Service.

In the traditional sense, outfitters have been operating in wilderness since the days of Lewis and Clark and Jim Bridger. The presence of outfitters in wilderness predates many of the modern-day forms of wilderness recreation that are embraced by agency managers and the public. America Outdoors recognizes that wilderness outfitters must be extremely sensitive to the environment and respect the rights of other users to operate successfully in wilderness.

My remarks today will focus on opportunities to access wilderness by that segment of the public that does not have the time, the skills or the equipment to safely outfit their own trips. We believe that maintaining recreational opportunities for the outfitted public while maintaining the primeval character of wilderness was a goal of the Wilderness Act of 1964.

At the outset, please let me say that in my discussions with outfitters in the preparation of this testimony there were many compliments to agency managers in the field regarding their perspectives and management of wilderness resources. Region 1 of the USDA Forest Service is identified often by outfitters as a model for wilderness management. In citing the emerging problems that we see in wilderness management, I want to be sure that we do not overlook the important contributions that many in public service make in fulfilling the mission established for them by Congress and the Wilderness Act of 1964.

On the other hand, many outfitters do see some alarming trends emerging in many wilderness areas that threaten the viability of quality outfitted services. I will briefly outline those concerns:

1. We believe a bias is emerging in many wilderness areas against that segment of the public who wish to experience wilderness through outfitted services. This bias is manifest in the revisions to management plans where party sizes and use levels are being reduced to levels that are not viable for successful outfitter and guide operations. Often these reductions are not the result of resource impacts because the same activities are not prohibited for self-guided users. In some areas the same activities by self-guided users are often allowed to continue without limitation or restriction. Those managers who chose to restrict use by the outfitted public fall back on a strict interpretation of the clause in the Act that states: *"Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas."* While we believe this is an affirmation of the role for appropriate commercial

services, some purist groups and managers are using the "as necessary" provision to call for the elimination of outfitted services. (Please see the appendices and the schematic for the "needs assessment.") This strict interpretation also ignores the paragraph of the Act (d) (5), which recognizes the need for commercial services for "realizing the recreational or other wilderness purposes of the areas."

2. In some areas wilderness management appears to be more dependent on the values of the resource manager than the intent of Congress as established in the 1964 Act. In part this is occurring with the decentralization of agency management functions. In some areas outfitters praise the cooperation received from managers. In other areas outfitters are being forced out.

3. In some wilderness areas, use allocated to the outfitted public is no more than 5% to 7% of overall use. This use is tightly controlled and supervised. Some might say, "micro-managed". In some of these same areas self-guided users are allowed to enter wilderness without a permit and with no restrictions. We believe that there are a number of wilderness areas where managers spend a disproportionate amount of time and resources managing outfitted use while ignoring impacts of other users. Despite the low level of outfitted use, when cutbacks are called for these managers often attempt to reduce or eliminate opportunities for the outfitted public. (Sawtooth Wilderness-ID, see letter from David Brown to Paul Ries, February 28, 1996. High Unitas Wilderness-UT, *Deseret News,* November 11, 1996. Letter from Kit Niemann to Benjamin O. Kizer, November 26, 1994. Letter to National Park Service from Craig Mackey, Outward Bound, April 12, 1996. These documents are included in the appendices).

4. Historical and traditional uses that were recognized in a wilderness designation should not be sacrificed once the ink is dry. It is important to maintain the web of legitimate activities that are culturally and historically significant that pre-existed a wilderness designation. If these areas qualified for wilderness with those activities, then there is no reason that they should not continue if that use is managed appropriately. Even if they are distasteful to the purist elements, a deal is a deal and the Act recognized the importance of pre-existing uses.

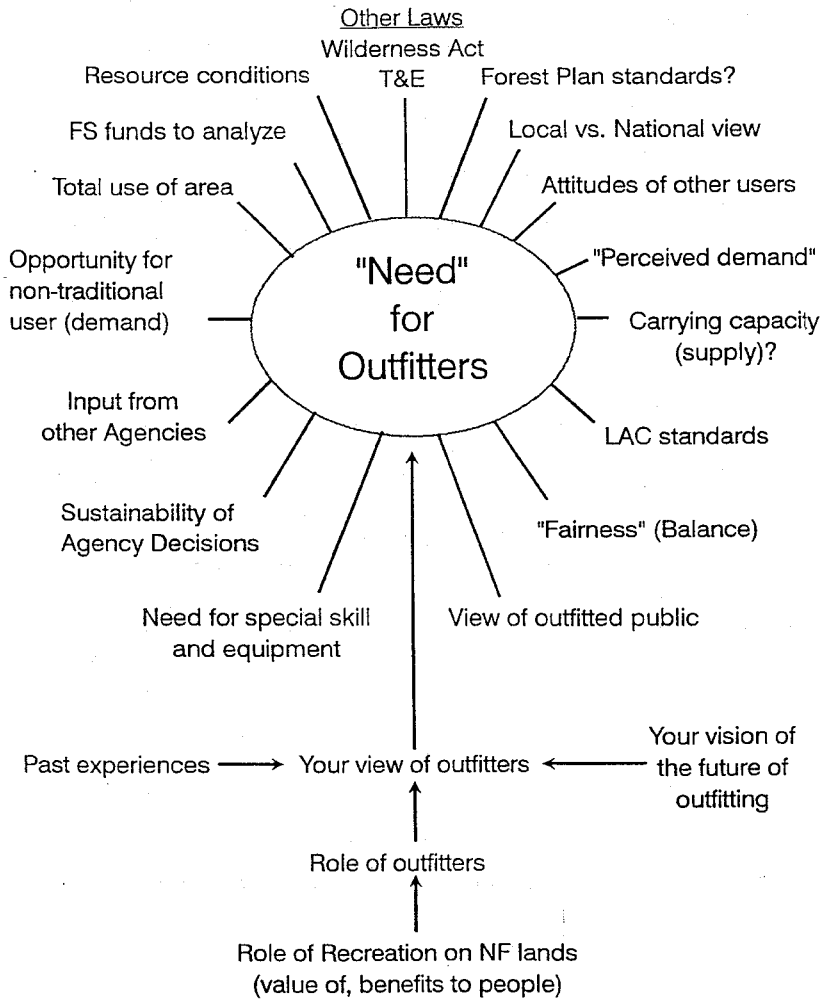
In general, I share the view of many that maintaining recreation opportunities for the use and enjoyment of wilderness areas was clearly a purpose of the Wilderness Act. I also believe that this purpose is being supplanted by another agenda in some areas. That agenda is a revision of the purpose of wilderness from that intended by Congress in the Wilderness Act. Proponents of a so-called strict interpretation of the Act select phrases to challenge legitimate outfitted services. If successful, these proponents will displace opportunities for the outfitted public and other recreation interests in wilderness.

Man has always been a part of wilderness. Yet today we seem to be aspiring for biospheres in glass bubbles rather than areas "devoted to the public purposes of recreational, scenic, scientific, educational, conservation and historical use." It is possible to manage and protect wilderness and maintain its natural character without eliminating man and recreation. I believe that the survival of the Wilderness System will depend on expanding the constituency for wilderness and not on the alienation of those who have long been a part of it.

I appreciate the opportunity to testify before this committee and ask that my testimony be submitted for the record.

Figure 1

Factors Affecting Determination of Need for Outfitters



File: Sawtooth

AMERICA OUTDOORS

The national voice of the outfitting industry.

February 28, 1996

Mr. Paul Ries
Area Manager
Sawtooth National Recreation Area
Star Route
Ketchum, Idaho 83340

Dear Mr. Ries:

I am writing to comment on the Sawtooth Wilderness Environmental Assessment. America Outdoors is a national association of outfitters that provide guided outdoor recreation experiences to families and the general public who would otherwise be unable to enjoy the backcountry.

We very much appreciate the role federal land managers play in managing recreation opportunities in stunning natural areas like the Sawtooth NRA. Forest Service personnel have a difficult task in balancing the needs of a broad range of user groups.

The outfitted public is an important constituency and user group in the Sawtooth and in many other national recreation areas. Management of these areas is supported by taxpayers from the throughout the nation. Many of these taxpayers are tourists who must utilize the services of outfitters to access the backcountry. To limit their use to 5% of total use unfairly restricts access of this important group of taxpayers and users and sets up an artificial bias toward self-guided users for an area that is supported and designated for "National" use by federal funds. It also limits the economic benefit of the Sawtooth NRA. We do not advocate that outfitted use dominate the Sawtooth but that the outfitted public receive more substantial use than proposed by the plan.

The primary intent of the permitting process in the Sawtooth plan appears to be the imposition of strict limitations on the outfitted public. Instead the permitting process should be used to minimize impacts and balance use. Evidence of this bias against the outfitted public is ample. While the suggested alternatives severely restrict and regulate use by the outfitted public and outfitters, no substantive management is provided for over 90% of users most of whom, unlike the outfitted public, are unsupervised. Goats are treated more favorably by this management plan than the outfitted public. It is hard to believe that the outfitted public will have more impact than goats. This bias should not be tolerated.

National headquarters, P. O. Box 1348, Knoxville, TN 37901 • 615-524-4814 • Fax 615-525-4765
Washington office, 308 Constitution Ave., NE, Washington, D.C. 20002 • 202-546-1808 • Fax 202-543-6870

Restrictions designed to minimize resource impacts should apply to all users. The outfitted public is also "the public" who simply require or desire the services of an outfitter to access the backcountry. Their use is supervised by guides experienced with the backcountry and its sensitive areas. As a result of this supervision, the outfitted public may have less impact than some unsupervised, self-guided users who are unfamiliar with the backcountry but who receive no attention from the regulations proposed by this plan.

Capping use for the outfitted public without limiting use of other users in discriminatory. Permitting and management should not focus on unfairly excluding valid user groups, such as the outfitted public. Before singling out the outfitted public by restricting their use, please determine the total use capacity and apply restrictions to all user groups as may be appropriate.

Thank you for this opportunity to comment.

Sincerely,

David Brown
Executive Director, America Outdoors
Knoxville, Tennessee

Guides say Uinta wilds plan targets them

By Lezlee E. Whiting
Deseret News correspondent

ROOSEVELT — Those who serve as hired guides on trips into the High Uintas say wilderness management proposals target them for discrimination.

Joe Jessup, Whiterocks, president of the Northeast Utah Outfitters, Packers and Guides Association, said the Ashley National Forest's latest draft environmental impact statement for amendment of the High Uintas Wilderness Forest plan lists four alternatives that would limit or exclude outfitter-guide businesses using horses or mules, while allowing the public to travel into the same areas unrestricted.

The High Uintas Wilderness plan covers 640,000 acres of wilderness designation in Uintah, Duchesne and Summit counties. It is designed to protect recreational areas, wildlife and natural habitats and watershed.

Jessup said that although outfitters and guides were involved in the public-input process, Forest Service officials did not include any of the group's recommendations when formulating the draft statement.

"It's very discriminatory and is contradictory to itself," said Jessup. "This final EIS draft has been prepared with a total disregard for the outfitter-guide permittees."

Gayne Sears, wilderness coordinator for the Roosevelt/Duchesne Ranger District, said the proposals don't entirely exclude outfitters but do limit their use of horses and mules on "catered trips" into the wilderness area by not allowing the animals to stay with the group overnight. She admitted, however, that "other users" would be allowed to go into the same area with livestock and camp overnight unrestricted.

"Wilderness is supposed to provide a challenge and a pristine environment. As managers we try not to market the wilderness to make a profit. Outfitters are in it to make a profit, so there is a very thin line," she said.

Jessup said Forest Service officials are missing the boat by not realizing the benefit the guides provide not only to a specific segment of the public — more than 70 percent of pack trip clients are more than 60 years old and many are physically challenged, so they must rely on outfitters as their only means to enjoy a wilderness experience — but to the Forest Service itself.

Sears said that in response to the criticism by outfitters and guides the Forest Service has extended the comment period prior to the release of the final statement, expected in January or February.

April 12, 1996

Bob Yearout
Chief, Concessions Division
National Park Service
P.O. Box 37127
Washington, D.C. 20013-7127

Dear Bob:

This brief letter is a follow-up to your request for information on the impacts NPS planning and permitting procedures are having on the outfitter/guide community in general and on wilderness educators in particular.

This outline is presented as succinctly as possible. Outward Bound would welcome any opportunity to meet with NPS staff to discuss solutions and how we, the wilderness education community, can work in partnership with the NPS. Thank you for soliciting our input.

As you will note, most of these issues cross agency lines.

I. Planning

Through backcountry/river management planning processes, we are seeing drastic reductions in backcountry access. Almost without exception, these cuts are falling on the backs of the commercial outfitter and wilderness educator.

A. Group size, carrying capacity, social impact, VERP

1) How are these decision being made, substantiated?
2) How can the outdoor industry participate in the process?
3) How can academia participate in the process?
4) How are these decisions being reviewed/appealed within the agencies?
5) How do you balance commercial versus general public use?
6) Substantial cuts in backcountry (commercial) use while frontcountry (general public) use skyrockets.

B. Zoning

This is the issue of the backcountry being divided into numerous zones to manage use [Examples: Canyonlands, Joshua Tree, White River National Forest]

- continued -

1) Zones, capacity limits, camping restrictions, travel restrictions are targeted to commercial use
2) Zoning so complicated only an educated, sophisticated (commercial) user could/would follow the guidelines and restrictions

II. Permitting and Reservations

A. Permitting

1) Significant changes and discrepancies in how permits are issued and administered
2) Discrepancies in how fees are calculated and administered
   * Fees should relate to activities conducted on the resource
   * Commercial sector willing to pay our share of fees.
   * We would rather pay legitimate fees than be denied access
3) Permitting process needs to allow sufficient lead time to run a business.
4) Sheer volume of paperwork (prospectus and response)
5) Elimination of CULs/IBPs

B. Reservations

1) Reservations systems/staff are being eliminated
   * Commercial/educational sectors must have reliable future use
2) We are willing to pay a share of administrative costs to fund reservation systems

III. Certification and Accreditation

Primarily a climbing issue, agencies are looking for ways to promote safety in the backcountry and reduce search and rescue costs.

1) Certification requirements are targeted at commercial sector.
2) Certification is a relatively new and highly inconsistent practice.
3) Agencies do not want to or cannot certify -- looking to private/non-profit sector to provide standards and certification process.
4) Certification should be a safety/professionalism/education issue -- not used a means to reduce overall use in the backcountry.
5) In general, commercial/educational users are not creating the safety concerns.
   * Agencies and outfitter community should work together to promote safety and educate the backcountry user.
   * Groups like Outward Bound routinely perform backcountry search and rescue operations, providing a service -- not a cost -- to agencies.

- continued -

IV. Wilderness Education Is Part of the Solution -- Not the Problem

A. Wilderness Educators are working in partnership with the agencies

1) Education
- Educating a new generation of American on the value of public lands and wilderness
- Environmental education
- Leave No Trace minimum impact practices.

2) Service
- Service in the backcountry
- Community service
- Visitor contact and education.

3) Safety
- Education on proper techniques, equipment and behavior in the backcountry

4) Diversity
- Reaching out to involve new, increasingly diverse generations in the use, enjoyment and protection of public lands.

Again, this is only meant to provide a quick overview. The Outward Bound system operates in 22 states, and, over the last three decades, we have built and maintained strong working relationships with land managers from federal, state and local government We have experienced and helped fashion the full range of land management policies and procedures.

At any time and location, we would willingly participate in discussions on how the agencies and the outdoor industry can work in partnership to promote and protect our public lands and resources.

Again, thank you for the opportunity to comment.

Sincerely,

Craig W. Mackey

Public Policy Liaison
Outward Bound USA
14130 Berry Road
Golden, CO 80401
(303) 278-2298
(303) 278-6747 (fax)

November 26, 1994

Benjamin O Kizer
District Ranger
Quilcene Ranger District

Reference to Closure of Buckhorn Wilderness to Commercial Outfitters:

Dear Mr. Kizer,

Can you give me a short and simple explanation of the reasons for closing the Buckhorn Wilderness to Commercial Outfitters. Some thing I can quote in news letters, correspondence, and conversations.

We worked very hard to develop good operating procedures and to maintain a good reputation. Honestly, I feel hurt by the decision and find it hard to explain the reasons for the decision when asked. Also, I get asked by people on both sides of the issue. I need one answer that is going to be productive and hopefully will not lead to more questions

I get many requests for trips into the Buckhorn Wilderness. Partly because we have done trips in the Buckhorn for so long and partly because they are still listed in our brochure. The cost of printing is to great to pitch these brochures and order new ones, so I need to add a recantation to my literature. I will also need a good explanation ready for the Washington Outfitters & Guides Association meeting on the 13th & 14th of January.

I do wont you to know that we are still very interested in pass-through permits, a special use permit and to continue as a volunteer for Olympic National Forest.

Sincerely,

Kit Niemann

Kit's Llamas • P.O.Box 116 • Olalla, Wa. 98359 USA • Ph 206-857-5274 • Fax 206-857-5141

TESTIMONY OF

EDWARD J. BAUMUNK
Co-Owner of BBJ Mining
Tecopa, California

BEFORE THE HOUSE OF REPRESENTATIVES
SUBCOMMITTEES ON NATIONAL PARKS AND PUBLIC LANDS AND
FORESTS AND FOREST HEALTH

April 15, 1997

Full statement:

I am Ed Baumunk of Tecopa, California. I have lived in and worked in and around mining in Southern California for over 50 years. With my partner A.G. Jackson, I own the Rainbow and Caliente Mines, filed under the name of BBJ #1 through #6 Claims, near Death Valley and within the newly expanded Death Valley National Park.

The claims are actually in the Saddle Peak Hills close to State Highway 127 between Baker and Shoshone, and not at all visible from either Death Valley or the Highway. A 1996 letter to Congressman Lewis from the Park Service describes them as "deep within the Park." This is simply not true. We asked them, through Congressman Lewis, to be excluded from the Park, and they refused.

The claims are now located within the expanded Death Valley National Park, and are also within a designated wilderness area, despite the existence of roads and past mining activity.

When we discovered this talc deposit in 1952 and filed claims under the 1872 mining law on the deposit, the land was administered by the Bureau of Land Management (BLM). Actually, at that time, there was no government presence on the land. We filed our claims with San Bernardino County, where they are located, pursuant to laws in effect at that time. The land remained under jurisdiction of BLM until 1994 when the California Desert Protection Act transferred jurisdiction to the National Park Service (NPS).

During the past 45 years, the mines have been in operation several times, during periods when the value of talc was sufficient to warrant mining the deposit or contracting out to a producer who had capital. We built the head frames shown in the pictures in 1953 and 1956 as part of our early operation. Over the past 45 years we estimate that we have removed 60,000 tons of ore from the mines. The main adit extends for over 1,400 feet into the mountain, and shows the continuity, size and extent of the ore body.

We were never too much aware of all the work going on relative to the so-called Desert Plan and Desert Bill. No one ever came and talked to us about the various inventories and studies, nor notified us that operation of our claims might even be in jeopardy.

We did know that BLM had adopted mining regulations and we filed a plan of operations with the Barstow BLM Office in 1993. They approved a minimum operation in June 1994 allowing 100 tons per day of extraction. This is only a minimal amount, which constitutes start-up for us and our contractor, the Oro Grande Mining Company. We currently have a purchase proposal before us which would take 800 tons per day after start-up, increasing to 1,600 tons per day, and leveling off at 2,000 tons per day.

These quantities would come entirely from the underground mine, with the material being hauled off site on a road system that has existed for many years. At a current commercial value of about $45 to $50 per ton at the rail head, and up to $120 per ton when refined, we are talking significant money.

The value of the material would, I am told, generate a considerable boost to the economy of this remote area of San Bernardino and Inyo Counties through employment and support factors related to it.

I wish to touch on 3 factors during my allotted time--the shift from BLM to the Park Service, our experience to date trying to gain authorization from National Park Service Staff in Death Valley to operate, and what we would like to see happen.

Shift from BLM to NPS:

As stated before, we were never involved in the Desert Plan or Desert Bill. We have been shown that BLM, prior to 1992, did not propose the area for wilderness. They prepared a Wilderness Report which was given to Congress in 1990. That document, which I have with me indicates why the area was not believed to be appropriate for Wilderness, but must have been ignored when Congress passed the Bill in 1994 putting our mines in wilderness. (A copy of the section pertaining to the Saddle Peak Mountains Wilderness Study Area (WSA) (CDCA-219), which includes our claims, is attached to this testimony for the record.)

Among statements in the section pertaining to our area, I call to your attention:

--"the value of known and potential mineral ...deposits were determined to be of greater significance than the area's value as wilderness."

--"Portions of the WSA have high potential for talc and moderate potentials for silver, gold and copper. Past producing mines are located within the WSA. The evidence of surface disturbance still remains. There is one active operation within the WSA. There are 28 mining claims with the WSA on record with the BLM as of December 1987."

--"The area has known and potential mineral values. Active mineral exploration continues in the WSA. Full-scale development of any valid claims has a high potential to impact significant portions of the area. Access requirements for such developments would result in similar impacts."

--"The BLM GRA report (1980) classified a zone in the southwestern part of the WSA as having high potential for the occurrence of talc based on two past producers...and a favorable geologic environment cased on Precambrian dolomite rock altered by intruding diabase dikes."

Despite this information, the reports were not submitted to Congress in 1993, and they passed the Desert Bill in spite of it, including placing our mines in both wilderness and the expanded Death Valley National Park. For some reason Congress extended the boundary of the Park out to highway 127.

The access to our mine, and the mine itself, has always been shown on the USGS and Auto Club maps of the region. In fact the road was prominent enough that it formed the dividing line between two BLM study areas, #219 and #220. But when the Desert Bill authors drew maps for the Desert Bill, the road must have been ignored, and the two units were put together. Or, perhaps, they knew about the road, and wanted to make it more difficult for us to operate our mine.

This has now resulted in the Park Service closing and our access road, or at least posting it for use by authorized vehicles only. Since they have not approved our mining plan, we are not sure that we are fully authorized, but we have used it, and continue to do so, and I guess verbally its OK, but what about our contractors and officials from organizations other than the Park Service who have come out to look at our problems?

The Desert Bill does contain language that recognized that even though future claims could not be filed, our mine and operation was supposed to be protected under the principal of "Valid Existing Rights." In our mind, there is no question that we have a valid existing right, but it is up to the government to make that determination.

(It is interesting to note that our mine and area was placed in wilderness by the Desert Bill, but the adjacent lands within the former boundaries of Death Valley Monument were excluded from wilderness. Why was this? We can speculate that the Park Service knew that at a minimum this was not wilderness lands and had mineral values, and their proposals were not given the oversight by environmental groups with which BLM study areas were; or that the authors of the Desert Bill just wanted to close out mining, even if it was underground, and being conducted in accordance with laws and rules.)

The road has now disappeared from the Triple A maps. I have the 1990 map for Death Valley, and the 1996 one. They show the quality of the road with a double line in the earlier map, but no road or mine in '96. Does the Park Service think they can simply make us go away by giving out wrong information?

Application to NPS:

After the area was taken into Death Valley we applied to the Park Service for permission to mine. We held the 100T/day authorization from BLM, but this was not enough to cover the currently proposed development and demand. We began our experience with the Park Service in 1995, submitting a plan and supporting information during June and July. This was actually submitted by our contractor, Oro Grande Mining Company.

The Park Service has considered the application. They brought in a crew from Denver to look at our deposit during August 1995, returning in September, to make the Valid Existing Rights determination. The have completed work, and I have a copy of their report, prepared and approved in October 1996, which concludes that we do, in fact, have a valid existing right, and can therefore operate our mine. **The Park Service still has not authorized our use, and is now delaying while they now say they must do an environmental review.** They have been at this for over two years, and yet our rights were supposed to have been protected in the Desert Bill. Or at least what the Desert Bill sponsors said.

Meanwhile we have had some indication that the Park Service in Death Valley is getting pressure from environmental groups to find a way not to approve our operation. I have this copy of a letter from the Sierra Club to the Superintendent of Death Valley thanking him for the early delays in processing our application. (Note: while the date on it is "7/23/93," it was undoubtedly written in 1995, and was noted as received "7-25-95.") I have attached a copy of that letter to my testimony.

Even more damning is that Park Service has talked to environmental

groups about "buying out the Rainbow and Caliente Mines being their top prioity." **Superintendant Martin has even put this in writing. I call your attention to the January 22, 1997 letter (unsigned, but sent to us). We responded January 24, and received a formal response dated February 11, 1997.** He absolutely states that purchase will be the preferred alternative in the EA!

Underlying problem and correction:

Basically, we'd like NPS to authorize our operation and let us get on with what we feel are our basic rights which are insured in the Mining Law, and which were allegedly protected by the "Valid Existing Rights" language in the Desert Act. If the Park Service has determined we have a valid right, and knows that the mine has produced economic quantities of ore before, why are they dragging their feet?

Further, why is purchase of the mine their preferred alternative? If the mine claims are valid, and the mine is viable and has an economic value, why and how would they oppose its operation?

On a longer range scale, the area ought to be removed from the Park. It should never have been there in the first place, but somehow lines got drawn without regard to what they were including. Or maybe they were, and they wanted mining restricted. Under any circumstances, based on its history and track record in Southern California, we do not believe the Park Service will be a good neighbor, and we see nothing but a continuing problem related to their regulation of an activity about which they no nothing about.

Removal of the Saddle Peak Hills will have no effect on Death Valley that people know, and in fact, mining has always been part of the history of that area.

And the buyout idea. How can we operate with our regulator poised to close us down at any time? And Why? Further, where would the money come from? And why would someone want to spend the taxpayers dollars to buy us out when if the mine was producing it would <u>pay</u> taxes to the government, besides contributing to the economy.

We have our own problem. We hear there may be hundreds of these throughout the desert. Some of the big miners got taken care of when the Desert Bill passed. There are many of these little mines, many of which might not have been in regular operation but which have potential for reopening, and are now being stopped by BLM and the Park Service. Congress needs to fix my problem and take a look at what they did in 1994 when they created all this wilderness without considering all the data on mining and mineral values.

SADDLE PEAK MOUNTAINS WILDERNESS STUDY AREA (WSA)

(CDCA-219)

1. THE STUDY AREA — 9,763 acres

The Saddle Peak Mountains Wilderness Study Area is located in San Bernardino County within the north central portion of the California Desert Conservation Area (CDCA). The community of Baker is 38 miles to the south. The WSA includes 9,134 acres of public land under the jurisdiction of the Bureau of Land Management (BLM) and 629 acres owned by the State of California (See Map 1 and Table 1).

The WSA is bounded to the east by State Route 127 and the north by a mine access road. Death Valley National Monument adjoins on the west, and a mining access road forms the southern boundary. The WSA is within a future utility corridor (1990-2020) identified for the State of California, in the Western Regional Corridor Study (1980).

The WSA was included for further consideration during the planning process primarily because the western border of the WSA abuts administratively endorsed wilderness in Death Valley National Monument.

The area includes the Saddle Peak Hills which form the western three quarters of the WSA and the northwestern portion of the Silurian Valley. The Saddle Peak Hills are cut by normal faults which are mostly wavy or curved with a northwest trend. The WSA contains approximately 70% mountains, 10% alluvial fans, 10% sand-covered dissected fans, and 10% sand-covered fans. Elevations range from approximately 500 feet on the valley floor to 2,500 feet at the western border. The vegetative composition includes a typical creosote bush scrub plant assemblage that exhibits some variability based on elevations.

The WSA was studied under Section 603 of the Federal Land Policy and Management Act (FLPMA). Four alternatives were analyzed in the Draft and Final Environmental Impact Statement (EIS) for the CDCA Plan: protection, use, balanced, and no action; a summary of the area's wilderness values was included in Appendix III of the Final EIS.

2. RECOMMENDATION AND RATIONALE —

0	acres recommended for wilderness
9,134	BLM acres recommended for nonwilderness

No wilderness is the recommendation for the Saddle Peak Mountains WSA. The entire acreage in this WSA is released for uses other than wilderness. Under this recommendation, future activities in the area will be controlled by moderate intensity management guidelines. This recommendation will be implemented in a manner which will use all practical means to avoid or minimize environmental impacts.

The Balanced Alternative is the environmentally preferable alternative as outlined in the CDCA Plan and further explained in the California Wilderness Study Overview.

The lack of high quality wilderness values, the value of known and potential mineral and energy deposits, potential for development of a utility corridor and increases in vehicle dependant recreation use were determined to be of greater significance than the area's value as wilderness. There are approximately 7 miles of routes of travel including primitive ways, washes and other unmaintained routes of access which will remain available for vehicular use.

Designation of this area as wilderness would not contribute any additional unique or distinct features to the National Wilderness Preservation System. Other WSAs in the California Desert that are recommended suitable offer a more extensive and diverse representation of desert wilderness values.

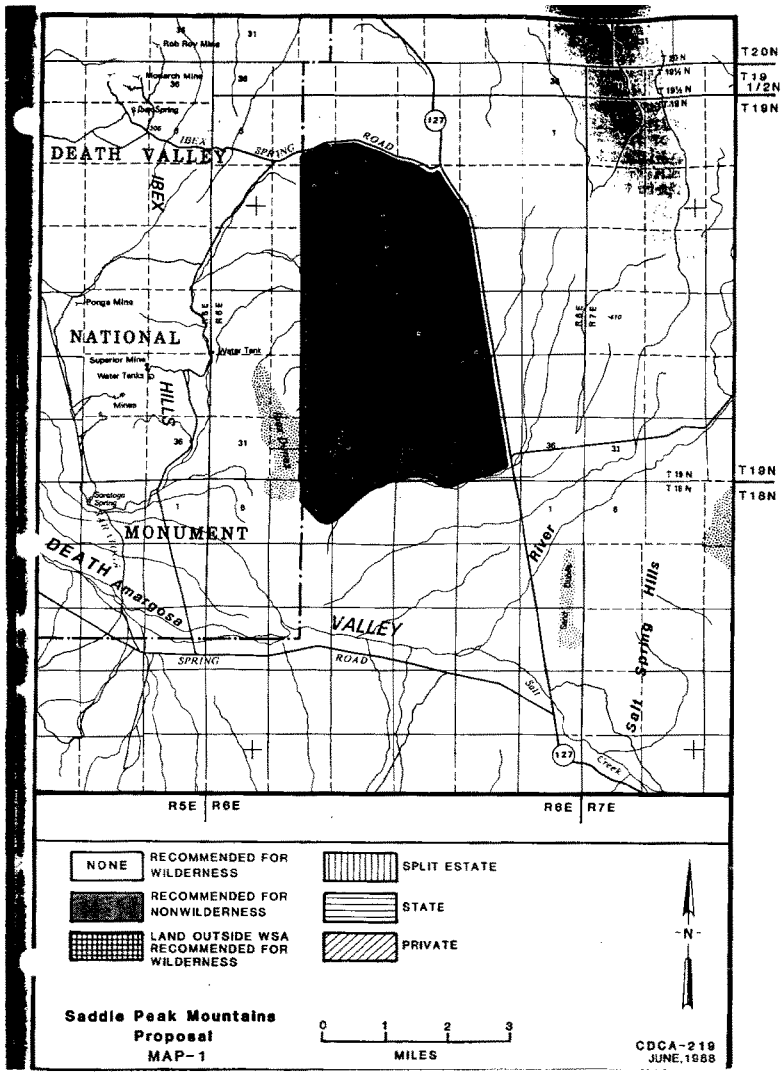
The WSA is adjacent to Death Valley National Monument's administratively endorsed wilderness. While designation of this WSA as wilderness would compliment the existing management of the Monument, the wilderness values within the Monument would not be adversely impacted by the nonwilderness recommendation.

Opportunities for solitude and primitive and unconfined types of recreation in the WSA are limited by the small, narrow size of the area. Active mining operations on the east boundary the Monument adjacent to the WSA tend to isolate the WSA from the wilderness values within the remainder of the Monument. The scenery is ordinary. The vegetative and wildlife resources within the WSA are common. There are no significant cultural resource values or Native American concerns.

The entire WSA has moderate potential for geothermal energy resources. Portions of the WSA have high potential for talc and moderate potentials for silver, gold, and copper. Past producing mines are located within the WSA. The evidence of surface disturbance still remains. There is one active operation involving mineral exploration within the WSA. There are 28 mining claims within the WSA on record with the BLM as of December, 1987.

Current recreation use is considered low. However, potentials for expansion of vehicle dependent opportunities are good given the limited but well defined internal access routes. Any additional routes created for mining exploration and development would also increase motorized vehicle recreation opportunities.

The WSA would be best managed and maintained under nonwilderness and moderate intensity management guidelines as prescribed in the CDCA Plan. Adjacent values in Death Valley National Monument would not be impacted and the mineral potential of the area could be fully realized.



Saddle Peak Mountains Proposal
MAP-1

TABLE 1 - Land Status and Acreage Summary of the Study Area

Within Wilderness Study Area		Acres
BLM	(surface and subsurface)	9,134
Split Estate	(BLM surface only)	0
Inholdings		
State		629
Private		0
Total		9,763

Within the Recommended Wilderness Boundary		Acres
BLM	(within WSA)	0
BLM	(outside WSA)	0
Split Estate	(within WSA)	0
Split Estate	(outside WSA)	0
Total BLM Land Recommended for Wilderness		0
Inholdings		
State		0
Private		0

Within the Area Not Recommended for Wilderness		Acres
BLM	(surface and subsurface)	9,134
Split Estate	(BLM surface only)	0
Total BLM Land Not Recommended for Wilderness		9,134

3. CRITERIA CONSIDERED IN DEVELOPING THE WILDERNESS RECOMMENDATIONS

A. Wilderness Characteristics

1. Naturalness: The area generally appears to have been affected primarily by natural forces. However, active mining claims and mines are found in both the northern and southern portions of the WSA and are substantially noticeable in the immediate area. Several routes provide access into the interior of the WSA and detract from natural values.

2. Solitude: Opportunities for solitude vary from poor to good. Within the canyons of the Saddle Peak Mountains, isolation is assured, yet on the bajada, solitude can be difficult to obtain due to a lack of vegetation and topographic screening. In the foothills of the Saddle Peak Hills themselves, and on the bajada, State Route 127 is clearly visible and the traffic noise has a limiting affect on solitude.

   This WSA is periodically overflown by military aircraft as part of the national defense mission taking place in approved military operating areas and flight corridors. The visual intrusions and associated noise create periodic temporary effects on solitude which are deemed necessary and acceptable as a part of the defense reparedness of the nation.

3. Primitive and Unconfined Recreation: The area's small size limits opportunities for primitive and unconfined types of recreation. Active mining operations within the adjacent Death Valley National Monument tend to have a confining effect on freedom of movement and primitive recreational opportunities.

4. Special Features: There are no special features. The landforms, ecological diversity, and geologic features are not unusual, they are typical of features common throughout the surrounding deserts and mountains.

B. Diversity in the National Wilderness Preservation System

1. Assessing the diversity of natural systems and features as represented by ecosystems: This WSA contains 9,134 acres of the American Desert/Creosote Bush ecosystem. The Saddle Peak Mountains WSA would not increase the diversity of the types of ecosystems represented in the National Wilderness Preservation System.

Table 2 - Ecosystem Representation

Bailey-Kuchler Classification Domain/Province/PNV	NWPS Areas areas	NWPS Areas acres	Other BLM Studies areas	Other BLM Studies acres
	NATIONWIDE			
American Desert/Creosote Bush	1	343,753	117	4,258,775
	CALIFORNIA			
American Desert/Creosote Bush	1	343,753	88	3,644,971

2. Expanding the opportunities for solitude or primitive recreation within a day's driving time (five hours) of major population centers: The WSA is within a five-hour drive of five major population centers. Table 1 summarizes the number and acreage of designated areas and other BLM study areas within a five-hour drive of the population centers.

Table 3
Wilderness Opportunities for Residents
of Major Population Centers

Population Centers	NWPS areas areas	NWPS areas acres	Other BLM Studies areas	Other BLM Studies acres
California				
Anaheim-Santa Ana	25	2,823,534	153	5,703,616
Bakersfield	32	4,071,358	128	3,998,548
Los Angeles-Long Beach	27	2,876,234	135	4,958,751
Riverside-San Bernardino	22	2,031,054	205	7,658,649
Nevada				
Las Vegas	46	3,507,293	311	11,186,463

3. Balancing the geographic distribution of wilderness areas: The WSA is within 50 air miles of seven BLM WSAs recommended for wilderness designation. The closest designated wilderness area is Dome Land Wilderness, administered by Sequoia National Forest, 100 miles west.

C. Manageability

The Saddle Peak Mountains WSA is manageable as wilderness. However, the additional effort that would be necessary to manage the area for wilderness is not justified given the low quality wilderness values that are present.

The area has known and potential mineral values. Active mineral exploration continues in the WSA. Full-scale development of any valid claims has a high potential to impact significant portions of the area. Access requirements for such developments would result in similar impacts.

Development and any necessary access to the private inholding would desecrate the entire WSA due to its central location within the WSA.

Military overflights in this WSA must be considered to maintain the integrity of the existing and future national defense mission as well as the wilderness resource.

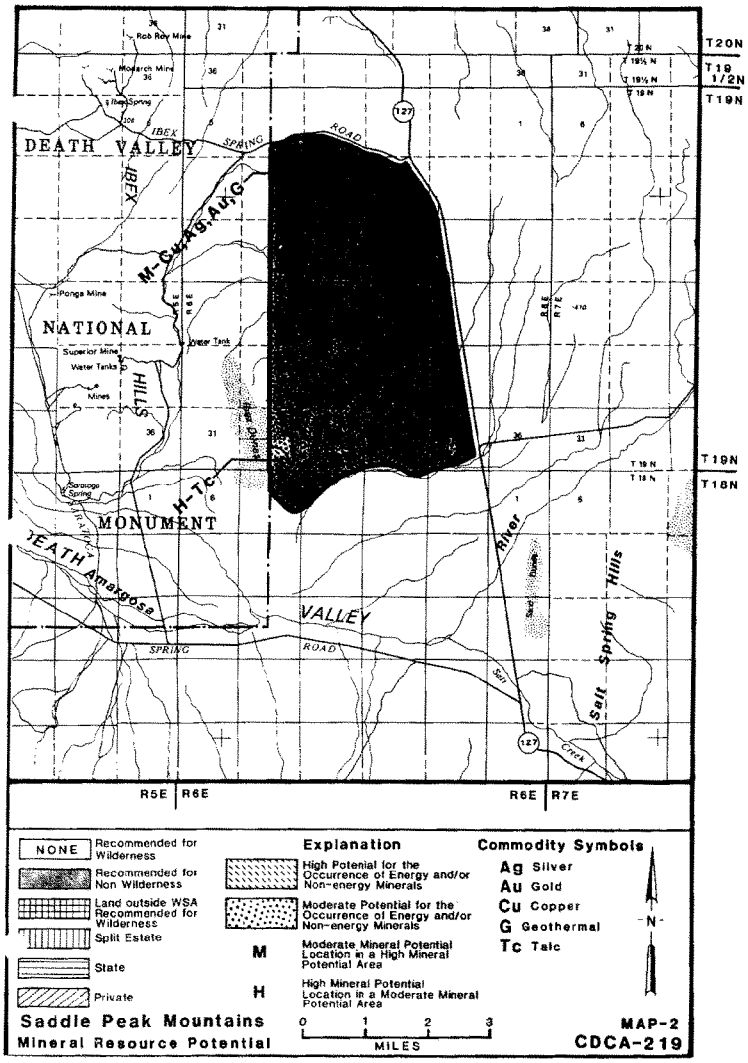
D. Energy and Mineral Resource Values

1. Summary of Information Known at the Time of the Preliminary Suitability Recommendation: The Saddle Peak Mountains WSA (CDCA-219) is located in the BLM Dumont Dunes Geology-Energy-Minerals (G-E-M) Resource Area (GRA). BLM G-E-M data in the wilderness portion of the Desert Plan EIS (Volume B, Appendix III) indicated in 1980 that this WSA contained two former talc producers and several mineral commodities of interest. Potential for the occurrence of copper, lead, silver, and talc was rated as "very high" in the GRA file. The area was classified as prospectively valuable for geothermal energy by the U.S. Geological Survey (USGS) in 1978. The BLM GRA report classified a zone in the southwestern part of the WSA as having high potential for the occurrence of talc based on two past producers (20,700 tons total before 1968) and a favorable geologic environment cased on Precambrian dolomite rock altered by intruding diabase dikes. The GRA classifies the WSA as having low potential for the occurrence of metallic minerals based on no known occurrences, but a favorable geologic environment which is very similar to the area around the Paddy's Pride lead-silver mine. At this mine, carbonate rocks of the Noonday formation were altered with lead and silver minerals.

   The potential for the occurrence of sodium in the southern part of the WSA was classified as moderate on the GRA overlays; however, the draft report stated that, "no exploration or development has indicated any mineral resource of this type." The potential for the occurrence of sodium is therefore "low", based on the USGS classification as prospectively valuable. The GRA classified the potential for the occurrence of geothermal resources in WSA as moderate based on the 1978 USGS "potential geothermal resource area" classification. Map 14 of the 1980 CDCA Plan has identified the area next to Highway 127 as having a favorable geologic environment (stream alluvial deposits) for sand and gravel.

   Under the BLM classification system, the area described as having a favorable environment for sand and gravel resources in the GRA file is classified as having a low potential for occurrence based on lack of interest in the deposit.

2. Summary of significant new mineral resource data collected since the preliminary suitability recommendation which should be onsidered in the final recommendation: No USGS or U.S. Bureau of Mines mineral survey was completed for this WSA because it is recommended nonsuitable for wilderness designation. In 1981, a plan of operations was received for access and drilling on the Good Enough #1 and #2 lode claims in the northwest part of the WSA. An area of mineralized rock with two fracture zones was explored by an adit on the same claims prior to the 1981 plan of operations. The claimant's assay reports indicate 5.6% copper, 30.2 ounces per ton


T20N
T19 1/2N
T19N
T19N
T18N
R5E
R6E
R6E
R7E
DEATH VALLEY
NATIONAL
MONUMENT
IBEX
SPRING
ROAD
IBEX
HILLS
M-Cu,Ag,Au,G
H-Tc
Amargosa
River
VALLEY
SPRING
ROAD
Salt Spring Hills
Salt Creek
127
Rob Roy Mine
Monarch Mine
Ponga Mine
Superior Mine
Water Tanks
Mines
Water Tank
Saratoga Spring
NONE
Recommended for Wilderness
Recommended for Non Wilderness
Land outside WSA Recommended for Wilderness
Split Estate
State
Private
Explanation
High Potential for the Occurrence of Energy and/or Non-energy Minerals
Moderate Potential for the Occurrence of Energy and/or Non-energy Minerals
M
Moderate Mineral Potential Location in a High Mineral Potential Area
H
High Mineral Potential Location in a Moderate Mineral Potential Area
Commodity Symbols
Ag Silver
Au Gold
Cu Copper
G Geothermal
Tc Talc
N
0 1 2 3
MILES
Saddle Peak Mountains
Mineral Resource Potential
MAP-2
CDCA-219

silver, and 0.012 ounces per ton of gold. This area is classified under the BLM classification system as having a moderate potential for the occurrence of these resources.

Although there are presently no producing mines in the WSA, exploration interest remains high as indicated by the activity mentioned above and the unpatented mining claims which are summarized in the following table taken from BLM records dated December, 1987.

Table 4 - Mining Claims

TYPE	NUMBER			ACRES		
MINING CLAIM	SUITABLE	NONSUIT.	TOTAL	SUITABLE	NONSUIT.	TOTAL
Lode	N/A	3	3	N/A	60	60
Placer	N/A	25	25	N/A	1,000	1,000
Mill Site	N/A	0	0	N/A	0	0
Total	N/A	28	28	N/A	1,060	1,060

E. Summary of Environmental Consequences of the Proposed Action

1. Impact on Wilderness Values: Noise, surface disturbance and access requirements for mineral and energy exploration and development will result in moderate adverse impacts on naturalness, solitude, and primitive and unconfined types of recreation. The entire WSA has identified energy and mineral potentials. Increased OHV opportunities and subsequent use, as a result of new access routes for exploration and development, will also cause adverse impacts to wilderness values.

2. Impact on administratively endorsed wilderness in death valley national monument: There will be no adverse impacts to management of the adjacent Monument. Although the administratively endorsed wilderness would be enhanced by designation of WSA 219, values in the Monument have sufficient quality and depth to stand on their own.

3. Impact on motorized vehicle recreation opportunities: Motorized vehicle recreation use opportunities will continue to be available to the OHV enthusiast. These use levels are expected to increase over time.

4. Impact on locateable and leasable mineral exploration and development: Opportunities for future exploration and development would continue to be available subject to applicable laws and regulations and the guidelines identified in the CDCA Plan.

5. Impact on western regional corridor study proposal: The study's proposed corridor would not be affected by the non-suitable recommendation. Analysis of the corridor proposal would be handled under guidelines established by the CDCA Plan.

F. Local Social and Economic Considerations

No local social or economic considerations were identified in the Final CDCA Plan and EIS. Therefore, no further discussion of this topic will occur in this document.

G. Summary of WSA - Specific Public Comments

Public comments were solicited throughout all phases in the development of the CDCA Plan, finalized in 1980. Issues raised by the public during the Inventory and Study Phase were taken into account during development of the Draft Plan Alternatives and Proposed Plan. The following is a summary of all comments received. Inaccuracies that are known to exist are noted in parentheses.

1. Inventory Phase: Most comments received supported inclusion of the area.

2. Study Phase: Six comments were received on this WSA. Four favored and two opposed wilderness designation. Proponents stated that contiguity to administratively endorsed wilderness in Death Valley National Monument enhanced manageability of the unit. They mentioned the scenic quality of the colorful, relatively barren hills and the opportunities for primitive recreation such as hiking and photography.

   The two letters opposing wilderness were concerned over mining scars, roads, and the geothermal potential of the area.

   Two comments were received in response to the Public Input Workbook (3/15/79). The National Park Service at Death Valley National Monument supported wilderness designation for this WSA because of its contiguity with the Monument and because it would protect the integrity of, and prevent unauthorized access to, Ibex Dunes within the Monument. One individual opposed wilderness because of roads leading to mines.

3. Draft Plan Alternatives: Few public comments specific to this WSA were received in response to the Draft Plan Alternatives. However, this WSA was one of those opposed by the National Outdoor Coalition, a coalition of mining, rockhounding, and off-road vehicle groups. A large number of club members sent in printed forms supporting a multiple use classification of "moderate use" for the WSA which was in agreement with the recommendation of both the Use Alternative and the Balanced Alternative. Conservation groups either supported the Protection Alternative, which recommended "limited use" for the unit or requested that the area be designated wilderness. Some additional comments mentioned geothermal and oil and gas potential and expressed a preference for the Use Alternative.

4. Proposed Plan: There were few specific comments on this WSA in response to the Proposed Plan. Conservationists were displeased with what they considered to be an insufficient amount of wilderness recommended by the Proposed Plan, but no specific comments were made about this particular WSA. The Plan recommended "moderate use" for this area.

No comments were received from local governments.

SIERRA CLUB

California/Nevada RCC Mining Committee
P.O. Drawer W, Independence, CA 93526
Stan Haye, Chair. (619) 878-2411, x2306

7/23/93

Dear Supt. Martin:

We would like to formally thank you and your excellent staff for the actions you have taken with regard to the Rainbow Talc Mine and in beginning the administration of the unpatented mining claims in the Park additions in accordance with the Mining in the Parks Act.

We regard these actions as very important to protect the resources entrusted to you, and we are very supportive of them. Please let us know if we can provide any assistance or support in furtherance of your actions.

Sincerely,

Stan Haye

Stan Haye, Chair

DATE RECEIVED: 7-27-95

ROUTE

(1) SUPT.	___ SCOTTY'S
___ PIO	___ LIBRARY
___ ADMIN.	___ NHA
___ MAINT.	___ MANZANAR
___ INTERP.	(3) CENTRAL FILES
___ RANGERS	___ ___
(2) RESOURCES	___ ___

United States Department of the Interior

NATIONAL PARK SERVICE
Death Valley National Park
Death Valley, California 92328

IN REPLY REFER TO:

L3023

January 22, 1997

Mr. A. G. Jackson
31171 Monterey
South Laguna, CA 92677

Dear Mr. Jackson:

This will acknowledge receipt of your correspondence of January 14, 1997 inquiring about the status of your mining claims, the Death Valley BBJ 1-6, which are located within Death Valley National Park. As we have stated, subsequent to the completion of the validity examination, the National Park Service will proceed with the completion of an Environmental Assessment of the proposed plan of operations as required by law. As we have stated in our frequent communications with your daughter, Candice Burrows, and your partners Mr. and Mrs. Baumunk, we have not been idle regarding your plan of operations. Quite conversely, we have devoted a considerable amount of time in our deliberations concerning the plan of operations. During the week of January 13th staff meetings were held in the Park Service's San Francisco offices to discuss this issue. The outcome of those meetings was the decision to complete the Environmental Assessment indicating acquisition of your mineral rights as the Park Service's preferred alternative.

While the completion of the Environmental Assessment will take several weeks, we wish to take this opportunity to inform you of our decision. The Park Service will be actively seeking funding sources with which to accomplish the preferred alternative to be stated as the conclusion of the environmental assessment process. As information becomes available on this subject we will keep you informed of our further progress.

Sincerely,

Richard H. Martin,
Superintendent

A.G. Jackson
31171 Monterey
South Laguna, CA 92677
714-499-2765

January 24, 1997

Mr. Richard Martin
Superintendent
Death Valley National Park
PO Box 579
Death Valley, CA 92329

RE: Rainbow & Caliente Mines
BBJ Claims 1-6
BLM #CAMC52822-52827

Dear Mr. Martin:

As the claim holders of the BBJ 1-6 mining claims we are somewhat confused and would like some clarification from your offices on the proposed procedure in obtaining our permit to resume mining.

We understand that your offices have had considerable discussion with reference to the possibility of purchasing the mineral rights of our 6 claims which are part of the Rainbow and Caliente Mines located within the proposed boundaries of the Death Valley National Park. In order for us to evaluate our options, we will need to know the purchase price you are proposing. Although this is of interest to us, at this time we would like to continue to pursue obtaining our permit to resume mining.

As we are at a disadvantage in knowing the correct procedure for obtaining our permits, we would like for your offices to forward a copy of the legal process, so that we can be assured that requirements for our permit are being expedited in a timely manner, and that we are not remiss in overlooking any critical item necessary to facilitate our goal. We have been involved in this process for over four years, which in itself has caused considerable hardship to our family income, we do not wish to have further delays which may add to this hardship.

In our last correspondence to you, we requested a status report, as we are anticipating the Environmental Assessment be complete in early February, which will be immediately followed by the 30 day public review. Knowing that your preferred alternative is to purchase our mineral rights, we would like to request that you keep the permitting process separate from the possible purchase of our claims.

We appreciate your prompt attention to our request and look forward to receiving the legal guidelines which we can follow to ensure that we are on time with our permit process.

Sincerely,

A.G. Jackson

A.G. Jackson

CC: Mel Essington
E.T. Baumunk

United States Department of the Interior

NATIONAL PARK SERVICE
Death Valley National Park
Death Valley, California 92328

IN REPLY REFER TO:
L3023

February 11, 1997

Mr. A.G. Jackson
31171 Monterey St.
South Laguna, CA 92677

Reference: Death Valley BBJ 1 - 6 Mining Claims

Dear Mr. Jackson:

This will acknowledge receipt of your correspondence of 1/24/97 and provide our reply to the questions you posed therein. We regret any confusion which you may perceive relating to the administration of your mining claims and proposed mining plan of operations. In your letter, you questioned what purchase price might be proposed for your mineral interests. It is correct the National Park Service will include acquisition of the mineral rights arising from your mining claims as one of several alternatives to be given consideration in our environmental assessment of your plan of operations. However, until such time as the environmental assessment has been completed and therein mineral rights acquisition has been designated as the preferred alternative, the National Park Service would be unable to proceed further with negotiations related to that scenario.

We wish to advise you, at this time, that because of the precedent setting nature of your proposed plan of operations (proposed mining operations within NPS wilderness) a possible outcome of the environmental assessment (EA) could be the recommendation that an environmental impact statement (EIS) may be needed to fully address the implications of the mining plan. We do not wish to unnecessarily encourage your expectations of either entering purchase negotiations nor to imply that an EIS may be required. At this time our staff is attempting to finalize the environmental assessment while laboring under an enormous work load. We will all need to await the completion of the EA.

We realize the time needed to complete the EA seems excessive to you, but please realize that our staff is working diligently on it in consideration of their work loads. Numerous staff specialists are involved in the completion of the EA and scheduling of their limited time is frequently difficult. By way of further explanation, we recently needed to acquire a Solicitor's opinion for clarification of some issues involved in the preparation of the

EA before we could proceed. Additionally, our mining engineer has been called upon to address an emergency situation arising from a collapsing tunnel associated with our potable water collection system. While these types of delays can be aggravating they are, as we are sure you are aware, unavoidable.

In response to your request concerning administrative procedure we are enclosing a copy of the NPS regulations governing mining claims. As you are aware we are now in the final stages of completing an Environmental Assessment of your proposed mining plan of operations. There is little we can do at this stage but to allow the staff sufficient time to complete that document. Once it has been completed management can render its decision in this matter. We trust you will bear with us in the time necessary to complete this requirement of law.

Sincerely,

Richard H. Martin,
Superintendent

Enclosure

Wilderness Watch

P.O. Box 9175
Missoula, Montana 59807
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Email: WILDWATCH@ism.net
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TESTIMONY OF GEORGE NICKAS
Policy Coordinator of WILDERNESS WATCH
on the IMPLEMENTATION OF THE WILDERNESS ACT (P.L. 88-577) by the FOREST SERVICE AND BUREAU OF LAND MANAGEMENT
before the
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH and
SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS
of the
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
April 15, 1997

Ms. Chairman and Mr. Chairman, members of the subcommittee, I appreciate the opportunity to provide the views of Wilderness Watch on the management of our nation's priceless Wilderness heritage.

Wilderness Watch is a national organization dedicated to the preservation and wise stewardship of lands within the National Wilderness Preservation System and the Wild and Scenic Rivers System. Our headquarters are in Missoula, Montana and we have eight chapters around the country. We fill a unique niche in the conservation community in that our focus is strictly on the stewardship of those lands designated as part of the wilderness or wild and scenic river systems. We consider ourselves "strict constructionists" of the Wilderness Act. We do not seek to limit any rights explicitly granted in the law, nor do we attempt to find rights or privileges that don't exist in the legislation. Put another way, we believe the Wilderness Act means what it says.

Wilderness Watch sits in a unique position to address the management of Wilderness for another reason. Our staff and board of directors include individuals who were directly involved in the legislative effort to pass the Wilderness Act, and who have been involved in the administration of Wilderness for the 32-plus years since passage of the Act. Our president, Mr. Bill Worf, was the first head of Wilderness management in the U.S. Forest Service. Bill was a member of the task force that drafted the regulations in 1964 that implemented the Wilderness Act, and he directed the development of the Forest Service Manual policy for day to day management of the Wilderness on the national forests. The regulations and policy remain largely as they were written, and that is as it should be since the Wilderness Act is remarkably clear in its intent.

The Wilderness System is in serious trouble. Wilderness ecosystems are being dramatically altered by the introduction of exotic plant and animal species. Alpine meadows are overgrazed by domestic livestock and packstock. Riparian corridors are damaged by livestock and recreation use. Hundreds of choice parcels are being "privatized" through an illegal system of campsite reservations and permanent facilities allowed for commercial services. Overflights and airplane landings compromise solitude, even in the most remote areas. Fire suppression, and now, "management-ignited" fires compromise natural ecological functions. Trail systems suffer from inadequate planning, construction and maintenance, and campsite scars proliferate in many areas. Illegal activities are being conducted by the public and agency personnel. These are my words, but I am certainly not the first to utter the message. Nine years ago, the House Subcommittee on National Parks and Public Lands held the first Congressional

Oversight Hearing on Forest Service management of Wilderness and the conclusion expressed by the Chairman then was basically the same.

Wilderness management isn't easy, and it is made even tougher when lawmakers interfere with the ability of managers to enforce the restrictions clearly called for in the Act. As the pressures from an "increasing population accompanied by growing mechanization" come to bear more directly on the wilderness system, the need for strong leadership in the agencies and unequivocal support from Congress are paramount.

There is little doubt that funding is inadequate to ensure the long term health and proper stewardship of the wilderness system. It would be wrong, however, to assume that more money alone will solve most problems. What is needed most of all is a commitment from the management agencies to adhere to the letter of the law and to insist that wilderness users do likewise. There must be a commitment at the top levels of the Forest Service and BLM to halt the deterioration of wilderness areas, and to provide unwavering support to those field managers who are making the hard decisions to protect these irreplaceable national treasures.

Exotic species introductions compromise the biological integrity of Wilderness ecosystems. Non-native vegetation is encroaching into many wildernesses. "Weeds" proliferate along trails, at trailheads, and at other human-impact sites. The agencies have undertaken limited efforts to control the spread of these plants, but the efforts are spotty, irregular and generally rely upon the use of herbicides, a "cure" that is the antithesis of wilderness.

More troubling is the deliberate introduction of exotic wildlife. Stocking non-native fish is a common management practice that significantly affects native aquatic biota and has virtually eliminated native fishes from many Wildernesses. The evidence implicating fish stocking for damaging native biota is abundantly clear. In the High Sierra's, for example, stocking fish in naturally fishless waters has pushed the mountain yellow-legged frog to near-extinction. Throughout the Rocky Mountains, including some of our finest wildernesses, non-native fish stocking has eliminated all but a few remnant populations of native cutthroat trout. Non-native game animals and birds have also been released in many wildernesses. These introductions are the direct result of a misplaced emphasis on Wilderness as little more than primitive recreation areas. But they fly in the face of the definition of Wilderness contained in Section 2(c) of the Wilderness Act: "...an area where the earth and its community of life are untrammeled by man...retaining its primeval character and influence...which is protected and managed so as to preserve its natural conditions...."

Commercial interests are being granted defacto private "rights" through campsite reservations, and are allowed to routinely violate the Wilderness Act's prohibition on permanent structures and installations. In the Frank Church-River or No Return Wilderness, outfitters were granted reserved camp sites, allowed to maintain caches of large items and to construct permanent structures (corrals, tent frames and floors, water supply systems, etc.). A federal court found this policy to clearly violate the Wilderness Act. Despite the court ruling, the Forest Service continues to sanction this practice in a number of other Wildernesses.

Vocal special interests are allowed to dictate policy that circumvents the spirit and letter of the Wilderness Act. An example is the controversy surrounding the use of permanent structures and installations for rock climbing in Wilderness. Despite two legal opinions from its office of general council (OGC) stating that the installation of fixed anchors violates the Wilderness Act, the Forest Service allows this practice to continue. BLM is now proposing new regulations that would allow these permanent structures to be placed in wildernesses under its jurisdiction, even though they have not been allowed in wilderness study areas because, as the agency admits, they impair wilderness suitability. Some rock climbers and many agency personnel argue that since the "climbing" community has supported Wilderness designation, it deserves special treatment in wilderness management, and to deny this treatment could jeopardize support for future wilderness designations. We disagree, but more importantly the use of fixed anchors violates the Wilderness Act. All wilderness users must be treated equally, and must abide by the same rules.

Snowmobiles have become a major source of Wilderness violations, and a major agency effort will be needed to curtail this use. It used to be that the remoteness and rugged character of most wildernesses protected them from snowmobile trespass. But as groomed trails push closer to wilderness boundaries and snowmobiles get more and more powerful, wildernesses grow more vulnerable to vehicle trespass. The statistics are staggering: It is estimated there are thousands of violations in the Boundary Waters Canoe Area Wilderness alone each year. In the winter of 1996, there were 472 violations confirmed in the Absaroka-Beartooth Wilderness, though only 7 perpetrators were caught and cited. Significant trespass problems exist in other wildernesses in Colorado, Oregon, Montana, Utah, Wyoming and California. Keep in mind the number of violations confirmed is likely to be only a small part of the total number of trespasses. While some violations are undoubtedly accidental, the snowmobile user bears the responsibility for knowing where he/she is at all times and where it is legal to ride.

Even with a strong law enforcement effort, and to date there hasn't been one, it is extremely difficult to catch most violators. Severe penalties are a necessary deterrent when the risk of getting caught is low. Wilderness Watch applauds those wilderness managers who have the courage and conviction to prosecute those who willfully violate the law! We also support and are participating in efforts to promote responsible riding and winter safety messages. We're convinced, however, that all the education in the world will do little to solve the problem without a strong law enforcement effort.

Aircraft overflights and the landing of aircraft in Wilderness significantly compromises opportunities for solitude and causes unnecessary wildlife harassment in many Wildernesses. When the Federal Aviation Administration released its plan to reduce aircraft overflights in Grand Canyon National Park, it achieved the reduction in part by redirecting the flights over the Saddle Mountain Wilderness. To its credit, the Forest Service has stated its strong objection to this plan and to overflights of wildernesses adjacent to Rocky Mountain National Park.

The Wilderness Act states that the use of aircraft where the use has "already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable." In some wildernesses, the landing of aircraft has increased to the point that wilderness values are non-existent in some places and at some times of year. Yet, there is very little regulation or monitoring of this use, nor is there any effort to assess the impacts of this use on wilderness visitors or wildlife.

New technology promises to steal the "wild" from the Wilderness. Much of the technology used in wilderness today could not have been anticipated by the framers of the Wilderness Act, though they clearly intended to safeguard wilderness from growing mechanization and technology. The use of cellular phones, global positioning systems, laptops and other icons of our technological age is running amok in wilderness. Senator Hubert Humphrey, chief sponsor of the Wilderness Act, spoke to the need to limit this sort of equipment when he described wilderness areas as places "...for people to make their way into...without all of the so-called advances of modernization and technology." Roderick Nash, author of Wilderness and the American Mind, recently wrote, "Wilderness requires restraint: ...the potential of communication's technology to impact adversely on wilderness once again requires the exercise of restraint. Motor vehicles and airplanes have been outlawed, and it may be time to extend the protective net." The regulations prohibiting the use of motorized equipment should apply to all machines powered by non-living power sources except for relatively benign devices like cameras and flashlights, which have been historically allowed by regulation.

A recent column in the Wall Street Journal (3/20/97), written by Tom Vines, a member of the Carbon County (MT) Sheriff's Search and Rescue Team, put the issue in another perspective. The author notes that, traditionally, wilderness users understood and accepted the risks of traveling in wilderness. Indeed, they knew that a wilderness experience is dependent on the knowledge that you are at the mercy of nature and your own backcountry skills. "But", the author stated, "that spirit seems foreign to a new breed of 'outdoorsmen' who embrace the appearance but not the substance of adventure." He went on to make the point that despite the argument that these

electronic gadgets might provide a margin of safety, they more often needlessly strain search and rescue systems that are already stretched to the limit.

Domestic livestock grazing is damaging many Wildernesses. The Wilderness Act allows for continued grazing where it was established prior to designation. The Act also charges wilderness managers with administering each area so as to preserve its wilderness character. Unfortunately, many managers perceive the allowance for grazing as limiting their authority and mandate to protect the Wilderness. As a result, some wildernesses are suffering unbelievable damage from inappropriate, and even illegal livestock grazing practices. Alpine meadows and riparian areas, have been the most heavily damaged.

A case in point: On the Diamond Bar allotment in the Aldo Leopold and Gila Wildernesses, a former permittee has been grazing 900 cattle (triple the number Forest Service range studies indicate are sustainable) in trespass for nearly 16 months, even though a judge ordered their removal last December. The Forest Service has taken no direct action to remove the trespassing cows. The results have obviously been devastating to the range and wilderness resource. Had it not been for appeals and litigation by Wilderness Watch and other conservation groups, the Forest Service was set to construct more than a dozen stock tanks, several miles of fence, and other range "improvements" within the wilderness in an ill-conceived effort to maintain unsustainable livestock grazing levels.

Administrative use of motorized equipment and permanent structures is becoming routine. A 1989 GAO study found that some administrative sites and other structures appear to exceed what is necessary for administering the wilderness. Recent Forest Service reports indicate that the number of times motorized equipment is used by agency personnel in wilderness each year numbers in the hundreds. Is it any wonder that some wilderness users have a hard time understanding why certain actions aren't allowed by the public, when those very actions are routinely done by agency managers? Wilderness managers must be encouraged to set an example for other users to follow.

Wilderness use is increasing, while the number of wilderness rangers declines. Recreation use has increased continuously since passage of the Wilderness Act. This increase isn't surprising given that the system has grown from 9 million acres in 1964 to 103 million acres, today. Recent studies show, however, that visitor use per acre is as high as it has ever been. In the 54 original national forest Wildernesses, visitation in 1994 was 86 percent higher than it was in 1965. Clearly, Americans love their Wilderness System and will continue to seek out its benefits in record numbers.

At the same time record numbers of users are entering Wilderness, the management agencies seem to be downsizing their seasonal wilderness ranger staffs. These wilderness rangers are the backbone of the wilderness protection effort. The downsizing can't be explained simply by pointing to decreasing budgets. It's true that the wilderness budget for the Forest Service, for example, has decreased for each of the past two years. Looking at a longer time frame, however, indicates that the amount of money spent on wilderness management doubled (after inflation) between 1987 and 1996. Last year, Wilderness Watch had to raise $12,000 on a 50/50 cost-share basis to put full time wilderness rangers in the Mission Mountains Wilderness, even though the Flathead National Forest, under whose administration the Mission Mountains and a portion of the Bob Marshall Wilderness Complex lie, was allocated $857,000 for wilderness management. Where did all the money go?

The National Wilderness Preservation System is the largest and finest land preservation system of its kind in the world. Other nations look to our's as guide for developing their own wilderness preservation systems. Americans are rightfully proud of their wilderness heritage and the commitment they have made to secure it for future generations. Congress must see to it that the wilderness system is given the attention it deserves from land managers. And Congress must also see to it that those managers who work to preserve the sanctity of wilderness and uphold the strict guidance in the Wilderness Act get the support they need.

TESTIMONY OF DARRELL KNUFFKE
DIRECTOR, WESTERN OUTREACH, THE WILDERNESS SOCIETY
BEFORE THE HOUSE RESOURCES COMMITTEE
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH

APRIL 15, 1997

Good morning Chairman Hansen and Chairman Chenoweth. My name is Darrell Knuffke, western outreach director for The Wilderness Society. I am pleased to be here today on behalf of the more than 320,000 members of my organization.

We are here today to talk about wilderness and how we manage these special places. That discussion needs a context, Mr. Chairman, and the context must be the remarkable, and resoundingly American, National Wilderness Preservation System. Briefly, I want to make three major points:

1. The National Wilderness Preservation System is a national treasure, protecting some of the most rugged and beautiful landscapes and biological systems on the planet.

2. Americans are drawn to our wilderness areas, many of which are fragile in nature and can be damaged if not managed sensibly and protected from motorized use and other threats.

3. Protection of our wilderness resources "for the American people of present and future generations" will require strong and consistent wilderness management and law enforcement, applied fairly and equally to all persons, regardless of rank or status.

Fifty years ago this year, Aldo Leopold was completing work on his "Sand County Almanac," a work that has shaped a half century of conservation thought in this country. It was "Sand County Almanac" that gave us what we have come to call the land ethic. In one essay, entitled, "The Ecological Conscience," Leopold said this: "A thing is right only when it tends to preserve the integrity, stability and beauty of the community and the community includes the soil, waters, fauna and flora as well as people." The highest expression of that ideal is the National Wilderness Preservation System.

Today, we have more than 600 wilderness areas in 44 states covering more than 100 million acres of national land--in our forests, national parks, wildlife refuges, and the Bureau of Land Management's national heritage lands. Still, it is worth noting, our wilderness system accounts for no more than two percent of the total land area in the lower 48 states. It includes not just some of the most rugged and beautiful landscapes on the planet but all too often serves as a last refuge of biological diversity. And while the dollar value of wilderness defies easy reckoning, a number of studies tell us that its presence is a contributor to the economic vitality of places where it remains.

For all its apparent size, our wild land resource is a fragile one. The threats to it are many and varied and our own love of wilderness and eagerness to use it are near the top of the list. Wilderness popularity grows. And by popularity here I mean both the number of Americans who strongly support the idea of wilderness and those who choose to use it.

I think it is a matter worth noting that we are here today at least partly in response to events that involved people going into their wilderness--perhaps inadvertently and ill-equipped, perhaps ill-advised, perhaps even illegally. But make no mistake, they were drawn to the wilderness. Millions of Americans are.

Unfortunately, there are people who are drawn into wilderness for very different reasons--mainly to violate its safeguards. I live in far northern Minnesota, not far from the Boundary Waters Canoe Wilderness Area, the nation's most popular wilderness. There, the Forest Service reckons illegal snowmobile intrusions in the thousands annually. Seeing if you can get your sled into the Boundary Waters and out without getting caught is something of an unofficial sport and is certainly a hot topic in local gathering spots.

These two pressures alone--more Americans wanting to use wilderness as it was meant to be used, a minority who disdain it and are willing to violate it--argue that it matters and matters greatly how we care for wilderness, use it, manage it.

I would reach back for a moment, Mr. Chairman, and touch again on Aldo Leopold's essay, specifically his very clear inclusion of the notion that his ecological community includes not just the soil, the water, the flora and the fauna, but for people too. Wilderness is such a community and wilderness is about life and for people.

It is also true that some who do not love wilderness--think we have too much set aside and devoutly oppose adding to it--argue that wilderness is somehow "anti-people." The Congress certainly didn't think so and neither do we. When the Congress passed the Wilderness Act of 1964, it explained its decision in these words: "...to secure for the American people of present and future generations the benefits of an enduring resource of wilderness."

Wilderness IS for people--for us as an idea, for us to embrace, for us to use. But wilderness is not first and not only for direct human use. And when we enter it we must do so on its terms, not ours, and in ways that respect and protect two things very specifically: the other values of wilderness that are intrinsic, less human-centered; and the opportunity of every wilderness visitor to find the essential wilderness that brought him there.

At the threshold, then, wilderness is a place without motors--deliberately and specifically without motors. But not slavishly without motors, Mr. Chairman, not insanely and insensitively without motors. When human health and safety are at issue, that ideal must stand aside. And it does. There is, in our view, sufficient flexibility in the Wilderness Act itself to allow this, sufficient flexibility in the agencies' regulations to implement it.

The decision to allow motor use in wilderness in these narrow circumstances will finally come down to an exercise in discretion by the humans closest to the situation and that is precisely where it should lodge. Because federal land managers are human, and fallible, not all of us will agree with every decision they make. We owe them some support.

In our view, there is no such latitude available to land managers--or at least shouldn't be--when it comes to defending wilderness against motorized intrusions by private citizens. Those issues are absolutely clear cut, in our mind, and should be. When it comes to defending wilderness, there is only one line we have any hope of defending: that is the line between no motors and one.

Consider the challenge facing wilderness managers. By definition, the places they try to protect for us are often big, mostly rugged, often remote. Access points are many; in winter,

practically limitless. Land managers are too few, too far between, with too much to do, and often have too little money to do the best job possible. They are hopelessly outmatched in any effort to protect wilderness against the machines of those who are either careless about wilderness boundaries plainly antipathetic to them.

Within this framework, there is room here for little tolerance; some would say none at all. And it matters little, either, whether the intrusion is deliberate or inadvertent. It is the proper business of the courts to weigh such gradations; it is the province of wilderness managers to keep the wilderness safe from motors unless life and safety are at issue.

We may not say that we didn't know where the wilderness boundary was after motoring across it, any more than we may say to a looming traffic cop that we didn't know what the speed limit was and hope to avoid a speeding ticket. It is everyone's responsibility to know the speed limit and it is every American's duty to help maintain the integrity of designated wilderness. The first step in that duty is knowing where it is.

A woman in the San Luis Valley of southwestern Colorado, near the San Juan Wilderness, who is a snowmobiler and member of a local snowmobile club, said it pretty well. "As a snowmobiler, you should not be out there if you do not know the rules and regulations. Ignorance of the law is not an excuse. You should know the boundaries, you should know your limitations and you should know your machine's limitations."

That speaks to inadvertence--or at least to the use of ignorance as a defense. Defiance of the rules is another, and more serious, business. And if ignorance of wilderness boundaries is entitled to little discretion, defiance is entitled to none. Not everyone agrees with every law on the books. But once a law is in place, it is the duty and responsibility of every American to adhere to it, to demand fair and equal enforcement. To demand as well equal application of the laws to all citizens, regardless of rank, status or celebrity. That seems so basic as to scarcely warrant saying.

It is that simple willingness to obey the law, even when there seems little chance of punishment if we don't, that makes ours a civilized society. How many of us have sat late at night at a red light in a rural or deserted intersection wondering what sense it made...but never seriously contemplating driving through the light. It is that willingness to obey the law that keeps us there till the light turns green. It is that willingness that keeps most able bodied drivers from parking in handicapped parking spaces, keeps us from saying, "what can it hurt; there's no one in it."

Simple disagreement with a law, or a federal regulation, does not itself provide an automatic exemption from it. The management of wilderness and the enforcement of the laws and regulations are critical to the protection of this resource for future generations of Americans. Without some sort of means for managing and monitoring the use, or abuse, of wilderness, many outstanding wilderness areas would quickly become trampled playgrounds for those with little regard for the natural values of wilderness.

If there is one point to be taken from today's hearing, it is that we must not, and cannot, take our wilderness capital for granted. Education is the most important and effective tool we have to remind us all of what we have and how precious it is. What we need, more than ever, is a greater recognition of the importance of wilderness, increased education and information about the damage people can cause if they are careless in wilderness.

Make no mistake, small actions by individuals do make a difference in the quality of wilderness and the quality of each person's experience with it.

In 1992, The Wilderness Society published, in partnership with the U.S. Forest Service, a citizen's guide to wilderness management. Included in that handbook is a set of general principles for managing, protecting, and ultimately enjoying America's federal wilderness. Chief among those principles is the importance of preserving outstanding opportunities for solitude or a primitive and unconfined recreation experience.

Again, these words from the Wilderness Act : "...it is the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness." This is the responsibility Congress placed on its own shoulders.

What we need now, is political leadership in the Congress with the courage to stand by the law and praise those public land stewards who are doing their job with fairness and thoroughness. Thank you very much for your attention to these issues and the opportunity to share our concerns.

Wilderness Accessibility for People with Disabilities

A Report to the President
and the Congress of the United States
on Section 507 (a) of the
Americans with Disabilities Act

December 1, 1992

conducted by
Wilderness Inquiry, Inc.
for the
National Council on Disability

Executive Summary

On the surface, the concurrent goals of equal accessibility and preservation of wilderness areas seem to be antithetical. However, at a closer look, we do not believe that is actually the case. It is not, in our estimation, a question of one goal or legal mandate taking precedence over another or superseding another. It is a question of finding effective ways to balance the intent of both and finding ways to provide the highest level access with the lowest level impact on the environment.

Statement of Mr. David C. Park, Chief, Special Programs and Populations Branch, National Park Service, to the National Council on Disability on August 7, 1991.

Introduction

The primary goal of this document is to satisfy the requirement of Section 507(a) of the Americans With Disabilities Act (ADA) of 1990.

> The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System (NWPS) as established under the Wilderness Act (16 U.S.C. 1131 et seq.)

The National Council on Disability (NCD) contracted with Wilderness Inquiry, Inc., of Minneapolis, Minnesota, to help conduct this study.

Background

In 1964 Congress passed the Wilderness Act and established the National Wilderness Preservation System. The NWPS is made up of lands managed by federal agencies, including the U.S. Forest Service, the National Park Service, the U.S. Fish and Wildlife Service and, more recently, the Bureau of Land Management. The NWPS is not an independent lands system.

Over the years since its passage, some people have claimed that the Wilderness Act discriminates against the rights of persons with disabilities because it prohibits the use of motorized vehicles, mechanized transport, and other activities within federally designated wilderness areas--the NWPS.

In 1990 Congress passed the Americans With Disabilities Act (ADA). The ADA specifically addresses the issue of wilderness access in Section 507(c):

> (1) In General--Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area to facilitate such use.
> (2) Definition--For the purposes of paragraph (1), the term wheelchair means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

Scope of study

This study is intended to accomplish the following objectives:

1. Review and summarize existing federal policies and regulations relevant to the issue of wilderness access by persons with disabilities.

2. Survey federal unit managers of the NWPS to determine current levels of use by persons with disabilities, identify important issues, and solicit suggestions for ways that persons with disabilities can better utilize the NWPS.

3. Survey programs and outfitters that have provided services to persons with disabilities in units of the NWPS to obtain recommendations and suggestions for improved access.

4. Identify and survey users of the NWPS who have disabilities to document use, obtain measures of the enjoyment of the NWPS by persons with disabilities, and solicit suggestions on ways to improve the level of enjoyment of the NWPS by persons with disabilities.

Limitations and methodology

This study should be considered exploratory in nature. We believe that it fairly and factually represents the issues considered; however, as with any study, it is important to note its limitations in order to establish its validity. Readers are urged to review the sections on limitations and methodology before drawing conclusions on the contents of this report.

Federal management policies and practices

The four federal agencies responsible for wilderness management have different policies and management practices regarding persons with disabilities.

Three of these agencies--the National Park Service, the Forest Service, and the Bureau of Land Management allow the use of wheelchairs within the NWPS. The Fish and Wildlife Service currently does not have any policies regarding this issue; however, the agency has stated its intention to adopt policies similar to those of the other land managing agencies within Department of Interior.

Forest Service policy does not allow the use of electric (motorized) wheelchairs in the NWPS. This policy appears to be in conflict with the definition of a wheelchair in Section 507 (c)(2) of the ADA, which states:

> ...the term wheelchair means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

This definition is assumed to include all wheelchairs, whether motorized or not, provided that they are suitable for use in an indoor pedestrian area.

Most NWPS managers (74 percent) do not make special provisions for wilderness area use by persons with disabilities. This appears to be consistent with Section 507(c)(1) of the Americans With Disabilities Act, which reads:

> ...consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area to facilitate such use.

However, beyond the question of wheelchair use, there is a lack of specific guidelines on use of the NWPS by persons with disabilities, including issues such as trail width and toilets at established sites.

Finally, there appears to be some confusion among NWPS field managers about policies regarding use by persons with disabilities and considerable differences in opinion about how best to serve persons with disabilities in the NWPS.

Use levels of the NWPS by persons with disabilities

In response to the NCD survey, managers of NWPS units estimated that a total of 16,767 people with disabilities use the NWPS each

year. Unfortunately, it is impossible to verify the accuracy of these estimates or to extrapolate from the data collected to other NWPS units that did not respond to the survey or to the question. Therefore, no meaningful estimates about use of the NWPS by persons with disabilities can be given. A number of NWPS units that are used relatively frequently by persons with disabilities have been identified by wilderness managers, outfitters, and users with disabilities.

Ability of persons with disabilities to enjoy the NWPS

A significant majority of persons with disabilities surveyed very much enjoy the NWPS and 76 percent do not believe that the restrictions on mechanized use stated by the Wilderness Act diminish their ability to enjoy the wilderness. People with disabilities appear to visit the NWPS in the same ways and for the same reasons that people without disabilities do.

Recommendations

1. All federal agencies that manage the NWPS should adopt policies consistent with those stated in Section 507(c) of the Americans With Disabilities Act as soon as possible.

2. Federal agencies should bring existing facilities outside of the NWPS up to code for use by persons with disabilities as soon as possible. This upgrade includes trailheads, parking facilities, restrooms, and telecommunications devices for the deaf (TDDs) in ranger stations.

3. NWPS managing agencies should develop guidelines for special permits and modifications regarding use by persons with disabilities that are consistent with the Wilderness Act. Agencies should be encouraged to facilitate NWPS use by persons with disabilities when such use is consistent with the Wilderness Act. Agencies are encouraged to work with persons with disabilities, outfitters, and other programs that use the NWPS to develop these guidelines.

4. NWPS unit managers should receive training to increase general awareness of disability issues and specific awareness of the policies and practices regarding use of the NWPS by persons with disabilities.

5. Each agency should develop better information about what is available to persons with disabilities who want to use the NWPS. This information should be made readily available to the public.

Statement of Robert La Tourell Jr.
President Ely Outfitters Association

As long as there have been visitors to the area of Northern Minnesota now known as the Boundary Waters Canoe Area, there have been businesses here catering to these visitor's needs. We are an integral part of the area and have a great deal of working knowledge about the area. Even though this is the case, our relationship over the years with the USFS has been a rocky one. Although we believe that the USFS would benefit from having a working relationship with the outfitters and taking advantage of the knowledge that we possess of the area, this hasn't been the case. We hope, by bringing up the following examples of some of the problems that exist in our relationship with the USFS, that this will help to solve this situation and move us in a direction that would be better for all parties involved.

A prime example of our problems can be seen in the planning process that preceded the latest BWCA Wilderness Management Plan. The USFS set up a process in which all people involved in the BWCA would get together and be set up in teams with a variety of backgrounds and interests being represented. These teams were then to come up with recommendations as to what direction the USFS should be taking in various matters dealing with the management of the BWCA. These teams included USFS personnel. The outfitting industry was represented, and although we had some reservations about how it would work out based on past dealings with the USFS, we spent a tremendous amount of time and energy attending meetings and being a part of this long process during our busy summer months. We had been told that our input was important, and thought that we could be of some help in managing the area properly. We were wrong.

When the final plan came out, we were astonished. Recommendations that had been worked out were disregarded. New, highly restrictive use level policies were adopted. These were adopted even though USFS physical resource data showed that there would be no significant impact on the resource with any of the proposed use levels and that the process, which we had spent so much time involved in, did not recommend these actions. The new plan even contained very significant changes, some of which illegally changed wording of the 1978 BWCA Wilderness Act, that weren't even discussed during the process. At this point, we knew that the process was no more than the USFS going through the motions.

Another example of our genuine concerns being disregarded concerns the permit system that governs our area. There is a quota level set up in the BWCA that limits the numbers of people entering the area. I won't go into our differences on these use levels here, but what is of concern is whether these use levels are being met or not. Outfitters, as well as many other user groups, believe very strongly that they aren't.

The way the system is now set up, many permits are being reserved and not used. People will mistakenly or purposefully reserve more permits than they finally end up using. Because of this, we are seeing situations where the permit quotas for certain areas are full, yet there isn't anyone there. Even though it is very well known among USFS personnel, BWCA users, and outfitters that this situation exists, the USFS has yet to adequately address this problem. In fact, when requesting information in regards to these "no-show" rates, we find that either no information exists or the information they have is incomplete at best and fails to address most areas of concern.

Attempts to recommend modifications that would safeguard against these types of abuses of the permit system have been met with significant resistance. We are constantly told that we can't change anything at this point because the BWCA Management Plan won't allow it. This plan, seemingly more sacred that the Holy Bible, cannot be changed, we are continuously told. However, as the attached letter from the USFS shows (USFS letter, Reply to 1950), when it serves the purposes of the USFS, the plan can be amended.

In our everyday operations, individual outfitters have what is known as a co-operators agreement with the USFS. With these agreements, approximately 50% of the total BWCA permits are issued by outfitters, which otherwise would have to be done by the USFS. We receive no compensation for this service other than the fact that our customers can pick their permits up on our premises rather than at a Forest Service permit center. The USFS is helped out tremendously as they are relieved of the extra expenses that would be involved in educating and issuing permits to these additional visitors to the BWCA.

Recently, the outfitting industry was targeted to come under additional regulations (I know it is hard to believe that there could be more). The USFS, in visits to the affected outfitters, told outfitters that if we didn't sign up for these new programs that we would be in jeopardy of losing our co-operators agreement. The regulations that they were explaining to us gave the USFS ridiculous search and seizure rights on an outfitter's private land, as well as other questionable provisions. We had a right to be concerned, and the situation was made worse with our co-operator agreement being used as a threat against us. Since that time many problems have arisen because of the inconsistencies of these policies and the special circumstances in our area. These were our concerns before we were forced to comply. But big government knew better than we did and our input was ignored.

Many more examples such as those previously listed could be cited. It is not a healthy situation for all parties involved in the BWCA. We need to progress past this type of behavior, and develop a relationship in which the USFS actually does value input from sources other than the politically powerful multi-million dollar preservationist groups. The outfitters look forward to any progress towards this end.

Respectfully Submitted,

Robert La Tourell Jr

Robert La Tourell Jr.
President
Ely Outfitters Association

United States Department of Agriculture | Forest Service | Superior National Forest | Gunflint Ranger District
P.O. Box 790
Grand Marais, MN 55604

Caring for the Land and Serving People

Reply to: 1950
Date: December 18, 1996

Dear Friends:

Happy holidays!!
We are at an important stage in the Upper Gunflint analysis. We have completed the bulk of the analysis and would like your comments. This letter will tell you about a proposal addition of burning in the wilderness, explain about the review process and let you know which alternative I'm considering implementing.

Prescribed Burning in the Boundary Waters Canoe Area Wilderness (BWCAW)

I want to call to your attention to two areas where we are proposing using prescribed fire in the BWCAW. The two areas are by Poplar Lake and Caribou Rock Trail. The area inside the wilderness is part of a larger prescribed burn outside of the wilderness. By burning inside the wilderness we will be able to use natural barriers for fuelbreaks, thereby reducing costs. The purpose of the prescribed burn in the wilderness is to reduce fuel hazard. **No other activities are proposed in the BWCAW.**

Current Forest Plan direction does not allow management ignition of fires in the wilderness. The Forest Plan would need to be amended to allow these two projects. We are proposing to amend the Forest Plan **for these areas only**; the amendment would not change anything else in the Forest Plan.

Your Review of the Proposed Environmental Assessment

Attached is the proposed Environmental Assessment for your review and comment. We have made some changes to the proposal based on comments from the public and additional field data. Some projects were dropped and under Alternative 3, some projects were added.

Chapters 1 and 2 will give you an overview. They give the who, what, when, where, why and how. Chapters 3 and 4 are the meat of the document and describe the environmental effects of different alternatives. A separate document (enclosed), the Biological Evaluation, gives a more detailed analysis of effects to threatened and endangered species. We will not be sending the Biological Evaluation again with the final assessment so please keep this one for your records.

The comment period runs from December 23, 1996 to January 27, 1997. Your specific comments will help us develop a better project and make an informed decision. We will address your comments in an appendix to the final assessment and revise the assessment if necessary. We will send a decision notice with the final assessment.

Preliminary Preferred Alternative

I have not made my decision yet on which alternative we will implement. However I have reviewed comments received and analysis thus far and have some thoughts about which alternative best meets the objectives of the proposal. At this time, I am considering selecting Alternative 2. Here are some of my thoughts and reasons.

1. I think there is a serious fire hazard in the Upper Gunflint area that needs to be addressed. It is a joint responsibility between land managers and property owners. Individuals who own land or improvements

assume some risk and responsibility when they build in a forest. Land managers such as the Forest Service have a responsibility to manage the forest to improve health and reduce fuel hazard where appropriate. Alternative 2 clearly provides a larger reduction in the fuel hazard than Alternative 3 (see chapter 4 of the assessment). I do not think it is prudent to take "no action" (Alternative 1) given the seriousness of the problem.

2. I think it is important to keep and increase the pine component in the ecosystem. In the long term, taking no action (Alternative 1) would decrease the pine component; alternative 2 would increase the pine.

3. Visual quality is important in the Upper Gunflint area. From comments we've received over the years, people like an old forest look, they like vistas or views of features, they like some open or park like forests and some don't like the look of dead balsam. For alternative 2 provides those types of viewing. The majority of the viewed forest would be in older age classes, there would be some small openings, some of the dead balsam along roads would be crushed making the existing forest more open and park like and the shelterwood cuts would also appear open and regenerate to pine. I know there would be effects to visuals in the short term but in the long term, alternative 2 would increase visual quality.

4. Alternative 2 would contribute to the timber supply. This was not the main objective of this project. However harvesting does reduce fuels as well as contribute to timber supply. This is an efficient way to accomplish two objectives.

5. Alternative 2 would reinstate fire in the ecosystem through prescribed burning. Prescribed burning is an important tool for fuel reduction and maintenance of pine ecosystems. Alternative 3 proposes more acres of burning than Alternative 2. Because the high amount of public concern about prescribed burning, I think it would be wiser to implement a smaller program and monitor public acceptance or reaction to it.

I appreciate the interest you have shown in this project. If you have questions or want additional information contact Becky Spears or Terry Gokee at 218-387-1750. Send your written comments to the address on the letterhead by January 17, 1997.

Best wishes for the New Year,

Jo Barnier

JO BARNIER
District Ranger

Testimony before the House Subcommittee on National Parks & Public Lands, and the House Subcommittee on Forests & Forest Health, for the Joint Oversight Hearing on Implementation of the Wilderness Act

April 15, 1997

Submitted by the Access Fund, a Climbers Advocacy Organization

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Dear Members of the Subcommittees,

The Access Fund, America's largest national climbers organization, is pleased to testify at the hearing on implementation of the Wilderness Act by the Forest Service and Bureau of Land Management.

The Access Fund has standing on the issue of wilderness management because a majority of our members climb in designated wilderness and lands under wilderness review. The Access Fund has been working on wilderness issues with the Forest Service, BLM, National Park Service, and US Fish & Wildlife Service since 1989.

The Access Fund is compelled to testify at this hearing because new wilderness regulations proposed by the BLM could eliminate climbing as a use of many wilderness areas, and would diminish public safety in the enjoyment of wilderness.

Moreover, there is a problematic lack of consistency between the federal wilderness management agencies on wilderness climbing policy. There should not be a different standard of protection, nor discrepancies in acceptable uses, from one wilderness area to the next and from one agency to another.

The Access Fund wishes to express its strong support for wilderness, and for rigorous preservation of its values and resources. We also wish to express our profound disappointment with the BLM, which has dismissed public input and neglected to seek advice from its field officers in the promulgation of wilderness policy. The BLM's proposed new wilderness regulations criminalize an established and legitimate wilderness use, without precedent and without any basis in resource data. The net result of these new regulations would not be the salvation of wilderness from an incompatible use, but to reduce or eliminate an activity which <u>defines</u> wilderness, and to alienate a constituency which is inherently a defender and supporter of wilderness.

The Access Fund requests that members of the Subcommittees remind the BLM that restrictions on accepted wilderness uses which provide little benefit to wilderness resources and values conflict with established regulatory guidance and should be avoided. Generally, the Wilderness Act and the Code of Federal Regulations direct wilderness managers to maximize visitor freedom within the wilderness, and to minimize direct controls and restrictions. Direct controls on wilderness use should be applied only when they are

essential for protection of the wilderness resource and after indirect measures have failed.

The Access Fund further requests that members of the Subcommittees recommend to the BLM that any new regulations not make accepted wilderness uses more dangerous, allow visitors to be responsible for their own safety, preserve wilderness climbing opportunities, are consistent between all of the wilderness management agencies, and generally follow Senator Frank Church's "rule of reason" in the administration of wilderness.

The Access Fund

The Access Fund is a 501(c)3 non-profit conservation and advocacy organization representing the interests of America's technical rock and mountain climbers. There are an estimated 500,000 to one million active climbers in the United States today. A significant majority of our members climb in wilderness and would be adversely affected by new wilderness regulations proposed by the BLM.

The Access Fund's mission is to keep climbing areas open, and to conserve the climbing environment. To accomplish this mission the Access Fund acquires and manages land; provides funding for conservation and resource impact mitigation projects; develops, produces and distributes climbers education materials and programs; underwrites scientific studies relevant to climbing; and works closely with land managers and other interest groups in the planning and implementation of public lands management and policy.

The Access Fund has conducted surveys of its membership and of the broader climbing community which show that a significant majority of climbers seek a wilderness climbing experience at least once during their climbing careers, and many climbers seek this experience regularly. Our surveys also indicate that climbers often place a higher value on wilderness climbing than on other climbing opportunities, and that climbers are strong supporters of wilderness and its preservation.

Since 1989, the Access Fund has been working directly with federal land managers and wilderness advocacy groups to establish a reasonable and sustainable policy for managing technical climbing in wilderness areas. We have participated in a formal task force convened by the Forest Service in 1990 to make recommendations on climbing policy. We have maintained regular contact with wilderness managers both in Washington and at the field level. And we have negotiated with leading environmental groups to achieve an "understanding" of wilderness climbing, the unique equipment requirements of climbers, and how climbing can be conducted and managed in wilderness to preserve wilderness character and values.

Wilderness Climbing - Defined

Wilderness climbing is a type of climbing experience characterized by greater solitude and adventure, often with greater risk, with longer approaches and more complicated descents than in front country areas. Wilderness climbing routes are typically multiple ropelengths in height, with high scenic value and opportunities for communion with wildlife and other elements of nature. Wilderness climbs often ascend peaks and pinnacles from which there is no easy way off, and descent must be accomplished by rappel. Wilderness climbing is "wilderness dependent," to use the agencies' parlance,

as the qualities which define the climbing experience in wilderness are unique to wilderness.

A majority of America's most historic, scenic, and challenging climbing resources are located in designated wilderness. The sheer walls of El Capitan and Half Dome in Yosemite National Park are in wilderness. Mt. Whitney, the highest point in the continental United States, is in wilderness. So are the vast majority of peaks throughout the Sierra Nevada, Cascade, and Rocky Mountain ranges. And tens of millions of acres of public lands which offer remarkable climbing opportunities are currently proposed for wilderness designation, such as the amazing backcountry canyons of the BLM-managed Red Rock Canyon National Recreation Area in Nevada.

One of the highest values for wilderness climbing is the opportunity to explore new terrain, to ascend a rock face or mountain by a route no one has traveled before. This opportunity is one of the core values of climbing, a value that permeates climbing history and can be considered to define, in part, the *spirit* of climbing. Thus this opportunity is important to all climbers, even if many climbers are content to climb established routes. Because this opportunity is different in wilderness than in non-wilderness, and because wilderness historically has provided this opportunity for climbers, this opportunity should be preserved under any wilderness management plan or program.

The Issue: Use of "Fixed Anchors" in Wilderness

Technical climbing entails significant, well-documented risks. To provide a margin of safety while climbing, climbers rely on a variety of specialized tools and techniques. These tools and techniques have evolved over the past century to provide lighter, stronger, more reliable protection while causing less damage to the climbing environment.

One of the mainstays of the climber's safety system are protection anchors, which connect the climber's rope to the rock, ice or snow. These small tools are mostly placed and then removed as a climbing team ascends a route, but occasionally are "fixed" (left in place). Fixed anchors may be required when climbers cross crackless sections of rock, and are always required when a technical descent (rappel) is the only way off of a climb.

Fixed anchors are usually difficult to see, even for climbers with a practiced eye. The safest type of fixed anchor, and also the type that causes the least overall impact to the physical resource, is the expansion bolt - a metal shaft typically 3/8" wide by 2" in length (about the size of an average man's little finger) with an ear-like "hanger" to which the climber's carabiners (snap-links) are clipped.

Probably 99% of all climbers never place a fixed anchor, anywhere. Only the first climbing party to ascend a new route typically places fixed anchors, if any, and subsequent parties simply use those that are already in place. Climbers also bear the responsibility for replacing (or choosing not to use) fixed anchors which through normal weathering and the stresses of use become weakened and unsafe. In an emergency, however, climbers may need to place additional fixed anchors to evacuate themselves.

Fixed anchors, including expansion bolts, have been used by climbers in wilderness for nearly sixty years. There is no evidence that this use of this tool has degraded wilderness values. Field studies have shown that, despite

the absence of government controls, fixed anchors have caused minimal disturbance to wilderness character and resources. Many areas have been designated as wilderness by Congress even though the use of fixed anchors was common and well publicized there prior to their designation.

Yet some wilderness managers believe this tool should no longer be permitted in wilderness. The BLM's proposed new regulations would make it illegal to use any type of fixed anchor in BLM wilderness.

Wilderness climbs often require one or more fixed anchors to provide a reasonably safe and enjoyable wilderness experience. In most wilderness areas, few fixed anchors are required for climbing - their use has been infrequent and widely dispersed. The Access Fund believes this standard should be preserved. But BLM officials have suggested that if climbing cannot be accomplished in a wilderness area with even this minimal level of fixed anchor use, then climbing itself should be banned.

It should be understood that protection anchors used by technical climbers in wilderness are solely and completely for the purpose of providing a margin of safety while climbing. Fixed anchors play an essential role in the climber's safety system and must be allowed wherever climbing is allowed, if only for emergency situations. Climbers' protection anchors are not a convenience, and they are requisite for the activity (in other words, wilderness climbing cannot be accomplished with an expected minimum of safety without their occasional use).

Specific Complaint: The BLM's Proposed Wilderness Regulations Would Diminish Public Safety in the Enjoyment of Wilderness, Have No Precedent Nor Basis in the Wilderness Act, Are Not Consistent With Policies in Effect or Being Considered by the Other Wilderness Management Agencies, and Fail to Balance Purism and Practicality in the Administration of Wilderness

The Access Fund believes that fixed anchors are generally necessary for wilderness climbing, and are compatible with wilderness values and the guidance and mandates of the Wilderness Act. The Access Fund supports the consistent and reasonable management of wilderness climbing, including the use of fixed anchors. The Access Fund will support restrictions on this use, where such measures are necessary to protect wilderness character and values. For example, the Access Fund supports the general prohibition of power drills in wilderness (power drills are sometimes used to place expansion bolt anchors).

However, the Access Fund does not believe that the use of fixed anchors should be generally prohibited in wilderness. We support a policy which affirms the essential role fixed anchors play in the climber's safety system, and which directs local wilderness managers to manage this use so as to preserve the unique qualities and resources of each wilderness area. The Access Fund believes it is unnecessary, and even unconscionable, to make it illegal for climbers to use standard safety tools, which have had no appreciable adverse effect on wilderness, which make possible the wilderness climbing experience.

The BLM's proposed new wilderness regulations represent misguided and counter-productive wilderness management, for the following reasons:

(1) The proposed regulations are not consistent with policies in effect or proposed for the other wilderness management agencies. All of the four wilderness management agencies have considered promulgating new rules to guide management of climbing in wilderness. None of these agencies have yet approved new regulations to this effect, and only the BLM has released draft rules for public comment. The National Park Service and Forest Service have far more wilderness climbing resources than the BLM under their purview, and have far greater experience than the BLM in managing climbing in wilderness.

It makes no sense, and is detrimental to the balanced and sustainable management of wilderness, for one management agency to implement policies which are inconsistent with wilderness policy at the other wilderness agencies. Inconsistent policy has the effect of making wilderness values relative and subject to change from one wilderness area to the next, when the Wilderness Act requires that all wilderness must be managed by the same rules and principles.

The BLM, National Park Service, Forest Service, and US Fish & Wildlife Service should collectively determine, with substantial input from the public, the specific purpose and language of new regulations intended to improve management of wilderness climbing. These agencies should then issue new regulations jointly, with a unified concept for implementation. The Access Fund would be pleased to offer its considerable financial and human resources to assist with both the development of policy and its on-the-ground implementation.

(2) The proposed regulations would diminish public safety in the enjoyment of wilderness, by making it illegal for climbers to use fixed safety anchors. As explained above, fixed anchors are sometimes necessary for wilderness climbing, and in nearly six decades of use have caused negligible adverse impact to wilderness resources. Since the regulations do not prohibit climbing, only the use of essential climbing safety devices, their effect is to render a welcome type of wilderness recreation more dangerous.

For management purposes, the BLM should recognize and affirm that some level of fixed anchor use must be allowed wherever climbing is allowed, if only for emergencies and for pro-active resource protection purposes.

It seems ludicrous that climbers could be penalized for rescuing themselves from severe storms or medical emergencies, where their retreat is enabled by the use of fixed anchors. It seems equally ludicrous that climbers should be prohibited from climbing in wilderness areas where climbing is not possible without the occasional use of fixed anchors, which are an insignificant resource impact and which can be easily managed through "soft" measures such as visitor outreach and education to ensure that an undue proliferation does not threaten wilderness character.

Aside from the liability implications the BLM's proposed wilderness regulations raise, the question remains: <u>why is this severe measure necessary?</u>

The BLM argues that the proposed regulations will allow local area managers to permit fixed anchor use, under special order or a BLM management plan. But field officers will not be inclined or encouraged to countermand national wilderness regulations, and it takes an average of seven years to complete a BLM comprehensive management plan. In the meantime, climbers will have to choose between climbing with little or no protection, violating the

law, or not climbing at all - essentially a moratorium on a supposedly "welcome and appropriate" wilderness use.

(3) The BLM's proposed wilderness regulations are unprecedented, and are not mandated by the Wilderness Act or existing rules in the Code of Federal Regulations.

Neither Congress nor any of the federal wilderness management agencies have previously determined that climbers' use of fixed anchors is so detrimental to wilderness that it must be prohibited. In fact, dozens of climbing areas where fixed anchors have been commonly used have been designated as wilderness since 1964.

The Wilderness Act does not specifically allow or prohibit fixed anchors and other tools used for wilderness recreation which may represent an intrusion on the wilderness resource. Some wilderness managers have suggested that fixed anchors should be considered "permanent improvements," or a type of "structure" or "installation," both of which are generally prohibited by the Wilderness Act. But no court has ever ruled on this issue, and the de facto policy of all of the wilderness management agencies has been to consider fixed anchors "imprints of man" which are "substantially unnoticeable" in wilderness.

Moreover, the Wilderness Act provides discretionary authority to wilderness managers to allow various intrusions on the wilderness resource is they are "necessary to meet minimum requirements for the administration of the [wilderness] area." Fixed anchors have previously been, and should continue to be, considered "necessary to meet minimum requirements for the administration" of wilderness climbing areas, where these tools are required to provide a reasonably safe and enjoyable wilderness climbing experience.

There is no rule presently in the CFR which specifically prohibits or restricts the use of climbing safety anchors. General rules such as 36 CFR 2.1 are intended to prevent vandalism and deliberate damage to natural resources for no purpose - not to eliminate activities which may cause slight impacts to natural resources in the routine practice of a legitimate form of wilderness recreation.

What the CFR does include are rules specifying "Wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions" (36 CFR §293.2 - Forest Service), and "Wilderness will be made available for human use to the optimum extent consistent with the maintenance of wilderness character" (43 CFR § 8560.0-6 - BLM).

(4) The BLM's proposed regulations fail to balance purism with practicality in the administration of wilderness.

Since every accepted use of wilderness has its associated resource impacts, and since many wilderness areas are so designated even though they have been modified by "permanent improvements" (such as dams, fences and mining equipment), it is virtually impossible to achieve the ideal wilderness described by the Wilderness Act. Nonetheless, wilderness managers, and wilderness users, should strive to attain this ideal.

However, in seeking to attain this ideal wilderness managers should not develop and promulgate so rigorous a policy for wilderness preservation that significant numbers of customary wilderness users are alienated. The public must have access to wilderness, through a variety of types of "primitive and

unconfined recreation," or they will not support wilderness. If the public does not support wilderness then Congress will not allocate the funding necessary to administer wilderness properly.

The BLM's proposed wilderness regulations would sacrifice climbers' safe access to wilderness and would provide little, if any, benefit to wilderness resources and values, since fixed protection anchors cause insignificant impacts. Where is the balance in this solution? Until the BLM or any other wilderness management agency can document that fixed climbing anchors are a serious threat to wilderness then it should not waste its limited resources on making new rules to eliminate this use, and thereby eliminate or severely limit climbing opportunities in wilderness.

Request for Assistance

The Access Fund requests that members of the Subcommittees support the appropriation of sufficient (increased) funding for administration of American Wilderness. In addition, we encourage the members to support legislation which provides for additions to the National Wilderness Preservation System. America needs wilderness - it's part of our collective psyche, and infuses our social and civic values.

The Access Fund also requests that members of the Subcommittees remind the BLM that the American public experiences and values wilderness in a variety of ways. The citizenry will not support wilderness if access to this national heritage is denied, or so restricted that all freedom, risk, and adventure - qualities that are intrinsic to and articulated by wilderness climbing - are lost.

The Access Fund further requests that members of the Subcommittees recommend to the BLM that any new regulations be (1) consistent with already established wilderness rules in effect for the other wilderness management agencies, and with any new rules promulgated by the other agencies; (2) preserve existing and new opportunities for wilderness climbing, and for other legitimate and established recreational uses of wilderness which are consistent with the specific mandates of the Wilderness Act; (3) ensure that the public will not face increased risk and diminished personal safety in the enjoyment of wilderness; and (4) rely on Senator Frank Church's visionary "rule of reason" in the administration of wilderness (in 1977, Sen. Church clarified congressional intent in interpretation of the Wilderness Act by stating that management agencies should use a "rule of reason" and "do only what is necessary" to protect wilderness characteristics and still provide for "human use and enjoyment" of wilderness).

Sincerely

Sam Davidson

SAM DAVIDSON
Senior Policy Analyst
The Access Fund
Boulder, Colorado

March 28,1997

Memorial weekend 1994 I was camping and fishing on Basswood Lake in the BWCA with my wife Jane. We were flying the U.S. flag at our campsite, tied between two trees with the field of stars toward an easterly direction, as stated in the U.S. Flag Standards. Two people in U.S. Forest Service uniforms came into our campsite and asked us to take the flag down because it was not in keeping with the wilderness concept. We questioned them as to what was wrong with it. They just insisted we should take it down.

While they were in camp they also made us take down a tarp we had put up to shelter us from the wind. They said the ropes tying it down were in some weeds and the ropes were destroying the natural fauna of the area.

As they left they once again told us we had to take the flag down. I did not take it down and expected them to return and I decided I would not take it down unless they issued a citation stating it had to come down. They did not return.

I have been going into the BWCA for many years and long before it was the BWCA. Since the permit system started I have always applied for a permit the first day they are issued and had received one every year. Since this flag incident I have been denied a permit and the person I have listed as an alternate on the permit has applied also and has likewise been denied. I feel this is more than "luck of the draw".

Two years ago I applied for a permit to stay overnight in the BWCA over the July 4th holiday. I was denied a permit into Basswood Lake because they were all taken according to the Forest Service. I went to Ely, Minnesota and stayed at White Iron Lake and my wife and I got a day permit for Basswod Lake. When we arrived at Basswod Lake, we found that not one of the campsite that we passed by had anyone camping there. We saw only three boats on the entire lake and find it hard to understand why no overnight permits were available.

It is my sincere hope the BWCA will be accessable to all people who have come to enjoy as much as I have.

Sincerely,

Ed Pavek,DVM

The luckiest man in the BWCAW

Dr. Ed Pavek has been coming up to the Boundary Waters since 1957, not long after he got out of the service during the Korean War. He's an animal doctor, a veterinarian, and runs the Pavek Animal Clinic in Hopkins, Minnesota.

He knows enough about the Boundary Waters to understand that the Memorial Day weekend usually provides some pretty good walleye fishing, which is why he and his wife were camped out on a point just past Lewis Narrows on Basswood Lake. Since it was Memorial Day weekend, they had the American flag flying, roped between two trees.

Ed was sitting on the shore with a leech and bobber out in the water when a canoe pulled up with two young men in U.S. Forest Service uniforms on board.

Here is how Ed describes it: "There were two men, one with a beard and one without a beard. The one without the beard came up on the campsite, looked around, and said: "You're gonna have to take that flag down."

"What?" Ed was dumbfounded.

The USFS trail crewman repeated his demand that the flag would have to come down, that it didn't go with the wilderness concept. Now, Ed Pavek is 60 years old and a war veteran. He does not take kindly to somebody telling him he cannot fly the flag of the United States.

"I told the young man to show me in the regulations that I cannot fly the flag on the campsite," Ed said. "He couldn't come up with a regulation except that the flag did not go with the wilderness. I wouldn't take the flag down, and he finally left. A little while later, a conservation officer from the DNR came up and I told him what happened. The officer was astounded and said he had never heard of anything so bizarre."

Doc Pavek is a friend of Dave Brewer, who had a veterinary office in Ely and is the son-in-law of Ely businessman Billy Mills. Pavek told Dave, who told Billy, who called the Echo. And we called Doc Pavek back and got the story.

We highly doubt that this anti-flag issue is policy on the Superior National Forest, but we can't be sure in these days of environmental enlightenment. However, giving the agency the benefit of the doubt, we will assume this is an individual matter and that maybe the young man in uniform possibly flunked History 1 and 2 in school.

First, flags have been a part of the Boundary Waters for almost 300 years. When the French Voyageurs came in the early 1700s, they flew the French flag over their camps, over their forts and off the backs of their big North canoes.

When the British came in the 1800s, they flew the British flag off the sterns of their canoes, on their campsites and at their forts.

And when the Americans came during the middle 1800s, they flew the flag on their canoes, campsites, and forts. For sure, the American flag in those days did not have nearly as many stars on the field of blue that it does now, but it flew proudly.

Moving into the present and the current incident: It is inconceivable to most of us that any federal employee wearing the uniform of any U.S. agency, standing on federal land, would tell anyone not to fly the flag.

Now this is where the lucky part comes in. It was quite fortunate for that young man in the USFS uniform that he was dealing with Ed Pavek who is by nature a very peaceable, non-violent person. Everyone is not so inclined. The editor of the Echo can name off a dozen or so old veterans from World War II (along with some Korean and Vietnam vets) who might have reacted differently under similar circumstances. Some of us buried a number of very good men who died fighting for the American Flag and to ask any of us to strike our colors anywhere in the U.S. is tantamount to a declaration of war.

Had that young man encountered someone like Bob Jacobsen, or Einerd Johnson, or Billy Mills, or Johnny Zup, or Doc Hanson or even this old editor, he might well have found himself suddenly in the lake, uniform and all.

We could have traced down the name of the Forest Service trails person who committed this act of ignorance, but we don't want to know who he is. However, we certainly do want him to go back and review his history, past and present, and to understand that there are simply some things you don't do wearing a U.S. uniform, such as telling someone to take the flag down, particularly on the Memorial Day weekend which is set aside to honor those who died for that flag.

Perhaps a newer, more patriotic and historic view of the Boundary Waters should be initiated among USFS personnel. And perhaps the outfitters should provide every canoe group with an American flag and suggest they fly it proudly on every campsite.

The Echo Editor cannot speak for others but he is notifying the Forest Service that while he has never had a flag in camp before, from now on, the American Flag will be flying on every BWCAW campsite he occupies. And no one... repeat, no one... had better ever tell him to pull that flag down not there, not here, not anywhere in the U.S.

Come to think of it, perhaps he will fly the official flag of the U.S. Marine Corps alongside the Stars and Stripes, just to get the point across.

The flag war continues

An incident in the Boundary Waters Canoe Area on Memorial Day weekend in which U.S. Forest Service personnel either ordered a U.S. flag taken down, or moved from where it was flying, has unfortunately escalated with the federal agency issuing several different versions of what occurred.

The first version was that Superior Forest personnel came up on the campsite of Dr. and Mrs. Ed Pavek, Hopkins, MN, to suggest that the flag be flown "more appropriately" so that it showed the "proper respect and lessen the visual impact." There was an opinion offered that the flag was flying with the blue field to the right instead of the left, but since the flag was roped between two trees, the blue field location might depend upon which side of the flag the viewer was standing. What "visual impact" referred to was never explained.

USFS personnel related that Mrs. Pavek said the flag was being flown out in the open as a marker for the balance of their camping group which were expected along. USFS personnel said it would be all right to "leave the flag up until they get here" which would clearly indicate that the initial contact had been to remove the flag. The conversation was calm.

Mrs. Pavek was at the camp while her husband was fishing a short distance away. He was not aware of what was taking place until he came back to the campsite and was informed by his wife. At that point, he became irritated. He reported the incident upon returning to Hopkins. "We have been flying the flag on our campsites for eight years," Pavek reported, "and no one ever questioned it before." Dr. Pavek is a Korean War veteran although reported as a Vietnam Veteran in the initial USFS report.

The Forest Service, on subsequent radio broadcasts, said that there was a misunderstanding about the flag and that there was no agency bias against flying it. In a follow-up editorial, the Ely Echo pointed out that there was indeed some sort of anti-flag policy since concessionaire Robert LaTourell, who operates Prairie Portage on federal land, was notified he must remove the flag pole and flag he had been flying at the portage for a number of years before he would be given his 1994 USFS permit.

On June 13, the Region 9 headquarters of the USFS, in its Weekly Report to personnel, said that the Forest Service crewmen who went up on the campsite did so to explain "it was inappropriate to spread the flag out on the rocks, showing her (Mrs. Pavek) where to hang it, instead."

The flag simply was not on the rocks or on the ground. It was hanging between two trees as the USFS crew originally reported.

The Region 9 Weekly Report added that "the forest (Superior) has had a volatile relationship in the past with the editor of the Ely Echo, but it seemed in recent months to improve and stabilize. They (USFS) are very interested in resolving this issue in a positive way."

With the Region 9 Weekly Report in hand, the Echo Editor made his second visit to the District Office, pointing out that the reference to the flag on the rocks was pure fiction. A district spokesperson said a correction was being sent out.

The Echo Editor said that in regard to "resolving the matter" USFS could end the controversy quite easily if it would simply send an apology to Dr. Pavek and his wife and notify Robert LaTourell it would be all right to fly the flag at Prairie Portage. At press time, Friday, no notification was received at the Echo from the USFS on these suggestions, nor was any correction on the flag on the rocks matter received.

The Echo Editor also offered the opinion that what occurred out in the forest was not the problem of the trail crew, but of how they are trained by the agency. The trail crewmen, he noted, are hard working, experienced employees no doubt doing exactly what they had been trained to do.

Rather than getting the trail crews all tangled up in "visual impact" it might be worthwhile for the USFS to train trail crews to understand that campers are members of the public. They are the real owners of the wilderness and are also the employers who pay USFS salaries through their taxes. The Forest Service personnel, he noted, are managers of the forest hired by those taxpayers.

As the Region 9 Weekly Report said: "They (the USFS) are very interested in resolving this (flag) issue..." It would be nice if they could. Until that happens, we (the Echo) are likely to remain "volatile."