

# CRS Report for Congress

## Wilderness Laws: Permitted and Prohibited Uses

January 25, 2007

Ross W. Gorte  
Specialist in Natural Resources Policy  
Resources, Science, and Industry Division



Prepared for Members and  
Committees of Congress

# Wilderness Laws: Permitted and Prohibited Uses

## Summary

The Wilderness Act generally prohibits commercial activities, motorized uses, and infrastructure developments in congressionally designated wilderness areas. However, the Wilderness Act and many subsequent laws designating wilderness areas also contain provisions authorizing activities that do not conform with these general prohibitions. The general prohibitions and the authorized uses are important because controversies persist over permissible and prohibited activities in wilderness areas, and because bills often seek to modify existing areas or activities.

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Congress approved the Wilderness Act (P.L. 88-577; 16 U.S.C. §§1131-1136) in 1964 to establish a National Wilderness Preservation System on federal lands “where the earth and its community of life are untrammled by man, where man himself is a visitor who does not remain.” As of December 31, 2006, the System totaled 694 units, with 106.6 million acres. (See CRS Report RL31447, *Wilderness: Overview and Statistics*, by Ross W. Gorte.) Congress has taken two basic approaches to protecting the wilderness attributes on certain federal lands while allowing some uses that might alter the pristine character of the lands. One approach, described here, is to explicitly allow uses in congressionally designated wilderness areas that do not conform with the Wilderness Act’s general management guidance; the other, not covered in this report, is to designate areas by some other label, with special management direction for those areas in the laws creating them.<sup>1</sup>

The Wilderness Act, directly and by cross-reference in subsequent wilderness statutes, generally prohibits commercial activities, motorized uses, and roads, structures, and facilities in units of the National Wilderness Preservation System designated by acts of Congress. Specifically, §4(c) states:

Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

This section thus prohibits most businesses, commercial resource exploitation (such as timber harvesting), and motorized or mechanical entry (via cars, trucks, off-road or all-terrain vehicles, bicycles, aircraft, or motorboats) except in emergencies.

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<sup>1</sup> There has also been substantial debate over administrative and/or legislative protection of the inventoried roadless areas in the National Forest System. For information, see CRS Report RL30647, *National Forest System Roadless Area Initiative*, by Pamela Baldwin and Ross W. Gorte.

## Wilderness Act Provisions

The Wilderness Act also authorizes activities that do not conform with the general restrictions, usually subject to regulation by the Secretary.<sup>2</sup> Specifically:

- §4(d)(1) allows “the use of aircraft or motorboats, where these uses have already become established,” subject to “desirable” restrictions;
- §4(d)(1) also allows “such measures ... as may be necessary in the control of fire, insects, and diseases,” subject to “desirable” conditions;
- §4(d)(2) allows mineral prospecting conducted “in a manner compatible with the preservation of the wilderness environment”;
- §4(d)(3) provides for establishing and developing valid mineral rights, “subject, however, to such reasonable regulations governing ingress and egress as may be prescribed” consistent with using the land for mineral development, and with leases, permits, and licenses containing “such stipulations as may be prescribed ... for the protection of the wilderness character of the land consistent with the use of the land...”;<sup>3</sup>
- §4(d)(4) allows the President to authorize water project development, including road construction and use;
- §4(d)(4) also allows livestock grazing, “where established prior to the effective date of this Act ... subject to such reasonable regulations as are deemed necessary”; and
- §4(d)(6) allows commercial services “which are proper for realizing the recreational or other wilderness purposes of the areas.”

In addition, access for livestock and wildlife management have fostered concerns over the years. After discussions in several Congresses, the 101<sup>st</sup> Congress provided detailed guidelines in H.Rept. 101-405, the Interior and Insular Affairs Committee’s report on the Arizona Desert Wilderness Act of 1990 (P.L. 101-628). Appendix A (pages 41-43) is “Grazing Guidelines,” and states (among other provisions):

The maintenance of supporting facilities, existing in an area prior to its classification as wilderness (including fences, line cabins, water wells and lines, stock tanks, etc.), is permissible in wilderness. Where practical alternatives do not exist, maintenance or other activities may be accomplished through the occasional use of motorized equipment.... Such motorized equipment uses will normally be permitted in those portions of a wilderness area where they had

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<sup>2</sup> The Wilderness Act generally referred to the Secretary of Agriculture, because the act initially only designated wilderness areas in the National Forest System. Subsequent wilderness laws refer to the Secretary of Agriculture or Secretary of the Interior, depending on who has jurisdiction over the designated areas.

<sup>3</sup> The authority to establish new mineral rights expired in 1983. No attempts to establish new rights were attempted until the Reagan Administration, and then Congress included provisions in the Interior appropriations acts prohibiting establishing new mineral rights until the Wilderness Act’s expiration of that authority.

occurred prior to the area's designation as wilderness or are established by prior agreement.

The construction of new improvements or replacement of deteriorated facilities in wilderness is permissible if in accordance with these guidelines and management plans governing the area involved....

The use of motorized equipment for emergency purposes such as rescuing sick animals or the placement of feed in emergency situations is also permissible.

Appendix B of H.Rept. 101-405 (pages 44-51) is "Wildlife Management Guidelines." It provides guidance similar to the grazing guidelines in Appendix A of H.Rept. 101-405, and reads in part:

This language [§4(c) of the Wilderness Act] is viewed as direction that all management activities within wilderness be done without motor vehicles, motorized equipment, or mechanical transport, unless truly necessary to administer the area or are specifically permitted by other provisions in the Act. It means that any such use should be rare and temporary; that no roads can be built; and that wilderness managers must determine such use is the minimum necessary to accomplish the task. Any use of motorized equipment or mechanical transport requires advance approval by the administering agency....

Flow-maintenance dams, water developments, water diversion devices, ditches and associated structures, and other fish and wildlife habitat developments necessary for fish and wildlife management (which were in existence before wilderness designation) may be permitted to remain in operation.

Appendix B provides additional direction and examples of authorized activities for various specific fish and wildlife management activities, including population surveys and sampling, fish stocking, wildlife transplanting, and more.

These appendices to H.Rept. 101-405 have been referenced in many subsequent wilderness statutes as relevant guidance for administering grazing and wildlife in the designated wilderness areas.

## **Subsequently Enacted Provisions**

In addition to the special provisions in the Wilderness Act that allow otherwise-prohibited activities in some circumstances, many subsequent laws designating units of the National Wilderness Preservation System have authorized specific uses or activities that do not conform with the general prohibitions on access to and use of wilderness areas. Typically these provisions apply to one or a few areas, although occasionally the provisions apply to all the areas designated in the statute. These provisions are identified below, grouped into several categories and arranged chronologically from the earliest enactment within each category.

**Motorized Access — Land.** The subsequently enacted provisions in wilderness statutes are generally to allow access to one or more areas for continued motorized access, often for provide for maintenance of pre-existing facilities, for continued wildlife management activities, or for continued use of pre-existing rights-of-way.

- P.L. 95-237, *Endangered American Wilderness Act of 1978*: §2(i) allows local government access for maintaining current and future watershed facilities in one unit in Utah.
- P.L. 95-249, *Absaroka-Beartooth Wilderness Act*: §4 preserves a right-of-way claim in one unit being litigated at that time.
- P.L. 95-495, *Boundary Waters Canoe Area Wilderness Act*: §4(e) allows snowmobile use in certain units; §4(d) and §4(g) allow mechanized portages in certain units; §4(h) allows continued motorized uses only; and §4(i) allows motorized access for emergencies and administrative purposes.
- P.L. 96-487, *Alaska National Interest Lands Conservation Act of 1980*: §703(b) allows mechanized portage equipment in a specific unit.
- P.L. 96-560, *Colorado Wilderness Act of 1980*: §102(a)(17) allows motorized access for maintenance of water resource facilities in one unit.
- P.L. 98-425, *California Wilderness Act of 1984*: §101(a)(2) and (25) allow continued access for livestock facilities in two specific units; §101(a)(6) allows motorized administrative use of a fire road between contiguous wilderness units; and §101(a)(24) allows a right-of-way for construction.
- P.L. 98-428, *Utah Wilderness Act of 1984*: §302(b) allows access for local government to maintain current and future watershed facilities in 9 of the 12 wilderness units designated.
- P.L. 98-550, *Wyoming Wilderness Act of 1984*: §201(a)(11) allows motorized federal access for bighorn sheep management in one designated unit.
- P.L. 101-628, *Arizona Desert Wilderness Act of 1990*: §101(a)(3) allows access for operating and maintaining a pipeline in one unit; §101(a)(20) provides access and use of a powerline right-of-way in one unit; and §101(k) allows continued use and maintenance of a particular road.
- P.L. 102-301, *Los Padres Condor Range and River Protection Act*: §2(5) allows continued use of a road corridor in one unit until a bypass is completed.
- P.L. 103-77, *Colorado Wilderness Act of 1993*: §8(d) allows motorized access for use, operation, maintenance, repair, and replacement of water resource facilities in existence upon enactment in all designated units.
- P.L. 103-433, *California Desert Protection Act of 1994*: §102(1) and (13) provide rights-of-way for military access across two designated units; §103(f) allows state motorized access for wildlife management; and §708 guarantees access to nonfederal lands within all designated units.
- P.L. 106-456, *Spanish Peaks Wilderness Act of 2000*: §3(a) allows continued historic uses of the Bulls Eye Mine Road.

**Motorized Access — Water.** These provisions are to allow continued use of motorboats, sometimes with more restrictive conditions, for lakes or watercourses within the designated wilderness areas.

- P.L. 93-429, *Okefenokee National Wildlife Refuge Wilderness Act*: §2(1) allows powered watercraft of 10 horsepower or less within the unit.
- P.L. 95-495, *Boundary Waters Canoe Area Wilderness Act*: §4(c) identifies horsepower limits and duration (some access is temporary) for motorboats in specific counties and/or lakes within the unit; and §4(f) limits motorboat use to historic levels, except for homeowners.
- P.L. 98-430, *Florida Wilderness Act of 1984*: §1(4) allows continued motorboat use in one unit.

**Motorized Access — Air.** Originally, these provisions were to allow for continued aircraft landing within a wilderness area or for helicopter access for sanitary facilities. Since 1990, several wilderness statutes have included provisions to allow low-level military overflights of wilderness areas.

- P.L. 95-237, *Endangered American Wilderness Act of 1978*: §2(i) allows helicopter access for sanitary facilities in one unit in Utah.
- P.L. 96-312, *Central Idaho Wilderness Act of 1980*: §7(a)(1) allows continued landing of aircraft within a designated unit.
- P.L. 98-428, *Utah Wilderness Act of 1984*: §302(b) allows helicopter access for sanitary facilities in 10 of the 12 designated units.
- P.L. 101-628, *Arizona Desert Wilderness Act of 1990*: §101(I) directs that “nothing in this title shall preclude low level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes over wilderness areas designated by this title.”
- P.L. 104-433, *California Desert Protection Act of 1994*: Title VIII, the California Military Lands Withdrawal and Overflights Act of 1994, §802 authorizes low level overflights of military aircraft, special airspace units, and military flight training routes over wilderness areas.
- P.L. 106-65, *National Defense Authorization Act for FY2000*: §3032 authorizes low level overflights of military aircraft, special airspace units, and military flight training routes over the Cabeza Prieta Wilderness designated by §301(a)(4) of P.L. 101-628.
- P.L. 107-282, *Clark County Conservation of Public Land and Natural Resources Act of 2002*: §205 authorizes low level overflights of military aircraft, special airspace units, and military flight training routes over wilderness areas.
- P.L. 107-370, *Big Sur Wilderness and Conservation Act of 2002*: §5 authorizes low level overflights and non-motorized access for military training.
- P.L. 108-424, *Lincoln County Conservation, Recreation, and Development Act of 2004*: §206 authorizes low level overflights of military aircraft, special airspace units, and military flight training routes over wilderness areas.
- P.L. 109-163, *National Defense Authorization Act for FY2006*: Title III, Subtitle H, Utah Test and Training Range, §382 (b) and (c) authorizes low level overflights of military aircraft, special airspace



units, and military flight training routes over the wilderness area designated in the act.

- P.L. 109-362, *Northern California Coastal Wild Heritage Wilderness Act*: §4(h) authorizes low level overflights of military aircraft.

**Water Infrastructure.** As noted above, the Wilderness Act allows the President to authorize water project developments in wilderness areas designated by Congress. Subsequent statutes typically address access for construction, operation, and maintenance of water infrastructure within specific wilderness areas. Two recent laws have included provisions prohibiting presidential authorization of new water projects in wilderness areas designated by the acts.

- P.L. 95-237, *Endangered American Wilderness Act of 1978*: §2(e) protects rights for water diversion and use, including operations, maintenance, repair, and replacement of water project facilities in one unit in Colorado.
- P.L. 96-550, *New Mexico Wilderness Act of 1980*: §102(a)(9) retains existing management, rules, and regulations for a municipal watershed in one unit.
- P.L. 96-560, *Colorado Wilderness Act of 1980*: §102(a)(5) protects rights for water diversion and use, including operation, construction, maintenance, and repair of water project facilities in one unit.
- P.L. 98-425, *California Wilderness Act of 1984*: §101(a)(25) protects rights for water diversion and use, including construction, operation, maintenance, and repair of water project facilities in one unit.
- P.L. 98-550, *Wyoming Wilderness Act of 1984*: §201(c) protects rights for water diversion and use, including construction, operation, maintenance, and modification of water project facilities in four units.
- P.L. 101-628, *Arizona Desert Wilderness Act of 1990*: §101(l) protects flood control dam operations in one unit; and §301(e) and §302 direct that the two units abutting the Colorado River shall have no effect on upstream dams or on water management in the Upper Colorado River Basin, respectively.
- P.L. 103-77, *Colorado Wilderness Act of 1993*: §2(a)(13) protects rights for water diversion and use, including construction, operation, use, maintenance, and repair of water project facilities in one unit.
- P.L. 103-433, *California Desert Protection Act of 1994*: §202 and §203 direct that the two units abutting the Colorado River shall have no effect on upstream dams or on water management in the Upper Colorado River Basin, respectively.
- P.L. 107-282, *Clark County Conservation of Public Land and Natural Resources Act of 2002*: §208(d) authorizes structures and facilities for wildlife water development projects, if the Secretary of the Interior determines they will enhance wilderness values and if the visual impacts “can reasonably be minimized.”
- P.L. 107-370, *Big Sur Wilderness and Conservation Act of 2002*: §8 authorizes construction and maintenance of a new water line and

corresponding spring box adjacent to an existing domestic water service in one unit.

- P.L. 108-424, *Lincoln County Conservation, Recreation, and Development Act of 2004*: §204(d)(4) prohibits most water facility development in the designated areas, except for wildlife water facilities, as authorized in §209(d), if the Secretary of the Interior determines they will enhance wilderness values and if the visual impacts “can be reasonably minimized.”
- P.L. 109-94, *Ojito Wilderness Act*: §3(i)(4) prohibits water facility development in the area, except for “wildlife guzzlers.”

**Other Infrastructure and Activities.** Numerous other structures and activities within designated areas have been authorized in wilderness statutes. Most authorize continued access or maintenance of pre-existing structures. Several have included a provision allowing the installation and maintenance of weather-related equipment and facilities.

- P.L. 95-237, *Endangered American Wilderness Act of 1978*: §2(c) and §2(d) allow fire prevention and watershed protection activities in two units.
- P.L. 96-312, *Central Idaho Wilderness Act of 1980*: §5(d)(1) allows prospecting and exploration for and development of cobalt within part of one unit.
- P.L. 96-550, *New Mexico Wilderness Act of 1980*: §102(a)(5) allows construction of additional fencing for livestock grazing in one unit.
- P.L. 97-384, *Charles C. Deam Wilderness Act*: §3 allows access to and maintenance of a cemetery in one unit in Indiana.
- P.L. 98-322, *Vermont Wilderness Act of 1984*: §104(c) allows maintenance of trails and associated facilities in all designated units.
- P.L. 98-406, *Arizona Wilderness Act of 1984*: §101(a)(13) allows installation and maintenance of hydrological, meteorological, and telecommunication equipment in one unit.
- P.L. 98-428, *Utah Wilderness Act of 1984*: §305 allows installation and maintenance of hydrological, meteorological, climatological, and communication equipment in 9 of 12 designated units.
- P.L. 100-668, *Washington Park Wilderness Act of 1988*: §102 allows the maintenance, repair, and replacement of an underground powerline through one unit.
- P.L. 101-195, *Nevada Wilderness Act of 1990*: §10 allows installation and maintenance of hydrological, meteorological, and climatological equipment in all designated units.
- P.L. 101-628, *Arizona Desert Wilderness Act of 1990*: §301(g) allows continued border operations within one designated unit.
- P.L. 101-633, *Illinois Wilderness Act of 1990*: §9 allows access to and maintenance of a cemetery in one unit.
- P.L. 102-301, *Los Padres Condor Range and River Protection Act*: §3(b) allows fire prevention and watershed protection activities in one unit.
- P.L. 103-433, *California Desert Protection Act of 1994*: §103(g) allows motorized law enforcement activities within all designated

units; and §705(a) provides for Native American access for cultural and religious purposes.

- P.L. 106-156, *Dugger Mountain Wilderness Act of 1999*: §2(d) allows motorized use of a road for two years to disassemble and remove a fire tower that was scheduled for removal, with the road permanently closed thereafter.
- P.L. 107-282, *Clark County Conservation of Public Land and Natural Resources Act of 2002*: §210 authorizes installation and maintenance of hydrological, meteorological, or climatological equipment in the areas if the facilities “are essential to flood warning, flood control, and water reservoir operation activities.”
- P.L. 108-424, *Lincoln County Conservation, Recreation, and Development Act of 2004*: §211 authorizes installation and maintenance of hydrological, meteorological, or climatological equipment in the areas if the facilities “are essential to flood warning, flood control, and water reservoir operation activities.”
- P.L. 109-118, *Caribbean National Forest Act of 2005*: §3(d) authorizes installation and maintenance of hydrological, meteorological, climatological, or atmospheric facilities in the areas if they “are essential to the scientific research purposes of the Luquillo Experimental Forest.”
- P.L. 109-362, *Northern California Coastal Wild Heritage Wilderness Act*: §4(g) authorizes installation and maintenance of hydrological, meteorological, or climatological equipment (notably snow sensors and stream gauges) in the areas “to further the scientific, educational, and conservation purposes” of the areas.
- P.L. 109-382, *New England Wilderness Act of 2006*: §213(c) authorizes continuance of the Appalachian National Scenic Trail, the Long Trail, and the Catamount Trail, and the marking and maintenance of the trails and associated structures, consistent with the Green Mountain National Forest Plan.