Working together to conserve our desert lands

Principles for Wilderness Management in the California Desert

DESERT
MANAGERS GROUP

PRINCIPLES FOR WILDERNESS MANAGEMENT IN THE CALIFORNIA DESERT

A Response to Transition Task #28; Develop a consistent management policy for DOI in managing California Desert Wilderness.

CHAPTER I. SECURING AN ENDURING RESOURCE OF WILDERNESS

It is the intent of the Federal land managers of the California Desert to secure for the American people of present and future generations an enduring resource of wilderness, composed of those Federal lands in the California Desert designated by Congress as "wilderness areas."

The California Desert Protection Act designated 69 new wilderness areas, approximately 3.6 million acres, primarily administered by the Bureau of Land Management. Three of the wilderness areas are partially managed by the U.S. Forest Service, comprising approximately 100,000 acre. The National Park Service now administers 3.9 million wilderness acres in three units of the National Park System. The Fish and Wildlife Service gained 9,000 acres of wilderness in two refuges.

Wilderness areas shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness. The areas designated by Congress as wilderness in the California Desert are to be managed to retain their "...primeval character and influence, without permanent improvements or human habitation,...protected and managed so as to preserve...natural conditions."

Wilderness designation generally provides the most protective form of Federal land management requiring difficult decisions to ensure that the intent of the Wilderness Act is met: "to preserve...natural conditions," and "outstanding opportunities for solitude or a primitive and unconfined type of recreation." Where the Wilderness Act, or any other law, including the California Desert Protection Act, makes any exceptions to the general prohibitions in the Wilderness Act, the managers undertake to implement such exceptions consistently, judiciously and thoughtfully. Where wilderness characteristics of primeval character have been degraded, the managers pledge to restore the area, where feasible, to a condition, that "...generally appears to have been affected primarily by the forces of nature."

Lastly, the managers will commit to develop common procedures that apply to all wilderness areas managed by each Federal agency, to the greatest extent legally permissible.

CHAPTER II. THE WILDERNESS ACT AND SPECIFIC PROHIBITIONS

The Wilderness Act (16 U.S.C. 1133(c)) specifically prohibits certain activities on wilderness lands, no matter which Federal agency administers the lands. Federal agencies, by regulation and policy, may not permit such activities on their lands, except for the special provisions of the Wilderness Act or other statutes.

The Wilderness Act specifically prohibits:

* commercial enterprises;
* permanent roads;
* temporary roads;
* motor vehicles;
* motorized equipment;
* motorboats;
* landing of aircraft;
* any form of mechanical transport, and
* structures or installations.

Note that the above prohibitions do not apply to those who possess "existing private rights" e.g. valid mining claims, inholdings or rights-of-way within wilderness. "Existing private rights" is the first, and major, exception to the Wilderness Act prohibitions and this exception applies to the wilderness areas in the California Desert. Other exceptions are discussed in Chapters III and IV.

In addition to the Wilderness Act prohibitions, Federal agencies may impose other prohibitions on Federal lands that are within wilderness under each agency's specific statutory authorities. It is a fundamental premise of the Wilderness Act that the designation of Federal lands as "wilderness" does not remove the lands from the National Forest System, public lands or National Refuge System, National Park System, or from the laws and agencies that govern those systems (16 U.S.C. 1133(a)).

CHAPTER III. MINIMUM REQUIREMENTS FOR ADMINISTRATION OF THE AREA

The Wilderness Act provides a second major exception to the prohibitions listed in Chapter II. The Wilderness Act at 16 U.S.C.1133(c) states that "except as necessary to meet minimum requirements for the administration of the area for the purposes 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..." Note that the "minimum requirement" exception can never be used to allow a commercial enterprise or a permanent road in a wilderness area. A backcountry patrol station, fire lookout, a radio repeater, an helicopter rescue of an injured person, or a chainsaw may all be permitted in a wilderness only if such use is determined through a documented decision process, such as NEPA, to be the "minimum requirement for the administration of the area" for wilderness purposes.

Federal land managing employees often speak of "minimum tool." That term is shorthand for this provision of the Wilderness Act and applies only to agency administrative activities for wilderness.[1]

There has been a disparity between Federal agencies on applying the exception of "minimum requirements for the administration of the area for the purpose" of wilderness. The decision to permit administrative activities that are the minimum requirements remains the decision of each unit manager. However, the Desert managers, through collective communication, will build on a foundation of good decisions that protect both physical resources and the wilderness character of the area.

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[1] Federal agencies also seek to govern activities by those who possess "private existing rights" in wilderness (e.g. a right-of-way holder) or an authorized user (e.g. a grazing allottee) under the "minimum tool" policy. Strictly speaking, the prohibitions in 16 U.S.C. 1133(c) DO NOT APPLY to those with "private existing rights" within designated wilderness. However, the agencies are nonetheless obligated to permit the exercise of "private existing rights" so as to minimize the damage to Federal wilderness areas. It is in this context that use of the term "minimum tool" must be understood.

CHAPTER IV. SPECIAL PROVISIONS IN THE WILDERNESS ACT

Congress incorporated into the 1964 Wilderness Act several "special provisions," or exceptions. Since the 1964 Wilderness Act involved only national forest lands, the exceptions were originally applicable only to national forest wilderness areas. The "special provisions" are:

* aircraft or motorboat use where they were established (16 U.S.C. 1133(d)(1));
* measures for control of fire, insects and diseases (16 U.S.C. 1133(d)(1));
* conduct of mineral surveys (16 U.S.C. 1133(d)(2));
* location of mining claims until the end of 1983 (16 U.S.C. 1133(d)(3));
* continued mineral leasing until January 1, 1984 (16 U.S.C. 1133(d)(3));
* water project development with Presidential approval (16 U.S.C. 1133(d)(4));
* continuation of existing grazing (16 U.S.C. 1133(d)(4));
* retention of state authority over wildlife management (16 U.S.C. 1133(d)(7);
* guarantee of adequate access to non-federal lands surrounded by wilderness (16 U.S.C. 1134(a)), and
* customary ingress and egress to mining claims and other occupancies surrounded by wilderness (16 U.S.C. 1134(b)).

Several of the above "special provisions" apply specifically to wilderness in "national forests." Others of the "special provisions" apply to the Secretary of Agriculture. The exceptions that apply to "national forest" wilderness and to the Secretary of Agriculture also apply to wilderness managed by the BLM under the terms of the Federal Land Policy and Management Act (FLPMA) at 43 U.S.C. 1782(c).

Individual acts establishing wilderness in National Park System units, including the California Desert Protection Act at Section 603, contain language that is similar to the following:

> The wilderness areas designated by this Act shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, and where appropriate, any reference in that Act to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

The Associate Solicitor, Conservation and Wildlife, wrote to the NPS Director on February 26, 1975 stating that "...an (NPS wilderness) act containing this language causes Wilderness Act sections" that apply to the Secretary of Agriculture "...to be made applicable to the (National Park System) area designated as wilderness." However, the memo explains that special provisions applicable to "national forest" wilderness are not applicable to national park system wilderness. See the chart on the next page for applicability of each "special provision."

1964 WILDERNESS ACT (Public Law 88-577)
Table 1

EXCEPTIONS TO PROHIBITIONS OF WILDERNESS ACT	CITATIONS	BLM	FS	FWS	NPS
To meet the minimum requirements for the administration of area including emergencies involving health/safety of persons.	4(c)	*	*	*	*
Aircraft or motorboat use, where established	4(d)1	*	*	*	*
Control fire, insects, and diseases	4(d)1	*	*	*	*
Gathering information about mineral or other resources	4(d)2	*	*		
Claim location, mineral leasing until 12/31/83 or designation	4(d)3	*	*		
Federal water projects allowed by the President	4(d)4(1)	*	*		
Grazing of livestock, where established, may continue	4(d)4(2)	*	*		
Boundary Water Canoe Area	4(d)5		*		
Commercial Services for wilderness purposes	4(d)6	*	*	*	*
Neutral with regard to State Water law	4(d)7	*	*	*	*
Neutral with regard to State wildlife jurisdiction	4(d)8	*	*		
Adequate Access to private and State lands	5(a)	*	*		
Ingress and egress to claims	5(b)	*	*		

CHAPTER V. THE SPECIAL PROVISIONS OF THE CALIFORNIA DESERT PROTECTION ACT AND THEIR EFFECT UPON WILDERNESS

Each unit of the National Wilderness Preservation System is governed by the laws that govern the national forests, national wildlife refuges, national parks or public lands and by the Wilderness Act. Finally, each wilderness area is ultimately governed by the provisions of the Act that established the area as wilderness.

The California Desert Protection Act, Titles I, II and VI, designate wilderness areas to be administered by the BLM, Forest Service, Fish and Wildlife Service and the NPS. The Act contains several provisions that apply to wilderness. Some of the provisions do not apply equally to all wilderness created by the Act. Others of the provisions are applicable to all wilderness.

Some of provisions are unique in the history of wilderness designations by Congress. The chart on the following page lists the provisions of the California Desert Protection Act that affect wilderness in the California Desert.

CALIFORNIA DESERT PROTECTION ACT OF 1994 (Public Law 103-433)
Table 2

General Provisions	BLM Wilderness	FS Wilderness	FWS Wilderness	NPS Wilderness	Non-wilderness Portions of Park Units		
					Death ValleyNP	Joshua Tree NP	Mojave Preserve
Management under Wilderness Act	103(a)	103(a)	201(b)	603			
Maps and legal descriptions	103(b)	103(b)	201(c)	602	304	404	504
Livestock Grazing	103(c)	103(c)	103(c)	306, 510	306		510
Buffer Zones	103(d)	103(d)					
Fish and Wildlife Jurisdiction	103(e)	103(e)					
Fish and Wildlife Management	103(f)	103(f)					
Law Enforcement	103(g)	103(g)					
Colorado River dams			202				
Colorado River Upper Basin	203	203	203	203	203	203	203
No Reserved Water Rights in Colorado River			204				
Withdrawl Under Mining Law	103(a)	103(a)		305/405/507	305	405	507
Mineral Validity Examinations				509			509
Utility Rights-of-Ways						406	511
Land Tenure Adjustment Priority	702	702	702	702	702	702	702
Native American Uses & Interests	705(a)	705(a)	705(a)	705(a)	705(a)	705(a)	705(a)
Federal Reserve Water Rights	706	706	706	706	Implicit water rights		
State School Lands Exchange	707	707	707	707	707	707	707
Access for Inholdings	708	708	708	708	708	708	708

CHAPTER VI. STATEMENT OF AGREEMENTS

We the undersigned managers agree to:

1. The Principles enunciated herein as guiding the management of wilderness in the California Desert;

2. To review and give individual attention to each proposed annex to these Principles that addresses wilderness and other management issues;

3. To authorize the wilderness task force to meet with other task forces to craft procedures which minimize impacts to wilderness resources.

SIGNATURES

Manager, California Desert District	9/15/95 DATE
Manager, Yuma District	9/15/95 DATE
Superintendent, Mojave National Preserve	9/15/95 DATE
Superintendent, Death Valley National Park	9/15/95 DATE
Superintendent, Joshua Tree National Park	9/15/95 DATE
State Supervisor, U.S. Fish & Wildlife Service	9/15/95 DATE