PRINCIPLES GOVERNING LAW ENFORCEMENT AND BORDER OPERATIONS WITHIN WILDERNESS

I. INTRODUCTION

Title VI of the California Desert Protection Act (CDPA) designated National Park System areas as wilderness. Law enforcement management in park wilderness is governed by Section 4(c) of the Wilderness Act. Section 4(c) provides that actions such as measures required in emergencies involving the health and safety of persons within the wilderness areas may be taken as is "necessary to meet the minimum requirements for the administration of the area for the purposes of" wilderness.

Title I of the CDPA designated BLM areas as wilderness. Section 103(g) of the Act provided direction for managing law enforcement access in wilderness. This direction is unique among wilderness laws. Section 103(g) applies only to Title I wilderness areas designated in the CDPA (BLM and Forest Service managed areas) and it states that the prohibitions of the Wilderness Act of 1964 are not to "...be construed to preclude Federal, State, and local law enforcement agencies from conducting law enforcement and border operations as permitted before the date of enactment of this Act, including the use of motorized vehicles and aircraft, on any lands designated as wilderness by this Act."

This Annex (Annex 2) applies the key terms in Section 103(g) of the CDPA to the management of Title I (BLM/FS only) wilderness in the California Desert. The annex also prescribes the standards of the Wilderness Act, Section 4(c) to Title VI (NPS) wilderness.

Wilderness designation by Congress did not erase the existing roads nor alter the public's use patterns. Much of the wilderness designated by the CDPA is crossed by a network of existing motor vehicle trails, that are now closed by law to motor vehicle and mechanized transport use and landing of aircraft. In the initial phases of wilderness protection, education is a key tool. So too is the application of practical and pragmatic law enforcement methods. As the Federal agencies succeed in restoring degraded wilderness areas, the nature of the law enforcement methods will evolve and adapt to reflect the protected status of wilderness.

II. PRINCIPLES

1. Section 103(g) of the California Desert Protection Act (CDPA) modifies the preclusion on the use of motor vehicles, landing of aircraft, mechanized transport and motorized equipment established by the Wilderness Act, section 4(c), within Title I Federal agency administered wilderness areas established by the CDPA.

2. Section 103(g) applies to every Federal, State, and local law enforcement agency that exercises lawful authority over public conduct on the Title I wilderness areas designated by the CDPA.

3. The modification of the Wilderness Act established by Section 103(g) applies only to law enforcement and border operations on the lands that are now Title I wilderness where such activities were "permitted" prior to the wilderness designation. Section 103(g) does not limit the use of motor vehicles or motorized equipment, mechanized transport or the landing of aircraft in connection with law enforcement and border operations to only where such uses actually occurred on October 31, 1994.

4. "Law enforcement" for the purposes of this Annex means the application of any criminal or civil statutes, laws, ordinances, rules and regulations by a law enforcement officer of a Federal, State or local government agency. Law enforcement includes communications, surveillance, patrol, investigation, gathering of evidence, apprehension, detention or arrest of a suspect, citation, search and seizure, and the service of process.

5. "Border operations" means patrol via vehicle or aircraft, the detection, interdiction or apprehension of illegal aliens and/or contraband, and the installation of detection devices and the placement of fences in those wilderness boundaries that form part of the international boundary with the Republic of Mexico.

6. The provisions of Section 103(g) of the CDPA apply only to law enforcement and border operations. Section 103(g) does not apply to search and rescue, fire, emergency medical services and similar activities. Such issues are governed by the Wilderness Act, Section 4(c) or 4(d)1, and separate Annexes will address them.

7. The use of motor vehicles, landing of aircraft, mechanized transport and

motorized equipment on Federal lands that are designated as wilderness for law enforcement and border operations is subject, on Title I wilderness, to such reasonable conditions that the appropriate Federal land-managing agency may impose. Such uses in Title VI wilderness are subject to NPS determination as a necessary requirement for the administration of the area as wilderness.

8. The following standards govern motor vehicle, motorized equipment, mechanized transport use or landing of aircraft in wilderness created by the CDPA but each agency may impose additional or more restrictive standards:

a. Protection of wilderness is dependent upon the vigorous enforcement of applicable laws and regulations.

b. General or routine motor vehicle, motorized equipment, mechanized transport or aircraft landing for law enforcement, and border operations in wilderness is not authorized. Such uses are permissible only if vehicle use/landing of aircraft is the last reasonable means to enforce laws pertaining to wilderness resource protection and;

1. where on-going violations of law or regulations have been observed; or

2. when the law enforcement officer has reason to believe that a violation of Federal, State or local law is occurring, and when the resultant impacts of entering wilderness are justifiable; or

3. when the law enforcement officer has reason to believe that officer safety, prudence and proper police procedure justify such uses.

c. Law enforcement officers must be sensitive to wilderness designation and will minimize the use of motorized vehicle, mechanized transport and aircraft landings in wilderness. Convenience alone is not a justification for such uses in wilderness.

d. Each motor vehicle or motorized equipment use or landing of aircraft in wilderness will be documented by agency personnel on appropriate forms, as prescribed by each agency and reported by other Federal, State and local

agencies to the appropriate Area Manager or Park Superintendent. Such documentation is for the purpose of providing data for internal management oversight and review of problem areas.

e. During the initial phases of wilderness protection, greater use of vehicular access into wilderness may be employed but only as a strategy of limited duration, not to exceed two years after this Annex.

9. Area Managers and Superintendents are responsible to deploy and use non-vehicular ground patrol and passive devices, including signs, boundary notices, physical closures, maps and educational efforts to reduce and prevent illegal intrusions into wilderness.

10. The NPS and BLM will seek to enter into joint cooperative agreements with other Federal, State and local law enforcement agencies whose responsibilities require that they enforce the law on persons in BLM or NPS wilderness. A part of such agreements will provide more specific details as to protocols, procedures, notification, routes, means and reporting wilderness entries under Section 103(g) of the CDPA, and Section 4(c) of the Wilderness Act for Title VI wilderness.

11. NPS and BLM law enforcement officers and wilderness staff will ensure reclamation of any readily visable impacts to wilderness caused by motor vehicle, motorized equipment or aircraft use by law enforcement personnel.

12. Upon conviction, as part of the sentencing process, any costs of reclamation will be sought from violators in the form of restitution for the BLM or NPS.

13. The installation of BLM/NPS law enforcement radio repeaters in wilderness is not permitted except if it is determined, after the consideration of reasonable alternatives, to be the minimum requirement necessary for the administration of the area as wilderness (pursuant to Section 4(c) of the Wilderness Act). The consideration of reasonable alternatives means that the NPS or BLM will prepare an environmental assessment with public comment for such proposals. Alternatives to be considered include the possibility of consolidating repeater sites at existing locations or installing more than one repeater in nonwilderness, rather than a single repeater in wilderness. Cost alone should not disqualify an otherwise reasonable alternative from consideration.

SIGNATURES

Manager, California Desert District — DATE 9/15/95

Manager, Yuma District — DATE 9/15/95

Superintendent, Mojave National Preserve — DATE 9/15/95

Superintendent, Death Valley National Park — DATE 9/15/95

Superintendent, Joshua Tree National Park — DATE 9/15/95

State Supervisor, U.S. Fish & Wildlife Service — DATE 9/15/95