PRINCIPLES FOR SPECIAL SCIENTIFIC, RECREATIONAL AND COMMERCIAL USES WITHIN WILDERNESS AREAS OF THE CALIFORNIA DESERT

I. INTRODUCTION

The Bureau of Land Management (BLM) and the National Park Service (NPS) regulate a wide range of special uses, some of which are commercial and recreational. The BLM and the NPS authorize such activities on public lands and in National Park System units through a variety of instruments and under their own agency regulations.

Annex 4 examines the principles that govern agency authorization of special scientific, recreational and commercial uses in wilderness areas administered by the BLM and the NPS in the California Desert.

BLM possesses a well developed body of regulations and manuals for wilderness management. BLM and NPS regulations governing many of the special uses are not wilderness specific. However, wilderness designation (and regulations in the case of BLM) may impose prohibitions and/or further restrictions on the activities and associated authorizations. This annex places such authorizations in the context of the Wilderness Act.

II. PRINCIPLES

1. Scientific Research

a. Since the conduct of legitimate scientific research is a purpose of wilderness, research proposals may be conducted in wilderness if the proposal conforms to agency regulatory standards.

b. If the research proposal involves prohibited acts under the Wilderness Act (i.e., the use of installations, motor vehicles, motorized equipment, mechanized transport, or landing of aircraft) such uses may be considered ONLY IF the research is a minimum requirement necessary for the administration of the area for the purposes of the Wilderness Act.

c. To qualify as research for the purpose of the Wilderness Act, such research must be identified as such by the appropriate agency. The agency must then consider what is the minimum requirement for the conduct of research and approve no more than that minimum requirement.

d. For BLM, laws provide for two types of research on BLM wilderness that are not tied to the administration of the area, but that may be authorized the use of motor vehicle, motorized equipment, mechanized transport, or landing of aircraft. The two types of research are:

   i. Research by California Fish and Game on BLM wilderness to maintain or restore fish and wildlife populations and the habitats to support such population under Section 103(f) of the California Desert Protection Act; and

   ii. Surveys, "...consistent with the concept of wilderness preservation, by the Geological Survey and the Bureau of Mines to determine the mineral value, if any, that may be present;..." as provided for in Section 4(d)(2) of the Wilderness Act.

e. Research involving conduct prohibited by the Wilderness Act will not be allowed within wilderness areas, except as prescribed in "b" and "d" above.

2. Commercial Filming And Photography (refer to BLM WO Instruction Memorandum 94-59)

a. Commercial filming and photography constitutes a "commercial enterprise." (see exception in 2(c) below). Commercial filming and photography permits will not be issued in designated wilderness areas due to the provision in Section 4(c) of the Wilderness Act that prohibits "commercial enterprise(s)" in wilderness.

b. Commercial filming means the use of professional casts, settings or crews, other than bona fide newscasters or personnel. Commercial photography means the taking of photographs of articles of commerce or models for the purpose of advertising (refer to 36 CFR 5.5). Commercial photography also includes taking pictures of public land users, such as those engaged in recreational activities, for the express purpose of selling the photographs to the users.

c. Certain commercial filming and photography, under narrowly construed circumstances may be permitted in wilderness under Section 4(d)(6) of the Wilderness Act despite the prohibition on commercial enterprises. Such filming and/or photography must be "...necessary for activities which are proper for realizing the recreational or other wilderness purposes of the (wilderness) areas." Films or photography that educate the public about wilderness protection, safety, ethics, values or resources in a documentary or other instructional format may be considered under Section 4(d)(6) even if such films or photography are involved in commerce. The 4(d)(6) exception does not waive the prohibitions of 4(c) of the Wilderness Act for motor vehicles, landing of aircraft, mechinized transport, structures or installations.

3. Recreation

The Wilderness Act provides for "primitive and unconfined type of recreation." Recreation is subject to all the prohibited acts described in 4(c) of the Wilderness Act.

a. Air Delivery

The delivery of persons, materials, supplies by airborne means into wilderness is prohibited in BLM wilderness (43 CFR 8560.1-2(f)). Air delivery is generally prohibited in any National Park System area, not just wilderness (36 CFR 2.17). The delivery of persons or objects, or the landing of aircraft on National Park System lands requires a special use permit for the former or the promulgation of special regulations for the latter (36 CFR 2.17). The NPS will not promulgate special regulations or issue special use permits to authorize landing of aircraft or air delivery of persons or objects in NPS wilderness.

b. Bolting of Climbing Routes

The installation of new climbing bolts, or reinstallation of bolts on existing routes in wilderness, by use of motorized equipment is prohibited by the Wilderness Act section 4(c). No new bolts will be permitted on climbing routes in wilderness areas until such time as agency planning documents have been completed and reached a conclusion on whether such installations are permitted or prohibited under the Wilderness Act.

c. Contests

Contests, as defined in the BLM manual 8560.31(D), are events that entail physical or mental endurance of a person or animal; foot races; canoe or boat races; competitive trail rides; survival contests or exercises. They are not permitted in wilderness areas of the California Desert.

d. Commercial Recreational Activities

Recreation use of wilderness lands in the California Desert for business or financial gain is not permitted. Section 4(d)(6) provides an exception for certain commercial recreational activities. Section 4(d)(6) provides that "commercial services may be performed within wilderness areas to the extent necessary for activities which are proper for realizing the recreational and other wilderness purposes of the areas." This exception was crafted primarily for climbing, hiking, river and hunting guide services.

A commercial recreational service, such as a guide service, may be allowed under Section 4(d)(6). However, such a service is subject to all the prohibitions listed in 4(c) of the Wilderness Act and does not qualify for the"minimum requirement" exception to the prohibitions.

Agencies will require commercial stock users in wilderness to use their own "weed free" feed for stock.

e. Backcountry Permits

Individual Resource Areas and Parks/Preserve have the discretion to require backcountry wilderness permits based on each agency's regulatory authority.

f. Group Size

Individual Resource Areas and Parks/Preserve may prescribe group size limits under that agency's regulatory authorities. Where there are contiguous wilderness areas managed by separate agencies, each agency will make every effort to develop common group size limits.

g. Special Events

Non-commercial recreational special events, such as gatherings, assemblies and weddings may be authorized in wilderness. Besides conforming to each agency's regulations, such events must:

(1) must not entail use of motor vehicles, mechanized transport, landing of aircraft, motorized equipment, structures, installations, or any other of the prohibited acts described in Section 4(c) of the Wilderness Act;
(2) not harm the resources of the wilderness or the wilderness experience; and
(3) conform with duly-established group sizes.

Special events that are an exercise of First Amendment rights of freedom of speech, assembly or religion, and that would violate the prohibitions of the Wilderness Act, are governed by standards enunciated in Federal case law. Such requests require special guidance beyond the scope of these principles.

h. Noncommercial Recreational Stock Use

Recreational stock use is allowed in wilderness in the California Desert. It must conform with group size limits and closures imposed by the respective agency. The agencies will require that stock users bring in their own "weed free" feed.

i. Hunting

Hunting is permitted in wilderness areas where hunting is authorized in law insofar as such activity is conducted without violating any of the prohibitions of the Wilderness Act such as the use of motor vehicles, mechanized transport, landing of aircraft, motorized equipment, structures or installations.

j. Rockhounding

Recreational rockhounding, including the use of metal detectors, is not prohibited in BLM wilderness (BLM manual .31E). It is not allowed on NPS lands, including NPS wilderness lands (36 CFR 2.1).

k. Recreational Mining

So called "Recreational mining" in BLM wilderness is subject to 43 CFR 3809. Such activity is prohibited on all NPS lands, including wilderness.

4. Rights-of-Way (ROW)

a. Since rights-of-way are "commercial enterprises", new rights-of-way will not be issued in NPS wilderness areas. Section 501 of FLPMA prohibits issuing rights-of-way in BLM managed wilderness areas.

b. Existing rights-of-way in wilderness may be renewed as they expire only when the existing instrument conveying a rights-of-way provides a right of renewal that qualifies the right as a "prior existing right" for purposes of the Wilderness Act. If the expiring rights-of-way lacks a right of renewal, the administrating agency will seek to relocate the facility outside of wilderness, if possible. If the facility can not be relocated (e.g., a major oil and gas pipeline) the continued occupancy of federal lands will be authorized, for public lands, by a 2920 permit and for National Park System lands, a special use permit, or under the appropriate legal authority governing that facility.

c. Under Section 708 of the California Desert Protection Act, rights of access for in-holders in wilderness areas in the California Desert are governed by separate instructional guidance from the BLM State Office and NPS Field Office. (See 43 CFR 8560.4(3) and BLM-CA Instruction Memorandum 95-137 for additional BLM guidance.)

III. SIGNATURES

Manager, California Desert District — DATE 12/6/95

Manager, Yuma District — DATE

Superintendent, Mojave National Preserve — DATE 12/6/95

Superintendent, Death Valley National Park — DATE 12/6/95

Superintendent, Joshua Tree National Park — DATE 12-6-95

State Supervisor, U.S. Fish & Wildlife Service — DATE 12/6/95

Superintendent, Lake Mead National Rec. Area — DATE 12/6/95