

# GRAZING IN THE NATIONAL WILDERNESS PRESERVATION SYSTEM

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Peter A. Appel and Christopher Barnes, *Grazing in the National Wilderness Preservation System*, 53 IDAHO L. REV. 465 (2017).

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# GRAZING IN THE NATIONAL WILDERNESS PRESERVATION SYSTEM

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**Abstract:** The sole direction in the Wilderness Act of 1964 concerning commercial livestock grazing in wilderness is forty words long: “Within wilderness areas in the national forests designated by this Act...the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.” We discuss just what these words mean in the context of the law and the subsequent so-called Congressional Grazing Guidelines, and examine recent agency misinterpretations of this direction.

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## I. BACKGROUND OF GRAZING IN THE WILDERNESS ACT

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## OF 1964

The first wilderness bill was introduced in the U.S. Senate in June, 1956.<sup>1</sup> It included direction on grazing: "Except as otherwise provided in this section...no portion of any area constituting a unit of the National Wilderness Preservation System shall be devoted to...grazing by domestic livestock (other than by pack animals in connection with the administration or recreational, educational, or scientific use of the wilderness)."<sup>2</sup> Yet one page later, the bill continued:

Within national forest areas grazing of domestic livestock...where [this practice has] already become well established may be permitted to continue subject to such restrictions as the Chief of the Forest Service deems desirable. Such practices shall be recognized as nonconforming use...and shall be terminated whenever this can be effected with equity to, or in agreement with, those making such use.<sup>3</sup>

It is not surprising, given these somewhat contradictory directions for management, that livestock operators feared their grazing would be curtailed. However, Howard Zahniser, executive director of the Wilderness Society and primary author of the initial wilderness bill, knew the bill had to contain provision for this activity if it was to get out of the Interior committees in either the House or Senate.<sup>4</sup> As he wrote to the Salt Lake Tribune in 1958, "We earnestly wish to be able to cooperate with livestock...interests in the development of a truly rational and enduring wilderness preservation program."<sup>5</sup> And so, despite Zahniser's familiarity with past overgrazing problems on the federal lands, the grazing provision was clarified.

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1. S. 4013, 84th Cong. (1956) (2nd Sess.).

2. *Id.* § 3(b).

3. *Id.*, § 3(c)(2).

4. See MARK HARVEY, WILDERNESS FOREVER: HOWARD ZAHNISER AND THE PATH TO THE WILDERNESS ACT 204 (2005).

5. *Id.* at 205 (citing Howard Zahniser, *Letter to the Editor*, SALT LAKE TRIB., Jan. 16, 1958).

Perhaps “clarified” is not quite accurate. “Simplified”—at least on paper if not on the ground—might be a better term. When passed into law,<sup>6</sup> the Wilderness Act’s direction on the management of commercial livestock grazing was a mere: “Within wilderness areas in the national forests designated by this Act...the grazing of livestock, where established prior to [September 3, 1964], shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.”<sup>7</sup>

## II. BACKGROUND TO THE CONGRESSIONAL GRAZING GUIDELINES

In the fifteen years subsequent to the passage of 1964 Act, Congress wrestled with what it—and the country—wanted out of a National Wilderness Preservation System. Over agency objections, conservation organizations pressed for an expansive definition of wilderness that would open up opportunity for more areas to be designated.<sup>8</sup> The Eastern Wilderness Areas Act of 1975,<sup>9</sup> established congressional precedent that past uses of an area would

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6. Wilderness Act, Pub. L. No. 88-577, 88 Stat. 577 (1964) (codified as National Wilderness Preservation System, 16 U.S.C. §§ 1131-1136 (2012)).

7. 16 U.S.C. § 1133(d)(4) (2012). The United States Forest Service (USFS) is the only agency that manages national forests, and national forests were the only lands mentioned in the grazing provision. Agencies within the Department of the Interior that manage wilderness—the National Park Service (NPS), the United States Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM)—were not originally included. Indeed, BLM was not mentioned at all in the Wilderness Act of 1964. At least one court has interpreted a reference to “national forests” in the Wilderness Act to apply only to lands that USFS manages and no others. *See Brown v. U. S. Dep’t of Interior*, 679 F.2d 747, 751 (8th Cir. 1982). Nevertheless, in section 603 of the Federal Land Policy and Management Act (FLPMA), Congress granted to BLM the authority to manage wilderness areas under its jurisdiction in a manner similar to that of USFS. Pub. L. No. 94-579, § 603, 90 Stat. 2743, 2785 (1976). Specifically, subsection (c) of that section 603 provides: “Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area.” *Id.*; 43 U.S.C. § 1782(c) (2012).

8. *See* CRAIG W. ALLIN, *THE POLITICS OF WILDERNESS PRESERVATION* 186–93 (1982).

9. National Wilderness Preservation System, Designation of Certain Lands, Pub. L. No. 93-622, 88 Stat. 2096 (1975). “Eastern Wilderness Areas Act” is the Act’s generally accepted common name.

not automatically preclude wilderness designation of areas that showed some evidence of human imprint. Similarly, the Endangered American Wilderness Act of 1978,<sup>10</sup> established that adjacent land use or activities would not automatically preclude wilderness designation. In the first case, Congress decided past “non-conforming”<sup>11</sup> uses within the area would not prevent wilderness designation; in the latter law, Congress decided that current “non-conforming” uses outside the area would not prevent wilderness designation. But grazing was more complicated—a current and ongoing “non-conforming” use inside the area.<sup>12</sup>

It is not surprising, therefore, that the USFS (the only agency at the time with commercial livestock grazing in its wilderness areas) would permit grazing, but started phasing out related structures, installations, and motorized use<sup>13</sup> as “prohibited uses” under Section 4(c) of the Wilderness Act.<sup>14</sup> Nor is it surprising that live-

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10. Endangered American Wilderness Act of 1978, Pub. L. No. 95-237, 92 Stat. 40 (1978).

11. Although it does not appear in the Wilderness Act as enacted, the term “non-conforming use” was introduced by Zahniser in the first wilderness bill (see HARVEY, *supra* note 4), and is often used as short-hand for any wilderness use or activity that apparently diverges from those implied by the definition of “wilderness” found in the 1964 Act. See 16 U.S.C. § 1131(c) (2012). These non-conforming uses (as opposed to illegal uses) are provided for in 16 U.S.C. § 1133(d) and § 1134.

12. Without the non-conforming use provision allowing it, the Wilderness Act would flatly prohibit the practice under section 4(c). 16 U.S.C. § 1133(c) (2012); Wilderness Act, Pub. L. No. 88-577, § 4(c), 88 Stat. 577, 894 (1964) (“Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise . . . within any wilderness area designated by this Act. . .”). Interestingly, the penultimate compromise bill of the Eastern Wilderness Areas Act would have eliminated grazing throughout the entire wilderness system. However, “[t]he preservationist lobby was not about to join in purifying the western wilderness areas of nonconforming uses at the expense of alienating supporters. Too much purity meant too little wilderness.” ALLIN, *supra* note 8, at 191. Preservationists succeeded in getting this provision stripped from the final bill. *Id.* at 192.

13. See, e.g., Mitchel P. McClaran, *Livestock in Wilderness: A Review and Forecast*, 20 ENVTL. L. 857, 866-868 (1990).

14. See 16 U.S.C. § 1133(c) (2012) (“[E]xcept as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter . . . 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.”).

stock permittees would object to such actions as making their operations prohibitively expensive. After fifteen months of debate, Congress struck a compromise<sup>15</sup> in the form of House Report 96-617 referenced in the Colorado Wilderness Act of 1980.<sup>16</sup> The substantive language of this Report was duplicated in House Report 101-405, Appendix A, referenced in the Arizona Desert Wilderness Act of 1990.<sup>17</sup> This Report is the one cited in subsequent bills, and is commonly referred to as the Congressional Grazing Guidelines (CGG).

### III. SPECIFIC MANAGEMENT PRESCRIPTIONS IN THE CONGRESSIONAL GRAZING GUIDELINES

The CGG presents five “guidelines and policies”<sup>18</sup> and a summary statement.

“1. There shall be no curtailments of grazing ... simply because an area is, or has been designated as wilderness.”<sup>19</sup> Reductions, generally to improve deteriorated resource conditions, “should be made as a result of revisions in the normal grazing and land management planning and policy setting process.”<sup>20</sup> Increases are allowable if there would be “no adverse impact” to wilderness character.<sup>21</sup> While theoretically possible, it is difficult to see how any appreciable increase could occur in practical application under that

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15. See McClaran, *supra* note 13, at 870.

16. Act of Dec. 22, 1980, Pub. L. No. 96-560, § 108, 94 Stat. 3265, 3271 (1980) (“[W]ithout amending the Wilderness Act of 1964, with respect to livestock grazing... the provisions...relating to grazing shall be interpreted and administered in accordance with the guidelines contained ... in the House Committee Report (H. Report 96-617) accompanying this Act.”).

17. Arizona Desert Wilderness Act of 1990, Pub. L. No. 101-628, § 101(f)(1), 104 Stat. 4469, 4473 (1990).

18. H.R. REP. NO. 101-405, at 41 (1990).

19. *Id.*

20. *Id.*

21. *Id.*; see 16 U.S.C. § 1133(b) (2012); see generally PETER LANDRES, ET AL., *Keeping It Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System*, FOREST SERV. GEN. TECH. REPT. RMRS-GTR-340 (Oct. 2015), [www.fs.fed.us/rm/pubs/rmrs\\_gtr340.pdf](http://www.fs.fed.us/rm/pubs/rmrs_gtr340.pdf) (for a detailed discussion of wilderness character).

restriction because it would almost certainly adversely affect wilderness character as a whole, and Section 4(b) of the Wilderness Act mandates that agencies preserve wilderness character.<sup>22</sup>

“2. The maintenance of supporting facilities, existing in an area prior to its classification as wilderness. . . is permissible. . . . Where practical alternatives do not exist, maintenance or other activities may be accomplished through the occasional use of motorized equipment. . . . Such occasional use of motorized equipment should be expressly authorized,” and “should be based on a rule of practical necessity and reasonableness” where there are no “practical alternatives.”<sup>23</sup> Some have argued that the CGG “largely revoked agency discretion”<sup>24</sup> concerning facilities and activities. This is not the case. The agencies clearly maintain the ability to dictate frequency, timing, and degree of maintenance, as well as the method of accomplishing activities (for example, requiring the use of wheeled vehicles, rather than the environmentally more destructive tracked vehicles, to maintain a stock pond).

“3. The replacement or reconstruction of deteriorated facilities” should not require using “natural materials” unless “their use would not impose unreasonable additional costs on grazing permittees.”<sup>25</sup> Because this guideline only addresses replaced or reconstructed or deteriorated (i.e., preexisting) facilities, it does not apply to new facilities. These are covered in the fourth guideline.

“4. The construction . . . of new improvements should be primarily for the purpose of resource protection and the more effective management of these resources rather than to accommodate increased numbers of livestock.”<sup>26</sup> In other words, new facilities can be allowed if and only if they are the minimum necessary to preserve wilderness character; this restriction is not placed on the repair “or replacement of deteriorated facilities.”<sup>27</sup>

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22. 16 U.S.C. § 1133(b) (2012).

23. H.R. REP. NO. 101-405, at 42 (1990).

24. McClaren, *supra* note 13, at 874.

25. *Id.* at 872 n. 65.

26. *Id.*

27. *Id.*

“5. The use of motorized equipment for emergency purposes such as rescuing sick animals or the placement of feed in emergency situations is also permissible. This privilege is to be exercised only in true emergencies, and should not be abused by permittees.”<sup>28</sup>

In summary, subject to the conditions and policies outlined in this report, the general rule of thumb on grazing management in wilderness should be that activities or facilities established prior to the date of an area's designation as wilderness should be allowed to remain in place and may be replaced when necessary.... Thus, if livestock grazing activities and facilities were established in an area at the time Congress determined that the area was suitable for wilderness and placed the specific area in the wilderness system, they should be allowed to continue.<sup>29</sup>

Taken out of context, this summary has caused great confusion, as detailed below. The summary continues, “With respect to areas designated as wilderness prior to the date of this Act, these guidelines shall not be considered as a direction to reestablish uses where such uses have been discontinued.”<sup>30</sup> In other words, preexisting activities, facilities—indeed, and even entire grazing allotments—cannot be re-established in wilderness once they have been discontinued or abandoned. It is important to note, however, that the federal agency must formally recognize this cessation in either a grazing plan or land use plan amendment, and discontinuation or abandonment does not occur simply because a facility (or

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28. *Id.* The Wilderness Act contains a comparable provision in Section 4(c), 16 U.S.C. 1113(b), allowing the use of motorized equipment or motor vehicles for “measures required in emergencies involving the health and safety of persons within the area,” provided that the use of such equipment is “necessary to meet minimum requirements for the administration of the area for the purpose of this Chapter.” 16 U.S.C. § 1133(c) (2012). Although current agency practice is to perform programmatic minimum requirements analyses for search and rescue, that practice could be a way of implementing this guideline to ensure that permittees do not abuse it.

29. *McClaren*, *supra* note 13, at 874 n. 66.

30. Harold Shepard, Comment, *Livestock Grazing in BLM Wilderness and Wilderness Study Areas*, 5 J. Env'tl. L. & Litig. 61, 65 n. 24 (1990).



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even an entire allotment) was not being used at the year of designation.<sup>31</sup>

#### IV. RESIDUAL MANAGEMENT QUESTIONS

Although the Congressional Grazing Guidelines (CGG) clarified much of the intended management of commercial grazing operations in wilderness, the agencies face resolving some potential questions that the CGG does not address directly. In our view, the text of the Wilderness Act, judicial interpretations, fair implications from the CGG, the general policies behind the Act provide clear guidance to the agencies in answering these questions.

First, given the repeated emphasis in the CGG on past uses on wilderness allotments, can grazing be considered a “historical use” protected under Section (4b) of the Wilderness Act?<sup>32</sup> No. The section in question refers to public purposes.<sup>33</sup> Commercial livestock grazing is a private purpose, and covered under Section 4(d)(4)(2) of the Act.<sup>34</sup> To claim that grazing is protected as a historical use would mean that any previous use of a wilderness area would be similarly protected, which is clearly not the intent of the law.

The CGG states that “livestock grazing activities. . . established in an area” at the time Congress designated it as wilderness “should be allowed to continue.”<sup>35</sup> Therefore, shouldn’t all motor-

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31. See *Ventana Wilderness All. v. Bradford*, 313 Fed. App’x 944, 946 (9th Cir. 2009) (holding that a “temporary cessation in grazing did not serve to discontinue the use, especially where the interruption was caused by the transition from private to public land, the Forest Service demonstrated an intent to allow grazing within a fairly short period after acquiring the property, even before the property was officially designated as wilderness”).

32. See, e.g., U.S. Dep’t of Int., Bur. Land Mgmt., Preliminary Environmental Assessment for the Upper Bench, Lower Bench and Battleship Allotments Permit Renewal, DOI-BLM-CO-N034-2015-0002-EA, at 72 (Jun. 2016) (concluding that the allotment permits should be renewed, in part, because “[l]ivestock grazing has been part of the history of [this] landscape since the late 1800’s”).

33. 16 U.S.C. § 1133(b) (2014) (“Except as otherwise provided in this chapter, wilderness areas shall be devoted to the *public* purposes of recreational, scenic, scientific, educational, conservation, and historical use”) [emphasis added].

34. See 16 U.S.C. § 1133(d)(4)(2) (2014).

35. H.R. REP. NO. 101-405, at 43 (1990).

ized uses, including herding of livestock, that occurred prior to designation still be allowed?<sup>36</sup> Again, our answer is: No. This argument conflates the activity with the method of accomplishing that activity. Here, the conflation is the activity—herding—with the method of accomplishing that—using motor vehicles. This is clearly not Congressional intent, as can be seen by looking at the example detailed in the second guideline:

For example, motorized equipment need not be allowed for the placement of small quantities of salt or other activities where such activities can reasonably and practically be accomplished on horseback or foot. On the other hand, it may be appropriate to permit the occasional use of motorized equipment to haul large quantities of salt to distribution points. Moreover, under the rule of reasonableness, occasional use of motorized equipment should be permitted where practical alternatives are not available.<sup>37</sup>

Note that the decision on whether or not to use a motor vehicle to accomplish an action rests entirely on what the permittee can reasonably accomplish on horseback or foot, not on how the activity was accomplished prior to designation. In terms of herding livestock, it is obviously practical to do so without motor vehicles, as this was historically and is currently the method employed in hundreds of wilderness grazing allotments across the country. Moreover, to conclude otherwise would ignore the admonition in guideline #5 of the CGG—“The use of motorized equipment [is a] privilege is to be exercised only in true emergencies, and should not be abused by permittees”—would be meaningless.<sup>38</sup> Few impacts to an area’s wilderness character would be more deleterious than allowing routine motorized access, and it would require explicit authorization from Congress.<sup>39</sup>

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36. See Mark Squillace, *Grazing in Wilderness Areas*, 44 ENVTL. L. 415, 435 (2014) (“It would appear that motor vehicle use for herding animals that occurred before an area was designated wilderness is an activity that Congress expressly intended to allow to continue.”).

37. H.R. REP. NO. 101-405, at 42 (1990).

38. *Id.*

39. See Forest Jobs and Recreation Act, S. 1470, 111th Cong., § 202(n)(3)(B) (1st Sess. 2009), (allowing “historical motorized access to trail sheep” and unlimited “motorized access to

Since the Act states that “the grazing of livestock, where established prior [designation of the area], shall be permitted to continue”<sup>40</sup> and the CGG states that “there shall be no curtailments of grazing...simply because an area is... wilderness,”<sup>41</sup> can grazing ever be terminated in a wilderness? Here our answer is: Yes. Nevertheless, the question remains as to under what circumstances.

It is clear from the Guidelines that grazing cannot be unilaterally terminated except under the same conditions that would apply on non-wilderness lands. Such conditions would include failure to abide by permit conditions, or deteriorated conditions of the land (such as long-term habitat changes) that make the area no longer suitable for livestock grazing.<sup>42</sup>

Originally, Zahniser’s draft bill envisioned that the federal agency could, with willing permittees, buy-out livestock operators or exchange operations within wilderness areas with ungrazed allotments outside the wilderness.<sup>43</sup> As noted, this provision does not appear in the final version of the Wilderness Act, and while the CGG does not address this directly, it would seem this circumstance was not anticipated as routine by Congress. To date, very

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water infrastructure for cattle” “to preserve historic access for other ranching activities” in the proposed Snowcrest Wilderness); and Owyhee Wilderness Areas Boundary Modifications Act, S. 1167, 114th Cong., § 3 (2nd Sess. 2016), (as originally introduced, allowed “the use of motor vehicles for livestock monitoring, herding, and gathering” on an allotment within the Pole Creek and Owyhee River Wilderness areas). Neither bill (in any iteration) has been passed into law. Both these bills were supported by self-described conservation groups, and both were amended to allow those uses if the managing agency found them to be the minimum necessary under the CGG -- which, as we have shown, they cannot be. For a more detailed discussion on these and similar current compromises to wilderness character by some wilderness advocates, see Martin Nie & Christopher Barns, *The Fiftieth Anniversary of the Wilderness Act: The Next Chapter in Wilderness Designation, Politics, and Management*, 5 ARIZ. J. ENVTL. L. & POL’Y 237, 278-90 (2014).

40. Wilderness Act, Pub. L. No. 88-577, 88 Stat. 577 (1964) (codified at 16 U.S.C. §§ 1131-1136 (2012)).

41. H.R. REP. NO. 101-405, at 41 (1990).

42. See 36 C.F.R. § 222.4 (2016); 43 C.F.R. 4130.3-1(b), -3(a) (2016).

43. See HARVEY, *supra* note 4.

few wilderness bills provide explicit direction to allow such actions.<sup>44</sup>

However, what if a permittee wishes to “donate” a permit, without either exchange or other remuneration? The law says that where grazing was present prior to designation it “shall be permitted to continue”, not that “it must be present in perpetuity.”<sup>45</sup> Surely Congress did not intend to force a permittee to run livestock against his wishes. But is such a desire by the permittee sufficient to then permanently retire the area from livestock grazing absent explicit direction from Congress to do so? Mark Squillace has outlined significant impediments to doing so, citing the Supreme Court decision in *Public Lands Council v. Babbitt* that “a permit holder is expected to make substantial use set forth in the grazing permit.”<sup>46</sup> If Congress did not intend to force a permittee to run livestock, apparently the Supreme Court does. Presumably, the operator wishing to “donate” his lease owns the base property, but Squillace argues that if the base property owner does not wish to exercise his permit, the federal agency “has the authority—and *perhaps* even the duty—to lease the land to a third party who does want to graze.”<sup>47</sup>

However, what is also clear is that the federal agency has the authority to formally determine that an area in question is no longer chiefly valuable for grazing, a necessary precursor to clearing the way for the permanent retirement of the associated lease. The catch is that the CGG makes it clear that the designation of

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44. See Steens Mountain Cooperative Management and Protection Act of 2000, Pub. L. No. 106-399, § 202(d)(2), 114 Stat. 1655, 1667 (2010) (“The Secretary shall permanently retire all grazing permits applicable to certain lands in the Wilderness Area, as depicted on the map referred to in section 101(a), and livestock shall be excluded from these lands.”); Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, § 1503(b)(3)(D), 123 Stat. 991, 1034–35 (2009) (in part, directing the Secretary to “accept the donation of any valid existing permits or leases authorizing grazing on public land, all or a portion of which is within the wilderness areas designated by this subtitle” and to “terminate the grazing permit or lease; and . . . ensure a permanent end to grazing on the land covered by the permit or lease”).

45. 16 U.S.C. § 1133(d)(4)(2) (2014).

46. Squillace, *supra* note 36, at 440–442.

47. *Id.* at 442 [emphasis added].

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an area as wilderness is, in and of itself, insufficient for such a determination.<sup>48</sup> The agency would have to find that other rationales are at play, for example that the area is more valuable for providing forage for native species or other conservation and ecological reasons, or that eliminating grazing would reduce visitor conflicts, or that it would simply restore a more natural environment by removing the infrastructure a grazing operation might require. While these rationales are compatible with wilderness designation, they are not a *sine qua non* of designation.

Courts have approved of agencies taking actions that extend beyond the original statutory provisions protecting a wilderness area. For example, in a somewhat related situation, USFS closed a trail outside, but leading to, the Glacier Peak Wilderness to motorized trailbikes to reduce user conflict.<sup>49</sup> An off-highway vehicle association sued, claiming that finding conflict was arbitrary and capricious, and that singling out their user-group created a "buffer zone" explicitly prohibited in the Washington State Wilderness Act of 1984.<sup>50</sup> The Ninth Circuit agreed with the lower court that USFS had ample evidence of user conflict. As for the buffer zone:

To the extent an activity is prohibited on land adjacent to a Wilderness area solely because of its potential effect on the Wilderness area, the prohibition would likely violate the Wilderness Act's prohibition of buffer zones. However, if an activity is prohibited, in part, for reasons other than the possible effect that activity will have on an adjoining Wilderness area, it is not an impermissible buffer zone under the Wilderness Act. The Wilderness Act clearly prohibits use restrictions on nonwilderness areas based solely on the potential impact that use might have on the Wilderness. Congress' intent on this point is manifested through its express language in section 9 of the [Washington] Wilderness Act: "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 boundary of the wilderness area." (Emphasis added.) When Congress

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48. H.R. REP. NO. 101-405, at 41 (1990) ("There shall be no curtailments of grazing in wilderness areas simply because an area is, or has been designated as wilderness. . .").

49. Northwest Motorcycle Ass'n v. USDA, 18 F.3d 1468, 1470-71 (9th Cir. 1994).

50. *Id.*

used the words "of itself," it implicitly stated that the effects on a Wilderness area can be considered when allocating uses of adjoining nonwilderness area, so long as it is not the only reason. Therefore, contrary to the Plaintiff's position, the Wilderness Act does not prevent the Forest Service from considering the Wilderness classification of adjoining land as a factor in developing the Land and Resource Management Plan for the non-wilderness area.<sup>51</sup>

Similarly, the basic fact that Congress has declared an area to be wilderness is not sufficient to curtail grazing, but neither must the agency treat that fact as irrelevant if it has specific reasons to limit or terminate grazing in a particular wilderness area.

## V. CONCLUSION

In the Wilderness Act, Congress exempted some activities that the Act would otherwise bar either to promote use and enjoyment of the lands,<sup>52</sup> or to allow preexisting, nonconforming activities to continue under some circumstances. Grazing constitutes one of the more troublesome of these activities, and Congress—through both the language of the Act and through enforceable guidelines—has struck a balance between allowing this activity under the right conditions and limitations. Agencies that oversee grazing within wilderness should not lose track of Congress's ultimate definition of wilderness, and its overriding command to them that they preserve wilderness character of the areas under their care.<sup>53</sup> Although the Wilderness Act did not by any means eliminate grazing in wilderness, agencies should not simply accept grazing as "business as usual" without thinking critically about the role that wilderness designation generally and the particular features and needs of an area when making decisions about how to strike a properly protective balance.

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51. *Id.* at 1480–81.

52. *See, e.g.*, 16 U.S.C. § 1133(d)(5) (2012) (permitting "[c]ommercial services [to] 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").

53. *See* 16 U.S.C. § 1131(b), (c) (2012); 16 U.S.C. § 1133(b) (2012).