The Wilderness Act as Congress Intended

by John T. Keane

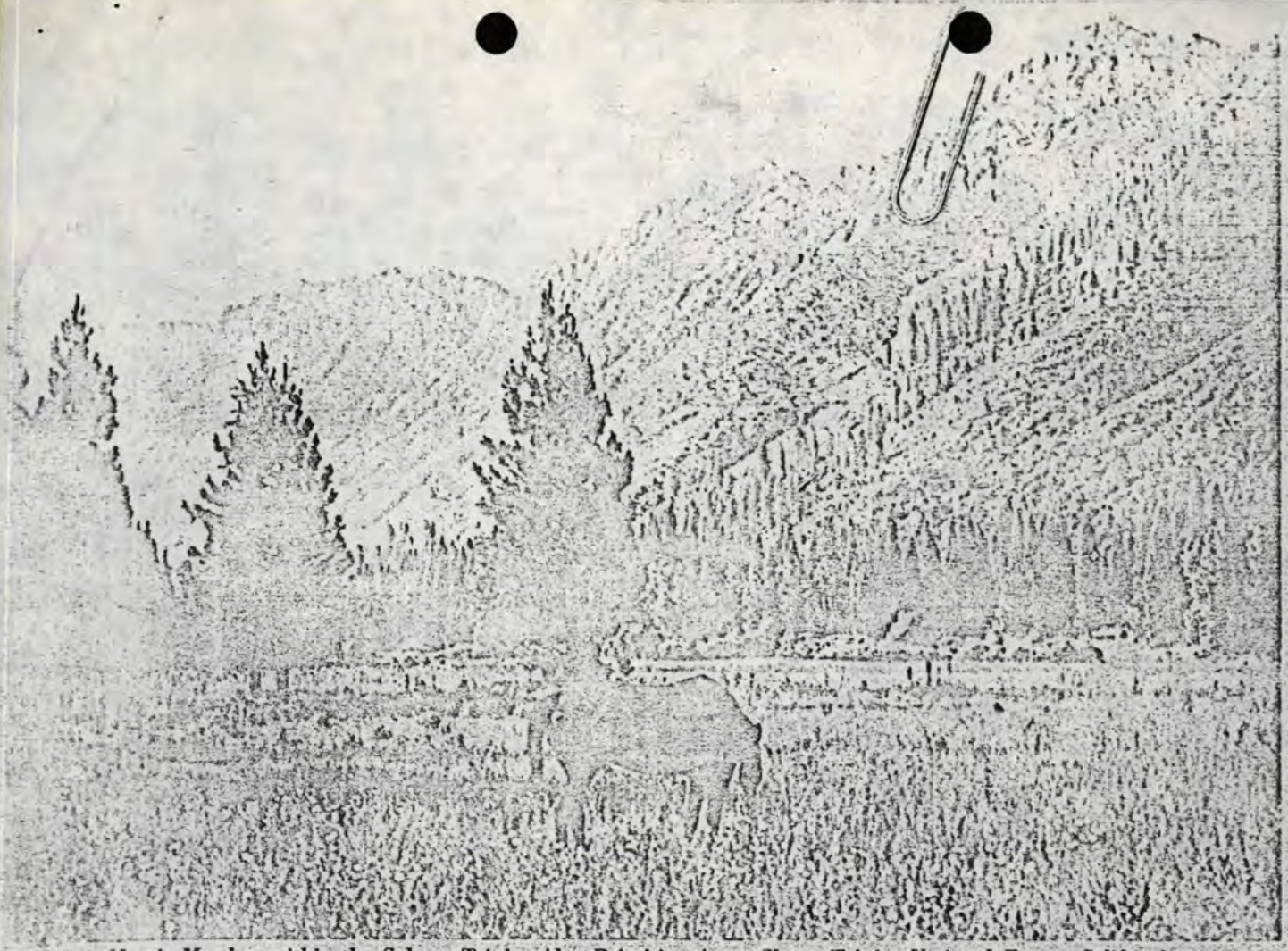
COURT actions to prevent or reverse decisions of federal land management agencies are increasing in frequency, as prominently noted in recent issues of AMERICAN FORESTS. They are based on claims that the government has acted arbitrarily or capriciously and contrary to federal regulations or law. Such actions may become even more common as various plaintiffs seek legal interpretations and decision precedents favorable to their own causes.

Has the February, 1970 decision of Judge William E. Doyle in Colorado District Court, tabbed the "Great Chicken-Little Case" by AMERICAN FORESTS' contributor Peter Kain, set an important precedent in conservation law? The answer to this depends on the ruling of the Tenth Circuit Court of Appeals, expected in 1971, which will determine if the Forest Service did indeed thwart and frustrate the intent and spirit of the Wilderness Act of 1964 by making a timber sale in an area contiguous to the Gore Range-Eagle Nest Primitive area in Colorado. (See box on following page.)

An understanding of the intent of this law can be obtained by reviewing the legislative history as reported in the Congressional Record and pertinent committee reports. If the wording of a law does not in itself clearly state the intent, then committee reports or statements made on the floor of Congress in debate of the measure become the most-valued indicators of Congressional intent.

There is no disagreement among the parties in these disputes that the Wilderness Act is clear and specific with respect to the duties of the Secretary of Agriculture to review and report to the President on the suitability or nonsuitability for wilderness of those national forest lands *within* primitive area boundaries. The disagreement concerns the status of contiguous lands *outside* of primitive areas.

Does a contiguous area, or for that matter an area inside of a primitive area, have a "predominant wilderness value" merely because it lacks development and signs of activities of man? Or, is an area of "predominant wilderness value", within the intent of the



Morris Meadow within the Salmon-Trinity Alps Primitive Area, Shasta-Trinity National Forest, California

View across Echo Lake looking into the Salmon-Trinity Alps Primitive Area. Alps massif is in background. This lake area will probably be recommended for classified wilderness status by the U.S. Forest Service

What is the Intent of Congress?

WHETHER you call it the Battle for East Meadow Creek or the Great Chicken-Little Case, or by its legal citation *Parker* v. *U.S.*, the Colorado District Court decision of Judge Doyle last February may well have repercussions in other areas of the West. The *Parker* case involved an attempt to terminate a timber sale in an area near the Gore Range-Eagle Nest Primitive Area in Colorado's White River National Forest.

Judge Doyle ordered a halt of logging and planned road construction for an indefinite period because of language in the Wilderness Act which, in his view, "leaves no doubt that at least as to those contiguous areas which are predominantly of wilderness value, the decision to classify or not to classify them as wilderness *must remain open through the Presidential level*" (emphasis by the court).

The Act specifies—

> "Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value."

Eager to test the precedent set in Judge Doyle's Denver courtroom, the Sierra Club has turned its attention to California and the Salmon-Trinity Alps Primitive Area. In June 1970, the Sierra Club's Legal Committee requested the California Regional Forester to take immediate steps to prevent logging, road building or any other activities in a "predominantly wilderness" area of about 35,000 acres to the west of, but outside and contiguous to the western boundary of the Salmon-Trinity Alps Primitive Area. The Club objected to the current Colgrove Timber Sale, a portion of which is within the Club's defined contiguous area, and alleged it was illegal. The *Parker* decision and the Wilderness Act were cited as the basis for the objection. The Sierra Club stated that legal action was being contemplated in the event that the Regional Forester failed to act.

On June 24, the Regional Forester responded that he would not terminate timber cutting and road building in the timber sale area. He said the Forest Service did not believe the sale and related activities were illegal. Furthermore, termination would involve the Forest Service in a breach of contract dispute with the timber operator. It was noted that the Club had not objected during the pre-sale advertisement period, and four years before passage of the Wilderness Act, had agreed in principle to a tentative proposal to eliminate the western portion of the primitive area from classified status.

On September 18, the Sierra Club filed an administrative appeal before the Board of Forest Appeals in Washington, D. C. contesting the decision of the Regional Forester on the grounds that it is contrary to law, applicable regulations and the facts. In addition to the Colgrove Timber Sale, the Club objected to portions of three more recent timber sales which intrude into the contiguous area in question. The Club maintains that the area has a significant wilderness value that requires it to be studied for inclusion in the National Wilderness Preservation System.

With public hearings scheduled for 17 national forest primitive areas totaling more than three million acres during the 1970-73 period, it appears that more conflict lies ahead. Was Judge Doyle correct in ruling that to permit a timber sale outside of the Gore Range-Eagle Nest Primitive Area would "thwart and frustrate one of the major purposes and the spirit of the Wilderness Act?" Can the Sierra Club rightfully seek to terminate or postpone sales of national forest timber outside of the Salmon-Trinity Alps or other primitive areas still scheduled for review? The accompanying article suggests that the intent of Congress is important to the resolution of such issues and has been overlooked. (J.T.K.)

Wilderness Act, an area which h
residual value for wilderness; th
an area determined to have wilde
value but not having significant eco
ic values for timber, minerals and
commodities or for developed re
tion or some use other than wilder
Did Congress intend to restrict Fo
Service management outside of p
itive areas?

It may be surprising to reader
AMERICAN FORESTS to learn that t
questions were discussed repeatedl
the Congress during the tumult
eight-year journey of the Wilder
Act into law. During this period t
was no substantive debate about in
sion in the National Wilderness P
ervation System of the Forest Se
"wilderness" and "wild" areas w
had been reviewed and administra
ly classified earlier by the Forest S
ice. Discussion about the Forest Se
primitive areas and if and how t
should become units of the Natio
Wilderness Preservation System was
most common element of the protrac
debate.

Section 3(b) of the Act was
compromise finally reached. It provi
that primitive area management be
changed for a maximum of 10 ye
During this time, each primitive a
would be reviewed by the Forest Se
ice, and a recommendation would
made by the Secretary of Agricult
to the President and then by the Pr
ident to the Congress. Congress wo
then determine whether to include
or parts of such areas in the Natio
Wilderness Preservation System.

Let's look at what was said dur
the floor debate and in the repor
(Emphasis added.)

Areas Already Withdrawn

Senate Report No. 109 of the Co
mittee on Interior and Insular Affa
which accompanies S. 4, was presente
on April 3, 1963 by Senator Church f
the chairman, Senator Anderson.
pages 2, 4, and 13 it states:

> "The committee's report on S. 174, which was Report No. 635 of the 87th Congress filed July 27, 1961, is applicable to S. 4.
>
> "As reported at that time, the Wilderness Preservation System can be established without affecting the economic arrangements of communities, counties, states or business enterprises *since the areas are already withdrawn*, or because

private rights and established uses are permitted to continue. *There will be no* withdrawal of lands from the tax base of counties or communities; *no withdrawal of timberlands on which lumbering operations depend*, nor any withdrawal of present grazing or mining rights."

* * *

"A second development since the previous report was filed is increased understanding and agreement that S. 4 does not 'sterilize,' 'quarantine,' nor 'lock up' a vast new 60-million acre area of federal lands but involves *lands previously restricted in use* by laws creating our national parks, by establishment as wildlife areas, or *by national forest classification.*"

* * *

"The national forest lands affected by S. 4 are not now subject to exploitation for timber. Timber sales were barred by executive regulation, with rare exceptions, when the 14.3 million acres of national forest primitive areas were set aside in the twenties and thirties for preservation as wilderness."

The most active proponent of wilderness legislation in the House of Representatives was Congressman John P. Saylor of Pennsylvania. Mr. Saylor served on the Committee on Interior and Insular Affairs and was a signatory to the joint conference report on S.4, which became the Wilderness Act. Speaking on the House floor in support of H.R. 930 and S. 4, he stressed that as far as national forests were involved, the bill would relate only to areas ". . . within the 8 percent of national forest lands comprising the less than 15 million acres *already classified for wilderness protection.*"

He commented further (109 Cong. Rec. (1963) 11930):

"The argument about positive (Congressional) action relates particularly to a procedure that is provided for a careful review of the wilderness lands and their permanent inclusion in the wilderness system on the basis of such a review.

"Bear in mind that this review relates only to the lands that Congress by the act says are to be considered, and all these lands are now in some kind of administrative status as wilderness."

Senator Frank Church of Idaho, served as floor manager of S. 174 and S. 4 following the illness of Committee on Interior and Insular Affairs Chairman, Senator Anderson. As manager of wilderness legislation in the Senate, Senator Church was called on frequently to explain the meaning of provisions of the bill being considered.

Quoting Senator Anderson, the ailing chairman, Senator Church commented (107 Cong. Rec. (1961) 18370):

" 'There is a very sound reason for drawing a line between handling of areas already reserved and any new areas.

" 'Inclusion of the wild, wilderness, primitive, park, and wildlife areas in the wilderness preservation system will cause little or no disturbance of individual, communities, or economic patterns. *The areas have been withdrawn for years. There have been no timber sales from forest lands involved* so there are no lumber mills dependent on them which will have to close down. Established mining operations and grazing will not be disturbed.

" 'There is thus virtually no change in the status quo of the areas to be handled under the presidential recommendations procedure in the bill. The bill simply makes wilderness preservation a statutory directive and responsibility of the existing land administering agency in its handling of already reserved lands.'

"Mr. President, that explanation by the committee chairman is important. It is important for the Senate to understand that the lands under the jurisdiction of the Department of Agriculture—and I speak of it particularly—that will be affected by this bill are *those lands which, in his executive discretion, the Secretary of Agriculture has already determined shall be set aside as wilderness, wild, primitive, or canoe areas.*"

Maximum Possible Scope

Senator Church explained the scope of the wilderness system and the purpose of reviewing the Forest Service primitive areas (107 Cong. Rec. (1961) 18374):

"At no time during the deliberations in the Committee on Interior and Insular Affairs did anyone on either side dispute the desirability of establishing and preserving wilderness areas in the United States. The only problem before us has been how to do this in a way which will be equitable to all, which will constitute no encroachment upon the legitimate business interests of the people of the Western States, and which at the same time will establish a uniform wilderness system embracing tracts of public land that are variously denominated under existing law.

"The committee concluded, after very detailed and exhaustive hearings, that the method proposed in the pending bill would be the fair method.

"First of all, we undertake to confine the proposed wilderness system to those areas of public land that have already been set aside for recreational use. Thus, the system could only include areas already designated as wild areas, wilderness areas, canoe areas, primitive areas in national forests, primitive-type areas in national parks and in national monuments, and such areas in wildlife refuges and game ranges.

"That is the maximum possible scope of the wilderness system to be established by the bill.

"With respect to the tracts which have already been designated as 'wild, wilderness, or canoe areas,' these will be incorporated in the wilderness system upon the enactment of the bill. As to these areas, there is no dispute.

"The dispute arises over the treatment to be given to the primitive areas in the national forests and the wilderness-type areas in the national parks and in the game refuges. The committee believed these areas should be carefully reappraised, so that any portion having merchantable timber or being more susceptible to multiple use would be excluded, and the remainder not susceptible to merchantable use, would be retained. On the basis of such a review, the recommendations would then be

(Turn to page 61)

he Wilderness Act as Congress Intended

(From page 43)

...e to Congress, and Congress ...uld reserve the final judg-...nt***."

...further explanation of the maxi-...extent of a wilderness system by ...e of the legislation was made by ...or Church (107 Cong. Rec. ...1) 18366-18367):

"The purpose of the bill is to ...ate a wilderness system com-...ing those areas which have al-...dy been withdrawn in the na-...al parks, wildlife refuges, and ...mitive areas in the national for-..., for what are primarily rec-...ational purposes. *Not only are ... areas named in the printed ...rings, but there are maps of the ...tes affected showing exactly ...re the areas are located.*

"So the junior Senator (Carroll) ...n Colorado is quite correct: ... *will not be establishing,* by ...tue of the proposed legislation, ... *intrusions upon the public ...main.* We will not be with-...wing from the national forests ... areas which have not already ...n designated as wild or primi-... areas."

...ator Church offered further com-...on the purpose of primitive area ... (107 Cong. Rec. (1961) 18366):

"The Interior Committee want-...to make certain that the wilder-...system to be established would ...confined to those areas that have already been withdrawn for recreational purposes.***

"In the national forests, these areas are known as primitive areas. Upon the enactment of the bill, procedures are established for review to determine what part of these primitive areas will be permanently retained within the wilderness system."

Suitable For Wilderness Alone

An understanding of the term "predominantly wilderness" may be gained from Senator Church's explanation given on the Senate floor (107 Cong. Rec. (1961) 18366):

"The Secretary (of Agriculture) has 10 years after the enactment of the bill to review those areas that have already been withdrawn and designated as primitive areas, on the effective date of the bill, the purpose of the review to be *to separate out from these primitive areas any portion found to be more suitable for multiple use,* and then *to recommend for permanent retention within the wilderness system the balance which is predominantly wilderness in character and of value for recreational use alone.*"

Senator Church also emphasized that economic interests were protected by the bill (107 Cong. Rec. (1961) 18353-18354):

"As the Senator (Morse) well

knows, the bill in actuality constitutes no threat to any legitimate economic interest. It is based upon the wilderness type areas in national parks and national monuments, and those primitive areas which have already been withdrawn from the national forests, in which lumbering is already prohibited and in which there is very little or no mining activity.

* * *

"No one will be adversely affected by passage of the bill. It has been carefully drawn to give all possible protection to the economic interests of the West."

Using Idaho as an example because of its high proportion of federal land, the importance of lumber and mining to the economy, and its large primitive area acreage, Senator Church commented on economic protection and the intent of primitive area reviews (107 Cong. Rec. (1961) 18046):

"Because the areas covered by the pending bill have already been set aside in their primitive state for some measure of preservation, the proposed wilderness system can be established, if we act now, with no adverse effect on anyone. *The tracts involved have already been excluded from timber sales, and consequently do not form any part of the cutting circle for any community or lumber company.****

* * *

"The pending bill would establish a wilderness system in Idaho based on these existing primitive areas. But before these areas could become a permanent part of the system, each one would have to be reviewed for wilderness values within 10 years following the enactment of the bill: *Those portions found to be more suitable for multiple use—for lumbering, mining, and grazing, as well as recreation—would be released from their present restrictive classification and would revert to ordinary forest lands;* the remaining acres, where wilderness values clearly predominate, would then be recommended for retention in the wilderness system."

Oregon's Senator Morse, a strong advocate of wilderness legislation, commented on the bill's effect on commercial interests (107 Cong. Rec. (1961) 18353):

"I am constantly astonished by the point of view expressed in much of the mail from my State which seems to believe that commercial rights or interests now available for timber cutting, grazing, mining, or recreation, would be taken away under S. 174.

"Mr. President, that just is not the case at all."

Senator Hart of Michigan, a consistent supporter of the legislation, commented similarly (107 Cong. Rec. (1961) 18391):

"A favorite expression used by opponents of the bill is that it will lock up re[illegible] needed in the future. But *this bill does not extend the wilderness classification to one additional acre of land* that is not wilderness at the present time and *is not already protected from commercial use.*"

California Senator Kuchel, in a previous reference to national forests, expressed a similar view (107 Cong. Rec. (1961) 18370):

"The legislation which the Senate is considering today would be effective as to national forests only in those areas which the Secretary has already determined to be wilderness, wild, primitive, or canoe areas. The vast expanse of the public domain under the Department of Agriculture *remains for his consideration for the other multiple uses* in which the able Senator from Idaho and I both believe."

Senator Murray, Interior Committee Chairman until his death, said of the bill (106 Cong. Rec. (1960) 15574):

"It will not interfere with established practices, such as grazing, for example. *It includes many areas now open to lumbering.*"

Senator Humphrey of Minnesota introduced the original wilderness bill in 1956 and he remained a strong advocate until passage of wilderness legislation in 1964. He commented on the effect of wilderness legislation on commercial interests (105 Cong. Rec. (1959) 2637):

"None of us here in the Senate need fear that after the enactment of this measure the commercial interests, whom we all respect and value, will come to us and complain that they have been hurt. None of them will suffer damage.

"This bill, for example, does not give wilderness status to a single acre of forest land now available for timber production.

* * *

"For *the wilderness bill relates to federal lands* in parks, refuges or *in some* other *special status* in which they already are removed *from commercial availability.*"

Only Areas Already Set Aside

Senator Douglas of Illinois succinctly summarized the effect of wilder-