



# A HANDBOOK ON THE WILDERNESS ACT

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- This booklet is designed to serve as a portable reference work for persons engaged in campaigns for the preservation of natural land areas eligible to become units of the National Wilderness Preservation System.

**The essential documents** in such citizen efforts are:

- the basic Act—PL 88-577, known as the Wilderness Law of 1964, accompanied by a section-by-section analysis;
- the regulations promulgated by the Department of Agriculture and the Department of the Interior for implementing the Wilderness Law and for managing the wilderness areas under their jurisdictions;
- A list of Wilderness areas and potential wilderness areas by states.

**How to Use This Book.** Familiarize yourself with the provisions of the Wilderness Act and with the regulations for its implementation. Note that the agencies do not have the last word on what lands shall be designated as wilderness and protected under the law. Congress has reserved to itself the setting of boundaries—the agencies only suggest, and the President recommends.

Thus the Wilderness System clearly is intended to be a reflection of the will of the people of the United States, through the specific acts of their representatives in the U. S. Congress.

Related materials, published by The Wilderness Society and other citizen conservation organizations, should be studied in connection with the review of particular areas, with the organization of wilderness study committees, and with developing campaigns for public support of wilderness proposals.



Public Law 88-577  
88th Congress, S. 4  
September 3, 1964

### An Act

To establish a National Wilderness Preservation System for the permanent good of the whole people, and for other purposes.

## COMPLETE TEXT OF THE WILDERNESS ACT

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SHORT TITLE

SECTION 1. This Act may be cited as the "Wilderness Act."

#### WILDERNESS SYSTEM ESTABLISHED—STATEMENT OF POLICY

SECTION 2. (a) In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these 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, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this Act or by a subsequent Act.

(b) The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

#### DEFINITION OF WILDERNESS

(c) A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

#### NATIONAL WILDERNESS PRESERVATION SYSTEM—EXTENT OF SYSTEM

SECTION 3. (a) All areas within the national forests classified at least 30 days before the effective date of this Act by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness," "wild," or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall—

(1) Within one year after the effective date of this Act, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this Act: *Provided, however*, That correction of clerical and typographical errors in such legal descriptions and maps may be made.

(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.

*Classification.* (b) The Secretary of Agriculture shall, within ten years after the enactment of this Act, review, as to its suitability or non-suitability for preservation as wilderness, each area in the national forests classified on the effective date of this Act by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President.

*Presidential recommendation to Congress.* The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness" or other

reclassification of each area on which review has been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third of all the areas now classified as "primitive" within three years after the enactment of this Act, not less than two-thirds within seven years after the enactment of this Act, and the remaining areas within ten years after the enactment of this Act.

*Congressional approval.* Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on the effective date of this Act shall continue to be administered under the rules and regulations affecting such areas on the effective date of this Act until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any such area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. 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. Notwithstanding any other provisions of this Act, the Secretary of Agriculture may complete his review and delete such area as may be necessary, but not to exceed seven thousand acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado, if the Secretary determines that such action is in the public interest.

*Report to President.* (c) Within ten years after the effective date of this Act the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within, the national wildlife refuges and game ranges, under his jurisdiction on the effective date of this Act and shall report to the President his recommendation as to the suitability or non-suitability of each such area or island for preservation as wilderness.

*Presidential recommendation to Congress.* The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after enactment of this Act, not less than two-thirds within seven years of enactment of this Act, and the remainder within ten years of enactment of this Act.

*Congressional approval.* A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or other-



wise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

*Suitability.* (d) (1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness—

*Publication in Federal Register.* (A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

*Hearings.* (B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: *Provided.* That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

*Proposed modification.* (e) Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such recommendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section.

#### USE OF WILDERNESS AREAS

SECTION 4. (a) The purposes of this Act are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and wildlife refuge systems are established and administered and—

(1) Nothing in this Act shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215).

(2) Nothing in this Act shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thye-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-Blatnik-Andresen Act (Public Law 607, Eighty-fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this Act shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this Act shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with the Act of August 25, 1916, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 432 et seq.); section 3(2) of the Federal Power Act (16 U.S.C. 796 (2)); and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

(b) Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

#### PROHIBITION OF CERTAIN USES

(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose 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 within any such area.

#### SPECIAL PROVISIONS

(d) The following special provisions are hereby made:

(1) Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as

may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

(2) Nothing in this Act shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

*Mineral leases, claims, etc.* (3) Notwithstanding any other provisions of this Act, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to the effective date of this Act, extend to those national forest lands designated by this Act as "wilderness areas"; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this Act as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if the timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this Act: *Provided*, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this Act shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after the effective date of this Act within the boundaries of wilderness areas designated by this Act shall create no rights in excess of those rights which may be patented under the provisions of this subsection.



Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this Act shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this Act as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

*Water resources.* (4) Within wilderness areas in the national forests designated by this Act, (1) the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and (2) the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

(5) Other provisions of this Act to the contrary notwithstanding, the management of the Boundary Waters Canoe Area, formerly designated as the Superior, Little Indian Sioux, and Caribou Roadless Areas, in the Superior National Forest, Minnesota, shall be in accordance with regulations established by the Secretary of Agriculture in accordance with the general purpose of maintaining, without unnecessary restrictions on other uses, including that of timber, the primitive character of the area, particularly in the vicinity of lakes, streams, and portages: *Provided*, That nothing in this Act shall preclude the continuance within the area of any already established use of motorboats.

(6) Commercial services may 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.

(7) Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(8) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

#### STATE AND PRIVATE LANDS WITHIN WILDERNESS AREAS

SECTION 5. (a) In any case where State-owned or privately owned land is completely surrounded by national forest lands within areas designated by this Act as wilderness, such State or private owner shall be given

such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest, or the State-owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture:

*Transfers, restriction. Provided, however,* That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or causes to be relinquished to the United States the mineral interest in the surrounded land.

(b) In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

*Acquisition.* (c) Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this Act as wilderness if (1) the owner concurs in such acquisition or (2) the acquisition is specifically authorized by Congress.

#### GIFTS, BEQUESTS, AND CONTRIBUTIONS

SECTION. 6. (a) The Secretary of Agriculture may accept gifts or bequests of land within wilderness areas designated by this Act for preservation as wilderness. The Secretary of Agriculture may also accept gifts or bequests of land adjacent to wilderness areas designated by this Act for preservation as wilderness if he has given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives. Land accepted by the Secretary of Agriculture under this section shall become part of the wilderness area involved. Regulations with regard to any such land may be in accordance with such agreements, consistent with the policy of this Act, as are made at the time of such gift, or such conditions, consistent with such policy, as may be included in, and accepted with, such bequest.

(b) The Secretary of Agriculture or the Secretary of the Interior is authorized to accept private contributions and gifts to be used to further the purposes of this Act.

#### ANNUAL REPORTS

SECTION 7. At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system, including a list and descriptions of the areas in the system, regulations in effect, and other pertinent information, together with any recommendations they may care to make.

Approved September 3, 1964.

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LEGISLATIVE HISTORY:

HOUSE REPORTS:

No. 1538 accompanying H. R. 9070 (Committee on Interior & Insular Affairs) and No. 1829 (Committee of Conference).

SENATE REPORT:

No. 109 (Committee on Interior & Insular Affairs).

CONGRESSIONAL RECORD:

Vol. 109 (1963): April 4, 8, considered in Senate.

April 9, considered and passed Senate.

Vol. 110 (1964): July 28, considered in House.

July 30, considered and passed House, amended, in lieu of H. R. 9070.

August 20, House and Senate agreed to conference report.



# INTERPRETATION OF THE WILDERNESS ACT<sup>1</sup>

Where the Wilderness Act refers to the Secretary of Agriculture, the provisions apply to national forest lands; where the Secretary of the Interior is mentioned, the provisions apply to national parks and monuments, and national wildlife refuges and ranges. The "appropriate Secretary" applies to either Agriculture or Interior.

**SECTION 1** states the title as the "Wilderness Act."

**SECTION 2** is a statement of policy including a definition of wilderness. It establishes the National Wilderness Preservation System.

**SECTION 2(a)** is a statement of the belief of Congress that increasing population and human developments will occupy or modify all areas of the Nation except those set aside for preservation in their natural condition. It is accordingly declared to be the policy of Congress to assure the Nation an enduring resource of wilderness, and for this purpose a National Wilderness Preservation System is established to be composed of appropriate federally-owned areas which are designated by Congress as wilderness areas. The Act states that these areas shall be administered for the American people "in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, [and] the preservation of their wilderness character . . ."

**SECTION 2(b)** specifies that each Federal Department and agency having jurisdiction over areas of wilderness shall continue to manage these areas after their inclusion in the National Wilderness Preservation System. This section also contains a prohibition against appropriations for payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit or for additional personnel required solely for the management of areas because they are included in the wilderness system.

**SECTION 2(c)** defines wilderness. The first sentence of this definition states in an ideal concept the nature of wilderness areas where the natural community of life is untrammled by man, who visits but does not remain. The second sentence describes an area of wilderness as it is to be considered for the purposes of the Act—an area of undeveloped Federal land retaining its primeval character and influence without permanent improvements or human habitation and managed so as to preserve its natural conditions. Wilderness is further defined as an area generally appearing to have been affected primarily by the forces of nature with the imprint of Man's work substantially unnoticeable, which offers outstanding opportunity for solitude or a primitive or unconfined type of recrea-

<sup>1</sup> From THE LIVING WILDERNESS Special Issue, *A Handbook on the Wilderness Act*, Number 86, Spring-Summer, 1964.

tion, and ecological, geological, or other features of scientific, educational, scenic, or historical value.

The Act specifies that an area of wilderness must include at least 5,000 acres or be of sufficient size to make practicable its preservation. This latter provision will permit preservation of areas of less than 5,000 acres, such as islands and other areas which can be adequately protected as wilderness "in an unimpaired condition."

#### NATIONAL FOREST LANDS

**SECTION 3** designates the 54 wilderness, wild, and canoe areas of the national forests which the Act places in the National Wilderness Preservation System. It also sets out the areas of Federal lands in national forest primitive areas and in the national park system and the wildlife refuges and game ranges which are to be considered for such designation during the next ten years. Procedures are established for review of these areas by the executive agency with public notice and hearings to be held by the Secretary of Agriculture (on proposals relating to the primitive areas) or the Secretary of the Interior (on proposals for park and wildlife lands) before the President makes his recommendations to the Congress for the designation of these areas as wilderness areas or for other reclassification. The recommendations of the President for designation of an area as wilderness becomes effective only if so provided through Act of Congress. Consideration of any future proposals to change boundaries or modify any existing wilderness area within the National Wilderness Preservation System will require the same public notice, hearings, review procedures, and Congressional approval. Addition of areas of wilderness, not specified in the Act for review and possible addition to the system would also require the same authorization of Congress through legislation.

SUBSECTIONS 3(a) and (b) deal with national forest areas which have been administratively classified for wilderness protection. There are 88 of these areas, totaling some 14.6 million acres.

**SECTION 3(a)** designates as "wilderness areas" and for inclusion in the National Wilderness Preservation System the 54 presently existing wilderness, wild, and canoe areas (representing 9.1 million acres) of the national forests, and sets forth requirements that maps and descriptions of the areas and regulations regarding them be available to the public. These areas have already been carefully reviewed and classified for wilderness protection by the Forest Service after having been subjected to public notice and public hearing procedures.

**SECTION 3(b)** deals with the 34 now existing primitive areas in the national forests, comprising some 5.4 million acres. These areas are made subject to review during the next ten years by the Secretary of Agriculture to determine their suitability or unsuitability for preservation as wilderness. Following public notice, hearings, and the completion of his review, the Secretary is to report his findings to the President. The President is then to make recommendations regarding each area to the Senate and the House of Representatives.

The recommendations of the President may include a proposed elimination and declassification of portions not found to be predominantly of wilderness value, or proposed additions of contiguous national forest land predominantly of wilderness value. The Act states that a primitive area "may be increased in size by the President at the time he submits his recommendations to the Congress by not more than 5,000 acres with not more than 1,280 acres of such increase in any one compact unit." However, the Act does not limit the President in proposing the addition of any contiguous area of national forest land that is predominantly of wilderness value. Neither does it limit his recommendations for altering existing boundaries.

Each recommendation of the President to Congress will become effective only if so provided by an Act of Congress. The primitive areas are to continue in their present status, protected as wilderness under existing regulations of the Forest Service and the Secretary of Agriculture until Congress has acted on a presidential recommendation or has otherwise determined the use that will be made of them. A time schedule calls for Presidential recommendations on one-third of the primitive areas within three years, not less than two-thirds in seven years and on the remainder within ten years after passage of the Wilderness Act.

Other national forest areas that are in fact wilderness but have never been so classified for protection as such could also be added to the National Wilderness Preservation System. Nothing in the Wilderness Act would prevent the Secretary of Agriculture from considering such areas for preservation. Each area, however, must be the subject of legislation in the future to authorize its inclusion in the National Wilderness Preservation System.

The Act authorizes the exclusion of up to 7,000 acres from the Gore Range-Eagles Nest Primitive Area through a provision added by the House-Senate Conference Committee. This states that the Secretary of Agriculture "may complete his review and delete such area as may be necessary, but not to exceed 7,000 acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado," if he "determines that such action is in the public interest." The exclusion would provide for the possible construction of Highway 70 and a water tunnel across the southern end of this 61,000 acre unit of national forest wilderness. In the Conference Report the House Conferees (H.R. Report No. 1829, August 19, 1964), noted that, "if the President recommends that the Gore Range-Eagles Nest Primitive Area be designated as a wilderness area for inclusion in the Wilderness System, he may recommend the addition of other lands, not now within the primitive area, to replace the 7,000 acres that may be deleted."

#### PARK AND REFUGE LANDS

SECTION 3(c) makes a provision for wilderness within national park system areas and national wildlife refuges and ranges which is like that made with regard to primitive areas.



The Secretary of the Interior in this instance is to review during a ten-year period the roadless portions comprising 5,000 or more contiguous acres in the parks and monuments, and national wildlife refuges and game ranges (including roadless islands), and to report to the President his recommendations as to their suitability or unsuitability for preservation as wilderness. One-third of these areas are to be reviewed and subject to Presidential recommendation within three years, not less than two-thirds within seven years, and the remainder within ten years following enactment of the Wilderness Act.

The President is to advise the House and the Senate of his recommendations on areas and islands for which reviews have been completed. An area will be given wilderness protection on a permanent basis as part of the National Wilderness Preservation System only when Congress so provides through passage of authorizing legislation. The Act requires that "nothing . . . shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system."

SECTION 3(d) requires the Secretary of the Interior or of Agriculture, before submitting recommendations to the President regarding areas in their respective jurisdictions to give public notice in the Federal Register and the local press, hold public hearings, and invite the Governor, county officials, and Federal agencies concerned to submit their views. Any views submitted by these officials and agencies must be included with any recommendations to the President and to Congress.

SECTION 3(e) provides that any boundary changes or modifications to be made in the future are to be subjected to public notice and hearings, recommended to the President by the appropriate Secretary with maps and descriptions, and are to be effective only through affirmative action of Congress. This requirement applies also in the case of proposals for the elimination of parts or all of an area that is included in the National Wilderness Preservation System. Addition to the System of areas of so-called "de facto" wilderness, areas which have never been designated for protection, would require Congressional authorization.

#### USES OF WILDERNESS AREAS

**SECTION 4** deals with uses of wilderness areas.

SECTION 4(a) declares with specific legislative references, that the Wilderness Act shall be within and supplemental to and not in interference with the purposes for which the national forests, parks, and refuges have been established. SECTION 4(a)(3) states that, "Nothing in this Act shall modify the statutory authority under which units of the national park system are created." This language is followed by the provision that "the

designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this Act shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with the Act of August 25, 1916, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, . . .”

An important wilderness-protective provision in SECTION 4(b) requires that “Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.” The wilderness areas are to be devoted, with the exceptions specified in the legislation, to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

SECTION 4(c) prohibits certain uses except as specifically provided elsewhere in the Act. These prohibited uses are those inconsistent with wilderness preservation, such as commercial enterprises, motor vehicles and motorized equipment, roads, and structures and installations. With the exception of the minimum required for administration and emergency measures for health and safety, the Act prohibits temporary roads, motor vehicle use, motorized equipment or motor boats, landing of aircraft, mechanical transport and structures and installations.

SECTION 4(d) sets forth special provisions permitting certain non-conforming wilderness uses. Under 4(d)(1), aircraft and motorboat use may continue where already established, and measures to control fire, insects, and disease may be taken subject to conditions deemed desirable by the Secretary of Agriculture.

SECTION 4(d)(2) permits prospecting and gathering of information on minerals in national forest wilderness in a manner compatible with the preservation of the wilderness environment. The Secretary of the Interior (whose department includes the Bureau of Mines and the U. S. Geological Survey) is directed to develop and conduct, in consultation with the Secretary of Agriculture, recurring surveys by the Bureau of Mines and the Geological Survey to determine the mineral values present in the national forest wilderness areas, and to make the results available and submit them to the President and Congress. The Act states that such surveys shall be conducted in a manner “consistent with the concept of wilderness preservation.”

Mining, prospecting, and oil and gas development would be permitted under mining laws and in accordance with regulations to protect wilderness values for 19 years in wilderness lands of the national forests under language of SECTION 4(d)(3). During this period these lands would continue to be open, subject to regulations, to mining development and to mining intrusions. The Act provides a cutoff date of January 1, 1984,

after which no patents within a national forest wilderness area would be issued except for valid claims existing on this date. Previously there was no mandatory termination date.

Under the Act national forest wilderness, wild, canoe, and primitive areas, which are placed in the National Wilderness Preservation System or designated by Congress for review and inclusion during the next ten years, are subject under regulation to the mining and mineral leasing laws and mineral location and development activities, as they were before the Act was passed. A provision in this section requires that "mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by the Act shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed."

The Act requires restoration as near as practicable of the surface of the land disturbed by mining activities. It specifies also that mining locations within the boundaries of wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto. The Secretary of Agriculture is given authority to develop reasonable regulations governing ingress and egress consistent with the use for mineral location, development, and exploration. Patents issued under the mining laws affecting national forest wilderness areas "shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal and beneficiation of the mineral deposits." Each such patent, however, shall reserve to the United States all title in or to the surface of the land and products thereof. No use of the surface of a claim or its resources not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise provided by the Act.

Congressional sponsors of the Wilderness Act indicated that the administrative regulations governing mineral exploration and development activities could be made sufficiently restrictive under the requirements of the Act to afford greater protection for national forest wilderness than had been possible previously.

Other provisions in SECTION 4 would: permit the President to allow the construction of reservoirs, transmission lines, or other facilities within wilderness areas of the national forests if he deems them more in the public interest than the preservation of wilderness; authorize the continuation of grazing within national forest wilderness where an established practice; continue special Forest Service regulations on the Boundary Waters Canoe Area in Minnesota; permit appropriate commercial services for wilderness recreation and other wilderness purposes, such as recording scientific data; recognize State water laws and their application to lands affected by the Act; and provide for hunting and fishing on national forest areas under state regulations.

SECTION 5 provides that where State or private "in-holdings" exist in national forest wilderness areas, the state or private owner shall be afforded access or shall be given Federal lands of equal value in exchange.



Private owners of lands and holders of valid mining claims within national forest wilderness areas are assured ingress and egress under "reasonable regulations" of the Secretary of Agriculture that are "consistent with the preservation of the areas as wilderness" and by means "which have been or are being customarily enjoyed with respect to other such areas similarly situated."

The Secretary of Agriculture is authorized to acquire private landholdings within national forest wilderness areas, subject to the concurrence of the owner, the approval of necessary appropriations and specific authorizations by the Congress.

SECTION 6 authorizes the Secretary of Agriculture to accept gifts or bequests of land within wilderness areas designated by the Act for preservation as wilderness. It also permits him to accept gifts or bequests of land adjacent to wilderness areas designated by the Act if he has given 60 days' advance notice to the Congress. Such areas would be added to the wilderness areas involved.

The Secretary of Agriculture and the Secretary of the Interior are each authorized to accept private contributions and gifts to be used to further the purposes of the Act.

SECTION 7 provides for an annual report to be submitted jointly by the Secretaries of Agriculture and Interior for transmission by the President to the Congress. This will contain information on the status of the National Wilderness Preservation System, with descriptions of areas, regulations in effect, and other pertinent information, together with any recommendations they wish to make.

# WILDERNESS REGULATIONS OF THE DEPARTMENT OF THE INTERIOR

## TITLE 43—PUBLIC LANDS: INTERIOR

### SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

(Circular 2203)

#### PART 19—WILDERNESS PRESERVATION

PART 19, consisting of SUBPARTS A and B is added to read as follows:

##### RULES AND REGULATIONS

##### SUBPART A—National Wilderness Preservation System

- SEC.
- 19.1 Scope and purpose.
  - 19.2 Definitions.
  - 19.3 Reviews of roadless areas and roadless islands.
  - 19.4 Liaison with other governmental agencies and submission of views by interested persons.
  - 19.5 Hearing procedures.
  - 19.6 Regulations respecting administration and uses of wilderness areas under the jurisdiction of the Secretary.
  - 19.7 Private contributions and gifts.
  - 19.8 Prospecting, mineral locations, mineral patents, and mineral leasing within National Forest Wilderness.
- 

##### SUBPART B—Wilderness Preservation of Lands Exclusively Administered Through the Bureau of Land Management

- 19.25 Retention and management of certain classes of public lands for wilderness preservation.

AUTHORITY: The provisions of this PART 19 issued under 78 Stat 890; 16 U.S.C. 1131-1136 and R.S. 2478; 43 U.S.C. 1201.

## SUBPART A—NATIONAL WILDERNESS PRESERVATION SYSTEM

### SECTION 19.1 *Scope and purpose.*

This subpart sets forth sections dealing with the administration by the Department of the Interior of certain provisions of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131-1136).

### SECTION 19.2 *Definitions.*

As used in this subpart the term:

(a) "National Forest Wilderness" means an area or part of an area of national forest lands designated by the Wilderness Act or by a subsequent act of Congress as a wilderness area.

(b) "National Park System" means all federally owned or controlled areas administered by the Secretary through the National Park Service.

(c) "National Wilderness Preservation System" means the federally owned areas designated by the Wilderness Act or subsequent acts of Congress as wilderness areas.

(d) "National Wildlife Refuge System" means those lands and waters administered by the Secretary as wildlife refuges, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any statute, proclamation, executive order, or public land order.

(e) "Roadless area" means a reasonably compact area of undeveloped Federal land which possesses the general characteristics of a wilderness and within which there is no improved road that is suitable for public travel by means of four-wheeled, motorized vehicles intended primarily for highway use.

(f) "Roadless island" means a roadless area that is surrounded by permanent waters or that is markedly distinguished from surrounding lands by topographical or ecological features such as precipices, canyons, thickets or swamps.

(g) "Secretary" means the Secretary of the Interior or an official of the Department of the Interior who exercises authority delegated by the Secretary of the Interior.

(h) "Wilderness" means a wilderness as defined in section 2(c) of the Wilderness Act.

### SECTION 19.3 *Reviews of roadless areas and roadless islands.*

(a) The Secretary is required by section 3(c) of the Wilderness Act to review every roadless area of 5,000 contiguous acres or more in each unit of the National Park System and every roadless area of 5,000 contiguous acres or more and every roadless island in the national wildlife refuges and game ranges of the National Wildlife Refuge System, which was under the supervision of the Secretary on September 3, 1964. The Secretary is further required to recommend to the President whether each such area and island is suitable or not suitable for preservation as wilderness. Reports and recommendations must be submitted by the Secretary in time to permit the President to advise the Congress of his recommendations thereon:

(1) Covering not less than one-third of such areas and islands by September 3, 1967;

(2) Covering not less than an additional one-third by not later than September 3, 1971; and

(3) Covering the remainder by not later than September 3, 1974.

(b) The primary objective of the Department of the Interior's review of roadless areas and roadless islands pursuant to section 3(c) of the Wilderness Act and the regulations of this Part shall be to identify and recommend for preservation as wilderness, by inclusion in the National Wilderness Preservation System,



those areas which, after consideration of all relevant factors, it is concluded will achieve the policy of the Congress, as expressed in section 2(a) of the Wilderness Act.

(c) Nothing in the sections of this part shall, by implication or otherwise, be construed to lessen the authority of the Secretary with respect to the maintenance of roadless areas within units of the National Park System or the maintenance of roadless areas and islands within units of the National Wildlife Refuge System.

#### SECTION 19.4 *Liaison with other governmental agencies and submission of views by interested persons.*

(a) When a review is initiated under the provisions of section 3(c) of the Wilderness Act and the sections of this part, arrangements shall be made for appropriate consideration of problems of mutual concern with other Federal agencies and with regional, State, and local governmental agencies.

(b) Any person desiring to submit recommendations as to the suitability or nonsuitability for preservation as wilderness of any roadless area in any unit of the National Park System, or of any such area or any roadless island in any unit of the National Wildlife Refuge System, may submit such recommendations at any time to the superintendent or manager in charge of the unit. Such recommendations will be accorded careful consideration and shall be forwarded with the report of review to the Office of the Secretary.

#### SECTION 19.5 *Hearing procedures.*

(a) Before any recommendation of the Secretary concerning the suitability or nonsuitability of any roadless area or island for preservation as wilderness is submitted to the President, a public hearing or hearings shall be held thereon at a location or locations convenient to the area or areas affected. If the lands involved are located in more than one State, at least one such hearing shall be held in each State. At least 60 days before the date of any such hearing, public notice thereof shall be published in the *Federal Register* and in newspapers of general circulation in the area. The public notice shall contain or make reference to a map of the lands involved and a definition of boundaries and a statement of the action proposed to be taken by the Secretary thereon.

(1) Any hearing held under this section shall be presided over by a hearing officer designated by the Secretary.

(2) Any person may present testimony at the hearing orally or in writing, or both, by notification to the hearing officer in accordance with the published notice of the hearing. Witnesses shall not be subjected to cross-examination but the hearing officer may invite responses by witnesses to questions he may ask for the purpose of clarifying the testimony presented.

(3) The witnesses shall not be sworn, but statements made by them orally or in writing are subject to the provisions of 18 U.S.C. 1001, which makes it a crime for any person knowingly and willfully to make to any agency of the United States any false, fictitious, or fraudulent statement as to any matter within its jurisdiction.

(4) A verbatim record of the hearing shall be kept.

(5) The hearing officer may be instructed by the Secretary to prepare and submit a recommendation concerning the suitability or nonsuitability of the area or areas for preservation as wilderness.

(6) A copy of the transcript of the hearing record, and of any recommendation made by the hearing officer as a result thereof, shall, during the pendency of the subject matter, be maintained for public examination (i) in an office of the Department of the Interior convenient to the area or areas affected, and (ii) in the headquarters office of the Department in Washington, D. C.

(7) The Secretary reserves the right at all times to consider information available to his office from any source, not limited to the record of the public hearing or hearings, in the further consideration of proposed recommendations concerning the suitability or the unsuitability of the area or areas for preservation as wilderness.

(b) At least 30 days before the date of any such public hearing, the hearing officer shall advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and the other Federal departments and agencies concerned, and invite such officials and agencies to submit their views at the hearing. The Governor, the governing board, and the other Federal agencies may also submit views following the hearing but such views must be received in the Office of the Secretary by no later than 30 days following the date of the hearing to assure that they will receive consideration.

(c) Any public views received pursuant to the provisions of this section will be accorded careful consideration and a summary thereof shall be forwarded with the recommendations of the Secretary to the President with respect to the area under consideration.

*SECTION 19.6 Regulations respecting administration and uses of wilderness areas under jurisdiction of the Secretary.*

Regulations respecting administration and use of areas under the jurisdiction of the Secretary which may be designated as wilderness areas by statute shall be developed with a view to protecting such areas and preserving their wilderness character for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, with inconsistent uses held to a minimum.

*SECTION 19.7 Private contributions and gifts.*

(a) The Secretary is authorized by section 6(b) of the Wilderness Act to accept on behalf of the United States private contributions and gifts to be used to further the purposes of the Act. The Secretary, under the authorization of section 6(b), may accept on behalf of the United States any sums of money, marketable securities or other personal property (but not real property) to be used for such things as expediting reviews of roadless areas and islands under his jurisdiction, expediting mineral resource surveys of National Forest Wilderness, or fostering public information and research related to wilderness preservation.

(b) Anyone desiring to make a contribution or gift under the provisions of this section may submit an offer to the Secretary of the Interior, Washington, D. C. 20240, stating the amount of money or describing the securities or other personal property involved. If the offer involves property other than cash, the statement should set forth that the offeror is the owner of the property free and clear of all encumbrances and adverse claims. The offeror may specify a particular purpose for which the offer is made, but the Secretary may in his discretion reject any offer entailing purposes, terms, or conditions unacceptable to him.

(c) Sums of money and marketable securities received under this section that are not otherwise restricted and are allocated to furthering the purposes of the Wilderness Act as it relates to lands within the National Park System shall be transferred to a special account in the National Park Trust Fund and shall be administered in accordance with the provisions of 36 CFR Part 9.

(d) Offers of gifts of land to promote the purposes of a grazing district or facilitate administration of public lands, including preservation and management of wilderness values, may be tendered to the Secretary under the provisions of section 8(a) of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272) as amended (43 U.S.C. 315g). Offers of gifts of land or interests in land to facilitate adminis-



tration or contribute to improvement, management, use, or protection of public lands and their resources, including the preservation and management of wilderness values, may be tendered to the Secretary under the provisions of section 103(a) of the Public Land Administration Act of July 14, 1960 (74 Stat. 506; 43 U.S.C. 1364) Persons desiring to make such offers should follow the procedures established by 43 CFR Subpart 2111.

(e) Under the provisions of the Act of June 5, 1920 (41 Stat. 917; 16 U.S.C. 6), the Secretary is authorized, in his discretion, to accept donations of patented lands, rights-of-way over patented lands or other lands, buildings, or other property within the various national parks and national monuments for the purposes of the National Park System. Persons desiring to offer lands, rights-of-way, or buildings under the provisions of the Act of June 5, 1920, should make inquiry of the superintendent of the national park or monument within which the property is located.

*SECTION 19.8 Prospecting, mineral locations, mineral patents, and mineral leasing within National Forest Wilderness.*

Regulations issued under the provisions of the Wilderness Act pertaining to prospecting, mineral locations, mineral patents, and mineral leasing within National Forest Wilderness are contained in Parts 3327 and 3638 of Subchapter C of Chapter II of this Title.

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**SUBPART B—WILDERNESS PRESERVATION OF LANDS EXCLUSIVELY ADMINISTERED THROUGH THE BUREAU OF LAND MANAGEMENT**

*SECTION 19.25 Retention and management of certain classes of public lands for wilderness preservation.*

(a) Section 1(a) of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411-1418) directs the Secretary, among other things, to develop and promulgate regulations containing criteria under which he will determine which of the public lands and other Federal lands administered by the Secretary exclusively through the Bureau of Land Management shall be retained in Federal ownership, at least until June 30, 1969, and managed for certain purposes. Section 3 of the same Act directs the Secretary to develop and administer for multiple use and sustained yield of the several products and services obtainable therefrom those public lands he determines to be suitable for interim management in accordance with such regulations. Among the uses listed in the Act for which lands retained in Federal ownership are authorized to be managed is wilderness preservation.

(b) Sections issued under the authority of the Act of September 19, 1964, are contained in Parts 2410 and 2411 of Subchapter B of Chapter II of this Title. (78 Stat. 890; 16 U.S.C. 1131-1136 and R.S. 2478; 43 U.S.C. 1201).

*Stewart L. Udall, Secretary of the Interior*

February 17, 1966.



CHAPTER II—BUREAU OF LAND MANAGEMENT,  
DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT

(Circular 2204)

PART 3320—ACTS CONCERNING LIMITED AREAS

SUBPART 3327—Prospecting and Mineral Leasing Within  
National Forest Wilderness

PART 3630—AREAS SUBJECT TO SPECIAL MINING LAWS

SUBPART 3638—PROSPECTING, MINERAL LOCATIONS, AND  
MINERAL PATENTS WITHIN NATIONAL FOREST WILDERNESS

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SUBPART 3327—Prospecting and Mineral Leasing Within  
National Forest Wilderness

Sec.

3327.1 Scope and purpose.

3327.2 Definition.

3327.3 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.

3327.4 Mineral leases, licenses, and permits within National Forest Wilderness.

3327.5 Withdrawal from mineral leasing.

**AUTHORITY:** The provisions of this Subpart 3327 issued under 78 Stat. 890; 16 U.S.C. 1131-1136 and R.S. 2478; 43 U.S.C. 1201.

**SECTION 3327.1** *Scope and purpose.*

This subpart sets forth procedures to be followed by persons wishing to prospect on lands within National Forest Wilderness, and special provisions pertaining to mineral leases, licenses, and permits within National Forest Wilderness.

**SECTION 3327.2** *Definition.*

As used in this subpart the term "National Forest Wilderness" means an area or part of an area of National Forest land designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

**SECTION 3327.3** *Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.*

(a) The provisions of the Wilderness Act do not prevent any activity, including prospecting, within National Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with applications for mineral leases, licenses, or permits on lands which may be open to such applications, attention is directed to the fact that no such applications will be granted after December 31, 1983.

(b) All persons wishing to carry on any activity, including prospecting, for the purpose of gathering information about mineral or other resources on lands within National Forest Wilderness should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing surface use of the lands for such activity.

*SECTION 3327.4 Mineral leases, licenses, and permits within National Forest Wilderness.*

(a) Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d) (3) of the Wilderness Act.

(b) All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands within National Forest Wilderness shall contain a provision that is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

(c) All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness, issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

*SECTION 3327.5 Withdrawal from mineral leasing.*

Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from leasing by virtue of the provisions of section 4(d) (3) of the Wilderness Act.

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SUBPART 3638—Prospecting, Mineral Locations, and Mineral Patents  
Within National Forest Wilderness

SEC.

3638.1 Scope and purpose.

3638.2 Definition.

3638.3 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.

3638.4 Mineral locations within National Forest Wilderness.

3638.5 Mineral patents within National Forest Wilderness.

3638.6 Withdrawal from operation of the mining laws.

AUTHORITY: The provisions of this Subpart 3638 issued under 78 Stat. 890; 16 U.S.C. 1131-1136 and R.S. 2478; 43 U.S.C. 1201.

*SECTION 3638.1 Scope and purpose.*

This subpart sets forth procedures to be followed by persons wishing to prospect on lands within National Forest Wilderness, and special provisions pertaining to mineral locations and mineral patents within National Forest Wilderness.

*SECTION 3638.2 Definition.*

As used in this subpart, the term "National Forest Wilderness" means an area or part of an area of National Forest lands designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

SECTION 3638.3 *Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.*

(a) The provisions of the Wilderness Act do not prevent any activity, including prospecting, within National Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with the location of valuable mineral deposits which may be discovered through such activity and which may be open to such location, attention is directed to the fact that no claim may be located after midnight, December 31, 1983, and no valid discovery may be made after that time on any location purportedly made before that time.

(b) All persons wishing to carry on any activity, including prospecting, for the purpose of gathering information about mineral or other resources on lands within National Forest Wilderness should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing surface use of the lands for such activity.

SECTION 3638.4 *Mineral locations within National Forest Wilderness.*

(a) Until midnight, December 31, 1983, the mining laws of the United States and the regulations of this chapter pertaining thereto, including any amendments thereto effective during such period, shall to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d) (3) of the Wilderness Act.

(b) All mineral locations established after September 3, 1964, and lying within the National Forest Wilderness, shall be held and used solely for mining or processing operations and uses incident thereto, and such locations shall carry with them no rights in excess of those rights which may be patented under the provisions of 3638.5 of this chapter.

(c) All persons wishing to carry on any activity under the mining laws on lands within National Forest Wilderness, on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing activities to be performed thereon in connection with the locations of mining claims.

SECTION 3638.5 *Mineral patents within National Forest Wilderness.*

(a) Each patent issued under the U. S. mining laws for mineral locations established after September 3, 1964, or validated by discovery of minerals occurring after September 3, 1964, and lying within National Forest Wilderness shall, in accordance with the provisions of section 4(d) (3) of the Wilderness Act:

(1) Convey title to the mineral deposits within the patented lands, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the National Forest rules and regulations;

(2) Reserve to the United States all title in or to the surface of the lands and products thereof; and

(3) Provide that no use of the surface of the patented lands or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as expressly provided in the Wilderness Act.

(b) Each patent to which the provisions of this section are applicable shall contain the express condition that the use of the patented lands shall be subject to



regulations prescribed by the Secretary of Agriculture as referred to in 3638.4 (a) of this subpart and that the patented lands shall be held open for reasonable inspection by authorized officers of the U. S. Government for the purpose of observing compliance with the provisions thereof.

SECTION 3638.6 *Withdrawal from operation of the mining laws.*

Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from the operation of the mining laws by virtue of the provisions of section 4(d) (3) of the Wilderness Act.

*Stewart L. Udall, Secretary of the Interior.*

February 17, 1966.

# WILDERNESS REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

## TITLE 36— PARKS, FORESTS, AND MEMORIALS CHAPTER II— FOREST SERVICE, DEPARTMENT OF AGRICULTURE

### PART 251— LAND USES

#### Administration and Use of National Forest Wilderness and National Forest Primitive Areas

In part 251 of Title 36, Code of Federal Regulations, §§251.20, 251.21, and 251.21a are hereby revoked; and §§251.70 to 251.84 are added, under the heading "Administration and Use of National Forest Wilderness and National Forest Primitive Areas," as follows:

#### ADMINISTRATION AND USE OF NATIONAL FOREST WILDERNESS AND NATIONAL FOREST PRIMITIVE AREAS

##### SECTION 251.70 *Definition.*

National Forest Wilderness shall consist of those units of the National Wilderness Preservation System which at least 30 days before the Wilderness Act of September 3, 1964, were designated as Wilderness and Wild under Secretary of Agriculture's Regulations U-1 and U-2 (§§251.20, 251.21), the Boundary Waters Canoe Area as designated under Regulation U-3 (§251.22), and such other areas of the National Forests as may later be added to the System by act of Congress. Sections 251.70 to 251.84 apply to all National Forest units now or hereafter in the National Wilderness Preservation System, including the Boundary Waters Canoe Area, Superior National Forest, except as that area is subject to §251.85.

##### SECTION 251.71 *Objectives.*

Except as otherwise provided in the regulations in this part, National Forest Wilderness shall be so administered as to meet the public purposes of recreational, scenic, scientific, educational, conservation, and historical uses; and it shall also be administered for such other purposes for which it may have been established in such a manner as to preserve and protect its wilderness character. In carrying out such purposes, National Forest Wilderness resources shall be managed to promote, perpetuate, and, where necessary, restore the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation. To that end:

(a) Natural ecological succession will be allowed to operate freely to the extent feasible.

(b) Wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions.

(c) In resolving conflicts in resource use, wilderness values will be dominant to the extent not limited by the Wilderness Act, subsequent establishing legislation, or the regulations in this part.

SECTION 251.72 *Control of uses.*

To the extent not limited by the Wilderness Act, subsequent legislation establishing a particular unit, or the regulations in this part, the Chief, Forest Service, may prescribe measures necessary to control fire, insects, and disease and measures which may be used in emergencies involving the health and safety of persons or damage to property and may require permits for, or otherwise limit or regulate, any use of National Forest land, including, but not limited to, camping, campfires, and grazing of recreation livestock.

SECTION 251.73 *Maintenance of records.*

The Chief, Forest Service, in accordance with section 3(a) (2) of the Wilderness Act, shall establish uniform procedures and standards for the maintenance and availability to the public of records pertaining to National Forest Wilderness, including maps and legal descriptions; copies of regulations governing Wilderness; and copies of public notices and reports submitted to Congress regarding pending additions, eliminations, or modifications. Copies of such information pertaining to National Forest Wilderness within their respective jurisdictions shall be available to the public in the appropriate offices of the Regional Foresters, Forest Supervisors, and Forest Rangers.

SECTION 251.74 *Establishment, modification, or elimination.*

National Forest Wilderness will be established, modified, or eliminated in accordance with the provisions of sections 3 (b), (d), and (e) of the Wilderness Act. The Chief, Forest Service, shall arrange for issuing public notices, appointing hearing officers, holding public hearings, and notifying the Governors of the States concerned and the governing board of each county in which the lands involved are located.

(a) At least 30 days' public notice shall be given of the proposed action and intent to hold a public hearing. Public notice shall include publication in the *Federal Register* and in a newspaper of general circulation in the vicinity of the land involved.

(b) Public hearings shall be held at locations convenient to the area affected. If the land involved is in more than one State, at least one hearing shall be held in each State in which a portion of the land lies.

(c) A record of the public hearing and the views submitted subsequent to public notice and prior to the close of the public hearing shall be included with any recommendations to the President and to the Congress with respect to any such action.

(d) At least 30 days before the date of the public hearing, suitable advice shall be furnished to the Governor of each State and the governing board of each county or, in Alaska, the borough in which the lands are located, and Federal departments and agencies concerned; and such officers or Federal agencies shall be invited to submit their views on the proposed action at the hearing or in writing by not later than 30 days following the date of the hearing. Any views submitted in response to such advice with respect to any proposed Wilderness action shall be included with any recommendations to the President and to the Congress with respect to any such action.

SECTION 251.75 *Commercial enterprises, roads, motor vehicles, motorized equipment, motorboats, aircraft, aircraft landing facilities, air-drops, structures, and cutting of trees.*

Except as provided in the Wilderness Act, subsequent legislation establishing a particular Wilderness unit, or §§251.27, 251.28, and 251.30, paragraphs (c) and (d) of this section, and §§251.76, 251.77, and 251.81 through 251.85, inclusive,



and subject to existing rights, there shall be in National Forest Wilderness no commercial enterprises; no temporary or permanent roads; no aircraft landing strips; no heliports or helispots; no use of motor vehicles, motorized equipment, motorboats, or other forms of mechanical transport; no landing of aircraft; no dropping of materials, supplies, or persons from aircraft; no structures or installations; and no cutting of trees for nonwilderness purposes.

(a) "Mechanical transport," as herein used, shall include any contrivance which travels over ground, snow, or water on wheels, tracks, skids, or by flotation and is propelled by a nonliving power source contained or carried on or within the device.

(b) "Motorized equipment," as herein used, shall include any machine activated by a nonliving power source, except that small battery-powered, hand-carried devices such as flashlights, shavers, and Geiger counters are not classed as motorized equipment.

(c) The Chief, Forest Service, may authorize occupancy and use of National Forest land by officers, employees, agencies, or agents of the Federal, State, and county governments to carry out the purposes of the Wilderness Act and will prescribe conditions under which motorized equipment, mechanical transport, aircraft, aircraft landing strips, heliports, helispots, installations, or structures may be used, transported, or installed by the Forest Service and its agents and by other Federal, State, or county agencies or their agents, to meet the minimum requirements for authorized activities to protect and administer the Wilderness and its resources. The Chief may also prescribe the conditions under which such equipment, transport, aircraft, installations, or structures may be used in emergencies involving the health and safety of persons, damage to property, or other purposes.

(d) The Chief, Forest Service, may permit, subject to such restrictions as he deems desirable, the landing of aircraft and the use of motorboats at places within any Wilderness where these uses were established prior to the date the Wilderness was designated by Congress as a unit of the National Wilderness Preservation System. The Chief may also permit the maintenance of aircraft landing strips, heliports, or helispots which existed when the Wilderness was designated by Congress as a unit of the National Wilderness Preservation System.

#### SECTION 251.76 *Grazing of livestock.*

(a) The grazing of livestock, where such use was established before the date of legislation which includes an area in the National Wilderness Preservation System, shall be permitted to continue under the general regulations covering grazing of livestock on the National Forests and in accordance with special provisions covering grazing use in units of National Forest Wilderness which the Chief of the Forest Service may prescribe for general application in such units or may arrange to have prescribed for individual units.

(b) The Chief, Forest Service, may permit, subject to such conditions as he deems necessary, the maintenance, reconstruction, or relocation of those livestock management improvements and structures which existed within a Wilderness when it was incorporated into the National Wilderness Preservation System. Additional improvements or structures may be built when necessary to protect wilderness values.

#### SECTION 251.77 *Permanent structures and commercial services.*

Motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures and uses are prohibited in National Forest Wilderness. The Chief, Forest Service, may permit

temporary structures and commercial services within National Forest Wilderness to the extent necessary for realizing the recreational or other wilderness purposes, which may include, but are not limited to, the public services generally offered by packers, outfitters, and guides.

**SECTION 251.78 *Poisons and herbicides.***

Poisons or herbicides will not be used to control wildlife, fish, insects, or plants within any Wilderness except by or under the direct supervision of the Forest Service, or other agency designated by the Chief, Forest Service; however, the personal use of household-type insecticides by visitors to provide for health and sanitation is specifically excepted from this prohibition.

**SECTION 251.79 *Jurisdiction over wildlife and fish.***

Nothing in the regulations in this part shall be construed as affecting the jurisdiction or responsibility of the several States with respect to wildlife and fish in the National Forests.

**SECTION 251.80 *Water rights.***

Nothing in the regulations in this part constitutes an expressed or implied claim or denial on the part of the Department of Agriculture as to exemption from State water laws.

**SECTION 251.81 *Access to surrounding State and private lands.***

States or persons, and their successors in interest, who own land completely surrounded by National Forest Wilderness shall be given such rights as may be necessary to assure adequate access to that land. "Adequate access" is defined as the combination of routes and modes of travel which will, as determined by the Forest Service, cause the least lasting impact on the primitive character of the land and at the same time will serve the reasonable purposes for which the State and private land is held or used. Access by routes or modes of travel not available to the general public under the regulations in this part shall be given by written authorization issued by the Forest Service. The authorization will prescribe the means and the routes of travel to and from the privately owned or State-owned land which constitute adequate access and the conditions reasonably necessary to preserve the National Forest Wilderness.

**SECTION 251.82 *Access to valid mining claims or valid occupancies.***

Persons with valid mining claims or other valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded claims or occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims or occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, issue permits which shall prescribe the routes of travel to and from the surrounded claims or occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

**SECTION 251.83 *Mining, mineral leases, and mineral permits.***

Notwithstanding any other provisions of the regulations in this part, the U. S. mining laws and all laws pertaining to mineral leasing shall extend to each National Forest Wilderness for the period specified in the Wilderness Act or subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System.

(a) Whoever hereafter locates a mining claim in National Forest Wilderness shall within 30 days thereafter file a written notice of his Post Office address and the location of that mining claim in the office of the FOREST SUPERVISOR or DISTRICT RANGER having jurisdiction over the National Forest land on which the claim is located.

(b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the U. S. mining laws as then applicable to the National Forest land involved. Persons locating mining claims in any unit of National Forest Wilderness on or after the date on which the said unit was included in the National Wilderness Preservation System shall be accorded the rights provided by the U. S. mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. All claimants shall comply with reasonable conditions prescribed by the Chief, Forest Service, for the protection of National Forest resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and so as to provide for the preservation of its wilderness character; and a performance bond may be required.

(1) Prior to commencing operation or development of any mining claim, or to cutting timber thereon, mining claimants shall file written notice in the office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Unless within 20 days after such notice is given the Forest Service requires the claimant to furnish operating plans or to accept a permit governing such operations, he may commence operation, development, or timber cutting.

(2) No claimant shall construct roads across National Forest Wilderness unless authorized by the Forest Service. Application to construct a road to a mining claim shall be filed with the Forest Service and shall be accompanied by a plat showing the location of the proposed road and by a description of the type and standard of the road. The Chief, Forest Service, shall, when appropriate, authorize construction of the road as proposed or shall require such changes in location and type and standard of construction as are necessary to safeguard the National Forest resources, including wilderness values, consistent with the use of the land for mineral location, exploration, development, drilling, and production and for transmission lines, waterlines, telephone lines, and processing operations, including, where essential, the use of mechanical transport, aircraft or motorized equipment.

(3) Claimants shall cut timber on mining claims within National Forest Wilderness only for the actual development of the claim or uses reasonably incident thereto. Any severance or removal of timber, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management and in such a manner as to minimize the adverse effect on the wilderness character of the land.

(4) All claimants shall, in developing and operating their mining claims, take those reasonable measures, including settling ponds, necessary for the disposal of tailings, dumpage, and other deleterious materials or substances to prevent obstruction, pollution, excessive siltation, or deterioration of the land, streams, ponds, lakes, or springs, as may be directed by the Forest Service.

(5) On mining claims validly established prior to inclusion of the land within the National Wilderness Preservation System, claimants shall, as directed by the Forest Service and if application for patent is not pending, take all reasonable measures to remove any improvements no longer needed for mining purposes and which were installed after the land was designated by Congress as Wilderness and,



by appropriate treatment, restore, as nearly as practicable, the original contour of the surface of the land which was disturbed subsequent to the date this section is adopted and which is no longer needed in performing location, exploration, drilling, and production and promote its revegetation by natural means. On such part of the claim where restoration to approximately the original contour is not feasible, restoration for such part shall provide a combination of bank slopes and contour gradient conducive to soil stabilization and revegetation by natural means.

(6) On claims validly established after the date the land was included within the National Wilderness Preservation System, claimants shall, as directed by the Forest Service, take all reasonable measures to remove improvements no longer needed for mining purposes and, by appropriate treatment, restore, as near as practicable, the original contour of the surface of the land which was disturbed and which is no longer needed in performing location and exploration, drilling and production, and to revegetate and to otherwise prevent or control accelerated soil erosion.

(c) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in the United States, subject to a right to cut and use timber for mining purposes. So much of the mature timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations issued by the Chief, Forest Service, which as a minimum incorporate the following basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(d) Mineral leases, permits, and licenses covering lands within National Forest Wilderness will contain reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for purposes for which they are leased, permitted, or licensed. The Chief, Forest Service, shall specify the conditions to be included in such stipulations.

(e) Permits shall not be issued for the removal of mineral materials commonly known as "common varieties" under the Materials Act of July 31, 1947, as amended and supplemented (30 U.S.C. 601-604).

#### SECTION 251.84 *Prospecting for minerals and other resources.*

The Chief, Forest Service, shall allow any activity, including prospecting, for the purpose of gathering information about minerals or other resources in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment, and except, further, that:

(a) No persons shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws and laws pertaining to mineral leasing cease to apply to the specific Wilderness, nor shall any person after such date have any preference in applying for a mineral lease, license, or permit.

(b) No overland motor vehicle or other form of mechanical overland transport may be used in connection with prospecting for minerals or any activity for the purpose of gathering information about minerals or other resources except as authorized by the Chief, Forest Service.

(c) Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for mineral prospecting or for other purposes shall apply in writing to the office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Excavations shall be considered "substantial" which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued by the Forest Service. Such permits may provide for the protection of National Forest resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

(d) Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest and the subsequent maintenance of such facilities, all pursuant to section 4(d) (4) (1) of the Wilderness Act, will be permitted when and as authorized by the President.

#### SECTION 251.86 *National Forest Primitive Areas.*

(a) Within those areas of National Forests classified as "primitive" on the effective date of the Wilderness Act, September 3, 1964, there shall be no roads or other provision for motorized transportation, no commercial timber cutting, and no occupancy under special-use permit for hotels, stores, resorts, summer homes, organization camps, hunting and fishing lodges, or similar uses: *Provided*, That existing roads over National Forest lands reserved from the public domain and roads necessary for the exercise of a statutory right of ingress and egress may be allowed under appropriate conditions determined by the Chief, Forest Service.

(b) Grazing of domestic livestock, development of water storage projects which do not involve road construction, and improvements necessary for the protection of the National Forests may be permitted, subject to such restrictions as the Chief, Forest Service, deems desirable. Within Primitive Areas, when the use is for other than administrative needs of the Forest Service, use by other Federal agencies when authorized by the Chief, and in emergencies, the landing of aircraft and the use of motorboats are prohibited on National Forest land or water unless such use by aircraft or motorboats has already become well established, the use of motor vehicles is prohibited, and the use of other motorized equipment is prohibited, except as authorized by the Chief. These restrictions are not intended as limitations on statutory rights of ingress and egress or of prospecting, locating, and developing mineral resources.

(78 Stat. 890, 16 U.S.C. 1131-1136; 30 Stat. 35, as amended 16 U.S.C. 551; 74 Stat. 215, 16 U.S.C. 528-531)

Done at Washington, D. C., this 31st day of May 1966.

*Orville L. Freeman, Secretary of Agriculture.*