

ARIZONA WILDERNESS

HEARING

BEFORE THE

SUBCOMMITTEE ON

PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON

ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 2117

TO DESIGNATE CERTAIN LANDS AS WILDERNESS IN THE STATE OF ARIZONA

H.R. 2570

TO PROVIDE FOR THE DESIGNATION OF CERTAIN PUBLIC LANDS AS WILDERNESS IN THE STATE OF ARIZONA

APRIL 5, 1990



Printed for the use of the
Committee on Energy and Natural Resources

S 816-12

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(iii)

ARIZONA WILDERNESS

THURSDAY, APRIL 5, 1990

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Dale Bumpers, presiding.

OPENING STATEMENT OF HON. DALE BUMPERS, U.S. SENATOR FROM ARKANSAS

Senator BUMPERS. The purpose of today's hearing is to receive testimony on S. 2117, the Arizona Wilderness Act of 1990. S. 2117, which is co-sponsored by Senators DeConcini and McCain, would add 39 wilderness areas, comprising approximately 1.1 million acres of BLM land to the National Wilderness Preservation System. The bill also adds approximately 1.3 million acres of wilderness in four national wildlife refuges in Arizona.

H.R. 2570, which is also before the subcommittee, is very similar to title I of S. 2117. S. 2117 represents the first BLM statewide wilderness proposal to be considered by Congress.

I would like to commend both Arizona Senators and the Arizona House Delegation for their hard work in arriving at a consensus with this legislation, and I hope that we can deal with this bill expeditiously, possibly in our next mark-up session.

I respectfully ask each witness to summarize your testimony and please limit your oral remarks to no more than 5 minutes.

At this time, I will place copies of both S. 2117 and H.R. 2570 in the hearing record. The record will remain open for 2 weeks to receive additional comments and testimony.

[The texts of the bills follows:]

(1)

101ST CONGRESS
2D SESSION

S. 2117

To designate certain lands as wilderness in the State of Arizona.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, JANUARY 23), 1990

Mr. DeCONCINI (for himself and Mr. McCain) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To designate certain lands as wilderness in the State of
Arizona.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the "Arizona Wilderness Act
- 5 of 1990".

1 **TITLE I—DESIGNATION OF WIL-**
2 **DERNESS AREAS TO BE ADMIN-**
3 **ISTERED BY THE BUREAU OF**
4 **LAND MANAGEMENT**

5 **SEC. 101. WILDERNESS DESIGNATION AND MANAGEMENT.**

6 (a) **DESIGNATION.**—In furtherance of the purposes of
7 the Wilderness Act, the following public lands are hereby
8 designated as wilderness and therefore, as components of the
9 National Wilderness Preservation System:

10 (1) Certain lands in Mohave County, Arizona,
11 which comprise approximately 23,600 acres, as gener-
12 ally depicted on a map entitled “Mount Wilson Wilder-
13 ness” and dated February 1990, and which shall be
14 known as the Mount Wilson Wilderness.

15 (2) Certain lands in Mohave County, Arizona,
16 which comprise approximately 31,070 acres, as gener-
17 ally depicted on a map entitled “Mount Tipton Wilder-
18 ness” and dated February 1990, and which shall be
19 known as the Mount Tipton Wilderness.

20 (3) Certain lands in Mohave County, Arizona,
21 which comprise approximately 27,530 acres, as gener-
22 ally depicted on a map entitled “Mount Nutt Wilder-
23 ness” and dated February 1990, and which shall be
24 known as the Mount Nutt Wilderness.

1 (4) Certain lands in Mohave County, Arizona,
2 which comprise approximately 76,600 acres, as gener-
3 ally depicted on a map entitled "Warm Springs Wil-
4 derness" and dated February 1990, and which shall be
5 known as the Warm Springs Wilderness.

6 (5) Certain lands in Mohave County, Arizona,
7 which comprise approximately 15,900 acres, as gener-
8 ally depicted on a map entitled "Aubrey Peak Wilder-
9 ness" and dated February 1990, and which shall be
10 known as the Aubrey Peak Wilderness.

11 (6) Certain lands in La Paz County, Arizona,
12 which comprise approximately 14,630 acres, as gener-
13 ally depicted on a map entitled "East Cactus Plain
14 Wilderness" and dated February 1990, and which shall
15 be known as the East Cactus Plain Wilderness.

16 (7) Certain lands in Mohave and Yavapai Coun-
17 ties, Arizona, which comprise approximately 41,600
18 acres, as generally depicted on a map entitled "Raw-
19 hide Mountains Wilderness" and dated February 1990,
20 and which shall be known as the Rawhide Mountains
21 Wilderness.

22 (8) Certain lands in Mohave, Yavapai, and La Paz
23 Counties, Arizona, which comprise approximately
24 129,525 acres, as generally depicted on a map entitled
25 "Arrastra Mountain Wilderness" and dated February

1 1990, and which shall be known as the Arrastra
2 Mountain Wilderness.

3 (9) Certain lands in La Paz County, Arizona,
4 which comprise approximately 25,287 acres, as gener-
5 ally depicted on a map entitled "Harcuvar Mountains
6 Wilderness" and dated February 1990, and which shall
7 be known as the Harcuvar Mountains Wilderness.

8 (10) Certain lands in La Paz and Maricopa Coun-
9 ties, Arizona, which comprise approximately 22,865
10 acres, as generally depicted on a map entitled "Har-
11 quahala Mountains Wilderness" and dated February
12 1990, and which shall be known as the Harquahala
13 Mountains Wilderness.

14 (11) Certain lands in Maricopa County, Arizona,
15 which comprise approximately 20,600 acres, as gener-
16 ally depicted on a map entitled "Big Horn Mountains
17 Wilderness" and dated February 1990, and which shall
18 be known as the Big Horn Mountains Wilderness.

19 (12) Certain lands in Maricopa County, Arizona,
20 which comprise approximately 30,170 acres, as gener-
21 ally depicted on a map entitled "Hummingbird Springs
22 Wilderness" and dated February 1990, and which shall
23 be known as the Hummingbird Springs Wilderness.

24 (13) Certain lands in La Paz, Yuma, and Marico-
25 pa Counties, Arizona, which comprise approximately

1 94,100 acres, as generally depicted on a map entitled
2 "Eagletail Mountains Wilderness" and dated February
3 1990, and which shall be known as the Eagletail
4 Mountains Wilderness.

5 (14) Certain lands in Maricopa County, Arizona,
6 which comprise approximately 15,250 acres, as gener-
7 ally depicted on a map entitled "Signal Mountain Wil-
8 derness" and dated February 1990, and which shall be
9 known as the Signal Mountains Wilderness.

10 (15) Certain lands in Maricopa County, Arizona,
11 which comprise approximately 61,000 acres, as gener-
12 ally depicted on a map entitled "Woolsey Peak Wilder-
13 ness" and dated February 1990, and which shall be
14 known as the Woolsey Peak Wilderness.

15 (16) Certain lands in Maricopa County, Arizona,
16 which comprise approximately 14,500 acres, as gener-
17 ally depicted on a map entitled "Sierra Estrella Wil-
18 derness" and dated February 1990, and which shall be
19 known as the Sierra Estrella Wilderness.

20 (17) Certain lands in Maricopa and Pinal Coun-
21 ties, Arizona, which comprise approximately 34,400
22 acres, as generally depicted on a map entitled "Table
23 Top Wilderness" and dated February 1990, and which
24 shall be known as the Table Top Wilderness.

1 (18) Certain lands in Pima County, Arizona,
2 which comprise approximately 5,080 acres, as general-
3 ly depicted on a map entitled "Coyote Mountains Wil-
4 derness" and dated February 1990, and which shall be
5 known as the Coyote Mountains Wilderness.

6 (19) Certain lands in Pima County, Arizona,
7 which comprise approximately 2,065 acres, as general-
8 ly depicted on a map entitled "Baboquivari Peak Wil-
9 derness" and dated February 1990, and which shall be
10 known as the Baboquivari Peak Wilderness.

11 (20) Certain lands in Gila County, Arizona, which
12 comprise approximately 9,201 acres, as generally de-
13 picted on a map entitled "Needle's Eye Wilderness"
14 and dated February 1990, and which shall be known
15 as the Needle's Eye Wilderness. The right-of-way re-
16 served by right-of-way reservation A-16043 dated Oc-
17 tober 20, 1986, together with the right of ingress and
18 egress thereto, shall not be affected by this Act, and
19 the existing powerline utilizing such right-of-way may
20 be operated, maintained, and upgraded, subject to rea-
21 sonable requirements to protect wilderness values.

22 (21) Certain lands in Graham County, Arizona,
23 which comprise approximately 6,590 acres, as general-
24 ly depicted on a map entitled "North Santa Teresa

1 Wilderness" and dated February 1990, and which shall
2 be known as the North Santa Teresa Wilderness.

3 (22) Certain lands in Graham County, Arizona,
4 which comprise approximately 10,883 acres, as gener-
5 ally depicted on a map entitled "Fishhooks Wilder-
6 ness" and dated February 1990, and which shall be
7 known as the Fishhooks Wilderness.

8 (23) Certain lands in Cochise County, Arizona,
9 which comprise approximately 11,998 acres, as gener-
10 ally depicted on a map entitled "Dos Cabezas Moun-
11 tains Wilderness" and dated February 1990, and
12 which shall be known as the Dos Cabezas Mountains
13 Wilderness.

14 (24) Certain lands in Graham County, Arizona,
15 which comprise approximately 6,600 acres, as general-
16 ly depicted on a map entitled "Redfield Canyon Wil-
17 derness" and dated February 1990, and which shall be
18 known as the Redfield Canyon Wilderness.

19 (25) Certain lands in La Paz County, Arizona,
20 which comprise approximately 18,805 acres, as gener-
21 ally depicted on a map entitled "Gibraltar Mountain
22 Wilderness" and dated February 1990, and which shall
23 be known as the Gibraltar Mountain Wilderness.

24 (26) Certain lands in La Paz County, Arizona,
25 which comprise approximately 15,755 acres, as gener-

1 ally depicted on a map entitled "Swansea Wilderness"
2 and dated February 1990, and which shall be known
3 as the Swansea Wilderness.

4 (27) Certain lands in La Paz County, Arizona,
5 which comprise approximately 29,095 acres, as gener-
6 ally depicted on a map entitled "Trigo Mountain Wil-
7 derness" and dated February 1990, and which shall be
8 known as the Trigo Mountain Wilderness.

9 (28) Certain lands in Yuma County, Arizona,
10 which comprise approximately 8,855 acres, as general-
11 ly depicted on a map entitled "Muggins Mountain Wil-
12 derness" and dated February 1990, and which shall be
13 known as the Muggins Mountain Wilderness.

14 (29) Certain lands in Yavapai and Maricopa
15 Counties, Arizona, which comprise approximately
16 9,200 acres, as generally depicted on a map entitled
17 "Hells Canyon Wilderness" and dated February 1990,
18 and which shall be known as the Hells Canyon
19 Wilderness.

20 (30) Certain lands in Maricopa County, Arizona,
21 which comprise approximately 63,600 acres, as gener-
22 ally depicted on a map entitled "North Maricopa
23 Mountains Wilderness" and dated February 1990, and
24 which shall be known as the North Maricopa Moun-
25 tains Wilderness.

1 (31) Certain lands in Maricopa County, Arizona,
2 which comprise approximately 72,004 acres, as gener-
3 ally depicted on a map entitled "South Maricopa
4 Mountains Wilderness" and dated February 1990, and
5 which shall be known as the South Maricopa Moun-
6 tains Wilderness.

7 (32) Certain lands in Mohave County, Arizona,
8 which comprise approximately 38,400 acres, as gener-
9 ally depicted on a map entitled "Wabayuma Peak Wil-
10 derness" and dated February 1990, and which shall be
11 known as the Wabayuma Peak Wilderness.

12 (33) Certain lands in Mohave County, Arizona,
13 which comprise approximately 27,390 acres, as gener-
14 ally depicted on a map entitled "Upper Burro Creek
15 Wilderness" and dated February 1990, and which shall
16 be known as the Upper Burro Creek Wilderness.

17 (34) Certain lands in Yavapai County, Arizona,
18 which comprise approximately 11,840 acres, as gener-
19 ally depicted on a map entitled "Hassayampa River
20 Canyon Wilderness" and dated February 1990, and
21 which shall be known as the Hassayampa River
22 Canyon Wilderness.

23 (35) Certain lands in Pinal County, Arizona,
24 which comprise approximately 5,800 acres, as general-
25 ly depicted on a map entitled "White Canyon Wilder-

1 ness" and dated February 1990, and which shall be
2 known as the White Canyon Wilderness.

3 (36) Certain lands in Mohave County, Arizona,
4 which comprise approximately 8,700 acres, as general-
5 ly depicted on a map entitled "Tres Alamos Wilder-
6 ness" and dated February 1990, and which shall be
7 known as the Tres Alamos Wilderness.

8 (37) Certain lands in Cochise County, Arizona,
9 which comprise approximately 19,650 acres, as gener-
10 ally depicted on a map entitled "Peloncillo Mountains
11 Wilderness" and dated February 1990, and which shall
12 be known as the Peloncillo Mountains Wilderness.

13 (38) Certain lands in Yuma County, Arizona,
14 which comprise approximately 21,860 acres, as gener-
15 ally depicted on a map entitled "New Water Moun-
16 tains Wilderness" and dated February 1990, and
17 which shall be known as the New Water Mountains
18 Wilderness.

19 (39) Certain lands in Gila and Graham Counties,
20 Arizona, which comprise approximately 12,711 acres
21 generally depicted on a map entitled "Aravaipa Wil-
22 derness Additions" and dated February 1990, and
23 which shall be added to and managed as part of Ara-
24 vaipa Wilderness.

1 (b) **MANAGEMENT.**—Subject to valid existing rights, the
2 wilderness areas designated by this Act shall be administered
3 by the Secretary of the Interior (hereinafter in this Act re-
4 ferred to as the “Secretary”) in accordance with the provi-
5 sions of the Wilderness Act governing areas designated by
6 that Act as wilderness, except that any reference in such
7 provisions to the effective date of the Wilderness Act (or any
8 similar reference) shall be deemed to be a reference to the
9 date of enactment of this Act.

10 (c) **MAP AND LEGAL DESCRIPTION.**—As soon as prac-
11 ticable after enactment of this Act, the Secretary shall file a
12 map and a legal description of each wilderness area designat-
13 ed under this section with the Committee on Interior and
14 Insular Affairs of the United States House of Representatives
15 and with the Committee on Energy and Natural Resources of
16 the United States Senate. Such map and description shall
17 have the same force and effect as if included in this Act,
18 except that correction of clerical and typographical errors in
19 such legal description and map may be made. Such map and
20 legal description shall be on file and available for public in-
21 spection in the Office of the Director, Bureau of Land Man-
22 agement, United States Department of the Interior.

23 (d) **NO BUFFER ZONES.**—The Congress does not intend
24 for designation of wilderness areas in the State of Arizona to
25 lead to the creation of protective perimeters or buffer zones

1 around any such wilderness area. The fact that nonwilder-
2 ness activities or uses can be seen or heard from areas within
3 a wilderness shall not, of itself, preclude such activities or
4 uses up to the boundary of the wilderness area.

5 (e) FISH AND WILDLIFE.—As provided in paragraph
6 (7) of section 4(d) of the Wilderness Act, nothing in this Act
7 or in the Wilderness Act shall be construed as affecting the
8 jurisdiction or responsibilities of the State of Arizona with
9 respect to wildlife and fish on the public lands located in that
10 State.

11 (f) LIVESTOCK.—(1) Grazing of livestock in wilderness
12 areas designated by this Act, where established prior to the
13 date of the enactment of this Act, shall be administered in
14 accordance with section 4(d)(4) of the Wilderness Act and the
15 guidelines set forth in Appendix A of the Report of the Com-
16 mittee on Energy and Natural Resources to accompany
17 S. of the 101st Congress (S. Rept. 101-).

18 (2) The Secretary is directed to review all policies, prac-
19 tices, and regulations of the Bureau of Land Management
20 regarding livestock grazing in Bureau of Land Management
21 Wilderness areas in Arizona in order to insure that such poli-
22 cies, practices, and regulations fully conform with and imple-
23 ment the intent of Congress regarding grazing in such areas,
24 as such intent is expressed in this Act.

1 (g) WATER.—With respect to each wilderness area des-
2 ignated by this Act, Congress hereby reserves a quantity of
3 water sufficient to fulfill the purposes of this Act. The priori-
4 ty date of such reserved rights shall be the date of enactment
5 of this Act. The Secretary of the Interior shall file a claim for
6 the quantification of such rights in an appropriate stream ad-
7 judication, and shall take all steps necessary to protect such
8 rights in such an adjudication. The Federal water rights re-
9 served by this Act are in addition to any water rights which
10 may have been previously reserved or obtained by the United
11 States for other than wilderness purposes.

12 (h) WILDLIFE MANAGEMENT.—In furtherance of the
13 purposes and principles of the Wilderness Act, management
14 activities to maintain or restore fish and wildlife populations
15 and the habitats to support such populations may be carried
16 out within wilderness areas, where consistent with relevant
17 wilderness management plans, in accordance with appropri-
18 ate policies and guidelines such as those set forth in appendix
19 B of the Report of the Committee on Energy and Natural
20 Resources to accompany S. of the 101st Congress (S.
21 Rpt. 101-).

22 SEC. 102. CONGRESSIONAL FINDING.

23 Excepting for the Baker Canyon areas (AZ-040-070),
24 and the approximately 57,800 acres of public land as gener-
25 ally depicted on a map entitled "Cactus Plain Wilderness

1 Study Acres' dated February 1990, the Congress hereby
 2 finds and directs that all public lands in Arizona, adminis-
 3 tered by the Bureau of Land Management pursuant to the
 4 Federal Land Policy and Management Act of 1976 not desig-
 5 nated as wilderness by this Act, or previous Acts of Con-
 6 gress, have been adequately studied for wilderness designa-
 7 tion pursuant to section 603 of such Act and are no longer
 8 subject to the requirement of section 603(c) of such Act per-
 9 taining to the management of wilderness study areas in a
 10 manner that does not impair the suitability of such areas for
 11 preservation as wilderness.

12 **SEC. 103. GILA BOX RIPARIAN NATIONAL CONSERVATION**
 13 **AREA.**

14 (a) **PURPOSES.**—In order to conserve, protect, and en-
 15 hance the riparian and associated areas described in subsec-
 16 tion (b) and the aquatic, wildlife, archeological, paleontolog-
 17 ical, scientific, cultural, recreational, educational, scenic, and
 18 other resources and values of such areas, there is hereby es-
 19 tablished the Gila Box Riparian National Conservation Area
 20 (hereafter in this section referred to as the “conservation
 21 area”).

22 (b) **AREAS INCLUDED.**—The conservation area shall
 23 consist of the public lands generally depicted on a map enti-
 24 tled “Gila Box Riparian National Conservation Area” dated
 25 February 1990, and comprising approximately 20,900 acres.

1 (c) MAP.—As soon as practicable after the date of en-
2 actment of this Act, a map and legal description of the con-
3 servation area shall be filed by the Secretary with the Com-
4 mittee on Interior and Insular Affairs of the House of Repre-
5 sentatives and the Committee on Energy and Natural Re-
6 sources of the Senate. Such map shall have the same force
7 and effect as if included in this section. Copies of such map
8 shall be on file and available for public inspection in the
9 Office of the Director of the Bureau of Land Management,
10 Department of the Interior, and in appropriate office of the
11 Bureau of Land Management in Arizona.

12 (d) MANAGEMENT OF CONSERVATION AREA.—(1) The
13 Secretary shall manage the conservation area in a manner
14 that conserves, protects, and enhances its resources and
15 values (including the resources and values specified in subsec-
16 tion (a)), pursuant to the Federal Land Policy and Manage-
17 ment Act of 1976 and other applicable law, including this
18 section.

19 (2) The Secretary shall allow only such uses of the con-
20 servation area as the Secretary finds will further the pur-
21 poses for which the conservation area is established. Except
22 where needed for administrative purposes or to respond to an
23 emergency, use of motorized vehicles in the conservation
24 area shall be permitted only on roads specifically designated

1 for such use as part of the management plan prepared pursu-
2 ant to this section.

3 (e) **WITHDRAWAL AND WATER.**—(1) Subject to valid
4 existing rights, all Federal lands within the conservation area
5 are hereby withdrawn from all forms of entry, appropriation,
6 or disposal under the public land laws; from location, entry,
7 and patent under the United States mining laws; and from
8 disposition under all laws pertaining to mineral and geother-
9 mal leasing, and all amendments thereto.

10 (2) Congress hereby reserves a quantity of water suffi-
11 cient to fulfill the purposes (as specified in subsection (a)) for
12 which the conservation area is established. The priority date
13 of this reserved right shall be the date of enactment of this
14 Act. The Secretary shall file a claim for the quantification of
15 this right in an appropriate stream adjudication, and shall
16 take all steps necessary to protect such right in such adjudi-
17 cation. The Federal water right reserved by this paragraph
18 shall be in addition to any other water rights which may have
19 been previously reserved or obtained by the United States.

20 (f) **MANAGEMENT PLAN.**—(1) No later than 2 years
21 after the date of enactment of this Act, the Secretary shall
22 develop a comprehensive plan for the long-term management
23 of the conservation area in order to fulfill the purposes for
24 which the conservation area is established. The management
25 plan shall be developed with full public participation and shall

1 include provisions designed to assure protection of the re-
2 sources and values (including the resources and values speci-
3 fied in subsection (a)) of the conservation area. For the pur-
4 poses of this section, the term "management plan" means the
5 plan developed under this subsection.

6 (2) The management plan shall include a discussion of
7 the desirability of the inclusion in the conservation area of
8 additional lands, including the lands not in Federal ownership
9 that are contiguous to the boundary of the conservation area
10 (as depicted on the map referenced in subsection (b) or as
11 hereafter adjusted pursuant to subsection (g)) and within the
12 area extending two miles on either side of the centerline of
13 Eagle Creek from the point where Eagle Creek crosses the
14 southern boundary of the Apache National Forest to the con-
15 fluence of Eagle Creek with the Gila River (this area is here-
16 after referred to in this section as the "Eagle Creek riparian
17 area").

18 (3) In order to better implement the management plan,
19 the Secretary may enter into cooperative agreements with
20 appropriate State and local agencies pursuant to section
21 307(b) of the Federal Land Policy and Management Act of
22 1976.

23 (4) In order to assist in the development and implemen-
24 tation of the management plan, the Secretary may authorize
25 appropriate research, including research concerning the envi-

1 ronmental, biological, hydrological, cultural, and other char-
2 acteristics, resources, and values of the conservation area,
3 pursuant to section 307(a) of the Federal Land Policy and
4 Management Act of 1976.

5 (g) ACQUISITION AND BOUNDARY ADJUSTMENTS.—(1)
6 The Secretary is authorized to acquire non-Federal lands or
7 interests therein within the boundaries of the conservation
8 system unit or within the Eagle Creek riparian area.

9 (2) The Secretary is authorized to adjust the boundaries
10 of the conservation area so as to incorporate within the con-
11 servation area any lands or interests within the Eagle Creek
12 riparian area that may be acquired after the date of enact-
13 ment of this Act as well as public lands within that portion of
14 the Eagle Creek riparian area west of the centerline of Eagle
15 Creek that the Secretary finds appropriate in order to proper-
16 ly manage such acquired lands as part of the conservation
17 area. Any lands or interests so incorporated shall be managed
18 as part of the conservation area.

19 (3) No lands or interests therein owned by the State of
20 Arizona or any political subdivision of such State shall be
21 acquired pursuant to this subsection except through donation
22 or exchange, and no lands or interests within the conserva-
23 tion area or the Eagle Creek riparian area shall be acquired
24 from any other party or entity except by donation, exchange,

1 or purchase with the consent of the owner of such lands or
2 interests.

3 (h) **NO BUFFER ZONES.**—The Congress does not intend
4 for the establishment of the conservation area to lead to the
5 creation of protective perimeters or buffer zones around the
6 conservation area. The fact that there may be activities or
7 uses on lands outside the conservation area not permitted in
8 the conservation area shall not preclude such activities or
9 uses up to the boundary of the conservation area to the
10 extent consistent with other applicable law.

11 (i) **ADVISORY COMMITTEE.**—The Secretary shall estab-
12 lish an advisory committee to advise the Secretary with
13 respect to the preparation and implementation of the man-
14 agement plan. Such advisory committee shall consist of seven
15 members appointed by the Secretary. One member shall be
16 appointed from nominations supplied by the Governor of Ari-
17 zona and one member each shall be appointed from nomina-
18 tions supplied by the supervisors of Graham and Greenlee
19 Counties, respectively. The remaining members shall be per-
20 sons with recognized backgrounds in wildlife conservation,
21 riparian ecology, archeology, paleontology, or other disci-
22 plines directly related to the purposes for which the conserva-
23 tion area is established.

24 (j) **REPORT.**—No later than 5 years after the date of
25 enactment of this Act, and at least each 10 years thereafter,

1 the Secretary shall report to the Committee on Interior and
 2 Insular Affairs of the House of Representatives and the Com-
 3 mittee on Energy and Natural Resources of the Senate on
 4 the implementation of this section, the condition of the
 5 resources and values of the conservation area, and the
 6 progress of the Secretary in achieving the purposes for which
 7 the conservation area is established.

8 (k) ENFORCEMENT.—Any person who violates any reg-
 9 ulation promulgated by the Secretary to implement this sec-
 10 tion shall be subject to a fine in accordance with applicable
 11 provisions of the Sentencing Reform Act of 1984 (18 U.S.C.
 12 3572) or to imprisonment for at least 6 months but no more
 13 than one year, or both such fine and imprisonment.

14 (l) AUTHORIZATION.—There are hereby authorized to
 15 be appropriated such sums as may be necessary to implement
 16 the provisions of this section.

17 **TITLE II—DESIGNATION OF WIL-**
 18 **DERNESS AREAS TO BE ADMIN-**
 19 **ISTERED BY THE UNITED**
 20 **STATES FISH AND WILDLIFE**
 21 **SERVICE**

22 **SEC. 201. WILDERNESS DESIGNATION AND MANAGEMENT.**

23 (a) DESIGNATION.—In furtherance of the purposes of
 24 the Wilderness Act, the following lands are hereby desig-

1 nated as wilderness and therefore, as components of the
2 National Wilderness Preservation System:

3 (1) Certain lands in the Havasu National Wildlife
4 Refuge, Arizona, which comprise approximately
5 14,606 acres, as generally depicted on a map entitled
6 "Havasu Wilderness" and dated September 1989, and
7 which shall be known as the Havasu Wilderness.

8 (2) Certain lands in the Imperial National Wildlife
9 Refuge, Arizona, which comprise approximately 9,220
10 acres, as generally depicted on a map entitled "Imperi-
11 al Wilderness" and dated September 1989, and which
12 shall be known as the Imperial Wilderness.

13 (3) Certain lands in the Kofa National Wildlife
14 Refuge, Arizona, which comprise approximately
15 504,800 acres, as generally depicted on a map entitled
16 "Kofa Wilderness" and dated September 1989, and
17 which shall be known as the Kofa Wilderness.

18 (4) Certain lands in the Cabeza Prieta National
19 Wildlife Refuge, Arizona, which comprise approximate-
20 ly 763,000 acres, as generally depicted on a map enti-
21 tled "Cabeza Prieta Wilderness" and dated September
22 1989, and which shall be known as the Cabeza Prieta
23 Wilderness.

24 (b) MANAGEMENT.—Subject to valid existing rights, the
25 wilderness areas designated under this section shall be ad-

1 ministered by the Secretary of the Interior (hereinafter in this
2 Act referred to as the "Secretary") in accordance with the
3 provisions of the Wilderness Act governing areas designated
4 by that Act as wilderness, except that any reference in such
5 provisions to the effective date of the Wilderness Act (or any
6 similar reference) shall be deemed to be a reference to the
7 date of enactment of this Act.

8 (c) MAP AND LEGAL DESCRIPTION.—As soon as prac-
9 ticable after enactment of this Act, the Secretary shall file a
10 map and a legal description of each wilderness area designat-
11 ed under this section with the Committee on Interior and
12 Insular Affairs of the United States House of Representatives
13 and with the Committee on Energy and Natural Resources of
14 the United States Senate. Such map and description shall
15 have the same force and effect as if included in this Act,
16 except that correction of clerical and typographical errors in
17 such legal description and map may be made. Such map and
18 legal description shall be on file and available for public in-
19 spection in the Office of the Director, United States Fish and
20 Wildlife Service, United States Department of the Interior.

21 (d) WATER.—With respect to each wilderness area des-
22 ignated by this Act, Congress hereby reserves a quantity of
23 water sufficient to fulfill the purposes of this Act. The priori-
24 ty date of such reserved rights shall be the date of enactment
25 of this Act. The Secretary shall file a claim for the quantifica-

1 tion of such rights in an appropriate stream adjudication, and
2 shall take all steps necessary to protect such rights in such an
3 adjudication. The Federal water rights reserved by this Act
4 shall be in addition to any water rights which may have been
5 previously reserved or obtained by the United States for
6 other than wilderness purposes.

7 (e) **MILITARY ACTIVITIES.**—Nothing in this Act, in-
8 cluding the designation as wilderness of lands within the
9 Cabeza Prieta National Wildlife Refuge, shall be construed
10 as—

11 (1) precluding or otherwise affecting continued
12 low-level overflights by military aircraft over such
13 refuge or the maintenance of existing associated
14 ground instrumentation, in accordance with any appli-
15 cable interagency agreements in effect on the date of
16 enactment of this Act; or

17 (2) precluding the Secretary of Defense from en-
18 tering into new or renewed agreements with the Secre-
19 tary of the Interior concerning use by military aircraft
20 of airspace over such refuge or the maintenance of ex-
21 isting associated ground instrumentation, consistent
22 with management of the refuge for the purposes for
23 which such refuge was established and in accordance
24 with laws applicable to the National Wildlife Refuge
25 System.



101ST CONGRESS
2^D SESSION

H. R. 2570

IN THE SENATE OF THE UNITED STATES

MARCH 5 (legislative day, JANUARY 23), 1990

Received; read twice and referred to the Committee on Energy and Natural
Resources

AN ACT

To provide for the designation of certain public lands as
wilderness in the State of Arizona.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Arizona Desert Wilder-
5 ness Act of 1990".

6 **SEC. 2. WILDERNESS DESIGNATION AND MANAGEMENT.**

7 (a) **DESIGNATION.**—In furtherance of the purposes of
8 the Wilderness Act, the following public lands are hereby
9 designated as wilderness and therefore, as components of the
10 National Wilderness Preservation System:

1 (1) Certain lands in Mohave County, Arizona,
2 which comprise approximately 23,600 acres, as gener-
3 ally depicted on a map entitled "Mount Wilson Wilder-
4 ness" and dated February 1990, and which shall be
5 known as the Mount Wilson Wilderness.

6 (2) Certain lands in Mohave County, Arizona,
7 which comprise approximately 31,070 acres, as gener-
8 ally depicted on a map entitled "Mount Tipton Wilder-
9 ness" and dated February 1990, and which shall be
10 known as the Mount Tipton Wilderness.

11 (3) Certain lands in Mohave County, Arizona,
12 which comprise approximately 27,530 acres, as gener-
13 ally depicted on a map entitled "Mount Nutt Wilder-
14 ness" and dated February 1990, and which shall be
15 known as the Mount Nutt Wilderness.

16 (4) Certain lands in Mohave County, Arizona,
17 which comprise approximately 90,600 acres, as gener-
18 ally depicted on a map entitled "Warm Springs Wil-
19 derness" and dated February 1990, and which shall be
20 known as the Warm Springs Wilderness.

21 (5) Certain lands in Mohave County, Arizona,
22 which comprise approximately 15,900 acres, as gener-
23 ally depicted on a map entitled "Aubrey Peak Wilder-
24 ness" and dated February 1990, and which shall be
25 known as the Aubrey Peak Wilderness.

1 (6) Certain lands in La Paz County, Arizona,
2 which comprise approximately 14,630 acres, as gener-
3 ally depicted on a map entitled "East Cactus Plain
4 Wilderness" and dated February 1990, and which shall
5 be known as the East Cactus Plain Wilderness.

6 (7) Certain lands in Mohave and La Paz Counties,
7 Arizona, which comprise approximately 41,600 acres,
8 as generally depicted on a map entitled "Rawhide
9 Mountains Wilderness" and dated February 1990, and
10 which shall be known as the Rawhide Mountains Wil-
11 derness.

12 (8) Certain lands in Mohave, Yavapai, and La Paz
13 Counties, Arizona, which comprise approximately
14 126,760 acres, as generally depicted on a map entitled
15 "Arrastra Mountain Wilderness" and dated February
16 1990, and which shall be known as the Arrastra
17 Mountain Wilderness.

18 (9) Certain lands in La Paz County, Arizona,
19 which comprise approximately 25,287 acres, as gener-
20 ally depicted on a map entitled "Harcuvar Mountains
21 Wilderness" and dated February 1990, and which shall
22 be known as the Harcuvar Mountains Wilderness.

23 (10) Certain lands in La Paz and Maricopa Coun-
24 ties, Arizona, which comprise approximately 22,865
25 acres, as generally depicted on a map entitled "Har-

1 quahala Mountains Wilderness” and dated February
2 1990, and which shall be known as the Harquahala
3 Mountains Wilderness.

4 (11) Certain lands in Maricopa County, Arizona,
5 which comprise approximately 20,600 acres, as gener-
6 ally depicted on a map entitled “Big Horn Mountains
7 Wilderness” and dated February 1990, and which shall
8 be known as the Big Horn Mountains Wilderness.

9 (12) Certain lands in Maricopa County, Arizona,
10 which comprise approximately 30,170 acres, as gener-
11 ally depicted on a map entitled “Hummingbird Springs
12 Wilderness” and dated February 1990, and which shall
13 be known as the Hummingbird Springs Wilderness.

14 (13) Certain lands in La Paz, Yuma, and Marico-
15 pa Counties, Arizona, which comprise approximately
16 89,000 acres, as generally depicted on a map entitled
17 “Eagletail Mountains Wilderness” and dated February
18 1990, and which shall be known as the Eagletail
19 Mountains Wilderness.

20 (14) Certain lands in Maricopa County, Arizona,
21 which comprise approximately 15,250 acres, as gener-
22 ally depicted on a map entitled “Signal Mountain Wil-
23 derness” and dated February 1990, and which shall be
24 known as the Signal Mountains Wilderness.

1 (15) Certain lands in Maricopa County, Arizona,
2 which comprise approximately 61,000 acres, as gener-
3 ally depicted on a map entitled "Woolsey Peak Wilder-
4 ness" and dated February 1990, and which shall be
5 known as the Woolsey Peak Wilderness.

6 (16) Certain lands in Maricopa County, Arizona,
7 which comprise approximately 14,500 acres, as gener-
8 ally depicted on a map entitled "Sierra Estrella Wil-
9 derness" and dated February 1990, and which shall be
10 known as the Sierra Estrella Wilderness.

11 (17) Certain lands in Maricopa and Pinal Coun-
12 ties, Arizona, which comprise approximately 34,400
13 acres, as generally depicted on a map entitled "Table
14 Top Wilderness" and dated February 1990, and which
15 shall be known as the Table Top Wilderness.

16 (18) Certain lands in Pima County, Arizona,
17 which comprise approximately 5,080 acres, as general-
18 ly depicted on a map entitled "Coyote Mountains Wil-
19 derness" and dated February 1990, and which shall be
20 known as the Coyote Mountains Wilderness.

21 (19) Certain lands in Pima County, Arizona,
22 which comprise approximately 2,065 acres, as general-
23 ly depicted on a map entitled "Baboquivari Peak Wil-
24 derness" and dated February 1990, and which shall be
25 known as the Baboquivari Peak Wilderness.

1 (20) Certain lands in Gila County, Arizona, which
2 comprise approximately 9,201 acres, as generally de-
3 picted on a map entitled "Needle's Eye Wilderness"
4 and dated February 1990, and which shall be known
5 as the Needle's Eye Wilderness. The right-of-way re-
6 served by right-of-way reservation A-16043 dated Oc-
7 tober 20, 1986, together with the right of ingress and
8 egress thereto, shall not be affected by this Act, and
9 the existing powerline utilizing such right-of-way may
10 be operated, maintained, and upgraded, subject to rea-
11 sonable requirements to protect wilderness values.

12 (21) Certain lands in Graham County, Arizona,
13 which comprise approximately 6,590 acres, as general-
14 ly depicted on a map entitled "North Santa Teresa
15 Wilderness" and dated February 1990, and which shall
16 be known as the North Santa Teresa Wilderness. The
17 Secretary of the Interior, acting through the Bureau of
18 Indian Affairs, shall administer that portion of the
19 Black Rock Wash Road located within the boundaries
20 of the San Carlos Apache Reservation so as to allow
21 reasonable use of the road for private and administra-
22 tive purposes and may permit limited public use of
23 such road for the purpose of access to the public lands
24 outside the reservation boundary.

1 (22) Certain lands in Graham County, Arizona,
2 which comprise approximately 10,883 acres, as gener-
3 ally depicted on a map entitled "Fishhooks Wilder-
4 ness" and dated February 1990, and which shall be
5 known as the Fishhooks Wilderness.

6 (23) Certain lands in Cochise County, Arizona,
7 which comprise approximately 11,998 acres, as gener-
8 ally depicted on a map entitled "Dos Cabezas Moun-
9 tains Wilderness" and dated February 1990, and
10 which shall be known as the Dos Cabezas Mountains
11 Wilderness.

12 (24) Certain lands in Graham County, Arizona,
13 which comprise approximately 6,600 acres, as general-
14 ly depicted on a map entitled "Redfield Canyon Wil-
15 derness" and dated February 1990, and which shall be
16 known as the Redfield Canyon Wilderness.

17 (25) Certain lands in La Paz County, Arizona,
18 which comprise approximately 18,805 acres, as gener-
19 ally depicted on a map entitled "Gibraltar Mountain
20 Wilderness" and dated February 1990, and which shall
21 be known as the Gibraltar Mountain Wilderness.

22 (26) Certain lands in La Paz County, Arizona,
23 which comprise approximately 15,755 acres, as gener-
24 ally depicted on a map entitled "Swansea Wilderness"

1 and dated February 1990, and which shall be known
2 as the Swansea Wilderness.

3 (27) Certain lands in La Paz County, Arizona,
4 which comprise approximately 29,095 acres, as gener-
5 ally depicted on a map entitled "Trigo Mountain Wil-
6 derness" and dated February 1990, and which shall be
7 known as the Trigo Mountain Wilderness.

8 (28) Certain lands in Yuma County, Arizona,
9 which comprise approximately 8,855 acres, as general-
10 ly depicted on a map entitled "Muggins Mountain Wil-
11 derness" and dated February 1990, and which shall be
12 known as the Muggins Mountain Wilderness.

13 (29) Certain lands in Yavapai and Maricopa
14 Counties, Arizona, which comprise approximately
15 9,200 acres, as generally depicted on a map entitled
16 "Hells Canyon Wilderness" and dated February 1990,
17 and which shall be known as the Hells Canyon Wilder-
18 ness.

19 (30) Certain lands in Maricopa County, Arizona,
20 which comprise approximately 63,600 acres, as gener-
21 ally depicted on a map entitled "North Maricopa
22 Mountains Wilderness" and dated February 1990, and
23 which shall be known as the North Maricopa Moun-
24 tains Wilderness.

1 (31) Certain lands in Maricopa County, Arizona,
2 which comprise approximately 60,800 acres, as gener-
3 ally depicted on a map entitled "South Maricopa
4 Mountains Wilderness" and dated February 1990, and
5 which shall be known as the South Maricopa Moun-
6 tains Wilderness.

7 (32) Certain lands in Mohave County, Arizona,
8 which comprise approximately 38,400 acres, as gener-
9 ally depicted on a map entitled "Wabayuma Peak Wil-
10 derness" and dated February 1990, and which shall be
11 known as the Wabayuma Peak Wilderness.

12 (33) Certain lands in Yavapai County, Arizona,
13 which comprise approximately 27,390 acres, as gener-
14 ally depicted on a map entitled "Upper Burro Creek
15 Wilderness" and dated February 1990, and which shall
16 be known as the Upper Burro Creek Wilderness.

17 (34) Certain lands in Yavapai County, Arizona,
18 which comprise approximately 11,840 acres, as gener-
19 ally depicted on a map entitled "Hassayampa River
20 Canyon Wilderness" and dated February 1990, and
21 which shall be known as the Hassayampa River
22 Canyon Wilderness.

23 (35) Certain lands in Pinal County, Arizona,
24 which comprise approximately 5,800 acres, as general-
25 ly depicted on a map entitled "White Canyon Wilder-

1 ness" and dated February 1990, and which shall be
2 known as the White Canyon Wilderness.

3 (36) Certain lands in Yavapai County, Arizona,
4 which comprise approximately 8,700 acres, as general-
5 ly depicted on a map entitled "Tres Alamos Wilder-
6 ness" and dated February 1990, and which shall be
7 known as the Tres Alamos Wilderness.

8 (37) Certain lands in Cochise County, Arizona,
9 which comprise approximately 19,650 acres, as gener-
10 ally depicted on a map entitled "Peloncillo Mountains
11 Wilderness" and dated February 1990, and which shall
12 be known as the Peloncillo Mountains Wilderness.

13 (38) Certain lands in La Paz County, Arizona,
14 which comprise approximately 21,680 acres, as gener-
15 ally depicted on a map entitled "New Water Moun-
16 tains Wilderness" and dated February 1990, and
17 which shall be known as the New Water Mountains
18 Wilderness.

19 (39) Certain lands in Gila and Graham Counties,
20 Arizona, which comprise approximately 12,711 acres,
21 as generally depicted on a map entitled "Aravaipa
22 Wilderness Additions" and dated February 1990, and
23 which shall be added to and managed as part of Ara-
24 vaipa Wilderness.

1 (b) **MANAGEMENT.**—Subject to valid existing rights, the
2 wilderness areas designated by this Act shall be administered
3 by the Secretary of the Interior (hereinafter in this Act re-
4 -ferred to as the “Secretary”) in accordance with the provi-
5 sions of the Wilderness Act governing areas designated by
6 that Act as wilderness, except that any reference in such
7 provisions to the effective date of the Wilderness Act (or any
8 similar reference) shall be deemed to be a reference to the
9 date of enactment of this Act.

10 (c) **MAP AND LEGAL DESCRIPTION.**—As soon as prac-
11 ticable after enactment of this Act, the Secretary shall file a
12 map and a legal description of each wilderness area designat-
13 ed under this section with the Committee on Interior and
14 Insular Affairs of the United States House of Representatives
15 and with the Committee on Energy and Natural Resources of
16 the United States Senate. Such map and description shall
17 have the same force and effect as if included in this Act,
18 except that correction of clerical and typographical errors in
19 such legal description and map may be made. Such map and
20 legal description shall be on file and available for public in-
21 spection in the Office of the Director, Bureau of Land Man-
22 agement, United States Department of the Interior.

23 (d) **NO BUFFER ZONES.**—The Congress does not intend
24 for designation of wilderness area in the State of Arizona to
25 lead to the creation of protective perimeters or buffer zones

1 around any such wilderness area. The fact that nonwilder-
2 ness activities or uses can be seen or heard from areas within
3 a wilderness shall not, of itself, preclude such activities or
4 uses up to the boundary of the wilderness area.

5 (e) FISH AND WILDLIFE.—As provided in paragraph
6 (7) of section 4(d) of the Wilderness Act, nothing in this Act
7 or in the Wilderness Act shall be construed as affecting the
8 jurisdiction or responsibilities of the State of Arizona with
9 respect to wildlife and fish on the public lands located in that
10 State.

11 (f) LIVESTOCK.—(1) Grazing of livestock in wilderness
12 areas designated by this Act, where established prior to the
13 date of the enactment of this Act, shall be administered in
14 accordance with section 4(d)(4) of the Wilderness Act and the
15 guidelines set forth in Appendix A of the Report of the Com-
16 mittee on Interior and Insular Affairs to accompany H.R.
17 2570 of the One Hundred First Congress (H. Rept. 101-
18 405).

19 (2) The Secretary is directed to review all policies, prac-
20 tices, and regulations of the Bureau of Land Management
21 regarding livestock grazing in Bureau of Land Management
22 Wilderness areas in Arizona in order to insure that such poli-
23 cies, practices, and regulations fully conform with and imple-
24 ment the intent of Congress regarding grazing in such areas,
25 as such intent is expressed in this Act.

1 (g) WATER.—(1) With respect to each wilderness area
2 designated by this Act, Congress hereby reserves a quantity
3 of water sufficient to fulfill the purposes of this Act. The
4 priority date of such reserved rights shall be the date of en-
5 actment of this Act.

6 (2) The Secretary of the Interior and all other officers of
7 the United States shall take all steps necessary to protect the
8 rights reserved by paragraph (1), including the filing by the
9 Secretary of a claim for the quantification of such rights in
10 any present or future appropriate-stream adjudication in the
11 courts of the State of Arizona in which the United States is
12 or may be joined and which is conducted in accordance with
13 the McCarran Amendment, 43 U.S.C. 666.

14 (3) Nothing in this Act shall be construed as a relin-
15 quishment or reduction of any water rights reserved or ap-
16 propriated by the United States in the State of Arizona on or
17 before the date of enactment of this Act.

18 (4) The Federal water rights reserved by this Act are
19 specific to the wilderness areas and national conservation
20 area located in the State of Arizona designated by this Act.
21 Nothing in this Act related to reserved Federal water rights
22 shall be construed as establishing a precedent with regard to
23 any future designations, nor shall it constitute an interpreta-
24 tion of any other Act or any designation made pursuant
25 thereto.

1 (h) WILDLIFE MANAGEMENT.—In furtherance of the
2 purposes and principles of the Wilderness Act, management
3 activities to maintain or restore fish and wildlife populations
4 and the habitats to support such populations may be carried
5 out within wilderness areas, where consistent with relevant
6 wilderness management plans, in accordance with appropri-
7 ate policies and guidelines such as those set forth in appendix
8 B of the Report of the Committee on Interior and Insular
9 Affairs to accompany H.R. 2570 of the One Hundred First
10 Congress (H. Rept. 101-405).

11 (i) AMENDMENT.—Section 101(a)(23) of the Arizona
12 Wilderness Act of 1984 (98 Stat. 1487) is amended by strik-
13 ing “the governmental agency having jurisdictional authority
14 may authorize limited access to the area, for private and ad-
15 ministrative purposes, from U.S. Route 70 along Black Rock
16 Wash to the vicinity of Black Rock;”.

17 **SEC. 3. AREAS RELEASED.**

18 Excepting for the Baker Canyon area (AZ-040-070),
19 and the approximately 57,800 acres of public land as gener-
20 ally depicted on a map entitled “Cactus Plain Wilderness
21 Study Area” dated February, 1990, the Congress hereby
22 finds and directs that all public lands in Arizona, adminis-
23 tered by the Bureau of Land Management pursuant to the
24 Federal Land Policy and Management Act of 1976 not desig-
25 nated as wilderness by this Act, or previous Acts of Con-

1 gress, have been adequately studied for wilderness designa-
2 tion pursuant to section 603 of such Act and are no longer
3 subject to the requirement of section 603(e) of such Act per-
4 taining to the management of wilderness study areas in a
5 manner that does not impair the suitability of such areas for
6 preservation as wilderness.

7 **SEC. 4. GILA BOX RIPARIAN NATIONAL CONSERVATION AREA.**

8 (a) **PURPOSES.**—In order to conserve, protect, and en-
9 hance the riparian and associated areas described in subsec-
10 tion (b) and the aquatic, wildlife, archeological, paleontolog-
11 ical, scientific, cultural, recreational, educational, scenic, and
12 other resources and values of such areas, there is hereby es-
13 tablished the Gila Box Riparian National Conservation Area
14 (hereafter in this section referred to as the “conservation
15 area”).

16 (b) **AREAS INCLUDED.**—The conservation area shall
17 consist of the public lands generally depicted on a map enti-
18 tled “Gila Box Riparian National Conservation Area” dated
19 February 1990, and comprising approximately 20,900 acres.

20 (c) **MAP.**—As soon as practicable after the date of en-
21 actment of this Act, a map and legal description of the con-
22 servation area shall be filed by the Secretary with the Com-
23 mittee on Interior and Insular Affairs of the House of Repre-
24 sentatives and the Committee on Energy and Natural Re-
25 sources of the Senate. Such map shall have the same force

1 and effect as if included in this section. Copies of such map
2 shall be on file and available for public inspection in the
3 Office of the Director of the Bureau of Land Management,
4 Department of the Interior, and in appropriate office of the
5 Bureau of Land Management in Arizona.

6 (d) **MANAGEMENT OF CONSERVATION AREA.**—(1) The
7 Secretary shall manage the conservation area in a manner
8 that conserves, protects, and enhances its resources and
9 values (including the resources and values specified in subsec-
10 tion (a)), pursuant to the Federal Land Policy and Manage-
11 ment Act of 1976 and other applicable law, including this
12 section.

13 (2) The Secretary shall allow only such uses of the con-
14 servation area as the Secretary finds will further the pur-
15 poses for which the conservation area is established. Except
16 where needed for administrative purposes or to respond to an
17 emergency, use of motorized vehicles in the conservation
18 area shall be permitted only on roads specifically designated
19 for such use as part of the management plan prepared pursu-
20 ant to this section.

21 (e) **WITHDRAWAL AND WATER.**—(1) Subject to valid
22 existing rights, all Federal lands within the conservation area
23 are hereby withdrawn from all forms of entry, appropriation,
24 or disposal under the public land laws; from location, entry,
25 and patent under the United States mining laws; and from

1 disposition under all laws pertaining to mineral and geother-
2 mal leasing, and all amendments thereto.

3 (2)(A) Congress hereby reserves a quantity of water suf-
4 ficient to fulfill the purposes (as specified in subsection (a)) for
5 which the conservation area is established. The priority date
6 of this reserved right shall be the date of enactment of this
7 Act.

8 (B) The Secretary of the Interior and all other officers of
9 the United States shall take all steps necessary to protect the
10 right reserved by this paragraph, including the filing by the
11 Secretary of a claim for the quantification of such right in any
12 present or future appropriate stream adjudication in the
13 courts of the State of Arizona in which the United States is
14 or may be joined and which is conducted in accordance with
15 the McCarran Amendment, 43 U.S.C. 666.

16 (f) **MANAGEMENT PLAN.**—(1) No later than two years
17 after the date of enactment of this Act, the Secretary shall
18 develop a comprehensive plan for the long-term management
19 of the conservation area in order to fulfill the purposes for
20 which the conservation area is established. The management
21 plan shall be developed with full public participation and shall
22 include provisions designed to assure protection of the re-
23 sources and values (including the resources and values speci-
24 fied in subsection (a)) of the conservation area. For the pur-

1 poses of this section, the term "management plan" means the
2 plan developed under this subsection.

3 (2) The management plan shall include a discussion of
4 the desirability of the inclusion in the conservation area of
5 additional lands, including the lands not in Federal ownership
6 that are contiguous to the boundary of the conservation area
7 (as depicted on the map referenced in subsection (b) or as
8 hereafter adjusted pursuant to subsection (g)) and within the
9 area extending two miles on either side of the centerline of
10 Eagle Creek from the point where Eagle Creek crosses the
11 southern boundary of the Apache National Forest to the con-
12 fluence of Eagle Creek with the Gila River (this area is here-
13 after referred to in this section as the "Eagle Creek riparian
14 area").

15 (3) In order to better implement the management plan,
16 the Secretary may enter into cooperative agreements with
17 appropriate State and local agencies pursuant to section
18 307(b) of the Federal Land Policy and Management Act of
19 1976.

20 (4) In order to assist in the development and implemen-
21 tation of the management plan, the Secretary may authorize
22 appropriate research, including research concerning the envi-
23 ronmental, biological, hydrological, cultural, and other char-
24 acteristics, resources, and values of the conservation area,

1 pursuant to section 307(a) of the Federal Land Policy and
2 Management Act of 1976.

3 (g) ACQUISITION AND BOUNDARY ADJUSTMENTS.—(1)
4 The Secretary is authorized to acquire non-Federal lands or
5 interests therein within the boundaries of the conservation
6 system unit or within the Eagle Creek riparian area.

7 (2) The Secretary is authorized to adjust the boundaries
8 of the conservation area so as to incorporate within the con-
9 servation area any lands or interests within the Eagle Creek
10 riparian area that may be acquired after the date of enact-
11 ment of this Act as well as public lands within that portion of
12 the Eagle Creek riparian area west of the centerline of Eagle
13 Creek that the Secretary finds appropriate in order to proper-
14 ly manage such acquired lands as part of the conservation
15 area. Any lands or interests so incorporated shall be managed
16 as part of the conservation area.

17 (3) No lands or interests therein owned by the State of
18 Arizona or any political subdivision of such State shall be
19 acquired pursuant to this subsection except through donation
20 or exchange, and no lands or interests within the conserva-
21 tion area or the Eagle Creek riparian area shall be acquired
22 from any other party or entity except by donation, exchange,
23 or purchase with the consent of the owner of such lands or
24 interests.

1 (h) NO BUFFER ZONES.—The Congress does not intend
2 for the establishment of the conservation area to lead to the
3 creation of protective perimeters or buffer zones around the
4 conservation area. The fact that there may be activities or
5 uses on lands outside the conservation area that would not be
6 permitted in the conservation area shall not preclude such
7 activities or uses on such lands up to the boundary of the
8 conservation area to the extent consistent with other applica-
9 ble law.

10 (i) ADVISORY COMMITTEE.—The Secretary shall estab-
11 lish an advisory committee to advise the Secretary with re-
12 spect to the preparation and implementation of the manage-
13 ment plan. Such advisory committee shall consist of seven
14 members appointed by the Secretary. One member shall be
15 appointed from nominations supplied by the Governor of Ari-
16 zona and one member each shall be appointed from nomina-
17 tions supplied by the supervisors of Graham and Greenlee
18 Counties, respectively. The remaining members shall be per-
19 sons with recognized backgrounds in wildlife conservation,
20 riparian ecology, archeology, paleontology, or other disci-
21 plines directly related to the purposes for which the conserva-
22 tion area is established.

23 (j) REPORT.—No later than five years after the date of
24 enactment of this Act, and at least each ten years thereafter,
25 the Secretary shall report to the Committee on Interior and

1 Insular Affairs of the House of Representatives and the Com-
2 mittee on Energy and Natural Resources of the Senate on
3 the implementation of this section, the condition of the re-
4 sources and values of the conservation area, and the progress
5 of the Secretary in achieving the purposes for which the con-
6 servation area is established.

7 (k) ENFORCEMENT.—Any person who violates any reg-
8 ulation promulgated by the Secretary to implement this sec-
9 tion shall be subject to a fine in accordance with applicable
10 provisions of the Sentencing Reform Act of 1984 (18 U.S.C.
11 3572) or to imprisonment for at least six months but no more
12 than one year, or both such fine and imprisonment.

13 (l) AUTHORIZATION.—There are hereby authorized to
14 be appropriated such sums as may be necessary to implement
15 the provisions of this section.

Passed the House of Representatives February 28,
1990.

Attest: DONNALD K. ANDERSON,
Clerk.

Senator BUMPERS. Senator McClure.

STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR FROM
IDAHO

Senator McCLURE. Thank you very much, Mr. Chairman. As you are aware, I am generally concerned with taking any action on public land measures which are internal to a State unless both Senators from that State are in agreement. The full committee has a very good record in this record. The major exception is when legislation before this committee contains a provision which will have nationally significant ramifications.

While both of my esteemed colleagues from Arizona are in agreement on all measures within the Arizona Wilderness Act, I do think that we need to pay some careful attention to the water language in this legislation, in light of its possible impact on land owners and other holders of water rights throughout the Western States.

This is particularly true in that this is a first of a series of bills which will be considered by this committee involving areas administered by the Bureau of Land Management.

In the past, I have deferred to the delegations from Nevada and Washington regarding water language in their respective wilderness bills when they choose to preempt the laws of their States.

The practical effect of what we did in those two acts is probably non-existent, given that we were dealing with headwaters of areas already protected under the management authorities of the Forest Service and the National Parks Service. This legislation, however, addresses the designation of "downstream wilderness areas." Therefore, the water rights language in this legislation is most important and the issue with the greatest potential for setting precedent—one which we will have to live with for a very long time.

Of particular concern to me are comments in the House legislative history indicating that there are only a few areas, such as Bill Williams, where there is appurtenant, unappropriated water. At a minimum, the bill should indicate that in most areas, the assertion of reserve right will be quantified as zero. I am particularly concerned with respect to the assertion of a new reservation at Havasu and Imperial refuges because of their proximity to the Colorado. I assume the Arizona delegation is equally concerned, given the House report language, but I would caution both my colleagues that report language will not cure the plain meaning of a statute.

Thank you, Mr. Chairman. I look forward to hearing from the witnesses today.

Senator BUMPERS. Thank you, Senator McClure.

Let me just point out that we checked with the cloak room, and we can have a vote as late as 3 p.m. and as early as right now, but I want to go ahead and get started anyway, and I see that neither of our Senators who were scheduled to testify are here yet. We will take them at such time as they arrive.

And our first witness, therefore, is Mr. Cy Jamison, Mr. Michael J. Spear. Mr. Jamison is Director of the Bureau of Land Management, and Mr. Spear is Regional Director, Region 2, U.S. Fish and Wildlife Service.

Gentlemen, welcome. Mr. Jamison, your name is first, please start.

STATEMENT OF CY JAMISON, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY BEAU McCLURE, DEPUTY STATE DIRECTOR, LANDS AND RENEWABLE RESOURCES, ARIZONA

Mr. JAMISON. Thank you, Mr. Chairman.

I am accompanied by Beau McClure from Arizona. He is the Deputy State Director for Renewable Resources and will be able to answer any detailed questions.

I will briefly summarize my statement if my full one is put in the record.

Senator BUMPERS. Absolutely.

Mr. JAMISON. Thank you. I appreciate the opportunity to appear before you today to present the Department's views on S. 2117, the proposed Arizona Wilderness Act of 1990, and H.R. 2570, the proposed Desert Wilderness Act of 1990. Since the two bills are quite similar, I will address my remarks to S. 2117.

As you know, BLM has been engaged in a review of wilderness areas pursuant to section 603 of FLPMA. We believe this careful, orderly and comprehensive review process is preferable to the accelerated process used in developing this legislation. I have been assured by our Arizona State office and Washington office staff that most of the necessary information relating to Arizona wilderness has been adequately developed, analyzed and synthesized. I am also confident that the public has an adequate opportunity to become involved in the process.

Further, I am pleased to note that the mineral reports have been finalized for 20 of the 39 WSAs proposed for wilderness designation in both bills. Given these facts, I believe we have substantially complied with the spirit and intention of the formal wilderness designation process prescribed by FLPMA.

Let me suggest some amendments to general provisions that I think would strengthen both bills. The Department opposes the water rights language in both bills. We believe if a water right is needed, BLM should apply under State water law. We support the inclusion of specific language to provide management activities to benefit fish and wildlife and their habitat. These provisions are necessary to provide BLM, among other things, water resources for wildlife on BLM's arid lands.

Of the 39 areas proposed for designation as wilderness in S. 2117, there are nine areas BLM initially recommended as non-suitable. We no longer object to two of the areas, White Canyon and Peloncillo Mountains, being included as wilderness, however we urge that both bills be amended to eliminate and release the other seven areas as not suitable for wilderness.

Based on new information received, we also urge that both bills be amended to include four additional areas not included in either bill. These are Lower Burro Creek, Crossman Peak, Planet Peak and Cactus Plain.

The language directing BLM to carry out a grazing policy review to insure conformity with the Wilderness Act is not needed. This is already being done on a continuous basis.

Other components or more specific wilderness areas in the Gila Box Riparian National Conservation Area are included in my full written testimony, which you have before you.

Regardless of the specific concerns I raised, I want to compliment the Arizona delegation on putting this legislation together. Although we are asking that some changes be made to the legislation, we recognize that a lot of thought and consideration have gone into it.

I still think we need input from the Bureau of Mines, USGS and the Army Corps of Engineers, plus the Air Force. Their review would be appropriate before this bill is marked up, to ensure everyone's concerns are considered.

We will continue to work with members of the House and Senate and various parties representing resource users, to ensure that the Arizona wilderness bill is passed and adequately meets the needs of everyone. This concludes my remarks.

[The prepared statement of Mr. Jamison follows:]

APR 5 1990

STATEMENT OF CY JAMISON, DIRECTOR, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE ON S. 2117 A BILL "TO DESIGNATE CERTAIN LANDS AS WILDERNESS IN THE STATE OF ARIZONA" AND H.R. 2570, AND ACT "TO PROVIDE FOR THE DESIGNATION OF CERTAIN PUBLIC LANDS AS WILDERNESS IN THE STATE OF ARIZONA".

I appreciate the opportunity to appear before you today to present the Department's views on S. 2117, the proposed "Arizona Wilderness Act of 1990" and H.R. 2570, the proposed "Arizona Desert Wilderness Act of 1990."

The Administration supports the concept of designating additional wilderness in Arizona. The Administration prefers to allow the Bureau of Land Management's wilderness study process to be completed, with the recommendations then being transmitted by the Secretary to the President and then to Congress as required by law. This ensures full interagency review. Moreover, such a careful, orderly approach provides the best recommendations for comprehensive wilderness legislation.

However, if the Committee chooses to proceed with this legislation, we are providing you BLM's preliminary recommendations for all areas now under study in the State of Arizona. These preliminary recommendations are without the benefit of complete mineral reports, wilderness study reports, takings analyses, State, Departmental or full interagency review that is currently scheduled to be completed by 1991.

We strongly urge the Committee to delay final action on this legislation to allow us to complete an interagency review of the preliminary recommendations

contained in this testimony. This review will be based on existing mineral and other resource data, but it will allow the Administration to formulate a comprehensive set of recommendations for resolution of the BLM wilderness question in Arizona, including the release of all public lands currently under wilderness study but not included in the wilderness system.

Since H.R. 2570 is quite similar to S. 2117, I will address my remarks only to S. 2117, except where I note the differences. I will confine my remarks to Title I of S. 2117, which designates BLM lands as wilderness. Title II pertains to wilderness areas within the national wildlife refuge system. We defer to the Fish and Wildlife Service on that title.

BACKGROUND

As you know, BLM has been engaged in review of wilderness study areas (WSA's) pursuant to section 603 of the Federal Land Policy and Management Act (FLPMA). The Department is developing specific detailed Wilderness Study Reports for each WSA. These, plus the U.S. Geological Survey and Bureau of Mines mineral reports as well as a statewide summary, will furnish the basis for the recommendations that will ultimately be submitted to the President in 1991. If the President concurs, the Administration's proposal will then be forwarded to Congress for further consideration. This is the process called for in FLPMA and we are proceeding to implement it in the manner Congress set forth in that Act. We believe that this careful and orderly, comprehensive approach which reveals the total BLM wilderness picture, is preferable to an accelerated process at this time.

While only a few of the wilderness study reports have been formally completed in accordance with the process established by FLPMA, I have been assured by the Arizona State office and Washington office staff that the bulk of the necessary information relating to Arizona wilderness has been developed, analyzed and synthesized. I am also confident that adequate opportunity for public involvement has been provided.

During the past few months, BLM's Arizona State office staff has been working with congressional staff and other interested parties to develop, assemble and make available as much needed information as possible to arrive at the individual designation decisions. This has been a challenge for all concerned, and I want to recognize here the commitment and diligence of those who have contributed to this cooperative effort.

As a result of this thrust, our BLM Arizona State office has been able to work out many of the remaining resource conflicts, boundary issues and other concerns brought to light through the wilderness study process. Further, I am pleased to note that mineral reports have been finalized for twenty of the WSA's proposed for wilderness designation in S. 2117 and H.R. 2570 but 19 remain to be completed.

With this background, I will summarize the bills, noting areas of difference.

Wilderness Area Designation

Title I of S. 2117 would designate 39 BLM wilderness areas, comprising a total of approximately 1.1 million acres in Arizona. These areas are situated in BLM's Phoenix, Safford and Yuma Districts and comprise parts of Mohave, La Paz, Yavapai, Yuma, Maricopa, Pima, Gila, Graham, Cochise, Pinal, and Greenlee Counties, Arizona.

Section 101 requires designated areas to be administered by the Secretary of the Interior in accordance with the Wilderness Act. It also provides that maps and legal descriptions of the designated areas be filed with the appropriate House and Senate Committees and that copies be kept on file in the Headquarters office of BLM.

Subsection 101(d) states the intent of Congress that no buffer zones be created around the designated wilderness areas. Section 101(e) preserves the status quo with respect to State jurisdiction over wildlife and fish within designated areas.

Under subsection 101(f), existing grazing uses are to be administered under section 4(d)(4) of the Wilderness Act and certain guidelines referenced in the bill. In addition, the bill directs the Secretary to review all grazing policies, practices and regulations of the Bureau for wilderness areas in Arizona to assure that they conform with the intent of this legislation.

In subsection 101(g) Congress establishes a Federal reserved water right to be quantified by the Secretary in an appropriate stream adjudication. The priority date of this reserved water right would be the date of enactment of this Act. This language differs from the related provisions in H.R. 2570. Section 2(g) of H.R. 2570 reserves water sufficient to fulfill the purposes of the Act and establishes the priority date as the date of enactment. Further, it requires the Secretary and other officials of the United States to take steps needed to protect the reserved rights. These would include filing a claim for quantification in any appropriate stream adjudication in the State courts in which the United States is joined and which is conducted under the McCarran Amendment. Finally, H.R. 2570 specifies that the water rights reserved are specific to the area designated and that nothing in the Act shall be construed to set a precedent for future designations.

Section 101(h) authorizes activities for maintenance or restoration of fish and wildlife populations and the habitats to support them within wilderness areas where consistent with relevant wilderness management plans. This would be carried out in accordance with policies and guidelines referenced in the Act.

Section 102 releases lands not included in the wilderness areas, nearly 950,000 acres, from further study under Section 603 of FLPMA. This release would not apply to Baker Canyon and approximately 57,800 acres of the Cactus Plain Wilderness Study Area.

Gila Box Riparian National Conservation Area

Section 103 establishes the Gila Box Riparian National Conservation Area, comprising approximately 20,900 acres depicted on a referenced map and provides for its management to conserve, protect, and enhance its resources and values, pursuant to FLPMA and other applicable law. Use of the area would be confined to those uses that further the purposes for which it is established. Except for emergency or administrative use, motorized vehicle use would be limited to roads designated as part of a management plan.

Subsection 103(e) would withdraw the Gila Box Riparian NCA from all forms of appropriation and would congressionally establish a Federal reserved water right to be quantified by the Secretary in an appropriate stream adjudication. The priority date of this reserved water right would be the date of enactment of this act. Again the water rights language differs from that in the comparable section of H.R. 2570, in the same manner as the water rights language for wilderness areas that I mentioned previously.

Subsection 103(f) directs the Secretary to develop a comprehensive plan for the long term management of the conservation area within two years after the date of enactment. Subsection 103(g) authorizes land acquisition within the NCA unit or the Eagle Creek Riparian area and authorizes boundary adjustments. However, State owned lands could be acquired only by donation or exchange, and owner consent would be required for all acquisitions in the Eagle Creek area.

Subsection 103(h) states the intent of Congress that no buffer zones be created around the Gila Box Riparian National Conservation Area.

Under subsection 103(i) the Secretary is directed to establish an advisory committee to provide advice on the preparation and implementation of the Gila Box NCA Management Plan.

Section 103(j) directs the Secretary to report to the appropriate Senate and House committees, no later than 5 years after the date of enactment of this Act and at least each 10 years thereafter, on the implementation of section 103, the condition of the resources and values of the conservation area and the progress being made in achieving the purposes for which the conservation area is established.

Section 103(k) establishes penalties for violating regulations promulgated by the Secretary to implement section 103.

DISCUSSION

As I indicated in my introductory remarks, we are committed to the process for wilderness recommendations set forth in FLPMA and urge that BLM wilderness designations be handled under this approach. However, due to the information which has been developed and the extraordinary success we have had in resolving conflicts relating to these specific areas under consideration in S. 2117 and H.R. 2570, I believe we are in a position to make preliminary

recommendations for amendment that largely would address any remaining concerns that we are currently aware of. Further changes may be necessary following interagency review within the Administration.

COMMENTS AND SUGGESTED AMENDMENTS PERTAINING TO GENERAL PROVISIONS

Grazing Policy Review

Subsection 101(f) requires review of grazing policies, practices and regulations to assure conformity with the Wilderness Act. These are continuously under review to assure compliance with law and policy. Specific direction to carry out a review is not needed.

Water Rights Language Section 101(g) and 103(e)

With all due respect, the Department opposes the water rights language in both bills. We think if a water right is needed BLM can apply under State law. Arizona is the first State to proceed with this type of water rights language and we feel it would have adverse consequences if applied on a National basis.

As I noted in my summary of the bills, the language of the two bills differs with regard to reservation of water rights. If you intend to proceed anyway, we prefer the language found in sections 2(g) and 4(e) of H.R. 2570. This language, although only slightly different than what appears in S. 2117, more specifically characterizes the current situation and the course of action that the Department would expect to pursue in State courts with respect to water

rights. We strongly urge amendment of S. 2117 to substitute the language of H.R. 2570 with regard to water rights in wilderness areas as well as the corresponding language in the section on Gila Box Riparian NCA if the committee decides to create new Federal reserve water rights.

Wildlife Management

We strongly support the inclusion of specific language to provide for management activities to benefit fish and wildlife and the habitats to support them, providing they are consistent with wilderness management plans and the guidelines referenced in the legislative history.

Release Of Lands From Further Study

Under section 102 of S. 2117 and section 3 of H.R. 2570, Baker Canyon and approximately 57,800 acres of the Cactus Plain WSA are left in study status indefinitely.

We agree that consideration of Baker Canyon is more appropriate in conjunction with reporting the recommendations for wilderness suitability in the State of New Mexico, as it is adjacent to a much larger study area in that State.

With regard to Cactus Plain, it is our understanding that study status is to continue pending a decision by the town of Parker as to whether or not it will relocate adjacent to the study area. Since the boundaries of Cactus Plain have been modified to exclude the problem area we urge it be included in the

designation. If not, then we shall proceed to implement the wilderness study provisions of section 603 of FLPMA with regard to Cactus Plain and will make further recommendations when that process is completed.

COMMENTS AND RECOMMENDED AMENDMENTS CONCERNING SPECIFIC WSA'S DESIGNATED AS WILDERNESS BY S. 2117 AND H.R. 2570

Of the 39 areas proposed for designation as wilderness in S. 2117, BLM's Arizona State office initially recommended all or portions of 30 as suitable. There are also 6 areas recommended as suitable which are not included in S. 2117 or H.R. 2570. I will address these differences with some specificity, if I may.

The 9 areas included in this proposed legislation that BLM initially recommended as unsuitable for wilderness designation are Upper Burro Creek, Hassayampa River Canyon, Hummingbird Springs, Hells Canyon, North Maricopa Mountains, South Maricopa Mountains, White Canyon, Tres Alamos, and Peloncillo Mountains. We continue to have concerns about the designation of 7 of these, although boundary modifications in the bills have eliminated some of the most troublesome manageability considerations. It should be noted that none of these 9 areas have been studied by the Bureau of Mines and U.S. Geological Survey.

For the remaining two areas, White Canyon and Peloncillo Mountains, however, we would not object to designation. In the case of White Canyon, a revision of the boundaries resolved resource conflicts. The Peloncillo Mountains have

always been known to have outstanding natural values and characteristics, but previous land ownership patterns made wilderness management problematic. Exchanges completed with the State Land Department have eliminated the problems and allowed us to support an area even larger than the original WSA as suitable for wilderness designation.

Areas BLM Recommends Be Eliminated from S. 2117 and H.R. 2570

We urge that both bills be amended to eliminate and release these areas, due to their unsuitability for wilderness designation.

Upper Burro Creek

BLM recommends the release from further study of the Upper Burro Creek WSA because of manageability problems caused by private mineral inholdings, certain onsite land uses incompatible with the preservation of wilderness values, and potential mineral development in several portions of the WSA. Access to and development potential of the privately owned mineral rights, especially in the northern half of the WSA, may eventually subject this area to an unpredictable regime of difficult to regulate surface disturbing impacts. Much of the northern

and central portions of the WSA consist of flat mesa tops which support relatively intensive grazing systems. This, associated with riparian restoration along Francis and Burro Creeks, would present compatibility problems with the long-term management of this area as wilderness.

Santa Fe Pacific Railroad owns the mineral estate in 6,400 acres within the Upper Burro Creek WSA. It has recently expressed an interest in exchanging out its mineral estate, whether or not the 6,400 acres are included in the Upper Burro Creek Wilderness Area or excluded from it. We are willing to work with Santa Fe Pacific Railroad on an exchange of its mineral interests in the Upper Burro Creek WSA, but I recommend that Upper Burro Creek not be designated as wilderness for the reasons I mentioned.

Hassayampa River Canyon WSA

We recommend the Hassayampa River Canyon WSA not be included in the wilderness designation in the bills due to manageability problems resulting from land ownership patterns, potential mineral conflicts, and an obvious lack of local public support. Even with the boundaries as described in the bills, the mineral potential and manageability problems overlap the river canyon, the area with the highest wilderness values. Those portions of the WSA outside the river canyon do not have high enough wilderness qualities to merit a suitability recommendation.

Hummingbird Springs WSA

Hummingbird Springs should not be designated as wilderness because other resource uses, including general vehicle-based motorized and non-motorized types of recreation, the potential for gold and associated mineral development, and manageability problems would make wilderness management inappropriate. It is a popular recreation area. Hunting, hiking, sight-seeing, driving of jeep trails and camping are the most popular activities. Although natural in appearance and seemingly pristine in many areas, the area contains a well used trail network, with many of these routes in wash bottoms. Although the boundary adjustments in both bills would reduce or eliminate some resource conflicts, some still remain.

Hells Canyon WSA

Manageability problems caused by inholdings, cherrystemmed roads, and on-site and off-site land uses incompatible with the preservation of wilderness values are the reasons BLM does not recommend the Hells Canyon area as suitable for designation. Potential development of and the associated access to two 640-acre parcels would severely impact wilderness values in a substantial portion of the area. Five frequently used roads extend into the WSA. All five would be closed to public use under these bills.

North Maricopa Mountains WSA

The North Maricopa Mountains area is not recommended as wilderness because of manageability problems associated with potential mineral development, and the continued use of several cherrystemmed roads that extend into the unit. The area will be difficult to manage for wilderness without complete road and vehicle way closures, because of its close proximity to an area with increasing population growth. Some of the manageability problems have been reduced by the boundary adjustments reflected in the bills. Although there is no record of extensive mineral production in the area, at least half of the unit is considered to have moderate to high mineral potential.

South Maricopa Mountains WSA

The South Maricopa Mountains also have manageability problems associated with mineral development and the continued use of two cherrystemmed roads entering the area from Interstate 8. Approximately 35 miles of vehicle ways, not including cherrystemmed roads, dissect most of the western half, making it difficult to manage off highway vehicle related recreation. Although there is no record of extensive mineral production, as much as 75 percent of the unit contains high to moderate mineral potential, with a majority of the mineralized area having high mineral potential.

Tres Alamos WSA

Low wilderness values and potential conflicts with mineral development are

the reasons we do not recommend the Tres Alamos area as suitable for wilderness designation. Despite the area's scenic character, its generally sparse screening and open plains confine opportunities for solitude to small portions and provide no outstanding recreation opportunities. The eastern cliffs of the attractive monolith are on State lands, giving the area poor management integrity.

Acreeage or other differences in specific wilderness designations

We note that the bills differ as to the acreage included for several areas. These are Warm Springs, Arrastra Mountain, Eagletail Mountains, and South Maricopa Mountains. In each case the acreage in H.R. 2570 more closely reflects BLM recommendations and resolution of resource or other conflicts. We recommend amendment of S. 2117 to conform to H.R. 2570 in that regard.

Subsection 2(a)(21) of H.R. 2570 has necessary language that is lacking in S. 2117. It pertains to the North Santa Theresa area and would specify that management of a road within the San Carlos Apache Reservation would be carried out through the Bureau of Indian Affairs. Limited use of the road for certain purposes would be authorized. We urge inclusion of this language in the comparable provision of S. 2117.

Areas BLM recommends be included in wilderness designation in S. 2117 and H.R.

2570

Based on current information, we urge amendment to include additional areas, bearing in mind that they would otherwise be released and returned to public land management without any further study.

BLM initially planned to recommend as suitable for wilderness designation six areas that are not included in S. 2117 or H.R. 2570: Black Mountains North, Burns Springs, Lower Burro Creek, Crossman Peak, Planet Peak, and Cactus Plain. Information obtained since BLM's original tentative recommendations has caused us to reevaluate our position on Black Mountains North and Burns Springs. We now believe non-designation of these two areas is appropriate due to the consideration of the flight paths into the Bullhead City Airport and the mineral values. However, we continue to urge inclusion of the remaining four areas.

Lower Burro Creek WSA

Lower Burro Creek is recommended for wilderness designation to ensure the preservation of outstanding opportunities for recreation and solitude as well as benefits related to scenic, wildlife, cultural, plant, and water resources. The area includes 6 miles of perennial Burro Creek, an area known for its scenic beauty, abundant wildlife, and riparian habitat. It offers outstanding recreation opportunities to the visitor who can hike, backpack, camp, sightsee, birdwatch, fish, hunt, collect rocks, take photographs, and ride horseback. The Burro Creek drainage is regarded as

one of the most archaeologically sensitive areas on public lands in the area. Further, the area recommended as suitable encompasses one of the most biologically diverse areas in Arizona, with over 250 plant and 300 animal species within 5 major plant communities.

Crossman Peak

Designation of the Crossman Peak area as wilderness would ensure the preservation of crucial desert bighorn sheep habitat, water resources, plant communities, cultural resources, outstanding opportunities for solitude and primitive recreation, as well as the imposing and relatively undisturbed scenic backdrop to Lake Havasu and the growing Lake Havasu City area. Outstanding scenery, opportunities for solitude, and a diversity of primitive recreation opportunities, ranging from day hiking, rock climbing, visiting cultural resource sites, photography, and wildlife and plant viewing makes the area attractive to a wide variety of recreationists.

Planet Peak

Planet Peak is recommended as suitable for wilderness designation to preserve outstanding opportunities for solitude and primitive and unconfined recreation, as well as benefit crucial desert bighorn sheep habitat. The wilderness values of substantially unnoticeable human imprints are enhanced by wildlife values. Conflicts with other resources uses in the area are limited.

Cactus Plain

The preservation of a unique dune system and the associated special plant and wildlife communities are the reasons BLM recommends the Cactus Plain area as suitable for wilderness designation. The dune system supports creosote, galleta bunch grass, small cacti and colorful annuals. There are also stands of ocotillo, silver cholla, and big saguaro cactus. Solitude is enhanced by the area's large size, the numerous points of entry that encourage dispersed use, and the relatively dense vegetation cover on the eastern portion. There are two unique dunescrub plant communities in the area, and conflicts with other resource uses are limited. We feel that the boundary adjustments to the west side can accommodate the future expansion of the Parker Town Site and that the remainder of the area should be designated as wilderness.

As I noted, Section 102 of S. 2117 and section 3 of H.R. 2570 would continue study status for the Cactus Plain WSA indefinitely. Should Congress determine not to accept our recommendation for inclusion of the area with the revised boundary we recommend, then we will continue the FLPMA wilderness review process for this area.

Other Comments on Specific Wilderness AreasMount Nutt

The city of Oatman has historically made use of a pipeline to deliver domestic water, originating at Flag Spring, located on a patented mining claim, in

Section 35, T. 20 N. R. 20W. G&SRM, Mohave County, Arizona, within the proposed Mount Nutt Wilderness Area. Currently, there is no authorization from BLM for this pipeline. Should either of these bills be enacted and Mount Nutt is designated as wilderness, BLM will authorize the use and maintenance of the pipeline under existing applicable authority. It is our intention that this authorization would be terminated promptly as soon as the City of Oatman has acquired and commenced operation of an alternate water source.

Rawhide Mountains and Arrastra Mountain WSA

A portion of both the Rawhide Mountains and Arrastra Mountain proposed wilderness areas are covered by a withdrawal by the Corps of Engineers for Alamo Dam and Reservoir. The Bureau of Reclamation also has a powersite withdrawal for the Dam, which is already fully constructed.

The Corps has a licensing arrangement with the State Park and State Fish and Game Departments covering the withdrawn area to manage recreation and fish and wildlife.

Due to the presence of these other agencies in a portion of these areas, we believe it is appropriate to insert in subsections 101(a)(7) and (8) of S. 2117 and subsections 2(a)(7) and (8) of H.R. 2570 language to specifically provide for coordinated wilderness management by BLM.

Language of amendment to so provide is attached.

GILA BOX RIPARIAN NATIONAL CONSERVATION AREA

The designation of the Gila Box as a Riparian National Conservation Area is consistent with our proposed management recommendations for this area. Under section 103(d), Management of Conservation Area, the Secretary is to manage the area in a manner that conserves, protects, and enhances its resources and values allowing only such uses as are found will further the purposes for which the area is established. BLM is to develop a comprehensive plan for long-term management of the area, with full public participation.

We have several comments and recommendations on the provisions of the Gila Box sections in both S. 2117 and H.R. 2570.

The language in subsection 103(d)(2) specifies that the use of motorized vehicles will be permitted only on roads designated for such use in the Management Plan. In addition to existing roads, there may also be other "ways" or "trails" appropriate for road designation without impairment of the natural values of the area. We would consider these other routes, as well as existing roads, in preparation of the Management Plan.

Read together, subsections 103(f)(2) and (g)(2) are confusing. Subsection 103(f)(2) requires that we incorporate a discussion of including additional lands in the management plan. This discussion is to encompass non-Federal lands contiguous to the boundary shown in the map as filed, or as adjusted under subsection 103(g). These non-Federal lands could include those lands "within the area extending two miles on either side of the centerline" of a referenced stretch of Eagle Creek.

However, under subsection 103(g) acquisition and boundary adjustment authority is limited to any acquired lands within the Eagle Creek riparian area "as well as public lands within that portion of the Eagle Creek riparian area west of the centerline of Eagle Creek."

We recommend amendment to conform the authorized boundary adjustments and acquisition language to the full scope of the discussion in the management plan. Deletion of the phrase "west of the centerline of Eagle Creek" from subsection 103(g)(2) of S. 2117 and subsection 4(g)(2) of H.R. 2570 would accomplish this.

Section 103(f) provides two years for development of a management plan for the area. We believe that a three year period would be more realistic. Since numerous wilderness plans will be developed and completed within a two year period, the task for the district will already be formidable. Due to this volume and the complexity of the area for which the plan is required, we urge modification to three years.

For reasons stated earlier in my remarks, the water language in subsection 101(g) of S. 2117 should be modified to reflect the language in subsection 4(e) of H.R. 2570.

This concludes my statement. I will be pleased to answer questions.

Attachment I

Suggested Language of Amendment

Add at the end of subsections 101(a)(7) and (8) in S. 2117 and subsections 2(a)(7) and (8) of H.R. 2570 the following:

"Management of the wilderness values of this area pursuant to this Act, including that portion withdrawn in connection with the Alamo Dam and Reservoir, shall be carried out by the Secretary of the Interior through the Bureau of Land Management. The Secretary shall ensure that such management will not affect the operation and maintenance of Alamo Dam by the Secretary of the Army in accordance with the authorized project purposes. In addition, the Secretary shall consult with the Secretary of the Army, the State of Arizona Fish and Wildlife Agency, and any other Federal and State agencies which are affected by the management of the wilderness values in the area."

Attachment II

RECOMMENDED ACREAGE CHANGES AND TECHNICAL CORRECTIONS

S. 2117

- p. 3, line 2 - change 76,600 to 90,600.
- p. 3, line 16 - change Yavapai to La Paz.
- p. 3, line 24 - change 129,525 to 126,760.
- p. 5, line 1 - change 94,100 to 89,000.
- p. 7, line 14 - add Cochise County.
- p. 7, line 24 - add Mohave County.
- p. 9, line 2 - change 74,004 to 60,800.
- p. 9, line 12 - add Yavapai County.
- p. 10, line 3 - change Mohave to Yavapai County.
- p. 10, line 8 - add Greenlee and Graham Counties.
- p. 10, line 13 - change Yuma to La Paz County.
- p. 10, line 14 - change 21,860 to 21,680.
- p. 10, line 19 - change Gila to Pinal County.
- p. 13, line 23 - change "areas" to "area".
- p. 14, line 1 - change "Acres" to "Areas."

TECHNICAL CORRECTIONS

H.R. 2570

- p. 7, line 12 - add Cochise County.
- p. 7, line 22 - add Mohave County.
- p. 9, line 12 - add Mohave County.
- p. 10, line 8 - add Greenlee and Graham Counties.
- p. 10, line 19 - change Gila to Pinal County.
- p. 11, line 24 - change area to areas.

Senator BUMPERS. Mr. Spear.

**STATEMENT OF MICHAEL J. SPEAR, REGIONAL DIRECTOR,
REGION 2, FISH AND WILDLIFE SERVICE, DEPARTMENT OF
THE INTERIOR**

Mr. SPEAR. Thank you, Mr. Chairman. It is my pleasure to appear before you today to discuss the proposed wilderness designations on national wildlife refuges in Arizona.

S. 2117 and H.R. 2571, as passed by the House of Representatives, would designate as wilderness portions of four diverse and very valuable units of the refuge system: the Havasu, Imperial, Kofa and Cabeza Prieta National Wildlife Refuges. Although each of the four refuges was established for its individual purposes, each also protects a part of the fragile and unique desert ecosystem of the Southwest.

In 1974, the President proposed wilderness designations on all four of these refuges. They have been managed for over 15 years as de facto wilderness. The bill follows those 74 recommendations with certain modifications that we support, and we also recommend relatively minor amendments to reflect more recent agreements. The stability and health of these areas testify to the manner in which they have been protected from disturbance or development.

Analysis and selection of management methodologies comprise the requisite minimum tools for use in a wilderness area, have not precluded positive management actions. On the Kofa Refuge, maintenance of approximately 80 existing wildlife watering facilities and construction of seven new sites have occurred since the original proposal was submitted to Congress.

On Cabeza Prieta Refuge, similar habitat management efforts have also been implemented. We have modified methods of personnel and material transport from wheel vehicles to helicopters where appropriate, but such modifications have not caused us to delay or forego in any manner management actions considered necessary to further our mission in the administration, protection and enhancement of the lands and wildlife for which we are responsible.

Speaking specifically to Kofa Refuge, the 1974 proposal for the Kofa Refuge set forth a total of 542,000 acres as suitable for wilderness. That proposal included three applications for withdrawal of public domain lands for addition to the refuge. The largest of these withdrawals comprised 31,000 acres lying immediately north of the refuge's northern boundary. This proposal was made prior to the enactment of the Federal Land Policy and Management Act, which provided the BLM with the authority to manage these wilderness areas. The passage of FLPMA, in effect, negated the need for land to be added to the refuge in order to be designated wilderness. Fish and Wildlife Service supports continued administration of this tract by the Bureau of Land Management.

The two remaining small parcels of public land, including the 1974 withdrawal requests, abut the western boundary of these refuges. The Department supports inclusion of these two areas within the refuge and their designation as wilderness.

Limitations of motorized public access in the Kofa Refuge were included in the 1974 proposal. In January of this year, a compromise on access roads, linking the Kofa Wilderness units, was reached. It will not only satisfy the sometimes conflicting needs of the various user groups, but most importantly, will secure the protection of the wilderness values. We believe the remaining road system, with 326 miles open to public access and 31 miles closed, allows adequate travel within the refuge, but protects valuable wildlife habitat.

In addition the major access quarters proposed for Kofa Refuge were delineated 600 feet wide. We do not believe such a broad width is necessary and recommend that rights of way for roads on the refuge be limited to 100 feet on each side of the centerline.

I would note that the figure of 5,300 acres for two tracts of public land to be added to the refuge and designated wilderness reflects a recent reconfiguration of the area agreed upon between the Service and BLM to avoid possible conflicts with existing utility corridor. We learned after the submission of our written statements that H.R. 2571 had been amended to reflect this revised acreage, so the amount we recommend for Kofa is consistent with that contained in H.R. 2571 as passed by the House.

On Cabeza, the 1974 proposal proposed to designate 833,000 acres of the refuges as wilderness. We continue to support the limitation of motorized access on the Cabeza Refuge, to the two corridors proposed in 1974. These corridors provide necessary access while protecting the classic, desert wilderness values of the refuge. However, the width of these corridors should also be reduced to 200 feet.

The 1974 proposal for Cabeza excluded an area of approximately 37,000 acres lying along the southern refuge boundary. This area, known as the Tule Well Exclusion, had been targeted for development that would have rendered it unsuitable for wilderness status. These planned developments were directed to support nonwilderness-oriented recreation, the demand for which has never developed. We do not envision that the demand will arise to justify exclusion of this area from wilderness. Therefore, we request that it be included in the Cabeza Wilderness proposal.

Military usage: The Department of Army, Air Force, and Navy utilize the airspace over the Kofa and Cabeza Refuge on a year-round basis. The Fish and Wildlife Service does not anticipate any change to existing operations and coordination with military users caused by wilderness designations that we have recommended in these two refuges.

Imperial Refuge: In 1974, approximately 14,000 acres of the Imperial were proposed for designation in five units—8,000 of that lies in Arizona. The disjunct parcels were necessitated by the occurrence of tracts of private and State lands. Acquisition of State in-holdings in Arizona has resulted in extension of possible wilderness lands on the eastern bank of the river, almost contiguously with the length of the refuge.

We support designation of 9,000 acres of wilderness at Imperial Refuge.

On Havasu Refuge, the 1974 proposal designated lands as wilderness within the Havasu Refuge which encompassed a total of 2,500 acres, all in California. A larger Arizona segment of 14,600 acres

was found suitable but not recommended because of third-party mineral holdings. Through the fine efforts of former Bureau of Land Management Arizona State Director, Dean Bibles, in 1988, a three-party land exchange among the Service, the Bureau of Land Management and the mineral estate owner, the Santa Fe Pacific Railroad, brought the mineral rights for land in question back to the Federal Government.

We support designation of these 14,000 acres as wilderness in the Arizona portion of the refuge.

In conclusion, the desert environment encompassed by these proposals represents a world of extraordinary variety and complexity. As greater and greater land areas in the West and Southwest are encroached upon by development, fewer and fewer areas retain much of their original character. In the 15 years that has followed since these areas of Arizona Refuges were first proposed for wilderness, the Service has followed its mandate to preserve and protect the natural resource values that render these areas outstanding units of the National Wildlife Refuge System.

Mr. Chairman, thank you for the opportunity to testify in this important legislation. I will be happy to address any questions.

[The prepared statement of Mr. Spear follows.]

STATEMENT OF MICHAEL J. SPEAR, REGIONAL DIRECTOR, REGION 2, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ON S. 2117, WILDERNESS DESIGNATIONS ON NATIONAL WILDLIFE REFUGES IN ARIZONA

April 5, 1990

Mr. Chairman, I am Michael Spear, Regional Director of the Southwest Region of the United States Fish and Wildlife Service. It is my pleasure to appear before you today to discuss proposed wilderness designations on National Wildlife Refuges in Arizona.

S. 2117, and H.R. 2571 as passed by the House of Representatives, would designate as wilderness portions of four diverse and very valuable units of the National Wildlife Refuge System -- the Havasu, Imperial, Kofa, and Cabeza Prieta National Wildlife Refuges. Although each of the four refuges was established for its individual purposes, each also protects a part of the fragile and unique desert ecosystem of the Southwest. It is the desert habitat, in varying amounts, on each of the four refuges that has been proposed for wilderness classification.

In 1974, the President proposed wilderness designations on all four of these refuges. The bill follows those recommendations, with certain modifications that we support, and we also recommend relatively minor amendments to reflect more recent agreements. Enactment of this legislation will ensure the continuation of management of these areas to protect their unique and irreplaceable natural values.

Roderick Nash, the historian of the American wilderness movement, once predicted that the time when wilderness was considered viable only for leftover land, preserved because nobody wanted it for anything else, was fading fast. Nowhere has that prediction proved more true than at the Kofa and Cabeza Prieta Refuges.

On these refuges, vast tracts of Sonoran desert are present as complete ecological units of exceptional wildlife value. The wilderness proposals embrace alluvial desert valleys and mountain ranges that represent the last reaches of undisturbed Sonoran desert of any appreciable size and contiguity remaining on this continent. On Havasu and Imperial Refuges, the desert lands and mountains rim the flood plain of the Colorado River as it flows through Service-administered wetlands and croplands.

The plant and wildlife communities supported by these lands reflect the unique character of the desert environment to which they have adapted. The stability and health of these areas testify to the manner in which they have been protected from disturbance or development. The management of those plant and wildlife communities to achieve the purposes for which the refuges were established, while also protecting the wilderness values of

the lands, has had to be altered only minimally in deference to their de facto wilderness status. The analysis and selection of management methodologies that comprise the requisite minimum tools for use in a wilderness area have not precluded positive management actions.

On the Kofa Refuge, maintenance of approximately 80 existing wildlife watering facilities and construction of 7 new sites has occurred since the original proposal was submitted to Congress. On the Cabeza Prieta Refuge, similar habitat management efforts have also been implemented. We have modified methods of personnel and material transport from wheeled vehicles to helicopters where appropriate, but such modifications have not caused us to delay or forgo in any manner management actions considered necessary to further our mission in the administration, protection, and enhancement of the lands and wildlife for which we are responsible.

Kofa National Wildlife Refuge

The 1974 proposal for the Kofa Refuge set forth a total of 542,600 acres as suitable for wilderness designation. That proposal included three applications for withdrawal of public domain lands for addition to the Refuge. The largest of these withdrawals comprised 31,700 acres lying immediately north of the Refuge's northern boundary. This proposal was made prior to the enactment of the Federal Lands Policy and Management Act (FLPMA), which provided the BLM with the authority to manage wilderness areas. The passage of FLPMA, in effect, negated the need for the land to be added to the refuge in order to be designated wilderness.

Because the lands within this portion of the proposed withdrawal which are suitable for wilderness (21,680 acres) have been included in the Bureau of Land Management's New Water Mountains wilderness proposal also addressed in this bill, and because the BLM manages all the adjoining public lands where management facilities such as parking, trail heads and road access development and maintenance would occur, the Fish and Wildlife Service supports continued administration of this tract by the Bureau of Land Management.

The two remaining, smaller parcels of public domain land included in the 1974 withdrawal request about the western boundary of the Kofa Refuge. The Department supports inclusion of these two areas within the Refuge and their designation as wilderness. Adding them to the refuge would not only create a more manageable boundary, following distinct geographical features readily identifiable by visitors, but also protect the western slopes of the Castle Dome Mountains.

Limitations of motorized public access on the Kofa Refuge were included in the 1974 wilderness proposal. Approximately 82 miles of road were proposed for closure, retaining 275 miles open to link the major units comprising the wilderness. This proposal

approached the question of vehicular access in the most conservative manner considered necessary to preserve wilderness values.

In the 16 years of de facto wilderness management of large portions of these refuges that have passed since their first wilderness proposals, the Fish and Wildlife Service has worked with all the divergent private and public entities who expressed their continuing interests in these lands. Our experience has indicated that a somewhat less restricted access network would still protect the wilderness values of the area. In testimony last year before the House Interior Committee on this legislation, the Service recommended a modification of the 1974 proposal to open an additional 49 miles of roads to the public. This modification was designed to provide a more realistic balance between isolation of large tracts of core wilderness lands and fragmenting wilderness through maintenance of unnecessary roadways.

In January of this year, a compromise on access roads linking the wilderness units was reached that will not only satisfy the sometimes conflicting needs of the various user groups but, most importantly, will secure the protection of wilderness values of these lands held on the national behalf for generations to come. That compromise would open some roads and close others, resulting in a net closure of an additional 3 miles of refuge roads. We believe the remaining road system, with 326 miles open to public vehicular-access and 31 miles closed, allows adequate travel within the refuge but protects extremely valuable wildlife habitats and wilderness values of the Kofa Refuge.

In addition, the major access corridors proposed for the Kofa Refuge in 1974 were delineated as 600 feet wide. We do not believe such a broad width is necessary and recommend that rights of way for roads on the Refuge be limited to 100 feet on each side of centerline. By reducing road corridor widths to 200 feet from the originally proposed 600 feet and by establishing the road network as I have described, an additional 6,200 acres would be included in wilderness.

This addition, together with the inclusion of 5,300 acres of Public Domain lands in two tracts abutting the western boundary of the refuge would result in a total of 516,200 acres of wilderness in the Kofa Refuge. We recommend that whichever bill the Committee reports be amended to reflect this figure.

I would note that the figure of 5,300 acres for the two tracts of public land to be added to the refuge and designated wilderness reflects a recent reconfiguration of the area, agreed upon between the Service and BLM, to avoid possible conflicts with an existing utility corridor. These figures, and the resulting total acreage for the Kofa wilderness designation, are different than the figures reflected in H.R. 2571 as passed by the House.

Cabeza Prieta National Wildlife Refuge

The 1974 proposal to designate 833,500 acres of the Cabeza Prieta Refuge as wilderness also included a proposed withdrawal of 80,000 acres of public domain lands as an addition to the Refuge, and designation of 72,700 acres of those lands as wilderness. This area, known as the Tinajas Altas, is part of the Barry M. Goldwater Air Force Range and forms a critical element for ground maneuver training exercises by the U.S. Marine Corps. The 1986 Military Lands Withdrawal Act extended the authority for the military use of the area, and gave the natural resource management responsibility to BLM.

A recent land use planning study by the Bureau found that surface military training activities have noticeably impacted 36,000 acres within this area, and that it does not possess high or threatened cultural, wildlife, scenic or botanical resource values. It therefore would not meet wilderness suitability criteria. I fully expect BLM policies and practices in regulating uses of the area to provide necessary resource management of the Tinajas Altas, particularly in the proposed 56,000-acre Area of Critical Environmental Concern encompassing the Tinajas Altas Mountains.

We therefore support the decision reflected in S. 2117 and H.R. 2571 not to transfer these 80,000 acres to the refuge.

We continue to support the limitation of motorized access on the Cabeza Prieta Refuge to the two corridors proposed in 1974. These corridors provide necessary access while protecting the classic desert wilderness values of the Refuge. However, the width of these corridors should be reduced to 200 feet from the originally proposed 600 feet. Public uses are minimal and highly restricted by the military uses made of Refuge airspace.

We have calculated that approximately 3,418 acres could be added to wilderness within the Cabeza Prieta Refuge through this reduction of road corridor width.

The 1974 wilderness proposal for the Cabeza Prieta excluded an area of approximately 37,000 acres lying along the southern refuge boundary. This area, known as the Tule Well Exclusion, had been targeted for development that would have rendered it unsuitable for wilderness status. These planned developments were directed to support non-wilderness-oriented recreation, the demand for which has never developed, and we do not envision that the demand will arise to justify exclusion of this area from wilderness.

Therefore, we request that it be included in the Cabeza Prieta wilderness proposal. The addition of these acres and those freed by the narrowing of the road corridors would increase the proposed wilderness area to 803,418 acres, and we recommend that S. 2117 be amended to reflect this acreage, which was contained in H.R. 2571 as passed by the House of Representatives.

Military Usage

The Departments of the Army, Air Force, and Navy utilize the airspace over the Kofa and Cabeza Prieta Refuges on a year-round basis. The Kofa Refuge receives overflight use by the Department of the Army over approximately 80 percent of its area and more than 170,000 acres of the southern half of the Refuge serve as a non-impact artillery overflight zone. Although most flights are at elevations above 24,000 feet, aircraft operations may occur from 1,500 feet above ground level to 80,000 feet. Missions over the Refuge follow a general east-to-west flight path and may exceed 200 flights per month.

The Cabeza Prieta Refuge is overlain by the Barry M. Goldwater Air Force Range with joint use by the U.S. Marine Corps, from Yuma Air Station, over the western sector, and the Air Force, from Luke Air Force Base, over the eastern sector. All military aircraft flying over Cabeza Prieta Refuge are required to maintain minimum altitudes of at least 1,500 feet above ground level, except along mutually approved low-level corridors. Air operations below 1,500 feet are allowed at any time along the existing corridors. In instances where low-level flights are proposed in the airspace exterior to the existing paths, coordinated review and assessment is conducted by the requesting military office and the Refuge.

The U.S. Fish and Wildlife Service does not anticipate any change to existing operations and coordination with military users caused by the wilderness designations we have recommended in these two refuges.

Imperial National Wildlife Refuge

In 1974, approximately 14,470 acres of the Imperial Refuge were proposed for wilderness designation in five units. Of that total, 6130 acres are located in California and 8340 acres lie across the Colorado River in Arizona. The disjunct parcels (2 units in California and 3 in Arizona) were necessitated by the occurrence of tracts of private and State lands. Acquisition of State inholdings in Arizona has resulted in extension of possible wilderness lands on the eastern bank of the river almost contiguously along the length of the Refuge. The ownership of these areas by the State was the only reason for excluding them from the 1974 proposal. The subsequent acquisition by the Service has rendered these lands suitable for wilderness designation.

We therefore support designation of 9,220 acres of wilderness at the Imperial refuge, as provided by S. 2117 and H.R. 2571.

The river boundary of the proposed wilderness was described in 1974 as a line 300 feet horizontally landward of contour elevation 230. In order to provide a line which would afford more protection to highly valuable backwater areas flanking the river, and to provide a more clearly discernible boundary, we support placing the wilderness boundary at the 200-foot contour from Clear

Lake north to Township 4S., Range 23W., SW 1/4 of Section 18, and at at the 220-foot contour from that point north to the northern wilderness boundary, immediately south of Clip Wash.

Havasu National Wildlife Refuge

The 1974 proposal to designate lands as wilderness within the Havasu Refuge encompassed a total of 2,510 acres, all in California. A larger Arizona segment of 14,606 acres was found suitable but not recommended because of third party mineral holdings on alternate sections of land. Through the fine efforts of Bureau of Land Management Arizona State Director Dean Bibler in 1988, a three-party land exchange among the Service, the Bureau of Land Management, and the mineral estate owner (Santa Fe Pacific Railroad Company) brought the mineral rights for land in question back to the Federal Government.

We support designation of these 14,606 acres as wilderness in the Arizona portion of the refuge, as provided by S. 2117 and H.R. 2571.

Conclusion

The desert environment encompassed by these proposals represents a world of extraordinary variety and complexity. As greater and greater land areas in the West and Southwest are encroached upon by development, fewer and fewer areas retain much of their original natural character. The diversity of biotic species, ecological communities, and other natural elements stand on an ever narrowing base. To counteract this, we need to set aside, in viable units, adequate areas of functioning ecosystems and their biological components. It is not enough simply to set aside certain tracts where convenient. Before we are confronted with only ecological remnants of natural systems, we must actively protect complete, self-sustaining units. Such an opportunity for protection is before us in consideration of wilderness on these four refuges.

In the 15 years that have followed since these areas of Arizona refuges were first proposed for wilderness, the U.S. Fish and Wildlife Service has followed its mandate to preserve and protect the natural resource values that render these areas outstanding units of the Refuge system. In doing so, the Service has also preserved the natural processes and biotic diversity of the desert ecosystems that make these lands suitable for wilderness status.

For most of the American public, these four areas of the Kofa, Cabeza Prieta, Havasu, and Imperial National Wildlife Refuges have always been remote. Set apart by a harsh and unforgiving climate, by extremely rugged terrain, and by a water supply that is most noticeable by its absence, these areas cannot and should not support intense public uses. However, they and the plant and wildlife communities they support have endured for centuries. The

passage of S. 2117 or H.R. 2571 will assure that these wild areas will continue to endure.

Mr. Chairman, thank you for the opportunity to testify on this important legislation. I will be happy to address any questions you may have.

Senator BUMPERS. Mr. Jamison, how quickly can you get—you say you would like to see this delayed until you can complete your reviews. How quickly can you get that to us?

Mr. JAMISON. On the areas that we proposed as wilderness, I think the mineral reports are scheduled to be done this fiscal year, Senator, so that would be at the end of September at the latest. We would do our utmost to try to speed that up.

Senator BUMPERS. You know these wilderness bills usually just keeps Senators hanging by their thumbs until they are finally passed. As chairman of the subcommittee, I like to move these bills out. I do not want to be precipitous about it, but I do not like to see people—they are always fairly controversial, there are always people who object to whatever is done, and you have, I guess, total unanimity in the Arizona delegation now on this bill. And it is certainly my thought that we ought to move to mark-up on this as quickly as possible.

Mr. JAMISON. We are not even in an argument with you on acreage. We still feel that there is a serious problem, because this is trend setting, precedent setting in our opinion, on water rights. And if you noticed, our statement did not oppose it. In fact, we commended the delegation for working towards the goal, but we feel a little fine tuning is needed. Plus we would like to present the rest of the information because we have 10 other States following this, Senator, and we want to make sure we do it right.

Senator BUMPERS. Well certainly, we do, too.

Senator McClure?

Senator McCLURE. Mr. Chairman, I note that we have a rollcall vote underway, and I wondered if our colleagues wanted to present their statements now so that they did not have to come back, or whether they would come back after the rollcall.

Senator BUMPERS. I do not think you are going to have time. Because you are getting ready to get five lights right now. This is the final passage of the Voc Ed bill.

Senator DeConcini, how long is your statement?

Senator DECONCINI. About an hour and a half.

[Laughter.]

Senator BUMPERS. I suggest we adjourn the committee.

How about you, Senator McCain?

Senator MCCAIN. I can submit mine for the record, Mr. Chairman, and Senator DeConcini can—

Senator BUMPERS. Why do we not go ahead and get started then.

Senator DECONCINI. I would prefer to come back. I am not going to be more than 10 minutes, but—

Senator BUMPERS. Fine. I think that is a better idea. Let us all go vote. This is final passage.

Senator WALLOP. Mr. Chairman, if they are coming back, I just would like to read a couple of paragraphs of mine. I intend to come back, too.

Senator BUMPERS. By all means, do that. We will get that out of the way.

STATEMENT OF HON. MALCOLM WALLACE P, U.S. SENATOR FROM WYOMING

Senator WALLOP. I noted with sighs, the incompleteness of some of the studies. I want to make certain that the designation of the Cabeza Prieta Wildlife Refuge as a wilderness area, situated along the border of Mexico and Arizona, will in no way interfere with the activities conducted by the Drug Enforcement Agency, the Border Patrol or any other agency dealing with drug or illegal entry issues.

I have a concern about military overflights, and since this is the first BLM wilderness bill, I look forward to working with the two senators to produce the best product possible.

But there is the issue of water language. I have spoken to this issue on numerous occasions and will not take the subcommittee's time at this moment, but suffice it to say that I cannot say I am pleased with the language in these bills. And I think changes will be necessary, if the Senate delegation shares the concerns set forth in the House report. For example, on the Bill Williams, there appears to be agreement that the quantification of a reserved right must protect vested rights and be consistent with the operation of Alamo Dam. Report language will not accomplish that, nor would it protect the ability of the State of Arizona to consider a change in use application by Scottsdale with respect to water rights appurtenant to Planet Ranch. These are the direct dangers of enacting sweeping water language which preempts State law. I am certain that all will agree that nothing in this act in the water language is intended to affect in any way, the law of the river or impact the Colorado River. There is a considerable danger in asserting a new reserved right for Havasu and the Imperial Refuges unless there is the clear need to obtain additional water rights. Given that the Federal Government has already preempted the regime of the Colorado River in the lower basin, an additional Federal reserve right must be carefully defined. On this issue, at least, I hope I have the confidence that my colleagues from Arizona and I are in complete agreement. There should be and there can be no opening for the courts to interfere with the Colorado River.

Mr. Chairman, I would ask that my statement be inserted in the record.

Senator BUMPERS. Without objection.

[The prepared statement of Senator Wallop follows:]

*Malcolm Wallop***Opening Statement by****Senator Malcolm Wallop****Subcommittee on Public Lands, National Parks and Forests****Hearing on S. 2117 and H.R. 2570,
Arizona Wilderness Designation****April 5, 1990**

Mr. Chairman, thank you for scheduling this hearing to enable us to discuss the merits of this legislation, S. 2117 and H.R. 2570, which would designate areas administered by the Bureau of Land Management and the Fish and Wildlife Service as wilderness in the State of Arizona.

I am aware of the hard work necessary to reach an agreement concerning wilderness designation in Arizona, however, it is my understanding that the Bureau of Land Management has not completed the wilderness study process. In fact, these proposed areas are actually preliminary recommendations that in some cases lack complete mineral reports, taking analyses, and State, Departmental or full interagency review.

These are items which help to contribute to the best recommendations for wilderness legislation. The lack of such information may be detrimental to a comprehensive bill.

There are a number of issues in this legislation before us that I would like to address.

First, I would like to ensure that the designation of the Cabeza Prieta Wildlife Refuge as a wilderness area -- situated along the border of Mexico and Arizona -- will in no way interfere with any activities conducted by the Drug Enforcement Agency, Border Patrol or any other agency dealing with drug or illegal entry issues.

Secondly, while there is language in the bills, as well as in the House report, which allows for military overflights over designated wilderness areas, it is important to note there is nothing in current law which prevents low-level overflights over wilderness. There is, however, an FAA advisory to maintain a minimum altitude of 2000 feet above the terrain of wilderness, and a Defense Department policy to maintain that level at 3000 feet. Should the military choose to ignore the FAA advisory and change the Department policy, which could be accomplished, their actions will create controversy, complaints, and endless litigation, all of which could seriously restrict the military's mission in and around Arizona.

I want to ensure that the legislation is specifically clear with regard to military overflights. We have in the past, attempted to protect overflights, mining operations, grazing and other activities in various wilderness bills, and thought we had accomplished good and comprehensive legislation, only to find that some land managers have interpreted the intent of Congress differently than intended, and in fact contrary to the express statutory language.

Since this is the first BLM wilderness bill, I look forward to working with Senator DeConcini and Senator McCain to report out the very best product possible. The resolution of issues raised by this legislation are similar to issues that will be raised not only in my own State of Wyoming, but all across the West.

Last, but certainly not least, is the issue of water language. I have spoken to this issue on numerous occasions and will not attempt to take up much of the Subcommittee's time at this moment. Suffice it to say that I am not pleased with the language in these bills and I think that changes will be necessary if the Senate delegation shares the concerns set forth in the House Report. For example, on the Bill Williams, there appears to be agreement that the quantification of a reserved right must protect vested

rights and be consistent with operation of Alamo Dam. Report language will not accomplish that, nor would it protect the ability of the State of Arizona to consider a change in use application by Scottsdale with respect to water rights appurtenant to Planet Ranch. These are the direct dangers of enacting sweeping water language which preempts state law. I am certain that all will agree that nothing in this Act in the water language is intended to affect in any way the Law of the River, or impact the Colorado River. There is a considerable danger in asserting a new reserved right for Havasu and Imperial Refuges unless there is a clear need to obtain additional water rights. Given that the federal government has already preempted the regime of the Colorado River in the Lower Basin, an additional federal reserved right must be carefully defined. On this issue, at least, I am confident that my colleagues from Arizona and I are in complete agreement. There can be no opening for the Courts to interfere with the Colorado River.

I will have a number of questions for the witnesses and a number of questions to submit for the record. Thank you, Mr. Chairman.

Senator BUMPERS. Do either of you have any further questions of Mr. Jamison or Mr. Spear?

Senator WALLOP. I will.

Senator BUMPERS. If you gentlemen will hang around, then, we would appreciate that.

Let us go vote, and we will come back.

[Recess.]

Senator BUMPERS. Senator DeConcini, please proceed.

Senator DECONCINI. Mr. Chairman, my colleague has a Commerce Committee hearing that he is supposed to be involved in right now, so I yield to Senator McCain.

Senator BUMPERS. Senator McCain?

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. I appreciate the indulgence of my senior colleague, and I am grateful to Senator DeConcini for allowing me to proceed.

Mr. Chairman, I have an Aviation Subcommittee hearing at which I am the ranking member, and as a result, I am sure all planes will run on time and safely, so I do not want to miss that hearing.

Mr. Chairman, I will be extremely brief. This legislation is a product of a year and a half of town hall meetings, of hearings, of public comment, input from all over our State.

We have literally walked on or looked at every acre that is under consideration. Senator DeConcini and I and the other residents of my State believe we happen to inhabit the most beautiful State in America, and we want to preserve a good portion of it for future generations.

There is consensus on this bill. There were various interests that would like to have seen more or less. They would have like to have seen some land in multiple use, others would have liked to have seen it preserved.

We went through a very difficult, drawn out process. We obtained consensus on this bill, and we are grateful for the support that this subcommittee has expressed for it.

Could I just say on the issue of the water language, I am aware of the concerns of—particularly those that are articulated by Senator McClure and Senator Wallop. I am very grateful that in conversation with them, they have assured me that they will work with us to try to get acceptable language so that we can get this legislation completed by the Congress in a timely fashion.

I look forward to working with them, and I appreciate and understand their concerns.

One of the following witnesses, Mr. Plummer, who is the head of the Department of Water Resources in Arizona will, I am sure, be able to address some of the concerns that have just been raised.

I thank you, Mr. Chairman, and I thank this subcommittee for its very hard work in making, frankly, the preservation of some pristine and beautiful areas possible for future generations of Arizonans and Americans.

[The prepared statement of Senator McCain follows:]

STATEMENT OF SENATOR JOHN McCAIN
ON S. 2117--THE ARIZONA WILDERNESS ACT of 1990
to the SENATE SUBCOMMITTEE ON PUBLIC LANDS

I thank the distinguished chairman and the members of the subcommittee for holding today's hearing on the Arizona Wilderness Act of 1990, and for allowing me to share my views on this legislation which is of such vital importance to the people of Arizona.

As the committee knows, Arizona is a land of spectacular natural beauty. From the magnificent Grand Canyon in the north, to the majestic lower Sonoran Desert of southern Arizona, we have been truly blessed.

Our rich natural heritage is something the people of Arizona are justly proud of and fiercely determined to protect. Anyone who has visited the Grand Canyon State can certainly understand why.

Like many western states, a large portion of Arizona, including some of our most spectacular natural areas, is owned and managed by the federal government. In general, the people of Arizona and the federal land management agencies have enjoyed a fruitful and cooperative relationship. As the joint caretakers of our natural heritage, we have made our public lands work. The National Parks and Forests, Federal Wildlife Refuges and BLM lands in my state have provided untold recreational, conservation and economic opportunities to Arizonans and all Americans.

Particularly, the multiple-use concept of public land management has enabled us to successfully meet many diverse and vital societal needs and interests. Nevertheless, most Arizonans share the sentiments expressed by Congress when it established the National Wilderness Preservation System 25 years ago: that "increasing population, accompanied by expanding settlement and growing mechanization, should not occupy and modify all areas...leaving no lands designated for preservation and protection in their natural condition."

When passing the Wilderness Act, Congress promised "to secure for present and future generations the benefits of an enduring resource of wilderness." Fulfilling that promise is why we are here today.

As the committee knows, the Bureau of Land Management and the U.S. Fish and Wildlife Service have finished studying the lands they manage in Arizona and have recommended the areas deemed suitable for inclusion in the National Wilderness Preservation System. It is now time for Congress to act on the agency recommendations and to decide which study areas will be placed into wilderness, and those which will be released back to multiple-use.

To begin the process, last May, Senator DeConcini and I introduced the Arizona Wilderness Act--Senate Bill 1080. The measure was intended as a starting point and vehicle for discussion--a bill we expected to reshape and improve with the guidance of public input and attention. As you know, Chairman Udall introduced a separate and somewhat different measure in the House.

Over the past year, the Arizona delegation has been working diligently to reconcile these bills, and to develop a single piece of consensus legislation. To assist us in that endeavor, the House Subcommittee on Public Lands held field hearings in Arizona which were extremely informative and useful. In addition the delegation held numerous town hall meetings and received comments and input from interested citizens across the state. With the information we collected, the delegation spent hundreds of hours working on the legislation in the hope of achieving a compromise agreement which would serve the best interests of Arizona and the nation.

I am happy to join Senator DeConcini in reporting to the subcommittee that we have achieved such a general agreement which, we are confident, accomplishes our stated goals. Senate Bill 2117 is the product of those efforts.

In keeping with the delegation agreement, Chairman Udall modified the wilderness legislation he introduced in the House to comport with the compromise. The bill covering BLM lands--H.R. 2570--was amended in Committee and passed the House by an overwhelming margin last month. The bill covering the Wildlife Refuges, H.R. 2571--was passed earlier this week. Again, those pieces of legislation reflect the compromise and, with the exception of water rights language, are identical to the Senate Bill. I should mention that some technical corrections were made on the House bills just before final passage, which should also be made in the legislation before the subcommittee. I understand that the Bureau of Land Management and the Fish and Wildlife Service will provide a list of those technical amendments to the subcommittee.

The legislation seeks to place approximately 1.1 million acres of BLM land, and 1.2 million acres of Fish and Wildlife Service land into the National Wilderness Preservation System and would release nearly 1 million acres back to multiple-use.

This bill would extend protection to a number of our most important riparian zones, including areas located on the Hassayampa and Bill Williams Rivers and on Burro Creek.

Other areas proposed for wilderness are important lambing grounds for Big Horn sheep, and home to endangered and rare species of plant and animals, such as the Pronghorn Sheep and the American Bald Eagle. One of the most significant contributions will be inclusion of the KOFA and Cabeza Prieta National Wildlife Refuges in the wilderness system.

Senator DeConcini has described some of the vital components of the legislation. I certainly concur with his remarks and, at this time, I would like to address briefly a number of issues which I know are of particular interest to the subcommittee.

First, the issue of water rights, which I know is an area of intense concern to the subcommittee. Perhaps no public lands issue is quite as contentious or divisive as the question of wilderness water rights.

The Subcommittee will notice a discrepancy between the water language in the Senate and House bills. The reason for this difference is that final water rights language wasn't worked out until shortly before H.R. 2570 was considered by the full House. This, of course, took place after the Senate Bill was introduced, so there was not time to incorporate the revised language.

Mr. Bill Plummer, Director of the Arizona Department of Water Resources is with us today and will testify before the subcommittee shortly. I'm sure he will comment on the language in greater detail.

I should just note for the subcommittee that the language adopted by the House, was negotiated between the Interior Committee and key members of the Arizona House delegation who have a particular background and expertise in water law. We are confident the language meets Arizona's needs. I would hope the committee will work with us and support the wishes of our state and the delegation, as in the case with the Nevada wilderness bill.

Our intent was to ensure that water rights for wilderness areas would be junior to all pre-existing rights, in order to protect rightholders from unwanted federal intrusion or pre-emption.

Second, we wanted to express the delegation's preference that wilderness water rights be quantified by state authorities within the appropriate state processes, without diminishing or contravening the underlying tenets of the McCarran Act.

I look forward to working with the committee on this very thorny issue. I hope we can achieve an understanding on language which will guarantee water to sustain the riparian and wildlife values of wilderness areas, without subjecting our state to any unknown or unanticipated excesses or abuses. Again, we believe the House language accomplishes those goals.

On another issue, the subcommittee will notice that the legislation calls for the creation of the Gila Box Riparian National Conservation Area on the Gila River in southeastern Arizona. We believe the designation of a conservation area will best serve the environmental values and recreational uses of this particular resource.

Only 10 percent of Arizona's riparian zones remain intact. Creation of the Gila Box conservation area, modeled after the NCA established two years ago on the San Pedro River in Arizona, would provide specific protection for the significant riparian values on the Gila. Such a designation would be less restrictive than wilderness and would allow appropriate vehicular access to enhance recreation and the other purposes for which the area is specifically created. The Conservation Area will be an excellent addition to Arizona's public trust.

I would also like to comment on the wilderness designation of four Wildlife Refuges in Arizona, including the KOFA, Cabeza Prieta, Havasu and Imperial.

The Fish and Wildlife Service first recommended these areas for wilderness in 1974, recommendations which have been pending before Congress for the past sixteen years. A number of important questions and conflicts had to be resolved before the refuges, especially Kofa and Cabeza Prieta, could be included in the legislation.

First, there was some question about whether wilderness management would be compatible with the primary purpose of the refuge: to preserve and enhance wildlife. Based on the testimony of numerous Fish and Wildlife Service officials, including Director John Turner, I have been convinced that wilderness management prescriptions are indeed compatible. Wilderness designation simply ensures that necessary wildlife management projects are conducted in the least intrusive manner in order to mitigate negative impacts on habitat and associated resource values. Mike Spear, the Regional Director of the Fish and Wildlife Service is also with us today. I'm sure he would be delighted to answer any questions the subcommittee may have on wilderness wildlife management.

I would also like to mention two particular conflicts which the delegation addressed itself to regarding the refuges. As you know, the Cabeza Prieta National Wildlife Refuge, totaling over 850,000 acres, represents the largest remaining tract of pristine lower Sonoran desert in the nation. It is home to the endangered Pronghorn Antelope and the Desert Bighorn Sheep.

The designation of this area was in great jeopardy because of the potential impact it would have on annual low-level flight training exercises conducted over the refuge by the marine corps. Closing off this vital airspace would have had an unacceptable impact on the Marine Corps Air Station in Yuma, Arizona and the training mission essential to our national defense.

In cooperation with the Marine Corps, the delegation was able to agree upon language to provide for continued use of the air corridors over the refuge for training purposes.

On the KOFA, the delegation, together with environmental and recreation groups were able to work out a compromise road network which will preserve large tracts of wilderness land while allowing access for hunting and other recreational purposes through a number of cherry stemmed roads.

I think it's important to understand that the Refuges in Arizona have been managed as wilderness for almost two decades with great success by all accounts. Officially placing these areas into the wilderness system will ensure that nothing changes. I am available at any time to provide any clarifications or explanations the committee may need about the legislation.

Certainly the wilderness debate is not without some controversy and conflict. Wilderness resource conservation in a growing world is no simple proposition. This is especially true in the West, where our economy was built on natural resource development. Mining, timbering and cattle ranching--the historical breadwinners of the west--depend heavily on use of public lands. Consequently, restrictive land management proposals are fraught with controversy and pose many formidable challenges.

In Arizona, we have been able to meet those challenges through a spirit of cooperation, compromise and a common commitment to the conservation ethic by the environmental community, industry and the public.

We took great care to avoid land use conflicts when possible. Nevertheless some will still philosophically oppose "locking up" areas in wilderness citing its impact on mineral development. Others will object to cutting off vehicular access and mobility. I do not disregard the importance of these concerns. Mineral development and cattle ranching are and always will be important to the economy of our state. Certainly, in most cases, resource developers strive to be conscientious stewards of the lands they use. And, for those with limited time, physical capacity or lack of desire to hike, vehicular access to outdoor recreation opportunities is, also, extremely important. I am a believer in the multiple-use concept of our public lands.

True wilderness, however, is a limited and endangered commodity and once opened it is never fully reclaimed. Most would agree, the relatively few pristine areas remaining in Arizona should be preserved. The BLM manages over 15 million acres in the State of Arizona. With a little over one-million acres in the wilderness system, we will still have plenty of public land available for multiple uses including mineral development, cattle grazing and vehicular access.

While, undoubtedly, we will forego certain opportunities with wilderness, we will create them as well--such as the opportunity to find a measure of solitude in a frantic world; to know there is a place to refresh the soul, and where nature is allowed to take its course free from the imposing reach of man. In addition, wilderness can provide economic benefits. Arizona is a fast growing state, in an increasingly populated country. Western wilderness will be in ever greater demand, putting Arizona in an excellent position to benefit economically from our fastest growing and best loved industry--recreation.

Walt Whitman once wrote, "Without enough wilderness America will change. Democracy, with its myriad personalities and increasing sophistication, must be fibred and vitalized by regular contact with outdoor growths--animals, trees, sun warmth and free skies--or it will dwindle and pale."

As we embark on the year 2000 and beyond, our natural heritage will be our anchor, the common thread linking the past and future, and a bountiful source of joy and inspiration.

As the stewards of this magnificent land, we have an obligation to our children and those who follow. The greatest gift we can give to them, is the greatest gift we have been given--an enduring legacy we call Arizona.

Again, I thank my friend Senator DeConcini, Chairman Udall and all the members Arizona's Congressional delegation for their hard work and commitment on this issue. I look forward to hearing the testimony today and to working with the Energy Committee toward passage of this bill.

Senator BUMPERS. Thank you, Senator McCain. Senator McCain, I do not have any questions of you. Do any of my colleagues?

Senator McClure?

Senator McClure. Mr. Chairman, I will not delay Senator McCain. I understand priorities have to be set and when you have to be some place, you have to be someplace else.

But I do want to make one comment with respect to what you said about the water language because I think we can work it out. I think the question is to discern exactly what you gentlemen mean about what it is you want done and how you want this bill to reflect that desire on your part.

That is my concern, to make certain that the language really does do what you believe it does. And we will ask some questions of the experts when they are on the stand as to how to make certain that the language accomplishes what it is that you have in your minds.

That is where I am going and I think we can find out exactly where the areas of uncertainty lie, and find a way to reduce that uncertainty and to express it very clearly.

Senator McCain. Thank you, sir.

Senator Bumpers. Senator Wallop?

Senator Wallop. Mr. Chairman, to add to that, the real key to all of this is to have Arizona and its water users certain that what passes here is what they expect to have happen down the road.

We cannot have these decisions made in courts by the people who are not elected and by people who owe nothing to the people of Arizona. And that has been our concern from the beginning on these difficult water problems that have occurred with other wilderness bills.

The courts have shown themselves able to caste water rights that the Congress never anticipated. I mean, it is absolutely clear in my mind that the original Wilderness Act would never have passed had the original people here, and I think Cliff Hansen and Frank Church, and over in the House, the fellow from Colorado, Wayne Aspinall, they never would have passed that—

Senator McClure. He was not the fellow from Colorado; he was the chairman.

[Laughter.]

Senator Wallop. Yes, not only was he the chairman, but he was known for his devoted protection of water rights, and yet the court in Colorado has come up with the idea that when we passed the wilderness legislation, we passed a vested right to the United States. And that was not what anybody intended, and if we can avoid that by legislation and provide certainty to the State of Arizona and the other Colorado River States, we should try to do that.

Senator Bumpers. Senator Burns?

Senator Burns. I have no questions. Thank you, Mr. Chairman.

Senator McCain. Thank you, Mr. Chairman.

And to my colleagues, I know I speak for the delegation and the people of Arizona, we look forward to working out this language with you and I know you share our commitment to have this legislation enacted into law.

Senator Bumpers. Senator McCain, thank you very much.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA

Senator DeCONCINI. Thank you for the time and I am glad to join my colleague, Senator McCain, in support of S. 2117. Like Adlai Stevenson said, "My job is to talk; yours is to listen. I hope we finish at the same time."

I am going to submit a full statement, and I hope to stay awhile, Mr. Chairman, to listen to some of the questions and particularly some of the answers from the experts that Senator McClure may want to ask.

The legislation you are considering today is the second wilderness bill that my colleague, Senator McCain, and I have introduced in the Congress. The first, S. 1080, was introduced last May and it would have designated as wilderness 895,150 acres of Bureau of Land Management, Fish and Wildlife Service lands.

That legislation for the most part adopted the BLM recommendation on the acreage for wilderness designation. Also, last year in the House, the senior member of our delegation, Congressman Udall, Chairman Udall, introduced two wilderness bills that would have included over 2.7 million acres of Federal land in the wilderness reservation system.

The bill the committee is hearing today, S. 2117 is the product of a year long or longer discussion among the members of the Arizona congressional delegation and reconciled differences between the two bills and a countless number of hearings.

It designates approximately 2.4 million of both Bureau of Land Management and Fish and Wildlife Service land as wilderness. With several exceptions, it is identical to the two measures passed by the House most recently. The committee will likely hear testimony that this bill goes too far or does not go far enough. Maybe that is the sign that we have a good piece of legislation before you.

I feel, however, that S. 2117 reflects what in my opinion is a widespread agreement throughout my State on what wilderness should be in Arizona. While it does not contain everything that everybody wanted, the legislation is fair on balance.

A particular emphasis of the bill is the protection of Arizona's rapidly disappearing desert riparian areas. Out of the seven riparian areas considered for wilderness suitable by the BLM, six are included in the wilderness preservation system and one, the Gila Box, will be made a National Riparian Conservation Area.

One of the riparian areas designated as wilderness by this bill is White Canyon. This area, in my opinion, typifies the cooperative spirit in which the bill was drafted. A major mining company expressed very significant concerns that the creation of the wilderness area would hamper its ability to develop a mine in the area.

At the suggestion of the Arizona congressional delegation, this mining company, the proponents of wilderness designation for White Canyon and the BLM sat down and came to an agreement that will allow the area to come a wilderness area. Throughout the bill, there are many examples of this.

The major difference between this bill and the bill passed by the House is the issue of Federal reserve water rights. The question of whether a wilderness designation implies an additional water right

has always been very controversial in the West, and it was difficult for the delegation to reach a consensus on the issue.

However, we in the Arizona delegation consider ourselves fortunate to have some prominent lawyers as part of the delegation, including Congressman—Chairman Udall and Congressman Kyl and Congressman Rhodes, who worked a long time on this language.

The Arizona Department of Water Resources put in a tremendous amount, drafting an amendment to the House bill that addresses the issue of Federal reserve water rights in wilderness areas.

The language that was adopted by the House states clearly that it is Congress' intent that wilderness water rights be quantified and clarified in the courts of the State, meaning the State of Arizona in this case.

Furthermore, the language declares that this approach only applies to this bill and this bill only. It is my belief that these issues should be resolved on a State-by-State basis. The House amendment is an Arizona solution for an Arizona wilderness bill, and accordingly I ask that S. 2117 be amended to include the House language.

Now, Mr. Chairman, coming to this agreement on the wilderness bill, Arizona has once again demonstrated that, notwithstanding party differences and sectional differences, we have been able to work together. We held extensive hearings, Congressman Udall's committee did. The Senators attended, so did other House Members. It was almost an enjoyable experience—

[Laughter.]

Senator DECONCINI [continuing]. Except for a couple of incidents, but in retrospect it was a very positive experience and very important to get to this bill.

I particularly want to thank my colleague, Senator McCain, and his staff for his tireless effort in working with myself and my staff in putting this bill together on the Senate side. Without the hard work of his staff and himself being involved, I do not think we would be here today.

I also have to thank and compliment, of course, the premier of wilderness and conservation in my judgment, and our senior Representative and that is Morris Udall. Over the years he has earned not only my respect, being a role model when I was in school and he practiced law in my father's law firm, but his leadership on natural resources issues is renowned.

He kept the delegation moving forward. He gave us every leeway, and then he reined us in.

Mr. Chairman, I also want to extent my gratitude to you and members of this committee who have consulted and talked to us during the course of this on a number of occasions, as to what might be acceptable here and what your views are from other wilderness bills.

Particularly, Mr. Chairman, it is real appreciation, perhaps for you more than anybody else, not coming from the West, to sit through these long hearings of States that are 2,000 miles away that probably water rights do not make a lot of difference, Federal water rights do not make a lot of—

Senator BUMPERS. You could not be more right.

[Laughter.]

Senator DeCONCINI. I know it is just because you are just a darn good Senator that you do this, and I am not sure I would do it for you but I appreciate it anyway.

I do have a full statement, Mr. Chairman, that I ask be put into the record, and if I can answer some questions I would be glad to entertain them.

[The prepared statement Senator DeConcini follows:]

TESTIMONY OF THE HONORABLE DENNIS DeCONCINI
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND
FORESTS OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

THE HONORABLE DALE BUMPERS, CHAIRMAN
April 5, 1990

Mr. Chairman, I would like to thank you and the members of the committee for allowing me to testify today in support of S. 2117, the Arizona Wilderness Act of 1990. I'm reminded of something Adlai Stevenson used to say when he was in positions such as the one I find myself in this afternoon, "My job is to talk and your job is to listen, and I hope we finish at the same time."

The legislation you are considering today is the second wilderness bill that my colleague Senator McCain and I have introduced this Congress. The first, S. 1080, was introduced last May and it would have designated as wilderness 895,150 acres of Bureau of Land Management and Fish and Wildlife Service lands. That legislation, for the most part, adopted the BLM recommendations on suitable acreage for wilderness designation. At that time, I stated that we were introducing that legislation to elicit a thorough and candid analysis of this issue by our colleagues and constituents. Also, last year in the House the senior member of the Arizona delegation, Chairman Udall, introduced two wilderness bills that would have placed over 2.7 million acres of federal land in the wilderness preservation system.

The bill before the committee today is the product of year long discussions among the members of the Arizona Congressional

delegation and reconciles the differences between the two bills. Accordingly, the House bill has been amended to reflect these changes.

Mr. Chairman, I am happy to tell you and the subcommittee today that my goal of a thorough and candid analysis has indeed been accomplished. After many months of discussions among members of the Arizona delegation, hearings both in Arizona and Washington, meetings with staff and meetings with constituents, we have arrived at the bill before you today --- a consensus Arizona Wilderness bill. This bill reflects what, in my opinion, is wide-spread agreement throughout my state on what wilderness should be in Arizona. While it does not contain everything that everybody wanted, this legislation is a fair and balanced wilderness bill.

This consensus bill designates, as wilderness, approximately 1.1 million acres out the 2.1 million acres of BLM land currently in wilderness study status in Arizona. The land that is not designated as wilderness by this Act will be "released" to multiple-use management. A particular emphasis of this bill is the protection of Arizona's rapidly disappearing desert riparian areas. Out of the seven riparian areas considered for wilderness suitability by the BLM, six are included in the wilderness preservation system and one, the Gila Box, will be made a National Riparian Conservation Area.

The major difference between Senator McCain's and my

original bill and S. 2117 is the inclusion of two large wildlife refuges: the Kofa and Cabeza Prieta National Wildlife Refuges. When we introduced our first bill last year, I had concerns that the designation of these refuges as wilderness would impact the ability of the refuge managers to manage the very significant wildlife resources within them. However, in testimony before the House Interior committee, John Turner, the Director of the Fish and Wildlife Service, allayed these concerns. My colleague, Senator McCain will discuss this point in greater detail in just a moment.

There are a number of issues concerning this wilderness bill that I would like to touch upon briefly. The vast majority of the wilderness areas designated by this bill are in a desert environment with very little, if any, water associated with them. The question of whether a wilderness designation implies an additional water right has always been very controversial in the west and it was difficult for the delegation to reach a consensus on this issue. However, we in the Arizona delegation consider ourselves fortunate to have two outstanding water lawyers, Jon Kyl and John Rhodes. They worked with Chairman Udall and the Arizona Department of Water Resources to draft an amendment to the House bill that addresses the issue of the Federal reserve water rights in Wilderness Areas. I do not believe it is an issue as to whether or not the creation of a wilderness area creates a reserve water right. Rather, I believe it to be an

issue of how and in what arena these water rights will be quantified. The language that was adopted by the House states clearly that it is Congress' intent that these reserve water rights be quantified and clarified in the courts of the state. Furthermore, the language declares that this approach only applies to this bill. It is my belief that these issues should be resolved on a state by state basis. The House amendment is an Arizona solution for an Arizona wilderness bill and accordingly I ask that S. 2117 be amended to include the House water rights language.

There is an additional water issue that affects only two proposed wilderness areas; the Swansea Wilderness Study Area (W.S.A.) and the Rawhide Mountains W.S.A. These two areas are in the Bill Williams watershed. This watershed contains the only significant unappropriated water rights in the state. The Arizona Department of Water Resources has indicated that the Bill Williams River is not ripe for adjudication at this time, and they would like report language included in an Arizona Wilderness bill stating that it is not the intent of the legislation to force an adjudication in this area. It is my understanding that Bill Plummer, the Director of Arizona Department of Water Resources, will be testifying before the subcommittee. I'm sure he will discuss this issue in greater detail.

Another wilderness issue that the Arizona delegation addressed was the issue of management of wildlife in wilderness

areas. It is my personal opinion that Congress needs to further clarify and define the appropriate role of wildlife managers and federal agencies in the management of wildlife within the wilderness areas designated by this legislation. As I stated earlier, many of the areas designated as wilderness by this bill are in a desert environment. Development pressures have greatly reduced the natural habitat of many species of wildlife. For example, the migratory patterns of the desert bighorn sheep have been disrupted by roads and other man-made obstacles. This prevents this species, in many instances, from seeking out its natural waters. In many of the areas designated as wilderness by this legislation, there do not exist natural sources of water and as a result the wildlife managers have had to undertake measures to provide it. The Arizona delegation wanted to ensure that these practices would be able to continue in wilderness areas. We came to the conclusion that by including the wilderness wildlife management guidelines developed by the International Association of Fish and Wildlife Agencies in the Committee Report with a statutory reference in the bill, this will state, clearly, that wildlife management is compatible with wilderness. This was included in the House-passed bill and we ask the committee to adopt this approach and include these guidelines in the committee report.

Concerning cattle grazing, the delegation agreed that the guidelines contained in the Colorado bill (PL 96-560) have been

successful in allowing for the proper management of livestock grazing in wilderness areas. As was done in the House bill, we ask that the committee report also include these guidelines with a statutory reference in the bill.

As I stated earlier, a particular emphasis of this bill is the protection of Arizona's rapidly disappearing riparian areas. With the indulgence of the Committee, I would like to take a moment to highlight two of these areas and outline briefly issues that we would like to have addressed by the committee. The one area that, in my mind, typifies the cooperative spirit in which this bill was drafted is White Canyon. White Canyon is located within an hour's drive of Arizona's largest metropolitan area. It is an area of tremendous beauty containing a deep and dramatic gorge with a perennial stream flowing through it. A significant number of wildlife species make their home in White Canyon. These include the mountain lion and black bear as well as a number of special status species. A major mining company, ASARCO Minerals, expressed to the delegation very significant concerns that the creation of this wilderness area would hamper its ability to develop its significant mineral resource in the vicinity. At the suggestion of the Arizona Congressional delegation, ASARCO, wilderness proponents and BLM sat down and came to an agreement that will allow this area to become a wilderness area. It was agreed that with a modest boundary adjustment and report language recognizing the possible existence

of this mine and stating that the designation of this wilderness area is not intended to prevent them from developing their resources outside the boundary, they would be able to continue with plans for this mine. Therefore, I would ask that the committee report reflect this agreement and include language asserting these points.

An area that is also worthy of mention is Upper Burro Creek. This area was not recommended for wilderness by BLM because the state of Arizona owned three key sections bordering the 8.5 miles of Burro Creek within this WSA. Those state land sections have since been acquired by BLM making it a much more manageable wilderness area. This unit consists of a steep, scenic canyon along Burro Creek and a large mesa. Upper Burro Creek is estimated to contain more than 25 percent of the wildlife species occurring in Arizona; more than any other BLM W.S.A. This area also contains many National Register quality archaeological sites. However, there remains an unresolved issue concerning Upper Burro Creek that I would like to bring to the attention of the committee. Santa Fe Minerals still holds substantial subsurface mineral rights within the Upper Burro Creek wilderness area. It is important for me to note at this point that this company has been a responsible corporate entity in Arizona. This is evidenced in part by the fact that Santa Fe negotiated the exchange of approximately 140,000 acres of subsurface mineral rights which enabled 8 areas to be designated

as wilderness by this bill. I have significant concerns that we are forcing this company to enter into another exchange so that they will not have to deal with the difficulties inherent with developing their resources in a wilderness area. Accordingly, I believe it needs to be made clear that it is Congress' intent that it is in the public interest to acquire the private subsurface mineral estate within the wilderness area. I look forward to working with the committee to accomplish this aim.

Mr. Chairman, in coming to agreement on this wilderness bill, Arizona has once again demonstrated why its delegation is unique among those in Congress. We don't always see eye-to-eye on every issue, but we are able to put aside partisan differences for the good of the state we serve. This consensus wilderness bill is further example of this cooperative spirit. Each and every member of the Arizona delegation has made his mark on this legislation.

I particularly want to thank my colleague, Senator McCain, for his tireless efforts in working with me on this bill. Without the hard work of Senator McCain and his staff, we would not have this legislation.

I also want to say a few words about my good friend, Mo Udall, Chairman of the House Interior Committee. Over the years, he has earned my respect and admiration for his leadership on natural resource issues. He kept the delegation moving forward toward a compromise bill. His commitment to seeing this work

completed has been an inspiration to me.

Mr. Chairman, I also want to extend my gratitude to you for your timely consideration of this legislation. I am hopeful that the Senate will pass this legislation in as timely a fashion as possible. The Arizona delegation has worked long and hard to get to this point and this bill is much too important to delay action.

I look forward to working with the committee.

Senator BUMPERS. I want to commend you and Senator McCain for your diligent efforts in getting this bill up here. And you are certainly right; I really enjoy and appreciate my position as chairman of this subcommittee, it is something—except on wilderness bills.

I do not think we have ever had a wilderness bill that was not pretty controversial. Everybody agrees to it, but Senator Wallop and Senator McClure can always find something wrong with it.

[Laughter.]

Senator BUMPERS. But in any event, you are to be commended for the tremendous work you have done on this, and we will do everything we can to expedite this. And hopefully we can resolve the water language and the question of drug enforcement and our agreement with Mexico and anything else that might cause a problem.

I take it, Senator DeConcini that you are amenable to the House water language?

Senator DECONCINI. Indeed I am, and I want the record to be very clear that that is the request of Senator McCain and me that the committee certainly adopt that language, maybe there would be some other discussions on language, but certainly adopt that language to the bill that is before you when you mark it up.

Senator BUMPERS. Senator McClure?

Senator MCCLURE. Thank you very much, Mr. Chairman.

I want to state for the record what is obvious and perhaps does not need to be stated: anybody who has worked on wilderness legislation knows how difficult it is, and it has always been my position that I want to support what the delegates from the State want. When the senators and representatives can come to us and say we have an agreement, I want to find every reason in the world to say yes.

One of the concerns that I have however is that we did pass last year a Washington bill—or 2 years ago, dealing with wilderness in the National Park System, and we adopted language which Senator Evans wanted for his State.

Last year we adopted a Nevada wilderness bill and the Nevada officials, the State officials and as well as the Senators from Nevada said that is what they wanted. And while I would not have found it acceptable for Idaho, I said that is fine if that is what you want, because I do think it needs to be adapted to local circumstances.

I think the assignment of resources, particularly a resource as valuable and in many areas as scarce as the water is, is just one of the assignments of resources just like drawing boundaries on the map, assigns resources for particular uses and that can be as particular as the choice of boundaries.

I want to find a way to indeed express what has been decided among the people who are most directly affected by the legislation. What I found, however, as we got to dealing with the Idaho wilderness bill, is that national organizations said no, you cannot have what you want, you got to do it exactly the way Washington and Nevada did.

I think that stands in the way of being able to fine tune language to meet local conditions, and I see what you have attempted to do here, and I applaud you.

Senator DECONCINI. If I could interrupt you, I think in our case it is a little bit—I take it back, I do not think it is presumptuous at all. We have, what I understand is an agreement with those national organizations that this language is acceptable and is not as quite as perhaps where I would want it to be, but it does not do any violence to what I think is important from my State's waters rights over those of the Federal Government.

And on the other hand, what I think is important that you point out here, is that if this a precedent, it is a good one for Idaho and perhaps your States because Washington was done for Washington, Nevada was done for Nevada and I presume that Arizona will be done for Arizona, and when it comes to Wyoming or Idaho, that it will be done for your State.

It should be in my judgment because I think it is very important. We have to live there, and the Federal Government lives there only in a different spirit judgment and in a much more dominant role than I do in my State.

Senator McCLURE. I appreciate your statement because that is exactly the spirit in which I am approaching this problem. I am not going to try to second-guess you as to what you ought to have, that is your decision and for the people of Arizona to tell us through their elected Representatives and State officials what it is you want.

Whatever questions I have in regard to the water language will be, does the language really accomplish unambiguously what it is you have stated you wanted.

I notice on page 4 of your statement and page 3 of Senator McCain's statement very similar language. He stated, and I will read, "Our intent was to ensure that water rights for wilderness areas would be junior to all pre-existing rights, in order to protect rightholders from unwanted Federal intrusion or preemption."

And while you did not use that exact language, I take it you agree with that statement?

Senator DECONCINI. I do agree with that, Senator McClure.

Senator McCLURE. Then both you and he went forward beyond that to say, and I quote from your statement on page 4, "The language that was adopted by the House states clearly that it is Congress' intent that these reserve water rights be quantified and clarified in the courts of the State."

Senator McCain used slightly different language by saying "be quantified by State authorities within the appropriate State processes," and I think again, there is no disagreement over—although the words are slightly different?

Senator DECONCINI. That is right, there is none and I guess maybe we should have had the same staff person write those same sentences because we intend the same, and I can assure you that is what has been expressed to me and was—just when I sat down with Senator McCain before the vote, we just mentioned this same thing, that we do agree.

Senator McCLURE. And I think there is some value in having different language to express the same thought.

Senator DECONCINI. I do not think there is any contradiction in the language, Senator McClure.

Senator McCLURE. I agree.

Senator DECONCINI. There is not intended to be any. And quite frankly, if anybody thinks otherwise, we would enter additional remarks of identical language, but I am glad you bring it to our attention, because you are getting to the point that Senator Wallop mentioned, that you want this done and you have underscored so many times, you want this done for what is good for Arizona, which means the Federal lands there as well the State uses and the individual uses.

Senator McCLURE. Mr. Chairman, I will just make one further comment in this regard, because I think it is extremely important to understand exactly where all parties are coming from. I have no quarrel with what you are attempting to do.

I commend you for attempting to write it, attempting to get language that carries it forward. It has been my experience however, that people who really work on language for months and months if not years and years, their understanding of the terminology used is against the backdrop of all of the discussions they have had, and other people not party to those discussions read the language and do not have the same—it does not to them give the same clarity of expression as the people who developed the language through the negotiations.

So we may read the language and say, hey, we do not quite see it that way, not having been involved in those discussions. And what I will be trying to do certainly is to make certain that I can read what your intention is, read the language and say there is no ambiguity, anybody reading that can understand it.

Senator DECONCINI. I have no argument with that, and I think it is important to make it as clear as we can, for our sake.

Senator BUMPERS. Senator Wallop?

Senator WALLOP. Mr. Chairman, let me say I am in total accord with what Jim has said. I would say this because I have said it before and others may not be so willing to, but I would be cautious as to how much of an understanding you thought you had with those groups who say they have your interests at heart.

Colorado has had some rare experiences with people who have committed, that this is the way the language is to be understood. In my own State, we worked like hell trying to get a wilderness bill for a long, long time. And we got everybody on board and they all signed it, and the day after it was over they were in court challenging various positions that they had committed to us were then satisfactory—for which tradeoffs had been arranged, I might add.

So the problem is that the Federal Government cannot quite control itself. It is not that it necessarily wishes to go back on firm commitments and understandings, but individuals who compose in our society the Federal Government are always able to gain access to a court. And all of a sudden you have people who are not elected and who sometimes, even in courts, have agendas.

Senator DECONCINI. Senator Wallop, let me, if I could, interrupt you to say that nobody can guarantee nobody will bring a suit here, but—

Senator WALLOP. Oh, no, I understand that.

Senator DECONCINI. But the groups we have worked with, I must say, in the environmental area and in the mining area, to me are extremely responsible and they will not—I do not believe they will be a party to any litigation because I believe the commitments that they have made to us on the water rights and what have you that they may not like them but that are not going to do it.

Now, it does not mean that somebody will not, but the people we have worked with, particularly on the environmental side—

Senator WALLOP. I must say in all honesty, Congressman Johnson thought that in Colorado and Senator Wallop thought that in Wyoming and—

Senator DECONCINI. I could be dead wrong, but I have worked with these people for many, many years and I know some of them on a personal basis and all of them on a professional basis. And though we may have had some disagreements on the Clean Air Act or something else, I have not found them to be anything but honest and forthright on where they stand and what their commitments are and where they stand after the deal is put together.

Senator WALLOP. If I could make just one last observation about the importance of certainty. You may have seen the headlines in the Washington Post on the front page this morning about what is happening in California with their third year of drought, and they are talking about permanent changes in water.

That is not the time you want somebody to challenge your rights to what you think you have, and as I just look down the road, all of us have growing populations. We have needs, and to the extent that we can arrange it, water ought to be a certainty.

We cannot arrange for God, but we can arrange for law and the sharing of things, and I think all we are trying to do is to reflect your desires within your State.

Senator DECONCINI. Thank you, Senator Wallop.

I want to thank Mr. Spear, Mr. Jamison, for letting us intervene here for the time that they have put into this bill as well, but letting me testify, and if the chairman wants, I would be glad to vacate.

Senator BUMPERS. You are vacated.

[Laughter.]

Senator DECONCINI. I am vacated.

Do you have anymore questions, Mr. Chairman?

Senator BUMPERS. Senator DeConcini, here is what the staff wrote me in preparation for this hearing, and I want you to say true or false.

[Laughter.]

Senator BUMPERS. "As amended, H.R. 2570 and H.R. 2571 explicitly reserve for each wilderness area or national riparian conservation area, a quantity of water sufficient to fulfill the purposes of the act.

"The priority date for such water rights is the date of enactment of this act. The Secretary is required to take all steps necessary to protect the reserve water rights including the filing of a claim for the quantification of water rights and any present or future stream adjudication in the State of Arizona to which the United States is or may be joined under the McCarren amendment.

"The McCarren amendment allows the United States to be joined in a State stream adjudication proceeding. While suits under the McCarren amendment would proceed in State court, the Secretary would retain the option of proceeding in Federal court as provided under existing Federal law."

True or false?

Senator DECONCINI. False.

Senator BUMPERS. What?

[Laughter.]

Senator BUMPERS. Did you say false or both?

Senator DECONCINI. I am not sure, Mr. Chairman, but I do not, cannot answer that question with any certainty because I do not understand it.

Senator BUMPERS. You understand the McCarren amendment?

Senator DECONCINI. Well, I do not understand the McCarren amendment completely. I know what it is.

Senator BUMPERS. Let me just shorten all of this, Senator DeConcini by saying, I do not have a dog in the fight, I do not live in the West like most of you, and so I can be a very impartial negotiator in this whole thing and will do it. I will use my good offices to try to mediate this.

What our problem always is though, Senator DeConcini, and I am sure you appreciate this, is that we do not want to set a precedent because every time we change the water language, the next wilderness bill that comes by, if we change it, it sets a precedent. They either want it or they want to expand on it or something else. So we have tried to be very narrow.

As you know, FLPMA does not really address this in a significant way. It is a Colorado decision that has addressed it by saying it is implicit in FLPMA that we will reserve such water as necessary to carry out the purposes of the wilderness bill.

So we have been tinkering with that, and I do not know. Are any two wilderness bills alike on reserve water?

Senator McCLURE. We have never had any language with respect to reserve water until after the Colorado decision, which startled many of us into action, because Congress had never before felt it necessary to say anything, and I think the Wyoming bill was the first.

So it is very recent legislative action on our part.

I might just say, Mr. Chairman, I think Senator DeConcini answered the question correctly when he said false, because I think the premises of the question are not current law.

Senator DECONCINI. I do not know if they are, but the reason I answered false is because I cannot give you a legal opinion.

Senator BUMPERS. I do not understand this fully either because I do not understand what the Secretary is supposed to do where a case proceeds in State court, whether he is supposed to have it removed to Federal court or whether he is supposed to file a separate action, or what.

Senator DECONCINI. Mr. Chairman, the intent of this bill is for it to be considered in State court, there is no question about it, it does set out a reserve water right for the Federal Government.

Senator BUMPERS. But you cannot preempt the Secretary's right to go into Federal court to adjudicate the same question.

Senator McCURE. The McCarren Act provides for the proceedings in the State court.

Senator DECONCINI. You can go ahead and go to Federal courts, but it says you go to State court first. I think that is constitutional. I think you can do that. It does not mean that you cannot go on to Federal courts. We want a determination in the State court.

Senator BUMPERS. We cannot resolve all of this this afternoon. Senator Burns?

Senator BURNS. I just have a question, I am probably diving off into this unknown abyss, I just want to ask a question here. It says, "Congress hereby reserves a quantity of water sufficient to fulfill the purpose of this act."

Who makes that determination?

Senator DECONCINI. The agency managing the land, in my understanding, would have to make the determination. Then it would be decided if there is a difference going first to the State court. That is important to us. It does not mean as the Chairman points out, that it could not eventually go to the Federal courts.

We want it adjudicated in the State courts.

Senator BUMPERS. Let me give you an interpretation that I would have, Senator Burns, and it is that he is not mandated under the act to do that right now, but he is mandated to do that in case there is a present or future lawsuit questioning it.

Then he has to go into court and attempt to quantify under the State law—

Senator McCURE. And in a State court.

Senator BUMPERS. I am not sure he could not do that in Federal court.

Senator McCURE. This may not be the time nor the manner in which to make the record clear, but I believe the practice under the McCarren Act is that even if the Federal Government went into Federal court to try to preserve or protect a Federal right, the State, he could file it there in the Federal court and the Federal court would vacate it so it could go back into the State court for the adjudication of the stream.

So I think that there is a practice that yes, you have the right to file in the Federal court, but you are going to find the Federal court immediately going back into the State court and the State adjudication process.

I would also like to state for just a moment, in response to a comment made by the Chairman, I believe, and again, I am reaching back into my memory, I believe it is correct to say that when FLPMA was passed and we attempted to bring together into one statute all of the law that relates to the management of the public lands, that we carefully did not repeal the provisions of current law that dealt with the State priority or the lack of Federal pre-emption of State water rights, and there was a very careful omission of any repeal or recodification of those provisions of prior law, which still stand.

Senator BUMPERS. Well, we are going to be here until very late at this rate.

Senator DECONCINI. I want the record to, if I can, Mr. Chairman, from Mr. Burns' question of the—it is not the agency that manages

the land. They make their assessment and then they apply to the State water agency and they make that determination.

If they disagree then of course they can contest that in the State court.

Senator BURNS. I have no further questions for this wonderful witness.

Senator BUMPERS. Senator DeConcini, we are going to have some work to do here, because I do not want the bill to go out of here in any kind of an ambiguous form. I want everybody to agree on at least what we understand. That does not mean you can preempt lawsuits, but I do want it to be clearer than it is right now.

Senator DeCONCINI. Thank you, Mr. Chairman.

Senator BUMPERS. Did you wish to question Mr. Jamison or Mr. Spear?

Senator McClURE. Yes, I do.

Senator BUMPERS. Mr. Jamison, would you and Mr. Spear come back to the table, please?

Go ahead.

Senator McClURE. Thank you very much. I think maybe one of the first things we might clarify is this question of the activities of the U.S. Border Patrol or the Drug Enforcement Agency within wilderness areas.

I am a little bit confused. I do not know which one of you wishes to respond on behalf of wildlife refuge. Mr. Spear?

Mr. SPEAR. Senator McClure, I believe that is our privilege to deal with this one. The Cabeza Prieta Refuge has a 55-mile border with Mexico; 37 miles of that border was part of the original wilderness proposal of 1974.

An additional approximately 15 to 18 miles have been proposed to be added to that wilderness proposal here recently. We have a 1987 memorandum of agreement with the border patrol that, in essence, states our practice and our mutual agreement between the two agencies as to how we will handle this, and we would plan on continuing that.

I will read one clause of that, that we believe deals with that question. It says: "To restrict off-road vehicular travel to extreme emergency situations and to restrict off-road damage to environment to as little damage as possible."

In essence, the way we have worked with the border patrol is a hot-pursuit, so to speak, type of rule. They may go off-road, in our opinion. What we ask them to do is report the fact that they have done that so we know why those tracks are there.

Senator McClURE. I would say under the agency's authority to manage proposed wilderness areas, that that memorandum might serve very well as to how you manage areas that are proposed for wilderness.

I do not think it will stand the test of a court challenge with respect to a designated wilderness area, and I think once it is designated it falls under the provision of the Wilderness Act, and any border patrolman that drives a mechanical vehicle in it is violating the law.

Now, would you provide us with a copy of that memorandum of understanding?

Mr. SPEAR. Certainly, sir.

Senator McCLURE. And if you have any other legal opinion with respect to the operation of the Wilderness Act, with respect to law enforcement activities, I would like to solicit your advice on that. And, Mr. Jamison, the same with respect to any advice the Department can give us on that subject, because I know what has happened—not in law enforcement, but in management practice, within the National Forest boundaries of a designated wilderness areas and there are no mechanical conveyances permitted—none, zero, zip.

Mr. JAMISON. We will get you that, Senator.

Mr. SPEAR. Senator, we will provide what we have. I am not aware of any legal opinions on this matter.

[The information referred to follows:]

The Bureau of Land Management (BLM) believes that existing law and policy adequately address the conduct of law enforcement activities within designated wilderness areas. The BLM's policy for the management of designated wilderness areas is set out in BLM Manual 8560 and Handbook H-8560-1. This policy provides for the use of mechanical and motorized equipment when such equipment is determined to be the minimum tool necessary to accomplish a specific activity. Routine law enforcement activities within a designated wilderness would be addressed in the appropriate wilderness area management plan. "Fresh pursuit" or "hot pursuit" is specifically allowed without obtaining prior approval.

With the growing emphasis on drug interdiction, the BLM has developed specific guidelines for the eradication and removal of Cannabis from wilderness areas. We believe it would be reasonable to extend these existing guidelines to all drug related law enforcement activities, including drug related activities along the International Border.

Senator McCLURE. Okay. If that is not correct, I do not know what we would do, because I can only think of one or two differences provided by statute, both being water-based wilderness areas in which some motorized boat traffic was permitted. But I cannot think of another instance, even though it has been discussed a number of times. We tried even to get a wintertime snowmobile trail through that has been under use for years prior to the enactment of the wilderness in Idaho and this committee objected to that provision and would not permit it.

I do not know what the answer to that question is, but I fear that you will find the passage of a wilderness designation as a matter of law will preclude the application of that agreement.

Senator BUMPERS. Senator Burns?

Senator McCLURE. Do you have a memorandum of understanding with respect to the Drug Enforcement Agency?

Mr. SPEAR. I was just looking at this. It discusses Immigration and Naturalization Service, Border Patrol. It does not cover the drug enforcement authority—

Senator McCLURE. So it is just the Border Patrol?

Mr. SPEAR. Yes.

Senator McCLURE. Any other law enforcement agency does not even purport to be covered?

Mr. SPEAR. No.

Senator McCLURE. This is not just an isolated instance. We will have others that abut the border of Mexico as well, and not in current legislation but in future legislation that will confront us. So it is a serious question with respect to ultimate policy in this regard.

While I understand the law enforcement agencies and others can fly over, even fly over in a helicopter, they cannot land, which

some people have hypothesized as such that you can get close enough to jump, you might even get close enough to get picked up, but you cannot touch down.

Senator BUMPERS. Gentleman, thank you much.

Senator McCLURE. I have a couple of other questions.

Mr. Jamison, the Department has already applied for certain water rights for recreation, fish and wildlife. If granted, would those rights be adequate for the Bill Williams Wilderness Area?

Mr. JAMISON. Yes, my understanding is we have applied for in-stream flows there. We applied under State water law and if we receive that through the proper adjudication, I think it adequately protects our management objectives.

Senator McCLURE. But that depends upon if granted?

Mr. JAMISON. They have not been granted yet, we just applied for them.

Senator McCLURE. Does the Department have any problem with the adequacy of Arizona State law either in substance or procedure in acquiring necessary water rights for management of these areas, which in the Department's view would warrant the preemption caused by the assertion of a reserved right?

Mr. JAMISON. I think the way the Arizona water law is laid out is adequate for us to protect our interests.

Senator McCLURE. Would the Department agree that there are areas proposed for wilderness in which a reserved right would be meaningless, given there is either no appurtenant water or that the appurtenant water is fully appropriated?

Mr. JAMISON. I think if my memory serves me correctly, there are 39 areas, and of those only 11 have water on them. The rest of them have, basically, no water resources.

Senator McCLURE. What good does it do to reserve a right if there is no water?

Mr. JAMISON. Well, I think you answered your own question.

Senator McCLURE. Either because there is none there or because it is all appropriated.

Mr. JAMISON. That is right.

Senator McCLURE. If the language of the House measure were enacted, how would the Department proceed to protect a reserve right where there is no appurtenant water or where the water is fully appropriated?

Mr. JAMISON. That, I do not have an answer to. I think we would have to let a half a dozen Philadelphia lawyers and probably the whole Interior Department take a look at it to come up with some kind of an answer.

Senator McCLURE. Would you oppose transfers of senior rights or attempt to intervene in any change of use proceedings in the State?

Mr. JAMISON. I think we are going to have to. For instance in Scottsdale; Scottsdale has applied for some and we have also applied for in-stream flow. I think that is in the Bill Williams River, and we want to be taken care of.

Senator McCLURE. You may intervene, but you would go it in the State proceedings and pursue it through the State law, is that right?

Mr. JAMISON. That is our plan, yes, sir.

Senator McClure. Your proposed amendment on Alamo speaks to management of the areas, but not to any limitation on the quantification of the reserved right.

Do you believe that the reserved right should be subordinated to the operation of Alamo Dam or do you believe that the operation of Alamo and subsequent efforts by Scottsdale to obtain water, either through acquisition of additional appropriations or change in use, should be subject to the reserved right?

Mr. JAMISON. I am going to have to get some help on that one. I do not have an answer to that.

Senator McClure. Would you provide an answer for the record, please?

Mr. JAMISON. Yes, Senator.

[The information referred to follows:]

The BLM reserved water right for wilderness purposes would be subordinate to the Army's flood control duties because Alamo Dam Congressional directives would pre-date the BLM's water right. Similarly, the BLM water right application for wilderness purposes would automatically be subordinate to the City of Scottsdale's application. If Scottsdale's application matures into a water right, the BLM right would likewise be subordinate to the City's water right. Therefore, nothing needs to be done by the Congress to subordinate the BLM right to Scottsdale's application. Nor would the Congress have to do anything to make the BLM right subordinate to the operation of Alamo Dam for flood control purposes. It should be noted, however, that if the BLM's water right application should mature into a water right, the BLM would have the opportunity of becoming a party to any future legal proceedings involving changes by other water right owners in points of diversion, uses, or transfers of water of contests of the validity of rights held or applied for by others.

However, Scottsdale's application is just that—an unprocessed water right application. Many entities, including the BLM, have protested that application and Scottsdale faces legal problems in obtaining a water rights, and practical problems in moving the water to the City. Nevertheless, it is very important to understand that the relationship of the BLM to other claimants, such as Scottsdale, is a matter which will be determined by the State's water rights adjudication process, and Scottsdale's application could be rejected by the Arizona Department of Water Resources (DWR).

Senator McClure. The municipal water supply for the town of Oatman lies within the proposed Mount Nut Wilderness area. What difficulties will be encountered by the officials of Oatman in maintaining their facilities within the wilderness area?

Mr. JAMISON. In my understanding, it is a water pipeline that runs through the wilderness area.

Senator McClure. Is the source of water within the wilderness area as well?

Mr. JAMISON. No, it is in a patented mining claim, inside the wilderness area.

Senator McClure. It is an inholding within the wilderness area?

Mr. JAMISON. Yes, sir. One of the things that we would encourage is the town of Oatman to actually apply for a permit, so we could do it, but we think that the Wilderness Act would allow us to let that structure remain in there. We need to actually get a right-of-way authorized for it, and it is my understanding that they do have not one yet and they have never applied for one.

Senator McClure. We created a wilderness in the State of California in which there is a large concrete dam, so there is a precedent for the creation of wilderness even with such facilities present within the boundaries.

Mr. JAMISON. Yes, and we have a wilderness in Montana that has an airport in it, too.

Senator McCLURE. We make specific note of such things as it is going through, to make sure that nobody says hey, now you have to take that out of there or that it can no longer be maintained there.

Mr. JAMISON. And it is my understanding, and the Arizona delegation knows far better than I, at the present time that is the only source of water for Oatman, and they are looking at some other alternatives. But in the meantime, we should protect their right there.

Senator McCLURE. And I assume that if they have a pipeline they also have to have the right to maintain the pipeline.

Mr. JAMISON. That is absolutely correct.

Senator McCLURE. If there is a break in the line, they have to be able to repair it.

Mr. JAMISON. That is correct.

Senator McCLURE. I assume if it is wilderness they have to walk in to do it and carry on their back what is necessary to take care of it.

Mr. JAMISON. We want to keep the impacts to the minimum, that sort of proposal.

Senator McCLURE. As I recall, the wilderness—the interpretation of the Wilderness Act precludes the use of mechanical conveyances.

Mr. JAMISON. Yes. I think I would prefer in the legislation that it actually laid out what exactly we would be allowed to do there. That would be much preferable.

Senator McCLURE. The designation of wilderness in Arizona will require additional management responsibilities such as regulating road closures, off-road traffic and so forth.

How much additional personnel and monies will be required by the BLM to properly and adequately manage those additional wilderness areas?

Mr. JAMISON. We did a rough, a very rough—I do not have a number of people, but we estimate that it is going to cost us budget-wise around \$2.5 million.

Senator McCLURE. There is within this proposal frequent mention of current use of air space in military operations, including low-level flights. Are those low-level flights today at supersonic speeds?

Mr. JAMISON. Yes, I would say some of them are. One of things I ask in my opening statement is that we be given a little additional time so the Air Force could report in what they feel their impacts would be from this bill, and that was the reason I did that.

Senator McCLURE. Mr. Spear, are some of those flights and some of that air space over wildlife refuges?

Mr. SPEAR. They certainly are, Senator, Kofa and Cabeza in particular. Cabeza Refuge has two low-level flight corridors that are already arranged with the Goldwater Range.

In addition, the memorandum of understanding that we have with the Air Force allows for negotiated low-level corridors at other times of the year. So there are two standard corridors and it allows for negotiations on others.

Senator McCLURE. Are there specific provisions in the statute for the operation and the maintenance of such flight training exercises over fish and wildlife refuges?

Mr. SPEAR. The statute in essence would continue the current practice.

Senator McCLURE. I am speaking of under what authority is the current practice arranged? I am not questioning it. I just want to know where you point.

Mr. SPEAR. I have to get my testimony out. It is in the bill itself.

Senator McCLURE. Well, it is in this bill itself, but I am talking about what—you currently have such an arrangement.

Mr. SPEAR. Yes, and that is under the—in essence an agreement with the—

Senator McCLURE. It is a memorandum of understanding under general statutory authority, or under a specific statutory provision?

Mr. SPEAR. Under the provisions that—and I am not expert on this Senator, but under the provisions that establish the recent Goldwater Range and allowed for the land management practices. I believe it called for a specific MOU dealing with the subject of flight.

Senator McCLURE. So that we might be absolutely certain as to what the precedent is and how we do that, would you provide for the record the statutory provision that either gives you general authority or specific authority to enter into such a cooperative agreement for the operation of those air exercises.

Mr. SPEAR. We will, Senator McClure. Thank you very much.

[The information referred to follows:]

The original Memorandum of Understanding was signed in 1960. The laws in effect at that time which provided the Secretary of the Interior with authority to enter into agreements of this nature included the Fish and Wildlife Coordination Act (16 U.S.C. 661) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742(a)(4)) (The citations are to the specific sections authorizing the agreements.)

Subsequently, this agreement was incorporated by reference into Public Law 87-597, withdrawing public lands (including the refuge) at the then Luke-Williams Air Force Range for defense purposes. The law provided that the lands were withdrawn and reserved, subject to the agreement, for defense purposes (76 Stat. 399).

The Memorandum was revised in 1975. At that time the Secretary also had authority to enter into such agreements by the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd(d)).

Public Law 99-606 again withdrew and reserved for defense purposes the re-named Barry M. Goldwater Air Force Range. The purposes for which the land was reserved included (100 Stat. 3458):

- (A) an armament and high-hazard testing area;
- (B) training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and
- (C) subject to other requirements of the Act, other defense-related purposes consistent with the above.

This law also provided that no provision of the Act should be construed as amending the updated agreement, and established restrictions on the ability of the Secretaries to revise it (100 Stat. 3462).

The right of the military to use this airspace is established by Public Law 99-606. The Memorandum of Agreement sets forth conditions under which that right will be exercised so as to minimize the impacts on wildlife.

Senator BUMPERS. Senator Burns?

Senator BURNS. In that one area, Mr. Chairman, I guess I would just like to make a statement in the area that Senator McClure was referring to as no mechanical or transportation, down that one area on the border. I would just like to let the record reflect that I

think it is bad public policy to assign wilderness designations where no patrol can be used on an international border. I think that is very bad precedence, and I think that should be addressed, maybe in this bill. And that is the only thing that I would ask.

Senator BUMPERS. We are not going to do that, Senator Burns. Senator BURNS. I just think it is bad public policy.

And that is all the questions I have. Most of my questions have been answered, other than the fact that I was happy to hear the answers of the director of the BLM. I think he pretty well answered my questions.

Senator BUMPERS. Gentlemen, thank you, for being here.

We are going to have to go to the 5-minute rule here or we are not going to get through.

Our next panel is Mr. William Plummer, director of the Arizona Department of Water Resources and Mr. Duane Shroufe, Director of the Arizona Game and Fish Department, Phoenix.

Gentlemen, welcome to the committee.

Mr. Plummer, you are first on my list, so if you will, please proceed with your testimony.

STATEMENT OF N.W. PLUMMER, DIRECTOR, ARIZONA DEPARTMENT OF WATER RESOURCES

Mr. PLUMMER. Thank you, Mr. Chairman. My name is Bill Plummer. I am Director of the Arizona Department of Water Resources. I appreciate the opportunity to appear before you today testifying regarding S. 2117. My testimony will focus on the single issue of water rights. I will summarize my statement and have the full statement available for the record, if you choose.

Senator BUMPERS. Thank you.

Mr. PLUMMER. The State of Arizona worked very closely with members of the Arizona congressional delegation in developing language, both statutorily and in committee reports, to address the water right issues in the Arizona Wilderness legislation. We believe H.R. 2570, as passed, appropriately addresses water rights for wilderness areas. The necessary water rights for wilderness purposes are reserved by law, yet the necessary safeguards are included to avoid upsetting the existing distribution of waters in the State.

It is important that any legislation regarding the creation of wilderness areas address the issue of water rights. The matter should not be left for future determination by the courts without some direction from the Congress. Clearly, to the extent that they are available and occur naturally in an area, water resources are an integral part of the wilderness area.

The creation of a Federal Reserve water right for wilderness areas is not inappropriate. However, the establishment of this new water right through legislation must have statutory limitations and provisions. In the State of Arizona, the two most important provisions include the quantity reserved must be limited to the amount sufficient to fulfill the purpose of the area, and two, the priority date should not be earlier than the date of enactment of the law creating the wilderness area.

For the most part, the creation of Federal reserve water rights for wilderness purposes in Arizona will have little or no impact. Essentially, all of the areas proposed to be designated as wilderness in the legislation before you today are located in the uppermost parts of the watersheds. Therefore, maintaining these areas in a primitive state, as required under the wilderness law, has no impact on water rights or uses in the State. In fact, the assurance that there will be no opportunity for water development in the wilderness areas gives further protection to downstream senior rights.

While we can generally say that the reservation of waters to be designated as wilderness in Arizona will have little impact, there are two notable exceptions. These are the proposed Swansea and Rawhide Mountains wilderness areas located on the Bill Williams River. These areas are located below the existing Alamo Dam, which was authorized by the Flood Control Act of 1944. The Alamo Dam Project was constructed primarily for flood control, but the report of the Corps of Engineers leading to the congressional authorization, showed that the reservoir could also serve purposes of, among others, water conservation, recreation and wildlife.

The Bureau of Land Management has applied to the State for an instream flow appropriation on the Bill Williams River below the Alamo Dam for fish, wildlife and recreation purposes. This application is for the stream reach that flows through the proposed wilderness area.

If granted and perfected, the priority dates of the rights applied for by BLM would antedate the Federal Reserve Right created by this act. We believe that the State of Arizona has an administrative process to grant instream flow water rights that should fulfill and satisfy all wilderness purposes.

Unfortunately, wilderness is not recognized as a beneficial use in Arizona State water law. Water rights must be granted for recreation and wildlife, including fish. Nevertheless, the Department of Water Resources believes that a State-granted water right for recreation and wildlife uses will in all likelihood satisfy the need for water for the wilderness areas.

With regard to adjudications, Arizona currently has two very large general stream adjudications under way, one on the Gila River system and one on the Little Colorado system. It is expected that these proceedings will provide the mechanism for quantification of wilderness water rights created by this legislation.

The only area where adjudications have not commenced, but where there are a significant number of Federal water rights is on the Bill Williams River. It is the State's position that the Bill Williams is not ripe for general adjudication at this time. There are no large-scale unquantified Federal reserve water rights, such as Indian reserved rights, on the Bill Williams, and there are still unappropriated water available.

In summary, Mr. Chairman, the State of Arizona believes that H.R. 2570 appropriately addresses water rights for the wilderness areas.

I appreciate the opportunity to be here today.

[The prepared statement of Mr. Plummer follows:]

STATEMENT
of the
ARIZONA DEPARTMENT OF WATER RESOURCES
before the
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
presented by
N.W. PLUMMER, DIRECTOR
APRIL 5, 1990
Regarding S.2117

Mr. Chairman and members of the committee, I am N.W. Plummer, Director of the Arizona Department of Water Resources. I appreciate the opportunity to appear before you and testify regarding S.2117. My testimony today will focus on the single issue of water rights.

The State of Arizona worked with the members of the Arizona Congressional delegation in developing language both statutorily and in committee reports to address the water right issues in the Arizona Wilderness legislation. We believe that the House Bill, HR 2570, appropriately addresses water rights for wilderness areas. The necessary water rights for wilderness purposes are reserved by law, yet the necessary safeguards are included to avoid upsetting the existing distribution of waters in the state.

It is important that any legislation regarding the creation

of wilderness areas address the issue of water rights. The matter should not be left for future determination by the courts. Clearly to the extent that they are available and occur naturally in an area, water resources are an integral part of wilderness areas. The creation of a Federal Reserved Water Right for wilderness areas is not inappropriate. However, the establishment of this new water right through legislation must have statutory limitations, and provisions. In the State of Arizona the two most important provisions include: 1) the quantity reserved must be limited to the amount sufficient to fulfill the purpose of the wilderness area; and 2) the priority date should not be earlier than the date of enactment of the law creating the new wilderness areas. The law should specifically direct the Secretary of the Interior, in the case of BLM areas, to protect the reserved rights through participation in general stream adjudications conducted in accordance with the McCarran Amendment.

For the most part the creation of federal reserved water rights for wilderness purposes in Arizona will have little if any impact. Essentially all of the areas proposed to be designated as wilderness in the legislation before you today are located at the uppermost parts of the watersheds. Therefore maintaining these areas in the primitive state that is required under wilderness law has no impact on water rights or uses in the state. In fact the assurance that there will be no opportunity for water development in the wilderness areas gives further protection to the downstream senior rights.

Areas proposed for designation as wilderness in Arizona which are not located at the headwaters of the streams are generally located on streams which are fully appropriated. Therefore creation of a wilderness right with a priority date as of the effective date of the Act has little if any impact on water development opportunities.

While we can generally say that the reservation of water for the areas to be designated as wilderness in Arizona will have little impact, there are two notable exceptions. These are the proposed Swansea and Rawhide Mountains wilderness areas located on the Bill Williams River in western Arizona. These areas are located below the existing Alamo Dam and reservoir which was authorized by the Flood Control Act of 1944. The Alamo Dam project was constructed primarily for flood control, but the report of the Corps of Engineers leading to Congressional authorization showed that the reservoir could also serve purposes of, among others, water conservation, recreation and wildlife. Therefore the project was sized to allow benefits for these purposes to be realized. The Arizona Department of Game & Fish currently holds water rights for fishery purposes in Alamo Lake. The Arizona State Parks Department maintains a boat ramp on the lake for recreational purposes.

There are existing water rights downstream from Alamo Dam on the Bill Williams River outside of the proposed wilderness areas. The City of Scottsdale owns the Planet Ranch and appurtenant water rights located downstream from the dam and reservoir. This ranch was purchased for the purpose of

eventually retiring water use and transferring the water rights to the City of Scottsdale for municipal and industrial purposes. Near the confluence of the Bill Williams River and the Colorado River is the Bill Williams unit of that Havasu National Wildlife Refuge. The water rights for the Bill Williams unit of the refuge have not been quantified. Other water rights also exist on this reach of the river.

In addition to owning Planet Ranch, Scottsdale has applied to the Department of Water Resources for a permit to appropriate additional water from the Bill Williams River. The Central Arizona Water Conservation District, the umbrella repayment entity for the Central Arizona Project, has protested Scottsdale's application on several points, including the grounds that any unappropriated water on the Bill Williams River as of 1968 has been dedicated to the Central Arizona Project. Also, the Bureau of Land Management has applied to the state for an instream flow appropriation on the Bill Williams River below Alamo Dam for fish, wildlife and recreation purposes. This application is for the stream reach that flows through the proposed wilderness areas.

If granted and perfected the priority dates of the rights applied for by Scottsdale and BLM would antedate the Federal Reserve Right created by this Act. The BLM instream flow rights, if granted, should fulfill the federal wilderness purpose. Nevertheless the situation is unique in its complexity. We believe that it is important that Congress recognize the situation that exists and give assurance that it is not the

intent to create water rights for the Swansea and Rawhide Mountains wilderness areas which could be quantified in a manner that impact the opportunities to develop the resources of the Bill Williams River to obtain the multipurpose benefits which can be achieved through proper operation of Alamo Dam and reservoir. The Secretary of the Army must continue to be allowed to operate the Alamo project while still protecting the wilderness qualities of the two areas proposed downstream. We ask that you consider this unique situation in committee report language.

We believe that the State of Arizona has an administrative process to grant instream flow water rights which should fulfill and satisfy all wilderness purposes. Unfortunately, wilderness is not recognized as a beneficial use in Arizona's state water law. Water rights must be granted for recreation and wildlife, including fish, purposes. Nevertheless, the Department of Water Resources believes that a state-granted water right for recreation and wildlife uses will in all likelihood satisfy the need for water for wilderness purposes. It is the intent of the Department of Water Resources to continue the process of granting instream flow rights for the applications before us in the wilderness areas considered in this legislation. Of particular importance are the applications for water rights on Swansea and Rawhide Mountains wilderness areas, and for Upper Burro Creek. Water rights provisions in the Wilderness Act should not detract from the state's opportunities to quantify these recreation and wildlife rights under state administrative law and should also

support provisions to quantify the wilderness rights in a general adjudication process in the Arizona State Court system.

With regards to adjudications, Arizona currently has two very large general stream adjudications underway, one on the Gila River system and one on the Little Colorado River system. It is expected that these proceedings will provide the mechanism for quantification of the wilderness water rights created by this legislation. The only area where adjudications have not commenced where there are a significant number of federal water rights is on the Bill Williams River. It is the state's position that the Bill Williams River is not ripe for a general adjudication at this time. There are no large scale unquantified federal reserve water rights such as Indian rights on the Bill Williams River and there is still unappropriated water available. As the administrative process for granting state water rights continues and more water rights are issued on the Bill Williams River it will be appropriate for a general adjudication to take place. This will be several years from now and will come at a time when our staff, as well as the staff of the Federal agencies involved, will have more resources available to undertake the adjudication process.

In summary, Mr. Chairman, the State of Arizona believes that the House Bill, HR 2570, appropriately addresses water rights for wilderness areas. The necessary water rights for wilderness purposes are reserved by law, yet the necessary safeguards are included to avoid upsetting the existing distribution of waters in the state.

Senator BUMPERS. Thank you, Mr. Plummer.
Mr. Shroufe.

**STATEMENT OF DUANE L. SHROUFE, DIRECTOR, ARIZONA GAME
AND FISH DEPARTMENT**

Mr. SHROUFE. Mr. Chairman and members of the committee, my name is Duane Shroufe, Director of the Arizona Game and Fish Department and Secretary to the Arizona Game and Fish Commission.

I would like to thank you for the opportunity to express the Arizona Game and Fish Commission and Department's concerns regarding designation of lands in Arizona to wilderness, specifically S. 2117.

Let me preface these concerns by stating that the Arizona Game and Fish Commission and Department strongly believe that the wildlife resources of Arizona are critical to the quality of life and the economic well-being of Arizona. We have two basic areas of concern regarding the designation of lands in Arizona to wilderness.

The first concern is public access. The Arizonans that support the Arizona Game and Fish Department have donated countless hours and dollars invested in Arizona's wildlife and habitat projects to ensure the continued existence of wildlife species in Arizona and to enhance wildlife populations where feasible.

We feel that these efforts are the Department's driving force in aggressively pursuing and protecting access for the public, particularly sportsmen throughout Arizona. The limited use of vehicles in wilderness areas places severe restrictions on individuals pursuing wildlife. The necessary food and water requirements for a sportsman to venture from his or her vehicle into 120° temperature, decreases their success, whether it be for hunting or photography. Therefore, our commission and department work closely with the Arizona congressional delegation and the Bureau of Land Management in an attempt to obtain suitable cherry stems for public access.

It is apparent from the maps that not all the requests were met. Let me emphasize here, we understand various reasons for this and the need for all interests involved to reach for equitable solutions that will maintain the integrity and intent of wilderness.

The other concern the Arizona Game and Fish Commission and Department has toward wilderness designation is its effect on our ability to manage wildlife and to develop and maintain wildlife habitat projects. The Arizona Game and Fish Commission worked long hours with the department and its constituents to develop criteria that specifically addressed our authority to manage wildlife and to construct and maintain wildlife projects on designated wilderness lands. These lands in Arizona proposed for wilderness already house projects that required extensive manpower and countless dollars to construct. The majority of these projects provide key elements that limits wildlife in Arizona's deserts.

Without the ability to continue reasonable, cost-effective management practices on these projects, our hands would be tied, and the existence of many wildlife populations would be terminated. There is

concern by many that past and future projects will be threatened with this designation of wilderness. Therefore, we are concerned when the wilderness management criteria that the commission established was not accepted for inclusion in the proposed wilderness bill.

The proposed language before you today gives many in Arizona some comfort. The Arizona Game and Fish Commission and Department would like to reiterate that we appreciate the Arizona congressional delegation's attempt to develop language that addresses our concerns regarding wildlife management on lands designated in wilderness, and we support its inclusion in both S. 2117 and H.R. 2570. We are aware of the compromises that must be made when balancing all interests involved and look optimistically forward in developing our working relationship with the appropriate land management agencies. We hope that this language will bring some stability to the terms and conditions governing wildlife management on Arizona lands designated as wilderness.

I would like to take this opportunity to address a concern that we feel strongly must be resolved. It is not a common practice for the Arizona Game and Fish Department to acquire lands, whether through purchase or lease, but when we do acquire land, the department strives to maximize wildlife utilization of these lands through its management practices. These management practices could vary from the creation of a wetland to the development of an agriculture crop for migratory birds.

Our concerns arose when we were informed that proposed wilderness boundaries for the Arrastra and Rawhide study areas may include a portion of lands acquired by the department in the late 1960s. The Arizona Game and Fish Department acquired 17,000 acres from the U.S. Army Corps of Engineers, known as the Alamo Lake Wildlife Area, with the agreement that these lands would be made available for fish and wildlife conservation and management purposes.

The license grants the Arizona Game and Fish Department the authority to carry out management practices for wildlife. Item 7 on the license from the U.S. Department of the Army describes our authority to plant, harvest crops directly or by service contract and to provide food for wildlife. The Arizona Game and Fish Department is successfully conducting a farming operation for wildlife near Buckeye, Arizona and is contemplating a similar project in the Alamo Lake Wildlife Area when funds become available.

Our commission and department would respectfully recommend that either these lands be withdrawn from the wilderness designation or verbiage should be included in the bill to allow the department to exercise a lease agreement with respect to management practices to benefit Arizona's wildlife populations.

I would like to thank you for the opportunity to appear before you today, and again thank the Arizona delegation for their concern and efforts to include language in the Arizona Wilderness Bill that would enable the Arizona Game and Fish Department to provide wildlife resources for the enjoyment, appreciation and use for present and future generations.

[The prepared statement of Mr. Shroufe follows.]

STATEMENT
of the
ARIZONA GAME AND FISH DEPARTMENT
before the
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
presented by
DUANE L. SHROUPE, DIRECTOR
APRIL 5, 1990
Regarding S.B. 2117/H.B. 2570

CHAIRMAN BUMPERS, AND MEMBERS OF THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND THE FORESTS. MY NAME IS DUANE SHROUPE, DIRECTOR OF THE ARIZONA GAME AND FISH DEPARTMENT.

I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO EXPRESS THE ARIZONA GAME AND FISH COMMISSION'S AND DEPARTMENT'S CONCERNS REGARDING THE DESIGNATION OF LANDS IN ARIZONA TO WILDERNESS. SPECIFICALLY, HOUSE BILL 2570 AND SENATE BILL 2117.

LET ME PREFACE THESE CONCERNS BY STATING THAT THE ARIZONA GAME AND FISH COMMISSION AND DEPARTMENT STRONGLY BELIEVE THAT THE WILDLIFE RESOURCES OF ARIZONA ARE CRITICAL TO THE QUALITY OF LIFE AND THE ECONOMIC WELL BEING OF ARIZONA.

THEREFORE, WE HAVE ADOPTED A MISSION THAT HAS COMMITTED OUR DEPARTMENT TO CONSERVE, ENHANCE, AND RESTORE ARIZONA'S DIVERSE WILDLIFE RESOURCES AND HABITATS THROUGH AGGRESSIVE PROTECTION AND MANAGEMENT PROGRAMS, AND TO PROVIDE WILDLIFE RESOURCES FOR THE ENJOYMENT, APPRECIATION, AND USE OF PRESENT AND FUTURE GENERATIONS.

WE HAVE TWO BASIC AREAS OF CONCERN REGARDING THE DESIGNATION OF LANDS IN ARIZONA TO WILDERNESS. THE FIRST CONCERN IS PUBLIC ACCESS. THE ARIZONANS THAT SUPPORT THE ARIZONA GAME AND FISH DEPARTMENT HAVE DONATED COUNTLESS HOURS AND DOLLARS INVESTING IN ARIZONA'S WILDLIFE AND HABITAT PROJECTS TO ENSURE THE CONTINUED EXISTENCE OF WILDLIFE SPECIES IN ARIZONA AND TO ENHANCE WILDLIFE POPULATIONS, WHERE FEASIBLE.

WE FEEL THAT THESE EFFORTS ALONG WITH THEIR NATURAL RIGHTS ARE THE DEPARTMENT'S DRIVING FORCE IN AGGRESSIVELY PURSUING AND PROTECTING ACCESS FOR THE PUBLIC, PARTICULARLY SPORTSMEN THROUGHOUT ARIZONA. THE LIMITED USE OF VEHICLES ON WILDERNESS AREAS PLACES SEVERE RESTRICTIONS ON INDIVIDUALS PURSUING WILDLIFE. THE NECESSARY FOOD AND WATER REQUIREMENTS FOR A SPORTSMAN TO VENTURE FROM HIS OR HER VEHICLE IN 120 DEGREE TEMPERATURES DECREASES THEIR SUCCESS WHETHER IT BE FOR HUNTING OR FOR PHOTOGRAPHY. THEREFORE, OUR COMMISSION AND DEPARTMENT WORKED CLOSELY WITH THE ARIZONA CONGRESSIONAL DELEGATION AND THE BUREAU OF LAND MANAGEMENT IN AN ATTEMPT TO OBTAIN SUITABLE CHERRY STEMS FOR PUBLIC ACCESS. IT WAS APPARENT FROM THE MAPS THAT ALL

REQUESTS WERE NOT MET. LET ME EMPHASIZE HERE THAT WE UNDERSTAND VARIOUS REASONS FOR THIS AND THE NEED FOR ALL INTERESTS INVOLVED TO REACH FOR EQUITABLE SOLUTIONS THAT WILL MAINTAIN THE INTEGRITY AND INTENT OF WILDERNESS.

THE OTHER CONCERN THE ARIZONA GAME AND FISH COMMISSION AND DEPARTMENT HAS TOWARDS WILDERNESS DESIGNATION IS ITS EFFECT ON OUR ABILITY TO MANAGE WILDLIFE AND TO DEVELOP AND MAINTAIN WILDLIFE HABITAT PROJECTS.

THE ARIZONA GAME AND FISH COMMISSION WORKED LONG HOURS WITH THE DEPARTMENT AND ITS CONSTITUENTS TO DEVELOP CRITERIA THAT SPECIFICALLY ADDRESSED OUR AUTHORITY TO MANAGE WILDLIFE, AND TO CONSTRUCT AND MAINTAIN WILDLIFE PROJECTS ON DESIGNATED WILDERNESS LANDS. THESE LANDS IN ARIZONA PROPOSED FOR WILDERNESS ALREADY HOUSE PROJECTS THAT REQUIRED EXTENSIVE MANPOWER AND COUNTLESS DOLLARS TO CONSTRUCT. THE MAJORITY OF THESE PROJECTS PROVIDE THE KEY ELEMENT THAT LIMITS WILDLIFE IN ARIZONA'S DESERTS. WITHOUT THE ABILITY TO CONTINUE REASONABLE, COST EFFECTIVE MANAGEMENT PRACTICES ON THESE PROJECTS, OUR HANDS WOULD BE TIED, AND THE EXISTENCE OF MANY WILDLIFE POPULATIONS WOULD BE TERMINATED. THERE IS CONCERN BY MANY THAT PAST AND FUTURE PROJECTS WILL BE THREATENED WITH THE DESIGNATION OF WILDERNESS.

THEREFORE, WE WERE CONCERNED WHEN THE WILDLIFE MANAGEMENT CRITERIA THAT THE COMMISSION ESTABLISHED WAS NOT ACCEPTED FOR INCLUSION IN THE PROPOSED WILDERNESS BILL.

THE PROPOSED LANGUAGE BEFORE YOU TODAY GIVES MANY IN ARIZONA SOME COMFORT. THE ARIZONA GAME AND FISH COMMISSION AND DEPARTMENT WOULD LIKE TO REITERATE THAT WE APPRECIATE THE ARIZONA CONGRESSIONAL DELEGATION'S ATTEMPT TO DEVELOP LANGUAGE THAT ADDRESSES OUR CONCERNS REGARDING WILDLIFE MANAGEMENT ON LANDS DESIGNATED WILDERNESS, AND SUPPORTS ITS INCLUSION IN BOTH S.B. 2117 AND H.B. 2570. WE ARE AWARE OF THE COMPROMISES THAT MUST BE MADE WHEN BALANCING ALL INTERESTS INVOLVED, AND LOOK OPTIMISTICALLY FORWARD IN DEVELOPING OUR WORKING RELATIONSHIP WITH THE APPROPRIATE LAND MANAGEMENT AGENCIES. WE HOPE THAT THIS LANGUAGE WILL BRING SOME STABILITY TO THE TERMS AND CONDITIONS GOVERNING WILDLIFE MANAGEMENT ON ARIZONA LANDS DESIGNATED AS WILDERNESS.

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO ADDRESS A CONCERN THAT WE STRONGLY FEEL MUST BE RESOLVED.

IT IS NOT A COMMON PRACTICE FOR THE ARIZONA GAME AND FISH DEPARTMENT TO ACQUIRE LANDS, WHETHER THROUGH PURCHASE OR LEASE. BUT WHEN WE DO ACQUIRE LAND, THE DEPARTMENT STRIVES TO MAXIMIZE WILDLIFE UTILIZATION OF THESE LANDS THROUGH ITS MANAGEMENT PRACTICES. THESE MANAGEMENT PRACTICES COULD VARY FROM THE CREATION OF A WETLAND TO THE DEVELOPMENTATION OF AN AGRICULTURAL CROP FOR MIGRATORY BIRDS.

OUR CONCERNS AROSE WHEN WE WERE INFORMED THAT PROPOSED WILDERNESS BOUNDARIES FOR THE ARRASTRA AND RAWHIDE STUDY AREAS MAY INCLUDE A PORTION OF LANDS ACQUIRED BY THE DEPARTMENT IN THE LATE 60'S.

THE ARIZONA GAME AND FISH DEPARTMENT ACQUIRED 17,300 ACRES FROM THE U.S. ARMY CORPS OF ENGINEERS, KNOWN AS THE ALAMO LAKE WILDLIFE AREA WITH THE AGREEMENT THAT THESE LANDS WOULD BE MADE AVAILABLE FOR FISH AND WILDLIFE CONSERVATION AND MANAGEMENT PURPOSES. THE LICENSE (NO. DACW 09-3-71-6) GRANTS THE ARIZONA GAME AND FISH DEPARTMENT THE AUTHORITY TO CARRY OUT MANAGEMENT PRACTICES FOR WILDLIFE. ITEM #7 ON THE LICENSE FROM THE US DEPARTMENT OF THE ARMY DESCRIBES OUR AUTHORITY TO PLANT AND HARVEST CROPS, DIRECTLY OR BY SERVICE CONTRACT, TO PROVIDE FOOD FOR WILDLIFE. THE ARIZONA GAME AND FISH DEPARTMENT IS SUCCESSFULLY CONDUCTING A FARMING OPERATION FOR WILDLIFE NEAR BUCKEYE, AZ, AND IS CONTEMPLATING A SIMILAR PROJECT IN THE ALAMO LAKE WILDLIFE AREA WHEN FUNDS BECOME AVAILABLE.

OUR COMMISSION AND DEPARTMENT WOULD RESPECTFULLY RECOMMEND THAT EITHER THESE LANDS BE WITHDRAWN FROM WILDERNESS DESIGNATION OR VERBAGE SHOULD BE INCLUDED IN THE BILL TO ALLOW THE DEPARTMENT TO EXERCISE THE LEASE AGREEMENT WITH RESPECT TO MANAGEMENT PRACTICES TO BENEFIT ARIZONA'S WILDLIFE POPULATIONS.

I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY, AND AGAIN THANK THE ARIZONA DELEGATION FOR THEIR CONCERN AND EFFORTS TO INCLUDE LANGUAGE IN THE ARIZONA WILDERNESS BILL THAT WOULD ENABLE THE ARIZONA GAME AND FISH DEPARTMENT TO PROVIDE WILDLIFE RESOURCES FOR THE ENJOYMENT, APPRECIATION AND USE OF PRESENT AND FUTURE GENERATIONS.

Senator BUMPERS. Thank you both very much for your testimony, but let me ask you this Mr. Shroufe, you state here it is not a common practice for the Arizona Game and Fish Department to acquire lands whether through purchase or lease, but when we do acquire land, the department strives to maximize wildlife utilization, et cetera. These management practices could vary from creation of a wetland and so on and so on.

You say the Game and Fish Department acquired 17,300 acres from the U.S. Army Corps of Engineers known as the Alamo Lake and Wildlife Area, with the agreement that these lands would be made available for fish and wildlife conservation and management purposes. Did the State of Arizona get a fee simple title to that?

Mr. SHROUFE. Mr. Chairman, no, sir. We have a lease agreement that expires in 1995, with all probability, will be renewed and extended to the Game and Fish Department.

Senator BUMPERS. Well, I think your lease—when does your lease expire?

Mr. SHROUFE. In 1995, Mr. Chairman.

Senator BUMPERS. Is the language in the bill that allows you to continue your management practices there until 1995?

Mr. SHROUFE. Mr. Chairman, with designation as a wilderness, a lot of the terms in that lease we would not be able to go forward with, especially when it addresses mechanical means of doing certain types of projects on that property and minimum tools.

Senator BUMPERS. Did you bring this up with the authors of this bill?

Mr. SHROUFE. Mr. Chairman, yes, we did.

Senator BUMPERS. What was the answer?

Mr. SHROUFE. Mr. Chairman, we were not successful in getting the items satisfied to our wishes.

Senator BUMPERS. You want this land—one of the problems that might arise if we remove this land from this bill, it would be very difficult to get it included later if you had a hang up with the Corps of Engineer on your renewal, the renewal of your lease arrangement. But I might be amenable—I just have to speak to Senators DeConcini and McCain about it—I might be amenable to allowing you, certainly, to continue the practice you have begun there with some investment, I take on the part of Arizona, from now to 1995 and maybe even beyond.

Mr. SHROUFE. I think the reasons were, there is a very significant amount of riparian habitat along these areas.

Senator BUMPERS. Is this in the Bill Williams River area?

Mr. SHROUFE. This is in the upper reach of the Bill Williams, yes, the big Sandy River in particular. And our agency the Arizona Game and Fish Department, is an agency that is responsible and probably, I would say, the prime agency in that State to be a protector of riparian habitats. Its the areas around those riparian habitats that we would be looking at to enhance for wildlife purposes, and not be disturbing the important riparian habitat that is there now. And the inclusion of this area into the wilderness legislation is to further protect or protect the riparian habitat.

Senator BUMPERS. Have you seen the wildlife management guidelines in H.R. 2570?

Mr. SHROUFE. Mr. Chairman, yes, we have.

Senator BUMPERS. Are you satisfied with them?

Mr. SHROUFE. Those guidelines, Mr. Chairman, those guidelines and some revisions of those guidelines, it was our request that they be included in the statute. However, as I stated in my statement here that we are satisfied that they—that those guidelines are referred to in the statute, and we feel better about that.

Senator BUMPERS. Mr. Plummer, when water rights for wilderness areas were quantified under Arizona law, is the amount of water to be quantified determined by current or future needs?

Mr. PLUMMER. Mr. Chairman, based on current needs.

Senator BUMPERS. Current needs?

You indicate that the Bill Williams is the only major river with significant Federal water rights for which there is no ongoing stream adjudication proceeding. Do you expect there to be an adjudication proceeding for that river?

Mr. PLUMMER. Mr. Chairman, at some point in the future there will be a need to adjudicate that river.

Senator BUMPERS. Right now as I understood—was it you that said Scottsdale has applied for an additional allocation of water?

Mr. PLUMMER. Mr. Chairman, it is in my testimony. I did not make—

Senator BUMPERS. That is not from the Bill Williams though, is it?

Mr. PLUMMER. Mr. Chairman, Scottsdale has two activities on the Bill Williams. One, they purchased the Planet Ranch a number of years ago and are now using those water rights for agricultural activities. At some point in the future, their intent is to transfer those rights for municipal use to the City of Scottsdale. They have also applied to the Department of Water Resources for all unappropriated water remaining in the Bill Williams River. So two separate activities.

Senator BUMPERS. The central Arizona project people are opposed to that, is that right? To the Scottsdale application?

Mr. PLUMMER. To the second application, that is correct.

Senator BUMPERS. Senator McClure?

Senator McCLURE. Mr. Chairman, I will have a number of questions which I will submit for response in writing. I do not want to take the time of the committee to ask all the questions that I have in mind.

Mr. Shroufe, first of all, could you provide for the committee the wildlife management program which is referred to in the House bill and which you hope to be able to implement in the future?

Mr. SHROUFE. Mr. Chairman, Senator, yes, sir.

Senator McCLURE. I do not want to take the position, I do not take the position of being such a purist that I raise issues with respect to wilderness management exceptions that are designed to in any way obstruct the opportunity to pass legislation.

I do want to remind those who are listening that in the past, exceptions from wilderness management have been very grudgingly granted. I could refer to a number of specific instances such as Mariann Lakes in the State of Oregon, where so many people were using the area that they needed to put in some sanitation facilities, and they were not granted that opportunity because it was a wil-

derness area and therefore, sanitation facilities should not be permitted.

I made mention of the opportunity to try to continue some snowmobile travel in the wintertime in areas where there would be absolutely no impact upon the lands and only temporary impact upon the resources, and that opportunity was denied.

I think of a number of other places in which special provisions were requested and the committee or the Congress, in its collective wisdom, said no.

There is a very singular directive and purpose with respect to the management of wilderness areas, and that is that man's activities are pretty largely excluded. There have been some other exceptions on the other side, as I mentioned, with respect to the area in California, in which is a rather large, concrete dam and it is continued in its presence and its operation. And I do not think it is totally impossible to contemplate the continuation of the use of a pipeline. But, I just mention this because it is not automatically granted, and it certainly is argued by some with some vehemence, that management is anathema to the purposes of the wilderness and I am sure we will hear that from some who, in spite of their desire to have popular support, will say not at that price.

You mentioned in your statement on page 2, public access—and you have also indicated that in some instances—access will be limited because not all of the existing road system will be continued. It is not cherry stemmed by the maps, will be cut off by the boundaries. Am I correct?

Mr. SHROUFE. Mr. Chairman and Senator, that is correct.

Senator McCLURE. So you understand that we are considering areas for inclusion in wilderness which are not now currently roadless?

Mr. SHROUFE. That is correct.

Senator McCLURE. Which is a little strange, if indeed management agencies operating under existing law violate the terms of existing law to manage for wilderness those areas which are not roadless.

Mr. SHROUFE. That is right.

Senator McCLURE. But you have made your pitch to the people who were drafting the bill, and they have made their judgments. And in some instances, current access will be eliminated.

Mr. SHROUFE. Mr. Chairman and Senator, that is correct. In some instances it will continue.

Senator McCLURE. But if it continues, it is cherry stemmed?

Mr. SHROUFE. That is correct.

Senator McCLURE. Could you provide us with a specific list of areas where current road access is eliminated? Is that a massive job or is it relatively easy for you?

Mr. SHROUFE. Mr. Chairman, Senator, that would be relatively easy for us to do.

Senator McCLURE. Would you please do that with sufficient reference to the map so we can locate it on the map?

Mr. SHROUFE. Yes sir, we can do that.

Senator McCLURE. You also have testified with respect to the amount of effort, money and labor that has gone into the development of facilities for the management of wildlife, and I think you

also used the terms to protect the continuation of certain wildlife that are there now. Patterns do change over time, and we try to resist those changes by manmade activities. I know in some instances in the past, I do not know whether it is true in your State—I believe it was and perhaps still is—where we put in watering facilities for upland game birds and wildlife so that they could have watering areas where water would not be provided naturally, is that correct?

Mr. SHROUFE. That is correct.

Senator McCLURE. So-called gallinaceous guzzlers, among others, and I assume you have some of those and some of these projected or proposed wilderness areas?

Mr. SHROUFE. Mr. Chairman, Senator, we are referring here, basically in total, to water developments, catchments and they are for big horn sheep specifically, not for gallinaceous birds, but for big horn sheep.

Senator McCLURE. How many of those exist?

Mr. SHROUFE. Mr. Chairman, I do not have a figure right now, but I could provide that data to the committee.

Senator McCLURE. How extensive are those catchments and what is their nature?

Mr. SHROUFE. They are very extensive. There has been a lot of effort, and I spoke to public effort. We have an organization called the Desert Big Horn Sheep Society that volunteered literally thousands of hours of volunteer labor and money to provide these water developments in these areas, and many of these developments have taken place. Some are still being planned in these areas, and they are the life blood of those big horn sheep populations in those mountainous, desert areas.

Senator McCLURE. If you could provide for the record a listing of the numbers and the types of structures you are talking about. Catchments can be anything from a depression that was dug in an area where it would catch water to diversions in out of streams flows into areas. I would like to have some idea of what kind of structures, what kind of manmade or artificial catchments have been provided.

Mr. SHROUFE. Mr. Chairman, Senator, we could do that.

Senator McCLURE. Mr. Plummer, let me start out with a rather basic question. It has to do with philosophy rather than a specific provision of this law or a specific application of the provision of this law. There is pending before the Supreme Court of the United States today, the *Rockcreek* case, in which a number of States have joined together to challenge the Federal preemption on stream flows in the State of California, which was undertaken by a ruling of the Federal Energy Regulatory Commission. Arizona is one of the participants in that lawsuit.

Do you not see something inconsistent with your position here, which says you are in favor of Federal preemption, while in that instance you are opposing Federal preemption?

Mr. PLUMMER. I am not familiar with all the details in the *Rockcreek* case, but my understanding is that the issues in that case are more fully controlling water as opposed to perhaps quantification. I think there is a difference between those two.

Senator McCLURE. The *Rockcreek* case, Federal Energy Regulatory Commission overruled the State of California that was trying to maintain stream flow for fish and wildlife purposes. FERC said you do not have the authority to maintain stream flow; the Federal Government has the authority to license projects, and if we license projects that are in opposition to the maintenance of stream flow by the State of California, the State of California has to get out of the way.

Mr. PLUMMER. Well, I think that is correct, sir, my understanding of the case. But again, I believe it has to do more with who has the authority to issue that permit or issue the determination for the in-stream flows as opposed to the quantification. I see the case here in the wilderness areas, for example on the Bill Williams, in terms of the Arizona statutes allowing the use of in-stream flows, that they in fact, could be very close to what the wilderness values will be. No one is arguing that we have or do not have the authority or there is a conflict between the State and the Federal authority in terms of setting those. It is a matter of quantification. That is my understanding.

Senator McCLURE. Well, assume that the Federal Government decided that they wanted more water than you decided was appropriate for the same use. They said one quantity and you said a different quantity for the same purpose and the same use, and you are saying under this, the Federal Government can do so?

Mr. PLUMMER. Under the Wilderness Act?

Senator McCLURE. Yes.

Mr. PLUMMER. The Court of Arizona in the case that we envision here would make that final determination in the adjudication.

Senator McCLURE. So the court would make the determination rather than the State or the Federal Government?

Mr. PLUMMER. That is correct. In Federal reserved rights, that is the way it works in Arizona. The courts determine that. Whether Indian rights or other types of rights, the courts make that determination during the adjudication process.

Senator McCLURE. Certainly, there is a conflict between the case in Colorado and that of the Court in the *United States v. New Mexico*, 1978 case. In the latter case, the New Mexico case, the court limited the reserved right to the primary purposes of the reservation.

Would current case law on implied rights not provide more certainty to the State of Arizona with respect to BLM wilderness than would the language of this legislation?

Mr. PLUMMER. It is very difficult to tell—definitions are always a problem in these sorts of pieces of legislation. But I'm not certain that when you look at the case law, whether that would have more certainty than some other process. Certainly, it can be argued as you go through the quantification that in-stream flow may be the total amount or maybe wilderness values require some additional type of water.

Senator McCLURE. That is a matter of judgment, is it not?

Mr. PLUMMER. That is correct.

Senator McCLURE. And you are going to give that judgment to the court under whatever guidelines there are. The *New Mexico* case laid down some guidelines. What this statute does is to set a

new process without the same guidelines that the court set down in the *New Mexico* case. I would submit to you, then, there is at least an area of uncertainty in the court's rule on this language, which might vary greatly from what the court said in the *New Mexico* case.

Mr. PLUMMER. That could happen. We would hope that the courts would accept the determinations by the department under the in-stream flow determination.

Senator McCLURE. By the Department of the State agency?

Mr. PLUMMER. That is correct.

Senator McCLURE. When you say by the department, there is a Federal Department, too.

Mr. PLUMMER. When I refer to the department it is the Department of Water Resources. I will use DWR from now on.

Senator McCLURE. I understand.

Mr. Shroufe, in the State of Arizona involved here are there live streams entering and leaving proposed wilderness areas?

Mr. SHROUFE. Mr. Chairman, Senator, the Bill Williams, I believe, would be the only one in the wilderness areas associated with it, as far as entering and exiting. Most of the other areas, I believe, and I would have to check and get back with the committee, these areas are on mountain tops, so that would be at the upper reaches.

Senator McCLURE. But there could be live streams exiting from the proposed areas, is that correct?

Mr. SHROUFE. There could be. Perhaps Mr. Plummer could better answer that question.

Senator McCLURE. Let me ask this question as a hypothetically. If there are such live streams that either cross the boundary going in or cross the boundary going out, under either circumstance, would your department be concerned about various kinds, not just fish within the streams that might go back and forth across the boundary?

Mr. SHROUFE. Mr. Chairman, Senator, yes. We would be concerned if that was the case.

Senator McCLURE. And is it not possible that the Federal Government in the management of a wilderness area or somebody on behalf of an interest, not just the Government, would assert that the reservation of waters within the wilderness boundary also implied the protection of the naturally occurring biota in that stream?

Mr. SHROUFE. Mr. Chairman, I believe that would be correct.

Senator McCLURE. And if that is correct that that reservation of right in the statute might be or could be construed to follow that biota wherever it was, outside as well as inside the boundaries of the wilderness area?

Mr. SHROUFE. Mr. Chairman, Senator, outside the wilderness area, I am not sure if I could extend that argument.

Senator McCLURE. One of the concerns that I had in the Washington instance, which was in the Olympic National Park, there are short streams that originate within the park and flow into the ocean. And certainly one of the naturally occurring features of the park are the fish within that stream. At a total preemption of State law on behalf of the water within the parks, can be argued to include the biota—the naturally occurring biota in that stream,

and if actions with respect to the stream outside the park interfered with what otherwise would be naturally occurring within the park, that there would be assertion of Federal preemption outside of the park as well as inside the park in order to protect those features that are inside the park. Is that not a possibility?

Mr. SHROUFE. That could be a possibility under that scenario.

Senator McCLURE. And if you have live streams in the State of Arizona in which whatever might move back and forth across the boundary, if there were such an assertion that would be a matter of concern to you?

Mr. SHROUFE. Yes.

Senator McCLURE. Mr. Plummer, would it be a matter of concern to you?

Mr. PLUMMER. If we had as much water as the Olympic Peninsula, we would have a different problem in Arizona. Most of our streams—

Senator McCLURE. You would have more people living there, too.

Mr. PLUMMER. Most of our streams are very sporadic in terms of flow, and very, very few run year round. So most of the time I think the types of examples and questions you have asked probably are not applicable. Bill Williams certainly is one of the differences.

Senator McCLURE. I am not certain of the answer to this question. Let me speculate for just a moment, however. With respect to a Federal preemption for purposes of this act, in which you have established a Federal reservation on certain matters—a Federal preemption, not just a reservation, that might be asserted to interfere with prior rights. And what I am suggesting is the possibility that under the language written in the bill, somebody could assert the Federal preemption and condemn prior rights to satisfy the Federal preemption. Is that a possibility?

Mr. PLUMMER. The only circumstance that I could think of where that could become an issue would be if a senior right holder wanted to change his right to perhaps some other location or some other use.

Senator McCLURE. Currently under State law, there could be a contest with respect to the change in the point of use or the purpose of use?

Mr. PLUMMER. That is correct.

Senator McCLURE. But I am not referring to that. I think that is clearly the case. I am just wondering if—and you recognize that as a possibility under this law and under the language in this statute. I am addressing myself to the different situation in which there are prior rights that conflict with the quantity reserved under the statute, and whether or not somebody asserting the Federal purpose theory could come in and say yep, the statute gives us a right to the water for that use. Now we will condemn prior rights in order to satisfy the water reserve under this statute. Would that be a matter of concern to you?

Mr. PLUMMER. Senator McClure, I do not believe that will happen, but obviously, we cannot predict what courts might do. But with the dates of priority being different, our assumption is and our belief is, as we proceed through our management of the water rights, that the senior right holder has the advantage.

Senator McCLURE. You are familiar with the principle of law that the Federal Government can take property?

Mr. PLUMMER. I am familiar with that, sir.

Senator McCLURE. And the right to use water is under our law in Idaho, a property right. Is it a property right under Arizona law?

Mr. PLUMMER. Yes, sir.

Senator McCLURE. Then it is not impossible for the Federal Government to take water, is it?

Mr. PLUMMER. But only through the condemnation process.

Senator McCLURE. Through the condemnation process. Now, would you be comfortable with the notion that the Federal Government might, in order to carry out the purposes of this act, condemn water in Arizona?

Mr. PLUMMER. That is a question I had not focused on. I do not know if I would be concerned. We take the position in Arizona, that water goes to highest and best use, except as it relates to in-stream flows. If the Government came in and wanted to condemn, I expect it depends on who is being impacted. And if the condemnation of certain rights impacted some third parties, we would have to look at that very carefully. I do not know right now if I could project how we would turn out on one like that.

Senator McCLURE. Certainly, there are positions under State law for the highest and best use and the conversion from one use to another, even against the right of a prior user. It is true under Idaho statute; I assume it is similar under Arizona statute. And I am not talking about whether or not they would do it pursuant to the State law. I am talking about whether they would do it under the authority of the statute that we pass that preempted State law.

Mr. PLUMMER. I do not have an answer for that, sir.

Senator McCLURE. If you, after thinking about it, wish to express some opinion, I would invite you to do so. I am not certain that I can see that under the statute that that is likely, but I can conceive of it being an assertion being made by someone who says, we created rights under this statute, knowing that there was not enough water there to fulfill those rights, but we granted the Federal Government a preemptive right, and arguing that since the Congress surely could not have been intended to do a useless thing, we must have intended to create in the Federal Government the authority to take water now applied to other uses to satisfy the rights set forth in this statute. And I do not think that is a far-fetched hypothesis, but if you are concerned and others are concerned, we ought to at least say whether we want that to happen or whether we do not want it to happen.

Mr. PLUMMER. I will get back to the committee on that.

Senator McCLURE. Thank you very much, Mr. Chairman. I will submit the balance of my questions in writing for response to the record.

Senator BUMPERS. First of all for the record, I want to say I am just having so much fun I can hardly restrain myself.

[Laughter.]

Senator BUMPERS. There was a time when Senator McClure announced he was not going to run again that I was actually sad.

[Laughter.]

Senator BUMPERS. That has long since passed.

Senator Wallop.

Senator WALLOP. Mr. Chairman, I have a number of questions that I would like to submit. Unfortunately, I have a vote in the Armed Services Committee. But Mr. Plummer, let me plant a parting thought in your mind. You said throughout your statement and your responses to Senator McClure, you do not believe it will happen, I assume that it will not in all probability—in all likelihood, will satisfy the need.

Those are not very certain statements when you are dealing with water, and I just wondered why it would be that you would feel comfortable with assuming that they will not, or in all likelihood they will not, or have confidence that they may not, or do not believe that that will happen, when you could satisfy it under law in the passage of this thing. I mean, you are ceding to the Federal Government the sovereign power of the State of Arizona, and I do not understand why you would do that when it is not necessary to provide the very protection that—

Senator BUMPERS. We fought a civil war over that point.

Senator WALLOP. Exactly. But this exists now and there is no need for him to give it up. I mean, you might just as well have another war rather than just surrender it.

Mr. PLUMMER. Well, Senator, a lot of the provisions of this bill, the House bill as passed, as Senator McCain and Senator DeConcini mentioned, are the results of negotiations. We are comfortable with the results of those negotiations.

In particular, in the reference to the—and in all likelihood, statement that I made, was specifically in reference to the in-stream flow issue, again. We feel very confident that because of the nature of our territory in Arizona, the types of land that water passes through, that the in-stream flow right, when granted—if granted in some cases, but we have already issued some in-stream flow permits—that that would take care of the wilderness water rights. And we are so satisfied that those two definitions are likely to be so consistent that no matter if it is finally decided later in adjudication, we are comfortable with that.

Senator WALLOP. That is not the position that Arizona took in Arizona versus California. And you state in here that the Bill Williams is not ripe for general stream adjudications since there are no large scale unquantified Federal reserve water rights and there is still unappropriated water available. I assume that you would agree that this situation would certainly be altered if this legislation is enacted, which would leave an unquantified Federal reserve right for unspecified purposes and perhaps no further unappropriated water.

Mr. PLUMMER. Well, as I said, we believe that with the BLM application for an in-stream flow right in the area of the wilderness that when we evaluate that permit and assume that we grant it, that will take care of the wilderness water right. We do not see much inconsistency.

Senator WALLOP. Again, I just forgot to tell you, and I am sorry we do not have time to develop this further now, but that is not a very sound assumption just based on the history of wilderness administration and the pursuit of rights through the courts. That is

just not the way people have behaved, you know, and I do not see anything on my radarscope that thinks that people are not likely to gather under wilderness everything that they can stuff into it. It has just been our experience.

And maybe that is what Arizona wants, but why would you do it? Why would you cede to the Federal Government that power when you would still have the ability to control it under State law, which is not anathema to the whole concept.

The suggestion was that we ask if the Governor could sign off on this legislation. Has the Governor signed off on this legislation?

Mr. PLUMMER. The Governor supports the wilderness bill.

Senator WALLOP. Let me just finish one thing here, dealing with the Colorado—okay, the legislation claims a reserved right for wilderness in several wildlife refuges. What additional quantities of water do you believe will be necessary for these wildlife refuges?

Mr. PLUMMER. I do not believe—well, it depends on the wildlife refuge, but those along the river, I do not think they are going to need any additional water.

Senator WALLOP. With respect to Havasu Refuge, what appurtenant waters have not already been fully appropriated for the refuge?

Mr. PLUMMER. There is a water right that exists out of the Colorado River for the wildlife refuge.

Senator WALLOP. That is the source of my question and worry, I think. Unless you are suggesting to this committee that that reserved right is meaningless, are you not inviting the court to reach beyond the boundary of the wilderness to impose a flow requirement on the Colorado?

Mr. PLUMMER. I suppose that is a possibility, and I think given choices we would prefer to see some specific language that makes it clear that there is no intent to usurp the law of the river and all the operations that exist on the river.

Senator WALLOP. Because to the extent that some court does find that the reserved right might imply an intent to affect the Colorado, the next question would obviously be, if Arizona is prepared to agree that any such Federal reserved right must be set aside solely from Arizona's allocation of water in the lower basin.

Mr. PLUMMER. Even though in the other case that I mentioned I am satisfied with the likelihood part of it, on this one, I am not so sure because the Colorado River is very, very critical to the State of Arizona. And not knowing what courts might do with that particular part of it, I would say it would be well to clarify that very specifically.

Senator WALLOP. Could we then invite you to work with us on doing that, because that whole lower basin, we do not need to have it become unravelled with one or several wilderness bills. And clearly, it is not the intent to do that.

Mr. PLUMMER. That is correct.

Senator WALLOP. Would you work with us on that?

Mr. PLUMMER. Yes.

Senator WALLOP. Mr. Chairman, I have several other questions that perhaps we could submit. Then they might require a little research and would get us to the same kind of point of understanding

of what it is that Arizona really wants to have happen so that we can see if we can achieve it.

Senator BUMPERS. Thank you very much Senator Wallop.

And gentlemen, thank you for your patience and thank you for being with us this afternoon.

Senator McClURE. Mr. Chairman, while the next panel is coming up, and I will not delay these witnesses leaving, I would like to make a brief statement for the record with respect to a comment I made a moment ago. I do not want anybody to construe my comments with respect to the stream flows of the Olympic National Park as indicating my expectation that such an assertion of right would be made or that it was supported by congressional action. On the contrary, I do not believe that it was the intention of Congress, and Senator Evans stated on the record it was not his personal intention or belief that we give rise to such claims, but I have seen some claims made that I had not thought anybody could possibly dream up, but they did.

Senator BUMPERS. Thank you.

The last panel is Mr. Friesner, Arizona Wilderness Coalition; Mr. James W. Norton, Southwest Regional Director of the Wilderness Society; Mr. George G. Byers, Director, Public Affairs, Sante Fe Pacific Minerals Corporation; Mr. Larry Adams, Arizonans for Responsible Wilderness; Mr. Jeff Menges, Arizona Cattle Growers Association.

Mr. Menges, I am advised that you have a 5 o'clock flight and would like to go first. We would be pleased to accommodate you and so please feel free to commence your testimony.

Let me also state for the panel that I have to leave at about 25 after. I am going to try to get back before the panel concludes, but Senator McClure will take over at that point. Please proceed.

STATEMENT OF JEFF MENGES, ARIZONA CATTLE GROWERS ASSOCIATION

Mr. MENGES. Mr. Chairman, members of the committee, my name is Jeff Menges. I am a cattleman from Morenci, Arizona. I am also a Vice Chairman of the Public Lands Committee of the Arizona Cattle Growers Association.

I appear before you today on behalf of our association, the Public Lands Council, the National Cattlemen's Association, American Sheep Industry and Association of National Grasslands to express our concerns about S. 2117, the Arizona Wilderness Act of 1990.

In any wilderness legislation that may be enacted we strongly support the provisions in this bill which release wilderness study area lands that are not designated as wilderness back into multiple use management.

We also support the language in S. 2117 which clearly states that it is not the intent of Congress to create wilderness buffer zones. We strongly urge the committee to require that grazing interests are represented on advisory boards or committees that may be established and particularly for the Gila Box National Conservation area.

Our paramount concern is water and the provisions in this bill for Federal reserve water rights. Both Senator DeConcini and Sen-

ator McCain expressed the lack of agreement within the Arizona delegation on the issue of reserve water rights language contained within the bill. Just as buffer zones and release language are specifically addressed within the bill, we would like specific language addressing water rights, quantifications and filings to be addressed in the bill itself.

It is our policy that Congress recognize State water rights. We do not support the concept of Federal reserved water rights for wilderness areas.

We believe the designation of federally reserved water rights for the proposed Arizona wilderness areas and the Gila Box NCA will throw an unfair cloud on current uses and possible future uses of lands upstream and downstream of the various wilderness designations. The bill instructs the Secretary to file for quantification of these water rights in the appropriate stream adjudication. It also acknowledges that existing water rights may very well fulfill many if not all of the purposes of the designated wilderness.

The bill fails, however, to give the Secretary a point in time to quantify the water rights to be claimed in the adjudication where one exists. It also fails to provide a mechanism for water quantification where no current adjudication is proceeding.

We believe the legislation should require the Secretary to file for water rights with the Arizona Department of Water Resources and, where relevant, in-stream adjudications that are ongoing in Arizona courts. In those filings, by the very nature of them, the Secretary would be required to quantify any additional water rights not already federally owned that would be necessary for accomplishing his responsibilities for these wilderness areas.

Under Arizona law the Secretary would be required to specify amounts of water to be used and each area would receive a priority date as of the date of filing. A logical assessment of current requirements could then be made. Future requirements for water use would be filed for with a reasonable time frame as such needs are identified. Without this latter mechanism to deal with future water rights needs, the Federal water rights that are now reserved in S. 2117 will remain a cloud on water uses for an extended period of time until the Secretary quantifies not only existing but possible contemplated future uses of water. This is both unnecessary and unfair to the citizens of Arizona who need to know what water rights are theirs and what water rights belong to the Federal Government. Paramount Federal interest in managing these wilderness areas will not, in any practical sense, be impaired by reliance upon Arizona law for possible future water uses.

If Federal water rights are to be part of the Arizona wilderness designations, we believe it is essential to have certainty as to the priority date and the amount of water uses that will be associated with these wilderness areas.

The Secretary should be required to quantify the Federal claims for the wilderness designation based on existing water use requirements as of the effective date of the act. In addition, any future water uses that may be identified must be filed under Arizona law. This would give both the Secretary and the court a finite yardstick from which to measure these reserved water rights without leaving in limbo the yet to be identified future water uses. This require-

ment would also prevent the Secretary from having to instruct his current staff to guess with generosity on possible future uses in order to meet the quantification mandate of this bill in current pending Arizona State court adjudications.

Water and its use has always been one of the most critical areas of concern to Arizona and its people. Without certainty as to the priority date and the amount of water designated by this act, we will face the same uncertain future that has befallen others in attempting to deal with unquantified reserved water rights associated with Indian reservations. Recognizing the inequity of this latter situation, the Bush administration has pushed for negotiated settlements of Indian water rights in Arizona as a way of removing the cloud that currently hovers over our water supply. If this bill merely mimics this situation, it only serves to perpetuate and enlarge that cloud. The adjudication process will take a decade or longer, and many of these areas will not be adjudicated until even after that. S. 2117 needs a mid-course correction to provide mechanisms for achieving certainty in these water claims now.

Thank you for this opportunity.

[The prepared statement of Mr. Menges follows:]

TESTIMONY
by

Jeff Menges
Morenci, Arizona

on behalf of the
ARIZONA CATTLE GROWERS' ASSOCIATION,
and also on behalf of
THE PUBLIC LANDS COUNCIL,
NATIONAL CATTLEMEN'S ASSOCIATION,
AMERICAN SHEEP INDUSTRY ASSOCIATION,
and
ASSOCIATION OF NATIONAL GRASSLANDS

before the

United States Senate
Senate Energy and Natural Resources Committee
Public Lands, National Parks and Forests Subcommittee

April 5, 1990

on

S. 2117

The Arizona Wilderness Act of 1990

The Arizona Cattle Growers' Association represents more than 2000 beef cattle producers throughout the state of Arizona. The Public Lands Council represents the 31,000 western ranchers who graze cattle and sheep on federal lands in 14 western states, and coordinates the public land policies of the National Cattlemen's Association, American Sheep Industry Association and the Association of National Grasslands. The National Cattlemen's Association is a non-profit trade association representing approximately 230,000 professional cattlemen throughout the nation, including individual members, 48 affiliated state cattle associations, and 23 affiliated national breed organizations. The American Sheep Industry Association represents the nation's 113,000 lamb and wool producers, including 38 state organizations, associated organizations and companies, and individual members. The Association of National Grasslands represents approximately 4,000 ranch families who graze livestock on National Grasslands in North Dakota, South Dakota, Wyoming, Colorado, and Nebraska.

Mr. Chairman, members of the committee, my name is Jeff Menges. I am a cattleman from Morenci, Arizona and also Vice Chairman of the Public Lands Committee of the Arizona Cattle Growers' Association. I appear before you today on behalf of our Association, the Public Lands Council, National Cattlemen's Association, American Sheep Industry Association and the Association of National Grasslands to express our concerns about S. 2117, the Arizona Wilderness Act of 1990.

I will take a moment to note that in any wilderness legislation that may be enacted, we strongly support the provisions in this bill which release wilderness study area lands that are not designated as wilderness back into multiple-use management. We also support the language in S. 2117 which clearly states that it is not the intent of Congress to create wilderness buffer zones. We strongly urge the committee to require that grazing interests are represented on any advisory boards or committees that may be established and particularly for the Gila Box National Conservation Area.

Due to our time limitations today, I will not dwell on the excessive amount of land that is proposed for wilderness designation in this bill, the management problems that will result, or the unnecessary impediments to multiple-use management that S. 2117 presents. Our concerns on these matters will be expressed by Mr. Larry Adams who is speaking today for Arizonan's for Responsible Wilderness, a coalition to which we belong.

Our paramount concern is water and the provisions in this bill for federal reserve water rights. Both Senator DeConcini and Senator McCain expressed the lack of agreement within the Arizona delegation on the issue of reserve water rights language contained within the bill. Just as buffer zones and release language are specifically addressed within the bill, we would like specific language addressing water rights quantifications and filings to be addressed in the bill itself.

It is our policy that Congress recognize state water rights. We do not support the concept of federal reserved water rights for wilderness areas.

We believe the designation of federally reserved water rights for the proposed Arizona wilderness areas and the Gila Box NCA will throw an unfair cloud on current uses and possible future uses of lands upstream and downstream of the various wilderness designations. The bill instructs the Secretary to file for quantification of these reserved rights in the appropriate stream adjudication. It also acknowledges that existing water rights may very well fulfill many, if not all, of the purposes of the designated wilderness. The bill fails, however, to give the Secretary a point in time to quantify the water rights to be claimed in the adjudication where one exists. It also fails to provide a mechanism for water quantification where no current adjudication is proceeding.

We believe the legislation should require the Secretary to file for water rights with the Arizona Department of Water Resources and, where relevant, in stream adjudications that are ongoing in Arizona courts. In those filings, by the very nature of them, the Secretary would be required to quantify any additional water rights not already federally owned that would be necessary for accomplishing his responsibilities for these wilderness areas.

Under Arizona law, the Secretary would be required to specify amounts of water to be used and each area would receive a priority date as of the date of filing. A logical assessment of current requirements could then be made. Future requirements for water use would be filed for within a reasonable time frame as such needs are identified. Without this latter mechanism to deal with future water right needs, the federal water rights that are now reserved in S. 2117 will remain a cloud on water uses for an extended period of time until the Secretary quantifies not only existing but possible contemplated future uses of water. This is both unnecessary and unfair to the citizens of Arizona, who need to know what water rights are theirs and what water rights belong to the federal government. Paramount federal interest in managing these wilderness areas will not, in any practical sense, be impaired by reliance upon Arizona law for possible future water uses.

If federal water rights are to be part of the Arizona wilderness designations, we believe it is essential to have certainty as to the *priority date* and the *amount of water* uses that will be associated with these wilderness areas. The Secretary should be required to quantify the federal claims for the wilderness designation based on existing water use requirements as of the effective date of the Act. In addition, any future water uses that may be identified must be filed under Arizona law for any future. This would give both the Secretary and the court a finite yardstick from which to measure these reserved water rights without leaving in limbo the yet to be identified future water uses. This requirement would also prevent the Secretary from having to instruct his current staff to guess with generosity on possible future uses in order to meet the quantification mandate of this bill in current pending Arizona state court adjudications.

Water and its use has always been one of the most critical areas of concern to Arizona and its people. Without certainty as to the priority date and amount of water use designated by this Act, we will face the same uncertain future that has befallen others in attempting to deal with unquantified reserved water rights associated with Indian Reservations. Recognizing the inequity of this latter situation, the Bush Administration has pushed for negotiated settlements of Indian water rights in Arizona as a way of removing the cloud that currently hovers over our water supply. If this bill merely mimics this situation, it only serves to perpetuate and enlarge that cloud. The adjudication process will take a decade or longer and many of these areas will not be adjudicated until even after that. S. 2117 needs a mid-course correction to provide mechanisms for achieving certainty in these water claims now.

Thank you for the opportunity to appear here this afternoon and present this testimony. S. 2117

Senator BUMPERS. Thank you. And if you need, you may be excused.

Mr. Friesner.

STATEMENT OF CRAIG FRIESNER, ARIZONA WILDERNESS COALITION

Mr. FRIESNER. Mr. Chairman, member of the committee, good afternoon. My name is Craig Friesner, and I live in Kingman, Arizona, and I am speaking today on behalf of the Arizona Wilderness Coalition.

I have a copy of the coalition's statewide wilderness proposal.

First, I am proud to represent and speak for the Arizona Wilderness Coalition. The coalition in my mind has been the driving force for the wilderness preservation movement in Arizona for some years.

Second, I have a sense of anticipation for the imminent passage of this Arizona wilderness bill.

Literally millions of acres of some of the best wilderness anywhere will now be preserved as part of that national treasury which is the wilderness preservation system.

Finally, I admit to a sense of frustration. While this bill is a good and workable political compromise, it falls far short of a great wilderness bill which would do justice to the many areas deserving of protection in Arizona.

Even so, the coalition extends its thanks and appreciation to Senators McCain and DeConcini and their staffs for their many hours of dedicated labor as they struggle to reach a consensus in this arena of widely diverse views and emotions.

Likewise, the Arizona delegation and their staffs on the House side are to be commended for their similar efforts. I would also like to extend my personal thanks to Jim Norton of the Wilderness Society and Rob Smith of the Sierra Club who gave energy, wisdom and resources to the coalition's efforts.

The Arizona Wilderness Coalition supports this bill. It obviously falls short of our recommendations, but we recognize the political realities which constrain our delegation.

I would comment generally on two aspects of the bill. The water rights language as proposed in the House is acceptable to the coalition. We are advised by competent legal counsel that this language merely codifies existing Arizona law. The wildlife management language, for similar reasons, as proposed is also acceptable to the coalition.

As to a few of the included areas, I have these brief comments. Regarding Upper Burro Creek, the coalition urges that it is critical to include the upper areas of Goodwin Mesa. This is important habitat. It will be the only BLM wilderness which supports a native population of chihuahuan pronghorn. It also includes a large area of semi-desert grassland.

We also endorse the proposed additions that the BLM is making for this wilderness area. I am referring to the Negro Ed area.

As to Cactus Plain, we would urge that the congressionally designated wilderness study area be made as large as possible and especially to include those sections to the northwest which are under

consideration as a protected natural area. These include a linear dune field in the Black Peak sand dune area.

As to the Gila Box National riparian conservation area, we would urge that these provisions be left intact. We would have preferred wilderness designation here, but we believe this proposal will provide much needed protection to this remarkable area. We believe a unique set of circumstances came together here in this situation to allow this resolution.

I would like to return briefly to my theme of frustration. The Arizona Wilderness Coalition in their statewide proposal recommended over 4.1 million acres of public land to be designated as wilderness. This compromise bill calls for less than 2.5 million acres. The Arizona Wilderness Coalition has earned respect for being informed, hardworking and respectful of the competing values involved in the wilderness designation controversies.

The question has to be asked of how to account for this disparity in acreages. Has the AWC gone off the deep end and proposed that everything in sight be designated as wilderness? Or has Arizona's delegation succumbed to the pressure of the various foes of wilderness to the point of trimming their proposal to a least objectionable standard?

I submit to you that the latter question strikes closest to the heart of the matter. To be sure, Arizona's delegation has been beat over the head by cattle growers, miners, off-road vehicle enthusiasts, hunters and any number of other groups that see wilderness designation as a threat to their perceived prerogatives on public land. Quite clearly, too, Arizona's delegation has been beat over the head by a variety of wilderness enthusiasts. Surely the Arizona delegation must be reeling.

I would call upon those members of Congress from States other than Arizona to now bolster Arizona's delegation in its efforts to preserve this national heritage for these lands belong to all the nation. I would venture a guess that virtually even member of Congress has visited Arizona, and I would guess also that those members who have been to Arizona know it to be special, remarkable, unique and incredible.

The leading newspapers of Arizona have recommended generous wilderness designations consistent with the AWC proposal. Even the prestigious Arizona Highways Magazine urges that the AWC proposal is more appropriate than the Senate bill of last year or even Congressman Udall's proposals of last year.

According to a recent poll there is overwhelming popular support in Arizona for wilderness designations. There should be dramatic additions to this bill and certainly no deletions. I will make reference to those areas mentioned in my written comments, and thank you for your time.

[The prepared statement of Mr. Friesner follows:]



Arizona Wilderness Coalition

2127 E. Osborn, Phoenix, AZ 85016

STATEMENT OF CRAIG FRIESNER FOR THE ARIZONA WILDERNESS COALITION
BEFORE THE SENATE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS
AND FORESTS REGARDING THE ARIZONA WILDERNESS ACT OF 1990, S 2117,
AND HR 2570 AND HR 2571, APRIL 5, 1990, WASHINGTON, DC.

Mr. Chairman and members of the Subcommittee, my name is Craig Friesner and I live in Kingman, Arizona. I am speaking today as a member of the executive committee of the Arizona Wilderness Coalition, which advocates wilderness protection on behalf of 39 recreation, environmental and civic organizations in our state.

For years the Coalition, its supporting groups and countless individuals have worked with the Fish and Wildlife Service and the Bureau of Land Management on wilderness proposals for deserving areas under those jurisdictions. The Coalition published our recommendations for wilderness in our state's desert areas in December, 1987. I would like to submit a copy of our proposal to the Subcommittee.

The Coalition proposed wilderness designation for 4 million acres of primarily BLM and national wildlife refuge lands. Also included were some contiguous national forest lands, a few other Forest Service areas mandated by Congress for additional wilderness study and some stream stretches which warrant designation as wild and scenic rivers. Obviously the legislation before this Subcommittee does not include everything we think merits protection. However, we support S. 2117 and its House companion measures, HR 2570 and HR 2571, as important and positive steps in protecting Arizona's desert wildland heritage.

We are especially pleased to see that this legislation includes wilderness designation for most of the areas with major streams flowing through them. As you can imagine, flowing water is literally the lifeblood of the desert ecosystem and is a great attraction for the recreational user as well. This is why we have strongly supported a federal reserved water right for these areas. We are satisfied that the language proposed by Congressman Rhodes as an amendment to HR 2570 and approved by the House before final passage of the bill meets Arizona's needs and is consistent with the purposes of the National Wilderness Preservation System. We urge the Subcommittee to adopt this language for S. 2117.

We also note that the provisions dealing with wildlife management in wilderness remain consistent with the Wilderness Act and established policy which has been agreed to by both the relevant federal agencies and the state wildlife agencies through their international association.

One area which was particularly controversial was the Gila Box, near Safford. While we still believe that wilderness would have been the most appropriate designation for this area, we recognize that the proposed National Conservation Area includes important land outside the BLM wilderness study area boundary and mandates strict management criteria which should protect the remarkable river and wildlife values here. In this unique instance, the proposed NCA designation is a responsible compromise.

The greatest difference in acreage between the House bills and the Senate bill as originally introduced last spring was on the wildlife refuges. We have long felt that the Cabeza Prieta and Kofa refuges in particular would be some of the most pristine and extraordinary additions to the wilderness system possible. We worked diligently with Senators DeConcini and McCain to resolve the special situation of military overflights at Cabeza Prieta and to identify an acceptable selection of road corridors at Kofa. Thanks to their hard work and leadership, compromises were found which allowed these two magnificent areas to be saved for the future. We recommend that the Subcommittee adopt the provisions of HR 2571 as passed this past Tuesday by the House. That bill contains wilderness boundaries consistent BLM and Fish and Wildlife Service testimony, and it makes the water rights language consistent with the House-passed BLM wilderness bill, HR 2570.

The largest area remaining under wilderness study is a most unusual place. The Cactus Plain sounds harsh, but in fact it is home to a variety of plants and animals, including the scaly sandplant, a candidate for federal threatened or endangered species status, and the Mohave desert fringe-toed lizard, a state candidate species for threatened status. This area includes the most extensive sand dune area in Arizona, and nine sections of land in the northwest corner of the original BLM wilderness study area are proposed for a State Natural Area to protect the best of the natural values here. We would like to work with the Subcommittee and Senators DeConcini and McCain to make sure that as much of the proposed natural area is included within the final wilderness study area boundary. We also urge that this area be put off-limits to off-road vehicle use and mining activity during the wilderness study period to preserve the delicate plant and animal communities.

Upper Burro Creek is proposed for wilderness in this legislation, but it is important that the final boundary retain the semidesert grassland area on Goodwin Mesa in the northwest part of the area. This was the only BLM wilderness study area in Arizona with a native population of Chihuahuan pronghorn, a state threatened

species. The BLM has proposed adding some additional acreage to their original WSA boundary in the Negro Ed area which is now in federal ownership, and we support this strongly.

There are some special areas which are not proposed for designation in this legislation despite their outstanding wilderness values, their lack of substantive conflicts and the public support that they have. The Little Horn Mountains, East Clanton Hills and Face Mountain would round out an ecological complex that is now anchored only by the proposed Eagletails wilderness. Ragged Top is supported by the Mayor of Tucson and the Pima County Board of Supervisors as well as a variety of citizens who want to save this extraordinary botanical area as Tucson grows in the future. Lower Burro Creek needs to be protected as a year-round riparian area and as the primary recreational resource serving BLM's popular campground along the creek. Saddle-Mountain is a landmark and prime recreational site for the community of Tonopah and its many visitors. Crossman Peak near Lake Havasu City and the Ramparts area near Meadview, both areas close to where I come from, deserve protection to preserve the environmental and scenic values so many people are moving to northwest Arizona to enjoy.

We urge this Subcommittee and Senators DeConcini and McCain to consider adding these areas into the final wilderness package. If this is not possible, then we would like to work with our Senators and this Subcommittee on ways to assure that the important environmental values in these areas are recognized and saved.

In closing, I would like to thank the Subcommittee for the opportunity to be here today. I would also like to acknowledge and thank our Arizona Congressional delegation, and especially our Senators Dennis DeConcini and John McCain for working so hard towards a wilderness bill which will serve Arizona well. I think the future will judge these efforts very favorably. Thank you.



CITY OF TUCSON
OFFICE OF THE MAYOR

THOMAS J. VOLGY
MAYOR

February 13, 1990

255 WEST ALAMEDA
P.O. BOX 27210
TUCSON, ARIZONA 85726-7210
PHONE (602) 791-4201

Senator Dennis DeConcini
U. S. Senate
328 Senate Hart Office Building
Washington, D. C. 20510

Dear Senator DeConcini:

I am writing to urge you to ensure that Ragged Top is included in the Arizona Wilderness Bill. As you may know, the recent House Bill does not include Ragged Top in its inventory of areas to be designated as wilderness.

In my estimation, this omission represents a serious oversight. Urban dwellers need the beauty and solitude of wilderness areas accessible to them.

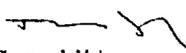
The 4,800 acre Ragged Top wilderness area is approximately twenty miles north of Tucson. It is truly outstanding wilderness in terms of its overall qualities of spires, crags, ridges and the unusual opportunities it provides for solitude. There is ample wildlife in the area as well, including desert bighorn sheep, the rare desert tortoise, and many raptor species.

However, the pristine qualities of Ragged Top are currently threatened by off-road vehicle use and recreational miners. Wilderness designation is critical to the preservation of Ragged Top as an open space for the appreciation of people from Tucson and Marana.

I urge you and your colleagues to make sure that justice is done to the beautiful Ragged Top area, and to the people of southern Arizona, by designating Ragged Top as a wilderness area.

I appreciate your interest and concern about this matter.

Sincerely,



Thomas J. Volgy
Mayor

TJV:sac

cc: Ken Rait

PROCLAMATION

WHEREAS, Pima County's economy is largely based on preserving environmental qualities such as clean air, open space, scenic vistas; and

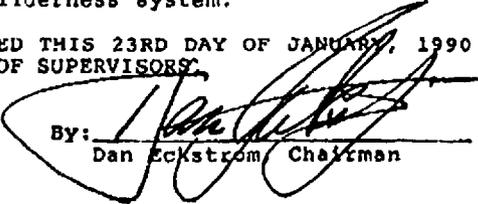
WHEREAS, the Ragged Top/Silverbell Complex is an area of outstanding biological diversity and scenic beauty; and

WHEREAS, the Ragged Top/Silverbell Complex provides unique opportunities for primitive and unconfined recreation; and

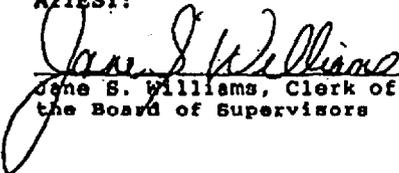
WHEREAS, Pima County's growing population benefits greatly from recreation in open space and scenic vistas; and

NOW, THEREFORE, BE IT RESOLVED that the Pima County Board of Supervisors endorse the Arizona Wilderness Coalition's proposal to add the Ragged Top/Silverbell Complex to the nation's wilderness system.

PASSED AND ADOPTED THIS 23RD DAY OF JANUARY, 1990
BY THE PIMA COUNTY BOARD OF SUPERVISORS.

By: 
Dan Eckstrom, Chairman

ATTEST:


Gene S. Williams, Clerk of
the Board of Supervisors

Senator BUMPERS. Thank you very much.
Mr. Norton.

**STATEMENT OF JAMES W. NORTON, SOUTHWEST REGIONAL
DIRECTOR, THE WILDERNESS SOCIETY**

Mr. NORTON. Mr. Chairman, with your permission, I would like to ask that my written statement be included in the record, and I will summarize it orally here.

Senator BUMPERS. It is so ordered.

Mr. NORTON. My name is Jim Norton. I am the Southwest Regional Director of the Wilderness Society. I am based in Phoenix and cover the States of Arizona and New Mexico for the society.

The Wilderness Society is pleased to be a member organization of the Arizona Wilderness Coalition. We feel that the coalition's proposal of 4.1 million acres that Mr. Friesner alluded to earlier would provide the best protection for Arizona's desert lands.

We recognize, however, that the bills before you reflect a consensus among the Arizona delegation. This consensus, while not achieving all of the land protection goals of The Wilderness Society, is a giant step forward for the State. When these bills are enacted into law, the wilderness system in Arizona would be more than doubled.

The Wilderness Society is especially pleased that so many of the State's riparian or stream-side areas that were proposed by the coalition for wilderness will be designated as wilderness. We would have preferred to see the Gila Box area also included in the wilderness system. However, we can live with the Gila Box riparian national conservation area created in the bills because of its strong management language requiring the resource to be conserved, protected and enhanced.

Several vast desert ecosystems will be permanently protected in wilderness. Among these, perhaps, the most significant are the Cabeza Prieta and Kofa National Wildlife Refuges. These areas are among the most pristine and vast Sonoran Desert areas we have left in the world. They have been managed as wilderness since the mid-seventies, and it is entirely fitting that these deserving areas be given permanent protection.

Mr. Chairman, I would like to commend both Senators DeConcini and McCain for their hard work to bring about this consensus. The Senators held countless meetings throughout Arizona. They listened and I believe responded to the overwhelming support expressed for wilderness in this State and for that they should be congratulated.

Before concluding, I would like to briefly address the issues of wildlife management and water rights. The measures before you include a provision that allows wildlife management activities to continue provided that they are consistent with the relevant wilderness management plans and in accordance with appropriate policies and guidelines.

The Wilderness Society feels that this provision is unnecessary because it merely affirms existing congressional guidance to agency managers. However, we have no objection to it.

The Arizona delegation reached consensus, as has been mentioned earlier, on water rights language on the H.R. 2570. This compromise language was offered as an amendment to the bill on the floor of the House by Congressman Jay Rhodes and was co-sponsored by Congressman Kyle Kolbe, Chairman Moe Udall, and Chairman Bruce Vento. The Wilderness Society is pleased to support this consensus provision.

The Arizona water rights compromise is a good approach to protecting Federal reserve water rights for wilderness. There is an express reservation of water. The procedural steps necessary to quantify them are anticipated, and committee report language addressing this was agreed to as well.

Because this issue is controversial, I urge the subcommittee to amend S. 2117 to conform with the consensus House passed version of the water rights language and resist any attempts to weaken protection for wilderness water rights.

In conclusion, Mr. Chairman, I would like to ask that three reports be included in the record, and I will submit those to the Clerk after the hearing.

Senator McCLURE [presiding]. They will be submitted for reception to the pile or a matter of the record, whatever is appropriate in the individual case of the reports.

[The prepared statement of Mr. Norton follows:]



THE WILDERNESS SOCIETY

**STATEMENT OF JAMES W. NORTON, SOUTHWEST REGIONAL DIRECTOR
OF THE WILDERNESS SOCIETY, BEFORE THE SENATE PUBLIC LANDS,
NATIONAL PARKS AND FORESTS SUBCOMMITTEE ON THE ARIZONA
WILDERNESS BILLS S-2117, HR-2570 AND HR-2571,
APRIL 5, 1990, WASHINGTON, D. C.**

Mr. Chairman and members of the Subcommittee, I thank you for the opportunity to present this testimony today. I am Jim Norton, the Southwest Regional Director of The Wilderness Society. Our Southwest Office is based in Phoenix and covers the states of Arizona and New Mexico.

The Wilderness Society is keenly interested in the proposals before you today. Throughout our 55 year history, we have worked for the preservation and wise management of our nation's federal lands. We are a membership organization composed of 350,000 members nationwide and including approximately 5,000 in Arizona.

Arizona is fortunate to enjoy an incredible array of extraordinary natural features. From the Grand Canyon to cool forested mountain ranges to the haunting beauty of the vast deserts, the state has many scenic attractions that are the envy of the world.

In part because of the unique and diverse scenic beauty of the state, Arizonans enjoy a high quality of life. Recreation opportunities including hiking, camping, bird watching, hunting and fishing are outstanding and readily available throughout the state. Many people visit Arizona or move there to live permanently in order to take advantage of the high quality of life that the natural environment has to offer.

Arizona is changing rapidly, however, and there is increasing pressure being placed on the remaining wild and pristine areas. According to a report presented to the state legislature entitled Urban Growth in Arizona: A Policy Analysis, the state is becoming increasingly urbanized at a dramatic rate. Since 1900 the population has grown twenty-five fold and now almost 80% of residents live in urban areas.

The rapid urban growth in Arizona over the years has contributed to a generally healthy economy, but at the same time it has placed stresses and strains on the state's natural areas and on the quality of life. Arizonans are increasingly recognizing that continued rapid growth threatens the natural features that are so important to them. The brown cloud over

SOUTHWEST REGIONAL OFFICE

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(602) 256-7921

Phoenix and Tucson and overcrowded parks and recreation areas are examples of this.

Wilderness is an effective counter balance to the stresses of urbanization. By providing large allocations of land for recreation, scenic beauty, watershed protection, wildlife and other uses, wilderness can help to ensure that Arizona's quality of life remains high for many generations to come. We have an opportunity now to protect many wild areas before its too late.

The best opportunity for increasing our state's base of protected wilderness areas is in our deserts. This is appropriate given that this is where both Phoenix and Tucson, the most rapidly growing areas, are located.

Arizona is the only state in the country that has representative examples of all four North American deserts: Great Basin, Mohave, Sonoran and Chihuahuan. In general, we have not treated our deserts very well. Off road vehicle use, overgrazing, dams, mining, road building, powerlines and urban development have taken their toll on the sensitive ecology of our deserts. Free flowing rivers and streams (known as riparian areas), the lifeblood of the desert ecosystems, have been especially hard hit by the abuses. Ninety percent or more of Arizona's riparian areas have already been destroyed and we must do everything possible to protect what little we have left.

PROPOSALS BEFORE CONGRESS

Several bills designed to protect desert areas are currently pending before Congress. These include S-2117 (BLM and refuges), HR-2570 (BLM only) and HR-2571 (refuges only). In addition, the Congress has before it the proposals of the U.S. Fish and Wildlife Service (FWS), Bureau of Land Management (BLM) and Arizona Wilderness Coalition (AWC).

The Wilderness Society is pleased to be a member organization of the Arizona Wilderness Coalition and an endorser of the AWC proposal. We feel that this proposal, which totals 4.1 million acres including 2.2 million acres of BLM land, 1.6 million acres of national wildlife refuges and .3 million acres of national forest land, provides the best opportunity to preserve Arizona's natural heritage while at the same time balancing other uses. If the entire coalition proposal was enacted into law, still less than 9% of Arizona would be included in the wilderness system.

We recognize that S-2117 and (taken together) HR-2570 and HR-2571 are virtually identical and reflect a consensus among the Arizona delegation. This consensus, while not achieving all of the land protection goals of The Wilderness Society, is a giant step forward for the state. If these bills are enacted into law, approximately 1.1 million acres of BLM lands and 1.3 million acres of wildlife refuges would be designated as

wilderness, more than doubling the size of the National Wilderness Preservation System in Arizona.

Many deserving areas will be given lasting protection by S-2117, HR-2570 and HR-2571. Among them are almost all of the riparian areas proposed for wilderness by the coalition including Upper Burro Creek, White Canyon, Hassayampa River, Rawhides, Swansea, and Redfield Canyon. The Society would have preferred to see the Gila Box area included in the wilderness system, however, we can live with the Gila Box Riparian National Conservation Area created in the bills because of the strong management language requiring the resource to be conserved, protected and enhanced. We are disappointed that the Lower Burro Creek Area, with its free flowing water and long list of rare plants and animals, will not be given any protection by S-2117 or HR-2570.

Several vast desert ecosystems will also be permanently protected in these bills. Perhaps most noteworthy of these are the Cabeza Prieta and Kofa National Wildlife Refuges. These refuges are among the most pristine and vast Sonoran desert areas in the world. Six mountain ranges are included in Cabeza Prieta and, unlike almost every other area in the state, the valleys between them remain pristine and virtually roadless. Both Cabeza Prieta and Kofa have been managed as wilderness by virtue of wilderness recommendations submitted by the President to Congress in the mid-1970's. It is entirely fitting that these special areas will be given formal wilderness designation in the consensus wilderness proposal.

Mr. Chairman, I would like to commend both Senators DeConcini and McCain for their hard work to bring about this consensus. Upon introduction of S-1080 (the predecessor to S-2117) last year, both Senators indicated that they were receptive to adding deserving areas to the bill. The Senators held many meetings with constituents throughout Arizona. They listened and responded to the overwhelming support expressed for wilderness in the state and for that they should be congratulated.

Before concluding Mr. Chairman, I would like to address briefly the issues of water rights and wildlife management in wilderness.

WILDLIFE MANAGEMENT IN WILDERNESS

Both S-2117 and HR-2570 include a provision (Section 2 h) dealing with wildlife management in wilderness areas. This provision allows wildlife management activities provided that they are consistent with relevant wilderness management plans and in accordance with appropriate policies and guidelines. The Wilderness Society feels that this provision is unnecessary because it merely affirms existing Congressional guidance to agency managers, however, we have no objection to it.

Since the Wilderness Act became law twenty-six years ago, native populations of wildlife have thrived in the untrammelled habitats that wilderness provides. Many species of wildlife are in fact dependant upon large blocks of wild country. In Arizona, the desert bighorn sheep, bald eagle, golden eagle and peregrine falcon are examples of these wilderness dependant species.

Congress has long recognized that wildlife management activities may take place in wilderness areas. In some areas certain wildlife management activities are essential to the continuation or restoration of native populations in wilderness.

Wilderness designation does not change the underlying management purposes of the federal land agency that administers the area. For example, the management of wildlife populations through hunting is not changed by wilderness classification since, if an area was closed to hunting prior to wilderness designation, such as in a National Park, it remains closed to such use; if it was open to hunting, as in a National Forest, it would remain open to hunting. Similarly, the purpose for which an area is included in the National Wildlife Refuge System, such as wildlife conservation, does not change by wilderness designation.

In some cases the use of motorized equipment including motor vehicles, helicopters and airplanes is authorized by Congress for wildlife management activities. However, such use of motorized equipment is required to be the minimum necessary to meet the administrative needs of the wilderness. No permanent roads can be constructed in wilderness areas.

Wilderness managers are sometimes challenged by the Wilderness Act mandate to maintain the untrammelled character of an area while at the same time assuring preservation of native wildlife populations. Managers are to assure a natural balance of all wildlife species - both game and non-game - which depend upon natural conditions for their survival while not emphasizing management activities favoring some species at the expense of others.

In many parts of the desert Southwest, the restoration of natural populations of wildlife is limited by a shortage of available water supplies. This is perhaps nowhere more evident than within the range of the desert bighorn sheep in south and western Arizona. This area is occupied by a rare subspecies of the bighorn that currently exists at only a small fraction of its historic numbers. In order to preserve this species, the maintenance of existing water supplies in wilderness is permitted. Development of new water supplies is permitted as well, provided that it is essential to wildlife survival. The use of mechanical equipment by agency managers is allowed provided that it is the minimum necessary as required by the Wilderness Act.

Congress has provided guidance to agency managers about wildlife management in wilderness in the Wilderness Act and in House Interior Committee Report 98-40. The Forest Service and BLM have implemented joint guidelines applying this Congressional guidance. According to the BLM, these guidelines were developed with the cooperation of the Wildlife Management Institute and officials of the International Association of Fish and Wildlife Agencies (IAFWA). At their annual meeting in September, 1986, the IAFWA formally endorsed these policy guidelines. These guidelines are referenced in the Committee Report on HR-2570.

Under the guidelines, the following types of wildlife management activities may be permitted if properly planned and implemented to ensure maintenance of the wilderness character of an area: use of motorized equipment, use of aircraft, research and management surveys, habitat alteration, wildlife management facilities (e.g. structures to store drinking water for wildlife), chemical treatment of streams, collection of fish spawn, fish stocking, aerial fish stocking, transplanting wildlife, predator control, fire management.

To date, evidence suggests that existing Congressional guidance reasonably balances wildlife management needs with the need to ensure preservation of the wilderness values. There has been no evidence submitted demonstrating that wildlife populations cannot be satisfactorily managed under existing Congressional guidance and the provisions of the Wilderness Act. In fact, wildlife populations in wilderness appear to be doing quite well. Under existing Congressional guidance, the Forest Service and BLM have approved many different types of wildlife management projects involving motorized access, use of aircraft, use of motorized equipment, installation of manmade structures, and manipulation of the habitat. State wildlife agencies are not being prevented from managing wildlife in wilderness. Rather, they are simply being required to carefully design and implement management activities to ensure consistency with the Congressional mandate that the minimum necessary tool is used and that the wilderness character is preserved.

WATER RIGHTS

The Arizona Congressional delegation reached consensus on the water rights language included in HR-2570. The compromise language was offered as an amendment to the bill on the floor of the House by Congressman Jay Rhodes and cosponsored by Congressman Jon Kyl, Congressman Jim Kolbe, Chairman Mo Udall and Chairman Bruce Vento. HR-2571 was subsequently amended accordingly. The Wilderness Society is pleased to support this consensus provision.

The water rights provision explicitly creates a federal reserved water right for each area, establishes the priority date of the rights as the date of enactment of the act and directs the

Secretary of Interior to file for the rights in the appropriate stream adjudications. It is anticipated that the Secretary will file for these rights in stream adjudications in the Arizona state courts where the United States is joined and in accordance with the McCarran Amendment.

The Wilderness Society along with the Sierra Club and John Leshy, a law professor at Arizona State University, maintained a dialogue over the past year or so with the Arizona Department of Water Resources to anticipate any real conflicts between federal reserved water rights and wilderness. We learned that there are likely to be few, if any, conflicts because the priority date for these newly established wilderness areas will be junior to prior existing rights. Special language was proposed to address two areas along the Bill Williams River, Rawhide and Swansea, because of a complex set of water uses that must be considered along with the wilderness right. The Department also expressed a desire to not have the new wilderness right trigger an immediate stream adjudication because they are currently involved in two other complex and time consuming adjudications. Language was inserted in the House Interior Committee's Report to address these concerns.

The Arizona water rights compromise is a good approach to protecting federal reserved water rights for wilderness. There is an express reservation of water for wilderness, the procedural steps necessary to be taken to quantify them are anticipated and committee report language was agreed to. Water is the lifeblood of wilderness areas, especially in the desert southwest, and the Arizona Congressional delegation should be commended for finding a way to preserve this important resource. Because the issue of water rights in wilderness is controversial, I urge the Subcommittee to amend S-2117 to conform with the consensus House passed version of the water rights language and resist any attempts to weaken protection for wilderness water rights.

In conclusion, Mr. Chairman, I would like to ask for permission to submit three documents for the hearing record. These are The Energy and Mineral Sector in Arizona, by The Wilderness Society Economist, W. Thomas Goerold, January 1989; The American Southwest: A Vanishing Heritage, Report 1, Ecological Values of Bureau of Land Management Wilderness Study Areas in Arizona by David E. Brown, July 1989; and Wilderness Area Survey prepared by the Behavior Research Center, January 1990. That concludes my statement, Mr. Chairman and I would be happy to answer any questions that you or any other members of the Subcommittee might have.

Senator McClure. Mr. Byers.

**STATEMENT OF GEORGE G. BYERS, DIRECTOR, PUBLIC AFFAIRS,
SANTA FE PACIFIC MINERALS CORP.**

Mr. BYERS. Thank you, Mr. Chairman. I will talk about wilderness and private property rights.

Santa Fe Pacific's interest in this bill stems from the fact that our affiliate, the Santa Fe Pacific Railroad Company, owns some 96,000 acres of reserved mineral interests in seven BLM WSAs. I want to focus on the 6,400 acres which we own in the Upper Burro Creek WSA which S. 2117 would designate as wilderness.

Our ownership in BLM WSAs in Arizona was much greater before we completed a lengthy and complex minerals exchange with BLM and the Arizona State Land Department in 1988. Senator DeConcini's testimony refers to this. This exchange completely removed 109,000 acres of our mineral lands from 12 BLM WSAs, over 24,000 acres from the Grand Canyon-National Park, and over 7,000 from the Havasu Wildlife Refuge.

This exchange extended a tradition of cooperation with the Federal Government which goes back to the 1900s which led to the creation of the Grand Canyon National Park, the Petrified Forest National Park, and the Coconino National Forest.

The 1988 exchange gave BLM what it called the best possible candidates for possible wilderness designation while allowing Santa Fe Pacific to keep its mineral ownership in areas which our geologists believe have significantly high mineral potential. The exchange enabled the government to block up its holdings in these areas and pave the way for Congress now to establish nearly one half million acres of wilderness.

I should note that while our goal in the exchange was to retain high potential mineral lands, some of the lands which we gave up in 1988 do, in fact, have high potential such as those in the Mount Nutt, Wabayuma Peak and Aubrey Peak WSAs.

Santa Fe Pacific made this concession because the BLM persuaded us that these WSAs offered exceptional opportunities for wilderness designation. We were not asked by BLM to exchange our minerals in the Upper Burro Creek WSA because the BLM does not believe the area to be suitable for wilderness designation for a number of valid reasons. But we understand that a general agreement has been reached in the delegation that this area be made wilderness.

Santa Fe Pacific would prefer that Upper Burro Creek not be managed as wilderness because of our property rights and the area's high mineral potential, but we have indicated our willingness to undertake yet another exchange with BLM should Congress conclude that the area deserves wilderness status.

Our objective is to be compensated for the economic loss of valuable mineral lands included in a wilderness area and exchange of Federal mineral interests for Santa Fe Pacific mineral interests would compensate us for that loss and eliminate the difficult problem which privately owned minerals pose for BLM's future management of any wilderness area.

Although BLM has exchanged authority under section 206 of FLPMA, BLM's ability to complete a minerals exchange could be greatly improved if language similar to the exchange provisions included in the act establishing the El Malpais National Monument and National Conservation Area were added to S. 2117.

Section 504 of that act directed the Secretary to exchange Federal mineral interests out of a pool of Federal lands for Santa Fe Pacific mineral lands in the conservation area if three conditions were met. If the Secretary determined that mineral interests to be exchanged were of approximately equal value, if the exchange was not otherwise inconsistent with FLPMA, and if it was in the public interest.

The El Malpais language could be adapted along the lines of section 606 of Senator Cranston's California desert bill, S. 11, to direct an exchange of Federal mineral interests in lands to be selected by him for Santa Fe Pacific's private mineral lands. Attachment C to my testimony is the language of section 606 with suggested modifications.

Although BLM and the Arizona State Land Office have informally indicated their willingness to make another mineral exchange similar to the one made in 1988, Santa Fe Pacific is concerned that this exchange could be indefinitely delayed in the course of an overall Interior Department review of its land exchange program.

That is why we believe it is important that Congress mandate the exchange of its Upper Burro Creek mineral lands so that BLM, Santa Fe Pacific and the public will not be entangled in such a delay.

The public interest benefits in this exchange are very clear, Mr. Chairman, and that is why we believe that it is appropriate for Congress to ensure that they are obtained in a timely fashion. Thank you very much.

[The prepared statement of Mr. Byers follows:]

Statement of
George G. Byers
Director-Public Affairs

SANTA FE PACIFIC MINERALS CORPORATION

ON
S. 2117
THE ARIZONA WILDERNESS ACT
OF 1990

Before the
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Washington, D.C.

April 5, 1990

Mr. Chairman and members of the subcommittee, my name is George Byers. I am Director of Public Affairs for Santa Fe Pacific Minerals Corporation, a subsidiary of Santa Fe Pacific Corporation.

I appreciate the opportunity to testify before you today on Senator DeConcini's and Senator McCain's Arizona wilderness bill, S. 2117. Santa Fe Pacific's interest in the Arizona wilderness issue stems from the fact that its affiliate, Santa Fe Pacific Railroad Company, owns some 96,000 acres of reserved mineral interests within seven of the Bureau of Land Management's ("BLM") Arizona Wilderness Study Areas ("WSA's"). My testimony today will focus on the 6,400 acres of mineral lands that Santa Fe Pacific owns within the Upper Burro Creek WSA. S. 2117 would designate this area as wilderness while releasing to multiple use status the lands within the other 6 WSA's which contain 89,000 acres of the Santa Fe Pacific subsurface estate.

Santa Fe Pacific's mineral ownership within BLM WSA's in Arizona was much greater before we completed a lengthy and complex minerals exchange with the BLM in 1988. This exchange, called the "Mohave Desert-Grand Canyon Exchange", completely removed 109,185 acres of our mineral inholdings from 12 BLM WSA's. In addition, over 24,000 acres of our mineral lands were exchanged out of the Grand Canyon National Park and over 7,000 acres were exchanged from within the Havasu National Wildlife Refuge, enabling portions of the Refuge to be considered for wilderness designation in S. 2117.

This exchange, by the way, extended a tradition of cooperation with the federal government in Arizona which goes back to the early

1900's. Our exchanges have led to the establishment of the Grand Canyon National Park, the Petrified Forest National Park, the Coconino National Forest and the Havasu National Wildlife Refuge.

The 1988 exchange provided the BLM with what it termed as "the best possible candidates" for potential wilderness designation while allowing Santa Fe Pacific to retain mineral ownership in those areas which our geologists have deemed to have significantly high potential for economic mineral development. The exchange enabled the government to block up its holdings in these areas and thereby paved the way for Congress now to establish nearly 500,000 acres of wilderness. We appreciate the active support Senators DeConcini and McCain and Congressman Stump and other members of the Arizona Congressional delegation gave to our efforts.

It is important to note that while our goal in the exchange negotiations was to retain high potential mineral lands, some of the lands Santa Fe Pacific gave up in the exchange do in fact have high potential, such as the acreage it owned in the Mount Nutt, Wabayuma Peak and Aubrey Peak WSA's. Santa Fe Pacific was willing to make this concession because the BLM persuaded us that these WSA's offer exceptional opportunities for wilderness designation. Attachment A lists those WSA's and other important lands from which Santa Fe Pacific's mineral ownership was removed. Attachment B lists the seven WSA's in which it has retained its ownership.

Santa Fe Pacific was not asked to exchange its minerals within the Upper Burro Creek WSA because the BLM did not recommend the area to be suitable for wilderness designation. The BLM study of

the area found that it had high potential for a variety of minerals. In addition, BLM's study points to the fact that the area has 163 mining claims in addition to our 6,400 acres. BLM also cited the WSA's future manageability problems and lack of essential wilderness characteristics as other reasons why this WSA should be returned to multiple use.

We understand that a general agreement has since emerged out of discussions among members of the Arizona Congressional delegation that this area be designated as wilderness. Santa Fe Pacific would prefer that Upper Burro Creek not be managed as wilderness because of our property rights and the area's high mineral potential. However, the company has indicated its willingness to undertake yet another exchange of its mineral interests should Congress conclude that the area deserves wilderness status. Our objective is to be compensated for the economic loss of valuable mineral lands resulting from their inclusion in a wilderness area. An exchange of federal mineral interests for Santa Fe Pacific mineral interests would compensate Santa Fe Pacific for that loss and, at the same time, would eliminate the difficult problem which privately-owned mineral interests pose for BLM's future management of any wilderness area.

Although the Secretary of the Interior presently has the authority to carry out such an exchange under section 206 of the Federal Land Policy and Management Act, BLM's ability to complete a minerals exchange could be greatly improved if language similar to the exchange provisions included in the act establishing the El

Malpais National Monument and National Conservation Area, Public Law 100-225, were added to S. 2117. Section 504 of that act directed the Secretary to exchange federal mineral interests out of a pool of identified federal lands for Santa Fe Pacific mineral interests located within the boundaries of the conservation area. The provision conditioned the Secretary's duty to exchange upon his determining that 1) based upon existing mineral information, the private and federal mineral interests to be exchanged were approximately equal value, 2) the exchange was not otherwise inconsistent with FLPMA, and 3) it was in the public interest.

Unfortunately, the BLM has not had sufficient time to identify a pool of federal mineral interests in Arizona suitable to exchange for the Santa Fe Pacific mineral estate within the Upper Burro Creek WSA. Nevertheless, the El Malpais language could be adapted along the lines of section 606 of Senator Cranston's California Desert bill, S. 11, to direct the Secretary to exchange federal mineral interests in lands to be selected by him for Santa Fe Pacific's private mineral properties. Conditioning that directive upon a Secretarial finding similar to that required by the El Malpais provision reserves adequate discretion in the Secretary to ensure that the exchange is in the public interest. Attachment C is the language of Section 606, with necessary modifications underscored to adapt it to this situation.

Several recent BLM land exchanges have become the subject of Congressional attention. We are concerned that these developments might lead to a reexamination by the BLM of its exchange policy and

procedures, and possibly to an administrative moratorium on land exchanges.

Although both the BLM and the Arizona State Land Office have informally indicated their willingness to make another mineral exchange similar to the one made in 1988, Santa Fe Pacific is concerned that the exchange could be indefinitely delayed in the course of an overall Interior Department review of its land exchange program. That is why Santa Fe Pacific believes that it is important that Congress mandate the exchange of its Upper Burro Creek mineral lands, so that the BLM, Santa Fe Pacific and the public will not be entangled in such a delay. Where the public interest benefits of an exchange are as clear as they are here, we think it is entirely appropriate for Congress to ensure that they be obtained in a timely fashion.

In closing, Mr. Chairman, I would like to commend the Arizona Congressional delegation and its staff for working so hard to fashion what I believe is a reasonable compromise to the Arizona wilderness issue. I will be pleased to try to answer any questions the subcommittee may have on my testimony.

**MOHAVE DESERT - GRAND CANYON
MINERAL EXCHANGE BETWEEN BLM
AND THE
SANTA FE PACIFIC RAILROAD COMPANY**

1. BLM

<u>WILDERNESS STUDY AREA</u>	<u>TOTAL WSA ACREAGE</u>	<u>SFPRR MINERALS OWNERSHIP REMOVED BY EXCHANGE</u>
Arrastra Mountain	114,410	7,361.00
Aubrey Peak	15,440	10,295.28
Black Mesa	8,512	11,421.59
Crossman Peak	38,620	5,742.30
Gibraltar Mountain	25,357	7,909.20
Lower Burro Creek	22,300	1,879.08
Mount Nutt	29,985	4,200.61
Mount Tipton	21,190	11,959.43
Planet Peak	17,570	5,040.00
Swansea	42,575	6,935.84
Wabayuma Peak	38,450	22,908.68
Warm Springs	<u>118,455</u>	<u>13,532.06</u>
	492,864	109,185.07

2. FISH & WILDLIFE SERVICE

Havasu National Wildlife Refuge	7,418.73
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3. NATIONAL PARK SERVICE

Grand Canyon National Park & Lake Mead National Recreation Area	<u>24,469.32</u>
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TOTAL SANTA FE PACIFIC RAILROAD COMPANY ACREAGE TRANSFERRED TO FEDERAL GOVERNMENT	141,073.12
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BLM MINERALS TRANSFERRED TO SANTA FE PACIFIC IN YAVAPAI COUNTY	140,934.24
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(Attachment A)

SANTA FE PACIFIC RAILROAD COMPANY'S
MINERAL ACREAGE REMAINING IN
BLM ARIZONA WILDERNESS STUDY AREAS

<u>WSA NAME</u>	<u>WSA NO.</u>	<u>SFRR ACREAGE*</u>
Black Mountains North	2-09	9,040
Burns Spring	2-10	8,320
Grand Wash Cliffs	2-15	4,620
Mohave Wash	5-7C/5-48/2-52	57,800
Planet	2-53	7,400
Rawhide Mountains	2-58	2,560
Upper Burro Creek	2-62	<u>6,400</u>
		96,140

* Approximate acreage figures provided by BLM, Kingman, RA

(Attachment B)

101st CONGRESS
1st Session

S. 11

To provide for the protection of the public lands in the California desert.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (Legislative day, JANUARY 3), 1989

Mr. CLEGG introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for the protection of the public lands in the California desert.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "California Desert Protec-
4 tion Act of 1989".

5 **FINDINGS AND POLICY**

6 **SEC. 2. (a)** The Congress finds and declares that—
7 (1) the federally owned desert lands of southern
8 California constitute a public wildland resource of ex-
9 traordinary and inestimable value for this and future
10 generations;

(Attachment C)

1 (b) Within six months from the date of enactment of this
 2 Act, the Secretary of the Interior shall notify the chairman of
 3 the State lands commission what State lands or interests
 4 therein are within the wilderness areas and national park
 5 units designated by this Act. The notice shall contain a list-
 6 ing of all public lands or interests therein within the bound-
 7 aries of the State of California which have not been with-
 8 drawn from entry and which the Secretary, pursuant to the
 9 provisions of sections 202 and 206 of the Federal Land
 10 Policy and Management Act of 1976, has identified as appro-
 11 priate for transfer to the State in exchange for State lands.
 12 Such listing shall be updated at least annually.

13 (c) If the chairman of the State lands commission gives
 14 notice to the Secretary of the State's desire to obtain public
 15 lands so listed, the Secretary shall notify the chairman in
 16 writing whether the Department of the Interior considers the
 17 state lands within the wilderness areas and national park
 18 units to be of equal value to the list of lands the chairman has
 19 indicated the State wishes to obtain. It is the sense of the
 20 Congress that the exchange of lands and interests therein
 21 with the State pursuant to this section should be completed
 22 within two years after the date of enactment of this Act.

23 MINERAL EXCHANGES

24 SEC. 606. (a) The Secretary of the Interior is authorized and directed
 25 to exchange the Federal mineral interests in lands he may select
 26 State of Arizona ~~California~~ for private mineral interests in lands locat-

49

Upper Burro Creek Wilderness

1 ed within the boundaries of the ~~wilderness areas and national~~

2 ~~park units designated by this Act if—~~

has agreed to such exchange as

3 (1) the owner of such private mineral interests has
4 made available to the Secretary all information re-
5 quested by the Secretary as to the respective values of
6 the private and Federal mineral interests to be ex-
7 changed; and

8 (2) on the basis of information obtained pursuant
9 to paragraph (1) and any other information available,
10 the Secretary has determined that the mineral interests
11 to be exchanged are of approximately equal value; and

12 (3) the Secretary has determined—

13 (A) that except insofar as otherwise provided
14 in this section, the exchange is not inconsistent
15 with the Federal Land Policy and Management
16 Act of 1976; and

17 (B) that the exchange is in the public inter-
18 est.

19 (b) The Secretary shall file a legal description of the
20 mineral interest areas exchanged pursuant to this section
21 with the Committee on Interior and Insular Affairs of the
22 House of Representatives and the Committee on Energy and
23 Natural Resources of the United States Senate. Such legal
24 description shall have the same force and effect as if included
25 in this Act, except that the Secretary may correct clerical

Senator McCLURE. Mr. Adams?

STATEMENT OF LARRY D. ADAMS, ARIZONANS FOR RESPONSIBLE WILDERNESS

Mr. ADAMS. Thank you. My name is Larry D. Adams from Bullhead City, Arizona. I am here representing Arizonans for Responsible Wilderness. This is a hastily formed association of traditionally conflicting interest groups that are united in their opposition of the Arizona Wilderness Act, S. 2117.

I am a native-born Arizonan and raised in rural central Arizona and had lived the past 25 years in western Arizona at Bullhead City, immediately adjacent to many of the wilderness areas under discussion here today. I have spent my entire life in the rural back country of Arizona.

We are in disagreement with S. 2117 for a variety of reasons, many of which we feel have substantial national consequences. We object strenuously to the fact that completed mineral explorations have not been done on all of the proposed wilderness areas and that substantial information concerning mineral deposits in these wilderness areas have apparently been ignored in the drafting of this bill.

We further object to the total land area included in this wilderness bill. These lands are centered around primarily retirement communities and we feel that wilderness discriminates against the retired and handicapped segments of our population. Remember, please, that the lands in question are a very harsh, rugged environment, and only the most physically capable individuals will be able to enjoy them. We object to the fact that wilderness study areas were not signed to inform citizens of Arizona that these lands were under consideration for wilderness designation, and what it means to traditional users if they do in fact become wilderness.

There were 79 wilderness study areas involved in this entire process. It is a physical impossibility to begin to address the concerns with each of these proposed wilderness areas in the five minutes awarded each speaker.

We have areas designated for wilderness with roads or vehicle ways through them that have been in existence for 50, 100 and 150 years that are declared roadless and untraveled by man. We have at least one instance where a public or municipal water source is located within a wilderness boundary.

A prevalent misconception by the general population is that wilderness is beneficial to wildlife and this, at least in Arizona, is just not true. The scarcity of water and marginal habitats for wildlife require closer, hands-on management than many areas of our nation. Arizona already has vast areas of wilderness, and history will show that it has not necessarily been a godsend to wildlife.

We further believe that the right to manage wildlife in Arizona is the right of the State of Arizona.

Under language in this bill as well as the original Wilderness Bill of 1964, these rights are not guaranteed. Too often we have seen and heard of instances where specific language protecting individual, private, State and military rights was incorporated in in-

dividual State wilderness bills only to be overturned in the courts in favor of language in the original Wilderness Bill of 1964.

The elitist proponents of wilderness have a history of compromise to facilitate passage of individual wilderness bills relying on and being successful with court action at some future date to achieve those original goals.

Senators, we often dwell on sins of the past concerning our public lands. It is important to remember that in 1990 we collectively know more about the environment and deal with it more effectively than we ever have in the past. As time passes we will continue to learn and technology will improve to enable us to do an even better job in the future than is being done today.

Wilderness designation is extreme. Statistics show that less than 5 percent of the population utilize wilderness areas. There are many varied and legitimate needs for the use of our public lands, and wilderness designation ignores all of these other needs.

It is our contention that there are many ways other than wilderness designation, which is an extreme approach, to achieve the common goals of both proponents and opponents of wilderness. The common goal is the protection and enhancement of the environment.

We ask that you carefully examine the total status of land ownership in Arizona. With the Indian reservations, vast acreage in national parks, recreational areas, national monuments, military reservations, existing wilderness, some 1.5 million acres of public lands without access because of private ownership patterns, there is not much public land left accessible to our citizens. Wilderness will shift and concentrate recreational burdens to other public lands, further deteriorating their values and necessitate more and more restriction on these remaining lands.

We are currently conducting our review without the benefit of maps to evaluate exactly where we are with this bill at this time. We would ask that this process be slowed down to allow our various groups the opportunity to evaluate the current status of these individual wilderness areas.

Senators, I thank you for your time and opportunity to speak. Please keep in mind that although it is five minutes of your time here today, that it is the lifestyle of 500,000 Arizonans that ride with you today. Thank you.

[The prepared statement of Mr. Adams follows:]

TESTIMONY OFFERED BY ARIZONANS FOR RESPONSIBLE WILDERNESS
REPRESENTATIVE LARRY D. ADAMS
BEFORE
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

April 3, 1990

Mr. Chairman, Senators: My name is Larry D. Adams from Bullhead City, Arizona. I am here representing Arizonans for Responsible Wilderness. This is a hastily formed association of traditionally conflicting interest groups that are united in their opposition to the "Arizona Wilderness Act - Senate Bill #2117. The organizations I currently represent are listed on the back of my written testimony.

I am a native Arizonan, born and raised in rural central Arizona and have lived the past 25 years in Western Arizona at Bullhead City, immediately adjacent to many of the Wilderness areas under discussion here today. I have spent my entire life in the rural back country of Arizona.

We are in disagreement with Senate Bill #2117 for a variety of reasons, many of which we feel have substantial national consequences.

The original language in 2117 concerning water is unacceptable to us. I understand that language has been amended on the floor of the House but as yet our people have not been furnished copies of the amended language to judge whether or not the new language is sufficient to protect existing water rights or the interest of the people of Arizona.

We object strenuously to the fact that completed mineral explorations have not been done on all of the proposed Wilderness areas and that substantial information concerning mineral deposits in these wilderness areas have apparently been ignored in the drafting of this bill.

We further object to the total land area included in this Wilderness Bill - an additional 2+ million acres of our public lands. These lands are centered around primarily retirement communities and we feel that wilderness discrimination against the retired and handicapped segments of our population. Remember please that the lands in question are a very harsh, rugged environment that only the most physically capable individuals will be able to enjoy.

We object to the fact that wilderness study areas were not signed to inform citizens of Arizona that these lands were under consideration for wilderness designation and what it means to the traditional users if they do in fact become wilderness.

The same 79 Wilderness study area involved in this entire process. There have been three public hearings on the proposals that we are aware of, one in Phoenix, one in Lake Havasu City in Arizona and this on today. It is a physical impossibility to begin to address the concerns with each of these proposed wilderness areas in the 5 minutes awarded to each speaker.

We have areas designated for wilderness with roads or vehicle ways through them that have been in existence for 50, 100 and 150 years that are declared roadless "and untrammelled by man". We have at least one instance where a public or municipal water source is located within the wilderness boundary.

A prevalent misconception by the general population is that wilderness is beneficial to wildlife and this, at least in Arizona is just not true. The scarcity of water and marginal habitats for wildlife require a more hands on management than many other areas of our nation. Arizona already has vast areas of wilderness and history will show that it has not necessarily been a godsend for wildlife.

We further believe that the right to manage wildlife in Arizona is the right of the State of Arizona. Under language in this bill as well as the original wilderness bill of 1964 these rights are not guaranteed. Too often we have seen and heard of instances where specific language protecting individual, private, state, and military rights was incorporated in individual state wilderness bills only to be overturned in the courts in favor of language in the original wilderness bill of 1964. The elitist proponents of wilderness have a history of compromises to facilitate passage of individual wilderness bills relying on and being successful with court action at some future date to achieve there original goals.

Senators, to often we dwell on sins of the past concerning our public lands. It is easy to criticize grazing, timber and mining abuses of the first and even middle part of this century. It is important to remember that in 1990 we collectively know more about the environment and deal with it more effectively than we did in the past. As time passes we will continue to learn and technology will improve to enable us to do an even better job in the future than is being done today. Wilderness designation is EXTREME. Statistics show that less than 5% of the population utilize wilderness areas. There are many varied and legitimate needs for the use of our public lands and wilderness designation ignores all of these other needs.

The Bureau of Land Management in cooperation with the State of Arizona, the mining, timber and cattle industry and many individual interests have in recent years been involved in extensive land trades to block up public ownerships, the end result being the ability to better protect everyone's individual interest and afforded a more balanced management of our public land. It is our contention that there are many ways other than wilderness designation which is an extreme approach to achieve the common goals of both proponents and opponents of wilderness. The common goal is the protection and enhancement of the environment.

We ask that you carefully review the total status of land ownership in Arizona. With National Parks, National Monuments, Military Reservations, existing wilderness areas some 1.5 million acres of public lands without access because of private ownership patterns there is not that much public land left accessible to our citizens.

Wilderness will shift and concentrate recreational burdens to other public lands further deteriorating their values and necessitate more and more restrictions on these remaining lands.

We are currently conducting our review without the benefit of maps to evaluate exactly where we are with this bill at this time. We would ask that this process be slowed down to allow our various groups the opportunity to evaluate the current status of these individual wilderness areas.

Senators, I thank you for your time and the opportunity to speak. Please keep in mind that although it is 5 minutes of your time here today it is the life style of 500,000 or more Arizonans that ride with your decision today.

Senator McCCLURE. Thank you very much, Mr. Adams. Let me just follow through on a comment that you made and ask a question in regard to it. Two or three places in your statement you refer to the fact that five minutes just is not long enough to comment on each of the areas, and you have asked us to give you an opportunity to comment.

You certainly have that opportunity. It is not an unlimited opportunity, however, but to the extent that you can and wish to comment further, you can file your statement with the committee. To the extent you can and wish to comment on the individual portions of the wilderness proposals, you have that opportunity to also. Again, time is not unlimited and I have no idea what the chairman will wish to designate the limitation on time for comment. But I do invite you to submit further comments for the record, if you wish to do so.

Mr. ADAMS. Thank you, Senator. We will do that extensively.

Senator McCCLURE. May I ask a question of Mr. Friesner and Mr. Norton in particular? Both of you make a statement with which I take no exception, but I want to know what you mean by it. That is the purpose of the hearing, I guess. Both of you indicate that you are satisfied with the water language as written into the House bill, and both of you make statements, please don't, in the process, weaken the protection for the wilderness or for the uses of water in wilderness preservation.

Mr. Plummer, in his testimony, indicated that he believed that the appropriate uses for water were provided for in State statute and to the extent wilderness values needed water for their protection that that could be accommodated and would be accommodated under State process pursuant to State law and pursuant to State statute.

Do you have any disagreement with that statement that Mr. Plummer made, Mr. Friesner?

Mr. FRIESNER. No, your honor, I do not.

Senator McCCLURE. Mr. Norton?

Mr. NORTON. Senator, I am not a water lawyer. In fact, I am not a lawyer at all and this is, as you know—and you certainly know this far, far better than I—a very complex subject.

If I understand the question, I would certainly agree that indeed, the applications under State law for State in-stream flows may in some cases be in effect the same water that, in effect, the wilderness water rate would have. And so, indeed there may be some cases such as that. However, I am not confident and comfortable that that State in-stream protection is enough, and that is why we feel it is important that there be a Federal reserve water right as well. There have been, I believe, several dozen applications for the State in-stream flow, and only a couple have been granted. There have not been any court tests of that and that sort of thing, so we feel it is important that the Federal reserve water right, which provides more assurance that that protection will be provided, be allowed to continue.

Senator McCCLURE. All right.

Mr. Friesner, did you wish to say something further?

Mr. FRIESNER. Let me enlarge on that just briefly. I am an attorney in Arizona. I have been a prosecutor for all my professional life, so my expertise is criminal law, not water law.

Senator McCLURE. We hope that they are not exactly the same. [Laughter.]

Mr. FRIESNER. We do hope they are mutually exclusive, but in some cases, they are not. We are satisfied because we know that professionals in water law have looked at this language very closely. Mr. John Lessey, at the Arizona State University of Law; David Baron, Arizona Center for Law in the Public Interest; and a variety of lawyers from the Department of Water Resources have looked at this language. What I know about water law is that this codifies what exists already in Arizona. If no language were proposed for the bill at all, the same procedures would go forward.

Senator McCLURE. I will invite each of you to submit further answer to that question, if you desire to do so. I do not want to ask anybody to make an unguarded comment, which, if after consultation with others you found was to be overbroad. But I am concerned with the response you gave, Mr. Norton, because I am not sure that I quite understand it to be in concert with the other witnesses who testified.

As I understood what you said, you believe that there may be instances in which the Federal reservation will be broader of protection of wilderness water rights than is State statute. And therefore, you seek by this language to invest in the Federal Government a greater right than is currently true under State law. If I understand Mr. Friesner, it is his understanding quite the contrary.

Mr. NORTON. Mr. Chairman, I think we are going to take you up on your offer of providing some additional information for the record.

[Laughter.]

Senator McCLURE. Thank you very much, because I agree with what the Chairman has said. We hope to complete this act without ambiguity. And I think that is the most important consideration that I have, is that all parties have a similar understanding of what the law is and what you desire it to be, and that we state it in unambiguous terms to reflect what that understanding is. So I will explore in the questions that I ask, whether or not there is an understanding or a misunderstanding as to what is intended. And secondly, try to work with the members of the delegation from Arizona and the other members of this committee to devise language that clearly states what that understanding is.

I think one of the worse things we can do is to be less than precise with respect to this language and invite rancor and dissention and continued litigation over the meaning of the language if, indeed, we have it in our capacity to avoid that.

I will also make a—I do not know whether it is a general statement or a specific statement, Mr. Norton, on the fourth page of your testimony, in the middle of the page you say, "in some cases the use of motorized equipment, including motor vehicles, helicopters and airplanes as authorized by Congress for wildlife management activities. As a matter of fact, there are some few, but very few, specific provisions with respect to motorized equipment," et cetera, but not simply limited to wildlife management activities.

We have, I think, tried to be very—use of motorized equipment is the exception and not the rule. And when there is an exception, we try to spell it out within very carefully defined limits. And I would invite you without challenging your statement at all, invite you to list those instances which you have in mind as to the kinds of provisions that Congress has made in this regard. Would you do so?

Mr. NORTON. Certainly, if I might, Mr. Chairman, to clarify that quickly, I was referring there to generic authority in the Wilderness Act itself, dealing with the use of motorized equipment when the minimum necessary. The interpretation of that, which the Wilderness Society certainly supports, and which I think is also codified in the guidelines that the BLM and Fish and Wildlife Service and other agencies have in place, does allow the use of motor vehicles when it is the minimum necessary to achieve those purposes spelled out in the Wilderness Act. And indeed, I'd be happy to provide several examples where we, indeed, agree, that certain activities of that sort, and use of motor vehicles may be the minimum necessary and therefore, should be—

Senator McCLURE. If you would provide for the record the language to which you refer in the examples to which you refer.

Mr. NORTON. We will do so.

Senator McCLURE. You have heard some of the previous questions, and I think you have been here in the room during the entire hearing this afternoon. With respect to the activities of the Border Patrol, the Drug Enforcement Agency, and others with respect to the interdiction of drug traffic along the Mexican boarder. In those instances, where a wilderness may be created along the boarder, we may indeed have created some ambiguity with some difficulty with respect to law enforcement activities.

Of course, there is always the possibility that you could withdraw to the perimeter of the wilderness area, which would be an invitation for unlawful activities within the wilderness area. We are going to seek to find an answer to that, and I do not know what that answer will be, but certainly it is something that we ought to deal with.

Mr. Byers, you asked us to specifically legislate or mandate an exchange of property. You have succeeded in making an exchange on other areas where the BLM was managing for wilderness. Do you perceive that you will have further difficulty with respect to the land exchange necessary if other areas are included in wilderness?

Mr. BYERS. Senator, we do. The administrative exchange that we undertook and completed in 1988 took about six years to finish.

Senator McCLURE. You are lucky if it did not take longer than that. You are lucky if you got there at all.

Mr. BYERS. We are. That is true. We had a great deal of help from the Arizona State Land Office as well as the BLM. They were a party to that. But BLM has conducted a number of exchanges in Arizona. These exchanges have come under a great deal of scrutiny, even though BLM did not do anything wrong. There is a concern that there will be some sort of a halt or delay in land exchange programs in Arizona. And BLM, while it has indicated to us its willingness and the State Land Office as well, to go ahead and do one more exchange with us, we are concerned that this is

going to take a long, long time, and we just want to be sure with this language that that does not happen.

Senator McCLURE. Well, certainly, I do not want us to overlook the necessity of treating fairly with property rights where they are involved, and I am sure that the rest of the committee will agree that those property rates must be respected. Exactly how we will do that in this legislation, of course, is subject to the will of the committee.

Mr. Adams, I am told by staff that we can assure you that the record will be left open for at least 2 weeks for further comments, if you have them. Obviously, if you have comments that you are not able to get in by that time, and I can recognize the difficulty when you are dealing with this many separate units covering so much territory within the State, that you may wish to have more time than that, or will not be able to complete it within that time. I would invite you to get as much done. I suggest you get as much done within the next 2 weeks as is possible for you to do. And until this matter is finally concluded in the Congress, certainly you have the right of every citizen to approach any member of the Congress with further information. But the earlier you can get it here, the more useful it will be and the more likely it will be to serve the cause you represent.

I know that there will be a number of questions to be submitted by various members of the committee. I know the chairman has questions that he wishes to submit for response in writing.

Again, and I do not mean to belabor the subject, I am not quite certain that I know what is meant by water necessary for the purposes of the wilderness act. That is a subjective, sometimes subjective, evaluation in the minds of several people. I do not know we define that. The better we can define it, the more comfortable I will be. I did not agree with the court in the *Colorado* case. I did agree with the court in the *New Mexico* case. And while the guidelines on the *New Mexico* case may not be specific, they were perhaps more specific than the language in this statute.

And in order to avoid the misunderstanding, if you have a further definition of what those rights are, I would like to see it. And I know—well, let me give a specific that I know will offend someone. I hope it does not offend you. And that is in the Dinosaur National Monument on the Utah-Colorado boarder, the people who use the river for kyacking asserted Federal preeminence and Federal preemption in order to preserve the white-water character of the river flowing through the Dinosaur National Monument. The district court hearing that case found against the people who were asserting their right, said it has little or nothing to do with the purpose for which the monument was established.

I know that within the Department of the Interior, at the time that court decision was made, they questioned for a moment, for some time, as to whether to appeal that case. And they decided not to appeal the case, not because they disagreed with the claim of the people that were claiming Federal preemption, they decided not to appeal because they were afraid they would lose the case, and so they let it stand.

And I mention that only because that seemed to me to be an extreme case of overreaching on the part of people who had a legiti-

mate concern over the use of the river but sought to use the establishment of a national monument in a way that was never intended by the Congress.

I seek to avoid, as far as it is humanly possible, any such assertions in the future. And I am very much concerned that what is the reservation for uses appurtenant or necessary or implied by wilderness reservation is a somewhat nebulous term. The greater definition that we can give it, the more comfortable that I will be with the outcome. And in fairness to all the parties, I think we should be as precise as we know how to be.

All witnesses will have a period of 2 weeks in which to file further comments. All members will have the opportunity to submit questions for response in writing to the record.

If there be no further matter to come before the subcommittee, it stands adjourned.

[Whereupon, at 4:55 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240



IN REPLY REFER TO
1750(140)

4.1.9

Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands,
National Parks and Forests
Committee on Energy & Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your April 19, 1990, letter in which you enclosed questions submitted by Senator McClure and Senator Wallop relating to the April 5, 1990, hearing before your Subcommittee regarding S. 2117, a bill to designate certain lands as wilderness in the State of Arizona, and H.R. 2570, a bill to provide for the designation of certain public lands as wilderness in the State of Arizona.

If you have any further questions or need additional information, please let us know.

Sincerely,

A. Jamison
Director

Enclosures

(191)

USAV-00004811

Q 1. The Department has already applied for certain water rights for recreation, fish and wildlife. If granted, would those rights be adequate for the Bill Williams wilderness area?

A. We believe the BLM's water right application No. 33-94245 for 25,548 acre feet annually, if granted, would be adequate for the Rawhide and Swansea proposed wilderness areas on the Bill Williams River below Alamo Dam. However, the Corps of Engineers' release schedule from Alamo is uncertain and we will need to continue working with them on it.

There are two limitations with the right which can be obtained under Arizona State law. First, the right is limited to two beneficial uses - wildlife, including fish, and recreation. Although there may be a risk, we believe quantification under these beneficial uses will be adequate to maintain riparian habitat and to provide for the specific requirements of endangered or threatened species. Second, there is always the possibility that the State legislature could change the law. Under existing State law, the rights applied for would be adequate for the areas downstream of Alamo Dam.

Q 2. Does the Department have any problem with the adequacy of Arizona State law, either in substance or procedure, in acquiring necessary water rights for management of these areas which in the Department's view would warrant the preemption caused by the assertion of a reserved right?

A. No, there would be no problem as long as the Arizona Department of Water Resources (DWR) initiates and follows through on its process to permit instream flow claims.

Q 3. Would the Department agree that there are areas proposed for wilderness in which a reserved right would be meaningless given that there is either no appurtenant water or that the appurtenant water is fully appropriated?

A. Yes, reserved rights will not be pursued where there are no water sources appurtenant to the areas.

Q 3(a). If the language of the House measure were enacted, how would the Department proceed to "protect" a reserved right where there is no appurtenant water or where the water is fully appropriated?

A. Instream flow rights provide valuable protection even where the stream is fully appropriated in a consumptive use sense. While existing rights are "consumptive" in nature, an instream flow right is "non-consumptive" in nature. Thus, a more recent non-consumptive instream flow right does not in any way affect existing consumptive use rights. The non-consumptive use instream flow right is, however, valuable in order to protect against potential future actions which could affect the flow, such as transfers of water rights or new upstream appropriations.

Q 3(b). Would you oppose transfers of senior rights or attempt to intervene in any change in use proceedings in the State?

A. If the attempted change would adversely affect the BLM's existing instream flow water rights, we may have to oppose the proposed change. This kind of issue must be addressed on a case-by-case basis. We would need to examine the facts of each individual case.

Q 4. Your proposed amendment on Alamo speaks to management of the areas, but not to any limitation on the quantification of the reserved right. Do you believe that the reserved right should be subordinated to the operation of Alamo Dam or do you believe that the operation of Alamo and subsequent efforts by Scottsdale to obtain water either through acquisition of additional appropriations or change in use should be subject to the reserved right?

A. A reserved right with a priority date of 1990 is already subordinate to the flood control operation of Alamo Dam. In other words, the flood control directive of Congress in regard to that dam will dictate the operation of the reservoir by the Army, and the downstream water right obtained by the BLM will have to be subject to that operation.

The Scottsdale efforts are a completely different matter. The Scottsdale ranch is downstream of the BLM wilderness areas, so the BLM water right can only serve to help Scottsdale by keeping water flowing in the river. The city's attempt to appropriate additional water from the Bill Williams River, however, has at least three limitations. First, the city's plans may prove to be infeasible for a number of reasons and, therefore, the application could easily be rejected by the Arizona DWR sometime in the future. Second, the city's application has been opposed by the Central Arizona Project's (CAP) local management entity, the Central Arizona Water Conservation Department (CAWCD). CAWCD's position is that the State committed the surplus flows of the Bill Williams to the CAP when the CAP was authorized by Congress in 1968. This would present a serious barrier to the city's application. Third, the city's application conflicts with the presently unquantified reserved water right for the Bill Williams Unit of the Havasu National Wildlife Refuge.

The city's application to appropriate the surplus water on the Bill Williams River is considered speculative. Nevertheless, the application predates the BLM's application. So, if all or part of the city's application were granted by Arizona's DWR, the BLM water rights would be subordinate.

Q 5. How long would it take the Bureau of Mines and the U.S. Geological Survey to study and report on the nine areas you referred to on page 10 of your written testimony?

A. Because the BLM has recommended that the nine areas are unsuitable for wilderness designation, we have never requested the Geological Survey or the Bureau of Mines to initiate studies. The normal timeframe for completing such studies and reports is three years, but we have been advised that the agencies could probably complete them in about two years. However, we do not intend to request a study.

Q 6. The municipal water supply for the town of Oatman lies within the proposed Mt. Nutt wilderness area. What difficulties will be encountered by the officials of Oatman in maintaining their facilities within the wilderness area?

A. Although the pipeline is not currently authorized, we believe we can authorize it by permit (a revocable three-year authorization) under the authority of section 302(b) of the Federal Land Policy and Management Act. Once authorized, the BLM will work with the city to determine the equipment, techniques, and schedules needed for routine as well as emergency repair. We understand that this pipeline has a history of being undependable, and that the community is in the process of investigating alternative water sources.

Q 7. The designation of wilderness in Arizona will require additional management responsibilities; i.e., regulating road closures, off-road traffic, etc. How much additional personnel and monies will be required by the BLM to properly and adequately manage those additional wilderness areas?

A. We are still in the process of fine tuning our personnel and budget needs for FY 1991 assuming wilderness designation. However, we currently estimate a total dollar need of about \$2.5 million for wilderness management in Arizona. This reflects total funding needs of \$1,690,000 in the wilderness subactivity, \$40,000 in mining law administration, \$100,000 in lands and realty, \$70,000 in soil, water, and air, and \$600,000 in cadastral survey. These funding levels would support about 29 new positions - 8 wilderness specialists, 5 rangers, 1 geologist/mining engineer, 3 realty specialists, 2 hydrologists, and 10 surveyors.

INSERT FOR THE RECORD

HOUSE SENATE	APPROPRIATIONS COMMITTEE	HOUSE SENATE	ARMED SERVICES COMMITTEE	HOUSE SENATE	OTHER
HEARINGS START 8 APR 1990	TRANSCRIPT PAGE NO.	LINE NO.	INSERT NO.	<input checked="" type="checkbox"/>	ENCLOSURE + Natural Resource
					Question 1

BLM Testimony - Arizona Wilderness Act

Question: S. 2117 and H.R. 2570 would designate wilderness areas within the State of Arizona. Please describe in detail military flight patterns (low level, subsonic, etc.) and use over the proposed wilderness area.

Answer: The enclosed information provides details on military flight patterns and use over the proposed wilderness area:
 Enclosure: (1) Joint Operations Graphics (Air), (three maps). (2) Military Training Routes, Chapters 1 & 2 (extracts).

INSERT FOR THE RECORD

HOUSE SENATE	APPROPRIATIONS COMMITTEE	HOUSE SENATE	ARMED SERVICES COMMITTEE	HOUSE SENATE	OTHER
HEARING DATE	TRANSCRIPT PAGE NO.	LINE NO.	INSERT NO.	Question 2	

BLM Testimony - Arizona Wilderness Act

Question: How will wilderness designation of these areas impact the military's ability to continue their operations and activities?

Answer: Portions of the following air routes are affected:

<u>Route No.</u>	<u>Points</u>	<u>Altitudes</u>
VR-231	A,B,C,D	100'-6000' AGL
VR-242	E,F,G	300'-1500' AGL
VR-245	G,H,I	300'-5000' AGL
VR-283	M,N,O	500'-1500' AGL
VR-1267	F,G,H	200'-1500' AGL
VR-216	F,G	500-ALG-400' MSL
VR-250	D,E,F	SFC-7000' MSL
VR-272	E,F,G	SFC-5000' MSL

These routes range in width from two miles to five miles and may vary by route leg. All are subsonic, but high speed flights, up to 500 knots, occur at times. If these routes are not grandfathered by statutory overflight language, all of the tactical training routes accessing R-2301 range will be rendered unusable. Tactical training requires low, high speed flight, during day and evening hours. The lands proposed for wilderness in Title I underlie virtually all unrestricted airspace in Yuma and LaPaz counties.

Additionally, the Army Corps of Engineers currently has an approved civil works project, the Alamo Dam Project. The wilderness designations of Arrastra Mountains and Rawhide Mountains areas directly affect this project. After reviewing the map delineating the two wilderness areas, it appears that a portion of the Alamo Reservoir is included within the wilderness designation. The Arrastra Mountains wilderness area (no. 59) should be amended to remove the area bordered by the Alamo Lake to, at a minimum, the flood pool elevation. In addition, we recommend that a 200 lineal foot buffer zone be created between Alamo Lake and the wilderness area. This buffer zone will serve to ensure that power boats and other uses of the lake are less perceptible to wilderness users.

INSERT FOR THE RECORD

HOUSE	APPROPRIATIONS COMMITTEE	HOUSE	ARMED SERVICES COMMITTEE	HOUSE	OTHER
SENATE		SENATE		<input checked="" type="checkbox"/> SENATE	
HEARING DATE	TRANSCRIPT PAGE NO.	LINE NO.	INSERT NO.	Question 3	
6 APR 1990					

BLM Testimony - Arizona Wilderness Act

Question: Do You have any Memoranda of Understanding or Agreements with either the Bureau of Land Management or Fish and Wildlife Service to conduct operations and/or activities at the present time? Please submit copies of any agreements for the record.

Answer: We do not have Memoranda of Understanding or Agreements with either the Bureau of Land Management or Fish and Wildlife Service with respect to any of the proposed wilderness areas. A previous Memorandum of Understanding with the Fish and Wildlife Service, regarding the Cabaza Prieta Refuge expired on 24 March 1990. A draft two year extension of the previous agreement has been prepared and is being review^d by the Fish and Wildlife Service. The extension is not substantially different than the expired MOU as it pertains to use of the refuge by all parties. It provides for overflights at 1500' or above, except in mutually approved low level corridors. A copy of the previous Memorandum of Understanding is provided is attached.

INSERT FOR THE RECORD					
HOUSE	APPROPRIATIONS COMMITTEE	HOUSE	ARMED SERVICES COMMITTEE	HOUSE	OTHER
SENATE		SENATE		SENATE	
HEARING DATE	TRANSCRIPT PAGE NO.	LINE NO.	INSERT NO.	Question 4	

BLM Testimony - Arizona Wilderness Act

Question: Do you have any suggested statutory language which would allow military operations and/or activities to continue at current levels over these areas?

Answer: The following language is recommended as an addition to Title I to prevent existing tactical training routes (Range R-2301) from being rendered unusable and to provide for the Corps of Engineers approved Alamo Dam project.

"Nothing in this Act shall preclude low-level overflights of military aircraft, the designation of new units of special use airspace, or the use or establishment of military flight training routes over areas designated as wilderness by this act."

With respect to the Army Corps of Engineer's Alamo Dam civil works project the following language is offered.

"Management of wilderness values of this area pursuant to this Act, including that portion withdrawn in connection with the Alamo Dam and Reservoir, shall be carried out by the Secretary of the Interior through the Bureau of Land Management. The Secretary shall ensure that such management will not affect the operation of the Alamo Dam and Reservoir project by the Secretary of the Army in accordance with the authorized project purposes. In addition, the Secretary shall consult with the Secretary of the Army, the State of Arizona Fish and Wildlife Agency, and any other Federal or State agencies which are affected by the management of wilderness values within the Alamo Dam and Reservoir project area."



GAME & FISH DEPARTMENT

2222 West Greenway Road, Phoenix, Arizona 85023 (602) 942-3000

Governor
Buz McDowell

Commissioner
Francis W. Wierger, Tucson, Chair
Thomas G. Woods, Jr., Phoenix
Philly W. Adams, Flag
Oswald E. Whiting, Elmhurst
Larry Taylor, Yuma

Director
Dennis L. Burch
Deputy Director
Thomas W. Spalding

April 16, 1990

The Honorable Dale Bumpers, Chairman
Subcommittee on Public Lands, National Parks and Forest
Senate Energy and Natural Resources Committee
Dirksen Senate Office Building Room 308
Washington, DC 20510

Dear Chairman Bumpers and Members Of The Subcommittee:

I appreciated the opportunity to discuss the issue of wildlife management on Arizona lands designated wilderness before the Senate Subcommittee on Public Land, National Parks and Forest. I especially appreciate the Subcommittee's sincere concerns that were apparent by the questions asked during the hearing. I would like to take this opportunity to address the requests you had for the Arizona Game and Fish Department. The following comments are provided:

1. Is the Arizona Game and Fish Department satisfied with the wildlife language?

As I stated in my presentation to the Subcommittee, the Arizona Game and Fish Commission, Department and Constituents worked laboriously to develop management criteria that specifically addressed our authority to manage wildlife and to construct and maintain wildlife projects on designated wilderness lands. I have included this criteria (see Attachment A: Arizona Game and Fish Commission wildlife management criteria) for the Subcommittee. The Arizona Game and Fish Commission and Department would prefer this to be the language referenced in the Arizona Wilderness Bill. The need for identifying wildlife as a resource on wilderness is a necessity to protect the rights of wildlife. We are optimistic that the final language Congress includes will allow the Department to continue proper management of Arizona's wildlife.

2. Could you provide for the Committee, the Wildlife Management Programs you hope to implement in the future (on the Alamo Lake Wildlife Area)?

An Equal Opportunity Agency

The Alamo Lake Wildlife Area is a block of land that has been withdrawn by the U.S. Army Corps of Engineers and leased to the Arizona Game and Fish Department and Arizona State Parks Board (see Attachment B; letter to Elaine Marquis with the Bureau of Land Mgt., from the Department of the Army, dated November 8, 1989). The purpose of this lease is for recreational development and the management of fish and wildlife (see Attachment C; Lic. #DACW09-3-71-6, Arizona Game and Fish License for Alamo Lake Wildlife Area). This license specifies the authority given to the Arizona Game and Fish Department for various wildlife management practices, including: but not limited to, farming crops for wildlife. These practices have been highlighted on Attachment C for easy reference.

Alamo Lake is heavily utilized by the public for boating, fishing, and other wildlife oriented recreation. This area serves as important foraging and nesting habitat for bald eagles, waterfowl and shorebirds.

The Arizona State Parks Board has obtained a portion of this land through a recreational lease which could include motorized vehicle use in limited areas.

Wilderness advocates primary concern for the Arrastra/Rawhide Wilderness areas are for the protection of the riparian corridor along the Big Sandy and Santa Maria Rivers. These corridor are included within the lease boundaries given to the Arizona Game and Fish Department. The primary management objective of this Department is to protect the riparian vegetation, while enhancing the adjacent habitat to benefit wildlife.

The Arizona Game and Fish Department would respectfully request that all lands within the Alamo Lake Wildlife Area be withdrawn from the wilderness boundary designation in the Arrastra and Rawhide Mountain Wilderness Study Areas. We feel the management objectives for these lands are not compatible with the spirit of wilderness designation.

Requests #3 and #4 will be delivered with the use of Attachment D: (Map of Proposed Wilderness Areas in Arizona).

3. Provide a list or maps of Wilderness Study Areas where access will be lost.

The red lines on each map are indicative of vehicular access routes that will be lost due to wilderness designation. These indicated routes do not represent all access within the Wilderness Study Areas (WSA). Each WSA was evaluated and those routes that appeared significant for continued public access were selected and designated

Chairman Bumpers

-3-

April 16, 1990

so by the red lines appearing on the maps before you in Attachment D. There are many other traditional, primitive roads in existence that do not appear on any legal maps.

4. Provide a list or maps showing the numbers and types of facilities that occur on the Wilderness Study Areas.

Each Wilderness Study Area map will show all developed water catchments for wildlife, indicated by a red dot. All other wildlife projects will be indicated by a blue dot and described on the map, referencing its type of facility or project.

I would like to take this opportunity to address concerns regarding the designation of Wildlife Refuge lands in Arizona to wilderness. Our Department cannot support this designation. Our working relations with the USFW Service have been excellent and highly beneficial to the management of Arizona's wildlife. The Department strongly opposes any change in management action that might alter the primary focus to wilderness at the expense of wildlife.

I hope that the materials and responses given to you will clarify your concerns. If I can be of further assistance, feel free to contact me.

Sincerely,



Duane L. Shroufe
Director

DLS:TKO:jr

ATTACHMENT A

Listed below is the Management Criteria established by the Arizona Game and Fish Commission (Commission). It is their request that these Management Criteria be adopted into the Arizona Wilderness Bill, to ensure the most beneficial approach to managing Arizona's wildlife on all approved Wilderness Areas. The Commission feels that this Criteria and the other concerns listed in the "Commission Approved Wilderness Study Areas, April 1989", must be resolved in order for the Commission to support any of the Wilderness proposals endorsed at their April 8 meeting.

**Arizona Game & Fish Commission
Management Criteria
Arizona Wilderness Bill**

Sec. (). (a) As provided in section 4(d)(8) of the Wilderness Act, nothing in this Act shall be construed as affecting the jurisdiction or responsibility of the State of Arizona with respect to wildlife and fish in the national forests, Bureau of Land Management lands, or National Wildlife Refuges, in Arizona.

(b) Nothing in this Act shall be construed as limiting the ability of the Arizona Game and Fish Department, in consultation with the affected federal land management agency, from using mechanized equipment including, but not limited to, helicopter, fixed wing aircraft, and motorized vehicles, to carry out the following activities within lands designated wilderness by this Act.

(1) Fish and wildlife research and management surveys and population sampling.

(2) Facility development and habitat alteration, including the maintenance operation or creation of flow maintenance dams, water developments, water diversion devices, and associated structures necessary for fish and wildlife conservation. Clearing of debris impeding movement of fish on spawning streams shall be permitted. Motorized equipment may be used to accomplish the purpose of this paragraph.

(3) Stocking or transplanting of fish or collection of fish spawn, is permitted if the purpose is to accomplish at least one of the following objectives:

- (i) reestablishment or maintenance of indigenous species;
- (ii) recovery of threatened or endangered species; or
- (iii) maintenance or enhancement of recreational values associated with indigenous or exotic species.

(4) Chemical treatment of waters is permitted when the purpose is to accomplish at least one of the following objectives:

- (i) reestablishment of native species;
- (ii) recovery of threatened or endangered species; or
- (iii) corrections of undesirable conditions resulting from human influence.

(5) Removal, reintroduction or supplemental transplants of terrestrial wildlife species, including the use of motorized vehicles to perform this work, shall be permitted if:

- (i) the status of threatened or endangered species would be enhanced; or
- (ii) a population of a native species eliminated or reduced by acts of man would be restored or enhanced; or
- (iii) maintenance or enhancement of recreational values associated with indigenous or exotic species as identified in the applicable wilderness management plan would result; or
- (iv) other significant wilderness values would not be impaired.

(6) Control of problem wildlife shall be permitted to:

- (i) reduce depredations on other wildlife and domestic livestock;
- (ii) remove animals creating a public nuisance related to human interests;
- (iii) prevent transmission of diseases or parasites affecting other wildlife or humans; or
- (iv) abate conflicts with native species, particularly if those native species are endangered or threatened.

ATTACHMENT B



DEPT TO
ATTENTION OF

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT CORPS OF ENGINEERS
P O BOX 2711
LOS ANGELES CALIFORNIA 90052-2725

November 8, 1989

CESPL-CO-0
Operations Branch

Elaine Marquis, Area Manager
Bureau of Land Management
Kingman Resource Area
2475 Beverly Avenue
Kingman, AZ 86401

Dear Mrs. Marquis:

In reference to your Resource Management Plan (RMP) Update, Number 3 dated October 1989 for the Kingman Resource Area, the map of proposed areas of critical environmental concern included a portion of the Big Sandy River which is not the responsibility of the Bureau of Land Management (BLM). This government land was withdrawn from BLM for the Alamo Lake project and is the responsibility of the Corps of Engineers, Los Angeles District.

We have licensed to the Arizona Game and Fish Department the Alamo Lake Flood Control Project, which includes the Big Sandy River, for management of fish and wildlife. This also includes the area leased to Arizona State Parks for recreational development.

Arizona Game and Fish Department is actively pursuing the development of the Big Sandy and Santa Maria Rivers for riparian areas. We support this development and management of our project by the state to the fullest. Therefore please remove from your area of critical environmental concern (riparian) in the RMP all lands encompassed by the Alamo Lake Project.

If you have any questions please contact Mr. Ted Carr at (213) 894-5635.

Sincerely,

Carl F. Enson, P.E.
Chief, Construction-
Operations Division

ATTACHMENT C

DEPARTMENT OF THE ARMY

License

No. DACW09-3-71-6

FOR FISH AND WILDLIFE CONSERVATION AND MANAGEMENT PURPOSES
 ALAMO RESERVOIR
 YUMA AND DOHAVE COUNTIES, ARIZONA

THE SECRETARY OF THE ARMY, under authority of Section 3 of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq), and Section 4 of the Act of Congress approved 22 December 1944, as amended (76 Stat. 1195; 16 U.S.C. 4601), hereby grants to the STATE OF ARIZONA, acting by and through its Game & Fish Commission, herein referred to as the licensee, a license for a period of twenty-five (25) years commencing on 1 April 1970, and ending on 31 March 1995, to use and occupy approximately 22,855.71 acres of land and water areas under the primary jurisdiction of the Department of the Army in the Alamo Reservoir, Arizona, as described in legal description, file 50-K-2, dated 24 April 1969 and revised 14 May 1969, marked Exhibit "A" and as illustrated on Drawing No. 50-K-2, dated 15 May 1969, marked Exhibit "B", both of which exhibits are attached hereto and made a part hereof, for fish and wildlife conservation and management purposes.

THIS LICENSE is granted subject to the following conditions:

1. That the licensee, in the exercise of the privileges hereby granted, shall conform to such rules and regulations as may be prescribed by the Secretary of the Army to govern the public use of the said project area, and with the provisions of Section 3 of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq) and Section 4 of the Act of Congress approved 22 December 1944, as amended (76 Stat. 1195; 16 U.S.C. 4601).
2. That the licensee may construct upon said land such buildings, improvements, facilities, accommodations, fences, signs and other structures as may be necessary for the purposes of this license, and may plant seeds, shrubs and trees, provided that all such structures shall be constructed and the landscaping accomplished in accordance with plans approved by the District Engineer, U.S. Army Corps of Engineers, in charge of the administration of the property.
3. That the licensee shall administer and maintain the said property, for the purposes of this license, in accordance with the master plan for the said project area and with an annual management program to be mutually agreed upon between the licensee and the said District Engineer, which may be amended from time to time as may be necessary. Such annual management program shall include, but is not limited to, the following:
 - a. Plans for management and development activities to be undertaken by the licensee or jointly by the Corps of Engineers and the licensee.
 - b. Budget of the licensee for carrying out the management and development activities.

c. Personnel to be used in the management of the area.

d. Plans for supervising, patrolling and policing the licensed areas, including the water areas.

4. That all improvements and personal property of the United States, and the land or water areas occupied thereby, are expressly excluded from this license.

5. That the licensee shall protect the property from fire, vandalism, soil erosion and littering, and may make and enforce such rules and regulations as are necessary, and within its legal authority, in exercising the privileges granted in this license, provided that such rules and regulations are not inconsistent with those prescribed by the Secretary of the Army to govern the public use of the area.

6. That the licensee shall, at its own expense, maintain the property in a clean condition, free from litter and floatable debris. Refuse receptacles shall be nonfloatable and refuse disposed of in a manner approved by local health agencies.

7. That the licensee, in exercising its governmental or proprietary functions, may plant and harvest crops, either directly or by service contract or under sharecrop agreements with local farmers, to provide: (a) food for wildlife and (b) necessary compensation to farmers under any sharecrop agreement. Recognizing that a poor crop season may result in a lack of food for wildlife in a given future year, the licensee will be allowed to provide a reasonable surplus which will be held in reserve against a future poor crop season or may be disposed of by the State and the proceeds from the sale held in reserve against a future poor crop season. In any event, the lands will not be used by the State for the production of crops or any other purpose to produce revenue to defray costs of management or development of the wildlife area. Lands within the licensed area, available and suitable for lease for agricultural or grazing purposes and not being utilized in connection with the production of food for wildlife, will be leased by the District Engineer. Monies collected by the State from the sale of surplus crops and not used within five years from the date of collection thereof, to provide food for wildlife in a poor crop season, shall be paid to the District Engineer. The licensee will establish and maintain adequate records and accounts and render periodic statements of receipts and expenditures in furtherance of its wildlife feeding program, as may be required by said District Engineer. The District Engineer shall have the right to perform audits of the licensee's records and accounts.

8. That all service contracts or sharecrop agreements entered into pursuant to Condition No. 7 shall expressly state that they are granted subject to all the terms and conditions of this license and that the service contract or sharecrop agreement will not be effective until the terms and conditions thereof are approved by the District Engineer.

License No. DACA09-3-71-6

9. That the licensee may take, trap, remove, stock or otherwise control all forms of fish and wildlife within the said area, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use for fishing, hunting or trapping shall be consistent with the state laws for the protection of fish and wildlife; also, the licensee shall enforce the fish and game laws and such orders and regulations as may be issued by the Arizona Game & Fish Department, and/or its Director, which laws, orders and regulations are consistent with its state-wide program.

10. That portion of the land and water areas of the project included in the Lease for Public Park and Recreational Purposes, No. DACW09-1-70-22, granted to the State of Arizona, acting by and through its State Parks Board, shall be open to public use for boating, swimming, bathing, fishing and other recreational purposes, all as provided for in said lease. The balance of the land and water areas of the project shall be open to public use generally, without charge, for recreational purposes and ready access to and exit from such areas shall be maintained for general public use, when such use is determined by the Secretary of the Army not to be contrary to the public interest. However, no use of any area shall be permitted which is inconsistent with the State laws for the protection of fish and game.

11. That this license is subject to all existing and future easements, leases, licenses and permits heretofore granted, or to be hereafter granted, by the United States concerning said lands and water areas; provided, however, that upon appropriate notification by the licensee to said District Engineer, the United States, insofar as may be consistent with other uses and purposes of the project, will not enter into any new easements, leases, licenses or permits, or renewals thereof, which will, in the opinion of the District Engineer, adversely affect the current operations of the licensee under the provisions of the license, or which will conflict with the definitely scheduled program of the licensee for the expansion of its activities under the provisions of this license.

12. That the licensee shall not discriminate against any person or persons because of race, creed, color or national origin in the conduct of its operations hereunder.

13. That no cuts or fills along the shore line or other changes in topography shall be made by the licensee without the prior approval of the said District Engineer.

14. That the licensee shall comply promptly with any regulations, conditions, or instructions affecting the work hereby authorized if and when issued by the Federal Water Pollution Control Administration and/or the State water pollution control agency having jurisdiction to abate or prevent water pollution. Such regulations, conditions or instructions in effect or prescribed by the Federal Water Pollution Control Administration or State agency are hereby made a condition of this license.

15. That ingress to and egress from the project area shall be afforded the licensee over existing access roads, such interior roads as may be constructed, and at such additional places over Government-owned land as may be

approved by said District Engineer. The licensee shall provide appropriate markings at its own expense.

16. That the right is hereby expressly reserved to the United States, its officers, agents, employees and contractors to enter upon the said land and water areas, at any time and for any purpose necessary or convenient in connection with river and harbor and flood control work, and to remove therefrom timber, or other material, required or necessary for such work; to flood said premises when necessary, and/or to make any other use of said land as may be necessary in connection with public navigation and flood control, water conservation or recreation and the licensee shall have no claim for damages of any character on account thereof against the United States or any agent, officer, employee or contractor thereof.

17. That any property of the United States damaged or destroyed by the licensee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the licensee to the satisfaction of the said District Engineer.

18. That the United States shall not be responsible for damages to property or injuries to persons which may arise from, or be incident to, the exercise by the licensee of the privileges herein granted, or for damages to the property of the licensee, or for damages to the property or injuries to the person of the licensee's officers, agents, servants or employees, or others who may be on said premises at their invitation or the invitation of any one of them, arising from or incident to the flooding of said premises by the Government or flooding from any other cause, or arising from or incident to any other governmental activities on the said premises.

19. That at the time of the commencement of this license, the licensee will obtain from a reputable insurance company, acceptable to the Government, liability or indemnity insurance providing for minimum limits of \$50,000.00 per person in any one claim, and an aggregate limit of \$150,000.00 for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, and \$150,000.00 for damage to property suffered or alleged to have been suffered by any person or persons resulting from the operations of the licensee under the terms of this license.

20. That this license may be relinquished by the licensee at any time by giving to the Secretary of the Army, through the said District Engineer, at least thirty (30) days' notice in writing.

21. That this license may be revoked by the Secretary of the Army in the event the licensee violates any of the terms and conditions of this license and continues and persists therein for a period of thirty (30) days after notice thereof, in writing, by the said District Engineer.

22. That on or before the date of expiration of this license or its relinquishment by the licensee, the licensee shall vacate the said Government

premises, remove all property of the licensee therefrom, and restore the premises to a condition satisfactory to the said District Engineer. If, however, this license is revoked, the licensee shall vacate the premises, remove said property therefrom, and restore the premises as aforesaid within such time as the Secretary of the Army may designate. In either event, if the licensee shall fail or neglect to remove said property and so restore the premises, then said property shall become the property of the United States, without compensation therefor, and no claim for damages against the United States, or its officers or agents, shall be created by or made on account thereof.

23. That all notices to be given pursuant to this license shall be addressed, if to the licensee, to the Director, Arizona Game & Fish Department, 2222 W. Greenway Road, Phoenix, Arizona 85023, and if to the Government, to the District Engineer, U.S. Army Engineer District, Los Angeles, P.O. Box 2711, Los Angeles, California 90053, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid (or, if mailed by the Government, deposited under its franking privilege) in a post office or branch post office regularly maintained by the United States Government.

24. A portion of the lands described herein are public domain on which the final order of withdrawal for Alamo Reservoir has not yet been issued. These lands are described as follows:

Gila and Salt River Meridian, Arizona

T. 10 N., R. 12 W.,
Sec. 6, Lots 4, 5, 12, 13, and 14.

T. 10 N., R. 13 W.,
Sec. 1, Lots 1, 2, and 3, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,
SW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 10, NE $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ N $\frac{1}{2}$;
Sec. 11, NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$;
Sec. 12, NW $\frac{1}{4}$.

T. 11 N., R. 12 W.,
Sec. 13, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 14, N $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 15, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 20, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 21, W $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 23, E $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 29, NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 31, Lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 32, W $\frac{1}{2}$ E $\frac{1}{2}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$.

License No. DACW09-3-71-6

T. 11 N., R. 13 W.,
Sec. 22, N $\frac{1}{2}$ SW $\frac{1}{4}$.

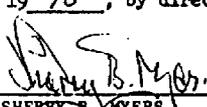
T. 12 N., R. 12 W.,
Sec. 17, W $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 18, Lots 2, 3, and 4, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
Sec. 19, Lot 1 and NE $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 12 N., R. 13 W.,
Sec. 12, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 13, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$.

Pending the perfection of the said withdrawal, this license is effective as to the above lands only to the extent of the rights accruing to the Department of the Army by virtue of its application for withdrawal, Serial Number Arizona 035844, on file with the Bureau of Land Management, Department of the Interior, Phoenix, Arizona. Upon issuance of the final withdrawal order, this license shall be effective as to the above lands in the same manner as to the other lands described in this license to the extent this license is compatible with the conditions of the final withdrawal order.

25. That this license is effective only insofar as the rights of the United States under the primary jurisdiction of the Department of the Army in the property are concerned and the licensee shall obtain such permission as may be necessary on account of any other existing rights.

IN WITNESS WHEREOF I have hereunto set my hand this 26th day of August, 1970, by direction of the Assistant Secretary of the Army.


SHERRY R. MYERS
Assistant For Real Property
OASA (16L)

The above instrument, together with the provisions and conditions thereof, is hereby accepted this 21st day of February, 1970.

APPROVED AS TO FORM

STATE OF ARIZONA, acting by and through its Game & Fish Commission

This 5th day of March, 1970By: Al. D. GandyGARY K. NELSON
The Attorney GeneralTitle: ChairmanBy: John S. O'Connell
Assistant Attorney General

DATE: 24 April 1969
 UNIT: A-2
 ACREAGE: 22,855.71
 PROJECT: Alamo Reservoir
 LOCATION: Yuma and Mohave Counties, Arizona
 FILE: 50-R-2

CARRANT TO STATE OF ARIZONA FOR FISH AND WILDLIFE CONSERVATION

Gila and Salt River Meridian

- T. 10 N., R. 12 W.,
 sec. 6, Lots 4, 5, 12, 13, and 14.
- T. 10 N., R. 13 W.,
 sec. 1, Lots 1, 2, 3, and 4, S $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{2}$, SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{2}$;
 secs. 2 and 3;
 sec. 4, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 sec. 9, NE $\frac{1}{4}$, and E $\frac{1}{2}$ NE $\frac{1}{4}$;
 sec. 10, N $\frac{1}{2}$;
 sec. 11, N $\frac{1}{2}$;
 sec. 12, N $\frac{1}{2}$;
- T. 11 N., R. 12 W.,
 sec. 4, Lots 2, 3, and 4, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{2}$;
 sec. 5, Lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{2}$;
 sec. 7, Lots 3 and 4, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 sec. 8, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;
 sec. 9;
 sec. 10, S $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;
 sec. 11, S $\frac{1}{2}$;
 sec. 12, S $\frac{1}{2}$;
 sec. 13, N $\frac{1}{2}$, and N $\frac{1}{2}$ S $\frac{1}{2}$;
 sec. 14, N $\frac{1}{2}$, NE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 sec. 15, N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 secs. 16, 17, 18, and 19;
 sec. 20, N $\frac{1}{2}$, and SW $\frac{1}{4}$;
 sec. 21, W $\frac{1}{2}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$;
 sec. 23, E $\frac{1}{2}$ NE $\frac{1}{4}$;
 sec. 29, N $\frac{1}{2}$, and S $\frac{1}{2}$;
 secs. 30 and 31;
 sec. 32, W $\frac{1}{2}$, and W $\frac{1}{2}$ SE $\frac{1}{2}$.
- T. 11 N., R. 13 W.,
 sec. 12, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{2}$;
 sec. 13;

Exhibit "A"

sec. 14, S₁W₂, S₂W₂, and S₃W₂;
 sec. 22, S₁W₂;
 sec. 23, S₁, S₂W₂, S₃W₂, and S₄W₂;
 secs. 24, 25 and 26;
 sec. 27, S₁, and S₂W₂;
 sec. 34, S₁, S₂W₂, and S₃W₂;
 sec. 35;
 sec. 36.

T. 12 N., R. 12 W.,
 sec. 17, S₁W₂;
 sec. 18, Lots 2, 3, and 4, S₁W₂; S₂W₂, S₃W₂, and S₄W₂;
 sec. 19, Lot 1, S₁W₂, S₂W₂, and S₃W₂;
 sec. 20, S₁W₂, and S₂W₂;
 sec. 28, S₁W₂;
 sec. 29, S₁W₂, and S₂W₂;
 sec. 30, S₁, S₂W₂, and S₃W₂;
 sec. 31, S₁W₂;
 sec. 32, S₁, S₂W₂, and S₃W₂;
 sec. 33, S₁W₂, and S₂W₂.

T. 12 N., R. 13 W.,
 sec. 12, S₁W₂;
 sec. 13, S₁W₂, S₂W₂, S₃W₂, and S₄W₂.

The areas described aggregate 22,855.71 acres.

Revised: 14 May 1969

Written by: W.H.R.

FILE: 50-X-2

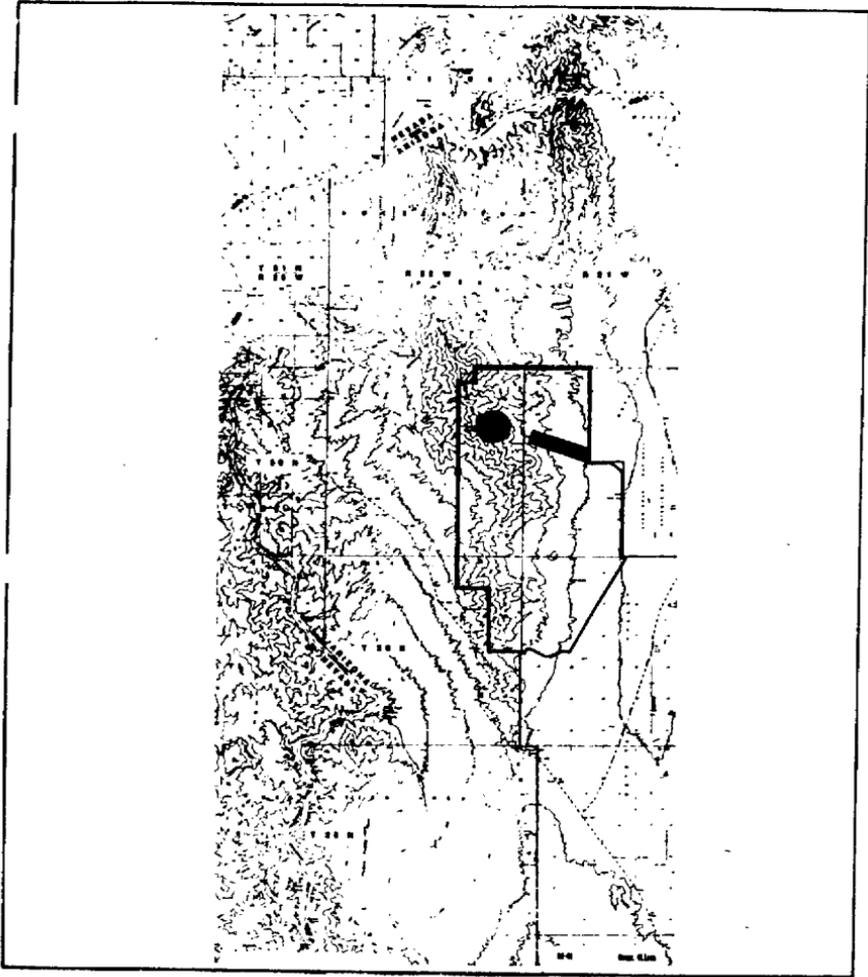
ATTACHMENT D

Maps of proposed Arizona wilderness area boundaries for Senate Bill 1080, depicting public access roads lost due to wilderness designation and wildlife improvement projects within wilderness boundaries.

Prepared by
Arizona Game and Fish Department
April 1990

Legend for Wilderness Area Maps

-  Significant public access roads within wilderness areas currently not cherry-stemmed
-  Developed wildlife water catchment
-  Other wildlife projects (Descriptions of projects given on appropriate maps)



WILDERNESS AREA MAP

02-001 MOUNT WILSON



1:50,000

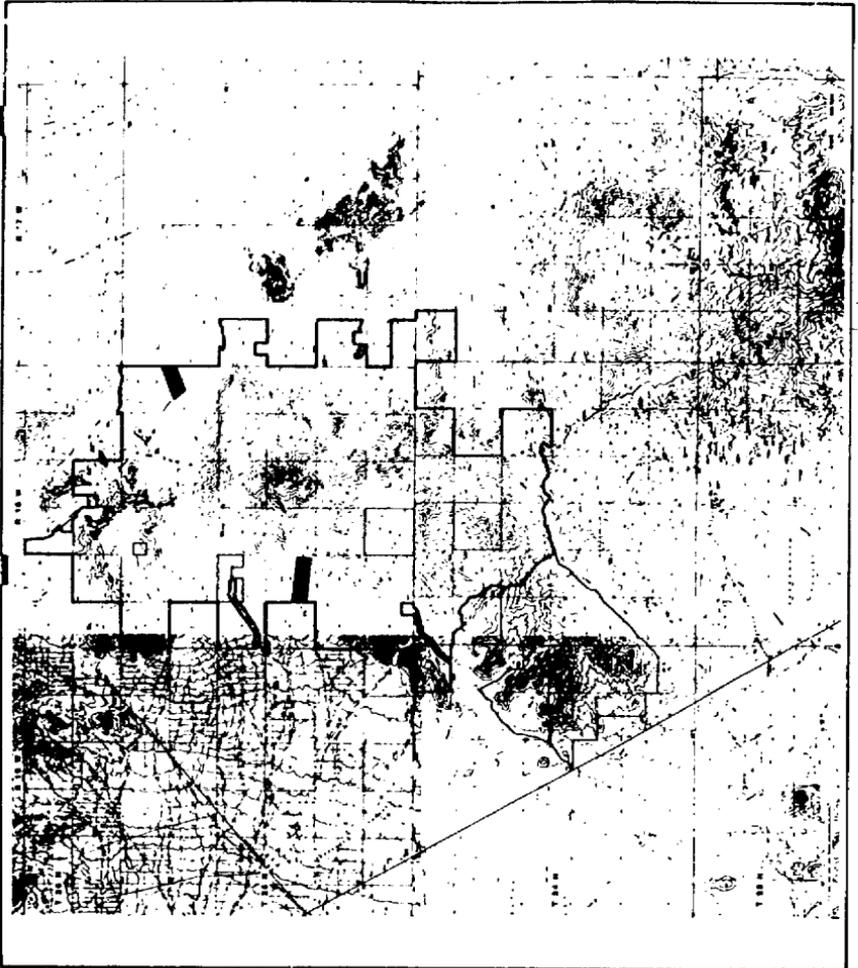
————— WILDERNESS AREA BOUNDARY

FEBRUARY 1976



SCALE ONE INCH =

COMPILED BY THE DIVISION OF LAND MANAGEMENT, ARIZONA STATE OFFICE, PHOENIX, ARIZONA



WILDERNESS AREA MAP

02-012/042 MOUNT TIPTON

U.S. DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
FEBRUARY 1990

LEGEND

- WILDERNESS STUDY AREA BOUNDARY
- ▬ WILDERNESS AREA BOUNDARY

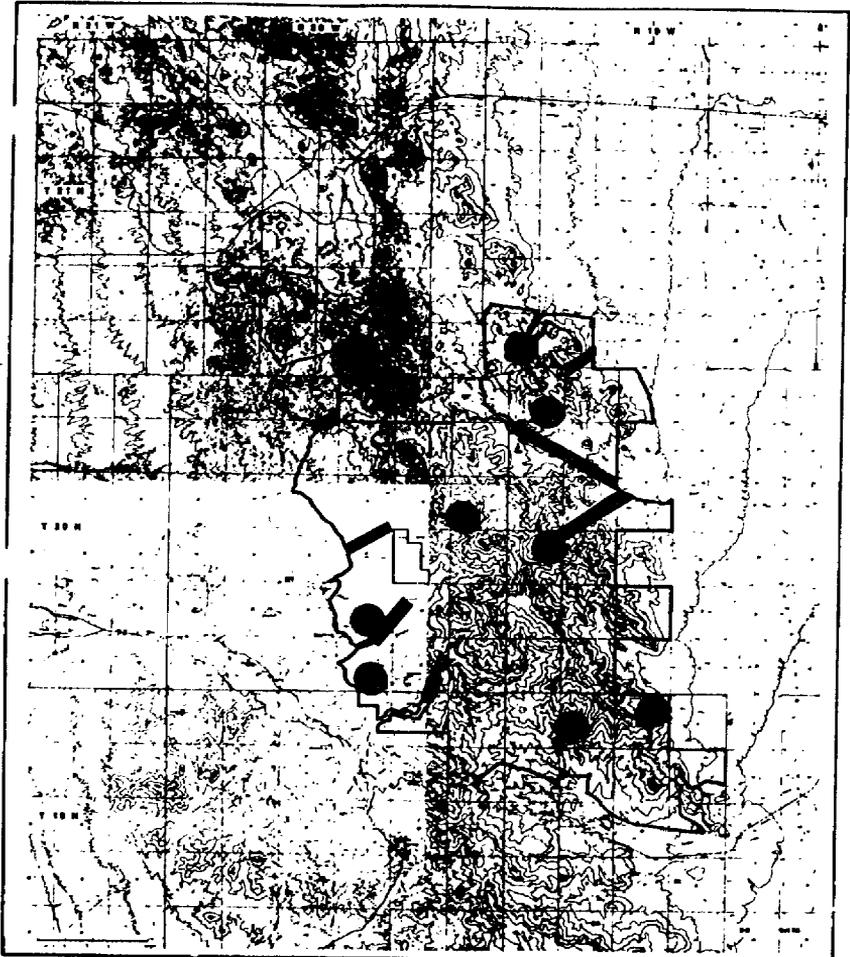


SCALE ONE INCH = 10 MILES

COMPILED BY THE BUREAU OF LAND MANAGEMENT, ANCHORAGE STATE OFFICE, FREDSON AIRFIELD



PRICE \$1.25 (BOOK)



WILDERNESS AREA MAP

02-024 MOUNT NUTT



- LEGEND
- WILDERNESS STUDY AREA BOUNDARY
 - WILDERNESS AREA BOUNDARY

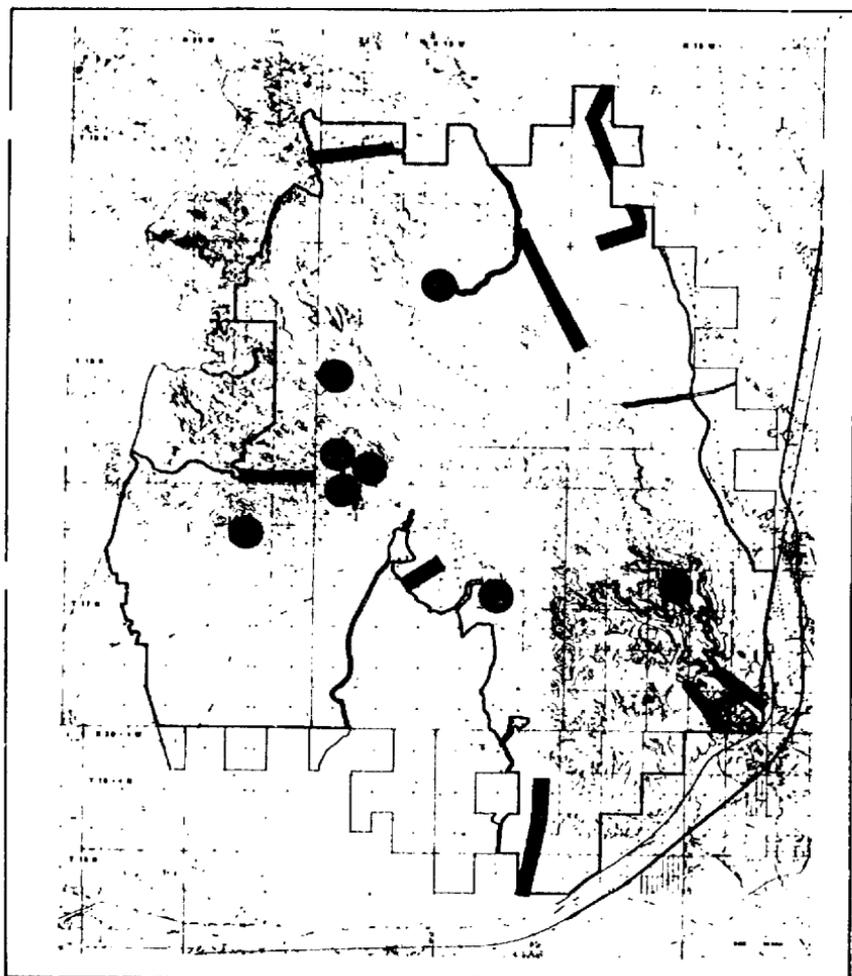
U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF LAND MANAGEMENT
FEBRUARY 1966

SCALE ONE INCH TO ONE MILE

REPRODUCED BY THE BUREAU OF LAND MANAGEMENT, AIRMAIL STATION OFFICE, PUEBLO, COLORADO



PRICE \$2.50 each



WILDERNESS AREA MAP

U.S. DEPARTMENT OF AGRICULTURE

FEDERAL BUREAU OF SURVEY

FEBRUARY 1966

02-028/029 WAPM SPRING



- WILDERNESS TRAIL AND BOUNDARY
- WILDERNESS AREA BOUNDARY



SCALE ONE INCH = 1000 FEET

COMPILER OF THE BUREAU OF LAND MANAGEMENT, WASHINGTON STATE OFFICE, PULLMAN, WASHINGTON



WILDERNESS AREA MAP

02-037/043 WABAYUMA PEAK

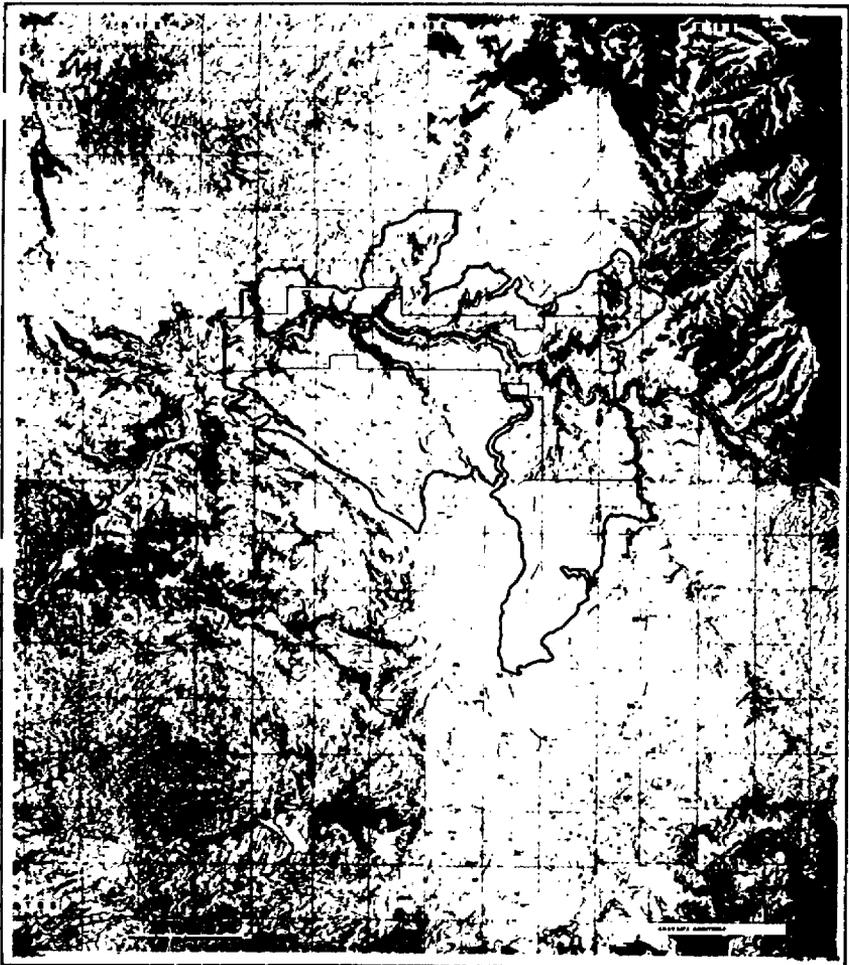
U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF LAND MANAGEMENT
FEBRUARY 1990



1:50,000
WILDERNESS AREA BOUNDARY



SCALE: ONE INCH = ONE MILE
EXAMPLES OF THE BUREAU OF LAND MANAGEMENT: WYOMING STATE OFFICE, PUEBLO, COLORADO



WILDERNESS AREA MAP

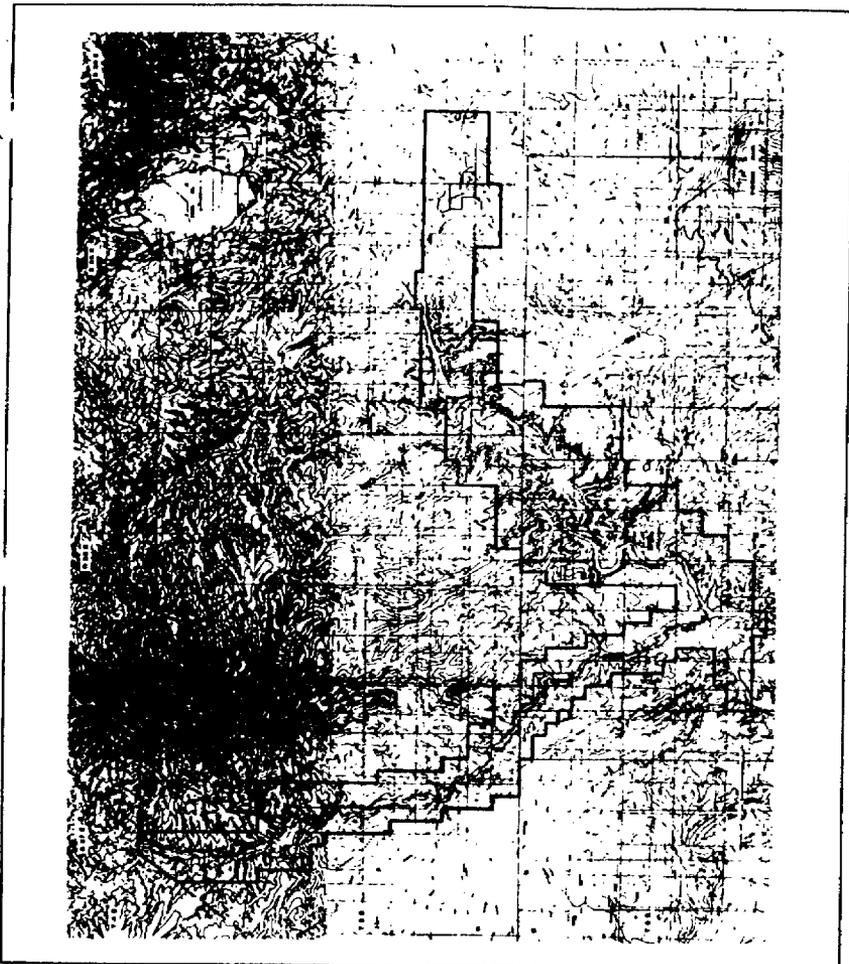
ARAVAIPA ADDITIONS



----- EXISTING WILDERNESS AREA BOUNDARY
————— WILDERNESS AREA BOUNDARY

U.S. GEOLOGICAL SURVEY
FEBRUARY 1990





GILA BOX RIPARIAN NATIONAL CONSERVATION AREA

04-22/23/24A GILA BOX

U.S. DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT

FEBRUARY 1999



NATIONAL CONSERVATION AREA BOUNDARY

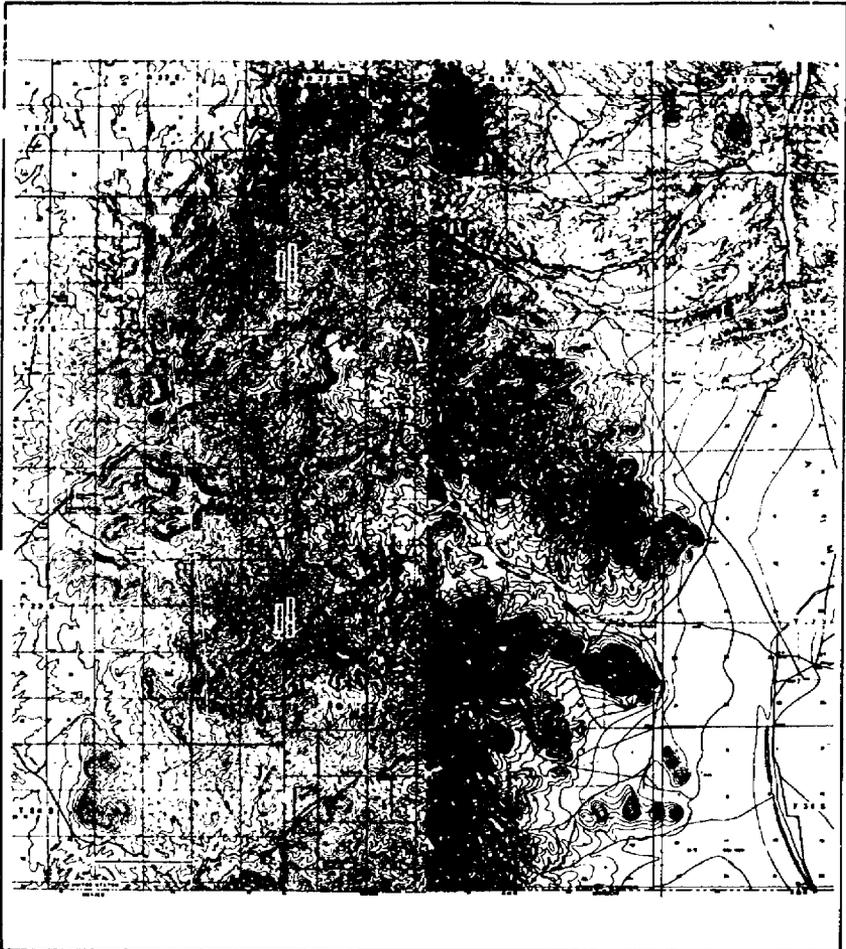


SCALE ONE INCH = 10 MILES

COMPILED BY THE BUREAU OF LAND MANAGEMENT, WASHINGTON STATE OFFICE, PUEBLO, COLORADO



PRICE \$2.50 (600)



WILDERNESS STUDY AREA MAP

04-070 BAKER CANYON

U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF LAND MANAGEMENT
FEBRUARY 1990



LEGEND

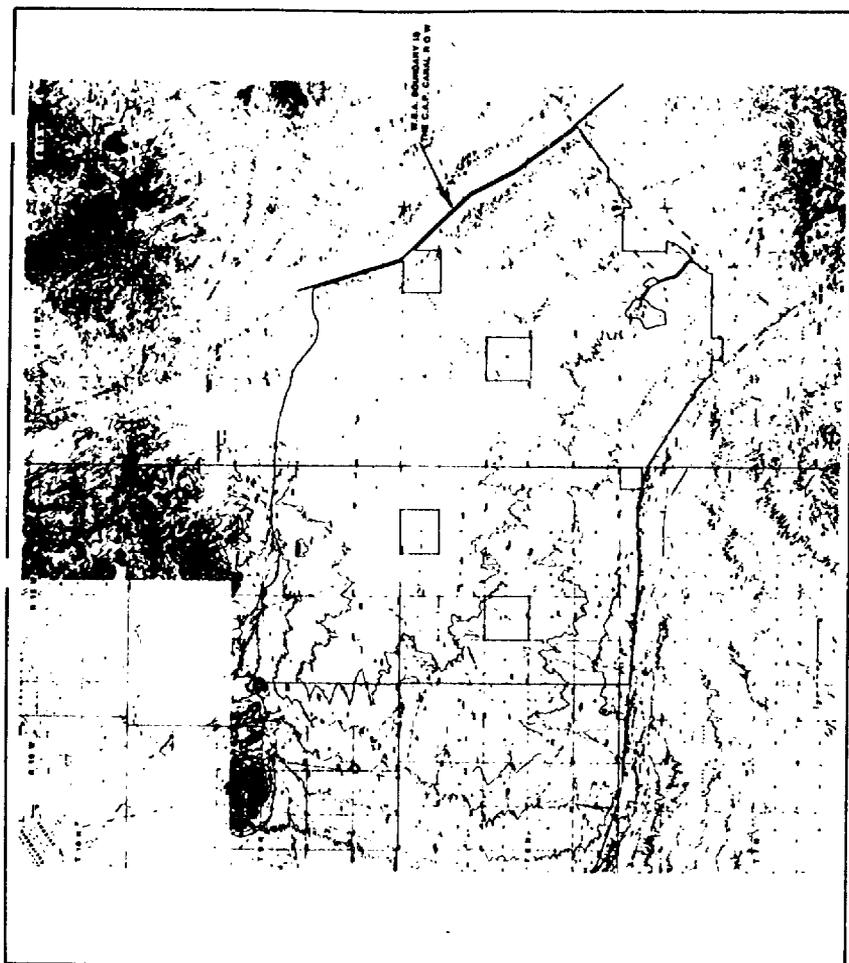
WILDERNESS STUDY AREA BOUNDARY

SCALE ONE INCH = 10 MILES

COMPILED BY THE BUREAU OF LAND MANAGEMENT, WASHINGTON STATE OFFICE, PUNICHT, WASHINGTON



PRICE \$2.50 each



WILDERNESS STUDY AREA MAP

08-014A/B CACTUS PLAIN

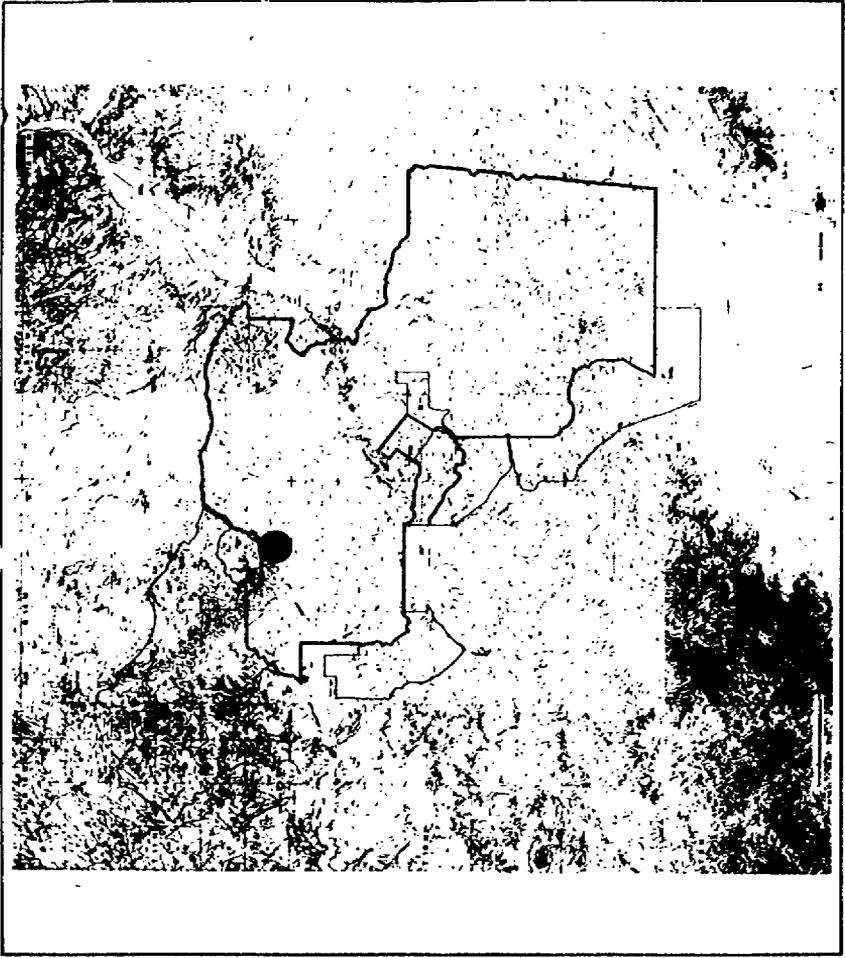
LEGEND
 _____ WILDERNESS STUDY AREA BOUNDARY
 _____ PRIMARY ROAD

SCALE ONE INCH = _____

COMPILED BY THE BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR

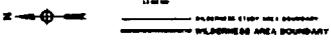


PRICE \$2.50 EACH



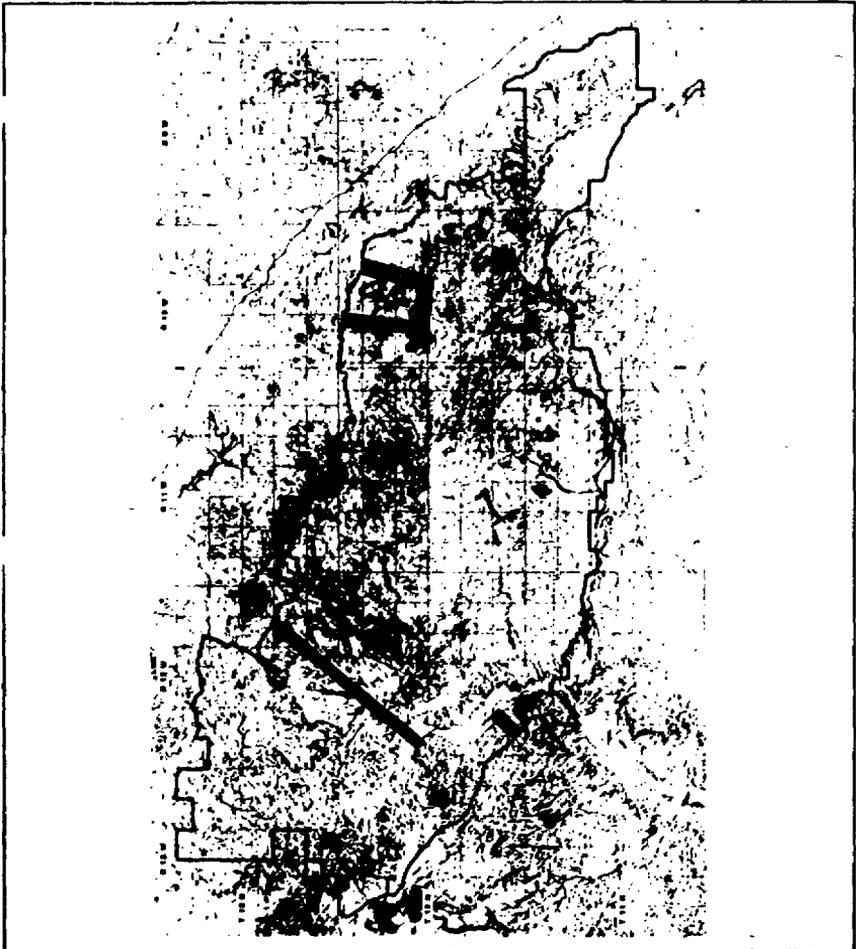
WILDERNESS AREA MAP
U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF LAND MANAGEMENT
FEBRUARY 1968

02-066 RAWHIDE MOUNTAINS



SCALE ONE MILE

PREPARED BY THE BUREAU OF LAND MANAGEMENT, NATIONAL SYSTEM OF PUBLIC LANDS, WASHINGTON



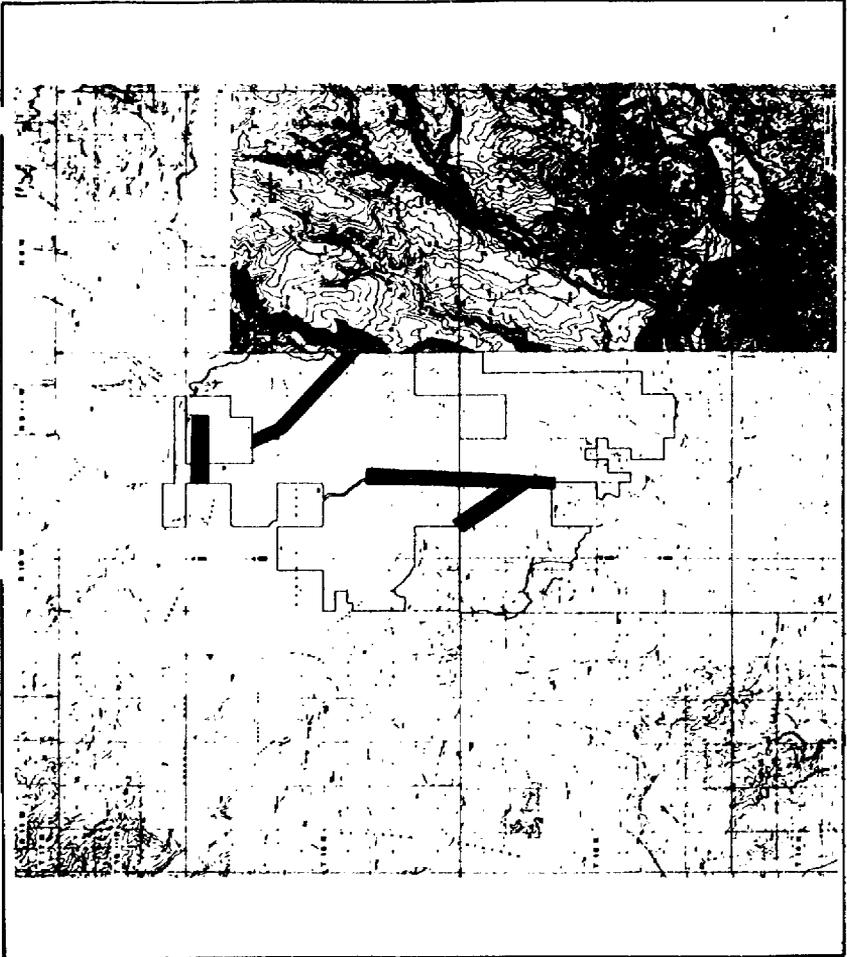
WILDERNESS AREA MAP

02-059/088/204 ARRABTRA MOUNTAIN

WILDERNESS AREA BOUNDARY

FEBRUARY 1961





WILDERNESS AREA MAP

U.S. DEPARTMENT OF INTERIOR

BUREAU OF LAND MANAGEMENT

FEBRUARY 1988

01-062 UPPER SUMP CREEK



1:50,000

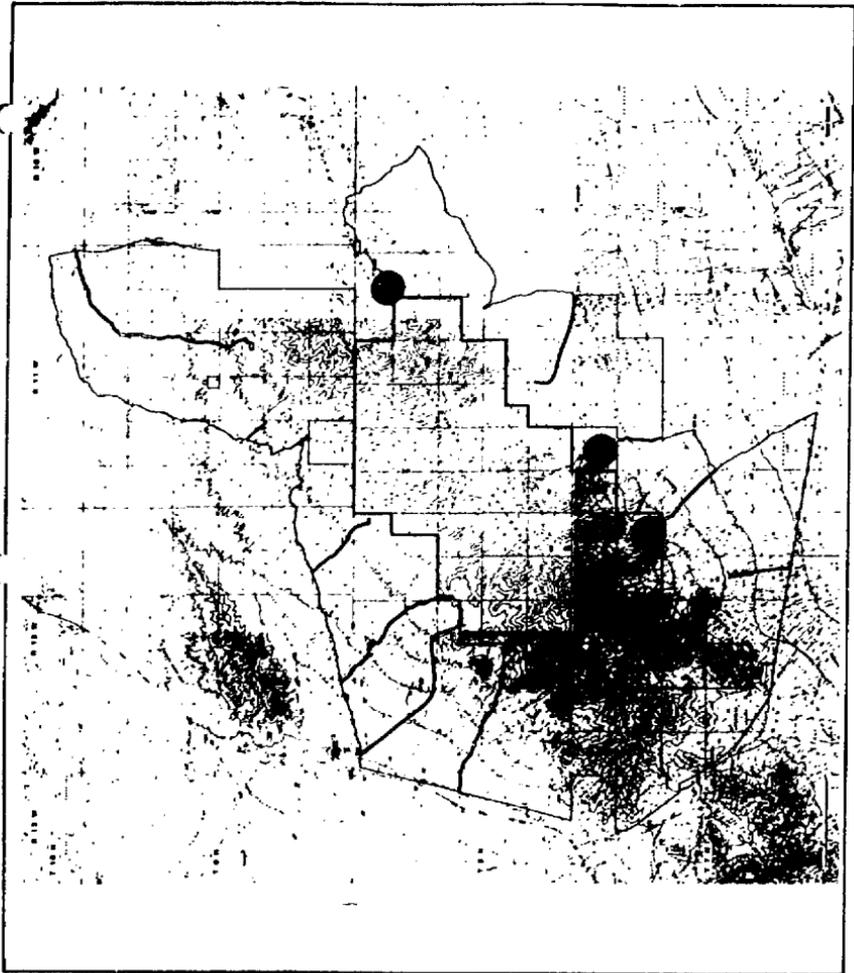
WILDERNESS AREA BOUNDARY

SCALE ONE INCH = 1 MILE

COMPILER: THE BUREAU OF LAND MANAGEMENT, DENVER STATE OFFICE, DENVER, COLORADO



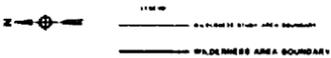
PRICE: \$2.50 (50¢)



WILDERNESS AREA MAP

02-078 HARCUVAR MOUNTAINS

U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF LAND MANAGEMENT
FEBRUARY 1968

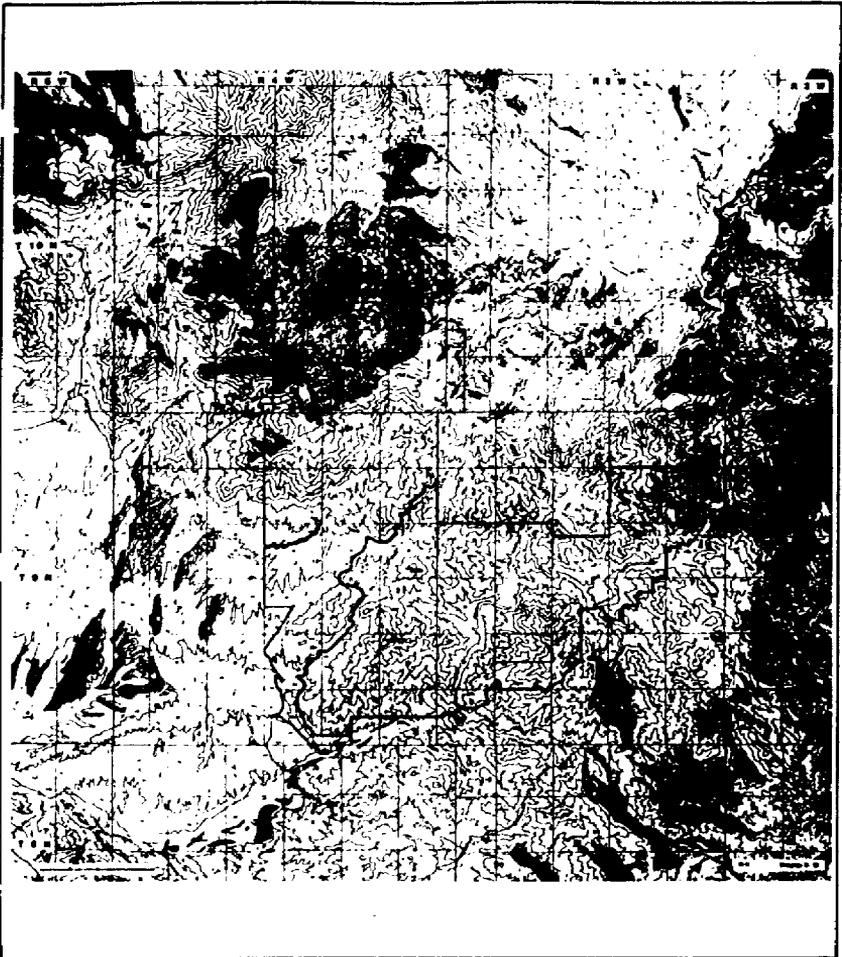


SCALE 1:100,000

MAP MADE BY THE BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF AGRICULTURE



PRICE \$2.00 EACH



WILDERNESS AREA MAP

02-083 MASSAYAMPA RIVER CANYON

U.S. GEOLOGICAL SURVEY
BUREAU OF LAND MANAGEMENT
FEBRUARY 1986



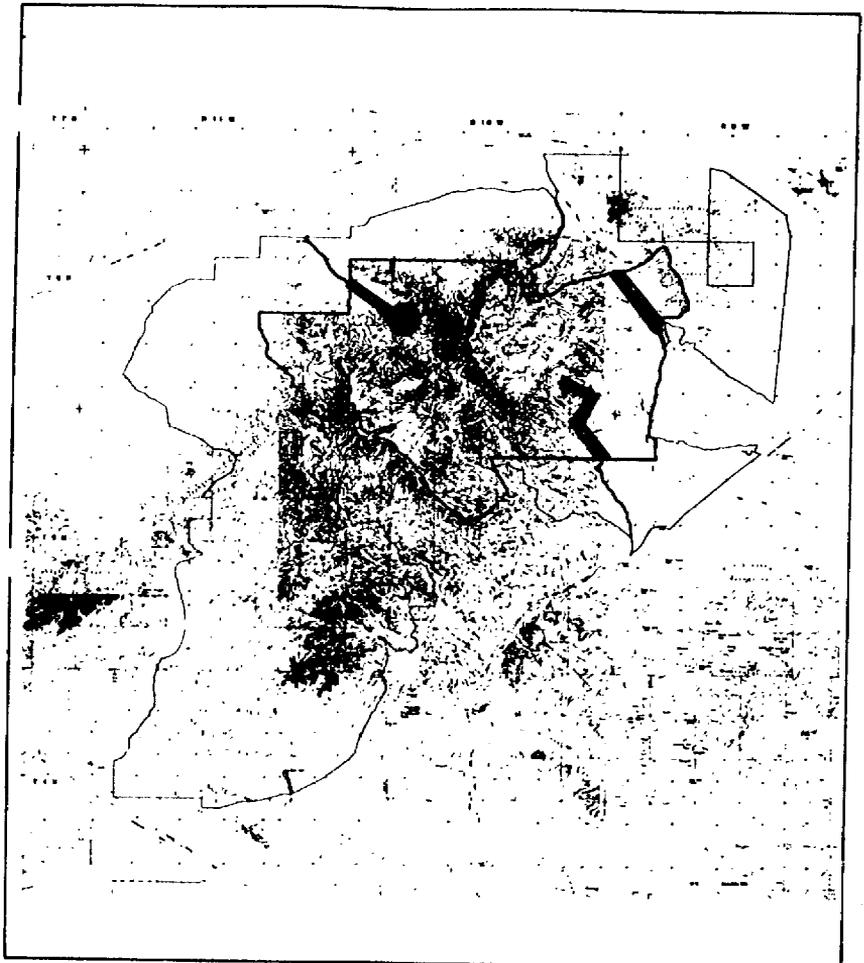
- 1:10,000
- PLANNED STATE WILDERNESS
- WILDERNESS AREA BOUNDARY

SCALE 1:10,000

SAMPLES BY THE BUREAU OF LAND MANAGEMENT, WILDERNESS STATE OFFICE, FURNACE MOUNTAIN



PRICE \$2.50 EACH



WILDERNESS AREA MAP

02-085 HARQUAHALA MOUNTAINS

SCALE OF 1:50,000
DATE OF 1:50,000 SCALE
FEBRUARY 1986



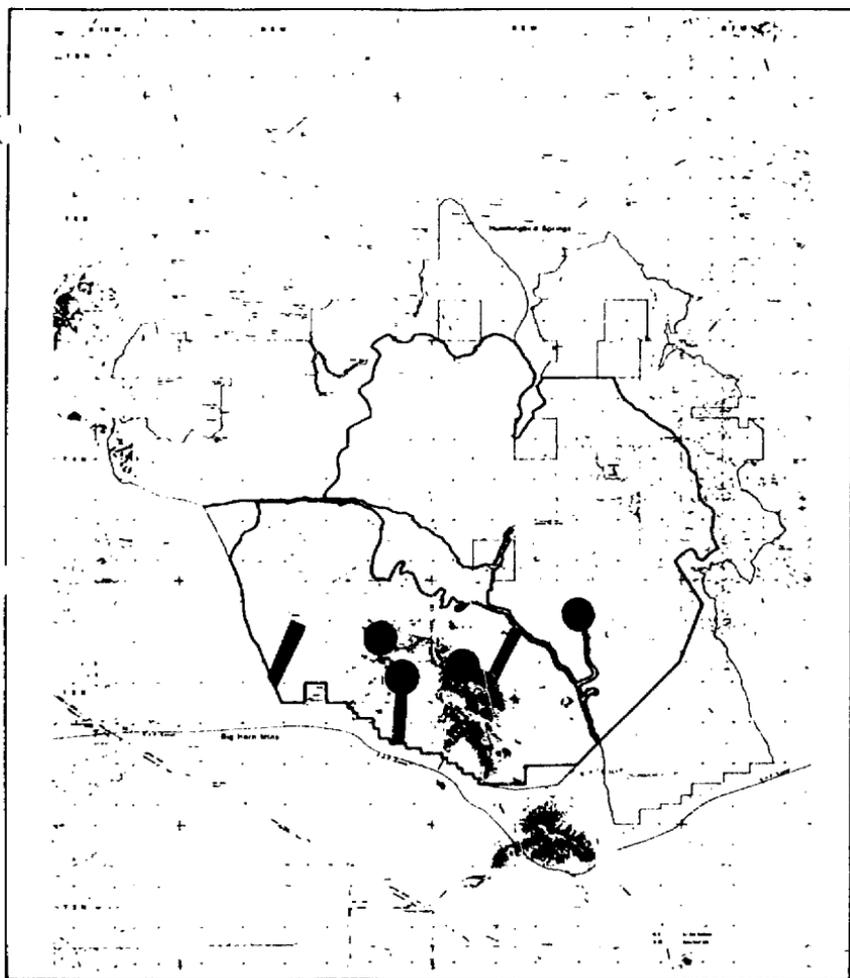
- WILDERNESS STATE LAND BOUNDARY
- WILDERNESS AREA BOUNDARY

SCALE 1:50,000

COMPILED BY THE BUREAU OF LAND MANAGEMENT, UNITED STATES OFFICE, PUEBLO, COLORADO



PRICE \$2.50 each



WILDERNESS AREA MAP

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
FEBRUARY 1988

02-008 BIG HORN MOUNTAINS

02-100 HUMMINGBIRD SPRINGS



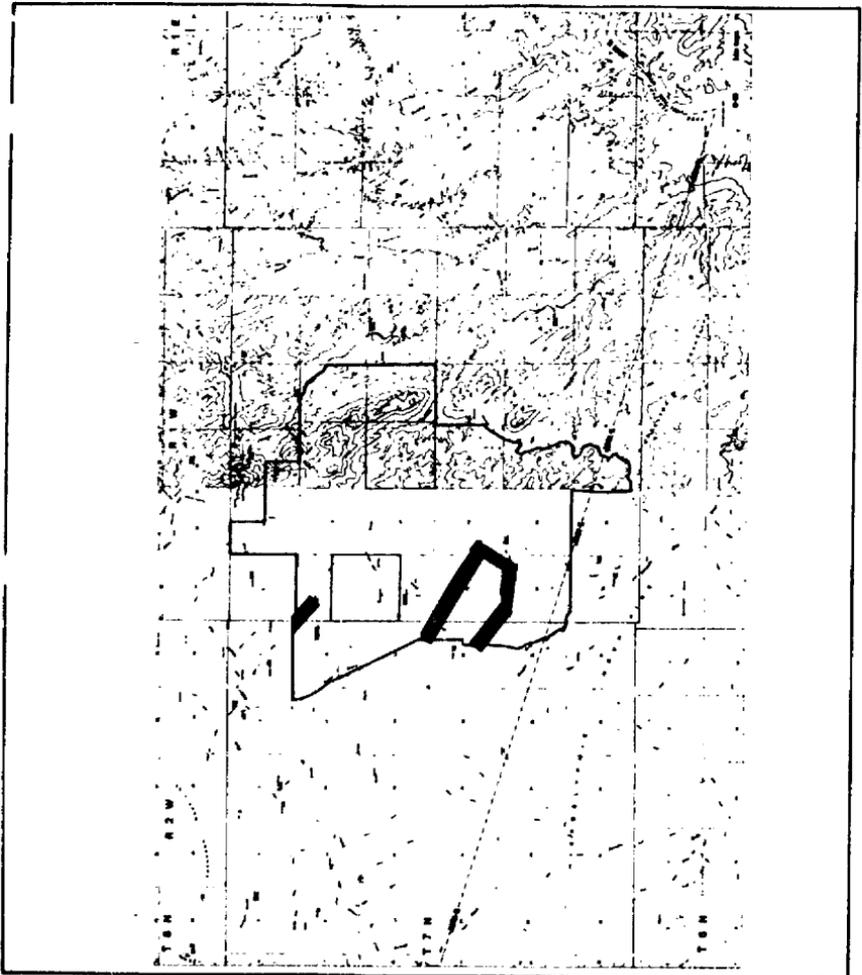
1:50,000
WILDERNESS STUDY AREA BOUNDARY
WILDERNESS AREA BOUNDARY



SCALE 1:50,000

COMPILED BY THE BUREAU OF LAND MANAGEMENT, WILDERNESS STATE OFFICE, THERMIDOR, MONTANA

PRICE \$2.50 EACH



WILDERNESS AREA MAP

U.S. DEPARTMENT OF AGRICULTURE

BUREAU OF LAND MANAGEMENT

FEBRUARY 1988

02-118 HELLS CANYON



1:50,000

WILDERNESS AREA BOUNDARY



SCALE: ONE INCH = 1 MILE

COMPILED BY THE BUREAU OF LAND MANAGEMENT, WASHINGTON STATE OFFICE, PULLMAN, WASHINGTON



WILDERNESS AREA MAP

02-125 NEW WATER MOUNTAINS

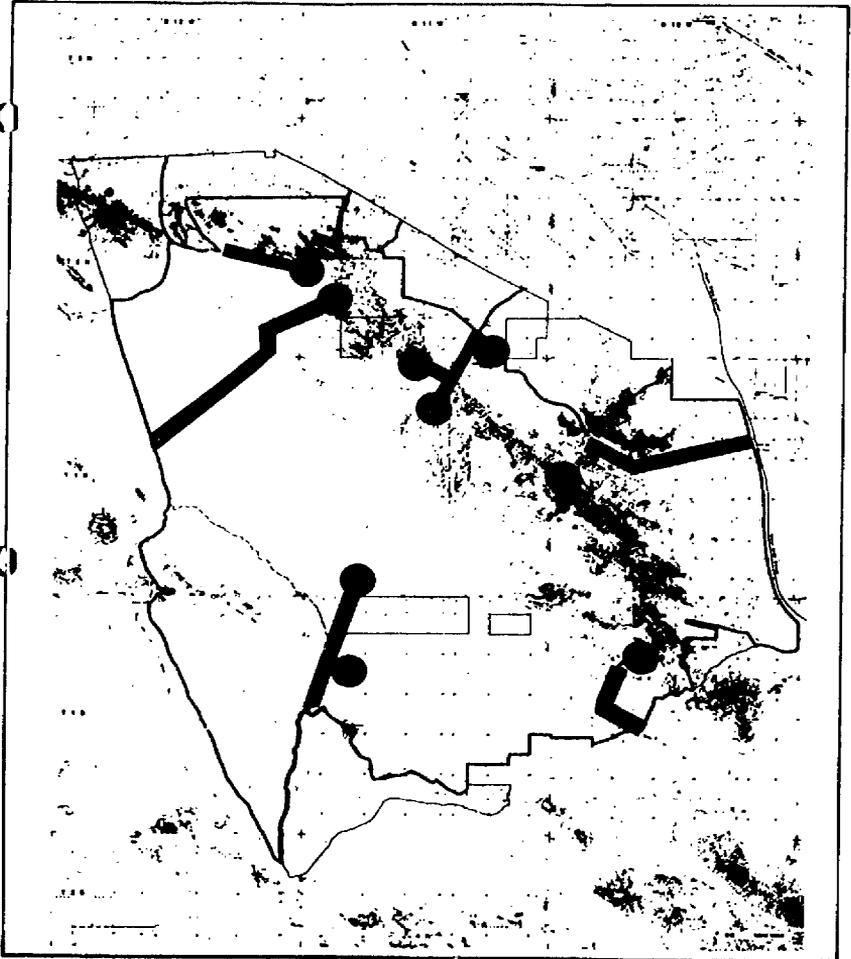
LEGEND
--- WILDERNESS STUDY AREA BOUNDARY
--- WILDERNESS AREA BOUNDARY

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
FEBRUARY 1994



SCALE ONE INCH = 1000 FEET

PREPARED BY THE BUREAU OF LAND MANAGEMENT, NATIONAL SYSTEMS CENTER, PUEBLO, COLORADO



WILDERNESS AREA MAP

U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF LAND MANAGEMENT
February 1988

02-128 EAGLETAL MOUNTAINS



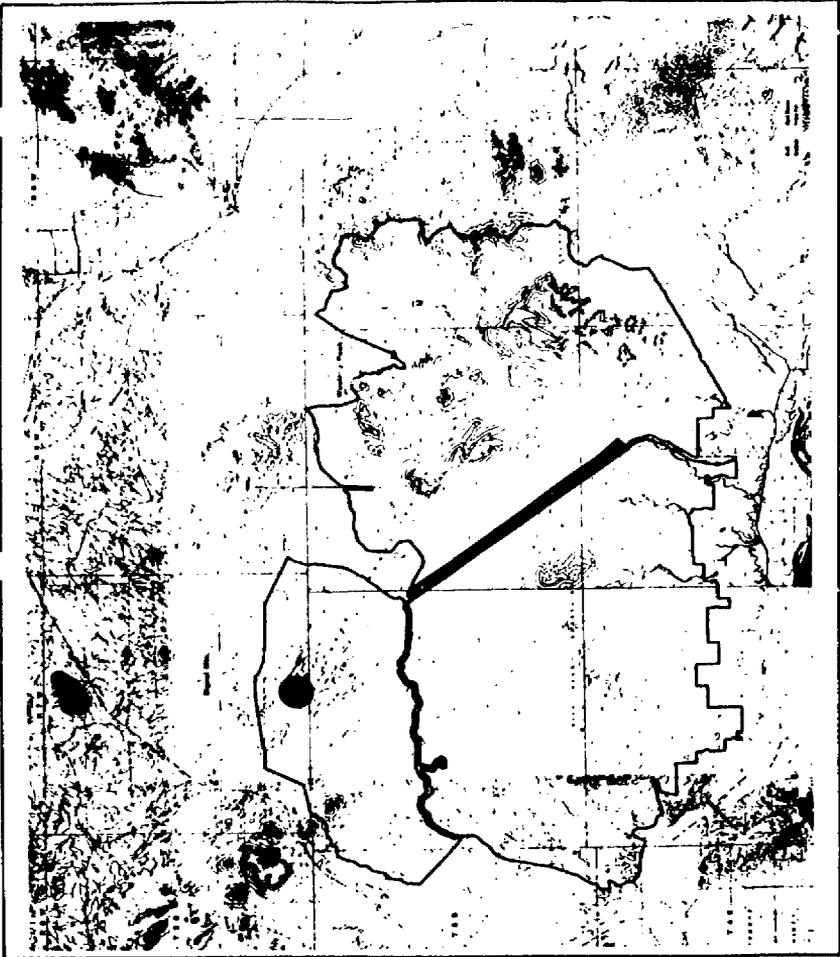
- LEGEND
- WILDERNESS STUDY AREA BOUNDARY
 - WILDERNESS AREA BOUNDARY

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WILDERNESS AREA MAP

U.S. DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT

FEBRUARY 1964

02-158 SIGNAL MOUNTAIN

02-142/144 WOOLBEY PEAK



LEGEND

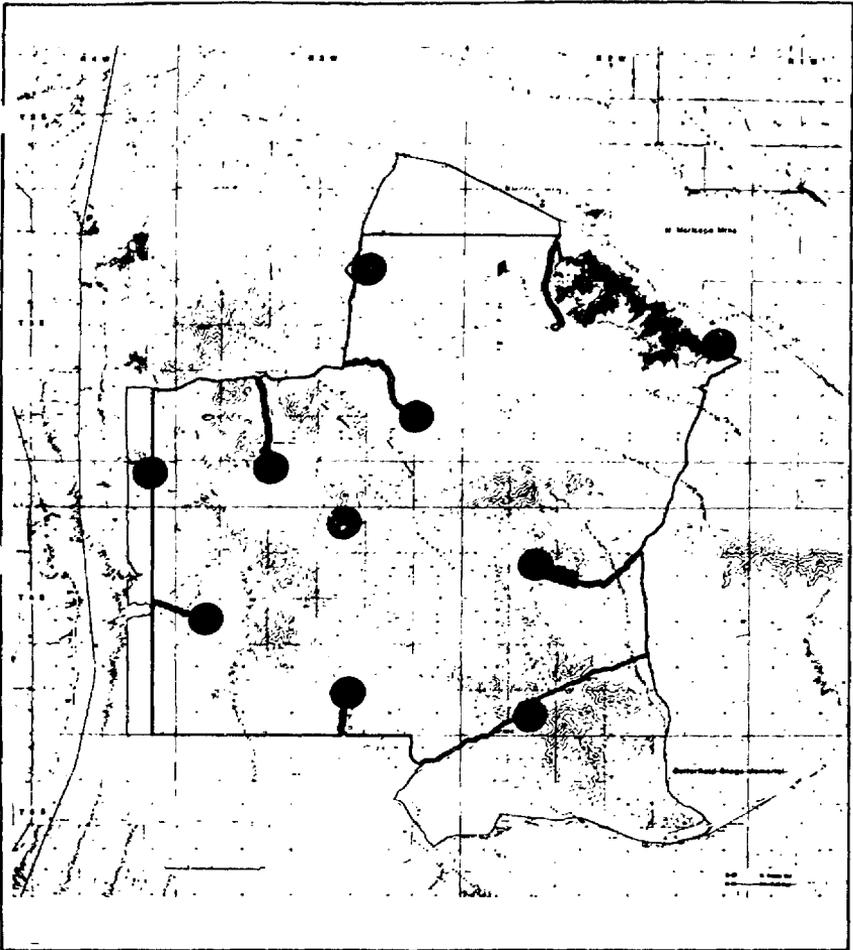
————— WILDERNESS AREA BOUNDARY



SCALE ONE INCH TO ONE MILE

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WILDERNESS AREA MAP

U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF LAND MANAGEMENT
FEBRUARY 1966

02-187 NORTH MARICOPA MOUNTAINS
02-104-BUFFERFIELD-STAGE-MEMORIAL



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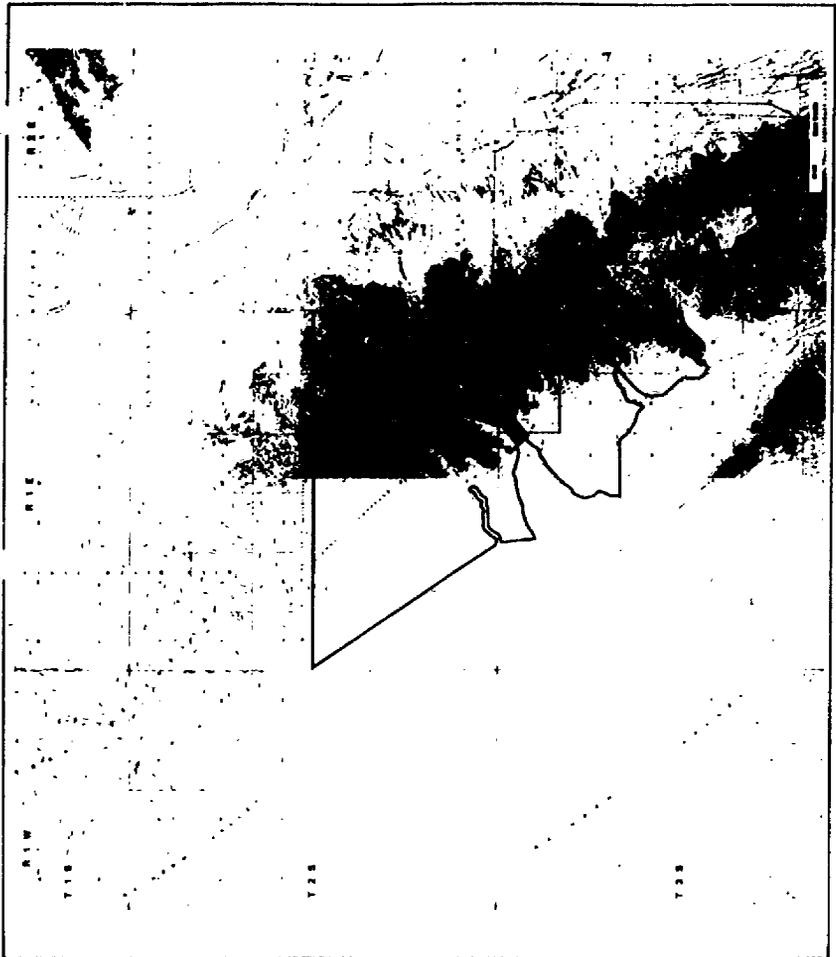
 WILDERNESS STUDY AREA BOUNDARY
 WILDERNESS AREA BOUNDARY



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WILDERNESS AREA MAP

02-160 SIERRA ESTRELLA

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FEBRUARY 1988

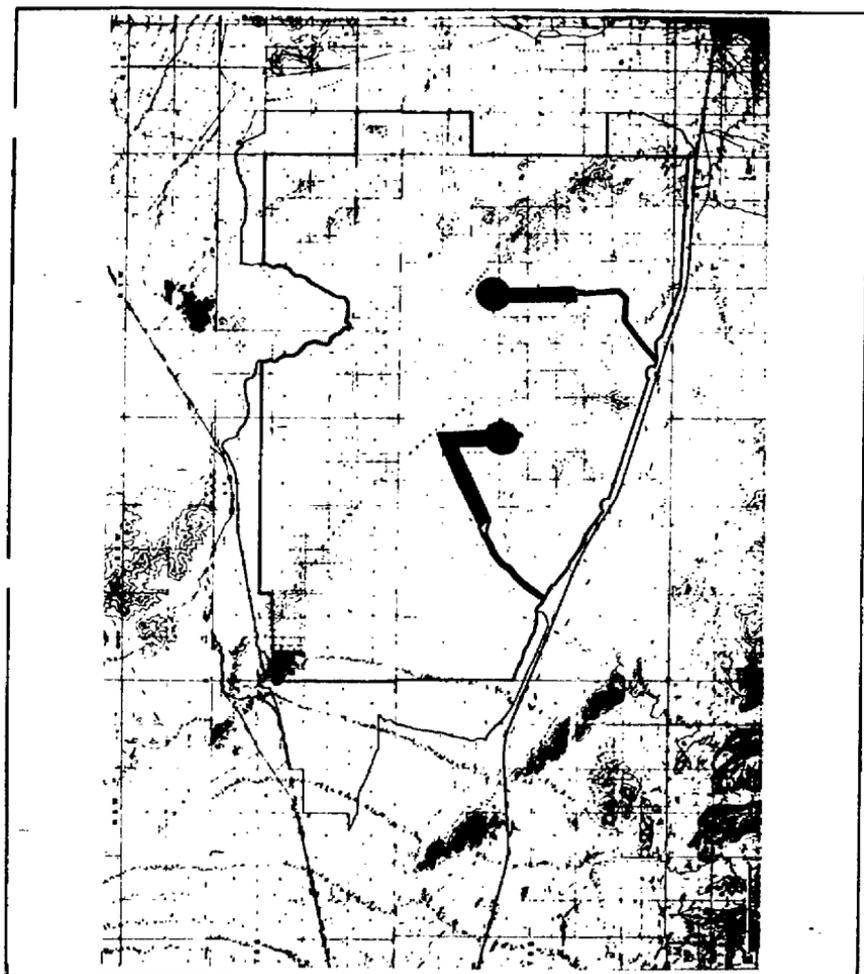
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WILDERNESS AREA BOUNDARY



SCALE: ONE INCH = 10 MILES

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WILDERNESS AREA MAP

02-183 SOUTH MARICOPA MOUNTAINS

U.S. DEPARTMENT OF AGRICULTURE

FOREST SERVICE

FEBRUARY 1990



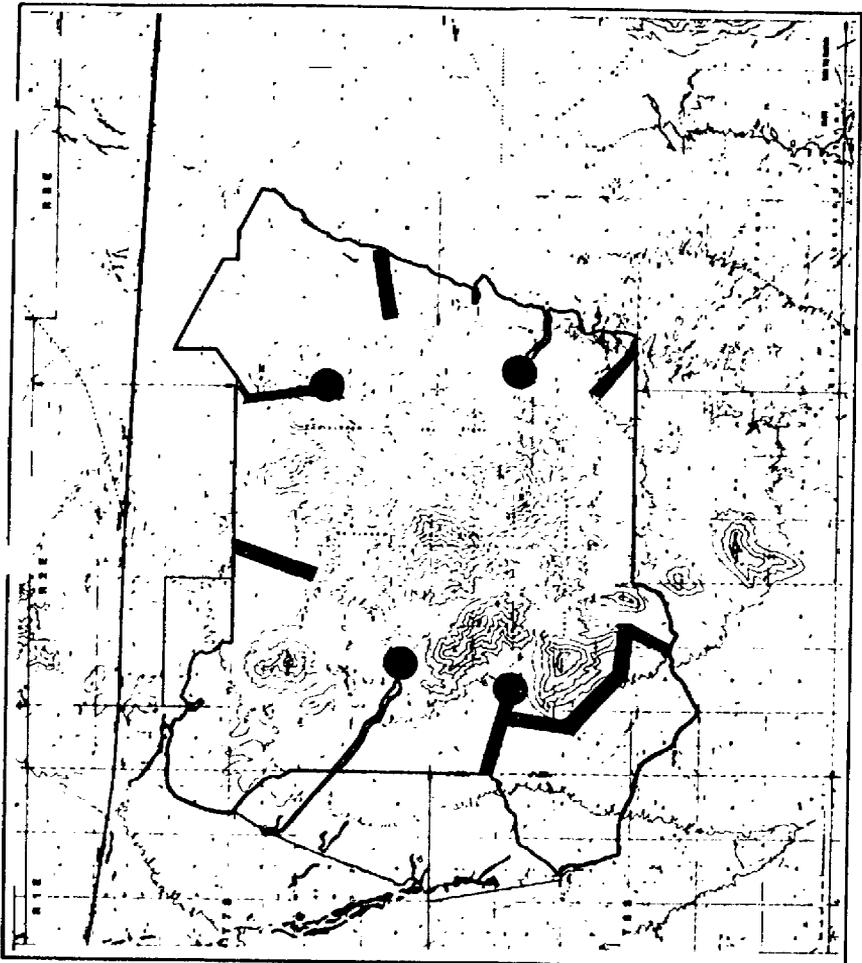
LEGEND

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- WILDERNESS AREA BOUNDARY



SCALE ONE INCH = 10 MILES

ADAPTED BY THE BUREAU OF LAND MANAGEMENT, ARIZONA STATE OFFICE FROM THE ORIGINAL SOURCE



WILDERNESS AREA MAP

02-172 TABLE TOP MOUNTAINS

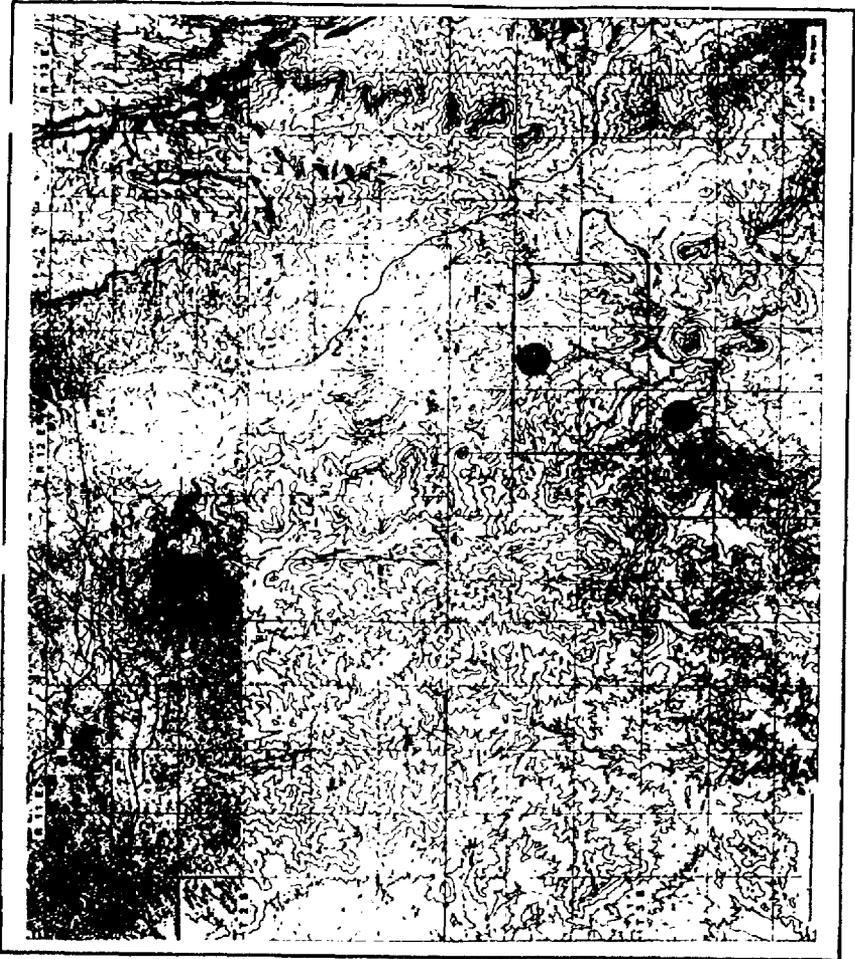
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BUREAU OF LAND MANAGEMENT

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- LEGEND
- 1:50,000 SCALE
 - STUDY AREA BOUNDARY
 - WILDERNESS AREA BOUNDARY



MAPLE BY THE BUREAU OF LAND MANAGEMENT, WASHINGTON STATE OF THE FEDERAL GOVERNMENT



WILDERNESS AREA MAP

02-187 WHITE CANYON

U.S. DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

FEBRUARY 1968



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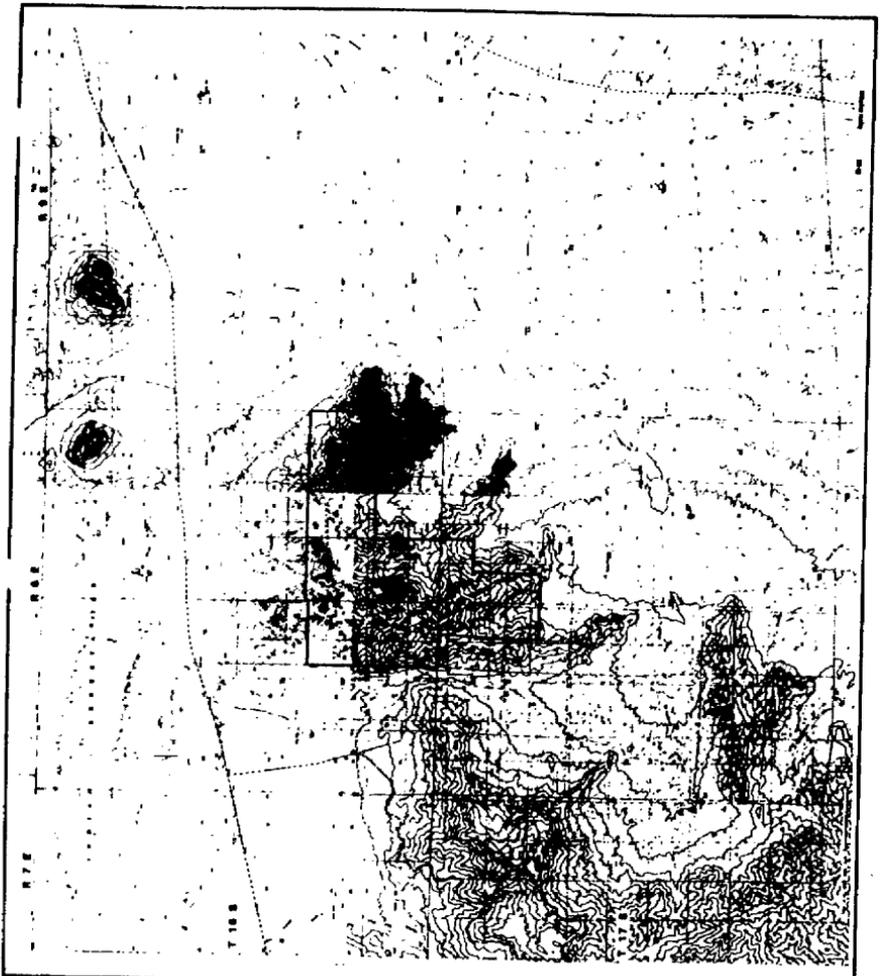
WILDERNESS AREA BOUNDARY

SCALE ONE INCH = 1 MILE

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WILDERNESS AREA MAP

02-202 COYOTE MOUNTAINS

U.S. DEPARTMENT OF AGRICULTURE

FEBRUARY 1966



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WILDERNESS AREA BOUNDARY

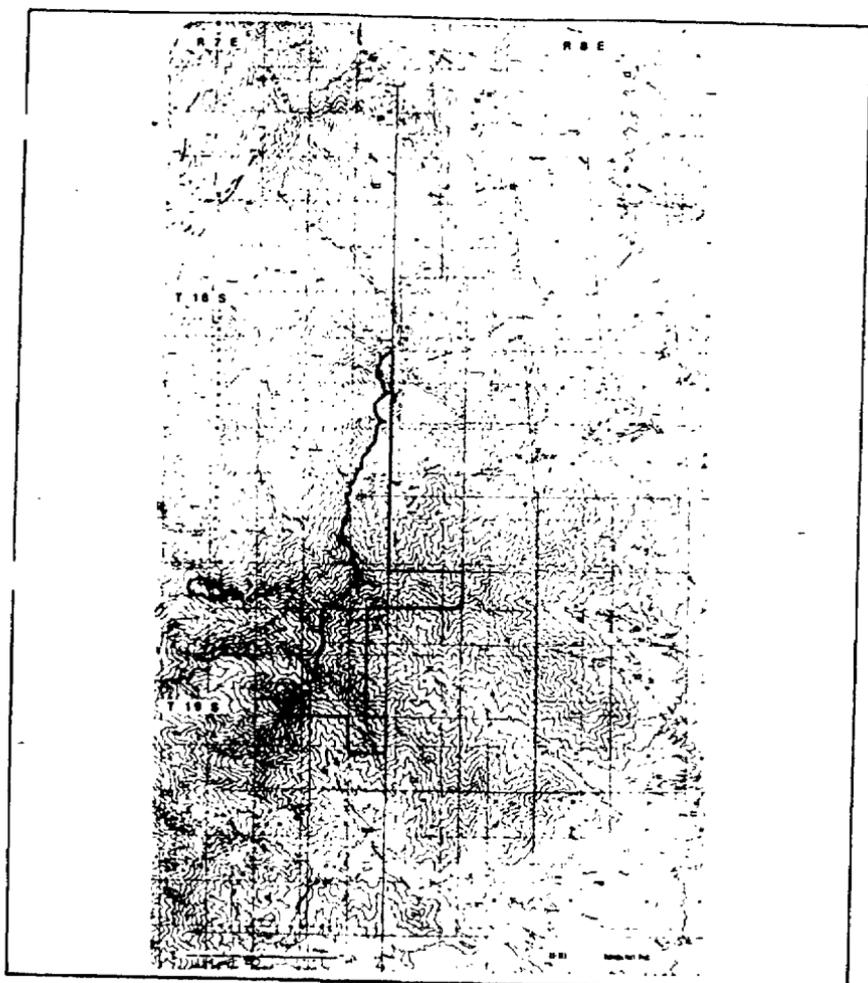


BIGHORN SHEEP TRANSPLANT



SCALE AND UNIT

OFFICE OF THE DIRECTOR OF LAND MANAGEMENT, NATIONAL SYSTEM OF PUBLIC LANDS



WILDERNESS AREA MAP

02-203 BABQUIVARI PEAK



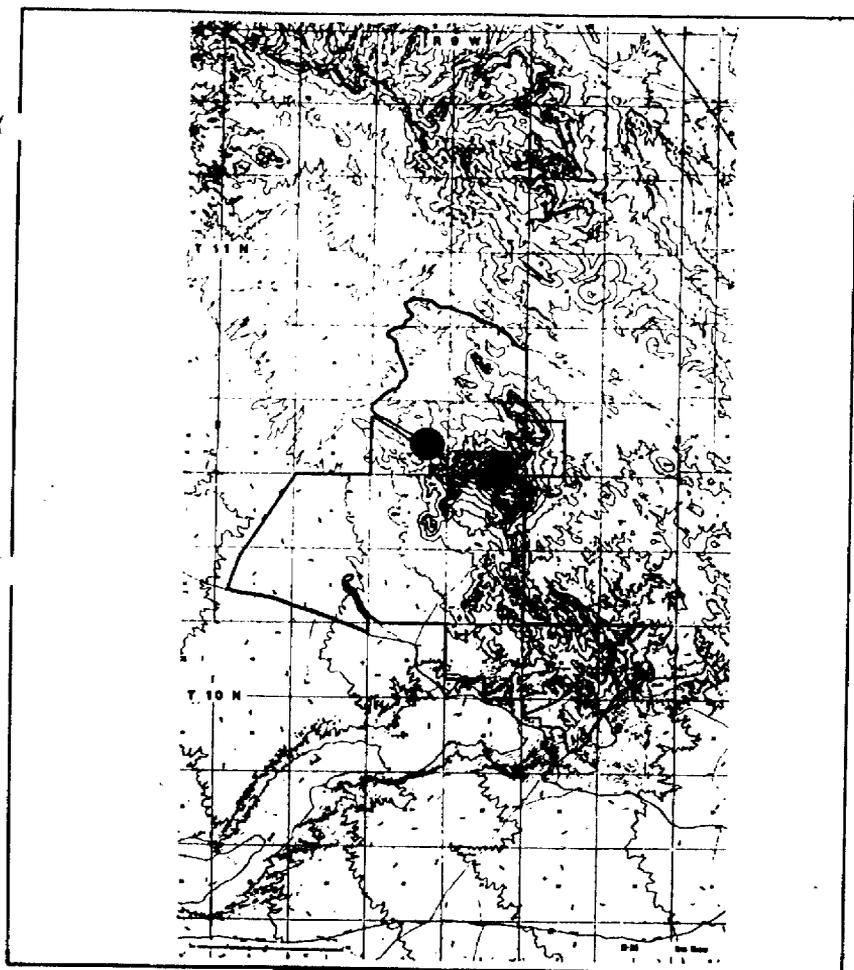
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WILDERNESS AREA BOUNDARY

1988



MAP SHEET

COMPILED BY THE BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR



WILDERNESS AREA MAP

U.S. DEPARTMENT OF AGRICULTURE

FEDERAL BUREAU OF SURVEY

FEBRUARY 1966

02-206 TRES ALAMOS



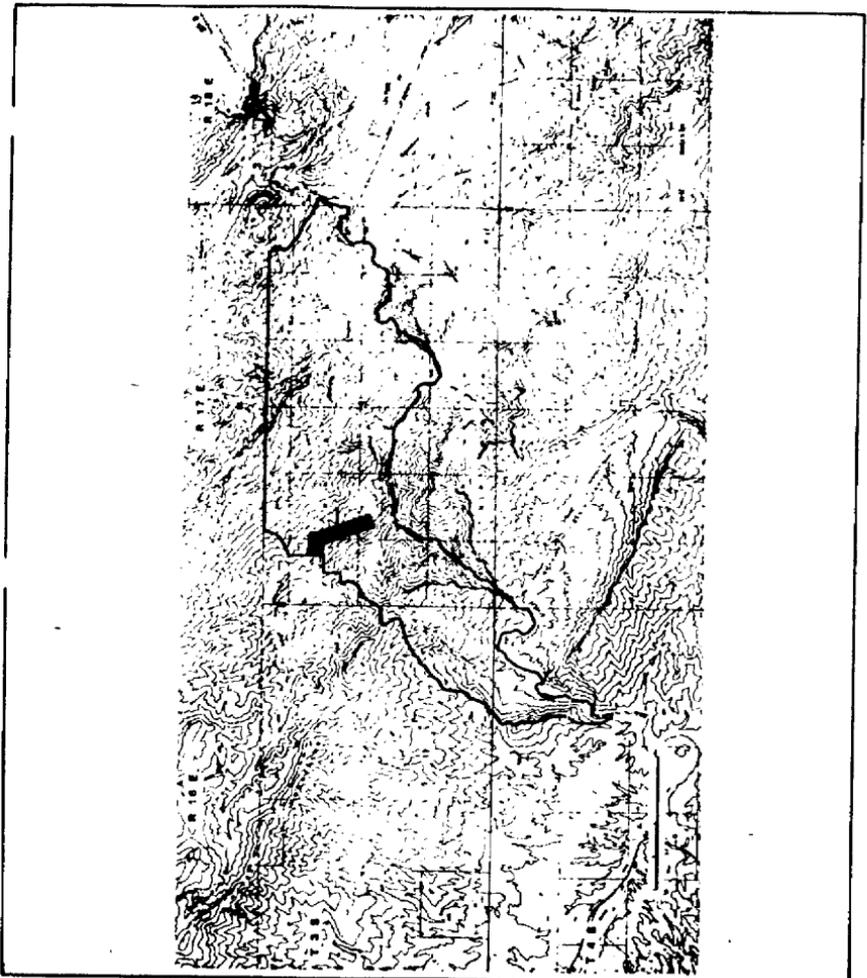
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- WILDERNESS AREA BOUNDARY
 - WILDERNESS AREA BOUNDARY

SCALE: ONE INCH = FIVE MILES

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WILDERNESS AREA MAP

U.S. DEPARTMENT OF INTERIOR

BUREAU OF LAND MANAGEMENT

FEBRUARY 1990

04-001 NEEDLE'S EYE



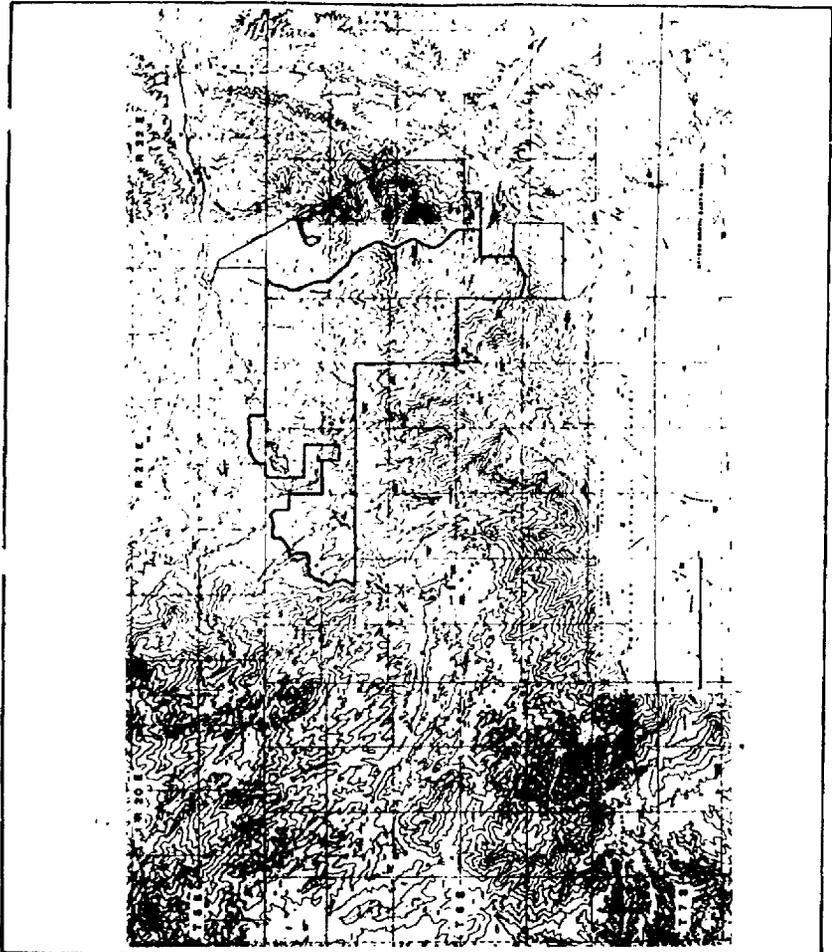
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SCALE ONE INCH = [redacted]

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WILDERNESS AREA MAP

04-008 NORTH SANTA TERESA

SCALE

U.S. DEPARTMENT OF AGRICULTURE

WILDERNESS SERVICE

DECEMBER 1978

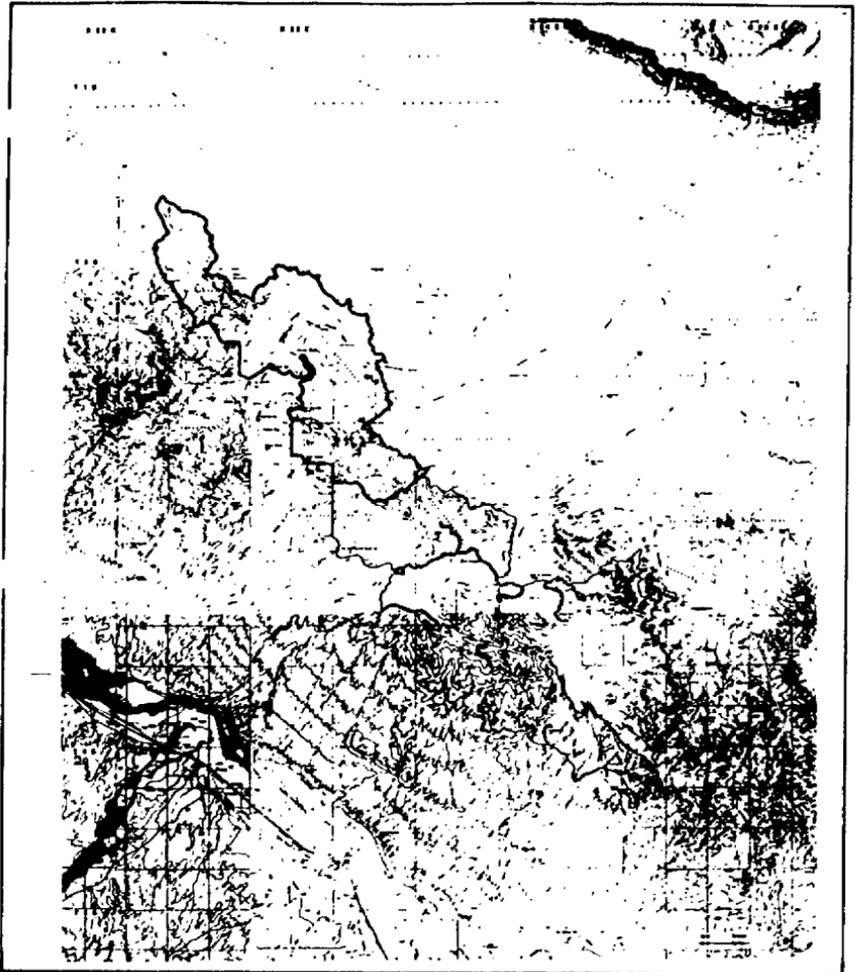


- UNDESIGNATED OTHER BOUNDARY
- WILDERNESS AREA BOUNDARY



SCALE AND UNIT INFORMATION

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WILDERNESS AREA MAP

U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF LAND MANAGEMENT
FEBRUARY 1960

04-014 FIRE HOOPS
04-016 DAY MINE



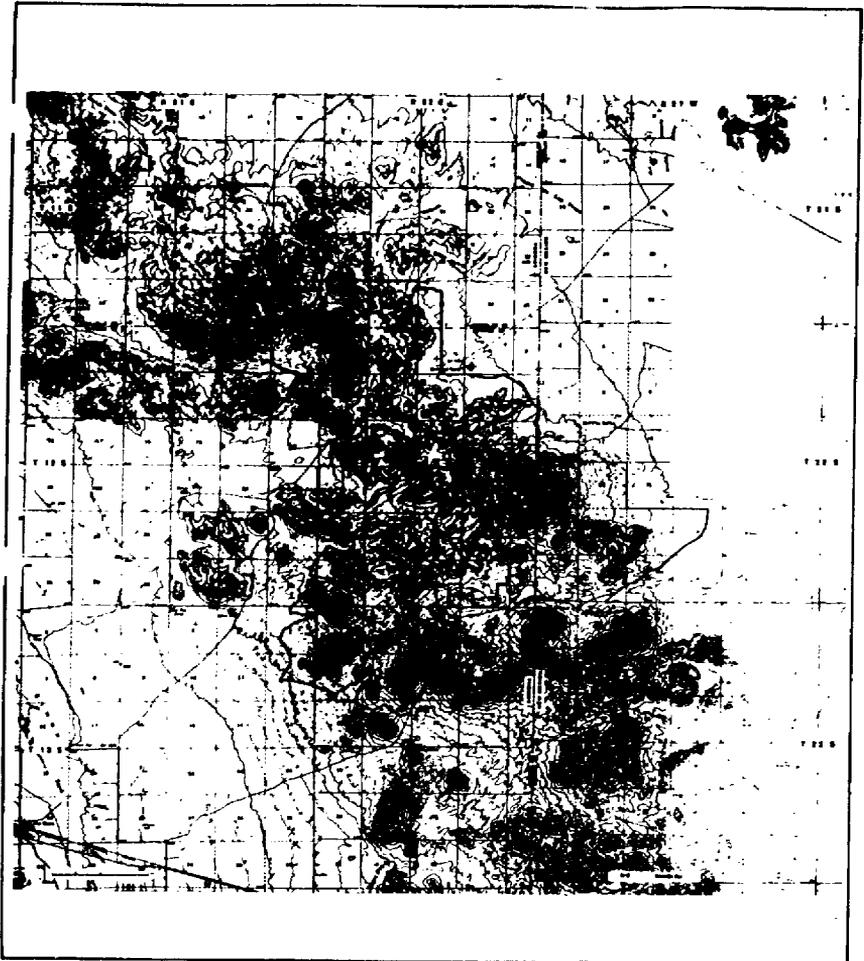
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————— WILDERNESS STUDY AREA BOUNDARY

————— WILDERNESS AREA BOUNDARY



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WILDERNESS AREA MAP

04-060 PELONCILLO MOUNTAINS

1:50,000
 UNITED STATES GEOLOGICAL SURVEY
 BUREAU OF LAND MANAGEMENT
 FEBRUARY 1990

----- BIGHORN SHEEP WILDERNESS AREA BOUNDARY
 _____ WILDERNESS AREA BOUNDARY

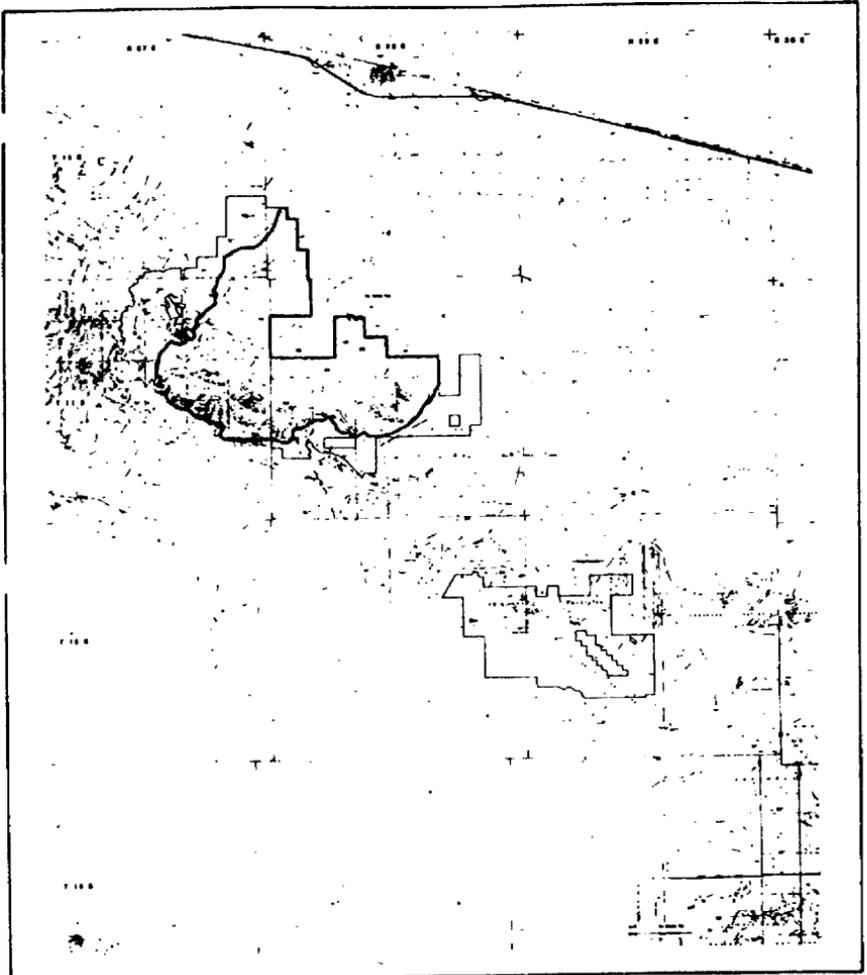


BIGHORN SHEEP TRANSPLANT

SCALE 1:50,000

COMPILED BY THE BUREAU OF LAND MANAGEMENT, UNITED STATES GEOLOGICAL SURVEY





WILDERNESS AREA MAP
 U.S. DEPARTMENT OF AGRICULTURE
 BUREAU OF LAND MANAGEMENT
 FEBRUARY 1988

04-048 DOS CABEZAS MOUNTAINS
 04-049 BOWIE MOUNTAIN

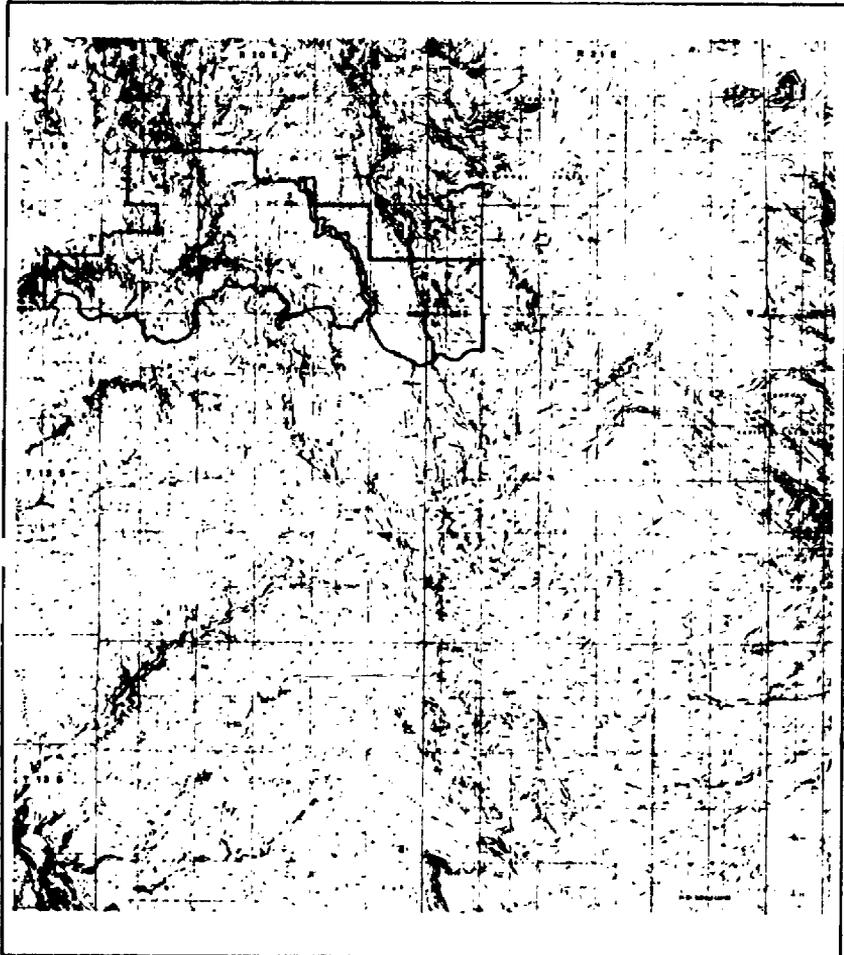


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 WILDERNESS AREA BOUNDARY



SCALE: 1:50,000

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WILDERNESS AREA MAP

04-081 REDFIELD CANYON

U.S. DEPARTMENT OF AGRICULTURE

FEBRUARY 1960



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WILDERNESS AREA BOUNDARY



SCALE AND UNIT

COMPILER BY THE BUREAU OF LAND MANAGEMENT, WASHINGTON STATE OFFICE, PULLMAN, WASH.



WILDERNESS AREA MAP

08-012 GIBRALTAR MOUNTAIN



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 WILDERNESS AREA BOUNDARY

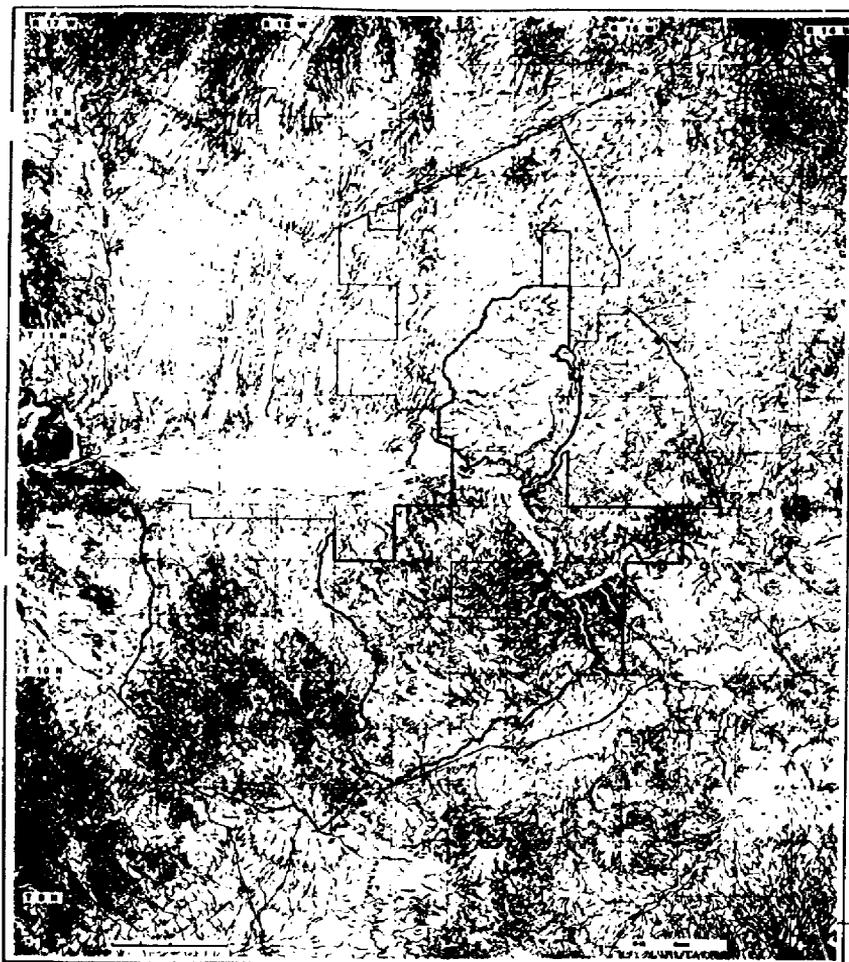
U.S. GEOLOGICAL SURVEY
 BUREAU OF LAND MANAGEMENT
 FEBRUARY 1986

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WILDERNESS AREA MAP

U.S. DEPARTMENT OF INTERIOR

BUREAU OF LAND MANAGEMENT

FEBRUARY 1990

05-015A SWANSEA

- WILDERNESS STUDY AREA BOUNDARY
- WILDERNESS AREA BOUNDARY



SCALE: ONE INCH = 10 MILES

PREPARED BY THE BUREAU OF LAND MANAGEMENT, JARVIS STATE OFFICE, FORTY-NINE AVENUE

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WILDERNESS AREA MAP

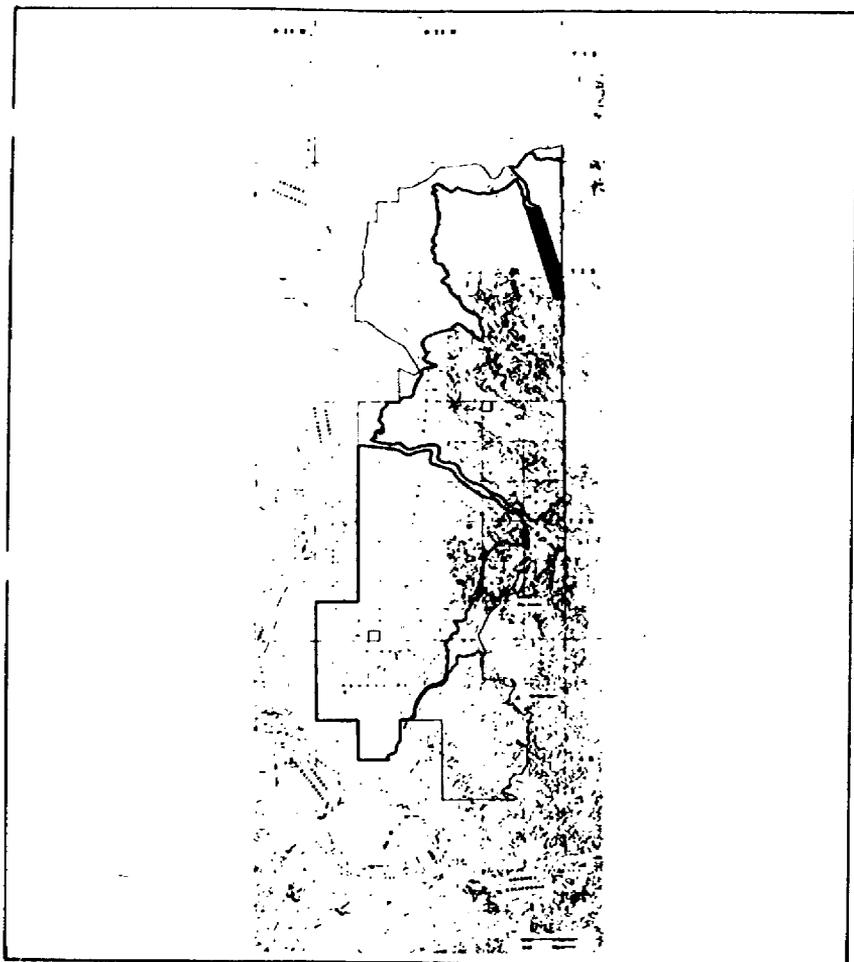
06-017 EAST CACTUS PLAIN

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DATE OF LAST REVISION
FEBRUARY 1966



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WILDERNESS AREA MAP

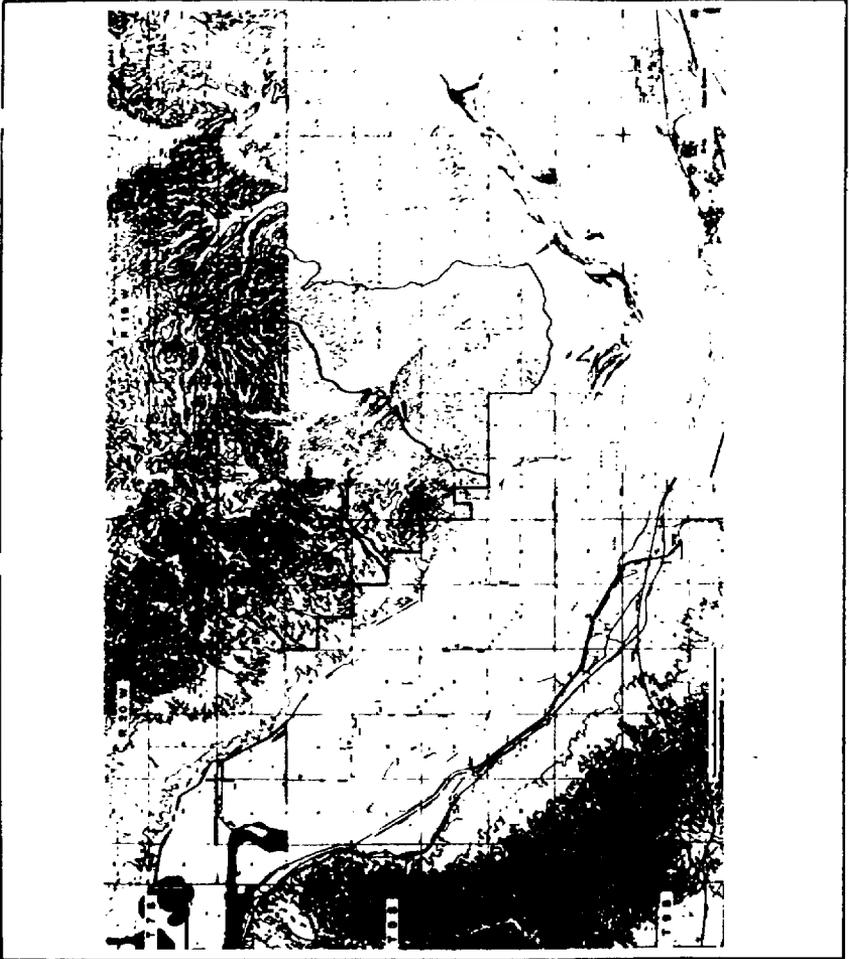
U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
PERMITS BY THE BUREAU OF LAND MANAGEMENT, UNDER THE STATE FORELAND ACT.

00-0000 SOUTH-TYHOON MOUNTAINS

00-0000 TROO MOUNTAINS

- LEGEND
- STUDY AREA BOUNDARY
 - WILDERNESS AREA BOUNDARY





WILDERNESS AREA MAP

08-063A MUGGINS MOUNTAIN



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DATE OF 1:50,000 ORIGINAL BY

FEBRUARY 1960

----- MUGGINS MOUNTAIN STATE WILDERNESS

----- WILDERNESS AREA BOUNDARY



SCALE BAR

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GAME & FISH DEPARTMENT

2221 West Greenway Road Phoenix Arizona 85023 4312 (602) 942 3000

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Ross Moffard

Commissioners:

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Philip W. Ashcroft, Eagar

Gordon K. Whiting, Kinnodyke

Larry Taylor, Yuma

Elizabeth T. Woodin, Tucson

Director

Duane E. Shroule

Deputy Director

Thomas W. Spalding

May 3, 1990

The Honorable Dale Bumpers, Chairman
 Subcommittee on Public Lands, National Parks and Forests
 Senate Energy and Natural Resources Committee
 Dirksen Senate Office Building, Room 308
 Washington, D.C. 20510-6150

Dear Chairman Bumpers:

After testifying on April 5th at the Subcommittee on Public Lands, National Parks and Forests on S. 2117 and H.B. 2570, the Arizona Wilderness bills, I returned to Arizona with a list of requests the Subcommittee had offered. I was unaware that an official request was forthcoming (received on April 23, 1990) and attempted to address your concerns with a response that I mailed to you on April 16, 1990. The official concerns were similar to those I initially responded to and I would like to take this opportunity to further address your requests in hopes of fulfillment.

On the occasion that your official questions are similar to the responses already sent, I will refer back to that document identified as "Initial Response."

1. You have stated in your testimony that the proposed language in S. 2117 gives many in Arizona some comfort. Are you completely satisfied that the report language will enable you to arrest your concerns? Or would statutory language be more acceptable? If so, please explain why statutory language is preferred.

As I previously stated in both the presentation to the Subcommittee and in the "Initial Response #1," the Arizona Game and Fish Commission is not satisfied that the report language will resolve all concerns. It is my belief, as Secretary to the Commission, that the desirable scenario would be to include the Arizona Game and Fish Commission's Wildlife Management Criteria for Arizona lands designated as wilderness ("Initial Response"/Attachment A) as statutory language in the Arizona Wilderness bills.

Statutory language is the preferred alternative based on the

An Equal Opportunity Agency

premise that we believe it would give wildlife greater priority in today's management practices surrounding wilderness, and if any wildlife management practices were ever tested in the judicial process, its probability to prevail would be increased. Furthermore, our Department has experienced bureaucratic roadblocks due to individual interpretations of language regarding wilderness. It is our belief that statutory language specifically identifying our ability to manage wildlife on lands designated wilderness will allow the Arizona Game and Fish Department (AGFD) to continue the conservation and proper management of Arizona's diverse fish and wildlife.

2. Have you had personal experience with wilderness report language which did not work as intended? Please explain in detail.

The Bureau of Land Management (BLM) and the U.S. Forest Service adopted the report language in the California Wilderness Act and have been using it as criteria for determining the appropriateness of wildlife projects for wilderness. Our concerns and past experiences are related to problems associated with this report language and the interpretation of it. To be more specific, the interpretation of what "minimal tool" is, and what is "compatible" with wilderness. The intent of the Arizona Game and Fish Commission is to have statutory language identifying wildlife and associated management practices as a wilderness resource with equal consideration in managerial decisions.

Listed below are examples of situations where our Department felt that report language, and interpretations thereof, were inadequate:

Juniper Mesa Catchment:

This wildlife project was developed prior to the designation of the Juniper Mesa Wilderness Area. It is located in the Prescott National Forest. After the area was designated wilderness the AGFD requested permission to use a truck and transport materials into the catchment for repairs. The request was denied on the grounds that using a motorized vehicle was not allowable under wilderness guidelines. The Regional Forester did grant permission to use a motorized vehicle to remove the structure. The water catchment is necessary to maintain the local turkey population and also benefits mule deer as well as a myriad of nongame wildlife species. The AGFD realizes the critical need for this project and is planning to repair the catchment utilizing a horse drawn wagon to deliver new materials and haul away debris. This increased burden will cost the AGFD excessive dollars and manpower.

Gray Tank Water Catchment:

In June of 1989, the state offices of BLM and AGFD selected

this water catchment as a viable project. At this time funds and manpower were assigned. On October 4, 1989, the AGFD submitted a formal proposal to BLM stating detailed descriptions of the project. The plan was to build a storage facility with a shade cover, designed to reduce evaporation and maintain water quality. Furthermore, there were signs of domestic livestock in the area necessitating the construction of a pipe rail fence to exclude their use. The AGFD was left with the impression that there was no problem with the project's compatibility with wilderness and coordinated a work crew of 50 volunteers from Arizona Desert Bighorn Sheep Society, a helicopter and Department personnel to construct the project. Two days prior to the construction date (January 10, 1990), the BLM advised us that they had modified the plans and were denying the Department permission to construct the shade and pipe rail fence on the grounds that they are incompatible with wilderness, even though these items are on other designated wilderness areas. The BLM later agreed to construct the pipe line fence if future problems arose, but were opposed to the shade structure.

The inconsistencies and personal interpretations regarding "minimal tool" and "wilderness compatibility" make the planning of these wildlife projects very difficult. The BLM administration is working very hard to coordinate with the AGFD to address our concerns. Even with their efforts, our ability to maintain these projects decreases with the varying interpretations from agency to agency, wilderness area to wilderness area, and even individual to individual. The AGFD is optimistic that strong statutory language, combined with a positive interagency relationship, will leave less room for interpretation and enable Arizona to continue proper wildlife management and conservation.

3. **What is the specific impact to your wildlife programs and public access routes which were not "cherry-stemmed" on the maps referred to on Page 2 of your testimony?**

The BLM, Arizona Congressional Delegation and Wilderness Coalition made sincere efforts to meet our concerns regarding access for public use and wildlife management activities. Although all concerns were not met, a large portion of primary access routes were cherry-stemmed. As I indicated in "Initial Response #3," each Wilderness Study Area was evaluated and those routes that appeared significant for continued public access were selected and designated so by the red lines appearing in the "Initial Response/Attachment D, Maps." There are many other traditional, primitive roads in existence that were not recommended by the Arizona Game and Fish Commission for cherry-stemming.

In reference to the impacts of roads not cherry-stemmed on our wildlife programs, the AGFD is optimistic that our working relationship with the appropriate land management agencies will allow access to wildlife projects beyond wilderness boundaries, for administrative purposes. Our

Department is under the impression from the BLM that permission to access any wildlife project requiring maintenance (i.e. repairs, routine trips of hauling water by vehicle), will be granted. There are concerns that some individuals do not consider wildlife an element of wilderness and will attempt to prohibit these practices. That is the foundation behind our desire for complete cherry-stemming versus administrative access. It is our belief that a road that is cherry-stemmed is less vulnerable to complete closure, compared to one established as administrative access.

4. Please provide any statutory language that you feel will solve your specific problems with the legislation as drafted.

In response to Question #4, I will again submit for the record, the management criteria established by the Arizona Game and Fish Commission (See Attachment).

The AGFD's primary concern is that language be included in S. 2117 and H.B. 2570 (preferably in statute) that will allow our Department to continue managing Arizona's diverse fish and wildlife, protect past investments we have made to accomplish this mission, and continue the practice of developing projects that benefit wildlife populations.

I would like to take this opportunity to address a recent issue that has been brought to the Department's attention. There is some discussion that the boundaries surrounding the Upper Burro Creek Wilderness Study Area are potentially being modified. Our Department is very aware of this Wildlife Study Area location and, due to its geographic isolation, agrees with the BLM that it does not meet wilderness criteria. However, if it is the intention of the Delegation to include this area as wilderness, we would respectfully request that the Salt Creek Road be cherry-stemmed for both public and administrative access. The public utilizes this road frequently for various recreational uses and access to Goodwin Mesa. The following table is representative of some uses:

Salt Creek Road Use Data:

1989 HUNT	USE
1200 Deer Permits	50 hunters
150 Javelina	8 hunters
25 Antelope	7 hunters
Quail	20-40/season
Trappers	2-4 (Bagdad Residents)
Recreationist	1 vehicle/weekend (Feb. - May)

To prohibit access through Salt Creek Road would result in significant additional travel time to Goodwin Mesa and possibly eliminate a large segment of traditional users to the area. Additionally, response time for our Officers (located in Bagdad, AZ) to this area for enforcement purposes would significantly be

reduced if access were denied. This would be detrimental in the Department's ability to enforce Arizona statutes, including assistance in enforcing Wilderness legislation.

If I can be of further assistance please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Duane L. Shroufe". The signature is written in dark ink and is positioned to the right of the typed name.

Duane L. Shroufe
Director

DLS:TKO:jr

Attachment

ATTACHMENT A

Listed below is the Management Criteria established by the Arizona Game and Fish Commission (Commission). It is their request that these Management Criteria be adopted into the Arizona Wilderness Bill, to ensure the most beneficial approach to managing Arizona's wildlife on all approved Wilderness Areas. The Commission feels that this Criteria and the other concerns listed in the "Commission Approved Wilderness Study Areas, April 1989", must be resolved in order for the Commission to support any of the Wilderness proposals endorsed at their April 8 meeting.

Arizona Game & Fish Commission
Management Criteria
Arizona Wilderness Bill

Sec. (). (a) As provided in section 4(d)(8) of the Wilderness Act, nothing in this Act shall be construed as affecting the jurisdiction or responsibility of the State of Arizona with respect to wildlife and fish in the national forests, Bureau of Land Management lands, or National Wildlife Refuges, in Arizona.

(b) Nothing in this Act shall be construed as limiting the ability of the Arizona Game and Fish Department, in consultation with the affected federal land management agency, from using mechanized equipment including, but not limited to, helicopter, fixed wing aircraft, and motorized vehicles, to carry out the following activities within lands designated wilderness by this Act.

(1) Fish and wildlife research and management surveys and population sampling.

(2) Facility development and habitat alteration, including the maintenance operation or creation of flow maintenance dams, water developments, water diversion devices, and associated structures necessary for fish and wildlife conservation. Clearing of debris impeding movement of fish on spawning streams shall be permitted. Motorized equipment may be used to accomplish the purpose of this paragraph.

(3) Stocking or transplanting of fish or collection of fish spawn, is permitted if the purpose is to accomplish at least one of the following objectives:

- (i) reestablishment or maintenance of indigenous species;
- (ii) recovery of threatened or endangered species; or
- (iii) maintenance or enhancement of recreational values associated with indigenous or exotic species.

(4) Chemical treatment of waters is permitted when the purpose is to accomplish at least one of the following objectives:

- (i) reestablishment of native species;
- (ii) recovery of threatened or endangered species; or
- (iii) corrections of undesirable conditions resulting from human influence.

(5) Removal, reintroduction or supplemental transplants of terrestrial wildlife species, including the use of motorized vehicles to perform this work, shall be permitted if:

- (i) the status of threatened or endangered species would be enhanced; or
- (ii) a population of a native species eliminated or reduced by acts of man would be restored or enhanced; or
- (iii) maintenance or enhancement of recreational values associated with indigenous or exotic species as identified in the applicable wilderness management plan would result; or
- (iv) other significant wilderness values would not be impaired.

(6) Control of problem wildlife shall be permitted to:

- (i) reduce depredations on other wildlife and domestic livestock;
- (ii) remove animals creating a public nuisance related to human interests;
- (iii) prevent transmission of diseases or parasites affecting other wildlife or humans; or
- (iv) abate conflicts with native species, particularly if those native species are endangered or threatened.

100-111-3 71 4: 19



May 3, 1990

ARIZONA
DEPARTMENT
OF WATER
RESOURCESRosa Malford, Governor
N. W. Plummer
Director15 South 15th Avenue
Phoenix, Arizona 85007

The Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands,
National Parks and Forests
United States Senate
Washington, D.C. 20510-6150

Dear Senator Bumpers:

Your work as Chairman of the Subcommittee on Public Lands, National Parks and Forests on the Arizona Wilderness bills is appreciated. I enclose with this letter my answers to the questions asked by Senators McClure and Wallop about these bills.

If you have any questions, please give me a call.

Sincerely,

N.W. Plummer
Director

NWP:BAM:rmn

Enclosure

Questions from Senators Wallop and McClure

Answers from Mr. N. W. Plummer, Director,
Arizona Department of Water Resources
Phoenix, Arizona

- 1) You state that you believe that the House bill appropriately addresses water rights. Does that mean that you oppose the language included in the Senate measure? What are your specific concerns with the Senate language?

Yes. Specifically, the Department opposes the sentence in Section 201(d) which states that "Federal water rights reserved by this Act shall be in addition to any water rights which may have been previously reserved or obtained by the United States for other than wilderness purposes." If other Federal water rights exist they should be considered as partially or totally fulfilling the wilderness water rights. Furthermore, we believe that in-stream flow rights for recreation and wildlife purposes for wilderness areas, if granted under state law, will fulfill Federal water rights for wilderness purposes.

- 2) You state that the issue of water rights should not be left for future determination by the courts, yet you also appear to assert that the quantification of the rights, and presumably also the definition of purposes, should only be done by the Courts in a general stream adjudication? Does that seem a little inconsistent to you?

In my testimony before the committee I expanded on this statement to explain that future determinations by the courts should not be undertaken without direction from Congress. In Arizona we have in place a process for determination of federal reserve water rights which we believe will satisfy the needs of the wilderness areas while at the same time protecting other water users in the state. First is our state administrative process for granting water rights for minimum in-stream flows. These are granted for recreation and wildlife purposes, including fish. BLM today has before the Department of Water Resources applications for in-stream flows for the critical stream reaches in proposed wilderness areas. We believe that quantification of these in-stream flows by the State will be the first and most important step in determining the water rights for wilderness areas.

Secondly, Arizona is conducting, in the state courts, two large general stream adjudications pursuant to the McCarran amendment. We believe that the adjudication courts will give a great deal of weight to the State's in-stream flow water right determination in quantifying federal wilderness

water rights.

The position I advocate reflects Arizona's hydrology and laws. It is not intended as a guidepost for use in other states with different circumstances.

- a) If you want to eliminate any judicial determination, why don't you simply provide for a quantification in the legislation?

We are opposed to quantification in the legislation. At this time there is little or no data available to specifically quantify rights on all the streams involved. Arizona's administrative process for quantification of in-stream flow rights should be utilized initially. The final determination should be made by the courts in a general adjudication, with appropriate direction by Congress.

- 3) You state on page 2 that the establishment of these rights should have statutory limitations. In Cappaert v. United States, 426 U.S. 128 (1976), the Supreme Court held that:

...when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation.

In 1978, the Court in United States v. New Mexico limited the reserved right to the "primary" purpose of the reservation. Wouldn't current case law on implied rights provide more certainty to the State of Arizona with respect to the BLM wilderness than would the language of the legislation?

The language of the legislation does not provide less certainty than current case law on implied rights. To the extent that the language of the legislation is vague, current case law would be utilized to interpret the language. Finally, rejection of the S.2117 language on additive water rights would be interpreted as direction by Congress to an adjudication court to consider whether in-stream flow rights quantified by a state administrative process entirely fulfill the Federal water rights reserved for wilderness purposes.

- 1) What purposes do you see in Wilderness designation which require the preemption of the laws of Arizona?

Wilderness advocates will argue that the state water right system does not recognize wilderness purposes as a beneficial use. From a water management perspective, we would prefer that the wilderness designation did not affect

Arizona laws. However, the explicit designation of federal reserved rights to be quantified in the state courts is a practical solution to the concerns of wilderness advocates which should have little if any impact on water users in Arizona.

- a) Doesn't Arizona law already recognize in-stream flows for recreation, fish, and wildlife?

Yes.

- b) Hasn't BLM already applied for such rights in the Bill Williams area?

Yes.

- c) Why do you feel that the federal government should preempt Arizona law rather than simply requiring BLM or the Fish and Wildlife Service to apply for State rights, since you seem to agree that the granting of such a right would be consistent with the State's support for the legislation?

An in-stream flow right granted under Arizona law only would not satisfy those who are concerned that water for recreation, fish and wildlife purposes may not fulfill all wilderness values. They would like an opportunity to develop a position on this after the state process of quantification is completed. The Department of Water Resources is confident that the result of a state administrative process will be satisfactory, and is prepared to take wilderness values into consideration in quantifying rights for recreation, fish and wildlife purposes under state law. Therefore, the Department is prepared to allow opportunity for further argument as a compromise position.

- 5) You also, on page 2, support the language of the House bill which restricts the quantification of the reserved right to a general stream adjudication. Why do you support that limitation on the State's procedural laws rather than language such as "The rights reserved by this legislation shall be quantified in accordance with the procedural laws of the State of Arizona"?

The final quantification in an adjudication would present the only opportunity for wilderness advocates to argue, if they felt the need, that an in-stream flow right for recreation, fish and wildlife does not fulfill all wilderness purposes.

- a) Would you object to a requirement that the Secretary comply with the requirements of State law?

No. In fact, the legislation now requires this to some extent. The Secretary must file a claim for the water rights in a state court adjudication.

- b) Do you find any conflict between the position of the State of Arizona on this legislation, which apparently supports preemption, and the position which the State recently took in filing an amicus brief in the Rock Creek case opposing FERC preemption under First Iowa?

No. In the Rock Creek case, FERC's position would allow it to have exclusive and broad authority on stream flow issues. Giving an opportunity for a quantification argument based on federal law in an adjudication to those uncomfortable with a purely state administrative determination on water would not allow the kind of broad preemption sought by FERC.

- c) What are the areas in which the State of Arizona does not believe the Federal Government should not [sic] comply with State water law?

The Federal Government should avoid compliance with Arizona water law only if compliance with Arizona's law would defeat a federal objective.

- d) Does the limitation to a general stream adjudication concern you, given that both the purposes and the quantification are undefined so that any future state rights will always be under a cloud until the State initiates a general stream adjudication?

No. After the state administrative process has quantified BLM's request for water for recreation, fish and wildlife, all parties concerned may well be satisfied that the federal wilderness water right is completely, or essentially completely, satisfied. As the Department of Water Resources acts on others' applications for water rights, it should quickly become apparent whether anyone believes that the federal wilderness right has taken all the remaining water in the river. A general stream adjudication will be initiated only if anyone is concerned about a "cloud" on rights.

- e) Why shouldn't whatever the right is be quantified as quickly as possible?

It should be. However, the technical difficulties in quantifying an instream flow right make the state administrative process the quickest means for accurately quantifying the right while allowing all parties concerned to have input into the decision. The administrative quantification should then serve as the

basis for an adjudication court's final determination of the wilderness water right.

- 6) You state that areas proposed for designation which are not located at the headwaters are generally located on streams which are fully appropriated and therefore the designation will have little if any impact. If that is the case, why bother creating a reserved right?

It makes little if any difference in those areas, but the reserved right should be created as a workable solution to the concerns of some advocates for wilderness water rights. This solution should work well in Arizona's unique hydrologic and legal circumstances.

- a) Are there areas designated under the legislation which in the view of the State of Arizona do not have appurtenant water? If so, which areas are they?

Most of the areas contain only ephemeral or intermittent streams. Few areas contain perennial streams.

- b) With respect to those areas, isn't the assertion of a reserved right a meaningless exercise and a gratuitous preemption of State law?

Because there will be no adverse impacts, it seems appropriate to make the water language consistent throughout the bill.

- c) Are there areas which may have appurtenant water but which are fully appropriated? If so, which areas are they?

All areas on the Gila River watershed are fully appropriated.

- d) With respect to those areas, is it the position of the State that the quantification of the reserved right should be zero since there is no unappropriated appurtenant water to reserve?

No. As a practical matter, the priority system will reduce water available to zero. However, the quantification in those areas should be at whatever level is necessary to fulfill wilderness purposes. If additional water becomes available in those areas, the federal right will then be in place in the appropriate amount.

- e) If that is the expectation of the State, then why shouldn't the legislation exclude those areas rather than inviting the Courts to be creative in trying to give meaning to what would otherwise be a meaningless

action?

See the answer to question #6.

- f) Aren't you inviting interference with senior rights by advocating a reserved right where you believe there is no unappropriated appurtenant water?

No. Prior vested rights will not be affected under either state or federal law, except with adequate compensation. Also, areas on the Gila River system are in the uppermost parts of the watershed, except for the Gila Box area. Therefore, non-diversionary wilderness water rights will give little or no opportunity for interference.

- 7) With respect to the two areas where you believe that there is a possibility of a reserved right, do you believe there should be some limit on the quantification of that right so as not to interfere with either pending applications, the operation of the Alamo Dam, or a future change in use application by Scottsdale for water appurtenant to the Planet Ranch?

A limit on the quantification, limiting it to the amount allowed under state law, would avoid interference with pending applications and with the operation of Alamo Dam. However, while the language of the House bill is not perfect, it is workable, particularly if additional language is added to refer specifically to the Committee report. Under state law, a change in use may not be approved if it will affect any other existing water right. A federal right should not get less protection than a state water right.

- a) What are the specific limitation which you want?

See answer above.

- b) Would a limitation that the reserved right could not exceed 10 cfs protect the State's interest?

Yes. That is the minimum amount now normally released from Alamo Dam.

- c) Do you believe that the BLM's pending application on the Bill Williams, if granted, would completely fulfill any wilderness purpose?

Yes.

- d) Would you support language which would deny any reserved right on the Bill Williams to the extent that the pending application is granted in order to forestall future litigation?

No. That would prevent future litigation, but it would

not be consistent with the compromise agreement.

- e) If the State believes that BLM can apply through State law to obtain whatever rights are needed for the proper management of these areas, why should there be any reserved rights elsewhere?

To satisfy those who are not comfortable with purely state water rights. Furthermore, creation of these water rights will provide consistency throughout the bill, with little or no impact on other areas.

- f) To the extent that the State is concerned over the impact of the reserved rights on operation of Alamo Dam, couldn't those concerns be better dealt with if BLM applied for a State water right through State process rather than having the federal government preempt Arizona law?

That would be true only if the federal water right were significantly different, in quantity and timing of releases, than the state water right. I do not believe the federal right would be significantly different.

- g) Why do you believe that language in the Committee report would overcome the specific language of the statute?

The language in the Committee report would not overcome specific and plain language in the statute. However, to the extent the statute is vague or ambiguous, a court would look to the Committee report as an aid to statutory interpretation. The language of the statute should specifically refer to the House Committee report.

- h) Should any reserved right be subordinated to the operation of Alamo Dam and any rights granted by the State of Arizona?

That reserved right would, under federal law, be subordinated to existing rights vested under state or federal law. Any additional subordination would not be consistent with the solution represented by the House Bill.

- 8) You state on page 5 that Arizona has a process to grant in-stream flow rights for purposes which you believe "will in all likelihood satisfy the need for water for wilderness purposes". If you really believe that, why are you advocating that the federal government disregard State law and preempt the laws of Arizona? Did Arizona take that position in Arizona v. California?

This is a position which will be workable, given Arizona's hydrology and laws. Arizona v. California was primarily a

resolution of conflicting interpretations of federal law.

- a) Is your concern and reason for advocating federal preemption based on your belief that Arizona's laws are inadequate or on a concern that unless you agree to a preemption you will not be able to get legislation enacted?

No. Neither.

- b) Again, on page 5 you state that "water rights provisions . . . should not detract from the state's opportunities to quantify these recreation and wildlife rights under state administrative law . . ." To the extent you believe that the State, rather than the courts, is the proper forum to balance conflicting demands for scarce water resources, wouldn't a denial of federal reserved rights and the accompanying preemption coupled with a requirement for the Secretary to apply for a State right better protect the State interest?

Yes. However, the House bill provides a practical alternative to such a denial.

- 9) You state that in your view, the Bill Williams is not ripe for a general stream adjudication in part since there are no large scale unquantified federal reserved water rights and there is still unappropriated water available. I assume you would agree that the situation would certainly be altered if this legislation is enacted, which would leave an unquantified federal reserved right for unspecified purposes and perhaps no further unappropriated water. Why do you believe that is a good scenario rather than having the federal government apply for a State water right under established State procedures?

As we expressed in testimony, this is the one river system which gives us concern. Currently the river system is controlled by Alamo Dam. This legislation must not affect the dam's operation. BLM has applied for in-stream flows below Alamo Dam and we expect these water rights, if granted, to be consistent with wilderness needs in this area. We would expect the dam to be operated to release water to satisfy these rights consistent with operational criteria.

- 10.1) On the Upper Burro Creek wilderness, the House report indicates that facilities for the town of Bagdad are located outside of the unit and that the designation will not interfere with access for maintenance and improvements will not be affected. Would any of those activities occur within the wilderness area?

It is my understanding that they would not.

- a) Is there any possibility that the reserved right could interfere with future development or the need for additional water supplies by the town of Bagdad?

It is possible, but doubtful.

- b) Does the mine depend on water supplies, and if so, how much?

The mining company has water rights and claims totaling 2012.2 acre-feet per year from Francis Creek above the Upper Burro Creek wilderness area and 1,045.2 acre-feet per year from Boulder Creek, which flows into Burro Creek in the wilderness area. No records are provided to the state regarding how much water is put to use.

- 10.2) The legislation you support would also claim a reserved right for wilderness in several wildlife refuges. What additional quantities of water do you believe are needed for these areas?

The water needed in these areas will amount to ephemeral flows of those desert areas, and possibly the small streams that arise there.

- a) With respect to the Havasu Refuge, what appurtenant waters have not already been fully appropriated for the Refuge?

The Havasu Refuge was decreed a right in Arizona vs. California for 37,300 acre-feet per year from the Colorado River. Because these uses will be through diversion by man made structures, this water probably cannot be used on a wilderness area.

- b) Unless you are suggesting that this Committee include in its report that the reserved right is meaningless, aren't you inviting a court to reach beyond the boundary of the wilderness area to impose a flow requirement on the Colorado?

We have suggested language to be included which would make it clear that the wilderness designation does not affect the operation of the reservoirs on the Colorado River.

- c) Should the legislation specify that nothing in this Act may in any manner be construed to affect the regime on the Colorado?

See (b) above.

- d) To the extent that some court does find that the

"reserved" right must imply an intent to affect the Colorado, is Arizona prepared to agree that any such federal right must be satisfied solely from Arizona's allocation of water in the Lower Basin?

See (b) above.

- 11) Unless there are specific purposes in the wildlife refuges which are not already satisfied by existing water rights, why should there be any additional reserved water right?

To satisfy those who are reluctant to rely on the state water right process.

- 12) Is there any reason why the Fish and Wildlife Service could not apply to the State of Arizona for any additional water rights which it feels it needs?

No.

- 13) The House Report states that "water rights for the Rawhide Mountains and the Swansea Wilderness areas shall be quantified in a manner that recognizes vested water rights, takes into account the purposes of the Central Arizona Project, and is consistent with the laws the Secretary of the Army must following operating the Alamo Project, while still protecting the wilderness qualities of these two areas." Do you agree?

Yes.

- a) There is nothing in the legislation which indicates any such limitation or balancing of interests. Should the legislation specify these considerations, and do you believe that a court is better able to balance these interests than the State of Arizona?

The legislation should contain a reference to the House Report so that a future court will have guidance on statutory interpretation.

April 19, 1990

Honorable Dale Bumpers
Chairman, Energy and Natural Resources Committee
Subcommittee on Public Lands, National Parks and Forests
308 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Hearing Record on Arizona Wilderness Bills S-2117, HR-2570

Dear Chairman Bumpers,

At the April 5, 1990 hearing on the Arizona Wilderness Bills we were asked to respond to several questions. Specifically, we were asked whether or not instream flows granted under Arizona state law adequately protect water in wilderness areas. We were also asked if there is any difference between our points of view on this issue.

The Arizona Wilderness Coalition and its member organizations including The Wilderness Society have the same position about wilderness water rights. We support the compromise water rights language in HR-2570 as it was amended on the floor of the House by Congressman John J. Rhodes. This provision establishes a federal reserved water right for each area with a priority date as of the enactment of the act. It also directs the Secretary of Interior to take all steps necessary to protect the rights including the filing of claims in stream adjudications in the courts of Arizona and in accordance with the McCarran Amendment.

We do not feel that instream flows that may be granted under state law are sufficient to ensure protection for wilderness values. Only two instream flow rights have been granted by the state of Arizona and several dozen applications for such rights have been pending for some time. So far, there have been no legal challenges against the ability of the state to grant instream flows but such suits may be filed by other water users as decisions about pending applications are made. Also, it is our understanding that under state law instream flow purposes for recreation and fish rank behind consumptive uses for cities, agriculture and industry.

Because of the uncertainty over the ability of state law to protect water in wilderness, we feel that federal reserved water rights are essential.

In addition, Jim Norton was asked for examples of the use of motorized equipment in wilderness for wildlife management purposes and the authority by which the use occurs.

Generally, the use of motorized equipment in wilderness areas is not necessary to achieve wildlife management goals. Authority for use of motorized equipment, provided that it is necessary to meet minimum requirements for the administration of the area, is granted in section 4(c) of the Wilderness Act of 1964. This is the so called "minimum tool" requirement that is embodied in the wilderness management regulations of the Bureau of Land Management, Forest Service and Fish and Wildlife Service. Copies of pertinent sections of these regulations are attached for your review.

The following are a few of many examples of the use of motorized equipment in wilderness for wildlife management purposes in compliance with the minimum tool requirement:

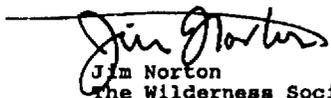
- 1) A motorized drill was used in the Gila Wilderness to construct a small dam necessary to prevent encroachment by exotic fish species into habitat for the native Gila trout, an endangered species.
- 2) Thirty desert bighorn sheep were transplanted into the Superstition Wilderness by helicopter. The sheep were captured in the Kofa National Wildlife, an area to be designated wilderness in S-2117 and HR-2570. Because it is proposed for wilderness by the administration, the refuge has been managed the same as already designated areas.
- 3) The entire gene pool of a sub-population of the Gila trout was transferred from McKenney to Little Creek. A helicopter was considered to be the minimum tool because warm temperatures could have destroyed the population if other transportation was used. The project was considered essential to the survival of trout.
- 4) Twelve mountain goats were transplanted into the Frank Church - River of No Return Wilderness via helicopter to supplement the existing indigenous population. Helicopters were considered the only means of transport that ensured survival and were used by necessity, not convenience.
- 5) Aircraft were used to transport approximately fifteen desert bighorn sheep between Badger Creek Canyon and Bushhead canyon in the Paria Canyon/Vermilion Cliffs Wilderness. Also, a temporary holding pen was constructed in the wilderness and was removed after the project was successfully completed.

All of the above wildlife management activities were completed in accordance with and under the authority of Section 4(c) of the Wilderness Act and appropriate guidelines and regulations. We believe that plenty of flexibility is provided under current law and that any additional special provisions dealing with wildlife management in wilderness are unnecessary.

Thank you for the opportunity to provide this additional information for the hearing record.

Sincerely,


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6 RM 8.1

8. Wilderness Area Management

- 8.1 Scope.** This chapter applies to all wilderness areas and those areas outside Alaska pending Congressional establishment as wilderness on national wildlife refuges. Units under consideration for wilderness in Alaska are managed under the rules, regulations, policies and laws governing the National Wildlife Refuge System and by the provisions of the Alaska National Interests Lands Conservation Act (ANILCA).
- 8.2 Policy.** To manage wilderness areas using the minimum tools necessary to safely accomplish the Service's refuge objectives and preserve, to the extent practicable, the interaction of natural forces with the land. The minimum tool is defined as that combination of methods and equipment that least degrades the wilderness values of the land while meeting refuge objectives in a safe and economical manner.
- 8.3 Objectives.** The Service's management objectives for wilderness are:
- A. To manage the land to accomplish refuge purposes in such a way so as to preserve the wilderness resource for future benefit and enjoyment of the public; and
 - B. To provide opportunities for education, research, solitude, and recreation where these activities are compatible with refuge purposes.
- 8.4 Authorities.**
- A. Wilderness Act of 1964. (See 1 RM 5 for complete citation.) The only sections that apply to wilderness areas within the NWRS are: Section 2, Wilderness Policy; Section 3(c), (d), and (e), Wilderness Reviews; Section 4(a) and (b), Use of Wilderness Areas; Section 4(c), Prohibition of Certain Uses; Section 4(d)(1), (b), and (7), Special Provisions; Section 6(b), Contributions and Gifts; and Section 7, Annual Reports. The provisions of sections applying only to National Forest wilderness areas established by this Act provide criteria that can be used to establish general management guidelines and policies for individual Service areas.
 - B. Alaska National Interest Lands Conservation Act of 1980. Many sections of ANILCA apply to wilderness management in Alaska, especially: Section 304, Refuge Administration; Section 811, Subsistence Access; Section 1010, Alaska Mineral Resource Assessment Program; Section 1110, Special Access and Access to Inholdings; Section 1310, Navigation Aids and Other Facilities; Section 1315 (c) and (d), Wilderness Management; and Section 131b, Allowed Uses.
 - C. Code 50 of Federal Regulations 35; 43 U.S.C. 1201.
 - D. Specific Service wilderness area authorities. P.L.'s 90-532, 91-504, 92-364, 93-429, 93-550, 93-632, 94-557, 95-450 and 96-487.

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- E. The Clean Air Act as amended August 7, 1977. Applicable sections include: Part A, Air Quality and Emission Limitation, sections 107-112, and 121; Part C, Prevention of Significant Deterioration of Air Quality, sections 160-169 and 169A, Visibility Protection for Federal class I areas.
- F. Other. Authority for management policy and directives may be found in the records of hearings and/or Congressional debate and House and Senate committee reports of the Wilderness Act and the individual public laws.

8.5 Definitions.

- A. Minimum tool. The minimum action or instrument necessary to successfully, safely, and economically accomplish wilderness management objectives.
- B. Wilderness area. Congress, in the Wilderness Act, defined what general characteristics, ideally, a wilderness area should have: "Sec. 2.(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 untrammeled 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 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 unnoticable; (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." Since Congress ultimately decides areas that are designated as wilderness, that body describes specific characteristics on a case by case basis.

8.6 Responsibilities.

- A. Washington Office. Coordinates Congressional review of proposed wilderness areas. Prescribes policies for wilderness management. Establishes criteria for wilderness study. Note: The Denver Air Quality Staff (DAQS) is an arm of the Division of Refuge Management that coordinates and provides support services to regional and refuge offices concerning air quality management of wilderness areas. (Address: National Park Service-AIR; DAQS-Permit Review and Technical Support Branch; Air Quality Division, Box 25287, Denver, Colorado 80225.)

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- B. Regional Office.** Reviews and submits wilderness proposals to Washington office. Approves refuge wilderness management plans.
- C. Refuge manager.** Manages wilderness units and prepares refuge wilderness management plans.
- 8.7 General.** The intent of the Wilderness Act is not to abrogate or amend laws governing the administration and management of national wildlife refuges. All laws governing the administration of the NWRS remain intact. However, Congress has superimposed constraints on the manner in which the refuge lands that have been designated as wilderness could be administered in the course of managing to meet refuge objectives. The major consideration is that the wilderness area must be administered in accordance with the establishing law(s) and the applicable provisions of the Wilderness Act itself.

The Wilderness Act permits many activities in a wilderness area so long as they do not permanently alter the natural processes that interact with the land. In addition to the management latitude inherent in the Wilderness Act, the specific legislation establishing each wilderness area may also contain special management directives. The sections of ANILCA listed in 8.4B contain provisions that apply to refuge wilderness areas in Alaska. All of these provisions must be regarded as authority for management. Refuge managers should be guided by any special provisions contained in the legislation that established the wilderness area on their refuge.

All refuge wilderness areas that exceeded 5,000 acres in size and were in existence on the date of the enactment of the amended Clean Air Act of August 7, 1977 (CAA), were classified by Congress as mandatory class I and may not be redesignated. All remaining refuge wilderness lands are designated as class II. Legislation in the amended CAA provides for special consideration and protection of the air quality of class I wilderness areas. A list of class I and class II refuge lands is available from DAQS.

8.8 Administrative guidelines.

- A. Use of motorized equipment.** Motorized equipment may be used in special circumstances if it is the minimum tool necessary to accomplish a task safely and without long term impairment of the area's wilderness character. However, except where Congress specifically authorizes such uses in the establishing laws or in other acts modifying the Wilderness Act such as ANILCA, the use of motor vehicles, motorized equipment, mechanical transportation, and the landing of aircraft would not be used in the routine administration of wilderness. The determination of when motorized equipment constitutes the minimum tool will be left to the refuge manager. Some examples of special situations are given below:

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- (1) Emergency situations involving the public's health and safety, including search and rescue operations.
 - (2) Activities essential to accomplishing refuge objectives. For example, if bighorn sheep tanks dry up and the only means of supplying water is by trucking it into the tanks or, where grazing is permitted, bringing a veterinarian in by truck to treat seriously ill cattle.
 - (3) In the control of fire, insects, diseases, or other hazards.
- B. Use of aircraft over a wilderness area. The Wilderness Act does not prohibit the use of aircraft in air space over a refuge or wilderness. Thus, the use of aircraft to conduct law enforcement patrols, searches, pest plant and insect control, fire spotting and control, routine census counts, and similar activities can continue, subject to the rules and regulations otherwise governing the use of aircraft.
- C. Wildfire. General Service policy is to control all wildfires in the NWRS, including those within designated wilderness areas (see 6 RM 7, Fire Management). A current, approved fire management plan for specific units may provide for nonsuppression of wildfires if both of the following criteria are met:
- (1) there is low risk of fire spreading to non-refuge lands or of damage to private property, and
 - (2) there is no significant threat to public health or safety.

Immediate action will be taken to control all wildfires that do not meet both of the above criteria. Note that "control" does not necessarily mean extinguish. In areas designated for nonsuppression, control may mean securing those firelines necessary to ensure that the above criteria are not violated and then allowing the fire to burn itself out.

While an aggressive approach to wildfire control on certain wilderness areas may be in order, the method(s) utilized should be the "minimum tool." The minimum tool may include, but is not limited to, lookout towers, tool caches, firebreaks, motorized land, water or air equipment, and chemical retardants. In conducting wildfire control activities, care must be taken to ensure that control methods do not harm the refuge and wilderness area more than the wildfire itself. For example, extensive bulldozed firebreaks on a hillside that result in permanent scars and soil erosion may have a far greater adverse effect than the temporary effect of fire. These kinds of situations should be carefully analyzed and adequately provided for in the refuge management plans.

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- D. Prescribed burning. When consistent with refuge objectives and contingent upon the existence of a current, approved fire management plan for the wilderness area, prescribed burning is permitted. Burning may even be desirable within wilderness, especially when fire is a natural force that has historically affected the area or when fire is necessary to restore, maintain, protect, or preserve the wilderness resources and values of the area, or when controlled burning can reduce fire hazards to the refuge or wilderness. Using mechanically-created firebreaks and motorized equipment for prescribed burning is generally not permitted on a wilderness area. However, firebreaks may be constructed contiguous to the wilderness area.
- E. Habitat restoration. Native plants will be used when restoring vegetation in a wilderness area. However, exotic nurse crops (annuals) that allow native vegetation to become established are permissible. Seedlings should be randomly planted to avoid straight lines. Cover regeneration by natural ecological succession is preferred to extensive plantings (if soil and climate conditions permit revegetation within five years) where there is no possibility of severe soil erosion.
- F. Pest and disease control. Pest plants and animals, including insects, may be controlled if they pose an economic, health or safety threat to persons or private property. Noxious weeds, as identified by a State or county board, are deemed under most circumstances to pose such a threat. Mosquitoes and other animals that may carry human diseases are normally considered a threat to public health and safety. Methods of control should produce the least possible impact on the wilderness resource. Methods such as aerial spraying of pesticides, weed pulling, hand spraying, and biological controls should be considered. Pesticide use must be consistent with current Service policy (see 7 RM 14, Pest Control).
- G. Grazing. The Wilderness Act does not prohibit livestock grazing in a refuge wilderness area where it has been an established activity prior to designation of an area as wilderness. In all instances, grazing should be in compliance with Service policy (see 6 RM 5, Grassland Management). Temporary facilities necessary for livestock management such as windmills, watering tanks, corrals, and fences may be constructed, maintained, reconstructed or replaced so long as they are determined essential to the accomplishment of refuge objectives. Improvements or structures that conflict with wilderness values will, if possible, be relocated outside wilderness boundaries or redesigned to minimize their effect of the wilderness area.
- H. Maintenance of fish and wildlife populations. On all refuge wilderness lands (including Alaska), restocking of native fish and wildlife species that have been extirpated from the area is permitted. The introduction of non-endemic species is prohibited. However, threatened

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or endangered species may be considered for introduction to refuge lands when consistent with formal recovery efforts for the species and when it has been determined that impacts to endemic species are minimal. On wilderness lands in Alaska, where compatible with the purposes of the refuge, maintaining, enhancing, and rehabilitating existing fish populations is permitted. Where restocking efforts are undertaken, local genetic strains should be used if possible.

- I. Wildlife management facilities.** Facilities essential to accomplishing refuge management objectives or those required to provide protection for the wilderness area are permitted, but it is preferable that they be located outside the wilderness area. These facilities may include, but are not limited to, wildlife watering areas, exclosures, patrol cabins, heliports, airstrips, and temporary fencing. In all instances, facilities should blend with the environment.
- J. Access.** Outside Alaska, owners of State or private land that is effectively surrounded by wilderness shall be given such rights as necessary to assure adequate access to their land. Refuge managers, in consultation with regional offices, will issue renewable Special Use Permits for periods not to exceed five years allowing access across wilderness areas to these State or private lands (see 5 M4 12, Rights-of-Way). Efforts should be made to determine if land exchanges are possible to consolidate ownerships.

On wilderness lands in Alaska, the use of snowmachines, motorboats (excluding airboats), airplanes, and nonmotorized surface transportation methods is permitted for traditional activities and for travel to and from villages and homesites, subject to reasonable regulations to protect the land's natural and other values. Any access restrictions will require appropriate notice and public hearings in the vicinity of the affected area. The State of Alaska and private landowners shall be allowed adequate access to their land, including areas of subsurface rights, for economic or other purposes when the land is effectively surrounded by wilderness or other Federally-owned lands. Such rights are subject to reasonable regulations to protect resource values.

- K. Mineral exploration.** Section 1010 of ANILCA, the "Alaska Mineral Resource Assessment Program," requires the Secretary to assess the oil, gas and other mineral potential on all public lands in Alaska, including wilderness areas. The mineral assessment program may include, but is not limited to, techniques such as side-looking radar and core and test drilling (but not exploratory drilling of oil and gas test wells).

Geological and geophysical exploration activities that do not require the use of motorized equipment may be permitted on designated wilderness areas in Alaska if they can be made compatible with refuge purposes.

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NATIONAL WILDLIFE REFUGE SYSTEM

**POLICIES AND GUIDELINES FOR FISH AND WILDLIFE MANAGEMENT
IN NATIONAL FOREST AND BUREAU OF LAND MANAGEMENT WILDERNESS**

Purpose

This statement of policy and the following guidelines are intended to provide guidance to State and Federal personnel for the management of fish and wildlife in wilderness in accordance with the Wilderness Act of 1964 (16 USC 1131-1136). Both State and Federal agencies are responsible for fostering mutual understanding and cooperation in the management of fish and wildlife in wilderness. These guidelines should serve as a framework for cooperation among the Forest Service, Bureau of Land Management, and the States in the coordination of fish and wildlife management and in the development of cooperative agreements or other management plans.

These policies and guidelines were developed within the overall context of the purpose and direction of the Wilderness Act, and they should be made available to all agencies responsible for management of the National Wilderness Preservation System, to appropriate State fish and wildlife agencies, and to other interested parties.

General Policy

Fish and wildlife management activities in wilderness will be planned and carried out in conformance with the Wilderness Act's purpose of securing an "enduring resource of wilderness" for the American people. The wilderness resource is defined in section 2(c) of the Act, as an area essentially "untrammelled by man", where natural ecological processes operate freely and the area is "affected primarily by the forces of nature." The National Wilderness Preservation System will be managed to ensure that ecological succession, including fire and infestation of insects, operate as freely as possible with only minimum influence by humans.

Fish and wildlife management activities will emphasize the protection of natural processes. Management activities will be guided by the principle of doing only the minimum necessary to manage the area as wilderness.

Section 4(d)(7) of the Wilderness Act stipulates that "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." Angling, hunting, and trapping are legitimate wilderness activities, subject to applicable State and Federal laws and regulations.

This nation is fortunate in having a National Wilderness Preservation System encompassing a wide range of ecosystems. Specific on-the-ground conditions will result in slightly different application of these guidelines in so vast a system. These different applications are spelled out in National Forest Plans or wilderness management plans. This is both appropriate and proper, if we are to allow nature to play the dominant role.

Attachment 1-1

1: Use of Motorized Equipment

Section 4(c) of the Wilderness Act states:

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.

The emphasis is on the management of the area as wilderness as opposed to the management of a particular resource. This language is viewed as direction that all management activities within wilderness be done without motor vehicles, motorized equipment, or mechanical transport, unless truly necessary to administer the area or are specifically permitted by other provisions in the Act. It means that any such use should be rare and temporary; that no roads can be built; and that wilderness managers must determine such use is the minimum necessary to accomplish the task. Any use of motorized equipment or mechanical transport requires advance approval by the administering agency.

2. Fish and Wildlife Research and Management Surveys

Research on fish and wildlife, their habitats and the recreational users of these resources is a legitimate activity in wilderness when conducted "in a manner compatible with the preservation of the wilderness environment" (Sec. 4(d)(1) of the Wilderness Act). Methods that temporarily infringe on the wilderness environment may be approved if alternative methods or other locations are not available. Research or management surveys must be approved in writing, on a case-by-case basis, by the administering agency.

Helicopters and fixed-wing aircraft overflights may be used to conduct approved fish and wildlife research activities. Aircraft must be used in a manner that minimizes disturbance of other users, including humans and wildlife.

All fish and wildlife studies within and over wilderness must be conducted so as to preserve the natural character of the wilderness. Aerial counts and observations of wildlife may be permissible for management of wilderness wildlife resources. Capturing and marking of animals, radio telemetry, and occasional temporary installations (such as shelters for cameras and scientific apparatus and enclosures and exclosures essential for wildlife research or management surveys) may be permitted, if they are essential to studies that cannot be accomplished elsewhere.

Guidelines

- a. Obtain specific written approval or permits from the administering agency before erecting any structure, enclosure, or enclosure.
- b. Locate and construct all structures so as to make them unobtrusive on the landscape.
- c. Construct structures of native materials or camouflage to make them blend with their natural surroundings.
- d. Plan aircraft flights over wilderness to minimize disturbance. Consider time of day, season of the year, route and altitude of flight, and location of landing areas on the perimeter of the wilderness.
- e. Research projects underway when a wilderness is designated may continue, but modify research methods to minimize disturbance of the wilderness environment.
- f. Installation of permanent base stations within wilderness is not permitted for monitoring of radio-instrumented animals.
- g. The administering agency should only approve capture methods that minimize the impact on the wilderness environment.

3. Facility Development and Habitat Alteration

In rare instances, facility development and habitat alteration may be necessary to alleviate adverse impacts caused by human activities on fish and wildlife. For the benefit of wildlife that spend only part of the year in wilderness, give first priority to locating facilities or habitat alterations outside wilderness.

Flow-maintenance dams, water developments, water diversion devices, ditches and associated structures, and other fish and wildlife habitat developments necessary for fish and wildlife management (which were in existence before wilderness designation) may be permitted to remain in operation.

Clearing of debris that impedes the migratory movements of fish on primary spawning streams may be permitted, but only in a manner compatible with the wilderness resource.

Maintenance of existing water supplies and development of additional water supplies may be permitted, but only when essential to preserve the wilderness resource and to correct unnatural conditions resulting from human influence.

Guidelines

- a. Submit proposals for new structures or habitat alterations to the administering agency for approval.

- b. Build or maintain new and existing structures permitted for wildlife management in a manner that minimizes the visual impacts on the landscape.
- c. Limit clearing of debris from spawning streams to those identified in the wilderness management plan as being critical to the propagation of fish.
- d. Use only nonmotorized equipment to clear debris. Use explosives only when the use of hand tools is not practical, and only outside of heavy visitor-use periods.
- e. The administering agency and the State agency will jointly make decisions to remove existing water related improvements.
- f. If it is necessary to restore essential food plants after human disturbance, use only indigenous plant species.

4. Threatened and Endangered Species

Many wilderness areas provide important habitat for Federally listed threatened and endangered species of wildlife. Actions necessary to protect or recover threatened or endangered species, including habitat manipulation and special protection measures, may be implemented in wilderness. But such actions must be necessary for the perpetuation or recovery of the species and it must be demonstrated that the actions cannot be done more effectively outside wilderness. Use only the minimum actions necessary and the methods most appropriate in wilderness.

Guidelines

- a. Manage wilderness to protect known populations of Federally listed threatened or endangered species where necessary for their perpetuation and to aid in their recovery in previously occupied habitat.
- b. When alternative areas outside of wilderness offer equal or better opportunities for habitat improvement or species protection, take actions to recover threatened or endangered species outside of wilderness first.
- c. Threatened and endangered species may be transplanted into previously occupied habitat within wilderness.
- d. All transplants or habitat improvement projects require approval by the administering agency.
- e. To prevent Federal listing, protect indigenous species that could become threatened or endangered or are listed as threatened or endangered by States.

5. Angling, Hunting and Trapping

Angling, hunting and trapping are legitimate wilderness activities subject to applicable State and Federal laws and regulations.

6. Population Sampling

Scientific sampling of fish and wildlife populations is an essential procedure in the protection of natural populations in wilderness.

Guidelines

- a. Use only methods that are compatible with the wilderness environment.
- b. Gill netting, battery-operated electrofishing, and other standard techniques of population sampling may be used.
- c. Closely coordinate sampling activities with the administering agency and schedule them to avoid heavy public-use periods.

7. Chemical Treatment

Chemical treatment may be necessary to prepare waters for the reestablishment of indigenous species, to protect or recover Federally listed threatened or endangered species, or to correct undesirable conditions resulting from the influence of man. Species of fish traditionally stocked before wilderness designation may be considered indigenous if the species is likely to survive. Undesirable conditions and affected species shall be identified in wilderness plans.

Guidelines

- a. Use only registered pesticides according to label directions.
- b. In selecting pesticides, give preference to those that will have the least impact on non-target species and on the wilderness environment.
- c. Schedule chemical treatments during periods of low human use, insofar as possible.
- d. Immediately dispose of fish removed in a manner agreed to by the administering agency and the State agency.

8. Spawn Taking

The collection of fish spawn shall be permitted from wilderness when alternative sources are unavailable or unreliable, or where spawn taking was an established practice before wilderness designation.

Guidelines

- a. Do not use motorized equipment to assist in collecting and removing spawn.
- b. Use of techniques and facilities necessary to take spawn, which were in existence before wilderness designation, may continue as provided for in the wilderness management plan.
- c. Facilities for spawn-taking stations approved after wilderness designation must be removed after the termination of each season's operation.
- d. Decisions to prohibit spawn taking, where it was an established practice before wilderness designation, will be made jointly by the administering agency and the State agency.

9. Fish Stocking

Fish stocking may be conducted by the State agency in coordination with the administering agency, using means appropriate for wilderness, when either of the following criteria is met: (a) to reestablish or maintain an indigenous species adversely affected by human influence; or (b) to perpetuate or recover a threatened or endangered species.

Selection of species for stocking will be determined jointly by the administering agency and the State agency. Exotic species of fish shall not be stocked. The order of preference for stocking fish species is (a) Federally listed threatened or endangered indigenous species, (b) indigenous species. Species of fish traditionally stocked before wilderness designation may be considered indigenous if the species is likely to survive. Numbers and size of fish and time of stocking will be determined by the State agency.

Barren lakes and streams may be considered for stocking, if there is mutual agreement that no appreciable loss of scientific values or adverse effects on wilderness resources will occur.

Guidelines

- a. The State agency shall make fish stocking schedules available to the administering agency, indicating what species and numbers are planned for each water within a wilderness.
- b. Adjust stocking rates to minimize the likelihood of exceeding the carrying capacity of the water being stocked so as to reduce the chance of producing a population imbalance and to minimize the likelihood of attracting overuse detrimental to the wilderness resource.

10. Aerial Fish Stocking

Aerial stocking of fish shall be permitted for those waters in wilderness where this was an established practice before wilderness designation or where other practical means are not available. Aerial stocking requires approval by the administering agency.

Guidelines

- a. As justification for aerial stocking, the State agency will supply the administering agency a list of those waters where stocking with aircraft was an established practice before wilderness designation, indicating the type of aircraft used (fixed-wing or helicopter). This justification will become a part of the wilderness management plan.
- b. To stock waters that had not been aerially stocked before wilderness designation, the State agency will demonstrate to the administering agency the need for using aircraft.
- c. Plan aircraft flights over wilderness to minimize disturbance. Consider season of year, time of day, route and altitude of flight, and location of landing areas on the perimeter of the wilderness.

11. Transplanting Wildlife

Transplants (removal, reintroduction, or supplemental introduction) of terrestrial wildlife species in wilderness may be permitted if necessary: (a) to perpetuate or recover a threatened or endangered species; or (b) to restore the population of an indigenous species eliminated or reduced by human influence.

Transplants shall be made in a manner compatible with the wilderness character of the area. Transplant projects, including follow-up monitoring, require advance written approval by the administering agency.

Guidelines

- a. Motorized methods and temporary holding and handling facilities may be permitted if they are the minimum necessary to accomplish an approved transplant.

12. Wildlife Damage Control

Wildlife damage control in wilderness may be necessary to protect Federally listed threatened or endangered species, to prevent transmission of diseases or parasites affecting other wildlife and humans, or to prevent serious losses of domestic livestock. Control of nonindigenous species also may be necessary to reduce conflicts with indigenous species, particularly if the latter species are threatened or endangered.

Guidelines

- a. Acceptable control measures include lethal and nonlethal methods, depending upon need, justification, location, conditions, efficiency and applicability of State and Federal laws.

- b. Control measures will be implemented by the Animal and Plant Health Inspection Service, the administering agency, the State fish and wildlife agency, or other approved State agency, pursuant to cooperative agreements or memoranda of understanding. Wildlife damage control must be approved by the administering agency on a case-by-case basis.
- c. Direct control at individual animals causing the problem.
- d. Use only the minimum amount of control necessary to solve the problem.
- e. Use pesticides only where other measures are impractical. Use only registered pesticides according to label directions and subject to the following restrictions:
 - 1) Pesticides may be applied only by certified pesticide applicators.
 - 2) The placement of pesticides shall be accurately indicated on the largest scale USGS map available.
 - 3) Place warning signs at the entrance to the area where pesticides are being used to warn the public of any dangers to themselves or their pets.
 - 4) In the selection of pesticides, give preference to those that will have the least impact on non-target species and on the wilderness environment.

13. Visitor Management to Protect Wilderness Wildlife Resources.

Many wildlife species are sensitive to human encroachments on their ranges. Grizzly bear, bighorn sheep, elk, mountain goat, birds of prey (such as peregrine falcon and bald eagle), other migratory and resident birds, and certain other wilderness wildlife species cannot tolerate excessive human disturbance, particularly during certain seasons of the year.

When necessary to reduce human disturbance to a wildlife species, the administering agency, in coordination with the State agency, may take direct or indirect management actions to control visitor use.

Guidelines

- a. Specify in the wilderness management plan the management actions necessary and the agency responsible to reduce conflicts with wildlife.
- b. If and when it becomes apparent that public use is significantly degrading the wilderness wildlife resources, limitations on visitor use may be imposed and enforced by the appropriate agency. Any limitations will be applied equitably to all wilderness visitors.

14. Management of Fire

The objectives of fire management in wilderness are to: (a) permit lightning-caused fires to play, as nearly as possible, their natural ecological role within wilderness and (b) reduce, to an acceptable level, the risks and consequences of wildfire within wilderness or escaping from wilderness. Fire ignited by lightning will be permitted to burn or will be suppressed as prescribed in an approved plan. Prescribed fires ignited by man may be permitted to reduce unnatural buildup of fuels only if necessary to meet objectives (a) and (b) above. Although additional benefits may result from man-ignited prescribed fire, vegetative manipulation will not be used to justify such fires.

APPENDIX II

Additional Material Submitted for the Record



APR 30 1990
ROSE MOFFORD
GOVERNOR

Office of the Governor

*State Capitol, West Wing
Phoenix, Arizona 85007*

April 16, 1990

Senator Dale Bumpers, Chairman
Subcommittee on Public Lands, National Parks and Forests
Senate Committee on Energy and Natural Resources
Washington, D.C. 20510-5001

Dear Dale:

On April 5, 1990, the Subcommittee on Public Lands, National Parks and Forests heard S 2117, a bill to designate certain Bureau of Land Management land in Arizona as wilderness areas. I would like to take this opportunity to communicate my position on the Arizona wilderness legislation.

I support HR 2570 and HR 2571 as passed out of the House of Representatives; particularly the added wording pertaining to water rights. I am supportive of a similar approach to S 2117. The Arizona cattle industry, as represented by the Governor's Rangeland Advisory Council, also supports the water language contained in HR 2570.

Although not all interests in Arizona are entirely satisfied with the wilderness legislation, I believe the House bills represent a fair and equitable resolution of the issues related to wilderness designation of BLM lands in our State. The members of the Arizona delegation are to be commended for their negotiation efforts.

Thank you for the opportunity to express my position.

Sincerely,

A handwritten signature in cursive script that reads "Rose Mofford".

ROSE MOFFORD
Governor

RM/mc



Arizona State Mine Inspector

DOUGLAS K. MARTIN
 1616 West Adams, Suite 411
 Phoenix, Arizona 85007-2627
 (602) 542-5971

1990 / 11 / 11 7:51

April 11, 1990

The Honorable Dale Bumpers
 Chairman
 Committee on Public Land, National Parks and Forest
 U.S. Senate
 SD-308
 Washington, D.C.
 20510-8150

Dear Senator Bumpers:

For many Americans, the word "wilderness" conjures up the picture of quiet forests, clear rivers, sanctuaries for wild life, and a place to spend some quite time communing with nature.

For Arizonans, the word "wilderness" as it is used in the wilderness act evokes quite another picture. Arizona is a state with enormous areas of wild, natural, unique wonders. Arizona is also unique in having only 11% of its land owned by private citizens; the remainder of this state is the property of the Federal, State, County and City Governments, as well as the Bureau of Indian Affairs. Therefore, we are very cautious about changes which would restrict the use of the public lands.

After a careful perusal of the Wilderness Act and its impact on the state of Arizona, I can not support this legislation. Its restrictions on multiple use, the denial of mineral exploration rights so vital to a mining state, the end of access to natural sights and areas of interest to tourists, and the loss of already shrinking forestry and ranching areas, are likely to prove burdensome and costly to the state of Arizona.

From the standpoint of a professional dedicated to the safety of miners I am concerned about the restrictions this act would impose on our search and rescue efforts. As I understand the proposed legislation, the land set aside for wilderness would be inaccessible to such things as rescue vehicles, for example.

(continued)



AMERICAN FARM BUREAU FEDERATION

225 TOLUHY AVENUE - PARK RIDGE - ILLINOIS - 60068 - (312) 399-5700
600 MARLAND AVENUE S.W. - SUITE 800 - WASHINGTON, D.C. - 20024 - (202) 484-2222

April 3, 1990

The Honorable Dale Bumpers
Chairman
Senate Public Lands, National Parks
and Forests Subcommittee
United States Senate
Washington, DC 20510

Dear Senator Bumpers:

The American Farm Bureau Federation strongly opposes H.R. 2570, the "Arizona Wilderness Act of 1989." The bill is also opposed by the Arizona Farm Bureau Federation, the state's largest organization of farmers and ranchers. We request that this statement be included in the April 5, 1990, hearing record on H.R. 2570.

H.R. 2570 designates about 1.1 million acres of Arizona Bureau of Land Management land as wilderness. As wilderness, these lands would be accessible to only a select few. Nearly all activities would be prohibited or severely restricted. Important maintenance services are not provided in wilderness areas. Fire protection, water and resource management are nonexistent.

Farm Bureau supports the multiple-use management of our federal lands for a variety of uses such as livestock grazing, recreation, wildlife, timber and mineral production. Multiple-use management is a proven concept. It has provided important economic and recreational opportunities on our federal lands. At the same time, it has done an excellent job of protecting our natural resources.

The wilderness "non-management" record is not proven. Some say it is a proven failure. Wilderness designation restricts economic opportunities for our citizens and our local communities. It provides fewer recreational opportunities to a smaller number of people. Visitor rates to any wilderness areas are declining. Wildlife enhancement efforts are often more successful on private lands or federal lands which are actively managed.

Wilderness non-management can result in the long-term damage to our natural resources. The needless destruction from wildfires which occurred in Yellowstone National Park is a dramatic example. Wilderness advocate Michael Frome, a professor of environmental journalism at Western Washington

The Honorable Dale Bumpers

April 3, 1990

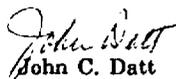
Page 2

University, stated in the July-August issue of National Parks Magazine that wilderness areas are generally in a state of deterioration and degradation.

Of special concern to Farm Bureau is the language in H.R. 2570 relating to water rights. The bill creates a "federally reserved water right" for wilderness areas. The amount of water reserved for the wilderness areas is not specified. The bill merely reserves, "a quantity of water sufficient to fulfill the purposes of the Act." Our legal counsel and other water experts agree that this language could be used to claim "natural" flows for rivers in wilderness areas, jeopardizing rights of other water users, especially those upstream from the proposed wilderness areas. If the Arizona water language is enacted, a dangerous precedent could be established which could affect water users in other states. Unfortunately, a House amendment by Representatives Rhodes and Kyle which requires quantification of wilderness water rights through an appropriate stream adjudication does not alleviate our concern.

We strongly urge that you oppose H.R.. 2570.

Sincerely,


John C. Datt
Executive Director
Washington Office

JCD/dsb

APR 19 '90 15:24 AZ BEEF COUNCIL

P.2/3



ARIZONA WOOL PRODUCERS ASSOCIATION

1401 North 24th Street • Suite 4 • Phoenix, Arizona 85008 • (602) 275-0363

April 19, 1990

Re: S2117 - Wilderness Legislation

Dear Mr. Bumpers:

The Arizona Wool Producers Association (AWPA) is a proponent of multiple-use of public lands. While not opposed to wilderness designation or the Wilderness Act of 1964; we are opposed to locking up vast areas of land to simply gain more acreage for wilderness designation. However much land is under government supervision; there will always be those who want more.

We understand the fragility of some areas of our state and nation. We also recognize the devastation visited upon them either through pursuit of industry or human ignorance. However, we feel Wilderness Areas are non-solutions. A means to avoid the responsibility of sound management.

Isolation will not guarantee preservation; rather it may contribute to the demise of the specific we seek to preserve. In many cases, preservation is not only unrealistic, but inappropriate.

The Arizona Wool Producers Association can not support S2117 until the issues regarding federal water rights, lack of access to the elderly and handicapped are addressed, as well as, completion of the mineral surveys.

Enclosed you will find a resolution stating additional concerns the AWPA has in regards to wilderness.

Thank you for your time and consideration.

Sincerely,

Lisa Perez-Bray
Executive Secretary

EMERUS BOBSON, PRESIDENT, Chandler MARLIO AJA, VICE-PRESIDENT, Buckeye LISA BRAY, EXECUTIVE SECRETARY-TREASURER, Phoenix
DIRECTORS: MARLIO P. AJA, Buckeye JOE ALZA, Casa Grande RUBY SCHMIDTKE, Casa Grande JOE BARTEROLA, Casa Grande FELIX PEREZ, Orono
DOLLY SCHMIDTKE, LEBLANCHE APPOINT, Casa Grande

USAV-00004916

Arizona Cattle Growers' Association

1401 North 24th Street Suite #4 • Phoenix Arizona 85008 • Telephone (602) 267-1129

B. J. McGibbon
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Yavapai County
Alex Dees Yuma
Yuma County

May 8, 1990

Senator Malcolm Wallop, Ranking Minority Member
Subcommittee on Public Lands, National Parks and
Forests
Senate Committee on Energy and Natural Resources
Washington, D.C. 20510-5001

Dear Senator:

We have a copy of Governor Mofford's letter to you,
April 18, 1990 regarding the Governor's support of
the Arizona wilderness legislation, particularly the
water rights language. We would like to make two
statements about the water language in wilderness
legislation.

1. The Arizona Cattle Growers' Association policy states that we oppose any wilderness legislation until such time as the question of reserved water rights on federal lands is resolved." See the full policy on Wilderness Areas attached.
2. The Governor's Rangeland Advisory Council recommended to Governor Mofford, per policy adopted April 5, 1990, that...

"Governor Mofford support the inclusion of water language as stated in Section 2, Paragraph (g) HR 2570 with the addition of specific language directing the Secretary of the Interior to file for ... water rights with the Arizona Department of Water Resources..." (emphasis added). See attached policy recommendation.

PAST PRESIDENTS

Judge Edward R. Mork Arizona
Capt. Wm. H. McKittrick Wilcox
James E. Barr Yuma
James Jay Riggs Dos Cabezas
Dwight B. Herard Phoenix
James A. Johnson Williams
Charles P. Muller Flagstaff
Lon L. Harmon Prescott
Edgett H. Grubb Flagstaff
Henry G. Bovee Tucson
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C.W. Peterson Ansonia
Dan C. McKinney Tucson
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A.C. Webb Maricopa
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John Abbott Flagstaff
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Frank Pancho Bovee Tucson
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Diane Miller Sonora
Joe Lane Wilcox
Fred T. Bovee Tucson
Harold Metzger Flagstaff
Walter Armer Tucson
Lynn Anderson Mohave
Bob Bowman Sonora
Jim Webb Phoenix
Deceased

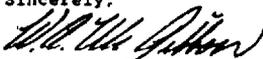


Senator Malcolm Wallop
May 8, 1990
Page Two

The Governor's Rangeland Advisory Council suggested that the above recommendations, together with a copy of testimony presented April 5, 1990 by Mr. Jeff Menges before the Senate sub-committee on Public Lands, National Parks and Forests, be forwarded to the Arizona Delegation and the office of the President as reasons.

We trust this clarifies the position of the Arizona Cattle Growers' Association.

Sincerely,



William A. McGibbon
President, Arizona Cattle Growers' Association

Enclosures

cc: Governor Rose Mofford
Congressional Delegation
Senator Bumpers

GOVERNOR'S RANGELAND ADVISORY COUNCIL

Members present:

Fred Baker
Ken Chilton
Walt Armer
Jim Webb
John Neal

Additional:

Pam Neal
Jean Hassell, AZ State Land Department
Larry Stephenson, AZ Department of Environmental Quality
Bureau of Land Management Representative

Representatives of the Bureau of Land Management presented information concerning the status of the Wilderness Bill presently before the United States Senate and House of Representatives.

Policy Recommendation:

The Governor's Rangeland Advisory Council recommends that Governor Mofford support the inclusion of water language as stated in Section 2, Paragraph (g) of HR 2570 with the addition of specific language directing the Secretary of the Interior to file for wilderness water rights with the Arizona Department of Water Resources in SB 2117 in Title I, Section 101, Paragraph (g); Section 103, Paragraph (e), (1) and (2) and Title II, Section 201, Paragraph (d).

The reasoning for making this recommendation is included in the remarks made by Mr. Jeff Menges on behalf of the Arizona Cattle Growers Association before the Senate Subcommittee on Public Lands, National Parks and Forests on Thursday, April 5, 1990.

The Council suggests that Governor Mofford support and convey our recommendation, along with Mr. Menges' remarks, to Arizona's Congressional delegation and the office of the President.

The topic Best Management Practices was discussed by the group with Larry Stephenson from AZ Department of Environmental Quality presenting the Department's views. Although no conclusion was reached, it was determined that this issue should continue to be monitored by the Governor's Rangeland Advisory Committee.

ARIZONA CATTLE GROWER'S ASSOCIATION

PUBLIC LANDS COMMITTEE BLM

Resolution #18-88 Wilderness Areas
As approved August 11, 1989

Be it resolved, that the ACGA believes that any wilderness legislation to be passed by Congress should:

- 1.) Designate as wilderness only those areas that meet the criteria specified in the Wilderness Act of 1964;
- 2.) Not designate as wilderness those areas which have been gerrymandered to include non-wilderness corridors which contain roads;
- 3.) Contain release language returning those WSA's not designated as wilderness back into multiple use management;
- 4.) Allow livestock permittees to use motorized, mechanized equipment in wilderness areas to promptly and economically care for livestock, range or water improvements, fences, etc., and to provide for predator control;
- 5.) Recognize state water rights and provide that the wilderness areas are not subject to the doctrine of federal reserved water rights;
- 6.) Allow for increased grazing in wilderness of WSA's when range conditions permit;
- 7.) Specify what currently inactive or vacant allotments indicated that grazing had previously been "established" within the meaning and intent of the Wilderness Act of 1964 and that grazing on such allotments within wilderness areas can resume when range or economic conditions allow;
- 8.) Amend the Wilderness Act of 1964 to require that an economic impact statement be prepared for any areas identified, or under study, prior to enactment of legislation establishing such wilderness areas.

Be it further resolved, that the ACGA supports inclusion of the following language in any and all legislation designating wilderness areas:

"No provisions of this Act or any other Act of Congress designating areas as part of the National Wilderness Preservation System, nor any guidelines, rules or regulations issued thereunder, shall constitute the establishment of an expressed or implied right to the acquisition, diversion, appropriation, use or flow of water to the federal government because of the designation except in full compliance with states water laws."

Be it finally resolved, that the ACGA opposes any wilderness legislation until such a time as the question of reserved water rights on federal lands is resolved.

SPARKS & SILER, P. C.

ATTORNEYS

7803 FIRST STREET

SCOTTSDALE, ARIZONA 85261-4573

(602) 948-3300

June 21, 1990

JOE P. SPARKS
 E. DENNIS SILER
 KEVIN T. TENAN
 MICHAEL C. BRIEL
 DONALD D. LOES
 JOHN H. RYLEY

Senator Dale Bumpers, Chairman
 Subcommittee on Public Lands, National
 Parks and Forests
 Committee on Energy and Natural Resources
 SD-308 Dirksen Senate Office Building
 Washington, D.C. 20510

Re: Arizona Desert Wilderness Act of 1990

Dear Senator Bumpers:

We represent the San Carlos Apache Tribe (Tribe) and write to express the Tribe's extreme alarm concerning the proposed Arizona Wilderness Legislation, specifically H.R. 2570 and the Senate's action thereon.

The Tribe has two areas of concern. The first arises from Section 4 of H.R. 2570 which establishes the Gila Box Riparian National Conservation Area (hereafter, "Gila Box Riparian Area"). The second concern arises from Section 2(a)(21) which directs the Secretary of Interior to administer a non-federal dirt Road on the Tribe's Reservation for public and private access across tribal land.

Gila Box Riparian Area.

Section 4 of H.R. 2570 establishes the 20,900 acre Gila Box Riparian Area. The Tribe respectfully requests that Section 4 be deleted from the Bill. Almost all of the land to be included in the Gila Box Riparian Area - including a large segment of Bonita Creek - is subject to the prior and longstanding claims of ownership by Tribe. All of Bonita Creek lying west of longitude 109 degrees 30 minutes, or approximately 75 percent of the Gila Box Riparian Area (i.e. more than 15,000 of the 21,000 acres) is subject to the prior claims of ownership by the San Carlos Apache Tribe.

This portion of the Reservation was established by the Executive Orders of President Grant on November 9, 1871 and December 14, 1872. The President ordered that the southeast boundary of the Reservation was to follow the crest of the Gila Mountains, the Almagra Mountains and other mountains bordering the north bank of the Gila River to the New Mexican boundary near Steeple Rock. The eastern boundary of the Reservation was subsequently changed on July 21, 1874, when President

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Grant restored all Reservation lands lying east of 109 degrees 30 minutes longitude to the public domain.

Many current maps ignore the language of the Executive Orders and erroneously show the southeast boundary to be north of the crest of the Gila Mountains, thus omitting nearly 40,000 acres of tribal land. The Gila Box Riparian Area created by the pending Bill lies entirely within the approximately 40,000 acres claimed by the Tribe.

In a December 7, 1989 letter from the Superintendent, San Carlos Agency, to the Phoenix Area Director, the BIA concluded:

"The boundary line beginning at the southeastern portion (the Bonita Creek area) of the Reservation as shown on present maps is up to 11 miles too far to the north depending on which historical map is used for comparison. This eliminates approximately 40,000 acres from the Reervation." Letter, San Carlos Agency to Phoenix Area Director, December 7, 1989, page 2.

Most of the current maps of this area were apparently based on the erroneous survey conducted in 1883 by surveyor Paul Reicker. Contrary to the Executive Orders and contrary to the express Instructions issued by Mr. Reicker, Reicker's survey of the southeast corner of the Reservation shows the boundary jutting northeast, departing from the crest of the Gila Mountains and the southeasterly line required by the Executive Orders.

We point out, moreover, that the Gila Box Riparian Area would include a substantial amount of Reservation land even as erroneously surveyed by Mr. Reicker in 1883. Certain correspondence of the Department of Interior written nearly 70 years ago indicates that fences in the southeast corner of the Reservation, specifically the Bonita Creek area, were moved north by Interior personnel solely for convenience to provide non-Indian cattle ranchers with increased access to the scarce Creek waters on the Reservation. Subsequently, maps were generated which reflected fence locations, but inaccurate Reservation boundaries.

On September 27, 1983 the Tribe wrote to the Secretary of the Interior and submitted its claims which may have been subject to the Indian Claims Limitation Act of 1982, Pub. L. 97-394 (28 U.S.C. § 2415). The letter provided:

"The San Carlos Apache Indian Tribe claims that portion of land lying [west] of 109 degrees 30 minutes west longitude and south of the present Reservation fence but north of the Cordilleras de Gila [Gila Mountains] as Reservation property. Individual and corporate defendants have trespassed upon the above-described property and derived benefits from use of water, mineral deposits and cattle grazing rangeland without the permission of or payment to the Tribe."

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On November 7, 1983 the Secretary of Interior published in the Federal Register the list of all potential pre-1966 Indian damage claims submitted to Interior. Excluded from the list were "claims which have no legal merit whatsoever or which were not sufficiently identified as a claim." Fed. Reg. Vol. 48, No. 216, p. 51204.

After reviewing the Tribe's claim to land lying west of 109 degrees, 30 minutes and north of the Gila Mountains, the Secretary of Interior included the Tribe's claim of ownership on his official list and identified it as Claim #H58616-105.

The Tribe has retained our Firm to prepare litigation dealing with these trespass and damage claims, which is expected to be filed in the near future.

You should also know that the Tribe has filed claims to all waters of Bonita Creek lying west of longitude of 109 degrees 30 minutes, and that these claims are now pending in the Arizona Water Adjudication litigation (Maricopa County Superior Court W-1, W-2, W-3 and W-4).

The presumption that the Bonita Creek lands are federal lands, which may be dealt with without consultation with and the consent of the Tribe, is invalid.

As you are aware, only Congress can alter the boundaries of Indian Reservations, and any alteration must be done in express legislation. While we do not feel that the language of Section 4 would constitute an express taking of tribal lands, we strongly urge that Section 4 be deleted.

Black Rock Wash Road.

Section 2(a)(21) of the Bill establishes the "North Santa Teresa Wilderness". In addition, this section provides:

"Secretary of the Interior, acting through the Bureau of Indian Affairs, shall administer the portion of the Black Rock Wash Road located within the boundaries of the San Carlos Apache Reservation so as to allow reasonable use of the Road for private and administrative purposes and may permit limited public use of such Road for the purpose of access to the public lands outside the Reservation boundary."

The Tribe challenges this provision on constitutional grounds.

A 6 mile portion of the Black Rock Wash Road is within the boundaries of the San Carlos Apache Reservation as established by the above-referenced Executive Orders of 1871 and 1872. Although in 1896 Congress approved a conditional cession of these lands by the Tribe

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for "occupation, location, and purchase under the provisions of the mineral land laws only", this Congressional action did not change the exterior boundaries of the Reservation and the lands under the Road were not affected because no minerals were located thereon. These lands and the Road always were and remain today part of the Reservation. See Act of June 10, 1896, 29 Stat. 368.

The Bureau of Indian Affairs has consistently maintained that there is no public right-of-way for this Road. In addition, a Senate Committee directly addressed this issue in its consideration of the Arizona Wilderness Act of 1984. While noting that the Tribe has always permitted the State of Arizona, the United States and local ranchers to cross the Road, the Committee concluded:

"no right-of-way pursuant to Federal Law has been acquired. Although the lands were once open to entry pursuant to the Mineral Entry Laws of the United States, no rights-of-way were required during that period." Senate Report 98-463 (May 18, 1984), Committee on Energy and Natural Resources, at page 21.

The language utilized in H.R. 2570 authorizing the Secretary of the Interior to administer this Road and the Senate action thereon is unconstitutional in its present form. This conclusion is clearly evidenced by the findings of the above quoted Senate Committee that no Federal right-of-way has been granted pursuant to Federal Law.

The Tribe is appalled by the language of the House Report 100-405 accompanying H.R. 2570, which states:

"[T]he possibility of the [Black Rock Wash] road being closed again has been raised by the San Carlos Apache Indian Tribe, although the road and the ranches predate by nearly a half century a land transfer which brought the road within the boundaries of the Tribe's reservation." House Report 100-405, page 19.

This is false in its entirety. The House Report is in error in stating that the road and ranches predate by nearly a half century a land transfer which brought the Road within the Reservation's boundaries. The area including the Road was made a part of the Reservation in 1871 and 1872. While this area was conditionally ceded by the Tribe for "mineral purposes only", no patent was ever issued for the road, nor was any federally approved right of way ever granted by the Tribe and the Secretary of Interior as required by Federal law.

We can state with certainty that the Road was not constructed in 1821 - 50 years prior to establishment of the Reservation. At that time, this area was regarded by non-Indians as a howling wilderness.

In addition, contrary to the House Report, the Tribe has never sought to close Black Rock Wash Road to ranch owners in the area, land

Page 5

managing agencies, or other interested persons. Inasmuch as the dirt road crosses nearly 6 miles of this sparsely populated area of the Reservation, the Tribe has obvious and legitimate concerns regarding law enforcement and maintenance of the Road. In light of this, while the Tribe has sought to administer proper use of the Road through issuance of permits to ranchers and government personnel, the Tribe has never sought to close the Road.

The Tribe has consistently worked to accommodate neighboring ranchers and government land-managing agencies and others by issuance of permits for access across the Road when requested. The Tribe remains hopeful that interested parties, including the Tribe, the Coronado National Forest, BLM and others may resolve this matter with language acceptable to all parties.

We are confident that if this legislation is passed in its present form, the San Carlos Apache Tribe will immediately authorize the filing of a lawsuit seeking a judicial declaration that the legislation is unconstitutional.

Your thoughtful consideration to the Tribe's objections is greatly appreciated.

Sincerely,

SPARKS & SILER, P.C.



Joe P. Sparks

SCT-100504

c: Buck Kitcheyan, Chairman
San Carlos Apache Tribe

William Byler

NWRA



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STATEMENT

of the

NATIONAL WATER RESOURCES ASSOCIATION

before the

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

presented by

Thomas F. Donnelly
Executive Vice President

Regarding S. 2117 and HR. 2570 Concerning Designation of
Additional Wilderness Areas within the State of Arizona

Mr. Chairman and Members of the Committee:

I am Thomas F. Donnelly, Executive Vice President of the National Water Resources Association. I am submitting this statement for the record to express the Association's concerns regarding Arizona wilderness bills S.2117 and H.R. 2570.

The National Water Resources Association (NWRA) is a nonprofit federation of state associations and individuals dedicated to the conservation, enhancement, and efficient management of our Nation's most precious natural resource, WATER. The NWRA is the oldest and most active national association concerned with water resources policy and development. Its strength is a reflection of the tremendous "grassroots" participation it has generated on virtually every national issue affecting western water conservation, management, and development.

The NWRA is not opposed to the designation of additional wilderness areas in the State of Arizona. We strongly support the proper management of the public lands and, therefore, the overall objective of S.2117 and H.R. 2570. However, we are extremely concerned about (1) the designation of Bureau of Land Management (BLM) lands prior to the determination of their suitability as wilderness and (2) the language relating to the reservation of water for wilderness areas contained in the proposed legislation (S.2117 and H.R. 2570). We believe such language will have a major, albeit unintended, adverse impact on existing water rights, future water use and future water resource management practices.

We believe that the designation of BLM lands as wilderness at this time is premature. The Bureau of Land Management is under a Federal mandate to study its lands and to make recommendations to the President of

the United States as to which of these lands are considered to be suitable for addition to the National Wilderness Preservation System. Such recommendations are due to the President in October, 1991. The studies of BLM lands in Arizona have not yet been completed nor has BLM made any determination of which lands are suitable for designation as wilderness. The consideration by Congress of BLM wilderness in Arizona should not occur prior to the completion of the studies and the filing of BLM's recommendations with the President.

Great deference should be given to the study findings and recommendations by BLM in the designation of their lands as wilderness. Without such consideration and analysis, the proposed wilderness designations could result in serious impacts to numerous private property rights and detrimentally affect the future economic health of the State of Arizona. The NWRA strongly urges this committee to delay further action on S.2117 and H.R. 2570 until the studies and recommendations of BLM have been completed and submitted to the President and Congress.

Furthermore, granting federal reserved water rights for wilderness areas in western states which utilize the prior appropriation system to administer water rights will seriously impair the development and management of precious state water resources. This is especially true with BLM lands because they are generally located at lower elevations far down in river drainage basins.

The issue of federal reserved water rights for wilderness came sharply into focus in 1984, when the Sierra Club filed a lawsuit against the United States concerning the 24 existing wilderness areas in Colorado. In this lawsuit, the Sierra Club alleged that new federal reserved instream flow water rights for wilderness had been automatically created with the

designation of the wilderness areas. The Sierra Club claimed that Congress had intended that such implied water rights be created when it passed the 1964 National Wilderness Preservation Act. The Sierra Club asserted, and continues to assert, that these alleged rights are entitled to all remaining water flowing within and through the wilderness areas. This lawsuit, which was decided on this issue in favor of the Sierra Club at the District Court level, is now pending in the Tenth U. S. Circuit Court of Appeals. Regardless of who wins in the Circuit Court, it is apparent that this matter will be appealed to the U.S. Supreme Court, and many more years will elapse before a final judicial determination is reached.

It should be noted, however, that a 1988 decision from the Federal District Court for New Mexico reached a contrary conclusion. In that case, commonly referred to as the Molybdenum Corporation of America Case, the Court ruled that Congress did not intend to imply federal reserved water rights for wilderness with the passage of the 1964 Act, and therefore, no such rights exist. In addition, the Solicitor of the Department of Interior issued an opinion in 1988 reaching the same conclusion. After completing an exhaustive analysis of the provisions of the 1964 Wilderness Act and the legislative history thereof, the Interior Solicitor stated, "On the basis of a detailed examination of the Wilderness Act and its legislative history, we conclude that the better legal view is that Congress did not intend to create federal reserved water rights when it provided for the designation of wilderness areas."

Federal wilderness water rights previously had not been recognized nor claimed, and the sudden appearance of such a reserved right has caused extreme concern by water users and providers throughout the West. Since the filing of the lawsuit by the Sierra Club, the debate over additional

wilderness in the West has become more heated. The disagreement has expanded far beyond the issue of whether Congress implied federal reserved water rights for wilderness to one of whether new wilderness additions should expressly be granted federal water rights in the authorizing legislation.

The claims made by proponents of wilderness water rights to "all remaining water" stems from the language contained in the National Wilderness Preservation Act of 1964. That law states that wilderness lands shall be maintained in a "natural state", with "pristine conditions", and be untrammeled and unaffected by man. When wilderness areas are expressly granted federal water rights for quantities "sufficient to fulfill the purposes" of the wilderness as is provided in S.2117 and H.R. 2570, there is little doubt that a court would be severely constrained in attempting to decree to the wilderness anything less than all remaining unappropriated water in the stream. Thus, the magnitude of the problem cannot be underestimated.

In considering the controversy, we must distinguish between the headwaters wilderness area and the non-headwaters, or downstream, wilderness area. The effects of a high-elevation, headwaters wilderness area are limited to impacts within the boundary of the wilderness. New water development, as well as changes to existing water rights which cause additional diminishment of flows, would be strictly prohibited.

As wilderness areas are created farther downstream, the problems compound and the impacts become much more severe. All western states administer water rights based upon a system of prior appropriation. The very laws on which we rely to protect our water rights and maintain order in our water rights administration systems provide the means for wilderness

water rights to totally disrupt these systems and seriously threaten our economic future! A downstream wilderness which is granted rights to all remaining water flowing into and through it will prevent all upstream actions which would alter the timing, volume or quality of such flows. This means that no new water development to support growth, no water rights changes and no innovative management techniques to increase water use efficiency, such as water trades and exchanges, will be allowed if the wilderness water flows are affected in any way. Such restrictions will have devastating economic impacts throughout the West!

True conservation of water -- its wise use and management, not its nonuse -- has enabled the American West to reach greatness. Arizona and the other western states have effectively applied the right and ability to wisely develop, manage and utilize their scarce water resources to achieve today's quality of life. Furthermore, in the West there are no property rights more important than water rights. To superimpose new federal water rights on the existing water rights administration systems will preempt or seriously diminish the value of considerable personal property and will totally disrupt the water rights administration systems of western states, which have been in place in excess of one hundred years. The result will be legal and economic chaos with extreme damage to our quality of life!

The magnitude of this problem has been masked somewhat because much of wilderness already designated in the West lies in high elevation, headwaters areas. However, the majority of the lands still being considered for wilderness are downstream areas, located at lower elevations much farther down within river basins. This is especially true with BLM lands, which total approximately 24 million acres across the West. (See Attachment 1.) Most of the BLM lands in Arizona being proposed for

wilderness designation in S.2117 and H.R. 2570 fall within this downstream category. Potential downstream wilderness water rights impacts are compounded even more with the designation of BLM lands which have not been thoroughly studied to identify all water rights conflicts.

The National Public Lands Advisory Council, acknowledging the downstream characteristic of the majority of BLM lands, has recognized the far-reaching, serious impacts which would occur to existing water rights and future opportunities for development and management of water resources in the West. The Council has adopted a resolution (Attachment 2) which addresses this problem and requests that BLM take action to avoid these water resource conflicts.

BLM's policy regarding federal reserved water rights for wilderness is commensurate with the 1988 Interior Department Solicitor opinion previously referenced. The administration believes that wilderness areas are not entitled to federal reserved water rights. If BLM land managers ever determine a need for water rights on the public lands, such rights will be acquired in accordance with the substantive and procedural laws of the state in which the public lands are located. The National Water Resources Association concurs in the position held by BLM on this point. We strongly urge this committee to amend S.2117 and H.R. 2570 to specifically disclaim the existence of all federal reserved water rights for the proposed wilderness areas.

An examination of the facts and circumstances reveals that in actuality federal reserved water rights are not needed to assure that wilderness areas in Arizona, or any other western state, will have water. In headwaters wilderness areas, upstream segments cannot be dewatered because Federal law prohibits the development of water resources within a

wilderness area unless previously authorized in Federal legislation or unless permission is specifically granted by the President of the United States. Such permission has never been granted, and may be given only if it would relieve a very severe emergency or drought situation.

For downstream wilderness areas, several mechanisms are already in place in western states to assure continued flows of water within and through such areas.

- (1) The requirement of western states, including Arizona, to deliver water to downstream states pursuant to interstate compacts and equitable apportionment decrees will assure that significant flows remain in streams and rivers in downstream areas.
- (2) Streams and rivers absolutely cannot be dried up nor significantly dewatered. New diversions of water require the issuance of various Federal and State permits. Such permits require the bypass of significant quantities of water to downstream areas in order to protect aquatic life, wildlife and other environmental values.
- (3) The water rights administration systems in western states are based upon the prior appropriation doctrine. The very basic principles upon which these systems operate cause substantial flows of water to be delivered downstream to satisfy the calls of senior water rights.
- (4) Arizona, as is the case with most western states, already has the ability to appropriate instream flows for all wilderness areas through its instream flow program administered by the State Department of Water Resources. In fact, thousands of miles of instream flows have already been appropriated by Arizona and

other western states, including flows in many of the streams in existing and proposed wilderness areas.

It is clear that wilderness areas where water already naturally occurs will continue to enjoy water flows. Federal reserved water rights for such areas are not necessary. Arizona, along with most other western states, already has the means to provide for the water needs of wilderness while balancing water needs for food production, drinking water, recreation and jobs --- to maintain a healthy economy. For Congress to impose yet another requirement on Arizona's already over-taxed streams and rivers, which will result in deterioration of the integrity of the existing instream flow program and which will make effective management of the state's scarce water resources impossible, is unconscionable!

Attachment 3 is "An analysis of Wilderness Water Rights Impacts", which describes the various types of headwaters and non-headwaters (downstream) wilderness areas and the impacts caused by each. We strongly urge the members of this committee to review this material carefully because it clearly sets forth the concerns which are so crucial to the future of Arizona and the West.

To demand that no wilderness be designated goes contrary to the objectives of proper balance of use and management of the public lands. Therefore, the conflicts presented by wilderness water rights must be resolved by including proper language in all new wilderness laws. Wilderness should not possess federal water rights, and new legislation should specifically disavow their existence. We recommend that this Committee consider as a substitute the language which you previously approved in the Idaho Wilderness Bill, S.371, introduced by Senator James McClure, and which is also contained in the Montana Wilderness Bill,

S.2235, introduced by Senator Conrad Burns, and in the Colorado wilderness bill, S.2001, introduced by Senator William Armstrong. The language in these bills states that nothing in these Acts or in the 1964 Wilderness Act "shall constitute or be construed to constitute either an express or implied reservation of water or water rights for any purpose." All three of these bills further provide that the United States may acquire such water rights as it deems necessary for wilderness pursuant to the substantive and procedural laws of the State. This substitute language will recognize and preserve the rights of Arizona to govern itself and to properly manage its very vital water resources.

There is no doubt that the natural beauty of our environment is one of the West's greatest heritages. Where practical, such beauty should be protected and preserved. However, in so doing, we absolutely cannot lose sight of the value of the West's most basic natural resource -- our water. The ability to manage and use our water for food production, drinking water, recreation and other benefits, to the fullest extent possible, must also be preserved. It represents the very essence of the culture, economy and life in the West!

ATTACHMENT 1

BUREAU OF LAND MANAGEMENT LANDS UNDER
STUDY FOR DESIGNATION AS WILDERNESS
(As of 12-1-83)

<u>State</u>	<u>Acres</u>
Alaska	-0-
Arizona	2,414,000
California	6,743,000
Colorado	801,000
Hawaii	-0-
Idaho	1,917,000
Montana	452,000
New Mexico	985,000
Nevada	4,384,000
Oregon	2,316,000
Utah	3,261,000
Wyoming	550,000
TOTAL:	23,823,000



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
NATIONAL PUBLIC LANDS ADVISORY COUNCIL
WASHINGTON, D.C. 20240

August 12, 1989

FEDERAL RESERVED WATER RIGHTS

Resolution of the National Public Lands Advisory Council

WHEREAS: The question of Federal Reserved Water Rights in wilderness has not been resolved; and

WHEREAS: Many Bureau of Land Management Wilderness Study Areas (WSA's) in the State of Colorado and other western States are astride or otherwise encompass downstream segments of rivers and streams; and

WHEREAS: If in the future, it is determined that the designation of wilderness does in fact contain implied Federal Reserved Water Rights, the satisfaction of such water rights requires the maintenance of historic stream flow regimens and would also include the contemporary flows which have occurred historically; and

WHEREAS: This requirement can obviously wreak havoc with all upstream existing water rights; and

WHEREAS: For example, it has been reported to the Council that the boundaries of the Black Ridge Canyons West WSA encompass very small areas of the opposite bank of the Colorado River, which boundary, if adopted, could preclude future development and impede transfers of existing water rights on the river.

THEREFORE, BE IT RESOLVED: That the National Public Lands Advisory Council requests the Director of the Bureau of Land Management and the Secretary of the Interior to review the boundaries of the WSAs in Colorado and other western States to assess possible conflict with upstream water rights, to change boundaries or release WSAs from "recommended" status if such a conflict exists, and/or where necessary to strongly advise the President and Congress to incorporate specific Federal Water Rights release language into any Bureau of Land Management wilderness legislation.

AN ANALYSIS OF WILDERNESS WATER RIGHTS IMPACTS

Wilderness Area A, shown on Exhibit 1, is located in a high elevation, headwaters area and consists entirely of headwaters stream segments. All of the streams within Wilderness Area A arise completely within the wilderness and there are no existing water rights located within or above the wilderness area. And since the streams arise completely within the wilderness area, there is no land lying upstream which may be developed. The presence of a federal reserved instream flow water right in Wilderness Area A causes no impact to existing water rights but does remove the potential for future water development within the wilderness. Wilderness Area A is typical of many of those already existing in the West.

Wilderness Area B is also located in a high elevation mountain headwaters area except that in this case the wilderness contains a mixture of headwaters stream segments and non-headwaters, or downstream, segments. There are existing water rights located on some of the streams within the wilderness area. Where such water rights are present, only the segments lying upstream from these water rights are considered headwaters. In addition, Spruce Creek, which passes through the extreme western portion of Wilderness Area B, arises outside the wilderness area. Since the upper reaches of Spruce Creek are available for further development, Spruce Creek is categorized as a downstream segment. Some of the existing wilderness areas in the West and many of those currently being considered for designation are like Wilderness Area B, containing a combination of headwaters and downstream segments.

In the case of Wilderness Area B, the presence of a federal reserved instream flow water right has serious implications. If such wilderness water rights claim all of the remaining unappropriated water in all of the stream segments within the wilderness as alleged by the Sierra Club and other environmental preservationist organizations, and which our courts will be constrained to grant, then any further water development which would diminish the flow of water in any stream segment within the wilderness would be prohibited! No new appropriations could be made on any of the streams within the wilderness area, nor could any appropriations be made on the upstream portions of Spruce Creek outside the wilderness boundary. The existing water rights currently diverting water from within and upstream of the wilderness area could not be expanded nor enlarged. Furthermore, movement of points of diversion within the wilderness to locations farther upstream would be prohibited.

By distinguishing between headwaters and downstream segments, many of the water rights conflicts are avoided. Further development of the water resource in stream segments lying downstream from existing water rights would be permitted.

Furthermore, development on Spruce Creek, specifically the upstream section lying outside the wilderness area, would also be permissible. However, changes in points of diversion farther upstream within the wilderness would still not be allowed.

Wilderness Area C is located at a lower elevation than either A or B, and is situated farther downstream. None of this wilderness area would be classified as headwaters because it lies downstream from developable land and the majority, if not all, of the streams flowing through the wilderness arise from outside the wilderness area. Only small tributaries which arise completely within the wilderness boundary, such as the one shown in the western portion of the wilderness area, would be headwaters stream segments. Wilderness Area C typifies the majority of the lower elevation areas now being considered for wilderness designation, especially the numerous Bureau of Land Management Wilderness Study Areas.

In the case of Wilderness Area C, federal reserved instream flow water rights which claim all of the remaining unappropriated water in the streams within the wilderness have very serious impacts to both existing water rights and to potential future water development. Obviously, movement of points of diversion to locations farther upstream within the wilderness area and expansion of existing water rights within the wilderness area boundaries would not be allowed, nor could any new appropriations of water within the wilderness boundaries be made. But more significantly, no new appropriations of water at any location within the drainage basin upstream from the wilderness, nor any other water rights changes which would diminish the flow of water through the wilderness area, would be allowed. Because of the downstream low-elevation proximity of this type of wilderness, the adverse impacts would be extremely far reaching. Countless water rights would be affected and potential for new growth and development would be totally removed.

Besides preventing new appropriations of water and changes in points of diversion which may be needed, Wilderness Area C also removes many opportunities for more effective management and utilization of limited resources through exchanges and sales or leases. For example, the Town of Sageville imports water from another river basin and discharges the imported return flows into Current Creek. Sageville desires to reuse these imported return flows via an exchange whereby a new diversion would be initiated from Beaver Creek and the out-of-priority depletions would be replaced with imported return flows delivered to Current Creek and subsequently to the Resource River. Such an exchange is common in the West and, in this case, can easily be operated so long as the water right held by the Sweetgrass Irrigation Company is not injured. A variation of this exchange could also be an arrangement whereby the Town of Sageville sells some of its imported return

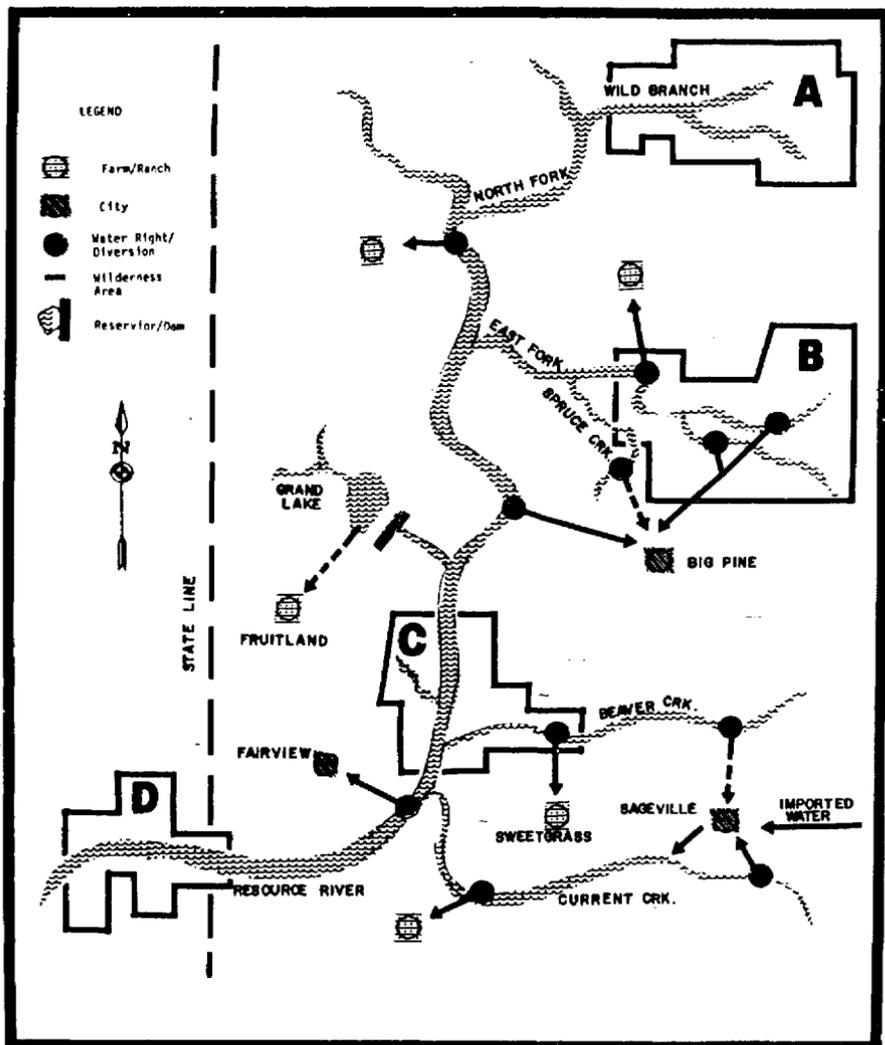
flows to the Sweetgrass Irrigation Company. Sweetgrass would merely increase its diversions from Beaver Creek through its existing facilities. The additional depletions would be replaced in the Resource River by Sageville's imported return flows delivered down Current Creek. However, if Wilderness Area C includes federal reserved instream flow water rights as described above, then none of these exchanges would be possible because flows in portions of Beaver Creek and the Resource River within the wilderness area would be diminished! On the other hand, if federal wilderness reserved instream flow water rights are specifically disclaimed in downstream wilderness areas, then innovative management techniques involving exchanges of water could be effectively utilized.

It has been alleged by the Sierra Club and others that the satisfaction of wilderness water rights requires the maintenance of historic stream flow regimens. The historic stream flow regimen, it is also alleged, includes not only the historic natural flow variations, but also the contemporary flows which have occurred historically. In other words, if man, through the normal operation of a water system, has caused variations in flow on stream segments which subsequently are included within a newly designated wilderness, then these man-made flow variations must be continued in order to satisfy the wilderness water right! This type of requirement can obviously wreak havoc with water development opportunities. For example, referring again to Wilderness Area C on Exhibit 1, the Town of Fairview owns and operates Grand Lake as a part of its water supply. The standard operating procedure for Fairview, as with most reservoir systems in the West, is to fill Grand Lake with the spring and summer snowmelt runoff. Releases are then made from Grand Lake down the Resource River to Fairview during the balance of the year as the water is needed. For the sake of illustration, let's suppose that this practice of delivering reservoir water down the Resource River was carried on for a number of years prior to the designation of Wilderness Area C. Following the designation of the wilderness area, the Fruitland Irrigation Company desires to purchase a portion of Fairview's water from Grand Lake and have it delivered via a new pipeline, as illustrated. Such an arrangement between Fruitland and Fairview would no longer be possible because of the resulting decrease in contemporary flows through Wilderness Area C. Thus, the presence of the wilderness water right effectively precludes one's constitutional right to purchase or dispose of personal property!

Wilderness Area D is also a downstream wilderness area located at a lower elevation, and like Wilderness Area C, contains no headwaters segments. The distinction of Wilderness Area D is that it is a "state line" wilderness; that is, it encompasses lands from two adjoining states. It is shown on Exhibit 1 to illustrate the impacts that such wilderness areas can have on equitable

apportionment decrees and interstate compacts. If Wilderness Area D includes a federal reserved water right for all of the remaining unappropriated water in the Resource River, then obviously the upstream state could be prevented from exercising any unused entitlements under its equitable apportionment decrees or interstate compacts, because such action would diminish the flow of water through Wilderness Area D in both states. Such limitations would have the effect of reallocating water among basin states, would void major agreements previously made among states and ratified by the U. S. Congress, and would seriously damage the upstream state's economy! It must be made perfectly clear in our laws that neither the designation of wilderness areas nor the existence of federal wilderness reserved instream flow water rights, whether express or implied, can affect state entitlements under river compacts or equitable apportionment decrees!

EXHIBIT 1



June 6, 1990

Sen. Dale Bumpers

Dear Sir:

Arizonans for Responsible Wilderness (ARW) would like to take this opportunity to ask for the inclusion of the "Arizona Game & Fish Commission Management Criteria" in S.B.2117 or any other bill dealing with Arizona Wilderness (see attachment A attached). We would also ask that to attachment A paragraph 1 section B the term power tool be specifically added.

ARW believes that the management of wildlife is a sovereign state right that should not be relinquished to the federal government. Past experience has proven that current language in the proposed Arizona Wilderness bills does not give the Arizona Game & Fish the latitude to properly manage it's wildlife in our arid state.

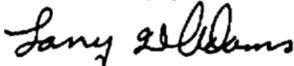
The language calling for the use of minimal tools is absolutely unworkable as it applies to Arizona. The interpretation of minimal tool rests solely with individual land managers and can vary considerably with those individual interpretations of minimal tool.

Arizona Game & Fish has already experienced numerous occasions where the needs of wildlife cannot be met because of the minimum tool minimum wildlife improvements in existing wilderness.

Wildlife has benefited greatly in Arizona because of sound management practices. There are more elk than ever before in history; Bighorn sheep have been brought back from the brink of extinction and re-established in historical range because of sound management and water development.

The State of Arizona must retain the ability to manage and enhance it's wildlife resources and this cannot be accomplished under language currently in the Arizona Wilderness Bills.

Respectfully yours,



ATTACHMENT A

Listed below is the Management Criteria established by the Arizona Game and Fish Commission (Commission). It is their request that these Management Criteria be adopted into the Arizona Wilderness Bill, to ensure the most beneficial approach to managing Arizona's wildlife on all approved Wilderness Areas. The Commission feels that this Criteria and the other concerns listed in the "Commission Approved Wilderness Study Areas, April 1989", must be resolved in order for the Commission to support any of the Wilderness proposals endorsed at their April 8 meeting.

Arizona Game & Fish Commission
Management Criteria
Arizona Wilderness Bill

Sec. (). (a) As provided in section 4(d)(8) of the Wilderness Act, nothing in this Act shall be construed as affecting the jurisdiction or responsibility of the State of Arizona with respect to wildlife and fish in the national forests, Bureau of Land Management lands, or National Wildlife Refuges, in Arizona.

(b) Nothing in this Act shall be construed as limiting the ability of the Arizona Game and Fish Department, in consultation with the affected federal land management agency, from using mechanized equipment including, but not limited to, helicopter, fixed wing aircraft, and motorized vehicles, to carry out the following activities within lands designated wilderness by this Act.

(1) Fish and wildlife research and management surveys and population sampling.

(2) Facility development and habitat alteration, including the maintenance operation or creation of flow maintenance dams, water developments, water diversion devices, and associated structures necessary for fish and wildlife conservation. Clearing of debris impeding movement of fish on spawning streams shall be permitted. Motorized equipment may be used to accomplish the purpose of this paragraph.

(3) Stocking or transplanting of fish or collection of fish spawn, is permitted if the purpose is to accomplish at least one of the following objectives:

- (i) reestablishment or maintenance of indigenous species;
- (ii) recovery of threatened or endangered species; or
- (iii) maintenance or enhancement of recreational values associated with indigenous or exotic species.

(4) Chemical treatment of waters is permitted when the purpose is to accomplish at least one of the following objectives:

- (i) reestablishment of native species;
- (ii) recovery of threatened or endangered species; or
- (iii) corrections of undesirable conditions resulting from human influence.

(5) Removal, reintroduction or supplemental transplants of terrestrial wildlife species, including the use of motorized vehicles to perform this work, shall be permitted if:

- (i) the status of threatened or endangered species would be enhanced; or
- (ii) a population of a native species eliminated or reduced by acts of man would be restored or enhanced; or
- (iii) maintenance or enhancement of recreational values associated with indigenous or exotic species as identified in the applicable wilderness management plan would result; or
- (iv) other significant wilderness values would not be impaired.

(6) Control of problem wildlife shall be permitted to:

- (i) reduce depredations on other wildlife and domestic livestock;
- (ii) remove animals creating a public nuisance related to human interests;
- (iii) prevent transmission of diseases or parasites affecting other wildlife or humans; or
- (iv) abate conflicts with native species, particularly if those native species are endangered or threatened.

April 17, 1990

Senator Dale Bumpers
Chairman
Senate Subcommittee on Public Lands,
National Parks, and Forests

Dear Senator Bumpers:

As stated in earlier testimony, Arizonans For Responsible Wilderness is a growing group of individuals and organizations formed to oppose Senate Bill 2117. We oppose this legislation for many varied reasons. This letter will deal specifically with National Wildlife Refuges and why they should be excluded from the Wilderness system entirely.

Under the National Wildlife Refuge System, administered by the U.S. Fish and Wildlife Service, lands have been set aside to protect wildlife. These lands are often unique and at the very least, critical to the wildlife they house within their boundaries. In each case, wildlife conservation and proper wildlife management are the key tools used in the refuges purpose and management.

In 1939, the Cabeza Prieta National Wildlife Refuge and the Kofa National Wildlife Refuge were established in Southwestern Arizona. These two refuges comprise of over one and one-half million acres (1,520,000) of prime Desert Bighorn Sheep habitat. *"Desert Bighorn Sheep and their protection"*, were the specific reasons for the refuges establishment. If our refuges become Wilderness, the specific intent behind their establishment will be swept aside in favor of the Wilderness doctrine of "leave it alone and stay out". Wildlife management and its role on the refuge, will become secondary to Wilderness management and its unrealistic, arbitrary regulations dealing with wildlife. If the original charter of these refuges is to continue, then Wilderness designation *cannot be allowed to happen*.

Wildlife has flourished under the National Wildlife Refuge System, and I might add has flourished *without* Wilderness. The Refuge system combined with the Pittman Robertson Act of 1937, has allowed wildlife in this country to come back and continue to improve into the 1990's. For this reason we respectfully request that all of Arizona's Wildlife Refuges proposed for Wilderness be *omitted* from Senate Bill 2117.

Allow the State and Federal agencies involved with the management of the refuges to continue unburdened by Wilderness designation. And most of all, let these wonderful Wildlife Refuges continue in the spirit and mission for which they were started. We *cannot* betray the trust under which the refuges have operated for the last 50 years.

Respectfully,



Pete Cimellaro

Arizonans For Responsible Wilderness

PC/cc

La Paz County Board of Supervisors

601 11TH STREET
POST OFFICE BOX C
PARKER, ARIZONA 85344
(602) 669-6115

April 18, 1990



GENE FISHER
DISTRICT #1
DUCE MINOR
DISTRICT #2
FRANK G. LEE JR.
DISTRICT #3
NETAL BOWMAN
CLERK COUNTY MANAGER
FAX (602) 669-9709

Via Federal Express

The Honorable Dale Bumpers, Chairman
Subcommittee on Public Lands
308 Dirksen, Senate Office Building
Washington, D.C. 20510-6158

Dear Senator Bumpers:

It is the unanimous position of the La Paz County Board of Supervisors that the areas within the County that have been proposed for Wilderness designation be left in their current status of multiple use management.

The County is 4,400 square miles with only 141,000 acres in private ownership. The remainder is comprised of 1.7 million acres of public lands including Bureau of Land Management and Bureau of Reclamation withdrawn lands; 161,260 acres of Federal lands in wildlife refuges; 1,063 acres purchased by the Bureau of Reclamation for the Central Arizona Water Project; 395,201 acres of Federal lands in military reservations; 229,785 acres of Indian reservations; and, the remainder belongs to the State of Arizona.

The Town of Parker is surrounded on all sides by an Indian Reservation. The Town of Parker annexed an area outside the Indian Reservation to allow for their future growth, only to find that area bordered by what has now become a Wilderness Study Area. Even though the Cactus Plain 55,000 acres are designated for Wilderness Study Area, it is our opinion that this designation will severely hamper or preclude future development of this area. Therefore, we urge your consideration of releasing this area from Wilderness Study Area designation.

Following is a list of areas in, or partially in, the County being designated as Wilderness:

Eagletail Mountains	94,100	Arrastra Mountains	129,525
Trigo Mountains	29,095	Gibraltar	18,805
New Water Mountains	21,860	East Cactus Plain	14,630
Harcuvar	25,287	Harquahala	22,865
Big Horn Mountains	20,600	Rawhide Mountains	41,600
Swansea	15,755		

Arizona Wildlife Refuge Wilderness areas partially within our County are:

Imperial National Wildlife Refuge	9,220
Havasu National Wildlife Refuge	14,606
Kofa National Wildlife Refuge	504,800

The Honorable Dale Bumpers
April 18, 1990
Page Two

Rawhide Mountains, Harquahala Mountains, Gibraltar, Trigo Mountains and Swansea have a very high mineral potential; and, Marcuvar Mountains, New Water Mountains, Cactus Plain and East Cactus Plain have from moderate high to high mineral potential as rated by the Arizona Mining Association. This was supported by detailed geological information and maps presented by the Arizona Mining Association. For the economic future of La Paz County, we urge you to leave these areas in multiple use management status.

These lands are currently enjoyed by the public. The designation of Wilderness will restrict this enjoyment to those who are physically able to walk into these areas.

The Board of Supervisors respectfully requests and urges you to consider their request to leave these areas in the multiple use management designation.

Sincerely,



Willis A. "Duce" Minor II
Chairman

et

cc: Senator Dennis DeConcini
Senator John McCain



ARIZONA MINING ASSOCIATION

DAVID C. R. DINGER
President

April 13, 1990

Sen. Dale L. Bumpers, Chairman
Senate Subcommittee on Public Lands,
Natural Parks and Forests
308 Dirksen Building
Washington, DC 20510-6150

Dear Senator Bumpers:

S. 2117
Arizona Wilderness Legislation

I am writing this letter on behalf of the Arizona Mining Association (AMA) and its member companies (AMAX Mineral Resources Company, ASARCO Inc., Callahan Mining Corporation, Cyprus Minerals Company, Homestake Mining Company, Magma Copper Company and Phelps Dodge Corporation). We request that this letter be made part of the record of the Subcommittee hearing on April 5, 1990 on S. 2117, which, for the most part, is identical to H.R. 2570, approved by the U.S. House of Representatives recently.

We wish the record to show that not all Arizonans were pleased with H.R. 2570 as it was approved by the House of Representatives. In fact, we in the mining industry have grave concerns that the legislation will have a significant and negative impact upon our ability to provide minerals for our nation.

Early in the lengthy process that brought the Arizona Wilderness issue to its current status, the AMA, through experienced geologists and land managers from its member companies, submitted detailed geological and mineralogical information on various Wilderness Study Areas (WSA's) that were under consideration for wilderness designation, stressing the probability of existence of economic mineral deposits. At every step of the process, we made it clear that we were willing to negotiate, to change boundary lines and to do anything reasonable to salvage valuable mineral prospects for further exploration and possible development. Admittedly, there were some areas close to existing copper operations, such as Lower Burro Creek, Ragged Top and a portion of White Canyon, that we were able to convince the Arizona delegation should be excluded, and we appreciate having been given that consideration.

2702 N. Third Street · Suite 2015 · Phoenix, Arizona 85004 · (602) 266-4446

Sen. Dale L. Bumpers
April 13, 1990
page 2

By and large, however, large tracts of land have been included in the legislation that have to be considered choice, geologically speaking, for economic mineral exploration and potential development. In fact, of the WSA's included in H.R. 2570, the AMA evaluated many of those as being high in mineral potential. Ironically, in many instances, areas of high mineral value and those with highly desired wilderness characteristics seem to coincide. Moreover, the old cliché that minerals are where you find them certainly applies to Arizona. In 1989, according to the U.S. Bureau of Mines, Arizona was the nation's leading producer in value of nonfuel minerals - some \$3.2 billion worth. Historically, our member companies have produced 60% or more of the nation's newly-mined copper each year. Arizona truly is a mining state and is blessed with great mineral wealth. Much of the potential mineral wealth lies in the western part of the state where a large portion of the designated wilderness lies.

While it is late in the legislative process on this issue, we firmly believe that the boundary line adjustments that we discussed with legislative staff during these proceedings should be reconsidered and a compromise reached. In this era of increasing dependency upon other nations for essential minerals, as well as a time of ever-increasing international trade deficit, it is difficult to accept the blatant locking up of large acreage in the name of wilderness preservation, when the goal can be accomplished in other ways.

The AMA does not oppose wilderness designation as such, nor do we oppose the Wilderness Act of 1964. There was a justifiable need for the Act at that time. We would point out, however, that other protective laws have been enacted since 1964. In addition to the various environmental laws now in existence, the Federal Land Policy Management Act of 1976 specifically provides for the proper management of many diverse uses of public lands under the multiple-use concept. No longer must we make the "all or none" choice that may have been necessary in 1964.

Sen. Dale L. Bumpers
April 13, 1990
page 3

For the record, and by copy of this letter, we urge your subcommittee and the Arizona Congressional delegation to reconsider some of the valuable mineral prospects that would otherwise be locked into wilderness, as described in our proposal to the Arizona delegation. In a number of instances, a simple boundary line adjustment would suffice. If you desire additional information, please advise.

Sincerely,



David C. Ridinger

DCR/jc

pc: Arizona Congressional delegation
Subcommittee members

CITY OF BULLHEAD CITY



P.O. Box 1048
Bullhead City, Arizona
(602) 763-9400

April 3, 1990

Chairman Dale Bumpers
United States Senate
Washington, D.C. 20510

Re: Senate Bill 2117

Dear Chairman Bumpers:

The Bullhead City Council passed Resolution #88R-018 during Council meeting on January 3, 1989 opposing the expansion of wilderness in Arizona.

Please note that the people and communities adjacent to proposed wilderness areas are overwhelmingly opposed to the establishment of any additional wilderness.

The proposed wilderness areas in Mohave County will restrict the use of these lands by 85% of our population due to their age and physical condition.

It is our feeling that Mohave County would best be served by maintaining the few roads into these areas restricting the expansion of new roads. The land is now protected by the natural terrain and in most cases it is impossible to travel off the improved roads due to rough terrain.

Thanks for your vote against Senate Bill #2117.

Sincerely,

Bob Rogge
BOB ROGGE

Mayor

BR/jp

April 2, 1990

Honorable Dale Bumpers
 Chairman
 Subcommittee on Public Lands, National Parks and Forests
 United States Senate
 Washington, DC 20510

Subject: Senate Bill 2117 - Wilderness

Dear Senator Bumpers:

The membership of the Arizona Bow Hunters Association has since its inception been pro-wilderness, a leader in conservation efforts and particularly active in wildlife management, wildlife habitat enhancement and protection of sensitive natural areas in Arizona.

We strongly believe that areas that do properly meet the definition of pristine and untouched by man (so far as possible); devoid of roads, mines, buildings and are scenic and natural in status are, as per the definition of wilderness, prime candidates for wilderness designation.

We also believe we are being caught up in a zealots crusade where rational thought sometimes no longer prevails. We believe that:

- Areas that are so large as to physically preclude any human from backpacking or horse trailing with anywhere enough water to traverse the area and survive in this Arizona desert setting should have access roads.
- Where many hundreds of miles of existing and frequently used roads are by sleight-of-hand definition declared to be non-existent even though these same have been in frequent actual use for 50 plus years - and some for over 75 years.
- Where the use of these very roads would be prohibited and access would be denied to the very areas we are attempting to save for all to see and enjoy.
- Where such inaccessible large areas will literally be denied to the elderly, disabled or infirm.

Page 2

- Where the term "least tool" is so ill-defined as to be literally defined as "no tool" and can become the means of preventing such agencies as the Arizona Game and Fish Department from using aircraft or ground vehicles to perform wildlife surveys, wildlife disease control or other wildlife biologists duties necessary for health and management of species as charged.
- Where the same term "least tool" could leave 1/4 of Arizona's Southern border unpatrolled and unprotected from illegal immigration and drug traffic due to a prohibition on motorized tools (aircraft or ground vehicles for patrol).
- Where federal water rights, Arizona State and its municipalities' water rights, plus sovereign Indian nation and the sovereign country of Mexico's water rights are so ill-defined as to surely lead to decades of costly litigation in courts.

As such we ask not that Senate bill 2117 be defeated, but, that it be put on hold for sufficient time for cooler heads to specifically address the above problems in such a manner as to leave no doubt as to intended meaning and that more concern be given to access for citizens of all ages and physical status.

Sincerely,

for 
 Ronald L. Eshelman
 Chairman
 Arizona Bow Hunters Association



San Pedro Natural Resource Conservation District
247 S Curtis - Willcox, AZ 85643

April 5, 1990

David Brock
Chairman of Public Lands Subcommittee
U.S. Senate
Washington, D.C. 20515

Attention: David Brock

STATEMENT OF OBJECTION TO THE PROPOSED WILDERNESS BILL, SUBMITTED TO THE
U.S. SENATE PUBLIC LANDS SUBCOMMITTEE APRIL, 1990

The San Pedro Natural Resource Conservation District is in opposition to the proposed Wilderness Bill #2117 now under consideration by Senator Dale Bumpers Committee.

We are opposed to any further acreage being designated Wilderness until an economic impact study has been completed addressing our mining, livestock and tourism industries. A wilderness decision of this type will have a substantial impact on the economy of our area and must not be made until all the facts and figures are taken into consideration.

We are aware that the language in the bill permits cattle grazing, but through our first-hand experience, we have seen that designating an area "wilderness" makes it no longer economically feasible for the rancher to maintain cattle on it, and it soon becomes so overgrown that many areas are unusable.

Cordially,

Bonnie Thompson, Clerk
San Pedro Natural Resource Conservation District

cc: U.S. Senator John McCain
U.S. Senator Dennis DeConcini
U.S. Rep. John Rhodes III
U.S. Rep. Bob Stump
U.S. Rep. Jon Kyl
U.S. Rep. Jim Kolbe
Az. State Senator Gus Arzberger
Az. State Rep. Mike Palmer
Az. State Rep. Ruben Ortega

Cyprus Bagdad Copper Corporation

Post Office Box 245
 Bagdad, Arizona 86321
 Telephone (602) 633-2241
 April 16, 1990

The Honorable Dale L. Bumpers, Chairman
 Senate Subcommittee on Public Lands,
 National Parks and Forests
 308 Senate Dirksen Office Building
 Washington, D.C. 20510-6158

Dear Senator Bumpers:

On April 5, 1990, the Senate Subcommittee on Public Lands, National Parks and Forests heard testimony on the Arizona Wilderness Act (S.2117). Cyprus Copper Company would like to submit the contents of this letter and the attached map as part of the record for that hearing.

Cyprus Copper Company's Bagdad mine is in close proximity to the Upper Burro Creek WSA proposed for wilderness designation in S.2117. We have concerns about the impacts of this wilderness area on our mine operations. We are concerned about the air quality issues raised by mining activities near a designated wilderness area, and we are concerned about the reservation of federal water rights as it may affect the future of the town of Bagdad and the long-term viability of our mine's operations.

Current statute gives each state the authority to designate air quality classifications for federal wilderness areas within their boundaries; however, legislation has been introduced to take that exercise of judgement away from the states. There are increasing pressures to require all public lands to meet national air quality standards that do not necessarily take into account diverse local conditions. Visibility and haze impacts on public lands are receiving more and more attention. If Upper Burro Creek is included in S.2117 without some reasonable adjustment of boundaries away from our mine activities, we fear these trends will result in legislation or regulations which, in the future, could bring charges against the mine and curtailment of operations for "impairing visibility" or for violating Class I standards of a Wilderness area.

The boundary adjustments we are requesting are represented on the accompanying map. The upper Burro Creek WSA was defined by the BLM in its environmental impact statement as "approximately 27,390 acres." Subsequent to this acreage determination, the BLM has acquired 5,875 acres of private and state lands (the green areas on the map) which logically will become additions to the wilderness. To accommodate our boundary adjustments approximately 4,840 acres (the yellow areas on the map) would be excluded from the WSA. The Upper Burro Creek WSA would realize a net increase of 1,035 acres.

The adjustment in the southeast will exclude areas that are close to -- at points within a few thousand feet of -- our present and future

CYPRUS

tailings impoundments (the two blue areas at the bottom of the map) and that are impacted by prevailing south-westerly winds over our mine operations. The 1½-mile cherrystem into the south central area would allow continuing two-wheel drive access via a well-graded road to the new solar-powered Salt Creek well. This state-of-the-art pumping facility is a cooperative project financed in part by the BLM, and provides an important year-around watering station for both wildlife and livestock.

The yellow areas along the eastern boundary in the north of the WSA define the rim of the mesa above Francis Creek to be the wilderness boundary as opposed to the edge of our pipeline right-of-way and access road, the boundary as currently drawn. This adjustment will minimize the visual and sound impacts on the wilderness resulting from pumping and pipeline maintenance and will allow improvements to our planned powerline right-of-way.

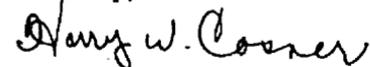
We believe these areas are reasonable deletions needed to accommodate expanding mine and town facilities, and to insure our future operation. BLM recently acquired the green shaded areas on the map, and their addition to the wilderness would constitute approximately 4500 acres. The boundary adjustment deletions and the BLM acquisition additions yields a total of 21,620 acres for the Upper Burro Creek Wilderness.

On the water rights issue, we have followed the discussion of the Arizona delegation's intent and the subsequent language. We agree with Congressman Rhodes' reported comments that the language included in the House passed bill does not represent Arizona conferees' intent. With the precedent setting importance of the water language included in the final bill, the wording should be carefully chosen and fully debated, taking into consideration impacts on water needs of all users, current and future.

We must ensure an adequate supply of potable water to the town of Bagdad and sufficient water to support the mine operations. Currently Cyprus Bagdad has water rights and claims to water rights from Francis and Boulder Creeks totaling 3057.4 acre feet per year for mining and municipal purposes. Mr. C. L. Linser, Deputy Director of the Arizona Department of Water Resources, stated that "the creation of a federal reserve water right on those streams could affect the amount of water that Cyprus would receive in a new appropriations." Total water requirements over the 30-year mine life for mine-related and municipal purposes are anticipated to be in excess of 10,500 acre feet per year. Future restrictions on water transfer between hydrologic basins may force Bagdad to seek substantial additional water rights in the Burro Creek drainage area.

Thank you for the opportunity to enter Cyprus' comments into the record.

Sincerely,



H. W. Cosner
Vice President and General Manager



Tucson Rod and Gun Club

P.O. BOX 12921

TUCSON, ARIZONA 85732

April 17, 1890

The Senate Sub-Committee on Energy
and Natural Resources
c/o Mr. David Brooks
308 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Senators:

I am writing to you on behalf of the Board of Directors and 3200 members of the Tucson Rod and Gun Club to express our opposition to S.B. 2117, the so-called "BLM Wilderness Bill."

- The experience in other wilderness areas shows that wilderness status, regardless of the legislation, becomes a de facto prohibition of motor vehicles and overflight by aircraft. Many areas in Arizona are not accessible without motor vehicles.
- S.B. 2117 would change the status of the Kofa and Cabeza Prieta Wildlife Refuges, established 50 years ago for the benefit wildlife. Wilderness area status would severely limit the ability of the Arizona Game and Fish Department to manage wildlife and maintain habitat improvements in those areas as well as in every other area designated as wilderness.
- Water is particularly scarce in the Kofa and Cabeza Prieta. Maintenance of water catchments and other habitat improvements developed over the past five decades would be virtually impossible without motor vehicles to carry in the building materials and water necessary to mix concrete.
- Access in the Cabeza Prieta, which lies along the Mexican border, would be limited to hiking or horseback for both the general public and LAW ENFORCEMENT AGENCIES! Customs and the Border Patrol are losing their battles with drug smuggling and illegal immigration now. Placing their agents on foot or horseback and eliminating aerial surveillance would add to their problems.
- There are many questions regarding federal reserve water rights for wilderness areas that remain unsettled. Establishing new wilderness areas before those questions are resolved may result in protracted litigation and serious negative economic impacts in this state.
- Additionally, many of the mineral surveys that should have been conducted in the WSAs have not been performed. Those surveys must be completed before an area can be declared wilderness under the Wilderness Act.

To: The Senate Sub-Committee on Energy
and Natural Resources

From: Donald L. Burton

Date: April 17, 1990

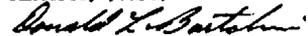
Page 2

- Wilderness status effectively excludes the very young, the handicapped, and our older citizens because they are physically unable to hike beyond the periphery of such areas. Demographic studies show the population in this country is aging, which suggests even greater numbers will be excluded from those lands in the future. Deliberate discrimination against whole classes of American citizens by effectively denying them access to public lands is both unacceptable and unexcusable.

We hope you will re-examine the advisability of this bill and join with us in opposing its passage. Thank you for considering our views on this legislation.

Please include this letter as part of the official hearing record.

Sincerely yours,



Donald L. Burton, President
Tucson Rod and Gun Club

STATEMENT
of the
ARIZONA DEPARTMENT OF WATER RESOURCES
before the
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
presented by
N.W. PLUMMER, DIRECTOR
APRIL 5, 1990
Regarding S.2117

Mr. Chairman and members of the committee, I am N.W. Plummer, Director of the Arizona Department of Water Resources. I appreciate the opportunity to appear before you and testify regarding S.2117. My testimony today will focus on the single issue of water rights.

The State of Arizona worked with the members of the Arizona Congressional delegation in developing language both statutorily and in committee reports to address the water right issues in the Arizona Wilderness legislation. We believe that the House Bill, HR 2570, appropriately addresses water rights for wilderness areas. The necessary water rights for wilderness purposes are reserved by law, yet the necessary safeguards are included to avoid upsetting the existing distribution of waters in the state.

It is important that any legislation regarding the creation

of wilderness areas address the issue of water rights. The matter should not be left for future determination by the courts. Clearly to the extent that they are available and occur naturally in an area, water resources are an integral part of wilderness areas. The creation of a Federal Reserved Water Right for wilderness areas is not inappropriate. However, the establishment of this new water right through legislation must have statutory limitations, and provisions. In the State of Arizona the two most important provisions include: 1)the quantity reserved must be limited to the amount sufficient to fulfill the purpose of the wilderness area; and 2)the priority date should not be earlier than the date of enactment of the law creating the new wilderness areas. The law should specifically direct the Secretary of the Interior, in the case of BLM areas, to protect the reserved rights through participation in general stream adjudications conducted in accordance with the McCarran Amendment.

For the most part the creation of federal reserved water rights for wilderness purposes in Arizona will have little if any impact. Essentially all of the areas proposed to be designated as wilderness in the legislation before you today are located at the uppermost parts of the watersheds. Therefore maintaining these areas in the primitive state that is required under wilderness law has no impact on water rights or uses in the state. In fact the assurance that there will be no opportunity for water development in the wilderness areas gives further protection to the downstream senior rights.

Areas proposed for designation as wilderness in Arizona which are not located at the headwaters of the streams are generally located on streams which are fully appropriated. Therefore creation of a wilderness right with a priority date as of the effective date of the Act has little if any impact on water development opportunities.

While we can generally say that the reservation of water for the areas to be designated as wilderness in Arizona will have little impact, there are two notable exceptions. These are the proposed Swansea and Rawhide Mountains wilderness areas located on the Bill Williams River in western Arizona. These areas are located below the existing Alamo Dam and reservoir which was authorized by the Flood Control Act of 1944. The Alamo Dam project was constructed primarily for flood control, but the report of the Corps of Engineers leading to Congressional authorization showed that the reservoir could also serve purposes of, among others, water conservation, recreation and wildlife. Therefore the project was sized to allow benefits for these purposes to be realized. The Arizona Department of Game & Fish currently holds water rights for fishery purposes in Alamo Lake. The Arizona State Parks Department maintains a boat ramp on the lake for recreational purposes.

There are existing water rights downstream from Alamo Dam on the Bill Williams River outside of the proposed wilderness areas. The City of Scottsdale owns the Planet Ranch and appurtenant water rights located downstream from the dam and reservoir. This ranch was purchased for the purpose of

eventually retiring water use and transferring the water rights to the City of Scottsdale for municipal and industrial purposes. Near the confluence of the Bill Williams River and the Colorado River is the Bill Williams unit of that Havasu National Wildlife Refuge. The water rights for the Bill Williams unit of the refuge have not been quantified. Other water rights also exist on this reach of the river.

In addition to owning Planet Ranch, Scottsdale has applied to the Department of Water Resources for a permit to appropriate additional water from the Bill Williams River. The Central Arizona Water Conservation District, the umbrella repayment entity for the Central Arizona Project, has protested Scottsdale's application on several points, including the grounds that any unappropriated water on the Bill Williams River as of 1968 has been dedicated to the Central Arizona Project. Also, the Bureau of Land Management has applied to the state for an instream flow appropriation on the Bill Williams River below Alamo Dam for fish, wildlife and recreation purposes. This application is for the stream reach that flows through the proposed wilderness areas.

If granted and perfected the priority dates of the rights applied for by Scottsdale and BLM would antedate the Federal Reserve Right created by this Act. The BLM instream flow rights, if granted, should fulfill the federal wilderness purpose. Nevertheless the situation is unique in its complexity. We believe that it is important that Congress recognize the situation that exists and give assurance that it is not the

intent to create water rights for the Swansea and Rawhide Mountains wilderness areas which could be quantified in a manner that impact the opportunities to develop the resources of the Bill Williams River to obtain the multipurpose benefits which can be achieved through proper operation of Alamo Dam and reservoir. The Secretary of the Army must continue to be allowed to operate the Alamo project while still protecting the wilderness qualities of the two areas proposed downstream. We ask that you consider this unique situation in committee report language.

We believe that the State of Arizona has an administrative process to grant instream flow water rights which should fulfill and satisfy all wilderness purposes. Unfortunately, wilderness is not recognized as a beneficial use in Arizona's state water law. Water rights must be granted for recreation and wildlife, including fish, purposes. Nevertheless, the Department of Water Resources believes that a state-granted water right for recreation and wildlife uses will in all likelihood satisfy the need for water for wilderness purposes. It is the intent of the Department of Water Resources to continue the process of granting instream flow rights for the applications before us in the wilderness areas considered in this legislation. Of particular importance are the applications for water rights on Swansea and Rawhide Mountains wilderness areas, and for Upper Burro Creek. Water rights provisions in the Wilderness Act should not detract from the state's opportunities to quantify these recreation and wildlife rights under state administrative law and should also

support provisions to quantify the wilderness rights in a general adjudication process in the Arizona State Court system.

With regards to adjudications, Arizona currently has two very large general stream adjudications underway, one on the Gila River system and one on the Little Colorado River system. It is expected that these proceedings will provide the mechanism for quantification of the wilderness water rights created by this legislation. The only area where adjudications have not commenced where there are a significant number of federal water rights is on the Bill Williams River. It is the state's position that the Bill Williams River is not ripe for a general adjudication at this time. There are no large scale unquantified federal reserve water rights such as Indian rights on the Bill Williams River and there is still unappropriated water available. As the administrative process for granting state water rights continues and more water rights are issued on the Bill Williams River it will be appropriate for a general adjudication to take place. This will be several years from now and will come at a time when our staff, as well as the staff of the Federal agencies involved, will have more resources available to undertake the adjudication process.

In summary, Mr. Chairman, the State of Arizona believes that the House Bill, HR 2570, appropriately addresses water rights for wilderness areas. The necessary water rights for wilderness purposes are reserved by law, yet the necessary safeguards are included to avoid upsetting the existing distribution of waters in the state.