



## Board of Directors

Jon Dettmann  
President  
Minnesota

Louise Lasley  
Vice President  
Wyoming

Gary Macfarlane  
Secretary  
Idaho

Bill Worf  
Treasurer  
Montana

Stewart Brandborg  
Montana

Joe Fontaine  
California

Jeff Kane  
Oregon

Susan Morgan  
Washington

Bob Oset  
Montana

Howie Wolke  
Montana

## Executive Director

George Nickas

## Advisory Council

Magalen Bryant  
Dr. Derek Craighead  
Dr. M. Rupert Cutler  
Michael Frome  
Dr. Roderick Nash

## Counselor

Stewart Udall

January 8, 2010

U.S. Senate Subcommittee on Public Lands and Forests  
United States Senate  
Washington, D.C.

*Faxed to 202-224-6163*

Dear Members of the Senate Subcommittee on Public Lands and Forests:

This letter is Wilderness Watch's testimony on Senate Bill S 1470, the "Forest Jobs and Recreation Act of 2009" introduced by Senator Jon Tester. Wilderness Watch is a national nonprofit conservation organization dedicated to the protection and proper stewardship of lands within the National Wilderness Preservation System. Wilderness Watch's staff and Board of Directors include many of America's leaders and experts in Wilderness management and protection, including people who were involved in the passage of the 1964 Wilderness Act and in the administration of Wilderness for more than 45 years.

Wilderness Watch is also part of the "Last Best Place Wildlands Campaign (LBPWC)," a recently launched effort to draw attention to a number of significant concerns with S. 1470. We wish to associate our testimony with the detailed analysis and testimony provided to the Subcommittee by the LBPWC.

We will confine our concerns in this letter to the provisions in Title II of S. 1470 as they relate to Wilderness and its management.

At the outset, we are concerned that S. 1470 diverges in a number of significant ways from the principles in the Wilderness Act. Allowances for military training exercises, helicopter landings, routine use of motor vehicles for livestock and wildlife management, and for access to a variety of "improvements", devolution of federal control over motorized access for search and rescue operations or emergency services, allowance for virtually unlimited habitat manipulation under the guise of fire suppression activities or wildlife management, and other provisions in the bill make a mockery of Wilderness as defined in the Wilderness Act, i.e. "an area where the earth and its community of life are untrammelled by man...retaining its primeval character and influence, without permanent improvements,...which is protected and managed so as to preserve its natural conditions."

Some of the greatest difficulties in protecting the wild character of lands within the National Wilderness Preservation System are the challenges posed by special provisions or non-conforming uses included in wilderness legislation. These provisions not only allow activities that are inappropriate and degrade individual areas, but more importantly the cumulative impacts from these provisions threaten to diminish the core values that distinguish Wilderness from other public lands.

Wilderness Watch urges Congress to adhere to the principle and spirit of the Wilderness Act and forego approving these non-conforming activities in Wilderness.

**Sec 202(e)(2)** allows for presuppression activities for fire management. Presuppression could include fuel reduction or other measures generally practiced on non-wilderness lands, but incompatible with Wilderness. This provision refers to “House Report 98-40,” an outdated report designed primarily for national forest lands in southern California, conditions very different from those found in western Montana. For example H.Rpt. 98-40 states, “Due to the arid climate, high seasonal temperatures and buildup of fuel that exists in so many California roadless areas, especially in southern California.” Much has been learned about fire management in the intervening 25 years, particularly in the Northern Rockies, that suggests these higher elevation roadless lands are not outside the range of natural variability in terms of fire regimes. Moreover, wilderness fire programs in the region that have emphasized a natural fire regime have shown tremendous benefits to the wilderness resource. These programs have been so successful that the lessons learned over three decades are now being applied to non-wilderness lands, at great benefit to native ecosystems and taxpayers. S. 1470 would set fire management back to an era of fiscal and environmental insanity. Further, the result of S. 1470 will be Wildernesses that highly manipulated by humans, contrary to the central ethos of the Wilderness Act.

The Wilderness Act provides ample authority to the Secretary to control fires to protect life, property, and other forest resources. S. 1470 would allow extensive habitat manipulation under the guise of fire management. The bill should be changed to be consistent with the limitations in the Wilderness Act.

**Sec. 202(f)**, access to private property, attempts to redefine the Wilderness Act by stating the language in this section is “in accordance with section 5(a) of the Wilderness Act” when in fact it is not. The Wilderness Act provides for adequate access to private lands or, where there is a conflict between protecting the Wilderness and allowing access, the Wilderness Act allows the Secretary to offer a land exchange instead of access. It is a carefully crafted provision designed to ensure that the Wilderness would be protected from harm (for an informative analysis of this provision, see the Opinion of Attorney General Benjamin Civiletti, 43 Op. Att’y Gen. 243, 269 (1980)). S. 1470 undermines this protection in two ways. First, it strips away the provision that allows the Secretary to offer an exchange. Second, it requires that the access, in addition to being “adequate,” shall “ensure the reasonable use and enjoyment of the property by the owner.” If the owner can make the case that her reasonable use and enjoyment requires a road to be built to the private land, then the Wildernesses in the bill could be roaded. This gives the owners of private land within Wilderness more access rights than they hold on other national forest lands. S. 1470 should be made consistent with the Wilderness Act.

**Sec. 202(g)** allows installation and maintenance of snow sensors and stream gauges within the areas designated as Wilderness. The Wilderness Act prohibits structures and installations unless they are necessary to manage and protect Wilderness. S. 1470 expands this narrow exception to allow for structures and installations for a variety of unnecessary purposes.

**Sec. 202(h)** creates an exception allowing military training exercises, including landing helicopters, in the proposed Highlands Wilderness. It also provides for low-level military overflights and new units of special airspace over Wilderness. While airspace over Wilderness is not controlled by land management agencies, this kind of aircraft use is inconsistent with protecting Wilderness values. S. 1470 should instruct the Department of Defense to enter into discussions with the Secretary of Agriculture to design training programs that minimize the impact of military overflights on designated Wilderness.

Since the hearing on S. 1470, Senator Tester has stated his intention to remove the proposed Highlands Wilderness from S. 1470. Given the number of non-conforming activities proposed in this area, we agree that removing it from proposed wilderness designation is the appropriate course of action. Another designation that protects the Highlands area from resource extraction and motorized recreation use should be explored.

**Sec. 202(j)** allows the Secretary to carry out a variety of fish and wildlife habitat manipulation projects that are contrary to the Wilderness Act's fundamental tenet of an area "untrammelled by man...which is protected and managed so as to preserve its natural conditions." The bill's requirement that such projects be consistent with wilderness management plans, guidelines, and policies is of little comfort or substance. Agency management plans, policies or guidelines are not legally binding. They can be and often are inconsistent with the laws they are supposed to implement. Indeed, projects based on land management plans are routinely found in court to be unlawful. S. 1470 would make such projects legal, potentially causing significant harm to Wilderness.

**Sec. 202(j)(2)(b)** would potentially grandfather currently allowed motorized recreation uses in areas designated Wilderness: "Nothing in this Act—affects access for any recreational activity allowed by any law...." This would obviously create a conflict with Wilderness protection and should be deleted.

**Sec. 202(l)** states that no later than 1 year after enactment of S.1470, the Secretary shall offer to enter into a memorandum of understanding with all law enforcement and emergency personnel to ensure each is authorized to enter each wilderness area to conduct emergency operations. This provision would bypass the long-established process whereby the land manager must approve any motorized use on a case-by-case basis. Local law enforcement or search and rescue organizations generally lack understanding or knowledge about protecting wilderness values. Given the proliferation of cell phone-triggered, often unnecessary search and rescue operations it is important that wilderness stewards be consulted and retain authority for authorizing motor vehicle use during these operations.

**Sec. 202(m)** grandfathers the terms of existing outfitter permits without further analysis.

Limitations and safeguards in the Wilderness Act would not apply to these permits, further compromising wilderness management. Moreover, if any of the existing commercial uses include motor vehicles, motorized equipment, or other nonconforming uses, they would also be grandfathered into Wilderness.

**Sec. 202(n)** provides that in the proposed East Pioneers Wilderness nothing affects the right of any owner of one or more water impoundment structures to “customary and usual access” including motorized use over and along trails, and the right to operate and maintain the one or more water impoundment structures. The Wilderness Act protects private, existing rights and it permits ingress and egress to valid occupancies consistent with “other such areas similarly situated.” This is the appropriate standard that should be applied to areas in S. 1470. The Forest Service should retain the authority to limit access in a way that preserves an area’s wilderness character. Granting special favors to those who own water impoundment structures in the East Pioneers will lead to similar demands elsewhere, further eroding the Wilderness Act. Moreover, the provisions in S. 1470 will grant a greater and more permanent right of access to these owners that they currently enjoy with the lands under non-wilderness status.

**Sec. 202(n)(2)** states nothing affects the customary and usual access of Beaverhead County to the proposed Highlands Wilderness to operate and maintain a communications site on Table Mountain and the water supply pipeline for the City of Butte including the right to operate and maintain them. Given the push in many areas for building communication towers (such as cell towers) in Wilderness, this provision could be a very harmful precedent. As stated earlier, Wilderness Watch would prefer that rather than encumber the NWPS with a host of new special provisions, the Highlands areas should be left non-wilderness, but protected from further development and motorized recreation under a different management classification.

**Sec. 202(n)(3)** allows motorized access to water infrastructure constructed to protect the Ruby River and to “preserve historic access for other ranching activities and shall continue under the permit system in existence as of the date of enactment of [S. 1470]”. It also allows the use of all terrain vehicles (ATVs) for trailing sheep. This language grandfathers non-conforming uses into the Snowcrest Wilderness. It represents the first time that the use of motor vehicles has been allowed for herding livestock and other routine ranching activities. Livestock operators have managed their herds for decades throughout the Wilderness system without the need for routine motorized use provided in S. 1470. If it is allowed here, it will be insisted upon elsewhere. Congress should not set this precedent.

**Timber harvesting in Wilderness.** In several sections that deal with non-wilderness special management areas, reference is made to allowing “Timber harvesting...to the extent allowed under section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)).” Any reference to the Wilderness Act in relation to timber harvesting should be removed. Use of the term “timber harvesting” in the context of national forests connotes commercial logging. For example, Websters defines timber as “wood for use in making something,” and harvest as “to gather in a crop.” The Wilderness Act, in section 4(d)(1), allows for measure to control fire, insects and disease. While those “measures” may include in rare instances the cutting of trees, it was never the intent nor has it ever been interpreted that this provision would allow for “timber harvesting.” Congress should not now suggest that timber harvesting is allowable in Wilderness. Any such

implication in S. 1470 should be removed.

**In summary, Wilderness Watch urges Congress to remove all provisions in Title II of S. 1470 that do not conform to the Wilderness Act.** Such provisions will harm the areas being designated and weaken America's National Wilderness Preservation System by setting damaging precedents that erode the values the Wilderness Act was created to protect.

Other provisions:

While Wilderness Watch does not usually weigh in on which areas should be designated as Wilderness, we do oppose S. 1470's provisions that would declassify existing wilderness study area status for those areas designated by Congress as WSAs in the Montana Wilderness Study Areas Act of 1977. These are some of Montana's finest wildlands. They represent the legacy of the late-Senator Lee Metcalf, one of the most steadfast champions of Wilderness that Congress has produced. His legacy should be secured and the wilderness character of these lands should be preserved with permanent wilderness protection.

Thank you for the opportunity to provide this testimony and for your consideration of our concerns.

Sincerely,

George Nickas  
Executive Director