



WILDERNESS WATCH

Keeping Wilderness Wild

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**THE CATTLE COMPROMISE:
LIVESTOCK GRAZING'S DAMAGING EFFECT ON WILDERNESS AND
THE WAY TOWARD A LIVESTOCK-FREE WILDERNESS SYSTEM**

A WILDERNESS WATCH POLICY PAPER
January 2019

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EXECUTIVE SUMMARY

Livestock are authorized to graze over a quarter of the 52 million acres of protected wilderness in the lower forty-eight states. Due to grazing language in the Wilderness Act and its 1980s-era corollary, the Congressional Grazing Guidelines, grazing has been occurring in otherwise-undomesticated wilderness areas for over half a century. Grazing damages wilderness, yet at one-tenth of a percent of all forage fed to livestock in the United States, grazing in wilderness hardly contributes to the U.S. livestock industry. This whitepaper reviews the history of livestock grazing in wilderness areas. It includes a brief discussion of the extent of livestock grazing that occurs in wilderness and grazing's harmful impact on wilderness land and federal agency budgets. It concludes with recommendations to retiring grazing permits in order to protect wilderness for wildlife, healthy ecosystems, and future generations.

I. Introduction: Livestock Does Not Belong in Wilderness

In the Wilderness Act, Congress exempted some activities that the Act would otherwise bar to allow preexisting, non-conforming activities to continue under some circumstances. Grazing constitutes one of the more troublesome of these activities due to its damaging effect on wilderness lands and wilderness character.

II. History of Grazing Law and Policy in Wilderness

In 1964, Congress passed the Wilderness Act "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness." The provision allowing grazing in the Wilderness Act is an exception to the general premise of the Act, which directs agencies to manage wilderness areas to preserve their wilderness character and natural conditions.

A. History of Grazing on Public Land

Livestock grazing was a primary use of federal public lands from 1930 to 1960, but public use began to change in the mid-1960s, leading to the passage of the Wilderness Act and the application of a conservation ethos to the management of public lands.

B. Grazing and the Wilderness Act

The first draft of the wilderness bill explicitly forbade grazing in wilderness, yet grazing language was added in subsequent drafts of the bill to placate the politically powerful livestock industry in the American West.

C. The Congressional Grazing Guidelines

In 1980, Congress created what has since become known as the Congressional Grazing Guidelines in the form of House Report 96-617, which permit activities in wilderness – vehicles, motorized equipment, development – meant to facilitate grazing, but which were not contemplated in the Wilderness Act.

III. Impacts on Wilderness and Wilderness Character

Grazing causes substantial harm to wilderness ecosystems and recreational aesthetics, and is fundamentally at odds with the Wilderness Act's mandate to keep "the earth and its community of life [...] untrammelled by man."

IV. Extent of Grazing in the National Wilderness Preservation System

Livestock actively graze about 10 million acres of the 52.4 million acres of wilderness in the lower 48 states. Most of the grazing in wilderness areas takes place in arid or semiarid climates, areas particularly unsuited to grazing. Wilderness areas are unsuited to grazing, yet they are extraordinarily important for biodiversity, scientific study, recreation, and the preservation of wildness.

V. Grazing Economics

The federal grazing program in wilderness operates at a loss to the U.S. Treasury. In addition to monetary costs, grazing in wilderness has indirect and intangible environmental costs, including long-term damage to streams, negative impacts on native grassland ecosystems, losses of endangered species, and degradation of the wilderness visitor experience.

VI. Recommendations: Toward a Livestock Free Wilderness System

The most expedient and effective way to reduce and eventually eliminate the destructive impacts of grazing in wilderness is via Congressional action.

A. Congressional Action

There are many possible avenues Congress could take to end grazing in wilderness, but the most effective and equitable approach is to automatically retire a wilderness grazing permit that is waived by the permittee, and to close any currently vacant allotments in wilderness to grazing. Additionally, Congress should amend the CGG to reduce the impacts associated with grazing in wilderness.

B. Agency Action

The first and easiest method for land management agencies to reduce grazing in wilderness is to close all vacant grazing allotments in order to protect ecological and recreational values. Moreover, federal land management agencies have the authority to formally determine that an area in question is no longer chiefly valuable for grazing, a necessary precursor to clearing the way for the permanent retirement of the associated lease.

VII. Conclusion

The difficulty in finding effective solutions to the growing problem of grazing in wilderness signifies that grazing in wilderness should be reconsidered. Since grazing is inherently contrary to the concept of wilderness, and since removal of grazing from wilderness lands will present only minor impacts to the livestock industry as a whole, the most logical conclusion is that it should be phased out or eliminated, and not be allowed to continue in these special areas.

I. INTRODUCTION

Ah, wilderness—that haven of unspoiled views, vibrant ecosystems, wild spaces, sacred stillness...and cows? Of the 52 million acres of protected wilderness in the lower forty-eight states, livestock are authorized to graze 13 million acres, over a quarter of the total acreage.¹ The Wilderness Act of 1964² provides for the preservation of certain tracts of undeveloped federal land at the most protective level of public land administration. It mandates that wilderness areas shall be “protected and managed so as to preserve [their] natural conditions.”³ Yet at the passage of the Act, Congress stipulated that, subject to reasonable regulation, livestock grazing “shall be allowed to continue”⁴ in those wilderness areas where grazing was established at the time of wilderness designation.

The grazing provision of the Wilderness Act was effectively expanded by the 1980 Congressional Grazing Guidelines,⁵ which explicitly prohibit curtailing grazing solely because an area is designated wilderness. They also permit the perpetuation of existing facilities (including fences, line cabins, stock tanks, stock pond dams, and more), and in some cases the construction of new facilities, as well as the use of motorized equipment to facilitate grazing operations “where practical alternatives do not exist.” The incompatible activities allowed in wilderness by the Grazing Guidelines—vehicles, motorized equipment, development—are only a few of many chisels that persistently chip away at wilderness values in the name of grazing.

Grazing is inherently inimical to the goals of the Wilderness Act. Livestock have an adverse effect on the ecology of wilderness areas, in part due to trampling, water pollution, and conflict with native species. In addition, livestock grazing diminishes an area’s “untrammled” wilderness character and the opportunity for present and future generations to experience the unique benefits that authentic wilderness provides.

This paper reviews the history of livestock grazing in wilderness areas. It includes a brief discussion of the extent of livestock grazing that occurs in wilderness, as well as an overview of grazing’s harmful impact on wilderness land and federal agency budgets. It concludes with several recommendations to reduce or remove livestock from wilderness lands by retiring grazing permits in order to protect wilderness for wildlife, healthy ecosystems, and future generations.

¹ In the context of this paper, we discuss livestock grazing only in the context of legal livestock grazing, not trespassing. Additionally, when we refer to “livestock grazing,” we are referring only to the grazing of cattle and sheep, not horses or other animals. Where possible, we removed grazing allotments from our numbers that exclusively grazed horses. We do not discuss recreational pack stock grazing under a commercial permit.

² Hereinafter “the Wilderness Act” or “the Act”.

³ 16 U.S.C. § 1131(c).

⁴ 16 U.S.C. § 1133(d)(4).

⁵ Hereinafter “CGG”, “Grazing Guidelines”, or “Guidelines”.

II. HISTORY OF GRAZING LAW AND POLICY IN WILDERNESS

In 1964, Congress passed the Wilderness Act “to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.”⁶ The law provided statutory protections for wilderness areas and established the National Wilderness Preservation System. The Act, among other things, mandated that wilderness areas be administered in a manner that will leave them “unimpaired for future use and enjoyment as wilderness” and provide for “the protection of these areas” and “the preservation of their wilderness character.”⁷

The Wilderness Act defines wilderness: “A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are *untrammelled by man*, where man himself is a visitor who does not remain.”⁸ Wilderness is “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* . . .”⁹ In addition, wilderness should be “*affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable*.”¹⁰

The provision allowing grazing in the Wilderness Act is an exception to the general premise of the Act, which directs agencies to manage wilderness areas to preserve their wilderness character and natural conditions. The language concerning livestock grazing in wilderness is a mere forty words long: “Within wilderness areas in the national forests designated by this Act...the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.”¹¹ Thus, grazing which existed in wilderness areas when the Wilderness Act was enacted may continue.

In order to fully grasp the challenges from livestock grazing in the fight for wilderness preservation, it is necessary to understand the existing array of laws, executive

⁶ 16 U.S.C. § 1131(a).

⁷ *Id.*

⁸ 16 U.S.C. § 1131(c) (emphasis added).

⁹ *Id.* (emphasis added).

¹⁰ *Id.* (emphasis added).

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

authorities, media coverage, and ongoing policy debates that affect ranchers, wilderness advocates, conservationists, and politicians.

A. History of Grazing on Public Land

After the Civil War in the mid-nineteenth century, the western livestock industry started to expand. Access to federal public lands was not restricted, and young men headed west to drive livestock and build a future away from the devastation of war. Ranchers drove large herds of sheep and cattle around mountains and meadows to find forage, or herds were left unattended to roam. Forests on federal lands were also logged indiscriminately. During the 1890s, due to widespread overuse and land degradation—the classic tragedy of the commons—Congress took its first steps to protect public land in the form of “forest reserves.”¹² In 1905, the newly created Forest Service was given administration of those lands (now called “national forests”) and, among other things, the authority to “permit, regulate, or prohibit grazing in the forest reserves.”¹³ Unfortunately, this did not lead to a widescale reduction of grazing overuse.

In the western states, outside of the new federally regulated national forests, access to large amounts of federal land remained unregulated and open to grazing, and that land continued to deteriorate, leading to the passage of the Taylor Grazing Act in 1934. The Act’s purpose was to “stop injury to the public grazing lands by preventing overgrazing....”¹⁴ The Act further explained that the Secretary of the Interior was authorized to establish grazing districts to “promote the highest use of the public lands.”¹⁵ A newly established Division of Grazing (renamed the Grazing Service in 1939) delineated grazing allotments, issued grazing permits, and collected fees.¹⁶ The Taylor Grazing Act served to rein in previously unregulated overgrazing in the West and laid a foundation for our modern grazing system.

During the Great Depression, under the authority of the Bankhead-Jones Farm Tenant Act of 1937, the federal government reclaimed millions of acres of failed homesteads, mainly in the West.¹⁷ Many of those lands were transferred to the Grazing Service. Other large parcels were put under Forest Service management and renamed “national grasslands.” In 1946, the Grazing Service merged with the General Land Office to form the Bureau of Land Management (BLM), giving the BLM management authority over public land grazing and rangelands. Thus, by the end of the 1940s, both the

¹² Glaser et al., Center for Biological Diversity, *Costs and Consequences: The Real Price of Livestock Grazing on America’s Public Lands*, 7 (2015), available at https://www.biologicaldiversity.org/programs/public_lands/grazing/pdfs/CostsAndConsequences_01-2015.pdf.

¹³ USDA Forest Service, *Why does the Forest Service permit livestock grazing on National Forest System lands?*, <https://www.fs.fed.us/rangeland-management/grazing/allowgrazing.shtml> (last visited Jan. 7, 2019).

¹⁴ USDI BLM 1984a.

¹⁵ 43 U.S.C. § 315 (2006).

¹⁶ *Id.*

¹⁷ 7 USCS §§ 1000 et seq.

Forest Service and the BLM administered large swaths of undeveloped public land for grazing.

Livestock grazing was a primary use of federal public lands from 1930 to 1960, but public use began to change in the mid-1960s. Around the time that the Wilderness Act was passed in 1964, Congress also passed a slew of other environmental laws, including the Wild and Scenic Rivers Act of 1968, the National Environmental Policy Act of 1969, the Clean Air Act of 1970, the Clean Water Act of 1972, and the Endangered Species Act of 1973. Several of these laws changed the expectation of how public lands were to be managed, leading, among other things, to changes in the terms and conditions that applied to grazing leases and permits.

B. Grazing and the Wilderness Act

In response to the continued depletion of the American wilderness and an upswell in conservation ethos, Congress passed the Wilderness Act of 1964 after eight years of debate.¹⁸ President Lyndon Johnson signed the bill into law on September 3, 1964, which created the National Wilderness Preservation System and immediately placed 54 areas into the system. That “instant wilderness” included 9.1 million acres in 13 states, including some of our most iconic wilderness areas.

The first draft of the wilderness bill, introduced in the U.S. Senate in 1956, explicitly forbade grazing in wilderness: “[N]o portion of any area constituting a unit of the National Wilderness Preservation System shall be devoted to...grazing by domestic livestock.”¹⁹ One page later, the bill clarified, “Such practices shall be recognized as non-conforming use...and shall be terminated whenever this can be effected to, or in agreement with, those making such use.”²⁰ However, language to allow grazing in wilderness areas was added in subsequent drafts of the bill to placate the politically powerful cattle and sheep industries in the American West.²¹

Some call the addition of grazing to the Wilderness Act “one of the greatest [compromises] in the history of the conservation movement.”²² Howard Zahniser, the executive secretary of the Wilderness Society and the primary author of the initial wilderness bill, acknowledged that the bill had to contain a provision for grazing if it was to get out of the Interior committees in either the House or Senate, but Zahniser’s political willingness to compromise on grazing in his wilderness bill was in sharp contrast to his personal feelings on the matter. In remarks at a conference in December 1953, Zahniser admonished, “Grazing by domestic livestock is a commodity use that

¹⁸ Encyclopedia.com, *Wilderness Act of 1964*, <https://www.encyclopedia.com/environment/energy-government-and-defense-magazines/wilderness-act-1964> (last visited Jan. 7, 2019).

¹⁹ Peter A. Appel and Christopher Barns, *Grazing in the National Wilderness Preservation System*, 53 IDAHO L. REV. 465 (2017), *citing* S. 4013 §§ 3b-c, 84th Cong. (1956)(2nd Sess.).

²⁰ *Id.*

²¹ Mitchel P. McClaran, *Livestock in Wilderness: A Review and Forecast*, 20 ENVTL. L. 857, 858 (1990).

²² Mark Squillace, *Grazing in Wilderness Areas*, 44 ENVTL. L. 415 (2014), *available at* <http://scholar.law.colorado.edu/articles/82>.

is a threat to wilderness areas in the national forests, where it should be excluded as soon as this can be equitably accomplished.”²³ Zahniser further explained, “Grazing existed as a permitted use in national forest areas before they were set aside as wilderness and has continued partly because it has been expedient to avoid opposition to the wilderness program.”²⁴

Zahniser passed away mere months before President Lyndon B. Johnson signed the Wilderness Act into law in September 1964, but he left an indelible mark on the final bill. It was he who aptly described wilderness as “untrammeled;” yet, he could not keep grazing, and its associated “trammeling,” out of wilderness.²⁵ The legislative history of the Wilderness Act, as well as Zahniser’s comments, make it clear that the original founders of the Act intended to exclude grazing from wilderness. Unfortunately, a decade and a half after Zahniser’s death, grazing’s impact on wilderness was expanded with the passage of the Congressional Grazing Guidelines.

C. The Congressional Grazing Guidelines

In the fifteen years subsequent to the passage of the Wilderness Act, Congress, the land management agencies, and the American people wrestled with what they wanted out of a National Wilderness Preservation System. Preservationists wanted to keep “non-conforming uses”²⁶—those uses prohibited under Section 4(c) of the Wilderness Act—out of wilderness, such as structures, installations, and motorized use. Livestock permittees, however, objected, claiming that limiting such uses made their sheep and cattle operations prohibitively expensive.²⁷

In the seventies and early eighties, two major events in wilderness policy resulted in Congress clarifying its intent regarding grazing management structures, facilities, and motorized equipment use in wilderness. First, in 1976, Congress passed the Federal Land Policy and Management Act (FLPMA), which provided a comprehensive mandate for protection and management of public lands and allowed for the creation of the first wilderness areas managed by the BLM. The second major event was the 1979 publication of the Forest Service’s Roadless Area Review and Evaluation (RARE) II wilderness assessment.²⁸ Many potential wilderness areas identified in

²³ Mark Harvey, *The Wilderness Writings of Howard Zahniser* 113 (2014).

²⁴ *Id.*

²⁵ Zahniser chose to use “untrammeled,” rather than the less arcane “untrampled” or “undisturbed” in order to convey the essential freedom and wildness of wilderness. A trammel is a net for catching fish, for example, or a hobble for confining horses. Untrammeled, then, means unconfined, uncontrolled, unrestrained, or unmanipulated. Zahniser explained his choice of adjective in a 1957 speech: “Untrammeled—not untrampled—untrammeled, meaning free, unbound, unhampered, unchecked, having the freedom of the wilderness.” Howard Zahniser, “The Wilderness Bill and Foresters,” delivered to the Washington, D.C., chapter of the Society of American Foresters, Mar. 14, 1957.

²⁶ Although it does not appear in the Wilderness Act as enacted, the term “non-conforming use” was introduced by Zahniser in the first wilderness bill, and is often used as shorthand for any wilderness use or activity that diverges from those implied by the definition of “wilderness” found in the 1964 Act. *See* 16 U.S.C. § 1131(c) (2012).

²⁷ Appel, *supra*, at 469.

²⁸ McClaran, *supra*, at 869.

RARE II contained non-conforming uses, but otherwise qualified for wilderness designation. However, livestock interests adamantly opposed wilderness designation in those areas, because designation as wilderness would likely have the effect of prohibiting motorized and other non-conforming uses. In order to settle the status of the 60 million acres of roadless lands at stake, Congress had to decide on the acceptability of motorized equipment use, grazing management structures, and facilities in wilderness.

After fifteen months of debate, the 1980 Colorado Wilderness Act finalized formal congressional intent through what has since become known as the Congressional Grazing Guidelines (CGG), in the form of House Report 96-617.²⁹ In the House Report, the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs acknowledged that the land management agencies had been inconsistently interpreting the grazing language of the Wilderness Act.³⁰ The Subcommittee considered amending the Wilderness Act to clarify how agencies should administer grazing in wilderness, but it decided that the broad language in the Wilderness Act was best left unchanged and settled on clarification in the form of the CGG.³¹

The original draft of the House Report to the Colorado Wilderness Act contained a specific grazing provision, proposing that equipment customarily used to support grazing be continued unfettered. Certain Western congressmen wanted to grandfather in all past use of motorized equipment for ranchers and their grazing operations in the proposed wilderness areas.³² Predictably, rancher associations supported the provision, and environmental groups rejected it. Cattlemen claimed that limitations on grazing mechanisms and motorized equipment use would make it impossible for stockmen to operate in wilderness from both an economic and a management standpoint.³³ A sheep rancher testified that the proposed wilderness contained roads where he had customarily moved sheep with pickup trucks, and “it would be quite an inconvenience...to do this all by horseback.”³⁴

While the Subcommittee Chairman, Rep. John F. Seiberling (D-OH), sympathized with the ranchers’ need to act quickly in emergency situations, he was unsupportive of language that grandfathered in all customary uses of motorized equipment for grazing activities. He noted that there should be regulations “which are going to be more

²⁹ Pub. L. No. 96-560, § 108, 94 Stat. 3265, 3271 (1980) (“[W]ithout amending the Wilderness Act of 1964, with respect to livestock grazing...the provisions...relating to grazing shall be interpreted and administered in accordance with the guidelines contained...in the House Committee Report (H. Report 96-617) accompanying this Act.”).

³⁰ H. Rep. 96-617 at 11.

³¹ *Id.*

³² Additions to the National Wilderness Preservation System, Hearings Before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, Ninety-sixth Congress, first and second sections, on H.R. 5487 (Oct. 18-19, 1979) at pp. 35-36, 37.

³³ Hearings on H.R. 5487 at 60.

³⁴ *Id.* at 69.

restrictive in wilderness areas than in nonwilderness” and declared that “we better not designate a wilderness if we are just going to have a completely unchanged activity.”³⁵

The proposed expansive grazing language did not make it into the final House Report. Instead, the Subcommittee enumerated five general policies to “be considered in the overall context of the Wilderness Act of 1964 and [the Colorado Wilderness Act of 1980].”³⁶ The five principles in the House Report came to be known as the Congressional Grazing Guidelines, and were duplicated in House Report 101-405, Appendix A, referenced in the Arizona Desert Wilderness Act of 1990, the first major wilderness bill for BLM-administered lands.³⁷ Unfortunately, the CGG principles permitted, albeit with limitations, activities not contemplated in the Wilderness Act.

The CGG language applied to all wilderness areas managed by any federal agency. The Guidelines affirmed that “there shall be no curtailments of grazing... simply because an area... has been designated as wilderness.”³⁸ Reductions in numbers can only be made “as a result of revisions in the normal grazing and land management planning and policy setting process.”³⁹ Livestock numbers can be increased only if doing so has “no adverse impact on wilderness values.”⁴⁰

Facilities “existing in an area prior to its classification as wilderness” can be maintained.⁴¹ Maintenance using motorized equipment is permissible if “expressly authorized” and “where practical alternatives do not exist... based on a rule of practical necessity and reasonableness.”⁴² Such occasional motorized equipment use will “normally be permitted... only where they had occurred prior to the area’s designation as wilderness.”⁴³ Reconstruction of deteriorated facilities should be with “‘natural materials’ unless... their use [would create] unreasonable additional costs on grazing permittees.”⁴⁴ New facilities may be built only “for the purpose of resource protection.”⁴⁵ In this case, the resources to be protected are the resource of wilderness and its wilderness character. Finally, the only other time motor vehicles or motorized equipment should be used is in an emergency, such as rescuing a sick animal.⁴⁶ Congressman Seiberling, Chairman for the Subcommittee on Public Lands, emphasized during the hearings that the Guidelines “generally allow the use of motorized vehicles within wilderness areas *only in emergencies*.”⁴⁷

³⁵ *Id.* at 73-74.

³⁶ H. Rep. 96-617 at 11.

³⁷ Arizona Desert Wilderness Act of 1990, Pub. L. No. 101-628, § 101(f)(1), 104 Stat. 4469, 4473.

³⁸ H. Rep. 101-405 at 41.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Cong. Record, 125 (1979) p. 27,291. (Emphasis added).

When Congressman Seiberling and his contemporaries passed the CGG in 1980, many supporters and advocates felt that the impact of the CGG would be minor. Many wilderness areas designated prior to 1980 had little to no livestock grazing within their borders.⁴⁸ In those wilderness areas with substantial livestock grazing, the use of motor vehicles as part of those grazing operations was rare or non-existent.⁴⁹ However, in the following decades, many of the wilderness areas added to the National Wilderness Preservation System, especially those in the intermountain West and the desert Southwest, were extensively grazed by cattle and domestic sheep. As times changed, so too did the livestock industry, and ranchers became increasingly accustomed to using off-road vehicles and other motorized equipment to access and manage their herds.

Since their passage, the CGG have been included in most national forest and BLM wilderness bills, and they have become one of the most widespread examples of the unanticipated consequences of special provisions in wilderness bills. While Chairman Seiberling contemplated motor vehicle use within wilderness only in emergencies, the reality is that land management agencies often read the CGG exceptions to allow motor vehicles and mechanized use for non-emergency purposes or when not otherwise necessary.

Passage of the CGG cracked open the door to mechanized use in wilderness, and it continues to be pushed wider. For instance, the 2009 Owyhee Initiative, which covered nearly one million acres of the Owyhee Canyonlands country in southwestern Idaho, proposed the use of motorized equipment inside wilderness for “customary” activities, including the herding of livestock.⁵⁰ While the CGG allow motorized use if there are no practical alternatives and there would be no significant adverse effect, the Owyhee Initiative aimed to grant ranchers virtually unlimited access, including cross-country access through the wilderness. The Initiative did not pass as originally proposed, but interested parties continued to push for a loose interpretation of the CGG. In 2014, a wilderness management plan for the Owyhee region allowed motorized and mechanized use for herding, gathering, maintenance and monitoring activities within the six wilderness areas.⁵¹ While a settlement agreement resolving an

⁴⁸ See John C. Hendee et al., *Wilderness Management* 208-81 (2nd ed. 1990). The authors cite a “1980 survey of 127 designated wilderness areas totaling about 15 million acres in the national forests” which had a total of only 729 grazing allotments.

⁴⁹ *Id.* at 281. Only 17 of the cited 127 wilderness areas had “motorized access permitted.”

⁵⁰ Owyhee Initiative Agreement (May 10, 2006), <https://static1.squarespace.com/static/5950fe6b099c01a39eee4fb2/t/59517491440243892991d59f/1498510482613/OI+agreement+final.pdf>.

⁵¹ U.S. Dep’t of the Interior, Bureau of Land Mgmt., *Owyhee Canyonlands Wilderness and Wild & Scenic Rivers Final Management Plan and Assessment* 49 (2015), available at https://eplanning.blm.gov/epl-front-office/projects/nepa/12502/56781/61472/WMP_EA_04142015_FINAL.pdf. (“ Motorized or mechanized vehicles and equipment may be authorized on existing administrative access routes for project maintenance or repair when needed to transport equipment or supplies that cannot reasonably be accomplished by foot, pack stock, or other non-motorized or non-mechanized means.”) A settlement agreement made minor strides in reining in what otherwise seemed a broad approval for motorized use

appeal on the management plan affirmed that wilderness activities must be consistent with the CGG, in 2016, yet another bill addressing the Owyhee region suggested officially authorizing the use of motor vehicles for livestock monitoring, herding, and gathering.⁵² At the same time, the Utah Public Lands Initiative Act (PLI) was attempting to enshrine livestock grazing as the priority use of public lands in Utah, including in wildernesses.⁵³ Examples like the Owyhee and PLI “reinterpretations” of the CGG are becoming more prevalent, and they are a far cry from the standard of “no practical alternatives” established in the CGG in 1980.

Additionally, it is increasingly possible for a rancher to receive a dispensation from the BLM not only to maintain his grazing facilities, but also to herd his cattle with motor vehicles. Take, for example, the Little Jacks Creek Wilderness, where in 2014, the BLM authorized “the use of an ATV within the Little Jacks Wilderness to herd livestock between pastures.”⁵⁴ In a nearby area, the BLM was considering a rancher’s request “for motorized access to accomplish herding” as recently as August 2018.⁵⁵ What seemed like a narrowly crafted and rare allowance for vehicle use in a wilderness bill nearly 40 years ago is morphing into a growing trend of allowing vehicle use for tending cattle and sheep, fixing fences, distributing salt, and “riding the range” in recent wilderness bills.

As incompatible as motor vehicle use is with wilderness, livestock itself is arguably the more destructive force on the land. Even when motor vehicle use is restricted, livestock itself causes the most harm to ecosystems and recreational and aesthetic values. And since the Guidelines were passed, there are few, if any, instances where livestock grazing has been reduced or eliminated in wilderness.

III. IMPACTS ON WILDERNESS AND WILDERNESS CHARACTER

Grazing will always be incompatible with the purpose of the Wilderness Act. Livestock displace wildlife, destroy plant communities, imperil native species, and crush sensitive riparian zones. They also defecate in trout streams, trample stream banks, damage soils, and denude the ground of forage and protective cover needed by wildlife, wreaking havoc on fragile ecosystems.⁵⁶ They can turn once-rich topsoil to dust, causing soil erosion, stream sedimentation, turbidity, and elimination of some

by requiring ranchers to submit proposals for all non-emergency use, which BLM would analyze for compliance with the Wilderness Act and CGG before granting authorization.

⁵² Owyhee Wilderness Areas Boundary Modifications Act, S. 1167, 114th Cong. (2015). This bill was never voted on by the Senate.

⁵³ Utah Public Lands Initiative Act, H.R. 5780, 114th Cong. (2016).

⁵⁴ U.S. Dep’t of the Interior, Bureau of Land Mgmt., Lahtinen letter, Sept. 12, 2014.

⁵⁵ U.S. Dep’t of the Interior, Bureau of Land Mgmt., *Request for Motorized Use in Wilderness – Big Springs Allotment*, available at

https://www.blm.gov/sites/blm.gov/files/uploads/Owyhee%20Canyonlands%20Wilderness%20Plan_LivestockGrazing.pdf.

⁵⁶ Perry Knize, *Winning the War for the West*, The Atlantic (1999), available at

<https://www.theatlantic.com/magazine/archive/1999/07/winning-the-war-for-the-west/306233/>.

aquatic habitats. Grazing may result in trampling of archaeological sites, degradation of natural scenery, and the proliferation of nonnative species such as cheatgrass.⁵⁷ Nonnative plants are generally unsuitable as forage for livestock and they often are less reliable for stabilizing fragile desert soils.⁵⁸ Furthermore, the proliferation of nonnative vegetation, such as cheatgrass, makes Western landscapes more prone to unnaturally severe fires.⁵⁹ Grazing causes substantial harm to wilderness ecosystems and recreational aesthetics and has proven environmentally unsustainable even at relatively modest levels. Livestock grazing is fundamentally at odds with the Wilderness Act's mandate to keep "the earth and its community of life [...] untrammelled by man."⁶⁰

Most grazing in wilderness occurs in the mountain and desert regions of the western United States, in arid and semiarid areas that have not evolved with intensive grazing by native herbivores.⁶¹ Grazing impacts are most significant in those areas because the impacts on ecosystems in arid regions may be largely irreversible.⁶² Additionally, in many arid and semiarid wildernesses, a critical structural component of undisturbed soil is a biological crust on the surface, known as a cryptobiotic crust, consisting of interwoven communities of cyanobacteria, algae, lichens, mosses, and their byproducts.⁶³ The crust stabilizes soils against erosion, absorbs and holds water, fixes nitrogen, and adds organic matter to the soil, but trampling livestock destroys it.⁶⁴ Grazing livestock in arid and semiarid regions also increases levels of dust particulates in the atmosphere.⁶⁵ As dust settles on downwind snowfields, it accelerates snowmelt rates, which causes the water supply held in snow to flow into streams, rivers, and reservoirs earlier than desirable, resulting in late-season water shortages and potential drought throughout the West.⁶⁶

Livestock adversely impacts wildlife in wilderness. Over 136 species in the mainland U.S. have been listed as threatened or endangered due in part to livestock grazing.⁶⁷ Many more species are in serious decline and have been given sensitive, special status, or other designations indicating imperilment. Livestock change the composition of plant species that wildlife rely on and outcompete other species for water and forage.⁶⁸ The mere presence of livestock can discourage wildlife from accessing water sources

⁵⁷ Squillace, *supra*, at 418.

⁵⁸ *Id.*

⁵⁹ Ben Adler, *Cattle grazing is a climate disaster, and you're paying for it*, Grist (2016), available at <https://grist.org/climate-energy/cattle-grazing-is-a-climate-disaster-and-youre-paying-for-it/>.

⁶⁰ 16 U.S.C. § 1131(c)

⁶¹ David N. Cole & Peter B. Landres, *Threats to Wilderness Ecosystems: Impacts and Research Needs*, 6 Ecological Applications 172 (1996).

⁶² *Id.*

⁶³ Joseph M. Feller & David E. Brown, *From Old-Growth Forests to Old-Growth Grasslands: Managing Rangelands for Structure and Function*, 42 Ariz. L. Rev. 319 (2000).

⁶⁴ *Id.*

⁶⁵ Squillace, *supra*, at 418.

⁶⁶ *Id.*

⁶⁷ Moskowitz, *supra*, at 29.

⁶⁸ *Id.*

and breeding and forage areas.⁶⁹ Livestock numbers and size makes it difficult to protect streambanks and streambeds from trampling, erosion, and pollution, which inhibits reproduction of many native fish that evolved in clear streams and imperiling sensitive aquatic species.⁷⁰ In Arizona wilderness areas, a long history of grazing has negatively impacted streambed health, affecting the threatened Gila trout, which needs adequate aquatic and bank vegetation as well as stream stability to grow.⁷¹ A sagebrush steppe species, the Greater Sage-Grouse, was the unassuming face of a large collaborative effort to conserve western rangelands after degradation of its habitat left the bird potentially eligible for listing on the endangered species list, leading biodiversity advocates to observe, “In the arid West, livestock grazing is the most widespread cause of species endangerment.”⁷²

Livestock serve as a vector to spread disease and parasites, both native and exotic, to wild animals throughout the West.⁷³ For instance, in the Weminuche Wilderness in southern Colorado, the Forest Service has been debating whether to continue to allow domestic sheep to graze in wilderness areas, even though a bacterium carried by domestic sheep is decimating wild bighorn sheep populations throughout the West.⁷⁴ It is Colorado Parks and Wildlife protocol to kill any bighorn sheep that come in contact with domestic sheep to prevent disease transmission; in 2016, the agency killed six bighorns that came into contact with domestic grazing sheep in southern Colorado.⁷⁵ In the Sierra Nevada, heavy historic sheep grazing has been blamed for reduced wildlife populations, resulting from both forage consumption and transmission of diseases, particularly to bighorn sheep.⁷⁶

Livestock grazing also negatively affects the intangible recreational and aesthetic values for which visitors seek out wilderness. Due to the impacts of livestock such as trampling, loss of native plants, absence of wild animals, and introduction of manure and the inevitable flies that accompany that manure, most people would not consider a section of stream where cattle had congregated for several days to be a wilderness experience. Consumptive activities like hunting are harmed when livestock displace wild game, while non-consumptive activities like boating and bird watching suffer from the degradation of streamside and riparian areas. The BLM has estimated that 80 percent of western riparian habitats, both in and outside of wilderness, have been

⁶⁹ *Id.*

⁷⁰ Karyn Moskowitz & Chuck Romaniello, Center for Biological Diversity, *Assessing the Full Cost of the Federal Grazing Program* 28 (2002), available at https://www.biologicaldiversity.org/publications/papers/assessing_the_full_cost.pdf.

⁷¹ Cole, *supra*, at 171.

⁷² Adler, *supra*.

⁷³ Cole, *supra*, at 171.

⁷⁴ Paige Blankenbuehler, *Agricultural interests steer Colorado’s wildlife management*, 50 High Country News 13, available at <https://www.hcn.org/issues/50.15/wildlife-agricultural-interests-steer-colorados-wildlife-management>.

⁷⁵ Jonathan Romeo, *Decision on future of sheep grazing pushed back*, Durango Herald (2017), available at <https://durangoherald.com/articles/141841>.

⁷⁶ Cole, *supra*, at 171.

damaged due to livestock.⁷⁷ This affects the aquatic species within streams and ponds, as well as the many bird species that populate riparian regions.

Rangeland “improvements” made by ranchers, in the form of grazing infrastructure, can be as destructive to wilderness as livestock grazing itself. “Improvements” may include: the maintenance or replacement of existing structures or the construction of new fences, windmills, water pipelines, and stock ponds; irrigation; fertilization; and even the use of chemicals to control noxious weeds. Any one of those activities harms wilderness areas, and the combination of several of them causes even greater harm. Wilderness is the only public land designation where, by law, the land is meant to retain its “natural conditions”; livestock-related development undermines that important goal. Furthermore, native predators are frequently killed, even within wilderness, by state and federal wildlife services, in order to protect livestock. In 2002, a federal court ruled that the Department of Agriculture was justified in killing a large number of mountain lions in the Santa Teresa Wilderness in Arizona in order to protect livestock.⁷⁸ The Court endorsed the Forest Service’s argument that “private livestock grazing implicitly includes operations to support that grazing, such as legal control of predators.”⁷⁹ These “support operations,” however, represent precisely the types of encroachments that Congress sought to prohibit in wilderness with the passage of the Wilderness Act.

Grazing in wilderness also undermines efforts to minimize climate change. Grasslands and forests are essential carbon sinks. Shrubs, grasses, and trees recycle carbon dioxide and thereby regulate atmospheric concentrations of carbon. Loss of both grasslands and forests contributes to rising rates of carbon in the atmosphere and therefore to climate change. As the reality of climate change becomes more apparent it will almost certainly become more difficult to protect sensitive lands from the adverse effects associated with grazing. In 2012, an Oregon State study found that climate change is worsening environmental stressors on Western grasslands; the researchers recommended that the federal government reduce or eliminate livestock grazing on public lands.⁸⁰ As saving pristine pieces of ecosystems becomes increasingly necessary, it is important to remove grazing’s stranglehold on our wilderness system.

⁷⁷ Moskowitz, *supra*, at 29.

⁷⁸ *Forest Guardians v. Animal & Plant Health Inspection Serv.*, 309 F.3d 1141 (9th Cir. 2002).

⁷⁹ *Id.* (“The Wilderness Act of 1964 and the Arizona Wilderness Act of 1984 do not expressly prohibit predator control in wilderness areas. 16 U.S.C. §§ 1131-1136; Arizona Wilderness Act § 101(a)(23), (f)(1); H.R.Rep. No. 96-617, at 10-13 (1979). They do, however, allow pre-existing grazing operations to continue in areas later designated as wilderness. See Arizona Wilderness Act § 101(f)(1). We agree with the Forest Service that ‘private livestock grazing implicitly includes operations to support that grazing, such as lethal control of predators.’”)

⁸⁰ Adler, *supra*.

IV. EXTENT OF GRAZING IN THE NATIONAL WILDERNESS PRESERVATION SYSTEM

It is important to contextualize wilderness livestock grazing within the broader landscape of public land grazing.⁸¹ Livestock graze approximately 530,000 Animal Unit Months (AUMs) in wilderness,⁸² out of a total 15.6 million AUMs grazed annually on all BLM and Forest Service-administered public land.⁸³ Grazing does extreme damage to wilderness, yet at just 3 percent of 3 percent of all forage fed to livestock in the United States, grazing in wilderness hardly contributes to the U.S. livestock industry.⁸⁴ This is due in part because many wildernesses are closed to grazing or include vacant allotments, but also because wilderness lands tend to be the least suited for livestock grazing due to their ruggedness or inaccessibility. If all livestock were removed from wilderness, in fact, the cattle and sheep industries would be largely unaffected. Comparatively, wilderness areas are of little importance to the vast amount of livestock raised in the U.S., yet they are extraordinarily important for biodiversity, scientific study, recreation, and the preservation of wildness.

Livestock graze about 10 million acres of the 52.4 million acres of wilderness in the lower 48 states. Livestock grazing occurs in over 330 wilderness areas and in all of the eleven western states.⁸⁵ There is no authorized grazing in wildernesses in Alaska or Hawaii, and wilderness grazing takes place almost exclusively west of the Mississippi River.⁸⁶ The states with the most acreage grazed in wilderness include Nevada (2.4 million acres), Arizona (1.8 million acres), California (1.8 million acres), and Colorado (1 million acres).⁸⁷ The wildernesses that have grazing within their boundaries are primarily administered by the BLM and the Forest Service (only a handful of wildernesses on national wildlife refuges permit livestock grazing). The wildernesses with the most grazing acreage within their boundaries are the High Uintas Wilderness in Utah (261,075 acres grazed), the Pecos Wilderness in New

⁸¹ See definition of “livestock grazing” *infra* note 1.

⁸² An Animal Unit Month (AUM) is the amount of forage needed by an “animal unit” grazing for one month. The quantity of forage needed is based on weight, and the animal unit is defined as one mature cow and her young calf or five sheep. The figure for 530,000 AUMs comes from our sourced data, referenced in Tables 1 and 2, *infra*.

⁸³ CRS Report, *Statistics on Livestock Grazing on Federal Lands: FY2002 to FY2016*, <https://www.everycrsreport.com/reports/R44932.html> (last visited Jan. 25, 2019). In FY2016, livestock grazed 8,722,209 AUMs on BLM-administered land and 6,884,934 AUMs on FS-administered land, totaling 15,607,143 AUMs.

⁸⁴ Center for Biological Diversity, *Grazing*,

https://www.biologicaldiversity.org/programs/public_lands/grazing/ (last visited Jan. 11, 2019).

“ [W]estern federal rangelands account for less than 3 percent of all forage fed to livestock in the United States.” See also our figure of 530,000 AUMs in wilderness, out of 15.6 million AUMs on BLM and USFS-administered public land, or approximately 3.4 percent.

⁸⁵ Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Nevada, Washington, Oregon, and California.

⁸⁶ There are three wildernesses in the East – Raccoon Branch, Little Wilson Creek, and Lewis Fork, all in Virginia – which have at most about two hundred acres in allotments. There is likely little, if any, grazing in the wildernesses. The allotments are likely not active, but Wilderness Watch was unable to confirm this.

⁸⁷ See Wilderness Watch data, available at <https://wildernesswatch.org/grazing>.

Mexico (201,100 acres grazed), the Mazatzal Wilderness in Arizona (163,070 acres grazed), and the Black Rock Desert Wilderness in Nevada (157,911 acres grazed).⁸⁸

Most of the grazing in wilderness areas takes place in arid or semiarid climates, areas particularly unsuited to grazing. For instance, in Arizona, known for its desert climate and very hot summers, 41 percent of 4.5 million acres of wilderness is grazed. In Utah, grazing is allowed on over half (51 percent) of wilderness. In Nevada, another desert state, 70 percent of nearly 3.5 million acres of wilderness is grazed, the highest percentage of any state. One particularly egregious example of inappropriate grazing in wilderness takes place in a national park unit—Mojave National Preserve in Southern California, home to three of the four major North American deserts.⁸⁹ Of the roughly 700,000 acres of wilderness in the Preserve, nearly 70,000 acres is grazed. Additionally, grazing was once allowed, although now is prohibited, in wilderness within Death Valley National Park, the United States’ “hottest and driest national park,”⁹⁰ and site of the hottest spot in the world.⁹¹

Grazing within wilderness does not make ecological or economic sense. It is wasteful of the few water sources available in arid climates, and it is not nearly as productive as grazing cattle or sheep on nutrient-rich, well-watered grasslands. It is likely that without subsidies from the federal government, many stockmen would not make a profit from grazing their livestock in desert areas. From a wilderness, ecological, and an economic standpoint, ending grazing in wilderness makes sense.

Table 1

Agency ⁹²	Total Wilderness Acres	Allotted Wilderness Acres	Grazed Wilderness Acres	AUMs in Wilderness
BLM	8.8 million	4.7 million	4.4 million	185,000
USFS	36.6 million	8.0 million	5.3 million	334,000
FWS ⁹³	20.7 million	<0.1 million	<0.1 million	10,000
NPS ⁹⁴	43.9 million	<0.1 million	<0.1 million	2,000

⁸⁸ *Id.*

⁸⁹ U.S. Dep’t of the Interior, Nat’l Park Service, *Nature & Science*, <https://www.nps.gov/moja/learn/nature/index.htm> (last visited Jan. 11, 2019).

⁹⁰ U.S. Dep’t of the Interior, Nat’l Park Service, *Hottest, Driest, and Lowest National Park*, <https://www.nps.gov/deva/index.htm> (last visited Jan. 11, 2019).

⁹¹ U.S. Dep’t of the Interior, Nat’l Park Service, *Nature & Science*, <https://www.nps.gov/deva/learn/nature/index.htm> (last visited Jan. 11, 2019).

⁹² Bureau of Land Management (BLM); U.S. Forest Service (USFS); U.S. Fish and Wildlife Service (FWS); National Park Service (NPS)

⁹³ The majority of wilderness managed by the U.S. Fish and Wildlife Service is in Alaska and does not have livestock grazing.

⁹⁴ The majority of wilderness managed by the National Park Service is in Alaska and does not have livestock grazing.

Table 2

State	Total Wilderness Acres	Allotted Wilderness Acres ⁹⁵	Grazed Wilderness Acres	Percent of Wilderness Grazed ⁹⁶	AUMs in Wilderness ⁹⁷
Arizona	4,512,056	2,241,000	1,836,000	41%	123,000
California	14,967,957	2,546,000	1,835,000	12%	62,000
Colorado	3,735,240	1,628,000	1,001,000	27%	79,000
Idaho	4,796,558	685,000	608,000	13%	29,000
Montana	3,501,410	129,000	116,000	3%	6,000
Nebraska	12,437	8,000	8,000	64%	2,000
Nevada	3,448,418	2,620,000	2,427,000	70%	89,000
New Mexico	1,698,604	1,128,000	769,000	45%	49,000
North Dakota	39,652	6,000	6,000	15%	6,000
Oregon	2,475,323	335,000	233,000	9%	11,000
Utah	1,157,992	603,000	593,000	51%	31,000
Washington	4,484,603	334,000	31,000	1%	1,000
Wyoming	3,067,696	640,000	548,000	18%	37,000

V. GRAZING ECONOMICS

The federal grazing program in wilderness operates at a loss to the U.S. Treasury. At a grazing fee of \$1.41 per AUM, the BLM and Forest Service likely only receive around \$750,000 per year in revenues from grazing in wilderness. However, a 2005 Government Accounting Office audit found that revenues from all public land grazing amount to one-sixth the costs of managing agency grazing programs.⁹⁸

Moreover, the direct costs of public land grazing management are only a minor part of the full costs of the grazing program; the agencies likely spend even more on grazing indirectly through other programs than through public land grazing budgets alone. Many other programs within the land management agencies either support ranching operations on public lands or are needed to compensate for resource damage caused by

⁹⁵ This is an aggregate of all allotments open to grazing. Each open allotment may not be grazed every year for reasons such as permittee choice (called nonuse), drought, or vacancy. Allotments become vacant when a permittee sells her ranch or decides to no longer graze livestock. Most un-grazed allotments are vacant allotments. All open allotments, including vacant allotments, are eligible under current management structures to be grazed by livestock in future years.

⁹⁶ Percentages were found by checking grazed wilderness acres against total wilderness acreage in a given state. Values have been rounded to the nearest whole amount.

⁹⁷ An Animal Unit Month (AUM) is the amount of forage needed by an “animal unit” grazing for one month. The quantity of forage needed is based on weight, and the animal unit is defined as one mature cow and her young calf or five sheep.

⁹⁸ U.S. Gov’t Accountability Office, Report to Cong. Requesters, *Livestock Grazing* (2005), available at <https://www.gao.gov/new.items/d05869.pdf>.

livestock. For instance, Wildlife Services, in the Department of Agriculture, kills wild predators to protect livestock, among other purposes. Additionally, the Fish and Wildlife Service spends time and resources identifying, protecting, and recovering threatened and endangered species, many of which are imperiled due to impacts from livestock grazing. One estimate of the annual costs to the U.S. Treasury for all public land grazing operated by the BLM and the Forest Service suggests a minimum expenditure of \$128 million, possibly approaching \$1 billion annually.⁹⁹

Indirect and intangible environmental costs, including long-term damage to streams, negative impacts on native grassland ecosystems, and losses of endangered species, add substantially to the public cost of grazing. The values of non-consumptive recreation, biological diversity, and other ecological services are especially important in wilderness. Lost quality of life, reduced recreation values, diminished wildlife and game, degraded archeological resources, impaired watersheds and water quality, and flammable forests that result from livestock grazing all represent “costs” of public land grazing to wilderness and the American public.

Both the BLM and the Forest Service recognize that ranching imposes a cost on recreational users of public lands, including wilderness visitors, by degrading the quality of the visitor experience. “Recreation values are degraded by livestock grazing and by declines in water quality and riparian habitat conditions. Livestock trampling and fecal matter reduce aesthetics and environmental quality at developed and undeveloped sites. Declining riparian conditions reduce wildlife viewing opportunities, make streams less floatable and fishable, and degrade a variety of recreation experiences. Continued declines in riparian conditions and concentration of livestock in riparian areas would lesson naturalness, solitude, and other values of designated wilderness.”¹⁰⁰ Considering that many traditionally ranching-dependent communities are increasingly reliant on tourism and recreation as the economy in the rural West changes, it would behoove those communities to conserve the federal lands that draw visitors—and income—rather than degrade those areas with livestock.¹⁰¹

VI. RECOMMENDATIONS: TOWARD A LIVESTOCK FREE WILDERNESS SYSTEM

The Congressional Grazing Guidelines state that “[t]here shall be no curtailments of grazing... simply because an area... has been designated as wilderness.”¹⁰² Reductions in numbers can only be made “as a result of revisions in the normal grazing and land management planning and policy setting process” and for “the protection of the range resource from deterioration.”¹⁰³ It is clear from this language, as well as the Wilderness Act’s mandate that “the grazing of livestock, where established prior to [designation of the area], shall be permitted to continue,” that grazing cannot be

⁹⁹ Moskowitz, *supra*, at 1.

¹⁰⁰ *Id.* at 29.

¹⁰¹ *Id.* at 19, 30.

¹⁰² H. Rep. 96-617.

¹⁰³ *Id.*

unilaterally terminated except under the same conditions that would apply on non-wilderness lands. Such conditions would include failure to abide by permit conditions, conflicts with wildlife, or deteriorated conditions of the land (such as long-term habitat changes) that make the area not suitable for livestock grazing. In short, the most expedient and effective way to reduce and eventually eliminate the destructive impacts of grazing in wilderness is via Congressional action.

A. Congressional Action

There are many possible avenues Congress could take to end grazing in wilderness, but the most effective and equitable approach is to automatically retire a wilderness grazing permit that is waived by the permittee, and to close any currently vacant allotments in wilderness to grazing. This would create the opportunity for grazing permittees in wilderness to voluntarily relinquish their grazing permits back to the managing federal agency in exchange for compensation paid by a third party. This is the approach codified in PL 114-46, the Sawtooth National Recreation Area and Jerry Peak Wilderness Additions Act, and PL 111-11, which established the Owyhee Canyonlands Wilderness, and promoted in the “Rural Economic Vitalization Act” legislation introduced in the last two Congresses.¹⁰⁴ Allowing ranchers to receive compensation in exchange for voluntarily giving up their grazing permits is an equitable solution to save valuable wilderness areas without dispossessing the ranchers who currently hold the permits.

The concept is simple: Congress would enact a law that says if a public lands grazing permit holder voluntarily relinquishes a permit, the federal public lands covered by the permit would never again be grazed by livestock. The management agencies would permanently retire the permit, reallocating forage to wildlife and allowing associated allotments to recover from livestock grazing. Third parties would have the incentive to compensate ranchers—on a willing-buyer, willing-seller basis—knowing that the wilderness would be permanently off-limits to livestock grazing. A permittee could be compensated for retiring their interest by a state fish and wildlife agency, a private conservation organization, or another entity.

¹⁰⁴ Voluntary permit retirement has been authorized in a few areas of the West already, including the Boulder-White Clouds Wilderness areas of Idaho. That legislation, PL 114-46, includes an option allowing grazing permit holders on land within or adjacent to the Boulder-White Clouds Wilderness areas to voluntarily retire their permits and be eligible for compensation from outside groups. In another example, in 1998, an Idaho senator proposed that a power agency purchase and then retire the grazing permit for an allotment in the Frank Church River of No Return Wilderness to protect endangered salmon and trout. The power agency paid for the permit outright, and the Forest Service drafted a planning amendment to the forest management plan to retire the allotment. Additionally, the Rural Economic Vitalization Act (REVA), a bill most recently reintroduced by Rep. Adam Smith (D-Wash.) in July 2017, planned to address this issue and allow permittees to voluntarily relinquish their permits to the BLM and the Forest Service in exchange for compensation. Then the federal government could permanently retire those grazing permits, returning the land for wildlife, recreation, and other non-livestock uses. REVA has languished in Congress since 2011, but if passed, it would end grazing on public land in a way that encourages voluntary relinquishment by ranchers and restoration of public lands.

Additionally, Congress should amend the CGG to reduce the impacts associated with grazing in wilderness. As described earlier, Congress did not anticipate that the land management agencies would allow motor vehicle use for non-emergency or otherwise routine management practices. Yet, over time, the agencies have become increasingly liberal in their interpretation and have begun allowing motor vehicles for tasks such as herding or monitoring livestock. Congress should remedy this situation by amending the Guidelines to further constrain the conditions under which motor vehicles, structures, or installations are allowed. Further, Congress should make it clear that agencies can constrain livestock grazing in wilderness to protect any of the values or resources found there, just as the agencies are authorized to do on other public lands. The language of the current CGG which states that, “[t]here shall be no curtailments of grazing... simply because an area... has been designated as wilderness” is often interpreted by land managers to mean grazing cannot be curtailed in wilderness, even when grazing degrades recreational, wildlife, scientific, ecological, or other values. In short, the CGG have led to the absurd situation where livestock grazing has more permanence in wilderness than elsewhere on public lands. Congress should remedy that misinterpretation.

Finally, it should be noted that the most lasting means of ridding wilderness of grazing is to have Congress either repeal the relevant provisions of the Wilderness Act, or prohibit or phase out grazing in individual existing and future wilderness areas. The latter solution is more feasible since it can be accomplished by considering each piece of wilderness legislation separately. However, it also leaves each piece of wilderness legislation open to negotiation over language, allowed activities, and non-conforming uses; the inevitable haggling between interested parties could dilute each subsequent wilderness bill until the land in question looks nothing like wilderness at all. Because we believe that allowing ranchers to receive compensation in exchange for voluntarily giving up their grazing permits is a viable solution under the existing regulatory framework, Wilderness Watch does not discuss either amending the Wilderness Act or amending individual wilderness-designating statutes in detail in this paper.

B. Agency Action

The federal agencies need not wait for Congress to act to protect wilderness from some of the damaging effects of grazing. The grazing language of the CGG and the Wilderness Act is clear in its intent that livestock grazing *shall be permitted* to continue within wilderness; it does not, however, mandate that livestock grazing *must* be present in perpetuity. Surely Congress did not intend to make it harder for land management agencies to curtail grazing in wilderness than on other public lands.

The first and easiest method for land management agencies to reduce grazing in wilderness is to close all vacant grazing allotments in order to protect recreational and ecological values. Our data show that many unassigned grazing allotments within wilderness have been vacant for years. Those allotments account for much of the difference between acreage grazed in wilderness and acreage allotted in wilderness and, if closed, would significantly reduce the number of acres that could one day be

reopened to grazing. Because those allotments are not assigned to individual users, they could be closed without being waived to the agency by a permittee.

Moreover, federal land management agencies have the authority to formally determine that an area in question is no longer chiefly valuable for grazing, a necessary precursor to clearing the way for the permanent retirement of the associated lease. Because the CGG makes it clear that the designation of an area as wilderness is, in and of itself, insufficient for such a determination, the agencies would have to find that other legitimate rationales warrant curtailment. For example, an agency may find that an area is more valuable for providing forage for native species or other conservation and ecological reasons, or that eliminating grazing would reduce visitor or wildlife conflicts, or that it would simply restore a more natural environment by removing grazing infrastructure.

This approach requires the agencies to find that certain lands are not chiefly valuable for grazing and amend their land use plans to reflect that finding.¹⁰⁵ Compelling evidence supports the idea that desert lands that receive less than twelve inches of annual rainfall, and lands that have not historically been used by ungulates, are more valuable for conservation and protection of the ecological health of the lands than for grazing. The case for such a claim would seem particularly compelling for wilderness lands, which, after all, are supposed to be “untrammelled by man.” Notably, the basic fact that Congress has declared an area to be wilderness is not sufficient to curtail grazing, but neither must the agency treat that fact as irrelevant if it has specific reasons to limit or terminate grazing in a particular wilderness area.

A significant advantage to this approach is that it can be carried out under existing law. What is needed, however, is leadership at the BLM and the Forest Service to amend the agency manuals that outline the procedures agencies might use for handling applications to retire grazing permits, or to adopt a joint rule, following a notice and comment process, which sets out the circumstances whereby the agencies will require removal of livestock from wilderness. The rules might simply confirm the requirements previously described in the BLM rules about restricting grazing to protect range health and other things. The rules could also confirm that when a rancher voluntarily gives up his grazing permit in wilderness and the permit becomes a vacant allotment, that allotment is permanently retired.

VII. CONCLUSION

In the 54 years since the passage of the Wilderness Act, Congress and the federal agencies have become more accepting of livestock management structures, facilities,

¹⁰⁵ An impediment to removing grazing in wilderness is that the vast majority of public lands have historically been deemed chiefly valuable for grazing under the Taylor Act. The land management agencies cannot retire grazing permits on lands that have historically been deemed chiefly valuable for grazing without first changing that finding and amending the relevant land use plan.

and motorized equipment use than Howard Zahniser and his colleagues who worked to pass the wilderness bill ever could have imagined. Wilderness designation has grown from under 9 million to over 100 million acres. However, resolution of the paradox of permitting livestock grazing and its associated management structures, facilities, and motorized equipment use in areas reportedly “untrammled by man” has not occurred; instead it has become normalized.

In the Wilderness Act, Congress exempted some activities that the Act would otherwise bar to allow preexisting, non-conforming activities to continue under some circumstances. Grazing constitutes one of the more troublesome of these activities. The difficulty in finding effective solutions to the growing problem of grazing in wilderness signifies that grazing in wilderness should be reconsidered. Since grazing is inherently contrary to the concept of wilderness, and since removal of grazing from wilderness lands will present only minor impacts to the livestock industry as a whole, the most logical conclusion is that it should be phased out or eliminated, and not be allowed to continue in these special areas.

Removing livestock grazing from wilderness is essential to protecting areas “where the earth and its community of life are untrammled by man” and ensuring that the “primeval character” of these special spaces is safeguarded. The absence of livestock will restore habitat for native fish, birds, and wildlife, and improve water quality and quantity. It will ensure that wild lands are protected “for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness.” As a place set apart, where we yield ourselves to nature’s primacy, wilderness is the antithesis to our cultural crusade to dominate and bend nature to our purposes. It acts as a refuge, a place of serenity for mankind as we increasingly urbanize ourselves. In this moment of environmental crisis when humans are increasingly concerned about the health of our planet, wilderness areas are crucial as safeguards of wild nature for present and future generations. Our mission, the vision of the Act’s framers, and the responsibility of land managers to protect wilderness values will never be fully executed until grazing is ended in wilderness.