

Wilderness in Nevada:

How the Designation Affects Federal Lands

BY LOUIS M. BUBALA, III, ESQ.

It is no secret that the federal government owns Nevada—or at least the land. The U.S. owns roughly 85 percent of the state’s land, or more than 60 million acres of the state’s 70.7 million acres.¹ Federal lands have helped fuel Nevada’s growth over the years. From the Transcontinental Railroad in the 1860s to Las Vegas today, federal land transfers have helped shape Nevada’s progress.

Congress also has taken steps to protect undisturbed federal lands in Nevada. In 1964, President Lyndon

Johnson signed the Wilderness Act into law. The act was adopted nationally “to assure that an increasing population does not occupy and modify all areas within the United States, leaving no lands designated for preservation and protection in their natural condition.”²

Since then, Congress has designated 70 wilderness areas in Nevada.³

Wilderness makes up a small part of Nevada, approximately 3.4 million acres, less than 5 percent of the state.⁴ The designations come with special protections to maintain wilderness in its “untrammelled” state. The adjective has little use in everyday vocabulary, but Congress put it in context: “A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.”⁵

Nevada has adopted a cooperative approach to wilderness designation in recent years. Local and federal

government leaders, developers and conservations have collectively worked to assemble mutually beneficial bills on a county-by-county basis. Specific bills have been enacted for lands in Clark, Humboldt, Lincoln, Lyon and White Pine counties.⁶ The acts have provided local communities the chance to develop federal lands, often those located near their populations, while adding wilderness protection to more remote areas. More recent discussions have involved land bills in Clark, Douglas, Pershing and Washoe counties.

But wilderness remains a largely unknown quantity to most people. The following information is a primer on wilderness: What is it? Where is it? What does it mean? What is its future?

What is wilderness?

With the adoption of the Wilderness Act, Congress gave itself the power to designate federal land as “wilderness areas” to be administered to “leave them unimpaired for future use and enjoyment

as wilderness and ... the preservation of their wilderness character.”⁷

Congress adopted four elements for land to be designated as wilderness. The land:

- Generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable;
- Has outstanding opportunities for solitude or a primitive and unconfined type of recreation;
- Has at least 5,000 acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and
- May also contain ecological, geological or other features of scientific, educational, scenic or historical value.⁸

Where is wilderness?

In Nevada, Congress has designated wilderness within federal lands managed by the U.S. Departments of Interior and Agriculture. Those designations include lands under the Forest Service, Bureau of Land Management, National Parks Service, and Fish & Wildlife Service. In conjunction with the adoption of the Wilderness Act, Congress designated the Jarbidge Wilderness in Elko County. This wilderness covers approximately 110,000 acres managed by the U.S. Forest Service as part of the Humboldt-Toiyabe National Forest.

Since then, Congress has designated 69 other wilderness-area parcels in Nevada. They include



points outside of Las Vegas and Henderson with the Mt. Charleston Wilderness in the Spring Mountains, Rainbow Mountain Wilderness and La Madre Mountains Wilderness in the Red Rock Canyon National Conservation Area, and the North McCullough Wilderness in Sloan Canyon National Conservation Area.

Reno has the Mt. Rose Wilderness. Further out are the Black Rock Desert Wilderness and High Rock Canyon Wilderness north of Gerlach.⁹ The majority of designations are spread around the state. They include the Death Valley Wilderness west of Beatty, Santa Rosa-Paradise Peak Wilderness north of Winnemucca, Wovoka Wilderness near Yerington and Hawthorne, and Bristlecone Wilderness near Ely.

What can you do in wilderness?

Congress adopted a multi-use approach in designating wilderness. The areas are “devoted to the public purposes of recreational, scenic, scientific, educational, conservation and historical use.”¹⁰ At the same time, Congress placed prohibitions and limitations on certain activities to preserve the land’s wilderness characteristics.

Here are some potential uses and prohibitions on wilderness:

Outdoor Recreation: The Wilderness Act permits a range of activities including hiking, backpacking, camping, canoeing, rafting, kayaking, climbing, ice climbing, mountaineering, horseback riding,

cross-country and downhill skiing, swimming, fishing, hunting and wildlife viewing. More than 16 million trips occur in wilderness nationally each year, according to Wilderness Connect, a collaborative website run by the University of Montana, the federal Arthur Carhart National Wilderness Training Center and the federal Aldo Leopold Wilderness Research Institute.¹¹



Mechanical Transportation: Motorized vehicles, motorized equipment, motorboats and landing of aircraft are prohibited in wilderness.¹² However, measures may be taken for emergencies involving the health and safety of people in the area, as well as actions necessary to control fire, insects and diseases.¹³ For example, U.S. District Judge Kent Dawson held that helicopter search-and-rescue training is a permissible use, so that humans can safely use wilderness.¹⁴ Aircraft and motorboat use also may be continued if their use was established prior to a wilderness designation.¹⁵ Bicycles also are prohibited in wilderness, as the act prohibits all mechanized transportation, not just motorized transportation. With the growth of mountain biking, Congress has contemplated the pros and cons of a legislative change, but nothing has been altered yet.

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Structures: Structures cannot be built in wilderness,¹⁶ but historical structures may be preserved.¹⁷

Mining, Mining Claims and Mineral Leases: These uses are generally prohibited unless a mining claim pre-dates the wilderness' designation.¹⁸ Pre-designation claims also may come with certain abilities to use mechanical transportation or build structures.¹⁹

Grazing: Commercial grazing may continue if established before the wilderness designation.²⁰ Like mining, pre-designation grazing comes with certain abilities to use mechanical transportation or build structures.²¹

Commercial Services: These services are permitted to help realize recreational or other wilderness purposes.²² A typical use is commercial packing.

Water Rights: State law continues to control water rights.²³

Hunting: States retain their jurisdiction over wildlife and fish.²⁴

What is the future of wilderness?

Although congressionally designated wilderness has been around for more than 50 years, the law is not static. Congress can continue to designate additional lands as wilderness, as evidenced by ongoing discussions on county lands bills mentioned earlier. There also are federal lands currently managed as wilderness study areas. While these lands have not been congressionally designated as wilderness, they are generally managed by federal agencies with similar restrictions until Congress determines whether to declare them wilderness.

Nevada's land bills have addressed some wilderness study areas; other wilderness study areas have been unresolved for decades. In 2018, then-U.S. Senator Dean Heller proposed a five-year period for Congress either to designate the lands as wilderness or to release them back in the federal agency's general land inventory.²⁵ The bill drew a range of responses, favored by those seeking a final resolution on management and opposed by those seeking a substantive conclusion, rather than a procedural termination. Although the bill did not become law before Heller left office, the issue remains under consideration by other lawmakers in Congress.

Wilderness, like many areas of law, has more than its share of nuances. As a matter of federal law, there are decisions made around the country in management and judicial interpretations that directly and indirectly affect Nevada's wilderness. But the Wilderness Act has remained largely unaltered since 1964, providing the guiding principles for the designation and management of wilderness. **NL**



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1. See David Johnson & Pratheek Rebala, Here's Where the Federal Government Owns the Most Land, [Time.com](#) (Jan. 5, 2016) (citing U.S. Geological Survey) (last viewed Feb. 4, 2019).
2. 11 U.S.C. 1131(a) (omissions omitted).
3. See List Wilderness by State: Nevada, [Wilderness.net](#) (last viewed Feb. 4, 2019).
4. Juliet Eilperin, With Obama's Help, Harry Reid Leaving an Indelible Mark in the Nevada Desert, [Washington Post.com](#) (July 7, 2015).
5. 11 U.S.C. 1131(c).
6. See, e.g., Success: Northern Nevada Land Bills Pass Senate, Set to Become Law, U.S. Rep. Mark Amodei (Dec. 12, 2014).
7. 11 U.S.C. 1131(a).
8. 11 U.S.C. 1131(c).
9. The Burning Man festival occurs in the Black Rock Desert High Rock Canyon National Emigrant Trails National Conservation Area. It happens on lands managed by the Bureau of Land Management, but not on designated wilderness.
10. 11 U.S.C. 1133(b).
11. Common Misconceptions about Wilderness, [Wilderness.net](#) (last viewed Feb. 4, 2019).
12. 11 U.S.C. 1133(c).
13. 11 U.S.C. 1133(d)(1).
14. *Wilderness Watch, Inc. v. Bureau of Land Mgmt.*, 799 F. Supp.2d 1172 (D. Nev. 2011).
15. 11 U.S.C. 1133(d)(1).
16. 11 U.S.C. 1133(c).
17. See 11 U.S.C. 1133(b).
18. 11 U.S.C. 1133(d)(2)-(3).
19. 11 U.S.C. 1134(b)..
20. 11 U.S.C. 1133(d)(4).
21. 11 U.S.C. 1134(b).
22. 11 U.S.C. 1133(d)(5).
23. 11 U.S.C. 1133(d)(6).
24. 11 U.S.C. 1133(d)(7).
25. See Benjamin Spillman, 'All Hell is Going to Break Loose,' under Dean Heller Wilderness Bill, Aide Says, [RGJ.com](#) (June 4, 2018) (last viewed on Feb. 4, 2019).