

Legislative Interpretation as a Guiding Tool for Wilderness Management

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Abstract—The Wilderness Act of 1964, which established the National Wilderness Preservation System, contains both a clear definition of wilderness and multiple “nonconforming” exceptions to this definition. Managers are given discretion to manage these nonconforming uses but must do so within the framework of wilderness the Act sought to preserve. This paper presents a process for assessing congressional intent by closely examining both the legislative language and the legislative history. This process is based on the works of legal scholars, case law and judicial practice. The paper then demonstrates the application of this process to the management of airstrips and jetboat use in the Frank Church - River of No Return Wilderness.

Human ecologists recognize that all environmental decisions involve three groups of humans: scientists, constituents and governments. While wilderness management should be based on scientific principles, it must also operate within the constraints posed by the governmental framework; this, in turn, is constantly influenced by the citizenry. In the United States, this governmental framework involves laws, regulations and management practices. When governmental directives conflict or are ambiguous, it is even more difficult for managers to make decisions based on sound science.

One frequently overlooked tool for resolving such conflicts is legislative interpretation. Legislative interpretation involves the careful examination of relevant laws and their legislative histories. Legislative interpretation can be confusing to the uninitiated and, as a result, may be misused. All legislative history is not created equal, nor is it always an appropriate recourse. Therefore, it is important to clearly understand the implications, merits and limitations of legislative history before applying it to management questions.

I will present a process for using legislative history to understand difficult management questions. I have adapted this framework from the conventions of the courts in order to make it easily accessible to managers, decision-makers, scientists and citizens. It provides a road map to lead interpreters through the confusing maze of legislative

documents that comprise legislative history. To illustrate its efficacy, I demonstrate its application to two specific management issues: managing airstrips on the Frank Church River of No Return Wilderness and jet boat use of the Salmon River.

Background

In 1964, the Wilderness Act established the National Wilderness Preservation System (NWPS) (P.L. 88-577). The system was initially composed of only 54 Forest Service areas, with a total of 9.1 million acres. Today, the NWPS contains 625 areas and more than 104 million acres managed by four federal agencies. Every wilderness area is governed not only by the Wilderness Act, but by the legislation that established it. These subsequent wilderness laws have all incorporated the management provisions of the Wilderness Act by reference. Some also add special provisions relevant only to the areas designated within. Therefore, legislative interpretation must analyze the Wilderness Act and any other legislation relevant to a particular wilderness.

The Wilderness Act defines wilderness 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” (sec. 2(c)). To protect this wilderness character, the Act prohibits roads, structures and installations, commercial enterprises and the use of mechanized transport and motorized equipment. But the Act also includes exceptions to these prohibitions. There are exceptions for air access, motorboat use and grazing where these uses were established prior to wilderness designation (secs. 4(d)(1) and 4(d)(4)(2)). The Act also contains a time-limited exception for mining activities, and allowances for water developments and commercial services under certain circumstances. These uses are called ‘nonconforming wilderness uses.’ While many who partake in these uses object to this term, it has been used throughout the history of wilderness legislation. During discussion of the bill that would eventually become the Wilderness Act, Representative John Saylor, one of the original sponsors, defined “nonconforming uses” as “certain existing intrusions that literally or by nature do not conform to the first two sentences of the definition [but that] can be tolerated for practical purposes, and indeed are so tolerated in establishing the system” (U.S. Congress 1962, 20268). This term is used repeatedly throughout the legislative history of the Wilderness Act. Some of the exceptions for such nonconforming uses are found in mandatory clauses, while others are subject to the managing agency’s discretion. It is when managers exercise this discretion that most controversies arise - and where this process can be most useful.

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The Analytical Process

When a manager is faced with an ambiguous or discretionary situation, the following analytical process can be very helpful. The primary steps in the process are: 1) use statutory construction to determine whether ambiguity exists and attempt to resolve it, 2) if the ambiguity still persists, use legislative interpretation to clarify congressional intent.

Step 1—Statutory Construction

The reviewer must initially determine whether a law is truly ambiguous as it affects the situation at hand. The courts often apply the plain meaning doctrine to determine whether a law is truly ambiguous or not. This doctrine holds that when statutory language is clear and unambiguous, it represents the final meaning of the statute. A clear statement of this doctrine is found in *United States v. Missouri Pacific Railroad* (1929). In this decision the court wrote that;

where the language of an enactment is clear and construction according to its terms does not lead to absurd or impractical consequences, the words employed are to be taken as the final expression of the meaning intended.

Only when such a strict analysis of the law would yield “absurd” results, or the words are unclear, can other interpretive methods be used.

The U.S. Supreme Court retreated from this earlier interpretation in *United States v. American Trucking Association* (1940). In what has become a new standard for the plain meaning rule the court noted that “when aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no ‘rule of law’ which forbids its use, however clear the words may appear on ‘superficial examination.’” Thus, if legislative materials can help, this court argued, they should not be ignored.

Another method for deciphering statutory language is the canons of linguistic construction. They are not codified in law, but these canons stem from decades of case law. They are general linguistic truisms such as: general words should be considered more broadly and specific words more narrowly; when general words follow the designation of particular things, they should be construed to include only those things specifically enumerated; associated words may be used to understand an ambiguous word or phrase; and the mention of one thing implies the exclusion of another; to name a few (Crawford 1940). While it is unlikely that managers will have a list of these canons on their office walls, they remind the interpreter to read laws systematically and logically.

Step 2—Legislative Interpretation

If statutory construction fails to eliminate the confusion, Stephen Breyer, a current Supreme Court Justice, lists five circumstances where the use of legislative history is appropriate: 1) to avoid an absurd result, 2) to discover and correct drafting errors, 3) to determine whether a special meaning exists for a word within a statute, 4) to determine the purpose of a word in the statutory scheme, and 5) to help choose between reasonable alternative interpretations of a

politically controversial statute (Breyer 1992). If any of these five circumstances apply, Breyer suggests turning to legislative interpretation.

The final step involves analyzing the applicable legislative history. Legislative history is the “explanations of the legislators themselves, or the documents officially used by them, in the course of making a specific law” (Folsom 1972). It includes committee reports, congressional debates and committee hearings. These documents provide the “authoritative explanations of the purposes or meaning of the language of the resulting law” (Folsom 1972). Legislative history cannot be used to change the general meaning of the statute, but it can be used to resolve controversies over interpretation or to determine the intended scope of statutory provisions.

All legislative history is not created equal, and the weight given to different aspects of legislative history varies. Figure 1 illustrates the relative importance of these documents. This hierarchy was created from a variety of sources, including scholarly writings and the standard legal guide to statutory construction, and reflect common usage by the courts (de Sloovere 1940, Dickerson 1975, Folsom 1972, Singer 1992). When attempting to interpret legislative history, these documents must be analyzed in order of importance.

Committee reports are generally given the most weight (McDonald 1991). On the next level are the explanations made by the committee chairperson when reporting a bill out of committee. In the process of explaining a bill to the full legislature, a committee chair must answer specific questions about it and defend it against opposition and therefore must be familiar with both the bill and the situation in need of remedy (Singer 1992).

Statements made by the legislative sponsors of a bill to the whole chamber are next in importance. They reveal “a legislative intent more significant than that revealed by those of a more casual legislative adherent” (Dickerson 1975). In contrast, the views of opponents are rarely assigned much importance, as their statements “may tend to overstate the reach of the provision opposed” (Folsom 1972).

Committee hearings are given less weight because they are generally “concerned with the more diffuse matters of ulterior legislative purpose” (Dickerson 1975). However, issues may be discussed in hearings that may not be

- I. Committee Reports
- II a. Statements of sponsors to the whole chamber
b. Explanations of the Committee Chair
- III a. Committee hearings
b. Statements in general debate
- IV a. Statements of members of the opposition
b. Amendments or language rejected in committee or on the floor

Figure 1—Significance of legislative documents in descending order of importance.

revisited in other documents. Amendments or previous bill language that were discarded also play a role. The elimination of words or phrases from a draft bill indicates that the meaning in question was not intended or was no longer acceptable to the majority. Finally, testimony given by non-congressional parties during committee hearings have little value other than to provide context (Singer 1992).

Applying the Process to Wilderness Management Issues

Airstrip Management in Idaho

The first example that I apply this process to is airstrip management on the Frank Church River of No Return Wilderness (FC-RONRW) in Idaho. This is an interesting example because it involves two separate wilderness laws. The Central Idaho Wilderness Act (CIWA) of 1980 established the 2.3 million acre FC-RONRW (P.L. 96-312). This remote area had a long tradition of access by airplane, and some users wished to ensure that this means of access would continue after wilderness designation (U.S. Senate 1979). As a result, the CIWA deviated from the standard language of the Wilderness Act's section 4(d)(1) to state that certain established uses "shall" rather than "may" be permitted to continue subject to the Secretary's regulations. It also added that:

the Secretary shall not permanently close or render unserviceable any aircraft landing strip in regular use on national forest lands on the date of enactment of the Act for reasons other than extreme danger to aircraft, and in any case not without the express written concurrence of the agency of the State of Idaho charged with evaluating the safety of backcountry airstrips (sec. 7(a)(1)).

Compared with the language of the Wilderness Act, this provision significantly limits the agency's discretion to close airstrips in the FC-RONRW.

There is currently an effort to create a comprehensive wilderness management plan. The Draft Environmental Impact Statement (DEIS) for the plan analyzes different strategies for managing these airstrips that include instituting commercial use permits, seasonal closures for wildlife and resource protection reasons, and limiting maintenance on certain airstrips (USDA Forest Service 1998). It is up to managers to decipher what management discretion remains under section 7(a)(1) and how it should be exercised.

Statutory Construction—To apply the analytical process to this question, the interpreter must first determine whether ambiguity exists. To do so, the text of both the Wilderness Act and the CIWA must be analyzed. The initial ambiguity regarding airstrip management stems from the Wilderness Act's exception in section 4(d)(1), permitting a use that is incompatible with the definition of wilderness found in section 2. The CIWA adds to this ambiguity by increasing statutory protection for airstrips, without resolving the underlying conflict between managing for air access and for wilderness protection.

With section 7(a)(1) of the CIWA, Congress clearly limits the agency's ability to close airstrips on the FC-RONRW. In doing so, Congress demonstrated that it could reduce the

agency's management discretion if it desired. Remember that one linguistic canon states that "the mention of one thing implies the exclusion of another" (Singer 1992, 334). Congress did not specifically limit the agency's discretionary ability to restrict use levels. By expressly restricting closures but not restricting other managerial discretion, Congress indicates that only the ability to close airstrips is limited.

Legislative Interpretation—Legislative interpretation is still necessary to address the question of management discretion. Breyers' fifth scenario applies in this case. Both the Wilderness Act and the Central Idaho Wilderness Act are politically controversial statutes, and varying reasonable interpretations can be made from both about how airstrips should be managed.

While aircraft landings are permitted in wilderness areas where they occurred before designation, the Wilderness Act defines wilderness in terms that do not include motorized travel. Section 2(c) of the Act defines a wilderness as an area "where the imprint of man's work [is] substantially unnoticeable" that has "outstanding opportunities for solitude or a primitive and unconfined type of recreation." These definitions are clarified by the legislative history of the Wilderness Act. Senator Hubert Humphrey, the legislation's original sponsor, defined wilderness as "the native condition of the area, undeveloped, . . . untouched by the hand of man or his mechanical products" (U.S. Congress 1957, 19). He saw wilderness as a place "for people to make their way into . . . without all of the so-called advances of modernization and technology" (U.S. Congress 1957, 20). None of the statements defining wilderness in the final law or in its legislative history include motorized uses. While airstrips did not conform with the ideal qualities of wilderness, the proponents' political strategy was to protect the status quo (Mercure and Ross 1969).

Although allowed to continue, airstrips are subject to regulation at the discretion of the managing agency. Congress abdicated its right to statutorily terminate the use of wilderness airstrips in the 1964 Act, but it also explicitly gave the Forest Service discretion to regulate aircraft access as the agency "deems desirable" (P.L. 88-577, sec. 4(d)(1)).

At the time of the bill's passage, only a few of the area's airstrips were actively maintained and some had been closed due to their dangerous conditions. Senator Church emphasized that with this provision, "the Forest Service is expressly prohibited from closing airstrips on national forests within the wilderness, which are in regular use at present, except for the reason of aircraft safety" (U.S. Congress, Senate 1980, S17780). The CIWA clearly restricts the Forest Service's ability to close airstrips on the FC-RONRW, except in the case of extreme danger to aircraft. However, it does not reduce the Forest Service's discretion to manage use levels on, and maintenance of, these strips. The legislative history of the CIWA supports the conclusion that closure, not management discretion, was the evil being remedied by this provision. The bill's sponsor, Senator Church, wanted to prevent the Forest Service from arbitrarily closing airstrips. There is no indication in the statute's legislative history that Congress intended to reduce the agency's discretionary ability to manage use-levels pursuant to agency regulations and policies.

Acceptable Levels of Jet Boat Use on the Salmon River

In addition to establishing the FC-RONRW, the CIWA designated 125 miles of the Salmon River as part of the Wild and Scenic Rivers System (P.L. 96-312). The CIWA contains a stipulation concerning continued jet boat use of the river. It states that:

The use of motorboats (including motorized jetboats) within this segment of the Salmon River shall be permitted to continue at a level not less than the level of use which occurred during calendar year 1978. (sec. 9(a)(C))

The Forest Service calculated the 1978 level from historical data and promulgated it as a standard in 1980. Private jet boat use is currently limited on the Salmon River during the control season of June 20 to September 3 to 15 Boat Use Days (BUDs) per week. Use outside of the control season is unregulated.

CIWA also required the agency to complete a comprehensive management plan for the entire wilderness. This plan was not begun until 1994. The preferred alternative in the 1998 DEIS for the FC-RONRW Wilderness Management Plan would extend the control season for private jet boaters and limit noncommercial BUDs to two per week (USDA Forest Service 1998). This proposal drew intense criticism from private jet boaters, who believe that the intention of CIWA was not to restrict motorboat use of the river. In response to these comments, and as part of a larger project aimed at understanding this class of river users, I undertook a legislative interpretation of the motorboating clause in CIWA.

Statutory Construction—The language of the statute clearly indicates that jet boat use can continue above a certain level. The ambiguity appears in regards to how much regulation was intended above that level. The issue is very politically controversial, and there is heated argument over whether or not regulation was intended. Therefore, a recourse to legislative interpretation is warranted.

Legislative Interpretation—The first legislative history documents to examine are committee reports. In November 1979, the Senate Committee on Energy and Natural Resources released a bill that included a jet boat provision similar to the final, except that the phrase “approximately equal to” was used in place of “not less than.” The report justified this provision “primarily because jetboats provide a means to reach deep into the wilderness in a relatively short time”(U.S. Congress 1979, 23). It further clarified that:

The Committee went beyond existing law . . . to assure that this traditional means of access to the river and the wilderness beyond will be allowed in the future. This section of the bill provides for the continuation of this use without preempting the prerogatives of the Secretary under the provisions of the Wild and Scenic Rivers Act to regulate motorized travel on the river in times of low water, or high fire hazard, or for other reasonable purposes. (U.S. Congress 1979, 23)

During debate in the Senate, Senator Church proposed an amendment that would change the language of section 9(a)(C) from “approximately equal to” to a “level not less than.” The reason for this change was to:

make clear that the purpose of the section is not to establish a ceiling on motorboat use on the mainstream of the Salmon but, rather, to use the year 1978 as a floor. . . the Secretary would retain the necessary flexibility to increase the use of motorboats on the basis of a management plan. . . The language would not result in overuse of motorboats in the future, but would simply prevent a decision on the part of the Secretary that would curtail their use below the level of calendar year 1978.

This amendment was accepted and reappeared in the House’s report in March of 1980.

The legislative history of this section indicates that while the level of motorboat use should not be administratively reduced below the 1978 level, Congress’ intention was never to limit the agency’s discretion to manage use levels to protect the wilderness resource. The question may still remain as to the accuracy of the 1978 level used by the Forest Service, but that will not be resolved through congressional research.

Conclusions

As these two examples illustrate, wilderness managers are asked to make a host of discretionary decisions in a very polarized atmosphere. They are constantly faced with pressures from interest groups demanding opposing interpretations of wilderness regulations. Where the Wilderness Act is clear and directive, these requests are easily dealt with; where the Act is ambiguous, the result is often controversy and confusion. These are just a few examples of the discretionary quandaries facing managers. This analytical process provides them with a clearer view of both their congressionally mandated responsibilities and the ideals that underlie them.

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