

Improving Wilderness Stewardship Through Searchable Databases of U.S. Legislative History and Legislated Special Provisions

BY DAVID R. CRAIG, PETER LANDRES, and LAURIE YUNG

The online resource Wilderness.net currently provides quick access to the text of every public law designating wilderness in the U.S. National Wilderness Preservation System (NWPS). This article describes two new searchable databases recently completed and added to the information available on Wilderness.net to help wilderness managers and others understand and interpret these laws. The first database provides access to a legislative history library and reference guide, and the second database provides access to legislated special provisions. Each database is described below in terms of how it may be used to inform decisions concerning wilderness stewardship, along with basic information about organization and content. We conclude with a brief discussion of research questions that may be more readily explored now that these databases are available.

Legislative History Database

Folsom (1972, p. 1) defines legislative history as “explanations of the legislators themselves, or the documents used by them, in the course of making a specific law.” For federal laws designating wilderness, this course is often lengthy and complex, involving a number of unsuccessful attempts and an extensive congressional record. This history is contained in committee reports, congressional hearings, floor debate, and statements before Congress. Legally, legislative history is used to clarify the intent behind legislation only when the plain meaning of the legislation itself is not clear or is



Coauthors (l to r) David R. Craig, Peter Landres, and Laurie Yung

ambiguous. In these situations, legislative history may serve as a reference point for understanding the intent of Congress. However, if the language of a statute is clear and unambiguous, then interpretation must be based solely on the wording of the statute. Meyer (2000) summarizes guidance on using legislative history as a tool in wilderness management, and cautions. “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” (p. 343).

The legislative history database developed by the authors contains the complete congressional record related to every wilderness law, and provides access to many of the electronic documents comprising these histories. This searchable database is available online at Wilderness.net (www.wilderness.net/legislativehistory/).

The Significance of Legislative History

When addressing questions concerning the intent or meaning of a law, legislative histories provide context for more accurate interpretation of statutory language. Analyzing legislative history may help settle disputes over the way a wilderness area should be managed. For example, Meyer (1998) offered a resolution to the disagreement over use of a newly acquired airstrip in the Eagle Cap Wilderness in Oregon by analyzing congressional intent regarding the area's management. Similarly, Watson et al. (2004) used legislative history to determine congressional intent for jet-boat use on the Salmon River in the Frank Church-River of No Return Wilderness in Idaho. Courts routinely use legislative history to understand congressional intent in resolving disputes.

Examining the legislative history of a wilderness law may help explain its evolution over time, often through rounds of political negotiation. Acreage amounts, boundaries, and management provisions can differ significantly between bills. For example, P.L. 103-77, the Colorado Wilderness Act of 1993, contains a provision for the construction, operation, use, maintenance, and repair of water project facilities and diversion systems in the Hunter-Fryingpan Wilderness. It also includes a provision that protects state mineral interests in the Lost Creek Wilderness. Neither of these special provisions was included in 98 H.R. 5426, an early version of this bill. Furthermore, only one of the 10 wilderness areas eventually designated by P.L. 103-77, the Raggeds Wilderness, was designated with the same acreage amount as was originally proposed in 98 H.R. 5426; all other acreage amounts were altered as the bill evolved.

Examples from other laws abound and demonstrate how legislative history provides insight into the political, economic, and social dimensions that shape the process and character of wilderness designation. From testimony by local officials to congressional debate on the floor of the House and Senate, these voices bring life to legal text and illustrate the interests and concerns of both proponents and opponents of wilderness area designation.

Building the Legislative History Database

The legislative history of some public laws may be spare and concise, with wilderness areas designated by a single version of a bill. Often though, legislative histories are far more complex, with some wildernesses only designated following years of unsuccessful attempts by different congressional members through a variety of bills. One example is 96 H.R. 5341, a bill that passed the House in 1980 but was never voted on in the Senate. This failed bill is part of the legislative history of two wilderness laws because of the wilderness areas it sought to designate. Some of these areas include the Bell Mountain, Rockpile Mountain, Piney Creek, and Devils Backbone wildernesses in Missouri, designated by P.L. 96-560, a different bill introduced during the same congressional session. The other wilderness areas contained in 96 H.R. 5341, the Pocosin, Sheep Ridge, Catfish Lake South, and Pond Pine wildernesses of North Carolina, were designated four years later by P.L. 98-324. Failed bill 96 H.R. 5341 is therefore included as part of the legislative history of both wilderness laws in the database.

Many unsuccessful bills from within the decade following the Wilderness Act contain the "seeds" for wilderness areas designated by future

laws. For example, 93 H.R. 4793 sought to designate more than 50 wilderness areas in 19 different states. Most of these areas were designated more than a decade later through 16 different public laws, generally on a state-by-state basis. Through this early omnibus-style bill, wilderness areas designated by the Eastern Wilderness Areas Act of 1973, the Arkansas Wilderness Act of 1984, and the New England Wilderness Act of 2006, find a common legislative origin. The legislative history database traces the complete genealogy of these and every law designating wilderness back to its original bill or bills. The database does not, however, include legislation for areas that were proposed as wilderness but never designated.

Content of the Legislative History Database

The legislative history database for Wilderness.net was largely compiled using electronic information from the online resources Lexis-Nexis Congressional (web.lexis-nexis.com/congcomp) and the Library of Congress website THOMAS (thomas.loc.gov). Lexis-Nexis provides information back through the 101st Congress (1989–1990), and THOMAS provides information back through the 93rd Congress (1973–1974). Both online resources identify all bills related to the particular bill of interest. For the development of the database for Wilderness.net, related bills were examined to determine whether they included wilderness proposals, and from these, more related bills were identified. In this manner, a chain of relevant bills and related legislative history documents were compiled to ensure a comprehensive collection of all wilderness-related bills and their records.

Congressional debate, committee reports, and the details of all major

actions for bills are available in electronic documents back to 1989 and the 101st Congress. Prior to 1989, in most cases, only a Bill Tracking Report (BTR) was available electronically. A BTR provides an abstract of a bill's primary details, including a summary of the bill's language and a list of relevant documents, but does not include the text of reports, debates, or speeches. BTRs are available online for bills recently introduced, back through 1973 (93rd Congress). For the Wilderness.net database, BTRs for bills considered prior to 1973 were constructed from information available in the Congressional Record, the original source for the information collected from Lexis-Nexis and THOMAS.

In the legislative history database, all bills are cross-referenced with related bills and laws. The database provides detailed information about each related congressional document, including the reference information required to find a record in a federal repository library if no electronic version of the file was available. For example, whereas most early committee reports and congressional hearings will still need to be found in a federal repository library, the legislative history database greatly simplifies the process of collecting these documents by providing substantial reference information. Most importantly, this database identifies the existence of these documents, eliminating the need for preliminary searches to identify documents related to a particular wilderness bill or law.

Special Provisions Database

Special provisions are typically thought of as legislated exceptions to the 1964 Wilderness Act Section 4(c) prohibitions against commercial enterprise,



Figure 1—Indian Creek airstrip. A special provision in P.L. 96-312 allows aircraft landings in the Frank Church-River of No Return Wilderness in Idaho. Photo by David R. Craig.

permanent roads, motor vehicles, motorized equipment, aircraft landing, mechanical transport, structures, and installations. Oftentimes, activities or uses that are allowed by such special provisions are referred to as “nonconforming” uses (see figure 1). Section 4(d) of the 1964 Wilderness Act includes eight special provisions that apply to all the wildernesses designated in 1964 as well as all subsequently designated wilderness. In the first compilation and description of special provisions in wilderness legislation, Browning et al. (1988) generally define special provisions as “specific guidelines for allocation and management based upon unique circumstances of local or regional concern.” When included in legislation, special provisions or other specific management directions are legal requirements for designating and managing a wilderness (Dawson and Hendee 2009).

To assemble the special provisions database, the text of every wilderness law was read and all special provisions were identified. Based on the potential

for alternative interpretations, we included all provisions that differ from the statutory language of the 1964 Wilderness Act in the special provisions database. Furthermore, because there is no exact definition of a special provision, we included all provisions that modified management of a specific wilderness, but were not necessarily exceptions to Section 4(c) of the Wilderness Act, such as boundary adjustments. This searchable database is available online at Wilderness.net (www.wilderness.net/specialprovisions/).

The Significance of Special Provisions

Some people believe that special provisions challenge the statutory, as well as the philosophical definition of wilderness. Others believe that on-the-ground conditions or political realities demand wilderness-specific special provisions. Thus, special provisions are at the heart of many controversies over the designation and management of wilderness areas (Gorte 2009; Nickas and Proescholdt 2005). Some special

provisions originated as Congressional Committee Reports, such as the grazing provisions in the Colorado Wilderness Act. Many special provisions allow the same types of activities and levels of use present in an area at the time of its designation as wilderness. For example, special provisions allow for mining exploration in the Cranberry Wilderness in West Virginia, motorboat use in the Boundary Waters Canoe Area Wilderness in Minnesota, and the right of public access to a cemetery in the Charles C. Deam Wilderness in Indiana.

Special provisions are often broadly worded, and although granting rights of access and use, generally provide few or no details about how these provisions are to be implemented and the levels of use that should be allowed. For example, jet-boat use on the Salmon River in the Frank Church-River of No Return Wilderness is allowed by P.L. 96-312 “to continue at a level not less than the level of use which occurred during calendar year 1978.” But determining exactly what those levels were in 1978 and what they should be now has generated considerable debate and at times contention (Watson et al. 2004).

Some special provisions are written in similar, but not identical language to those provisions contained in Section 4(d) of the Wilderness Act. Nickas and Proescholdt (2005) argue that slight differences in statutory language inevitably lead to different managerial interpretations and less restrictive provisions, allowing types of nonconforming uses unintended by legislators. The authors cite as a prominent example the inclusion of the words *National Forest System* in the statement “the Secretary shall provide such access to non-federally-owned land within the boundaries of the National Forest System” in Section 1323[a] of the 1980 Alaska National

Table 1—Special provisions database primary and secondary categories

ACCESS

Easements
General access
Mechanized access
Military access
Motorized access
Tribal access

COMMERCIAL USE

Grazing
Mining
Permits/Licenses/Leases
Recreation services
Timber

GENERAL ADMINISTRATION

Acquisition/Exchange
Agency jurisdiction
Appropriations
Buffer zones
General administration
Inholdings
“Minimum necessary” requirements
Pre-existing uses/rights/laws

MOTORIZED/MECHANIZED USE

Aircraft/helicopters
Mechanized equipment
Motorboats
Motorized equipment
Motorized vehicles

PUBLIC USE AND FACILITIES

Hunting/Fishing/Trapping
Recreation development
Structures/Roads
Trails/Bridges/Signs

NATURAL AND CULTURAL RESOURCE MANAGEMENT

Cultural resources
Insects/Diseases/Invasive species
Fire management
Fisheries
Monitoring/Data collection/Evaluation
Resource development
Wildlife management

WATER

Water facilities
Water resources
Water rights/laws

Interest Lands Conservation Act, an act in which every other wilderness provision is specific to Alaska. This provision has been subsequently interpreted by some managers as applicable to all national forest lands, and has led to approval of motorized use to access nonfederal lands within wilderness areas in other states.

Organizing the Special Provisions Database

Special provisions were organized according to primary and secondary categories (see table 1). Where a specific provision relates to several aspects of wilderness management, the provision is categorized under each relevant secondary category. For example, designation of the Carson-Iceberg Wilderness in California contained a special provision ensuring continued motorized access to facilities used for livestock grazing activities. In this case, the provision was categorized under grazing, motorized access, and structures/roads. The text provided in the database for a special provision in a particular category often contains language related to other provisions (situated just before or just after the provision of interest), which is included in the excerpt for context. Special provisions can also be accessed by wilderness law and wilderness area in the database.

Conclusion

Our intent in developing both databases and making them readily available on Wilderness.net is to provide wilderness managers and others access to information that is often difficult and cumbersome to locate. The accessible legislative history and special provisions databases assist wilderness managers in determining congressional intent for the areas they manage and, in some cases, improve wilderness management by reducing confusion

The accessible legislative history and special provisions databases assist wilderness managers in determining congressional intent for the areas they manage and, in some cases, improve wilderness management by reducing confusion regarding how to interpret wilderness law.

regarding how to interpret wilderness law. Furthermore, the two databases complement one another. For example, if the meaning of a special provision is not sufficiently clear, the bill's legislative history may reveal the intent behind the special provision. An explicit example of this occurs with a special provision for grazing in the Mount Massive Wilderness of Colorado, an area managed by both the U.S. Fish and Wildlife Service and the U.S. Forest Service, where the only information given is that grazing on Forest Service land shall be managed "in accordance with the guidelines contained...in the House Committee Report (H. Report 96-617) accompanying this Act." The insight provided by the legislative history database may be especially valuable for special provisions that evolved from the earliest versions of those bills proposing an area's designation.

In addition, the legislative history and special provisions databases can be utilized to answer contemporary questions about wilderness legislation. For example, are there more or fewer special provisions in recent laws, as compared with past laws? Does recent wilderness legislation that is increasingly the result of intense local negotiation contain more special provisions than previous legislation, and do these provisions contain sufficient detail to allow for effective management? Do members of Congress debate and describe these provisions in different ways at different points in time?

Once a special provision is inserted into a particular law, is it likely to be used again in subsequent proposals? The databases allow for investigation of such contemporary concerns about wilderness legislation. Answering these questions will assist us in understanding how wilderness law and management are changing over time, and allow us to consider the implications of such changes.

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References

- Browning, J.A., J.C. Hendee, and J.W. Roggenbuck. 1988. 103 Wilderness laws: Milestones and management direction in wilderness legislation, 1964–1987. *Bulletin Number 51*. Moscow, ID: College of Forestry, Wildlife and Range Sciences, University of Idaho.
- Dawson, C. P., and J. C. Hendee. 2009. *Wilderness Management: Stewardship and Protection of Resources and Values*, 4th ed. Golden, CO: Fulcrum Publishing.
- Folsom, G. B. 1972. *Legislative History: Research for the Interpretation of Laws*. Charlottesville: University Press of Virginia.
- Gorte, R. W. 2009. *Wilderness Laws: Permitted and Prohibited Uses*. Congressional Research Service Report RL33827. Available online at: wikileaks.org/wiki/CRS-RL33827.
- Meyer, S. 1998. Wilderness airstrips: A case study for using legislative history to inform wilderness management. M.S. thesis, The University of Montana, Missoula.
- . 1999. The role of legislative history in agency decision making: A case study of wilderness airstrip management in the United States. *International Journal of Wilderness* 5(2): 9–12.
- . 2000. Legislative interpretation as a guiding tool for wilderness management. In *Wilderness Science in a Time of Change Conference—Volume 5: Wilderness Ecosystems, Threats, and Management*, comp. D. N. Cole, S. F. McCool, W. T. Borrie, and J. O'Loughlin, J. (pp. 343–347); 1999 May 23–27; Missoula, MT. Proceedings RMRS-P-15-VOL-5, Ogden, UT: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station.
- Nickas, G., and K. Proescholdt. 2005. Keeping the wild in wilderness: Minimizing nonconforming uses in the National Wilderness Preservation System. *International Journal of Wilderness* 11(3): 13–18.
- Watson, A. E., M. Patterson, N. Christensen, A. Puttkammer, and S. Meyer. 2004. Legislative intent, science, and special provisions in wilderness. *International Journal of Wilderness* 10(1): 22–26.
- DAVID R. CRAIG is a research associate for the Wilderness Institute and works as a forestry technician for the Salmon-Challis National Forest managing recreation on the Middle Fork of the Salmon River; email: dcraig@fs.fed.us.
- PETER LANDRES is an ecologist at the Aldo Leopold Wilderness Research Institute, Rocky Mountain Research Station, USDA Forest Service; email: plandres@fs.fed.us.
- LAURIE YUNG is the director of the Wilderness Institute, College of Forestry and Conservation, The University of Montana; email: laurie.yung@umontana.edu.