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The Special Provision of Grazing in the Wilderness Act of 1964

“The grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.”

The Wilderness Act of 1964, Section 4(d)(4)(2)

This simple sentence was the original sum of the Congressional direction to federal agencies for managing grazing in wilderness. (Boilerplate language in subsequent wilderness laws applies this provision by extension to all areas in the National Wilderness Preservation System.¹)

Yet the simplicity of this statement raises further questions about how this Congressional direction is to be implemented on the ground. The use of the word “shall” is clear – managers do not have the authority to choose whether or not grazing shall be permitted to continue. But is that true in all cases? What if natural conditions are being degraded by over-grazing? And what are “reasonable regulations”? Understandably, some early wilderness managers proscribed certain grazing permittee activities based on the prohibitions of motorized use and placement of structures found elsewhere in the Wilderness Act. Is it not “reasonable” to say grazing shall continue but the water trough and the windmill that fills it must be removed?

Congress first started answering these questions in 1977, with its House Report 95-620, and followed up in 1978, with House Report 95-1321. In 1979, Congress went into greater detail on its intent, issuing House Report 96-617, “decline[ing] to amend section 4(d)(4)(2) of the Wilderness Act, agreeing instead to reaffirm...the following nationwide guidelines and specific statements of legislative policy.” This Report accompanied the Colorado Wilderness Act of 1980 (passed as Public Law 96-560). Due to minor discrepancies with Senate language associated with the Central Idaho Wilderness Act of 1980 (P.L. 96-312), the House reissued their guidance with slight changes as House Report 96-1126. The entirety of that report, as well as implications of its interpretation, can be found elsewhere in this Toolbox.

In 1990, the House reissued this direction as House Report 101-405, Appendix A. It is this Report, accompanying the Arizona Desert Wilderness Act of 1990 (P.L. 101-628) that is most often cited in subsequent legislation. This report can be found elsewhere in this Toolbox, though its implications for management are no different from those of the earlier House Report.

¹ For a discussion of how this applies to units managed by the Fish & Wildlife Service and the National Park Service, see the document “Implications of the Congressional Grazing Guidelines” found elsewhere in this Toolbox.