



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D.C.

AUG 4 1967

Memorandum

To: Director, Bureau of Outdoor Recreation

From: Associate Solicitor, Parks and Recreation

Subject: Wilderness Hearings--Boundary Extensions

The memorandum of May 3, 1967, to you from the Regional Director, Southeast Region, regarding Departmental wilderness hearings at which consideration is given to wilderness proposals that include lands presently in private ownership, has been referred to this office for our views. According to the Regional Director's memorandum there have been several wilderness hearings in which it was urged that the wilderness proposal of the Department for a particular area include privately owned land. This action was based, in part, upon the premise that the land administering agency planned to acquire the private lands before the area would actually be incorporated into the Wilderness System by Congress. Since the comments of the Bureau on various wilderness proposals would depend upon whether a wilderness hearing and Departmental recommendation for an area of the National Wildlife Refuge or National Park System may include privately owned land, guidance was requested on this matter.

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It is our view that there is nothing in the Wilderness Act which precludes the review and recommendation for wilderness designation areas that include privately owned lands. We find nothing in the Departmental regulations, 43 CFR Part 19 (31 F.R. 3010), which precludes review and recommendation of privately owned lands for inclusion in a wilderness area. The regulations were primarily designed to implement the hearing requirements of the act and to establish certain procedures by which the public could participate in the wilderness hearings. We view the regulations as establishing the minimum standards for review, but in no way restricting or limiting the review provided in accordance with the Wilderness Act.

Initially, it should be noted that the Forest Service areas administered by the Department of Agriculture, which were designated as wilderness by section 3 (a) of the Wilderness Act, 78 Stat. 890, 891 (1964), 16 U.S.C. 1131, 1132 (1964), include privately owned lands. Most of the privately owned lands consisted of in-holdings which Congress authorized the Secretary of Agriculture to acquire under the limited acquisition authority of Section 5 (c) of the Wilderness Act. Congress also provided in section 5 (a) of the act that the owners of privately owned lands within the boundaries of a wilderness area shall have the right of reasonable ingress and egress to their land. Accordingly, there is no indication of a reluctance, per se, on the part of Congress to include private lands within a wilderness area.

While the restrictions placed upon wilderness areas by the act (i.e., no roads or commercial development) can only be applied to lands in Federal ownership, we find nothing in section 3 (c) of the act that precludes the Department of the Interior from reviewing and recommending wilderness status for areas of the National Park and National Wildlife Refuge Systems which include privately owned lands. In

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fact, it is more than likely that some of the reviewed areas having wilderness characteristics may also contain in-holdings of privately owned lands some of which may be in the process of acquisition or may be programmed for acquisition. If the private lands are acquired before the area is considered by Congress for inclusion in the Wilderness System and the private lands were properly considered at the hearing, there clearly would be no obstacle to Congress conferring wilderness status on these lands on the grounds of the observance of necessary procedural steps or on account of their ownership status.

It should be noted as a corollary to these views that while the Wilderness Act directs the review of areas of the National Park and National Wildlife Refuge Systems which were in existence at the time the act was passed, the act does not, in our judgement, preclude the Secretary from including in the review and recommendations lands which are or may be acquired after the passage of the act for addition to areas in existence when the act was passed. Similarly, the Wilderness Act does not limit in any respect the land acquisition authorities of the Department, as is suggested in the Regional Director's memorandum. The only limitation found in the Wilderness Act relating to land acquisition applies to the Secretary of Agriculture for areas which Congress has incorporated into the Wilderness System. To date no Interior administered areas are part of this System.

If, however, some of the lands are not in Federal ownership at the time Congress considers wilderness designation for an area, the treatment these lands would receive from the Congress is now uncertain. Congress would have alternative courses of action. It could refuse to include the private lands in the

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wilderness area; it could refuse to designate the area containing the private lands as wilderness because they detract from the wilderness character of the area; it could designate the entire area as wilderness; or it could make the wilderness designation of the area conditioned upon the acquisition of the private lands. It would appear that Congress would weigh the probability of acquisition against the degree to which the size, location, and development of the private lands may adversely affect the wilderness characteristics of the area. Accordingly, each agency in considering wilderness status for areas that include privately owned lands would have to consider the possibility of those lands being in Federal ownership at the time Congress considers the area against the effect of their continued private ownership status on the wilderness character of the area in the event that they are not acquired.

This matter is further complicated by the fact that the land acquisition authority of the Department could be restricted by the Congress in the legislation designating areas as wilderness. Under Section 5 (c) of the Wilderness Act the Secretary of Agriculture may only acquire privately owned lands if the owner consents to the acquisition or Congress specifically authorizes the acquisition. Whether this limitation on acquisition will apply to Interior wilderness areas is not known now, of course. More than likely this Department would request that Congress not limit or repeal existing acquisition authorities for the various areas of the National Park and National Wildlife Systems.

Related to this problem is section 3 (d) of the Wilderness Act, which precludes modification or extension of the boundaries of a wilderness area without a new hearing. This section causes certain problems for a reviewing agency. It would seem desirable

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to review at the original hearing areas having wilderness characteristics, even though they may include some privately owned lands, in order to avoid subsequent hearings should any of those lands be acquired at a later date.

/s/ Bernard R. Meyer

Bernard R. Meyer

cc:
Director, Sport Fisheries and Wildlife
I Concur:

Signed Lewis S. Flagg III
Associate Solicitor, Territories, Wildlife & Claims