

BACKGROUND

The paper that begins on the next page was originally prepared by the authors of Keeping It Wild 2 (*KIW2*) in 2015 as a rebuttal to the critique of *KIW2* that now appears on the Wilderness Watch website. This rebuttal was not previously released because it and the critique were originally prepared as companion articles that would be published in the International Journal of Wilderness. As part of this set, the Journal solicited several other articles on wilderness character monitoring, including an article from a legal scholar to provide an impartial review of the definition of wilderness character used in *KIW2* and the critique. These articles were published in the December 2015 issue of the Journal but the critique and our rebuttal were not included because the critique, after several rounds of substantive changes, was withdrawn by its authors at the publication deadline. At that point, the Journal asked the *KIW2* team if we wished to publish our rebuttal anyway, and we declined because the rebuttal was written to directly address the critique and without the critique there would be no context for the rebuttal. With the recent posting of the critique on the Wilderness Watch website and subsequent circulation by email, we want readers to know about this rebuttal. Our original rebuttal from 2015 has been modified to reflect the latest version of the critique appearing on the Wilderness Watch website as of December 1, 2016.

Preserving All of Wilderness Character – It’s the Law and Good Stewardship

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We wrote *Keeping It Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System* (Landres *et al.* 2015; hereinafter, *KIW2*) building on the lessons learned from the previous seven years of implementing wilderness character monitoring. Most of us, along with over 100 agency staff who helped develop wilderness character monitoring over the last decade and the 150 additional staff who provided review comments, have spent our careers as wilderness professionals working to improve our agencies’ stewardship of the National Wilderness Preservation System.

In their critique “The Definition of Wilderness Character in ‘Keeping It Wild’ Jeopardizes the Wilderness of Wilderness” Cole *et al.* (2016) state that they share our goal of improving wilderness stewardship, and criticize *KIW2* because in their view it does not adhere “to the ideals of the Wilderness Act, its authors and the intent of Congress.”

Most of the criticisms raised in this current critique have been repeated for over a decade, discussed by the several different agency teams reviewing them, and rejected. In our response here, we show that the opinions expressed in this critique misinterpret the plain meaning of the 1964 Wilderness Act, do not conform to the norms of statutory interpretation, diminish the depth and richness of wilderness character, prevent fully assessing the effects of proposed projects on wilderness character, and if adopted, could easily lead to management decisions in existing wilderness and language in new wilderness legislation that would degrade both the ideals and very fabric of the National Wilderness Preservation System.

Defining Wilderness Character

There is wide agreement that the central mandate given to the federal agencies by Congress in the 1964 Wilderness Act (hereinafter, the Act) is to preserve wilderness character. The Act, however, does not explicitly define wilderness character and legal scholars (e.g., McCloskey 1966, 1999; Rohlf and Honnold 1988; Ochs 1999) assert that the Act’s Section 2(c) Definition of Wilderness expresses congressional intent for the meaning of wilderness and wilderness character. A definition is essential to serve as a foundation for wilderness stewardship and to evaluate the outcomes of this stewardship. Therefore, in *KIW2*, we define wilderness character as follows:

Wilderness character is a holistic concept based on the interaction of (1) biophysical environments primarily free from modern human manipulation and impact, (2) personal experiences in natural environments relatively free from the

¹ The views expressed in this paper are those of the authors and do not necessarily represent the views or policies of the four federal wilderness-managing agencies.

encumbrances and signs of modern society, and (3) symbolic meanings of humility, restraint, and interdependence that inspire human connection with nature. Taken together, these tangible and intangible values define wilderness character and distinguish wilderness from all other lands.

We developed this definition based on the wording of the Act and the writings of classic wilderness authors (e.g., Marshall 1930, Leopold 1949, Zahniser 1956, Olson 1957) that all assert the breadth and complexity of wilderness and by inference, wilderness character. The wilderness character of an area is composed of many qualities—some are tangible, some intangible. Some of these qualities have attributes that are measurable, some do not; some are within a manager’s control, some are not. Some qualities of an area’s wilderness character cannot even be described, such as how the area’s spiritual value contributes to wilderness character. Consistent with this broad definition from *KIW2*, Wilderness Watch (2016a), a non-governmental organization focused on wilderness management, states that, “Historical records clearly demonstrate that Wilderness Act visionaries believed that wilderness character consists of both tangible, physical components as well as intangible, psychological and spiritual components.”

To build a practical program to monitor trend in wilderness character that could be applied to every wilderness in the United States, we started with the dictionary definition of “character”: a combination of qualities that make something unique or distinct. We then looked to the plain wording of the Act for this combination of qualities that makes wilderness character unique and distinct from all other types of land. We used the Act’s two sentences from Section 2(c) “Definition of Wilderness” to identify five qualities that summarize the plain wording of this entire Section: untrammelled, natural, undeveloped, solitude or primitive and unconfined recreation, and other features of value. Supporting this approach, Steinhoff (2011) states that, “Wilderness character’ is properly interpreted as consisting of the defining qualities of wilderness,” and in a recent legal review of the meaning of wilderness character, Nagle (2015) concludes that “wilderness management should consider all of the act’s goals.” Importantly, and contrary to the assertions of Cole *et al.*, *KIW2* clearly distinguishes between the definition of wilderness character and the framework of five qualities used to monitor wilderness character. There are distinct and significant stewardship implications from recognizing and monitoring all of these qualities that together contribute to an area’s wilderness character.

Cole *et al.* claim that the definition of wilderness character should not be defined as in *KIW2*—a combination of qualities that make something unique—but instead should be narrowly defined as the “the main or essential nature that serves to distinguish” wilderness from other areas. Cole *et al.* describe how untrammelled is the unique essence of wilderness and therefore that wilderness character should be defined solely as untrammelled, or wildness, using only the first sentence from the Act’s definition of wilderness. Cole *et al.* support this claim based on their interpretation of Howard Zahniser’s 1963 congressional testimony. Nagle (2015) points out that this assertion is internally inconsistent and violates the traditional rules of statutory interpretation. Given all of Zahniser’s writings on the subject, we feel it is reasonable to interpret the body of these writings differently: Zahniser may have emphasized the protection

of wilderness “character” to remind managers that wilderness is fundamentally different and compel them to preserve all of the tangible and intangible values of wilderness. The crucial point is that regardless of how one chooses to interpret Zahniser’s testimony and writing, the only definition that we as federal employees responsible for wilderness stewardship must follow is the one from Section 2(c) of the Act, and we do not have the option of picking and choosing what part of the Act to follow.

We agree that untrammeled is the essence of wilderness, as stated in every publication on wilderness character monitoring, including *KIW2*, which provides a detailed explanation of how and why untrammeled is central and essential for understanding and managing wilderness. However, while untrammeled is a necessary part of wilderness character, it alone is not sufficient. For example, as explained by Aplet and Cole (2010), “an artificially constructed waterway parallel to the Potomac River, overgrown with exotic species, might reasonably be called ahistorical, highly altered, yet self-willed and untrammeled.” In other words, the idea of untrammeled could be applied to both wilderness and an abandoned city lot since what distinguishes them from their surroundings is the lack of intentional human manipulation. Clearly they do not have the same character—not because in one the lack of manipulation is purposeful and in the other it is inadvertent, but because the other qualities that make up the character of a wilderness are simply not present in the character of an abandoned city lot.

We assert that wilderness character is far more complex than just one attribute, no matter how essential and unique that one attribute is. By arguing that wilderness character is only about untrammeled, Cole *et al.* make wilderness character something less—a shadow of the complex richness that makes these areas unique.

Tensions Within the Wilderness Act

Cole *et al.* insist that the tension created by differentiating between the qualities of untrammeled and natural is inconsistent with basic principles of statutory construction, and therefore natural should be defined in a way that is synonymous with untrammeled. Tension between conflicting mandates within a law, however, is common. Perhaps the most familiar tension is in the 1916 National Park Service Organic Act, which requires managers to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” Legislative mandates that are in tension do not mean that they are necessarily incompatible; it simply means that there are multiple goals that land managers need to address. In some situations, such as when an ecological intervention is being considered, there will be tension between the untrammeled and natural qualities (Cole 1996, Cole 2000, Steinhoff 2011), but the overarching mandate from the Act is that they complement one another to create an area that is intentionally unmanipulated and contains its natural set of species and ecological processes. Only by recognizing these tensions can managers openly discuss and debate these different goals. This fosters increased understanding among management staff about the complexity and richness of wilderness, in turn increasing the likelihood of transparent decisions and accountability.

Rather than acknowledging that the Act contains mandates that may be in tension, Cole *et al.* create a definition of untrammeled that, in their words, “can be considered equivalent” to “natural” and also incorporates “undeveloped,” as if all three could be part of the same term. However, under the rules of statutory construction (Singer 2004), each word in a statute is used because it conveys meaning and Congress would not otherwise have used different words. Likewise, Congress meant for “motor vehicles” and “mechanical transport” to mean different things in Section 4(c) of the Act. Conflating untrammeled with natural and undeveloped makes it possible to get around some of the legal and stewardship inconsistencies that arise by Cole *et al.* defining wilderness character as only untrammeled. However, the Act as written does not permit this construction.

Although Cole *et al.* conflate untrammeled, natural, and undeveloped, they offer no rationale (legal or otherwise) for omitting outstanding opportunities for solitude or a primitive and unconfined type of recreation, and other features of value, that are in the Act’s statutory definition of wilderness. Supporting our contention that outstanding opportunities for solitude or a primitive and unconfined type of recreation are an essential part of wilderness character, two of the Cole *et al.* coauthors previously wrote that “Like personal character, wilderness character is comprised of even more than...tangible attributes, it involves intangible qualities as well. These components include outstanding opportunities for solitude and primitive and unconfined recreation, and their related values of freedom, self-reliance, risk, adventure, discovery, mystery, and as a place set apart—both physically and psychologically—from modern civilization and its commercialized and material distractions” (Nickas and Proescholdt 2005).

The Stewardship Problems with Oversimplifying Wilderness Character

Not only is the definition of wilderness character offered by Cole *et al.* legally unsupportable, oversimplifying wilderness character to mean only untrammeled might lead to the degradation of wilderness character in areas that are already designated, as well as in areas being considered for designation. A broad definition of wilderness character is commonly used in defense of good wilderness stewardship. For example, Wilderness Watch (2016b) objected to the installation of volcanic monitoring sites in the Mt. Hood Wilderness because these “...structures, installations, and helicopter flights and landings...*degrade wilderness character*” (emphasis added). An analysis of all 357 uses of the phrase “wilderness character” in Wilderness Watch newsletters from 2004 to 2016 show that only 10% of these uses are explicitly related to untrammeled while 52% are explicitly related to the natural, undeveloped, and solitude qualities (the remaining 38% are general uses that could not be assigned to any of the qualities).

Cole *et al.* assert that their definition of wilderness character would lead managers to be “less active and interventionist” and we agree. However, in some situations trammeling may be appropriate to preserve—or improve—an area’s wilderness character. For example, reintroducing previously extirpated wolves to Rocky Mountain National Park Wilderness would improve the area’s wilderness character by improving the natural quality of the wilderness. Such a decision would clearly involve many factors, but if wilderness character was defined

narrowly as untrammled, those who want to block such action could claim that reintroducing wolves would violate the preservation of wilderness character.

Conversely, the New Mexico Department of Game and Fish introduced gemsbok, one of the large *Oryx* species from arid Africa, to portions of New Mexico as a game animal, and gemsbok now inhabit the Bosque del Apache Wilderness. To remove them from this wilderness would require a trammeling action but under a narrow definition of wilderness character, removing gemsbok could be claimed to violate the Act. Fortunately, removing gemsbok is supported by the law, and allowing them to remain would undermine good stewardship by allowing the negative effects on water, plants, and other wildlife from this large exotic herbivore to persist.

Furthermore, the Cole *et al.* definition would lend support to precedent-setting anti-wilderness provisions in future legislation since under their definition any special provision that does not trammel an area has no effect on its wilderness character. For instance, legislation could allow all-terrain vehicles to herd sheep as long as there were no significant impacts to the vegetation, or allow landing of helicopters for military training (both have been included in recently proposed wilderness legislation). Nie and Barns (2014) documented how such legislation is becoming increasingly common, with some people calling “for further concessions from wilderness in order to gain designation—leading to what others might call a “WINO”—Wilderness In Name Only.” Under the Cole *et al.* narrow definition, many of these concessions, such as motor vehicle or motorized equipment use, proliferation of installations, or landing of aircraft could be defended as not degrading wilderness character. We disagree, and following *KIW2*’s broad definition of wilderness character and monitoring framework of five qualities, such activities would seriously degrade an area’s wilderness character.

Cole *et al.* attempt to get around these stewardship and legislation problems by defining untrammled as also including natural and undeveloped. We already have shown how these other qualities are not legally synonymous with untrammled but are important and distinct qualities of wilderness character.

Using the Framework of Qualities to Evaluate Impacts to Wilderness Character

Cole *et al.* assert that the *KIW2* framework of qualities allows wilderness managers to make bad decisions. We acknowledge that some managers have abused, and will continue to abuse, the *KIW2* definition of wilderness character and the framework of qualities to arrive at a pre-determined decision which, in actuality, degrades wilderness character as a whole (and not solely the untrammled quality). Wilderness decisions, however, are no more exempt from abuse than any other decisions made under the National Environmental Policy Act of 1969, and the definition of wilderness character from Cole *et al.* will not stop these abuses.

As clearly explained in *KIW2*, it is not a decision making tool. Wilderness decisions can be extraordinarily complex and difficult, and decision makers need to thoughtfully consider what is gained and what is lost in an effort to preserve wilderness character as a whole. The framework of qualities in *KIW2* has been used to systematically and comprehensively organize and evaluate information about the potential impacts to wilderness character from projects

that are being proposed in wilderness. Cole *et al.* assert that this process is flawed because it fails to adequately show impacts to the untrammeled quality. This criticism is a red herring because using the framework of five qualities provides opportunities for a robust analysis of impacts to all aspects of wilderness character—including the untrammeled quality—that would otherwise not be possible. Scores of impact analysis documents using this framework of qualities have been written over the last several years. In two recent and important examples, this framework of qualities was used to organize the analysis of effects to wilderness character that contributed to denying the proposed road in the Izembek Wilderness (US Department of Interior 2013) and the proposed Angoon Airstrip in the Kootznoowoo Wilderness (US Department of Transportation 2016).

Conclusions

Cole *et al.* and we agree on three critically important issues: the mandate of the Act is to preserve wilderness character, agency managers need to understand what wilderness character is, and monitoring is necessary to evaluate whether wilderness stewardship is fulfilling this mandate. The definition of wilderness character is crucial to all three issues, which is why *KIW2* provides a definition based on the wording of the Act. We fundamentally disagree with the narrow definition of Cole *et al.* that wilderness character is only untrammeled. We believe this oversimplification misinterprets the plain meaning of the Act, runs counter to standard legal practice, diminishes the depth and richness of wilderness character, prevents fully assessing the effects of proposed projects on wilderness character, and could lead to new wilderness designations that are “wilderness in name only.”

We believe that Cole *et al.* are well-intentioned in trying to keep managers from making bad decisions, but by oversimplifying wilderness character to equate it only with untrammeled, they would keep managers from making good ones. The congressional proponents of the Act were clearly aware of the ideal and practical nature of the two-sentence statutory definition of wilderness. By focusing on the ideal, Cole *et al.* remind us that untrammeled is of essential and unique importance in wilderness stewardship. By focusing on both the ideal and the practical, *KIW2* reminds us of our entire stewardship responsibility.

KIW2 does not negate the importance of untrammeled as Cole *et al.* assert. *KIW2* clearly and unequivocally states that all the qualities of wilderness character are important, both ideal and practical, while allowing the untrammeled quality to be a “thumb on the scale” in determining the overall trend in wilderness character. Indeed, with the agencies now embracing wilderness character monitoring, we see wilderness managers increasingly understanding what untrammeled really means. Even more important, we now see the wilderness agencies and the public recognizing the centrality of the mandate to preserve wilderness character. *KIW2* is the only way so far devised to know if wilderness character is being preserved—it will not make stewardship perfect but it will make wilderness stewardship better.

References

Aplet, G.H., and D.N. Cole. 2010. The trouble with naturalness: rethinking park and wilderness goals. Pages 12-29 in *Beyond Naturalness: Rethinking Park and Wilderness Stewardship in an Era of Rapid Change* (D.N. Cole and L. Yung, editors). Island Press, Washington DC.

Cole, D. 1996. Ecological manipulation of wilderness: an emerging management dilemma. *International Journal of Wilderness* 2(1):15-18.

Cole, D. N. 2000. Paradox of the primeval: ecological restoration in wilderness. *Ecological Restoration* 18(2):77-86.

Cole, D., D. Scott, E. Zahniser, R. Kaye, G. Nickas, and K. Proescholdt. 2016. The definition of wilderness character in "Keeping It Wild" jeopardizes the wildness of wilderness. Available at: <https://wildernesswatch.org/images/pdf/2016-Wilderness-Character-KIW2.pdf>, accessed December 1, 2016.

Landres, P., C. Barns, S. Boutcher, T. Devine, P. Dratch, A. Lindholm, L. Merigliano, N. Roeper, and E. Simpson. 2015. *Keeping it Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System*. USDA Forest Service Rocky Mountain Research Station General Technical Report RMRS-GTR-XXX. Rocky Mountain Research Station, Fort Collins, CO.

Leopold, A. 1949. *A Sand County Almanac and Sketches Here and There*. Oxford University Press, New York, NY.

Marshall, B. 1930. The problem of the wilderness. *The Scientific Monthly* 30:141-148.

McCloskey, M. 1966. The Wilderness Act of 1964: its background and meaning. *Oregon Law Review* 45: 288-321.

McCloskey, M. 1999. Changing views of what the wilderness system is all about. *Denver University Law Review* 76:369-381.

Nagle, J.C. 2015. The legal meaning of wilderness character. *International Journal of Wilderness* 21(3):10-13.

Nickas, G. and K. Proescholdt. 2005. *Keeping the wild in wilderness: minimizing non-conforming uses in the National Wilderness Preservation System*. Wilderness Watch Policy Paper, available at: <http://wildernesswatch.org/pdf/Special%20Provisions.pdf>, accessed December 1, 2016.

Nie, M., and C. Barns. 2014. The fiftieth anniversary of the Wilderness Act: the next chapter in wilderness designation, politics, and management. *Arizona Journal of Environmental Law & Policy* 5:290.

Ochs, M.J. 1999. Defining wilderness: from McClosky to legislative, administrative and judicial paradigms. *Denver University Law Review* 76:659-679.

Olson, S.F. 1957. *The Singing Wilderness*. Alfred A. Knopf, New York, NY.

Rohlf, D., and D.L. Honnold. 1988. Managing the balance of nature: the legal framework of wilderness management. *Ecology Law Quarterly* 15:249-279.

Singer, N.J., editor. 2004. *Sutherland Statutes and Statutory Construction*, 6th edition. Clark Boardman Callaghan Publishers, Deerfield, IL.

Steinhoff, G. 2011. The Wilderness Act, prohibited uses, and exceptions: how much manipulation of wilderness is too much? *Natural Resources Journal* 51:287-305.

United States Congress. 1916. The National Park Service Organic Act. 39 Stat. 535.

United States Congress. 1956. The Wilderness Act, S. 4013, 84th Cong., 2nd Sess.

United States Congress. 1983. U.S. House Report 98-40 from the Committee on Interior and Insular Affairs, March 18, page 43.

United States Department of the Interior. 2013. Izembek National Wildlife Refuge Land Exchange Road Corridor EIS. Available at: <https://www.fws.gov/nwrs/threecolumn.aspx?id=2147524796>, accessed December 1, 2016.

United States Department of Transportation. 2016. Final Environmental Impact Statement and Section 4(f) Evaluation: Anjoon Airport. Available from: http://www.angoonairporteis.com/Documents/FEIS/a_Angoan_Airport_FEIS_LowRes_Sept2016.pdf, accessed December 1, 2016.

Wilderness Watch. 2016a. Wilderness stewardship concepts. Wilderness Watch website, <https://wildernesswatch.org/stewardship-concepts>, accessed December 1, 2016.

Wilderness Watch. 2016b. Mt. Hood Wilderness threatened by proposed structures and installations. *Wilderness Watcher* 27(3):9.

Zahniser, H. 1956. The need for wilderness areas. *The Living Wilderness* 59 (Winter to Spring):37-43.

Zahniser, H. 1963. Hearings before the Committee on Interior and Insular Affairs, United States Senate (88th Congress, 1st session) on S. 4, February 28 and March 1, 1963.