The Wilderness Act of 1964 provides a degree of protection to the resources of the National Park System that the National Park Service Organic Act itself does not. Both the Organic Act and the Wilderness Act speak in comparable terms about preserving the integrity of resources. However, the Wilderness Act goes beyond the Organic Act and proscribes certain activities about which the Organic Act is silent. Finally, unlike the Wilderness Act, the Organic Act has always been subject to interpretation as prescribing “dual missions.” That interpretation has resulted in a level of “improvements” on park lands that the Wilderness Act would not permit.

The Organic Act and Wilderness Act

In both the Organic Act and the Wilderness Act, Congress sought to preserve resources unimpaired, for their enjoyment by present and future generations.

The Organic Act that established the National Park Service states, in near-poetic terms, that the purpose of the parks, monuments, and other reservations...

...is to conserve the scenery and the natural and historic objects and the wildlife 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.

In very similar language, the Wilderness Act echoes the Organic Act, and states that the policy of the Congress is to secure for the American people of present and future generations the benefits of an enduring resource of wilderness...

Further, Congress directed that these areas shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness...” (emphasis added).

Unlike the Organic Act, the Wilderness Act defines the desired state for which wilderness areas are to be managed. Wilderness is, Congress said, “an area
where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” Wilderness is an area “of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural condition...with the imprint of man's work substantially unnoticeable.” (16 U.S.C. 1131(c)).

The Wilderness Act Specifically Prohibits Certain Activities

The Wilderness Act (16 U.S.C. 1133(c)) specifically prohibits in designated wilderness certain activities that the National Park Service, by regulation and policy, otherwise permits in units of the National Park System. Among them are:

- commercial enterprises;
- permanent roads;
- temporary roads;
- motor vehicles;
- motorized equipment;
- motorboats;
- landing of aircraft;
- any form of mechanical transport; and
- structures or installations.

Any visitor to the National Park System will find most, if not all, of the above facilities and uses in virtually every park, except in those portions of the park that may be designated as “wilderness.” While the last seven items above may be permitted in wilderness in parks, the Park Service may permit them only if they are the minimum requirements for the administration of the area as wilderness.

The Organic Act Tension Between Conservation and Enjoyment

The Organic Act language provided a basis for the Department of the Interior and the National Park Service to view parks as areas of tourist development, roads and buildings. Unlike the Wilderness Act, the language of the Organic Act is ambiguous. Reasonable people may interpret the Organic Act as directing park development. Certainly many Park Service Directors and Secretaries of the Interior interpreted the law precisely that way. It was not until 1986 that the federal courts rejected a statutory interpretation that finds in the Organic Act a dual, conflicting mission of conservation and public enjoyment.

No such ambivalence surrounds the Wilderness Act. While debates may rage about whether a particular use or facility is required to meet the minimum requirements of wilderness administration, there is no debate that the Wilderness Act mandates the preservation of natural conditions, where the imprint of man's works are absent or unnoticeable. Thus, wilderness designation affords the National Park System a degree of protection from the broader latitude found in the Organic Act.

When Secretary of the Interior Franklin Lane wrote to Park Service Director Stephen Mather in 1918, he admonished the director that “Every activity of the Service is subordinate...to faithfully preserve the parks...in essentially their nat-
ural state.” However, that same letter instructed Mather to afford every opportunity to the public “to enjoy the national parks in the manner that best satisfies the individual taste.” “In fact,” he wrote, “the parks will be kept accessible by any means practicable.”

Secretary of the Interior Hubert Work wrote to Mather in 1925 stating that “the duty imposed upon the National Park Service by the organic act creating it to faithfully preserve the parks and monuments for posterity in essentially their natural state is paramount to every other activity.”

Yet, so persistent were the demands for development in lands that were to be “unimpaired” that Director Horace Albright wrote, upon his resignation, in 1933, that the Park Service should “Oppose with all...strength and power all proposals to penetrate... wilderness regions with motorways and other symbols of modern mechanization. Keep large sections of primitive country free from the influence of destructive civilization. Keep [them] for those who seek peace and rest in silent places; keep them for the hardy climbers of the crags and peak; keep them for the horseman and the pack train; keep them for the scientist and student of nature.... Remember once opened, they can never be wholly restored to primeval charm and grandeur.”

In 1934, Secretary Harold Ickes excoriated the Park Service for building its constituency on a foundation of tourism. “I do not want any Coney Island” he told a conference of park superintendents. He decried the Park Service’s tendency to build roads and other modern improvements and entertainment. He described the large, expensive hotels such as the Ahwahnee and the Old Faithful Inn, as “highbrow” desecrations of our great outdoor temples.

Yet, despite Ickes' evangelistic tone, then-Director Arno Cammerer took most pride in the physical developments that $67 million in road and trail construction (from 1929 to 1934) had brought to the parks. This apparent dislike for wilderness was evident once again, in 1939, when Cammerer drafted a proposal for a park in the Kings Canyon area of the California Sierras. The proposal made no provision for wilderness management. Ickes rejected the proposal and directed the Park Service to come up with a wilderness park. Meanwhile, in the Forest Service, a movement for wilderness management was being born in the thoughts and actions of Bob Marshall, Aldo Leopold, and Arthur Carhart. The movement for wilderness did not come from the National Park Service. Instead, the Park Service, in the years after World War II, built its case for a massive development and rehabilitation program known as “Mission 66.” The watchword was “Parks are for People.” For whom, then, was “wilderness?”

Thus, it should come as no surprise to learn that Park Service management did not enthusiastically support various wilderness proposals that appeared in
Congress in the 1950s under Senator Hubert Humphrey's name. In fact, the Park Service opposed wilderness legislation.

When Congress passed the Wilderness Act in 1964 it required that the Secretary of the Interior submit, within ten years, recommendations of all lands in the National Park System that qualified for wilderness. The Park Service's first proposals for wilderness designation could best be described as "minimalist," and were designed to reduce constraints on agency flexibility.

Even today some Park Service managers see no need for a Wilderness Act, or for wilderness designation in "their" parks. Some of us still interpret the Organic Act as directing that the Park Service must serve two masters, preservation and development for visitor enjoyment, and serve them equally. While this was an acceptable interpretation of the Organic Act until 1986, it is much less so today.

In 1986, the U.S. District Court for the District of Columbia, in the case of National Rifle Association v. Potter, stated: "In the Organic Act Congress speaks of but a single purpose, namely conservation." The court further stated that "Finally, in its 1978 rider to the Redwood National Park Expansion Act, Congress reiterated its intention that the National Park System be administered in furtherance of the 'purpose' [not 'purposes'] of the Organic Act, that being, of course the conservation of, *inter alia*, wildlife re-
sources." Thus, until further judicial review, the Organic Act speaks to the nation of but a single purpose, with enjoyment being a dependent and subsidiary function of that purpose.4

All Wilderness is Not Created Equal

The Wilderness Act contains language at 16 U.S.C. 1133(a)(3) that states: "Nothing in this chapter shall modify the statutory authority under which units of the national park system are treated. Further, the designation of any... unit of the national park system as a wilderness area shall in no manner lower the standards evolved for the use and preservation of such park, monument or other unit of the national park system."

Taken out of context, a reader may detect in the above provision a hint that the protection afforded by the Wilderness Act is somehow less than that afforded by the Organic Act. But, that is not the context which compelled Congress to include this caveat in the Wilderness Act.

Congress incorporated in the 1964 Wilderness Act several compromise features that are applicable only to national forest wilderness areas. Among these are:

- conduct of mineral surveys (16 U.S.C. 1133(d)(2));
- location of mining claims until the end of 1983 (16 U.S.C. 1133(d)(3));
- water project development with
presidential approval (16 U.S.C. 1133(d)(4));

- continuation of existing grazing (16 U.S.C. 1133(d)(4));

- retention of state authority over wildlife management (16 U.S.C. 1133(d)(7));

- guarantee of adequate access to non-federal lands surrounded by wilderness (16 U.S.C. 1134(a)); and

- customary ingress and egress to mining claims and other occupancies surrounded by wilderness.

All of the above provisions apply specifically to wilderness administered by the U.S. Forest Service. The provisions also apply to wilderness managed by the Bureau of Land Management under the terms of the Federal Land Policy and Management Act (FLPMA) at 43 U.S.C. 1782(c). These exceptions do not apply to wilderness areas designated in units of the National Park System. The language of 16 U.S.C. 1133(a)(3) about not lowering standards for the National Park System was meant to guard against statutory interpretations that would make special provisions applicable to national forest wilderness also applicable to National Park System wilderness.

In an opinion of February 24, 1967, the Department of the Interior Solicitor wrote that “it is obvious that Congress could only have intended by the Wilderness Act that wilderness designation of national park system lands should, if anything, result in a higher, rather than a lower, standard of unimpaired preservation.”

Conclusion

Approximately 40 million acres, or 50% of the National Park System, are designated wilderness. Millions more acres await transmittal to the President by the Secretary of the Interior, and to the Congress by the President, as required by 16 U.S.C. 1132(c). The Wilderness Act envelops those acres with the strictest level of protection, more strict than the Organic Act alone provides. And Director Roger Kennedy is moving to revitalize the many Park Service wilderness proposals that have gathered dust for over a decade now.

The ancient rabbis who wrote the Talmud formulated a principle to protect the core of the law. The rabbis devised subsidiary structures. If, for example, the law forbade the conduct of business on the Sabbath, the rabbis devised a rule that forbade the handling of money on the Sabbath. Thus, to obey the rabbinical stricture on handling money insured (at least, in those days) adherence to the basic law forbidding business transactions. They called this principle “Syag Torah” which means a “fence around the law.” Even for those who do not find any greater protection for parks in the Wilderness Act than is accorded parks by the Organic Act, at the very least, the Wilderness Act is like a fence around the Organic Act.

David Brower once wrote that the Organic Act was to our society
like the act of a scout, who, out in front of the party, saw a precipice ahead and put up a sign saying "Go Slow, Sharp Turn." Perhaps the Wilderness Act is like a sign saying to our society and our land managers, "Stop."

Notes
1. The Wilderness Act permits commercial services necessary for realizing the recreational purposes of wilderness; for example, services for a fee that, whether by foot or pack animal, guide visitors in wilderness areas. (16 U.S.C. 133(d)(5)).
2. Temporary roads, use of aircraft, motor vehicles, motorized equipment, mechanical transport, installations or structures may be permitted in wilderness "to meet minimum requirements for the administration of the area." (16 U.S.C. 1133(c)). Thus, a backcountry patrol station, a radio repeater, a helicopter rescue of an injured person, or a chainsaw may all be permitted in a wilderness upon a demonstration that such use is a "minimum requirement."
4. Those who would discount the court decision because it is "only a District Court" need be aware that since the court sits in the seat of the United States Government, its decisions have application government-wide. If this were not true, then the interpretation of the Organic Act given in this case would apply only to parks in the District of Columbia.
5. Opinion M-36702 (74 I.D. Nos. 4 & 5).