California v. Bergland: A Precarious Victory for Wilderness Preservation

I. INTRODUCTION

Since the late 1800s, Americans have struggled over the fate of the nation's public wilderness.[1] Developers stress the benefits that stem from the exploitation of natural resources, while their opponents point to the economic and non-economic values of conservation[2] as well as the harmful side-effects of development. This battle has reached a climax in recent years. The two federal agencies responsible for managing the great majority of undeveloped public lands in this country, the Forest Service[3] and the Bureau of Land Management ("BLM"),[4] have both announced plans

1. L. IRLAND, WILDERNESS ECONOMICS AND POLICY 20-27 (1979) [hereinafter cited as L. IRLAND]. *But see* R. NASH, WILDERNESS AND THE AMERICAN MIND (1967) [hereinafter cited as R. NASH] (tracing the roots of the wilderness movement to the Romantic and Transcendentialist movements in the early 1800s).

2. L. IRLAND, *supra* note 1, at 2, lists nine utilitarian and six nonutilitarian justifications for wilderness preservation. R. NASH, *supra* note 1, at 116-19, describes the importance of the public's perception of the link between wilderness preservation and watershed protection in the creation of New York's Adirondack State Park in 1872.

3. The Forest Service was created by the Act of February 1, 1905, ch. 288, 33 Stat. 628, which concurrently transferred management responsibility for the forest reserves from the Secretary of Interior to the Secretary of Agriculture. The forest reserves were renamed the national forests in 1907. Act of March 4, 1907, ch. 2907, 34 Stat. 1256.

Protection and development of the national forests are currently governed by the provisions of the Organic Act of June 4, 1897, ch. 2, 30 Stat. 11 (current version at 16 U.S.C. § 475 (1976)); the Multiple Use-Sustained Yield Act of 1960, 16 U.S.C. §§ 528-531 (1976); the Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. §§ 1600-1614 (1976 & Supp. II 1978), *as amended by* the National Forest Management Act of 1976, Pub. L. No. 94-588, 90 Stat. 2949.

4. Congress established the BLM on July 16, 1946, by consolidating the General Land Office (created in 1812) and the Grazing Service (created in 1934). Reorg. Plan No. 3 of 1946, § 403, 5 U.S.C. app., at 727 (1976). The Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1782 (1976 & Supp. II 1978), defines the responsibilities of the agency.

to permanently allocate the remaining undeveloped land under their jurisdiction to wilderness and nonwilderness uses.[5] Such action would effectively end the debate; lands designated wilderness would remain in their natural state with congressional protection and all other areas would be destined for development.

A recent case in the United States District Court for the Eastern District of California, *California v. Bergland*,[6] indicates that the fight is not yet over. Responding to the Forest Service proposal, California and other intervening parties brought an action to declare the Agency's accompanying environmental impact statement inadequate.[7] Judge Lawrence K. Karlton agreed with the plaintiffs' arguments and enjoined the Forest Service from developing certain land in California designated for nonwilderness use until it prepares an adequate environmental impact statement.[8] The decision stands as a potential barrier to both agencies' plans to settle the fate of the nation's remaining wilderness.

This note analyzes *California v. Bergland* and its implications for the future of wilderness in America. It first explains the history of

The federal government owns over 755 million acres of land in the United States. This amounts to about one-third of the nation's land. The vast majority of this lies west of the Mississippi River. Four hundred seventy million acres, or about 62%, are managed by the BLM, and the Forest Service administers 187 million acres, or 25%. The Department of Defense, the Fish and Wildlife Service, and the National Park Service control 4%, 4% and 3%, respectively, and the remaining 2% is divided among other agencies. U.S. PUBLIC LAND LAW REVIEW COMMISSION, ONE-THIRD OF THE NATION'S LAND 19-22 (1970).

5. FOREST SERVICE, U.S. DEP'T OF AGRICULTURE, FINAL ENVIRONMENTAL STATEMENT, ROADLESS AREA REVIEW AND EVALUATION (RARE II) (1979) [hereinafter cited as RARE II EIS]; BUREAU OF LAND MANAGEMENT, U.S. DEP'T OF INTERIOR, WILDERNESS INVENTORY HANDBOOK (1978). Section 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976 & Supp. II 1978), commands the Department of Interior to complete a wilderness review and evaluation by October 21, 1991. After studying the wilderness characteristics of 175 million acres of roadless land, the BLM had released as of November 14, 1980, all but 24 million acres from further consideration for wilderness designation, concluding that 151 million acres "clearly and obviously" lacked wilderness value. [1980] 11 ENVIR. REP. (BNA) 1046; [1979] 10 ENVIR. REP. (BNA) 302.

The total roadless area within the jurisdiction of these two agencies currently covers over 236 million acres. RARE II EIS, *supra*, at 7; [1979] 10 ENVIR. REP. (BNA) 302. This amounts to more land than is contained in 1) California, Nevada and Oregon; 2) Texas, Louisiana and Arkansas; or 3) the first thirteen states.

6. 483 F. Supp. 465 (1980), *appeal docketed*, No. 80-4115 (9th Cir. Mar. 13, 1980).

7. Complaint for Plaintiff State of California at 12-13, California v. Bergland, 483 F. Supp. 465 (E.D. Cal. 1980), *appeal docketed*, No. 80-4115 (9th Cir. Mar. 13, 1980).

8. 483 F. Supp. at 502.

wilderness preservation in this country, the details of the Forest Service's allocation proposal, and the legal requirements for environmental impact statements. It next discusses the court's reasoning, concluding that the decision was both in accord with legal precedent and internally consistent. Finally, it attempts to assess the impact of the decision on the fate of the nation's wilderness.

II. BACKGROUND

A. *Wilderness Preservation in America*

Wilderness protection in America has evolved, during the twentieth century, from administrative programs to legislative sanction. Sporadic instances of land preservation date back to the late 1800s—in 1864 California acquired the nucleus of what is now Yosemite National Park for use as a public park,[9] and in 1872 President Grant established Yellowstone Park[10]—but the federal government did not elaborate a consistent wilderness policy until the 1900s. The Forest Service, which was created and given jurisdiction over the national forest reserves[11] in 1905,[12] was responsible for this undertaking. Initial attempts at designating land as "wild" or "wilderness" were isolated and unstandardized,[13] largely the product of the efforts of a few committed Forest Service employees.[14] One such individual envisioned wilderness as "a continuous stretch of country preserved in its natural state . . . , big enough to absorb a two weeks' pack trip, and kept devoid of roads, artificial trails, cottages, or other works of man."[15] In 1929, following a sur-

9. R. NASH, *supra* note 1, at 106-07. The federal government gave the land to California, Act of June 30, 1864, ch. 184, 13 Stat. 325, but eventually reacquired it.

10. Act of March 1, 1872, ch. 24, 17 Stat. 32. R. NASH, *supra* note 1, at 108-13, provides an interesting account of the Act's legislative history.

11. Congress passed authorizing legislation for the establishment of forest reserves in 1891. Act of March 3, 1891, ch. 561, § 24, 26 Stat. 1095 (repealed in § 704(a) of the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2744).

12. *See* note 3 *supra*.

13. L. IRLAND, *supra* note 1, at 22.

14. R. NASH, *supra* note 1, at 185-87, describes the efforts of Arthur H. Carhart and Aldo Leopold in obtaining wilderness classification for the Trappers Lake country in Colorado (1920) and portions of the Gila National Forest in New Mexico (1924), respectively.

15. Leopold, *The Wilderness and its Place in Forest Recreation Policy*, J. FORESTRY 718, 719 (1921).

vey of all the land within its jurisdiction, the Forest Service promulgated "L-regulations" for the establishment of uniform "primitive areas," land maintained in a natural condition "for purposes of public education, inspiration and recreation."[16] By 1933, sixty-three such areas existed.[17] "U-regulations," which were issued in 1939 and remained in effect until 1964, updated this original series of regulations, distinguishing "wilderness," "wild" and "recreation" areas by size and allowable activities.[18]

After World War II, industry demand for exploitation of the resources on federal lands increased.[19] In response, environmental interest groups advocated a more permanent form of protection of wilderness than administrative regulation: legislative designation.[20] Senator Hubert Humphrey introduced the first wilderness bill in 1956,[21] and in 1964 the Wilderness Act became law.[22] Wilderness was defined as "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain."[23] The Act declared a national policy of encouraging wilderness preservation[24] and created the National Wilderness Preservation System ("NWPS").[25]

Of primary concern here are the provisions for designation of Forest Service land as wilderness.[26] Fundamentally, the Act provided Congress alone with the authority to set aside land as

16. L. IRLAND, *supra* note 1, at 23.
17. L. IRLAND, *supra* note 1, at 23.
18. 36 C.F.R. §§ 251.20-.22 (Supp. 1939). *See* R. NASH, *supra* note 1, at 206.
19. L. IRLAND, *supra* note 1, at 24.
20. *Id.*
21. S. 4013, 84th Cong., 2d Sess. (1956). Representative John P. Saylor cosponsored the bill. H.R. 11703, 84th Cong., 2d Sess. (1956). For an account of the legislative history, *see* R. NASH, *supra* note 1, at 220-25.
22. 16 U.S.C. §§ 1131-1136 (1976 & Supp. II 1978).
23. *Id.* § 1131(c). Section 1131(c) further defines wilderness as:
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 conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.
24. 16 U.S.C. § 1131(a) (1976).
25. *Id.*
26. 16 U.S.C. § 1132 (1976).

wilderness.[27] First, it designated existing Forest Service wilderness areas for immediate inclusion in the NWPS.[28] Second, the Act required the President to present, within ten years, recommendations to Congress on the suitability of designating as wilderness all land in the national forests presently classified as "primitive."[29] Finally, the Act anticipated future additions to the system, again through legislative designation.[30] These future additions of land to the NWPS were the key to implementation of wilderness preservation policy, for while the initial inclusions involved some nine million acres,[31] the Forest Service alone managed more than seventy million additional acres of land that qualified for wilderness designation (essentially, roadless areas larger than 5,000 acres).[32]

The Forest Service completed the statutorily required review of "primitive" areas for wilderness recommendation, and in 1972 began to study other roadless areas for possible inclusion in the NWPS.[33] This effort, the Roadless Area Review and Evaluation ("RARE I"), "was designed to identify those roadless, undeveloped areas that appeared to be the best candidates for inclusion in the

27. 16 U.S.C. §§ 1131, 1132(b), 1132(c) (1976).

28. "All areas within the national forests classified . . . as 'wilderness', 'wild' or 'canoe' are hereby designated as wilderness areas." 16 U.S.C. § 1132(a) (1976).

29. 16 U.S.C. § 1132(b) (1976). The President was to base his recommendation on a report prepared by the Secretary of Agriculture. "Primitive" land is essentially roadless and undeveloped. 36 C.F.R. § 293.17 (1980). Section 1132(c) required a similar report from the Secretary of Interior on the suitability of roadless areas in the national park system and national wildlife refuges and game ranges for inclusion in the NWPS.

30. 16 U.S.C. § 1136 (1976).

31. RARE II EIS, *supra* note 5, at 2.

32. RARE II EIS, *supra* note 5, at 4-6, describes the status of the NWPS as of January 4, 1979. With respect to Forest Service lands, statutorily protected areas had grown from the original 9 million acres to 15.2 million acres. The Carter Administration had recommended to Congress another 3.3 million acres of Forest Service land for inclusion in the NWPS. These areas were not counted in the RARE II inventory, which discovered another 62 million acres of de facto wilderness. *See* text at note 41 *infra*. Thus, even ignoring wilderness areas in 1964 that were subsequently developed, the Forest Service in that year probably managed over 70 million acres of wilderness.

Other federal agencies also managed land in 1964 that possessed wilderness potential. By 1979, almost 4 million acres of land under the control of the National Park Service, the Bureau of Land Management and the Fish and Wildlife Service was included in the NWPS, with an additional 22.9 million acres recommended for congressional designation. RARE II EIS, *supra* note 5, at 4-6. Moreover, the Bureau of Land Management manages an additional 175 million acres of roadless land. *See* note 5 *supra*.

33. RARE II EIS, *supra* note 5, at 5-6.

NWPS" and resulted in the selection of 274 "wilderness study areas."[34] However, the project met with severe public criticism for its methodology.[35] Furthermore, the Agency did not prepare an environmental impact statement to accompany the plan, and in 1973 a federal court enjoined development of certain lands pursuant to RARE I for that reason.[36] Consequently, the Forest Service dropped RARE I and in 1977 began again with RARE II.[37]

B. *RARE II*

The first stage of RARE II was an inventory of all areas that met the minimum statutory criteria for wilderness designation.[38] By definition, therefore, the Forest Service could have recommended all the land involved in RARE II for wilderness designation. Following publication of the initial list,[39] the inventory underwent successive amendments up until the day before announcement of the final decision.[40] The final count listed 2,919 areas containing 62,036,904 acres as meeting the criteria.[41] Most of these areas

34. *Id.* at 6.

35. California v. Bergland, 483 F. Supp. 465, 471 (E.D. Cal. 1980), *appeal docketed*, No. 80-4115 (9th Cir. March 13, 1980).

36. Wyoming Outdoor Coordinating Council v. Butz, 484 F.2d 1244 (10th Cir. 1973). *Accord*, Sierra Club v. Butz, [1973] 3 ENVT'L L. REP. 20071 (N.D. Cal. Aug. 29, 1972).

37. RARE II EIS, *supra* note 5, at 6. The Forest Service cited other reasons for undertaking RARE II:

> [t]he original review of roadless areas and continuation of the planning process contributed to resolution of the roadless area question. While the normal process [of evaluating individual areas pursuant to RARE I] would most likely have resulted in a substantial number of areas being designated wilderness, it was felt that a more concerted effort was desirable, among other reasons, to speed up determinations, to permit a more comprehensive approach to identification of appropriate areas, and to encourage a more systematic review and evaluation of the remaining areas.

Id.

38. *Id.* Essentially, the Agency looked for roadless areas 5,000 acres or more in size.

39. 42 Fed. Reg. 59,688 (1977).

40. The Agency amended the list on February 14, 1978, 43 Fed. Reg. 6,291 (1978); June 8, 1978, 43 Fed. Reg. 24,876 (1978); October 3, 1978, 43 Fed. Reg. 45,754 (1978); October 19, 1978, 43 Fed. Reg. 48,670 (1978); December 13, 1978, 43 Fed. Reg. 58,208 (1978); and January 3, 1979, 44 Fed. Reg. 926 (1979). The amendments were based on public proposals for additions or deletions, remeasurement of areas, elimination of land found to be not actually roadless, and subsequent allocation of land for development through the Agency's ordinary land management programs. RARE II EIS, *supra* note 5, at 7.

41. RARE II EIS, *supra* note 5, at 7. Sixty-two million acres equals an area about the size of the state of Oregon. This amounted to about one-third of all the land managed by the Agency. *See* note 4 *supra*.

were situated west of the Mississippi River in mountainous and forested terrain.[42] Some possessed greater wilderness potential than others: they possessed more natural beauty, contained more diverse landscapes and wildlife, or were more isolated from the effects of human civilization. Similarly, some areas contained greater amounts of minerals, oil, timber and grazing land than others, and arguably thus would be best utilized through development. In many areas these qualities overlapped.

The second stage of RARE II, evaluation of the inventoried lands, itself involved two substages: development of alternative allocations and evaluation of those alternatives.[43] The Forest Service first chose three categories into which it would ultimately allocate the roadless areas: "wilderness," "further planning," and "nonwilderness."[44] The Agency would recommend areas allocated to the wilderness category to the President and Congress for statutory designation and protection as wilderness.[45] It would simply defer its decision on the future of all land placed in the further planning category; that is, it would consider the areas "for all uses, including wilderness, during development of land and resource management plans or other specific project plans."[46] Land classified as nonwilderness would be immediately available for "resource utilization" according to current laws and management plans.[47]

The Forest Service would make land in this third category available for various kinds of development, but not for preservation. The Agency specifically excluded the wilderness option as an alternative use of land in this category. Under one of the regulations[48] ("Regulation 219.12(e)"[49]) promulgated by the Forest Service to implement the Forest and Rangeland Renewable Resources Planning Act of 1974,[50] the Agency cannot reconsider areas designated nonwilderness by RARE II for wilderness until it prepares the "second generation" of forest management plans in ac-

42. Using rough calculations based on the appendices to the RARE II EIS, *supra* note 5, less than two million acres were situated east of the Mississippi River.

43. RARE II EIS, *supra* note 5, at 21.

44. *Id.* at 7.

45. *Id.* at 9.

46. *Id.*

47. *Id.*

48. 36 C.F.R. § 219 (1980).

49. *Id.* § 219.12(e).

50. 16 U.S.C. §§ 1600-1614 (1976 & Supp. II 1978), *as amended by* the National Forest Management Act of 1976, Pub. L. No. 94-588, 90 Stat. 2949.

cordance with the National Forest Management Act of 1976.[51] The Act requires the Agency to complete the first generation of plans by 1985,[52] and to revise the plans at least every fifteen years.[53] Thus, the wilderness potential of lands designated nonwilderness could not be considered in development plans until around 1995.

The Forest Service next developed ten alternatives for allocating the roadless areas into these three categories. One approach would have been simply to vary the percentages of total roadless area allocated to each category to arrive at ten different options. Instead, the Agency obtained each alternative by stressing in varying degrees different criteria, or factors, which it determined should be weighed in the decision.[54] For example, as one alternative the Agency emphasized utilization of resources, one such factor, by allocating all roadless areas that contained significant natural resources to the nonwilderness category (even though some of these areas might also be valuable as wilderness) and obtained an allocation with a high percentage of all the land allocated to nonwilderness.[55] Similarly, by emphasizing wilderness values over the other factors, the Agency obtained a different allocation in which more areas were designated wilderness.[56] The other criteria were low-, moderate- and high-level "planning targets for characteristics of landform, ecosystem, wildlife and accessibility representation," and the Regional Foresters' perceptions of local and regional issues.[57] By stressing these criteria in different combinations and degrees, the Forest Service arrived at seven alternatives. Three more, allocating all the land to either the wilderness or nonwilderness category, and taking "no action" at all, made a total of ten. With the exception of the "all wilderness" alternative, the percentage of total acreage designated wilderness ranged from six to thirty-three percent.[58]

51. Pub. L. No. 94-588, 90 Stat. 2949, (amending the Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. §§ 1600-1614 (1976 & Supp. II 1978)).

52. 16 U.S.C. § 1604(c) (1976 & Supp. II 1978).

53. 16 U.S.C. § 1604(f)(5) (1976). However, 36 C.F.R. § 219.11(f) (1980) requires a revision every ten years.

54. RARE II EIS, *supra* note 5, at 21-22, 25-31.

55. *Id.* at 25, 26-27. This was alternative "C."

56. *Id.* at 25-26, 27, 31. These were alternatives "D" and "I."

57. *Id.* at 25.

58. *Id.* at 37.

Evaluation of the different allocations involved accommodating public comment and meeting various goals set by the Forest Service for RARE II.[59] The process began with the publication of the RARE II draft environmental impact statement on June 15, 1978, which listed the alternative allocations and requested public comment.[60] The Agency recorded the responses to the draft, and then developed a new allocation alternative that it felt best reflected public preference.[61] This allocation, essentially a combination of two of the original alternatives, served as a "starting point" for the decision-making process.[62]

The remaining evaluation consisted of subjecting this hybrid alternative to a series of ten successive adjustments based on different factors.[63] These adjustments included meeting targets for landform and wildlife diversity, moving all areas with "high resource potential" out of the wilderness category, and considering local concerns with respect to specific areas, to name only a few.[64] A final allocation emerged from these adjustments which the Forest Service announced to the public on January 4, 1979.[65] Out of 2,919 areas and 62,036,904 acres, it allocated 1,981 areas containing 36,151,558 acres to nonwilderness; 624 areas containing 15,088,838 acres to wilderness; and 314 areas containing 10,796,508 acres to further planning.[66] As percentages of total Forest Service roadless acreage, this amounted to 59% nonwilderness classification, 23% wilderness and 18% further planning.[67]

C. *The National Environmental Policy Act of 1969*

RARE II, like all recent government programs, had to conform with the National Environmental Policy Act of 1969 ("NEPA").[68]

59. *Id.* at vii-viii.

60. FOREST SERVICE, U.S. DEP'T OF AGRICULTURE, DRAFT ENVIRONMENTAL STATEMENT, ROADLESS AREA REVIEW AND EVALUATION (RARE II).

61. RARE II EIS, *supra* note 5, at 31-32.

62. *Id.* at vii.

63. *Id.* at 32-35.

64. *Id.* Other factors included additional consideration of public response; Regional Foresters' perceptions of public agreement; targets for accessibility; withdrawal of all National Grasslands areas; placing all areas with "high wilderness attribute ratings" in the wilderness or further planning categories; and meeting Resource Planning Act targets.

65. RARE II EIS, *supra* note 5, at iii.

66. *Id.* at 36.

67. *Id.* at 37.

68. 42 U.S.C. §§ 4321-4361 (1976).

Section 102 of the Act requires a federal agency to prepare an environmental impact statement ("EIS") whenever it proposes "major Federal actions significantly affecting the quality of the human environment."[69] "Action" encompasses the "making, modification or establishment of regulations, rules, procedure and policy."[70] It is "major" if there is a "*potential* that the environment may be significantly affected."[71] Basically, for any such proposal, an agency must describe in detail 1) the environmental effects of its proposed action, 2) any alternatives to the program that involve less severe environmental consequences, and 3) any "irreversible and irretrievable commitments of resources" involved in the proposal.[72]

Courts have elaborated on the meaning of this statute. NEPA does not demand that an agency reach any particular, or the most environmentally sound, decision, and the judiciary may not substitute its wisdom for an agency's as to the propriety of taking a specific action.[73] Nevertheless, as the Supreme Court has held, courts should require that an agency take a "hard look" at the environmental consequences of its actions in a detailed statement analyzing all the factors enumerated in section 102(c) of NEPA.[74] Simply admitting that a proposed action will have an adverse impact on the environment will not suffice.[75] Anything less than a detailed study will not serve the dual purpose of an EIS: to insure that environmental considerations are "integrated into the very process of agency decision-making,"[76] and to act as an environmental "full-disclosure" statement that permits other officials, Congress and the public to evaluate the environmental consequences of the action on their own.[77]

69. *Id.* § 4332(2)(C).

70. 40 C.F.R. § 1500.5(a)(3) (1978). All remaining references to federal regulations will be made to those in effect at the time the Forest Service prepared the RARE II EIS.

71. 40 C.F.R. § 1500.6(a) (1978). (emphasis added).

72. 42 U.S.C. § 4332(2)(C) (1976). The agency must also discuss "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity." *Id.* § 4332(2)(C)(iv).

73. Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976).

74. *Id.*

75. *See* Nat'l Wildlife Fed'n v. Andrus, 440 F. Supp. 1245, 1252-53 (D.D.C. 1977).

76. Andrus v. Sierra Club, 442 U.S. 347, 350 (1979).

77. Silva v. Lynn, 482 F.2d 1282, 1285 (1st Cir. 1973); Scientists' Inst. for Pub. Information, Inc. v. AEC, 481 F.2d 1079, 1091 (D.C. Cir. 1973); Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 833 (D.C. Cir. 1972); Calvert Cliffs' Coordinating Comm., Inc. v. AEC, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

In meeting this requirement, the Forest Service chose to prepare a "programmatic" environmental impact statement ("PEIS") instead of a "site-specific" statement.[78] This terminology refers to differences in the content of environmental impact statements that generally accompany different government programs. If a particular agency action will affect only one area, then the statement must consider (in detail) only the environmental impact in that area.[79] On the other hand, if the action makes broad policy determinations or inaugurates a national program, then the statement need consider only the larger, overall environmental consequences.[80] The latter type is labeled programmatic. One court allowed such a statement where a later EIS would timely examine the site-specific impact of the government's action.[81] Courts require a programmatic statement where several separate government actions will have "cumulative" or "synergistic" effects on the environment that a site-specific EIS fails to scrutinize.[82] In either case, while a PEIS may suffice for a time, an agency must eventually study the site-specific impact of all programs.[83] As one court concluded, a PEIS alone cannot provide the "finely tuned and 'systematic' balancing analysis" mandated by NEPA.[84]

III. *California v. Bergland*

On July 25, 1979, the state of California brought suit against the Secretary of Agriculture[85] and the Forest Service to have the nonwilderness designation of forty-seven roadless areas in California pursu-

78. California v. Bergland, 483 F. Supp. 465, 470 (E.D. Cal. 1980), *appeal docketed*, No. 80-4115 (9th Cir. Mar. 13, 1980).

79. *See* Kleppe v. Sierra Club, 427 U.S. 390, 398-402 (1976).

80. *See* 2 F. GRAD, TREATISE ON ENVIRONMENTAL LAW § 9.02[1][b] (1980).

81. County of Suffolk v. Secretary of Interior, 562 F.2d 1368, 1377-79 (2d Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978).

82. Kleppe v. Sierra Club, 427 U.S. 390, 409-10 (1976); Natural Resources Defense Council, Inc. v. Adm'r, Energy Research and Dev. Admin., 451 F. Supp. 1245, 1258 (D.D.C. 1978).

83. Natural Resources Defense Council, Inc. v. Adm'r, Energy Research and Dev. Admin., 451 F. Supp. 1245, 1258 (D.D.C. 1978); Kelley v. Butz, 404 F. Supp. 925 (W.D. Mich. 1975); Natural Resources Defense Council, Inc. v. Morton, 388 F. Supp. 829, 838-40 (D.D.C. 1974), *aff'd mem.*, 527 F.2d 1386 (D.C. Cir.), *cert. denied*, 427 U.S. 913 (1976).

84. Calvert Cliffs' Coordinating Comm., Inc. v. AEC, 449 F.2d 1109, 1113 (D.C. Cir. 1971).

85. The RARE II EIS, *supra* note 5, at i, listed Secretary Bob Bergland as the "responsible official" who, in accordance with 42 U.S.C. § 4332(2)(C) (1976), prepared the EIS.

ant to RARE II declared invalid and to enjoin the Forest Service from developing the areas[86] until it prepared another EIS that complied with NEPA.[87] The court later permitted several other parties, including California counties, environmental interest groups, businesses, trade associations and individuals, to intervene.[88]

In addressing motions by plaintiffs for summary judgment,[89] the court rendered a straightforward yet detailed[90] and complex assessment of the issues. It first determined that the RARE II EIS must include *site-specific* analyses of the environmental consequences of the proposal, since each nonwilderness designation constituted a "major federal action."[91] It then found that the statement did not contain these necessary analyses and that it therefore failed to satisfy NEPA requirements.[92] In addition, the court found that the EIS was defective because the Agency did not allow the public an opportunity to comment on the final allocation decision and then did not adequately respond to the comments which it did receive.[93] Finally, because of the threat of irreparable environmental injury to the disputed areas, the court issued an injunction prohibiting the Agency from approving or carrying out any development activities on the disputed areas until it prepared another EIS that conformed with NEPA standards.[94]

A. *Site-specific Assessment Required*

The factual finding which led the court to require a site-specific analysis was that the allocation of *individual* roadless areas to nonwilderness uses amounted to a major federal action.[95] As discussed above,[96] an action is "major" whenever there is a "potential

86. California v. Bergland, 483 F. Supp. 465, 470 (E.D. Cal. 1980), *appeal docketed*, No. 80-4115 (9th Cir. Mar. 13, 1980).

87. Complaint for Plaintiff State of California at 13, California v. Bergland, 483 F. Supp. 465 (E.D. Cal. 1980), *appeal docketed*, No. 80-4115 (9th Cir. Mar. 13, 1980).

88. California v. Bergland, [1979] 9 ENVT'L L. REP. 20,795 (E.D. Cal. Sept. 27, 1979).

89. 483 F. Supp. at 502.

90. The opinion in the official reporter is 33 pages long.

91. 483 F. Supp. at 502.

92. *Id.* at 481-93.

93. *Id.* at 493-98.

94. *Id.* at 498-501.

95. *Id.* at 479.

96. *See* text accompanying note 71 *supra*.

that the environment may be significantly affected."[97] The court ultimately determined that the scope of the action proposed in RARE II with respect to individual areas far exceeded that threshold.

The court first noted that all the land considered in RARE II was, by definition, currently wilderness, and that nonwilderness designation would expose the areas to a spectrum of development activities, from mining to motorized recreation, without further consideration of their wilderness value.[98] The Forest Service argued that such development was at best only contemplated and not yet proposed, and that impact statements accompanying future proposals for specific areas would best assess their environmental consequences.[99] Thus, the Agency contended, the scope of its decision was minimal. The court, however, found that RARE II accomplished more than simply opening up wilderness for theoretical development. In conjunction with the crucial Regulation 219.12(e),[100] which prohibits reconsideration for wilderness designation of RARE II areas allocated to nonwilderness until a revision of forest management plans, the nonwilderness allocation in fact precluded any consideration of the wilderness value or potential of specific areas for at least the next ten years.[101] Impact statements accompanying development plans proposed during that period would not fully assess their environmental consequences. In other words, the effect of RARE II would have been to foreclose future consideration of wilderness values and alternatives in the planning process.[102]

97. 40 C.F.R. § 1500.6(a) (1978).

98. 483 F. Supp. at 474.

99. *Id.* at 475.

100. *See* text accompanying notes 48-51 *supra*.

101. 483 F. Supp. at 475.

102. The court dismissed the Agency's assertion that these factors would be considered in subsequent EISs accompanying specific proposals for development. In the first place, Regulation 219.12(e), *supra* note 49, specifically prohibits consideration of the wilderness designation. Second, even if the Agency studied the "no action" alternative, *i.e.*, not to go ahead with a particular project, by itself that could not adequately protect wilderness values either. Depending upon prior management plans, a no action alternative may in fact mean development; such an alternative, at any rate, cannot include the affirmative protection of wilderness designation; and any justification for "no action" must, by law and regulation, rely not on wilderness values but on factors unrelated to wilderness. 483 F. Supp. at 475-76.

The court also saw three additional side effects of this action.[103] First, once an area was designated nonwilderness, the Forest Service would not consider measures to mitigate or minimize the effect of future development proposals on wilderness character.[104] Second, for at least the next decade there would be no opportunity for affirmative protection through legislative designation as wilderness.[105] Third, because development during the next ten years might erode the wilderness character of an area to the point that it would no longer meet the minimum criteria for statutory designation, the opportunity for future wilderness classification might be permanently lost.[106]

The court concluded that these consequences of individual designations met the criteria for major federal action:[107]

> RARE II designations change the forest planning process by deciding wilderness issues prior to local forest planning consideration of potential uses. RARE II forecloses consideration of wilderness values or the wilderness alternative during the future forest planning process. The designations are themselves tantamount to a decision to engage in development activities on the individual areas. In sum, it is clear that RARE II nonwilderness designations may significantly affect the environment of *individual* areas.[108]

Before considering the issue of whether the prepared EIS adequately assessed the environmental impact of these major federal actions, the court rejected the Forest Service's assertion that even if it had to undertake an environmental analysis of the site-specific impact of the nonwilderness designations, it possessed the right to defer that examination until it proposed specific projects.[109] The

103. *Id.* at 476.
104. *Id.*
105. *Id.*
106. *Id.*
107. Two other considerations influenced the court on this point. First, the national policy of wilderness protection, enunciated in both the Wilderness Act, 16 U.S.C. §§ 1134-1136 (1976 & Supp. II 1978), and the National Forest Management Act, 16 U.S.C. § 1604 (1976 & Supp. II 1978), require the Forest Service to consider wilderness as a possible forest use in its planning process. Second, federal courts have found Forest Service projects to be major federal actions in the past. 483 F. Supp. at 478. *See* notes 188-91 and accompanying text *infra*.
108. 483 F. Supp. at 479. (emphasis added).
109. *Id.* at 479-81.

court first found the Agency's reliance on *Kleppe v. Sierra Club*[110] misplaced. In *Kleppe*, the Supreme Court reversed a decision by the United States Court of Appeals for the Seventh Circuit that a regional EIS, in addition to nationwide and site-specific statements, was required for the development of coal reserves in the Northern Great Plains. The Supreme Court held that since regional development was at best only *contemplated*, and not proposed, NEPA did not require an impact statement.

RARE II did propose major federal action, however, and therefore *Kleppe* was not determinative.[111] Even though at the time the Forest Service may have been only contemplating specific development projects, those projects were not the only major federal actions at issue. Rather, the action which concerned the court was the decision not to consider wilderness values and uses when planning development in the *future*. The Agency proposed this action, and therefore an impact statement was mandated. An EIS must precede, not follow, a major federal action.[112]

The Agency's second basis for its claimed right to defer preparation of a site-specific statement fell for the same reason. Citing *County of Suffolk v. Secretary of Interior*,[113] a decision by the United States Court of Appeals for the Second Circuit, the Agency argued that, since it proposed no specific projects and thus the environmental impact was uncertain, NEPA did not require "speculation or 'endless hypothesizing as to remote possibilities' "[114] in a site-specific EIS. The Forest Service misdirected its argument by focusing on future projects, though, for again the court found no uncertainty in the foreclosure of future consideration of wilderness values.[115]

In fact, the court concluded that to allow the Forest Service to defer site-specific analysis would create a "Catch-22" situation in which the Agency would never evaluate the loss of wilderness in designated areas.[116] On the one hand, as the Agency prepared the

110. 427 U.S. 390 (1976).
111. 483 F. Supp. at 480.
112. *See* Cady v. Morton, 527 F.2d 786 (9th Cir. 1975).
113. 562 F.2d 1368 (2d Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978).
114. 483 F. Supp. at 480 (quoting County of Suffolk v. Secretary of Interior, 562 F.2d 1368, 1379 (2d Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978)).
115. 483 F. Supp. at 480-81.
116. *Id.* at 480, 484.

RARE II EIS as a programmatic statement, it would not consider site-specific impact. On the other hand, nonwilderness designation by RARE II together with Regulation 219.12(e)[117] eliminated the opportunity for site-specific statements to assess wilderness values and uses when the Agency proposes development projects in the future. This the court could not allow:

> [s]imply put, the agency may not evade its duty. . . . Since by virtue of RARE II and its implementing regulations the Forest Service is now making a decision that limits its discretion in the future and prevents late environmental assessment of wilderness values, it must assess the environmental consequences of its action now. Thus, the validity of the RARE II EIS must be tested by whether or not its environmental analysis of both the overall program and specific area designations is NEPA sufficient.[118]

B. *EIS Inadequacy*

After demanding a site-specific EIS for each nonwilderness designation, the court next considered whether the statement submitted by the Forest Service provided the analysis necessary to comply with this requirement. It concluded that the statement was insufficient because it neither adequately assessed the environmental impact of the proposed actions nor considered a reasonable range of alternative actions. Both findings were fatal to the submitted EIS in the face of NEPA requirements.

1. Environmental Analysis

With respect to the inadequacy of the environmental impact analysis, the court first noted that the statement contained no comprehensive description of any area.[119] Not only did common sense

117. *See* text accompanying note 49 *supra*.

118. 483 F. Supp. at 480, 481.

119. *Id.* at 484. In response to comments in the draft EIS that noted this deficiency, the Forest Service stated that "[i]ndividual descriptions of nearly 3000 roadless areas would produce an extremely voluminous document. . . . The public . . . [is] also encouraged to get on the ground in these areas and learn more about them." RARE II EIS, *supra* note 5, at 108. The court found the suggestion dismaying:

> [t]his statement encouraging the public (and one presumes Congress also since it must decide which areas to include in the Wilderness System) to visit nearly 3000 areas in order to get individual descriptions of them suggests that the environmental statement has failed its disclosure purpose. Moreover, it is extremely unlikely to have been feasible for anyone to visit all the areas during the comment period following the draft statement.

483 F. Supp. at 484 n.19.

dictate the impossibility of assessing impact on the environment unless one knows what the environment is like before the impact, but regulations promulgated by the Council on Environmental Quality ("CEQ") required such a description.[120] While the Forest Service supplied extensive site-specific information on resource and development potential in the EIS,[121] it did not discuss the wilderness characteristics or value of each area.[122] The only material that even resembled a description was a series of computer print-outs containing certain quantitative information for each area: acreage, location, classification as to basic landform, the number of wildlife species in the area, and a competitive rating score of "wilderness attributes."[123] The Agency classified areas larger than 50,000 acres by ecosystem type as well.[124] In the opinion of the court this did not constitute a "hard look."[125]

The Forest Service also failed to examine the impact of nonwilderness designation on each area's wilderness characteristics. The court noted that the EIS did not consider 1) the impact of development on the wilderness characteristics of a particular area,[126] 2) the secondary effects of loss of wilderness,[127] 3) any possible measures that would mitigate the impact of nonwilderness designation on the environment,[128] and 4) the impact of development on future opportunities for wilderness classification.[129] The court rejected the Agency's argument that consideration of the impact of nonwilder-

120. 40 C.F.R. § 1500.8(a)(1) (1978).

121. Each area is given a rating for development potential which measures optimum resource potential versus cost of development. Maximum yield estimates are given for timber, mineral, gas, oil, uranium, coal, geothermal potential, grazing and recreational use. Multi-county analysis [sic] of the economic impact of designations are included in supplements to the draft statement.
483 F. Supp. at 484. *See* RARE II EIS, *supra* note 5, at State and Geographic Area Appendices.

122. 483 F. Supp. at 484. The court noted that the EIS failed to consider both the economic and non-economic wilderness values of each area. *Id. See* note 2 *supra*.

123. 483 F. Supp. at 484.

124. *Id.*

125. *Id.* at 487.

126. *Id.* at 484.

127. *Id.* The court suggested two such effects: impact on water quality and wildlife.

128. *Id.* For example, the Agency could have confined development to a specific area, or limited the types of development it allowed.

129. *Id.*

ness designation was impossible because it had no development plans at the time:

> [t]he result [of the designations] is classically Catch 22. The development effect on wilderness is not considered now and it is unlikely that any environmental statement in the future will discuss it. Thus the impact of development on the wilderness values of a particular area . . . will most likely never be considered. . . . [U]ncertainty as to the course of future development is no excuse for abandoning environmental analysis, especially when irreversible and irretrievable commitments of resources are presently made.[130]

Finally, the court held that the Forest Service's "wilderness attribute rating system" ("WARS") worksheets did not meet the burden of describing the areas and disclosing the impact of a nonwilderness designation. The system involved rating areas competitively on four characteristics selected by the Agency as indicative of wilderness qualities.[131] The Agency added together these numerical evaluations on the worksheets and listed the final scores in the EIS. The court found that this procedure did not constitute a comprehensive description or an impact analysis.[132] The

130. *Id.* at 484-85. In a footnote, the court expressed its doubts that the Forest Service had no present development plans:

> [d]uring the decision process, nearly every area in dispute was placed in the nonwilderness category for various local economic or "community stability" reasons. Records for these decisions indicate that specific types of development such as intensive logging or site intensive recreational development were contemplated for each of these areas. Further, as the environmental statement explains, if an area had proven resources, it was normally designated for nonwilderness. It would seem obvious that the type of resources present would dictate the type of use anticipated.

Id. at 485 n.21.

131. The system utilized four distinct factors identified in the Wilderness Act—naturalness, apparent naturalness, opportunity for solitude, and opportunity for a primitive recreation experience—and assigned a numerical rating from one to seven depending on the degree of naturalness or opportunity exhibited. A seven rating indicates the highest degree of naturalness or the most opportunity. The four factors rated were combined to give a potential WARS range from four to twenty-eight. Recognizing that many roadless areas could achieve the same numerical value, supplementary factors of ecological, scenic, geological, and cultural values also mentioned in the Wilderness Act were rated in a similar manner. These scores were utilized in tie-breaking but were not included in the combined WARS.

RARE II EIS, *supra* note 5, at 21.

132. 483 F. Supp. at 486.

final score, the only figure actually in the EIS, provided minimal information.[133] Moreover, the court refused to incorporate the WARS worksheets by reference, for not only did CEQ regulations restrict such incorporation,[134] but also the court could find "no case allowing material central to the adequacy of an environmental statement to be incorporated by reference."[135]

The court noted that, even if it could incorporate the WARS worksheets into the EIS, they still could not supply the necessary site-specific analysis. It found in the worksheets only a comparative score on generalized attributes without a comprehensive description of the areas, a consideration of specific wilderness values, a suggestion of alternatives that would mitigate the environmental impact, or, fundamentally, a discussion of the overall impact of nonwilderness allocation.[136] Further, WARS brought a built-in bias into the analysis, providing only a competitive evaluation of wilderness qualities while placing absolute values on economic resources.[137] In short, even assuming incorporation, the Forest Service failed to fully disclose the effects of its proposed action.[138]

2. Alternatives

The court next considered the plaintiffs' assertion that the Forest Service had failed to consider a reasonable range of alternatives as required by NEPA.[139] The plaintiffs had the burden of showing

133. *Id.* at 485.

134. "The material must be 'reasonably available for inspection by potentially interested persons within the time allowed for comment.' (40 C.F.R. 1502.21 (1978))." *Id.* The WARS worksheets were scattered about the country at regional Forest Service offices. *Id.* at 486. 40 C.F.R. § 1500.8(b) (1978) requires that, even allowing for incorporation, the EIS must still be understandable without undue cross reference.

135. 483 F. Supp. at 485.

136. *Id.* at 486. The court elaborated on this point in a footnote:

> The comments are of a brief, and very general nature. For example, one comment under the "opportunity for solitude" attribute merely stated "good topographical variation." The type of land features or vegetation present in this area is undisclosed. Major features of an area are reduced to highly generalized descriptions such as "mountain" or "river." One can hypothesize how the Grand Canyon might be rated: "Canyon with river, little vegetation."

Id. at 486 n.22.

137. *Id.* at 486.

138. *Id.* at 487.

139. *See* 42 U.S.C. §§ 4332(2)(C), 4332(2)(E) (1976); 40 C.F.R. § 1500.8(a)(4) (1978).

that the EIS did not discuss "all reasonable approaches" to the project.[140] If they demonstrated that fact, then the burden shifted to the Agency to justify the shortcoming within "the four corners of the environmental statement itself."[141] If it could not, the EIS would fail.[142]

The plaintiffs met the initial burden of proof by showing that all the alternatives considered in the EIS were heavily skewed toward nonwilderness use.[143] No alternative, with the exception of an all-wilderness alternative which the Forest Service summarily dismissed,[144] allocated more than 33% of the de facto[145] wilderness to the wilderness category.[146] Nonwilderness allocations, on the other hand, ranged between 37% and 94%.[147]

The court could not find a reason for this restricted range of alternatives in the EIS. The statement did not provide an explicit justification, and the five criteria that the Agency used to develop the alternatives could not explain the pro-development tilt either.[148] One criterion, "resource output levels assigned to each area by the Forest Service,"[149] will serve as an example. The Agency did not explain in the EIS how it set these levels or why they were necessary, nor did it discuss (or even assert) why it was not possible to both meet these output levels and allocate more than 33% of the acreage to wilderness.[150] Furthermore, such administratively determined levels were irrelevant, because RARE II involved legislative proposals and Congress is simply not bound by an agency's plans.[151] The lack of justification offered for the re-

140. 483 F. Supp. at 488. *Accord*, Life of the Land v. Brinegar, 485 F.2d 460, 472 (9th Cir. 1973), *cert. denied*, 416 U.S. 961 (1974); Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 834 (D.C. Cir. 1972).

141. 483 F. Supp. at 488. Nat'l Wildlife Fed'n v. Andrus, 440 F. Supp. 1245, 1254 (D.D.C. 1977).

142. 483 F. Supp. at 488.

143. *Id.* at 489.

144. RARE II EIS, *supra* note 5, at 26. The alternative served "as a reference point for comparison of all other alternatives." *Id.*

145. *See* text accompanying note 38 *supra*.

146. RARE II EIS, *supra* note 5, at 37.

147. *Id.* Further planning allocations ranged from 1% to 38%.

148. 483 F. Supp. at 490-91.

149. *Id.* at 490.

150. *Id.*

151. *Id.* at 491. Another criterion was the "impact of allocations on resource ex-

stricted range of alternatives bemused the court: "I can only conclude that there was either no justification and thus the restriction was arbitrary, or the Forest Service had reasons and simply did not disclose them."[152]

C. *Public Comment and Agency Response*

The plaintiffs also challenged the way the Forest Service solicited public comments and its response to those received. They asserted that:

> [f]irst, since the proposed action was not disclosed in the draft EIS, the public was denied an opportunity to consider and respond to it. Second, the Forest Service did not respond to comments directed to individual areas. Finally, the Forest Service changed its method of evaluating comments after the draft EIS.[153]

The court agreed with plaintiffs on all three grounds.[154] It based its conclusions on CEQ regulations[155] which "contemplate a *reasonable* opportunity for public and official comment on the impact statement"[156] and require an agency to respond in the EIS to all reasonable comments.[157] While an agency need not adopt the substance of the comments, to achieve the goal of disclosing relevant issues public comments must receive "good faith attention."[158]

The court found that on the first issue the facts were as the plaintiffs alleged, and that the defendant's arguments were not per-

ploitation," such as mining, recreation or timbercutting. The court first noted that the Forest Service did not explain why an alternative with greater wilderness designations was impossible. More significantly, the Agency failed to discuss the basic justifying issue: why it needed to exploit RARE II resources at all. Without this, discussion of the impact on resource exploitation was meaningless. *Id.*

152. *Id.* at 491-92.

153. *Id.* at 493.

154. *Id.* at 494-98.

155. 40 C.F.R. §§ 1500.9-.10 (1978) require circulation of the draft EIS to the public, consideration of responsible comments, and attachment of those comments to the final EIS.

156. Lathan v. Volpe, 350 F. Supp. 262, 266 (W.D. Wash. 1972). *Accord*, Natural Resources Defense Council, Inc. v. Morton, 388 F. Supp. 829, 839 (D.D.C. 1974), *aff'd mem.*, 527 F.2d 1386 (D.C. Cir.), *cert. denied*, 427 U.S. 913 (1976).

157. Lathan v. Volpe, 350 F. Supp. 262, 265 (W.D. Wash. 1972). *See* Appalachian Mountain Club v. Brinegar, 394 F. Supp. 105, 121-22 (D.N.H. 1975).

158. Warm Springs Dam Task Force v. Gribble, 565 F.2d 549, 554 (9th Cir. 1977).

suasive.[159] The RARE II draft EIS did not propose any particular action or allocation, but merely outlined the ten alternatives.[160] In fact, the Forest Service did not reveal the final allocation[161] to the public until it issued the final EIS.[162] Although CEQ regulations do not demand identification of a proposal in the draft, they do require circulation of the proposal prior to the "first significant point of decision in the agency review process."[163] Therefore, even though the Forest Service may have had a good reason for structuring the process as it did, the court reasoned that "[t]he appropriate course of conduct in these circumstances would have been to circulate a supplement to the draft EIS when a proposed action had been identified."[164]

Disclosure in the draft of the criteria used in formulating the proposal failed to cure this flaw.[165] The Agency allowed the public no chance to comment on the priorities it gave to criteria, and, more importantly, it simply denied the public any opportunity to comment on the allocations themselves. The court cited *Appalachian Mountain Club v. Brinegar*,[166] which found an EIS inadequate when important data was not included in the draft. As stated in that opinion:

> [t]here are two dangers that can occur when information appears in the final EIS for the first time: (1) the ultimate decisionmakers will believe that there is no controversy due to lack of critical comment; and (2) objective errors without being redflagged would go unnoticed.[167]

The court found that these factors assume even more importance when, as with the case at bar, it is the proposed action itself which is not subject to scrutiny.[168]

The plaintiffs based their second criticism of the treatment of

159. 483 F. Supp. at 494-96.
160. *Id.* at 489, 494.
161. The final allocation was a combination of two of the original ten alternatives that was subjected to a series of adjustments. RARE II EIS, *supra* note 5, at vii-viii. *See* text accompanying notes 61-64 *supra*.
162. 483 F. Supp. at 494.
163. 40 C.F.R. § 1500.7(a) (1980).
164. 483 F. Supp. at 495.
165. *Id.*
166. 394 F. Supp. 105 (D.N.H. 1975).
167. *Id.* at 122.
168. 483 F. Supp. at 495.

public comment in RARE II, the Agency's inadequate response to site-specific comments,[169] on NEPA interpretations which require that agencies include all substantive comments,[170] as well as their responses to reasonable and relevant ones,[171] in the final EIS. The Forest Service responded to comments on specific area designations[172] by simply tabulating the *number* of comments and categorizing them as recommending allocation of a specific area to wilderness, nonwilderness or further planning.[173] The EIS included only the final figures.[174]

The Agency tried to justify this summary treatment by arguing that it was simply not feasible to give each comment individual attention.[175] The court, however, concluded that the importance of the environmental issues involved in RARE II rendered this explanation inadequate.[176] Each specific designation was a major federal action, requiring full NEPA compliance, and therefore each area warranted individual, site-specific analysis. Consequently, the court said, "[t]abulation of bare designation preferences does not indicate that the agency has taken a 'hard look' at the *environmental* problem raised."[177] The court noted that while the Forest Service has the discretion to determine the magnitude of any proposed action, its legal duty pursuant to NEPA limits that freedom.[178] A program cannot be so large as to make compliance impossible.[179]

169. *See* Statement of Material Facts as to Which There Can Be No Genuine Issue and Memorandum of Points and Authorities in Support of Motion for Summary Judgment for Plaintiff Intervenor Natural Resources Defense Council, Inc. at 26-28, California v. Bergland, 483 F. Supp. 465 (E.D. Cal. 1980), *appeal docketed*, No. 80-4115 (9th Cir. Mar. 13, 1980).

170. 40 C.F.R. § 1500.10(a) (1978).

171. Lathan v. Volpe, 350 F. Supp. 262, 265 (W.D. Wash. 1972).

172. These comments accounted for the majority of all comments received by the agency. RARE II EIS, *supra* note 5, at 100, app. U-4.

173. *Id.* at app. U-5.

174. *Id.* at app. U-6 to U-50.

175. 483 F. Supp. at 496.

176. *Id.*

177. *Id.* (emphasis original).

178. *Id.* at 497.

179. The court had little sympathy for the plight of the Forest Service:

> [t]he difficulty of considering each comment is a factor the Forest Service should have considered before it decided to determine three thousand allocations at once. The volume of response may well have been a message to the Forest Service that the scope of the RARE II process was too broad. . . . Defendants' argument in effect suggests that an agency may always be excused from complying

Finally, the court held that by changing its method of evaluating public comment, the Forest Service again acted unlawfully. The draft EIS stated that in evaluating comments "[e]mphasis will be placed on the value of response content rather than on the number of signatures that support it. . . . [M]ultiple signatures on petitions or multiple copies of form letters will not make them more valuable than the personal letters in decisionmaking."[180] Nevertheless, the Agency allocated specific areas to the three categories according to the number of *signatures* supporting various designations in the initial step in the final adjustment process.[181] The court concluded that it counted quantity instead of quality: "[a] form letter with one hundred signatures was counted one hundred times while a personal letter signed by one person was only counted once."[182]

The court stated that an agency cannot change its rules without observing the requirements of due process, including timely notice, and administrative procedure.[183] Because the Administrative Procedure Act[184] requires a court to "hold unlawful and set aside agency action . . . found to be without observance of procedure required by law,"[185] the Forest Service's actions were held invalid.[186]

IV. ANALYSIS OF THE COURT'S DECISION

As the court's determination that each nonwilderness designation in RARE II constituted a major federal action follows Ninth Circuit precedent, and its subsequent scrutiny of the EIS revealed no analy-

> with the law when it chooses the device of broadening the scope of the action, or proposing a multitude of individual actions in one environmental statement, such that responding to the anticipated flood of comments is infeasible. . . . To put it baldly, an agency has no discretion to make decisions, however well motivated, which preclude it from performing its legal duty.

Id. at 496-97.

180. FOREST SERVICE, U.S. DEP'T OF AGRICULTURE, DRAFT ENVIRONMENTAL STATEMENT, ROADLESS AREA REVIEW AND EVALUATION (RARE II) 107 (1978).

181. RARE II EIS, *supra* note 5, at 32-33. The court noted that "[f]ive of the disputed areas [in California] were adjusted from wilderness or further planning designations to nonwilderness at step one based upon the 'opinion poll.' " 483 F. Supp. at 497.

182. 483 F. Supp. at 497.

183. *Id.* at 498 (citing United States v. Nixon, 418 U.S. 683, 694-96 (1974), and K. DAVIS, ADMINISTRATIVE LAW OF THE SEVENTIES § 5.03-5 (Supp. 1978)).

184. 5 U.S.C. §§ 551-559 (1976 & Supp. III 1979).

185. 5 U.S.C. § 706(2)(D) (1976).

186. 483 F. Supp. at 498.

sis of these designations sufficiently detailed to satisfy NEPA requirements, the court properly held the Forest Service in violation of NEPA.

A. *Major Federal Action*

Two lines of authority support the initial conclusion that each designation was a major federal action and that RARE II required a site-specific rather than a programmatic impact statement. First, as the court itself noted,[187] courts have found that a wide variety of activities on federal land are major federal actions that require an EIS. A Forest Service plan to spray only eighty-four acres of forest with chemical herbicides required a site-specific EIS, even though the Agency had previously prepared a programmatic statement concerning policy for use of the herbicides in a twenty-state area.[188] Similarly, impact statements had to accompany individual grazing permits granted by the Bureau of Land Management in addition to a programmatic statement.[189] Authorization of logging on 670 acres in the Teton National Forest also amounted to a major federal action,[190] as did the authorization of mining beneath another 770 acres of forest.[191]

In the case at bar, the court determined that the commitment of wilderness areas at least 50,000 acres in size[192] to future development, absent the opportunity for reconsidering their value as wilderness when specific projects are proposed, also qualified as major federal action. The Forest Service could be expected to carry out similar "major" activities on RARE II territory in the future[193] and, a fortiori, the projects would involve land one hundred times

187. *Id.* at 478.

188. Kelley v. Butz, 404 F. Supp. 925 (W.D. Mich. 1975).

189. Natural Resources Defense Council, Inc. v. Morton, 388 F. Supp. 829 (D.D.C. 1974), *aff'd mem.*, 527 F.2d 1386 (D.C. Cir.), *cert. denied*, 427 U.S. 913 (1976).

190. Wyoming Outdoor Coordinating Council v. Butz, 484 F.2d 1244 (10th Cir. 1973).

191. Cady v. Morton, 527 F.2d 786 (9th Cir. 1975).

192. For example, the Taku Glacier area in Alaska encompasses 215,471 net acres; the West Lemhi Range area in Idaho, 280,576 net acres; and the Apache Kid area in New Mexico, 131,810 net acres. RARE II EIS, *supra* note 5, at apps. A-5, G-5, and L-4 (respectively).

193. "Roadless areas placed in the nonwilderness category will . . . , be available for resource utilization such as logging, intensive grazing, recreation site development, dispersed motorized recreation use, etc." RARE II EIS, *supra* note 5, at 9.

greater in size than in previous cases. In short, the *effect* of each nonwilderness designation was the same as, if not more significant than, other proposals previously held to be major federal actions, and thus NEPA required environmental impact statements for each designation.

That the *designations* themselves were major federal actions, however, regardless of their future *effects*, is also supported by precedent. *Environmental Defense Fund, Inc. v. Andrus ("EDF")*,[194] a recent decision by the United States Court of Appeals for the Ninth Circuit, concluded, as did *California v. Bergland*, that simply eliminating the opportunity for a certain use of a resource in the future can also be "major."[195] A major federal action can occur not only when a particular activity is proposed, but also when a decision prevents consideration of alternative activities involving the same resource in the future.

EDF involved an industrial water marketing program initiated by the Secretary of Interior in 1967. The Secretary allocated water from two reserviors in Montana and Wyoming for industrial use, and then executed water supply option contracts with petroleum and mining companies that committed most of the allocated water.[196] He did not prepare an EIS for either the program or the individual contracts, and an environmental group contested these omissions. The court first held that a statement was necessary for the overall program. It found the district court's reliance on *Kleppe v. Sierra Club*[197] misplaced,[198] and that uncertainty over whether the contracts would be exercised in the future "does not obviate the importance of the decision to divert [the water] and the

194. 596 F.2d 848 (9th Cir. 1979).

195. *Id.* at 852.

196. The Yellowtail and Boysen Reservoirs, situated in the Northern Great Plains, were projects of the Flood Control Act, ch. 665, 58 Stat. 887 (1944). Water is a precious resource in this semi-arid region, which has an economy based primarily on farming and ranching. Prior to 1967, runoff from both reservoirs supplemented downstream irrigation.

The region, however, also contains one of the richest strippable coal deposits in the world, the "Fort Union Formation." An adequate water supply is crucial to exploitation of this resource, and petroleum and mining companies quickly purchased options for water from the reservoirs when the Secretary initiated the marketing program. By 1974, 28% of the capacity of the reservoirs was committed to industrial use; the effect was to eliminate future runoff. 596 F.2d at 849-51.

197. 427 U.S. 390 (1976).

198. 596 F.2d at 851.

necessity to evaluate the environmental consequences of that decision."[199]

The Ninth Circuit also rejected the Secretary's contention that preparation of an impact statement for individual option contracts may be deferred until the option is *exercised* and the holder seeks licensing, holding instead that an EIS must be prepared prior to the *execution* of the option.[200] It stressed that the crucial issue was whether there had been a commitment of the resource to a specific use and a concurrent elimination of other future uses:

> [t]hese water option contracts guarantee to the option holder the availability of a certain amount of water whenever the option is exercised and the holder meets the standards for licensing. The term of the contract is 40 years; if actual deliveries do not occur within ten years, however, the contract terminates. The government cannot unilaterally change its mind; the government cannot commit the amount of water to other uses while the option is held. For the term of the contract, it is an "irreversible and irretrievable commitment of the availability of resources." As such, it is a major federal action requiring an EIS.[201]

The facts of *EDF* parallel those of *California v. Bergland*. Alternative uses of scarce natural resources were at issue in both cases: in the former, agricultural or industrial use of water; in the latter, development or preservation of wilderness. Although no specific use of the resources was actually in progress at the time of the litigation, both government agencies had irrevocably committed themselves to certain uses in the future. In *EDF* a contractual duty prevented reconsideration of nonindustrial water uses for at least ten years, and in *California v. Bergland* a regulation prohibited reassessment of the wilderness values of RARE II lands again for at least ten years.

The fundamental issue presented in these cases is whether there has been a definite commitment of resources. If there has, and the other elements of a major federal action are present,[202] then a site-specific impact statement must be prepared.[203] Contrary to the Forest Service's assertion that it possessed a "discretionary" right

199. *Id.*
200. *Id.* at 852.
201. *Id.*
202. *See* text accompanying notes 70-71 *supra*.
203. *See* Friends of the Earth, Inc. v. Coleman, 518 F.2d 323, 328 (9th Cir. 1975) (airport development plan); Friends of the Earth, Inc. v. Coleman, 513 F.2d 295, 299 (9th Cir. 1975) (federal highway project).

to defer preparation of an EIS for each nonwilderness designation until it proposed specific development projects,[204] the weight of authority[205] will not excuse, on the basis of uncertainty alone, preparation of an EIS where there is a major federal action:

> [i]t must be remembered that the basic thrust of an agency's responsibilities under NEPA is to predict the environmental effects of proposed action before the action is taken and those effects fully known. Reasonable forecasting and speculation is thus implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labelling any and all discussion of future environmental effects as "crystal ball inquiry."[206]

Moreover, the decision cited by the Forest Service in support of its position, *County of Suffolk v. Secretary of Interior*,[207] does not in fact enunciate a different rule. Stressing that the multistage program in dispute[208] still retained flexibility, and that the government reserved the power to make modifications when necessary data not then available was incorporated into an EIS, the Second Circuit held only that it would not violate the "rule of reason" to defer preparation where there was no "irreversible and irretrievable commitment."[209] Absent that flexibility, though, deferment was not possible: "[w]here the major federal action under consideration, once authorized, cannot be modified or changed, it may be essential to obtain such information as is available, speculative or not, for whatever it may be worth in deciding whether to make the crystallized commitment."[210]

204. California v. Bergland, 483 F. Supp. 465, 479 (E.D. Cal. 1980), *appeal docketed*, No. 80-4115 (9th Cir. Mar. 13, 1980).

205. Port of Astoria v. Hodel, 595 F.2d 467, 478 (9th Cir. 1979); City of Davis v. Coleman, 521 F.2d 661, 676 (9th Cir. 1975); Lathan v. Volpe, 455 F.2d 1111, 1121 (9th Cir. 1971).

206. Scientists' Inst. for Pub. Information, Inc. v. AEC, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

207. 562 F.2d 1368 (2d Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978).

208. The controversy centered around the leasing of the federally-owned outer continental shelf to private industry for oil and gas exploration. In its first EIS, the Bureau of Land Management deferred consideration of the issue of pipeline routes, planning instead to study it at a later "stage."

209. County of Suffolk v. Secretary of Interior, 562 F.2d 1368, 1378 (2d Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978).

210. *Id.*

B. *Site-specific Analysis*

Given the crucial determination that each nonwilderness designation was a major federal action, the rest of the court's opinion properly focused on the inadequacy of the *site-specific* environmental impact analysis carried out by the Forest Service.[211] The court searched in the submitted EIS for a description of each area and an analysis of the impact of nonwilderness designation. It found neither. Nor did it find a consideration of mitigation measures or alternatives for each area.[212] The court examined the Agency's treatment of public comment and discovered that it gave all site-specific comments no greater attention than was necessary to assign them to "yes-no" categories with respect to each designation.[213] Finally, the court rejected the recurring Forest Service excuses of "bulkiness"[214] and "infeasibility"[215] precisely because of its finding of major federal action at a site-specific level. NEPA requires a detailed EIS for each designation, and an agency cannot circumvent the statute merely on grounds that compliance is difficult.[216]

V. Conclusions and Implications

The court in *California v. Bergland* held that the present commitment of forty-seven roadless areas of national forest in California to nonwilderness uses in the future, to the exclusion of wilderness uses, constitutes forty-seven major federal actions. This decision followed Ninth Circuit precedent. Then, focusing on the adequacy of the Forest Service's analysis of the site-specific environmental impact of each nonwilderness designation in RARE II, the court ruled that the Agency did not fulfill the requirements of NEPA and was enjoined from developing the areas until it prepared an adequate environmental impact statement.

211. The court, of course, also found the RARE II EIS defective as a programmatic statement: it failed to consider a reasonable range of alternatives and it inadequately responded, on an overall level, to public comment. *See* text accompanying notes 139-52, 153-86 *supra*, respectively.

212. California v. Bergland, 483 F. Supp. 465, 484-87 (E.D. Cal. 1980), *appeal docketed*, No. 80-4115 (9th Cir. Mar. 13, 1980).

213. *Id.* at 496-97.

214. *Id.* at 497.

215. *Id.* at 496-97.

216. These ultimate determinations of site-specific inadequacy were essentially inevitable. The court simply found a major federal action where the Forest Service saw none, and as might be expected, the Agency had not prepared environmental analyses after it concluded they were not warranted.

Ultimately, *California v. Bergland* warns that a project with the dimensions of RARE II is too broad for a programmatic EIS. The Forest Service could not possibly combine nearly 3,000 major federal actions into one proposal and still satisfy the requirements of NEPA. Thus, RARE II's wholesale approach, its central and justifying feature,[217] was inherently unlawful. The court agreed that the scope of any government action was left to the discretion of the responsible agency. Nevertheless, it demanded that all major federal actions conform to NEPA standards, regardless of any "unfeasibility." According to the opinion, the RARE II EIS would have to include the following for each area designated nonwilderness: 1) a comprehensive description of the area and its wilderness qualities; 2) analysis of the environmental impact of nonwilderness designation; 3) consideration of alternatives, *e.g.*, wilderness or further planning designation, or measures such as restricted development that would mitigate the impact of nonwilderness designation; and 4) response to all "reasonable" comment. The sheer size of such a compendium, much less the work involved in preparing it, renders such a project next to impossible. The bottom line of the decision is that allocations must be made on an individual basis. Thus, although the choice of the breadth of an action is left to the agency involved, there is still some absolute limit on the magnitude of programs that have site-specific impact.

The real significance of *California v. Bergland* lies in the enormous stakes involved in RARE II and in the constraints placed on the federal government's freedom to allocate its remaining wilderness. Although the plaintiffs technically disputed the disposition of only a "mere" 1 million acres of land in California, the court effectively censured the Forest Service's allocation of the entire 36 million acres of land designated nonwilderness. The nonwilderness allocations in other states were no less "major federal actions," the Agency's analysis of the environmental impact no less deficient, and the response to site-specific comment no less cursory. The territory involved in RARE II is equivalent to an area the size of the

217. While this normal process would most likely have resulted in a substantial number of areas being designated wilderness, it was felt that a more concerted effort was desirable, among other reasons, to speed up determinations, to permit a more comprehensive approach to identification of appropriate areas, and to encourage a more systematic review and evaluation of the remaining roadless areas. Thus, RARE II was undertaken.
RARE II EIS, *supra* note 5, at 6.

state of Oregon, or of New York and Pennsylvania combined.[218] A multitude of people required hundreds of years to determine the fate of the land in these states; the Forest Service proposed to set the character of a similar area in one and one-half years and 600 pages.[219] The court would not accept this as full disclosure.[220]

The ramifications of *California v. Bergland* extend past the boundaries of RARE II. As discussed above,[221] the Department of Interior's Bureau of Land Management ("BLM"), charged with overseeing the vast majority of the public domain, is currently conducting its own roadless area review and evaluation along lines similar to the Forest Service program. Its goal is also to decide which of the present wilderness areas within its jurisdiction should be given permanent designation as such, and to open up the rest for development.[222] This proposal involves 175 million acres.[223] Together, the two agencies thus propose a sweeping, undoubtedly permanent, change in the future character of one-third of all federal land.[224]

California v. Bergland signifies that a decision on the future of America's wilderness cannot be made on a wholesale basis. The government must take a 'hard look' at each individual area, and in particular must take into account its value as wilderness. Furthermore, given the detailed nature of this task, RARE II and its BLM counterpart do not appear possible. The government simply cannot make one allocation decision involving so much land and still comply with NEPA.

However, five contingencies raise doubts about the impact of the decision. Most obvious, of course, is the fact that *California v. Bergland* is currently on appeal to the United States Court of Ap-

218. There are 640 acres in one square mile, and therefore 62,000,000 acres equals 96,875 square miles. The area of Oregon is 96,981 square miles, and of New York and Pennsylvania combined, 94,909 square miles.

219. The RARE II EIS contains 548 pages of main text and appendices. Selected letters received by the Forest Service from various groups, commenting on the draft EIS, fill another 182 pages.

220. *See* Trout Unlimited v. Morton, 509 F.2d 1276, 1283 (9th Cir. 1974).

221. *See* text accompanying notes 4-5 *supra*.

222. BUREAU OF LAND MANAGEMENT, U.S. DEP'T OF INTERIOR, WILDERNESS INVENTORY HANDBOOK (1978). *See* 43 U.S.C. § 1782 (1976).

223. *See* note 5 *supra*.

224. U.S. PUBLIC LAND LAW REVIEW COMMISSION, ONE-THIRD OR THE NATION'S LAND 22 (1970). This also amounts to ten percent of all the land within the United States. *Id.* at 327.

peals for the Ninth Circuit. The parties completed their briefs by the end of 1980, but the court will probably not hear oral argument until late 1981. While the decision seems to be in accordance with the law, reversal always remains a possibility.

Secondly, the direct legal effect of the case extends to only forty-seven areas in California.[225] While the decision rejected the entire EIS and stands as precedent, its impact will be confined to that state until RARE II nonwilderness designations in other states are contested. Meanwhile, the Forest Service will carry out its development plans for nonwilderness land.[226] At this time no other cases raise challenges similar to RARE II. Environmental interest organizations, likely plaintiffs in such actions, fear that a rash of such suits would produce a congressional backlash[227] (Congress could simply affirm the nonwilderness allocation made by the Forest Service, rendering the NEPA issue moot), making the possibility of future challenges to RARE II uncertain.

Thirdly, with respect to the BLM wilderness program, the crucial "Catch-22" dilemma that eliminated the possibility of future consideration of wilderness values in nonwilderness-designated areas might never arise. The BLM might not promulgate an implementing regulation similar to the Forest Service Regulation 219.12(e)[228] that prevents consideration of wilderness values after nonwilderness designation. Without this provision, the BLM designations would not amount to "irreversible commitments," and the BLM could lawfully defer consideration of the impact of the designations on these values until it proposes specific projects in the future. Such an allowance, however, may be contrary to the overall goal of the program, which is to permanently allocate BLM land to wilderness and nonwilderness uses.

Congressional action is the fourth uncertainty. Environmentalists' fears of a drastic reaction to *California v. Bergland* are not unfounded. In the Ninety-sixth Congress, Representative Foley (D. Wash.) introduced a bill that would have set time limits for Congress to include in the NWPS areas designated for wilderness or further planning by RARE II, after which they would be treated

225. California v. Bergland, 483 F. Supp. 465, 502 (E.D. Cal. 1980), *appeal docketed*, No. 80-4115 (9th Cir. Mar. 13, 1980).

226. RARE II EIS, *supra* note 5, at iv.

227. Letter from Trent W. Orr, attorney for Natural Resources Defense Council, Inc., to author (December 24, 1980).

228. *See* note 49 *supra*.

as nonwilderness.[229] While this bill failed to attract significant support, three wilderness acts that passed in 1980 did include more limited "release" language.[230] Basically, under this language all Forest Service roadless areas in the three states concerned not designated wilderness were released from further wilderness consideration until the second round of forest management planning, to begin in the early 1990s.[231] The defects of RARE II lose importance with such a legislative imprimatur. Given the more conservative tilt perceived in the Ninety-seventh Congress, the continued relevancy of the decision remains uncertain.[232]

Fifthly, the change in administrations may affect the wilderness issue. The Carter Administration supported the wilderness cause by endorsing RARE II[233] which, despite its faults, proposed to nearly double the size of the NWPS, and by opposing the "release" language in wilderness legislation.[234] The specific intentions of President Reagan and his administration in this area are unknown. If he reverses policy on these and related issues, Congress could ratify RARE II, or perhaps even refuse to make the wilderness designations that RARE II proposed.

229. H.R. 6070, 96th Cong., 1st Sess. (1979). The cutoff dates were January 1, 1984, for areas designated wilderness, and January 1, 1987, for areas designated for further planning.

230. The Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, 94 Stat. 2371 (1980); Act of December 19, 1980, Pub. L. No. 96-550, 94 Stat. 3221; Act of December 22, 1980, Pub. L. No. 96-560, 94 Stat. 3265. Provisions in the latter two acts bar court challenges to the RARE II EIS.

231. 16 U.S.C. § 1604(f)(5) (1976). *See* notes 51-53 and accompanying text *supra*.

232. On March 31, 1981, Senators Hayakawa, McClure, Helms, Heflin and Symms introduced the "RARE II Review Act of 1981." S. 842, 97th Cong., 1st Sess. (1981). Section 3 of the Act, applicable to any court order issued before or after enactment of the Act, would remove from any federal court the authority to determine the "legal or factual sufficiency of the RARE II final environmental statement." Section 4 would set four- to seven-year time limits for Congress to place land in the NWPS, after which time land could no longer be considered for wilderness designation by the Forest Service during its periodic planning process. (Land designated nonwilderness by RARE II would be immediately subject to this planning constraint.) Sections 5 and 7 would prohibit the Forest Service from conducting any further review and evaluation of land under its jurisdiction for inclusion in the NWPS and also prohibit it from managing any land for the purpose of protecting its suitability for wilderness designation. Finally, Section 6 would prohibit the Forest Service from creating "buffer zones" around wilderness areas, that is, restricting commercial activity near wilderness areas in order to maintain, visually and aurally, the areas' wilderness character.

233. EXEC. COMM. NO. 1504, H.R. DOC. NO. 96-119, 96th Cong., 1st Sess. (1979); 15 WEEKLY COMP. OF PRES. DOC. 669 (April 16, 1979).

234. *Wilderness in the National Forests: California Court Finds RARE II NEPA Violations, Congress Ponders 'Release,'* [1980] 10 ENVT'L L. REP. 10096, 10100 n.46.

The lasting importance of *California v. Bergland* is thus unclear. For the present, however, it stands as a crucial constraint on the federal government's freedom to determine the fate of the nation's wilderness.

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