

# **A LAND AND RESOURCE MANAGEMENT REVIEW**

for the

Skagit Environmental Endowment Commission

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# I. INTRODUCTION\*

## A. THE UPPER SKAGIT VALLEY

The Upper Skagit River Valley<sup>1</sup> is an exceptional place. The Skagit River and Ross Lake cut through dramatic mountains that sweep up to the most heavily glaciated area in the lower 48 American states. Ascending the valley, one moves from river, marshes, cottonwood-studded floodplains and lakes to mountain slopes of majestic old growth fir, cedar and hemlock, to flowered alpine meadows and mountain glaciers. Mountain goats traverse the area's cliffs, while grizzly bear, elk and wolves roam below.

Located where coastal ecosystems meet those of the interior, the Upper Skagit is part of one of the most diverse ecosystems on the planet<sup>2</sup>. The Skagit's rugged forests, rocky outcrops, valley bottoms, and alpine areas provide a wide range of habitats. In this transition zone, coastal plants grow cheek by jowl with those of the Interior - and with others more typical of California than of the Pacific Northwest. It is the only place in mainland British Columbia where Pacific Rhododendrons grow.<sup>3</sup>

More than 200 species of birds have been sighted in the Valley<sup>4</sup>. The Valley is home to a number of species that are endangered or threatened, or at risk of becoming so: including northern spotted owl, Coastal/Pacific giant salamander, Pacific water shrew, grizzly bear, bull trout, propertius duskywing, coastal tailed frog, phantom orchid, tall bugbane, and peregrine falcon.<sup>5</sup> The red bat and shrew mole reach the limits of their range in the Valley.<sup>6</sup>

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\*Grammar and citation in this report generally follows Canadian style and rules.

<sup>1</sup> For the purposes of this Report, the Upper Skagit refers to the portion of the Skagit River watershed above Ross Dam in Washington State, extending to the Skagit's headwaters in British Columbia.

<sup>2</sup> North Cascades National Park website.

<sup>3</sup> *A Citizen's Guide to the Skagit Valley*, p. 5.

<sup>4</sup> *A Citizen's Guide to the Skagit Valley*, p. 6.

<sup>5</sup> See D.H. Knopp and Lee Larkin, *Ecological Study of the Skagit Valley Provincial Park Lowlands*, Prepared for the Skagit Valley Endowment Commission by BC'S Wild Heritage Consultants, 2000 [*Ecological Study*]. Also, information comes from personal communication with Ross Vennesland, Ministry of Water, Land and Air Protection biologist. The last three species may not be documented in the Skagit, but there is a high likelihood that they are there.

<sup>6</sup> SEEC website, Skagit Valley Provincial Park description, and the North Cascades National Park website.

The Upper Skagit constitutes some of British Columbia's best spotted owl habitat, and represents the best un-fragmented corridor of connective habitat between US and Canadian populations<sup>7</sup>. Likewise, the Skagit Valley provides an important ecological link between the grizzly bear population in the US Cascade Mountains and the much larger grizzly populations in British Columbia. Protection of the Canadian Skagit will be necessary if grizzly bear are to permanently recover in the US Cascades<sup>8</sup>.

The Skagit River also provides significant habitat for threatened Bull Trout<sup>9</sup>. The Skagit is one of the most important trout streams in the British Columbia<sup>10</sup>, and is considered one of the finest fly-fishing rivers in North America<sup>11</sup>.

One of the most valuable things about the Upper Skagit is that it provides an accessible "backyard wilderness" for millions of people. The Canadian Skagit Valley is located within a 3 hour drive of nearly 70% of British Columbia's population<sup>12</sup>. Similarly, the American Upper Skagit is only a short drive away for the 3 million people who live in the Seattle-Tacoma metropolitan area. The Skagit provides these people with the opportunity to experience an affordable wilderness experience-a refuge from modern life where they can refresh the mind, body and spirit.

The Upper Skagit offers a wide range of year-round recreation opportunities, including some of the best fishing and canoeing in the region. It also offers opportunities for boating, hiking, backcountry

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<sup>7</sup> Personal communication, Brian Clark, BC MWLAP. The unprotected "Donut" in the Canadian Skagit is in the middle" of a Spotted Owl Special Management Zone. A very substantial portion of the total provincial population of spotted owls have been documented as using the Skagit. According to Jared Hobbs, BC Government Spotted Owl specialist, there are somewhere between 4-7 independent Spotted Owl territories that have been identified in the Canadian Skagit Watershed, and at least one confirmed breeding pair (out of only 8 breeding pairs confirmed in the province) has been documented as using the unprotected portion of the Skagit as part of its range. See the discussion under endangered species, in the Canadian portion of this Report.

<sup>8</sup> In addition, the American Upper Skagit comprises a significant portion of the North Cascades Grizzly Bear Recovery Zone.

<sup>9</sup> Bull trout are considered threatened in the UNITED STATES, but not in Canada.

<sup>10</sup> P. 21, Skagit Valley Provincial Park Management Plan.

<sup>11</sup> P. 21, Skagit Valley Provincial Park Management Plan. Lee Straight of the *Vancouver Sun* cited the Skagit as one of the finest fly fishing rivers in western North America. See *A Citizen's Guide to the Skagit Valley*, by Tom Perry, p. 7.

<sup>12</sup> Draft Management Plan for E.C. Manning Provincial Park and Cascade Recreation Area.

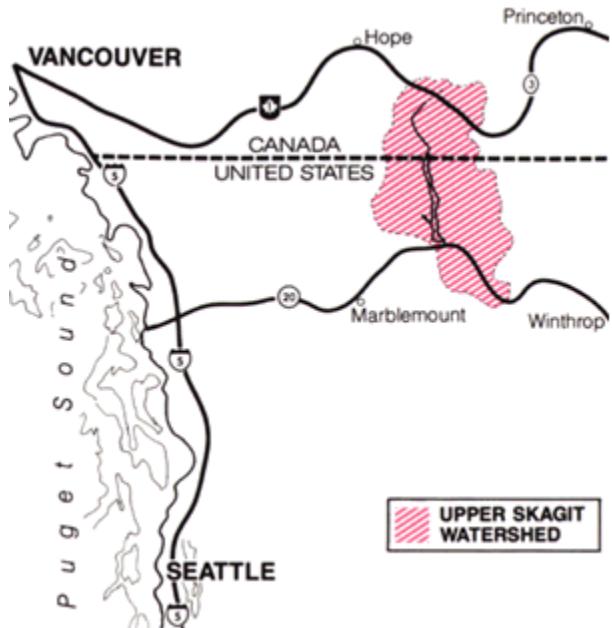
and car camping, mountain climbing, horseback riding, wildlife and bird watching.

The special values of the Upper Skagit Valley have been recognized by the fact that almost all has been given Wilderness status in the United States, and approximately 2/3 of the Canadian Skagit has been protected in parks and reserves. These American and Canadian protected areas lie at the heart of one of the largest and most diverse areas of contiguous protected lands in (and adjacent to) the United States --the protected American lands of the North Cascades National Park, Mount Baker National Wilderness and Recreation Areas, the Pasayten Wilderness, and Loomis Forest, which link with Canada's Skagit Valley, Manning, Cathedral and Snowy Mountain Provincial Parks. The United States has placed the North Cascades Park on its formal list of potential World Heritage sites. (See Map 1 below.)

Map 1:



Map 2:



## B. THE SKAGIT ENVIRONMENTAL ENDOWMENT COMMISSION

A unique characteristic of the Upper Skagit is the fact that an international Commission, the Skagit Environmental Endowment Commission, has been established, with a mandate to conserve and protect the area's natural, recreational, educational/research and other special values. The Skagit Environmental Endowment Commission has a weighty responsibility.

In 1984, an international treaty<sup>13</sup> and agreement<sup>14</sup> were signed that resolved the longstanding controversy over whether or not Seattle City Light would be allowed to raise the Ross Dam on the Skagit River—a project that while increasing the energy putout for Seattle, would have flooded a substantial portion of the Canadian Skagit Valley.

Ultimately, parties on both sides of the border agreed that in exchange for agreement not to raise the Dam, British Columbia would sell electricity from elsewhere to Seattle City Light. The agreement also created an international environmental endowment fund, to be used for the benefit of the Upper Skagit Valley watershed above Ross Dam.

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<sup>13</sup> Treaty Between the United States and Canada Relating to the Skagit River and Ross Lake in the State of Washington and the Seven Mile Reservoir on the Pend d'Oreille River in the Province of British Columbia, April 2, 1984, ("Treaty").

<sup>14</sup> British Columbia-Seattle Agreement<sup>14</sup>

The environmental endowment fund is administered by The Skagit Environmental Endowment Commission, with equal numbers of Commissioners appointed by the Government of BC and the Mayor of Seattle. The Commission's endowment fund must be used for the purposes of:

- conserving and protecting wilderness habitat,
- enhancing recreational opportunities,
- acquiring mineral or timber rights consistent with conservation and recreational purposes,
- conducting feasibility studies of projects,
- assisting in the creation of a trail system connecting Manning Provincial Park and North Cascades National Park, planning of foot bridges, trails and interpretive displays, and the removal of Ross Lake stumps and snags.<sup>15</sup>

Since its beginning, the Commission has funded hundreds of projects. In recent years the combined grants have totaled about US\$300,000 annually. The types of projects The Commission has funded have included education and wildlife research projects, land acquisition to conserve minerals, timber and wilderness, and recreation projects such as hiking trails and campsites.<sup>16</sup>

The Commission has many strengths. It is unusual, in that it is a body born out of an international treaty. It has official representation from both the United States and Canada. The Commission has enhanced credibility because Commissioners are not seen as partisans, although its members have been officially appointed by the BC Government and the Mayor of Seattle.

As an apolitical body with a conservation/recreation mandate, the Commission has high moral authority for positions it chooses to advocate. It enjoys a cooperative relationship with agencies from both countries, and can integrate and enhance the work of agencies on both sides of the border.

Moreover, because the Commission possesses a considerable endowment, the Commission wields the power of a major funder. As

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<sup>15</sup> [Skagit River Treaty and British Columbia-Seattle Agreement](#), Appendix D, Article I(a)-(g). Senate Treaty Doc. 98-26, April 2, 1984.

<sup>16</sup> From the Skagit Environmental Endowment Commission website.

we will see, the Commission could potentially trigger important land/resource management changes through strategic allocation of these endowment funds, and by taking certain strategic actions.

On the other hand, the power of the Commission to affect events and to carry out the recommendations of this Review is constrained by a number of factors. For example, the Commission has no direct governing/regulatory authority, and it operates with a very limited staff. Its actions are also limited geographically, to the boundaries of its service area. The ability of the Commission to affect events may also be limited by a perceived limit on the amount of advocacy it can do.

### **C. THIS PROJECT**

As part of a new, proactive long-term strategy, the Commission is currently proceeding with Needs Assessment projects, to determine how it can act more strategically to better achieve its goals in regard to Recreation, Education and Interpretation, Conservation Biology, and Land/Resource Management. Among other things, the Needs Assessments will make recommendations on how future grant applications can be targeted to address gaps in service.

As part of that strategic exercise, the Commission asked the University of Victoria's Environmental Law Centre and the University of Washington School of Law's Berman Environmental Law Clinic to conduct this Land/Resource Management Review/Needs Assessment Review in order to provide strategic advice to the Commission on how it can achieve its land and resource management goals in the Skagit Valley.

This Review is aimed at answering the Commission's seven questions. Those questions are:

1. What US and Canadian land management resource laws and policies affect the Upper Skagit watershed today?
2. Of the above identified laws and policies, which have the ability to adequately protect the resources the Commission determines in need of protection? Which laws and policies are relevant to the other purposes of the Commission's fund?
3. What options/tools are available to the Commission to constructively influence the management policies of land and resources within the watershed?

4. What political constraints exist for the Commission with respect to influencing management policies of land and resources within the watershed? Are there other constraints?
5. What are the options, if any, for recommending changes in land management laws and policies in order to address limitations in the current management of the Upper Skagit watershed?
6. What role can and should the Commission play in the future development of land management laws and policies that oversee the watershed?
7. How might the Commission prioritize its involvement in working with policy makers to influence laws and policies that pertain to the lands and resources within the watershed?

These questions were not answered on an individual question-by-question basis, but rather they formed the guiding principles used in preparation of this Review. The Commission's questions became the thematic framework that helped shape and direct the research and analysis contained within.

#### **D. THE DRAMATIC DIFFERENCE IN LEGAL PROTECTION OF THE WATERSHED IN THE Two COUNTRIES.**

One of the unique challenges of the Commission is to preserve a watershed bisected by the Canadian/United States border. During research for this Review, a fundamentally important theme emerged: The international border bisecting the watershed has resulted in very different levels of land protection and the use and availability of very different legal tools to ensure conservation.

For example, in the United States, most of the watershed is designated as wilderness under the *Wilderness Act* of 1964. As explained in the Review, this Act prohibits all commercial activities in the area: essentially preserving the land in its wild, natural state. In contrast, the Canadian side of the watershed has a more fragmented scheme for designating protected lands. Although the creation of Manning Provincial Park and Skagit Valley Provincial Park resulted in a level of protection that approaches that contained in the United State's *Wilderness Act*, approximately one-third of the area within the Canadian watershed falls outside of these parks. As a result, resource

extraction practices, primarily logging, mining, and water extraction currently threaten a significant portion of the Canadian Skagit.

Besides the specific Congressional protection afforded by creation of Wilderness Areas and the North Cascades National Park Complex in the watershed, the United States has a longer history of statutory protection of natural resources. Laws such as the *Endangered Species Act* (1973), and the *Clean Water Act* (1977) collectively offer a comprehensive tool kit to protect the natural integrity of the Skagit Watershed in the United States. In addition to the difference in *designation* of protected areas, other statutory protections of environmental resources—including habitat and threatened species—are also less developed in Canada than the U.S. As set forth in the discussion below, Canadian laws tend to be either far weaker (e.g., the new *Species at Risk Act*) or non-existent.

Therefore, from a statutory protection standpoint, the geographic area that is of most concern falls on the Canadian side of the border.

#### **E. THE KEY RECOMMENDATIONS**

As a result of this asymmetry, this Review recommends that the Commission's priority be to the achievement of greater protection of the lands in the Canadian Skagit Valley. The focus should be on expanding protected areas in the Canadian Skagit, because it is the area most at risk from logging, mining, water extraction and other potentially destructive practices. This focus is consistent with the High Ross Treaty<sup>17</sup>, which directs that most Fund expenditures should be made in British Columbia.

In the Review that follows, there are numerous other strategies discussed, and recommendations made. The Review is organized as follows:

#### *Executive Summary*

#### *Report on US Issues*

- A Review of the statutory framework of protection for U.S. lands, and US administrative regulation and management

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<sup>17</sup> Article III of Appendix D of the *High Ross Treaty* directs that "a large majority of the expenditures from the Fund, averaged over a period of ten years, shall be made in British Columbia".

- A review of the current threats and issues facing the U.S. portion of the watershed
- Recommendations for Commission actions to address those threats and issues is found under the discussion of each issue

*Report on Canadian Issues*

- Review of the legal and political management of the Canadian portion of the watershed
- Review of the threats and issues that face that portion of the watershed
- Since the threats in Canada are more pressing and legal protections less sweeping, there is a comprehensive review of the legal tools that could conceivably be invoked to conserve the Canadian Skagit
- The Review concludes with a discussion of the long-term solution – what the Commission can do to achieve expansion of protected areas in the Canadian Skagit.

## **II. EXECUTIVE SUMMARY**

### **A. THREATS FACING THE US UPPER SKAGIT**

#### **1. Recreational Pressures and Overuse (Review Pages 38-41):**

- Because of lack of typical commercial threats such as timber harvest, increasing recreational pressures and overuse are one of the major threats to the U.S. Upper Skagit
- Currently, recreational pressures are not evenly distributed throughout the watershed. Recreational pressures are largely dictated by access: the Highway 20 corridor is the area most prone to overuse, while the remote parts of the Wilderness Areas are the least used.
- The Commission is already contributing to the understanding of recreational use patterns through the recreational study currently underway in North Cascades National Park.
- On a more local level, the Commission should continue to consider funding of projects that mitigate damage from recreational use. Land managers contacted for this review stressed the need for additional funding at the federal level. The Commission may consider using the Endowment to supplement federal funds, or solicit additional federal funding.

#### **2. Invasive Species (Review Pages 41-43):**

- Invasive Species constitute one of the major threats to the US Upper Skagit, particularly its wilderness areas and wildlife habitats.
- The Commission should fund studies to inventory and understand the impact invasive species have on the watershed. Support eradication and mitigation activities.

#### **3. Mining Activities (Review Pages 43-47):**

- There are no mining claims in either the Stephen Mather Wilderness or the Pasayten Wilderness. The Wilderness Act's

prohibition on mining is strict; no new claims may be located within either Wilderness Area.

- There are no mining claims in Ross Lake National Recreation Area. Mining, like timber harvest, is prohibited in this area because of the adverse effects mining would have on scenic values.
- Similarly, mining is not allowed along Highway 20. There are no claims in this highway corridor.
- Mining is allowed in the national forest lands within the Mt. Baker-Snoqualmie National Forest in the area bounded by Canyon Creek and Highway 20.
  - a. **Active Claims:** Currently there are approximately 80 patented claims, mostly within the Barron Creek area, and approximately 90 unpatented claims scattered throughout this area. All of these are small-scale operations that currently pose little if any threat to the watershed. Change of use of any patented claim could affect this analysis.
  - b. **Inactive/Abandoned Claims:** Chief among the threats to the watershed is an abandoned claim, the Azurite Mine. Currently under study, this mine site contains sulfur rich tailings piles that pose both an acidic runoff and metals threat to tributaries to Ross Lake, and Ross Lake itself. It remains to be seen whether this site will be cleaned up under either the federal Superfund Law or the State's Model Toxics Control Act. If the site is scheduled for cleanup, the Commission should take action in the form of participation in the cleanup selection process. If the site is not cleaned up, it may be necessary to monitor the site, and determine if, in the future, it warrants further attention due to changing conditions.
- The Commission should also stay informed of any new plans of operations of permits applications related to mining activities on the National Forest.

#### **4. Timber Harvest (Review Pages 47-49):**

- The only area open to logging in the US Skagit is the corridor of national forest land within the Mt. Baker-Snoqualmie National Forest, bounded by Canyon Creek and Highway 20 in the southeastern portion of the watershed. It is unlikely, given political opposition, and likely challenges under NFMA and the ESA that logging will take place in this area—which consists of late successional old growth forest.
- Commercial logging in the Stephen T. Mather and the Pasayten Wilderness Areas is prohibited. The prohibition on commercial timber harvest in the Wilderness Act is absolute, and the longstanding nature of this Act makes it highly unlikely that these Wilderness Areas would be opened to logging.
- The Ross Lake National Recreation Area is not open to commercial timber harvest. Congress explicitly protected scenic value of this area, and logging is contrary to this mandate.
- As a Scenic Highway, the Highway 20 corridor is not open to logging. Similar to the Ross Lake NRA, this area is managed to maintain scenic values and logging is contrary to this statutory mandate. In addition, the Okanogan Forest Plan explicitly prohibits logging in this area.
- The Commission should remain aware of proposed statutory and/or regulatory changes, and depending on the nature of such changes be prepared to take a more active role to achieve the Commission's goals.

#### **5. Glacial Retreat (Review Pages 54-55):**

- The current atmospheric warming trend is thought to be responsible for the rather rapid decrease in glacial area in the Northern Cascades. Obviously, there is little the Commission can do in this area, but the Commission should consider funding studies that quantify the rate and extent of glacial retreat, and these studies, if properly presented to the public, may raise awareness of the need to address this issue.

## **6. Use of an Environmental Monitor (Pages 79-80)**

### **B. THREATS FACING THE CANADIAN SKAGIT**

#### **1. The Need to Expand Protected Areas:**

The lands outside of the protected Provincial Parks and Ecological Reserves face a number of potential threats. At least 11 forest licences exist which authorize timber harvesting, and harvesting has been taking place.

In the unprotected “Donut Hole”, there are at least 170 mineral claims and grants, including two very substantial ore bodies. The “Giant Copper” ore body contains more than 45 million tons of ore containing gold, silver, copper, molybdenum, uranium and other metals – and is suitable for open pit mining. In addition, although there are no current mineral claims in the Cascade Recreation Area, if minerals were discovered there, mineral development (unlike timber harvesting) is allowed in such recreation areas.

Other potential threats include the fact that a water extraction licence for a water bottling plan has been issued, and there are concerns about invasive species and potential recreational overuse.

It is recommended that the Commission adopt a strategy with the specific goal of:

- achieving legal protection (equivalent to a Class A Park) for all the unlogged drainages in the Skagit that are currently unprotected (including 18 and 20 Mile Creeks, LaForge Creek, Silverdaisy and 26 Mile Creeks and portions of the Sumallo);
- upgrading the protective status of the Cascade Recreation Area to the equivalent of Class A Parks status; and
- ultimately achieving the same status for the remainder of the Canadian Skagit drainage.

A number of components of a strategy for accomplishing this goal are discussed at the end of the review, including the need to vigorously pursue the current discussions with the Provincial Government, establish a collaboration with First Nations, find partners, and raise the public profile of the Skagit Valley.

The Commission could raise the Valley’s profile by sponsoring the production of articles, media clips, coffee table book, movie,

song/photo contests, international conferences, and by seeking the status of Canadian Heritage River, BC Endangered River, World Heritage Site, or Biosphere Reserve.

## **2. Use of an Environmental Monitor:**

If protected areas are not expanded as proposed, promotion of the Commission's mandate would require a complicated, piecemeal approach, using the multifarious tools described below.

Optimum use of these tools likely requires an Environmental Monitor, a "Skagit Keeper", to utilize existing legal tools, "watchdog" industrial compliance with environmental laws, participate in land and resource management processes on behalf of the Commission, and raise the public profile of the Skagit, and promote the need for additional protected areas.

Even with the use of an Environmental Monitor, the nature of these tools is that they can mitigate possible environmental damage, but will not permanently prevent it. Only expanding protected areas can accomplish that.

An Environmental Monitor could monitor activities on both sides of the border.

## **3. Canadian Tools Available, If Protected Areas Not Extended:**

### **a. General Tools**

- Utilize *Fisheries Act* provisions that regulate pollution and prohibit alteration of fish habitat -- and allow Government to require that minimum river flow levels be maintained.
- Request and participate in Environmental Assessments for proposed major non-forestry developments, like mining, water extraction and road-building. Such assessments seldom stop a proposed project, but aim to mitigate damage.
- Attempt to utilize Endangered Species laws and policies. There are a number of laws and policies that apply, but most are subject to a great deal of government discretion and do not offer substantial long-term protection for endangered or threatened species in the Canadian Skagit.

**b. Tools to Deal with Forestry Issues**

- Ask government to provide protective designation of particularly sensitive portions of the Skagit (riparian areas, areas around roads, old growth).
- ***Participate in public reviews of forest plans, by providing information and requesting changes to protect conservation values.***
- ***Pursue appeals of forestry plan approvals, and make submissions on appropriate levels of harvest in the area.***
- Seek and support special regional rules to govern local forestry, like the Clayoquot Sound Scientific Panel Rules.
- Challenge various government approvals, and watchdog enforcement of various environmental laws.
- Support a Skagit Valley Ecosystem Charter, whereby US and Canadian authorities would agree to optimize and standardize mining and forestry standards on both sides of border.

**c. Tools to Deal with Mining Issues**

Purchase mineral tenures on a case-by-case basis

Make submissions documenting the need for sensitive portions of the Canadian Skagit to be designated as protected "Mineral Reserves".

Pursue Environmental Assessment Processes for Mine Proposals

- ***Challenge mining companies' applications for pollution permits, and*** watchdog enforcement of permits and legislation.

**d. Tools to Address Water and Fisheries**

- ***To address proposals for water extraction, ask the federal minister of fisheries to set limits on the amount of water that can be removed from Skagit streams; provide scientific information to provincial water officials about the importance of maintaining water flows in the Skagit watershed and protecting Skagit streams; and potentially collaborate with***

*riparian owners in the watershed in filing objections to new water licenses.*

- *Play a watchdog role in ensuring enforcement of water licences and approvals, and of the Fisheries Act.*
  - *Seek Environmental Assessments of any proposed development that alters the flow of the Skagit.*
  - Urge government to designate the Skagit River as a sensitive stream and to bring the unproclaimed provisions of the Fish Protection Act into force.
- e. **Tools to Address Road Development**
- Make submissions for alternative methods of logging (e.g., heli-logging), when roads are proposed in forest plans.
  - If a mine proposal calls for construction of new roads, the Commission could likely address the issue in the Environmental Assessment process.
  - Make submissions to Government that the Commission opposes extension of existing roads in the Skagit Drainage, and in particular the construction of new roads in presently unroaded drainages such as 18 and 20 Mile, 26 Mile and Silverdaisy drainages.
  - *Make submissions that the Silver/Skagit road remain unpaved, during the next consultation on the Skagit Valley Provincial Park Management Plan.*
  - Seek an Environmental Assessment, if paving is ever proposed for the road.
  - Urge the provincial government to prohibit the paving of the Silver/Skagit Road under the *Environment and Land Use Act* or other legislation.
  - *Recommend that the B.C. government prohibit the construction of any new roads in the region by passing comprehensive roadless area legislation.*

**f. International Tools to Influence Canadian Governments**

- File a complaint with the Commission for Environmental Cooperation, if Canadian environmental laws are not being enforced.
- Where Canadian development is impacting US ecosystems or species (eg, Bull Trout), recommend that the US government make a formal request for the International Joint Commission to investigate and issue a public report.

## **III. REPORT ON U.S. ISSUES**

### **A. OWNERSHIP AND MANAGEMENT OF THE AMERICAN SKAGIT**

With the exception of a small number of inholdings, all of the land within the Upper Skagit watershed<sup>18</sup> on the US side of the border (“American Skagit”) is public land under the ownership and control of the federal government. The American Skagit is comprised of five major federal land management units:

- The Ross Lake National Recreation Area, formed by Ross Lake Dam along the Skagit waterway;
- North Cascades National Park, located to the west and south of Ross Lake;
- The Stephen T. Mather Wilderness Area, which largely overlays North Cascades National Park; (See Map 4)
- The Mt. Baker-Snoqualmie National Forest, located to the east and south of Ross Lake; and
- The Pasayten Wilderness Area, an area overlying a large part of the Mt. Baker-Snoqualmie National Forest.

See Maps 3 and 4

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<sup>18</sup> See Note 1, supra.

Map 3: National Forest and National Recreation Area Boundaries



Map 4: Wilderness Area



Each of these land management units was created by an act of Congress, beginning with the creation of the Mt. Baker-Snoqualmie Forest in 1891, and continuing through 1988, with the designation of the Stephen T. Mather Wilderness Area.<sup>19</sup> Although these lands were created under different statutes with numerous and sometimes differing mandates, and as explained more fully below are managed by two different federal agencies (the U.S. Park Service and the U.S. Forest Service), the vast majority of these lands share an important designation—that of Wilderness Area. Approximately 93% of the American Skagit is designated as Wilderness under the Wilderness Act of 1964, the highest level of protection afforded to public lands. The Wilderness Act's protections effectively supplant<sup>20</sup> other applicable

<sup>19</sup> The Mt. Baker-Snoqualmie National Forest was established as a Forest Reserve in 1891. In 1968 Congress carved out North Cascades National Park and the Ross Lake Recreation Area from the Mt. Baker-Snoqualmie National Forest. At the same time, Congress created the Pasayten Wilderness Area, protecting a pristine portion of the Mt. Baker-Snoqualmie National Forest east of Ross Lake. In 1988 Congress established the Stephen T. Mather Wilderness Area, extending Wilderness Act protections to 93% of North Cascades National Park and the Ross Lake Recreation Area.

<sup>20</sup> Congress declared that the purposes of the Wilderness Act are "within and supplemental to the purposes for which national forests and units of national park system were established and administered." 16 U.S.C. 1133. Moreover, each agency administering any wilderness area is responsible for preserving the area's wilderness character, and administering the area for the other purposes for which it was established in a manner that preserves its wilderness character.

statutory mandates, this Review will begin with an analysis of the purpose of the Wilderness Act and its impact in the American Skagit. Next, the Review will address the other governing land management regimes governing management of the areas of the American Skagit managed by the National Park Service.

## **1. The Pasayten and Stephen T. Mather Wilderness Areas**

There are two Wilderness Areas within the American Skagit, the:

- The Stephen T. Mather Wilderness Area (administered by the National Park Service within the Department of Interior); and
- the Pasayten Wilderness Area (administered by the U.S. Forest Service within the Department of Agriculture).

Though these two Wilderness Areas are administered by two different agencies, with significantly different overall missions and mandates, the differences in their management, and differences in the level of protection afforded is practically indistinguishable. Moreover, while individual policies may differ slightly between the two Wilderness Areas, all of the policies must comply with the minimum requirements of the Wilderness Act.

The following sections will first outline the history and purpose of the Wilderness Act, and then briefly touch on each managing agency's policies implementing the Wilderness Act in the American Skagit. Significantly, the Commission's goals—preservation of the watershed and enhancing recreational opportunities—largely parallel the Wilderness Act's purposes, and, as a result there is already strong statutory protection for the values that the Commission seeks to protect and promote.

**a. History, Purpose, and Statutory Mandates of The Wilderness Act of 1964**

Passed by Congress in 1964, the Wilderness Act was a response to concerns about the increasingly rapid rate of destruction of the United States' wild areas.<sup>21</sup> "Wilderness" is defined in the Act 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. . . an area of underdeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation.

16 U.S.C. § 1131(c).

The designation of a Wilderness Area can be made only by Act of Congress, see 43 U.S.C. § 1782(b), and only Congress can alter an area's enabling legislation. *Id.* Once designated the protections of the Wilderness Act are sweeping in scope. Subject to certain exceptions, public lands designated as Wilderness Areas:

shall [have] no commercial enterprise and no permanent road . . . [and] there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

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<sup>21</sup> As Congress stated, "in order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the U.S. and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is the policy of Congress to secure for present and future generations the benefits of an enduring resource of wilderness." 16 U.S.C. § 1131(2). For a comprehensive history of the tensions and compromises of the Wilderness Act's passage, Daniel Rohlf and Douglas L. Honnold, Managing the Balances of Nature: The Legal Framework of Wilderness Management, 15 ECOLOGY L. Q. 249 (1988).

16 U.S.C. § 1133(c).

Moreover, the Wilderness Act requires that lands designated wilderness areas 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, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness.

16 U.S.C. § 1131(2).

Thus, while existing uses established prior to designation are generally grandfathered and permitted to continue,<sup>22</sup> designation as a Wilderness Area effectively bans commercial enterprises, permanent or temporary roads, mechanical transports, and construction of structures and installations.<sup>23</sup> The only significant exception to this prohibition is for a managing agency, authorizing use of minimum impact structures, installations, and motorized transportation in carrying out management of the area.<sup>24</sup> The impacts of this Act on the Upper Skagit are significant, because of the large amount of the watershed afforded Wilderness status by Congress. The following section illustrates the manner in which the two agencies, the National Park Service and the National Forest Service, manage the Stephen Mather and Pasayten Wilderness Areas. As will become apparent, the policies governing the management of these Wilderness Areas largely mirror the mandate of the Commission.

**b. National Park Service Management of the Stephen Mather Wilderness**

Through the creation of the Stephen Mather Wilderness, the Washington Park Wilderness Act of 1988, provided the enhanced protections of the Wilderness Act to 93% of the land area of North

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<sup>22</sup> 16 U.S.C. § 1133(d)(1); 16 U.S.C. § 1133(d)(4).

<sup>23</sup> 16 U.S.C. § 1133(c).

<sup>24</sup> 16 U.S.C. § 1133(c).

Cascades National Park and the Ross Lake National Recreation Area.<sup>25</sup> As a result, the designated wilderness portions of the Park and Ross Lake NRA must be managed for Wilderness characteristics. In 1989, consistent with Park Service policies,<sup>26</sup> the Superintendent of the North Cascades National Park Wilderness produced a Wilderness Management Plan for this area.<sup>27</sup> Among the Park's missions, as it explained in its statement of purpose, is to "preserve and protect the lands legislatively designated as the Stephen Mather Wilderness for use and enjoyment of the public in a manner that will leave them unimpaired for future use and enjoyment as wilderness."<sup>28</sup> The Plan includes management strategies and physical design standards for trails, bridges, signs, compost toilets and campsites, general education and information, the development of a wilderness use permit system, and restrictions on recreational use, such as limits on party size, campfires, and camping setbacks from trails and water.<sup>29</sup> Notably, although nearly a decade ago, the Park Superintendent recognized deficiencies in the original 1989 plan and the need for a revision,<sup>30</sup> the NPS has not yet issued a revised plan.<sup>31</sup>

**Accordingly, we recommend that the Commission encourage and support the Park Superintendent's efforts to revise the Wilderness Plan.**

#### **c. National Forest Service Management of the Pasayten Wilderness**

In 1968 Congress passed Public Law 90-544<sup>32</sup> creating the Pasayten Wilderness area, consisting of lands in both the Okanogan National Forest and the Mt. Baker-Snoqualmie National Forest. In order to simplify management practices, management of the roughly 200,000

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<sup>25</sup> Public Law 100-688, 16 U.S.C. § 90.

<sup>26</sup> National Park Service Management Policies Section 6.3.4.2 (2001) (hereinafter, NPSMP).

<sup>27</sup> Wilderness Management Plan for the Stephen Mather Wilderness, March 20, 1989.

<sup>28</sup> See <http://www.nps.gov/noca/purpose.htm>

<sup>29</sup> State of the Stephen Mather Wilderness, P. 2-1, 1994.

<sup>30</sup> The areas that are to be addressed in the amended plan include paying appropriate attention to all wilderness values, recreational, scenic, scientific, conservation, educational and historical, as well as applying an ecosystem approach whenever possible, application of new technology and science, identification of new management strategies for recreation not addressed in the original plan, a reevaluation of trails systems and camps, and preparation of an environmental assessment and associated public comment. State of the Stephen Mather Wilderness, P. 2-1 to 2-2 1994.

<sup>31</sup> State of the Stephen Mather Wilderness, P. 2-1, 1994.

<sup>32</sup> Act of Oct. 2, 1968, Pub. L. No. 90-544, 82 Stat. 926 (1968).

acre section of the Mt. Baker-Snoqualmie National Forest that is east of the Ross Lake National Recreation Area now falls under the management of the Okanogan National Forest.<sup>33</sup> This includes those parts of the Mt. Baker-Snoqualmie National Forest and the Okanogan National Forest that are also a part of the Pasayten Wilderness.

In managing the Pasayten Wilderness, the Okanogan National Forest Supervisor complies with general USFS Wilderness Area regulations, published in the Code of Federal Regulations.<sup>34</sup> These regulations largely reflect the language of the Wilderness Act, requiring administration of Wilderness Areas to "meet the public purposes of recreational, scenic, scientific, educational, conservation and historic uses," and to "preserve and protect" the character of Wilderness Areas.<sup>35</sup> To accomplish this, the USFS, once again mirroring the language and mandate of the Wilderness Act, prohibits: commercial enterprises, temporary and permanent roads, cutting of timber for non wilderness purposes, aircraft landing strips, use of motorized vehicles, equipment, or other forms of mechanical transport, as well as landing of aircraft, dropping of materials from aircraft, and building of structures or installations.<sup>36</sup> However, the USFS goes on to further defines terms such as "mechanical transport," and "motorized equipment," and delineates when the exceptions to the general prohibitions contained in 36 C.F.R. § 293.6 apply.<sup>37</sup> The USFS also allows for temporary structures and commercial services which further management goals, such as public services offered by packers, outfitters and guides.<sup>38</sup>

In addition, the Okanogan Forest has promulgated other specific regulations prohibiting: 1) hitching or tying pack animals to a tree overnight, 2) hitching or tying pack animals within eight feet of a tree, 3) caching equipment for longer than 48 hours, 4) groups larger than 12 persons, 5) groups of pack animals larger than 18, 6) grazing animals within 200 feet slope distance of the shoreline any lake, 7) shortcircuiting a trail switchback, 8) being in areas closed for restoration, and 9) any livestock feed other than processed grain.<sup>39</sup>

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<sup>33</sup> U.S.D.A. Forest Service, About Us, available at <http://www.fs.fed.us/r6/oka/about/history.shtml> (last modified July 2, 2004).

<sup>34</sup> 36 C.F.R. § 293.

<sup>35</sup> 36 C.F.R. § 293.2.

<sup>36</sup> 36 C.F.R. § 293.6.

<sup>37</sup> 36 C.F.R. § 293.6(a)-(d).

<sup>38</sup> 36 C.F.R. § 293.8.

<sup>39</sup> Wilderness.net, The National Wilderness Preservation System, available at <http://www.wilderness.net/index.cfm?fuse=NWPS&sec=wildView&tab=regulations&WID=445> (last visited Aug. 8, 2004).

Due to the Wilderness Act's prohibitions on commercial activities such as mining and timber harvests, these activities are strictly prohibited in the Pasayten Wilderness Area. These prohibitions arise out of the specific language of the Wilderness Act<sup>40</sup> and the USFS's implementation of that act.<sup>41</sup> National Forest lands not designated as Wilderness Areas, on the other hand, are subject to both mining and logging. Because of these prohibitions, and the other strict guidelines for use of the area outlined above and discussed below, typical anthropogenic impacts related to mining, timber harvest, road building and overuse—impacts that often threaten other, non-wilderness, and more easily accessible areas of so many national forests—are not significant threats to the Pasayten Wilderness Area.

Accordingly, though we recommend that the Commission continue to stay abreast of possible threats to this area, we do not consider this to be among the highest priority action items. Instead, as discussed in Section III-B, pages 38-55 of this Review, with respect to the American Skagit we recommend that the Commission focus its attention on monitoring of activities in the lands that fall outside of Wilderness Areas, and to the limited threats to Wilderness Areas.

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<sup>40</sup> "No [mining] patent within wilderness areas designated by this chapter shall issue after December 31, 1983" 16 U.S.C. § 1133(d)(3).

<sup>41</sup> "There shall be in National Forest Wilderness...no cutting of trees for nonwilderness purposes" 36 C.F.R. § 293.6.

### **Map 3: National Forest and National Recreation Area Boundaries**



## **2. National Park Service and National Forest Service Management of Non-Wilderness Area Lands**

Although Wilderness Act protection, as noted above, effectively trumps the other statutory mandates that National Park Service must follow in managing lands designated as Wilderness, there are other areas of the American Skagit the National Park Service administers—notably the Ross Lake Recreation Area, and parts of North Cascades National Park—that fall outside of the Stephen T. Mather Wilderness. Similarly, the National Forest Service must follow separate mandates in managing the portions of the American Skagit—mostly an area adjacent to Canyon Creek and Highway 20 in the southeastern portion of the watershed—that fall outside of the Pasayten Wilderness Area. These other statutory regimes are discussed below.

**a. National Park Service Management of Non-Wilderness Area Within the North Cascades National Park Complex**

In addition to the Wilderness Act, two other statutory regimes govern the National Park Service's management of North Cascades National Park Complex: the National Park Service Organic Act of 1916<sup>42</sup> (which provides the basic statutory mandate for management of the whole of North Cascades National Park), and the 1968 Amendment to the National Park Service Organic Act creating the Ross Lake National Recreation Area.<sup>43</sup> Each will be discussed in turn.

**i. National Park Service Management of the North Cascades National Park/Ross Lake Recreation Area Complex Under the National Park Service Organic Act of 1916**

The National Park Service was established in 1916, with Congress' passage of the National Park Service Organic Act of 1916. Now nearly 90 years later, the National Park Service Organic Act remains the core of Park Service authority, and the definitive statement of the purposes of the national parks, and of the National Park Service's mission.

For example, Section 1 of the Organic Act, directs the National Park Service to

conserve the scenery and the natural and historic objects and wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

16 U.S.C. § 1. And, Congress has also required that:

the authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have

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<sup>42</sup> 16 U.S.C §§ 1-4.

<sup>43</sup> 16 U.S.C. § 1 Subchapter X Sec. 90c-1.

been or shall be directly and specifically provided by Congress.

16 U.S.C. 1a-1. To achieve these mandates, the National Park Service develops regulations that guide park superintendents in managing individual parks,<sup>44</sup> and park superintendents, in turn, develop individual management plans for particular parks or park units.

Congress amended the National Park Service Organic Act in 1968 creating the North Cascades National Park, and the Ross Lake and Lake Chelan National Recreation Areas.<sup>45</sup> As a result, the Park Superintendent of North Cascades National Park is responsible for the management of these three areas, and all three park units are managed as one.

The management plan currently in force for the North Cascades National Park Complex was issued in 1988.<sup>46</sup> This plan's purpose is to manage the pristine environment of the park with a "light touch," and to keep intrusions to a minimum "so that visitors now and in the future can continue to experience all the awesome grandeur and all the subtle patterns of the North Cascades."<sup>47</sup> To accomplish this goal, the plan outlines guidelines for ecosystem management, expansion of recreational activities, and resource management. Resource management is also addressed in a separate document, the North Cascades Resource Management Plan, which outlines the research goals of the Park. These goals focus on issues of major importance such as: important species of birds and mammals, natural fire management, vegetation impact monitoring/re-vegetation, resource inventory and monitoring, management of lakes and rivers, feasibility studies (including listing of the Skagit as a Wild and Scenic River) and air quality studies.<sup>48</sup> In addition, the plan addresses management and preservation of cultural resources<sup>49</sup> and provides extensive detail on

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<sup>44</sup> Regulations can typically be found in the Code of Federal Regulations, Title 36. National Park Service Management Policies, 2001. available at, <http://www.nps.gov/refdesk/mp/>.

<sup>45</sup> 16 U.S.C. § 1 Subchapter X; Public Law 90-544, 82 Stat. 926, Oct. 2, 1968.

<sup>46</sup> General Management Plan, North Cascades National Park, Ross Lake National Recreation Area, Lake Chelan National Recreation Area, July 1988.

<sup>47</sup> General Management Plan, North Cascades National Park, Ross Lake National Recreation Area, Lake Chelan National Recreation Area, at 3, July 1988.

<sup>48</sup> General Management Plan, North Cascades National Park, Ross Lake National Recreation Area, Lake Chelan National Recreation Area, 6-8.

<sup>49</sup> General Management Plan, North Cascades National Park, Ross Lake National Recreation Area, Lake Chelan National Recreation Area, 8.

management of visitor use.<sup>50</sup> This plan requires regular updating, with the ongoing revision process expected to be completed by 2006.<sup>51</sup>

## **ii. National Park Service Management of Ross Lake National Recreation Area**

The Ross Lake National Recreation Area is the most accessible part of the North Cascades National Park Service Complex. The Ross Lake National Recreation Area (118,000 acres, 47,200 hectares) is the corridor for scenic Washington State Route 20, the North Cascades Highway, and includes three reservoirs: 12,000-acre (4,800-hectare) Ross Lake, 910-acre (364-hectare) Diablo Lake, and 210-acre (84-hectare) Gorge Lake -- water gateways to more remote areas.

Because the Ross Lake NRA is outside of North Cascades National Park, and the Stephen T. Mather Wilderness Area<sup>52</sup>, it is managed in a different manner. For example, the Superintendent of North Cascades National Park manages the Ross Lake NRA for "public outdoor recreation benefits,"<sup>53</sup> and for "conservation of the scenic, scientific, historic and other values contributing to public enjoyment," of Ross Lake.<sup>54</sup> Perhaps the most important distinction is related to recreation; motorized vehicles, hunting and fishing are all allowed in the Ross Lake Recreation Area.<sup>55</sup> Limited access to Ross Lake, however, shapes the way in which the Lake is used. On the US side, Ross lake can only be reached by water taxi across Diablo Lake, or by hiking in on a trail. And, while Ross Lake Resort provides a portage service for boats from Diablo Lake to Ross Lake, there are no other boat ramps accessible from the American side of the Lake. Access to the Lake from the American side is also likely to continue to be limited because Congress banned construction of any roads on the east side of the Lake.<sup>56</sup>

The Park Superintendent's recent decisions further limit recreational use of the Lake. For example, the Park Superintendent recently banned personal watercraft from the Lake, after making a determination that personal watercraft are inconsistent with current

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<sup>50</sup> General Management Plan, North Cascades National Park, Ross Lake National Recreation Area, Lake Chelan National Recreation Area, 10.

<sup>51</sup> Interview with Bill Paleck, North Cascades National Park Superintendent, July 29, 2004.

<sup>52</sup> Ross Lake itself would not qualify for Wilderness Act protection because it is not "pristine" (having been created by the construction of a dam), and, therefore, management of Ross Lake differs from the surrounding wilderness areas.

<sup>53</sup> 16 U.S.C. § 1 Subchapter X, Sec. 90c-1(1).

<sup>54</sup> 16 U.S.C. § 1 Subchapter X, Sec. 90a.

<sup>55</sup> 16 U.S.C. § 1 Subchapter X, Sec. 90c-1(2).

<sup>56</sup> Id.

recreational use of the Lake and pose an increased pollution and safety risk.<sup>57</sup> Further, while hunting and fishing are generally allowed in recreation areas, and generally follow state regulations, Ross Lake and its tributaries currently have many additional protective regulations in effect.<sup>58</sup>

At the present time, Ross National Lake Recreation Area is managed in a manner that is both consistent with the mandate of providing recreational opportunities, and with the mandate to preserve its scenic, scientific and historic qualities, and management of this area largely parallels the Commission's mandates. In addition, recreational use of Ross Lake is similar to use of the surrounding Wilderness Areas, there are no roads within the Ross Lake NRA, most boating activity is by canoe or kayak, with some small motor boats found on the Lake and recreational uses such as camping and hiking are generally similar to those uses in wilderness areas.

**b. United States Forest Service Management of National Forest Lands Outside of the Pasayten Wilderness Area**

The large majority of land lying east of Ross Lake National Recreation Area is part of the Mt. Baker-Snoqualmie National Forest, with a small section of the land lying in the North Cascades National Park.<sup>59</sup> Most of this land, however, is also a part of the Pasayten Wilderness, leaving a smaller sliver of land in the southeastern portion of the watershed that is solely National Forest Land, with no Wilderness designation.<sup>60</sup> These lands primarily comprise a small segment of lands along Canyon Creek and Highway 20, in the southeastern part of the watershed. The United States Forest Service manages these non-wilderness National Forest lands under three main statutory schemes; the Multiple-Use Sustained-Yield Act of 1960 and the National Forest Management Act of 1976. Both of these statutes, because of their applicability to the non-wilderness designated National Forest land in the watershed, are discussed below. Finally, the review will address

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<sup>57</sup> Superintendent, North Cascades National Park, Analysis of Appropriateness of Personal Watercraft in North Cascades National Park Complex, (Determination to Prohibit Personal Watercraft), Feb. 26, 1999, Available at <http://www.nps.gov/noca/PWComplete.htm> (last visited Aug. 17, 2004).

<sup>58</sup> For a summary of these regulations, see North Cascades National Park: Fishing Regulations, available at: <http://www.nps.gov/noca/fishing-reg.htm#special> (last visited Aug. 18, 2004).

<sup>59</sup> While the National Forest lands are technically part of the Mt. Baker-Snoqualmie National Forest, they are managed as part of the Okanogan National Forest. See section IV(B), infra. See Map 1.

<sup>60</sup> See Maps 1 and 2.

how the North Cascades Scenic Highway designation affects the management of the Mt. Baker-Snoqualmie National Forest.

### **i. National Forest Lands History: The Organic Administrative Act of 1897**

The Forest Reserve Act of 1891 originally created the Mt. Baker-Snoqualmie National Forest as a Forest Reserve.<sup>61</sup> Forest Reserves created under the Forest Reserve Act were the precursor to today's National Forest System, and the first guidelines for managing these reserves were contained in the Organic Administrative Act, passed by Congress in 1897.<sup>62</sup> The Organic Act provided for the formation of reserves to "improve and protect the forest within the reservation . . . or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber".<sup>63</sup> Notably, Congress explicitly created these reserves for the purpose of securing timber for use throughout the United States. In 1907 Congress changed the name forest reserves to national forests,<sup>64</sup> and in 1960 it added outdoor recreation, stock range, wildlife and fish to the lists of resources that national forests should provide.<sup>65</sup> Therefore, presently, the National Forest System must manage National Forest lands to provide a continuous supply of timber, outdoor recreation, stock range, wildlife and fish, and to do this, the United States Forest Service aims to "to sustain the health, diversity, and productivity of the Nation's forests . . . [and] to meet the needs of present and future generations,"<sup>66</sup> by:

- 1) protecting and managing the natural resources on National Forest System lands,
- 2) researching all aspects of forestry, rangeland management, and forest resource utilization,
- 3) assisting the community and cooperating with State and local governments, forest industries, and private landowners to help protect and manage non-Federal forest and associated range and watershed lands to improve conditions in rural areas,
- 4) achieving and supporting an effective workforce that reflects the full range of diversity of the American people, and

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<sup>61</sup> 16 U.S.C. § 471 (Repealed).

<sup>62</sup> 16 U.S.C. § 475.

<sup>63</sup> 16 U.S.C. § 475.

<sup>64</sup> Act of March 4, 1907, ch. 2907, 34 Stat. 1269.

<sup>65</sup> 16 U.S.C. § 528.

<sup>66</sup> U.S.D.A. Forest Service, About Us-Mission, available at <http://www.fs.fed.us/aboutus/mission.shtml> (last modified Mar. 18, 2004).

5) providing international assistance in formulating policy and coordinating U.S. support for the protection and sound management of the world's forest resources.<sup>67</sup>

Juxtaposed against the Wilderness Act, the Forest Service Organic Act of 1897 not only provided for, but encouraged, the development of timber, outdoor recreation, range and fish and wildlife resources. As explained below, this mandate was further reinforced by the Multiple-Use Sustained Yield Act of 1960, and the National Forest Management Act of 1976.

## **ii. National Forest Lands: the Multiple-Use Sustained-Yield Act of 1960**

In 1960, Congress passed the Multiple-Use Sustained-Yield Act (MUYSA), which required the Department of Agriculture to "develop and administer the renewable surface resources of the national forests for multiple use<sup>68</sup> and sustained yield<sup>69</sup> of the several products and services obtained" from within the boundaries of national forests.<sup>70</sup> MUYSA requires the Department of Agriculture, through the United States Forest Service, to administer the National Forests in order to guarantee the continued access to the natural resources provided by the Forests for all future generations. The principles of MUYSA become part of a National Forest's managing regulations through their implementation in the land management plans required by the National Forest Management Act of 1976 (NFMA).<sup>71</sup> In drafting the resource management plans, the Secretary of Agriculture must "provide for multiple use and sustained yield of the products and services obtained . . . [from the National Forests] . . . in accordance with the Multiple-Use Sustained-Yield Act."<sup>72</sup> Activities that affect the continued functionality of national forests, such as timber harvests, must comply with MUYSA. Over time, no single use, such as mining, can operate at the total loss of other resources from a forest. Furthermore, activities like logging that remove resources from the

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<sup>67</sup> U.S.D.A. Forest Service, About Us-Meet the Forest Service, available at <http://www.fs.fed.us/aboutus/meetfs.shtml> (last modified Mar. 18, 2004).

<sup>68</sup> Defined as "the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people". 16 U.S.C. § 531.

<sup>69</sup> Defined as "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land." 16 U.S.C. § 531.

<sup>70</sup> 16 U.S.C. § 529.

<sup>71</sup> 16 U.S.C. §§ 1600-1614, see section IV(D) infra.

<sup>72</sup> 16 U.S.C. § 1604(e)(1), 16 U.S.C. § 1607.

forest must be performed in a manner that ensures that future generations will have access to those same resources.

Upon its inception, MUYSA received support from both the environmental and commodity based interests.<sup>73</sup> Over the years though, that support has waned to some degree as the actual effectiveness of MUYSA for preservation of national forest resources came into question. A common criticism is MUYSA's lack of judicially enforceable standards.<sup>74</sup> Perhaps the most widely voiced criticism, however, is that MUSYA "grants responsible agencies essentially unlimited discretion and provides little guidance for making on-the-ground management decisions".<sup>75</sup> While such discretion<sup>76</sup> could, in the abstract, lead to mining and timber harvests in those lands not designated as Wilderness Areas in the American Skagit watershed, legislation passed since MUYSA limits such activity in this area. For example, the North Cascades Scenic Highway designation, discussed below, is a prime example. Additionally, in 1976, partly in response to the criticisms raised against MUYSA, Congress passed the National Forest Management Act to "[include] substantive standards and guidelines to ensure that [USFS management practices] would be environmentally sound."<sup>77</sup>

### **iii. National Forest Lands: The National Forest Management Act of 1976**

Congress' passage of the National Forest Management Act of 1976 ("NFMA") had a large impact on how the Department of Agriculture administers the National Forest System. Congress established NFMA

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<sup>73</sup> Scott W. Hardt, Federal Land management in the Twenty-First Century: From Wise Use to Wise Stewardship, 18 Harv. L. Rev. 345, 348.

<sup>74</sup> Tony Arjo, Watershed and Water Quality Protection in National Forest Management, 41 Hastings L.J. 1111, 1116-17.

<sup>75</sup> Scott W. Hardt, Federal Land Management in the Twenty-First Century: From Wise Use to Wise Stewardship, 18 Harv. L. Rev. 345, 368.

<sup>76</sup> Challenges to the discretion granted to the United States Forest Service have been raised in court. Scott W. Hardt summarizes the case law in Federal Land Management in the Twenty-First Century. The courts concluded that while there is a broad range of discretion granted to the Forest Service, there are indeed standards in MUSYA that the Forest Service follows. For this reason, the courts are reluctant to overturn the Forest Service's decisions when they have considered other competing uses in their management decisions. Functionally, this means that the Forest Service only has to consider other uses in managing the forests, but is not required to give any minimum level of protection to any given use. Scott W. Hardt, Federal Land Management in the Twenty-First Century: From Wise Use to Wise Stewardship, 18 Harv. L. Rev. 345, 368.

<sup>77</sup> Tony Arjo, Watershed and Water Quality Protection in National Forest Management, 41 Hastings L.J. 1111, 1117.

to help create a program that extracts resources from the national forests in perpetuity.<sup>78</sup> To achieve this goal, NFMA requires three main actions by the Secretary of Agriculture.<sup>79</sup> First, NFMA requires an assessment of national forests lands, updated every ten to fifteen years, which must include an inventory of available resources in the national forests and an analysis of the demand put on those resources.<sup>80</sup> Second, NFMA requires the development of renewable resource programs that follow MUYSAs and the mandates of the National Environmental Policy Act of 1969.<sup>81</sup> These programs must be designed to ensure the continued protection of the national forests as well as the continued supply of the natural resources from the forests. Third, NFMA requires the development of a land management plan for each of the national forests.<sup>82</sup> These management plans must use an interdisciplinary approach incorporating state and local management processes to insure that the management of national forests in accordance with MUYSAs principles.<sup>83</sup> This process is designed to guarantee the continued supply of outdoor recreation, stock range, timber, watershed, wildlife and fish, and wilderness. As illustrated by the text of the statute,<sup>84</sup> NFMA designed to operates in conjunction with other existing environmental regulations to establish and maintain

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<sup>78</sup> 16 U.S.C. § 1600(2).

<sup>79</sup> On Dec. 22, 2004, after this Report had been drafted, U.S. Forest Service released a final rule that provides the framework for individual forest management plans governing the 155 national forests and 20 grasslands. It is beyond the scope of this report to analyze the effects if any of this new rule should it be implemented. According to the USFS press release, the rule establishes a dynamic process to account for changing forest conditions, emphasizes science and public involvement, and ultimately will help local forest managers provide future generations with healthier forests, cleaner air and water, and more abundant wildlife while sustaining a variety of forest uses. The USFS also states that the new rule will make forest planning more timely and cost effective, cutting the time for forest plan revisions to 2-3 years, with a comprehensive evaluation of the plan to be completed every five years to ensure it is meeting goals and objectives. Desired land conditions will be outlined in each management plan, and local managers will be held accountable for their efforts to achieve them. And land management plans under the new rule will be strategic in nature. Generally, these plans will not include specific project management decisions.

<sup>80</sup> 16 U.S.C. § 1601.

<sup>81</sup> 16 U.S.C. § 1601.

<sup>82</sup> 16 U.S.C. § 1604.

<sup>83</sup> 16 U.S.C. § 1604.

<sup>84</sup> "In developing, maintaining, and revising plans for units of the National Forest System pursuant to this section, the Secretary shall assure that such plans...provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960" 16 U.S.C. § 1604(e).

a cohesive system that will provide valuable resources for not only this generation, but generations to come.

All of the Mt. Baker-Snoqualmie National Forest lands to the east of the Ross Lake Recreation Area fall under the management of the Okanogan National Forest.<sup>85</sup> Originally implemented in 1988, and currently in the process of revision, the Okanogan National Forest's management is the main planning document for the Forest. Other documents, such as the Northwest Forest Plan,<sup>86</sup> work in conjunction with the Okanogan Forest Plan to form the comprehensive management framework under which activates are permitted.

Pursuant to NFMA,<sup>87</sup> the public will have an opportunity to participate and comment upon the new management plan, currently scheduled for release in 2006. The public comment period is a prime example of an avenue that the Commission can take to influence how the USFS manages lands in the watershed.

#### **c. The Highway 20 Corridor**

A section of the American Skagit's national forest lands located along the Highway 20 corridor lie outside of the Pasayten Wilderness. Both the United States Congress and the Washington State legislature have recognized this corridor for its natural beauty and scenic values: Congress used the passage of the Washington State Wilderness Act of 1984<sup>88</sup> to protect the lands along the corridor, while Washington used the Scenic and Recreational Highway Act of 1967 to recognize the intrinsic value of this area.<sup>89</sup> Each action was designed to protect and uphold the scenic value of the land surrounding Highway 20 in the North Skagit area. Moreover, as explained immediately below, because activities such as mining and logging would be inconsistent with the stated goals of preserve the scenic quality of the highway,

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<sup>85</sup> U.S.D.A. Forest Service, About Us, available at <http://www.fs.fed.us/r6/oka/about/history.shtml> (last modified July 2, 2004).

<sup>86</sup> The Northwest Forest Plan is a collection of "extensive standards and guidelines...that comprise a comprehensive ecosystem management system" for national forests in northern California, Oregon, and Washington. Bureau of Land Management, Record of Decision for Amendments to Forest Service and Bureaus of Land Management Planning Documents Within the Range of the Northern Spotted Owl, available at <http://www.or.blm.gov/ForestPlan/newroda.pdf> (last visited 11/10/04).

<sup>87</sup> 16 U.S.C.S. § 1604(d).

<sup>88</sup> Washington State Wilderness Act of 1984, Pub. L. No. 98-339, 98 Stat. 299 (1984).

<sup>89</sup> Wash. Rev. Code §§ 47.39.010-47.39.910.

these acts provide additional protection over forest service lands that that otherwise would be open to such activities.

In passing the Washington State Wilderness Act ("WSWA"), Congress recognized Highway 20's "remarkable scenic values" and recognized that the corridor provided a "unique aesthetic travelway through the Cascade Mountains"<sup>90</sup> that needed to be protected. Accordingly, Congress directed the Secretary of Agriculture to administer the highway corridor in a manner that would maintain the existing scenic values.<sup>91</sup>

In 1998, Congress passed the Transportation Equity Act for the 21<sup>st</sup> Century<sup>92</sup> which reauthorized the National Scenic Byways program.<sup>93</sup> This program apportions money for states to use in their own state scenic byway programs.<sup>94</sup> Washington State's legislature recognized the need to "protect and preserve the scenic and recreational resources from loss through inappropriate development",<sup>95</sup> and revised the Scenic and Recreational Highway Act of 1967<sup>96</sup> to comply with the Transportation Equity Act. Although Highway 20 is not designated a National Scenic Byway, it is part of the State's scenic and recreational highway system.<sup>97</sup> This designation qualifies Highway 20 for assistance from the federal government to help maintain the scenic beauty of this state scenic highway. We note, however, that the Department of Transportation only allocates money after a formal request for a specific program designed to enhance the scenic or recreational aspects of the scenic highway. Subsequently, expenditures along Highway 20 have not been consistent, because only a few requests have been made.

### **3. Conclusion**

The designation of a large part of the American Skagit as Wilderness areas is consistent with the Commission's twin mandates: (i) preserving scenic and wilderness values in the watershed; and (ii) promoting recreational uses of the watershed that are consistent with

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<sup>90</sup> Washington State Wilderness Act of 1984, Pub. L. No. 98-339, sec. 8(a), 98 Stat. 299 (1984).

<sup>91</sup> Washington State Wilderness Act of 1984, Pub. L. No. 98-339, sec. 8(b), 98 Stat. 299 (1984).

<sup>92</sup> Transportation Equity Act for the 21<sup>st</sup> Century, Pub. L. No. 105-178, 112 Stat. 107 (1998) (codified as 23 U.S.C. § 162 (2004)).

<sup>93</sup> 23 U.S.C. § 162.

<sup>94</sup> 23 U.S.C. § 162(b).

<sup>95</sup> 1990 Wash. Laws c.240 §1.

<sup>96</sup> Wash. Rev. Code §§ 47.39.010-47.39.910.

<sup>97</sup> Wash. Rev. Code § 47.39.020(14).

those scenic and wilderness values. In sharp contrast with the situation in Canada, on the American side of the border, with the exception of very limited grandfathered uses that preexisted wilderness designation, the Wilderness Act protections, including prohibitions on development, including road building, mining and timber harvesting, serve to protect the watershed from most of the common threats to the area's wilderness character. While providing perhaps the highest level of statutory protection available under U.S. law, the Wilderness Act's statutory protections do not mean that the watershed is free from future threats. As discussed below, pressures from increased use resulting from population growth in Washington State, as well as threats from invasive species, large scale climate change, and even the remote possibility of raising the Ross Lake Dam require continued vigilance.

## **B. THREATS TO THE AMERICAN SKAGIT**

### **1. Introduction**

As discussed in Sections II-III, above, strong federal statutory protections serve to limit the number and severity of threats to the American Skagit. Included within this area are two large Wilderness Areas, a National Recreation Area, and a Scenic Highway. Together these areas cover the vast majority of the watershed and overlay federal lands already designated as National Park lands and National Forest lands. Even with the relative strength of these statutory designations, however, threats to the integrity of the watershed still exist. For example, there is a small section of the watershed designated national forest lands in the area that lies outside of the Wilderness and Recreation Areas which is therefore open to multiple use activities such as logging. This area of the National Forest area is perhaps the most at risk area, and on the United States side of the watershed, may warrant the most attention. This section of the Review contains a discussion of the threats facing the American Skagit, including: recreational pressures; invasive species; mining; timber harvests; cross-border traffic; wildfires, and retreating glaciers.

### **2. Recreational Pressures**

#### **a. Wilderness Areas**

As discussed above, the majority of the watershed in the United States, roughly 700,000 acres, is designated Wilderness under the federal Wilderness Act. This designation prohibits commercial activities (logging, mining, residential development) that typically comprise the majority of anthropogenic threats to wild areas.

Accordingly, recreational use, and more particularly increased recreational uses comprise perhaps the greatest threat to the American Skagit. With an expected population growth in Washington State of 36 percent over the next 30 years,<sup>98</sup> and with much of this population increase likely to occur in Western Washington, The Commission can anticipate that without careful management the increasing population pressures may result in degradation of Washington's wilderness areas, including the American Skagit. Some of the many potential effects associated with increased recreational use include increased erosion and foliage damage from hiking and pack animals, higher quantities of human waste deposits, and increased habitat degradation in and around campsites.

Of course, the distribution of present and future recreational pressures depends on many factors. For example, a variety of circumstances including limited camping areas, permit requirements for overnight use, and perhaps most importantly, the western Pasayten Wilderness Area's own rugged terrain and limited trails—currently work to help shield both Wilderness Area's from overuse.

Demands for recreational activity in the more accessible areas may rise with increasing population pressures and, if access is improved, recreational pressures may increase in other more remote areas as well. It is, therefore, important to monitor the pattern of recreational use in these areas, so that appropriate steps to prevent or mitigate damage maybe taken at the appropriate time. Although the identification of these trends and future recreational use patterns is beyond the scope of this Review, we note that the Commission has already designated funds for a University of Washington study to identify major user trends, preferences, and conflicts between commercial parties and educational groups in North Cascades National Park. Information gleaned from that study will likely prove useful in assisting the federal land managers regulate future recreational uses. As noted above, **opportunities for such input include the upcoming 2006 Amendment to the General Management Plan<sup>99</sup> for North Cascades National Park and the current revision to the Okanogan Forest Plan.**

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<sup>98</sup> Washington State Department of Transportation, Washington State's Population Growth, available at <http://www.wsdot.wa.gov/planning/wtp/datalibrary/population/historicalpopgrowth.htm> (last visited Oct. 20, 2004).

<sup>99</sup> Interview with Bill Paleck, Superintendent, North Cascades National Park, in Sedro Woolley, WA (July 29, 2004).

It is also important to remember that while the Wilderness Act encourages recreational use, such uses are not without limit. The Wilderness Act's statutory language places a greater emphasis on the integrity of the wilderness area, and the maintenance of wilderness characteristics, than on sating the public's recreational desires.<sup>100</sup> Accordingly, if increased recreational use of the wilderness areas were to significantly **threaten the natural ecosystem** the land managers may close or limit access to affected areas, or certain uses.<sup>101</sup>

### b. Recreational Pressures on Non-Wilderness Areas

The vast majority of the North Cascades National Park Service Complex does not experience the high level of overuse suffered at other national parks in Western Washington such as Mount Rainier and Olympic National Park. However, concentrations of visitors at popular camp sites along Ross Lake as well as specific sites along the Highway 20 corridor are giving rise to concerns.<sup>102</sup>

For example, with its relatively easy access and some of the region's best camping, hiking and boating opportunities, Ross Lake faces the threat of overuse. Currently, because of its remote location, Ross Lake does not experience heavy motorized boat traffic. The uses of the Lake are mostly dictated by its accessibility: motorized vehicles can only access the lake through Canada by the long, rugged Silver Skagit dirt road, and small motor boats can enter at Diablo Lake and pay Ross Lake Resort to portage the boats around the dam to Ross Lake. One long-term threat to the Upper Skagit Watershed identified by several people interviewed for this Review is the potential paving of the Silver Skagit road.<sup>103</sup> To best protect Ross Lake from a serious increase in recreational use and the resulting degradation of its wild character, it is recommended that the Commission actively participate in all management plan revisions, and participate in any discussions that might lead to increased use and/or paving of the Silver Skagit

Indeed, the Commission should be involved in all decisions concerning the potential increase in recreational opportunities. the Commission can be an effective partner with the federal land managers to ensure that each decision balances the enhancement of recreational

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<sup>100</sup> 16 U.S.C. § 1131(a).

<sup>101</sup> See Daniel Rohlf and Douglas L. Honnold, Managing the Balances of Nature: The Legal Framework of Wilderness Management, 15 Ecology L.Q. 249, 278.

<sup>102</sup> Interview with Bill Paleck, Superintendent, North Cascades National Park, in Sedro Woolley, Wash. (July 29, 2004).

<sup>103</sup> Interview with Bill Paleck, Superintendent, North Cascades National Park, in Sedro Woolley, Wash. (July 29, 2004).

opportunities against potential harm to area's wilderness resources. The NPS' recent decision to ban personal watercraft on the Lake provides a good example. That decision, was based, in part, on the fact that such watercraft are inconsistent with past and current uses.<sup>104</sup>

Similarly, where areas are currently overused The Commission should work with the federal land managers to limit uses and/or mitigate injury. For example, Highway 20 serves as a major tourist attraction and serves as the major route from west of the Cascades to the Methow Valley and the towns of Twisp and Winthrop during the summer and fall. As such, it is probably not practicable to limit use of recreational areas along the Highway 20 corridor. While it may not be possible to limit traffic in this area, the Commission still has opportunities to help mitigate damage caused by visitors. For example, the Commission may grant additional financial assistance to the USFS for trail maintenance.<sup>105</sup> Improving trails helps to prevent erosion and off-trail hiking, both of which are destructive to the environment. **Therefore, the Commission should assess how it will balance its recreation and conservation mandates, and consider how its grants can best be used to mitigate the negative impacts associated with recreational use.**

### 3. Invasive Species

Invasive species<sup>106</sup> pose another significant threat to wilderness and wildlife habitat.. On a national scale, invasive species cost the United States an estimated 100 billion dollars each year, and negatively affect more than half of the species currently on the endangered species list.<sup>107</sup> On a watershed scale, each year the American Skagit faces

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<sup>104</sup> See Superintendent, North Cascades National Park, [Analysis of Appropriateness of Personal Watercraft in North Cascades National Park Complex, \(Determination to Prohibit Personal Watercraft\)](#), Feb. 26, 1999, [available at http://www.nps.gov/noca/PWComplete.htm](http://www.nps.gov/noca/PWComplete.htm) (last visited Aug. 17, 2004).

<sup>105</sup> Trail maintenance and replacement can be extremely expensive for an agency that is suffering funding cutbacks under the current Administration. For example, replacement of a popular suspension bridge at Thunder Creek (just outside of the Upper Skagit watershed in North Cascades National Park) is estimated to cost \$200,000. The floods of October 2003 caused similar damage throughout the Park complex. See Joel Connelly, [In the Northwest: What Happened to Bush's Promise About Parks?](#), Seattle Post-Intelligencer, Aug. 6, 2004, [available at http://seattlepi.nwsource.com/connelly/185067\\_joel06.html](http://seattlepi.nwsource.com/connelly/185067_joel06.html) (last visited 8/31/04).

<sup>106</sup> Defined as "an alien [a.k.a. non-native] species whose introduction does or is likely to cause economic or environmental harm or harm to human health." Exec. Order No. 13,112, 64 Fed. Reg. 6183 (Feb. 8, 1999).

<sup>107</sup> National Invasive Species Council, [What are the Impacts of Invasive Species?](#), [available at http://www.invasivespecies.gov/impacts.shtml](http://www.invasivespecies.gov/impacts.shtml) (last visited 10/21/04).

invasions by various exotic plant species that threaten the naturally existing habitat. For example, in the Ross Lake area reed canary grass continues to spread from Canada into the United States. A pilot project is underway to kill the grass with herbicide, cover the treated area with woody debris, and replant with native riparian vegetation.<sup>108</sup> Similarly, knapweed<sup>109</sup> occasionally appears in areas of the watershed.<sup>110</sup> Invasive species can cause serious damage to the natural habitat in a watershed, and if left unchecked these plants could seriously alter the landscape of the Upper Skagit watershed.

One of the Commission's strengths is its ability to respond rapidly to individual threats and to supplement funding of agencies that can respond to those threats. Therefore, in defining a long range vision and plan for achieving its goals, the Commission will be well-served to not lose sight of the value of shorter-term projects, such as funding the eradication of invasive species. Long-term goals, such as a World Heritage designation, undoubtedly play an important role in protecting the Upper Skagit. However, focusing exclusively on such long-term goals could impair the Commission's ability to contribute to day-to-day projects<sup>111</sup> that have substantial cumulative effects on the quality of the watershed.<sup>112</sup>

In a recent interview, Superintendent Bill Paleck listed invasive species control as one of the primary areas where the National Park needs

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<sup>108</sup> Interview with Bill Paleck, Superintendent, North Cascades National Park, in Sedro Woolley, Wash. (July 29, 2004).

<sup>109</sup> "Spotted knapweed is a biennial or short-lived perennial forb of the composite family. It commonly grows to 3-4 feet in height. . . . Single thistle-like, pinkish-purple flower heads reach 3/4 inch in diameter and occur at the tips of terminal or axillary stems from late June through August. . . . Spotted knapweed often attains high densities on sunny wild lands--even ones undisturbed by human or livestock activity. Knapweed tends to dominate sites at the expense of community diversity or forage production. Knapweed infestation can also increase surface run-off and sedimentation." Wisconsin Department of Natural Resources, [Spotted Knapweed](#), available at

<http://www.dnr.state.wi.us/org/land/er/invasive/factsheets/knapweed.htm> (last visited 8/24/04).

<sup>110</sup> Interview with John Newcom, District Ranger, Methow Valley Ranger District of the Okanogan National Forest, (Aug. 03, 2004).

<sup>111</sup> Historically, Congress tends to appropriate money for large-scale expensive projects that are easily visible to visitors, rather than the more mundane "day-to-day dollars" that help a park operate. Joel Connelly, [In the Northwest: What Happened to Bush's Promise About Parks?](#), Seattle Post-Intelligencer, Aug. 6, 2004, available at [http://seattlepi.nwsource.com/connelly/185067\\_joel06.html](http://seattlepi.nwsource.com/connelly/185067_joel06.html) (last visited 10/21/04).

<sup>112</sup> Interview with Bill Paleck, Superintendent, North Cascades National Park, in Sedro Woolley, WA. (July 29, 2004).

more funding.<sup>113</sup> Although the Commission's mandate recognizes the importance of not funding projects that are the responsibility of the governments of Canada and the United States,<sup>114</sup> the Commission's mandate of conserving and protecting the wilderness and wildlife habitat of the Skagit arguably justifies expenditures for the eradication of invasive species<sup>115</sup> in the same way that the Commission supplements the agencies' trail building and other programs. Therefore, by giving direct funding to the National Park Service for the eradication of invasive species the Commission could further their mandate of conserving the natural integrity of the Skagit.

In short, invasive species pose a real and immediate threat to the health of the watershed, and there exists a need for funding to help combat their incursion into the natural ecosystem. The Commission has the opportunity to make a real and immediate impact on the preservation of the Upper Skagit Watershed by providing financial assistance and support to the NPS and the USFS to help control populations of non-native species.

Accordingly, we recommend that the Commission explore the possibility of providing grants to the NPS and the USFS to prevent and fight invasive species within the American Skagit to help maintain the natural ecological diversity of this area.

#### **4. Mining in the American Skagit**

There are currently no mining claims or patents in either of the Wilderness Areas. Because under the Wilderness Act public land is withdrawn from further claims mining, and because mining is inconsistent with the preservation of the scenic nature of Ross Lake Recreation Area,<sup>116</sup> the threats related to mining is only a concern in

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<sup>113</sup> Interview with Bill Paleck, Superintendent, North Cascades National Park, in Sedro Woolley, Wash. (July 29, 2004).

<sup>114</sup> For instance, the accompanying documents clarifying the treaty include the admonishment that "the Environment Endowment Fund not be used extensively for capital-intensive projects of maintenance expenditures, which are intended to remain primarily the responsibility of the governments with jurisdiction over the lands in question." Skagit River Treaty and British Columbia-Seattle Agreement, Appendix E, Section 11, Senate Treaty Doc. 98-26, April 2, 1984.

<sup>115</sup> Skagit River Treaty and British Columbia-Seattle Agreement, Appendix D, Article I(a), Senate Treaty Doc. 98-26, April 2, 1984.

<sup>116</sup> 16 U.S.C. § 1 subchapter X part 90(c-1).

the section of the American Skagit that is neither within the Wilderness Areas or Ross Lake National Recreation Area.<sup>117</sup>

The only area currently open to mining and mining claims extends roughly along Ruby Creek and its tributaries up to Barron, in an area that is a part of Mt. Baker-Snoqualmie National Forest, and managed for timber, recreation, and natural resource extraction. Below is an evaluation of the threats the mines pose to the watershed, including a specific discussion of the Azurite Mine on Mill Creek, followed by a more general discussion of other mining claims in the watershed.

#### a. The Azurite Mine

The largest mining threat in the American Skagit is the Azurite Mine. Located on Mill Creek, a tributary of Ross Lake via Canyon and Ruby Creeks, the Azurite Mine was actively worked from 1916-1942, during which it yielded \$972,000 worth of gold ore. The extraction of gold resulted in a 41,000 ton tailings pile located just East of Mill Creek.<sup>118</sup> This tailings pile, an oxidized bright orange mass sparsely covered by vegetation, still contains trace amounts of gold, as well as arsenic, copper, and lead in the tailings that all exceed the relevant standards<sup>119</sup> of the State's Model Toxics Control Act.<sup>120</sup> Given the tailings pile's proximity to Mill Creek, and the fact that it contains a large amount of readily oxidizable sulfate minerals, the potential exists for the formation of acidic waters that will flow into the surface water of Mill Creek—thereby posing a threat to both aquatic and benthic organisms in Mill Creek-- and eventually into Ross Lake itself.<sup>121</sup> In addition, there is the potential for mobilization of the heavy metals contained within the tailings pile, with resulting toxic impacts on the biologic communities in the watershed.

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<sup>117</sup> Mining is incompatible with the Wilderness Act and the National Recreation Area designations, which both require the management of lands for recreational and aesthetic qualities. See supra sections II, III.

<sup>118</sup> Fritz E. Wolff et al., Inactive and Abandoned Mine Lands-Azurite Mine, Whatcom County, Washington, Washington State Department of Natural Resources Open File Report 2002-2003, (Aug., 2003).

<sup>119</sup> Id.

<sup>120</sup> Wash. Admin. Code § 173-340.

<sup>121</sup> Surface water analysis shows that only copper and zinc registered above Washington's surface water standards in water tested at the foot of the mill tailings pile. Fritz E. Wolff et al., Inactive and Abandoned Mine Lands-Azurite Mine, Whatcom County, Washington, Washington State Department of Natural Resources Open File Report 2002-2003, (Aug., 2003).

The USFS is currently investigating the necessity of a federal Superfund<sup>122</sup> cleanup at the Azurite Mine. In the summer of 2004, the USFS conducted an initial investigation to quantify the effects of the tailings on the watershed, as well as the necessity and possible methods of cleanup. This investigatory process will be followed by a determination of what, if any, action is necessary for a cleanup.<sup>123</sup> We recommend that the Commission should stay informed of the status of this investigation, and potentially participate as a concerned party if the cleanup moves past the initial investigation towards the selection of a remediation strategy and design.

The interests and strategy of the Commission in being involved in this process would depend on the nature of the proposed cleanup, and would involve a informed balancing of the Commission's goals and mandates in influencing the cleanup design. For example, any cleanup of the Azurite mine would require the fortification of the road historically used to access the mine. Currently, road access to the Azurite mine area is limited as the access road originally used for mining has deteriorated since the mine's closing, in large part because of the heavy rains during 2003.<sup>124</sup> Any reopening of this access road would be likely to stir controversy. On the one hand, reopening of the road might increase recreational use. There is already expressed interest by road advocates who want the area opened up for use by All Terrain Vehicles (ATVs). Increased use of ATV's in this area could run counter to the Commission's goals because it could lead to greater erosion, noise, and air pollution. And, the reopening this access road could set precedent for road use in the area, which has the potential to lead to ATV access in an area where there currently is none. On the other hand, a major mine cleanup operation is not feasible without road access to the site.<sup>125</sup> Therefore, while remediation of the Azurite mine tailings may have a positive effect on the environment, there is the possibility that doing so would lead to other detrimental impacts on the same area namely, through increased use of off road vehicles in the area after remediation is completed

At a minimum, therefore, the Commission should stay informed regarding the potential Superfund cleanup of the Azurite Mine complex, and consider opportunities to participate as a concerned

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<sup>122</sup> 42 U.S.C. §§ 9601-28.

<sup>123</sup> Interview with John Newcom, District Ranger, Methow Valley Ranger District of the Okanogan National Forest, (Aug. 03, 2004).

<sup>124</sup> Id.

<sup>125</sup> Id.

party if the cleanup moves past the initial investigation toward a the selection of a remediation strategy and design.

### **b. Other Mining Claims**

In addition to the inactive Azurite Mine complex, there are approximately 90 active patented and unpatented<sup>126</sup> mining claims within the American Skagit staked in the Mill Creek, Slate Creek, and Canyon Creek drainages.<sup>127</sup> Some of these claims are being assessed or worked with hand tools or small portable suction dredge equipment, while others largely lie dormant. Because these mining operations are relatively small in scale, they do not pose a significant threat to the water quality in the watershed at this time.<sup>128</sup> Furthermore, as gold prices fell, the amount of mining in this area slowed as it became unprofitable for many mines to operate.<sup>129</sup> However, a future rise in gold prices could once again lead to increases in local mining activity and consequent threats to water quality. Because these mining claims are small and have little negative impact on the watershed, they should not be at the top of the Commission's priority list of opportunities to significantly advance protection in the Upper Skagit watershed. Moreover, because of the management directives that the USFS operates under, this portion of the watershed is currently open to further exploration and new mining claims. So, even if the Commission were to purchase mining patents from their current owners, another citizen could easily prospect in the watershed and establish another mining claim, leading to possible establishment of new mining claims and operations. If the Commission nonetheless wanted to complete such a purchase, it could initiate do so by contacting the individual claim owners and negotiating a purchase price for the claim.<sup>130</sup>

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<sup>126</sup> In general under the 1872 Mining Act, there are two types of mining claims: patented and unpatented. Unpatented claims are based on the asserted discovery of a valuable mineral and require performance of at least \$100 worth of labor and improvements each year, or the payment of a \$100 claim maintenance fee. CITE. If these conditions are not met, the claim is null and void, the owner no longer has the right to mine that site. Patented claims, on the other hand, require no such annual maintenance or expenditure. Once established, the patentee and his/her heirs own a patented claim—essentially fee simple title--without condition. 30 U.S.C. §§ 21-54.

<sup>127</sup> Id. For a list of active and inactive claims in the area and their owners see Appendix L

<sup>128</sup> Interview with John Newcom, District Ranger, Methow Valley Ranger District of the Okanogan National Forest, (Aug. 03, 2004).

<sup>129</sup> See Appendix K for a historic table of gold price fluctuations

<sup>130</sup> See Appendix L for a list of claim owners

Due to the relatively small scale, limited geographic scope, and benign nature of the current mining activity, we recommend that the Commission concentrate its financial assets in other areas. The Commission should, however, keep itself informed of any shifting political or economic winds resulting in increased mining activity, and should maintain relations with federal land managers to stay informed and ready to participate in any processes (such as commenting on Plans of Operations, or Clean Water Act permits) that might result in increased mining.

**5. Timber Harvests in the U.S. Portion of the Upper Skagit Watershed**

Under the current regulatory schemes it is highly unlikely that American Skagit will be commercially logged. The combination of designations of federal lands as Wilderness Areas, a National Recreation Area, and the North Cascades Scenic Highway designations protect the large majority of timber in this region. The small area of national forest lands along the highway 20 corridor that lies outside of the North Cascades Scenic Highway designation, comprises late succession growth forest, is an unlikely candidate for logging.

However, the Bush Administration has expressed an interest in relaxing protections under the Endangered Species Act,<sup>131</sup> undoing protections of roadless areas,<sup>132</sup> and has expressed a general reluctance to extend wilderness area protection to new areas<sup>133</sup> despite bipartisan and local support for such proposals. Although the Administration's proposed changes and directions do not directly affect the American Skagit, they do demonstrate the current political climate in the United States and illustrate the need for The Commission to closely monitor administrative and legislative developments that may affect the watershed.

#### **a. Logging in the Wilderness Areas**

Through its entrenched statutory bans on destructive commercial activities, the Wilderness Act prohibits commercial activities in much of

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<sup>131</sup> For example, the Bush Administration recently proposed delisting the Marbled Murrelet from the Endangered Species List. This would have the effect of lowering protection of Marbled Murrelet habitat in the Pacific Northwest, which, although primarily coastal, does extend inland about 50 miles. Marbled Murlets need this inland habitat to nest. [See Jeff Barnard, Federal Officials Move Toward Dropping Protection for Seabird](#), Seattle Times, Sept. 2, 2004, at B1.

<sup>132</sup> This rule is currently open for comment, [see 36 C.F.R. 294; 69 Fed. Reg. 42636 \(July 16, 2004\)](#).

<sup>133</sup> Alex Fryer, [Wild Sky Bill hits House Roadblock](#), Seattle Times, July 21, 2004 at B1.

the watershed.<sup>134</sup> This ban sweeps across all commercial activities, with a sole exception made for the managing agency to carry out their management mandate in a wilderness area.<sup>135</sup> In addition, because logging is a commercial activity that destroys the natural scenic and recreational values that the Wilderness Act protects, it is also prohibited in all designated Wilderness Areas because of the mandate to preserve the scenic qualities of wilderness areas. Therefore, there is little if any threat from commercial logging in the Stephen Mather and Pasayten Wilderness Areas.

#### **b. Logging in the Ross Lake NRA**

Although not covered by the Wilderness Act, Congress has effectively protected the Ross Lake National Recreation Area from logging. The North Cascades Act of 1968 created the Ross Lake National Recreation Area to preserve and protect the outdoor recreation and scenic integrity of the Upper Skagit River and the land surrounding it.<sup>136</sup> In that act, Congress directed the Secretary of Interior to administer the recreation area to "best provide for public outdoor recreation benefits and conservation of scenic, scientific, historic, and other values contributing to public enjoyment."<sup>137</sup> Because logging would serve to degrade the scenic integrity rather than preserve it, it is therefore prohibited.<sup>138</sup> By putting an exception for tree removal into the statute, Congress has indicated that this action would otherwise run contrary to the intent of the statute.

#### **c. Logging in National Forest Lands Outside of the Wilderness Area and the NRA**

Outside of the established Wilderness and Recreation Areas there exists a section of National Forest land surrounding Highway 20 that would normally be subject to logging, but is protected by the designation of the North Cascades Scenic Highway in the Washington State Wilderness Act.<sup>139</sup> Under the authority of the Washington State Wilderness Act,<sup>140</sup> activities such as mining and logging are permitted

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<sup>134</sup> See section II, supra.

<sup>135</sup> See section II, supra.

<sup>136</sup> 16 U.S.C. § 1 subchapter X part 90(c-1).

<sup>137</sup> 16 U.S.C. § 1 subchapter X part 90(c-1).

<sup>138</sup> Further evidence that logging is not allowed within the National Recreation Area can be gleaned from the inclusion of a Congressional exception that explicitly allows for removal of trees from the Ross Lake National Recreation Area for the express purpose of protecting power lines, towers, and equipment. *Id.*

<sup>139</sup> For a discussion of the North Cascades Scenic Highway designation, see section IV(E).

<sup>140</sup> Washington State Wilderness Act of 1984, Pub. L. No. 98-339, 98 Stat. 299 (1984).

only if they do not compromise the existing scenic values of the corridor.<sup>141</sup> This requirement has had the practical effect of preventing logging along the Highway 20 corridor.<sup>142</sup> The Okanogan Forest Plan also reflects this legislative direction by prohibiting scheduled timber harvests in the corridor.<sup>143</sup>

Finally, a small section of the American Skagit lies outside of the three previously discussed statutory protections. While logging in this area is not directly prohibited by any land management statute, the likelihood that commercial logging would occur in this area of the National Forest is highly unlikely. This portion of the National Forest consists of late successional old growth trees, the logging of which would likely raise significant public opposition.<sup>144</sup> This opposition would likely be both political and legal in nature, using tools such as the Endangered Species Act<sup>145</sup> to block logging endeavors in an effort to protect species such as the Spotted Owl. The effort needed to overcome this public opposition would likely make it infeasible to attempt logging in this relatively small portion of the Forest. In addition, this area is also in inventoried roadless status.<sup>146</sup>

In sum, the vast majority of the American Skagit watershed is highly protected from logging activities that could adversely affect the quality of the watershed.

Because under the current scheme there is little chance of any logging taking place in this portion of the watershed, we recommend that the Commission not put its first priority on expending time or funds to prevent U.S. logging, unless there is a change in circumstances.

## **6. Cross-Border Traffic**

In addition to the mandates already noted in this Review, the Commission was also been tasked with facilitating the establishment, if feasible, of a cross-border trail system in the watershed, effectively linking Canadian and American recreational resources.<sup>147</sup> To date, the

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<sup>141</sup> *Id.*

<sup>142</sup> Interview with John Newcom, District Ranger, Methow Valley Ranger District of the Okanogan National Forest, (Aug. 03, 2004).

<sup>143</sup> *Id.*

<sup>144</sup> Interview with John Newcom, District Ranger, Methow Valley Ranger District of the Okanogan National Forest, (Aug. 03, 2004).

<sup>145</sup> 16 U.S.C. §§ 1531-1599.

<sup>146</sup> *Id.*

<sup>147</sup> Skagit River Treaty and British Columbia-Seattle Agreement, Appendix D, Article I(g). Senate Treaty Doc. 98-26, April 2, 1984.

Commission has expended little effort in this regard, and recent drug trafficking activity and increased post-September 11 border security concerns suggest that this may be a difficult mandate for the Commission to achieve.

For example, a Heightened security at traditional border crossing areas such as I-5 has led to increased smuggling of drugs, money, and weapons through more remote and less patrolled areas<sup>148</sup> and a recent influx in illegal cross border drug trafficking in the North Cascades Park Complex and the Pasayten Wilderness may lead to changes in border crossing procedures within these boundaries. A similar situation led to increased restrictions on border crossings in Glacier National Park, and could possibly lead to similar restrictions by the U.S. Customs and Border Protection (CBP) in the North Cascades area.<sup>149</sup> Should CBP decide to place tighter restrictions on cross border traffic in this area it is highly likely that border crossings by park visitors would still be permitted. In an interview for this Review, Superintendent Bill Paleck expressed his willingness to work with CBP should they choose to change the current policies in order to maintain the amicable relationship between the North Cascades Complex and CBP while maintaining public access to the Recreation Area. The primary goal of this cooperation would be to tighten security along the border while creating a legal means for legitimate visitors to cross the U.S.-Canadian border. The Commission should remain aware of the situation and work with federal land managers to enhance to the extent feasible cross-border visitor experience consistent with legitimate security and law enforcement concerns.

## **7. Wildfires**

Wildfires, and wildfire management, play an integral role in the health of forests. For approximately the last one hundred years the predominant fire management practice was the use of immediate and direct suppression on every fire in order to put it out as quickly as possible, thus preventing large acreages of forest from burning.<sup>150</sup> This technique has resulted in the detrimental situation that exists today: the existence of large stands of dead, dry, and very dense

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<sup>148</sup> Joel Connelly, In the Northwest: Smugglers Hiking New Routes in Parks, Wilderness, Seattle PI, August 11, 2004, available at [http://seattlepi.nwsource.com/connelly/185698\\_joel11.html](http://seattlepi.nwsource.com/connelly/185698_joel11.html) (last visited 10/22/04).

<sup>149</sup> Interview with Bill Paleck, Superintendent, North Cascades National Park, in Sedro Woolley, WA (July 29, 2004).

<sup>150</sup> Id.

forests that are at serious risk for turning into catastrophic forest fires.<sup>151</sup>

Due to the ineffectiveness of this previous fire management strategy, a new three part strategy is now being used to manage forests in a healthier and safer manner. This strategy includes: 1) immediate and direct suppression fires, 2) containment fires, and 3) fires for resource benefits. As stated previously, fires fought with immediate and direct suppression are attacked when they are at their smallest in order to extinguish them before they spread. This strategy is used primarily when fires are near homes and buildings or when fire fighting resources are stretched too thin and proper resources would unavailable for a larger firefight. Fires fought under the containment strategy generally reach a much greater size than immediate and direct suppression fires. Under this regime, land managers and fire fighting personnel examine the fire and establish boundaries to which they will let the fire reach. Firefighters will attempt to keep the fire from escaping those boundaries, while allowing it to burn naturally inside of the designated area. Finally, fires managed for resource benefits burn freely with minimal, if any, boundary restrictions being established. This combined fire management system leads to healthier forests because the fires help to thin the dead and dying trees, as well as the brush that has accumulated on the forest floor. Instead of amassing large amounts of fuel that could erupt into an uncontrollable fire, various fires of any given season consume the fuel and actually serve to prevent catastrophic fires.

Fires are managed with special care in Wilderness Areas. Consistent with the Wilderness Act,<sup>152</sup> the NPS manages fires within their wilderness areas "in such a way as to protect natural and cultural resources and to minimize the lasting impacts of the suppression actions."<sup>153</sup> In other words, the NPS uses the minimum impact requirements when fighting fires in designated wilderness areas within their boundaries. The nature of the North Cascades Park Complex requires the institution of all three types of fire suppression activities, but efforts to suppress fires are made with the intent of leaving the wilderness area in as natural and undisturbed condition as it was before the fire suppression.

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<sup>151</sup> Id.

<sup>152</sup> Section 4(d)(1) of the Wilderness Act states that "such measures may be taken as necessary in the control of fires, insects and diseases."

<sup>153</sup> U.S. Department of Interior, Management Policies 2001, 68.

Though also acting under the requirements of the Wilderness Act, the USFS manages fires within the Pasayten Wilderness in a slightly different manner. Under the Forest's Fire Use Plan when a fire within the Pasayten Wilderness is first identified, the Forest undertakes an analysis to determine whether the fire will be suppressed or allowed to burn for resource benefits.<sup>154</sup> In practice, the Forest Service allows most fires to burn uninhibited in wilderness areas because those areas are supposed to function with as little human interference as possible. Generally, the only fire suppression that takes place within the boundaries of the Pasayten is on fires that threaten to spread into areas where naturally burning fire is not acceptable such as critical habitat for endangered species or toward Manning Provincial Park in Canada.<sup>155</sup>

Unfortunately, due in large measure to Washington's current drought conditions and a recent beetle infestation,<sup>156</sup> which has created large stands of dead trees and underbrush that burn very easily, many areas of the Upper Skagit watershed forests (whether comprising the North Cascades Park Complex or National Forest lands) are at an increased risk of burning in a large-scale wildfire. Two of the highest risk areas are the Pasayten Wilderness and much of the North Cascades Scenic Highway corridor.<sup>157</sup>

Although mechanical thinning of portions of the dead trees would lessen this risk of fire because the Pasayten Wilderness is managed as a natural ecosystem, the Forest currently has no plans to mechanically thin the dead trees within its boundaries.<sup>158</sup>

Proper fire management is an essential component of the health of a forest, and both management agencies in the U.S. portion of the Upper Skagit utilize the tri-part management scheme designed to promote healthy forests. This area is not one where The Commission needs to focus their financial efforts to protect the Upper Skagit,

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<sup>154</sup> Interview with John Newcom, District Ranger, Methow Valley Ranger District of the Okanogan National Forest, (Aug. 03, 2004).

<sup>155</sup> *Id.*

<sup>156</sup> Increased populations of Pine Bark Beetles, Citrus-long Horned Beetles, Douglas-fir Beetle, and Spruce Beetles have killed thousands of acres of forest, leaving them susceptible to fire. Washington State Department of Natural Resources, [Washington Forest Health Issues in 2003](#), (last visited 8/25/04).

<sup>157</sup> Interview with John Newcom, District Ranger, Methow Valley Ranger District of the Okanogan National Forest, (Aug. 03, 2004).

<sup>158</sup> Any thinning that does occur in the National Forests will likely be concentrated near the so-called forest-urban interface—in order to prevent loss of home and of life. *Id.*

because both the NPS and USFS aptly manage wildfires in the Upper Skagit watershed.

## **8. Potential for Raising Ross Dam as Outlined in the Treaty and Associated Agreement**

Though currently unlikely, there still exists the possibility that the parties could agree to, or Seattle could take unilateral action to raise to the Ross Dam. Setting aside for the moment the possibility that the parties would agree to such an action, the Treaty provides for Seattle's unilateral action to raise the Dam in the event of default by British Columbia on its obligation to deliver power to the City of Seattle. Specifically, Article II(1) of the Treaty and Section 9 of the Agreement give Seattle the right to unilaterally raise Ross Dam to a height of 1725.0 feet (the level the dam was to be raised to prior to the negotiation of the Treaty) if British Columbia fails to deliver power to Seattle and an arbitration tribunal finds that British Columbia is in material breach of the Treaty.

Importantly, Congress specifically granted that Seattle could exercise this right "without regard to any United States law, decision, regulation or order which might be argued as limiting or negating this authority."<sup>159</sup> Arguably, in the event of a default and subsequent arbitration panel finding, Seattle is effectively shielded from any legal challenge to raising the Dam.<sup>160</sup> Although the likelihood of such a

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<sup>159</sup> Treaty between Canada and the United States of America relating to the Skagit River and Ross Lake, and the Seven Mile Reservoir on the Pend d'Orielle River, Article II(1)(b). Senate Treaty Doc. 98-26, April 2, 1984.

<sup>160</sup> The intent of this provision is reflected in the House Executive Report accompanying the treaty. For instance, Senators Gorton and Evans noted the extensive litigation surrounding Seattle's original application to the Federal Energy Regulatory Commission to amend its existing license for Ross Dam to raise it to 1725.0 feet, and noted that the extensive hearings and litigation surrounding this application "vindicated its right under United States law to complete its project and enhance the existing power output of the Ross Project by a substantial margin," and this provision was necessary to preserve the right to immediately raise the dam should British Columbia default, without the need to redo the substantial administrative and judicial review. See Joint Statement of Slade Gorton and Daniel J. Evans, U.S. Senators from the State of Washington on the Skagit River-Ross Dam Treaty, Senate Exec. Rept. 98-37 at 8; see also Letter of Submittal from the Department of State to the President regarding Skagit River-Ross Dam Treaty, Senate Exec. Rept. 98-37 at 4 (summarizing the administrative and judicial review process undergone as a result of Seattle's original application to raise Ross Dam, and noting that Seattle therefore has a right to raise the dam in a "effective and timely fashion," if British Columbia defaults, because Seattle's right to construct the "High Ross Dam has been confirmed in the past by the International Joint Commission, United States Regulatory agencies, and in the courts of the United States after exhaustive litigation.")

default may be low, particularly in light of the potential consequences--the raising of the Dam and consequently the flooding of a large part of the remaining Skagit Valley--it may be appropriate for the Commission to continue to monitor the economics of power generation and delivery from Canada, and, if necessary, explore avenues to ensure that these deliveries continue. The Treaty itself is in force until 2066, and, although past and present political and social forces make the raising of the Dam unlikely,<sup>161</sup> those conditions could change dramatically in the next 62 years.

## **9. Glacial Retreat**

Glacial runoff provides a substantial portion of water for the creeks that run into Ross Lake and the Skagit River, producing up to 40 percent of stream runoff in the summer and fall months,<sup>162</sup> providing much of the water necessary for agriculture ventures, hydroelectric power, and salmon runs.<sup>163</sup> The past 150 years have seen the glaciers in this area shrink, with approximately a 44 percent reduction in size.<sup>164</sup> Recent studies of the glaciers show that they are still retreating, and are not recovering much of their mass during even the harsh winter months.<sup>165</sup> If the glacial retreat continues at its current rate the Upper Skagit watershed will eventually suffer a significant reduction in flow which could have large impacts on this region, including threatening the salmon that utilize the Skagit River for spawning grounds.

The retreat of glaciers in the Upper Skagit region is obviously not something that the Commission can prevent, but the potential severity of the problem merits its mention in this Review. However, the Commission could establish an educational program to inform the public of this impending situation, and the likely consequences.

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<sup>161</sup> Shortly after ratification, one author noted that "it is inconceivable that British Columbia would ever trade its Skagit Valley for money or power after fighting such a long, hard battle to win its protection," and further noted that British Columbia currently had an energy surplus, a "critical factor which made the idea of selling energy to Seattle on contract more politically acceptable." Kirin, *supra* note at 78, 92.

<sup>162</sup> Rob Burrows & John Riedel, Monitoring Glacier Change in the North Cascades, National Park Service Natural Resource Year in Review 2002, available at [http://www2.nature.nps.gov/YearinReview/yir2002/03\\_I.html](http://www2.nature.nps.gov/YearinReview/yir2002/03_I.html), (last visited 10/22/04).

<sup>163</sup> Id.

<sup>164</sup> Id.

<sup>165</sup> Interview with Bill Paleck, North Cascades National Park Superintendent, July 29, 2004.

*“Wilderness to the people of America is a spiritual necessity, an antidote to the high pressure of modern life, a means of regaining serenity and equilibrium”*

*— Sigurd Olson*

## **IV. REPORT ON CANADIAN ISSUES**

### **A. OWNERSHIP AND MANAGEMENT OF THE CANADIAN SKAGIT**

Almost all of the land in the Canadian Skagit is publicly owned land<sup>166</sup>. An analysis of the legal mechanisms that could be used to protect the Skagit requires a brief discussion of how land is owned and managed in British Columbia.

In contrast to the extensive federal land holdings in Washington State and the American Skagit, over 90% of British Columbia's land is owned by the province<sup>167</sup>. This is reflected in the Canadian Skagit, where, except for a small amount of privately owned land in Sunshine Village, the entire Canadian Skagit is provincially owned and administered<sup>168</sup>.

In addition to owning most of the Canadian Skagit, the Provincial Government may legislate quite broadly about it. It has the jurisdiction to legislate about the use and management of both private and provincial lands. The government of Canada's jurisdiction to legislate about such lands is limited -- but it can legislate about such things as fisheries, international waters and migratory birds, environmental assessments of projects with a federal connection, navigation, and "Indians and lands reserved for Indians".

It should be noted that the question of ownership of public land in the Canadian Skagit, and throughout B.C., is complicated by the fact that much of that land is within the traditional territories of various First Nations. The extent of aboriginal rights and title over public lands remains undetermined, because treaties were never concluded with the First Nations that traditionally used the Skagit. Currently, these issues are the subject of both treaty negotiations and litigation. As a result, the provincial Crown's ownership and management of public

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<sup>166</sup> There is a small area of privately owned properties at Sunshine Village in the Upper Sumallo drainage, comprising 3.63 km<sup>2</sup>, discussed below. At one time lots 221 and 222 near Ross Lake within what is now Skagit Valley Park belonged to Seattle City Light, and lot 1103 was a flooding reserve for the High Ross. Ken Farquharson believes these have been acquired by BC Parks, but that should be confirmed.

<sup>167</sup> Only 5.7% of BC is privately owned, and almost all the rest is provincially owned - - with a few exceptions such as lands reserved for Indians and federally-controlled canals, railways, harbours, etc. See C. Sandborn, *Green Space and Growth*, Commission on Resources and Environment, Victoria, 1996, p. 5.

<sup>168</sup> The "Canadian Skagit" here refers to the Skagit River watershed north of the US border.

land in the Skagit may be subject to aboriginal rights and title of an as yet undetermined extent.

## **B. OVERVIEW OF THE LAND MANAGEMENT FRAMEWORK**

### **1. Protected Lands**

The provincially-owned lands in the Canadian Skagit are comprised of:

- 2 Class A Provincial Parks,
- four Ecological Reserves,
- a Recreation Area.
- Unprotected Crown lands (Provincial forest)

#### **a. The Class A Parks: Skagit and Manning**

The majority of the Canadian Skagit watershed is protected in two "Class A" Provincial Parks -- Skagit Valley Provincial Park and E.C. Manning Provincial Park. (See Map.) Management and development of Class A parks is constrained by the *Park Act*. Commercial logging, mining and hydro electric development are not permitted within such parks.<sup>169</sup> And Government can only issue park use permits for activities related to natural resources<sup>170</sup> if the use is *necessary to preserve or maintain the recreational values* of the park.<sup>171</sup>

##### **E.C. Manning Provincial Park**

E.C. Manning Park was first established in 1941 and presently spans 70,844 hectares directly to the south of the Cascade Recreation Area.

#### **b. Skagit Valley Provincial Park**

Skagit Valley Provincial Park was originally established in 1970 as a small 1500 hectare provincial park. Three years later, the provincial government reclassified the park as a recreation area but added

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<sup>169</sup> Although in 1995 the Act was amended to allow certain non-park uses, such as grazing and hay cutting, to continue where those uses existed at the time the park was created.

<sup>170</sup> Or an interest in land.

<sup>171</sup> See ss. 8(2) and 9(2). Emphasis added. Note that there are also Class B and C Parks. Class B Parks permit a broader range of activities and uses – the test for issuing a park use permit for activity in such a park is more lenient than for Class A. For Class B parks, a park use permit must not be issued respecting an interest in land or natural resources unless the permit "is not detrimental to the recreational values of the park." See ss. 8(4) and 9(4) of the *Park Act*. Class C Parks are identical to Class A Parks in terms of the test that must be met before a park use permit may be issued. The difference is that Class C Parks must be managed by a local board appointed by the minister.

32,000 hectares to create the Skagit Valley Recreational Area. This choice was made to accommodate existing tenures and encumbrances. In 1996, the majority of the recreational area (approximately 28,000 hectares) was again reclassified and declared a Class A park.

The remainder of the former Skagit Valley Recreation Area was reclassified as vacant Crown land, along with a small portion of Manning Park and other lands, and made available for potential mineral exploration and development. This latter area includes the Silverdaisy/26 Mile Creek area (the donut hole). See below.

#### **c. The Recreation Area: Cascade Recreation Area**

Cascade Recreation Area encompasses approximately 11,900 hectares adjacent to the northwest portion of E.C. Manning Park.<sup>172</sup>

Recreation areas are created by regulation (order in council) and are defined as Crown land reserved or set aside for public recreational use. They differ from parks in that the minister has greater discretion in issuing park use permits in a recreation area. Recreation areas can be designated under the *Mineral Tenure Act*, which provides for the exploration of minerals. As noted above, in 1973 Skagit Valley Provincial Park was enlarged, but reclassified as a recreational area to allow for resource development.

Currently, in accordance with the Protected Areas Strategy and strategic land use planning processes, all recreation areas are being evaluated to determine whether they should be "upgraded" to full protected area status (e.g. Class A park) or returned to integrated resource management lands.

### **2. Management Plans for the Two Parks and the Recreation Area**

Parks and recreation areas are managed in accordance with "management plans". These plans are essentially administrative manuals setting out objectives and strategies relating to conservation, development, interpretation and operation of the park or recreation area for a period of 5 to 10 years. Management plans are not binding

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<sup>172</sup> The Recreation Area was first established in 1987. In 1999, the Snass River drainage portion of the recreation area was upgraded to Class A park status and added to E.C. Manning Park.

on the government, but they indicate government's intentions for management<sup>173</sup>.

**a. Skagit Valley Provincial Park Management Plan Highlights**

- Recognizes the important role of the Skagit Valley Provincial Park as a component of an internationally significant group of protected areas within the U.S. and Canada and recommends cooperation with federal, state and provincial jurisdictions.
- Recognizes that the purpose of the park is to maintain a primitive atmosphere, in contrast to more developed protected areas in the region.
- Requests that the Ministry of Transportation and Highways maintain the Silver-Skagit Road in its present gravel condition with improvements limited to safety.
- Restricts park facility developments along the Skagit River to maintain a special feature river experience recognizing the river's provincial heritage status.
- In conjunction with the United States National Park Service, proposes to develop visitor services at Ross Lake including an international visitor centre.
- Provides park and natural history interpretive programs working closely with First Nations and local interest groups and the United States National Park Service staff.
- Proposes to acquire the private land and mineral claims in the provincial park when they become available.<sup>174</sup>

A single draft management plan encompasses both Manning Park and the Cascade Recreation Area, but the draft plan does not yet have final approval.

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<sup>173</sup> Note that their approval is not contingent on the presence of funding to implement management actions identified in the plan. See Ministry of Water, Land and Air Protection, "About BC Parks", online:

[http://wlapwww.gov.bc.ca/bcparks/facts/about\\_prk.htm](http://wlapwww.gov.bc.ca/bcparks/facts/about_prk.htm) (accessed August 6, 2004).

<sup>174</sup> BC Parks, Lower Mainland District, *Skagit Valley Provincial Park Management Plan* (January 1998) p. 4.

**b. Draft E.C. Manning Provincial Park and Cascade Recreation Area Management Plan – Key Recommendations:**

- Reclassifying Cascade Recreation Area to Class A park status
- Supporting a First Nation traditional use inventory
- Working with other interests to protect sensitive viewing areas and restore roadside disturbances
- Preparing an ecosystem plan
- Prohibiting off-road motorized recreation activities except snowmobiles in a confined zone.<sup>175</sup>
- The draft plan identifies the continued increase of visitors to the area as a goal, balanced with careful management of resources with an emphasis on protecting natural and cultural values.

**c. Ecological Reserves: Skagit River Forest, Skagit River Cottonwoods, Skagit River Rhododendrons and Ross Lake**

Four ecological reserves are located within the Skagit Valley Provincial Park boundary. These reserves total approximately 300 hectares and were created to protect examples of a Coastal Douglas fir stand,<sup>176</sup> a black cottonwood stand,<sup>177</sup> red rhododendron habitat<sup>178</sup> and ponderosa pine habitat.<sup>179</sup>

Ecological reserves enjoy the most stringent ecological protection of all the categories of protected areas. The purpose of the *Ecological Reserve Act* is to reserve Crown lands for ecological purposes – e.g., to protect habitat for endangered species and unique geological phenomena; to protect important representative examples of natural ecosystems; and reserve areas for scientific research and study<sup>180</sup>.

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<sup>175</sup> Environmental Stewardship Division, *Draft E.C. Manning Provincial Park and Cascade Recreation Area Management Plan* (March 2002), p. 8.

<sup>176</sup> Skagit River Forest Ecological Reserve #21.

<sup>177</sup> Skagit River Cottonwoods Ecological Reserve #89.

<sup>178</sup> Skagit River Rhododendrons Ecological Reserve #106.

<sup>179</sup> Ross Lake Ecological Reserve #22.

<sup>180</sup> *Ecological Reserve Act*, R.S.B.C. 1996, c.103, s. 2. Ecological reserves generally have management statements that are less detailed than park management plans.

### **3. Unprotected Crown Lands**

A substantial portion of the Canadian Skagit watershed lies outside any protection scheme. There are two key unprotected segments:

1. land along the western and northern edges of Skagit Valley Provincial Park (which includes the area surrounding the panhandle of Manning Park); and
2. land at the juncture of Skagit Valley Provincial Park, E.C. Manning Provincial Park and Cascade Recreation Area, including the Silverdaisy Mountain area (the “donut hole”).

Both segments contain timber tenures and are managed in accordance with the provincial forestry regime. There are numerous mineral tenures that are managed in accordance with the BC mining regime. Within the ‘donut hole’ an additional management framework – the Silverdaisy Integrated Management Plan – overlays the general forestry and mining regimes. Both the general regimes and the Silverdaisy Plan are described in more detail below.

### **4. The BC Forestry Regime**

#### **a. Tenures**

Under the *Forest Act*, the Provincial Government grants tenure rights to parties to conduct forestry on Crown lands. Tenure agreements are the vehicle through which the Crown grants, and defines the scope of, specific rights to use Crown forest land and its resources. Among other things, they prescribe the compensation payable for the tenure, and the responsibilities of the tenure holder. Timber tenure agreements often overlap with a variety of other tenures, permits, and licences for activities such as hunting, guiding, grazing, water use, and energy and mineral exploration and development.<sup>181</sup>

A number of forestry tenures have been granted in the Canadian Skagit, and they are enumerated and discussed in the “Threats” section below.

#### **b. Control of Annual Allowable Cut**

The amount of timber that can be harvested on Crown lands is controlled by setting an “Annual Allowable Cut” (AAC). Every five

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<sup>181</sup> Cortex Consultants, “A Quick Reference: British Columbia’s Timber Tenure System”, Resource Tenures and Engineering Branch, BC Ministry of Forests, 2001.

years<sup>182</sup> the Provincial Chief Forester determines the AAC for each Timber Supply Area (TSA), thus defining the maximum amount of timber that will be available for harvesting<sup>183</sup>. In setting the AAC, the Chief Forester must specifically consider numerous factors, including: the rate of timber production that is sustainable; environmental factors; implications to British Columbia of alternative rates of cut; and economic and social objectives expressed by government<sup>184</sup>.

When he sets the AAC, the Chief Forester is independent of the political process and is not to be directed by Government on his calculation. During this review, members of the public have an opportunity to examine the data and timber supply analysis, and provide public comment.

The Canadian Skagit is located in the Fraser TSA<sup>185</sup>. (See map) In 1999, the AAC for the Fraser TSA was set at 1.27 million cubic metres of wood, a decrease of about 18% compared to the previous AAC. The Chief Forester's 2004 review maintained the AAC at 1.27 million cubic metres.<sup>186</sup>

### **c. Forest Practices Regulation**

Forest practices such as logging, road and bridge building, and silviculture are regulated by the *Forest and Range Practices Act (FRPA)*, which is in the process of replacing the old *Forest Practices Code*.

Central to these laws is the requirement that forest companies operate according to government-approved operational plans. Under the Code, these operational plans included detailed Forest Development Plans (FDPs) and site-specific Silviculture Prescriptions. Under the new FRPA, those required plans are in the process of being replaced by far more general Forest Stewardship Plans (FSPs).

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<sup>182</sup> Generally AAC is determined every five years, unless the re-determination date is formally postponed under s. 8 of the Forest Act.

<sup>183</sup> Ministry of Forests, *Fraser Timber Supply Area: Public Discussion Paper* (December 2003), p. 2, online:

<<http://www.for.gov.bc.ca/hts/tsa/tsa30/tsr3/pdp.pdf>> (accessed August 3, 2004) [Public Discussion Paper].

<sup>184</sup> *Forest Act*, R.S.B.C. 1996, c. 157, s. 8.

<sup>185</sup> And is administered by the Chilliwack Forest District Office.

<sup>186</sup> Documents related to that review can be found online at <<http://www.for.gov.bc.ca/hts/tsa/tsa30/docs.htm>>.

FRPA will continue to set out some specific requirements for those carrying out forest practices (e.g., protected minimum riparian reserve zones). However the requirements in the new law are far fewer, and less specific. The relevant features of the new regime will be discussed in more detail in the section entitled 'Threats' below.

## **5. The BC Mining Framework**

The primary pieces of legislation governing mining within BC are the *Mineral Tenures Act* and the *Mines Act*.

The *Mineral Tenures Act* governs the granting of mineral exploration and exploitation rights in the province.<sup>187</sup> Generally, mineral tenures can be obtained either by locating and recording a claim or by acquiring title from an existing holder. Responsibility for the administration of the *Mineral Tenure Act* lies with the Mineral Titles Branch of the Ministry of Energy and Mines. British Columbia is divided into mining divisions, which are in turn grouped into regions. There is a Gold Commissioner's office for each region, with one appointed Gold Commissioner appointed for each mining division. A Chief Gold Commissioner supervises all Gold Commissioners, who have the direct responsibility of maintaining the records of mineral titles within their mining divisions.

### **a. Characteristics of mineral tenures**

Legal title to minerals in British Columbia can be held under four different types of tenure. The key features of each type of tenure are outlined in the following table.<sup>188</sup>

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<sup>187</sup> *Land Act*, R.S.B.C. 1996, c. 245, s. 50.

<sup>188</sup> For more information on mining and mineral titles in B.C., see [www.em.gov.bc.ca/Mining/Titles/Publications/web-book/b\)chap1.htm](http://www.em.gov.bc.ca/Mining/Titles/Publications/web-book/b)chap1.htm)

Type of Tenure	Key Features
<b>1. Freehold</b>	<ul style="list-style-type: none"> <li>Administered by the Land Title Branch of the Ministry of the Attorney General.</li> <li>Generally included within other grants such as railway settlement grants or grants to private surface rights.</li> <li>Extent of the right to minerals is stated on the Certificate of Title and may include all minerals or be restricted to particular minerals.</li> <li>Not subject to the provisions of the <i>Mineral Tenure Act</i>.</li> </ul>
<b>2. Crown granted mineral claims</b>	<ul style="list-style-type: none"> <li>These are historical tenures. No new Crown granted mineral claims were issued after 1957 and grant holders must pay an annual mineral tax to maintain the title.</li> <li>Administered by the Resource Revenue Branch of the Ministry of Energy and Mines and the Land Title Branch of the Ministry of the Attorney General.</li> <li>Grant may specify the minerals that are included. Where the grant does not so specify, it includes those minerals defined in the <i>Mineral Act</i> in force when the grant was issued. Also can include some surface rights.</li> <li><i>Mineral Tenure Act</i> generally does not apply.</li> <li>Any work carried out on a claim subject to the provisions of the <i>Mines Act</i>.</li> </ul>
<b>3. Title to Located Mineral and Placer claims; and 4. Mining and Placer Leases</b>	<ul style="list-style-type: none"> <li>Administered by the Mineral Titles Branch of the Ministry of Energy and Mines.</li> <li>Tenure holder receives the right to all minerals or placer minerals as defined in the <i>Mineral Tenure Act</i> that were available at the time of location or have since become available under the terms of the Act.</li> <li>All provisions of the <i>Mineral Tenure Act</i> apply.</li> <li>Work carried out on a claim or lease subject to the provisions of <i>Mines Act</i>.</li> </ul>

The holder of a mineral or placer claim has the right to use the surface of the claim for mining purposes only, as no surface rights *per se* are included in the claim<sup>189</sup>.

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<sup>189</sup> Therefore, the holder of a mineral or placer claim does not have the right to live on the claim, or to build a dwelling on the claim. To carry out work on a claim or

To maintain Crown granted titles, it is only necessary to pay an annual mineral tax.<sup>190</sup> Other types of claim are valid for one year at a time. To maintain these claim, the holder must annually pay the prescribed recording fee and either (1) record the exploration and development work completed on that claim during the current anniversary year; or (b) pay cash in lieu of the work.<sup>191</sup>

There are a number of mineral claims in the unprotected portion of the Canadian Skagit, as discussed below, under Threats.

Mining activity itself is regulated under the *Mines Act*, through a system of permits and inspections. This legislation regulates mines during exploration, development, construction, production, closure, reclamation and abandonment.<sup>192</sup> The *Mines Act's Health, Safety and Reclamation Code* regulates health and safety standards, siting of mines and reclamation requirements.<sup>193</sup> The *Mines Act* is primarily administered by the Chief Inspector of Mines, who is appointed by the Minister of Energy and Mines.

## **6. The Integrated Plan for the Donut Hole – The Silverdaisy Integrated Management Plan**

The Silverdaisy Mountain Area (aka "the Donut Hole"), at the junction of Manning and Skagit Provincial Parks and the Cascade Recreation Area is an area of prime concern because of the risk that both minerals and timber within it will be developed. Several cutblocks have already been logged in the area. The area also contains numerous mineral tenures, and has long been the subject of interest for mineral development.

In 1996 certain lands from the former Skagit Valley Recreation Area and Manning Park were returned to vacant Crown land status in the Donut hole, as part of a land tradeoff that involved establishment of

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lease that disturbs the surface by mechanical means, a Notice of Work under the *Mines Act* is required. Further, written approval must be granted prior to commencement from the District Inspector of Mines.

<sup>190</sup> *Mineral Tax Act*, R.S.B.C. 1996, c. 291, s.2. A mineral tax is a tax levied on mine operators, and all companies or individuals who operate a mine in the Province must annually file a Mineral Tax Return for each mine.

<sup>191</sup> The relevant values can be found in the *Mineral Tenure Act Regulation*, B.C. Reg. 297/88.

<sup>192</sup> *Mines Act*, R.S.B.C. 1996, c. 293, s. 2.

<sup>193</sup> *Ministry of Energy and Mines Code – Health, Safety and Reclamation Code for Mines in British Columbia*. Online: <<http://www.em.gov.bc.ca/Mining/Healsafe/mxready/mxcode01.htm#The%20Microsoft>> (accessed August 12, 2004).

Skagit Provincial Park and Cascade Recreation Area. The decision was primarily intended to provide certainty to the mining industry and to allow planning for mineral development to proceed. Subsequently, Cabinet requested that the Ministry of Environment, Lands and Parks, the Ministry of Forests and the Ministry of Mines develop an integrated management plan for these Crown lands surrounded by Manning and Skagit Valley Parks.

The Silverdaisy Integrated Management Plan was developed for the purpose of ensuring that forestry, fish, wildlife and recreation concerns would be addressed by any development plans. The plan applies to the area known as the 'donut hole' and encompasses 3 subsections:

1. Land removed from the original Skagit Recreation Area to be reclassified as vacant Crown land (approximately 3000 hectares) (Silverdaisy and 26 Mile Creek)
2. Skagit Provincial Forest land (approximately 1300 ha).
3. Additional land that was removed from E.C. Manning Park, to be reclassified as vacant Crown land (approximately 1500 ha).

Currently, there are forestry tenures in all three subsections. For more information on the tenure holders, see page   below.

Notably, the plan includes a provision acknowledging Cabinet's decision to return the land removed from the Skagit Valley Recreation Area to park status once the Ministry of Energy and Mines determines that mineral exploration and development are complete. The same provision also raises the possibility that the remaining area governed by the plan (*i.e.*, the Skagit Provincial Forest and the land removed from E.C. Manning Park) may be considered for park status "upon completion of both mineral exploration and development as well as forest development."<sup>194</sup> However, it should be noted that the provincial government is not legally bound to adhere to these provisions.

Government has never given the draft Integrated Management Plan for this area the force of law by formalizing it as a "Higher Level Plan". However, the plan should be persuasive to government officials making decisions in the Skagit.

Highlights of the Silverdaisy Integrated Management Plan by Sector

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<sup>194</sup> Ministry of Energy and Mines, Ministry of Environment, Lands and Parks, Ministry of Forests & Land Use Co-ordination Office, *Silverdaisy Integrated Management Plan*, October 1998, p. 15.

<b>Sector</b>	<b>Highlights</b>
<b>Mining</b>	<ul style="list-style-type: none"> <li>If mineral tenures are allowed to lapse and a significant undeveloped resource or mineral potential remains, the Ministry of Energy and Mines will create an opportunity for industry to reacquire a single tenure package within the planning area.</li> </ul>
<b>Recreation</b>	<ul style="list-style-type: none"> <li>Recreational features to be recognized in resource extraction proposals</li> <li>Impacts from any development activity on the Skagit River Trail (which borders the plan area within the Skagit Valley Park) should be avoided</li> <li>Visual disturbances from any development activity should be avoided.</li> </ul>
<b>Forestry</b>	<ul style="list-style-type: none"> <li>No timber harvesting in subsection 1 (land removed from the Skagit Valley Recreation Area). Development and extraction restricted to mineral purposes.<sup>195</sup> <i>Note. There are currently forest tenures in this subsection.</i></li> <li>Commercial timber harvesting permitted in subsections 2 and 3 (i.e., the land that was already Provincial Forest in 1996 and the land removed from E.C. Manning Park).</li> <li>Visual quality objectives should be accounted for.</li> </ul>
<b>Fish and Wildlife</b>	<ul style="list-style-type: none"> <li>Management of spotted owls in accordance with the Spotted Owl Management Plan. This constrains both forestry and mineral exploitation and development.</li> <li>Management of grizzly bears according to the North Cascades Grizzly Bear Reintroduction Project and the Grizzly Bear Conservation Strategy.</li> <li>Subject to the availability of funding, inventory and mapping of wildlife species and habitat in the area to be completed by the Ministry of Environment, Lands and Parks (now the Ministry of Water, Land and Air Protection).</li> </ul>

<sup>195</sup> This restriction was a result of Cabinet's decision to return the area that had been removed from the Skagit Valley Recreation Area to park status once mineral exploration and development were complete.

<b>Road Access</b>	<ul style="list-style-type: none"> <li>• B.C. Parks to issue park use permits ensuring the right of vehicular access to the plan area through E.C. Manning Park. This includes permits to upgrade road facilities if required for mining development purposes.</li> <li>• Tenure holders responsible for maintenance of the existing road system and for any new road construction required for harvesting, mineral exploitation or mining purposes.</li> </ul>
<b>First Nations</b>	<ul style="list-style-type: none"> <li>• Plan area lies within asserted traditional territories of the Nlaka'pamux and Sto:lo First Nations.</li> <li>• Plan intended to be without prejudice to the positions taken by any parties in treaty negotiations and aboriginal rights and title claims.</li> <li>• First Nations issues to be addressed by each agency through its operational and approval processes.</li> </ul>

## 7. Privately Owned Lands

There is a small amount of privately-owned land in the Canadian Skagit. This is composed of 3.63 km<sup>2</sup> of private land at Sunshine Village in the Sumallo River drainage. This land consists of recreational properties, with a population of about 160 people. This area lies within the jurisdiction of the Fraser Valley Regional District<sup>196</sup>.

It is beyond the scope of this paper to go into the intricacies of the legislation governing Regional District land use. However, if changes in development are proposed on lands within the Regional District, The Commission may be able to challenge them, using the tools available for dealing with local governments. A good summary of those tools is found in *The Smart Growth Guide to Local Government Law and Advocacy*, found on the West Coast Environmental Law Association website <http://www.wcel.org>; and in *The Smart Growth Toolkit* found at <http://www.smartgrowth.bc.ca>

The Commission should monitor the Regional District's plans and legislation, to keep apprised of potential changes in the status of those

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<sup>196</sup> At one time lots 221 and 222 near Ross Lake within what is now Skagit Valley Park belonged to Seattle City Light, and lot 1103 was a flooding reserve for the High Ross. Ken Farquharson believes these have been acquired by BC Parks, but that should be confirmed.

lands (e.g., proposals for more housing development, construction of buildings for water extraction development, etc.).

West Coast Environmental Law Association offers funding to hire private lawyers to represent nonprofit groups on environmental issues, and The Commission , or an allied non-profit group, could potentially obtain legal representation to deal with proposals before the Regional District. Call 1-800-330-9235 for more information.

## C. THREATS TO THE CANADIAN SKAGIT

### 1. Forestry

Logging, roadbuilding and other forestry activities can negatively impact the conservation objectives of The Commission. Forestry development can eliminate critical habitat for the spotted owls and grizzly in the Skagit. It can cause stream sedimentation and habitat destruction that could reduce the Skagit's threatened Bull Trout population, and affect other fish. In addition, it forestry can displace other plant and animal species, cause soil erosion, landslides and degradation of water quality.

Given the number of timber tenures within the area and the current trend toward deregulation of the BC forestry industry, forest operations are clearly a potential threat to Skagit conservation values. Below is a discussion of the forest tenures that exist in the Skagit, and a discussion of how the current regulatory regime may exacerbate the potential threat that those tenures may pose.

#### a. The Kinds of Tenures Held in the Canadian Skagit<sup>197</sup>

Government has granted the following types of forest tenures in the Canadian Skagit:

##### i. Forest Licence (FL)

A Forest License (FL) guarantees the licensee a volume-based right to timber somewhere in a Timber Supply Area. In other words, the licensee has a right to harvest a certain volume, but not necessarily in a particular area. However, general areas known as "chart areas" are designated within the TSA where the licensee can operate. Licensees are responsible for creating operational plans for forestry, carrying out those plans, building roads, and reforesting cut areas. Because FLs

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<sup>197</sup> The BC provincial government is undertaking fundamental changes to the provincial forestry law framework. The information in this section reflects the most current information available at the time of writing.

are generally periodically replaced<sup>198</sup>, companies are effectively given long-term rights to an equivalent volume of timber.<sup>199</sup>

## **ii. BC Timber Sales – Timber Sales Licence<sup>200</sup>**

Timber Sales Licences (TSLs) are often sold to small operators. These licences are administered by BC Timber Sales, a government agency. When it sells TSLs, government keeps a number of responsibilities that lie with the forest company under major licences. The successful bidder on this type of licence is not responsible for planning the operations, but merely for following the government's plans for that sale. Government also takes responsibility for building and maintaining roads, and for replanting the area. TSLs generally cover smaller geographic areas than FLs or Timber Sales Licences (TSLs).

## **iii. Major Timber Sales Licence (TSL)**

TSLs with an AAC of more than 10,000m<sup>3</sup> are classified as 'major licenses'. A major TSL conveys the right to annually harvest timber within a TSA, in accordance with cutting permits. Licensees are responsible for planning, protection and reforestation activities. Major TSLs have a term not exceeding 10 years and are replaceable every 10 years.<sup>201</sup>

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<sup>198</sup> Although there is also a non-replaceable type of Forest Licence.

<sup>199</sup> West Coast Environmental Law, *Forest Act – Timber Tenure: British Columbia Guide to Watershed Law and Planning*. Online:

<<http://www.bcwatersheds.org/issues/water/bcgwlp/o12-1.shtml>> (accessed July 30, 2004) [Guide to Watershed Law and Planning].

<sup>200</sup> Forest Service of British Columbia, *BC Timber Sales*, Ministry of Forests, 2003.

For more information, see [www.for.gov.bc.ca/bcts](http://www.for.gov.bc.ca/bcts).

<sup>201</sup> *Ibid.* Note that the new s. 24.2 of the *Forest Act* turns some major TSLs into FLs.

Specific Tenures currently held in the Upper Skagit area From the Fraser TSA map,<sup>202</sup> a minimum of 11 licences have been identified in the Upper Skagit region. The current licensees that correspond with these licence numbers, however, are not all correctly identified by the map legend. Rather, Erik Nelson of the Chilliwack Forest District has identified the current licensees as follows:<sup>203</sup>

<b><i>Licence Number</i></b>	<b><i>Licensee</i></b>	<b><i>Volume</i><sup>204</sup></b>
A20432	BCTS	
A63954	BCTS	
A19203	Interfor FL	168,612 m <sup>3</sup>
A63956	BCTS	
A20477	Interfor Major TSL	6,250 m <sup>3</sup>
A19208	Canadian Forest Products Ltd. FL	58,707 m <sup>3</sup>
A63956	BCTS	
A23710	BCTS	
A63955	BCTS	
A19201	Teal Cedar Products Ltd. FL	351,880 m <sup>3</sup>
A20542	Tamihi Logging Co. Ltd. FL	56,264 m <sup>3</sup>

TSLs in the Canadian Skagit are administered by BC Timber Sales in Chilliwack<sup>205</sup>. Other licences are administered by the Chilliwack Forest District office.

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<sup>202</sup> Forest Service of British Columbia, *Fraser Timber Supply Area – Forest Licensee Operating Areas*, Ministry of Forests (2003), online: <[http://www.for.gov.bc.ca/ftp/dck/external/!publish/web/gis/plotfiles/chart/Licensee\\_Operating\\_Areas\\_Overview.pdf](http://www.for.gov.bc.ca/ftp/dck/external/!publish/web/gis/plotfiles/chart/Licensee_Operating_Areas_Overview.pdf)> (Accessed July 30, 2004).

<sup>203</sup> Personal communication. July 29, 2004.

<sup>204</sup> Ministry of Forests, *TSA AAC, Apportionment and Commitments*, Ministry of Forests, 2004. Online: <<http://icw.for.gov.bc.ca/ftp/HTH/external/!publish/Apportionment/Fraser.pdf>> (Accessed August 3, 2004).

<sup>205</sup> BC Timber Sales, Chinook Business Area, Chilliwack. The Timber Sales Office provides administration, management and planning services for the Business Areas.

Logging has been proceeding in the donut hole area, and more is planned for the future. The tenures in the Canadian Skagit mean that there could be eventually be substantial logging in the future.

However, a number of licence tenures in the Canadian Skagit are being returned to government, opening up the opportunity to more easily transfer them into protected area status, if The Commission acts to seize this opportunity. See "The Long Term Solution", below, for discussion.

On the other hand, if the tenures being returned are not put into protected status, a substantial percentage of the returned licences will be handed over to BC Timber Sales<sup>206</sup>, which has a widespread reputation for poor forestry on the tenures it administers<sup>207</sup>.

#### **a. An Exacerbating Factor – The Weakening of Forest Practices Laws**

If logging continues in the Canadian Skagit, a concern arises because provincial regulation of forestry has recently been substantially weakened. The new *Forest and Range Practices Act* (FRPA) is shifting the regulatory approach to a so-called 'results-based' regime – a regime that will be fully implemented when a final set of forest practices regulations are brought into force on December 31, 2005.<sup>208</sup> The new regime has been criticized for its singular focus on economic objectives, to the virtual exclusion of environmental values. A brief overview of the changes highlights the ways in which continued forestry activity, particularly within the 'donut hole', may not be reconcileable with The Commission's objective of protecting the Skagit watershed.

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<sup>206</sup> Major licencees are being required to return approximately 20% of their cutting rights, province-wide. Half of those returned rights will be returned to woodlots, community forests and First Nations. And half will go to BC Timber Sales to sell. Personal communication, Graham Archdekin, BC Timber Sales.

<sup>207</sup> Forest Practice Board audits and investigations have often shown that forestry operations under BC Timber Sales tend to have a worse environmental record than that of major licensees. For more information, contact Mark Haddock, Forest Practices Board member.

<sup>208</sup> There are rumours that this date may be delayed up to two years.

## **Key Changes under New Forest Practices Legislation<sup>209</sup>**

### **i. Less Information in Forestry Plans.**

Site-level plans are no longer reviewed or approved by the Forest Service or wildlife officials. Forest Development Plans (FDPs) are replaced with Forest Stewardship Plans, which are more general in nature and are not subject to the same content requirements as FDPs were. For example, unlike FDPs, Forest Stewardship Plans will not have to show where specific cutblocks will be located – making it difficult for conservationists to identify where there may be specific threats to specific species, streams, etc. In addition, a company will have to conduct fewer assessments than formerly, before a plan is approved. The absence of precise information will eliminate or limit opportunities for issue identification and comment, both by government staff and the public.

### **ii. Reduction in Protection of Environmental Values.**

The district manager no longer has the general statutory obligation to reject a proposed plan if it does not adequately conserve environmental resources<sup>210</sup>. Under the new regime, plans *must* be approved unless the Minister of Forests (or district manager) determines that the plan's identified results or strategies are inconsistent with vague objectives in the Act or landscape-level plans. Moreover, the *Government Actions Regulation* identifies a number of non-timber values and prohibits the Minister from taking action to protect those values unless:

- doing so would not 'unduly reduce the supply of timber' from BC forests;
- the action is consistent with all other objectives, including objectives related to the economically viable supply of commercial timber;
- the action is so important that it outweighs the cumulative impact on the capacity of a forest company to be 'vigorous, efficient and world competitive'.

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<sup>209</sup> This summary is based on the more extensive summary in West Coast Environmental Law, "Timber Rules: Forest Regulations Lower Standards, Tie Government Hands and Reduce Accountability" (February 2004), online: <[http://www.wcel.org/deregulation/Timber\\_Rules.pdf](http://www.wcel.org/deregulation/Timber_Rules.pdf)> (accessed August 3, 2004).

<sup>210</sup> A power the manager had under the former s. 41 of the *Forest Practices Code Act*.

### **iii. Standards Ultimately Determined by Industry.**

While some of the standards from the old Forest Practices Code will serve as default requirements, companies can propose an alternative “result” or “strategy” in their plans, so long as it meets the broadly worded government objectives. The generality of the wording of the government objectives – combined with the primacy given to economic values in the new regime -- means that the plan requirements approved under the new regime may well be lower than those under the former *Forest Practices Code*.

The government’s own Forest Practices Board has pointed out that many of the “results” that companies must define in their forest plans will not be measureable – and therefore will be unenforceable.

### **iv. Reduced Enforcement Staff.**

Government staff have been cut by more than one-third in the last three years, so government has far less capacity to enforce environmental laws. For example, 800 positions have been eliminated in the Ministry of Forests in the last three years. Such staff cuts have not only taken place in the Ministry of Forests, but also the Ministry of Water, Land and Air Protection and the Ministry of Energy and Mines.

The result is severe understaffing of government regulators. On average each B.C. Forest Service employee is now responsible for 18,000 hectares of forestland, an area equal to 45 Vancouver Stanley Parks. In the U.S., National Forest Service employees are responsible on average for an area equivalent to five-and-a-half Stanley Parks<sup>211</sup>.

### **v. Companies Less Likely to be Found Liable for Environmental Damage.**

Companies will be far less likely to be penalized for causing environmental damage. Despite the generality of Forest Stewardship Plans (FSPs), the company can use compliance with its own FSP as a defence, if it is charged with causing environmental damage. Moreover, the definition of ‘damage to the environment’ is now restricted<sup>212</sup> to specified events that “fundamentally and adversely alter an ecosystem.”

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<sup>211</sup> Ben Parfitt, *Axing the Forest Service*, Sierra Club of Canada publication, December, 2004

<sup>212</sup> By section 3 of the *Forest Planning and Practices Regulation*

Also, under the new legislation, companies for the first time will be able to escape administrative penalties if they used "reasonable care" – even if they broke the rules.

#### **vi. Reduced Opportunity for Public Input.**

While Forest Development Plans under the Forest Practices Code were put out for review every one or two years, the basic term for Forest Stewardship Plans is 5 years and may be extended to 10 years. Moreover, the restrictions on actions to protect environmental and recreational values discussed above tie the hands of decision makers to such an extent that public input may have limited impact.

### **2. Mining**

Mining development has the potential to have enormous negative impacts on the Canadian Skagit. Mine development can have some of the most serious impacts on wilderness of all types of development. Open pit mines can scar the landscape, and destroy substantial habitat. Acid mine drainage, a common problem in BC, and has decimated entire fisheries in places like the Tsolum River. Construction of roads and transmission lines can scar the landscape, disrupt wildlife, and cause destructive sedimentation of streams.

There are 162 current staked mineral claims<sup>213</sup> in the donut hole area. These are all owned by Imperial Metals Corporation of Vancouver. In addition there are 8 historically claimed Crown grants<sup>214</sup> in the donut hole.<sup>215</sup> No mining claims in the Cascade Recreation Area are on Ministry of Energy and Mines files, although Recreation Areas can be designated by Cabinet to allow for the exploration of minerals, and there are numerous mining claims directly east of the Recreation Area<sup>216</sup>. To see the geographic distribution of mineral claims, please refer to the map in Appendix L.

A portion of the Imperial Metals claims relate to an ore body known as "The Giant Copper". This body was mined in 1936-37, and again in

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<sup>213</sup> Type 3 claims in the above table.

<sup>214</sup> Type 2 in the above table. Current ownership of the Crown granted claims can be obtained by doing a land title search through the New Westminster Land Title Office, or through the Mineral Resource Revenue Branch.

<sup>215</sup> Personal communication, Ian Webster, BC Ministry of Energy and Mines. See the tenure map and mineral tenure report and other information on mineral claims in appendices.

<sup>216</sup> See section 23, Mineral Tenure Act. Information on claims comes from personal communication, Ian Webster, BC Ministry of Energy and Mines. He mentions one surveyed lot exists on the western margin of the Recreation Area, as well.

1941 and 1947. It has a large body (45.4 million tons) of ore containing gold, silver, copper, molybdenum, uranium and other metals. The characteristics of the rock here are similar to a deposit in Australia which has turned into an extraordinarily large deposit. This deposit appears to be suitable for open pit mining (because part of the ore is near the surface) as well as underground mining. There is another ore body with over 15 million tons of ore containing gold, copper and silver<sup>217</sup>.

A number of factors might lead to development of mining in the near future. World demand for copper and molybdenum is extremely high right now. Molybdenum prices have risen five-fold recently. In addition, the current provincial government was elected promising to re-energize mining in the province. The government has recently enacted a number of changes to the regulatory and tax framework to encourage mining investment and development<sup>218</sup>. As a result, the mining industry has nearly doubled exploration spending since 2001, and it is predicted that the trend will continue.

Although no attempt has been made to develop a mine in the donut hole over the past forty years, this sharp increase in provincial mining activity could cause the Skagit claims – including the claims that could lead to open-pit mining --to be developed. In addition, the government's political commitment to fostering mining could make it difficult to persuade government officials to take actions that could be interpreted as contrary to these high-level objectives.

### **3. Water Extraction**

Water extraction surfaced as a concern in early 2003. At that time, Rota Development applied to the provincial government for a water licence to extract 288,000 gallons of spring water/day from nine feeder springs of the Sumallo River, a Skagit tributary, for the industrial bottling of water. Rota Development had recently purchased all outstanding shares of Sunshine Valley Development Inc., the previous landowner in this area. In response to the application, concerns were expressed by members of THE COMMISSION, Trout

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<sup>217</sup> See the Appendix on Mining claims. Other information is from personal communication, Ian Webster.

<sup>218</sup> These changes include new incentives for mining development within provincial taxation system and improved geoscience capabilities with new maps and geophysical information. Ministry of Energy and Mines, "B.C. mining exploration nearly doubles in two years" (May 20, 2004), online: [http://www2.news.gov.bc.ca/nrm\\_news\\_releases/2004EM0014-000430.htm](http://www2.news.gov.bc.ca/nrm_news_releases/2004EM0014-000430.htm) (accessed August 12, 2004).

Unlimited, government officials, the public, the media and the Fraser Valley Regional District Board of Directors.

***In November 2003 government issued Rota a water extraction licence<sup>219</sup> authorizing them to extract 60,000 gallons/day from the springs. It is unknown at this time whether Rota, in light of this reduced volume, will pursue their plans for a water bottling facility in the Sunshine Valley. The Commission could monitor possible construction plans for such a facility being built on private lands, and potentially challenge such plans with the Fraser Valley Regional District, as well.***

***For a full listing of the water licences that have been issued or are being processed in British Columbia, contact Land and Water British Columbia Inc<sup>220</sup>.***

Other threats

As in the US Skagit, overuse by recreationists and invasive species pose threats to the Canadian Skagit, and can be dealt with by The Commission collaborating with Provincial Park and other officials, in much the same way as described in the US portion of this Review.

## **D. TOOLS FOR PROTECTING THE CANADIAN SKAGIT**

### **1. Status Quo Tools to Protect the Canadian Skagit**

#### **a. Overview of the Toolbox**

The Canadian project team has comprehensively surveyed the legal tools that are currently available to protect the conservation and other values in the Canadian Skagit Valley. Below you will find a discussion of the myriad of legal tools that could potentially be utilized.

In reviewing these tools, we have concluded that they are mostly mechanisms that, at best, would mitigate the potential effects of logging, mining, water extraction and other activities. These tools will be time-consuming for the Commission to use, and at the end of the day do not offer anything near the level of protection that Protected Area status would offer. That is why we have concluded that the Priority Action for the Commission should be to pursue the long term

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<sup>219</sup> Water licence C118258.

<sup>220</sup> Land and Water British Columbia Inc. is a provincial Crown corporation that manages the allocation of Crown land and water resources. For more information, see <http://lwbc.bc.ca/>.

solution of obtaining Protected Status<sup>221</sup> for key unprotected lands in the Skagit.

However, Government may decide not to extend Protected Status to additional lands. In that case, the Commission will have to rely upon the toolbox of current legislation and policy, in order to achieve its mandate. Below is a discussion of the current tools that the Commission could use to protect the conservation and other values of the Canadian Skagit Valley. By vigorously utilizing all of the tools discussed, the Commission could likely mitigate the impact of development in the Valley. In addition, vigorous use of these tools could raise the profile of the Skagit, and thereby contribute to the ultimate goal of extending Protected Status to the rest of the Canadian Skagit.

### **i. Who Could Use the Tools Discussed Below?**

As you will see below, there are numerous ways in which the Commission could use the law and participate in land/ resource management processes. It may want to do this relying on individual Commissioners and staff. In most cases, Canadian Commissioners would have legal standing to participate in the processes as individuals, acting at the Commission's request. However, because Commission members have limited hours to spend on the Commission activities, and staff support is extremely limited, it would be difficult for the Commission to identify key issues and opportunities, assess their relative importance, and proceed with intervening in all the relevant processes, many of which are complex and time-consuming.

The legal and policy processes are simply too numerous, complex and ever-changing to allow the Commission to effectively pursue all of them, by relying upon staff and voluntary Commissioner action. Therefore, the Commission would likely have to contract with grantees to pursue the land and resource management processes discussed. This could be done in a one-off approach, as the Commission decides on which processes are the most important to pursue at a particular time, and give grants to individuals to pursue a specific process (e.g., to document and seek designation of Old Growth Management Areas; to participate in the public process responding to a proposed Forest Stewardship Plan).

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<sup>221</sup> The equivalent of Class A Park status. However, protective designation might be called something different than a Class A Park, because of provincial government reluctance to expand formal Protected Areas further, since the province has already exceeded the goal it set in 1991 of establishing 12% of the province in Protected Areas.

However, it may be difficult for the Commission to judiciously distinguish those processes which should be pursued from those which shouldn't. An individual given a grant to participate in one process may not have a broad enough background and overview of the issues in the Skagit to do a good job. And, during the life of an individual grant, the process being utilized may be superseded by a new process that is actually of more significance.

## **ii. An Environmental Monitor – The “Skagit Keeper”**

If the Commission wants to participate in a comprehensive and effective way in land/resource decision-making, the Commission should consider hiring an individual to act as an “Environmental Monitor”, or “Skagit Keeper”. Taking direction from the Commission, the Skagit Keeper could act as a “watchdog” over industrial activity in the Canadian Skagit, to ensure compliance with the law. The Skagit Keeper could also keep track of the various land/resource management processes and other tools discussed below, and ensure that the Commission’s information and views are put forward. The Skagit Keeper could also work to raise the profile of the Skagit, and to promote ultimate designation of additional Protected Areas<sup>222</sup>.

There are numerous examples of such environmental monitors that have been highly successful, including over 100 Waterkeeper organizations that exist worldwide. The Puget Soundkeeper monitors industry compliance with pollution laws in Puget Sound. Recently, an experienced environmental prosecutor/fisherman<sup>223</sup> has been named the Fraser River Riverkeeper, to monitor compliance with government regulations on the River, and work for protection of the Fraser River.

Ideally, the “Skagit Keeper” environmental monitor would have a strong background in land and resource management and law, advocacy skills, knowledge of forest ecosystems, and no conflicts of interest. Potential candidates include former employees of B.C. Parks, former civil servants, West Coast Environmental Law, Sierra Legal Defence Fund, EAGLE, land trusts, and conservation groups.

- Until the rest of the Canadian Skagit acquires Protected Area status, the Commission could hire (perhaps in partnership with a like-minded group) a Skagit Keeper to:
  - utilize existing legal tools to protect the Skagit;
  - “watchdog” industrial compliance with environmental laws;

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<sup>222</sup> Or their equivalent.

<sup>223</sup> Vancouver lawyer Doug Chapman

- participate in land/resource management processes on behalf of the Commission; and
- raise the profile of the Skagit and of the need to designate additional Protected Areas in the Valley

## **2. General tools to Protect the Canadian Skagit**

Below are some of the general tools that could be used to protect Skagit values from adverse impacts. Later, we will discuss tools that are industry-specific.

### **a. Fisheries Act**

The *Fisheries Act*<sup>224</sup> is one of Canada's strongest pieces of environmental legislation. Provisions of the Act could be applied to forestry operations, mining, water extraction, and other activities. The Act protects fish and fish habitat from damaging activities<sup>225</sup>. Protected 'habitat' includes spawning grounds and nursery, rearing, food supply and migration areas.<sup>226</sup>

The Act contains a number of tools that can be used to protect fish habitat:

- The Act prohibits the alteration of fish habitat<sup>227</sup>. For example, logging, mining, and water extraction activity that alters fish habitat is prohibited.
- The Act makes it an offence to deposit a substance that is deleterious to fish into waters into waters frequented by fish<sup>228</sup>. 'Deleterious substances' include such things as sedimentation caused by logging, acid mine drainage from mining operations, oil and fluid spills from machinery, and any other substance with a deleterious effect on fish. The Act is occasionally used to prosecute particularly bad logging practices that have caused sedimentation. However, industries like mines are not prosecuted as long as they are within pollution limits set by government permits (e.g., a provincial pollution permit<sup>229</sup>).

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<sup>224</sup> R.S.C. 1985, c. F-14.

<sup>225</sup> The Act regulates fisheries, and applies to all fish habitat and water bodies relevant to a commercial, sport, or aboriginal fishery in Canada.

<sup>226</sup> on which fish depend directly or indirectly in order to carry out their life processes. See *B.C. Guide to Watershed Law and Planning*.

<sup>227</sup> *Fisheries Act*, s. 35.

<sup>228</sup> Except as authorized by the Minister or regulations. See *Fisheries Act*, s. 36.

<sup>229</sup> Under the *Environmental Management Act*.

- The Commission (or its members or grantees<sup>230</sup>) could monitor the compliance of forestry, mining, or other activities with the Fisheries Act prohibitions against altering fish habitat and depositing deleterious substances into water. Violations could be reported to the Department of Fisheries and Oceans.
- Commission studies could focus on fisheries, and the impact of current and potential activities on fish, to assist in future Fisheries Act prosecutions.

However, most of the time, these prosecution provisions only come into play after the fact – after the damage has been done. A prosecution for violation might be successful, but the damage will still have occurred. If it can gather compelling evidence, the Commission could take a more proactive approach and attempt to utilize two provisions that are invoked less often: Section 22 authorizes the Minister of Fisheries and Oceans to designate minimum flow levels for rivers to permit the ‘safe and unimpeded descent of fish’. And section 37 authorizes the Minister to obtain plans for proposed activity that could disrupt habitat or deposit a deleterious substance – and then prohibit or restrict the activity<sup>231</sup>.

- ***The Commission could provide the Minister of Fisheries and Oceans with information and data to persuade the Minister to designate minimum flow levels for the Skagit and its tributaries, under s. 22 Fisheries Act. This could lessen the impact of future water extraction operations.***
- ***The Commission could monitor proposed development activities, and ask the Minister to review planned activities that may harm fish, and issue orders prohibiting or restricting such activity.***

It should be noted that such orders are discretionary, and would be unusual to obtain, particularly for activities that have been approved and permitted by the Province.

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<sup>230</sup> As with many of the recommendations below, the Commission could act through individual members, or contractors. Henceforth, when this report refers to what the Commission can do, it is understood that it may act through individual Commissioners or grantees.

<sup>231</sup> S. 37(2) *Fisheries Act*.

## b. Environmental Assessments

A general tool that could be used in dealing with proposals for major non-forestry developments, like mining, water extraction, and road construction is Environmental Assessment. Both the provincial and federal governments provide for such assessments.

### BC Environmental Assessment Act

The BC *Environmental Assessment Act*<sup>232</sup> requires an Environmental Assessment (EA) for certain projects. The primary goal of the EA process is to assess the potential environmental, health and safety, socioeconomic, and community effects that may result from a proposed project, and develop measures for managing those effects.

A project may trigger the EA process in one of three ways:

1. If it is designated as a “reviewable project” in the *Reviewable Projects Regulation*.<sup>233</sup> For example, the Regulation provides that mines and water projects of a certain type will normally require an environmental assessment. However, even then the Environmental Assessment Office Executive Director has discretion to decide that an environmental assessment certificate will not be required, if satisfied that the project has no potential for significant adverse effects.
2. The Minister may designate a project as reviewable if it may have significant adverse environmental, economic, social, heritage or health effects.<sup>234</sup>
3. A person may request that the Environmental Assessment Office Executive Director use his discretion to designate the project as reviewable.<sup>235</sup>

Proponents of projects that must be reviewed must apply to the Environmental Assessment Office, which coordinates assessments. Once an assessment is complete, Cabinet Ministers<sup>236</sup> can either refuse to issue the required environmental assessment certificate, order that further assessment be completed, or, if satisfied the Act's

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<sup>232</sup> *Environmental Assessment Act*, S.B.C. 2002, c. 43.

<sup>233</sup> *Reviewable Projects Regulation*, B.C. Reg. 370/2002. Available online: <[http://www.qp.gov.bc.ca/statreg/reg/E/EnvAssess/370\\_2002.htm](http://www.qp.gov.bc.ca/statreg/reg/E/EnvAssess/370_2002.htm)>.

<sup>234</sup> *Reviewable Projects Regulation*, s. 6(1).

<sup>235</sup> *Reviewable Projects Regulation*, s. 7.

<sup>236</sup> The ministers of Sustainable Resource Management, Water Land and Air Protection, and the minister responsible for the project in question.

requirements have been met, issue the certificate, usually with terms and conditions that govern the project.

Environmental assessments provide an important opportunity for the public to voice concerns about a particular project, and have those considerations taken into consideration by decision makers. However, it's important to note that the required content of an EA is left largely to the discretion of the Executive Director of the Environmental Assessment Office. Also, Cabinet Ministers are not legally bound to follow the recommendations included in an EA. Furthermore, Environmental Assessments can alter requirements for the project proponent, and mitigate impacts, but will almost never stop a project.

### i. Canada Environmental Assessment Act

A significant project might also be assessed under the federal environmental assessment legislation. If so, the assessment might be conducted as a joint federal-provincial proceeding.

The *Canadian Environmental Assessment Act (CEAA)*<sup>237</sup> provides for environmental assessment (EA) of projects where a federal authority either proposes a project, grants funding for a project, grants an interest in land for the purpose of a project or exercises a regulatory duty (e.g., issues a license or permit) in relation to a project.<sup>238</sup> For example, the federal law is triggered when approvals are required from Fisheries and Oceans Canada under the *Fisheries Act* or *Navigable Waters Act* to authorize the "harmful alteration, disruption, or destruction of fish habitat."<sup>239</sup> Even where none of the basic triggers apply, the Minister of Fisheries and Oceans and the Minister of Foreign Affairs have discretion to order an EA in respect of a project that may cause significant adverse effects outside Canada<sup>240</sup>.

Under the Act, the responsible federal agency first "screens" the project to determine if it's likely to cause significant adverse environmental effects. When the agency deems appropriate, it can give public notice, and opportunity for public comment. Larger projects with potential for greater environmental impacts and greater public concern may be required to undergo a 'comprehensive study',

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<sup>237</sup> S.C. 1992, c. 37 [CEAA].

<sup>238</sup> CEAA, s. 5.

<sup>239</sup> B.C. Guide to Watershed Law and Planning.

<sup>240</sup> It should be noted, however, that they may not do so where the interested provinces have agreed to carry out an assessment addressing same key factors that would be addressed under a federal EA. See CEAA, s. 47.

or be referred to a mediator or a public review panel with hearings,<sup>241</sup> which provides a greater role for public input and consultation.

As with provincial assessments, federal Environmental Assessments will seldom stop a proposed project. Usually, the EA just adds restrictions and conditions, and provides for mitigation, etc.

- The Commission could seek provincial Environmental Assessment of proposed projects like mines, water extraction and non-forestry roads. In the Environmental Assessment, the Commission could make submissions on its concerns about potential project impacts.
- ***The Commission could also examine project proposals in the Canadian Skagit, to see if they trigger the application of the federal assessment law (e.g., involve Fisheries Act permits or cause significant adverse environmental effects outside Canada). If so, the Commission could participate in the federal assessment process.***

### c. Endangered Species Legislation and Policies

The following Canadian Skagit species have been identified as either being at risk<sup>242</sup>: northern spotted owl, Coastal/Pacific giant salamander, Pacific water shrew, grizzly bear, bull trout, coastal tailed frog, mountain beaver and propertius duskywing, phantom orchid, tall bugbane, and peregrine falcon.<sup>243</sup>

The Canadian Skagit – including its unprotected areas -- contains some of the best habitat in British Columbia for some of these species. For example, in the case of spotted owl, southern British Columbia is the only place in Canada where the northern spotted owl population can survive, as this is their most northerly range. And a significant portion of the total provincial population of spotted owls have been documented as using the Skagit drainage. Since surveys began, between 4 and 7 independent Spotted Owl territories have been identified in the Canadian Skagit Watershed. At least one confirmed breeding pair -- out of only 8 breeding pairs confirmed in the province

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<sup>241</sup> CEAA, s. 21.1.

<sup>242</sup> Threatened or endangered, or at risk of becoming so.

<sup>243</sup> See D.H. Knopp and Lee Larkin, *Ecological Study of the Skagit Valley Provincial Park Lowlands*, Prepared for the Skagit Valley Endowment Commission by BC'S Wild Heritage Consultants, 2000 [Ecological Study]. Also, information comes from personal communication with Ross Vennesland, Ministry of Water, Land and Air Protection biologist. The last three species may not be documented in the Skagit, but there is a likelihood they are there.

-- has been documented as using the unprotected portion of the Skagit as part of its range<sup>244</sup>. The Skagit contains a type A quality corridor that is the largest unbroken corridor for spotted owl habitat between Canada and the United States – a corridor that provides a crucial link for maintaining genetic exchange between populations on either side of the border.<sup>245</sup>

Protection of the Skagit is not only essential to the recovery of northern spotted owl populations, but also to American grizzly bears. The North Cascade mountains surrounding the Skagit represents the most southerly range for grizzly populations west of the Rockies. The Skagit forms a valuable corridor for grizzly populations too, connecting the decimated US populations with the much larger populations of grizzlies farther north in Canada. The BC government has acknowledged:

*"The North Cascades area contains one of the most imperiled grizzly bear populations in British Columbia with an estimate of fewer than 25 animals remaining in an area of 9807 [square kilometers]. This population has been designated as "Threatened" under the provincial Grizzly Bear Conservation Strategy and is shared with Washington State where it is listed as "Threatened" under the United States' federal Endangered Species Act."*<sup>246</sup>

Grizzlies have been extirpated from areas in the western interior and in the eastern and southern portions of the North Cascades in the US.<sup>247</sup> As a result, the remaining population in the North Cascades is especially important for the recovery of the species population in the US Cascades region.

The following is a discussion of the tools that could be used to protect Species at Risk in the Canadian Skagit.

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<sup>244</sup> Personal communication, Jared Hobbs, BC Government Spotted Owl specialist, MWLAP.

<sup>245</sup> Spotted Owl Management Plan. See note **Error! Bookmark not defined.** at 4.

<sup>246</sup> Government of British Columbia: Ministry of Water Land and Air, *Recovery Plan For Grizzly Bears In The North Cascades of British Columbia*, 2001 at i.

<sup>247</sup> *Ibid.*

### i. Federal Species at Risk Act (SARA)

SARA<sup>248</sup> is the federal law that protects species considered threatened, endangered or extirpated in Canada. The act prohibits the destruction of residences of threatened and endangered species, and allows for critical habitat to be identified and protected through management and recovery plans.

The northern spotted owl and the tall bugbane are listed under SARA as endangered. The Coastal/Pacific giant salamander, Pacific water shrew, peregrine falcon, and phantom orchid are all listed as threatened. The grizzly and mountain beaver are listed as of "special concern", a far less protective category<sup>249</sup>.

If the Skagit were federal land, SARA could provide substantial protection to the endangered and threatened species and their habitat. However, the Skagit is provincial land and the federal Act is generally limited to federal lands and to areas of federal jurisdiction like fish and international migratory birds<sup>250</sup>. **Thus, SARA doesn't generally apply to species (other than fish and migratory birds) on provincial lands like the Skagit.**

However, the federal government has a putative discretion to apply SARA's prohibitions against harming a species if *the province has failed to provide adequate protection for a listed species*. In that unusual circumstance, the federal government can theoretically step in to protect a species<sup>251</sup>. It can act by way of emergency order if it wishes<sup>252</sup>. However, the choice to do so lies in the discretion of the federal government – and similar discretionary mechanisms in other Canadian environmental legislation have never been used<sup>253</sup>.

In February 2004, Canadian environmental groups petitioned the federal Minister of the Environment requesting an *emergency order* to protect the northern spotted owl.<sup>254</sup> Although the petition was

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<sup>248</sup> *Species at Risk Act*, R.S.C. 2002, c. 29.

<sup>249</sup> The Rubber boa is not yet listed but is classified by COSEWIC as a species of special concern -- Government of Canada, *Committee on the Status of Endangered Wildlife in Canada*, online: COSEWIC Species Database, [http://www.cosewic.gc.ca/eng/sct1/searchform\\_e.cfm](http://www.cosewic.gc.ca/eng/sct1/searchform_e.cfm) >..

<sup>250</sup> Like Bull Trout, if it ever gets listed as endangered or threatened.

<sup>251</sup> See sections 34 and 61 of SARA.

<sup>252</sup> S. 80, SARA.

<sup>253</sup> Kate Smallwood, *A Guide to Canada's Species at Risk Act*, Sierra Legal Defence Fund, 2003, p. 36

<sup>254</sup> Devon Page, "Petition in support of an Emergency Order pursuant to section 80 of the Species at Risk Act, 2002, c. 29 for protecting the Northern Spotted Owl",

unsuccessful, there has been some speculation that the federal government is putting pressure on the province to better protect the spotted owl in the province.

- The Commission could urge the federal Minister of the Environment to exercise federal discretion to apply the protective provisions of SARA to Skagit species that are currently listed as endangered or threatened, such as the Pacific water shrew, coastal/Pacific giant salamander, peregrine falcon, phantom orchid and the northern spotted owl.

Other species in the Skagit may be endangered or threatened, but may not yet be listed as such under SARA. In addition to urging the above actions by the federal Minister, the Commission could take steps to promote the assessment and listing of species that it believes are at risk.

This could be particularly useful for a fish or migratory bird species, because those species fall under federal jurisdiction, no matter where located. For example, if Bull Trout were listed as threatened or endangered under SARA, the federal government would automatically have jurisdiction to enforce the protective provisions in the federal Act, using its constitutional jurisdiction over fisheries<sup>255</sup>.

- The Commission could apply to the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) for assessments of particular species in the Upper Skagit that the Commission believes should be listed under SARA as Species at Risk, but are not yet listed. Alternatively, the Commission could ask either COSEWIC or the Minister of Environment to move to have the species listed, on an emergency basis<sup>256</sup>.

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Petition Submission to the Minister of the Environment (2004) Sierra Legal Defence Fund.

<sup>255</sup> Any person may apply to the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) for an assessment of a particular wildlife species, which includes a geographically or genetically distinct population of animal, plant or other organism that is wild and native to Canada. COSEWIC then reviews the report, assesses the status of the species and provides reasons for its assessment. The ultimate decision to list the species is at the discretion of Cabinet.

<sup>256</sup> See Kate Smallwood, *A Guide to Canada's Species at Risk Act*, Sierra Legal Defence Fund, 2003, pp. 21-22.

## **ii. The British Columbia Wildlife Act**

The *BC Wildlife Act* has been extraordinarily inadequate in regard to endangered species. It has provided for certain protection for such species. However, only four species – the Vancouver Island marmot, burrowing owl, the sea otter and a species of pelican – have ever been listed as endangered under the Act. The Act has had provided no protection to the numerous other species at risk in the province.

However, in order to minimize the possibility of the federal government intervening under SARA to protect provincial species, the province has recently amended the provincial *Wildlife Act* to bring the Act into compliance with *SARA*, by allowing the province to list the same species that the federal government lists under SARA.<sup>257</sup>

The most notable amendment would allow Provincial Cabinet to prescribe and protect areas as "species residences."<sup>258</sup> However, no specific 'species residences' have yet been prescribed and protected.<sup>259</sup> According to government sources, even when prescribed, it is more likely that areas of residence will be defined as things like nests or burrows -- and not actual large land areas.<sup>260</sup>

- If the Wildlife Amendment Act comes into force, the Commission could urge the provincial government to designate and set-aside "species residences" for those species considered threatened or endangered in the Skagit.
- The Commission could advocate for an amendment to the Wildlife Act to broaden the protection afforded to the "residences" of species to encompass protection of the 'habitat' of threatened and endangered species.

## **iii. Spotted Owl Management Plan**

The Spotted Owl Management Plan ("SOMP") is a provincial government policy that sets out a strategy for managing the owl

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<sup>257</sup> *Wildlife Amendment Act, 2004*. See Ministry of Water, Land and Air Protection, News Release, "B.C. Increases Species Protection, Provides Certainty" (May 12, 2004).

<sup>258</sup> *Wildlife Amendment Act*, s. 1.

<sup>259</sup> E-mail correspondence dated June 24, 2004, from Trudy Chatwin, Rare and Endangered Species Biologist, Ministry of Water Land and Air Protection: Fish and Wildlife Science and Allocation Section.

<sup>260</sup> E-mail correspondence dated June 25, 2004 from Ted Lea Vegetation Ecologist, Ministry of Water Land and Air Protection: Terrestrial Ecosystem Science Section.

population over the long-term while minimizing impact of conservation measures on forest and resource industries in B.C.<sup>261</sup> The Plan is a policy, and not an enforceable law. While it had status under the *Forest Practices Code*, it has not been given formal status under the new *Forest and Range Practices Act*, and is reportedly not being consistently followed by government officials across the province. Some forest companies are complying with the plan, but others are not.

Currently, 44% of the total habitat identified for the management of spotted owls in the province lies in protected areas, and is thus not threatened by logging.<sup>262</sup> Under the Spotted Owl Management Plan, the rest of the identified Crown owl habitat has been designated as "Special Resource Management Zones" for owls.

Spotted owls inhabiting the Skagit drainage and the area around Manning Park are managed under SRMZ zone number one (See Map.) The SRMZ extends from the west entrance of Manning Park east to the head waters of the Skagit River and south to the United States border.<sup>263</sup> This zone also encompasses and extends across the Silverdaisy area. This SRMZ has been estimated at approximately 3200 hectares of gross forested area.<sup>264</sup>

Under the Spotted Owl Management Plan, a minimum of 67% of the gross forested land considered suitable habitat for the spotted owl is theoretically to be maintained in each SRMZ.<sup>265</sup> However, if there is a fire that destroys a substantial amount of spotted owl habitat (as is likely in the Skagit area, as it is overdue for a big fire), the amount of permissible logging would not be reduced to maintain the target percentage of actual owl habitat. In addition, the target of maintained habitat is a policy statement, and in reality may not actually meet the stated goal of 67%. For example, in the Queen Charlotte Islands a provincial policy of maintaining 10-12% of marbled murrelet habitat in some cases has resulted in maintenance of less than 5% of such habitat<sup>266</sup>. Furthermore, as mentioned, the Plan is not being

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<sup>261</sup> Government of British Columbia: Ministry of Water, Land and Air Protection, (June 2004), "Northern Spotted Owls and Their Management Plan," online: Northern Spotted Owls and Their Management Plan

< <http://wapwww.gov.bc.ca/sry/fwh/wildlife/srmz.htm> >

<sup>262</sup> *Ibid.*

<sup>263</sup> *Ibid.*

<sup>264</sup> *Ibid.* at tab 1 Special Resource Management Zone 1 at 2.

<sup>265</sup> *Ibid.*

<sup>266</sup> Evidence in Forest Practices Board v. Husby Forest Products, Forest Appeals Commission case decided in December, 2003.

consistently applied, because it has not been formally adopted under the new legislation.

Even with its flaws, expansion of the owl Special Resource Management Zone could protect significant amounts of forest from development. However, the zones are established on the basis of surveys that have documented areas of habitat used by owls.

- It may well be useful for the Commission to commission further spotted owl biological studies, to better document use of the Skagit drainage by the owl. This could increase the area protected, and the level of protection afforded, by the Spotted Owl Management Plan in the Skagit. The Commission could then urge government to fully apply the provisions of the Plan in the Skagit drainage.

#### **iv. The Identified Wildlife Management Strategy**

The Identified Wildlife Management Strategy ("IWMS") is a provincial government initiative designed to minimize the effect of forest and range practices on defined "species at risk"<sup>267</sup>. The Strategy applies to a number of species in the Skagit, including the coastal tailed frog, Pacific water shrew, Tall bugbane, great blue heron, Lewis' woodpecker, coastal/pacific giant salamander, long billed curlew, short-eared owl, spotted owl, Keen's long-eared myotis, fringed myotis, and grizzly bear<sup>268</sup>.

These identified species may be protected under the IWMS through the designation of 'Wildlife Habitat Areas' ("WHAs")<sup>269</sup>. WHAs are mapped areas that designate critical habitats so that development activities may be managed to limit impact on those habitats.<sup>270</sup> Forest tenure

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<sup>267</sup> As well as regionally important wildlife. See Government of British Columbia: Ministry of Water, Land and Air Protection, (June 2004), "*Identified Wildlife Management Strategy*," online: Identified Wildlife Management Strategy <<http://wlapwww.gov.bc.ca/wld/identified/accounts.html>>.

<sup>268</sup> According to the *Ecological Study of the Skagit Valley Provincial Park Lowlands* or to Ross Venessland, Ministry of Water, Land and Air Protection biologist, the above species inhabit the Skagit. They are listed in the government order defining species covered by the Strategy. Government of British Columbia: Ministry of Water, Land and Air Protection, (June 2004), "*Identified Wildlife Management Strategy*," online: Order – Category Species at Risk.

<sup>269</sup> And General Wildlife Measures.

<sup>270</sup>British Columbia, Ministry of Water Land and Air Protection, *Identified Wildlife Management Strategy: Procedures for Identifying Wildlife – Version 2004*, (British Columbia: Government of British Columbia 2004) at 3 [IWMS Procedures].

holders are required to prepare their forestry stewardship plans in accordance with specific objectives.

Presently, there are no designated WHAs in the Skagit or Silverdaisy. However, there are proposals currently in the works for thirteen separate WHAs protecting grizzly bears in areas surrounding these regions.<sup>271</sup> In the 18 and 20 mile Creek area there is also a proposal for a WHA for grizzly bears near the northern part of the region known as Ghost Past.<sup>272</sup>

The IWMS has a procedure that permits members of the public to submit proposals for establishing a WHA.<sup>273</sup> However, a major limitation is that provincial policy severely limits the amount of Timber Harvesting area that can be set aside through such WHAs. For example, the maximum amount of timber lands that can be set aside for biodiversity purposes cannot exceed one per cent of the timber harvesting land base.

However, if the Commission cannot meet the broader goal of moving the Skagit's key unprotected lands into Protected Area status, it may be useful for the Commission to pursue the establishment of as many Wildlife Habitat Areas as possible.

The Commission could fund submissions calling on government to establish Wildlife Habitat Areas to protect particular endangered and threatened species in the Skagit.

Although Bull Trout were previously covered by special management requirements under the IWMS<sup>274</sup>, they are not currently designated under the government's new list of species requiring special management under the Strategy<sup>275</sup>. This may well be an administrative snafu, as the Ministry of WLAP started with the COSEWIC list of species in building its new list of designated species, and intends to add to the list.<sup>276</sup>

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<sup>271</sup> Correspondence dated July 25, 2004 from Greg George, Strategic Land Planning Biologist, Lower Mainland Planning.

<sup>272</sup> *Ibid.*

<sup>273</sup> IWMS Procedures at 4. See note 270.

<sup>274</sup> Ministry of Water, Land and Air Protection, "Status of Bull Trout" (2004), online: <<http://wlappww.gov.bc.ca/soerpt/4fish/trout.htm>> (accessed July 23, 2004).

<sup>275</sup> For the full text of the IWMS, see Ministry of Water, Land and Air Protection, online: <<http://wlappww.gov.bc.ca/wld/identified/iwms2004.html>>

<sup>276</sup> Ministry of Water, Land and Air Protection, "Identified Wildlife Management Strategy" (2004), online: <[http://wlappww.gov.bc.ca/wld/identified/approved\\_order.html](http://wlappww.gov.bc.ca/wld/identified/approved_order.html)> (accessed July 22, 2004).

- *The Commission could make submissions to the Ministry of WLAP that Bull trout should be included in the Identified Wildlife Management Strategy. In this vein, The Commission could partner with other stakeholders to encourage scientific study and mobilize political support.*

#### **v. The US Pelly Amendment**

If Canada egregiously fails to act to protect endangered and threatened species, there may be an US tool that could be of assistance. The Pelly Amendment<sup>277</sup> to the *US Fisherman's Protective Act of 1967*<sup>278</sup> provides a mechanism by which the President can impose trade sanctions following a finding by the Secretary of the Interior that a country is taking actions to undermine international efforts to conserve endangered or threatened species.

If Canada egregiously fails to take action to protect its endangered and threatened species, The Commission could consider asking US officials to invoke the Pelly Amendment, to compel Canada to better protect its species at risk.

However, it would likely be politically inadvisable for The Commission to be asking for the invoking of trade sanctions, as that could reduce The Commission's political capital within Canada.

#### **vi. Conclusions on Endangered Species**

In conclusion, there is a whole complex of endangered species laws and policies that apply in British Columbia. However, protection under these instruments is mostly discretionary, and does not offer substantial long-term protection for endangered or threatened species in the Canadian Skagit.

### **3. Additional Tools to Address Specific industrial activity**

#### **a. Forestry**

Before Forestry operations commence, the Commission<sup>279</sup> could do the following:

- *The Commission could ask the Provincial Cabinet to suspend forestry operations in the Skagit by invoking Part 13 of the Forest Act.*

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<sup>277</sup> 22 U.S.C. §§ 1971-1979.

<sup>278</sup> 22 U.S.C. §§ 1971-1980.

<sup>279</sup> As a Commission, or through individual Commissioners or grantees.

This provision allows the Minister of Forests to suspend cutting permits, road permits and forestry plans in areas that have been designated by Cabinet under Part 13 of the Forest Act. Part 13 has been used in the Queen Charlotte Islands to suspend logging in an area that the Haida people have proclaimed as a Tribal Park, pending resolution of issues in the area. The Commission could argue that its ultimate goal is to achieve protected status for the entire Skagit Watershed protected -- and pending resolution of that issue, that the Minister should suspend forestry in the watershed.

Relatively large areas can be protected from forestry under Part 13, but it requires political will to act.

- The Commission could call for particularly important small areas of old growth to be designated and protected as "Old Growth Management Areas" under s. 93.4 of the *Land Act*.

***Commission scientific studies identifying key patches of old growth could facilitate such designations. Candidate areas outside the parks exist in the drainages of 18 and 20 Mile Creeks, Laforge Creek and in the donut hole.***

- The Commission could participate in the public review of forest stewardship plans and forest development plans<sup>280</sup> in the Canadian Skagit<sup>281</sup>.

***The Commission could provide submissions requesting that plans be modified to protect conservation values that the Commission identifies and documents. For example, such plans could be amended to recognize the need to protect areas of special natural value and vulnerability – e.g., to use ecoforestry and helilogging near Bull Trout streams, around Spotted Owl and grizzly habitat, etc. (See discussion of Forest Development and Forest Stewardship Plans above.<sup>282</sup>).***

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<sup>280</sup> Because of the transition period between statutes there may be amendments of forest development plans that would be subject to public review for some time.

<sup>281</sup> However, the identified limitations of this process should be taken into account.

<sup>282</sup> In order to do this, the Commission will have to know when such plans are being prepared, either by the licensee, or by government (in the case of BC Timber Sales licences). The Commission should monitor newspaper legal ads for upcoming public reviews, and request the District to make special efforts to contact the Commission. Although the District will not generally notify interest groups, it may be willing to

- If a Forest Development Plan/Forest Stewardship Plan or amendment is approved, the Commission can challenge the approval if the Plan does not adequately protect the environment or recreation values, by asking the Forest Practices Board<sup>283</sup> to appeal the approval.

***However, such appeals must establish that the approval was contrary to the law, and the legislation has been watered down so extensively that substantive success on protecting the environment is not generally very likely.***

- The Commission could provide data and make submissions to the Chief Forester when he holds his periodic review of timber supply in 2007, in order to set the Annual Allowable Cut (AAC) for the Fraser TSA.

***Such data, which might be created by a grant from the Commission, could focus on the scientific factors that would support reducing the cut in the Skagit area, to protect natural values. (See discussion of AAC above.<sup>284</sup>)***

- ***The Commission could use its international status, and the importance of the values found in the Skagit, to argue that special forestry rules should apply in the Skagit. The Commission could fund the necessary scientific work to adapt the special rules developed by the Clayoquot Sound Scientific Panel for the Skagit Valley.***

Special rules requiring ecoforestry now apply in the Clayoquot Sound area, as a result of a high-profile public campaign in that area. The campaign led government to appoint a Scientific Panel that recommended that highly restrictive ecoforestry rules apply in

make an exception for the Commission, especially after current licence takebacks in the Skagit are completed and the remaining licences are government-administered BCTS licences.

<sup>283</sup> The Forest Practices Board is an independent public watchdog, funded by government. See their website at [www.fpb.gov.bc.ca](http://www.fpb.gov.bc.ca)

<sup>284</sup> *To learn more about what form this participation could take, see the "Citizens' Guide to Allowable Annual Cut Determinations." – by G. Utzig and D. MacDonald, BC Environmental Network (March, 2002), online at <http://www.bcen.bc.ca/caucuspg/fr/publicat/AAC-CG>* To keep track of the AAC process, sign up for an electronic distribution list that gives notice of newly released timber supply documents, including AAC releases. To subscribe, visit [www.for.gov.bc.ca/his/listserv/tsr.htm](http://www.for.gov.bc.ca/his/listserv/tsr.htm).

Clayoquot. The Panel's rules have reduced the harvest by well over 50%.

The Commission could urge Government to apply rules similar to those developed by the Clayoquot Sound Scientific Panel to the Skagit. The Commission could publicly offer to fund the scientific work that might be necessary to adapt those rules to the geography of the Canadian Skagit.<sup>285</sup>

However, the Clayoquot rules were a response to a unique situation. Clayoquot had been subject to an intensive international campaign to protect the Clayoquot region, a campaign that involved the largest civil disobedience campaign in Canadian history, with over 800 people arrested.

- ***If a regional or subregional (LRMP) plan is ever developed for the area including the Skagit, the Commission could consider participating in the development of such a plan.***

In recent years, the province has convened multi-stakeholder round tables to develop higher-level land use plans for many regions and sub-regions. These plans set strategic-level land use objectives for these larger areas. The process of creating such a plan would provide an opportunity for stakeholder input from the Commission and allied groups to make submissions regarding the benefits of conserving the Skagit Valley. However, there is apparently no current intention to initiate a subregional or regional plan for the area encompassing the Skagit.

None of the above measures is likely to stop logging in the Skagit. However, if Commission studies document high-value areas within areas proposed for logging, the persuasive presentation of such evidence could modify logging plans, and mitigate damage.

After forestry commences, the Commission could do the following:

- ***If The Commission observes illegal forest practices, it could report them.***

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<sup>285</sup> In a more proactive approach, the Commission could also support the efforts of West Coast Environmental Law Association and others to strengthen the new forest practices legislation.

It can ask the Ministry of Forests to investigate possible contraventions of *the Forest and Range Practices Act* or the *Forest Practices Code*. It can ask fisheries officials to enforce the federal *Fisheries Act*.

- ***The Commission could appeal lack of adequate enforcement.***

If the Ministry of Forests fails to enforce forest practices legislation or issues an inadequate penalty, The Commission could ask the Forest Practices Board, the government-funded independent watchdog agency, to appeal the matter and obtain an adequate enforcement order. However, the facts of such a case would have to be egregious – the Board is unlikely to act otherwise.

However, the new legislation is so vague and relatively unenforceable, that the grounds for successful appeal are likely to be narrow.

- ***The Commission could also ask the Forest Practices Board to investigate a specific complaint about compliance with forest practices laws – or to investigate a broader forest practices issue.***

For example, the Board recently completed a special investigation into the inadequate protection of mountain caribou in BC. The Commission could ask the Board to conduct a special investigation of forest practices in the Skagit generally; or on the impact of logging on bull trout in the Skagit, etc. Such investigations are published as reports to both the legislature and the public. They have educational and political value, but are not legally binding.

- ***The Commission could appeal government approval of forestry Pesticide Management Plans under the Integrated Pest Management Act.***

#### **b. Mining**

The Commission could purchase mineral tenures on a case-by-case basis

Short of working to establish a protected area for the currently unprotected lands, the Commission, could try to deal with the potential threat of mining in particular areas of the Canadian Skagit, by entering negotiations to purchase individual mineral tenures in the Upper Skagit watershed from the owners. In the past, the Commission has bought out mineral rights on both sides of the border.

The Commission could purchase key mineral tenures, when development is likely and mineral values are high, on a case-by-case basis. The Commission should seek assurances from government that replacement tenures will not be issued.

The Commission could make submissions to the Chief Gold Commissioner, requesting that portions of the Canadian Skagit, and in particular sensitive segments of waterways contained therein, should be designated as "Mineral Reserves" under s. 22 of the Mineral Tenure Act.

The designation of a "Mineral Reserve" can help to prevent the potential environmental impacts associated with mining activity. The Chief Gold Commissioner can designate an area as a mineral reserve<sup>286</sup> -- which makes it possible to restrict or prohibit mining activity there. Large areas can be reserved – as can specific streams with significant fisheries values.

***The Commission could provide the Commissioner with data that focuses on the scientific factors that would support barring mineral development in the Skagit area, to protect natural values. For example, the Commission might fund studies on Acid Mine Drainage potential in the Canadian Skagit, and document resulting potential threats to Bull Trout.***

However, the mining industry may resist such a Mineral Reserve designation as much as the establishment of a Park in the donut hole. Some of the same political factors (i.e., a provincial government that is encouraging mining) that make a new park in the Skagit difficult to achieve may also apply to the Mineral Reserve designation.

Nevertheless, the Mineral Reserve designation may be a useful tool if a Park is unachievable – to protect key smaller areas, like Bull Trout spawning and rearing areas.

The Commission could pursue Environmental Assessment Processes for Mine Proposals

The Commission could wait for mining proposals to come forward, and take an active part in Environmental Assessment processes for such proposals. Any substantial mining proposal would likely be subject to

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<sup>286</sup> *Mineral Tenure Act*, R.S.B.C. 1996, c.292, s. 22 [MTA].

such an assessment<sup>287</sup>. See the discussion of Assessments and their limitations, above.

If Mining Proceeds:

- The Commission could appeal the issuance of permits issued under the Environmental Management Act.

If mining were to proceed in the Canadian Skagit, the Commission<sup>288</sup> could attempt to challenge permits that a company is applying for. For example, mines must generally have a waste discharge permit before they can discharge waste into the environment.<sup>289</sup> The Commission could appeal the issuance of such an *Environmental Management Act* permit, on grounds that it allowed excessive pollution<sup>290</sup>.

- The Commission could play a watchdog role in ensuring that permits and legislation are complied with.

Once a mine has a waste discharge permit, the Commission could watchdog compliance with the waste permit, and report noncompliance to government, asking the Director of Waste Management to issue a pollution prevention order<sup>291</sup>. The Commission could also watchdog exploration, construction, operation and mine closures to ensure that they follow the permits and other requirements of the *Mines Act* and the *Health, Safety and Reclamation Code*<sup>292</sup>. It could also watchdog that the mine is compliant with the water licence

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<sup>287</sup> See Part 3 of the *Reviewable Projects Regulation* under the *Environmental Assessment Act* for the characteristics of mines that would be routinely required to be assessed.

<sup>288</sup> As with so many of these tools, the this action could be taken through one of its members, or a grantee.

<sup>289</sup> The permit is issued under section 14 of the *Environmental Management Act*. Mining is a prescribed industry under s. 2(1) and Sch. 1 of the *Waste Discharge Regulation*, B.C. Reg. 320/2004. Also, see s. 6(2), *Environmental Management Act*.

<sup>290</sup> A person aggrieved by the issuance of a permit can appeal the issuance of the permit to the Environmental Appeal Board -- *Environmental Management Act*, ss. 99 and 100.

<sup>291</sup> The Director may order the mine to provide information; perform tests, surveys, or investigations; install works or measures that are reasonably necessary to prevent the pollution; or make any alterations to works reasonably necessary to prevent pollution -- *Environmental Management Act*, s. 81.

<sup>292</sup> Complaints about noncompliance with this legislation are directed to the Ministry of Energy and Mines, whereas complaints about noncompliance with the *Environmental Management Act* go to the Ministry of Water, Land and Air Protection.

it has been issued for use of water from streams, the provisions of the *Fisheries Act*, etc.

### c. Water Extraction

Last year's licencing of Rota Development to extract water from the Sumallo River for bottling raises issues regarding water extraction and its effect on fish and the environment. As mentioned, s. 22 of the Fisheries Act authorizes the Minister of Fisheries and Oceans to designate minimum flow levels for rivers to permit the 'safe and unimpeded descent of fish'.

- The Commission could ask the federal Minister of Fisheries and Oceans to designate minimum flow levels, to protect the Skagit's flow for fish. The Commission could cite the international importance of the threatened Bull Trout, and the susceptibility of that species in the request.

#### i. Water Act

Water licenses are required for diversion of water for industrial purposes under the *Water Act*<sup>293</sup>. The Act also requires government approvals<sup>294</sup> if a person wants to make "changes in or about a stream" (e.g., modifying streamside land and vegetation or the channel)<sup>295</sup>. Approvals and licenses are issued by the Water Management Branch<sup>296</sup>.

The Branch can refuse to issue -- or attach conditions to -- a new water licence, if the licence would have a significant impact on uses of water. For example, a "fish clause" may be included in the water licence to protect fish and fish habitat. Similarly, conditions may be attached to approvals for "changes in and about a stream"<sup>297</sup>.

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<sup>293</sup> Under this Act, the province grants private rights to use provincial water by issuing water licenses.

<sup>294</sup> Or a licence, order or regulation that authorizes the changes..

<sup>295</sup> *Water Act*, s. 9.

<sup>296</sup> Ministry of Water, Land and Air Protection. The comptroller or regional water manager issues the licences.

<sup>297</sup> Standard conditions on approvals will reflect the concerns of the Water Management Branch for water quality implications, downstream flooding, and potential effects on the works of downstream licensees, as well as habitat and ecosystem concerns from provincial and federal fisheries and wildlife agencies. Further requirements pertaining to changes in or about a stream are defined in regulations under the Act. See West Coast Environmental Law, "British Columbia's *Water Act*", online: <<http://www.wcel.org/water/wateract.html>> (accessed July 23, 2004).

When an application for a water license is made, the Act provides that a 'licensee, riparian owner or applicant for a license' may file an objection to the granting of the application.

- The Commission could provide scientific information to water officials about the importance of maintaining water flows in the Skagit watershed and protecting Skagit streams. Although the Commission would not necessarily have status to challenge an application for a water licence or approval, the Water Management Branch could be provided with scientific information to be considered when it makes its decision. Such information could guide officials in placing conditions on licenses and approvals, or in refusing licenses and approvals.
- Since riparian owners do have the right to object to (appeal) water licence applications, at some point the Commission might be able to collaborate with riparian owners in the watershed (i.e., in Sunshine Village) to help them file formal objections to the issuance of additional new water licenses<sup>298</sup>.

***In discussions, government staff have conceded there is currently little monitoring and enforcement of water licences and approvals.***

- To deal with lack of enforcement, the Commission could play a watchdog role in ensuring that the terms of water licences and approvals that get issued for activities like water extraction and mining are complied with. This could be important, since the water bottling licence is for a far smaller quantity of water than was requested.

## **ii. International River Improvement Act**

Anyone who plans to construct anything that significantly alters the flow of a river going into the US requires a federal license under the *International River Improvements Act*<sup>299</sup>. The main significance of the

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<sup>298</sup> Not being a riparian owner or licensee, SEEC would not have independent standing to file such an objection. Note that the company that obtained the new water license has reportedly purchased the shares of Sunshine Valley Development Inc., so that corporation would not likely file an objection.

<sup>299</sup> The Act prohibits the construction, operation or maintenance of a 'river improvement' on an international river without a license from Environment Canada (*International River Improvements Act*, s. 4.) An 'international river' is defined as water flowing from any place in Canada to any place outside of Canada. An 'international river improvement' is defined as:

*International Water Protection Act* for the Commission is that an application for a license under the Act would likely trigger an environmental assessment under the Canadian Environmental Assessment Act. See the discussion above.

- The Commission could monitor development (logging, mining, water extraction, etc.) in the watershed, for any "work" that alters the flow of the Skagit. -- to determine whether the licensing requirement under the International River Improvement Act, as well as an Environmental Assessment, is triggered.

### **iii. Environmental Assessment**

Any substantial water extraction proposal could potentially be subjected to a provincial or federal Environmental Assessment process. See the discussion of such assessments, above.  
Fish Protection Act.

The *Fish Protection Act* expressly prohibits the construction of any new dams on the main stem of the Skagit River.<sup>300</sup> Under this Act<sup>301</sup>, Provincial Cabinet can also designate a stream as a 'sensitive stream' – and certain restrictions apply to *Water Act* licenses and approvals issued on such streams. However, key provisions of the *Fish Protection Act* have not yet been brought into legal force.<sup>302</sup> The legislation was passed by the previous government, which tended to be more sympathetic to environmental concerns -- and the current government has not implemented key provisions. These include provisions granting powers to consider impacts on fish and fish habitat in issuing *Water Act* licenses and approvals, powers to issue water licenses to community groups for the purposes of protecting in-stream flow, and powers to limit water license diversions during drought.<sup>303</sup> It is unlikely that the current government will bring those provisions into force.

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a dam, obstruction, canal, reservoir or other work the purpose or effect of which is to increase, decrease or alter the natural flow of an international river, and to interfere with, alter or affect the actual or potential use of the international river outside Canada. – s. 2

<sup>300</sup> *Fish Protection Act*, s. 4.

<sup>301</sup> Section 6.

<sup>302</sup> It would require an order of the provincial cabinet to make them law. See *B.C. Guide to Watershed Law and Planning*, West Coast Environmental Law Association website: <http://www.wcel.org>

<sup>303</sup> *Water Act*, ss. 5, 8 and 9.

- ***The Commission could urge government to designate the Skagit River as a sensitive stream and to bring the unproclaimed provisions of the Fish Protection Act into force.***

#### d. Road Development

Road construction and use can cause a variety of ecological impacts. Roads can displace wildlife, create barriers to species dispersal, reduce reproductive success, spread pests, diseases and exotic species, damage soils, and degrade stream environments<sup>304</sup>.

Road construction associated with logging and mining activity in the donut hole and 18 and 20 Mile Creek drainages is of particular concern. The Commission should consider participating in forest plan processes and environmental assessment processes to address road concerns.

- ***If a Forest Stewardship Plan or Forest Development Plan proposes new roads for logging, The Commission could make submissions for alternative methods of logging (e.g., heli-logging), during the public comment opportunity. (See above.)***
- ***If a mine proposal calls for construction of new roads, The Commission could address the issue in the Environmental Assessment process. (See above.)***
- ***The Commission could state to Government that it is opposed to extension of existing roads in the Skagit Drainage, and in particular the construction of new roads in presently unroaded drainages such as 18 and 20 Mile, 26 Mile and Silverdaisy drainages.***

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<sup>304</sup> Natural Resource Defense Council, *End of the Road: The Adverse Ecological Impacts of Roads and Logging: A Compilation of Independently Reviewed Research*, 1999. Online: <<http://www.nrdc.org/land/forests/roads/eotrinx.asp>> (Accessed August 19, 2004).

### i. Silver/Skagit Road

The status of the existing Silver/Skagit Road also presents concerns<sup>305</sup>. Currently, the road is surfaced with gravel. Both BC Parks and the Commission have already expressed concern that, if the Silver/Skagit Road were to be paved, this would increase the number of park visitors dramatically, and negatively impact the area. The high cost of paving the long, hilly road may ultimately prevent paving, but there is still concern about the possibility of paving.

The current Skagit Valley Provincial Park Management Plan (“the Plan”) recognizes the importance of not paving the Silver/Skagit Road, and requests that the Ministry of Transportation and Highways not pave it.

Although park management plans are not legally binding, they are taken seriously by government ministries.<sup>306</sup> Based on the duration of other B.C. park management plans, a new management plan for Skagit Valley Provincial Park will likely be drafted between 4 and 14 years from now, and will be open to public consultation at that time.

- During the public consultation process preceding the drafting of the next Skagit Valley Provincial Park Management Plan, the Commission could make submissions emphasizing their interest in maintaining the Silver/Skagit as an unpaved road.
- ***The Commission could seek an environmental assessment, if paving is ever proposed for the road.***

See discussion of Environmental Assessments, above.

More permanent assurance that the Silver/Skagit road will not be paved might be accomplished by persuading government to permanently designate the road as one that will not be paved, for example, under the *Environment and Land Use Act* or under the yet-to-be-proclaimed amendments to the *Land Act*<sup>307</sup> that will allow for conservation designations of Crown lands. [See below.]

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<sup>305</sup> This road joins Highway #1 three kilometres west of Hope, B.C., and provides access to the Skagit Valley Provincial Park. It is 37 km from Highway #1 to the park entrance and a further 23 km to Ross Lake Reservoir and the Canada-US border.

<sup>306</sup> Personal Communications with Eva Riccius, Canadian Parks and Wilderness Society, August 11, 2004, and Ian Pepper, Ministry of Water, Land and Air Protection, August 17, 2004.

<sup>307</sup> Bill 46, *Land Amendment Act* 2003, s. 93.1.

- ***The Commission could urge the provincial government to prohibit the paving of the Silver/Skagit Road under the Environment and Land Use Act or other legislation.***

## ii. The Donut Hole Access Road

It appears that a Park Use Permit that was issued to the Ministry of Forests for the use and maintenance of the road from Highway 3 that briefly passes through E.C. Manning Park on the way to the Donut Hole may be invalid. Under the *Park Act*, such a permit must not be issued unless, in the opinion of the minister, to do so is *necessary to preserve or maintain the recreational values* of the park involved.<sup>308</sup> It may be difficult for government to argue that giving a permit for use of the road as a logging road was necessary to ‘preserve or maintain the recreational values of the park.’

However, challenging such a permit may not be productive since it would be open to government to simply remove the road right-of-way from the park.

- ***The Commission may want to keep in mind the possibility that the Donut Hole Access Road may not be legally permitted at this time, and consider the utility of challenging it, if current discussions about expanding Protected Areas do not bear fruit..***

## A Comprehensive Law Reform Approach to Roads

- To address road threats comprehensively, the Commission could recommend that the B.C. government prohibit the construction of any new roads in the region by passing legislation similar to the proposed U.S. Roadless Area Conservation Rule.
- An Additional Designation Mechanism to Consider: Designation under amendments to the Land Act (not yet in force)**

Recent amendments to the Land Act<sup>309</sup> would allow the designation of Crown land for conservation purposes.<sup>310</sup> However, such designations may not be made for a purpose that is inconsistent with a purpose for which that area of Crown land is designated or otherwise reserved

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<sup>308</sup> *Park Act*, R.S.B.C. 1996, c. 344, s. 8.

<sup>309</sup> Bill 46, *Land Amendment Act, 2003*, 4<sup>th</sup> Sess., 37<sup>th</sup> Parl., British Columbia, 2003, S.B.C. 2003, c. 74 [Bill 46].

<sup>310</sup> Bill 46, s. 93.1, cl. 1.

under another enactment.<sup>311</sup> Unlike many other forms of designation, the amendments expressly provide that orders and regulations made under Part 7.1 are binding on government.<sup>312</sup> This legislation has passed, but has not yet been brought into force.

- Although this Act does not afford the same measure of protection as Class A park or comparable status would afford, designations under the Land Act could be used to achieve specific objectives in areas of concern<sup>313</sup>.

Note:

- ***To stay up to date on BC provincial forestry and environmental law, consult the websites of West Coast Environmental Law Association, [www.wcel.org/services/](http://www.wcel.org/services/); BC Environmental Network <http://www.bcen.bc.ca>; and Sierra Legal Defence Fund <http://www.sierralegal.org>***

#### **4. International Tools to Influence BC**

The Commission for Environmental Cooperation, established under the North American Free Trade Agreement (NAFTA), reviews claims submitted by private citizens and NGOs that a NAFTA country is failing to effectively enforce its environmental laws. Upon reviewing a submission, the CEC can investigate the matter and may publish a public report. While a report doesn't have legal effect, it can draw public attention to specific issues. Both NGOs and the governments of the North American countries have used submissions to the CEC to assist in enforcing environmental laws.<sup>314</sup>

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<sup>311</sup> Bill 46, s. 93.2.

<sup>312</sup> Bill 46, s. 93.02.

<sup>313</sup> Historically, cabinet has also made use of The Environment and Land Use Act to achieve environmental or land use objectives where no other piece of legislation granted the exact authority needed. This Act outlines the powers of the Environment and Land Use Committee (ELUC), a provincial cabinet committee, which is authorized to establish and recommend programs to foster public awareness and concern for the environment; to ensure that the preservation of the natural environment is considered in the administration of land use and resource development and to conduct inquiries and make recommendations related to land use management (s. 3). The provincial cabinet may make a variety of types of orders based on ELUC recommendations (s. 7). However, discussions with government officials suggest that use of the ELUC legislation is not currently favoured, and few orders have been made under the Act over the past two years.

<sup>314</sup> For example, submissions to the CEC include issues involving British Columbia Hydropower policy, a submission by various NGOs, that Canada is failing to enforce the *Fisheries Act*, and to utilize its powers under the *National Energy Board Act*, to ensure the protection of fish and fish habitat in BC's rivers from damage caused by hydroelectric dams; British Columbia logging policy, once again a submission by

- ***To deal with a failure to effectively enforce Canadian Environmental laws, The Commission<sup>315</sup>, might file a complaint with The Commission for Environmental Cooperation.***

### a. International Boundary Waters Treaty

*Under the International Boundary Waters Treaty*, the International Joint Commission can investigate and report on issues of concern along the border in response to requests from either Canada or the United States<sup>316</sup>. In advisory, non-binding reports, the IJC has assumed such diverse tasks as investigating and reporting on transboundary water and air pollution, and drafting principles to guide resource development in such a way as to prevent transboundary conflict. Legally it has the power to initiate such a report on the request of either the US or Canada, although in practice it has only proceeded when there has been a joint request by both countries<sup>317</sup>.

The IJC could investigate and report on such matters as the potential threat to the international Bull Trout population posed by the increasing development in the Canadian Skagit.

### b. US Endangered Species Act

Activities such as logging, mining, water extraction, road construction and recreational development can compromise the basic habitat requirements of bull trout, which are acutely sensitive to disturbance<sup>318</sup>. Listed under the US Endangered Species Act, they are

various foundations, including the David Suzuki Foundation, Greenpeace Canada, Sierra Club of British Columbia, the Northwest Ecosystem Alliance and the Natural Resources Defense Council that Canada is failing to enforce its Fisheries Act; and a submission that the United States is failing to enforce the Migratory Treaty Act in protecting Migratory Birds. Information on the CEC can be found at <http://www.cec.org/>

<sup>315</sup> Or an individual Commissioner.

<sup>316</sup> Under its "reference" function, under the *International Boundary Waters Treaty*, Article IX. The High Ross Treaty ousted IJC jurisdiction over the Skagit for a number of matters where the IJC has greater authority, but it still has status to do such advisory reports.

<sup>317</sup> Personal communication with Michael Vechsler, Counsel, International Joint Commission. While one country could ask for such a report, funding for the exercise must be shared by the two countries.

<sup>318</sup> Bull trout have extremely narrow spawning and rearing habitat requirements compared to other fish, making the species particularly vulnerable to watershed disturbances. Removal of canopy cover causes increased thermal loading of streams, increased deposit of sediment into the watercourse reduces the survival

considered “vulnerable” and are “blue listed” in BC<sup>319</sup>. Today, southern British Columbia represents the species’ centre of global distribution.<sup>320</sup> The importance of the Canadian habitat to Skagit stocks is underscored by the fact that as much as 70% of the Bull Trout stocks in the Upper Skagit system spawn in British Columbia.<sup>321</sup>

Because of British Columbia’s significance as a spawning ground, the conservation of Bull Trout stocks in British Columbia is critical if stocks in the United States are to be conserved. The Bull Trout is listed as threatened under the United States *Endangered Species Act*.<sup>322</sup> And the US recovery plan for the trout specifically identifies BC forestry as impacting bull trout stocks.

- ***Where Canada is failing to adequately protect natural values in the Skagit Valley and impacting the US ecosystem (eg, with Bull Trout), The Commission could recommend that the US government make a formal request for the International Joint Commission to investigate and issue a public report.***

Because of their extreme sensitivity, Bull Trout are considered a good indicator species of ecosystem health.<sup>323</sup> Protecting Bull Trout stocks is one strategy that could indirectly further the protection of a whole host of additional ecological and recreational values in the upper Skagit watershed -- because protecting Bull Trout necessarily involves a broad range of measures to protect the ecosystem more generally.

### **c. Cooperative Cross-Border Management Initiatives**

As we have seen, Canadian environmental legal protections tend to be far weaker than those in the US. A spotted owl that flies across the international border goes from a jurisdiction that actually protects them to one where there is more paperwork than protection. If the

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rates of eggs and young fish, and disturbances such as the removal of riparian vegetation, erosion of streambanks and channel alterations decrease aquatic habitat complexity, all of which threaten Bull Trout.

<sup>319</sup> BC Species and Ecosystem Explorer, 2003.

<sup>320</sup> *Defenders of Wildlife*.

<sup>321</sup> Personal communication with Ed Connor, Ph.D, Aquatic Ecologist, Seattle City Light.

<sup>322</sup> U.S. Fish and Wildlife Service, Puget Sound Management Unit. “Preliminary Technical Assistance for Bull Trout Recovery Planning Efforts” (February 24, 2004), online: <<http://www.sharesalmonstrategy.org>> (accessed July 13, 2004).

<sup>323</sup> S.G. Cannings and J. Ptolemy, *Rare Freshwater Fish of British Columbia*. B.C. Ministry of Environment, Lands and Parks, Victoria, BC (1998). 214 pp. [*Rare Freshwater Fish of British Columbia*].

proposed US listing of Bull Trout habitat as "critical" goes forward, protection of the fish in the US will be far greater than in Canada. By swimming a few metres across a border, the fish would travel from protected to entirely unprotected habitat.

- ***Because environmental standards differ so much in the two countries, the Commission could advocate that the best forestry/mining/water management practices/regulations from either side of the border should apply throughout the watershed.***

This could be done in a number of ways, as has been demonstrated in international agreements created in the Great Lakes. For example:

#### **i. Creation of a Skagit Ecosystem Charter**

The Great Lakes Commission coordinates ecosystem management of the Great Lakes, in 8 states and two provinces, by cooperative agreement. In 1994 the Commission drafted an Ecosystem Charter for the Great Lakes. This charter is a voluntary agreement in which various agencies and groups sign the charter and agree to follow its principles, centered on a shared vision of ecosystem management within the Great Lakes. The purpose of the Charter is to standardize practices within the Great Lakes Ecosystem. The Ecosystem Charter for the Great Lakes draws together principles from over 60 different laws, treaties, policies and practices within the Great Lakes ecosystem, and when combined with the cooperation of the 160 agencies, management groups, municipalities and other stakeholders, can serve to satisfy the goal of standardizing practices within the Great Lakes<sup>324</sup>.

- ***The Commission could call for a Skagit Ecosystem Charter to be applied to the international Skagit watershed above Ross Dam, to standardize the environmental rules applied in both parts of the Skagit..***

#### **ii. Maximizing International Efforts to Protect Skagit Waters and Values**

The Great Lakes Water Quality Agreement ("GLWQA") was signed by Canada and the United States in 1972, with the goal of improving the health of Great Lakes waters. Overseen by the International Joint

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<sup>324</sup> Ecosystem Charter for the Great Lakes-St. Lawrence Basin, Signatory Statements, One Year Later, available at <http://glc.org/ecochar/statement.html> (last visited August 27, 2004).

Commission,<sup>325</sup> the GLWQA imposes the obligation on both the United States and Canada to "make a maximum effort to develop programs, practices and technology necessary for a better understanding of the Great Lakes Basin Ecosystem and to eliminate or reduce to the maximum extent practicable the discharge of pollutants into the Great Lakes System."<sup>326</sup> The GLWQA is considered to be a success, and has helped substantially reduce pollutant levels in the Great Lakes.

- ***The Commission could urge governments in the two countries to commit themselves to make maximum efforts to conserve natural values in the Skagit Valley in both countries.***

### **iii. Creation of a Unified Approach to Resource Management**

The Great Lakes Charter of 1985 is a cooperative agreement between the governors and premiers of Great Lakes States and Provinces, which<sup>327</sup> creates a unified approach to water resource management across the border. It creates a framework by which large withdrawals of Great Lakes waters would not be allowed without first seeking consent of all affected Great Lakes States and Provinces.

Similarly, in the Skagit, activities that would damage the regional ecosystem might require consent from the "other side of the border".

- ***The Commission could urge governments in the two countries to work together to create a unified approach to the management of key natural resources in the Upper Skagit Valley.***

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<sup>325</sup> The International Joint Commission was established by the Boundary Waters Treaty of 1909 between Canada and the United States, with the goal of joint management of waters shared by the two nations, and resolution of disputes regarding those waters. Boundary Waters Treaty, Jan. 11, 1909, United States and the United Kingdom, 36 Stat. 2448.

<sup>326</sup> Great Lakes Water Quality Agreement, Apr. 15, 1972, amended Nov. 22, 1978; Oct. 16, 1983, T.I.A.S. 9257.

<sup>327</sup> Along with related documents.

## **V. THE LONG TERM SOLUTION: EXPANDING CANADIAN PROTECTED AREAS**

### **A. A LONG TERM GOAL: OBTAINING PROTECTED STATUS FOR THE UNPROTECTED LANDS**

The one-third (check) of the Canadian Skagit drainage that lies outside of Provincial Parks and Ecological Reserves is the area at most risk of damage from forestry, mining, water extraction and other development. As we have seen, the tools to provide protection to the watershed in that area are extremely weak, particularly in comparison to the protection of the American Upper Skagit.

#### **1. Review of Tools**

The Commission can do its best to make use of the tools available. As discussed above, it can:

- Utilize the provisions of the *Fisheries Act* barring alteration or pollution of fish habitat;
- Utilize endangered species laws and policies, such as they are;
- Request and participate in environmental assessments of certain development proposals, including possible mining and water extraction proposals.
- Appeal pollution permits issued in the area;
- Provide input into Forest Stewardship Plans, Forest Development Plans and regional, sub-regional, and local plans, and appeal such plans when possible;
- Make representations to the Chief Forester about annual allowable cut levels;
- Document the case for designating the most sensitive areas as Old Growth Management Areas, Wildlife Habitat Areas, protective Mineral Reserves, etc., and urge government to establish such areas;
- Document the need for government to issue orders limiting water extractions, to maintain stream flow;

- Make submissions to government officials about proposals to extract water from streams;
- Watchdog the area for contraventions of present laws and policies, for example for violations of forest practices legislation, water legislation, fisheries laws, etc.
- Urge government to establish legislation and rules beneficial to the Skagit. For example, it can urge special forestry rules, as in Clayoquot Sound, and amendment of general environmental legislation (e.g. endangered species legislation and policies.)
- Use international mechanisms, like complaints to the International Joint Commission, the Commission on Environmental Cooperation, to urge more effective enforcement of environmental laws.
- Urge cooperative cross-border resource management initiatives, with the objective of attempting to apply the most stringent environmental standard in either country to the entire Upper Skagit watershed.
- Take steps to ensure the Silver/Skagit Road is not paved.

However, none of those actions will provide the kind of long-term protection from development that is afforded in a Class A Park or Ecological Reserve. Even if the Commission pursues those actions, there is still the chance that the Canadian Skagit could get logged, mined and otherwise developed in ways that could be quite harmful.

## **2. Specific Goals:**

➤ ***Recommendation: That the Commission develop a strategy with the specific goals of:***

- ***achieving legal protection (equivalent to a Class A Park) for all the unlogged drainages in the Skagit that are currently unprotected (including 18 and 20 Mile Creeks, LaForge Creek, Silverdaisy and 26 Mile Creeks and portions of the Sumallo);***
- ***upgrading the protective status of the Cascade Recreation Area to the equivalent of Class A Parks status; and***

- *ultimately achieving the same status for the remainder of the Canadian Skagit drainage*<sup>328</sup>.

## B. IMPACTS OF THE GOAL ON COMMISSION DECISION-MAKING

If the Commission were to set a goal of achieving the equivalent of Class A Park status for the unprotected lands, that goal should be considered whenever the Commission makes a funding decision. For example, one of the rationales in favour of the Commission funding a "Skagit Keeper" would be the fact that a Skagit Keeper could provide a sustained public focus on the need to protect the rest of the Skagit. In the course of working to implement the tools above (e.g., watchdogging forestry operations, making submissions to government), a Skagit Keeper could maintain the public focus that may ultimately lead to the longer-term solution of increased protected areas.

The goal could be considered whenever the Commission funds scientific studies -- it could ask itself whether the study furthers the goal of creating new protected areas? A study on Coastal Giant Salamanders or Pacific water shrew might receive priority, because documenting the existence of threatened/endangered species in the watershed might advance the goal of establishing new park land.

Similarly, recreation and education projects might also be given priority, if they advance the land use goal of extending protected areas. For example, an education project that would raise public awareness of the importance of the Skagit – and thus bolster support for a park -- might be given priority.

Even if protected areas do not get expanded, such Commission-funded studies could still be helpful in preparing submissions to government on how to manage the Canadian Skagit more sensitively. They could be useful in Commission submissions regarding things like Forest Stewardship Plans, Annual Allowable Cut, Environmental Assessments of proposed mining and other activities, potential designation of Wildlife Habitat Areas, Old Growth Management Areas, Spotted Owl Special Resource Management Areas, and other subjects.

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<sup>328</sup> Note that the draft plan for Manning Park and this Recreation Area calls for the Recreation Area to be upgraded to Class A Park status. Note also that expending money in BC to expand protected areas is consistent with Article III of Appendix D of the *High Ross Treaty*, which directs that "a large majority of the expenditures from the Fund, averaged over a period of ten years, shall be made in British Columbia".

### C. SEIZE THE DAY -- FACTORS FAVOURING PROTECTION AT THIS TIME

Of more pressing concern than such long-term funding approaches is the fact that a unique opportunity exists for the Commission to take immediate action to promote protection of this area. There are a number of factors that are currently favourable to the accomplishment of such protection, including:

- Interfor and Canfor are surrendering their forest tenures in the Skagit -- forming a unique window of opportunity to have those tenures devoted to conservation<sup>329</sup>. The fact that the Crown will have unencumbered ownership should make it easier to place these areas into protected status.
- The timber types in much of the unprotected area (in the "donut hole") are not particularly valuable.
- Companies wanting to log portions of the unprotected lands would face challenges and expense. Terrain along the northwest panhandle of Manning Park make road construction into the unlogged drainages of 18 and 20 Mile Creeks and Laforge Creek difficult and expensive.
- Public opposition to timber development of the area is strong, because the area is adjacent to some of the highest profile park land easily accessible to Vancouverites. Much of the public thinks that the unprotected area is already Park Land.
- The land near the panhandle/donut hole is visible from a highly used scenic highway corridor. (When companies tried to get Park Use Permits for access roads to be constructed across the panhandle of Manning Park to access 18-20 Mile Creek timber, there was a public outcry, and the permits were not granted.)

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<sup>329</sup> The following licences within the Upper Skagit watershed are anticipated to be returned to the Crown before the end of 2005: A19203 (International Forest Products [Interfor] – FL); A20477 (Intefor – TSL Licence); and A19208 (Canadian Forest Products [Canfor] – FL) – according to personal communication with Erik Nelson, Chilliwack Forest District, July, 2004. Under the new *Forestry Revitalization Act*, large major licensees are being required to return approximately 20 per cent of their province-wide replaceable tenures to the Crown for redistribution to woodlots, community forests, and First Nations. A portion will also be sold at auction to the highest bidder through BCTS.

- Mining companies would face public relations problems if they tried to develop a mine in this high-profile area. On the other hand, they could win a great deal of good will by agreeing to protect Vancouver's "Backyard Wilderness". Thus, they may be open to offers to "buy out" their mineral tenures. Retirement of Skagit tenures could be characterized as part of a province-wide "sustainable" mining strategy – a strategy consistent with the province's general pro-mining stance.
- The area is in the core of prime spotted owl habitat in BC, and forms perhaps the most important link to the American spotted owl population. Under the current Spotted Owl Management Plan, there would have to be some constraints on development to respect owl habitat – and there is reportedly some concern within the provincial government that the federal government might intervene and invoke the Species at Risk Act to protect owls, if BC doesn't do more to protect the owls.
- Protecting the Skagit would be politically popular, because the 1970's "Save the Skagit" campaign made the word "Skagit" an environmental watchword.
- The Commission could bring money to the table. It could not only bring its own funds, but potentially catalyse money from US foundations and other sources. Thus, unlike most proposals for protected areas, this one might pay for itself, from government's perspective. The previous fund that was devoted specifically to compensating mineral tenure holders whose tenures were expropriated (e.g., for protected areas), has been terminated over the past two years, so Commission money to carry out this function may be welcome.<sup>330</sup>
- There have been proposals for conservation groups to invest \$100 million to buy conservation rights on Crown land on the Central Coast – to compensate First Nations and other local people for the setting aside of

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<sup>330</sup> Personal communication with Ministry of Energy and Mines, August 12, 2004.

development plans. The Skagit could be a much smaller "pilot project" of such a proposal<sup>331</sup>.

- There is an opportunity to creatively address First Nations claims in the area. Creation of a First Nations Cultural Centre along Highway #3, along with arrangements for First Nations to own and manage the Centre, could create economic development opportunities for First Nations, and showcase Aboriginal culture and history side-by-side with nature education/research produced by the Commission.
- The 2010 Olympics raises the opportunity for the federal government to pay for such a Skagit First Nations Cultural Centre, and help compensate them for their Aboriginal claims. Situated on Highway #3, such a Centre would be the Eastern Gateway to the Olympics -- and would provide a unique and potentially highly popular tourist destination.
- The draft Manning Provincial Park/Cascade Recreation Area Management Plan recommends that Cascade Recreation Area should be reclassified as a Class A Park. This should be supported by The Commission.

#### D. STRATEGIES TO ACHIEVE PROTECTION

➤ ***It is recommended that The Commission consider the following potential strategies for achieving greater protection in the Canadian Skagit Valley:***

**1. Set the Goal of Achieving the Equivalent of Class A Provincial Park protection for the Entire Canadian Skagit, with the Priorities Defined in the Above Recommendation.**

You're unlikely to reach your destination, if you don't first define it. It is recommended that the Commission explicitly articulate a goal.

**2. Quickly Pursue the Current Discussions with the Provincial Government.**

An opportunity to achieve conservation goals may be achievable in the very near term.

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<sup>331</sup> The Central Coast project does not seem to have momentum at this point, and may no longer be a major factor.

### **3. Establish a Collaboration with First Nations.**

Local First Nations may well have legal rights and/or title to the land involved. The Commission should move quickly to communicate with the First Nations that may have claims in the area, including the Ntlaka'pamux Nation Tribal Council<sup>332</sup>; the Sto:lo group of Nations<sup>333</sup>, and the Upper Similkameen Nation<sup>334</sup>.

Dealing with First Nations issues may be complex because of the uncertainty regarding what First Nations may claim the area (it is not unusual to have a multiplicity of First Nations claims for the same area), and uncertainty as to the ultimate outcome if claims were to be finally adjudicated. However, a successful First Nation's claim could conceivably alter a government decision to protect an area. Therefore, it is important to seek collaboration with, and buy-in from, First Nations, if possible.

In addition, First Nations would be very important partners in any proposal to government, and the support of First Nations for a proposal could be very powerful politically. The Government needs to deal with land claims issues, and an innovative approach might create a solution that conserves the area, meets the needs of First Nations, and helps Government reach broader agreements with First Nations.

It would be prudent to discuss these matters with First Nations at the earliest opportunity, and attempt to come up with an approach that can satisfy their needs for economic development (e.g., with the Cultural Centre discussed above, to provide ongoing employment and income) – as well as The Commission's need for conservation of the area.

There are many examples of protected areas where aboriginal needs and conservation goals have been integrated. In Chile, Los Flamencos National Park is co-managed by the indigenous Lican Antai people and government. In Australia, a number of parks have been returned to Aboriginal ownership and title (e.g., in the form of a land trust or Aboriginal Land Council), with government leasing the park back from the Aboriginal group for park use. Such arrangement have provided for conservation of the land, recognition of traditional aboriginal

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<sup>332</sup> This group, based in Lytton, was previously compensated by Seattle City Light for the flooding of their lands.

<sup>333</sup> And related groups that may have their own independent claims.

<sup>334</sup> As well as any others that come to the attention of the Commission as potentially having claims.

hunting and fishing rights within the limits of biodiversity and conservation needs, protection of Aboriginal cultural interests, park management by bodies with majority aboriginal membership, provisions for Aboriginals to run cultural centers and share in park income, and other provisions that may be attractive to First Nations that are interested in conserving the Skagit Valley<sup>335</sup>.

Existing Canadian examples might also be looked at. For example, the Stein Valley Provincial Park, Tatshenshini-Alsek Park, the Kitlope Heritage Conservancy and a number of other BC protected areas are co-managed by the BC government and local First Nations. The Hakai Luxvbalis Conservancy Area, an area important for sports fishing tourism, is co-managed by the Heiltsuk First Nation and government. The Haida First Nation co-manages Gwaii Hannas National Park along with the federal government<sup>336</sup>.

With creative thinking, and creative partnerships (see below), the Commission and First Nations might be able to create a win-win for both the Commission and First Nations in the Skagit.

#### **4. Find Partners**

If Commission funds alone are insufficient to acquire protection of the Canadian Skagit, many groups may be willing to partner with the Commission. Land trusts and foundations have expressed an interest in helping to augment Commission funds for such a project. The Land Conservancy of BC has expressed an interest in getting involved in public fundraising for such a project, in partnership with the Commission. The Northwest Ecosystem Alliance, which has been involved in massive fundraising campaigns to protect areas near the border, has also expressed an interest in helping to protect the Skagit. The Wilburforce Foundation has expressed an interest in providing technical assistance to the Commission if it decides to pursue a fundraising strategy.

On the Central Coast of BC, private conservation funding organizations have been attempting to put together a \$100 million deal to make a financial contribution to First Nations, local communities, companies

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<sup>335</sup> Alexa McLaren, a Nanaimo lawyer has done a great deal of research on this topic, and should be contacted for a copy of the paper she did for the Environmental Law Centre on this topic.

<sup>336</sup> Alexa McLaren, a Nanaimo lawyer has done a great deal of research on this topic, and should be contacted for a copy of the paper she did for the Environmental Law Centre on this topic.

and others to “buy conservation” of the area – and eventually place a conservation covenant on the land, to protect it indefinitely. Such organizations could be approached to make a similar conservation contribution in the Skagit<sup>337</sup>.

## **5. Raise the Profile of the Skagit, and Publicize the Commission’s Goal to Save It.**

It is necessary to build a public constituency for long-term protection. Many areas in British Columbia have been successfully protected as the result of public campaigns to raise the area’s profile. Such campaigns can build the political will to grant protection. If the Canadian Skagit is not protected before the next BC election, it may be necessary to do further work to raise the profile of the Skagit, as part of a long term strategy to obtain protection.

Remember that raising the profile of the Skagit serves more than just one purpose – in addition to providing impetus for protecting new areas, it gives the Commission more credibility when it makes submissions on other issues, such as Forest Stewardship Plans, the Skagit/Silver road issue, etc. The Commission could consider the following options for raising the Skagit’s profile:

**a. Produce and Commission Articles and Clips About the Upper Skagit** for the media. The fact that the international Commission has set an ambitious goal to finally Save the Skagit is newsworthy.

**b. Finance Production of a Coffee Table Book about the Skagit**, modeled on the successful coffee table books that played such a key role in the campaigns to protect the Stein Valley and South Moresby in the Queen Charlotte Islands. The publication of Tom Perry’s book, *A Citizen’s Guide to the Skagit Valley*, played a role in the original campaign to stop the raising of the Ross Dam.

**c. Produce a Skagit Movie.** The Commission could work with the Knowledge Network to produce a very low-cost “B.C. Moments” television/movie video about the Upper Skagit<sup>338</sup>. Perhaps the soundtrack could be the song “Skagit Valley Forever”, written by

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<sup>337</sup> To find out more about the Central Coast effort, one could contact Greg McDade, who worked on that project.

<sup>338</sup> “B.C. Moments” is a series of geographical vignettes that the Knowledge Network runs between their television programs. In the past, other parties looking to ‘spotlight’ a particular geographic region have used the Knowledge Network to create free or low-cost video.BC Moments video.

renowned folk singer Malvina Reynolds in the 1970s, with new words generated by a song-writing contest. (See below.)

**d. Song/Photo Contest.** The Commission could sponsor a contest for photos of the Upper Skagit watershed, and a songwriting contest, to write a theme song about the Skagit. The contests would raise the profile of the Upper Skagit. Contest photos could be used to create a Skagit Valley calendar, to promote its protection<sup>339</sup>.

**e. Organize International Conferences of Organizations with a Specific Interest in the Skagit** (e.g. ecologists, fly fishermen, wilderness organizations, recreation groups) to focus public attention on the Skagit. For example, there may be an opportunity to forge partnerships and to galvanize public support for the protection of the Upper Skagit watershed around the Bull Trout issue. The fishing and angling community represents one of the main user groups of the watershed, and much of the initial opposition to the raising of the Ross Dam came from this community. Trout Unlimited Canada (TUC) has facilitated conferences and public education initiatives on the Bull Trout, and has expressed a specific interest in the conservation of Bull Trout stocks in the Skagit River.<sup>340</sup>

**f. Seek Canadian Heritage Rivers System Status.** The Commission could publicly announce that it is seeking Canadian Heritage River status for the Canadian Skagit<sup>341</sup>. This would raise the status of the river nationally.

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<sup>339</sup> Sierra Club (with the photos of Ansell Adams) and the Western Canada Wilderness Committee have used such calendars to successfully promote protection of innumerable areas.

<sup>340</sup> Personal Communication with Dr. James White, Ph.D, President of Vancouver chapter of Trout Unlimited Canada.

<sup>341</sup> Canadian Heritage River status does not provide legal protection, but it does produce recognition and status – and it represents a commitment by governments to work with the stakeholders of a river to carry out certain actions contained in the management strategy.

The Canadian Heritage River System (CHRS) is a national river conservation program established by provincial, territorial, and federal governments. The program aims to “conserve and protect the best examples of Canada’s river heritage, to give them national recognition, and to encourage the public to enjoy and appreciate them.” See [http://www.chrs.ca/About\\_e.htm](http://www.chrs.ca/About_e.htm). The System is administered by the Canadian Heritage Rivers Board, composed of members appointed by federal, provincial, and territorial governments.

Citizens can nominate a river by presenting a submission to their federal, provincial or territorial board member (a government employee). The responsible government(s) then has the discretion to pursue the nomination if the river has

**g. Get the Skagit onto the List of BC's most Endangered Rivers.** Submit documentation of the risk that logging, mining and water extraction could pose to the Skagit and ask the Outdoor Recreation Council to list the Skagit on its highly-publicized list of British Columbia's most Endangered Rivers. This year's logging, the recent water extraction licence, plus the potential for new mining development could possibly qualify the Skagit for the list.

**h. Call on the Canadian and US Governments to Apply to Have the North Cascades Park and the Skagit Valley Above Ross Dam Declared Part of a UN World Heritage Site or Biosphere Reserve<sup>342</sup>.** *World Heritage Site designation not only provides international recognition, but also elevates the status of the area domestically, resulting in increased scrutiny and impetus for protection.*

The Skagit would join the other two World Heritage Sites declared along the Canada/US border -- Waterton/Glacier International Peace Park on the Montana/Alberta border and Kluane/Wrangell-St. Elias/Glacier Bay/Tatshenshini-Alsek National Parks on the Alaska/ Canada border<sup>343</sup>.

A similar international protection mechanism that the Commission could consider requesting for the area is designation as a Biosphere Reserve, a program also administered by UNESCO, which promotes preservation of a core area inside a buffer area that allows careful sustainable development. A Biosphere Reserve has been established around Waterton/Glacier International Peace Park.

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"outstanding natural, cultural and/or recreational values, a high level of public support, and it [is] demonstrated that sufficient measures will be put in place to ensure that those values will be maintained." The national Board makes recommendations to the federal government about whether status should be granted.

<sup>342</sup> Establishment of a World Heritage Site would be consistent with the original aims in establishing the Commission. The Skagit River Treaty and British-Columbia-Seattle Agreement report, a document intended to clarify the agreement that established the Commission, recognizes the high priority of establishing a "firm connection between North Cascades National Park in the United States and Manning Provincial Park in the Province of British Columbia, forming an International Park." -- Skagit River Treaty and British Columbia-Seattle Agreement, Appendix E, Section 11, Senate Treaty Doc. 98-26, April 2, 1984.

<sup>343</sup> Under the Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972<sup>343</sup>, the United Nations (UNESCO) can grant World Heritage Site status to world-class cultural and natural heritage sites.

Calling for the creation of a World Heritage Site or Biosphere Reserve has helped increase protection of Canadian areas in the past. For example, the campaign to establish a Biosphere Reserve in Clayoquot Sound was an element in the successful campaign to establish a large park in that area<sup>344</sup>.

However, the Commission should not take resources from other high priorities to place into a campaign for UN designation – it should carefully weigh the costs (in time and resources) of such an effort against the benefits and the likelihood of success<sup>345</sup>.

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<sup>344</sup> The designation of Clayoquot Sound in British Columbia in 2000 as a Biosphere Reserve led to increased protection (including lower rates of logging) in the region, and increased funding, including a \$12 million dollar grant to establish the Clayoquot Biosphere Trust for preservation of the region by the Canadian government. See [Clayoquot Biosphere Trust Homepage](#), available at <http://www.clayoquotbiosphere.org/> (last visited Aug. 26, 2004).

<sup>345</sup> According to Bill Paleck, the Park Superintendent for the North Cascades Complex.

## **APPENDIX**

### **APPENDIX A: MINING TENURES**

Mr. Sandborn,

The following information is in response to your December 14 telephone enquiry about mineral and mineral tenure information in the Manning/Skagit Valley parks area.

The "doughnut" area that is excluded from Manning Park, in the vicinity of Hatchethead and Silverdaisy mountains and partly bordering Skagit Valley Park, contains 162 current mineral claims that were acquired by staking. The area also contains 8 surveyed Crown Grant claims and an additional 8 Crown Grants within Skagit Valley Park. Please see the insert map.

<<...OLE\_Obj...>>

The owner of all the acquired claims appears to be:

IMPERIAL METALS CORPORATION  
200-580 HORNBY ST  
VANCOUVER  
BRITISH COLUMBIA  
CANADA  
V6C3B6

Business Phone (604) 6698959

Fax Number (604) 6874030

<http://www.imperialmetals.com/s/Home.asp>

In order to determine who the Crown Granted claims belong to a Land Title search would have to be made through the New Westminster Land Title office. The provincial Mineral Resource Revenue Branch may have this information as well.

The acquired tenure information contained in the attached MS Word was determined by viewing the tenure at [www.MapPlace.ca](http://www.MapPlace.ca). The Crown Granted claim information contained in the attached MS Word document was determined by viewing <http://www.mtonline.gov.bc.ca/>. The New Westminster Mining Division Gold Commissioner's Office, located in the Vancouver Mineral Development office, will have the current tenure data. I did not see

any "Quarrying" tenure for this area within the files at the Ministry of Sustainable Resource Management's data warehouse.

<<Chris Sandborn - Mineral Titles.doc>>

The table below lists the mineral occurrences that are documented in the provincial mineral database MINFILE. Please see [www.MINFILE.ca](http://www.MINFILE.ca).

Minfile No.	Names	Status	Commodities	
092HSW001	GIANT COPPER: AM BRECCIA: CANAM: A.M. (L.1586): PASS: CAMP: NEW BRECCIA: NO. 1: INVERMAY	Developed	CU AU AG ZN PB MO UR WO	
092HSW002	INVERMAY: NORWEGIAN: CANAM: GIANT COPPER: K.V. GOLD: VERNON 3	Past Producer	AG ZN PB AU CU	
092HSW012	D & J: DIAMOND: SILVER BELL: BELL: DELLA Prospect	CU AU AG ZN PB		
092HSW025	SILVER DAISY	Past Producer	AG PB ZN AU CU	
092HSW027	JULY: CANAM: GIANT COPPER: INVERMAY Prospect	AG AU ZN CU		
092HSW161	NO. 1: GIANT COPPER	Prospect	AG PB ZN	
	CU			

Two of these MINFILE occurrences have documented mineral inventory: please see below. This information is also found at [www.MINFILE.ca](http://www.MINFILE.ca).

## **APPENDIX B**

### **(1)**

#### **GIANT COPPER**

Year 1998. 45,373,026 tonnes ore

Indicated Silver 11.19 g/t (grams per tonne)

Gold 0.38 g/t

Copper 0.470 % (per cent)

Information Circular 1999-1, page 9. AM and Invermay (092HSW002) zones calculated by Imperial Metals Corporation.

#### **AM**

Year 1995 26,762,000 tonnes ore

Measured Silver 12.34 g/t

Gold 0.38 g/t

Copper 0.653 %

Inf. Circ. 1997-1, page 19 and 1995 Annual Report, Imperial Metals.

Previous drilling and underground development have outlined an open pittable resource for the AM Breccia zone.

#### **AREA**

Year 1995 19,956,200 tonnes ore

Indicated Silver 11.99 g/t

Gold 0.41 g/t

Copper 0.750 %

Northern Miner - February 13, 1995.

Drill indicated resource using a strip ratio of 4.5 to 1 and including a small, near-surface pit estimated to contain 5,986,860 tonnes grading 0.64 per cent copper, 0.30 gram per tonne gold and 10.96 grams per tonne silver at a stripping ratio of 1.5 to 1.

### **(2)**

#### **INVERMAY**

Year 1997 15,330,000 tonnes ore

Inferred Copper 0.210 %

Gold 0.38 g/t

Silver 7.92 g/t

1997 Cordilleran Roundup Abstracts, page 24 and WWW. Geological resource. See Giant Copper (092HSW001) for AM and Invermay resource.

The table below lists exploration and development expenditures (in 1986 & 1992 dollars) that were made in the area and credited, in part, towards the cost of maintaining tenure. This information can be found at <http://www.em.gov.bc.ca/Mining/Geolsurv/Aris/default.htm>.

Report_No Expend\$86	Year	Latitude Expend\$92	Longitude	Expenditure	
259 1958 24788.89		49.18806	-121.05778	4462	19316.02
4074 1972 13026.82		49.16306	-121.02778	3400	10179.64
4075 1972 40229.89		49.16306	-121.02778	10500	31437.13
7823 1979 132924.34		49.16306	-121.02778	65000	106557.38
8691 1980 217592.52		49.16306	-121.02778	116412	173232.14
18340 1989 440024.28		49.16639 571981.39	-121.01778		501627.68
19045 1989 13336.61		49.18306 17336.07	-121.01778		15203.73
19878 1989 347922.46		49.15806	-121.01778	305128	267656.14
23902 1996 61935.54		49.16361	-121.02472	67447.8	49740.27
24157 1995 214733.56		49.16639 265680.54	-121.01778		286669.3
24986 1997 388855.87		49.16639 488462.53	-121.01778		535843.39

A Mineral Potential "ranking" for the area, based on a provincial survey of mineral tracts, can be found at [www.MapPlace.ca](http://www.MapPlace.ca).

Yours truly,

Ian Webster P.Geo.  
 Geologist, B.C. Ministry of Energy & Mines  
 250-952-0433 <http://www.em.gov.bc.ca/Mining/Geolsurv/default.htm>

**APPENDIX C: MINERAL TENURE REPORT**  
**ACQUIRED MINERAL TENURE**

Claim Name	Located By	Tenure Number	Good Standing Until
CAMBORNE NO. 1	MATS CONVERSION	<a href="#">236526</a>	20110220
CAMBORNE NO. 2	MATS CONVERSION	<a href="#">236527</a>	20110220
LOIS NO.1	MATS CONVERSION	<a href="#">236626</a>	20110220
INVERMAY NO.1	MATS CONVERSION	<a href="#">236755</a>	20100220
VERNON #1	MATS CONVERSION	<a href="#">236496</a>	20110220
VERNON #2	MATS CONVERSION	<a href="#">236497</a>	20110220
VERNON #3	MATS CONVERSION	<a href="#">236498</a>	20110220
VERNON #4	MATS CONVERSION	<a href="#">236499</a>	20110220
VERNON #5	MATS CONVERSION	<a href="#">236500</a>	20110220
VERNON #6	MATS CONVERSION	<a href="#">236501</a>	20110220
VERNON #7	MATS CONVERSION	<a href="#">236502</a>	20110220
VERNON #8	MATS CONVERSION	<a href="#">236503</a>	20110220
LORNA FR.	SMITH, JAMES W K	<a href="#">236729</a>	20110220
LOIS 7 FR.	SMITH, JAMES W K	<a href="#">236730</a>	20110220
RAN FR.	MATS	<a href="#">235415</a>	20110220

CONVERSION			
SLIDE FR.	MATS CONVERSION	<a href="#"><u>235426</u></a>	20110220
I.P.4 FR.	MATS CONVERSION	<a href="#"><u>235428</u></a>	20110220
HANK NO.5	MATS CONVERSION	<a href="#"><u>236504</u></a>	20100220
HANK NO.7	MATS CONVERSION	<a href="#"><u>236505</u></a>	20100220
MISTY	MATS CONVERSION	<a href="#"><u>236510</u></a>	20110220
MISTY NO.1	MATS CONVERSION	<a href="#"><u>236511</u></a>	20110220
MISTY NO.2	MATS CONVERSION	<a href="#"><u>236512</u></a>	20110220
MISTY NO.3	MATS CONVERSION	<a href="#"><u>236513</u></a>	20110220
MAY NO. 1	MATS CONVERSION	<a href="#"><u>236514</u></a>	20100220
MAY NO. 2	MATS CONVERSION	<a href="#"><u>236515</u></a>	20100220
MAY NO. 3	MATS CONVERSION	<a href="#"><u>236516</u></a>	20100220
MAY NO. 4	MATS CONVERSION	<a href="#"><u>236517</u></a>	20100220
MAY NO. 5	MATS CONVERSION	<a href="#"><u>236518</u></a>	20100220
MAY NO. 6	MATS CONVERSION	<a href="#"><u>236519</u></a>	20100220
MAY NO. 7	MATS CONVERSION	<a href="#"><u>236520</u></a>	20100220
MAY NO. 8	MATS CONVERSION	<a href="#"><u>236521</u></a>	20100220

MAY NO. 9	MATS CONVERSION	<a href="#"><u>236522</u></a>	20100220
MAY NO. 10	MATS CONVERSION	<a href="#"><u>236523</u></a>	20100220
MAY NO. 11	MATS CONVERSION	<a href="#"><u>236524</u></a>	20100220
INVERMAY NO. 3	MATS CONVERSION	<a href="#"><u>236525</u></a>	20110220
MAY #16	MATS CONVERSION	<a href="#"><u>236532</u></a>	20110220
RED #2	MATS CONVERSION	<a href="#"><u>236534</u></a>	20100220
RED #3	MATS CONVERSION	<a href="#"><u>236535</u></a>	20100220
RED #4	MATS CONVERSION	<a href="#"><u>236536</u></a>	20100220
SABRE NO.1	MATS CONVERSION	<a href="#"><u>236538</u></a>	20100220
G.E. NO.2	MATS CONVERSION	<a href="#"><u>236591</u></a>	20110220
LOIS NO.2	MATS CONVERSION	<a href="#"><u>236627</u></a>	20110220
LOIS 3	MATS CONVERSION	<a href="#"><u>236628</u></a>	20110220
LOIS 4	MATS CONVERSION	<a href="#"><u>236629</u></a>	20110220
LOIS 5	MATS CONVERSION	<a href="#"><u>236630</u></a>	20110220
LOIS 6	MATS CONVERSION	<a href="#"><u>236631</u></a>	20110220
LOIS 8	MATS CONVERSION	<a href="#"><u>236632</u></a>	20110220

LOIS 9	MATS CONVERSION	<a href="#"><u>236633</u></a>	20110220
LOIS 10	MATS CONVERSION	<a href="#"><u>236634</u></a>	20110220
LOIS 11	MATS CONVERSION	<a href="#"><u>236635</u></a>	20110220
LOIS 12	MATS CONVERSION	<a href="#"><u>236636</u></a>	20110220
LOIS 13	MATS CONVERSION	<a href="#"><u>236637</u></a>	20110220
LOIS 14	MATS CONVERSION	<a href="#"><u>236638</u></a>	20110220
LESLIE	MATS CONVERSION	<a href="#"><u>236639</u></a>	20110220
LESLIE 1	MATS CONVERSION	<a href="#"><u>236640</u></a>	20110220
GM NO. 31	MATS CONVERSION	<a href="#"><u>236649</u></a>	20110220
GM NO. 32	MATS CONVERSION	<a href="#"><u>236650</u></a>	20110220
GC-40	MATS CONVERSION	<a href="#"><u>236699</u></a>	20110220
GC-43	MATS CONVERSION	<a href="#"><u>236701</u></a>	20110220
GC-35	MATS CONVERSION	<a href="#"><u>236695</u></a>	20110220
GC-37	MATS CONVERSION	<a href="#"><u>236696</u></a>	20110220
GC-38	MATS CONVERSION	<a href="#"><u>236697</u></a>	20110220
GC-39	MATS CONVERSION	<a href="#"><u>236698</u></a>	20110220

GC-42	MATS CONVERSION	<a href="#"><u>236700</u></a>	20110220
GC-46	MATS CONVERSION	<a href="#"><u>236702</u></a>	20110220
GC-48	MATS CONVERSION	<a href="#"><u>236703</u></a>	20110220
GC-49	MATS CONVERSION	<a href="#"><u>236704</u></a>	20110220
GC-50	MATS CONVERSION	<a href="#"><u>236705</u></a>	20110220
GC-51	MATS CONVERSION	<a href="#"><u>236706</u></a>	20110220
PEG NO.1	MATS CONVERSION	<a href="#"><u>236709</u></a>	20110220
PEG NO.2	MATS CONVERSION	<a href="#"><u>236710</u></a>	20110220
G.C. 52	MATS CONVERSION	<a href="#"><u>236711</u></a>	20110220
G.C. 53	MATS CONVERSION	<a href="#"><u>236712</u></a>	20110220
G.C. 54	MATS CONVERSION	<a href="#"><u>236713</u></a>	20110220
G.C. 55	MATS CONVERSION	<a href="#"><u>236714</u></a>	20110220
G.C. 56	MATS CONVERSION	<a href="#"><u>236715</u></a>	20110220
G.C. 57	MATS CONVERSION	<a href="#"><u>236716</u></a>	20110220
G.C. 58	MATS CONVERSION	<a href="#"><u>236717</u></a>	20110220
G.C. 59	MATS CONVERSION	<a href="#"><u>236718</u></a>	20110220

G.C. 60	MATS CONVERSION	<a href="#"><u>236719</u></a>	20110220
G.C. 61	MATS CONVERSION	<a href="#"><u>236720</u></a>	20110220
G.C. 62	MATS CONVERSION	<a href="#"><u>236721</u></a>	20110220
G.C. 63	MATS CONVERSION	<a href="#"><u>236722</u></a>	20110220
G.C. 64	MATS CONVERSION	<a href="#"><u>236723</u></a>	20110220
G.C. 65	MATS CONVERSION	<a href="#"><u>236724</u></a>	20110220
G.C. 66	MATS CONVERSION	<a href="#"><u>236725</u></a>	20110220
G.C. 67	MATS CONVERSION	<a href="#"><u>236726</u></a>	20110220
G.C. 68	MATS CONVERSION	<a href="#"><u>236727</u></a>	20110220
BARB NO.4	MATS CONVERSION	<a href="#"><u>236731</u></a>	20100220
BARB NO.3	MATS CONVERSION	<a href="#"><u>236732</u></a>	20100220
GC 36	MATS CONVERSION	<a href="#"><u>236743</u></a>	20100220
GC 41	MATS CONVERSION	<a href="#"><u>236744</u></a>	20100220
GC 44	MATS CONVERSION	<a href="#"><u>236745</u></a>	20100220
GC 45	MATS CONVERSION	<a href="#"><u>236746</u></a>	20100220
GC 47	MATS CONVERSION	<a href="#"><u>236747</u></a>	20100220

HANK NO.2	MATS CONVERSION	<a href="#"><u>236749</u></a>	20100220
HANK NO.4	MATS CONVERSION	<a href="#"><u>236750</u></a>	20100220
HANK NO.6	MATS CONVERSION	<a href="#"><u>236751</u></a>	20100220
HANK NO.8	MATS CONVERSION	<a href="#"><u>236752</u></a>	20100220
INVERMAY NO.2	MATS CONVERSION	<a href="#"><u>236756</u></a>	20100220
AXE #2	MATS CONVERSION	<a href="#"><u>236816</u></a>	20110220
CANAM 3	MATS CONVERSION	<a href="#"><u>235772</u></a>	20110220
CANAM 2	MATS CONVERSION	<a href="#"><u>235773</u></a>	20110220
G.E. NO.1	MATS CONVERSION	<a href="#"><u>236590</u></a>	20110220
G.E. NO.4	MATS CONVERSION	<a href="#"><u>236593</u></a>	20110220
GM NO. 29	MATS CONVERSION	<a href="#"><u>236647</u></a>	20110220
GM NO. 30	MATS CONVERSION	<a href="#"><u>236648</u></a>	20110220
GM NO. 27	MATS CONVERSION	<a href="#"><u>236645</u></a>	20110220
G.E. #3 FR.	MATS CONVERSION	<a href="#"><u>236655</u></a>	20110220
I P NO.1 FR.	SMITH, JAMES W K	<a href="#"><u>236733</u></a>	20100220
HANK NO.1 FR.	SMITH, JAMES W K	<a href="#"><u>236748</u></a>	20100220
JET NO.2 FR.	SMITH, JAMES W K	<a href="#"><u>236754</u></a>	20100220
RIDGE 1 FR.	SMITH, JAMES W K	<a href="#"><u>236740</u></a>	20100220

RIDGE 2 FR.	SMITH, JAMES W K	<a href="#">236741</a>	20100220
RIDGE 3 FR.	SMITH, JAMES W K	<a href="#">236742</a>	20100220
MAY FR.	SMITH, JAMES W K	<a href="#">236753</a>	20100220
I P NO.2 FR.	SMITH, JAMES W K	<a href="#">236734</a>	20100220
I P NO.6 FR.	SMITH, JAMES W K	<a href="#">236736</a>	20100220
REX #22 FR.	MATS CONVERSION	<a href="#">236815</a>	20110220
AXE #10 FR.	SMITH, JAMES W K	<a href="#">236817</a>	20110220
RED #1	MATS CONVERSION	<a href="#">236533</a>	20100220
JET NO. 1 FRACTIONAL	MATS CONVERSION	<a href="#">236537</a>	20100220
LOIS FR	MATS CONVERSION	<a href="#">236625</a>	20110220
26 MILE FR.	MATS CONVERSION	<a href="#">236728</a>	20110220
G.E. NO.2	MATS CONVERSION	<a href="#">236591</a>	20110220
GC-39	MATS CONVERSION	<a href="#">236698</a>	20110220
G.E. NO.3	MATS CONVERSION	<a href="#">236592</a>	20110220
G.E. NO.4	MATS CONVERSION	<a href="#">236593</a>	20110220
CANAM 3	MATS CONVERSION	<a href="#">235772</a>	20110220
CANAM 2	MATS CONVERSION	<a href="#">235773</a>	20110220
JOHN 1	MATS CONVERSION	<a href="#">235417</a>	20100220
JOHN 2	MATS	<a href="#">235418</a>	20100220

## CONVERSION

JOHN 3	MATS CONVERSION	<a href="#"><u>235419</u></a>	20100220
JOHN 4	MATS CONVERSION	<a href="#"><u>235420</u></a>	20100220
G.E. NO.5	MATS CONVERSION	<a href="#"><u>236594</u></a>	20110220
G.E. NO.6	MATS CONVERSION	<a href="#"><u>236595</u></a>	20110220
G.E. NO.7	MATS CONVERSION	<a href="#"><u>236596</u></a>	20110220
G.E. NO.8	MATS CONVERSION	<a href="#"><u>236597</u></a>	20110220
G.E. #9	MATS CONVERSION	<a href="#"><u>236651</u></a>	20110220
G.E. #10	MATS CONVERSION	<a href="#"><u>236652</u></a>	20110220
G.E. #11	MATS CONVERSION	<a href="#"><u>236653</u></a>	20110220
G.E. #12	MATS CONVERSION	<a href="#"><u>236654</u></a>	20110220
GM NO. 32	MATS CONVERSION	<a href="#"><u>236650</u></a>	20110220
GM NO. 27	MATS CONVERSION	<a href="#"><u>236645</u></a>	20110220
GM NO. 29	MATS CONVERSION	<a href="#"><u>236647</u></a>	20110220
GM NO. 30	MATS CONVERSION	<a href="#"><u>236648</u></a>	20110220
GM NO. 28	MATS CONVERSION	<a href="#"><u>236646</u></a>	20110220
I P NO.9 FR.	SMITH, JAMES W K	<a href="#"><u>236739</u></a>	20100220

I P NO.8 FR.	SMITH, JAMES W K	<a href="#"><u>236738</u></a>	20100220
G.E. NO.1	MATS CONVERSION	<a href="#"><u>236590</u></a>	20110220
MAY NO. 4	MATS CONVERSION	<a href="#"><u>236517</u></a>	20100220
MAY NO. 5	MATS CONVERSION	<a href="#"><u>236518</u></a>	20100220
MAY NO. 7	MATS CONVERSION	<a href="#"><u>236520</u></a>	20100220
BROWN NO. 1	MATS CONVERSION	<a href="#"><u>236528</u></a>	20110220
BROWN NO.2	MATS CONVERSION	<a href="#"><u>236529</u></a>	20110220
BROWN NO.3	MATS CONVERSION	<a href="#"><u>236530</u></a>	20110220
BROWN NO.4	MATS CONVERSION	<a href="#"><u>236531</u></a>	20110220
GC-48	MATS CONVERSION	<a href="#"><u>236703</u></a>	20110220
GC-50	MATS CONVERSION	<a href="#"><u>236705</u></a>	20110220
GC-51	MATS CONVERSION	<a href="#"><u>236706</u></a>	20110220
RIDGE 3 FR.	SMITH, JAMES W K	<a href="#"><u>236742</u></a>	20100220

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**British Columbia Ministry of Energy and Mines**  
**Geological Survey Branch**  
**Mineral Titles Search & Statistics**

## APPENDIX D: CROWN GRANT CLAIMS

### Query Results

#### Survey Parcels

[Show Gator Details](#)

**SID:** 4643480

**Legal Desc.:** DISTRICT LOT 1584, BEING A.M. NO. 4 MINERAL CLAIM, YDYD

**Status:** Active

[Zoom to this feature](#)

**End of Result Set**

#### Survey Parcels

[Show Gator Details](#)

**SID:** 4643350

**Legal Desc.:** DISTRICT LOT 1581, BEING A.M. NO. 5 MINERAL CLAIM, YDYD

**Status:** Active

[Zoom to this feature](#)

**End of Result Set**

#### Survey Parcels

[Show Gator Details](#)

**SID:** 4643510

**Legal Desc.:** DISTRICT LOT 1585, BEING AUGUSTUS NO. 5 FRACTION MINERAL CLAIM, YDYD

**Status:** Active

[Zoom to this feature](#)

**End of Result Set**

#### Survey Parcels

[Show Gator Details](#)

**SID:** 4643640

**Legal Desc.:** DISTRICT LOT 1586, BEING A.M. MINERAL CLAIM, YDYD

**Status:** Active

[Zoom to this feature](#)

**End of Result Set**

**Survey Parcels**

[\*\*Show Gator Details\*\*](#)

**SID:** 4643220

**Legal Desc.:** DISTRICT LOT 1579, BEING A.M. NO. 1 MINERAL  
CLAIM, YDYD

**Status:** Active

[Zoom to this feature](#)

**End of Result Set**

**Survey Parcels**

[\*\*Show Gator Details\*\*](#)

**SID:** 4643770

**Legal Desc.:** DISTRICT LOT 1587, BEING A.M. NO. 2 MINERAL  
CLAIM, YDYD

**Status:** Active

[Zoom to this feature](#)

**End of Result Set**

**Survey Parcels**

[\*\*Show Gator Details\*\*](#)

**SID:** 4643800

**Legal Desc.:** DISTRICT LOT 1595, BEING REX NO. 1 FRACTION  
MINERAL CLAIM, YDYD

**Status:** Active

[Zoom to this feature](#)

**End of Result Set**

**Survey Parcels**

[\*\*Show Gator Details\*\*](#)

**SID:** 4643190

**Legal Desc.:** DISTRICT LOT 1577, BEING A.M. NO. 3 MINERAL  
CLAIM, YDYD

**Status:** Active

[Zoom to this feature](#)

## **End of Result Set**

Within Skagit Park

### **Survey Parcels**

[\*\*Show Gator Details\*\*](#)

**SID:** 4647860

**Legal Desc.:** DISTRICT LOT 1729, BEING D. & J. NO. 5 MINERAL  
CLAIM, YDYD

**Status:** Active

### **Survey Parcels**

[\*\*Show Gator Details\*\*](#)

**SID:** 4648060

**Legal Desc.:** DISTRICT LOT 1735, BEING D. & J. FRACTION MINERAL  
CLAIM, YDYD

**Status:** Active

### **Survey Parcels**

[\*\*Show Gator Details\*\*](#)

**SID:** 4647600

**Legal Desc.:** DISTRICT LOT 1727, BEING D. & J. NO. 4 MINERAL  
CLAIM, YDYD

**Status:** Active

### **Survey Parcels**

[\*\*Show Gator Details\*\*](#)

**SID:** 4647730

**Legal Desc.:** DISTRICT LOT 1728, BEING D. & J. NO. 6 MINERAL  
CLAIM, YDYD

**Status:** Active

### **Survey Parcels**

[\*\*Show Gator Details\*\*](#)

**SID:** 4647570

**Legal Desc.:** DISTRICT LOT 1726, BEING D. & J. NO. 3 MINERAL  
CLAIM, YDYD

**Status:** Active

**Survey Parcels**[Show Gator Details](#)**SID:** 4647440**Legal Desc.:** DISTRICT LOT 1725, BEING D. & J. NO. 1 MINERAL  
CLAIM, YDYD**Status:** Active**Survey Parcels**[Show Gator Details](#)**SID:** 4647990**Legal Desc.:** DISTRICT LOT 1730, BEING D. & J. NO. 2 MINERAL  
CLAIM, YDYD**Status:** Active**Survey Parcels**[Show Gator Details](#)**SID:** 4641790**Legal Desc.:** DISTRICT LOT 1510, YDYD**Status:** Active

## **APPENDIX E**

Mr. Sandborn,

The following information is in regard to your enquiry about the grade and tonnage of Giant Copper.

***The follow is from the B.C. Mineral Deposit Profiles found at  
<http://www.em.gov.bc.ca/Mining/Geolsurv/MetallicMinerals/MineralDepositProfiles/PROFILES/L04.htm>***

British Columbia porphyry Cu \* Mo ± Au deposits range from <50 to >900 Mt with commonly 0.2 to 0.5 % Cu, <0.1 to 0.6 g/t Au, and 1 to 3 g/t Ag. Mo contents are variable from negligible to 0.04 % Mo.

Median values for 40 B.C. deposits with reported reserves are: 115 Mt with 0.37 % Cu, \*0.01 % Mo, 0.3g /t Au and 1.3 g/t Ag.

***The following grade and tonnage for Giant Copper comes from a July 7, 1999 Imperial Metals News Release: Invermay (giant copper)***

Not far from the Similco property, 200 kilometres east of Vancouver, B.C., and covering 2,880 hectares, the 100-per-cent-owned Invermay property has a resource of 45.4 million tons grading 0.4 of a gram per tonne (0.011 of an ounce per ton) gold, 11.2 grams per tonne (0.326 of an ounce per ton) silver and 0.47 per cent copper.

***The following grade and tonnage information for the Giant Copper comes from  
<http://www.em.gov.bc.ca/cf/minfile/search/search.cfm?mode=masterreport&minfilno=092HSW001>***

The drill-indicated resource was last estimated at 19,956,200 tonnes grading 0.75 per cent copper, 0.41 gram per tonne gold and 11.99 grams per tonne silver at a stripping ratio of 4.5:1. The resource includes a small, near-surface pit estimated to contain 5,986,860 tonnes grading 0.64 per cent copper, 0.30 gram per tonne gold and 10.96 grams per tonne silver at a stripping ratio of 1.5:1 (Northern Miner - February 13, 1995).

Please see Table 1A at

***<http://www.em.gov.bc.ca/Mining/Geolsurv/Minpot/articles/gradeton/grd-ton.htm>*** for grade and tonnage data for B.C. Porphyry Cu mineral deposits.

Your truly,  
**Ian Webster** P.Geo.  
Geologist, B.C. Ministry of Energy & Mines  
250-952-0433 <http://www.em.gov.bc.ca/Mining/Geolsurv/default.htm>

## **APPENDIX F**

Mr. Sandborn,

The most up-to-date Mineral Titles information for the Cascade Recreation Area is shown on the maps in the Gold Commissioner's in the Vancouver Mineral Development Office. After January 12, 2005 the electronic "Mineral Titles Online" maps (see **(2)** below) will be the most up-to-date.

Three web-based sources of mineral titles do not show any mineral tenure in the recreation area at this time.

**(1)**

No Mineral Tenure appears within the Cascade Recreation Area at [www.MapPlace.ca](http://www.MapPlace.ca) (see image below);

<<...OLE\_Obj...>>

**(2)**

No Mineral Tenure appears within the Cascade Recreation Area in the attached PDF file (below) found at the Mineral Titles Online site <http://www.mtonline.gov.bc.ca/>;

<<map42903.pdf>>

A surveyed lot does appear within the area on its western margin (see details below) but I do not know what kind it is.

### Identify Results

---

-

Survey Parcels

Show Gator Details

SID: 3871121

Legal Desc.: BLOCK B, DISTRICT LOT 358, YDYD

Status: Active

Show Gator Details

SID: 4680750

Legal Desc.: DISTRICT LOT 358, YDYD

Status: Active

Coordinate Position

BC Albers: 1363838, 489386

Geographic: 120° 59' 50" W  
49° 18' 18" N

**(3)**

No Mineral Tenure appears within the Cascade Recreation Area at the Mineral Titles PDF map site

<http://srmwww.gov.bc.ca/mida/pdf/m092h.shtml> (see below).

<<...OLE\_Obj...>  
<<...OLE\_Obj...>

Yours truly,

[Ian Webster](#) P.Geo.

Geologist, B.C. Ministry of Energy & Mines

250-952-0433 <http://www.em.gov.bc.ca/Mining/Geolsurv/default.htm>

# STATUTES

## APPENDIX G: NATIONAL PARK SERVICE ORGANIC ACT OF 1916

16 U.S.C. § 1. Service created; director; other employees

There is created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall have substantial experience and demonstrated competence in land management and natural or cultural resource conservation. The Director shall select two Deputy Directors. The first Deputy Director shall have responsibility for National Park Service operations, and the second Deputy Director shall have responsibility for other programs assigned to the National Park Service. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified, except such as are under the jurisdiction of the Secretary of the Army, as provided by law, by such means and measures as enjoyment of future generations.

§ 1a. Repealed. June 25, 1948, c. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

### § 1a-1. National Park System: administration; declaration of findings and purpose

Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the system. Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose established by section 1 of this title, to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.

### § 1a-2. Secretary of the Interior's authorization of activities

In order to facilitate the administration of the national park system, the Secretary of the Interior is authorized, under such terms and conditions as he may deem advisable, to carry out the following activities:

- (a) Transportation

Provide transportation of employees located at isolated areas of the national park system and to members of their families, where (1) such areas are not adequately served by commercial transportation, and (2) such transportation is incidental to official transportation services.

(b) Recreation

Provide recreation facilities, equipment, and services for use by employees and their families located at isolated areas of the national park system.

(c) Advisory committees; compensation and travel expenses

Appoint and establish such advisory committees in regard to the functions of the National Park Service as he may deem advisable, members of which shall receive no compensation for their services as such but who shall be allowed necessary travel expenses as authorized by [section 5703 of Title 5](#).

(d) Park equipment purchases

Purchase field and special purpose equipment required by employees for the performance of assigned functions which shall be regarded and listed as park equipment.

(e) Services, resources, or water contracts

Enter into contracts which provide for the sale or lease to persons, States, or their political subdivisions, of services, resources, or water available within an area of the national park system, as long as such activity does not jeopardize or unduly interfere with the primary natural or historic resource of the area involved, if such person, State, or its political subdivision--

(1) provides public accommodations or services within the immediate vicinity of an area of the national park system to persons visiting the area; and

(2) has demonstrated to the Secretary that there are no reasonable alternatives by which to acquire or perform the necessary services, resources, or water.

(f) Vehicular air-conditioning

Acquire, and have installed, air-conditioning units for any Government-owned passenger motor vehicles used by the National Park Service, where assigned duties necessitate long periods in automobiles or in regions of the United States where high temperatures and humidity are common and prolonged.

(g) Exhibits and demonstrations; sale of products and services; contracts and cooperative arrangements; credits to appropriation

Sell at fair market value without regard to the requirements of the Federal Property and Administrative Services Act of 1949, as amended, products and services produced in the conduct of living exhibits and interpretive demonstrations in areas of the national park system, to enter into contracts including cooperative arrangements with respect to such living exhibits and interpretive demonstrations, and to credit the proceeds therefrom to the appropriation bearing the cost of such exhibits and demonstrations. Sixty percent of the fees paid by permittees for the privilege of entering into Glacier Bay for the period beginning on the first full fiscal year following the date of enactment of this sentence shall be deposited into a special account and that such funds shall be available--

(1) to the extent determined necessary, to acquire and preposition necessary and adequate emergency response equipment to prevent harm or the threat of harm to aquatic park resources from permittees; and

(2) to conduct investigations to quantify any effect of permittees' activity on wildlife and other natural resource values of Glacier Bay National Park. The investigations provided for in this subsection shall be designed to provide information of value to the Secretary, in determining any appropriate limitations on permittees' activity in Glacier Bay. The Secretary may not impose any additional permittee operating conditions in the areas of air, water, and oil pollution beyond those determined and enforced by other appropriate agencies. When competitively awarding permits to enter Glacier Bay, the Secretary may take into account the relative impact particular permittees will have on park values and resources, provided that no operating

conditions or limitations relating to noise abatement shall be imposed unless the Secretary determines, based on the weight of the evidence from all available studies including verifiable scientific information from the investigations provided for in this subsection, that such limitations or conditions are necessary to protect park values and

resources. Fees paid by certain permittees for the privilege of entering into Glacier Bay shall not exceed \$5 per passenger. For the purposes of this subsection, "certain permittee" shall mean a permittee which provides overnight accommodations for at least 500 passengers for an itinerary of at least 3 nights, and "permittee" shall mean a concessionaire providing visitor services within Glacier Bay. Nothing in this subsection authorizes the Secretary to require additional categories of permits in, or otherwise increase the number of permits to enter Glacier Bay National Park.

(h) Regulations; promulgation and enforcement

Promulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States: Provided, That any regulations adopted pursuant to this subsection shall be complementary to, and not in derogation of, the authority of the United States Coast Guard to regulate the use of waters subject to the jurisdiction of the United States.

(i) United States Park Police and other National Park Service employees; meals and lodging

Provide meals and lodging, as the Secretary deems appropriate, for members of the United States Park Police and other employees of the National Park Service, as he may designate, serving temporarily on extended special duty in areas of the National Park System, and for this purpose he is authorized to use funds appropriated for the expenses of the Department of the Interior.

(j) Cooperative research and training programs

Enter into cooperative agreements with public or private educational institutions, States, and their political subdivisions, for the purpose of developing adequate, coordinated, cooperative research and training programs concerning the resources of the National Park System, and, pursuant to any such agreements, to accept from and make available to the cooperator such technical and support staff, financial assistance for mutually agreed upon research projects, supplies and equipment, facilities, and administrative services relating to cooperative research units as the Secretary deems appropriate; except that this paragraph shall not waive any

requirements for research projects that are subject to the Federal procurement regulations.

(k) Leases

(1) In general

Except as provided in paragraph (2) and subject to paragraph (3), the Secretary may enter into a lease with any person or governmental entity for the use of buildings and associated property administered by the Secretary as part of the National Park System.

(2) Prohibited activities

The Secretary may not use a lease under paragraph (1) to authorize the lessee to engage in activities that are subject to authorization by the Secretary through a concessions contract, commercial use authorization, or similar instrument.

(3) Use

Buildings and associated property leased under paragraph (1)--

- (A) shall be used for an activity that is consistent with the purposes established by law for the unit in which the building is located;
- (B) shall not result in degradation of the purposes and values of the unit; and
- (C) shall be compatible with National Park Service programs.

(4) Rental amounts

(A) In general

With respect to a lease under paragraph (1)--

- (i) payment of fair market value rental shall be required; and
- (ii) [section 1302 of Title 40](#) shall not apply.

(B) Adjustment

The Secretary may adjust the rental amount as appropriate to take into account any amounts to be expended by the lessee for preservation, maintenance, restoration, improvement, or repair and related expenses.

(C) Regulation

The Secretary shall promulgate regulations implementing this subsection that includes provisions to encourage and facilitate competition in the leasing process and provide for timely and adequate public comment.

(5) Special account

(A) Deposits

Rental payments under a lease under paragraph (1) shall be deposited in a special account in the Treasury of the United States.

(B) Availability

Amounts in the special account shall be available until expended, without further appropriation, for infrastructure needs at units of the National Park System, including--

- (i) facility refurbishment;
- (ii) repair and replacement;
- (iii) infrastructure projects associated with park resource protection; and
- (iv) direct maintenance of the leased buildings and associated properties.

(C) Accountability and results

The Secretary shall develop procedures for the use of the special account that ensure accountability and demonstrated results consistent with this Act.

(I) Cooperative management agreements

(1) In general

Where a unit of the National Park System is located adjacent to or near a State or local park area, and cooperative management between the National Park Service and a State or local government agency of a portion of either park will allow for more effective and

efficient management of the parks, the Secretary may enter into an agreement with a State or local government agency to provide for the cooperative management of the Federal and State or local park areas. The Secretary may not transfer administration responsibilities for any unit of the National Park System under this paragraph.

(2) Provision of goods and services

Under a cooperative management agreement, the Secretary may acquire from and provide to a State or local government agency goods and services to be used by the Secretary and the State or local governmental agency in the cooperative management of land.

(3) Assignment

An assignment arranged by the Secretary under [section 3372 of Title 5](#), of a Federal, State, or local employee for work in any Federal, State, or local land

or an extension of such an assignment may be for any period of time determined by the Secretary and the State or local agency to be mutually beneficial.

[§ 1a-3. Legislative jurisdiction; relinquishment by Secretary; submittal of proposed agreement to Congressional committees; concurrent legislative jurisdiction](#)

Notwithstanding any other provision of law, the Secretary of the Interior may relinquish to a State, or to a Commonwealth, territory, or possession of the United States, part of the legislative jurisdiction of the United States over National Park System lands or interests therein in that State, Commonwealth, territory, or possession:

Provided, That prior to consummating any such relinquishment, the Secretary shall submit the proposed agreement to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives, and shall not finalize such agreement until sixty calendar days after such submission shall have elapsed. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide. The Secretary shall diligently pursue the consummation of arrangements with each State, Commonwealth,

territory, or possession within which a unit of the National Park System is located to the end that insofar as practicable the United States shall exercise concurrent legislative jurisdiction within units of the National Park System.

#### § 1a-4. Uniform allowance

Notwithstanding [section 5901\(a\) of Title 5](#), the uniform allowance for uniformed employees of the National Park Service may be up to \$400 annually.

#### § 1a-5. Additional areas for National Park System

##### (a) General authority

The Secretary of the Interior is directed to investigate, study, and continually monitor the welfare of areas whose resources exhibit qualities of national significance and which may have potential for inclusion in the National Park System. Accompanying the annual listing of areas shall be a synopsis, for each report previously submitted, of the current and changed condition of the resource integrity of the area and other relevant factors, compiled as a result of continual periodic monitoring and embracing the period since the previous such submission or initial report submission one year earlier. The Secretary is also directed to transmit annually to the Speaker of the House of Representatives and to the President of the Senate, at the beginning of each fiscal year, a complete and current list of all areas included on the Registry of Natural Landmarks and those areas of national significance listed on the National Register of Historic places [FN1] which areas exhibit known or anticipated damage or threats to the integrity of their

resources, along with notations as to the nature and severity of such damage or threats. Each report and annual listing shall be printed as a House document: Provided, That should adequate supplies of previously printed identical reports remain available, newly submitted identical reports shall be omitted from printing upon the receipt by the Speaker of the United States House of Representatives of a joint letter from the chairman of the Committee on Natural Resources of the United States House of Representatives and the chairman of the Committee on Energy and Natural Resources of the United States Senate indicating such to be the case.

(b) Studies of areas for potential addition

(1) At the beginning of each calendar year, along with the annual budget submission, the Secretary shall submit to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate a list of areas recommended for study for potential inclusion in the National Park System.

(2) In developing the list to be submitted under this subsection, the Secretary shall consider--

- (A) those areas that have the greatest potential to meet the established criteria of national significance, suitability, and feasibility;
- (B) themes, sites, and resources not already adequately represented in the National Park System; and
- (C) public petition and Congressional resolutions.

(3) No study of the potential of an area for inclusion in the National Park System may be initiated after the date of enactment of this subsection, except as provided by specific authorization of an Act of Congress.

(4) Nothing in this Act shall limit the authority of the National Park Service to conduct preliminary resource assessments, gather data on potential study areas, provide technical and planning assistance, prepare or process nominations for administrative designations, update previous studies, or complete reconnaissance surveys of individual areas requiring a total expenditure of less than \$25,000.

(5) Nothing in this section shall be construed to apply to or to affect or alter the study of any river segment for potential addition to the national wild and scenic rivers system or to apply to or to affect or alter the study of any trail for potential addition to the national trails system.

(c) Report

(1) The Secretary shall complete the study for each area for potential inclusion in the National Park System within 3 complete fiscal years

following the date on which funds are first made available for such purposes. Each study under this section shall be prepared with appropriate opportunity for public involvement, including at least one public meeting in the vicinity of the area under study, and after reasonable efforts to notify potentially affected landowners and State and local governments.

(2) In conducting the study, the Secretary shall consider whether the area under study--

(A) possesses nationally significant natural or cultural resources and represents one of the most important examples of a particular resource type in the country; and

(B) is a suitable and feasible addition to the system.

(3) Each study--

(A) shall consider the following factors with regard to the area being studied--

(i) the rarity and integrity of the resources;

(ii) the threats to those resources;

(iii) similar resources are already protected in the National Park System or in other public or private ownership;

(iv) the public use potential;

(v) the interpretive and educational potential;

(vi) costs associated with acquisition, development and operation;

(vii) the socioeconomic impacts of any designation;

(viii) the level of local and general public support; and

(ix) whether the area is of appropriate configuration to ensure long-term resource protection and visitor use;

(B) shall consider whether direct National Park Service management or alternative protection by other public agencies or the private sector is appropriate for the area;

(C) shall identify what alternative or combination of alternatives would in the professional judgment of the Director of the National Park Service be most effective and efficient in protecting significant resources and providing for public enjoyment; and

(D) may include any other information which the Secretary deems to be relevant.

(4) Each study shall be completed in compliance with the National Environmental Policy Act of 1969.

(5) The letter transmitting each completed study to Congress shall contain a recommendation regarding the Secretary's preferred management option for the area.

(d) New area study office

The Secretary shall designate a single office to be assigned to prepare all new area studies and to implement other functions of this section.

(e) List of areas

At the beginning of each calendar year, along with the annual budget submission, the Secretary shall submit to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate a list of areas which have been previously studied which contain primarily historical resources, and a list of areas which have been previously studied which contain primarily natural resources, in numerical order of priority for addition to the National Park System. In developing the lists, the Secretary should consider threats to resource values, cost escalation factors, and other factors listed in subsection (c) of this section. The Secretary should only include on the lists areas for which the supporting data is current and accurate.

(f) Authorization of appropriations

For the purposes of carrying out the studies for potential new Park System units and for monitoring the welfare of those resources, there are authorized to be appropriated annually not to exceed \$1,000,000. For the purposes of monitoring the welfare and integrity of the national landmarks, there are authorized to be appropriated annually not to exceed \$1,500,000. For carrying out subsections (b) through (d) there are authorized to be appropriated \$2,000,000 for each fiscal year.

[FN1] So in original.

§ 1a-6. Law enforcement personnel within National Park System

- (a) Omitted
- (b) Designation authority of Secretary; powers and duties of designees
- In addition to any other authority conferred by law, the Secretary of the Interior is authorized to designate, pursuant to standards prescribed in regulations by the Secretary, certain officers or employees of the Department of the Interior who shall maintain law and order and protect persons and property within areas of the National Park System. In the performance of such duties, the officers or employees, so designated, may--
- (1) carry firearms and make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony, provided such arrests occur within that system or the person to be arrested is fleeing therefrom to avoid arrest;
- (2) execute any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation issued pursuant to law arising out of an offense committed in that system or, where the person subject to the warrant or process is in that system, in connection with any Federal offense; and
- (3) conduct investigations of offenses against the United States committed in that system in the absence of investigation thereof by any other Federal law enforcement agency having investigative jurisdiction over the offense committed or with the concurrence of such other agency.

- (c) Supplemental special policemen; designation authority of Secretary; cooperation with State officials in enforcement of State law; reimbursement to State; concurrent jurisdiction; delegation of enforcement responsibilities

The Secretary of the Interior is hereby authorized to--

- (1) designate officers and employees of any other Federal agency or law enforcement personnel of any State or political subdivision thereof, when

- deemed economical and in the public interest and with the concurrence of that agency or that State or subdivision, to act as special policemen in areas of the National Park System when supplemental law enforcement personnel may be needed, and to exercise the powers and authority provided by paragraphs (1), (2), and (3) of subsection (a) of this section;
- (2) cooperate, within the National Park System, with any State or political subdivision thereof in the enforcement of supervision of the laws or ordinances of that State or subdivision;
- (3) mutually waive, in any agreement pursuant to paragraphs (1) and (2) of this subsection or pursuant to subsection (b)(1) with any State or political subdivision thereof where State law requires such waiver and indemnification, any and all civil claims against all the other parties thereto and, subject to available appropriations, indemnify and save harmless the other parties to such agreement from all claims by third parties for property damage or personal injury, which may arise out of the parties' activities outside their respective jurisdictions under such agreement; and
- (4) provide limited reimbursement, to a State or its political subdivisions, in accordance with such regulations as he may prescribe, where the State has ceded concurrent legislative jurisdiction over the affected area of the system, for expenditures incurred in connection with its activities within that system which were rendered pursuant to paragraph (1) of this subsection.

The authorities provided by this subsection shall supplement the law enforcement responsibilities of the National Park Service, and shall not authorize the delegation of law enforcement responsibilities of the agency to State and local governments.

(d) Special policemen not deemed Federal employees; exceptions

- (1) Except as otherwise provided in this subsection, a law enforcement officer of any State or political subdivision thereof designated to act as a special policeman under subsection (b) of this section shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including, but not limited to, those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal benefits.

- (2) For purposes of the tort claim provisions of Title 28, a law enforcement officer of any State or political subdivision thereof shall, when acting as a special policeman under subsection (b) of this section, be considered a Federal employee.
- (3) For purposes of subchapter I of chapter 81 of Title 5, relating to compensation to Federal employees for work injuries, a law enforcement officer of any State or political subdivision thereof shall, when acting as a special policeman under subsection (b) of this section be deemed a civil service employee of the United States within the meaning of the term "employee" as defined in [section 8101 of Title 5](#), and the provisions of that subchapter shall apply.

- (e) Federal investigative jurisdiction and State civil and criminal jurisdiction not preempted within National Park System

Nothing contained in this Act shall be construed or applied to limit or restrict the investigative jurisdiction of any Federal law enforcement agency other than the National Park Service, and nothing shall be construed or applied to affect any right of a State or a political subdivision thereof to exercise civil and criminal jurisdiction within the National Park System.

§ 1a-7. National Park System development program

(a) Omitted

- (b) General management plans; preparation and revision by Director of National Park Service; list to Congress; contents

General management plans for the preservation and use of each unit of the National Park System, including areas within the national capital area, shall be prepared and revised in a timely manner by the Director of the National Park Service. On January 1 of each year, the Secretary shall submit to the Congress a list indicating the current status of completion or revision of general management plans for each unit of the National Park System. General management plans for each unit shall include, but not be limited to:

- (1) measures for the preservation of the area's resources;
- (2) indications of types and general intensities of development (including
  - visitor circulation and transportation patterns, systems and modes) associated with public enjoyment and use of the area, including general locations, timing of implementation, and anticipated costs;
- (3) identification of and implementation commitments for visitor carrying capacities for all areas of the unit; and
- (4) indications of potential modifications to the external boundaries of the unit, and the reasons therefor.

(c) Repealed. [Pub.L. 105-391, Title IV, § 415\(b\)\(2\)](#), Nov. 13, 1998, 112 Stat. 3515

§ 1a-7a. National Park System crime prevention assistance

(a) Availability of funds

There are authorized to be appropriated out of the Violent Crime Reduction Trust Fund, not to exceed \$10,000,000 for the Secretary of the Interior to take all necessary actions to seek to reduce the incidence of violent crime in the National Park System.

(b) Recommendations for improvement

The Secretary shall direct the chief official responsible for law enforcement within the National Park Service to--

- (1) compile a list of areas within the National Park System with the highest rates of violent crime;
- (2) make recommendations concerning capital improvements, and other measures, needed within the National Park System to reduce the rates of violent crime, including the rate of sexual assault; and
- (3) publish the information required by paragraphs (1) and (2) in the Federal Register.

(c) Distribution of funds

Based on the recommendations and list issued pursuant to subsection (b) of this section, the Secretary shall distribute the funds authorized

by subsection (a) of this section throughout the National Park System. Priority shall be given to those areas with the highest rates of sexual assault.

(d) Use of funds

Funds provided under this section may be used--

- (1) to increase lighting within or adjacent to National Park System units;
- (2) to provide emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to National Park System units;
- (3) to increase security or law enforcement personnel within or adjacent to National Park System units; or
- (4) for any other project intended to increase the security and safety of National Park System units.

§ 1a-8. Maintenance management system

(a) Implementation and elements

Beginning in fiscal year 1985, the National Park Service shall implement a maintenance management system into the maintenance and operations programs of the National Park System. For purposes of this section the term "maintenance management system" means a system that contains but is not limited to the following elements:

- (1) a work load inventory of assets including detailed information that quantifies for all assets (including but not limited to buildings, roads, utility systems, and grounds that must be maintained) the characteristics affecting the type of maintenance work performed;
- (2) a set of maintenance tasks that describe the maintenance work in each unit of the National Park System;
- (3) a description of work standards including frequency of maintenance, measurable quality standard to which assets should be maintained, methods for accomplishing work, required labor, equipment and material resources, and expected worker production for each maintenance task;

- (4) a work program and performance budget which develops an annual work plan identifying maintenance needs and financial resources to be devoted to each maintenance task;
- (5) a work schedule which identifies and prioritizes tasks to be done in a specific time period and specifies required labor resources;
- (6) work orders specifying job authorizations and a record of work accomplished which can be used to record actual labor and material costs; and
- (7) reports and special analyses which compare planned versus actual accomplishments and costs and can be used to evaluate maintenance operations.

(b) Repealed. [Pub.L. 104-333, Div. I, Title VIII, § 814\(d\)\(1\)\(F\)](#), Nov. 12, 1996, 110 Stat. 4196

#### § 1a-9. Periodic review of National Park System

The Secretary of the Interior (hereafter in sections 1a-9 to [1a-13](#) of this title referred to as the "Secretary") is authorized and directed to conduct a systematic and comprehensive review of certain aspects of the National Park System and to submit on a periodic basis but not later than every 3 years a report to the Committee on Natural Resources and the Committee on Appropriations of the United States House of Representatives and the Committee on Energy and Natural Resources and the Committee on Appropriations of the United States Senate on the findings of such review, together with such recommendations as the Secretary determines necessary. The first report shall be submitted no later than 3 years after November 28, 1990.

#### § 1a-10. Consultation with affected agencies and organizations

In conducting and preparing the report referred to in [section 1a-9](#) of this title, the Secretary shall consult with appropriate officials of affected Federal, State and local agencies, together with national, regional, and local organizations, including but not limited to holding such public hearings as the Secretary determines to be appropriate to provide a full opportunity for public comment.

#### § 1a-11. Contents of report

The report shall contain--

- (a) A comprehensive listing of all authorized but unacquired lands within the exterior boundaries of each unit of the National Park System as of November 28, 1990.
- (b) A priority listing of all such unacquired parcels by individual park unit and for the National Park System as a whole. The list shall describe the acreage and ownership of each parcel, the estimated cost of acquisition for each parcel (subject to any statutory acquisition limitations for such lands), and the basis for such estimate.
- (c) An analysis and evaluation of the current and future needs of each unit of the National Park System for resource management, interpretation, construction, operation and maintenance, personnel, housing, together with an estimate of the costs thereof.

#### § 1a-12. Evaluation of proposed boundary changes

Within one year after November 28, 1990, the Secretary shall develop criteria to evaluate any proposed changes to the existing boundaries of individual park units including--

- (a) analysis of whether or not the existing boundary provides for the adequate protection and preservation of the natural, historic, cultural, scenic and recreational resources integral to the unit;
- (b) an evaluation of each parcel proposed for addition or deletion to the unit based on the analysis under paragraph (1) [FN1];
- (c) an assessment of the impact of potential boundary adjustments taking into consideration the factors in paragraph (c) [FN2] as well as the effect of the adjustments on the local communities and surrounding area.

[FN1] So in original. Probably should be paragraph "(a)".

[FN2] So in original.

#### § 1a-13. Proposals for boundary changes

In proposing any boundary change after November 28, 1990, the Secretary shall--

- (a) consult with affected agencies of State and local governments [FN1] surrounding communities, affected landowners and private national, regional, and local organizations;

- (b) apply the criteria developed pursuant to [section 1a-12](#) of this title and accompany this proposal with a statement reflecting the results of the application of such criteria;
- (c) include with such proposal an estimate of the cost for acquisition of any parcels proposed for acquisition together with the basis for the estimate and a statement on the relative priority for the acquisition of each parcel within the priorities for acquisition of other lands for such unit and for the National Park System.

[FN1] So in original. Probably should be followed by a comma.

[§ 1a-14. National park system advisory committees](#)

(a) Charter

The provisions of section 14(b) of the Federal Advisory Committee Act (5 U.S.C. Appendix; 86 Stat. 776) are hereby waived with respect to any advisory commission or advisory committee established by law in connection with any national park system unit during the period such advisory commission or advisory committee is authorized by law.

(b) Members

In the case of any advisory commission or advisory committee established in connection with any national park system unit, any member of such Commission or Committee may serve after the expiration of his or her term until a successor is appointed.

[§ 1b. Secretary of the Interior's authorization of additional activities; administration of National Park System](#)

In order to facilitate the administration of the National Park System, the Secretary of the Interior is authorized to carry out the following activities, and he may use applicable appropriations for the aforesaid system for the following purposes:

(1) Emergency assistance

Rendering of emergency rescue, fire fighting, and cooperative assistance to nearby law enforcement and fire prevention agencies and for related purposes outside of the National Park System.

(2) Utility facilities; erection and maintenance

The erection and maintenance of fire protection facilities, water lines, telephone lines, electric lines, and other utility facilities adjacent to any area of the said National Park System, where necessary, to provide service in such area.

(3) Transportation of employees of Carlsbad Caverns National Park; rates

Transportation to and from work, outside of regular working hours, of employees of Carlsbad Caverns National Park, residing in or near the city of Carlsbad, New Mexico, such transportation to be between the park and the city, or intervening points, at reasonable rates to be determined by the Secretary of the Interior taking into consideration, among other factors, comparable rates charged by transportation companies in the locality for similar services, the amounts collected for such transportation to be credited to the appropriation current at the time payment is received: Provided, That if adequate transportation facilities are available, or shall be available by any common carrier, at reasonable rates, then and in that event the facilities contemplated by this paragraph shall not be offered.

(4) Utility services for concessioners; reimbursement

Furnishing, on a reimbursement of appropriation basis, all types of utility services to concessioners, contractors, permittees, or other users of such services, within the National Park System: Provided, That reimbursements for cost of such utility services may be credited to the appropriation current at the time reimbursements are received.

(5) Supplies and rental of equipment; reimbursement

Furnishing, on a reimbursement of appropriation basis, supplies, and the rental of equipment to persons and agencies that in cooperation with, and subject to the approval of, the Secretary of the Interior, render services or perform functions that facilitate or supplement the activities of the Department of the Interior in the administration of the

National Park System: Provided, That reimbursements hereunder may be credited to the appropriation current at the time reimbursements are received.

(6) Contracts for utility facilities

Contracting, under such terms and conditions as the said Secretary considers to be in the interest of the Federal Government, for the sale, operation,

maintenance, repair, or relocation of Government-owned electric and telephone lines and other utility facilities used for the administration and protection of the National Park System, regardless of whether such lines and facilities are located within or outside said system and areas.

(7) Rights-of-way

Acquiring such rights-of-way as may be necessary to construct, improve, and maintain roads within the authorized boundaries of any area of said National Park System and the acquisition also of land and interests in land adjacent to such rights-of-way, when deemed necessary by the Secretary, to provide adequate protection of natural features or to avoid traffic and other hazards resulting from private road access connections, or when the acquisition of adjacent residual tracts, which otherwise would remain after acquiring such rights-of-way, would be in the public interest.

(8) Operation and maintenance of motor and other equipment; rent of equipment; reimbursement

The operation, repair, maintenance, and replacement of motor and other equipment on a reimbursable basis when such equipment is used on Federal projects of the said National Park System, chargeable to other appropriations, or on work of other Federal agencies, when requested by such agencies. Reimbursement shall be made from appropriations applicable to the work on which the equipment is used at rental rates established by the Secretary, based on actual or estimated cost of operation, repair, maintenance, depreciation, and equipment management control and credited to appropriations currently available at the time adjustment is effected, and the Secretary may also rent equipment for fire control purposes to State, county, private, or other non-Federal agencies that cooperate with the Secretary in the

administration of the said National Park System and other areas in fire control, such rental to be under the terms of written cooperative agreements, the amount collected for such rentals to be credited to appropriations currently available at the time payment is received.

§ 1c. General administration provisions; system defined; particular areas

(a) "National park system" defined

The "national park system" shall include any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

(b) Specific provisions applicable to area; uniform application of sections 1b to 1d and other provisions of this title to all areas when not in conflict with specific provisions; references in other provisions to national parks, monuments, recreation areas, historic monuments, or parkways not a limitation of such other provisions to those areas

Each area within the national park system shall be administered in accordance with the provisions of any statute made specifically applicable to that area.

In addition, the provisions of sections 1b to 1d of this title, and the various authorities relating to the administration and protection of areas under the administration of the Secretary of the Interior through the National Park Service, including but not limited to the Act of August 25, 1916 (39 Stat. 535), as amended [16 U.S.C. 1, 2, 3, and 41], the Act of March 4, 1911 (36 Stat. 1253), as amended (16 U.S.C. 5) relating to rights-of-way, the Act of June 5, 1920 (41 Stat. 917), as amended (16 U.S.C. 6), relating to donation of land and money, sections 1, 4, 5, and 6 of the Act of April 9, 1924 (43 Stat. 90), as amended (16 U.S.C. 8 and 8a-8c), relating to roads and trails, the Act of March 4, 1931 (46 Stat. 1570; 16 U.S.C. 8d) relating to approach roads to national monuments, the Act of June 3, 1948 (62 Stat. 334), as amended (16 U.S.C. 8e-8f), relating to conveyance of roads to States, the Act of August 31, 1954 (68 Stat. 1037), as amended (16 U.S.C. 452a), relating to acquisitions of inholdings, section 1 of the Act of July 3, 1926 (44 Stat. 900), as amended (16 U.S.C. 12), relating to aid to visitors in emergencies, the Act of March

3, 1905 (33 Stat. 873; [16 U.S.C. 10](#)), relating to arrests, sections 3, 4, 5, and 6 of the Act of May 26, 1930 (46 Stat. 381), as amended ([16 U.S.C. 17b](#), [17c](#), [17d](#), and [17e](#)), relating to services or other accommodations for the public, emergency supplies and services to concessioners, acceptability of travelers checks, care and removal of indigents, the Act of October 9, 1965 (79 Stat. 696; [16 U.S.C. 20-20g](#)), relating to concessions, the Land and Water Conservation Fund Act of 1965, as amended [16 U.S.C.A. § 406l-4 et seq.], and the Act of July 15, 1968 (82 Stat. 355), shall to the extent such provisions are not in conflict with any such specific provision, be applicable to all areas within the national park system and any reference in such Act to national parks, monuments, recreation areas, historic monuments, or parkways shall hereinafter not be construed as limiting such Acts to those areas.

#### [§ 1d. Appropriations](#)

On and after August 8, 1953, applicable appropriations of the National Park Service shall be available for the objects and purposes specified in [section 17j-2](#) of this title.

#### [§ 1e. National Capital region arts and cultural affairs; grant program](#)

There is hereby established under the direction of the National Park Service a program to support and enhance artistic and cultural activities in the National Capital region. Eligibility for grants shall be limited to organizations of demonstrated national significance which meet at least two of the additional following criteria:

- (1) an annual operating budget in excess of \$1,000,000;
- (2) an annual audience or visitation of at least 200,000 people;
- (3) a paid staff of at least one hundred persons; or
- (4) eligibility under the Historic Sites Act of 1935 ([16 U.S.C. 462\(e\)](#)).

Public or private colleges and universities are not eligible for grants under this program.

Grants awarded under this section may be used to support general operations and maintenance, security, or special projects. No organization may receive a grant in excess of \$500,000 in a single year.

The Director of the National Park Service shall establish an application process, appoint a review panel of five qualified persons, at least a majority of whom reside in the National Capital region, and develop other program guidelines and definitions as required.

The contractual amounts required for the support of Ford's Theater and Wolf Trap National Park for the Performing Arts shall be available within the amount herein provided without regard to any other provisions of this section.

#### § 1f. Challenge cost-share agreement authority

##### (1) Definitions

For purposes of this subsection:

(A) The term "challenge cost-share agreement" means any agreement entered into between the Secretary and any cooperator for the purpose of sharing costs or services in carrying out authorized functions and responsibilities of the Secretary of the Interior with respect to any unit or program of the National Park System (as defined in [section 1c\(a\)](#) of this title), any affiliated area, or any designated National Scenic or Historic Trail.

(B) The term "cooperator" means any State or local government, public or private agency, organization, institution, corporation, individual, or other entity.

##### (2) Challenge cost-share agreements

The Secretary of the Interior is authorized to negotiate and enter into challenge cost-share agreements with cooperators.

##### (3) Use of Federal funds

In carrying out challenge cost-share agreements, the Secretary of the Interior is authorized to provide the Federal funding share from any funds available to the National Park Service.

### § 1g. Cooperative agreements

The National Park Service may in fiscal year 1997 and thereafter enter into cooperative agreements that involve the transfer of National Park Service appropriated funds to State, local and tribal governments, other public entities, educational institutions, and private nonprofit organizations for the public purpose of carrying out National Park Service programs pursuant to [section 6305 of Title 31](#) to carry out public purposes of National Park Service programs.

### § 1h. Sums provided by private entities for utility services

Notwithstanding any other provision of law, in fiscal year 2003 and thereafter, sums provided to the National Park Service by private entities for utility services shall be credited to the appropriate account and remain available until expended.

### § 1i. Work under reimbursable agreements; recording obligations

Heretofore and hereafter, in carrying out the work under reimbursable agreements with any State, local or tribal government, the National Park Service may, without regard to [31 U.S.C. 1341](#) or any other provision of law or regulation, record obligations against accounts receivable from such entities, and shall credit amounts received from such entities to the appropriate account, such credit to occur within 90 days of the date of the original request by the National Park Service for payment.

### § 2. National parks, reservations, and monuments; supervision

The director shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several national parks and national monuments which on August 25, 1916, were under the jurisdiction of the Department of the Interior, and of the Hot Springs National Park in the State of Arkansas, and of such other national parks and reservations of like character as may be created by Congress. In the supervision, management, and control of national monuments contiguous to national forests the Secretary of Agriculture may cooperate with said National Park Service to such extent as may be requested by the Secretary of the Interior.

### § 3. Rules and regulations of national parks, reservations, and monuments; timber; leases

The Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and

management of the parks, monuments, and reservations under the jurisdiction of the National Park Service, and any violation of any of the rules and regulations authorized by this section and sections 1, 2 and 4 of this title shall be punished by a fine of not more than \$500 or imprisonment for not exceeding six months, or both, and be adjudged to pay all cost [FN1] of the proceedings. He may also, upon terms and conditions to be fixed by him, sell or dispose of timber in those cases where in his judgment the cutting of such timber is required in order to control the attacks of insects or diseases or otherwise conserve the scenery or the natural or historic objects in any such park, monument, or reservation. He may also provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of any of said parks, monuments, or reservations. No natural, [FN2] curiosities, wonders, or objects of interest shall be leased, rented, or granted to anyone on such terms as to interfere with free access to them by the public: Provided, however, That the Secretary of the Interior may, under such rules and regulations and on such terms as he may prescribe, grant the privilege to graze livestock within any national park, monument, or reservation herein referred to when in his judgment such use is not detrimental to the primary purpose for which such park, monument, or reservation was created, except that this provision shall not apply to the Yellowstone National Park: And provided further, That the Secretary of the Interior may grant said privileges, leases, and permits and enter into contracts relating to the same with responsible persons, firms, or corporations without advertising and without securing competitive bids: And provided further, That no contract, lease, permit, or privilege granted shall be assigned or transferred by such grantees, permittees, or licensees without the approval of the Secretary of the Interior first obtained in writing.

[FN1] So in original. Probably should be "costs".

[FN2] So in original. The comma probably should not appear.

### § 3a. Recovery of costs associated with special use permits

Notwithstanding any other provision of law, the National Park Service may on and after November 11, 1993, recover all costs of providing necessary services associated with special use permits, such reimbursements to be credited to the appropriation current at that time.

§ 3b. Maintenance and repair of Government improvements under concession contracts

Privileges, leases, and permits granted by the Secretary of the Interior for the use of land for the accommodation of park visitors, pursuant to [section 3 of Title 16](#), may provide for the maintenance and repair of Government improvements by the grantee notwithstanding the provisions of [section 1302 of Title 40](#), or any other provision of law.

§ 4. Rights-of-way through public lands

The provisions of [sections 1, 2](#), and [3](#) of this title shall not affect or modify the provisions of [section 79](#) of this title.

## **APPENDIX H: NATIONAL FOREST SYSTEM ORGANIC ADMINISTRATIVE ACT OF 1897**

### **16 U.S.C. § 472. Laws affecting national forest lands**

The Secretary of the Department of Agriculture shall execute or cause to be executed all laws affecting public lands reserved under the provisions of [section 471](#) of this title, or sections supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

#### **§ 472a. Timber sales on National Forest System lands**

(a) Authorization; rules and regulations; appraised value as minimum sale price

For the purpose of achieving the policies set forth in the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; [16 U.S.C.A. §§ 528-531](#)) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476) [[16 U.S.C.A. § 1600](#) et seq.], the Secretary of Agriculture, under such rules and regulations as he may prescribe, may sell, at not less than appraised value, trees, portions of trees, or forest products located on National Forest System lands.

(b) Designation on map; prospectus

All advertised timber sales shall be designated on maps, and a prospectus shall be available to the public and interested potential bidders.

(c) Terms and conditions of contract

The length and other terms of the contract shall be designed to promote orderly harvesting consistent with the principles set out in [section 6](#) of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended [[16 U.S.C.A. § 1604](#)]. Unless there is a finding by the Secretary of Agriculture that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960 [[16 U.S.C.A. §§ 528-531](#)]) will result, sales contracts shall be for a period not to exceed ten years: Provided, That such period may be adjusted at the discretion of the Secretary to provide additional time due to time delays caused

by an act of an agent of the United States or by other circumstances beyond the control of the purchaser. The Secretary shall require the purchaser to file as soon as practicable after execution of a contract for any advertised sale with a term of two years or more, a plan of operation, which shall be subject to concurrence by the Secretary. The Secretary shall not extend any contract period with an original term of two years or more unless he finds (A) that the purchaser has diligently performed in accordance with an approved plan of operation or (B) that the substantial overriding public interest justifies the extension.

(d) Advertisement of sales; exceptions

The Secretary of Agriculture shall advertise all sales unless he determines that extraordinary conditions exist, as defined by regulation, or that the appraised value of the sale is less than \$10,000. If, upon proper offering, no satisfactory bid is received for a sale, or the bidder fails to complete the purchase, the sale may be offered and sold without further advertisement.

(e) Bidding methods; purposes; oral auction procedures; monitoring and enforcement for prevention of collusive practices

(1) In the sale of trees, portions of trees, or forest products from National Forest System lands (hereinafter referred to in this subsection as "national forest materials"), the Secretary of Agriculture shall select the bidding method or methods which--

- (A) insure open and fair competition;
- (B) insure that the Federal Government receive not less than the appraised value as required by subsection (a) of this section;
- (C) consider the economic stability of communities whose economies are dependent on such national forest materials, or achieve such other objectives as the Secretary deems necessary; and
- (D) are consistent with the objectives of this Act and other Federal statutes.

The Secretary shall select or alter the bidding method or methods as he determines necessary to achieve the objectives stated in clauses (A), (B), (C), and (D) of this paragraph.

(2) In those instances when the Secretary selects oral auction as the bidding method for the sale of any national forest materials, he shall require that all prospective purchasers submit written sealed qualifying bids. Only prospective purchasers whose written sealed qualifying bids are equal to or in excess of the appraised value of such national forest materials may participate in the oral bidding process.

(3) The Secretary shall monitor bidding patterns involved in the sale of national forest materials. If the Secretary has a reasonable belief that collusive bidding practices may be occurring, then--

- (A) he shall report any such instances of possible collusive bidding or suspected collusive bidding practices to the Attorney General of the United States with any and all supporting data;
- (B) he may alter the bidding methods used within the affected area; and
- (C) he shall take such other action as he deems necessary to eliminate such practices within the affected area.

(f) Research and demonstration projects

The Secretary of Agriculture, under such rules and regulations as he may prescribe, is authorized to dispose of, by sale or otherwise, trees, portions of trees, or other forest products related to research and demonstration projects.

(g) Designation, marking, and supervision of harvesting; personnel

Designation, marking when necessary, and supervision of harvesting of trees, portions of trees, or forest products shall be conducted by persons employed by the Secretary of Agriculture. Such persons shall have no personal interest in the purchase or harvest of such products and shall not be directly or indirectly in the employment of the purchaser thereof.

(h) Utilization standards, methods of measurement, and harvesting practices; monetary deposits by purchasers of salvage harvests; nature, purposes and availability of designated fund; return of surplus to Treasury

The Secretary of Agriculture shall develop utilization standards, methods of measurement, and harvesting practices for the removal of trees, portions of trees, or forest products to provide for the optimum practical use of the wood material. Such standards, methods, and practices shall reflect consideration of opportunities to promote more effective wood utilization, regional conditions, and species characteristics and shall be compatible with multiple use resource management objectives in the affected area. To accomplish the purpose of this subsection in situations involving salvage of insect-infested, dead, damaged, or down timber, and to remove associated trees for stand improvement, the Secretary is authorized to require the purchasers of such timber to make monetary deposits, as a part of the payment for the timber, to be deposited in a designated fund from which sums are to be used, to cover the cost to the United States for design, engineering, and supervision of the construction of needed roads and the cost for Forest Service sale preparation and supervision of the harvesting of such timber. Deposits of money pursuant to this subsection are to be available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: Provided, That such deposits shall not be considered as moneys received from the national forests within the meaning of [sections 500](#) and [501](#) of this title: And provided further, That sums found to be in excess of the cost of accomplishing the purposes for which deposited on any national forest shall be transferred to miscellaneous receipts in the Treasury of the United States.

(i) Purchaser credit for permanent road construction; right of election of small business concerns; estimated cost; date of completion; use of funds for construction; effective date

(1) For sales of timber which include a provision for purchaser credit for construction of permanent roads with an estimated cost in excess of \$20,000, the Secretary of Agriculture shall promulgate regulations requiring that the notice of sale afford timber purchasers qualifying as "small business concerns" under the Small Business Act, as amended [[15 U.S.C.A. § 631](#) et seq.], and the regulations issued thereunder, an estimate of the cost and the right, when submitting a bid, to elect that the Secretary build the proposed road.

(2) If the purchaser makes such an election, the price subsequently paid for the timber shall include all of the estimated cost of the road.

In the notice of sale, the Secretary of Agriculture shall set a date when such road shall be completed which shall be applicable to either construction by the purchaser or the Secretary, depending on the election. To accomplish requested work, the Secretary is authorized to use from any receipts from the sale of timber a sum equal to the estimate for timber purchaser credits, and such additional sums as may be appropriated for the construction of roads, such funds to be available until expended, to construct a road that meets the standards specified in the notice of sale.

(3) The provisions of this subsection shall become effective on October 1, 1976.

[§ 473. Revocation, modification, or vacation of orders or proclamations establishing national forests](#)

The President of the United States is authorized and empowered to revoke, modify, or suspend any and all Executive orders and proclamations or any part thereof issued under section 471 of this title, from time to time as he shall deem best for the public interests. By such modification he may reduce the area or change the boundary lines or may vacate altogether any order creating a national forest.

[§ 474. Surveys; plats and field notes; maps; effect under Act June 4, 1897](#)

Surveys, field notes, and plats returned from the survey of public lands designated as national forests undertaken under the supervision of the Director of the United States Geological Survey in accordance with the provisions of Act June 4, 1897, chapter 2, section 1, Thirtieth Statutes, page 34, shall have the same legal force and effect as surveys, field notes, and plats returned through the Field Surveying Service; and such surveys, which include subdivision surveys under the rectangular system, shall be approved by the Secretary of the Interior or such officer as he may designate as in other cases, and properly certified copies thereof shall be filed in the respective land offices of the districts in which such lands are situated, as in other cases. All laws inconsistent with the provisions hereof are declared inoperative as respects such survey. A copy of every topographic map and other maps showing the distribution of the forests, together with such field notes as may be taken relating thereto, shall be certified thereto by the Director of the Survey and filed in the Bureau of Land Management.

[§ 475. Purposes for which national forests may be established and administered](#)

All public lands designated and reserved prior to June 4, 1897, by the President of the United States under the provisions of [section 471](#) of this title, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as national forests under said section, shall be as far as practicable controlled and administered in accordance with the following provisions. No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of said section, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

## **APPENDIX I: WILDERNESS ACT OF 1964**

### **16 U.S.C. § 1131. National Wilderness Preservation System**

(a) Establishment; Congressional declaration of policy; wilderness areas; administration for public use and enjoyment, protection, preservation, and gathering and dissemination of information; provisions for designation as wilderness areas

In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as

these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this chapter or by a subsequent Act.

(b) Management of area included in System; appropriations

The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

(c) "Wilderness" defined

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized 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. An area of wilderness is further defined to mean in this chapter 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.

#### S 1132. Extent of System

(a) Designation of wilderness areas; filing of maps and descriptions with Congressional committees; correction of errors; public records; availability of records in regional offices

All areas within the national forests classified at least 30 days before September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness", "wild", or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall--

(1) Within one year after September 3, 1964, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this chapter: Provided, however, That correction of clerical and typographical errors in such legal descriptions and maps may be made.

(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness

areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.

(b) Review by Secretary of Agriculture of classifications as primitive areas; Presidential recommendations to Congress; approval of Congress; size of primitive areas; Gore Range-Eagles Nest Primitive Area, Colorado

The Secretary of Agriculture shall, within ten years after September 3, 1964, review, as to its suitability or nonsuitability for preservation as wilderness, each area in the national forests classified on September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness" or other reclassification of each area on which review has been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third

of all the areas now classified as "primitive" within three years after September 3, 1964, not less than two-thirds within seven years after September 3, 1964, and the remaining areas within ten years after September 3, 1964. Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on September 3, 1964 shall continue to be administered under the rules and regulations affecting such areas on September 3, 1964 until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any such area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value.

Notwithstanding any other provisions of this chapter, the Secretary of Agriculture may complete his review and delete such area as may be necessary, but not to exceed seven thousand acres, from the

southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado, if the Secretary determines that such action is in the public interest.

(c) Review by Secretary of the Interior of roadless areas of national park system and national wildlife refuges and game ranges and suitability of areas for preservation as wilderness; authority of Secretary of the Interior to maintain roadless areas in national park system unaffected

Within ten years after September 3, 1964 the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within, the national wildlife refuges and game ranges, under his jurisdiction on September 3, 1964 and shall report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice

shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after September 3, 1964, not less than two-thirds within seven years of September 3, 1964, and the remainder within ten years of September 3, 1964. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

(d) Conditions precedent to administrative recommendations of suitability of areas for preservation as wilderness; publication in Federal Register; public hearings; views of State, county, and Federal officials; submission of views to Congress

(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness--

(A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

(B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: Provided, That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

(e) Modification or adjustment of boundaries; public notice and hearings; administrative and executive recommendations to Congress; approval of Congress

Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such recommendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section.

§ 1133. Use of wilderness areas

(a) Purposes of national forests, national park system, and national wildlife refuge system; other provisions applicable to national forests, Superior National Forest, and national park system

The purposes of this chapter are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered and--

(1) Nothing in this chapter shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215) [[16 U.S.C.A. §§ 528-531](#)].

(2) Nothing in this chapter shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thye-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-Blatnik-Andresen Act

(Public Law 607, Eighty-fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this chapter shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this chapter 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 in accordance with [sections 1, 2, 3, and 4](#) of this title, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225; [16 U.S.C. 432](#) et seq.); section 3(2) of the Federal Power Act ([16 U.S.C. 796\(2\)](#)); and the Act of August 21, 1935 (49 Stat. 666; [16 U.S.C. 461](#) et seq.).

(b) Agency responsibility for preservation and administration to preserve wilderness character; public purposes of wilderness areas

Except as otherwise provided in this chapter, each agency administering any area designated as wilderness shall be responsible for preserving the

wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this chapter, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

(c) Prohibition provisions: commercial enterprise, permanent or temporary roads, mechanical transports, and structures or installations; exceptions: area administration and personal health and safety emergencies

Except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this chapter and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

(d) Special provisions

The following special provisions are hereby made:

(1) Aircraft or motorboats; fire, insects, and diseases

Within wilderness areas designated by this chapter the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

(2) Mineral activities, surveys for mineral value

Nothing in this chapter shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information

about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the United States Geological Survey and the United States Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

(3) Mining and mineral leasing laws; leases, permits, and licenses; withdrawal of minerals from appropriation and disposition

Notwithstanding any other provisions of this chapter, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to September 3, 1964, extend to those national forest lands designated by this chapter as "wilderness areas"; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling,

and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this chapter as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands

and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this chapter: Provided, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this chapter shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after September 3, 1964, within the boundaries of wilderness areas designated by this chapter shall create no rights in excess of those rights which may be patented under the provisions of this subsection. Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this chapter shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(4) Water resources, reservoirs, and other facilities; grazing

Within wilderness areas in the national forests designated by this chapter, (1)

the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and (2) the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

(5) Commercial services

Commercial services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

(6) State water laws exemption

Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(7) State jurisdiction of wildlife and fish in national forests

Nothing in this chapter shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

§ 1134. State and private lands within wilderness areas

(a) Access; exchange of lands; mineral interests restriction

In any case where State-owned or privately owned land is completely surrounded by national forest lands within areas designated by this chapter as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest, or the State-owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture: Provided, however, That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or causes to be relinquished to the United States the mineral interest in the surrounded land.

(b) Customary means for ingress and egress to wilderness areas subject to  
mining claims or other occupancies

In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

(c) Acquisition of lands

Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this chapter as wilderness if (1) the owner concurs in such acquisition or (2) the acquisition is specifically authorized by Congress.

§ 1135. Gifts, bequests, and contributions

(a) Acceptance by Secretary of Agriculture of land for preservation as wilderness; regulations

The Secretary of Agriculture may accept gifts or bequests of land within wilderness areas designated by this chapter for preservation as wilderness. The Secretary of Agriculture may also accept gifts or bequests of land adjacent to wilderness areas designated by this chapter for preservation as wilderness if he has given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives. Land accepted by the Secretary of Agriculture under this section shall become part of the wilderness area involved. Regulations with regard to any such land may be in accordance with such agreements, consistent with the policy of this chapter, as are made at the time of such gift, or such conditions, consistent with such policy, as may be included in, and accepted with, such bequest.

(b) Authorization to accept private contributions and gifts

The Secretary of Agriculture or the Secretary of the Interior is authorized to accept private contributions and gifts to be used to further the purposes of this chapter.

### § 1136. Annual reports to Congress

At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system, including a list and descriptions of the areas in the system, regulations in effect, and other pertinent information, together with any recommendations they may care to make.

## **APPENDIX J: WASHINGTON STATE WILDERNESS ACT OF 1984**

98 Stat. 299 (1984)

An Act to designate certain National Forest System lands in the State of Washington for inclusion in the National Wilderness Preservation System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States

of America in Congress assembled, That this Act may be referred to as the "Washington State Wilderness Act of 1984".

SEC. 2. (a) The Congress finds that --

(1) many areas of undeveloped National Forest System lands in the State of Washington possess outstanding natural characteristics which give them high values as wilderness and will, if properly preserved, contribute as an enduring resource of wilderness for the benefit of the American people;

(2) the Department of Agriculture's second roadless area review and evaluation (RARE II) of National Forest System lands in the State of Washington and the related congressional review of such lands have identified areas which, on the basis of their landform, ecosystem, associated wildlife, and location, will help to fulfill the National Forest System's share of a quality National Wilderness Preservation System; and

(3) the Department of Agriculture's second roadless area review and evaluation of National Forest System lands in the State of Washington and the related congressional review of such lands have also identified areas which do not possess outstanding wilderness attributes or which possess outstanding energy, mineral, timber, grazing, dispersed recreation and other values and which should not now be designated as components of the National Wilderness Preservation System but should be available for nonwilderness multiple uses under the land management planning process and other applicable laws.

(b) The purposes of this Act are to --

(1) designate certain National Forest System lands in the State of Washington as components of the National Wilderness Preservation System, in order to promote, perpetuate, and preserve the wilderness character of the lands, protect watersheds and wildlife habitat,

preserve scenic and historic resources, and promote scientific research, primitive recreation, solitude, physical and mental challenge, and inspiration for the benefit of all the American people, to a greater extent than is possible in the absence of wilderness designation; and

(2) insure that certain other National Forest System lands in the State of Washington be available for nonwilderness multiple uses.

SEC. 3. In furtherance of the purposes of the Wilderness Act of 1964 (78 Stat. 890, 16 U.S.C. 1131 et seq.) the following lands in the State of Washington are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System:

(1) certain lands in the Mount Baker-Snoqualmie National Forest, Washington, which comprise approximately forty-nine thousand acres, as generally depicted on a map entitled "Boulder River Wilderness -- Proposed", dated March 1984, and which shall be known as the Boulder River Wilderness; "16 USC 1132"

(2) certain lands in the Olympic National Forest, Washington, which comprise approximately forty-five thousand eight hundred and seventeen acres, as generally depicted on a map entitled "Buckhorn Wilderness -- Proposed", dated March 1984, and which shall be known as the Buckhorn Wilderness; "16 USC 1132"

(3) certain lands in the Mount Baker-Snoqualmie National Forest, Washington, which comprise approximately fourteen thousand three hundred acres, as generally depicted on a map entitled "Clearwater Wilderness -- Proposed", dated March 1984, and which shall be known as the Clearwater Wilderness; "16 USC 1132"

(4) certain lands in the Olympic National Forest, Washington, which comprise approximately twelve thousand one hundred and twenty acres, as generally depicted on a map entitled "Colonel Bob Wilderness -- Proposed", dated March 1984, and which shall be known as Colonel Bob Wilderness; "16 USC 1132"

(5) certain lands in the Mount Baker-Snoqualmie and Wenatchee National Forests, Washington, which comprise approximately mately one hundred twelve thousand six hundred and seven acres, as generally depicted on a map entitled "Glacier Peak Wilderness Additions -- Proposed", dated March 1984, and which are hereby incorporated in and shall be deemed to be a part of the Glacier Peak Wilderness as designated by Public Law 88-577 and Public Law 90-544; "16 USC 1131"

(6) "82 STAT. 926' certain lands in the Gifford Pinchot National Forest, Washington, which comprise approximately three thousand and fifty acres as generally depicted on a map entitled "Glacier View

Wilderness -- Proposed', dated March 1984, and which shall be known as the Glacier View Wilderness; "16 USC 1132'

(7) the boundary of the existing Goat Rocks Wilderness, as designated by Public Law 88-577 "16 USC 1131", located in the Wenatchee and Gifford Pinchot National Forests, Washington, is hereby revised to include those lands generally depicted on a map entitled "Goat Rocks Wilderness -- Revised", dated March 1984; "16 USC 1132'

(8) certain lands in the Wenatchee and Mount Baker-Snoqualmie National Forests, Washington, which comprise approximately one hundred three thousand five hundred and ninety-one acres as generally depicted on a map entitled "Henry M. Jackson Wilderness -- Proposed", dated March 1984, and which shall be known as the Henry M. Jackson Wilderness. "16 USC 1132' The Henry M. Jackson Wilderness is designated in remembrance of Senator Jackson's deep, personal feelings for this area, especially that portion known as "Monte Cristo", which he visited often as a boy. Through such designation, the Congress recognizes his unparalleled contributions to the natural resource policies of the Nation in general and Washington State in particular;

(9) certain lands in the Gifford Pinchot National Forest, Washington, which comprise approximately twenty thousand six hundred and fifty acres, as generally depicted on a map entitled "Indian Heaven Wilderness -- Proposed", dated March 1984, and which shall be known as the Indian Heaven Wilderness; "16 USC 1132'

(10) certain lands in the Okanogan and Wenatchee National Forests, Washington, which comprise approximately one hundred fifty thousand eight hundred and thirty-three acres as generally depicted on a map entitled "Lake Chelan-Sawtooth Wilderness -- Proposed", dated March 1984, and which shall be known as the Lake Chelan-Sawtooth Wilderness; "16 USC 1132'

(11) certain lands in the Gifford Pinchot National Forest, Washington, which comprise approximately fourteen thousand four hundred and twenty acres, as generally depicted on a map entitled "Mount Adams Wilderness Additions -- Proposed", dated March 1984, and which are hereby incorporated in and shall be deemed to be a part of the Mount Adams Wilderness as designated by Public law 88-577; "16 USC 1131'

(12) certain lands in the Mount Baker-Snoqualmie National Forest, Washington, which comprise approximately one hundred seventeen thousand nine hundred acres as generally depicted on a map entitled "Mount Baker Wilderness -- Proposed", dated March 1984, and which shall be known as the Mount Baker Wilderness; "16 USC 1132'

(13) certain lands in the Olympic National Forest, Washington, which

comprise approximately fifteen thousand six hundred and eighty-six acres, as generally depicted on a map entitled "Mount Skokomish Wilderness -- Proposed", dated March 1984, and which shall be known as the Mount Skokomish Wilderness; "16 USC 1132"

(14) certain lands in the Mount Baker-Snoqualmie National Forest, which comprise approximately fourteen thousand three hundred acres, as generally depicted on a map entitled "Noisy-Diobsud Wilderness -- Proposed", dated May 1984, and which shall be known as the Noisy-Diobsud Wilderness; "16 USC 1132"

(15) certain lands in the Mount Baker-Snoqualmie and Wenatchee National Forests, Washington, which comprise approximately fifty thousand nine hundred and twenty-three acres as generally depicted on a map entitled "Norse Peak Wilderness -- Proposed", dated March 1984, and which shall be known as the Norse Peak Wilderness; "16 USC 1132"

(16) certain lands in the Okanogan National Forest, Washington, which comprise twenty-four thousand three hundred and twenty-six acres, as generally depicted on a map entitled "Pasayten Wilderness Additions -- Proposed", dated March 1984, and which are hereby incorporated in and shall be deemed to be part of the Pasayten Wilderness as designated by Public Law 88-577; "16 USC 1131"

(17) certain lands in the Kaniksu and Colville National Forests, Washington, which comprise approximately forty-one thousand three hundred and thirty-five acres, as generally depicted on a map entitled "Salmo-Priest Wilderness -- Proposed", dated March 1984, and which shall be known as the Salmo-Priest Wilderness; "16 USC 1132"

(18) certain lands in the Gifford Pinchot National Forest, Washington, which comprise approximately fifteen thousand seven hundred and twenty acres, as generally depicted on a map entitled "Tatoosh Wilderness -- Proposed", dated March 1984, and which shall be known as the Tatoosh Wilderness; "16 USC 1132"

(19) certain lands in the Olympic National Forest, Washington, which comprise approximately seventeen thousand two hundred and thirty-nine acres, as generally depicted on a map entitled "The Brothers Wilderness -- Proposed", dated March 1984, and which shall be known as The Brothers Wilderness -- Proposed", dated March 1984, and which shall be known as The Brothers Wilderness; "16 USC 1132"

(20) certain lands in the Gifford Pinchot National Forest, which comprise approximately six thousand and fifty acres, as generally depicted on a map entitled "Trapper Creek Wilderness -- Proposed", dated March 1984, and which shall be known as the Trapper Creek Wilderness; "16 USC 1132"

(21) certain lands in the Wenatchee and Gifford Pinchot National Forests, Washington, which comprise approximately one hundred and

sixty-six thousand six hundred and three acres, as generally depicted on a map entitled "William O. Douglas Wilderness -- Proposed", dated March 1984, and which shall be known as the William O. Douglas Wilderness "16 USC 1132". The William O. Douglas Wilderness is designated in remembrance of Justice Douglas' lifelong efforts to preserve the Cougar Lakes area for the recreational benefits of future generations. Through such designation, the Congress recognizes his persistent concern for the Cougar Lakes area, and his contribution to conservation efforts throughout the Nation; and

(22) certain lands in the Olympic National Forest, Washington, which comprise approximately two thousand three hundred and twenty acres, as generally depicted on a map entitled "Wonder Mountain Wilderness -- Proposed", dated March 1984, and which shall be known as the Wonder Mountain Wilderness "16 USC 1132". "16 USC 1132"

SEC. 4. (a) As soon as practicable after this Act takes effect, the Secretary of Agriculture shall file the maps referred to in section 3 of this Act and legal descriptions of each wilderness area designated by section 3 of this Act with the Committee on Energy and Natural Resources, United States Senate, and the Committee on Interior and Insular Affairs, House of Representatives, and each such map and legal description shall have the same force and effect as if included in this Act: Provided, That correction of clerical and typographical errors in such legal descriptions and maps may be made. Each such map and legal description shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.

(b) Subject to valid existing rights, each wilderness area designated by section 3 of this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act of 1964 "16 USC 1131" governing areas designated by that Act as wilderness areas, except that with respect to any area designated in section 3 of this Act, any reference in such provisions to the effective date of the Wilderness Act of 1964 shall be deemed to be a reference to the effective date of this Act.

SEC. 5. (a) The Congress finds that --

- (1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II);
- (2) the Congress has made its own review and examination of National Forest System roadless areas in the State of Washington and of the environmental impacts associated with alternative allocations of

such areas.

(b) On the basis of such review, the Congress hereby determines and directs that --

(1) without passing on the question of the legal and factual sufficiency of the RARE II Final Environmental Statement (dated January 1979) with respect to National Forest System lands in States other than Washington, such statement shall not be subject to judicial review with respect to National Forest System lands in the State of Washington;

(2) with respect to the National Forest System lands in the State of Washington which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II) and those lands referred to in subsection (d), that review and evaluation or reference shall be deemed for the purposes of the initial land management plans required for such lands by Forest and Rangeland Renewable Resources Planning Act of 1974, "16 USC 1600' as amended by the National Forest Management Act of 1976 "16 USC 1600' to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plans, but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a ten-year cycle, or at least every fifteen years, unless, prior to such time the Secretary of Agriculture finds that conditions in a unit have significantly changed;

(3) areas in the State of Washington reviewed in such final environmental statement or referenced in subsection (d) and not designated as wilderness upon enactment of this Act or identified for special management in section 7 or 8 of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, "16 USC 1604' as amended by the National Forest Planning Act of 1976: Provided, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans in the State of Washington are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 "16 USC 1604', as amended by the National Forest Management Act of 1976, and other applicable law, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be

managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, "16 USC 1600' as amended by the National Forest Management Act of 1976, "16 USC 1600' and other applicable law; and

(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Washington for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(c) As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 "16 USC 1604', as amended by the National Forest Management Act of 1976, the term "revision' shall not include an "amendment' to a plan.

(d) The provisions of this section shall also apply to:

(1) those National Forest System roadless lands in the State of Washington in the Gifford Pinchot, Olympic and Umatilla National Forests which were evaluated in the Upper Cispus; Lone Tree; Clear Creek; Upper Lewis; Trapper-Siouxon; Soleduck; Quinault; Oregon Butte; and Shelton Cooperative Sustained Yield Unit unit plans; and  
(2) National Forest System roadless lands in the State of Washington which are less than five thousand acres in size.

SEC. 6. (a) In furtherance of the purposes of the Wilderness Act of 1964, certain public lands in Franklin County, Washington, which comprise approximately seven thousand one hundred and forty acres, as generally depicted on a map entitled "Juniper Dunes Wilderness -- Proposed' and dated March 1984, are hereby designated as the Juniper Dunes Wilderness "16 USC 1132' and, therefore, as a component of the National Wilderness Preservation System.

(b) Subject to valid existing rights, the Juniper Dunes Wilderness shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness "16 USC 1131'. For purposes of this section, any references in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this section, any reference to the Secretary of Agriculture with regard to the administration of such areas shall be deemed to be a reference to the Secretary of the Interior, and any reference to wilderness areas designated by the Wilderness Act or designated national forest wilderness areas shall be deemed to be a reference to the Juniper Dunes Wilderness designated by this section. For purposes of this section, the reference to national forest rules and regulations

in the second sentence of section 4(d)(3) of the Wilderness Act "16 USC 1133' shall be deemed to be a reference to rules and regulations applicable to public lands, as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1702).

(c) As soon as practicable after this Act takes effect, the Secretary of the Interior shall file a map and legal description of the Juniper Dunes Wilderness with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives, and such map and description shall have the same force and effect as if included in this Act: Provided, That correction of clerical and typographical errors in the legal description and map may be made. The map and legal description shall be on file and available for public inspection in the offices of the Bureau of Land Management, Department of the Interior.

SEC. 7. "16 USC 460 pp' (a) In order to assure the conservation and protection of certain natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreational values associated therewith, the Mount Baker National Recreation Area located in the Mount Baker-Snoqualmie National Forest, Washington, is hereby established.

(b) The Mount Baker National Recreation Area (hereafter referred to as the "recreation area') shall comprise approximately eight thousand six hundred acres as generally depicted on the map entitled "Mount Baker National Recreation Area -- Proposed', dated March 1984, which shall be on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture.

(c) The Secretary of Agriculture shall, as soon as practicable after the date of enactment of thic Act, file a map and a legal description of the recreation area with the Committee on Energy and Natural Resources, United States Senate, and the Committee on Interior and Insular Affairs, House of Representatives, and each such map and legal description shall have the same force and effect as if included in this Act: Provided, That correction of clerical and typographical errors in such legal description and map may be made. The map and legal description shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.

(d) The Secretary shall administer the recreation area in accordance with the laws, rules and regulations applicable to the national forests in such manner as will best provide for (1) public outdoor recreation (including but not limited to snowmobile use); (2) conservation of scenic, natural, historic, and other values contributing to public

enjoyment; and (3) such management, utilization, and disposal of natural resources on federally owned lands within the recreation area which are compatible with and which do not significantly impair the purposes for which the recreation area is established.

SEC. 8. (a) The Congress finds that certain lands within the Mount Baker-Snoqualmie and Okanogan National Forests along the North Cascades Highway have remarkable scenic values, representing a unique aesthetic travelway through the Cascade Mountains in the northern portion of the State of Washington. The value of preserving this scenic area and assuring that it is managed in such manner that its scenic beauty and recreation qualities are maintained for future generations is recognized by the Congress.

(b) In order to preserve and protect these values, certain National Forest System lands comprising approximately eighty-seven thousand seven hundred and fifty-seven acres, as generally depicted on a map entitled "North Cascades Scenic Highway -- Proposed" and dated March 1984, shall be administered by the Secretary of Agriculture to preserve the scenic value of this highway corridor. Management activities, including resource use and development, within the area may be permitted by the Secretary of Agriculture if the existing scenic values of the area are maintained.

(c) Management direction for the area that recognizes these scenic values shall be included in the forest plans developed for the Okanogan and Mount Baker-Snoqualmie National Forests in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 "16 USC 1604", as amended.

SEC. 9. Congress does not intend that designation of wilderness areas in the State of Washington lead to the creation of protective perimeters or buffer zones around each wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

SEC. 10. The Secretary of Agriculture shall exchange lands and interests in lands with Weyerhaeuser Company in accordance with the following provisions:

(a) If the Weyerhaeuser Company offers to the United States the following described lands and interests in lands the Secretary shall accept such lands and interests therein:

TABLE OMMITTED.

(b) Upon acceptance of title by the United States to such lands and interests therein, the Secretary shall convey to Weyerhaeuser Company all right, title, and interest of the United States to the following described National Forest System lands and interests therein:

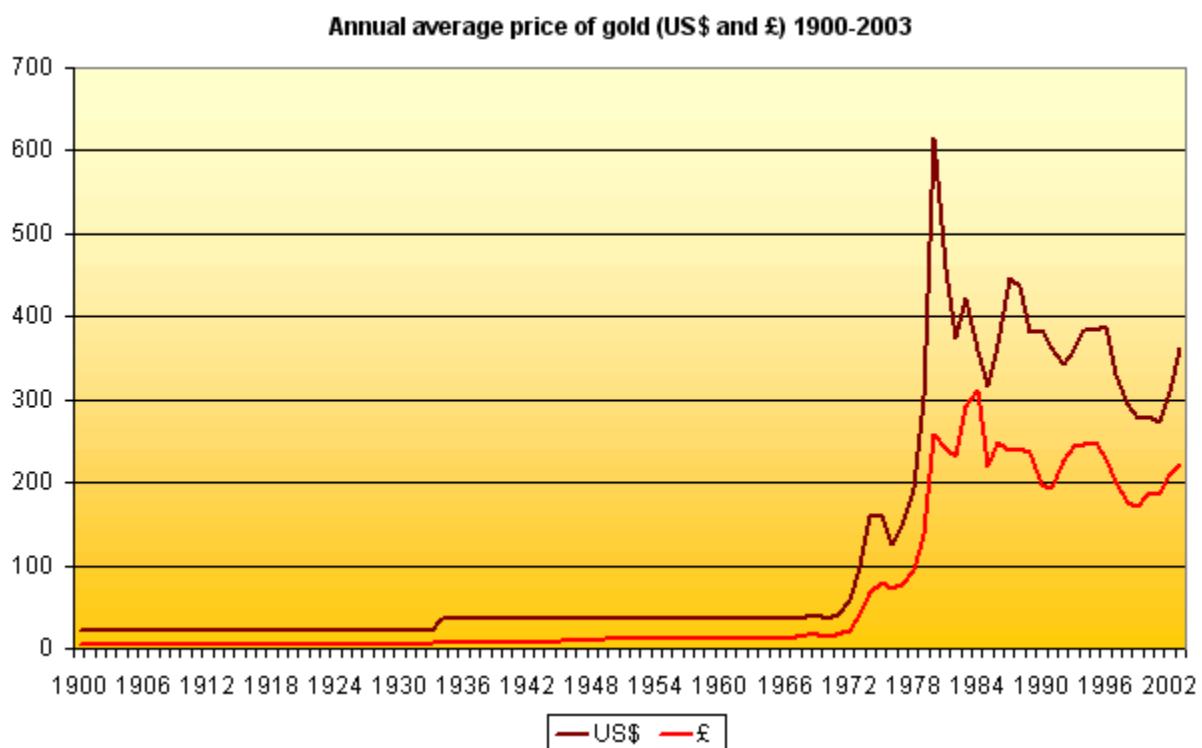
TABLE OMITTED

- (c) The instruments of conveyance respecting the lands and interests exchanged under this section may contain such reservations as may be agreed upon by the Secretary and Weyerhaeuser Company.
- (d) It is the sense of Congress that the exchange authorized pursuant to this section should be completed within ninety days after the date of the enactment of this Act. The Secretary shall use other existing acquisition authorities if the exchange authorized by this section is not completed within a reasonable time after the expiration of such ninety day period.
- (e) The Secretary shall certify in writing that to his satisfaction, at the time of conveyance, there has been no reduction in the values of the lands or interests therein which formed the basis for the exchange provided for in this section. If the Secretary finds that a reduction in the value of the lands or interests therein has occurred, the Secretary shall not carry out the exchange for those lands or interests so affected and acquisition of those lands and interests shall be undertaken by the Secretary in accordance with other provisions of law.

SEC. 11. Subject to valid existing rights, the Federal lands in Walla Walla and Columbia Counties, Washington, located within the Mill Creek Watershed roadless area as identified in the Oregon Butte Unit Plan are hereby withdrawn from all forms of location, entry, and patent under the United States mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

## Other

### APPENDIX K GOLD PRICE FLUCTUATIONS



**APPENDIX L: LIST OF MINING CLAIM OWNERS AND CONTACT INFORMATION**

Claim Owner	Claims Held	Estimat'd Acreage	Address/Phone Number	Partners
Neil Gerth	10	207	23752 262nd Pl Se Maple Valley, WA 98038	Jon Zak PO Box 551 Hobart, WA 98025
Billy Martin	3	141	12595 Willamette Mer Silverdale, WA 98383	Douglas Stroud, Keith Wederspahn, Robert E Sapp, Roy E Kenworthy, William E Palmer, Melode G Sapp, Gary L Hyatt, Verna Martin
David W. Smith	4	120	4530 Larson Dr Oak Harbor, WA 98277	Duane Suthers, Eric D Fisher
Washington Prospecto	10	200	10002 Aurora N #1193 Seattle, WA 98133	
Roy Kenworthy	1	100	8610 24th Ave E Tacoma, WA 98445	Billy Martin, Douglas Stroud, William E Palmer, Keith Wederspahn
William E Palmer	1	100	7300 32nd Ave Ne #49 Olympia, WA 98506	Billy Martin, Roy Kenworthy, Douglas Stroud, Keith Wederspahn
Keith Wederspahn	1	100	4249 Sleater Kinney Olympia, WA 98506	Billy Martin, Roy Kenworthy, Douglas Stroud, William Palmer
Douglas Stroud	1	100	3514 18th St Ct Nw Gig Harbor, WA 98335	Billy Martin, Roy Kenworthy, William Palmer, Keith

Eric D. Fisher	3	100	11305 N Skagit Burlington, WA 98233	Wederspahn David W. Smith, Jim Fisher
Gary Jackson	2	80	12814 Sr 530 Arlington, WA 98223	Michael Koontz Sr.
Dennis V. Shannon	2	80	PO Box 29466 Bellingham, WA 98228	284 E Koontz Rd Oak Harbor, WA 98277 Scotti Shannon (Address Unknown)
Boeing Employees	3	60	21224 184th Ave Se Renton, WA 98058	
Michael W. Sours	3	60	PO Box 1952 Woodland, WA 98674	
Gary L. Hyatt	2	41	15617 Field Rd Bow, WA 98232	Melode G Sapp, Robert E Sapp, Billy Martin, Verna Martin
Melode G. Sapp	2	41	931 Kitsap St Port Orchard, WA 98366	Gary Hyatt, Billy Martin, Verna Martin
Robert Sapp			12595 Wilamette Meridian Rd Nw	
Verna Martin	2	41	Silverdale, WA 98383 4 Rader Rd Winthrop, WA 98862	See above
Leon F. Lehman, Ramona Lehman	2	41		Jerry Sullivan, Ramona M Lehman, James Elvig
Dan Gebbers	2	41	Box 7 Brewster, WA 98812	Ed Pariseau
Kit Clark	2	41	2006 E Grand Ave #c Everett, WA 98201	PO Box 888 Brewster, WA 98812
Dennis M. Johnson,	1	40	17723 65th Dr Nw Stanwood, WA 98292	

Elaine Johnson				
Candace Christensen, Gregory Christensen	1	40	4256 Hoff Road Bellingham, WA 98225	
Duane Suthers	1	40	5464 Cedar Ridge Ln Sedro Wolley, WA 98284	David W. Smith
Victor Schneider, Loretta Schneider	1	40	PO Box 642 Mckenna, WA 98558	
Jim Fisher	1	40	1741 S Woodland Dr Mount Vernon, WA 98273	Eric Fisher  11305 N Skagit Burlington, WA 98233 Ramona & Leon Lehman
James Elvig	1	21	?	
Jerry Sullivan	1	21	Route 1 Box 447 Winthrop, WA 98862	Ramona % Leon Lehman
Pete Kimbrell	1	21	51 C Eastlake Rd Oroville, WA 98844	
John Lester, Kjell Lester, Carol Lester, Kory Lester, V Ray Ellis	1	21	PO Box 311 Airway Height, WA 99001	
Jr., Tammie Ellis				
Paula Ney	4	120	349 B West Chewuch Rd Winthrop, WA 98862 311 89th St Se Everett, WA 98208	Pat Eason  4927 135th Pl Ne Marysville, WA 98271 Rick Cruz
Rex Ballestrasse	1	20	209 S W 12th St Renton, WA 98055	
Dan Johnson	1	20	31020-203rd St Ne Arlington, WA 98223	
Ed Sanger	1	20	949 14th St	

Chris Huls	1	20	Everett, WA 98201 26835 N Sr20
Thomas Brown	1	20	Oak Harbor, WA 98277 44 Moss Flower Rd Grapeview, WA 98546