

Appendix I: Inclusion of Langmuir Research Site in Wilderness Inventory

To: Josh Hicks, Assistant Director, National Forest Action Center

From: Alison Flint, Counsel & Planning Specialist

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Re: Inclusion of Langmuir Research Site in Cibola NF wilderness inventory

Question Presented:

Would inclusion of the Langmuir Research Site in the wilderness inventory for the Cibola National Forest (or a potential recommendation that the lands encompassing the site be designated as wilderness) conflict with Congress' intent in establishing the site?

Brief Answer:

Likely no. There are no apparent legal barriers to inclusion of the 31,000-acre Langmuir Research Site in the Cibola's wilderness inventory. In particular, inclusion of the site in the inventory would not conflict with Congress' intent in establishing the site for scientific research purposes. While ultimate designation and management of the site as wilderness could potentially result in certain limited conflicts with Congress' intent that the site be managed to protect and enhance opportunities for scientific research, such conflicts likely could be avoided by excluding from the inventory the 1,000-acre "principle research facility" (approximately 3% of the site) where research activities are concentrated. That reasonable approach would allow the Forest Service to inventory and evaluate the remaining 97% of the site for wilderness characteristics and determine whether to carry the area (or a portion of the area) forward in the NEPA process, and ultimately whether to recommend it for wilderness designation.

Background:

The New Mexico Wilderness Act of 1980 (the "Act"), Public Law No. 96-550, 96 Stat. 3221 (Dec. 19, 1980), designated certain lands in the Gila, Cibola, Apache, Lincoln, Carson, and Santa Fe National Forests as wilderness. Title II of the Act established the Langmuir Research Site in the Cibola National Forest "in order to encourage scientific research into atmospheric processes and astronomical phenomena, and to preserve conditions necessary for that research." *Id.* §§ 201, 205(a). The 31,000-acre site includes a "principle research facility" of approximately 1,000 acres, or about 3% of the total site. *Id.* § 205(a). Congress found that "the high altitude and freedom from air pollution and night luminosity caused by human activity make the research site uniquely suited" to particular types of research. *Id.* § 202.

The Act provides the Forest Service with broad discretion – through the land and resource management planning process – to "administer, protect, and regulate use of the research site in accordance with the laws, rules, and regulations applicable to National Forest System lands, and in such manner as will best contribute to purposes of this Act." *Id.* §§ 203, 205(b). Congress placed some limitations on that discretion, however, by identifying four specific management objectives for the site: (1) that the 1,000-acre principal research facility "be

managed primarily for scientific research purposes,” with “[d]ispersed recreation, grazing, and other uses” permitted to the extent they are “compatible with scientific research;” (2) that the entire site “be managed to enhance scientific research objectives,” with research activities, equipment, and structures permitted in accordance with the governing plan; (3) that roads “be limited to those necessary for scientific research activities and other reasonable activities,” with motor vehicle use restricted to designated roads; and (4) that “small instrumented research rockets” be permitted to land in designated areas. *Id.* § 205(e)-(f). The Act also authorizes the Forest Service to issue a special use permit to the New Mexico Institute of Mining and Technology for the site. *Id.* § 204. A 1992 special use permit covers the 1,000-acre principle research facility and authorizes “use of rockets, weather balloons, buried monitoring stations (kivas), overhead wires, buried utilities, waterlines, improvements, roads, towers, and storage area, and other uses.”¹

Pursuant to the 2012 National Forest Planning Rule, 36 C.F.R. § 219.7(c)(2)(v), and proposed revisions to Chapter 70 of the Forest Service Land Management Planning Handbook 1909.12, the Cibola National Forest is in the process of completing its initial inventory of lands with wilderness characteristics that may be suitable for inclusion in the National Wilderness Preservation System. The Forest Service did not include the Langmuir Research Site in its initial inventory. According to planning staff on the Cibola National Forest, the agency considers the research site to be “congressionally withdrawn” because the requirements in the Act establishing the site could run counter to wilderness management.

Discussion:

Inclusion of the Langmuir Research Site in the Cibola’s wilderness inventory would not conflict in any direct or apparent way with Congress’ intent in establishing the site, as expressed in Title II of the New Mexico Wilderness Act of 1980. The language of the Act demonstrates Congress’ intent that the site be managed to protect and enhance scientific research opportunities. See Public Law No. 96-550, §§ 203, 205. However, nothing in the Act suggests that Congress intended to preclude or limit other uses of the site, such that the area should be considered congressionally “withdrawn.” To the contrary, the Act makes clear that the site is to be managed “in accordance with the laws, rules, and regulations [generally] applicable to national Forest System lands.” *Id.* § 203; *accord id.* § 205(b), (c) (management plan to be developed pursuant to the National Forest Management Act, 16 U.S.C. § 1604, and in consultation with various stakeholders, including, *inter alia*, scientific agencies and conservation and wilderness interest groups). Moreover, while the entire 31,000-acre site is to “be managed to enhance scientific research objectives,” only the 1,000-acre principle research facility is to “be managed *primarily* for scientific research purposes,” with other uses permitted to the extent they are “compatible with scientific research.” Public Law No. 96-550, § 205(f) (emphasis added).

More generally, Congress’ intent that the site be used for scientific research is entirely compatible with the area’s inclusion in the Cibola’s wilderness inventory (or with an eventual

¹ A copy of the permit is available on the Langmuir Laboratory for Atmospheric Research’s website at <http://langmuir.nmt.edu/about/special-use-permit>.

recommendation for wilderness designation). In fact, Congress made clear in section 4(b) the Wilderness Act of 1964 that scientific research is one of the “public purposes” of wilderness – on equal footing with recreation, scenic, educational, conservation, and historical uses. 16 U.S.C. § 1133(b) (“Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, *scientific*, educational, conservation, and historical use.” (emphasis added)); *see also id.* § 1131(c) (defining wilderness to include, *inter alia*, areas that “contain ecological, geological, or other features of *scientific*, educational, scenic, or historical value” (emphasis added)); California Desert Protection Act of 1994, Public Law No. 103-433, 108 Stat. 4471, § 2(b)(1)(E) (Oct. 31, 1994) (congressional explanation that a primary purpose of wilderness is to “retain and enhance opportunities for scientific research in undisturbed ecosystems”).²

While scientific research is one of the public purposes and values of wilderness, research activities can, in certain circumstances, conflict with management of an area to protect and preserve its wilderness character and values.³ For example, Congress expressly permitted roads in the Langmuir Research Site to the extent “necessary for scientific research activities and other reasonable activities,” Public Law No. 96-550, § 205(f), while wilderness management would preclude such roads, *see* 16 U.S.C. § 1133(c). In such instances, it is possible that management of the site as wilderness could conflict with Congress’ intent that the site be managed to enhance scientific research opportunities.

Nevertheless, the possibility of certain, limited conflicts between scientific research activities and wilderness management should not preclude inclusion of the site in the Cibola’s wilderness inventory. First, a majority of the scientific research activity that could potentially conflict with wilderness management is concentrated on the 1,000-acre principle research facility, which Congress directed “be managed *primarily* for scientific research purposes,” Public Law No. 96-550, § 205(f) (emphasis added), and is covered by a Forest Service special use permit that authorizes certain uses that may conflict with wilderness values, *see supra* p. 2 & n.1. While it may be appropriate to exclude those 1,000 acres from the wilderness inventory, the agency should include the remaining 30,000 acres – covering approximately 97% of the site. The proposed revisions to Chapter 70 of the Forest Service Land Management Planning Handbook 1909.12 support this approach. For example, section 71 provides that the wilderness inventory must be reasonably broad and inclusive in order to effectively identify all lands that may have wilderness characteristics. FSH 1909.12, ch. 70, § 71.

Second, only by including the site (or a majority of the site) in the inventory, will the Forest Service have an opportunity to evaluate the wilderness characteristics of the area. *See* FSH 1909.12, ch. 70, § 72. In fact, the evaluation process looks in part at “the degree to which the

² Indeed, to facilitate that public purpose, the Forest Service in 1993 established the Aldo Leopold Wilderness Research Institute to manage and conduct research in wilderness.

³ *See, e.g.,* David J. Parsons, *The Challenge of Scientific Activities in Wilderness*, USDA Forest Service Proceedings RMRS-P-15-VOL-3. 2000, available at http://www.fs.fed.us/psw/cirmount/meetings/ncbotany/Reed4_scientific%20research.pdf (concluding that, while scientific research “is an appropriate and necessary use of wilderness,” it can require activities that conflict with other wilderness resources and values).

area may also contain ecological, geological, or other features of *scientific*, educational, scenic, or historic values,” as required by the Wilderness Act. *Id.* § 72.1 (emphasis added); *accord* 16 U.S.C. § 1131(c). That comprehensive evaluation – along with additional information gleaned through public participation and coordination and consultation with interested stakeholders, including the New Mexico Institute of Mining and Technology and the National Science Foundation – will help reveal the likelihood of any potential conflicts between scientific research and wilderness management and the extent to which they can be mitigated or avoided.

Finally, should the Forest Service ultimately determine to recommend all or a portion of the research site for wilderness designation, Congress will have an opportunity to determine whether wilderness designation would conflict with its intent in establishing the research site. In the meantime, the Forest Service would retain discretion to manage the area both to preserve and protect its wilderness characteristics and its unique opportunities for scientific research.

Conclusion/Recommendation:

Inclusion of the Langmuir Research Site in the Cibola’s wilderness inventory would not conflict in any direct or apparent way with Congress’ intent in establishing the site for scientific research purposes. However, the Forest Service could avoid any potential, limited conflicts between particular research activities and other wilderness values by excluding from the inventory the 1,000-acre principle research facility – which covers only about 3% of the site. That reasonable approach would allow the Forest Service to inventory and evaluate the remaining 97% of the site for wilderness characteristics and determine whether to carry the area (or a portion of the area) forward in the NEPA process, and ultimately whether to recommend it for wilderness designation.