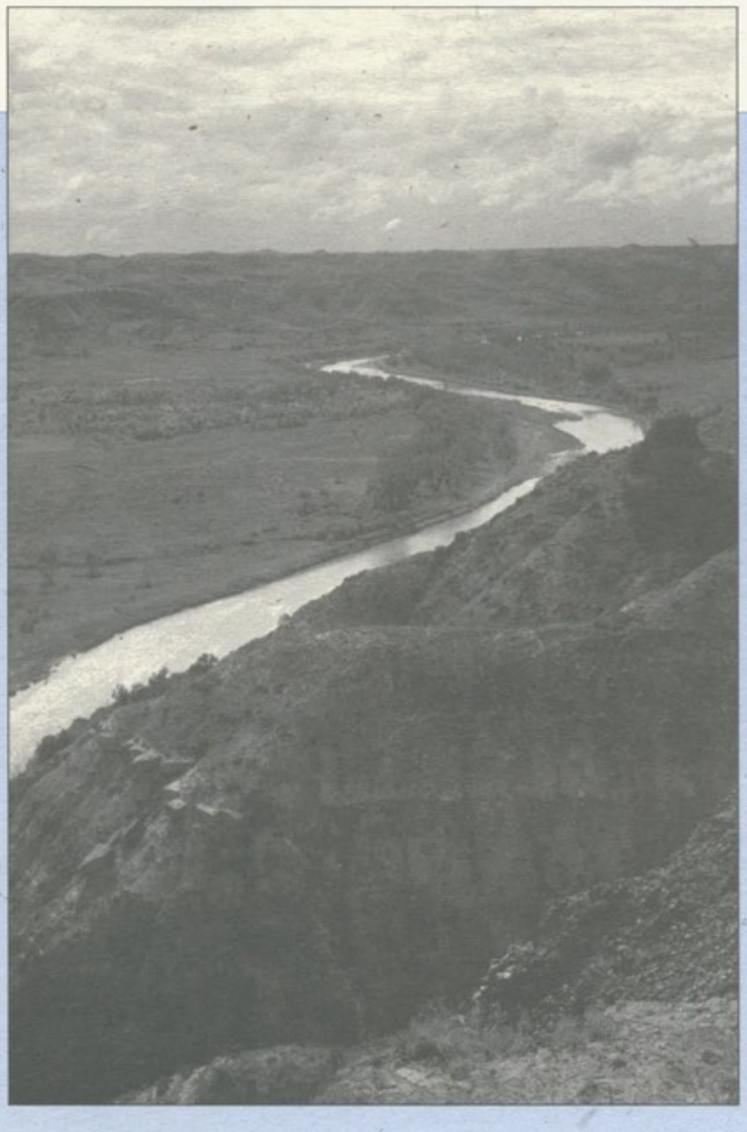

Badlands on the Brink

North Dakota Wilderness and Wild and Scenic River Proposal

Badlands on the Brink

NORTH DAKOTA
WILDERNESS AND
WILD AND SCENIC
RIVER PROPOSAL

(cover photo) Little Missouri River
PHOTO: © KIRK KOEPSEL

Sponsoring Organizations

Dacotah Chapter of the Sierra Club
North Dakota Wildlife Federation
The Three Affiliated Tribes of North Dakota
Clean Water Action
North Dakota Wildlife Society
Bismarck-Mandan Bird Club
The UND Environmental Conservation Organization (ECO)
NDSU Environmental Action Committee
Lewis and Clark Wildlife Club
Sierra Club
National Wildlife Federation
American Wildlands
American Rivers
National Parks and Conservation Association
The Wilderness Society
National Audubon Society
Fargo-Moorhead Audubon Society

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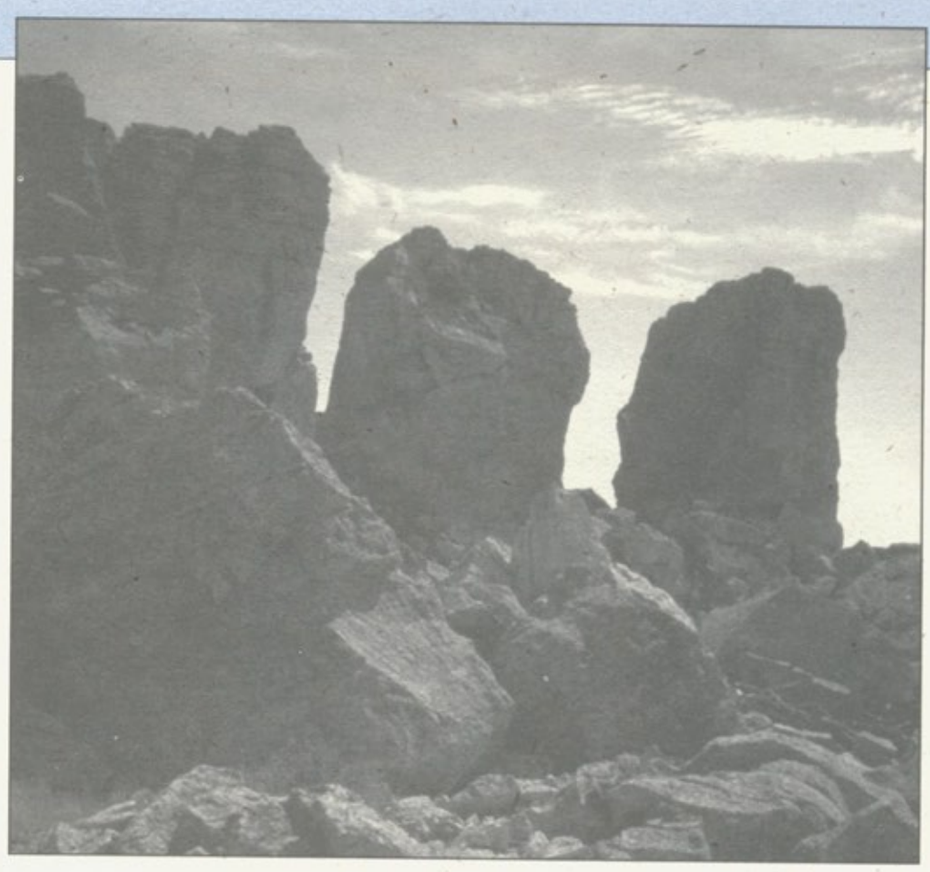
Introduction



Rock escarpments in Bullion Butte provide rare opportunities for solitude and spectacular views of the badlands.
PHOTO: © KIRK KOEPSEL

In 1964, Congress passed the Wilderness Act "to secure for the American people of present and future generations the benefits of an enduring source of wilderness."

Almost 30 years after the passage of the act, the promise is yet to be fulfilled. North Dakota is one of only three states that has not passed a comprehensive statewide U.S. Forest Service wilderness bill. Meanwhile, the amount of wilderness in the state that qualifies for protection is rapidly diminishing.

Five hundred thousand acres of the Little Missouri National Grassland, situated in the western North Dakota badlands, qualified for wilderness designation in the early 1970s. By 1977, when the second Roadless Area and Review Evaluation was complete, the number of acres eligible for wilderness protection was cut in half. Today, only slightly more than 150,000 acres of potential wilderness remains.

The major reason for the loss of wild lands has been the development of oil and other resources. In the 1970s, pushed partly by the OPEC oil embargo, oil drilling increased dramatically. In just the northern portion of the Little Missouri National Grassland, over 1,800 wells have been drilled; 675 are currently producing. Five hundred more drilling sites are expected in the next 10 years. With the encouragement of the U.S. Forest Service, the massive drilling level continues.

We, the organizations sponsoring the North Dakota Wilderness Proposal, recognize that oil and gas development contributes greatly to the economic well-being of western North Dakota and is a vital natural resource. But we steadfastly believe that this use must be balanced with other, equally valuable uses of our public lands.

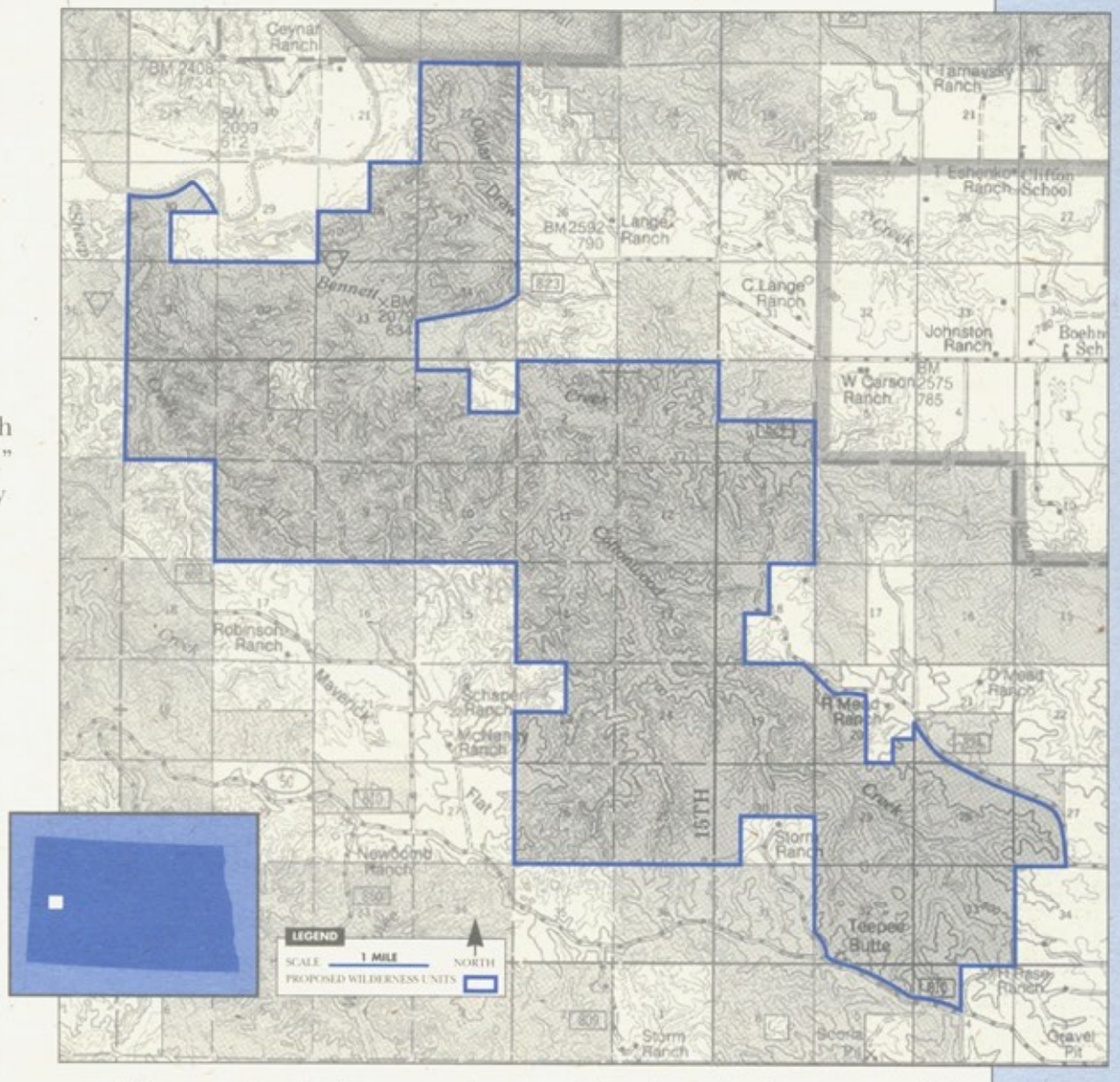
These federal lands — totaling only slightly more than 4 percent of the state — contain some of the most important wildlife habitat, wilderness and recreational areas found in North Dakota. For instance, the grassland serves as a potential reintroduction site for the endangered black-footed ferret — the rarest mammal in North America. Seven geographically distinct habitats are home to approximately 250 bighorn sheep.

The area's topography ranges from deeply incised, dramatically hued canyons to verdant ridges and 200-year-old ponderosa pines. It is this diversity of landscape that offers something for every outdoor enthusiast: scenery for the photographer, challenging terrain for the hiker and much-sought-after remote opportunities for campers and hunters.

Yet the enchanting aura of the proposed wilderness is hardly news. Theodore Roosevelt developed much of his conservation ethic during his stay in what is now known as the Little Missouri National Grassland, an ideal that later influenced much of the environmental character of his presidency. Roosevelt, in reflecting on his visit to the area, said: "In that land, we led a free and hardy life....we knew toil and hardship and hunger and thirst...but we felt the beat of hardy life in our veins, and ours was the glory of work and the joy of living." Without wilderness designation for these grasslands, future generations may be robbed of their right to experience life out on the great open spaces, under the magnificent skies of the West. These opportunities are dwindling with each passing year as the pressures for development increase. The American people, through their representatives in Congress, need to set aside wilderness areas within these Western grasslands — before it's too late.

Utilizing our natural resources must not mean allowing our remaining grasslands to become oil fields. This proposal aims to force the Forest Service to balance oil development with recreational, wilderness and wildlife uses.

Bennett-Cottonwood



Bennett Creek is a wide, flat-bottomed canyon with active prairie-dog "towns," characteristic of the larger tributary drainages of the Little Missouri River. Side canyons of Bennett Creek, such as Sheep Creek, are extremely rugged and offer excellent opportunities for solitude.

Cottonwood Creek is narrower and more primitive than Bennett Canyon and presents some of the best scenery and most challenging terrain in this proposed wilderness area. Its grassy ridge tops offer extensive vistas of cragged canyons and steep, multicolored cliffs.

There are 10 archeological, five historical and two isolated artifact sites known to exist within Bennett-Cottonwood.

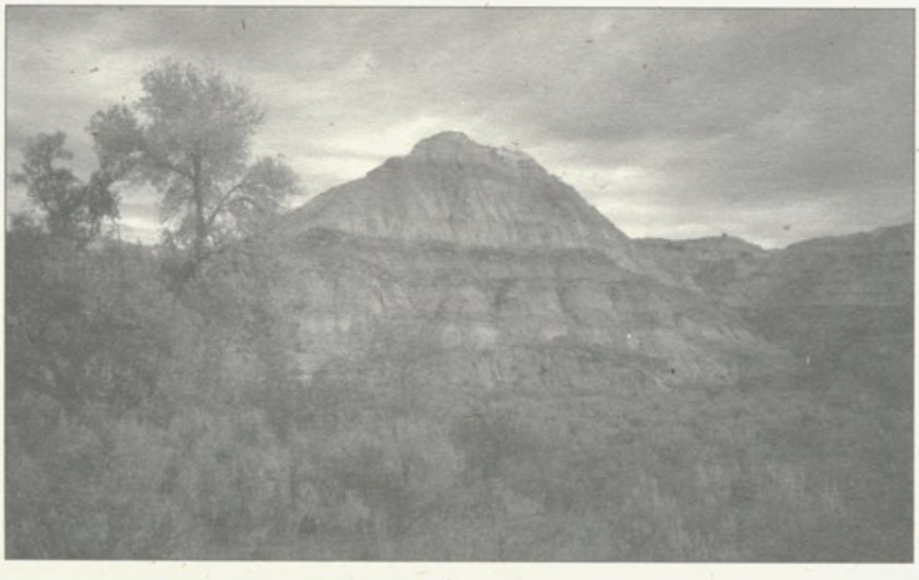
WITH THE EXCEPTION OF THE northern portion, managed for livestock and oil development, the Forest Service currently operates most of Bennett-Cottonwood as a roadless and primitive wildlife area.

The biggest threat to Bennett-Cottonwood is oil and gas development. Conservationists have waged an eight-year battle to save the area from development, an effort that, with the exception of minor boundary alterations, has been successful.

Bennett-Cottonwood derives its name from the two creeks that carved this spectacular canyon region.

PHOTO: © KIRK KOEPSEL

Various two-track roads exist in the area, but have little effect on Bennett-Cottonwood's natural qualities. Ranchers will be allowed to continue to use these roads for maintenance and repair of range facilities. An old scoria pit exists in the area, but has not been used within the last few years.



PROPOSED WILDERNESS AREA: 18,366 ACRES

Bennett-Cottonwood is one of the few areas where multiday horse packing or backpacking trips are still feasible without encountering any other people. The area contains plentiful game, including bighorn sheep, which are rarely found in the state.

Located 2.5 miles northwest of Grassy Butte, Bennett-Cottonwood borders private and state lands on the north and southwest, and Forest Service roads 810 on the south and 824 on the east. For a 1-mile stretch along its northern boundary, it abuts Theodore Roosevelt National Park. Forest Service road 823, a gravel road which leads to a small oil field, the Trail Side Field, runs along the northeastern portion of the area. There is one 160-acre inholding which will have to be acquired through purchase or exchange.

Bullion Butte

The area is a toned-down version of the stark and rugged badlands farther north. The top of the butte has an expansive, rolling-prairie surface with no trees. The edges and cliffs themselves are sandstone, creating a well-suited habitat for raptors.

Opportunities to observe native North Dakota wildlife abound. Hawks, bighorn sheep, eagles and sharp-tailed grouse are plentiful. Important to the wildlife of the area are the juniper trees found on the northeast incline and the cottonwood riparian forest along the Little Missouri. Bullion Butte's abundant population of trophy mule deer and pronghorn antelope makes it a popular hunting area.

The butte's many hills, valleys, woody draws and other drainage areas, along with its size, makes for challenging back-country hiking and offers solitude to the outdoor enthusiast. From its large sandstone cliffs and boulder-scattered inclines to its grassy summit and juniper-forested northeast slope, the butte offers variety and challenge yet is accessible to the majority of hikers and horse riders. The stretch of the Little Missouri River, the other major recreational feature, offers fishing and canoeing opportunities.

There are 15 archeological, six historical and 20 isolated artifact sites known to exist within this proposed wilderness area.

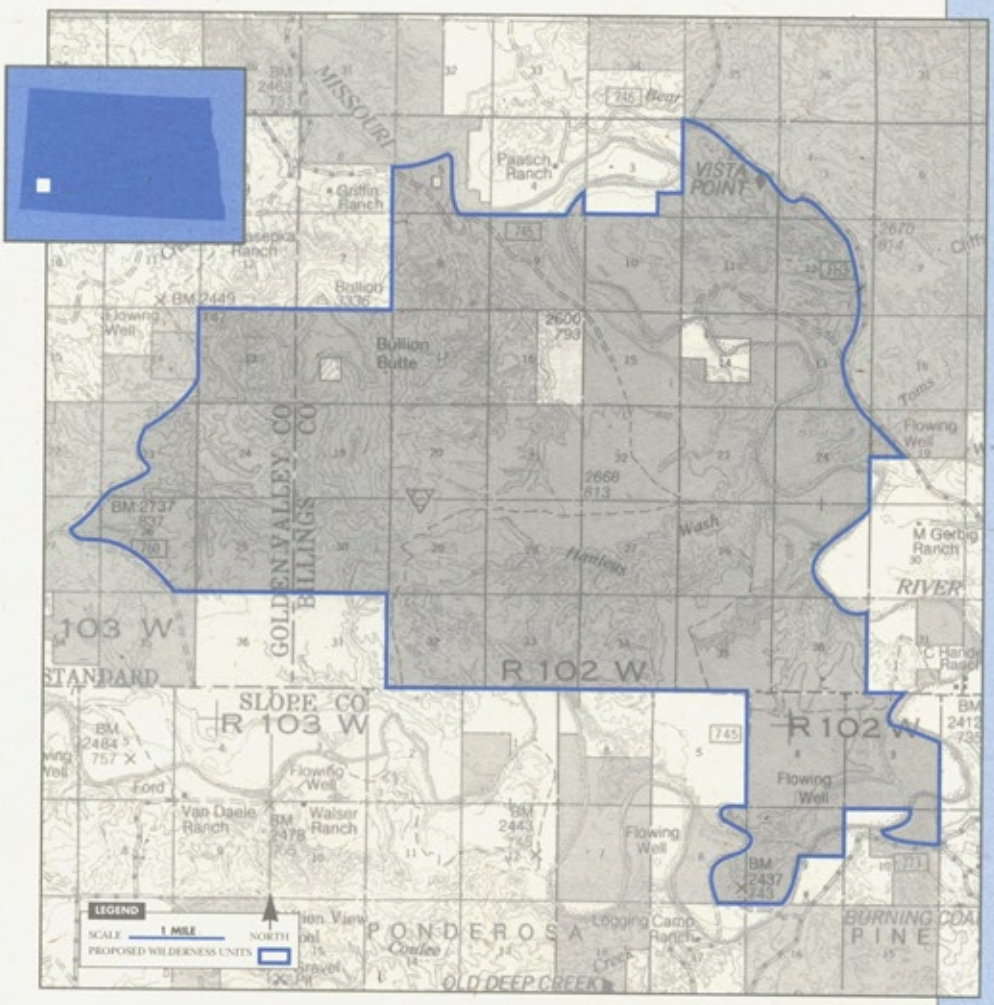
THE FOREST SERVICE currently manages Bullion Butte to protect its important wildlife habitat. Two-track roads, stock tanks, fences and a small inholding with a hunting cabin are evidence of human encroachment.

At present, grazing and hunting are the most common uses of the area. Wilderness designation will have little if any impact on these uses.

Bullion Butte is under imminent threat of oil and gas development. Part of the area is covered with split-estate lands controlled by Meridian Oil Company, a subsidiary of Burlington Northern Railroad. Meridian is currently encouraging extensive exploration of its mineral estate in search of oil reserves.

Bullion Butte is a fine example of rugged North Dakota badlands topography and, unlike other regions of the badlands, it remains relatively free of human imprints.

PHOTO: © KIRK KOEPSEL

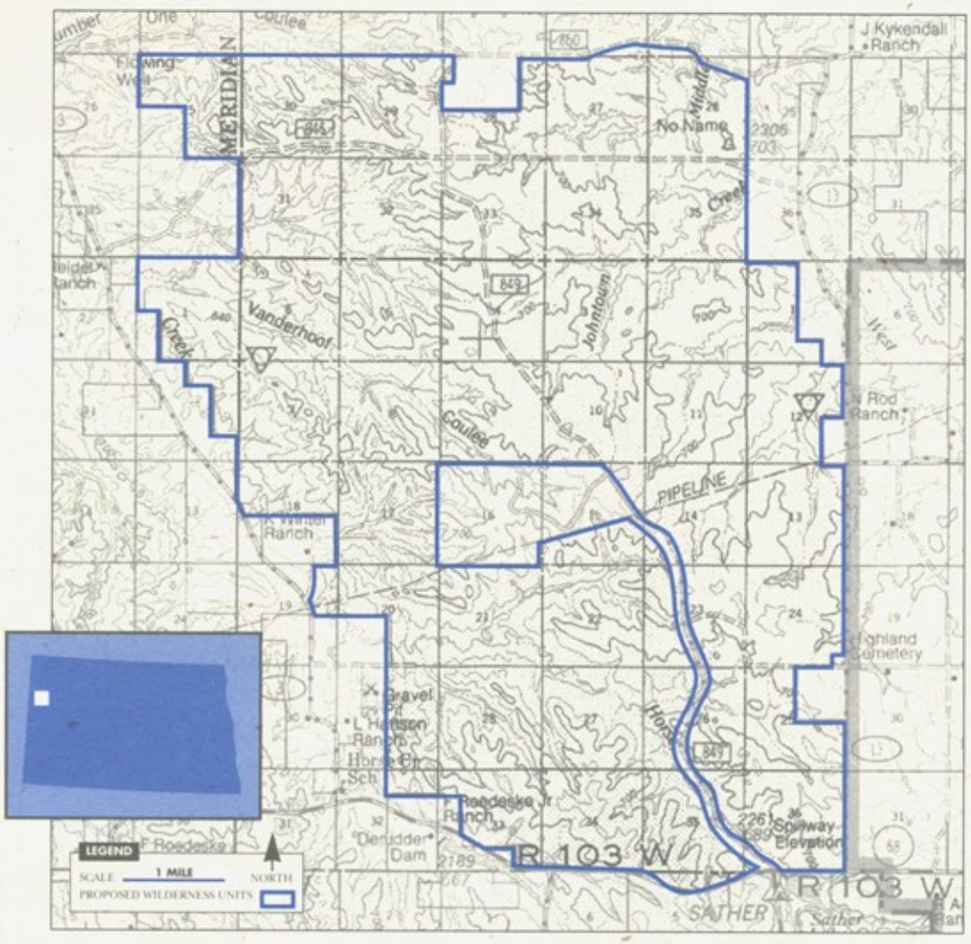


PROPOSED WILDERNESS AREA: 19,130 ACRES

The remarkable characteristics of the Bullion Butte area include its vast size, its potential for solitude and its absence of roads other than simple two-tracks. The abrupt cliffs and rock-strewn slopes of the butte are impressive and provide spectacular views of the southern portion of the badlands. Few places in North Dakota, if any, offer such magnificent vistas.

Bullion Butte is located in the southern portion of the badlands, approximately 15 miles south of Medora. The area is bordered by the East River Road and private land on the east; the Little Missouri River and private land on the south; Forest Service roads 755 and 760 on the west, and the Griffin Ranch on the north. Included in the acreage are 600 acres of private land which will have to be acquired through purchase or exchange.

Horse Creek



PROPOSED WILDERNESS AREA: 25,320 ACRES

Horse Creek features rolling mixed-grass prairie dissected by small, woody draws — the only example of this type of landform that still qualifies as wilderness in the Little Missouri National Grassland. The other proposed areas are all located in the rugged badlands.

The Horse Creek proposed wilderness area is 5 miles south of Cartwright and is bounded on the south by a one-wire powerline and state Highway 68. On the east and west, the area is bounded by private land and on the north by oil field activity and major roads. The irregular shape of Horse Creek results from the exclusion of an oil well located on state school land. Horse Creek contains 580 acres of state school land which will have to be acquired through purchase or exchange.

The remarkable ravine-dissected rolling hills of Horse Creek are sprinkled with seasonal streams. Mixed-grass prairie is the predominant plant community with primary species of wheat grass, needle-n-thread and June grass; forbs are plentiful as well. Green ash and American elm are the most common trees in the area. Woody draws, though limited along the ravines, and a prairie dog colony can also be found.

The area provides premium hiking, horseback riding, and camping and hunting opportunities. The proximity of Sather Campground, just south of the area, allows visitors to use Horse Creek during the day and then camp in a developed campsite. Upland game bird, deer and antelope are plentiful for hunting, also a popular activity in this area.

There are 19 archeological, nine historical and seven isolated artifact sites known to exist within this proposed wilderness area.

THE FOREST SERVICE has designated the southern half of Horse Creek a roadless area under the Custer National Forest Management Plan. The northern portion is managed for livestock and oil development.

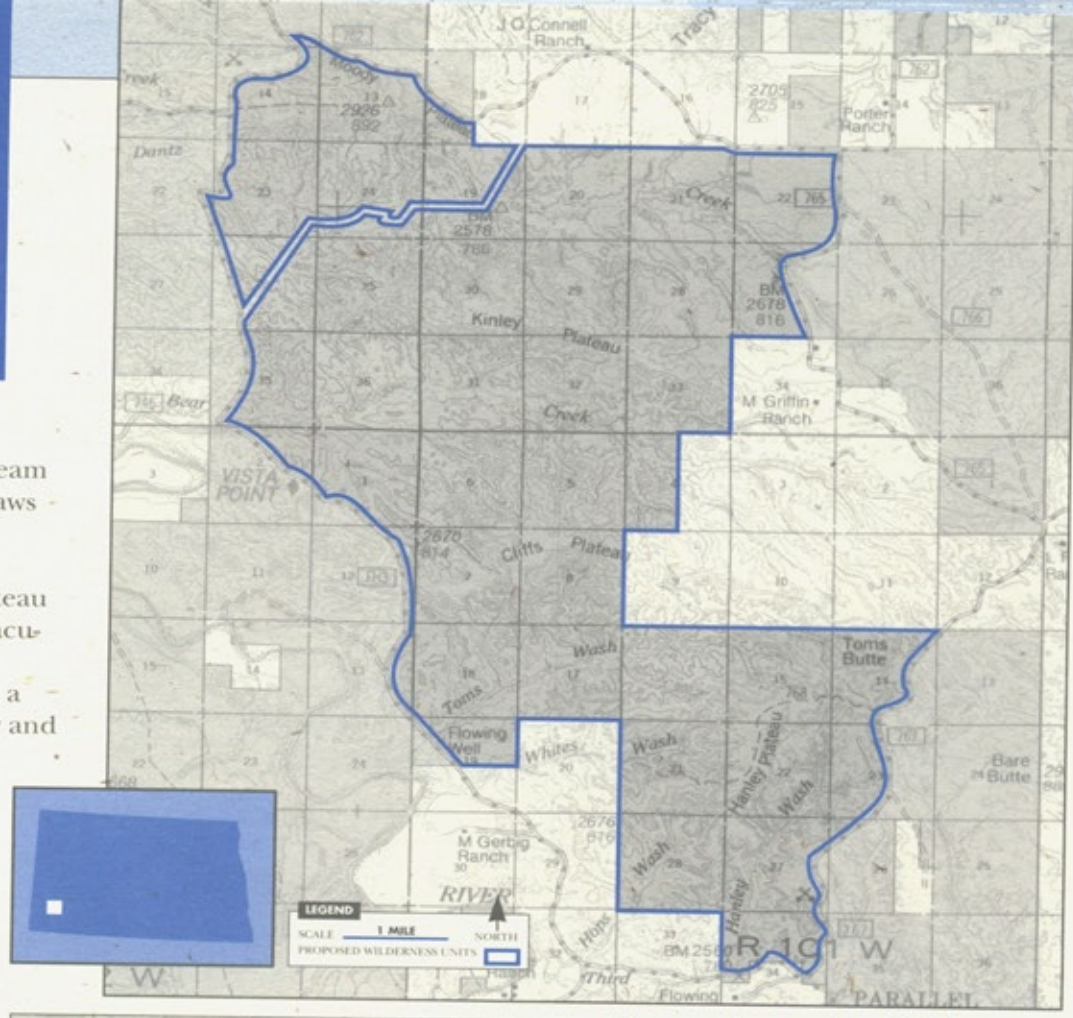
Grazing does occur in Horse Creek and various grazing improvements exist. A small wooden corral is present in the north third of Horse Creek and several livestock reservoirs have been constructed in the ravines. The corral and reservoirs have little impact on the overall naturalness of the area and will continue under wilderness designation.

Oil and gas development poses the most major threat to Horse Creek. Drilling has already occurred on school section land, as well as limited mineral development in the immediate vicinity. A buried pipeline crosses through the bottom third of the area, but does not affect the area's primitiveness. It is likely that Horse Creek contains oil reserves which may be developed if the area is not designated wilderness.

A primary scoria road is present from Highway 68 to the oil well in school section 16. The remainder of the roads are two-tracks, occasionally used by ranchers for maintenance and repairs. This use will continue to be permitted with wilderness designation.

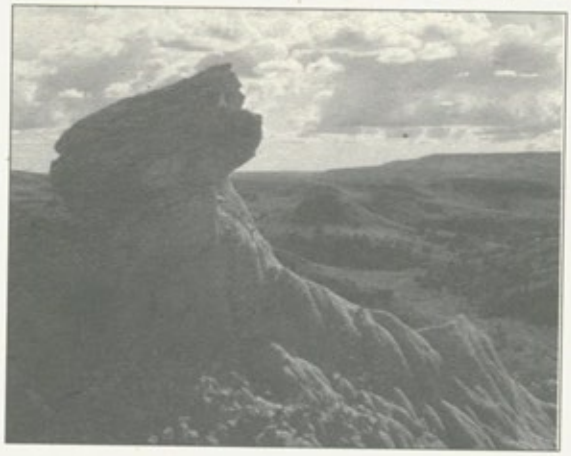
Horse Creek is the only area in the proposal that features rolling prairie.

Kinley Plateau



Cottonwood-lined stream bottoms, juniper draws forb-laden hills and plateaus all combine with the exposed geology of Kinley Plateau to form one of the most spectacular and rugged landscapes in North Dakota. In the summer, a kaleidoscope of red, blue, gray and white hues of the eroded and exposed scoria and clay buttes are intertwined with a myriad of vegetation. The area is noted for its big game, particularly trophy mule deer. Kinley Plateau is home range for the largest herd of bighorn sheep in the state.

There are 11 archeological, two historical and seven isolated artifact sites known to exist within the proposed wilderness area, including effigy rock art and eagle catch pits.



One road separates Kinley Plateau from Bullion Butte. Combined, these two areas create the largest tract of roadless land left in North Dakota.

PHOTO: © KIRK KOEPSEL

THE FOREST SERVICE currently manages the entire area for the protection of wildlife species. The proposed wilderness is grazed by the livestock of neighboring ranchers, a non-intrusive use which will continue with wilderness designation. There are allotment and pasture fences in the area, but they blend with the countryside and are only visible from short distances.

Oil and gas development was prohibited under the Custer National Forest Management Plan. However, because part of the mineral estate is owned by Meridian Oil Company, the area is under imminent threat of development. Duncan Energy has contracted with Meridian and recently proposed drilling several wells on the Meridian-owned mineral estate in the area. In fact, in March 1993, Duncan Energy constructed a road and drilled a well in Kinley Plateau without prior Forest Service permission or approval. The Forest Service is in the process of bringing suit against Duncan Energy for this violation.

Kinley Plateau is hunted extensively for mule deer, a provision which will continue with wilderness designation. Vehicle access, however, would be prohibited, making Kinley Plateau one of the few areas in North Dakota where a backpack or horse-pack hunt for trophy mule deer could be pursued without motor vehicle-interruption.

PROPOSED WILDERNESS AREA: 21,120 ACRES

Kinley Plateau still exhibits all the natural characteristics of the Little Missouri badlands prior to impacts caused by man. The size and irregular terrain of the area easily allows visitors to delve into solitude.

Kinley Plateau is bounded primarily by Forest Service road 762 on the north, 765 and 767 on the east, and East River Road on the west. Portions of the study area are bordered by private lands along the north, east and southwest boundaries. Kinley Plateau has excellent vehicle access from every direction via all-weather scoria roads and is located approximately 10 miles south of Medora. Approximately 1,280 acres of state school land would have to be acquired through purchase or exchange.

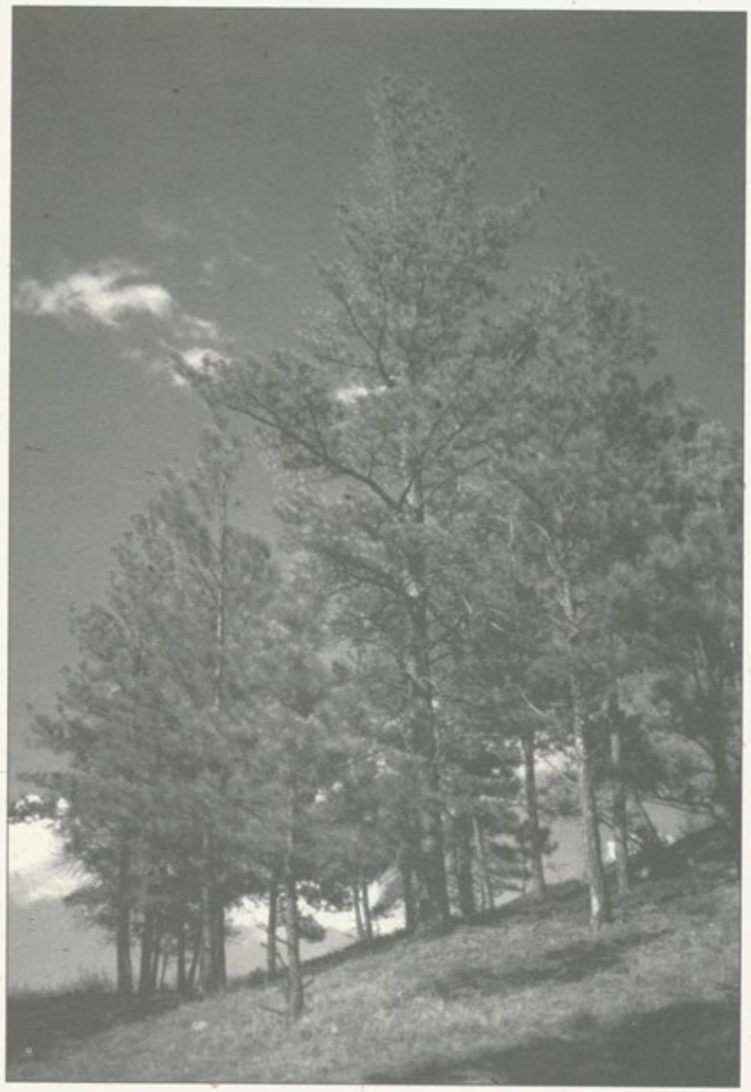
Over the years many of the track roads formed by ranchers and hunters have become impassable due to natural erosion of ravines and ridges. Other track roads represent no more than paths in the grass that would quickly vanish with lack of vehicle use.

Ponderosa Pine

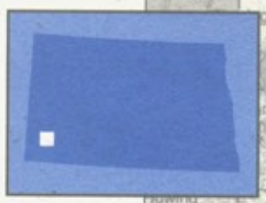
The most outstanding features of Ponderosa Pine are the pines themselves, some of which are over 200 years old. It is believed that logs from this area were used to build Teddy Roosevelt's Maltese Cross ranch house. A small area of the bluebunch wheat grass, a grassland type that occurs in association with the ponderosa pine, can also be found in the region.

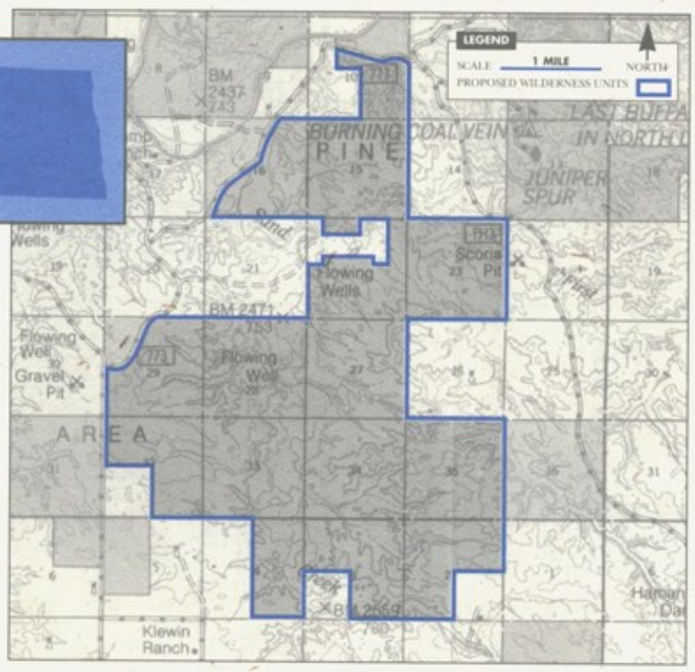
Through the heart of the area flows picturesque Sand Creek, its banks strewn with scoria outcroppings. It is this area of the Little Missouri National Grasslands that is most reminiscent of the Western wilderness. The area's pine-laden scenery makes for spectacular hiking, horseback riding and hunting.

There are 13 archeological, two historical and six isolated artifact sites known to exist within this proposed wilderness area.



Ponderosa pines, though abundant in the Rocky Mountains, are a rare sight in the badlands.
PHOTO: © KIRK KOEPSEL





PROPOSED WILDERNESS AREA: 7,800 ACRES

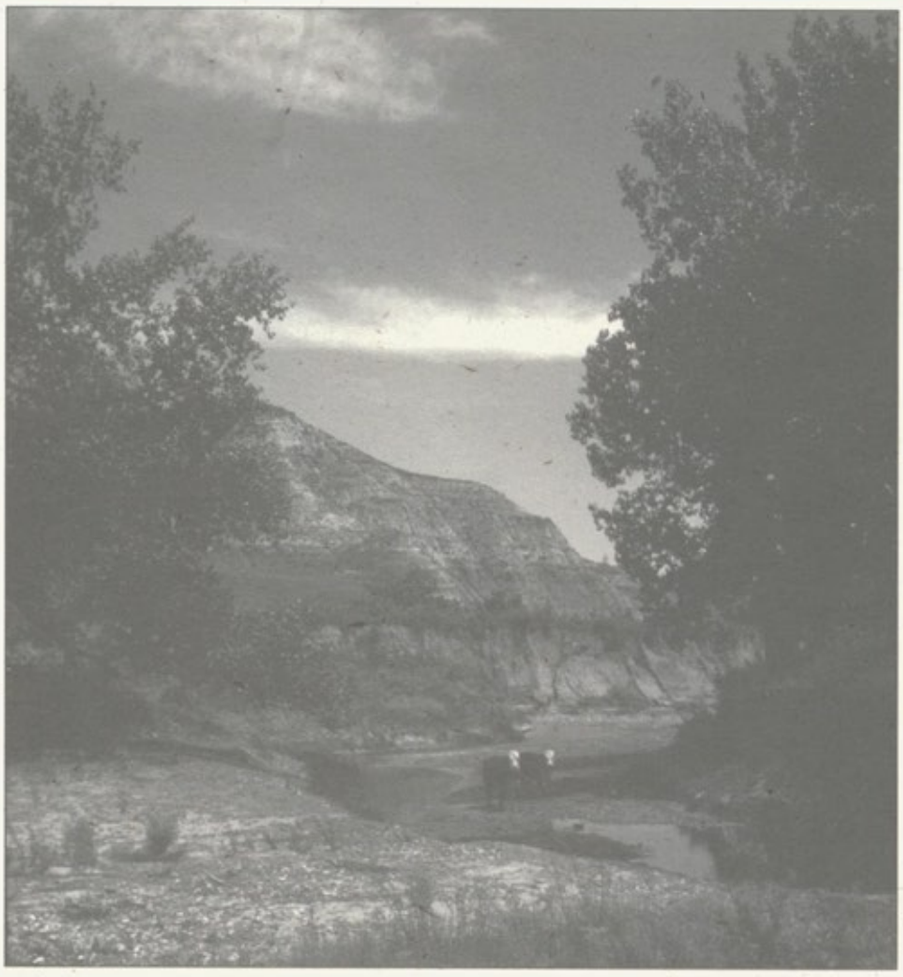
MOST OF PONDEROSA PINE is managed by the Forest Service for wildlife protection, while the southeastern portion of the area is managed for livestock and mineral development. Grazing is currently the dominant use in the area and should be unaffected by wilderness designation. There are two two-track roads, one water tank and an electric fence in the southern portion — but the overall area remains undisturbed and wild.

Oil and gas development is a constant threat, particularly with the current exploration in the southern portion of the Little Missouri National Grassland.

Although prevalent in many areas throughout the Northwest, pine forests are uncommon in North Dakota — the nation's most treeless state. However, due to the area's similarity to the low-elevation mountain settings of the West, the region boasts one of the most northeastern stands of ponderosa pines in North America. The closest major ponderosa pine stands are hundreds of miles away in the Black Hills of South Dakota and the Custer National Forest. Pine-covered buttes with rolling prairie in the area's southeast corner and the Little Missouri River flood plain in the northwest corner provide this area with a varied and unique landscape.

Located 8 miles northwest of Amidon, Ponderosa Pine is bounded by private land on the northwest, south and east; by East River Road 742 on the northeast, and state road 773 on the west. Included in this portion of the wilderness proposal are 340 acres of state school land which will need to be acquired through purchase or exchange.

Wannagan



Wannagan sits next to Theodore Roosevelt National Park and will be a spectacular addition to the park's Petrified Forest Wilderness.
PHOTO: © BRUCE HAMILTON

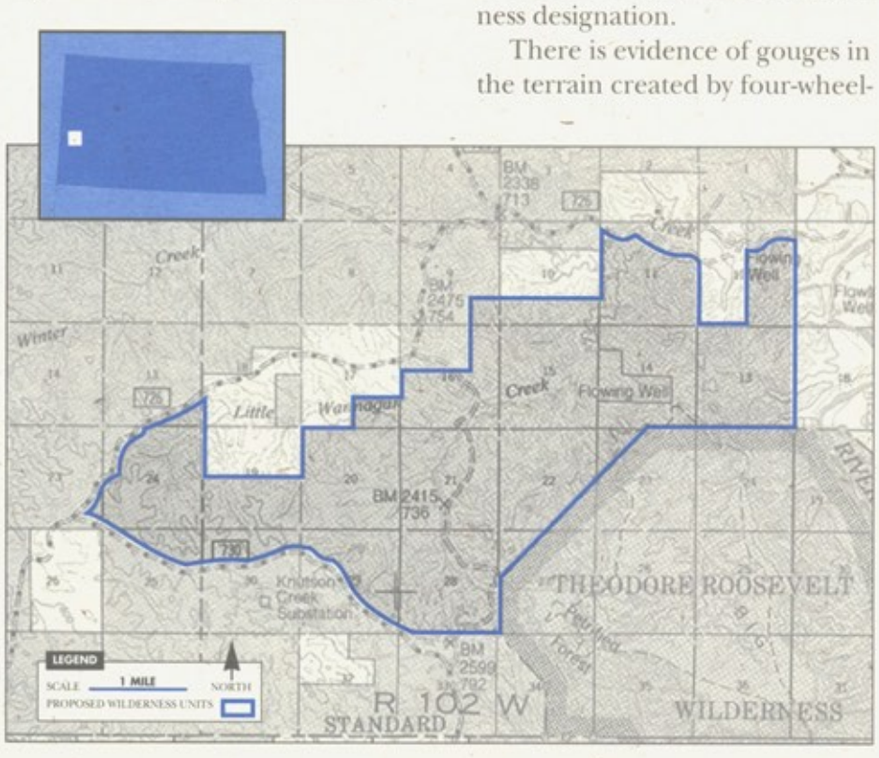
The badlands of Wannagan are rugged and primitive with few trees except for several low-lying species near creeks. There are small hills with outcrops or sedimentary rocks which offer vast geological scenic and scientific value. The erosion of sedimentary rocks, in particular, yields a breathtaking vista. The area is inhabited by deer, elk, coyotes and prairie dogs.

Wannagan is a natural extension to the existing Petrified Forest Wilderness Area and would enhance the activities and resources already available in the vicinity.

There are 13 archaeological and two isolated artifact sites known to exist in this proposed wilderness area.

THE SOUTHERN TWO-THIRDS of Wannagan are currently being managed by the Forest Service for grazing and oil development, while the northern portion remains as a primitive wildlife area. Grazing will be allowed to continue if Wannagan is designated wilderness. Oil and gas development poses the biggest threat to the area. Pump jacks are already present in many areas surrounding Wannagan and drilling in the area is likely without wilderness designation.

There is evidence of gouges in the terrain created by four-wheel-drive vehicles; an indication that the area needs protection from this type of activity to prevent further erosion.



PROPOSED WILDERNESS AREA: 7,480 ACRES

Wannagan's unique landscape is the result of its proximity to the Petrified Forest Plateau, whose northwestern escarpment lies within the area. An intricate maze of canyons dominates the area, offering essential habitat for Wannagan's wildlife, especially elk and mule deer. Wannagan is one of the few areas in the badlands where elk exist and where trophy elk can be hunted.

Wannagan is bordered on the northeast and west by private land and on the southeast by the southern unit of Theodore Roosevelt National Park and the existing Petrified Forest Wilderness Area. The area can easily be accessed by Forest Service roads and Wannagan Road which runs along the outer edge. Wannagan contains 880 acres of state school land which will have to be acquired through purchase or exchange.

Little Missouri River Wild and Scenic River

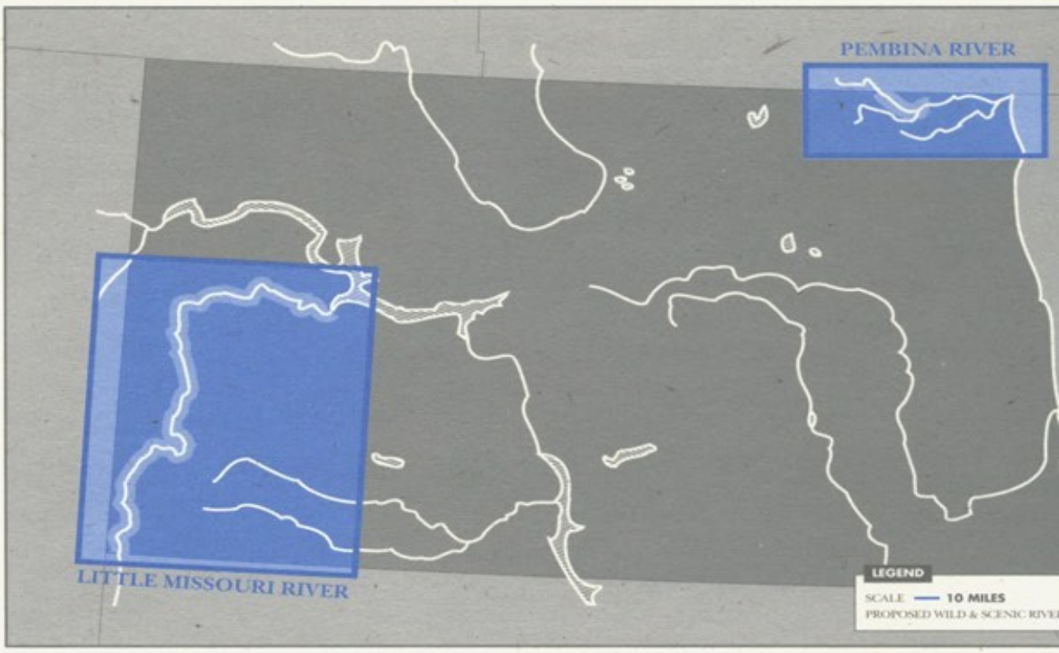
In addition to the magnificent badlands, numerous rare plants are found along the banks of the Little Missouri. Cottonwood forests and sagebrush shrub lands are commonplace and less than half of the river's flood plain is hayed or plowed. The river corridor is home to such unusual North Dakota game species as elk and bighorn sheep, as well as the more familiar white-tailed and mule deer.

One of the most visited recreational destinations in North Dakota, the river is a popular sportfishing area due to its high content of northern pike and channel catfish. The river also has fantastic canoeing, hiking and camping opportunities. Sightseeing is particularly popular in the north and south units of Theodore Roosevelt National Park.

The Little Missouri is considered to possess nationally significant cultural resources. Its banks are scattered with prehistoric campsites, chipping stations and eagle traps. Vast numbers of sites from the cattle baron period are prevalent, including the home and meat shipping facilities of the Marquis de Mores and Theodore Roosevelt's Elkhorn Ranch.

The Little Missouri River is great for canoeing and sport fishing.
PHOTO: © KIRK KOEPSEL

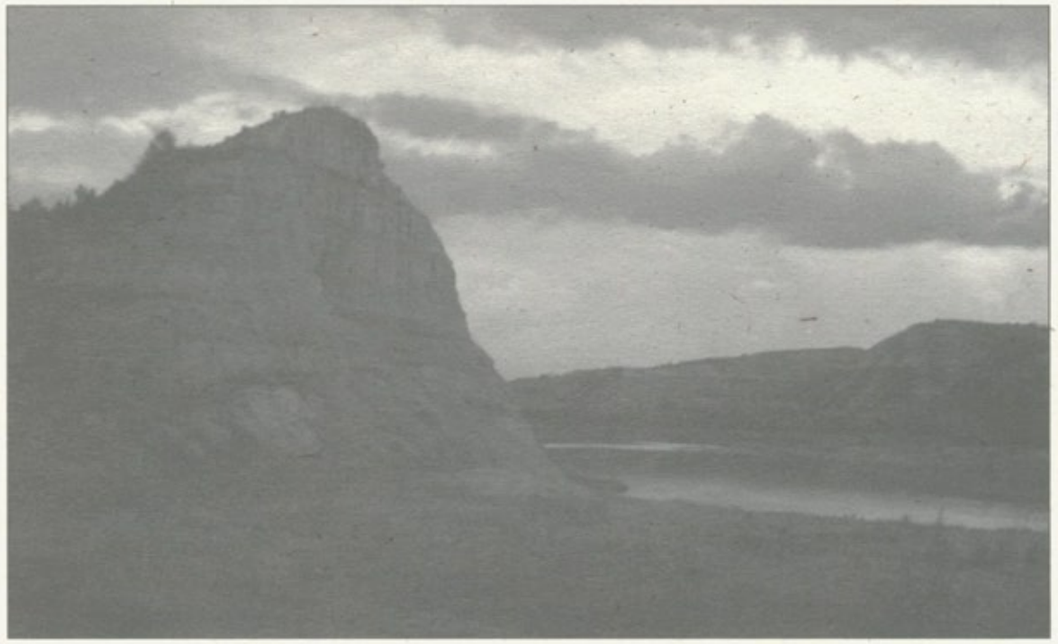
THE MAJOR CONFLICT to Wild and Scenic River designation is oil and gas development, which has already changed vast tracts of land in the grassland from a wilderness to an industrial landscape. Many sections of the Little Missouri River are threatened with this development.



THE LITTLE MISSOURI RIVER will be designated as follows:
The 92 miles from South Dakota Border to Brown Ranch — **scenic river**
The 16 miles from Brown Ranch to Three V Crossing — **wild river**
The 39 miles from Three V Crossing to C Hande Ranch — **scenic river**
The 14 miles from C Hande Ranch to Paasch Ranch— **wild river**
The 39 miles from Paasch Ranch to Wind Canyon— **scenic river**
The 4 miles from Wind Canyon to Roosevelt Park North Border — **wild river**
The 85 miles from Roosevelt Park North Border to Ceynar Ranch — **scenic river**
The 12 miles from Ceynar Ranch to Squaw Creek Campground — **wild river**
The 45 miles from Squaw Creek Campground to Lake Sakakawea — **scenic river**

Much of the river's course crosses public lands such as Theodore Roosevelt National Park, the Little Missouri State Primitive Park, the Little Missouri National Grasslands, and the Bureau of Land Management's Big Gumbo and Lost Bridge areas. Portions of the Little Missouri have already been designated a State Scenic River, however this offers only limited protection. It is one of the most deserving rivers in the country for federal protection.

The Little Missouri River, one of the most spectacular and scenic rivers in the state, extends approximately 350 miles from the South Dakota border to Lake Sakakawea. The river flows through impressive badlands, which rise as high as 300 feet above the flood plain and contain multicolored hues from eight different rock formations. In its North Dakota River Study, the North Dakota Parks and Recreation Department gave the Little Missouri a Class I rating, meaning that the river's resources are of national significance.



Pembina River Wild and Scenic River

The Pembina possesses the only whitewater in the state.
PHOTO: © KIRK KOEPSEL

The Pembina is among the deepest and steepest river valleys and a major portion of the largest unbroken woodland in the state. Its gorge is almost completely undisturbed, due in part to the widespread and unstable shale outcroppings. The area's contiguous, diverse habitats contain the highest number of varied natural communities in North Dakota.

The Pembina River forest is the last native area of significant size in the state. It includes American elm, green ash, box-elder, basswood, quaking aspen and paper birch. Shrub species include chokecherry, Juneberry and highbush cranberry. Stands are in excellent condition from the Canadian border to Walhalla.

Sightseeing, hiking, photography, fishing and canoeing are common recreational activities during the warm months, while cross-country skiing and snowmobiling are popular in the winter. During high water, the gorge provides whitewater excitement for canoeists and rafters.

Regional deer populations have been reported between 400 to 2,000 head with an average annual hunting success rate of 43 percent. Moose hunting, a popular activity in the Pembina Gorge, will continue under scenic river designation and motorized retrieval of harvested moose will also be able to continue under scenic designation.

The Pembina supports a moderate sport fishery for northern pike, walleye, yellow perch and channel catfish. There are no listed endangered or threatened fish species in the river, but there are three state-rare species. The river has also historically supported a successful migration of spawning lake sturgeon.

Pembina Valley also has an essential biological value due to its high water quality and species diversity. The upper portion of the valley has been the focus of several studies which have documented extensive rare flora. Over twenty state-rare species have been sited in the area, as well as the endangered gray wolf.

The Pembina Gorge has important geological value. Nowhere else in the state are the Cretaceous Pierre, Niobrara and Carlile formations as extensively exposed. The oldest bedrock exposure in the state is found near where the Pembina River crosses the Cavalier-Pembina County line. Vertebrate and invertebrate fossils have been reported in both the Carlile and Pierre formations in Cavalier County.

THE STATE OF NORTH DAKOTA is the largest landowner along the river. Its management activities may be somewhat limited by the designation, including the harvesting of timber. There may also be conflicts with private property owners who may not wish to sell scenic easements. The U.S. and Canada have, for a number of years, discussed the possibility of a dam on the Pembina, but the proposal has never gotten beyond the discussion stage. A massive drainage project to augment spring flows to the river has been suggested for one of the tributaries.

THE PROPOSAL would designate the 22 miles of the Pembina River from the Canadian border to State Highway 32 as a scenic river. Two tributaries of the Pembina — the Little North Pembina and the Little South Pembina should also be examined for addition to the Wild and Scenic River System

The upper stretches of the river flow through the magnificent Pembina Gorge, carving Cretaceous bedrock to a depth of more than 400 feet and a width of more than 1 mile. The gorge is surrounded by prairie farmland, but is itself heavily forested. Below the mouth of the gorge, the river traverses glacial Lake Agassiz and is typical of other prairie rivers in the state. During periods of drought, and in late summer, the river occasionally dries up temporarily.

The Pembina River, one of the most breathtaking rivers in North Dakota, flows approximately 22 miles from the Canadian border to its junction with state Highway 32. In 1987, it was listed as a Class I stream by the North Dakota Parks and Recreation Department, recognizing its national significance and substantial resource value.

Road access to the upper portions of the Pembina is minimal. A poorly extended dirt road ends at a ford approximately 3 miles from the Canadian border. Twelve miles downstream, a well-maintained road bridges the Pembina near the Frostfire Ski Area. A minor dirt road, 16 miles from the border, crosses the river at a second bridge. Highway 32 begins to parallel the river 22 miles from the Canadian border.

Cavalier and Pembina counties have recently launched a program designed to bring tourists to the "Rendezvous Region," an area that straddles the two counties near Cavalier, Pembina, Langdon and Walhalla. Designation of the Pembina as a Wild and Scenic River will fit in well with the counties' plans.

Wilderness Issues

Wilderness designation is no stranger to controversy. The law that established the National Wilderness Preservation System in 1964 took eight years to pass Congress. Unfortunately, the basic questions that Congress attempted to settle with that legislation are still debated each time a new wilderness proposal is advanced. Far too often we hear the old myths that wilderness designation would halt livestock grazing; that untold mineral wealth would be locked-up; that recreational access would be stifled; and that water rights would somehow be usurped. The following section addresses these issues in turn, and attempts to lay a factual foundation for the discussion of specific wilderness proposals.

What Does Wilderness Designation Mean?

Beginning with the creation of Yellowstone National Park in 1872, the U.S. has set aside tracts of undeveloped public land in order to preserve the unspoiled remnants of what was once a pristine continent. With the passage of the Wilderness Act in 1964, formal standards for the designation and protection of wilderness areas were established. Wilderness is a key part of the multiple-use concept, which does not mean — nor has it ever meant — every use on every acre. Beyond that, the uses of wilderness itself are many. Among those allowed in wilderness areas are:

- Foot and horse travel; hunting and fishing; back-country camping
- Float-boating and canoeing
- Guiding and outfitting
- Scientific study; educational programs
- Livestock grazing, only in previously established areas
- Control of wildfires; control of insect and disease outbreaks
- Mining on pre-existing mining claims

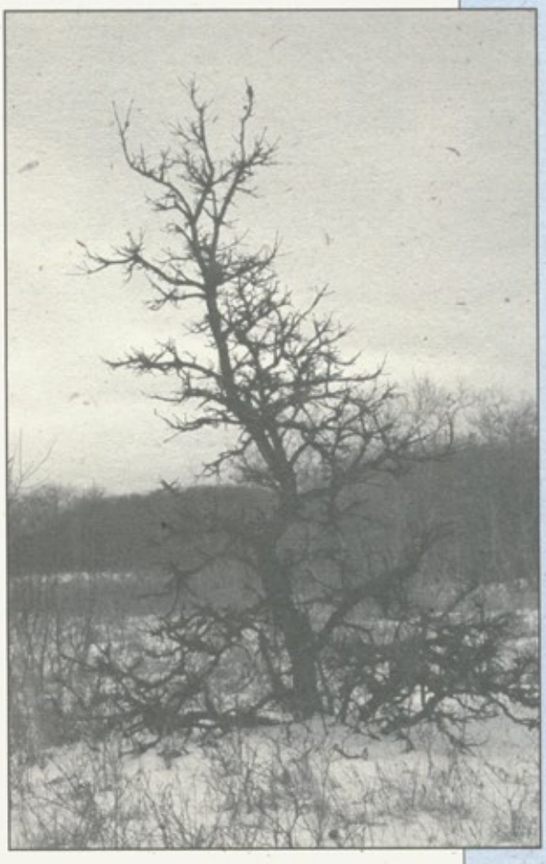
In order for nature to operate free from man's interference, and to preserve opportunities for solitude, certain uses are not permitted. Among those not allowed on the wilderness area are:

- Use of mechanized transport (except in emergencies or for vehicles such as wheelchairs)
- Road building, logging, and similar commercial uses
- Staking new mining claims or mineral leases
- New reservoirs or powerlines, except where authorized by the President as a national interest.

When wilderness opponents claim that wilderness is "locked up" from multiple-use and does not consider the views of local residents, look again. This myth dies hard. Logging, mining, and motor vehicle use, if not carefully regulated, can monopolize the public's land for the benefit of the few. These are the real single-use lock-ups of public land — the ones which usually occur without much public debate.

The Question of Purity

The boundaries of these proposed wilderness areas have been carefully drawn to exclude maintained and traveled roads, heavily-used or off-road vehicle routes, active mines and oil wells, most developed livestock facilities, and established recreation sites. But where the intrusions are crumbling the landscape, or could be restored to a near-natural condition, they have been included within the wilderness boundaries. Several old mining scars, little-used Jeep tracks, and some small or primitive livestock facilities have also been incorporated if they are located within an otherwise wild area and cannot reasonably be excluded by boundary adjustments. Existing commercial uses of stock facilities and mines will be allowed to continue within wilderness areas but are subject to reasonable regulations designed to protect wilderness values.



Sand dunes in the J. Clark Salyer proposed wilderness have now overgrown with grasses and tracts of forest.
PHOTO: © KIRK KOEPSEL

Congress has made it clear that such intrusions do not disqualify an area from wilderness designation if they are "substantially unnoticeable" within the context of the entire area. This does not mean that such imprints must be invisible, only that the land retain an overall sense of wildness. Few lands in the Little Missouri National Grassland and the other parts of North Dakota included in this proposal are totally untouched by man. The legislative history of the Wilderness Act makes it clear that such imprints do not disqualify entire areas from protection.

Some ask why conservationists include areas with Jeep tracks and other signs of human encroach-

ment in wilderness proposals, but object to allowing the vehicles and activities which bring about such imprints within designated wilderness areas. The answer, quite simply, is that the primary goal of designation is to prevent further damage to natural areas. Within limits, nature can heal old scars, but this cannot be used to justify further damage. Once an area is designated wilderness, it is the responsibility of the managing agency to prevent further impairment of the area's wild character.

Fire, Insect and Disease Management

Wildfire is an important part of natural ecosystems. Fires remove debris, recycle soil nutrients and encourage new plant growth. Fires caused by lightning within designated wilderness can be allowed to burn if there is no threat to life and property. Decisions related to wilderness fire management should conform to a fire management plan to be adopted following public comment. Fire suppression techniques must use minimum tools, such as avoiding bulldozers where handwork is sufficient, and they must prevent unnecessary degradation of the land.

Prescribed burning may be permitted to restore and maintain the natural condition of a fire-dependent ecosystem. This can help perpetuate habitat for certain threatened and endangered plants or animals.

Insects and disease outbreaks, like fire, are normal events in natural ecosystems. Our use of the term "infestation" only shows how little we know of these natural processes. Still, insects and disease may be controlled within designated wilderness areas, if not doing so would threaten endangered plant or animal species or other resources.

Mineral Resources and Wilderness

The leasing, claiming or sale of federal mineral resources are prohibited in wilderness. Some of the areas, however, including those in the Missouri National Grassland, do contain existing, undeveloped mineral leases.

These areas deserve wilderness protection for several reasons, in spite of the existence of these leases. First, almost all of the lands outside of our proposal are open to oil and gas development. To maintain some balance with development, these few areas, totaling just over 10 percent of the grassland, should be spared from oil and gas development. Second, the Forest Service has shown an inability to protect roadless areas without Congress mandating wilderness protection. Third, these leases will all expire within 10 years — many of them even sooner. Fourth, these areas are naturally those with the least oil and gas potential. If they contained significant amounts of oil or gas they would have been developed long ago. Fifth, the Forest Service can exchange these leases for ones of equal value outside of the proposed wilderness areas, thus eliminating further conflict.

Grazing in Wilderness

One of the least-understood provisions of the Wilderness Act of 1964 is the authorization of livestock grazing in designated wilderness areas. The act's language was further clarified by Congress in the Colorado Wilderness Act of 1980. The committee report accompanying that bill contains more detailed guidelines which the Forest Service has since incorporated into its wilderness management policy: "The legislative history of this language is very clear in its intent that livestock grazing and the necessary facilities to support a livestock grazing program, will be permitted to continue in National Forest wilderness areas, when such grazing was established prior to classification of an area as wilderness."

This report specifies that wilderness designation cannot be used as an excuse to reduce or phase out grazing. Grazing levels may be allowed to increase if there would be "no adverse impact" on wilderness values. However, no new permits can be issued. New improvements such as fences and spring developments are permissible, but should be aimed at protecting resources, rather than increasing grazing levels. Livestock permitees cannot be compelled to use natural materials in the construction of facilities if doing so would impose "unreasonable" costs.

Wilderness designation can benefit livestock operations by eliminating conflicts between off-road vehicles and livestock, including vandalism, open gates, and harassment and theft of livestock.

Livestock grazing, if improperly managed, can lead to soil erosion, competition for forage with wildlife species, the introduction of non-native plant species, the spread of disease to wildlife populations, damage to riparian areas, and deterioration of water quality. These problems must be dealt with regardless of whether an area is designated wilderness.

Off-Road Vehicles

Off-road vehicles (ORVs), which include four-wheel-drive pickup trucks, three- and four-wheeled all-terrain vehicles (ATVs), snowmobiles, and trail bikes, are commonly used in the North Dakota badlands. Off-road vehicle users often ask why their form of recreation is not allowed within designated wilderness areas. Vehicles are essentially incompatible with wilderness and conflict with other users. When an ORV intrudes into a wild place, the solitude sought by the visitor on foot or horseback is lost as the natural silence is suddenly shattered.

Physical resource damage is another reason why ORVs are not permitted in wilderness areas. ORVs can destroy fragile soils, break off delicate rock ledges, erode stream banks at stream crossings, and leave unsightly tire tracks. The damage from vehicles is often irreparable.

In 1977, the National Science Foundation and the Geological Society of America published a detailed analysis entitled "Impacts and Management of Off Road Vehicles." This report found that

ORVs disturb soils, increase erosion, damage water quality, destroy plants and adversely affect animals.

The analysis also raised concerns about long-term effects of ORVs. In discussing impacts on plant communities, the study said: "Indeed, it seems certain that many delicate interdependencies between organisms and their habitats, having been obliterated by ORVs, can never be restored."

Some ORV users complain that they are willing to share their routes with hikers, so why can't hikers accept vehicles? The problem is that vehicles have an impact out of proportion to their numbers. One motorbike or ATV can destroy the badlands or sand hills silence for miles around, interrupting the solitude for dozens of hikers. The same foot travelers, properly dispersed, will not disturb each other.

Many ORV users desire easy access to scenic places. North Dakota has thousands of miles of highways, secondary roads, backcountry Jeep routes and trails that will remain open even if our wilderness proposal is enacted. No point in any of our proposed wilderness areas is more than 4 miles from a road. Unless additional lands are placed off limits to vehicle use, the solitude, silence and opportunity for physical challenge — so long a part of the American West — will become a thing of the past.

Wilderness Water Rights

Although the controversy over wilderness water rights has occurred across the West, it is less of an issue in North Dakota than other states. Most of the lands involved in this proposal are acquired lands which do not have a water right associated with them. Only those lands which were never sold or given to an individual, would receive a federal reserved water right. However, in some cases the federal government may have to acquire water rights to protect the riparian and aquatic features of some of the proposed wilderness areas if the area is designated.

Water is a critical component of the North Dakota badlands as well as the Souris and Sheyenne Sand Hills ecosystems. If wilderness streams and wetlands were to dry up or diminish significantly due to their diversion and drainage, then water would not be available for wildlife, riparian plants and recreation. Clearly, wilderness legislation must include a reserved water right if it is to completely protect wild ecosystems.

Many of the areas in the North Dakota wilderness proposal are essentially headwaters where the water originates within the proposed wilderness. This water still is available for downstream development and diversion. A few streams do contain small segments which enter the wilderness from upstream. These creeks are near their sources and contain small flows. In the future, if any dam or diversion larger than a stock pond is contemplated for these creeks, these structures would most likely be located downstream of the wilderness areas rather than upstream. However, two areas, Strom-Hanson and Bullion Butte, do contain segments of the Little Missouri, a river the state has already designated a Scenic River. Damming or diverting major flows from the Little Missouri would have devastating consequences on these two areas. Thus, as part of our plan we have proposed designating the Little Missouri a component of the National Wild and Scenic Rivers System. The J. Clark Salyer proposed wilderness, located on the Souris River, already has secured water rights for this wildlife refuge by the federal government.

For those small parcels of land in our wilderness proposal which are part of the public domain, a federal reserved water right would be granted. Courts have defined the quantity of a reserved water right for public land as the amount necessary to carry out the purposes for which the land was protected. Thus, a wilderness water right is the amount of water needed to ensure the integrity of wilderness values. The use of water in wilderness is non-consumptive. Wilderness streams capture precipitation and contribute to groundwater recharge, and the primary users of water within wilderness are plants and animals. Water that flows into a wilderness flows out of a wilderness, and is still available for downstream uses.

Due in part to unresolved legal battles on the issue of water rights, it is necessary for Congress to assert a reserved water right for each wilderness area it establishes. But some members of Congress from the West persist in their attempts to strip water rights from wilderness areas by attaching inappropriate language to wilderness bills under consideration by Congress. Moreover, an Interior Department Solicitor's opinion issued in the waning days of the Reagan administration officially denied the existence of wilderness water rights. Therefore the responsibility has fallen on Congress to assert such rights and Congress has done so repeatedly in recent years — with the Nevada wilderness bill in 1989; the El Malpais, New Mexico, legislation in 1988; and the Arizona BLM wilderness bill in 1990. The citizens of these states are no less concerned about future economic growth.

In order to protect wilderness water resources for North Dakota wilderness public domain lands, legislation will need to follow these guidelines:

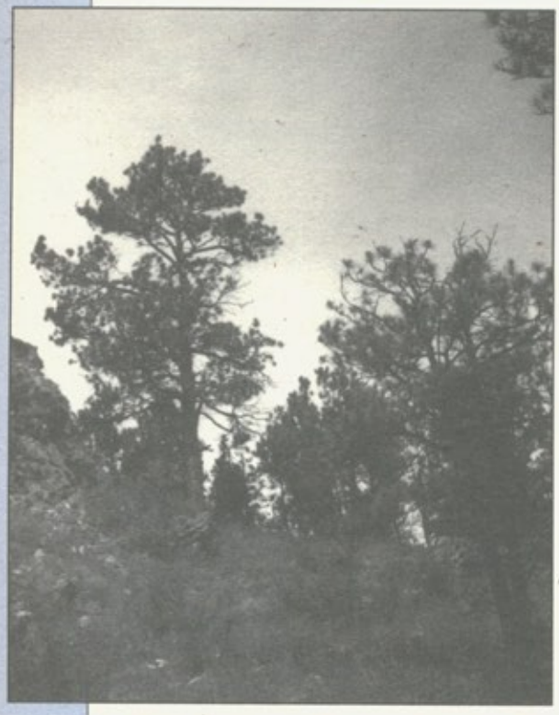
(1) An express reservation of water for the amount necessary to protect wilderness values . . .

(2) . . . with the priority date as the date of enactment.

(3) Wilderness water rights are subject to all valid existing water rights and . . .

(4) . . . are in addition to any other water rights already reserved by the United States.

(5) The federal government must promptly claim a wilderness water right for each of the areas designated as wilderness by the North Dakota BLM Wilderness Act.



The proposed Ponderosa Pine unit features pine forests in the nation's most treeless state, North Dakota.
PHOTO: © WAYDE SCHAFER

Some federal land managers claim that they cannot be compelled by the courts to assert and defend wilderness water rights. Therefore, wilderness legislation should include a statement which ensures that the federal agency responsible for managing the new wilderness will not treat the assertion of a wilderness water right as discretionary, and will enter without delay into the state's water rights adjudication process.

It would be difficult to find anyone who would seriously propose that after a wilderness is established, its forests could be clearcut, its most impressive geologic features stripped away, or its wildlife exterminated. Likewise, a wilderness would be greatly diminished with its water siphoned off. We must ensure, then, that legislation which establishes wilderness in North Dakota includes measures necessary for the protection of wilderness water resources.

Split-Estate Land

The term "split-estate" refers to land for which the surface is managed by the Forest Service, but the subsurface mining, oil, gas, or geothermal rights belong to private interests or to the state. In many of the cases, the Federal government retains the legal right to protect the surface resources. In some cases, the owner of the subsurface minerals may have rights to use the surface. Determination of which situation applies requires legal analysis of each individual split-estate case. Even in the latter case, activities must be managed to ensure any destructive activities are the minimum necessary for development.

There are several areas proposed for wilderness where the Forest Service has used the presence of split-estate land as a justification for opposing wilderness designation in the past. A better solution to the problem exists. Many of the split-estate lands are scattered and remote, making the sites difficult to develop. The Forest Service is in a position to exchange the subsurface rights on lands that qualify for wilderness for subsurface rights on other Forest Service or BLM lands that do not have wilderness potential. This option would give the state and private interests the opportunity to "block up" land where development is more likely to be economically feasible in the future and have less environmental impacts. In fact, land exchange for this and other reasons is an on-going activity of the Forest Service and one we wholeheartedly support.

The split-estate lands for which we recommend acquisition are those that would significantly enhance the wilderness values of the badlands of western North Dakota.

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Wild and Scenic River Issues

What does Wild and Scenic River Designation Mean?

Wild and Scenic River designation will protect a river course from new federally built, permitted, or licensed dams, plus other water resource projects which would have a direct and adverse effect on the free-flowing values of the river. This includes projects by the Federal Energy Regulatory Commission, the U.S. Army Corps of Engineers, The Bureau of Reclamation, the Soil Conservation Service and other federal agencies. Hypothetically, the limitation of the Wild and Scenic Rivers Act to only cover water development activities that are in the federal arena may seem to leave enormous loopholes. As a practical matter, however, it does not. Through the Clean Air and Water Act, Congress exerted authority over "waters of the United States" and expansively defined such waters to include streams down to the size of 5 cubic feet-per-second. This is roughly the same volume of water as two fire hoses going full blast. Totally non-federal projects, therefore, may be isolated farm ponds or similar minor water projects that do not require a federal action permit from the U.S. Army Corps of Engineers.

Also, as part of the Wild and Scenic River designation, a land management plan will be adopted for the river corridor. The river corridor boundary will encompass the important river resource values and will have an average delineation of 320 acres per river miles. If the land is federally owned, the agency responsible for it will specify permissible activities within the corridor. These will be adjusted according to whether the river is classified as "wild," "scenic," or "recreational." If a river is bounded by private land, the agency will cooperate with local governments and land owners to implement an agreed-upon plan to conserve all of the river's resources. This usually involves the employment of local land use measures, such as zoning, and specifies appropriate land uses within the river corridor.

Local residents are concerned as to how designation will affect private lands within the designation boundary and in the communities along or near the river. This can be a difficult question to answer and yet it is clearly the most important from a citizen's perspective. National Wild and Scenic River designation has no direct effect on non-federal decision making. Localities are, however, urged to develop their own land management program that will be compatible with the designation. Needless to say, discussions of how designation may affect local land use will usually be vague and cause confusion. This points to the need for rivers bounded by private land, to have to the extent possible, a specific agreed-upon plan prior to designation — a plan that local jurisdictions have developed, deliberated, and adopted. Without such a plan, it will always be difficult to tell an apprehensive landowner what will happen to his or her land after designation.

WILD AND SCENIC RIVER designation has much flexibility for accommodating local residents and their activities along the river. The Act can, however, protect a river's most valuable feature. Designation, depending on the provisions of the duly adopted river management plan, achieves the following for a river:

(1) A permanent ban on FERC-licensed hydroelectric projects on the designated segment and a corresponding permanent ban on federally supported water resource projects — dams, diversions, channelization — that would have a direct adverse effect on the attributes for which the river was designated.

(2) A permanent ban on new mineral claims or mining on federal lands within the corridor boundaries along river segments classified as "wild," and some restrictions on mining federal land along scenic recreational river segments.

(3) Possible purchase of private land within the designated boundary, virtually always on a "willing seller-willing buyer" basis. Provisions are included that allow owners to live on the land, if they choose, for a maximum of 25 years.

It is important to note that the Act contains many limitations on federal land acquisition. One of the most significant is an express ban on fee title condemnation for rivers where at least 50 percent of the land is already public ownership, as in the case with many western rivers. Also, communities, cities, villages and boroughs that have adopted local river protection programs using their own authorities, are free of any unwanted government acquisition.

As both a practical matter and matter of policy, the federal government does not condemn land or such interests in land as "scenic easements." A scenic easement is a partial interest in land, through which a seller usually gives up the right to develop new structures on his or her land. In 1988, the Forest Service released findings which showed that of the 200,000 acres of private land contained in Wild and Scenic River corridors on their lands in California, Oregon and Washington, no acres have ever been condemned in fee, and a mere 751 acres of the scenic easement were condemned. No easements were ever taken for recreation access.
While the federal government does technically have power under the Act to condemn scenic easements and river-access easements, the

agencies have made it their policy to acquire land interests only on a willing-seller basis. Condemnation of easements has been used only as a last resort to control developments that would adversely affect the river. When the extreme circumstance has occurred, landowners are paid up to 90 percent of the value of their property for the easement, which does not force them to leave their land but would preclude new buildings on it.

(4) If state owned lands are in the corridor, the state may donate the land to the federal government. Also, the Act contains requirements that other federal agencies convey land and manage adjacent lands consistent with the goals of designation.

(5) For private land areas along a designated Wild and Scenic River, the land managing agency will request localities to adopt land-use ordinances and encourage voluntary actions by landowners that will protect the resource values and scenic attributes of the river. The request that local towns adopt river conservation ordinances is not binding upon them. However, the Act states that the federal government is barred from purchasing land or easements from unwilling sellers if a local ordinance compatible with conserving the river's values has been adopted.

(left) The Little Missouri River, which flows about 350 miles from the South Dakota border to Lake Sakakawea.
PHOTO: © KIRK KOEPSEL

(above) The Pembina River is among the deepest and steepest river valleys in North Dakota.
PHOTO: © KIRK KOEPSEL

It is up to local officials and the residents to determine what local land-use ordinances are appropriate and whether they will adopt them. Many of the communities along Wild and Scenic Rivers are small and in rural settings and do not have much experience with local land use regulation. To aid these local governments and to encourage them to adopt local land plans to protect the river, the Secretary of the Interior is authorized to issue guidelines. These guidelines stress such land-use controls as the setback of facilities from the river bank, vegetative screening of facilities from the river, and limitations on the height of structures near the river to minimize visual impact. There is no direct authority for the federal agencies to zone private land.

[Extract from THE AMERICAN RIVERS GUIDE TO WILD AND SCENIC RIVER DESIGNATION, by Kevin J. Coyle, copyright 1988 by American Rivers, Inc. Permission to reprint or adapt is granted to Northern Plains Office of the Sierra Club for the North Dakota wilderness proposal.]