

Access to Other Lands, Mining Claims and Valid Occupancies

The Wilderness Act states in Section 5 (a):

“In any case where State-owned or privately owned land is completely surrounded by national forest lands within areas designated by this Act 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) 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. “

Federal Regulations

Sec. 293.12 Access to surrounded State and private lands.

States or persons, and their successors in interest, who own land completely surrounded by National Forest Wilderness shall be given access as provided in subpart D of part 251 of this chapter.

Sec. 293.13 Access to valid occupancies.

Persons with valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, issue permits which shall prescribe the routes of travel to and from the surrounded occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

Forest Service Policy

2320.5 – Definitions

15. Adequate Access. The combination of routes and modes of travel that the Forest Service has determined will have the least-lasting impact on the wilderness resource and, at the same time, will serve the reasonable purposes for which State or private land or rights is held or used.

2326.13 - Access to Surrounded State and Private Land, Valid Mining Claims, or Other Valid Occupancies

1. Surrounded State and Private Land. Ensure adequate access to States or persons, and their successors in interest, who own land completely surrounded by wilderness. Adequate access is defined in 36 CFR 293.12 and section 2320.5.

Prevent unauthorized road construction or motorized transport across wilderness. The Regional Forester may provide these landowners with written permission to use wilderness routes or motorized modes of travel not available to the general public. When the exercise of these rights of access to surrounded land would be detrimental to wilderness values, attempt to acquire the land by purchase or exchange or donation before granting access.

2. Valid Mining Claims or Other Valid Occupancies. Permit access to valid occupancies according to the direction in 36 CFR 293.13. Include proposals for access within the boundaries of the claim area in the operating plan. Authorize access off the claim area by special use permit if there is approval for other than primitive access (FSM 2710).

2326.11 - Use of Motorized Equipment by Other Government Agencies. Approve the use of motorized equipment, aircraft, or mechanical transport by other government agencies in National Forest wilderness in the same manner and under the same conditions stipulated for Forest Service use (sec. 2326.1). Special provision is given for access to existing snow measurement sites (sec. 2323.44).

2326.12 - Use of Motorized Equipment by Valid Occupants of National Forest Land. Approve the use of motorized equipment and/or mechanical transport by valid occupants of National Forest System lands in wilderness using criteria in section 2326.1.

Management Practices

Access issues can be challenging and complicated. The language of the Wilderness Act “such State or private owner shall be given such rights as may be necessary to assure adequate access” is strong and it compels a thoughtful decision process. While there is no one size fits all answer both the law and policy require managers to seek and compare similar access situations to help determine what is reasonable.

A primary consideration in determining adequate access is the Wilderness Act mandate to “preserve wilderness character.” The method of travel used to access state or private land may have adverse effects on one or more qualities of wilderness character. For example, allowing motor vehicle travel inside wilderness would likely affect natural conditions and outstanding opportunities for solitude or a primitive and unconfined type of recreation. The motor vehicle travel route would also be considered a development in wilderness.

A review of a recent court ruling may help illustrate this topic. In the Absaroka-Beartooth Wilderness on the Gallatin NF in Montana, the owners of a patented mining claim asked the Forest Service for permission to construct a 6-mile gravel road to their property so they could better access the mineral potential, transport construction materials for hunting and fishing cabins, and for emergency access. The Forest Service denied them the road based on a review of other similarly situated inholdings and found that in only one other instance had new road construction been authorized in a wilderness area. The FS said the owners could still walk or ride horses in and construction materials could be flown in by helicopter.

The owners went to court: helicopter access was prohibitively expensive & unreasonable. The Court found for the Forest Service (Absaroka Trust vs. Glickman D. Mont., 2002), succinctly decreeing, the law “does not guarantee the cheapest access, only adequate access,” and this access is consistent with similar areas situated elsewhere, and cited FS Regulations, “Where a conflict in resource use exists, the preservation of wilderness character predominates over other values.”