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### **Gila Box Area: Gila Box Riparian National Conservation Area, and the Fishhooks and Needle's Eye Wilderness Areas**

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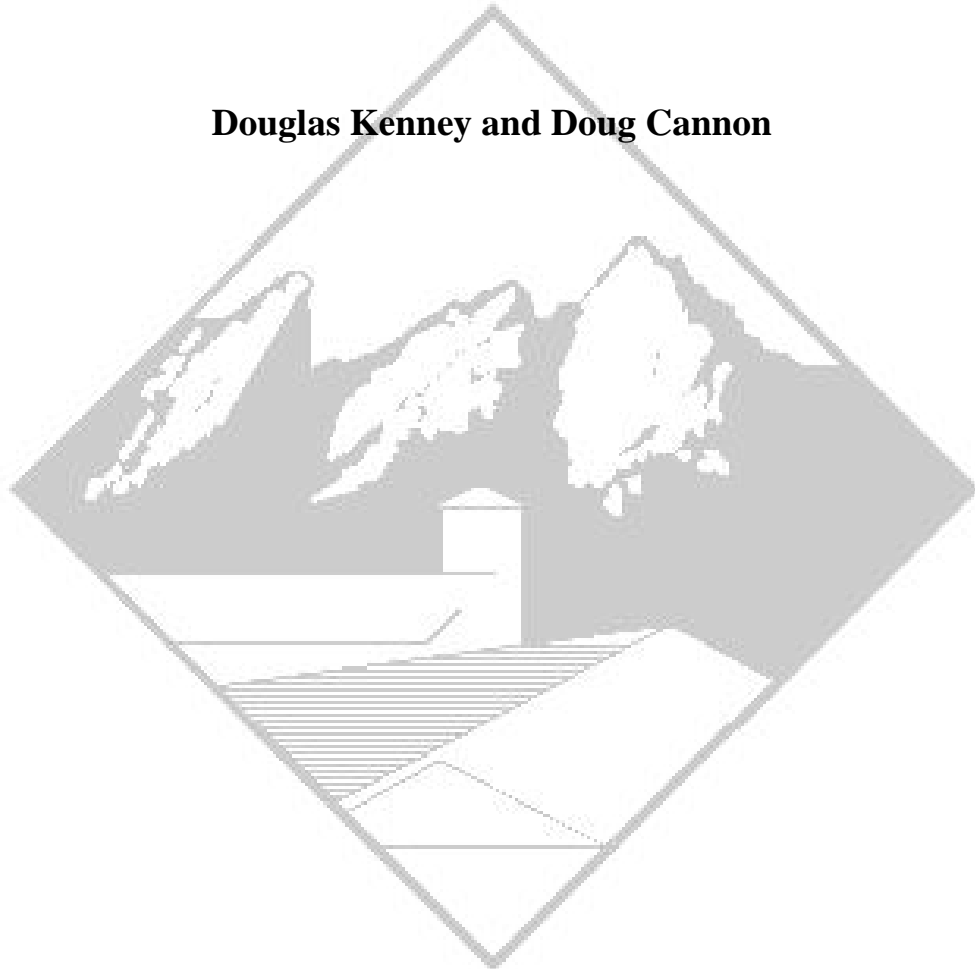
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**GILA BOX AREA:  
GILA BOX RIPARIAN NATIONAL CONSERVATION AREA,  
AND THE  
FISHHOOKS AND NEEDLE'S EYE WILDERNESS AREAS**

**Douglas Kenney and Doug Cannon**



**Natural Resources Law Center  
February 2005**

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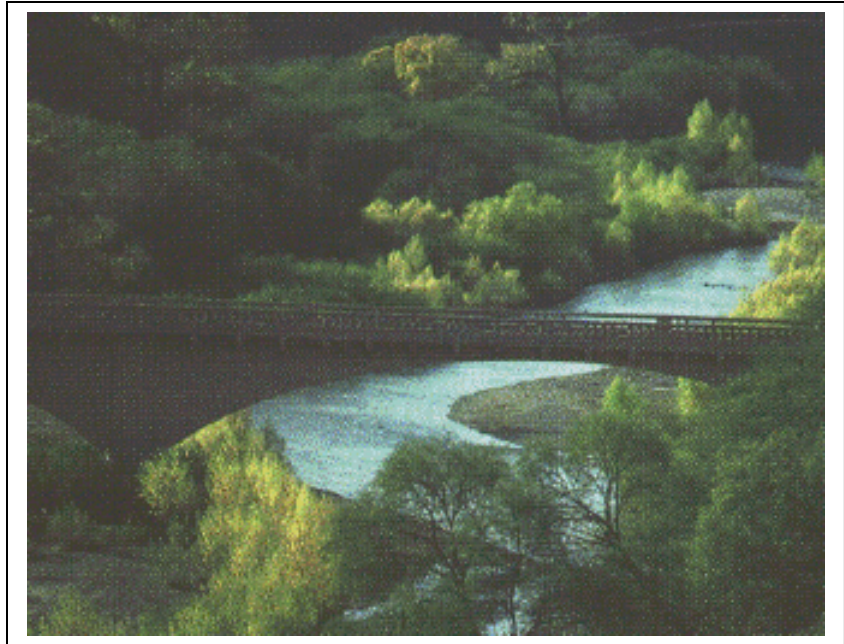
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## OVERVIEW OF THE REGION

The Gila Box Riparian National Conservation Area (NCA) is located in southeastern Arizona about twenty miles northeast of Safford in Greenlee and Graham Counties. This is a sparsely populated region of about 20,000 residents (including the towns of Safford, Thatcher and Pima) employed largely in mining, ranching and tourism activities.<sup>1</sup> The Gila Box NCA covers approximately 21,767 acres, featuring speculator canyons up to 1,000 feet deep and parts of four perennial waterways: the Gila River, Bonita Creek, Eagle Creek, and the San Francisco River. From a physical standpoint, the site is most notable for its extensive riparian areas valued by plant and animal species as well as humans. The canyons and water features of the area are home to a variety of listed, candidate and priority species, including the peregrine falcon, southwestern willow flycatcher, goshawk, southwest toad, lowland leopard toad, and mountain lion.<sup>2</sup> As discussed later, these resource values have frequently clashed with human activities in the region, particularly recreation, mining and ranching.

### The Fishhooks

Wilderness Area covers 10,500 acres about 30 miles northwest of Safford, Arizona.<sup>3</sup> The area consists of numerous canyons that offer great scenery and hiking. Similar features are found downstream in the Needle's Eye Wilderness Area, an area of about 8,760 acres located about 20 miles southeast of Globe, Arizona.<sup>4</sup> This is some of the most rugged, remote and



physically speculator sections of the Gila Basin, punctuated by deep canyons and blessed with perennial flowing water. Both Fishhooks and Needle's Eye abut private lands and the San Carlos Apache Indian Reservation.

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<sup>1</sup> *Safford District Resource Management Plan: Draft*. (1990), U.S. Bureau of Land Management, Safford District, pages 152-3. (Hereafter cited as "*Safford District RMP*, 1990.")

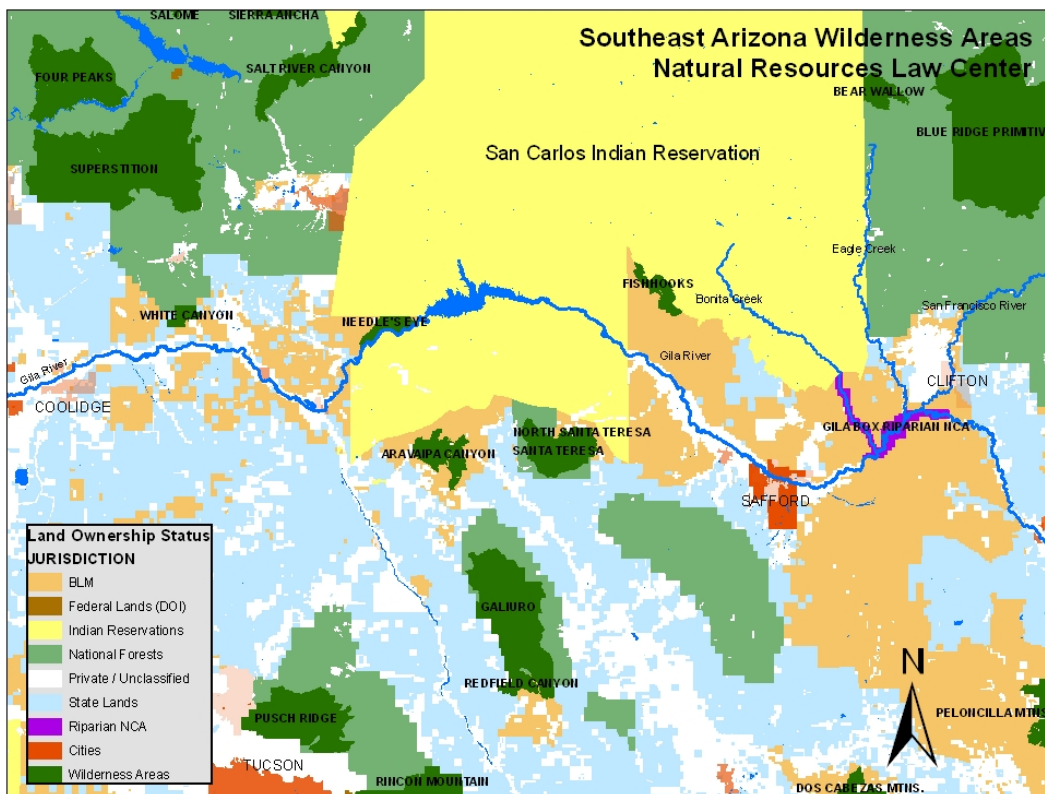
<sup>2</sup> *Gila Box Management Plan, Environmental Assessment and Decision Record* (1998), U.S. Bureau of Land Management, Safford Field Office. (Hereafter cited as "*Gila Box Management Plan*, 1998.")

<sup>3</sup> <http://www.az.blm.gov/rec/fishhooks.htm> (last visited 11/5/04).

<sup>4</sup> <http://www.az.blm.gov/rec/Needle's.htm> (last visited 11/5/04).

Until recently, all three areas (Gila Box, Fishhooks and Needle’s Eye) were located within the Safford Field Office of the Bureau of Land Management, which covered 1.4 million areas of sparsely populated land in southeastern Arizona bordered on the east by New Mexico and the south by Mexico. Almost the entire area is drained by the Gila River. After recent agency reorganizations, Gila Box and Fishhooks are in the Safford Field Office, while Needle’s Eye is within the Tucson Field Office.

The Gila Box Riparian National Conservation Area was created in the Arizona Desert Wilderness Act of 1990.<sup>5</sup> The Act also designated 39 wilderness areas, including the nearby Fishhooks and Needle’s Eye areas. The following case study describes the legislative history and management issues in all three areas, with a primary emphasis on Gila Box, in an attempt to discern if the “Riparian National Conservation Area” status of Gila Box has resulted in significantly different resource protections than what would have occurred if Gila Box were designated wilderness, as originally attempted, along with Fishhooks and Needle’s Eye.



<sup>5</sup> P.L. 101-628 Title II (Nov. 28, 1990), 104 Stat. 4469.

## LEGISLATIVE HISTORY

Each of the three areas featured in the case study were established in the Arizona Desert Wilderness Act of 1990. Only Gila Box was highly controversial, which accounts for the area being designated as a Riparian National Conservation Area (NCA) rather than as wilderness.<sup>6</sup> As described below, once this political compromise regarding Gila Box was established, the Arizona wilderness bill quickly became law.

### Gila Box Riparian National Conservation Area

Efforts to provide Gila Box with some form of protective status started in the mid-1970s after the BLM released a plan authorizing geothermal leasing in the Gillard Hotsprings. The proposal was short-lived, but brought conservationists—including the National Public Lands Task Force and the Sierra Club—into the Gila Box discussions, with the former urging inclusion of the site in the wild and scenic rivers system<sup>7</sup>, a proposal later reinforced by a 1982 decision of the National Park Service suggesting that the Gila River be studied to determine its suitability.<sup>8</sup> This was only one of several competing proposals in the late 1970s and 1980s, including calls for Gila Box to be designated as an “outstanding natural area” (ONA) or “area of critical environmental concern” (ACEC), both of which require management regimes that do not threaten the outstanding natural characteristics of the area.<sup>9</sup> Even more ambitious were suggestions of pursuing National Park status for the region.<sup>10</sup> At the other end of the spectrum were proposals by the Bureau of Reclamation and the Corps of Engineers to build water storage and flood control projects in the region.<sup>11</sup> Three dam sites had been identified in the area, and the Corps had even applied for a “withdrawal” for the Camelsback site.<sup>12</sup>

Gila Box was also part of a larger statewide effort to identify and designate select BLM sites as wilderness. Since 1980, BLM had been studying 14 wilderness study areas (WSAs) in Arizona, including Gila Box (as well as Needle’s Eye and Fishhooks).<sup>13</sup> By the mid-1980s, momentum for a statewide desert lands wilderness bill was growing and Gila Box figured to be a key, albeit controversial, inclusion. One proponent of wilderness legislation wrote: “Gila Box—this is going to be one of the major battles of

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<sup>6</sup> The Gila Box NCA is only the second “Riparian” NCA in the nation, joining the San Pedro Riparian National Conservation Area established a year earlier and located about 100 miles to the southwest. [http://www.az.blm.gov/nca/gila\\_box/gila.htm](http://www.az.blm.gov/nca/gila_box/gila.htm) (last visited 10/4/04).

<sup>7</sup> Letter from Charles Watson to BLM dated Feb. 23, 1975. Can be found in Wilderness Society Archives Denver Public Library.

<sup>8</sup> *Safford District RMP*, 1990, at 150.

<sup>9</sup> *Gila Box Coordinated Resource Management Plan: Final* (1985), Gila Box Steering Committee and the U.S. Bureau of Land Management, Safford District, page 9. (Hereafter cited as “*Gila Box CRMP*, 1985.”)

<sup>10</sup> Arizona Wilderness Coalition Meeting notes July 1, 1989, Wilderness Society Archives Denver Public Library.

<sup>11</sup> *Gila Box CRMP*, 1985, at 1-2. The area was subject to spring floods from snowmelt, and from summer flash-floods from heavy rain events.

<sup>12</sup> This dam was proposed as part of the Central Arizona Project (CAP). The dam was to create a reservoir on the Gila River just inside New Mexico. This reservoir and dam would be just a short distance upstream from the Gila Box site.

<sup>13</sup> *Safford District RMP*, 1990, at 150.

the [Arizona] wilderness bill.”<sup>14</sup> The primary reason was that Phelps Dodge owned and operated the Morenci copper mine near the proposed boundaries of the area. This was at the time one of the largest copper mines in the United States and employed almost 3,000 locals; it remains one of the world’s largest open pit mines. Phelps Dodge saw wilderness designation as a threat to future operation expansions, and had already refused to even discuss the sale or transfer of the company’s riparian lands to the federal government if the area was designated wilderness. Since the company owned those portions of Eagle Creek considered by the BLM to be the most valuable creek in the area, the agency considered this a major strike against wilderness designation for Gila Box.<sup>15</sup>

Concerns over the Phelps Dodge mine and the Camelsback Dam site were apparent in the first major wilderness bill (S. 1080) offered on May 18, 1989 by Arizona Senators Deoncini and McCain, which omitted Gila Box. In contrast, H.R. 2570 introduced a month later on June 7 by Representative Mo Udall of Arizona included the full 17,831 acre Gila Box WSA for wilderness designation.<sup>16</sup> As debate and negotiations regarding the two bills commenced, it was quickly apparent that the opposition to Gila Box becoming a wilderness area was too steep and wilderness was likely not a politically viable alternative.<sup>17</sup> In addition to the Phelps Dodge and Camelsback Dam issues, there was also strong opposition generally to wilderness from the local residents of southeastern Arizona, who had a longstanding tradition of opposing federal control of land and resources, and who had a strong interest in many existing uses of the site potentially impacted by wilderness designation.<sup>18</sup> For example, the region was popular with off-road vehicle (ORV) enthusiasts; a 1985 management plan estimated this use to be as high as 7,500 recreational visitor days annually.<sup>19</sup> In fact, the BLM’s 1983 assessment of wilderness potential cited singled out “conflicts with ORV use in canyon bottoms” as its rationale for recommending against designation of Gila Box as wilderness.<sup>20</sup> The region was also used for grazing, boating, hunting and fishing.<sup>21</sup>

Because of the local attitudes, Representative Kolbe (Arizona) strongly opposed the wilderness idea, but was open to other options.<sup>22</sup> In response, alternative ideas began to surface. The alternative that really caught on was the creation of a National Conservation Area (NCA). It is not clear who came up with the idea originally, but what is known is that Dean Bibbes, Arizona State BLM director, and Mark Trautwein, Rep. Udall’s public lands and wilderness specialist on the House Interior Committee, both had an interest in creating a conservation-based land management tool that allowed for some traditional

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<sup>14</sup> Memo from Jim Norton to Arizona Wilderness Leaders (11-21-88), Wilderness Society Archives Denver Public Library.

<sup>15</sup> *Safford District RMP*, 1990, at 150.

<sup>16</sup> H.R. 2570 sec. 2(a)(47), Version 1 (June 13, 1989).

<sup>17</sup> Personal correspondence with Mark Trautwein, November 11, 2004). (Trautwein was Rep. Morris Udall’s public lands and wilderness specialist on the House Interior Committee.)

<sup>18</sup> *Id.*

<sup>19</sup> *Gila Box CRMP*, 1985, at 8.

<sup>20</sup> *Draft Wilderness EIS* (1983), U.S. Bureau of Land Management, Safford District (BLM-AZ-ES-008-8500), page 17. (Hereafter cited as “*Draft Wilderness EIS*, 1983.”)

<sup>21</sup> *Gila Box CRMP*, 1985, at 7-8.

<sup>22</sup> *Id.*



uses, unlike wilderness, but was based on conservation and not multiple use.<sup>23</sup> The year prior the San Pedro Riparian NCA had been designated and the results had been well received.<sup>24</sup> So following the example of San Pedro, and with the desire to create a series of BLM conservation areas, the NCA idea began to take hold.<sup>25</sup> Many members of the conservation community were less enthusiastic, but could not deny the practicality of the approach. In a letter from Rob Smith of the Sierra Club and Jim Norton of The Wilderness Society to various Arizona wilderness leaders, the wilderness proponents acknowledged that some headway in resource protection may be possible with an NCA<sup>26</sup>; pursuing wilderness protection for Gila Box was simply not politically viable.

Rep. Kolbe felt he could get the locals in his district to accept an area that allowed some traditional uses, but still provided increased protection for the land.<sup>27</sup> Of particular concern was the off-road vehicle (ORV) community. The Gila Box Steering Committee, established by the BLM to craft the 1985 Gila Box Coordinated Resource Management Plan, had included a local ORV activist as one of its 8 members, and had not recommended any new restrictions on ORV activity.<sup>28</sup> Designation of Gila Box as an NCA rather than wilderness had the support of the ORV community as long as the NCA legislation did not contain provisions that banned ORV use.<sup>29</sup>

The NCA proposal was generally well received by Phelps Dodge as well, but the exact borders of the site were still of concern. In two letters from Phelps Dodge to Rep. Kolbe, the company expressed that it could support an NCA for the Gila Box Canyon itself, but it would not support an NCA that included San Francisco River or Eagle Creek, or that required protective “buffer zones” around the NCA that limited non-wilderness and non-conservation activities outside the boundaries of the NCA even if there were some residual impacts on the NCA.<sup>30</sup> The company also reiterated that it would not sell or exchange any of its lands.

With Phelps Dodge now agreeing to the broader NCA concept Senators Deconcini and McCain introduced S. 2117 on February 8, 1990. This bill tracked their previous Senate wilderness bill, S. 1080, except that S. 2117 introduced the concept of creating the Gila Box Riparian National Conservation Area. This bill would create a 20,900 acre NCA—considerably larger than the 11,500 acre site recommended by Phelps Dodge, but generally excluding the areas of concern to the company and explicitly denying any buffers around the area.<sup>31</sup> This bill was referred to committee for consideration.

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<sup>23</sup> Id.

<sup>24</sup> Statement of Rep. Morris K. Udall to House regarding Arizona Wilderness Act 136 Cong. Rec. H 398-05, H400 (Feb. 21, 1990).

<sup>25</sup> H.R. Rep. 101-405 Section-by-Section Analysis Gila Box Riparian National Conservation Area (Feb. 21, 1990)

<sup>26</sup> Arizona Wilderness Coalition Meeting notes July 1, 1989, Wilderness Society Archives Denver Public Library.

<sup>27</sup> Id.

<sup>28</sup> *Gila Box CRMP*, 1985.

<sup>29</sup> John Kelley meeting notes (July 17, 1989); Wilderness Society Archives Denver Public Library.

<sup>30</sup> Letters from Phelps Dodge to Rep. Kolbe (Sept. 12, 1989, and Oct. 27, 1989), Wilderness Society Archives Denver Public Library.

<sup>31</sup> S. 2117 §103(b) and (h) (Feb. 8, 1990).

The problem of the proposed Camelsback Dam was also soon resolved. This reservoir and dam would be just a short distance upstream from the proposed Gila Box NCA. It had long been assumed that a wilderness designation for Gila Box would first require a de-certification of the project<sup>32</sup>; however, it was unclear if de-certification was also necessary to pursue a NCA. Additionally, regardless of the protective status selected for Gila Box, there was a concern that Senator Domenici from New Mexico would demand some sort of statutory language that protected his state's rights to Central Arizona Project (CAP) water from the Gila River.<sup>33</sup> In the end, however, Camelsback became a non-issue as the Corps of Engineers announced that it was de-authorizing the project.<sup>34</sup>

On July 10, 1990 Senator McCain sent out a letter announcing that “a carefully forged and fragile compromise” had been made surrounding the terms of an Arizona wilderness bill and that compromise was found in a new version of H.R. 2570.<sup>35</sup> The other two senate bills were dropped. In reality these two bills were more political show than reality. The entire Arizona congressional delegation had long recognized Rep. Udall's bill, H.R. 2570, as the one that would carry the day.<sup>36</sup> Udall's bill had to go through four different iterations to finally get into a condition where the entire congressional delegation could support it. The new compromise version was introduced on July 13, 1990.

This bill called for the creation of thirty-nine wilderness areas. In addition it called for the creation of the Gila Box Riparian National Conservation Area.<sup>37</sup> The area would cover about 20,900 acres and would have the same boundaries as found in S. 2117. As negotiated, a number of provisions were included to appease opposition from Phelps Dodge. First, the bill stated “[t]he Congress does not intend for the establishment of the conservation area to lead to the creation of protective perimeters or buffer zones around the conservation area.”<sup>38</sup> Second, the boundary of the NCA did not extend up Eagle Creek, but stopped at the confluence of the San Francisco River and the Gila River as proposed by Phelps Dodge. Finally, language was included in the bill that allowed the BLM to try to acquire the Eagle Creek lands, but only through voluntary means; the BLM was not given the eminent domain authority to take any lands from Phelps Dodge.

The bill avoided any direct discussion of ORV use or grazing rights in the NCA. Instead the bill dealt with these issue by saying “[t]he Secretary shall manage the conservation area in a manner that conserves, protects and enhances its resources and values...”<sup>39</sup> The thought behind this language was that it would create a situation where the BLM

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<sup>32</sup> Letter from Thoron Lane (Southwest Wildlands Education Institute) to Friends of the Gila Box and Eagle Creek (July 25, 1987), Wilderness Society Archives Denver Public Library.

<sup>33</sup> Fax from Rob Smith (Sierra Club) to Lori Potter, Maggie Fox, Debbie Sease, Jim Norton, John Leshy, Mike Francis, and Karen Sheldon, (Aug. 3, 1990), Wilderness Society Archives Denver Public Library.

<sup>34</sup> 55 FR 40906 (Oct. 5, 1990).

<sup>35</sup> Letter from John McCain to Bill Armstrong dated July 10, 1990. Wilderness Society Archives Denver Public Library.

<sup>36</sup> Personal correspondence with Mark Trautwein, November 11, 2004.

<sup>37</sup> H.R. 2570 version 5 §4 (July 13, 1990).

<sup>38</sup> 16 U.S.C.A. §460ddd(i).

<sup>39</sup> H.R. 2570 version 7 Title II Sec.201(d) (Nov. 14, 1990).

would have the statutory power to eliminate, curtail or otherwise direct these types of activities in the NCA. The benefit of this type of provision was that the statute did not have to specifically address these issues and thereby eliminated any political adversity that could arise with direct treatment.<sup>40</sup>

The bill did state that ORV use was to be “permitted only on roads specifically designated for such use as part of the management plan...”<sup>41</sup> The purpose of this statement in conjunction with the discretion given to the secretary above was aimed at eliminating the use of ORVs in the riparian zones of NCA. In fact in the House report it was said “[t]he language of this section is clearly intended to terminate this activity in the conservation area and keep all motorized access limited only to those parts of the conservation area where such uses will not conflict with the primary mandate to conserve, protect, and enhance the area’s resources and values.”<sup>42</sup> For political reasons, it seemed easier to accomplish this goal as part of the management planning process than in the organic statute.

During hearings on H.R. 2570 support for the designation of Gila Box seemed almost unanimous, with the exception of the San Carlos Apache Indian Tribe that asserted claims to land and water resources in the Gila Box area.<sup>43</sup> Conservation groups (including the Arizona Wilderness Coalition and The Wilderness Society) all stated that they wished Gila Box was being designated as wilderness, but each felt the NCA designation would suffice.<sup>44</sup>

Other user groups did not express any opposition to Gila Box, instead focusing opposition on the water aspects of the wilderness bill (as discussed later in the summary of Fishhooks and Needle’s Eye).<sup>45</sup> In the end Representative Kolbe called the resolution of the Gila Box situation as the “most significant compromise achieved in this bill.”<sup>46</sup>

H.R. 2570 was finally passed by the House on Feb. 28, 1990 and then the Senate on Oct. 27, 1990.<sup>47</sup> It was signed by the President on Nov. 28, 1990 and became P.L. 101-628.<sup>48</sup>

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<sup>40</sup> Personal correspondence with Mark Trautwein, November 10, 2004.

<sup>41</sup> 16 U.S.C.A. §460ddd(d)(2).

<sup>42</sup> H.R. Rep. 101-405 Section-by-Section Analysis Gila Box Riparian National Conservation Area (Feb. 21, 1990)

<sup>43</sup> Hearings, Subcommittee on Public Lands, National Parks, and Forests of the Committee on Energy and Natural Resources, 301-303, *S. 2117: To Designate Certain Lands as Wilderness in the State of Arizona and H.R. 2570: To Provide for the Designation of Certain Public Lands as Wilderness in the State of Arizona*. (April 5, 1990). The tribe said the Gila Box NCA designation would create “disputed lands.” No additional mention is made in the hearings of the congressional debate regarding the tribal issues and no substantive changes occurred to the legislation as a result of the tribes concerns. Additionally nothing could be found in the record reflecting that the dispute over the lands was ever pursued by the Tribe.

<sup>44</sup> *Id.* at 155, 159.

<sup>45</sup> *Id.* at 146-148.

<sup>46</sup> 136 Cong. Rec. H. 523-02, H525 (Feb. 28, 1990).

<sup>47</sup> 136 Cong. Rec. H. 532 (Feb. 28, 1990), 136 Cong. Rec. S. 17473 (Oct. 27, 1990).

<sup>48</sup> 136 Cong. Rec. H. 13916 (Nov. 28, 1990).

## Fishhooks and Needle's Eye Wilderness Areas

The Fishhooks and Needle's Eye areas were identified by the BLM as wilderness study areas (WSAs) largely due to their remoteness and their spectacular physical features. When discussion began about what areas to include in the Arizona statewide wilderness act, both WSAs were on all the lists and, overall, experienced very little opposition. In part, this lack of opposition can be attributed to the 1983 Safford District WSA assessment that recommended against designation of the most controversial units (particularly Gila Box), and for those that were recommended—such as Fishhooks and Needle's Eye—adjusted the WSA boundaries to minimize conflicts.<sup>49</sup> By the time the wilderness bills were debated in Congress, much of the hard lifting had already been accomplished.

The 1983 study of Safford District WSAs considered a range of wilderness designation options, ranging from *All Wilderness* (totaling 131,820 acres) to *No Wilderness* (0 acres), with intermediate steps of *Enhanced Wilderness* (99,618 acres), *Moderate Wilderness* (45,073 acres), and the *Proposed Action* (34,881 acres).<sup>50</sup> For Fishhooks, the WSA covered 15,013 acres. The eventual wilderness designation of 10,500 acres corresponds roughly to the *Moderate Wilderness* and *Proposed Action* options (both 10,083 acres). The lands removed from consideration were primarily in the south of the WSA, which included the majority of the “vehicle ways” and mining claims. While Fishhooks did not have a history of mineral production and the potential for production appeared low, nearby sites were producing (especially for copper), and 76 mining claims existed in the WSA as of 1982.<sup>51</sup> The revision of the boundaries eliminated all 76 claims from the wilderness boundaries.<sup>52</sup> The smaller boundaries also eliminated a road and some livestock facilities from the eventual wilderness boundary.<sup>53</sup>

The Needle's Eye WSA covered 9,485 acres. The eventual designation (of 8,760 acres) roughly corresponds to the *Moderate Wilderness* and *Proposed Action* options (both 8,970 acres). The small acreage reduction was to designate the western boundary along a ridgeline, and to prevent the eastern boundary from extending beyond a vehicle way.<sup>54</sup> Much like Fishhooks, Needle's Eye did not have any known economic mineral deposits, but there was some mining activity nearby, and the area had 43 mining claims (as of 1982). Unlike Fishhooks, none of these claims were eliminated by the proposed boundary adjustment.<sup>55</sup> This was not thought to be too problematic given the historical lack of mineral production in this site.

The other major human activity of concern in the region at the time of the wilderness assessment was grazing. The Fishhooks WSA featured about 1,280 AUMs, while

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<sup>49</sup> *Draft Wilderness EIS*, 1983.

<sup>50</sup> *Id.* at 15.

<sup>51</sup> *Id.* at 38.

<sup>52</sup> *Id.* at 66.

<sup>53</sup> *Id.* at 58.

<sup>54</sup> *Id.* at 15-16.

<sup>55</sup> *Id.* at 66.

Needle's Eye WSA had about 660 AUMs.<sup>56</sup> In both cases, wilderness designation was expected to have only low adverse impacts on grazing, although completion of some elements of the allotment management plans would be complicated by restrictions on road-building and the use of heavy machinery.<sup>57</sup> Some of these potential conflicts were addressed by the proposed boundary adjustments.

The proposed boundary adjustments to Fishhooks and Needle's Eye (and the other sites evaluated) were generally effective in reducing potential conflicting uses and undoubtedly helped quell local opposition to wilderness designation, however, the local perception of the wilderness proposal was, at best, apathetic. As summarized in the wilderness assessment:

Residents generally believe that enough wilderness already exists and that more is not needed. They are particularly concerned about conflicts with mineral development. Moreover, they do not want an influx of outsiders to "their lands" and can see no real benefit to be derived from wilderness.<sup>58</sup>

Attitudes toward wilderness in Tucson and Phoenix, however, were found to be "more balanced."<sup>59</sup>

Once the debate over specific wilderness bills began, the only notable opposition against the Fishhooks wilderness designation was offered by the Arizona Cattleman's Association, which felt that Fishhooks did not meet wilderness standards.<sup>60</sup> Other interests generally acknowledged the suitability of the site for wilderness, but argued over the appropriate boundaries of the site. While a wilderness coalition was seeking 68,000 acres<sup>61</sup>, the BLM found that 10,083 acres were suitable, and this smaller figure was used in all three Arizona wilderness bills discussed earlier.

There was a little more controversy surrounding the designation of Needle's Eye. The main source of contention involved a high voltage power line running through the middle of the wilderness area.<sup>62</sup> This power line had to be surveyed every 90 days for maintenance purposes. In addition plans had already been drawn up to upgrade the line from a 44 kv line to a 69 kv line. This regular surveying and the upgrade all required access to the line. In the end special provisions were included to allow for a right-of-way for the power line and for the ingress and egress needed for its maintenance and upgrading.<sup>63</sup> The House Committee report was clear to spell out that the ingress and

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<sup>56</sup> Id. at 40.

<sup>57</sup> Id. at 69-70.

<sup>58</sup> Id. at 51.

<sup>59</sup> Id. at 52.

<sup>60</sup> Arizona Cattleman's Association Arizona Wilderness Proposal (1989), Wilderness Society Archives Denver Public Library.

<sup>61</sup> Comparison of Wilderness Recommendations (not dated), Wilderness Society Archives, Denver Public Library.

<sup>62</sup> H. Rpt. 101-405 (Feb. 21, 1990).

<sup>63</sup> H.R. 2570 Version 7 Title 1 Sect.101(a)(20) (Nov. 14, 1990).

egress was to be by foot, horse or helicopter; motorized ingress or egress that would not be consistent with the wilderness area.<sup>64</sup> In addition there was some opposition to Needle's Eye from tribal interests on the basis that the wilderness area would be on lands the tribe claimed a right to, but in the end the tribal concerns did not prove to be a roadblock of any kind and the tribe took no further action to claim the lands.<sup>65</sup> Grazing was not a concern; in fact, the Needle's Eye WSA was one area the Arizona Cattleman's Association supported for wilderness designation.<sup>66</sup>

By themselves neither of these areas proved to be controversial to the level of ever threatening to keep them from becoming wilderness. But one issue that did threaten to keep the entire bill from passing was the issue of reserved water rights. Most streams in Arizona are already fully appropriated and overused; the entire average flow of the Gila River has been apportioned since the Gila River Decree in 1935.<sup>67</sup> There was a large concern in the State of Arizona that the inclusion of reserved water rights language would be an intrusion on existing rights and may even lead to the government coming in and taking water rights in order to protect the wilderness areas.<sup>68</sup> The reserved rights language was of concern to parties outside of Arizona as well, as leaders of other western states were concerned the language could have a precedent setting impact on future wilderness legislation for their states. This concern became the most debated issue in the entire Arizona wilderness bill and was the main topic in all of the House and Senate reports and hearings.<sup>69</sup> In the end H.R. 2570 did contain language that created reserved water rights in all the wilderness areas and in the Gila Box NCA.<sup>70</sup> But in order to get this language through it took significant assurances of the limits of the water rights.

In a letter to Senator Bill Armstrong (Colorado), Senator McCain explained the scope of the bill, writing that "I hasten to emphasize that the federal right expressed in H.R. 2570 contains no provision allowing federal condemnation of prior existing rights, nor is one presumed."<sup>71</sup> The letter clarified that the government would not be taking any water in order to fulfill the needs of the wilderness areas and that the government's priority date would be the date of the bill's passage. In the same letter he also emphasized that the reserved rights were in no way to create a precedent for future wilderness bills and the reserved right provision was in no way to be used to interpret the meaning of other reserved water rights language. This sentiment was also clearly articulated in a provision

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<sup>64</sup> H. Rpt. 101-405 (Feb. 21, 1990).

<sup>65</sup> Arizona Wilderness Coalition Meeting Notes July 1, 1989, Wilderness Society Archives Denver Public Library.

<sup>66</sup> Arizona Cattleman's Association Arizona Wilderness Proposal (1989), Wilderness Society Archives Denver Public Library.

<sup>67</sup> *Gila Box Management Plan*, 1998, at 7.

<sup>68</sup> Letter from Senator John McCain to Senator Bill Armstrong (July 10, 1990), Wilderness Society Archives Denver Public Library.

<sup>69</sup> See H. Rpt. 101-405 (Feb. 21, 1990); S. Rpt. 101-359 (July 10, 1990); Hearing, Senate Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resource, *S.2117: To designate Certain Lands as Wilderness in the State of Arizona and H.R. 2570: To Provide or the Designation of Certain Public Lands as Wilderness in the State of Arizona* (April 5, 1990); 136 Cong. Rec. H. 13318-2, 13318-13332 (Oct. 27, 1990); 136 Cong. Rec. E. 3680-01, 3680-3682 (Nov. 2, 1990).

<sup>70</sup> H.R. 2570 Version 7 Title 1 Section 101(g) (Nov. 14, 1990).

<sup>71</sup> *Id.* at 63.

added to H.R. 2570 stating that the reserved water rights elements apply specifically to Arizona and was not to create a precedent with regard to future designations or in the interpretation of any other act or designation.<sup>72</sup> Additionally many of the politicians from upper basin states of the Colorado River required inclusion of a provision that specifically spelled out that the water provisions in this bill would in no way impact any upper basin states rights to use, store, develop, or regulate water it was entitled to under any federal or state law or treaty or under any international treaty.<sup>73</sup> With the upper basin states appeased and the locals more confident the federal government was not going to come and take their water for wilderness preservation, the bill was passed.

## RESOURCE MANAGEMENT

### Planning and Management in Gila Box

*The BLM shall manage the conservation area in a manner that conserves, protects and enhances its resources and values, including the riparian and associated areas and the aquatic, wildlife, archaeological, paleontological, scientific, cultural, recreational, educational, scenic, and other resources and values...*

--- Gila Box Management Plan<sup>74</sup>

While the Gila Box NCA is subject to a variety of area-wide plans and policies—including the Safford District Resource Management Plan (adopted in 1991 and reviewed in 2000)—the management of Gila Box is most directly addressed in the final Gila Box Management Plan. Overseeing the development of this plan was a 7-member Gila Box Advisory Committee, established in 1991 and featuring two members drawn from the local counties (Greenlee and Graham), one nominated by the Governor, and four from outside the area with resource management expertise.<sup>75</sup> Following 19 meetings of the Advisory Committee and BLM planning team and four public meetings, a Draft Gila Box Riparian National Conservation Area Interdisciplinary Activity Plan/Environmental Assessment<sup>76</sup> was issued in 1993; the final plan was issued in 1998. This plan replaces the earlier (pre-NCA designation) Gila Box Coordinated Resource Management Plan (CRMP) issued in 1985. That plan was also overseen by an advisory committee, the Gila Box Steering Committee, comprised of representatives from the National Parks and Conservations Association, Arizona Game and Fish Department, local off-road vehicle

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<sup>72</sup> Id.

<sup>73</sup> Id. at Section 302. One way in which this is important involves New Mexico's claims on the Gila River.

<sup>74</sup> *Gila Box Management Plan*, 1998, at 3.

<sup>75</sup> Six tribes were also contacted—the San Carlos Apache Tribe, White Mountain Apache Tribe, Gila River Indian Community, Salt River Pima-Maricopa Indian Community, Tohono O'odham Nation, and Ak-Chin Indian Community—but none showed an interest in participating in the planning process (*Gila Box Management Plan*, 1998, at 2 and 7).

<sup>76</sup> Report # AZ-040-03-02.

users, Safford District Advisory Council, Phelps Dodge Corporation, Safford District Grazing Advisory Board, National Audubon Society, and local ranchers.<sup>77</sup>

In order to appreciate how the NCA designation has affected management in the Gila Box area, it is useful to compare the 1998 NCA management plan to the pre-existing management framework described in the CRMP adopted five years prior to NCA creation. Unfortunately, a direct comparison between the 1985 CRMP and the 1998 NCA plan is complicated by the fact that the two regions do not share identical boundaries (which is itself illuminating). The planning area of the CRMP covered 66,400 acres, approximately 3 times the size of the eventual Gila Box NCA.<sup>78</sup> In creating the NCA, some of the most problematic management issues and sites addressed in the CRMP were avoided; they are outside the NCA boundaries. In particular, many problems associated with fragmented land ownership and industrial activities (mining) are largely avoided.<sup>79</sup> The CRMP covered an area owned and managed by several entities: 34,800 acres (52%) by BLM, 9,100 acres (14%) in the Corps withdrawal (and managed by BLM), 9,200 acres (14%) of state land, and 13,300 acres (20%) of private land.<sup>80</sup> Almost 46% of the riparian corridor was in private land. In contrast, by the time the Gila Box NCA Management Plan was issued in 1998, the site covered just 21,767 acres of public land and 1,720 acres of private land. Nonetheless, some key issues and sites addressed in the CRMP occur in areas now within NCA boundaries, and thus offer valuable comparisons.

The two most significant issues have been grazing and off-road vehicle (ORV) use. At the time of the CRMP, the region had about 8,200 Animal Unit Months (AUMs) spread across the 66,400 acres, with actual use estimated at 25% below this level.<sup>81</sup> Grazing in riparian areas (many later included in the NCA) was of particular concern, as it was acknowledged to be “a major limiting factor in the reproduction of broadleaf riparian species.”<sup>82</sup> The CRMP identifies additional fencing, modified fire suppression, and the creation of off-channel stock ponds as eventual solutions. In contrast, ORV use was not considered to be a critical problem, and no effort was made to designate lands as “open, closed or limited.”<sup>83</sup> ORV use primarily occurs during periods of low water (June to January) using sand rails.<sup>84</sup> Most evidence of ORV use is erased in the spring runoff. The CRMP provides for the “continuation of the present type and levels of ORV use in the area, unless studies indicate otherwise.”<sup>85</sup> Both concerns have been revisited in the 1998 NCA plan.

Grazing is still allowed in the NCA, but is now limited to upland areas. As stated in the NCA Plan: “Livestock grazing of the riparian areas will be deferred for the life of the

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<sup>77</sup> *Gila Box CRMP*, 1985, at 4.

<sup>78</sup> *Id.*

<sup>79</sup> These concerns were discussed in the legislative history.

<sup>80</sup> *Gila Box CRMP*, 1985, at 4.

<sup>81</sup> *Id.* at 7.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 8.

<sup>84</sup> A sand rail is a type of 4-wheel off-road buggy designed primarily to traverse sandy and wet soils.

<sup>85</sup> *Id.* at 26.



Gila Box Plan. Administrative decisions will be issued to the affected permittees.”<sup>86</sup> Achieving this goal requires 30 miles of new fences; additionally, new water pumps, tanks, and pipelines will be built to provide livestock water (since they can no longer drink directly from the streams). In justifying this action, the NCA Management Plan argues that “Less than 1% of the land managed by the BLM in the continental United States is classified as riparian land . . . . The BLM believes these lands are far more valuable to the citizens of the United States for values and uses other than livestock grazing.”<sup>87</sup> Apparently, this argument was well received in the Gila Box: nine of the 11 grazing permittees whose allotments border these riparian areas had already voluntarily agreed to stop grazing, thus only 2 permittees (and about 2 dozen head of livestock) were affected by the administrative decision.<sup>88</sup>

As expected (and intended by Congress), the 1998 NCA plan draws on the language in the Arizona Desert Wilderness Act to prohibit all ORV use within the boundaries of the NCA. According to the 1998 NCA plan, in making this decision, the Gila Box Advisory Committee notes that “ORV use in the river bottoms of the area has been a longstanding controversy,” and that continuing such uses would “conflict with the primary mandate to conserve, protect and enhance the area’s resources and values.”<sup>89</sup> Additionally, the number of roads open for recreational access in the riparian area is slashed dramatically, from 38 miles to 2 miles, with no roads at all designated in the Gila River floodplain.<sup>90</sup> An additional 1.5 miles of road is retained along Bonita Creek to be used (and maintained) by the City of Safford, necessary to allow employees to access the city’s water supply systems.<sup>91</sup> Some ORV trespassing occurs in the area and is considered an ongoing management challenge.<sup>92</sup>

Complicating efforts to reduce roads and vehicular traffic are a corresponding effort to reduce recreational pressures on the site. The NCA generates over 20,000 visitor days annually; major uses include “camping, backpacking, hiking, picnicking, recreational driving, fishing, hunting, horseback riding, water play, tubing, boating, bird watching, photography, nature study, and mountain biking.”<sup>93</sup> The management goal is to reduce pressure on the resources by spreading out recreationists throughout the site, primarily through the creation of additional access (entry) points served by five parking areas and providing access to two new campgrounds (total of 25 units).<sup>94</sup> Already there are 4 picnic areas, 2 boat launch areas, 2 trails, and 1 interpretive site and 3 information kiosks. Additionally, the number of Special Recreational Use Permits will be limited at no more

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<sup>86</sup> *Gila Box Management Plan*, 1998, at 59.

<sup>87</sup> *Id.* at 59-60.

<sup>88</sup> *Id.* at 60.

<sup>89</sup> *Id.* at 17.

<sup>90</sup> *Id.* at 44.

<sup>91</sup> A right-of-way has been granted to the City of Safford to construct, operate, and maintain a water collection and distribution system within the Gila Box RNCA (*Gila Box Management Plan*, 1998, at 30, 44). The 1998 NCA plan urges cooperation between the BLM and the City on these matters.

<sup>92</sup> Personal communication with Trevor Hare, Conservation Biologist, Sky Island Alliance, February 11, 2005.

<sup>93</sup> *Gila Box Management Plan*, 1998, at 11-12.

<sup>94</sup> *Id.* at 11-18.

than 5; there are currently 3 commercial outfitting companies with such permits. Once 80 persons a day are on the river, a permitting system for commercial and private river runners will be implemented. The intent is to impose an allocation system once use levels reach a level that threaten the resource. No motorized watercraft are allowed on the Gila within the NCA.

The elimination of riparian grazing and the transportation plan component are key elements in the effort to protect the riparian corridor—specifically, 23 miles of the Gila River and 15 miles of Bonita Creek. It is hoped that this will improve the tree-to-sapling ratios for cottonwoods, willows, and sycamores. In most cases, a 1:1 ratio is desired to maximum habitat diversity<sup>95</sup> and provide bank stabilization.<sup>96</sup> Other tools being used to restore riparian habitat include instream flow water right applications, new plantings, and modifications to banks and stream morphology.

Despite the presence of mining in the region and a past history of mining within the Gila Box boundaries, mining is not a current issue within the NCA.<sup>97</sup> The NCA designation withdrew the area from further mineral entry, and pre-existing claims were eventually challenged by the BLM when evidence of past activity could not be confirmed. Several claims were successfully repealed in this fashion, prompting remaining claims to be voluntarily abandoned. Today there are no valid mining claims within the NCA.

Many of the resource protections afforded the NCA follow and supercede the earlier designation in the 1991 Safford District RMP of 2,621 mostly riparian acres (including 210 on private land) as an “area of critical environmental concern” (ACEC).<sup>98</sup> This designation reflects the area’s unique natural features (canyons, free-flowing water, mesquite bosques, overlap of Sonoran and Chihuahuan Desert vegetation), prehistoric and historic features (e.g., archeological sites), and its extensive fish and wildlife resources (including many threatened and endangered species).<sup>99</sup> Additionally, the Gila

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<sup>95</sup> According to the 1998 NCA management plan, listed species include the peregrine falcon, bald eagle, razorback sucker, southwestern willow flycatcher, cactus ferruginous pygmy-owl, and the Arizona hedgehog cactus. Candidate species include the southwest cave myotis, western mastiff bat, goshawk, southwest toad, lowland leopard toad, and Gila chub. Priority species include: bighorn sheep, javelina, mountain lion, black bear, western yellow-billed cuckoo, common black-hawk, wild turkey, and Montezuma quail (*Gila Box Management Plan*, 1998, at 23). With very few exceptions (peregrine falcon and bald eagle), recovery plans and population targets have not yet been established. Additional study and monitoring is planned. It is expected that the management plan will benefit most of not all of the species of concern. Some native species will be re-introduced; some non-native species will be controlled (page 26).

<sup>96</sup> *Gila Box Management Plan*, 1998, at 8.

<sup>97</sup> Communication with Larry Thrasher, BLM Geologist, February 24, 2005.

<sup>98</sup> *Safford District Resource Management Plan and Environmental Impact Statement: Final* (2000), U.S. Bureau of Land Management, Safford District, at 28. (Hereafter cited as “*Safford District RMP*, 2000.”) (Note that the original RMP, drafted in 1990 and adopted in 1991, was reviewed in 2000 and reissued when it was found to be an adequate basis for continued management.) An area of critical environmental concern (ACEC) is defined by BLM as “A public land area where special management attention is required to protect important historic, cultural, or scenic values, fish and wildlife or natural systems or processes, or to protect life and safety from natural hazards” (page 413).

<sup>99</sup> The Gila Box ACEC designation included the following management prescriptions: Withdrawal of the area from mineral entry; prohibition of surface occupancy for mineral leasing activities; closing of the area to mineral material sales; restricting vehicles to existing roads and trails; acquisition of private inholdings

Box NCA plan reflected Interior's pending recommendation to Congress in 1996 to include the following elements in the Wild and Scenic River system: 15.2 miles of the Gila River as "scenic" and 7.8 miles as "recreational"; 8.1 miles of Bonita Creek as "recreational"; and 1/8 mile of San Francisco Creek as "recreational."<sup>100</sup> Also important is the designation of the entire NCA as a "Visual Resource Class II" area, which calls for minimal visual impact of management activities.<sup>101</sup>

## **Fishhooks and Needle's Eye Wilderness Areas**

Fishhooks and Needle's Eye are small, isolated and remarkably similar sites, neither with a management plan, but rather controlled by the Safford District management plan and by the BLM's general guidelines on wilderness. Physically, both are dominated by spectacular canyons associated with the Gila River and tributaries. Fishhooks is named for three canyons forming hook-shaped curves; approximately 40 miles downstream, three separate canyons, with 1,000 foot walls, combine to form the labyrinth known as Needle's Eye. Both sites provide ample opportunities for hiking and primitive recreation, despite the absence of trails, assuming that you can get there. This is no small feat, especially in Needle's Eye, for which the BLM warns: "Currently there is no legal access."<sup>102</sup> Entering the site legally is not impossible, but requires obtaining permission from private landowners—in particular, one rancher owning the parcel of land between the wilderness and Arizona state trust lands—or from the San Carlos Apache tribe, which is extremely hesitant to grant access.<sup>103</sup> Access to Fishhooks is also largely dependent on the cooperation of a key landowner and/or the San Carlos tribe.<sup>104</sup>

Perhaps the most important similarity between the two sites is their remoteness, which greatly limits recreational pressures as well as management attention. Both areas receive

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(as available); prohibiting rights-of-way; and restrictions on woodcutting (except for use of dead wood in campfires) (*Safford District RMP*, 2000, at 437-438). Many of these restrictions were already provided by the Arizona Desert Wilderness Act and are reiterated in the 1998 Gila Box NCA Management Plan.

<sup>100</sup> Pursuant to the Wild and Scenic Rivers Act (1968) (PL 90-542) and BLM Manual 8351, several of the involved rivers in 1993 were determined to be "eligible" in the system: The Gila River (23 miles in the RNCA), Bonita Creek (15 miles in the RNCA), and the San Francisco River (1/8 mile in the RNCA) (*Gila Box Management Plan*, 1998, at 4, 13). Detailed eligibility studies were completed in 1993 and, acting on BLM's advice, Interior in 1996 also recommended designations regarding streams within the RNCA. These recommendations are pending before Congress. Until action is taken, BLM manages these areas in accordance with Wild and Scenic guidelines. Currently, the only Arizona river included in the wild and scenic rivers system is an approximately 80 mile stretch of the Verde; see <http://www.nps.gov/rivers/wildriverslist.html#az>.

<sup>101</sup> A Class II visual resource designation calls for "retention of the landscape character," and requires that "changes in any of the basic elements (form, line, color or texture), caused by management activities, should not be evident in the characteristic landscape." Wilderness areas feature a Class I designation, which "provides for natural, ecological changes only ... where landscape modification should be restricted" (*Safford District RMP*, 2000, at 420). The vast majority of BLM lands managed by the Safford Field Office are in class III and IV designations (page 40). Class III calls for only "partial retention of landscape character," while class IV calls for "modification of the landscape character" (page 420).

<sup>102</sup> <http://www.az.blm.gov/rec/Needle's.htm>

<sup>103</sup> Interview with Catie Fenn, BLM Outdoor Recreation Planner & Wilderness Specialist, February 7, 2005.

<sup>104</sup> Interview with Tom Schnell, BLM Lead Natural Resource Specialist, February 22, 2005.

few visitors, mostly seeking hiking and hunting opportunities.<sup>105</sup> One of the few controversial elements of these wilderness areas is the illegal entry and use of Needle's Eye by recreationists, including one individual who traveled along the stream on a powerboat.<sup>106</sup> Illegal use of motorized vehicles is also an issue in Gila Box, but is rare in Fishhooks.<sup>107</sup>

Traditional economic uses of land, such as grazing and mining, are extremely light in both wilderness areas. Grazing continues in both sites at levels equal or below historic amounts, and at an intensity that does not appear to threaten riparian health.<sup>108</sup> Neither site has any mining activity. Surveying and maintenance of the Needle's Eye power line has also, apparently, been without incident; the line is patrolled by air.<sup>109</sup>

The water rights issue that so plagued the Arizona Desert Wilderness Act remains a politically delicate issue, although not an otherwise hot topic facing wilderness managers. The legislation instructs the Secretary (via BLM) to take the necessary steps to protect the reserved rights asserted for each area.<sup>110</sup> This was done for Fishhooks in 1994 with the filing of instream flow claims "sufficient to maintain all streams, springs, washes, seeps, ponds, lakes and all groundwater at their natural flows, levels and conditions, subject only to valid existing water rights having priority dates earlier than the date the wilderness area was established."<sup>111</sup> For Fishhooks, this translated to a modest request of approximately 22 acre-feet/year, although the agency may have left the door open to a modified request if new information becomes available. Upstream at the Gila Box NCA, the BLM request is for a much more sizeable amount of 379,000 acre-feet/year, split roughly equally among the needs of fish and wildlife, recreation, and riparian habitat.<sup>112</sup>

No water rights filings for Needle's Eye and several other wilderness sites appear yet in the state's surface water rights online database. However, the local BLM hydrologist responsible for these filings has records from the early 1990s suggesting a claim was filed for Needle's Eye for 139,634 acre-feet, with most (about 138,000) for the Gila River itself.<sup>113</sup>

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<sup>105</sup> Interviews with Catie Fenn, BLM Outdoor Recreation Planner & Wilderness Specialist, February 7, 2005; and Tom Schnell, BLM Lead Natural Resource Specialist, February 22, 2005.

<sup>106</sup> Interview with Catie Fenn, BLM Outdoor Recreation Planner & Wilderness Specialist, February 7, 2005.

<sup>107</sup> Personal communications with Trevor Hare, Conservation Biologist, Sky Island Alliance, February 11, 2005; and Tom Schnell, BLM Lead Natural Resource Specialist, February 22, 2005.

<sup>108</sup> Interviews with Catie Fenn, BLM Outdoor Recreation Planner & Wilderness Specialist, February 7, 2005; and Tom Schnell, BLM Lead Natural Resource Specialist, February 22, 2005.

<sup>109</sup> Interview with Catie Fenn, BLM Outdoor Recreation Planner & Wilderness Specialist, February 7, 2005.

<sup>110</sup> Section 101(g)(2) instructs "[T]he Secretary and all other officers of the United States shall take steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication ..."

<sup>111</sup> State of Arizona surface water rights application number 45-00020 through 45-00057.

<sup>112</sup> This filing occurred in August 1995, application numbers 45-000222 to 45-000267. Note that for the purposes of administration, the State of Arizona has filed these applications as "wilderness" rights.

<sup>113</sup> Interview with Delbert Molitor, BLM Hydrologist, February 22, 2005. The claimant number is 39-68705.

The more immediate water related concern for Needle's Eye comes courtesy of Coolidge Dam and San Carlos Reservoir, located just upstream of the wilderness. The project, authorized in the San Carlos Project Act of 1924, is owned and operated by the Bureau of Indian Affairs on behalf of the tribe, mainly to serve irrigation interests, but also supports a valuable boating and sport fishery industry at the reservoir.<sup>114</sup> Operation of the facility has greatly modified the timing and magnitude of flows downstream in Needle's Eye, and although the majority of the riparian area remains lush, its composition has undoubtedly been shaped by the modified flow regime. Future changes to the operational regime of Coolidge Dam could also entail significant downstream impacts.

Storage in San Carlos Reservoir has dropped precipitously during the recent drought, although the very wet winter has eased the crisis. As of May 2004, storage was at 3 percent capacity threatening the reservoir's sport fishery and other recreational values.<sup>115</sup> Ongoing efforts to retain and supplement water in storage are influenced in various ways by state and federal efforts to fully utilize the Central Arizona Project (CAP) and to settle tribal water rights claims with CAP water. For example, in May of 2004, the Bureau of Reclamation prepared a Draft Environmental Assessment exploring a possible water exchange that would allow the San Carlos tribe to retain approximately 20,000 acre-feet of water in the San Carlos Reservoir by ceasing downstream releases.<sup>116</sup> Downstream users formerly served by reservoir releases—namely, San Carlos Irrigation and Drainage District (SCIDD) and the Gila River Indian Community (GRIC)—would instead be provided with CAP water.<sup>117</sup> Strategies such as this can help protect water supplies on the reservation, but are likely to significantly curtail water releases downstream through Needle's Eye. The US Fish and Wildlife Service has issued a no jeopardy opinion for this proposed exchange, despite admitting that the proposal will adversely effect the bald eagle, southwestern willow flycatcher, and the spikedace.<sup>118</sup>

Relatively few additional management issues are found in Fishhooks and Needle's Eye. Needle's Eye continues to have some problems with motorized trespass; similar problems

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<sup>114</sup> *San Carlos Apache Tribe Central Arizona Project Water Exchange: Draft Environmental Assessment* (2004), U.S. Bureau of Reclamation, Phoenix Area Office. (Hereafter cited as "*CAP Water Exchange*, 2004.") Maintaining the reservoir is key to providing income and employment on the reservation, which features a 25.6 percent unemployment rate (as of 2002). In the last year of good reservoir levels (1996), boating and fishing generated a total economic value for the tribe of \$3.7 million (page 35).

<sup>115</sup> *CAP Water Exchange*, 2004, at 6.

<sup>116</sup> *Id.*

<sup>117</sup> The San Carlos Apache Tribe Water Rights Settlement Act of 1992 increased the tribe's CAP allocation to approximately 64,000 acre-feet.

<sup>118</sup> Several quotes in the draft environmental assessment convey the problem for downstream resources: "Conditions for southwestern willow flycatchers and bald eagles below Coolidge Dam are improved during periods when stored water is released to the river or natural flow is high" (*CAP Water Exchange*, 2004, at 29). "The proposed water exchange could lower water tables further stressing riparian vegetation within the Gila River floodplain" (page 31). "In a system that has already been stressed due to past drought and reduced flows, any further reduction in flows could result in the loss of vigor and/or mortality of vegetation in the habitat used by nesting flycatchers" (page 32).

in Needle's Eye have been recently addressed through signage upgrades.<sup>119</sup> Better monitoring and managing of grazing is also seen by some as a need<sup>120</sup>, although this observation might speak more to the extremely light BLM management presence on these lands more than it does to the significance of grazing. Contributing to the "light presence" of BLM in this area may be the frequent BLM administrative reorganizations in the "Middle Gila" area; for example, jurisdiction of Needle's Eye in recent years have shifted between BLM's Phoenix, Safford, and now Tucson field offices.<sup>121</sup>

## CONCLUSIONS

### Gila Box

Overall, the conservation promise of the Gila Box NCA appears to have materialized, with the seminal moment being the much-delayed passage of the final management plan in 1998 banning ORV use and riparian grazing.<sup>122</sup> As noted in an Arizona Daily Star editorial from February 2, 1998:

At last the Gila Box conservation area may now gain a fighting chance to become what it was supposed to be. ... A total ban on off-road vehicles, for instance, is long overdue. And even ranchers themselves must respect the decision to fence the lush bottom lands against cattle that will now be relegated to less sensitive upland areas... With its new plan, the BLM has at last moved to answer the original vision of the Gila Box Riparian National Conservation Area with conscientious on-the-ground conservation.<sup>123</sup>

As discussed earlier, environmental groups had argued in favor of wilderness designation, but opponents had legitimate arguments for opposing this designation: e.g., the existence of ORV activity in the riparian corridor, the mining potential of the area, and the presence of the Camelsback Dam site.<sup>124</sup> Grazing in the riparian corridor was also widely acknowledged as problematic. Twenty years later, each of these concerns has been addressed. ORVs (and powerboats) are now banned from the riparian corridor, and on-road vehicle traffic has been reigned in by a dramatic reduction in road miles. Much of the mining potential of the site was addressed by the careful delineation of the NCA border, and by ongoing efforts to consolidate landholdings. For example, in July of

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<sup>119</sup> Personal communication with Trevor Hare, Conservation Biologist, Sky Island Alliance, February 11, 2005.

<sup>120</sup> Id.

<sup>121</sup> Interview with Catie Fenn, BLM Outdoor Recreation Planner & Wilderness Specialist, February 7, 2005.

<sup>122</sup> It is worth noting that adoption of the plan was a difficult process only completed after the Land and Water Fund of the Rockies, Sierra Club, and the Southwest Center for Biological Diversity threatened litigation in 1997 on the basis that the plan was five years behind schedule. Steve Yozwiak, 10/9/97. "Groups seek decision on Gila Box." Forest Guardians: News. (Reprinted from The Arizona Republic.)

<sup>123</sup> "Making the Gila Box work." 2/11/98. Forest Guardians: News. (Reprinted from The Arizona Daily Star.)

<sup>124</sup> Dave Downey. June 25, 1989. "Gila Box Battle Looms." Mesa Tribune. A1, A8.

2004, the BLM announced a land swap with Phelps Dodge involving an exchange of mineral rich BLM lands near Morenci for riparian parcels in the Gila Box Riparian NCA held by Phelps Dodge.<sup>125</sup> The Camelsback Dam site was abandoned prior to NCA establishment. And grazing in the riparian corridor has been eliminated, with obvious benefits. A recent Riparian Health Assessment shows all 15 miles of Bonita Creek within the NCA to be in a “properly functioning condition”; approximately two-thirds of the 23 mile Gila River stretch also meet this standard.<sup>126</sup>

Challenges and threats to the Gila Box Riparian NCA remain: e.g., mining activities in adjacent lands are a persistent (and expanding) threat; upstream water development in New Mexico could reduce river flows (especially peak flows)<sup>127</sup>; and grazing is still permitted in upland areas. Perhaps most importantly, Gila Box remains very popular with recreationists which undoubtedly impacts resources despite efforts to spread out recreation across the site and to curtail most high-impact activities (namely mechanized activities). Protecting the Gila Box from its own popularity will likely be the greatest long-term management challenge.

Wilderness designation might have modified the type of recreation pressures slightly, but overall, it would probably have not resulted in a site of significantly different character or one featuring a radically different mix of resource protections and threats. Now, as in 1990, the “NCA compromise” appears to be a good deal for the environmental community. Many reasons support this conclusion: e.g., the proposed designation of Gila Box as wilderness had low political viability; the NCA boundaries achieved were actually larger than the WSA; the NCA designation has led to a management regime prohibiting ORV use and riparian grazing; and the NCA designation not only offered a pathway for improved protection of Gila Box resources but also greatly improved the viability of the entire Arizona Desert Wilderness Act. It also was an important step for the BLM in its efforts to establish a conservation mechanism “between the extremes of difficult-to-achieve wilderness and the not-so-tender mercies of routine BLM management.”<sup>128</sup> In contrast, an unsuccessful all-or-nothing bid for wilderness status in Gila Box would likely have fated the site to continued abuse, particularly from ORV use and riparian grazing.

## **Fishhooks and Needle’s Eye Wilderness Areas**

In contrast to the deliberate planning and intensive management focus of the Gila Box NCA, the Fishhooks and Needle’s Eye wilderness areas receive very little attention from managers or resource users. The remoteness and inaccessibility of the wilderness areas not only helps to justify their designation, but also is the key to their ongoing survival without need for or evidence of significant management interventions.

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<sup>125</sup> Craig Harris. “BLM Plans Land Swap with Phelps; Deal Would Expand Copper Mine’s Site.” July 3, 2004. [The Arizona Republic](#).

<sup>126</sup> Interview with Jeff Wilbanks, BLM Recreation Planner, February 22, 2005.

<sup>127</sup> For example in 2004, New Mexico pursued federal funds for developing 18,000 acre-feet of water upstream on the Gila. “New Mexico Draws Fire for Gila River Water Removal.” 5/3/04. [Forest Guardians: News](#). (Reprinted from the [Eastern Arizona Courier](#).)

<sup>128</sup> Personal correspondence with Mark Troutwein, November 10, 2004.

Perhaps the greatest long-term issue facing these wilderness areas (and the Gila Box as well) is the overall use and management of the Gila River (and tributaries), which implicates a variety of issues including the operation of the Central Arizona Project; interstate allocation and management between Arizona and New Mexico, and more generally, as part of the Colorado River system; the scope and operation of tribal water rights settlements; and the limited protections associated with post-1990 federal reserved water rights on arid-region streams that have been overstressed for many decades before the first wilderness proposal was raised. In this respect, all riparian areas along the middle Gila River face similar and formidable long-term challenges that are likely to go well beyond what a handful of protected areas, and the associated BLM managers, can be expected to address.



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