

BEFORE THE FOREST SUPERVISOR, NEZ PERCE NATIONAL FOREST AND/OR  
THE REGIONAL FORESTER, REGION ONE  
U.S. FOREST SERVICE  
UNITED STATES DEPARTMENT OF AGRICULTURE

Wilderness Watch		)
Friends of the Clearwater		)
		)
		)
Appellants		)
		)
v.		)
		)
Julie King		)
Bitterroot National Forest Supervisor		)
Respondent		)
-----		)

NOTICE OF APPEAL  
STATEMENT OF REASONS  
RELIEF REQUESTED

DATED February 4, 2013

TO: USDA Forest Service, Northern Region (R-1); ATTN: Appeals Deciding Officer (RFO); PO Box 7669, Missoula, MT, 59807

DECISION APPEALED: The decision appealed is the Decision Notice and Finding of No Significant Impact (DN and FONSI) to approve the Alternative Four in the environmental assessment (EA) for the Running Creek Bridge. This notice of appeal is filed pursuant to the requirements of 36 CFR 215.

NOTICE OF APPEAL

Notice is hereby given pursuant to 36 CFR. 215 et seq. that Wilderness Watch and Friends of the Clearwater hereby appeal the decision to the Regional Forester.

The Appellants assert that the Forest Supervisor’s decision is in error and not in accordance with the legal requirements of the National Environmental Policy Act (NEPA) and the Wilderness Act and their implementing regulations.

The actions proposed by Alternative Four in the EA would directly and significantly affect the appellants. Appellant groups are conservation organizations working to ensure that designated wilderness is kept wild under the precepts of the Wilderness Act and for

the protection of wildness, biological diversity and ecosystem integrity in the Wild Rockies bioregion (including the Bitterroot National Forest). Appellant group members use the Bitterroot National Forest and Selway-Bitterroot Wilderness, for recreation, wildlife viewing, photography, solitude, and wilderness enrichment.

Implementation of bridge construction with use of helicopters and other motorized equipment would adversely affect us by the unnecessary use of motorized equipment within the Wilderness. The activities, if implemented, would adversely impact the processes that shape the natural qualities of the project area, harm the very idea of wilderness, and are contrary to law.

Contacts:

Gary Macfarlane, Friends of the Clearwater, PO Box 9241, Moscow, ID 83843  
(208)882-9755

George Nickas, Wilderness Watch, PO Box 9175, Missoula, MT 59807 (406)542-2048

## STATEMENT OF REASONS

### Introduction

Appellants allege that the use of a helicopter (and other motorized equipment) for this project violates the Wilderness Act's prohibition on the use of motorized equipment or aircraft. Appellants further allege that the construction of the Running Creek bridge violates the Act's prohibition on structures and installations. Appellants recognize that the law allows for an exception to these prohibitions when the proposed activity is "necessary to meet minimum requirements for administration of the area for the purpose of this Act," however, the agency has failed to justify that the proposed activities are either necessary or the minimum required for wilderness preservation, therefore the decision must be overturned.

There are two interrelated issues that the EA, DN and Minimum Requirements Decision Guide (MRDG, located in the EA) improperly and inconsistently address. They are what are the impacts of structures and motorized equipment/motorized transport on wilderness character and what is truly "necessary to meet minimum requirements."

### Minimum Necessary

There are two germane questions. First, is the bridge necessary? Second, if so, does it need to be replaced with motorized equipment? The second question also has at least two sub categories, the use of smaller motorized equipment and the use of a helicopter for transport of materials. The EA and MRDG fail to make the case on either of these two questions.

Is a bridge necessary? There are two important factors that weigh on this issue. Assuming the purpose of the bridge is to provide access along the Selway River, there are feasible alternatives that don't involve building a permanent structure in the Wilderness. The EA failed to recognize the old 521-520 trail system that stays on the east side of the Selway. It exists and could be used in lieu of rebuilding a bridge. This is the route that goes past North Star Ranch and over the low saddle just east of Elevator Mountain. Even if that stretch of trail would have to be rebuilt--between North Star and Selway Lodge--such an option should have been considered. In any case, the 521 trail to North Star, the 519 and the 219 trails from North Star to the saddle west of Gardiner Peak and the newer 520 trail to Selway Lodge all show on the current Forest Service Selway-Bitterroot Wilderness map. Even if the extension of the 521 trail that goes along the Selway north from North Star were not to be chosen, the above noted routes, which are a bit longer and deviate a few miles from the Selway River, could still be used. All of these trails are within opportunity class 3.

Further, the Selway trail stays on the east and north side of the river for most of its length. It is about 50 miles long, and only a six-mile segment is on the west side. Redesignating the route (or routes) on the east side as the main Selway trail may make sense from a trail management perspective as well.

Second, the EA and MDRG note that the stream can be forded. In fact, the EA notes that fording is indeed possible and would be done while the new bridge is being constructed. While fording might be risky during high water in late spring, larger streams than Running Creek have fords on them. One example is the North Fork of Moose Creek. This is in the same opportunity class as the Running Creek bridge, opportunity class 3 in the Selway-Bitterroot General Management Direction. It should also be noted that the ford exists and was user created. If a ford were not feasible or too risky users would not create one to shorten the hike up Running Creek and then back down it. Thus, the MRDG is based on a false premise that a ford is inconsistent with this opportunity class and not safe.

The EA is inconsistent about the impacts of a ford versus a bridge (pages 72 and 73). This inconsistency affects the conclusion in the DN about fords and bridges. (See also wilderness character discussion on a ford).

Even if we were to accept that a bridge across Running Creek is indeed the minimum necessary, that does not mean that motorized tools and, perhaps even worse, motorized transport via a helicopter is necessary.

With regard to the thorny issue of helicopter transport, the analyses in the EA and in the DN (see page 6) note that a packable bridge design is clearly possible. This alternative was fully analyzed. The DN frets such a design would require stabilizing metal rods underneath and that these rods might possibly be more susceptible to damage from debris flow (page 6). However, the EA states the clearance of both bridge designs (alternatives 3 and 4) would be 3 feet above the 100-year high water mark. Indeed, it seems the alternative 3 bridge would be no less susceptible to debris than the selected alternative.

(NOTE: The EA does not raise the concern of debris catchment and it was unknown to the public during the comment period). Packable bridge designs are used in wilderness.

Unfortunately, the Forest Service has not presented consistent information to the public on packable bridges. The Forest Service claimed the shorter Three Links Bridge, which crosses a tributary of the Selway River many miles downstream from this project, was too long for a packable design. However, the agency later admitted that there are now packable designs that could have been used. Of course, this was after the bridge materials had been purchased and the decision to use helicopters made. The same mistake must not be made again. (see also the discussion on wilderness character below).

The DN (Appendix A) states regarding the 1974 bridge, "An engineer present at the time did not believe that a helicopter was used." That statement is for a bridge with longer stringer-70 feet--than the 55-foot variety for the new bridge location.

Moreover, the Forest Service has built much longer bridges in Wilderness without the aid of helicopters and motorized equipment. As one example, in 2011 the 128-ft-long Gates Park pack bridge was packed in and assembled in the Bob Marshall Wilderness. According to an article in the Missoulian (see [http://missoulian.com/news/state-and-regional/mules-add-power-to-bob-marshall-bridge-construction-project/article\\_4b201262-130c-11e1-bd61-001cc4c03286.html](http://missoulian.com/news/state-and-regional/mules-add-power-to-bob-marshall-bridge-construction-project/article_4b201262-130c-11e1-bd61-001cc4c03286.html)):

*Old-fashioned mule power and new construction techniques and tools were used to reconstruct the 128-foot-long Gates Park Pack Bridge spanning the North Fork of the Sun River in the Bob Marshall Wilderness.*

*The combination eliminated the need for heavy-lifting equipment on site - and helicopters to get it there.*

*U.S. Forest Service officials said the project is an example of how bridges in quiet backcountry areas can be successfully rehabilitated with less noise and a lighter construction footprint when compared with traditional methods.*

There is no explanation or discussion in the EA or DN why larger bridges can be built in the Bob Marshall Wilderness with traditional skills, but that helicopters and power tools are the minimum required for the Selway-Bitterroot Wilderness. There is no justification in the EA or DN why the bridge now proposed for replacement could be built without helicopters in 1974, but not today. Nor is there any indication that local FS officials sought advice from other forests or experts where these bridges have been constructed without helicopter assist. The Forest Service Technology and Development Center located in Missoula specializes in engineering and designing such projects. Yet there is no indication that MTDC was fully consulted on the project, especially since there is no mention of the Bob Marshall bridge in the EA or MRDG. Instead, it appears local staff decided at the outset that a helicopter would be used and the analysis proceeded from there.

Furthermore, the conclusions in the EA, DN (including response to comments) and MRDG regarding impacts to wilderness character from helicopter use are flawed and inconsistent. This is addressed in more detail in the wilderness character section.

With regard to the use of other motorized equipment, the EA and MRDG devote little attention. We noted in our comments:

*The EA is not clear what the impacts will be from bridge construction or removal. The EA states for all action alternatives, "Some motorized tools will be used." Then it states, "a concrete cutting saw or a pionjar may be used." It further notes, "Chainsaws may be needed," for bridge removal. Will motorized equipment be used? What equipment will be used and for how long? The EA does not meet NEPA mandates for an adequate analysis because of these inconsistencies and uncertainties.*

The response to our comments does not say precisely what will be done with these motorized tools. It still uses the word "may" to describe what motorized equipment might be used. The EA was not amended to clearly state that other motorized equipment will be used. There is no analysis of doing this work without motors. For example, there is no analysis of using a star drill to break up the old pilons or to drive bridge supports into the rock.

"Feasible" has been defined by the Courts as "possible as an engineering matter" and as "physically possible." (See Citizens to Preserve Overton Park v. Volpe. Also, Friends of the Boundary Waters Wilderness v. Robertson (8th Cir., 1992). The DN rejects other options without the benefit of a helicopter or motorized equipment when the EA claims some such options are feasible--specifically a ford and a packable bridge. Had the EA looked at other alternatives, like using the existing trails on the east side of the river, those would be feasible also. The fact the 1974 bridge was built without a helicopter and with stringers of native material much heavier than the proposed glu-lam stringers in the selected alternative shows that a non-helicopter option is feasible even if it is not a packable bridge design. The difference in time between the various bridge construction methods are five weeks (helicopter) versus seven weeks (packable design).

Perhaps the EA, DN and MRDG are an admission that the agency has lost the ability manage wilderness properly and use primitive tools. Nevertheless, there has been considerable money and time spent on trying to keep these skills alive. There are experts in the region who could do this kind of work without motorized equipment.

#### Wilderness Character

The first sentence of Section 2(a) of the 1964 Act gives the over-arching mandate. The "purpose" is "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness" through the establishment of "a National Wilderness Preservation System" and that system "shall be administered for the use and

enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment **as wilderness** and so as to provide for the protection of these areas, the preservation of their **wilderness character** . . .” (emphasis added). It is instructive that recreation does not appear in this purpose.

The Forest Service Manual (FSM) explains how the requirements of the Wilderness Act are to be met. The overriding management philosophy is as follows (FSM 2320.6)

*The goal of wilderness management is to identify these influences, define their causes, remedy them, and close the gap ("A") between the attainable level of purity and the level that exists on each wilderness ("X").*

Thus, it is clear that the goal of wilderness management is to keep and improve the wild conditions of wilderness. Resorting to the use of a helicopter for this bridge is a step backward, not forward as the regulation requires, especially since the decision to use a helicopter, use other motorized equipment or even rebuild a bridge is not based upon a clear showing that it is the minimum necessary as noted in the section above.

The same section of the Manual further notes:

*Where a choice must be made between wilderness values and visitor or any other activity, preserving the wilderness resource is the overriding value. Economy, convenience, commercial value, and comfort are not standards of management or use of wilderness.*

Even the agency’s own monitoring protocol notes on page 31 that the “undeveloped” quality of wilderness is harmed by motorized equipment (see Landres et al. Monitoring Selected Condition Related to Wilderness Character: A National Framework, RMRS-GTR-151, April 2005). Indeed, one of the core indicators of impacts to wilderness character is “Mechanical transport and motorized equipment use authorizations.” (Ibid.).

The EA and DN fail to recognize that wilderness character involves much more than merely the physical expression of wilderness. Wilderness is the integration of the physical and the idea. This is discussed in detail in the monitoring protocol.

With regard to a ford, the EA inconsistently claims that a ford would have more impacts on hydrology than the selected bridge alternative (see page 75). That is specious because **a)** a 401 permit is required for the bridge alternatives, but undetermined (likely) for the ford alternative (page 67) and **b)** a ford would be constructed for the bridge alternatives anyway for users during bridge construction expected to last 5 to 7 weeks. (Note: According to the EA it would take only 3 weeks to construct a ford, and that assumes a ford needs to be constructed, which is rarely the case)

With regard to use of a helicopter, the DN erroneously concludes there is less impact from helicopters in wilderness than traditional methods. The EA and DN do not explain how 295 - 340 pack trips, a five week construction time, and a helicopter are less

impacting on wilderness character than 477 - 567 pack trips and seven weeks of construction time. That is contrary to the very definition of wilderness. It is illogical, as the response to comments and EA lead one to believe, that additional trips with pack animals, which are entirely compatible with wilderness, do more harm than landing helicopters and dropping materials, which is a non-conforming, generally prohibited activity in wilderness.

The DN itself sows the seeds of its own fallacy. It claims (page 12) that helicopter flights are of little consequence in wilderness because, "the bridge is within 100 yards of a private airstrip where air traffic is common." There are two important issues that should be considered.

First, the private land and airstrip are not part of the National Wilderness Preservation System. That land is an inholding. By statute, different laws apply. Just as 100 yards away from the Selway-Bitterroot Wilderness boundary there exists a paved federal highway (Highway 12) does not mean that motorized use is of no consequence within that portion of the wilderness. There is more damage done from helicopter landings in wilderness than simply the noise. The DN fails to recognize this point.

Second, and just as important is the fact that the bridge is only 100 yards from a private airstrip. The EA failed to analyze an option that would use that airstrip to bring in materials. It is logical to conclude that it might be very easy to haul the needed materials 100 yards with nonmotorized means with little impact.

Specifically regarding recreation, Forest Service policy states (FSM 2323.12 part 3):

*3. Manage for recreation activities that are dependent on the wilderness environment so that a minimum of adaptations within wilderness are necessary to accommodate recreation.*

A ford is a minimum adaptation. So is using the 520-521 route to avoid bridge reconstruction. Preserving wilderness character is paramount and more important than visitor activity (recreation). The analysis in the EA and DN erroneously conclude otherwise.

NEPA

There is an inadequate analysis of alternatives. An alternative that bypassed the bridge should have been considered. However, the EA did not reveal to the public the existence of the route and the analysis ignored it.

It is unclear as to how far equipment and material will be hauled under the various alternatives. The existing bridge and the proposed route are located next to the private land at Running Creek and the associated airstrip. The EA and MRDG did not look at the possibility of using that site as the place from which the material would originate and how that may affect wilderness character. We are not suggesting such an option should

have been the one selected, especially without analysis. However, it might be very easy to haul the glu-lam or other kind of stringers, or use non-motorized wheeled equipment (admittedly mechanized equipment), from the private land 100 yards to either bridge site. Such an alternative should have been considered especially since the EA went to lengths to erroneously suggest there is little impact to wilderness character from landing helicopters in wilderness near a private inholding with airplane access.

We recognize the Forest Service is losing the skills needed to complete projects in wilderness without the use of motorized equipment and to administer wilderness in accord with the Wilderness Act. Again, as far as the record shows, there was no helicopter used for the larger 1974 bridge that is being replaced. However, the agency's unwillingness to maintain its traditional skill set is no excuse for failing to follow NEPA and the Wilderness Act.

Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800 (9th Cir. 1999) [land exchange] speaks directly to the issue of scope.

*"The Forest Service also contends that because the purpose of the transaction was to carry out an "exchange" and not a purchase, it was not required to consider this alternative. Seattle Audubon Society, 80 F.3d at 1404 (holding that an agency is not required to examine alternatives inconsistent with its basic policy objectives). To the extent that Weyerhaeuser would have been exchanging its lands for federal monies rather than federal lands, we do not recognize such an inconsistency. [FN7] Were we to construe the statement of purpose as limiting the transaction to land-for-land exchanges, it would certainly be too narrow to meet the standards for an appropriate statement of purpose as articulated in City of Carmel, 123 F.3d at 1155." [end footnote]*

Is this case, the Forest Service argues in the DN the purpose and need is so narrow as to conduct a specific kind of bridge reconstruction that requires the use of a helicopter. This is done even though the existing bridge was originally built without a helicopter.

A decision of this magnitude requires the preparation of an EIS. Motorized use in wilderness is not allowed, except in rare circumstances. This is usually related to emergency situations. This project is not an emergency. It is also controversial in that non-motorized construction, or at the very least, an option of not using helicopters was done by the Forest Service in 1974 and was done on a much longer bridge in the Bob Marshall very recently. As such, there is a controversy over whether a helicopter is really needed. Also, helicopters landing in the wilderness are a significant impact, by definition, on the wilderness because this is expressly forbidden in the Act itself. Thus, this is a major action significantly affecting the environment.

The EA fails to look at critical issues. For example, the impacts to wildlife from helicopter use are barely mentioned. They are dismissed because they are temporary. However, helicopters have significant impact on wildlife and the EA did not look at impacts to rare, threatened, sensitive or endangered species such as wolverine, lynx,



wolves (recently delisted), fisher, or grizzly (rare in the Clearwater Basin, one illegally killed in 2007).

RELIEF REQUESTED

Appellants request that the Regional Forester:

1- Rescind the decision notice for this project because it violates The Wilderness Act and the National Environmental Policy Act and agency regulations.

2- Require the preparation of an EIS if this project goes forward, and require that the EIS analyze in detail alternatives that a) do not involve the use of aircraft or motorized equipment, and b) fully assess the potential to replace the bridge with a ford or to open alternative, historical trail routes that do not require crossing Running Creek.

Sincerely,

Gary Macfarlane  
Friends of the Clearwater  
PO Box 9241  
Moscow, ID 83843  
--and--  
Board Member  
Wilderness Watch

George Nickas  
Executive Director  
Wilderness Watch  
PO Box 9175  
Missoula, MT 59807