

November 22, 2010

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Dear Mr. Liu:

Wilderness Watch is providing these comments on the Pack and Saddle Stock Outfitter-Guide Special Use Permit Issuance Draft Environmental Impact Statement.

General Comments:

The Wilderness Act generally prohibits commercial enterprise. The Act includes a limited exception to this prohibition for commercial services performed “to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” The exception is subject to the requirement to preserve each area’s wilderness character.

Thus, the crux of the issue is whether the proposed activity (outfitting-guiding) is limited to the *extent necessary*, and whether the proposed action protects and preserves the area’s wilderness character. The proposed action fails on both counts. The needs assessment does not justify the proposed significant expansion in permitted commercial services, nor does the proposal to increase the allowable amount of impact at campsites protect the area’s wilderness character. The DEIS and its proposed action fails to comply with the Wilderness Act.

Further, the DEIS has failed to consider a reasonable range of alternatives as required by the National Environmental Policy Act. None of the alternatives considers an overall decrease in commercial service service-days, even though the data suggests that commercial use is in decline and there is no meaningful data presented to show why this decline won’t continue. For this and other reasons explained below, the DEIS does not comply with NEPA.

Determination of Need and Extent Necessary for Commercial Services

The Needs Assessment (at p. 4) sets out three key questions it sought to answer to meet “legal and policy requirements”:

1. What types of commercial services are needed to meet management objectives or in wilderness, the public purposes of wilderness?

2. What amounts of these commercial services are needed to meet management objectives or purposes in an area?
3. Can the amount of needed commercial services be sustained while protecting wilderness character?

But these questions get the analysis backwards.

First, the Wilderness Act requires the agency to manage wilderness so as to preserve wilderness character. Second, the Wilderness Act prohibits commercial enterprise within wilderness. However, the Act includes a narrow exception to allow some commercial services, but only (1) for activities which are proper for realizing wilderness purposes and (2) only to the “extent necessary.” Thus, the emphasis of this exception is to limit commercial services to levels that are “necessary,” not determining which types and what amounts of services are “needed.”

The Wilderness Act only included the term “necessary.” Nowhere does the term “need” appear. The term “necessary” means “required to be done, achieved, or present; essential.” Absent from this definition and the use of this term in the Act is any notion of “demand” or “desire.” So any commercial services can only be permitted if they are “required” or “essential” to meet the purposes wilderness. If those purposes can be met without permitting commercial services, then those services are not “necessary.” Further, the purposes of wilderness do not include the comfort or convenience of visitors, nor economic opportunities for private businesses. The whole purpose of the prohibition on economic enterprise was to eliminate the profit motive and pressures associated with economic development from a small sphere of the public domain: wilderness.

Therefore, the appropriate question for the agency to answer in a Needs Assessment is whether commercial services are necessary to realize the recreational or other wilderness purposes of the areas, or could those purposes be met without commercial services? Only if those purposes could not be met does the Act allow commercial services. And once it is determined that the purposes could not be met absent permitting commercial services, the agency must determine (1) the extent to which commercial packstock services are necessary to meet those purposes, and (2) whether, if those services are permitted to that extent, wilderness character would be preserved. In sum, the Wilderness Act requires the Forest Service to limit public use of commercial services in the wilderness for recreational, scenic and other authorized purposes to the extent necessary, and only as consistent with the overall imperative of preserving and protecting the wilderness character of the land.

What this purported “Needs Assessment” does is:

- (1) conclude that existing levels of commercial use and acknowledged impacts to wilderness resources from overuse are acceptable,
- (2) conclude that all commercial hiking/backpacking and horsepacking services are needed in general, with no analysis of the actual motivations of visitors using those services or what forms and services within these categories are “necessary,”
- (3) conclude that the maximum level of commercial use in the last 10 years plus the projected magnitude of increased demand in the future are the “minimum extent necessary” for commercial services, and

(4) “recommend” that that level of commercial service be authorized.

In other words, this “Needs Assessment” is simply a rationalization for increasing levels of commercial use dressed up in terms of “need.”

**The “Needs Assessment” Never Clearly Articulates a Definition for “Necessary,” nor Does it Implicitly Rely on One that is Compatible with the Wilderness Act**

The “Needs Assessment” alludes to several criteria that may be related to whether commercial services are necessary, but never clearly articulates a definition or what specific criterion the agency is relying upon:

- “help identify the minimum extent of commercial services needed to provide visitors access to the wilderness.” (at p. 12)
- “The analysis found that there is a need for commercial services for pack and saddle stock recreation, and for hiking/backing/wilderness education.” (at p. 23)
- “There is a demonstrated, continuing demand for both services, however the demand for stock services has been on a downward trend for the past decade.” (at p. 24)
- “The 1996 Needs Assessment found there was a high need for outfitters and guides for pack and saddle stock and extended hiking/backpacking trips. This finding was confirmed using an updated method of evaluating need, described below.” (at p. 23)
- “Are services or activities legally allowed in wilderness and do services or activities support management objectives or general wilderness direction in forest management plans.” (p. 23)
- “it is necessary to offer outfitter-guide services so a wider range of the general population will be able to experience recreation activities in wilderness.” (p. 39)
- “This number is at or very near the minimum number required for businesses to stay in operation. If the level was reduced, there is a high likelihood that some businesses would fail.” (p. 39)

None of these rationales can support a finding that all current commercial use is “necessary,” let alone that even more commercial use is necessary. No attempt was made to determine what portion of existing use was actually necessary to the commercial clients (i.e., those visitors that could not otherwise have visited the wildernesses or otherwise realized the benefits of wilderness). Further, the “Needs Assessment” completely ignores the most likely and common reason that visitors hire commercial packstock for their trips: comfort and convenience.

It also strains logic to conclude that commercial services are necessary when (1) there are documented impacts to wilderness character and resources, and (2) the vast majority of use is non-outfitted. The “Needs Assessment” reports that in the Pasayten Wilderness approximately 7% of the visitors are commercially outfitted (p. 6) and that in the Lake Chelan-Sawtooth Wilderness approximately 3% of the pack and saddle stock users are outfitted, and all outfitter-guide service days represent only 1% of the visitor days in the Lake Chelan-Sawtooth (p. 9). In other words, commercial services are not necessary

for, at minimum, 93% to 99% of visitors, and hiking and horsepacking can be experienced by the vast, vast majority of users with no commercial support. And this does not account for commercial use that was not necessary.

### **The “Needs Assessment” Completely Ignores that Many Visitors Hire Commercial Packstock for their Comfort and Convenience and to Carry Unnecessary Gear that is Incompatible with Wilderness into the Backcountry**

The 1,000 pound gorilla in the room that the “Needs Assessment” ignores entirely is that many and probably most visitors hire commercial packstock for their comfort and convenience. But comfort and convenience are not compatible with the purposes of wilderness. The “Needs Assessment” makes no attempt to quantify the proportion of commercial use that is for comfort and convenience. It does not attempt to analyze what portion of commercial use is provided to visitors that would not otherwise visit the wilderness.

Further, many clients of commercial packers hire their services so that they can bring equipment and supplies into the wilderness that they would not otherwise be able to carry, such as coolers, heavy and/or perishable foods, alcoholic beverages, tables, chairs, radios, and the like. The “Needs Assessment” should analyze the extent to which this occurs, and analyze and propose requirements that would address such unnecessary and incompatible use. For example, the agency could limit the number of packstock per client sufficiently that only necessary gear could be carried into the wildernesses.

Given that the impacts from pack stock use are a significant concern in these wildernesses and the DEIS analysis, why did the Forest Service choose to not analyze the number of packstock that are actually needed for groups of various numbers of individuals to visit these areas? Why does the DEIS deem it appropriate for a single individual, for example, to utilize 18 head of stock for a single trip, given the amount of impact a herd that size has on the Wilderness? How did the Forest Service determine that up to 18 head of stock per group, even if the group is one or two people, is “necessary” or appropriate?

### **The Determination of the “Minimum Extent Necessary” was Simply an Analysis of the Status Quo and Projected Demographics**

The analysis of “the minimum extent necessary” for commercial services begins by observing that “[t]he minimum amount of commercial services needed to provide for recreation is not a number that can be precisely calculated.” (p. 39) While this may be true, it does not excuse the agency from failing to make any determination or calculation at all related to actual necessity.

#### *Recent and Current Use Levels*

To determine the “minimum extent necessary” the “Needs Assessment” first analyzes existing levels of use. It notes that actual use is generally less than authorized use in both wildernesses. It then notes that in the Pasayten Wilderness “[t]here is an overall downward trend in the number of service days the existing outfitters are providing (p. 8), and in the Lake Chelan-Sawtooth “[t]he number of service days the existing outfitters have provided has remained somewhat steady, with a drop in numbers in the mid-2000s” (p. 11). The “Needs Assessment” then attempts to explain this downward trend in use through speculative statements about forest fires, the loss of operators, and a sluggish economy.

Such speculative explanations are vital to the next step in the analysis: it concludes that the maximum actual use levels in the past 10 years are the “minimum extent necessary.” Only one explanation is provided for why maximum recent use levels are the “minimum extent necessary” (p. 39):

This number is at or very near the minimum number required for businesses to stay in operation. If the level was reduced, there is a high likelihood that some businesses would fail.

So the ultimate criterion for determining “the minimum extent necessary” is the economic viability of the commercial outfitters. First, this is not a defensible criterion for determining that commercial services are necessary (i.e., economic development is not a public purpose of wilderness). Second, no analysis is provided to support that this conclusory statement is even true.

### *Demographic Trends*

Aging population demographics “indicate[] that there will be an increase in the number of people and the percentage of visitors who are physically incapable of hiking or backpacking into the Pasayten and Lake Chelan-Sawtooth wilderness areas, and that the need for pack and saddle stock outfitter-guides will increase in the coming years.” (at p. 12)

“Assuming that as people age, they are less able to backpack long distances, an aging visitor population may have an increasing need for pack and saddle stock outfitter guides. Conversely, visitors traveling into the wilderness with youngsters might need outfitter services more than some groups. Having outfitter-guides for pack and saddle stock and hiking/backpacking would help make wilderness trips more feasible for these age groups.” (at p. 12)

“Since the population of the state is projected to grow more rapidly than the population of Okanogan County, it is safe to assume that the percentage of visits to the Tonasket and Methow Valley districts from people who live nearby will decrease, and the percentage of those from outside the area will increase. Keeping with the assumption that those who travel longer distances to recreate in the Pasayten and Lake Chelan-Sawtooth are more likely to require the services of an outfitter- guide, the minimum amount of commercial services needed in these wildernesses will increase in the coming decade and beyond.” (at p. 13)

### *Ultimate Determination of the Extent Necessary*

“Washington State’s Interagency Committee on Outdoor Recreation estimated that there will be a 15% increase in the number of people hiking and backing, and a 5% increase in the number of people riding horses in the next 10 years (Interagency Committee on Outdoor Recreation, 2003). \* \* \* Applying the projected increased [use], there will be approximately 42,343 people hiking in the Pasayten, and 15,684 using pack animals by the year 2020.” (p. 40)

Pasayten:

Hiking/Backpacking:

“The highest amount of use the existing hiking/backpacking outfitter guides have reported over the

past five years is nearly 3,000 service days, and the highest over the past ten years is approximately 3,500.” (p. 41)

“Using the current number of visitor days, approximately 3,700 service days are needed for hiking/backpacking outfitter-guides. Looking into the future, this would increase to approximately 4,200 service days being needed.” (p. 41)

#### Horsepacking:

“The highest amount of pack and saddle stock outfitter-guide service days in the past five years was approximately 1,200 (not considering years when wildfires decreased the number of service days), and the highest over the past ten was approximately 1,700. The minimum extent necessary for pack and saddle stock service days was determined to be 12% of pack and saddle stock users.” (p. 42)

“Using the existing number of visitor days, approximately 1,900 service days are needed to meet the minimum extent necessary. This number will increase to approximately 2,000 by 2020.” (p. 42)

How did the Forest Service determine that the current “need” is for 1900 service-days when the maximum actual use has been 1700, and only 1200 in the past five years?

#### Lake Chelan-Sawtooth:

“Currently, there are approximately 56,332 visitor days in the Lake Chelan-Sawtooth, and 2% of those were outfitter-guide clients in 2005.” (p. 43)

“Existing use levels were determined to be within capacity, but likely near the upper end of the acceptable range. At this time, outfitter-guide service days must be conservatively allocated to ensure expectations for available service days do not develop.” (p. 43)

“Applying Washington State’s Interagency Committee on Outdoor Recreation estimations for increases in the number of people recreating, there will be approximately 36,628 people hiking, and 18,008 people using pack stock in the Lake Chelan-Sawtooth Wilderness by 2020.” (p. 43)

#### Hiking/Backpacking:

“The highest amount of use the existing hiking/backpacking outfitter guides have reported over the past five years is approximately 1,500 service days, and the highest over the past ten years is approximately 1,600. This is roughly 4% of the total number of hikers/backpackers annually. Given that the capacity analysis showed that use may be approaching capacity in the Lake Chelan-Sawtooth, this percentage was not increased to allow additional use. The minimum extent necessary for hiking/backpacking is 4% of overall use.” (p. 44)

“Using the current number of visitor days, approximately 1,600 service days are needed for hiking/backpacking outfitter-guides. Looking into the future, this could increase to approximately 1,830 service days being needed.

“The recommended distribution of these days is to divide 1,400 service days among the existing outfitters, and hold 300 days in a priority use pool. Another 130 service days should be placed in a temporary use pool.” (p. 44)

#### Horsepacking:

“The highest amount of pack and saddle stock outfitter-guide service days in the past five years

is approximately 510 (not considering years when wildfires decreased the number of service days), and the highest over the past ten has been approximately 670. This is approximately 3% of all pack and saddle stock use, which was determined to be the minimum extent necessary.” (p. 44)

“Using the existing number of visitor days, approximately 670 service days are needed to meet the minimum extent necessary. This number will increase to approximately 720 by 2020.

“The recommended distribution of days is to divide 560 service days among the existing pack and saddle stock outfitter-guides, and to place 160 days in a priority use pool.” (p. 45)

In the end, the Needs Assessment does not determine an “extent necessary” for commercial services, but instead gives a “Recommended Number of Service Days” (*see* Figures 19-20 and 23-24).

### **It is not Permissible under the Wilderness Act to Permit an Increased Authorization of Commercial Services in the face of Documented Impacts to Wilderness Character**

The “Needs Assessment” acknowledges that several areas are currently impacted by high use (p. 46):

The following analysis areas have been identified as areas where use levels are higher and close monitoring is needed to ensure that wilderness character is not adversely impacted:

#### Pasayten Wilderness

Lakes in the vicinity of Harts Pass and the Pacific Crest Trail

Hidden Lakes

Crow and Corral Lakes/Sheep Mountain Area

Spanish Camp

Black Lake

#### Lake Chelan-Sawtooth Wilderness

Oval Lakes

North Lake and Surrounding Area

Twisp Pass

Louis Lake

Williams Lake

Libby Lake

Star Lake

Tuckaway Lake

Bernice Lake

Surprise Lake

Yet, the “Needs Assessment” recommends that authorized levels of commercial use be increased. This directly contradicts clear judicial precedent interpreting the Wilderness Act and is not permissible.

### **Selective and Biased Presentation of User Survey Results**

The “Needs Assessment” reports results from a user perception survey to argue that existing levels of commercial use are adequately protective of solitude (p. 19):

Outstanding opportunities for solitude, primitive, and unconfined recreation exist in most locations throughout the Pasayten and Lake Chelan-Sawtooth wilderness areas. Every person has a different perception of solitude, and of how many encounters with others it takes to lose the sense of solitude. The 2009 Wilderness Study gathered information on people's perception of the opportunity for solitude by asking about crowding. Approximately 90 to 95% of those interviewed did not feel crowded at all or felt only slightly crowded during their trips in the wilderness areas. The feeling of crowds is grounded in a person's expectations, and about three-quarters (72% in the Pasayten and 79% in the Lake Chelan-Sawtooth) of the people saw as many or fewer people than they expected. Roughly one-half (55% in the Pasayten and 42% in the Lake Chelan-Sawtooth) of the visitors felt solitude is part of the wilderness experience, while the other half (43% in the Pasayten and 48% in the Lake Chelan-Sawtooth) felt that they did not expect complete solitude and expected to see other people some of the time (Burns, et al, 2010).

Later it states the following (p. 36):

The survey found that virtually everyone (97%) reported that they did not have any conflicts with other groups during their trip. In addition, 90 to 95% did not feel crowded at all or felt only slightly crowded. The feeling of crowds is grounded in a person's expectations, and about three-quarters (72% in the Pasayten and 79% in the Lake Chelan-Sawtooth) of the people saw as many or fewer people than they expected. Roughly one-half (55% in the Pasayten and 42% in the Lake Chelan-Sawtooth) of the visitors felt solitude is part of the wilderness experience, while the other half (43% in the Pasayten and 48% in the Lake Chelan-Sawtooth) felt that they did not expect complete solitude and expected to see other people some of the time." (at p. 36)

While a majority of visitors may have reported results favorable to the agency's conclusion, this portrayal of the survey results completely discounts the views of the visitors that did believe the wildernesses were overcrowded and saw more visitors than they expected. Implicit in the agency's conclusions is that the preservation of wilderness character should be judged based on the subjective views of a majority of visitors, rather than on objective criteria grounded in the specific requirements of the Wilderness Act. Nowhere does the Wilderness Act cabin the requirement of "outstanding opportunities for solitude." Thus, these results more powerfully support a conclusion that the agency is failing to preserve outstanding opportunities for solitude when 10% of visitors felt "crowded" in the wildernesses, and visitors expectations have been so influenced by crowding that "visitors to more highly used trailheads had adjusted their tolerance of other wilderness users" and that "[m]ost knew what conditions they were likely to find, adjusted their expectations accordingly." (p. 37; quoting with approval a similar study for Oregon wilderness visitors) This presentation of the survey result demonstrates that the agency believes that sacrifice zones, which do not meet the standards of the Wilderness Act, are appropriate in wilderness.

The "Needs Assessment" also reports that "[t]he majority of visitors (81% in the Pasayten and 87% in the Lake Chelan-Sawtooth) thought the wilderness was in good condition." (p. 36) But this means that 13 to 19% of visitors did not think that "the wilderness was in good condition. This is a significant number of visitors, and indicates that the Forest Service's ultimate conclusion that "the existing amount of use is within [] social capacities at this time" (p. 29) is simply wrong.

The Forest Service does not have the authority to rationalize degraded wilderness character and experiences. Instead, the agency has a statutory duty under the Wilderness Act to preserve both.

### **Encounters Analysis is Based on Fundamentally Flawed Assumptions That do Not Provide for Preserving Wilderness Character**

The “Encounters Analysis” in the “Needs Assessment” is based on multiple unsupported assumptions and completely ignores encounters with visitors that are already in the wildernesses (i.e., it is entirely based on the number of groups that enter wilderness on a particular day). It concludes that “there is a 96% probability of encountering not more than seven parties on trail in the Pasayten on any given day, and a 98% probability in the Lake Chelan-Sawtooth.” (p. 20). But this unsupported speculative analysis is not supported by the agency’s own user survey data that is reported in the “Needs Assessment,” which found that nearly two-thirds (65%) of the visitors saw groups 5 times on their trips and an additional 27% saw groups 6 to 10 times. (p. 38)

### **The Biophysical Capacity Analysis is Flawed Because it Distributes Use Across the Entire Wildernesses Even Though Most Impacts Occur Because Use is Concentrated in Popular Areas at Popular Times**

The “Needs Assessment” defines “biophysical capacity” of the wildernesses as “the amount of overall use an area can sustain without detrimental social or physical resource impacts (without impairing wilderness character).” (p. 29). To determine the biophysical capacity, the analysis begins by concluding that if use were evenly distributed throughout the wildernesses, it “capacity” would be for every campsite in the wildernesses to be occupied by a party equal in size to the average group size on every day for the entire season of use. Acknowledging that groups are never evenly distributed throughout all locations in the wilderness and that some locations are more popular than others, the analysis “conservatively” assumes that the capacity of the wildernesses is for half of all campsites to be occupied every day. Thus, the analysis multiplies (1) the average group size for each wilderness (2) times half of the total number of campsites in each wilderness (3) times the total number of days in the operating season. That “capacity” for each wilderness is then compared to existing use levels to determine whether existing levels are within the wilderness’s “capacity.”

Absent from the analysis is any rationale for assuming that wilderness character will be unimpaired if half of campsites are occupied. Further, no basis is stated for using the entire 120 day season to calculate the capacity. There is simply no way to conclude that if half of the wilderness campsites were occupied by an average group for the entire summer that physical resources and wilderness character would not be impacted.

The analysis does not rationally account for the fact that use is concentrated at popular areas and popular times, even though the Forest Service acknowledges that for both wildernesses use. The “Needs Assessment” states that “some locations are more popular than others” (p. 30) and that use is highest on “weekends and holidays in July, August, and September.” (p. 38) The analysis should start with actual existing use levels during popular times and at popular locations. This is where capacity is relevant, not wilderness-wide, including a great number of areas and campsites that are seldom visited.

For the Pasayten Wilderness, the “biophysical capacity analysis” acknowledges that, even with existing levels of use, “resource specialists found concentrated areas of impact around campsites.” (p. 30) Yet the Forest Service ultimately concluded that existing use is substantially below capacity (i.e., currently 52,600 visitor days and a “capacity” of 180,000 visitors per-season). How can this be true when the agency admits that current conditions do not meet its definition of “capacity” (i.e., when existing levels and patterns of use are causing “detrimental physical resource impacts” and “impairing wilderness character”)?

For the Lake Chelan-Sawtooth Wilderness, existing overnight use levels are much closer to even this unsupported calculation of capacity (i.e., the current number of overnight visitor days is about 28,166, yet the calculated capacity is 40,800 visitor days per season). The agency similarly noted that “resource specialists found concentrated areas of impact around campsites.” (p. 31) Yet the Forest Service ultimately concluded that existing use is below capacity.

The fact that overnight use levels in the Lake Chelan-Sawtooth are well below the “capacity” determined for the area by this methodology, yet there are “concentrated areas of impact around campsites” demonstrates that this is a flawed methodology both (1) for determining “capacity” and (2) for determining levels of use that will be protective of wilderness character. Overall use levels are just one variable that impacts wilderness character. Another is the concentration of use at particular times in particular locations (i.e., spikes in use). This methodology does not rationally account for this essential variable in determining capacity, and in fact completely minimizes it. The methodology also completely ignores that wilderness character and resources will be far more vulnerable to a given level of use during some times of the season (e.g., during the early season when conditions in trails, meadows, and campsites are much more wet and vulnerable to disturbance).

### **No Analysis of the Necessity of Day Rides and their Associated Concentration of Use and Impacts Near Trailheads**

“Twisp Pass and South Creek trails are the two most popular routes for day rides.” (p. 38)

### **Revisions to Needs Assessment Should Only Be Used in Conjunction with Public Notice and Comment**

Appendix A is a “Need Evaluation” protocol and form establishing a “process [that] will be used to document any new proposed [commercial] activities in the future.” (p. 23) The instructions for the “process” state the following (p. 50):

This tool is to be used by the Forest Service employees who are associated with recreation management and special uses administration within the district or forest. The forest or district special use permit administrator will identify the team of employees who will rate the activity. The team will generally be made up of the special use permit administrator (team leader), wilderness manager, and recreation program manager. Other specialists can be assigned as needed. Each individual will be responsible for completing the evaluation form using the rating system below. The team will then convene and reach agreement on each category, and an overall rating. The final evaluation will be reviewed by the District Ranger or Forest Supervisor.

Absent from this “process” is any public participation. The “process” could be conducted entirely behind closed doors with no involvement of the general public. In other words, agency officials could modify or complete a new needs assessment at any time with no public notice or comment. This appears to be a blatant attempt to avoid accountability to the public and to rewrite this “Needs Assessment” at will. This “process” should be deleted from the Needs Assessment because any determination that additional commercial services may be authorized in wilderness is a major federal action that requires public notice and comment and agency compliance with the National Environmental Policy Act.

### **The “Monitoring Plan” in the “Needs Assessment” does not Monitor any Variables that Would Indicate whether Commercial Services are Being Provided Only to the Extent Necessary**

The “Monitoring Plan” includes four items related to wilderness character impacts, but no items related to commercial use or the “extent necessary” requirements of the Wilderness Act. (p. 47) Because such items are missing, it is not clear why the “Monitoring Plan” was included in the “Needs Assessment” at all. If a “Monitoring Plan” is retained in the “Needs Assessment,” it should be supplemented to include measures that would justify that existing commercial use or any future authorized level of use is actually necessary and proper for wilderness. For example, user survey that indicate whether they are using commercial services out of necessity, convenience, etc.

### **The Needs Assessment is Not an Honest and Unbiased Assessment of the Extent to Which Commercial Services are Necessary and Proper in Wilderness**

Every assumption, analysis, and conclusion in this “Needs Assessment” was designed to rationalize an increase in use by outfitters. The Forest Service should scrap this attempt and develop a methodology capable of complying with the Wilderness Act for determining the extent to which commercial services are necessary in these wildernesses.

## DEIS and Compliance with the National Environmental Policy Act

### **Purpose and Need/Alternatives**

The purpose and need cannot be so narrowly defined as it precludes a reasonably array of alternatives. Furthermore, it must be based upon sound reason.

The DEIS fails on many counts. First, the purpose and need is so narrowly defined that it has precluded even the consideration of an alternative that complies with the forest plans direction on core barren area. No action alternative meets the current forest plan. Every action alternative would decrease protective wilderness standards. There is no reasonable array of alternatives. Further, why did the Forest Service choose to not consider a single alternative that reduced the allowable campsite impacts below the current forest plan standard?

Second, the DEIS is not based upon sound reason. It suggests that weakening the standards in the forest plans for core disturbed areas is necessary based upon studies that show it is better to sacrifice already impacted areas to prevent impacts from spreading to unimpacted areas.

Regardless of the veracity of these so-called “findings” (they are Cole’s speculation, his research didn’t directly test whether this kind of displacement of impacts actually occurs), that question is irrelevant. Simply put, outfitters and guides use sites selected by the Forest Service. There can be no displacement of impacts unless the Forest Service approves new sites. Cole’s research might have some utility if the issue in the DEIS were impacts from the general, non-outfitted public, but the DEIS has declared that is beyond the scope of the analysis.

Thus, it is illogical to use Cole’s research as the rationale for changing campsite standards at outfitter sites. Simply put, the Forest Service has failed to implement the forest plan and the agency is looking for an excuse for breaking its contract with the American people.

A basic requirement of NEPA is that federal agencies must consider a reasonable range of alternative actions in an EIS. 42 U.S.C. § 4332(2)(c)(iii); 40 C.F.R. § 1502.14; *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1988). The range of alternatives should “sharply [define] the issues and [provide] a clear basis for choice among options by the decisionmaker and the public.” *Id.* Under NEPA, alternatives analysis must:

*(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. ...*

*(c) Include reasonable alternatives not within the jurisdiction of the lead agency.*

40 C.F.R. § 1502.14 (a) and (c). See *California v. Block*, 690 F.2d 753, 765-69 (9th Cir. 1982) (reversing EIS for failure to address reasonable range of alternatives); see also *Muckleshoot Indian Tribe v. USFS*, 177 F.3d 800 (9th Cir. 1999) (reversing EIS for failure to address reasonable range of alternatives).

The Seventh Circuit recently explained:

No decision is more important than delimiting what these “reasonable alternatives” are. . . . One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing “reasonable alternatives” out of consideration (and even out of existence). . . . If the agency constricts the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role.

The DEIS must analyze a range of alternatives that includes one action alternative where the forest plan standards are met. The Forest Service showed it is capable of amending the plan to weaken wilderness protection. It could certainly, in one alternative, amend the plan to reduce party size (both stock and people) to meet the standards.

The purpose and need also contradicts the Wilderness Act. The DEIS is based on the premise that there is a need for outfitting, therefore it MUST occur. The Wilderness Act language is clear that outfitting “may” occur, it is not mandated to occur even if certain criteria are met. If it does occur, it must be both necessary and proper (see section on Needs Assessment).

## **Scientific Integrity/Accuracy**

The DEIS is based upon faulty logic, inadequate analysis, and non-sequiters between data and conclusions. Two issues illustrate these fatal flaws.

This first example lays out some logical inconsistencies and problems in the analysis. On one hand, the DEIS claims that data tracking impacts from outfitter use (particularly stock) need only go back 10 or 20 years. However, the Pasayten Wilderness was designated over 40 years ago. Without some data that shows that wilderness character has not degraded from outfitter use since designation, the agency is not meeting its mandates under the Wilderness Act. Ten or twenty years is insufficient.

On the other hand, the DEIS claims that the overall trend in wilderness character is improving since designation. Assuming the DEIS is accurate and meeting NEPA mandates for quality information, there must be some kind of data that goes back to designation. Does any exist that shows an improving trend in outfitter sites?

To further muddy the water, the DEIS later explains the improvement in wilderness character since designation is due to the elimination of domestic livestock grazing in the area (presumably due to economic issues). However, the DEIS so narrowly defined the purpose and need as to exclude impacts from the non-outfitted public. If one accepts the DEIS premise in chapter one, improvement in wilderness character from issues other than management of outfitter use is irrelevant to this analysis.

In summary, the DEIS inconsistently picks and chooses the scope of the analysis to shed a favorable light on the preferred alternative. When looking at the “big picture” allegedly shows an improvement in wilderness character over the years, such analysis is included. When looking at the big picture of recreation impacts shows problems, the analysis is rejected.

The second example shows a fatal flaw in the DEIS itself. The DEIS claims it is “impossible” to differentiate impacts between outfitted and non-outfitted stock users! If that is indeed the case, how can there be any kind of credible analysis in the DEIS or any kind of monitoring of outfitter use?

Of course, that statement seems faulty. Since outfitters have assigned camps, it should be possible to differentiate impacts in those areas. Indeed, the management of outfitting use and this DEIS itself are based upon, in part, the amount of bare core area at campsites.

In all cases, outfitter horse camps are approved by Forest Service so some reasonable interpretations can be made as to the impacts of outfitter versus non-outfitted public use.

Chapter 3 clearly notes the largest impacted camp in the Pasayten is regularly used by commercial outfitters and three are the six largest impacted campsites are regularly (assigned, presumably) outfitter camps. This is quite a statement since only three percent of the stock use is outfitter-based.

## **Cumulative Impacts**

The DEIS avoids a real cumulative impacts analysis based upon historical actions. Instead, it conflates the current situation with cumulative impacts. There should be a record of historic decisions that affect the wilderness and backcountry areas. The 9<sup>th</sup> Circuit Court requires proper cumulative impact analysis. The DEIS fails on this count entirely.

## **Wilderness Analysis**

The DEIS claims no impacts from any alternative to undeveloped or untrammelled qualities of Wilderness. However, according to the DEIS outfitters use spring pipes and have corrals at some locations. Presumably these developments would cease under alternative 1. Thus, that alternative would have beneficial impacts.

The conclusion that opportunities for solitude and primitive and unconfined recreation would be enhanced under alternatives 2 and 3, in light of an overall increase in use, has no rational validity (page 3-59). It also conflicts with the DEIS analysis elsewhere on this issue.

The DEIS notes all alternatives would be in compliance for elk standards. This ends the analysis. However, it does not note what impacts would be to elk from the various alternatives. Impacts to a native species (elk) does have an impact on wilderness character. The impacts to wolves and grizzlies needs better analysis. Grizzlies are sometimes mistaken for black bears and many are killed on outfitted hunts in the Northern Rockies each year. A grizzly was recently killed in the Bitterroot Recovery Zone where they are very rare by an outfitted hunter, who mistook it for a black bear in the Clearwater National Forest.

Impacts to TES fish and aquatic species are improperly assessed. For example, the DEIS claims bull trout critical habitat has not been designated. It has been recently designated by the USFWS. The fact that camping occurs in RHCAs is a problem that the DEIS fails to address. All camps should be moved outside of the RHCAs.

## Conclusion

For the reasons described above, the DEIS fails to meet the requirement of the Wilderness Act, NEPA, and the ESA. A supplemental DEIS and a new “needs assessment” should be prepared that meet the requirements of these laws and the agency’s mandate to preserve the wilderness character of the Pasayten and Lake Chelan-Sawtooth Wildernesses.

Sincerely,

George Nickas  
Executive Director