June 19, 2015

Susan Stresser
Wapiti District Ranger
203A Yellowstone Ave.
Cody, WY 82414

Sent via Email comments-rocky-mountain-shoshone@fs.fed.us

Dear Ranger Stresser:

Enclosed are comments from Wilderness Watch on the draft EA for the Soda Butte Creek Yellowstone Cutthroat Trout Conservation Project. This project proposes to poison brook trout in the North Absaroka Wilderness, Yellowstone National Park and other portions of the Custer Gallatin and Shoshone National Forests.

Wilderness Watch is a national nonprofit wilderness conservation organization focused on protecting the National Wilderness Preservation System. We utilize public education, citizen engagement, legislative lobbying, and litigation to protect Wildernesses such as the North Absaroka Wilderness. Wilderness Watch appreciates the concern for long-term viability of Yellowstone cutthroat trout expressed by this proposal, however we believe the project as proposed is contrary to the letter and spirit of the Wilderness Act.

Wilderness

The wilderness analysis is deeply flawed. While we appreciate the fact no motorized equipment will be used in Wilderness, the EA assumes that an action benefiting a native species even when the action involves the use of poisons is more important than preserving the area’s wildness. While brook trout are unnatural in this area, their continued existence in Soda Butte is not an overt trammeling of the wilderness as poisoning would be. Brook trout introduction into the area was considered positive at the time and the current situation is an inadvertent consequence of that action. It takes a deliberately conscious act to confine, tether or trammel something. In sum, the project violates the basic premise of wilderness as a self-willed landscape. Howard Zahniser, the author of the Wilderness Act, put it succinctly in the title of his 1963 editorial, Guardians Not Gardeners.

The Wilderness Act does not allow this kind of activity, regardless of how well intended it may be. Rather, this action strikes at the very heart of wilderness as an area untrammelled or self-willed. The agencies do not have the authority to purposely trammel wilderness by this kind of activity.
It is clear that the proposed action is designed to promote a perceived definition of naturalness above preserving the area’s wildness or as a self-willed landscape. This is contrary to the intent of the Wilderness Act. Indeed, the Wilderness Act’s author said the essential quality of wilderness is its wildness, as does the Pinchot Report. The EA downplays the problems of manipulating the wilderness. While brook trout may not be desirable in the North Absaroka Wilderness or Yellowstone National Park the Wilderness Act does not prohibit their presence. The same can’t be said for the use of poisons, which trammel the functioning of aquatic systems and kill all aquatic organisms that derive oxygen from the water.

For the reasons examined below, one should reject the premise that the Wilderness Act can be interpreted in such a manner that untrammeled wildness is co-equal with naturalness and that these two alleged key components of wilderness character are increasingly in conflict. Neither rules of statutory construction nor the history of the Act permit such an interpretation.

The laws of statutory construct are clear that reading a law should not put portions of the law in conflict. McCloskey (McCloskey, 1999) notes:

The section referring to natural conditions follows the key initial point about it being untrammeled. . .Any meaning given to the phrase “natural conditions” should be consistent with the key idea of not “trammeling” these areas. This interpretation is favored because this language comes first and, in accordance with rule of statutory construction, it avoids any unnecessary implication of conflict between the provisions…Thus, the community of life in wilderness should not be subdued, or put under domination of man.

Thus, natural conditions, as used in the Wilderness Act, are the result of untrammeled wilderness and not some point in time. As Bill Worf suggests, a drip torch (or one could add poisoning) is just as damaging to wilderness as a bulldozer. (Worf 1997). In Wilderness, we let nature deal with the cards she is dealt.

In Monitoring Selected Conditions Related to Wilderness Character: A National Framework. Landres, et al. 2005. RMRS-GTR-151 has this to say about untrammeled, “All actions that manipulate or control ecological systems inside wilderness diminish the untrammeled quality of wilderness character.” As examples of such actions the Monitoring Framework includes transplanting animals or plants, and applying herbicides, pesticides or piscicides to remove unwanted species.

The Monitoring Framework cites two of the agency’s preeminent wilderness researchers in describing how the untrammeled quality of Wilderness affects management: Cole (2000) states that untrammeled “suggests more about the process of management than it does about the outcomes of management.” (emphasis added). Lucas (1973) states that “If ecological processes operate essentially uncontrolled within the Wilderness frame of reference, the results, whatever they might be, are desirable by definition. The object is not to stop change, nor to recreate conditions as of some arbitrary historical date, nor to strive for change favorable to big game or scenery. The object is to let nature ‘roll the dice’ and accept what results with interest and scientific curiosity.” (emphasis added). Clearly this poisoning and fish-stocking project impairs wilderness character by harming the untrammeled quality of Wilderness.
The MRDG was apparently not prepared by a wilderness specialist or even a biologist on the Shoshone National Forest. Simply put, what expertise does a fish biologist on an adjacent national forest have in determining wilderness values in the North Absaroka Wilderness? Further, what expertise do Montana Fish Wildlife and Parks employees have in preparing an EA that analyzes impacts to Wilderness? Indeed, state fish and wildlife agencies seem to have hostility to Wilderness and believe their desires, as they interpret certain MOUs, override the Wilderness Act.

The MRDG itself has serious problems in its analysis and confuses steps 1 and 2 and creates a catch-22 whereby the untrammeled wilderness will always lose to some tortured definition of natural. Further, the MRDG alleges brook trout could cause possible extinction of Yellowstone cutthroat in the Lamar River basin. Have cutthroat trout been eliminated from any equally large river system in the West due solely to brook trout?

The EA does not mention the agency wilderness recommendation in Yellowstone National Park. While most of Soda Butte Creek appears outside the recommendation as it closely parallels the road, a couple of small tributaries appear to be in the recommendation.

The EA notes:
As a considerable portion of the treated waters flow through designated wilderness, additional sampling would occur to evaluate if the project would have any effect on wilderness values. Macroinvertebrates would be collected in streams flowing through the North Absaroka Wilderness, using the same FWP protocols for category 1 streams (FWP 2012).

Aside from the fact that the North Absaroka Wilderness is in Wyoming and not Montana, that paragraph raises two questions. First, would this sampling be by non-motorized and non-mechanized means? Second, if so, isn’t this the kind of information that should be in the EA to determine what the impacts on the Wilderness are from this proposal?

In summary, the discussion on Wilderness in the EA and MRDG doesn’t comply with agency policy or the Wilderness Act. Aside from the fact that no motorized equipment will be used—and that is commendable—the EA shows a lack of understanding of Wilderness. That is to be expected as the EA was not prepared by either the Forest Service or the Park Service—the two agencies with responsibility over wilderness administration (or recommended wilderness administration)—in the project area.

Other Issues

The EA notes under the purpose of the project:

Soda Butte Creek supports a slightly hybridized population of Yellowstone cutthroat trout and nonnative brook trout. Hybridization comes from past stocking or invasion of rainbow trout and westslope cutthroat trout. Brook trout are an invasive species that can eliminate native cutthroat trout within a few decades following invasion. Brook trout originated from fish stocked in Montana; however, they are invading downstream into YNP. Nearly 2
decades of mechanical removal has not eliminated brook trout. Total eradication of brook trout is a desired outcome, given their ability to rapidly increase in numbers and invade new waters. In addition, hybridized fish provide a source of nonnative genes that have potential to spread throughout the Lamar River watershed. The proposed action would eliminate brook trout and hybrids from Soda Butte Creek and prevent invasion of brook trout and hybrids throughout the greater Lamar River watershed.

What the EA seems to do here is confuse brook trout, which don’t hybridize with cutthroats, and others like rainbow, which do. The trout below the barrier are likely more hybridized than those above the barrier. In fact, the EA states, “The NPS created a barrier to upstream movement of nonnative rainbow trout in Soda Butte Creek at Ice Box Canyon.” If that is indeed the case, how does this project meet the purpose and need?

Further, the EA makes it clear that, “Hybridization with rainbow trout is the leading cause of decline in Yellowstone cutthroat trout.” As such, the focus on brook trout is not well explained.

The EA does not make the case for this project. The threats to Yellowstone cutthroat are not clearly explained, especially in context of competition with brook trout and hybridization with other trout. It seems the poisoning may kill an important Yellowstone cutthroat population that may be less hybridized than others down stream. This seems to be counter-productive. Was any thought given to saving the genetics of the current Yellowstone cutthroats above the barrier?

The EA also does not make the case that poisoning will work. It states:

> FWP and the CGNF tried chemical and mechanical removal of brook trout to stem this early invasion but were unsuccessful. In 2004, another source of brook trout emerged, and chemical removal from this unnamed tributary occurred soon after.

How is this any better than the electroshocking? What about treating 38 miles of complex stream habitat? What are the changes of success and when will the agencies determine it has been a success? How many separate poisonings will be needed? The EA only evaluated the impacts of one poisoning event.

Regarding sensitive amphibians, the EA dismissed concerns to the northern leopard frog and the western toad based upon a 1999 survey of Gallatin National Forest. How do these old data meet NEPA requirements, especially given the fact that only part of the project area was surveyed? An old, forest wide survey (that may have been cursory for the project area) seems to miss NEPA’s requirements for adequate site-specific analysis. Further, what about other amphibians not mentioned in the EA such as the wood frog, boreal chorus frog, or tiger salamander?
The “wetlands and isolated pools” proposed for poisoning present concerns. What about sediment deposits of rotenone in marshes, or the uptake of rotenone by wetland vegetation? As such, how would rotenone be distributed through the fish areas in a marsh? How much reliance on uncalibrated spaying would there be to compensate for the difficulties of eliminating nonnative fish in wetlands and isolated pools? In other words, how would you stay within FIFRA label requirements? And what is the species composition of life in these wetlands?

The jurisdictional issue is not well detailed. Is the Park Service participating in the EA even though it is doing a separate categorical exclusion process? Why didn’t the Forest Service or Park Service do the EA?

Given the number of questions to be answered, the scope of the project (38 miles), the unique and sensitive geographic characteristics impacted (designated wilderness, wetlands and stream habitat, etc.), the uncertainties regarding methodology and results, the likelihood of violations of federal environmental laws and regulations (including the Wilderness Act), and other factors that tend to demonstrate a likely significant effect on the environment, a full environmental impact statement should be prepared.

Summary

The EA and MRDG are inadequate in analyzing the impacts from this project, especially the impacts to wilderness. The project description doesn’t make clear whether brook trout or hybridization present the greatest threats. If the latter, it seems the project area should be below rather than above the barrier. An EIS is needed to fully explore the issue. Please keep Wilderness Watch updated on this project.

Sincerely,

Gary Macfarlane

cc: Yellowstone National Park