May 2, 2011

Julie King
Supervisor
Bitterroot National Forest
1801 N. 1st St.
Hamilton, MT 59840

Dear Supervisor King:

Wilderness Watch and Friends of the Clearwater are providing these comments on the Fred Burr High Lake Dam Access For Repair Project 2011 Environmental Assessment.

Introduction

Wilderness Watch and Friends of the Clearwater (FOC) support the need to maintain dams in the Wilderness in a safe condition and in a manner that protects and preserves the area's wilderness character. The proposal as described in the scoping letter may achieve the former, but it does so by unlawfully harming the wilderness character of the Selway-Bitterroot Wilderness. The use of a helicopter for transporting materials to the dam site violates the Wilderness Act's prohibition on the use of aircraft in Wilderness. The project can be easily modified to forego the use of aircraft and to be compatible with the need to protect the SBW. Wilderness Watch and FOC stand ready to help.

This project is basically routine maintenance that, were it not for the proposed use of a helicopter, would not likely require Forest Service analysis or approval to proceed. There are viable options to the proposed action that would not only meet the non-motorized requirements of the Wilderness Act, but would have saved the Forest Service tens-of-thousands of dollars spent in developing this EA. At a time when the agency can't meet many of its basic stewardship responsibilities it is disappointing to see it waste so much time, energy, and taxpayer money analyzing a completely unnecessary motorized intrusion into the Selway-Bitterroot Wilderness.

Forest Service Authority and Responsibility

This analysis is very misleading in its description of the Forest Service responsibilities on projects such as this. While it might be true that the Forest Service "cannot decide… which methods shall be used to ensure safely rehabilitated dam facilities," the agency can and should require that the methods chosen by the dam owner forego the use of motor vehicles, and that dam operations and maintenance activities preserve the area's

wilderness character. With such ground rules in place, the dam owners can design their methods accordingly.

Alternatives

According to the EA, Alternative 1 "is not consistent with the law, regulation, policy, or Forest Plan direction," and Alternative 3 "would not meet legal requirements to permit ingress or egress" to the dam. Since the only other alternative, Alternative 2, is the Proposed Action it appears that not a single legal alternative has been considered. How does the absence of a single, legal alternative to the proposed action (Alt. 2) meet NEPA's requirement for a reasonable array of alternatives? Why did the Forest Service choose to not provide a viable alternative to the proposed action?

There are other serious problems with the analysis of alternatives. Alternative 1, No Action, fails to recognize that the dam owner could complete all repairs without the need for Forest Service approval. The cable for the log boom could be packed by stock or on foot and the boom repaired without the need for any Forest Service authorization, just as log booms have been maintained for decades in the Selway-Bitterroot and elsewhere. Similarly, the dam owner could pack materials for replacing the catwalk in the same fashion without Forest Service authorization. Visitors pack materials (gear) into the lake on a regular basis without needing FS approval and the dam owner packing materials to the dam would be no different in this regard. The EA assumes the dam operator will do nothing if he/she isn't allowed motorized access. This is an unwarranted assumption given the dam was built and has been maintained for 80-plus years without motorized access. The No Action alternative needs to be completely revised.

The analysis of Alternative 2, the Proposed Action, and Alternative 3, Access by Packstock, demonstrates the Forest Service bias toward helicopters and away from traditional stock and foot access. The EA warns that with Alternative 3 stock use "could result in serious injury to FBLHC and/or their contractors," yet nothing is said of the risk posed by helicopter use. This is a particularly glaring omission since at least one helicopter engaged in routine management activities has crashed in the Bitterroot Mountains in the past 18 months, and another had to jettison its load to avoid serious injuries or deaths. The later case involved another SBW dam project. Moreover, with every alternative there is the potential for injury from stock use, yet the only alternative where it is mentioned is Alterative 3. Why is that?

The analysis of the non-motorized alternative is fundamentally flawed. If the FS analysis is correct that the last 1-1/2 miles of trail would require significant work to make it safely passable for stock, then it seems obvious the EA should have considered an alternative that involves hauling the materials this short distance on foot. Since stock will be packing gear and supplies to within 1-1/2 miles of the dam, it could pack all the materials to the same location and they could be carried the last 1-1/2 miles on foot. It would take only a dozen short trips to haul the 700 lbs. of materials to the dam site.

Why didn't the EA or Minimum Requirements Decision Guide consider hauling the materials this short distance by foot? For that matter, why wasn't an alternative considered that employed

using lighter materials and/or a different design to make hauling on foot or packstock even easier?

Selecting a non-motorized alternative would not delay or burden the dam owner. With the availability of organizations like the Montana Conservation Corps, Selway-Bitterroot Foundation, or the number of unemployed, healthy people in the Missoula and Bitterroot Valleys who are capable of and would probably enjoy getting paid to haul a few loads to the dam, there is no doubt the materials can be delivered to the dam without using a helicopter. For that matter, our organizations would consider taking on this task.

In short, the environmental analysis needs to include one or more reasonable, legal, non-motorized alternatives to the proposed action. A non-motorized ("traditional skills") alternative as described above has the benefit of meeting both the dam owner's need for a safe dam and the Forest Service's responsibility to protect the wilderness character of the SBW. NEPA requires such an alternative be considered in detail, and the Wilderness Act requires the agency to preserve the area's wilderness character from harm.

Because reasonable alternatives exist that do not involve prohibited aircraft use, the proposed action is unlawful.

Analysis of Impacts

We sincerely question the amount of trail work the EA claims will be needed in order for pack stock to haul supplies to the proposed campsite. Such claims on other dam projects in the SBW have been grossly overstated. For example, the EA for a project on the Holloway Lake Dam made similar claims about the need for extensive trail work to complete the project. There, as here, the amount of trail work needed was used as justification for allowing helicopter use. A field trip conducted as part of resolving an administrative appeal uncovered just how significantly the EA misrepresented the amount of work needed both at the dam and along the trail (see the Holloway Lake Dam "Report on the Informal Disposition Meeting/Field Trip" attached as part of these comments). Since this EA was prepared over the winter and the public has not had an opportunity to visit the field to check on the conditions portrayed in the EA, we urge you to forego a decision until a field trip can be conducted.

As described above, the supposed need to reconstruct the last 1-1/2 miles of trail and any impacts associated with that would be eliminated by hauling the materials by foot for this short stretch.

Wilderness and Dams

The challenge for the Forest Service is to administer legally permitted, non-conforming structures in a way that doesn't further degrade the area's wilderness character. Utilizing traditional skills and foregoing the use of motorized equipment is a sign of respect for and commitment to upholding the spirit of the Wilderness Act. Invading Wilderness with helicopters and other tools of modern technology strikes at the heart of Wilderness as a place set apart.

The EA needs to acknowledge that the existing dam was built and has been maintained without motorized equipment for nearly a century. It is how dams in the Selway-Bitterroot and other Wildernesses around the country have traditionally been maintained.

In the discussion leading up to passage of the Wilderness Act in 1964, the Secretary of Agriculture described how the Forest Service would interpret and implement the law:

> "Water developments for the storage and diversion of water for irrigation, domestic, and other uses have been allowed in this wilderness-type areas. The works generally have been constructed and maintained by means which did not involve motorized transportation. There are 144 such projects. We would construe the provisions of [the Wilderness Act] as permitting the continued maintenance of these existing projects by means which would not involve motorized transportation as in the past."

S. Rep. No. 109 p.29, 88th Cong. 1st session (1963).

The proposed action reflects a starkly different interpretation and implementation of the law. Should the Forest Service adopt such an action, the EA should explain how the agency has arrived at such a remarkably different interpretation of the Wilderness Act than the Secretary of Agriculture and Congress arrived at in 1964.

The Wilderness Act's central mandate requires the Forest Service to protect the area's wilderness character. Agency policy espouses a non-degradation policy for achieving this end. The Forest Service has adopted a management framework for monitoring conditions related to wilderness character in order to determine whether it is meeting its legal mandate. It is quite clear that the proposed action will degrade the area's wilderness character, but that a non-motorized alternative as we've proposed will not.

<u>Need for an environmental impact statement</u>

If the Forest Service chooses to authorize use of a helicopter for this project, then it needs to prepare an environmental impact statement that considers not only the significant impact of helicopter use on this project, but also the cumulative effects of helicopter use on other projects in the SBW.

In recent years the use of motorized vehicles and equipment has been approved or is proposed on numerous dam-related projects on the Bitterroot NF in the SBW. In just the past several months major projects that include extensive motorized intrusions have been approved for the Tin Cup Dam and Canyon Lake Dam. In addition, the FS is considering requests for motorized access to install structures and equipment at Tamarack Lake. The agency has also granted carte blanche approval for motorized access and use at several other dams in the SBW. Many of these projects alone have had or could have significant impacts on the wilderness character of the SBW. In addition, the Forest Service's own administrative activities have relied on helicopter use for such things as replacing bridges in the SBW. Taken together, the cumulative effects of the authorized motorized activities and the proposals for additional use have caused and threaten to continue to

cause significant impacts to the SBW. An EIS is clearly warranted before the agency approves any additional motorized access or motorized equipment use.

While officials at the Bitterroot National Forest have become cavalier in their approval of helicopter use in the SBW, the courts have taken a dimmer view of aircraft intrusions. While refusing to issue an injunction halting a plan to use helicopters to capture and collar up to eight wolves in the FC-River of No Return Wilderness, a federal court in Idaho explained:

> "[T]he Court shares plaintiffs' concerns that this decision could be interpreted wrongly as a stamp of approval on helicopter use. It is not for two reasons. First, the decision is limited by its facts: This proposed activity is designed to aid the restoration of a specific aspect of the wilderness character of the Frank Church Wilderness that had earlier been destroyed by man. *The use of helicopters for any other purpose would be extremely difficult to justify under the Wilderness Act, NEPA, or any categorical exclusion*. (emphasis added)
>
> Second, the next helicopter proposal in the Frank Church Wilderness will face a daunting review because it will add to the disruption and intrusion of this collaring project. The Forest Service must proceed very cautiously here because the law is not on their side if they intend to proceed with further helicopter projects in the Frank Church Wilderness." *See Wolf Recovery Foundation v. U.S. Forest Service, 629 F.Supp.2d 1264 (D. Id. 2010).*

In a subsequent ruling, the Court reiterated its concern about helicopter use in Wilderness:

> "In its prior decision in this case, the Court stated that future helicopter use would add to the "disruption and intrusion" of wilderness values, face a "daunting review, " and "be extraordinarily difficult to justify." *See Memorandum Decision (docket no. 36).* The Court's opinion makes it clear that helicopter use in a wilderness area is "antithetical to a wilderness experience," and that the approval of the single project at issue here – based on unique facts – is unlikely to be repeated."

These ruling recognize the incompatibility of helicopter use in Wilderness, the need for a thorough and cumulative analysis of the impacts from helicopter and other motorized equipment use, and the need to embrace alternatives that do not involve motorized equipment use. In light of the amount of helicopter use recently authorized in the SBW, it seems further allowances may face more than a "daunting review."

<u>Wildlife</u>

Numerous threatened or endangered and other special of special concern potentially inhabit the project area. The analysis needs to consider impacts to these species including bull trout, westslope cutthroat trout, fisher, wolverine, wolves, grizzlies, mountain goats, and management indicator species identified in the forest plan.

Please feel free to contact Gary Macfarlane at Friends of the Clearwater (208-882-9755) or me if you have any questions concerning our comments on the proposal.

Sincerely,

George Nickas
Executive Director

Gary Macfarlane
Friends of the Clearwater

Enclosure: Attachment #1: Report on the "Informal Disposition" meeting / field trip (8/10/2001). Appeal of the Decision Notice and Finding of No Significant Impact, Holloway Dam Maintenance Project Selway-Bitterroot Wilderness.

Attachment #1

Report on the "Informal Disposition" meeting / field trip (8/10/2001)

Appeal of the Decision Notice and Finding of No Significant Impact
Holloway Dam Maintenance Project
Selway-Bitterroot Wilderness.

Submitted by:

George Nickas, Wilderness Watch
Gary Macfarlane, Friends of the Clearwater

Attending:

Appellants: George Nickas, Wilderness Watch; Gary Macfarlane, Friends of the Clearwater

USDA Forest Service: Jeanne Higgins, Stevensville District Ranger; Bill Goslin, Terry Anderson; Betsy Ballard; Doug McClelland; Pete Zimmerman

Permit holder: Wayne Jacobsen, Sweeney Creek Water Users Association

We want to acknowledge and thank District Ranger Jeanne Higgins for agreeing to conduct the resolution meeting on-site. We appreciate the participation of many of the staff and ID Team to look at and discuss the project. The field trip into Holloway Lake proved to be extraordinarily informative and illuminating. Each of the major issues of the appeal was discussed at length, and substantive new information came to light. We believe the information learned on the trip and our discussions for resolution will allow the appeal to be resolved and the Wilderness to be spared the intrusions of helicopters and other mechanized equipment.

The meeting started with a presentation by Wayne Jacobsen, SCWUA representative. Mr. Jacobsen described the project in detail. It was surprising to learn that the project Mr. Jacobsen described departed from the project described in the EA and DN/FONSI in at least two significant ways. In our view, Mr. Jacobsen's presentation raised additional, important issues that need to be addressed before the project, as it has been proposed, can be approved.

First, Mr. Jacobsen indicated that he intended to cut the metal outlet pipe into 4-ft. lengths so that it could be handled on site. The EA indicated the 30-ft. pipe would be in three lengths, and rejected suggestions that it be packed in in shorter lengths because "Use of welding equipment for a number of days would impact the solitude of the Wilderness, scar the area where the welding is done, and add an additional fire hazard in a dry time of year." (EA p 28). It was later acknowledged by the both the Forest and Regional engineers and the District Ranger that the plan to cut the pipe into shorter lengths represents a changed condition that needed additional consideration.

Second, Mr. Jacobsen stated that it might not be necessary to drill any holes or break any rock to slip the liner into the existing outlet pipe. He indicated at most it would require "6 or 7, maybe

10 holes, but there's a good chance we won't need any." The EA and DN justified the use of an electric drill "to drill up to 34 14-inch deep holes in a rock on the lake bottom that is directly in the path of pipe that would be slipped into the existing culvert." ((DN / FONSI p. 7). Not only did the rationale for the electric drill prove wrong, but we later learned when standing on the dam that nobody from the agency knows whether the new outlet pipe will be slipped in from the upstream or downstream end, thus making it impossible to determine whether any holes must be drilled. Because the lake was full and water was rushing through and around the outlet pipe, we were unable to determine whether there is any rock obstructing the insertion of the new outlet pipe. It was acknowledged that to date nobody from the Forest Service has evaluated whether drilling is necessary, nor how many holes might need to be drilled.

Mr. Jacobsen also explained that even with a complete collapse of the Holloway Dam, the amount of water running down Sweeney Creek would not exceed snowmelt runoff in a good snow year, and that a natural constriction in the canyon would dam up any flood flows and release them in amount that would prevent downstream flooding. He reiterated his concern that the Forest Service didn't allow him to use the PVC pipe he had purchased for the project because the dam's design was like a "brick wall" and couldn't cave in on the outlet pipe unless there was a complete dam collapse.

Before leaving the trailhead and bidding good-by to Mr. Jacobsen, we discussed the key issues of the appeal. Our discussions and what we learned during the course of our hike to the dam follows.

Issue #1: <u>Use of a helicopter</u>

The DN/FONSI approved the use of a helicopter based on the "need" to haul three 600-700 lb. lengths of pipe, and 3,000 lbs. of other supplies.

After completing the hike to the dam, it was agreed by all that the dam is readily accessible by trail for backpacking supplies and, in all likelihood, for using packstock (see trails discussion below). This directly contradicts the Decision Notice which states, "I found Alternative 1 [use of helicopters] would provide…the only feasible way to transport the material and equipment to the dam." (DN p. 11). The only question remaining was whether an alternative exists to the use of steel / iron pipe. It was agreed that HDPE pipe was an acceptable alternative, but questions remained whether it could be joined without heat fusion. George Nickas informed the group that Wilderness Watch had contacted the company (ISCO) that provides the pipe and that was cited in the EA. Company representatives assured WW that it's "Snap-Tite" system would meet all the engineering demands for joining pipes, that it can be joined with primitive tools, and that the pipe can be manufactured in lengths short enough to be hauled on a person's back, if necessary. (A 16" diameter pipe was reported to weigh approx. 10 lbs./foot.) It was agreed that if such an alternative exits, the helicopter was unnecessary.[1]

[1] Mr. Nickas noted that Wilderness Watch president, Bill Worf was meeting with a representative of ISCO at the same time as our fieldtrip. The company provided Mr. Worf with a sample and additional information about its "Snap-Tite" system. Subsequently, Wilderness Watch and Doug McClelland, USFS regional dam engineer, met to review the pipe-joining system. Mr. McClelland confirmed that the system appears completely adequate to complete the repair work at Holloway Dam.

Issue #2: Use of a motorized drill

As noted above in the presentation by Mr. Jacobsen, the need for a motorized drill was brought into serious question. It was agreed that the information was not available determine how many, if any, holes would need to be drilled, nor could it be determined if a motorized drill was necessary.

Issue #3: Trail conditions

We followed a well-defined trail all the way to the dam. The existence of such a trail directly contradicts the finding in the EA that, "…the trail from Duffy Lake to Holloway Lake is non-existent, and the pack string would end up traveling across steep, out-sloped, bare rock." (EA p. 36. Similar claims are made throughout Appendix 1 "Response to Comments" and in the DN/FONSI.) It was agreed that the trail is adequate for hauling all supplies and the pipe (provided there was a suitable alternative to steel / iron pipe) to the dam.

The only trail issue that remained was the extent of upgrading that would be required to bring the supplies to the dam. On the walk back to the trailhead, each of the potential "problem" areas was noted and discussed. Without exception, it was determined that it was possible to get pack loads on the existing trail, though Bill Goslin noted several places where it would be tight between the trees and / or a couple of spots where he would like to correct existing trail problems (with or without the dam project). The importance of a good packer with good stock was noted on many occasions. The amount of work needed would be very minimal and the appellants agreed we did not want the trail upgraded in any way.

It is noteworthy that on the hike out we encountered two groups with packstock. The lack of professional skills displayed by at one group with two pack animals suggests that a good packer should have little trouble traversing the existing trail. We saw three loads go in. Assuming all three come out, the total number of loads constitutes at least 25 percent of what would be required for the Holloway Dam project. In short, it appears that using packstock to transport supplies for the dam maintenance project would be a relatively minor addition to current use.

As a final point to emphasize our conviction that the project can be completed the "Wilderness way," Wilderness Watch and Friends of the Clearwater pledged that our organizations would put together a pack stock and / or backpack effort to haul all materials to the dam site if the SCWUA was unable to do it. And we committed to do it for less cost than the helicopter option.

Issue #4: NEPA analysis

Among other things, our appeal challenged the failure of the EA to seriously consider non-motorized alternatives to the proposed action. It was noted by the Forest Service that the agency suggested to Mr. Jacobsen that the SCWUA consider using HDPE pipe, but that the agency did not analyze that alternative because it wasn't brought forth by the proponent. From

our discussions and finding on the trip, we believe it is safe to say that everyone concluded HDPE pipe would be a viable alternative (pending approval of a pipe-joining system).

We learned a couple of other things relating to process and quality of the EA. First, the misstatements regarding trail conditions indicate the EA was developed using erroneous information. Second, we learned that the Forest Service had not independently investigated or confirmed information provided by the proponent that was critical to the Decision Notice. Claims that it was not possible to safely pack materials to the site (hence the need for a helicopter), and claims that it would be necessary to drill 34 holes to clear a path to pass the new outlet pipe through the existing pipe (hence the need for the motorized drill) were not investigated on-site by the Forest Service.

Conclusion:

Our negotiated resolution field trip, and subsequent follow up, clearly showed that it is possible, desirable, and indeed relatively simple, to complete the Holloway Dam maintenance project without the need for motorized equipment or transport. We learned that the project analyzed in the EA differed in important aspects from the project planned by the proponent. We learned that the EA did not carefully analyze the project and the need for motorized equipment. We learned that the trail is entirely passable for both pack stock and backpack. We learned that there are alternatives to the use of steel / iron pipe that can be readily packed to the site and joined together without motorized equipment. We learned that a viable, non-motorized alternative exists, but that it wasn't fully developed or analyzed in the EA.

During discussions at the dam, the District Ranger asked if appellants would be willing to withdraw our decision if the District Ranger allowed only non-motorized access for this year to replace the cribbing. Appellants suggested that the district ranger withdraw the decision authorizing motorized equipment, which would moot the appeal. In the alternative, we suggested that we would withdraw our appeal if the decision were amended to preclude the use of motorized equipment, including the helicopter and power drill. It appeared to us that the appellants and the district ranger were on the same track, but that the details of how the decision would be changed or rescinded needed to be worked out.

<u>Submitted August 15, 2001</u>