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Rachel Lipsky
US Forest Service
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February 12, 2016

Sent Via Email to: rslipsky@fs.fed.us

Dear Ms. Lipsky,

Wilderness Watch is providing these scoping comments regarding the Forest Service's proposal to reconstruct trail segments in the Alpine Lakes Wilderness using helicopters and possible other motorized equipment. Wilderness Watch is a national wilderness advocacy organization, headquartered in Missoula, Montana, dedicated to the protection and proper administration of the National Wilderness Preservation System.

As more fully described below, the Forest Service's proposed action would adversely affect Wilderness Watch's organizational interests, as well as its members' use and enjoyment of the Alpine Lakes Wilderness.

We appreciate the opportunity to comment and request that the Forest Service fully address the below concerns in preparation of an environmental assessment or environmental impact statement for the project. A decision memo and categorical exclusion are completely inappropriate for a proposal that violates a fundamental premise of Wilderness by authorizing the use of helicopters and motorized equipment, as well as the installation of structures, in designated wilderness.

Furthermore, the scoping letter lacks sufficient detail on which to judge the merits of this proposal. The amount of gravel and the number and length of the treated wood material to be hauled by helicopter isn't divulged in the scoping letter. The estimated number of flights is not divulged either.

Wilderness Watch appreciates the value of wilderness as a unique place where one can experience how nature functions when left alone. However, as the scoping letter states, the trail reconstruction project involves actions prohibited by Section 4(c) of the Wilderness Act—specifically, helicopter flights to haul treated lumber and crushed rock for trail reconstruction and bridge materials for the 30-foot Talapus Lake outlet. The proposal would also include the use of a motorized rock drill. It also appears the structures themselves—hundreds of feet of turnpikes, treated wood and crushed rock—may indeed be more than the minimum necessary for management of the area as Wilderness. The use of helicopters, a rock drill and possibly the overbuilding of structures in no way “honors the Wilderness character of the area.”

Wilderness is “in contrast with those areas where man and his own works dominate the landscape . . . the earth and its community of life are untrammled by man, where man himself is a visitor who does not remain.” 16 U.S.C. §1131(c). The Forest Service has described “wilderness character” as “the combination of biophysical, experiential, and symbolic ideals that distinguish wilderness from all other lands.” The Wilderness Act and the Forest Service’s implementing regulations are clear: helicopter flights and landings and a motorized rock drill constitute the use of a motorized intrusion that are harmful to wilderness character. Accordingly, the Wilderness Act prohibits the use of motorized equipment and transport, including helicopters and rock drills, in designated wilderness with only one exception: “except as necessary to meet minimum requirements for the administration of the area *for the purpose of this chapter*.” 16 U.S.C. § 1133(c) (emphasis added). Structures and installations are likewise prohibited, subject to the same, very narrow exception.

In the scoping letter, the Forest Service merely asserts that the project as proposed is needed without considering any alternatives. Unsupported statements like this fall far short of what the Wilderness Act requires, which is to demonstrate that the project as proposed is necessary to “preserv[e] the wilderness character of the area.” *Id.* § 1133(b). Unless the Forest Service can make and support this demonstration in its forthcoming analysis of the project, the project cannot proceed. *Id.* § 1133(c); *Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1040 (9th Cir. 2010) (setting aside the agency’s authorization of new structures built by motorized means in wilderness area pursuant to § 1133(c) because the agency failed rationally to demonstrate that structures would advance wilderness preservation and no less intrusive approach could achieve that goal).

Under the Wilderness Act, the Forest Service may approve the use of helicopters to carry materials for trail and bridge construction, to build the kind and extent of structures described, and to use a motorized rock drill only if it is necessary to preserve wilderness character, and there are no alternatives that would achieve that purpose with lesser impact. 16 U.S.C. § 1133(c); *Wilderness Watch*, 629 F.3d at 1036.

The Forest Service Manual (FSM 2320.6) 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.

Preserving wilderness character is paramount and more important than visitor activity (recreation). The term wilderness character appears three times in the Wilderness Act’s general provisions (and once in special 4d provisions). Its importance is evident to anyone familiar with the Wilderness.

Specifically regarding recreation, the Manual policy states (FSM 2323.12 part 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.

FSM 2323.13f allows the Forest Service to “[p]rovide or replace bridges only: 1. When no other route or crossing is reasonably available.” The scoping letter does not describe or discuss any alternatives to the proposed action. Manual direction also speaks to wilderness character in terms of challenge. FSM 2320.2 (part 4) notes:

Protect and perpetuate wilderness character and public values including, but not limited to, opportunities for scientific study, education, solitude, physical and mental challenge and stimulation, inspiration, and primitive recreation experiences.

The Wilderness Act contains a narrow exception to allow otherwise-prohibited activities—such as helicopter or motorized rock drill use or construction of structures—only where such activities are necessary to meet the minimum requirements for administration of an area for the purpose of the Wilderness Act. 16 U.S.C. § 1133(c). In other words, the exception applies only where the otherwise-prohibited activity will affirmatively advance the “‘preservation and protection’ of wilderness lands . . . in their natural, untrammled state.” *Wilderness Soc’y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1061 (9th Cir. 2003) (en banc) (quoting 16 U.S.C. § 1131(a)). The Wilderness Act charges “each agency administering any area designated as wilderness [with the responsibility of] preserving the wilderness character of the area.” 16 U.S.C. § 1133(b).

As the Ninth Circuit stated in *High Sierra v. Blackwell*:

The Wilderness Act twice states its overarching purpose. In Section 1131(a) the Act states, ‘and [wilderness areas] shall be administered for the use and enjoyment of the American people *in such a manner as will leave them unimpaired for the future use and enjoyment as wilderness, and so as to provide for the protection of those areas, the preservation of their wilderness character,*’ 16 U.S.C. § 1131(a) (emphasis added). Although the Act stresses the importance of the wilderness areas as places for the public to enjoy, it simultaneously restricts their use in any way that would impair their future *as wilderness*. This responsibility is reiterated in Section 1133(b), in which the administering agency is charged with preserving the wilderness character of the area.

High Sierra Hikers Ass’n v. Blackwell, 390 F.3d 630, 648 (9th Cir. 2004) (emphases in original); *see also id.* at 645 (citing 16 U.S.C. 1133(b)). The fact that actions which support recreational activities are valid in Wilderness does not excuse the Forest Service’s obligation to demonstrate that the project will advance “the purpose of” the Wilderness Act, 16 U.S.C. § 1133(c), which is to preserve designated wilderness in an untrammled state, *id.* § 1131(a), (c). Also see *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d at 647 (affirming that, under the Wilderness Act, the

Forest Service may not “elevate[] recreational activity over the long-term preservation of the wilderness character of the land”).

The obvious question is why can’t the trail work and bridge, assuming it is even necessary, be done without without the use of helicopters or motorized rock drills? “Helicopters carry ‘man

and his works' and so are antithetical to a wilderness experience. It would be a rare case where machinery as intrusive as a helicopter could pass the test of being 'necessary to meet minimum requirements for the administration of the area.'" *Wolf Recovery Found. v. U.S. Forest Serv.*, 692 F. Supp. 2d 1264, 1268 (D. Idaho 2010).

This question leads directly to the discussion of alternatives. Several options do come to mind that need to be thoroughly evaluated. Regarding helicopter use for the bridge, there are packable designs used in Region I that extend far beyond thirty feet 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 attached 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.

It is a mystery as to why a bridge with a span 4 times greater and built to support pack strings can be built in the Bob Marshall Wilderness with traditional skills, but helicopters and power tools are the minimum required for a footbridge built in the Alpine Lakes Wilderness. Furthermore, the scoping letter is unclear whether foot logs or steel I-beams would be flown in and it is also inconsistent as to whether native material is or isn't available (NOTE: This lack of clarity also raises the question of whether one or two bridges will be replaced). In any case, the distance is so short from the trailhead that it may be possible for the needed bridge materials to be carried on foot (perhaps by groups of volunteers) to the site.

In terms of helicopter use for puncheon material and crushed rock, it is hard to imagine that the puncheon material can't be packed in. It is also hard to imagine there isn't material onsite or, alternatively, why gravel is needed.

While we don't advocate the use of wheelbarrows in Wilderness, as they are mechanized transport, the Forest Service considers them to have less of an impact on Wilderness than helicopters and thus should be considered as an alternative.

In terms of motorized rock drills, why is this needed? What about using a hand held star drill? What about routing the trail around rocks?

We suggest you contact others within the agency who have experience with traditional skills and can help you design a project that is compatible with wilderness values. The Forest Service Missoula Technology and Development Center has a great deal of experience and expertise in addressing management challenges in Wilderness utilizing traditional skills. Has it been consulted on this project? It appears the Mt. Baker Snoqualmie National Forest team has simply defaulted to helicopters and other motorized equipment because it lacks the necessary wilderness skills or commitment to accomplishing projects the “wilderness way.”

It may be that a use is too great in the area and the solution is to reduce recreational use. These and other options need to be considered.

The Forest Service must also complete an appropriate National Environmental Policy Act (“NEPA”) analysis for the project addressing the above concerns and fully analyzing direct, indirect and cumulative impacts as well as a reasonable range of alternatives that may avoid or lessen adverse impacts. The Environmental Impact Statement is NEPA's core requirement. Environmental concerns must be “integrated into the very process of agency decisionmaking” and “interwoven into the fabric of agency planning.” *Andrus v. Sierra Club*, 442 U.S. 347, 350-351 (1979). NEPA directs federal agencies to prepare a detailed Environmental Impact Statement (“EIS”) for federal actions that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). The phrase “human environment” is “interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” 40 C.F.R. § 1508.14. The reason for an EIS is two-fold: 1) to ensure that the agency will have available and will carefully consider detailed information on significant environmental impacts when it makes decisions, and 2) to “guarantee that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.” *Robertson v. Methow Valley Citizens*, 490 U.S. 332, 349 (1989); 40 C.F.S. § 1501.2(b).

Pursuant to NEPA’s implementing regulations, to determine whether an EIS is required, federal agencies may first prepare a less detailed environmental assessment. See 40 C.F.R. § 1501.4. An environmental assessment should consider several factors to determine if an action will significantly affect the environment, a circumstance that would mandate the preparation of an EIS. If the agency concludes the action will not significantly affect the environment, it must issue a “Finding of no Significant Impact” to justify its decision not to prepare an EIS. 40 C.F.R. § 1508.13. The Finding of No Significant Impact must provide a convincing statement of reasons why the action will not have a significant effect on the environment. *Id.* It is only when the proposed action will not have a significant effect on the environment that an EIS is not required. 40 C.F.R. § 1508.13. “[I]f substantial questions are raised regarding whether the proposed action may have a significant effect upon the human environment, a decision not to prepare an EIS is unreasonable.” *Save the Yaak Committee v. Block*, 840 F.2d 714, 717 (9th Cir.1998).

We raise these above issues for important reasons. The Forest Service intends to do a CE on this project. Approving a prohibited action in Wilderness with a CE violates NEPA and the agency’s own CE regulations. NEPA regulations allow agencies to categorically exclude actions from environmental review only if they “do not individually or cumulatively have a significant impact on the human environment and [if they] have been found to have no such effect in procedures adopted by a Federal agency in implementation of those regulations.” 40 C.F.R. § 1508.4.

Neither the Counsel on Environmental Quality's nor the U.S. Department of Agriculture's NEPA regulations categorically exclude from NEPA review installation of structures in wilderness or use of helicopters or motorized tools in wilderness. Even if a proposed action falls within a category of actions that is categorically excluded from NEPA review, NEPA regulations require environmental review if "extraordinary circumstances" exist. 36 C.F.R. § 220.6. Extraordinary circumstances may include, among other things, actions that have significant impacts on wilderness; actions that have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of resources; actions that establish a precedent for future action or represent a decision in principle about future actions; actions that have a direct relationship with other actions with individually insignificant but cumulatively significant environmental effects; and actions that threaten a violation of Federal law imposed for the protection of the environment. 36 C.F.R. § 220.6(b); 40 C.F.R. § 1508.27. All of these things are present in this proposal. Further, the Forest Service's own management direction does not allow for categorical exclusions of actions in wilderness – particularly where the action involves the authorization of multiple prohibited uses. *See High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 641 (9th Cir. 2004) (noting that the Forest Service's own regulations do not permit the categorical exclusion of activities in wilderness areas. Forest Service Handbook 1909.15, 30.3(1)(a)-(b)).

Simply put, the use of motorized equipment, including helicopters, and even the construction of new trail structures has a negative impact on the Wilderness. If the trail were to be maintained or reconstructed with traditional skills appropriate for Wilderness and the infrastructure similar to what currently exists, then a CE might be appropriate. In this case Wilderness is one of the extraordinary circumstances that triggers a more detailed analysis under NEPA precisely because prohibited methods and activities are proposed. (See 36 C.F.R. § 220.6)

Furthermore, the short public comment on this proposal does not give the public adequate time to go and visit the site to determine whether what is proposal is truly the minimum necessary. Again, we request that an EA be done and adequate time during the snow-free season for the public to visit the site before comments are due.

Another issue that needs to be addressed is whether or how this proposal meets direction in the Forest Plan and the Wilderness Management Plan.

Please keep us updated on this proposal. Finally, we request a field trip with agency personnel to the site before a decision is made and before final public comments are due. We believe it would greatly aid the agency in its deliberations on this proposal.

Sincerely,



Gary Macfarlane
Board Member

cc: Dana Johnson, Wilderness Watch Staff Attorney

Wilderness Watch Comments