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March 15, 2016

Emily Simpson
Wilderness Planner
Bureau of Land Management
HC33 Box 33500
Ely, NV 89301-9408

Dear Ms. Simpson:

Wilderness Watch provides these comments on the Environmental Assessment (EA) for Maintenance of Range Developments within Ely District Wilderness. Wilderness Watch is a national nonprofit wilderness conservation organization dedicated to the protection and proper administration of the National Wilderness Preservation System.

We are concerned that the only notification we received was a card telling us the comment period had been extended to March 15. Please make sure we receive notification of this project in the future.

Introduction/Scope

Since this is supposedly a programmatic EA, we have some concerns that need to be addressed. Site-specific EAs or EISs must be done for each activity that proposes to use prohibited actions in these Wildernesses, as per BLM direction in the Manual and Handbook. This programmatic look at prohibited authorizations seems to violate that direction. Further, the public won't have the opportunity to comment on the site-specific proposals for use of motorized equipment or other prohibited methods when the minimum requirements analysis (MRA) is done through preparation of the minimum requirements decision guide. This appears to be a way to evade BLM direction, public accountability and the requirements of the Wilderness Act.

It is indeed puzzling the BLM is doing this extra EA when requires for motorized use or other prohibited actions would not be common, as the grazing guidelines indicate. Rather, there should be a site-specific analysis for each proposal, given they would only be occasional in occurrence. We discuss these issues further in the section below.

Wilderness Act/NEPA

The Wilderness Act created a National Wilderness Preservation System. Wilderness areas must be administered in a manner that will leave them "unimpaired for future

use and enjoyment as wilderness,” and that will provide for “the protection of these areas” and “the preservation of their wilderness character.” The definition of “wilderness” is an area where the community of life is “untrammeled” by man and the land retains its primeval character and influence, and which is “protected and managed so as to preserve its natural conditions.”

Agencies administering wilderness are “responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established *as also to preserve its wilderness character.*” (emphasis added). Section 4(c) of the Wilderness Act prohibits uses of wilderness that are not consistent with this mandate, and specifically provides that temporary roads, structures and installations, motor vehicles, motorized equipment, landing of aircraft, and other forms of mechanical transport are prohibited in designated wilderness with one exception: where “necessary to meet the minimum requirements for administration of the area for the purpose of [the Wilderness] Act.” Commercial enterprises and permanent roads are prohibited with only two exceptions: unless specifically provided for in the Wilderness Act or subject to prior existing rights.¹

The EA, however, turns the Wilderness Act on its head regarding impacts to Wilderness. It ignores the prohibitions in the Wilderness Act cited above and suggests motorized use would have the same (or in some cases) lesser impacts on Wilderness than non-motorized use. This point is reinforced by the analysis of wildlife impacts. The EA notes:

An unlimited number of trips would be allowed for non-motorized maintenance activities. Using non-motorized methods for maintenance of range developments could result in longer durations of disturbance to wildlife species.

The problem with that analysis is that permittee non-motorized/non-mechanized trips are not restricted in the Wilderness now. Indeed, permittees are encouraged by BLM to be where their livestock are grazing to ensure proper distribution and utilization. As such, the EA’s analysis is flawed and biased.

As the EA notes, with respect to livestock grazing, the various legislation establishing the Wildernesses in the Ely District provided that ongoing grazing shall be allowed to continue, subject to necessary reasonable regulations and the grazing guidelines described in Appendix A of House Report 101-405.

While BLM may grant exceptions to the prohibited activities and uses in accordance with Section 4(d) of the Wilderness Act and Appendix A of House Report 101-405, BLM’s Manual clearly notes that NEPA analysis is required for these activities (BLM Manual 6340 1.6D3 and 4):

3. NEPA Compliance

In conformance with BLM Handbook H-1790-1, Appendix 5, if any of the “extraordinary circumstances” are applicable to the action being considered, either an EA or an EIS must be prepared for the action. Among these “extraordinary circumstances” are actions that

¹ We address the issue of permanent roads later in this comment.

may “have significant impacts on...wilderness areas.” The BLM interprets this language to mean that a categorical exclusion cannot be used to approve any action in a wilderness that would authorize a use listed in 1.6.B.2 of this manual: any commercial enterprise or service; any permanent or temporary road; the use of any motor vehicle, motorized equipment, or motorboat; the landing of any aircraft or the picking up or dropping off of people or material from an aircraft; the use of any other form of mechanical transport; the building or placement of any structure or installation. In addition, a categorical exclusion cannot be used to approve any action in a wilderness that may have a significant impact to wilderness character.

Further, the following section, 4. Public Notification (BLM Manual 6340 1.6D4) states the agency, “must provide public notice of proposed actions within wilderness areas.” ... “Any substantive comments from the public (e.g. NEPA scoping comments), solicited or not, should be considered during the NEPA process.” ... Even more important, “The notice should include enough information for the recipient to understand the purpose, location, nature, size, and expected implementation date of the proposed action.”

Thus, this EA can't function as the NEPA analysis for site-specific proposals. Specifics such as the “location, nature, size, and expected implementation date of” site-specific projects are not provided. For example we don't know when or how many times BLM will authorize, via various MRAs, various activities that would be covered under this proposal. The EA does not contain the kind of site-specific information about the existing developments, which would answer questions such as the frequency of the required maintenance. For example, the EA doesn't report the condition or kind of fences (such metal posts or wooden posts), the condition of pipes and whether they need to be annually blown out with a motorized compressor (or whether that could be done out of Wilderness as some pipelines cross Wilderness boundaries), and the degree to which various range structures may be failing or may fail in the near future.²

The EA apparently complains about these reasonable requirements:

The No Action Alternative is the continuation of current management. In this case, each request for motorized or mechanized vehicle or equipment uses for maintenance of existing range developments would require a site-specific NEPA analysis, MRA and letter of authorization. This would dramatically delay the permittee's ability to maintain existing range developments, particularly those instances when motorized/mechanized vehicles or equipment are determined to be the minimum necessary for the maintenance activity.

While the scoping letter clearly notes “In most situations, authorization for motorized use would be considered on a case-by-case basis,” it should logically follow this requires the preparation of site-specific analysis as per BLM direction noted above. Yet this EA in the paragraph above suggests otherwise. This statement leads one to believe that most requests for motorized use would be pre-approved by the decision accompanying this EA.

² Furthermore, the EA does not discuss how pipelines were cleaned prior to the common availability of motorized compressors.

Furthermore, the separation in time of the MRAs, to be prepared for each separate request, and this EA, which is in reality a programmatic document masquerading as a site-specific analysis, clearly violates BLM's direction. Compliance with this direction necessitates both a site-specific and case-by-case analysis under NEPA for each request (emergencies excepted), which is the sole mechanism to involve the public, and the preparation of an MRA. Simply put, contrary to The Ely District's complaint, BLM regulations clearly envision that each MRA would accompany a separate NEPA document. Case-by-case NEPA analyses are needed to address each unique set of circumstances.

Thus, the EA is a direct conflict with the grazing guidelines. The guidelines envisioned motorized use that was truly the minimum necessary and only on an occasional basis. The EA apparently contemplates numerous requests for motorized use, because it expects an untimely response to each request. Occasional requests for motorized use should not "dramatically delay" maintenance of existing facilities.

Indeed, the EA's analysis is confused. Impacts from motorized use on Wilderness are downplayed because the EA states there will be a "low frequency of motorized use in the wilderness." However, the EA leads one to believe that a timely response to a request can't be made. There are only three logical reasons responses would not be timely. First, it is an emergency, which is outside the bounds of this EA and emergencies are addressed in the grazing guidelines. Second, there are too many requests for motorized use so they are more than occasional, meaning BLM can't respond to them in a timely manner. Third, BLM believes that the permittees are so negligent that range structures are not properly maintained.

For example, the EA alleges:

Under the motorized proposed action, it is possible to have a more rapid response to issues regarding range developments that are failing or have failed. Any additional disturbance caused by the use of motorized vehicles in wilderness would be outweighed by benefits realized from the timely maintenance of range developments. The motorized alternative would facilitate better livestock management and better allow operators to implement best management practices in their operations.

Again, the failing or failed range structures would be the result of lack of proper maintenance. Even the EA suggests most maintenance can easily be done by non-motorized means. Does the BLM believe that the permittees on the Ely District don't properly maintain range structures and allow them to deteriorate to the point of failure or are so disorganized that they don't request from BLM permission to conduct any needed maintenance involving motorized use without adequate lead time to do a proper NEPA analysis and involve the public?

The EA suggests that permanent roads would be established for grazing purposes. That is contrary to the Wilderness Act. For example:

Access route maintenance may use hand tools (shovel, hand saw) for minor repair needs, when approved in association with other maintenance requests. The use of heavy

equipment for major access route developments would be considered on a case-by-case basis with site-specific NEPA analysis.

Here the EA recognizes continual maintenance of access routes (roads) by either hand means or motorized means. By any definition, that maintenance would be on a permanent road because the access routes are not trails, but are maintained for passage of motor vehicles.

The EA offers no analysis of the frequency of permittee requests for motorized use in Wilderness, the condition of range improvements, or the need for motorized use on any specific activity. All we are told is that fence repair over ½ mile in length is too long to do with non-motorized means or that pipelines may need annual cleaning by motorized compressors. Similarly, there is no monitoring that addresses the need for the grazing structures, current need for maintenance on those grazing structures, and need for any motorized or mechanized tool use. Again, the EA should have been informed by the history of the allotment, monitoring data, permit administration and the like.

Conclusion

The EA provides too little information on which to provide site-specific comments, as it is not a site-specific document. BLM needs to adopt the no-action alternative and proceed with requests for motorized use on a case-by-case NEPA and MRA analysis, as the regulation require.

Please keep us updated on this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Macfarlane". The signature is fluid and cursive, written over a light blue horizontal line.

Gary Macfarlane
Board Member