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August 26, 2016

Kathy Mitchell
Mt. Hood National Forest
16400 Champion Way
Sandy, OR 97055

Sent via: comments-pacificnorthwest-mthood@fs.fed.us

Dear Ms. Mitchell,

The following comments come from Wilderness Watch on the USGS Volcanic Monitoring Stations in Mt. Hood Wilderness Preliminary Assessment ("Preliminary Assessment"). Wilderness Watch is a national wilderness conservation organization focused on the protection of all the Wildernesses in the National Wilderness Preservation System, including the Mt. Hood Wilderness.

As we understand the proposal, the United States Geological Survey (USGS) proposes to build four new permanent volcano monitoring stations on the flanks of Mt. Hood within the Mt. Hood Wilderness. These four new stations would be in addition to the 10 existing monitoring stations on or near Mt. Hood on the Mt. Hood National Forest. These stations would be permanent structures and installations that would require an unlimited number of helicopter flights and landings to install the stations and service the stations for at least 30 years and probably long after that into the future.

We have grave concerns that the proposed project as described in the Preliminary Assessment significantly violates the 1964 Wilderness Act, 16 U.S.C. 1131-1136.

Quoting Section 4(b) of the Wilderness Act, the Preliminary Assessment concludes that the project is lawful because it "meets this goal of the Wilderness Act as a scientific research project." However, as discussed below, this statement ignores that Section 4(b) allows scientific research and other public uses only insofar as they preserve wilderness character. This statement also ignores Section 4(c) of the Wilderness Act, which expressly prohibits structures, installations, and motorized uses absent this very narrow exception. The Forest Service has not shown that this project meets these very narrow exceptions, and thus the proposed project violates the

Wilderness Act. We strongly urge the Forest Service and USGS to properly analyze the impacts to Wilderness in the next stage of environmental review, and to develop alternatives to the proposed project that don't violate the Wilderness Act.

Our more detailed comments follow:

1. The one, singular purpose of the 1964 Wilderness Act is to preserve wilderness character. Section 2(a) of the Wilderness Act states in part:

...and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character....

Similarly, Section 4(b) of the Wilderness Act states:

Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be 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.

The U.S. federal courts have confirmed that the single overarching purpose of the Wilderness Act is to preserve wilderness character.

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 future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character." 16 U.S.C. § 1131(a) (emphasis added). Although the Act stresses the importance of wilderness areas as places for the public to enjoy, it simultaneously restricts their use in any way that would impair their future use as wilderness. This responsibility is reiterated in Section 1133(b), in which the administering agency is charged with preserving the wilderness character of the wilderness area.

High Sierra Hikers Ass'n v. Blackwell, 390 F.3d 630

The Preliminary Assessment fails to analyze how the monitoring project will help preserve wilderness character, even if the monitoring might produce interesting information. Similarly, the Preliminary Assessment does not analyze why the existing 10 monitoring stations on or near Mount Hood cannot provide adequate information to the Forest Service and USGS.

2. The so-called "public purposes" in the Wilderness Act can only be done in Wilderness if they are compatible with the preservation of wilderness character.

Wilderness areas are devoted to various public purposes, including recreational,

scientific, and historical use, “[e]xcept as otherwise provided in [the Wilderness Act]” and subject to the overarching mandate to preserve wilderness character. (Wilderness Act, sec. 4[b].) In accordance with this mandate, the Wilderness Act specifically prohibits structures and motorized uses within Wilderness unless “specifically provided for” by the Act or unless “necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act].” (Wilderness Act, sec. 4([c].)

The Wilderness Act’s reference to “scientific use” does not eliminate the Act’s specific prohibition on man-made structures, motorized uses, or aircraft landings. The proposed project would allow all three of these things, and each one of them would violate the Wilderness Act.

3. The Preliminary Assessment improperly gives all scientific research projects a free pass, regardless of whether these projects degrade wilderness character.

The Preliminary Assessment, page 5, states: “Section 4(b) states that ‘wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.’ This project meets the goal of the Wilderness Act as a scientific research project.” Similarly, the Preliminary Assessment, page 19, states: “As discussed in section 1-5, this project meets the goals of the Wilderness Act as a scientific research project.” Again, on page 35, the Preliminary Assessment states: “The proposal meets the intent of the Wilderness Act as a scientific research project. Research and monitoring data are needed in this case because it is important to have monitoring instrumentation in place before the start of volcanic unrest.”

As noted above, this is an entirely improper reading of the Wilderness Act. Such a blithe abdication of the Forest Service’s responsibilities to preserve the wilderness character of the Mount Hood Wilderness would seemingly allow any and all damage to the wilderness character of the Mount Hood Wilderness if a hypothetical project was connected to a scientific purpose. Would the Forest Service similarly allow driving a bulldozer to build a dam within the Wilderness if such an activity was connected with some science project? Would the Forest Service allow the excavation of the peak of Mount Hood in order to better measure the underlying volcanic and seismic activity? The Preliminary Assessment contains no analysis of how the “research and monitoring data” is necessary for preserving the wilderness character of the Mount Hood Wilderness. The research and monitoring data might be interesting, but the data won’t help the Forest Service in preserving wilderness character. The Forest Service simply cannot abdicate or ignore its responsibilities under the Wilderness Act to preserve wilderness character simply because this project is for scientific research.

Congress was unequivocal in expressing the administering agency’s sole mandate: “[E]ach agency administering any area designated as wilderness shall be 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.” 16 U.S.C. § 1133(b). Thus, if the Forest Service wishes to approve a scientific

research project that includes uses found by statute to degrade wilderness character (e.g. structures, installations, helicopter use, motorized use), the Forest Service is obliged to demonstrate that the action meets the narrow exception in Section 4(c) of the Act. It cannot simply ignore the Act's prohibitions by claiming a broad safe-harbor under the umbrella of scientific research. Such a position would render the rest of the Act meaningless.

4. The Wilderness Act prohibits permanent structures and installations, and the landings of helicopters and other aircraft. Structures, installations, and helicopter flights and landings degrade wilderness character, and the proposed project envisions use of all of these prohibited items and actions. Both helicopter landings and the placement of installations in the Wilderness are prohibited under the Wilderness Act “except as necessary to meet minimum requirements for the administration of the area” *as wilderness*. 16 U.S.C. § 1133(c); *see also* 36 C.F.R. § 261.18(c) (Forest Service regulations prohibiting “Landing of aircraft, or dropping or picking up of any material, supplies, or person by means of aircraft, including a helicopter” in National Forest Wilderness); 36 C.F.R. § 293.6 (prohibiting “mechanical transport”; “landing of aircraft”; and “dropping of materials, supplies, or persons from aircraft” in wilderness except as provided by Wilderness Act).

The only exception to these prohibitions is if they are “necessary to meet minimum requirements for the administration of the area” as Wilderness. The structures and motorized uses are not necessary to meet minimum requirements for the administration of the Mount Hood Wilderness, and the Forest Service has provided no reasoned explanation to the contrary.

To invoke the exception in Section 4(c) of the Wilderness Act, the Forest Service “must make a reasoned finding of necessity.” *Wilderness Watch v. Iwamoto*, 853 F.Supp.2d at 1075. “A ‘generic finding of necessity does not suffice.’” *Id.* The first step in the necessity analysis is determining that “the proposed management action is appropriate or necessary for administration of the area as wilderness and does not cause significant impact to wilderness resources and character, in accordance with the Wilderness Act.” AR-1522.

The Forest Service has not made the proper necessity determination for the proposed project, and therefore the project cannot proceed under the Wilderness Act.

5. The Preliminary Assessment admits that the project will damage wilderness character. On pages 34-35 of the Preliminary Assessment, the Forest Service admits that the proposed project will degrade the wilderness character of the Mount Hood Wilderness and it fails to reconcile this fact with the mandates of the Wilderness Act. The overarching purpose of the Wilderness Act is wilderness preservation—not scientific research. Scientific research is certainly contemplated as a public use, but only so long as it preserves wilderness character. That a project’s purpose is scientific in nature does not alleviate the Forest Service of its burden to administer the Wilderness for scientific and other uses in a manner that preserves wilderness character.

Though Wilderness Watch does not support the so-called four aspects of wilderness

character framework, since it improperly diminishes the role of wildness (untrammelled) as the central importance in wilderness character, nonetheless the Forest Service's analysis shows that the proposed project will harm all four aspects.

Untrammelled: "Installing monitoring sites within the Mt. Hood Wilderness would impact the untrammelled nature of the specific sites, as installation would be an intentional action."

Natural: "There would be a limited, site-specific impact to the natural characteristics at each site."

Undeveloped: "The installations would be a permanent development on 105 square feet of the Mt. Hood Wilderness, which is in conflict with the undeveloped character of wilderness."

Solitude or Primitive and Unconfined Recreation: "The presence of the monitoring stations would compromise the primitive nature of wilderness."

Yet despite the proposed degradation of wilderness character that the project would impose, the Forest Service seems intent on pushing ahead with this ill-advised project simply because it is a scientific research project:

Other Features of Value: "The proposal meets the intent of the Wilderness Act as a scientific research project." (Preliminary Assessment, p. 35.)

6. The proposed project does not fall under the "fire, insects, or disease" language of the Wilderness Act.

The Preliminary Assessment (p. 19) makes the claim:

Section 4(d)(1) of the Act includes special provision where "such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable." While these special provisions are not specific to volcanic eruptions, the Act contemplated natural events occurring within the area that could have detrimental effects on life or property outside the wilderness boundary and authorized the necessary measures for their control.

The proposed project for volcanic monitoring stations is not for fire, not for insects, and not for disease. The Forest Service cannot claim that Section 4(d)(1) authorizes this project. The plain meaning of the statute is clear here.

7. The range of alternatives is deficient. The Preliminary Assessment contains only two alternatives: a No-Action Alternative and the Proposed Action Alternative. This range of alternatives is deficient under the National Environmental Policy Act, 42 U.S.C. 4321. Federal agencies have a duty to "[r]igorously explore and objectively evaluate all reasonable alternatives" to its proposed action that would minimize adverse

environmental impacts. *Alaska Conservation Council v. Fed. Highway Admin.*, 649 F.3d 1050, 1056 (9th Cir. 2011).

Further, the range of alternatives offered in the Preliminary Assessment does not satisfy the agency's burden to demonstrate that the action is the minimum necessary under the Wilderness Act. Because of the Wilderness Act's strong prohibition on structures, installations, and motorized and helicopter use, the agencies have the burden to demonstrate each authorization of a prohibited use is the minimum necessary to administer the area as wilderness. In other words, the agencies must demonstrate that there are no alternatives available that can achieve the agencies' goals without resorting to prohibited uses. See *Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1039 (9th Cir. 2010).

The Forest Service and USGS should develop and analyze alternatives that don't rely on permanent structures and installations, motorized uses, and helicopter landings as part of the environmental review process. In other words, the agencies should develop and seriously consider alternatives that don't violate the Wilderness Act.

As examples, the Forest Service should consider and analyze an alternative that would place new monitoring stations outside of designated Wilderness, even if those stations might not provide as much data as the ones proposed. The agency should analyze an alternative that utilizes temporary instrumentation and not permanent structures as proposed, even if that might mean not as much data might be collected. And finally, the Forest Service should develop and analyze an alternative that does not require helicopter landings to install or service the instrumentation, but can rather be installed and serviced by foot or by packstock.

Please keep Wilderness Watch informed of next steps in this process.

Sincerely,

A handwritten signature in dark ink that reads "Kevin Proescholdt". The signature is written in a cursive, flowing style.

Kevin Proescholdt
Conservation Director