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## Wilderness Watch Comments

on

### “Supplement to Minimum Requirements Analysis/Decision Guide (MRA/MRDG): Evaluating Proposals for Ecological Intervention in Wilderness” -- June 2016 Draft

by

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September 15, 2016

### General Comments

• **The Wilderness Act does not generally allow for interventions in Wilderness.** Rather, the opposite is called for: the Wilderness Act calls for restraint and humility in how we deal with Wilderness and directs us to leave Wilderness unmanipulated and untrammelled.

This draft intervention framework seems intended to provide some constraints on ecological manipulation in Wilderness, and that is positive. However, we seriously question whether there is any statutory authority to engage in ecological intervention. Rather, we see it at cross-purposes with Wilderness and the Wilderness Act.

• **Ecological interventions in Wilderness due to climate change will degrade wilderness character just like other interventions do.** For example, many proposed ecological intervention proposals seem to be the result of world-wide changes to ecological systems as a result of human-caused climate change. For better or worse, we expect those to increase. Specific interventions in Wilderness to address climate change are unlikely to alter the trajectory of the changing climate. Other proposals include large-scale manipulation of vegetation, not necessarily the result of climate change. Our comments aren't directed at minor actions such as recovering a degraded campsite or removal of a structure, like a fence, which may aid the unfettered movement of wildlife. Though these may be of ecological benefit, they do not seem to fit the definition of ecological intervention addressed in the Supplement. Still, we need to remember that interventions in Wilderness—even if for seemingly “good” purposes such as dealing with climate change—will degrade wilderness character just as other significant interventions do.

• **The framework for the so-called five qualities of wilderness character found in Keeping It Wild 2 and used in the MRDG process is flawed and improperly diminishes the central importance of wildness in wilderness**

**character.** Some underlying assumptions need to be explored before approving a framework to evaluate proposed ecological intervention in Wilderness. Some of these relate to how (or whether) one should view the various wilderness qualities—the agencies have selected five, as per wilderness character monitoring protocol—which are used in the decision tree in the Minimum Requirements Decision Guide/Minimum Requirements Analysis (MRDG) process. Pertinent questions include:

- Are these the correct qualities to monitor and should they be used to make decisions about wilderness administration?
- Are they all of equal value in making decisions?
- Should they be defined as being in harmony rather in conflict with each other?

This last question is particularly important as the implicit assumption in the monitoring protocol and the MRDG process is that naturalness is often in conflict with the untrammelled quality of Wilderness. We present a different view of the Wilderness Act. Rather than repeat our arguments here, we are attaching a critique of the KIW2 definition of wilderness character and its weighing of the five qualities used to define it (see Attachment 1).

Our concerns with KIW2 aside, we believe the Supplement would benefit from including the direction put forth in the Pinchot Institute’s report commissioned by the four wilderness-administering agencies:

*“Protection of the natural wild, where nature is not controlled, is critical in ensuring that a place is wilderness.... Since wild is a fundamental characteristic of wilderness that is not attainable elsewhere, if there is a choice between emphasizing naturalness and wildness, stewards should err on the side of wildness.”*

Further, we think it important to make a pertinent distinction between untrammelled and wild as they relate to the Supplement and MRDG process. Both terms certainly define wilderness character, but in the context of weighing decisions to consider ecological interventions they are not entirely synonymous. Wild is a condition on the landscape—nature exercising its free will—while untrammelled speaks also to a human choice not to trammel—to let nature be. It is the embodiment of human restraint. Thus a decision to trammel has permanent impacts; it can’t be undone.<sup>1</sup> Once the action occurs it last forever.

The difference in how we view those two concepts in Wilderness is significant because managers will often claim impacts to “untrammelled” are temporary, while impacts to “natural” are long-lasting and, therefore, of greater significance. This inevitably results in “benefits” to natural outweighing “costs” to untrammelled.

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<sup>1</sup> An analogy might be you can’t un-hit someone, even though the process of healing will eventually eliminate the bruise.

The issue of necessity is a key question that needs to be further examined. If natural and untrammled are of equal importance, ecological intervention that would arguably benefit naturalness would automatically detract from untrammled Wilderness. It would seem, therefore, that ecological intervention can't be considered necessary. At best, it is a wash. We further address the concern of whether the MRDG process could even be used in determining necessity in the following paragraphs.

• **The MRDG process was not designed to analyze ecological intervention in Wilderness.**

Rather, its purpose was to analyze whether the narrow exceptions to the prohibitions in section 4(c) of the Wilderness Act could be used in administering Wilderness. In other words, the MRDG process applies to agency actions that propose the use of motorized equipment, motorized/mechanized transport, construction of structures, or other prohibited actions listed in section 4(c) of the Wilderness Act for the sole purpose of wilderness administration. Even if ecological intervention were appropriate, the MRDG process seems to be a poor tool to make those determinations. This Supplement itself tacitly admits as much, "This supplement is needed because ecological intervention proposals commonly entail complex legal, scientific, and ethical questions that may be beyond the realm of a typical MRA or MRDG."

For example, the current structure of the MRDG process will inevitably result in wilderness losing out to naturalness because step one determines if the action is necessary without weighing the wilderness qualities against each other. As such, untrammled Wilderness doesn't come into play until after an action has been deemed "necessary." Only in the second step does the weighing of the five "qualities" of wilderness character come into the analysis for purposes of determining the least harmful way to do the project. Since untrammled is relegated to 1/5<sup>th</sup> of wilderness character in the MRDG process, the inevitable result, though not likely the intent, will be to minimize the untrammled quality in the National Wilderness Preservation System. While the Supplement is largely directed at step one (see parts A, B and C) and might help deter some intervention, it is an add-on that doesn't fit well in the current structure of the MRDG process. Further it won't solve the overarching question of whether ecological intervention is appropriate in Wilderness. Besides, inaction won't likely be considered a realistic alternative, otherwise why would an agency manager go through the MRDG process in the first place?

In sum, even if the MRDG process were the proper tool to evaluate that which the Act does not contemplate—ecological manipulation—can the MRDG process actually facilitate a manager in making a finding of necessity given the current MRDG structure? Even if this Supplement would effectively alter the MRDG process to include a weighing of untrammled versus naturalness in step one, can there be a clear showing of necessity in light of the fact the two qualities apparently cancel each other out? Further, does the Supplement's checklist format truly facilitate a wilderness administrator in making such a decision?

It is our experience that the wilderness character monitoring protocol (and its definitions) and the MRDG process lead agency managers to conclude there is an ever-increasing need to manipulate. Wilderness character monitoring documents changes (such as weeds, climate change, fire and fire suppression) and subsequent agency proposals analyzed through the MRDG process inevitably result in actions that are deemed essential to preserve wilderness character. While we would hope the Supplement mitigates some of this concern, we feel much more public discussion about the issues and questions above—regarding necessity, whether ecological

manipulation is even appropriate, how wilderness character is defined in the MRDG and other structural concerns with the MRDG process—should occur before addressing ecological manipulation in Wilderness.

• **The Supplement repeatedly asks wilderness managers to make judgments or answer questions that are well beyond their expertise and in most cases beyond the expertise of the world’s greatest experts.** Question A2, for example, asks “Does the proposal describe how the ecological intervention will provide long-term adaptation or mitigation to the effects of climate change?” Even Dr. E.O. Wilson would have a problem answering this question. Similarly, though most wilderness managers are NOT attorneys, question C3 asks, “Does the proposal describe if potential legal and administrative conflicts and uncertainties have been resolved?” Most wilderness managers don’t have the expertise to review federal case law from all over the country to answer this question.

### **Specific Comments**

The first question for sections A, B and C asks, “*Does the proposal contain essential information for evaluating the MRA/MRDG Step 1 question “Is Action Necessary?”*” Each of the major Sections, A, B and C are addressed separately below.

#### **“A. Is there an ecological issue or degradation that is prompting the proposed ecological intervention?”**

Even if intervention were legitimate in Wilderness, the real question is how can ecological degradation (much of which may be perceived rather than real) be prevented short of intervention? The Supplement assumes the status quo where wilderness administrators take no concrete action on human uses (mainly recreational) rather than intervening in Wilderness. For example, weed spread is mainly a function of viewing trail systems from a recreation lens rather than a wilderness one. Rather than prevent spread through requiring that all stock be quarantined before entry into Wilderness, keeping trail treads smaller and less inviting for weeds, regulating use during periods where weed seed is most early transported, or inspecting gear entering wilderness, the only action taken by agencies has been herbicides or some manual control. Rather than a policy to allow ecological intervention, even with constraints, there should be policies for managing recreation use that prevent ecological degradation. That does not occur because the goal of agencies is to maximize visitor numbers because funding is largely predicated on such measures. At the very least consider asking:

- What measures in visitor use, including restricting visitor use and/or its impacts, have been done?
- What changes in agency administration have been undertaken to deal with preventing the ecological degradation?

- What triggering mechanisms in plans and/or site-specific decisions have been made to prevent ecological degradation?

If the answer to these has been few or none, then the intervention must not occur.

A separate question under this category asks about historic information concerning ecological degradation. Historic context is not enough. Rather, an assessment of whether non-intervention management actions have been taken on a broad scale should be addressed, and if not why not. Too often Wilderness is treated in a recreation or human-centric manner, so there is an unwillingness to implement measures that impede our use, so the fallback position is to manipulate wilderness conditions. Weeds and their control is one example where this situation routinely plays out. The unintended consequences from that policy contribute to the perceived need to engage in ecological manipulation.

The point that addresses “current information about the ecological degradation, especially the known or potential ecological threats and risks” fails to recognize that risks are highly speculative. Virtually no manager is in a position to judge those risks. Anything could be justified under this broad loophole.

Regarding historic conditions, they are point-in-time determinations. Wilderness is about process. Facilitating adaptation to a new condition is so speculative it can’t be done accurately even by the world’s leading ecologists. The only logical approach is to let natural processes determine the new condition.

Regarding adaptation to climate change, Wilderness provides the one place where we can study the effects of climate change without human intervention. Climate change should never be considered as a justification for intervention in Wilderness. In fact, the Supplement has a later point for consideration that addresses the issue, “Given the scientific value of wilderness as an untrammelled baseline, intervention actions will diminish the potential for future wilderness research.” We concur and that is reason enough alone to cast doubt on any ecological intervention in Wilderness.

Irreversible loss, thresholds, and ecosystem shifts are highly speculative and virtually untestable in any meaningful way that would apply to wilderness administration. Historical range of variability is an outdated concept in an era of climate change. Wilderness is not a static museum. It will change; it should change.

Question 3 asks, “Does the proposal describe why action is more important than inaction to preserve wilderness character?” The way the MRDG is structured, step one cannot be conflated with step two, yet that is what this question asks the managers to do. Step two is where the qualities of wilderness character are analyzed. For this to occur, the MRDG/MRA process would have to be scrapped and replaced with something new.

Question 4, in effect, sets up naturalness in conflict with wildness. That is the wrong approach. Naturalness flows from wildness, is a function of wildness, is whatever wildness brings.

Question 5 and the underlying considerations are things the MRDG process is not designed to do. Also, virtually no manager can address these points, especially, “Whether this type of intervention has been successful elsewhere, and if so, whether these results apply to this proposal.”

**“B. Does the proposed intervention need to occur here and now?”**

Section 2 asks whether the intervention will set a national precedent in wilderness and includes two considerations to answer the query: has the action occurred heretofore in any other wilderness, or is it experimental. We believe the issue of precedent should be reframed.

The dictionary defines precedent in two ways: as something that has been done *prior in time* and as something that *may serve to authorize or justify further acts of the same or similar kind*. The Supplement approaches the question using the first definition—has it been done before—but the later definition is more appropriate for protecting wilderness from excessive and unwarranted interventions.

The unfortunate reality is it would be hard to find an action that is entirely precedent-setting using the first definition. With 750+ wilderness in the system administered by thousands of managers over the past 50 years you can bet almost any kind of ecological intervention has been tried at least once. Often it occurred without NEPA or public involvement or any consideration of the fact that the action was to take place in Wilderness. Those kinds of actions shouldn’t be used to justify future interventions, which is what answering “no” to the question in the supplement would lean toward.

What seems far more important and appropriate for weighing a decision about precedent is whether the proposed action will *serve to authorize or justify further acts of the same or similar kind*. If a proposed intervention is likely to lead to further interventions it is a much more serious concern than whether a manager, rightly or wrongly, has taken similar actions in the past.

**“C. What are the legal and administrative considerations that apply to the proposed intervention?”**

This section, discussing criteria for determining necessity, provides guidance that is contrary to law and the language of the Wilderness Act. Part of the problem, as previously described, is that the referenced necessity determination is an exception requirement found within the prohibition section of the Wilderness Act. 16 U.S.C. 1133(c). That section does not address ecological interventions.

That another statute may permit an intervention (or, more appropriately, a Section 1133(c) prohibited use) does not create a legal foundation for authorizing that activity in wilderness. Instead, that activity or use must be provided for by a special provision within the Wilderness Act or a designating statute, be necessary to fulfill a valid existing right, or it must meet the narrow exception criteria found within Section 1133(c) of the Wilderness Act. That is, it must be “necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act].”

Setting aside that fundamental problem, even if the exception provision in Section 1133(c) of the Wilderness Act did apply to ecological interventions, the MRDG Supplement misinterprets the law. The first question asks, “Does the proposal describe if there is a legal direction that *permits* the proposed intervention?” (emphasis added). This is the wrong question. Some statutes may *permit* activities that are prohibited by the Wilderness Act (e.g. NHPA permits—but does not require—building reconstruction while the Wilderness Act categorically prohibits structures). It is a well-settled canon that a more restrictive provision or statute controls over a less restrictive provision or statute, and thus the Wilderness Act controls over less restrictive statutes.

Perhaps a more appropriate way to phrase this question is to ask whether there is a statute that *requires* the proposed intervention. The Wilderness Act generally militates against interventions so it would be more protective of Wilderness to ask whether a different statute requires the intervention.