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February 8, 2017

Forest Supervisor
Okanogan-Wenatchee National Forest
c/o Jennifer Zbyszewski
Methow Valley Ranger District
24 West Chewuch Road
Winthrop, WA 98862

Sent Via the Internet with Email copy to: jzbyszewski@fs.fed.us

Dear Ms. Zbyszewski:

Wilderness Watch is providing these comments on the Pack and Saddle Stock Outfitter-Guide Special Use Permit Issuance Draft Supplemental Environmental Impact Statement (DSEIS). We have participated in the process in the past and still have several questions and concerns with this new DSEIS. We appreciate the extension of the comment period over the holidays. We trust these comments will be of use in formulating a decision.

Background:

This issue has a long history. Public interest organizations have recognized the problems with pack and saddle stock permitting in the Pasayten Wilderness in particular. Forest Service employees themselves have documented serious problems over the past several years (see for example FEIS Appendix F). The degree to which and whether these problems have been addressed is not clear in the DSEIS.

The biggest challenge in commenting on this DSEIS is that it has to be read in conjunction with the FEIS. That makes review of the document extremely difficult. There is a lack of clarity as to how alternatives 2, 3 and 4 have changed since the Final Environmental Impact Statement (FEIS) and record of decision (ROD). We have appended our earlier comments and our earlier appeal of this project as they are still relevant to this DSEIS.

Our comments here are directed at the Pasayten and Lake Chelan-Sawtooth Wildernesses. We recognize there are backcountry areas, mainly roadless land contiguous to those two Wildernesses, which are also addressed in this DSEIS. Those backcountry areas are also important and care must be taken in their management, though they do not fall under the statutory direction of the Wilderness Act.

Lastly, when we quote from the DSEIS, we have left the formatting in place. The result is some quoted paragraphs have bold, italicized and underlined text and others mix normal text with bold, italicized and underlined text. We did this to make it easier for the reviewer.

Introduction:

As noted in our earlier comments:

The Wilderness Act generally prohibits commercial enterprise. The Act includes a limited exception to this prohibition for commercial services performed “to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” The exception is subject to the requirement to preserve each area’s wilderness character.

That is still the issue. The DSEIS does not adequately analyze whether the new needs assessment, as we previously remarked about the old assessment, “is limited to the *extent necessary*, and whether the proposed action protects and preserves” the wilderness character of the two Wildernesses. Is the amount and types of use proper? Our comments here are mainly directed at the proposed action (alternative 4), though we address the other alternatives as well.

Further, the DSEIS, like the DEIS before it, “has failed to consider a reasonable range of alternatives as required by the National Environmental Policy Act.” None of the alternatives considers limiting commercial service service-days in the Wildernesses to even the average level of use over the past 5 years—assuming that level of use is necessary. It is important to note the amount of use during those five years was not constrained by any factors except perhaps the commercial outfitters ability to market their trips. Put another way, the alternatives in the DSEIS render meaningless the Wilderness Act limit on commercial services to only the *extent necessary*. Rather than focusing on economic variables, or on the maximum amount of commercial use the area can support (i.e. “capacity”), the Wilderness Act requires the Forest Service to ensure it is authorizing commercial services only to the extent necessary.

Lastly, we have questions and concerns about how and whether the DSEIS addresses Forest Plan and other planning requirements. This includes but is not limited to barren core areas at campsites, party size limits, and associated conditions and trends in the Wildernesses.

Wilderness and NEPA:

The DSEIS, on page 5, states the purpose and need for the project contains the following five aspects:

respond to special use permit applications from current pack and saddle stock outfitter-guides;

meet the public need for pack and saddle stock outfitter guides;

protect wilderness character in the Pasayten and Lake Chelan-Sawtooth Wilderness Areas while providing pack and saddle stock outfitter-guide commercial services ***to the extent***

necessary.

reconcile inconsistencies between forest plan standards and guidelines for barren core (see Glossary) in wilderness with party size limitations (currently 12 people and 18 head of stock), and the non-degradation policy and the prohibition on camps within 200 feet of meadows, streams, lakes, and special interest areas.

provide for enough pack and saddle outfitter guide days outside of wilderness to help maintain business viability, when considered with service days inside wilderness to meet the extent necessary.

(Emphasis in original). The third aspect, which is the key requirement under the Wilderness Act, is buried under the other aspects. Even that aspect is qualified. As such, the DSEIS has a deeply flawed purpose and need which elevates special use permits, a level of assumed public need for pack stock outfitting and the need to weaken certain existing Forest Plan Standards to provide for a certain party size over preserving wilderness character. This is especially true given the history of the issue in the Pasayten Wilderness.

In terms of alternatives, a Forest Plan amendment to keep the barren core requirement rather than loosening that restriction, which the agency states is necessary to allow a party size that exceeds what agency researchers have found to be the maximum (about 9 head of stock, see Cole 1989 and 1990 and Watson et al. 1993), is rejected (page 9). Thus, Wilderness and wilderness character lose out by not having an alternative that reduces party size to meet existing Forest Plan standards, or at least reducing barren core areas at all campsites to a lower level than currently exist.

Only alternative 3 takes another approach and limits party size to 12 heartbeats, which could mean one person and 11 head of stock. Yet this option amends Forest Plan barren core standards to 2,800 square feet, an area over 50 by 50 feet, larger than most homes. The other alternatives, except no outfitting, allow barren core areas of nearly double that size or what is the existing, degraded condition. Such large barren core areas are hardly places where the imprint of man's work is substantially unnoticeable.

Furthermore, the DSEIS does not evaluate other options to recover campsites. Permanently degraded sites are inconsistent with the Wilderness Act, yet that is what the DSEIS proposes to perpetrate. There is no new data from the FEIS that suggests these sites are recovering. Alternatives such as using llamas or burros, which might have a smaller impact, are not considered. Differences between impacts from outfitters who mainly supply visitors, to those who may guide but take stock out until needed, to those who guide and keep the stock with the visitors are not detailed. The idea of rotating camps on an annual basis, so they recover the next season, is not addressed as a potential way to recover barren core areas. Moving camps away from all sensitive areas is not addressed in any alternative. The idea of selecting more durable sites for possible camp locations is also not considered.

Further, the DSEIS notes in many places that leave-no-trace is required. Yet, the Forest Plan amendments would allow violation of those standards. This sends confusing and mixed signals.

The DSEIS (including the proposed Plan amendments) doesn't consider how wilderness plans

and specific Forest Plan direction for various areas in the Wildernesses may be affected. For example, resource or social conditions may vary depending on the management standards and objectives for various parts of the two Wildernesses.

What seems to be missing from the DSEIS is a clear understanding of the allocated user days for commercial stock outfitters. Pages B-8 and B-11 suggest 1800 and 715 service days respectively for the Pasayten and Lake Chelan-Sawtooth Wildernesses respectively. Since permits have been issued on an annual basis, absent term permits, can any number be considered currently allocated user days?

Regardless, DSEIS page 6 gives a minimum extent numbers little changed from the past FEIS. Given the trend in stock outfitter actual use, this is excessive and beyond the extent necessary.

What is even more telling is comparing Wilderness to non-Wilderness in terms of changes from the FEIS to the DSEIS. Page 8 of the DSEIS states:

The basis for the total number of service days in FEIS Alternative 4 was the highest use during 1999 to 2009, plus 25%, which totaled 6,700 service days. The number of service days in wilderness in FEIS Alternative 4 exceeded the recalculated extent necessary, so for the modified Alternative 4, the days within the Pasayten and Lake Chelan-Sawtooth wildernesses were reduced to match the extent necessary. This reduced the total number of service days to 6,082.

(Emphasis in original). However, that doesn't appear to be what has happened between the FEIS and the final. The old extent necessary calculation in the FEIS was a range (DSEIS page 6), 1735 to 2170 for the Pasayten and 660 to 825 for the Lake Chelan-Sawtooth, in terms of stock outfitter days. The extent necessary would, by definition, be the lower figures. It has been reduced by 95 for the Pasayten and increased by 77 for the Lake Chelan-Sawtooth. The difference would be a reduction of 18. Yet, overall reduction of user days amounts to 618 (6700 to 6082). Thus, it would appear outfitting use outside of Wilderness was reduced more than inside Wilderness by the new needs assessment. This is puzzling, mainly because the DSEIS does not clearly explain the different methodologies.

The DSEIS claims both alternatives 3 and 4 would **decrease** the number of commercial saddle and stock users in the Pasayten Wilderness. Alternative three would also **decrease** use in the Lake Chelan-Sawtooth Wilderness while alternative 4 would slightly increase that use. (See page 20). However, those claims are not consistent with the DSEIS itself.

Regarding the actual use by outfitters, the DSEIS approach seems to be that of the past five high years (see pages 11 and 12), excluding the past two years due to fire (see page B-5). However, page 41 of the DSEIS states regarding the amount of use and the impact on Wilderness:

The range of years used for this determination was from 2001 to 2010. There has been a decline in outfitter guide service days in the past five years, but the reason for that decline is unknown. The decline may be a result of wildfires, the downturn in the economy, decreased demand, or other factors. The eleven year span was selected in case the factors

affecting the use change, and the need increases to the levels seen earlier in the 11-year span.

Which is it, five years or eleven? If five years, what set of five years? The fact that two low years were already dropped doesn't seem to come into play. Even using more years of data, the numbers still don't add up. Page B-5 points out the highest year for outfitter stock user days was 2004 in the Pasayten. Every year since then has been significantly lower, and the trend has been generally down. The anomaly is the year 2004, not the past nine years. It certainly appears the agency is cherry-picking data to come to a pre-determined decision. This fails any test of objective analysis.

Regardless, the numbers elsewhere in the DSEIS itself do not support the above noted claims in the DSEIS. The average use for the Pasayten over the past 5 years (excluding 2014 and 2015) is 769 stock outfitter days (page B-5), not the 1640 in alternative 4 (1330 plus the pool of 310, page 14). The 1330 stock outfitter service days, the supposed need as per the 2016 needs assessment not counting the additional pool, is slightly above the highest use recorded in the DSEIS, the anomalous 2004 figure (page B-5). (NOTE: Page 46 comes up with yet another number for alternative 4 in the Pasayten, 2,870 user days). These facts are further evidence of serious problems in the DSEIS analysis.

Regarding alternative 3, the DSEIS states it consists of the average number of used service days over the past five years, plus 25% for business growth¹. Thus, it cannot be less than existing use as the DSEIS alleges on page 20 (see also page B-5). This is just further evidence the DSEIS needs a complete redraft to make any sense.

Indeed, alternatives 2 and 3 are not clear as to the proposed numbers of stock outfitter user days for the Pasayten Wilderness (or anywhere, for that matter). Rather the DSEIS refers to a formula that is a shifting target depending on whether the agency decides "extraordinary circumstances" exist or not that may have affected outfitter businesses (pages 11 and 12). Elsewhere (page 43) the DSEIS comes up with 2000 and 1000 users days respectively, for alternatives 2 and 3, which don't necessarily comport with the formulae on pages 11 and 12. Those numbers should be 1013 and 962 users days, respectively, for alternatives 2 and 3.

The upshot is the DSEIS analyzes impacts based upon a reduction in actual use of stock outfitter visitor days in the Pasayten Wilderness (see pages 43 and 49) when the truth is every action alternative would increase actual use quite substantially. This contradiction in the DSEIS must be corrected. Further, the DSEIS has no updated information as per the existing condition (with one exception, noted below), based upon monitoring (which should have occurred), so the current condition is no different than the older FEIS. These failings clearly violate NEPA and Wilderness Act requirements.

Similar problems exist with the Lake Chelan-Sawtooth Wilderness in terms of actual use of outfitter pack stocks as it relates to the action alternatives. The only exception, and it is slight, is that the DSEIS admits that alternative 4 is an increase (reported as very small) over actual use. However, like the example on the Pasayten, the increases are actually substantial when looking

¹ In an apparent inconsistency, the needs assessment uses ten years.

at the numbers on page B-12.

Our past comments noted:

On one hand, the DEIS claims that data tracking impacts from outfitter use (particularly stock) need only go back 10 or 20 years. However, the Pasayten Wilderness was designated over 40 years ago. Without some data that shows that wilderness character has not degraded from outfitter use since designation, the agency is not meeting its mandates under the Wilderness Act. Ten or twenty years is insufficient.

On the other hand, the DEIS claims that the overall trend in wilderness character is improving since designation. Assuming the DEIS is accurate and meeting NEPA mandates for quality information, there must be some kind of data that goes back to designation. Does any exist that shows an improving trend in outfitter sites?

Are there data that go back to designation to determine a trend in preserving wilderness character on either of the two Wildernesses in terms of impacts from outfitter pack stock use (as opposed to impacts from past uses such as livestock and mining impacts)? Can the Forest Service distinguish between impacts from outfitted stock users and private stock users? If not, how can any conclusions in the DSEIS and FEIS be valid?

We addressed these questions in past comments:

Since outfitters have assigned camps, it should be possible to differentiate impacts in those areas. Indeed, the management of outfitting use and this DEIS itself are based upon, in part, the amount of bare core area at campsites. In all cases, outfitter horse camps are approved by Forest Service so some reasonable interpretations can be made as to the impacts of outfitter versus non-outfitted public use.

Chapter 3 clearly notes the largest impacted camp in the Pasayten is regularly used by commercial outfitters and three of the six largest impacted campsites are regularly (assigned, presumably) outfitter camps. This is quite a statement since only three percent of the stock use is outfitter-based.

Regarding the one change in the existing condition for Wilderness from the FEIS to the DSEIS, the DEIS notes on page 43:

The Bald Mountain and Sheep Mountain camps have constructed features for stock containment. A minimum requirement decision guide (MRDG) was completed in 2016 to determine the need for these structures, and determined that allowing the continued use of the structures would better protect wilderness character by minimizing the amount of barren core in camps (refer to MRDG in the analysis file).

(Emphasis in original). The MRDG was not on the website when we last checked. Was an EA done for these structures? If so, why were we not informed? It seems obvious this decision is affecting this DSEIS and needs assessment, contrary to NEPA. What are these structures? Do they include spring pipes? What outfitter structures exist in the two Wildernesses and have all

been found to be the minimum necessary for preservation of the Wilderness? What is proper about allowing outfitters to have permanent structures in Wilderness, which degrade Wilderness, especially when the rest of the public (rightly so) cannot do so? Simply put, such an action is not proper or necessary in Wilderness.

The DSEIS claims that alternative 4 would result in "reduced impacts" to Wilderness (page 50) to the natural quality of the Pasayten Wilderness, though that is contradicted elsewhere in the DSEIS. In fact, page 57 states:

The incremental addition of use from permitted stock outfitter- guides in the Pasayten Wilderness ranges from 0% in Alternative 1, to 11% in 2017 to 10% in 2027 in Alternative 2, to 5% in 2017 and 2027 in Alternative 3, and ranges from 9% in 2017 to 8% in 2027 in Alternative 4. The incremental addition of use from permitted stock outfitter-guides in the Lake Chelan-Sawtooth Wilderness ranges from 0% in Alternative 1, to 2% in 2017 and 2027 in Alternative 2, to 1% in 2017 and 2027 in Alternative 3, to 2% in 2017 and 2027 in Alternative 4.

(Emphasis in original). How increased use results in fewer impacts is not explained in the DSEIS. The contradictions in the DSEIS about whether use will increase under the various alternatives are also not recognized.

The impacts addressed to wilderness character in chapter 2 are limited to solitude (page 18). Yet the environmental consequences section has a richer and more complete, though not more accurate, analysis. This causes further head scratching among members of the public.

The supposed upward trend is not supported either. Page 57 claims, "Grazing by outfitted and non-outfitted pack and saddle recreational livestock would not alter plant communities, or impact vegetation more than could recover within one year (*see Botany section*)." (Emphasis in original). If that is true, why does the Forest Service see a need to amend the Forest Plan barren core standards?

The evidence presented by the Forest Service clearly suggests any improvement is due to recovery of past historic degradation from livestock (not pack stock) or mining, rather than from changes in commercial pack stock use. Further, the annual recovery of areas does not mean they are on an upward trend. Rather, it would be static from year to year. Please explain this contradiction.

The DSEIS B-41 states "The impacts will be long-term since campsites will be perpetuated by continued use." Thus, the capacity of the land to recover from use has been exceeded. The DSEIS also states:

Current and proposed pack and saddle outfitted use does not comply with some Forest Plan wilderness standards and guidelines or with the Wilderness Act because the party size and amount of use perpetuates large camps and degrades the condition of the wilderness.

This is an admission that the preferred alternative will not meet the Wilderness Act.

Similarly, the DSEIS does not present any new data on how much grazing is taking place by outfitted stock users and whether Forest Plan standards and objectives are being met. DSEIS page 13 states, “The outfitters would have a total of 390 animal unit months for authorized grazing.” Has recent monitoring been done to determine what is being used now and current condition and trend of places used by outfitter stock?

Of the alternatives analyzed, the only action alternative that might result in some improvement, and that is debatable, would be alternative 3. That is because it adopts a lower party size standard (12 heartbeats), which research has shown results in fewer impacts. However, the same alternative would weaken barren core standards, and would actually increase use from recent levels.

In summary, the DSEIS's analysis is contradictory. It is not clear why or how the Forest Service came up with certain conclusions. Wilderness is an afterthought and subservient to providing outfitter days. The DSEIS's layout is difficult to correlate with the old FEIS.

Determination of Need and Extent Necessary for Commercial Services:

The new needs assessment, like its predecessor, is equally inscrutable. There is no clear showing of how the recommended outfitter user day numbers came out as they did. The criticisms in our earlier comments are also applicable to the latest needs assessment (which is incorrectly dated as February 13 in Appendix B), though there are some unique assertions in this current version. The needs assessment notes on page B-2:

First, the Forest Service must decide that the activity is proper for realizing one or more of the wilderness purposes.

Second, determine if there is a need for commercial services to provide these activities.

If commercial services are deemed necessary (i.e. there is a need for those services), then decision makers must determine the ‘extent necessary’, or what amount and type of service is needed to achieve the purposes of the Act.

This analysis is topsy-turvy. The Wilderness Act requires the agency to manage wilderness so as to preserve wilderness character. The Wilderness Act prohibits commercial enterprise within wilderness. However, the Act includes a narrow exception to allow some commercial services, but only (1) for activities which are proper for realizing wilderness purposes and (2) only to the “extent necessary.” This is a very narrow exception.

The needs assessment only looks at “proper” in context of “necessary”, thereby conflating the two major considerations. Something that is proper would not give outfitters special privileges in Wilderness (approval of structures) that degrade Wilderness. Yet, the DSEIS clearly indicates that has been done (see above).

The term “necessary” means “required to be done, achieved, or present; essential.” Absent from this definition and the use of this term in the Act is any notion of “demand” or “desire.” So any

commercial services can only be permitted if they are “required” or “essential” to meet the purposes wilderness **and** if they are proper. If those purposes can be met without permitting commercial services, then those services are not “necessary.”

Further, the purposes of wilderness do not include the comfort or convenience of visitors, nor economic opportunities for private businesses. The whole purpose of the prohibition on economic enterprise was to eliminate the profit motive and pressures associated with economic development from a small sphere of the public domain: Wilderness.

One of the new additions to DSEIS, which apparently ties to the needs assessment, is a reference to the Forest Service Handbook 2709.11. This guidance in the Handbook is apparently the justification used to set up an additional reserve pool of outfitter user days that is 25% over highest actual use for the preferred alternative. This is no different than what the needs assessment and DSEIS claim was discarded based on economics. The FSH tail is being used to wag the Wilderness dog.

In any case, the needs assessment itself makes two points clear:

1- Actual commercial pack stock use is about half of what is proposed to be allocated in alternative 4 and the trend is down. That clearly does not pass any test of necessity. This is addressed in more detail above.

2- The decline in commercial pack stock use (page B-5, for example) is far greater than the slight declines in non-outfitted use. That suggests that the rationales given as to declining commercial stock use--mainly fires--are most likely wrong. Rather, there seems to be more of a trend of self-supported wilderness travel. While the needs assessment gives lip service to this issue on page B-30, "proportional relationship between outfitter and non-outfitted use levels" it is not explored because of the contradictory information throughout the DSEIS, including the needs assessment. This is also addressed above.

Yet, the conclusion as to the amount that is necessary and proper is higher than any historic use and much higher than use over the past five or even ten years. What the agency claims necessary (page B-37) turns out to be based upon "the highest actual use from 10 years" (an anomaly) a perceived increase in demand (debunked in our earlier comments), and other considerations, rather than a rational approach to determining the extent necessary. These numbers are more than double the average use over the past five years. It is well-settled that “the Forest Service must show that the number of permits granted was no more than was necessary to achieve the goals of the Act.” *High Sierra Hikers v. Blackwell*, 390 F.3d 630, 647 (9th Cir. 2004). This “limitation on the Forest Service's discretion to authorize commercial services only to “the extent necessary” flows directly out of the agency's obligation under the Wilderness Act to protect and preserve wilderness areas.” *Id.* The Forest Service faces a steep climb in demonstrating that such a marked increase in permitted use over recent actual use satisfies the agency’s mandate to protect wilderness character and authorize commercial use only to the extent necessary.

Of the 7 steps on page B-37, only one, the last, even addresses Wilderness. Instead, the analysis appears to be all about projected increasing demand and highest percentage use. It ignores the

clear trends in stock outfitter use within the assessment itself, and it ignores the restrictive mandates of the Wilderness Act. It appears front-loaded to come up with a pre-determined decision, essentially the same one as before.

B-21 states, “Resource specialists found concentrated areas of impact around campsites, but overall wilderness character is not being degraded by the recreation activities because the effects are limited and localized.” This looks at the Wildernesses as a whole rather than considering how unacceptable impacts are spread. Overall numbers are insufficient when looking at severe localized impacts. Almost any degradation can be considered localized by this approach.

Summary

In summary, the DSEIS’s analysis is contradictory. It is not clear why or how the Forest Service came up with certain conclusions. Wilderness seems to be an afterthought and subservient to providing outfitter days. The DSEIS’s layout is difficult to correlate with the old FEIS making review difficult.

Please keep us updated on this proposal. Send us copies of future decisions and NEPA documents.

Sincerely,



Gary Macfarlane
Board Member

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