



## WILDERNESS WATCH

*Keeping Wilderness Wild*

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**RE: OBJECTION to the Draft Decision Notice Volcanic  
Monitoring Stations in the Mt. Hood Wilderness Project**

Pursuant to 36 CFR Part 218, Wilderness Watch objects to the Draft Decision Notice for the **Monitoring Stations in the Mt. Hood Wilderness Project Environmental Assessment.**

Pursuant to Part 218, Wilderness Watch is the lead objector. Contact Person: Gary Macfarlane (ph) 208-882-9755. The full objection and attachments are included in the email.

Wilderness Watch filed comments on this project as documented in the EA Appendix A. If your schedule permits, we would like to discuss the issues raised in our objection with you.

Sincerely,

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## THE PROPOSAL VIOLATES THE WILDERNESS ACT

Our scoping comments of April 23, 2015 and our comments on the PEA of August 26, 2016 address our concerns. Specifically, in our August 26, 2016 comments, we raised the following points with detailed discussion beneath each point (emphasis in original):

- 1. The one, singular purpose of the 1964 Wilderness Act is to preserve wilderness character.**
- 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.**
- 3. The Preliminary Assessment improperly gives all scientific research projects a free pass, regardless of whether these projects degrade wilderness character.**
- 4. The Wilderness Act prohibits permanent structures and installations, and the landings of helicopters and other aircraft.**
- 5. The Preliminary Assessment admits that the project will damage wilderness character.**
- 6. The proposed project does not fall under the “fire, insects, or disease” language of the Wilderness Act.**

The EA and MRDG do not make the case that any of the prohibited actions in Section 4(c) meet the narrow qualifications for exception. How do the prohibited actions preserve wilderness character or even protect visitors in the area? These questions are explored in more detail in the following paragraphs and sub-sections.

The Wilderness Act contains a narrow exception to allow otherwise-prohibited activities—such as helicopter use, motorized equipment or placement/maintenance of installations—only where such activities are necessary to meet the minimum requirements for administration of an area for the purpose (singular) 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).

The Wilderness Act requires the administering agency to demonstrate that the project as proposed is necessary to preserve the wilderness character of the area. Unless the Forest Service can make and support this demonstration in its analysis of the project, the project cannot proceed. *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 where the agency failed rationally to demonstrate that structures would advance wilderness preservation and a no less intrusive approach could achieve that goal).

Even USGS recognizes that there may be constraints in operating in Wilderness:

Technological constraints (e.g., telemetry infrastructure in remote locations) may limit monitoring options or require considerable advance planning. Permits for access to Wilderness Areas and National Parks must be obtained in advance from land managers. Physical terrain and weather (e.g., on high, glacier-clad stratovolcanoes) can alter scheduled instrument installation and maintenance.

*USGS OPEN-FILE REPORT 2005-1164 An Assessment of Volcanic Threat and Monitoring Capabilities in the United States: Framework for a National Volcano Early Warning System* at 28.

However, the only wilderness consideration in the EA that attempts to mitigate harm to Wilderness is to maintain the structures, once constructed, generally by non-motorized means.

### **Wilderness Visitor Safety**

Our PEA comments stated, “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.”

The Forest Service appears to have changed the stated purpose and need of the project in an attempt to shoehorn the proposal into a Wilderness-compatible purpose. Our comments addressed previous stated reasons for the project, and those previous reasons now appear to be secondary if not completely forgotten. The PEA stated the primary reason for this proposal “is to fill gaps in the monitoring network at Mt. Hood, particularly on the upper flanks and near the summit area.” PEA at 4. Now the DN claims:

Recent eruptions in Alaska (Okmok, 2008; Larsen et al. 2009), Chile (Calbuco volcano, 2015; Van Eaton et al. 2016), and Japan (Ontake volcano, 2014; Kato et al. 2015) have demonstrated that volcanoes can transition rapidly from a state of quiescence to eruption with as little as a few hours, or in rare cases even a few minutes, of warning. If adequate systems are not in place and Mt. Hood were to wake up quickly, it is possible that warning signs of an impending eruption could be missed, putting the lives of **wilderness users** and others in danger. The most common precursors to volcanic activity are surface deformation, increases in volcanic gasses emitted from a volcano, and increases in earthquakes.

DN at 2 and 3, emphasis added. Safety of visitors in Wilderness is now the stated reason for this project likely because of concerns about the legality of the earlier and more honest reasons, which we pointed out in our comments. Shoehorning the safety of visitors in Wilderness into this proposal is disingenuous at best for reasons stated below.

First, the Wilderness Act’s emergency exception does not allow otherwise prohibited uses as preventative measures. The parenthetical phrase in Section 4(c) “(including measures required in emergencies involving the health and safety of persons **within** the area)” is premised upon an emergency, such as an injury requiring motorized rescue. Emphasis added. A federal court in Washington rejected agency arguments that trail-side shelters should be rebuilt and maintained for visitor safety in the Olympic Wilderness due to the notoriously harsh and oftentimes unpredictable weather there. It noted that the emergency exception in Section 4(c) “most logically applies to matters

of urgent necessity rather than to conveniences for use in an emergency.” It also quoted the agency’s own policy recognizing this distinction:

The Wilderness Act and current NPS management policies encourage wilderness users to prepare for, and encounter the wilderness on its own terms, striving to provide “primitive and unconfined” recreation opportunities, complete with the risks that arise from wildlife, weather conditions, etc. NPS wilderness management policies do not support the provision of facilities in wilderness specifically to eliminate these risks.

Further, the Forest Service itself has a similar policy to that of the NPS. *FSM 2320.3 – Policy* at point 10 “Inform wilderness visitors that they face inherent risks of adverse weather conditions, isolation, physical hazards, and lack of rapid communications, and that search and rescue may not be as rapid as expected in an urban setting in all publications and personal contacts.” *FSM 2321.2 Objectives* has at point 4, “physical and mental challenge and stimulation,” as an important public value to be perpetuated and protected in Wilderness.

If preventive measures were indeed legitimate, the agencies would allow all sorts of warning systems in Wilderness. For example, such a strained interpretation would allow monitoring devices to detect flash floods in Wildernesses where those occur, special devices to detect fires where they could present a danger to visitors in habitats--prairie or grasslands--where they could quickly expand, or a collaring program of all grizzly bears and the installation of devices to detect nearby grizzlies at all backcountry camping areas to avoid danger to visitors. There are inherent dangers that come with recreating in Wilderness, whether it be turning a corner on a trail to find a grizzly sow with cubs lumbering your direction or finding the volcano you are traversing has suddenly come to life. Violating the Wilderness Act and degrading the Wilderness with structures, installations, and motorized intrusions to make use of Wilderness “safer” undermines everything Wilderness is about.

Second, setting aside the above problem, there is no indication in the EA that a volcanic warning system will actually increase the safety of persons within the Wilderness. Warning signs of an eruption, which are usually detectable outside of Wilderness, tend to be normal for Cascade Range volcanoes. Even if monitoring equipment could aid in detecting imminent eruptions where the typical warning signs are not present, the EA and DN do not assess the practicality of contacting visitors in Wilderness when that information is received (see also the section about alternatives). The agency has not disclosed a plan to contact wilderness visitors or explained how that might be accomplished. In fact, since registration is only required May to October and is on the honor system, the new and ostensible reason for this proposal—contacting visitors in the Wilderness—seems even less likely due to incomplete visitor information. EA at 3, footnote 1. Indeed, the Forest Service claims its “visitation numbers are likely low since people use the wilderness outside this time period and some users do not complete a permit.” Ibid.

Frankly, if a major eruption occurs quickly, the Forest Service or USGS would likely have higher priorities than alerting people in the Wilderness at that time, as there would be greater emergency priorities out of the Wilderness. In fact, the MRDG alleges “safety of workers” is compromised by waiting to install equipment once heightened volcanic unrest is detected. If that were true, neither agency would be out trying to contact people in the backcountry once something is detected by the proposed devices, even if such contacts were practical. The supposed benefit gained by adding the wilderness-harming new stations to the existing monitoring stations—early warning for informing wilderness visitors—is therefore impractical to implement. In other words, there is no advantage to visitors in the Wilderness from adding these four stations to the monitoring system. Similarly, even if the detection system would only be used to inform visitors not yet in the Wilderness, that approach gives lie to the reasons for adding these new sites--speed in early detection. The current system could be used,

once an anomaly is detected, to inform visitors that are coming into the Wilderness. Apparently this is not happening. The agency appears to be using visitor safety as an attempt to evade the protective requirements in the Wilderness Act. As noted earlier, visitor safety won't be improved because there is no concrete plan or intent to disseminate information to those visitors in the Wilderness.

Rather than dissemble the public and violate the Wilderness Act, the Forest Service should have fully considered alternatives such as the use of packable, temporary equipment for monitoring volcanoes if the agency believes such monitoring is important for reasons other than visitor safety in Wilderness. In fact, the Senate suggested temporary measures for volcano monitoring in a committee report.<sup>1</sup>

Indeed, USGS admits in making its proposal:

We largely ignored such issues as cost, permitting requirements, and logistic difficulties, which can vary greatly from volcano to volcano and cannot be addressed by a generic standard. In fact, many U.S. volcanoes are remote, in wilderness areas, and (or) subject to harsh weather conditions. Such factors may limit the type and number of instruments that can be deployed at specific volcanoes.

*USGS Instrumentation Recommendations for Volcano Monitoring at U.S. Volcanoes* at 2. Rather than “limit[ing] the type and number of instruments,” the Forest Service has abdicated its responsibility to USGS desires and concluded that, “In order to increase safety preparedness, the primary purpose of the project is to fill capability gaps in the existing volcanic monitoring network.” EA at 5. This raises some serious questions about the tail wagging the dog, especially when ones sees that the reasons for this project have shifted from one mainly of scientific study to one putatively of visitor safety in Wilderness. In any case, the Mount Hood Wilderness was designated in 1964, 55 years ago. The fact that the Forest Service did not find these stations necessary for visitor safety until now is highly suspect.

The above indicates that the real reason for the proposal is that USGS wants to do it. Congress passed the Wilderness Act because the federal agencies, especially the US Forest Service, were not protecting wildlands under their jurisdiction.<sup>2</sup> The Act places restrictions on the agencies, and rightly so.<sup>3</sup> This proposal is not supported, based upon visitor safety in Wilderness. It is casuistry in an attempt to evade the plain language of the Wilderness Act.

Further, it is not clear why monitoring stations outside of wilderness are not adequate. The MRDG says none of the monitoring stations is high enough in elevation except for two, “Palmer Glacier at the 8,600-

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<sup>1</sup> While we disagree with the use of motorized equipment in the following example, the Senate Committee report for the Mt. Baker Wilderness (Report 98-461) suggested it was acceptable to allow temporary seismic stations to be placed by helicopters, but only “If the mountain shows signs of volcanic activity in the future ... .” We would further point out that there is no statutory or committee language allowing the proposed permanent devices and helicopter use in the Mount Hood Wilderness.

<sup>2</sup> See Craig Allin, *The Politics of Wilderness Preservation*, Greenwood Press 1982, Contributions in Political Science, Number 64 at pages 102 to 105 and 135. Allin cites James P. Gilligan’s 1954 doctoral dissertation, *The Development of Policy and Administration of Forest Service Primitive and Wilderness Areas in the Western United States*. Relevant pages are attached.

<sup>3</sup> See Sean Kammer, *Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration*, 43 ENVTL. L. 83, 100-101 (2013), attached.

foot level on Mt. hood's south side and the site at Mt Hood Meadows Ski area." MRDG at 5. Such equivocation begs the question as to why those two stations are insufficient.

The MRDG also tacitly admits these stations are not needed. It states that "Most volcanic earthquakes beneath Mt Hood ... are mostly small (magnitude less than or equal to 1)." Ibid. That sentence itself reveals that there is information about these earthquakes or such a statement would not have been made.

### **Scientific Research**

The proposal cannot be justified as scientific research either. Our comments stated:

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.

Regarding the first clause in the sentence, the purpose of the Wilderness Act in section 4(c) is singular, not plural. The public purposes or uses of the Wilderness Act in section 4(b) are not its purpose, rather allowable uses so long as wilderness character is maintained. To misinterpret section 4(b) as allowing prohibited uses for the public purposes or uses, in spite of clear language to the contrary, would allow motorized recreation to enhance visitor recreation use at hard to reach places.

The proposal also violates the Agency's own policy on research in the *Forest Service Manual at 2324.42* which states:

1. Encourage research in wilderness that *preserves the wilderness character of the area* (FSM 2320.3) (emphasis added).
2. Identify wilderness management or national issues that may require research in forest plans.
3. Review proposals to conduct research in wilderness to ensure that research areas outside wilderness could not provide similar research opportunities. Direct projects that would jeopardize wilderness values to areas outside wilderness.
4. Review research proposals to conduct research in wilderness to *ensure that research methods are compatible with wilderness values*. Do not allow the use of motorized equipment or mechanical transport unless the research is essential to meet minimum requirements for administration of the area as wilderness and cannot be done another way (sec. 4(c) the Wilderness Act). Include specific stipulations in the approval document (emphasis added).

None of the above applies here. Volcanic monitoring is not necessary for administration of the area as Wilderness.

#### Remedy

Choose the No Action Alternative. Alternatively, select an alternative that does not require permanent structures or the use of motorized equipment.

### **FAILURE TO COMPLY WITH NEPA**

The EA failed to adequately analyze the direct, indirect, and cumulative impacts of the proposal on wilderness character, including impacts from permanent structures and motorized access, and failed to rigorously explore reasonable alternatives that would lessen or eliminate those impacts. The EA does not adequately discuss the enduring impacts of permanent structures on wilderness character or the cumulative impacts of these structures with other structures and installations already in the Wilderness. Similarly, the EA does not adequately address the impacts of motorized and mechanized intrusions in conjunction with other past and reasonably foreseeable motorized intrusions in the Wilderness. .

Perhaps the biggest problem is the failure to look at a reasonable range of alternatives, including a non-motorized access with temporary structures, as has been recommended in other wildernesses. While the MRDG looked at that option (and inappropriately dismissed it for reasons already stated), the MRDG is not the NEPA document nor can it substitute for the NEPA document. One of the likely reasons that a reasonable range of alternatives was not explored is that the Forest Service allowed the project proponent to define the proposal around a set equipment design, which unreasonably narrowed the range of possible actions to meet the purpose and need. The MRDG alleges the non-motorized option could not be considered because of the weight of the fiberglass shelters, 500 pounds. The Forest Service did not consider an alternative for a packable design to assemble on-site for those structures. The agency has packed in bridges that weigh many tons using packable designs. (see attached) Surely, a packable design for a temporary shelter that can withstand snow loads could be done, one that could be carried in smaller loads and assembled on-site.

A project that would install new structures in Wilderness requires the preparation of an EIS. The EA and MRDG clearly show that wilderness character of the area will be harmed by the authorization of multiple prohibited uses within designated wilderness, including the installation of permanent structures and the associated motorized access to install and maintain them. The structures will remain in the wilderness for decades likely requiring repeated motorized intrusions to install and maintain them over their lifetime, causing significant enduring impacts on wilderness character.

The above inadequacies constitute a failure to take a hard look at project impacts in violation of NEPA.

#### Remedy

Withdraw the DN and EA and prepare an EIS that takes a hard look at direct, indirect, and cumulative impacts and rigorously explores a reasonable range of alternatives.