



## WILDERNESS WATCH

*Keeping Wilderness Wild*

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August 14, 2020

FMP Region 2  
Attn: Sharon Rose  
3201 Spurgin Road  
Missoula, MT 59804

Sent Via Email to [shrose@mt.gov](mailto:shrose@mt.gov) and via the Internet

RE: Aquatic Poisoning Project North Fork Blackfoot River Fish Restoration Project and Draft Environmental Assessment (EA) by Montana Department of Fish Wildlife and Parks (FWP)

Dear Ms. Rose:

The following comments on the North Fork Blackfoot River Native Fish Restoration Project come from Wilderness Watch, a national wilderness conservation organization. Wilderness watch's headquarters is located in Missoula, with additional staff offices in Idaho and Minnesota. Our mission is to protect the wilderness character of all units of the National Wilderness Preservation System, including the Scapegoat Wilderness. While Wilderness Watch appreciates the concern for long-term viability of Westslope cutthroat trout expressed by this proposal, however we believe the project as proposed is contrary to the letter and spirit of the Wilderness Act and would do nothing to protect Westslope cutthroat. The size of the project is also unprecedented in Wilderness.

While our comments are directed at the Montana FWP EA, a copy is

being sent to the Forest Service since it is that agency that must approve, modify, or reject the proposal from the State of Montana. Montana is no responsible for administering the Scapegoat Wilderness. We do address Wilderness in this comment even though it is not the purview of the state because it appears the Forest Service may rely on comments submitted during this process.<sup>1</sup> Nonetheless, we reserve the right to submit additional comments to the Forest Service on this proposal.

## Background

As a result of the online meeting, we understand that the Forest Service would only prepare a cursory CE, We don't know if it would include public involvement. While this comment period is for the state MEPA process, the Forest Service cannot abdicate its duties to the American public in the administration of Wilderness to the State. Regardless of the expertise of Montana FWP in wildlife, it is not accountable to all US citizens and FWP does not have expertise in wilderness administration. As such, we question the applicability of the legitimacy of the MRDG and the analysis in the EA of Wilderness, both apparently prepared by FWP.

## Wilderness Act

Congress defined "Wilderness" as follows:

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

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<sup>1</sup> The EA states on page 5, "The proposed project area is in the Scapegoat Wilderness. The USFS will evaluate the potential for the project to affect wilderness values in their scoping effort, which will run concurrently with the public comment period of this EA." However, nowhere in the SOPAs for the past year for the Helena-Lewis and Clark National Forest or the Lolo National Forest is this project mentioned. It is not found on either of the two national forests' project web pages in the Under Analysis section. Given the online meeting, it appears to us the Forest Service is abdicating its duty to the American public. Moreover, 36 C.F.R. section 220.4(e)(1): "**Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS (220.6).**" (Emphasis added). The scoping process needs to involve the public, pursuant to 40 C.F.R. part 1501.7(a)(1): "As part of the scoping process the lead agency shall...[i]nvite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, **and other interested persons (including those who might not be in accord with the action on environmental grounds)**..." (Emphasis added). Wilderness is listed as potential extraordinary circumstances. It is particularly applicable in this case as motorized equipment and transport is proposed.

16 U.S.C. § 1131(c). Congress stated that 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, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness ....” *Id.* § 1131(a). Accordingly, “...each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such areas for such other purposes for which it may have been established as also to preserve its wilderness character.” *Id.* § 1133(b). Congress and the federal courts have made clear that the goal of advancing recreation and research in wilderness, while allowable and encouraged, cannot trump the overriding statutory purpose to preserve wilderness character. *See id.* §§ 1131(a), (c), 1133(b)-(c); *High Sierra Hikers v. Blackwell*, 390 F.3d 630, 647 (9th Cir. 2004) (affirming that, under the Wilderness Act, the Forest Service may not “elevate[] recreational activity over the long-term preservation of the wilderness character of the land”). Consistent with these statutory mandates, the Forest Service’s implementing regulations dictate that in wilderness, “[n]atural ecological succession will be allowed to operate freely to the extent feasible.” 36 C.F.R. § 293.2(a).

Since the Forest Service did not prepare the EA, there is no analysis of impacts to Wilderness or wilderness character. In fact, the EA states as much, “The proposed project area is in the Scapegoat Wilderness. The USFS will evaluate the potential for the project to affect wilderness values in their scoping effort, which will run concurrently with the public comment period of this EA.” EA at 5.

Aside from a draft minimum requirements decision guide (MRDG), of presumably FWP authorship, which is not a NEPA document and cannot be substituted for NEPA compliance for the Forest Service, the EA is largely silent. It does admit, “The modest gains in fish mortality when eradication is not the goal does not justify the expense, effort, and repeated disturbance in designated wilderness resulting from additional years of treatment.” EA at 12. This is puzzling as the neither the EA nor the MRDG fully analyzes other methods of fishing removal. Rather, they are dismissed as ineffective or even causing more harm to Wilderness.<sup>2</sup>

Helicopter and motorized equipment use in the Wilderness is 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 “[l]anding 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). Consistent with the Wilderness Act and its implementing regulations, the Forest Service’s management direction makes clear “Wildlife and fish management programs shall be consistent with wilderness values,” FSM 2323.32(3), and the Forest Service is directed to “[d]iscourage measures for direct control (other than normal harvest) of wildlife and fish populations,” FSM 2323.32(4), and “[p]rovide an environment where the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist,” FSM 2323.31(1). If the Forest Service could approve helicopter-assisted management any time the state agency

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<sup>2</sup> The EA alleges that trammeling would be increased under mechanical removal, which presumably does not call for helicopters. EA at 13. However, the citation (Endicott 2017) is also the main author of this EA, an employee of FWP. FWP has no responsibility over wilderness administration.

requests it, the statutory prohibition against helicopter use would be meaningless.

Accordingly, under the Wilderness Act, the Forest Service may only approve the use of helicopters and motorized equipment and poisoning of fish in the Scapegoat Wilderness if the Forest Service rationally demonstrates that it is necessary to meet minimum requirements for administration of the area (singular) for the purpose of the Wilderness Act, and there is no alternative to otherwise-prohibited uses that would achieve that purpose. *See* 16 U.S.C. § 1133(c). There is no wilderness purpose for this action as we discuss later in this comment.

The Wilderness Act contains a “narrow” exception authorizing helicopter use only where necessary to “further the wilderness character of the area.” *Wolf Recovery Found.*, 692 F. Supp. 2d 1264, 1267-68 (D. Id. 2010) (quotation omitted). This exception permits otherwise-prohibited activities only in the “most rare of circumstances.” *Id.* at 1268. Similarly, this circumstance, particularly in combination with other factors, raises substantial questions over the significance of the proposed action’s direct, indirect, and cumulative impacts to wilderness. *See Wilderness Watch v. Vilsack*, No. 4:16-cv-12-BLW, at 17 (D. Id. Jan. 18, 2017) (finding 40 C.F.R. § 1508.27(b)(3) “is triggered because the project took place in the Wilderness Area.”).

Aside from using prohibited means, this action would extensively trammel Wilderness. Howard Zahniser, drafter of the Wilderness Act, stated that “[a] wilderness is an area where the earth and its community of life are untrammelled by man. (Untrammelled – not untrampled – untrammelled, meaning free, unbound, unhampered, unchecked, having the freedom of the wilderness.)” While the Montana FWP is claiming this is necessary, “[t]hese threats do not justify further interventions into the natural processes within wilderness areas. These projects, whose purposes are to restore (or redirect) natural processes through the exercise of human agency, are precisely the intrusions of human culture that the Wilderness Act meant to exclude from these special places.”<sup>3</sup> This mandate is reflected in the epigram written by Howard Zahniser, “With regard to areas of wilderness, we should be guardians not gardeners.”

This fundamental tenet of wilderness stewardship was reiterated in a program review initiated by the four federal agencies and conducted by the Pinchot Institute for Conservation in 2001. The purpose of the study was to examine the critical management issues facing Wilderness. One of the eight “fundamental principles” for stewardship emphasized the need to preserve the wildness in Wilderness. As the Pinchot report stated, “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.”<sup>4</sup> In *Keeping It Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System*, Landres et al. 2015. RMRS-GTR-340<sup>5</sup> has this to say about untrammelled:

To preserve the Untrammelled Quality of wilderness, managers need to exercise restraint when authorizing actions that manipulate any aspect of the wilderness—in general

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<sup>3</sup> See attached, Sean Kammer, *Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration*, 43 Environmental Law 83, 86 (2013).

<sup>4</sup> See attached Pinchot Report.

<sup>5</sup> While we have serious concerns with this protocol, see attached critique (Cole et al. 2015), it does recognize that trammeling negatively affects Wilderness. Our comments expand upon this concern.

actions that trammel should be avoided as an essential principle of wilderness stewardship unless it can be shown that these actions are necessary to preserve wilderness character as a whole (Kaye 2014).

Landres et al. 2015 at 34. It is hard to conceive of trammeling actions that would be necessary for this purpose. The Strategy cited above and its associated *Monitoring Selected Conditions Related to Wilderness Character: A National Framework*. Landres, et al. 2005. RMRS-GTR-151 cite two of the Forest Service's preeminent wilderness researchers in describing how the untrammled quality of Wilderness affects management. Cole (2000) in Framework states that untrammled "suggests more about the *process* of management than it does about the *outcomes* of management." (Emphasis added). The Strategy paper states,

Lucas (1973, p. 151) stated, "If ecological processes operate essentially uncontrolled within the Wilderness frame of reference, the results, whatever they might be, are desirable by definition. The object is not to stop change, nor to recreate conditions as of some arbitrary historical date, nor to strive for favorable change in big game populations or in scenic vistas. The object is to let nature 'roll the dice' and accept the results with interest and scientific curiosity."

Landres et al. 2015 at 33. The proposed action is not consistent with these mandates for the reasons explained below.

### **EA and MRDG Failings**

There is no good evidence that fish inhabited the area above the falls. The EA tries to shoehorn the idea that fish may have been there on page 4, but there is no hard evidence. The EA states this is "in part because extensive fish stocking has obscured genetic traces of preexisting *Oncorhynchus* fisheries (Pierce et al. 2018)." Such a conclusion, that stocking has obscured genetic traces, is biased because it presupposes that fish were indeed present prior to stocking. The lack of replicable genetic data suggests the opposite, especially given the advances in DNA detection technology. Since the one instance (supposedly) of Westslope cutthroat genetics from above the falls in Cooney Creek can't be replicated, it would appear that is more likely the result of a testing error or stocking of fish that had Westslope cutthroat genes in the relatively recent past rather than evidence of Westslope cutthroat in the area prior to the first fish stocking that took place.

The apparent absence of any other fish species also suggests a historically fishless area above the falls. There is no reference to sculpins or whitefish in the EA. Sculpins (see <http://fieldguide.mt.gov/speciesDetail.aspx?elcode=AFC4E02080> which describes a species that could be present in the area) and whitefish ( see <http://fieldguide.mt.gov/speciesDetail.aspx?elcode=AFCHA03060>) both inhabit cold clear streams. It would stand to reason if Westslope cutthroat were found above the falls because of connectivity with other subbasins in the North Fork or adjacent basins of the Blackfoot during "climatic or hydrologic events" (EA at 4), then other fish species like white or sculpin would also be present.

Indeed, many of the headwater streams in and around the Bob Marshall Wilderness Complex (the South Fork Flathead is a notable exception) were considered fishless as evidenced by MFWP's own mapping of native trout historic range at during the online meeting. The claims

that other falls exist in adjacent tributaries ignore the fact that the North Fork Falls is particularly high. The fact that no good evidence exists that the area contained fish should be reason enough for the Forest Service (at least) to deny this proposal. There is no Wilderness purpose, unlike what the MRDG tries to claim. It is not restoring natural conditions, which is a dubious endeavor anyway in Wilderness when it involves trammeling.<sup>6</sup> As noted above, Wilderness experts have explained Wilderness is about process not end points.

The claim that this action will benefit the pure Westslope cutthroat in the Wilderness below the falls (a short section of the main stem and any tributaries that are fish bearing are within the Wilderness), and therefore would be necessary, is also dubious for two reasons. The unprecedented size of this proposal would poison 67 miles of wilderness streams and three lakes. That trammeling action alone is far greater than the short segment of the North Fork within the Wilderness.<sup>7</sup> Further, and even more important, the stream reaches below the falls are not distant from genetically *impure* fish that reside further below in the drainage. These fish could just as easily come up from the lower North Fork (or from the Main Blackfoot and then up the North Fork) versus other *impure* fish surviving the long drops over the falls. In fact, the MRDG recognizes a “potential upstream expansion of downstream rainbow trout” which it tries to twist into a reason to have a Westslope cutthroat population above the falls in spite of the fact there is no good evidence they existed there prior to stocking. The EA admits there has been decades with non-native fish above the falls (and there are rainbows and other fish in the Blackfoot River system below). Why haven’t those fish above the falls (and those below as well) already affected the supposedly purer WCT populations below the falls by now?

Thus, the EA and MRDG want it both ways. FWP claims the area above the falls has to be cleared of fish, trammeling the Scapegoat Wilderness, even though the real threat to the purer strain of Westslope cutthroat fish in the North Fork below the falls is from further downstream and outside the Wilderness. FWP also claims it is important to put Westslope cutthroat above the falls for a refugia, even though no good evidence exists they were ever found there. This is simple sophistry masquerading as analysis.

The purpose and need section does not articulate a defensible wilderness-based need for fish poisoning followed by fish stocking and does not indicate how artificial fish stocking is necessary to administer the Scapegoat Wilderness “so as to preserve its natural conditions” and maintain the wilderness as “an area where the earth and its community of life are untrammelled by man.” 16 U.S.C. § 1131(c). Indeed, it would be incredibly difficult to articulate a need for artificial fish stocking in wilderness streams that were historically fishless. *See* “Non-Native Trout in Natural Lakes of the Sierra Nevada: An Analysis of Their Distribution and Impacts on Native Aquatic Biota” (noting that “trout stocking serves to maintain an artificial fishery that has substantial impacts on native aquatic biota” and that stocking is necessarily at odds with wilderness, “areas managed for their natural values”); *see also* “Non-Native Fish Introductions and the Reversibility of Amphibian Declines in the Sierra Nevada” (Forest Service publication noting that the introduction of non-native trout into naturally fishless lake ecosystems is a major cause of decline in certain amphibians). Both studies, by Knapp, are attached. It should also be noted, the goal of this project is not to return this area to a fishless state, which was the likely condition prior to stocking.

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<sup>6</sup> See also *Californians for Alternatives v. U.S. Fish & Wildlife Serv.*, 814 F. Supp. 2d 992 (E.D. Cal. 2011).

<sup>7</sup> Dry Fork of the North Fork is indeed dry during portions of the year in its lowest reach before the confluence with the North Fork. It is not part of the treatment area.

Active stocking and manipulation of fish populations in historically fishless streams is directly at odds with the Forest Service’s management guidance. *See* FSM 2323.31 (“Provide an environment where the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist.”); *see also* FSM 2320.2 (“Maintain wilderness in such a manner that ecosystems are unaffected by human manipulation and influences so that plants and animals develop and respond to natural forces.”). Given the clear inconsistency with Wilderness Act mandates and the Forest Service’s management guidance, the artificial fish-stocking component of the proposed action cannot be authorized.

The EA indicates that the hybrids, which have a predominant contribution of genes from rainbow trout, are poorly suited to the cold waters in the project area, resulting in low densities and poor angling opportunities. Poor angling opportunity is not a legitimate reason to poison wilderness streams. Further, the low density of these fish may be an indication of a historically fishless (or troutless) subbasin rather than poorly adapted stocked fish populations that have nonetheless survived for nearly 100 years.

The amount of helicopter use is not clear. The MRDG for the reduced mechanized use alternative clearly states there would be 59 flights for this project. MRDG at 36. However, adding up the flights later in the MRDG do not add up to that number. There would be 20 flights for activation (MRDG at 37), one day and an unknown number of flights that might be combined with short-term stocking for deactivation (MRDG 42), 40 flights for short-term stocking (Ibid.), and 7 for long-term stocking (MRDG at 43). Assuming all the flights for deactivation are also for stocking, the number is 67, not 59.

The EA is equally unclear. It states the task “could be accomplished with about 10 flights in and out of the wilderness over a maximum of 2 days, and 5 flights over a maximum of 2 days to remove gear after the project has been completed.” EA at 10. *See also* EA at 27. This raises two questions. Are in and out counted as one or two flight in the MRDG? If not, then there is an inconsistency. Why does the MRDG state it would take only one day for deactivation and the EA two days? The EA concurs it would take 7 flights for long-term stocking (EA at 11), but then confuses the issue by stating in the initial phases, “helicopters would be needed for up to 7 days, with up to 20 flights in a single day. This includes the stocking of trout in the first year, which would require trout (sic?) up to 30 flights and would occur over a maximum of three days.” Aside from the 30 and 40 short-term stocking flights being inconsistent between the MRDG and the EA, the EA could have as many as 110 to 140 flights over the course of 7 days.

In an effort to mislead a reader into thinking this action might actually be compatible with Wilderness, the MRDG alleges that helicopters are more in keeping with Wilderness than are impacts from pack stock use. For example, the MRDG suggests that helicopter use rather than stock will have fewer impacts on wilderness attributes “By fitting this mobilization into 2 days of helicopter time we will reduce the duration of the impact to Wilderness visitors’ opportunity for solitude by reducing the number of pack stock that would need to use the trail network that is already very popular during the summer season.” MRDG at 58. *See also* MRDG at 42 and at 56. Packstrings are compatible with Wilderness; helicopters are not.<sup>8</sup>

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<sup>8</sup> Even though the EA states it is not analyzing impacts to wilderness (EA at 5) it refers to a document (Endicott 2017), prepared by the author of the EA, in what appears to be a backdoor attempt to do

The proposal also includes trammeling by breaching beaver dams to get better poison distribution. The assumption is beavers will rebuild the dams. However, that assumes that each dam is connected to an active beaver colony rather than an old dam that has been left after the beavers moved out. Thus, this would be a far greater impact that characterized.

Size and complexity of the proposal almost guarantees failure. The literature cited in the EA and the EA itself note that the habitat complexity make it impossible to have a complete kill of fish. If the desired percentages of genetic purity are not met, then what?

Rotenone is a poison that kills all organisms that utilize gills during part of their life cycle. These organisms include not only the targeted non-native fish, but amphibians, macroinvertebrates, and other non-target organisms that use gills. See Erman 2012, Dalu et al. 2015, and Mangum and Madrigal 1999.

In particular, it is important to note the EA cites to Finlayson et al. 2010 in looking at impacts from rotenone. Erman 2012 states, “The study by Finlayson et al. (2010) had serious methodological problems in toxicity testing and analysis that render their conclusions suspect or incorrect.” The Montana Chapter of the Wildlife Society cites other studies relating to rotenone dealing with an amphibian known to inhabit the area, the Rocky Mountain tailed frog. In Montana all amphibian larvae as well as tailed frog (*Ascaphus truei*) adults ... either use some sort of aquatic respiration or may be unlikely to exit treated water bodies depending on the time of day and presence/absence of humans (Daugherty and Sheldon 1982 and Ernst et al. 1994). Thus, all of these species are likely to suffer mortality through the application of piscicides.” Joslin, G., and H. Youmans, coordinators 1999 at 2.7. The EA also tries to evade the real possibility it may drastically and negatively affect species in one genus:

Posttreatment monitoring would assess the status of *Utacapnia* in Sourdough Creek; however, interpretation of monitoring results should consider the species rarity (Newell et al. 2008) and the natural variability of species presence in samples (Vinson et al. 2010). Rare species may be absent from samples but still present in streams. Although winter

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wilderness analysis (EA at 13). That document is a publication of the Montana Fish Wildlife and Parks, which has no wilderness administration responsibility. That document is interesting not just in the mistakes it makes, but that it does admit to serious impacts from poisoning. For example, it erroneously conflates the impacts of helicopters and horses and backpacks by failing to recognize backpacks and horses are not incompatible with Wilderness:

Transportation of gear into remote areas also has potential to alter wilderness character, increase the human imprint, and diminish the visitor’s enjoyment of the peace and tranquility. Personal gear, provisions, and field gear are transported by backpack, horse train, or helicopter. Each mode is a disturbance that increases human presence, causes noise, and results in conditions that may affect enjoyment of wilderness.

Endicott at 14. Yet, it does recognize, “[r]emoval of woody debris” as a serious problem (Ibid.). Ironically, the breaching of beaver dams, similar to removal of woody debris, is considered inconsequential in the EA because it is assumed beavers would rebuild the dams. In the case of old dams no longer occupied, this would not be the case.

stoneflies have reduced dispersal capability compared to other species of aquatic invertebrate, the broad geographic range of the Columbian stonefly (Doddall and Giberson 2014) indicates they can disperse from other streams.

EA at 24. The research we have cited on the negative impacts of rotenone are applicable here.<sup>9</sup> At the very least, there is scientific controversy over the effects of rotenone on macroinvertebrates and amphibians. This scientific controversy needs to be honestly and directly addressed. The EA downplays impacts because it is written from a fisheries-centric perspective. For example, see the EA at 20 and 21. Regardless, chemicals like rotenone and potassium permanganate would bring a significant trammeling to the wilderness character of three lakes and 67 miles of streams in violation of the basic tenants of the 1964 Wilderness Act (16 U.S.C. 1131-1136).

The safety measures required in the EA suggest rotenone is not as benign as the EA leads one to believe. For example, the EA states, “Likewise, as detailed in the assessment on effects on wildlife and fish, rotenone-treated water would not pose a health risk to horses and mules drinking from streams. Stock owned by the outfitters contracted to assist with the project would not be allowed to drink from any surface water on the day of it being treated.” If stock are not allowed to drink from water treated that day and humans need to wear safety gear, why are the impacts to wildlife considered nil?

## **National Environmental Policy Act Background**

NEPA directs federal agencies to prepare a detailed Environmental Impact Statement (“EIS”) for federal actions that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). The phrase “human environment” is “interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” 40 C.F.R. § 1508.14. The purpose of an EIS is two-fold: 1) to ensure that the agency will have available and will carefully consider detailed information on significant environmental impacts when it makes decisions, and 2) to “guarantee that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.” *Robertson v. Methow Valley Citizens*, 490 U.S. 332, 349 (1989); 40 C.F.S. § 1501.2(b).

### **1. An Environmental Impact Statement is required.**

Pursuant to NEPA’s implementing regulations, to determine whether an EIS is required, federal agencies may first prepare a less detailed environmental assessment. *See* 40 C.F.R. § 1501.4. An environmental assessment should consider several factors to determine if an action will

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<sup>9</sup> Further, one of the advocates of rotenone use cited in the EA, either a current or former employee of FWP, is the lead author of a study that states, “Macroinvertebrates sampled within the detoxification area experienced similar, but greater, effects from the potassium permanganate than individuals within the treatment area that were exposed to rotenone.” Skaar et al 2017. The EA is largely devoid of analysis of the negative impacts of sodium permanganate.

significantly affect the environment, a circumstance that would mandate the preparation of an EIS. 40 C.F.R. § 1508.27. If the agency concludes the action will not significantly affect the environment, it must issue a FONSI to justify its decision not to prepare an EIS. 40 C.F.R. § 1508.13. The FONSI must provide a convincing statement of reasons why the action will not have a significant effect on the environment. *Id.* It is *only* when the proposed action will not have a significant effect on the environment that an EIS is not required. 40 C.F.R. § 1508.13.

The proposed action poses significant direct, indirect, and cumulative impacts to the environment and to wilderness character. Because the proposed action has the potential to significantly affect a designated wilderness and anticipates a precedent for future connected authorizations, with attendant cumulative impacts (including future poisoning and stocking actions in the watershed), it will result in cumulatively significant impacts, and result in a violation federal law (including the Wilderness Act). A full environmental impact statement should be prepared. See 40 C.F.R. § 1508.27.

It should be noted that in the case of the Carson-Iceberg Wilderness in California, an EIS was prepared to analyze the impacts of rotenone use due to a court ruling in 2005. When an EIS was prepared, the US District Court found that the EIS was inadequate and that it failed to follow the Wilderness Act. *Californians for Alternatives v. U.S. Fish & Wildlife Serv.*, 814 F. Supp. 2d 992 (E.D. Cal. 2011).

## **2. The Forest Service must take a hard look at and disclose the direct, indirect, and cumulative impacts of the project.**

NEPA requires the Forest Service to take a hard look at the direct, indirect and cumulative impacts of the project. Under NEPA, the direct impacts of an action must be analyzed based on the affected interests, the affected region, and the locality in which they will occur. 40 C.F.R. § 1508.27(a). Indirect effects of a proposed action are effects that are caused by the action but occur later in time or are further removed in distance. 40 C.F.R. § 1508(b). Cumulative impacts are “the impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. Cumulative impacts can result from “individually minor but collectively significant actions taking place over a period of time” and are “the impacts on the environment which result from the incremental impact of the action when added to other *past*, present, and *reasonably foreseeable future* actions regardless of what agency (Federal or non- Federal) or person undertakes such other actions.” *Id.* (emphasis added).

For the proposed action, the Forest Service needs to disclose and analyze the full extent of the fish poisoning and stocking proposal, especially on Wilderness. What are the cumulative impacts of such a stocking program where the streams were historically fishless?

## **Conclusion and Summary of Recommendation**

As it currently stands, this proposal is fatally flawed and should be scrapped. If this goes forward, Wilderness Watch strongly urges that Montana FWP and Forest Service perform comprehensive EISs that take a hard look at the direct, indirect, and cumulative impacts of this

proposal. Then the agencies and the public will be able to make better-informed decisions about this project.

Please keep Wilderness Watch informed about this project. We request that you send us copies of decisions and future documents and keep us updated about any additional steps in this project.

Sincerely,



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Cc: USFS Lolo and Helena-Lewis and Clark NFs

#### **Literature Cited**

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