



WILDERNESS WATCH

Keeping Wilderness Wild

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March 12, 2021

John Slown
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Sent Via Email to comments-northern-lolo-seeley-lake@fs.fed.us and via US Mail

Dear Mr. Slown,

The following comments from Wilderness Watch and 14 undersigned groups are being submitted on the misleadingly titled North Fork Blackfoot River “Native Fish Restoration” Project, which would authorize intensive ecological manipulation in the Scapegoat Wilderness. The proposed project includes poisoning 67 miles of streams and 3 lakes above a natural fish migration barrier (the North Fork falls) in the Scapegoat Wilderness, breaching beaver dams throughout the project area, and a 5-year fish stocking effort using hatchery-reared westslope cutthroat trout in areas that were historically (and in some cases currently) fishless. In addition to this significant trammeling of the Scapegoat Wilderness, the project also proposes an unprecedented amount of motor vehicle and motorized equipment use, including up to 93 helicopter flights, motorboats, pumps, and gas-powered generators.

Wilderness Watch is a national wilderness conservation organization with headquarters in Missoula, Montana. 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, we believe the project as proposed is contrary to the letter and spirit of the Wilderness Act. We believe efforts to restore westslope cutthroat (WCT) should focus on those areas where they were naturally found, and not in waters where the introduction of fish will compromise the native biota.

In addition to these comments, we're attaching our previous comments on the Montana Fish Wildlife and Parks (FWP) Environmental Assessment (State's EA). As discussed below, we see significant errors in the State's EA, the two Minimum Requirements Decision Guides (MRDGs), and the Forest Service proposed action (PA). We request that the Forest Service commit to a full National Environmental Policy Act review through preparation of an Environmental Impact Statement that takes a "hard look" at the potential impacts of the project as proposed and seriously considers a range of alternatives.

Preliminary Concerns: Lack of Public Involvement and NEPA Review

We are dismayed that your office is contemplating categorically excluding from National Environmental Policy Act (NEPA) review a project of this size, scope, and controversial effect in designated Wilderness, particularly where the proposal includes the use of piscicides to kill fish, fish "stocking" in areas that were historically fishless, and the use of motorboats, generators, helicopters, structures, and installations to accomplish it all. All of these things are either explicitly prohibited under Section 4(c) of the Wilderness Act or in serious conflict with the Act's "untrammelled" mandate. The MRDG itself notes that "supplements [to the MRDG were] written to address ecological intervention proposals that commonly entail *complex legal, scientific, and ethical questions* that may be beyond the realm of a typical MRDG and better address the justification for this action" (emphasis added). MRDG at 2.¹ It also notes that "an action of this magnitude is sure to involve a short term measurable impact to the area's natural quality." *Id.* at 17. Yet, incredibly, the Forest Service is likely authorizing this project through a categorical exclusion!

Wilderness Watch requested the Lolo Forest Supervisor commit to completing an EA or EIS or, barring that, extend the comment period for an additional 30 days. The public had been given less than two weeks to respond to the proposal. While the extension of the comment period is positive, the proposed use of a categorical exclusion violates both NEPA and the Wilderness Act. In fact, the administration has issued an order (attached) requiring review of actions that are done pursuant to section 4(c) of the Wilderness Act. The extensive helicopter and other motorized equipment and transport proposed in this project are activities that are presumptively prohibited in Wilderness under Section 4(c). Furthermore, a directive from the Regional Office regarding Wilderness and CEs (April 28, 1997) notes that, "We should start our project analysis thinking at the EA level and go from there . . . In my view, using a CE for projects in Wilderness will be the exception rather than the rule." If a CE can be used in Wilderness to exempt projects of this size and scope, utilizing a wide array of generally prohibited uses and significantly altering ecological processes, then one has to wonder if any project ever would rise to the level of an EA or EIS.

The State's EA does not remedy this problem. Our comments to the FWP address the lack of Wilderness analysis in the State's EA. Those comments were provided to the Forest Service at that time. It's not surprising the State's analysis lacked wilderness considerations as the State has neither the responsibility for wilderness stewardship nor the expertise to do such an analysis. We had expected the Forest Service would prepare a professional analysis and engage the public in the NEPA process. Apparently, the agency has opted to take a pass. The PA is not an

¹ Citations to the MRDG refer to the later of the two MRDGs, the one that appears on the Forest Service website.

analysis, nor does the MRDG constitute a NEPA document. It is likely that projects like this are what led the acting Undersecretary of Agriculture to issue his February 1, 2021 memorandum requiring the FS to submit for NRE's review all projects for "[A]ctivities in designated wilderness areas taken pursuant to Sections 4(c) and 4(d) of the Wilderness Act," such as this project. This should be a wake-up call for you to engage the public in a meaningful public comment period and prepare the proper level of NEPA analysis, which in this case is an environmental impact statement (EIS), not a mere categorical exclusion (CE).

Since the Forest Service did not prepare the State's EA, there is no analysis of impacts to Wilderness or wilderness character in the EA. In fact, the State's EA admits as much stating, "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." State's EA at 5. But this scoping process has no NEPA analysis of impacts to Wilderness. The two draft MRDGs, both presumably with the FWP as primary author, are not NEPA documents and cannot be substituted for NEPA compliance for the Forest Service.

The Forest Service has a duty to protect the Scapegoat Wilderness. "Congress made preservation of wilderness values 'the primary duty of the Forest Service, and it must guide all decisions as the first and foremost standard of review for any proposed action.'" *Wilderness Watch v. Vilsack*, 229 F.Supp.3d 1170, 1182 (D. Id. 2017) (citing *Greater Yellowstone Coalition v. Timchak*, 2006 WL 3386731 at *6 (D. Id. Nov. 21, 2006)). While FWP has the responsibility to manage wildlife across Montana, wilderness designation places restrictions on that management authority and requires the Forest Service to ensure that any state wildlife management activities in wilderness, including research, are conducted in a manner that preserves wilderness character. Congress provided a clear mandate for administering agencies: "[E]ach agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character." 16 U.S.C. § 1133(b). The Forest Service is abdicating its statutory duties by deferring to the State's objectives and avoiding meaningful public scrutiny and engagement.

Wilderness Act Concerns

The Forest Service may only approve a motor-assisted poisoning and stocking project in the Wilderness if the Forest Service rationally demonstrates that the project is consistent with the purpose of the Wilderness Act, that the action is necessary to meet minimum requirements for administration of the area as Wilderness, and there is no alternative to otherwise-prohibited methods that would achieve that purpose. *See* 16 U.S.C. § 1133(c). The justifications for the project advanced in the scoping notice and associated documents fall far short of these stringent standards.

FWP’s proposal for intensive, wide-scale ecological manipulation is fundamentally at odds with Wilderness preservation.

The project would authorize the chemical eradication of trout in 67 miles of stream and 3 lakes above a natural fish migration barrier (the North Fork falls) in the Scapegoat Wilderness, breaching of beaver dams throughout the project area, and a 5 year “restocking” of hatchery-reared westslope cutthroat trout in areas that were historically (and in some cases currently) fishless. This is an example of a highly controversial and hotly disputed trend emerging in Wilderness management—one where Wilderness administering agencies are giving up on the idea of Wilderness and opting more readily for human intervention and manipulation to achieve or maintain desired conditions.

The Wilderness Act establishes a National Wilderness Preservation System to safeguard our wildest landscapes in their “natural,” “untrammled” condition. 16 U.S.C. § 1131(a). Wilderness is statutorily defined as “an area where the earth and its community of life are untrammled by man” and an area “retaining its primeval character and influence... which is protected and managed so as to preserve its natural conditions....” *Id.* § 1131(c). In contrast to other areas where multiple use mandates and human- values for “desired conditions” drive management decisions, in Wilderness, the Wilderness Act sets forth the desired condition. In Wilderness, the desired condition is a wild, primitive landscape, untrammled by man, where natural processes prevail. Accordingly,

In contrast to other public land management statutes, which typically authorize agencies to consider and weigh diverse values through exercise of their scientific and policy expertise, the Wilderness Act required certain areas to be managed predominantly for one use: wilderness preservation....

Unlike all other land-management statutes, the Wilderness Act’s basic purpose was not to delegate authority to expert agencies, but rather, to exclude certain lands from the application of the agencies’ specialized expertise, to restrain agency flexibility, and to protect (with limited, narrow exceptions) certain lands from the impact of the sort of policy choices land managers typically make.

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

Consistent with the Wilderness Act and its implementing regulations, the Forest Service’s management direction states, “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). Further, the Forest Service is directed to “[m]aintain 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.” FSM 2320.2.

FWP's goals and methods in its project proposal are at odds with the administration of "area[s] where the earth and its community of life are untrammled by man," 16 U.S.C. § 1131(c). We raised this concern in our prior comments:

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 untrammled by man. (Untrammled – not untrampled – untrammled, 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."² 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."³

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-340⁴ has this to say about untrammled:

To preserve the Untrammled Quality of wilderness, managers need to exercise restraint when authorizing actions that manipulate any aspect of the wilderness—in general 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* cites two of the Forest Service's preeminent wilderness researchers in describing how the untrammled quality of Wilderness affects

² See attached, Sean Kammer, *Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration*, 43 Environmental Law 83, 86 (2013).

³ See attached Brown et al. Report from the Pinchot Institute.

⁴ 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.

management. Cole (2000) in Framework states that untrammelled “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.

We appreciate concern for the long-term viability of westslope cutthroat trout, and we appreciate that it and many other species have been and will be greatly impacted by human influence, including climate change.⁵ But intensive intervention and manipulation projects such as the one here raise concerning questions over the long-term viability of Wilderness as well.

Ultimately, “whatever ‘wilderness character’ means, it cannot be something that depends upon the active manipulations of humans.” Sean Kammer, *Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration*, 43 ENVTL. L. 83, 86 (2013). Restraint and humility are important values underpinning the Wilderness Act, and “[l]and managers should exercise this same humility in dealing with wilderness areas, lest they lead us down a path to where there are no longer any places that are truly ‘wild,’ no places beyond the control of human institutions and cultural imperatives.” *Id.* The Forest Service should not authorize the project because it is incompatible with the purpose of the Wilderness Act. At the very least, the Forest Service must seriously consider, in a public NEPA document, alternatives that lessen or avoid this conflict, including alternatives that do not include motorized use and fish stocking.

The Forest Service has not addressed the risk of project activities actually exacerbating problems stemming from prior ecosystem manipulation or reconciled that risk with the stringent goals of the Wilderness Act.

Aside from a two-sentence acknowledgement that the “application of this piscicide will kill the majority [sic] existing fish population” and “[i]t is also likely to have a short term negative effect to invertebrate and amphibian populations within the project area,” there is no discussion about direct and indirect effects of poisoning waterways and introducing WCT into areas it has not historically and/or does not currently exist.

Leaving Wilderness to serve as a baseline for comparison against agency tinkering elsewhere has value because we so often get things wrong. For example, in 2012, federal and state wildlife officials learned that a fish “believed to be the greenback cutthroat trout, which for more than

⁵ While the scoping notice and MRDG indicate human-assisted range-expansion into higher elevation waters as a climate change related reason for the project, project documents also indicate a general preference toward genetic purity (which raises its own questions of value bias and nativeness vs. wildness), and a desire by MWP to create a more robust fishery (likely for anglers), even if hybridized.

forty years had been the focus of state and federal recovery efforts in Colorado streams and lakes, was, in essence, the wrong fish. Populations of greenback cutthroat trout that had been carefully reared, protected, and restored to Front Range habitats were more likely variants of a different subspecies, the Colorado River cutthroat trout[.]” Havlick and Biermann 2020. DNA advancements made this realization possible. But this is the way of scientific inquiry – today’s understandings bring forth tomorrow’s questions. And, as one scientist put it, “We can only ask questions that we have imagination for.”⁶

When applying a chemical poisoning agent to water bodies, there are likely many consequences—both known and unknown. Our comments on the State’s EA stated:

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 stoneflies have reduced dispersal capability compared to other species of aquatic invertebrate, the broad geographic range of the Columbian stonefly (Dosdall 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.⁷ At the very least, there is scientific controversy over the effects of rotenone on

⁶ <https://www.theatlantic.com/science/archive/2019/01/how-lichens-explain-and-re-explain-world/580681/> Yong, E. 2019. *The Overlooked Organisms that Keep Challenging Our Assumptions About Life*. The Atlantic.

⁷ 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

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?

The concerns over poisoning such a vast area warrants scrutiny and pause. Other research about use of rotenone include Billman 2010, Billman et al. 2011, Billman et al. 2012. Research has demonstrated the unintended consequences of rotenone use. So has experience. There were impacts to tailed frogs in the Bitterroot Mountains (see Sampling for Rocky Mountain Tailed Frog (*Ascaphus montanus*) on Overwhich Creek August 2019). Other media reports and communications have recognized the problems of rotenone as well (see Other articles file in attached in the News Articles folder).

In 2010, in another westslope cutthroat trout project, a FWP rotenone poisoning operation went awry poisoning fish in a four-mile down-river stretch of Cherry Creek, a tributary to the Madison River.⁸ FWP never figured out how it happened, but nonetheless, it’s surprisingly certain it will never happen again. This supposedly “controlled” FWP poisoning project was on a much smaller scale than what is planned for the Scapegoat Wilderness. The FWP suspicion that rotenone got into the ground water, and later resurfaced downstream should give the Forest Service pause about the use of rotenone in the Scapegoat Wilderness. The limestone geology of the area suggests that it could be easy for surface flows to go underground, similar to what happens at adjacent Dry Fork in certain seasons.

Site-specific analysis of its use in the Scapegoat Wilderness is also needed. That requires the preparation of an EIS. As we stated in our comments to the State, “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?”

The questions raised by actions like the ones proposed here are complicated outside of Wilderness and scientists are calling for broader discussion over the implications:

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 potassium permanganate.

⁸ See the attached article in the Bozeman Daily Chronicle, August 14, 2010, by Daniel Person.

While trout management has typically relied on human intervention, the turn to genetic science is bringing new lineages and taxa into being, altering long-standing conservation priorities and intensifying the manipulation of biological processes such as reproduction and dispersal. As a result, other social and ecological factors are pushed to the margins of management decisions. These changes, we argue, warrant greater conversation about the consequences of molecular analyses and the values embedded in trout science and conservation more broadly.

Cutthroat trout are just one of many organisms today for whom managers are making life and death decisions based on subtle differences in genetic makeup or genealogy.

...

In Colorado, recent findings about native cutthroat trout lineages and genetics have brought to the fore practical and philosophical questions about how DNA analyses will guide management. Categorizations of wildness, nativeness, and purity are complicated not only by changing assumptions about trout taxonomy and genetics, but also by the history of anthropogenic fish transfers and recent decades of attachment by anglers to particular fisheries.

Havlick and Biermann 2020 at 3 and 6. Inside Wilderness, these actions are incredibly controversial and for good reason. The Wilderness Act has already resolved the conflict in favor of wildness and in favor of removing intentional human interference—and its associated value bias and unintended consequences—from the equation. The Forest Service has failed to reconcile, or even address, this tension. The Forest Service cannot demonstrate the project’s compatibility with the goals and proscriptions of the Wilderness Act without doing so.

FWP’s proposal is not necessary to meet minimum requirements for administration of the Scapegoat Wilderness.

Even if FWP’s proposal could be construed as wilderness-compatible, which it cannot, the proposal still runs afoul of the Wilderness Act because it is not *necessary* to meet *minimum requirements* for administration of the Wilderness.

a. A no-stocking alternative was unlawfully dismissed from consideration.

The Forest Service failed to consider an alternative that did not involve stocking streams and lakes with fish after eradicating previously stocked fish. The MRDG acknowledges the possibility that the project area was naturally fishless before prior stocking. MRDG at 65. It argues that those stocked fish are creating unnatural conditions in the Wilderness, and their eradication is necessary to restore natural conditions. *See e.g. id.* at 42. It then argues, quite incredibly, that *restocking* is necessary to maintain the natural character of the project area “due to the presence of [previously stocked] fish at the time of Wilderness Designation for the Scapegoat. Removal of all fish would unacceptably alter this baseline” *Id.* This is a trammeling gumption trap at its finest! It also demonstrates the problem of conflating “natural conditions” with desired conditions or with conditions existing at some fixed point in time. Rather, an area

that is untrammeled—an area where natural processes prevail with little human intervention, regardless of prior influence—will create its own natural conditions that evolve naturally over time.

There is no good evidence that fish historically inhabited the area above the falls and it is extremely unlikely they did. The State’s EA tries to shoehorn the idea that fish may have been there but there is no hard evidence:

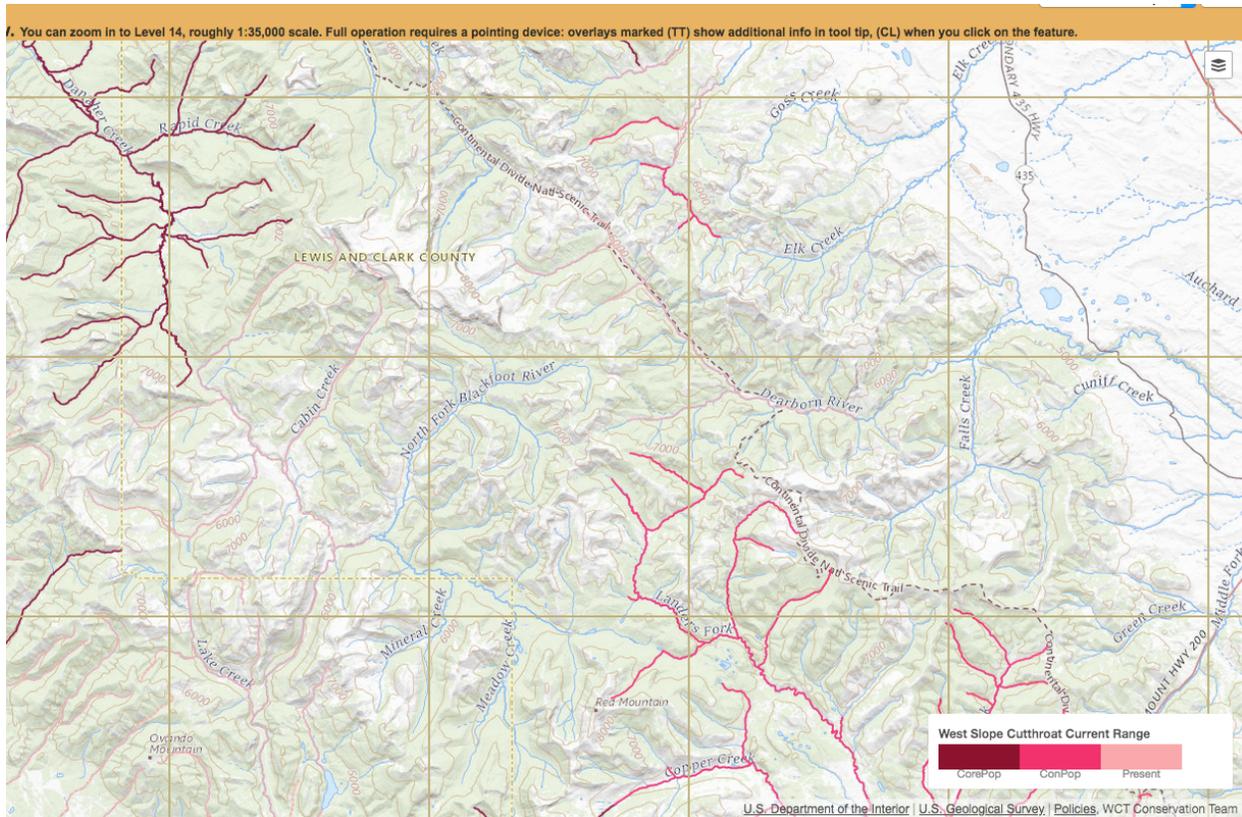
Although the waterfall currently blocks upstream movement of fish, the historical distribution of salmonids within the project area is uncertain, in part because extensive fish stocking has obscured genetic traces of preexisting *Oncorhynchus* fisheries (Pierce et al. 2018). The barrier falls may have prevented fish from accessing the project area; however, westslope cutthroat trout were present upstream of waterfalls or other natural barriers in the Blackfoot River watershed, such as Monture Creek and the Landers Fork (Pierce and Podner 2000).

State’s EA at 4. The State’s EA also states, “a single fish in Cooney Creek had genetic markers only characteristic of westslope cutthroat trout, the sample could not be replicated, and it provided inconclusive evidence regarding the presence of pure WCT in the project area (Pierce et al. 2018).” State’s EA at 3. Basing a decision on such flimsy evidence to motorize and trammel the Scapegoat Wilderness, one of the premier areas in the US, is illogical. Our comments on the State’s EA noted,

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.

Furthermore, the fact that there has been extensive fish stocking in and around the project area and that “[w]estslope cutthroat trout are present in neighboring watersheds in the Scapegoat Wilderness,” (State’s EA at 4) strongly suggests westslope cutthroats were never above the falls. Had they been, then there would be remnant populations of relatively pure WCT just like in Landers Fork (Two Point, Webb, Bighorn, or Heart Lakes were likely historically stocked) or Dry Fork (Canyon Lake was likely historically stocked). It is much more logical to conclude that the similarities in the drainages⁹ would have led to similar outcomes regarding WCT abundance now. If stocking had removed westslope genetics from the upper North Fork, why didn’t it do it in Landers Fork or Dry Fork? Since that is not the case as the photo from the website below shows (see <http://maps.wildtroutstreams.com/Cutthroats.html>) then the preponderance of the evidence strongly suggests that the North Fork falls, were indeed a historic fish barrier:

⁹ Indeed, if the “low divides” between the drainages really functioned as the EA suggests on page 4, then this part of the Wilderness should have confirmed remnant populations of westslope cutthroat trout.



The fact there is no evidence or mention of other fish in the State’s EA also raises serious doubt. Our previous comments stated regarding sculpins and whitefish:

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.

Regarding the purpose of the project as it relates to fish, the State’s EA and PA equivocate. In terms of genetics of other *Oncorhynchus* species and subspecies, the State’s EA is clear “the goal of this project is suppression, not eradication.” State’s EA at 12. And, “Although not a nonhybridized population, the project would provide a more robust fishery than what exists now.” State’s EA at 4. Yet, the PA states, “The North Fork of the Blackfoot River provides an opportunity to restore pure strain westslope cutthroat trout” in the Wilderness. PA at 3.¹⁰

The justification that poisoning combined with restocking is needed to keep the westslope cutthroats that reside in the Wilderness in the short segment of the North Fork below the falls

¹⁰ Elsewhere, the PA equivocates as to whether they will be pure westslope cutthroats.

free from impacts from the fish above the falls is also baseless. The following four paragraphs repeat points we made in our letter to FWP on the State's EA.

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 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.¹¹ 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 MRDGs recognize 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 State's EA admits non-native fish have been above the falls for decades (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?

The presence of fish in a previously fishless area is a significant impact and this proposal would perpetuate that problem. (See also Pilliod and Peterson 2001; Schindler et al. 2000; and Knapp et al. 2000). 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 untrammled 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 as are Dunham et al. 2004, Knapp et al 2001, Schindler et al. 2001, Pister 2001, Pilliod and Peterson 2001, and Matthews and Knapp 1999, which also address the issue. It should also be noted, the goal of this project is not to return this area to a fishless state, which was the historic condition prior to stocking.

Even if there were fish above the falls, the population resulting from this proposal would not be what was there historically, rather a hatchery-bred and subsequently hybridized population. It seems a purpose of this may be to enhance recreational opportunities as, "the project would provide a more robust fishery than what exists now." State's EA at 4.¹²

¹¹ 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.

¹² The inconsistency of the FWP and FS position is laid bare in the State's EA when looking at this EA's

In sum, the preponderance of evidence suggests there were no westslope cutthroat trout historically above the falls. It stretches credulity to suggest otherwise. Active stocking, perpetuation, 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. It is not the minimum necessary for preservation of the area as Wilderness as required by the Wilderness Act.

b. A non-motorized alternative was not considered, and the motorized uses considered are not the minimum necessary.

The Forest Service's proposed action (PA, page 2) fails to consider a non-motorized transport alternative even though the record indicates it is possible. The MRDG concludes that an options that would not use helicopters transport is feasible.

The State's EA and Forest Service's PA propose significant helicopter and other motorized equipment and transport use. However, the amount of helicopter use is not clear. The MRDG for the reduced mechanized use alternative¹³ clearly states there would be 59 flights for this project. MRDG at 31.¹⁴ However, adding up the flights reported in the same MRDG does not add up to that number. There would be 20 flights for activation (MRDG at 32), one day of an unknown number of flights that might be combined with short-term stocking for deactivation (MRDG 36 and 37), 40 flights for short-term stocking (*Ibid.*), and 7 for long-term stocking (MRDG at 38). Assuming all the flights for deactivation are also for stocking, the number is at least 67, not 59. It is also not clear whether there would be 7 additional flights in a second year for long-term stocking.

Our comments to FWP on the State's EA stated:

rejection, without analysis, of a non-stocking alternative. The State's EA on page 13 admits, "Uncertainty over the potential for westslope cutthroat trout to have been present in the project area is a consideration." Yet it states, "removing fish would be unlikely to achieve a pre-settlement character of the streams' ecology, nor is this character known." This contrasts with the analysis in the State's EA which suggests even with all the poisoning, the impacts to invertebrates, amphibians and others are minimal. EA at 19 to 26. If rotenone truly has minimal impacts on other aquatic life, why wouldn't a fishless historic condition return? If the allegation that removing fish won't return the area to a pre-settlement condition is true, then assuming westslope were present, stocking fish that will hybridize with the remaining fish is just as unlikely to achieve a pre-settlement character of the streams' ecology as fish removal alone.

¹³ The MRDG evaluated an option that would have up to 93 flights.

¹⁴ There are two MRDGs, the later one on the FS website and the earlier one with the State's EA, both of which appear to have been done by the FWP.

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.¹⁵

Aside from the Forest Service sign-on section at the end of the second MRDG, there are few differences between the two MRDGs, and those are mainly pagination. The MRDG above reference of page 58 translates to the newer MRDG as page 32.

¹⁵ 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 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.

Our comments on the State's EA also stated:

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 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.").

What is clear is that the materials can be hauled in by packstring, as the MRDG admits on pages 14 and 15. While it would take more time (2 weeks versus 4 weeks), it would be the minimum necessary **IF** the rest of the proposal were consistent with the Wilderness. That said, the MRDG tries to dissuade a decision maker from choosing that alternative based upon factors that are irrelevant, non-quantifiable, or erroneous. For example:

- The MRDG lists what it calls "The smallest and simplest of these systems [rotenone detoxification] is a volumetric feeder that weighs about 80 pounds, plus at least 3 gas powered generators, such as a Honda 2000 or 2200." EA at 15. It then cautions larger

systems (supposedly preferable, though without quantification) cannot be hauled in by stock and placement of the smaller system is in difficult terrain. Without any quantification or justification, it suggests helicopters are safer for hauling the chemical materials and the larger equipment, while also admitting for stock transport, “the risk of spillage of this chemical is low, it is possible.” *Ibid.* What about safety of helicopters, which would have far more tragic circumstances in case of an accident? What about packing in the chemicals in backpacks, which eliminates any risk of spill from stock transport? Simply put, non-helicopter treatment of wilderness streams has occurred (see attached Record of Decision and EIS for the Paiute Cutthroat Trout Restoration Project on the Humboldt-Toiyabe National Forest, 2010, without non-motorized transport) and the MRDG admits it can be done with “low” risk.¹⁶

- The MRDG claims, “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 32. There are two problems with this statement. First, helicopters are not allowed in Wilderness, whereas pack animals are. The impacts to solitude from helicopters is much greater than pack animals, by definition. Second, the MRDG proposes to use helicopters when fewer people, presumably those who are seeking more solitude, would be in the area. The impacts, therefore, would be even greater as “Any approved helicopter flights should be done during mid week to reduce impacts to the recreating public.” MRDG at 10. This statement confuses quality with quantity. Besides, it is difficult to have more solitude when more people are in the area.
- The MRDG only finds negative impacts from motorized use on solitude and not to other wilderness attributes. As noted above, the MRDG erroneously concludes there is almost no difference in the impacts from using helicopters and not using them in the rating system. The problem may be with the MRDG process itself, as it fractures Wilderness and ignores the essence of Wilderness, its wildness.

The State’s EA does not justify the use of other motorized transport either. The State’s EA fails to report the surface area of the lakes, rather it gives the volume. Their size, based upon volume, does suggest that other options may be available rather than motorized spreading of rotenone on the lakes (see Knapp and Matthews 1998). Such an option should have been considered IF the rest of the proposal were to meet the minimum necessary were to be consistent with the Wilderness.

The analysis needs to consider, and the decision needs to justify, each authorization for motorized use. For example, if the surface area and volume of Parker Lake precludes using nets or other nonmotorized means to remove fish, that doesn’t mean those methods won’t work on a much smaller lake, like Twin Lake. No option was considered that would treat any lake with gill nets and all options in the MRDG considered using motorized pumps for rotenone dispersal even though one option did not propose motorized transport, though it would use motorized rotenone dispersal, on Parker Lake. (See also Knapp and Matthews 1998).

¹⁶ We address the issue of safety in the section on poisoning.

Similarly, the assessment concludes using pack animals to haul rotenone to the site would require a lot of animals with associated impacts to the trails. Yet it does not consider the level of impact and number of animals in the context of the number of pack animals that traverse the area in an average year, nor the impacts compared to the number of pack animals that would be expected to travel the area in the next five or ten years. Because the trails in the area are some of the most heavily used by pack animals, there's no evidence presented to indicate the impacts from using pack animals to haul rotenone and other supplies would have a significant or even noticeable additional impact on the Wilderness.

The proposal in the EA also justifies using helicopters to haul supplies to locations not easily reached by pack animals. Yet, it didn't analyze hauling the supplies on foot, which is obviously doable because field crews will be hiking to those sites.

Nor does the analysis consider hauling rotenone and other supplies on foot if the impact from stock is too great. In other stream and lake poisoning projects, the Forest Service has required that the poisons and motorized equipment be hauled on foot or pack animals. In the Carson-Iceberg Wilderness in the High Sierra, a stream poisoning project that involved 11 miles of stream and one lake, the agency required all equipment and supplies to be transported on foot or pack animal, a distance of approximately five miles (see attached Record of Decision, 2010, for the Paiute Cutthroat Trout Restoration Project on the Humboldt-Toiyabe National Forest and the associated FEIS).¹⁷

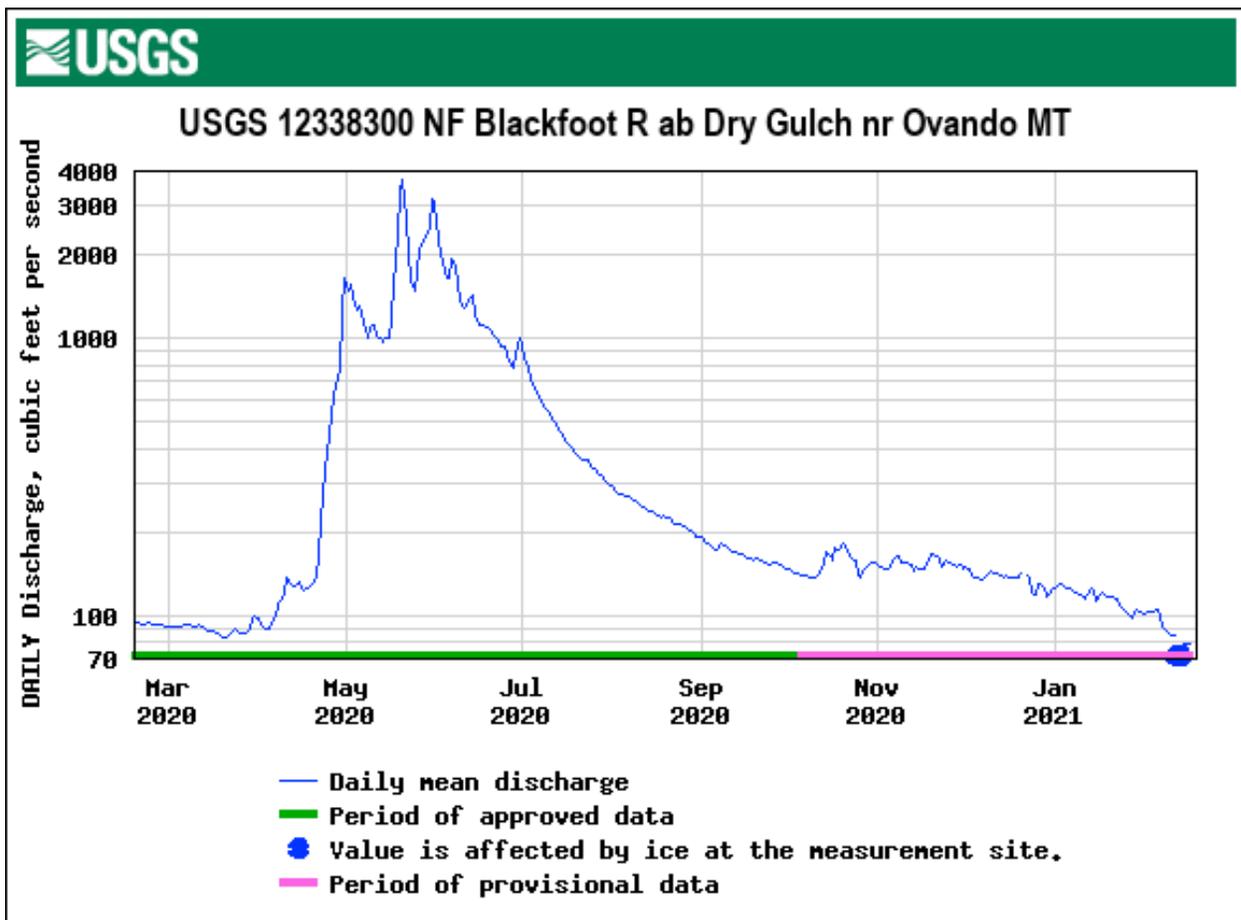
The bottom line is the Forest Service has simply accepted the State's proposal without carefully considering whether each proposed use of a prohibited activity is "necessary to meet minimum requirements for administration of the area for purpose of this Act," as required by law. The State designed a project that meets its desires for economy, efficiency, time-scale, and its standard operating procedures. None of these are appropriate standards for Wilderness protection or administration. The project must be withdrawn. At the least, the Forest Service must prepare an EIS fully disclosing and assessing the issues described above and any other impacts, rigorously explore a full range of alternatives, and allow for full public review and comment.

Other Wilderness Concerns

Aside from what we have already documented, we are concerned about the timing of this project. It seems the justification to do this via helicopter transport, during mid-week in early to mid-September, and not during the hunting season in late September and early October (which may be the best time in terms of stream flow in the area see below), is due to perceived impacts on

¹⁷ An earlier EA and DN were issued but stopped by an injunction. That decision also required the rotenone in the lake to be dispersed using non-motorized boats, unlike the Scapegoat project that didn't consider a non-motorized option in the State's EA for Parker Lake. The MRDG for this proposal does consider a non-motorized boat option. The lake poisoning proposal was dropped in the FEIS and ROD in the Carson-Iceberg Wilderness. Regardless, when the FEIS and ROD were prepared, the US District Court found that the EIS failed to follow the Wilderness Act in looking at impacts to the Wilderness from the use of rotenone. *Californians for Alternatives v. U.S. Fish & Wildlife Serv.*, 814 F. Supp. 2d 992 (E.D. Cal. 2011).

recreation. “The active disturbance caused by the project should be completed prior to September 15th in order to reduce displacement of Wilderness visitors during the busy Backcountry Hunting season.” MRDG at 10. This is alleged even though low water is the best time to do the poisoning because of a greater chance of success and fewer impacts to the Wilderness and other values. State’s EA at 8, MRDG at 10. There is no explanation why the Forest Service (or FWP, who apparently did the MRDG) puts the interest of the backcountry hunting recreationist above that of the summertime or early fall recreationist who will have their wilderness experience ruined by the project. Nor is there any analysis as to why—from a wilderness stewardship standpoint—the Forest Service is placing the interest of the early season hunting public (and the management proposal) above the Wilderness itself because the best time do this proposal, assuming the proposal were consistent with Wilderness, is during the hunting season as the data from USGS for the North Fork Blackfoot clearly demonstrate. USGS data on the North Fork Blackfoot River confirms that the lowest water levels during snow-free/ice-free seasons are during the backcountry hunt in late September and early October:



The MRDG incorrectly alleges “The project area typically sees its lowest water levels in late July, August, and early September.” *Ibid*. Thus, it appears this incorrect representation of the data is to justify the timing of the proposal to fit FWP priorities, rather than have the least

amount of impact to Wilderness.¹⁸

We also have serious concerns about the agencies using the informal and internal MRDG process—something that is not consistent from agency to agency and has never been through formal notice and comment rulemaking—to circumvent NEPA. The way the agency has designed the MRDG process is fatally flawed and leads to unnecessary trammeling. The first step is often abused because the problem is described so specifically that no other action is possible or, at best, that action outside of the Wilderness will only partially solve the problem, so it is rejected. In this case, the issue is focused on an area within the Scapegoat Wilderness, rather than the entire range of westslope cutthroat in Montana (the real issue of concern, not the Scapegoat Wilderness). The inclusion of the question in the MRDG worksheet as to whether “other legislation” weighs on the decision is almost always entirely irrelevant, as the Wilderness Act is the controlling statute in Wilderness, yet the question is posed as though managers must weigh the restrictions imposed by the WA against conflicting laws. Most troubling is the implication that the other four characteristics of wilderness can be protected by management action--sacrificing untrammelled wildness in almost every instance. Given the bias of agencies to manipulate, to manage, the MRDG reinforces the management paradigm and Wilderness loses. This is contrary to the Wilderness Act¹⁹ and the rule of statutory construction, which requires the Act to be read in harmony and not in internal conflict.

Similar problems arise with the incorporation of this point system in MRDG worksheets. For example, in those worksheets, agencies tally up points for each potentially degrading activity on each quality of wilderness character. But, since there is only a check-box, each activity gets only 1 negative point regardless of the intensity of its impact. To illustrate, an activity involving 120 helicopter landings to capture and collar wildlife would get one “negative” point for trammeling. An alternative with 10 helicopter landings and fewer collars would get the same. And, in some cases, a decision maker may think that a helicopter landing doesn’t fit neatly within any of the “quality” categories, so the decision maker might not check any of the negative boxes, even though the Wilderness Act expressly prohibits motorized use. This creates an absurd and subjective tallying and balancing system that Congress did not intend or express in the Wilderness Act. That subjectiveness becomes even more problematic when agency staff without wilderness training are completing the worksheets.

Indeed, the proposed action is not consistent with Wilderness in any way, shape or form. It is meddling and manipulation, not protection of natural processes. One can’t reverse trammeling through more trammeling. One can’t restore natural conditions through trammeling. Natural conditions are what flow from an untrammelled environment.

While there are other designations that protect landscapes, only Wilderness has a statutory mandate to keep Wilderness untrammelled.²⁰ The Forest Service is ignoring the fundamental

¹⁸ This also violates NEPA and MEPA as no alternative in the State’s EA considered doing the project after September 15.

¹⁹ See Kammer 2013, which makes the case that wildlife manipulation in Wilderness is contrary to the Wilderness Act.

²⁰ See Brown et al. 2001.

value of Wilderness.²¹

The PA and the State's EAs fail to consider other potential impacts to the Scapegoat Wilderness. For example, while the State's EA suggests replacing the fish that currently live in these waters with westslope cutthroat trout will improve angling opportunities, the FS hasn't considered the impacts this could have on the Wilderness. A 2007 study that reviewed monitoring data of campsite conditions in the BMWC found there were many campsites that violated standards (Tanner and Nickas 2007). If angling is improved in the upper North Fork, the number of visitors may increase with a corresponding increase in campsite impacts. The FS needs to consider how improving angling opportunities in the upper North Fork could affect campsite conditions and whether it will perpetuate a situation that is already out of standard. Similarly, the analysis should consider how not stocking these waters with fish might improve campsite conditions.

National Environmental Policy Act

A categorical exclusion is blatantly improper for a project involving multiple prohibited uses and intensive ecosystem and population manipulation in over 67 miles of streams and 3 lakes in a designated Wilderness. It is appalling and disappointing that Wilderness expertise and leadership within the Forest Service has degraded so severely that we have to argue such an obvious point.

Our comments to the FWP addressed the issue in considerable detail:

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

²¹ See Cole, et al. 2015.

determine if an action will 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 must be prepared. See 40 C.F.R. § 1508.27.

...

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?

It should also be recognized 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 on an earlier EA that found the EA out of compliance with NEPA. The EIS and Record of Decisions were also found to be out of compliance on a later lawsuit with the Wilderness Act. *Californians for Alternatives v. U.S. Fish & Wildlife Serv.*, 814 F. Supp. 2d 992 (E.D. Cal. 2011).

The Forest Service must also rigorously explore and develop alternatives that would lessen environmental impacts, including impacts to wilderness character. 42 U.S.C. § 4332(2)(E). In doing this, the Forest Service must ensure that it has not defined the purpose and need of the project so unreasonably narrow that it precludes consideration of all reasonable alternatives, and it cannot allow another entity's objectives to "define the scope of the proposed project" in a manner that "necessarily and unreasonably constrains the possible range of alternatives." See *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 812 (9th Cir. 1999); *Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1070, 1072 (9th Cir. 2009).

Here, the Forest Service cannot let the State's objectives override the Forest Service's primary obligation to wilderness preservation. The Forest Service's NEPA analysis must stay centered on that obligation and seriously consider a no-action alternative and other alternatives that significantly reduce or eliminate prohibited uses and intentional manipulation of the Wilderness.

Summary

This proposal is fatally flawed and should be scrapped. If this goes forward, the Forest Service must perform a comprehensive EIS that take a hard look at the direct, indirect, and cumulative impacts of this proposal on Wilderness.

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,



Gary Macfarlane
Board Member

Swan View Coalition
Kalispell, MT

Flathead-Lolo-Bitterroot Citizen Task Force
Missoula, MT

Alliance for the Wild Rockies
Helena, MT

Friends of the Wild Swan
Bigfork MT

Yellowstone to Uintas Connection
Mendon, UT

Blue Mountains Biodiversity Project
Fossil, OR

Friends of the Bitterroot
Hamilton MT

Conservation Congress
Great Falls, MT

Heartwood
Tell City, IN

Native Ecosystems Council
Three Forks, MT

Shawnee Forest Defense!
Carbondale, IL

Friends of the Clearwater
Moscow, ID

Shagbark
Paoli, IN

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