



WILDERNESS WATCH

Keeping Wilderness Wild

Board of Directors

Louise Lasley, NM
President

Marty Almquist, MT
Vice President

Gary Macfarlane, ID
Secretary

René Voss, CA
Treasurer

Talasi Brooks, ID

Franz Camenzind, WY

Mark Pearson, CO

Mark Peterson, WI

Cyndi Tuell, AZ

Howie Wolke, MT

Executive Director
George Nickas

Advisory Council
Magalen Bryant
Dr. Derek Craighead
Dr. M. Rupert Cutler
Dr. Roderick Nash

Minnesota Office
2833 43rd Ave. South
Minneapolis, MN
55406

Idaho Office
P.O. Box 9765
Moscow, ID 83843

October 15, 2021

Bureau of Land Management (BLM)
Price Field Office
125 South 600 West
Price, UT 84501

Sent via: [BLM UT PR Comments@blm.gov](mailto:BLM_UT_PR_Comments@blm.gov)

Dear BLM Staff,

The following comments on the September 2021 Environmental Assessment (EA) on "Issuing Special Recreation Permits in Wilderness Areas, DOI-BLM-UT-G020-2021-32-EA" come from Wilderness Watch, a national wilderness conservation organization focused on the protection and proper stewardship of all units of the National Wilderness Preservation System. Our focus obviously includes the 17 new Wildernesses in Emery County that are the subject of this EA. Our comments include the following:

- **BLM must develop Wilderness Stewardship Plans (WSPs) for the new Wildernesses, and must develop them FIRST, before issuing Special Recreation Permits (SRPs).** The BLM should develop Wilderness Stewardship Plans (WSPs) for each of the new Wildernesses, and not rely on just making minor amendments to the Price Field Office's Resource Management Plan (RMP) to guide the stewardship of these important, newly-designated areas. These new Wildernesses deserve such WSPs in order to protect and steward the wild character of the new areas.

Furthermore, the WSPs must be developed BEFORE the Price Field Office issues any Special Recreation Permits (SRPs) for the new Wildernesses. To do as the BLM proposes (issue SRPs now, develop stewardship policies later) is putting the cart before the horse. Issuing SRPs now – before any analysis of wilderness conditions in the areas has been completed – poses the potential of embedding commercial operations within these Wildernesses that may later need to be removed after analyses have been done. Such a removal is extraordinarily difficult to do, especially if the BLM had already sanctioned a commercial operation via an SRP.

- **Commercial SRPs must be only sparingly issued as required by the 1964**

Wilderness Act. Commercial activities degrade a Wilderness's wild character. They detract from an area's wildness and make an area more like the lands overrun by our civilization, rather than "in contrast with those areas where man and his works dominate the landscape," as the Wilderness Act states. That's why the framers of the Wilderness Act and Congress itself included a prohibition in this federal law on commercial activities in designated Wildernesses, with only a very narrow exception for some appropriate outfitting and guiding.

The 1964 Wilderness Act in general prohibits commercial enterprises within designated Wildernesses:

Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act.

16 U.S.C. § 1133(c)

The Wilderness Act further provides that "[c]ommercial services may be performed within the wilderness areas . . . to the *extent necessary* for activities which are proper for realizing the recreational or other wilderness purposes of the areas." 16 U.S.C. § 1133(d)(5) (emphasis added). Interpreting the Wilderness Act's specific exemption for commercial services in § 1133(d)(5), the Ninth Circuit has held that "the statutory scheme requires, among other things, that the assigned agency make a finding of 'necessity' before authorizing commercial activities in wilderness areas." *High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d at 646. However, "a finding of necessity is a necessary, but not sufficient, ground for permitting commercial activity in a wilderness area." *Id.* at 647. The finding must be "specialized," and "[t]he Forest Service may authorize commercial services only 'to the extent necessary.'" *Id.* (citing 16 U.S.C. § 1133(d)(5)) (emphasis in original). Courts have emphasized that the prohibition against commercial activity is "one of the strictest prohibitions of the Act." *Californians for Alternatives to Toxics v. U.S. Fish and Wildlife Serv.*, 814 F. Supp. 2d 992, 1016 (E.D. Cal. 2011) (citing *Wilderness Watch v. U.S. Fish and Wildlife Serv.*, 629 F.3d 1024, 1040 (9th Cir. 2010)). And, "[t]he limitation on the Forest Service's discretion to authorize commercial services only to 'the extent necessary' flows directly out of the agency's obligation under the Wilderness Act to protect and preserve wilderness areas." *Blackwell*, 390 F.3d at 647. Accordingly, "if an agency determines that a commercial use should trump the Act's general policy of wilderness preservation, it has the burden of showing the court that, in balancing competing interests, it prepared the 'requisite findings' of necessity." *High Sierra Hikers Ass'n v. U.S. Dept. of Interior*, 848 F. Supp. 2d 1036, 1046 (N.D. Cal. 2012) (citing *Californians for Alternatives to Toxics*, 814 F. Supp. 2d at 1017; *High Sierra Hikers Ass'n v. U.S. Forest Serv.*, 436 F. Supp. 2d 1117, 1131 (E.D. Cal. 2006) ("[W]hen there is a conflict between maintaining the primitive character of the area and between any other use . . . the general policy of maintaining the primitive character of the area must be supreme.")).

• **Group sizes proposed in the EA are far too large.** The general limit of 25 people in some areas of Wilderness is completely excessive, as this would represent a large group of people using the same area at the same time. The specific limit of 14 in other Wilderness areas also seems excessive.

By means of comparison, the Boundary Waters Canoe Area Wilderness in Minnesota has a maximum group size of just nine people. That size limit is much more in keeping with protecting wilderness values like solitude and silence than the excessively large group size limits suggested in the EA for the Emery County Wildernesses.

The BLM must objectively analyze the required “reasonable range of alternatives,” including those alternatives with much lower group size limits for Wilderness.

- **The Needs Assessment is wholly inadequate.** Appendix B of the EA is supposedly the Needs Assessment. It is nothing more than an inventory of current and potential commercial services. There is no analysis of whether segments of the public need commercial services, nor whether the public can visit these Wildernesses without commercial services. The Needs Assessment is completely inadequate and must be thrown out.

The federal courts have also addressed inadequate Needs Assessments in this context:

But this conclusion improperly equates “preference” with “need,” especially when such pack stock trips could be made in scenic non-wilderness.

High Sierra Hikers Ass’n, et al, v. Bernie Weingardt, et al, 521 F.Supp. 2d 1065

The BLM must completely re-write the Needs Assessment for this project to comply with the Wilderness Act and federal court findings. A mere compilation of current commercial services will not suffice. An analysis that shows the “requisite finding of necessity” must be conducted.

- **BLM must conduct analyses of direct, indirect, and cumulative adverse impacts on soils, vegetation, wildlife, wildness, solitude, etc.** As examples, the EA should analyze which areas may provide seasonal or permanent habitat for those species that may be adversely affected by commercial services and the crowds they may bring. For example, bighorn fawning areas, Mexican Spotted Owl (MSO) and other raptor nests, and deer migration corridors should be closed to SRP uses at the appropriate times and with the appropriate buffers.

Given the prolonged mega-drought, native ecological communities and species are already severely stressed. Past status quo SRP management and authorizations are likely no longer appropriate in light of these worsening environmental conditions. Protecting these natural communities and species must be the top priority, and if there is any doubt, BLM should err on the side of caution.

Please keep Wilderness Watch on your contact list for this project.

Sincerely,



Kevin Proescholdt
Conservation Director