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Working to protect and restore Western Watersheds and Wildlife

Western Watersheds Project

Bureau of Land Management
Caliente Field Office
Attn: Kyle Teel, SSHV
1400 South Front Street, Box 237
Caliente, NV 89008

Via Email: kteel@blm.gov

Re: South Spring and Hamlin Valley Watersheds Restoration Plan
DOI-BLM-NV-L030-2020-0006-EA

July 26, 2021

Dear Mr. Teel,

Please accept these comments on behalf of Western Watersheds Project (WWP) and Wilderness Watch (WW).

Western Watersheds Project is a nonprofit environmental conservation group with 12,000 members and supporters founded in 1993 and has field offices in Idaho, Montana, Wyoming, Arizona, Utah, Nevada and California. WWP works to influence and improve public lands management throughout the West. We are concerned about the magnitude of this project and what we believe to be overzealous and heavy-handed management objectives that will likely yield undesirable outcomes in many instances.

Wilderness Watch is a national wilderness conservation organization dedicated to the protection and proper stewardship of the National Wilderness Preservation System. Wilderness Watch appreciates the concern over what many consider unnatural changes to native vegetation. However we believe the restoration project as proposed is contrary to the letter and spirit of the Wilderness Act and ignores the best science regarding fire ecology.

BLM Must Analyze the South Spring and Hamlin Valley Watersheds Restoration Plan as part of an Environmental Impact Statement (EIS)

In order to properly assess the potential impacts of all species and the ecosystem as a whole, the BLM must analyze the impacts of this massive landscape-scale project as part of a single EIS. NEPA establishes that federal agencies must take such a comprehensive "hard look" by evaluating in a single EIS all actions that are "connected" or "similar"—meaning they have "common timing or geography"—or when they may have "cumulatively significant" impacts. See 40 C.F.R. § 1508.25(a)(2)-(3), § 1508.27(b)(7) & § 1508.7. Agencies—like BLM here—violate these NEPA requirements when they "segment" their proposed actions into several parts for separate analysis, or fail to address cumulative impacts of a proposed action along with effects of past, present or reasonably foreseeable future actions. See Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985) (reversing for failure to analyze impacts of related road and logging projects together); Carmel-by- the-Sea v. U.S. Dep't of Transp., 123 F.3d 1142, 1160-61 (9th Cir. 1997) (reversing because agency failed "both to catalogue adequately past projects in the area, and to provide useful analysis of the cumulative impact of past, present and future projects" with the proposed project); Save the Yaak Comm. v. Block, 840 F.2d 714, 720 (9th Cir. 1988) (an "assessment of connected actions is necessary even if the impact of the proposed action is not significant").

The proposed actions under the preferred alternative, together and individually, are a major federal action which affects 666,000-plus acres of prime sagebrush habitat, varied vegetation communities and sensitive species habitat, significantly affecting the environment. See 40 C.F.R. § 1508.27. By any measure, an Environmental Assessment is woefully inadequate for the proposes of this project. The completion of an EIS is the only reasonable avenue for BLM to take in this situation.

The Environmental Assessment is Programmatic and Therefore Cannot Authorize Site-Specific Actions

Although the BLM is not required to fully analyze site-specific impacts until a "critical decision" has been made to act on site development - i.e. when the agency proposes to make an irreversible and irretrievable commitment of the availability of resources to [the] project at a particular site," *Friends of Yosemite Valley v. Norton, 348 F.3d 789, 801* (citing State of Cal. v. Block, 690 F.2d 753, 761 (9th Cir. 1982)), the BLM cannot avoid its obligation to take a hard look under NEPA by choosing to generally describe possible treatments and impacts in an EA. Failure to fully analyze the site-specific environmental impacts of the proposed project results in either an EA that fails the hard look standard under NEPA or is merely programmatic in nature.

A programmatic EA is adequate for decisions that do not irreversibly and irretrievably commit agency resources to a particular project, although the agency must later develop a site-specific NEPA analysis when that commitment occurs. See Friends of Yosemite Valley, 348 F.3d at 800 (citing N. Alaska Envtl. Ctr. v. Lujan, 961 F.2d 886, 890-91 (9th Cir. 1992)) (stating that a programmatic plan "must provide' sufficient detail to foster informed decision-making, but site-specific impacts need not be fully evaluated until a critical decision has been made to act on site development.) Here, the BLM has failed to make the site-specific vegetation

treatment decisions necessary to evaluate the probable environmental impacts of those decisions.

Inadequate Baseline

The EA lacks an adequate baseline because it does not disclose and describe in sufficient detail the health and trends of sensitive and threatened species over time in the project area.

Pinyon – Juniper Woodlands and Fire (Please see attached for literature cited)

Romme et al. (2009) suggested that there are three types of pinyon-juniper vegetation, all of which have differences in understory composition and length of fire rotations: Persistent Pinyon-Juniper Woodlands, Pinyon-Juniper Savannas, and Wooded Shrublands. Persistent Pinyon-Juniper Woodlands, which can be found throughout much of the Colorado Plateau and Great Basin, range from sparse stands of small trees growing on poor substrates to dense stands of large trees growing on more productive substrates. These communities exhibit variable cover and the understory is often sparse with significant areas of bare ground. Fire is inherently rare. In fact, Romme et al. (2009) describe how many Persistent Pinyon-Juniper Woodlands exhibit little to no evidence that they ever sustained widespread surface fires; rather, high-severity "crown" fire was likely the dominant fire regime.

Over time, these woodlands accumulate fuel and conditions become highly flammable, and fires are typically stand-replacing. Estimates on historical fire intervals in Persistent Pinyon-Juniper Woodlands vary from 400 to 600 years, based on best available fire scar data from across the West (Romme et al. 2009). Historically, Pinyon-Juniper Savannas, which are found further south and east in places such as New Mexico and Arizona, receive monsoon rains that likely shortened historic fire return intervals. These savannas have low to moderate density and cover of pinyon or juniper or both, with a well-developed understory of nearly continuous grass or forb cover. Shrubs may be present but are usually only a minor component. Wooded Shrublands tend to have the soil, climate, and natural disturbance patterns that favor shrubs as a major part of pinyon-juniper forests (Romme et al. 2009).

Romme et al. (2009) stressed that spreading, low-intensity, surface fires had a limited role in molding stand structure and dynamics of most pinyon and juniper in the landscape. Historical fires in all pinyon-juniper-woodland types generally did not "thin from below" or kill predominantly small trees. Instead, the dominant fire effect was to kill most or all trees and to top-kill most or all shrubs within the burned area, regardless of tree or shrub size. This was true historically and for most ecologically significant fires today. The authors concluded that in many pinyon-juniper woodlands, stand dynamics are driven more by climatic fluctuation, insects, and disease than by fire.

In a synthesis of fire ecology and management of pinyon-juniper systems in southern Utah, Tausch and Hood (2007) explain the history of fire in the region before Euro-American settlement. Deeper soils in the canyon bottoms and swales in pinyon-juniper woodlands were generally more productive for herbaceous species, and thus had higher fire frequencies. As soils become shallower, such as on steeper topography, the abundance of perennial herbaceous species becomes more limited. Shrubs and low trees are more competitive on these substrates

because their deeper roots can exploit water trapped in cracks in the rocks—water that is not available to herbaceous species with shallow roots. Fires appear to have been less frequent, increasing the probability of dominance by trees, which can often be several centuries old.

Baker and Shinneman (2004) also reported that low-severity surface fires were not common in pinyon-juniper woodlands, and they found no evidence that low-severity surface fires would have consistently reduced tree density in moderate-density woodlands, even with sagebrush or grassy understories. Although the authors found some evidence that surface fires may occur in higher elevation pinyon-juniper ecotones with ponderosa pine (Pinus ponderosa), they found little data to support the idea that fires spread widely in juniper savannas at lower-elevation ecotones.

Baker and Shinneman (2004) documented 126 wildfires in pinyon-juniper woodlands since Euro-American settlement that were described in the literature, and of these, two were low severity, three were possibly mixed severity, and 121 were high severity. The authors concluded that there are no data to demonstrate that the frequency of high-severity fires has increased or decreased in pinyon-juniper woodlands since Euro-American settlement and that frequent fire interval estimates (i.e., 13 to 35 years) from other researchers (Brown 2000; Frost 1998; Hardy et al. 2000) were not supported. However, other studies have suggested recent regional increases in severe crown fires in pinyon-juniper woodlands relative to historical periods (e.g., Floyd et al. 2004), and some of these areas may continue to have more frequent fires where nonnative annual grasses (e.g., cheatgrass) have invaded (Floyd et al. 2006 studying pinyon-juniper systems specifically, and Finney et al. 2011 and DellaSala 2018 in context of fires in forested systems generally).

Climate data is now being incorporated into many pinyon-juniper treatment projects, and this is helping practitioners better understand an important component of fire in these systems today. Keyser and Westerling (2017) used 5-year climate variables to predict where high severity fires occur so that managers can conduct more targeted fuels reductions. Several studies have found that climatological factors are more correlated with ignition of wildfires than amount of biomass in trees. Dennison et al. (2014), Holden et al. (2007), Westerling (2016), and Westerling et al. (2006) found that drying trends over the last 20 years had a greater influence on fire activity in dry pine forests, including pinyon-juniper woodlands, than fine fuels and biomass production. They concluded that fire risks are more strongly associated with increased spring and summer temperatures and an earlier spring snowmelt. However, while this is true of the amount of area burned or number of large fires, this may not be the case in terms of fire severity, in which fuel accumulation and continuity may be very important (Douglas Shinneman, personal communication, November 2018).

Surface disturbance associated with mechanical treatments facilitates cheatgrass expansion and may actually serve to increase incidence of fire (Roundy et al. 2014a). Young et al. (2015) found that removing trees reduced canopy fuel loads but surface fuel loads increased. The fine woody debris produced by mastication has been shown to increase the herbaceous layer, including flammable cheatgrass (Aanderud et al. 2017). Redmond et al. (2013) also found an increase of fuels in chained treatments after 20 to 40 years. The previous section of our review details examples of mechanical pinyon-juniper treatments that increase both native and non-native herbaceous understories, all of which have the potential to increase not only post-treatment fuel loads but to potentially create conditions with fuel loads higher than they

were historically, depending on whether the type of woodland is Persistent Pinyon-Juniper Woodland , Pinyon-Juniper Savanna, or Wooded Shrubland. Bates and Davies (2017) have speculated that burning slash in late fall to early spring and including a revegetation component on warmer sites with depleted understories may help. Young et al. (2015) also recommended conducting cool-season prescribed fires after treatments to reduce surface fuels. However, they note that the presence of cheatgrass at the site may impact the success of this method. It should be noted that none of these mitigation practices appear to have been tested.

Pinyon-Juniper Woodlands: Fire Frequency and Carbon Sequestration

There is a great need for more information on the degree to which fuel reduction treatments result in fewer wildfires in pinyon-juniper communities. Some recent research cites climatic factors and human activity rather than pinyon and juniper fuel loads as the chief cause of increasing frequency and extent of wildfire. Other studies suggest that fire intensity might be influenced by the recent increase in trees. There is a consensus, however, that exotic annuals such as cheatgrass promote fire and efforts must be made to arrest their expansion to prevent catastrophic habitat degradation. Many studies note an increase in these species with treatment along with, or instead of, more desirable perennial grasses and forbs. Since this is such a big risk in many areas, applying uniform fire and structural treatments in pinyon-juniper woodlands for the purpose of reducing fire risk must only be undertaken with great caution. Areas that already have large populations of flammable exotics may be unsuitable for fuel reduction treatments, especially if future research indicates that treatments are not effective at reducing wildfire.

Pinyon-Juniper Woodlands and Mechanical Treatments

Pinyon-juniper treatments can lead to an increase in invasive and/or annual plants, particularly cheatgrass (Evans and Young 1985, 1987; Havrilla et al. 2017; Monaco et al. 2017; Provencher and Thompson 2014; Stephens et al. 2016). Cheatgrass can outcompete the forbs and grasses the treatment was intended to increase (Bates et al. 2007). Many studies found that mechanical treatments in pinyon-juniper woodlands may increase herbaceous production, but the increase in invasive, annual plants may not necessarily improve overall ecosystem conditions. For example, Vaitkus and Eddleman (1987) concluded that after juniper removal in Oregon, herbaceous production doubled but much of the increase came from annual plants. Davis and Harper (1989) reported significant increases in weedy annuals on chained treatments in Utah. Owens et al. (2009) observed increases in cheatgrass following lop and scatter/pile burn and mastication treatments in Colorado. Ross et al. (2012) found that in Utah cheatgrass was not present on control sites but it comprised more than 18% cover on lop and scatter/pile burn treatments and between 11% and 18% cover on mastication treatments. Bybee et al. (2016) found that the fine woody debris produced by mastication increased cover of both native and non-native herbaceous plants. Studies in Utah showed that the fine woody debris produced by shredding pinyon and juniper also has an effect on soil microbial activity and nutrient availability deep into the soil profile, even far away from the treatment site (Aanderud et al. 2017). This in turn influenced both native and non-native plants on a species-specific basis. For example, cheatgrass and some native grasses increased, while bluebunch wheatgrass decreased. The positive influence of fine woody debris diminished over time for cheatgrass but increased for native grasses.

Mastication has increased perennial grasses and forbs in early pinyon juniper phases (I and II). However, in later Phase III sites with little understory cover, mastication can cause an increase in invasives. Recent treatments in southwest Utah in these kinds of Phase III woodlands are showing much increased cover of cheatgrass despite being seeded after treatment (Laura Welp, personal observation May 2020).

Mastication produces mulch, which increases nitrogen and facilitates increases in native and non-native grasses (Aanderud et al. 2017). Over time, cheatgrass may decline. Mulch also significantly increases surface fuel loads, especially on sites with high tree cover such as that found in Phase III pinyon-juniper communities. Mulch can decrease bare ground and soil and wind erosion relative to chaining and prescribed burns, although mulch depths over 5 cm can inhibit perennial grass establishment. This method also has less impact on shrubs than other methods. Removing trees by hand is highly selective, so it is the best method for retaining or increasing desirable vegetation like perennial shrubs, grasses, and forbs. PEIS at 4-10,11. Soil disturbance and bare ground is also minimized and shrubs and biological soil crust is retained to a greater degree than other methods. Soil nutrient release is more gradual than that following fire. Like other methods, however, invasive annuals increased moderately after disturbance, especially on Phase III sites where perennial understory vegetation was less abundant. It is unknown if this unintended result is a long-term impact (Miller et al. 2019) BLM should therefore conduct detailed site-specific analysis at all treatment sites to determine the potential for post-treatment invasion. At the very least, removal of Phase III pinyon-juniper should be excluded from all action alternatives, as treatments of Phase III communities have the highest potential to increase invasive annuals and have no known ecological justification.

The EA fails to analyze or even mention the potential for large-scale removal of pinyon pine and juniper forests to transform these endemic forests of the American West into juniper-only communities. In a study of the long-term outcome of 25 years of pinyon and juniper removal within the Grand Staircase-Escalante National Monument, Redmond et al. (2013) found that transformation to juniper communities may be occurring as a result of pinyon pine and juniper removal: Interestingly, treated areas had significantly less Pinus edulis (piñon pine) recruitment compared to untreated areas, while there was no change in Juniperus osteosperma (Utah juniper) recruitment. These results indicate that treated areas may become more J. osteosperma dominated in the future due to increased establishment of J. osteosperma compared to P. edulis. The result of this degradation of pinyon pine and juniper populations to juniper may be due in part to the comparatively higher susceptibility of pinyon to drought compared to juniper. Breshears et al. (2005) describe losses of pinyon throughout southwestern woodlands in response to drought and associated bark beetle infestations. This trend may be exacerbated by climate change.

Expansion of Pinyon-Juniper Woodlands into Sagebrush Systems

Pinyon-juniper-woodland expansion into sagebrush communities has been correlated with the loss of wildlife habitat, increased erosion, loss of herbaceous species, non-native species invasion, and decreases in water quantity and quality (Baker and Shinneman 2004; Blackburn and Tueller 1970; Burkhardt and Tisdale, 1969, 1976; Soule and Knapp, 1999). Thus, current management of pinyon-juniper woodlands is often based on the assumption that removal of pinyon-juniper trees will reverse these conditions.

However, the evidence for expansion of pinyon-juniper into other community types (usually sagebrush) needs to be weighed within the context of the different types of pinyon-juniper woodlands (Persistent Pinyon-Juniper Woodlands, Pinyon-Juniper Savannas, and Wooded Shrublands) (Romme et al. 2009), their distribution and juxtaposition at a landscape scale, and the value of old pinyon-juniper woodlands. It is important to consider the ecological distinction between recently invaded sagebrush landscapes versus old pinyon-juniper woodlands. At the same time, it can be quite difficult to ascertain when an area is indeed a wooded shrubland and has been for hundreds of years or whether it was once sagebrush into which pinyon and juniper has expanded. In some cases the soil type and associated Ecological Site Description can help shed light on the true nature of the woodland and sagebrush association. In other cases the management goals might be the same (i.e., tree removal) regardless of whether the site is indeed a wooded shrubland on a soil type favoring pinyon and junipers trees, or an invaded sagebrush Ecological Site Type. Yet another uncertain area regarding pinyon-juniper expansion is environmental conditions that favor infilling of wooded shrublands over time, to the degree that they eventually resemble persistent woodlands. Where they co-occur, sagebrush and woodland communities can have different states or levels of co-dominance within the overall successional dynamics of the sagebrush/woodland-ecosystem complex of a particular landscape area (Tausch and Hood 2007). Because these systems are dynamic and highly variable across the landscape, successional status and associated ecosystems of pinyon-juniper woodlands are the result of complex interactions of topography, soils, environmental conditions, past patterns of disturbance, and successional processes through time (Tausch and Hood 2007).

Boundaries of these species have been fluctuating through thousands of years, according to woodrat midden studies, so “encroached” areas may actually be within the range of natural vegetation. Lyford et al, (2003) recorded long distance dispersal of Utah juniper into northern Utah and Wyoming in the early Holocene 7,500-5,400 years ago, based on sampling of woodrat midden subfossil plant material that was radiocarbon-dated. A subsequent wet climatic phase delayed expansion, and then a following dry phase 2,800 years ago lead to a rapid expansion of juniper across the area. Thus juniper “encroachment” may simply be part of this long-term Holocene expansion and fluctuation. Pinyon-juniper communities should be managed as native plant communities, and not “excessive fuel” or “invasive species.”

Regardless of the reasons for pinyon-juniper expansion, practitioners who focus management attention on areas where woodlands have expanded into shrublands classify the stages of pinyon-juniper expansion into “Phase I, Phase II and Phase III” stages. Phase I woodlands are defined by the dominance of shrubs and herbaceous vegetation layers associated with early phases of woodland encroachment, and typically, tree cover is less than 10 %. Phase II woodlands are those in which trees, shrubs, and herbaceous vegetation share relative dominance, and pinyon and juniper cover is typically somewhere between 10% and 30%. In Phase III woodlands, trees dominate with cover typically exceeding 30% (Miller et al. 2000, 2005, 2008).

Land managers often prescribe pinyon-juniper treatments to lessen the likelihood of large, devastating crown fires, especially around populated areas or structures (e.g., Healthy Forests Restoration Act). Many researchers advocate treating pinyon-juniper woodlands at low- to mid-tree dominance index (i.e., Phases I and II). This will retain the shrubs on a site and

increase ecosystem resilience and resistance by promoting herbaceous cover (Roundy et al. 2014a; Williams et al. 2017; Young et al. 2013a). They also recommend treating with methods such as cutting or mastication rather than chaining because there is less soil erosion and better seedling establishment.

Historical and Current Ecological Context of Pinyon-Juniper and Sagebrush Systems

In the western United States, there were historically an estimated 50 million acres of pinyon-juniper woodland (Gottfried and Severson 1994; Mitchell and Roberts 1999). These communities have large ecological amplitudes; their range can extend from the upper edge of salt desert shrub communities at the lowest elevations to the lower fringes of subalpine communities at the higher elevations (West et al. 1998; Tausch and Hood 2007). Pinyon and juniper trees are often associated with a range of sagebrush species and subspecies. Where they co-occur, sagebrush and woodland communities can have different states of co-dominance within the overall successional dynamics of the sagebrush/woodland ecosystem complex of a particular landscape (Tausch and Hood 2007). How these codominant patterns influence both historical and current fire regimes and expansion of pinyon-juniper woodlands into sagebrush systems are covered in more detail below.

The pre-Euro-American historical fire regimes for pinyon-juniper woodlands in the Great Basin and Colorado Plateau have been a matter of some debate. They most likely varied greatly. Moreover, when discussing pre-settlement fire regimes, it is important to also consider the influence that aboriginal fire-setting, presumably in order to influence both wildlife habitat and resource foraging, was having on pinyon-juniper woodlands on the eve of Euro-American contact (Raisha et al. 2005). However, most researchers agree that the patterns of historical disturbance were spatially distributed across the landscape and the subsequent successional changes through time following those disturbances were much different prior to Euro-American settlement than afterward. The pattern and behavior of fire was closely related to the unique interactions of topography, soils, environmental conditions, and vegetation composition present at that time on each landscape area of interest. Then, as now, larger fires tended to occur during periods of drought (Betancourt et al. 1993; Swetnam and Betancourt 1998). Insects, diseases, and native ungulates appear to have played a widespread but relatively minor role (Tausch and Hood 2007).

Literature reviews on the topic of historical fire regimes in pinyon-juniper woodlands have pointed out common areas of agreement among many ecologists. Most authors find that pinyon-juniper woodlands are susceptible to high-severity fires both now and in the past. Fire intervals vary depending on type of pinyon-juniper woodland and presence of non-native plants. We maintain that pinyon-juniper communities represent a diverse array of native vegetation types, including pinyon-juniper open scrubland, juniper savanna, and closed pinyon-juniper old-growth woodland (Romme et al. 2009). Several species of Juniperus and Pinus are also involved. Fire regimes and plant community structure are very different in the Western juniper (Juniperus occidentalis)-bluebunch wheatgrass (Elymus spicatus) steppe savanna, as compared to shrub-rich Utah juniper (J. osteosperma)-Singleleaf pinyon (Pinus monophylla) woodlands of central Nevada.

Wilderness

"We describe an area as wilderness because of a character it has – not because of a particular use that it serves. A wilderness is an area where the earth and its community of life are untrammeled by man. (Untrammeled – not untrampled – untrammeled, meaning free, unbound, unhampered, unchecked, having the freedom of the wilderness.)." Howard Zahniser, drafter of the Wilderness Act, in a 1957 speech discussing the Wilderness Bill.

The 1964 Wilderness Act governs the administration and stewardship of the National Wilderness Preservation System. This visionary law defines Wilderness in part as "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." Untrammeled means unmanipulated or unconfined, where humans do not dominate or impose human will on the landscape. Wilderness designation brings a special protection for Wildernesses, and requires the federal land management agencies like the BLM to not manipulate or dominate the Wilderness. Rather, federal agencies are required by the Wilderness Act to preserve the wilderness character of these Wildernesses and to protect their wildness. This mandate is reflected in the epigram written by the drafter of the Wilderness Act, Howard Zahniser who wrote, "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."[1]This is explained in more detail in point 2 below.

Below we detail some of the major flaws in BLM's proposed action for Wilderness.

1- The Wilderness Act is not internally in conflict

The terms "natural" and "untrammeled" are complimentary (and not to be conflated), and thus the Wilderness Act isn't internally inconsistent, as the EA seems to suggest. The canons of statutory construction dictate that natural conditions be in harmony with wildness (untrammeled). *United States v. Powell*, 6 F.3d 611, 614 (9th Cir. 1993) ("It is a basic rule of statutory construction that one provision should not be interpreted in a way which is internally contradictory or that renders other provisions of the same statute inconsistent or meaningless"); *see also Wilderness Society*, 353 F.3d at 60 ("a fundamental canon that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"); *Kmart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of [a] statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole."); *United States v. Lewis*, 67 F.3d 225, 228-29 (9th Cir. 1995) ("Particular phrases must be construed in light of the overall purpose and structure of the whole statutory scheme."). Thus, what is natural for the area necessarily flows from what is

[1] See attached.

untrammeled. Otherwise, the default position will always be to trammel Wilderness to comport with a land manager's notion of what is natural, even though various complicated factors—many of which we do not fully understand and cannot control—are always necessarily at play in shifting natural conditions. Wilderness is "in contrast" to areas where our actions and decisions dominate the landscape. Nature should roll the dice in Wilderness, not managers.[2, 3]

2- BLM cannot make the decision to trammel Wilderness in this instance

Kammer states:

> 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). Again, it is attached. While the BLM is rationalizing ecological intervention based on poor past management practices and on other human-induced changes, "[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." *Id.*

The proposal is seriously flawed also because the central "characteristic of Wilderness" cannot be attained elsewhere. The ostensible reason for destroying wild or untrammeled Wilderness, naturalness, is a twisting of the Wilderness Act. The agency will always allege that trammeling is short term while supposedly returning an area to some preconceived natural state will be long term. Under that rationale, in no circumstance could untrammeled Wilderness be favored over supposed natural Wilderness. BLM managers will always find an excuse to

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[2] See Cole et al 2015, attached, a critique by wilderness professionals, which is a rejection of the reductionist approach to Wilderness taken by the EA and the misuse of the KIW2 protocol in administrative decisions.

[3] See Kammer 2013, attached, makes the case that wildlife manipulation in Wilderness is contrary to the Wilderness Act. See also:

Worf, Bill. 1997. Response to "Ecological Manipulation in Wilderness" by Dr. David N. Cole. International Journal of Wilderness, Vol. 3, No. 2. pp. 30-32.

McCloskey, Michael. 1999. Changing Views of What the Wilderness Act is All About. 76 Denver University Law Review, pp. 369-381.

Nickas, George. 1999. Preserving an Enduring Wilderness. 76 Denver University Law Review, pp. 454-463.

trammel Wilderness to reach their desired goals, because what they do is manipulate.

Stated another way, Wilderness is as much a process as a place. It is "untrammeled by man" (wild or unconfined) with "primeval character and influence." These relate directly to a process that is devoid of conscious industrial human manipulation. This point becomes crucial in instances where it appears that wildness/Wilderness is at odds with natural conditions. The EA believe there is a conflict between the two and come down on the side of naturalness, contrary to the Wilderness Act. Indeed, according to the laws of statutory construction, the law should be read so there is no internal conflict.

For example, the Wilderness Act did not prescribe management that would maintain pre-Columbian flora and fauna, as desirable as that may seem to some. The Wilderness Act did not prescribe a pre-settlement vegetative condition, as desirable as that may seem to some. It did not prescribe that man-made artifacts be protected from natural processes. There is no charge to manage specific endpoints. Management is very carefully used in the Wilderness Act and mainly in conjunction with managing things that could harm the wilderness and its wild processes. Wilderness is about process, not an end point. This is where the EA utterly fails as it potentially contemplates significant manipulation in wilderness.

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 untrammeled environment.

Further, the discretion of "control of fire" is not so broad or in the context of trammeling actions prior to fire occurrence, but measures to control a fire once it is started. It is not an open door to manipulation of Wilderness in the name of fire management, rather it is specifically directed at the discretion to detect and fight (or not) fires in Wilderness, on the relatively infrequent circumstances under which they are occurring. In other words, it is to be used for actual fires and not speculatively used for possible future fires. This shoehorning of manipulation in Wilderness when fires are not presently on the ground completely defeats the purpose of preserving wilderness character.

If that were not enough, the proposal calls for prohibited actions in Wilderness including motorized use--helicopter transport and chainsaws--and structures. EA at 45. 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.").

The preceding paragraphs show how the BLM tries to reduce the Wilderness Act to a procedural statute—something akin to NEPA. The Wilderness Act is a substantive statute with a substantive purpose, 16 U.S.C. 1131(a), and substantive prohibitions, 16 U.S.C. 1133(c). The

Courts are very clear that the Wilderness Act is not a procedural statute. "The Wilderness Act 'emphasizes outcome (wilderness preservation) over procedure' and has been described to be 'as close to an outcome-oriented piece of environmental legislation as exists.'" *Wilderness Watch v. Iwamoto*, 853 F.Supp.2d 1063, 1071 (W.D. Wash. 2012) (quoting *High Sierra Hikers Ass'n v. U.S. Forest Serv.*, 436 F.Supp.2d 1117, 1138 (E.D. Cal. 2006)). "[T]he Wilderness Act is a specific, protective statute militating against [various forms of] intrusions." *Olympic Park Associates*, No. C04-5732FDB, 2005 WL 1871114, at *7 (W.D. Wash. Aug 1, 2005). Accordingly, the BLM must ensure that any management action it is taking is substantively compatible with the Wilderness Act, including authorizing generally prohibited activities only to the extent necessary. This duty cannot be abdicated by other management objectives and goals. "The limitation on the Forest Service's discretion to authorize prohibited activities only to the extent necessary flows directly out of the agency's obligation under the Wilderness Act to protect and preserve wilderness areas." *High Sierra Hikers Ass'n*, *v. Blackwell*, 390 F.3d 630, 647 (9th Cir. 2004). 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." *Greater Yellowstone Coalition v. Timchak*, 2006 WL 3386731 at *6 (D.Idaho Nov. 21, 2006).

3- The EA is inconsistent in its wilderness analysis

The EA notes that there will be "a negative trammeling effect" (at 43), negative impacts to the undeveloped "quality of wilderness" (at 45), and negative impacts to solitude and unconfined recreation (*Id.)*. Digging in a bit deeper, we learn that "the trammeling actions would be spread over a decade or more. Trammeling would persist due to the vegetative conditions and continue to increase in severity as the FRCC rating continues to move further towards FRCC 3." EA at 43. Astonishingly, the EA comes to the conclusion that all of this damage to Wilderness is okay, based upon the impossible notion of returning the area to a natural state through unnatural means. "The overall effects of proposed actions within the wilderness areas would restore wilderness values." EA at 45. This is a form of cognitive dissonance. Even if we were to accept the applicability of the FRCC ratings for Wilderness (or anywhere in the project area), the EA's haphazard analysis itself admits that trammeling will "increase in severity as the FRCC rating continues to move further towards FRCC 3." In essence, away from the direction the EA elsewhere claims it is supposed to go. In any case, FRCC ratings have nothing to do with wilderness character as explained earlier in this comment. They are endpoints, not process oriented.

The EA admits there have been past fires in the Wilderness but that has not changed the way BLM analyzes the current condition. However, by the EA's own admission, the trammeling really doesn't do any good. Even with trammeling, the FRCC conditions will worsen.[4]

According to BLM (https://www.blm.gov/visit/white-rock-range-wsa) the White Rack Range Wilderness and the contiguous WSA in Utah:

[4] We address later in this comment the issue that the FRCC ratings are suspect and not based upon the best available science as it relates to fire ecology.

> The White Rock Range WSA is a part of the greater White Rock Mountains, a pristine north-south oriented mountain range that straddles the border of east-central Nevada and western Utah. … In 2004, the Nevada portion was designated as wilderness under the Lincoln County Conservation Recreation Development Act. … The White Rock Range is primitive in the most literal sense. Virtually untouched by human activity, the area has the capacity to accommodate large numbers of visitors while still maintaining solitude due to the heavy tree cover and jumbled mountain topography. … Solitude, lands unaffected by outside influences, and the opportunity for primitive recreation combine with the abundance of natural springs to make this area an ideal destination for the avid outdoors person.[5]

This hardly comports with the findings of the EA.

4- NEPA Wilderness Policy

The huge size of the proposal and project area makes this really a programmatic rather than a site-specific EA, regardless of what the EA alleges. The process itself violates BLM's manual Direction regarding Wilderness projects and motorized incursions. The Manual clearly notes that site NEPA analysis is required for these activities (BLM Manual 6340 1.6D3):

> 1. NEPA Compliance
>
> In conformance with BLM Handbook H-1790-1, Appendix 5, if any of the "extraordinary circumstances" are applicable to the action being considered, either an EA or an EIS must be prepared for the action. Among these "extraordinary circumstances" are actions that may "have significant impacts on...wilderness areas." The BLM interprets this language to mean that a categorical exclusion cannot be used to approve any action in a wilderness that would authorize a use listed in 1.6.B.2 of this manual: any commercial enterprise or service; any permanent or temporary road; the use of any motor vehicle, motorized equipment, or motorboat; the landing of any aircraft or the picking up or dropping off of people or material from an aircraft; the use of any other form of mechanical transport; the building or placement of any structure or installation. In addition, a categorical exclusion cannot be used to approve any action in a wilderness that may have a significant impact to wilderness character.

Further, the following section states:

> 2. Public Notification
>
> Field office managers must provide public notice of proposed actions within wilderness areas. Notification should occur as soon as practicable, such as when the purpose and need for a proposal (which may be the same as the "purpose and need" for purposes of NEPA) is defined. Notification may occur through the agency website, local media, and the use of mailing lists of interested parties. In certain instances, such as projects with regional or national interest, Federal Register publication may also be warranted. Any

[5] There is a similar finding on the wilderness.net site for the White Rock Range Wilderness.

substantive comments from the public (e.g. NEPA scoping comments), solicited or not, should be considered during the NEPA process.

The notice should include enough information for the recipient to understand the purpose, location, nature, size, and expected implementation date of the proposed action.

The EA has no specifics on implementation times for the project. All we know is that it may take ten years. This is hardly the specificity required by the BLM Manual. We don't know how many helicopter flights/landings or when they would take place. We only have a rough idea as to where the activity would occur, based upon the maps, which show all of the Wilderness within the project area as targeted for manipulation.

We don't know if an MRDG has been done for the Wildernesses in the project area. It is not included online. If one ahs been done, why isn't it publicly available?

5- Science and Wilderness

The EA notes that the Wildernesses are generally higher in elevation. That raises the question of fire frequency. Considerable research shows that fire was generally occurred at longer intervals in the Great Basin vegetation types (see for example, Romme, W., C. Allen, J. Bailey, W. Baker, B. Bestelmeyer, P. Brown, K. Eisenhart, L. Floyd-Hanna, D. Huffman, B. Jacobs, R. Miller, E. Muldavin, T. Swetnam, R. Tausch and P. Weisberg. 2007. Historical and Modern Disturbance Regimes of Piñon-Junifer Vegetation in the Western U.S.; Baker and Shinneman. 2004. Fire and restoration of pinon–juniper woodlands in the western United States: a review. Forest Ecology and Management 189 (2004) 1–21; and Lanner and Frazier. 2011. The historical stability of Nevada's pinyon-juniper forest. Phytologia (December 2011) 93(3)). Longer return intervals were the norm for the higher elevations in the mountains as well. There is little current scientific support for BLM's ideological position about fire regimes. Removing livestock is the best way, including the way compatible with Wilderness, to see ecosystem recovery (see, for example Beschta et al., 2012 .Adapting to climate change on western public lands: addressing the ecological effects of domestic, wild, and feral ungulates. Environmental Management, vol. 51, no. 2, pp. 474–491, 2012)

The fact that fires have burned in the two Wilderness yet BLM proposes more fire suggests that there will never be a return to a natural fire regime. The Wilderness will be forever degraded by ongoing agency actions.

Sincerely,

/s/ Adam Bronstein

/s/ Gary Macfarlane

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