Dear Ms. Tsang:

The following comments from Wilderness Watch are being submitted on the Draft Environmental Assessment Arctic Grayling Conservation Red Rock Lakes National Wildlife Refuge, which would authorize intensive constructions of facilities in the Red Rock Lakes Wilderness. It would also permit extensive trammeling by managers of ecological conditions in the Wilderness. The proposed project, depending on the alternatives, would include constructing ¾ of a mile of electric lines, up to a mile of pipeline, constructing 2/3 of a mile of long permanent wall barrier, and the extensive and permanent use of motorized equipment. In short, it is a proposal entirely at odds with the letter and spirit of the Wilderness Act and should be immediately dropped from further consideration.

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 Red Rock Lakes Wilderness. All of the action alternatives are gross violations of the Wilderness Act and harm the Red Rock Lakes Wilderness. We have never seen an industrial development like this ever proposed in Wilderness because it is contrary to the law.¹

WILDERNESS

This proposal is brazen in its conflict with the Wilderness and the Wilderness Act. “Wilderness” is “in contrast” to places our civilization dominates. All the action

¹ The only times similar proposals have come up in Wilderness are those cases that involve the narrow exceptions to the Wilderness Act in section 4(d), which are mainly concerned with valid existing rights.
alternatives would turn the Red Rock Lakes Wilderness into a fish farm via a permanent infrastructure that is prohibited by law.

**Statutory Mandate:** The Wilderness Act establishes a National Wilderness Preservation System to safeguard our wildest landscapes in their “natural,” “untrammeled” condition. 16 U.S.C. § 1131(a). Wilderness is statutorily defined as “an area where the earth and its community of life are untrammeled 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). Thus, wilderness “shall be administered for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment as wilderness....” Id. § 1131(a) (emphasis added). The Act’s opening section “sets forth the Act’s broad mandate to protect the forests, waters, and creatures of the wilderness in their natural, untrammeled state” and “show[s] a mandate of preservation for wilderness and the essential need to keep [nonconforming uses] out of it.” Wilderness Soc’y v. U.S. Fish & Wildlife Serv., 353 F.3d 1051, 1061-62 (9th Cir. 2003) (en banc).

**Federal Agency Guidance:** Federal agency guidance states, “Wilderness areas are living ecosystems in a constant state of evolution[,]” and “[i]t is not the intent of wilderness stewardship to arrest this evolution in an attempt to preserve character existing” at some prior time. BLM Manual 1.6(A)(6)(iv). And, “[a] key descriptor of wilderness in the Wilderness Act, untrammeled refers to the freedom of a landscape from the human intent to permanently intervene, alter, control, or manipulate natural conditions or processes.” FWS Policy 1.5(DD). And, “[m]aintaining wilderness character requires an attitude of humility and restraint. We preserve wilderness character by ... imposing limits on ourselves.” FWS Policy 1.13(D). In Wilderness, we “[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.” Forest Service Manual (FSM) 2323.31. Accordingly, “[i]n the context of the Wilderness Act, an untrammeled area is where human influence does not impede the free play of natural forces or interfere with natural processes in the ecosystem.” FSM 2320.5(2).

**A. The analysis relies upon an impermissibly strained reading of the Wilderness Act and the EA erroneously sets up the Wilderness Act as a procedural rather than a substantive law**

As discussed below, the Wilderness Act does not state that there are five qualities of Wilderness nor does it provide conflicting definitions for wilderness qualities. Rather, these are complementary definitions that provide a coherent reading of the Wilderness Act where natural conditions generally flow from untrammeled conditions. To the extent that there is an administrative conflict between various uses of wilderness and preservation of wilderness, the statute and the agencies’ regulations and management guidance provide direction for resolving those conflicts in favor of wilderness preservation. See, e.g., 16 U.S.C. § 1133(b). FWS policy states:

The character of wilderness refocuses our perception of, relationship to, and use and enjoyment of nature. It requires changing our view of a landscape from the utilitarian, commodity orientation that often dominates our relationship with nature to respect for and deference to other life forms and natural processes. It requires us to recognize that we are embedded in these natural processes. Wilderness character imposes upon us an obligation to leave to future generations what remains
of the world we did not make and do not control. Wilderness represents a symbol of respect for
the natural conditions and wildness that civilization has displaced.

Part 610 Wilderness Stewardship, FWS 1.13C

The notion of five wilderness qualities came about in Landres’ Keeping it Wild protocols—internal
agency guidance documents that have not gone through formal notice and comment rulemaking. These
documents are the subject of much disagreement and controversy, largely because they promote—
intentionally or not—an interpretation of the Wilderness Act that is internally inconsistent and result in
management actions that are antithetical to Wilderness preservation. See, e.g. Cole, et. al. 2015. While
initially envisioned as a tool to help agencies measure wilderness character, on the ground it has had the
unintended consequence of agencies (including the Fish and Wildlife Service here) using the documents
to creep back into active management paradigms that are predominant outside of Wilderness.²

A prime example of a rapidly growing consequence from Keeping it Wild is the erroneous idea that
managers can weigh various components of wilderness character against each other, thereby reducing the
Wilderness Act to a point tallying system rather than a substantive law with cohesive goals and stringent
prohibitions. This management mindset effectively and unlawfully repeals and rewrites the Wilderness
Act.

Much of the problem stems from incorrectly perceived tensions between the terms “natural” and
“untrammeled” in the Wilderness Act. Such an interpretation allows agencies to view “natural” as a set
of conditions existing at some fixed point in time, and when there is a deviation from those conditions,
the agencies feel compelled to actively manipulate conditions (trammel them) to “restore” whatever prior
conditions the agency has deemed “natural” for the area. This is likely a product of a long- ingrained
agency history of modifying public lands to achieve “desired conditions,” an idea laden with value bias
even in the best of times. Measuring natural conditions with a tiny yardstick necessarily shifts the focus
to human preference. Throw climate change and all of its uncertainties into the mix, and the increasing
urge to actively maintain static conditions becomes all the more problematic.

Further illustrating the problem, oftentimes agency managers don’t agree on the past time-point for
demonstrating what is “natural” for the area. For example, the Forest Service proposed to (re)introduce
mountain goats to Wilderness in Utah stating that “mountain goats will be considered part of the natural
conditions present at the time of wilderness designation, but it must be made clear that this does not
imply that we believe mountain goats are native.” Forest Service, Minimum Requirements Analysis –
Bighorn Sheep and Mountain Goat Disease Study, 6 (2017). Yet, in another example, the Forest Service,
in conjunction with the National Park Service, is eradicating an “exotic mountain goat population” on the
Olympic Peninsula due to “adverse impacts on the natural quality of designated wilderness.” National
Statement, i, iii (2017); see also National Park Service, Olympic Nat’l Park, Olympic National Park
Minimum Requirements Analysis, 2017; Forest Service, Olympic, Mt. Baker- Snoqualmie, and
Okanogan-Wenatchee National Forests, Minimum Requirements Analysis Mountain Goat Removal from

² Our discussions indicate that Landres and others did not intend this protocol to become the way the agencies administer
Wilderness. Yet, the minimum requirements analysis (MRA) process, the worksheet for the process is called the
minimum requirements decision guide (MRDG), are designed to set up various wilderness attributes in conflict with each
other.
In the case of the Olympics, mountain goats were introduced in the 1920s—well before wilderness designations in the 1980s—but the Park Service and Forest Service do not consider them part of natural wilderness conditions. See Olympic Nat’l Park, Draft Mountain Goat Management Plan / Environmental Impact Statement at 2; Olympic, Mt. Baker-Snoqualmie, and Okanogan-Wenatchee National Forests, Minimum Requirements Analysis Mountain Goat Removal from Olympic National Forest Wilderness Areas at F-6, F-18, F-21.

In yet another example, the Park Service relocated wolves to an island in Michigan because “[p]redation on the island has been minimal over the last five years due to the decreasing number of wolves on the island,” and the Park Service “has observed changes in the ecosystem as a result of increased herbivory from the growing moose population.” Wolves did not exist on the island until the 1950s and many of them were choosing to leave the island when ice bridges formed to the mainland. Nonetheless, the Park Service worried that the increased herbivory could accelerate vegetative changes already occurring as a result of global warming and reasoned that “introducing wolves immediately would re-establish a top-down, predator influenced system, thus decreasing herbivory and allowing forest succession to return to a historic trajectory.” National Park Service, Isle Royale National Park Environmental Impact Statement to Address the Presence of Wolves, 67 (2018). It noted that under the no-action alternative, “the island ecosystem functions would continue to change, from the past predator influenced ecosystem, to an ecosystem primarily influenced by physical conditions and vegetation community structure.” Id. at 69, 73. It also admitted that “[t]here is debate among scientists as to which is most viable or preferable” and admits “[w]hether this is beneficial or adverse for the system depends on whether there is a preference for an ecosystem more influenced by predation or an ecosystem more influenced by bottom-up controls.” Id. (emphasis added).

These issues are illustrative of agency tendency to manage for “desired conditions” and the tendency to conflate “desired conditions” with “natural conditions.”

The Wilderness Act sought to remove agency bias and influence from the equation. Put another way:

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.


That Wildernesses have been affected by intentional human manipulation in the past (e.g. vegetative manipulation, development, fire suppression, etc.) or are affected by unintentional human influence now and will continue to be in the future (e.g. climate change) does not change how they are to be
administered once designated as Wilderness. The drafters of the Wilderness Act understood:

[I]t would be impractical and unwise to require that lands be completely untrammeled prior to being designated, but [the drafters] fully expected wilderness areas, once designated, to be untrammeled into the future.

Id. at 106-107.

The statute, when read as a coherent whole, supports this position. The canons of statutory construction dictate that the term “natural conditions” be read in harmony with the term “untrammeled.” See 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 v. U.S. Fish & Wildlife Service, 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.”). In other words, a statute should be construed “as a symmetrical and coherent regulatory scheme,” Gustafson v. Alloy Co., 513 U.S. 561, 569 (1995), and a “harmonious whole,” Fed. Trade Comm’n v. Mandel Brothers, Inc., 359 U.S. 385, 389 (1959).

Thus, the Wilderness Act, read as an internally consistent document as required by law, does not pit the terms “untrammeled” and “natural” against one another. “A wilderness, in contrast with those areas where man and his own works dominate the landscape,” is statutorily defined 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” and an area “retaining its primeval character and influence, ... which is protected and managed so as to preserve its natural conditions....” 16 U.S.C. § 1131(c). Thus, what is natural for the area necessarily flows from what is untrammeled. Indeed, this is the common meaning of the term “natural.” See Black’s Law Dictionary 1026 (6th ed. 1990) (natural means wild, formed by nature, and not artificially made or cultivated); see also Webster’s New International Dictionary of the English Language (1960) (defining “natural” as 1) “Of, from, or by, birth; natural-born;” 5) “In accordance with, or determined by, nature;” and 9) “Not artificial”). It is the result of a process, not a static end point. 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.

Here, the Fish and Wildlife Service is conflating “desired conditions” with “natural conditions” in this case and creating a false conflict to justify actions in Wilderness. 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.
In addition, this illegal dissection of the Wilderness Act into competing attributes has turned the Wilderness Act into a procedural rather than a substantive statute. If the FWS can approve this project in Wilderness by claiming improvement to natural wilderness character (EA at 34) and minor impacts to other so-called wilderness attributes, then Wilderness has no meaning at all because anything can be done in Wilderness. The Wilderness Act becomes a mere procedural check box.

Similarly, the dissection of Wilderness with competing attributes has resulted in a bizarre interpretations. The EA considers the permanent infrastructure “on natural characters” as being “short-term and negligible” rather than long term. Someone unfamiliar with the bizarre way natural is defined in this illogical reductionist approach would be surprised to learn that impacts to natural conditions don't mean permanent unnatural objects in the Wilderness like pipelines, electric lines, walls, and generator housing.

In *Keeping It Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System*, Landres et al. 2015. RMRS-GTR-340 has this to say about untrammeled:

> To preserve the Untrammeled 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 and development actions similar to what has been proposed that would be necessary for this purpose. Constructing permanent facilities to aerate a natural lake via motorized means, even if much of the infrastructure is buried, in no way is compatible with Wilderness. It is not the minimum necessary (see the rest of this comment). The Strategy cited above and its associated *Monitoring Selected Conditions Related to Wilderness Character: A National Framework*. Landres, et al. 2005. RMRS-GTR-151 cite two of the Forest Service’s preeminent wilderness researchers—the agency that has done almost all of the of the research about Wilderness—in describing how the untrammeled quality of Wilderness affects management. Cole (2000) in Framework states that untrammeled “suggests more about the *process* of management than it does about the *outcomes* of management.” (Emphasis added). The Strategy paper further 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.

In fact, *if any of the wilderness attributes should have primacy, it is untrammeled or wild wilderness.*

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3 Again we have serious concerns with this protocol, see attached critique (Cole et al. 2015). Nonetheless, it does recognize that trammeling negatively affects Wilderness. Our comments expand upon this concern.
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.”

Accordingly, the Fish and Wildlife Service should not authorize this project because it is utterly incompatible with the purpose of the Wilderness Act.

B. The analysis is inadequate and does not show that the proposal is the minimum necessary for administration of the area as Wilderness

The EA makes several errors in the wilderness analysis. These involve a misunderstanding of the word untrammeled and inappropriately downplaying negative impacts from the various proposals.

The EA states on page 33, “Alternatives B1, B2, C, and D would result in minor trammeling during the construction phases of each alternative, but most of these effects would be expected to be short-term and negligible.” There are two egregious errors. This first is that trammeling does not mean trampling, as the EA seems to think. Trammeling is an action that constrains natural processes. In this instance, the trammeling is permanent as all the proposals are designed to artificially aerate the lake every year through various means, depending on the alternative. It is not short term trammeling but permanent trammeling.

The second problem is that the impacts are not negligible, but something that happens every year in perpetuity.

The EA also states on page 33, “The undeveloped wilderness character generally followed the same pattern as trammeling with Alternatives B1, B2, C, and D, requiring little visible infrastructure in wilderness that would have long-term impacts.” It does not matter that the proposals are not very visible, they are major and permanent developments in Wilderness. The EA describes them as being over one thousand meters long—well over ½ mile, including the use of motors and installation of permanent electric lines for the long-term operation of the facilities under some options. As such, the allegation they are short term and negligible is not true.

In fact the EA on page 34 itself is contradictory regarding the impacts from alternatives B1, B2, C, and D, “Long-term, visible structures would include the splachers, diffusers, compressors, and housing for the compressors.” It then inappropriately downplays those impacts stating, “However, if compressors were placed on a trailer and transported off Wilderness after use, they would only be present during a period where there are few visitors.” The impacts to visitors are not the only measure of impacts to Wilderness. Further, this is approval of motorized transport every year.

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4 In any case, “naturalness” does not appear in the Wilderness Act. It is natural conditions.
5 This mistake in understanding the meaning of untrammeled is amplified by the analysis of alternatives E and F on page 34. All proposals permanently trammel Wilderness. Alternative E and F are not necessarily more trammeling, though they may be more visible or larger.
Alternatives E and F are bad for Wilderness, as the EA admits. After completed, neither would apparently require annual operation, though dredging is not a long-term solution and would occur at some point in the future (EA at 14).

As such, all of the action alternatives have impacts that are inconsistent with Wilderness. The kind of development proposed would turn that portion of the Wilderness into non-wilderness under every action alternative.

Even assuming that doing some form of human meddling or action is the minimum necessary for the preservation of the area as Wilderness—and it clearly is not--the EA itself admits:

> The current decline of the CV grayling population is likely driven by multiple contributing factors, and many hypotheses have been posited. Despite previous and ongoing research, scientific uncertainty around the competing hypotheses made it difficult to identify which factors were most important to address and which actions would be most likely to reverse the population decline.

EA at 7.

Thus, actions outside of Wilderness must be explored before contemplating actions in Wilderness including action on other upper Missouri populations, which are not within Wilderness. Also, more study is needed to identify the most important factors in grayling population decline and it should be recognized that grayling are not listed under the Endangered Species Act.6

The EA rejects an option of closing an area to fishing, based upon a false belief that the only impacts to fishing are from catching of adults. The following points should have been considered for an alternative to close Red Rock and Elk Creeks to angling.

Fishing regulations implemented in 2013 liberalized fishing and may be responsible for the recent observed declines. This correlates much better temporally to the decline than the hypoxia theory. Grayling don't make redds but scatter their eggs making them very susceptible to human foot traffic while fishing, causing stream disturbance where eggs are laid and increases in sediment. Further, repeated hooking of adults as evidenced by a 2022 creel survey, suggesting each adult is being captured several times. What are the angling use trends in these streams over the past two decades?

What data show that grayling are actually dying in the lake from hypoxia? Data from a 2019 study by Davis shows overwinter survival was greater than 90 percent. This is incongruous with the allegations in the EA. Have surveys of the lake immediately post ice-off revealed any dead grayling from hypoxia? Our understanding is that has not been the case. Ironically, the presumably preferred action alternatives state, “In addition, bald eagle and other species such as otter may benefit from access to open water and fish created by the splasher, diffuser, or aerator during the winter.” Rather than decrease mortality, these action alternatives may increase grayling mortality.

The reported greater populations of grayling in the basin during the first part of the last decade were from

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6 Even if grayling were listed, it would not justify these proposals in Wilderness.
artificial means and a program that ran between 2010 and 2015. This suggests the wild population of grayling has not been high for decades but that numbers were inflated during that period due to artificial propagation. This also raises the question of whether the adfluvial population of grayling in Upper Red Rock Lake is natural or the result of the artificial propagation, possibly from other sources in the upper Missouri River such as the Big Hole River. The FWS should analyze the genetic history of grayling in the Red Rock system in a new NEPA document.

The EA does not consider the impacts to grayling from cattle grazing. All native salmonid habitat is harmed by sheep and cattle grazing. Grayling appear to be especially susceptible given their spawning behavior. Even if the hypothesis that lack of oxygen in Upper Red Rock Lakes is a main factor in grayling decline, the EA should have analyzed whether nutrients from cattle manure are the cause of the reduced oxygen supply. According to data Wilderness Watch received from the Fish and Wildlife Service, the Red Rock Lakes National Wildlife Refuge is grazed annually by cattle to the tune of 3100 animal unit months. Assuming a four-month grazing season, this would amount to about 775 cattle on the refuge. It is not only cattle grazing on the refuge, but cattle grazing in the entire Red Rocks Creek watershed on state, private, and public land (national forest and lands administered by the BLM) that would contribute to this problem.

The EA fails to look at the impacts from the Lima dam on grayling survival, both in and out of the Wilderness. This dam is just downstream of the Wilderness.

We have found no minimum requirement analysis (MRA) in the EA. While the MRA process is fatally flawed in that it dissects the Wilderness Act into competing wilderness attributes, for better or worse, it is a requirement of FWS Policy (see Part 610 Wilderness Stewardship, FWS 1.18).

Simply put, the EA does not make the case that any of the action alternatives are the minimum necessary for preservation of Wilderness even if one incorrectly assumes that action in Wilderness is required. As such, the EA violates section 4(c) of the Wilderness Act.

NEPA INADEQUACY

The EA is insufficient to approve long-term infrastructure in Wilderness. The impacts from the all the action alternatives are significant as they require extensive use of prohibited action in section 4(c) of the Wilderness Act.

An EIS is needed for other reasons. Trumpeter swans, a main reason for the establishment of the refuge, would be harmed by this proposal. The EA's analysis is cursory on the impacts to trumpeter swans (EA at 17). The EA admits scientific controversy over the cause of grayling decline (EA at 7). This uncertainty requires the preparation of an EIS.

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.R. § 1501.2(b).

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

Pursuant to NEPA’s implementing regulations, to determine whether an EIS is required, federal agencies
may first prepare a less detailed environmental assessment. *See* 40 C.F.R. § 1501.4. An environmental
assessment should consider several factors to determine if an action will 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 action alternatives pose significant direct, indirect, and cumulative impacts to the environment and to
wilderness character. Because they have the potential to significantly affect a designated wilderness and
anticipates a precedent for future connected authorizations, with attendant cumulative impacts (including
ongoing operation of the infrastructure), 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 FWS must take a hard look at and disclose the direct, indirect, and cumulative impacts
of the project.**

NEPA requires the Fish and Wildlife 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 action alternatives, the FWS needs to disclose and analyze the full extent of the proposals,
especially on Wilderness. What are the cumulative impacts of such an artificial and ongoing fish
propagation program?
The FWS 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 FWS 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 FWS cannot let the State’s objectives override the FWS's primary obligation to wilderness preservation. Nor can it so narrowly define the problem as lack of oxygen in winter, which is only one of several competing hypotheses, and the EA admits as much (EA at 7). The NEPA analysis must stay centered on that obligation and seriously consider a no-action alternative or other alternatives that significantly reduce or eliminate prohibited uses and intentional manipulation of the Wilderness.

Please keep us informed about this proposal.

Sincerely,

Kevin Proescholdt
Conservation Director