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The Honorable Ronald B. Leighton

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILDERNESS WATCH, INC.

Plaintiff,

v.

SARAH CREACHBAUM, *et al.*,

Defendants,

and

NATIONAL TRUST FOR HISTORIC PRESERVATION, *et al.*,

Defendants-Intervenors.

3:15−cv−05771−RBL

PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND RESPONSE BRIEF IN OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR: August 26, 2016

ORAL ARGUMENT REQUESTED

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Plaintiff submits this reply brief in support of its motion for summary judgment (Doc. #21), in opposition to Defendants' response and cross-motion for summary judgment (Doc. #42) (hereinafter "NPS"), and in response to Intervenors' brief (Doc. #43) (hereinafter "Int.").

I. SUMMARY OF REPLY ARGUMENT

The overarching purpose of the Wilderness Act is wilderness preservation, 16 U.S.C. § 1131(a), and Congress tasked agencies with one clear mandate—the preservation of wilderness character. 16 U.S.C. § 1133(b). Wilderness areas are devoted to various public purposes, including recreational, scientific, and historical use, "[e]xcept as otherwise provided in [the Wilderness Act]" and subject to the overarching mandate to preserve wilderness character. Id. In accordance with this mandate, the Wilderness Act specifically prohibits structures and motorized uses within wilderness unless "specifically provided for" by the Act or unless "necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act]." 16 U.S.C. § 1133(c). Thus, if the Park Service wishes to rebuild a structure that the Wilderness Act or the statute that designated the Olympic Wilderness does not specifically authorize, it must demonstrate that the structure is "necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act]." Id. The Park Service admits it must conduct this necessity analysis, but neither the Park Service's 2008 General Management Plan nor its Minimum Requirements Worksheets demonstrate that the Wilder, Botten, Bear Camp, Canyon Creek, and Elk Lake structures meet Section 1133(c)'s narrow exception. Its decisions are therefore arbitrary, capricious, and contrary to the Wilderness Act, 16 U.S.C. §§ 1131-1136, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706.

The Wilderness Act's reference to "historical use" does not eliminate the Act's specific prohibition on man-made structures. Every court that has reviewed an agency decision to maintain or rebuild a structure in wilderness based on its historical status has found that the agency

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1 cannot rebuild the structure unless it meets the criteria in Section 1133(c), and every court re-
2 viewing such a decision has narrowly construed that exception language and found the agencies'
3 decisions unlawful. See Olympic Park Assocs. v. Mainella, No. C04-5732FDB, 2005 WL
4 1871114, *8-9 (W.D. Wash. Aug 1, 2005); Wilderness Watch v. Iwamoto, 853 F.Supp.2d 1063,
5 1075-77 (W.D. Wash. 2012); High Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d
6 1117, 1131, 1151 (E.D. Cal. 2006); see also Wilderness Watch v. U.S. Fish & Wildlife Serv.,
7 629 F.3d 1024, 1036-38 (9th Cir. 2010). The Park Service and Intervenors attempt to evade
8 these holdings by recycling the same arguments presented in the above cases. Specifically, the
9 Park Service suggests that Section 1133(a)(3) of the Wilderness Act, in conjunction with the
10 Park Service Organic Act and National Historic Preservation Act ("NHPA"), grants it special
11 discretion in administering wilderness areas, while Intervenors go even further and claim that
12 Section 1133(a)(3) exempts the Park Service altogether from the Act's "minimum requirements"
13 provisions. But nothing in Section 1133(a)(3), the Organic Act, or the NHPA exempts the Park
14 Service from the Wilderness Act's more restrictive provisions. Respondents' final claim, that
15 the Park Service properly applied a categorical exclusion under the National Environmental Pol-
16 icy Act, likewise does not withstand scrutiny.

II. ARGUMENT

A. The structures are not necessary to meet minimum requirements for administration of the Wilderness, and the Park Service has provided no reasoned explanation to the contrary.

Respondents contend the Park Service's generalized statements about cultural resources in the 2008 General Management Plan ("GMP"), or the Minimum Requirements Worksheets ("MRWs") the Park Service completed, satisfy the agency's burden to demonstrate that each structure is necessary for administration of the Olympic Wilderness. See NPS at 1, 11-14; Int. at 15-17. However, neither the 2008 GMP nor the MRWs include a reasoned finding of necessity.

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To invoke the exception in Section 1133(c), the Park Service "must make an adequately reasoned finding of necessity." Iwamoto, 853 F.Supp.2d at 1075. "A 'generic finding of necessity does not suffice.'" Id. (quoting Wilderness Watch v. U.S. Fish & Wildlife Serv., 629 F.3d at 1037). The first step in the necessity analysis is determining that "the proposed management action is appropriate or necessary for administration of the area as wilderness and does not cause a significant impact to wilderness resources and character, in accordance with the Wilderness Act." AR-1522. The second step is to determine "the techniques and types of equipment needed to ensure that impacts on wilderness resources and character are minimized." AR-1523. The Park Service admits it must conduct this necessity analysis. See NPS at 1, 14, 25 (arguing it determined the structures were necessary); AR-1522 (2006 Management Policies stating the agency must determine if actions "affecting wilderness character, resources, or visitor experience are necessary, and if so how to minimize impacts."); AR-3368 (MRW stating the same).

Here, the Park Service never engaged in a reasoned analysis to demonstrate the structures are necessary at all; consequently, the Park Service's decisions were not "founded on a reasoned evaluation of the relevant factors" and cannot be sustained. Friends of Yosemite Valley v. Norton, 348 F.3d 789, 793 (9th Cir. 2003). None of the MRWs completed for the structure work addresses how each project is necessary to meet minimum requirements for administration of the Olympic Wilderness for the purpose of the Wilderness Act. The Park Service admits the MWRs authorizing the projects speak for themselves and are the best evidence of their contents. Defs.' Answer, Doc. #16, at ¶¶ 39, 45, 52, 61. But the MRWs clearly do not include a reasoned analysis of the necessity of each structure; instead, each focuses on the historical significance of the structures and then refers back to the Park Service's broad management policies for cultural resources. AR-6015-16 (Wilder project necessity statement); AR-6109-10 (Botten project necessity statement); AR-6208-09 (Bear Camp necessity statement); AR-6467 (Canyon Creek project

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1 necessity statement); see also AR-6243-44 (Canyon Creek project authorization from 2005
2 pointing to the same general language from the Park Service's 2001 policies); AR-6715 (Elk
3 Lake necessity statement). The Park Service's failure to analyze the actual need for the struc-
4 tures is sufficient grounds for this Court to hold the Park Service's authorizations arbitrary and
5 capricious and in violation of the Wilderness Act. See Motor Vehicles Mfrs. Ass'n v. State Farm
6 Mutual Auto. Ins. Co., 463 U.S. 29, 43 (1983); Wilderness Watch v. U.S. Fish & Wildlife Serv.,
7 629 F.3d at 1039.
8
9 The Park Service erred by improperly *assuming* the structures were necessary under the
10 broad language of the GMP, which merely incorporates the broad language of the 2006 Manage-
11 ment Policies, and by then proceeding to evaluate only the techniques and equipment needed to
12 do the work. AR-6015, 6019-25; AR-6109-11, 6113-19; AR-6208-10, 6212-19; AR-6467-68,
13 6470-78; AR-6715-16, 6718-26; see Wilderness Watch v. U.S. Fish & Wildlife Serv., 629 F.3d
14 at 1037-38. While the Park Service argues it "determined that the maintenance was 'appropriate
15 and necessary for administration of the area as wilderness,'" NPS at 25 (citing AR-6017, 6111,
16 6210, 6468, 6716), that quotation is pulled from boiler-plate, signature-line text on generic
17 MRW forms that the Park Service uses for all proposed actions impacting wilderness. The other
18 citation provided, NPS at 12, references the 2008 programmatic categorical exclusion form,
19 which states "[t]here are over 40 structures located in the park's wilderness that are to be main-
20 tained for their historical significance, for administration use to manage wilderness, and for
21 emergency use by park visitors and staff." AR-3546.
22
23 The Park Service cannot point to anything in the 2008 GMP where the Park Service pro-
24 vides a reasoned analysis demonstrating that the Wilder, Botten, Bear Camp, Elk Lake, and Can-
25 yon Creek structure projects satisfy the "necessity" exception of the Wilderness Act. Indeed, the
26 Park Service admits it "did not complete a minimum requirements analysis in the 2008
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1 [GMP]…." Defs.' Answer, Doc. # 16, at ¶ 24; see also AR-3365-66 (2008 programmatic MRW admitting the same). It admits "…there is not an approved Wilderness Plan or an equivalent plan that includes 'necessity and minimum requirement considerations….'" Defs.' Answer, Doc. #16 at ¶ 24; AR-3365 (admitting GMP did not include minimum requirements considerations). And it admits that "[n]o specific structure rehabilitation or reconstruction projects were analyzed or proposed in either the [GMP] or the Programmatic MRW." Compare Defs.' Answer at ¶ 25 with Pl.'s First Am. Compl., Doc. # 13 ¶25; AR-3372, 3381 (2008 programmatic MRW stating that each project will be evaluated on a project-by-project basis); see also AR-3549 (programmatic categorical exclusion stating each project will be evaluated on a project-by-project basis). These admissions undermine completely any claim or suggestion that the 2008 GMP included the required necessity analysis.[1]

Because the GMP is a broad, programmatic document, the Park Service deferred more specific analyses to future, site-specific proposals and to an upcoming Wilderness Stewardship Plan ("Wilderness Plan"). The Park Service explained that the forthcoming "wilderness plan will address the historic preservation of cultural resources in wilderness and will provide more details on how cultural resources will be managed." AR-2940; see also AR-4183 (noting that the GMP provides "conceptual guidance for wilderness and calls for the development of a Wilderness [] Plan"). In the interim, for site-specific management actions affecting cultural resources, a

[1] These admissions also undermine respondents' suggestions that Plaintiff should have challenged the 2008 GMP or other programmatic documents. See NPS at 33 n. 22; Int. at 4. Plaintiff could not have challenged those programmatic documents because the issue would not have been ripe for review. Ohio Forestry Ass'n Inc. v. Sierra Club, 523 U.S. 726, 734 (1998) (appeal allowed only after a more focused site-specific authorization is proposed and analyzed); Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 71 (2004) ("A statement by [the agency] about what it plans to do, at some point, provided it has the funds and there are not more pressing priorities" cannot provide the basis for an APA suit). More to the point, there was no need for Plaintiff to challenge the 2008 GMP because it did not conduct, or even purport to conduct, the required necessity analysis for any particular structure nor did it authorize work on any particular structures.

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"responsible decision maker will include appropriate consideration of the application of the provisions of the Wilderness Act in analysis and decision making concerning cultural resources." AR-2940; see also AR-2938 ("If and when specific developments or other actions are proposed subsequent to the [GMP], appropriate detailed environmental and cultural compliance documentation will be prepared in accord with NEPA and National Historic Preservation Act requirements, considering applicable laws and policies, including the Wilderness Act."); AR-2939. It assured the public that "[t]he responsible decision maker will include appropriate consideration of the application of the provisions of the Wilderness Act in analyses and decision making concerning cultural resources, including appropriate environmental compliance with opportunities for public involvement." AR-2936; see also AR-2935. The Park Service is currently preparing a Wilderness Plan and analyzing alternatives ranging from protecting all cultural resources to allowing natural processes to prevail, which further indicates that the Park Service has not yet made a necessity determination regarding each of these structures. NPS at 11; AR-4856, 4857 ("[a] determination would be made as to which historic structures and cultural landscapes would be protected.").[2]

In addition to failing to demonstrate the necessity of each individual structure, the Park Service admits it never explained why each structure was necessary in relation to all of the other structures in the Olympic Wilderness. Defs.' Answer, Doc. #16, at ¶¶ 35, 41, 48, 54, 63. In a footnote, the Park Service argues it was not required to explain why each structure was necessary in relation to all of the other structures because the "structures were individually determined to be historically significant on their own merits." NPS at 28 n. 18. However, this position ignores

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[2] The Park Service issued a notice of intent to prepare an Environmental Impact Statement ("EIS") for a Wilderness Stewardship Plan on February 22, 2013. AR-4201-02. The Park Service indicated it would tentatively release a Draft EIS in the fall/winter of 2013 and the Final EIS in 2014. AR-4191. The Park Service has not yet released a Draft EIS for public review and comment. See NPS at 11.

1 the holdings in Olympic Park Associates, Iwamoto, and High Sierra Hikers Ass'n v. U.S. Forest
2 Service. All of the structures in those cases were deemed to be historically significant on their
3 own merits, but that did not alleviate the agency of its burden to demonstrate that they were nec-
4 essary to meet minimum requirements for administration of the wilderness. See Olympic Park
5 Assocs., 2005 WL 1871114, at *2, *8; Iwamoto, 853 F.Supp.2d at 1075-76; High Sierra Hikers
6 Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1125, 1136-37. If the Park Service wishes to main-
7 tain and rebuild multiple structures in wilderness, it must demonstrate that each of the structures
8 is the minimum necessary—that it needs five or forty structures to administer the area—a heavy
9 burden it has not met.
10
11 The Park Service attempts to distinguish Wilderness Watch v. U.S. Fish & Wildlife Ser-
12 vice by arguing the structures in that case were new structures while here the Park Service "did
13 not build entirely new structures." NPS at 26. The degree of newness is irrelevant. See High
14 Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1136; Iwamoto, 853 F.Supp.2d at
15 1076. Moreover, the actions challenged in this case far exceed minor maintenance activities with
16 each of the structures undergoing significant structural repairs and in many, if not all, cases com-
17 plete dismantling and reconstruction with a large quantity of new material. See Pl.'s Mem.
18 Supp. Mot. for Summ. J., Doc. # 21, at 12-13 (listing extent of work for each structure); see also
19 AR-6019 (Wilder MRW stating "[t]he structure is in too poor a condition to perform any routine
20 maintenance.") In any event, the Ninth Circuit's holding that the agency failed to explain its un-
21 derlying assumption that the structures were necessary at all, and that it failed to seriously con-
22 sider reasonable alternatives, is surely applicable to this case. See Wilderness Watch v. U.S.
23 Fish & Wildlife Serv., 629 F.3d at 1037-38.
24
25 The Park Service also attempts to distinguish Olympic Park Associates, 2005 WL
26 1871114, by arguing that the court relied heavily on the fact that replacement shelters in that case
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were reconstructed off-site and flown in. NPS at 27. This is the same argument rejected by the court in High Sierra Hikers Ass'n v. U.S. Forest Service:

> To the extent Defendants are trying to build a distinction based on rebuilding rather than maintaining or repairing, the difference is more one of semantics than substance. It is not the activity itself that is at issue, it is the object of the activity. [As] in Olympic Park, the object of the activity is to perpetuate the existence of structures in a designated wilderness area.

436 F.Supp.2d at 1136. The court's analysis in Olympic Park Associates focused more on the *presence* of reconstructed shelters than the location of their reconstruction or the use of helicopters to facilitate the projects. See Olympic Park Assocs., 2005 WL 1871114, at *5-7 (finding a reconstructed shelter in a subalpine meadow "would surely be disconcerting" to a wilderness traveler expecting to experience a landscape of "primeval character and influence, without permanent improvements or human habitation.").

The Park Service likewise attempts to distinguish this case from Iwamoto by noting the historic structure in that case was disassembled and removed via helicopter, stored off-site, and then returned to its prior location via helicopter and reassembled on-site. NPS at 26. However, the bulk of the court's analysis focused on the fact that "the Forest Service ha[d] not identified any documentation where the Service engaged in a reasoned analysis of the necessity of dismantling, removing, and reconstructing the lookout [structure]," Iwamoto, 853 F.Supp.2d at 1075, and concluded that "[t]he Forest Service erred egregiously by not conducting the required necessity analysis before embarking on such an aggressive course of action." Id. at 1076. Following that analysis, the court then noted that "[t]he extensive use of helicopters to carry out the Forest Service's reconstruction plan is also concerning." Id. The court further noted that the Forest Service had "made frequent use of helicopters not to promote wilderness values but rather to further what the Service understands to be a separate purpose of the Wilderness Act, i.e., historic preservation." Id. at 1077. The court's analysis is clearly on-point.

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1 In a footnote, the Park Service argues that High Sierra Hikers Ass'n v. U.S. Forest Ser-
2 vice is distinguishable because in that case the Forest Service opted to maintain the structures to
3 enhance fishing opportunities rather than to preserve their historical significance. NPS at 27 n.
4 17. That is simply not accurate. The court noted: "[t]he purpose of the activity proposed by the
5 Forest Service … is twofold; to enhance fisheries by enhancing downstream flows, and to pre-
6 serve historical values." High Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1144.
7 The court devoted substantial analysis to the effect of NHPA eligibility and historical value on
8 the Forest Service's ability to maintain those structures in wilderness, and found "there is noth-
9 ing the court can point to that would authorize such an action where the maintenance of the
10 [structures] would otherwise come into conflict with the Wilderness Act." Id. at 1135-37.
11
12 To the extent Respondents argue that High Sierra Hikers Ass'n v. U.S. Forest Service and
13 Olympic Park Associates are no longer good law based on Wilderness Watch v. U.S. Fish &
14 Wildlife Service, 629 F.3d 1024, Respondents are also incorrect. Wilderness Watch v. U.S. Fish
15 & Wildlife Service did not address the preservation of historic structures under the guise of "his-
16 torical use" or under the NHPA and for that reason it does not overrule those cases. Even if Wil-
17 derness Watch v. U.S. Fish & Wildlife Service could be interpreted as finding the phrase "histor-
18 ical use" in Section 1133(b) to be ambiguous, the High Sierra Hikers Ass'n v. U.S. Forest Ser-
19 vice court issued an alternative holding and reached the same result as Iwamoto. High Sierra
20 Hikers Ass'n v. U.S. Forest Serv. 436 F.Supp.2d at 1146. Both courts found that even if the
21 phrase "historical use" is ambiguous, the structures were still not necessary for administration of
22 the area as wilderness.
23
24 Next, the Park Service defends its summary dismissal of alternatives that would not have
25 offended the Wilderness Act by arguing that relocation of the structures would diminish their
26 historical significance. NPS at 28; see also Int. at 17-18. However, while the Park Service may
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have analyzed alternatives compatible with the Park Service's goals under the NHPA and its cultural management policies, it failed to reconcile those goals with the mandates of the Wilderness Act. See Olympic Park Assocs., 2005 WL 1871114 at *6. As discussed below, the NHPA does not mandate or prohibit any particular form of preservation, and the agency's own management guidance contemplates the removal of structures so long as the agency follows the proper procedures under the NHPA. See AR-2504; AR-4236. Yet the Park Service utterly failed to engage in a reasoned analysis of alternatives that explained why relocation of the structures, or some form of preservation other than rebuilding the structures in wilderness (e.g., documentation), would not satisfy the Park Service's duties under the operative cultural preservation statutes.

Finally, the Park Service failed to demonstrate that its use of motorized equipment and helicopters was the minimum necessary. The Park Service authorized the use of helicopters to deliver a "large quantity of building materials," as well as the use of chainsaws and gas-powered drills on the Wilder, Botten, and Bear Camp structures. AR-6019, 6025; AR-6113, 6119; AR-6212, 6219. The Park Service contends the use of helicopters and motorized tools was acceptable because it reduced the amount of time crews needed to spend in the wilderness. NPS at 26-27. However, as the Park Service acknowledged, and later demonstrated, the structure work could have been accomplished without these generally prohibited uses. See AR-6019; AR-6113; AR-6478; AR-6725. The Wilderness Act places no specific restriction on the use of trails or pack-stock, but it clearly prohibits helicopters and motorized tools. See 16 U.S.C. § 1133(c). Further, the large quantity of building materials needed, the extensive work required, and the use of helicopters, chainsaws, and gas-powered drills to rebuild structures in a wilderness area where structures are generally prohibited—some for the second or third time—further underscores the incompatibility of these projects with the purpose of the Wilderness Act.

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B. Rebuilding man-made structures does not preserve wilderness character.

In explaining the "purpose and need" for the structure projects, the Park Service focused solely on broad historical and cultural preservation goals under the Park Service's general management policies and the NHPA. See AR-6015-16; AR-6109-10; AR-6208-09; AR-6467; AR-6715. Respondents now attempt to graft these goals onto the Wilderness Act's purpose by arguing that the preservation of historic structures falls under the umbrella of "historical use" in Section 1133(b) of the Wilderness Act, and thus serves one of the purposes of the Act, and that the structures should be or must be permitted on that basis alone. NPS at 16, 18, 24; Int. at 8-9.

Respondents' argument is flawed for three reasons. First, historical use, no matter how it is defined, is not the overarching purpose of the Act. Congress used the singular form of the word "purpose" in Section 1133(c), stating that structures are prohibited "except as necessary to meet minimum requirements for administration of the area for *the purpose* of [the Wilderness Act]." 16 U.S.C. § 1133(c) (emphasis added). The overarching purpose of the Wilderness Act is to designate lands "for preservation and protection *in their natural condition*," id. § 1131(a) (emphasis added), and to accomplish this purpose, wilderness areas "shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment *as wilderness*, and so as to provide for the protection of these areas, the preservation of their wilderness character…" Id.; High Sierra Hikers Ass'n v. Blackwell, 390 F.3d 630, 648 (9th Cir. 2004) (noting that "[t]he Wilderness Act states twice its overarching purpose" of preserving wilderness character). The Act defines wilderness as "undeveloped Federal land retaining its primeval character and influence, *without permanent improvements or human habitation*," 16 U.S.C. § 1131(c) (emphasis added). The overarching purpose of the Wilderness Act is the preservation of wilderness, not historical use or the preservation of buildings. As an author of the Wilderness Act explained, "The purpose of the Wilderness Act is to preserve the

wilderness character of the areas to be included in the wilderness system, not to establish any particular use." Bills to Establish a National Wilderness Preservation System: Hearings on S. 174, H.R. 293, H.R. 299, H.R. 496, H.R. 776, H.R. 1762, H.R. 1925, H.R. 2008, H.R. 8237, Before the Subcomm. on Public Lands of the H. Comm. on Interior Affairs, 87th Cong. 1301 (1962) (statement of H. Zahniser).

Historical use is instead a "public purpose" of wilderness that is subservient to the preservation of wilderness character and the rest of the Act's provisions. 16 U.S.C. § 1133(b). Here, the Park Service admits the presence of these structures "result[s] in an adverse effect on wilderness character due to the presence of human made structures in wilderness." AR-3376. And indeed, the structures are not necessary to preserve the wilderness character of the Olympic Wilderness because "[t]he area manifested its wilderness characteristics before the [structures] were in place and would lose nothing in the way of wilderness values were the [structures] not present." High Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1137. The Park Service incorrectly elevated the preservation of structures over the preservation of wilderness character, which is plainly contrary to Section 1133(b) and the prohibitions in Section 1133(c).

Second, the terms "historical use" and "historical value" in the Wilderness Act do not logically refer to man-made buildings at all, and Respondents' position that they do requires an impermissibly strained and conflicting reading of the Act. 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.") (internal quotation omitted). "Historical value" follows the terms "ecological" and "geological" features in the definition of wilderness, 16 U.S.C. § 1131(c), and "historical use" is listed in the section describing uses of wilderness, which are all subservient to the preservation of wilderness character. Id. § 1133(b). Given their context in the statute

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and the Act's emphasis on protecting natural, undeveloped conditions, the terms "historical use" and "historical value" logically refer to natural features of historical value and uses that do not conflict with the definition of wilderness or require an otherwise prohibited use. See Wilderness Watch v. Mainella, 375 F.3d 1085, 1092 (11th Cir. 2004); accord Olympic Park Assocs., 2005 WL 1871114, at *6; see also S. Rep. No. 88-109, at 17 (1963) ("The wilderness hiker, primarily interested in recreation, observes evidences of geological and *natural history*, resource management and conservation by natural forces, the interrelationships of various forms of life.") (emphasis added). The statute should be construed "as a symmetrical and coherent regulatory scheme," Gustafson v. Alloyd 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), and a court may not uphold "administrative decisions that [it] deem[s] inconsistent with [the] statutory mandate or that frustrate the congressional policy underlying [the] statute." Friends of Yosemite Valley, 348 F.3d 789, 793 (9th Cir. 2003). The Wilderness Act provides coherent and harmonious regulatory directives which, absent specifically enumerated exceptions, are designed to further the Act's overarching purpose.

Third, even if historical use could be construed as the purpose of the Act, and even if historical use could logically refer to man-made buildings, the Park Service must still analyze whether each structure is necessary, which it has not done. Only one court has deferred to the agency's characterization of "historical use" as a "purpose" of the Wilderness Act, see Iwamoto, 853 F.2d at 1074, but the court's finding was not as unequivocal as Intervenor's suggest. See Int. at 10. The court found "compelling" prior cases holding "that historical preservation, at least with respect to man-made structures, is not a valid purpose of the Wilderness Act," but also stated that it "must also take into account available Ninth Circuit precedent [giving deference to

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the agency's interpretation of the term "conservation" in Section 1133(b)], which, while not directly on point, is instructive." Iwamoto, 853 F.2d at 1072-73 (discussing Wilderness Watch v. U.S. Fish & Wildlife Serv., 629 F.3d 1024). In explaining its hesitancy, the court reasoned that "one might imagine that agency action furthering the goals of conservation would be *less* likely to conflict with the overriding goal of wilderness preservation than action furthering other referenced uses," such as historical use. Id. at 1074. That reasoning provides an accurate statutory basis for distinguishing the preservation of structures under the guise of "historical use" from the use of structures to further wildlife conservation efforts, and the court should have held accordingly rather than deferring to the agency. See Wilderness Soc'y v. U.S. Fish & Wildlife Serv., 353 F.3d 1051, 1069 (9th Cir. 2003) ("Whatever else might be done permissibly within wilderness in extraordinary circumstances for purposes relating to conservation or preservation of wilderness, we conclude that it is 'quite clear' that conduct with the primary purpose and effect to aid [a prohibited use] cannot be countenanced."). In any event, even though the court deferred to the agency on historical use, it still found the structure to be unlawful. Iwamoto, 853 F.3d at 1075-76. Respondents' contention that the structures can be maintained based solely on "historical significance" is arbitrary, capricious, and in violation of the Wilderness Act and this Court's prior precedent.

C. Sections 1133(a) and 1133(a)(3) of the Wilderness Act do not exempt the Park Service from the rest of the Wilderness Act.

The Park Service argues that Section 1133(a)(3) of the Wilderness Act, in conjunction with the Park Service Organic Act and the NHPA, grants special discretion to the Park Service in administering wilderness areas. NPS at 17. Intervenors go much further and argue that Section 1133(a)(3) exempts the Park Service altogether from the Act's prohibitions on structures. Int. at 13-14. Both arguments are incorrect.

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Section 1133(a)(3) does not permit the activities authorized by the Park Service in this case for at least four reasons. First, it is contrary to a plain reading of the Wilderness Act. Respondents' interpretation would nullify the Wilderness Act's prohibition on structures and make the Act's specific exceptions unnecessary and superfluous. Congress intended the Wilderness Act's prohibitions to apply to all designated wildernesses and excepted normally prohibited activities in specific circumstances through Section 1133(d) (special provisions), through special provisions in the designating statute for each wilderness, and through the exception clause of Section 1133(c). The general language in Section 1133(a) is not limited to cultural resource statutes. Respondents' interpretation of Section 1133(a)(3) therefore would result in a scenario where anytime Congress passed a more general law that "might pertain to or affect" a wilderness area, 16 U.S.C. § 1133(a)(3), that more general law would impermissibly negate the more specific provisions of the Wilderness Act and undermine the Park Service's duty to preserve wilderness character. Olympic Park Assocs., 2005 WL 1871114, at *8; see also Spokane & Inland Empire RR v. U.S., 241 U.S. 344, 350 (1916) (narrow exceptions to a prohibition must be strictly construed and interpreted in a manner that preserves the primary operation of the provision).

Second, respondents' positions are contrary to Park Service guidance. The Park Service clarified the meaning of Section 1133(a) in its Reference Manual. National Park Service Reference Manual 41 explains that "[s]ome park managers and staff erroneously interpret [Section 1133(a)(3)] to imply that units of the National Park System might be exempt from the requirements of the Wilderness Act," AR-1257, and clarifies,

> Congress included some sections within the Wilderness Act that are generally applicable only to U.S. Forest Service and Bureau of Land Management wilderness areas. These sections included the ability to conduct mineral surveys, locate mineral claims, authorize water projects, continue grazing allocations, and provide access to inholdings and mining claims. To avoid the implication that these exceptions were somehow applicable to units of the National Park Service, Congress added the

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> above Section 4(a)(3) statement. This language was meant to guard against interpretations that would make these special provisions in the Act applicable to the [Park Service] unless specifically provided by legislation.

AR-1257-58. Section 1133(a)(3) was meant to ensure the Wilderness Act would not be construed to allow activities normally banned within National Parks; it was not meant to allow activities normally prohibited in wilderness.

Third, contrary to Intervenor's contention, Int. at 11, the parties to the Olympic Park Associates case briefed this issue extensively and the court found no statutory basis for Defendants' position. See Defs.' Br. at 12-13 and Pls.' Reply at 3-11, Olympic Park Assocs, No. C04-5732FDB, 2005 WL 1871114 (W.D. Wash. Aug 1, 2005) (Doc. #s 18, 19). While it did not cite Section 1133(a) explicitly, the court did discuss it and noted:

> [T]he NPS [] interprets the Wilderness Act to require greater protection than the Organic Act would require. "The effect of the Wilderness Act is to unambiguously place an additional layer of protection on wilderness areas within the National Park System." The Organic Act cannot be interpreted to require replacement of collapsed shelters with new reconstructions to be placed in the wilderness by helicopter where the Wilderness Act is a specific, protective statute militating against such intrusions.

Olympic Park Assocs., 2005 WL 1871114, at *7 (citations omitted). The court found that "[t]he Wilderness Act provides that an agency utilizing its authority under other laws in ways that affect the wilderness must do so pursuant to the requirements of the Wilderness Act as a whole." Id. at *8. And it found this mandate consistent with the "long established rule of statutory construction…where there is a specific provision that governs an issue, it takes superiority over any general provision" and concluded that "the Wilderness Act under which the Olympic Wilderness was designated, is the specific provision, while the [NHPA], among others earlier mentioned, is the general." Id.

Fourth, there is no law requiring the Park Service to rebuild deteriorated buildings in wilderness, so there is no statutory conflict between the Wilderness Act's restrictive provisions and

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other statutes. The opening section of the Organic Act, 54 U.S.C. § 100101(a), states a general intent to "conserve the scenery, natural and historic objects, and the wild life [therein] . . . ." It contains nothing that would override or conflict with the specific prohibition on structures in the Wilderness Act. See Olympic Park Assocs., 2005 WL 1871114, at *7. The Olympic National Park was designated to protect the area's natural environment, specifically the unique primeval forests, wildlife habitat, and mountainous country. AR-1. Congress designated the Olympic Wilderness solely "in furtherance of the purposes of the Wilderness Act." Washington Park Wilderness Act of 1988, P.L. 100-68, § 101, 102 Stat. 3961, 3961 (Nov. 16, 1988). Accordingly, the Olympic Wilderness must be managed under the specific provisions of the Wilderness Act, which are not nullified by a general reference to "historic objects" in the opening section of the Organic Act. Olympic Park Assocs., 2005 WL 1871114, at *7. This position is supported by the Park Service's Reference Manual, which notes concern over the Park Service's prior focus on development at the expense of "the preservation of pristine lands" and explains that "[t]his concern led Congress to include the National Park Service within the scope of the Wilderness Act of 1964." AR-1256-57. "[T]he Wilderness Act prohibits activities in national park wilderness areas that the Organic Act permits or leaves open to interpretation by park managers." Id.

The Olympic Wilderness designating statute also does not mandate the actions taken by the Park Service. Respondents argue that Congressional silence on the retention of structures in the Olympic Wilderness should not be read to prohibit their reconstruction. NPS at 23. This argument is unavailing, however, because the designating statute is not ambiguous and thus resort to legislative intent is not appropriate. See High Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1142-43. "The preeminent canon of statutory interpretation requires [a court] to presume that the legislature says in a statute what it means and means in a statute what it says there." United States ex rel. Hartpence v. Kinetic Concepts, Inc., 792 F.3d 1121, 1128 (9th Cir.

1 2015). "When Congress provides exceptions in a statute,…[t]he proper inference…is that Con-
2 gress considered the issue of exceptions and, in the end, limited the statute to the ones set forth."
3 Toor v. Lynch, 789 F.3d 1055, 1061 (9th Cir. 2015) (quoting United States v. Johnson, 529 U.S.
4 53, 58 (2000)). Congress is fully capable of carving out exceptions when it sees fit, as it did with
5 the powerline in this case and as it has done in multiple other wilderness designations. See Pl.'s
6 Mem. Supp. Mot. for Summ. J., Doc. #21, at 29-30. Congress did not act to preserve backcoun-
7 try structures in the Olympic Wilderness, however, indicating that Congress did not intend those
8 structures would be preserved except as necessary to meet the minimum requirements for admin-
9 istration of the area as wilderness.

10 Even if resort to legislative history were appropriate, the legislative history does not sup-
11 port Respondents' position. "A court examining legislative history for evidence of intent must
12 find that intent is manifest or else the examination is just a matter of substituting one ambiguity
13 for another." High Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1143. This is par-
14 ticularly true "where congressional intent is being proffered to rebut a presumption established
15 by statute," id., such as the presumption that structures are prohibited in wilderness. 16 U.S.C. §
16 1133(c). Respondents cite to a floor statement by Senator Evans and Senator Adams as evidence
17 of legislative intent. NPS at 10, 22-23; Int. at 3, 12-13. But "the views of a single legislator,
18 even a bill's sponsor, are not controlling." Mims v. Arrow Fin. Servs., LLC, 132 S.Ct. 740, 752
19 (2012). Committee reports, on the other hand, are authoritative sources of legislative intent. See
20 Hertzberg v. Dignity Partners, 191 F.3d 1076, 1082 (9th Cir. 1999). Here, neither the Senate nor
21 the House committee report for the Olympic Wilderness legislation mentions, much less dis-
22 cusses, making an exception for the backcountry shelters in the Olympic Wilderness. See S.
23 REP. NO. 100-512 (1988); H.R. REP. NO. 100-961 (1988). Senator Evans's floor comment likely
24 referred to one prepared statement in the entire legislative history of the Olympic Wilderness's

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1 designating statute submitted by six retired National Park Service staffers requesting language to
2 protect the "rustic shelters" from active removal by the Park Service. See Washington Park Wil-
3 derness Bill of 1988: Hearing on H.R. 4146 Before the Subcommittee on National Parks and
4 Public Lands of the Committee on Interior and Insular Affairs, 100th Cong. 779-90 (1988)
5 ("House Hearing"). Despite this request for explicit statutory language to protect the structures,
6 the committee report made no recommendation to include such language. Compare House Hear-
7 ing for H.R. 4246 at 784-85 with H.R. REP. NO. 100-961 (1988).
8
9 Further, Senator Adams' statement focused on public concern that legislation would cut
10 off access to the parks—not on concern over historic structures—and he responded with assur-
11 ances that Wilderness boundaries had been drawn to exclude roads and areas needed for facility
12 development. Washington Park Wilderness Act of 1988: Hearing on S. 2165 Before the Sub-
13 comm. on Public Lands, Nat'l Parks and Forests of the Comm. on Energy and Natural Re-
14 sources, 100th Cong. 27-30 (1988) (statement of Senator Brock Adams). He also acknowledged
15 that "[o]nce designated as wilderness, the common signs of human activity–roads, buildings, and
16 recreational facilities–will be prohibited." Id. at 29. That the structures at issue existed at the
17 time of wilderness designation does not create a presumption they will be maintained. See High
18 Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1136, 1141-42 (while the agency is
19 not required to make the wilderness pristine upon designation by removing pre-existing struc-
20 tures, it may not perpetuate their existence through maintenance absent explicit statutory authori-
21 zation).
22
23 The NHPA also does not require or proscribe any particular action. The NHPA imple-
24 menting regulations make clear that NHPA is procedural:
25
26 > Having complied with this procedural requirement [of allowing the historic preser-
27 > vation advisory council to comment on proposed projects] **the Federal agency may**
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> **adopt any course of action it believes is appropriate.** While the Advisory Council comments must be taken into account and integrated into the decisionmaking process, program decisions rest with the agency implementing the undertaking.

36 C.F.R. § 60.2(a) (emphasis added); see also 54 U.S.C. § 306103. This position is reinforced by "every court that has considered the [NHPA]." Iwamoto, 853 F.Supp.2d at 1071 (citing Nat'l Trust for Historic Pres. v. Blanck, 938 F.Supp. 908, 922 (D.D.C. 1996) aff'd, 203 F.3d 53 (D.C. Cir. 1999)); see also Olympic Park Assocs., *7 (citing the same); United States v. 162.20 Acres of Land, 639 F.2d 299, 302 (5th Cir. 1981) (NHPA "creates a mechanism to promote [historic and cultural] values neither by forbidding the destruction of historic sites nor by commanding their preservation, but instead by ordering the government to take into account the effect any federal undertaking might have on them."). In contrast, "[t]he 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.'" Iwamoto, 853 F.Supp.2d at 1071 (citing High Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1138). "When there is a conflict between maintaining the primitive character of [a wilderness] area and between any other use … the general policy of maintaining the primitive character of the area must be supreme." Minn. Pub. Interest Research Group v. Butz, 401 F. Supp. 1276, 1331 (D. Minn. 1975), rev'd on other grounds, 541 F.2d 1292 (8th Cir. 1976).[3]

The other two statutes cited in Section 1133(a) also do not require the Park Service to preserve structures in the wilderness. The Historic Sites Act serves to protect sites, buildings, and objects of national significance and is not applicable to this case. See 54 U.S.C. §§ 320101,

[3] As it argued in Olympic Park Associates, the Park Service here argues that Wilderness Watch v. Mainella actually supports the proposition that the Park Service has the authority under the NHPA to reconstruct historic buildings in wilderness. NPS at 20. However, the Mainella court addressed the NHPA peripherally and did not discuss or analyze any outcome-oriented mandates under the NHPA. See 375 F.3d at 1091-92; see also Int. at 12 (noting the court's limited analyses of the interplay between the Wilderness Act and the NHPA).

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320106 (providing that no funds may be expended for the purposes of restoring historic structures unless and until Congress specifically authorizes such an appropriation); see also 36 C.F.R. §§65.1, 65.2(a), 65.4(a) (criteria concerning objects of "national significance."). The Antiquities Act provides for the creation of national monuments by presidential declaration. See 54 U.S.C. § 320301. It also does not authorize or mandate the type of work authorized here.

This Court should not rule that Section 1133(a)(3) functions as an exemption here for yet another reason. Section 1133(a)(3) states that the designation of any area of a national park "shall in no manner lower the standards evolved for the use and preservation of such park…in accordance with [certain statutes]." 16 U.S.C. § 1133(a)(3). But the Park Service has not established: (1) what standards had evolved for preserving structures at the time Congress designated the Olympic Wilderness in 1988; (2) that those standards were "in accordance with" the statutes listed in Section 1133(a)(3); or (3) that the structure work challenged in this case meets the "evolved standards." The Park Service's history of removing structures, or allowing them to degrade, strongly suggests that as of 1988 the Park Service had not evolved a preservation standard that conflicts with the Wilderness Act's prohibition on structures. See Int. at 2 (noting most of the structures have been removed or destroyed), 5 (noting that the Elwha drainage had over twenty structures but only three structures remain); see also NPS at 9-10 (noting over 70 shelters removed prior to wilderness designation and plans to remove more), 25 (noting the structures at issue had fallen into severe disrepair or had deteriorated); NPS at 11; and AR-4856-57 (noting draft Wilderness Plan alternatives allowing remaining structures to degrade). This Court should not rule that Section 1133(a)(3) functions as an exemption here because the Park Service has not cited any record evidence demonstrating that it had established a preservation standard by 1988, that any evolved standards were consistent with applicable law, or that the work at issue in this case meets the evolved standard.

Where the Wilderness Act's prohibition on structures is **"strong,"** Wilderness Watch v. U.S. Fish & Wildlife Serv., 629 F.3d at 1039, **"categorical,"** High Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1137, **"specific" and "protective,"** Olympic Park Assocs., 2005 WL 1871114, at *7, and a **"clear proscription,"** Iwamoto, 853 F.Supp.2d at 1070, the "statutory structure, with prohibitions… limited by specific and express exceptions, shows a clear congressional intent generally to enforce [prohibitions] when the specified exceptions are not present." Wilderness Soc'y, 353 F.3d at 1062 (citing U.S. v. Smith, 499 U.S. 160, 167 (1991)). Respondents provide no legal support for their position that the general language of Section 1133(a) exempts the Park Service from the specific provisions of the Wilderness Act because none exists. See High Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1137 (finding no authority for the notion that the Wilderness Act should yield different results for different agencies).

D. The Park Service violated NEPA by categorically excluding the projects and by failing to take a hard look at the direct, indirect, and cumulative impacts of its structure projects.

The Park Service's defense of its NEPA compliance does not withstand scrutiny either. NEPA regulations allow categorical exclusions for "[r]outine and continuing government business" and provide examples, "including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g., limited size and magnitude or short-term effects)." 43 C.F.R. § 46.210(f). "To be excludable, the action should easily fit in [this] category and clearly have no potential for environmental impact." AR-3440. The Park Service argues its actions fit within the "routine maintenance" categorical exclusion because the Park Service's management guidance interprets 43 C.F.R. § 46.210(f) "to include actions 'designed to preserve the integrity of an existing structure or facility'" including "maintenance and repairs" to cultural resources. NPS at 29. To the extent the Park Service's guidance broadens the types of actions contemplated by 43 C.F.R. § 46.210(f) or

1 the Council on Environmental Quality's ("CEQ") NEPA regulations, that guidance is improper.
2 See Utah Environmental Congress v. Bosworth, 443 F.3d 732, 743 (10th Cir. 2006). More to the
3 point, the actions at issue in this case far exceed routine maintenance because they involve exten-
4 sive reconstruction of collapsed and deteriorated buildings within a wilderness area. See Pl.'s
5 Mem. Supp. Mot. for Summ. J., Doc. # 21, at 12-13; see also AR-6019 (Wilder MRW stating
6 "[t]he structure is in too poor a condition to perform any routine maintenance."). The actions do
7 not "easily fit" within 43 C.F.R. § 46.210(f) nor do they "clearly have no potential for environ-
8 mental impact." AR-3440.

9 The Park Service admits the presence of man-made structures presents long-term wilder-
10 ness impacts, see AR-3376, but cites to Or. Nat. Desert Ass'n v. Cain, 17 F.Supp.3d 1037, 1053
11 (D. Or. 2014) ("ONDA"), in arguing that the reference in 43 C.F.R. § 46.210(f) to "'short term
12 effects' refers to the effects of the maintenance activities themselves, not to the structure receiv-
13 ing the maintenance." NPS at 29. In ONDA, the district court found the application of the "rou-
14 tine maintenance" exclusion appropriate for maintenance on existing roads where the mainte-
15 nance involved no new road construction or upgrading. ONDA, 17 F.Supp.3d at 1052. How-
16 ever, that case did not involve the issuance of a categorical exclusion for an activity in wilder-
17 ness. Indeed, the court acknowledged that "[n]ormally, routine operation and maintenance ac-
18 tions are categorically excluded from NEPA analysis (with the exception of actions conducted
19 within [Wilderness Study Areas]." Id. Here, the continued presence of generally prohibited
20 structures in a designated wilderness area constitutes a long-term effect that precludes the use of
21 this categorical exclusion. 43 C.F.R. § 46.210(f).

22 Additionally, multiple extraordinary circumstances render the use of a categorical exclu-
23 sion inappropriate. See 43 C.F.R. § 46.215; 40 C.F.R. § 1508.4. "[A]ll that is required to render
24 the [categorical exclusion] inappropriate is the *possibility* of significant effects," and substantial

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1 evidence of that possibility was before the agency in this case. Citizens for Better Forestry v.
2 U.S.D.A., 481 F. Supp. 2d 1059, 1088 (N.D. Cal. 2007); see also 40 C.F.R. §§ 1508.4, 1508.27;
3 Sierra Club v. Bosworth, 510 F.3d 1016, 1027 (9th Cir. 2007); AR-3440.
4
5 The Park Service discounts the possibility of significant impacts to wilderness by arguing
6 that it did not construct "entirely new" structures in the wilderness. NPS at 31. However, as dis-
7 cussed above, the activities in this case went far beyond minor maintenance activities, and in any
8 event, "the object of the activity is to perpetuate the existence of structures in a designated wil-
9 derness area," an activity that itself presents significant impacts to wilderness character. High
10 Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F.Supp.2d at 1136.
11
12 The Park Service also dismisses the possibility of conflicts concerning alternative uses of
13 resources by arguing that this case is distinguishable from prior cases holding similar activities
14 unlawful and that its 2008 GMP resolved any conflict over this issue. NPS at 33. However, as
15 discussed at pp. 7-8, supra, this case is not distinguishable and, at a minimum, this Court's prior
16 holding presents *the possibility* of conflict over similar activities. The Park Service's Chief of
17 Cultural Resources and Chief of Wilderness Stewardship both noted this possibility. AR-3921-
18 22; AR-3922-23. Further, as discussed at pp. 4-6, supra, the Park Service did not resolve these
19 conflicts through its GMP—it deferred that task to a later date and promised future NEPA com-
20 pliance with "opportunities for public comment."
21
22 The Park Service does not refute that it has made a decision in principle about future his-
23 toric preservation actions. See NPS at 33; see also AR-6796 (Wilderness Specialist noting po-
24 tential for nation-wide ramifications); 43 C.F.R. § 46.215(e). Instead Respondents argue that
25 Plaintiff should have challenged the policy statements made in the 2008 GMP. NPS at 33 n. 22;
26 Int. at 23. However, as discussed at p. 5 n.1, supra, Plaintiff could not have challenged the GMP.
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1 The Park Service admits the regulations require looking at cumulative impacts in the "ex-
2 traordinary circumstances" context, 43 C.F.R. § 46.215, but argues the possibility of cumulative
3 impacts did not exist because each structure was assessed on its own merits. NPS at 32. Where
4 the Wilderness Act prohibits structures unless a structure is necessary, *and the minimum neces-*
5 *sary*, to administer the area as wilderness, the Park Service must assess the necessity and impact
6 of each structure in relation to all of the other structures it is rebuilding in wilderness. The cate-
7 gorical exclusion is inapplicable here because each structure cannot be analyzed in a vacuum.
8
9 Finally, the Park Service conflates "adverse effect" with "significant effect" on historic
10 structures. NPS at 32. The regulations require the Park Service to consider whether the action
11 will have significant impacts on historic properties, 43 C.F.R. § 46.215, and "significant" im-
12 pacts may be either beneficial or adverse. 40 C.F.R. § 1508.27(b)(1). The significant extent of
13 reconstruction for each structure indicates there was likely a significant impact to each structure
14 whether beneficial or adverse. See Pl.'s Mem. Supp. Mot. for Summ. J., Doc. #21 at 12.
15
16 The Park Service impermissibly relied upon categorical exclusions, failed to disclose and
17 explain the reasons for and impacts of the projects, and failed to explore reasonable alternatives
18 that would have avoided or lessened these impacts. See Idaho Conservation League v. Lannom,
19 No. 1:15-cv-246-BLW, 2016 U.S. Dist. LEXIS 101371, at *28-29, 35-36 (D. Idaho August 2,
20 2016) (finding the lack of a reasoned necessity and minimum necessity analysis violates NEPA
21 and lack of reasoned alternatives analysis to lessen wilderness impacts also violates NEPA).
22
23 **III. CONCLUSION**
24 For the foregoing reasons, Wilderness Watch respectfully requests that this Court grant
25 Plaintiff's motion for summary judgment (Doc. #21) and deny the Federal Defendants' cross-
26 motion for summary judgment (Doc. #42).
27
28 //

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Respectfully submitted this 5th day of August, 2016.

s/ Dana M. Johnson

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CERTIFICATE OF SERVICE

I, Paul Kampmeier, hereby certify that on August 5, 2016, I electronically filed

- PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND RESPONSE BRIEF IN OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT; and
- this CERTIFICATE OF SERVICE

with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to Sara Porsia, counsel for the Federal Defendants, and to Elaine Spencer and David Bechtold, counsel for Intervenors-Defendants.

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