

Wilderness Watch
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BEFORE THE REGIONAL FORESTER, REGION SIX
U.S. FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Wilderness Watch)
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)
)
 Appellant)
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 v.)
)
 Rebecca Lockett Heath)
 Okanogan-Wenatchee National Forest Supervisor)
 Respondent)
 -----)

NOTICE OF APPEAL
STATEMENT OF REASONS
RELIEF REQUESTED

DATED May 13, 2013

TO: Regional Forester
Attention: 1570 Appeals
P. O. Box 3623
Portland, Oregon 97208-3623

NOTICE OF APPEAL

Wilderness Watch hereby appeals, pursuant to 36 CFR Part 215, the Record of Decision (ROD) and Final Environmental Impact Statement (FEIS) titled "Pack and Saddle Stock Outfitter-Guide Special Use Permit Issuance" on the Okanogan-Wenatchee National Forest.

Wilderness Watch is a nonprofit conservation organization whose mission is to provide citizen oversight to ensure the long-term preservation of America's wilderness and wild & scenic rivers. Wilderness Watch (WW) is the only organization dedicated solely to monitoring and protecting wilderness and wild & scenic rivers nationwide. WW is headquartered in Missoula, Montana. Many of the 1,300+ members of WW enjoy backpacking, hiking, horse packing, snowshoeing, and many other non-motorized

activities in the Pasayten and Lake Chelan-Sawtooth Wildernesses, in which they can experience the beauty, peace, and solitude found within these areas.

Wilderness Watch believes the decision is in error and violates, among other laws, the Wilderness Act, the National Environmental Policy Act, and the National Forest Management Act.

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STATEMENT OF REASONS

Preface

This appeal focuses on the two wildernesses in the analysis area, the Pasayten and Lake Chelan-Sawtooth Wildernesses. The analysis area for the FEIS also includes remote roadless backcountry areas that offer an experience somewhat like wilderness as well as areas that are more developed. The FEIS and ROD make little or no distinction between wilderness and the remote backcountry. An alternative that would have allowed larger groups or more outfitter use in the remote backcountry could have solved concerns about outfitting businesses by allocating more use to backcountry areas and non-wilderness.

This was not only a missed opportunity. The FEIS analysis seems to conflate backcountry areas with wilderness. This, in turn, can lead to a misunderstanding of wilderness, wilderness character and the purpose of wilderness by the agency. When wilderness is treated like roadless areas, wilderness is lost.

Wilderness

Introduction

The FEIS/ROD increase the amount of use allocated beyond what is necessary in clear violation of the Wilderness Act.

The needs assessment is seriously flawed in that it conflates demand with the extent necessary, it doesn't look at ways to reduce numbers of stock, it doesn't look at alternative kinds of stock that may have a lesser impact on the land, and it didn't analyze ratios of people to stock.

The selected alternative will cause unacceptable and unlawful harm to wilderness character by allowing huge barren core areas to remain, allowing camping within 200 feet of water, allowing structures in camp sites, and increasing commercial services in the Pasayten and Lake Chelan-Sawtooth Wildernesses.

As noted in our comments on the DEIS, the entire analysis is backward in terms of what is necessary and proper for commercial services, barren core areas and party size. The Record of Decision (ROD) notes:

It is physically impracticable to fit 12 people and 18 head of stock inside areas of 400 to 1,000 square feet of barren core (vegetation loss or bare, compacted mineral soil) in every campsite. Due to topography, vegetation type, historical use - including large party-sizes and livestock

grazing, and the current party size of 12 people and 18 head of stock, many existing camps exceed these levels. Continued use and short growing seasons have perpetuated barren core in some of these camps even though livestock grazing is no longer occurring and party size is now limited.

This is illustrative of how backward the process has been. For example, rather than coming up with an alternative that complies with existing forest plan standards designed to protect wilderness character in terms of leave no trace camping and barren core areas, here is an implicit assumption that 12 people and 18 stock are necessary and that thousands of square feet of bare soil at campsites are acceptable. Thus, the statement that “party size is now limited” is misleading and wrong. We detail how these erroneous assumptions drove both the analysis in the FEIS and the Needs Assessment to foreordained conclusions in the paragraphs below. Simply put, the ROD and FEIS fail to meet the Wilderness Act.

The narrow exception that allows, but does not mandate, commercial services is completely twisted by the FEIS. A review of the history is in order. Even though Congress intended to permit (not mandate) some commercial operations in the wilderness, Congress did set limits on commercial services in the Wilderness Act. Further these limits were intended to be real and prioritize the general public who are not outfitted commercially over commercial outfitters.

In our comments we raised the issue of the 2004 9th Circuit decision on commercial outfitters. The key issue is the Forest Service erroneously interpreted “necessary” to mean whether there is a public demand for a particular commercial service, for packstock outfitters. The court rejected this approach and it has been upheld.

Also, regarding commercial services, the Wilderness Act states they, “may be performed to the extent necessary” to meet recreational or other purposes. However, the FEIS states there is a required commercial service:

*An alternative was considered but eliminated that would have reduced party size to the number of stock and people that could fit in 400 square feet. The party size would be considerably smaller than was analyzed in Alternative 3, and would be similar to Eliminated Alternative #5. As with that alternative, the outfitter-guides would not be able to operate businesses with such a small party size and thus minimum **required** commercial services would not be provided to the public, but was eliminated from detailed study. (Emphasis added).*

Required is not the same as *may*. Commercial services may be allowed, but they are not required. There is no requirement that recreational activities take place in any given wilderness. Indeed, in some wildernesses visitor use is prohibited entirely or significantly limited to protect wildlife, archaeological resources or other values.

Below we explore in more detail how these tortured definitions of the Wilderness Act the Forest Service is trying to make lead to bad wilderness policy in this specific case.

Extent Necessary

The FEIS (Page 2-1) suggests that a decision was made prior to an objective analysis of alternatives and was pre-determined by conflating need with a minimal amount of commercial service that might be allowed:

A “no action” alternative, Alternative 1, provides a baseline for the environmental effects analysis. This alternative would not meet the purpose and need of responding to applications for 10-year special use permits for outfitter-guides and of reconciling barren core standards and party size standards. It does not meet the minimum extent necessary for commercial services and therefore includes the effects of not meeting the Purpose and Need.

It does appear the FEIS pre-determined that commercial service was required without analyzing whether meeting recreational attributes of wilderness might conflict with other wilderness values or wilderness character. This also violates NEPA by setting a purpose and need so narrow as to preclude a reasonable range of alternatives.

It may well be true that some level of commercial services could or maybe even should be allowed. However, the FEIS and ROD do not make a compelling case and selected alternative in the ROD does not meet any objective evaluation of the extent necessary. There are some serious problems with the FEIS and ROD as explained below.

The FEIS conflates need with desire or demand (page 3-17), and equates demand with need. This interpretation flies in the face of the 9th Circuit decision and the Wilderness Act. The Wilderness Act says that commercial services are allowed (not mandated) only in order to meet the wilderness purposes of a particular place. Whether more people want the commercial service, or different commercial services, or whether outfitters want to expand their businesses to meet some projected demand, or whether the population is aging, are not relevant. What is relevant are whether the public purposes of the Act are being met and whether they are being subject to the overarching requirements to protect wilderness character. The FEIS, ROD and Needs Assessment clearly fail this test because they base need, at least in part, on an aging population, projected increases in demand, and a desire to expand business on the part of outfitters.

The history of the Wilderness Act and the Wilderness movement bears this out. Howard Zahniser, noted wilderness “should in no sense be viewed as a commodity.” Aldo Leopold argued against guides and guidebooks. The original version of the Wilderness Act had no exceptions to the prohibition on commercial enterprises. Commodity interests obtained a broad exception in a draft version in 1960 that didn’t include any language about the extent necessary or proper. Conservationists and some agency managers became concerned and the restrictive language we see today was added in 1961. Even though commercial interests tried to change “may” to “shall”, that attempt was unsuccessful.

Page 3-6 notes, many recreation activities continue to be popular in the analysis area. These include, “hiking, non-outfitted (personal) pack and saddle stock use, fishing, camping in developed and undeveloped campsites,” and several others. There are “163,840 visitor days in the analysis area each year,” excluding stock outfitters. This suggests that any need for commercial packstock services would be very small, if any, as citizens are already recreating in the area, including the two wildernesses, and using pack and saddle stock. Indeed, the FEIS admits (3-41), “Non-outfitted pack and saddle stock use

in the Lake Chelan-Sawtooth Wilderness has increased since the construction of the Twisp River Horse Camp in the early 1990s.”

In fact, the FEIS does not quantify the need for commercial services in terms of the percentage of the public it needs to serve. The Needs Assessment only gives lip service to any real need:

The existing services provide predominately recreational purposes, however clients also benefit from scenic, conservation, and historic aspects of the trips. The services are essential to some visitors who cannot hike extended distances, are not familiar or experienced with pack and saddle stock handling, or are not experienced backpackers.

Further, the conclusion that one must be an experienced backpacker to enjoy wilderness denies the very essence of wilderness as a place where one learns lessons and nature’s terms. Wilderness is a place of risk and challenge, by intent and nature.

Regarding the number of service days, Page 3-24 notes:

*The lowest number of service days, or an average of a range of years cannot be used in the minimum extent necessary determination. The number of people needing the services of an outfitter-guide will vary from year-to-year, so the **minimum extent** of commercial services allowed needs to be large enough to cover the years with the **largest** need. (Emphasis added)*

This is completely illogical and contradictory. The minimum is not the largest. The FEIS and Needs Assessment therefore conflate “extent necessary” and “demand” rather than differentiating them. If Congress had intended to let market demand drive need or extent necessary, it would have clearly stated such in the Wilderness Act. Congress enacted a much more limited allowance for commercial services in the extent necessary and proper.

Thus, the FEIS and ROD determine more pack stock commercial services than are currently being provided are needed because demand might go up even though the trend is down. This is also illogical and flies in the face of the Wilderness Act and case law.

The FEIS and appendices are inconsistent on the numbers of reported use and allocated use. The FEIS lists 3431, (1-5), 3432 (3-12) and 3433 (Appendix E) for allocated use. While the overall difference is small, the numbers reported for different outfitters vary between the FEIS and Appendix E.

There is also a pool of extra days that outfitters could acquire. Yet, the ROD adds even more service days in spite of the fact a pool already exists. The ROD also adds extra days to the proposed action (page 1-22), increasing it to 6,700 days from 4620. Even the latter number is higher than currently allocated (4460, page 1-5), assuming the data are accurate. Again, this includes an extra pool.

Page 3-17 notes:

Alternative 2 would allow 4,620 service days, which is a small increase over the existing 4,460 days available now. The outfitters commented on the Draft Environmental Impact Statement that they would be able to sustain their businesses with this number of days, but would not be able to expand their businesses if demand increases without the increased number of days.

Yet again we see demand masquerading as need. In terms of wilderness, the FEIS and ROD do not make the case that an increased number of visitor days to 6,700 are needed for packstock outfitters. It is not the purpose of wilderness to allow outfitters to expand their business. In any case, the trend has been down, the projected increase cited in the FEIS has not occurred. In fact, the FEIS suggests a 28% increase rather than “the 3% increase in stock users estimated by Washington State (Interagency Committee on Outdoor Recreation, 2003).” Since 2003, the trend has been down in outfitted stock users, as reported in the FEIS. Thus, these figures are inaccurate, regardless of the reasons.

Other figures are either hidden or discounted if they don’t show an increasing demand. Appendix B notes regarding the Pasayten Wilderness:

Pasayten Wilderness

The 531,541-acre Pasayten Wilderness spans the Methow Valley and Tonasket Ranger Districts. The western-most portion of the Pasayten is located on the Mt. Baker-Snoqualmie and administered by the Methow Valley Ranger District.

There are about 18,700 annual visitor days (one visitor day equals one person for one day) in the Pasayten. This number was calculated by converting the number of annual visits reported in the National Recreation Use Monitoring completed on the Okanogan National Forest in 2005 to visitor days. The number of annual visits was 11,000, and the average length of stay was 40.7 hours (averaged for the Pasayten and Lake Chelan-Sawtooth together). Multiplying these numbers gives the total number of hours spent in the Pasayten. Dividing this product by 24 hours converted 11,000 visits to 18,654, rounded to 18,700 visitor days.

*This figure is supported by data gathered on registration permits. Wilderness visitors are required to fill out a registration permit prior to entering the wilderness. Data from these permits was compiled and averaged for 2001 through 2011, showing an average of * visitor days annually.*

National Visitor Use Monitoring was completed again in 2010, with a report compiling the data issued in 2011. This reported that there were 5,000 visits to the Pasayten that year with an average stay of 12 hours. This calculates out to 2,500 visitor days, which is substantially lower than the 2005 data, and the average of the registration permits. Therefore, the 2010 data for wilderness visitation was determined to not be reliable enough to use, and the 2005 data to be the most reliable information available.

It is not clear what the average outfitter use was since an asterisk replaces the figure that should have been provided. The same appendix states, “however the demand for stock services has been on a downward trend for the past decade.” Regardless, demand does not equate to the extent necessary in terms of the Wilderness Act.

The FEIS (including the Needs Assessment) and ROD are wrong at best, intentionally misleading at worst, when suggesting that pack stock outfitters serve an educational purpose of Wilderness. Appendix B-5 notes, “The pack and saddle stock outfitters also follow leave-no-trace techniques and model the behavior to their clients and other stock users.” There is no logical consistency between operations that create or maintain barren core areas of 400 square-feet and the teaching of leave-no-trace principles.

Similarly LNT encourages campers to camp no closer than 200 feet of water, yet the FEIS notes that many of the outfitter camps are located closer to water than 200 feet. Indeed, the FEIS mentions (the DEIS did not include such an alternative) and the ROD approves a forest plan amendment to allow outfitters to violate leave-no-trace ethics approving use of existing campsite in 200 feet.

Regarding the number of stock and party size, the ROD and FEIS assume that 12 people and 18 stock are the answer for commercial services. The claim that smaller numbers are unworkable is contradicted by the FEIS itself and other adjacent wildernesses. Page 3-37 it notes, “The average size of an outfitted pack and saddle stock group is 8 people and 14 head of stock (based on outfitter-guide use records over the past 10 years).” However, the FEIS analysis, including the amount of barren core area supposed needed to house stock, is erroneously based on the 12 people 18 stock standard.

Furthermore, the Glacier Peak Wilderness on the same national forest (which has stock outfitters) has a party size limit of 12 heartbeats. So does the contiguous Stephen Mather Wilderness. So do the nearby Alpine Lakes and Henry M Jackson Wildernesses. The Wenaha-Tucannon Wilderness, a wilderness noted for horse use, has a limit of 18 heartbeats. There is no explanation or analysis in the FEIS as to why larger groups are necessary, and the limits in other nearby large Wildernesses suggest there is no need for the larger party size.

Indeed, non-outfitted parties tend to have less impact. The FEIS admits (page 3-37), “Non-outfitted groups tend to be smaller than some outfitted groups.”

The needs assessment is seriously flawed in that it doesn’t address the issues that the 9th Circuit Court has said are required. It conflates need or extent necessary with demand. It goes on to predict an increased demand for outfitted recreation due to and aging population (and increasing population) even though it admits that demand for stock outfitters has been decreasing. It should also be noted that the US population has been aging and growing for a few decades but demand for commercial services in the two wildernesses have declined. This flies in the face of logic.

Other necessary factors are also ignored. Minimizing stock impacts wasn’t done. Only the 12 heartbeats alternative, and even that indirectly, looked at lowering the numbers of stock per person. The assessment didn’t consider other kinds of stock that may have less of an impact even though some are used in the area (llamas and donkeys) The assessment didn’t look at unneeded items to reduce weight that could alter the ratio of stock to people.

The needs assessment did not look at the need for or extent necessary of any day rides or drop camps in the wilderness as opposed to supported stock trips. Further, the FEIS is unclear how those activities would affect a permittee’s use of visitor days, the allocation of visitor days, or how they affect wilderness character.

In summary, the FEIS and ROD do not show a need for the service, let alone the amount that was approved which is considerably in excess of the average for the past 20 years and even more in excess of the recent past. This is especially true of the two wildernesses in the analysis area. The current limits, which are entirely arbitrary and subject only to market demand, vastly exceed even the demand for services. An honest assessment of what is truly the *extent necessary and proper* would lead to restrictions to protect soil and vegetation resources, opportunities for solitude, and the Act’s requirement

to limit commercial enterprise. In short, allocated use levels would be somewhat less than current actual use. Instead, the FEIS/ROD *increase* allocated use to a level far beyond what any analysis, let alone the FEIS, could ever show is necessary for realizing the benefits of these Wildernesses. The FEIS and ROD violate the Wilderness Act and they don't comport with case law on this issue.

Wilderness Character

The first sentence of Section 2(a) of the 1964 Act gives the over-arching mandate. The "purpose" is "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness" through the establishment of "a National Wilderness Preservation System" and that system "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** and so as to provide for the protection of these areas, the preservation of their **wilderness character** . . ." (emphasis added). It is instructive that recreation does not appear in this purpose.

The Forest Service Manual (FSM) explains how the requirements of the Wilderness Act are to be met. The overriding management philosophy is as follows (FSM 2320.6):

The goal of wilderness management is to identify these influences, define their causes, remedy them, and close the gap ("A") between the attainable level of purity and the level that exists on each wilderness ("X").

Thus, it is clear that the goal of wilderness management is to keep and improve the wild conditions of wilderness. Approving more commercial visitor days in the wilderness than are currently used and are currently permitted is placing recreation use, and more specifically *commercial enterprise*, above the law's requirement to preserve wilderness character.

Furthermore, the FEIS further violates wilderness by suggesting that existing standards and guidelines designed to protect wilderness are inconvenient. Keeping the forest plan the way it is (3-18), "could force the outfitters to change their current operating procedures to take fewer clients to possibly less desirable campsites, and offer fewer services and amenities." This is because the standards and guidelines require compliance with leave-no-trace ethics in wilderness. The selected alternative eliminates compliance with leave-no-trace through a forest plan amendment.

The FEIS does not offer any data that would suggest the above assertion is valid. Further, the FEIS is confused on the issue. It alleges an upward trend in campsite conditions because old livestock camps are recovering. However, it also assumes that camping impacts persist from year to year.

Also regarding the forest plan, the FEIS (3-26) notes:

The Desired Future Conditions for wilderness areas, as stated in the Wenatchee Forest Plan are that wilderness resource values will be somewhat improved through management of recreation visitor use. A general upward trend should be apparent in monitoring results.

However, the FEIS notes that there will be no improvement in core barren areas under the selected alternative. The Forest Service Manual (FSM 2320.6) further notes:

Where a choice must be made between wilderness values and visitor or any other activity, preserving the wilderness resource is the overriding value. Economy, convenience, commercial value, and comfort are not standards of management or use of wilderness.

It is clear the Forest Service violated this section by emphasizing “economy” over wilderness protection. Moreover, there is no evidence in the analysis that shows levels less than approved in the ROD wouldn’t keep all businesses in operation (see section above).

The analysis of wilderness in the FEIS suggests that any improvement in wilderness character is mainly the result of the ending of livestock grazing (as opposed to packstock), the cessation of mining and the like (see pages 3-32 to 3-34 and 3-36). Campsites that are still used remain in a degraded condition. (NOTE: *However, it is interesting to note the contradictory nature of the FEIS on this issue. At 3-36 it states, “The overall condition of both wilderness areas has been on an upward trend since designation due to the elimination of commercial livestock grazing and implementation of forest plan standards and guidelines.” This is only partly true as the standards and guidelines have not been implemented regarding camping distance from water and meadows and maximum sizes of barren core areas).*

For example, according to the FEIS, the barren core area would not change under the selected alternative. Page 3-32 notes that areas which formerly livestock grazing camps and now used by recreationists, “changed very little after the areas were designated as wilderness due to the short growing season, and impacts from continued use.” Thus, there is a continued “impact” to “the opportunities for solitude.” Regarding barren core areas, the FEIS concludes there will be no improvement to wilderness character on this criterion, one of the significant issues in the FEIS. The barren core issue is one of the few areas where the FEIS has actual quantifiable data as other, “effects discussed . . . are not easily quantified.” (Page 3-1). Thus, the selected alternative is the worst for wilderness character for this criterion as it approves increasing the number of commercial permits and won’t recover any large barren core areas.

As such, the claims on pages 3-15 and 3-16 about an upward trend are irrelevant as they relate to barren core because taking one data set does not give trend in terms of monitoring (see also 3-30). In any case, there is no real data presented in the FEIS that suggests an upward trend for any aspect of wilderness character.

The fact that the ROD chooses to amend the forest plan to weaken restrictions on camping distance from meadows and water bodies and to allow existing large barren core areas to remain is further evidence that the selected alternative does not meet the Wilderness Act. Even worse, the agency chose not to follow recommendations to close one camp (see pages 2-6 and 2-7) the specialists suggested be closed. That does not preserve wilderness character.

The forest plan amendment to allow camping near meadows and water could have negative impacts on the meadows and wetlands. Contrary to what is alleged on page 1-26, there is scientific evidence that documents impacts from packstock in a wilderness setting. Research done by Montana State University in the Lee Metcalf Wilderness documents the desirability of changing the timing of grazing seasonally from year to year (something not adequately addressed in the FEIS and something that would likely never occur due to the heavy and continual use during summer), the impacts of soils compaction in wet meadows and that unacceptable changes in plant communities may occur over time even with moderate

use. (Olson-Rutz, et al., and undated, Final Report: The effects of packstock grazing on a dry, high elevation meadow, online at <http://animalrangeextension.montana.edu/Articles/Equine/Final/Finalreport.htm>).

Even actions to improve the problems created by stock use adversely affect wilderness character. The FEIS notes on page 3-35 that restoration activities have improved one aspect of wilderness character (solitude) by, “constructing facilities at campsites to reduce further damage to vegetation and soil.” However, this negatively affects wilderness character by constructing facilities.

The FEIS then contradicts itself on page 3-36, claiming “Recreation activities” don’t impact the “undeveloped quality in either wilderness. The undeveloped quality is that wilderness is essentially without permanent improvement or modern human occupation.” This is illogical given what is stated about facilities on page 3-35. The FEIS does not adequately consider the impact of those structures on wilderness character.

There is also the matter of equity with other recreationists. Page 1-5 notes:

There are five camps in the Pasayten Wilderness – Bald Mountain, Beaver Creek, Sheep Mountain, Crow Lake, and Whistler camp – that are assigned sites. These campsites are designated and authorized for occupancy and use by a specific outfitter, and closed to use by the general public. The outfitter pays an additional fee for each site, and is allowed to leave camping equipment and supplies in camp for the entire season. All equipment and supplies must be removed at the end of the season. For all other campsites, all equipment and supplies must be removed at the end of each trip.

Outfitters should not be allowed to keep material longer than the general public in a campsite. It flies in the face of the claims that outfitters serve an “educational” role, unless the purpose is to teach the public there are two classes of visitors and only one class, the public, is expected to practice leave no trace or limited impact techniques. Outfitters should not be allowed to have exclusive use of camps in the wilderness. This negatively affects the wilderness character of the area while favoring a non-conforming use over the public use, which is also inconsistent with the Wilderness Act. Neither outfitters nor their clients should be afforded special privilege in Wilderness.

Wilderness character will be most harmed by the selected alternative. It allocates more visitor days to commercial services than any option analyzed and it will not reduce barren ground caused by packstock. Instead of reducing commercial stock use (non-commercial stock use may need to be reduced as well) to a carrying capacity, the ROD weakens the forest plan standards designed to protect the wilderness.

NEPA/NFMA

The purpose and need in the DEIS did not include the “need” to weaken the forest plan standards to allow campaign within 200 feet of water and sensitive places. The DEIS didn’t analyze that forest plan amendment (see FEIS page 1-24). Rather, it came about after-the-fact. At a minimum, the agency should have done a supplemental DEIS to gather comment on the new amendment. Thus, the ROD and FEIS violate NEPA and NFMA.

The range of alternatives in the FEIS is too narrow. The alternative that would eliminate one camp because of its impacts to wetlands should not have been dropped. Page 2-6 notes, “The analysis of the camp found that, aside from the impact to the near-by wetlands, the camp is having only minimal environmental effects.” This is a designated wilderness and at the very least, that option should have been considered. The specialists recommended the camp be closed (see pages 2-6 and 2-7). Also, the FEIS notes that fish stocking has a negative impact on the wilderness (see page 3- 33). An alternative that dealt with fish stocking as a way to reduce outfitter camp impact should have been considered.

As noted above, there were no alternatives that looked at minimizing negative impacts in wilderness while allowing more commercial use in non-wilderness backcountry. The ability to meet the need for commercial services outside Wilderness is central to determining to what extent commercial services are necessary in Wilderness. Thus, the FEIS fails NEPA in analyzing a range of alternatives.

The analysis in the FEIS violates requirements for cumulative impact analysis. Rather than evaluate past impacts, the FEIS uses, “current environmental conditions as a proxy for the impacts of past actions.” Further, the “cumulative effects analysis does not attempt to quantify the effects of past human actions by adding up all prior actions on an action-by-action basis.” This also sends the signal the agency has not been properly managing either the uses in the analysis area.

The FEIS discounts the 2010 NVUM recreation use figures. Presumably they were collected using the same protocol used for the 2005 figures. The reason these 2010 figures were not used is they seem to contradict the figures collected at trailheads in the Pasayten Wilderness and because they showed a decline in use in the wilderness. What the FEIS fails to do, however, is show the trailhead figures for a comparison. This information should have been included and its omission calls into question the scientific integrity of the NEPA analysis.

The Wilderness section of this appeal also details problems in NEPA analysis, including the inadequate needs assessment, which translates to an inadequate FEIS. No alternatives were evaluated comparing various kinds of outfitting—day rides, drop camps, or more full service camps—in terms of meeting the extent necessary and proper for commercial services.

Conclusion

The FEIS and ROD do not make the case that the selected alternative should be adopted. The Needs Assessment violates the Wilderness Act and case law. While the FEIS is deficient, it does contain enough information to show that the selected alternative will do the most harm to wilderness.

RELIEF REQUESTED

We request that the Regional Forester:

- 1- Rescind the ROD and require the Supervisor to prepare a new EIS that complies with NEPA.
- 2- Issue a new ROD that:
 - a. excludes the two forest plan amendments that weaken wilderness standards

- b. adopts a forest plan alternative to limit all stock use and party size to 12 heartbeats in the two wildernesses, similar to that found in contiguous and nearby wildernesses.
- c. prepares a new needs assessment that meets the requirements of the 9th Circuit Court decision.
- d. allocates service days based on what is necessary and proper that allows degraded sites to recover and that creates no new impacts that persist from year to year.

Sincerely,

Gary Macfarlane

Board Member