



WILDERNESS WATCH

Keeping Wilderness Wild

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June 24, 2022

Price Field Office
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125 South 600 West
Price, UT 84501

RE: Cane Wash Improvements EA

ATTN: Molly Hocanson, Stephanie Howard, and Daniel Kauffman

Sent: via the internet portal and email to mhocanson@blm.gov, showard@blm.gov, dkauffman@blm.gov, and utprmail@blm.gov

Dear Ms. Hocanson, Ms. Howard, and Mr. Kauffman:

These are Wilderness Watch's comments on the environmental assessment (EA) entitled *Cane Wash Improvements*. Wilderness Watch is a national nonprofit wilderness conservation organization dedicated to the protection and proper administration of the National Wilderness Preservation System. We appreciate that BLM is making an attempt to block motor vehicle trespass in the Sids Mountain Wilderness, but believe the effort suffers from ignoring actions that will achieve the goal without further damaging the Wilderness. We have serious concerns with the proposed action (PA) and the EA, as the proposed action violates the Wilderness Act, is not the minimum necessary to protect the Wilderness, and would be harmful to it.

WILDERNESS

The 1964 Wilderness Act governs the protection of the wilderness system. Wilderness designation brings a special protection for Wilderness and forbids the federal land management agencies like the BLM from manipulating or dominating the Wilderness. Rather, federal agencies are required by the Wilderness Act to preserve the Wilderness. Section 4(c) of the Wilderness Act contains prohibitions against the use of motor vehicles, motorized equipment, structures or installations unless it is the minimum necessary for preservation of Wilderness. That is a high bar that BLM has not met as demonstrated in our comments below.

Using heavy equipment to construct a barrier inside the Wilderness to prevent illegal motorized use in the Sids Mountain Wilderness is counterproductive. The various subheadings address several concerns and point out fallacies in the EA and MRDG.

The Action is Not the Minimum Necessary

There are two main problems with the proposed action that demonstrate the proposed action is not the minimum necessary.

- The first problem is the proposed action would degrade the Wilderness supposedly to prevent illegal (and degrading) use. While it may be more challenging to block access outside the Wilderness where the canyon is wider, it can be done with heavy equipment and without violating the prohibitions in the Wilderness Act. Better yet, taking other administrative actions outside the Wilderness that prevent illegal use should be considered. We expound more on this in the following paragraphs and include ideas that have apparently not been tried because of a mindset that sees current ATV trails, decided by an administrative process, as more important than the statutory protection afforded the Sids Mountain Wilderness.
- The second problem is that BLM, to date, has not rerouted the ATV trail in Cane Wash, which is outside of the Sids Mountain Wilderness and to the south of the wilderness boundary. It is from this route where illegal users gain access to the Wilderness by leaving the trail and heading down Cane Wash. The EA itself admits, “The current route alignment makes motorized travel difficult to manage at a critical Wilderness boundary juncture.” EA at chapter 2, page 2. This is an admission that action outside the Wilderness, an action that has not been tried before, may solve the problem. We also address this second problem in the paragraphs below.

Trying to solve illegal motorized use by using heavy motorized equipment and constructing a large barrier in the Wilderness doubles the harm to Wilderness. The EA and MRDG fail to explore other ideas that would not harm and continue to harm the Wilderness. They are dismissed as having already been tried.¹

Rerouting the hairpin turn, which seems an essential part of the PA, has not been tried. By definition, it is the minimum necessary as it is outside of Wilderness. The EA and MRDG failed to look at doing only that part of the PA. BLM cannot credibly claim the full PA is the minimum necessary when completing the part of the project outside the Wilderness that is “critical” may solve the problem.

BLM seems to be operating under an assumption that its duty is to balance its *legal obligation* to protect the Wilderness with its *desire* to allow vehicle use on nearby routes. BLM has the legal mandate to protect the Wilderness, it doesn't have a mandate to keep Cane Wash open to motor vehicles. Violating the Wilderness Act's prohibitions on the use of motor vehicles and structures in order to allow discretionary ATV use to continue on these trails would be an abject failure of BLM's wilderness stewardship obligations.

Other options should also have been considered. These include closing the ATV routes outside of Wilderness that enter Cane Wash at other points.

Failure to consider closing ATV routes that access Cane Wash and ultimately invite ATV trespass into

1 The EA and MRDG are internally conflicted about re-routing ORV users. On one hand, they state that placing rocks to reroute motorized users to the east rather than continue down Cane Wash by fixing the hairpin turn can be done by placing roadside rocks and blading to make the new route evident. On the other hand, they claim this kind of directional routing has already been tried and failed. For example, compare chapter 1, pages 1 and 2, and chapter 2, pages 2–4.

the Wilderness suggests a narrow-minded approach to the problem. For example, the MRDG reflects an uncreative mindset when stating Cane Wash is “a main thoroughfare for motorized travel in the area.” This is presented as a status quo that cannot change. It fails to acknowledge this vehicle use is a recent phenomenon that post-dates the BLM wilderness review and the time when BLM was charged with protecting the wilderness values of the area, including Cane Wash.

This can change if BLM were to take its wilderness protection mandate seriously. BLM could close off all ATV use in Cane Wash and perhaps all of the side routes that get down there from the east and west including the route at the south end of Calf Mesa from the Buckhorn Wash road, the two routes from the Oil Well Flat Road that go into Cane Wash, and Coal Wash and its associated routes. While it may be a popular ATV and motorcycle area, BLM contends that trespass from these trails can't be curtailed even after 20-years of BLM effort.²

There is also the option of aggressive enforcement by ticketing people who violate the Wilderness. If BLM were to engage in aggressive enforcement, it may change behavior in the future.

These kinds of options have not been considered. As such, BLM has no basis for making a minimum necessary decision on this proposal.³

The Action is Premised on the Assumption that Illegal Use Would Continue in the Wilderness Even After the Project is Done

This is an astounding proposal in that BLM is effectively administratively de-designating a portion of the Sids Mountain Wilderness. The EA and MRDG don't propose blocking vehicle access at or before the wilderness boundary, instead the proposal is to construct a barrier inside the Wilderness and essentially allowing vehicle access in that portion of Cane Wash that is Wilderness, but upstream of the barrier. Thus, the PA does not solve the problem of illegal motorized use. It compounds the damage to Wilderness by building a structure and using heavy motorized equipment to do it.

In the case of the PA, this vehicle use is not analyzed as negatively affecting the Wilderness. Rather, the EA (which has no wilderness analysis) and the MRDG seem to forget the fact that vehicle use is expected to occur in the Wilderness up to the barrier. If not, then why construct a barrier in Wilderness? Thus, the rating system of the MRDG is flawed because it ignores the fact vehicles are still expected to go into the Wilderness.

The MRDG Process Violates the Wilderness Act

A brief note about the origins and consequences of defining wilderness character through fragmenting the eloquent whole of the Wilderness Act are in order. Landres and others identified their various attributes of wilderness character by dissecting the Wilderness Act. It was an exercise in reductionism.

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- 2 Research from Utah State University shows that nearly half of riders prefer to ride "off established trails." Of the ORV riders surveyed, 49.4% prefer to ride off established trails, while 39% did so on their most recent excursion. Of the dirt bike riders surveyed, 38.1% prefer to ride off established trails, while 50% did so on their most recent excursion. (Institute for Outdoor Rec & Tourism, USU, 2001). An example from the Fishlake National Forest illustrates the issue in another way. The agency found 1200 miles of illegally created routes on the Fishlake National Forest. It is more than a few bad apples that are creating thousands of miles of illegal routes. These surveys dispel the few bad apple myth.
 - 3 There is another detail about the proposal that proves it is not the minimum necessary. Workers will travel to the wilderness site in vehicles when the distance could be easily walked.

The main purpose behind this exercise was to be able to objectively monitor changes in wilderness character in the National Wilderness Preservation System. Hence, the protocol titled *Keeping it Wild* and *Keeping it Wild 2*. While this process to define wilderness character was undoubtedly a well-intended effort, as time has passed it is clear it has serious negative unintended consequences for Wilderness. Other wilderness specialists and researchers recognize these failings in their pointed critique (see Cole et al. 2015). A prime example of a negative consequence is the erroneous idea that managers could trade off various components of wilderness character against each other, thereby reducing the Wilderness Act into a procedural process via the MRDG process, rather than a substantive law. Thus the essential character of Wilderness—its *wildness*—has been relegated to a minor role, and the teeth of the Act—the prohibitions—have become more like dentures that can be removed whenever a land manager wants to compromise the letter and spirit of the Act.

Even under the fragmentation of Wilderness inherent in the MRDG process, this MRDG is fatally biased. A couple of examples illustrate the problem. The idea that because “boulders would be neatly and strategically placed” and would therefore be positive for the undeveloped nature or opportunities for solitude and primitive and unconfined recreation of the Wilderness is unbelievable. It will be evident that the boulders are a human-created barrier to anyone in the area. Human installations, even using native materials, do not have a positive impact on any definition of the undeveloped aspect of Wilderness. As the EA describes, “The proposed barrier would consist of large boulders placed side by side in a line, along the existing range fence.” EA at chapter 2, pages 1 and 2.

The idea that drilling holes and placing a cable would have no effect on the natural aspect of wilderness is also dubious. Lastly, the idea that using motorized equipment in Wilderness, which BLM seems to assume would not prevent motorized use up to the proposed barrier, will somehow have a positive impact on Wilderness boggles the mind.

The PA Fails to Recognize and Demonstrate the Importance of the Wilderness Boundary

The PA does not propose anything for the wilderness boundary. This has negative effects on visitors and their behavior and on the agency itself. Even if visitors on ORVs wanted to follow the law, if they don't know where the wilderness boundary is, it will be violated. Having some indication of where the wilderness boundary is is important in enforcement, even if it is information available on maps, at trailheads, or visitor information areas. In contrast, the proposal's most likely message to the public would be that the wilderness boundary is where the barriers are placed. To those in the know, the proposal's signal is that the wilderness boundary is not meaningful and trespass into the wilderness is okay for the portion upstream of the barrier in the Sids Mountain Wilderness.

The failure to recognize the wilderness boundary also has a corrosive effect on the agency's wilderness ethic. It suggests to BLM employees that the agency can ignore the mandates of the Wilderness Act if it takes effort, including enforcement effort, and decide where the wilderness boundary is located in spite of what Congress has done. Such administrative de-designation of Wilderness is neither legal nor ethical.

NEPA

Aside from the lack of real alternatives, as discussed above, the fact that the EA does not analyze impacts to Wilderness is a fatal flaw. Rather, the EA references the MRDG rather than engage in analysis. BLM's Manual notes the MRDG “process described in this appendix is not a substitute for NEPA requirements” under various Department of Interior regulations. See BLM Manual 6340 Appendix B. Rather than an analysis, the MRDG has a simplistic numerical rating system that downplays impacts to Wilderness from the proposal by only looking at certain aspects of the proposal. It is not an objective analysis required by

NEPA.

Further, we don't know how long the project would occur in Wilderness, whether it is one hour, one day, one week or more. This would seem to violate the NEPA requirements for Wilderness found in the BLM 6340 Manual.

The EA does not quantify the amount of illegal use. It concludes, without any supporting documentation, the issue is becoming worse. That may be true, but the EA should have been based upon some analysis of field monitoring or other empirical data. Without that information, BLM can't come up with alternatives or do an adequate analysis.

Summary

Wilderness Watch strongly opposes this proposed action. It is not consistent with the Wilderness Act and would further degrade the Sids Mountain Wilderness. We appreciate that BLM is making an attempt to block motor vehicle trespass in the Wilderness, but believe the effort suffers from ignoring actions that will achieve the goal without further damaging the Wilderness. Preventing illegal use requires stronger measures than those contemplated in the action alternative. Further, the EA is inadequate to make an informed decision because it doesn't look at changing behavior through enforcement.

Please keep Wilderness Watch informed on this project. Send copies of the final EA and any decisions via US Mail and by email to kevinp@wildernesswatch.org.

Sincerely,


Kevin Proescholdt
Conservation Director