



WILDERNESS WATCH

Keeping Wilderness Wild

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February 20, 2024

Elizabeth Tsang
U.S. Fish & Wildlife Service
NWRS Planning Division
P.O. Box 25486 DFC
Denver, CO 80225

Sent via email to: elizabeth_tsang@fws.gov

Please acknowledge receipt.

Dear Ms. Tsang:

Wilderness Watch submits the following comments on the Draft Environmental Assessment (EA) for Beaver Dam Notching in the Red Rocks Lakes National Wildlife Refuge Wilderness. Wilderness Watch is a national wilderness conservation organization with headquarters in Missoula, Montana. Our mission is to protect the wilderness character of all units of the National Wilderness Preservation System, including the Red Rock Lakes Wilderness.

Introduction

There are three main concerns we have with the proposal in the EA:

- The MRA/MRAF process (referring to a minimum requirements analysis and the minimum requirements analysis framework¹) is misapplied here. That framework derives directly from the very narrow exceptions to the prohibitions in Section 4(c) of the Wilderness Act. But this proposal does not regard any 4(c) prohibited uses. Instead, the agency appears to have morphed the minimum requirements framework into a vehicle for excusing wilderness damage generally. Rather than assess whether a 4(c)-prohibited activity is minimally necessary to preserve wilderness character, the use of the framework here appears to serve as a vehicle for justifying violations of the general wilderness preservation mandate in exchange for purported benefits to discrete resource concerns. Such an approach has no basis in the law. Not everything that has a negative impact on Wilderness or wilderness character involves the prohibitions in Section 4(c).

¹ See <https://wilderness.net/practitioners/minimum-requirements-analysis/default.php>

- The EA fails to adequately address the impact to the Wilderness from the proposal and fails to look at other options. It would harm the Red Rocks Lakes Wilderness through human manipulation (trammeling) of the environment. The Wilderness Act places the onus on the agency to minimize human impact and human-associated harms to the wilderness environment and to species such as arctic grayling. But this proposal and analysis fail to consider any such approaches and instead leap to overt trammeling, which negatively affects Wilderness as a place and an idea. The EA needs to look at other options, such as those that should reduce or possibly eliminate the agency perception that it needs to manipulate the Wilderness.
- The EA is also inadequate in other ways. Besides too narrowly defining the purpose and need, thereby limiting options (see bullet point above), it leads the reader to conclude that this project is only one small part of a larger plan that would have even greater impacts on the Red Rocks Lakes Wilderness. As such, this proposal involves anticipated cumulative impacts and connected actions that should be analyzed together in a single document.

The MRA/MRAF Process

Page 1 of the MRAF states that “[t]his document is intended for uses prohibited by Section 4(c) of the Wilderness Act in designated wilderness, but it can be used to analyze all projects in wilderness.” But such a use of the “minimum requirements framework,” which was designed with Section 4(c) in mind, has no basis in the law. Conflating various parts of the Wilderness Act under the rubric of Section 4(c) for analysis to justify actions incompatible with Wilderness is a legally dubious approach and would circumvent FWS’s singular statutory obligation to preserve wilderness character.

Regardless of whether the MRAF is the appropriate method for analyzing a project that does not invoke the prohibitions in Section 4(c), and we maintain that it is not, a major problem with the WRAF process is it adopts a view of the Wilderness Act that pits five needlessly dissociated qualities of Wilderness into conflict. A coherent reading of the Wilderness Act maintains that natural conditions generally flow from untrammled conditions. To the extent that there is an administrative conflict between various uses of wilderness and preservation of wilderness, the statute and the agencies’ regulations and management guidance provide direction for resolving those conflicts in favor of wilderness preservation. *See, e.g.*, 16 U.S.C. § 1133(b). FWS policy states as follows:

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

Part 610 Wilderness Stewardship, FWS 1.13C

Similarly, “[a] key descriptor of wilderness in the Wilderness Act, untrammled refers to the freedom of a landscape from the human intent to permanently intervene, alter, control, or manipulate natural conditions or processes.” FWS Policy 1.5(DD).

The MRAF is the subject of much disagreement and controversy, not only because it promotes—intentionally or not—an interpretation of the Wilderness Act that is internally inconsistent and results in

management actions that are antithetical to Wilderness preservation—*see, e.g.* Cole, et. al. 2015—but also because it is structured to favor management actions that trammel Wilderness. Untrammelled wilderness will always play second fiddle to the other claimed wilderness attributes because doing something in the Wilderness will prevail over letting nature call the shots. Unlike the active management paradigm common to areas outside the National Wilderness Preservation System, keeping wilderness wild and untrammelled requires human and management restraint. In other words:

In contrast to other public land management statutes, which typically authorize agencies to consider and weigh diverse values through exercise of their scientific and policy expertise, the Wilderness Act required certain areas to be managed predominantly for one use: wilderness preservation....

Unlike all other land-management statutes, the Wilderness Act’s basic purpose was not to delegate authority to expert agencies, but rather, to exclude certain lands from the application of the agencies’ specialized expertise, to restrain agency flexibility, and to protect (with limited, narrow exceptions) certain lands from the impact of the sort of policy choices land managers typically make.

Sean Kammer, *Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration*, 43 ENVTL. L. 83, 100-101 (2013).

In sum, the WRAF is not the appropriate framework to analyze this proposal. Further, the biases in the WRAF process amount to an illegal rewrite of the Wilderness Act, abdicating the law’s substantive preservation mandate and substituting a procedural, check-box approach.

Harming and Trammeling the Wilderness, Inadequate Analysis

While the proposal does not invoke 4(c) prohibitions, it is a management action that trammels and manipulates Wilderness. Removing natural features and manipulating the impact of native species is hardly consistent with Wilderness.

Before considering this option, other things that negatively affect Arctic grayling and their spawning habitat need to be considered. Human uses and associated uses need to be better managed. The following topics should have been better analyzed in the EA and could improve Arctic grayling survival.

The EA does not analyze or propose to close the refuge spawning stream(s) to fishing. Fishing creates two problems. The first is that walking in the stream or on its edge can destroy grayling eggs or increase sediment, even after spawning has been completed. Grayling don’t create redds like other salmonids that co-inhabit the same area. The second is that the catch and hopefully successful release of any grayling causes stress to the fish. Mortality of Arctic grayling can be relatively high. (*See* Falk, M.R. and D.V. Gillman, 1975. Mortality data for angled arctic grayling and northern pike from Great Slave Lake area, Northwest Territories, Canada; Fisheries and Marine Service. Resource Management Branch. Central Region. Data Report Series CEN D-75-1 cited in Laberge Environmental Services. 1998. An evaluation of hooking mortality resulting from live-release fishing. Prepared for Yukon Fish and Wildlife Trust, Report Series #2). The problem is compounded when best practices for keeping fish alive often necessitate wading into the water to release them. (*See* Cook, Katrina V. Robert J. Lennox, Scott G. Hinch, and Steven J. Cooke. 2015. Fish out of water: how much air is too much? Fisheries Volume 40 2015 - Issue 9 Published online). Table 1 of the EA admits, “A number of adult grayling spend the

summer in Red Rock and Odell Creeks where they are caught and released by anglers.” EA at pdf 12, unpaginated.

Cattle grazing is yet another impact. The USFWS uses cattle to supposedly mimic bison grazing in Red Rock Lakes according to the Draft Compatibility Determination For Prescribed Grazing as a Habitat Management Tool Red Rock Lakes National Wildlife Refuge. However, one of the only studies to compare the bison and cattle clearly shows that cattle prefer riparian areas and water far more than bison do (Allred, B. W., S. D. Fuhlendorf, and R. G. Hamilton. 2011. The role of herbivores in Great Plains conservation: comparative ecology of bison and cattle. *Ecosphere* 2(3):art26. doi:10.1890/ES10-00152.1). While fences divide the units and may be employed to protect riparian areas, the Fish and Wildlife Service’s 2011 Red Rock Lakes NWR Report on Wilderness Character Monitoring states:

The public and grazing permittees sometimes undertake unauthorized actions in wilderness that manipulate the environment in unplanned and impactful ways. This can include diverting water before it enters the refuge, grazing without authorization, poaching, use of salt licks to attract wildlife, etc. In 2011, the unauthorized trammeling actions that results in a refuge response primarily constituted livestock trespass by both grazing permittees and non- permittees. On six instances, refuge staff had to request a local cattle owner (Tash) to remove trespass cattle from refuge wilderness.

Wilderness Character Monitoring Report at 15. Further:

Most wilderness boundaries at Red Rock Lakes NWR are marked, but the public, grazing permittees, or refuge volunteers and seasonal employees may, either knowingly or unknowingly, use motor vehicles, motorized equipment, or mechanical transport in wilderness. Observed or reported unauthorized uses will be recorded in the log on the wall near the printer in refuge headquarters. In 2011, there were two observed, unauthorized uses. On 9/21 a local cattle owner, while moving their herd, used ATVs in wilderness. On 10/1 a large, red and white helicopter flew low over refuge headquarters and west over wilderness. There is speculation that this may have been a military flight.

Ibid. at 31. Page 39 also indicates that written records were not kept of unauthorized use or trespass and page 43 suggests that this problem might be remedied in the future.

The upshot is, there is no monitoring data presented in the EA to quantify cattle impacts on the spawning streams in the Wilderness or other parts of the refuge, whether authorized or unauthorized. This omission is critical. The amount of grazing is significant, some 3100 AUMs annually in the Wilderness, more than half of which is water.

Regarding the beaver dams, the EA recognizes that in high flow years, grayling can pass the dams without notching as they are usually washed out. Thus, the proposed action should exclude notching during higher snowpack years. And the EA is far from clear about the possibility of passage through the dams. Grayling and beavers have co-inhabited the Centennial Valley for millennia. Proper wilderness administration demands management restraint in Wilderness and requires managers accept natural processes rather than what they want as desired end goals, be they numbers of a particular species or specific vegetative types.

Furthermore, Figure 1 in the EA is clear that no beaver dams were in the Wilderness in 2023. Only two years of dam location data are presented.

One additional concern with breaching the beaver dams is breaching would reduce the beaver dams' ability to capture sediments in the creek. This would be particularly important during spring run-off when the dams are breached. We recognize that the question of whether sediment has been filling Upper Red Rock Lake is under contention, but reducing the beaver dams' ability to intercept these sediments can only exacerbate any sediment issues in Upper Red Rock Lake.

The 1000-fish threshold, below which notching would occur, is based upon an end goal from a habitat group. It may also be based on greater numbers that were the result of artificial propagation when fish were raised and then planted into the area earlier in this century. The 1000 number seems far in excess of what was naturally occurring prior to that planting effort. There is some doubt as to the whether the 1000 goal is legitimate and, depending on the source of the grayling eggs for propagation, whether the population is entirely native as the EA suggests it is.

Heavy-handed management and handling of grayling may result in additional mortality and conflict with Wilderness. While the EA provides little detail on how grayling are handled and counted, ideas on how to make censusing techniques less invasive should be considered to reduce mortality. For example, the culvert outside the Wilderness on the main spawning stream might be the location for a non-invasive counting device rather than implanting tags. At the very least, the EA should look at ways to lessen the impact on grayling and the Wilderness by management actions.

Cumulative/Connected Actions

The EA (pages 6 and 10) leads the reader to conclude that other actions are planned. This includes action inside the Wilderness to oxygenate Upper Red Rock Lake, which was found to be inconsistent with Wilderness by Judge Molloy. The EA states:

Monitoring has documented hypoxic conditions in URRL during some winters that led to high grayling mortality (i.e., winterkill). Factors that likely lead to hypoxic conditions in URRL include prolonged snow and ice cover and macrophyte abundance. While grayling have seemingly persisted in the CV under persistent risk of winterkill in Upper Lake, the relative significance of winterkill may currently be greater due to lack of connectivity with other UMR grayling populations, which prevents geneflow and a refounding source for the population (USFWS and MFWP 2017).

EA at pdf 10.

Targeting natural factors like the impact of beavers—which have coevolved with grayling in this environment for millennia—is antithetical to Wilderness preservation under the law and should be the *last* sort of action considered by administrators after exhausting all sources of human degradation to the wilderness environment. This proposal, for example, entirely fails to assess relevant factors outside the Wilderness such as restoring habitat connectivity for grayling both up- and downstream of Red Rock Lakes. And FWS has certainly not yet acted to fully abate all detrimental impacts that occur through fishing, through livestock grazing, through management activity, and through other human presence on the landscape. Furthermore, since this proposal anticipates cumulative impacts and connected actions, these items should be analyzed together in a single document.

Please keep Wilderness Watch updated on this proposal.

Sincerely,

A handwritten signature in dark ink that reads "Kevin Proescholdt". The signature is written in a cursive, flowing style.

Kevin Proescholdt
Conservation Director