WILDERNESS WATCH
Keeping Wilderness Wild

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November 12, 2024

BLM Director
Attention: Protest Coordinator (HQ210)
PO Box 151029
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Submitted via: https://eplanning.blm.gov/eplanning-ui/project/2023675/570

Re: Protest of Cascade Siskiyou National Monument PRMP/FEIS Language on Vegetation Management in Soda Mountain Wilderness.

Dear BLM Director,

The Proposed Resource Management Plan and Final Environmental Impact Statement contains the following language regarding vegetation management in the Soda Mountain Wilderness that is far more permissive than allowed under the 1964 Wilderness Act (16 U.S.C. 1131-1136):

> • Limit vegetation management actions in Wilderness Areas to only occur for the purposes of removing non-native vegetation or to reduce wildfire risk to life, property, or wilderness character. All vegetation management actions must be consistent with the Wilderness Act and BLM Manual 6340 and must protect CSNM objects and values. Conduct a compatibility review during implementation level NEPA and decision-making processes and provide opportunities for public and Tribal input.
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> (Volume 2, Appendix E, page E-3)

This language goes far beyond what the 1964 Wilderness Act permits. Our Protest seeks to change this language to authorize only activities that the Wilderness Act allows.

This Protest comes from Wilderness Watch, a national wilderness conservation organization focused on the protection and proper stewardship of all units of the National Wilderness Preservation System, including the Soda Mountain Wilderness, which is entirely contained within the National Monument boundaries.

Our Protest focuses on the excessive "pre-suppression" activities included in the language cited above within the Soda Mountain Wilderness portion of the National Monument. Our specific comments follow:

1. Cutting and thinning for vegetation management are not allowed within the Soda Mountain Wilderness, especially with chainsaws and other motorized equipment.
The language we are protesting envisions allowing vegetation management activities within the Soda Mountain Wilderness "for the purposes of removing non-native vegetation or to reduce wildfire risk to life, property, or wilderness character." This would most likely be done with chainsaws and other motorized equipment. Such authorizations would violate the Wilderness Act.

If the BLM intends to authorize cutting and thinning within the Soda Mountain Wilderness, the BLM would violate the Wilderness Act, specifically the bans on motorized equipment (if chainsaws or other motorized equipment are contemplated) and the statutory requirement to maintain untrammeled Wilderness so as to preserve its primeval character and influence and its natural conditions.

The Wilderness Act, Section 4(c) states:

> Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, ***no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport***, and no structure or installation within any such areas. (emphasis added)

In addition, Section 4(b) of the Wilderness Act unambiguously directs the BLM to preserve the wilderness character of the Soda Mountain Wilderness:

> Except as otherwise provided in this Act, each agency administering any area designated as wilderness ***shall be responsible for preserving the wilderness character*** of the area and shall so administer such area for such other purposes for which it may have been established as also ***to preserve its wilderness character***. (emphases added)

Furthermore, the definition of Wilderness in Section 2(c) of the Wilderness Act requires the BLM to protect the untrammeled character of the Soda Mountain Wilderness:

> A wilderness, ***in contrast with those areas where man and his works dominate the landscape***, is hereby recognized as an area where the earth and its community of life are ***untrammeled by man***, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of

undeveloped Federal land ***retaining its primeval character and influence***, ***without permanent improvements*** or human habitation, which is protected and managed so as to preserve its natural conditions…. (emphases added)

2. Language in BLM's policy guidance cannot override the statutory language of the Wilderness Act. The language that we are protesting mirrors language from the BLM's Manual:

> **Fuel treatment is not allowed in wilderness, except in rare circumstances**. Due to the controversial nature of fuel treatments and the complexities of analyzing the effects of these on the totality of wilderness character, when they are to be used as a replacement for wildland fire they may require analysis through an EIS. Fuel treatments may be permitted:
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> > A. To remove non-native vegetation (see also section 1.6.C.15); or
> > B. When prescribed fire without pretreatment in the wilderness will inevitably cause unacceptable risks to life, property, or wilderness character (including cultural resources, as outlined in 1.6.C.5.f); or
> > C. When any wildland fire will inevitably cause unacceptable risks to life, property, or wilderness character.
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> BLM Manual 6340(1.6)(C)(7)(d), emphases added

This policy language is far more permissive than the statutory language from the Wilderness Act. There is no language in the Wilderness Act authorizing a suspension of the Act's protections to deal with "non-native vegetation," for example. Nor is there any language in the Wilderness Act authorizing "pretreatment in the wilderness." This overly-permissive policy language cannot override or supersede the statutory language of the Wilderness Act. This language must be removed from the Cascade Siskiyou National Monument plan.

3. Section 4(d)(1) of the Wilderness Act—a special provision for the control of fire, insects, and disease—does NOT permit pre-suppression landscape manipulations. This section of the Wilderness Act states:

> Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

Special provisions to a statute are specifically enumerated and *narrowly crafted* exceptions to the statutory scheme and must be construed as such. The special provision on fire, insects, and disease at § 4(d)(1) cannot be applied so broadly that it renders the statute, its terms, and its overarching mandate meaningless. Section 4(d)(1) necessarily has

boundaries; otherwise an agency could always point to diffuse and enduring environmental conditions (e.g. climate change, fire risk, high tree density, changing species compositions, etc.) as a rationale to control those conditions via logging, burning, and other landscape manipulations, and the exception could always swallow the rule. Accordingly, the fire, insects, and disease special provision requires some exigency, such as responding to a fire that might threaten a town, some consideration of scale and intensity, and some finality so that fire control does not become an ongoing, landscape-scale ecological manipulation project that completely overrides the purpose and goals of the Wilderness Act. *See, e.g., Sierra Club v. Lyng*, 663 F. Supp. 556, 558, 560 (D.D.C. 1987) (noting that "the cutting of thousands of acres of wilderness pineland in an attempt, among other things, to create 'buffer' areas against the spread of beetles—[is] a process seriously unsettling to the values underlying the Wilderness Act" and discussing limitations on control actions "to ensure wilderness values are not unnecessarily sacrificed.").

The Ninth Circuit has made clear that even when there may be ambiguity where Wilderness administration overlaps the Section 4(d) special provisions (in that case, the provision providing for commercial services to facilitate recreation), the test for legality is still "the impact [the agency's] decision would have on its ultimate responsibilities under the Wilderness Act"—to preserve wilderness character. *High Sierra Hikers' Ass'n v. Blackwell*, 390 F.3d 630, 647 (9th Cir. 2004) . The Act, the court noted, restricts use for recreational or other purposes "in any way that would impair [an area's] future use *as wilderness*." *Id.* (emphasis in original). Indeed, in the *Blackwell* case, the Ninth Circuit noted the agency improperly "elevated recreational activity over the long-term preservation of the wilderness character of the land," particularly "[g]iven the Wilderness Act's repeated emphasis of the administering agency's responsibility to preserve and protect wilderness areas." *Id*. at 647, 648.

These boundaries are baked into the language of the special provision.[1] This section of the Wilderness Act allows the federal agencies administering designated Wilderness to take *necessary* measures to *control* fires. This section applies to control of existing, already-burning fires, NOT landscape manipulation that fabricates desired conditions in anticipation of potential future fire behavior. And the actions must be *necessary*. In other words, this provision does NOT allow otherwise-illegal actions for fire **presuppression** activities for future possible fires. Such a broad allowance would fundamentally undermine the Act's untrammeled mandate, and it would violate basic rules of statutory construction where exception terms (e.g., "control" and "necessary") must be construed narrowly.

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[1] These boundaries are also reflected in the legislative history of the Wilderness Act. Reports, hearings, and testimony from 1957 through 1964 (the year Congress enacted the Wilderness Act) demonstrate that the discussion on fire, insects, and disease focused on the ability of the agencies to quickly respond to exigent circumstances (e.g. whether firefighters could adequately respond via air and without roads and motorized equipment). While some interest groups pushed for both "prevention and control" authorization in the special provision, only "control" made it into the final bill. Similarly, the legislative history acknowledges that "wilderness restrictions prohibit the cutting or salvage of timber."

4. The Soda Mountain Wilderness statutory designation does NOT include any special provision for presuppression activities. Congress recognized the differences between suppression of actively burning fires (as authorized by section 4[d][1] of the Wilderness Act), and presuppression activities that actively manipulate landscape conditions in an attempt to ward off potential future fires.

In 1978, as one example, Congress included the following language for dealing with the Santa Lucia Wilderness in California:

> Provided, That the Forest Service is authorized to continue fire presuppression, fire suppression measures and techniques, and watershed maintenance pending completion of the management plan for the Santa Lucia area;"
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> P.L. 95-237, sec. 2(c)

In that same statute, Congress included similar language dealing with the Ventana Wilderness:

> In order to guarantee the continued viability of the Ventana watershed and to insure the continued health and safety of the communities serviced by such watershed, the management plan for the Ventana area to be prepared following designation as wilderness shall authorize the Forest Service to take whatever appropriate actions are necessary for fire prevention and watershed protection including, but not limited to, acceptable fire presuppression and fire suppression measures and techniques.
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> P.L. 95-237, sec. 2(d)

Congress has clearly made the distinction between fire suppression activities for actively burning fires, and fire presuppression activities in designated Wilderness. In a very few instances, Congress has given explicit authorization to conduct fire presuppression activities inside designated Wilderness. Congress has NOT done so for the Soda Mountain Wilderness.

5. Conclusion. Wilderness Watch urges the BLM to not include any authorizations for fire presuppression activities in the Soda Mountain Wilderness in the Final EIS and ROD/RMP for the Cascade-Siskiyou National Monument. We instead suggest that the BLM use the language for Alternative D: "Prohibit all vegetation management activities in Wilderness Areas" (Volume 2, E-3).

Sincerely,

Kevin Proescholdt

Kevin Proescholdt
Conservation Director