



## WILDERNESS WATCH

*Keeping Wilderness Wild*

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December 18, 2023

Allison Landro  
Beaverhead-Deerlodge National Forest  
420 Barrett Street  
Dillon, MT 59725

RE: Beaverhead-Deerlodge Outfitter Guide EA

SENT VIA the portal <https://cara.fs2c.usda.gov/Public//CommentInput?Project=56926>

Dear Ms. Landro:

The following are comments from Wilderness Watch regarding the Revised Outfitter and Guide Environmental Assessment (EA) for the Forest. Wilderness Watch is a national nonprofit wilderness conservation organization dedicated to the protection and proper stewardship of the National Wilderness Preservation System. Our comments focus on the Anaconda-Pintler and Lee Metcalf Wildernesses and the West Pioneers and Sapphire WSAs. The WSAs are statutorily protected. We also refer you to detailed comments submitted by Friends of the Bitterroot that address other areas of concern including wildlife, recommended wilderness, roadless areas, and other important issues.

While commercial outfitting may serve an important role in providing necessary services to the public who desire to visit the Wilderness and WSAs, it should be recognized, as the Wilderness Act does and the courts have, that it is necessary to limit commercial uses to the extent they are necessary and proper. The amount of commercial use should not be demand-driven, i.e. whatever the market will bear. The founders of the Wilderness idea, the author of the Act, and the Congress all recognized the need to keep Wilderness--as much as possible--a commercial-free zone. The draft EA fails on this point.

### Background and Process

There are some serious concerns about the process in terms of transparency and regulations. They include:

The Wilderness Management Plan for the Anaconda-Pintler was only put on the website on December 12. This provides only 6 days for the public to review and comment on

how that crucial document intersects with the EA. In addition, we could find no copy of that plan online prior to December 12, 2023.

Similarly, there is no Wilderness Management Plan for the Lee Metcalf Wilderness. The BLM Bear Trap unit has had a plan for some time, but there is none online for the Forest Service units.<sup>1</sup> It is putting the cart before the horse to allocate new outfitting and guiding permits in the Lee Metcalf Wilderness without first having a Wilderness Management Plan to guide any such allocation.

The Forest Service has failed to comply with regulations on comment periods. 36 CFR 218.7(d) states:

Within 4 calendar days of the date of publication of the legal notice in the newspaper of record or, when applicable, the FEDERAL REGISTER, a digital image of the legal notice or FEDERAL REGISTER publication, or the exact text of the notice, must be made available on the Web. Such postings must clearly indicate the date the notice was published in the newspaper of record or FEDERAL REGISTER, and the name of the publication.

We can find no digital copy of the announcement on the project webpage.

The ROS maps in the EA appear to be different than those associated with Beaverhead-Deerlodge Forest Plan and EIS. The scale in the EA is very small, so it is difficult to tell.

Given these concerns, the agency is duty bound to withdraw the EA and reissue it for public comment at a later date. Our concerns below point also out the need for another revised EA that includes adequate information for the public to comment on the proposal.

## **Wilderness**

The EA states:

In the Anaconda-Pintler Wilderness, existing outfitter and guides would be capped at the 10-year actual use “high” authorized by the Anaconda-Pintler Wilderness Plan in 2013, as long as demand exists and monitoring shows that impacts remain within an acceptable range. In accordance with the Anaconda-Pintler Wilderness Plan, new or additional service days are only issued from those available from unused or returned Anaconda-Pintler Wilderness service days.

In the Lee Metcalf Wilderness, service days would be allocated from the pool days available in the affected landscape (Madison Landscape) that encompass the wilderness area. In other words, a separate service day pool for the Lee Metcalf Wilderness is not being proposed. The authorization of commercial activities in

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<sup>1</sup> The Needs Assessment states on page 32, “No authorization of any new uses in the Lee Metcalf because of the language in the current plan; yurt backcountry skiing in the Anaconda Pintler.” The EA sheds no light on whether such a plan exists for the Lee Metcalf Wilderness.

Congressionally designated wilderness must be consistent with the Wilderness Act of 1964 as well as agency policy found in Forest Service Manual 2320 and 2710 and Forest Service Handbook 2709.14. Outfitting and guiding activities must be compatible with use by other wilderness visitors and maintain the wilderness resource.

Both wilderness areas were included in the 2015 Needs Assessment and Capacity Analysis, consistent with Forest Service policy for the management of outfitting and guiding in Congressionally designated wilderness.

EA at 14. Our concern is the EA does not address the important claims addressed above.

Regarding both Wildernesses, it is impossible to tell what the EA proposes because the analysis in the EA is based upon the landscapes, which include more than just the Wilderness. Nowhere in the EA is the number of permits in Wilderness or the projected number of permits in Wilderness discussed. The EA merely tries to assure us, “The project recreation specialist has reviewed the proposed actions for consistency with the Wilderness Act. Screening criteria and design features cited in Appendices ensure wilderness character is protected.” EA at 48. There is no quantification here, just happy talk.

Furthermore, that statement on page 48 raises another major failing with the EA. That is the conflation of recreation with wilderness character. The EA and recreation report are the only documents that address impacts to Wilderness and they only focus on impacts to solitude.<sup>2</sup> That report fails to look at impacts to the biophysical environment.<sup>3</sup> For example, there is no analysis of how the proposed action would affect wildlife movement or ground cover in Wilderness. This could be a significant concern, especially in the Lee Metcalf Wilderness, if new outfitted winter use affects wintering wildlife. The other reports do not mention Wilderness. Therefore, it is impossible to tell the impacts to wildlife in Wilderness from outfitter and guide use proposed in the EA.

The EA does not answer whether “demand exists (in the Anaconda-Pintler Wilderness) and monitoring shows that impacts remain within an acceptable range.” EA at 14. We don’t know the “10-year actual use high authorized” nor do we know whether “monitoring shows that impacts remain within an acceptable range.” Ibid. None of those data are presented. The EA is wholly inadequate in providing very basic information that should be readily available to the Forest Service.

The *Field Report of Wilderness Character Anaconda Pintler Wilderness*, which was not part of this project’s package, does show impacts to campsites on pages 49 through 137. But, there is nothing in the EA to indicate more recent data on the trend, up or down, on these campsites or even whereto they are used by outfitters and guides. Page 42 of the *Field Report* is the only place where outfitters are mentioned, and that is associated with monitoring attributes, but the report does not include that

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2 The EA appears to fragment wilderness analysis into discrete categories, which has been criticized by wilderness professionals. See Cole et al. 2015, attached to this comment.

3 The Needs Assessment states on pages 14 and 15, “The ‘extent necessary’ process is closely related to determining the capacity for recreation visitor use. It includes determining the capabilities of the social, biological, and physical components of the wilderness resource to accommodate use without impairment of the wilderness character. Currently, the BDNF has no set numeric allocations, or ‘caps’, for recreational uses in any area of the forest, including in wilderness.” Since there is no specific analysis of biological and physical resources in Wilderness the Forest Service has not done its due diligence.

parameter in the campsite inventory. Besides, that report is ten years old.

Even with hours of cross-referencing various documents, it is not possible to determine what impacts there are in Wilderness. Vague statements like those found on page 26 of the EA, which dismiss impacts to Wilderness from outfitting and guiding, are meaningless without supporting data.

In sum, the EA can't show that "Under the Proposed Action, new proposals for commercial use or changes to existing authorized use (including expanding existing use) in congressionally designated wilderness must be evaluated for their dependency on wilderness as well as compatibility with wilderness character before authorizing." The Decision Notice for this EA will either be the decision document to determine outfitter use in Wilderness or, at best, a Categorical Exclusion and Decision memo will be issued that relies on this EA and may include no public scoping.

### **WSAs (Wilderness Study Areas)**

The failings of the EA regarding Wilderness, as noted above, are also problems for the WSAs. There are two key additional problems with the WSAs as well:

- The EA does not show whether or how the proposed action would comply with Judge Molloy's ruling on the WSAs in the Forest. They were designated in 1977.
- The EA suggests motorized and mechanized outfitted use could occur in the WSAs. However, there is no analysis of the amount currently taking place nor the amount in the proposed action.

### **Needs Assessment**

The needs assessment really does not establish a specific need for increasing Wilderness outfitted recreation. It mostly sets up a process to determine if there is a need (see the flow chart on page 95).

The Forest Service Manual note at 2323.13g:

Outfitter and Guide Operations. Address the need for and role of outfitters in the forest plan. The plan must address the type, number, and amount of recreation use that is to be allocated to outfitters. Ensure that outfitters provide their service to the public in a manner that is compatible with use by other wilderness visitors and that maintains the wilderness resource.

As noted above, this has not been done. We don't know the amount of use taking place in Wilderness (or WSAs).

The U.S. Court of Appeals for the Ninth Circuit:

The finding of necessity required in the Wilderness Act is a specialized one. The Forest Service may authorize commercial services only "to the extent necessary."

(emphasis added in original). Thus, the Forest Service must show that the number of permits granted was no more than necessary to achieve the goals of the Act....At best, when the Forest Service simply continued preexisting permit levels, it failed to balance the impact that that level of commercial activity was having on the wilderness character of the land. At worst, the Forest Service elevated recreational activity over the long-term preservation of the wilderness character of the land.

*High Sierra Hikers v. Blackwell*

The Needs Assessment does little to shed light on wilderness outfitting. A decision-maker could not determine whether the requirements of the manual and a court case are met by reading the Needs Assessment and the EA.

Please keep us updated on this proposal. We again request a new EA be issued that provides the necessary information for determining requirements for outfitting and guiding changes in Wilderness and WSAs.

Sincerely,



Kevin Proescholdt  
Conservation Director