



United States
Department of
Agriculture

Forest
Service

Washington
Office

14th & Independence SW
P. O. Box 96090
Washington, DC 20090-6090

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Mr. George Nickas
Wilderness Watch
Box 9175
Missoula, Montana 59807

CERTIFIED MAIL R.R.R.

RE: Discretionary Review of April 13, 1998, Appeal Decision on Sawtooth Wilderness Management Direction

Dear Mr. Nickas:

We have reviewed Deputy Regional Forester Jack G. Troyer's April 13 1998, appeal decision of your November 4, 1997, appeal of the Sawtooth National Forest Supervisor Bill LeVere's September 15, 1997, Sawtooth Wilderness Management Direction Decision Notice and Finding of No Significant Impact. I have decided to exercise my authority to conduct a discretionary review pursuant to 36 C.F.R. 217.17. My decision affirms in part and reverses in part the Deputy Regional Forester's April 13, 1998, appeal decision.

Background

In his September 15, 1997, Decision Notice Sawtooth National Forest Supervisor LeVere decided "No additional anchors will be allowed. Replacement and Maintenance will be allowed on existing anchors by special use permit only (standards are set by the climbing community). As in any wilderness no mechanized equipment will be permitted, including battery operated drills".

Wilderness Watch appealed the Forest Supervisors' decision to permit the replacement and maintenance of existing fixed anchors and asserted that the use of fixed anchors violates the Wilderness Act, Department of Agriculture regulations and Forest Service policy. You argue that fixed anchors are permanent improvements, installed by private parties to make easier and more convenient their use of the wilderness. You further argue that because fixed anchors are permanent improvements their installation violates the public policy established by Congress and agency policy. Therefore, you contend that Forest Supervisor's decision should be changed to prohibit placement of new or replacement of fixed anchors and to require all existing fixed anchors be removed.



The Deputy Regional Forester affirmed the Forest Supervisor's decision with direction to complete an analysis of the management need for fixed anchors to protect the wilderness resource and administer climbing activities in the Sawtooth Wilderness. His decision directed that the analysis should determine the need for fixed anchors, the general areas they are to be allowed, and the disposition of those anchors found not necessary for the administration of the Sawtooth Wilderness. He further directed that prior to completion of the analysis no new fixed anchors will be allowed within the Sawtooth Wilderness, and a closure order should be implemented to prevent additional installation of fixed anchors until the analysis is completed

Legal Analysis

The Wilderness Act (hereinafter "the Act") "established the National Wilderness Preservation System composed of federally owned land "administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness. . ." 16 U.S.C. §1131(a). "Wilderness" is defined in section 2(c) of the Act as:

. . . an area where the earth and its community of life are untrammelled by man. . . retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable. . .

Id. at §1131(c).

Section 2(c) of the Act establishes the public policy that there should be no permanent improvements within Wilderness areas. The Forest Service has defined "permanent improvements" to include all structural or nonstructural improvements that remain in one location for more than one field season. Forest Service Manual §2320.5(5). Permanent improvements are authorized in designated wilderness areas only for the protection of the wilderness resource.

Id. at §2323.13.

Section 4(c) of the Act puts teeth into section 2's policy pronouncement by prohibiting various activities in Wilderness areas:

Except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness designated by this chapter and, except as necessary to meet minimum requirements for the administration of the area for the purpose of

this chapter (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 area.

16 U.S.C. §1133(c).

The prohibition in section 4(c) of the Act against "installations" is relevant to the issue of fixed anchors. While "installation" is not defined in the Act or regulations, its common meaning is "(s)omething installed, as a system of machinery or apparatus placed in position for use." Random House College Dictionary, p. 690 (1980). In our opinion, anchors used to facilitate rock climbing fall within the common meaning of "installation." If that is the case in this situation, and we believe it is, then the question is not whether the Forest Service can regulate the practice of fixed anchors but whether it can allow the activity to occur in the first place. The Act does not provide the agency with the discretion to authorize fixed anchors in wilderness areas.

There is a significant history of rock climbing in wilderness areas, and the Forest Service recognizes rock climbing as an appropriate activity in wilderness areas. While rock climbing is an authorized activity in wilderness areas, providing rock climbing opportunities where equipment or installations are required that violate the Act's prohibitions is not permissible under the Act. Administration of wilderness areas pertains primarily to the Forest Service's responsibility to care for and protect the wilderness resource, not for wilderness users to undertake their recreational activities by whatever means necessary. Rock climbing is a recreational activity subject to the prohibitions set forth in the Act. The fact that rock climbing is a recreational activity that has and continues to be performed in wilderness areas does not allow for use of equipment or installations in support of rock climbing that are prohibited under the Act.

Previous litigation involving structures and installations in wilderness areas indicates the Forest Service may not authorize permanent structures and installations in wilderness, with very limited exception. In Wilderness Watch v. Robertson, No. 92-0740 (Apr. 16, 1993, D. D.C.), plaintiff sued the Forest Service over the authorization of permanent structures and installations for use by commercial outfitters and guides operating in the Frank Church-River of No Return Wilderness. The structures and installations included tent frames, caches of non-native materials, and water systems. The court held that such structures "directly conflict with express provisions of the Wilderness Act because they are not necessary to meet minimum requirements for the administration of the area, and they do not appear to be temporary in nature." Wilderness Watch, at 11. The Court directed the parties to develop a remedial plan to ensure compliance with the Act, and subsequently adopted a plan prohibiting permanent structures, with the very limited exception of minimal native material structures where necessary to protect the wilderness resource. The agency's interpretation of the Act's prohibition on structures and

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installations as applied to fixed anchor rock bolts is consistent with the court's interpretation of the Act in Wilderness Watch.

Conclusion

The Wilderness Act prohibits the use of installations "except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act. . ." It is my opinion that fixed anchors qualify as installations and are not necessary to meet the minimum requirements for the administration of the area for the purpose of the Act.

Consequently, I believe that the use of fixed anchors is prohibited within wilderness areas. Therefore, the Regional Forester's April 13, 1998, decision which, among other things, directed the Forest Supervisor to "complete an analysis of the management need for fixed anchors to protect the wilderness resource . . ." is reversed. No such analysis is necessary because fixed anchors are prohibited under the Wilderness Act. Finally, I have determined that at the discretion of the Forest Supervisor, existing fixed anchors may remain in place at this time because of the administrative burden, potential safety risks, and physical impacts on the wilderness resource of removing them.

This constitutes the final administrative determination of the Department of Agriculture [36 CFR 217.17 (f)].

Sincerely,



Darrel L. Kenops
Reviewing Officer for the Chief