WILDERNESS WATCH
Keeping Wilderness Wild

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Pacific Southwest Regional Office, Ecosystem Planning
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Dear US Forest Service Staff,

The following comments come from Wilderness Watch on the draft Environmental Assessment for the Sequoia and Sierra National Forest's Prescribed Fire Project. Wilderness Watch is a national wilderness conservation organization focused on the protection and proper stewardship of all units of the National Wilderness Preservation System, including the Domeland Wilderness, Kiavah Wilderness, Ansel Adams Wilderness, John Muir Wilderness, Dinkey Lakes Wilderness, Kaiser Wilderness, Golden Trout Wilderness, Monarch Wilderness, South Sierra Wilderness, and Jennie Lakes Wilderness, which are contained within the Sequoia and Sierra National Forest boundaries.

The proposed action would violate both the letter and spirit of the Wilderness Act through widespread and prolonged trammelling and the use of motorized tools including, but not limited to chainsaws, helicopters, and drones, constituting an act of ecosystem level pre-suppression landscape manipulation. The fact that the proposed actions' overarching objective of habitat manipulation is the same for Wilderness and non-wilderness lands shows that the project was developed and analyzed without considering the unique legal and social implications for the lands involved. Further, through condition-based management, characterized by the lack of site-specific assessment and only providing Minimum Requirements Analysis (MRA) and consultation with the USFWS regarding impact to endangered species after the decision, the proposed action would violate the National Environmental Policy Act (NEPA).

While Wilderness Watch would like to express its support for Alternative C (Wilderness Exclusion Alternative), there remain significant concerns about the scope, scale, duration, and intensity of this project outside of Wilderness. From pg. 1 of the draft EA:

This project includes all NFS lands within the Sequoia and Sierra National

> **Forests** including those designated as the Giant Sequoia National Monument, but excluding the San Joaquin Experimental Range and small, isolated parcels outside of the two contiguous forest areas (see Appendix A–Maps). The project area incorporates areas with special designations including inventoried roadless areas, **designated wilderness areas**, and other areas with special designations such as research natural areas, botanical areas, and geological areas. **Total acreage is approximately 2.4 million acres**; this includes approximately 811,150 acres in the Sequoia National Forest, approximately 1,287,394 acres in the Sierra National Forest, and approximately 328,407 acres designated as the Giant Sequoia National Monument.

Given the proposed scope of the prescribed burning, it is necessary to go through the steps required by NEPA, including site-specific analysis that would satisfy NEPA's 'hard look' requirement. Additionally, the project is proposed to take place in 5-year intervals of over 80,000 acres, as explained below. We strongly encourage the Forest Service to not only opt for Alternative C and conduct an EIS, but provide site-specific NEPA analysis, with public notice and opportunity for public comment, for each interval of the prescribed burn project.

Comments

1. The actions proposed by the agency's prescribed burn management plan would degrade the untrammeled character of the Wilderness areas, thereby violating the Wilderness Act. The definition of Wilderness in Section 2(c) of the Wilderness Act requires the Forest Service to protect the untrammeled character of the proposed impacted Wilderness areas:

> 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)

Wilderness's wild and untrammeled condition is, in fact, its defining character. By the agency's own admission, the goal of the proposed action, "would move ecosystems toward desired conditions in alignment with management direction from the forest and monument plans." Draft EA, pg. 2. This stated purpose is a violation of the Wilderness Act.

Additionally, Section 4(b) of the Wilderness Act unambiguously directs the Forest Service to preserve the wilderness character of the impacted Wilderness areas:

> 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)

The agency claims, "[i]n the long term, the use of prescribed fire would preserve the elements of the untrammeled, undeveloped, and natural conditions that are an integral part of the wilderness character." pg. 75, Draft EA. It appears that the agency's approach is, through cutting, burning, and landscape manipulation, to trammel Wilderness with the hope of preventing future trammeling of Wilderness. However, the defining character of Wilderness is that it be *wild*; all other features flow from this one character, and it should not be violated in an act of trammelling based on the assumption that it will preempt the need for future tramelling.

Furthermore, the Forest Service justifies their proposed action by inserting that tramelling would be allowed in Wilderness areas in the case of future wildfires. Pg. 74 of the draft EA states that, "During the event of a large fire, large-scale fire operations would be used to suppress sections of the fire, further manipulating the wilderness environment and degrading the untrammeled quality of wilderness character." The argument that the proposed project would, in turn, prevent future tramelling fails to consider that wildfires in Wilderness should be allowed to burn naturally without the presence of human manipulation, letting naturally-ignited fires run their course and play their essential role in shaping Wilderness habitat.

Moreover, the agency's justification for potentially trammeling over 866,000 acres of protected Wilderness is the hope that it will restore *natural-conditions* as a Wilderness character. However, *natural-conditions* is not a defining wilderness character, and it lacks definition, as natural conditions are continually changing and there is no clear state of *naturalness* to return to. As stated in the draft EA, the agency seeks to return the landscape to a condition in which the norm is, "Low-to mixed-severity fires approximating natural conditions should be characteristic over most of the landscape, and high-severity fire should occur in small patches distributed across the landscape." pg. 4, Draft EA. However, there is little evidence that the actions proposed would restore the landscape to these desired conditions, and some evidence to the contrary as shown in Section 6 of this comment. In any event, natural conditions are defined by nature, not by what humans believe the conditions of the area ought to be.

The Wilderness Act does not state that there are five qualities of Wilderness character nor does it provide conflicting definitions for wilderness qualities. Indeed, the Forest Service acknowledges on page 17 of the Wilderness Report, "Wilderness character is not defined in the 1964 Wilderness Act . . . ." in other project analyses that these "qualities are not specifically mentioned in the law," and in other places has provided complimentary definitions of "untrammeled" (as "areas essentially unhindered and free from human manipulation") and "natural" (as "areas with ecological systems largely separate from direct human influence."). Forest Service, Olympic, Mt. Baker-Snoqualmie, and Okanogan-Wenatchee National Forests, *Minimum Requirements Analysis Mountain Goat Removal from Olympic National Forest Wilderness Areas*, 2016. These complementary definitions provide a coherent reading of the Wilderness Act where natural conditions generally flow from untrammeled 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); 36 C.F.R. § 293.2(c); FSM 2320.6.

The notion of five wilderness qualities came about in Landres' et al. Keeping it Wild protocols—internal agency guidance documents that have not gone through formal notice and comment rulemaking (See also draft Wilderness Report, pages 74 and 75). These documents are the subject of much disagreement and controversy, largely because they promote— 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. While initially envisioned as a tool to help agencies measure conditions related to wilderness character, on the ground it has had the unintended consequence of agencies (including the Forest Service here) using the documents to creep back into active management paradigms that are predominant outside of Wilderness.

A prime example of a rapidly growing consequence from *Keeping it Wild* is the erroneous idea that managers can weigh various components of wilderness character against each other, thereby reducing the Wilderness Act to a point tallying system rather than a substantive law with cohesive goals and stringent prohibitions. This management mindset effectively and unlawfully repeals and rewrites the Wilderness Act.

Much of the problem stems from incorrectly perceived tensions between the terms "natural" and "untrammeled" in the Wilderness Act (NOTE: The EA incorrectly uses the term naturalness on page 71. Naturalness does not appear in the Wilderness Act.). Such an interpretation allows agencies to view "natural" as a set of conditions existing at some fixed point in time, and when there is a deviation from those conditions, the agencies feel compelled to actively manipulate conditions (trammel them) to "restore" whatever prior conditions the agency has deemed "natural" for the area. This is likely a product of a long-ingrained agency history of modifying public lands to achieve "desired conditions," an idea laden with value bias even in the best of times. Measuring natural conditions with a tiny yardstick necessarily shifts the focus to human preference. Throw climate change and all of its uncertainties into the mix, and the increasing urge to actively maintain static conditions becomes all the more problematic.

The Wilderness Act sought to remove agency bias and influence from the equation. Put another way:

> 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).

That Wildernesses have been affected by intentional human manipulation in the past (e.g. vegetative manipulation, development, fire suppression, etc.) or are affected by unintentional human influence now and will continue to be in the future (e.g. climate change) does not change how they are to be administered once designated as Wilderness. The drafters of the Wilderness Act understood:

> [I]t would be impractical and unwise to require that lands be completely untrammeled prior to being designated, but [the drafters] fully expected wilderness areas, once designated, to be untrammeled into the future.

Id. at 106-107. The statute, when read as a coherent whole, supports this position. The canons of statutory construction dictate that the term "natural conditions" be read in harmony with the term "untrammeled." *See United States v. Powell*, 6 F.3d 611, 614 (9th Cir. 1993) ("It is a basic rule of statutory construction that one provision should not be interpreted in a way which is internally contradictory or that renders other provisions of the same statute inconsistent or meaningless"); *see also Wilderness Society*, 353 F.3d at 60 ("a fundamental canon that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"); *Kmart Corp. v. Cartier, Inc*., 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of [a] statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole."); *United States v. Lewis*, 67 F.3d 225, 228-29 (9th Cir. 1995) ("Particular phrases must be construed in light of the overall purpose and structure of the whole statutory scheme."). In other words, a statute should be construed "as a symmetrical and coherent regulatory scheme," *Gustafson v. Alloyd Co*., 513 U.S. 561, 569 (1995), and a "harmonious whole," *Fed. Trade Comm'n v. Mandel Brothers, Inc*., 359 U.S. 385, 389 (1959).

The Wilderness Act, read as an internally consistent document as required by law, does not pit the terms "untrammeled" and "natural" against one another. "A wilderness, in contrast with those areas where man and his own works dominate the landscape," is statutorily defined 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" and an area "retaining its primeval character and influence, ... which is protected and managed so as to preserve its natural conditions...." 16 U.S.C. § 1131(c). Thus, what is natural for the area necessarily flows from what is untrammeled. Indeed, this is the common meaning of the term "natural." *See* Black's Law Dictionary 1026 (6th ed. 1990) (natural means wild, formed by nature, and not artificially made or cultivated); *see also* Webster's New International Dictionary of the English Language (1960) (defining "natural" as (1) "Of, from, or by, birth; natural-born;" (5) "In accordance with, or determined by, nature;" and (9) "Not artificial"). It is the result of a process, not a static endpoint. Otherwise, the default position will always be to trammel Wilderness to comport with a land manager's notion of what is natural, even though various complicated factors—many of which we do not fully understand and cannot control—are always necessarily at play in shifting natural conditions.

Here, the Forest Service is conflating "desired conditions" with "natural conditions" and creating a false conflict to justify actions in Wilderness. Ultimately, "whatever 'wilderness character' means, it cannot be something that depends upon the active manipulations of humans." Sean

Kammer, *Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration*, 43 ENVTL. L. 83, 86 (2013). Restraint and humility are important values underpinning the Wilderness Act, and "[l]and managers should exercise this same humility in dealing with wilderness areas, lest they lead us down a path to where there are no longer any places that are truly 'wild,' no places beyond the control of human institutions and cultural imperatives." *Id.*

The *Keeping it Wild 2* protocol acknowledges the importance of protecting wilderness character as a process rather than an outcome:

> Lucas (1973, p. 151) stated, "If ecological processes operate essentially uncontrolled within the Wilderness frame of reference, the results, whatever they might be, are desirable by definition. The object is not to stop change, nor to recreate conditions as of some arbitrary historical date, nor to strive for favorable change in big game populations or in scenic vistas. The object is to let nature 'roll the dice' and accept the results with interest and scientific curiosity."

Landres *et al., Keeping It Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System,* 33 (2015).

This fundamental tenet of wilderness stewardship was reiterated in a program review initiated by federal agencies and conducted by the Pinchot Institute for Conservation in 2001. The purpose of the study was to examine the critical management issues facing Wilderness. One of the eight "fundamental principles" for stewardship emphasized the need to preserve the wildness in Wilderness. As the Pinchot report stated, "Protection of the natural wild, where nature is not controlled, is critical in ensuring that a place is wilderness….Since wild is a fundamental characteristic of wilderness that is not attainable elsewhere, if there is a choice between emphasizing naturalness and wildness, stewards should err on the side of wildness."

Attempts to resist natural processes and change through active manipulation of the wilderness are not only at odds with the Wilderness Act, but the Forest Service's own management guidance. Vegetation changes, fire interval and intensity, and wildlife disbursement attributable to a changing climate cannot logically represent degradation of wilderness character. See 36 C.F.R. § 293.2(a) (dictating that, in wilderness, "[n]atural ecological succession will be allowed to operate freely to the extent feasible"). The Forest Service Manual directs the Forest Service to "[m]aintain wilderness in such a manner that ecosystems are unaffected by human manipulation and influences so that plants and animals develop and respond to natural forces." FSM 2320.2. Thus, if there are actions the Forest Service may take to reduce impacts to the wilderness without manipulating natural processes (e.g. practices on private land that reduce structure flammability), it must take those measures and allow natural processes to take it from there.

Finally, the agency's proposed application of prescribed burns in the draft EA is at odds with previous management recommendations stated in the Decision Notice (DN) for the Castle Fire Ecological Restoration Project, which provided the following rationale for its removal of prescribed burns from it's management approach in the Moses Proposed Wilderness:

> In the EA, approximately 2,056 acres in the Moses Mountain Inventoried Roadless Area

> (IRA), proposed for designation as wilderness under the 2012 Giant Sequoia National Monument (GSNM) Land Management Plan Record of Decision, were included in the prescribed burning acreage. ***I am changing the treatment of those acres in that IRA from prescribed burn to managed wildfire to better maintain wilderness characteristics.***

DN pg. 3(emphasis added). The management approach proposed in the draft EA, which calls for prescribed burns in all Wilderness areas including the proposed Wilderness, would renege on the guarantee of the previous management proposal, violating a promise made to the public and impacted parties who participated in the NEPA process for the Castle Fire Restoration Project. Exclusion of the proposed Monarch Proposed Wilderness from the prescribed burn is the only way for the agency to remain internally consistent with their management directives. Further, by pursuing Alternative C, removing all Wilderness areas from the project area, the agency would, according to the previous management directive, "better maintain wilderness characteristics." *Id*.

2. Motorized tools for cutting and burning are not allowed in Wilderness areas. If the agency intends to authorize cutting and burning within the listed wilderness areas, the Forest Service would violate the Wilderness Act, specifically its prohibition on motorized equipment (if chainsaws, helicopters, drones, 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)

According to both the draft Wilderness Report and the draft EA, the Forest Service is considering the use of mechanized tools including not only chainsaws and pumps, but helicopters and drones, throughout the project area and timeline. As stated on pg. 71 of the draft Wilderness Report, "It has been determined that limited motorized uses (such as chainsaws, pumps, helicopters and drones) may be necessary under limited circumstances." Additionally, in Table 6 *Example implementation workflow within a recommended or designated wilderness area* on pg. 21 of the draft EA, "Ignition and holding operations would be completed using hand tools (chainsaws, Pulaskis, shovels, etc.) and handheld firing devices. Use of portable pumps or water drops by aircraft may be needed. Ignitions using helicopters or drones may be considered when hand ignitions aren't feasible or safe."[1]

[1] It is also worth noting that the proposed actions are couched within the non-committal language of condition-based management practices (i.e. *may be necessary under limited circumstances* and *may be considered*), so as to avoid directly engaging with the site-based analysis and public involvement required by NEPA. This will be explored below in Section 3.

Simply put, the use of these mechanized tools is strictly prohibited by the Wilderness Act, except when their use is necessary to meet the minimum requirements for administration of the wilderness. It's difficult to think of circumstances under which the use of drones flown over protected Wilderness, dropping incendiary devices is conducive to any reading of the Wilderness Act and the obligations of wilderness management understood therein.

2. 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, naturally 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.[2] 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.

3. Given the extent of the proposed project area within designated and recommended Wilderness, an EA is not sufficient to satisfy NEPA's 'hard look' requirement and address the potential impact to Wilderness areas. Given the project area of 2.4 million acres, there can be no question that there is a diversity of habitats, each which require their own consideration when assessing the potential environmental impacts of prescribed burning. The same can be said for the 866,000 acres of the project area that is designated Wilderness. Rather than provide site-specific analysis, the draft EA provides a broad, cursory analysis of the project area that fails to satisfy NEPA's "hard look" requirement, which requires agencies to take a "hard look" at the project's "site-specific" impacts. *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982). Additionally, this "hard look" must consider all foreseeable direct, indirect, and cumulative impacts, *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d 957, 963 (9th Cir. 2002).

NEPA's look-before-you-leap mandate requires federal agencies to "carefully weigh environmental considerations and consider potential alternatives to [a] proposed action before the government launches any major federal action." *Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2004). To that end, NEPA requires federal agencies to prepare a detailed EIS before making decisions with significant environmental effects. 42 U.S.C. § 4332(2)(C), particularly given the inclusion of "area[s] demonstrat[ing] unique characteristics," 40 C.F.R. § 1508.27(b)(3), such as Wilderness, within the project area of the proposed alternative.

The proposed action is likely to cause significant direct, indirect, and cumulative impacts. Should the Forest Service choose to move forward with their proposed alternative, the agency must take a hard look at this project through an Environmental Impact Statement ("EIS") and rigorously explore reasonable alternatives that would not offend the Wilderness Act. The EIS is NEPA's core requirement. Environmental concerns must be "integrated into the very process of agency decision making" and "interwoven into the fabric of agency

[2] 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.

planning." *Andrus v. Sierra Club*, 442 U.S. 347, 350-351 (1979). The purpose of an EIS is two-fold: 1) to ensure that the agency will have available and will carefully consider detailed information on significant environmental impacts when it makes decisions, and 2) to "guarantee that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision." *Robertson v. Methow Valley Citizens*, 490 U.S. 332, 349 (1989); 40 C.F.R. § 1501.2(b).

Moreover, without further EISs including site-specific analysis of all foreseeable direct, indirect, and cumulative impacts, the proposed project constitutes a condition-based management (CBM) approach, which has recently been found to be illegal. *Southeast Alaska Conservation Council v. U.S. Forest Serv.*, 413 F. Supp. 3d 973, 981 (D. Alaska 2019).

Even if a CBM approach were not previously deemed illegal, the Forest Service's own condition-based management document states that "CBM projects must meet the site-specificity and public involvement requirements of NEPA. There is no get-out-of-NEPA-free card with CBM" (pg. 1 Condition-Based Management Frequently Asked Questions). In order for the agency to remain consistent with their own mandate, as previously stated,, then it should engage in further site-specific analysis including the opportunity for public comment.

Moreover, according to the agency's own documents, the proposed alternative is an attempt at ecosystem level manipulation, and therefore consistent with a condition-based management approach: "This proposal seeks to proactively plan treatments in fire-adapted landscapes… with intent to improve ecosystem structure and function and restore watersheds." Draft EA, pg. 2. This project doesn't aim to restore one facet of the wilderness, but rather implement a wide-scale manipulation of habitat, which is the antithesis of what the Wilderness Act intended. For even if the agency argues, as it has in the past, that a limited act of tramelling leads to the restoration of one element of the wilderness, such as a particular native species, a similar argument cannot be applied to a project of this scope, which can only be considered habitat manipulation and an all-encompassing act of tramelling.

4. The agency's proposal to determine compliance with the Wilderness Act after the decision is a violation of NEPA. The EA states that, "[t]he MRA would be completed after a decision notice on the project is signed (so long as it includes wilderness) and prior to project implementation." Draft EA, pg. 8. The agency's proposed approach of implementing the Minimum Requirements Analysis (MRA) or MRA Framework after the decision would necessarily exclude public involvement, as it would not occur during implementation planning. There is no reading of NEPA which would allow for the agency to prepare MRAs during implementation planning, therefore omitting the opportunity for public involvement.

The agency explains that, "The proposed action would be implemented incrementally and non-contiguously over time on up to 32,000 acres across portions of the Sequoia National Forest (including the Giant Sequoia National Monument) and up to 50,000 acres across portions of the Sierra National Forest within each 5-year implementation period" Draft EA, pg. 9, failing to provide a sufficient timeline, and leaving the public to assume that that

proposed prescribed burn will happen in perpetuity with no further opportunity for impact analysis or public input.

Not only is the process of delaying the MRA until implementation planning a violation of NEPA, but as discussed above, the use of an MRA in place of a site-specific decision document is a violation of the Wilderness Act, as natural conditions will always trump untrammeled (wild). It would be prudent, then, to discuss the viability of the MRAF and the MRA process itself as an interagency management tool, as it's build upon a misinterpretation of the Wilderness Act and a misdefining of wilderness character when the Act is considered as an internally consistent document as is required of statute. Somewhat confoundingly, the implementation of the MRA is both overly simplistic in its approach to analyzing wilderness character and *minimum requirement*, while also complicating the statutory definition of wilderness which is, quite simply, "an area where the earth and its community of life are **untrammeled by man**" (Wilderness Act, 16 U.S.C. § 1131 (c)). This, perhaps, can be understood when viewed as a means by which those that are implementing the MRA tool can both have their cake and eat it too. By complicating the definition of wilderness character (as explained in Section 1 of this comment) and plugging this definition into a rudimentary management tool (a series of YES or NO questions followed by a comment box), the MRA tool makes it possible to circumvent the stringent requirements of the Wilderness Act without applying the level of analysis necessary to adequately evaluate a proposed action's potential impact to wilderness character.

In short, the MRAF has not gone through rulemaking, and is flawed in that the natural conditions will always trump untrammeled (wild), when considered through the lens of the MRAF.

5. The agency's proposed plan to consult the USFWS regarding potential impacts to threatened and endangered species after the decision is a violation of NEPA. On pg. 98 of the draft EA the agency states, "Because the Sequoia and Sierra National Forests Prescribed Fire Project takes a forestwide, systematic approach to plan and implement prescribed fire and associated pre-treatment activities, *Endangered Species Act consultation will be phased and occur post-NEPA decision.*" [emphasis added] Here the agency essentially admits that it plans to violate NEPA, as NEPA requires all necessary environmental information and relevant documentation be made available to the public prior to the decision.

Moreover, the agency proposes that, "For elements of the proposed action that are not addressed within existing programmatic consultations, a biological assessment would be prepared during implementation planning." Draft EA, pg. 98. By waiting until implementation planning to complete the biological assessment, the agency would fail to comply with NEPA, as the implementation planning phase does not include additional NEPA analysis or public involvement. In short, under no reading of the Wilderness Act could a project aimed at ecosystem-scale human manipulation of habitat be permitted.

Furthermore, the agency states, "Potential for adverse effects to whitebark pine would be greatly reduced under the wilderness exclusion alternative, because most acres of whitebark pine within the project area are located in designated wilderness (23,199 of 23,412 acres, or

99 percent)." Draft EA, pg. 38. Barring speculation about potential future fires, one can assume that, similar to whitebark pine, the wilderness exclusion alternative would greatly reduce the potential for adverse effects to all endangered and threatened species within the wilderness area. Regardless, there will be potential to negatively impact endangered species, threatened species, and species of interest, so the agency must practice due diligence in analyzing those potential impacts prior to the decision and before implementation planning.

6. Fire ecology research shows that megafires are ecologically beneficial and necessary for increased biodiversity. As recent research into fire ecology has shown:

> The relationship of megafires to native biodiversity warrants special attention by ecologists and land managers…In the southeastern Sierra Nevada mountains of California, greater richness of bird species was reported in the ~61,000 ha McNally fire of 2002 than in adjacent, unburned mature/old conifer forest (Siegel and Wilderson, 2005), similar to bird richness levels in the ~18,000 ha Donner fire of 1960 in the northern Sierra Nevada (Raphael et al., 1987). Likewise in the northern Sierra Nevada, the highest total bird abundance was found in the unlogged high-severity fire areas within the ~23,000 ha Storrie fire of 2000 (Burnett et al., 2010). A more recent investigation of moderate-/high.severity fire areas in the 104,178 ha Rim fire of 2013 in the central Sierra Nevada found high avian abundance and diversity just 1 year after the fire, including numerous species that were absent or nearly absent in adjacent unburned forest, concluding that these higher-severity areas in the Rim fire created 'a rich habitat for early-successional birds that will sustain these rarer species on the Sierra landscape for years to come' (Fogg et al., 2014).
>
> Megafires also influence habitat for rare and management-sensitive species such as the California spotted owl (*Strix occidentalis occidentalis*). This forest species mainly selected unlogged high-severity areas in the McNally fire area for foraging, more than lower fire severity areas and more than unburned mature/old forest (Bond et al., 2009).

DellaSala, Dominick A, and Chad T Hanson. *Ecological and Biodiversity Benefits of Megafires*, Elsevier Inc., 2015, pp. 27–28.

On pg. 78 of the draft EA the agency states, "The overall result of this proposal would provide opportunities for future preservation of the naturalness of wilderness in the long term, though it negatively affects natural qualities in the short term." Again, the agency is using the idea of a return to an unspecified state of *naturalness*, while there is significant research into the ecological benefits of mixed-severity fires in the promulgation of biodiversity and habitat creation.[3]

Moreover, the agency is seeking to carry out the proposed action based on the conclusion that forests with increased protections are more vulnerable to high-severity fires, but the science remains inconclusive that more management reduces the frequency and severity of wildfires:

[3] It should be noted that the California spotted owl is under intense pressure due to habitat loss, and is currently classified as a near-endangered species. Habitat protection and creation is of the utmost importance for this species.

> An extension of the prevailing forest/fire man-agement hypothesis is that biomass and fuels increase with increasing time after fire (due to suppression), leading to such intense fires that the most long-unburned forests will experience predominantly severe fire behavior (e.g., see USDA Forest Service 2004, Agee and Skinner 2005, Spies et al. 2006, Miller et al. 2009b, Millerand Safford 2012, Stephens et al. 2013, Lydersenet al. 2014, Dennison et al. 2014, Hessburg 2016). However, this was not the case for the most long-unburned forests in two ecoregions in which this question has been previously investigated—the Sierra Nevada of California and the Klamath-Siskiyou of northern California and southwest Oregon. In these ecoregions, the most long-unburned forests experienced mostly low/moderate-severity fire (Odion et al. 2004, Odionand Hanson 2006, Miller et al. 2012, van Wagtendonk et al. 2012). Some of these researchers have hypothesized that as forests mature, the overstory canopy results in cooling shade that allows surface fuels to stay moister longer into fire season (Odion and Hanson 2006, 2008). This effect may also lead to a reduction in pyrogenic native shrubs and other understory vegetation that can carry fire, due to insufficient sunlight reaching the understory (Odion et al. 2004, 2010).

Bradley, C. M., C. T. Hanson, and D. A. DellaSala. 2016. *Does increased forest protection correspond to higher fire severity in frequent-fire forests of the western United States?* Ecosphere 7(10):e01492.

Because there is a lack of scientific consensus supporting the agency's claim that the proposed methods for pre-suppression will effectively reduce the chances of more frequent, high-severity fires, the protections afforded these areas by the Wilderness Act should be respected. Doing so will offer a unique opportunity to observe how ecosystems behave when allowed to function outside the confines of human manipulation and in the face of human restraint.

Conclusion

The actions proposed in the EA by the Forest Service would be, by all measures, one of the most profound violations of the Wilderness Act in the law's 60 years of existence. The draft EA is not sufficient to reliably assess the potential environmental impacts of a project of this size and scope. Wilderness Watch urges the Forest Service to pursue Alternative C, the Wilderness Exclusion alternative, as the actions within the proposed alternative would necessarily violate the Wilderness Act's purpose–preservation of untrammeled wilderness, and thus the agency's overriding mandate to preserve wilderness character. The proposed prohibited uses are not necessary to meet minimum requirements for administration of the area for the purpose of the Wilderness Act. However, if the proposed alternative is chosen, the agency should unequivocally provide further documentation analyzing the full impacts to Wilderness and the legality of the action, MRA or otherwise, as well as following the standards laid out in NEPA, by providing a site-specific EIS and an opportunity for public comment. This should be done up front rather than after the decision during the implementation planning phase, which would eliminate the opportunity for public input.

Please keep us informed about the status of this project, and thank you for your consideration.

Sincerely,

Mason Parker
Wilderness Defense Director
Wilderness Watch

Attachments

Bradley, C. M., C. T. Hanson, and D. A. DellaSala. 2016. *Does increased forest protection correspond to higher fire severity in frequent-fire forests of the western United States?* Ecosphere 7(10):e01492. 10.1002/ecs2.1492

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