From: Bill Lockhart
To: FS-comments-intermtn-uinta-pleasantgrove
Subject: [External Email]Emerald Lake Shelter proposal comments
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Dear UWCNF:

I am submitting these comments on the Emerald Lake Shelter Reconstruction Project both in my personal capacity and in my role as board chair for Citizens' Committee to Save Our Canyons, whose staff has previously submitted comments.

The Emerald Lake Shelter project is clearly unlawful. In support of its decision to conduct activities inconsistent with the proscriptions of the Wilderness Act, the UWCNF has relied on alleged authority under the National Historic Preservation Act (NHPA). Let me explain why this reliance is plainly misplaced.

It's highly common for the more substantive section(s) of an act to start with "Except as provide in" a variety of other statutes from the same or other acts. The Wilderness Act is clear that "except as provided in this Act" (emphasis added), the act provides for a prohibition on the construction (or reconstruction) of structures. The UWCNF provides no authority that overcomes this clear language and allows its assertion of provisions of the NHPA to support its Emerald Lake Shelter reconstruction proposal. And, indeed, courts have consistently viewed the Wilderness Act as prohibiting historic preservation efforts by agencies. For example:

Wilderness Watch v. Iwamoto, 853 F. Supp. 2d 1063 (W.D. Wash. 2012) (invalidating Forest Service and public's rebuilding of historic structure within wilderness allegedly authorized by the NHPA)

High Sierra Hikers Ass'n v. U.S. Forest Serv., 436 F. Supp. 2d 1117 (E.D. Cal. 2006) (invalidating Forest Service's decision to maintain and repair historic structures within wilderness)

Olympic Park Assocs. v. Mainella, No. C04-5732FDB, 2005 WL 1871114 (W.D. Wash. Aug. 1, 2005) (invalidating Park Service's off-site reconstruction and replacement by helicopter of historic structures within wilderness that had been collapsed by snow loads)

Wilderness Watch v. Mainella, 375 F.3d 1085 (11th Cir. 2004) (invalidating Park Service's use of motor-vehicle transport across wilderness to provide tourist access to historic sites)

Here is a summary of some of the federal case law on questions pertaining to historic structures in wilderness area: https://wildernesswatch.org/images/wild-issues/2018/Historical-Structures-in-Wilderness.pdf

The UWCNF's Minimum Requirement Analysis (MRA) correctly points out that the agency

must consider historic preservation in its management decisions, but these decisions must remain consistent with its mandate to protect wilderness qualities. As the Iwamoto case stated —and as the MRA gets wrong at pg. 7—the NHPA places no obligation on the agency that the agency might balance against its singular, clear mandate to protect wilderness values.

The only way for the UWCNF to justify a structure or other use that is inconsistent with the general proscriptions of the Wilderness Act is through the performance of a MRA (Minimum Requirements Analysis) which, as rationally developed in accord with the requirements of the Administrative Procedures Act, determines whether a use is, as section 4(c) requires, "necessary to meet the minimum requirements for the administration of the area for the purposes for this Act. Of course, the Emerald Lake Shelter project would fail to survive a properly prepared analysis because the UWCNF offers no credible reason the shelter's reconstruction is necessary at all. Most saliently, the MRA never considers the value of allowing the building to age naturally, allowing it to reflect and be appreciated for its true antiquity, rather than appearing unnaturally frozen in time, in contrast to the wilderness in which it sits.

I believe that the Emerald Lake Shelter project represents a clear violation of statute. Because the unlawfully misdirected expenditure of public funding obviously constitutes waste and abuse of agency resources, I plan to inform the Dept of Agriculture's Office of Inspector General of this matter.

Bill Lockhart
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