WILDERNESS WATCH
Keeping Wilderness Wild

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WILDERNESS WATCH OBJECTION TO THE FERNBERG CORRIDOR LANDSCAPE MANAGEMENT PROJECT

I. Introduction and Legal Standing

The following objection is filed by Wilderness Watch on the Fernberg Corridor Project. Wilderness Watch is a national wilderness conservation organization focused on the protection and proper stewardship of the National Wilderness Preservation System, including the Boundary Waters Canoe Area Wilderness (BWCAW) in Minnesota. Wilderness Watch works with all four federal agencies that administer Wilderness, and for more than 35 years has fought to ensure that these agencies comply with the 1964 Wilderness Act. One Wilderness Watch staffer has also worked for more than 50 years to protect the BWCAW, including active work to pass the 1978 BWCAW Act (Public Law 95-495), enforce the 1978 law's implementation, and decades of other work to protect the BWCAW's wilderness character.

Pursuant to the United States Forest Service's predecisional administrative review process at 36 C.F.R. Part 218, Wilderness Watch submits this formal objection to the Fernberg Corridor Landscape Management Project (Project No. 65214), proposed for implementation in the BWCAW on the Superior National Forest in Minnesota.

This objection is timely filed within the 45-day objection period following publication of the legal notice of the draft decision on July 2, 2025, as required by 36 C.F.R. § 218.6(a). Wilderness Watch submitted detailed written comments during the scoping and public comment phases of the project, thereby satisfying the eligibility requirements for filing an objection under 36 C.F.R. § 218.5(a).

This objection raises fundamental concerns regarding the Forest Service's compliance with the Wilderness Act, the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA). We urge the agency to withdraw or significantly revise the proposed decision in light of these violations.

II. The Project Would Trammel Wilderness and Violate the Wilderness Act

The Fernberg Corridor Project proposes to burn up to 84,000 acres within the BWCAW using human-ignited prescribed fire. This proposal, which is unprecedented in scale, relies on motorized and mechanized methods expressly prohibited under the Wilderness Act, including the use of helicopters, motorized ignition equipment, chainsaws, and other mechanized or powered tools. All of these would degrade wilderness character.

The 1964 Wilderness Act contains a flat prohibition on the use of motor vehicles, motorized equipment, mechanical transport, and installations within designated Wilderness. These prohibitions are not merely procedural but serve the Wilderness Act's central purpose: preserving "wilderness character" by protecting areas "untrammeled by man." 16 U.S.C. §§ 1131(a), 1133(c). The Act makes clear that such prohibited uses may only occur when "necessary to meet minimum requirements for the administration of the area for the purpose of [the] Act." *Id.* § 1133(c). This is an exacting standard that requires a documented showing that (1) the action is essential to administering the area as Wilderness and (2) there is no less intrusive alternative available.

Here, the Forest Service fails to meet this threshold. Nowhere in the EA or Decision Notice does the agency demonstrate why such extensive trammeling—relying on motorized ignition over tens of thousands of acres—is the minimum necessary to administer the BWCAW consistent with the Wilderness Act's mandate.

As Wilderness Watch stated in its scoping comments on Jan. 31, 2024, the use of prohibited tools must be justified through a rigorous site-specific minimum requirements analysis (MRA), not by general appeals to efficiency or ecological benefit. The agency's failure to undertake such analysis violates the clear terms of the Wilderness Act.

The Forest Service neither considers nonmotorized alternatives such as natural ignitions (e.g., lightning-caused fires managed under a Minimum Impact Suppression Tactics (MIST) protocol) nor explains why ecological objectives cannot be achieved through less intrusive, nonmechanized means.

These deficiencies were explicitly identified in Wilderness Watch's earlier comments on the project, which emphasized the availability of less intrusive alternatives such as managing lightning-caused fires. The agency's refusal to meaningfully consider such alternatives further undermines its compliance with the Act's minimum requirements standard.

Indeed, as Wilderness Watch emphasized in its comments, the use of prescribed fire to simulate natural disturbance regimes does not justify prohibited actions under the Wilderness Act. As the Ninth Circuit explained in *High Sierra Hikers Asss'n v. Blackwell*, 390 F.3d 630, 646 (9th Cir. 2004), "[t]he Wilderness Act twice states its overarching purpose" which is to "preserv[e] the wilderness character of the wilderness area."

The Act demands a presumption against interference. Large-scale manipulation of forest conditions using chainsaws, aerial ignition devices, and fire control line, even for ostensibly ecological goals, represents the very kind of intentional control of natural conditions that the Wilderness Act was designed to prevent. Projects of this magnitude are not compatible with the concept of Wilderness as a self-willed, self-perpetuating landscape. This project would result in a human-managed forest, albeit one managed by prescribed fire, not a wild self-managed forest as called for by the Wilderness Act.

The BWCAW is not a fire-dependent landscape in need of human ignition. As noted in Wilderness Watch's comments, the area continues to experience naturally-occurring fire

ignitions, including the 2021 John Ek and Whelp fires and the 2025 Lake 3 island and Horse River fires. The agency fails to explain why a policy of allowing such natural processes to unfold is insufficient, particularly in light of the statutory obligation to *resist human manipulation of natural systems*.

The EA also relies extensively on the flawed Keeping It Wild2 (KIW2) framework to justify this project. As Wilderness Watch described in its comment letter, the KIW2 framework is fatally flawed, has never gone through official rulemaking or approval, and pits the five so-called qualities of wilderness character against each other rather than protecting wilderness character as a whole as the law requires. In this case, the EA relies on improving the natural quality by restoring fire, but at the expense of degrading overall wilderness character. EA at 47-48. In the end, the statutory language of the Wilderness Act supersedes KIW2, and the Forest Service is statutorily required to preserve the wilderness character of the BWCAW.

Accordingly, the Fernberg Corridor Project would trammel the Wilderness and violate the express terms of the Wilderness Act. The agency's failure to rigorously apply the Wilderness Act renders its decision unlawful and unsupported by the administrative record.

III. Fire Science Does Not Justify Burning Deep in the Wilderness

The Fernberg Corridor EA justifies extensive interior burning within the BWCAW as necessary to reduce the risk of wildfire to nearby communities and structures located in the Wildland Urban Interface (WUI) adjacent to the Fernberg Road corridor. (See, for example: "Minimize Potential Effects from a Wildfire in the Wildland Urban Interface: There is a need to alter current vegetation conditions to improve wildfire suppression efforts and increase safety for firefighters, residents, and visitors if a wildfire started in the project area.") Final EA at 5.

However, the scientific basis for this rationale is deeply flawed. Peer-reviewed fire science demonstrates that the primary determinant of home ignitability during wildland fire events is not the intensity of the fire several miles away, but rather the condition of vegetation and fuels within 100 to 200 feet of the structure itself.

This is not particularly new research, and the Forest Service has been aware of it for more than a quarter-century. In 1999, in the Forest Service's own publication, U.S. Forest Service Fire Scientist Dr. Jack Cohen concluded:

> The evidence indicates that home ignitions depend on the home materials and design and only those flammables within a few tens of meters of the home (home ignitability). The wildland fuel characteristics beyond the home site have little if any significance to W-UI home fire losses. Thus, the wildland fire threat to homes is better defined by home ignitability, an ignition and combustion consideration, than by the location and behavior of potential wildland fires.... Extensive wildland vegetation management does not effectively change home ignitability.

Cohen 1999. *Reducing the Wildland Fire Threat to Homes: Where and How Much?* USDA Forest Service Gen.Tech.Rep. PSW-GTR-173.

In the Journal of Forestry, Cohen also concluded that "we can conclude that home ignitions are not likely unless flames and firebrand ignitions occur within 40 meters of the structure." Cohen 2000. *Preventing Disaster: Home Ignitability in the Wildland-Urban Interface*. Journal of Forestry.

More recent peer-reviewed fire science confirms that landscape-level prescribed burning far inside Wilderness does not meaningfully reduce home ignition risks in adjacent WUI communities. Jack Cohen explains that during extreme WUI fire events, "large flames of burning shrubs and tree canopies (crown fires) must be within 100 feet to ignite a home's wood exterior." Cohen 2010. The Wildland–Urban Interface Fire Problem, Fremontia, Vol. 38, Nos. 2 and 3). Thus, a prescribed burn ignited five to six miles inside the Boundary Waters Canoe Area Wilderness would have no measurable benefit for protecting homes or structures in the WUI along the Fernberg Corridor. Further, follow-up studies continue to affirm that effective home protection requires fuel management within 30 to 100 feet of structures, not remote wilderness burns (see also Cohen & Stratton, 2008; Westhaver & Cohen, 2022).

In short, fuel treatments miles inside the wilderness five or six miles *east* of the Fernberg Road are neither scientifically justified nor demonstrably effective at protecting homes along the WUI, particularly given the predominantly *westerly* winds that would typically push fires to the east inside the BWCAW rather than to the west towards the Fernberg Road. The EA's uncritical reliance on fuel breaks and large-scale interior burning as WUI defenses ignores this key scientific consensus.

As Wilderness Watch's comments explained, natural lightning-caused fires are already occurring in the BWCAW, offering ecologically-appropriate disturbance without violating Wilderness mandates. The Forest Service fails to explain why allowing such fires to unfold under MIST protocols—rather than imposing human-ignited fire using prohibited methods—is not sufficient to achieve its objectives.

Accordingly, the claim that prescribed fire within the BWCAW is necessary for community protection inside the Fernberg Corridor lacks scientific basis. The actual science undermines the agency's justification for violating Wilderness values with its massive burning proposal miles deep inside the BWCAW.

The agency's reliance on fire as a WUI defense is not only legally insufficient under the Wilderness Act, but it also lacks factual support under NEPA. This failure to engage with contrary scientific findings, such as those by Cohen and others, renders the EA's purpose and need statement, and its FONSI, arbitrary and capricious under the Administrative Procedure Act (APA).

IV. The Project Mischaracterizes Treaty Obligations and Does not Justify Prohibited Activities in Wilderness

The EA cites the 1854 Treaty between the United States and the Lake Superior Band of Ojibwe (10 Stat. 1109) and references tribal usufructuary rights—including hunting, fishing, and gathering—on lands ceded by the Tribe, including portions of the BWCAW. While these rights are well-established and deserve full recognition, the EA fails to provide a legal basis for

concluding that large-scale, motorized prescribed burning within designated Wilderness is *required* to honor those rights.

Treaty rights, while legally enforceable and constitutionally protected under the Supremacy Clause (U.S. Const. art. VI, cl. 2), are still subject to reasonable, non-discriminatory regulation for conservation and public safety purposes. This principle, and the particular context of the BWCAW, is centrally addressed in *United States v. Gotchnik*, which concerned the permissible scope of treaty-reserved rights within the designated Wilderness as it relates to the Wilderness Act's prohibition on motorized use. 57 F. Supp. 2d 798, 804 (D. Minn. 1999), *aff'd*, 222 F.3d 506 (8th Cir. 2000).

In our scoping comments, Wilderness Watch expressly acknowledged the importance of honoring treaty obligations, but also emphasized that such obligations must be interpreted consistently with statutory mandates. Specifically, we cautioned that "[t]reaty rights cannot be used to justify or override otherwise unlawful agency conduct in designated Wilderness." *See* Scoping Comments of Wilderness Watch (Jan. 31, 2024) at 4. The Forest Service fails to grapple with this fundamental legal principle, and the EA offers no analysis of how these obligations could be honored through means consistent with the Wilderness Act.

To be clear, nothing in the 1854 Treaty—or in subsequent judicial interpretations—suggests that the Forest Service is *required* to use aircraft, chainsaws, or mechanized ignition tools in order to uphold the Tribe's rights to harvest resources within the BWCAW. Nor does the record demonstrate that the Tribe's ability to exercise treaty rights is impaired by foregoing the proposed prescribed fire operations. Here, the Forest Service remains bound by the plain language of the Wilderness Act, which prohibits all motor vehicles, motorized equipment, mechanical transport, and structures in designated Wilderness.

The EA's repeated emphasis on co-stewardship and cultural alignment with the Bois Forte, Grand Portage, and Fond du Lac Bands, while admirable, does not override statutory constraints.

The Forest Service has also failed to analyze whether the same cultural or ecological objectives could be achieved using non-trammeling means—such as allowing lightning-ignited fires to burn under managed conditions—rather than violating the Wilderness Act with human-ignited burns and prohibited tools.

Moreover, the agency never explained why the use of non-motorized methods, or the reliance on naturally ignited fire, is insufficient to preserve or enable the exercise of treaty-reserved activities, nor did it undertake any type of minimum requirements analysis for any of the treaty-justified actions proposed.

In sum, the EA errs in implying that the 1854 Treaty obligates the agency to pursue a course of action that contravenes the Wilderness Act and such an assertion lacks legal foundation. The Forest Service's invocation of treaty rights does not relieve it of its statutory duties, and cannot substitute for compliance with the Wilderness Act's mandatory and unambiguous protections.

V. The Forest Service Ignored Significant Public and Advisory Input

Despite substantial public concern expressed during the scoping period—including detailed objections by Wilderness Watch and other groups—the EA fails to meaningfully respond to comments critical of mechanical trammeling and large-scale prescribed fire within the BWCAW.

In the most recent comment period for this project, begun on January 16, 2025, the Forest Service received 2,410 comments. Over 2,300 of those comments opposed the massive prescribed burning proposed in the draft EA, and instead supported Alternative 3, which called for no prescribed burning inside the BWCAW. (Final EA at 18). Yet the Forest Service has ignored the approximately 95% of the public comments opposed to the extensive manipulation of the BWCAW proposed in the project.

NEPA requires that agencies take a "hard look" at the environmental consequences of proposed actions and respond meaningfully to significant opposing views. The Forest Service's failure to meaningfully address nearly 2,300 comments opposing Alternative 2—including legal, scientific, and policy objections—violates both the spirit and letter of this requirement.

Additionally, the agency disregarded the input of its own BWCAW Collaborative. The Forest Service created the Collaborative at least in part to advise the agency on BWCAW issues and management. In the spring of 2025, the Collaborative created a straw poll specifically on the issues of fire in the BWCAW. (*See* https://docs.google.com/forms/d/1G9UxaBvkfDhw9ntxEt7weIGDR-lPsuyv4cwFHeuHa8Y/viewanalytics) Many of the results of this poll reveal considerable opposition to the type of prescribed burning inside the BWCAW that the Fernberg Corridor Project proposes. These poll results include:

- 58.3% agreed that prescribed fire should not involve practices prohibited by the Wilderness Act;
- 62.5% agreed that lightning-ignited wildfire should be preferred over human-ignited prescribed fire;
- 83.4% agreed that prescribed fire imposes human priorities on forest dynamics.

Both the public comments to the draft EA and the poll of the Forest Service's BWCAW Collaborative show strong opposition to the type of massive prescribed fire within the BWCAW proposed by the Fernberg Corridor Project. Yet the Forest Service ignores such strong opposition. The agency cannot simply ignore this feedback when crafting a decision that affects one of the most visited Wildernesses in the country.

VI. The Project Requires an Environmental Impact Statement (EIS)

Given the scale of burning, the use of prohibited activities in a designated Wilderness, the extraordinary public interest, and the unsettled science and legal risks surrounding the proposal, the Forest Service must prepare a full Environmental Impact Statement (EIS) as required under

NEPA, 42 U.S.C. §§ 4321 et seq.

As Wilderness Watch emphasized in its scoping and DEA comments, NEPA requires agencies to take a "hard look" at the environmental consequences of their actions and to prepare an EIS where significant impacts may occur. The Fernberg Corridor Project's proposed scale of manipulation—84,000 acres of human-ignited burning, including within the BWCAW using chainsaws, helicopters, and mechanized ignition—plainly qualifies as a major federal action significantly affecting the environment.

The EA also fails to respond meaningfully to critical scientific and legal comments, including more than 2,300 public submissions opposed to the proposed action. Courts have held that an agency's failure to grapple with significant opposing viewpoints, particularly those backed by science or law, undermines the integrity of its NEPA analysis and weighs in favor of requiring an EIS. *See*, e.g., *Center for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1167 (9th Cir. 2003).

The EA similarly fails to analyze how and whether the Project will "increase the likelihood that subsequent lightning ignitions could be managed to play their natural role in a greater portion of the Wilderness." EA at 50. The Superior National Forest has promised since at least the 1987 Fire Management Action Plan to restore fire to its natural role in the BWCAW, but still the Forest Service has not done so. The Fernberg Corridor Project EA makes the same promise, but fails to analyze how this project will achieve that goal.

Additionally, the Forest Service's Finding of No Significant Impact (FONSI) is unsupported by the record. The agency fails to assess the cumulative impacts of extensive mechanical fire manipulation on wilderness character and ecological integrity, disregards legal precedent that narrowly constrains its discretion within designated wilderness, and ignores reasonable, non-trammeling alternatives such as managing natural ignitions in line with the Wilderness Act. Each of these omissions reflects a failure to take the "hard look" NEPA requires and further underscores the need for a full EIS.

VII. The Forest Service's Action is Premature in Light of Pending Forest Plan Amendments

The Forest Service is moving forward with the Fernberg Corridor Project in advance of its pending amendments to the Superior National Forest Land and Resource Management Plan. These amendments are expected to reshape the agency's approach to fire management, climate resilience, and tribal consultation—each of which is directly implicated by the actions proposed in this project.

By initiating landscape-scale prescribed burning within the BWCAW prior to completing these broader amendments, the agency is improperly segmenting its NEPA review. NEPA prohibits agencies from breaking a larger undertaking into smaller pieces to avoid comprehensive environmental review. See 40 C.F.R. § 1508.25(a)(1) (requiring analysis of connected and cumulative actions). Courts have held that premature action on one component of a larger plan constitutes unlawful segmentation when it forecloses or biases the outcome of future decisions. See, e.g., *Save Barton Creek Ass'n v. Fed. Highway Admin.*, 950 F.2d 1129, 1139–41 (5th Cir.

1992); *Thomas v. Peterson*, 753 F.2d 754, 759 (9th Cir. 1985).

We recognize the Supreme Court's recent decision in *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 145 S. Ct. 1497 (2025) which held that NEPA does not require agencies to evaluate speculative upstream or downstream impacts beyond their regulatory authority. However, that ruling does not diminish the requirement to prepare an Environmental Impact Statement where a project—such as the Fernberg Corridor Project—poses direct, significant environmental impacts within the agency's jurisdiction. Nor does it alter the rule that agencies may not segment or prematurely pursue major federal actions while deferring broader programmatic review. The Project's unprecedented scale, its impact on designated Wilderness, and its advance timing ahead of a Forest Plan amendment, all trigger NEPA's EIS mandate regardless of *Seven County*'s limited holding.

The Forest Service's failure to acknowledge or evaluate how the Fernberg Corridor Project relates to the forthcoming forest-wide plan amendments improperly sidesteps broader policy and ecological considerations that will soon be governed by updated planning guidance. This sequencing is arbitrary, undermines the utility of NEPA's tiered review structure, and risks foreclosing meaningful alternatives. The Forest Service should defer action on the Fernberg Corridor Project until it has completed the Forest Plan amendments that would provide the proper legal and ecological framework for evaluating such actions.

VIII. The Forest Service Lacks Capacity to Implement the Project Responsibly

The Superior National Forest is currently facing severe staffing shortfalls, and lacks adequate personnel to carry out a project of this magnitude.

The decline in staffing began in 2024, when then-Chief Randy Moore imposed a freeze on all hiring. This freeze prevented the Superior National Forest from hiring back seasonal and part-time employees. Superior National Forest Supervisor Tom Hall said "that the agency would have to scramble to do the basics, like staffing the forest's five district offices."

When President Trump came back into office, his administration fired thousands of Forest Service employees nation-wide, including more staff on the Superior National Forest. As of February 2025, the Superior was down about 100 employees to a total of about 250 employees, according to a news story in the Minnesota Star Tribune. (*Minnesota Star Tribune*, Feb. 21, 2025.) More of Superior National Forest employees have likely left since February due to additional firings, forced resignations, and employee buy-outs.

This shortfall is further evident in that fact that, for the first time ever, neither the Kawishiwi Ranger District (Ely) nor the Gunflint Ranger District (Grand Marais) is issuing BWCAW visitor permits this summer because of lack of staff. This staffing shortfall is forcing private outfitters and other cooperators to issue BWCAW permits instead of the Forest Service.

The staffing shortfall also raises serious doubts about the agency's ability to safely and lawfully implement such a massive and controversial project as the Fernberg Corridor Project. Proceeding without adequate staff capacity increases the risk of unintended environmental and wilderness damage and operational shortcuts that may violate the law.

Conclusion

Wilderness Watch respectfully requests that the Forest Service:

- Withdraw its Draft Decision Notice and Finding of No Significant Impact (FONSI);
- Prepare a full Environmental Impact Statement (EIS) in compliance with NEPA;
- Suspend all proposed prescribed fire activities within the Boundary Waters Canoe Area Wilderness (BWCAW) pending lawful analysis under the Wilderness Act;
- Reevaluate alternatives that align with the preservation of wilderness character and current fire science, including natural ignitions managed in compliance with the Wilderness Act;
- Incorporate public input—including the overwhelming opposition to prescribed fire within the BWCAW—into any revised environmental analysis and decision-making;
- Defer final action on the Fernberg Corridor Project until completion of the Superior National Forest Plan amendments, ensuring consistency with updated policy frameworks.

The Fernberg Corridor Project, as currently approved, would violate the Wilderness Act, NEPA, and the APA. It disregards legal prohibitions on motorized and mechanized use in Wilderness, ignores compelling scientific evidence, and fails to meaningfully address the concerns of the public and its own advisory group. For these reasons, the Forest Service must withdraw its approval and comply with the laws governing our public lands and Wilderness.

Sincerely,

/s/ Kevin Proescholdt
Conservation Director
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/s/ Daniel Brister
Staff Attorney
Wilderness Watch