



WILDERNESS WATCH

Keeping Wilderness Wild

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February 28, 2022

Supervisor H. Scott Ray (Reviewing Officer)
Daniel Boone National Forest

Sent Via the Internet

**RE: OBJECTION to the Draft Decision Notice Red River Wild and Scenic
River Comprehensive River Management Plan**

Pursuant to 36 CFR Part 218, Wilderness Watch and objects to the Draft Decision Notice for the **Red River Wild and Scenic River Comprehensive River Management Plan**

Pursuant to Part 218, Wilderness Watch is the lead objector. Contact Person: Gary Macfarlane (ph) 208-882-9755. The full objection and attachments are included.

Wilderness Watch filed comments on this project. If your schedule permits, we would like to discuss the issues raised in our objection with you. The objection focuses on specific points.

Sincerely,

Gary Macfarlane
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Structures, Installations, and “Hardened” Campsites are not the Minimum Necessary and Violate Wilderness¹

We noted in our comments that:

Before choosing assigned campsites and attendant hardening in Wilderness, the agency should consider use numbers and a permit system. Assigned sites and the attendant structures degrade Wilderness. Even sites that don't have structural developments have some kind of signage, which detracts from Wilderness. A permit system with conservative limits is something to seriously consider for the Wilderness. Rather than manipulate the Wilderness, the agency needs to manage human recreation uses of the Wilderness.

The first sentence of Section 2(a) of the 1964 Act describes the statute's over-arching mandate. The “purpose” is “to secure for the American people of present and future generations the benefits of an enduring resource of wilderness” through the establishment of “a National Wilderness Preservation System” and that system “shall be administered for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment **as wilderness** and so as to provide for the protection of these areas, the preservation of their wilderness character . . .”. (emphasis added). It is instructive that recreation does not appear in this purpose. Even in the balance of Section 2(a) the words “use and enjoyment as wilderness” refer to all six of the acceptable public uses listed in Section 4(b).

The mandate is to administer all activities so that this Wilderness will remain “unimpaired for future use and enjoyment as wilderness”. It is also clear that this mandate applies to the setting rather than to any particular use or recreational experience.

The Wilderness Act is explicit in section 4(c):

. . . 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 area.” (emphasis added)

Purpose is singular in section 4(c) so it is not to be confused with the allowable public uses in section 4(b), which are expressly conditioned upon compatibility with the rest of the Act. Section 4(c) prohibits structures and motorized uses, including helicopters, absent very narrow exception where the structure or motorized use is “necessary to meet minimum requirements for the administration of the area for the purpose of [the Act].” Thus, the Forest Service must make a reasoned, specialized finding of necessity before it may authorize this project, and for the reasons stated below, the project as proposed is not necessary.

The regulations of the Forest Service provide important direction.

The Forest Service Manual (FSM) explains how the requirements of the Wilderness Act are to be met. The overriding management philosophy, regarding impacts, including nonconforming uses, on Wilderness is as follows (FSM 2320.6):

The goal of wilderness management is to identify these influences, define their causes, remedy them, and close the gap (“A”) between the attainable level of purity and the level that exists on each wilderness (“X”).

¹ The NEPA section addresses the lack of clarity as to what would be done and where it would be done.

Thus, it is clear that the goal of wilderness management is to keep and improve the wild conditions of wilderness.

The same section of the Manual further notes:

Where a choice must be made between wilderness values and visitor or any other activity, preserving the wilderness resource is the overriding value. Economy, convenience, commercial value, and comfort are not standards of management or use of wilderness.

Preserving wilderness character is paramount and more important than visitor activity (recreation). Specifically regarding recreation, the Manual policy states (FSM 2323.12 part 3):

Manage for recreation activities that are dependent on the wilderness environment so that a minimum of adaptations within wilderness are necessary to accommodate recreation.

Buildings and placing structures and installations--be they posts, signs, or making a durable site-- at assigned sites irrevocably damages the physical nature of Wilderness. Coming up with a permit system does not. A permit system, in spite of any concerns about it, is consistent with section 4(c) of the Wilderness Act. By definition, actions that do not incorporate the 4(c) prohibitions to the Wilderness Act are the minimum necessary. In this case, there are actions that could be taken to obviate the perceived need for structures or installations.

The Ninth Circuit Court of Appeals decision in *High Sierra Hikers vs. Blackwell* made clear that preservation of Wilderness Character is paramount:

The Wilderness Act twice states its overarching purpose. In Section 1131(a) the Act states, “and [wilderness areas] shall be administered for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character.” 16 U.S.C. § 1131(a). (emphasis in original omitted). Although the Act stresses the importance of wilderness areas as places for the public to enjoy, it simultaneously restricts their use in any way that would impair their future use as wilderness. This responsibility is reiterated in Section 1133(b), in which the administering agency is charged with preserving the wilderness character of the wilderness area.

A permit system would be consistent with that direction.

Our comments noted,

The Wilderness Act isn’t internally inconsistent, as the EA seems to suggest. *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, the way to solve overuse is by limiting the use, not “hardening” Wilderness to supposedly handle such use.

It is inconsistent to suggest the requirements of the Wilderness Act are to be met by violating the Wilderness Act when alternatives to 4(c) prohibitions exist. For example, the Change Log states on page 2, “construction or site improvement techniques for designated campsites in Clifty Wilderness will not violate prohibited uses as defined in the Wilderness Act.” By definition, construction and most site improvement techniques would involve prohibitions.

Remedy

Analyze and adopt an alternative that uses off-site means—be it a permit system, improved user education, or something else--to limit impact to Wilderness rather using than 4(c) prohibitions.

Any Existing Installations (fixed anchors and bolts) in the Clifty Wilderness are not shown to be the Minimum Necessary

Our comments raised the question of fixed anchors in Wilderness. Rather than address the issue, the response merely states, “The routes the commenter is referring to were in place prior to the 2004 Forest Plan and are therefore allowed to exist and be maintained.” Comment disposition page 9. Fixed anchors are permanent installations and not legal, unless they are found to be the minimum necessary by the agency, regardless of when they were installed. First, there is no inventory in the EA or Forest Plan, let alone a site-specific analysis, to determine whether any of these installations are in the Wilderness, and if so, no determination if they are the minimum necessary. Second, it is up to the Forest Service, not members of the public, to determine what is the minimum necessary and when such structures or installations would need maintenance. This is ripe for abuse. Third, the Clifty Wilderness was designated in 1985, not 2004. In any case, regardless of when the fixed anchors were placed

We have attached a plan, submitted by citizens, for climbing on the Bitterroot National Forest that might be of use.

Remedy

Determine whether any fixed anchors actually exist in the Clifty Wilderness and then take appropriate action.

NEPA

Our Comments stated, “The proposal does not have enough information for site-specific analysis. We don’t know precisely what is planned for assigned wilderness campsites. Even some proposed front country sites have a category TBD (EA at 58). Given these uncertainties, an EIS is needed to fully assess the impacts of this proposal.” The EA made changes, but not for Wilderness. None of the new maps at the end of the revised EA show where the campsite with structures would be located. Indeed, the comment disposition page 1 indicates that the degree of specificity is not known. Finally, it is unclear as to what would be done in Wilderness. For example, the DN refers to “durable” surfaces, posts, and signs, but that is the extent of the specificity in the documents.

Indeed, this is a programmatic document, not a site-specific one. As such, there must be site-specific analysis.

Remedy

Prepare a site-specific NEPA document for the planned activities in the Wilderness.

