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Keeping Wilderness Wild

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Minnesota Office
2833 43rd Ave. South
Minneapolis, MN
55406

Idaho Office
P.O. Box 9765
Moscow, ID 83843

May 27, 2022

Objection Reviewing Officer
USDA Forest Service, Northern Region
26 Fort Missoula Road
Missoula, MT 59804

Objection Submitted Electronically: appeals-northern-regional-office@usda.gov

**RE: OBJECTION TO THE BUFFALO CREEK YELLOWSTONE
CUTTHROAT TROUT CONSERVATION PROJECT**

Wilderness Watch submits these comments on the “Buffalo Creek Yellowstone Cutthroat Trout Conservation Project ” pursuant to 36 C.F.R. § 218. Wilderness Watch is the lead objector. These objection comments encompass the entire project, which occurs in the Absaroka-Beartooth Wilderness. The responsible official for this project is Mary Erickson, Forest Supervisor for the Custer-Gallatin National Forest where the project will occur. Wilderness Watch previously submitted comments in April 2021. The previous comments and associated attachments are specifically incorporated by reference in this objection letter.

Wilderness Watch is a national wilderness advocacy organization, headquartered in Missoula, Montana, dedicated to the protection and proper administration of the National Wilderness Preservation System. Wilderness Watch members use and value, and will continue to use and value, the Absaroka-Beartooth Wilderness for personal and professional pursuits, including hiking, plant and wildlife viewing, and plant and wildlife study. Wilderness Watch members also value the Absaroka-Beartooth Wilderness for its own sake. Wilderness Watch members value knowing that Wilderness is protected as Congress intended—that it is administered as an untrammelled landscape where natural processes, rather than intentional human interference, dictate conditions—whether or not they ever set foot inside the Wilderness boundary. As more fully described below, the Forest Service’s proposed action would adversely affect Wilderness Watch’s organizational interests, as well as its members’ use and enjoyment of the Wilderness.

Wilderness Watch's co-objectors also use and value the Absaroka-Beartooth Wilderness and will be harmed by the Forest Service's proposed action.

Alliance for the Wild Rockies is a tax-exempt, non-profit public interest organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and its naturally functioning ecosystems. The Alliance has over 2,000 individual members. Members of the Alliance observe, enjoy, and appreciate the Northern Rockies' native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future, including in the Project area in the Custer Gallatin National Forests. Alliance's members' professional and recreational activities are directly affected by the Forest Service's failure to perform its lawful duty to protect and conserve these ecosystems by approving the challenged Project. Alliance for the Wild Rockies joins this objection on its own behalf and on behalf of its adversely affected members.

Conservation Congress is a grassroots, 501(c)(3) nonprofit organization that advocates for the protection of native wildlife and their habitat, including aquatic species. Conservation Congress also works to protect established wilderness and roadless areas for use by imperiled species and from further encroachment by humans. Conservation Congress is a membership organization with approximately 500 members throughout the western United States.

Friends of the Bitterroot is a non-profit conservation organization founded in 1988 with a mission is to preserve the wildlands and wildlife and to protect the forests and watersheds of our region as we work for a sustainable relationship with the environment. Our members recreate and receive inspiration from experiencing those aspects of our natural environment.

Gallatin Yellowstone Wilderness Alliance is a 501(c)(3) whose mission is to set aside into Wilderness all Wilderness-quality lands of the Custer Gallatin National Forest, determined according to ecosystem health, while discovering and renouncing any economic and political expediencies that would compromise such protection.

Swan View Coalition (SVC) is a non-profit conservation organization dedicated to conserving water quality and quiet, secure habitats for fish, wildlife and people. Our members use the Project area for recreation, employment, wildlife viewing, photography, research, education, aesthetic enjoyment, spiritual rejuvenation, and other activities.

Yellowstone to Uintas Connection (Y2U) is a 501(c)(3) public interest organization whose staff and members have and will continue to work to protect the integrity of habitat for fish and wildlife as well as recreate in this region. We are concerned about the loss of integrity of the Regionally Significant Wildlife Corridor (Corridor) that connects the Greater Yellowstone Ecosystem and Northern Rockies to the Uinta Wilderness and Southern Rockies. The Yellowstone to Uintas Connection organization was given this name to bring attention to this Corridor and we use this name in reference to both the organization and Corridor as it provides context and public awareness to the location and its importance. Y2U is in Paris, Idaho.

TIMING

Once again, the Forest Service is authorizing an intensive helicopter-assisted wildlife project in Wilderness with very little time between final project authorization and implementation and thus not enough time for meaningful judicial review. The Forest Service is aware these projects risk violations of federal law and are likely to be challenged, but the pattern and practice of rushed implementation after a decision continues.

The Forest Service has been the subject of at least three federal court orders requiring the Forest Service to allow enough time for judicial review between project authorization and implementation. As here, those cases involved helicopter-assisted wildlife manipulation projects in designated Wilderness, including a nearly identical fish poisoning / stocking project in the Scapegoat Wilderness in Montana last year. *See Wolf Recovery Found. v. U.S. Forest Serv.*, 692 F. Supp. 2d 1264, 1270 (D. Idaho 2010); *Wilderness Watch v. Vilsack*, 229 F. Supp. 3d 1170, 1175 (D. Idaho 2017) (noting the agency ignored the Court’s prior directive in the present case); *see also* Order on Motion to Reconsider at 1-2, *Wilderness Watch v. Vilsack*, 229 F. Supp. 3d 1170 (ECF No. 61) (“Ignoring a prior directive of the Court, the Forest Service allowed the project to begin immediately, preventing plaintiff environmental groups from being able to timely seek injunctive relief.”); *Wilderness Watch v. Vilsack*, 229 F. Supp. 3d 1170, 1183 (D. Idaho 2017), *aff’d in part*, *Wilderness Watch v. Perdue*, 805 Fed. Appx. 467 (9th Cir. 2020) (enjoining immediate implementation of future helicopter-assisted wildlife projects in the Wilderness and noting “[t]he public interest suffers when actions in the wilderness evade judicial review”).

In 2021, a federal court in Montana ordered the Forest Service to postpone immediate implementation of a project nearly identical to the one at issue here to a date “sufficiently far in advance to permit this Court to exercise meaningful judicial review.” Order re Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction at 2, *Wilderness Watch v. Marten*, No. 9:12-cv-82-DLC (D. Mt. July 24, 2021) (citing *Wilderness Watch v. Perdue*, 805 Fed. Appx. 476, 481 (9th Cir. 2020) (“The public interest suffers when actions in the wilderness evade judicial review”)).

Objections are due May 29, 2022, which is a Sunday in the middle of a long weekend, so the deadline is bumped to Tuesday, May 31, 2022. The project has a narrow implementation window, which is slated to start mid-August. *See* DN 4. Assuming the objection reviewing officer takes the time to thoroughly consider and respond to objections—a process that can take up to 45 days without the discretionary 30 day extension—there will be very little time between a final decision (assuming the project is authorized) and project implementation. Such a scenario would, again, require concerned citizens to rush to court and seek a temporary restraining order to preserve the status quo.

REQUESTED REMEDY: We therefore request that the Forest Service delay project implementation until 2023 to allow for a thorough objection review process, and should objections not be resolved amicably, sufficient time for judicial review before project activities commence.

BACKGROUND

We appreciate concern for the long-term viability of Yellowstone cutthroat trout (YCT), and we appreciate that it and many other species have been and will be greatly impacted by human influence, including climate change. But intensive intervention and manipulation projects such as the one here raise concerning questions over the long-term viability of Wilderness as well.

The Forest Service is again deferring to Montana Fish, Wildlife, and Parks' (FWP) statewide plan to establish YCT populations across the state of Montana, including in areas like the project area that were historically fishless and not occupied by YCT, even where these intentional ecological manipulations are fundamentally at odds with the Forest Service's mandate to preserve wilderness character. To put it plainly, the Forest Service is about to authorize a 10-year project in designated Wilderness to eradicate a fish species "stocked" by the agencies nearly a century ago so the agencies can stock a different fish species in an area that did not contain fish before being stocked the first time. To accomplish this, the Forest Service will authorize 99 helicopter landings in Wilderness to deliver supplies such as bear-resistant cages, gasoline, and pesticides and to aerial spray pesticides in meadow areas, the use of motorboats and gas-powered generators, and the placement of various installations. In all, the Forest Service is allowing Montana Fish, Wildlife, and Parks to poison 45.5 stream miles (or over 76 percent of the stream miles in the Wilderness), 11 out of the 22 lakes, and 2 large meadows in the Wilderness. Beyond the obvious impacts occurring throughout the 10 years of project implementation, the Wilderness degradation from this intentional trammeling will extend well beyond a decade.

The reason for this project is not wilderness preservation at all. Instead, YCT are facing various habitat stressors and hybridization throughout the watershed, including hybridization from other fish already below the barrier falls on Buffalo Creek, *see* Draft EA at 10, 13, and FWP wants to plant genetically pure strains in high elevation waters—above natural fish migration barriers—where there are no other fish, *see* Draft EA 11. FWP has deemed the downstream "Slough Creek [] a highly valued Yellowstone cutthroat fishery," but rainbow trout and hybrid rainbow / Yellowstone cutthroat trout are regularly found there. *See* Draft EA ii. This is a similar story across the state of Montana. *See, e.g.* FWP Scapegoat EA; FWP Scapegoat Decision Notice (detailing a nearly identical project proposed for the Scapegoat Wilderness). The problem for FWP is that many of the areas where it wants to plant "pure" YCT are high elevation lakes in Wilderness that were historically fishless, and propagating an introduced species in Wilderness is fundamentally at odds with tenants of the Wilderness Act. So, FWP, and the Forest Service by acquiescence, is resorting to great feats of statutory contortionism to shoehorn trout farming into the Wilderness Act's narrow exceptions.

The project is the latest in a growing number of proposals where the Forest Service is expressly shirking its statutory duties as a federal administrative steward of designated Wilderness and deferring to the broad fish and wildlife management goals of state agencies. The Forest Service is ignoring exceptionally well-settled caselaw explaining that while state agencies have general management authority over wildlife in the state, federal administering agencies have the ultimate authority—and the duty—to protect federal lands and the wildlife existing therein pursuant to the more restrictive and protective mandates of federal law. The Forest Service here is failing to administer the Absaroka-Beartooth Wilderness pursuant to the mandates of the Wilderness Act.

This project is also the latest in a growing number of proposals where climate change is used as the shoehorn to justify wilderness-degrading projects, including those seeking to actively manipulate ecological conditions within Wilderness.¹ From fish poisoning and stocking projects to selective tree planting proposals, from projects geared toward actively interfering with some ecological successions while actively assisting others, the Forest Service is demonstrating a rapidly increasing desire to intervene in natural processes and manipulate Wilderness to achieve a desired condition. The Forest Service is also increasingly conflating these “desired” conditions with “natural” conditions and using this conflation to argue that the manipulations are compatible with wilderness preservation. But active, adaptive manipulations are not compatible with wilderness preservation. Trammeling is not compatible with wilderness preservation. And the Forest Service needs to appreciate the crossroads at which it stands. Climate change, and the rapid ecological change it brings, is not going away. The Forest Service must decide whether it is an agency up to the task of wilderness preservation in the years ahead, or whether it will abandon the idea of Wilderness altogether.

As former Secretary of Agriculture, Orville Freeman, once said:

In the city, in the country, almost everywhere he goes, the American is confronted with an environment dominated by his own technology. This is new, no others before us have experienced it on the scale we experience today. The end result is not certain. For man, with all his ability to adapt, for all his domination of the "lesser" species, still is a child of the sea, the mountains, the very wilderness he is rapidly obliterating. We are a nation bedazzled by technology, and addicted to crash solutions. But there are no instant ecologies; no instant wilderness. And so, in the final analysis, we must devote much more of our attention in the future to assessing each new technological development for its ultimate impact on man's environment. I hope it is never said of this generation, as Stephen Vincent Benet once said of another: "They thought, because they had power, they had wisdom also." We now have the power, literally, to move mountains. The next few years will determine if we have the wisdom to refrain from doing so.

The project before the Forest Service now is not necessary to meet minimum requirements to administer the Absaroka-Beartooth Wilderness. Wilderness was an inconvenient afterthought in Montana Fish, Wildlife, and Park's larger plan to propagate YCT throughout the state of Montana, including in high elevation streams and lakes often found in designated Wilderness. Because the goal of the project is plainly antithetical to wilderness preservation, and because it requires a decade of activities expressly prohibited by the Wilderness Act, the state tried to shoehorn it into the Wilderness Act's narrow exceptions by arguing that replacing one stocked species of fish with YCT, in an area that was naturally fishless, would result in a “net gain” in naturalness for the Wilderness. Rather than addressing this fundamental problem, the Forest Service responded to it by deferring to a misstatement of state authority and noting “it is outside

¹ While project documents indicate human-assisted range-expansion into higher elevation waters as a climate change related reason for the project, project documents also indicate a general preference toward genetic purity (which raises its own questions of value bias and nativeness vs. wildness), and a desire by MWP to create a more robust or desirable fishery (likely for anglers).

the scope of the Forest Service decision.” DN 6; *see also* EA 17-18. For the reasons stated below, the Forest Service’s authorization violates the Wilderness Act.

WILDERNESS ACT VIOLATIONS

The Forest Service may only approve a motor and helicopter-assisted poisoning and stocking project in the Wilderness if the Forest Service rationally demonstrates that the project is consistent with the purpose of the Wilderness Act, that the action is necessary to meet minimum requirements for administration of the area as Wilderness, and there is no alternative to otherwise-prohibited methods that would achieve that purpose. *See* 16 U.S.C. § 1133(c). The justifications for the project fall far short of these stringent standards.

Statutory Mandate: The Wilderness Act establishes a National Wilderness Preservation System to safeguard our wildest landscapes in their “natural,” “untrammeled” condition. 16 U.S.C. § 1131(a). Wilderness is statutorily defined as “an area where the earth and its community of life are untrammeled by man” and an area “retaining its primeval character and influence... which is protected and managed so as to preserve its natural conditions....” *Id.* § 1131(c). Thus, wilderness “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, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness....” *Id.* § 1131(a) (emphasis added). The Act’s opening section “sets forth the Act’s broad mandate to protect the forests, waters, and creatures of the wilderness in their natural, untrammeled state” and “show[s] a mandate of preservation for wilderness and the essential need to keep [nonconforming uses] out of it.” *Wilderness Soc’y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1061-62 (9th Cir. 2003) (en banc).

The Wilderness Act contains a narrow exception to allow otherwise-prohibited activities—such as helicopter and installation use—only where such activities are necessary to meet the *minimum requirements* for administration of an area *for the purpose of the Wilderness Act*. 16 U.S.C. § 1133(c). In other words, the exception applies only where the otherwise-prohibited activity will affirmatively advance the “‘preservation and protection’ of wilderness lands ... in their natural, untrammeled state.” *Wilderness Soc’y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1061 (9th Cir. 2003) (en banc) (quoting 16 U.S.C. § 1131(a)). The Wilderness Act charges “each agency administering any area designated as wilderness [with the responsibility of] preserving the wilderness character of the area.” 16 U.S.C. § 1133(b). As the Ninth Circuit stated in *High Sierra v. Blackwell*:

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 the future use and enjoyment as wilderness, and so as to provide for the protection of those areas, the preservation of their wilderness character,*’ 16 U.S.C. § 1131(a) (emphasis added). Although the Act stresses the importance of the wilderness areas as places for the public to enjoy, it simultaneously restricts their use in any way that would impair their future *as wilderness*. This responsibility is reiterated in Section 1133(b), in which the administering agency is charged with preserving the wilderness character of the area.

High Sierra Hikers Ass'n v. Blackwell, 390 F.3d 630, 648 (9th Cir. 2004) (emphases in original); *see also id.* at 645 (citing 16 U.S.C. 1133(b)). FWP's broad management goals to propagate cutthroat trout are not coextensive with the statutory mandate to preserve wilderness lands in their untrammelled state and thus cannot be used to invoke the exception to the Act's prohibitions. *See* 16 U.S.C. § 1133(c). Instead of repeating FWP's management objectives motivating the project, the Forest Service must demonstrate how the active manipulation of fish species in a historically fishless area will advance the preservation and protection of the Absaroka-Beartooth Wilderness in its natural, untrammelled state.

Federal Administrative Duties and Management Direction: While FWP has the responsibility to manage wildlife across Montana, Wilderness designation places restrictions on that management authority and requires the Forest Service to ensure that any state wildlife management activities in Wilderness are conducted in a manner that preserves wilderness character.² Congress provided a clear mandate for administering agencies: "[E]ach 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." 16 U.S.C. § 1133(b). Certain uses and activities, including helicopter landings, motorized uses, and installations, undermine the preservation of Wilderness and are thus prohibited with narrow exception. 16 U.S.C. § 1133(c); *see also* 36 C.F.R. § 261.18(c) (Forest Service regulations prohibiting "[l]anding of aircraft, or dropping or picking up of any material, supplies, or person by means of aircraft, including a helicopter" in National Forest Wilderness); 36 C.F.R. § 293.6 (prohibiting "mechanical transport," "landing of aircraft," and "dropping of materials, supplies, or persons from aircraft" in Wilderness except as provided by Wilderness Act). These uses and activities may be authorized by the Forest Service only where "necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act]." 16 U.S.C. § 1133(c). An agency authorizing activity generally prohibited by the Wilderness Act must find the action is both necessary and implemented only to the extent necessary. *Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1037 (9th Cir. 2010). "The limitation on the Forest Service's discretion to authorize prohibited activities only to the extent necessary flows directly out of the agency's obligation under the Wilderness Act to protect and preserve wilderness areas." *High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 647 (9th Cir. 2004).

The Forest Service's management direction adds that "[w]ildlife and fish management programs shall be consistent with wilderness values," FSM 2323.32(3), and the Forest Service is directed to "[d]iscourage measures for direct control (other than normal harvest) of wildlife and fish populations," FSM 2323.32(4), and "[p]rovide an environment where the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist," FSM 2323.31(1). This is consistent with other federal agency guidance noting, "A key descriptor of wilderness in the Wilderness Act, untrammelled refers to the freedom of a landscape from the human intent to permanently intervene, alter, control, or manipulate natural conditions or processes." FWS Policy 1.5(DD). And, "[m]aintaining wilderness character requires an

² *See* Nie et al., *Fish and Wildlife Management on Federal Lands: Debunking State Supremacy*, 47 ENVTL. L. 797-932 (2017).

attitude of humility and restraint. We preserve wilderness character by ... imposing limits on ourselves.” FWS Policy 1.13(D).

Accordingly, the Forest Service may only approve the multiple prohibited activities proposed if it rationally demonstrates that eradicating a species that has existed in the project area for nearly a century and replacing it with a different species that has never existed in the project area is necessary to preserve the Absaroka Beartooth Wilderness and there are no wilderness-compatible alternatives to achieve that purpose. *See* 16 U.S.C. § 1133(c).

I. The project does not serve the purpose of the Wilderness Act. It fundamentally undermines Wilderness preservation and sets a troubling precedent for future Wilderness administration. (*See also* 4-21-2021 Comment Letter at 3-6)

Eradicating one species that was introduced nearly a century ago and replacing it with another introduced species does not serve the purpose of the Wilderness Act. The Forest Service’s authorization in this project deviates sharply from the goals and mandates of the Wilderness Act as well as agency guidance principles, and it sets a troubling precedent for Wilderness administration in the future. Here, the Forest Service is authorizing trammeling actions to promote YCT in an area the agencies admitted was fishless and never supported YCT. *See* Final EA at 4, 25, 26, 55, 64). Yet, likely because it knows this project is not compatible with Wilderness, the Forest Service misleadingly explains in the MRDG:

The natural values identified in the 2019 Absaroka Beartooth Wilderness Character Narrative include providing important sanctuaries for native aquatic species which the proposed project is aligned with by removing a non-native aquatic species (rainbow trout) and replacing them with a native species (Yellowstone cutthroat trout).

MRDG at 2. YCT are not native to this portion of the Wilderness. The justification is that since past stocking of nonnative rainbows affected the fishless nature of the area, we might as well go on trammeling even further. (*Ibid*)

In this case, there is no discrete, human-caused disruption in Wilderness that can be corrected with a discrete, short-lived intervention. This is not an errant patch of spotted knapweed along a stock trail that can be pulled. Attempting to mitigate nearly a century of stocking non-native fish by stocking a different fish that never existed in the project area is trammeling to create “desired conditions.” It is not an action that will restore “natural conditions.” Natural conditions flow from natural processes—from a system that is untrammeled and left to play the cards it is dealt. If anything, the introduction of poisons and the perpetual propagation of fish will further harm the native aquatic biota that evolved here in the absence of fish or poisons.

The trammeling actions in this case, and the extensive helicopter intrusions authorized to implement the poisoning of 45 miles of streams, present a significant threat to the future of Wilderness administration and are unlawful for the reasons set forth below.

REQUESTED REMEDY: Do not approve the project because its underlying purpose and its methods are fundamentally incompatible with the wilderness preservation.

A. The project relies upon an impermissibly strained reading of the Wilderness Act (*See also 4-21-2021 Comment Letter at 2-6*)

The project EA and draft decision impermissibly rest on a conflicting reading of the Wilderness Act to justify the project. Both rely on a false tension in the statute:

The summary of effects can best be described by the following: “manipulating an ecosystem to restore it highlights a fundamental tension and dilemma in wilderness stewardship, that is manipulating the ecosystem to protect or restore the natural quality of wilderness by definition compromises the untrammelled quality, while not manipulating (i.e. practicing restraint or hands- off management) preserves the untrammelled quality but may compromise the natural quality of wilderness” (Landres et al. 2020).

EA at 66.

As discussed below, the Wilderness Act does not state that there are five qualities of Wilderness nor does it provide conflicting definitions for wilderness qualities. Indeed, the Forest Service has acknowledged in other project analyses that these qualities are not specifically mentioned in the law, and it has provided complimentary definitions of “untrammelled” (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, *Draft Minimum Requirements Analysis Mountain Goat Removal from Olympic National Forest Wilderness Areas*, F-5 (2016). These complementary definitions provide a coherent reading of the Wilderness Act where natural conditions generally flow from untrammelled 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’ Keeping it Wild protocols—internal agency guidance documents that have not gone through formal notice and comment rulemaking. 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 result 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 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. 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.³ 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 manipulate conditions that were never historical becomes all the more problematic.

Further illustrating the problem, oftentimes agency managers don’t agree on the past time-point. For example, the Forest Service proposed to (re)introduce mountain goats to Wilderness in Utah stating that “mountain goats will be considered part of the natural conditions present at the time of wilderness designation, but it must be made clear that this does not imply that we believe mountain goats are native.” Forest Service, *Minimum Requirements Analysis – Bighorn Sheep and Mountain Goat Disease Study*, 6 (2017). Yet, in another example, the Forest Service, in conjunction with the National Park Service, is eradicating an “exotic mountain goat population” introduced to the Olympic Peninsula in the 1920s – prior to its designation as a National Park and as a Wilderness. The agencies argue removal is needed due to “adverse impacts on the natural quality of designated wilderness.” National Park Service, *Olympic Nat’l Park, Draft Mountain Goat Management Plan / Environmental Impact Statement*, i, iii, 2 (2017).

In yet another example, the Park Service relocated wolves to an island in Michigan because “[p]redation on the island has been minimal over the last five years due to the decreasing number of wolves on the island,” and the Park Service “has observed changes in the ecosystem as a result of increased herbivory from the growing moose population.” Wolves did not exist on the island until the 1950s and many of them were choosing to leave the island when ice bridges formed to the mainland. Nonetheless, the Park Service worried that the increased herbivory could accelerate vegetative changes already occurring as a result of global warming and reasoned that “introducing wolves immediately would re-establish a top- down, predator influenced system, thus decreasing herbivory and allowing forest succession to return to a historic trajectory.” National Park Service, *Isle Royale National Park Environmental Impact Statement to Address the Presence of Wolves*, 67 (2018). It noted that under the no-action alternative, “the island ecosystem functions would continue to change, from the past predator influenced ecosystem, to an ecosystem primarily influenced by physical conditions and vegetation community structure[.]” *Id.* at 69, 73. It also admitted that “[t]here is debate among scientists as to which is most viable or preferable” and admits “[w]hether this is beneficial or adverse for the system depends on whether there is a **preference** for an ecosystem more influenced by predation or an ecosystem more influenced by bottom-up controls.” *Id.* (emphasis added).

These issues are illustrative of agency tendency to manage for “desired conditions” and the

3 Admittedly, in this case this strained interpretation does not even fit as this part of the Wilderness was historically fishless.

tendency to conflate “desired conditions” with “natural conditions.” It also demonstrates the extent of the inter and intra agency confusion resulting from a tortured reading of the Wilderness Act – there is no agreement on what is natural or native at any particular point in time.

This is why 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. stocking of non-native rainbow trout) 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 untrammelled prior to being designated, but [the drafters] fully expected wilderness areas, once designated, to be untrammelled 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 “untrammelled.” 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 end point. 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 trammeling 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 gets it right in at least one place when it 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).

Accordingly, the Forest Service should not authorize this project because it is fundamentally incompatible with the purpose of the Wilderness Act.

REQUESTED REMEDY: Do not approve the project because its underlying purpose and its methods are fundamentally incompatible with the wilderness preservation.

B. Dumping piscicides in streams is inconsistent with the Wilderness Act and may not even work (*See also* 4-21-2021 Comment Letter at 6-12)

It is hard to consider anything more invasive and intentionally manipulative than dumping piscicides designed to kill all gill breathing organisms in an effort to completely eradicate one fish species only to replace it with another in an area that was historically fishless. Our comment stated:

As we stated in our comments to the State on the North Fork Blackfoot poisoning project, “The literature cited in the EA and the EA itself note that the habitat complexity make it impossible to have a complete kill of fish. If the desired percentages of genetic purity are not met, then what?” In this EA, page 23 states this complexity, the result of beaver dams⁸, would require motorized pumps and maybe even aircraft dispersal of rotenone! EA at 23. Habitat complexity is also blamed for the rejection of electrofishing. EA at 26. Yet, page 42 states, “The goal is total eradication of rainbow trout, so streams and Hidden Lake would not have a food base for fish-eating birds until the population recovers, which typically takes 5 years.” Why is complete eradication possible here but not in the Scapegoat, which also has complex habitat? This inconsistency is glaring.

WW Comment Letter at 8.

Additionally, the primary reason for the project is to protect YCT downstream of the falls—and outside of the Wilderness—from hybridization with rainbow trout. Final EA 6-7. But, total eradication of rainbow trout above the falls—even if it were possible—will not protect fish in the lower drainage from continued hybridization because rainbow trout and trout hybrids already exist there too. In FWP’s Scapegoat Decision Notice, it noted, “Even with the reduction or elimination of the hybrid population above the falls, nothing will prevent further expansion of rainbow trout and hybridization from expanding up to the falls from the downstream reaches of river.” FWP Scapegoat DN 9. “Rainbow trout are distributed throughout the [watershed] below the falls[.]” *Id.* In the Buffalo, Slough, and Lamar watersheds, trout have been hybridizing for at least a decade. Final EA 6-7.

REQUESTED REMEDY: Do not approve the use of piscicides in this project.

C. The Forest Service has not addressed the risk of project activities actually exacerbating problems stemming from prior ecosystem manipulation or reconciled that risk with the stringent goals of the Wilderness Act. (*See also* 4-21-2021 Comment Letter at 7-8).

Leaving Wilderness to serve as a baseline for comparison against agency tinkering elsewhere has value because we humans so often get things wrong. For example, in 2012, federal and state wildlife officials learned that a fish “believed to be the greenback cutthroat trout, which for more than forty years had been the focus of state and federal recovery efforts in Colorado streams and lakes, was, in essence, the wrong fish. Populations of greenback cutthroat trout that had been carefully reared, protected, and restored to Front Range habitats were more likely variants of a different subspecies, the Colorado River cutthroat trout[.]” Havlick and Biermann 2020. DNA advancements made this realization possible. But this is the way of scientific inquiry – today’s

understandings bring forth tomorrow's questions. And, as one scientist put it, "We can only ask questions that we have imagination for."⁴

Similar unintended consequences have occurred with rotenone application and deactivation. In 2010, in another westslope cutthroat trout project, a FWP rotenone poisoning operation went awry, poisoning fish in a four-mile down-river stretch of Cherry Creek, a tributary to the Madison River. ⁵ FWP never figured out how it happened, but nonetheless, it's surprisingly certain it will never happen again. This supposedly "controlled" FWP poisoning project was on a much smaller scale than what is planned for the Absaroka-Beartooth Wilderness. The FWP suspicion that rotenone got into the ground water, and later resurfaced downstream should give the Forest Service pause about the use of rotenone.

Additionally, FWP intends to use potassium permanganate to deactivate rotenone. One study found that "Macroinvertebrates sampled within the detoxification area experienced similar, but greater, effects from the potassium permanganate than individuals within the treatment area that were exposed to rotenone." Skaar et al 2017.

The application of pesticides and detoxification agents over such an enormous area presents the risk of significant ecological impacts, and the ethics of such intensive management are a growing source of debate:

While trout management has typically relied on human intervention, the turn to genetic science is bringing new lineages and taxa into being, altering long-standing conservation priorities and intensifying the manipulation of biological processes such as reproduction and dispersal. As a result, other social and ecological factors are pushed to the margins of management decisions. These changes, we argue, warrant greater conversation about the consequences of molecular analyses and the values embedded in trout science and conservation more broadly. Cutthroat trout are just one of many organisms today for whom managers are making life and death decisions based on subtle differences in genetic makeup or genealogy.

...

In Colorado, recent findings about native cutthroat trout lineages and genetics have brought to the fore practical and philosophical questions about how DNA analyses will guide management. Categorizations of wildness, nativeness, and purity are complicated not only by changing assumptions about trout taxonomy and genetics, but also by the history of anthropogenic fish transfers and recent decades of attachment by anglers to particular fisheries.

Havlick and Biermann 2020 at 3 and 6.

⁴ <https://www.theatlantic.com/science/archive/2019/01/how-lichens-explain-and-re-explain-world/580681/> Yong, E. 2019. The Overlooked Organisms that Keep Challenging Our Assumptions About Life. The Atlantic.

⁵ See the attached article in the Bozeman Daily Chronicle, August 14, 2010, by Daniel Person.

Inside Wilderness, these actions are incredibly controversial and for good reason. The Wilderness Act has already resolved the conflict in favor of wilderness and in favor of removing intentional human interference—and its associated value bias and unintended consequences—from the equation. The Forest Service has failed to reconcile, or even address, this tension. The Forest Service cannot demonstrate the project’s compatibility with the goals and proscriptions of the Wilderness Act without doing so.

REQUESTED REMEDY: Do not approve the project.

II. FWP’s proposal is not necessary to meet minimum requirements for administration of the Absaroka-Beartooth Wilderness. (See also 4-21-2021 Comment Letter at 9-12).

Even if FWP’s proposal could be construed as wilderness-compatible, which it cannot, the proposal still runs afoul of the Wilderness Act because it is not *necessary* to meet *minimum requirements* for administration of the Wilderness.

A. The Forest Service unlawfully dismissed a no-stocking alternative from consideration.

In declining to consider a no-stocking alternative, the Forest Service unlawfully ceded its authority to FWP. When commentors expressed concern over restocking naturally fishless waters in Wilderness, the Forest Service responded, “This alternative was not considered in detail in the Wilderness Minimum Requirements Decision Guide because it is outside the scope of the Forest Service decision,” and cited the savings clause in Section 4(d)(7) of the Wilderness Act, which merely reiterates general state authority to manage wildlife and fish within the state. It is extremely well-settled law that while state agencies have the responsibility to manage wildlife across the state, including regulating hunting and fishing, wilderness designation places restrictions on that management authority and requires the Forest Service to ensure that any state wildlife management activities in wilderness are compatible with the mandates of the Wilderness Act. Congress provided a clear mandate for administering agencies: “[E]ach 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.” 16 U.S.C. § 1133(b). The Forest Service is abdicating its statutory duties by deferring to the State’s objectives.

A no-stocking alternative would better comply with the mandates of the Wilderness Act because the area was historically fishless before being stocked with rainbow trout. FWP acknowledges the project area was naturally fishless before stocking. EA 4, 17-18, 26, 55, 64, 65. It argues that the previously stocked fish, even though they’ve been there for nearly a century and well before Wilderness designation, are creating unnatural conditions in the Wilderness, and their eradication is necessary to restore natural conditions. See DN 4. It then argues, quite incredibly, that restocking with a different species of fish that has never existed within the project area is appropriate! Hard-pressed to argue that it is necessary to preserve wilderness—as required by the Wilderness Act—the state merely notes that “The leave fishless alternative would not result

in establishing a secure population of [YCT] within the climate shield, which would result in a lost opportunity to establish a secure population of [YCT].” EA 65. The agencies admit “there are no other laws specifically requiring the implementation of the proposed project within the Buffalo Creek sub-watershed.” MRDG 4.

REQUESTED REMEDY: Do not authorize fish stocking.

B. FWP’s statewide cutthroat trout stocking plans can occur outside of Wilderness.

This project is just one component of a statewide FWP plan to prioritize active management of cutthroat trout populations. *See* Draft EA 14-16. Because the proposed actions are fundamentally incompatible with wilderness preservation, the FWP should focus on similar efforts outside of designated Wilderness.

REQUESTED REMEDY: Do not authorize the project within designated Wilderness.

C. Implementing the project with helicopters, motorized equipment, and installations is not necessary to meet minimum requirements for administration of the Absaroka-Beartooth Wilderness (*See also* 4-21-2021 Comment Letter at 9-12).

The project decision authorizes an incredible number of helicopter intrusions in Wilderness, and in an area occupied grizzly bears and by other species reliant upon fish as a food source, over a 10-year period, accompanied by other motorized uses and installations. This intensity and duration of intrusion is exceptional and is downplayed in project documents, in part because of the agency’s flawed MRDG process.

The MRDG worksheet illustrates the absurdity of the agency’s check-box necessity and minimum necessary analysis. These worksheets, like the *Keeping It Wild* protocol, have not been subjected to formal notice and comment rulemaking, and the worksheets themselves vary from agency to agency and often conflict with the directives in the Wilderness Act. For example, in those worksheets, agencies tally up points for each potentially degrading activity on each quality of wilderness character. But, since there is only a check-box, each activity gets only 1 negative point regardless of the intensity of its impact. To illustrate, an activity involving 120 helicopter landings to capture and collar wildlife would get one “negative” point for trammeling. An alternative with 10 helicopter landings and fewer collars would get the same. And, in some cases, a decisionmaker may think that a helicopter landing doesn’t fit neatly within any of the “quality” categories, so the decisionmaker might not check any of the negative boxes, even though the Wilderness Act expressly prohibits motorized use. This creates a tallying and balancing system that Congress did not intend or express in the Wilderness Act.

Such inconsistent and confused decisionmaking is on display in the MRDG here. One alternative includes 178 helicopter landings and received a wilderness character “rating” of -14. MRDG 33. Another alternative, with NO helicopter flights (because it relies solely on pack animals, which are not prohibited by the Wilderness Act) received the same rating of -14 points, MRDG 44, and yet another alternative relying on a mix of pack animals and 99 helicopter flights received -15 points! MRDG 56. Notably, the no-action alternative received the most

wilderness-friendly score at -1 points, but the Forest Service did not choose that alternative. Instead, it chose the alternative with highest negative rating! *See* DN 4 (selecting the proposed action, which authorizes 99 helicopter flights and pack animal support).

Making matters worse, the Forest Service is authorizing decades of wilderness-degrading activities all for the purpose of replacing one stocked fish species with another—neither of which were present in the project area prior to stocking efforts! Project documents indicate the Forest Service is also authorizing the project to protect downstream fish—outside of the Wilderness—though the efficacy of such action is speculative given complete eradication in complex habitat is likely not possible and given that rainbow trout and hybrid fish already exist downstream as well. This scenario presents quite a hurdle for authorizing normally prohibited uses in Wilderness.

“The agency charged with administering a designated wilderness area is responsible for preserving its wilderness character.” *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d 630, 646 (9th Cir. 2004) (citing 16 U.S.C. §1133(b)). Congress made the mandate to protect wilderness character paramount over other land-management considerations, *see* 16 U.S.C. §1133(b), and expressly prohibited certain activities that it determined to be antithetical to wilderness preservation, including “landing of aircraft,” “use of motor vehicles [or] motorized equipment,” and “structure[s] or installations[.]” *Id.* §1133(c); *see also* 36 C.F.R. § 261.18(c) (Forest Service regulations prohibiting “[l]anding of aircraft, or dropping or picking up of any material, supplies, or person by means of aircraft, including a helicopter” in National Forest Wilderness); 36 C.F.R. § 293.6 (prohibiting “mechanical transport,” “landing of aircraft,” and “dropping of materials, supplies, or persons from aircraft” in wilderness except as provided by Wilderness Act). These prohibitions are the strictest prohibitions in the Act. *See Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1040 (9th Cir. 2010). These uses and activities may be authorized by the Forest Service only where “necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act].” 16 U.S.C. § 1133(c).

Accordingly, under the Wilderness Act, the Forest Service may only approve helicopter use, motorized equipment use, and installations in the Wilderness if the Forest Service rationally demonstrates that poisoning some 45 miles of streams, 11 lakes, and large meadows, for the purpose of replacing one fish species with another in a historically fishless area, is necessary to meet minimum requirements for administration of the area for the purpose of the Wilderness Act, and there is no alternative to otherwise-prohibited uses that would achieve that purpose. *See* 16 U.S.C. § 1133(c). The Forest Service’s authorization violates the Wilderness Act because, as discussed above, the project is not necessary for administering the Absaroka-Beartooth Wilderness pursuant to the Wilderness Act. 16 U.S.C. §1133(c). Instead, the project goals and methods are fundamentally at odds with the Wilderness Act’s mandate to preserve the Absaroka-Beartooth Wilderness’s “untrammeled” character and “natural conditions.” *Id.* §1131(c).

Additionally, even if the project could be construed as necessary for preserving the Absaroka-Beartooth Wilderness, which it cannot, the authorization still violates the Wilderness Act because it is not the *minimum requirement* for administering the area pursuant to the Wilderness Act. *Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 629 F.3d at 1037 (an agency authorizing activity generally prohibited by the Wilderness Act must find the action is necessary and implemented only to the extent necessary). “The limitation on the Forest Service’s discretion to

authorize prohibited activities only to the extent necessary flows directly out of the agency's obligation under the Wilderness Act to protect and preserve wilderness areas." *High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d at 647.

The analyses in the project documents fall far short of meeting the standards set forth by the Wilderness Act for approving normally prohibited activities in Wilderness. The EA ignores analyzing an option that would not use motorized equipment (*EA* at 26). The Forest Service discounts the impact of helicopter intrusions noting they would be only short-term (*Id.* At 4). Even though the project would occur for two weeks each summer—with multiple helicopter landings, aerial spraying of piscicides, and dropping fish from the sky, for up to ten years in duration! (*Id.* at 67). There is no detailed analysis as to why other non-motorized or less-motorized methods in Wilderness could not achieve the Forest Service's goals in whole or in part. *See Wolf Recovery Foundation*, 692 F.Supp.2d 1264, 1270 (D. Id. 2010) (“[g]iven that [one helicopter] project is allowed to proceed, the next project will be extraordinarily difficult to justify” and “will face a daunting review because it will add to the disruption and intrusion” from prior projects); *see also Wilderness Watch v. Vilsack*, 229 F.Supp.3d 1170 (D. Id. 2017) (finding a subsequent helicopter project in Wilderness unlawful). Such an incredibly cursory analysis falls far short of the Wilderness Act's stringent standard for authorizing normally prohibited uses in Wilderness.

If the Forest Service could approve helicopter, motorboat, generator, and installation assisted rotenone poisoning any time the Forest Service or FWP wanted to manipulate aquatic species composition, something that is clearly a routine management action for FWP, the statutory prohibition against helicopter use would be meaningless. Additionally, as discussed above and in our comment letter, the effectiveness of such activities is contested by the Forest Service and the FWP themselves in comparing the Scapegoat Wilderness poisoning proposal to that of the Absaroka-Beartooth Wilderness. Such a sweeping statement of utility cannot suffice for the requisite “specialized” finding of necessity. *See Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 629 F.3d at 1036-1039.

REQUESTED REMEDY: Do not authorize helicopter, motorboat, motorized equipment, or installation use.

NEPA VIOLATIONS

I. The project violates NEPA and its implementing regulations (*See also* 4-21-2021 Comment Letter at 12-17)

For the reasons stated above, the project documents fail to provide a hard look at the direct, indirect, and cumulative impacts to Wilderness and fully explore reasonable alternatives that would eliminate or lessen impacts to wilderness character from poisoning and planting fish and the extensive associated motorized intrusions and installations. The problems in this case were likely exacerbated by the Forest Service's reliance on state-prepared project analyses rather than conducting its own analysis through the requisite lens of the Forest Service's duties as federal administrators of the Absaroka-Beartooth Wilderness.

Our comments stated:

“It is likely that projects like this are what led the acting Undersecretary of Agriculture to issue his February 1, 2021 memorandum requiring the FS to submit for NRE’s review all projects for “[A]ctivities in designated wilderness areas taken pursuant to Sections 4(c) and 4(d) of the Wilderness Act,” such as this project. This should be a wake-up call for you to engage the public in a meaningful public comment period and prepare the proper level of NEPA analysis, which in this case is an environmental impact statement (EIS), not a mere categorical exclusion (CE).”

WW comment at 2.

An EIS is required for such a large and ongoing ecological manipulation project with extensive use of helicopters and other prohibited uses in Wilderness for a ten year period.

We also stated:

We also have serious concerns about the agencies using the informal and internal MRDG process—something that is not consistent from agency to agency and has never been through formal notice and comment rulemaking—to circumvent NEPA. The way the federal agencies have designed the MRDG process is fatally flawed and leads to unnecessary trammeling. The first step is often abused because the problem is described so specifically that no other action is possible or, at best, that action outside of the Wilderness will only partially solve the problem, so it is rejected. In this case, the MRDG will likely focus on an area within the Absaroka-Beartooth Wilderness, rather than the entire range of Yellowstone cutthroat in Montana (the real issue of concern, not the Absaroka-Beartooth Wilderness). Given the bias of agencies to manipulate, to manage, the MRDG process reinforces the management paradigm and Wilderness loses. This is contrary to the Wilderness Act⁶ and the rule of statutory construction, which requires the Act to be read in harmony and not in internal conflict.

REQUESTED REMEDY: If the Forest Service chooses to proceed with consideration of this proposal, it should prepare an EIS that fully analyzes the project’s direct, indirect, and cumulative impacts over the 10-year period and beyond and rigorously explores alternatives—including those that can be accomplished outside of Wilderness—to better preserve wilderness character.

Thank you for your consideration,



⁶ See Kammer 2013, which makes the case that wildlife manipulation in Wilderness is contrary to the Wilderness Act. This is a different footnote than in the original

George Nickas
Executive Director, Wilderness Watch
PO Box 9175, Missoula, MT 59807
406-542-2048
gnickas@wildernesswatch.org

Mike Garrity
Executive Director
Alliance for the Wild Rockies
P.O. Box 505
Helena, MT 59624
wildrockies@gmail.com

Denise Boggs
Conservation Congress
1604 1st Ave S
Great Falls, MT 59401
www.conservationcongress-ca.org

Jim Miller, President
Friends of the Bitterroot
PO Box 442
Hamilton, MT 59840
millerfobmt@gmail.com

Joseph Scalia III, President
Gallatin Yellowstone Wilderness Alliance
P.O.Box 5256
Bozeman, MT 59717
scaliaiii@gmail.com

Keith Hammer – Chair
Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901
keith@swanview.org

Jason Christensen
Director
Yellowstone to Uintas Connection
PO Box 363, Paris, ID 83261
435-881-6917
www.yellowstoneuintas.org