



WILDERNESS WATCH

Keeping Wilderness Wild

July 11, 2019

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District Manager

William Childress

LCDO

1800 Marquess Street

Las Cruces, NM 88005

Sent via US Mail and the electronic website

Dear Mr. Childress:

These are comments from Wilderness Watch on the environmental assessment (EA) to update the programmatic EA for commercial hunting and guiding in Wilderness Study Areas (WSAs) and Wilderness in the Las Cruces BLM District. Wilderness Watch is a national nonprofit wilderness conservation organization dedicated to the protection and proper administration of the National Wilderness Preservation System. We sent earlier comments to Ms. Treiman on the scoping letter earlier this year.

We still believe the proposal violates Wilderness by commercializing it and also violates the letter of the law. Our past comments (attached) are directly mainly at the newly designated Wildernesses in the Organ Mountains and Desert Range, the only ones within the District and lay the foundation for our continuing concerns. These are the Aden Lava Flow, Broad Canyon, Cinder Cone, East Portrillo Mountains, Mount Riley, Organ Mountains, Portrillo Mountains, Robledo Mountains, Sierra de las Uvas, and Whitehorn Wildernesses. Most of this comment letter is directed at specific problems in the EA itself. We also provide some suggestions. Our earlier comments stated:

For Wilderness to be in contrast to other areas, where human works dominate, it must be treated with humility and restraint. To protect the unique values of wild wilderness, the 1964 Wilderness Act prohibits commercial enterprise, including commercial filming, in designated Wildernesses. The prohibition against commercial enterprise (and permanent roads) is the strongest protection in the Act subject only to "existing private rights." Section 4(c) of the Wilderness Act wisely prohibits commercial enterprise in Wildernesses ("Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act..."). The Wilderness Act provides only two exceptions to this complete ban on commercial enterprise: 1) commercial livestock grazing (Sec. 4[d][4]), and 2) commercial services, such as outfitters and guides (Sec. 4[d][5]).

Regarding outfitting and guiding, the Act provides it may (it is not must) occur but only the degree it is necessary and proper. We have concerns over the sheer amount of commercial use proposed, the way it may be conducted, and the addition of filming.

These earlier comments also addressed the issue of compliance with the BLM Manual and other BLM direction. This programmatic document could approve commercial outfitting, photography, and filming in Wildernesses and WSAs without further NEPA analysis. What is disconcerting is nowhere in the EA, except Table 5, are the names of all the Wildernesses mentioned, let alone analyzed. Only the Organ Mountains Wilderness receives further mention. Even that can hardly be called analysis:

With the exception of the Florida Mountains WSA and Organ Mountains Wilderness; Wilderness and WSAs are lightly visited by the recreating public. The Organ Mountains Wilderness, adjacent to an urban area, receives 60,000 visitors annually. The Florida Mountains WSA, as mentioned above, is used extensively by hunters and residents from nearby Deming, NM. Individual hunters may visit the WSA several times during the course of a hunt.

EA at 11. Further, “While the Organ Mountains Wilderness is heavily visited by recreationists, outfitters and guides have not traditionally brought clients into the area. ... the area is not a highly desirable hunting destination.” EA at 12. The EA admits, “Based on the trip plan analysis (Table 3), no commercial hunting operations have occurred in the WSAs that became Wilderness.” EA at 15. This begs the question of why do an EA that would allow commercial outfitting and associated filming and photography in Wilderness (and almost all WSAs) if it is not needed? It is obvious, by BLM’s own admission: there is no need for commercial outfitting, or associated filming and photography in Wilderness.

Strangely, the EA is internally inconsistent. It states, “The need for the proposed action arises from frequent applications for commercial SRPs throughout the LCDO that include BLM WSAs and Wilderness Areas. An additional need is to respond to requests for commercial filming/still photography activities that take place concurrent with the SRP.” EA at 1. How is this consistent with the statement on page 15 of the EA quoted above? The EA states the question to be answered regarding Wilderness is, “What are the potential impacts of guided hunting activities to wilderness character in Congressionally designated Wilderness Areas?” EA at 4. It is not for other outfitted activities as they are not mentioned or analyzed in the EA.

For whatever reasons, BLM chose to do an EA that ostensibly analyzes non-existent outfitted hunting in Wilderness for which there is no demand. Nowhere in the EA does it state there have been applications for outfitted wilderness hunting. All we are told is that the Organ Mountains Wilderness is not a highly desirable hunting destination. Further, the EA recommends that this speculative outfitting could go forth without further NEPA review or any site-specific information on where such activities would take place in the Aden Lava Flow, Broad Canyon, Cinder Cone, East Portrillo Mountains, Mount Riley, Organ Mountains, Portrillo Mountains, Robledo Mountains, Sierra de las Uvas, and Whitehorn Wildernesses. These Wildernesses are scattered between disjunct units of the Organ Mountains-Desert Peaks National Monument. The only conclusion the public can reach is that Wilderness is inappropriately shoehorned into a

programmatic EA that is best suited for the non-wilderness portions of the District.¹ As such, this commercial use is neither necessary nor proper as required by the Wilderness Act.

Regarding the issue of need, we noted in our earlier comments:

BLM regulations state, “The BLM should determine through analysis if one or more of the public purposes of wilderness would go unrealized if there was no commercial use. If a given purpose can be adequately realized in a given place and time without commercial services then the commercial service is not necessary.” BLM Manual at 6340 1.6 C. 4. i.

The EA states, “The LCDO currently issues 43 SRPs annually to outfitters and guides. Approximately 60% of these SRPs are to businesses with clients for two exotic, introduced game mammals found only on public lands in the LCDO.” EA at 11. What need is there to nearly double the amount of allowable SRPs to 75, as proposed? We raised the issue of the inadequacy of a programmatic EA to analyze the impacts on Wilderness and wilderness character in our scoping comments:

Further, the following section, 4. Public Notification (BLM Manual 6340 1.6 D. 4.) states the agency, “must provide public notice of proposed actions within wilderness areas.” ... “Any substantive comments from the public (e.g. NEPA scoping comments), solicited or not, should be considered during the NEPA process.” ... Even more important, “The notice should include enough information for the recipient to understand the purpose, location, nature, size, and expected implementation date of the proposed action.” This detail is not included in the letter and it is unlikely to be included in a programmatic EA.

As noted previously, we don’t know the specific location of potential outfitting in the Aden Lava Flow, Broad Canyon, Cinder Cone, East Portrillo Mountains, Mount Riley, Organ Mountains, Portrillo Mountains, Robledo Mountains, Sierra de las Uvas, or Whitehorn Wildernesses. We don’t know how many outfitters may be allowed to operate in each of those Wildernesses. We don’t know when that may occur. Additionally, there is no needs assessment or other analysis to determine the amount of outfitting that is necessary and proper for the ten Wildernesses. For example, BLM policy gives an “example, an overnight pack trip to a distant valley to experience wilderness solitude may be dependent on a wilderness setting and therefore would likely satisfy the statutory requirement that the service is proper for realizing the wilderness purposes of the area.” BLM Manual 6340 1.6 C. 4. a. iv. That is far different than what is described in the EA of peripheral use of WSAs and no known use of Wildernesses by outfitters and guides. The EA is inadequate to make a decision regarding commercial outfitting, guiding, filming, and associated photography in Wilderness.

In sum, the EA demonstrates no need for outfitted hunting in Wilderness. Such activity has not occurred nor is it likely to occur as the EA admits:

Based on the trip plan analysis (Table 3), no commercial hunting operations have occurred in the WSAs that became Wilderness. Therefore, no commercial filming activities associated with outfitter/guide operations have occurred. Because the species usually associated with guiding/outfitting SRPs are not generally not found in the LCDO Wilderness Areas, there is low potential for commercial hunting and associated commercial filming/still photography to occur within Wilderness.

¹ Most WSAs have no history of commercial hunting outfitting either as noted in the EA and elsewhere in this comment.

EA at 15. Thus, such outfitting and associated commercial filming and photography is not necessary. The proposed action violates the Wilderness Act, NEPA, and BLM Manual direction.

Regarding the commercial filming aspect of the proposal, our earlier comments stated:

For example, what the scoping letter describes is not “necessary for realizing the recreational or other wilderness purposes of the area and does not otherwise utilize a prohibited use.” It would be for entertainment or promotional reasons. There is no reason advertising videos for outfitters can’t be done outside of Wilderness.

The EA leads one to believe that commercial filming could be used on a so-called reality TV show, documenting a hunt of some celebrity that went with a certain outfitter in Wilderness. While the lack of current interest in outfitting hunting trips in the Wildernesses suggests such a scenario might be unlikely, such a video could end up on cable TV. Then, it would be too late.

“If a WSA is designated as Wilderness, the commercial filming/still photography permit will be terminated (BLM Manual 6330, p. 1-19, Section 1.6, D.4.b.ii.)” EA at 7. This suggests that commercial filming of outfitted hunting activities is not consistent with Wilderness, yet the EA would allow it in Wilderness. This needs to be explained.

Further, the EA is not clear what further documentation might be done for outfitted hunting and associated photograph and filming. Would a decision simply be made or would a site-specific EA be prepared as required by BLM policy cited herein?

We have not commented on the adequacy of the EA, or lack thereof, for the non-wilderness portion of the District, but the EA is entirely inadequate to deal with Wilderness. Rather than doing this EA for outfitted hunting and associated commercial filming/photography in Wilderness, site-specific EAs should be prepared only when there is a demonstrated need for the activity and there is a proposal. Further, a needs assessment should be prepared to analyze all commercial services in Wilderness for the District. Thus, we suggest an alternative be selected that rejects any wilderness outfitted hunting and associated filming and photography pending site-specific NEPA analysis through, at minimum, an EA.

Please send us a copy of any other documents for public comment or decisions when they are released. You can send information to the address at the bottom of first page.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Macfarlane". The signature is written in a cursive, flowing style.

Gary Macfarlane
President