



Sierra Forest Legacy

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MONO LAKE
COMMITTEE

February 1, 2016

Randy Moore, Regional Forester
USDA Forest Service, Pacific Southwest Region
1323 Club Drive
Vallejo, CA 9459

Via electronic mail

Re: Wilderness Evaluation Process and Areas Identified for DEIS Analysis

Thank you for providing the additional information on the wilderness evaluations for the Inyo, Sierra, and Sequoia National Forests and areas being considered for analysis in the upcoming DEIS, and for the opportunity to provide input. We are pleased that wilderness evaluation narratives have been written for each wilderness inventory polygon —as opposed to only those identified for DEIS analysis. We remain concerned, however, that the Forest Service has misapplied the wilderness evaluation criteria in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c), and section 72 of the Chapter 70 directives, Forest Service Handbook (FSH) 1909.12, ch. 70, § 72. We have repeatedly notified the Forest Service about these concerns, including in

our August 28, 2015 comments on the wilderness evaluation process paper.¹ Unfortunately, as described below, the wilderness evaluation narratives reveal that the agency did not implement our feedback about proper application of the evaluation criteria.

In addition, we remain concerned about how the information from the evaluation is being carried forward into the NEPA process. While an improvement over the 121,000 acres initially identified for DEIS analysis last May, the current proposal to carry forward only 495,366 – less than 32% of the final inventoried acreage – is still inadequate. It excludes areas recommended by The Wilderness Society and other members of the public during scoping, appears to exclude areas based on improper manageability considerations, and does not provide an adequate range of alternatives.

We hope that the Forest Service will remedy the issues identified in this and our previous letters prior to release of the DEIS, and that information submitted by the public will in fact help shape the content of the DEIS alternatives, as required by Chapter 70.²

I. Deficiencies in Application of Wilderness Evaluation Criteria

The following discussion identifies a number of significant errors in the Forest Service’s application of the wilderness evaluation criteria in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c), and section 72 of the Chapter 70 directives. We reviewed a limited subset of the evaluation narratives, including areas on the Sierra and Sequoia National Forests that we preliminarily recommended for wilderness designation in our November 17, 2014 supplemental scoping comments, and areas that we and other groups have recommended on the Inyo National Forest. Based on that limited review, we have identified a number of polygon narratives that exhibit each deficiency. These limited examples appear to be representative of more widespread misapplication of the criteria throughout the wilderness evaluation narratives. There are many other narratives that we have not highlighted that exhibit the same deficiencies and must be corrected. The Forest Service should remedy these deficiencies in its final wilderness evaluation narratives and ensure that they do not influence the determination of areas to carry forward for DEIS analysis, the analysis itself, or the decision of which areas to recommend for wilderness designation.

¹ See The Wilderness Society, *et al.*, Comments on Ch. 70 wilderness evaluation process (Oct. 30, 2014) (identifying numerous deficiencies with the “Wilderness Evaluation Narrative Outline”); The Wilderness Society, *et al.*, Comments on Ch. 70 wilderness evaluation (June 3, 2015) (identifying process and range of alternatives deficiencies); The Wilderness Society, *et al.*, Comments on Ch. 70 wilderness evaluation (Aug. 28, 2015) (identifying numerous deficiencies with the wilderness evaluation process paper); The Wilderness Society, *et al.*, Comments on wilderness evaluation process (Dec. 1, 2015) (reiterating our process and range of alternatives concerns).

² See FSH 1909.12, ch. 70, § 73 (identification of areas to carry forward for analysis must be “[b]ased on the evaluation and input from public participation opportunities”); *see also* Wilderness Evaluation FAQ, at 2 (Dec. 2015) (stating intention to utilize public comments to “help shape what is in the alternatives we release in the draft EIS”).

A. Apparent naturalness versus ecological integrity

As we described in detail in our October 30, 2014 and August 28, 2015 comments, the Forest Service appears to have improperly evaluated the naturalness criterion by focusing in large part on the area's ecological or historical naturalness or integrity, rather than its *apparent* naturalness, as required under the Wilderness Act and the Chapter 70 directives. The evaluation of naturalness must focus on whether the area generally *appears* natural to the average, reasonable visitor who is unfamiliar with the area's historical or ecological conditions. Chapter 70 makes clear that the agency is to evaluate "[t]he extent to which the area *appears* to reflect ecological conditions that would normally be associated with the area without human intervention" and whether "plant and animal communities *appear* substantially unnatural."³

Rather than evaluating the *appearance* of ecological conditions and plant and animal communities, many narratives simply categorize the relative ecological integrity of the area. For example, the naturalness discussion for Dexter Canyon (Polygon 91068) on the Inyo National Forest states that "the area is believed to have moderate ecological integrity" and then goes on to list the presence, absence, or condition of certain ecological features such as native fish, invasive plant species, riparian vegetation, soil quality, and air quality. While measures of an area's ecological integrity may be relevant to whether it also contains ecological or other values,⁴ they are not a proper consideration of the area's naturalness. Instead, the relevant inquiry is whether ecological conditions *appear* natural to the average visitor. The narrative for Dexter Canyon lacks any evaluation of how the area appears to the average visitor.

Similarly, many of the narratives note the presence of invasive plant species. For example, the narrative for Watterson Canyon (Polygon 944) on the Inyo National Forest notes that "[t]here is a departure from natural conditions due to the presence of invasive plant species (cheatgrass is expanding). Yet there is generally no indication of how the presence of those species affects how the area would be perceived by the average visitor. Absent an evaluation of whether and why those plant communities *appear* substantially unnatural, the mere presence of invasive species – which is ubiquitous in many areas – is irrelevant.

Of the narratives we reviewed, the apparent naturalness criterion appears to have been misapplied for Polygons 315, 340, 357, 539, 577, 586, 646, 772, 781, 819, 1012, 1068, 1179, 1236, 1242, 1246, 1258, 1281, 1339, 1355, 1357, 1361, 1378, 1391, and 1408, each of which focus on the ecological integrity and composition of plant and animal communities of the area,

³ FSH 1909.12, ch. 70, § 72.1(1)(a)&(b) (emphasis added).

⁴ See 16 U.S.C. § 1131(c)(4); FSH 1909.12, ch. 70, § 72.1(4). Measures of ecological integrity should be based on scientific data. For example, we are pleased that the Forest Service has integrated into the evaluation The Wilderness Society's data on ecological representation. See Dietz, M. S., R. T. Belote, G. H. Aplet, and J. L. Aycrigger. 2015. The world's largest wilderness protection network after 50 years: an assessment of ecological system representation in the U.S. National Wilderness Preservation System. *Biological Conservation* 184:431-438.

rather than how relevant ecological conditions and plant and animal communities *appear* to the average visitor.

B. Consideration of human activities and improvements

Many of the narratives also improperly rely on the presence of past or current human activities or improvements – such as mining, grazing, fish stocking, restoration activities, timber harvest, recreation developments, historic sites, or wildlife improvements – when evaluating naturalness. The relevant inquiry, however, is not the presence of these activities or improvements, but rather their effect on the area’s naturalness, as judged by the average visitor.⁵ Activities or improvements that are “substantially unnoticeable” do not undermine the area’s apparent naturalness.⁶ As Appendix B to the wilderness evaluation process paper explains, “[a]n area does not have to be pristine or untouched to be suitable for the NWPS” and may contain vegetation treatments, timber harvests, permanently installed vertical structures, areas of historic mining, range improvement areas with minor structural improvements, minor, easily removable recreation developments, ground return utility lines, watershed treatment areas, lands that are adjacent to development or activities that impact opportunities for solitude, structures, dwellings, and relics of past occupation where they are considered part of the historic or cultural landscape, and level 1, decommissioned, unauthorized, or temporary roads – as long as they are substantially unnoticeable.⁷

For example, some narratives rely on the presence of closed system (ML1) roads. For example, the narrative for the Southern Piute Mountains (Polygon 18) on the Sequoia National Forest describes the presence of grazing infrastructure and ML1 roads. The presence of ML1 – which do not disqualify an area from the wilderness inventory⁸ – is irrelevant absent an evaluation of whether those roads make the area appear unnatural to the average visitor (which the narrative for the Southern Piute Mountains lacks). Importantly, many ML1 roads may be in the process of passive restoration and/or may be identified for decommissioning. Similarly, the presence of grazing and associated infrastructure – which is commonplace throughout the western national forests, including in designated and recommended wilderness – is irrelevant absent an evaluation of whether the activity and associated improvements appear substantially unnoticeable to the average visitor (which, again, the narrative for the Southern Piute Mountains lacks).

Other narratives rely on the presence of past timber harvests. For example, the narrative for Polygon 1377 Adjacent to Monarch Wilderness on the Sequoia National Forest states that “[t]he

⁵ FSH 1909.12, ch. 70, § 72.1(1)(c) (when evaluating apparent naturalness, “[c]onsider such factors as . . . [t]he extent to which improvements included in the area . . . represent a departure from apparent naturalness”).

⁶ See 16 U.S.C. § 1131(c)(1); FSH 1909.12, ch. 70, § 72.1(1).

⁷ See Wilderness Evaluation Process Paper, Attachment B: Guidance for Consideration of Evaluated Areas for Recommendation in an Alternative, at 1

⁸ FSH 1909.12, ch. 70, § 71.22a(1)(a).

southern half of the area has a significant history of timber harvest and associated Level 1 roads and plantations,” but provides no evaluation of how those past timber harvests appears to the average visitor or whether they are substantially noticeable. Decades-old timber harvests with revegetation occurring are often unnoticeable to the average visitor. It is not the presence of past timber harvests, but whether the area *appears* natural *in spite of* them and any other human activities or improvements that may be present.

Of the narratives we reviewed, Polygons 63, 73, 227, 315, 304, 357, 539, 577, 586, 646, 772, 781, 819, 821, 1012, 1068, 1179, 1236, 1242, 1258, 1281, 1339, 1378, 1384, 1387, 1391, 1394, 1408, 1426, 1431, and 1432 discuss the presence of past or current human activities or improvements without evaluating whether those activities or improvements *appear substantially unnoticeable* to the average visitor.

C. Opportunities for solitude or primitive and unconfined recreation

Some of the narratives suggest that the Forest Service may have improperly conflated the criterion that an area has “outstanding opportunities for solitude or a primitive and unconfined type of recreation.”⁹ Both the plain language of the Wilderness Act and the Chapter 70 directives make clear that this is an either/or criterion: “an area only has to possess one or the other” and “does not have to possess outstanding opportunities for both elements, nor does it need to possess outstanding opportunities on every acre.”¹⁰ Thus, the evaluation must consider them separately and cannot aggregate, average, or otherwise conflate the two. Narratives like that for Polygon 539 Adjacent to Dinkey Lakes Wilderness on the Sierra National Forest, however, clearly conflate the two: stating that “[p]rimitive opportunities exist in areas away from existing motorized trails and near the current wilderness boundary,” without identifying which type or types of opportunities are being evaluated.

Of the narratives we reviewed, Polygons 63, 73, 227, 304, 315, 539, 577, 781, 821, 1012, 1339, 1378, 1384, 1387, 1391, 1394, 1408, 1426, and 1432 may have improperly aggregated or co-mingled opportunities for solitude with opportunities for primitive and unconfined recreation.

D. Consideration of outside sights and sounds

Many narratives improperly consider outside sights and sounds. Only “pervasive” sights or sounds that impair opportunities for solitude are relevant.¹¹ For example, the mere presence of a road adjacent to the polygon – which will necessarily be ubiquitous, as polygon boundaries were defined by the location of roads – is irrelevant. To the extent the narratives consider outside sights or sounds, they must include an explanation of why they “are pervasive and influence a visitor’s opportunity for solitude.”¹²

⁹ 16 U.S.C. § 1131(c)(2) (emphasis added).

¹⁰ FSH 1909.12, ch. 70, § 72.1(2).

¹¹ FSH 1909.12, ch. 70, § 72.1(2)(a).

¹² FSH 1909.12, ch. 70, § 72.1(2)(a).

Most of the narratives we reviewed list *potential* outside sights or sounds – often associated with the roads that necessarily define the boundaries of the polygon – in the evaluation of opportunities for solitude. The narratives generally do not address whether any sights or sounds associated with roads or other nearby activities, uses, or infrastructure are pervasive and widespread enough to diminish opportunities for solitude throughout a substantial portion of the polygon.¹³ For example, the narrative for Peckinpah Creek (Polygon 557) on the Sierra National Forest considers “the potential for the noise from motorized vehicles on adjacent roads and motorized trails traveling across the unit.” The narrative does not address the extent to which this *potential* noise might be pervasive, or how it would impact a visitor’s opportunities for solitude.

In some instances, the narratives improperly consider outside sights and sounds as an impediment to the area’s naturalness. For example, the narrative for the Southern Piute Mountains (Polygon 18) on the Sequoia National Forest describes a nearby CERCLA site with *potential* impacts to the view shed. The apparent naturalness criterion looks at “the degree to which *the area* generally appears to be affected primarily by the forces of nature,” including “[t]he extent to which improvements *included in the area* . . . represent a departure from apparent naturalness.”¹⁴ The inquiry does not extend to the appearance of surrounding areas outside the polygon boundary.

Of the narratives we reviewed, Polygons 63, 73, 227, 304, 357, 539, 557, 577, 586, 646, 772, 781, 819, 821, 1012, 1068, 1179, 1236, 1242, 1246, 1258, 1281, 1339, 1355, 1357, 1361, 1378, 1384, 1387, 1391, 1394, and 1408 appear to improperly consider outside sights and sounds.

E. Consideration of motorized uses

Most of the narratives we reviewed focus on the presence of motorized uses inside and/or outside the evaluated polygons. While motorized uses may impact an area’s apparent naturalness and/or opportunities for solitude, their presence does not automatically impede wilderness character, as many of the narratives seem to assume. In fact, Congress, the Forest Service, and other agencies have routinely determined that areas with authorized motorized activity possess wilderness characteristics and managed them to maintain their suitability for wilderness designation.¹⁵

¹³ See FSH 1909.12, ch. 70, § 72.1(2) (“pervasive sights and sounds from outside the area” must influence a visitor’s opportunity for solitude, which need not occur on every acre).

¹⁴ FSH 1909.12, ch. 70, § 72.1(1)(c) (emphasis added).

¹⁵ See, e.g., Public Law No. 96-550, § 103, 94 Stat. 3221 (Dec. 19, 1980) (designating six wilderness study areas in New Mexico National Forests to be managed “to maintain their presently existing wilderness character and potential for inclusion in the [NWPS]: *Provided*, [t]hat . . . current levels of motorized . . . uses . . . shall be permitted to continue subject to . . . reasonable rules and regulations”); Payette National Forest, Land and Resource Management Plan, ROD-9, III-74, III-82 (2003), *available at* <http://www.fs.usda.gov/detail/payette/landmanagement/planning/?cid=stelprdb5035589> (recommending over 200,000 acres for wilderness designation and permitting existing motorized uses to continue in those areas unless it degrades wilderness values or causes resource damage or user conflicts);

Some narratives consider the mere presence of motorized uses in the area as undermining its naturalness. As described above, absent an evaluation of whether that use would appear substantially unnoticeable to the average visitor, the mere presence of motorized uses is an inappropriate consideration. For example, the narrative for Polygon 539 Adjacent to Dinkey Lakes Wilderness on the Sierra National Forest states that “[t]he area is surrounded by an extensive road network and is crossed by the Swamp and Coyote motorized trails” in its evaluation of apparent naturalness. There is no discussion of how the trails or their use would appear to the average visitor. And consideration of the surrounding road network is entirely irrelevant to the evaluation of apparent naturalness, which is limited to the apparent character of the area itself.¹⁶

Many narratives consider the mere presence of motorized uses to impair opportunities for solitude, without an adequate evaluation of whether that use is pervasive and how it influences a visitor’s opportunity for solitude throughout the area.¹⁷ For example, the narrative for Dexter Canyon (Polygon 1068) on the Inyo National Forest notes that “[t]he area is dissected by one motorized trail” and that “[p]roximity to motorized recreation . . . limit[s] opportunities for solitude.” These narratives also typically address motorized uses as an impediment to the ability to manage the area to preserve its wilderness characteristics, as addressed in more detail below.

Of the narratives we reviewed, Polygons 63, 73, 227, 304, 357, 539, 577, 586, 646, 772, 781, 819, 821, 1012, 1068, 1236, 1246, 1281, 1339, 1378, 1384, 1391, 1394, 1408, 1426, and 1432 appear to improperly consider the presence of motorized uses inside or adjacent to the area.

F. Manageability considerations

Chapter 70 lists five factors to consider when evaluating “the degree to which the area may be managed to preserve its wilderness characteristics”: (a) shape and configuration of the area; (b) legally established rights or uses within the area; (c) specific Federal or State laws that may be relevant to availability of the area for wilderness or the ability to manage the area to protect wilderness characteristics; (d) the presence and amount of non-Federal land in the area ; and (e) management of adjacent lands.¹⁸ As these factors – which focus on the geographical shape and configuration of the area and any governing legal requirements – highlight, the evaluation is not an appropriate place to consider management *trade-offs*, which should be analyzed in the DEIS.

BLM Manual 6320.06(A)(2)(d)(v) (BLM-identified Lands with Wilderness Characteristics may include motorized uses on designated routes); BLM, Little Snake Field Office, Record of Decision and Approved Resources Management Plan at 33 (Oct. 2011), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/co/field_offices/little_snake_field/rmp_revision/rod.Par.8.3246.File.dat/01_LS-ROD_Approved-RMP.pdf (motorized activity permitted on designated roads and trails within Lands with Wilderness Characteristics).

¹⁶ See FSH 1909.12, ch. 70, § 72.1(1).

¹⁷ See FSH 1909.12, ch. 70, § 72.1(2)(a).

¹⁸ FSH 1909.12, ch. 70, § 72.1(5).

Most of the narratives we reviewed, however, improperly consider management trade-offs such as whether a polygon may be managed to use or control fire, for livestock grazing, for threatened or endangered species, to eradicate invasive species, or to conduct ecological restoration. For example, the narrative for Pizona-Truman Meadows (Polygon 1339) on the Inyo National Forest highlights the potential need for active management of sage grouse priority habitat and wild horse herds, as well as the illegal use of user-created motorized trails that “are being considered for addition to the forest’s trail system.” Consideration of these sorts of management trade-offs are outside the scope of the wilderness evaluation.

Moreover, many of the management activities listed in the narratives – including grazing, wildlife management (e.g., sage grouse), restoration activities – do not constitute conflicting uses that would necessarily impede wilderness management. Indeed, the Wilderness Act tasks agencies with managing wilderness for a range of public purposes, including recreational, scenic, scientific, educational, conservation, and historical uses.¹⁹ Activities such as ecological restoration and wildfire management may continue if they do not interfere with preservation of wilderness characteristics.²⁰ In some cases, these activities may in fact *increase* wilderness character.

Many narratives consider motorized uses as a manageability concern. For example, Polygon 1246 North of Eureka Valley Road on the Inyo National Forest notes the presence of motorized trails, as well as widespread illegal off-highway vehicle use occurring along the western and southern portion of the polygon. Importantly, even authorized motorized uses are not “[l]egally established . . . uses within the area,” which should be interpreted to encompass uses established by law²¹ – not to agency planning or implementation decisions like designation of motorized trails in a travel management plan. Instead, consideration of how to balance motorized recreational opportunities with protection of wilderness characteristics is another management trade-off that should be analyzed in the DEIS.

Of the narratives we reviewed, Polygons 63, 73, 227, 304, 315, 357, 539, 577, 586, 646, 772, 781, 819, 821, 1012, 1068, 1179, 1236, 1246, 1258, 1339, 1355, 1357, 1361, 1281, 1378, 1384, 1387, 1391, 1394, 1408, 1426, 1431, and 1432 recite improper manageability considerations.

¹⁹ See 16 U.S.C. § 1133(b).

²⁰ See, e.g., Wilderness Evaluation Process Paper, Attachment B: Guidance for Consideration of Evaluated Areas for Recommendation in an Alternative, at 1 (“Congress has recognized the need to provide for passive or active restoration in previously modified areas that have wilderness characteristics.”).

²¹ Such legally established rights or uses might include, for example, rights of access to private land inholdings, see Federal Land Policy & Management Act of 1976, Title V, 16 U.S.C. §§ 1761-1770; mining on patented or unpatented hard rock mining claims, see General Mining Law of 1872, 30 U.S.C. §§ 22, 26; ski area operations pursuant to special use permit, see National Forest Ski Area Permit Act of 1986, 16 U.S.C. § 497b; or American Indian treaty rights, see, e.g., *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 177, 193-95, 202 (1999) (affirming tribal hunting, fishing, and gathering rights established by treaty).

II. Identifying Areas for DEIS Analysis

Chapter 70 requires that areas be identified for NEPA analysis “[b]ased on the evaluation and input from public participation opportunities.”²² While we are pleased that the evaluation process paper and narratives have been provided for public input, we are concerned that the deficiencies in the wilderness evaluation identified above and in our previous comment letters will result in areas being improperly excluded from DEIS analysis. More broadly, we are concerned that the Forest Service has not articulated a rational or repeatable process for identifying areas to be brought forward. As we pointed out in our August 28, 2015 letter, the wilderness evaluation process paper does not articulate whether or how the Forest Service weighed and compared the relative wilderness characteristics of each area to inform the determination of which areas or portions of areas to carry forward for analysis. The information released in December 2015 does not appear to address this issue, except to suggest that public feedback will help shape the DEIS alternatives.²³

Our concern is highlighted by the current proposal of areas to carry forward. For example, all but one of the polygons on the Sierra and Sequoia National Forests currently proposed for inclusion in Alternative C have been reduced in size from the inventoried area, many of them substantially. For example, the Bright Star Wilderness Additions (polygon 1426) on the Sequoia National Forest was reduced from nearly 50,000 acres to less than 19,000 acres in the current proposal for Alternative C, while Devil’s Gulch (Polygon 772) and Shuteye (Polygon 646) on the Sierra National Forest were reduced from nearly 48,000 acres and over 18,000 acres to approximately 20,500 acres and less than 7,000, respectively. These and other areas we recommended for wilderness designation in our supplemental scoping comments – including Polygons 63, 73, 315, 539, 646, 772, 819, 821, 1378, 1384, 1387, 1394, 1408, 1426, and 1431 – have been significantly whittled down without adequate explanation.

While we assume that the Forest Service will provide in the DEIS its rationale for which areas or portions of areas it chose to carry forward, we remain concerned that areas have been whittled down based on improper manageability concerns or other considerations. For example, the wilderness evaluation narrative for the Bright Star Additions improperly focuses on the presence of motorized recreation as an impediment to the area’s manageability. It is unclear whether the 30,000 acres that are not proposed to be carried forward for NEPA analysis were excluded due to this consideration. The wilderness evaluation narrative for Shuteye suggests that removing areas including motorized trails would resolve manageability concerns.

III. NEPA Range of Alternatives

Since May 2015, we have repeatedly raised our concern that the approach of carrying forward for DEIS analysis only a minority of the inventoried areas will result in an unreasonably narrow range of alternatives, in violation of NEPA. The analysis of alternatives under NEPA is the “heart”

²² FSH 1909.12, ch. 70, § 73.

²³ See Wilderness Evaluation FAQ, at 2.

of an EIS.²⁴ An agency must “[r]igorously explore and objectively evaluate all reasonable alternatives” to a proposed action.²⁵ Consistent with NEPA’s basic policy objective to protect the environment, this includes more environmentally protective alternatives.²⁶ “The existence of a viable but unexamined alternative renders an [EIS] inadequate.”²⁷ The “touchstone” of the inquiry is “whether an EIS’s selection and discussion of alternatives fosters informed decision-making and informed public participation.”²⁸

While we are pleased to see that the Forest Service is proposing to carry forward additional acreage in Alternative C, the current proposal is still inadequate to ensure a reasonable range of alternatives and to foster informed decision-making and public participation. Alternative C would currently include only 495,366 acres of potential recommended wilderness – less than 32% of the final inventoried acreage. Binding Ninth Circuit precedent has rejected as unduly narrow a range of alternatives that would have designated a maximum of 33% of roadless acreage as recommended wilderness.²⁹

We have repeatedly recommended solutions to fix the range of alternatives problem and hope that the Forest Service will implement those recommendations in the DEIS. First, **one alternative should include all, or the vast majority of, the 1.5 million acres of inventoried/evaluated areas.** This would ensure an adequate range of alternatives and a robust analysis of the trade-offs and impacts associated with recommending most (if not all) of the inventoried areas.³⁰ Given the significant problems with the forests’ wilderness evaluation and Chapter 70 process to date, this alternative would also better facilitate additional changes to the evaluation in response to public input during this comment period and on the DEIS and reduce

²⁴ 40 C.F.R. § 1502.14.

²⁵ *Id.* § 1502.14(a). *See also* 42 U.S.C. § 4332(2)(E) (agencies must “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources”).

²⁶ 40 C.F.R. § 1500.2(e) (agencies must “[u]se the NEPA process to identify and assess reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment”). *See also, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1121-22 (9th Cir. 2002) (citing cases), *abrogated on other grounds by The Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1178-80 (9th Cir. 2011) (en banc).

²⁷ *Mont. Wilderness Ass’n v. Connell*, 725 F.3d 988, 1004 (9th Cir. 2013) (quotations and citation omitted).

²⁸ *Id.* at 1005 (quotations and citation omitted).

²⁹ *California v. Block*, 690 F.2d 753, 765 (9th Cir. 1982).

³⁰ *See* Council on Environmental Quality, *NEPA’s Forty Most Asked Questions*, 46 Fed. Reg. 18,026 (Mar. 23, 1981) (“When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness.”); *California*, 690 F.2d at 765, 768-69 (in addition to considering an alternative that allocated 100% of inventoried roadless areas to wilderness, “it was unreasonable for the Forest Service to overlook the obvious alternative of allocating more than a third of the RARE II acreage to a Wilderness designation”); *cf. Mont. Wilderness Ass’n*, 725 F.3d at 1004-05 (range of alternatives for national monument plan that would have opened between 0 and 10 (the total number existing) backcountry airstrips, including several mid-range alternatives, was reasonable).

the risk that the Forest Service will need to conduct supplemental NEPA in order to adequately respond to issues raised by the public.

Second, **another alternative should include all the areas TWS and other groups have recommended for wilderness designation** during scoping and other relevant public participation opportunities. For example, our November 17, 2014 supplemental scoping comments recommended 233,111 acres on the Sierra National Forest and 248,526 acres on the Sequoia National Forest for wilderness designation. In total, we have recommended approximately 625,130 acres across the three forests – or about 40% of the final inventoried acreage – for wilderness designation and provided detailed information documenting the areas’ wilderness characteristics. Under NEPA, the Forest Service is obligated to consider and analyze this reasonable proposal as an alternative.³¹

IV. Suitable Uses and Management of Recommended Wilderness

The Forest Service has asked for “input regarding suitable uses and management of recommended wilderness.” The Forest Service Manual establishes that the standard for allowing non-conforming uses in recommended wilderness is that they may not reduce the area’s wilderness potential.³² The Forest Service Handbook directs that the Forest Service may allow non-conforming uses so long as they protect and maintain the social and ecological characteristics that form the basis of the wilderness recommendation.³³ In general, we believe that non-conforming uses should be prohibited from recommended wilderness. However, if the Forest Service is considering allowing motorized recreation or other non-conforming uses within recommended wilderness areas, it must provide adequate assurance that both the Forest Service Manual and Handbook requirements are met.

Specifically, if the forest supervisors choose to allow non-conforming uses in recommended wilderness, they must:

- Document in detail the social and ecological characteristics that form the basis of the wilderness recommendation in the administrative record;
- Provide a reasoned and fact-based explanation in the administrative record for why allowing the uses will not reduce the wilderness potential; and
- Establish standards that ensure that wilderness potential is not reduced as a result of allowing the non-conforming uses. This includes, but is not limited to: 1) a standard requiring monitoring of the social and ecological characteristics that form the basis of the wilderness recommendation, and mandatory adaptive measures if the wilderness potential is found to be diminished, and 2) a standard requiring the Forest Service to consider monitoring data submitted by the public.

³¹ See *Mont. Wilderness Ass’n*, 725 F.3d 1004 (“The existence of a viable but unexamined alternative renders an [EIS] inadequate.” (quotations and citation omitted)).

³² FSM 1923.03(3) (“Any area recommended for wilderness or wilderness study designation is not available for any use or activity that may reduce the wilderness potential of an area.”).

³³ FSH 1909.12, ch. 70, § 74.1.

V. Conclusion

We are pleased that the Forest Service has attempted to correct some of the public participation and process deficiencies we have previously identified. We are concerned, however, that the wilderness evaluation and current proposal for areas to carry forward for NEPA analysis remains flawed. The Forest Service should correct the identified deficiencies in its application of the evaluation criteria, and utilize the corrected evaluations and input from the public to identify areas or portions of areas to carry forward for NEPA analysis. In doing so, the agency must ensure a reasonable range of alternatives that encompass proposals submitted by the public and at least one alternative that would recommend for wilderness designation all or a significant proportion of the inventoried and evaluated areas.

Thank you for your consideration, and please do not hesitate to contact us with any questions.

Sincerely,



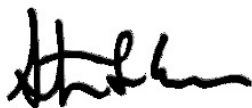
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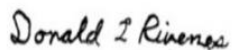
Greg Suba
Conservation Director
California Native Plant Society



Trudy Tucker
National Forest Chair
Tehipite Chapter, Sierra Club



Malcolm Clark
Range of Light Group (Toiyabe Chapter)
Sierra Club



Don Rivenes
Executive Director
Forest Issues Group

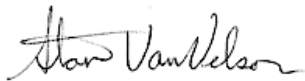
Patricia Puterbaugh
Lassen Forest Preservation Group

Lisa Cutting
Eastern Sierra Policy Director
Mono Lake Committee



Michael J. Connor, Ph.D.
California Director
Western Watersheds Project

Joe Fontaine
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Senior Regional Representative
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