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February 18, 2010

Sylvia Clark
District Ranger
Pleasant Grove Ranger District
Uinta-Wasatch-Cache National Forest

RE: Silver Lake Dam stabilization

Dear Ms. Clark:

Wilderness Watch learned earlier today that the Forest Service is seeking comments on a proposal to lower or stabilize the Silver Lake Dam in the Lone Peak Wilderness. Apparently, the project was initiated based on a recommendation from the state water engineer that the water level in the lake should (must?) be lowered.

It's been many years since I hiked into Silver Lake. I believe this project represents a wonderful opportunity to restore a piece of the Lone Peak Wilderness to its natural condition.

Wilderness Watch provided comments in August 1999 and in March of 2000 on proposals from the Forest Service to lower the Silver Lake Dam by five feet and eight feet, respectively. Please include those letters as part of the official comment file. Due to our long-standing interest in this project, Wilderness Watch should have received the most recent scoping letter, but we did not. Please be sure that we are included on the list to receive any future notices about this project. Also, please provide our office with a copy of the current scoping notice and any other information that will assist us in understanding the full scope of the work needed such as the type of dam (earthen, rock and mortar, etc.), amount of material that needs to be moved, and any information or direction you've received from the state engineer.

Wilderness Watch has two decades of experience dealing with issues involving dams and other major projects in Wilderness. Some members of our board of directors have even longer experience as administrators dealing with these issues, working with traditional skills, and managing Wilderness. Based on what we know about the scope of the Silver Lake Dam project, we believe it is entirely possible to complete all necessary work to lower the dam to its natural level without the use of any motorized vehicles or equipment.

Maintaining or perpetuating the dam runs counter to the Wilderness Act

It is our understanding that the U.S. Forest Service owns the dam. As such, the dam is an administrative structure that must be managed in accordance with the general provisions of the Wilderness Act.

“...except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter... there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and **no structure or installation** within any such area.” emphasis added. Wilderness Act Section 4(c)

Like all administrative structures, the Silver Lake Dam should be reviewed to determine whether it is “necessary to meet minimum requirements” for administering the Wilderness to protect the area’s wilderness character. Wilderness Watch is confident that any reasonable review will clearly show that it is not necessary and thus is a prohibited structure that cannot be operated and maintained.

In a similar situation where the Forest Service proposed maintaining several dams in the Emigrant Wilderness, a federal court concluded that maintaining prohibited structures is illegal.

...regardless of how carefully and thoroughly Forest Service considered the various action plans, the plans considered and the plan finally chosen are predicated on the legal contention that maintenance, repair and operation of the dams is “necessary to meet minimum requirements for the administration of the area for purposes of this chapter” – a contention that is without legal or logical support. High Sierra Hikers v. Blackwell. 2006.

Here, as there, maintaining and operating an unnecessary administrative structure runs counter to both the spirit and letter of the Wilderness Act.

The Wilderness Act also mandates that the Forest Service preserve Lone Peak’s wilderness character:

... each 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. Wilderness Act Section 4(b).

The Forest Service has developed monitoring protocols that can help in determining if a project or activity would degrade an area’s wilderness character (see Monitoring Selected Conditions Related to Wilderness Character: A National Framework. US Department of Agriculture, Forest Service, General Technical Report RMRS-GTR-151. April 2005. Also see Keeping It Wild: An Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System Gen. Tech. Rep. RMRS-GTR-212. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. 2008. 85 p.). The protocols identify four qualities of wilderness character that can be measured and described. Each of the four qualities—untrammelled, natural, undeveloped, and opportunities for solitude—will be degraded by the perpetuation of the dam and the use of motorized equipment to maintain or remove it.

Department of Agriculture regulations and Forest Service policy prohibit maintaining the dam in Wilderness.

Agency regulations and policy also direct and guide management of the area. The regulations state in part, “National Forest Wilderness shall be managed to promote, perpetuate, and where necessary, restore the wilderness character of the land...” (36 CFR 293. 2). Forest Service policy calls for “Manage[ing]

wilderness toward attaining the highest level of purity in wilderness within legal constraints.” Where human influences have degraded wilderness, “The goal of wilderness management is to identify these influences, define their causes, remedy them, and close the gap between the attainable level of purity and the level that exists on each Wilderness.” (FSM 2320.6). The Silver Lake Dam is an example of a human influence that has degraded the Wilderness. Rather than perpetuate the dam, the project should be designed to lessen its presence and impact on the Wilderness.

Forest Service dam policies also argue against maintaining dams in Wilderness. Forest Service Manual 7500 is particularly informative.

FSM 7502 – Objectives:

Two objectives are relevant to Silver Lake Dam. In both cases, breaching or removing the dam meets the objectives better than any other option. This is especially true over the long term.

Manage water storage or transmission structures administered or permitted by the Forest Service to:

1. Prevent sudden failure resulting in loss of life or extensive damage to property or the environment.
4. Minimize the potential liability of the Forest Service from failures of Forest Service owned and permitted dams.

FSM 7503 – Policy:

Here again, the referenced wilderness policies clearly argue for breaching the dam.

8. Comply with the policies on the following aspects of water storage and transmission facilities management identified in the cross-referenced sections of the Forest Service Manual:

a. Facilities located in wilderness areas (FSM 2320.3, 2323.42, 2326).

2320.3 - Policy

1. Where there are alternatives among management decisions, wilderness values shall dominate over all other considerations except where limited by the Wilderness Act, subsequent legislation, or regulations.

4. Cease uses and activities and remove existing structures not essential to the administration, protection, or management of wilderness for wilderness purposes or not provided for in the establishing legislation.

2323.42 - Policy

The policy for soil and water management is generally the same as for all National Forest watersheds (FSM 2502). However, in wilderness natural processes shall dominate; measures that modify plant cover and treat soil mantles or other activities designed to supplement natural water yield are inappropriate.

2326.1 - Conditions Under Which [Motorized] Use May Be Approved

Allow the use of motorized equipment or mechanical transport only for:

1. Emergencies where the situation involves an inescapable urgency and temporary need for speed beyond that available by primitive means. Categories include fire suppression, health and safety, law enforcement involving serious crime or fugitive pursuit, removal of deceased persons, and aircraft accident investigations.
2. Aircraft or motorboat use established before the area was designated as wilderness by the Act of 1964 or subsequent wilderness legislation.
3. Exploration and development of valid existing mineral rights (FSM 2323.7).
4. Access to surrounded State and private lands and valid occupancies (FSM 2326.13).
5. To meet minimum needs for protection and administration of the area as wilderness, only as follows:
 - a. A delivery or application problem necessary to meet wilderness objectives cannot be resolved within reason through the use of nonmotorized methods.
 - b. An essential activity is impossible to accomplish by nonmotorized means because of such factors as time or season limitations, safety, or other material restrictions.
 - c. A necessary and continuing program was established around the use of motorized equipment before the unit became a part of the National Wilderness Preservation System, and the continued use of motorized equipment is essential to continuation of the program.
 - d. Removal of aircraft wreckage when nonmotorized methods are unsuitable.

It does not appear that the use of motorized equipment to maintain the Fish Lake Dam meets any of the exceptions listed in FSM 2326. All work needs to be accomplished by non-motorized and non-mechanized means. In developing the EA, we strongly urge you to include an alternative that breaches the dam to allow the natural lake and natural hydrological function to be restored, and that the work is done without equipment.

We look forward to learning more about this project and to working with you to restoring Silver Lake in a manner consistent and respectful of the Lone Peak Wilderness.

Sincerely,

George Nickas
Executive Director