

April 6, 2011

Chuck Oliver
District Ranger
Darby Ranger District
712 N. Main St.
Darby, MT 59829

Dear Mr. Oliver:

Wilderness Watch and Friends of the Clearwater are providing these comments in response to your scoping letter of March 4, 2010, announcing the initiation of an environmental assessment for a proposal to reconstruct the Tamarack Lake Dam in the Selway-Bitterroot Wilderness.

Introduction

Wilderness Watch and Friends of the Clearwater (FOC) recognize and support the need to maintain dams in the Wilderness in a safe condition and in a manner that protects and preserves the area's wilderness character. The proposal as described in the scoping letter may achieve the former, but it does so by causing significant harm to the wilderness character of the Selway-Bitterroot Wilderness. The extensive use of motorized equipment both for transporting materials and at the dam site during the reconstruction process will substantially harm the area's wilderness character as well as violate the Wilderness Act's prohibition on the use of motorized vehicles motorized equipment and aircraft. The project needs to be revised to be compatible with the need to protect the SBW. Wilderness Watch and FOC stand ready to help.

The scoping letter lacks sufficient information to provide meaningful comments on the proposed action.

The stated purpose of the proposed action is to address "structural deficiencies...to comply with the requirements of dam safety laws and regulation." Yet nowhere in the proposed action are these structural deficiencies described, nor does the scoping letter describe what dam safety requirements and regulations must be met. Mention is made of modifying the dam embankment and the outlet pipe, but specifics are completely lacking. The public needs to have such information available in order to provide comments on the proposed action and to address meaningful alternatives.

Some of the specific questions the EA/EIS needs to address include: What are the specific structural deficiencies in the existing dam that must be corrected? What are the specific

dam safety requirements that must be met? What is the minimum amount of work that must be completed to meet each of the dam safety requirements and/or correct structural deficiencies?

Storage capacity

The scoping letter states the project is designed to “restore storage capacity.” It also states that the spillway will be modified to “increase storage capacity.” It isn’t clear what is meant by “restore storage capacity.” It suggests that storage capacity was once greater than at present, but no information is provided that allows the public to understand to what degree water storage will be “restored” or “increased.” What does it mean to “restore storage capacity”? How much will storage be increased? When was the storage capacity reduced, and why?

The plan to increase storage capacity begs the question of whether the dam owner(s) has a right to store additional water. The Bitterroot drainage is a closed system in the process of water adjudication to justify current rights, not allocate more. The Forest Service should confirm that the dam owner has the right to store more water in Tamarack Lake before it authorizes work to expand storage capacity.

The Wilderness Act prohibits the enlargement or expansion of water works, dams, and similar developments in Wilderness. How does the proposal to expand water storage capacity in Tamarack Lake comply with this prohibition in the law?

Hazard rating

The Forest Service’s Region One Wilderness Dams Information Sheet indicates Tamarack Lake Dam is a “low hazard” dam. The scoping notice states the dam has been classified “high hazard.” Why the discrepancy? The hazard rating could substantially affect the amount or type of work required at the dam. The changed hazard rating, if indeed it has changed, needs to be explained. The EA should also describe what would be required to restore the “low hazard” rating so that present and future impacts to the Wilderness can be minimized.

Access to the dam

The trail to the dam is less than seven miles in length, reasonably maintained and safe. All camp equipment, tools, food, and personnel can access the dam project by hiking or pack string support.

Alternatives to the proposed action

The environmental analysis needs to include one or more reasonable non-motorized/non-mechanized alternatives to the proposed action. At least one alternative should be designed to meet the *minimum necessary* to correct structural deficiencies and comply with federal dam safety requirements—the stated Purpose and Need for the project. A non-motorized (“traditional skills”) alternative that achieves dam safety requirements has the benefit of meeting both the dam owner’s need for a safe dam and the Forest Service’s responsibility to protect the wilderness character of the SBW. NEPA requires such an alternative be considered in detail, and the

Wilderness Act requires the agency to preserve the area's wilderness character from harm. Wilderness Watch and FOC believe it is the responsibility of the dam owner—as the project proponent—to develop and submit such alternatives, though the Forest Service could certainly assist in that effort. Again, Our organizations stand willing to help.

It should be noted that the non-motorized alternative described above would likely be very different than a non-motorized alternative designed to reconstruct the dam using the same design, materials, standards, and goals as the proposed action. The proposed action goes beyond what is required to meet the Purpose and Need and it is designed on the assumption that helicopter transport and heavy equipment use will be allowed. Attempting to replicate the proposed action with non-motorized equipment might be infeasible given the assumptions used in developing the proposed action. But NEPA requires reasonable *alternatives* to the proposed action, not replicates of it.

Wilderness and Dams

The Tamarack Lake Dam is a legally permitted, non-conforming structure in the Selway-Bitterroot Wilderness. Its presence degrades the area's wilderness character. The challenge for wilderness stewards (and the dam owner, too) is to administer the structure in a way that doesn't further degrade the area's Wilderness character. Utilizing traditional skills and foregoing the use of motorized equipment is a sign of respect for and commitment to upholding the spirit of the Wilderness Act. Invading Wilderness with helicopters and other tools of modern technology strikes at the heart of Wilderness as a place set apart.

The stated reason for re-construction of the dams in Wilderness on the Bitterroot National Forest is “to meet the requirements of federal dam safety standards.” These standards and proposed action always seem to result in helicopter access and transport of a variety of motorized equipment. Tamarack Lake is no exception. There must be some or all of the dam work that could be completed using traditional skills while still meeting federal dam safety standards. The re-construction of Canyon Dam was an example that saved the dam owners a substantial amount of money and much of the work was accomplished in the true spirit of Wilderness. In that same spirit, the Tamarack Dam analysis should include a valid traditional skills alternative.

It needs to be acknowledged that the existing dam was built without motorized equipment and it has stood for nearly a century. Though dam safety standards might have changed, it is not clear that those standards preclude utilizing the same methods and tools or other non-motorized methods and tools to rebuild the dam.

In the discussion leading up to passage of the Wilderness Act in 1964, the Secretary of Agriculture described how the Forest Service would interpret and implement the law:

“Water developments for the storage and diversion of water for irrigation, domestic, and other uses have been allowed in this wilderness-type areas. The works generally have been constructed and maintained by means which did not involve motorized transportation. There are 144 such projects. We would construe the provisions of [the

Wilderness Act] as permitting the continued maintenance of these existing projects by means which would not involve motorized transportation as in the past.”

S. Rep. No. 109 p.29, 88th Cong. 1st session (1963).

The proposed action reflects a starkly different interpretation and implementation of the law. Should the Forest Service adopt such an action, the EA should explain how the agency has arrived at such a remarkably different interpretation of the Wilderness Act.

The Wilderness Act’s central mandate requires the Forest Service to protect the area’s wilderness character. Agency policy espouses a non-degradation policy for achieving this end. The Forest Service has adopted a management framework for monitoring conditions related to wilderness character in order to determine whether it is meeting its legal mandate. It is quite clear that the proposed action will degrade most or all of these monitoring conditions. How will the agency modify the proposed action so that it doesn’t degrade the area’s wilderness character?

Need for an environmental impact statement

The proposed re-construction of the Tamarack Lake Dam with its heavy reliance on motorized incursions would have a significant impact on the Selway Bitterroot Wilderness and requires the Forest Service prepare an environmental impact statement (EIS).

Moreover, in recent years numerous dam-related projects that utilize motorized vehicles and equipment have been approved or are proposed on the Bitterroot NF in the SBW. In just the past several months, major projects that include extensive motorized intrusions have been approved for the Tin Cup Dam and Canyon Lake Dam. In addition, the FS is considering requests for motorized access to install structures and equipment at Fred Burr Lake and a second request at Tamarack Lake. The agency has also granted carte blanche approval for motorized access and use at several other dams in the SBW. Many of these projects alone have had or could have significant impacts on the wilderness character of the SBW. In addition, the Forest Service’s own administrative activities have relied on helicopter use for such things as replacing bridges in the SBW. Taken together, the cumulative effects of the authorized motorized activities and the proposals for additional use have caused and threaten to continue to cause significant impacts to the SBW. An EIS is clearly warranted before the agency approves any additional motorized access or motorized equipment use.

It goes without saying that officials at the Bitterroot National Forest have become all too cavalier in their approval of helicopter use in the SBW. These officials have lost sight of how antithetical helicopters and other modern technologies are to both the letter and spirit of Wilderness law and policy. Fortunately, the courts have taken a dimmer view of helicopter use in Wilderness. While refusing to issue an injunction halting a plan to use helicopters to capture and collar up to eight wolves in the FC-River of No Return Wilderness, a federal court in Idaho explained:

“[T]he Court shares plaintiffs’ concerns that this decision could be interpreted wrongly as a stamp of approval on helicopter use. It is not for two reasons. First, the decision is limited by its facts: This proposed activity is designed to aid the restoration of a specific aspect of

the wilderness character of the Frank Church Wilderness that had earlier been destroyed by man. *The use of helicopters for any other purpose would be extremely difficult to justify under the Wilderness Act, NEPA, or any categorical exclusion.* (emphasis added)

Second, the next helicopter proposal in the Frank Church Wilderness will face a daunting review because it will add to the disruption and intrusion of this collaring project. The Forest Service must proceed very cautiously here because the law is not on their side if they intend to proceed with further helicopter projects in the Frank Church Wilderness.” *See Wolf Recovery Foundation v. U.S. Forest Service, 629 F.Supp.2d 1264 (D. Id. 2010).*

In a subsequent ruling, the Court reiterated its concern about helicopter use in Wilderness:

“In its prior decision in this case, the Court stated that future helicopter use would add to the “disruption and intrusion” of wilderness values, face a “daunting review, ” and “be extraordinarily difficult to justify.” *See Memorandum Decision (docket no. 36).* The Court’s opinion makes it clear that helicopter use in a wilderness area is “antithetical to a wilderness experience,” and that the approval of the single project at issue here – based on unique facts – is unlikely to be repeated.”

These ruling recognize the incompatibility of helicopter use in Wilderness, the need for a thorough and cumulative analysis of the impacts from helicopter and other motorized equipment use, and the need to embrace alternatives that do not involve motorized equipment use.

Wildlife

Numerous threatened or endangered and other special of special concern potentially inhabit the project area. The analysis needs to consider impacts to these species including bull trout, westslope cutthroat trout, fisher, wolverine, wolves, grizzlies, mountain goats, and management indicator species identified in the forest plan.

Please feel free to contact Gary Macfarlane at Friends of the Clearwater or me if you have any questions concerning our comments on the proposal.

Sincerely,

George Nickas
Executive Director