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June 26, 2009

Bobbie Lacklen
Kootenai National Forest
31374 US 2 West
Libby, MT 59923

Dear Ms. Lacklen,

Enclosed are comments from Wilderness Watch on the Montanore Project in the Cabinet Mountains Wilderness and the Kootenai National Forest. We have several serious problems with this proposal, including the potentially irreparable harm to grizzly bears and other sensitive species from both the mine and the general increase in human activity in the area. Our comments, however, focus on the impacts to the Cabinet Mountains Wilderness.

Impacts to Wilderness Character

Preserving the area's wilderness character is the Forest Service's overarching mandate in the Cabinets:

"Except as otherwise provided in the Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area…." Section 4(b) of the Wilderness Act.

This should have been the overriding issue analyzed in the DEIS. While the DEIS analyzes four components of wilderness values (incidentally, those used in the monitoring protocol for wilderness character), the term wilderness character never appears in the DEIS. This is a serious omission and renders the DEIS legally inadequate.

The analysis in the EIS should use as a basis the Interagency strategy for monitoring wilderness character (see Keeping It Wild: An Interagency Strategy to Monitor Trends in Wilderness Character Across the National Wilderness Preservation System. USDA General Technical Report RMRS-GTR-212. July 2008). The monitoring protocol includes several qualities of wilderness character that should be analyzed to determine the potential impacts of the mine and related activities, as well as a number of indicators that should be monitored over time should the mine proceed. In addition to the specific measurable qualities, the protocol notes there are intangible qualities for which we may not

now have measures, but that also influence wilderness character. For example, the sense of risk or self-reliance would likely change if the Wilderness becomes more crowded or "outside" sights and sounds are more prevalent due to mining activities. The effects to these intangible qualities should also be considered.

The DEIS does not discuss the impacts to wilderness character in any substantive way. Though it makes mention of the four qualities for measuring wilderness character utilized in the protocol mentioned above, the analysis largely ignores three of the four attributes (see 3.23.4.1.2). For example, will the free play of wildlife in the Wilderness be hampered by this mine? If wildlife don't have freedom of movement outside of the Wilderness, it could constrain their actions in the Wilderness. That would affect wilderness character. Endangered species like grizzlies provide important wilderness values and impacts to this species will affect wilderness character. What about fish moving in and out of the Wilderness? These factors all influence the area's wilderness character, yet are not analyzed or described. The impacts from outside activities are noted in relation to visitor use only. The impacts to wilderness character with the Cabinet Mts. Wilderness from activities outside the Wilderness must be addressed (see Izaak Walton League of America v. Kimball, U.S. District Ct., District of Minnesota. 2007. Upheld by 8th Circuit Court of Appeals, 2009).

Even regarding visitor impacts, the analysis does little to suggest the severity of the impact. There is no mention of the loss of wilderness character from having a mine and mine tunnels in the Wilderness or what that may mean for the subsurface Wilderness, whether that be in terms of visitors impacts or other wilderness attributes that affect wilderness character.

There are also questions about the actual impacts to the surface. The DEIS notes an air vent will be constructed on an inholding within the Wilderness, yet the map suggests the private land may not be an inholding. The DEIS is also not clear whether sounds from mining would be noticeable to wildlife or visitors. Even if surface structures/impacts are precluded--and that is not entirely clear--does not mean that there will be no impacts to the surface from subsurface activities.

For example, will water flow within the wilderness or the hydrology be affected by this activity? What about subsidence? What about subsurface life? Is there any chance it may be affected by the mine?

The DEIS ignores cumulative impacts to the wilderness and wilderness character. Section 3.3 does not address wilderness character. What are the combined impacts of this project and others? Could important wilderness values be lost as a result of cumulative impacts? These questions were not addressed in the wilderness section.

Further, the entire analysis is based on the false premise that the mining will not occur within the Wilderness. Nothing in the Wilderness Act that designated and governs the administration of the Cabinet Mountains Wilderness provides support for the mistaken notion that the Wilderness is restricted to the surface of the mountain. The Wilderness extends as deep into the Earth as does the territorial boundary of the United States. Thus, all of the impacts that will occur within that boundary are direct impacts to the Cabinet Mountains Wilderness.

Wilderness Provisions

The DEIS should be clearer on whether the mining claims and proposed activities meet the requirements of section 4(d)(3), 5(a) and 5(b) of the Wilderness Act. Specifically, the claim history of the area and any "rights" the claimant may have are not discussed in the wilderness section of the DEIS as it applies to section 4(d)(3) of the Wilderness Act. Questions such as was subsurface ingress and egress enjoyed prior to designation need to be asked. In essence, there is not a clear showing in the DEIS of compliance with the Wilderness Act.

It should be emphasized the agency's duties under the Wilderness Act are not overridden by any "rights" the applicants may have under the 1872 mining law. Compliance with the Wilderness Act's provisions must be met. In a similar instance, the courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995): Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)). The DEIS does not clearly address this issue in context of the Wilderness Act.

Summary

The DEIS is inadequate in addressing the Cabinet Mountains Wilderness. It needs to be redone in order to comply with the Wilderness Act and NEPA.

Sincerely,

Gary Macfarlane
Board Member