



**File Code:** 1570-1

**Date:** January 9, 2006

**Route To:** (1570 - 215)

**Subject:** 215 - ARO Letter - Wind Lakes Trail DN - Clearwater NF - Appeal #06-01-00-0028 - Friends of the Clearwater, et al.

**To:** Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Gary Macfarlane on behalf of Friends of the Clearwater, Wilderness Watch, William Worf, and The Ecology Center protesting the Wind Lakes Trail Decision Notice (DN) on the Powell Ranger District (Clearwater National Forest).

The District Ranger's decision adopts Alternative 3, which includes trail work that consists of minor trail relocation and the construction/reconstruction of native material trail structures. Of the existing five puncheons and one turnpike:

- One puncheon will be removed;
- two puncheons will be shortened, with turnpikes added;
- two puncheons will be reconstructed to a longer length to provide for additional resource protection where the trail crosses wet and boggy areas;
- two new turnpikes and one puncheon will be constructed over problem areas for additional resource protection;
- five short trail segments, totaling 564 feet, will be relocated to avoid boggy areas;
- five switchbacks on the 1,000-foot section of Trail #24 between the two larger of Wind Lakes will be relocated to reduce trail gradients and make the resultant trail less hazardous to stock travel; and
- where deemed feasible and in place of planned puncheons, boggy areas will be crossed using a less obtrusive sub-surface structure to support user travel through soft areas.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellants' objections and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Wilderness Act. The appellants request the DN be rescinded. The appellants were not interested in an informal resolution meeting.

### ISSUE REVIEW

**Issue 1. The agency's own documentation in the EA and elsewhere clearly shows that the extent of the trail work and new structures are not the minimum requirements for management of the wilderness as wilderness.**



**Response:** The decision to reconstruct the Wind Lakes Trail is within the purview of the direction contained in the Wilderness Act, Forest Service Policy, and the Selway Bitterroot General Management Plan.

The Wilderness Act clearly allows for the management agency to use structures when determined to be the minimum necessary to administer the area for the purpose of the Act (Doc. I-11, pp. 2-4). To determine the minimum necessary action to respond to resource concerns in the Wind Lakes area, the District completed a Minimum Requirement Decision Analysis (Doc. I-11) and used that analysis in conjunction with the Forest Service Policy (FSM 2323.13) and the direction contained in the Selway-Bitterroot Wilderness General Management Direction (GMD) to develop a project that addresses resource damage concerns, while allowing established uses to continue in the Wind Lakes area. This selected alternative meets the guidelines for secondary trails in Opportunity Class 3 as described in Forest Plan direction found in the GMD (DN, p. 1). If the District did not address the resource concerns in the Wind Lakes area, significant resource damage would continue, resulting in degradation of wilderness character (GMD, p. A-1).

**Issue 2. Perhaps the worst problem is that the minimum tool analysis does not analyze the alternatives in the EA.**

**Response:** The Minimum Requirement Decision Guide is a document that was developed to assist a wilderness manager in thinking through how to respond to a specific resource problem or situation in wilderness. A wilderness manager will respond to the questions; then based on the specific situation, allowed uses and other direction, such as a wilderness management plans, determine the least action to take to resolve the problem. Once that action is identified, a minimum tool analysis is completed specifically to determine what kind of tools should be used to implement the action that is considered to be the minimum necessary. Powell Ranger District personnel chose to complete the worksheets to determine the minimum necessary action and through the minimum tool analysis determined the work could be completed using traditional tools (Doc. J-2).

**Issue 3. There is no category in the DN about preservation of wilderness character in the purpose and need section and that is a serious error. It (DN) is unresponsive to public comments and therefore violates both the Wilderness Act and NEPA.**

**Response:** Protection of wilderness character is a theme that starts with the Purpose and Need statement (EA, p. 2) and is carried throughout the documentation. The preferred alternative allows continued use of Trail #24 while protecting wilderness character, and also contains provisions for addressing future resource concerns that may result from the trail work on Trail #24 (DN, pp. 5, 7, and 10).

**Issue 4. The DN fails to recognize that the manual requires, where a choice must be made between wilderness values and visitor or any other activity, preserving the wilderness resource is the overriding value. Even if these trail structures were the minimum necessary, the EA and DN don't support such a finding.**

**Response:** As stated in the Background and Purpose and Need, there were serious resource problems on trails in the Wind Lakes area; severe drainage and erosion problems resulting from poor tread and deteriorating trail structures (EA, pp. 1-2). The District considered a variety of

options to address these resource concerns while allowing continuation of established use on the trail system. To not address these resource concerns would be to allow deterioration to continue, which is contrary to direction contained in the GMD (p. A-1). The selected alternative achieves balance between protection of wilderness values and continued visitor activity.

**Issue 5. The DN, without any evidence, concludes the Tom Beal trailhead is the most important one for horse access and that Trail #24 is the most important trail.**

**Response:** As stated in the EA (pp. 16-22), of the three options available to access Wind Lakes, the Tom Beal Trailhead and Trail #24 provide the best opportunities for both hikers and horse travel. A thorough discussion of all three options is contained in the EA.

**Issue 6. The District Ranger can't approve new structures such as the puncheon. There is no provision in the manual for delegating this authority to other levels. Generally, the FSM only allows District Rangers the authority to approve temporary structures, which this is not (see 2323.04e).**

**Response:** FSM 2323.04c allows for management of other resources in wilderness to be assigned to the Forest Supervisor or the District Ranger. Pursuant to FSM 1950.4d, Forest Supervisor Larry J. Dawson delegated signatory authority for the Wind Lakes Trails EA, DN, and FONSI to the District Ranger on June 16, 2005 (Doc. J-23).

**Issue 7. The EA fails to consider the impacts of treated materials on the environment. The EA leads one to believe that treated material will be used for puncheon. This material is highly toxic. That issue has not been analyzed or addressed in the EA.**

**Response:** As stated in the DN, page 1, all trail structures will be constructed out of native materials, thus eliminating the need to analyze affects of treated materials.

**Issue 8. The decision to upgrade the trail to meet some trail standards (way, mainline, secondary), which are not the trail standards in the GMD, are inappropriate for wilderness and violate the wilderness character of the area.**

**Response:** As stated in the DN, page 1, the preferred alternative maintains Trail #24 as a secondary trail. The reconstruction/relocation of Trail #24 will meet secondary trail guidelines and Opportunity Class 3 trail standards as described in Forest Plan direction found in the SBWGMD. No trails in the project area are being upgraded to meet standards.

**Issue 9. The DN and EA confuse the singular purpose of the Wilderness Act, found in section 2a, with the public purposes or uses which are compatible with wilderness that are found in section 4b.**

**Response:** The proposed project does not conflict with the purpose of wilderness as stated in Section 2(a) of the 1964 Wilderness Act. The preferred alternative strikes a balance between protection of wilderness character and continued enjoyment of the area by the American public. As stated in the Purpose and Need (EA, p. 2) and the Minimum Requirements Decision Analysis (Doc. I-11, p. 4), the proposed project serves to protect the resource for future generations by addressing serious resource damage.

**Issue 10. The FSM requires that trails are to be designed and located and lay lightly on the land. Other alternatives do a better job of meeting this concern than does the selected alternative.**

**Response:** The reconstruction/relocation of Trail #24 will meet secondary trail guidelines and Opportunity Class 3 trail standards as described in Forest Plan direction found in the SBWGMD. This standard is considered to be the minimum necessary to allow continued use of that trail. The work will be accomplished in a manner that will be as unobtrusive as possible while providing the greatest resource protection, using native materials and accomplishing the work with traditional tools (Doc. J-1, p. A-1; DN, p. 1).

**Issue 11. The appellants contend that the FONSI is inadequate, because “the FONSI concludes there are no scientific controversies with this proposal.”**

**Response:** The CEQ regulations [40 CFR 1508.27 (b)] set out 10 factors that must be considered in determining whether an EIS must be prepared. One factor is the degree to which the effects on the quality of human environment are likely to be highly controversial. The courts have been clear that the controversy factor is not meant to test whether there is public opposition to the proposals. The term controversial refers to cases where a substantial dispute exists as to the size, nature, or effect of the major federal action rather than to the existence of opposition to a use. The documentation for this project responds to the information provided by the public and supports that the effects of the project on the human environment are not highly controversial. The statement on page 14 of the DN that the effects of the selected alternative are not scientifically controversial is appropriate.

### RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellants. I recommend the District Ranger’s decision be affirmed and the appellants’ requested relief be denied.

/s/ Lesley W. Thompson  
LESLEY W. THOMPSON  
Appeal Reviewing Officer