

**APPENDIX G**

**FRANK CHURCH-RIVER OF NO RETURN  
WILDERNESS REMEDIAL PLAN**

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**United States  
Department of  
Agriculture**

**Forest  
Service**

**Region 1  
200 East Broadway  
P.O. Box 7669  
Missoula, MT 59807**

**Region 4  
324 25th Street  
Ogden, UT 84401**

File 2320 Date: November 17, 1998  
Code:  
Route  
To:  
Subject: Wilderness Watch Lawsuit, Frank Church River of No Return Wilderness  
To: Forest Supervisors Region 1 and Region 4

On August 31, 1998, District Court Judge Thomas Hogan dismissed the Wilderness Watch case against the Forest Service. His decision is attached for your careful review.

We believe the decision is well reasoned, well researched, instructive in its interpretation of the Wilderness Act, and we are thankful to now have the case brought to closure.

In retrospect, there are lessons to be learned from this seven-year process. The court, in its 1993 decision, agreed with Wilderness Watch that the Forest Service administration of the FCRONRW violated provisions of the Wilderness Act. As a remedy, the Court accepted the Forest Service's Remedial Plan to correct the deficiencies. The Forest Service was required to submit lengthy status reports to the Court and to the Plaintiffs. In our view, the FCRONRW was the beneficiary of the Court's decision, and Wilderness Watch, et al., appropriately took the Forest Service to task.

The Judge, however, in his latest decision, concluded that the Court does not wish to micro-manage wilderness. The Forest Service must use its expertise and discretion, within fairly narrow sideboards, to accomplish the overall purpose of the wilderness, and the several public purposes enumerated in the Act. In denying the plaintiffs motion for contempt and sanctions, Judge Hogan acknowledged the complexity of managing large wildernesses and found the Forest Service administration was well reasoned. He concluded Wilderness Watch's interpretation of the Wilderness Act was too narrow.

We must continue to manage wilderness within the decision space discussed by the Court. This decision validates the Forest Service analysis of the "minimum necessary" doctrine, framed by the often unique attributes of specific sites, resource needs, reasonable alternatives and existing management direction. We know you will continue to work with the Region's wilderness outfitters to find additional minimum impact techniques where appropriate.

/s/Kathleen A. McAllister for  
DALE N. BOSWORTH  
Regional Forester, Region 1

/s/Jack G. Troyer for  
JACK BLACKWELL  
Regional Forester, Region 4

Enclosure

cc:

WO-J.Stokes

RMLHW-S.Morton

[rmlhw/correspondence/morton/wilderness\\_watch\\_lawsuit](#) *I concur: s.morton10/22/98*



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1998 U.S. Dist. LEXIS 14457 printed in FULL format.

WILDERNESS WATCH, et al., Plaintiffs v. F. DALE ROBERTSON, et al,

Defendants

Civ. No. 92-740 (TFH)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

1998 U.S. Dist. LEXIS 14457

August 31, 1998, Decided

August 31, 1998, Filed

DISPOSITION: (\*1) Plaintiffs' motion for sanctions [74] DENIED; defendants motion to dismiss [75] GRANTED; case DISMISSED.

CORE TERMS remedial order, wilderness, permanent, Wilderness Act, regulations, campsite, outfitter, caches, contempt, approve, streams, temporary, complied, trails, site, feet, lakes, installation, enjoyment, terrain deference, implementing, corrals, water, tent, statutory language, preservation, recreational, conservation, administer.

COUNSEL For Plaintiff(s) Anne Veronica Simonett, Esq. Faegre & Benson Minneapolis, MN For Plaintiff(s): Colin H. Diehl Esq., Univ. Of Denver School of Law Denver, Colo

For Defendant(s): Gerald S. Fish, Esq., U.S. Dept. Of Justice, Washington, D.C.

JUDGES: Thomas F. Hogan, United States District Judge.

OPINION BY. Thomas F. Hogan

OPINION: MEMORANDUM OPINION.

Pending before the Court are plaintiffs' motion for sanctions and defendants' motion to dismiss the case. The Court held a hearing on these motions on May 20, 1996 at which it received exhibits and heard testimony from several witnesses. After considering the evidence presented at the hearing and the arguments made by the parties in their pleadings the Court finds that defendants have complied with the Court's Remedial Order. For this reason, the Court will deny plaintiffs' motion, will grant defendants' motion and will dismiss the case.

I Background

Plaintiffs are Wilderness Watch, Inc., a non-profit organization dedicated to the preservation of the National Wilderness System, and two individuals, William Worf [\*2] and Howard Spaletta. These individuals, along with several of the organizations other members use the Frank Church - River of No Return Wilderness ("Frank Church Wilderness") located in Idaho, for hiking, camping, horse packing, photography, and other recreational, scientific, and educational purposes.

Defendants include the United States Forest Service, the Chief of that agency, the Regional Forester for the Inter- Mountain Region, and the Regional Forester for the Northern Region. Plaintiffs brought this suit in 1992, alleging that defendants' maintenance policies for Frank Church Wilderness violated the Wilderness Act and the Forest Service's regulations. Plaintiffs' primary allegations were that defendants illegally permitted commercial outfitters to keep permanent structures, installations, piped water systems, and caches of goods, and that defendants otherwise failed to maintain the Frank Church Wilderness as required under the regulations. The Court agreed with plaintiffs and on April 8, issued a Memorandum Opinion which found that the manner in which defendants maintained Frank Church Wilderness "directly violates the express provisions of the Wilderness Act and [\*3] its implementing regulations."

In order to ensure correction of these violations, the Court entered a Remedial Order on March 14, 1994. n1 The order was designed to ensure that defendants administer the outfitter and guide operations within the Frank Church Wilderness in compliance with the Wilderness Act. The Remedial Order requires defendants to ensure that all caches of goods are removed from the wilderness, and to assign spaces to outfitter groups in compliance with the regulations. Furthermore, the remedial order requires that permanent structures not be permitted, except as the Forest Service Authorized Officer determines that they are "necessary to meet minimum requirements for the administration of the area" as provided under the Wilderness Act. Attached to the order are four exhibits, which detail the criteria for evaluation of these structures. The Order also required defendants to submit regular status reports summarizing accomplishments under the terms of the remedial order n1 The remedial order was, in part, retroactively applied to the previous September.

[\*4]

On November 27, 1995, plaintiffs moved for contempt sanctions, in response to defendants' October 1995 Accomplishment Report. Plaintiffs alleged that defendants have failed to satisfy the terms of the remedial order, and that defendants' actions violate the Wilderness Act, its implementing regulations, and the Forest Service manual and the Frank Church Management Plan. In response, defendants moved to dismiss the Complaint, on the grounds that they have complied with the remedial order. The Court held a hearing on those motions on May 20, 1996. At that hearing the Court received several exhibits, and heard the testimony of four individuals - William Worf president of Wilderness Watch, Howard Spaletta, a retired engineer and regular user of the Frank Church Wilderness, George Matejko Supervisor of the Frank Church Board of Directors, and Kenneth Wotring, a wilderness coordinator at Frank Church Wilderness. Those individuals testified to the condition of the Wilderness, and to the steps taken, and being taken, to comply with the Remedial Order.

## II Discussion

### A. Legal Standards

This case involves questions of compliance with federal statutes and regulations' as well as with [\*5] a Court Order. Therefore, the case concerns interpretation of the statutes, and of the Remedial Order. Defendants contend that their interpretations deserve deference, and should only be set aside if unreasonable. Defendants are correct that the Court should give deference to their interpretation of statutes and regulations, to the extent that it is reasonable, in light of both the underlying statute and the legislative history. See e.g. *Securities Industry Association v. Board of Governors of the Federal Reserve System*, 468 U.S. 137, 142-43, 82 L. Ed. 2d 107, 104 S. Ct. 2979 (1984). However, this deference sets the framework for judicial analysis but does not replace it and the Court must reject an interpretation that is at odds with the statutory language or that frustrates Congressional intent. *Id.*; *FEC v Democratic Senatorial Campaign Committee* 454 US. 27. 32, 70 L. Ed. 2d 23, 102 S. Ct. 38 (1981).

Furthermore, defendants are incorrect about their interpretation of the Court's Remedial Order. The Court interprets and enforces its own orders; the task is not left to an agency that is subject to those orders. See e.g., *Peters v. National Railroad Passenger Corp.*, [\*6] 296 U.S. App. D.C. 202, 966 F.2d 1483 1487 (D.C. Cir. 1982). Therefore, the Court need show no deference to defendants interpretation of the Remedial Order.

Plaintiffs ask the Court to hold defendants in contempt, for failing to comply with the Remedial Order. There is no debate that the Court has the inherent power to enforce its orders through the civil contempt process See *Shillitani v. United States*, 384 U.S. 364, 370, 16 L. Ed. 2d 622, 86 S. Ct. 1531 (1996). In order to impose sanctions, the Court must (1) enter an order, (2) find disobedience of that order, and (3) impose sanctions, which begin with a conditional finding of contempt, and later may proceed to exaction of the threatened penalty. See *National Labor Relations Board v. Blevins Popcorn Co.*, 212 U.S App.D.C. 289, 659 F.2d 1173 1184(D.C. Cir. 1981) A violation need not be intentional or willful to warrant contempt; however, the violation must be established by clear and convincing evidence. *Blevins*, 659 F.2d at 1183-84. See also, *Armstrong v. Executive Office of the President* 303 U.S. App. D.C. 107, 1 F3d 1274, 1289 (D.C. Cir. 1993). Furthermore, contempt will generally lie only for violation [\*7] of an order that is both clear and unambiguous. *Armstrong*, 1 F.3d at 1289. Thus, the Court can begin the contempt process only if it finds, by clear and convincing evidence, that defendants have violated an unambiguous provision of the Remedial Order.

### B Disputed Areas of Compliance

The Remedial Order requires changes in the management of the Frank Church Wilderness; it appears undisputed that defendants are in compliance on some issues. n2 However plaintiffs assert that defendants remain in violation for three reasons. First, plaintiffs assert that defendants failed to remove all caches from the Wilderness, as required by paragraph 19 of the Remedial Order. Second, plaintiffs assert that defendants continue to improperly locate campsites, within 200 feet of lakes, streams and trails in violation of the Wilderness. Finally plaintiffs assert that defendants have approved, and continue to approve, permanent structures on campsites, in violation of the Remedial Order and the Wilderness Act. n2 For example, neither party disputes that defendants have altered their method of assigning campsites, in compliance with the Order.

[\*8] The Court heard substantial testimony on both the condition of the Frank Church Wilderness and the policies pursued by the Forest Service to comply with the Court's order. In consideration of that testimony, and of the exhibits presented to the Court, the Court finds that defendants have complied with the statutes and with the Remedial Order in each of these three areas.

#### 1. Caches

The Remedial Order directs that "all caches will be removed from the Wilderness." When the Court granted plaintiffs' motion for summary judgment and entered the Remedial Order, plaintiffs had produced substantial evidence through direct testimony, photographs, and other media, that defendants permitted outfitters to permanently cache a wide variety of items at campsites including Stoves, tents, food, and other unsightly property. By the time of the May 20, 1996 hearing however the evidence established that these caches had been eliminated. Defendants demonstrated that they had not permitted outfitters to maintain caches, neither formally or informally. Defendants admitted that, in a few isolated instances, outfitters had not cleaned their campsites in a timely manner but demonstrated that cleanup was [#9] precluded by extenuating circumstances, such as early and heavy snowfall. In addition, defendants showed that in every case, they required cleanup as soon as possible, and that they took disciplinary action against those outfitters who failed to comply. The testimony and evidence presented to the Court establishes that defendants do not permit caches on campsites and that they have taken sufficient action to prevent outfitters from violating this policy. Therefore, the Court finds that defendants are in compliance with this portion of the Remedial Plan.

#### 2. Location of Campsites

The Frank Church River of No Return Wilderness Management Plan states that: All camp facilities and improvements should be at least 200 feet from trails, streams and lakes, where terrain permits. Consider relocating, if possible, to where terrain permits. Paragraph 14 of the Remedial Order directs defendants to consider this policy as one of the factors in assigning campsites for use in the Wilderness. Plaintiff asserts that, because some sites do not comply with this single passage, defendants are in violation of the Remedial Order. There is no dispute that a certain number of campsites [\*10] are within 200 feet of trails, streams, or lakes. Defendants assert, however, that they have taken all possible steps to limit the number of such sites, given practical limitations, such as terrain and environmental impact.

The Remedial Plan identified this criterion as only one of seventeen for consideration of site locations. Furthermore, while the Court entered the order to push defendants to correct glaring shortcomings in the management of the Frank Church Wilderness, the Court does not wish to engage in micro-management of the area. Therefore while the Court is certainly concerned with defendants' attempts to comply with the Remedial Order, the Court is also mindful that defendants are confronted with a vast wilderness, which presents many different types of terrain and physical conditions and that defendants must be granted a certain amount of discretion to make decisions based on these conditions, and on their substantial expertise in these matters. For this reason, the Court looks to determine whether defendants have exercised their discretion reasonably, and whether they have complied to the fullest extent possible, given the practical realities of the Wilderness.

The [\*11] evidence and testimony in this case demonstrate that defendants have chosen and maintained locations that comply with the requirements of the Wilderness Act and the Court's Remedial Order. The realities of terrain, the requirements of safety and use, and the concerns for degradation of the land occasionally preclude location of a campsite more than 200 feet from all streams, lakes, or trails. However, defendants have established that they seek to limit the number of these campsites as much as possible, and to locate all sites as far from streams, lakes, and trails as the practical circumstances will allow. n3

n3 Plaintiffs assert, as an additional point, that defendants have redefined some waters as "seeps" instead of "streams" and that campsites are within 200 feet of these waters. Plaintiffs have not shown that defendants' definition of these waters is unreasonable; therefore, the Court is unwilling and unable to substitute its micro-management for the expert judgment of the agency in charge of those matters. \*12]

The Remedial Order does not require that defendants transcend practical limitations imposed by the Wilderness. Furthermore while the Management Plan states a strong preference for location away from certain landmarks, it too recognizes the realities that may prevent full accord with that preference. Therefore, defendants' practice of locating as many sites as possible, but not every site, more than 200 feet away from streams, lakes, or trails complies with the Court's Remedial Order, and it represents a reasonable interpretation of defendants' responsibilities under the Wilderness Act.

3. Permanent and Temporary Structures Finally, plaintiffs contend that defendants frequently approve the use of permanent structures, in violation of the Remedial Order. Plaintiffs appear to concede that defendants approve only structures made of native materials, and that defendants have not approved any large or fully-constructed structures, such as corrals, cabins, or sanitation facilities. Instead, plaintiffs' assert that smaller improvements, such as base logs, hitching posts, and stored lumber that may be used for temporary corrals, which are considered "permanent" under the Remedial Order, [\*13] n4 and are prohibited by that Order and by the Wilderness Act.

n4 Paragraph 8 of the Remedial Order defines "permanent structures and installations" as "Any standing structure or installation, including tent frames, tent platforms, toilet structures, tent floors or base logs, hitch racks...standing corrals or furniture, whether they are constructed of native or non-native materials, if not removed when not in use." (Emphasis added).

Plaintiffs present two arguments in support of their position. First they assert that the terms of the Remedial Order prohibit approval of these permanent structures. Second, plaintiffs argue that, even if the Court's Order permits approval, the Wilderness Act, and its associated regulations, do not.

a. Compliance With Remedial Order

The Remedial Order requires that all permanent structures - specifically including standing corrals, hitch racks, and base logs - be removed, except to the extent that the Forest Service Authorized Officer determines that they are "necessary [\*14] to meet minimum requirements for the administration of the area for purposes of the Wilderness Act." The Order directs the Forest

Service to consult three attachments, as a guide to which structures should be approved as necessary for administration. It is clear that the Remedial Order contemplates some minor, unobtrusive permanent structures to the extent they are necessary to meet the minimum requirements for administration of the Wilderness. Defendants' witnesses testified that, in all cases where permanent structures are authorized, the Forest Service officers consider the use of temporary structures, but determine that a permanent structure is necessary to carry out the purposes of the Wilderness Act. There is no evidence before the Court that any such determination is unreasonable. Defendants have not approved any "motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges' electronic Installations, and similar structures," which are clearly prohibited under the reguladons. See 36 C.F.R. \_ 293.8. The only Structures approved in the Wilderness are minor, relatively unobtrusive, partially assembled conveniences constructed of native [\*15] material. The decision to permit these structures is not unreasonable, and is within the discretion afforded by the Remedial Order. For this reason, defendants have not violated the Court's Order.

b. Compliance With Wilderness Act

Plaintiffs also contend that, even if defendants have complied with the terms of the Remedial Order, the Wilderness Act itself sets a higher standard and prohibits these permanents structures, They assert that the Forest Service's interpretation improperly gives defendants "carte blanche" to approve permanent structures, in violation of the law. Therefore, argue plaintiffs, defendants remain in violation of the statute, and dismissal of the case is improper. The Wilderness Act directs that, "except as necessary to meet minimum requirements for the administration of the area for the purpose of [the Act]... there shall be...no structure or installation. " 16 U.S. C. 1133. The statute therefore manifests a presumption against structures, except as minimally necessary. The regulations elaborate further - they expressly prohibit large structures' such as hotels, lodges, and other buildings, and explicitly permit temporary structures "to the extent [\*16] necessary for realizing the recreational or other wilderness purposes." 36 C.F.R. 293.8.

Plaintiffs assert that the Wilderness Act prohibits all permanent structures, under all circumstances. Furthermore plaintiffs argue that defendants may not approve even temporary structures, except to pursue the Act's single purpose - the preservation of the area unimpaired for future use and enjoyment. The Forest Service presents a different interpretation of the statute. The 1995 Forest Service Manual - which represents the agency's most recent, authoritative interpretation of the Wilderness Act and its implementing regulations- does not contain a blanket prohibition on permanent structures, but instead conditionally prohibits such structures 'unless they are necessary to meet the minimum requirements for administration of the area for the purposes of the Wilderness Act". The Manual also recognizes that strict conservation is merely one of the statute's several purposes, and that the Service must consider the minimum needs of those who use wilderness areas.

Defendants' interpretation is neither unreasonable nor at odds with the legislative intent behind the Wilderness Act. While the statute [\*17] expresses a clear preference against permanent structures, it does not expressly prohibit such structures. Congress could have imposed a blanket prohibition, but did not. Instead, Congress recognized that some minor structures, including pemanent ones, may be "necessary to meet minimum requirements for the administration of the

area." 16 U.S.C. 1133 Even the regulations do not preclude all permanent structures: they prohibit certain major structures, and provide for approval of certain temporary structures, but do not discuss the type of unobtrusive structure involved in the present case. See 36 C.F.R. 293.8. Thus, the statutory language leaves open the reasonable interpretation that certain limited, permanent structures may be permitted, if they are necessary for minimum administration of an area; n5 This is the interpretation adopted by the Forest Service, and is also the conclusion reached by the Court in paragraph 20 of the Remedial Order n5 Indeed, the 1988 opinion of the Department of Agriculture's Office of General Counsel, which plaintiffs cite as restating the proper interpretation of the statute, did not counsel a prohibition against all per- structures, but only against those that were not needed for "minimal management of the wilderness." [\*18] Not only is the Forest Service's interpretation reasonable in light of the statutory language, but it is also a reasonable means of pursuing the statutory purposes. The stated purpose of the Wilderness Act is to establish a Wilderness Protection System, and to "secure for the American people of present and future generations the benefits of an enduring resource of wilderness." 16 USC. 1131(a) The statute develops that purpose farther, and directs that wilderness areas be administered for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of the wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness. Id. Thus the statute clearly directs defendants to administer the Wilderness with an eye not only toward strict conservation, but also to ensure the "use and enjoyment of the American people."

The Wilderness Act does not direct defendants to pursue a single, limited purpose, as plaintiffs suggest, but it instead requires them to serve [\*19] a number of public purposes, and to foster "recreational, scenic, scientific, educational, conservation, and historical use." 16 U.S.C. 1133(b). For this reason' defendants' management decisions must consider all these purposes, and defendants must undertake a minimum of administration, in order to make the Wilderness accessible to those Americans who wish to use it.

Thus, the Forest Service's interpretation of its statutory authority - that it may approve some permanent structures, but only as necessary for minimal management of the wilderness - is reasonable in light of the statute, regulations, and legislative purpose of the Wilderness Act. This interpretation, which is in accord with the Court's Remedial Order, does not grant the agency carte blanche to approve unsightly structures; it limits the Forest Service, by obligating it to seriously consider less permanent alternatives, and to grant approval only when necessary to administer the wilderness for its many visitors. The testimony and evidence before the Court demonstrates that defendants have met their obligation, and therefore that their actions do not violate the Wilderness Act, or its implementing regulations. [\*20]

### III Conclusion

The Court must first deny plaintiffs' motion for contempt sanctions. The Court may impose these sanctions only if defendants have violated a clear order of the Court. Although plaintiffs allege several ongoing violations, none of these alleged actions run afoul of the Court's Remedial Order; therefore, sanctions are not appropriate. Defendants' motion demands a deeper inquiry, which requires the Court to examine defendants' interpretation of their statutory obligations. The Court is not interested in managing the Frank Church Wilderness; thus, the Court must defer to

reasonable management decisions, since it is defendants, and not the Court, who are delegated the statutory authority, and who have accumulated the practical expertise, to make those decisions. Therefore, the Court may set aside defendants' decisions only if they do not reasonably comply with the statutory language. Plaintiffs raise three allegations of noncompliance. The evidence before the Court demonstrates, however, that defendants have made reasonable decisions, based on reasonable interpretations of the Wilderness Act. Thus, defendants have complied both with the Court's order, and with the provisions [\*21] of the Wilderness Act. For this reason, the Court's involvement is no longer necessary to ensure compliance with the law, and the Court may dismiss this case as moot.

August 31, 1998  
Thomas F. Hogan  
United States District Judge

**ORDER**

For the reasons stated in the Court's Memorandum Opinion, it is hereby ORDERED that plaintiffs' motion for sanctions [74] is DENIED; it is further ORDERED that defendants' motion to dismiss [75] is GRANTED; it is further ORDERED that this case is DISMISSED.

August 31st, 1998      Thomas F. Hogan      United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

WILDERNESS WATCH, et al., Plaintiffs, v, F. DALE ROBERTSON, Chief of the United States Forest Service, et al., Defendants,

ORDER

The Court hereby adopts, as the order of the Court, defendants' remedial plan approved by order filed September 10, 1993, as follows:

FOREST SERVICE REMEDIAL PLAN  
FRANK CHURCH--RIVER OF NO RETURN WILDERNESS

The objective of this remedial plan is to ensure that outfitter and guide operations within the Frank Church--River of No Return Wilderness are in compliance with applicable provisions of the Wilderness Act and implementing Forest Service regulations.

I. Definitions

1. Assigned site: A site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public, during the authorized period of occupancy. Holders are assessed a fee for use of assigned sites. Generally, the boundary of an assigned site will be described as the immediate area surrounding authorized temporary structures and installations.

2. Permit: A revocable and noncompensable authorization which, when signed by the authorized officer and holder, allows specified occupancy and use of wilderness land and contains the terms and conditions of such occupancy and use, including an approved operating plan for the period of the permit and an annually approved itinerary.

3. Holder: Any applicant who has received a special use authorization to conduct outfitting and guiding.

4. Wilderness: The Frank Church--River of No Return Wilderness, as designated by the Central Idaho Wilderness Act of 1980.

5. Special Use Authorization: A permit that grants privileges of occupancy and use of wilderness land, subject to specified terms and conditions.

6. Cache: Storage of non-native materials and stock feed in wilderness outside the permitted period of occupancy at a site.

7. Non-native materials: All metal, plastic, rubber, cement, processed or dimensional lumber, or other manufactured materials.

8. Permanent structures and installations: Any standing structure or installation, including tent frames, tent platforms, toilet structures, tent floors or base logs, hitch racks, meat poles, piped water collection and delivery systems, springboxes, permanent signs, buildings of any kind, storage structures, standing corrals or furniture, whether they are constructed of native or non-native materials, if not removed or dismantled when not in use during periods of authorized occupancy.

9. Permanent piped water collection system: Any spring box or other conveyance or collection device designed or intended to collect water from any natural spring to an assigned site for purposes of human use or stock watering if that system or device is not removed when the assigned site is not in use.

10. Permanent piped water delivery system: Any pipe or ditch or other conveyance or distribution system designed or intended to transport water from any natural spring to an assigned site for purposes of human use or stock watering if that system or device is not removed when the assigned site is not in use.

11. Priority use: A Forest Service commitment to the holder of a permit for outfitting and guiding for a specific duration. The amount of use is based on the holder's past use and performance, and on forest land and resource plan allocations.

12. Revocation: Cessation of a special use authorization by action of the authorized officer prior to the end of the specified period of occupancy or use due to the holder's noncompliance with the terms of the authorization, or for reasons that are in the public interest. Revocations are appealable by the holder.

13. Suspension: Temporary revocation, in whole or in part, of occupancy or use privileges granted under a special use authorization.

## II. Remedial Plan

14. Sites will be assigned and approved by the Forest Service Authorized Officer on an annual basis. Location and authorized season of occupancy will be based on proposed use, type of recreation experience being provided, resource considerations, and minimizing impacts with non-outfitted recreation users. Considerations in Attachment A of the Forest Service remedial plan will be used by the Forest Service Authorized Officer in determining site designation.

15. Assigned sites will be documented in the Annual Itinerary and Operating Plan which will be included as an exhibit to and made part of the Outfitter and Guide Permit. The Annual Itinerary and Operating Plan will be revised and approved annually. The Operating Plan will include a map of specific assigned site locations and will document, as a minimum, perimeter descriptions, authorized season of use, use of structures or installations where permissible under the terms of the Wilderness Act, and type of service being provided from the assigned site. Usually, the authorized season of use at assigned sites will not exceed 6 consecutive months and will be limited to the fall big game hunting season. In rare situations, a Forest Service authorized

officer may approve exceptions based on type of recreation service being provided and resource considerations.

16. All assigned sites will be posted on site and at the wilderness trailheads during periods of authorized occupancy. Signing will identify outfitter name, assigned area description, and authorized season of occupancy and use. Signs will state that the site is assigned to an outfitter and guide who is providing a public service under special use permit, for which they pay a fee. In addition, signing will indicate that the Forest Service reserves the right to use and allow others to use any part of the permit area.

17. Authorized temporary structures and installations, use of assigned sites by the holder, and priority use permits will not be considered or promoted as equipment or assets that are available for sale during change of ownership of an outfitting and guiding business. The permit is not assignable and terminates upon change of ownership of the business. The decision whether to issue a new permit to a holder or successor in interest is at the absolute discretion of the Forest Service. The authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued. There is no guarantee of the use and occupancy of previously assigned sites. Upon abandonment, revocation, termination, or expiration of the special use authorization, the holder will be required to remove all structures and improvements and restore the site.

18. Based on holder past performance, a performance bond acceptable to the Forest Service may be required of the holder to ensure 1) removal of all unauthorized improvements or caches and 2) restoration and rehabilitation of assigned site(s) at the time the permit is terminated. Bond necessity will be determined by the Forest Service Authorized Officer and will be based on past performance concerns.

19. All caches will be removed from the Wilderness by December 31, 1993. All Operating Plans for the 1993 operating season will include a schedule for removal and restoration and rehabilitation plans.

20. Existing permanent standing corrals/hitch-racks, base logs, and permanent water collection and delivery systems, including spring boxes, that are not permissible under the Wilderness Act will be removed by December 31, 1993. Existing structures and installations will be evaluated by the Forest Service Authorized Officer to determine whether they are, "necessary to meet minimum requirements for the administration of the area for the purposes of (the Wilderness Act)." The criteria disclosed in Attachments B through D will be used for the evaluation.

21. Results of the evaluation in Paragraph 20 will be submitted for review to the holder involved, the plaintiffs in this action, and the Regional Forester of the Intermountain Region prior to becoming final, and no later than July 15, 1993. The Regional Forester will make the final determination on those permanent structures and installations and permanent piped water collection and delivery systems that are determined to be necessary, as that term is understood under the Wilderness Act.

22. Operating Plans will reflect final determinations on permanent structures and installations and permanent piped water collection and deliver systems and will identify schedules for removal, where appropriate. Removal schedules and a restoration and rehabilitation plan will be incorporated into Operating Plans by September 1, 1993.

23. Holders will not be authorized to occupy and use assigned sites in 1994 until Forest Service personnel have verified that actions identified in Paragraphs 19 and 22 have been accomplished. Forest Service compliance inspections will be completed no later than August 1 each year. Prior to conducting inspections, the plaintiffs in this action, the holder, and the Idaho Outfitters and Guides Licensing Board will be notified of compliance inspection dates and invited to attend.

24. Failure of the holder to meet time frames identified in Paragraphs 19 and 22 is considered non-compliance with the terms and conditions of the Special Use Permit. Non-compliance is considered unacceptable performance by a holder and shall result in immediate suspension or revocation, as appropriate to the circumstances. Non-compliance may also result in loss of priority use assignment. The holder will be allowed an opportunity to correct the non-compliance within time frames determined by the Forest Service Authorized Officer. Failure to correct the non-compliance will result in immediate revocation. Upon revocation, the Forest Service will invoke the performance bond to remove remaining unauthorized items and to restore and rehabilitate the site, as necessary.

25. The Forest Service will amend the Bitterroot, Boise, Challis, Nez Perce, Payette, and Salmon National Forest Land and Resource Management Plans to conform with the terms and conditions of this Remedial Plan.

26. The Forest Service will submit a "Remedial Plan Accomplishment Report" to the Court and to the plaintiffs summarizing accomplishments under the terms and conditions of this Remedial Plan. A Status Report will be submitted by January 15, 1994, July 15, 1994, and January 15, 1995.

SO ORDERED.  
15, March, 1994.

/s/ Thomas F. Hogan  
United States District Judge

Attachment A  
Campsite Assignment Considerations

Introduction: Proper selection of assigned campsites is critical to ensure the protection of the wilderness resource. Campsites should be assigned in locations where use of permanent structures and installations is minimized, to the extent possible. The following factors are to be considered by the Forest Service Authorizing Official when assigning and reviewing campsite locations.

Is use of the campsite appropriate to meet Wilderness Management Objectives/Purposes?

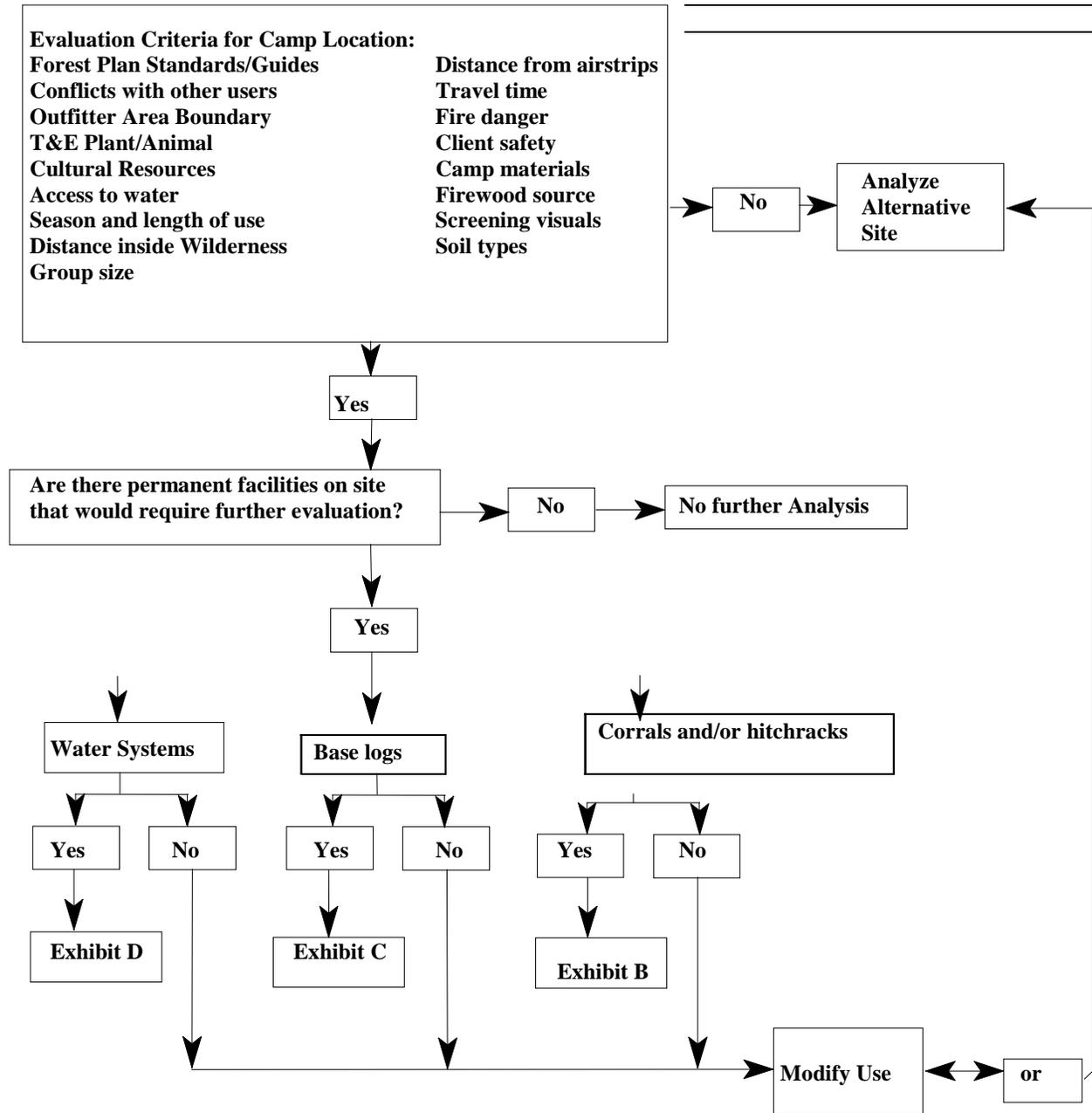


EXHIBIT B  
HITCHRACKS AND/OR CORRALS

Background: The Wilderness Management Plan states "Permanent hitchracks and/or corrals may be authorized, if necessary, for the humane treatment of stock or to solve a continuing resource problem." The basic test is whether permanent facilities will better provide for wilderness resource protection. Use of temporary facilities is the preferred option. When temporary facilities can not provide for the protection of wilderness resource and provide for the humane treatment of stock, then the following decision criteria will be used to evaluate the need for permanent facilities.

When evaluating the minimum necessary stock holding facilities, the authorized officer must first evaluate IF a corral or hitchrack is the minimum necessary and second determine what TYPE of stock holding facility is the minimum necessary. Temporary alternatives will be fully exhausted before authorizing permanent facilities.

DECISION CRITERIA

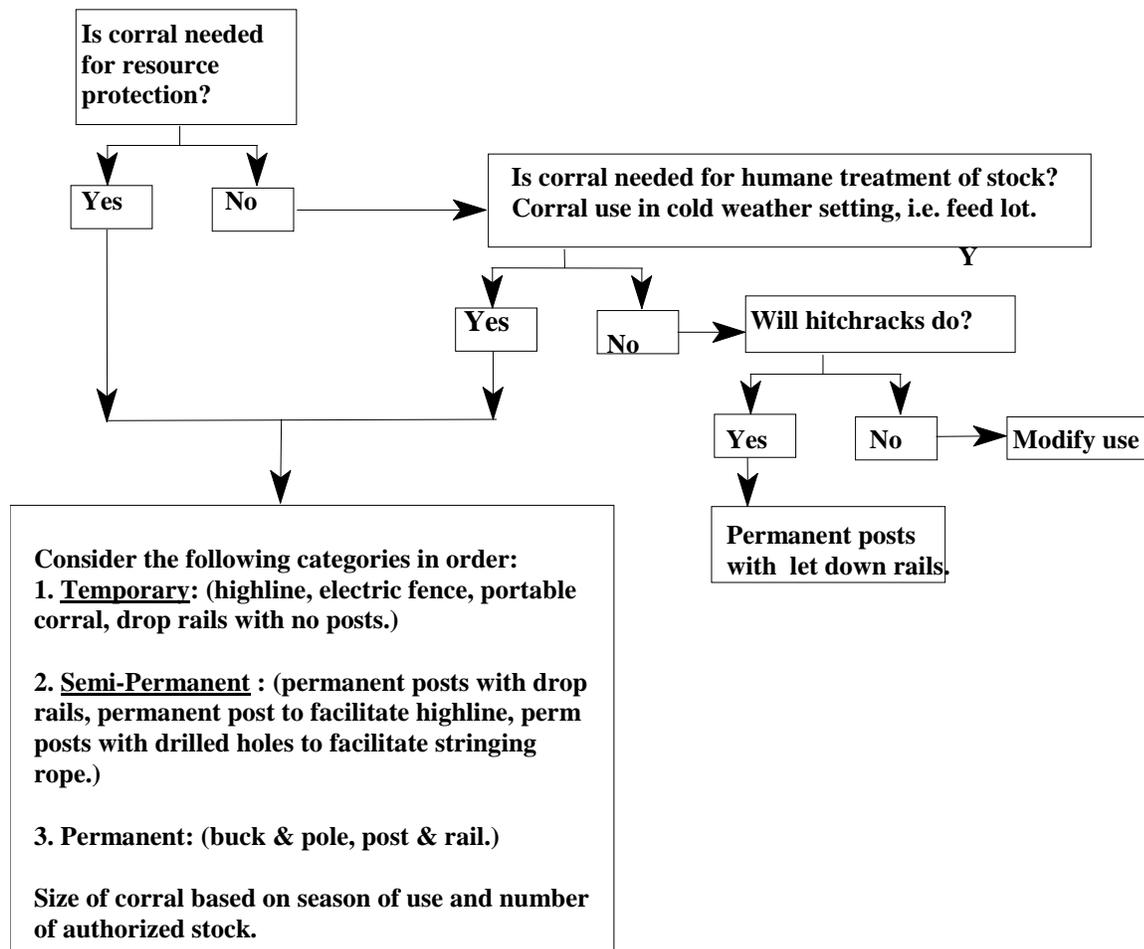
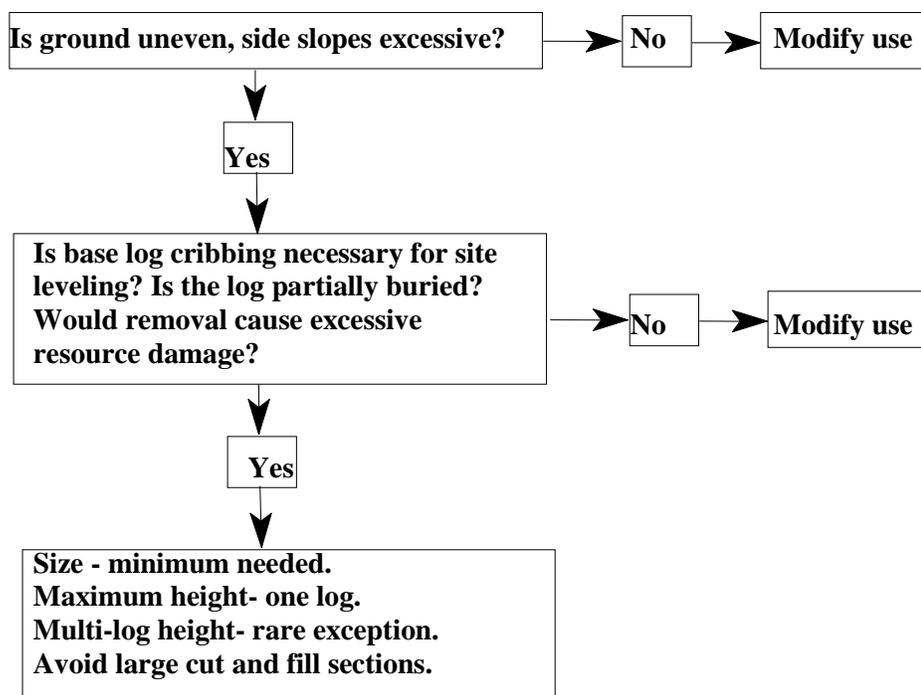


EXHIBIT C  
BASE LOGS

Background: The Wilderness Management Plan states "Ground logs for tents may be allowed on case-by-case basis." Base logs for tents provide two functions: 1) As part of the tent framing/support structure; and, 2) to provide cribbing for tent pad leveling. Only base logs used for cribbing of steep or uneven side slopes may be allowed to remain. Base logs used merely to outline the tent pad will be temporary. When temporary facilities can not provide for the protection of wilderness resources, the following decision criteria will be used to evaluate the need for permanent base logs.

DECISION CRITERIA



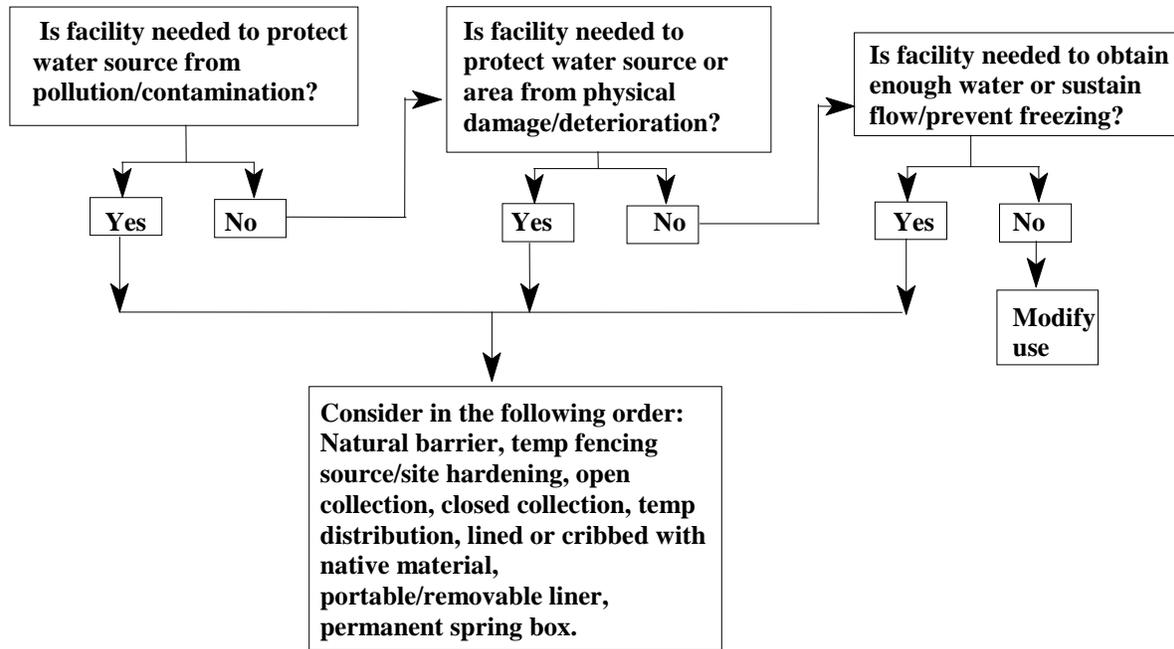
## EXHIBIT D WATER SYSTEMS

Background: The Frank Church-River of No Return Wilderness (FC-RONRW) Agreement of May 24, 1990, pursuant to the lawsuit settlement, Idaho Outfitter and Guides Association v. U.S. Attorney, No. N-87-0426, states "Removal of all in-camp plumbing fixtures connected to water systems and underground piping to tents by 1990. Implementation of approved methods of water collection and distribution for stock needs that best protect the wilderness resource values by 1992."

Within the FC-RONRW there exists 80+ assigned campsites. Most of these camps use undeveloped live water sources such as streams, ponds, or lakes. Fewer (about 22 camps) have some level of developed water systems. Developed water systems are generally springs or seeps with either closed fabricated collection boxes or built up and/or dug out open collection pools. Some of these seeps and spring developments have distribution systems, varying from permanent buried pipes, temporary over ground water lines, or small diversion ditches. In most cases, the camps which use a distribution system with a developed water source are located in water scarce areas where there is the need to protect the development from stock trampling and to collect and store water.

When temporary facilities can not provide for the protection of wilderness resources, the following decision criteria will be used to evaluate the need for permanent water system developments.

DECISION CRITERIA



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