Wilderness Awareness Workshop

# Case Study Discussion Form

**1. Issue:** Authorization of water improvements in Wilderness via special use permits.

**2. Situation:** Middle Fork Lodge is a private inholding located on the Middle Fork River, within the Frank Church – River of No Return Wilderness. The Lodge currently has an impoundment at Thomas Creek on FS land that provides water for irrigation of approximately 30 acres of pasture and a secondary power supply for electricity to structures. The impoundment prevents fish passage. The dam site and pipe transporting water to the private property are authorized under a special use permit issued in 1998. A 1996 application for a permanent conditional easement under P.L. 99-545 is pending decision. Water rights are being claimed under the state adjudication process. The FS will not contest the claim. The Lodge has proposed to repair the leaking dam and install a fish ladder to allow fish passage. Three alternatives are to be considered: repair the existing dam on FS land with or without motorized equipment or mechanical transport, or move the dam to private property and remove/restore the old site. Thomas Creek could potentially support Bull Trout (a listed species) and West Slope Cut-Throat Trout.

**3. Management Question(s):** Should the request to repair the dam be approved?

Related questions:

* What criteria are used to evaluate other proposals for water improvements in the Wilderness?
* How do the provisions of The Wilderness Act and the Central Idaho Wilderness Act apply to:
	+ Existing or proposed improvements under Special Use permit?
	+ Existing or proposed improvements not under Special Use permit?
	+ Existing improvements created prior to the passage of the CIWA?
	+ Improvements at administrative sites?
	+ Improvements at other agency facilities? (for example, State Fish and Game facilities)

**4. Direction/Guidance:**

**a. What does the Wilderness Act say?**

**PROHIBITION OF CERTAIN USES**

 (c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), 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.

***Water resources and grazing.*** (4) Within wilderness areas in the national forests designated by this Act, (1) the

President may, within a specific area and in accordance with such regulations as he may deem desirable,

authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial;…

**b. What does the Central Idaho Wilderness Act say?**

Section 5 (c) Subject to valid existing rights, the River of No Return Wilderness designated by this Act shall be administered by the Secretary in accordance with the provisions of the Wilderness Act: *Provided*, That any reference in such provisions to the effective date of this Act.

Section 7 (b) As provided in paragraph 4(d)(7) of the Wilderness Act, nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

**c. What is your agency policy?**

2323.43d - Existing Water Development Structures. If needed and in the public interest, or a part of a valid existing right, permit maintenance or reconstruction of existing structures that does not change the location, size, or type, or which would not increase the storage capacity of a reservoir. Structures include reservoirs, ditches, and related facilities for the control or use of water that were under valid special-use permit or other authority when the area involved was incorporated under the Wilderness Act. For approval, see FSM 2323.04.

Do not permit the use of motorized equipment and mechanized transportation for maintenance of water-development structures except where practiced before the area was designated wilderness. See section 2326 for motorized and mechanical use approval responsibilities.

Evaluate each improvement in the forest plan to determine if continued use of the improvement is compatible with the wilderness resource. If the improvement is to remain, describe maintenance needs and methods of accomplishing the work in the wilderness implementation schedule. If not, allow the improvement to deteriorate naturally. In the case of high hazard dams or other large structures where downstream values are jeopardized by imminent failure or loss, breach or remove the structure in a manner that does not have an adverse effect on the downstream values (FSM 2324.3).

2326 - USE OF MOTORIZED EQUIPMENT OR MECHANICAL TRANSPORT IN WILDERNESS

2326.02 - Objectives

 1. Accomplish management activities with nonmotorized equipment and nonmechanical transport of supplies and personnel.

 2. Exclude the sight, sound, and other tangible evidence of motorized equipment or mechanical transport within wilderness except where they are needed and justified.

2326.03 - Policy

 1. Ensure that Forest Service employees acquire and maintain necessary skills for primitive travel by foot, horse, canoe, or other nonmechanical means and the use of hand tools. For definitions see FSM 2320.5.

2. Do not approve the use of motorized equipment or mechanical transport unless justified as described in 2326.1. For procedures and examples see FSH 2309.19. For definitions see FSM 2320.5.

2326.1 - Conditions Under Which 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 motor boat 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.

Specify, for each wilderness, the places and circumstances in which motorized equipment, mechanical transport, or aircraft are necessary for protection and administration of the wilderness and its resources in the forest plan.

The Line Officer approving the use of motorized equipment, aircraft, or mechanical transport shall specify what uses of that equipment are suitable and will have the least lasting impact to the wilderness resource. Schedule use of this equipment to minimize impact on wilderness visitors.

**d. What does your forest plan or wilderness plan say?**

FC-RONR Wilderness Management Plan:

(III)(B)(3)(i) Protect both resident and anadromous fish spawning and reading habitat.

(III)(B)(3)(j) Maintenance of wilderness values will be overriding if fish and wildlife management objectives are incompatible with other general wilderness values.

(III)(D)(3)(f) Permit existing domestic and power-generating water developments until no longer needed.

(III)(D)(3)(h) Motorized transport and mechanized equipment will not be permitted for maintenance of water developments unless there is no reasonable alternative.

(III)(F)(4)(c)(1)(a) On an opportunity basis, cancel or revise special use permits to reduce conflicts with wilderness values.

**5. What are your management options?**

*Remember to split this minimum requirements decision making process into two parts:*

 *Step 1 – Is any administrative action necessary?*

 *Step 2 – If action is necessary, what is the minimum tool/method that will cause the least*

 *degradation of the wilderness resource and character?*

 Step 1: Is administrative action necessary? \_\_\_\_ YES \_\_\_\_\_ NO

 Why?

Step 2: If the answer to Step 1 is YES, administrative action is necessary, then discuss the following

 alternatives and others that your group develops:

1. Approve the project as proposed using motorized equipment or mechanical transport.

2. Approve the project as proposed using non-motorized equipment and non-mechanical transport.

3. Remove the existing dam, restore the site, and have a new dam with reservoir and fish ladder constructed along the same creek but on private property.

What other alternatives are feasible?

**6. What is your decision?**

**7. What is the rationale for your decision?**

The rationale should link the decision made to wilderness management objectives, law, policy, forest plan standards and guidelines, etc. and explain how this decision best protects the wilderness character while addressing the problem in a feasible manner.

**8. What additional constraints are necessary to minimize disturbance to the wilderness resource and character?**

What mitigation measures are necessary?

 Timing, location, or frequency of activity?

 Maintenance requirements?

 Standards or design requirements?

 Monitoring?

**Actual Decision** (if made):

The project is approved as proposed using motorized equipment and mechanical transport.

**Rationale for decision:**

The rationale would link the decision made to wilderness management objectives, law, policy, forest plan standards and guidelines, etc. and explain how this decision best protects the wilderness character while addressing the problem in a feasible manner.

The mechanized approach was accepted over the non-mechanized approach for the following reasons: significantly shorter time required to complete the project, less exposure to negatively impacting recreational experiences, less disruption to operations at the Lodge.

Repairing the existing facility on FS land was selected over the alternative to move the facility to private land and construct a new impoundment. This approach will minimize the overall impact to the area and continue to utilize the existing structure, rather than create additional impact at a new site. Time to complete the project will be days rather than up to one year. It will result in overall less impact to aquatic resources.

The MRDG conducted for this project states, “ If wilderness values are considered primary over convenience, comfort, political, economic and commercial aspects then the repair of the reservoir portion of the project should not proceed. The project is based on all of these aspects. The project supports the continued irrigation of approx. 30 acres of pasture and hay operation. Stock are kept for both private and commercial use. Some hydropower is also generated, as a secondary power source, to provide for both private and commercial use. While wilderness values may be considered there is nothing about this project that supports wilderness values. The project does not enhance ecological, geological, scientific, educational, scenic or historical values. The project does not promote solitude or a primitive and unconfined type of recreation.”

Regarding biophysical effects and the selected alternative, it states for both the motorized and nonmotorized alternatives, “Natural conditions, both biological and physical, as currently exist, will not be affected by repair of reservoir. Conditions for fish will be greatly improved as the ladder will provide for passage which is currently blocked by the dam structure.” Regarding the alternative to move the dam to private land, it is argued, “This alternative would result in both biological and physical effects, primarily within Thomas Creek and riparian areas. Creating a new site, albeit within private property, will negatively impact aquatic life within Thomas Creek at the site of Construction, as well as elimination of riparian vegetation. Restoration activities at the abandoned site and construction activities at the new site will generate sediment to Thomas Creek. Fish passage will be restored.”

What mitigation measures are necessary?

 Timing, location, or frequency of activity? Work will occur during late summer/early fall during low water period but while air temperatures are still high. A forest service representative should be on site during the repair and installation activities.

 Maintenance requirements? Maintenance requirements should be detailed and included in plans being developed by the engineers… Review and approval of plans by Salmon-Challis National Forest engineer is required.

 Standards or design requirements? Still pending.

 Monitoring? Periodic assessment by a Forest Service fish biologist; regular periodic inspection by a Forest Service engineer.