



FSEEE Forest Service Employees for Environmental Ethics

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TRANSMITTED ELECTRONICALLY TO comments-pacificnorthwest-olympic-pacific@fs.fed.us

October 31, 2014

Greg Wahl, Project Lead,
USDA-Forest Service
Olympic National Forest
1835 Black Lake Blvd SW
Olympia, WA 98512

RE: Pacific Northwest Electronic Warfare Range Special-Use Permit Application

Dear Mr. Wahl:

These comments on the U.S. Navy's application for a special-use permit to conduct the Pacific Northwest Electronic Warfare Range project on national forest land are submitted in response to District Ranger Dean Millett's scoping notice of September 26, 2014, and supplement our earlier comments of October 8, 2014.

Electronic warfare training is not a public purpose for which national forests are reserved and administered.

In 1897, pursuant to the 1891 Forest Creative Act, President Grover Cleveland reserved the public land that includes the present-day Olympic National Forest, including the land at issue in the Navy's electronic warfare permit application.

The reservation of federal land, pursuant to statutory authority granted by Congress, "not only withdraws the land from the operation of the public land laws, but also **dedicates the land to a particular public use.**" S. Utah Wilderness Alliance v. BLM, 425 F.3d 735, 784-785 (10th Cir. Utah 2005) (emphasis added). A reservation's permissible public uses are defined by the statutory authority under which the reservation was made, and by any subsequent authorizing legislation. Examples of public land reservations include Indian reservations, military reservations, and national parks and monuments. United States v. New Mexico, 438 U.S. 696, 699 (U.S. 1978).

The particular public uses for which Congress has reserved the national forests are set forth in various authorizing statutes. The two original purposes, authorized in the 1897 Organic Act, are to secure "favorable conditions of water flows," and "to

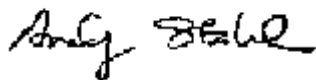
furnish a continuous supply of timber.” 16 U.S.C. 475; United States v. New Mexico, 438 U.S. 696, 707 (U.S. 1978) (“The legislative debates surrounding the Organic Administration Act of 1897 and its predecessor bills demonstrate that Congress intended national forests to be reserved for only two purposes – [to] conserve the water flows, and to furnish a continuous supply of timber for the people.”) In 1960, Congress added outdoor recreation, range, and wildlife and fish to the public purposes for which national forests are to “be administered.” 16 USC 528.

In addition to these natural resource public purposes, Congress has also authorized the Forest Service to permit use of national forests for, among other things, telecommunications facilities (43 USC 1761), archaeological site exploration (16 USC 432), and oil and gas pipelines (30 USC 185). So, too, Congress has authorized the Forest Service to permit state or local governments (but not other federal agencies) to construct or maintain “public buildings or other public works” on national forests, at a fair market value price (43 USC 931). At no time, however, has Congress passed a statute authorizing generally the use of national forests for military use, nor does any statute authorize specifically the use of the Olympic National Forest for such purpose.

The Forest Service appears to take the position that a different section of the Organic Act, which authorizes the Forest Service to “make such rules and regulations . . . as will ensure the objects of such reservations, namely to regulate their occupancy and use and to preserve the forests thereon from destruction,” provides the missing statutory authority to administer the Olympic National Forest for military uses. That view misunderstands this law. Regulating the “occupancy and use” of statutorily authorized uses is a distinct function from defining the permissible uses in the first instance. The fact that Congress has, on many occasions, added to (and, in some cases, subtracted from) the specific uses authorized on national forests shows that Congress understands that the 1897 Organic Act’s “occupancy and use” language is not an omnibus catch-all authorizing any and all uses.

In sum, the Forest Service should deny the Navy’s application for a special-use permit because Congress has not authorized military training as a permissible use of the Olympic National Forest.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Baker". The signature is written in a cursive, somewhat stylized font.

Executive Director