

# **An Analysis of the Clearwater Basin Collaborative Focusing On the Proposed Wilderness, Special Management Areas and Wild and Scenic Rivers**

Friends of the Clearwater



Weitas Creek Roadless Area  
Chuck Pezeshki Photo

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### **Introduction**

The Clearwater Basin Collaborative (CBC) is a group that formally convened in 2008, their stated purpose being an attempt to resolve resource management conflicts in the Clearwater Basin, with a focus on the national forests. The group includes representatives of the logging industry, motorized vehicle interests, outfitting groups, hunting groups, and mainstream environmental groups. In 2013, the CBC issued an “Agreement and Work Plan” for management and use of the Nez Perce-Clearwater National Forests, much of which the CBC proposes to be implemented through federal legislation<sup>1</sup>. The proposed legislation would designate some lands as Wilderness and some rivers as Wild and Scenic Rivers, while possibly “releasing” other lands for increased logging.

While the CBC has received positive press and praise from Idaho’s elected officials and some conservationists, there is serious concern that the group and its proposals will set negative precedent regarding the Wilderness Act and provide inadequate protection for this wild area. It also may serve to circumvent the National Environmental Policy Act (NEPA), which guarantees all American citizens, not just a select group, to participate in national forest analysis and subsequent decision-making processes.

This analysis addresses components of the CBC’s proposal, focusing specifically on wilderness, special management areas, and wild and scenic rivers. A close look at the proposal reveals that these special areas would be less protected than under current management plans in certain crucial respects. First, the deal includes provisions that are inconsistent with wilderness, as defined by the Wilderness Act. These harmful precedents threaten wilderness everywhere by allowing nonconforming uses, thereby weakening the entire National Wilderness Preservation System, and by putting pressure on agencies to allow these uses in designated Wilderness elsewhere.

Second, by any measure, the acreage proposed for protection as wilderness is paltry, with only 20% of the qualifying roadless lands recommended for wilderness designation, and fifteen inventoried roadless areas comprising hundreds of thousands of acres omitted entirely. The designations as proposed could serve to weaken protection on up to one million acres of roadless wildlands.

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<sup>1</sup> Available at <http://www.clearwaterbasincollaborative.org/wp-content/uploads/2013/05/CBC-Agreement-and-Work-Plan-as-amended-May-22-2013-Final.pdf>

Third, the river protections proposed under the Wild and Scenic Rivers Act are similarly paltry, with the Forest Service recommending far more rivers for protection than are proposed by the CBC. Fourth, the CBC proposal would dramatically increase logging in large areas of the Clearwater Basin, in a trade-off which will harm water quality as well as fish and wildlife habitat.

## **Executive Summary**

### **I. A Summary of Clearwater Basin Wildlands and Wild Rivers**

The Clearwater Basin has about 1.5 million acres of roadless land that qualify for wilderness. As part of the largest assemblage of roadless country in the lower 48 States, the wildlands in the Clearwater region are unmatched, and form the most important habitat in the entire Rockies for large carnivores, in part because of the amazing low-elevation biological diversity.

### **II. The Proposed Land Protections are Flawed and Inadequate**

The CBC proposal only recommends 20% of the qualifying roadless lands for wilderness. Crucial areas like the quarter-million acre Weitas Creek Roadless Area and the remote Pot Mountain Roadless Area were omitted. Even worse, the deal includes provisions in the proposed wilderness that are completely inconsistent with preservation of wilderness. In contrast, the Northern Rockies Ecosystem Protection Act provides protection for virtually all of the roadless lands in the Clearwater Basin and contains no provisions that weaken wilderness.

#### **A. Giving Commercial Services (Outfitters) Special Rights**

To avoid commercializing wilderness, the Wilderness Act states *"there shall be no commercial enterprise"* within any wilderness. At the same time, Congress also recognized that some people may need the services of outfitters in order to experience wilderness. Thus, Congress also made a very narrow exception where *"Commercial services"* like outfitting *"may be performed"* but only *"to the extent necessary for activities which are proper"* to achieve wilderness purposes.

The CBC proposal grants special rights to outfitters that would negatively affect the ability of agencies to administer wilderness and protect it in perpetuity. For example, the proposal would make Forest Service decisions, such as moving outfitter camps, even in the face of severe resource damage, subject to veto by the outfitters themselves.

#### **B. Making Wilderness Game Farms?**

The CBC proposal would further allow state game managers unfettered motorized access in designated wilderness. It could also allow illegal manipulation of habitat inside wilderness. Such compromised land is not wilderness. In wilderness, natural processes should determine the relative diversity and abundance of wildlife. The level of human influence, including management actions and decisions, should be minimized in wilderness. Citizens and managers must move wildlife management programs in a direction that leaves wilderness as an area *"untrammeled by man...retaining its primeval character and influence...protected and managed so as to preserve its natural conditions..."* The Wilderness Act does not specifically grant special exceptions for state fish and game agencies to use motorized equipment to eliminate carnivores like wolves or manipulate habitat to increase certain game species.

### **C. Inadequate Protections for Specific Areas**

Current management direction provides far better ecological protection than the CBC proposal. The CBC proposal would only protect about 300,000 roadless acres (203,000 acres on the Clearwater National Forest) as (compromised) wilderness and about 163,000 acres as “special management areas.” But current management direction (*i.e.*, the 1987 Clearwater Forest Plan, as modified by a 1993 lawsuit settlement agreement) offers management as recommended wilderness for a total of 532,000 roadless acres (an additional 26,000 acres if one counts the Idaho Panhandle National Forests 1987 recommendation in the Clearwater Basin) and a total of 261,000 roadless acres protected for the enhancement of fisheries and wildlife habitat (an additional 11,000 acres if one includes the Idaho Panhandle National Forests in the Clearwater Basin). Thus the agreement does not address the real issue of roadless development on the national forests in the Clearwater Basin and, as proposed, could actually weaken protection on anywhere from 340,000 acres to much more, depending on provisions in any legislation.

### **III. The Proposed River Protections are Inadequate**

In terms of river protection, the Forest Service recommends more streams for protection than are proposed in the CBC proposal, with nine eligible and recommended river segments being omitted.

### **IV. A Summary of Other Issues and Concerns with the Clearwater Basin Collaborative and the Agreement**

The CBC’s proposals circumvent the National Environmental Policy Act (NEPA), which guarantees all American citizens, not just a select group, to participate in national forest analysis and subsequent decision-making processes. The CBC also proposes to significantly increase logging in the Clearwater and Nez Perce National Forests. This is unacceptable in important fisheries habitat and where streams currently do not meet water quality standards. Significantly increased logging will have negative impacts to water quality and wildlife habitat.

### **Conclusion**

This year is the 50<sup>th</sup> anniversary of the 1964 Wilderness Act. The CBC deal denigrates Wilderness by proposing incompatible provisions, which would, if enacted, designate “wilderness” in name only. This threatens the entire National Wilderness Preservation System that generations have worked to build over the past almost 50 years. Wilderness, as we've known it, as a wild place and as a concept in America is in danger of disappearing both from our culture and the landscape. Increasing logging in crucial watersheds, potentially weakening protection on hundreds of thousands of existing roadless areas and compromising the Wilderness Act, wilderness values and qualities are too high a price to pay for designation of 300,000 acres of new “in-name-only” wilderness and 163,000 acres of special management.

## **I. A Summary of Clearwater Basin Wildlands and Wild Rivers**

The wildlands in the Clearwater are unmatched. The Clearwater region is the wild and wet north half the Big Wild, or Greater Salmon Selway Ecosystem. This is the largest assemblage of roadless country in the lower 48 States. Indeed, the Clearwater Basin portion of the Big Wild is the most important area in the entire Rockies, including Yellowstone and Jasper National Parks, for large carnivores.<sup>2</sup> The low-elevation habitat is also unique, containing forested states of ancient cedar and mountain hemlock and other water loving rare plants.

The Clearwater Basin has about 1.5 million acres of roadless land that qualify for wilderness. This includes all of the roadless areas on the Clearwater National Forest portion of the Nez Perce-Clearwater National Forests (recently administratively combined), most of the roadless land on the Nez Perce National Forest portion (excluding areas in the Salmon River Basin), some roadless lands on the Idaho Panhandle National Forests, and some lands managed by the Bureau of Land Management that are either roadless or Wilderness Study Areas.<sup>3</sup>

The Clearwater Basin also includes portions of three designated wildernesses: The Selway-Bitterroot, the Gospel-Hump, and Frank Church-River of No Return. Approximately 1.3 million acres of those wildernesses are in the Clearwater Basin, the majority of which is in the Selway-Bitterroot Wilderness (almost 1.1 million acres).<sup>4</sup>

In terms of rivers protected under the Wild and Scenic Rivers Act, the Clearwater Basin includes the Middle Fork Clearwater, Selway and Lochsa Wild and Scenic Rivers. Designated in 1968, these were among the first protected rivers under the Act.

## **II. The Proposed Land Protections are Flawed and Inadequate**

The Clearwater Basin Collaborative proposes two designations for protection of wildlands—wilderness and “special management areas.” Of the 1.5 million acres of wilderness-eligible lands in the Clearwater Basin, only 300,000 acres are proposed for wilderness. This only amounts to about 20% of the qualifying roadless lands. Expansive, ecologically critical wildlands like the Weitas Creek Roadless Area, a prime wilderness candidate, were passed over for wilderness.

Another approximately 163,000 acres are proposed by the CBC to be designated as special management areas. This designation is proposed for parts of two very large roadless areas— both prime wilderness candidates.

In contrast, the Northern Rockies Ecosystem Protection Act (HR 1187) would protect the *entirety* of the Clearwater Basin roadless areas as wilderness—real wilderness—protecting the

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<sup>2</sup> See Carroll, Carlos, Reed F. Noss, and Paul C. Paquet. 2001. *Carnivores as focal species for conservation planning in the Rocky Mountain region*. World Wildlife Fund. Toronto. See also Carroll, Carlos, Reed F. Noss, and Paul C. Paquet. 2001. *Modeling carnivore habitat in the Rocky Mountain region: a literature review and suggested strategy*. World Wildlife Fund. Toronto.

<sup>3</sup> See endnote **A Roadless areas**.

<sup>4</sup> See endnote **B Wilderness acreage**.

genetic diversity of the region, allowing recovery of rare species, and providing for natural migration due to climate change.<sup>5</sup>

Wilderness and Wild and Scenic River designations are the purview of Congress. The Forest Service is obligated to make recommendations and do studies in forest plans, but the agency cannot designate a wilderness or a wild and scenic river. However, the agency can administratively provide almost any kind of protection it chooses for national forest lands, whether recommended for wilderness or not.

As troubling as this paltry acreage is, it is not the greatest threat posed by the CBC proposal. That threat is that the proposed wilderness areas would not be protected as real wilderness, as defined by the Wilderness Act of 1964. Rather, they would be a blurred and compromised wilderness, where outfitting interests have special rights that harm wilderness, and the Idaho Department of Fish and Game (IDFG) is permitted to have motorized access and manipulate wilderness to support its preferred wildlife species.

This problem of making legislative exceptions that water down wilderness protections was articulated by George Nickas and Kevin Proescholdt of Wilderness Watch in a 2005 report.<sup>6</sup>

As that report explains:

The Wilderness Act, passed in 1964, was a uniquely American idea and a tribute to the vision of several generations of Americans who saw the value in setting aside from human domination some valuable remnants of primitive North America. The Act established the National Wilderness Preservation System “for the permanent good of the whole people” to be protected and managed so as to preserve its wilderness character.

Forty years later it is increasingly clear that despite the best intentions of the law the lands within the NWPS are degrading. One of the greatest emerging challenges to protecting the wild character of these lands is the preponderance of *special provisions* or *non-conforming uses* being included in Wilderness bills. These provisions not only allow activities within Wilderness that are inappropriate and degrade individual areas, but more importantly the cumulative impact of these provisions threatens to diminish the core values that distinguish Wilderness from other public lands.

These special exemptions or nonconforming uses have damaging impacts on wilderness that could be categorized in three ways. First, the exception itself, such as allowing motorized use for state wildlife agencies, negatively affects the quality of the wilderness itself, its wildlife, and the experience of other wilderness users. Second, the exception changes the perception among the public and managers that wilderness is nothing special, and not really a place where “the earth its community of life are untrammelled by man.” Such exceptions send the signal that wilderness

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<sup>5</sup> See <http://www.wildrockiesalliance.org/issues/nrepa/index.html> or <http://www.friendsoftheclearwater.org/description/>

<sup>6</sup> Available at: [www.wildernesswatch.org/pdf/Special\\_Provisions.pdf](http://www.wildernesswatch.org/pdf/Special_Provisions.pdf). A version of this report also appears in the scholarly publication *International Journal of Wilderness*. Nickas, G. and K. Proescholdt. 2005. Keeping the wild in wilderness: Minimizing nonconforming uses in the National Wilderness Preservation System. *International Journal of Wilderness* 11(3): 13-18.

need not be treated differently. Third, exceptions in one place put pressure on wilderness managers elsewhere to weaken protections.

### **A. Giving Commercial Services (Outfitters) Special Rights**

The CBC proposal would set a harmful precedent by bestowing upon outfitters rights in wilderness that are not enjoyed by other citizens, nor even enjoyed by outfitters on other national forest lands, wilderness or not. The proposal is not consistent with the Wilderness Act, and would harm the public interest by increasing outfitter rights at the expense of wilderness character.

Congress recognized that wilderness can easily be damaged by commercialization. The Wilderness Act's section 4(c) provides that except as specifically provided otherwise, "there shall be no commercial enterprise . . . within any wilderness area." A narrow exception was made in section 4(d) for activities like outfitting, but only "to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas." Section 4(c) also provides that there "shall be . . . no structure or installation within any such area."

In turn, the Forest Service's regulations allow the agency to permit "commercial services within the National Forest Wilderness to the extent necessary for realizing the recreational or other wilderness purposes, which may include, but are not limited to, the public services generally offered by packers, outfitters, and guides." 36 C.F.R. § 293.8.

To implement this mandate, the Forest Service requires an analysis of whether outfitting is needed, called a "needs assessment," for all outfitting, in or out of wilderness. These are usually done on an area or forest-wide basis. To prevent wilderness from being over-commercialized, such a needs assessment also determines to what extent outfitting is necessary in the wilderness.

The courts interpret these provisions strictly, recognizing that outfitting in wilderness needs to be carefully regulated. In the Ansel Adams and John Muir Wildernesses in California, the Ninth Circuit Court of Appeals overturned the Forest Service's reissuance of outfitter permits, where serious resource damage was occurring from pack stock and the agency failed to consider the impact on its responsibilities under the Wilderness Act.<sup>7</sup> In a case challenging outfitters' structures in the Frank Church-River of No Return Wilderness, a court held that they needed to be removed.<sup>8</sup> Other cases have also ruled against structures and/or outfitting in wilderness that are more than the minimum necessary for preservation of the area as wilderness.<sup>9</sup>

However, the CBC proposal would *exempt* its proposed wildernesses from these important safeguards in the Wilderness Act. Troublingly, the CBC begins its section on outfitting by stating that it wants to "ensure outfitters can continue to operate a profitable business, and are not going

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<sup>7</sup> *High Sierra Hikers Association v. Blackwell*, 390 F.3d 630 (9th Cir. 2004).

<sup>8</sup> *Wilderness Watch v. Robertson*, No. 92-0740 (D.D.C. Apr. 16, 1993).

<sup>9</sup> *Olympic Park Associates v. Mainella*, No. 04-5732-FDB, 2005 WL 1871114 (W.D. Wash. Aug. 1, 2005), *High Sierra Hikers Association v. Weingardt*, 521 F. Supp. 2d 1065 (N.D. Cal. 2007).

to be subject to new and unduly restrictive rules in areas that become protected as a result of legislation.”<sup>10</sup> CBC’s three proposed exceptions for outfitters in wilderness follow.

### 1) Structures and Camps

The agreement provides that legislation would “guarantee” that all existing structures, whether legal or not, be permitted to remain in wilderness for the life of the permit holder.<sup>11</sup> They can only be moved if both “[t]he Outfitter and the Forest Service agree” to the changes.<sup>12</sup>

This exception would allow outfitters to have permanent structures in wilderness, contrary to the Wilderness Act. It also grants outfitters *veto authority* over the Forest Service in terms of whether camps or structures should be moved—a decision the agency should make, not commercial interests. These exceptions gut the Wilderness Act’s protections against structures, which ensure that wildernesses retain their wild character.

Again, the Act states that outfitting may occur (it is not mandated) only to the “extent necessary.” That is a high bar intended to preserve wilderness, which would be drastically lowered under this exception.

### 2) All Existing Outfitters Deemed Necessary

The agreement states that “[w]here outfitting currently exists satisfies the Forest Service’s requirement to do a needs assessment.” In other words, they are deemed to be necessary in the areas the CBC proposes for wilderness.<sup>13</sup>

The question of whether existing outfitter services are “necessary” in a wilderness should not be prejudged before the needs assessment. Such a pronouncement unfairly benefits outfitters, and utterly cuts out the public, which would be permitted to participate in a needs assessment. In addition, the CBC proposal would prevent the Forest Service, without the consent of outfitters, to make needed changes in existing outfitting permits to meet wilderness objectives or even basic resource management. This granting of *de facto* rights would give away the use and control of a public resource to a private party. This stunning provision would give outfitters more rights in the Clearwater wildernesses proposed by the CBC than other non-wilderness national forest lands.

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<sup>10</sup> See footnote 1.

<sup>11</sup> According to information obtained from the Forest Service through a Freedom of Information Act Request, there are a few “permanent” outfitter structures within the CBC proposed *wildernesses*. Also, it is not clear to what degree the entire CBC group was aware, during its deliberations, of either the existence of specific outfitter permanent structures or instances where the Forest Service currently sponsors uses of structures that would be incompatible with wilderness designation. The Meadow Creek guard station complex, which has water and plumbing, in the East Meadow Creek area is an example of both. The complex is no longer used primarily by the Forest Service for managing the area. Rather, one or more buildings are rented out to the public as lodging and one or more buildings, presumably different ones, are used by an outfitter for housing clients. Such a resort/cabin arrangement is clearly inconsistent with wilderness.

<sup>12</sup> See footnote 1.

<sup>13</sup> Ibid.

### 3) Trails

The agreement requires “[t]he Forest Service to maintain trails” in wilderness areas, and further proposes that outfitters be *compensated* to maintain trails in wilderness.<sup>14</sup>

Bizarrely, these provisions would only apply to wilderness, not elsewhere. Again, this is a flawed and disturbing precedent. Wilderness trails, where allowed, are to have minimal maintenance and must fit in visually and ecologically with the landscape. The Forest Service has trained crews who conduct any needed maintenance work in a manner consistent with wilderness. Outfitters do not have that training or any obligation to preserve wilderness character. The Forest Service also decides where to locate trails, whether to maintain trails, how often they need to be maintained, and how much maintenance they need. Outfitters do not have that authority. Thus, this exemption could easily lead to situations where trails are overbuilt, maintained in a manner inconsistent with wilderness, or inappropriately located.

In sum, instead of meeting the spirit and letter of the Wilderness Act’s sensible controls on commercial outfitting, the CBC proposal refers to them as “unduly restrictive,”<sup>15</sup> and runs roughshod over them. It proposes actions not only inconsistent with wilderness, but even with normal national forest management regarding outfitters and trails.

As *Keeping the Wild in Wilderness* puts it, the Wilderness Act “provided managers with the tools they needed to ensure that the impacts from [commercial outfitting and guiding] exceptions would be rare and carefully controlled. Unfortunately, the good intentions of the law are not being realized on the ground.”<sup>16</sup> The CBC deal would abolish these important tools and good intentions of the Wilderness Act, thus ensuring they would never be met.

#### B. Making Wilderness Game Farms?

Another troubling provision in the CBC proposal provides that “[l]egislation that designates new wilderness areas will have language that ensures Idaho Department of Fish and Game (IDFG) is able to manage for fish and wildlife populations.”<sup>17</sup>

In general, state agencies such as IDFG are not permitted to utilize motorized transportation such as helicopters in wilderness without special permission from the Forest Service. In wilderness, natural processes should determine the relative diversity and abundance of wildlife.<sup>18</sup> The level of human influence, including management actions and decisions, should be minimized such that the areas remain “*untrammelled by man...retaining its primeval character and influence...protected and managed so as to preserve its natural conditions...*”<sup>19</sup> The Wilderness

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<sup>14</sup> See footnote 1.

<sup>15</sup> Ibid.

<sup>16</sup> See footnote 6.

<sup>17</sup> See footnote 1.

<sup>18</sup> See 36 CFR 293.6 and the Forest Service Manual at 2323.33, 34 and 35

<sup>19</sup> Italics from the Wilderness Act in section 2(c).

Act does not specifically grant special exceptions for state fish and game agencies to use motorized equipment or manipulate habitat.

This issue has come to the fore recently in Idaho, as IDFG has sought permission to land helicopters in wilderness to collar wolves. Among other things, conservationists feared that the agency would use the information from collars to later kill the wolves, a fear that was realized in winter 2014 when IDFG sent a hunter-trapper into wilderness to kill wolves in the Frank-Church River of No Return Wilderness.

The CBC's language would presumably gut the limitations on IDFG's use of helicopters. As reported in the Lewiston Morning Tribune on June 1, 2013:

The state agency has fought in recent years for the right to land helicopters in wilderness areas in order to place radio tracking collars on wolves. Both Brooks and Oppenheimer<sup>20</sup> said it is not clear exactly how far the language goes. But Idaho Fish and Game officials know exactly what it means - permission to land helicopters and use other motorized or mechanized equipment when needed.

Dave Cadwallader, supervisor of the department's Lewiston-based Clearwater Region, said his agency won't be able to support new wilderness areas if it can't periodically land helicopters in them. He also said the state should not have to seek permission from the Forest Service to do so.

What Cadwallader describes is not wilderness; he describes a game farm.

The late Bill Worf, a father of wilderness stewardship, the first wilderness program leader in the Forest Service, and a co-founder of Wilderness Watch, had experiences that are applicable to this issue of motorized use for wildlife managers. He wrote that not long after passage of the Wilderness Act, Chief Ed Cliff of the Forest Service was asked by geologists to approve helicopter use in a wilderness to assess mineral potential.<sup>21</sup> This was before the 1984 cut-off date in the Wilderness Act, which prevented further mineral leasing or claim-staking in wilderness. Worf notes that the proponents "used all of the usual arguments, i.e., use of helicopters is state-of-the-art, modern day geologists just wouldn't walk, it would be prohibitively expensive, etc." After back and forth, Worf reports that Ed Cliff, "slammed his fist on the table" and then emphatically stated, "Our guys are out there maintaining trails with cross-cut saws and, by God, your guys can walk." Worf concludes, "The meeting was over, and the geologists walked." IDFG staffers can walk too.

Simply put, the IDFG does not, nor should it have, control of national forest wildernesses; nor can that agency violate wilderness by deciding whether or when to use motorized equipment in wilderness, when and where to build structures, or allow any other prohibited activity. These are activities allowed by the Forest Service only if they are necessary for the singular purpose of wilderness preservation. That is a very high bar. The Wilderness Act permits fish and game

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<sup>20</sup> Brooks and Oppenheimer represent the Wilderness Society and Idaho Conservation League, respectively.

<sup>21</sup> Worf, W. 2011, revised from a 2004 presentation. Reflections on Forest Service Wilderness Management in *Wilderness: Reclaiming the Legacy*. 2011. Page 50 Missoula, MT. Wilderness Watch.

agencies to continue their normal jurisdiction, like the regulation of hunting and fishing, but it does so in context of protection of the wilderness resource.<sup>22</sup>

Ironically, the Forest Service has more management control over actions of the Idaho Department of Fish and Game (IDFG) on national forests outside of wilderness than it would, under the CBC deal, in the proposed *wilderness*. The Forest Service determines how access is carried out and whether structures are built on other portions of the national forest.

Both the outfitter provision and the IDFG management provision in the CBC proposal are a step to privatizing and/or localizing control of the national forest wilderness, a mini-sagebrush rebellion land grab. As Wilderness Watch has noted, these kinds of legislative provisions “not only allow activities within Wilderness that are inappropriate and degrade individual areas, but more importantly the cumulative impact of these provisions threatens to diminish the core values that distinguish Wilderness from other public lands.”<sup>23</sup> In this case, the wilderness would even be less protected than other public lands because the explicit nature of the agreement would significantly diminish Forest Service authority in managing outfitting and IDFG activities even below that of other national forest system lands. Thus, the *status quo* is far preferable to the so-called *wilderness* in the agreement.

### **C. Inadequate Protections for Specific Areas**

In addition to the management loopholes described above, there are problems with the boundaries of the four proposed wildernesses in the CBC proposal, as well as the two proposed special management areas. The four proposed wildernesses are: Great Burn/Hoodoo (also called Kelly Creek), Mallard-Larkins, Selway-Bitterroot Additions, and East Meadow Creek (also technically an addition to the Selway-Bitterroot Wilderness).

#### *1) CBC Proposal Protects Far Less Acreage Than the Status Quo.*

In the 1987 Clearwater National Forest Plan, the Forest Service made recommendations on what areas in the forest it believed qualified for protection as wilderness. Among the four wildernesses proposed by the CBC, the Forest Service recommended the Great Burn/Hoodoo, Mallard-Larkins, and Selway-Bitterroot Additions as wilderness at approximately the same boundaries as suggested by the CBC. Under the Forest Plan, those areas are managed as recommended wilderness, also known as B-2 management areas. This management area direction does not allow “new Forest system roads” and classifies the area as “unsuitable” for timber.

In 1993, a settlement agreement required the Forest Service to manage far more areas as recommended wilderness after the Clearwater National Forest Plan was challenged by conservationists in court. That legally binding agreement added protection to additional specific roadless areas, more than doubling—and adding over 300,000 acres—to the areas required to be

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<sup>22</sup> See Endnote C Fish and Game authority.

<sup>23</sup> See footnote 6 on page 5.

managed as recommended wilderness under the Forest Plan alone.<sup>24</sup> Those areas must be managed as Forest Service-recommended wilderness until the Forest Plan is revised.<sup>25</sup>

However, the CBC proposal ignores these areas' hard-fought protections and wilderness potential, for the most part only considering the 1987 Clearwater National Forest Plan recommendations for wilderness designation. Thus, under the CBC proposal, many existing roadless areas that are currently protected for fisheries and wildlife habitat could be opened for motorized use and possibly commercial logging.

Thus, the area currently managed as Forest Service recommended wilderness in the Clearwater National Forest includes far more than what is proposed as either wilderness or special management areas in the CBC proposal. For that reason, the status quo is much more protective than the CBC proposal. Table 1 below compares the 1987 Clearwater National Forest Plan, the 1993 Clearwater National Forest Plan Settlement Agreement (the status quo until the plan is revised) and the CBC proposal in terms of what each recommended for wilderness designation.

Table 1  
Recommended Wilderness Clearwater National Forest  
(Listed in acres and rounded to nearest 1,000 acres)

| Area                   | Forest Plan | Settlement Agreement <sup>26</sup> | CBC Proposal |
|------------------------|-------------|------------------------------------|--------------|
| Great Burn             | 113,000     | 133,000                            | *?~136,000   |
| Selway Additions       | 19,000      | 38,000                             | 19,000       |
| Mallard-Larkins        | 67,000      | 77,000                             | 48,000       |
| Weitas Creek           | 0           | 188,000                            | 0            |
| Fish and Hungry Creeks | 0           | 54,000                             | 0            |
| Upper North Fork       | 0           | 42,000                             | 0            |
| Total                  | 199,000     | 532,000                            | 203,000      |

\*The acreage for this area in the CBC proposal is imprecise as a recommended boundary has not been finalized by the group. It is derived from information provided in the CBC work plan and overall figures reported in the *Lewiston Morning Tribune* on 6/1/13. It may be larger or smaller than the reported acreage.

The Nez Perce National Forest Plan (also 1987), did not recommend any new additions to wilderness but did provide important administrative protection for Meadow Creek and a few other areas.

The CBC's wilderness proposal fails to recommend numerous prime wilderness candidates like Weitas Creek (perhaps the most important wilderness candidate in the Clearwater Basin, due to its large size and prime lower-elevation plant and wildlife habitat), Fish and Hungry Creeks, and the Upper North Fork, which are protected under the settlement agreement. Other areas in

<sup>24</sup> See endnote **D Clearwater Forest Plan Settlement Agreement**.

<sup>25</sup> An announcement for a forest plan revision was made in 1994. Since that time, there has been at least one failed effort to revise the plan; the latest estimate is that a new combined plan for both Forests will be final in 2015 or 2016.

<sup>26</sup> See endnote **D Clearwater Forest Plan Settlement Agreement**.

the Clearwater Basin—like Pot Mountain, perhaps the wildest area on the Clearwater National Forest, the Johns Creek addition to the Gospel Hump Wilderness on the Nez Perce National Forest, or about 200,000 acres of additions to the Selway-Bitterroot Wilderness including Gedney Creek, Warm Springs Creek, Colt-Killed Creek, Lake Creek and Sneakfoot Meadows—are also omitted even though some of those areas have significant protection in the Forest Plan (see Table 2).

As Tables 1 and 2 show, roadless lands, outside of existing wilderness, total about 1.5 million acres in the Basin and the CBC deal would only protect a small portion of these lands. Beyond a proposed wilderness recommendation and special management area for most of Meadow Creek, on the Nez Perce National Forest, there is nothing in the CBC deal that would address the larger issue of roadless protection on the two Forests since only 20% of the qualifying roadless lands are recommended for wilderness designation under the proposed CBC deal and another 11% as special management areas.

In addition, CBC proposal will likely bias the Forest Plan revision process. The Clearwater and Nez Perce National Forests have been administratively combined and the Forest Service recently began the formal public involvement process under NEPA for revising these two plans, which will become one plan. A new final plan for both the Clearwater and Nez Perce National Forests is expected in 2015 or 2016. Because the CBC ignored the 1993 settlement agreement, the Forest Service will likely conclude there is no incentive to make the new plan anywhere near as protective as the old plan, as modified by the 1993 settlement agreement. Indeed, the Forest Service's preliminary proposal was not very protective. With over 1.5 million acres of existing roadless land, most environmental advocates familiar with the Clearwater Basin had hoped for a much larger area of roadless protection in the new Forest Plan.

Thus, the CBC proposal does not address the critical issue of roadless development on the Nez Perce and Clearwater National Forests. Because it includes only token levels of roadless protection (300,000 acres of proposed *wilderness* and 163,000 acres of special management areas), it could functionally *release nearly 1 million acres of existing roadless areas*. In short, it is a very poor deal for roadless areas that has largely been designed by development interests that are prevalent in the Clearwater Basin Collaborative.

These omissions comprise some of the Clearwater Basin's most biologically crucial roadless areas. Much critical habitat for bull trout designated under the Endangered Species Act is found in these omitted roadless areas, such as the Upper North Fork. Fish and Hungry Creeks, also omitted, are the most important wild steelhead streams in Idaho and are designated critical habitat for that species. The Fish and Hungry Roadless Area also contains important coastal disjunct habitat for rare species.

Table 2 on the following page compares specific roadless areas that would be protected under the status quo (existing forest plans—the 1987 Clearwater, Nez Perce and Idaho Panhandle Plans, as modified by the Settlement Agreement on the Clearwater National Forest Plan), the CBC proposal, and the Northern Rockies Ecosystem Protection Act (NREPA).

**Table 2**  
**Three Protection Plans for Roadless Areas in the Clearwater Basin<sup>27</sup>**  
 (Figures rounded to nearest 1000 acres. Chart limited to protective measures that prohibit roads and/or logging.)

| Area*                                      | Existing Direction** | CBC Proposal** | NREPA**          |
|--|----------------------|----------------|------------------|
| <a href="#">Weitas Creek</a> <sup>28</sup> | <b>188,000</b>       | 60,000         | <b>260,000</b>   |
| <a href="#">Mallard-Larkins</a>            | <b>103,000</b>       | <b>48,000</b>  | <b>201,000</b>   |
|  | 16,000               |                |                  |
| <a href="#">Great Burn</a>                 | <b>133,000</b>       | ***?~136,000   | <b>154,000</b>   |
|  | 19,000               |                |                  |
| <a href="#">Selway Additions</a>           | <b>38,000</b>        | <b>19,000</b>  | <b>224,000</b>   |
| (excludes Meadow Creek listed below)       | 32,000               |                |                  |
| <a href="#">Meadow Creek</a>               | 200,000              | <b>97,000</b>  | <b>215,000</b>   |
|  |                      | 103,000        |                  |
| <a href="#">Pot Mtn.</a>                   | 0                    | 0              | <b>51,000</b>    |
| <a href="#">Fish and Hungry Creeks</a>     | <b>54,000</b>        | 0              | <b>118,000</b>   |
| <a href="#">Gospel Hump Add.</a>           | 0                    | 0              | <b>30,000</b>    |
| <a href="#">Upper North Fork</a>           | <b>42,000</b>        | 0              | <b>49,000</b>    |
| (includes Rawhide)                         |                      |                |                  |
| <a href="#">Weir Creek</a>                 | 0                    | 0              | <b>22,000</b>    |
| <a href="#">Moose Mountain</a>             | 16,000               | 0              | <b>22,000</b>    |
| <a href="#">Grandmother Mtn.</a>           | 9,000                | 0              | <b>11,000</b>    |
| <a href="#">O'Hara Falls Ck.</a>           | 9,000                | 0              | <b>33,000</b>    |
| <a href="#">Pilot Knob</a>                 | 0                    | 0              | <b>21,000</b>    |
| <a href="#">Pinchot Butte</a>              | 2,000                | 0              | <b>9,000</b>     |
| <a href="#">Clear Creek</a>                | 0                    | 0              | <b>9,000</b>     |
| <a href="#">Lick Point</a>                 | 0                    | 0              | <b>7,000</b>     |
| <a href="#">Siwash</a>                     | 0                    | 0              | <b>9,000</b>     |
| <a href="#">Dixie Summit/ Nut Hill</a>     | 1,000                | 0              | <b>5,000</b>     |
| <a href="#">Eldorado</a>                   | 0                    | 0              | <b>7,000</b>     |
| <b>Total</b>                               | <b>862,000</b>       | <b>463,000</b> | <b>1,457,000</b> |
| <b>Wilderness Total</b>                    | <b>558,000</b>       | <b>300,000</b> | <b>1,457,000</b> |

\*Acreage figures are for the Clearwater Basin only, even where roadless areas cross basin boundaries, except Meadow Creek, where the full acreage is reported. Table 2 excludes about 30,000 acres of roadless lands in the Clearwater Basin, including two areas mainly in Montana (included in NREPA), scattered uninventoried roadless land not included in any proposal, minor boundary adjustments, and slight differences in rounding aggregate national forest roadless acreages versus individual area acreage.

\*\* The bold text consists of the wilderness proposals of CBC, NREPA, and agency recommended wilderness including the additional areas in the Clearwater National Forest Plan settlement agreement that are to be managed as recommended wilderness. The plain text figures in these columns are areas with other kinds of protection that prohibit roadbuilding and logging and the two Special Management Areas proposed in the CBC proposal. Since the Idaho Roadless Rule offers incomplete protection for most areas, Table 2 only includes areas in the Idaho Roadless Rule protected from logging and road building.<sup>29</sup>

\*\*\*The acreage for this area in the CBC proposal is imprecise as a recommended boundary for Great Burn/Hoodoo has not been finalized by the CBC group. It would be between 112,000 acres and 152,000 acres. 136,000 acres was chosen as an estimate based upon figures reported in the Lewiston Morning Tribune (6/1/13) of a total of about 300,000 acres as proposed wilderness in the CBC proposal. The final proposal could be more or possibly less.

<sup>27</sup> See endnotes **A Roadless areas** and **D Clearwater Forest Plan Settlement Agreement**.

<sup>28</sup> Hyperlinks reference pages describing each roadless area on the Friends of the Clearwater website.

<sup>29</sup> See endnote **E Idaho Roadless rule** for more information.

## 2) *Problems with CBC's Proposed Wilderness Boundaries*

The four specific areas proposed for wilderness in the CBC proposal are examined below.

**1) The Great Burn/Hoodoo Area.** This vast expanse of wild country straddles the Montana-Idaho border along the Bitterroot Divide and includes Kelly Creek, famous for its blue-ribbon Westslope cutthroat fishery. The CBC proposal for this area is confusing. It claims that wilderness is recommended for “[t]he entire portion of the Great Burn Study area contained within the Wild Lands Recreation theme boundaries as recommended in 1987 Forest Plan.” However, the 1987 Forest Plan has no Wild Lands Recreation theme for this area. It has a wilderness recommendation (113,000 acres) and a roadless area (153,000 acres). The Idaho Roadless Rule of 2008 has a Wild Lands Recreation theme (152,000 acres), which consists of most of the Hoodoo Roadless Area. As the acreage differences indicate, the 1987 Forest Plan recommendation is different from the Roadless Rule Wild Lands Recreation theme area. Thus, the CBC proposal is not clear on whether it is based upon the Forest Plan recommendation, the Roadless Rule Wild Lands Recreation theme, or something else.

To make the issue even more confusing, the proposal also notes that “[l]anguage about the boundary will be negotiated.” Thus, there may be no agreement in the CBC group for defining the Great Burn/Hoodoo proposed wilderness.

What *is* clear is that if the CBC proposal were enacted, it would not be as protective as the Forest Plan Settlement Agreement, which protects the ecologically unique Fish Lake. Fish Lake is explicitly excluded as wilderness in the CBC proposal, even though it is correctly included in both the 1987 Forest Service wilderness recommendation and the 1993 settlement agreement. The omission is particularly troublesome because Fish Lake’s fragile environment has suffered extensive abuse from ORVs in recent years and its bull trout population is imperiled.<sup>30</sup>

**2) The Selway-Bitterroot Additions.** These additions on the north-central edge of the existing Selway-Bitterroot Wilderness are very small and only include the land recommended by the Forest Service in 1987. Again, the CBC proposal protects less acreage than the Forest Plan settlement agreement for this area.<sup>31</sup> Thus proposal excludes most of the “Secretary’s Area”—a portion of the old Selway Primitive Area that was protected prior to 1964, most of which is still wild and roadless.<sup>32</sup>

**3) Mallard-Larkins Area.** This roadless area extends west from the Bitterroot Mountain Range, generally along the divide between the St. Joe and Clearwater River drainages, and includes the Mallard-Larkins Pioneer Area. The CBC proposal excludes Five Lakes Butte, which is north of the Clearwater County line and was included in the 1987 Forest Plan recommendation. This

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<sup>30</sup> The Forest Service likewise failed to protect this roadless area, among others, in its recent Clearwater National Forest Travel Plan. That travel plan is currently being challenged by conservationists who are not part of the CBC as inconsistent with Clearwater National Forest Plan and settlement agreement.

<sup>31</sup> See Table 2 and endnote **E Idaho Roadless rule**.

<sup>32</sup> See endnote **H Lochsa River “Secretary’s Area”**.

omission makes no sense and would make the wilderness area very difficult to administer because the straight-line boundary is not easily identifiable on the ground.

Thus, the CBC proposal would be less protective than both the 1987 Forest Plan and the Forest Plan settlement agreement. Furthermore, both of those excluded key areas like Elizabeth Lakes (although the Forest Plan does provide some protection for part of the Elizabeth Lakes area, reflected in Table 2 under column 1).<sup>33</sup>

**4) East Meadow Creek Area.** This proposed wilderness area, which presumably would be an addition to the Selway-Bitterroot Wilderness, is less than half of the roadless area that the Forest Service felt should be wilderness in the late 1970s (see the West Meadow Creek Special Management Area discussion below).<sup>34</sup> While the 1987 Nez Perce National Forest Plan did not recommend any of Meadow Creek for Wilderness, it did provide significant protection for the area. The Nez Perce National Forest portion of the Nez Perce-Clearwater National Forests is undergoing a travel planning process now, so it is speculative to guess what protections it will provide. Wilderness designation would close the area to snowmobile use and to motorcycles on a few trails where that use is currently allowed, but snowmobile and motorcycle use is currently rare to nonexistent over most of the East Meadow Creek area. Meadow Creek may be the only conservation gain over the status quo, and even that is questionable given the provisions that weaken wilderness in the CBC proposal and the inadequate boundary.

### *3) Problems with the CBC's Proposed Special Management Area Boundaries and Management Direction*

In terms of the special management areas, the general idea that an alternative to wilderness designation could provide for nonmotorized or nonmechanized backcountry recreation in an undeveloped setting is a worthy goal.<sup>35</sup> However, the proposed special management areas fall short of being good models for that alternative kind of protection. The two areas proposed for special management are examined below.

**1) The Cayuse Creek Special Management Area.** This proposal would protect only about a *quarter* of the sprawling, low-elevation Weitas Creek roadless area (also known as Bighorn-Weitas), the largest roadless area entirely within the Nez Perce-Clearwater National Forests. Most of the Weitas Roadless Area is currently managed as recommended wilderness under the Clearwater National Forest Plan Settlement Agreement until the Forest Plan is revised (see Table 2). Additionally, the rest of the Weitas Roadless Area has some protection in the Forest Plan. As noted, the Weitas Creek area is perhaps the most important wilderness candidate in the Clearwater region because of its lower elevation habitat and geographic location in terms of large carnivore range.

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<sup>33</sup> See endnote **E Idaho Roadless rule**.

<sup>34</sup> East and West Meadow Creeks are actually one roadless area—the Meadow Creek Roadless Area. No road divides the two areas. The Forest Service inappropriately divided the area in two, presumably for administrative purposes, some time ago even though prior to that time the Forest Service considered Meadow Creek one roadless area.

<sup>35</sup> See endnote **G Alternative designations** for more information.

Unfortunately, the Cayuse Creek Special Management Area would allow motorized use, pursuant to the recent Clearwater National Forest Travel Plan. That Travel Plan is being challenged in court by conservation groups as being inconsistent with the protections offered in the Forest Plan.

The CBC proposal states that “[v]egetation management is allowed for public safety and administrative purposes.”<sup>36</sup> This vague statement is not explained. By apparently allowing logging, the proposed management direction appears weaker than current management under the Forest Plan settlement agreement and Forest Plan, under which logging is prohibited.

In sum, this proposal exempts three-quarters of the Weitas roadless area and appears weaker than current management in terms of logging. It could also be weaker in terms of off-road vehicles, depending on the outcome of the conservationists’ court case on the Clearwater National Forest Travel Plan.

**2) The West Meadow Creek Special Management Area.** This proposal is a mixture of good and bad provisions. Again, the Nez Perce National Forest portion is undergoing travel planning now, so it is speculative to guess what the decision may be for Meadow Creek in terms of areas open and closed to motorized vehicles. The draft travel plan, put out for public comment several years ago, did not address snowmobile use. However, a recent court decision may force the Forest Service to address snowmobiles in the plan. The CBC proposal would presumably close the area to snowmobile use, which is an improvement over the status quo as some use does take place on the Butter Creek trail. However, the place that sees the most off-road vehicle use (and snowmobile use), the 505 Divide Trail, would be out of the Special Management Area, as would be all the roadless land west of the trail currently in the Meadow Creek Roadless Area. In fact, a portion of the Divide Trail is currently closed to vehicles but it appears that the intent of the CBC proposal, if enacted, is to direct the Forest Service to open that trail to motorized use. That section of trail has been closed to protect wildlife habitat.

Currently, the proposed special management area is closed to logging under the forest plan (Forest Plan FEIS page II-38) during the planning period (10-years, but the plan has not been revised so the prohibition is presumably in effect). The entire area also has some protection under the Idaho Roadless Rule. The absence of any mention of logging or vegetation management in the agreement is strange given there is mention of it in the proposed Cayuse Special Management Area. Thus it is not clear whether this signals logging would be allowed or prohibited.

This special management area (SMA) explicitly allows both county search and rescue and Nez Perce Tribe and Idaho Fish and Game to use motorized equipment. Those kinds of decisions should be left to the Forest Service in its normal operating agreements with those other governmental agencies. This provision could set a bad precedent by removing Forest Service authority that it currently has. Besides, the CBC proposal clearly states, “Recreational motor vehicle use is not allowed in the SMA.” Thus, this provision is clearly not needed, as the administrative use of motorized vehicles by those agencies is not recreational vehicle use.

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<sup>36</sup> See footnote 1.

The special management area allows the Forest Service to use chainsaws routinely in the area for trail work. Interestingly, the Forest Service has found that chainsaws are less efficient than crosscut saws on many trails because of weight and fuel and safety requirements associated with chainsaws. For example, on the Salmon River Trail on the Nez Perce National Forest, where the agency has the discretion to use chainsaws, it does not do so for these reasons.<sup>37</sup>

Thus, the only substantive differences between the proposed West Meadow special management area and the proposed *wildernesses* are that a) the Forest Service would not use chainsaws in the proposed *wilderness* for routine trail maintenance and b) this proposed special management area does not undermine the Wilderness Act, allow structures for outfitters, or give outfitters special rights. When looking at all of these issues, the protection overall appears marginally better for this proposed special management area than even the proposed *wildernesses*. However, the CBC proposal does not address the issue of mountain bikes in this special management area.

The inconsistencies between the two special management areas are puzzling. There is no language about trail maintenance or motorized use for IDFG, county search and rescue, and Nez Perce Tribe fish and wildlife managers in the Cayuse Special Management Area proposal (which allows motor vehicles on one trail in summer and snowmobiles everywhere in winter). Such language is included in the West Meadow SMA (which does not allow recreational motor vehicles on any trail or in any season). The Cayuse Special Management Area proposal includes language about vegetation management; the Meadow Creek Special Management Area has none.

It is also not clear what the management prescriptions would be for roadless areas not identified in the CBC proposal, the vast majority of the wildland acreage (see Table 2). The wording of the CBC proposal leads one to believe that at least some logging will occur in roadless areas since only “the majority of timber harvest” is expected to occur in roaded areas (CBC work plan, page 8). It may be that a goal of the CBC agreement would be to log roadless areas not protected in the proposal. Indeed, the Forest Service has proposed logging in the Eldorado Creek Roadless Area in the Lolo Bugs proposed timber sale, a project the agency touts as having been reviewed by the CBC and meeting the exceptions to roadless logging in the Idaho Roadless Rule.<sup>38</sup>

### **III. The Proposed River Protections are Inadequate**

The CBC proposal short-changes river protection. The Forest Service listed streams eligible for protection under the Wild and Scenic Rivers Act in the forest plans in 1987 and subsequent amendments. The agency did not entirely complete its recommendations. All eligible segments, whether recommended or not, remain protected. The agency did recommend portions of the North Fork Clearwater, Kelly Creek, Cayuse Creek, Colt-Killed (White Sands) Creek, Gedney Creek, Running Creek and the remaining portion of the Lochsa River. The agency did not complete studies on Johns Creek, Fish and Hungry Creeks, or the South Fork Clearwater.

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<sup>37</sup> Pers. comm. with a Forest Service wilderness and recreation specialist.

<sup>38</sup> The Idaho Roadless Rule fails to protect most roadless areas from logging or even roadbuilding. See also endnote **E Idaho Roadless rule**

[Several tributaries and streams](#)<sup>39</sup> in the Clearwater Basin should be designated as Wild and Scenic Rivers.

The CBC recommends only seven river segments for protection under the Wild and Scenic Rivers Act—Kelly Creek, Fish Creek, Hungery Creek, Johns Creek, Meadow Creek, Cayuse Creek, and the Little North Fork Clearwater.<sup>40</sup> All were study rivers in the existing Forest Plans.

Thus, several rivers in the Clearwater Basin, listed below, were excluded from CBC’s recommendation. All the rivers on Table 3 below are eligible study rivers. The CBC did recommend protection from suction dredge mining on the North Fork Clearwater River, though that is the *status quo*. In addition, the Forest Service has proposed that Lolo and Musselshell Creeks, and other portions of the North Fork Clearwater and Colt-Killed, Cayuse, and Kelly Creeks are eligible for wild and scenic river status in its 2006 forest planning effort.

**Table 3**  
Wild and Scenic Study Rivers Excluded from CBC Proposal

North Fork Clearwater River  
Colt-Killed (White Sand) Creek and short segment of the Lochsa River  
Gedney Creek  
Three Links Creek Complex  
Moose Creek Complex  
Bear Creek Complex  
Running Creek  
South Fork Clearwater  
Bargamin Creek<sup>41</sup>

#### **IV. Other Issues and Concerns with the Clearwater Basin Collaborative and the Proposal**

Criticism of the CBC group centers on two main concerns. First, it has no legal authority to operate on behalf of American citizens. National Forests are owned by all Americans, not just the few who decide meet together to come up with “recommendations” for the national forests. Second, there is the concern that this, or other similarly organized collaborative groups, could

<sup>39</sup> Hyperlink references page describing proposed Wild and Scenic Rivers on the Friends of the Clearwater website.

<sup>40</sup> It is unclear whether the Little North Fork recommendation extends beyond the Clearwater National Forest portion of the administratively combined Nez Perce-Clearwater National Forests. The CBC proposal states the recommendation consists of “the entire eligible river segment on public land.” This suggests the recommendation does extend beyond the county boundary. The river itself is largely outside of Clearwater County. If the entire recommendation is included, both from the BLM and Forest Service, it would appear somewhat inconsistent with the constraints the CBC put on recommendations for roadless wildlands, which usually end at the county boundary. Regardless, the Little North Fork has been recommended for inclusion in the Wild and Scenic Rivers system by BLM and the Forest Service (the Idaho Panhandle National Forests office).

<sup>41</sup> Bargamin Creek is not within the Clearwater Basin. However, it is within the Meadow Creek Roadless Area and the portion Meadow Creek, called East Meadow Creek, which the CBC proposes for *wilderness*.

circumvent existing laws, especially those that allow all citizens to participate in national forest decision-making processes. For example, the recommendations of the CBC group on a timber sale could be informally adopted by the Forest Service before the formal analysis, public involvement, and decision-making process begins, rendering that legitimate process, which includes full public participation, a *pro forma* exercise. The bedrock environmental law upon which formal and inclusive public involvement is based is the forty-four-year-old National Environmental Policy Act (NEPA).

In essence, there is already a legal and inclusive process to consider public input and make decisions on national forests through NEPA. It is our opinion that these efforts of special interest collaboration constitute an unethical process that will significantly limit meaningful participation of the national public. Such examples of bad collaboration establish a precedent that effectively exclude regular citizens from effectively participating in a democratic manner by reaching back room decisions before the legitimate process begins.

Additionally, the CBC's proposal is deeply problematic because it proposes to "significantly increase" logging, and fails to protect old growth and most species of wildlife other than elk. We briefly look at three examples below.

The CBC proposal states (page 8) that the group plans "to work administratively to significantly increase the amount of timber being harvested within the Clearwater Basin." There is no analysis whether logging levels can be increased and meet water quality or other values. In fact, many of the places where logging would take place, "the roaded front," do not currently meet water quality or fish habitat standards set in the Clearwater and Nez Perce National Forest Plans.<sup>42</sup> For example, the Clear Creek area, the first big timber sale in the CBC's Selway-Middle Fork program area, does not currently meet the key sediment standard for water quality and fish habitat.<sup>43</sup> A substantial increase in logging would make it much harder to meet the sediment standard.

The CBC "will make recommendations" on "logging for old growth timber" in the Clearwater Basin.<sup>44</sup> There are serious problems with this proposal. Both the Clearwater and Nez Perce National Forests' Plans do not allow logging in the areas set aside for old growth protection. This is because the values protected in these places are harmed by industrial activity. Logging old growth is scientifically suspect. The Forest Plans only set aside 10% of the forested area for protection as old growth. Even then the Clearwater National Forest has not been meeting this standard, prompting a policy to not log stands that are close to old growth, but not yet meeting the definition. Science

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<sup>42</sup> See footnote 1.

<sup>43</sup> See the Forest Service's *Clear Creek NFMA Assessment: Middle Fork Clearwater River Drainage Nez Perce-Clearwater National Forest (sic) 2010-2011*. That document notes, "All areas exceed desired conditions of <30% cobble embeddedness for sediment."

<sup>44</sup> See footnote 1.

suggests far more old growth should be protected in this region.<sup>45</sup> Thus, even though the amount of old growth is minimal, the CBC proposal apparently seeks to roll back current protections.

The CBC fails to recognize species other than elk. It assumes the elk decline is abnormal. The truth is, elk numbers in the 1900s were abnormal due to some intersecting factors. The large wildfires of the early 1900s created optimum habitat for elk at levels probably not seen since the last ice age. In the early and mid-1900s, Idaho created game preserves in the Clearwater region to protect big game species. At the same time, predators were killed and poisoned in those same areas. Elk were brought in in the lower Clearwater from the Yellowstone region and let loose. All of this created an abnormally large elk population. Current populations are reflective of habitat conditions. For watershed health, plant succession and natural fires should be allowed to proceed. This would likely not result in dramatic increases in elk habitat. It may even result in some decrease over the near term.

### **Conclusion**

There are at least four important problems with the CBC proposal. First, the language proposed for administering new proposed wilderness is inconsistent with the Wilderness Act and would be wilderness in name only. This is a huge step backward, both for the specific areas and the National Wilderness Preservation System as a whole. Second, the recommendations for protection of wildlands and wild rivers are far too small, with only 20% of roadless acreage in the Clearwater Basin proposed as wilderness. The proposal seems to have entirely ignored roadless areas that are currently protected under the Clearwater National Forest Plan as modified by the settlement agreement. Thus, it could function to weaken protection on up to one million acres of roadless land. Third, the existing individual area protection in both the proposed wildernesses and special management areas is currently as good or better than the proposed CBC proposal for most areas. For such a small recommendation, this is troubling. The only exception might be portions of Meadow Creek. Fourth, the proposal would significantly increase logging in the Clearwater and Nez Perce National Forests in spite of the fact there are streams which contain important aquatic habitat that currently do not meet water quality standards.

This year, the 50<sup>th</sup> anniversary of the Wilderness Act, it is important to reflect on not only the past, but the future. Since the CBC proposal includes provisions incompatible with wilderness, this makes the proposed wilderness designation “wilderness” in name only. Allowing special exceptions in one area seriously threatens the integrity of the entire National Wilderness Preservation System that generations have worked to build over the past almost 50 years. Wilderness, both as a wild place and as a concept in America as we've known it, is in danger of disappearing from our culture and the landscape. Wilderness should be protected for the unique values and qualities that it provides. Wilderness is not an equestrian park, a game farm, a hiking camp, or a jungle gym. Compromising the Wilderness Act and the National Wilderness Preservation System and potentially weakening protection on hundreds of thousands of acres of wildlands is too high a price to pay for designation of new “in-name-only” wilderness.

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<sup>45</sup> See P. Lesica, 1995. *Using fire history models to estimate proportions of old-growth forest in northwest Montana, USA*. Biological Conservation 77: 33-39. That article suggests 20% to 50% old growth was the norm prior to settlement and logging.

## Endnotes:

**A) Roadless areas.** Roadless areas are generally over 5,000 acres in size. According to the Idaho Roadless Rule (USDA 2008, see [www.fs.usda.gov/roadmain/roadless/idahoroadlessrule](http://www.fs.usda.gov/roadmain/roadless/idahoroadlessrule)), there are 984,400 roadless acres on the Clearwater National Forest. That inventory missed some 20,000 acres that are likely roadless including land in the Weitas drainage near the unmaintained 555 route, the northern extension of the Siwash area in the North Fork Clearwater drainage, an area near Wendover Ridge in the Lochsa River Basin, and some contiguous land to potential Selway-Bitterroot Wilderness additions in the upper reaches of the Lochsa Basin. A total would be about 1,004,000 acres.

The Idaho Roadless Rule identified 497,000 roadless acres in the Nez Perce National Forest. Of that acreage, 137,300 are clearly within the Salmon River Basin. Two areas, Dixie Summit and East Meadow Creek Roadless Areas, contain acreage in both the Salmon and Clearwater Basins, though the vast majority of the cumulative acreage in those two areas is within the Clearwater Basin. About 8,000 acres of Dixie Summit/Nut Hill are in the Salmon Basin, making the total for that basin about 145,000 acres. The CBC recommends the Salmon portion of the East Meadow Roadless Area for wilderness, so its recommendations don't strictly follow the Clearwater Basin and that acreage is included in this report as being within the Clearwater Basin. The Forest Service also recognizes unroaded areas that were missed in the Idaho Roadless Rule Inventory including land that should be added to the West Meadow Creek Roadless area. Additional land adjacent to the Gospel Hump Wilderness, mainly in Johns Creek, is also roadless and was intentionally excluded from the Idaho Roadless Rule by the Forest Service for unknown reasons. Additional roadless land previously identified by the Forest Service as roadless was dropped from the Idaho Roadless Rule Inventory in the Middle Fork Clearwater and the Selway Drainages. Those areas still appear to be roadless, though possibly smaller in size. In addition, there are some few hundred acres of BLM-administered land that are contiguous to the West Meadow Creek Roadless Area. All of these amount to about 36,000 acres. Thus, a total for the Nez Perce National Forest, including contiguous BLM land, in the Clearwater Basin would be rounded to about 388,000 acres (497,000 minus 145,000 plus 36,000).

About 75,000 acres of the roadless land in the Idaho Panhandle National Forests portion of the Mallard-Larkins Roadless Area is within the Clearwater Basin, including a small amount of acreage missed by the Forest Service. Also, all of the Pinchot Butte Roadless Area and part of the Grandmother Mountain Roadless Area (both include significant acreage managed by BLM not included in Idaho Roadless Rule figures) on the Idaho Panhandle National Forest are within the Clearwater Basin. In fact, Grandmother Mountain is a BLM Wilderness Study Area. It is unclear from the agreement whether the CBC ever considered either of these two areas, which are entirely outside of Idaho and Clearwater Counties, in its deliberations. See also footnote 40 page 18. The total for the Clearwater Basin is about 95,000 acres.

Roadless acreage in the Clearwater Basin is therefore around 1.5 million acres (about 1,487,000 acres). If one counts all roadless lands that are part of roadless areas, which cross basin boundaries (including Idaho Panhandle National Forests and the Lolo National Forest in Montana), the roadless acreage is between 1.7 and 1.8 million acres.

**B) Wilderness acreage.** According to wilderness.net, an official wilderness website, the acreage of the Selway-Bitterroot Wilderness in Idaho is 1,089,144 acres, which is the entirety of the Wilderness within the Clearwater Basin. Wilderness.net does not break down the wilderness acreage by river basin for either the Frank Church-River of No Return or Gospel-Hump Wildernesses. The headwaters of the Selway River are within the Frank Church-River of No Return Wilderness. A rough estimate of the upper Selway Basin (counting sections) is about 120,000 acres. Using the same method, about 80,000 acres of the Gospel-Hump Wilderness are within the South Fork Clearwater Basin. Thus, the total for the three wildernesses within the Clearwater Basin is about 1.3 million acres.

**C) Fish and Game authority.** The Wilderness Act states:

Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

The wording “jurisdiction or responsibilities” of the states “with respect to wildlife and fish” arguably conveys narrow meaning in the sense of reasonable hunting/fishing seasons and regulations. It seems Congress wanted to keep that part of the *status quo* intact, intending that the various states would regulate hunting and fishing in wilderness, as they always had, but that it be done in a way compatible with wilderness. Senate Report 109, April 3, 1963, clearly notes regarding wilderness “the science of wildlife management is peculiarly concerned with the perpetuation of primeval areas as check areas against which the practices in game production on lands under management can be measured.” It seems there was a general consensus, fish and game agencies included, that wildlife in wilderness would be kept wild.

The broader term wildlife management, which crosses jurisdictional boundaries, is not mentioned in the Wilderness Act. Also, the supremacy clause in the US Constitution gives ultimate authority over wildlife and fish on public lands to the federal government. Several cases have referred to the U.S.C.A., Article IV Sec. 3, and clause 2 rulings under U.S. Constitutional law. *Gere v. Connecticut* in the late 1800s notes states have wildlife jurisdiction only to the extent it doesn't interfere with federal authority. Cases which have upheld the supremacy of the federal government to manage wildlife by way of the authority granted in various federal statutes include *Hunt v. U.S.* (278 US 96), *U.S. v. State of Washington* (520 F.2d 676) *New Mexico State Game Commission v. Udall* (410 F.2d 1197) and *Kleppe v. New Mexico* 426 US 529. In the latter case the U.S. Supreme Court ruled that “We hold today that the property clause gives Congress the power to protect wildlife on the public lands, state law notwithstanding.” The Endangered Species Act itself is proof that state jurisdiction of wildlife and fish is subservient to federal authority, even on private land.

Thus, one could more reasonably argue Wilderness Act does not give IDFG the authority to build or install structures or installations or to use aircraft or other motor vehicles, all of which are prohibited in section 4(c) of the Wilderness Act. With regard to these prohibitions the Act includes only very narrow and specific exceptions, none of which apply to the wildlife section quoted above.

**D) Clearwater Forest Plan Settlement Agreement.** The Settlement agreement states:

The Forest Service agrees, effective immediately, not to approve any timber sale or road construction project decisions within the area covered by the proposed 'Idaho Wilderness, Sustainable Forest and Communities Act of 1993,' H.R. 1570 and **that such lands will be managed according to Forest Plan standards and guidelines for recommended wilderness (Management Area B2).** The Forest Service further agrees to apply these management prescriptions to any area(s) added by amendment to H.R. 1570, and to any area(s) included in any other Idaho wilderness proposal introduced in Congress by any member of the Idaho delegation. (Emphasis added).

This means a relatively large land base is to be protected as recommended wilderness until the forest plan revision, as shown in Table 1. It includes not just the proposed wilderness in HR 1570 but the special management areas as well which would have had only limited protection had that legislation passed. It also includes any additions in subsequent legislation to HR 1570.

It is generally new Forest Service policy to prohibit motorized use in agency recommended wilderness (the B-2 management area), though the Clearwater National Forest Travel Plan falls short of that policy. The Clearwater National Forest Plan prohibits roadbuilding and logging in those areas. The areas protected under the settlement agreement and in the forest plan are larger than the CBC proposal (and the

1987 Forest Service recommended wilderness). Tables 1 and 2 reflect the settlement agreement acreage. Figures for the tables were rounded to the nearest 1000 acres and are derived from the Idaho Roadless Rule, the current Forest Plans for the Clearwater, Nez Perce, and Idaho Panhandle National Forests, reported acreage from HR 1570 and subsequent versions, and by counting sections where other information was unavailable. Thus all figures are fairly close approximations.

**E) Idaho Roadless Rule.** The Idaho Roadless Rule does not offer protection against logging and roadbuilding in roadless areas except in the areas included in the Wild Land Recreation theme. Table 2 only includes Idaho Roadless Rule areas where protection is greater than existing forest plan direction. However, it is somewhat unclear as to whether the Idaho Roadless Rule completely overrides existing plan direction where existing plan direction is stronger than the Idaho Roadless Rule. In the case of the Clearwater National Forest, it would seem the Idaho Roadless Rule can't override a court-ordered binding settlement agreement. Thus, which ever is stronger—the existing forest plan or the Idaho Roadless Rule—is reflected as the existing situation in Table 2

**F) Lochsa River “Secretary’s Area”:** The Secretary’s Area refers to land in the Lochsa River drainage mentioned in a letter from the Secretary of Agriculture during the administrative wilderness reclassification process. Specifically, in 1963, not long before passage of the Wilderness Act in 1964, the Secretary of Agriculture reclassified the old Selway-Bitterroot Primitive Area as an administrative wilderness, the Selway-Bitterroot Wilderness. However, the administrative wilderness was smaller than the old primitive area. This was not uncommon as the Forest Service, when making recommendations to the Secretary of Agriculture for reclassification of areas from primitive to wilderness, routinely proposed that the area involved be reduced in size. In this instance, the Secretary of Agriculture noted that much of the land removed from the old primitive area in the Lochsa should still receive considerable protection even though it did not receive reclassification as administrative wilderness. When the Wilderness Act passed in 1964, it classified as immediate wilderness only the areas that had been administratively designated as wilderness (including wild and canoe areas) by the Secretary of Agriculture.

**G) Alternative designations.** The Wilderness Watch paper, *Keeping the Wild in Wilderness: Minimizing Non-Conforming Uses in the National Wilderness Preservation System; A Tool for Protecting Wilderness in Future Wilderness Designations*, addresses alternative designations:

**Consider alternative designations if special provisions that compromise the ability to manage the area as Wilderness can’t be avoided and where the goal to prevent other uses such as logging or ATVs can be achieved with another classification.** For example, if the goal is to prevent logging or off-road vehicle use, but allowing mountain bikes, unregulated numbers of day-use hikers, and/or significant manipulation of natural processes is desired or inevitable, then consider other existing protective classifications such as national scenic area, national conservation area, national recreation area, national monument, wildlife preserve, etc. Such classifications are not new, and have worked well to protect areas’ undeveloped qualities while allowing some activities or levels of use that would not be appropriate if managing for protection of wilderness values. For example, in the 60,000-acre Rattlesnake area that borders Missoula, Montana, Congress designated the lower half of the area, which is popular for day-hiking, mountain biking, and horseback riding, as the Rattlesnake National Recreation Area and the upper half as the Rattlesnake Wilderness. The entire area is off-limits to resource extraction and road building, but only the more remote 30,000 acres are managed specifically to preserve Wilderness character.

While the CBC deal calls for special management areas, they are not as protective as those envisioned above. Further, the CBC’s pseudo-wilderness recommendations are more like special management areas in terms of protection.