



Friends of the Clearwater

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Sent via email to: appeals-northern-regional-office@fs.fed.us and via US Mail

To: Objection Reviewing Officer
USDA Forest Service
Northern Region
PO Box 7669
Missoula, MT 59807

RE: OBJECTION to the Center Johnson Environmental Assessment and Draft Decision Notice

Pursuant to 36 CFR Part 218, the Friends of the Clearwater (FOC) and Alliance for the Wild Rockies (AWR) file this Objection to the Center Johnson Environmental Assessment and Draft Decision Notice. This timber sale is proposed for the Slate Creek Ranger District of the Nez National Forest (a portion of the administratively combined Nez Perce-Clearwater National Forests).

Pursuant to Part 218, FOC is the lead objector. Contact Person: Gary Macfarlane, FOC Ecosystem Defense Director, P.O. Box 9241, Moscow, ID 83843 (209-882-9755). Attachments, references and other incorporated documents are included on the data CD with the version sent to the Forest Service (FS) via US mail postmarked this date or via email.

Objectors FOC and AWR (hereinafter FOC) filed timely joint comments on the Center Johnson Project. Those comments address the issues to the degree they were available at the time.

We would be willing to meet with the Forest Service to discuss this objection if the agency decides to hold such a meeting.

Introduction

We appreciate the opportunity to object on the Center-Johnson Project. We also appreciate posting the specialist reports along with the EA on the Nez Perce-Clearwater National Forests website. The Forest Service does not always provide such information with the project, and that makes public participation unusually hard. While we are disappointed that you have chosen to use a time period that wouldn't allow the public to access the project file within the time period allowed, which could effectively prejudice the public's ability to provide fully informed comments, the specialist reports can fill some of those gaps. Any statutes or regulations cited below are incorporated by reference. Throughout our comments, we have cited the best available science. If the Forest Service relies on science other than what is cited below, please cite that science and provide an explanation in your environmental analysis as to why that science is more appropriate than the science we have provided.

One of our members, Harry Jageman, submitted an objection on the Center-Johnson project. We incorporate his objection by reference and provide the citations that he referenced with our material.

Applicability

We are unconvinced of the need for this project in the areas that have not been verified on the ground. On page 13 of the EA, when the Forest Service discloses a need to “improve forest resilience to wildfire and insect and disease events,” and goes on to claim that “high tree densities are making the forest stands conducive to Douglas-fir beetle and fir engraver bark beetle epidemics.” Yet, pathologists admitted that their observations were mostly limited to “roadsides of accessible proposed units decided by Joan and Sue....” Forest Health Protection Report (hereinafter “CFO-16-015”) p. 2. The Douglas-fir beetle hazard map found in the report ranks most of the “hazard” from Douglas-fir beetles in the “low” category, with only portions of some of the units ranked as “moderate.” CFO-16-015, p. 2. Many of these units appear to overlap with the areas of low hazard. The report also disclosed that “insect and disease issues varied between units.” CFO-16-015, p. 2. If the Forest Service has found that insect and disease issues vary between units, there is no on-the-ground verification of pathogens in unvisited units, and the hazard map generated labels nowhere in the entire project boundary at “high” risk for Douglas-fir beetle hazard, we think an assertion that the area is at risk of a Douglas-fir beetle “epidemic” is unsupported and therefore questionable. The fir engraver bark beetle “epidemic” that the Forest Service asserted to be an underlying need for the project is also unsupported with the documents provided. The aerial survey depicted incidents of fir engraver, but these instances are in only a quarter of all units proposed for logging. CFO-16-015 at p. 8.

Letting pathogens and the ecological response run its natural course will also meet the needs stated on page 13 of the EA. Pathogens select for weak trees. “Disease is essential to ecological balance in a natural forest.” Costello et al (1995) p. 22. Stronger trees—either by physiological or genetic characteristics—will survive pathogen outbreaks. If the reason that trees survive is genetic, these surviving trees will play an evolutionary role in passing those genes to offspring. Additionally, “pathogens help to break down and release elements sequestered within trees and, by increasing mortality, they facilitate succession and help to maintain genetic, species, and age diversity.” Costello et al (1995) p. 22. Pathogens promote early and late seral vegetation patterns. Costello et al (1995). This project cannot improve upon such a system, especially because the Forest Service cannot predict which individual trees will have the genetic fitness to survive pathogen outbreaks.

We are unconvinced of the need for this project as one to reduce wildfire risk to local communities. As Harry Jageman stated in his comments, with which we fully agree, the areas extending ½ mile out from the communities that you have proposed to protect with logging are not areas with trees; it is grassland. Those areas are eight miles from Whitebird and fifteen miles from Riggins.

We ask for clarification under which title of the Healthy Forest Restoration Act which this project is proceeding. In the Center-Johnson project’s “proposed action” scoping document the Forest Service stated that the project “**may** be carried out in accordance with Title VI, section 602(d).”¹ This allows projects proposed pursuant to the Farm Bill to be proposed and analyzed under Title I or Title VI of the Healthy Forest Restoration Act. But in CFO-16-015, which preceded the PA by some months, the Forest Service said it was proposing the acreage under Title VI. CFO-16-015 p. 1. As the Forest Service had not yet determined whether it would exercise authority under Title I or Title VI, we could not discuss some of these issues in scoping. When discussing the Healthy Forest Restoration Act on pages 21-22 of the environmental assessment, the Forest Service is unclear as to which title of that Act this project falls under. While many of these issues do not change under either Title I or Title VI of HFRA (such as the need to consider extraordinary circumstances of follow the governing forest plan), there are several issues that could become problematic depending upon which title the Forest Service is

¹ Center-Johnson Project proposed action p. 3. “Title VI is codified at 16 U.S.C. § 6591a(d).”

using. As this is our last opportunity to comment, even though we aren't quite sure which title the FS is using, we raise them under both scenarios now.

If the Forest Service is using Title VI of HFRA to execute this project, we would like to note that there are several parameters that exceed what Title VI permits. Such overstep would include the treatment over 3,000 acres of land, which is prohibited by the Farm Bill amendment to the Healthy Forest Restoration Act. The Farm Bill provision that allows projects to be done under Title VI is 16 U.S.C. § 6591b. The first subsection, subsection (a), allows the Forest Service to elect to categorically exclude a proposed project under Title VI. Under section (c), however, the statute mandates, "A project ***under this section*** may not exceed 3,000 acres." 16 U.S.C. § 6591b(c)(1). A plain reading of the statute prohibits any project, whether it is categorically excluded or not, to exceed 3,000 acres. The Forest Service has far exceeded this 3,000-acre limitation in both proposed alternatives. Within the 9,855-acre project area, "the proposed decision would reduce hazardous fuels on approximately 3,800 acres..." This includes logging and burning outside (and addition to) the logged areas, which amount to over 3,000 acres. Additionally, section 6591b(c) also prohibits new permanent road, which the Forest Service has proposed with both alternatives. Center-Johnson EA p. 29. Under 16 U.S.C. § 6591b(c)(3), Congress was clear: "A project under this section shall not include the establishment of permanent roads." Thus, no new permanent roads may be built, no matter how long. As we don't have the project file, we haven't been able to review the Forest Service's conclusion that areas outside the wild-urban interface fall into the categories that they must for this to be a project under Title VI. If the Forest Service has chosen not to proceed under Title VI, there still remain issues with proceeding under Title I.

If the Forest Service is using Title I of HFRA to execute this project, the Forest Service has not developed adequate alternatives. Friends of the Clearwater asked for the following alternative in its scoping comments: "Please include and fully analyze an alternative that results in a road system reduced to the level which is fully affordable to maintain on an annual basis, which all of the watersheds affected by the proposal." FOC Center-Johnson PA comments p. 3. FOC pointed out that it might require modification of the proposed action because upgrading may not be affordable to maintain or may be located where chronic sedimentation into streams persists, and road obliteration may be the answer. But, by "reducing the footprint of roads," the Forest Service could "reduce the spread of noxious weeds and their associated costs and environmental damage." FOC Center-Johnson PA comments p. 3. Under Title I of HFRA, the Forest Service is required to study, develop, and describe an action alternative in addition to the proposed agency action if the alternative is proposed during scoping and meets the purpose and need of the project. The Forest Service noted considering but dropping the alternative reducing temporary road construction. First, this response did not consider FOC's comment, as FOC's comment related to the entire road system, and the Forest Service only answered by considering temporary roads in alternatives. Additionally, there was no explanation as to how this alternative was not reasonable or could not meet the stated purpose and need. And not considering this alternative has resulted in very likely continuing sediment impacts that are the reasons that watershed streams are so degraded in the project area. The Forest Service's response directed us to the roads management process, which was not a site-specific analysis looking at the hydrological impacts of roads in this project area.

If the Forest Service is using Title I of HFRA to execute this project, it has violated Title I because the action alternative the Forest should have developed was so similar to the proposed action that it cannot be considered an "alternative." The Forest Service proposed Action 2 and then titled the other action alternative "Alternative 2 as Modified." The difference in logging was ten less acres of small trees and one less acre of medium trees in exchange for *increasing* logging of trees over twenty inches. And for roads, Alternative 2 proposed 25 miles of road construction as compared to Alternative 2, as Modified, which proposed only one mile less of road construction while *increasing* gravel work by 10 miles. EA p. 29. That Alternative 2 and Alternative 2 Modified are the same alternative becomes very apparent when one compares the new roads, road construction, and road work as well. And this is

highlighted when reviewing the environmental consequences of the project when the Forest Service analyzed the impacts of the alternatives, often the “no action” alternative was analyzed separately, but Alternative 2 and Alternative 2 Modified were so similar that direct and indirect impacts could be discussed *as if they were the same alternative*. This is not a separate alternative; a plain understanding of “alternative” is a different way to achieve the same result. As Alternative 2 and Alternative 2 Modified are so similar that they did not need to be analyzed for different impacts, Alternative 2 Modified is not a true alternative. And if it is not a true alternative, the Forest Service has not analyzed a second action alternative. HFRA Title I requires the Forest Service to analyze two action alternatives (in addition to the no-action alternative) if one is suggested in scoping. As the Forest Service has not done so, it must drop the project or redo an EA with a second action alternative to avoid violating the legal requirements of Title I of HFRA.

REMEDY

Redo scoping and the EA to clarify the points raised in the objection.

NEPA Process

This is the first time we have been able to review any science or analysis is for this objection. We raised the issue that there will be no opportunity for the public to comment on what the EA identifies as the best available science. We also stated our concerns with the lack of involvement of the general public in project development: “The PA describes actions the FS took prior to scoping the proposal to the American public. Part of the earlier narrowly focused public involvement included meetings with self-selected members of the public who were able, because of their location, to engage in a collaborative process...” FOC PA comment.

The FS replied that there has been “several opportunities for the public to provide input” in responses to our comments, labeled comment 37 and 40 in the Public Comments and Forest Service Responses on the Center-Johnson—scoping and Proposed Action Document. The FS’s response referred to the EA summary of public involvement (pp. 14-15). But this involved a public meeting at the Slate Creek Ranger District, a field trip to the public area, and a second meeting at the Slate Creek Ranger District. These are all geographically exclusive places because, as we stated, they do select for the public who can attend based on their location. The FS additionally stated that it developed the project with the Clearwater Basin Collaborative, which is an exclusive group (that has, on occasion, actually asked parties to leave the collaborative), the Idaho County Commissioners (limited elected officials of a county and thus also an exclusive group), and the Nez Perce Tribe, who enjoys exclusive government-to government relations. The general public is excluded from these three groups as well. So, the only chance for the general public who doesn’t live near the Slate Creek Ranger District or the project area is the one scoping period.

The Forest Service incorporated the Center-Johnson project record by reference according to 40 C.F.R. § 1502.21. This regulation states, “No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment.” Forest Service regulations state the same. 36 C.F.R. § 220.4(h). If this project record were actually assembled, we would have it before the objection period has expired, and this will likely not happen. This is a pattern that we have seen with the Forest Service, as you have incorporated a project by record when it wasn’t available. *See* Friends of the Clearwater Availability of project record (Lolo Insects and Disease Project File), August 29, 2018. Even though you might invite comments after objection periods, once the objection period ends, there are very likely legal rights that may end with that objection period. This prejudices the general public from raising issues that will make the Forest Service’s analysis lawful or better. Specifically, as discussed below, we won’t be able to review your NEZSED, FISHED, WEPP or ECA modeling. Based on some problems that have been patterns with

the Forest Service with models like NEZSED in the recent past (i.e., Clear Creek), we are preserving objections that may arise when we review the model with the project file. Should we find there was an issue with the calculations and assumptions in the project file, where this information exists for these models (e.g., EA p. 103), we were prejudiced from raising them and giving the Forest Service notice of the issues here.

REMEDY

Withdraw the Draft Decision Notice and reissue it after the project file is available to the public.

Wildlife/Old Growth

FOC's comments addressed concern over old growth and wildlife. In particular, we were concerned about the amount and quality of old growth stands:

How do Management Area 20 designated stands in the project area conform to the Large Tree Size Class? It appears to be low, since the PA indicates much immature timber is included in MA 20. Why were so many immature timber stands designated into MA 20 **in this project area**? Given this situation, the EA must explain how the purposes of the Forest Plan's MA 20 designation are being served.

The best available science for determining if stands meet old-growth criteria requires actual field examinations. What are the results of field examinations of the project area for old growth? Please disclose on a map in the EA locations of all old-growth stands in the project area.

FOC PA comments at 9. The EA does not show that it complies with the direction in the Forest Plan. Appendix N lays out some specific requirements that appear not to have been met:

Current information indicates that, in order to maintain a viable population of old-growth-dependent species, it is necessary to maintain 10 percent of the total forested acres as old growth with no less than 5 percent of the forested acres maintained as old growth within each prescription watershed or combination of watersheds totalling 5,000 to 10,000 acres. If less than 5 percent old growth exists in a drainage, the additional required acres will be assigned to adjacent drainages where excess old growth is available.

An additional 5 percent of the forested acres within each prescription watershed shall be designated as replacement old growth.

Forest Plan Appendix N-2. However, the Center Johnson Wildlife Specialist Report and the EA give contradictory and confusing information about the amount of old growth. The EA states on page 127, "Existing data show that all old growth units currently meet the Forest Plan standard of five percent existing old growth and the remainder in replacement old growth." However, the Center Johnson Wildlife Specialist Report on page 50 states there are 228 acres of MA 20² for a project area of 9,935, which is only, 2% of the area. Specific to the Old Growth Analysis Areas (OGAAs), the report on page 51 (Table 9) shows little overlap between MA 20 and either the forest plan or North Idaho guidelines.³ Table 9 also shows far less than 5% MA 20 old growth in one OGAA and less than 5% for both in actual OGAA's in terms of either forest plan or North Idaho.

² Contrary to what is stated in the wildlife report, figure 3 of the EA does not show the MA 20 set aside.

³ In any case, there appears to be an erroneous conclusion regarding the Green et al. 1992. It was intended to be minimum screening criteria for possible old growth stands from the timber stand data base and not the final definition or determination of old growth.

There are other problems. There is no indication that what has been side aside as MA 20 meets the requirements of Appendix N in terms of prioritization. The 2010 FIA data that show enough old growth on the Nez Perce national Forest are outdated in that several large fires have occurred since that time, including large fires on the Slate Creek Ranger District, and several large timber sales have been approved.

The Forest Plan does not allow for logging in old growth. Yet, the project apparently approves logging in old growth, couched as thinning.

Similarly, HFRA Title I or Title VI require the Forest Service to retain the large trees contributing to old-growth structure. 16 U.S.C. §§ 6512, 6591b(b). Either Title I or Title VI requires the Forest Service to retain as many large trees as possible. Out of two similar alternatives where the Forest Service has proposed logging, Forest Service has proposed to pick the plan that would log MORE large trees. *See* EA p. 60. Thus, selection of the alternative with increased large-tree logging when the Forest Service proposed an alternative that logged less large trees is unlawful under HFRA Title I.

HFRA Title I requires the Forest Service to carry out projects in a manner that “focuses largely on small diameter trees, thinning, strategic fuel breaks, and prescribed fire to modify fire behavior, as measured by the projected reduction of uncharacteristically severe wildfire effects for the forest type (such as adverse soil impacts, tree mortality or other impacts.” 16 U.S.C. § 6512(f)(1). But, your EA shows that the focus of this project is largely focused on medium-size trees. EA p. 60. Additionally, the draft alternative chosen increases clearcuts, which are increased by 331 acres, and not by thinning or strategic fuel breaks. *See* EA pdf p. 27.

Another concern is the analysis to species dependent on old growth. The EA claims on page 122 the fisher is not in the project area. Information contained in the Christie Creek and Sherwin Creek Allotments EA (attached) does show there is habitat present for the fisher, though it and other old growth species were not analyzed. That EA states, “There are four Nez Perce Forest old growth MIS that were not analyzed in detail because proposed activities would not affect them. These old growth MIS include: pine marten, fisher, pileated woodpecker and northern goshawk.” Christie Creek and Sherwin Creek EA at 67.

REMEDIES

Don’t log in any areas meeting either forest plan or Green et al guidelines.

Don’t log in any habitat for old growth MIS.

Withdraw the Draft Decision Notice and reinitiate scoping.

Water quality and fisheries

We are unclear as to the baseline sediment yield that the Forest Service is using to calculate the sediment yield over the base and suspect the Forest Service does not have any real data as to the current baseline for the watersheds as delineated in the Forest Plan. In our comments, we asked, “Has the FS recently measured sediment in project area streams in order to validate the NEZSED modeled estimates?” FOC Center-Johnson PA comments, p. 5. We also stated in our proposed-action comments that past projects and any monitoring within this project boundary be included in your EA. FOC Center-Johnson PA comments, p. 2-3. And finally, we noted that the Forest Service must reconcile the

conclusion that sediment yields meet the forest plan sediment yield guideline when the Forest Service has also admitted that there are four creeks that don't meet their fish habitat potential. FOC Center-Johnson PA comments p. 5.

It does not appear that the Forest Service has measured actual baseline conditions. In the *Specialist Report – Water Resources* at page 7, the Forest Service disclosed the following data sources:

Data Sources

Several data sources were used to assess impacts to water resources, and develop a Proposed Action that can better ensure water resource protection in accordance to Federal and State laws. These sources include the Nez Perce National Forest Watershed Database, the Nez Perce National Forest Area Soil Survey (USDA Forest Service 1987), digital information from Nez Perce – Clearwater National Forests GIS data layers, and project-specific field surveys conducted by Nez Perce-Clearwater National Forests Aquatics Program.

We presume that these data sources contributed to the baseline upon which the NEZSED model was run. But, as the Forest Service was not specific, we have no certain answer as to whether there was any specific monitoring information that contributed to the baseline. And we won't have access to NEZSED until we receive the project file, which won't be in time to meaningfully analyze or comment.⁴ However, according to the Forest Service's own documents, there needs to be five years of monitoring information that establishes a baseline. And under the Nez Perce Forest Plan, the Forest Service is required to validate its resource-prediction models, including water quality and fisheries, every two-to-five years. We don't see evidence that either requirements made it into the analysis for this EA. See Center Johnson EA Watershed analysis, pp. 83-101. And in the Water Specialist's report, the author acknowledged that indicators of streamside road density were not direct measures of watershed conditions. *Specialist Report – Water Resources* at p. 6.

The Forest Service must conduct an upward-trend analysis for watersheds listed in Appendix A that do not meet Forest Plan standards, and cannot harvest timber in those watersheds if it cannot show an upward trend. The Forest Service stated in the PA, "The existing levels of percent cobble embeddedness in Christie, Deer and Sherwin creeks all equate to a fish habitat potential that fails to meet Forest Plan Appendix 'A' objective of 70 percent (Table 10). An analysis will be conducted to determine if management actions will contribute to an upward trend toward meeting the habitat potential objective for these watersheds. There is need to reduce sediment and indicate a positive, upward trend in habitat carrying capacity." Proposed Action p. 38. According to your table 10 in the proposed action, Christie, Deer, Sherwin, and Joe creeks are not meeting their fish and water quality objectives. As there was no analysis in the proposed action, we could not comment on it. We did note that the PA stated that existing levels of cobble embeddedness failed to meet forest-plan standards for the several creeks:

How long have the levels of percent cobble embeddedness fail to meet the stated objective? Why does the FS not want the public to be able to comment on the upcoming "analysis ... to determine if management actions will contribute to an upward trend toward meeting the habitat potential objective for these watersheds"?

See FOC Center-Johnson PA comment pp. 5-6. The Forest Service paired our comment with a comment that noted, "cobble embeddedness appears to be increasing in Christie and Sherwin Creeks," and the Forest Service responded,

⁴ Access to the NEZSED model is incredibly relevant, as the Forest Service has had problems with this model on its Clear Creek project NEPA analysis.

Agreed. Available data presented in the Aquatics-Fisheries section of the Environmental Assessment indicate some project area streams have not met their Forest Plan Fish/Water Quality Objective since 2005.

Yes, the 2005 and 2016 data does show the cobble embeddedness data increasing the percent embedded in Christie and Sherwin creeks.

With the Proposed Action we have determined that we will have an upward trend in fish habitat potential in Christie, Deer, Sherwin and Joe Creek by:

- Applying RHCA buffers.
- No proposed temporary road stream crossings
- Apply graveled at stream crossings at roads that can deliver sediment to streams.
- Remove and replace culverts/log culverts - 13.
- Treat stream crossings through road decommissioning.

Public Comments and Forest Service Responses on the Center-Johnson – Scoping and Proposed Action Document, Page 26

The Forest Service is not in its compliance with forest-plan monitoring and have not shown an upward trend analysis for timber management to proceed in these watersheds. Forest Standard 8 for water requires the Forest Service to “[m]eet established fishery/water quality objectives for all prescription watersheds as shown in Appendix A.” Nez Perce Forest Plan II-22. “Management areas are stratified by fishery/water quality objectives. These objectives provide management direction in terms of the maximum estimated increases in sediment over baseline conditions that can be approached or equaled for a specified number of years per decade.” Nez Perce Forest Plan Appendix A-1. For prescription watersheds not meeting habitat objectives, timber harvest may only proceed if the Forest Service can show an upward trend of habitat objectives. And Christie, Deer, Joe, and Sherwin are not meeting their fish/water quality objectives, so the Forest Service must show an upward trend toward meeting the habitat potential in order for any timber harvest to occur in these watersheds.

The Forest Service has not shown an upward trend for any of these watersheds, thus proceeding with logging in these creeks would violate the forest plan (and thus NFMA) and does not constitute a hard look at impacts in violation of the National Environmental Policy Act. The Forest Service has conceded as much because you state that “we *will* have an upward trend...” and listed practices that *mitigate* for actions that impair water quality and habitat potential (as opposed to restoring water quality). There are several problems with this analysis, including whether using a comparable protocol, analysis inputs, the number of data points, and a misinterpretation of the forest plan that the Forest Service can meet its upward-trend requirement by punting such a showing to a later date.

Has the protocol for measuring cobble embeddedness has changed over time and can comparisons be made? Did the contracting surveyors use same protocol as forest plan to determine cobble embeddedness and percent surface fines by depth data to determine whether FP water quality objectives were being met?

Monitoring—not modeling—must show the upward trend for the above creeks. The Center-Johnson Trend Analysis (October 2018), page 2, the authors stated, “The Nez Perce Forest Plan states that field-based monitoring should be used to establish whether the improving trend is being achieved.” But then, the report immediately states that they did not use monitoring data for the analysis: “However for the sake of this pre-implementation analysis, NEZSED modeling was used to estimate potential increases in water and sediment yields to analyze potential increases in sediment delivery to streams.” Trend Analysis at p. 7. Because the analysis does not use field-based monitoring, it cannot demonstrate an actual upward trend in the manner the forest plan prescribes. This not only violates the Forest Plan

but is not a hard-look at the existing condition because the Forest Service has arbitrarily derived the existing condition, ignoring its ability to gather the data at its fingertips.

Two data points taken eleven years apart establishes neither a baseline condition or a trend. In the Forest Service's Third, Fourth, Fifth, and Ninth, it repeatedly states that a minimum of five years of data are necessary in order to establish baseline habitat conditions and determine relative change in condition. USDA, Forest Serv., Nez Perce National Forest Plan Third Annual Monitoring & Evaluation Report, 37 (1990) ("[a] minimum of 5 years of data are necessary in order to establish baseline habitat conditions and determine relative change in condition at the permanent monitoring stations."); USDA Forest Service, Nez Perce National Forest Plan Fourth Annual Monitoring & Evaluation Report, 43 (1991), USDA Forest Serv., Nez Perce National Forest Plan Fifth Monitoring & Evaluation Report, 50 (1992); USDA Forest Serv., Nez Perce National Forest Ninth Monitoring and Evaluation Report, 36 (1996); USDA Forest Service Nez Perce National Forest Fourteenth Monitoring and Evaluation Report p. 28 (fish habitat condition measured three years out of five in order to evaluate habitat trend over long periods) Forest Serv. Nez Perce National Forest Fifteenth Monitoring and Evaluation Report p. 21 (fish habitat trend measured 3 of five years at monitoring stations. Even the forest plan's example for "sufficient" baseline data is more than two data points. Forest Plan Appendix O, O-7 to O-8 ("All monitoring watersheds will have sufficient baseline data (3-4 years per station) for all variables by the end of the first decade"). Although the Forest Service was discussing baseline conditions at monitoring stations, we do not think this changes the assumption and the Forest Service's established practice that five years of data is what establishes a baseline habitat condition. Additionally, the forest plan is explicit on having baseline data prior to an activity like logging: "All drainages that are to be developed will have baseline data prior to development." Nez Perce Forest Plan, Appx O at O-7 to O-8. If funds are inadequate to properly monitor the Forest Plan goals and objectives, the forest plan requires an analysis to develop a further course of action, including amending the forest plan, revising implementation schedules, or dropping projects. Nez Perce Forest Plan p. V-5

Sherwin Creek appears to have only one survey year for fish habitat potential—2016—within the past eleven years, according to the Final EA at page 105 and the Upward Trend Analysis at page 2. And this one data point demonstrates that the creek does not meet the forest-plan standard. Because this is missing five years of data or three years of data from a five-year period, the Forest Service has not shown an upward trend. The Forest Service published two years of data points, taken eleven years apart, and these two data points show that Christie Creek *lost* significant habitat potential. Christie Creek's habitat-potential standard is 70 percent; but Christie Creek wasn't meeting that standard in 2005 when it was at 64 percent, and significantly *lost* more habitat potential, as the data shows that habitat potential decreased to a mere 14 percent.

The Forest Service must show an upward trend in a prescription watershed *before* logging. In the Upward Trend Analysis report, the authors stated, "The Forest Plan does not require that the improving trend be in place prior to initiation of timber harvest activities nor does it set a temporal boundary for achieving objectives." Trend Analysis p. 2. This suggests the Forest Service interprets that it can log in watersheds not meeting the forest plan standards so long as the Forest Service can show, perhaps at sometime in the future with modeling, that this area could meet the upward-trend requirement. With this interpretation, the Forest Service could always claim that the upward trend will occur at some unknown, later future date. This is a capricious and unlawful interpretation of the forest plan.

The present tense of the forest plan's plain language highlights this incorrect interpretation. The language from Appendix A is the following: "Timber management can occur in these watersheds, concurrent with habitat improvement efforts, as long as a positive, upward trend in habitat carrying capacity is indicated." Nez Perce Forest Plan Appx A-7. The plain language of this sentence, specifically the verb "is," demonstrates that the upward trend must already be occurring, before timber

harvest. If relying on some nebulous future point were a possibility, this sentence would have a future-tense verb in it. Practically, it offers no certainty and not guarantee, which would render the standard meaningless. Additionally, the forest plan discusses baseline data for *trends* (Nez Perce Forest Plan p. V-7, Appendix O), and baseline data is not a future-looking parameter—baseline data is what currently exists. A baseline is the “situation present...” Nez Perce FP p. VII-2

To avoid running afoul NEPA and the forest plan, the Forest Service must drop the logging and road construction in these watersheds as the Forest Service has not shown an upward trend for any of them based on the lack of several, existing data points gathered from monitoring.

The Biological Assessment (BA) relies on the Forest Service’s upward-trend analysis, which has the issues described above. These problems cause problems for the biological assessment, such as a reliance on modeling data when monitoring data could be collected, relying on a model that has either two or one data point for the prescription watershed, and nebulous conclusion, based on this data, that an upward trend is a possible future event. For those reasons, the biological assessment is arbitrary and does not rely on the best available science. Also, how can a biological assessment be in a draft stage but the final EA states there will not be an impact? Wouldn’t you need the finalized BA conclusions before coming out with the final EA about a potential impact to the listed fish species?

Equivalent Clearcut Area is also an important factor in water quality. USDA Forest Service 1994b states:

It is important to recognize that the Equivalent Clearcut Area model uses tree growth (canopy density) to estimate Spring peak flows and that channels do not recover immediately in response to tree growth. There is a lag time between hilltop recovery (growth) and channel recovery. The length of the lag time is difficult to predict and is likely to be influenced by factors other than simply canopy density (e.g. the role of culvert failures, in-stream activities, geology, etc.).

USDA Forest Service, 1994b. Savant Sage Final Environmental Impact Statement, Idaho Panhandle National Forests at III-73. Openings accumulate much more snow than in a forested areas that are not as “open,” thus provide a significant contribution to water yield especially during rain-on-snow (ROS) and spring runoff events. The number, mileage and proximity of the roads to the proposed logging units and streams are important because they will also have a significant effect on peak flows and the resultant impact on fish, stream channels, possible flooding, and landslides. This will be compounded by previous projects that have created openings as well.

REMEDIES

Withdraw the Draft Decision Notice and re-initiate scoping.

Don’t construct any new roads for this project.

Soils

The Forest Service has not complied with the forest plan or taken a hard look at its actions because it hasn’t evaluated the potential soil and mass wasting for all ground-disturbing activities. FOC stated in its PA comments (p. 4),

The Forest Plan requires “Evaluate the potential for soil ...mass wasting ...for all ground disturbing activities.” The FS proposes to delay do this, verifying “landslides and landslide prone areas ... during layout and implementation.” This means compliance with the Forest Plan cannot be assured in the EA.

The Forest Service responded to this comment maintaining that the agency hadn't conducted a full review of landslide-prone areas within the project boundary or unit activities, but implied that it might do so in the future, after this action had been signed off on and the project was moving forward:

Proposed actions have been evaluated for the potential for soil mass wasting in the EA.

At this time some field validation of landslide and landslide prone area has occurred and will continue through implementation as specified in Design Measure – Soils – 3 (EA, Chapter 2, Alternative). Landslide prone areas can be most completely identified and buffered (avoided) from treatment during layout by field going personnel on the ground.

Forest Service Response to PA comments, p. 50. The Forest Service also stated that the 568 landslide-prone acres were modeled and not verified. Forest Service Response to PA comments, p. 51. There is absolutely no reason why the Forest Service cannot do this during the NEPA analysis, and the law requires it. The point of NEPA is to take a hard look at the potential impacts *before* issuing a project decision:

NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.

40 C.F.R. § 1500.1(b). Field validation of landslides and landslide-prone areas is important because, if the Forest Service has to amend the project later, it could increase the roads you plan to build, whether they are permanent or temporary. More roads mean a potentially greater impact for water resources. *See* Nez Perce Forest Plan p. VI-16 (“The majority of man-caused sediment in Forest management activities has been shown to be produced by road construction. Nez Perce streams drain the Idaho Batholith and the bordering Belt series soils. Both are highly erosive and often occur with steep, unstable landforms”).

FOC stated on page 4 of our PA comments concerns about percentage DSD. While the EA (pages 115 and 116) display a chart that reflects the expected DSD (which is the chart also in the Specialist Report), the expected results are not in compliance with the R1 Soil Quality Standards, which have a stricter requirement (15%). As such, this violates regional standards that are part of each forest plan in Region I. Twenty-nine units exceed 15% detrimental soil disturbance. Several units are right at 15%.

REMEDIES

Drop units that exceed the 15% disturbance threshold.

Alter units that meet the 15% threshold to reduce soils impacts below 15%.

Withdraw the Draft DN and complete the validation of landslide prone soils.

Sincerely,



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-and for
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Works cited

Costello, J.D., Leopold, D.J., & Smallidge, P.J. (1995) *Pathogens, Patterns, and Processes in Forest Ecosystem*, BioScience, Voll 45, No. 1, pp. 16-24.