

April 1, 2019

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

Attention: Objection Review Officer

USDA Forest Service

26 Fort Missoula Road

Missoula, MT 59804.

RE: OBJECTION to the Little Boulder Project Final Environmental Impact Statement and Draft Record of Decision

Responsible Official: Cheryl Probert, Forest Supervisor, Nez Perce-Clearwater National Forest

Pursuant to 36 CFR Part 218, the Friends of the Clearwater (FOC) and Alliance for the Wild Rockies (AWR), Harry Jageman, and Tom Peterson file this Objection to the Final Environmental Impact Statement (FEIS and draft Record of Decision (ROD) issued by Forest Supervisor Cheryl Probert for the Little Boulder Project. This timber sale is proposed for the Palouse Ranger District of the Clearwater 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.

The Draft ROD's selected Alternative 2 proposes logging, roadbuilding and other activities as described in the FEIS:

- Regeneration logging on 1501 acres
- Noncommercial mechanical, hand and/or burning on 1183 acres
- 10.2 miles of temporary roads
- 5.2 miles of new roads and 1.8 of nonsystem roads added to the system
- 157 miles of road reconstruction and reconditioning

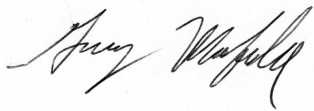
FOC and/or AWR, filed timely comment letters during the original scoping period on January 5, 2015. and we filed timely comments on the Draft EIS on March 5, 2018. Within our DEIS comment letter, we incorporated the February 7 and 11, 2018 comments of Harry Jageman within these comments.

We also incorporate the Objection by Harry Jageman, dated March 27, 2019.

Pursuant to 36 CFR 218.8, the Objectors state that the following content of this Objection demonstrates connections with previous comments for all issues raised herein, unless the issue or statement arose after the opportunity for comment. Pursuant to 36 CFR 218.8(b), the previous comments mentioned above are hereby incorporated by reference. Also, any statute or regulation we have cited in this document incorporate by reference.

We would like to meet and discuss all of the objection points as anything less won't resolve them all. Please let us know if you are amenable to meet with us.

Sincerely submitted,

A handwritten signature in black ink, appearing to read "Gary Macfarlane", written in a cursive style.

Gary Macfarlane
Friends of the Clearwater
PO Box 9241
Moscow, ID 83843
(208) 882-9755

And for

Mike Garrity, Executive Director
Alliance for the Wild Rockies
PO Box 505
Helena, MT 59624
406-459-5936
wildrockies@gmail.com

Objection 1 – Desired future conditions not part of Clearwater Forest Plan

In our DEIS comments, we stated the following:

[W]hen did the Forest Service adopt the 2011 Latah County Wildfire Protection Plan, the 2005 2011 Latah County Wildfire Protection Plan, or the Clearwater Subbasin Ecosystem Analysis at the Watershed Scale as part of the existing direction (forest plan) for the Clearwater National Forest?

The response to this comment in the FEIS was as follows:

Public involvement is very important. While we have not "adopted" County fire plans, we, as an agency, through multiple directives, plan and develop treatments of fuels in a strategic manner that treat fuels on National Forest lands within and adjacent to County identified WUI and private properties. These treatments are developed and created to comply with direction that comes from areas including; the National Cohesive Wildland Fire Management Strategy, the USDA Forest Service Strategic Plan, the Forest Service Manual 5100, and the Healthy Forests Restoration Act. For example, from HFRA "One purpose of the Healthy Forests Restoration Act is to plan, prioritize, and implement hazardous fuel reduction projects to reduce wildfire risk to communities, municipal water supplies, and other at-risk Federal land (Healthy Forests Restoration Act, section 2)." Section 102 of the Act lists the areas in which hazardous fuel reduction projects will occur: "Federal land in wildland-urban interface areas." From Forest Service Manual 5100 chapter 5140. "In cooperation with partners, strategically plan and implement on a landscape scale, risk-informed, and cost-effective hazardous fuel modification and vegetation management treatments to attain management objectives identified in Land and Resource Management Plans, to protect, sustain, and enhance resources and, where appropriate, emulate the ecological role of natural fire." By referencing the EAWS and Latah County CWPP we are able to meet the direction we have been given for treating hazardous fuels in a strategic and landscape manner with activities that have been proposed with the Little Boulder project.

FEIS p. 342. Above you have cited the purpose of HFRA to plan, prioritize and implement hazardous fuels reduction projects and have cited "wildland-urban interface areas" from that statute as authority by which you have incorporated the community wildfire protection plan for this project. When an agency cites a law for its permission to do something, the agency acts under the authority of that law. Because you keep citing HFRA as the basis that permits some of the specifications of this project (for which the forest plan does not provide) and that allows you to prioritize an "authorized hazardous fuel reduction" activities in consideration of community wildfire protection plans, you seem to be using your authority in authorizing this project under the Healthy Forests Restoration Act.

The desired conditions you have stated, relative to fuel treatments and in “coordination” with HFRA are the following:

Upland habitats approximate historic composition and density of native conifers. Disturbance regimes (both single tree and stand-replacing mortality events) approximate historic scale intensity and frequency. Succession stages (young, middle-aged and mature forest patches) are evenly represented and are well dispersed on the landscape.

These are not directions from the governing document, the Clearwater Forest Plan. To the extent this is incompatible with each of the management areas where you have proposed action, you are violating the forest plan. You cannot use the county wildfire protection plans as existing management direction. If you are submitting to HFRA authority for this project, as you strongly suggest you are in your response to our comments, there are legal obligations that accompany that authority, and you have not designed this project to meet the obligations that HFRA imposes, such as large tree retention or monitoring as required by 16 U.S.C. § 6512. Additionally, section 6512 also requires you to follow the forest plan and what is set out in that governing document, not inventing project-by-project direction that does not exist in a forest plan. In any event, even projects under HFRA must comply with the governing forest plan, and the above is not a direction of the governing forest plan. For this reason, you are violating NEPA, NFMA, and HFRA.

In this project, the Forest Service is not following its own process and is unlawfully relying on ambiguous statements that do not demonstrate compliance with the governing forest plan. In your DEIS and FEIS, the desired conditions that you cited did not change. They were the following:

- A diverse and healthy forest covers the landscape. Forest cover types approach pre-European settlement values; western white pine, western larch, and ponderosa pine cover types are gaining prevalence on the landscape and grand fir and Douglas-fir cover types have decreased in prevalence. Incidence of insect and disease damage is low, and stand conditions that are resilient allow for rapid recovery. There is a balance of successional stages; early-successional (30 – 50%); young-mid-successional (20– 40%); mature-mid-successional (30 – 45%); and late-old forest (15 – 40%).
- Sufficient old-growth stands have been identified and protected across the forest to meet established goals and provide habitat for old-growth dependent species (Forest Plan DFC, page II-18).

In our DEIS comments, we stated the following:

Further, the desired conditions (DCs) on page 5 of the DEIS have not gone through NEPA analysis and decision process to look at a range of alternatives or to consider cumulative impacts. These DCs are not part of the Clearwater National Forest Plan and have not been adopted into the forest plan. This is crucial because no alternatives to these new DCs have been considered even

though they are not part of the forest plan. The cumulative effects of that change in direction has not been analyzed either.

You responded to this comment as follows:

While you are correct the DFC is not worded the same as it appears in the forest plan, it is consistent with the intent of the desired future conditions in terms of the annual timber program and timber stand improvement. It is also consistent with the best available science related to current and historic forest successional stages.

FEIS p. 342. We note that the second bullet is a first forest-plan standard. There are no descriptions in the Clearwater Forest Plan under the applicable management areas as quoted above. The Forest Service is not following its own regulations and procedure. You are stating desired future conditions that are not the stated forest plan goals for the areas at issue. The governing regulations do not provide a statement that a similar intent is sufficient. If the desired conditions and management should change because of better available science, then the Forest should be introducing a plan amendment based on that best available science and that needs to undergo the NEPA process. You have not proposed a forest plan amendment. This lacks transparency and you are violating NFMA procedures in addition to NEPA. Additionally, even though a snapshot of tree frequency at a historical point in time might be accurate it is not the best available science because climate drives habitat and vegetation. *See, e.g., Brunelle (2003)(displaying dominant forests at different climatic periods).*

Remedy

Prepare a new supplemental EIS with full public involvement that is consistent with the Forest Plan, NEPA and NFMA

Objection 2 – NEPA

FOC is objecting based on a procedural violation that has arisen during this comment period. This is at least the second project within the past year where the environmental impact statement references the project file as a place to go to for more information and the project file is not available during the comment period.

CEQ regulations only allow incorporation by reference when the underlying material is actually available: “No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment.” 40 C.F.R. § 1502.21. Forest Service regulations state the same. See 36 C.F.R. §220.4(h).

In an earlier violation this year, the Lolo Insect and Disease EIS, the Forest Service specifically stated, “This FEIS hereby incorporates by reference all appendices and the project record...The project record is available for review at the Lochsa-Powell Ranger District in Kooskia, Idaho.” The Forest Service published the FEIS on August 10, 2018. When staff attorney Katie Bilodeau called the Lochsa-Powell Ranger District and was directed to the NEPA contact, she was informed that the project record was actually not available for review and the

Forest Service was in the process of compiling it. So, the project record was not available for review as required by regulation even though the Forest Service incorporated information from it; the result was the public had no access to the information.

In the EIS for Little Boulder, the Forest Service has not made such an explicit assertion, but substantively has incorporated the project file by reference pervasively throughout the document because the EIS is full of conclusions, and then references the reader to the project record for more details and supporting information—the very information that is the high quality of information that the public should have during NEPA comment periods. For example, the FEIS references the reader to information found in the project file on pages 34, 68, 74, 101, 116, 162, 203, 204, 206, 209, 212, 228, and 241.

The project file has not been made available during the comment period and will only be fully available when the public is no longer allowed to comment. When Harry Jageman emailed the Forest Service on February 18, 2019 about the Little Boulder Project File, he was informed by the NEPA contact that the “formal project record will be available when the Record of Decision (ROD) is signed. Right now, the Final Environmental Impact Statement (FEIS) is available for review on the project website along with the draft ROD.” Friends of the Clearwater submitted a FOIA request for the project file on February 25, 2019, which was received by the Forest Service on February 26, 2019. When the Forest Service emailed back on March 7 to acknowledge a February 26th receipt date, the Forest Service asserted 10 extra working days beyond the 20 FOIA allows, citing “unusual circumstances,” specifically the “volume of records being requested.” To be clear, FOIA states that “unusual circumstances” means

only to the extent reasonably necessary to the proper processing of the particular requests-

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a **voluminous amount of separate and distinct records which are demanded in a single request**; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

5 U.S.C. § 552(a)(6)(B)(iii). Categorizing our request for an EIS on a routine project record as a “voluminous amount of separate and distinct records” is disingenuous. It also prejudices us, as the estimated completion date by which the Forest Service would get us documents, April 9, 2019, falls after this comment period. As a result, we are missing most specialist reports and supporting documentation referenced in the EIS, as they are not on your website under the supporting tab for Little Boulder Project Documents. The specialist reports we did have access to were provided in a FOIA response to one of our members, who shared them with us. These reports were the biological assessment, the fisheries report, the watershed report, and the wildlife

report. We do not have any other specialist report, any monitoring, or assumptions that went into modeling for issues such as the watershed analysis. Even if the separate-and-distinct-voluminous-records distinction could have applied, the Forest Service did not offer us a chance to restrict our request for reports, monitoring, and assumptions that could have helped us with this comment period.

We are concerned that citing to the project record without giving the public access to these supporting documents is becoming a pattern and practice of this Forest, as this is the second time in a year that we have run up against this disclosure issue. This practice not only violates CEQ's NEPA regulations, but it has prejudiced FOC and the public in not having access to high-quality information upon which we can identify issues for you to consider in our comments. This also prejudices the Forest Service because you don't have the public's help in taking a hard look at the impacts of projects to ensure that you comply with NEPA.

Remedy

Post all of the specialist reports on your webpage, prepare a supplement EIS that provides adequate public involvement where important documents are available to the public.

Objection 3 – Watershed/Fisheries

Our DEIS comments stated:

According to the DEIS, roads are not analyzed in the sediment model and cobble embeddedness may have increased in certain areas. There is a clear lack of recent monitoring to show current conditions for fish habitat and water quality. Further, the cumulative impacts on watersheds and fisheries are complicated by not having information about private lands.

We also asserted,

This is also a serious problem for the listed steelhead. The lack of information in the DEIS (we are referred to the project files for the BA) and the current poor conditions in the project area are hardly a prescription for recovery of this species. Indeed, the DEIS on pages 111, 114, 115, 125, 141 and 142 points out failure to meet PACFISH, forest plan and even state standards in terms of sediment, temperature and other facts. If the streams are not recovering—and the DEIS suggests they are not recovering, or, at best, for a few reaches only doing so slowly.

We the footnote to this paragraph also asserted, “The claim in the DEIS that cobble-embeddedness is within standards is wrong because the maximum of 30 to 35% are exceeded by all surveys.”

The Forest Service responded, “The hydrology report shows that the proposed actions will not inhibit or reverse the recovery of the streams in the project area. In addition, the National Marine Fisheries Service concurred with the Forests' ‘not likely to adversely affect’ determination for steelhead and steelhead critical habitat.” The expert reports that we could

access and a consideration of cumulative effects of the last timber harvest in the area suggest that the proposed actions in the Little Boulder project will inhibit and possibly reverse the recovery of streams in the project area.

In sum, our objection, detailed below, is the FEIS does not meet forest plan requirements or the Endangered Species Act, and it violated the National Environmental Policy Act. Indeed, there are information and analyses in the FEIS itself and supporting documents which demonstrate lack of compliance, and there are cumulative impact considerations not given due weight. Perhaps the most obvious is the current problems with sediment, as revealed through cobble-embeddedness (CE) monitoring (or lack thereof) and the statements in the FEIS and supporting information, which are unclear.¹ For example:

The WEPP Watershed Online model indicates that the system is currently meeting the fisheries/water quality standards of Appendix K. With the monitoring information revealing high cobble embeddedness, there is an indication that the system is not recovering as quickly as it should have from previous episodes of road construction and timber harvest. Little Boulder Creek does not meet DFCs for cobble embeddedness or acting and potential debris. Water temperature standards for PACFISH, DFCs and state water quality are exceeded in Little Boulder.

Watershed Report at 9. This statement is internally inconsistent. The standards in Appendix K are not met when CE is high. Perhaps this is because, in a sleight of hand, the report also states:

All measured subwatersheds in the Little Boulder project area meet the Forest Plan standard for sediment, based solely on landscape sediment and not including road-generated sediment. Because it is well-known that sediment in forest landscapes is largely due to roads, the above results are incomplete. Also, forest level monitoring indicates that the Potlatch River is not meeting standards/has high levels of cobble embeddedness.

Id. at 11, See also FEIS at 156. The FEIS and supporting documents are saying if we discount the major sediment source, then standards are being met for sediment. Roads can't be discounted. Further, the proposed decision would build over 15 miles of new roads (including temporary roads), build a new bridge, and reconstruct or recondition 25 miles of roads. DROD at 3. These are not all ridgetop roads as there are stream crossings associated with them. Thus, new sediment sources would be created.

The statement from the Watershed Report on page 9 also points to two other problems. The first is the reliance on WEPP, which is not a watershed model. The standards in the forest

1 Indeed, rare endemic pieces in the project area, which are sensitive to sediment, are either extinct or on the threshold of extinction. See Attachments 1, 1.2, 1.3 and 1a.

plan are based upon watersheds.² As such, WEPP is the wrong model to gauge Forest Plan compliance at the watershed scale.

The second problem is that monitoring is showing non-compliance with the Forest Plan. The assumptions made about cumulative impacts are wrong. Three possibilities come to light: a) the Cherry Dinner Timber Sale and other development had far greater impacts than the Forest Service projected in that EIS, 2) or the protocol for looking at cumulative impacts grossly underestimates the impacts of logging and roadbuilding 3) or the Forest Service has not adequately evaluated the impacts from adjacent private or state land logging and development. Rather than honestly addressing the issue, the FEIS obfuscates and misleads the reviewer into thinking all is well. A deeper review of the agency's own information and analysis reveals serious problems with watershed and fish habitat conditions.

The Fisheries Report has similar problems. It refers to an analysis from 2017 that apparently projects no measurable increase in sediment, the same finding that has been consistently reported in other EISs and projects like the Cherry Dinner Timber Sale. Fisheries Report at 45. Yet, the wording of the FEIS and associated materials suggests that roads are not taken into account or that WEPP is being used inappropriately as a watershed-scale model, which it isn't. In any case, the modeling has proven to be wrong in projecting watershed conditions as CE has become worse on Ruby and Little Boulder Creeks. Fisheries Report at Appendix B.

The Fisheries report also engages in conclusion that may elevate the current condition above what it actually is. Appendix C rates the conditions on Ruby, Little Boulder and East Fork Potlatch stretches. However, there was no measurements of percent of fine sediment for spawning. Rather, a number is extrapolated. Also, the potential biological function for spawning is assumed to be the CE value. However, that assumption may not be accurate.

A look at the impact of previous timber sales in the area does not support recovery, and even suggests more damage. The Little Boulder project area is essentially the southern half of the Cherry Dinner project. Little Boulder FEIS p. 13. The Forest Service adopted the following mitigation measures in the Cherry Dinner project “designed to eliminate or reduce to acceptable levels the effects of proposed activities,” citing their sources such as the best management practices (BMP) from the Idaho Forest Practices Act and Stream Channel Alteration handbook, and comparable practices from the FS R1/R4 Soil and Water Conservation Practices Handbook. The Forest included the *effectiveness* of each measure. For the mitigation measures in the Cherry Dinner project, the Forest Service adopted the following:

- PACFISH default buffers are to be used to define timber sale unit boundaries. No timber harvest is to occur within 300 feet of fish-bearing streams, 150 feet of perennial non-fish bearing water, and 100 feet of intermittent streams. (Clearwater National Forest audits show this measure to be 99% effective.) Cherry Dinner FEIS p. 37

² The fact that the FEIS lumps the different watersheds together for analysis purposes, which dilutes the impacts of this timber sale on forest plan watersheds is addressed later in this objection point.

- Ignition points for prescribed fire are to be located outside of the PACFISH riparian buffers. BMP audits show this measure to have a High effectiveness. Cherry Dinner FEIS p. 37
- Culvert replacement/removal (including road construction, reconstruction, and maintenance) and road decommissioning will be conducted after July 15 to avoid conflicts with steelhead trout spawning and minimize adverse effects to aquatic organisms. BMP audits show these measures to have a High effectiveness. Cherry Dinner FEIS p. 38

The Cherry Dinner project, authorized in 2008, stated that “The average duration of timber sales of this size and complexity is four to seven years, including slash treatment, site preparation, and reforestation. Cherry Dinner FEIS p. 11. If the Forest Service sold this timber sale right away, the earliest the project could have been completed approximately 2011, and could have extended as late as 2015. The Cherry Dinner project appears to be the “Cherry Pit Timber Sale” and the “Dinner Bucket Timber Sale” listed in the past activities in the cumulative effects Appendix A.

The monitoring for the Cherry Dinner project included the following:

- Ongoing stream temperature monitoring will continue at the Potlatch River gage site and at the mouth of the East Fork Potlatch River.
- Riffle stability index sites (pebble count and channel transect) will occur on a three-to-four-year cycle at the East Fork Potlatch River, the gage site on the Potlatch River, and Little Boulder Creek.

Cherry Dinner FEIS p. 39.

It is unclear whether the Forest Service complied with either temperature monitoring commitment. The Forest Service doesn’t appear to have clear monitoring numbers after the completion of the Cherry Dinner project. For the mainstem Potlatch River, temperature data “is available for 20 of 21 years from 1993 to 2013.” The Forest Service did not state for which year it was missing data, nor what the temperature trend was after the Cherry Dinner project was completed. For the East Fork site of the Potlatch River, the Fisheries Report only had temperature data “for 11 of 12 years from 2002 to 2013,” and did not state for which year it did not have data, nor what was the temperature trend after the Cherry Dinner project was completed. *See* Little Boulder Fisheries Report, pp. 11-12. For Little Boulder Creek, temperature data near the mouth “is available for 5 of 20 years from 1994 to 2013.” Fisheries Report p. 13. The report did not state for which year it did not have data, nor what the temperature trend was after the Cherry Dinner project was completed. The fisheries report does not discuss post-Cherry Dinner project effects in terms of impact to stream temperatures. The fisheries report does not discuss the most recent monitoring at riffle stability index that the Cherry Dinner EIS stated would continue. If that is denoted in Appendix B of the fisheries report, it was done in 2014, which means that, on a three-to-four-year monitoring cycle, there should be very recent monitoring from 2017-2018, which is also missing.

The most current fish survey shows an alarming correlation to the Cherry Dinner project as well. The Forest Service, in the Cherry Dinner FEIS, stated the following:

Stream surveys conducted during 1993 and 1994 in area streams found the following fish species:

Mainstem Potlatch River - rainbow trout, redbside shiner, bridgelip sucker, speckled dace, longnose dace, chiselmouthr, largescale sucker, and sculpins.

East Fork Potlatch River - rainbow/steelhead trout, redbside shiners, speckled dace, longnose dace, bridgelip suckers.

Little Boulder Creek - rainbow/steelhead trout, speckled dace, and Paiute sculpin.

The 2005 surveys found the same species, but more overyearling rainbow-steelhead in the East Fork Potlatch River.

Cherry Dinner FEIS p. 60. After the Cherry Dinner project, even though rainbow trout was present in the Mainstem Potlatch River, the East Fork Potlatch River, and Little Boulder Creek in 2008, it was not included in the Little Boulder Analysis because it was “not recognizably present” in 2018. Additionally, the map of Little Boulder Project Streams, Subwatersheds, and Survey Information map for this project shows seven surveys with “No Fish” FEIS p. 133. If the Forest Service examines the Cherry Dinner project map (Vegetative Treatments and Associated Road Activities) for Alternative 2 (Figure 3—Alternative 2 in the draft and final EISs), there were several units that, minus the Pacfish buffers, came up to Little Boulder Creek. This is the same area where the Forest Service labeled “no fish” in fish surveys done for this proposed project, even with Pacfish buffers supposedly present.

Additionally, Appendix B of the Fisheries Report for Little Boulder cannot show a trend when considering Cherry Dinner. As stated in the Fisheries report, the streams in the project area “substantially exceed standards for cobble embeddedness.” Fisheries Report p. 45. In Appendix B, for the East Fork of Potlatch River, the Forest Service reported 58 percent for cobble embeddedness in 1994, and 50 percent cobble embeddedness for 2014. Two points don’t show an improvement, especially with the Cherry Dinner FEIS, which put fish habitat at the East Fork at 58 percent in 1994 but 43 percent in 2008 before the Cherry Dinner project. So, before Cherry Dinner cobble embeddedness was 43 percent, but after the Cherry Dinner project cobble embeddedness is 50. The Little Boulder Fisheries Report, Appendix B, shows cobble embeddedness has increased from 59 percent to 71 percent. This is not a trend, but the recent number shows far more cobble embeddedness, and the recent survey number, the higher cobble embeddedness post-dates the Cherry Dinner timber sales. And there is no information in Appendix B for the mainstem of the Potlatch River.

The Forest Service must take a far harder look at the cumulative effects on fish given the information it had before the Cherry Dinner project and it must break down the monitoring after the project to gauge whether the Forest Service is making correct assumptions on impacts to steelhead, including the impacts to cobble embeddedness and stream temperature. Listing these sales as a past activity in Appendix A is not a sufficient consideration of cumulative effects.

Given the spike in cobble-embeddedness, BMPs can’t be relied upon to meet Forest Plan standards. The paucity of recent monitoring data, discussed above, along with the projections in the Cherry Dinner FEIS, lead to the conclusion that fisheries analysis is inadequate. Furthermore, BMP reliance was struck down on the Fishbait Timber Sale, Clearwater National Forest, by Judge Erickson.

Our comments stated:

The level at which watershed analysis occurs is also of concern. For example, Little Boulder Creek, Hog Meadow Creek and several smaller face drainages flow into the Potlatch River and are themselves not connected themselves. Thus, lumping them tighter (sic, together) dilutes the impacts on water quality.

The FEIS does not consistently look at the watersheds. The FEIS indicates there are 3,433 acres in the Little Boulder Creek drainage. FEIS at 120. However, the analysis for the ECA does not break out the Little Boulder Creek watershed. See FEIS at 161. If one adds the logging in Cherry Dinner, private lands and what is proposed to be regeneration logging, the ECA for Little Boulder Creek would probably be close to if not exceeding the 20% ECA threshold indicated on page 161 of the FEIS. Further, Little Boulder Creek is an analysis watershed in the Forest Plan. See Forest Plan Appendix K-9 and should be considered separately.

Ruby Creek has similar problems. The response to comments (page 339) notes only 100 acres of logging, .5 miles of new road (temporary), and .7 miles of road reconditioning in Ruby Creek as a way to suggest activities in Ruby Creek are limited. The FEIS defends, actions in Ruby Creek by stating that there are only 100 acres of timber harvest, 0.5 miles of temporary road and 0.7 miles of road conditioning. However, the road reconditioning is really reconstruction of an old cattle trail (non-system road 820313) that will become a system road as per the DROD. Also, the FEIS now proposes to place that portion of Road 820313 (0.3 miles) into long-term intermittent storage and not decommission it. These are not all ridgetop roads as a new bridge on road 3308 where it crosses Ruby Creek is needed. FEIS at 37. A new culvert is also needed where road 820313 crosses a tributary of Ruby Creek.

The impacts of cattle grazing on fish habitat and watersheds are not evaluated. We have no idea as to the percent utilization of riparian zones or meadows or other impacts. We do know there is season-long grazing. About all the specific information that is relayed is that cattle will be managed and a new fence built. The lack of a hard look is exemplified by this statement in the FEIS:

At this time a new Allotment Management Plan for the Potlatch Creek allotment is being written, which timing beautifully allows for dovetailing the silvicultural intent of this project with cattle management objectives. Managing grazing with timber harvest is nothing new on this district, and the permittees and district personnel are all familiar with the day-to-day realities of managing these multiple uses in a way that works for cattle, timber regeneration, and harvest.

FEIS at 168. This is faith-based management, uninformed by any hard science. DEQ considers Ruby Creek because of high levels of *E. coli*. All streams are impaired due to temperature. *E. coli* and stream temperature are increased by livestock grazing.

Given the above, the finding of Not Likely to Adversely Affect steelhead is unsupported. The FEIS and associated documents demonstrate an increase in key reaches in CE from the past, even though BMPs were supposedly being followed.

Remedies

Prepare a Supplemental EIS, don't construct any new roads, temporary or permanent, in the project area.

Objection 4 -- Soils DSD and landslide prone

Our comments stated:

There are two main concerns with soils. Regarding the DSD standard, has the agency monitored the results of special design features for specific units (as opposed to BMPs or normal design criteria) and proven that the measures work in keeping DSD below 15%? If not, how can you claim that these special design features will work?

In spite of professed concerns over soil stability, the agency wants to retain logging units with high landslide hazards even though the acreage is relatively small. Additionally, areas with a moderate hazard need to be protected, yet measures such as 50% tree retention were only proposed for a few logging units even though the acreage of moderate hazard rating constitutes over 85 to over 91 percent of the acreage of units, depending on the alternative. This is a serious problem.

Tables 3.11.4, 3.11.15, and 3.11.16 show several acres of high hazard, landslide prone areas. See FEIS at 202 to 204. While the FEIS states the goal is to adjust the units, why weren't they adjusted already and areas of high landslide-prone areas or units already eliminated?³ Further, the FEIS indicates the vast majority of the logging will occur in areas of moderate landslide or erosion hazard. This is where the terminology employed in the FEIS becomes misleading.

"Areas of moderate to high instability requiring heavy live-tree retention (~50% existing tree retention) to maintain soil stability were also identified in units 10, 13a, 13b, 20, 33a, 39, 40, 40a, 43, and 49. (26 to 29 acres total depending on alternative)." FEIS at 204. One would expect 50% of existing trees to be a moderate tree retention rather than a heavy tree retention. Yet, mitigation only kicks in between moderate and high soils sensitivity. Regardless, the efficacy of these measures has not been tested under the kind of conditions that occurred in 1995 and 1996 or the spring of 2017 in the Selway and Lochsa.

Regarding the DSD, the FEIS states, "the proposed harvest and fuels treatment activities could cause DSD on approximately 149 acres for Alternative 2, 126 acres for Alternative 3, or 101 acres for Alternative 4, with the estimated increase of DSD in the activity areas ranging from 3.0 to 24.8% (see project file)." FEIS at 206, see also FEIA at 209. The 24.8% is well beyond the regional requirement of less than 15% DSD. Yet, the FEIS also states, "The project would meet the R1 SQS for all treatment units by limiting the extent of DSD to <15% following project implementation, except for harvest unit 15a in Alternative 4 which is expected to be at 20.4%

³ Three of these five high risk units (T19, T20 and T30) were previously included as old growth retention areas in the Cherry Dinner project. Please see the attached FEIS for Cherry Dinner.

DSD following project activities and would not meet the Region 1 Soil Quality Standards.” FEIS at 211. While this is confusing as to whether the percentages refer to percentages of percentages or not, it also isn’t clear whether this includes treatments that supposedly reverse the percentage of DSD.

Further, the DSD limits are the only quantitative standards the agency recognizes for the purposes of complying with NFMA’s substantive mandate to insure against irreversible losses in soil productivity. The Forest Service Manual FSM 2550 recognizes the need to validate the assumptions underlying the R1-SQS thresholds for soils disturbance. It directs the Forest Service to perform validation monitoring to “Use soil quality monitoring to validate and refine management decisions. The information collected allows land managers to determine if land management plan desired conditions are being achieved.”

The Cherry Dinner authorized logging in the same E1 management area. Additionally, the environmental analysis with the Cherry Dinner project included the following measure: “The District Soils Scientist will assess the amount of activity area impacted by proposed activities to validate the assumptions made for detrimental soil impacts for [the Cherry Dinner final EIS]. Cherry Dinner FEIS at 39. In the cumulative impacts for soils, the Forest discussed timber harvest “since 1960,” including timber harvest in the 1960s and 1970s, but you have omitted any discussion about the soil impacts from the Cherry Dinner project, which is relevant to the assumptions and predictions that the Forest is making for the impacts for this project because it can validate those assumptions and predictions.

Indeed, the DSD may largely be irreversible, unlike what the FEIS suggests (FEIS at 201). The Forest defined “irreversible” as “effects of actions on resources that can be renewed only after a very long period of time, such as the loss of soil productivity.” FEIS p. 320 We have included past environmental analyses where the Forest Service has stated that compaction was an irreversible impact, so this is a complete change in agency position. USDA Forest Service 2005d states, “**Decompaction** can at least **partly restore** soil porosity and productivity. Soil displacement that mixes or removes the volcanic ash surface layer reduces soil moisture holding capacity, which may be **irreversible and irretrievable**.” (Emphasis added.)

It also doesn't appear that the amount of DSD attributable to livestock grazing and ATV use was included in activity area calculations, in conformance to the R1 SQS.⁴

For these reasons you have not taken a hard look at the impacts of your actions, and have not demonstrated compliance with NEPA and NFMA.

Remedies

⁴ Our comments noted how cattle trails were illegally used by ATVs when the Forest Service and FOC monitored the Corralled Bear Timber Sale over a few years. Both livestock and ATVs can compact soil.

Eliminate the units with high hazard ratings

Require that units with moderate hazard ratings leave at least 50% of the trees onsite, reflective of the diversity of age and class size currently in the unit.

Include impacts from all activities in DSD calculations

Drop all units that already exceed the standard or will likely exceed the standard if the project is implemented

Prepare a Supplemental EIS

Objection 5 -- Wildlife-roads

Our comments raised the issue of roads. In the introduction we expressed concerns that “commitments the Forest Service made in documents such as the Cherry Dinner Timber Sale are not being followed (going back and building new roads or re-opening closed/decommissioned roads).” Footnote in original omitted. We also said, “The project would effectively create a new livestock trail between Ruby Creek and the campground around the to be closed 820313 road.”

The proposed decision will build 7 miles of new system roads and 10 miles of temporary roads. Already, the area has about 3 miles of roads per square mile. In particular, temporary road 820313 will now become a system road.

There are two problems. First, roads have a tremendous impact on wildlife as documented in the FEIS. Second, road closures don’t mitigate those impacts because closures are not always effective. The FEIS itself admits “Ongoing and future use of existing roads and unauthorized motorized recreation would likely continue to degrade suitable habitats to some extent, and large portions of the project subwatersheds are well-roaded or otherwise accessible to off-road vehicles, with the exception of most of the Little Boulder Creek riparian corridor.” FEIS at 149. The FEIS further states “Unfortunately, illegal activity from unauthorized motorized use is a problem in most areas in the National Forest.” FEIS at 343. Thus, the conclusions in the FEIS about road closures and impacts on wildlife are under-estimated.⁵

Harry Jageman’s appeal also addresses the issue of roads:

Ridgetop roads are bound to be detrimental to big game and other wildlife species and the new system road to units 33, 34, 36 and 37 will displace big game and other wildlife species from that area. Road closures on this road and others that originate from Potlatch Corporation roads on the eastern side of the project area are going to be particularly difficult to enforce since the gates that will control access will be several miles from a

⁵ It should also be noted that after years of monitoring as per the appeal agreement on the nearby Corralled Bear Timber Sale, the ATV use on decommission routes never reached the 90% agreement in the appeal resolution. See Attachment 2.

Forest system road and enforcement access will be limited. Potlatch permits four-wheeler use on their roads and the likelihood that these inaccessible gates will be breached is very high.

As evidenced by past success on the Cabin Fever and Cherry Dinner projects, several roads that were supposed to be closed remain open due to the lack of funding, inadequate closure devices, no signage and inadequate law enforcement.

It is clear that the agency has failed to do what it said it would do in the Cherry Dinner FEIS. The impacts to wildlife would likely be greater than what is portrayed in this FEIS as well.

Remedies

Don't build any new roads, permanent or temporary, in the project area.

Alternatively, drop the following units accessed by temporary or new system roads: 7, 9, 13 (including lettered subunits), 15 (including lettered subunits), 26, 32, 33 (including lettered subunits), 34, 36 (including lettered subunits), 37, 40a, and 49.

Objection 6 -- Wildlife and Monitoring

Our comments stated:

The DEIS claims no impact to moose or black-backed woodpecker. Yet habitat for those species would be affected by this proposal. Impacts to fisher, goshawk, pileated woodpecker and elk are likely due to the amount of logging. Lynx are briefly analyzed, but the DEIS fails to include the confirmed lynx and kittens (killed) that were located on the Palouse Ranger District.

Monitoring of MI and TES species has not occurred as per the forest plan. How can this project comply with the Clearwater National Forest Plan if monitoring has not been (sic, been) done for a decade?

The amount of logging and the size of the units is significant. 1501 acres of logging and nearly 1200 acres of "fuel treatments" in an area that was recently logged. Some of the cutting units exceed 100 acres in size. Aside from the PACFISH buffers, the central part of the project area will be one huge logged area. Logging and "fuel treatments" will remove important habitat components including snags, hiding cover, downed wood, and understory plants and shrubs. Aside from roads, the logging and fuel manipulation are significant impacts and would affect TES and MI species.

Harry Jageman, a PhD. in wildlife management, raised several issues in his objection over the viability analysis, individual species. We won't repeat those specific issues here, as we have already incorporated his objection into this objection and we concur with his concerns. We do want to re-emphasize this quote from his objection that sums up the agency's inconsistent approach in its analyses"

The Forest Service is fond of the argument that viability cannot be discussed at the project level, but they then use habitat numbers outside of the project area to defend excessive development within the individual project area. They rationalize that sufficient habitat is available in other areas to make up for losses within the project area. Under this scenario, no project ever creates a significant impact and species are lost by “10,000 cuts” as project after project is allowed to proceed. The Forest Service cannot have it both ways; either they need to have project designs that create minimal impacts to species of concern, or they need to have monitoring information that confirms their habitat proxies are “providing for a diversity of plant and animal communities based on the suitability and capability of the specific land area” as required by the National Forest Management Act.

The fact that the Clearwater NF has not monitored the population trends of its MIS as required by the Forest Plan bears more discussion. The FS has never shown it can comply with the Forest Plans forest-wide and distribution standards for old growth and old growth MIS habitat, monitoring requirements for old growth MIS or any MI or TES species. The last monitoring report for the Clearwater National Forest was in 2009. The Forest Plan requires that monitoring take place and that it be used in management decision-making. See Forest Plan pages IV-8 to IV-16.

Remedies

Do not log or “treat fuels” in any habitat for fisher, goshawks, pileated woodpeckers, or bats.

Eliminate road construction to protect elk habitat

Delay a decision and supplement any analysis on this project until adequate monitoring has taken place as per the Forest Plan and site –specific projects that affect the project area including but not limited to the Cherry Dinner Timber Sale. “If funding is inadequate to accomplish both the planned project/activities and the required monitoring, then implementation of the project/activity will be delayed until monitoring can be assured.” Forest Plan at IV-9.

Objection 7 – Old Growth

Our comments stated:

The DEIS claims there will be no logging of field verified old growth so old growth standards will be met. However, the Clearwater National Forest is not meeting old growth standards. Further, 248 acres of old growth replacement stands will be logged. The excuse is insects and disease. Yet, those are the agents that create stand conditions conducive to species that require old growth habitat. Fuel treatments will be conducted in old growth as well. How does this meet the Clearwater National Forest Plan?

Footnote in original omitted. The Reilly memo (Attachment 4) indicates that the Clearwater National Forest is below its Forest Plan requirements for old growth. Further, there have been several fires, especially in 2015, which likely reduced the old growth in the National Forest. The

FEIS does not have updated information on the current amount of old growth within the Clearwater National Forest.

Areas referenced in our comments that are in the replacement stands, located mainly in the Potlatch River Canyon. It looks logging would occur in T19, T20, T30, and T31 when comparing the maps in the Cherry Dinner FEIS (attached) with those in this FEIS. T 32 may also be partially within the old growth set aside unit.

The FEIS dismisses the current replacement old growth that would be logged under the proposed alternative for specious reasons, specifically that they lack diversity, desirable species, and are being harmed by disease and insects. See FEIS at 347. Loss of some trees in these mature stands is exactly what needs to happen to move the stands towards old growth. Further, the idea that old growth must include intolerant species is not appropriate for the habitat types in this area and conflicts with Green et al. The Forest Service is playing a cynical game of bait and switch with old growth. Nothing will ever reach old growth on the Palouse District because the agency will continually change what stands are replacement old growth (there is very little old growth on the District) whenever it wants to log.

It also begs the question, why in the Cherry Dinner Sale, did the agency set aside this old growth stand if it truly will never reach old growth definitions? Why should anyone believe the Forest Service when it constantly changes replacement old growth set-asides?

It is instructive to look at the old growth definition and requirements in more detail. Appendix H of the Forest Plan provides a Definition:

Old-growth Forest is defined as "a stand that is past full maturity and showing decay, the later stages of Forest succession." Stands must meet most of the following requirements to be considered old growth:

1. 15 or more live trees per acre.
2. One or more snags per 2 acres over 21 inches d.b.h.
3. Two or more canopy levels, heart rot and other signs of stand decadence.
4. Overstory canopy closure of 10-40 percent.
5. Usually with a definite shrub-sapling layer of at least 15 feet tall with a canopy closure of over 40 percent.
6. With understory and overstory canopy combined, exceeding 70 percent.
7. With significant coarse woody debris, including snags (> 10/AC over 20 feet) and downed logs (> 20 ton/AC and snag and logs) (minimum 4/AC) that are large ($\geq$ 21 dbh) and > 50 feet long.
8. Live tree component of various species with wide range in sizes and age including long-lived seral dominants. More than 10 live trees/AC that are either old or have become large (> 21 dbh).

Forest Plan Appendix H at H-1. Stand decadence is a defining element, caused by disease and insects. The Green et al. guidelines, though not formally adopted as Forest Plan direction via a

Forest Plan Amendment, also discuss decadence. It should further be noted that Green et al. itself does not consider those guidelines to be definitive, rather a first cut at what may be old growth for various forest types.

Furthermore, there will be fuel treatments in the step-down old growth stands, possibly reducing their value as old growth. The agency has argued that fire destroys old growth, when convenient⁶, but claims otherwise, when convenient as here.

The objection letter of Harry Jageman sums this issue well. While we incorporate the full objection into this one, it is instructive to draw attention to key paragraphs in that objection (also attached):

Fuel treatments will be conducted in 48 acres of field-verified old growth, 120 acres of step-down old growth and 61 acres stands with old growth recruitment potential (Table 3.12.3). Fuel treatments will remove snags, downed logs, small trees and understory vegetation that are important old growth components and 85% of these treatments are expected to be accomplished with heavy equipment (Fisheries and Aquatic specialist report - Page 6). Such treatments will simplify the complexity of these natural stands as they progress towards the complexity that is usually associated with old growth. Heavy equipment operations will be particularly disruptive to old growth characteristics.

You state that you are concerned about larger trees dying in old growth stands, but this is the natural progression in most of project area stands. Tolerant western red cedar gradually replaces intolerant species such as white pine or western larch and shorter-lived species such as grand fir. Your proposed fuel treatments will short change that process and move stands toward your preconceived vision of old growth as a park like condition of large old trees which is only one component of old growth. It will not allow for the replacement of older trees with trees from the understory since you will be removing most of them. The snags, downed logs and understory vegetation that you will remove also play an important role in the diversity of old growth and these will be diminished in the sanitized stands that you will create with your proposed fuel treatments.

The Cherry Dinner project designated a large block of forest located along the Potlatch River to old growth management. The idea was to maintain a large continuous block of un-fragmented forest which could develop into old growth characteristics over time. Many of the stands in the block were not considered old growth, but they were considered the best option for old growth management in the area because most the existing stands were of mature size and located along the river corridor. Such stands not only provide important riparian habitat protection but they also were important for wintering big game and other species such as the bald eagle that would be attracted to the river corridor. For humans, the old growth replacement block along the Potlatch River Trail provided a pleasing esthetic background for hikers and prior to the recent barrage of shooting near the trail was one of the most popular on the Palouse Ranger District.

⁶ See Attachment 3, Johnson Bar FSEIS at 168.

The Little Boulder project will begin to fragment this block by allowing regeneration harvest in stands that will be visible from the Potlatch Canyon Trail and by allowing fuel treatments in several locations within the retention area. Some fuel treatments will actually intersect with the Potlatch Canyon trail. The recommendations are largely being driven by the idea that existing grand fir, cedar and Douglas fir need to be replaced by intolerant species and that there is a high fire risk in the project area. Yes, there is some fire risk, there are some diseased trees and some fuel concentrations, but for the most part the stands are quite healthy and fuel loadings are not excessive. The area is highly roaded and in fact Road 1963 bounds most of the replacement block, there are multiple large existing clearcuts and agricultural areas surrounding the project area on all sides and the real fire risk seems to be highly over-rated due to these factors. Please reconsider your proposal to harvest and conduct fuel treatments in field verified old growth, step-down old growth or previously designated old growth replacement stands.

Remedies

Drop the logging units in the old growth replacement stand mentioned in this section.

Drop the fuel units that occur in (either full or in part) on the fringes of the replacement old growth identified in the Cherry Dinner FEIS. These are F47, 48, 50 and 51.

Objection 8 – Safety and Recreation

Our comments stated, “The DEIS fails to address the safety issues associated with an enlarged gravel pits (used as a shooting ranges). This includes but is not limited to the safety (and nuisance) for campers at the formal campground, the trash and the accumulation of lead. A better location needs to be found for this activity.” We concur with the objection point from Harry Jageman.

Remedy

Phase out the informal shooting area in the gravel pits and work with the Latah County Commissioners to find a more suitable location.

Objection 9 – Not a reasonable range of alternatives

In our DEIS comments, we stated,

The Seventh Circuit recently explained:
No decision is more important than delimiting what these "reasonable alternatives" are. . . . One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing "reasonable alternatives" out of consideration (and even out of existence)...If the agency constricts the definition of the project's purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Simmons, 120 F.3d at 660.

This project is headed down the same, pre-determined path in rejecting to analyze an alternative we suggested be reviewed:

[A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the goals of the agency's action, and the EIS would become a foreordained formality. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991), cert. denied, 502 U.S. 994, 112 S. Ct. 616 (1991).

Oddly, the no new roads alternative logs the most and the least logging alternative builds new roads. These are only some of problems with the DEIS in terms of alternatives. In sum, DEIS doesn't analyze a reasonable alternative in terms of logging and restoration. All action alternatives are massive in the scale of change.

The Forest Service responded that four "appropriate alternatives were analyzed in the DEIS based on scoping comments received from public and the purpose and need." FEIS p. 336.

These alternatives are way too similar to be a reasonable range of alternatives. Under CEQ regulations, the alternatives section

is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.

40 C.F.R. § 1502.14. The regulation goes on to list the requirements for alternatives:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
- (c) Include reasonable alternatives not within the jurisdiction of the lead agency.
- (d) Include the alternative of no action.
- (e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- (f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Id. The key issues the Forest identified for this project was watershed conditions, fish habitat, and soil stability and erosion hazards. The science we have introduced in the respective parts above show that all three of these key issues can be impacted by roadbuilding and can be impacted by logging separately. When you increase one but decrease another, this may impact the effects. And the effects of each alternative are similar. This means that the alternatives are not a range of alternatives and the Forest Service hasn't chosen alternatives that truly address the key issues identified, or has addressed them, but increased impacts to the other key issues so as to make the alternative effect's determination similar. The result is reviewers cannot adequately evaluate comparative merits. Because roads and logging cumulatively impact water, soil, and wildlife, not having an alternative that looks at both reduced roads and reduced logging will not permit a clear, reasoned choice among alternatives. Throughout the EIS, the discussion of the alternatives are so similar that two or three of the action alternatives are combined into the same section when discussing direct or indirect impacts, even for key issues. Perhaps because the fuels reduction treatment is unchanging throughout all action alternatives in addition to each alternative to the preferred one seemingly trying to reduce an impact on one key issue while increasing it for another in the same alternative. Also, the Forest Service did not look at varying mitigation measures for alternatives. For the above reasons, we do not think you have evaluated a reasonable range of alternatives in the manner prescribed by CEQ's NEPA regulations.

Remedy

Withdraw the entire project.

Alternatively,

Prepare a supplemental EIS that looks at non-logging ways to mitigate fire risk.

Prepare a supplemental EIS with an alternative that examines both reduced logging and reduced roadwork.