



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

November 8, 2019

Via Electronic Mail: appeals-northern-regional-office@usda.gov

Objection Reviewing Officer
U.S.D.A. Forest Service, Northern Region
26 Fort Missoula Road
Missoula, MT 59804

Re: Nez Perce Tribe's Objection to the End of the World Project Final Environmental Assessment and Draft Decision Notice and Draft Finding of No Significant Impact

Dear Objection Reviewing Officer:

On behalf of the Nez Perce Tribe ("Tribe"), and in accordance with 36 CFR §§ 218.8 and 218.9, I submit the attached objection to the End of the World Project ("EOTW" or "Project") Final Environmental Assessment ("EA"), Draft Finding of No Significant Impact ("FONSI"), and Draft Decision Notice ("DN"). Nez Perce-Clearwater National Forests ("Forest") Supervisor Cheryl Probert is the Responsible Official for the Project which is located in the Forest's Salmon River Ranger District. The objections outlined in the attachment are based on the Tribe's previously submitted comments.

The Forest is proposing to implement Alternative B as described in the Project EA. This Alternative includes 1,568 acres of regeneration harvest, 16,340 acres of intermediate harvest, 1,098 acres of pre-commercial thinning, 6,783 acres of prescribed fire, up to 17,908 acres of fuels reduction, 15 miles of new temporary road, and 28 miles of road decommissioning across a 49,565-acre area in the Tribe's aboriginal territory and are subject to the rights the Tribe reserved, and the United States secured, in its Treaty of 1855.¹ The Forest is also located within the Tribe's area of exclusive use and occupancy as adjudicated by the Indian Claims Commission, and encompasses areas of cultural and spiritual significance to the Tribe.²

The Tribe requests a meeting with you and the Forest to discuss and resolve our objections to the Project. Mike Lopez, Senior Staff Attorney for the Nez Perce Tribe Office of Legal Counsel, is

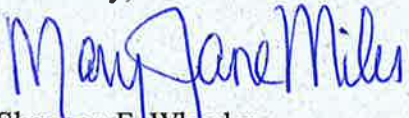
¹ Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957.

² Nez Perce Tribe v. United States, Docket # 175, 18 Ind. Cl. Comm. I

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the Tribe's contact for our objection. You are welcome to contact Mr. Lopez at (208) 843-7355 or mlopez@nezperce.org.

Sincerely,



For: Shannon F. Wheeler
Chairman

**NEZ PERCE TRIBE’S OBJECTION TO THE
END OF THE WORLD PROJECT FINAL ENVIRONMENTAL ASSESSMENT,
DRAFT DECISION NOTICE, AND DRAFT FINDING OF NO SIGNIFICANT IMPACT**

November 8, 2019

I. GENERAL COMMENTS

A. The Nez Perce Tribe’s Interest in the End of the World Project

Treaty tribes, such as the Nez Perce, have been recognized as managers of their treaty-reserved resources.³ As manager, the Tribe has devoted substantial time, effort, and resources to the recovery and co-management of treaty-reserved resources.

As a fiduciary, the United States and all its agencies owe a trust duty to federally recognized tribes to protect their resources.⁴ This trust relationship has been described as “one of the primary cornerstones of Indian law,”⁵ and has been compared to the relationship existing under the common law of trusts, with the United States as trustee, the tribes as beneficiaries, and the property and natural resources managed by the United States as the trust corpus.⁶

All executive agencies of the United States are subject to the federal trust responsibility to recognize and uphold treaty-reserved rights. Executive agencies must also protect the habitats and resources on which those rights rest, as the right to take fish and other resources reserved by the Tribe presumes the continued existence of the biological conditions necessary to support the treaty-reserved resources.⁷

Forest Service Manual (“FSM”) 1563.8b specifically states that the Forest Service “must administer lands subject to off-reservation treaty rights in a manner that protects Indian tribes’ rights and interests in the resources reserved under treaty.” Further, FSM 1563.03 directs the Forest Service, among other responsibilities, to “[i]mplement Forest Service programs and activities consistent with and respecting Indian treaty and other reserved rights and fulfilling the Federal Government’s legally mandated trust responsibility with Indian Tribes.”

Since time immemorial, the Tribe has occupied and used over 13 million acres of land now comprising north-central Idaho, southeast Washington, northeast Oregon, and parts of Montana. Tribal members engaged in fishing, hunting, gathering, and pasturing across their vast aboriginal territory. These activities still play—and will continue to play into the future—a major role in the subsistence, culture, religion, and economy of the Tribe.

³ *United States v. Washington*, 384 F. Supp. 312, 339-40, 403 (W.D. Wash. 1974).

⁴ See *United States v. Cherokee Nation of Oklahoma*, 480 U.S. 700, 707 (1987); *United States v. Mitchell*, 463 U.S. 206, 225 (1983); *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942).

⁵ Felix Cohen, *Handbook of Federal Indian Law* 221 (1982).

⁶ See, e.g., *Mitchell*, 463 U.S. at 225.

⁷ See *Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, 763 F.2d 1032 (9th Cir. 1985), cert. denied, *Sunnyside Valley Irrigation District v. United States*, 474 U.S. 1032 (1985).

This Project is located entirely within the Tribe's aboriginal territory subject to the rights the Tribe reserved, and the United States secured, in the Treaty of 1855.⁸ The Project is also located within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission,⁹ and encompasses areas of cultural and spiritual significance to the Tribe. As a result, the Tribe considers the protection of its treaty-reserved rights, and other rights and interests, to be a paramount obligation of the Forest when implementing this Project. The Forest has a trust responsibility to ensure that its actions, including implementation of this Project, are fully consistent with the 1855 Treaty, executive orders, departmental regulations, and other federal laws implicating the United States' unique relationship with the Tribe.

B. The Tribe's Participation in the End of the World Project

On October 10, 2017, Tribal staff attended a public field trip to the Project area. The Tribe submitted comments on the Project's Proposed Action ("PA") on March 14, 2018. A meeting between Tribal and Forest Service staff was held on June 14, 2018 to discuss the Tribe's scoping comments on the proposed action. Since then, Tribal staff received brief updates from the Forest. The Tribe recognizes management needs to address insect and disease activity, wildfire risk, and forest resiliency, but the Tribe is concerned about undue impacts to watershed conditions and wildlife species and their habitat during and after implementation of this Project. The Tribe notes that the Forest made some minor adjustments to the Project in response to the Tribe's scoping comments. The Tribe appreciates the modest reduction of treatment acres in the South Fork Clearwater River drainage and the incorporation of prescriptions conserving Pacific yew in stands outside Moose Winter Range Management Area 21. The Tribe remains concerned, however, about impacts to watershed and wildlife resources through treatments proposed under Alternative B.

II. SPECIFIC OBJECTIONS

Under the National Environmental Policy Act ("NEPA"), an EA need not "conform to all the requirements of an [Environmental Impact Statement], it must be "sufficient to establish the reasonableness of th[e] decision" not to prepare an EIS.¹⁰

A. Reliance on Outdated Landscape Assessments and Remotely-Derived Data

The EA and Silviculture Specialist Report rely heavily on two landscape-scale analyses: the SFCLA and the SCEAWS. These analyses were used by the Forest specifically as a resource for describing existing and anticipated conditions within the Project area. However, these assessments were developed in 1998 and 2000, respectively, and are unlikely to reflect current conditions. For more current data, the Forest relied on remotely-sensed VMAP data.¹¹ The Forest appears not to have field-validated these assessments, as "harvest units were proposed during project planning based primarily on remote analysis rather than field-verified observations and data."¹² Old

⁸ Treaty with the Nez Perces, June 11, 1855, 12 Stat. 957.

⁹ *Nez Perce Tribe v. United States*, Docket #175, 18 Ind. Cl. Comm. 1.

¹⁰ *Found. for N. Am. Wild Sheep*, 681 F.2d 1172, 1178 n. 29 (9th Cir. 1982); *see also* 40 C.F.R. § 1508.9(a)(1).

¹¹ EOTW Silviculture Specialist Report at 5.

¹² EOTW Silviculture Specialist Report at 5.

assessments and remotely-derived forest stand data are not, on their own, an appropriate basis for project development.

In addition, the SCEAWS was used by the Forest specifically to characterize that portion of the Project area lying within the Salmon River Watershed. But the Silviculture Specialist Report notes that the area evaluated by the SCEAWS is south of, and fully outside the Project area boundary. The Forest contends that “the terrain, aspect, and vegetative conditions described in the SCEAWS are similar enough to the [Project] area that this document can be used as an appropriate substitution for the [Project] analysis.”¹³ The Tribe disagrees. A project of this scale and intensity requires a detailed, site-specific, and field-verified assessment of existing conditions and management needs to satisfy NEPA and the Forest’s Trust responsibility to the Tribe.

Remedy: The Tribe requests that the Forest undertake a field-based assessment of current conditions and management needs within the Project area to validate and update, as necessary, assumptions and analyses contained in the EA. This information should be used to revise the Project in ways that appropriately reflect the diversity of site conditions and management needs throughout the Project area.

B. Inappropriately-Broad Silvicultural Prescriptions

The Project EA and Silviculture Specialist Report lack information and analysis to support the proposed silvicultural prescriptions within stands in the more mesic and/or higher-elevation portions of the Project area. The Tribe believes the Forest’s emphasis on Intermediate Harvest may be a consequence of the EA’s reliance on outdated assessments and remotely-derived data, forcing an approach under which “all prescriptions would be field-verified and written to be site-specific”¹⁴ during implementation. Among other concerns, this lack of specificity during Project analysis precludes a proper analysis of wildlife impacts because the extent of treatment in a given area is not adequately known at this time.

Efforts to actively promote low- and moderate-severity fire regimes, low fuel loading, and low wildfire risk are inconsistent with the underlying ecology of the most mesic portions of the Project area. These areas were historically shaped by less-frequent and more-severe fire regimes, as documented clearly in the SCEAWS and SFCLA. High fuel loading, moderate to high risk of high-severity wildfire, and the presence of insects and disease at endemic levels appear to be natural characteristics of these portions of the Project area.¹⁵ These areas should not be managed to sustain frequent low- and moderate-severity fire or for dominance by ponderosa pine and western larch. Doing so threatens to erode habitat quality for a number of obligate wildlife species (including fisher). Some active management may be needed or desirable in these areas, but the appropriate scale and intensity of such treatment is likely to be more limited than the prescriptions described in the EA. This is not accounted for in the EA, however, because existing conditions in these stands do not appear to have been field-verified.¹⁶

¹³ EOTW Silviculture Specialist Report at 7.

¹⁴ EOTW Silviculture Specialist Report at 6.

¹⁵ Smith, J. K., Fischer, W. C. 1997. Fire ecology of the forest habitat types of northern Idaho. General Technical Report INT-GTR-363. Ogden, UT: U. S. Department of Agriculture Forest Service Intermountain Research Station.

¹⁶ EOTW Silviculture Specialist Report at 5-6.

Remedy: The Tribe requests that the Forest field-verify the proposed silvicultural treatments, particularly within the most mesic treatment units. The results from that assessment should be used to reevaluate proposed treatments in those units, dropping them altogether or switching to less-impactful treatment types as appropriate.

C. Logging Systems

A map accompanying the Project Proposed Action identifies four main logging systems for treatment of forested areas: cable, hand, tractor, and tractor jammer. The Tribe is concerned by the Forest's proposed use of both tractor and tractor jammer methods, which are typically among the more ground-disturbing systems, particularly in the absence of additional information regarding specific equipment type(s). The tractor jammer systems with which the Tribe is familiar provide neither the lateral gathering ability nor the full load suspension necessary to minimize ground disturbance. An analysis of the logging system options available and the rationale for selecting the more-impactful logging systems are not provided in the EA or Silviculture specialist report.

Remedy: The Tribe requests that the Forest consider replacing both tractor and tractor jammer systems with a cable and/or cut-to-length system, tethered as necessary, to reduce ground disturbance, eliminate the need to construct some temporary roads, and minimize damage to residual trees and other important habitat elements. The selected system(s) should be justified in the EA in the context of other systems available for use.

D. Cumulative Effects

Under NEPA, an EA “must in some circumstances include an analysis of the cumulative impacts of a project.... An EA may be deficient if it fails to include a cumulative impact analysis....”¹⁷ “The importance of ensuring that EAs consider the additive effect of many incremental environmental encroachments is clear.”¹⁸ “[I]n a typical year, 45,000 EAs are prepared compared to 450 EISs.... Given that so many more EAs are prepared than EISs, *adequate consideration of cumulative effects requires that EAs address them fully.*”¹⁹

The EA contains incomplete information on the cumulative effects of the Project and does not summarize cumulative impacts to several resources, including, but not limited to, wildlife and threatened, endangered, and sensitive plant species, or native fish species and their habitat. These inadequacies make review of the NEPA documents and evaluation of the Project's impacts particularly challenging. For example, the EA incorrectly states “[c]urrently, there are no reasonably foreseeable future actions planned in the project area.”²⁰ The specialists' reports, however, identify livestock grazing, recreation, fire management, travel management, weed management, fire suppression, and precommercial thinning,²¹ as foreseeable actions in the Project area.

¹⁷ *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 895 (9th Cir. 2002).

¹⁸ *Id.* at 896.

¹⁹ *Kern v. United States Bureau of Land Management*, 284 F.3d 1062, 1076 (9th Cir. 2002) (emphasis in original).

²⁰ EOTW EA at 15.

²¹ EOTW Fire and Fuels Specialist Report at 22, Silvicultural Specialist Report at 21, Rangeland Specialist Report at 13, Wildlife Specialist Report at 114 and throughout.

Furthermore, the Tribe believes the Forest has inappropriately limited the geographic scope of the cumulative effects analysis to that of the Project area in at least some contexts.²² The Project area abuts private land to the north and west which are managed intensively. Nearby Forest Service projects to the east in the South Fork Clearwater River watershed include the proposed Hungry Ridge Restoration project and the recent Doc Denny Vegetation project, of which the stewardship portion is active. The combined volume of timber projected for these sales and EOTW are over 250 MBF.

Channel changes or habitat degradation are expected to be negligible from natural condition due to Best Management Practices implementation and the 5-10 year period required to complete Project activities.²³ This statement is bold and questionable when considering the stream habitat surveys have not happened in the South Fork Clearwater tributaries in 27 years, in select White Bird tributaries in 26 years, and in the North and South Forks of White Bird Creeks in 18 years.²⁴ Recent information, except for cobble embeddedness, is too dated to make conclusions on cumulative effects.

The Forest needs to take a hard look at cumulative impacts from past, present, and foreseeable future project. Cumulative analyses in the specialists' reports need to be accurately and consistently summarized in the EA. While, the Project record contains hundreds of supporting documents, the EA fails to adequately and consistently capture the Project's cumulative impacts. Due to the lack of consistently reported cumulative effects, the Tribe does not agree with the draft FONSI determination that there would be no significant, adverse effects to water quality, water yield, watershed condition, wildlife, cultural resources and, thus, the quality of the human environment under Alternative B; there is simply not enough information provided.

Remedy: Before making a final determination of no significant impact, the Tribe requests that the Forest properly evaluate cumulative effects to all relevant natural resources. Furthermore, the Tribe recommends that the Forest update and edit the EA and FONSI /FONSI with accurate and consistent data to justify determinations of no significant impacts. To address the lack of current pre-implementation data, the Tribe requests that monitoring be included to ensure there are limited impacts to the natural resources, including sediment and stream temperature monitoring in areas of fish use. Before and during implementation monitoring using standardized scientific protocols and sharing data results are recommended.

E. Proposed Central Idaho Land Exchange

The Central Idaho Land Exchange is a proposal the Idaho Department of Lands ("IDL"), the Forest Service, and other parties are exploring that would transfer private lands in the Upper Lochsa Basin to the Forest Service in exchange for certain Forest Service lands on the Nez Perce-Clearwater National Forests.²⁵ Map 3 on IDL's website (last updated on June 4, 2018) indicate that Forest

²² EOTW Draft FONSI at 4; Silviculture Specialist Report at 6 and 21.

²³ *Id.* at 30.

²⁴ *Id.* at 16.

²⁵ Central Idaho Land Exchange, Idaho Department of Lands, at <https://www.idl.idaho.gov/real-estate/central-id/index.html> (last visited October 17, 2019).

Service lands considered for transfer to IDL include lands within the Project. The Project EA and draft DN do not mention or evaluate this proposed land exchange.

Remedy: The Tribe requests that the Forest evaluate this land exchange proposal in the Project EA, draft DN, and draft FONSI.

F. Roads and Sediment Concerns

The draft DN states that the selected alternative B constructs 14.7 miles of temporary road²⁶ to be decommissioned and fully recontoured after use. The EA also includes 0.09 miles of new permanent road construction and 27.5 miles of road decommissioning.²⁷ Only 0.8 miles of the new temporary road would be on existing template; however, the EA goes on to state that “existing road prisms within units may be used for additional temporary roads if necessary” as part of the additional design features and mitigation measures to the Proposed Action and Alternative B.²⁸ The Tribe would like to know which road prisms are being considered for temporary roads and what their modeled potential impacts would be via NEZSED and/or WEPP modeling.

Temporary roads that could be used in harvest units need to be included in the NEZSED modeling when they meet the criteria listed below, especially over a worst-case scenario of over 20 years on the landscape. The Region 1/Region 4 Guide for Predicting Sediment Yields states “[r]oads to be considered include all system roads in the watershed and any other major constructed temporary road systems. Non-specified roads and skid trails internal to logging units are considered as part of logging effects...”²⁹ Failure to include all roads in the analysis and follow the assumptions of the model, as the Tribe understands it, invalidates the results of the model. Some key assumptions for the NEZSED model are as follows:

- Model temporary roads as part of harvest units when: there are no stream crossings; roads are located on stable, upper slopes; and there is little/discontinuous cut and fill (excavation) – this would equate to no engineered design.
- Model temporary roads as individual segments when: there are stream crossings; roads are located on landslide prone, highly erosive mid-slopes or mass wasting slopes; or roads require continuous excavation where there are deep cuts – this would probably equate to a road that would have some sort of engineered design or oversight.
- Temporary roads outside of harvest units modeled as individual segments. This would equate to the 14.7 miles proposed temporary roads.
- Add temporary road scenario for 1 Year Plus in the NEZSED updated formulas in Variables Table to include temp4 for temporary roads that would occur on the

²⁶ EOTW Draft DN at 16.

²⁷ *Id.* at 13.

²⁸ *Id.* at 7.

²⁹ USDA Forest Service. 1981. R1/R4 Guide for Predicting Sediment Yields from Forested Watersheds. Northern and Intermountain Regions at 16.

landscape for more than one year (overwinter). This also corresponds to Table 2 in The Implementation Guide to Appendix A of the Nez Perce National Forest Plan³⁰ which shows basic erosion rates in tons per square mile through modeled year five.

Including the provision that non-identified “existing road prisms within units may be added for temporary roads if necessary³¹” would require new modeling to assess the environmental impacts. Withholding potential temporary roads from the analysis and/or extending these temporary roads on the landscape for more than one year (overwinter) would invalidate the model based on these assumptions. The EOTW Project proposes to keep temporary roads on the landscape for longer than usual timber sales allow.³²

Sediment delivery from timber harvest and associated log haul need to be fully considered. The Project proposes to cut 140 MBF resulting in approximately 60,000 round trips on gravel roads by log trucks. Additionally, logging equipment and personnel will increase traffic in the Project area. Defining the roads to be used and modeling the potential impacts is important when taking a holistic look at the impacts of the Project as a whole with the intention to improve overall Forest and watershed conditions in the area.

Remedy: The Tribe requests that the Forest identify and make known all temporary roads needed for the Project and incorporate all into NEZSED and/or WEPP modeling for analysis based upon existing modeling assumptions. Due to the tight turn around and lack of the Tribe’s involvement in the sediment modeling part of this Project, the Tribe requests the NEZSED for further study. The long-term goal is to reduce the road density through decommissioning and limit sediment delivery and thus, improve watershed conditions in the Project area.

G. Rationale for and Monitoring of Mitigation Measures

The DN identifies a number of mitigation measures to be taken in association with this Project.³³ In most cases, explanations for the necessity of these measures are not provided. If the DN and FONSI rely on the implementation of these mitigation measures to avoid significant impacts to the referenced resources, that should be stated explicitly. In some cases, these measures do not appear to reference or relate to the potential effects evaluated in the EA (e.g. WL-4). In addition, the DN fails to lay out a process for implementing and monitoring these mitigation measures.³⁴ How will the Tribe and Forest know that these mitigation measures were implemented as designed and effective in their outcomes?

³⁰ Conroy and Thompson 2011. The Implementation Guide to Appendix A of the Nez Perce National Forest Plan at 20.

³¹ “Existing road prisms within units may be used for additional temporary roads if necessary.” EOTW EA at 7.

³² “within ten years after the termination of the contract” EOTW Draft DN at 16.

³³ EOTW Decision Notice at 9-12.

³⁴ Sutley, Nancy H. 2011. Appropriate use of mitigation and monitoring and clarifying the appropriate use of mitigated Findings of No Significant Impact. Memorandum for heads of federal departments and agencies; January 14, 2011. Council on Environmental Quality; Washington DC.

Remedy: If mitigation is necessary to support the FONSI, the Forest should adhere to Council on Environmental Quality guidance.²⁶ The Tribe requests that the Forest describe the need and rationale for the mitigation measures identified in the DN, clarify the purpose of those measures in relation to the FONSI, and describe the process for implementing and monitoring those measures.

H. Impacts to Wildlife Habitat

As a general matter, the EA lacks necessary information of the environmental impacts of the proposed action and alternatives. It does not provide sufficient evidence and analysis for determining whether to prepare an EIS. Summaries of the analyses from the specialists' reports³⁵ are inconsistently detailed across resources, which impedes understanding of environmental consequences and informed decision making.

The summary of impacts to wildlife³⁶ in the EA are misleading and lack clear interpretation of direct, indirect, and cumulative impacts under both action alternatives. For example, the EA does not adequately report acres of treated habitat for American marten, flammulated owl, old growth, mountain quail, pygmy nuthatch, northern goshawk, pileated woodpecker, fisher, and white-headed woodpecker. The EA only reports regeneration harvest in suitable habitat and intermediate harvest in potential habitat for many of these species. The EA also fails to disclose that under the proposed action and Alternative B that approximately 49 and 48% of other forest old growth habitat, respectively, would be treated through regeneration and intermediate harvest and landscape fire, which would impact American marten, fisher, bats, northern goshawk, and pileated woodpecker.³⁷ The EA does not summarize these impacts to these species and instead directs the reviewer to "[s]ee Old Growth Section" where it only reports regeneration harvest in other forest old growth habitat.³⁸

Although Fisher habitat is marginal in the Project area, the action alternatives (impacting 60 and 57% of probable habitat, under the proposed action and Alternative B, respectively)³⁹ would reduce canopy cover, amount of mature forest, and habitat connectivity while increasing openness. The EA incorrectly reports that current proportion of potential fisher habitat in openings in the Project area, which is 12%, not 14%. Under the proposed action and alternative B, the current proportion increases from 12 to 14 and 15%, respectively, which exceeds the 5% threshold for forest openings at the subwatershed scale for fisher. The EA also fails to disclose that variable density thinning would create openings up to 5 acres within treatment units, which may reduce habitat connectivity and cause avoidance by fisher, and other species, such as American marten. Because of the potential impacts to fisher habitat, the Tribe recommends that the Forest adopt mitigation measures to retain snags, large diameter trees, provide green replacement tree habitat, and limit the number of large openings in the variable density thinning treatments.

³⁵ EOTW EA at 15 - 51.

³⁶ EOTW EA at 30 - 49.

³⁷ EOTW Wildlife Specialist Report at 110 - 111.

³⁸ EOTW EA at 48.

³⁹ EOTW Fisher Tables, Project Record.

For American marten, the EA reports that approximately 94% of suitable habitat would be retained and 1% of old growth habitats would be converted through regeneration harvest under Alternative B.⁴⁰ However, the Wildlife Specialist Report states that 61% of suitable habitat would be treated through regeneration and intermediate harvest, landscape fire, and other proposed treatments (leaving 39% of suitable habitat retained), and that 48% of suitable existing and replacement old growth habitat would be treated through harvest or fire under Alternative B.⁴¹ Based on information in the Wildlife report, the Tribe questions the statement in the EA that “[s]ufficient habitat would remain unaffected by the proposed actions to continue to support marten within the project area, across the Forest, and at the Regional scale.”⁴²

For Mountain quail, the EA does not report intermediate harvest and landscape fire treatments in suitable habitat, and it appears from the EA that both action alternatives would retain 100% of suitable habitat. On the contrary, proposed actions would treat 50 to 55% of currently suitable and potentially suitable mountain quail habitat through intermediate harvest and landscape burning.⁴³ Landscape burning would represent the majority of treatment in suitable mountain quail habitat. Because of this, and potential adverse, short-term impacts from harvest and burning during the breeding season, the Tribe recommends that the Forest develop and implement a mitigation to avoid or minimize impacts to mountain quail during breeding.

Remedy: The EA needs to include pertinent information and interpret the effects under the action alternatives that are disclosed in the Wildlife report. There should be no inconsistencies between a specialist’s report and the EA. The Tribe requests that the Forest properly document, reevaluate, and/or add (as necessary) direct and indirect effects to all relevant resources. Where information is inadequate, missing, or contradictory, treatments should be scaled back or dropped to avoid inadvertent significant impacts (and violation of the FONSI). The Tribe recommends that the Forest adopt mitigation measures to avoid adverse impacts to species during breeding seasons, retain snags, large diameter trees, provide green replacement tree habitat, and limit the number of large openings in the variable density thinning treatments.

I. Elk Habitat Quality

Elk habitat quality within and surrounding the Project area is poor, with habitat security being of particular concern to the Tribe. The EA and Wildlife Specialist Report note that Elk Security would not meet desired conditions in any of the Elk Analysis Areas within the Project area. Although the effect of vegetation treatments on hiding cover is noted in the Wildlife Specialist Report,⁴⁴ this information is not used to evaluate changes in Elk Security. The Forest’s compliance with its Forest Plan Elk Habitat Effectiveness standards should not preclude a qualitative evaluation of the impact of expansive reductions in hiding cover across the Project area.

⁴⁰ EOTW EA at 30 - 31.

⁴¹ EOTW Wildlife Specialist Report at 104 - 105.

⁴² EOTW EA at 30.

⁴³ Wildlife Specialist Report at 87.

⁴⁴ EOTW Wildlife Specialist Report at 108.

Remedy: The Tribe requests that the Forest evaluate the impact of predicted reductions in hiding cover to elk distribution within the Project area.

J. Livestock Grazing and Invasive Plants

The Tribe recommends that the Forest defer livestock grazing in areas treated with fire until desired vegetative conditions have been met; at a minimum, surviving perennial grasses must have regained productivity and be producing viable seed at levels equal to grasses and forbs in unburned areas. Prior to the resumption of grazing, site-specific monitoring should demonstrate that the plant community and overall site conditions, including but not limited to, soil and hydrological conditions,⁴⁵ have recovered and are trending toward desired conditions.

Yellow star thistle is addressed specifically within the EA, but the presence of spotted knapweed is of primary concern to managers in the area. The EA states that invasive species are most likely to increase along roadways, which is true, but they are also prone to establish within disturbed areas, such as harvest units. The proposed action reduces fuels on up to 18,861 acres, disturbing the land in those areas and allowing for the potential for weed encroachment. The EA and DN do not describe what will be done to protect against and treat weed invasion in disturbed areas, both pre- and post-treatment.

Remedy: The Tribe requests that the Forest actively monitor grazing activities during and after implementation of the Project to limit 1) the spread of noxious weeds, 2) damage to planted trees, and 3) degradation of resource conditions, such as plant composition, soil stability, and sensitive species viability in the Project area. The Tribe also requests that the Forest add monitoring and treatment of yellow star thistle and other invasive plants pre- and post-harvest to the mitigation measures.

K. Large Openings

Large openings in the Project area have the potential to impact how terrestrial species move across the landscape. The large openings proposed under this Project, although fewer in number than when this Project was originally scoped, could exacerbate resource conditions within the Project area, including impacts from high road densities, high levels of motorized vehicle use and disturbance, cattle grazing, low elk habitat security, previous soil disturbance, and establishment and spread of undesirable plant species. Large openings are also of concern from an elk vulnerability standpoint, as extended sight lines may allow for extreme-range shooting by hunters from elevated vantage points.

Remedy: The Tribe requests that the Forest use a combination of dispersed and aggregated retention strategies to limit the size of openings to less than 40 acres in regeneration units. The Tribe also requests that the Forest evaluate and determine the condition of all openings adjacent to harvest units as part of its cumulative effects analysis. Furthermore, the Tribe requests that the Forest field-verify the prescription units and identify potential openings within variable density thinning treatments so they do not functionally become regeneration units (≥ 5 acres). Field

⁴⁵ Pellant, M., Shaver, P., Pyke, D. A., Herrick, J. E. 2005. Interpreting Indicators of Rangeland Health - Version 4: Bureau of Land Management, National Science and Technology Center Technical Reference 1734-6.

verification during the planning process, as opposed to implementation, would help refine the analyses of effects to resources within the Project area.

L. Upward Trend Analysis

No recent stream habitat surveys have been conducted in the Project area. Surveys were completed for the South Fork Clearwater tributaries in 1992, in selected White Bird tributaries in 1993, and in the North and South Forks of White Bird creeks in 2001.⁴⁶ In 2017, the Forest did conduct substrate (cobble embeddedness) field surveys to measure fine sediment in Project streams for Forest Plan objective compliance.

Jungle Creek, in the South Fork White Bird Creek drainage, does not meet its 70 percent fishery water quality objective for habitat potential and thus requires an upward trend analysis. Cold Springs is not limited by sediment and so does not require an upward trend analysis; however, the Forest completed an upward trend analysis because Cold Springs does not meet its 70 percent fishery water quality objective.

The Tribe questions the assumption that Asbestos Creek is meeting its Forest Plan water quality objective if the cobble embeddedness measure was not taken since 1985. Cove, Grouse, Bivouac and Jungle creeks in the South Fork Clearwater as well as Goose, Goodwin, and Tollgate creeks (which have no fishery) have no data but are also assumed to meet water quality objectives.⁴⁷

There are opportunities being missed within the Project area for watershed and aquatic habitat improvements which would contribute to an upward trend. For example, only 0.1 mile of revegetation is planned throughout the Project⁴⁸ when there are abundant revegetation prospects throughout the area. The proposed planting along Fish Creek at the Girl Scout Camp, although it is within an enclosure, the Forest Service does not maintain this fence and it is in desperate need of replacement. In its current state, riparian planting within this cattle enclosure will be less effective without significant fence maintenance. The stream within this enclosure is not only lacking riparian vegetation but is incised and lacking fish habitat and structure as well. The simple and cost-effective placement of beaver dam analogs within this meadow would improve fish habitat, increasing riparian vegetation, habitat diversity, and bank stability, further increasing the upward trend of watershed conditions.

Remedy: To address the lack of current pre-implementation data, the Tribe requests that monitoring be included to measure upward trend, including sediment and stream temperature monitoring in areas of fish use. Before, during, and after implementation monitoring using standardized scientific protocols and sharing data results are recommended. The Tribe also requests more habitat improvements be included to off-set the impacts to watershed and aquatic resources such as increased riparian plantings, improved cattle enclosures, and beaver dam analogs.

⁴⁶ EOTW Biological Assessment at 16.

⁴⁷ EOTW Biological Assessment at 17.

⁴⁸ EOTW EA at 13.

III. CONCLUSION

The Tribe's scoping comments and this objection are intended to help promote holistic forest ecosystem integrity and the vitality of the Tribe's treaty-reserved resources. The Tribe shares the Forest's goal of promoting healthy and safe forest conditions in the Project area. For the reasons described above, however, the Tribe has identified several deficiencies in the draft FONSI and DN that collectively do not adequately evaluate the Project's impacts. The Tribe accordingly looks forward to meeting with the Forest to address the Tribe's concerns through the requested remedies described in this objection.