



April 17, 2020

USDA Forest Service
Nez Perce-Clearwater National Forest
Attn. Zach Peterson, forest planner and Cheryl Probert, forest supervisor
909 3rd Street
Kamiah, Idaho 83536

Submitted via Nez Perce-Clearwater NF Cara webform, as well as email to zachary.peterson@usda.gov

Dear Ms. Probert, Mr. Peterson, and Nez Perce-Clearwater National Forest Planning Team,

Please accept this letter on behalf of Montana Wilderness Association (MWA) and our thousands of members and supporters in response to the public comment period of the draft environmental impact statement (DEIS) and draft revised forest plan (FP) for the Nez Perce-Clearwater National Forest. MWA is pleased to have the opportunity to contribute to this important step in the forest planning process.

I. ORGANIZATIONAL BACKGROUND

For more than 60 years, MWA, a 501(c)(3) organization, has worked with communities to protect Montana's wilderness heritage, quiet beauty, and outdoor traditions, now and for future generations. Our work began in 1958 when our founders sent a letter to 100 friends, inviting them to join a citizen-led effort to protect the Madison and Gallatin Ranges. Our commitment to grassroots conservation was instrumental in the passage of the 1964 Wilderness Act and the designation of all 15 Wilderness areas in Montana. Through our staff in Missoula, and on behalf of tens of thousands of supporters across the state and across the country, we are committed to protecting the wilderness values, preserving the cultural significance, and maintaining opportunities for quiet recreation in the planning area through the RMP process.

MWA has participated in this forest planning process since it began in 2012. Our members have a vested interest in the adjacent wildlands of the Nez Perce-Clearwater National Forest in Idaho. We travel over the border to visit the Nez Perce-Clearwater to spend time with our loved ones; pass down skills and knowledge to the next generation; harvest game through fair chase backcountry hunting and fishing; and find solace, recreation, refuge, and spiritual connection. Our membership in Mineral, Missoula, and Ravalli Counties consider the Nez Perce-Clearwater as much a part of our wildland backyards as the Lolo and Bitterroot National Forests, and the wild character of roadless areas and designated Wilderness on the Nez Perce-Clearwater attract our members from more distant counties, as well as Americans from all over the country.

Our comments address landscape and site-specific conservation primarily for the Hoodoo Roadless Area (a.k.a Great Burn). Our comments highlight elements of the draft plan and associated analysis in the DEIS that we support, areas we explicitly oppose, and areas that need to be improved, as well as support and rationale for our recommendations.



II. SUMMARY OF ORGANIZATIONAL COMMENTS

MWA supports the following management recommendations for the Hoodoo Roadless Area. Detailed rationale for these recommendations is found in part III.

- Manage all 151,874 acres of the Hoodoo Roadless Area as recommended wilderness, recognizing the area's outstanding wilderness characteristics (consistent with Alternative W).
- Prohibit all non-confirming uses across these 151,874 acres other than administrative use of chainsaws by USFS and partners, maximally protecting wilderness characteristics, as well as wildlife habitat for sensitive species that include, but are not limited to, wolverine and mountain goats (consistent with Alternative W).
- Continue to allow motorized access for 4.1 miles of the Fish Lake trail (consistent with Alternative Z).
- Manage the Hoodoo Roadless Area as unsuitable for timber production and harvest, including unsuitability for both permanent and temporary road construction.
- Manage the following river segments as suitable for Wild and Scenic River designation:
 - Kelly Creek (26.2 miles)
 - North Fork Kelly Creek (5.9 miles)
 - Middle Fork Kelly Creek (4.9 miles)
 - South Fork Kelly Creek (6.2 miles)
 - Cayuse Creek (35.9 miles)
- Continue to manage Rhodes Peak for recommendation as a Research Natural Area (consistent with all Alternatives).

In addition, MWA supports the following plan components that are outside of, or not specific to, the Hoodoo Roadless Area:

a. *Proposed Designated Special Areas*

In recognition of the botanical values and cultural significance of the Packer Meadows area, MWA supports the designation of this special area.

b. *Designated Wilderness*

MWA supports and would like to contribute to planning and implementing "a wilderness symposium for all agency personnel, non-government organizations, academia and private citizens on the wilderness areas managed by the Nez Perce-Clearwater and



adjoining national forests” (DEIS A4-73). We further encourage this symposium to address management of recommended, as well as, designated wilderness.

c. Management of Mallard-Larkins Roadless Area

Manage 90,855 acres of the Mallard-Larkins Roadless Area as recommended wilderness, recognizing the area’s outstanding wilderness characteristics (consistent with Alternative Y).

III. COMMENTS

Montana Wilderness Association’s comments cover these topics:

1. Range of alternatives
2. Management of Recommended Wilderness
3. Hoodoo Roadless Area (Great Burn)
 - a. Recommended wilderness
 - b. Non-conforming uses
 - c. Trans-boundary issues
 - d. Recreation
 - e. Wildlife
 - i. Grizzly bears
 - ii. Mountain goats
 - iii. Wolverine
 - f. Wild and Scenic Rivers
 - g. Research Natural Areas
4. Other management areas
 - a. Proposed designated special areas
 - b. Designated wilderness

1. Range of alternatives

Montana Wilderness Association cannot support any of the Alternatives as proposed in the DEIS and Draft Forest Plan. Throughout these comments we will clarify our objections to components of each alternative, as well as the elements we support.

MWA would also like to call particular attention to the fact that the DEIS indicates that Alternative Z reflects “a proposal for recommended wilderness that was brought forward by a group of national and state wilderness advocacy groups”. Alternative Z, however, would allow non-conforming uses in the Hoodoo Recommended Wilderness, including mechanized travel and winter over-snow motorized travel. Montana Wilderness Association does not support allowances for recreational non-conforming uses as explained in *Section 2* of these comments. It is unlikely that the proposal provided to the Forest Service included this provision for non-conforming uses and it is misleading of the Nez Perce-Clearwater to suggest that this



alternative reflects the management direction proposed and supported by the wilderness advocacy community.

2. Management of Recommended Wilderness

Recommended wilderness areas (RWAs) must be managed for social and ecological characteristics that preserve and enhance wilderness character over time, as required by the 2012 Planning Rule, US Forest Service guidance, and case law. Furthermore, the draft plan must adopt clear standards for the proper management of RWAs and mechanisms by which those standards can be immediately implemented.

- a. RWAs must be managed for social characteristics that preserve wilderness character over time

Public land managers are responsible for managing recommended wilderness areas (RWAs) to preserve wilderness character and their potential for future inclusion into the National Wilderness Preservation System (NWPS). Motorized and mechanized transport can diminish an area's "primeval character", its "outstanding opportunities for solitude or a primitive and confined type of recreation", as well as its ecological values, and it is essential that the DEIS adequately address and analyze these potential diminishments. Visitors to wilderness, whether designated or recommended, expect to find high levels of naturalness, solitude, and access to remote experiences via primitive recreation. Uses that do not conform to the intent and purpose of wilderness affect this experience. The diminishment of social and ecological characteristics can lead future decision makers to reduce, or even eliminate, RWAs in future planning processes: this loss of potential future wilderness character by allowing non-conforming uses must be addressed in the DEIS. For this reason, we urge the Planning Team to select an alternative, or combination of alternatives that prohibit mechanized transport, motorized use, and other non-conforming uses in RWAs, so as to properly protect these lands, maintain their potential for designation to the NWPS, and minimize future difficulties inherent in no longer allowing non-conforming uses if these areas were to become designated Wilderness.

The following comments focus on wilderness-related issues in the DEIS, specifically, the management directives for RWAs, and their inconsistency with the direction provided in the 2012 planning rule to "protect and maintain the ecological and social characteristics that provide the basis for their suitability for wilderness designation".

The Wilderness Act defines Wilderness by its unique qualities, including solitude and primitive recreation, and by defining activities that detract from the characteristics¹. Section 4 of The Wilderness Act prohibits roads, motorized uses, and mechanized transport to protect wilderness characteristics, stating:

¹ 16 USC 1131 §2(c).



PROHIBITION OF CERTAIN USES

(c) "...there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area."²

Congress reserves the right to make final decisions regarding Wilderness designations. In the intervening time before Congress acts, it is the managing agency's responsibility to "preserve [the] wilderness attributes until such time as Congress makes the decision regarding wilderness designation..."³

In December 2018, the Flathead National Forest concluded in its final, revised Forest Plan that nonconforming uses are not suitable in RWAs. Forest Supervisor Chip Weber described his reasoning in the final Record of Decision (emphasis added):

"I have included plan components to protect and maintain the ecological and social characteristics that provide the basis for each area's suitability for wilderness recommendation. One of these plan components indicates mechanized transport and motorized use are not suitable (MA1b-SUIT-06) in recommended wilderness areas. I have included this plan component in my final decision because **I believe it is necessary to protect and maintain the ecological and social characteristics that provide the basis for their wilderness recommendation** (described in Appendix G of the land management plan). Although a number of commenters and objectors expressed concern that the management of recommended wilderness creates "de facto wilderness" in lieu of action by Congress, the land management plan does not create wilderness. **The Forest Service has an affirmative obligation to manage recommended wilderness areas for the social and ecological characteristics that provide the basis for their recommendation until Congress acts.** The land management plan does not allow for continued uses that would affect the wilderness characteristics of these areas and possibly jeopardize their designation as wilderness in the future."⁴

It is important to manage RWAs "in a manner consistent with the Forest's recommendation [for wilderness]."⁵ Managing RWAs in a way that can negatively affect their ultimate inclusion into the NWPS, as Alternative Z would, is out-of-step with: 1) USFS 2012 Planning Rule, 2) 2015 Forest Service Manual, 3) Forest Service Handbook, and 4) Region 1 Guidance.

2012 Planning Rule

² 16 USC 1131 §4(c).

³ Bitterroot NF Travel Management Planning, Final Record of Decision (2016), p 25-27.

⁴ Flathead National Forest, Forest Plan Record of Decision (2018), p. 26.

⁵ Bitterroot Travel Management, Final Record of Decision (2016), p. 25-27.



The 2012 planning rule⁶ provides important regulatory guidance for the management of RWAs, as well as plan components like suitability and standards that create the framework to carry out that RWA guidance. The 2012 Rule states:

“The plan must provide for ... protection of Congressionally designated wilderness areas as well as management of areas recommended for wilderness designation to protect and maintain the ecological and social characteristics that provide the basis for their suitability for wilderness designation.”

This direction was acknowledged by Julie King, former Bitterroot National Forest Supervisor, in her decision in the 2016 Travel Management Plan Record of Decision to prohibit non-conforming uses in RWAs (emphasis added):

“Additionally, allowing uses that do not conform to wilderness character creates a constituency that will have a strong propensity to oppose recommendation and any subsequent designation legislation. Management actions that create this operating environment will complicate the decision process for Forest Service managers and members of Congress. It is important that when the wilderness recommendations are made to Congress that they be unencumbered with issues that are exclusive to the wilderness allocation decision.”⁷

Supervisor King’s decision follows Forest Service direction clearly and further adheres to the 2015 Forest Service Manual which states, “Any area recommended for wilderness or wilderness study designation is not available for any use or activity that may reduce the wilderness potential of an area.”⁸ It is not appropriate to manage RWAs for anything other than their wilderness character. Activities such as winter motorized use and mountain biking impair both the social and ecological characteristics of wilderness and cannot be permitted in RWAs.

Allowing uses that do not conform to wilderness character, particularly winter motorized use, has complicated management of the Nez Perce-Clearwater’s Hoodoo Roadless Area significantly over the last two decades, and allowed for creation of a “constituency” similar to that described by Julie King’s Travel Management Plan ROD. With the completion of the Clearwater Travel Plan in 2012, winter motorized use in the Hoodoo Roadless Area was no longer allowed. Illegal winter motorized trespass since this 2012 decision, however, has been a recurring issue that has been documented by Idaho Fish and Game⁹, Great Burn Conservation Alliance (formerly the Great Burn Study Group), and others. I personally was passed by three

⁶ 36 CFR 219.10(b)(1)(iv).

⁷ Bitterroot Travel Management, Final Record of Decision, p 25-27. The Federal District Court in Missoula upheld the 2016 this Record of Decision, including restrictions on mechanized use.

⁸ FSM 1923.03(3).

⁹ Nez Perce-Clearwater National Forest, DEIS, personal communication with Clay Hickey, July 2017, p 3.2.3.4-31.



snowmobilers near Granite Peak in the Crooked Fork drainage of the Hoodoo Roadless Area in March 2019, and the presence of old snowmobile and snow bike tracks in the area through which I traveled during that trip indicated that illegal trespass had frequently occurred throughout the month prior. Alternative Z's allowance of non-conforming uses would continue to create this "constituency", further increasing tensions between user groups, necessitating law enforcement efforts to ensure trespass does not occur on the Lolo National Forest side of the Hoodoo Roadless area, and encumbering the Service with user issues if Congress were to designate this area as Wilderness.

The direction in the 2012 Planning Rule instructs the USFS to "protect and maintain the ecological and social characteristics ... for wilderness designation" (emphasis added) and we strongly urge the Nez Perce-Clearwater NF to manage both the ecological and social characteristics of RWs in a manner that is consistent with the USFS's recommendations and prohibits uses that are non-conforming to the Wilderness Act.

Forest plans revised under the 2012 Rule are required to include desired conditions (DCs), and for the suitability requirements to uphold the DCs.¹⁰ Concerning suitability, the rule states that "specific lands within a plan area will be identified as suitable for various multiple uses or activities *based on the desired conditions applicable to those lands.*"¹¹ (emphasis added)

The Nez Perce-Clearwater has identified five critical desired conditions for RWA management, and it will be imperative for the objectives, goals, standards, and suitability requirements of the plan to support those DCs. Under Alternative Z, that will not be the case. The draft plan includes the following DCs for RWAs, which will require consistent suitability requirements for recreation management:

MA2-DC-RWILD-01: Recommended wilderness areas maintain their existing wilderness characteristics to preserve opportunities for inclusion in the National Wilderness Preservation System.

MA2-DC-RWILD-03: Recommended wilderness areas facilitate the connectivity and movement of wildlife species across the Nez Perce-Clearwater by remaining large areas with little human activity.

MA2-DC-RWILD-04: Recommended wilderness areas provide opportunities for solitude or a primitive and unconfined type of recreation. Impacts from visitor use do not detract from the natural setting.

¹⁰ CFR 36 § 219.7 (e)(1).

¹¹ CFR 36 § 219.7 (e)(1)(v).



MA2-DC-RWILD-05: Outfitter guide recreation special uses support identified public need to provide services aligned with the natural setting and recreational purposes of the recommended wilderness areas.

Alternatives W and Y uphold these DCs by finding nonconforming recreational uses not suitable in RWAs per suitability language in MA2-SUIT-RWILD-12, MA2-SUIT-RWILD-13, and MA2-SUIT-RWILD-14. The proposed suitability language in Alternative Z, however, will fail to create a future condition that allows the Hoodoo RWA to retain its social wilderness characteristics and opportunity for future inclusion. Furthermore, ecological values will be degraded should winter motorized travel be allowed to occur in the Hoodoo RWA. We urge the Planning Team to adopt the proposed suitability language offered for Alternatives W and Y, as it conforms with the stated DCs.

Case studies from across Region 1 show that authorizing or allowing non-conforming uses have directly precluded previously recommended RWA acreage from the possibility of inclusion in the NWPS in the future; thus failing to uphold a desired condition where RWAs maintain their potential for future Wilderness designation (see below for discussion on case studies).

2015 Forest Service Manual

The 2015 Forest Service Manual¹² planning directives address the management of RWAs. Those directives state:

Any area recommended for wilderness or wilderness study designation is not available for any use or activity that may reduce the wilderness potential of an area.

It is important to note that this Manual direction replaced the previous 1923.03 direction, which stated that:

“Any inventoried roadless area recommended for wilderness or designated wilderness study is not available for any use or activity that may reduce the wilderness potential of the area. Activities currently permitted may continue pending designation, if the activities do not compromise the wilderness values of the area.”

Discussed below are several case studies from Region 1 where uses and activities that occurred in areas recommended for Wilderness directly reduced the wilderness potential of the area. We urge the Nez Perce-Clearwater NF to follow this new direction in the Manual and prohibit any non-conforming uses, such as mountain biking and winter motorized travel, in areas recommended for wilderness, as in Alternative Z. Failure to follow the agency’s own policy would be arbitrary and capricious.

¹² FSM 1923.03(3).



Forest Service Handbook

The Forest Service Handbook¹³ states:

When developing plan components for RWAs, the responsible official has discretion to implement a range of management options. All plan components applicable to a recommended area must protect and maintain the social and ecological characteristics that provide the basis for wilderness recommendation. In addition, the plan may include one or more plan components for an RWA that:

- 1. Enhance the ecological and social characteristics that provide the basis for wilderness designations;*
- 2. Continue existing uses, only if such uses do not prevent the protection and maintenance of the social and ecological characteristics that provide the basis for wilderness designation;*
- 3. Alter existing uses, subject to valid existing rights; or*
- 4. Eliminate existing uses, except those uses subject to valid existing rights.”*

The Handbook reiterates the direction given in the 2012 Planning Rule by stating all plan components “must”, not may, “protect and maintain the social and ecological characteristics that provide the basis for wilderness designation”. The Handbook also restates the Forest Service’s authority to “alter” or “eliminate existing uses” in the prevention and maintenance of those characteristics.

Region 1 Guidance

Region 1 Guidance¹⁴ states:

If it is determined that the area is best suited to motorized or mechanized recreation, the area should not be recommended for wilderness. If it is determined that the best future use is inclusion in the NWPS, the desired condition should reflect that. If there are established uses that are incompatible with that desired condition, such as motorized or mechanized recreation, forests should choose to implement one of the following actions:

- 1. Pursue a non-motorized, non-mechanized approach to the management of the area through travel planning.*
- 2. Adjust management area boundary to eliminate the area with established uses.*
- 3. Not recommend the area for wilderness designation.*

Administrative use of motorized equipment for maintenance (chain saws, rock drills, limited use of helicopters) will continue to be allowed.

¹³ FSH 1909.12, Chp 70, Sec 74.1.

¹⁴ Consistency in Land and Resource Management Plans, 9/24/2007.



Region 1 Guidance clearly expresses that non-mechanized and non-motorized uses are not compatible with RWAs, and urges managers not to include such recreation in RWAs.

Pertinent Case Law - RWA Management

Opportunities for solitude and primitive and unconfined recreation, as well as secure wildlife habitat (particularly for at-risk or species of focus like the wolverine or mountain goat) decline in places where motorized and mechanized use is allowed. Areas that were once considered remote and inaccessible are made more accessible by improved technology available for motorized vehicles and mechanical transport, as well as increased recreation pressures from a growing number of forest users. These are two things that can change dramatically over the life of a Forest Plan, and were not considered in the analyzed effects of this DEIS.

This can limit the opportunities for quiet recreationists to experience the solitude offered by primitive recreation in the once-quiet backcountry of RWAs. The increased access and accompanying noise from machines compromises the underlying area's suitability for wilderness protection by degrading the social characteristics of wilderness. The noise, in particular, can even travel over forest boundaries to affect adjacent wild lands. In this case, this is important to note given the shared boundary between the Lolo and Nez Perce-Clearwater National Forests in the Hoodoo Roadless Area. These impacts all must be appropriately accounted for in the DEIS. The cases discussed below provide a legal basis for determining what management actions are appropriate for maintaining and enhancing wilderness character and opportunities for future inclusion in the NWPS.

A 2011 9th Circuit court ruling¹⁵ held that the Gallatin National Forest erred in its travel management, and helped further define wilderness character of the Hyalite-Porcupine-Buffalo Horn WSA.¹⁶ That ruling, along with *Citizens for Balanced Use v. Erickson*¹⁷ and *Russell Country Sportsmen v. USFS*,¹⁸ established that the Forest Service is obligated to consider the social characteristics in its management decisions:

The Wilderness Act does not define "wilderness" solely according to "physical, inherent characteristics." Instead, it states that, in addition to having physical characteristics such as large acreage, a wilderness "has outstanding opportunities for solitude".

¹⁵ *Montana Wilderness Association v. McAllister*, 666 F.3d 549 (9th Cir. 2011).

¹⁶ While Wilderness Study Areas are managed under a different scheme than the 2012 Rule, the application of the Rule's language regarding social characteristics should be consistent with these 2011 judicial interpretations. WSAs must be managed to preserve their wilderness character, and RWAs likewise must be managed to preserve their wilderness character. The resources being protected in RWAs and WSAs are therefore the same, and these judicial rulings provide important guidance as to how the Forest Service can preserve the opportunity for future Wilderness designation.

¹⁷ *Citizens for Balanced Use v. Erickson*, No. 10-35823 (9th Cir. 2011).

¹⁸ *Russell Country Sportsmen v. USFS*, 668 F.3d 1037 (9th Cir. 2011).



If the [Wilderness Act and Montana Wilderness Study Act] allowed the Service to focus on physical characteristics alone, even a massive escalation in noisy, disruptive motorized use would trigger no management response so long as there was no resulting physical degradation. For example, the Service could allow sightseeing helicopters to fly over the study areas in unlimited numbers, filling the study areas with loud and intrusive noise. Because the helicopters would likely never touch the ground, however, their presence from a common-sense perspective would plainly degrade the areas' wilderness character.¹⁹

In another case²⁰ that impacts national forests across the country, U.S. District Court for the District to Montana upheld the Forest Service's authority to restrict non-conforming uses, such as dirt bikes, four-wheelers, snowmobiles, and mountain bikes in RWAs in the Beaverhead-Deerlodge National Forest (BDNF).

At 3.35 million acres, the BDNF is Montana's largest national forest. It also encompasses 1.8 million acres of unprotected roadless lands, the most unprotected lands of any national forest in Montana. The revised Forest Plan allocated a small minority (18%) of these roadless lands to Recommended Wilderness management where mechanized and motorized vehicle use is prohibited. Though it banned motorized vehicles in RWAs, the BDNF's revised plan opened up the majority of the forest for motorized vehicle use (55% in summer, 60% in winter). Nevertheless, a coalition of off-road vehicle groups, county commissioners, and landowners sued the BDNF in December 2010 in an effort to overturn all of the RWA protections.

All of the Plaintiff's claims were either dismissed for lack of subject matter or, more importantly, denied on the merits. This case showed that national forests have the ability to protect the wilderness characteristics of some of our nation's most spectacular wilderness-quality areas and roadless habitat, where wildlife can thrive safe from modern human activities and interference, and backcountry travelers can enjoy hiking and horseback riding without the noise and disturbance of non-conforming uses.

Region 1 examples - Loss of wilderness character

In Region 1, there are several examples that illustrate how management decisions to allow non-conforming uses in RWAs have led to losses of RWA acres in subsequent forest planning processes, reducing the potential for future Wilderness designation for those areas. Below are four examples (three on the BDNF and one on the Flathead NF) where RWAs have decreased in size following RW management decisions that allowed non-conforming uses in RWAs. By allowing non-conforming uses to persist and establish, and by failing to manage these areas in a manner consistent with the Forest's recommendation, these decisions failed to protect and maintain ecological and social characteristics for wilderness designation.

¹⁹ *McAllister*, 666 F.3rd at 566.

²⁰ *Beaverhead County Comm'rs v U.S. Forest Serv.*, No. 2:10-cv-00068-SEH (D. Mont. July 22, 2013).



1. BDNF: Mt. Jefferson Recommended Wilderness

In 1990, the BDNF created the 4,474 acre Mt. Jefferson RWA in the Hellroaring Creek drainage, the ultimate headwaters of the Missouri River. Although small, the Mt. Jefferson RWA was adjacent to the 23,054 acre Centennials RWA, managed by the BLM, for a combined total of approximately 28,000 acres. The previous BDNF Forest Plan allowed snowmobiling in RWAs. When snowmobiling technology improved in the 1990s, Mt. Jefferson became a publicized snowmobile destination, accessed primarily from the Idaho side. Attempts by the Madison District Ranger to close the RWA to snowmobiles were overruled by the Forest Supervisor. In contrast, snowmobiling was prohibited in the adjacent BLM Centennials RWA. In 2002, the responsible BLM field manager wrote a letter to the BDNF requesting the closure of the USFS portion of the RWA in order to curtail illegal trespass. His request was ignored. When the BDNF revised its Forest Plan in 2009, the already small Mt. Jefferson RWA was cleaved in half: 2,000 acres in the upper reaches of the Hellroaring Creek drainage were stripped of RWA status, leaving only a 2,000 acre RWA in the lower reaches of the valley.

This example addresses the issue of illegal trespass in adjacent public lands when non-conforming uses are allowed. This is very relevant to decision-making for the Nez Perce-Clearwater given the adjacent Hoodoo Roadless Area acres managed by the Lolo National Forest as recommended Wilderness. Illegal trespass by non-conforming uses on the Lolo is expected to be an issue if management of the Nez Perce-Clearwater NF follows Alternatives X, Y, and Z. Conversations with Nez Perce-Clearwater staff at the public meetings held for this planning process suggest that law enforcement availability in this area is not adequate to manage illegal trespass, especially given that boundaries will not be marked and will not be entirely clear to users.²¹

2. BDNF: West Big Hole Recommended Wilderness

Approximately 56,000 acres of the approximately 130,000 acre West Big Hole Inventoried Roadless Area, on the east slope of the Beaverhead Range was an RWA in the BDNF's 1980s-era Forest Plan. Crowned by 10,620ft Homer Youngs Peak, the West Big Hole is a key link in the chain of wild areas that connect the Greater Yellowstone Ecosystem with central Idaho wildlands, including the Frank Church-River of No Return and Selway-Bitterroot Wildernesses. The previous BDNF Forest Plan allowed snowmobiling in RWAs, and when snowmobile technology improved in the 1990s, the West Big Hole became a popular high-marking playground. As a result, when the BDNF released its revised Forest Plan in 2009, the West Big Hole RWA was eliminated.

²¹ At the St. Regis public meeting on February 21, 2020, Kearsten Edwards indicated in conversation with Erin Clark of MWA that in the last few years law enforcement availability for the Hoodoo Pass area was 1-2 times per winter on the ground and zero to one overflight.



Winter motorized technology continues to improve. In recent decades snow bikes have become a readily available and popular technology. Snow bike riders can access more densely forested and steeper terrain than snowmobiles. These capabilities have potential impacts on winter habitat security for sensitive species such as wolverines and mountain goats. This issue will be further explored later in these comments.

3. BDNF: Anaconda-Pintler Wilderness Recommended Inclusions (Sullivan and Tenmile Creek)

The 1980s BDNF Forest Plan included Sullivan and Tenmile Creeks as RWA additions to the Anaconda-Pintler Wilderness. At the southeastern end of the Anaconda Range, these drainages harbor ancient, gnarled, 800-year-old subalpine larches that are among the oldest trees in Montana. Just like the West Big Hole and Mt. Jefferson, snowmobiles were allowed in this RWA. When technology improved enough to allow access into this rugged high country, recreation became popular enough that the BDNF removed the RWA when it revised its Forest Plan in 2009.

4. Flathead NF: Jewel Basin

The aptly-named Jewel Basin is a beloved gem in the Crown of the Continent ecosystem and the crown jewel of the Swan Range. The spectacular alpine lakes of the Jewel Basin are not unlike some of the incredible alpine lakes in the Hoodoo Roadless Area. In the 1987 Flathead National Forest plan, the Jewel Basin RWA encompassed over 32,000 acres. Like all 1980s forest plans, the 1987 plan, however, did not address mechanized transport. In subsequent years, the Alpine No. 7 trail that traverses the Swan Crest and bisects the Jewel Basin caught the interest of mechanized users, and became a popular mountain and dirt biking destination. Images of mountain bikers riding the Alpine No. 7 trail are used on local mountain biking websites and promotional materials.²² These mechanized users actively advocated for use of additional portions of Alpine No. 7 in Jewel Basin, as well as other trails in the Jewel Basin RWA.

The 2018 Flathead ROD ultimately eliminated 14,000 acres of RWA in Jewel Basin, shrinking it nearly by half. The plan attributed this loss specifically to recreational use pressure: “Jewel Basin recommended wilderness area excluded a portion in the south end where mechanized transport occurs.”²³ The final environmental impact statement also specifically states that the acreage of the Jewel Basin RWA was, “reduced ... to minimize effects on mechanized transport.”²⁴ In this case, the establishment of mountain biking in a RWA directly precluded that part of the RWA from continued protection and the possibility of future designation.

²² See <http://www.whitefishbikeretreat.com/flathead-valley.html>, <http://www.flatheadamb.org/news/flathead-national-forest-plan-revision>, and <https://www.trailforks.com/trails/alpine-trail-7/>.

²³ Flathead National Forest, FEIS, vol 1, p 27.

²⁴ Flathead National Forest, FEIS, vol 2, p 26.



As demonstrated by the case studies above, failing to close RWAs to burgeoning non-conforming uses precipitates a rapid decline in their potential for future inclusion in the NWPS. In the end, wilderness character, quality of wildlife habitat, quiet recreation opportunities, RWAs, and the potential for future designations have been significantly degraded.

We urge the Nez Perce-Clearwater NF to follow through on its responsibility to wilderness-quality lands and include only plan components that are consistent with its own administrative recommendations to manage these landscapes for social and ecological characteristics that preserve wilderness character over time, allowing maximum potential for Wilderness designation in the future. The Forest's own commitment to wilderness character sets the baseline for visitor's expectations and resulting actions.

Montana Wilderness Association strongly opposes Alternative Z of this draft plan, which would allow mechanized transport and winter motorized use in all recommended Wilderness areas, including the Hoodoo Roadless Area. For the reasons mentioned in this section, we believe Alternative Z's RWA management direction conflicts with the Forest's own recommendations and will fail to uphold the Nez Perce-Clearwater NF's legal responsibilities for managing RWAs.

The effects analysis of Alternatives Y and Z regarding mechanized and motorized use in RWAs is inadequate. It does not meaningfully address the degradation and potential loss of wilderness character in areas that are meant to be managed for potential inclusion in the NWPS. It also fails to fully analyze the ecological impacts of motorized and mechanized recreation in RWAs (i.e. the impacts on animals that rely on secure habitat in these areas). While it analyzes some of the potential impacts to wolverines, it does not adequately evaluate impacts to other species, such as mountain goats. It also fails to analyze the Service's ability to enforce boundaries for mechanized and motorized use, as well as the effectiveness of the natural features on these boundaries to contain use. The effects of Alternative Z focus on the "displacement" of motorized and mechanized recreators from RWAs, but there is no corollary analysis for how wilderness character will be displaced or lost, including the displacement of quiet recreators and wildlife by motorized and mechanized use.²⁵

The Nez Perce-Clearwater must support its own recommendations by prohibiting all non-conforming uses in RWAs, specifically declaring that these areas are not suitable for mechanized and motorized transport through clear standards, guidelines, and suitability language.

Plan components for RWA management

From the case studies above, and from our work across National Forests, MWA has learned that clear, unambiguous plan components that fully retain wilderness character and potential of

²⁵ Nez Perce-Clearwater DEIS, p. 3.6.2-11-12.



RWAs while waiting on Congress to act are a necessity. We encourage the Nez Perce-Clearwater NF to consider the following recommendations for forest-wide RWA plan components.

Non-conforming uses

Eliminating non-conforming uses and creating strong enforcement mechanisms to support those decisions is the norm in Montana's national forests, and equally applicable to Idaho national forests. Strong suitability language should be utilized that clearly states, "Recommended wilderness areas are not suitable for motorized or mechanized recreation." The final plan should also include standards, as standards are the only plan components that the Forest Service *must* (versus should) adhere to.

Inevitable changing technology and increasing recreation pressures over the life of a Forest Plan emphasize the need for standards that maintain the desired condition of RWAs. Standards are the legal constraints on activities, whereas suitability is a slightly more flexible tool, and it is important that those two elements of the final Forest Plan are congruent and supportive of each other. Consistent standards and suitability language will also make it much easier for the Forest to enforce its own plan during the monitoring and enforcement phases of forest planning. We encourage the Nez Perce-Clearwater NF to adopt a standard, in addition to the clear suitability language, when it comes to non-conforming uses in RWAs.

Both the BDNF and Kootenai National Forests in Region 1 include RWA standards that prohibit non-conforming uses. We strongly encourage the Nez Perce-Clearwater NF to follow the lead of these other Region 1 forests. Here is a proposed standard:

Standard: All motorized and mechanized forms of transportation and equipment are not allowed in recommended Wilderness, including snowmobiles, snow bikes, hang gliders, bicycles, carts and wagons, except for administrative purposes. Landing aircraft is prohibited except for administrative purposes.

Trail Development

Limiting trail density and managing RWAs like designated Wilderness will help ensure that areas retain their ecological and social wilderness characteristics and the possibility for inclusion in the NWPS. As the populations of Missoula and Ravalli Counties continue to grow²⁶ it will be increasingly important to protect recommended wilderness from trail proliferation. We urge you to consider applying the following guideline to recommended wilderness areas:

Guideline: To maintain areas of undeveloped wilderness character, there should be no net increase in miles of system trails within recommended wilderness. Trail reroutes for resource protection or after natural occurrences, such as fire, floods, windstorms, and

²⁶ Nez Perce-Clearwater DEIS, p 3.6.2.14.



avalanches, should utilize the best long-term sustainable routes with minimal trail infrastructure.

Implementation of RWA suitability

The DEIS contains an objective designed to provide a mechanism to implement prohibitions on motorized and mechanized transport:

MA2-OBJ-RWILD-01: Initiate site-specific planning within five years to remove all activities or uses that are not allowed in the Forest Plan's record of decision.

Rather than a five year process of removal, the Nez Perce-Clearwater NF could issue an order, concurrently with the final forest plan and ROD to close areas to non-conforming uses. Issuing such a closure order concurrently with the plan revision is authorized by the planning rule directives²⁷ and would be the most efficient way to implement the suitability plan components prohibiting non-conforming uses. This would ensure that allowable use is not in immediate conflict with the revised Forest Plan. If a multi-year process is determined to be necessary, in keeping with the Flathead NF plan that was also developed under the 2012 Planning Rule in Region 1, a three-year deadline to commence planning would be more appropriate.²⁸

Indicators and Effects Analysis

The measurement indicators used in the DEIS for recommended Wilderness, as listed below, do not adequately address or measure the benefits associated with recommended Wilderness:

1. Impacts on wheeled motorized opportunities,
2. Impacts on motorized over-snow vehicle opportunities,
3. Impacts on trails that allows mechanized transport,
4. Impacts on commercial use of permanent structures, and
5. Amount of underrepresented ecosystems in the wilderness system.

Four out of five indicators are weighted towards non-wilderness values. The analysis should be equalized by including a robust set of indicators weighted towards wilderness values. This can include indicators that measure impacts to naturalness and outstanding opportunities for solitude or primitive recreation. They should measure the negative effects to wilderness values and wilderness character if an area is not recommended or if certain management actions or uses are allowed. The DEIS indicates that recommended wilderness provides for "species diversity, protection of threatened and endangered species, protection of watersheds, scientific

²⁷ FSH 1909.12, section 21.8.

²⁸ The Flathead ROD states, "The Forest will initiate site-specific planning per the land management plan's suitability direction within three years from the date of this decision where an existing order may need to be changed (e.g., changes to snowmobile use per the current oversnow vehicle motor vehicle use map or where an order may need to be issued, e.g. to prohibit mechanized transport).", p 54.



research and other ecological processes, and social values,”²⁹ yet the indicators and analysis do not measure impacts to these values.

A improved set of indicators might include the below options, although this is not an exhaustive list:

- Impacts on naturalness,
- Impacts on opportunities for solitude and/or primitive recreation,
- Impacts on opportunities for semi-primitive, non-motorized recreation,
- Impacts on wolverine habitat,
- Impacts on mountain goat populations,
- Impacts on Idaho Roadless Areas providing high and medium-high capability for providing wilderness character as assessed using wilderness character attributes.

These indicators should be incorporated, analyzed, and reported on in the FEIS.

3. Hoodoo Roadless Area (Great Burn)

a. Recommended wilderness

The 252,000 acre Hoodoo Roadless Area is jointly managed by the Nez Perce-Clearwater (Idaho) and Lolo (Montana) National Forests. Both forests currently manage this roadless area as recommended wilderness (Nez Perce-Clearwater: 111,988 acres; Lolo: 98,100 acres). These areas are contiguous and there are 47 shared miles of boundary between the Montana and Idaho Hoodoo Roadless Areas. This 210,088 acre RWA represents an area larger than the state of Delaware.

The Hoodoo Roadless Area (a.k.a. Great Burn) is not superlative only in size, it also contains exceptionally wild country that provides for both wildlife and quiet recreation in outstanding ways. Montana Wilderness Association’s web page describing the Great Burn shares that, “The Great Burn has received one of the highest wilderness ratings of any area managed by the Forest Service, which has been recommending that Congress designate the area as Wilderness since the 1970s. Portions of all of the Great Burn Proposed Wilderness have been included in more than twenty legislative proposals, including one that went to President Reagan’s desk in 1988 and was pocket vetoed.” Appendix E of the Nez Perce-Clearwater DEIS acknowledges that, “the outstanding scenery, the variety and abundance of wildlife species (elk, black bears, mountain goats, and moose) and the high quality westslope cutthroat trout fishery in Idaho are major attractions.”³⁰

²⁹ Nez Perce-Clearwater DEIS, Chapter 3.

³⁰ Nez Perce-Clearwater DEIS, p E-70.



The vastness, wilderness character quality, and wildlife habitat values are critical elements that make the Hoodoo area one of the most outstanding examples of deserving recommended wilderness in our region. The Recommended Wilderness Evaluation performed as part of the Forest Planning process found that:

- The area retains a high degree of natural integrity and appearance (p. E-72).
- Human activities have resulted in relatively minor and isolated impacts (p. E-72).
- Vegetation in 73% of the roadless area is within the natural range of variation (p. E-72).
- The vastness of the area...along with its rectangular shape extending approximately 40 miles north-south provides excellent opportunity for solitude (p. E-74).
- External influences of sight and sound are minimal (p. E-74).
- The size and diversity of the area, the variety of vegetative types and landforms, the abundance of wildlife, streams, and lakes all contribute to virtually unlimited primitive settings for recreation (p. E-74).
- Approximately 42% of the area consists of ecological types that are currently underrepresented in the NWPS (p. E-75).
- Hoodoo is one of the three roadless areas on the Nez Perce-Clearwater where mountain goats are known to exist. These are unusual in the area and are scenic and wild to view (p. E-76).
- Water quality in the Hoodoo Roadless Area is generally high (p. E-76).
- The area shares boundaries with mostly other roadless areas (58%) and front country (42%). There are no adjacent private lands. The management of boundaries shared by other roadless areas is generally not challenging, since management is similar (p. E-78).
- No grazing allotments overlap with the area (p. E-78).

All of these findings, as well as other points that will be raised throughout these comments, suggest that the Hoodoo Roadless Area meets and exceeds requirements deserving of recommended wilderness management. Montana Wilderness Association, therefore, requests that the Nez Perce-Clearwater manage all 151,874 acres of the Hoodoo Roadless Area as recommended wilderness, utilizing the boundaries present in DEIS Alternative W.

b. Non-conforming uses

As described in *Section 2. Management of recommended wilderness*, the 151,874 Hoodoo recommended wilderness should prohibit non-conforming uses in order to



preserve wilderness character and maintain potential for this area's future inclusion into the NWPS.

c. Trans-boundary issues

The Lolo National Forest Plan and Travel Plan provide clear guidance regarding motorized use and wilderness characteristic management on the Montana-side of the Hoodoo Roadless Area, which is managed as MA12 (recommended Wilderness). Alternatives Y and Z would allow uses on the boundary of the Nez Perce-Clearwater and Lolo National Forest that are highly likely to result in spillover use onto the adjacent Hoodoo Roadless Area acres managed by the Lolo National Forest. The Lolo Forest Plan contains two clear MA12 standards, that are enforceable and have been tested and upheld by litigation.³¹ These two standards are:

1. No motorized use.
2. Proposed wilderness will be managed to "protect their wilderness characteristics" pending a decision on Wilderness classification.

The DEIS neglects to acknowledge and analyze the effects on Lolo National Forest recommended Wilderness by allowing non-conforming uses per Alternative Z or altering recommended Wilderness boundaries in the Hoodoo Roadless Area per Alternative Y to allow for winter motorized use on this boundary in the Hoodoo Pass area. These effects could include, but are not limited to, impacts on soundscape caused by winter motorized use, ability to enforce boundaries, as well as ecological impacts to wildlife populations that freely move from the Idaho to Montana portions of this roadless area and back. One of the sensitive mountain goat populations in the Hoodoo Roadless Area frequents both the Montana and Idaho-side of this roadless area. Idaho-side non-conforming uses are likely to have implications for the health of this trans-state population of mountain goats.

The Nez Perce-Clearwater has a non-discretionary duty, per the USFS Planning Handbook and 2012 Planning Rule, to assess the broader landscape in which this plan will be implemented:

USFS Planning Handbook

*The intent behind identifying designated areas in plans and recommending additional areas for designation is to: ... b. Recommend areas where doing so would help carry out the distinctive role and contributions of the plan area **in the broader landscape** or contribute to achieving desired conditions for the plan area.*³² (emphasis added)

³¹ *Montana Snowmobile Association v. Wildes*, 103 F. Supp. 2d 1239 (D. Mont. 2000).

³² FSH 1909.12, Chap. 20, Sec. 24.0, p 124.



2012 Planning Rule

*Ensure planning takes place in the context of the larger landscape by taking an 'all-lands approach.'*³³

*...Consider the landscape-scale context for management and will look across boundaries throughout the assessment, plan development/revision, and monitoring phases of the planning process.*³⁴

*The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity, taking into account: ... (ii) Contributions of the plan area to ecological conditions within the broader landscape influenced by the plan area.*³⁵

The released DEIS does not fulfill the Nez Perce-Clearwater's substantive duty to comply with these aspects of the 2012 Planning Rule and Planning Handbook. We encourage the Nez Perce-Clearwater to execute effects analysis that addresses how Nez Perce-Clearwater NF management of the Hoodoo Roadless Area will affect wilderness characteristics and recommended Wilderness management of the Lolo National Forest.

d. Recreation

Recreational use of the Nez Perce-Clearwater NF's designated Wilderness areas has grown tremendously in recent decades. In 2006, the Forest estimated 30,000 designated Wilderness visits, whereas in 2016, it estimated yearly Wilderness visitation at 76,000 visits (253% growth).³⁶ It is not unlikely that use of recommended Wilderness areas, such as the Great Burn, have seen similar growth in use.

We know that our Montana Wilderness Association members and supporters value the Great Burn for the extremely high-quality quiet recreation opportunities this area provides. Hiking, backpacking, trail running, horseback riding, horsepacking, wildlife viewing, and photography are frequently cited by our members as their reasons for recreating in this area. The DEIS indicates that 44.5% of the forest's users engage in hiking/walking, 43.4% view natural features, 7% engage in primitive camping, and 2.7%

³³ CFR 36 p 21164.

³⁴ CFR 36, Response to the Issue of Coordination and Cooperation Beyond NFS Boundaries, p 21178.

³⁵ CFR 36 § 219.8 (a)(ii).

³⁶ Nez Perce-Clearwater DEIS, p 3.4.2-6.



backpack³⁷. This large population represents our membership and other Great Burn users. It is important to note that only 2.6% of Nez Perce-Clearwater users engage in snowmobiling and other winter motorized use. The DEIS indicates that motorized off-road activities and motorized snow activities are expected to show low growth over the lifespan of this Forest Plan.³⁸

A local survey conducted by USFS Region 1 to determine the preferences for motorized and mechanized access to federal public lands showed that 61% of local respondents indicated there are adequate or too many accessible sites for snow machine use, additionally 32% of respondents indicated they didn't know whether there were too many or two few sites available. 51% of local respondents indicated there are adequate or too many accessible sites for mountain biking and 40% indicated they didn't know whether there were adequate sites.³⁹ Although the survey reflected data from across the entire footprint of the Nez Perce-Clearwater National Forest, and not just the communities adjacent to the Hoodoo Roadless Area, the high numbers indicating that there is currently adequate winter motorized and mountain biking suggests that there is not adequate demand or need to reduce recommended wilderness acreage for the Hoodoo Roadless Area as proposed in Alternatives X and Y.

The DEIS suggests that "The Nez Perce-Clearwater is one of a few remaining areas in the western United States that has the terrain to provide the opportunity for high level risk and high level skill-based winter motorized access in remote areas"⁴⁰. While the Nez Perce-Clearwater does offer terrain that meets this description, high quality snowmobiling opportunities in Montana and Idaho remain robust. In Montana, high risk, high skill playgrounds for winter motorized use are available in Cooke City and in the Beaverhead Deerlodge National Forest (as shared through case studies in *Section 2. Management of Recommended Wilderness*), as well as in the Lookout Pass area on the Montana-Idaho border north of the Hoodoo Roadless Area. This is a small sample of a variety of areas providing this unique set of experiences within a day's drive from our Montana-side Nez Perce-Clearwater communities, as well as a plentitude of lower risk, less remote snowmobiling terrain. On the Nez Perce-Clearwater NF 15.6% of the forest provides opportunities for semi-primitive motorized winter recreation, in addition to 23.4% of the forest providing roaded natural winter recreation.⁴¹ In total, over 39% of the forest is open for use by the 2.6% of Nez Perce-Clearwater NF users who engage in snowmobiling.⁴²

³⁷ Nez Perce-Clearwater DEIS, p 3.4.2-11.

³⁸ Nez Perce-Clearwater DEIS, p 3.4.2-9.

³⁹ Region 1 Social Survey, BBER, 2018; Region 1 Social Survey Year 2 only, BBER, 2019.

⁴⁰ Nez Perce-Clearwater DEIS, p 3.4.2-21.

⁴¹ Nez Perce-Clearwater DEIS, p 3.4.2-11.

⁴² Nez Perce-Clearwater DEIS, p I-30 and 3.4.2-9.



We are disappointed to see the DEIS make little mention of the health and medical benefits to people from spending time in nature, engaging in human-powered activities like walking and hiking. There is a rapidly growing body of science documenting the health and medical benefits that people can derive from spending time in quiet nature. These values are certainly among the most important direct benefits the Nez Perce-Clearwater NF provides for people of every age and background, in addition to indirect ecosystem services providing clear air and water.

Access to nature can result in lower levels of stress, reduced illness and mortality, accelerated healing times, reduced obesity, improved cardiac and overall health, and a greater sense of well-being.⁴³ These benefits have been clinically proven to apply to people of all ages, income levels, genetic backgrounds, health conditions, and abilities.⁴⁴ Numerous papers on this subject have been written by USDA scientists and researchers. Linda Kruger, a research scientist with the Juneau Forestry Sciences Lab and author of the USDA publication *The Forest as Nature's Health Service* states:

...caring for the land and serving people includes the provision of health benefits. One of the guiding principles of sustainability is to contribute to a healthy population... [A]n economic return on nature and wild places through wellness and increased quality of life will reduce healthcare costs and help create wellness... [D]elivering health benefits contributes to a healthy future for both people and the natural landscape. The most important emerging area of public health is the zone of interaction between the human and the natural environment.

⁴⁵

National forests and wild public lands provide some of the cleanest and healthiest environments in our region. These are some of the best areas for Idahoans and Montanans to exercise constitutional rights to a healthful environment because they are available to people regardless of income. In Idaho and Montana there are no fees for traveling in Wilderness or enjoying national forest trails.

Growing evidence suggests national forest lands with values including the opportunity for solitude and the opportunity to immerse oneself in natural landscapes hold immense long-term values for human wellness and recovery.

Wild, natural landscapes with outstanding natural and human health values, such as the Hoodoo Roadless Area, are present on the Nez Perce-Clearwater NF. Choices in the

⁴³ Improving Health and Wellness through Access to Nature, American Public Health Association.

⁴⁴ Outside Magazine, <https://www.outsideonline.com/2393660/science-newest-miracle-drug-free>.

⁴⁵ *The Forest as Nature's Health Service*. Linda E. Kruger, Research Social Scientist, Juneau Forestry Sciences Lab.



final plan directly affect future access to the human health values of the Forest. Plan decisions may have long term effects on the availability of areas for natural quiet, primitive wildland settings, and solitude. RWAs hold and maintain very high natural and human health values. Choosing to no longer manage the Hoodoo Roadless Area as recommended wilderness (Alternative X) or reducing the portion of the Hoodoo Roadless Area managed as recommended wilderness (Alternative Y) will directly reduce future access to human health values.

Montana Wilderness Association recommends that the final plan and FEIS carefully and critically include references to the best available science surrounding medical benefits of undeveloped and natural appearing forest lands as an important benefit to people, especially opportunities for quiet and human-powered recreation through maximizing management across the forest for recommended wilderness, such as in Alternative W.

Emerging Recreational Technologies

Rapidly evolving, and advancing, recreation technology demands both unambiguous plan components that clearly define what types of recreational uses are permitted in certain areas, as well as forward thinking policies that anticipate the increased use and associated impacts of certain activities over the life of the new plan. For example, in the 1980s it was barely conceivable that mountain bikes would be able to traverse most trails. Today mountain biking is a growing and popular recreation activity in our region. This plan must be able to withstand advances in motorized and mechanized technology for the next 15-30 years that, like advancements made since the 1980s, will undoubtedly make further and faster backcountry access earlier and therefore more desirable in all seasons.

Snow bikes are a relevant example to the Hoodoo Roadless Area. Timbersled, a snow bike manufactured that is now owned by Polaris, claims it has doubled the number of sleds it has sold every year since 2010.⁴⁶ The industry suggests that snow bikes are on pace to outsell snowmobiles in the next few years. The nimbleness of a snow bike far exceeds that of snowmobiles, allowing riders to access more heavily forested terrain and steeper aspects than on a snowmobile. Winter visits to the Hoodoo Roadless Area vicinity by our staff and members in recent years have demonstrated that snow bike use is prevalent in the area. The capabilities of these machines, and their likely increased presence, must be considered by the Nez Perce-Clearwater in evaluating the impacts of designating new winter motorized access areas.

Motorized (or electric-powered or electric-assisted) mountain bikes are another example of an emerging recreational technology that presents a challenge in the management of quiet trails. New electric bikes weigh as little as 65 pounds and have fat tires just like

⁴⁶ <https://www.timbersled.com/en-us/news/the-snow-bikes-are-coming/>.



regular mountain bikes. Riders can pick the desired level of pedal assistance or use the throttle that removes pedaling altogether. Worldwide, e-bike sales have skyrocketed with 35 million sold in 2016. Some economists predict the industry will account for more than \$34 billion in sales by 2025.

MWA strongly supports existing Forest Service management policy 13 that classifies all types of e-bikes as motorized vehicles that are exclusively permitted on motorized trails and roads.⁴⁷ While this management decision is not specific to the Nez Perce-Clearwater NF, it is important for the Nez Perce-Clearwater NF to adopt and articulate this policy within recreational plan components.

Snow bikes and e-bikes are just two examples and there are many emergent technologies that could change use on our national forest lands. Use of hovercrafts and flying vehicles are increasingly popular, and recreational use could pose new challenges for how to integrate them into Nez Perce-Clearwater NF management direction. Aircrafts specifically pose a danger to the integrity of Wilderness and recommended Wilderness, as well as wildlife populations such as mountain goats. No matter how advanced aircraft technology becomes, such transportation or recreation is not appropriate in any type of wilderness.⁴⁸

Montana Wilderness Association suggests this plan include the following standards regarding emerging recreation technologies:

- Use of emerging recreational technologies that are not specifically addressed by current direction are prohibited unless explicitly integrated through a public planning process.
- Electric bikes are defined as motorized travel and are not suitable on non-motorized routes.

e. Wildlife

Managing the Hoodoo Roadless Area as recommended Wilderness has numerous positive ecological impacts. In this section, Montana Wilderness Association enumerates some of the critical reasons recommended Wilderness management is needed to sustain and protect wildlife populations.

i. Grizzly bears

⁴⁷ USFS National Forest Briefing Paper, Managing E-Bikes on National Forest System Trails (2015).

⁴⁸ *McAllister*, 666 F.3rd at 566.



While the Hoodoo Roadless Area does not currently support a resident population of grizzly bears, this area is currently important for habitat connectivity between the Bitterroot Ecosystem and Northern Continental Divide Ecosystem grizzly bear recovery units.⁴⁹ In the fall of 2007, a grizzly bear was shot by a black bear hunter in the Kelly Creek area of the Hoodoo Roadless Area. The bear was genetically identified as having originated in the Selkirk Mountain population of North Idaho.⁵⁰ It is likely only a matter of time, probably within the scope of this plan, that grizzly bears will again reside in or regularly pass through the Hoodoo Roadless Area. The draft Forest Plan contains no plan components for grizzly bears. Montana Wilderness Association recommends including plan components for grizzly bears. Management of the Hoodoo as recommended Wilderness will provide habitat security and meet habitat and management requirements as outlined for Bear Management Units (BMUs) by the Interagency Grizzly Bear Management Team.

ii. Mountain goats

The Hoodoo Roadless Area is one of three roadless areas on the Nez Perce-Clearwater NF where mountain goats are known to exist. Idaho recognizes mountain goats as a Species of Greatest Conservation Need, priority Tier 3, in the Idaho State Wildlife Action Plan of 2017. Tier 3 species are considered “rare or uncommon, but not yet imperiled”⁵¹, and may face emerging threats or declining trends range wide.⁵² Several of the Hoodoo mountain goat herds have experienced significant declines in recent decades, and this includes the Hoodoo Roadless Area’s Blacklead herd.⁵³ Declines in this herd may be as high as 80%.⁵⁴ The Stateline/Heart Lake herd uses habitat on both Idaho and Montana sides of the Hoodoo Roadless Area. This herd may not have experienced declines as significant as the Blacklead herd, yet their habitat needs and sensitivities are the same.

Mountain goat habitat is broadly characterized by steep, rugged, and high-elevation terrain within subalpine to alpine regions.⁵⁵ The species prefers habitat close to ‘escape terrain’, such as cliffs, which allow individuals to avoid predation and disturbance.⁵⁶ Habitat is also selected based on heat load, which accounts for incoming sunlight, and

⁴⁹ Nez Perce-Clearwater DEIS, p. 3.2.3.3-87.

⁵⁰ Servheen, et al, *A Sampling of Wildlife Use in Relation to Structure Variables for Bridges and Culverts Under I-90 between Alberton and St. Regis, Montana*, 2004.

⁵¹ Idaho Department of Fish and Game, 2020. “Species Ranks”. <https://idfg.idaho.gov/species/taxa/ranks>.

⁵² Idaho Department of Fish and Game, 2017. Idaho State Wildlife Action Plan, p 34.

⁵³ Boyd, K. *Literature Review: Impacts of Human Recreational Land Use on Mountain Goats*. The Wilderness Society. 2020.

⁵⁴ Nez Perce-Clearwater DEIS, p 3.2.3.4-31.

⁵⁵ Smith, B. and DeCesare, N., 2017. Status of Montana’s mountain goats: A synthesis of management data (1960–2015) and field biologists’ perspectives, Montana Fish Wildlife and Parks; Idaho Department of Fish and Game, 2019. Idaho Mountain Goat Management Plan 2019-2024.

⁵⁶ Rice, C., 2008. Seasonal altitudinal movements of mountain goats. *Journal of Wildlife Management* 72(8).



influences both forage productivity and snow depth.⁵⁷ Given the limited availability of suitable habitat, mountain goat populations undergo short altitudinal migrations to accommodate seasonal resource variation.⁵⁸

Habitat becomes even more limited in the winter, when snow accumulation and harsh weather conditions concentrate mountain goat populations into ranges 2-50% the size of those occupied in the summer.⁵⁹ In the Rocky Mountains, preferred mountain goat winter habitat and feeding areas are located within 200m-wide ridgetop corridors that provide access to escape terrain.⁶⁰ Mountain goats face increased energy expenditures and physiological stress in the winter, making their winter habitat critical to population success. Preferred winter habitat is limited and isolated, leaving mountain goats vulnerable to direct threats as well as indirect threats that cause them to abandon high-quality habitat.⁶¹ Changes in spatial distribution, such as avoiding and/or fleeing areas of natural or anthropogenic disturbance, leads to increased energy expenditures at a time when forage resources are limited. Limited resource availability and harsh winter conditions result in nutritional deficiencies, increased starvation risk, and high juvenile mortality.⁶² Vulnerability to direct and indirect threats also occurs as a result of the small size and reproductive isolation of many populations. Undisturbed, high-quality winter habitat is critical to mitigating these threats and maintaining over-winter survival rates and population size.⁶³ The Nez Perce-Clearwater DEIS acknowledges the importance of protecting mountain goat winter habitat, “winter range is important to the long-term survival of mountain goats and should be identified and managed to reduce disturbance to mountain goats”.⁶⁴

Mountain goats are highly sensitive to both motorized and non-motorized recreational disturbance and demonstrate behavioral changes (increased vigilance and decreased foraging time), reduced reproductive success, and changes in spatial distribution (reducing presence in or abandoning desired habitat).⁶⁵ These impacts are particularly

⁵⁷ Shafer et al., 2012. Habitat selection predicts genetic relatedness in an alpine ungulate. *Ecology* 93(6).

⁵⁸ Rice, *Seasonal altitudinal movements of mountain goats*.

⁵⁹ Poole et al., 2009. *Wintering strategies by mountain goats in interior mountains*. *Canadian Journal of Zoology*, 87(3).

⁶⁰ Côté, S. and Festa-Bianchet, M., 2003. *Mountain Goat, Wild Mammals of North America: Biology, Management, Conservation*, p 1061–1075.

⁶¹ IDFG, Idaho Mountain Goat Management Plan 2019-2024.

⁶² IDFG, Idaho Mountain Goat Management Plan 2019-2024; Poole et al., *Wintering strategies by mountain goats in interior mountains*.

⁶³ Côté, S. and Festa-Bianchet, M., *Mountain Goat, Wild Mammals of North America: Biology, Management, Conservation*; Paul, K., 2017. *Potential Conflicts Between Wildlife and Over-snow Recreation in the Scotchman Peaks/Savage Peak Area*.

⁶⁴ Nez Perce-Clearwater DEIS, p 3.2.3.4-30.

⁶⁵ Joslin, G., 1986. *Mountain goat population changes in relation to energy exploration along Montana's Rocky Mountain front*. Biennial Symposium of the Northern Wild Sheep and Goat Council 5:253–269; Hurley, K. 2004. *Northern Wild Sheep and Goat Council position statement on helicopter supported*



acute in the winter, when resources and expendable energy are limited, as well as when disturbance occurs near nursery groups.⁶⁶ Unpredictable disturbances that occur at high-intensity, like that of motorized vehicles, are most detrimental to mountain goats and elicit moderate-to-strong negative physiological and functional responses in exposed animals.⁶⁷

Historically, mountain goat populations faced limited disturbance from winter motorized recreation such as snowmobiling, as until the 1990s machines lacked the capability to access remote areas frequented by mountain goats. Technological advances, the introduction of snow bike technology, and decreased snowpack availability are now leading to increased competition between mountain goats and motorized recreationists for the same areas, particularly along ridge-tops used by mountain goats for winter feeding and also favored by snowmobilers and snow bikers for the access to highline views.⁶⁸ Studies on general ungulate populations demonstrate that snowmobiles can cause increased flight response, habitat loss, and mortality.⁶⁹ Several studies have documented the negative impacts of helicopter disturbance on mountain goat populations, as well as that of non-aircraft disturbance. Both aircraft and non-aircraft disturbance can reduce effective habitat, lower forage and resting rates, and impact seasonal habitat use.⁷⁰

Mountain goats are particularly vulnerable to the potential negative impacts of snowmobile disturbance, as research indicates that ungulates become increasingly sensitive, rather than habituated, to long-term and repeated disturbance (Frid 2003). Given the accessibility of snowmobiles to rugged terrain and the frequent unpredictable, high-intensity disturbance resulting from this access, expansion of snowmobiling activity into critical mountain goat winter range is likely to reduce habitat availability and quality, produce increased energy expenditures, and reduce reproductive success.⁷¹ Mountain goat populations are small and isolated, making them vulnerable to and often unable to recover from population declines.⁷²

recreation and mountain goats, July 2004. Biennial Symposium of the Northern Wild Sheep and Goat Council 14:131–136; Paul, K., 2017. Potential Conflicts Between Wildlife and Over-snow Recreation in the Scotchman Peaks/Savage Peak Area.

⁶⁶ Hurley, K., 2004. Northern Wild Sheep and Goat Council position statement on helicopter supported recreation and mountain goats, July 2004. Biennial Symposium of the Northern Wild Sheep and Goat Council 14:131–136; Harris et al. 2014, *Effects of winter recreation on northern ungulates with focus on moose (Alces alces) and snowmobiles*, European Journal of Wildlife Resources (60).

⁶⁷ Paul, *Potential Conflicts Between Wildlife and Over-snow Recreation in the Scotchman Peaks/Savage Peak Area.*

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ IDFG, Idaho Mountain Goat Management Plan 2019-2024.

⁷¹ IDFG, Idaho Mountain Goat Management Plan 2019-2024.

⁷² Smith, B. and DeCesare, N., 2017, Status of Montana's mountain goats: A synthesis of management data (1960–2015) and field biologists' perspectives.



Looking specifically at the Hoodoo Roadless Area, recent flight counts by the Idaho Department of Fish and Game in areas occupied by goats documented snowmobile tracks near historic mountain goat areas and counted below 20 individuals where past winter counts were in the low 100s.⁷³ This evidence is highly suggestive that illegal winter motorized use in the Hoodoo Roadless Area (in areas that would become legally accessible for winter motorized use under Alternative X, Y and Z) has had significant negative impacts on the Blacklead mountain goat herd, which may be pushing that herd very quickly towards extirpation primarily due to human disturbance. This evidence also suggests that the models the Nez Perce-Clearwater NF used to estimate overlap between snowmobile use and known mountain goat population areas did not account for the skill levels of riders using this area, nor the new capabilities of snow bikes.⁷⁴ Overflights conducted by the Great Burn Conservation Alliance during winter months over the last decade have demonstrated high levels of snowmobile trespass throughout the Hoodoo Roadless Area, including in the Blacklead area, as well as the ability of these riders to access terrain that would not have been available to them even two decades ago.

To reduce the impacts of winter motorized recreation on mountain goat populations, existing management plans recommend maintaining at least a 500 meter line-of-sight setback from the animals while in open areas and maintaining a distance large enough to prevent disturbance.⁷⁵ Given the relatively narrow ridgeline corridors occupied by mountain goat populations during winter months, difficulties arise in enforcing these guidelines. In British Columbia, land management administrators use both visual surveys and habitat modelling to define three habitat categories - “occupied”, “high relative probability of occupation”, and “low suitability”. Recreation in areas identified as occupied or highly likely occupied by mountain goats, particularly during the winter, are placed under use-restrictions to limit disturbance and its potential negative impacts. This process is adaptive and responsive to both changes in mountain goat distribution and recreation type.⁷⁶ Adopting management principles of this kind in the Hoodoo Roadless Area is not possible, both from implementation, education, and enforcement standpoints. At the February St. Regis DEIS public meeting, Nez Perce-Clearwater NF team member Kearsten Edwards shared that in recent years winter law enforcement in the Hoodoo

⁷³ Nez Perce-Clearwater DEIS, p 3.2.3.4-31.

⁷⁴ “Preliminary model results suggest low amounts of overlap between snowmobile use and known mountain goat population areas. This makes sense because most mountain goat habitat is too steep for comfortable snowmobile use.” Nez Perce-Clearwater DEIS, p 3.2.3.4-44.

⁷⁵ Gordon, S.M. and S.F. Wilson. 2004. Effect of helicopter logging on mountain goat behavior in coastal British Columbia. Biennial Symposium of the Northern Wild Sheep and Goat Council 14:49–63.

⁷⁶ British Columbia Ministry of Environment, 2010. Management Plan for the Mountain Goat (*Oreamnos americanus*) in British Columbia.

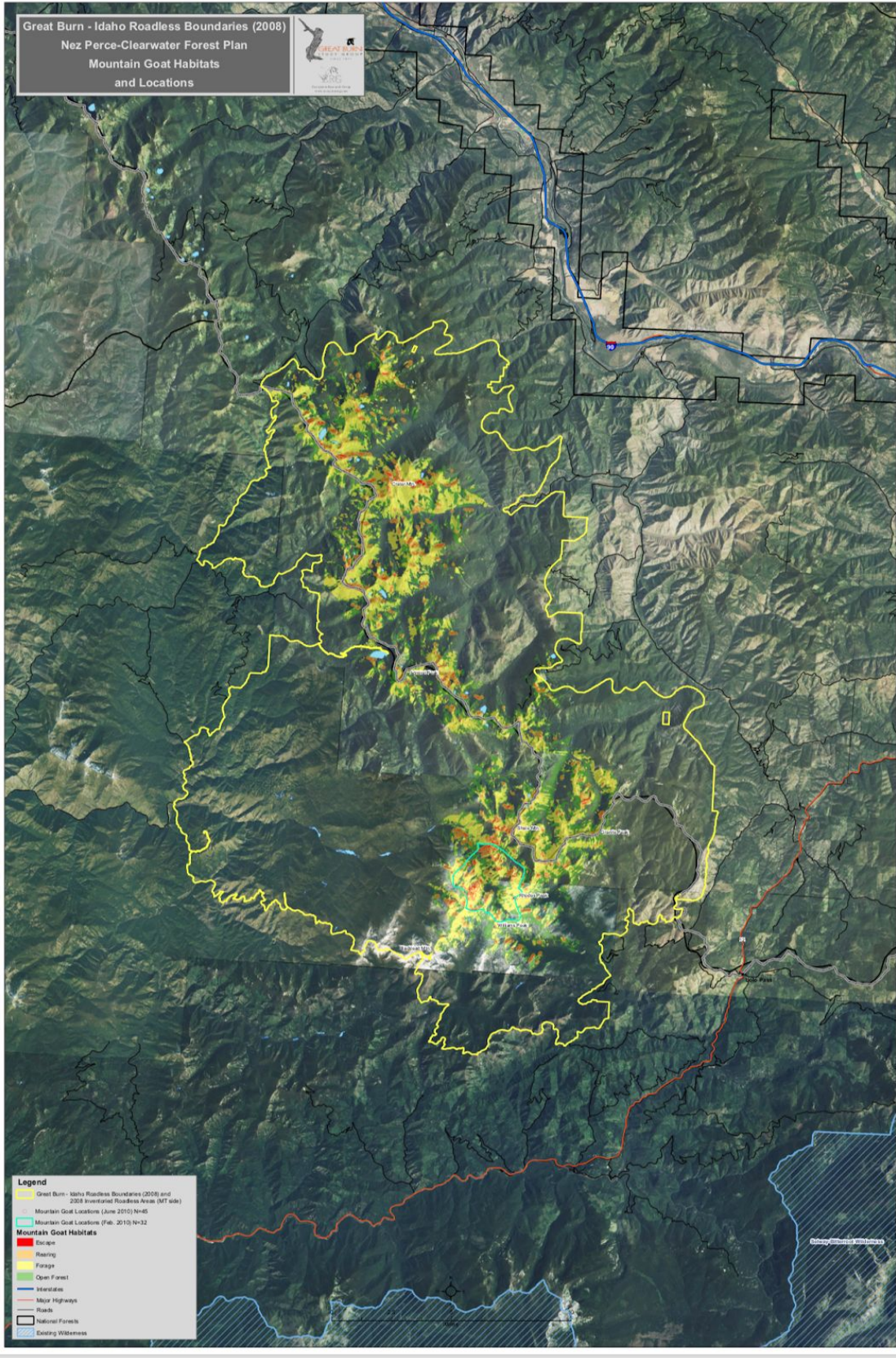


Pass area has consisted of one to two days on the ground and possibly one overflight.⁷⁷ This level of oversight is not adequate to implement the type of management described above, nor is it currently adequate to enforce illegal use and boundaries, as evidenced by tracks seen by Idaho Fish & Game on overflights, the level of snowmobile use I have seen while visiting the area in winter, as well as the observations of Great Burn Conservation Alliance members on winter overflights they have financed for a number of years.

Protecting the entire Hoodoo Roadless Area as recommended Wilderness with no allowance for non-conforming uses, particularly winter motorized use, as well as summer mechanized use, is critical to providing winter habitat security for the existing Hoodoo Roadless Area mountain goat populations.

The below map depicts a one-year snapshot of mountain goat presence from February and June 2010 counts, compiled by the Great Burn Study Group (now the Great Burn Conservation Alliance) and Ecosystem Research Group. A high resolution copy of this map will be provided as an attachment with these comments. The presence data on this map overlaps with areas that would be opened to winter oversnow use by Alternatives X, Y, and Z.

⁷⁷ Conversation between Erin Clark, MWA western Montana field director, and Kearsten Edwards, St. Regis Nez Perce-Clearwater public meeting, February 21, 2020.





iii. Wolverine

The wolverine is listed as a proposed threatened or endangered species for the Nez Perce-Clearwater National Forest, pending a status review by the U.S. Fish and Wildlife Service. Wolverine habitat is present across the forest, but the Great Burn provides unique, high-quality habitat worthy of special consideration. The DEIS indicated that, “areas that had a higher probability of use in modeled wolverine habitat include the Great Burn area near Lolo Pass.”⁷⁸ The DEIS also indicated that recommended wilderness areas, including the Great Burn, also appear to be an important connectivity area for lynx, fisher, and wolverine.⁷⁹

Wolverine have particularly narrow habitat needs, especially in winter and for females of reproductive age. The presence of persistent spring snowpack is a necessary component of wolverine habitat. The Copeland et al. model utilized by the Nez Perce-Clearwater in their analysis identified areas having persistent snowpack in at least five years out of seven, which isolated only three areas on the forest: the highest elevations along the Idaho-Montana border (within the Hoodoo Roadless Area), the Gospel-Hump Wilderness, and the Selway-Bitterroot Wilderness. Of identified habitat from the composite Copeland-Inman model, 42.3% occurs in Idaho Roadless Areas, including 127,267 acres in the Hoodoo Roadless Area.

Habitat needs and constraints become even narrower when assessing maternal denning needs. Heinemeyer et al. showed that female wolverines exhibited stronger avoidance of off-road motorized winter recreation, and wolverines of both sexes avoided areas of both motorized and non-motorized winter recreation.⁸⁰ While the Bighorn-Weitas Roadless Area contains the most overall wolverine habitat, the Hoodoo Roadless Area contains the most maternal denning habitat on the forest.⁸¹ The Hoodoo recommended wilderness area would contribute 35,727 acres of female wolverine habitat under Alternative W, only 18,455 acres in Alternative Y, zero acres in Alternative X, and although the amount of recommended wilderness under Alternative Z is intermediate to Alternatives W and X, the effects on wolverine conservation are equivalent to Alternative X (zero acres) because over-snow motorized travel would be permissible on these recommended wilderness acres. No single area on the entire forest other than the Hoodoo Roadless Area contains more than 6,800 acres of maternal denning habitat.

The Hoodoo Roadless Area also contains more acres having high importance for wolverine habitat connectivity than any other area on the Nez Perce-Clearwater. The plan demonstrates that the most important areas for connectivity on the forest are along

⁷⁸ Nez Perce-Clearwater DEIS, p 3.2.3.3-62.

⁷⁹ Nez Perce-Clearwater DEIS, p 3.2.3.3-70.

⁸⁰ Heinemeyer et al., 2019. Wolverines in winter: indirect habitat loss and functional responses to backcountry recreation. *Ecosphere* 10(2):02611. 10.1002/ecs2.2611.

⁸¹ Nez Perce-Clearwater DEIS, p 3.2.3.3-66, Table 18 and p 3.2.3.3-72, Table 22.



the Idaho-Montana border, in the Hoodoo Roadless Area (127,267 acres).⁸² This represents 60% of the high importance connectivity acres on the entire forest.

To protect wolverine habitat the Nez Perce-Clearwater has a responsibility to heed the data provided by the models utilized (Inman et al. 2012, Copeland et al. 2010), as well as the maternal denning habitat data⁸³, and data about range importance for habitat connectivity and gene flow⁸⁴, which all suggest that recommended wilderness management for the Hoodoo Roadless Area will significantly contribute to wolverine conservation on this forest. The draft Forest Plan does not include plan components for wolverine, in spite of the wolverines' candidacy for listing under the Endangered Species Act. The following reasoning is provided, "Most of the wolverine habitat already falls within either designated wilderness or Idaho Roadless Rule area." Given that the Idaho Roadless Rule does not preclude recreation that is known to have negative impacts on wolverine (see above), this rationale is not defensible.

The draft plan also does not adequately discuss the significance of wolverine habitat loss attributable to climate change. It has been predicted that between 2030 and 2059 suitable habitat in the contiguous U.S. for wolverine will decrease by 31%, and that for Idaho specifically habitat will decrease by 43%. These estimates further predict that habitat in the contiguous U.S. and Idaho will decrease by 63% and 78% respectively.⁸⁵ Climate change will reduce wolverine habitat, while simultaneously restricting winter recreationists to these waning areas that maintain persistent snowpack. This overlap will impact maternal denning success and lead to habitat loss and population declines.

In order to protect wolverine habitat and populations in the Great Burn, recommending this area for recommended wilderness management will only be productive if these areas are also designated off-limits to over-snow motorized and mechanized use.

Wild and Scenic River designations will also provide a level of protection for wolverines in the Hoodoo Roadless Area. Recognizing the following river segments as suitable Wild and Scenic Rivers will provide the associated acreages of protection for wolverine habitat:

Cayuse Creek: 4,138 acres
North Fork Kelly Creek: 1,746 acres
Middle Fork Kelly Creek: 1,423 acres
South Fork Kelly Creek: 1,549 acres

⁸² Nez Perce-Clearwater DEIS, p 3.2.3.3-70.

⁸³ Nez Perce-Clearwater DEIS, p 3.2.3.3-70.

⁸⁴ Idaho Fish and Game State Wildlife Action Plan, 2014 and Schwartz et al. 2009.

⁸⁵ McKelvey et al., 2011. Climate change predicted to shift wolverine distributions, connectivity, and dispersal corridors, Ecological Applications, Vol 21:8.



Kelly Creek: 637 acres
Crooked Fork Creek: 2,704 acres

Montana Wilderness Association recommends all of these river segments be found WSR suitable, not only to afford wolverine habitat protections, but also for the reasons enumerated in the following section of comments.

f. Wild and Scenic Rivers (WSR)

Congress passed the Wild and Scenic Rivers Act (WSRA)⁸⁶ to: (1) initiate a national wild and scenic rivers system (NWSRS); (2) designate the first components of the NWSRS (known as the “instant” rivers); and (3) prescribe the methods by which additional rivers may be added to the NWSRS from time to time.⁸⁷

The idea of creating a NWSRS emerged from Congress’ recognition (as far back as 1960) that “special attention should be given to the dwindling number of American streams that are still in a relatively natural state.”⁸⁸ America’s “unspoiled and free-flowing streams, or their segments, that symbolize [the] vanishing heritage of our original landscape” need to be “preserv[ed] and protect[ed].”⁸⁹ Many of “our remaining free-flowing rivers are under threat of dams, pollution, and other destructive assault. If some of them are to be saved or restored to their natural state, legislative action is urgent.”⁹⁰

In the WSRA, Congress declares up front that it is “the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.”⁹¹ The “established national policy of dam and other construction . . . needs to be complemented by a policy that would preserve . . . selected rivers or sections thereof in their free-flowing condition.”⁹² Just “as the Nation has set aside some of its land areas in national parks, national monuments, and national historic sites, and the like, so some of its streams which have exceptional values of the sorts . . . scenic, recreational, aesthetic, and scientific – ought to be preserved for public use and enjoyment.”⁹³

⁸⁶ 16 U.S.C. §§ 1271-1287.

⁸⁷ 16 U.S.C. § 1272; H.R. Rep. No. 90-1623, *reprinted in* 1968 U.S.C.C.A.N. 3801 (hereinafter, page references are to the U.S.C.C.A.N. cite).

⁸⁸ H.R. Rep. 90-1623 at 3802.

⁸⁹ S. Rep. No. 90-491.

⁹⁰ *Id.*

⁹¹ 16 U.S.C. § 1271.

⁹² *Id.*

⁹³ H. R. Rep. No. 90-1623 at 3802.



To be eligible for inclusion in the NWSRS, a river or segment thereof must be “free-flowing” and it or its related land area must possess at least one outstandingly remarkable value.⁹⁴ Free-flowing, as applied to any river or section of a river, means “existing or flowing in a natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway.” Outstandingly remarkable values are the “scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values” listed in section 1 of the WSRA.⁹⁵ Once the eligibility criteria is met, there are two ways for a river to be included in the NWSRS: (1) by an Act of Congress; or (2) upon application of a state governor and approval by the Secretary of the Interior as outlined in section 2 (a)(ii) of the WSRA.⁹⁶

Under the WSRA, there are three separate means by which a river is authorized for inclusion in the NWSRS via an Act of Congress. First, Congress can automatically designate the river, on its own, as a component of the NWSRS.⁹⁷ Second, Congress can designate the river as a “potential addition” to the NWSRS, require further study (the preparation of a suitability study report), and upon completion of this process designate the river as a component of the NWSRS.⁹⁸ Third, pursuant to Section 5 (d)(1) of the WSRA, Federal land management agencies such as the U.S. Forest Service, National Park Service (NPS), and BLM can (and must) conduct their own “specific studies and investigations” to determine if any additional rivers within their jurisdiction qualify for inclusion in the NWSRS and, if so, submit such rivers to Congress (via the President) for inclusion in the NWSRS.⁹⁹

Specifically, under Section 5 (d)(1) of the WSRA, the “Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States” qualify for inclusion in the NWSRS.¹⁰⁰ This section “requires the Secretaries of Agriculture and the Interior to conduct ‘specific studies and investigations’ to discover rivers eligible for inclusion in the [NWSRS].”¹⁰¹ This identification process is carried out at the field office level, by local federal agents, as part of a planning process.

Once identified, such potential additions to the NWSRA or eligible rivers are to be taken

⁹⁴ 16 U.S.C. § 1273 (b); see also *Center for Biological Diversity (CBD) v. Veneman*, 394 F. 3d 1108, 1109 (9th Cir. 2005) (defining eligibility).

⁹⁵ 16 U.S.C. § 1271. The reference to “other similar values” includes “ecological” values. 47 Fed. Reg. 39457 (1982 Interagency Guidelines).

⁹⁶ 16 U.S.C. § 1273 (a); see also *Wilderness Society v. Tyrrel*, 918 F. 2d 813, 815 (9th Cir. 1990) (discussing the WSRA’s designation process).

⁹⁷ See 16 U.S.C. § 1274 (a) (list of designated rivers).

⁹⁸ See 16 U.S.C. § 1275 (a) (river study reports); § 1276 (a) (list of Congress’ potential additions requiring a report).

⁹⁹ See 16 U.S.C. § 1276 (d)(1).

¹⁰⁰ *Id.*

¹⁰¹ *CBD*, 394 F. 3d at 1110; see also *Washington County, Utah, et. al.*, 147 IBLA 373, 377 (March 4, 1999) (discussion of section 5 (d) mandate); *SUWA*, 132 IBLA 255 (April 19, 1995) (rejecting groups challenge to section 5 (d) inventory as pre-decisional).



into account by Federal agencies in all planning activities (at either the plan or site specific level). In “all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas.”¹⁰² In sum, section 5 (d)(1) “requires all [Federal agencies] to take into account potential scenic river areas in their planning activities and directs the Secretary of the Interior and the Secretary of Agriculture to determine what scenic river areas there are that should be taken into account by such agencies.”¹⁰³

The Nez Perce-Clearwater began review of the waterways in the planning area in 2017 and completed a non-required suitability report in 2018. 89 river segments on the Nez Perce-Clearwater are currently managed as eligible segments, and all 89 deserve to continue being managed as eligible segments. After recognizing 89 rivers and streams to be eligible for designation under the Wild and Scenic Rivers Act, the Forest’s 2018 Wild and Scenic Rivers Suitability Report finds only 42% of those rivers and streams to be “suitable” for continued protections. This is unacceptable and a threat to waterways that feed the forests that support local timber industries, while simultaneously providing world-class recreation opportunities for individuals and jobs for local river guides and outfitters. These rivers and streams are also steeped in rich cultural history and are home to a number of cultural sites.

Correspondence obtained by American Rivers and American Whitewater through a January 2020 FOIA request¹⁰⁴ demonstrates that staff of the Nez Perce-Clearwater National Forest received significant pressure from Idaho County Commissioners to conduct a suitability report prior to the Forest Planning process with the express purpose of finding most eligible river segments unsuitable. A July 25, 2017 letter from the Board of Idaho County Commissioners to Forest Supervisor Cheryl Probert included the following statements, “We have concerns with the number of river segments (approximately 100) currently being proposed as eligible under the Wild and Scenic River Eligibility process.” “We believe that it is important that the Forest completes the Suitability Evaluation during the current Forest Planning process. We believe the Suitability process would eliminate most of these rivers, thus eliminating unnecessary and burdensome regulations on the land.”¹⁰⁵

In October 2018, American Whitewater notified the Nez Perce-Clearwater National Forest of critical flaws found in the Draft Suitability Report. “First and foremost, conducting suitability determinations to remove eligibility protections as part of the planning process is not a legal practice. Even if it were, the Draft Report was inappropriately released before public comment was solicited - except for the forest-wide opinions of select local groups and political leaders which fill the pages. The

¹⁰² 16 U.S.C. § 1276 (d)(1).

¹⁰³ H.R. Report 90-1623 at 3811.

¹⁰⁴ American Rivers FOIA request 2020-FS-R1-02171-F W&S Suitability, submitted January 21, 2020.

¹⁰⁵ Board of Idaho County Commissioners letter to Cheryl Probert, July 25, 2017. Included in attachments submitted with these comments.



Draft Report fails to connect the dots between the facts and opinions therein, and the differing conclusions represented by various alternatives... We ask that the Forest Service cease the suitability process entirely. If not, we ask that the Draft Report be withdrawn and resubmitted after public comment is solicited and considered. If neither of these steps are taken, we ask that all eligible streams be found suitable and ORVs expanded.”¹⁰⁶

Montana Wilderness Association has taken a close look at the river segments found in the Hoodoo Roadless Area: Kelly Creek, N Fork Kelly Creek, M Fork Kelly Creek, S Fork Kelly Creek, Cayuse Creek, Crooked Fork Creek, and Hopeful Creek. Reviews of these segments by the Forest found values significant and in keeping with those necessary for Wild and Scenic River eligibility. In keeping with the American Whitewater recommendation and the merits and values possessed, all of these Hoodoo Roadless Area river segments should be managed as eligible and suitable WSR river segments. Here is a brief summary of these river segments:

Kelly Creek (26.2 miles) - recognized in Alternatives W, Y, and Z

Recreational values: These values derive from Kelly Creek’s exceptional trout fishing. This creek supports important populations of steelhead trout and native cutthroat trout, and is one of three extremely important fluvial westslope cutthroat trout populations in the North Fork Clearwater River Basin, one of only a half dozen in the region. Fluvial bull trout are also present and the creek is also designated critical habitat for Columbia River bull trout. Kelly Creek supports Blue Ribbon equivalent trout fishing. Outstanding values recognized by the State Water Plan include species of concern, salmonid spawning, recreational use, and scenery. Kelly Creek notably offers a high-quality trail-based fishing opportunity in a natural setting.

Wild values: The suitability report describes Kelly Creek as “a harmonious relationship of rock, water, and a variety of vegetation...flowing through a variety of terrain, including high country meadows, forests, and rocky canyons.”¹⁰⁷ This creek provides important Harlequin duck habitat. Kelly Creek meets water quality standards. Areas along the creek provide winter habitat for big game, particularly elk and mountain goat.

Cultural values: It is important to note that Nez Perce tribal staff identified Kelly Creek as having cultural and historic importance to the Nez Perce tribe.

Cayuse Creek (35.9 miles) - recognized in Alternatives W and Y

Recreational values: Like Kelly Creek, Cayuse Creek’s recreational values derive from Kelly Creek’s exceptional trout fishing. This creek supports important populations of steelhead trout and native cutthroat trout, and provides Blue Ribbon equivalent trout fishing. Also like Kelly Creek, it is one of three extremely important fluvial westslope cutthroat trout populations in the North Fork Clearwater River Basin.

Wild values: Cayuse Creek contains some of the largest stands of old growth forest left in the Clearwater River Basin. Water quality standards have not been established for

¹⁰⁶ American Whitewater letter to Nez Perce-Clearwater National Forest, October 2, 2018. Included in attachments submitted with these comments.

¹⁰⁷ P 65.



Cayuse Creek. Areas along Cayuse Creek, like Kelly Creek, provide winter habitat for big game, particularly elk and mountain goats. The entire Cayuse corridor also provides lynx habitat.

N Fork, M Fork, and S Fork Kelly Creek (5.9, 4.9, and 6.2 miles respectively) - recognized in Alternatives W, Y, and Z

Wild values: The upper reaches of these forks include distinctive cliffs. All three forks meet water quality standards. Beneficial uses for these streams are aesthetic, cold water aquatic life, secondary contact recreation, wildlife habitat, and agricultural/industrial water supply. Protection of these headwaters obviously serves to protect water quality values for the downstream portions of Kelly Creek.

Crooked Fork Creek and Hopeful Creek (23.2 and 4.7 miles respectively) - Crooked Fork Creek recognized in Alternative Z

The Nez Perce-Clearwater National Forest needs to address why there is no suitability in any alternative for Hopeful Creek.

Fish-based values include diversity and abundance, habitat quality, and natural reproduction. Modeled to provide westslope cutthroat and bull trout habitat refugia. Bull trout spawning and early rearing occurs in this segment. This creek also supports Snake River steelhead and Chinook salmon spawning. Crooked Fork Creek supports a population of Harlequin ducks. The stream is free of non-native aquatic species. Areas along these creeks provide summer and winter habitat for big game, particularly elk.

MWA requests a final plan that offers full protection of the amazing river resources in the Hoodoo Roadless Area by recommending all seven of these eligible river segments as Wild and Scenic River suitable and establishing management to protect the outstandingly remarkable values of all seven segments, a total of 107 river miles. MWA also requests the suitability report be amended to address the “critical flaws” that have been identified.

g. Research Natural Areas

Montana Wilderness Association supports retaining Rhodes Peak as a proposed research natural area and to continue to encourage the Regional Forester to recommend this area for establishment.

4. Other Management Areas

Proposed Designated Special Areas

In recognition of the botanical values and cultural significance of the Packer Meadows area, MWA supports the designation of this special area.

Designated Wilderness



MWA supports and would like to contribute to planning and implementing “a wilderness symposium for all agency personnel, non-government organizations, academia and private citizens on the wilderness areas managed by the Nez Perce-Clearwater and adjoining national forests.”¹⁰⁸ We further encourage this symposium to address management of recommended, as well as, designated wilderness.

Management of other Recommended Wilderness

Manage 90,855 acres of the Mallard-Larkins Roadless Area as recommended wilderness, recognizing the area’s outstanding wilderness characteristics (consistent with Alternative Y).

IV. Conclusion

Thank you for the opportunity to comment during this important process. We appreciate the hard work of the Forest Plan Revision Team and other Nez Perce-Clearwater NF staff during this Forest Plan revision process. We are also particularly appreciative of the Forest’s efforts to include Montana communities in this process. The public meetings that you have offered in St. Regis, Missoula, and Hamilton during the last two phases of this process acknowledge the importance of this landscape to western Montanans, as well as Idahoans.

The Nez Perce-Clearwater National Forest contains some of the highest quality Wilderness, recommended Wilderness, and roadless areas in the Lower 48. This plan revision is a critical nexus in forest management to protect these incredible landscapes for the plants, animals, and people who depend on these areas.

We look forward to continued work with the Nez Perce-Clearwater NF team moving forward.

Sincerely,

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¹⁰⁸ Nez Perce-Clearwater DEIS, p A4-73.