

VIOLATIONS OF LAW, THE FOREST PLAN, THE WING CREEK-TWENTYMILE TIMBER SALES EIS AND ROD

Background and Introduction

As noted above in these comments, the PA does not fit into the parameters of the provisions of law allowing for the PA's proposed waiving of environmental laws and analysis procedures. That said, the PA also fails to adequately address the Endangered American Wilderness Act, in regards to land not designated as Wilderness. This means documents tiered to that Act – the Forest Plan, the Gospel Hump Wilderness Management Plan, and the Wing Creek-Twenty mile Timber Sales EIS and ROD.

Issues of prime concern about the areas that were not designated as Wilderness evolve around wildlife, fish, soils, and watersheds. These concerns were articulated in the legislation, the hearings, and committee reports. For example, the Endangered American Wilderness Act required in section 4(c)(1) the Forest Service (Secretary of Agriculture) to cooperate with Idaho and the Interior Department:

...in conducting a comprehensive fish and game research program within the Gospel-Hump Area and surrounding Federal lands in north-central Idaho. The Secretary shall assure that this research program includes detailed investigations concerning resident and anadromous fisheries resources (including water quality relationships) and the status, distribution, movements, and management of game populations, in order to provide findings and recommendations concerning integration of land management and development with the protection and enhancement of these fish and game resources.

Also, “the Secretary (of Agriculture)” was ordered to “take particular care to gather and integrate field data on soils types and soil hazards” [Section 4(d)(2)].

One of the biggest impacts to wildlife and fish comes from roads. This was recognized in the legislative record, the Forest Plan, and the Wing Creek-Twenty mile Timber Sales EIS and ROD. Whether through the loss of institutional memory or whatever other reasons, the Forest Service is erroneously proceeding as if the decisions to protect fish and wildlife made previously in statute and administrative decisions made after analysis in EISs can be overturned through an “emergency” determination meant to deal with the narrow issue of fire.

The 1875 Road System (including the 9824 and 9829 Roads)

The PA proposes to open up the 1875, 9824, and 9829 roads to the 492 road, something explicitly closed by the Wing Creek-Twenty mile ROD and FEIS, which was tiered to pages II-26 and II-27 of the Forest Plan. The Forest Plan deferred any decision on whether to open up a shorter route to the 492 road from the South Fork to Rainy Day Saddle and then the tie-through to the 492 road until a site specific EIS was done. The plan recognized that such a proposal would have serious impacts: “The decision to do this will not be made until the connection is complete, public involvement on the proposal is completed, and trade-offs are considered.” (Forest Plan at II-27.) Those tradeoffs and public comments were considered in the Wing Creek-Twenty mile ROD and FEIS. The decision was made to close those routes to public use, which the PA recognizes as the current situation on pages 24 and 25.

The Forest Service recognized in that ROD that it was necessary to have “an aggressive access

management program to mitigate the impacts” of the project on several resources including wildlife, fisheries, and non-motorized recreation. (ROD at 11.) The ROD closed those roads to use. (ROD at 11, 13, and 21.) Also adopted are mitigation measures and monitoring. (ROD at 19-24.)

The PA’s abbreviated process of public involvement violates the Forest Plan requirements cited above. Reversing sound policy decisions without going through an EIS, where those decisions were originally made, is a violation of NEPA.

In 2010, the Forest Service tried to open up the roads above after closing a short segment of the 492 road. The final decision was to keep the status quo. (*See* Sourdough Final DN and FONSI; also Sourdough Road Access comments by FOC). The current proposal is even worse in that no roads will be decommissioned.

Further, the Forest Service has not fulfilled its obligations under the Wing Creek-Twentymile Timber Sales EIS and ROD. On September 27, 2022 roads 1975, 9824, and 9829 were open or accessible to motor vehicles¹ as the following photos demonstrate.²

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- 1 On September 27, signs warned of a slide on the 492 road, presumably somewhere near Tenmile Creek. These signs were located at the junction of 492 and 9829 and where 492 descends into Fourmile Creek. However, the road was open between those points and there was no indication on the signs that the road was completely impassable or that it had been fixed. There was no indication on the Forest Service website at the time there was a slide on the 492 road. Regardless, there was evidence of recent use of the 492 road between from Rainy Day and Sixmile Creek, meaning that even if the road were impassable at one point, use was taking place on both sides of the road up to the point of the slide. Further, there is no provision to open up the closed roads in case of a landslide.
 - 2 Friends of the Clearwater is preparing a report with photo documentation of these and other failures of travel management. This report is the result of a multi-year citizen monitoring effort and should be available in late 2023.



The first gate on the 1875 road, supposed to be closed between 9/15 and 12/1



The 1875 Road near the junction with 9824, note the opening on the left



The 1875 same location as above, behind the gate, with opening visible that would allow ATV use

In the above two photos, the 1875 road here does not access the 492 road. Even if the opening of the tie through to road 492 were legitimate, the fact the side gate is opened on 1875 beyond the junction is not. Further, in the photo below, the fact that the 9824 and 9829 roads are opened

makes it possible to drive on the side spur roads, which have no gates. Thus, the entire 9824 road system was illegally open to use.



Open gate on the 9824 road near the 1875 junction

9829



TO PREVENT DAMAGE TO
LOAD

DO NOT BLOCK GATE

OPEN TO ALL OTHER USES



The open junction (north) of the 9829 and 492 roads

There are also problems with the 9829 road to the south. The Wing Creek-Twentymile Timber Sales EIS and ROD promised a berm and road ripping (ROD at 21 and FEIS at 127), which is not evident now, assuming it was done. Instead there is a gate that has been bypassed by ATVs as shown in the photos below.



Illegal bypass is evident to the right



Closer view of illegal bypass



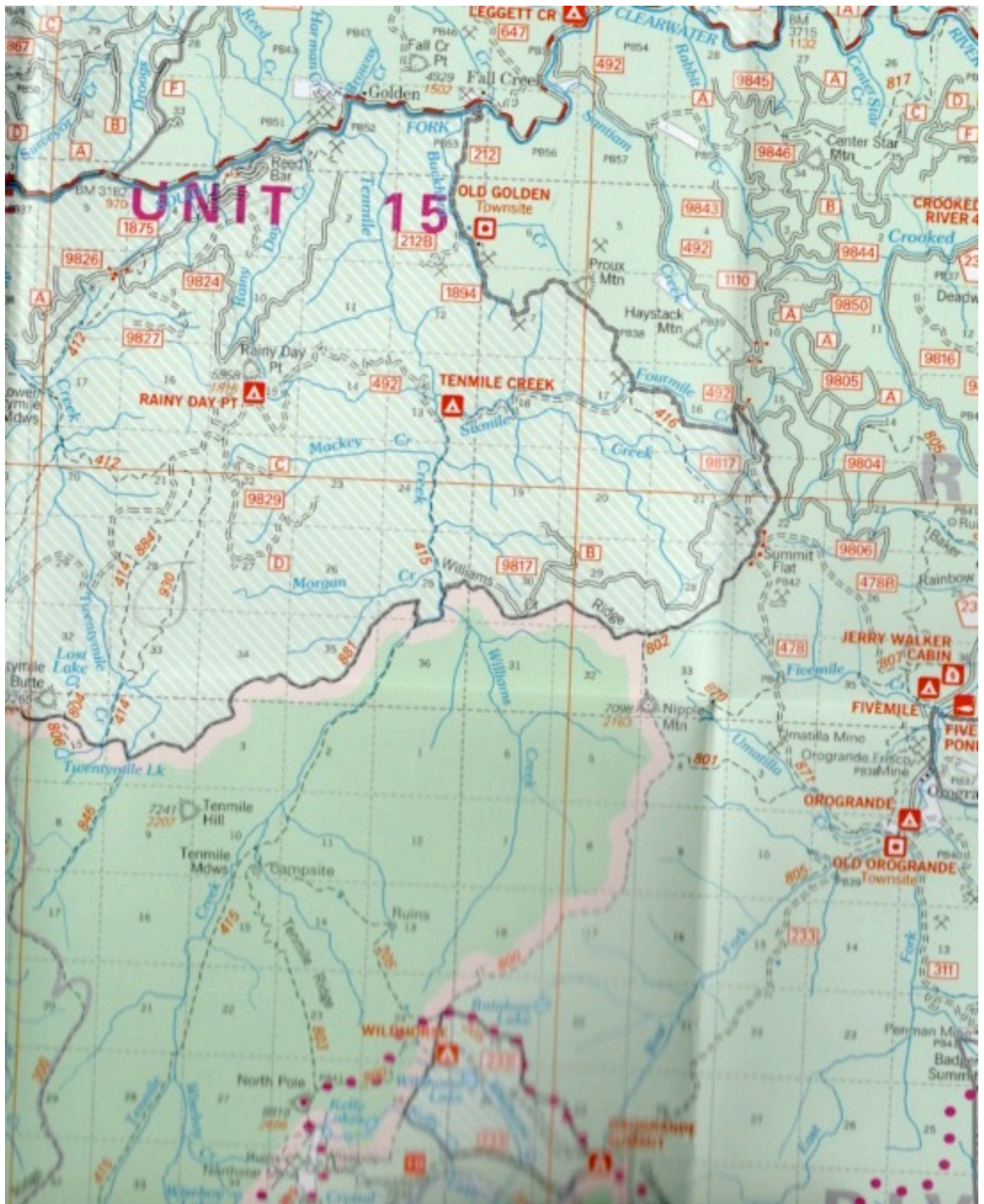
View of the illegal bypass from the back

The upshot is, the Forest Service has failed to meet the mitigation and monitoring requirements in the Wing Creek-Twentymile Timber Sales EIS and ROD. Side gates were open on the 1875 road the Illegal use has been taking place on the 9829 road south of the 492 road for some time. These are in addition to opening up the tie through that was supposed to be closed to public motorized use (except snowmobiles)³ to protect wildlife. How can the public trust the agency when the Forest Service fails to abide by its legal responsibilities and mandates?

Trail 930 and Road 492

Trail 930, which the PA misleadingly labels road 492C, is not currently a road, if it ever was. According to the Nez Perce National Forest DRAMVU FEIS Volume 2 (March 2017) the route is a trail and any template has been decommissioned for decades and closed to wheeled motorized use (see Appendix B trails page 15 of 15). At most, it was a jeep trail in the distant past. The public Forest Visitor Map (image below), the North Pole and Golden Forest Service topographic maps, and the Wing Creek-Twentymile Timber Sales FEIS at p. 68 all recognize 930 as a trail in a roadless area.

³ There is also no indication in the PA the Forest Service has met the monitoring requirements in the ROD and FEIS regarding snowmobile use and winter range. See for example ROD at 21.



Latest Forest Visitor Map

Thus, the PA is false and misleading by stating it is a road in need of maintenance only. It would amount to road construction if a road were built over the trail.

There has been some illegal ATV use on the trail. The photos below show the trail at its beginning and clearly demonstrate it is no road.





There is a short, steep, and primitively pioneered spur off the 492 road that leads to a dispersed campsite at the junction of the 884 and 930 trails. The failure of the Forest Service to recognize the reality of the on-the-ground situation demonstrates a lack of knowledge about the area and an apparent loss of expertise. The haste in putting this PA together also demonstrates an insouciance to caring for the land and serving the people. It seems the PA is a slapdash exercise that barely researched agency files, let alone incorporated any field work.

The PA also fails to recognize the history of the 492 road. The Forest Service decided in the ROD on the Wing Creek-Twenty mile Timber Sales that citizens wanted: "to maintain the road to a low standard enclosed by trees with minimal evidence of management activities. My decision is to manage the Sourdough Road #492 to maintain the present recreation uses and experiences." ROD at 13. Upgrading the segment of the 492 road from the junction of the 9829 road and some point to access the 930 trail (not quite one mile) would violate this decision.

In sum, the PA would be in violation of existing mandates and direction. It is a backdoor attempt to rewrite the Forest Plan and weaken existing standards. Trying to shoehorn this project into the emergency category is a gross disservice to the American public and the Nez Perce National Forest.