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USDA Forest Service  
Leanne Marten  
Northern Region Regional Forester  
Attn: Nez Perce-Clearwater Forest Plan Objection  
26 Fort Missoula  
Missoula, MT 59804.  
Submitted electronically via: <https://cara.fs2c.usda.gov/Public/CommentInput?Project=44089>

Re: Objection to "Nez Perce Clearwater National Forest Plan"

American Whitewater hereby formally objects to specific findings and decisions within the revised Land Management Plan for the Nez Perce Clearwater National Forest (NPCW) and the associated Final Environmental Impact Statement (FEIS) and Record of Decision (ROD). We do so following the regulations in 36 CFR 219. The Draft Record of Decision was dated and published in November of 2023 by the Responsible Official, Forest Supervisor, Cheryl Probert. Subsequently, the legal notice of the objection period appeared in the newspaper of record, the Lewiston Tribune, on November 28, 2023.

Lead Objector

A handwritten signature in black ink, appearing to read "Kevin Colburn".

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For the reasons stated here, American Whitewater objects to the Draft Record of Decision for the Revised Forest Plan for the Nez Perce–Clearwater National Forests (Nov. 2023) (“Draft ROD” or “ROD”) and its Appendices, the Final Environmental Impact Statement for the Land Management Plan for the Nez Perce-Clearwater National Forests (Nov. 2023) (“FEIS”) and its Appendices, and the 2023 Land Management Plan for the Nez Perce-Clearwater National Forests (Nov. 2023) (“Forest Plan”). American Whitewater has filed many sets of comments consistent with this objection over the life of this planning process including significant comments on the Draft Environmental Impact Statement.

**A. Statement of the issues and parts of the Forest Plan to which this Objection applies.**

In the Draft ROD, FEIS, and Forest Plan, the Forest Service wrongly uses the forest planning process to make unlawful and unsupported determinations that 77 of the 88 rivers found to be eligible for designation under the Wild and Scenic Rivers Act (WSRA) are not suitable for designation. This, in turn, results in a decision by the Forest Service *not* to afford those 77 “non-suitable” rivers the interim protections required by the 2012 Planning Rule as necessary to protect and enhance their free-flowing condition and their outstandingly remarkable values (ORVs). The process followed and conclusions reached by the Forest Service in this regard is contrary to the WSRA and the 2012 Planning Rule, 36 C.F.R. Part 219.

The parts of the Draft ROD, FEIS, and Forest Plan to which this Objection applies include, but are not limited to, the following:

- The Draft ROD at page 11, finding 77 rivers eligible but not suitable for inclusion in the Wild and Scenic Rivers system, and declining to apply interim protection measures to them in order to adequately protect and enhance their outstandingly remarkable values;
- The Draft ROD Appendix 1 which, in multiple locations, provides an incomplete and unsupported consideration of the suitability for inclusion in the National Wild and Scenic Rivers System of 77 of the 88 rivers that were determined eligible for inclusion, and recommends that those 77 rivers be found not suitable.
- The FEIS at page 47 (Section 2.3.9 - 2.3.12), which rejected consideration of four alternatives that would have managed more of or all of the 88 rivers found eligible for inclusion in the Wild and Scenic Rivers system using interim protection measures so as to protect and enhance their outstandingly remarkable values;
- The FEIS, *Appendix F: Nez Perce-Clearwater National Forests Wild and Scenic River Suitability* (Nov. 2023) which, in multiple locations, provides an incomplete and unsupported consideration of the suitability for inclusion in the National Wild and Scenic Rivers System of 77 of the 88 rivers that were determined eligible for inclusion, and recommends that those 77 rivers be found not suitable.

**B. Concise statement explaining the objection and suggesting how the decision may be improved.**

In the Draft ROD, FEIS, and Forest Plan, the Forest Service wrongly and unlawfully relied upon a Forest Service-initiated suitability study as the basis for the agency's determination that only eleven river segments within the Nez Perce-Clearwater National Forest are "suitable" for inclusion in the National Wild and Scenic Rivers System, and that one additional river should retain its "eligible" status, and that only those twelve rivers should receive interim protection measures to preserve their free-flowing state and their outstandingly remarkable values. See ROD at 57; FEIS at 43; Forest Plan at 97. The Forest Service's decision in this regard runs counter to the WSRA, the agency's own 2012 Planning Rule at 36 C.F.R. Part 219, and other pertinent agency guidance. It is also virtually without precedent; to the best of our knowledge, all but one National Forest that has completed a new or revised forest plan since the promulgation of the 2012 Planning Rule has not conducted suitability determinations as part of the forest planning process.

The Forest Service's flawed decision effectively excludes 77 rivers or river segments within the Nez Perce-Clearwater National Forest from further consideration of their potential for inclusion in the National Wild and Scenic Rivers system, and administratively strips them of their interim protection under the WSRA and the 2012 Planning Rule, despite the fact that they remain eligible for inclusion under the WSRA. The decision also strips eligibility protections from 13 rivers and some of their tributaries that have been in place since 1990, without disclosing the impacts of doing so. Under the Draft ROD and Forest Plan, these rivers would no longer be managed in a way that protects their wild and scenic eligibility.

In addition, the Draft ROD, FEIS, and Forest Plan is contrary to the WSRA, the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA) in several other respects, including but not limited to the following:

- (1) The Forest Service failed to consider a reasonable range of alternatives with respect to the finding of suitability for WSRA designation for the 88 rivers addressed in the FEIS<sup>1</sup>, in violation of NEPA and its implementing regulations. See 40 C.F.R. § 1502.14. In particular, the Forest Service (a) failed to consider an alternative that would find each "eligible" river to be "suitable" for inclusion in the Wild and Scenic Rivers System; (b) failed to consider an alternative that would defer any findings of non-suitability until a later date, thereby preserving each eligible river's protected status under the Forest Plan; and (c) failed to consider an alternative that would find suitable all 39 rivers found suitable under *at least one* of the considered alternatives.<sup>2</sup>
- (2) The Forest Service failed to meaningfully disclose, consider, and analyze the benefits of the No Action Alternative, and the related impacts of the Preferred Alternative caused by removing streams that afforded Wild and Scenic eligibility protections under the No Action Alternative.
- (3) The Forest Services deviated from its own guidance, including Chapter 80 (Wild and Scenic Rivers) of Section 1909.12 (Land Management Planning) the Forest Service Handbook (FSH), by giving a cursory, incomplete, or inaccurate

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<sup>1</sup> See FEIS Appendix F: Nez Perce-Clearwater National Forests Wild and Scenic River Suitability (Nov. 2023).

<sup>2</sup> There is no such "maximum suitability" alternative in the FEIS; while Alternative Z includes the most suitable rivers (37), for some unexplained reason it does not include two of the rivers (North Fork Clearwater and Cayuse Creek) that would be found suitable under Alternative Y. See FEIS at 42; FEIS Appx. F at 221–224.

assessment of the suitability of 77 of the 88 rivers considered for inclusion in the National Wild and Scenic Rivers System. In doing so the Agency elevated personal beliefs and opinions of a few people over well-documented factual and public support for continued interim protection of all eligible streams.

The Forest Service's decision may be improved by revising the Draft ROD, FEIS, and Forest Plan to clarify that all 88 rivers or river segments found to be eligible for inclusion in the National Wild and Scenic Rivers system will be managed to protect and enhance their free-flowing state and their outstandingly remarkable values through being deemed either eligible or suitable for Wild and Scenic designation. More specifically, the Forest Plan should be revised to include "plan components, including standards or guidelines, to provide for . . . management of rivers found eligible . . . for the National Wild and Scenic River system to protect the values that provide the basis for their suitability for inclusion in the system." 36 C.F.R. § 219.10(b)(1)(v).

Alternatively, the FEIS should be revised to include consideration of the alternatives mentioned above in paragraph B(1), and to include a more robust and complete suitability study that complies with the FSH. Such a study should consider the broad and river-specific errors we point out later in this objection, as well as the vast public support for retaining these rivers' eligibility protections.

### **C. Detailed Statement of the Objection.**

#### **1. The Forest Service lacks the authority under the WSRA or its 2012 Planning Rule to use "suitability studies" to administratively release from interim protection those rivers found eligible for designation under the Act.**

The Forest Service lacks the legal authority to use suitability studies as a means to forever release from interim protection and abandon rivers or river segments deemed by the agency to be "unsuitable" for designation under the Act, either as part of or separate from the forest planning process. This is especially true where those rivers have been found eligible for designation under the Act.

Section 5(d)(1) of the WSRA states that, "[i]n 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[.]" 16 U.S.C. § 1276(d)(1). The Act itself does not define what a "potential national wild, scenic and recreational" river is, but federal case law suggests that the phrase means rivers that may warrant designation under the Act, as opposed to rivers the Forest Service may wish to exclude from further consideration. *See, e.g., Ctr. for Biological Diversity v. Veneman*, 335 F.3d 849, 854 (9th Cir. 2003), opinion withdrawn and superseded on reh'g, 394 F.3d 1108 (9th Cir. 2005) (construing 16 U.S.C. § 1276(d)(1) in the context of rivers that the Forest Service had "determine[d] to be potentially eligible for inclusion in the national wild and scenic rivers systems.") (emphasis added by the Ninth Circuit).

Indeed, *Veneman* lends credence to an interpretation of the WSRA that permits the use of suitability studies only as vehicles for recommendations to Congress—not for the removal of interim protections for eligible rivers. As the Ninth Circuit explained,

[F]or rivers added to the WSRS through the inventory process, the Forest Service determines the eligibility of a particular river first by establishing whether the river is free-flowing and possesses one or more ORV. If the river is found to have both

characteristics, the Service classifies the river as “wild,” “scenic,” or “recreational.” **Once the river has been deemed “eligible,” the Service conducts a suitability study before Congress makes the ultimate decision regarding designation.**

*Id.* at 855 (emphasis added). The *Veneman* court’s reference to a “suitability study” plainly implies an administrative antecedent to Congressional action—an agency recommendation only, not a license to remove substantive interim protections for rivers already deemed eligible for designation under the WSRA. The ability of Congress to make “the ultimate decision regarding designation” would clearly be frustrated if eligible rivers lost their interim protections through administrative action resulting from an agency-initiated suitability study.

Consistent with Section 5(d)(1) of the WSRA, the Forest Service’s own 2012 Planning Rule imposes obligations on the agency to consider the eligibility of rivers for inclusion, and does not authorize “non-suitability” determinations as part of forest planning. First, the 2012 Planning Rule requires the agency, as part of the forest planning process, to:

[i]dentify the **eligibility** of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review.

36 C.F.R. § 219.7(c)(2)(vi) (emphasis added). Like the WSRA itself, the focus of the 2012 Planning Rule is thus on the identification of eligible rivers, and the rule says nothing about identification of rivers deemed suitable (or not) for designation. This stands in sharp contrast to the immediately preceding subsection of the rule, which instructs the Forest Service to “[i]dentify and evaluate lands that may be suitable for inclusion in the National Wilderness Preservation System and determine whether to recommend any such lands for wilderness designation.” 36 C.F.R. § 219.7(c)(2)(v) (emphasis added). Had the Forest Service intended for its Regions to identify the suitability of rivers as part of forest planning, it would have stated so explicitly—as it clearly knows how to do.

The 2012 Planning Rule also requires new or revised forest plans “to provide for” the protection of:

designated wild and scenic rivers as well as **management of rivers found eligible or determined suitable** for the National Wild and Scenic River system to protect the values that provide the basis for their suitability for inclusion in the system.

36 C.F.R. § 219.10(b)(v) (emphasis added). The rule’s use of the conjunctive “or” indicates that the Forest Service is required to protect rivers that fall within either of the two categories. Thus, rivers “found eligible” must be protected, just as rivers “determined suitable” for inclusion in the National Wild and Scenic River system must be protected by a revised forest plan.

Support for this approach is found in Forest Service guidance. The Forest Service Handbook, for example, makes clear that because Congress is the ultimate decider on Wild and Scenic River designation, rivers found by the agency to be eligible should be managed so as to preserve their eligibility characteristics until Congress makes its decision. See Forest Service Handbook, FSH 1909.12—Land Management Planning Handbook, Ch. 80—Wild and Scenic Rivers, at 26–27 (“Forest Service Handbook”) (“The planning rule at 36 CFR 219.10 provides for

interim management of Forest Service-identified eligible or suitable rivers or segments, to protect their values prior to a congressional decision whether to designate them as part of the National System.”).

## **2. The Forest Service wrongly declined to consider in detail four alternatives that would add or maintain protection for eligible rivers.**

A comprehensive analysis of viable alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14 (2016). NEPA requires federal agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives to a proposed project.” *Ctr. For Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008) (quoting 40 C.F.R. § 1502.14(a) (2016)). This requirement includes an analysis of alternatives that “will avoid or minimize” a proposal’s adverse effects. 40 C.F.R. § 1500.2(e) (2016); *see also* 46 Fed. Reg. 18026, 18027 (Mar. 23, 1981) (CEQ’s Frequently Asked Questions on NEPA). “One of the benefits of a comprehensive environmental impact statement, which requires that all reasonable alternatives be analyzed and evaluated, is that it may be able to break through any logjam that simply maintains the precarious status quo.” *National Wildlife Fed’n v. National Marine Fisheries Serv.*, 184 F. Supp. 3d 861, 876 (D. Or. 2016). Comprehensive analysis of alternatives “may allow, even encourage, new and innovative solutions to be developed, discussed, and considered.” *Id.*

The Forest Service wrongly rejected from detailed consideration four alternatives that would have afforded additional protection to rivers found eligible, or potentially eligible, for designation under the WSRA. *See* FEIS at 47. These alternatives were proposed by river conservation groups, including the Objectors. American Whitewater specifically requested these alternatives in our comments on the Draft Plan and Environmental Impact Statement.

One rejected alternative would have found additional rivers within the national forest to be eligible for designation under the WSRA. *See* FEIS at 47, § 2.3.9. The Forest Service rejected that alternative out of hand, based upon its own internal finding that just 88 rivers in the national forest are eligible. *Id.* The Forest Service all but admits that its process—begun in 2015 and presumably based upon data and information available to its “interdisciplinary team” at that time—ignored, or at best failed to incorporate and substantively respond to, the additional information (including identification of additional ORVs for additional rivers within the national forest) provided by stakeholders. *Id.* This approach is flawed and contrary to NEPA.

A second rejected alternative would have deferred any suitability studies or findings of non-suitability, and instead managed all eligible rivers under interim protection. *See* FEIS at 47, § 2.3.10. The FEIS does not explain why this alternative is inconsistent with the purpose and need of the revised Forest Plan, and instead wrongly asserts that the “2012 Planning Rule requires that National Forests include the evaluation of rivers for potential inclusion as a Wild and Scenic River under the Wild and Scenic River Act of 1968.” *Id.* This statement, as applied here by the Forest Service, grossly misstates the applicable legal and regulatory requirements. As stated above, the WSRA requires that “consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas” in the planning process, 16 U.S.C. § 1276(d)(1), while the 2012 Planning Rule requires the Forest Service to both “[i]dentify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System” and “provide for . . . [the] management of rivers found eligible” for the system. 36 C.F.R. §§ 219.7(c)(2)(vi), 219.10(b)(v). These provisions do not require any suitability study as part of the forest planning process, nor do they allow for any definitive findings of non-suitability (and resulting stripping of interim protections) of the kind made by the Forest Service here, and

indeed the FSH plainly gives the Forest Service discretion not to make suitability determinations as part of the forest planning process. FSH 1908.12, Ch. 83. Furthermore, all other Forests but one that has gone through planning since 2012 have declined to conduct suitability determinations, and rightly so.

A third rejected alternative would have continued to provide interim protective management to all rivers found eligible for designation under the WSRA. See FEIS at 47, § 2.3.11. The Forest Service wrongly rejected this alternative based solely on its mis-reading of the FSH for the proposition that “eligible rivers found not suitable need not be managed under interim protection measures[.]” *Id.* This goes against decades of Forest Service precedent and past practice, which until very recently has always afforded interim protections to eligible rivers so as to preserve their free-flowing condition and ORVs pending Congressional action. It also conflicts with the plain language of the 2012 planning rule requiring the protection of eligible streams.

A final rejected alternative would have included all 88 eligible river segments as suitable. See FEIS at 47, 2.3.12. Importantly, the Forest Service Handbook explicitly directs the Forest Service to include an alternative that finds all eligible rivers suitable. Section 83.31 of Chapter 80 states that for agency-initiated suitability reports the agency should follow the direction regarding Congressionally-mandated study reports in Section 83.32a through 83.32h, in which the Handbook states: “Study reports generally include the following types of alternatives: ... 2. An alternative in which all eligible segments are found suitable and are recommended for Congressional designation.” The Forest Service must consider such an alternative as one result of this objection.

In sum, the Forest Service provided insufficient basis to reject these proffered alternatives, and since each of them is consistent with the purpose and need of the Forest Plan, the FEIS should be revised to consider them in detail.

**3. For those alternatives actually considered in the FEIS, the Forest Service failed to explain, for each considered alternative, what the impacts would or would not be for potential wild and scenic rivers.**

When the Forest Service chooses to conduct a suitability study as part of forest planning, the FSH requires that

every study report and environmental analysis document must present an array of alternatives broad enough to encompass all reasonable proposals for use of the river area. Each alternative should be clear as to whether the river segment is found suitable or not suitable, and whether interim protection measures will apply or not. Each alternative should identify the plan components that would be added, removed, or modified. If the emphasis of an alternative is to protect the outstandingly remarkable values by means other than designation, include in that alternative any plan components needed to do so.

FSH 1908.12, Ch. 83.32d. The discussion of the alternatives considered in the FEIS falls short of this requirement:

- For Alternative W, the FEIS summarily states only that “Alternative W includes twelve rivers as suitable wild and scenic rivers” without mention of interim measures or any plan

components that would be added, removed, or modified as a result of that alternative. FEIS at 40.

- For Alternative X, the FEIS states only that “Alternative X allocates zero suitable wild and scenic rivers. Rivers that are referred to in the State of Idaho Department of Water Resources River Plan are managed consistently with that plan, which includes provisions to protect water quality and maintain free flow.” FEIS at 40. There is no discussion of which rivers, if any, are referred to in the Idaho River Plan, or of what provisions protect the water quality and free-flowing condition of those rivers.
- For Alternative Y, the FEIS states that “Fourteen rivers are found suitable in Alternative Y, including the South Fork Clearwater and North Fork Clearwater” without mention of interim measures or any plan components that would be added, removed, or modified as a result of that alternative.

Equally problematic and arbitrary is that there is no rational explanation provided in the FEIS or the Study Report included as Appendix F for the allocation of suitable rivers *between* the various alternatives. Although the FEIS briefly acknowledges that the “alternatives vary in the quantity and location of suitable wild and scenic rivers,” FEIS at 192, and that the “different alternatives recommend varying numbers of rivers for Wild and Scenic suitability and eligibility,” FEIS at 489, the Forest Service offers no rational basis for simultaneously considering Alternative Z (which would find 37 rivers suitable for wild and scenic designation) as well as Alternatives W, X, Y, and the Preferred Alternative (which would only find twelve, zero, fourteen, and eleven rivers, respectively, to be suitable for wild and scenic designation). In short, the number and choice of specifically-proposed suitable rivers included in each alternative is entirely random. This grab-bag approach to assembling a range of alternatives for consideration in the FEIS defies common sense and is contrary to NEPA.

In addition, the Forest Service arbitrarily decided to not disclose the impacts of the action alternatives through a comparison with the No Action Alternative. The Forest Service explained this choice:

Although the No Action Alternative encompasses the greatest acreage and river miles, these river segments are further away from final designation decision than rivers considered in other alternatives. This alternative would maintain the status of these rivers as eligible and defer a suitability study to a later date. A suitability study provides the basis for determining which eligible rivers or river segments should be recommended to Congress as potential additions to the National System. Due to the unknown outcome of a future suitability determination on rivers in the No Action Alternative, a direct comparison to the action alternatives is unwarranted, as it would be speculative. FEIS at 1692.

This statement is flawed for several reasons.

First, the claim that eligible rivers are “further away from final designation” is not supported by evidence and is false. Designations result from the public working with legislators to craft and pass legislation, largely irrespective of agency determinations. In practice, most modern designations are of eligible streams, and a smaller number are of streams either deemed suitable or not deemed eligible. Suitability determinations are no more valuable than eligibility determinations in securing designations, and indeed the fleeting opinions captured in suitability findings are quickly made irrelevant by elections, staff changes, and in some

instances changes on the ground. While Agency testimony is certainly helpful in securing designations, such testimony seldom is (and need not be) supported or limited by a river's suitability. Suitable rivers are no closer to designation than eligible rivers.

Second, speculating on the unknown Congressional outcome of a suitability determination is not relevant to comparing the effects of the alternatives under the forest plan. Both eligible and suitable rivers are managed identically in the forest plan, and that is what matters. The identical management of eligible streams in the No Action Alternative and the suitable streams in the action alternatives are described in plan components on pages 96 through 98 of the forest plan. Therefore speculating about whether an eligible river will become suitable is irrelevant. Speculating about whether rivers will be designated is out of scope.

The effect of the unfounded decision to not compare the No Action Alternative is significant. It hides from the public the fact that the Preferred Alternative marks a dramatic loss of river protections. Since 1990 the Forest Service has protected 29 streams totalling 559 miles as potential Wild and Scenic Rivers and would continue to do so under the No Action Alternative, whereas under the Preferred Alternative the Forest Service will only protect 12 rivers as potential Wild and Scenic Rivers totalling 238 miles. This is a massive loss of protections for some of our Nation's finest rivers and streams. The Forest Service should clearly show the effects of all alternatives, including the No Action Alternative, with equal treatment.

**4. The Forest Service made numerous false conclusions and unsupported findings in its FEIS *Appendix F: Nez Perce-Clearwater National Forests Wild and Scenic River Suitability and Record of Decision*, which, in turn, led to incorrect "non-suitable" determinations.**

Below we address both crosscutting flaws in the analysis that affect many rivers, as well as flaws in the analysis of specific rivers.

**a. The Forest Service Wrongly Found Many Rivers Unsuitable Based on a Misinterpretation of the Wild and Scenic Rivers Act's Purported Limits on Restoration Activities.**

Across the analysis of many rivers the Forest Service claims that Wild and Scenic eligibility or suitability would prevent, limit, or curtail aquatic and upland restoration work. This false premise creates a false choice between river protection and river restoration. The Forest Service Handbook clearly states that the agency may conduct stream and upland restoration activities in an eligible or suitable Wild and Scenic River corridor.<sup>3</sup> The Interagency Council agrees.<sup>4</sup> The Forest Service would only need to ensure that restoration activity would not have a "direct and adverse effect" on, or "substantially interfere with," the recognized values of the river. This is a very permissive standard, based on section 10(a) of the Wild and Scenic Rivers Act that allows such uses, and places no undue or significant burden on the Agency, particular in light of the many assurances in the plan that the Agency will protect the values whether or not they are deemed eligible or suitable for designation. Furthermore, many recognized values would benefit

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<sup>3</sup> Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(8): Interim Protection Measures for Eligible or Suitable Rivers.

<sup>4</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 50. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

from restoration work, and such work would be highly compatible with eligibility or suitability findings and in some cases required. Claims that suitability findings would prevent, limit, or curtail restoration work should be struck from the planning analysis.

**b. The Forest Service Wrongly Found Many Rivers Unsuitable Based on a Misinterpretation of the Wild and Scenic Rivers Act's Purported Limits on Timber, Fuels, and Habitat Management Activities.**

Across the analysis of many rivers the Forest Service claims that Wild and Scenic eligibility or suitability would prevent, limit, or curtail timber management, fuels reduction, and wildlife habitat efforts. Like with restoration, this false premise creates a false choice between river protection and other uses. The Forest Service Handbook clearly states that the agency may conduct timber management activities (including for fuels and wildlife benefits) in an eligible or suitable Wild and Scenic River corridor.<sup>5</sup> The Handbook states that for Scenic and Recreational rivers:

A range of vegetation management and timber harvest practices are allowed, if these practices are designed to protect users, or protect, restore, or enhance the river environment, including the long-term scenic character.<sup>6</sup>

Timber management (and prescribed fire) is even in Wild River corridors if associated with ORVs or to suppress wildfires.

Cutting of trees and other vegetation is not permitted except when needed in association with a primitive recreation experience, to protect users, or to protect identified outstandingly remarkable values. Examples of such exceptions include activities to maintain trails or suppress wildfires.<sup>7</sup>

The Interagency Council agrees with these recommendations and concludes that:

WSR designation is not likely to significantly affect timber management activities beyond existing measures to protect riparian zones, wetlands, and other resource values as guided by other federal requirements.<sup>8</sup>

These are very permissive standards, based on section 10(a) of the Wild and Scenic Rivers Act which allows uses that do not substantially interfere with river values, and places no undue or significant burden on the Agency. The kinds of work being proposed by the Agency - to protect rare habitats, communities, and wildlife habitat - is possible with basic care given to the rivers, which the public expects of the Agency. Claims that suitability findings would prevent, limit, or curtail timber management, fuels reduction, and timber related wildlife habitat work should be struck from the planning analysis.

**c. The Forest Service Wrongly Found Many Rivers Unsuitable Because They Were Under Other Protective Designations Like Wilderness.**

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<sup>5</sup> Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(9): Interim Protection Measures for Eligible or Suitable Rivers.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 39. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

The Forest Service arbitrarily decided to find many rivers unsuitable partially or entirely because those rivers flow through Wilderness Areas or other protective designations, essentially arguing that Wild and Scenic suitability has no benefit so why bother. Moose Creek is a prime example among many.

Obviously, many designated Wild and Scenic Rivers flow through designated Wilderness, including the Selway River, Salmon River, and Middle Fork Salmon in Idaho. The Interagency Wild and Scenic Rivers Council concurs:

Congress has frequently added WSR status to rivers flowing through national parks, national wildlife refuges and designated wilderness. Each designation recognizes distinct values for protection, and management objectives generally designed to not conflict. In some cases, WSR designations extend beyond the boundaries of other administrative or congressional area designations, thereby providing additional protection to the free-flowing condition and river values of the area.<sup>9</sup>

While we acknowledge that eligibility and suitability determinations have lessened benefits in protected areas, it is unreasonable - and unmoored from the common practice of designating such rivers - to find such rivers unsuitable. We also note that the Forest Service finds rivers unsuitable both because they are under protected designations like Wilderness, and also because they are not protected as Wilderness, in a classic catch-22.

**d. The Forest Service Wrongly Found Many Rivers Unsuitable Because The Rivers Lack Exemplary Values.**

For numerous rivers the Record of Decision makes arbitrary claims that a river's values are just not good enough. One characteristic example is regarding Old Man Creek:

Additionally, I do not believe the scenic splendor is so unique or rare, or otherwise contribute to vital national conservation purposes to warrant consideration as a Wild and Scenic River.<sup>10</sup>

And regarding Warm Springs Creek:

Additionally, I do not believe these river values are so unique, rare, or otherwise contribute to vital national conservation purposes to warrant consideration as a Wild and Scenic River.<sup>11</sup>

These arbitrary "beliefs" are directly refuted by the eligibility report generated by the Agency's own experts that determined these rivers have Outstandingly Remarkable Values that qualify them for Wild and Scenic designation. The suitability analysis contributed no new information to

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<sup>9</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 44. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

<sup>10</sup> ROD App. 1, Pg. 73

<sup>11</sup> ROD App. 1, Pg. 75

disprove the expert assessments in the Eligibility Report and yet reaches the opposite conclusion. Arbitrary claims that the documented ORVs are somehow not good enough for a river to qualify for designation should be removed from the analysis and from the basis for any unsuitability finding.

#### **e. The Potlatch River was Wrongly Found Unsuitable**

The Forest Service analysis of support or opposition is arbitrary and capricious. The analysis is silent on the over 700 public comments in support of suitability/eligibility protections for the Potlatch River, including detailed comments by American Whitewater. Paddlers are vested, knowledgeable, and in some cases local stakeholders in the future management of the Potlatch. Instead of properly weighing these supportive comments the Forest Service does not mention them, and instead fabricates a story of potential future opposition that is not even based on use of the Forest Service portions of the river. This omission of support and fabrication of opposition - which paints a negative picture of support - is arbitrary and capricious. In fact the record shows overwhelming support for suitability and eligibility, and no evidence of opposition.<sup>12</sup>

The Forest Service claims that “Current protections would likely perpetuate this river’s important contributions to the system” while also admitting that the potential for dam building on the river is “moderate” and suitability could curtail timber harvest on 766 acres of land otherwise open to logging to reach economic goals. The Forest Service can’t reasonably claim that suitability protections aimed at protecting river values would not be compatible with their desired logging on the Forest, and also claim that that logging would not impact the values of the river.<sup>13</sup>

The Record of Decision states that the “Potlatch River is not suitable for designation as a Wild and Scenic River in the forest plan due to the lack of certainty around future land management activities in most of the river corridor.”<sup>14</sup> The Forest Service manages and has a great deal of certainty over lands inside the eligible river corridor. If this concern is instead over a lack of control over lands *outside* of the eligible river corridor, that is a ubiquitous issue for many if not most Wild and Scenic Rivers and in no way disqualifies the river from suitability. The Forest Service could indeed protect the river values in a suitable corridor.

The Record of Decision states: “Water supply to the portion of the river that lies within the forest boundary is controlled by a multitude of private and corporate landowners with varying interests.”<sup>15</sup> This is largely or entirely a false statement: there are no significant impoundments or large diversions in the Potlatch watershed upstream of the eligible reach, and there is ample flow to support the current recreational and fisheries values. The Forest Service cites no proposals for this to change, and we note that the Forest Service acknowledges “Congress and the Secretary of the Interior have designated many river segments which are above or below dams that have regulated flows.”<sup>16</sup>

The Record of Decision states: “Designation would not ensure that water quantity or quality is protected, nor would it ensure the persistence of the river’s outstanding and remarkable value

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<sup>12</sup> See FEIS Appendix F, Pg. 37-40.

<sup>13</sup> See FEIS Appendix F, Pg. 37-40.

<sup>14</sup> ROD App. 1, Pg. 13.

<sup>15</sup> ROD App. 1, Pg. 13.

<sup>16</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 18. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

as boatable waters.”<sup>17</sup> This is a moot point, as many eligible, suitable, and designated rivers are downstream of private lands, dams, and extractive water rights. While designation would not ensure water quantity and quality is protected, it seldom does, and that in no way disqualifies the river from suitability.

The Record of Decision states: “Designation could limit or impact the ability of the Potlatch Implementation Group to implement activities for improving, restoring, and protecting habitat for steelhead.”<sup>18</sup> This statement is without basis, and is misleading at best. Significant stream restoration activities are permitted on Wild and Scenic rivers. Agency policy is clear that while restoration activities should seek to protect and enhance stream values, they do not prevent restoration work from occurring.<sup>19</sup> The Forest Service Handbook simply recommends that “Construction of structures and vegetation management designed to protect and enhance wildlife and fish habitat should harmonize with the area’s largely undeveloped character and fully protect identified river values” in scenic river corridors, and make similar considerations in wild and recreational corridors. The Handbook continues that a “fisheries restoration or enhancement project that has the potential to affect the free-flowing character must be evaluated as a water resources project.”<sup>20</sup> This is a routine screening carried out by Agencies, and by no means constitutes an impact to the project. Quite the opposite, it supports projects that benefit the river as a whole.

The conclusions and claims relied upon in finding the Potlatch River unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

#### **f. Elk Creek was Wrongly Found Unsuitable**

The Forest Service analysis of Elk Creek rightly recognizes its extraordinary scenic and recreational values, but finds the river unsuitable in all alternatives without explanation. The analysis fails to recognize the public support for suitability. Suitability would be tightly aligned with the emphasis on recreational management of the area. And the Forest Service even recognizes that “Changes to land use are not anticipated since much of the area has been managed to protect the waterfalls and the national recreation trail.”<sup>21</sup> Instead of recognizing the current and reasonably foreseeable conditions as persuasively strong evidence however, the Forest Service instead mentions some hypothetical scenarios in which future recreational management priorities could change or instream flow management could change. This reliance on fabricated hypothetical scenarios over well documented facts in deeming Elk Creek unsuitable is arbitrary and capricious.

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<sup>17</sup> *ROD App. 1, Pg. 13*

<sup>18</sup> *ROD App. 1, Pg. 13.*

<sup>19</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 50. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

<sup>20</sup> Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(8): Interim Protection Measures for Eligible or Suitable Rivers.

<sup>21</sup> *FEIS Appendix F, Pg 62*

The Forest Service falsely bases the unsuitability finding on a claim that “Elk Creek is currently not free flowing.”<sup>22</sup> Agency policy is clear that “any section of river with flowing water meets the technical definition of free flowing, even if impounded upstream,” and that “Congress and the Secretary of the Interior have designated many river segments which are above or below dams that have regulated flows.”<sup>23</sup> Elk Creek is free flowing and the upstream impoundment is immaterial to its suitability. The finding that “Elk Creek is not suitable for designation as a Wild and Scenic River in the forest plan due to the lack of certainty around future water supply” is based solely on a hypothetical scenario of changes to instream flows, and there is no evidence that such a small impoundment could eliminate the scenic waterfalls through flow reductions during any but the driest times.

The Forest Service also bases the unsuitability finding on the claim that “vegetative management in the river corridor is necessary for community fire protection. Such activities can be hampered or foreclosed by designation and subsequently the need to emphasize, protect and enhance the outstandingly remarkable values.”<sup>24</sup> This claim is unfounded. There are many examples of timber management in Wild and Scenic River Corridors, including the Flathead Wild and Scenic River, and including wildfire threat reductions. Agency policy is clear that “WSR designation is not likely to significantly affect timber management activities beyond existing measures to protect riparian zones, wetlands, and other resource values as guided by other federal requirements.”<sup>25</sup> Specifically, the Forest Service Handbook recommends: “A range of vegetation management and timber harvest practices are allowed, if these practices are designed to protect users, or protect, restore, or enhance the river environment, including the long-term scenic character.”<sup>26</sup>

One need only to visit this river to know it is the very picture of a Wild and Scenic River. The conclusions and claims relied upon in finding Elk Creek unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

#### **g. Lolo Creek was Wrongly Found Unsuitable**

The Forest Service analysis documents the many outstanding values of Lolo Creek including high quality habitat for fisher, steelhead, native spring Chinook Salmon, and Pacific lamprey. There is however no mention of the vast support in the record for finding Lolo Creek suitable, and indeed most of the suitability questions are simply left blank in the analysis. The only downside of suitability in the Forest Service’s opinion is potential limits on timber harvest that would be needed to protect the river values - a ubiquitous claim relating to the entire Forest. It is arbitrary and capricious, and a violation of NEPA and APA, to not find Lolo Creek suitable on its overwhelming merits and to not consider doing so in one or more alternatives.

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<sup>22</sup> *ROD App. 1, Pg. 11*

<sup>23</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 18. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

<sup>24</sup> *ROD App. 1, Pg. 11*

<sup>25</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 39. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

<sup>26</sup> Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(9): Interim Protection Measures for Eligible or Suitable Rivers.

Lolo Creek downstream of the Forest Service eligible reach has been deemed suitable by the BLM. The Forest Service considered a similar case of adjacency in this forest plan, regarding the Little North Fork of the Clearwater, in which the Forest decided to match the adjacent finding (of eligibility). Why then did the Forest Service not even consider matching the BLM's determination in a single alternative? It was arbitrary and capricious to inconsistently apply a test of adjacency in determining a river's suitability.

The ROD states: "Permanent protections through designation ... could potentially adversely affect the ability to implement ecological restoration activities within and near the river segment found eligible."<sup>27</sup> This is a false claim, as both upland and in-channel restoration work is supported by the Wild and Scenic Rivers Act.<sup>28</sup> The Forest Service seems to misunderstand that activities in a Wild and Scenic River corridor are allowed unless they substantially interfere with other uses. Not all activities have to be aimed squarely at ORV maintenance as the Forest Service claims. Section 10(a) of the Wild and Scenic Rivers Act is clear that "Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values."

The ROD claims that "Designation as a Wild and Scenic River could potentially change this [Tribal and recreational] access if impacts from the roads were determined to adversely affect the fish or wildlife outstandingly remarkable values."<sup>29</sup> This is a false and threatening statement. Recreation is an ORV on Lolo Creek and Tribal uses of the stream should be, and those uses - including access - would need to be protected under the Wild and Scenic Rivers Act. Furthermore, we are aware of no examples of road closures of this nature.

The ROD claims that permanent protection "would be at the expense of other management goals and actions needed to enhance resources, associated with the Tribe's reserved Treaty rights improve fish habitat, address the wildfire crisis, and restore forests ravaged by insects and disease." The Forest Service offers no evidence to back this hyperbolic claim of conflict, just conjecture based on misunderstandings of what the Wild and Scenic Rivers Act actually does.

The conclusions and claims relied upon in finding Lolo Creek unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

#### **h. Bostonian Creek, Boundary Creek, Caledonia Creek, Graves Creeks were Wrongly Found Unsuitable**

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<sup>27</sup> *ROD App. 1, Pg. 68*

<sup>28</sup> *See: Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(8): Interim Protection Measures for Eligible or Suitable Rivers. Also see: A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 50. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>*

<sup>29</sup> *ROD App. 1, Pg. 68*

The ROD claims that “Wild and Scenic River designation may impede or create unnecessary barriers in treating fuels and addressing the wildfire crisis. Designation may also limit tools and adaptation strategies needed to increase resiliency to climate change.” In fact, the Wild and Scenic Rivers Act does no such thing. The Agency has a robust suite of tools to treat fuels and adapt to climate change. Agency policy is clear that timber management and restoration activities are allowed within Wild and Scenic corridors so long as values are protected. Agency policy is clear that active timber management is permitted,<sup>30</sup> that “WSR designation is not likely to significantly affect timber management activities beyond existing measures to protect riparian zones, wetlands, and other resource values as guided by other federal requirements.”<sup>31</sup>

The conclusions and claims relied upon in finding Bostonian Creek, Boundary Creek, Caledonia Creek, Graves Creeks unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

**i. Moose Creek, North Fork Moose Creek, West Moose Creek, East Fork Moose Creek, Rhoda Creek, and Wounded Doe Creek were Wrongly Found Unsuitable.**

The Forest Service analysis is ripe with evidence of the outstanding values of these streams and offers not a single reason to find them unsuitable. These rivers are entirely in designated Wilderness, and are contiguous with the federally designated Selway Wild and Scenic River. Finding these rivers unsuitable with no evidence to support that claim and no rationale is arbitrary and capricious.<sup>32</sup>

After citing several times a belief that these streams are well protected already and thus designation would have little value, the ROD concludes: “Therefore, there is no benefit or compelling reason to support the application of permanent protection of the outstandingly remarkable values, potentially at the expense of meeting other management goals.”<sup>33</sup> This statement is unsupported however, because nowhere in the analysis does the Forest Service state what these “other management goals” are that would purportedly conflict with designation. Rather, all evidence is positive and yet the outcome was arbitrarily and capriciously to oppose suitability.

These rivers daylight the pessimistic Catch 22 that the Forest Service places the rivers on this Forest in. On one hand, if rivers are already protected from logging then they are not deemed suitable for Wild and Scenic designation because there is no need. On the other hand, if rivers are not already protected from logging then they are not deemed suitable to allow for unhindered logging to occur. Suitability is both damned if it does anything and damned if it

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<sup>30</sup> See: Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(9): Interim Protection Measures for Eligible or Suitable Rivers.

<sup>31</sup> A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 39. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>

<sup>32</sup> See FEIS Appendix F, Pgs. 141-146.

<sup>33</sup> ROD App. 1, Pg. 89

doesn't. This contradiction shows the arbitrary nature of the Forest Service's approach to suitability on this Forest, and the irrational conflicting bar that rivers must meet to merit protection as potential Wild and Scenic Rivers.

We point out that there is ample evidence to the contrary of the Forest Service perspective on this matter. *Many* congressionally designated Wild and Scenic Rivers flow through Wilderness, including the Selway River. Congress clearly does not agree with the Forest Service, and neither does the public. Members of the public have broadly supported Wild and Scenic protections in Wilderness as part of this forest plan, and the ROD errs in claiming Wild and Scenic designation is not compatible with Wilderness designation.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

**j. The Upper Lochsa River, Colt Killed Creek (formerly known as “White Sand Creek”), Big Sand Creek, Storm Creek, North Fork Storm Creek, and South Fork Storm Creek were Wrongly Found Unsuitable.**

These are among the most striking examples of streams with overwhelming outstanding values and public support, though are not found suitable in any alternative because of the Forest Service's interest in logging these watersheds without the hindrance of protecting the river values. Both the rivers in this list that are off-the table for logging due to Wilderness designation (Big Sands Creek, and the forks of Storm Creek), as well as those more open to logging paradoxically (and arbitrarily) receive the same outcome of unsuitability. There is simply no single rational rationale that could produce unsuitability findings for all of these exceptional streams.

Furthermore American Whitewater commented in both our comments on the Draft Suitability Report and the Draft Forest Plan that the Forest Service mischaracterizes Colt Killed Creek as a hike-in 7-mile “extreme” whitewater run, when in fact it is a 12-mile car-accessible Class III/IV run. The fact that simple factual errors persist throughout the years of planning is evidence that the record is not being built with integrity, and in this case is not sufficient for decision-making.

The ROD states that forest restoration activities and fuels reduction activities would be “precluded or made more complex were these streams managed under the WSR protections.”<sup>34</sup> As stated elsewhere, such activities would not be precluded by WSR protections. Agency best practice is clear that while restoration activities should seek to protect and enhance stream values, they do not prevent restoration work from occurring.<sup>35</sup> Claims to the contrary are false.

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<sup>34</sup> *ROD App. 1, Pg. 46*

<sup>35</sup> *See: Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(8-9): Interim Protection Measures for Eligible or Suitable Rivers. See Also: A Compendium of Questions & Answers Relating to Wild & Scenic Rivers: A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council. 2018. Pg. 50. Available at: <https://www.rivers.gov/sites/rivers/files/2023-07/q-a.pdf>*

Restoration and timber activities are allowed, and generally all uses that do not substantially interfere with the river's values are allowed. The fact that protecting the river's values may add a layer of complexity when designing these projects is not a reason to find the river unsuitable. These are Wild and Scenic eligible streams, and are worth a relatively small amount of added effort to protect their values.

To find the upstream extensions of the Wild and Scenic Lochsa River and its primary wild headwaters unsuitable across all alternatives is an egregious abuse of discretion, and flatly wrong. These streams are truly extraordinary and boast incredible recreational, fisheries, wildlife, and scenic values. The conclusion in the ROD that the streams' ORVs do not rise to the level of a Wild and Scenic River is unfounded and runs counter to the findings of Congress on the inseparable Lochsa River downstream. These streams have vast public support for designation, and documented threats in Appendix F. There is no reason these streams should not be found suitable, and not even considering suitability in any alternative is arbitrary, capricious, and an abuse of discretion.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

#### **k. Johns Creek, Gospel Creek, and West Fork Gospel Creek were Wrongly Found Unsuitable**

These streams are critical habitat for Snake River steelhead and bull trout, and home to spring Chinook Salmon spawning, and yet the Forest Service finds them unsuitable presumably because suitability would require the protection of river values while conducting logging operations. The false equivalence of the need to protect these species versus the need to avoid harming them through timber operations is not adequate justification for the Forest's unsuitability finding.

Appendix F again wrongly claims that "None of these river segments were recommended by river advocacy groups." The same claim was made in the Draft Appendix F, to which we responded: In fact, in American Whitewater's comments on the Draft Suitability Report we stated "American Whitewater requests that these streams be found suitable if the Forests move forward with a suitability process in order to protect the fisheries, recreational, scenic, and other values."

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

#### **l. The South Fork Clearwater River was Wrongly Found Unsuitable**

Like other rivers, the South Fork of the Clearwater River was deemed unsuitable in all alternatives with little rationale provided. The South Fork has clear, extraordinary, and well-documented values, and the Forest Service analysis states offers no reason to find the river unsuitable. It discloses the need to maintain the road and power lines which of course is allowed

in Wild and Scenic corridors, and it cites the agency's desire to log up to 6,014 acres without the hindrance of protecting the river values.<sup>36</sup>

The ROD admits that the South Fork "provides the same values as the Middle Fork Clearwater, Lochsa, and Selway rivers on the Forest that are already protected through designation as wild and scenic rivers," yet arbitrarily finds the South Fork not worthy.<sup>37</sup>

The many values of the South Fork, and in particular Golden Canyon, far outweigh the added requirement to protect values during logging operations, and indeed much of Golden Canyon is not richly forested or even accessible to logging operations.

We strongly refute the claim that Golden Canyon does not draw people to the area for whitewater paddling. Golden Canyon is wildly different from the Salmon and Lochsa, and to the paddling community the Forest Service's characterization of the run as sub-par is uninformed at best.<sup>38</sup> The river has appeared in narrowly-curated guidebooks as a destination, and recently appeared in films highlighting the river's impressive power and rapids.

Like for other rivers the Forest Service's opposition to suitability is based on the following false premise: "Protections through designation would only allow management activities that prioritize the protection and enhancement of these outstandingly remarkable values. This could potentially adversely affect the ability to implement other ecological restoration activities within and beyond the river corridor."<sup>39</sup> As stated elsewhere this is false, to the point of gaslighting. Restoration activities are entirely permissible in Wild and Scenic River corridors, as well as beyond the corridor.<sup>40</sup> The Forest Service irrationally claims that they have and will protect the river values yet claims they must avail themselves of a tool which requires them to protect river values while engaging in those activities.

The conclusions and claims relied upon in finding the South Fork of the Clearwater River unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

#### **m. The North Fork of the Clearwater River was Wrongly Found Unsuitable**

The analysis of the North Fork of the Clearwater has a long and accurate list of the river's many Outstandingly Remarkable Values, as well as its strong local support for designation, the importance of the river, benefits for lynx, and the threats by proposed dams. These facts make the river a very strong candidate for suitability protections. Indeed the Agency has protected the North Fork for the past 34 years as eligible for designation. And yet the Forest Service finds the river unsuitable for reasons that are difficult to discern.<sup>41</sup>

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<sup>36</sup> See FEIS Appendix F, pgs. 178-183.

<sup>37</sup> *ROD App. 1, Pg. 121*

<sup>38</sup> See FEIS Appendix F, pgs. 178-183.

<sup>39</sup> *ROD App. 1, Pg. 124*

<sup>40</sup> See: Forest Service Handbook 1909.12 – LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 80 – WILD AND SCENIC RIVER EVALUATION, Section 84.3(8-9): Interim Protection Measures for Eligible or Suitable Rivers.

<sup>41</sup> See FEIS, Appendix F, Pgs. 41-46.

The analysis cites potential conflict with big game habitat without any evidence or explanation. The analysis cites that “experience has shown” designation suitability would cause timber harvest to be “extremely limited” on a third of the corridor that qualifies as a Wild River. The analysis does not daylight what this experience was, whether timber harvest is even possible on those acres, or the capacity to conduct significant and complimentary timber treatments in the Recreational River stretch.<sup>42</sup>

The Record of Decision introduces a claim that active management would be needed in this river corridor to protect coastal disjunct refugia.<sup>43</sup> There is no analysis to support this claim, and no plan components aimed at protecting these habitats. Likewise, if these habitats were recognized as an ORV, the Forest Service would be encouraged and in fact required to take management actions needed to protect them, including perhaps active fuels treatments in surrounding forest. It is a false and unsupported paradigm that designation would conflict with these habitats.

The Agency conjectures about potential limits on timber harvest are in no way equal to the significant benefits of suitability found in the Forest Service’s own analysis. The conclusions and claims relied upon in finding the North Fork of the Clearwater River unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

**n. Bear Creek, Cub Creek, Brushy Fork Creek were Wrongly Found Unsuitable**

The sole reason given for not finding these currently eligible streams suitable is the belief that

There is no benefit or compelling reason to support the application of permanent protection of these outstandingly remarkable values in these creeks, potentially at the expense of meeting other management goals.<sup>44</sup>

The Forest Service offers no examples of any other management goals with which suitability findings would come at the expense of, making this statement unfounded and arbitrary. As stated elsewhere, there is also no basis for excluding Wilderness streams from suitability given the Congressional record of designating Wild and Scenic Rivers in Wilderness areas. The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

**o. Beaver Creek, Elmer Creek, Isabella Creeks were Wrongly Found Unsuitable**

The Forest Service finds these streams unsuitable in large part based on a claim that protecting the Botany ORV would be “potentially at the expense of meeting other management goals or restricting future action that could actually protect the ORV itself, especially in the face of climate change.”<sup>45</sup> This is irrational and not a sound basis for decision making. First, the Agency does not explain what “other management goals” the protection of the botany ORV would conflict

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<sup>42</sup> Id.

<sup>43</sup> See *ROD*, Pg. 26.

<sup>44</sup> See *ROD*, Pg. 77

<sup>45</sup> *ROD App. 1*, Pg. 14

with. Second, unless protecting the Botany ORV requires building a dam in the reach it is nonsense to claim that protecting the ORV would limit actions that would harm the ORV. The Forest Service would have a vast array of management actions at its disposal to protect the Botany ORV, and would be required - not prevented - from taking those actions to protect that ORV.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

**p. Lake Creek (Lochsa Tributary) was Wrongly Found Unsuitable**

The Forest Service wrongly based their unsuitability determination for Lake Creek on their assessment that fisheries resources “are ubiquitous across the region of comparison” and not “so unique, rare, or among the best representatives of these features that they rise to a level of significance...”<sup>46</sup> These statements are wrong in large part because the Forest Service admits:

The eligible segment is included as a major spawning area for Snake River steelhead trout and is designated critical habitat for both steelhead and Columbia River bull trout. A bull trout local population has been identified in Lake Creek. Fish Lake contains an adfluvial population of bull trout, *which is one of only two within the region of comparison.*<sup>47</sup> Emphasis added.

It defies logic to claim that one of only two adfluvial populations of ESA listed bull trout in the region is not “rare” and that it is “ubiquitous.”

Like on other rivers, the Forest Service also based the unsuitability determination on their claim that suitability would have “no apparent benefit or compelling reason that supports the application of permanent protection of these fish outstandingly remarkable values, potentially at the expense of meeting other management goals”<sup>48</sup> without actually delineating those goals. This river is in a gorge, across the Lochsa from Highway 12, and is in Wilderness and a Roadless Area. The claim that there are conflicts with management goals defies logic, and has no basis in the record.

The conclusions and claims relied upon in finding these streams unsuitable for Wild and Scenic designation are not supported by evidence, factually sound, or consistent with Agency policy.

**Conclusion**

The Forest Service is proposing to release past and proposed protections for significant numbers of our nation’s most cherished and ecologically important rivers and streams. This objection shows that the basis for that repeal of protections fails both in terms of misapplying policy, but also in failing to carry out the analysis in a rational, defensible manner. In the ROD the opinions of a few supplant the opinions of many, and the Forest Service exaggerates the impacts of interim Wild and Scenic protections to create false conflicts with other uses of the

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<sup>46</sup> ROD App. 1, Pg. 65

<sup>47</sup> ROD App. 1, Pg. 63

<sup>48</sup> ROD App. 1, Pg. 65

Forest. A well reasoned Forest Plan needs to be based on the national values of this Forest, and the unique role it plays for people, plants, and animals. It needs to protect all the streams that have been found eligible with interim Wild and Scenic River management to protect these very special streams' most important values while allowing other uses that do not substantially interfere with these values. We ask that the Forest Service take another and more even-handed hard look at such river protections based on corrected interpretations of law and policy, and that all 88 eligible streams be protected as such in the forest plan.