

March 8, 2024

Transmitted via online project portal at:

<https://cara.fs2c.usda.gov/Public/CommentInput?Project=17992>

and via US Mail

Attention: Objection Reviewing Officer
 USDA Forest Service, Northern Region
 26 Fort Missoula Road
 Missoula, MT 59804

Re: Clearwater National Forest Travel Planning FINAL Supplemental Environmental
Impact Statement and draft Record of Decision

Objection Reviewing Officer:

Pursuant to 36 CFR Part 218, Friends of the Clearwater (FOC), Alliance for the Wild Rockies, WildEarth Guardians, and the Idaho Chapter Sierra Club (Diane Prorak and Al Poplawsky submitted comments on behalf of the Club) file this objection to the January 23, 2024 Clearwater National Forest Travel Planning Final Supplemental Environmental Impact Statement (FSEIS) and draft Record of Decision (DROD). The Responsible Official is Forest Supervisor Cheryl Probert.

Pursuant to Part 218, FOC is lead objector. Primary contact person is Gary Macfarlane gary@wildrockies.org (208-882-9755) and secondarily Jeff Juel, FOC Forest Policy Director jeffjuel@wildrockies.org (509-688-5956).

Objectors incorporate our past history in the project, including two successful lawsuits, because those past comments, objections, and other submissions inform the discussion of resource issues raised in this objection. We also fully incorporate our previous comments into this objection, as well as the comments **and objection** written by Harry Jageman.

While these past submissions by FOC and other objectors should be part of the administrative record already, we are submitting a flash drive, via US Mail on this date, that contains this information even though this objection is also being submitted by the internet (and also included on the Flash Drive). These attachments, references, and other incorporated documents mentioned in objection statements below and previous comments are have been sent to the Forest Service Objection Reviewing Officer via U.S. mail postmarked by this date.

This Objection also does not repeat all of our comments during the past 25 years on travel planning. This does not mean we waive those concerns here in the objection phase, or believe the FS has addressed them. It merely means that, by only incorporating some of those previous comments, the discussions therein suffice for the purpose of this Objection.

We wish to meet with the Forest Service, especially the Regional Office, in an objection resolution meeting as per 36 CFR part 218. In light of what to us is clear failure of the Forest Supervisor's office to comply with two successful lawsuits on this topic, we feel a meeting that includes Regional Office personnel could be particularly useful.

Introduction and Background

Hereinafter, the DSEIS comments refers to those submitted by Friends of the Clearwater (FOC), WildEarth Guardians (WEG), and Alliance of rate Wild Rockies (AWR). Any other comments referred to in this objection will be so identified. The draft ROD is referred to as DROD.

The DSEIS comments state:

FOC and others have submitted photos, letters, and other documentation that dates back over 20 years. These have documented the agency's inaction. This includes our past comments, appeal, objection, petitions, and court case filings. We also incorporate, by reference, our comments on the draft revised Forest Plan for the Nez Perce-Clearwater National Forests (NPCNF). These comments address issues related to motorized use on trails (and over the snow machine use) on wildlife species (aquatic and terrestrial, Roadless areas/RWAs, watersheds, and soils). Rather than repeat those comments and concerns, many of which are applicable in light of the direction in FOC I and FOC II, this comment only contains a few quotes from our past submissions, in order to highlight key points. We also refer you to the comments submitted by Harry Jageman, a PhD wildlife biologist and former Forest Service employee. We incorporate those comments into our comment.

The point is there is a long history of involvement by objectors (particularly FOC) in this issue (nad a history of the agency ignoring its own plan, as evidenced by that history. Before examining the specific points of this objection, a few citations from our DSEIS comments lay out the inadequacy of the FSEIS and DROD. For example:

The description of FOC I in the DSEIS—a lawsuit brought by Friends of the Clearwater, AWR and Sierra Club—fails to note that compliance must be done to meet 100% EHE. The court ruled, “The Forest Service’s reasoning ignores the more current guidelines used for calculating EHE and the Court finds it to be arbitrary and capricious.” The Forest Service failed to comply with its own forest plan.

This brief background is important because undergirding the Forest Service policy on travel planning is delay in compliance with the Forest Plan, Executive Orders, and more specific promises to the public on the Forest. This behavior continued, even in light of FOC I, until FOC II. That history of unreasonable delay is well documented in the project record, our decades of letters and reports, and in the court cases. That delay and/or a history of noncompliance with agency direction predates the travel plan and continues to the present. In addition, this current DSEIS tries to evade the courts' rulings by proposing an amendment to the Forest Plan to remove the 100% EHE requirement rather than minimize the harm being done by motor vehicles. We address this later in our comments. Suffice to say now, the ruling in FOC II clearly rejected this illegitimate approach.

For reasons alluded to in the above paragraph, we use the term EHE to refer to the requirements to protect elk habitat in the Forest Plan. The ruling in FOC II struck down agency attempts, repeated in the DSEIS (see DSEIS pages 3-6 and 3-7), to suggest that the latest science was not applicable to the Forest Plan/Forest Plan ROD requirements for elk habitat protection.

DSEIS comments at 3. Further in a section entitled “Forest Plan Direction Limiting Motorized Use in

Light of FOC I and FOC II” our DSEIS comments stated:

Given the requirement to look at trails on a case-by-case basis in the FOC I and FOC II, as well as follow Forest Plan direction, it is important to also consider other direction in the Forest Plan that limits and restricts motorized use. There are a few key factors the DSEIS fails to adequately consider:

- The emphasis in the Forest Plan on protecting wildlife and their habitat in MAs C1, C6, B2, and A3. Rather than comply with the Forest Plan and FOC I and FOC II, the DSEIS simply comes to the same conclusion as the first and second EISs and RODs, which the courts found deficient. That reflects a pre-determined decision to ignore the direction of the court and to ignore the requirements of NEPA. One concrete example is the Windy Ridge Trail 167, which the project record determined is crucial elk habitat (calving and licks, see Travel Plan DEIS at A-7). That trail is not closed in the proposed action even though that would be the way to minimize conflicts.
- The Forest Plan also has direction to use the ROS in coming up with allocations (see also past comments, appeal, and petition). All DSEIS alternatives fail to meet that Plan Direction, in light of FOC I and FOC II, and rely on post-hoc changes to the ROS to shoehorn into the agency's pre-determined decision.
- Appendix F in the Forest Plan restricts motorized use. In light of FOC I and FOC II, the DSEIS fails to minimize conflicts. See also our past comments, appeal, and petition.)
- The DSEIS recognizes that changes in technology and use have increased impacts from motorized use and increased the amount of motorized use. Yet, the FS proposes no changes to minimize impacts on any trails. Assuming these trends continue, impacts will be greater than the DSEIS anticipates.

DSEIS comments at 5 and 6.

These points have been raised on numerous occasions. Yet, the Forest Service has refused, and as a result, lost in court twice in dealing with issues surrounding elk habitat effectiveness. In this current FSEIS and DROD, the Forest Service violates NEPA, the binding 1993 Lawsuit Settlement Agreement, NFMA and the Forest Plan, the minimization of harm criteria, and the direction of the Courts. We expect the Regional Office will reverse course.

Violations of NEPA

The FSEIS and DROD not only violates the two orders in FOCI and FOCII, but violate NEPA as well. The DSEIS comments addressed this serious problem:

The DSEIS fails to analyze an alternative that complies with the Settlement Agreement and FOC I and FOC II. The so-called No-Action Alternative would only keep the Fish Lake Trail closed to motorized use. It would not close areas that should have been closed to wheeled motorized use as per the Forest Plan many years ago. These include all of the B2 Settlement Agreement Areas, A3, C1, and C6 areas and trails. This violates the Settlement Agreement and the direction in those court cases. At the very least, an alternative that met the existing Forest Plan direction should have been analyzed in this DSEIS in light of those two court cases.

DSEIS comments at 4.

The Purpose and Need section in the in the DROD, page 4, is so narrow that it precludes compliance with the current Forest Plan and violates NEPA. That same page falsely leads a reader to believe the Court expected the Forest Service to amend the plan to open up the Fish Lake Trail as the Court had closed and to amend the Forest Plan to allow motorized use in all 100% elk habitat areas. Similar misleading statements are made in the response to comments (e.g. pages 282 and 283, 285 and 286). That is not what either court ruled.

Further, regarding other alternatives, the FSEIS is factually wrong and misleading when it states:

Some groups and individuals requested the closure (to motorized use) of specific trails and 1 road (Trails 20, 167, 191, 203, 204, 225, 229, 149, 445, 524, 531, 534, 691, 2240 and Road 555) during the Draft SEIS comment period. This request is far beyond the scope of this SEIS, would require additional public process, and would require Forest Plan Amendments because it would be inconsistent with current Forest Plan Standards in different management areas. Motorized use is not prohibited in MA B2. Allowance of motorized use is a Standard for MAs A3, C1, C3, C4, C6, and C8S.

FSEIS at 2-1 and 2-2. While the B2 management area does not require closure to vehicles year-round, the elk habitat standards mandate that trails be closed seasonally—the period of time that travel would be by wheeled vehicles rather than snowmobiles. The Court in FOCII ruled:

In sum, the Forest Plan imposes a 100% EHE standard for the RWAs in the CNF, including MA B2 and the Fish Lake EAA contained therein. The Forest Service must strictly comply with that standard. *See All. for the Wild Rockies*, 907 F.3d at 1110. The Forest Service's decision to allow continued motorized vehicle use of Fish Lake Trail—which at minimum keeps EHE at 90% and prevents EHE from improving to 95%—equates to non-compliance with the Forest Plan. The decision to allow continued motorized use is accordingly arbitrary and capricious.

Thus, the current EHE standards require closure of these areas to motorized use (wheeled use season) to protect elk habitat. The above quoted statement in the FSEIS is not true and the Forest Service knows it is not true. All of those trails mentioned above traverse areas of Settlement Agreement B2 Management Areas¹ as we show in other objection points. It would not require a plan amendment to close those areas to wheeled vehicles because the Forest Plan, as Judge Winmill emphasized, requires that action occur.

The deliberate failure in the FSEIS and DROD to consider closing any trail in 100% EHE to wheeled motorized vehicle use², as the Forest Plan and two court cases require, violates NEPA. No alternative is in compliance with the Forest Plan and no action alternative is analyzed that would comply with the Forest Plan.

Further, the FSEIS failed to have an alternative that took a hard look at closing portions of or all Settlement Agreement B2 areas (see objection points below) to motorized use during other

1 Though most of the trails mentioned are Settlement Agreement B2 areas, they were also in the 1987 Plan within A3, C1, or C6 areas, which also require 100% EHE.

2 The no-action alternative would keep the Fish Lake Trail closed to wheeled motor vehicles, but no others would be closed to meet the 100% EHE requirement.

seasons, closing trails in B2 settlement areas to mechanized use, or closing other areas the Forest Plan designates for closure to motorized vehicles. In the case of the latter, page 25 of the Forest Plan ROD, referring to C8S areas, states, “Although motorized use will be excluded from these areas, I believe in the long run that not only will the timber and big-game resources be managed equally, but a unique setting for recreation will be created.” Alternatives like this could have been explored.

The wolverine is now listed under the Endangered Species Act. As such, the FSEIS needs to be updated and consultation implemented.

The deliberate failure of the Forest Service to comply with FOC I and timely look at 100% EHE and to comply with FOC II suggests the following remedies:

Remedies:

- 1- Keep the 419 trail to closed to motorized wheeled vehicles; close trails 20, 167, 169, 176 (part), 445, 191, 691, 201, 203, 204, 231, 524, 531, 532, 534, 599, 225, 229, 2240, and close route 555 beyond the Weitas Guard Station.
- 2- Close trails 17, 517, 144, and 617 to comply with Forest Plan ROD page 25.
- 3- Close trails 419, 20, 167, 169, 176 (part), 445, 191, 691, 201, 203, 204, 231, 524, 531, 532, 534, 599, 225, 229, 2240, and close route 555 beyond the Weitas Guard Station to mechanized vehicles.
- 4- Drop the proposed Forest Plan amendment.

The Forest Service has Behaved Unethically if Not Illegally in Delaying and Denying Justice

Justice delayed is justice denied. In this case, both have occurred. The DSEIS comments laid out the issue well

FOC especially has been involved in travel planning on the Clearwater National Forest (CNF) over the life of the Forest Plan. Increasingly since 2015, the Forest Service has needlessly delayed and misled the public. This DSEIS demonstrates the agency is thumbing its nose at two federal court orders. These actions not only have failed to comply with the Executive Orders and the lawsuits, termed FOC I and FOC II, it damages the unique character of the backcountry of the Clearwater National Forest and is a huge disservice to the public, the owners of the national forests. Justice delayed is justice denied. We demand, at a minimum, that the Forest Service adhere to its current Forest Plan and comply with the Executive Orders by closing all trails and the 555 route within 100% Elk Habitat effectiveness as per the Forest Plan direction, including the 1993 Lawsuit Settlement agreement areas. A few other trails, located in crucial habitat, should also be closed and are referenced in our past comments and/or in our comments below.

Judge Winmill also ruled on regarding the foot-dragging done by the Forest Service on December 1, 2022, “Further, these violations must be viewed in light of the fact that the Forest Service has still to date failed to comply with the 2015 remand order in *FOC I* based on similar violations in relation to the 2012 ROD. No reasonable justification has been provided for this more than seven-year failure to comply with the *FOC I* remand order.” Indeed, when the order was issued it had been almost eight years since the ruling in FOC I.

It is important that those in the Northern Region's office reviewing this objection understand the history of the unwarranted delay. While it is well documented in the extensive project record for the Clearwater National Forest Travel Plan, including two separate court cases, both won by plaintiffs, a summary here may be important. FOC had a phone call with Supervisor Probert about the travel plan in late 2015. While the phone connection was bad, we learned that the winter use ROD would come first and the FOC lawsuit later. On January 14, 2016 FOC emailed the Clearwater National Forest Plan Team Leader about the timing of the FOC lawsuit and the winter lawsuit that was the focus of FOC II. Further, in the Declaration of Gary Macfarlane of August 30, 2021 (FOC II) on page 8 states, "[d]uring the time the Forest Service issued the draft and then final Record of Decision for the Recommended Wilderness, the Forest Service promised to do a supplemental environmental impact statement (SEIS) to meet the requirements of the lawsuit decision in the *Friends of the Clearwater* case." An email was sent to FOC on September 20, and the notice appeared on October 5, 2016. The above referenced declaration then details how the subsequent unwarranted delay is well-documented in the Schedule of Proposed Actions (SOPAs):

- A. The July-through-September 2017 SOPA lists the expected Notice of Availability (NOA) in the Federal Register for the DEIS as 7/2017, the decision was expected 3/2018, and the implementation would be 4/2018. Exhibit A, page 2; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2017-07.pdf> (last visited August 6, 2021).
- B. <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2018-07.pdf> The October-through-December 2017 SOPA lists the expected NOA for the DEIS as 10/2017, the decision was expected 3/2018, and the implementation would be 4/2018. Exhibit A, page 4; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2017-10.pdf> (last visited August 6, 2021).
- C. The January-through-March 2018 SOPA lists the expected Notice of Availability in the Federal Register for the DEIS as 2/2018, the decision was expected 1/2019, and the implementation would be 1/2019. Exhibit A, page 6; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2018-01.pdf> (last visited August 6, 2021).
- D. The April-through-June 2018 SOPA lists the expected Notice of Availability in the Federal Register for the DEIS as 5/2018, the decision was expected 2/2019, and the implementation would be 2/2019. Exhibit A, page 8; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2018-04.pdf> (last visited August 6, 2021).
- E. The July-through-September 2018 SOPA lists the expected Notice of Availability in the Federal Register for the DEIS as 7/2018, the decision was expected 7/2019, and the implementation would be 7/2019. Exhibit A, page 10; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2018-07.pdf> (last visited August 6, 2021).
- F. The October-through-December 2018 SOPA lists the expected Notice of Availability in the Federal Register for the DEIS as 10/2018, the decision was expected 6/2019, and the implementation would be 7/2019. Exhibit A, page 12;

see also <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2018-10.pdf>. (last visited August 6, 2021).

- G. The January-through-March 2019 SOPA lists the expected Notice of Availability in the Federal Register for the DEIS as 2/2019, the decision was expected 8/2019, and the implementation would be 8/2019. Exhibit A, page 14; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2019-01.pdf>. (last visited August 6, 2021).
- H. The April-through-June 2019 SOPA lists the expected Notice of Availability in the Federal Register for the DEIS as 6/2019, the decision was expected 2/2020, and the implementation would be 2/2020. Exhibit A, page 16; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2019-04.pdf>. (last visited August 6, 2021).
- I. The July-through-September 2019 SOPA lists the expected Notice of Availability in the Federal Register for the DEIS as 6/2019 (already passed!), the decision was expected 2/2020, and the implementation would be 2/2020. Exhibit A, page 18; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2019-07.pdf>. (last visited August 6, 2021).
- J. The October-through-December 2019 SOPA lists the expected Notice of Availability in the Federal Register for the DEIS as 6/2019 (which had already passed by the date the Forest Service released the SOPA!), the decision was expected 2/2020, and the implementation would be 2/2020. Exhibit A, page 20; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2019-10.pdf>. (last visited August 6, 2021).
- K. The January-through-March 2020 SOPA lists the expected Notice of Availability in the Federal Register for the DEIS as 6/2020, the decision was expected 6/2021, and the implementation would be 6/2021. Exhibit A, page 22; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2020-01.pdf>. (last visited August 6, 2021).
- L. The April-through-June 2020 SOPA list the expected Notice of Availability in the Federal Register for the DEIS as 6/2020, the decision was expected 6/2021, and the implementation would be 6/2021. Exhibit A, page 24; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2020-04.pdf>. (last visited August 6, 2021).
- M. The July-through-September 2020 SOPA lists the expected NOA for the DEIS as 6/2020 (a date which, again, had already passed by the time the Forest Service released the SOPA), the decision was expected 6/2021, and the implementation would be 6/2021. Exhibit A, page 26; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2020-07.pdf>. (last visited August 6, 2021).
- N. The October-through-December 2020 SOPA still lists the expected Notice of Availability in the Federal Register for the DEIS as 6/2020 (which again had already passed by the time the Forest Service released the SOPA), the decision

was expected 6/2021, and the implementation would be 6/2021. Exhibit A, page 28; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2020-10.pdf> (last visited August 6, 2021).

- O. The January-through-March 2021 SOPA lists the expected Notice of Availability in the Federal Register for the DEIS as 6/2020 (a date, again, already passed), the decision was expected 6/2021, and the implementation would be 6/2021. Exhibit A, page 30; *see also* <https://www.fs.fed.us/sopa/components/reports/sopa-110117-2021-01.pdf> (last visited August 6, 2021).

It became obvious to me in 2020 that the Forest Service never intended to follow Judge Lodge's order.

Id. at 9 to 11.

In this case, justice is also denied by the draft decision, which is no different than the 2011/2012 Clearwater National Forest Travel Plan in spite of the fact the Forest Service lost two court cases. We also address more specifically the flaws in the agency's draft decision later. Suffice it to say, it shows utter disregard for the rule of law and sound policy that the agency would not change its decision in any way in light of these two lawsuits. It is thumbing its nose at two federal judges.

It is also justice denied in the fact that had the Forest Service done what is right, the Travel Plan would be in effect now and it would remain in effect until a new travel plan were proposed under the soon to be revised Forest Plan.

This failure to close all 100% EHE to wheeled motorized vehicles (which would be a seasonal closure that does not necessarily apply to winter over-the-snow use) is justice denied. The agency has acted in bad faith throughout this process and the proposal is indicative of that illegitimate approach.

Remedy: Keep the 419 trail to closed to summer motorized wheeled vehicles; close trails 17, 20, 517, 167, 169, 176 (part), 445, 191, 691, 201, 203, 204, 231, 524, 531, 532, 534, 599, 225, 229, 2240, 144, and 617; and close route 555 beyond the Weitas Guard Station.

The Forest Service Cannot Unilaterally Amend the Plan to Weaken Protections Elk Protections As per the 1993 Lawsuit Settlement Agreement³

The 1993 Clearwater National Forest Plan Lawsuit Settlement Agreement is binding on the Forest Service until the Forest Plan is revised. The lawsuit settlement agreement states:

The Forest Service agrees, effective immediately, not to approve any timber sale or road construction project decisions within the area covered by the proposed 'Idaho Wilderness,

3 Our DSEIS comments on pages 4 and 5 also noted that the amendment materially affects these areas in other ways:

Connected to the previous two sections in this comment is the fact the proposed amendment would allow the agency to open up more trails to motorized use or other development (see DSEIS at 2-1). The EHE standard does not just apply to travel direction; it applies to any action or decision which may affect elk habitat. As such, weakening them is a significant decision that destroys the management standards that were developed to protect wildlife. The DSEIS fails to admit that the proposed 90% EHE, which is below current EHE for the areas, could result in even more damage. In addition, the agency had already rejected an alternative to weaken (by plan amendment) the Forest Plan standards in the 2011 Travel Plan FEIS. That path, which was never open in 2011--because of the Lawsuit Settlement Agreement--is still not available now.

Sustainable Forest and Communities Act of 1993,' H.R. 1570 and **that such lands will be managed according to Forest Plan standards and guidelines for recommended wilderness (Management Area B2)**. The Forest Service further agrees to apply these management prescriptions to any area(s) added by amendment to H.R. 1570, and to any area(s) included in any other Idaho wilderness proposal introduced in Congress by any member of the Idaho delegation.

Emphasis added. Our DSEIS comments stated:

The Forest Plan Settlement Agreement changed management direction for areas that have appeared in bills sponsored by members of the Idaho congressional delegation. These areas—including most of the Weitas Creek and Upper North Fork roadless areas – are to be managed as B2 or recommended wilderness.⁴ The Lawsuit Settlement Agreement is a legally binding commitment by the agency until the Forest Plan is revised. The agency cannot unilaterally amend that agreement by weakening or removing the standards in the B2 areas. If so, the agency could propose any amendment such as allowing for so-called restoration logging or other development incompatible with preservation of an area as B2 (Recommended Wilderness). Thus, the DSEIS proposes to illegally remove that portion of the Settlement Agreement.

DSEIS comments at 3 and 4, footnotes included. Put another way, the lawsuit settlement agreement effectively prohibits the Forest Service from altering the management requirements for the B2 settlement areas, which overlap **all** of the 1987 B2 areas, **all** of the C1 and C6 areas, **some** of the C8S areas, and **some** C3, C4, and E1 (Selway-Bitterroot Addition South of Beaver Creek).⁵ Also, the Court in FOC II ruled against the Forest Service on its allegation that the EHE doesn't matter and can be explained away. Thus, the DROD and FSEIS propose to illegally remove that portion of the Settlement Agreement.

The DSEIS comments also bring out that the Forest Service, in recent years, has tried to shrink the agreed to B2 settlement agreement areas:

The other problem is the FS refuses to acknowledge all the B2 settlement agreement areas. We have provided you with a map, from your own BHROWS document and other sources, that shows the lawsuit settlement agreement areas. They correspond roughly with the about 80% of the Weitas Roadless Area (Bighorn-Weitas, including but not limited to the 555 route beyond the bridge at the Guard Station, includes some C8S and inclusion of wildlife winter range now managed as B2 as per the Settlement Agreement), most of the Fish and Hungery Creek Roadless Area (North Lochsa Slope, also includes some C8S and inclusion of wildlife winter range now managed as B2 as per the Settlement Agreement), most of the Mallard-Larkins Roadless Area, most of the Upper North Fork Roadless Area (Meadow Creek-Upper North Fork), most of the Great Burn Roadless Area (AKA Kelly Creek or Hoodoo), and an expanded area north of Elk Summit, including Colt Killed Creek. This issue can be summed up as follows. In light of

4 In our earlier comments on the DEIS we stated, "Clearly, C-1, C-6, C8S, B2, and A3 management areas must be closed to wheeled vehicles to meet the forest plan ROD Elk Habitat Effectiveness (EHE) standards and meet other Forest Plan wildlife protections objectives." Also regarding MA C8S, our earlier comments, appeal, and petition point out the Forest Plan ROD and Forest Plan direction is for non-motorized recreation use.

5 The Forest Service engages in duplicity when it looks at areas for wilderness recommendation the forest planning process versus the travel planning process (or other proposals, see attached). It claims in the forest planning process that motorized use precludes an area from potential wilderness consideration, then argues in a the travel planning process that motorized use, even in areas recommended by the Forest Service for wilderness, is fully compatible with RWAs. There is no better example of this duplicity than Fish Lake, which is not recommended for Wilderness in the final draft of the Forest Plan.

FOC I and FOC II and the Settlement Agreement, the DSEIS fails to recognize that the Settlement Agreement expanded the B2 (recommended wilderness). This is a major flaw.

It should also be noted that the record shows those settlement agreement areas described above are recognized by the Forest Service. The image below is taken from the Forest Services BHROWS document and included in the Travel Plan project record, submitted by Friends of the Clearwater at several stages of this process. The front page and the map are attached to this objection.

For whatever reasons, the Forest Service conveniently forgets the 1993 Settlement Agreement Areas when discussing areas managed as B2 Wilderness. Perhaps the Regional Office can right this wrong.

Lastly, the agency has dragged its feet on complying with FOCI. The agency had plenty of time to amend the Forest Plan during the travel planning process that culminated in the 2011/2012 Travel Plan, but rejected that option. It also had time to do so after FOCI. The only reason it is doing it now is to evade compliance with Court orders. That ship has sailed and the agency missed the opportunity.

It is a waste of taxpayer dollars to amend the plan at this point in time, on the eve of a revised Forest Plan.

Remedies:

- 1- Close the trails in Settlement Agreement B2 areas – keep the 419 trail closed to summer motorized wheeled vehicles; close trails 20, 167, 169, 191, 691, 231, 524, 531, 532, 534, 599, 225, 229, 2240; and close route 555 beyond the Weitas Guard Station to summer motorized use.
- 2- Drop the Forest Plan amendment.

The Failure of the ROD and FSEIS to Recognize the 1993 Lawsuit Settlement Agreement Resulted in a Failure to Consider Mechanized Use

The DSEIS comments state:

Thus the history and background in the DSEIS of what the FS has done in the original travel plan and 2017 decision is misleading (see DSEIS pages 3-4 and 3-5). It suggests all these trails and cross country travel were closed to use (summer and also winter) by an enlightened policy. The fact is, the number of places closed, especially in winter, pales in comparison to the areas open. Further, the DSEIS only looks at the 1987 B2 (recommended wilderness) on the referenced pages, rather than the B2 management area **as per the Settlement Agreement.**

Emphasis added. This notable failure of the FSEIS and DROD and the Travel Plan The 1993 Clearwater National Forest Plan Lawsuit Settlement Agreement is binding on the Forest Service until the Forest Plan is revised. The lawsuit settlement agreement states:

The Forest Service agrees, effective immediately, not to approve any timber sale or road construction project decisions within the area covered by the proposed 'Idaho Wilderness, Sustainable Forest and Communities Act of 1993,' H.R. 1570 and **that such lands will be managed according to Forest Plan standards and guidelines for recommended**

wilderness (Management Area B2). The Forest Service further agrees to apply these management prescriptions to any area(s) added by amendment to H.R. 1570, and to any area(s) included in any other Idaho wilderness proposal introduced in Congress by any member of the Idaho delegation.

Emphasis added.

The Forest Service looked at impacts to wilderness in B2 areas in the 2011/2012 Travel Plan ROD and the 2017 SEIS and ROD for the 1987 B2 Management Areas and closed trails to mechanized use. It failed to even consider that option for the Settlement Agreement B2 areas.

Remedy: Close trails 419, 20, 167, 169, 191, 691, 231, 524, 531, 532, 534, 599, 225, 229, 2240; and route 555 beyond the Weitas Guard Station to mechanized use.

Failure to Do an Adequate Route by Route Determination

Our DSEIS comments dealt with specific trails:

- Trail 1 is entirely within the Selway-Bitterroot Wilderness. Since it is statutorily protected against motorized and mechanized use, its inclusion in the DSEIS is rather odd. Other trails also fail into this category.
- Trail 20, see our discussion above. Also, this trail bisects elk calving ground in its upper reaches (FEIS A-7) where ATVs are permitted in the Travel Plan, and it crosses wolverine, lynx, and fisher habitat.
- Trail 117 accesses B2 Management Area as per the Settlement Agreement.⁶
- Trail 167 see comment above. Also within B2 Management Area as per the Settlement Agreement.
- Trail 169 is partially within A3, which is 100% EHE. Earlier comments addressed the fact the ROS SPM could be closed seasonally, as per the Forest Plan direction.⁷ It doesn't affect the fact the area would see motorized use outside of the critical seasons for elk. Thus, the analysis in the DEIS is flawed to suggest closure in some seasons conflicts with the FP goal.
- Trails 176 and 445 Trail 176 is partially and 445 wholly within A3. DSEIS Appendix A erroneously states that closing these to wheeled vehicles, as per the EHE requirement, would turn the area into a non-motorized area. The area would be open to motorized use in winter, to wheeled vehicles in lower elevations and snowmobiles in upper elevations. See also Trail 169 above.
- Trail 191 and 691 are wholly within B2 Settlement Agreement area. Damage has been documented on the 191 trail. These trails are in wolverine habitat.

⁶ Motorized and non-motorized trails in the backcountry that intersect make enforcement difficult. This issue is addressed in detail in previous comments and reflects the failure to minimize impacts.

⁷ Similarly, an area under the ROS is classified as SPM, even if seasonally closed as per 100% EHE.

- Trail 201 is partially within the Settlement Agreement B2 area.
- Trails 203, 204, and 231 are within A3, which is 100% EHE. See also trail 169. The trails cross critical elk habitat.
- Trails 524, 531, 532, and 534 are within the B2 Settlement Agreement Area. Trail 532 becomes non-motorized so enforcement is difficult. These trails either insect with, or provide access to non-motorized trails. This is a problem shared with Trails 191/691, 167, and 20.
- Trails 225, 229, and 2240 all within B2 Settlement Agreement areas. DSEIS Appendices alleges they are outside the scope of this DSEIS, yet they are part of FOC I and FOC II. Their omission is a serious flaw. Further, the junction of Trails 229 and 2240 would entail fording critical steelhead habitat across Fish Creek. There is no established ford.
- Trails 144 and 617 traverse C8S which the Forest Plan emphasizes non-motorized recreation use. This issue has been raised in past comments in detail. These trails also include critical elk habitat. Monitoring provided to the Forest Service shows damage from motorized use. These trails should be closed based on minimizing impact to other resources.

DSEIS comments at pages 12 to 14, footnotes included though numbered differently.

What is unbelievable is the draft decision by the Forest Service is no different than the 2011/2012 Travel Plan. Not only does this reflect a predetermined decision that violates NEPA, it shows that the Forest Service did not comply with criteria for minimizing impacts from motorized trail use. Our comments, reflecting Forest Service information in the travel planning process (DSEIS comments page 5), and noting serious compliance problems (DSEIS comments 7 to 12) all indicate increasing impacts. Add that to the direction in the Forest Plan to protect wildlife in certain key areas (A3, B2, C8S, C1, C6, and settlement agreement B2) show that minimization has not occurred.

Harry Jageman's comments (incorporated into our DSEIS comments) expand on these points:

The Clearwater Forest Plan has several management areas that were expected to be managed at high levels of elk habitat effectiveness (near optimum) largely due to their unroaded character. Minimal open road and trail density is the largest factor in predicting elk habitat effectiveness according to Interagency Guidelines for Managing Elk Habitats and Populations (Servheen et al. 1997) and it was expected that motorized use would be kept to a minimum in these areas. ...

The Forest Service has argued that the 100% elk effectiveness goal is unobtainable because forage and cover conditions generally are never at ideal conditions and existing roads on the perimeter of these management areas preclude the achievement of 100% effectiveness. They then suggest that the elk effectiveness numbers should be lowered to 90%, but fail to mention that this reduction would allow motorized use on several trails that are currently located within these management areas. ...

The Forest Service then rationalizes the impacts from motorized travel on trails

and suggests that it makes little difference to the overall habitat conditions for elk, fish and other wildlife species. They fail to recognize that cover and forage conditions can be modified positively with prescribed burning and other measures, but motorized travel always has a negative impact on elk habitat. All peripheral roads were already in place and open to motorized use when the Forest Plan was signed in 1987 and these main access routes were never the target of the 100% goal which was centered more on the existing unroaded character within these management areas.

His comments also refer to goals in the various management areas and the goals to provide for optimum habitat. Rather than meeting those goals and standards, the Forest Service proposes to weaken those standards through a Forest Plan amendment. By definition, that is not minimizing impacts to other resources and fails to comply with the Executive Orders, case law, and the travel management rules.

Remedy: Keep trail 419 closed and close trails/routes as mentioned herein to summer (wheeled) motorized use.

Deceiving the Public

The Forest Service has mischaracterized the Fish Lake Trail. A January 24, 2024 report in the Lewiston Morning Tribune states:

“This is an amendment that ... reconsiders new scientific information around elk habitat,” Skowlund said Tuesday.

“The metric that was used for those areas surrounding Fish Lake and the trail itself was supposed to provide everything that elk need to be happy in their environment. 100% is not real in a natural dynamic, but that original analysis did not take into account the original context of that environment.”

Skowlund said years ago the Fish Lake Trail was a primitive-type Jeep road in the 1950s and 1960s and those elements of human disturbance mean that the pristine conditions for elk habitat effectiveness cannot ever reach 100%.

https://www.lmtribune.com/northwest/new-plan-allows-motorized-vehicles-at-fish-lake-trail/article_741c2b30-95a3-5a2c-9c67-f9b2b8d820a8.html None of the above is accurate. The only new scientific information about elk habitat in context of the Forest Plan is the Servheen et al., which the Forest Service was required to use by Judge Winmill and was also recognized as the best available science by Judge Lodge. There is no new science that suggests that motor vehicles don't harm elk security. As Harry Jageman, a PhD wildlife biologist wrote in his comments, the agency “fail[s] to recognize that ... motorized travel always has a negative impact on elk habitat.”

Regarding the second paragraph above, it is misleading. Judge Winmill wrote, “The Forest Service’s decision to allow continued motorized vehicle use of Fish Lake Trail—which at minimum keeps EHE at 90% and prevents EHE from improving to 95%—equates to non-compliance with the Forest Plan. The decision to allow continued motorized use is accordingly arbitrary and capricious.” He obviously knew full well that 100% may not be achievable, but the agency was bound to protect the habitat the best it can.

The last paragraph is not true and the District Ranger knows it.⁸ Our DSEIS comments stated, “We also wish to address misleading statement by the Forest Service about the Fish Lake Trail. The North Fork District Ranger claimed the trail was a former road. Our review of agency visitor maps show it has always been a trail.” (Footnote in original omitted). The Fish Lake Trail, at best, was a fire fighting dozer line to the private land in section 9. In any case, the 1987 B2 management area (the B2 Settlement Agreement Area too) has always been unroaded as the attached Forest Service maps and the 1960 topo map attest.

According to the Forest Plan FEIS on page C-35, the only impacts to natural integrity to the Fish Lake area are from [c]oncentrated use around some of the larger, more popular lakes, such as Fish Lake and Heart Lake, and overuse on several of the main trails” and not from Jeep roads.

Further, the idea that a recommended wilderness has to be pristine is faulty. The word does not appear anywhere in the Wilderness Act. The trope that the area can never reach 100% elk habitat effectiveness is also inaccurate as the 419 is a trail. Even if it were a road, Judge Winmill recognized that is not an excuse to further degrade the area.

Remedy: The Forest Service issues a public press release correcting the factual the errors in the District Ranger's statement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary Macfarlane". The signature is fluid and cursive, with the first name "Gary" being more prominent than the last name "Macfarlane".

Gary Macfarlane
Board Member
Friends of the Clearwater

⁸ The attached letters were sent to the District Ranger pointing out this error before the DSEIS.