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Comments: Please accept the attached comments (Nez Perce-Clearwater\_DEIS\_MWA\_Comments\_April2020.pdf) submitted on behalf of Montana Wilderness Association and its members.

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

If you have any difficulties with the attached files please do not hesitate to contact me.

#### ATTACHMENT BELOW

Montana Wilderness Association

April 17, 2020

USDA Forest Service

Nez Perce-Clearwater National Forest

Attn. Zach Peterson, forest planner and Cheryl Probert, forest supervisor

909 3rd Street

Kamiah, Idaho 83536

Submitted via Nez Perce-Clearwater NF Cara webform, as well as email to [zachary.peterson@usda.gov](mailto:zachary.peterson@usda.gov)

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

#### I. ORGANIZATIONAL BACKGROUND

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

MWA has participated in this forest planning process since it began in 2012. Our members have a vested interest in the adjacent wildlands of the Nez Perce-Clearwater National Forest in Idaho. We travel over the border to visit

the Nez Perce-Clearwater to spend time with our loved ones; pass down skills and knowledge to the next generation; harvest game through fair chase backcountry hunting and fishing; and find solace, recreation, refuge, and spiritual connection. Our membership in Mineral, Missoula, and Ravalli Counties consider the Nez Perce-Clearwater as much a part of our wildland backyards as the Lolo and Bitterroot National Forests, and the wild character of roadless areas and designated Wilderness on the Nez Perce-Clearwater attract our members from more distant counties, as well as Americans from all over the country.

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

## SUMMARY OF ORGANIZATIONAL COMMENTS

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

Manage all 151,874 acres of the Hoodoo Roadless Area as recommended wilderness, recognizing the area's outstanding wilderness characteristics (consistent with Alternative W).  
Prohibit all non-confirming uses across these 151,874 acres other than administrative use of chainsaws by USFS and partners, maximally protecting wilderness characteristics, as well as wildlife habitat for sensitive species that include, but are not limited to, wolverine and mountain goats (consistent with Alternative W).  
Continue to allow motorized access for 4.1 miles of the Fish Lake trail (consistent with Alternative Z).  
Manage the Hoodoo Roadless Area as unsuitable for timber production and harvest, including unsuitability for both permanent and temporary road construction.

Manage the following river segments as suitable for Wild and Scenic River designation:

Kelly Creek (26.2 miles)

North Fork Kelly Creek (5.9 miles)

Middle Fork Kelly Creek (4.9 miles)

South Fork Kelly Creek (6.2 miles)

Cayuse Creek (35.9 miles)

Continue to manage Rhodes Peak for recommendation as a Research Natural Area (consistent with all Alternatives).

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

### a. Proposed Designated Special Areas

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

### b. Designated Wilderness

MWA supports and would like to contribute to planning and implementing [Idquo]a wilderness symposium for all agency personnel, non-government organizations, academia and private citizens on the wilderness areas managed by the Nez Perce-Clearwater and adjoining national forests[rldquo] (DEIS A4-73). We further encourage this symposium to address management of recommended, as well as, designated wilderness.

### c. Management of Mallard-Larkins Roadless Area

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

## III. COMMENTS

Montana Wilderness Association's comments cover these topics:

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

#### 1. Range of alternatives

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

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

#### 2. Management of Recommended Wilderness

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

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

Public land managers are responsible for managing recommended wilderness areas (RWAs) to preserve wilderness character and their potential for future inclusion into the National Wilderness Preservation System (NWPS). Motorized and mechanized transport can diminish an area's [ldquo]primeval character[rddquo], its [ldquo]outstanding opportunities for solitude or a primitive and confined type of recreation[rddquo], as well as its ecological values, and it is essential that the DEIS adequately address and analyze these potential diminishments. Visitors to wilderness, whether designated or recommended, expect to find high levels of naturalness, solitude, and access to remote experiences via primitive recreation. Uses that do not conform to the intent and purpose of wilderness affect this experience. The diminishment of social and ecological characteristics can lead future decision makers to reduce, or even eliminate, RWAs in future planning processes: this loss of potential future wilderness character by allowing non-conforming uses must be addressed in the DEIS. For this

reason, we urge the Planning Team to select an alternative, or combination of alternatives that prohibit mechanized transport, motorized use, and other non-conforming uses in RWAs, so as to properly protect these lands, maintain their potential for designation to the NWPS, and minimize future difficulties inherent in no longer allowing non-conforming uses if these areas were to become designated Wilderness.

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

The Wilderness Act defines Wilderness by its unique qualities, including solitude and primitive recreation, and by defining activities that detract from the characteristics . Section 4 of The Wilderness Act (16 USC 1131 [sect]2(c)).prohibits roads, motorized uses, and mechanized transport to protect wilderness characteristics, stating:

#### PROHIBITION OF CERTAIN USES

(c) [ldquo]...there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.[rdquo] (16 USC 1131 [sect]4(c))

Congress reserves the right to make final decisions regarding Wilderness designations. In the intervening time before Congress acts, it is the managing agency[rsquo]s responsibility to [ldquo]preserve [the] wilderness attributes until such time as Congress makes the decision regarding wilderness designation...[rdquo] (3 Bitterroot NF Travel Management Planning, Final Record of Decision (2016), p 25-27.)

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

[ldquo]I have included plan components to protect and maintain the ecological and social characteristics that provide the basis for each area[rsquo]s suitability for wilderness recommendation. One of these plan components indicates mechanized transport and motorized use are not suitable (MA1b-SUIT-06) in recommended wilderness areas. I have included this plan component in my final decision because I believe it is necessary to protect and maintain the ecological and social characteristics that provide the basis for their wilderness recommendation (described in Appendix G of the land management plan). Although a number of commenters and objectors expressed concern that the management of recommended wilderness creates [ldquo]de facto wilderness[rdquo] in lieu of action by Congress, the land management plan does not create wilderness. The Forest Service has an affirmative obligation to manage recommended wilderness areas for the social and ecological characteristics that provide the basis for their recommendation until Congress acts. The land management plan does not allow for continued uses that would affect the wilderness characteristics of these areas and possibly jeopardize their designation as wilderness in the future.[rdquo] (4 Flathead National Forest, Forest Plan Record of Decision (2018), p. 26.)

It is important to manage RWAs [ldquo]in a manner consistent with the Forest[rsquo]s recommendation [for wilderness].[rdquo] Managing RWAs in a way that can negatively affect their ultimate inclusion into (5 Bitterroot Travel Management, Final Record of Decision (2016), p. 25-27)the NWPS, as Alternative Z would, is out-of-step with: 1) USFS 2012 Planning Rule, 2) 2015 Forest Service Manual, 3) Forest Service Handbook, and 4) Region 1 Guidance.

#### 2012 Planning Rule

The 2012 planning rule provides important regulatory guidance for the management of RWAs, (63 CFR 219.10(b)(1)(iv)) as well as plan components like suitability and standards that create the framework to carry out

that RWA guidance. The 2012 Rule states:

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

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

[Idquo]Additionally, allowing uses that do not conform to wilderness character creates a constituency that will have a strong propensity to oppose recommendation and any subsequent designation legislation . Management actions that create this operating environment will complicate the decision process for Forest Service managers and members of Congress. It is important that when the wilderness recommendations are made to Congress that they be unencumbered with issues that are exclusive to the wilderness allocation decision.[rdquo] (7 Bitterroot Travel Management, Final Record of Decision, p 25-27. The Federal District Court in Missoula upheld the 2016 this Record of Decision, including restrictions on mechanized use)

Supervisor King[rsquo]s decision follows Forest Service direction clearly and further adheres to the 2015 Forest Service Manual which states, [Idquo]Any area recommended for wilderness or wilderness study designation is not available for any use or activity that may reduce the wilderness potential of an area.[rdquo] It is not appropriate to manage RWAs for anything other than their (8 FSM 1923.03(3)) wilderness character. Activities such as winter motorized use and mountain biking impair both the social and ecological characteristics of wilderness and cannot be permitted in RWAs.

Allowing uses that do not conform to wilderness character, particularly winter motorized use, has complicated management of the Nez Perce-Clearwater[rsquo]s Hoodoo Roadless Area significantly over the last two decades, and allowed for creation of a [Idquo]constituency[rdquo] similar to that described by Julie King[rsquo]s Travel Management Plan ROD. With the completion of the Clearwater Travel Plan in 2012, winter motorized use in the Hoodoo Roadless Area was no longer allowed. Illegal winter motorized trespass since this 2012 decision, however, has been a recurring issue that has been documented by Idaho Fish and Game , Great Burn Conservation (9 Nez Perce-Clearwater National Forest, DEIS, personal communication with Clay Hickey, July 2017, p 3.2.3.4-31) Alliance (formerly the Great Burn Study Group), and others. I personally was passed by three snowmobilers near Granite Peak in the Crooked Fork drainage of the Hoodoo Roadless Area in March 2019, and the presence of old snowmobile and snow bike tracks in the area through which I traveled during that trip indicated that illegal trespass had frequently occurred throughout the month prior. Alternative Z[rsquo]s allowance of non-conforming uses would continue to create this [Idquo]constituency[rdquo], further increasing tensions between user groups, necessitating law enforcement efforts to ensure trespass does not occur on the Lolo National Forest side of the Hoodoo Roadless area, and encumbering the Service with user issues if Congress were to designate this area as Wilderness.

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

Forest plans revised under the 2012 Rule are required to include desired conditions (DCs), and for the suitability requirements to uphold the DCs. Concerning suitability, the rule states that (10 CFR 36 [sect] 219.7 (e)(1).)[Idquo]specific lands within a plan area will be identified as suitable for various multiple uses or activities based on the desired conditions applicable to those lands .[rdquo] (emphasis added) (11 CFR 36 [sect] 219.7 (e)(1)(v))

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

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

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

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

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

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

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

#### 2015 Forest Service Manual

The 2015 Forest Service Manual planning directives address the management of RWAs. (12 FSM 1923.03(3).)

Those directives state:

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

It is important to note that this Manual direction replaced the previous 1923.03 direction, which stated that: [Idquo]Any inventoried roadless area recommended for wilderness or designated wilderness study is not available for any use or activity that may reduce the wilderness potential of the area. Activities currently permitted may continue pending designation, if the activities do not compromise the wilderness values of the area.[rdquo]

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

#### Forest Service Handbook

The Forest Service Handbook states:

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

may include one or more plan components for an RWA that:

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

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

#### Region 1 Guidance

Region 1 Guidance states:

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

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

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