

Data Submitted (UTC 11): 4/20/2020 7:00:00 AM

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Organization:

Title:

Comments: American Rivers comments on DEIS and Draft Revised Forest Plan:

Dear Zach and the Nez Perce-Clearwater NF Planning Team:

Please find attached American Rivers' written comments on the Nez Perce-Clearwater National Forests' Draft Revised Forest Plan and DEIS.

I would appreciate an email confirming receipt of our comments.

Thank you,

Scott

Scott Bosse

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ATTACHMENT BELOW

Dear Mr. Peterson: American Rivers appreciates the opportunity to submit the following comments on the Draft Revised Forest Plan and Draft Environmental Impact Statement (DEIS) for the Nez Perce-Clearwater National Forests (the Forest). Founded in 1973, American Rivers is the leading conservation organization working to protect and restore the nation's rivers and streams. Our mission is to protect wild rivers, restore damaged rivers and conserve clean water for people and nature. Currently we have more than 355,000 members, supporters and volunteers throughout all 50 states, thousands of whom live, work and play on or along the rivers and streams that flow through the Nez Perce-Clearwater National Forests. As a result of the Forest's Wild and Scenic River Suitability Report (Appendix F in the DEIS), which serves as the foundational document for the

management alternatives that were evaluated in draft revised Forest Plan, at least 55% and as many as 100% of the Wild and Scenic eligible streams on the Forest are in danger of losing vital protections. American Rivers requests that the Forest address the following shortcomings in the DEIS and draft revised Forest Plan in order to protect all 89 of its Wild and Scenic eligible streams, comply with the Wild and Scenic Rivers Act (WSRA), and adhere to the 2012 Forest Planning Rule. The Nez Perce-Clearwater NF's Streams are Regionally and Nationally Significant. With 1.1 million acres of federally designated wilderness and five Wild and Scenic designated rivers, the Nez Perce-Clearwater National Forest (NF) is home to some of our nation's most cherished and ecologically intact public lands and waters. Pristine tributaries to the Clearwater, Lochsa, Salmon, Selway and Snake rivers feed the forests that support the local timber industry, while simultaneously providing world-class recreation opportunities and hundreds of jobs for local river guides and outfitters. Stewarded for thousands of years by indigenous peoples, these streams are steeped in rich cultural history and are home to a number of cultural sites, including one of three places indicated in Nimiipuu oral history as a place-of-origin for the Nez Perce Tribe. The majority of streams on the Forest are designated critical habitat for one or more fish species listed under the Endangered Species Act (e.g., Snake River spring/summer Chinook salmon, Snake River steelhead, bull trout), and many of them are projected to provide coldwater refugia for westslope cutthroat trout and bull trout as the climate warms.¹ The lands adjacent to these waterways also support healthy populations of elk, moose, rare carnivores such as Canada lynx and fisher, and over a half-dozen endemic snail species. In sum, these waters truly are the lifeblood of the Forest and surrounding communities. They deserve and need to be protected.

¹ Climate Shield data, USFS Rocky Mountain Research Station, Boise, ID. All Streams Found Eligible or Suitable for Wild and Scenic designation Warrant Protection. In accordance with Section 5(d)(1) of the Wild and Scenic Rivers Act (PL 90-542, 1968) and the USFS 2012 Planning Rule (36 CFR Part 219), the Nez Perce-Clearwater NF inventoried all of the named streams on the Forest, including 29 streams that were found to be eligible through the 1987 Nez Perce and Clearwater forest plan revision processes and additions from the 1990 Clearwater NF amendment. The Forest then assessed their eligibility for inclusion in the National Wild and Scenic Rivers System (NWSRS) as part of the forest plan revision process. Through this process, 89 streams were found to be free-flowing and possess one or more outstandingly remarkable values (ORVs), making them eligible for inclusion in the NWSRS and granting them protections to safeguard these characteristics. American Rivers commends the Forest for its exceptionally good work on this Wild and Scenic eligibility report. We believe each and every one of these stream segments deserves protection.

Suitability Determinations Have No Legal Basis in Forest Planning Most of our comments stem from the Forest's unfortunate decision to conduct a Wild and Scenic River Suitability Report and the resulting impact to Wild and Scenic eligible rivers in the draft revised Forest Plan. While the U.S. Forest Service (USFS) is legally required to study rivers as part of the planning process under Section 5(d)(1) of the WSRA, and mandated to conduct a comprehensive inventory and evaluation of rivers for eligibility during the forest plan revision process in accordance with the 2012 Planning Rule (36 CFR Part 219), the planning rule text contains no mention of suitability. The USFS mandate during forest planning is to "identify 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" (2020 Forest Planning Rule, 219.7(c)(vi)). The 2012 Planning Rule further clarifies that plans must protect eligible rivers until their suitability is determined at some later date, if ever: "The plan components for a new plan or plan revisions must provide for: (v) Protection of wild and scenic rivers as well as the protection of those rivers eligible for inclusion in the National Wild and Scenic River System to protect the values for which they might be included in the system until their suitability is determined" (2012 Forest Planning Rule [sect] 219.10(b)(v)). If and when the USFS does direct that a suitability analysis be conducted, it should be for the express purpose of providing, as stated in the Forest Service Handbook (FSH 1909.12, Chapter 80 [sect] 83.2), "the basis for determining which eligible rivers or river segments should be recommended to Congress as potential additions to the National System." The 2012 Planning Rule does not allow for or direct the USFS to make suitability determinations as a part of the planning process. As noted above, suitability determinations are a policy derived from the WSRA, which allows and envisions suitability determinations to be conducted only on Congressionally-mandated "study rivers" not on eligible streams. Suitability does not apply to planning, and any attempt to strip eligible streams of protections during planning would be illegal, regardless of the label

applied to it. American Rivers submitted a letter to the Forest's Interdisciplinary Team on September 15, 2017 in which we shared our concerns regarding the legality of undertaking a suitability study during the forest planning process as a potential means to strip protections from streams deemed eligible for designation. In our letter, we requested that the Forest omit or defer suitability determinations during its forest plan revision. The Forest did not heed our request and proceeded to conduct a suitability analysis of its Wild and Scenic eligible streams, setting itself apart as the only national forest in USFS Region 1 to do so. In July 2018, the Forest issued a draft Wild and Scenic River Suitability Report, followed by a final report in December 2019. The final report found only 40 of the Forest's 89 eligible streams to be suitable for designation, meaning that at least 55% of the Forest's eligible streams, totaling 267 stream miles, would lose protections even under the most protective alternative (Alternative Z) evaluated in the DEIS. In the interest of gaining more insight into the Forest's decision to conduct a suitability analysis, American Rivers and American Whitewater submitted a request under the Freedom of Information Act (FOIA) for access to all documents pertaining to Wild and Scenic River suitability on the Nez Perce-Clearwater NF from January 1, 2012, to the date of the request (January 21, 2020). Included in the set of documents we received was a letter addressed to Forest Supervisor Cheryl Probert from the Board of Idaho County Commissioners, dated July 25, 2017. In this letter, Idaho County Commissioners outlined concerns with the large number of Wild and Scenic eligible streams on the Forest, stating: "[e]ligible river segments may be more restrictive than rivers actually designated as Wild and Scenic." While the Board of Idaho County Commissioners provided no evidence to support this erroneous claim, the letter concludes with a request that the Forest complete a suitability evaluation for the purpose of eliminating most of its Wild and Scenic eligible streams, "thus eliminating unnecessary and burdensome regulations on the land." To claim that protections afforded to eligible streams are "[u]nnecessary and burdensome regulations" not only disregards the outstanding values for which these streams have been found eligible, but also undermines the fundamental purpose and statutory scheme of the WWSRA, which is to preserve our nation's rivers, not to strip them of vital protections. As detailed once again in comments submitted to the Forest on behalf of American Rivers, American Whitewater, Idaho Rivers United, and Outdoor Alliance on October 18, 2018, making suitability determinations as part of the forest planning process with the intent to strip rivers of their eligible status, remove protections, and preclude their potential incorporation into the NWSRS undermines the fundamental purpose of the WWSRA, which is to, "[p]reserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes." (16 U.S.C. [sect] 1271). In short, the process of determining suitability for Wild and Scenic eligible streams is intended to be a step towards adding potential rivers to the NWSRS, not stripping them of existing protections.

Request #1: American Rivers requests that the Nez Perce-Clearwater National Forests protect all 89 Wild and Scenic eligible streams for the life of the new Forest Plan, regardless of suitability determinations. The Forest Provided Insufficient and Erroneous Rationale for Finding Streams Unsuitable While the original WWSRA did not address suitability as part of the analysis process, Congress amended the Act twice, once in 1974 (Pub. L. No. 93-279 [sect] 4(a), 88 Stat. 122 (1974)) and once in 1988 (Pub. L. No. 100-557, 102 Stat. 2790 (1988)), to include provisions for making suitability determinations. These amendments outline the purpose for and circumstances under which a suitability analysis should be conducted, as well as five questions and 13 criteria which address an array of circumstances surrounding each eligible river segment in question. To conduct a comprehensive analysis and make well-informed decisions in determining suitability, it is imperative that each of these questions and criteria be addressed in detail. If a conflict exists among the reasons identified in these criteria for finding a river segment suitable or unsuitable, the comparison of conflicting reasons and resulting decision-making process should be clearly demonstrated within the report. While we believe the Forest addressed these five questions and 13 criteria in its final Wild and Scenic Suitability Report, it did not provide clear and legitimate rationale for its decision to strip protections for 49 of the 89 streams that had previously been found eligible for designation. A detailed suitability report, as stated in the Forest Service Handbook (FSH 1909.12, Chapter 80, 83.3), "[s]hould clearly demonstrate the reasons for or against recommending an individual river or river segment to Congress." In reviewing each of its 89 eligible stream segments, the Forest clearly demonstrates a multitude of reasons for recommending each segment as an addition to the NWSRS. These reasons include but are not limited to:

1. Protecting and enhancing critical habitat for:

- ESA-listed fish species including bull trout,

Snake River spring/summer Chinook, and Snake River steelhead-Sensitive species including westslope cutthroat trout and Pacific lamprey-Selway haplotype of the Coeur d'Alene Salamander (an endemic salamander species)-More than a half dozen endemic snail species-Western pearlshell mussels (a native river-dependent species)-Harlequin ducks (considered rare in the area)-Mountain quail, flammulated owl, woodpecker, and white-headed woodpecker-Rare carnivores such as fisher and lynx-Elk and moose².

Protecting stream reaches that climate models show will continue to provide coldwater refugia for westslope cutthroat trout and/or bull trout through the year 2040³.

Protecting important cultural sites, including:

- [middot] One of the oldest archeological sites on the southern Columbia Plateau (North Fork Clearwater River)
- [middot] One of three places indicated in Nimiipuu oral history as a place-of-origin for the Nez Perce Tribe (Bear Creek)
- [middot] Sew'issnime, an important traditional camp/gathering place for the Nez Perce Tribe (Musselshell Creek)
- [middot] An assemblage of archeological sites indicating an outstanding level of prehistoric land use (for a 5th order stream) not found elsewhere (Meadow Creek)
- [middot] Fisheries important to the Nez Perce Tribe (Meadow Creek, Red River, South Fork Clearwater River, and Slate Creek)
- [middot] Areas of cultural and historic importance to the Nez Perce Tribe (North Fork Clearwater River, Weitas Creek, Kelly Creek, Little North Fork Clearwater River, Clear Creek, South Fork Clear Creek, Lolo Creek, Musselshell Creek, Upper Lochsa River, Crooked Fork Creek, Brushy Fork Creek, Hopeful Creek, Meadow Creek, Running Creek, Meadow Creek (South Fork Clearwater River), Red River, Silver Creek, South Fork Clearwater River, Allison Creek, North Fork White Bird Creek, South Fork White Bird Creek, and Slate Creek)
- [middot] The rich Forest Service administrative history of the Moose Creek Ranger Station (a nationally recognized working historic ranger station), Three Forks Ranger Station, and the Moose Creek Ranches (known for its embodiment of early outdoor recreation) (Moose Creek, East Fork Moose Creek, North Fork Moose Creek)
- [middot] An outstanding collection of mining sites and features, including the site and history of the mining town New Golden (South Fork Clearwater River)

Protecting outstanding recreation opportunities, including:

- [middot] Hundreds of miles of boatable waters
- [middot] High quality Blue Ribbon equivalent fishing opportunities and exemplary fly fishing opportunities
- [middot] Sightseeing, wildlife viewing, and birding
- [middot] Cultural interpretation
- [middot] Hiking, backpacking, and camping
- [middot] Swimming and soaking in natural, undeveloped hot springs

Protecting outstanding geologic areas, including:

- [middot] Jerry Johnson Hot Springs (Warm Springs Creek)
- [middot] Striking waterfalls (Cliff Creek, Falls Creek, and Lost Pete Creek)

Protecting unique botanical characteristics, including:

- [middot] An extraordinary assemblage of coastal disjunct and endemic plant species, including refugia species: chickweed monkey flower (*Mimulus alsinoides*) and licorice fern (*Polypodium glycyrrhiza*) (North Fork Clearwater River)
- [middot] Core coastal refugia plant associations that are remnants of the last Ice Age (Little North Fork Clearwater River)

Protecting the many areas of visually striking scenery that exist along eligible river segments

The Forest's thorough documentation of these ORVs stands in stark contrast to its conclusion that 55% of these eligible streams are unsuitable for designation. The Forest Service Handbook (FSH 1909.12, Chapter 80, 83.2) addresses the objective of a suitability study in five questions, the first of which asks, "[Should the river's free-flowing character, water quality, and outstandingly remarkable values be protected, or are one or more other uses important enough to warrant doing otherwise?]" This question affirms that in determining an eligible stream segment to be unsuitable for designation, there must exist one or more other uses that is so important that it trumps the need to maintain a stream's existing protections. While the Forest loosely outlines potentially curtailed uses (Criteria #3) and local opposition to designating additional WSRs (Criteria #11) in its review of each stream segment, nowhere does it clearly articulate the reason(s) for finding any segment unsuitable. Unless and until the Forest provides specific justification for finding eligible streams to be unsuitable for designation, those decisions appear to be arbitrary and capricious and in violation of the Administrative Procedure Act (APA).

The Forest Overstated the Impacts that Suitability Would Have on Other Uses In determining Wild and Scenic suitability for a stream segment, Criteria #3 addresses "[The reasonably foreseeable potential uses of the land and water that would be enhanced, foreclosed, or curtailed if the area were included in the National System.]" The USFS claims that two such uses, timber harvest and motorized use, may be curtailed if select stream segments are found to be suitable (see Criteria #3 for each stream evaluated for suitability in the Wild and Scenic River Suitability Report, which appears as Appendix F in the DEIS). Of the 89 eligible river segments reviewed in its final Wild and Scenic River Suitability Report, the Forest states that timber harvest would potentially be curtailed on 79 of them if they were found to be suitable. The majority of these stream segments (60 of the aforementioned

79) are either partially or entirely within areas designated under the 2008 Idaho Roadless Rule (36 CFR 294, 2014). Under the Rule, the state of Idaho may recommend State-specific direction for the conservation and management of its inventoried roadless areas, of which there are approximately 1.5 million acres on the Nez Perce-Clearwater NF (36 CFR 294 [sect] 294.29, 2014). Each Idaho Roadless Area is listed under one of five management classifications depending on its specific quality and characteristics. Ranging from the most restrictive to least restrictive, the management classifications are as follows: Wild Land Recreation; Special Areas of Historic or Tribal Significance; Primitive; Backcountry/Restoration, and; General Forest, Rangeland, and Grassland. Each of these management classifications specify that certain activities are prohibited or permissible only under specific circumstances. Of the 60 Wild and Scenic eligible stream segments partially or entirely located within Idaho Roadless Areas, all are classified as Wild Land Recreation, Special Areas of Historic or Tribal Significance, Primitive, or Backcountry/Restoration themes. Wild Land Recreation Areas, Special Areas of Historic or Tribal Significance, and Primitive Areas largely prohibit the cutting, sale, or removal of timber, with specific exceptions that focus on critical habitat and ecosystem restoration, and/or reducing the risk of uncharacteristic wildfire events for the safety of at-risk communities and municipal water supplies. Backcountry/Restoration Areas allow the cutting, sale, or removal of timber only for specified purposes consistent with the land management plan components provided for in 36 CFR 294 [sect] 294.28(d) (2014). These regulations seek to protect and enhance the quality and characteristics of the state's inventoried roadless areas. In the context of the Forest's Wild and Scenic River Suitability Report, these regulations should be considered to be pre-existing protections that may already curtail certain uses, including timber harvest, in areas designated under the Idaho Roadless Rule. Given that the majority of the stream segments listed as potentially curtailing timber use if found suitable are located within these areas, all pre-existing regulations and their impact on the cutting, sale, and removal of timber must be noted in the appropriate places in Appendix F in the DEIS. Once the Forest properly recalculates the acreage of land on which timber harvest and motorized use would be curtailed due to suitability findings, we believe it will conclude that finding these streams to be suitable for designation would not curtail timber harvest anywhere near as much as stated in Appendix F of the DEIS. It is worth noting that neither Wild and Scenic eligibility and suitability determinations nor designation explicitly prohibit the cutting, sale, or removal of timber from within the designated river corridor or adjacent lands. The Interagency Wild and Scenic Rivers Coordinating Council's technical report, titled A Compendium of Questions & Answers Relating to Wild and Scenic Rivers (1997, rev. 2018), states: [ldquo]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.[rdquo] Therefore, when coupled with pre-existing protections afforded by the Idaho Roadless Rule and other designations including but not limited to Wilderness areas, recommended Wilderness, Research Natural Areas, and Geographic Areas, it is a gross overstatement to claim that timber harvest will be sharply curtailed if streams are found suitable for designation.

Request #2: American Rivers requests that the Forest provide clear and legitimate rationale for finding streams to be unsuitable for designation. If the Forest cannot provide this rationale, it must amend its Wild and Scenic River Suitability Report to add more suitable streams, amend the range of alternatives in the DEIS, and undertake a supplemental DEIS. The Forest Failed to Consider a Full Range of Reasonable Alternatives in the DEIS. American Rivers believes that by any reasonable interpretation of the National Environmental Policy Act (NEPA), the Forest did not consider a reasonable range of alternatives in the DEIS. The Forest considered just five alternatives in the DEIS (see table below). These five alternatives contemplated protecting as few as zero of the Forest's 89 Wild and Scenic eligible streams and as many as only 37 (42%) of them. According to the Council on Environmental Quality (CEQ), [ldquo]the phrase [lsquo]range of alternatives[rsquo] refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. Section 1502.14.[rdquo] The CEQ has this to say regarding how many reasonable alternatives a federal agency must evaluate in an environmental impact statement: [ldquo]For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of

alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90 or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case. It is worth noting that two of the alternatives the Forest evaluated in the DEIS, Alternative W and Alternative Y, emerged from discussions in the Clearwater Basin Collaborative (CBC). Ultimately, the CBC could not reach consensus on either of those alternatives. In the time that has elapsed since those discussions took place, the CBC has functionally dissolved, and the conservation group members of the collaborative now oppose stripping protections for the Forest's 89 Wild and Scenic eligible streams. Another alternative that was evaluated in the DEIS, Alternative X, appears to have been developed in response to calls by the Board of Idaho County Commissioners to protect no Wild and Scenic eligible rivers. Again, despite identifying 89 Wild and Scenic eligible streams and 40 Wild and Scenic suitable streams, the Forest chose to evaluate alternatives that would find as few as zero and as many as only 37 streams to be suitable for designation (Alternative Z). American Rivers believes that even the most protective alternative considered (Alternative Z) is not nearly protective enough of the Forest's streams. The North Fork and South Fork Clearwater Rivers warrant inclusion as suitable in any future preferred alternative. While we oppose any alternative that fails to protect worthy rivers for inclusion in the NWSRS, we believe the DEIS is particularly insufficient with regards to inclusion of alternatives that protect these two remarkable rivers. In the DEIS, only Alternative Y identifies the North Fork Clearwater River and South Fork Clearwater River as suitable for inclusion in the NWSRS. Of all the streams that the Forest evaluated in its Wild and Scenic River Suitability Report, these two remarkable rivers were deemed to possess the highest number of ORVs. The fact that they are not even included in the most protective alternative (Alternative Z) considered in the DEIS is a major oversight. Not only has the Forest's own suitability analysis deemed these rivers to be exceptional based on their existing ORVs, but both of these rivers face ongoing and significant threats from various activities. North Fork Clearwater River As noted in the Wild and Scenic River Suitability Report, the North Fork Clearwater River forms a major, distinctive river canyon that provides 79 miles of boatable water, ranging from class IV whitewater to flatwater stretches. In addition to being a place of historical significance for the Nez Perce Tribe (with one of the oldest archeological sites in the Columbia Plateau), the North Fork Clearwater contains an abundance of critical habitat for numerous rare species including the Harlequin duck and Coeur d'Alene salamander. The North Fork Clearwater also provides critical habitat for sensitive and endangered species such as westslope cutthroat trout and bull trout that is unsurpassed within the region of comparison (DEIS, Appendix F-41). South Fork Clearwater River Similarly, the South Fork Clearwater River provides outstanding recreational opportunities including whitewater and flatwater boating in various combinations using a variety of watercraft. It also provides critical habitat for Snake River steelhead and bull trout and is one of the only known places on the planet to have populations of the Selway forest snail, an endemic species known only to exist in Idaho County and a few isolated locations in the vicinity. While steelhead fishing draws anglers from around the nation to many streams on the Forest, the South Fork Clearwater River allows for more bank or walk and wade fishing than many rivers within the region of comparison (DEIS, Appendix F-220). In sum, it is clear that the Forest did not evaluate a full range of reasonable alternatives in the DEIS.

Request #3: American Rivers requests that the Forest conduct a supplemental DEIS that evaluates a wider range of reasonable alternatives, including a new alternative that finds all 89 eligible streams to be suitable for designation.

Conclusion American Rivers believes that the Forest acted improperly and in violation of the WSRA and the 2012 Planning Rule when it decided to conduct a Wild and Scenic suitability study at the front end of the Forest Plan revision process with the apparent intent to strip protections for a majority of the Forest's 89 Wild and Scenic eligible streams. Furthermore, the Forest's suitability determinations in its final Wild and Scenic River Suitability Report lack clear rationale, were based on exaggerated impacts to timber harvest and motorized use, and thus were arbitrary and capricious. Finally, the Forest failed to evaluate a full range of reasonable alternatives in its DEIS, and it must evaluate a new alternative that would find all 89 Wild and Scenic eligible streams to be suitable for designation. Since 2015, American Rivers has engaged in five forest plan revisions in USFS Region 1, including this one. Two of those forest plan revisions (on the Kootenai NF and Flathead NF) have been completed, and two more (on the Custer-Gallatin NF and Helena and Lewis & Clark NF) are due for completion in May. On each of those other four national forests, the USFS more than doubled the number of Wild and Scenic eligible streams and stream miles that will be protected in the new forest plans compared to the old forest plans they

replaced. Yet, on the Nez Perce-Clearwater NF, the USFS is considering slashing protections for 58-100% of its Wild and Scenic eligible streams. Given the importance of these streams to imperiled coldwater fish species as the climate warms, and considering how beloved they are by anglers and paddlers from across the nation, the Forest owes it to the American people to correct the shortcomings we have identified and incorporate our recommendations into the final EIS.