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Comments: 1. The Forest Service failed to demonstrate that it is on track to meet sediment load reductions assigned to the agency in the St. Maries River Subbasin Sediment TMDL and thus, the agency violated the Clean Water Act.
Congress passed the Clean Water Act (CWA) in 1972. The purpose of the CWA is [ldquo]to restore and maintain the chemical, physical, and biological integrity of the Nation[rsquo]s waters[rdquo] through the reduction and eventual elimination of the discharge of pollutants into those waters. 33 U.S.C. [sect] 1251(a). In

addition, the CWA establishes an [ldquo]interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife.[rdquo] Id. at [sect] 1251(a)(2).

To meet these goals, the CWA requires the establishment of water quality standards. Water quality standards are promulgated by the states and establish the desired condition of each waterway within the state[rsquo]s regulatory jurisdiction. 33 U.S.C. [sect] 1313(a). Water quality standards under the CWA are required to include three elements: (1) one or more designated [ldquo]uses[rdquo] of that waterway; (2) water quality [ldquo]criteria[rdquo] specifying the amount of various pollutants that may be present in those waters and

still protect the designated uses, expressed in numerical concentration limits and narrative form; and (3) an antidegradation policy (with implementation methods) to protect all existing uses. 33 U.S.C. [sect][sect] 1313(c)(2), 1313(d)(4)(B); 40 C.F.R. Part 131, Subpart B.

Section 303(d) of the CWA requires all states to identify and prioritize water bodies that do not meet water quality standards. For those water bodies on the [sect] 303(d) list, states must develop water quality improvement plans, called total maximum daily loads (TMDLs). TMDLs specify the pollutant load reductions needed in order for those water bodies to achieve water quality standards and fully support designated beneficial uses.

The Emerald Project is located in Emerald Creek, which is a tributary of the St. Maries River. The Idaho Department of Environmental Quality[rsquo]s (IDEQ) CWA [sect] 305(b) Status Report (2016) lists the beneficial uses of the St. Maries River and its tributaries, including but not limited to, Emerald Creek and any causes of impairment. The Department designated cold water aquatic life as a beneficial use of the St. Maries River, which has been impaired by sediment, siltation, and temperature. Cold water aquatic life and salmonid spawning are presumed beneficial uses of Emerald Creek, both of which have been impaired by sediment, siltation, and temperature.

In response to these impairments, IDEQ approved a sediment TMDL for the St. Maries River and its tributaries in 2003. A temperature addendum was approved in 2011. The in-stream water quality target for the St. Maries River sediment TMDL is full support of cold water aquatic life and salmonid spawning (Idaho Code 39.3611, 3615). The St. Maries River Subbasin TMDL assumes that sediment yields below 50% above natural background for the drainage will fully support the beneficial uses of cold water aquatic life and salmonid spawning (Page 61).

The St. Maries TMDL identifies stream bank erosion and forest roads as the primary sources of sediment in the drainage (Page 60). Accordingly, sediment load reductions were assigned to the various land owners in the watershed including but not limited to, the Forest Service. Sediment load reductions were assigned to the Forest Service at the following points of compliance in the St. Maries TMDL (Pages 67- 69): Middle Fork St. Maries River (32 tons/year), West Fork St. Maries River (180 tons/year), St. Maries at Emerald Creek (481 tons/year), Carpenter Creek (11 tons/year), St. Maries River at Tyson Creek (44 tons/year), Tyson Creek (7 tons/year), Santa Creek (535 tons/year), Alder Creek (0.1 tons/year), and St.

Maries River below Thorn Creek (63 tons/year). Moreover, the St. Maries TMDL states that sediment

[ldquo]yield reduction will be required from the entire [St. Maries River Drainage] in order for the impaired

watersheds to meet full support status.[rdquo] (Page 60). Land owners have until 2053 to achieve compliance.

The Forest Service administers approximately 66,467 acres (21.6%) of the 307,500-acre St. Maries River Subbasin. As evidenced by the agency[rsquo]s significant land holdings in the drainage and the load reductions assigned to it in the St. Maries River TMDL, the Forest Service is a significant contributor of sediment to the watershed. Unfortunately, the Forest Service does not appear to take it[rsquo]s assigned sediment load reductions seriously. While the agency acknowledges that [ldquo][n]umerous research studies have documented that forest roads are usually the leading human-caused contributor of sediment to stream channels[rdquo] (Water Resources Analysis Report, Page 2), the Forest Service nevertheless proposes to construct 12 miles of new permanent road to carry out the Emerald Project. Approximately 6.4 miles of which would be constructed within 300 feet of streams where sediment delivery to streams is most likely to occur. New road construction would also create at least 16 new stream crossings. In contrast, only 2.5 miles of roads were identified for decommissioning.

The Forest Service estimates that implementation of the Emerald Project will result in a net reduction of

2.7 tons of sediment per year (Water Resources Analysis Report, Page 23). However, the Forest Service failed to report the margins of error associated with its WEPP calculations for the Emerald Project in the EA and the Water Resources Analysis Report. Without this information, it is impossible for the reader to determine if a net increase in sediment production is within the margin of error. Because the estimated amount of sediment reduction is so low, it[rsquo]s quite possible that the Emerald Project will actually result in a net increase in sediment delivery to the watershed, but again, without knowing the margin or error, neither the public nor the decision maker can be certain. Consequently, the Forest Service failed to demonstrate that approval of the Emerald Project will comply with the required sediment load reductions outlined in the St. Maries River Subbasin TMDL, and therefore, the agency has failed to demonstrate that it will comply with the CWA in approving the Emerald Project.

2. The Forest Service violated the National Environmental Policy Act by failing to adequately consider the cumulative effects of the project to water quality when taken with other past, present, and reasonably foreseeable actions in the St. Maries River Drainage.

The Forest Service is required by regulations implementing the National Environmental Policy Act to consider the direct, indirect, and cumulative environmental impacts of proposed agency actions. 40 CFR

[sect] 1502.16; 40 CFR [sect] 1508.8; 40 CFR [sect] 1508.25(c). Direct effects are caused by the action and occur at the same time and place as the proposed project. Id. [sect] 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Id. [sect] 1508.8(b).

Both types of impacts include [ldquo]effects on natural resources and on the components, structures, and functioning of affected ecosystems,[rdquo] as well as [ldquo]aesthetic, historic, cultural, economic, social or health

[effects].[rdquo] Id. Cumulative effects are defined as the impacts resulting from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. 40 CFR

[sect] 1508.7. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Id.

As mentioned earlier, the Idaho Department of Environmental Quality assigned sediment load reductions to the Forest Service at several points of compliance within the St. Maries River Subbasin. Additionally, the St. Maries River Subbasin TMDL requires sediment load reductions across the entire subbasin in order to support designated beneficial uses in all subwatersheds. While the Forest Service[rsquo]s cumulative effects analysis for sediment delivery provides an estimate of net sediment delivery to the Emerald Creek Subwatershed, the analysis does not adequately address cumulative effects at the St.

Maries Subbasin scale. This is an important point because the St. Maries Subbasin TMDL requires sediment reductions across [ldquo]the entire [St. Maries River Drainage] in order for the impaired watersheds to meet full support status.[rdquo] (Page 60). The EA states only that the Emerald Project [ldquo]would meet the sediment reduction requirements of the St. Maries River Subbasin Sediment Total Maximum Daily Load[rdquo] (Page 20) without providing any data or evidence to support that conclusion.

We understand that it is nearly impossible for the Forest Service to predict actions that other land owners in the St. Maries River Subbasin will take in the future and what the effects of those actions to water quality will be. However, the Forest Service does have the ability to consider all past, present, and reasonably foreseeable future actions on federal lands within the subbasin. An adequate cumulative effects analysis for sediment at the subbasin scale would discuss what actions the Forest Service and other federal land managers have taken in the past, are taking at the present, and may take in the future, and what the cumulative contributions of those actions are to sediment loads in the subbasin.

Conversely, if federal actions have cumulatively reduced sediment loads in the subbasin, then the Forest Service should be able to estimate cumulative sediment load reductions in the subbasin associated with federal ownerships.

Unfortunately, there is virtually no discussion in the EA or the Water Resources Analysis Report of what actions the Forest Service has taken or may take in the St. Maries River Subbasin to satisfy the sediment load reductions mandated by the St. Maries River Subbasin TMDL. As mentioned earlier, the Forest Service has a deadline of 2053 to achieve the sediment load reductions assigned to the agency in the St. Maries Subbasin TMDL. If each and every project implemented by the Forest Service in the subbasin makes as little progress toward the sediment load reductions as the Emerald Project, then the Forest Service will not achieve the required sediment load reductions before 2053. On the other hand, the Forest Service may have made significant progress toward reducing sediment. In any case, neither the public nor the decision-maker can tell from reading the EA and Water Resources Analysis Report what the cumulative effects of federal actions in the subbasin are with respect to sediment delivery.

Therefore, the Forest Service failed to comply with NEPA.

3. The Forest Service violated the National Forest Management Act by prioritizing desired forest conditions as stated in the IPNF Forest Plan over desired conditions for water quality.

The National Forest Management Act (NFMA) directs the Forest Service to prepare and implement comprehensive Land and Resource Management Plans (commonly called Forest Plans) for each national forest. 16 U.S.C. [sect] 1604(a). Each Forest Plan (including any associated amendments) establishes management direction for resources, uses, and protective measures through standards, guidelines, goals, and objectives for that forest. Second, the Forest Service must ensure that all site-specific projects within each Forest, including but not limited to, logging, mining, road construction, and motorized use, are consistent with the relevant forest plan. Id. [sect] 1604(i). The Idaho Panhandle National Forests[rsquo] current Forest Plan was approved in 2015. Among other things the Plan includes components for both forest management and water quality (e.g. FW-DC-VEG-01 through FW-DC-VEG-12; FW-DC-WTR-01 through FW-DC-WTR-05).

The Primary problem with the Emerald Project is that it prioritizes the Forest Service[rsquo]s desired forest conditions as stated in the 2015 IPNF Forest Plan over the desired conditions for water quality. In fact, the

Purpose and Need statement found on pages 2-3 of the EA doesn[rsquo]t even mention the need to improve water quality consistent with the Forest Plan and the St. Maries River Subbasin TMDL. In particular there is no reference to FW-DC-WTR-02, which states:

All management activities will emphasize protection of water quality in order to meet applicable state water quality standards and fully support beneficial uses. Surface and groundwater flows support beneficial uses and meet the ecological needs of aquatic species and maintain the physical integrity of their habitats.

Instead, the Purpose and Need statement is limited to forest health, fuels, travel management and economic objectives.

The Forest Service[rsquo]s bias toward forest health objectives is further demonstrated in the section of the EA, describing alternatives considered but eliminated from detailed study. The interdisciplinary team considered but dismissed an alternative with no new road construction because [ldquo]it was found to not meet the forest health needs of the project area[rdquo] (Page 4). There is no consideration given whatsoever to the notion that the lone action alternative does not meet the water quality objectives for the project area as stated in the IPNF Forest Plan and the St. Maries River Subbasin TMDL. Because the Purpose and need is so unnecessarily constrained in favor of forest health, it illegally excludes water quality objectives (also a NEPA violation). This bias resulted in the development of a lone action alternative that will result in 12 miles of new road construction, of which slightly more than half will be located within 300 feet of streams where sediment delivery from roadways to stream channels is most likely to occur.

Furthermore, the Forest Service appears to have given no consideration to the option of using helicopters to treat units that are inaccessible by the existing transportation system. The agency had the opportunity to develop and objectively evaluate an alternative where both the desired conditions for forest health and water quality, as stated in the IPNF Forest Plan, could have both been addressed.

Nowhere in the response to comments did the Forest Service react to our suggestion that helicopters should be considered to access proposed treatment units that are inaccessible from the current transportation system in order to protect water quality while achieving forest health objectives. By ignoring Forest Plan desired conditions for water quality, which emphasize full support of designated beneficial uses under the CWA, the Forest Service violated NFMA.

After the passage of NFMA in 1976, the Senate bill sponsor, Senator Hubert Humphrey remarked, [ldquo]The days have ended when the forest may be viewed only as trees and trees viewed only as timber. The soil and the water, the grasses and the shrubs, the fish and the wildlife, and the beauty of the forest must become integral parts of the resource manager's thinking and actions.[rdquo] In the development of the Emerald Project, the Forest Service failed to meet the spirit and intent of NFMA.

Suggested remedies

To address the points raised in this objection, we request the following remedies:

[middot] Drop all new road construction within 300 feet of streams.

[middot] If desired, use helicopters to access treatments units that would be affected by reducing new road construction.

[middot] Identify additional roads for decommissioning, particularly within 300 feet of streams, to make

progress toward sediment load reductions required in the St. Maries River Subbasin TMDL.

[middot] Update the effects analysis to reflect any changes made to the project.

[middot] Update the cumulative effects analysis for sediment to document overall progress made or not made by the Forest Service toward the sediment load reductions that were assigned to the agency in the St. Maries River Subbasin TMDL.