

**OBJECTION  
AGAINST THE DRAFT RECORD OF DECISION (DROD)  
FOR THE LOST CREEK BOULDER CREEK  
LANDSCAPE RESTORATION PROJECT  
FINAL ENVIRONMENTAL IMPACT STATEMENT  
AS PER SECTION 218.8(d)**

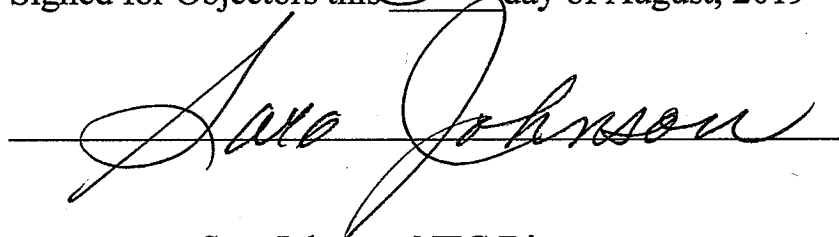
**Objectors Names and Addresses:**

Lead Objector Sara Johnson, Director, Native Ecosystems Council (NEC), PO Box 125, Willow Creek, MT 59760; phone 406-579-3286

Mike Garrity, Director, Alliance for the Wild Rockies (AWR), PO Box 505, Helena, MT 59624; phone 406-459-5936

Ron Mitchell, Director, Idaho Sporting Congress (ISC), PO Box 1136, Boise, Idaho; phone 208-761-1597.

Signed for Objectors this 5<sup>th</sup> day of August, 2019

A handwritten signature in cursive script that reads "Sara Johnson". The signature is written over a horizontal line.

Sara Johnson, NEC Director

**Name of Project:**

Lost Creek Boulder Creek Landscape Restoration Project

**Name of Responsible Official:**

Keith Lannom, Forest Supervisor

**Name of National Forest/Ranger District where Project is Located:**

Meadow Creek Ranger District of the Payette National Forest

## **Incorporation of Documents by Reference:**

As permitted by Section 218.8(b), we are incorporating the following documents by reference:

All Draft Environmental Impact Statement (DEIS) comments submitted in 2013 individually or jointly on the Lost Creek Boulder Creek Landscape Restoration Project by NEC, AWR and ISC.

Objections filed against the 2014 draft Record of Decision for the Lost Creek Boulder Creek Landscape Restoration Project filed individually or jointly by NEC, AWR and ISC.

All 2011 Draft Environmental Impact Statement (DEIS) comments submitted individually or jointly by NEC, AWR and ISC on the DEIS for the Forest Plan Amendments Proposed to Facilitate Implementation of the 2011 Plan-Scale Wildlife Conservation Strategy Phase 1: Forested Biological Community, (hereafter called "Wildlife Conservation Strategy Forest Plan Amendment), Payette National Forest.

All legal briefs associated with the legal challenge of the 2014 Lost Creek Boulder Creek Draft ROD in Idaho District Court and the Ninth Circuit Court of Appeals submitted by Plaintiffs NEC, AWR and ISC.

## **Attachments:**

The following 2 attachments are included with this objection, including Appendix A that provides copies of relevant literature cited in the Objection and/or in Appendix B, a Declaration by Dr. Sara Johnson.

## **Statement Demonstrating the Connection between Prior Specific Written Comments on this Project and the Content of the Objection:**

In their Objection filed against the 2014 draft ROD for the Lost Creek Boulder Creek Landscape Restoration Project, NEC and AWR provided extensive comments relating issues raised in the Objection with prior comments on the draft ROD for that project, as well as on the draft EIS for the Wildlife Conservation Strategy Forest Plan Amendment. Since this

Objection has been incorporated by reference into this current Objection against the Lost Creek Boulder Creek Landscape Restoration Project, which has not changed in the 2019 Draft ROD from the 2014 draft ROD which that Objection was filed against, these comments would also apply to the 2019 draft ROD for this project. In fact, since the 2019 release of the draft ROD for the Lost Creek Boulder Creek Landscape Restoration Project has not undergone any prior public involvement, where public comments were requested on a new draft NEPA document, this objection requirement can only be met by referencing comments provided by NEC and AWR on the 2013 DEIS for this project.

### **Proposed Remedy:**

Since the 2019 ROD for the Lost Creek Boulder Creek Landscape Restoration Project was vacated by the Ninth Circuit Court of Appeals, the Forest Service is required by the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA) to complete public involvement of any new management proposals for this landscape. This has not been done, which means that the release of the 2019 draft ROD for the Lost Creek Boulder Creek Landscape Restoration Project is invalid. In addition, the deficiencies of the 2014 ROD for the Project identified by the Ninth Circuit Court of Appeals, which were the basis for vacating the ROD, need to be corrected in any new proposals and decisions for this project. These include completing Forest Plan amendments for the portions of the project that are in violation of the 2003 Payette Forest Plan. The 2019 ROD is clearly in violation of the NEPA requirements for public involvement, and in violation of the NFMA direction that projects must be consistent with the Forest Plan. The 2019 draft ROD is therefore invalid and must be withdrawn.

### **Narrative Description of those Aspects of the Proposed Project Objected to, Specific Issues Related to the Project, how Environmental Laws, Regulation, or Policy Would be Violated:**

Although NEC, AWR and ISC believe that the draft 2019 ROD for the Lost Creek Boulder Creek Landscape Restoration Project is invalid due to violations of both the NEPA and the NFMA, we are providing summarizing the various Forest Plan violations below.

**A. The definition of ‘old forest habitat’ for the Lost Creek Boulder Creek Landscape Restoration Project (hereafter “LCBC Project” ) is inconsistent with the definition of old forest in the 2003 Forest Plan; the change in the criteria for old forest habitat requires logging and burning to create old forest habitat in the LCBC Project Area, and thus is a drastic change in management direction from the 2003 Forest Plan.**

The definition of old forest habitat applied to the LCBC Project is identified in the Forest Plan Amendments Proposed to Facilitate Implementation of the 2011 Plan-scale Wildlife Conservation Strategy (“hereafter WCS Amendment”) in Appendix E, Table E-2, page E-25. These new definitions of old forest habitat are not included in the Forest Plan. The definition of old forest habitat in the Forest Plan at GL-26 has no specific criteria, as per the following:

*Old forest is a component of the large Tree Size Class, with the following general characteristics: a variability in tree size that includes old, large trees with signs of decadence, increasing numbers of snags and coarse woody debris, canopy gaps, and understory patchiness. There are 2 broad types of old forest in the Southwest Idaho Ecogroup area –single-storied and multi-storied. Single-storied old forest is characterized by a single canopy layer of large or old trees. These stands generally consist of widely spaced, shade-intolerant species, such as ponderosa pine and western larch, that are adapted to a nonlethal, high frequency fire regime. Multi-storied old forest is characterized by two or more canopy layers, with large or old trees in the upper canopy. These stands can include both shade-tolerant and shade-intolerant species, and are typically adapted to a mixed regime of both lethal and nonlethal fires. Because old forest characteristics have been aggregated into two basic categories, it is generally easier to identify, monitor and compare the characteristics of these old forest types with desired vegetative conditions than it is with “old growth” (see old growth definition below).*

*Old growth is a defined set of forested vegetation conditions that reflect late-successional characteristics, including stand structure, stand size, species composition, snags and down logs, and decadence.*

*Minimum amounts of large trees, large snags, and coarse wood are typically required. Definitions of old growth generally vary by forest type, depending on the disturbance regimes that may be present. Also, within a given forest type, considerable variability can exist across the type's geographical range for specific ecological attributes that characterize late seral and climax stages of development. This variability among and within multiple (often 10-20) forest types makes old growth characteristics difficult to identify, monitor and compare to desired vegetative conditions.*

The WCS Amendment provided new definitions of old forest habitat in Table E-2 at E-25. In all the Potential Vegetation Groups (PVGs), there will be at least a 30% canopy cover of trees over 20 inches dbh. The number of trees this requires is not provided. There is no information as to how this amended definition of old forest habitat compares to the Forest Plan definition. However, the new definition of the WCS Amendment eliminates all existing old forest habitat in the LCBC Project because these stands have too many large old trees. As is noted in the errata for the LCBC 2019 FEIS and associated Draft ROD, at page 411, "currently no stands have been identified in the project area that meet all attributes that characterize old forest habitat as defined in proposed Forest Plan amendments. This errata notes that existing stands that contain large trees "provide building blocks for developing stands to maintain desired large tree and old forest conditions. Management actions (thinning and prescribed fire) can facilitate movement toward developing remaining components that are not within the desired conditions for low and broad elevation old forest habitat, such as species composition and canopy cover." Thus the errata, as also noted in the 2014 FEIS, claims that there will be no old forest habitats in the LCBC Project Area until those stands that contain too many large trees are logged and/or burned.

The WCS Amendment, as is applied to the LCBC Project, clearly results in drastic changes in the management of old forest habitat as per the 2003 Forest Plan. Although no FEIS or ROD was released for the WCS Amendment, it obviously would have required the deletion of the Forest Plan old forest standard WIST01. This standard at III-26 of the 2003 Forest Plan requires maintaining at least 20% of the acres within each forested PVG found in a watershed (5<sup>th</sup> field HU) in large tree size class (medium tree size class for PVG 10, persistent lodgepole pine). Management shall not decrease the current area occupied by the large tree size class, with

specific exceptions as long as no degradation occurs in development of desired vegetation conditions in the short or long-term. The LCBC Project provides new desired old forest levels, as per Table A-5 in the WCS Amendment. There is a wide range of desired levels of the large tree size class as per PVGs. So almost any level of the newly defined old forest habitat can exist within PVGs. To attain these desired conditions, however, for the LCBC Project, all existing stands of old forest habitat will have to be thinned (logged) and/or burned to move towards the WCS Amendment desired conditions for the new definition of old forest habitat.

Appendix 1 of the 2019 LCBC draft ROD includes project design features. One of these, #4, includes direction to retain forest stands that meet the definition of large tree size class, which apparently no large tree stands actually meet this criteria. Another project design criteria includes management actions are permitted in stands with large trees as long as they continue to meet the definition of large tree size class stand. These design features are consistent with the proposed project impact on old forest habitat – that it will be logged and/or burned because only a few large trees are required to meet the definition of old forest habitat.

**B. The WCS Amendment has never been completed as a Forest Plan Amendment; thus implementation of this unfinished Amendment for management of old forest habitat in the LCBC Project is a violation of the NFMA.**

Unless the WCS Amendment is completed for public involvement and a final ROD completed, this management strategy cannot be implemented for the LCBC Project because it results in violations of the 2003 Forest Plan in regards to the management of old forest habitat. The Forest Service apparently anticipated that the WCS Amendment was going to be very controversial, due to the required logging of old forest habitats, so that this Amendment was never finalized. Now the agency is attempting to implement this Amendment without ever releasing a draft ROD for public comment and objections. As demonstrated in the attached Declaration by Dr. Sara Johnson, the WCS Amendment will eliminate and/or degrade habitat for a considerable suite of old growth species. In 2018, The Flathead National Forest of Region 1 of the Forest Service identified those wildlife species associated with old growth forests, which included any wildlife species that uses the various attributes of old growth forests for some or all

of their ecological needs (USDA 2018). Of the 31 wildlife species identified in this document (Table 3-87 of the Glacier Loon Fuels Reduction and Forest Health Project EA 2018) (hereafter “Glacier Loon EA”), many include those identified as present on the Payette National Forest as per the Payette Forest Plan. These include the 5 sensitive species (northern goshawk, flammulated owl, boreal owl, northern three-toed woodpecker, and fisher), the threatened Canada lynx, one Management Indicator Species the pileated woodpecker, and the pine marten. (Appendix E of the 2003 Forest Plan at E-2 and E-4). Four of these species are identified in Table 3-87 (USDA 2018) as associated with closed forests, including the boreal owl, fisher, northern goshawk, and pileated woodpecker. The Canada lynx is also associated with dense, older forest habitat due to its reliance on snowshoe hares for prey (Kosterman et al. 2018).

Table 3-87 of the Glacier Loon EA also includes a number of other bird and mammal species (8) that are associated with “closed” old growth that likely occur on the Payette National Forest. These include the pine marten, northern flying squirrel, Hammonds’ flycatcher, golden-crowned kinglet, chestnut-backed chickadee, brown creeper, varied thrush, and Townsend’s warbler.

Research on forest birds in Montana has indicated that additional species associated with old growth (4) are very sensitive to logging, and require relatively undisturbed habitat. These include the pine grosbeak, red-breasted nuthatch, hermit thrush, and winter wren.

Finally, there are also additional wildlife species associated with old growth (7) because they are dependent upon cavities in snags for nesting. The decadence of old growth forests is important to cavity-nesting wildlife as suitable snags are very limited in most forests (Vizcara 2017). Forest thinning is known to reduce snag habitat by up to 58% (Holloway and Malcolm 2006). These include the flammulated owl, mountain chickadee, white-headed woodpecker, hairy woodpecker, black-backed woodpecker, pygmy nuthatch, and white-breasted nuthatch.

These old growth associated species that will be impacted by logging and burning old forest habitat in the LCBC Project total at least 24 species. These species are being reduced in the project area supposedly to benefit the white-headed woodpecker. However, the Forest Service has not provided any monitoring data or research that indicates logging will create habitat for

this species. Open forest habitat is not a suitable “proxy” for this species, as it requires many habitat features, such as suitable prey and large snags for nesting.

The huge impact the logging of old forest habitat will have on old growth-associated wildlife is in part justified by the agency’s failure to use it’s own recommendations and definitions for old growth habitat. The definitions of old growth developed by the Intermountain Region of the Forest Service (Hamilton 1993) and Region 1 of the Forest Service (Green et al. 1991) were based on extensive sampling of vegetation across both regions, along with summaries and analysis by various Forest Service experts. These definitions of old growth habitat will maintain most, if not all old growth-associated species in Table 3-87 (USDA 2018), while the new definition of old forest habitat for the WCS Amendment, as well as it is being applied to the LCBC Project, will eliminate and/or degrade habitat for most old growth-associated species. This WCS Amendment clearly promotes logging over wildlife.

The extensive logging and burning that is required for the LCBC Project will not only depart from the accepted science for management of old growth forests (Hamilton 1993, Green et al. 1991). The conditions for old growth defined in both agency documents cannot be created with logging. The justi

**C. The Forest Service is violating the NFMA by failing to complete a Forest Plan Amendment for the change of Management Prescription Categories (MPCs) in the LCBC Project Area, because management direction will change.**

As is noted in the FEIS errata for the 2019 draft ROD, the LCBC Project will change the MPC from 5.2 to 5.1, with 5.1 direction being for restoration and maintenance emphasis. Using 5.1 instead of the Forest Plan designated 6.2 is justified by a claim that the 5.1 conditions more closely resemble the historic range of variability (HRV). This strategy is based on a purported strategy to manage for the white-headed woodpecker, which uses open forest habitats, as opposed to the 24 species identified previously that will be harmed by logging old forest habitat. This woodpecker is identified as the wildlife species “of greatest conservation concern” although how this was determined among all old growth-associated wildlife species is never noted.



The change from 5.2 to a 5.1 management policy will result in additional environmental impacts in addition to the change in management of old forest habitat discussed previously (degrade habitat for 24 wildlife species associated with old forest habitats). The Forest Plan at A-3-4 shows that the percentage of large tree habitat is significantly different between these 2 MPCs. The acreage of large tree habitat will greatly increase with the switch to MPC 5.1, which means that the amount of logging to supposedly “create” the WCS Amendment definition of old forest habitat will also greatly increase (e.g., large tree habitat for PV 2 will increase from 30-58% of the area to 59-80% of the area, and for PVG 5 from 33-65% to 66-84%. In MPC 5.2, percentage of low canopy closure (logged forest) for PVG 2 is 4-24%, but is 74-94% in MPC 5.1. For PVG 5, for example, 5.2 calls for 3-23% open canopy (logged forest), while 5.1 calls for 24-45%. These changes clearly will increase logging levels in order to reduce canopy closure, and are significant changes to the effects of the 2003 Payette Forest Plan.

The Forest Service has reassigned the MPC for 32,009 acres from 5.2 to 5.1 for the LCBC Project. After the comment letters had been submitted and two months before the Record of Decision was issued, the Forested Vegetation Specialist for the Forest Service prepared a “White Paper Regarding MPC 5.1 vs 5.2 desired conditions” on July 18, 2014. The White Paper pointed out that the desired conditions for MPC 5.1 versus 5.2 were utilized on approximately 32,000 acres of the LCBC Project Area and proceeded to analyze and determine that this was allowed under the Forest Plan. With this White Paper, there can be no dispute that the Forest Service was aware of the issue and had full opportunity to rectify the violation of the Forest Plan.

The switch from MCP 5.2 to 5.1 for the LCBC project also results in a Forest Plan violation for Fire Standard 0312, which states that wildland fire use is prohibited. MPC 5.2 contains a binding fire standard whereas MPC 5.1 contains no fire standards at all. MPC 5.1 contains Fire Guideline 0309. It is not clear that Fire Guideline 0309 imposes a complete, binding prohibition on wildfire fire contained in Fire Standard 0312. In MA 3, the loss of Fire guidelines 0313 details when prescribed fire may be used. The impact of these changes (deletions) of fire management direction is never addressed, so the impact on wildlife is ignored. However, in the case of the lynx and wolverine, any increases in prescribed fire that will result from loss of direction limiting prescribed fire use will result in habitat degradation. Prescribed burning will reduce prey species for the lynx, and will not only reduce prey for the wolverine, but will increase avoidance of habitat due to

human disturbances (see Declaration by Dr. Sara Johnson attached to this objection for further discussion on prescribed fire impacts on the lynx and wolverine).

#### **D. Use of the Current Best Science in Analysis of Threatened and Endangered Species**

There has been a significant amount of new research that has been published on both the threatened Canada lynx and the proposed wolverine since the 2014 LCBC decision was implemented. Thus the Biological Assessment and Biological Opinion completed and/or obtained for the 2014 LCBC decision is outdated and thus in violation of the Endangered Species Act (ESA) (Declaration by Dr. Sara Johnson). When this project is evaluated in a supplemental EIS, this new science on the lynx and wolverine needs to be addressed in the BA. This new science demonstrates that the LCBC project will have adverse impacts on both species, which will require formal consultation with the U.S. Fish and Wildlife Service.