



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

February 3, 2020

Submitted Via Electronic Mail to: objections-intermtn-regional-office@fs.fed.us

Objection Reviewing Officer
Intermountain Region USFS
324 25th Street, Ogden, Utah 84401

Re: Nez Perce Tribe's Objection on the South Fork Restoration and Access Management Project Revised Environmental Assessment and Draft Decision Notice

Dear Objection Reviewing Officer:

On behalf of the Nez Perce Tribe ("Tribe"), and in accordance with 36 C.F.R. §§ 218.8 and 218.9, I submit the attached objection to the South Fork Restoration and Access Management Plan ("Project") revised Environmental Assessment ("EA") and Draft Decision Notice ("DN"). The Responsible Official is the Forest Supervisor for the Payette National Forest. This Project is located on the Krassel and McCall Ranger Districts on the Payette National Forest and the Cascade Ranger District on the Boise National Forest ("Forest").

The Project includes numerous actions relating to watershed restoration, motorized and non-motorized access, and improvements of recreation facilities within the South Fork Salmon River ("SFSR") watershed within a 329,000-acre Project area. The selected alternative is a hybrid of the alternatives presented in the Environmental Assessment, which includes one Project-level amendment related to the designation of existing routes as system roads for administrative purposes in the Krassel Work Center and Reed Ranch Airstrip area.

The objections outlined in the attachment are based on the Tribe's previously submitted comments. The Tribe submitted scoping comments on July 12, 2017, participated in a staff-to-staff meeting with Krassel District Ranger Anthony Botello on March 19, 2019, and submitted comments on the draft Environmental Assessment on May 16, 2019.

The Tribe's paramount goal is to protect and advance its treaty-reserved rights and cultural interests in its aboriginal territory. As the Forest is aware, the Project is located entirely within the Tribe's aboriginal territory and is subject to the rights that the Tribe reserved, and the United States secured, in the Treaty of 1855.¹ The Project is also located within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission.² The Forest Service has a trust responsibility to ensure that its actions, including implementation of this Project, are fully consistent with the 1855 Treaty, executive orders, departmental regulations, and other federal laws implicating the United States' unique relationship with the Tribe.

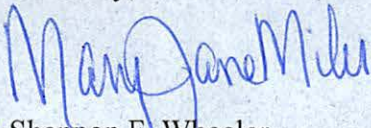
The Tribe, as part of its review of the Project, has been significantly involved in the Big Creek/Yellow Pine/South Fork Salmon River Collaborative ("Collaborative"). The Collaborative is comprised of Tribal staff, Valley County, Yellow Pine and Big Creek residents, local businesses, recreationists, and conservationists working together, in cooperation with the Forest and other federal and state agencies, to provide consensus-based recommendations on the Project.

While the Tribe appreciates the Forest's decision to decommission some roads in the Project, the Tribe is disappointed that the Forest declined the Tribe's requests in its submitted comments to decommission numerous other Management Level 1 roads in the Project that are already identified for removal in the Forest's travel management plan, that will result in violation of applicable Forest plan standards, and most fundamentally, will have significant ongoing impacts to fishery resources important to the Tribe.

The Tribe is also disappointed with the Forest's decision rejecting the Collaborative's recommendations regarding road decommissioning. The Tribe's participation has been integral to the Collaborative's efforts and accordingly supports the Collaborative's consensus recommendations for the Project, as documented in the November 14, 2016, proposal and reiterated in the Collaborative's May 16, 2019, letter submitted to the Forest.

The Tribe requests a meeting with you and the Forest to discuss and resolve its objections to the Project. Please contact Mike Lopez, Senior Staff Attorney at (208) 843-7355 or mlopez@nezperce.org to schedule a meeting.

Sincerely,



FOR: Shannon F. Wheeler
Chairman

¹ Treaty with the Nez Perces, June 11, 1855, 12 Stat. 957.

² *Nez Perce Tribe v. United States*, Docket #175, 18 Ind. Cl. Comm. 1.

**NEZ PERCE TRIBE’S OBJECTION TO THE
SOUTH FORK RESTORATION AND ACCESS MANAGEMENT PLAN REVISED
ENVIRONMENTAL ASSESSMENT AND DRAFT DECISION NOTICE**

**I. NEZ PERCE TRIBE’S INTEREST AND PARTICIPATION IN THE SOUTH FORK
RESTORATION AND ACCESS MANAGEMENT PLAN PROJECT**

A. The Nez Perce Tribe’s Interest in the Project

Since time immemorial, the Tribe has occupied and used over 13 million acres of land now comprising north-central Idaho, southeast Washington, northeast Oregon, and parts of Montana. Tribal members have engaged in fishing, hunting, gathering, and pasturing across their vast aboriginal territory. These activities still play—and will continue to play in the future—a major role in the subsistence, culture, religion, and economy of the Tribe.

Treaty tribes, such as the Tribe, have been recognized as managers of their treaty-reserved resources. As a manager, the Tribe has devoted substantial time, effort, and resources to the recovery and co-management of treaty-reserved resources.

As a fiduciary, the United States and all its agencies owe a trust duty to federally-recognized tribes to protect their resources. This trust relationship has been described as “one of the primary cornerstones of Indian law,” and has been compared to the relationship existing under the common law of trusts, with the United States as trustee, the tribes as beneficiaries, and the property and natural resources managed by the United States as the trust corpus. All executive agencies of the United States are subject to the federal trust responsibility to recognize and uphold treaty-reserved rights. Executive agencies must also protect the habitats and resources on which those rights rest, as the right to take fish and other resources reserved by the Tribe presumes the continued existence of the biological conditions necessary to support the treaty- reserved resources.

Forest Service Manual (“FSM”) 1563.8b specifically states that the Forest Service “must administer lands subject to off-reservation treaty rights in a manner that protects Indian tribes’ rights and interests in the resources reserved under treaty.” FSM 1563.03 further directs the Forest Service, among other responsibilities, to “[i]mplement Forest Service programs and activities consistent with and respecting Indian treaty and other reserved rights and fulfilling the Federal Government’s legally mandated trust responsibility with Indian Tribes.”

B. The Tribe’s Participation in the Collaborative

In 2005, the “Travel Management; Designated Routes and Areas for Motor Vehicle Use Final Rule” directed the Forest Service to conduct travel planning identifying the Minimum Road System (“MRS”) and the routes open for public use. In 2008, the Forest issued a Record of Decision for the snow-free season Travel Management Plan on the Krassel and McCall Ranger Districts, which was legally challenged.³ As part of a settlement, the Forest agreed to complete a

³ See *Valley County, Idaho v. United States Dept. of Agriculture et al.*, No. 1:09-cv-275-BLW, 2015 WL 65543. (D. Idaho January 5, 2015)

new analysis and decision for travel management in the SFSR Management Area to consider system and unauthorized routes. The Forest Service also agreed to consider in good faith, written recommendations for travel planning and other actions (e.g., watershed restoration) from the Collaborative.⁴

Tribal staff actively participated in the Collaborative for over two years, surveying hundreds of miles of non-inventoried roads on the Forest, regularly attending meetings, and participating in a Project field trip. On November 14, 2016, the Collaborative submitted a proposal to the Forest Service identifying approximately 166.5 miles of road decommissioning opportunities with associated maps and spatial data. On May 16, 2019, the Collaborative submitted a letter to the Forest recommending, among other actions, that the Forest decommission all Management Level One (“ML1”) roads that have resource issues.

In addition to participating in the Collaborative, the Tribe submitted scoping comments on July 12, 2017, participated in a staff-to-staff meeting with the Krassel District Ranger on March 19, 2019, and submitted comments on the Environmental Assessment on May 16, 2019.

II. SPECIFIC OBJECTIONS

A. The Forest’s Selected Alternative Retains Roads with Greatest Aquatic Resource Impacts, Negatively Affecting the Tribe’s Treaty-Reserved Resources and Violating Applicable Forest Plan Standards

The Tribe acknowledges and appreciates that the Forest’s selected alternative will result in decommissioning⁵ 143 miles of unauthorized roads. The Forest should address, however, resource degradation issues with the best means possible (which in most cases would be full recontour of the road prism), regardless if a road is unauthorized or ML1. road prism. The Forest is retaining 88 miles of ML1 roads that exist in the Project-specific MRS which includes the 56.5 miles of newly designated ML1 roads, many of which may have detrimental impacts on salmon and steelhead populations important to the culture and livelihood of the Tribe. ESA-listed fishes are susceptible to sedimentation of spawning and rearing habitat, which can lower growth, survival, and reproductive success. The Tribe’s concerns by specific areas are outlined below:

Buckhorn Creek

Forest Plan standard SWST01 provides: “Management actions shall be designed in a manner that maintains or restores water quality to fully support beneficial uses and native and desired non-native fish species and their habitat, except as allowed under [SWST04].”⁶ Forest Plan standard SWST04 provides in relevant part: “Management actions will neither degrade nor retard attainment of properly functioning soil, water, riparian, and aquatic desired conditions, except where outweighed by demonstrable short-term or long-term benefits to watershed resources.”⁷

⁴ South Fork Salmon River Restoration and Access Management Plan Draft Decision Notice at 1.

⁵ All references to road decommissioning in the Tribe’s objection shall mean full recontour of the road prism.

⁶ Payette National Forest Land and Resource Management Plan at III-21.

⁷ *Id.* at III-22.

Excessive roads and associated sediment in the Buckhorn Creek drainage are detrimental to ESA-listed fish and their habitat. Buckhorn Creek and its tributaries provide critical habitat for ESA-listed Snake River spring/summer Chinook salmon (*Oncorhynchus tshawytscha*), Snake River steelhead (*O. mykiss*), and bull trout (*Salvelinus confluentus*; 58 FR 68543, 70 FR 52630, 75 FR 63898). Forest snorkel surveys identified Chinook salmon at four sites, bull trout at six sites, and *O. mykiss* at ten sites (unpublished Payette National Forest data; 1993, 1995, 2004, 2011, 2017). As recently as 2017, an environmental DNA (“eDNA”) sample confirmed presence of *O. mykiss* and bull trout in Little Buckhorn Creek (unpublished Payette National Forest data). Further, Chinook salmon spawn in the SFSR at the mouth of Buckhorn Creek (unpublished Idaho Department of Fish and Game redd survey data; 2011, 2014, 2015, 2017).

Concerns with ATV trail construction

The selected alternative will increase long-term annual sediment delivery from 14 to 29 tons (over 200%).⁸ Additionally, “[w]hen compared to Alternatives C and D, the selected alternative would retain 43 miles of closed roads located mostly on land types having a high to moderate erosion hazard and debris slide rating and would increase the likelihood for road sediment and landslides.”⁹ These conditions resulting from the selected alternative will further degrade water quality conditions and therefore do not comply with SWST01 and SWST04.

In addition to these Forest Plan violations, the selected alternative violates Forest Plan standard SWST07 which provides: “[w]ithin legal authorities, ensure that new proposed management activities within watersheds containing 303(d) listed water bodies improve or maintain overall progress toward beneficial use attainment for pollutants that led to the listing.”¹⁰ Buckhorn Creek and its tributaries already have an EPA-approved Total Maximum Daily Load for temperature (IDEQ 2017). Of the 14.2 miles of new ATV trails within the Buckhorn Creek area, there are 21 stream crossings, with 3.5 miles (25%) located in the RCA (unpublished Tribe Watershed Division data). Trail Class 2 construction for ATVs would require a tread width of 60 inches and a brushing width of 96 inches.¹¹ Removing streamside vegetation in order to construct the stream crossing and trails can decrease shading needed to maintain cold water temperatures.

The Tribe is concerned about exacerbating the thermal impairment of the Buckhorn Creek watershed from new ATV trail construction in the RCA without the full suite of restoration offsets provided by road decommissioning (unauthorized and newly authorized ML1 roads). In Tribes draft EA comments the Tribe expressed its willingness to support the Forest’s construction of a new ATV trail along Little Buckhorn Creek, consistent with the Collaborative recommendation. The Tribe’s support, however, was expressly conditioned upon the agency agreeing to recontour all miles of roads that have resource impacts, as analyzed in Alternatives C and D. The Forest’s decision to construct the new ATV trail and also newly designate 38.7 miles of ML1 roads in this drainage¹²—but not agree to recontour the roads with resource impacts—ignores the Tribe’s and Collaboratives’ recommendations.

⁸ South Fork Salmon River Restoration and Access Management Plan Environmental Assessment Table 23 at 149.

⁹ South Fork Salmon River Restoration and Access Management Plan Soil and Hydrology Specialist Report at 34.

¹⁰ *Id.* at III-22.

¹¹ South Fork Salmon River Restoration and Access Management Plan Environmental Assessment at 57.

¹² South Fork Salmon River Restoration and Access Management Plan Environmental Assessment at 48.

Concerns with newly designated ML1 roads and decision to not decommission

Over half (58%) of the sediment delivery from roads to Buckhorn-area streams is coming from these 38.7 miles of ML1 roads that have been removed from decommissioning, as predicted by Geomorphic Road Analysis and Inventory Package (“GRAIP”) model and ground surveys (Keller et al. 2019a). Of these 38.7 miles of newly-designated ML1 road, 14.2 miles (37%) are located in the Riparian Conservation Area (“RCA”) and there are 41 stream crossings. Dismissal of these roads located in RCAs from potential decommissioning is inconsistent with Forest Plan Facilities and Roads Guideline FRGU05, which states “[w]here practical alternatives exist, roads in RCAs that are degrading riparian-dependent resources should be evaluated for obliteration or relocation.”¹³

Moreover, there are numerous roads within the 38.7 newly designated ML1 miles that lead to other roads for decommissioning and are currently impassable due to large landslides or road failures. These newly designated ML1 roads would need to be repaired to provide access to decommission the non-system roads that are connected to them. The Tribe is concerned that a lack of funding may result in these roads remaining unmaintained and continue to deliver sediment to streams.

The Forest should decommission the newly designated ML1 roads considering the ecosystem degradation described above and because these roads are unnecessary and do not lead to private property or support outstanding rights. The 2015 PNF Forest-wide Travel Analysis Report states that “[i]f there is no compelling administrative or public need for the road in the long-term, then it should be decommissioned.”¹⁴ No compelling administrative or public need for most of the roads in this area has occurred since the 1960s,¹⁵ indicating that these roads are unnecessary and should be decommissioned through full recontouring.

Zena Creek

Excessive roads and associated sediment in the Zena Creek drainage are detrimental to ESA-listed fish and their habitat. Zena Creek provides critical habitat for ESA-listed Snake River steelhead and bull trout (70 FR 52630, 75 FR 63898). Forest snorkel surveys identified ESA-listed Chinook salmon at one site and *O. mykiss* at five sites (unpublished Payette National Forest data; 2004, 2011). As recently as 2014, eDNA sampling confirmed the presence of *O. mykiss* and bull trout in Zena Creek (unpublished Payette National Forest data).

Concerns with ML1 roads and decision to not decommission

The selected alternative does not include decommissioning all 25.0 miles of ML1 roads that the Tribe, through its draft EA comments, and Collaborative support. Instead, the selected alternative only proposes decommissioning 5.9 miles of unauthorized roads, constituting just 12% of the roads recommended. Within the analysis area for the entire Project, this sub-watershed has the most road

¹³ *Id.* at III-60.

¹⁴ Payette National Forest Forest-wide Travel Analysis Report, 2015, Table 9 at 25.

¹⁵ South Fork Salmon River Restoration and Access Management Plan Draft Environmental Assessment at 7.

miles (82.2),¹⁶ second greatest annual sediment delivery (45.91 tons/year),¹⁷ highest road density (3.12 mi/mi²; Keller et al. 2019a), and the most road mileage in a landslide prone area (25% of roads proposed for decommissioning in Alternatives C and D; unpublished Tribe Watershed Division data).

Concerns with the description in the draft and final EAs

The draft EA states that the Zena Creek subwatershed has by far the greatest annual sediment delivery (91.4 tons/year)¹⁸, but there is no justification or actions that explain why the sediment delivery per year was reduced to 45.91 tons/year¹⁹ in the final version.

Cow Creek

The Forest did not analyze any alternatives that includes decommissioning the ML1 portion of the 7.2-mile Tie Creek Road (PNF Road 50387),²⁰ although it is not required for the MRS in the 2015 PNF Forest-wide Travel Analysis Report (Table 2).²¹ Removing the decommissioning of this road from all alternatives prevents the Zena Creek subwatershed from shifting to the 'Functioning Appropriately' category, based on the road density Watershed Condition Indicator (unpublished Tribe Watershed Division data). Moreover, preliminary road surveys identified that half of this route (3.6 miles) is located in an RCA, has numerous stream crossings and erosion features.

Phoebe and Camp Creeks

Excessive roads and associated sediment in the Phoebe and Camp Creek drainages are detrimental to ESA-listed fish and their habitat. Camp Creek provides critical habitat for Snake River steelhead and bull trout; Phoebe Creek provides critical habitat for steelhead (70 FR 52630, 75 FR 63898). Payette National Forest snorkel surveys identified Chinook salmon and *O. mykiss* in both Phoebe and Camp Creeks (unpublished Payette National Forest & Boise National Forest data; 1996, 2005, 2011). One of the snorkel surveys identified 380 Chinook salmon at a single site. Additionally, eDNA sampling confirmed presence of *O. mykiss* in Phoebe and Camp Creeks (unpublished Tribe Watershed Division data; 2014). Further, Chinook salmon spawn in the SFSR less than a quarter mile downstream from the mouth of Phoebe Creek (unpublished Idaho Department of Fish and Game redd survey data; 2013, 2014, 2015, 2016, 2017).

Concern with decision to not decommission ML1 roads

The Forest did not analyze any alternative to decommission the North Fork Camp and Seed Orchard Roads (PNF Roads 50775 and 50239).²² Collectively, 44% of these roads are located in

¹⁶ South Fork Salmon River Restoration and Access Management Plan Environmental Assessment Table 22 at 133.

¹⁷ *Id.* at 133.

¹⁸ South Fork Salmon River Restoration and Access Management Plan Draft Environmental Assessment Table 23 at 138.

¹⁹ South Fork Salmon River Restoration and Access Management Plan Environmental Assessment Table 22 at 133.

²⁰ *Id.* Table 37 at 259.

²¹ Payette National Forest Forest-wide Travel Analysis Report, 2015, Appendix A at 25 & 26.

²² South Fork Salmon River Restoration and Access Management Plan Draft Environmental Assessment at 259.

RCAs and have 7 stream crossings (unpublished Tribe Watershed Division data). The 6.4-mile North Fork Camp Road provides access to nearly all unauthorized roads proposed for decommissioning in this area. Decommissioning access would require clearing this road of live vegetation and downfall, making it vulnerable to future restoration issues and unauthorized motorized use if not fully recontoured.

The Forest's decision fails to evaluate and disclose what future management activities are being considered for the ML1 roads depicted in Table 1, aside from their utility to harvest timber.²³ Road Standard 1270 states that ML1 roads should not be reopened unless: a) reopening these roads shall not result in degradation to resources, b) degraded resources shall not be further degraded, and c) adverse effects to TEPC species are avoided.²⁴ Reopening these roads would degrade aquatic resources in the long term, if permanently opened for "administrative needs"; these uses contradict Forest General Standards 1215 and 1220.²⁵ These General Standards state that "[m]anagement actions, including salvage harvest, may only degrade aquatic, terrestrial, and watershed resource conditions in the temporary (up to 3 years) or short-term (3-15 years) time periods, and must be designed to avoid degradation or existing conditions in the long-term (greater than 15 years)."²⁶

Table 1. Summary of ML1 roads that are not proposed for decommissioning under any alternative in the draft EA. Details of this table include: road name, road number, specific area, 2015 management recommendation and MRS recommendation (from the 2015 Travel Analysis Report), proposed designation under all alternatives in the draft EA, and total mileage of each road.

Name	Road Number	Area	2015 Management Recommendation	MRS (Y/N/U)*	Alt A	Alt B	Alt C	Alt D	Miles
Seed Orchard	50239	Phoebe	Decom	N	ML1	ML1	ML1	ML1	0.9
North Fork Camp	50775	Phoebe	IDT Evaluate	U	ML1	ML1	ML1	ML1	6.4
Snap	50776	Phoebe	Decom	N	ML1	ML1	ML1	ML1	0.4
Tie Creek	50387	Cow	Decom	N	ML1 2wheel	ML1 2wheel	ML1 2wheel	ML1 2wheel	7.2
Buckhorn	50404	Buckhorn	IDT Evaluate	U	ML1 ATV	ML1 ATV	ML1 ATV	ML1 ATV	0.9

²³ South Fork Salmon River Restoration and Access Management Plan Transportation Specialist Report at 2 and 19.

²⁴ Payette National Forest Land and Resource Management Plan at III-255.

²⁵ *Id.* at III-250 & III-251.

²⁶ *Id.* at III-250 & III-251.

Jakie Creek	50384	Buckhorn	IDT Evaluate	U	ML1 ATV	ML1 ATV	ML1 ATV	ML1 ATV	2.2
Lower Buckhorn Loop	50382	Buckhorn	IDT Evaluate	U	ML1 ATV	ML1 ATV	ML1 ATV	ML1 ATV	3.3
Upper Buckhorn Loop	50383	Buckhorn	IDT Evaluate	U	ML1 ATV	ML1 ATV	ML1 ATV	ML1 ATV	1.6

*Y=yes, N=no, U=undecided

B. The Change in Designation of Numerous Unauthorized Roads in the Project to ML1 Violates the Forest Plan and Inventoried Roadless Area Standards

Concern with administrative needs identified through ALTA

Of the 56.5 miles of newly designated ML1 roads, the Tribe objects to the Forest designating 43.9 miles of those roads because the designation violates applicable Forest Plan Standards. Through this Project, the Forest identified many road prisms as ML1 in the Project-specific MRS based on Collaborative recommendations and “administrative needs”.²⁷ The meaning of “administrative needs” appears to be the potential to harvest timber, as evaluated through an ALTA analysis. ALTA is based on feasibility of logging from existing road prisms, without the “construction of new roads...but the addition of existing inventoried roads to the National Forest System of Roads.”²⁸ However, the analysis does not consider the impacts to landslide prone areas, aquatic resources, or the legality of logging from these road prisms. Use of these newly-designated ML1 roads to harvest timber, however, would be inconsistent with the Forest Plan in most cases. All roads the Forest defines as ML1 through this Project are in areas unsuitable for logging. The following information details area-specific concerns:

Concern with newly designated ML1 roads located in recommended Wilderness and IRAs

In Martin Creek, approximately 7.9 miles of inventoried road prisms (newly-designated ML1) in the Project are located in Recommended Wilderness (MPC 1.2). Logging in Recommended Wilderness is prohibited by Forest Plan standard 1202. Vegetation Standard 1202 provides: “Mechanical vegetation treatments, including salvage harvest, are prohibited.”²⁹ Further, the use of these roads in Recommended Wilderness would violate Forest Plan standard 1203 and Road standard 1205.³⁰ Recreation Standard 1203 states: “No new motorized or mechanical uses will be allowed, except where these uses must be allowed in response to reserved or outstanding rights, statute or treaty.” Road Standard 1205 states: “Road construction or reconstruction may only occur

²⁷ South Fork Salmon River Restoration and Access Management Plan Transportation Specialist Report at 2.

²⁸ South Fork Salmon River Restoration and Access Management Plan Transportation Specialist Report, Appendix A at 19.

²⁹ Payette National Forest Land and Resource Management Plan at III-249.

³⁰ *Id.* at III-249.

where needed... [t]o provide access related to reserved or outstanding rights, or... [t]o respond to statute or treaty.”

In addition, nearly half (3.9 miles) of the newly designated ML1 roads in Martin Creek and 5.3 miles of the newly designated ML1 roads in Buckhorn Creek are in the Needles Inventoried Roadless Area (“IRA”), managed under the Wild Land Recreation classification. This particular IRA classification states that “[r]oad construction or reconstruction are prohibited [unless] pursuant to statute, treaty, reserved or outstanding rights, or other legal duty of the United States.”³¹ Further, “[t]he cutting, sale, or removal of timber is prohibited...” in Wild Land Recreation IRAs.³²

Concern with newly designated ML1 roads located in MPC 3.1 and 3.2

Approximately 6.5 miles of newly designated ML1 roads in the Project are located in MPC 3.1. Conducting timber harvest in MPC 3.1 would violate Forest Plan standard 1216.³³ Reopening and use of roads in MPC 3.1 would violate Forest Plan standard 1218³⁴ and the temporal scale in LRMP General Standard 1215.³⁵

Throughout the Project area, 29.5 miles of newly designated ML1 road prisms are located in MPC 3.2. These road prisms exist in the Buckhorn, Fourmile, Camp, Zena, Fitsum, and Enos Creek subwatersheds. Logging in MPC 3.2 would violate Forest Plan standard 1221.³⁶ Reopening and using roads in MPC 3.2 would violate Forest Plan standard 1222 and the temporal scale in Forest Plan standard 1220.³⁷

The Forest Plan standards identified above limit new motorized/mechanical use and road construction/reconstruction in MPCs encompassed by this Project. These standards mirror guidelines from the PACFISH 1998 BiOp for “restricting the construction of new roads; ... minimizing ground disturbance in fire suppression; ... minimizing road construction and other ground disturbance in harvesting timber...” The use of these newly-designated ML1 roads would only be necessary to harvest timber or increase recreational opportunities, both of which are plainly forbidden for their MPCs in the Forest Plan. The use of the existing road prism would also require road construction/reconstruction, also expressly prohibited for these MPCs in the Forest Plan. For these reasons, the Forest is using an invalid rationale for including existing road prisms on the Project-specific MRS.

C. The Forest’s Designation of ML1 Roads Undermines Previous Travel Planning Decisions and Violates the Forest Plan

Forest Plan standard FRST04 provides: “In support of road management decisions, use an interdisciplinary science-based roads analysis process such as Roads Analysis: Informing

³¹ 36 CFR 294.23

³² 36 CFR 294.24

³³ *Id.* at III-250.

³⁴ *Id.* at III-251.

³⁵ *Id.* at III-250.

³⁶ *Id.* at III-251.

³⁷ *Id.* at III-251.

Decisions About Managing the National Forest Transportation System (USDA FS, 1999 Report FS-643)” (“Roads Analysis”).

The Tribe disagrees with the Forest’s contention that the McCall and Krassel Travel Analysis Process informed the designation of ML1 roads through this Project.³⁸ To the contrary, the Forest’s decision disregards its own 2015 Travel Analysis Report that followed Forest Plan Facilities and Roads Objective FROB06 to “[i]dentify roads and facilities that are not needed for land and resource management, and evaluate for disposal or decommissioning.”³⁹ The recommendation to decommission these ML1 roads follows Forest Plan guideline FRGU04 that “[r]oads that are not desired for public access or tribal uses, and that are no longer needed to manage the Forest or provide access to inholdings should be considered for decommissioning and returning the lands that they occupy to desired resource management.”⁴⁰

Previous travel analysis conducted for the Project area indicate that 14.2 miles of ML1 road are not required for the MRS and are recommended for decommissioning. However, the Forest’s selected alternative does not include decommissioning these unnecessary road prisms. In addition, the Forest’s selected alternative will not decommission 7.0 miles of road in the Cow Creek (Hemlock, Tie Ridge, Cow Ridge, and Sky Tie Roads; PNF Roads 51141, 51424, 51425, and 51426),⁴¹ and Phoebe (Creek Seed Orchard Road (PNF Road 50239) and the Snap Road (PNF Road 50776)) areas. Previous Forest analysis recommended not including these roads in the MRS and instead were recommended for decommissioning in the 2015 PNF Forest-wide Travel Analysis Report.⁴²

The Forest also did not analyze any alternatives that includes decommissioning the ML1 portion of the 7.2-mile Tie Creek Road (PNF Road 50387),⁴³ although it is also not required for the MRS in the 2015 PNF Forest-wide Travel Analysis Report (Table 1).⁴⁴ The Tie Creek Road provides access to all roads proposed for decommissioning in this area and would have to be cleared of vegetation in order to perform the work. The EA states “[w]here two-wheel motorized trails currently overlay unauthorized roads, if heavy equipment uses the road to access road decommissioning, the unauthorized road underlying the trail could receive decommissioning treatments as needed.”⁴⁵ Since this is already designated a two-wheel motorized trail, the Forest should follow these guidelines and decommission the road to address resource issues, and then reconstruct the trail.

Moreover, the Forest’s decision not to decommission 56.5 miles of unauthorized roads and instead designate them as ML1 violates the Forest Plan and is erroneous. According to the DN, the Forest designated the 56.5 miles road as ML1 roads based on the following reasons: (1) the Forest

³⁸ South Fork Salmon River Restoration and Access Management Plan Environmental Assessment at 4.

³⁹ Payette National Forest Land and Resource Management Plan at III-59.

⁴⁰ *Id.* at III-60.

⁴¹ *Id.* Table 37 at 257-259.

⁴² Payette National Forest Forest-wide Travel Analysis Report, 2015, Appendix A at 54 & 65.

⁴³ South Fork Salmon River Restoration and Access Management Plan Draft Environmental Assessment, Table 37 at 259.

⁴⁴ Payette National Forest Forest-wide Travel Analysis Report, 2015, Appendix A at 25 & 26.

⁴⁵ South Fork Salmon River Restoration and Access Management Plan Environmental Assessment at 47.

erroneously identified 14.9 miles of roads as unauthorized and corrected that classification to reflect that they are newly-designated ML1 roads; and (2) the Forest believes potential but currently unplanned future logging sales justifies the designation of 29.1 miles of road prisms as ML1. Forest designated the remaining 12.5 miles as ML1 with no documented analysis at all in the EA or DN.

The Forest used historic logging sale plans from the 1980's as the basis for redesignating 29.1 miles of 'undetermined' roads to ML1 status.⁴⁶ Specifically, the Forest used the 1981 Cougar Creek Transportation Plan⁴⁷ and the Preliminary Zena Creek Transportation Plan.⁴⁸ However, a road's identification in a logging sale plan alone does not justify designating that road as ML1. To designate roads as ML1 and comply with Forest Plan standard FRST04, the Forest must use "an interdisciplinary science-based roads analysis process." There is no evidence in the EA or DN that the Forest used such a process. Instead, the Forest relied solely on logging sale plans with hand-drawn maps that were not available to the public and did not undergo any prior review under the National Environmental Policy Act or other applicable federal law.

With respect to the 12.5 miles of newly-designated ML1 roads (PNF Roads 503839000, 503834000, 503835000, 503847000, 503847800, 503849000, 503849400, and a 1.5 mile section of 50383), the Tribe objects the validity of re-designating these roads as ML1 without written documentation of any sort. Visual illustrations of roads prisms on logging maps are insufficient evidence of ML1 road status and do not credibly constitute a "science-based roads analysis process" as required for roads management decision under the Forest Plan.

D. The Forest's Analysis and Decision Undermines the Collaborative Process

Following the Collaborative's proposal submission and initial scoping of this Project, the Forest re-evaluated the designation of all ostensibly unauthorized roads in December 2017. During this evaluation, the Forest analyzed roads listed in the 1981 Cougar Creek Transportation Plan⁴⁹ and the Preliminary Zena Creek Transportation Plan.⁵⁰ This re-evaluation of road status concluded that 56.5 miles in the Collaborative recommendation are ML1 roads and removed them from decommissioning. The Tribe expressed concerns regarding this ML1 road designation status during a staff-to-staff meeting with the Krassel District Ranger on March 19, 2019. During this meeting, the Krassel District Ranger stated that the ML1 roads were removed from decommissioning because he wanted to make them available for future restoration offsets. However, the Forest did not inform the Collaborative of changing the unauthorized roads to ML1 road status until the release of the draft EA in April of 2019. On May 16, 2019, the Collaborative wrote a letter to the Krassel District Ranger informing him that their intended recommendation was to decommission roads where resource issues exist, regardless if roads were designated as unauthorized or ML1. Nevertheless, the decision made disregards the Collaborative's recommendation. The Tribe believes doing so belies the Forest's good-faith commitment to consider written recommendations for travel planning and other actions from the Collaborative.

⁴⁶ South Fork Salmon River Restoration and Access Management Plan Transportation Specialist Report, page 22.

⁴⁷ Final Transportation Plan Cougar Creek Sale Area (1981).

⁴⁸ Preliminary Transportation Plan Zena Creek Sale Area.

⁴⁹ Final Transportation Plan Cougar Creek Sale Area (1981).

⁵⁰ Preliminary Transportation Plan Zena Creek Sale Area.

III. CONCLUSION AND REQUESTED OBJECTION REMEDIES

The Forest asked the Tribe to be part of the Collaborative. Tribal staff spent years participating in the Collaborative process and surveying roads to inform management decisions with sound data. The Tribe continues to support the Collaborative consensus recommendations submitted to the Forest Service on November 14, 2016. These recommendations had years of input from numerous individuals to balance resource issues and recreational opportunities. Unfortunately, the selected alternative misses the critical point that the Forest should address resource degradation issues with the best means possible (which in most cases would be full recontour of the road prism), regardless if a road is unauthorized or ML1.

The Tribe requests that the Forest agree to the following remedies to resolve its objection:

- Consistent with applicable Forest Plan standards, the Forest must decommission all ML1 roads in the Project that will either further degrade water quality or have aquatic resource impacts as defined by the criteria in the 2015 PNF Forest-wide Travel Analysis Report.
- Consistent with applicable Forest Plan standards, the Forest must decommission identified roads in the Buckhorn Creek, Zena, Phoebe and Camp and Cow sub-watersheds, to address soil, water, riparian, and aquatic resource degradation that impacts listed fish species, consistent with applicable Forest Plan standards.
- Consistent with the National Environmental Policy Act and other applicable federal law, the Forest must revise the EA and DN to evaluate and disclose the environmental effects associated with newly-designating roads as ML1 in the Project.
- The Forest must revise the EA and DN to describe the plan and accompanying analysis for restoration treatments that will improve aquatic and terrestrial ecosystem health in the Buckhorn watershed prior to ATV trail construction.
- The Forest must revise the DN to decommission all unauthorized and ML1 roads in the Project, as requested by the Tribe and recommended by the Collaborate in its November 14, 2016 written proposal.

IV. REFERENCES

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