



P.O. Box 1808, McCall, ID 83638  
[www.savethesouthforksalmon.com](http://www.savethesouthforksalmon.com) ■ [savethesouthfork@gmail.com](mailto:savethesouthfork@gmail.com)

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Jake Strohmeyer, District Ranger  
PO Box 696  
Cascade, ID 83611  
[jstrohmeyer@fs.fed.us](mailto:jstrohmeyer@fs.fed.us)

*BY ELECTRONIC MAIL - please confirm receipt*

Re: Scoping comments on the Burntlog Route Geophysical Investigation Project

Dear Mr. Strohmeyer:

Thank you for the opportunity to comment on the Burntlog Route Geophysical Investigation Project. Save the South Fork Salmon (SSFS) is a community-based citizens' organization, headquartered in Valley County, Idaho, dedicated to protecting the South Fork of the Salmon River watershed, its outstanding and remarkable natural values, and the economies that depend on those values. SSFS's members and supporters have a strong interest in protecting natural resources, maintaining recreational opportunities and access, and ensuring future generations can enjoy and benefit from these resources and opportunities in the South Fork of the Salmon River watershed. SSFS's members and supporters have participated in the Stibnite Gold Project environmental review process under the National Environmental Policy Act (NEPA) since the Payette National Forest (PNF) opened the scoping comment period in 2017, and have made significant investments in time and resources to better understand the project proposed by Midas Gold Corp. and its wholly owned subsidiaries Midas Gold Idaho, Inc., Stibnite Gold Company, and Idaho Gold Resources (collectively, MGII).

SSFS has serious concerns about the proposed Burntlog Route Geophysical Investigation Project (Burntlog Project or Project) proceeding under a categorical exclusion, and believes, based on the comments below, that it would be more appropriate and consistent with NEPA to proceed with an environmental assessment (EA) or and environmental impact statement (EIS). Furthermore, the Boise National Forest (BNF) must

take into consideration that this Project may violate NEPA, the 1872 Mining Law, the National Forest Management Act, and other land use policies such as the Idaho Roadless Rule.

**I. The use of a categorial exclusion is inappropriate.**

The Forest Service proposes to categorically exclude the Burntlog Project from environmental analysis based on category 36 C.F.R. 220.6(e)(8). The use of this categorical exclusion is inappropriate for several reasons. First, the Project proposes activities that are not allowed under the categorical exclusion. Second, the nature of the Project, connected with all past, present, and foreseeably future exploration activities has the potential to have significant effects such that reliance on a categorical exclusion is not appropriate. Finally, the degree of potential impacts to several resource conditions are such that extraordinary circumstances exist, making this Project inappropriate for a categorical exclusion.

**A. The Project proposes activities that are not authorized under the listed categorical exclusion.**

All the activities described in the proposed Project are not covered within the scope of those listed in the categorical exclusion under 36 C.F.R. 220.6(e)(8), and thus an EA, at a minimum, is required.

The categorical exclusion specifically includes “geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard road, or use and minor repair of existing roads.” According to the scoping document, “MGII proposes to use four methods to complete the proposed Burntlog Route geophysical investigation. The methods include a Dynamic Cone Penetrometer Test (DCPT), a track mounted excavator, a truck/track mounted hollow stem auger/core rig, and a helicopter assisted casing advancer/core drill rig.” Three of these proposed methods, the DCPT and the two truck/track methods, purportedly fall within the category of 36 C.F.R. 220.6(e)(8).

The fourth method is helicopter assisted casing advancer/core drill rig for geophysical investigation sites B-10, 11, 12, 13, 14, 15, 16, and 17. These sites are not in areas adjacent to, and not accessible by, existing roads. Nor will they be accessed by construction of less than one mile of low standard road. Rather, the sites will be accessed by helicopter, an activity that is neither specifically allowed, nor reasonably included in the scope of activities listed in 36 C.F.R. 220.6 (e)(8)(i-vii). Therefore, use of a categorical exclusion for the Project is inappropriate.

**B. The Impacts of Past, Present, and Reasonably Foreseeable Future Actions in the Project Area Raise Uncertainty About the Significance of the Burntlog Project's Cumulative Impact.**

Categorical exclusions are actions which do not individually or cumulative have a significant effect. However, the Forest Service's obligation during scoping requires consideration of potential cumulatively significant impacts in determining the significance of a proposed project's effects. 40 C.F.R. 1507.27(B)(7). The Forest Service Handbook also recognizes that "[s]coping should also reveal any past, present, or reasonably foreseeable future actions with a potential to create uncertainty over the significance of cumulative effects."<sup>1</sup> Here, because of the extensive past, present, and foreseeable future activity in the Stibnite area, there is significant uncertainty over the significance of the effects of the Burntlog Project on resource conditions. Thus, reliance on a categorical exclusion to approve this Project is not appropriate.

MGII has been exploring the Stibnite Mining District since 2009. In 2012, the PNF developed an EA for the Golden Meadows Exploration Project. After several years of appeals, objections, and litigation the PNF issued a Decision Notice and Finding of No Significant Impact in 2016 for MGII's exploration activities on Forest Service lands.<sup>2</sup> For the past 11 years, MGII has conducted extensive drilling and other exploration activities associated with minerals prospecting in the Stibnite Mining District. MGII submitted a formal Plan of Restorations and Operations (PRO) to the PNF in late 2016. The draft EIS for Stibnite Gold Project is currently under analysis by the PNF and cooperating agencies, including the BNF.<sup>3</sup>

This is at least the *eighth* year since the PNF initially approved significant mining exploration activities for MGII on Forest Service land.<sup>4</sup> The impacts of MGII's mining exploration activities have been ongoing for many years and, when combined with the impacts of the Burntlog Project, are highly uncertain and potentially significant. Ascribing a component of the larger Stibnite Gold Project environmental analysis, even though it falls under the jurisdiction of an adjacent National Forest unit (and not the lead permitting agency unit), does not justify use of a categorical exclusion under 36 C.F.R. 220.6(e)(8).

**C. Extraordinary circumstances exist that warrant further analysis in an EA or EIS.**

Forest Service regulations require the following resource conditions, among others, be considered in determining whether extraordinary circumstances warrant further analysis and documentation in an EA or EIS:

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<sup>1</sup> Forest Service Handbook 1909.15, s. 31.3.

<sup>2</sup> See Golden Meadows Exploration Project Decision Notice/FONSI EA p. 1-2 (Jan. 2016).

<sup>3</sup> See PNF Stibnite Gold Project webpage: <https://www.fs.usda.gov/project/?project=50516>

<sup>4</sup> See Golden Meadows Exploration Project Decision Notice/FONSI p. 1 (Jan. 2016).

- Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest sensitive species;
- Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas; and
- Inventoried roadless areas.

36 C.F.R. 220.6(b). “Categorical exclusions do not apply where there are extraordinary circumstances, such as adverse effects on threatened and endangered species or their designated critical habitat; wilderness areas; inventoried roadless areas; wetlands; impaired waters; national recreation areas; and archaeological, cultural, or historic sites.”<sup>5</sup> Here, a categorical exclusion is not appropriate because many of the sites contain resource conditions that may be adversely affected by the proposed Project such that further analysis is warranted.

First, the Project will have adverse effects on the adjacent Congressionally-designated wilderness area, the Frank Church River of No Return Wilderness (FCW). The sites accessed by helicopter, for example, see minimal human impact, aside from occasional recreational use, and range in elevation between approximately 7,500 to 8,400 feet. Moreover, these sites are within an Inventoried Roadless Area and managed as backcountry restoration under the Idaho Roadless Rule. In addition, several of these sites (B-14 thru 17) are less than one-quarter mile from the FCW. And although the Project itself is not located within the FCW, the Forest Service must consider the impacts that the Project will have on wilderness areas. *Greater Yellowstone Coal. v. U.S. Forest Serv.*, 12 F. Supp. 3d 1268, 1275-70 (D. Idaho 2014). Here, the noise from Project activities, particularly helicopters flying at high elevations in close proximity to the FCW may have an adverse impact to the character of the wilderness area. These impacts must be analyzed and disclosed in an EA or EIS.

Further, B-9 and DCPT-1 thru 4 are located in a riparian area adjacent to Trapper Creek, which is designated critical habitat for Columbia River Bull Trout under the Endangered Species Act (ESA). Management Area 20 in the BNF management plan refers to the Upper Burnt Log Creek sub watershed as “important to the recovery of listed fish species, and as high priority areas for restoration.”<sup>6</sup> In addition, threatened Ute-ladies’ tresses orchid and slender moonwort, a candidate species, may have “moderate to high potential habitat in riparian/wetland areas.”<sup>7</sup> Also noteworthy is that “wolverine denning habitat exists in high elevation cirques,” not unlike the Black Lake cirque. It must be determined if these species are present at any of the test sites, and if so, what the potential impacts to them could be. A plan to eliminate adverse impacts to these species should be developed. It

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<sup>5</sup> See “Highlights of Final NEPA Procedures,” 2019 USFS NEPA website: [https://www.fs.fed.us/emc/nepa/nepa\\_procedures/includes/final\\_nepa\\_procedures\\_highlights.pdf](https://www.fs.fed.us/emc/nepa/nepa_procedures/includes/final_nepa_procedures_highlights.pdf)

<sup>6</sup> BNF Management Plan III-372.

<sup>7</sup> *Id.* at III-372.

should include a monitoring plan to ensure compliance with appropriate best management practices (BMP's), and should specify BMP's in terms of their overall effectiveness and potential for implementation success.

Objective 2015 in the Forest Plan strives to de-list the “South Fork of the Salmon River drainage, including upper Johnson Creek, from the State of Idaho’s impaired water bodies list by applying appropriate and active watershed restoration to reduce *sediment, which is the identified pollutant of concern.*”<sup>8</sup> The impacts from sedimentation resulting from proposed activities in the watershed must be characterized in order to determine if these activities comply with this objective and if they will adversely affected ESA-listed fish species in the watershed.

The unique qualities of the aforementioned sites do not fit the intent of categorical exclusion described in 36 C.F.R. 220.6(e)(8). BNF must take a “hard look” at the impacts that the proposed activities will have on forest resources: including a more extensive environmental analysis of the impacts to soils, water quality and hydrology, vegetation (including sensitive species such as whitebark pine), wetland and riparian areas, wildlife (including the threatened Northern Idaho Ground Squirrel), aquatics (including sensitive species and ESA-listed fish), cultural resources, recreation, fuel spills, air quality, and noise for the proposed actions at these sites. The National Forest Management Act and the Forest Service Organic Administrative Act of 1897 require the Forest Service to minimize and protect against adverse impacts to resources. An EA, at a minimum, must be developed to understand the direct, indirect, and cumulative impacts this Project could have on forest resources.

## **II. Segmentation of Project from the Larger Stibnite Gold Project Violates NEPA.**

As stated in the scoping document, “[c]onnected to this action (MGII’s Stibnite Gold Project) is the need to develop a transportation route from the mine site to Highway 55.” The Council on Environmental Quality defines connected actions as actions that:

“(i) Automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. 1508.25(a)(1).

Here, the Burntlog Project is a connected action that is an “interdependent part of a larger action and depend[s] on the larger action for [its] justification. 40 C.F.R. 1508.25(a)(1). To be sure, as discussed above, construction of the Burntlog Route would never occur without construction of MGII’s proposed Stibnite Gold Project. These two actions are intimately linked and as such are required to be reviewed under the same environmental analysis; such as the Stibnite Gold Project EIS being developed by the PNF and other

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<sup>8</sup> *Id.* at III-376.

cooperating agencies, including the BNF.<sup>9</sup> Any geophysical investigation to determine the transportation route's feasibility must be included in the environmental analysis of the Stibnite Gold Project, and not as a separate action.

An agency cannot “[l]imit the choice of reasonable alternatives” before publishing a Record of Decision (ROD).<sup>10</sup> “While work on a required program environmental impact statement is in progress...agencies shall not take in the interim any major federal action...unless such action will not prejudice the ultimate decision on the program.”<sup>11</sup> Any activity to persuade the development of the Burntlog Route limits the range of reasonable alternatives being analyzed in the Stibnite Gold Project EIS. It is unclear as to why the BNF made the decision to scope this Project. The Stibnite Gold Project environmental analysis is far from being completed, and the associated ROD may or may not include the Burntlog Route for mine site access between Stibnite and Highway 55.

The use of a categorical exclusion under 36 C.F.R. 220.6(8) for a geophysical investigation of an action that is dependent upon a much larger action constitutes segmentation in the environmental review of the larger project. This is stated succinctly in the NEPA regulations: “Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement.”<sup>12</sup> Until such time that a ROD is issued for the Stibnite Gold Project, and *if* it includes the Burntlog Route as the transportation route to and from the mine site, then a geophysical investigation of developing the route would become warranted.

### **III. Map of Burntlog Route In the PRO Is Substantially Different than Map Attached to Burntlog Project Scoping Notice.**

The BNF has submitted a map (BNF Map) with the scoping notice that is inconsistent with the map contained within MGII's PRO.<sup>13</sup> SSFS recognizes this map as MGII's Burntlog 8A alternative submitted with the Modified Plan of Restoration and Operation (MODPRO) in 2019. The Stibnite Gold Project NEPA analysis currently underway is the venue to analyze alternative components of the mine access route. The MODPRO is not a substitute for an environmental effects analysis of these alternative components and cannot persuade any further activities until the completion of the Stibnite Gold Project NEPA analysis. Despite MGII's assertion that Burntlog 8A alternative is “favorable,”<sup>14</sup> NEPA requires the decision-making agency (the PNF in this case) to disclose the direct, indirect, and cumulative impacts of the alternative mine access routes. The public

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<sup>9</sup> See 40 C.F.R. 1506.1(1).

<sup>10</sup> 40 C.F.R. 1506.1(a).

<sup>11</sup> 40 C.F.R. 1506.1(c).

<sup>12</sup> 40 C.F.R. 1508.25(1).

<sup>13</sup> See MGII PRO, App'x C-5.

<sup>14</sup> See Technical Memorandum Section 6.2 and 6.3

will have the opportunity to examine the analysis of the mine site access alternatives when a draft EIS is published.

The public is under the assumption that the specific route presented in the PRO and the 2014 Pre-Feasibility Study [revised March 28, 2019] (PFS) is the route under consideration in the draft EIS. Moreover, the MODPRO is not readily available to the general public (it is questionable whether or not the Forest Service violated NEPA by not scoping this significant change in MGII's mine proposal). Had a route, such as Burntlog 8A alternative<sup>15</sup> been presented in the PRO during scoping the public would have had the opportunity to comment specifically on the more direct impacts to the Black Lake cirque.

This change in route location is significant. The impacts to Black Lake, a high elevation mountain lake, and the associated sensitive riparian area surrounding it constitute a significant alteration of the plan set forth in the PRO. The BNF must provide a reasonable explanation as to why it assumes the BNF Map is the Burntlog Route and not one of the several alternatives cited in the MODPRO,<sup>16</sup> or the route originally proposed in the PRO.

#### **IV. Midas Gold lacks Outstanding Rights to Conduct A Geophysical Investigation in Management Areas 20 and 21 of the BNF.**

MGII holds approximately 1,400 unpatented mining claims (of which 50 are millsite claims) in and around its proposed mining project area.<sup>17</sup> In 2015, MGII staked approximately 93 unpatented mining claims (Burntlog Claims) along a proposed mine site access route called Burntlog Route.<sup>18</sup> There is no evidence in the PRO that the mining claims staked conspicuously along this proposed Burntlog Route are valid.<sup>19</sup> To validate a mining claim “[a] claimant must...*discover* a valuable deposit. Satisfaction of other requirements of the 1872 act does not make a claim valid *absent* discovery of a valuable deposit.”<sup>20</sup> “The term ‘valid claim’ often is used in a loose and incorrect sense to indicate only that the ritualistic requirements of posting notice, monumentation, discovery work,

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<sup>15</sup> See Technical Memorandum BC2018e.

<sup>16</sup> See Technical Memorandum: SGP DEIS Modified Proposed Action – Chapter 2. s. 6.2; “Three alternative alignments were evaluated and included Burntlog 8A (Riordan Creek Segment), Horseshoe, and Riordan Option 2”

<sup>17</sup> See MGII PRO, App’x C.

<sup>18</sup> LR2000 BLM public information web portal. Mining claim information searched for referencing map in PRO Appendix C. Claims Numbers SF 1390 to SF 1482. *Also see* MGII PRO, Appendix C.

<sup>19</sup> Generally, the PRO describes the Burntlog Route as the preferred mine site access. The PRO does not mention planned future exploration activities in the vicinity of Burntlog Route, and implies mining must occur within a three-mile radius of planned operations at Stibnite in order to be economically feasible.

<sup>20</sup> Forest Service Manual 2811.5 (emphasis added).

payment of taxes, and so forth, have been met. Generally, a valid claim is a claim that may be patented.”<sup>21</sup>

MGII has conducted all of its previous exploratory drilling for valuable minerals within the Stibnite Mining District.<sup>22</sup> MGII has never indicated that mineralization exists within the boundaries of the Burntlog Claims staked along the Burntlog Route. Chapter 13 of MGII’s PRO titled, “Operations: Exploration,” attaches a map (PRO Figure 13-1) with a dashed green amoeba drawn around the Stibnite Mining District to outline an area that “Midas Gold is seeking approval for an additional exploration area.”<sup>23</sup> The area within this amoeba excludes the proposed Burntlog Route. Neither the PRO nor the PFS mention any potential future valuable mineral exploration sites along the proposed Burntlog Route.<sup>24</sup> MGII has been exploring its mineral interests in Idaho since 2009, and has never indicated any intention to conduct valuable mineral deposit investigations within any of the Burntlog Claims staked along the proposed Burntlog Route.

In *Mineral Policy Center v. Norton*, 292 F.Supp.2d 30, 46 (D.D.C. 2003), the court held that development “rights” under the mining laws only apply to lands covered by valid claims. This holding applies equally to both the Bureau of Land Management (FLPMA’s unnecessary and undue degradation standard was at issue in this case) and the Forest Service. Moreover, the court made clear what was required to “perfect” a mining claim was “discovery of the vein or lode.” *Id.* at n.19 (citing 30 U.S.C. 23).

The stated purpose of the proposed geophysical investigation is, however, “to collect crucial geophysical data at proposed rock quarries, bridge abutments, cut slopes, and soil nail/mechanically stabilized earth wall locations” and to “develop a new alignment between Trapper Creek and Stibnite,” which is in some way “connected to . . . the need to develop a transportation route from the mine site to highway 55.” The purpose of the geophysical investigation is *not* to explore for valuable minerals, but to investigate the feasibility to construct a transportation route through Inventoried Roadless Area on the boundary of the FCW for a proposed mining project which may or may not ever occur.

It is questionable as to whether MGII ever intends to prospect for minerals on its Burntlog Claims.<sup>25</sup> The Burntlog Route is one of seven access routes analyzed by MGII in

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<sup>21</sup> Forest Service Manual 2811.5 (1).

<sup>22</sup> See MGII PRO, MGII 2014 Prefeasibility Study and [www.sedar.com](http://www.sedar.com) (stating required investor disclosures under Canada laws).

<sup>23</sup> MGII PRO, p. 13-1.

<sup>24</sup> See *generally* 2014 PFS, s. 7 thru 9; see MGII PRO, Ch. 13.

<sup>25</sup> MGII proposes to use certain areas within its Burntlog Claims for borrow pits, but the discovery of “common varieties of sand, gravel, pumice, pumicite, or cinders” do not qualify as valuable mineral deposits and therefore do not confer validity upon a mining claim. See 30 U.S.C. 611.



the PRO. It was selected as the proposed access route in the PRO for a variety of reasons,<sup>26</sup> and is the mine access route analyzed in the PFS.<sup>27</sup> MGII continually markets the proposed Burntlog Route to the agencies and the public as the preferred access to the mine site.<sup>28</sup> As stated in the PRO, the cost-benefit balance for siting specific mining activities within a certain proximity to each other is a defining characteristic of the proposal:

“The purpose and need for the Project is for Midas Gold to economically develop and operate a modern mining operation at the Stibnite site to obtain financial return and benefits from its property rights and investment and supply extracted minerals for various uses. . . . Midas Gold established a radius of approximately three miles around the mineralized zones as the outer bounds for mine related facilities, such as the process facilities, tailings facility and development rock placement areas. This three-mile limit is appropriate given the rugged and mountainous terrain within and surrounding the Project site and the economic implications of distances in excess of this radius.”<sup>29</sup>

The Burntlog Claims are located well outside the “mineralized zone” and “three-mile limit” imposed by MGII for economical extraction of valuable minerals in proximity to its supporting facilities as outlined in the PRO and PFS.

After 11 years of minerals exploration MGII has not indicated that any of the Burntlog Claims have been “perfected.” “If there is no valuable mineral deposit beneath the purported unpatented mining claims, the unpatented mining claims are completely invalid under the Mining Law of 1872, and no property rights attach to those invalid unpatented mining claims.”<sup>30</sup> While MGII may retain the right to prospect for valuable minerals on these claims, the BNF is obligated to manage and protect its surface resources under more discretionary land use policies absent discovery of valuable minerals.

There is strong evidence that the Burntlog Claims held by MGII are invalid. The only stated use for them is as a “transportation route between the mine site and highway 55.” A “transportation route” is a much different mandate than mineral prospecting under the Mining Law of 1872. The Mining Law limits a claimant’s use of unpatented mining claims to “activities that are reasonably incidental to prospecting, mining and processing operations,

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<sup>26</sup> See PRO, App’x G, s. 8.11.4.

<sup>27</sup> See Stibnite Gold Project 2014 PFS (Amended March 28, 2019) s. 18.2 Site Access

<sup>28</sup> See <https://midasgoldidaho.com/resource-library-transportation-access/>

<sup>29</sup> MGII PRO, ES-1; *Id.* at App’x G, s. 7.8.

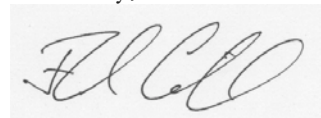
<sup>30</sup> *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 409 F. Supp. 3d 738, 748 (D. Ariz. 2019).

and subject to the right of the United States to manage surface resources.”<sup>31</sup> The purpose (geophysical investigation of a roadway) and need (develop a transportation route for an unapproved mining plan of operations) of the Burntlog Project are arbitrary, narrow in scope, and unlawful. At some point in the future, *if* a mining plan of operations is approved for the Stibnite Gold Project, and *if* the approved plan of operations includes an access road such as the Burntlog Route, then a geophysical investigation would be warranted “to collect crucial geophysical data at proposed rock quarries, bridge abutments, cut slopes, and soil nail/mechanically stabilized earth wall locations” to “develop a new alignment between Trapper Creek and Stibnite.” MGII lacks any rights to the surface of its purported Burntlog Claims to perform a geophysical investigation for the purpose of “developing a new [road] alignment.” The BNF is under a false assumption that MGII has certain outstanding rights to perform such an investigation, and is relying on complete speculation of future events that may or may not ever occur. As such, exploration activities that fall outside the scope of the 1872 Mining Law cannot lawfully be permitted on the Burnt Log Claims.

## CONCLUSION

The Burnt Log Project violates certain aspects of NEPA and the Mining Law of 1872 as outlined above. SSFS recommends that this Project be withdrawn until such time that these issues are resolved. Furthermore, it is clear to SSFS that this Project does not legally qualify for a categorical exclusion. We request the BNF prepare an EA of the proposal in order determine if the Burntlog Project should be further examined with an EIS. An EA should, at a minimum, analyze the impacts to wilderness and inventoried roadless areas, ESA-listed and candidate species and their critical habitat, wolverines and potential impacts to other wildlife, and sedimentation and other potential impacts to water quality.

Sincerely,



Fred Coriell  
President, Save the Southfork Salmon

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<sup>31</sup> *United States v. Backland*, 689 F.3d 986, 991 (9th Cir. 2012); U.S. Dep’t of Agric., *Unpatented Mining Claims*, available at: [https://www.fs.fed.us/geology/2015\\_UnpatentedMiningClaims1.pdf](https://www.fs.fed.us/geology/2015_UnpatentedMiningClaims1.pdf) (“You may not construct, place, or maintain any kind of building or other structure, **road**, trail, fence or enclosure, and place or store equipment **without the prior approval of a plan of operation from the Forest Service**. Prospecting and exploration activities usually do not justify the use of such structures.”)(emphasis added).