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Objection Reviewing Officer
USDA Forest Service, Northern Region
26 Fort Missoula Road
Missoula, MT 59804

February 14, 2022

Subject: Dead Laundry Project Objection

To whom it may concern:

Attached, please find my objection to the Dead Laundry Project on behalf of the Idaho Conservation League. The Dead Laundry Project is located on the Nez Perce-Clearwater National Forests. The responsible official is Andrew Skowlund, District Ranger for the North Fork Ranger District.

Mr. Skowlund has decided to implement the Proposed Action as described in the Dead Laundry Environmental Assessment. The Proposed Action includes 3,580 acres of timber harvest, 1,351 acres of prescribed fire, 640 acres of non-commercial fuels reduction near private lands, and 140 acres of old growth enhancement. To carry out these activities, the Forest Service also proposes to construct 52 miles of temporary roads and 12 miles of permanent roads to access treatment units.

The Idaho Conservation League filed timely comments on the Dead Laundry Project. We commented on the Proposed Action on April 9, 2020 and the Environmental Assessment on June 21, 2021. Issues raised in our comments included concerns about water quality, fish habitat, grizzly bear, the transportation network and the delineation of the wildland urban interface. We asked the Forest Service to develop and implement an integrated project that responds to both forest and watershed restoration needs in the Dead Laundry Project Area.

A legal notice initiating the objection period was published in the *Lewiston Tribune*, the newspaper of record on December 31, 2021. Objections must be submitted to the reviewing officer within 45 calendar days following publication of the legal notice. Objections to the Dead Laundry Project are therefore due no later than February 14, 2022, and thus this objection is timely.

Sincerely,

Brad Smith
North Idaho Director

Dead Laundry Project Objection

1. The Forest Service is neglecting watershed restoration needs in the Dead Laundry Project Area by rejecting an integrated restoration alternative.

The purpose of the Dead Laundry Project is to: (1) Reduce hazardous fuel loading within the project area to provide protection for the wildland urban interface areas associated with private inholdings within the project area; (2) Harvest wood products to sustain local and regional economies; and (3) Improve forest health and resiliency in concurrence with desired conditions and objectives identified in the Forest Plan. (Final Environmental Assessment, Page 4). While these are legitimate reasons for developing a project in this part of the Forest, the Idaho Conservation League is puzzled by the Forest Service's unwillingness to include watershed restoration in the Dead Laundry Project purpose and need. It is true that the Clearwater Forest Plan contains goals, objectives, standards and guidelines for forest health, fuels and timber production, but it also contains direction for water quality and fisheries that need not be mutually exclusive. Here are some examples:

Manage the Forest's fishery streams to achieve optimum level of fish production by: 1) maintaining high quality habitat in existing high quality streams and, 2) rehabilitating and improving degraded streams on certain developed portions of the Forest; and then maintaining the optimum levels.

(Forest Plan, Page II-2).

Manage watersheds, soil resources, and streams to maintain high quality water that meets or exceeds State and Federal water quality standards, and to protect all beneficial uses of the water, which include fisheries, water-based recreation, and public water supplies.

(Forest Plan, Page II-3).

The Final Environmental Assessment (EA) and the Fisheries Report illustrate that existing conditions in several of the streams in the Dead Laundry project area are less than desired by the Forest Plan and need restoration work to achieve Forest Plan objectives. Cobble embeddedness (CE) is one metric that can be used to determine the health of a stream. High functioning streams have CE values of less than 20%. Moderately functioning streams have CE values between 20 and 30%, and low functioning streams have a CE value greater than 30% (Biological Assessment, Page 2). Based on CE measurements taken by the Forest Service in 2017 (Fisheries Report, Page 6, Biological Assessment, Pages 6 and 7), several streams in the project area are low functioning including Deception Gulch (32.7% CE), Comet Creek (37.3% CE), Deadwood Creek (32.2% CE), China Creek (49.8% CE), Ruby Creek (38.4% CE), Osier Creek (58% CE), Swamp Creek (35.8% CE), Pollock Creek (30.5% CE), and Sugar Creek (35.9% CE). In summary, the majority of the streams in the project area are not properly functioning.

Riparian area road densities are another indicator of water quality and fish habitat. The National Marine Fisheries Service "Matrix of Pathways and Indicators" (NOAA 1998) rates healthy watersheds as having less than one mile of road per square mile. Unfortunately, as the Forest Service notes, the average

riparian area road density across all HUC 12 watersheds in the project area is 2.3 miles per square mile—a “low condition” (Fisheries Report, Page 8). Riparian road densities are more than twice what is recommended for healthy watersheds and fisheries.

The Forest Service’s own resource specialists admit that “It can be logically inferred that the continued use of roads within project area [riparian habitat conservation areas] long after the project is completed will continue to have adverse effects to fish and fish habitat through sediment delivery to streams.” (EA, Page 42). And as such, the Forest Service could only reasonably conclude that the Dead Laundry Project is “likely to adversely affect” bull trout (Draft Decision Notice, Page 15). Bull trout are listed as a “threatened” species under the Endangered Species Act (ESA).

The Forest Service considered but did not study in detail, alternatives such as use of temporary roads instead of new system roads, no new roads, and construct no or far fewer temporary roads (EA, Page 14). The agency dismissed these alternatives from further consideration because they “would not meet the purpose and need of the project of managing towards desired conditions and objectives identified in the Forest Plan.” (Page 14). However, there are two problems with this response. First, it is unreasonable for the Forest Service to define the purpose and need for action so narrowly. There is a compelling need in the Dead Laundry Project Area for watershed restoration. Nevertheless, the Forest Service dismissed watershed restoration activities out of hand, and instead, chose only to respond to the forest restoration needs in the project area.

Secondly, these alternatives do not accurately reflect the alternatives that we asked the Forest Service to consider. While reducing the extent of proposed road construction was part of our request, the Idaho Conservation League also asked for the agency to develop and implement an integrated alternative that addresses both the forest AND the watershed restoration needs in the project area. In other words, we were not just asking the Forest Service to reduce the amount of road construction, we the Forest Service to include watershed restoration activities in the project.

In fact, there are many examples of integrated resource restoration projects on the North Fork Ranger District, such as Middle Bugs, French Larch and Barnyard South to name a few. The purpose of these projects was to move forest and watershed conditions closer to Forest Plan desired conditions. Such projects demonstrate that forest restoration and watershed restoration are not mutually exclusive.

Case law concerning the National Environmental Policy Act (NEPA) has established that federal agencies cannot define the scope of proposed agency actions so narrowly as to preclude reasonable alternatives. Because the Forest Service has rejected alternatives that would also fulfill Forest Plan desired conditions for water quality and fisheries, the agency is in violation of the Forest Plan and NEPA.

It will probably be awhile before the Forest Service returns to do any sort of work in the Dead Laundry Project Area. Therefore, it would make sense to address the watershed restoration needs now. There may be an opportunity to utilize stewardship contracting or infrastructure funding to pay for the work. One thing is certain, the watershed restoration work won't be done without NEPA clearance.

2. The Forest Service did not adequately consider the full extent of the transportation network in its sediment models.

The Forest Service estimates that average annual rates of sediment delivery from roads will range from 3.72 to 11.34 tons per acre per year during project implementation (EA, Page 32). Predictions of average annual sediment delivery from roads after project implementation range from 0.65 to 0.77 tons per acre per year. These estimates include all system and temporary roads.

The Transportation Analysis Report states that there are 297 miles of known roads in the project area (Page 2). The estimates of average annual sediment delivery notably do not include non-system roads. The Forest Service has informed ICL that it has lidar data for the project area, and apparently there are numerous miles of non-system road that were constructed when some of the lands in the project area were owned by an industrial timber company. It is our understanding that most (if not all) of the non-system roads were unaccounted for in the sediment models for the Dead Laundry Project.

Furthermore, it appears that the Forest Service unfairly categorized the existing condition of ATV trails in the project area for its sediment modeling process. There are 66 miles of ATV trails (open to motor vehicles less than 50 inches in width) in the project area (Transportation Analysis Report, Page 5). All of the ATV trails were categorized as “stored roads” in the GRAIP Lite sediment modeling runs. However, the Forest Service provided no justification for treating them as such in the sediment modeling process. Stored roads are typically impassible because: (1) they are restricted to motorized travel; (2) the Forest Service typically removes culverts at stream crossings to reduce sediment delivery and provide aquatic organism and passage; and (3) stored roads usually become overgrown with vegetation that mitigates soil erosion.

In contrast, ATV trails may be well used. ATV trail/stream crossings often consist of an unhardened ford where erosion and sediment delivery occur. As such, it would seem improper to treat the well-used ATV trails in the project area as stored roads for the purpose of sediment modeling. In any case, the Forest Service has not cited any scientific information to support the assumption that ATV trails and stored roads generate similar volumes of sediment.

It also does not appear that the Forest Service surveyed the motorized trail system. The Water Resources Report notes that the existing system roads were surveyed during the 2019 field season (Page 12), but there is no indication in the EA or the Water Resources Report that the ATV trails or the non-system roads were surveyed. Surveys of the non-system roads and the ATV trails are necessary so that the existing conditions of these linear features can be adequately documented and then accounted for in the sediment models.

Whatever the case may be, the Forest Service acknowledges that there is an on-going concern about the condition of the transportation system and its environmental effects. The Transportation Analysis Report states:

Operating and maintaining the existing transportation system is a large portion of the forest budget. The forest operation and maintenance budget is currently not sufficient to finance maintenance on all the forest roads to the operating maintenance level. Resolving the conflict

between the need for access, the cost of associated road maintenance, and the current and expected future road program allocation will be a significant challenge.

(Page 3).

It is therefore puzzling to understand why the Forest Service proposes to add more permanent roads to the transportation system in the Dead Laundry Project Area.

Another contradiction in the Transportation Analysis Report (Page 9) is the statement that “No existing National Forest System Roads in the Travel Analysis area were recommended for decommissioning” when several roads listed in the table on page 11-13 are categorized as “not needed” and scored in at least one of the four risk categories. This contradiction would appear to support the theory that the Forest Service preemptively decided not to include watershed restoration activities in the project.

In summary, the Forest Service should adequately account for the sediment generated by all of the roads and trails in the project area under the existing condition, during project implementation and after project implementation. The Forest Service should also use its modeling results to identify the most problematic roads and trails, and then develop plans to decommission or relocate those features in order to achieve Forest Plan desired conditions for watersheds and fisheries. Eliminating or addressing the most problematic road and trail segments would also reduce the Forest Service’s transportation maintenance obligations.

3. It is unclear whether or not the Forest Service has achieved water quality standards developed for the project area under the Clean Water Act.

In addition to Forest Plan desired conditions for watersheds and fisheries, the Clean Water Act (CWA) obligates the Forest Service to comply with water quality standards established for waterways on National Forest System Lands. The Idaho Department of Environmental Quality’s (DEQ) CWA Integrated Report lists Deception Gulch as impaired due to sediment. This listing is supported by Forest Service data. The Fisheries Report (Page 3) and the Biological Assessment (Page 6) note that Cobble embeddedness in Deception Gulch is 32.7%--a low functioning condition. The condition of the watershed is a result of land management practices on sensitive land types. DEQ’s Total Maximum Daily Load (TMDL) for Deception Gulch characterizes the situation:

Road building, mining, and timber harvesting have been the major economic activities in the Deception Gulch watershed. Timber harvest has removed approximately 30 percent of the canopy in this watershed. The watershed has approximately 42 miles of roads resulting in a density of about 9 road miles per square mile of watershed, the highest of any watershed we studied in the [Upper North Fork Clearwater River Subbasin]. About 50 percent of the roads are on high-risk landtypes. Many of the roads are currently closed or impassable, thus limiting their sediment contribution from surface erosion. However, many of them still represent a high mass failure potential. Twenty-two mass failures were recorded for the 1995-96 rain-on-snow event and two have been recorded since then. This is the second highest number and the highest density of mass failures for any watershed in the [Upper North Fork Clearwater River Subbasin]. In addition, many of the mass failures had high delivery rates.

(TMDL, Page 59).

The TMDL does more than identify the problem. The document assigns a sediment reduction target to the Forest Service of 380 tons annually in Deception Gulch in order to achieve water quality standards and support designated beneficial uses (TMDL, Page 110). DEQ also estimated the amount of road decommissioning that would need to occur to achieve this target and identified some of the most problematic road segments. DEQ recommends a 50 percent reduction in road mileage in Deception Gulch and an 80 percent reduction in the number of mass failures (TMDL, Page 109). As far as specific, problematic road segments, DEQ states:

The road system on the west side of the drainage is built on geologic dip slopes that will continue to fail. Forest Service Road 734 shows numerous signs of fill slope slipping. Forest Service Roads 255 and 730 cross the contact between Wallace gneiss and the Revett quartzite where most of the large mass failures have occurred. It is likely that this unstable area will continue to fail...

(TMDL, Page 105).

A review of geospatial data and Forest Service documents shows that some of the most problematic road segments were dealt with as part of the Middle Black Project. However, the EA the Water Resources Report do not disclose how much progress the Forest Service has made toward the sediment reduction target as a result of prior projects like Middle Black. The Forest Service's response provides only the total mileage of road decommissioning that has occurred in Deception Gulch:

There has previously been a 57% reduction in road mileage from 53.3 miles to 22.8 miles in the Deception Gulch HUC 14 as well as a 46% reduction in streamside road density from 4.5 miles/square mile to 2.1 miles/square mile. IDEQ TMDLs are used to establish implementation plans to reach the goals of desired conditions for the sub-watershed.

(Response to Comments, Page 4).

While we appreciate learning how many roads have been decommissioned in Deception Gulch, the project documents do not describe how much sediment reduction has occurred as a result. This information is necessary to determine if the Forest Service has complied with the CWA.

It is also troubling to observe that some of the roads that were previously decommissioned in Deception Gulch and on the faces above the North Fork to improve water quality and fish habitat would be rebuilt for the Dead Laundry Project. Examples appear to include roads 5430, 734A, 74528, 74560, 830060, 830062, 830078, 830091, 830229, 830283, 830295, 830306 and 830387. If the Forest Service rebuilds roads that were decommissioned to improve water quality, then it runs the risk of unraveling some of the past progress made toward improving water quality and fisheries.

The Forest Service should go back and update the EA and the Water Resources Report to answer these questions and demonstrate whether or not the agency has complied with the CWA. It is not enough to say that the project will result in negligible increases in road densities and sediment to conclude that the Dead Laundry Project complies with the CWA (EA, page 34). Such conclusions must be supported with data and available science.

Also, returning to the rejection of watershed restoration proposals, the 255 Road is one of the roads identified as problematic in the TMDL. It's no mystery why this road has not been addressed. It is one of the primary public access roads in the project area. However, the Forest Service should consider if there is an opportunity to relocate the segment of the 255 Road in Deception Gulch, provide an alternative access route and decommission the segment of the road that is prone to landslides.

4. The Forest Service must document the effects of the Dead Laundry Project to westslope cutthroat trout.

The Northern Regional Forester issued an updated list of sensitive wildlife, fish and plant species in February 2011. Sensitive species are "Those plant and animal species identified by a regional forester for which population viability is a concern" (Forest Service Manual at 2670). In addition to implementing management practices and programs to maintain viable populations of sensitive species, the Forest Service Manual (2670.32) also requires agency staff to "Review programs and activities as part of the National Environmental Policy Act of 1969 process through a biological evaluation, to determine their potential effect on sensitive species" including but not limited to, westslope cutthroat trout—a Northern Region sensitive species.

The Dead Laundry EA and Fisheries Report do not, however, include an effects analysis for westslope cutthroat trout. The Forest Service explains in the Fisheries Report (Page 3) that westslope cutthroat trout and redband rainbow trout were not included in the analysis because of "their wider range of habitat requirements than bull trout." This rationale is insufficient.

First, the two species do not share the exact same distribution in the Dead Laundry Project Area. Snorkel surveys and eDNA results have shown that there are westslope cutthroat in Lake Creek, Elizabeth Creek, North Fork Clearwater River, Deadwood Creek, Moose Creek and Osier Creek (Fisheries Report, Page 8). While there is some overlap, snorkel and eDNA surveys show that bull trout distribution in the project area is limited to Moose, Osier and Swamp Creeks (Fisheries Report, Page 10). If the effects of project activities to bull trout in Moose, Osier and Swamp Creeks are only considered, then the effects analysis for bull trout does not serve as a proxy for westslope cutthroat trout in Lake Creek, Elizabeth Creek or Deadwood Creek.

Secondly, westslope cutthroat trout have a different life history. It is true that bull trout require colder water for survival, but the timing of spawning is different. Westslope cutthroat trout are spring spawners. In contrast, bull trout are fall spawners. Thus, the timing of project activities if limited or restricted for bull trout, may not suffice for westslope cutthroat trout.

Also, the Forest Service's determination is that the project is "likely to adversely affect" bull trout (DN, Page 15). Does this mean or not mean that the project is also going to adversely affect westslope cutthroat trout or not? Without an analysis for westslope cutthroat trout, it remains unclear. Therefore, the Forest Service must add an effects analysis for westslope cutthroat trout to the final EA and consider whether or not modifications to the project are warranted in light of the expected effects.

5. The Dead Laundry Project does not qualify for the programmatic biological assessment for grizzly bear and Canada lynx.

On December 16, 2020, the Fish and Wildlife Service released a map depicting areas where grizzly bears may be present in the states of Idaho, Montana, Wyoming and Washington. The map is an aggregation of sub watersheds where credible grizzly sightings have recently occurred, including but not limited to the Dead Laundry Project Area. Indeed, there have been recent credible sightings of grizzly bears in the area such as the taking of a grizzly bear in Kelly Creek in 2007 at a black bear baiting site and bear 927, which passed through the area en route to Selway-Bitterroot Wilderness in the summer of 2019. The Forest Service is required to consider the effects of a project to grizzly bears if the project is located in area identified as a location where grizzly bears may be present.

In addition to the procedural requirement to consider the effects of projects to grizzly bears in areas where they may be present, it is also important to ensure that the project does not interfere with recovery in the Bitterroot Ecosystem. The Fish and Wildlife Service shelved a plan to reintroduce grizzly bears to the Bitterroot Ecosystem in the early 2000s. In lieu of reintroduction, the Service instead unofficially embraced a policy of natural recovery. However, natural recovery is only going to occur if grizzly bears can get to the Bitterroot from the other recovery areas. The Dead Laundry Project just so happens to be located in one of those pathways between the Bitterroot and the occupied recovery areas to the north. As such, there is a need to ensure that the corridor between the recovery areas is permeable to grizzly bear use and movement. Numerous scientific studies note the importance of maintaining low levels of open and administrative motorized access in grizzly bear habitat. By expanding the road network in the project area, the Forest Service is only decreasing the permeability of the landscape and the likelihood that grizzly bears will move through it from neighboring ecosystems into the Bitterroot.

For this reason, we are not only skeptical of the Forest Service's determination that the Dead Laundry Project is "not likely to adversely affect grizzly bears" (Wildlife Report, Page 3), but we also do not believe that the project qualifies for the *Programmatic Biological Assessment for Activities that are Not Likely to Adversely Affect Canada Lynx, Grizzly Bear and Designated Canada Lynx Critical Habitat* (December 1, 2020). In order to qualify for the programmatic biological assessment referred to above (hereafter referred to as the "Programmatic BA"), a project must satisfy a set of criteria listed in the document.

Appendix A of the Programmatic BA describes a two-part screening process for determining if the Programmatic applies to a project in grizzly bear habitat. Part 1 (Page 39) consists of a flow chart that the Forest Service must navigate before it can proceed to Part 2, if at all. The first question in the flow chart is:

Does the action area have existing wheeled motorized access conditions that are resulting in potentially significant effects to grizzly bears?

While the answer to the first question is debatable, let's say hypothetically that the answer for the Dead Laundry Project is, "no". That means the next question in the screening process is:

Does the project include actions that result in a net increase in the amount of motorized routes or route density and/or a net decrease in the amount of core or secure habitat?

The answer to the second question is clearly, “yes”. The Dead Laundry Project will add 14 miles of new permanent road to the transportation system. Under the Programmatic BA, an answer of “yes” at this point in the flow chart leads the Forest Service to follow the standard consultation process.

But for argument’s sake, let’s say that the Dead Laundry Project advances to Part 2 of the screening process. Part 2 consists of a list of 18 different “Activity Types”. Within each of these Activity Types there are one or more “Activity Components”, which are essentially specific management actions. Activity Type 11 (Page 43) includes “Roads and Road Maintenance”. Activity Components included in this Type are permanent road construction, road reclamation, road maintenance, and temporary road construction (Page 43). For permanent road construction, the Programmatic BA states that the screening criteria are not applicable because the project has the potential to adversely affect grizzly bear, and the Forest Service should follow the standard consultation process.

Given these criteria, the Forest Service should not only follow the standard consultation process, but the agency should also reduce the extent of the transportation network in the project area to ensure that the landscape is permeable to grizzly bear use and movement.

Suggested Remedies

- A. Drop units or portions of units located on land types that are rated as high or very high for mass wasting potential, including units 101, 106, 107, 109, 15, 15A, 16, 16A, 16B, 19, 20A, 20B, 24, 30, 33C, 34A, 34B, 35, 38A, 59A, 63, 70, 72, 72A, 84, 85, 92, 94 and 97 (see map illustrating proposed resolution).
- B. Drop segments of proposed permanent or temporary construction located on existing templates in the units listed above, including roads 5430, 5445, 734, 734A, 74502, 74528, 74537, 74551, 74560, 74609, 74611, 74613, 830060, 830062, 830078, 830080, 830082, 830091, 830092, 830107, 830109, 830229, 830236, 830237, 830238, 830259, 830260, 830277, 830283, 830295, 830306 and 830387.
- C. Drop segments of new proposed temporary roads located in the units above, including temporary roads 2, 10, 11, 15, 27, 28, 29, 30, 31, 32, 33, 64, 65, 66, 117, 118, 119, 120, 123, 124, 125, 126, 127, 135, 144, 147, 148, 150, 151, 200, 201, 203, 204, 205, 209, 211, 213, 214, 216, 217, 223, 224, 225, 226, 227, 228, 229, 230, 244, 245, 246, 254, 267, 282, 295, 296, 298, 299, 311, 312, 313, 314, 316, 317, 324, 325, 326, 327 and 328.
- D. Develop and implement an integrated alternative that includes watershed restoration activities. It is our understanding that Forest Service staff identified a list of watershed restoration opportunities in the project area that should be considered. We also recommend decommissioning the segment of the 255 Road in Deception Gulch that is located on sensitive land types and providing an alternative access road in and out of the area.

- E. Sediment models should be updated to reflect the full extent of the transportation system, including ATV trails and non-system roads.
- F. The EA and the Water Resources Report should be updated to answer the questions raised in this objection regarding compliance with the Clean Water Act.
- G. The EA and Fisheries Report should include an effects analysis for westslope cutthroat trout.
- H. The Forest Service should follow the standard consultation process for grizzly bears.