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First name: Mary
Last name: Faurot Petterson
Organization:
Title:
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Stibnite Gold FEIS: Objection

Dear Supervisor Davis,
Thank you for the opportunity to lodge an Objection to the FEIS/DROD regarding fisheries resources and water quality.

As stated in my comment letters #9229 and #19418:
Fish. The SDEIS displays major shortcomings of virtually every factor used to evaluate impacts to fish (particularly intrinsic potential, streamflow productivity, barrier, and stream temperature models), and concludes negative impacts to Chinook salmon, bull trout, steelhead, and westslope cutthroat trout and their habitat.
For instance: permitting a project that is predicted to increase stream temperature and decrease flow in the face of imminent climate change, will negatively impact imperiled Chinook salmon, steelhead, bull trout, and cutthroat trout. And, with respect to barriers: The East Fork fish tunnel models volitional fish passage upstream at quite an ecological cost, if it actually works. The loss of stream biota, imperiled fisheries habitat, impaired riparian and stream function for 20 plus years in exchange for a fishway with artificial lighting, flow control, fish salvage and connectivity to questionable upstream water quality and habitat is unproven.

Water Quality. Effects analysis needs to include food chain pathways, toxicity for arsenic, antimony, mercury, and other contaminants, and other lacking information supported by Best Available Science stated by Maest (2022, in 1/9/2023 group comment letter from Save the South Fork Salmon et al) to understand the effects to aquatic life of the Stibnite Gold Project mining proposal.

In response to my comments, the FEIS B-729 and B-744 respond: "No further response required. General in nature or position statement. The EIS thoroughly assesses and analyzes the potential impacts on all applicable resources from the action alternatives and the No Action Alternative. During the decision-making process, the Forest Service will strive to identify the most effective and responsible course of action for the Payette and Boise National Forests and the communities it supports". And: "No further response required. General in nature or position statement. It is acknowledged and understood that concerns regarding potential long-term environmental impacts, ecological integrity, and the well-being of potentially affected communities are valid and important to consider. During the decision-making process, the Forest Service will seek to identify the best possible balance between environmental protection, community needs, and sustainable forest management."

These responses are inadequate because:
The FEIS has not thoroughly assessed and analyzed the potential impacts on fisheries resources and water quality, nor identified the best possible balance between environmental protection, community needs, and sustainable forest management. See below for FEIS examples of violations of the Endangered Species Act, Clean Water Act, Organic Act, and National Environmental Policy Act. Because of these violations, the Forest Service has not identified the most responsible course of action.

Fish.
Analysis Area. Chapter 4 of the FEIS only analyzes effects to fisheries at the mine site area; it fails to analyze consequences of the project to fisheries in the larger analysis area downstream and outside of the local mine site.

ESA Compliance. Despite the anticipated, significant adverse impacts to listed Chinook salmon, steelhead trout, and bull trout, and their critical habitat, the FEIS fails to demonstrate that the Project can meet the strict standards under Section 7 of the ESA to protect the listed fish species and to ensure that there will be no destruction or adverse modification of their designated critical habitats (FEIS p. 4-352). See below for Water Quality examples. The FEIS acknowledges that ESA-listed Chinook salmon, steelhead trout, and bull trout occur within the Project area and also would likely be impacted by the Project (FEIS, p. 3-274). The FEIS is inadequate in assessing and disclosing the direct, indirect and cumulative impacts of the Project on these species and fails to demonstrate compliance with the ESA.

Stream Temperature Increases. The FEIS fails to incorporate the impacts of climate change in future stream temperature estimates. This drastically underestimates the potential impacts the project will have on bull trout, Chinook salmon, and steelhead, who all depend on cold water habitats for their continued survival. FEIS (Appx B-383) states that "quantitative modeling of climate change is outside the scope of the water temperature analysis." This response is inadequate, and a violation of the NEPA "Hard Look" clause. NEPA requires that agencies take a hard look at the potential impacts of a proposed action, "including identifying and describing reasonably foreseeable environmental trends, including climate change effects."

And as the FEIS points out, the scarcity of topsoil/growth media and the challenges associated with riparian restoration indicate that full restoration (which includes the lowering of stream temperatures and the reestablishment of adequate and functioning riparian areas) may not occur for 100 years.
Fish Tunnel. The proposed fish tunnel's impacts are inadequately characterized, and analysis of the impacts of trap and haul is lacking. FEIS (p. B-388) agrees that the effectiveness of the fishway tunnel is uncertain. This response is inadequate and ignores the broader intent of the original comment. In the FEIS, there is ample language regarding the reality that trap and haul measures will need to be implemented if the fishway tunnel fails to provide volitional passage. Despite this, there is little to no analysis of trap and haul impacts on these species. It is well known that trap and haul results in increased stress and mortality of individual fish. Given that fish relocated in this manner will be moved to locations with potentially severely degraded habitat conditions, additional analysis is required to fully understand the potential impacts that may result.

Water Quality.
Compliance with Clean Water Act. The FEIS states (B-937 to 938) that "compliance with Clean Water Act (CWA) Section 404(b)(1) guidelines will not be determined through the NEPA process, but a final decision will come following the receipt of a complete application by the USACE." In violation of the CWA, Organic Act, and related requirements, a Final ROD and approval of the Project is pending, without this analysis and required findings.
Analysis Area. Chapter 4 of the FEIS only analyzes effects to water quality at the mine site area; but it fails to analyze consequences of the project to surface water quality in the larger analysis area downstream and outside of the local mine site.
Effects to ESA Fish. The NMFS 2024 BIOP (p. 354) states: "The new point and nonpoint sources of contaminants will impact water quality (contaminant concentrations and temperature) to a degree that is reasonably certain to result in incidental take of ESA-listed species. NMFS determined that incidental take is reasonably certain to occur as follows: (1) the proposed action will alter water quality within the mine site area in Meadow Creek, Sugar Creek, and the EFSFSR; and downstream from the mine site in the EFSFSR; (2) the affected habitat is or will be occupied by SR spring/summer Chinook salmon and SR Basin steelhead; (3) concentrations of copper, arsenic, mercury, and contaminant mixtures will be at levels associated with sublethal adverse effects for salmon and steelhead including, but not limited to: avoidance (adults and juveniles); reduced growth (juveniles); reduced ability to detect and avoid predators or capture prey; (4) mercury loads in West End Creek will substantially increase during operations, adding to the mercury load in Sugar Creek and the EFSFSR, which are already mercury-impaired; (5) stream temperatures are predicted to reach levels that could cause adult Chinook salmon to suffer pre-spawn mortality, reduced gamete viability, delayed or blocked migration; reduced

survival of incubating Chinook salmon embryos; and reduced growth of juvenile Chinook salmon and steelhead rearing in Meadow Creek and the EFSFSR."
The NMFS 2024 BIOP (p. 303) states: "during early closure, mercury concentrations in lower West End Creek will remain above levels that can contribute to harmful bioaccumulation of mercury. Ultimately, individual contaminants and contaminant mixtures are expected to continue to negatively impact the ability of the water quality PBF to support spawning and incubation, juvenile rearing, and adult/juvenile migration."

The NMFS BiOP (358 and 367): identified a new water treatment requirement in the terms and conditions that it states must be met; this water treatment system is not included, nor was it analyzed in the FEIS/DROD.
Due to these water quality adverse effects and violations, the FEIS fails to demonstrate that the Project can meet the strict standards under Section 7 of the ESA.

Compliance with Organic Act. The FEIS also fails to comply with the Organic Act and Part 228 regulations for its failure to require additional treatment options to reduce mercury to levels that are protective of fish. The Organic Act and Part 228A regulations require the agency to "maintain and protect fisheries and wildlife which may be affected by the operations." 36 C.F.R. § 228.8(e). These impacts also violate the Forest Service's duties to "minimize adverse environmental impacts on National Forest surface resources." 36 C.F.R. § 228.8. "The operator also has a separate regulatory obligation to 'take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.' 36 C.F.R. § 228.8(e)."
These issues are not adequately addressed in the SDEIS, FEIS and DROD.
Remedy.
The remedy for these violations is for the Forest Service to withdraw the FEIS and DROD and not issue any decision or take any action based on the inadequate FEIS. The Forest Service must not take any action until a revised FEIS and revised DROD demonstrate full compliance with each and every law, regulation, policy, and requirement noted. The Regional Forester must withdraw the FEIS and DROD with instructions to the Payette National Forest to correct all errors noted before approving or taking any actions.

Thank you for your consideration.