File Code: 1570-1 (215) **Date:** November 18, 1999
Route To:
Subject: Frank Church - River of No Return Wilderness Noxious Weed Treatment Record Of Decision, Appeal #00-01-00-0004
To: Appeal Deciding Officer, Region 4

This is my recommendation on disposition of the appeal filed by Gary Macfarlane on behalf of Friends of the Clearwater, Wilderness Watch, The Ecology Center, and Friends of the Bitterroot protesting the Frank Church-River of No Return Wilderness (FC-RONR) Noxious Weed Treatment Record of Decision (ROD) signed by the Salmon and Challis, Payette, Bitterroot, and Nez Perce National Forests' Supervisors.

The Forest Supervisors' decision adopts Alternative 2 which authorizes treatment of close to 300 sites encompassing approximately 1,775 acres of invasive weeds within the FC-RONR over the next 5 years beginning in 1999. The purpose of the action is to halt the establishment and expansion of invasive plants which managers feel pose the greatest risk to ecological resources within the FC-RONR. Treatments will incorporate Integrated Weed Management practices, the "Minimum Tool" approach, and an adaptive treatment strategy. Specific actions will entail controlling weed populations through a combination of manual, chemical, and biological methods; implementing restoration following control methods; and monitoring the effectiveness of the procedures.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the Appellants' issues and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The Appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Wilderness Act. The Appellants request the Regional Forester rescind the ROD for the FC-RONR Noxious Weed Treatments Final Environmental Impact Statement (FEIS) and require the Forests to reintegrate this issue into the ongoing planning process.

On October 27, 1999, a conference call was conducted with representatives of the Appellants, the Forest Service, and two Interested Parties. The purpose of the call was to determine if the appeal could be resolved through informal disposition based on the issues and record. The group was not able to reach resolution on the issues of the appeal, and agreed to go forward with the appeal review process.

ISSUE REVIEW

Issue 1: The Forest Service violated NFMA monitoring requirements. NFMA requires valid monitoring programs for resource management activities. Monitoring must precede the decision and any on-the-ground treatments. An effective monitoring program starts before the treatment occurs, yet in this case the treatment is scheduled to begin immediately and the monitoring protocols are left waiting.

Response: Monitoring under NFMA is not aimed at the project level. NFMA requirements are concerned with monitoring the implementation of Forest Plan objectives and how closely Forest Plan standards and guidelines have been applied [36 CFR 219.12(k)]. This project does not violate NFMA monitoring requirements. In accordance with Forest Plan monitoring (Bitterroot Forest Plan, Table IV-1, page IV-6, for example) base line monitoring of noxious

weeds has occurred at various levels since 1994 (FEIS, Appendix C) and base line weed population monitoring transects were established in the FC-RONR by Peter Landres of the Aldo Leopold Institute in 1998. It was this monitoring under 36 CFR 219.12(k) which alerted the Forests to the noxious weed problem in the FC-RONR. Additional monitoring of project effectiveness will continue after implementation to determine if the chosen practices are accomplishing the objectives (FEIS, p. 20, and Appendix J; ROD, pp. 11 and 12).

Issue 2: The Forest Service violated NEPA by failing to consider issues brought forth by the Appellants. Specifically the issues of a strong weed prevention element and a scientifically valid, implementable monitoring program need to be addressed in the EIS.

Response: Issues brought forth by the Appellants and other members of the public concerning monitoring and prevention were addressed (FEIS, pp. 94 to 101) and incorporated in the analysis (FEIS, pp. 20 to 23, and Appendix J). Treatment is only one part of the complete weed management picture. Other weed management practices including prevention, inventory, and early detection will be specifically discussed in the programmatic FC-RONR EIS (ROD, pp. 3 and 10). Monitoring and prevention practices are identified in the Decision as part of an overall strategy to most effectively manage weeds (ROD, pp. 10 to 14).

NEPA is not necessary to allow implementation of monitoring and prevention practices. Practices, such as requiring certified hay and monitoring of weeds, are ongoing activities which are categorically excluded from documentation [FSH 1909.15, 30.1a(4) and 30.1b(2)]. Past monitoring activities were identified in the FEIS (see response to Issue 1). The FEIS and ROD state that monitoring of project effectiveness will continue after implementation to determine if the chosen practices are accomplishing the objectives (FEIS, p. 20, and Appendix J; ROD, pp. 11 and 12). The Forest Service considered the issues brought forth by the Appellants and is in compliance with NEPA.

Issue 3: Nowhere in the FEIS and ROD are the impacts of unnatural human ignitions (the Elkhorn Jersey Project, for example) on the wilderness examined. Nor is there a discussion of how natural fires may prevent the spread of exotics which most likely evolved under different fire regimes than those that occurred naturally in the Northern Rockies.

Response: The purpose of this proposal is to treat noxious weeds. The comprehensive FC-RONR EIS will discuss all management options in the wilderness, including prescribed fire such as the Elkhorn Jersey Project. The FEIS does include the effects fire has on weeds and their spread. The FEIS discusses weed invasion susceptibility as affected by fire (p. 38 and Table 3.3), the possible effects fire (prescribed and wild) may have on weed invasion and expansion (p. 43), and Table 3.4 displays Habitat Susceptibility to weed invasion both with and without disturbances such as fire (p. 43).

Issue 4: NEPA applies to all federal activities, not just those on federal lands. Since this decision authorizes federal actions on private lands, those activities must also undergo rigorous NEPA analysis.

Response: The ROD authorizes weed treatment within the FC-RONR Wilderness beginning in 1999 and continuing until the comprehensive Wilderness EIS is implemented (ROD, p. 10). It does not authorize treatment on private property. Treatment of noxious weeds outside of the wilderness is an ongoing collaborative effort with private land owners using contributions from conservation organizations and other partners (FEIS, p. 37). The FEIS incorporates the effects of this coordinated effort in its assumptions of weed infestation rate (p. 60, Table 4.1) and displays infestations on private lands (Appendix C-1, pp. 197 to 200).

Issue 5: Nowhere in the Draft EIS (DEIS) is there a discussion on which noxious weeds have the capacity to invade climax natural communities and under what circumstances those infestations could occur.

Response: The DEIS displays the major vegetation types found within the FC-RONR (Table 3.22) and the risk of invasion by various weed species (Table 3.21) within the discussion of 'Potential Situation and Trends' (pp. 3-69 to 3-75).

Issue 6: The Forest Service violated NEPA by failing to be site-specific. The DEIS is not adequate for a programmatic or site-specific EIS. The DEIS and FEIS are not site-specific and cannot be used to justify site-specific actions. Predictions about increases must have site-specific information about what weeds may increase, where those increases may occur, and their possible impacts.

Response: The Draft and Final EIS are site-specific for weed treatments. The DEIS outlines a specific treatment strategy (DEIS, pp. 2-20 and 2-48 through 2-49) and specific treatment sites (DEIS Appendix G, pp. G-2 to G-18).

The FEIS provides the foundation for an integrated, coordinated control plan (pp. 16 to 23). In Alternative 2 (pp. 25 to 26) the FEIS outlines treatment objectives as determined by weed species and acreage, and identifies acres by treatment method. It displays the vegetation susceptible to weed invasion (Map 3.2), the sites of known weed infestations (Map 3.1), lists specific treatment sites (FEIS, Appendices C-1 to C-4, pp. 197 to 233), and the treatment acres by area and weed species (Appendix D, p. 237). The FEIS provides a good discussion on how fast various species of noxious weeds increase (p. 60), where those increases may occur (pp. 37 to 43, and 59), and the effects of noxious weed expansion and treatment (pp. 60 to 92).

The ROD outlines the elements of integrated weed management. It discusses the minimum tool concept, weed treatment objectives, treatment priorities, restoration and cultural practices, monitoring, and an adaptive strategy for treatment of future invasions (pp. 10 to 12). It summarizes weed treatment actions and the mitigation measures to minimize impacts (pp. 13 and 14). The Draft and Final EIS and the ROD are site-specific. They are in compliance with NEPA.

Issue 7: The Forest Service violated NEPA by failing to have a reasonable range of alternatives. The decision neither addresses the purpose and need for the project, nor the first priority for any integrated weed program. The EIS states that "Prevention" is a feature common to every alternative, but every action approved and discussed in the ROD and FEIS are reactive. The ROD does not include any prevention measures, and thus selected a course of action that was not included in any of the alternatives analyzed in the FEIS. Nowhere in the DEIS or FEIS is there an analysis of alternatives to use of synthetic poisons. Appellants and others have suggested numerous actions to help prevent the introduction of weeds into the wilderness and the spread of weeds within the wilderness. None of these suggestions received consideration by the Forest Service.

Response: The purpose of this very specific proposal is to treat noxious weed infestations from now up until the comprehensive Wilderness EIS is approved (FEIS, p. 1). All the alternatives are responsive to the stated purpose and need to varying degrees. The Deciding Officers chose Alternative 2 because it best addresses the noxious weed challenges in the wilderness (ROD, p. 15).

NEPA is not necessary to allow implementation of prevention practices such as requiring certified hay. These practices are ongoing prevention activities which are categorically excluded from documentation [FSH 1909.15, 30.1a(4) and 30.1b(2)]. However, prevention practices will be addressed in the comprehensive Wilderness EIS (ROD, pp. 3 and 10). In the interim those preventive measures such as requiring certified feed for stock and the noxious weeds educational programs at the Wild River launch sites will continue. The ROD states "[p]rovisions would be specified as needed for the prevention and control of weeds when new and existing special use permits (e.g. outfitter/guides) are issued/reissued" (p. 14).

The FEIS evaluates an alternative (Alternative 1) that does not use synthetic herbicides or introduce biological control (FEIS, p. 25; ROD, p. 15). The effects of Alternative 1, disclosed in Chapter 4 (pp. 59 to 86), show that Alternative 1 has the greatest expansion of weeds into the native plant communities and would, in turn, create an unnatural condition and continue to "trammel" the wilderness at a greater rate than any of the other alternatives (pp. 86 to 91). Alternative 5 analyzes management of the noxious weeds in the wilderness without the use of synthetic herbicides (FEIS, pp. 28 to 30; ROD, p. 15). Beyond that, the public suggested the use of two "non-toxic" herbicides. The team added Scythe and WOW to the analysis of herbicides so that even under Alternatives 2, 3, and 4 non-synthetic, "non-toxic" herbicides could be used (FEIS, p. 19).

The Forest Service evaluated and considered all comments that were received (Project File [PF], C-4, F-56, F-57, and F-28). Some of the public comments and suggestions on prevention and monitoring (PF, E-6 and E-7) were incorporated in the ROD (pp. 11 and 12). Prevention practices will be programmatically incorporated in the ROD and specifically discussed in the comprehensive Wilderness EIS (ROD, pp. 3 and 10). The Deciding Officers evaluated a reasonable range of alternatives. The range of alternatives in the FEIS is in compliance with NEPA.

Issue 8: The Forest Service violated NEPA by failing to prepare a supplemental DEIS. A supplemental document is required because: 1) A new alternative was analyzed in the FEIS which was not analyzed in the Draft; 2) The DEIS shows no weed infestations in the Selway drainage on its map and notes that weed management is focused in the Salmon River drainage, not the Selway. But the FEIS shows infestation in the Selway and the FEIS treats those areas with herbicides, manual/cultural, and biological control; 3) The DEIS fails to list four species of established or new weed invaders which are listed in the FEIS; 4) The DEIS shows an infestation of starthistle, yet the FEIS shows it only as a potential invader; 5) Differences in the size of weed infestations are inconsistent between the FEIS and DEIS, and sometimes within the documents themselves; and 6) The FEIS claims it is a separate and different document from the DEIS and that it is now site-specific where the DEIS was not. A supplemental EIS must be issued for public comment because of the new information and the change in scope of the EIS from a programmatic document to a site-specific document.

Response: Supplements are required "when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" [40 CFR 1502.9 (c)(ii)]. The new alternative was developed based on suggestions from the public rather than new circumstances or information (FEIS, p. 99).

The inclusion of treatment in the Selway drainage was based on internal comments and updated information received form the resource specialists during the comment period (PF, A-7 and H-4). The effects of treating or not treating weeds within the FC-RONR Wilderness,

including the Upper Selway Drainage are included in the analysis of effects within each resource section (FEIS, pp. 59 to 92). The yellow starthistle infestation (1 acre or less) was present when the DEIS was prepared and released. Subsequent hand pulling had eradicated the known infestation at the time the FEIS was released.

The acreage in the FEIS is based upon updated information and more accurate mapping. The DEIS was released to the public in January 1998, and contained information regarding noxious weeds current as of 1997. Inventories ongoing under the existing management plan in 1998 identified new infestations that are included in the FEIS. It is reasonable and within projected increases (DEIS, pp. 3-69 to 3-72; and FEIS, pp. 59 and 60) that noxious weed acreage would increase from the draft to final documents.

The existing programmatic Draft EIS was sufficiently specific on the noxious weed problem, noxious weed locations and population size, control treatments, and impacts (DEIS, pp. 1-23 to 1-24, 1-35, 2-20, 2-36, 2-48, 2-64, 2-80, 2-97, 2-104, 3-66 to 3-77, 4-99 to 4-139, and Appendix G) to be used as the draft for the Noxious Weed FEIS. The changes between the DEIS and FEIS do not constitute significant new circumstances or information. A new supplemental Draft EIS is not needed nor required.

Issue 9: The Forest Service violated NEPA regarding monitoring. NEPA requires that monitoring information be available to the public during the planning process and prior to a decision being made. Nowhere in the discussion about monitoring is any consideration given to monitoring introduced biological agents.

Response: 40 CFR 1500.1(b) requires that environmental information be available to the public and public officials before the decision is made and action taken. Information on noxious weed locations, and the impacts of weed expansion and treatment was presented to the public in the DEIS (pp. 4-99 to 4-139, Appendix G). Additional and updated information was available to the decision makers in the FEIS before they chose Alternative 2 (ROD, p. 15).

The FEIS states, "Monitoring will focus on...(3) effectiveness of bio-control" (p. 20). The monitoring form for treatments, including bio-control, can be found in the FEIS, Appendix J. Information gathered through monitoring is intended to be reviewed by the public. The ROD states, "[m]onitoring information will be disseminated to the public as effectively as possible utilizing such methods as mailings and the Internet" (p. 12). The Forest Service is in compliance with NEPA monitoring requirements.

Issue 10: The noxious weed EIS violates the Wilderness Act. Nowhere in the DEIS or FEIS is there a discussion of whether or not the bio-control insects are indigenous to the wilderness. The deliberate introduction of exotic species into the wilderness is contrary to the Wilderness Act and its implementing regulations. The agency must preserve the "wilderness character" of the area. Use of synthetic herbicides and the introduction of alien exotic species "trammel" the area and destroy its wilderness character. Nowhere in the FEIS or ROD is it shown that this program is allowed in designated wilderness.

Response: The FEIS states that bio-control agents are exotic (p. 89). The FEIS also recognizes an argument can be made that allowing a non-native insect into the wilderness is no less a violation of the Wilderness Act than allowing the non-native noxious weed to expand through the wilderness. The difference lies in the degree of impact each would have on the wilderness character. The noxious weeds displace the native vegetation, which directly affects wildlife populations, the visual experience, and ecosystem function (pp. 3 to 4, 80 to 82, 87, and 89). Impacts to these resources would destroy the wilderness character. The

exotic insects only directly affect the noxious weed host species and will indirectly retain the native vegetation, wildlife, visuals, ecosystem function, and the wilderness character.

The Wilderness Act allows for wilderness to be protected and managed so as to preserve its natural conditions [16 U.S.C. 1131, Sec. 2(c)]. In addition to the Act, land managers are charged by various laws, Executive Orders, and policies to maintain and protect wilderness ecosystems and natural conditions (FEIS, pp. 5, 86 to 87; ROD, pp. 16 to 18). As discussed in the ROD (p. 16) and FEIS (p. 5), the Forest Service Manual (under 2323.2) allows for noxious weed control in designated wilderness. The Wilderness Act (16 U.S.C. 1131-1136) and its implementing regulations (36 CFR 293) are silent on the introduction of insects or use of herbicides in wilderness to maintain the natural ecosystem. Such actions, therefore, are not contrary to the Wilderness Act, federal regulation, or agency policy.

RECOMMENDATION

I recommend the Forest Supervisors' decision be affirmed and the Appellants' requested relief be denied.

/s/ Richard F. Roberts

RICHARD F. ROBERTS
Reviewing Officer
Director, Ecosystem, Assessment, and Planning