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**Subject:** ARO Letter - North Lochsa Face Ecosystem Management Project ROD -  
Clearwater NF - Appeal #03-01-00-0017 - Nez Perce Tribal Executive Committee

**To:** Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Rick Eichstaedt, on behalf of the Nez Perce Tribal Executive Committee, protesting the North Lochsa Face Ecosystem Management Project Record of Decision (ROD) on the Clearwater National Forest.

The Forest Supervisor's decision adopts Alternative 5 as the selected action, with the following modifications: 1) to address public concerns about timber harvest in old growth stands, no old growth would be harvested as part of this decision; and 2) to address concerns about Canada lynx, pre-commercial thinning in lynx habitat was dropped from the selected actions. Alternative 5-modified also includes prescribed fire on approximately 12,530 acres, timber harvest on 4,032 acres, 3.5 miles of temporary roads construction, 66 miles of road obliteration, 54 miles of roads put in long-term maintenance, removal of four sediment traps, and noxious weed treatment.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellant's objections 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 appellant alleges the decision has failed to comply with the federal trust responsibilities owed to the Nez Perce Tribe; as well as obligations under the Pacific Northwest Electric Power Planning and Conservation Act, the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Endangered Species Act (ESA), the Wild and Scenic Rivers Act (WSRA), and the Clearwater National Forest Plan. The appellant requests a remand of the ROD. An informal meeting was held. The parties reached a resolution on the appeal issue relating to the use of Bonneville Power Administration-funded restoration projects allegedly being used as mitigation for the North Lochsa Face project. The Tribe decided to proceed with the appeal on the remaining issues.

#### ISSUE REVIEW

**Issue 1. The Forest failed to comply with the Federal trust responsibilities owed to the Nez Perce Tribe by failing to adequately analyze and protect treaty rights and trust resources. The Forest failed to comply with Executive Order 13175 on government-to-government consultation. The FSEIS inadequately responded to the Tribe's concerns in its previous comments and appeal. The Forest failed to protect and analyze impacts to the Tribe's treaty rights and trust resources and the habitat upon which they depend. The Forest did**



**not adequately consult with the Tribe on the impacts the project would have on cultural resources. The Forest inadequately analyzed Environmental Justice by failing to adequately consider and analyze the disproportionate impacts this project would have on the Tribe.**

**Response:** As early as February 26, 1995, the Forest, in their public involvement strategy, planned on conducting separate and concurrent involvement with the Nez Perce Tribal leaders and the Chief Joseph band of the Colville Confederated Tribes (FEIS Project File [PF], Vol. 1, Doc. 2, p. 1). In response to the Tribe's letter of August 1, 1997, the Lochsa District Ranger discussed the government's trust responsibilities. In the letter she stated,

“the NEPA implementing regulations require Federal agencies to invite Indian tribes to participate in the scoping process on project or activities that affect them. If the Tribe had reserved rights upon the Forest, consultation with the Tribe should be initiated prior to public scoping. These procedures were followed for the North Lochsa Face analysis. During the NFMA phase, prior to public scoping, Allen Pinkham (Nez Perce Tribal Government Liaison, Northern Region) was a member of the combined Forest and District IDT. All throughout the NEPA phase the Tribe has been notified of all public meetings, invited to participate in field trips, mailed all scoping documents, and has been briefed about the project by the District Ranger” (FEIS PF, Vol. 17, Doc. 851, p. 1).

The project file is replete with documents and correspondence back and forth between the Forest and the Tribe discussing various aspects of the project (FEIS PF, Vol. 3, Docs. 228, 229, and 252; Vol. 4, Doc. 341; Vol. 5, Docs. 344 to 366a; Vol. 7, Doc. 475; Vol. 17, Docs. 849 to 852; Vol. 18, Docs. 943, 944, and 950; Vol. 19, Docs. 1004 and 1010; SEIS PF, Vol. 2, Docs. 94a and 101; Vol. 6, Docs. CA-8, CA-14 through CA-17, CA-19, CA-24 and CA-80; and Vol. 7, Doc. CB-13). It is clear the Forest and the Tribe did not always understand each other in these exchanges or see eye-to-eye on various parts of the project, but the Forest did comply with Executive Order 13175.

The Supplemental EIS was prepared in response to the Regional Forester's decision to reverse the Vegetation and Aquatic ROD. Therefore, the Supplemental EIS only addressed the decision to be made regarding vegetation and aquatic management. Where those resource analyses overlapped with the Tribe's previous comments and appeal of the FEIS, the Supplemental EIS responded to the Tribe's concern. These include the existing conditions and environmental consequences to old growth, sensitive plants, noxious weeds, wildlife, soil and erosion processes, aquatic resources, the Lochsa Research Natural Area, heritage resources, wildfire, treaty rights, and economics (DSEIS, pp. 3-47 to 284). The Forest responded to the Tribe's letter (# 80) in the Response to Comments (FSEIS, Appendix D, pp. D-6, 9, 13, 15, 18, 19, 32 to 36, 41, 45, 46, 49, 50, 60, 62 to 65, 67 to 72, 75 to 83, 92, 107, 109, 111, 112, and 114).

The Forest did analyze impacts to the Tribe's treaty rights and trust resources (pp. 3-354 to 357) and the habitat upon which those resources depend (DSEIS, pp. 3-54 to 62, 68 to 72, 87 to 152, and 179 to 267). The SEIS found the proposed activities are not likely to have an effect upon the ability of Nez Perce Tribal members to exercise their rights to fish within and near the North Lochsa Face area (DSEIS, p. 3-355).

While the Nez Perce Tribe, in their appeal, disagrees that the Forest satisfied its responsibility and feels the ROD is in error as far as a consultation with the Tribe is concerned (ROD, p. 18), it is clear the Forest did request the Tribe's review and comment on the Draft Memorandum of Agreement for management and protection of historic properties (SEIS PF, Vol. 2, Doc. 101, p. 4). And as discussed in the Response to Comments (FEIS, p. D-33), "draft sections of the SEIS concerning cultural resources, economics, treaty rights and environmental justice were forwarded to Tribal officials for review and comment (SEIS PF, Vol. 6, Docs. CA-15, 16, 17, and 19; Vol. 2, Doc. 94a). Forest Service representatives met with Tribal officials on several occasions including November 28, 2001, and May 9, 2002, to discuss issues related to North Lochsa Face and the SEIS" (SEIS PF, Vol. 6, Doc. CA-24; Vol. 7, Doc. CB-13). The Forest is continuing to work with the Tribe to protect and monitor heritage sites as part of the strategic plan for the Lewis and Clark bicentennial and would initiate further consultation with the Tribe on each timber sale proposal (FEIS, p. D-33).

The Council on Environmental Quality published a document entitled *Environmental Justice, Guidance under the National Environmental Policy Act* (SEIS PF, Vol. 2, Doc. 126). The document was designed to assist Federal agencies with their NEPA procedures so that environmental justice concerns are effectively identified and addressed (p. 1). The document identified four important ways to consider environmental justice under NEPA: 1) analyze the effects of the Federal action on human health, economics, social aspects of minority and low-income populations, and Indian tribes; 2) mitigation measures should, whenever feasible, address the significant and adverse effects on minority and low income populations and Indian tribes; 3) the agency must provide opportunities for effective community participation, including consulting on potential effects and mitigations measure, and improve the accessibility of public meetings, documents, and notices; and 4) review of NEPA documents must ensure that environmental effects on minority and low income populations and Indian tribes was appropriately analyzed.

The SEIS did analyze the effects the project will have on the surrounding communities and the Tribe, with an emphasis on the economics of the project and the economic impact to the surrounding communities (DSEIS, pp. 3-353 to 364; FEIS PF, Vol. 26, Docs. 1090 to 1103; SEIS PF, Vol. 2, Docs. 111 to 126, and 128 to 134). The ROD found "[t]he selected actions would have no disproportionate effects on low-income or minority communities in the vicinity of the project..." (p. 36). Even so, the interdisciplinary team identified measures that would further reduce (mitigate) the impacts of the project and included them as management requirements and design features (DSEIS, Appendix B, pp. B-1 to 17). The interdisciplinary team did extensive public scoping with the communities and the Tribe (FSEIS, p. 2-2; ROD, pp. 16 to 18; FEIS PF, Vol. 1, Docs. 1 to 72, Vol. 2, Docs. 74 to 157, Vol. 3, Docs. 158 to 275, Vol. 4, Docs. 276 to 343a, Vol. 5, Docs. 344 to 366a, and Vol. 6, Docs. 367 to 459; SEIS PF, Vol. 3, Docs. 341 to 362e, Vol. 4, Docs. 363 to 425i, Vol. 6, Docs. CA-1 to CA-178, and Vol. 7, Docs. CB-1 to CB-26). After reviewing all of this material, I find the environmental effects on minority and low-income populations and Indian tribes were appropriately analyzed.

The Forest did comply with the Federal trust responsibilities owed to the Nez Perce Tribe and did comply with Executive Order 13175 on government-to-government consultation. The project adequately responded to the Tribe's concerns. The Forest protected the Tribe's treaty rights and trust resources and analyzed impacts to the habitat upon which those resources

depend. The Forest adequately consulted with the Tribe on the impacts of the project to cultural resources. The Forest complied with the Environmental Justice Executive Order, and adequately considered and analyzed the impacts this project would have on minority and low income populations and the Tribe.

**Issue 2. The North Lochsa Face project violates the Pacific Northwest Electric Power Planning and Conservation Act by failing to clearly separate the Bonneville Power Administration-funded, Tribal restoration projects from mitigation activities.**

**Response:** The Nez Perce Tribe dropped this appeal point in their letter to Forest Supervisor Larry Dawson, dated February 25, 2003.

**Issue 3. The FSEIS and ROD violate the National Environmental Policy Act.**

**Contention 1. The Forest failed to adequately respond to the Tribe's concerns in its previous appeal and comments.**

**Response:** On July 14, 2000, Deputy Regional Forester Kathleen A. McAllister reviewed your first appeal of the North Lochsa Face project. After careful consideration of your issues she affirmed the Recreation and Access Management decision and reversed the Vegetation and Aquatic management decision portion of the project. That decision constituted the final administrative determination of the appeal by the Department of Agriculture [36 CFR 215.18(c)]. No further response from the Forest to the Tribe's previous appeal is required.

After preparing the Supplemental EIS to clarify the environmental analyses related to road obliteration, the Forest sent the Supplemental EIS out for public comments, which were analyzed and responded to in the Final Supplemental EIS (FSEIS, Appendix D, pp. D-1 to 135). The response to the Tribe's concerns can be found on pages D-6, 9, 13, 15, 18, 19, 32 through 36, 41, 45, 46, 49, 50, 60, 62 through 65, 67 through 72, 75 through 83, 92, 107, 109, 111, 112, and 114. Response to the Tribe's concerns about the original EIS can be found in the first project file (FEIS PF, Volume 7, Doc. CB-16). The Forest adequately responded to the Tribe's comments.

**Contention 2: The FSEIS fails to analyze a reasonable range of alternatives, and the purpose and need for the project is too narrow.**

**Response:** An EIS must "rigorously explore and objectively evaluate all reasonable alternatives" [40 CFR 1502.14(a)]. The courts have established that this direction does not mean every conceivable alternative must be considered, but that selection and discussion of alternatives must permit a reasoned choice, foster informed decision-making, and informed public participation. Chapter 2 of the FSEIS describes how comments received from the public were used to identify issues and develop alternatives. The FSEIS describes eight alternatives analyzed in detail (pp. 2-9 to 38) and five alternatives that were considered but dropped from detailed study (pp. 2-7 to 9). The appellant's request for a restoration-only alternative was addressed in the FSEIS (p. 2-9), Response to Comments (FSEIS, Appendix D, pp. D-55, 73, 84, 88, and 89), and in the ROD (p. 26).

The Agency's Deciding Official has the discretion to determine the Purpose and Need for a project proposal. The NEPA implementing regulations state the NEPA document shall "briefly

specify the underlying purpose and need to which the agency is responding..." (40 CFR 1502.13). The Forest has provided information to support the stated Purpose and Need (DSEIS, pp. 1-7 to 18), and states it is based on the landscape conditions as described in the North Lochsa Landscape Assessment (FSEIS, p. D-89). I find the Purpose and Need to be within the discretion of the Responsible Official and it is adequately linked to broader scale analyses.

**Contention 3. The FSEIS failed to take a "hard look" at the environmental effects the project will have on watershed conditions and sedimentation.**

**Response:** The project took the required hard look at WATBAL, WEPP, sedimentation, the existing conditions of the aquatic resources, and the impacts the project would have on those resources (ROD, pp. 26 to 28; DSEIS, pp. 3-179 to 267, Appendix B, pp. B-1 to 4, Appendix K, pp. K-4 and 5; FSEIS, Appendix D, pp. D-6, 44 to 48, 52, 68, 69, 71, 72, 92, 93, and 122; SEIS PF, Vol. 3, Docs. 171 to 219, Vol. 7, Doc. CB-16, pp. 3 to 5, and Vols. 11, 12, 13, 14, and 15).

**Contention 4. The FSEIS failed to take a "hard look" at the changed condition, new information from watershed monitoring reports, mitigation measures, Best Management Practices (BMPs), and PACFISH requirements.**

**Response:** The project took the required hard look at those conditions that changed in the interval between the FEIS and FSEIS. Those changes are described in the ROD (pp. 4 to 5), the Response to Comments (FSEIS, pp. D-44, 47, and 71), and the analysis (DSEIS, pp. 1-1, 2-1, 3-189, B-1 and B-3). Each resource in Chapter 3 of the DSEIS discusses the existing condition of that resource as of January 2002. The changes between the FEIS and the FSEIS, and the condition of the various resources as they now exist have been given the required hard look.

The project took the required hard look at new information and watershed monitoring information (FSEIS, Appendix D, pp. D-48, 68, and 69; DSEIS, pp. 3-221 to 223, and 239 to 240). The project took the required hard look at mitigation measures, BMPs, and PACFISH requirements (ROD, pp. 26 and 27; FSEIS, Appendix D, pp. D-45 to 49, and 71; DSEIS, pp. 3-184, 185, 191, and 192, Appendix B, pp. B-1 to 3; SEIS PF, Vol. 7, Doc. CB-16, p. 5).

**Contention 5. The FSEIS is inadequate because the Forest failed to take a "hard look" at the environmental effects of the project with respect to cultural resources.**

**Response:** In consultation with the Idaho SHPO, and in participation with the Nez Perce National Historic Park, the Forest developed a heritage resource management and monitoring plan that would protect culturally-modified trees and other historic properties (ROD, p. 11) and entered into a Memorandum of Agreement with those agencies (SEIS PF, Vol. 2, Doc. 102). The Forest took the required hard look (ROD, pp. 11, and 36 to 37; FSEIS, Appendix D, pp. D-28 to D-32; DSEIS, pp. 3-320 to 334, and Appendix B, pp. 10 to 16; SEIS PF, Vol. 2, Doc. 83c, pp. 1 to 62).

**Contention 6. The FSEIS is inadequate because the Forest failed to take a “hard look” at the environmental effects of the project with respect to noxious weeds.**

**Response:** Noxious weed control was an important part of the Purpose and Need (DSEIS, pp. 1-16 to 18) and the Selected Alternative (ROD, pp. 8 and 9). The Forest took the required hard look at the effects of noxious weeds (ROD, pp. 25 and 26; FSEIS, pp. 4 and 12, Appendix D, pp. D-15 to 19, 70, 76, 77, and 78, Appendix F, pp. 2, 6, and 16 to 18; DSEIS, pp. 1-1 to 2, 26, 2-10 to 11, 35, 3-68 to 86, and 199 to 201, Appendix B, pp. B-8 and 9, Appendix E, pp. E-1 and 2; SEIS PF, Vol. 5, Docs. 463, 464, and 465).

**Contention 7. The FSEIS is inadequate because the Forest failed to take a “hard look” at the environmental effects of the project with respect to prescribed burning and fire suppression.**

**Response:** Prescribed fire and wildfire control was an important part of the Purpose and Need (DSEIS, pp. 1-7 to 16) and the Selected Alternative (ROD, pp. 7 and 10). The Forest took the required hard look at prescribed fire and fire suppression (ROD, pp. 32 and 33; DSEIS, pp. 3-18, 125 to 126, 130, 170 to 176, 335 to 340, and 348).

**Contention 8. The FSEIS is inadequate because the Forest failed to take a “hard look” at the environmental effects of the project with respect to wildlife.**

**Response:** The Forest took the required hard look at the impacts the project would have on wildlife (FSEIS, Appendix D, pp. D-71, 78 to 80, 90, 93, and 106 to 113, and Appendix F; DSEIS, pp. 3-78 to 158, Appendix B, pp. B-4 to 6), and based on the hard look dropped precommercial thinning in lynx habitat (ROD, pp. 5 and 16; FSEIS, p. 14; DSEIS, Appendix A, p. A-14).

**Contention 9. The Forest inadequately analyzed cumulative effects to water quality, fish, and wildlife from riparian grazing, Forest Service small timber sales, and private timber harvest.**

**Response:** The private land is Plum Creek property 40 miles upstream on the Lochsa River. The FSEIS (pp. 3-264 and 265) adequately analyzes the cumulative effects from private land impacts. The cumulative effects discussions in the FSEIS (Chapter 3) adequately consider the impacts from other Forest Service timber sales and the timber salvage program for each resource.

The original Final EIS did not address livestock grazing (FEIS, pp. 211 to 212). However, the project’s Biological Assessment for steelhead trout, fall Chinook salmon, and bull trout did consider the direct and indirect effects of grazing in Pete King Creek (FEIS PF, Vol. 10, Doc. 624, pp. 4, 63, 73, 74, 78, 79, 143, and 147), but does not discuss the cumulative effects of the grazing when taken with all other activities. The Nez Perce Tribe voiced their concern about the effects of grazing in their August 1, 1997, letter to Forest Supervisor Caswell (FEIS PF, Vol. 5, Doc. 344, p. 7). In response to this concern, the Forest hydrologist and fisheries biologist stated in a letter to the Forest Supervisor, “The Tribe also wanted the degradation to the RHCAs (Riparian Habitat Conservation Areas) by cattle grazing and mining disclosed.

This is such a small number it could be presented a (sic) negligible” (FEIS PF, Vol. 5, Doc. 353, p. 3). In the letter to the Tribe the Lochsa District Ranger stated, “Cattle grazing and mining are very minor to non-existent within the project area and thus have had a negligible effect on RHCAs” (FEIS PF, Vol. 5, Doc. 354, p. 4).

The wildlife biologist did consider the impacts of grazing in the cumulative effects for gray wolf (DSEIS, p. 3-118). Pasturing of horses and cattle upon open and unclaimed land as part of the Tribe’s treaty rights was also considered in the DSEIS (Appendix H, p. 11). The FSEIS responded to comments on noxious weeds, quarantine of animals, and use of pelletized feed as an issue that will be addressed when the Allotment Management Plan is updated (FSEIS, pp. D-17 to 18). While it is clear the direct and indirect impacts from grazing are extremely small, the supplemental EIS does not pull this information together and present the cumulative impacts of grazing to water quality, fish, and wildlife when combined with this project and all other past, present, and reasonably foreseeable future activities in the Pete King watershed. This needs to be done.

#### **Issue 4. The Clearwater National Forest violated the National Forest Management Act.**

##### **Contention 1. The Forest failed to meet objectives and standards of the Clearwater National Forest Plan relative to watershed conditions.**

**Response:** The FSEIS (pp. 3-179 to 267) goes into a very detailed analysis of each creek in the project area including the Forest Plan requirements, the analysis tools and process used, the evaluation criteria, the general characterization of the watershed, and the effects the project would have on each creek. After individual creeks are analyzed the cumulative effects to the Lochsa sub-basin are considered. The effects analysis is based on the data and other information found in the project file (FEIS PF, Vols. 1a, 9, 23, 24, and Vol. 20, Docs. 1032 to 1037; FSEIS PF, Vols. 11, 12, 13, 14, 15, 19, and 20). After analyzing all the impacts the project would have the watershed specialist concluded, “all action alternatives are consistent with the Clearwater Forest Plan and the Stipulation Agreement, where it applies. All action alternatives are consistent with the Clean Water Act and the Endangered Species Act. The project is designed to ensure that there are limited effects, in duration and magnitude, in the short term and neutral or beneficial effects in the long term to the aquatic ecosystem.” The project is consistent with the Clearwater Forest Plan.

##### **Contention 2. The Forest failed to meet objectives and standards of the Clearwater National Forest Plan relative to the old growth standard.**

**Response:** The Forest analyzed the impact the project would have on old growth forest (DSEIS, pp. 3-47 to 3-52). In response to the public’s concern about harvest in old growth forest, the decision maker dropped all timber harvest in old growth habitat (FSEIS, p. 85). The Forest Supervisor stated in the ROD (pp. 5, 6, and 16) this project, as amended, would not harvest any old growth. Approximately 11,680 acres, 9.2 percent of the area, has been identified as old growth forest in the Lochsa Face analysis (DSEIS, p. 3-49, Table 3-20). However, five of the old growth analysis units in the project area are below the Forest Plan standard of 5 percent old growth for each 10,000-acre watershed (Forest Plan, p. II-23). In order to be in compliance with the Forest Plan old growth standards, the Forest identified over 1,700 acres of replacement old growth in 35 stands (FEIS PF, Vol. 11, Doc. 701). Also, the DSEIS (p. 3-49) states, “[a]n

additional 700 acres in the project area have been identified through the Clearwater National Forests (sic) stand database as possibly qualifying as old growth forest (but needing field verification to confirm or refute).” In *The Wilderness Society v. Bosworth*, the Court found the use of replacement old growth to satisfy the 5 percent old growth standard was in compliance with the Forest Plan.

Since Alternative 5-modified would not remove any old growth forest and replacement old growth stands have been identified, the project is in compliance with the Forest Plan old growth standards (Forest Plan, p. II-23), the guidelines (Forest Plan, Appendix H), and the Wilderness Society Lawsuit Settlement Agreement.

**Contention 3. The Forest failed to comply with NFMA’s biodiversity requirement relative to wildlife population versus habitat monitoring.**

**Response:** The Clearwater National Forest is monitoring wildlife population trends of old growth management indicator species pileated woodpecker, goshawk, and pine marten. The monitoring is reported in the annual Forest Plan Monitoring and Evaluation Reports. The 2001 report (p. 125) states, a “normal population of pileated woodpecker and goshawks were commonly observed across the Forest and coincide with maintenance of old-growth habitat... Pine martens are very common in higher elevations and continued to be trapped with no limits or harvest restrictions being considered.”

**Issue 5. The North Lochsa Face project violates the Endangered Species Act (ESA). The Forest failed to reinitiate consultation on lynx and bull trout when selecting Alternative 5-modified. The Forest failed to undertake affirmative obligations to further the purposes of the ESA, to aid recovery of listed salmonid populations in the Lochsa River.**

**Response:** Reinitiation of consultation is not required when the amount or extent of take is the same or less than the original amount or extent evaluated, the change does not affect listed species in a manner or extent beyond those originally considered, and there are no new effects not previously considered (SFEIS PF, Vol. 1, Doc. 74, p. 2 and Doc. 74A, p. 4). The Forest Supervisor informed the public that further consultation was not required in the ROD errata, dated January 6, 2003. The Forest is in compliance with the ESA consultation requirements.

Part of the Purpose and Need is to improve aquatic conditions, which will aid in the recovery of listed species (DSEIS, pp. 1-1, and 17 to 18; ROD, p. 14). This project is in compliance with the ESA requirement to aid in the recovery of listed species.

**Issue 6. The North Lochsa Face project violates the Wild and Scenic Rivers Act by failing to adequately analyze the effects of the project on the Outstandingly Remarkable Values (ORVs) of scenery, recreation, fish, and wildlife, for the Lochsa River.**

**Response:** The FSEIS analyzed the effects the project would have on the Lochsa River (pp. 3-289 to 298). Each of the ORVs of scenery (DSEIS, pp. 3-268 to 272), recreation (DSEIS, pp. 3-350 to 352), fish (DSEIS, pp. 3-179 to 267), and wildlife (DSEIS, pp. 3-87 to 158) has also been analyzed for impacts from the project. The Forest has managed and monitored past timber harvests on private land in the Wild and Scenic River corridor and found the guidelines that have been used for all timber harvests in the corridor since 1966 have resulted in a natural appearing

landscape with no report of erosion or water quality problems. “Implementing these harvest guidelines for the proposed units in the Wild and Scenic River corridor of the North Lochsa Face Assessment will protect the outstandingly remarkable values of the Wild and Scenic River. The ORVs will be preserved as shown by past activity” (SEIS PF, Vol. 10, Doc. 617). The project is in compliance with the Wild and Scenic Rivers Act.

### RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellant with the exception of impacts from cumulative impacts due to grazing in the Pete King watershed.

I also found the FSEIS does not contain a summary as recommended at 40 CFR 1502.10(b) and 1502.12. The summary would help the public understand the EIS by touching on the major conclusions, areas of controversy, issues to be resolved, and the choice the Deciding Official made among alternatives.

I recommend the Forest Supervisor’s decision be affirmed, with the instructions to write a summary of the EIS. I also recommend the team pull together the information presented in the FEIS, DSEIS, FSEIS, the August 10, 1998, Biological Assessment for steelhead trout, fall Chinook salmon, and bull trout, and whatever other information is located in the project files concerning grazing in the project area, and document in the project file the cumulative impacts of grazing to water quality, fish, and wildlife when combined with this project and all other past, present, and reasonably foreseeable future activities. I further recommend the appellant’s requested relief be denied.

/s/ Michael J. Burnside  
MICHAEL J. BURNSIDE  
Appeal Reviewing Officer  
Regional Mining Geologist