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Sent via e-mail to: appeals-northern-regional-office@fs.fed.us

February 10, 2016

Subject: Objection to St. Joe Travel Management Plan

To whom it may concern:

On behalf of the Idaho Conservation League, I am filing the attached objection to the St. Joe Travel Management Plan. The project is located on the St. Joe Ranger District of the Idaho Panhandle National Forests. The responsible official is the District Ranger, Matthew A. Davis. I look forward to working with the St. Joe Ranger District to resolve this objection. Please contact me to schedule an objection resolution meeting at your earliest convenience.

Sincerely,

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Objection to St. Joe Travel Management Plan

The travel plan fails to minimize the effects of motor vehicle use to bull trout.

The travel management rule requires the responsible official to “consider effects on the following, with the objective of minimizing:

- (1) Damage to soil, watershed, vegetation, and other forest resources;
- (2) Harassment of wildlife and significant disruption of wildlife habitats;
- (3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and
- (4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.”

36 CFR § 212.55(b).

Unfortunately, the Draft Decision Notice (“DN”) fails to minimize the effects of motor vehicle use to bull trout, which are listed as threatened under the Endangered Species Act (“ESA”). A threatened species is one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 USC § 1532(20). Once a species is listed, the Fish and Wildlife Service is required to develop a recovery plan that provides for the conservation and survival of the species. 16 USC § 1533(f). A revised recovery plan for bull trout was adopted in September 2015.

In addition to designating a species as endangered or threatened, the Fish and Wildlife Service is also required to concurrently designate “critical habitat” for the species. The term “critical habitat” means:

- (1) The specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and
- (2) Specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

50 CFR § 424.02(d).

The Fish and Wildlife Service designated critical habitat for bull trout in 2010. The figure attached to the end of this objection illustrates the stream and river segments within the Coeur

d'Alene and St. Joe River Basins that were designated as critical habitat. Designated stream and river reaches within the St. Joe River Basin include the main river, Bad Bear Creek, Bean Creek, Beaver Creek, Bluebells Creek, Boulder Creek, California Creek, Cascade Creek, Delaney Creek, Dolly Creek, Entente Creek, Fly Creek, Freezeout Creek, Gold Creek, Heller Creek, Homestead Creek, Marble Creek, Medicine Creek, Mosquito Creek, North Fork Bean Creek, Quartz Creek, Red Ives Creek, Sherlock Creek, Simmons Creek, Timber Creek, Tinear Creek, Wisdom Creek, and Yankee Bar Creek. The bulk of these streams are tributaries to the upper reaches of the St. Joe River, where cold water refugia are available. These streams are “critical” to the conservation of bull trout in the face of climate change. Additional stressors, including direct and indirect impacts to bull trout from land use activities such as motor vehicle use are counter to recovery goals.

Under Section 7 of the ESA, each federal agency must consult with the Fish and Wildlife Service to insure that any actions authorized or funded or carried out by the agency are not likely to “jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of lands determined by the Service to be ‘critical habitat’.” 16 USC § 1536(a)(2), 16 USC § 1532(5).

The Forest Service considered and analyzed four action alternatives (B, C, and D). However, the differences between the existing condition (no action) and the three action alternatives are insignificant or minimal. For example, the number of locations where a motorized trail crosses occupied or designated critical bull trout habitat would be reduced by nine under Alternative B. Alternatives C and D would result in a reduction of four crossings. (See Table 27 on page 114 of the EA).

There are also similarly insignificant differences between the no action and action alternatives with respect to the mileage of motorize trails within fifty feet of streams. Reductions of 6, 4, and 3 miles would occur under Alternatives B, C, and D respectively. (See Table 23 on Page 102 of the EA).

The changes in the number of miles of motorized trails within 300 feet of streams are only slightly more meaningful. Reductions of 33, 23, and 16 miles would occur under Alternatives B, C, and D respectively.

Given the size of the St. Joe Ranger District, the amount of bull trout habitat, the importance of the habitat in the face of climate change, and the extent of the motorized road and trail network, these changes are underwhelming. The action alternatives and the Draft DN represent very little progress toward minimizing the effects of motorized vehicle use to bull trout as required by the travel management rule.

On pages 133 and 134 of the EA, the Forest Service outlines the reasons why the agency thinks the travel plan is consistent with the Endangered Species Act. The regulatory consistency section states that there will be a district-wide reduction of 78 motorized crossings of perennial streams and 54 crossings of intermittent streams (Statement 2), but this statement is inconsistent with analysis presented in Table 27 (Page 114), which suggests that the actual reductions in streams crossings will be much lower. Alternative B would result in a reduction of 55 motorized crossings of perennial streams and 46 crossings of intermittent streams (Note that many of these crossings are not located on streambed occupied by bull trout or designated as critical habitat). Alternative C would result in a reduction of 48 motorized crossings of perennial streams and 43 crossings of intermittent streams. Finally, Alternative D would result in a reduction of 44 motorized crossings of perennial streams and 25 crossings of intermittent streams.

Similarly, the regulatory consistency summary states that there will be a reduction of 54 motorized crossings in bull trout occupied streams (Statement 8). Again, the true total appears to be much lower. According to Table 27, the number of locations where a motorized trail crosses occupied or designated critical bull trout habitat would be reduced by nine under Alternative B. Alternatives C and D would result in a reduction of four crossings.

Consequently, the ESA regulatory consistency section does not hold water. The rationale used to suggest that the travel plan complies with the ESA relies on inaccurate information. If the statements in the regulatory consistency section were accurate, then the travel plan would actually make meaningful headway toward minimizing the effects of motor vehicle use to bull trout. Unfortunately, because the action alternatives and the Draft DN represent insignificant or minimal on-the-ground changes at best, the Forest Service has failed to minimize the effects of motor vehicle use to bull trout and comply with the ESA. Merely instituting a prohibition on cross-country motor vehicle use does not satisfy that travel management rule's minimization criteria or the ESA.

The Forest Service did not consider a reasonable range of alternatives.

The consideration and analysis of alternatives is the "heart" of a NEPA document. The Council on Environmental Quality's regulations direct agencies to "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 CFR § 1502.14(a); *see also City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990). Federal agencies must "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E); 40 CFR § 1508.9(b). The range of alternatives is essential to "sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public." 40 CFR § 1502.14.

Unfortunately, the St. Joe Ranger District refused to consider and analyze an alternative for non-motorized trail designations in the Grandmother Mountain Wilderness Study Area (“WSA”). The Grandmother Mountain WSA was originally established under the Federal Land Policy and Management Act of 1976 (43 USC § 1782). Administration of the WSA was transferred to the Forest Service under provisions of the Arkansas-Idaho Land Exchange Act of 1992 and the Idaho Land Enhancement Act of 2006. The Forest Service interprets these laws as an obligation to allow existing uses to continue (See page 65 of the EA, where it states that “uses in place prior to acquisition by the Forest Service shall continue to be allowed”).

We believe that the agency’s interpretation is flawed. The laws providing for the establishment of the area do not obligate the Forest Service to permit motorized use of the WSA. Instead, Section 4(b) of the Arkansas-Idaho Land Exchange Act of 1992 states:

Nothing in this Act shall be construed as *permitting or prohibiting* continued use of motorized vehicles on existing routes within such area at the level of such use as was permitted on August 1, 1992.

(Emphasis added). By use of the word “or” the statute clearly gives the Forest Service the discretion to permit or prohibit motorized use in the Grandmother Mountain WSA. Therefore, it is reasonable for non-motorized user groups to request and the Forest Service to give full consideration to an alternative for non-motorized trail designations in the Grandmother Mountain WSA. Conversely, it is unreasonable to exclude such an alternative from full consideration based on a flawed interpretation of the statutes.

The 1992 and 2006 statutes do not, however, give the Forest Service the discretion to decide whether or not to protect the wilderness characteristics of the Grandmother Mountain WSA. The 1992 statute spells out a mandate to preserve the wilderness characteristics of the area:

Subject to valid existing rights, those Federal and non-Federal lands within the Grandmother Mountain Wilderness Study Area which are transferred to the jurisdiction of the Forest Service pursuant to section 3(b) of this Act shall be managed so as to preserve their suitability for designation as wilderness, pursuant to section 603(c) of the Federal Land Policy and Management Act of 1976, until Congress determines otherwise.

This provision is further reinforced by Section 4(a)(3) of the Idaho Land Enhancement Act of 2006, which states:

Any land designated as a Wilderness Study Area that is transferred to the Secretary of Agriculture [...] shall be managed in a manner that preserves the suitability of land for designation as wilderness until Congress determines otherwise.

Prohibiting non-conforming uses in the Grandmother Mountain WSA is the best management strategy for preserving the area's suitability for designation as wilderness. Non-wilderness uses, such as motorized vehicles reduce opportunities for solitude and primitive and unconfined modes of recreation. Motorized vehicles also create noise and air pollution and introduce noxious weeds. Continuing to allow motorized recreation in the Grandmother Mountain WSA does not ensure the preservation of the area's suitability for wilderness.

Connection to prior specific written comments

Bull trout were a significant focus of our comments about the 2015 EA (see pages 1 through 6). In fact, we listed specific routes and stream crossings where we believe that conflicts between motor vehicle use and bull trout conservation exist. Our comments also provided suggestions for resolving these conflicts, none of which are incorporated into the Draft DN.

Non-motorized user groups asked the Forest Service to give full consideration to non-motorized trail designations in the Grandmother Mountain WSA during the St. Joe Ranger District's "focus group" process. ICL is one of the organizations that participated. In addition, we asked for full consideration and analysis of a non-motorized alternative for Grandmother Mountain in our comments about the 2015 EA (See pages 10 and 11). Unfortunately, the Forest Service dismissed the proposed alternative from further consideration based on its flawed interpretation of statutes.

Suggested remedies

Fly Creek Trail 88

This trail crosses a divided reach of Fly Creek before connecting to Trail 629. According to the Fisheries Report, redd counts were conducted in Fly Creek for a period of 17 years, and redds were found in six of those years (Page 14). Given the fact that bull trout use Fly Creek for spawning and rearing and that it is designated a critical habitat, we urge the district to close the trail.

A second option would be to reroute the trail to a location where a bridge can be constructed across Fly Creek at an undivided reach of the stream.

A third option is to apply an appropriate seasonal designation to the whole loop (including trails 28, 89 and 629). With the exception of a special season of use for the Big Creek Trail, the Forest Service only proposed one other season of use (May 22nd to September 7th) for all of the other seasonal motorized trails on the district. However, this season of use does not appear to be appropriate for bull trout. Juvenile bull trout typically do not complete their out-migration

before May 22nd. Moreover, adult bull trout begin moving up to spawning areas in mid August—two to three weeks before September 7th. Consequently, if the Forest Service is going to use seasonal designations to alleviate effects to bull trout and their habitat, then a more appropriate season of use would be necessary than the season proposed in the EA and Draft DN. It is also worth noting that a seasonal designation would not alleviate sediment delivery from the crossing to in-stream habitat.

Angle Point Trail 89

This trail crosses Beaver Creek a short distance upstream from the confluence of Beaver Creek and the St. Joe River. According to the Fisheries Report (Page 15), bull trout use Beaver Creek for spawning and rearing. The substrate at the stream crossing is suitable for spawning (Fisheries Report, Page 15; FWS Biological Opinion, Page 37). Given the fact that Beaver Creek is designated critical bull trout habitat, is used for spawning and rearing, and the substrate at the crossing is suitable for spawning, we encourage the Forest Service to close this trail.

A second option would be to construct a bridge across the creek. A bridge would help alleviate sediment, compaction of substrate, and the potential for direct mortality.

A third option is to apply an appropriate seasonal designation to the trail. With the exception of a special season of use for the Big Creek Trail, the Forest Service only proposed one other season of use (May 22nd to September 7th) for all of the other seasonal motorized trails on the district. However, this season of use does not appear to be appropriate for bull trout. Juvenile bull trout typically do not complete their out-migration before May 22nd. Moreover, adult bull trout begin moving up to spawning areas in mid August—two to three weeks before September 7th. Consequently, if the Forest Service is going to use seasonal designations to alleviate effects to bull trout and their habitat, then a more appropriate season of use would be necessary than the season proposed in the EA and Draft DN. It is also worth noting that a seasonal designation would not alleviate sediment delivery from the crossing to in-stream habitat.

Simmons Creek Trail 80

There are two disjointed segments of the Simmons Creek Trail. The first segment begins at the trailhead at the end of Road 218X and extends upstream to the junction with Three Lakes Divide Trail 72. This segment of the trail does not cross Simmons Creek and would be closed to motorized use under all of the action alternatives. Consequently, motorized use would not affect bull trout in Simmons Creek along this segment of the trail.

The second segment of the Simmons Creek Trail begins at the bridge on Road 1278, crosses Simmons Creek and continues upstream to the headwaters of Simmons Creek. This segment of the trail crosses Simmons Creek four times.

Simmons Creek is designated as critical habitat for bull trout spawning and rearing. The Forest Service conducted redd counts in Simmons Creek for a period of twelve years and located redds in six of those years. Redds located in 1996 and 1998 were found within the segments of Simmons Creek where the four trail crossings are located (Fisheries Report, Page 13). The substrate at the crossings is small cobble and gravel that juvenile bull trout can utilize as hiding cover during the day (BiOp, Page 38). In light of this information, we recommend closing the upper segment of the Simmons Creek Trail to all motorized use as proposed under Alternative B.

A second option is to designate the trail for an appropriate season of use. With the exception of a special season of use for the Big Creek Trail, the Forest Service only proposed one other season of use (May 22nd to September 7th) for all of the other seasonal motorized trails on the district. However, this season of use does not appear to be appropriate for bull trout. Juvenile bull trout typically do not complete their out-migration before May 22nd. Moreover, adult bull trout begin moving up to spawning areas in mid August—two to three weeks before September 7th. Consequently, if the Forest Service is going to use seasonal designations to alleviate effects to bull trout and their habitat, then a more appropriate season of use would be necessary than the season proposed in the EA and Draft DN. It is also worth noting that a seasonal designation would not alleviate sediment delivery from the crossing to in-stream habitat.

The third option is to consider rerouting the trail to one side of the creek so that there are no crossings. However, it is unclear if the terrain would accommodate a reroute to one side of the creek.

A fourth option is to construct trail bridges at all of the crossings.

Washout Point Trail 290

The Washout Point Trail crosses Washout Creek not far above its confluence with Simmons Creek. The Fish and Wildlife Service's Biological Opinion indicates that bull trout spawn and rear in Washout Creek. Although it is unclear how many total redd counts have been conducted in Washout Creek, the BiOp indicates that three redds were observed in the stream in 1993 and that the last redd count was conducted in 1997 (Page 39). In light of this information, we recommend closing the trail to all motorized use.

A second option is to designate the trail for an appropriate season of use. With the exception of a special season of use for the Big Creek Trail, the Forest Service only proposed one other season of use (May 22nd to September 7th) for all of the other seasonal motorized trails on the district. However, this season of use does not appear to be appropriate for bull trout. Juvenile bull trout typically do not complete their out-migration before May 22nd. Moreover, adult bull trout begin moving up to spawning areas in mid August—two to three weeks before September 7th. Consequently, if the Forest Service is going to use seasonal designations to alleviate effects to bull trout and their habitat, then a more appropriate season of use would be necessary than the

season proposed in the EA and Draft DN. It is also worth noting that a seasonal designation would not alleviate sediment delivery from the crossing to in-stream habitat.

A third option is to construct a bridge at the crossing. A bridge would help alleviate sediment, compaction of substrate, and the potential for direct mortality, but again, we recommend closing this trail to all motorized use as proposed under Alternative B.

Sherlock Creek Trail 76

Sherlock Creek Trail 76 crosses the creek approximately 3.5 miles upstream from its confluence with Heller Creek. The west end of the trail used to be accessed where Road 3726A crosses the creek before it was decommissioned in 2010.

Redd counts were conducted in Sherlock Creek for a period of 19 years. Redds were located during nine of those years up and downstream of the mining restoration site (Fisheries Report, Page 14). I could not find any information in the Environmental Assessment, Fisheries Report, or the Biological Opinion that explains the quality of the substrate at the crossing or the potential impact of a motorized trail crossing at this location to bull trout. However, a footnote in Appendix B of the Environmental Assessment suggests that the current condition of the trail is not suitable for motorized use. The footnote states, “[a]dditional environmental analysis and trail design would need to be done before this trail could be open to [motorcycle use because the] lower portion would require relocation and new construction.” (Appendix B – Trail List, Page 6).

Given the fact that the crossing was an old road that was decommissioned as part of the mining reclamation and that bull trout use Sherlock Creek for spawning and rearing, we recommend that the trail remain closed to all motorized use.

A second option is to designate the trail for an appropriate season of use. With the exception of a special season of use for the Big Creek Trail, the Forest Service only proposed one other season of use (May 22nd to September 7th) for all of the other seasonal motorized trails on the district. However, this season of use does not appear to be appropriate for bull trout. Juvenile bull trout typically do not complete their out-migration before May 22nd. Moreover, adult bull trout begin moving up to spawning areas in mid August—two to three weeks before September 7th. Consequently, if the Forest Service is going to use seasonal designations to alleviate effects to bull trout and their habitat, then a more appropriate season of use would be necessary than the season proposed in the EA and Draft DN. It is also worth noting that a seasonal designation would not alleviate sediment delivery from the crossing to in-stream habitat.

Foehl Creek Trail 120

There are two locations where this trail crosses designated critical bull trout habitat in Foehl Creek. The crossings are located approximately eight and ten kilometers upstream from the confluence with the Little North Fork Clearwater River.

While no redd surveys have been conducted in Foehl Creek, Idaho Fish and Game tracked three radio tagged bull trout (one in 2003 and two in 2004) that migrated approximately four kilometers up Foehl Creek from the Little North Fork Clearwater River (Fisheries Report, Page 15). In 2012, the Forest Service inspected the substrate at both crossings and concluded that the substrate was not ideal for redd construction (Fisheries Report, Page 15). Nonetheless, the Fish and Wildlife Service suggested in their Biological Opinion for the St. Joe Travel Plan that conservatism is warranted in the absence of redd surveys. The Service also pointed out that Idaho Fish and Game has determined that certain reaches of Foehl Creek provide suitable spawning and rearing habitat (BiOp, Page 40). Consequently, we recommend closing the Foehl Creek Trail to all motorized use.

A second option is to designate the trail for an appropriate season of use. With the exception of a special season of use for the Big Creek Trail, the Forest Service only proposed one other season of use (May 22nd to September 7th) for all of the other seasonal motorized trails on the district. However, this season of use does not appear to be appropriate for bull trout. Juvenile bull trout typically do not complete their out-migration before May 22nd. Moreover, adult bull trout begin moving up to spawning areas in mid August—two to three weeks before September 7th. Consequently, if the Forest Service is going to use seasonal designations to alleviate effects to bull trout and their habitat, then a more appropriate season of use would be necessary than the season proposed in the EA and Draft DN. It is also worth noting that a seasonal designation would not alleviate sediment delivery from the crossing to in-stream habitat.

Another option would be to construct bridges at the two crossings. Bridges would help alleviate sediment, compaction of substrate, and the potential for direct mortality.

The Forest Service could also consider rerouting the segment of Foehl Creek Trail 120 that is on the south side of the creek to the north side so that no motorized stream crossings are required. However, it is unclear whether or not the terrain on the north side of the creek is suitable for trail construction.

Grandmother Mountain WSA

The Forest Service should consider and analyze an alternative for non-motorized trails designations in the Grandmother Mountain WSA. The agency improperly dismissed such an alternative from full consideration based on a flawed interpretation of legal statutes. Moreover, the Forest Service has a non-discretionary duty to protect the wilderness characteristics of the Grandmother Mountain WSA. Therefore, it is reasonable for non-motorized user groups to request and the Forest Service to consider and analyze an alternative for non-motorized trail designations in the area.

