



Kootenai Tribe of Idaho

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November 25, 2013

USDA Forest Service
Objection Reviewing Officer
EMC, RPC-6th Floor
Attn: Judicial and Administrative Reviews
1601 N. Kent St.
Arlington, VA 22209

Submitted electronically to objections-chief@fs.fed.us and facsimile (703) 235-0138

Plan Revisions Being Objected to:

Kootenai and Idaho Panhandle National Forests Land Management Plans
Objections of the Kootenai Tribe of Idaho
EIS No. 20130287, Final EIS, USFS, ID
EIS No. 20130281, Final EIS, USFS, MT

Objector:

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Responsible Official:

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On 5 April 2012, the Kootenai Tribe of Idaho (“Kootenai Tribe” or “Tribe”) submitted comments on the Kootenai and Idaho Panhandle National Forest Draft Land Management Plans drafted under the 1982 Planning Rule. The Forest Service released its revised Forest Plans, Final Environmental Impact Statements and Draft Record of Decisions on 23 September 2013. The 60-day objection period, which falls under the 2012 Planning Rule, runs from 28 September – 26 November 2013.

The Kootenai Tribe commends the Forest Service for incorporating many of the Tribe’s comments into the final Plans. The Kootenai Tribe is especially pleased the Forest Service included Desired Conditions, Goals and Objectives related to Treaty rights, religious use and sacred places protection. The partnership between the Kootenai Tribe and the Forest Service is strong and we look forward to continuing our work together to restore the Forests in Ktunaxa Territory for the benefit of our communities and our shared resources.

While the Kootenai Tribe generally approves the majority of the final Forest Plans, there are some significant issues we believe must be improved before the final Forest Plans can entirely be approved. The Kootenai Tribe requests additional government-to-government consultation to address these issues. While the Tribe believes government-to-government consultation will address these issues, the Kootenai Tribe also files this letter as an “Objection” in order to protect its administrative remedies.

Wildlife Analysis:

The Kootenai Tribe provided extensive comments on the DEIS regarding the wildlife analysis and recommended additional analysis for the Final EIS and Plans. The Tribe is pleased that the Forest Service acted on the Tribe’s recommendation and contracted with the Ecosystem Research Group (ERG) out of Missoula, Montana to help understand the effects of the different alternatives.

We note that the Kootenai Tribe, through its Fish and Wildlife Department - Wildlife Division, requested the report in the Fall of 2012 when we were made aware of the effort to model the outcomes of each of the alternatives. The report was completed on December 19, 2012. The Final EIS was released on 20 September 2013 and the Wildlife Division finally received the ERG document on 28 October 2013.

First, the Kootenai Tribe acknowledges that modeling the actions proposed under the Forest Plan is challenging because the actions are not specific, predictable, or spatially precise. The ERG document helps to provide some basis for the wildlife analysis, however there are gaps in explanations, questionable conclusions, and apparent discrepancies between the ERG report and the Final EIS. We provide a few of these examples below.

- Northern Goshawk: The ERG analysis indicates that goshawk habitat will decline over the next 50 years under any alternative. The decrease is less under

Alternative B (constrained) and most under Alternative B (unconstrained). These decreases move goshawk habitat from within the Historic Range of Variability (HRV) to about 25% below the HRV. The ERG reports states the estimates of habitat are low in the model (potentially indicating more appropriate criteria are needed), territoriality limits the population (in general, as habitat quality increases, territory size decreases), and concludes that the species is viable with no citations to support these contentions. Moreover, the ERG report stated that a reduction substantially below HRV could result in a risk to the viability of the species (pg. 16, ERG 2012). Movement away from HRV occurs again in the chipping sparrow/dusky flycatcher and the marten (mesic) analysis. The FEIS concludes the species are viable and cites ERG. These expected declines need to be better explained and defended in the FEIS.

- Fire effects: In many areas in the FEIS, the authors state that declines in habitat are due to fire and other natural disturbances (insects and disease), not anthropogenic management. These statements show up in goshawk, marten (mesic), etc. where the amount of habitat decreases more under Alternative B, which has less fire and insect effects than the no action alternative. This explanation seems counter intuitive and needs more explanation. In some cases, the effects are inconsistent and differ by alternative and/or National Forest.
- Big game: In the FEIS, the USFS cite from the ERG report that “natural disturbances” are the major factor in habitat changes (ERG 2012) and interpret that to mean that the forest is moving in a direction that native species have adapted to. A couple sentences later, they state that “in general, management has a positive effect on the amount and distribution of habitat.” Therefore, the FEIS implies that both management options are analogous and equal in their effects (i.e., natural disturbances and active management). Furthermore, in the FEIS Vegetation Chapter, the authors state that even with the amount of stand replacing fire predicted by the ERG model, the forest would not substantially move toward HRV objectives, which contradicts the interpretation that the “natural disturbance” under the no action alternative move the forest toward HRV objectives.
- Size class distributions: The ERG analysis indicates that seedling/sapling size classes are currently below HRV and that all alternatives would result in a decline to a similar amount over 50 years even though there are sizable differences in area of stand replacing fires by alternative. It stands to reason that if there are more stand replacing fires then the seedling/sapling size class should increase over time.
- The ERG report shows that Alternative B would result in about 40% less whitebark pine potential regeneration habitat on the IPNF and 30% more on the KNF and relates it back to fire. However, if that were the case, then the no action alternative (i.e. has the most stand replacing fires), would be higher in both cases,

which it is not. The ERG reports needs a clarifying explanation on why the action alternatives decrease whitebark pine potential on the IPNF, while increasing potential on the KNF.

- The ERG analysis shows that flammuated owl habitat improves more with no action than under Alternative B. It is difficult to understand how increased stand replacing fires and the lack of management activities in flammulated owl habitat would improve conditions for this species.

Based on our review, it appears that the ERG report had limited internal USFS biological review (i.e., gaps in explanations and apparent discrepancies between the report and the Final EIS). Therefore, the Kootenai Tribe recommends a KNF and IPNF peer-review of the ERG report to further evaluate and better explain the results. Specifically, the internal review should improve the FEIS by addressing the following issues:

- (a) Verify species habitat criteria used in the ERG model.
- (b) Improve explanation of Alternative effects on Management Indicator Species (MIS).
- (c) Describe how movement away from HRV for species habitat does not affect viability of the species and/or how these effects might be mitigated.
- (d) Better explain the contribution of “natural” processes and management action effects expected under each Alternative. Blanket statements relating to “natural” disturbances need to be better defined and explained, especially where the results differ between the two National Forests.
- (e) Provide a detailed discussion on the results obtained through the two different modeling approaches used in the vegetation and wildlife section. It is unclear whether the models provided consistent outcomes to the scenarios simulated and whether the same conclusion can be made from both model results. Also, it is unclear whether these model results coincide with mapping/analysis efforts conducted for project work. More detailed explanations would be beneficial and help validate the model results.

Recommended Wilderness and “Non-Conforming” Uses:

Recommending wilderness areas is one of the most controversial aspects of forest planning and has some of the greatest potential to cause conflict in our communities. The Kootenai Tribe raised concerns about recommended wilderness in its comments on the DEIS and Plans and throughout government-to-government consultation.

It is imperative that the Forests inventory, evaluate, analyze and determine recommended wilderness in a fully transparent manner. The Kootenai Tribe believes the Forests failed to do so in the final Plans and recommends additional dialogue and discussion with the Tribe and affected communities on this issue.

The Wilderness Act defines wilderness as:

“in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act as an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make it practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic or historical value.”

The amount of recommended wilderness (RWAs) in the Plans is substantially more acreage than that in the 1987 Plans. Understanding the intent of recommended wilderness is to maintain wilderness characteristics while Congress decides whether to add the RWAs to the wilderness system, the Kootenai Tribe is very concerned that current allowed activities will be affected.

In fact, the Forest Service intends to eliminate all "non-conforming" uses in recommended wilderness areas – essentially treating these areas as de facto wilderness without the ability to negotiate the issues as contemplated by Congress in the Wilderness Act. The Kootenai Tribe disputes the characterization of existing uses as “non-conforming” and believes that this decision is not only inconsistent with the Wilderness Act on a legal basis, but bad policy that needlessly instigates conflict in our communities. The Kootenai Tribe maintains that the Forest Service has a broad range of discretion to determine management prescriptions in recommended wilderness areas, and must exercise that discretion in consultation with the Kootenai Tribe and in dialogue with the communities affected by the decision.

For example, the Long Canyon area of the Selkirks RWA in the Idaho Panhandle National Forest is a popular area for mountain biking activities. Thus, it does not contain the “outstanding opportunities for solitude” characteristic and that characteristic was not the basis for which the area is being recommended as wilderness. Despite this fact, the Forest intends to eliminate mountain biking in the RWA to protect solitude.

Another example involves the use of hand-held motorized equipment in areas of recommended wilderness. While prohibiting use of such equipment may preserve certain wilderness characteristics, the elimination of current existing uses may not be necessary and could lead to diminishment of Treaty and religious access for Kootenai Tribe citizens that rely on trails to certain areas.

When questioned about the decision to eliminate all existing “non-conforming” uses, the Forest indicated the decision was made in the Washington Office and the Forests have no discretion concerning this decision. The Kootenai Tribe respectfully demands the Forest Service identify the individuals in the Washington Office making this decision so that meaningful government-to-government consultation concerning this issue can be accomplished in compliance with the Forest Service’s responsibilities to the Tribe.

Additionally, the Kootenai Tribe objects to this decision and believes that the Wilderness Act and Forest Service policy grant a great level of discretion to the Forest Service to manage RWAs in a number of ways, including the ability to prescribe management that allows existing uses, provided that such uses do not prevent the protection and maintenance of the social and ecological characteristic *that provide the basis for wilderness designations*. In the case of Long Canyon RWA, solitude opportunities did not provide the basis for the recommended wilderness designation and, therefore, existing uses that may impact solitude do not need to be eliminated.

Conclusion

The Kootenai Tribe appreciates the work it took to develop two major Forest Plans and environmental analyses. With some additional effort, we believe the Forest Plans can be improved and set the stage for a better plan to manage these crucial areas of Ktunaxa Territory in a manner more acceptable to all communities affected by Forest management.

We look forward to continuing our work together on a government to government basis to address these comments and further refine the Forest Plans.

Sincerely,

Gary Aitken Jr.
Chairman
Kootenai Tribe of Idaho