FRIENDS OF THE CLEARWATER

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June 1, 2015

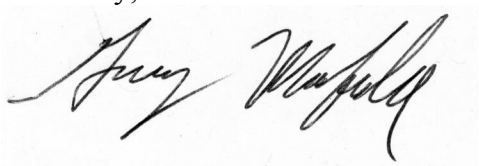
Objection Reviewing Officer
USDA Forest Service
Northern Region
PO Box 7669
Missoula, MT 59807

RE: Draft Record of Decision Lower Orogrande Project

Sent Via Email to: appeals-northern-regional-office@fs.fed.us

Pursuant to 36 CFR 218 regulations, this is an objection to the draft Decision Notice for the Barnyard South Sheep Project (DDN) and Environmental Assessment (EA) on the Clearwater National Forest. The Responsible Official is Cheryl Probert. This objection is filed on behalf of the Friends of the Clearwater and Alliance for the Wild Rockies. Friends of the Clearwater is the lead objector. However, since I am also a board member of Alliance for the Wild Rockies, my signature serves for both organizations on this objection letter.

Sincerely,



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--and for—

Alliance for the Wild Rockies
PO Box 505
Helena, MT 59624

Barnyard South Sheep Objections

Soil Issues

Objection 1: We noted in our draft EA comments, "Units include areas of high hazard soils. How does logging these units meet regional standards and NFMA requirements for soil protection?" We further noted:

> In addition, the fill failure on road 246 suggests that many more roads need to be decommissioned. This road has not been repaired since it occurred in 2011 (EA page 154). Indeed, that would only occur "once funds are available." This suggests the minimum road system analysis for this project area is actually more than a minimum road system.

The Forest Service places a great deal of emphasis in their analysis in the fact that they now know how to prevent landslides. Best management practices such as those described in the EA and DDN here have generally been implemented on the Clearwater National Forest since the 1995 and 1996 flood events. For the most part these methods have largely been untested by a similar large scale flood event and it remains to be seen how effective they will be. The exception is road 246, which the agency determined necessary in spite of the damage it caused. We therefore object to all units and roads that occur on high risk landtypes (see DDN pages 2 and 3). We do not agree that relying on untested design features will meet the intent of the 1993 lawsuit settlement in terms of producing no measurable increase in sedimentation. The Forest Service cannot assure that operation on high risk landtypes will not cause a large mass failure and delivery of large amounts of sediment to project area streams. Indeed, road 246 recently experienced a failure

REMEDY: Please drop all units on high-risk landtypes as well as the roads. This would be units 1-7, 10, 13, 14, 19, 20, 23, 34 and 35 (see DDN page 2) and the roads listed on DDN page 3.

Objection 2: There are some key issues with wildlife. We noted in our comments, "The EA also notes loss of older forests, which negatively affect goshawk, pileated woodpecker, pine marten and fisher. No forest plan monitoring data is presented." The response to comments conflated old growth with older forests. Further, the response did not address monitoring issues.

Northern Goshawk, American Marten Pileated Woodpecker and Fisher
The impacts to the pileated woodpecker, pine a marten and goshawk are dismissed because there is other habitat available. This "over the hill" strategy does not take into account impacts to that other habitat or possible changes in that habitat from other projects. Further, there is no indication that the habitat is filled as monitoring has been spotty at best. Thus, the impacts to these species from cumulative impacts are not adequately analyzed.

Fisher represents an interesting problem. The EA notes the "project area is thought to be the heart of core fisher habitat in north Idaho (Olsen 2014)." Page 124 suggests a lot of fisher habitat in the Clearwater National Forest (over on million acres) yet this is contradicted by references included in the EA itself (see also attachments 1 and 2). Simply put, the fisher analysis is inadequate especially since fishers have been found in the project area and were a major focus of research.

Elk

We also noted in our comments, "Even though the action alternatives would generate different amounts of temporary roads, and differing amounts of road use, there is no analysis of the impacts to elk habitat effectiveness from the project while it is taking place." The project area is contiguous to state and private land containing significant roads and impacts. The impacts to elk need to be looked at in a broader and cumulative context. Elk do not follow ownership lines and the agency must look at the larger area for cumulative impacts when conducted these analyses.

The elk standards were set at a very low amount (25% of potential on E-1 lands) in the Clearwater Forest Plan. This very low standard was a forest plan compromise that allowed higher standards (75% up to 100% of potential) to be applied in other areas (C8S, C-1, C-6 and B-2 management areas) of the Clearwater National Forest that were thought to be more important to elk.

Furthermore, the response to comments admits that elk habitat would fall below the very low 25% threshold.

Lynx
We noted in our comments:

> Regarding lynx, the EA assumes that there is considerable habitat outside of the project area. However, the cumulative impacts of activities in those areas are not analyzed. There is also no information about whether lynx have been surveyed in the area. As such, conclusions about lynx habitat (or lack thereof) are not well supported in the EA. Cursory conclusions are insufficient absent solid information.

The lynx analysis is simply a mapping exercise. This does not comply with the ESA.

REMEDIES: Don't issue the draft DN in final form and/or prepare a supplemental EA. In the alternative, do the following: Don't log within fisher, marten, pileated woodpecker, or goshawk habitat as identified in the EA. Adjust logging and roadbuilding in the EHEAs that would be below the 25% standard during project implementation so that those EHEAs stay above the forest plan threshold. Don't log in stands that meet lynx habitat, regardless of that fact that the project area is not within an LAU.

Watershed and Fisheries

Objection 3: Our comments noted:

> The WEPP model predicts more sediment from alternatives 2 and 4 due to roads but does not model the differences in acreage logged in the alternatives. Sediment impacts from road hauling are also not analyzed though the impacts from alternatives should vary because of the amount logged would vary. The impacts of existing roads within RHCAs are not considered. These are serious deficiencies.
>
> The EA inconsistently looks at sediment impacts. It acknowledges that more sediment would be produced under alternatives 2 and 4, yet the narrative on 101 treats all action alternatives the same.
>
> The EA estimates temporary roads would be in place for three seasons. There are two problems with this assumption. First, timber sale contracts routinely last five years and extensions are often granted. Second, watershed impacts from temporary roads don't end with decommissioning. Those impacts are of long-duration.

> The fisheries analysis (see table 4.13) for all alternatives is the same. This is a problem as the EA fails to quantitatively and qualitatively analyze differences between the alternatives. Bull trout in particular need cold and clear water.

What is problematic is that the EA does not have updated data on water quality or fish habitat in the project area because it claims nothing has happened in the project area except the landslides along road 246. In essence, there is not enough information in the EA to make a determination that there won't be an impact to species like bull trout or that the project will meet forest plan standards.

REMEDY: don't issue the DDN in final form and/or prepare a supplemental EA that meets the forest plan and forest plan settlement agreement.

NEPA/NFMA Issues

Objection 4: We noted in our scoping comments:

> The purpose and need relies on the BHROWS document, which didn't go through NEPA, for its justification. The DEIS needs to address how a non-NEPA document, which sets up desired future conditions different than the forest plan, is consistent with law.

One of the major problems is the use of (and abuse of) non-NEPA and non-decision documents and treating them the same ass programmatic decision documents, like a forest plan. The EA contains programmatic decisions establishing new management direction for the Forest by developing new desired conditions. As such, they MUST go through forest plan amendment or revision.

For example, the Forest Plan does not give direction to have fewer stands of grand fir or Douglas fir and shift toward more early seral species. It does not give percentages in successional stages (EA page 1).

The two main statutes that govern the management of our National Forests are the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA). These two intertwined environmental laws form the procedural path the Forest Service must follow when making management decisions that affect National Forest land. One of the most important steps in this path is the requirement of public participation in the management decisions. Public participation in Forest Service management decisions is extremely important because it helps to ensure agency compliance with the applicable environmental laws that control or affect land and resource use and provides for administrative appeal and judicial review of these decisions.

Specifically, the BHROWS has not gone through the NEPA analysis and decision process to look at a range of alternatives or to consider cumulative impacts nor has it been adopted into the forest plan. This is crucial because no alternatives to the non-forest plan DFCs have been considered. The cumulative effects of that change in direction has not been analyzed either.

If the agency wishes to use another set of DFCs other than those in the forest plan, it needs to comply with NEPA and NFMA by doing a forest plan amendment. Simply put, pre-NEPA decisions referred to in the FEIS are not allowed either under NEPA or NFMA, regardless of the reason.

Forest Service land-management decision-making is a two-stage process. Briefly, there is the planning stage and the site-specific project stage. The planning stage is the production of Land and Resource Management Plans (LRMP's or Forest Plans), which create a framework for subsequent forest management. Forest Plans are regarded as programmatic documents that establish the management direction of the forest. The second stage is the development of site-specific projects, which determine

the specific uses to which the forest will be put to accomplish the goals set forth in the Forest Plan. Site-specific projects are required to comply with the management prescriptions established in the Forest Plan.

Additional documents, which set management direction, under the deceptive auspices of analysis, are not allowed under NEPA and NFMA. Such tiering to a non-NEPA document is not consistent with NEPA, NFMA or the Nez Perce National Forest Plan. 40 C.F.R. § 1502.20. It doesn't matter whether those "decisions" were made elsewhere. They must be adopted by the forest plan to be legitimate as desired future conditions.

REMEDY: don't issue the DDN in final form and/or prepare a supplemental EA that meets NFMA and NEAP requirements.

Objection 5: In our scoping comments, we summarized concerns about cumulative impacts, "This means the FS must consider the cumulative effects of activities on land of all ownerships in or adjacent to the affected watersheds." The EA, in appendix A merely lists a bunch of projects. It does not analyze the cumulative impacts of those projects, including the lower Orogrande Project, which would presumably occur at a similar time frame as this proposal.

The cumulative effects of past actions that cause present effects, along with the indirect and direct effects of the proposed action, must be analyzed for the environmental impact likely to occur. 36 C.F.R. 220.4(f). "An EIS must include a useful analysis of the cumulative impacts of past, present and future projects in sufficient detail to be useful to the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts." *Natural Resources Defense Council v. U.S. Forest Service*, 421 F.3d 797, 814 (9th Cir. 2005) (internal quotations omitted). Regardless of who or what caused the past impacts, the cumulative impacts of all actions must be analyzed: "NEPA requires an agency to consider the environmental impact that results from the incremental impact of the action when added to other past, present and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." *Id.*

Also, the analysis stops at the national forest boundary for many resources. It does not take into account the cumulative impact of actions adjacent to the national forest to the west. It does not adequately take cumulative impacts from other planned activities (lower Orogrande).

REMEDY: don't issue the DDN in final form and/or prepare a supplemental EA that meets NFMA and NEPA requirements.

Objection 6: The agency has failed in its obligation to complete monitoring in a timely manner. The latest monitoring report is from 2009. This is particularly crucial for MIS population trends, fish habitat and water quality, though it is an issue with all monitoring items. For example, the forest plan (pages IV-14 and IV-16) discuss MIS monitoring and what management areas that monitoring affects. Without monitoring, the FS cannot know if conditions or demands in the area covered by the plan have changed significantly.

In other words, what changes are taking place on the landscape that affect MIS species or other monitoring items? Ecological processes are an important component in maintaining species habitat. Projects such as large-scale logging affect ecological processes. Attachment 3, from EPA, addresses issues like the confluence of ecological processes, habitat and human impacts.

REMEDY: don't issue the DDN in final form and/or prepare a supplemental EA after monitoring has been done.

Other Issues

Objection 7: In our scoping comments we noted:

> The EA talks about a minimum road system. How does this analysis mesh with the forest-wide roads analyses that are required? For example, the regulations at 36 CFR§ 212.5(b) state, "In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens…" When was public input requested for the barnyard South Sheep Travel Analysis?
>
> In addition, the fill failure on road 246 suggests that many more roads need to be decommissioned. This road has not been repaired since it occurred in 2011 (EA page 154). Indeed, that would only occur "once funds are available." This suggests the minimum road system analysis for this project area is actually more than a minimum road system.

The response to comment fails to link the two above paragraphs. In essence, the agency responded by saying we do TAP on a project as well as a forest level. While neither seems to have been done (the forest-wide process is not done and any project-specific analysis must be inferred from EA and/or project files), the point is simple: The agency clearly does not have the funds to maintain the road system. This is particularly true with the second slide on road 246.

As such, the agency cannot show how this project complies with the Travel Management Regulations at 36 CFR § 212.

REMEDY: don't issue the DDN in final form and/or prepare a supplemental EA until the science-based Travel Analysis Process (TAP) for the Clearwater National Forest has been done.

Objection 8: In our scoping comments we noted:

> Unit 23 appears to be in unroaded county contiguous to the Siwash roadless area. This issue was raised in our scoping comments and the EA does not address it. An EIS is needed to consider these impacts and other cumulative effects missed in the EA.

The response to comments states that the access to this unit is via an existing road system and that an unroaded portion north of the Siwash Roadless Area is not included in the sale (page A-12). However, there is no map in the EA to indicate where this unroaded land is located. There are also two inconsistences within the EA and response to comments. The first is that if the access is on an existing road, why is it shown as a new temporary road construction in the EA? Second, even if the road access exists, it does not mean unit 23 is outside any roadless or unroaded area. The road may well stop and the unit boundary.

REMEDY: drop unit 23. In the alternative, don't issue the DDN in final form and/or prepare a supplemental EA.