

September 15, 2012

Keith Lannom
Payette National Forest Supervisor
800 West Lakeside Ave.
McCall, ID 83638

Dear Supervisor Lannom:

These are comments on behalf of Wilderness Watch and Friends of the Clearwater for the Draft Environmental Impact Statement (DEIS) for the proposed plan of operations for the Golden Hand lode mining claims. This proposal would have unacceptable impacts on the Frank Church-River of No Return Wilderness and the life that inhabits that spectacular place.

Preservation of Wilderness and Wilderness Character

The Wilderness Act notes in section 5b:

In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

In what wilderness does extensive work of the type proposed in this DEIS take Place? Specifically, where does early prospecting or exploration include structures, road construction, hundreds of motor vehicle trips, and the like?

The DEIS leads one to believe the claims may not be valid as this work is to test validity (page 1-7). If that is indeed the case, such work must be done to protect the wilderness character of the area. The construction of roads and use of motor vehicles is not consistent with this mandate.

Furthermore, assuming the claims are valid, work still must be consistent with preservation of the area as wilderness. Approving the extensive amount of work as proposed by the two action alternatives would not preserve wilderness character, by any definition.

Why does the DEIS claim impacts "could" occur (page 3-17) to wilderness values when the bulk of the analysis clearly states that impacts will occur under the proposed action? Why does the DEIS claim past activities trammel the area when those activities have stopped and natural processes are now allowed to operate freely (page 3-16). In the next paragraph the DEIS reverses itself and claims untrammelled conditions have returned. Could you please explain these discrepancies?

Lastly, the DEIS notes irretrievable commitment of resources for wilderness, at least while the activities are ongoing. Since the impacts from decades-old development are discussed in the DEIS, isn't it appropriate to conclude these will be irreversible impacts regardless of the time frame? Also, how does the approval of a project that would be an irretrievable commitment of resources comply with the Wilderness Act?

NEPA

There is not a reasonable range of alternatives or any action alternative that would protect the wilderness character of the area. A nonmotorized means alternative was dismissed without review and without adequate explanation as to why it couldn't be done. An alternative that only used smaller motorized equipment was not considered. Again, there is no adequate explanation in the DEIS why this can't be done.

The DEIS concludes there would be few or no cumulative impacts from this and other projects, mainly because the area is designated wilderness. What the DEIS overlooks is the fact that this activity might lead to long-term development of a mine in the wilderness. The DEIS also overlooks potential development of other mineral deposits, both inside and outside of the wilderness. These are not properly addressed in the DEIS. At best, the DEIS lists past actions in appendix A instead of doing an analysis of cumulative impacts.

The DEIS is inconsistent in its analysis of proposed and past impacts. It states that the "roads" in wilderness would be temporary. However, these "roads" date back many decades and the DEIS elsewhere notes the significance of the impacts which occurred over 70 years ago. As such, any roads would not be temporary but their impacts would continue on into the future.

The DEIS defers analysis of many wilderness values to other sections. As such, the big picture of the impacts on the wilderness is missing. This alone makes the DEIS insufficient.

Reasonableness of the Proposed Action, Claim Validity, and a Valuable Deposit

These factors are tied together. Activity or facilities that are "reasonably incident" will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are "reasonably incident" would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably, if indeed

the deposit contains valuable minerals. Each stage also has an increasing impact on the land.

The proposal laid out in the DEIS, for 571 to 771 vehicle trips per year, road building and extensive heavy equipment use are grossly out of step with claims where the validity was challenged by the Forest Service where exploration activities presumably have not been extensive. Indeed, the DEIS does not analyze past exploration. Thus, it is hard to tell whether this is initial prospecting or, at most, slightly more advanced exploration. In either case, the scope of the development is far too great.

Indeed, the DEIS notes on page 1-7:

On August 12, 2002, the U.S. District Court in Idaho ordered the Forest Service to complete the Environmental Impact Statement (EIS) on AIMMCO's proposed operating plan for Golden Hand No. 3 and No. 4 lode mining claims. That decision was signed on May 1, 2003 and was vacated on March 14, 2011. The court also directed that in regards to Golden Hand No. 1 and No. 2 lode mining claims "the Forest Service must recognize AIMMCO's right to prepare for (a) validity hearing, and allow work to that end, while requiring adherence to all applicable rules and regulations."

Does this mean this work is being done for claim validity? If so, it would be unbelievable that claim validity--which is, by definition, something that must be determined in the beginning or the initial stages--would require such extensive work.

The logic of sequencing should be obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the forests, and to ensure to the extent feasible that disturbance is commensurate with each level of development.

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System "to regulate their occupancy and use to preserve the forest thereon from destruction." Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), *cert. denied*. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence.

The DEIS does not make the case this extensive development is needed. Thus, it doesn't ensure that the public's resources are not being jeopardized by actions that may be pursuant to invalid mining claims. The DEIS offers little information about past challenges to the claims made by the agency. Presumably, the Forest Service had good reason to question claim validity. Given the passage of time since those events (20 years), the DEIS does not show that the claimant has done anything to further the information base of

whether these claims do indeed possess a valuable deposit. Since the DEIS contains little information about past activity in the area, initial exploration of a smaller scale is needed to precede this proposal to determine validity and to be in step with proper sequencing.

Simply put, the massive development proposal does not conform to basic mining law, let alone an activity proposed for a designated wilderness. The Forest Service can't seriously expect the public or the decision maker to believe the extensive work proposed follows a logical pace of development when there is no record of any past prospecting or exploration work detailed in the DEIS. It would make no sense to jump to mine development absent earlier exploration or a valid discovery, yet the extensive nature of this proposal suggests a large jump.

ESA /Water Quality/Soils/TES and MI Species

It should be emphasized the agency's duties under the Endangered Species Act (ESA) are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995); Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

With regard to aquatic species and water quality, the DEIS expects us to believe that vegetated, overgrown old routes dating back to pre-World War II somehow produce more sediment than those areas would after being stripped of protective vegetation cover. Please explain this obvious impossibility.

Water quality is also affected by the activities, including the road construction, stream crossings and other actions. Will and NPDES permit be required for any of the proposed activities?

Furthermore, the DEIS relies on the WEPP model which does not model possible mass wasting events or short-term sediment from actions. Thus, impacts are not adequately evaluated. It is incredible if not disingenuous to suggest the no-action alternative is worse for the aquatic environment. Indeed, the DEIS itself, in the soils section, states there is little or no erosion taking place on these routes.

The DEIS admits that some steelhead may need to be moved. However, there is no quantification of the impacts to TES fish species. The DEIS apparently assumes there would be no impact to listed fish species as there are no preliminary determinations from the agency as there are with terrestrial species. What is even more confusing is the DEIS notes:

Consultation with the USFWS and National Oceanic and Administration (NOAA) is ongoing for threatened and endangered species and any effect determination would be preliminary until consultation is completed.

Is the Forest Service consulting with NOAA and FWS on bull trout, steelhead and salmon? If not, why is there no consultation. If so, why isn't there some kind of preliminary determination or analyses of impacts in the DEIS to those aquatic species as there are for terrestrial species? Frankly, we don't see how the DEIS meets NEPA or the ESA in terms of water quality, soils and fisheries analysis.

The DEIS comes up with "focal" species for terrestrial wildlife analysis. How does this approach meet the Payette national Forest Plan in terms of MIS monitoring? What scientific evidence is there this type of surrogacy is valid?

Has monitoring been done to validate assumptions in the DEIS for lynx, pileated woodpecker, boreal owls, wolverine and other TES and MI species? The DEIS contains no such information.

With regard to plants, the DEIS says surveys were conducted in 2002, 2008 and 2009. What was the protocol for these surveys and was the whole area surveyed? Some plants apparently were surveyed (candystick). Others, the narrative is not explicit.

Roadless

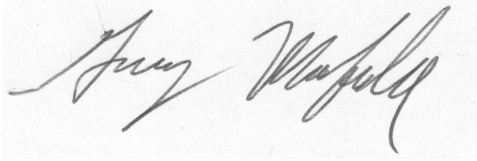
The DEIS is unclear whether there will be impacts on the roadless areas themselves. The map seems to indicate that there will be impacts but the narrative states otherwise. Without clear information, a reasoned decision cannot be made.

Summary

The DEIS is inadequate in its analysis of impacts and in its analysis of proper sequencing of mineral development. No attempt has been made to mitigate impacts by analyzing the use of non-motorized methods or only using small motorized equipment. A D-8 cat is not a small piece of equipment; a small ATV mounted drill may be considered a small piece of equipment. The DEIS offers no justification as to why this extensive proposal fits in with proper mineral development sequencing.

Please keep both organizations updated on this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Macfarlane", written on a light-colored rectangular background.

Gary Macfarlane
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--and--

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