



July 13, 2018

Josh Milligan
Forest Plan Revision Team Leader
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Re: Salmon-Challis National Forest Draft Wild and Scenic Eligibility Inventory

Dear Josh and Members of the Forest Plan Revision Team:

Thank you for the opportunity to submit comments on the Salmon-Challis National Forest's Draft Wild and Scenic Eligibility Report. American Rivers is a national nonprofit conservation organization whose mission is to protect wild rivers, restore damaged rivers, and conserve clean water for people and nature. Since 1973, American Rivers has protected and restored more than 150,000 miles of rivers through advocacy efforts, on-the-ground projects, and our annual America's Most Endangered Rivers® campaign. We have over 275,000 members and supporters throughout the country, many of whom live along, recreate on, derive their living from, and/or care deeply about the rivers and stream flowing across the Salmon-Challis National Forest.

Draft Wild and Scenic Eligibility Inventory

This comment letter is a follow-up to the Wild and Scenic eligibility report¹ that we submitted to the Forest on February 27, 2017. We would like to begin by thanking the Forest for completing a detailed, thorough and representative eligibility inventory, finding 69 rivers and 708 river miles eligible for designation under the Wild and Scenic Rivers Act. We strongly support all 69 of these streams being carried forward to the final eligibility evaluation, and ultimately the Record of Decision. While we proposed 124 Wild and Scenic eligible streams on the Salmon-Challis National Forest that we found to be free-flowing and possess Outstandingly Remarkable Values (ORVs), we support the Forest's findings and appreciate the transparency with which the Forest conducted its inventory. We ask that the agency reference the findings and data amassed in our report when considering additional streams and ORVs for the Final Wild and Scenic Eligibility Inventory.

In order to facilitate better public involvement in the future, we ask that the Salmon-Challis National Forest provide an executive summary for reports of this length, including the forthcoming Final Eligibility Inventory. The summary table and ESRI Story Map were very appreciated, but the Forest would benefit from providing a short narrative for citizens who might not be as familiar with natural resources policy and management, are intimidated by document that is over 500 pages long, but still need a brief overview. Another option would be to put mapping, background and decision-making documentation in appendices,

¹ *Wild and Scenic Eligibility Recommendations, Salmon Challis National Forest, Idaho*. November 2016. American Rivers.

shortening the main document. Either way, the length of the draft report seemed to us to be a potential barrier to citizen engagement.

Likewise, the overall timeline and public comment periods for the process have not been clearly communicated. We suggest that the Salmon-Challis National Forest publish the deadlines and processes for public comment submission more clearly and prominently on the plan revision website. Public comments are an important part of Wild and Scenic eligibility inventories. Considering the sheer number, length, and diversity of streams on national forests, and the limits of remote sensing and agency field staff capacity, it is important that the knowledge and resources of the public and NGO communities are enlisted in such inventories.

Wild and Scenic Suitability Study

An email from the Forest dated April 16, 2018, notified stakeholders that the comment period for the Draft Wild and Scenic Eligibility Report was extended to July 16, and that the Forest will begin to accept comments regarding its forthcoming suitability study on July 17, 2018. This timeline is not on the Forest's website, nor is there direction to the public regarding the proposed suitability study other than a very general paragraph describing what "suitability" is. We believe this sets the Forest up to receive comments primarily from those interests who have been following the process and are supportive of suitability-based releases from eligibility, while the citizenry who support conserving rivers will have never been prompted to engage in the process, nor notified of what is at stake.

Another concern is the lack of analysis – or time at all – between the closing of the draft eligibility comment period, and the opening of the suitability comment period. The Forest's language in the email referenced above states:

"Mark said that once the eligibility report is finalized, a comment period will begin about a river or stream's suitability under the Wild and Scenic Rivers Act. The comment period for suitability will begin on July 17, 2018, and go through October 17, 2018."²

How will the Forest finalize its Wild and Scenic Eligibility Report and communicate it to the public - presumably considering all public comments acquired over the preceding months – before the suitability comment period opens on July 17?

Finally, American Rivers and a growing coalition of nonprofits consider the Forest's decision to complete a suitability study, presumably including the "release" of eligible rivers from required administrative protections, to be a breach of the 2012 Forest Planning Rule. As articulated in a letter from American Rivers and American Whitewater to both the Salmon-Challis National Forest and the U.S. Forest Service's Region 4 office, the Planning Rule requires forests to (1) complete an eligibility inventory,³ and (2) protect both eligible and suitable (e.g. Congressional Study) rivers.⁴ The Planning Rule does not mention nor authorize the Forest Service to take any actions as part of a Forest Plan Revision that remove protective management from eligible streams. The political process

² "Salmon-Challis Forest Plan Revision Update," USDA Forest Service, Salmon Challis National Forest (forests@public.govdelivery). Received 04/16/2018.

³ 36 C.F.R. § 219.7(c)(2)(vi).

⁴ 36 C.F.R. § 219.10(b)(1).

described by the Forest as “suitability”⁵ is therefore prohibited under the 2012 Forest Planning Rule, which necessarily supersedes the Forest Service Handbook. Suitability with release also has no legal basis in the Wild and Scenic Rivers Act of 1968.

The Nez Perce-Clearwater National Forest (NP-CNF) is slightly ahead of the Salmon-Challis in its process, and is also pursuing suitability. It is clear that those involved view suitability as a potential tool to remove administrative protections from Wild and Scenic eligible rivers, violating the spirit and legal intent of the Wild and Scenic Rivers Act. We believe that this is also the case regarding the Salmon-Challis National Forest. In a July 2017 letter to Forest Supervisor Cheryl Probert, the Idaho County commissioners expressed their support for the suitability process on the NP-CNF as a means to reduce the number of streams protected under eligibility:

“We are concerned that the protection of these eligible river segments may be more restrictive than rivers actually designated as Wild and Scenic. When the adjacency provision of the Wild and Scenic Rivers Act is applied, these approximately 100 river segments could adversely affect the majority of the National Forest land in Idaho County. For these reasons we believe that it is important that the forest completes the suitability evaluation during the current forest planning process. We believe the suitability process would eliminate most of these rivers, thus eliminating unnecessary and burdensome regulations on the land.”⁶

Likewise, Brad Smith from the Idaho Conservation League (ICL), expressed ICL’s and the Clearwater Basin Collaborative’s support of the suitability process, namely, narrowing the list of eligible streams protected:

“The suitability process is where they can weigh the tradeoffs, and they would presumably narrow down the list by going through suitability.”⁷

The Wild and Scenic Rivers Act empowers agencies to conduct “suitability” determinations only when requested to carry out such studies by Congress.⁸ We ask the Salmon-Challis National Forest to immediately halt its plans to complete a Wild and Scenic Suitability Study, and to remove this process from its website and story map, indefinitely deferring Wild and Scenic suitability determinations until a such time as they are ordered by Congress.

American Rivers and the Challis National Forest 1989 Settlement Agreement

Both the Salmon-Challis National Forest and Region 4 of the USDA Forest Service have recently stated that the primary reason that the Forest is pursuing a suitability study for

⁵ See: <https://www.fs.usda.gov/detail/scnf/landmanagement/planning/?cid=fseprd576767>. Last visited on 07/11/2018.

⁶ Idaho County Free Press, August 2, 2017. Last visited July 12, 2018. Available at: <http://www.idahocountyfreepress.com/news/2017/aug/02/area-river-segments-evaluated-wild-and-scenic-poss/>

⁷ Ibid.

⁸ See Section 4(a) of the Wild and Scenic Rivers Act.

the Forest is a 1989 Settlement Agreement between the Challis National Forest and American Rivers, Inc.⁹ This agreement was meant to remedy American Rivers' claim that the Challis National Forest failed to identify, assess and protect Wild and Scenic eligible rivers during its plan revision in the late 1980s.

The resolution included a commitment by the Forest Service to identify all Wild and Scenic eligible rivers by September 1990, and "to amend the Challis plan to include specific management standards to protect eligible streams pending final decision on their suitability for inclusion in the national rivers system, and to complete suitability studies within the next planning cycle or earlier."¹⁰ American Rivers agreed to withdraw its appeal.

This 1989 agreement makes no mention of the release of Wild and Scenic eligible streams by the Forest, only the transmittal to Congress of recommended additions to the National Wild and Scenic Rivers System. Considering the substance of the appeal in question, we believe that American Rivers would not have agreed to a forest-wide study report, as articulated 29 years ago, if the process had included the release of eligible rivers at the time. In fact, a significant portion of the settlement agreement is devoted to inventorying eligible rivers, and to the establishment of management area provisions to protect such eligible rivers. It follows that this would not have been the case if these streams were planned for potential, subsequent release under what is considered a "suitability" process today. If the Forest is to meet the legal requirements of the settlement agreement, it cannot release eligible streams during its suitability process.

American Rivers recognizes that the agreed-to remedy occurred under a different legal framework,¹¹ covered only one-half of the current forest,¹² and was written under far different conditions. As such, we believe that the 1989 Settlement Agreement with the Challis National Forest is being misapplied to Wild and Scenic suitability in the current context by the Salmon-Challis National Forest and Region 4. We also find that previous agreements made between American Rivers and the Challis National Forest, should they in fact contradict the 2012 Planning Rule, would have no bearing on the current plan revision, which is occurring under updated legal, policy and scientific frameworks nearly 30 years later. We again ask the Salmon-Challis National Forest to immediately halt its plans to complete a Wild and Scenic Suitability Study with the release of streams found to be eligible, and to remove this process from its website and story map, indefinitely deferring Wild and Scenic suitability until a time when circumstances authorize one.

Conclusion

Thank you for the opportunity to comment on a well-executed Draft Wild and Scenic Eligibility Report. We hope that this will lead to a similar, if not slightly expanded Final Wild and Scenic Eligibility Report after the Forest incorporates comments made on the draft report. We believe that all streams found by the Forest to be "eligible" for Wild and Scenic designation deserve administrative protections, and that those protections must be carried

⁹ Withdrawal of Appeal No. 2047 of the Record of Decision, Land Resource Management Plan and Final Environmental Impact Statement for the Challis National Forest, February 16, 1989. (Enclosed)

¹⁰ Ibid.

¹¹ 1982 Forest Planning Rule

¹² The agreement covered only the Challis National Forest, not the Salmon National Forest.

forward through the NEPA process to the Record of Decision should a stream be found to be both free-flowing and in possession of at least one ORV, in accordance with the Wild and Scenic Rivers Act and the 2012 Forest Planning Rule. We find no legal basis for suitability determinations and the subsequent release of Wild and Scenic Eligible rivers during forest planning.

Please do not hesitate to call me if you would like to discuss these positions in more detail, in person or by phone.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Fiebig', with a long horizontal flourish extending to the right.

Michael Fiebig
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