

Clearwater Defender

News of the Big Wild

Friends of the Clearwater

Spring 2004, Vol. 2 No. 1

Creating a New Vision for the Future

By Larry McLaud

We all have the opportunity and responsibility to contribute to the revisions of Nez Perce and Clearwater Forest Plans. The revision process has begun; it is time to have your voice heard.

The Nez Perce and Clearwater Forest Plans were completed in 1987 and were the first attempt to comply, in part, with National Forest Management Act (NFMA). The Forest Plan was to guide management direction for the next 10 years.

NFMA ensures the plans consider both economic and environmental factors, provide for wildlife and fish, the diversity of plant and animal communities and also make sure timber harvesting will occur only where water quality and fish habitat are adequately protected from serious detriment.

Conservation groups became more effective in stopping proposed activities based on federal laws such the Endangered Species Act and Forest Plans. The actual timber production for the Nez Perce and Clearwater National Forest has steadily declined in the 1990s and now is below 30 million board feet per year per forest. If nothing else, the planning effort should get the public involved and thinking about public land management.

The weaknesses of the plans, **New Vision, Page 2**

Working to Conserve Bears Worldwide

By Lynne Nelson

Of the eight species of bears that exist worldwide, six are threatened or endangered. Bear populations have decline precipitously due to loss of habitat and excessive killing by man. In the U.S., grizzly bears outside of Alaska have been eliminated from 99 percent of their range and their numbers reduced from 100,000 to fewer than 1,000 since Europeans arrived on the continent. Significant grizzly populations exist only in the Yellowstone and Northern Continental Divide eco-

systems. Small and isolated populations of grizzly bears inhabit the North Cascades, Selkirk, and Cabinet-Yaak mountain ranges; however, these populations are considered relatively non-viable without outside influx of additional bears.

As a result of these devastating facts, the bear program at Washington State University was cre-

ated. In 1986 the WSU Bear Research, Education and Conservation Center was established to provide information and understanding necessary to conserve bears around the world. WSU scientists and graduate students work with the three North American bear species (grizzly, polar and American black bears) as well as the Asiatic sun bear and the Andean bear. WSU scientists and students work with both free ranging and captive bears.



Lynne Nelson with Luna and Mica

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many and the new revisions have the potential to correct some of these problems. During the first Forest Plan process, values of the public were overridden by the extraction industries. This time our challenge is to advocate for a plan that gives clear direction for values we support such biological integrity, water quality, wildlands protection and real restoration. Including the entire public in this process will be a major challenge given the number and diversity of landowners. A key to management success for the next 15 years may depend on the Forest Service's ability to listen to the public.

The Forest Service must be responsive to the needs of resources and habitats entrusted in their care with a focus on the ecological systems we all depend. The Forest Service must willingly and actively involve the public in management of our natural resources.

We expect the Forest Service to practice fiscal responsibility, efficiency, empathy, fairness and responsiveness in management and the revision process. But there is a lot of evidence to the contrary.

Our natural resources are increasing in value of all resources, including aesthetic and cultural values. Managing conflicts and stopping unacceptable degradation of our cultural, historic and recreation resources must be a primary goal. By reducing illegal and potentially damaging activities, the Forest Service can protect the public's assets.

We encourage the Forest Service to emphasize information and education programs to show how wildlife and their habitats are affected by human activities. This will afford citizens the opportunity to better understand, appreciate and make informed decisions about public land management.

We support effective and efficient enforcement of public laws for the protection of our valuable natural resources.

By getting involved in the forest plan revision process, you can help the forests. Friends of the Clearwater will be sending out

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Friends of the Clearwater

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Friends of the Clearwater, a recognized non-profit organization since 1987, defends the Idaho Clearwater Bioregion's wild lands and biodiversity through a Forest Watch program, litigation, grassroots public involvement, outreach, and education. The Wild Clearwater Country, the northern half of central Idaho's Big Wild, contains many unprotected roadless areas and wild rivers, and provides crucial habitat for countless rare plant and animal species. Friends of the Clearwater strives to protect these areas, restore degraded habitats, preserve viable populations of native species, recognize national and international wildlife corridors, and to bring an end to commodity extraction and industrialization on our public lands.

Friends of the Clearwater is a 501(c)(3) non-profit organization. All contributions the Friends of the Clearwater are tax-deductible.

The Clearwater Defender welcomes artwork and articles pertaining to the protection of the Greater Salmon-Selway Ecosystem. Articles in the Clearwater Defender do not necessarily reflect the views of Friends of the Clearwater.

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New Vision, continued. . .

alerts to ask for your participation and support in the process. Let's use this opportunity to make constructive changes for our future.

Nitty-gritty behind RS 2477

Staff report

Revised Statute 2477 (RS 2477) was introduced more than 130 years ago as part of the Mining Act of 1866. Congress intended this short statute to facilitate Western settlement by granting rights-of-way (i.e. allowing local and state governments to build and maintain roads) on public lands. Specifically, this short statute stated: “The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.”

Environmental lawyer Barbara Hjelle describes the law as a “self-executing grant.” This means that as roads were built across unreserved public lands, state and local governments automatically held the claims to rights-of-way for these lands without having to obtain any additional approval.

In 1976, Congress instituted the Federal Land Policy and Management Act. When FLPMA was established, it repealed the RS 2477 provision, replacing it with an updated process for determining national land access that involved public participation in the decision-making process and sensible long-term management goals. However, FLPMA states that valid right-of-way claims occurring between 1866 and 1976 remain unaffected.

How do we know what constitutes a valid right-of-way claim? No distinct guidelines seem to exist to separate the valid claims from the invalid ones. Traditionally, the Bureau of Land Management has attempted to follow the wording of the original statute recognizing valid RS 2477 rights-of-way as those that existed prior to 1976 involved construction of a highway, and occurred on public lands that had not previously been reserved for public use. Unfortunately, these are not particularly clear terms, and the Department of the Interior never clearly defined them. For instance, what constitutes construction? And what counts as a highway?

According to Barbara Hjelle’s survey of several court cases, “highways” may have a broad legal definition that includes more than the modern

paved roads. In Colorado, courts have ruled that “highways” include roads “formed by the passage of wagons, etc., over the natural soil” as well as foot paths. Because RS 2477 roads are defined on a state-by-state basis, one’s dried up riverbed may be another state’s highway.

Recent changes by the Bush Administration have further muddied the validation process for RS 2477 roads. Early this year, the Department of the Interior released a Disclaimer of Interest rule for RS 2477. A Disclaimer of Interest is simply a document that states that the federal government is no longer interested in a piece of land, thus opening rights to that land up to state and local government entities. The disclaimer removes the statute of limitations along with the need to possess a written title to land. As a result, individuals and governmental entities that are not current “owners of record” can claim title to roads on federal

Nitty-gritty, Page 7

A Message of Thanks

Thanks to all of you who donated during the Friends of the Clearwater’s year-end fundraising. Your support of Friends of the Clearwater is what keeps us going. We greatly appreciate your generosity.

Also, we want to extend a big thanks to the following foundations that have recently supported Friends of the Clearwater:

- * Wilburforce Foundation
- * Natural Trails and Water Coalition (RS 2477)
- * New-Land Foundation
- * 4S Foundation
- * Common Counsel (Acorn)
- * MUSE

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Around the Clearwater

Staff Report

Plight of the wolverine — Some time ago, Friends of the Clearwater (FOC) intervened in a successful lawsuit, plaintiffs including Defenders of Wildlife, Predator Conservation Alliance (PCA) and others, on protecting lynx and their habitat nationwide. Thanks to Meyers and Glickstein for representing us! Earth Justice also represented FOC, Defenders, PCA and others in a successful negotiation of a lawsuit on wolverine with the Fish and Wildlife Service. It required the FWS to rule on our petition for listing. However, it looks like we will be back in court as the FWS decided not to protect the wolverine.

After a summer field trip with FOC, the Clearwater National Forest appears to be leaning against using motorized equipment for trail work in the Selway-Bitterroot Wilderness.

The Western Mining Action Project intervened on behalf of FOC and Idaho Rivers United in a lawsuit to protect the South Fork Clearwater from dredge mining. Dredge miners sued the Forest Service in what looks like a frivolous lawsuit.

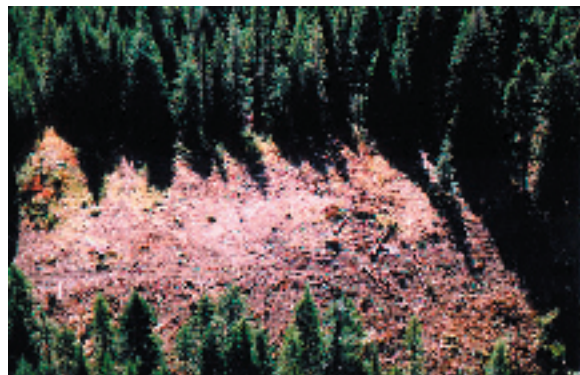
Brad Purdy is ably representing FOC, ICL and Mark Solomon in a motion before the Idaho Department of Environmental Quality concerning the issuance of a pollution permit to Potlatch.

Attorneys at advocates for the West, FOC and others are reviewing the Brick Trout and White-White appeal decisions and the Nez Perce Tribe has sued on the North Lochsa Face timber sale on the Clearwater National Forest. The Western Environmental Law Center has agreed to review the Meadow Face appeal decision on the Nez Perce National Forest for FOC. FOC and others recently filed a successful appeal on the Clean Slate timber sale on the Nez Perce National Forest. These timber sales could have serious impacts on water quality, ancient forests and wildlife. Stay tuned

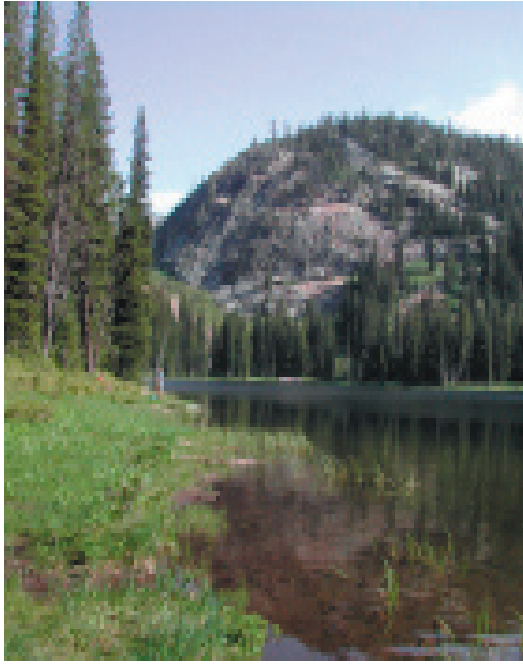
for forthcoming timber sale proposals in the upper South Fork Clearwater drainage on the Nez Perce National Forest. Public input will be vital in the process.

Natural fires burned this past summer. In some remote areas, the Forest Service did the right thing and let the fires burn; they couldn't be stopped anyway. But in Meadow Creek, a proposed addition to the Selway-Bitterroot Wilderness, hysteria and political intransigence held sway and more than 20 miles of dozer lines were cut into this fragile area, most miles away from the fire, which was moving in the opposite direction. Another fire, the Beaver Lakes Fire was deep in the upper Lochsa, far away from any houses. While fire fighting was not as damaging as the Slim's/Poet fires, costs totaled \$18 million dollars and included 2.4 miles of bulldozer and unneeded cutting near the Beaver Lakes lookout. Thanks to Lighthawk for flying over the Wild Clearwater to see what the fires did this past fall. The Clearwater National Forest has already proposed salvage sales.

The passage of the disastrous Horizontal Forest Act (actually misnamed the Healthy Forest Act, an all too common form of double-speak) bodes ill for wild forests. Citizen participation is reduced to almost nothing in lands we own by this extreme legislation. Timber corporations are queuing up for the subsidized liquidation of public forests. FOC is committed to defending the Wild Clearwater from this threat through public outreach and litigation.



Slim's fire line destruction (logging), courtesy Lighthawk. Fire was nowhere near this area.



Slate Lake, Gospel Hump Wilderness. The Gospel Hump Wilderness is contiguous to the Frank Church-River of No Return Wilderness. Therefore, these areas are actually one. Photo Larry McLaud

Frank Church-River of No Return Wilderness – A Wilderness in name only?

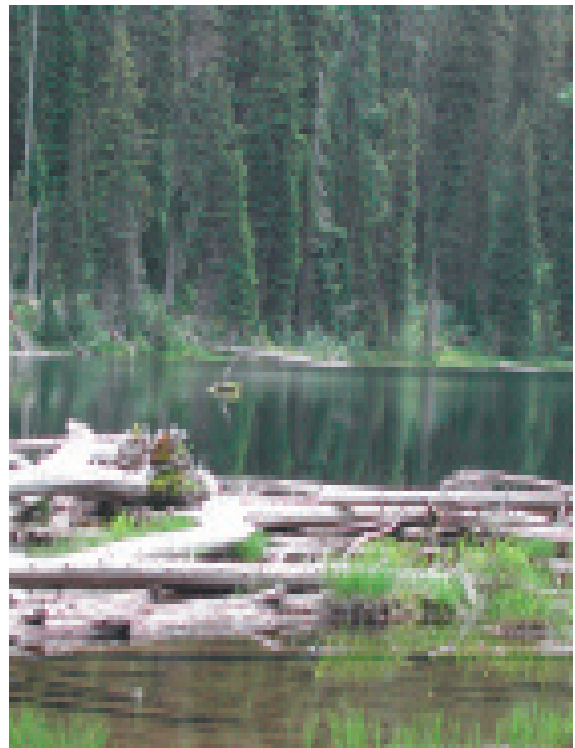
By Gary Macfarlane

Special interest legislation of the worst kind recently passed the Senate. This bill, sponsored by Larry Craig, would allow operation of illegally built lodges in the Frank Church-River of No Return Wilderness to continue operation. These lodges were built by rogue outfitters on the Salmon River (or in one case, allowed to be built by a rogue U.S. Forest Service in spite of the law) on public lands dedicated to Wilderness preservation. The Wilderness Act prohibits structures (except for necessary administrative purposes) and commercial enterprises of this sort. Traditional backcountry outfitting is allowed only if there is a real need. This sends the signal that our wildlands are for sale and punishes good outfitters who abide by the same pack-it-in pack-it-out regulations the rest of us are required to obey. This legislation is

now in the House of Representatives.

The Forest Service also recently released its final plan for the Frank Church Wilderness. It is an exercise in neglect. This sprawling 2.4 million acres of Wilderness, which includes the headwaters of the Selway River, has not received the care from the agency it needs, and this plan does nothing to correct those problems. Rather, the efforts by committed, on-the-ground Forest Service wilderness rangers are being undercut at higher levels and this plan is just a symptom of all that is wrong in the largest single block of Wilderness in the lower 48 states.

In spite of the problems, this remarkable area still has much wildness. Since the Forest Service has not only abrogated its responsibility, but is hostile to letting the area be Wilderness, it is up to citizens yet again to be the voice for the Wild. FOC cooperated with Wilderness Watch and other organizations in an appeal to this bad plan.



Mallard-Larkins Proposed Wilderness. The Mallard-Larkins stretches across over 400 square miles of the Clearwater and Idaho Panhandle National Forests in the headwaters of the St. Joe, North Fork Clearwater and Little North Fork Clearwater Rivers. Photo Larry McLaud

Bears, from Page1

Because it is necessary to weigh bears regularly, draw blood samples and provide special diets, not all research can be done in the wild. Research with captive bears permits a more in-depth understanding of bear biology.

Since its inception in 1986, the WSU bear program has been part of literally millions of dollars of bear research in the lower 48 states and Alaska. In the current political climate where conservation research is undervalued and starving for resources, this work at WSU becomes increasingly important. Current projects conducted by the program include: the importance of Yellowstone Lake cutthroat trout and Whitebark pine nuts to grizzly bears and testing the safety of brucellosis vaccines that may be used in Yellowstone's bison herds. Stream spawning cutthroat trout are an important food source in late spring for hibernation-emerging grizzly bears. Yellowstone Lake's cutthroat population is threatened by the introduction of more predaceous lake trout that are not stream spawners and are unavailable to the bears. Likewise the controversial brucellosis vaccine for bison appears to depress reproduction in grizzly bears. Newer areas of research for the program have included investigating the effects of ecotourism and sports fishing on feeding grizzly bears (in Alaska) and hibernation biology.

In 2003, the Bear Program had the opportunity to hand-raise two female grizzly bear cubs. Bears cubs born in captivity or orphaned and captured are not releasable under current restrictions and thus rehabilitation is not pursued. A new approach was adopted by the WSU Bear facility with these permanent residents. Luna and Mica were purposefully habituated to people and interacted with humans daily (except during hibernation). The goals were to create an environment where bears and people work together. A similar approach had been applied in other captive animal facilities with great success. Instead of tranquilization for routine procedures, Luna and Mica are conditioned to participate in non-invasive, non-painful procedures such as weight measure and ultrasound exams. The cubs appear to enjoy their human interactions. Many people believe bears to be antisocial,

however our findings agree with those who have personally worked with bears. Luna and Mica, and even many of the non-human raised bears, thrive on social connections and have very inquisitive minds that enjoy complex challenges.

Luna and Mica are participating in research attempting to understand bear hibernation biology. What triggers this phenomenon? Why do some bears hibernate while others in similar regions do not? Do bears sleep the entire winter? How are they able to physiologically adapt to these winter conditions? Luna and Mica have heart ultrasound exams performed monthly during the summer months and two times during hibernation. The first hibernation exam was performed Dec. 15, 2003. They were very happy to see their human friends (continual licking of hands and faces) as they have not had human contact since hibernation began in October. Luna and Mica also have been important ambassadors for their kind; they have traveled to elementary schools and brought attention to the plight of bears in our region.

In addition to the numerous ongoing studies, the WSU Bear Program is in the process of designing a new facility. The plans contain larger living quarters, three large 2- acre enclosures and flowing water, increasing enrichment for its residents.

If you would like to learn more about the WSU bears and program, visit the Web site at <http://www.natural-resources.wsu.edu/Research/Bear-Center/index.html>. To learn more, contact Nelson at olnelson@vetmed.wsu or via phone at (509) 335-0711.



FOC Fish Creek Hike. Photo by Rick.

Nitty Gritty, from Page3

lands. Although the federal government retains responsibility for validating right-of-way claims, they are not responsible for analyzing the impacts of development, and there are still no clear validation standards.

What does this mean for public lands in the West? Since the repeal of RS 2477, Utah has filed more than 5,000 road claims and counties in Idaho, Oregon and Montana have also filed a sizeable number. Many of these roads cut across lands that were allocated as National Forest lands at some point after 1866. Some people question the validity of a number of these claims. In addition, many fear that validating claims in these regions could pose a threat to lands designated as protected after 1866 as well as unprotected wildlands.

The Southern Utah Wilderness Alliance and others have posed the question: Are new claims really necessary when there are already plenty of public access roads currently being managed? Some believe that the claims are necessary because they provide needed access to rural areas and to resources on public lands. Others assert that the new claims are far from necessary and that many of the roads don't actually go anywhere.

When it comes to deciding the validity of RS 2477 claims, Greg Walcher, director of Colorado's Department of Natural Resources, suggests developing a process with set standards. All interested parties should be involved, and once a sound process has been developed, Walcher proposes a thorough road inventory. Based on the abundance of claims and lack of information about rights-of-way, this may be a time-consuming but valuable process.

Further resources:

The 1866 Mining Act

<http://www.suwa.org/1866/1866.html>

Rocky Mountain News – State Seeking rules on New Roads in Parks http://www.rockymountainnews.com/drmn/article/0,1299,DRMN_21_20011995,00.html

Utah Association of Counties-Sponsored RS

2477 Page <http://www.rs2477roads.com/2index.htm>

The Wilderness Society RS 2477 Home <http://www.wilderness.org/OurIssues/RS2477/>

Meet your Friends of the Clearwater

Greg Gollberg of Moscow

Board member and vice president

Program manager for the Fire Research And Management Exchange System (FRAMES) at the University of Idaho

“The Clearwater and other public wildlands are national treasures. They are gold. They are the currency of our cultural sanity. If spent, we are the poorer. As long as they remain in circulation, we are rich beyond our means.”



Greg and his wife, Linda, are currently building a cabin along the Lostine River in eastern Oregon.

Want to learn more about the Clearwater Country? Greg recommends reading “Walking the Big Wild” by Karsten Heuer, “Ghost Bears: Exploring the Biodiversity Crisis” by Edward Grumbine, “The Abstract Wild” by Jack Turner and “Flames in Our Forest” by Stephen F. Arno.

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Keep-it-Close By ... Calendar of Events

March

24 Ashley Martens and Noel Palmer present a refuge in the Puget Sound (any donations go to FOC) the Attic, 314 East 2nd Street, Moscow. 7:00 PM.

April

14 Lewis and Clark Trail Presentation by the Eastman's, 7:30 PM 1912 Building. FOC, Palouse Group Sierra Club, and ICL.

21 Potluck. Place TBA.

24 Hike! Note date change to the 24th. Meet at 8:00 AM Rosauer's Parking Lot Moscow, Co-
Contact the FOC office at (208) 882-9755 for more information

sponsored by Palouse Group Sierra Club. We will hike in the Rapid River Area with Scott Stouder and Holly Endersby, local writers and wildland advocates. Scott is the Western Filed Coordinator Roadless Land Protection for Trout Unlimited.

May

19 Potluck. Place TBA.

Contact FOC office for potential May hikes.