

This document represents the Idaho County Commissioner's response to the Nez Perce-Clearwater National Forest's eligible wild and scenic river process and criteria as part of Forest Plan revision.

We will address our concerns in three categories: 1) Overall Process, 2) Criteria for each specific resource, 3) Specific Rivers. Our concerns and comments are not new. They have been outlined in our County Resource Plan, which the Forest has, and have been verbally expressed during CBC sub-committee meetings and by personal communication through our representative. The following, once again, outlines our concerns:

Overall Process:

As we understand the Forest's process for river eligibility, the ID Team was to develop a series of criteria for each resource and then apply the criteria to each river. If any one of the criteria was met for a river, that river was then tagged with an Outstandingly Remarkable Value (ORV) and determined to be eligible. We disagree with this process because it is either contrary to the Wild and Scenic Rivers Act (Act) and Forest Service Policy, FSH 1909.12 (Forest Policy) or it does not fully implement the Act or Forest Policy. Our specific concerns ~~and rationale~~ are:

1. The process does not compare river with similar values in determining ORV's

The process identifies criteria, which if met, tags the river with an ORV. This process evaluates all rivers and identifies those rivers with a river-related value; or referred to as the "the best". It does not take the next step and compare rivers with similar values to determine which is the most significant, and therefore, outstandingly remarkable; "the best of the best". The Forest has stated on several occasions that the process is only to apply a set of criteria to a river, a binary or linear process.

FSH 1909.12, 82.73 – Outstandingly Remarkable Values, states:

"To be identified as outstandingly remarkable, a river-related value **must** be a unique, rare, or exemplary feature **that is significant when compared with similar values from other rivers** at a regional or national scale."

The criteria the Forest used is a means for determining river-related values for each resource for each river. However, we do not see where any comparison has been completed to determine which unique, rare, or exemplary features are significant when compared with similar values from other rivers or existing Wild & Scenic Rivers. The Forest just took all rivers that met the criteria.

FSH 1909.12, 82.73 – Outstandingly Remarkable Values, continues:

“Unique, rare, or exemplary features are those that are conspicuous **examples** of these values, among the **best representatives** of these features, within a region or the nation.”

It is clear in this wording that unique, rare, or exemplary features are a subset of a river-related value created by a comparison for significance. Wording like, “are conspicuous examples of these values” or “among the best representatives of these features” clearly indicates the agency is to compare similar values in other rivers to determine which ones are significant enough to rise to an ORV. This wording is also clear that we are not comparing a river value with all rivers, whether they have that value or not, but the comparison is between rivers with similar values, i.e. – river-related wildlife species compared to other rivers with the same river-related wildlife species.

An example would be wildlife and Harlequin Duck. The criterion used for Harlequin Duck was more than one observation, in different years, during the breeding season. Once rivers with Harlequin Duck are identified, they need to be compared with each other and with the existing wild and scenic rivers. The Selway, Salmon, and portions of the Middle Fork Clearwater and Lochsa have Harlequin Duck sightings. The other rivers that have Harlequin Duck have not and do not rise to the same or higher level when compared to the Selway or Salmon Rivers and, therefore, does not meet the bar for an ORV. To do so would be to identify every river with Harlequin Duck as an eligible river.

These criteria may be fine to determine if a wildlife river-related value exists, however, after a river(s) has been determined to have a river related value, there needs to be a comparison to determine which river(s) are significant for the river-related value being discussed (FSM 190912). The current process overlooks evidence presented and is unwarranted by the facts presented. The Forest has presented no logical rationale for why they are not following FSH 1909.12. This, then, is a clear error in judgment on the behalf of the Forest. These concerns need to be addressed by the Forest as required by NEPA.

Our suggestion: There needs to be a documented comparison between the rivers with similar river-related values to determine which ones are significant. This comparison needs to be completed within the context of existing Wild & Scenic Rivers.

2. The process is trying to be sterile, a GIS run

It has been suggested that eligibility is a fairly straight forward process; that to make a decision between rivers would be ~~arbitrary~~ **consistent and logical based on a given criteria**. We disagree with this comment.

FSH 1909.12, 82.73 – Outstandingly Remarkable Values, states,

“The determination that a river area does or does not contain one or more outstandingly remarkable values is a professional judgment on the part of the Responsible Official as informed by the Interdisciplinary Team, best available scientific information, and public participation”

This statement does not indicate a sterile, binary, or linear process of only identifying criteria and then applying those criteria to a river to determine if it has an ORV. It is much more subjective (professional judgment) than that, based on information and discussion. If it was supposed to be a binary or linear process as simple as developing criteria and then applying the criteria FSH 1909.12, 82.73 would not have stated that, it “is a professional judgment”.

Our suggestion: ~~The criteria based system needs to include more flexibility and public input in determining ORV’s rather than just a criteria based process.~~ The criteria based system does not give adequate flexibility for determining ORV’s and should be expanded to allow for input from the public and cooperating agencies.

3. This process does not have criteria to ensure the ORV are within the scope of the Act

The W&SR Act Section 1(b) identifies the purpose of the Act. Specifically, it states, “The Congress declares that the established national policy of dam and **other construction** at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition **to protect the water quality of such rivers** and to fulfill other vital national conservation purposes.” It is clear that the Act not only wants to protect rivers from dams but also “other construction”. It is also clear the Act wanted “their free flowing condition to protect the water quality of such rivers”. The Act goes on to state that ORV’s are to be “protected and enhanced”.

Our concern is that there is no overall criterion in the process that assures the intent of the Act is met. An ORV should not be something that is contrary to the intent of this Act. As an example, ~~a road (which qualifies as “other construction”) should be examined skeptically as part of an ORV.~~ roads qualify as ‘other construction’ allowed at appropriate sections of the rivers of the United States, yet they can also be a source of sediment affecting water quality (a purpose of the Act). ~~Roads have been determined to be a major source of sediment affecting “water quality (a purpose of the Act).~~ The closer a road is to the river the more impact the road

has on water quality. The closer a road is to the river the more impact the road has on the river's free flow status. If the agency determines that a road contributes to the ORV then the road has to be protected and enhanced in accordance with the Act. This puts the ORV at odds with itself and the intent of the Act.

An example of this is the South Fork Clearwater River (South Fork). The road up the South Fork runs so close to the river that the road's fill material is the river's bank in many places. Although the river still meets the requirement for free flow, this road does affect the free flow of the river. The road is still considered "other construction", similar to a dam. The road, along with its many side roads, is a major contributor of sediment to the river. Rock and debris slides and other material coming from the cut banks is a large contributor of sediment in the river.

Under the current process, this river is tagged with several ORVs. One of the ORV's is access (road) for fishing. How is this ORV protected and enhanced when the road is part of the ORV? Given the number of other designated wild and scenic rivers, it is hard to believe that this river, with its roads, rises to the level of outstandingly remarkable as defined by the Act and Forest Policy, particularly when compared to those existing wild and scenic rivers. There is more on this late in section 3, under the heading Specific Rivers: 1. South Fork Clearwater River.

Our suggestion: There should be an overall criterion that takes a critical look at rivers to ensure any ORV first meets the intent of the Act; that it is not promoting "other construction" and that it is protecting water quality. This would be particularly true for rivers with dams, roads, or other construction along them when determining whether an ORV exists or not. Items like proximity to the river, sediment/slide concerns, visual impact, and/or cumulative impacts should be taken into account. If the South Fork was in Kansas maybe it would rise to the level of outstandingly remarkable. However, in Idaho County, we have many rivers (most of which are already declared as Wild & Scenic) that provide for same or higher level of visuals, recreation, fisheries, wildlife, and cultural resources that do not have the adverse impacts of a major road. As discussed previously, if the South Fork was evaluated for significant river-related values when compared to other rivers (including those already declared as Wild & Scenic) with similar river-related values, it would not rise to the level of outstandingly remarkable.

We believe it is important to keep the eligibility and ORV process pure to the intent of the Act. There are many great values in Idaho County that need to be recognized, encourage, promoted, and managed. However, the Wild & Scenic Rivers Act is not the proper tool for many of these resource values. ~~and we need to make sure we don't extend the Act beyond its intent.~~

Criteria or Each Specific Resource:

1. Forest wide

- a. To be an ORV, the river related value must be in concert with the Wild & Scenic Rivers Act for protecting free flow and water quality.
- b. To be an ORV, the river related value should not include “dams, diversions, ditches, or other construction”.
- c. To be an ORV, it must be the result of a comparison with other rivers with similar values, including existing Wild & Scenic Rivers and/or eligible or suitable rivers from other Forests or agencies.

2. Scenery

- a. The region of comparison should include all of Idaho County. This would include the view shed from the Salmon and Clearwater Rivers, as well as portions of Hells Canyon, which is utilized by the local communities.
- b. The existence of “other construction” should be examined carefully when evaluating for a ‘scenic’ ORV. The existence of other construction (ex. Roads) should be a negative when comparing to other rivers with similar ‘scenic’ values.
- c. Currently the Main Salmon River, Snake River (Hells Canyon), Lochsa, Selway, and the Middle Fork Salmon River are all existing Wild & Scenic Rivers with canyons. Any river determined to be eligible for scenery should have qualities exceeding these existing rivers.
- d. The scenic write-up states, “The two major distinctive river canyons that are not already designated Wild and Scenic River are the” It is not the intent of the Wild & Scenic Rivers Act to make all rivers wild and scenic rivers. This write -up makes a case for one of our concerns as outlined in the Idaho County Resource Plan. We have already identified the best of the best. The goal is not for all rivers to be designated.

3. Recreation

- a. The region of comparison should include all of Idaho County, including the Middle Fork Salmon River, Snake River, and Rapid River.
- b. Streams paralleled by nationally or regionally recognized trails should not be the criteria for an ORV – it is not river based. The criteria for these trails are different than the criteria for an ORV. This criterion seems arbitrary.
- c. There are numerous rivers that have already been determined with recreational ORVs, including swimming, soaking, beaches, boatable waters, and high quality fishing. Any

new recreation rivers should be compared to the existing Wild & Scenic Rivers and should have to exceed what these rivers already offer.

4. Geology

- a. The region of comparison should include all of Idaho County.
- b. Given the large area of comparison, any river being evaluated for geology should be compared to all of the existing Wild & Scenic Rivers within the area of comparison, as well as those that have been determined to be eligible within the same area.

5. Fisheries

- a. The region of comparison should include all of Idaho County, including the Middle Fork Salmon River, Rapid River and the Snake River and the eligible South Fork Salmon River (Payette NF)
- b. Given the large area of comparison, any river being evaluated for fisheries should be compared to all of the existing Wild & Scenic Rivers within this area of comparison, as well as those that have been determined to be eligible within the same area, such as the South Fork Salmon River.

6. Historic and Cultural

- a. Agree with region of comparison.
- b. There needs to be a clear connection between the resources as a river-related value. For example, Is Moose Creek Admin Site river-related?
- c. There are cultural sites along most rivers. It is not clear how the Forest has determined which cultural sites rise to the level of an ORV particularly when comparing rivers with similar values.
- d. The section of river associated with historic or cultural activities needs to be limited to that area.
- e. Any mining history identified for an ORV should be closely examined to ensure the ORV is consistent with the Wild & Scenic Rivers Act (forest wide above). These areas may be culturally significant and are protected by other acts of law, but may not be appropriate to be identified as an ORV under the Wild & Scenic Rivers Act. It is not unusual for past mining activities (although historic) to be adversely affecting water quality. Mining and the associated structures, roads, etc. may also fall in the category of “other construction” impacting free flow.
- f. Given the large area of comparison, any river being evaluated for historic/cultural should be compared to all of the existing Wild & Scenic Rivers within the area of comparison, as well as those that have been determined to be eligible within the same area.

7. Wildlife

- a. The region of comparison should include all of Idaho County, including the Snake River and Rapid River.
- b. Given the large area of comparison, any river being evaluated for wildlife should be compared to all of the existing Wild & Scenic Rivers within the area of comparison, as well as those that have been determined to be eligible within the same area. To be a wildlife ORV, it must exceed the wildlife ORVs for the existing Wild & Scenic Rivers
- c. A single observation should not be the criteria for a wildlife ORV. This criterion should be more specific as to whether it is critical habitat, exceptional populations, etc.
- d. Although the species were derived from the Idaho Species Diversity Database, there is no rationale as to why the existence of one of these species within the region of comparison should be an ORV. Forest service direction indicates that Listed, Sensitive, or other species of concern may be considered as ORVs. It does not say they all have to be. The rationale to start with this list and use it to identify an ORV if any listed species are present seems lacking.

Specific Rivers:

1. South Fork Clearwater River

- a. When the current wild and scenic rivers (Lochsa, Selway, Middle Fork Clearwater, and Salmon) were identified, the South Fork Clearwater was passed over as not rising to the level of being a Wild & Scenic River.
- b. The ORV's identified in the report (Rec., Scenic, Cultural, Cultural NPT, Fish, and Wildlife) are all better represented in the other existing Wild & Scenic Rivers.
- c. The South Fork Clearwater River has a road running the length of the river, which also affects free flow. The South Fork Clearwater River has an extensive road system running from the river. The area has been logged, dredged, mined, grazed, and previously damned. All of these activities have some degree of adverse effect on the values identified. When compared to the other existing large rivers in the area, it does not rise to their level and should not be eligible as determined by FSH 1909.12, 82.73.
- d. Specifically, access for fishing was determined to be an ORV. This activity is not a river related value, but rather a road related value. If it was not for the road, this ORV would not exist. A river related value should exist whether access is there or not. ~~If the road was removed, this ORV would no longer exist.~~ If this is an actual ORV, then the construction of roads up other rivers ~~should would~~ be ~~the rationale justified in order~~ to create more outstandingly remarkable value. This rationale would not be logical in the

face of the Wild & Scenic River Act or Forest Policy and, therefore, is not logical for creating a ORV for this river.

- e. Every large river in Idaho County is currently designated Wild and Scenic except for one; the South Fork Clearwater. The Wild & Scenic Rivers Act and Forest Policy is clear in that every river is not intended for designation
- f. The determination of the South Fork Clearwater River as eligible overlooks evidence we have presented and is ~~not~~ unwarranted based on the facts. The logic the Forest has used appears to be lacking in the face of the evidence and facts presented.
- g. **Additionally, a considerable amount of private property is long river corridor. This should be taken into consideration as this process moves forward.**

2. Johns Creek

- a. The ORV's identified for Johns Creek (Scenic and Fish) are not rare, unique, or exemplary when compared to other areas or rivers, including the existing Wild & Scenic Rivers. Fish and scenic are an ORV on all 7 of the existing designated Wild & Scenic Rivers.
- b. To be an ORV, it must be the result of a comparison with other rivers with similar values, including existing Wild & Scenic Rivers and/or eligible or suitable rivers from other Forests or agencies.
- c. When this comparison is completed, Johns Creek would not rise to the level of significant as identified in FSH 1909.12, 82.73.

3. American River

- 1. The ORV's identified for American River (Wildlife) are not rare, unique, or exemplary when compared to other areas or rivers, including the existing Wild & Scenic Rivers. Wildlife is an ORV on all 7 of the existing designated Wild & Scenic Rivers.
- 2. To be an ORV, it must be the result of a comparison with other rivers with similar values, including existing Wild & Scenic Rivers and/or eligible or suitable rivers from other Forests or agencies.
- 3. When this comparison is completed, American River would not rise to the level of significant as identified in FSH 1909.12, 82.73.

4. Silver Creek

- 1. Silver Creek is an example of an ORV that is not well understood or identified in FSH 1909.12. We do not agree that this is a valid ORV.
- 2. The Nez Perce Tribe is a separate government entity and although we would agree that they are associated with historical values, we are not sure how this relates to ORV's. Idaho County also has ~~historical~~ rich history in the area, but the Forest has not asked us **to comment on** ~~for~~ those areas that are important to us.

3. Since an ORV has to be protected and enhanced by the Forest, we have several questions:
 - a. ~~Since it is a legal requirement, How d~~ Does the Forest Service ~~meet the legal requirement to~~ protect and enhance the values the Nez Perce Tribe identifies?
 - b. Does the Nez Perce Tribe have to consult with the Forest Service on activities they propose in these area to ensure they are within the river plan developed for the that ORV?
 - c. ~~Since there have been~~ Court rulings ~~have determined~~ that the Forest Service has regulatory oversight on other governments (i.e. the State of Idaho concerning heavy loads on Highway 12). Does the identification of a Nez Perce Tribe ORV give the Forest Service regulatory oversight of the Nez Perce Tribe for that river?
 - d. If the answer to these question are no, than can this really be on ORV if the Forest Service has no control over the management of the ORV?

4. Meadow Creek (Selway)

1. The ORV's identified for Meadow Creek (Rec, Cultural, Cultural NPT, Fish, and Wildlife) are not rare, unique, or exemplary when compared to other areas or rivers, including the existing Wild & Scenic Rivers. Rec, Cultural, Fish, and Wildlife are an ORV on all 7 of the existing designated Wild & Scenic Rivers.
2. To be an ORV, it must be the result of a comparison with other rivers with similar values, including existing Wild & Scenic Rivers and/or eligible or suitable rivers from other Forests or agencies.
3. When this comparison is completed, Meadow Creek would not rise to the level of significant as identified in FSH 1909.12, 82.73.

4. West Fork Crooked River

1. The ORV's identified for West Fork Crooked River (Fish) is not rare, unique, or exemplary when compared to other areas or rivers, including the existing Wild & Scenic Rivers. Fish is an ORV on all 7 of the existing designated Wild & Scenic Rivers.
2. To be an ORV it must be the results of a comparison with other rivers with similar values, including existing W&S Rivers and/or eligible or suitable rivers from other Forests or agencies.
3. When this comparison is completed, West Fork Crooked River would not rise to the level of significant as identified in FSH 1909.12, 82.73.

4. Red River

1. The ORV's identified for Red River (Rec, Fish, and Wildlife) are not rare, unique, or exemplary when compared to other areas or rivers, including the existing Wild & Scenic

Rivers. Rec, Fish, and Wildlife are an ORV on all 7 of the existing designated Wild & Scenic Rivers.

2. To be an ORV, it must be the result of a comparison with other rivers with similar values, including existing Wild & Scenic Rivers and/or eligible or suitable rivers from other Forests or agencies.
3. When this comparison is completed, West Fork Crooked River would not rise to the level of significant as identified in FSH 1909.12, 82.73.

In summary, the process the Forest has used does not follow the direction identified in FSH 1909.12. ~~This has~~ resulting in doubling the number of eligible Wild & Scenic Rivers. This unnecessary inflation of Eligible River has adverse effect, including increased cost of the planning process, increased time for the public to review and comment, and unintended consequences to the planning of future projects. Although the identification of criteria to determine eligibility is a valid method to identify river related values, the criteria seems to be liberal at times, resulting in the identification of river values that are not necessarily unique or rare. When questioned on the process, the criteria, or eligibility determinations, the responses are incomplete and seem to overlook the evidence and facts we have presented. ~~Therefore their conclusion appear to lack logic in their conclusion.~~