

July 2, 2018

Sent via e-mail

To: Objection Reviewing Officer
Intermountain Region, US Forest Service
324 25th Street
Ogden, UT 84401
objections-intermtn-regional-office@fs.fed.us

Re: OBJECTION to the
Kilgore Project Environmental Assessment (EA) and Draft Decision Notice and
Finding of No Significant Impact (DN/FONSI)
Responsible Official: William G. Davis, Dubois District Ranger
Caribou-Targhee National Forest

I. INTRODUCTION.

Pursuant to 36 CFR Part 218, **Idaho Conservation League (ICL), Greater Yellowstone Coalition (GYC), and Yellowstone to Yukon Conservation Initiative** (collectively Objectors), by their undersigned attorneys, file this Objection to the Environmental Assessment dated May 2018 (EA), and Draft Decision Notice and Finding of No Significant Impact dated May 2018 (Draft DN/FONSI), issued by Dubois District Ranger William G. Davis for the Kilgore Project in the Caribou-Targhee National Forest in Clark County, Idaho, proposed by Otis Gold Corporation. *See* May 17, 2018 Letter from District Ranger Davis to Interested Parties. The EA and Draft DN/FONSI are available at the Forest Service webpage for the Kilgore Project at: <https://www.fs.usda.gov/project/?project=53163>.

Pursuant to Part 218, ICL is the lead objector. Contact person: John Robison, ICL Public Lands Director, PO Box 844, Boise, ID 83701, **208.345.6933**; Street Address: 710 N 6th St., Boise, ID 83702. However, all Objectors are represented by their undersigned counsel and all Forest Service correspondence regarding this Objection should be directed to the attorney, Mr. Bryan Hurlbutt, at the address and contact information listed in the signature block at the conclusion.

Objectors filed scoping comments on the Forest Service's proposed actions on or about February 9, 2018, and have fully participated in the Forest Service review of the Kilgore Project. Pursuant to 36 CFR 218.8, the Objectors state that the following content of this Objection demonstrates the connections between Objectors scoping comments for all issues raised herein unless the issue or statement in the EA or Draft DN/FONSI arose or was made after the opportunity for scoping comments, as detailed herein. Pursuant to 36 CFR 218.8(b), Objectors' previous comments dated February 9, 2018, are hereby incorporated by reference.

III. GENERAL OBJECTION ISSUES

This section raises objections that are common to many of the specific environmental issues raised in the scoping comments, to the Forest Service's responses to those comments, and to new issues that have arisen since the public comment period. The next section (Section IV) provides more detail on specific issues raised in the scoping comments, on the Forest Service's responses, and on new issues that have arisen since the public comment period.

A. The EA and Draft DN/FONSI Violate NEPA

1. NEPA Background

The National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370(h), is America's basic "charter for protection of the environment." 40 C.F.R. § 1500.1(a). The Council on Environmental Quality ("CEQ") promulgates regulations implementing NEPA, which are binding on all federal agencies. 40 C.F.R. §§ 1500-1518.4.

NEPA requires federal agencies to ensure fully informed decision-making and provide for public participation in environmental analysis and decision-making. 40 C.F.R. § 1500.1(b)-(c). NEPA serves two principal purposes: (1) it ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts, and (2) it guarantees that the relevant information will be made available to the public so it may play a role in the decision-making process. This "hard look" at an action's impacts fosters both informed decision-making and informed public participation.

NEPA requires federal agencies to prepare an Environmental Impact Statement (EIS) for all "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). "Environmental information [must be made] available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b) (emphasis added). Among other things, an EIS must consider a reasonable range of alternative actions and assess site specific and cumulative impacts. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. §§ 1502.14, 1502.16, 1508.25.

CEQ regulations list factors to consider when evaluating whether an EIS is required, which include: "[t]he degree to which the proposed action affects public health or safety"; "[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas"; "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial"; "[t]he degree to which the possible effects on the human environment are uncertain or involve unique or unknown risks"; "[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration"; "[w]hether the action is related to other actions with individually significant impacts"; and "[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment." 40 C.F.R. § 1508.27(b).

Under CEQ's regulations implementing NEPA, federal agencies may prepare an Environmental Assessment (EA) to assist in the NEPA process. 40 C.F.R. §§ 1501.4(b), 1508.9. An EA is a more limited review of environmental factors associated with a federal action, and is performed to assist the agency in determining whether a lengthier and more thorough EIS is warranted because the proposed action may have significant impacts. If the analysis in the EA indicates that there are unlikely to be any significant impacts, the agency issues a Finding of No Significant Impact (FONSI) along with its substantive decision regarding the proposal.

One of NEPA's fundamental goals is to "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." 42 U.S.C. § 4321. Accordingly, the scope of NEPA review is quite broad, including disclosure and consideration of all reasonable alternatives, 40 C.F.R. § 1502.14(a), and direct, indirect and cumulative effects on "ecological. . . aesthetic, historic, cultural, economic, social, or health" interests. 40 C.F.R. § 1508(b). Cumulative impacts are the impacts on the environment that result from incremental impacts of the action when added to all other past, present, and reasonably-foreseeable future actions regardless of what agency or person undertakes such other actions. *Id.* § 1508.7. "Cumulative impacts can result from individually minor but collectively significant actions." *Id.*

The federal agency must "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated"; "[d]evote substantial treatment to each alternative considered in detail including the proposed action"; and "[i]nclude reasonable alternatives not within the jurisdiction of the lead agency." *Id.* § 1502.14(a)–(c). Agencies must also "[s]tudy, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 40 C.F.R. § 1507.2(d). An environmental assessment shall include a discussion of the proposed action and alternatives. 40 C.F.R. § 1508.9(b).

NEPA obligates the agency to make available to the public high-quality information including accurate scientific analyses, expert agency comments, and public comments before decisions are made and actions are taken. 40 C.F.R. § 1500.1(b). CEQ's NEPA regulations provide that information used to inform NEPA analysis "must be of a high quality" and that "[a]ccurate scientific analysis . . . [is] essential to implementing NEPA." *Id.* The agency's discussion and analysis must be based on professional and scientific integrity. *Id.* § 1502.24. To take the required "hard look" at a proposed project's effects, an agency may not rely on incorrect assumptions or data.

In addition to accurate scientific analysis, "expert agency comments[] and public scrutiny are essential to implementing NEPA." 40 C.F.R. § 1500.1. Under CEQ regulations, "agencies shall to the fullest extent possible: . . . [e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 C.F.R. § 1500.2. Agencies shall "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures." 40 C.F.R. § 1506.6.

2. The Forest Service Failed to Take a Hard Look at Direct, Indirect, and Cumulative Impacts

As set forth in further detail in Section IV below, the EA fails to adequately consider and disclose direct, indirect, and cumulative impacts of the Project to grizzly bears and other wildlife, fish and other aquatic life, groundwater, surface waters, and other resources. The EA admits that Otis Gold's proposed activities (including road, drill pad, and sump construction and drilling operations) would adversely impact these resources; however, it is difficult to evaluate the degree and extent of potential impacts given the inadequate information presented in the EA and the specialist reports.

The EA is short and lacks detail and analysis compared to other multi-year mine exploration projects evaluated by the Forest Service in Idaho. For comparison's sake, the CuMo Exploration Project on the Boise National Forest was very similar in scale and duration: a 5-year mining exploration involving the construction of more than ten miles of new roads and more than 100 drill holes. For the CuMo Project, the Forest Service prepared a much more detailed 287-page EA plus nine appendices to assess, avoid, and mitigate environmental impacts. *See Attachment A (CuMo Project EA and appendices)*. Similarly, for the Golden Meadows Exploration Project on the Payette National Forest the Forest Service prepared a detailed 301-page EA plus six appendices. *See Attachment E (Golden Meadows Project EA and appendices)*.

In addition, the Forest Service spent over 20 months preparing the 2014 Environmental Assessment for the previous Kilgore exploration project which involved clearing approximately 100-200 trees, constructing 3,919 feet of new roads, clearing 16 drill sites and directly impacted 1.8 acres. All activities were to be completed within one field season with an upper estimate of two years from a signed decision.

We note that this Plan of Operations is for a greatly expanded scope of work over a five-year period, involving clearing approximately 500 pine seedlings/saplings of whitebark pine (a Forest sensitive species), constructing 55,933 feet of new roads, clearing 140 drill stations (previously referred to in the 2014 EA as a drilling pad and associated sump) and directly impacting 22.7 acres. The Forest Service timeline to complete the draft Decision Notice and draft Environmental Assessment for this much more complicated project was shortened to just 4 months, compared to a 20-month environmental review for the previous and much smaller project. We acknowledge that there are some efficiencies to be gained in reviewing a similar project, but note that this project expands impacts into an entirely new watershed with limited baseline monitoring.

Objectors identified the need for the Forest Service to consider cumulative impacts of the Kilgore Project. *ICL et al. Scoping Comments*, pp. 2, 17. NEPA requires quantified or other detailed information about a proposed action's impacts when added to other past, present, and reasonably foreseeable future actions. Throughout the EA, the Forest Service ignored and downplayed cumulative impacts and failed to provide the kind of quantified and detailed information required to take a hard look.

With respect to water quality and quantity, the Forest Service failed to identify past, present, or reasonably foreseeable future actions that would overlap in time and space with the project area,

and instead claimed there are none. *See* EA, pp. 17 (surface water), 20 (ground water). This ignores Otis Gold’s recent past drilling at the Project site, livestock grazing in the watershed, downstream water withdrawals, and other past, ongoing, and foreseeable future activities impacting the West Camas Creek watershed and downstream Camas National Wildlife Refuge. For CuMo and Golden Meadows, the Forest Service prepared cumulative effects appendices identifying all past, present, and reasonably-foreseeable projects. Attachment A (CuMo Project EA) at Append. G; Attachment E (Golden Meadows EA) at Append. B.

The Forest Service’s cumulative effects analyses for wildlife species is particularly inadequate. For example, in the grizzly bear section of the EA, the Forest service acknowledges grizzly-livestock grazing conflicts, vegetation management, illegal OHV routes, and food rewards as having effects. EA, p. 28. But the Forest Service fails to provide any kind of quantified detail about the impacts of the Project when added to these. Similarly, in the whitebark pine section, the Forest Service acknowledges blister rust and vegetation management contribute to Otis Gold’s removal of whitebark pine and diminishment of whitebark pine numbers, but provides no quantified analysis and fails to even address climate change and fire. EA, p. 22.

Furthermore, the Forest Service fails to consider the appropriate cumulative effects area for wildlife and whitebark pine. As discussed more below, the Project is located in the Centennial Mountains in the “High Divide” which is a uniquely important wildlife corridor for grizzly bears and other species. For wildlife and whitebark pine cumulative effects, the Forest Service should have considered the impacts of the Kilgore Project when added to other past, present, and reasonably foreseeable future actions in and near this important wildlife corridor, but instead the Forest Service limited its analysis of cumulative effects analyses to smaller areas. *See*, EA, pp. 24–25. As part of this, the Forest Service should have considered the impacts of climate change, including increased fires, increased fire intensity, changes in snowmelt runoff, drought, and invasive species.

For these reasons, and additional reasons set forth in our specific objection issues in Section IV, the Forest Service failed to take a hard look at direct, indirect, and cumulative impacts of the Project in the EA in violation of NEPA. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

3. The Forest Service Failed to Adequately Involve the Public

In rushing along its approval of the Kilgore Project, the Forest Service failed to adequately involve the public. The Forest Service took public comment only once (during the initial scoping period) and then released the Final EA and Draft DN/FONSI without any further public comment period. Typically, in Objectors’ experiences with similar mining projects, the Forest Service takes public comments during scoping, and later releases a draft EA for public comment too. Then, after considering public comments (and often making substantial changes to the project and the EA) does the Forest Service issue the Final EA and, if appropriate, a Draft DN/FONSI. *See, e.g.*, Attachment A (CuMo Project EA, p. 15; Attachment E (Golden Meadows Project EA), p. 1-4, 1-15.

At the time of scoping, only very limited information about the Kilgore Project and the anticipated content of the environmental analysis was disclosed to the public, and as a result, Objectors and other members of the public had only a very limited opportunity to provide meaningful comment. Had the Forest Service also issued a draft EA for public comment later, which it could have easily done, Objectors and other members of the public could have provided valuable comment for the Forest Service to consider. Instead, after taking limited scoping comments, the Forest Service now proposes approving the Kilgore Project without any further public involvement.

The Forest Service continues to try to improperly limit public involvement. After the Final EA and Draft DN/FONSI were released, Objector ICL submitted a Freedom of Information Act (FOIA) request to the Forest Service, seeking a copy of the project record. But the Forest Service failed to provide a response within the 20-days required by FOIA, and when the Forest Service finally did respond, it did not provide any documents. *See* Attachment F (June 27, 2018 Forest Service FOIA response letter to ICL). The Forest Service claims all the information ICL requested is available on its Kilgore Project webpage. While some project documents are available on the webpage (including the Final EA, the Draft DN/FONSI, and a number of resource specialists' reports), the webpage does not have many other documents ICL specifically requested, including Otis Gold's Plan of Operations, Forest Service internal correspondence, and Forest Service correspondence with Otis Gold and other agencies, among other public documents the Forest Service must (and normally does) provide. Because of the Forest Service's failure to provide the project record, Objectors were deprived of the opportunity to review information they would have used to prepare these Objections and must now devote additional resources to obtain this basic information from the Forest Service through a FOIA appeal.

For these reasons, and additional reasons set forth in our specific objection issues in Section IV, the Forest Service failed to adequately involve the public in violation of NEPA. To remedy this violation, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein and take additional public comment before the Forest Service can consider approving any operations at the site.

4. The Forest Service Failed to Consider a Reasonable Range of Alternatives

The Forest Service failed to consider a reasonable range of alternatives. In the EA and Draft DN/FONSI, the Forest Service considered only Otis Gold's proposal (the Action Alternative) and a No Action Alternative. EA, p. 1. The Forest Service failed to develop any action alternatives to address many of the major issues Objectors and others raised for the Project, including AIZ incursions, wildlife impacts, fuel transportation, water quality, and water quantity.

The Forest Service should have considered an alternative with reduced roads, as Objectors recommended during scoping. ICL *et al.* Scoping Comments, p. 17. Many of the Kilgore Project's adverse environmental impacts relate directly and indirectly to the miles of road and number of drill pads and drill holes Otis Gold will construct and use. There are likely alternatives which allow Otis Gold to obtain geologic information it needs without allowing as much road and drill pad construction and use and, thus, with much less environmental impact. In

response to the scoping comments, the Forest Service baldly asserted—without any supporting information—that Otis Gold “proposed the minimum amount of road disturbance possible to achieve their drilling targets.” Response Table, Comment # 25-43. However, with the CuMo Exploration Project, the Forest Service considered a no action alternative, the company’s proposed action, and a reduced roads alternative; and the Forest Service ultimately selected the reduced roads alternative, finding it met the company’s needs (even though it allowed less roads and drill pads) and reduced the adverse environmental impacts. *See* Attachment A (CuMo Project EA), pp. 21–30; Attachment B (CuMo Project FONSI), p. 10.

The Forest Service should have also considered an alternative using helicopter drilling, as Objectors recommended during scoping. ICL *et al.* Scoping Comments, p. 17. Using helicopters instead of vehicles to access some or all of the drill pads would reduce the amount of new and existing roads Otis Gold would need to use, thereby reducing habitat fragmentation, loss of whitebark pine, sediment delivery, and numerous other impacts associated with using roads and constructing new roads. In response to the scoping comments, the Forest Service offers no rationale other than helicopter drilling would be more expensive. Response Table, Comment # 25-43. While helicopter drilling might be more expensive, helicopter drilling is a feasible alternative, and the added cost is not a reasonable basis for the Forest Service to reject considering it as an alternative. For example, Midas Gold was approved to use helicopter drilling at 24 of its 26 drill areas in the Golden Meadows Project in order to avoid adverse environmental impacts from building new roads. *See* Attachment E (Golden Meadows Project EA), p. 1-7. Here, Otis Gold could use helicopter drilling for its more remote drilling on Gold Ridge and Dog Bone Ridge, if not for the entire project, but the Forest Service was unwilling to consider this as an alternative.

The Forest Service should have also considered an alternative that limits drilling to daylight hours, as Objectors recommended during scoping. ICL *et al.* Scoping Comments, p. 17. A daylight-only drilling alternative could significantly reduce noise and light impacts to wildlife, including grizzly bears and other threatened and sensitive wildlife species. The Forest Service rejected considering this alternative, stating only that limiting drilling to daylight hours “may” prevent Otis Gold from completing the Project within 5 years. Response Table, Comment # 25-17. While this alternative might require Otis Gold to employ more drill rigs at once, or to extend the duration of operations, which could have other impacts, this is a feasible alternative which the Forest Service unreasonably rejected. Had the Forest Service considered this alternative in the EA, the Forest Service and the public could then evaluate the pros and cons of this alternative compared to Otis Gold’s proposed action. But the Forest Service was unwilling to consider this alternative.

The Forest Service should have also considered a concurrent reclamation and concentrated drilling alternative, as Objectors recommended during scoping. ICL *et al.* Scoping Comments, p. 17. By concentrating road construction, road use, and drilling in the same area at any given time, Otis Gold’s noise, lights, and other disturbing activities would be limited to one concentrated area, leaving the rest of the project area undisturbed. By requiring concurrent reclamation, once drilling is completed in one area, drill pads and roads can be reclaimed before moving on to the next area. This is a reasonable alternative, because each of Otis Gold’s “target areas” for drilling (Prospect Ridge, Mine Ridge, Gold Ridge, and Dog Bone Ridge) are separate areas reached by

different roads. But the Forest Service never considered this alternative, and is instead allowing Otis Gold to spread its road construction and drill rigs across the project site each year, causing disturbance throughout, and is allowing Otis Gold to put off all reclamation until the very end of the project, leaving all disturbed areas disturbed throughout the life of the project.

For these reasons, and additional reasons set forth in our specific objection issues in Section IV, the Forest Service failed to consider a reasonable range of alternatives in violation of NEPA. To remedy this violation, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein and consider more action alternatives before the Forest Service can consider approving any operations at the site.

5. The Forest Service Must Prepare a Full EIS

As set forth in further detail in Section IV below, the EA and Project Record disclose that the Project may have a significant impact on the environment, requiring the preparation of a full EIS. Impacts from Otis Gold's 5-year plan for extensive road construction, fuel haul, vehicle travel, drilling, water withdrawals, and on-site camping may significantly degrade and harm water quality, fisheries and other aquatic life, wildlife and wildlife habitat, and other resources.

The Forest Service improperly downplayed and minimized these impacts. In the Draft DN/FONSI, the Forest Service says no EIS is needed because this action will not significantly affect the quality of the human environment, despite admitting throughout the EA the many adverse impacts the Kilgore Project will have to this unique geographic area upstream of the Camas National Wildlife Refuge, on the High Divide, and part of the important Centennial Mountains wildlife corridor. Many project impacts remain uncertain and controversial, based on the Forest Service's inadequate EA, as described throughout these Objections. Furthermore, the Forest Service repeatedly downplayed impacts by claiming Otis Gold's mitigation measures would ensure impacts were small, even though the Forest Service never evaluated the effectiveness of the mitigation measures. *See, e.g.,* Attachment E (Golden Meadows EA) at Append. A (operating procedures effectiveness analysis).

The Forest Service must, therefore, prepare a full EIS. Through an EIS, the Forest Service can better involve the public, develop a wider range of alternatives, gather more complete baseline information, better analyze the Kilgore Project's environmental impacts, and better avoid and mitigate for significant adverse impacts.

For these reasons, and additional reasons set forth in our specific objection issues in Section IV, the Forest Service must prepare an EIS. To remedy this NEPA violation, the Forest Supervisor must remand the SEA and Draft SDN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein and prepare an EIS before the USFS can consider approving any operations at the site.

B. The Forest Service Failed Minimize Impacts Under the Organic Act

As set forth in further detail in Section IV below, the EA and Draft DN/FONSI fail to minimize adverse environmental impacts. On national forests, the Organic Act requires the Forest Service “to regulate their occupancy and use and to preserve the forests thereon from destruction.” 16 U.S.C. § 551. “[P]ersons entering the national forests for the purpose of exploiting mineral resources must comply with the rules and regulations covering such national forests.” *Clouser v. Espy*, 42 F.3d 1522, 1529 (9th Cir. 1994). The Forest Service’s mining regulations require that “all [mining] operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest resources.” 36 C.F.R. 228.4(c)(3). “Although the Forest Service cannot categorically deny a reasonable plan of operations, it can reject an unreasonable plan and prohibit mining activity until it has evaluated the plan and imposed mitigation measures.” *Siskiyou Regional Education Project v. Rose*, 87 F.Supp.2d 1074, 1086 (D.Or. 1999) citing *Baker v. U.S. Dept. of Agriculture*, 928 F.Supp. 1513, 1518 (D. Idaho 1996).

In the EA and Draft DN/FONSI, the Forest Service plans to approve Otis Gold’s proposal with minimal measures to protect environmental resources. For example, the Forest Service failed to reduce road construction and road use, failed to keep roads out of riparian areas and landslide prone areas, failed to require concurrent reclamation, failed to require concentrated drilling, failed to eliminate or minimize nighttime drilling, failed to incorporate fuel transport best practices and mitigation, failed to reduce vehicle traffic, failed to require sound baffles at drill sites, failed to require portable water tanks instead of drill pad sumps in steep areas, as stated in Objector’s comments (*see ICL et al. Scoping Comments*, pp. 12–18) and failed to incorporate other standard and accepted practices for minimizing impacts of mineral exploration projects.

The Forest Service required substantially more avoidance, mitigation, and monitoring measures when it approved other similar mine exploration projects in Idaho. The CuMo Exploration Project includes extensive mitigation and monitoring measures to protect soils and geology, water quality, terrestrial and avian wildlife, aquatics, vegetation, cultural resources, traffic and public safety, and fire safety and emergency response. Attachment B (CuMo FONSI, Attachment A, Part 1 “Mitigation Measures and Monitoring . . .”). Similarly, the Golden Meadows Project includes extensive, detailed standard operating procedures and environmental commitments to protect soils, water quality, vegetation, wetland and riparian resources, wildlife, aquatics, and other resources. Attachment E (Golden Meadows EA) pp. 2-33–2-57. Here, however, the Forest Service proposes signing off on Otis Gold’s plans without many of these measures.

For these reasons, and additional reasons set forth in our specific objection issues in Section IV, the EA and DN/FONSI violate the Organic Act. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein and require additional mitigation measures before the Forest Service can consider approving any operations at the site.

C. The Forest Service Failed to Act Consistently with the Forest Plan under NFMA

As set forth in further detail in Section IV below, the EA and Draft DN/FONSI fail to comply with all requirements of the Revised Forest Plan for the Targhee National Forest, April 1997 (the

“Forest Plan”) in violation of the National Forest and Management Act (NFMA), 16 U.S.C. § 1601 *et seq.*

Congress enacted NFMA in 1976 to establish a new legal framework for managing natural resources on Forest Service Lands. Among other requirements, NFMA requires the Forest Service to prepare a land and resource management plan, or “forest plan”, for each national forest. 16 U.S.C. § 1604(a). Each plan must include certain standards and guidelines for how the forest shall be managed. 16 U.S.C. §§ 1604(c), (g)(2) & (g)(3). Once a forest plan is adopted, all resource plans, permits, contracts, and other instruments for use of the lands must be consistent with the plan. 16 U.S.C. § 1604(i).

The Forest Plan for the Caribou-Targhee National Forest contains numerous binding standards as well as goals and objectives to protect the forest. However, the Forest Service has failed to comply with its standards to protect streams and wildlife at the Kilgore Project site, as set forth in sections below.

For these reasons, and additional reasons set forth in our specific objection issues in Section IV, the EA and DN/FONSI violate NFMA. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

IV. SPECIFIC OBJECTION ISSUES

A. Road Construction and Reclamation

Objectors raised concerns about new road construction, the existing network of roads already constructed and/or used by Otis Gold, and reclamation of project roads. ICL *et al.* Scoping Comments, pp. 13–14, 17. But the Forest Service has not conducted sufficient analysis of impacts from Otis Gold’s extensive road construction, nor has it adequately minimized the adverse impacts of road construction to protect water quality, fish, wildlife, and wildlife habitat.

Throughout the EA and project records, the Forest Service acknowledges that roads have extensive impacts. But the Forest Service improperly minimized and ignored the degree to which road density and road use will increase by using the wrong baseline. Under the No Action Alternative, the Forest Service assumes all existing roads would remain in place; whereas really, Otis Gold would be required to reclaim roads it has used recently during exploration. By failing to account for these road reclamations and closures, the Forest Service failed to recognize that the Otis Gold’s proposal will result in not only more than 10 miles of new roads, but will also allow the continued maintenance and use of existing project roads. *See* EA, p. 8 (map showing previously authorized project roads). The Forest Service, thus, misleadingly underestimated the adverse impacts of Otis Gold’s proposal compared to the No Action Alternative.

The Forest Service also failed to adequately analyze slope stability and landslides issues presented by building extensive roads across the steep slopes at the Project Site. As admitted in the EA, the project area includes steep slopes, and many roads would be located on steep areas.

EA, p. 14 (noting steep terrain at Project Site), 19 (noting steep terrain where roads would be built). But in response to comments, the Forest Service focused only on the steepness of the roads themselves, ignoring issues regarding the steepness and stability of the slopes on which roads and drill pads would be cut. Response Table, Comment ##s 25-18, 25-19.

As already discussed above, the Forest Service did not require concurrent reclamation and did not reduce the amount of new roads Otis Gold would construct, both of which would minimize many of the Kilgore Project's impacts. And the Forest Service failed to consider the impacts from road maintenance and reclamation activities, which can themselves have significant impacts to water quality and nearby lands.

For these reasons, the Forest Service failed to disclose and take a hard look at the Kilgore Project's impacts, in violation of NEPA, and failed to minimize the Project's impacts, in violation of the Organic Act. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

B. Fuel Transportation and Storage

Objectors raised concerns about the transportation of fuel and other hazardous materials. ICL *et al.* Scoping Comments, p. 14. However, the Forest Service failed to disclose basic information about Otis Gold's fuel haul plans, failed to conduct sufficient analysis of the risk and impacts of fuel spills, and failed to adequately avoid and mitigate these impacts.

In the EA, the Forest Service mentions hazardous spills in one dismissive sentence: "Proposed design features and BMPs implemented throughout the duration of activities would negate any hazardous spills to aquatic ecosystems (floodplains, stream, wetlands, etc)." EA, p. 13. And the only place where the Forest Service provides any information about fuel haul is buried in one paragraph in its response to comments. Response Table, Comment # 25-28. In that one paragraph, the Forest Service says fuel would be hauled using pickups typically carrying 110 gallons of fuel, and refueling would occur at the start of each shift. *Id.* Nowhere does the Forest Service identify Otis Gold's fuel haul route(s), or any analysis of their proximity to streams. The Draft DN/FONSI and EA fail to include any kind of estimate of the risk of fuel spills and any kind of estimate of the environmental impacts of a fuel spill(s). The Forest Service also fails to disclose whether, when, where, and how much fuel might be stored on site. Without explanation, the Forest Service says no pilot cars will be required. Response Table, Comment # 25-28. And other than requiring each fuel truck to carry a "basic spill kit" (Response Table, Comment # 25-29), the Forest Service failed to include any other best practices or standard procedures for avoiding and minimizing the risks of a fuel spill.

Drill rigs require a substantial amount of fuel. Vehicle accidents can occur, especially on steep and windy, unpaved mountain roads, and the result of a fuel spill can be significant, particularly if fuel reaches water. For both the CuMo and Golden Meadows exploration projects, the Forest Service provided and considered detailed information about: fuel haul routes, including distances within proximity to surface water and road conditions; frequency, quantity, and timing of fuel

haul; types of fuel haul vehicles and fuel haul containers; and other fuel haul information. *See* Attachment A (CuMo Project EA) 411–38 (Fuel Transport Memorandum); Attachment C (CuMo fuel transportation report); Attachment E (Golden Meadows EA), pp. 3-165–3-177 & Append. D (Petroleum Risk Assessment). The Forest Service also used road traffic and accident data to evaluate the potential for fuel haul vehicle accidents and risk of spill, and assessed the potential impacts of such a spill. *Id.* And the Forest Service required detailed and strict fuel haul plans and procedures, including but not limited to: restricting fuel haul to the least harmful routes (avoiding more dangerous roads and roads closer to water); requiring fuel haul convoys with advanced planning and rigorous protocol; not allowing fuel haul during inclement road or weather conditions; and other practices. *Id.* Here, however, the Forest Service failed to require these standard design features and BMPs for fuel haul and failed to provide any support for its bald and vague conclusion that any impacts would be negated.

For these reasons, the Forest Service failed to disclose and take a hard look at the Kilgore Project’s impacts, in violation of NEPA, and failed to minimize the Project’s impacts, in violation of Organic Act. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

C. Vehicle Travel and Road Maintenance

Objectors raised concerns about Otis Gold’s roads and vehicle traffic. ICL *et al.* Scoping Comments, p. 14. Transporting workers, equipment, and fuel, and other vehicle travel associated with the Kilgore Project, as well as road maintenance activities, has impacts to air quality (from dust and exhaust), water quality (from sediment delivery and fuel leaks and spills), plants and pollinators (from dust and invasive species), wildlife (from noise, lights, collisions, and other disturbance), and public convenience and safety (from traffic and accidents). But the Forest Service failed to provide basic information necessary to evaluate these potential impacts. Neither the Draft DN/FONSI nor the EA disclose the amount of vehicle traffic expected under the Project, as well as other details about where and when vehicle travel will occur and in what types of vehicles. Similarly, road maintenance activities are not disclosed or evaluated.

In response to the scoping comments, the Forest Service simply notes that dust suppression techniques will be employed. Response Table, Comment #25-31. Dust suppression is only partially effective and addresses only a small subset of the many adverse impacts from vehicle travel and road maintenance which the Forest Service is required to disclose, assess, and minimize.

Road maintenance and vehicle use all deliver sediment to streams, but the Forest Service did no sediment delivery analysis. In the EA, the Forest Service admits that project activities like road construction and road use will occur in intermittent stream drainages (EA, p. 11) and may produce sediment loading and suspension, among other water quality impacts (EA, p. 12). But the Forest Service simply dismisses these potential impacts, claiming they would be “negligible” without any modeling or other meaningful analysis. EA, p. 12. In sharp contrast, for the CuMo Project and Golden Meadows Project, the Forest Service did extensive analysis on sediment

delivery from roads and vehicles. *See* Attachment A (CuMo Project EA) 60, 95; Attachment E (Golden Meadows Project EA) pp. 3-17–3-19.

Roads and vehicles also impact wetlands, and the EA admits wetlands along parts of Corral, Allen, and West Camas Creek are located near transportation routes. EA, p. 14. But the Forest Service fails to consider how vehicle travel and road maintenance may impact these wetlands.

For these reasons, the Forest Service failed to disclose and take a hard look at the Kilgore Project's impacts, in violation of NEPA, and failed to minimize the Project's impacts, in violation of the Organic Act. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

D. Employee Camping

Objectors raised concerns about Otis Gold's employees camping in or near the Kilgore Project Site. ICL *et al.* Scoping Comments, pp. 12 & 16. Allowing the many workers necessary to carry out this large exploration project to live onsite for months in a row year after year could have significant impacts, including fire risk, wildlife disturbance, water pollution, spread of invasive plants, and other impacts. But the Forest Service failed to provide the basic information necessary to evaluate these potential impacts. Neither the Draft DN/FONSI nor the EA disclose the number of employees that would camp, where they might camp, for how long they would camp, or what protocol they would follow except that they would follow food storage measures for bears and will otherwise follow the same rules as the general public for dispersed camping. Response Table, Comment ## 25-13 & 25-42.

Just because Otis Gold's employees might follow dispersed camping rules does not mean there will not be impacts; yet the Forest Service failed to evaluate those impacts or provide further avoidance and mitigation measures. The Forest Service should have evaluated the impacts and should have considered whether any areas should be off limits to camping; whether campers should be dispersed or concentrated; and whether there should be restrictions on tree felling, firewood gathering, campfires, human and other waste generation, storage, and disposal, and other known impacts from long-term, concentrated group camping in National Forests year after year. Additionally, campsites should be inspected by the Forest Service, and depending on impacts, the Forest Service should close areas and/or impose additional camping restrictions.

For these reasons, the Forest Service failed to disclose and take a hard look at the Kilgore Project's impacts, in violation of NEPA, and failed to minimize the Project's impacts in violation of the Organic Act. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

E. Water Withdrawals

Objectors raised concerns about the impacts of Otis Gold's water use on water quantity and aquatic species. ICL *et al.* Scoping Comments, pp. 15, 16. In response to comments, the Forest Service says withdrawals in West Camas Creek and Corral Creek are not expected to impact fisheries, requires the Forest Service to inspect proposed drafting sites for site-specific mitigation needs, and that intake screens are required. Response Table, Comment ## 25-34 & 25-35.

In the EA, the Forest Service admits water drafting from streams would temporarily reduce instream flow rates but then claims the change would be "undetectable to local aquatic species." EA, p. 13. Later in the EA, the Forest Service estimates the percent streamflow reductions in West Camas and Corral creeks would be around 0.6% and 0.7%, respectively, at the drafting locations. However, the Forest Service failed to consider these flow impacts during different times of year, including critical periods of cutthroat rearing and migrating, and failed to consider the temperature impacts of these reduced flows. And the Forest Service fails to consider downstream impacts to West Camas Creek, where water temperature and flow problems are greater, and to the Camas National Wildlife Refuge. The Forest Service also admits the two drafting sites are near wetlands in Corral and West Camas Creeks, but dismisses change to flow during drafting as being "unmeasurable" without explanation. EA, p. 14.

In other project documents, the Forest Service also admits that Columbia spotted frog inhabit the proposed water withdrawal sites and could be harmed by water withdrawals, but the Forest Service never addresses this issue. The Forest Service should have gathered more baseline information, assessed impacts, and imposed suitable avoidance and mitigation measures to protect frogs.

For these reasons, the Forest Service failed to disclose and take a hard look at the Kilgore Project's impacts, in violation of NEPA, and failed to minimize the Project's impacts, in violation of the Organic Act. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

F. Aquatic Influence Zones and Fisheries

Objectors raised concerns about the Kilgore Project's adverse impacts to fisheries from roads and traffic, hazardous materials, water withdrawals, and drilling in and near streams. ICL *et al.* Scoping Comments, pp. 14–16. While we appreciate that the Forest Service is not allowing any drill pads to be located in AIZs, the Forest Service failed to adequately protect AIZs from other incursions and failed to adequately consider the impacts.

In the EA, the Forest Service acknowledges Allen, McGarry, West Camas, Corral, and East Rattlesnake Creeks are perennial fish-bearing streams and have an aquatic influence zone (AIZ) buffer of 200 feet. EA, p. 14. For Bearcat Canyon, however, the Forest Service set only a 75-foot stream buffer, based on its claim that even though the stream is partially perennial it does not likely contain fish. The Forest Service should impose a 200-foot buffer along Bearcat Canyon unless and until surveys determine whether or not there are fish and should not allow drill pads within 200 feet of Bearcat Canyon.

In the EA, the Forest Service acknowledges that five roads will cross intermittent streams, but dismisses these AIZ incursions, saying they all either have an existing road prism or would be dry during the proposed action. EA, p. 15. For crossings where there are existing prisms, this ignores the fact that these are still AIZ incursions and may require maintenance and will be used heavily and will thus still have impacts. For crossings that are expected to be dry during project activities, this too ignores that these are still AIZ incursions and that building and using roads in dry AIZs will still have lasting impacts on the riparian areas, especially since the roads will not be concurrently reclaimed. The Forest Service must consider the impacts of these AIZ incursions.

The EA is silent as to whether these five new AIZ road crossings will have culverts and what standards for constructing and maintaining the crossings will be followed, and the EA never mentions whether existing roads crossing AIZs have culverts. Maps in the project record show there are at least 14 existing stream crossings from Forest Service system roads and existing project roads. Properly constructed culverts and crossings allow fish passage and reduce sediment delivery. The Forest Service must require best practices and must evaluate the impacts of these numerous existing and new stream crossings.

The Forest Service failed to consider whether there are alternatives to each proposed new stream crossing. Most of the new stream crossings proposed by Otis Gold appear to be unnecessary, because they only access one drill area, or they access drill areas that could be reached by constructing a road outside of the AIZ. But the Forest Service never considered this and simply rubber-stamped Otis Gold's proposed stream crossings.

And while the EA discusses stream crossings, the EA fails to discuss other instances where roads would be located within AIZs but without crossing a stream. For example, it appears that a proposed new road segment to reach drill site ND21 would be located within the Rex Creek AIZ; a proposed new road segment to reach drill site ND4A would also be located within the Rex Creek AIZ; a new road segment to reach ND14 would be located within the Allan Creek AIZ; and another new road segment would be located within the upper reaches of the Bear Cat Canyon AIZ. The Forest Service must consider whether there are alternatives to these AIZ incursions, minimize impacts, and specifically evaluate the impacts of allowing new roads in these AIZs, which it has not done.

In the AIZ section of the EA, the Forest Service claims “no activity is expected to inhibit riparian, wetland, or any aquatic ecosystem processes and/or functions”, relying on its claim that construction standards and BMPs reduce or eliminate sediment loading and hydrological displacement. EA, p. 15. Yet, the Forest Service does not identify these measures, does not evaluate their effectiveness, and does not model or otherwise meaningfully assess the potential impacts.

Additionally, the Forest Service failed to adequately disclose and assess in the EA the impacts to Yellowstone Cutthroat Trout and other fish and aquatic species that may be impacted by road construction and vehicle travel in AIZs. Cutthroat are present in impacted streams in and around

the Project site and are adversely impacted by passage barriers, sedimentation, increased temperature, and fuel spills, but these impacts are not discussed in the EA.

For these reasons, the Forest Service failed to disclose and take a hard look at the Kilgore Project's impacts, in violation of NEPA, and failed to minimize the Project's impacts, in violation of the Organic Act. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

G. Drilling Impacts to Ground and Surface Water Quality

Objectors raised concerns about the water quality impacts from Otis Gold's extensive drilling program to both surface water and groundwater. ICL *et al.* Scoping Comments, pp. 15–16.

With respect to surface water, ignoring the fact that water flows downhill, the EA dismisses impacts to surface water streams as “minimal and low risk” because the project area is “located in headwater intermittent stream reaches” and most activities “would occur above spring and seep contact points.” EA, p. 16. However, as already explained, the Forest Service failed to adequately consider, avoid, and mitigate surface water quality impacts from fuel spills, sediment delivery, and turbidity related to road construction and vehicle travel. And additionally, as set forth below, the Forest Service failed to adequately consider, avoid, and mitigate surface and ground water impacts from Otis Gold's drilling program.

Otis Gold will construct 140 drill stations, up to three drill holes would be drilled at each station, and drill holes would average 1,300 feet deep. *See* EA, p. 19. The Forest Service admits drilling is expected to encounter groundwater, as it has in the past at the site, and may discharge to subsurface zones. EA, p. 19. However, the Forest Service failed to gather and consider basic information necessary to evaluate the impacts, and failed to require standard practices for protecting against and minimizing groundwater quality and hydrology as called for in the agency's own *Working Guide: Evaluating Groundwater Resources For Mineral Exploration Drilling* (Aug. 2014) (Attachment G).

The *Working Guide* explains: “A description of the type of drilling proposed (diamond core, reverse circulation, etc.), the drilling materials/fluids that will be used, and the anticipated location, number, depth and spacing of drill holes is essential for understanding the potential effects on groundwater.” Attachment G, p. 2. Additionally, “proposed drill hole abandonment procedures, materials, and timing should be clearly described”. *Id.* at 3. “Based on information gathered on the affected hydrogeologic environment and the subsequent environmental analysis, specific abandonment methods and procedures may need to be revised to limit effects on groundwater resources.” *Id.* at 3. Here, the Forest Service only generally describes drilling and abandonment processes. For example, Forest Service never considered drill spacing, which appears very dense when considering three drill wells can be drilled at each of 140 drill stations dotting the project area map, even though drilling many wells close together as proposed by Otis Gold can impact ground and surface water flows and quality. The Forest Service also only generally describes well abandonment and simply assumes abandoned wells will have no impact.

See EA, p. 20. Furthermore, it is not clear that Otis Gold would follow other abandonment procedures implemented in other exploration projects in Idaho. See Attachment A (CuMo Project EA); Attachment E (Golden Meadows Project EA). Similarly, the sumps Otis Gold would use to contain drill fluids are not well described, the potential impacts of overflowing or leaking sumps are not adequately analyzed, and sumps are not required to be lined or follow other best practices. See EA, p. 20.

The *Working Guide* also calls for a description of the hydrogeologic setting—“where groundwater occurs and how it moves through various rock units”—considering local geology, aquifer types, groundwater flow systems, groundwater quality, water wells and public drinking water source areas, springs and wetlands, and streams. Attachment G, pp. 3–7. The *Working Guide* calls for an analysis of effects to municipal watersheds, domestic wells, and public water supplies, and to effects on aquatic habitats by contamination or dewatering through impacts to springs, streams, cave and karst systems, and wetlands habitats. *Id.* at 7. The *Working Guide* warns of uncontrolled artesian flow and cross aquifer flow should be considered and may have impacts. *Id.* at 8. Here, the Forest Service seems to be simply guessing, such as where it says any groundwater contamination issues would be minimized by “[p]ossible compartmentalization of the groundwater due to structures or lithological blocks.” EA, p. 19. The EA lacks any clear identification of aquifers, springs, and wetlands in the area, and there is no analysis of municipal watersheds, domestic wells, and public water supplies near and downstream of the Kilgore Project area.

The *Working Guide* also calls for the Forest Service to consider drilling fluid loss/gain, stating “[a]n assessment should be made of the potential for large solution cavities or other preferential pathways to exist in the rock formations targeted for drilling so that the potential for loss or gain of drilling fluid can be anticipated.” Attachment F, p. 8. The Forest Service, however, never discusses drill fluid loss/gain in the EA. The Forest Service should consider past instances of drill fluid loss and/or gain to inform its analysis of impacts and to identify necessary avoidance and mitigation measures, such as ceasing drilling and capping wells when drill fluid gain/loss occurs.

The *Working Guide* also calls for consideration of contamination from the surface. *Id.* at 9–10. “An assessment should be made as to whether the drilling proposal adequately addresses the possibility of groundwater or surface water contamination from spillage or leakage of contaminants at the surface. This includes leakage of hydraulic or other fluids from a poorly maintained drilling rig, fuel or other spills, and leakage of contaminants from sumps or other drilling fluid reservoirs or holding pits.” *Id.* at 9. The Forest Service is supposed to have “specific procedures identified” to prevent surface water runoff from entering open drill holes. *Id.* at 10. The Forest Service does not have these specific procedures for runoff, nor has it adequately assessed spillage and leakage from drill rigs, fuel haul vehicles, and sumps.

Notably, stormwater management is an important issue at mine exploration sites, as not only might storm water flow into drill wells, it can also flow into sumps and/or cause sumps to overflow, can erode drills stations and roads and deliver sediment to streams, and cause other impacts. Yet the EA includes no discussion of stormwater management. The only reference to storm water management is in the required monitoring section of Appendix A, which says the

operator will provide an annual summary of stormwater management monitoring and BMP effectiveness. EA, p. 35. But there is no discussion of what the monitoring is or what the BMPs are, no evaluation of the effectiveness of these measures, and no assessment of stormwater impacts to water quality. *See* Attachment A (CuMo Project EA), pp. 34, 36 (discussing stormwater pollution prevention plan for project).

The *Working Guide* also calls for monitoring, including: having the driller report important hydrogeological data collected during drilling including aquifer types, depth to first and additional water zones, lithology and structural geology, salinity or specific conductance of groundwater, water quality analyses, water yields, standing water levels several hours after completion, and significant losses of circulation while drilling; accurate records of abandonment procedures and details including groundwater conditions, depth sealed, quantity and type of sealing materials used, casing details, and changes made to the drill hole during abandonment. Attachment F, pp. 11–12. While the Forest Service is requiring Otis Gold to conduct some limited water quality monitoring (discussed in more detail below), the Forest Service failed to require drill reports with this important information.

Instead of gathering this information and evaluating the potential impacts, as required by NEPA, and minimizing impacts, as required by the Organic Act, the Forest Service relies on ongoing monitoring to identify and fix any problems later once the project is underway. *See* EA, p. 16. However, the Forest Service fails to show that the monitoring and mitigation measures will be adequate. In fact, these measures are clearly inadequate.

In the EA, the Forest Service says Otis Gold initiated stream flow and surface water quality monitoring in 2013 on Crab, McGarry, and West Camas Creeks, and expanded to Prospect, Rex, Rey, and Allan Creeks in 2017, to assess water quality and water quantity. EA, p. 15. And while Otis Gold would continue monitoring these sites plus a few additional surface water sites, it will not be monitoring in key locations, including West Camas Creek downstream of all drilling in that drainage, and in Bear Cat Canyon below the Dog Bone Ride drilling area of impacts. Without monitoring these areas, there is simply no way to know whether many of the drill holes are causing adverse water quality impacts. And even when Otis Gold's monitoring identifies a problem, it is not clear how quickly the problem can be identified and to what degree it will be fixed; yet, the Forest Service assumes there will be virtually no impact thanks to the monitoring.

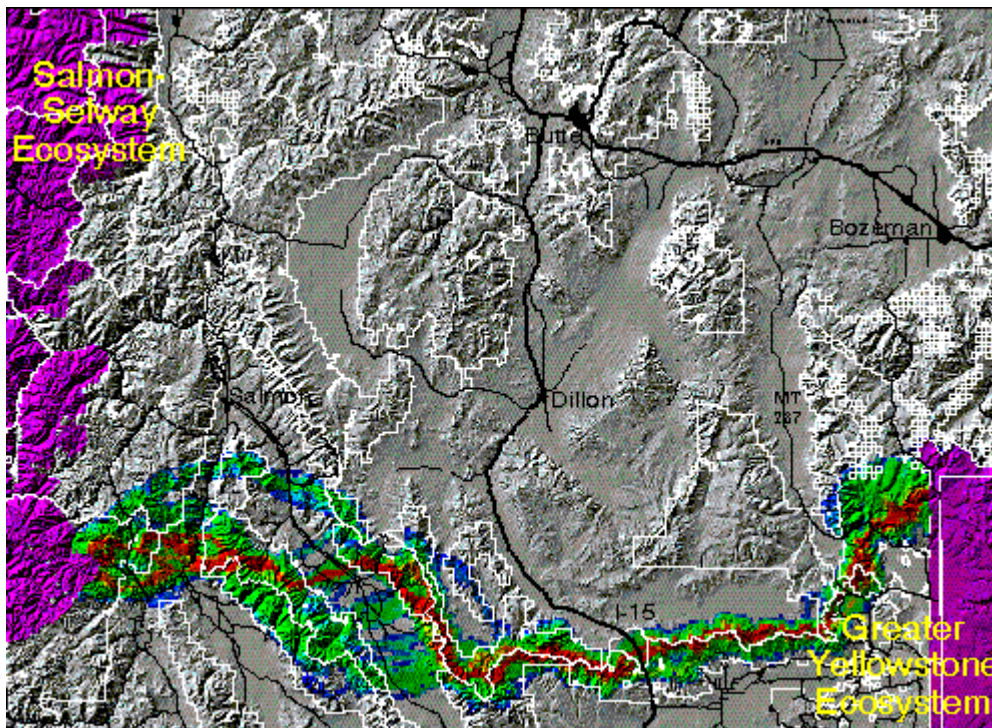
The Forest Service's reliance on groundwater monitoring is even more flawed. Otis Gold has monitored just one well monthly since June 2015 during project activities and will continue to do so. *See* EA, p. 19. And while Otis Gold has encountered groundwater during its previous drilling, no monitoring of this groundwater has yet occurred from any drill holes. EA, p. 19. Yet, the Forest Service treats this very limited monitoring from a single well as proof that groundwater has not been previously impacted, and that any future impacts will be quickly and easily identified and addressed.

These failures are particularly troubling since the Forest Service admits elevated levels of arsenic, iron, nickel, selenium, and zinc have been found in surface water and groundwater at the Kilgore Project site. EA, p. 19.

For these reasons, the Forest Service failed to disclose and take a hard look at the Kilgore Project’s impacts, in violation of NEPA, and failed to minimize the Project’s impacts in violation of the Organic Act. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

H. Grizzly Bear

Objectors raised concerns about the Kilgore Project’s impacts to grizzly bears, a “sensitive species” in the Caribou-Targhee National Forest. ICL *et al.* Scoping Comments, pp. 2–12. The project area is located in what is commonly known as the High Divide, an area along the Idaho-Montana border that provides critical wildlife habitat and a westward path for expanding and migrating Wildlife out of Yellowstone National Park. The Centennial Mountains are a critically important wildlife corridor for grizzly bear migration, connecting Greater Yellowstone grizzlies to other populations in the Northern Rockies. Recent research indicates that the project’s location and the surrounding area fall within an important section of projected grizzly bear travel between the GYE and the Northern Continental Divide Ecosystem (NCDE) (Peck 2017; Craighead Walker 1997; Kriebel 2015).¹ The Forest Service, however, ignored and downplayed the unique ecological significance of the Project area, particularly as a wildlife corridor along the High Divide, by claiming the Project is not located in the Centennial Mountains and employing other misleading tactics.



Map from Craighead & Walker 1997 showing East to West grizzly bear movement.

¹ See Attachment I (which includes numerous studies and reports related to grizzly bears referenced in this section of the Objections).

For example, the EA discusses direct and indirect impacts of the Kilgore Project to grizzly bears in just one paragraph, and the grizzly bear section includes no mention of significance of the High Divide and Centennial Mountains as a critical bear corridor. EA, pp. 28–29. And in response to comments, the Forest Service admits the Centennial Mountains may be the best corridor for grizzly bear movement between the Greater Yellowstone Ecosystem and the Bitterroot Ecosystem but simply claims Kilgore Project will have no impact, claiming the project area is not even in the Centennial Mountains. *See* Response Table, Comment # 3-1. The Forest Service is incorrect, the project is in the Centennial Mountains (as the Forest Service itself admits in other sections of the EA). EA, pp. 21, 23. The Forest Service should have acknowledged the impacts the Kilgore Project would have to the Centennial Mountains as a bear corridor, and should have assessed, avoided, and mitigated these impacts.

While the EA acknowledges that Otis Gold’s extensive drilling activities would disturb grizzly bears when the project is underway, the Forest Service downplays these impacts based on limited grizzly radiolocations near the project area in recent years, ignoring the significance of other nearby radiolocations, ignoring the fact that Otis Gold’s exploration activity may be the cause of limited radiolocations, and minimizing the importance of the area as potential habitat even if bears have not been regularly located there recently. *See* EA, p. 28. The Forest Service also admits that Otis Gold’s road building would decrease secure grizzly habitat, but downplays these impacts by claiming the project site has such low quality habitat because of the road construction and drilling Otis Gold has already done, effectively treating the Project area as a sacrifice zone. EA, pp. 28, 29.

Instead of using the adverse impacts of Otis Gold’s previous exploration as an excuse to avoid studying and better mitigating these impacts, the Forest Service must consider the new and expanded impacts together with these previous impacts and must mitigate accordingly. Without adequate mitigation, the GYE population would be adversely impacted by Otis Gold’s mining exploration activity. Furthermore, the grizzly bear species at large would additionally experience negative impacts due to the fact that the proposed action alternative would hinder genetic dispersal via individual bear migration. The proposed action alternative fails to mitigate any of these negative effects. The sole step the Forest Service takes in regard to grizzly bear habitat management is simply restating food storage orders required in the area. *See* EA, p. 34.

As already discussed, the Forest Service set an improper baseline by failing to recognize that under the No Action alternative, Otis Gold would close and reclaim roads, which would improve grizzly bear security. Additionally, without the extensive light, noise, and other disturbances Otis Gold has caused in recent years, bear would be more likely to visit the area. In fact, just recently, while there are no active operations underway at the Kilgore Project site, a grizzly was spotted nearby in the West Camas Creek watershed. Attachment G (IDFG news release regarding grizzly in the area). But the Forest Service instead compared Otis Gold’s proposal to an artificial No Action alternative where habitat remains insecure and bears are not expected to visit because of disturbances, downplaying the Kilgore Project’s adverse impacts to grizzlies.

Recent research on grizzly bear survival and road density in Canada provides suggestions for habitat management. Areas with a road density of 0.6km/km² or less had the highest density of

grizzly bears. This threshold should be met where “grizzly bear conservation is a priority.” The study further states that high road density should be limited to areas of low-quality bear habitat that are not movement corridors. Local habitat managers should implement “access controls” and road removal when possible to ameliorate the detrimental effects of road density in grizzly bear habitat (Lamb et. al 2017). But as already discussed, the Forest Service failed to consider an alternative with less road building, or concurrent road reclamation, that could have minimized road density.

In its review process, the Forest Service ignored important management direction for grizzlies. The Biological Assessment (BA) states that “there is no management direction outside the GBRZ. This project is outside the recovery zone.” BA, p.16. This is false. Though the Conservation Strategy does not provide explicit management for the GYE population outside of the GBRZ, it does provide clear management direction. The 2016 Conservation Strategy states multiple goals for grizzly bears outside of the Primary Conservation Area (PCA):

- Outside of the PCA, grizzly bears will be allowed to expand into biologically suitable and socially acceptable areas.
- Outside of the PCA, the key to successful management of grizzly bears lies in bears utilizing lands that are not managed solely for bears but in which their needs are considered alongside other uses.
- Manage the GYE grizzly bear population within the area called the Demographic Monitoring Area (DMA), to ensure a recovered population in accordance with the established Recovered Criteria.

2016 Conservation Strategy, p. 3. The PCA is located within the GYE and replaces the boundaries of the former Recovery Zone. The project area falls within the DMA boundaries. The DMA is outside of the bounds of the PCA. Therefore, the project area is subject to the above goals. Furthermore, the 2016 Conservation Strategy states that it “was developed to be the document guiding management and monitoring of the GYE grizzly bear population and its habitat upon recovery and delisting.” 2016 Conservation Strategy, p.1. The Conservation Strategy provides management direction for the GYE population of grizzly bears and should be a guiding document for the project’s overview and approval.

Similar direction is provided in the delisting rule itself, further validating the importance of habitat within the DMA boundary. “To promote natural connectivity, there are attractant storage rules on public lands between the GYE and other grizzly bear Recovery Zones in the NCDE and Bitterroot to minimize the grizzly bear-human conflicts. We do not consider connectivity to the east, west, or south a relevant issue to the GYE grizzly bear population’s long-term persistence because there are no extant populations in these directions to enhance the genetic diversity of the GYE population. However, we recognize the GYE grizzly bear population could be a possible source population to re- colonize the Bitterroot Ecosystem to the west.” FR 30536. “Although the structure of the GYE boundaries are different than those proposed in the draft NCDE Conservation Strategy, the DMA boundary extends all the way to the DPS boundary in sections to the west and north to facilitate connectivity between the GYE and both the NCDE and the Bitterroot ecosystem.” FR 30580.

In order for bears to “expand into biologically suitable and socially acceptable areas,” individual bears will need to utilize wildlife corridors as identified by the 2016 Conservation Strategy. This

guideline is additionally stated in the 1997 Targhee Forest Plan. The Forest Plan's goals for grizzly bear habitat include: "Allow[ing] for unhindered movement of bears (continuity with Yellowstone National Park and adjacent bear management units)." Forest Plan, p. III-17. The project area is located within the Centennial BAU. Wildlife Report, p. 37. Therefore, according to the 1997 Forest Plan, grizzly bears should be able to migrate from Yellowstone to the Centennial BAU and vice a versa. The Forest Service must take these goals into account when approving projects in the Caribou-Targhee National Forest, but it never did.

The Forest Service also failed to comply with its sensitive species policies. Greater Yellowstone Ecosystem Grizzly bears are a "sensitive species" in the Caribou-Targhee National Forest. *See* EA, p. 28; Forest Service Manual 2672.11 2(b). The Forest Service Manual (FSM) requires specific protections for sensitive species. According to the Forest Service Manual (FSM 2670.22), the Forest Service is required to protect sensitive species in three ways:

1. Develop and implement management practices to ensure that species do not become threatened or endangered because of Forest Service actions.
2. Maintain viable populations of all native and desired nonnative wildlife, fish, and plant species in habitats distributed throughout their geographic range on the National Forest System lands.
3. Develop and implement management objectives for populations and/or habitat of sensitive species.

But in the EA, the Forest Service fails to identify and apply management practices to ensure GYE grizzly bears do not become listed, fails to ensure viable grizzly populations will be maintained near the project area, and failed to identify and implement any management objectives for GYE grizzlies.

The Forest Service concluded in the EA that the Kilgore Project may impact bears and bear habitat but will not likely contribute to a trend toward federal listing or loss of viability to the population or species. EA, p. 29. Without objectives for populations and habitat of GYE grizzly, and without appropriate management practices, there is no way to ensure viability of sensitive species. As already explained above, this conclusion ignores consideration of the larger area used by grizzlies, and fails to properly account for the role Otis Gold's prior exploration has played in driving away bears and degrading bear habitat without reclamation. Furthermore, as discussed in greater detail in the Cumulative Effects section below, the Forest Service failed to consider the cumulative effects of other past, present, and reasonably foreseeable ongoing actions that impact bears all of which pose threats to species viability in the area.

The Forest Service also failed to consider how local impacts from Otis Gold's prior exploration and the Kilgore Project impact other sub-populations of bears. "The future of grizzly bear persistence in southwest Canada and northwest USA is likely dependent on management actions that promote and ensure meta-population function" (Proctor et al. 2005).

The Wildlife Report in the project record states that the GYE population of grizzly bears is reaching carrying capacity due to stabilizing population trends. Wildlife Report, p. 13. Reaching carrying capacity would increase grizzly movement via wildlife corridors (esp. for young males). Grizzly bear populations within the GYE and the Northern Continental Divide Ecosystem (NCDE), which currently retains its status as a threatened population, are believed to

be increasing. As these populations increase, the likelihood of individual dispersal increases as well (Peck 2017). This increase is believed to be limited to GYE and NCDE grizzly populations; populations that are outside of the GYE are still listed as threatened. Their survival hinges in part on the continued existence of the GYE grizzly population. Individuals from the GYE may disperse to other populations and increase genetic diversity, an important factor for grizzly survival: “If the two populations [NCDE and GYE] continue to expand and this distance decreases, the likelihood of successful immigration will increase accordingly” (Peck 2017, p. 15). The project area, therefore, is important not only to the GYE population of grizzly bears, but additionally to the grizzly bear species at large which still retains protections under the ESA. The Forest Service is required to consider the impacts of the proposed action for not only the GYE grizzly bear population, but additionally for other grizzly bear recovery areas under Section 7 of the ESA (a)(1).

Connectivity provides for the adaptation of species to effects of climate change and is critical to the conservation of species diversity (Heller and Zaveleta 2009). It is also generally accepted that isolated populations are at greater risk of extinction over the long term, and the largest and rarest species tend to disappear first (Soule 1983). Some level of movement and gene flow between geographically separate populations however, decreases the probability of extinction (Soule 1987; Harrison 1994; Hanski 1999), promotes population persistence (Hanski and Gilpin 1997), mitigates genetic erosion, and allows for immigration and emigration in response to random genetic, demographic, and environmental changes, including disease epidemics, cyclical food shortages, climate change or large scale fire events (Breitenmoser et al. 2001, Hedrick 1996, Hedrick and Gilpin 1996).

A metapopulation is a population of spatially separated populations whose range is composed more or less of isolated patches that are interconnected through patterns of movement between them (Lande and Barrowclough 1987). Boyce et al. (2001) demonstrated the importance of multiple “connected” populations to the survival of the grizzly in the Northern Rockies, and metapopulation theory directs that connectivity is the best long-term strategy to increase the resiliency and probability of persistence of remaining grizzly bear populations in the lower 48 States (Boyce 2000).

The grizzly bear was listed as a threatened species in the contiguous lower 48 states under the ESA, and should be recovered and managed as a large well-connected Northern Rockies metapopulation. Historic evidence supports the existence of a true metapopulation structure for grizzly bears in the contiguous United States (Craighead and Vyse 1996) including connectivity between the NCDE and the GYE (Picton 1986, Merriam 1922), as well as other populations.

While immigration from the GYE population to the NCDE is most likely (Peck 2017, p. 2), the GYE population may also disperse to the Bitterroot Ecosystem (BE) (Peck 2017, Krehbiel 2015). The BE is a designated recovery zone that does not currently have a grizzly bear population. 82 Fed. Reg. 30509 (June 30, 2017). The delisting decision of GYE grizzlies notes that connectivity may not directly benefit the GYE population, however connectivity would benefit other grizzly populations: “[W]e recognize the GYE grizzly bear population could be a possible source to recolonize the Bitterroot Ecosystem to the west.” 82 Fed. Reg. 30536 (June 30, 2017). In fact, the Review of the 2017 Final Rule for Greater Yellowstone Ecosystem Grizzly Bear

stated that the “primary potential impact” of delisting the GYE population was limited dispersal from the GYE to unrecovered ecosystems. 83 Fed. Reg. 18740 (April 30, 2018). Furthermore, the Demographic Monitoring Area (DMA) was originally extended into the Centennial Mountains for the purpose of allowing connectivity between the GYE and BE grizzly bear populations by providing “an east-west corridor of suitable habitat.” *Id.*

Conservation Science Partners (CSP) recently modeled ecological flow in the High Divide based on non-species specific ecological flow data presented by Dickson, et al. The model highlights the Island Park and Dubois Ranger Districts as the most important Ranger Districts in the study area for ecological connectivity between Yellowstone and the Salmon-Selway-Bitterroot complex (Slide 7 of CSP Presentation). This model considers both ecological integrity and its location to other areas with high ecological integrity. Conservation Science Partners then overlaid the grizzly bear dispersal data used by Peck, et al and the ecological flow models to find priority areas for connectivity in the High Divide region (Slide 8 of CSP Presentation). The Centennial Mountains, and the site of the Kilgore Mine proposal, lay squarely in the middle of the region’s top (95th percentile) priority areas for ecological and grizzly bear habitat connectivity.

As stated within the Wildlife Report, the project does in fact lie within the Centennial BAU. Though we remain certain that the project area is within an important wildlife corridor for grizzlies, if that were not true the Forest Service still would have a duty to protect and ensure the “unhindered movement” of grizzlies between the GYE and nearby BAUs according to the 1997 Targhee Forest Plan.

In the Final EA, the Forest Service states in the Summary of Environmental Effects that “[Grizzly bear] habitat quality is low in the project area, making it less likely that non-radio-collared bears are present or grizzly bears would expand into the area.” EA, p 29. The Wildlife Report highlights the importance of “secure habitat” for grizzly bear survival. Secure habitat is defined as habitat that 500 meters or more from a motorized route. Additionally, the amount of secure habitat is the most important factor in grizzly bear survival within their home range (Schwartz et al 2010). The most detrimental effect of the project to grizzly bears, a Forest Service sensitive species, would be the construction of project roads as they would decrease levels of secure habitat.

The Forest Service relied on the fact that the area had previously been occupied and in use by Otis for past exploration activities to make the determination that the habitat within and surrounding the project’s area is currently of low quality:

“Road construction decreases secure habitat for grizzly bears...Further, road construction is occurring in an area already characterized by relatively high road density. This high road density is from previous mineral exploration activities on the claim.” Wildlife Report, p. 40.

In order to meet the directions imposed by the 2016 Conservation Strategy, the 1997 Targhee Forest Plan, and the Forest Service Manual, the Forest Service should have considered road reclamation in the direct and indirect effects of the No Action Alternative. With this addition, the No Action Alternative would have concluded that the most important characteristic of grizzly bear habitat and the species’ respective survival within the area would improve, which would

presumably increase successful individual grizzly bear migration, thereby supporting the goals of various management directions.

We find it particularly troubling that the reclamation of existing project roads is not reasonably foreseeable. Otis Gold has not had to reclaim roads that were used in previous mining projects from up to a decade earlier: “Reclamation on these roads has not yet been completed because Otis has proposed them for use as part of this project currently under analysis.” EA, p. 6. Otis Gold could apply for another project within the area, therefore extending the period of time that the project’s area or the surrounding area would have decreased secure habitat for grizzly bears. This is would contradict the goals of various management plans. Furthermore, the Forest Service failed to create additional alternatives with less road density as discussed above.

For these reasons, the Forest Service failed to disclose and take a hard look at the Kilgore Project’s impacts, in violation of NEPA, and failed to minimize the Project’s impacts, in violation of the Organic Act, and failed to follow the Forest Plan in violation of NFMA. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

I. Whitebark Pine

Whitebark pine is a sensitive plant species and is important to grizzly bears. In the EA, the Forest Service admits Otis Gold’s extensive road network will remove seedling, sapling, and some mature whitebark pine. EA, p. 21. The Forest Service also admits that Otis Gold’s extensive surface disturbance throughout the site creates the opportunity for noxious weeds to establish and spread throughout the project area, which would negatively affect whitebark pine. EA, p. 22. The Forest Service also acknowledges that blister rust and other things (which the Forest Service fails to identify) cause past, current, and foreseeable stress and mortality. But the Forest Service fails to provide any detailed information about noxious weeds, blister rust, and other things harming whitebark pine, and the Forest Service fails to consider climate change and fires and how they can adversely impact whitebark pine in the area.

Furthermore, the Forest Service is required to develop and implement management practices to protect sensitive species, and develop and implement population and habitat management objectives. FSM 2672.11 2(b). The EA includes no discussion of such management practices or population and habitat objectives. Without these, the Forest Service cannot adequately assess the impacts or meet objectives.

For these reasons, the Forest Service failed to disclose and take a hard look at the Kilgore Project’s impacts, in violation of NEPA, failed to minimize the Project’s impacts, in violation of the Organic Act, and failed to follow the Forest Plan, in violation of NFMA. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

J. Other Wildlife

Objectors raised concern about the Kilgore Project's impacts to other wildlife, including elk, lynx, wolverine, goshawk, boreal owl, and great gray owl. ICL *et al.* Scoping Comments, p. 12. And project record information shows the Kilgore Project would also impact Columbia spotted frog. However, the Forest Service failed to adequately assess, avoid, and mitigate the impacts of Otis Gold's exploration to these species by failing to adequately survey species and identify their habitat and failing to scale back and mitigate Otis Gold's wildlife-disturbing activities, among other shortcomings.

For lynx, the Forest Service admitted the Kilgore Project would adversely affect lynx, and that lynx face numerous other threats, including snowpack loss, wildfires, trapping, illegal shooting, among others, but the Forest Service dismissed these cumulative effects without any quantified analysis and failed to account for the area's important function as a wildlife corridor. *See* EA, pp. 25–26. Lynx, similar to grizzly bears, utilize the area to disperse to different populations. This dispersal is vital for genetic variability which increases the likelihood of the species survival but was never discussed or evaluated in the EA.

Similarly for wolverine, the Forest Service admits that road construction, vehicle travel, and 24-hour drilling will disturb wolverine, and that wolverine faces threats from climate change and snowmobiling in the area. EA, p. 26. But the Forest Service just assumes wolverine will not use the area and failed to account for the area's importance for species dispersal. As with grizzly bears, lynx, and other mammals, wolverines require genetic diversity to adapt to environmental changes such as climate change.

For northern goshawk, boreal owl, and great grey owl, the Forest Service failed to assess road reclamation in the Direct and Indirect Effects of the No Action Alternative. Under the No Action alternative, Otis Gold would eventually have to reclaim former project roads. This would improve northern goshawk, boreal owl, and great grey owl habitat. Fragmentation, which is created by processes such as road construction, can negatively impact forest bird species. Research shows that local dynamics of extinction and turnover are positively associated with the level of a forest area's fragmentation (Boulinier *et al.* 2001). But the Forest Service failed to evaluate the impacts to these species, and instead simply relies on project mitigation measures to survey and avoid nest areas for these species without even describing when or how often surveys will occur. *See* EA, p. 34.

For migratory birds, the Forest Service did not properly survey for species in the project area. The Wildlife Report relies on surveys dating back to 2013 taken over the span of three days. Wildlife Report, p. 46. This data is roughly five years old. The newest data point is from four years ago. More recent surveys are required to determine what migratory birds utilize the project's area and therefore properly mitigate the effects of the proposed action alternative.

For elk, the Forest Service admits lost cover will have impacts, but fails to provide baseline information about elk populations in the area and fails to provide any kind of meaningful assessment of the impacts due to lost cover. EA, p. 29. Furthermore, the Forest Service failed to minimize the amount of roads Otis Gold will build and failed to require swifter road reclamation. And similar to its grizzly analysis, the Forest Service improperly claims habitat effectiveness

under the No Action alternative would be lower than it really would be because the Forest Service failed to account for the road reclamation Otis Gold would perform under the no action alternative. Furthermore, the Forest Service claims that the project area would be below ideal habitat effectiveness percentage, but fails to calculate what percentage of habitat effectiveness the project's area would have under the No Action alternative (and accompanying road reclamation). Wildlife Report, p. 51.

For Columbia spotted frog (a sensitive species), the Wildlife Specialist Report acknowledges frogs and frog habitat are present in, that Otis Gold's water use for drilling could lower water levels in breeding or summering habitat, and road construction and use could cause direct mortality to frogs. But the Forest Service failed assess, avoid, and minimize impacts, and failed to follow its sensitive species policy.

For these reasons, the Forest Service failed to disclose and take a hard look at the Kilgore Project's impacts, in violation of NEPA, and failed to minimize the Project's impacts under the Organic Act. To remedy these violations, the Forest Supervisor must remand the EA and Draft DN/FONSI back to the Caribou-Targhee National Forest with instructions to correct all errors noted herein before the Forest Service can consider approving any operations at the site.

V. CONCLUSION

In conclusion, as detailed above and in the previous comments submitted by all Objectors, the EA and Draft DN/FONSI fail to fully comply with numerous federal laws, regulations, policies, and other requirements. As such, the Forest Supervisor's Office must remand both documents and correct all errors noted herein. The Forest Service cannot approve any of the action alternatives described in the EA and Draft DN/FONSI, or any other alternative, unless and until all laws, regulations, policies, and other requirements noted herein are satisfied. Please direct all communications regarding this Objection to the undersigned attorney.

/s/ Bryan Hurlbutt
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