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### Hells Canyon National Recreation Area Case Study

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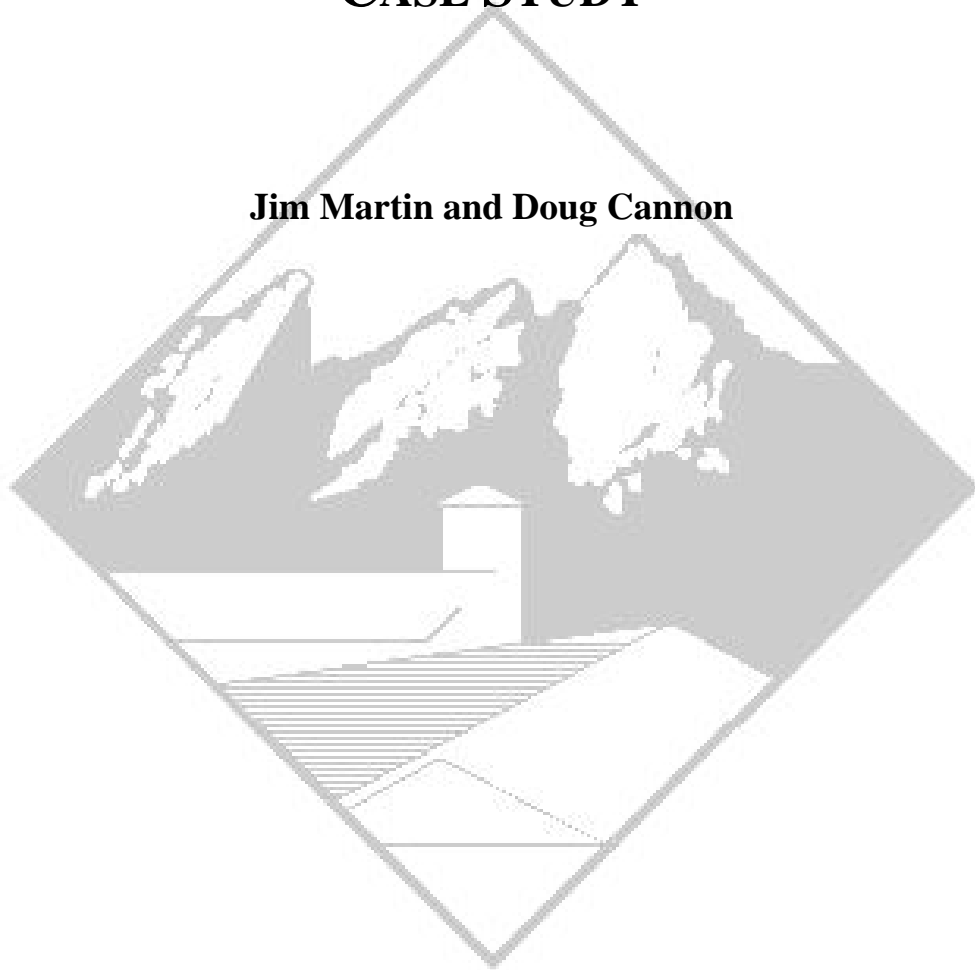
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# **HELLS CANYON NATIONAL RECREATION AREA CASE STUDY**

**Jim Martin and Doug Cannon**



**Natural Resources Law Center  
January 9, 2004**

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## I. BACKGROUND FACTUAL INFORMATION

The Hells Canyon National Recreation Area was established by act of Congress on December 31, 1975.<sup>1</sup> The area straddles the borders of northeastern Oregon and western Idaho and is located in Baker and Wallowa counties in Oregon and Nez Perce, Idaho, and Adams counties in Idaho.<sup>2</sup> The recreation area consists of 652,488 acres, 215,233 of which are designated as wilderness.<sup>3</sup> Within the recreation area, wild and scenic river corridors encompass 33,767 acres.<sup>4</sup> These corridors include portions of the Rapid River in Idaho, the Imnaha in Oregon, and the Snake River in Idaho and Oregon.<sup>5</sup> The area is managed by the Department of Agriculture, U.S. Forest Service. Since the recreation area spans three national forests in three different regions, the Chief Forester determined that the area would be managed by the Wallowa-Whitman Forest Supervisor.

The Snake and Rapid River additions to the wild and scenic river system were accomplished by the original act establishing the Hells Canyon National Recreation Area. Portions of the Imnaha River were added to the system by the Omnibus Oregon Wild and Scenic Rivers Act of 1988.<sup>6</sup> In addition, the Oregon Wilderness Act of 1980 designated as wilderness several wilderness study areas that had been designated by the 1975 act within the exterior boundaries of the recreation area.<sup>7</sup>



<sup>1</sup> 16 U.S.C § 460gg (2000), P. L. No. 94-199.

<sup>2</sup> [http://www.fs.fed.us/hellscanyon/about\\_us/establishment.shtml](http://www.fs.fed.us/hellscanyon/about_us/establishment.shtml) (June 23, 2003).

<sup>3</sup> [http://www.fs.fed.us/hellscanyon/about\\_us/index.shtml](http://www.fs.fed.us/hellscanyon/about_us/index.shtml) (June 24, 2003).

<sup>4</sup> 59 Fed. Reg. 36866 (1994).

<sup>5</sup> 16 U.S.C. § 1274 (a)(11)-(12),(78) (2000); Pub. L. No. 94-199 §3.

<sup>6</sup> 16 U.S.C. § 1274(78) (2000); Pub. L. No. 100-557.

<sup>7</sup> 16 U.S.C. § 1131 (2000); Pub. L. No. 98-328; This legislation designated the Westside Reservoir Face, McGraw Creek, and part of the Lick Creek areas as wilderness. The legislation also included soft release language, directing that released areas be managed pursuant to the comprehensive plan until the next round of forest planning.

## II. STATUTORY STANDARD

The purpose of protecting the Hells Canyon area was to “assure that the natural beauty, and historical and archeological values of the Hells Canyon area” and the Snake River from Hells Canyon dam to the Oregon-Washington border are “preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced. . . .”<sup>8</sup> The act immediately designated certain wilderness areas and wilderness study areas, designated segments of the Snake and Rapid Rivers as components of the wild and scenic river system, and prohibited the Federal Power Commission (now the Federal Energy Regulatory Commission) from licensing new facilities within the recreation area.

Just as important, the act also established long-term management goals for the recreation area that are of special import for the two-thirds of the recreation area that was not provided special protective designations. In section 7 of the act, Congress directed the Forest Service to administer the recreation area in accordance with laws and regulations that are applicable to the national forests for “public outdoor recreation,” and in a manner that is “compatible” with seven enumerated objectives:<sup>9</sup>

1. maintenance and protection of the free-flowing nature of the rivers within the recreation area;
2. conservation of scenic, wilderness, cultural, scientific and other values;
3. preservation of all features and peculiarities believed to be biologically unique;
4. protection and maintenance of fish and wildlife habitat;
5. protection of archaeological and paleontologic resources;
6. preservation and restoration of historic sites; and
7. “such management, utilization, and disposal of natural resources on federally owned land, including but not limited to, timber harvesting by selective cutting, mining and grazing and the continuation of such existing uses and developments *as are compatible with the provisions of this Act.*”

The act, at section 8(a),<sup>10</sup> directed the agency to complete a comprehensive management plan within five years that provides for “a broad range of land uses and recreation opportunities.” Recognizing that many uses were occurring within the recreation area when the legislation was adopted, the Congress also directed that while the Forest Service prepared that management plan,

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<sup>8</sup> 16 U.S.C § 460gg (a) (2000).

<sup>9</sup> 16 U.S.C. § 460gg-4 (1-7) (2000).

<sup>10</sup> 16 U.S.C. § 460gg-5(a) (2000).

“[s]uch activities *as are compatible with the provisions of this Act*, but not limited to, timber harvesting by selective cutting, mining, and grazing may continue ... at current levels of activity and in areas of such activity at the time of enactment of this Act.”<sup>11</sup> The “compatibility” language found in this section and in section 7, taken in tandem with the provisions of section 13, recognizing ranching, grazing, farming, and timber harvesting as they existed on the date of enactment as “traditional and valid uses of the recreation area,”<sup>12</sup> created substantial expectations among many local citizens that establishment of the recreation area would not materially change the local economy and character. The ecosystem protection provisions of section 7 were, at least in hindsight, somewhat at odds with the “compatibility” provisions. That conflict perhaps accounts for the fact that only thirty-plus years after enactment has the agency set in place a conservation-oriented management plan .

As briefly adverted to above, the act included several other provisions with a clear conservation effect. First, the Act forbids the Federal Energy Regulatory Commission (formerly the Federal Power Commission) from licensing any new dams, water conduits, reservoirs, powerhouses, transmissions lines, or any other project work carried out under the Federal Power Act within the recreation area.<sup>13</sup> Second, the legislation withdrew all federal lands within the recreation area “from all forms of location, entry, and patent under the mining laws of the United States, and from disposition under all laws pertaining to mineral leasing. . . .”<sup>14</sup>

The establishing legislation also directed the Secretary to allow a few activities to continue. Hunting and fishing are still allowed in the recreation area.<sup>15</sup> Grazing is still allowed in areas where grazing is not “incompatible with the protection, restoration, or maintenance” of the areas unique characteristics.<sup>16</sup>

Timber harvest on “other lands”<sup>17</sup> has been limited to situations where the harvest is necessary to protect ecosystem health, wildlife habitat, or for recreational and scenic uses; to reduce the risk posed by hazard trees; or to respond to a natural event like flood, wind, fire or

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<sup>11</sup> 16 U.S.C. § 460gg-5(f) (2000).

<sup>12</sup> 16 U.S.C. § 460gg-10 (2000).

<sup>13</sup> 16 U.S.C. § 460gg-2(a) (2000).

<sup>14</sup> 16 U.S.C. § 460gg-8 (2000); This provision is subject to existing rights and the Forest Service has promulgated rules for the regulation of pre-existing mining claims. 36 C.F.R. § 292.47 (2003).

<sup>15</sup> 16 U.S.C. § 460gg-9 (2000).

<sup>16</sup> 36 C.F.R. § 292.48 (2003). Grazing is limited to the levels of use that existed on December 31, 1975. *Id.*

<sup>17</sup> Defined as “all National Forest System lands in the HCNRA except for Wild and Scenic Rivers and Wilderness Lands.” 36 C.F.R. § 292.41 (2003).

infestation.<sup>18</sup> No actual timber harvest quota is set in the establishment legislation or the federal regulations. The regulations place even more restrictive standards on timber harvest in the wild and scenic river areas and the wilderness areas.<sup>19</sup> For wild, scenic and recreation river segments, timber harvest can only occur when it will protect or enhance the values for which the river was designated.<sup>20</sup> For areas designated as wild, timber harvest can only occur when necessary to provide for recreational facilities or to respond to a hazard trees or natural events.<sup>21</sup> Even then the harvest can only occur if the activity is consistent with the Wild and Scenic Rivers Act.<sup>22</sup> In wilderness areas no timber harvest is allowed except that which is authorized under the Wilderness Act and associated regulations.<sup>23</sup>

The Forest Service also has promulgated rules and regulations for the use of motorized and non-motorized equipment and rivercraft in the recreation area.<sup>24</sup> The regulations create a tiered structure that gets progressively more restrictive based on the land designation. On the “other lands,” motorized and mechanical equipment is allowed on designated roads, trails, and airstrips.<sup>25</sup> The use of equipment on roads and trails in “scenic” river corridors is subject to increased regulation, though in most instances one can still drive a motorized vehicle on designated roads.<sup>26</sup> As for “wild” river corridors no use is allowed except as is necessary for “the administration of the river or to protect and enhance the values for which the river was designated.”<sup>27</sup> Finally, in wilderness areas no use is allowed except as provided in the Wilderness Act and associated regulations.<sup>28</sup>

The one caveat to this section is that none of these standards preclude the use of motorized equipment in a number of situations:<sup>29</sup>

1. administration of the recreation area;
2. authorized scientific research;
3. authorized timber harvesting, grazing, or mining;

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<sup>18</sup> 36 C.F.R. § 292.46 (2003).

<sup>19</sup> *Id.* at (b)-(c).

<sup>20</sup> *Id.* at (b)(1).

<sup>21</sup> *Id.* at (b)(2).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at (c).

<sup>24</sup> 36 C.F.R. §§ 292.44, 292.45 (2003).

<sup>25</sup> 36 C.F.R. § 292.44 (a) (2003).

<sup>26</sup> *Id.* at (b)(1).

<sup>27</sup> *Id.* at (b)(2).

<sup>28</sup> *Id.* at (c).

<sup>29</sup> 36 C.F.R. § 292.44 (2003).



4. in response to public health or safety emergencies in the area;
5. for access to private in-holdings within the recreation area;

A separate set of regulations apply to rivercraft.<sup>30</sup> Non-motorized rivercraft are permitted subject to limitations established by the Forest Service Officer in the area.<sup>31</sup> Motorized rivercraft are generally prohibited in the recreation area except for limited portions of the Snake and Salmon rivers.<sup>32</sup>

The Forest Service also has promulgated regulations to delineate “compatible” land use and development activities on private land within the recreation area.<sup>33</sup> These regulations establish what type of new structure can be built and under what conditions, what type of structure it can be, when an existing structure can be replaced, and to what uses the structures can be put.<sup>34</sup>

Water was one of the most contentious issues the Congress faced in passing the Hells Canyon legislation. The final compromise provides that no provision of the Hells Canyon National Recreation Act nor the Wild and Scenic Rivers Act “shall in any way limit, restrict, or conflict with present and future use of the waters of the Snake River and its tributaries upstream from the boundaries of the Hells Canyon National Recreation Area, created hereby, for beneficial uses, whether consumptive or nonconsumptive, now or hereafter existing ....”<sup>35</sup> In addition, the act provides that “no flow requirements of any kind may be imposed in waters of the Snake River below Hells Canyon Dam under the provisions of the Wild and Scenic Rivers Act. . . .”<sup>36</sup> Conversely, another provision forbids any agency or department of the United States from allowing or supporting in any way a water resource development project that the Secretary of Agriculture determines could have an adverse affect on the recreation area.<sup>37</sup>

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<sup>30</sup> 36 C.F.R. § 292.45 (2003).

<sup>31</sup> *Id.* at (a).

<sup>32</sup> *Id.* at (b).

<sup>33</sup> 36 C.F.R. §§ 292.23, 292.24, 292.25 (2003).

<sup>34</sup> 36 C.F.R. § 292.23 (2003).

<sup>35</sup> 16 U.S.C. § 460gg-3(a).

<sup>36</sup> 16 U.S.C. § 460gg-3(b) (2000).

<sup>37</sup> 16 U.S.C. § 460-gg-2(b) (2000).

### III. PATH TO LEGISLATION

Hells Canyon has long been recognized by many as a unique place in the American west and multiple efforts were made to preserve this area before it was made a national recreation area. The first real conflict over the Hells Canyon area came in 1967 when the Supreme Court ruled in *Udall v. Federal Power Commission*.<sup>38</sup> This case involved a conflict between the Department of the Interior and the Federal Power Commission over construction of a new dam in the Hells Canyon area.<sup>39</sup> In the end the court stopped the construction of the dam pending further study.<sup>40</sup> The dam was never built because of increasing political interest in the Hells Canyon area.<sup>41</sup>

The initial legislative effort to preserve the Hells Canyon-Snake River area took place in 1970 when Senator Packwood (OR-R) introduced S. 3329,<sup>42</sup> a bill to establish the Hells Canyon-Snake National River, at the same time Representative Saylor (PA-R) introduced a companion bill in the House, H.R. 15455.<sup>43</sup> These bills were sent to the Committees of Interior and Insular Affairs, which never even held hearings on the bills.<sup>44</sup>

In 1971 Senator Packwood introduced Senate Bill 717 (S.717).<sup>45</sup> This bill was virtually a duplicate of S.3329, which he had introduced just the year before. The purpose of this bill was to designate the Hells Canyon-Snake River area as “national river.” The concept of a national river was based upon the national park idea.<sup>46</sup> This designation would have made the river and the area around the river subject to similar management practices as obtained in a national park, removing the area from mining and requiring that the area be managed principally to support

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<sup>38</sup> *Udall v. Federal Power Comm.*, 387 U.S. 428 (1967).

<sup>39</sup> *Id.* at 430-432.

<sup>40</sup> *Id.* at 434-437.

<sup>41</sup> In both the 91<sup>st</sup> (S. 940) and 92<sup>nd</sup> (S. 488) Congresses, bills were passed in the Senate that would have placed a moratorium on dam building in the Hells Canyon area. But neither of these bills was ever acted upon by the House and they both died at the conclusion of the respective sessions. For information on S. 940 see 116 Cong. Rec. Index, 1264 (1970); S. Rep. No.91-858, (May 12, 1970); Sen. SubComm. on Water and Power Resources of the Comm. on Int. and Insular Affairs, *Hearings on the Middle Snake River Moratorium: S.940*, (Fed. 17, 1970). For information on S.488 see 117 Cong. Rec. Index, 1604 (1971); S. Rep. No. 92-235, (June 23, 1971).

<sup>42</sup> 116 Cong. Rec. 927-933 (1970).

<sup>43</sup> *Id.* at 256.

<sup>44</sup> 116 Cong. Rec. Index, 1274, 1338 (1970).

<sup>45</sup> SubComm. on Parks and Recreation of the Comm. on Int. and Insular Affairs U.S. Sen., *Establishment of Hells Canyon-Snake National River: Hearings on S.717 and S.448*[the title page has the wrong number listed it should be S.488], 92<sup>nd</sup> Cong., 2, (Sept. 16, 17, 30 1971).

<sup>46</sup> *Id.* at 19.

recreation and to protect the unique resources of the river.<sup>47</sup> It should be noted that under S.717, hunting and fishing would have still been allowed, as would grazing.<sup>48</sup> The bill proposed to create three units; the Seven Devils unit-314,000 acres, the Imnaha unit-350,000 acres, and the Snake River unit-50,000.<sup>49</sup>

This bill never received the support it needed and after some committee hearings was killed before it ever reached the floor of the Senate for a vote.<sup>50</sup> Although the bill did have the support of some big names like Stewart Udall<sup>51</sup> the bill failed to earn the support of the Department of Agriculture,<sup>52</sup> the Department of the Interior,<sup>53</sup> and labor groups like the AFL-CIO.<sup>54</sup> In fact each of these groups publicly opposed the bill. Instead, the federal agencies supported S.488, which would have put in place a seven-year moratorium on the construction of any new dams on the Snake River in the Hells Canyon area; the agencies argued this approach would give them more time to complete studies to determine what land really needed protection and what the impacts on the water resources would be.<sup>55</sup> Although this bill passed the Senate it was referred to the House Committee on Interstate and Foreign Commerce and died there.<sup>56</sup>

In 1973 the issue of protecting Hells Canyon once again came before the Congress. This time Senator Hatfield (OR-R) sponsored S.657, a bill to designate the Hells Canyon National Forest Parklands Area.<sup>57</sup> An identical bill, H.R. 2624 sponsored by representative Ullman (OR-D), was introduced simultaneously in the House.<sup>58</sup> Neither of these bills ever really got much attention and died in committee.<sup>59</sup>

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<sup>47</sup> *Id.* at 5-6, 19.

<sup>48</sup> *Id.* at 6-7.

<sup>49</sup> *Id.* at 1, 3-5.

<sup>50</sup> 117 Cong. Rec. Index, 1610 (1971).

<sup>51</sup> Sen. SubComm. on Parks and Recreation of the Comm. on Int. and Insular Affairs, *Hearings on S.717 and S.448*[the title page has the wrong number listed it should be S.488], 92<sup>nd</sup> Cong., 48, (Sept. 16, 17, 30 1971).

<sup>52</sup> *Id.* at 12-13.

<sup>53</sup> *Id.* at 13-15, 68-92.

<sup>54</sup> *Id.* at 65.

<sup>55</sup> *Id.* at 12, 15.

<sup>56</sup> 117 Cong. Rec. Index, 1604 (1971).

<sup>57</sup> SubComm. on Parks and Recreation of the Comm. on Int. and Insular Affairs U.S. Sen., *Hearings on S. 657 and S.2233*, Part 1, 93<sup>rd</sup> Congress, 3, (December 6, 14-15, 1973).

<sup>58</sup> See SubComm. on Parks and Recreation of the Comm. on Int. and Insular Affairs United States House of Representatives, *Hearings on H.R. 2624 and H.R. 15798*, 93<sup>rd</sup> Congress, (July 15, 1974); 119 Cong. Rec. Index, 1921 (1973).

<sup>59</sup>

S.2233, a bill to create the Hells Canyon national recreation area, was also proposed in 1973.<sup>60</sup> Senators Church (ID-D), Hatfield (OR-R.), Packwood(OR-R.), and McClure(ID-R) co-sponsored this bill.<sup>61</sup> This bill contained provisions that called for some of the land in the recreation area to be designated as wilderness, some to be included in the wild and scenic river program, and some to be left as recreational lands.<sup>62</sup> This bill also provided that the lands were to be removed from mining and mineral leasing,<sup>63</sup> there were to be no more Federal Power Commission projects on the protected portions of the river,<sup>64</sup> development on private lands in the area would have been subject to increased regulation,<sup>65</sup> and the use of river craft (both motorized and non-motorized) would have been subject to control by the Secretary of Agriculture.<sup>66</sup> Grazing, hunting, and fishing were all still would have been allowed to occur.<sup>67</sup>

This bill caught people's attention and in December of 1973 field hearings were held in La Grande, Oregon, and Lewiston, Idaho.<sup>68</sup> During these hearings numerous individuals and groups spoke out about the proposed recreation area.<sup>69</sup> The groups opposed to the bill included the Northwest Public Power Association, which opposed the area because of the provisions that forbade new dam construction.<sup>70</sup> The AFL-CIO opposed the proposal because of its potential impacts on hydropower development in the region and the resulting impact on the manufacturing sector in the Pacific Northwest.<sup>71</sup> The Enterprise (Oregon) City Council and the Wallowa County (Oregon) County Commission also opposed the bill because of its economic and energy impacts as well as a generalized feeling of grievance and resentment against the federal government.<sup>72</sup> In a survey taken in the county 60.6% of the residents opposed the creation of the

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<sup>60</sup> *Id.* at 12.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 13-14; See §§ 2 & 3.

<sup>63</sup> *Id.* at 24; See § 11.

<sup>64</sup> *Id.* at 14, See § 4

<sup>65</sup> *Id.* at 22-23; See § 10.

<sup>66</sup> *Id.* at 25; See § 14(a).

<sup>67</sup> *Id.* at 24-25; See §§ 13, 14(b).

<sup>68</sup> SubComm. on Parks and Recreation of the Comm. on Int. and Insular Affairs U.S. Sen., *Hearings on S. 657 and S.2233*, Part 1, 93<sup>rd</sup> Congress, (December 6, 14-15, 1973) .

<sup>69</sup> For a complete list of all those who commented at the hearings see the photocopied table of contents fro the hearings included in the Hells Canyon loose-leaf folder.

<sup>70</sup> SubComm. on Parks and Recreation of the Comm. on Int. and Insular Affairs U.S. Sen., *Hearings on S. 657 and S.2233*, Part 1, 89, 93<sup>rd</sup> Congress, (December 6, 14-15, 1973).

<sup>71</sup> *Id.* at 180.

<sup>72</sup> *Id.* at 64-71.

recreation area.<sup>73</sup> Other groups that opposed the bill included the Idaho and Oregon Farm Bureaus, both of which feared the bill would lead to decreased grazing in the region.<sup>74</sup>

But there were also numerous supporters of the bill, including the Wilderness Society, the Sierra Club, and the Izaak Walton League.<sup>75</sup> But others also showed up in support of the bill. For example, Boise Cascade said it would the bill if minor boundary adjustments were made to decrease impacts on timber harvesting.<sup>76</sup> Governor Andrus of Idaho also supported the bill, although he also proposed some minor boundary adjustments to decrease impacts on resource development.<sup>77</sup> Mr. Slickpoo of the Nez Perce Tribal Council also came to the hearings to express the tribe's support for the recreation area.<sup>78</sup> In addition a number of sportsmen's groups and state wildlife agencies supported the bill for the protections it would provide to animal and fish species, though these groups expressed concern that this legislation would negatively affect the states' ability to regulate fish and game species in the area and would increase the role the federal government played in wildlife management<sup>79</sup> This was a result none of the sportsmens' groups seemed to want.

In addition to the field hearings the subcommittee also held hearings in Washington D.C.. During these hearings the subcommittee heard from the Department of the Interior, the Department of Agriculture, and the Federal Power Commission. Each of these agencies opposed the creation of the national recreation area for various reasons. The Departments of Interior and Agriculture opposed it on the grounds that not enough information existed to make decisions regarding mining or wilderness designation. They also argued that the canyon was not sufficiently unique to warrant such protection.<sup>80</sup> The Federal Power Commission objected on the ground that future hydropower projects that were being planned would have to be scrapped and no future projects could be built.<sup>81</sup> The Power Commission was also concerned about the impacts this could have on electrical production in the region.<sup>82</sup>

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<sup>73</sup> *Id.* at 65.

<sup>74</sup> *Id.* at 167,375.

<sup>75</sup> *Id.* at 35,54, 174.

<sup>76</sup> *Id.* at 73.

<sup>77</sup> *Id.* at 233.

<sup>78</sup> *Id.* at 332.

<sup>79</sup> *Id.* at 29, 176, 308.

<sup>80</sup> S. Rep. No. 94-153, 19-21, (May 22, 1975).

<sup>81</sup> *Id.* at 17-19.

<sup>82</sup> *Id.*

Following these extensive hearings the bill was sent to the full Senate for a vote.<sup>83</sup> The bill was eventually passed by the Senate and, in an unusual parliamentary maneuver, was referred back to committee.<sup>84</sup> The bill died in committee and was never signed into law.<sup>85</sup>

In 1975 the issue of protecting Hells Canyon was still fresh in Congress' mind and once again numerous attempts were made to create a national recreation area in Hells Canyon. In the House of Representatives three bills were introduced. H.R. 30 and H.R. 1630 proposed to establish the Hells Canyon National Recreation Area. H.R. 5394 was a bill to authorize and direct the Secretary of the Interior to study the feasibility and the suitability of creating a Hells Canyon National Recreation Area.<sup>86</sup> When hearings were held neither H.R. 1630 nor H.R. 5394 received much attention and in the end neither of the bills made it out of committee for a vote in the full house.<sup>87</sup> H.R. 30, originally sponsored by Mr. Ullman (OR-D) and co-sponsored by twenty other representatives,<sup>88</sup> received the majority of the committee's attention.

As had happened before, the Departments of Interior and Agriculture opposed passage of any bill that would create a national recreation area in Hells Canyon.<sup>89</sup> The Department of Agriculture again asserted the need for further study.<sup>90</sup> In addition, it did not want to see mineral resource withdrawn prior to studies into the region's mineral potential.<sup>91</sup> The Department of Agriculture suggested, as an alternative, the designation of a 68-mile stretch of the Snake River as wild and scenic while awaiting the results of further study before setting aside any other lands.<sup>92</sup> The Department of Interior supported this position.<sup>93</sup> The hearings over H.R. 30 proceeded very similarly to the hearings of the previous protection bills.

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<sup>83</sup> 120 Cong. Rec. 1615 (1973).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> SubComm. on Parks and Recreation of the Comm. on Int. and Insular Affairs United States House of Representatives, *Hearings on H.R. 30, H.R. 1630 and H.R. 5394*, 94<sup>th</sup> Congress, (April 10, 1975)

<sup>87</sup> 121 Cong. Rec. 1780, 1912 (1974).

<sup>88</sup> 121 Cong. Rec. 1731 (1975); co-sponsors included; Taylor (NC-D), Meeds (WA-D), Adams (WA-D), Aucoin (OR-D), Bingham (NY-D), Don Clausen (CA-R), de Lugo (V.I.-D), Seiberling (OH-D), Duncan (OR-D), Hicks (WA-D), Jarman (OK-R), Kastenmeier (WI-D), McCormack (WA-D), Miller (CA-D), Mink (HI-D), Pritchard (WA-R), Steelman (TX-R), Stephens (GA-D), Udall (AZ-D), Weaver (OR-D), Won Pat (Guam-D)

<sup>89</sup> SubComm. on Parks and Recreation of the Comm. on Int. and Insular Affairs United States House of Representatives, *Hearings on H.R. 30, H.R. 1630 and H.R. 5394*, 11-13, 94<sup>th</sup> Congress, (April 10, 1975).

<sup>90</sup> *Id.* at 13.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 12.

<sup>93</sup> *Id.* at 11.

However, the bill got a boost when Governors Andrus (ID.), Evans (WA.), and Straub (OR.) sent a joint telegram in support of H.R. 30 to the subcommittee.<sup>94</sup> In addition, the Mayor of Portland, Oregon, and the Multnomah County Commission (Oregon) also signed on in support of H.R. 30.<sup>95</sup> In addition the American Forestry Association supported passage of H.R. 30 as “the most practical and acceptable solution” to the long running controversy over the Snake River and Hells Canyon.<sup>96</sup> With political support on the rise the full House passed H.R. 30 for the establishment of the Hells Canyon National Recreation Area.<sup>97</sup>

The Senate had also once again been considering legislation to establish the Hells Canyon National Recreation Area. The same four senators who had introduced a very similar bill, S.2233, just a few years before, introduced S.322 during the first session of the 94th Congress in an attempt to preserve Hells Canyon. This committee dispensed with hearings, choosing instead to rely upon the record compile din hearings on S.2233 during the previous Congress.<sup>98</sup> The committee reported the bill favorably and it passed the full Senate.<sup>99</sup> With the passage of S.322 the house vacated its proceedings on H.R.30 and approved S.322, with amendments. The senate approved the House’s amendments and S.322 was on its way to the President who later signed it, making official the creation of the Hells Canyon National Recreation Area.<sup>100</sup>

Although S.2233 and S.322/H.R.30 appear to be very similar, there were a few differences that may have aided in getting the later bill passed. First, the new bill reduced the amount of river that was actually included in the recreation area and instead placed the removed portions of the river in the study provisions of the wild and scenic river act for future consideration.<sup>101</sup> Second, during the debate over H.R.30 the committee agreed that the National Recreation Area designation “was not intended to exclude other uses of resources within the area.”<sup>102</sup> This concession apparently was intended to allow for continued timber harvesting, grazing, and other uses that are consistent with the overall management direction for the area.<sup>103</sup>

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<sup>94</sup> *Id.* at 46, 52.

<sup>95</sup> *Id.* at 25-26.

<sup>96</sup> *Id.* at 159.

<sup>97</sup> 121 Cong. Rec. 1731 (1975).

<sup>98</sup> S. Rep. No. 94-153 (May 22, 1975).

<sup>99</sup> 121 Cong. Rec. 1632 (1975).

<sup>100</sup> *Id.*

<sup>101</sup> H.R. Rep. No. 94-607, 13, (Oct. 31, 1975).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

The provisions on logging appeared to be a major point which enabled the bill's proponents to attract broader support<sup>104</sup> In addition, the boundaries of the area were modified to exclude certain mineralized areas and to come into greater conformance with existing Forest Service management recommendations.<sup>105</sup> However, one compromise the committee refused to make was to allow some additional hydropower development in the area.<sup>106</sup> The committee noted that this was the only remaining free-flowing portion of the Snake River and refused to compromise on this point.<sup>107</sup>

The creation of the recreation area was not the end of legislative interest in Hells Canyon. In 1985, Senator Packwood (OR-R) proposed passage of S.1803, a bill to designate certain lands in and near Hells Canyon National Recreation Area as additions to the Hells Canyon Wilderness.<sup>108</sup> The bill would have created a 299,000-acre expansion of the Hells Canyon Wilderness, which in turn would have expanded the recreation area.<sup>109</sup> In addition the bill proposed to place a cap on the amount of timber that could be annually harvested from the recreation area.<sup>110</sup> This bill received stiff opposition from local communities,<sup>111</sup> school districts,<sup>112</sup> ranchers,<sup>113</sup> and loggers<sup>114</sup> who all saw the bill as a threat to the economic livelihood of the area and wanted no more wilderness and no more regulations on timber harvesting. In addition to these local interests, Governor Atiyeh of Oregon strongly opposed the bill<sup>115</sup> as did many members of the Oregon State Legislature.<sup>116</sup> On the other side of the debate many of the key environmental groups came out in support of this bill<sup>117</sup> as did the Nez Perce Indian Tribe who saw it as a means of protecting and enhancing historic salmon runs.<sup>118</sup> Yet in the end there was just not enough support to get this bill through. The bill eventually died in committee.<sup>119</sup>

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<sup>104</sup> *Id.* at 13-14.

<sup>105</sup> *Id.* at 14.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> Subcom. On Pub. Lands, Reserved Water and Resource Cons. Of the Comm. On Energy and Natural Res. U.S. Sen., *Hearings on S.1803*, 2, 99<sup>th</sup>, (Aug. 19, 1986).

<sup>109</sup> *Id.* at 3.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 37,38,249,331.

<sup>112</sup> *Id.* at 39, 43, 44, 48.

<sup>113</sup> *Id.* at 127, 142, 144, 238.

<sup>114</sup> *Id.* at 118, 189, 197, 305.

<sup>115</sup> *Id.* at 7.

<sup>116</sup> *Id.* at 10,12,15.

<sup>117</sup> *Id.* at 86, 118, 212, 261, 267.

<sup>118</sup> *Id.* at 83.

<sup>119</sup> 131 Cong. Rec. 3651 (1985).



However, at roughly the same time, more targeted bills that did not expand the recreation area or significantly change the area's management scheme did pass the Congress. Portions of the Imnaha River were designated as wild and as recreation rivers by the Omnibus Oregon Wild and Scenic Rivers Act of 1988.<sup>120</sup> The Oregon Wilderness Act of 1980 designated as wilderness several wilderness study areas located within the recreation area that had been identified in the original act.

In the early 1990's a new concern arose in the Hells Canyon National Recreation Area. Jet Boats had become a popular means of transportation up the river and some of the boats were more than twenty feet in length and had very large motors. Some argued this decreased the recreational opportunities for non-motorized users and negatively impacted the natural environment of Hells Canyon. When the Forest Service adopted river management plans to restrict motorized craft on several days during each week of the summer, Senator Craig (ID-R) proposed legislation (S.1374) to override the Forest Service management plan.<sup>121</sup> That legislation failed, in part because the Department of Agriculture opposed it.<sup>122</sup> The debate in this case came down to the environmental and conservation organizations<sup>123</sup> siding with the non-motorized users<sup>124</sup> against the motorized river users.<sup>125</sup> This bill never got the support needed to get out of committee and it died there.<sup>126</sup>

In 1995 Congresswoman Chenoweth (ID-R) and Congressman Cooley (R-OR) introduced H.R. 2693, seeking to slightly modify the boundaries of the Hells Canyon Wilderness area so as to exclude a 6.5-mile section of road so it could be opened to increased public access into the area.<sup>127</sup> This bill did get out of committee but it was continually postponed on the floor of the House and died without a full vote.<sup>128</sup>

In 1997 Senator Craig (ID-R) once again proposed legislation (S.360) that would modify the way in which motorized jet boats use the Snake River through Hells Canyon.<sup>129</sup> This bill was

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<sup>120</sup> 16 U.S.C. § 1274(78); Pub. L. No. 100-557.

<sup>121</sup> Subcom. On Pub. Lands, Reserved Water and Resource Cons. Of the Comm. On Energy and Natural Res. U.S. Sen., *Hearings on S.879, S.1167, S.1168, S.1174, S1374*, 16, 104<sup>th</sup>, (May 2, 1996).

<sup>122</sup> *Id.* at 22.

<sup>123</sup> *Id.* at 26.

<sup>124</sup> *Id.* at 57.

<sup>125</sup> *Id.* at 52.

<sup>126</sup> 141 Cong. Rec. 2435 (1995).

<sup>127</sup> H.R. Rep. No. 104-779,1-2, (Sept. 9, 1996).

<sup>128</sup> 141 Cong. Rec.1922 (1996).

<sup>129</sup> Sen. Rep. No. 105-78, 1-2, (Sept.11, 1997).

once again opposed by the Department of Agriculture.<sup>130</sup> As for supporters and dissenters, the same people lined up for this bill that had lined up just a couple of years before when S.1374 had been proposed.<sup>131</sup> This bill was reported out of committee but never received a vote of the full Senate and died at the conclusion of the session.<sup>132</sup>

The same year two bills were presented in the House of Representatives. One bill, H.R. 838, sponsored by Representative Chenoweth (ID-R), was a companion bill to S.360.<sup>133</sup> This bill suffered the same fate as S.360.<sup>134</sup> In addition, Representative Smith (OR-R) introduced H.R. 799, a virtual duplicate of H.R. 2693, which had failed just a couple of years before.<sup>135</sup> This bill once again attempted to slightly modify the boundaries to the Hells Canyon Wilderness so access could be gained to a 6.5-mile segment of a forest service road.<sup>136</sup> This bill made it out of committee but once again failed when it reached the floor of the House.<sup>137</sup>

As can see from the above discussion, the only Hells Canyon legislation that has been successful since the passage of the original establishment act in 1975 were bills to add segments of the Imnaha to the Wild and Scenic River System and the Oregon Wilderness Act which designated a number of new wilderness area and also cleaned up wilderness study designations from the original establishment act. No legislation to expand or alter the recreation area's boundaries was successful. Neither was legislation intended to reverse Forest Service management decisions (though the current political climate might be less adverse to such legislation).

The legislative history does not clearly explain how Congress fixed on the amount of wilderness to be designated as part of the recreation area. However, the amount of wilderness proposed in the original national recreation area bill in 1973 is remarkably similar to the amount of wilderness that was included in the 1975 bill that was enacted into law. It appears from some reports that there was substantial support for including more wilderness in the original act but the supporters eventually backed away from those larger numbers. The Department of Agriculture's

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<sup>130</sup> *Id.* at 5-6.

<sup>131</sup> For a complete list of those who commented in favor of an in opposition to the bill see the table of contents for the hearings in the Hells Canyon loose-leaf.

<sup>132</sup> Congressional Index, 105<sup>th</sup> Congress, 21005, CCH Publication.

<sup>133</sup> H.R. Rep. No. 105-378, (Nov. 4, 1997).

<sup>134</sup> Congressional Index, 105<sup>th</sup> Congress, 35013, CCH Publication.

<sup>135</sup> H.R. Report 105-377, (Nov. 4, 1997).

<sup>136</sup> *Id.* at 1-2.

<sup>137</sup> Congressional Index, 105<sup>th</sup> Congress, 35013, CCH Publication.

assertion that<sup>138</sup> insufficient resource surveys had been done in much of the Hells Canyon area may have been persuasive.<sup>139</sup> In fact, the major source of conflict over wilderness designation during the hearings was the potential loss of resources that would result from a wilderness designation.<sup>140</sup> It also appears that the decision to opt for a smaller wilderness area designation helped in securing the support of people like the Governors of Idaho, Oregon, and Washington and their respective state legislatures.

But in reality the fight is probably not over. Some conservation groups are still pressing to get Hells Canyon set aside as a national park.<sup>141</sup> The Hells Canyon Preservation Council wants greater protection for Hells Canyon ecosystem and is seeking to have legislation introduced that would combine the Hells Canyon National Recreation Area, the Hells Canyon Wilderness, and the Eagle Cap Wilderness to create the Hells Canyon-Chief Joseph National Preserve with a greater emphasis on protection of the ecosystem and less emphasis on recreation and human activities.<sup>142</sup>

## **IV. MANAGEMENT PLAN**

Section 8(a) of the Hells Canyon National Recreation Area Act of 1975<sup>143</sup> directed the Secretary of Agriculture to develop a “comprehensive management plan for the recreation area which shall provide for a broad range of land uses and recreation opportunities.” 16 U.S.C. § 460gg-5. Since the recreation area includes parts of three national forests (the Wallowa-Whitman, Nez Perce, and Payette) that span three administrative regions (1, 4 and 6), the Chief Forester decided that the area would be managed by the supervisor of the Wallowa-Whitman National Forest within region 6. The Wallowa-Whitman has therefore been the lead entity not

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<sup>138</sup> S. Rep. No. 94-153, 25, (May 22, 1975).

<sup>139</sup> H.R. Rep. No. 94-607, 22, (Oct.31, 1975).

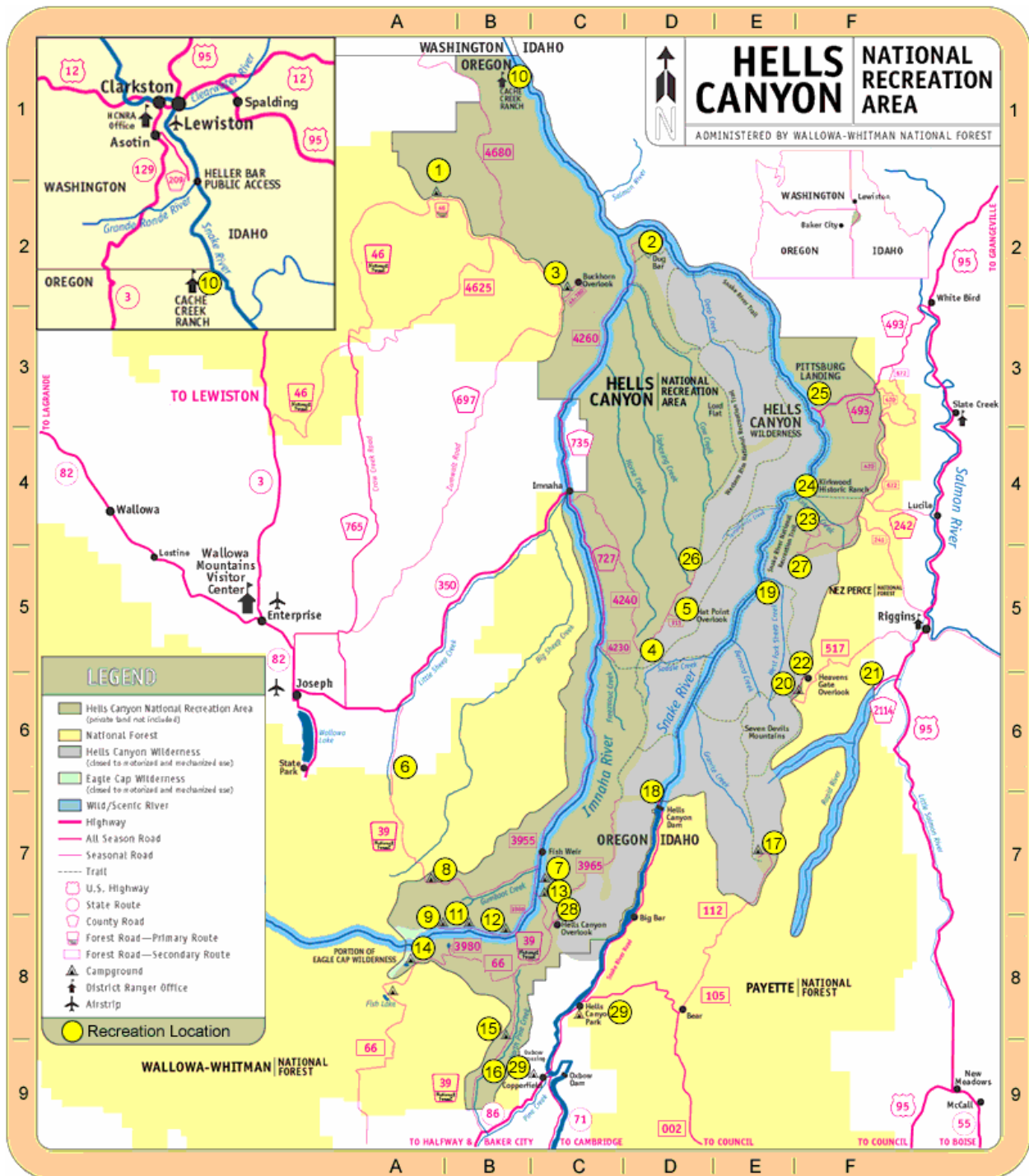
<sup>140</sup> The table of contents for all the hearings have been included in the Hells Canyon loose-leaf binder so all the individuals who commented can be viewed.

<sup>141</sup> For a discussion on many of the current conflicts in Hells Canyon and the various efforts to further protect the area see Joel Connelly, *Salvation for Hells Canyon*, National Parks, Mar/Apr. 1994 Vol. 68 Issue 3/4 p.24.

<sup>142</sup> Hells Canyon Preservation Council, *The Hells Canyon-Chief Joseph National Preserve Project*, <<http://www.hellscanyon.org/HCCJPabout.htm>>, August 19, 2003.

<sup>143</sup> The Hells Canyon Recreation Area act is codified at 16 U.S.C. §§ 460gg, 791a, 1131-1133, 1274, 1276 (2000).

Figure 1. Map of Hells Canyon National Recreation Area.



only for establishing programmatic direction for management of the recreation area but also for related tasks, such as compliance with the Endangered Species Act for all activities occurring within the recreation area.<sup>144</sup>

The Wallowa-Whitman National Forest completed its first comprehensive management plan in 1981 and the record of decision was signed by the chief forester, Max Peterson. However, that comprehensive management plan was highly controversial and attracted twenty-one appeals. In the face of that onslaught, the Forest Service rescinded its initial record of decision.<sup>145</sup>

The agency completed a new comprehensive management plan in 1982. It too was signed by Max Peterson, but it too attracted significant controversy and appeals. In 1983, Assistant Secretary of Agriculture Crowell ruled on five appeals related to boating on the Snake River.<sup>146</sup> Later that year, the assistant secretary also ruled that aircraft could use the Big Barr air strip within the Snake River Wild and Scenic River corridor.<sup>147</sup> Finally, in 1984 the assistant secretary ruled on another set of appeals, sustaining proposals for silvicultural methods in one management area and revising some flood plain designations for private land use regulations.

In 1990, the Forest Service incorporated the comprehensive management plan into the Wallowa-Whitman Forest Plan without amendment. A few years later the Forest Service initiated a review to assess whether the situation on the ground warranted changes to the

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<sup>144</sup> The Forest Service completed a revision to the comprehensive management plan for the recreation area. The EIS that accompanied the record of decision contains a wealth of information about the recreation area's current and past management.

U.S. Department of Agriculture,<sup>145</sup> *Final Environmental Impacts Statement, Hells Canyon National recreation Area Comprehensive Management Plan*, Volume 1, 1-18 and 1-19 ((2003) (hereinafter cited as *EIS*) contains an expansive timeline of management decisions for the recreation area.

<sup>146</sup> The appeal decision limited motorized boat travel on the Snake River during the period from Memorial day to Labor Day but expanded daily use on days when such use was permitted, established a campsite reservation system, and increased float party sizes.

<sup>147</sup> *Id.*

comprehensive plan. In 1998, the agency formally re-initiated the planning process.<sup>148</sup> The agency decided that rather than do a wholesale revision of the comprehensive plan, it would focus on several discrete and relatively small issues. Its goals were to maintain the area's emphasis on dispersed recreation, maintain the status quo for wilderness area management, increase service days for commercial aviation from 100 to 300 while keeping commercial air service out of the backcountry, and restricting motorized vehicle travel to designated routes and trails.

The Forest Service record of decision on its proposed revisions to the comprehensive management plan as signed July 21, 2003. The agency concluded that the changes did not amount to a significant forest plan amendment.

## **A. Context**

The Hells Canyon National Recreation Area is large and diverse and therefore poses a wide range of management challenges. The recreation area encompasses 652,488 acres, including 3,300 acres of privately owned land. Formally designated wilderness areas represent roughly one-third of the total recreation area: 220,000 acres. The recreation area also includes 290,158 acres of inventoried roadless area. And the Imnaha and Rapid River Wild and Scenic river corridors (35,474 acres) and Snake River Wild and Scenic river corridor (14,535) acres traverse the recreation area.

Conversely, the Hells Canyon dam occupies one corner of the recreation area. 311 different land owners own 3,300 acres within the recreation area,<sup>149</sup> which also includes seven patented mining claims as well as thirty-six untanted claims (all in Idaho) that pre-date the

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<sup>148</sup> Because of the process's timing, it was conducted pursuant to the 1982 NFMA regulations.

<sup>149</sup> That number includes twenty-five ranches located within the recreation area, primarily along the Imnaha River drainage. Some of those ranches hold permits for grazing allotments within the recreation area. In addition, some ranchers with base properties outside the recreation area also hold grazing permits for allotments partly or wholly within the recreation area. *EIS* at 3-443.

recreation area. Paved roads wind through parts of the recreation area to scenic viewpoints, and many miles of less developed road also are found within the area. Approximately ninety developed facilities exist in the recreation area, ranging from campgrounds and trailheads to scenic lookouts and cabins.

## **B. Grazing and Grassland Management**

Management of grazing on grasslands within the recreation area has been controversial throughout the area's existence.<sup>150</sup> That owes in part to the area's history: 108,000 animal unit months (AUMs) were permitted within what is now the recreation area in the 1920s. By 1998, that had fallen to 38,260 (a reduction of 65%). At the time the comprehensive plan amendments were being considered, the recreation area included grazing allotments that provided 39,750 AUMs, which still represents significant grazing activity. Those AUMs were distributed as follows:

Cattle/Oregon	34,990 AUM
Cattle/ID	4,950
Sheep/ID	170 <sup>151</sup>

Until adoption of the most recent amendments to the comprehensive plan, ninety-one percent (566,4110 acres) of the Hells Canyon National Recreation Area were subsumed by fifty-one grazing allotments. Until adoption of the recent changes to the comprehensive plan, the recreation area included fifty-one allotments. However, only 54 percent of those allotments

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<sup>150</sup> The EIS does a good job of explaining the local citizens' disappointment with the way in which the area has been managed to, in their view, gradually exclude extractive uses such as grazing, timber, and mining. Fundamentally, the local citizens understood section 7(7)'s language (area to be administered in a manner compatible with seven broad purposes, including such management of 'timber harvesting by selective cutting, mining and grazing .. as are compatible with the provisions of this Act) as maintaining such activities at the same level that obtained on the date of passage of the act. *EIS Summary* at 9. Moreover, section 8(f) no doubt lent some support to their contention by directing that "such activities as are compatible with the provisions of this Act, but not limited to timber harvesting ... mining and grazing may continue during development of the comprehensive management plan, at current levels of activity.... Furthermore, in development of the management plan, the Secretary shall give full consideration to continuation of these ongoing activities in their respective areas."

<sup>151</sup> *EIS* at 3-150.

(representing 298,905 acres) in forty allotments were active. The other eleven allotments representing 267,506 acres (47 percent of the allotments) were vacant.<sup>152</sup>

Of the eleven vacant allotments, three were vacated in the 1980s while 8 were vacated in the 1990s. According to the Forest Service, three were waived on the Oregon side of the Snake River in 1994 and 1996 to prevent the transmission of disease from domestic sheep to wild bighorn sheep. Two allotments became vacant when the agency acquired the base ranches that had held the allotments. One was vacated for personal reasons and another for economic reasons. One was vacated because the holder failed to qualify for its use. And one rancher vacated an allotment he no longer needed.

The agency conceded in the environmental impact statement that it had only limited knowledge about the current ecological condition of the recreation area's grasslands.<sup>153</sup> It used two different methods to estimate the overall range conditions in an attempt to measure the amount of acreage that was in satisfactory condition: a review of its permanent monitoring sites as well as an inventory of sites that fairly represented all of the allotments.<sup>154</sup> Seventy-eight (78) percent of the agency's permanent monitoring sites were in satisfactory condition, while ninety-seven (97) percent of inventory sites were reported to be in satisfactory condition.

However, some of the Forest Service's data painted a somewhat less rosy picture. Using range condition ratings, it appears from the data that 15-35% of ridge-top Montana is in poor or very poor condition; 15-45% of the ridge tops are in poor or very poor condition; and 8-22% of

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<sup>152</sup> All of those allotments are located entirely or partly within the recreation area. *EIS Summary* at 43.

<sup>153</sup> *EIS* at 3-151.

<sup>154</sup> The agency defined "satisfactory" as a tract that is in a mid-seral state and trending upward, or better. N See *EIS* at 3-147 to 3-153.



upper slopes, 25-45% of bench lands, 10-30% of lower slopes, and 15-45% of bottom lands are in poor or very poor condition.<sup>155</sup>

In revising its comprehensive management plan, and based upon the information available to it, the Forest Service decided to close most of the vacant allotments “with the intent of maintaining relatively large blocks of intact native grasslands ungrazed by livestock.”<sup>156</sup> Using that as its goal, the Forest Service’s final comprehensive plan amendments close 92% of the vacant allotments and classify them as unsuitable for permitted livestock grazing. The agency retained 3,641 acres (1%) as vacant and dedicated 7% (18,083 acres) to administrative horse grazing.<sup>157</sup> However, since that same 7% were being grazed pre-amendment even though they are accounted for as vacant, the net result is that the comprehensive plan amendments effectively freeze grazing at the levels at which grazing was actually occurring before the plan amendments. As a result, there is no possibility that grazers will be able to use the vacant allotments to run sheep or cattle.

One final point is important: most, but not all of the allotments that were vacated overlay the lands designated as wilderness within the recreation area. While the Forest Service considered using the vacant allotments to spread out the impact of domestic livestock grazing in the recreation area, the agency concluded that the number of new miles of fencing that would be required would pose an irreconcilable conflict with the purposes of the Wilderness Act.<sup>158</sup>

## **C. Timber**

Timber removal is another issue that has animated the debate over management of the recreation area since its inception. The enabling act itself provided in at least two different

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<sup>155</sup> These findings were extrapolated from data found at pages 3-149 to 3-150 of the EIS.

<sup>156</sup> *EIS* at 3-154.

<sup>157</sup> *Id.*

<sup>158</sup> Interview with Mary O’Brien, December 10, 2003. Notes can be found in the memorandum on public opinion prepared by Doug Cannon, in the Hells Canyon binder.

provisions that to the extent timber harvesting occurred within the recreation area, it could only be by selective cutting, not by clearcutting.<sup>159</sup> Building upon that limitation, the Forest Service limited timber activity to projects that protect and enhance ecosystem health, wildlife habitat, or recreational uses; reduce the risk of harm from hazard trees; or respond to natural events such as wildfire, insect infestation, or high winds.<sup>160</sup> As a result, the agency excluded forest lands in the recreation area from the regulated component of the Wallowa-Whitman National Forest timber base and from consideration as part of the forest's allowable sale quantity.<sup>161</sup>

The previous management plan contemplated an annual timber harvest of 4.695 million board feet annually. The recently-adopted amendments reduce that total by 49%, to 2.405 million board feet annually for the next decade.<sup>162</sup> It appears that the timber activity will be roughly evenly split between pre-commercial thinning (5,400 acres) and mechanical treatment and underbrush removal to reduce fire danger (1550 acres) on the one hand and selective tree removal from roaded areas 98,200 acres in the new plan as opposed to 21,000 in the previous plan).<sup>163</sup>

## **D. Minerals**

The Hells Canyon Recreation Area Act withdrew all federal lands within the recreation area from location under the mining act as well as from disposition under all laws related to mineral leasing, subject to valid existing rights.<sup>164</sup> According to the Forest Service, a set of unpatented claims known as the Duck Creek claims in Oregon were abandoned in 1995.<sup>165</sup>

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<sup>159</sup> Section 7(7), 16 U.S.C. § 460gg-4(7) (2000), related to long-term management of the area, and section 8(f), 16 U.S.C. § 460gg-5(f) (2000), related to management of the recreation area during the preparation of the management plan, limit timber harvesting to "selective cutting." See also 16 U.S.C. §460gg-7(e) (2000).

<sup>160</sup> *EIS* at 3-131.

<sup>161</sup> *EIS* at 3-131, 3-144.

<sup>162</sup> *EIS* at 3-457.

<sup>163</sup> *EIS* at 3-139.

<sup>164</sup> 16 U.S.C. § 460gg-8 (2000).

<sup>165</sup> *EIS* at 3-429.

Thirty-six (36) unpatented mining claims in Idaho also pre-date the act. All of those claims are found in the vicinity of Blue Jacket Mine where “most of the significant mineral activity has taken place.”<sup>166</sup> None of these claims is located within the wilderness area, and apparently no significant mining activity has occurred on any of the unpatented claims.

The Blue Jacket Mine itself is a collection of seven patented claims. Some work occurred on these claims between 1976 and 1988, but no major work has been done since then.<sup>167</sup> The claim owners sought from the state of Idaho a permit to conduct mining activities on the patented claims but the state rejected the application and requested further analysis. The mine owners have not conducted that analysis nor done any further work at the mine area.<sup>168</sup> The Forest Service believes that future mining activity is highly unlikely since any proposal would be highly controversial and financing would be difficult to obtain.<sup>169</sup>

## **E. Roads and Access**

A network of roads, ranging from a state highway to challenging four-wheel drive routes, exists within the recreation area. The use of backcountry roads and off-road travel were a significant issue during preparation of the comprehensive plan amendments. However, the comprehensive plan represents significant progress toward reducing on- and off-road travel:

- The final plan adopts a new standard that reduces road density from 1.5 miles per square mile to 1.35 miles per square mile;
- The new standard on road density will result in the closure of approximately one-third of existing unpaved roads within the HCNRA<sup>170</sup>;
- The new plan implements a “closed until posted open” management standard for off-road vehicles throughout the recreation area and eliminates a provision in the previous plan that permitted off-road vehicle use within 300 feet of existing routes in some areas;

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<sup>166</sup> *Id.*

<sup>167</sup> Apparently, the known ore reserves are limited in aerial extent to the patented claims. *EIS* at 3-429.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *EIS* at 3-43.

- Imposes seasonal closures on five roads, including three ridge-top roads that effectively leave them open only from June 1 through approximately August 31 (the closure goes into effect three days before the start of the archery season)<sup>171</sup>.

The new comprehensive plan does not, however, eliminate controversy over access issues within the HCNRA. While The Wilderness Society is generally highly supportive of the plan amendments, it is litigating the Forest Service's response to substantial off-road travel that is occurring around the Kirkwood Road.<sup>172</sup> Conservationists also continue to press the Forest Service to address their contention that the Lord Flat Trail violates the wilderness boundary in several places. More generally, conservationists see Off-Highway Travel increasing at a rapid pace and believe a more aggressive management strategy is needed to reduce environmental impacts from this activity.

The HCNRA also includes a number of air strips, and the Forest Service increased the number of service days from 100 to 300, while restricting the use of backcountry strips to emergencies.

As noted above, the recreation area also is home to 311 land owners. The previous and new plan promise to provide "reasonable ingress/egress through Hells Canyon National Recreation Area lands" and calls for the development of access management plans for private inholdings, consistent with the requirements of the Alaska National Interest Lands Conservation Act. However, it appears that access to private lands has not been, to date, a contentious issue within the recreation area. Nevertheless, the amended plan states that the acquisition of private lands along the Snake River is a high priority for the agency.

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<sup>171</sup> EIS at 3-43.

<sup>172</sup> The Wilderness Society, *America's Wilderness – The Wilderness Society's Member Newsletter* at 5 (Winter 2003-2004).

## **E. Wilderness and Roadless Areas**

The wilderness area within the recreation area is managed pursuant to the Wilderness act of 1964, and there appear to have been few conflicts.

The Forest Service has identified thirteen roadless areas that lie entirely or partly within the exterior boundaries of the recreation area. Those roadless areas encompass 290,158 acres within the recreation area.<sup>173</sup> At the time it completed the comprehensive plan amendments, the agency committed to retaining those areas in its roadless classification.<sup>174</sup>

## **F. Water Resources**

Hells Canyon National Recreation Area is somewhat anomalous in that a major system of hydroelectric dams are located on the Snake River immediately upstream of where that river (designated as wild by the act) enters the recreation area. Even though the segment of the Snake River within the recreation area is designated as a wild river, the Hells Canyon National Recreation Area Act severely circumscribes the Forest service's ability to protect riverine ecosystem values on the Snake.

Section 6(a) of the Act states that neither it nor the Wild and Scenic Rivers Act "shall in any way limit, restrict, or conflict with present and future use of the Snake River ... upstream from the boundaries of the" recreation area.<sup>175</sup> Section 6(b) then erects a barrier to flow requirements on the Snake River downstream of Hells Canyon Dam.<sup>176</sup> Thus, even though the Forest Service's environmental analysis notes the adverse effects imposed on the aquatic environment by the upstream hydroelectric system, the agency also concedes there is little that

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<sup>173</sup> *Id.* at 1-26.

<sup>174</sup> *Id.*

<sup>175</sup> 16 U.S.C. § 460gg-3(a) (2000).

<sup>176</sup> 16 U.S.C. § 460gg-3(b) (2000).

can be done to meliorate those problems.<sup>177</sup> Fortunately, however, the act also directs the agency to manage the rivers within the recreation area to preserve their free-flowing nature.<sup>178</sup>

## **G. Wild and Scenic Rivers**

Three wild rivers are located within the recreation area. The Snake River's 67.5-mile wild and scenic corridor runs from Hells Canyon Dam and Asotin, Washington and is a heavily used but remarkable resource. This river segment was designated as wild and scenic by the Hells Canyon National Recreation Area Act. A separate Recreation management Plan, most recently updated in 1999, provides the principal management guidance for this resource. The principal issues surrounding management of the Snake River has been use levels and their allocation between private and commercial trips, and use of the river by jet boats. Local groups also tried to convince the Forest Service to consider opening a backcountry airstrip as part of the comprehensive plan amendment process, but failed.<sup>179</sup>

The Imnaha River flows into the recreation area from the Eagle Cap Wilderness in the Willowa Mountains of Oregon. This area was added to the Wild and Scenic River system in 1988. A separate recreation management plan also exists for management of this river corridor.<sup>180</sup>

Finally, the Hells Canyon legislation also designated twenty-seven miles of the Rapid River (from its headwaters to the forest boundary) as a wild river. This segment of wild river does not have an independent management plan; instead, its management is guided by the recreation area's comprehensive management plan.<sup>181</sup>

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<sup>178</sup> 16 U.S.C. 460gg-4 (2000).

<sup>179</sup> *EIS* at 3-251.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

On the whole, the Forest Service's plans are designed to protect the free-flowing river's ecosystem values. The management direction is provided both by the comprehensive plan and by two recreation plans. In addition, several biological opinions related to threatened and endangered species (principally anadromous fish) constrain the agency's discretion. As a result, the conflicts around management and protection of all three river corridors seem to be narrow. One set involves permit levels for outfitters and guides; another revolves around the use of jet boats on the Snake River; and conservationists urged the Forest service to close the Krikwood Road (which provides access both to the Snake River and the wilderness area), because of the high level of off-road vehicle use occurring in the area.

#### **IV. LITIGATION AND APPEALS**

Hells Canyon National Recreation Area has engendered its fair share of litigation since the area's creation. Many of the cases have revolved around management of recreation in the Snake River, particularly the dispute over motorized water craft.<sup>176</sup> Other cases have spurred the Forest Service to take management actions that favor conservation but which the agency likely would not otherwise have taken. The principal cases are briefly outlined here.

In *Oregon Natural Resources Council v. Lyng*,<sup>182</sup> the conservation plaintiffs were trying to halt a salvage logging project in one of the management areas designated as "dispersed recreation/timber management." The plaintiffs' NEPA and Clean Water Act claims failed. However, the Ninth Circuit agreed with them that section 7(e) of the Hells Canyon National Recreation Area Act<sup>177</sup> created for the agency a nondiscretionary duty to promulgate standards for "timber harvesting by selective cutting." By rejecting the Forest Service's argument that it

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<sup>182</sup> 882 F.2d 1417 (9<sup>th</sup> Cir. 1989), *amended* 899 F.2d 1565 (9<sup>th</sup> Cir. 1990). The amendment addressed attorneys fee issues and not the substantive issues addressed in this case.

could manage timber resources on recreation area lands under the same regulatory regime that pertained to other national forest timber lands, the Ninth Circuit implicitly adopted the plaintiffs' argument that more stringent standards be obtained on recreation area lands.

The agency did promptly issue interim regulations without notice and comment that directed management of recreation area lands consistent with the comprehensive management plan and underlying Forest Service regulations of general applicability. The agency also later (in 1992) issued notices of intent to adopt rules governing federal and private lands within the recreation area, but never issued final rules. In *Hells Canyon Preservation Council v. Richmond*,<sup>183</sup> the plaintiffs sued to compel issuance of final rules. The court granted an order compelling timely issuance of such regulations, having ruled that they had been unreasonably delayed. In the process, the court agreed with the plaintiffs that the "Forest Service is bound by Congressional mandate to issue final regulations which are aimed at enhancing the recreational and ecological values unique to the" recreation area. And while the court noted the agency's broad latitude in selecting the means for accomplishing those goals, the court also noted that the agency's charge is to issue regulations that "protect the very values which HCPC claims are being compromised by the failure to regulate, and it must do so within a reasonable time."

## **VI. LOCAL ATTITUDES AND ECONOMIC IMPACT**

### **A. Local Attitudes**

The Forest Service conducted a study of local attitudes early in the plan amendment process and found that large majorities of people in the communities surrounding the recreation

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<sup>183</sup> <sup>183</sup> *Hells Canyon Alliance v. United States Forest Service*, 227 F.3d 1170 (9<sup>th</sup> Cir. 1170) is representative of those cases and also offers a thorough history of the dispute, including the development of a recreation management plan.

<sup>183</sup> 16 U.S.C. § 460gg-7 (2000).

<sup>183</sup> 841 F. Supp. 1039 (D. Or. 1993).



area want to see the area protected for future use or protection (with the number of respondents opting for “future use” roughly equaling the number citing support for “protection”). However, that survey, as well as the interviews conducted by the authors of this report, suggest that many people who live in the immediate vicinity of the recreation area are disenchanted with the way in which the recreation area is being managed. They tend to believe that the Congress promised to maintain timbering, grazing, mining and other traditional uses at the same levels at which those activities were occurring in 1975, but that the Forest Service has gradually (and precipitately, with the most recent plan amendments) moved away from those uses to a focus on recreation. Those sentiments likely underlay Wallowa County’s decision to appeal the recent comprehensive plan amendments. Local citizens also bemoan the failure of a recreation economy to generate much in the way of economic activity in their communities.

The conservationists with whom the authors spoke agreed on several points. First, they believe that while there remain significant management problems within the recreation area (principally off-highway vehicle use), the recreation area lands have been better managed than they likely would have absent the designation. Second, however, they also believe that the gradual improvement in management of the recreation area is due, in no small part, to their constant participation in the management process (not to mention administrative appeals and litigation). One interviewee in particular noted that the Sawtooth Recreation Area located in roughly the same region has been better managed, and attributed the difference to the Forest Service employees who have managed that area. Third, the conservationists we interviewed also lauded the recent amendments to the comprehensive plan as significant improvements over the status quo ante; they were particularly impressed by the agency’s decision to close the previously-vacant allotments.

## **B. Economic Impacts**

The authors were unable to locate any analyses of how the recreation area has affected the local economy. The environmental impact statement prepared to accompany the comprehensive plan amendments includes a section on socioeconomics. It confirms that the communities immediately surrounding the recreation area were once heavily dependent on timber, grazing, and mining, but that recreation has become a dominant feature in the local economy. A separate report (included in the binder for Hells Canyon) for Idaho communities located to the east of Hells Canyon confirm that the traditional industries are waning in importance, and that unemployment and other indicia of poverty are higher than are those for more urban areas of Idaho. The report encourages the local communities to embrace a recreation and tourism economy.

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## **APPENDIX B: CONTACT INFORMATION**

### **Agency Contacts**

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Wallowa-Whitman National Forest Headquarters  
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PO BOX 907  
Baker City, OR 97814  
(541) 523-6391  
[www.fs.fed.us/hellscanyon](http://www.fs.fed.us/hellscanyon)

Hells Canyon National Recreation Area Headquarters/Wallow Mountains Visitors Center  
88401 Highway 82  
Enterprise, OR 97828  
(541) 426-5546

Hells Canyon National Recreation Area-Snake River Office  
2535 Riverside Drive  
PO BOX 699  
Clarkston, WA 99403  
(509) 758-0616

Hells Canyon National Recreation Area-Idaho Office  
PO BOX 832  
Riggins, ID  
(208) 628-3916

## **Community Contacts**

Adams County  
Council, ID 83612-0048  
(208) 253-4561

Baker City  
1655 First Street  
PO BOX 650  
Baker City, OR 97814  
(541) 523-6541  
[www.bakercity.com](http://www.bakercity.com)

Baker County  
1995 Third  
Baker City, OR 97814  
[www.bakercounty.org](http://www.bakercounty.org)

Baker County Chamber of Commerce  
490 Campbell Street  
Baker City, OR 97814  
1-800-523-1235  
(541) 523-3356  
[www.bakerchamber.com](http://www.bakerchamber.com)

Baker County Visitors Bureau  
490 Campbell Street  
Baker City, OR 97814  
(541) 523-3356  
[www.visitbaker.com](http://www.visitbaker.com)

Boise City  
150 North Capital Boulevard  
Boise, ID 83702  
(208) 384-4422  
[www.cityofboise.org](http://www.cityofboise.org)

Boise Metro Chamber of Commerce  
250 S. 5<sup>th</sup> Street Suite 800  
Boise, ID 83702  
208-472-5200  
[www.boisechamber.org](http://www.boisechamber.org)

Boise Convention & Visitors Bureau  
312 South 9<sup>th</sup> Street  
PO BOX 2106  
Boise, ID 83702  
1-800-635-5240  
(208) 344-7777  
[www.boise.org](http://www.boise.org)

Clarkston City  
830 5<sup>th</sup> Street  
Clarkston, WA 99403  
(509) 758-5541

Clarkston Chamber of Commerce  
502 Bridge Street  
Clarkston, WA 99403  
(509) 758-7717  
[www.clarkstonchamber.org](http://www.clarkstonchamber.org)

Hells Canyon Chamber of Commerce (Baker County, OR)  
(541) 742-4222  
[www.halfwayor.com/chamberofcommerce](http://www.halfwayor.com/chamberofcommerce)

Idaho County  
320 West Main  
Grangeville, ID 83530  
(208) 983-2751  
[www.idahocounty.org](http://www.idahocounty.org)

Nez Perce County  
1225 Idaho Street  
PO BOX 896  
Lewiston, ID 83501  
(208) 799-3090  
[www.co.nezperce.id.us](http://www.co.nezperce.id.us)

La Grande City  
PO BOX 670  
La Grande, OR 97850  
(541) 962-1302  
[www.ci.la-grande.or.us/index.cfm](http://www.ci.la-grande.or.us/index.cfm)

La Grande Visitors Bureau/Union County Tourism  
102 Elm Street  
La Grande, OR 97850  
1-800-848-9964

Lewiston City  
1134 "F" Street  
PO BOX 617  
Lewiston, ID 83501  
(209) 746-3671  
[www.cityoflewiston.org](http://www.cityoflewiston.org)

Lewiston Chamber of Commerce  
111 Main Street Suite 120  
Lewiston, ID 83501  
1-800-473-3543  
(208) 743-3531  
[www.lewistonchamber.org](http://www.lewistonchamber.org)

Wallowa County  
101 S. River Street  
Enterprise, OR 97828  
(541) 426-4543  
[www.co.wallowa.or.us](http://www.co.wallowa.or.us)

Wallowa County Chamber of Commerce  
936 West North Street  
PO BOX 427  
Enterprise, OR 97828  
1-800-585-4121  
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## **Other Contacts**

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Hells Canyon Visitors Association  
800 Port Drive  
Clarkston, WA 99403  
1-800-774-7248  
(509)-758-7489  
[www.hellscanyonvisitor.com](http://www.hellscanyonvisitor.com)

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