

February 20, 2024

Mr. Ed Kowalski  
U.S. Environmental Protection Agency  
Enforcement and Compliance Assurance Division  
1200 Sixth Avenue, Suite 155  
Seattle, WA. 98101

Re: Complaint of Violation of The Clean Water Act and RCRA by the US Forest Service in the Hayden Lake Watershed, Idaho

Dear Mr. Kowalski,

The Hayden Lake Watershed Association, a 501(c)3 organization, represents approximately 300 households concerned with the quality of Idaho's Hayden Lake and the very special environment of its watershed. We are dedicated to protecting and restoring the environmental health and scenic beauty of Hayden Lake. We do this by working collaboratively with the community, government agencies, local officials and businesses.

Sixty three percent of the lake's watershed is managed by the US Forest Service. When the Forest Service announced its Honey-Badger Project Planning process in 2018, the Association took notice. The project boundaries encompassed the entire federally managed portion of Hayden Lake's watershed. The Association participated throughout the entire process. Our primary concerns were conditions that are known to or potentially could yield excessive sediment to tributary streams. We were also concerned about the Hayden Creek shooting site on FSR 437 which has operated without management for at least 30 years.

A primary storm water sediment yield is from FSR 437 (lower Hayden Creek Rd.) which accesses the lower few miles of Hayden Creek, Hayden Lake's largest tributary. During heavy rain and snow melt events sediments flow directly into Hayden Creek from the road and the shooting site. (See video on the Associations website: <https://haydenlakewatershedassociation.com/us-forest-service-honey-badger-planning-unit/>).

The Association proposed to the Forest Service that the road be closed and decommissioned. An alternate route was suggested that would place access well away from nearly all active stream discharge.

The Association also brought the Hayden Creek shooting site into the scoping process. Located in a borrow pit created by the Forest Service in the late 1970's or early 1980's, this location has been used for years by recreational shooters, experiencing use similar to local regulated gun ranges. Much of the use now includes AR-15 type rifles capable of more rapid-fire than those guns used in earlier years. As use has been entirely unregulated and unsupervised, many appliances and electronic devices have frequently been used for target practice, suggesting to us that additional hazardous contaminants, not just lead, may be present.

Lead toxicity is well understood to be a threat to water quality, human health, fish, mammals, and birds, particularly waterfowl. About one-half of the landowners on the lake rely on the lake water into which runoff from this site drains for domestic use. The Forest Service has demonstrated a disregard for Hayden Creek's water quality by ignoring BMPs for operating a shooting range, and for allowing sediment to flow freely into the creek along 437. The growing population on Hayden Lake that relies on lake water for its drinking water may have reason for concern.

Our position has been that like every other facility in the National Forest, the shooting site should be governed by a special use permit or a cost share agreement, to manage the cleanup and disposal of toxic materials. The other shooting range in the USFS ranger district, (Fernan Rod and Gun Club,) is governed under such an agreement, and must manage lead contamination as part of the agreement.

Rather than embrace these proposed solutions, the issues were withheld from the Honey-Badger planning process (2021 ROD.). The Forest Service explained that solutions for the FSR 437 and Hayden Creek Shooting site were likely to create a public interest that threatened to delay the vegetation management proposed for the watershed. We were assured by the Idaho Panhandle Forest Service Management team at the time that our concerns would be addressed in an unspecified planning process, based on their priorities. The Association objected in its comments and in a formal response to the draft decision document. The Forest Service's objection resolution letter did not address our objections nor make a formal commitment to a process or schedule to address sediment delivery to Hayden Creek or proper management of the shooting range.

The District Ranger and then the Assistant Forest Supervisor, acting in the DR's position after his transfer, met with Association representatives on several occasions to address both lower FSR 437 and the shooting site. The Forest Service representatives and their technical support team initially agreed that the road was poorly located and constructed, was unnecessary, and should be closed and decommissioned. They also agreed that the shooting activities should be stopped at the borrow pit if a management team could not be identified.

Later we learned that the shooting pit closure decision was reversed after internal discussions with Forest Service staff. The decision to close and decommission lower FSR 437 was also scrapped upon the recommendations of fire staff who felt it was needed to protect the urban interface. The Forest Service stated that it will address the poor construction and subsequent drainage issues on lower FSR 437, however it has recently informed our organization that road improvements would be delayed due to other priorities and budget concerns.

While these discussions were ongoing, in 2022, the Hayden Lake Watershed Improvement District (with some financial support from the Association and with the Forest Service's approval) re-built a degraded cement barrier across the west side of the shooting pit to prevent sediments and contaminants from washing into Hayden Creek. For one runoff season, the shooting pit was hydrologically isolated from draining into Hayden Creek.

In the summer of 2023 the re-built cement barrier was compromised to facilitate helicopter operation for fire suppression. The USFS rebuilt the barrier but did not restore it to its original condition or function, as runoff from the shooting site has been observed flowing through breaches in the barrier, across the road and into Hayden Creek.

Last Fall Forest Service District personnel, working with local shooters, implemented a "clean up" at the shooting range. The cement barrier was moved once again and heavy equipment donated by a participant removed the surface soil from the shooting site and replaced it with material from adjacent hill slopes. To our knowledge, no RCRA regulatory authority (DEQ or EPA) was consulted. When asked what became of the soil, which was clearly lead contaminated and likely contaminated with other hazardous materials, US Forest Service personnel responded that they didn't know. They suggested it "may have gone to the Kootenai County solid waste

facility.” It appears that the cleanup may have been carried out by volunteers and ranger district personnel without consideration of hazardous materials handling and disposal regulations.

In addition, the cement barrier was not re-constructed properly for the second time and the shooting site is again draining directly into Hayden Creek. Not only were federal regulations likely violated, the costly efforts of the Watershed Improvement District to stem the flow of contaminated drainage were negated.

Looking forward, the Association has no confidence that the Forest Service will adequately meet its responsibilities to implement the Clean Water Act and the Resource Recovery and Conservation Act. Association members have been given assurances, but the Forest Service has given no firm commitments, and most actions that have been taken were damaging.

We also question whether it was legal for the agency to ignore these pollution issues in favor of its vegetation management goals during the Honey-Badger NEPA process.

The Association recognizes that the enforcement of the RCRA is delegated to the State of Idaho. We request that the EPA intervene in these matters as the Forest Service has held the position that the state has no authority over a federal agency.

In addition, we believe that there are some CERCLA implications from the shooting range given the many appliances and electronic devices shot up over the years and the fact that the soil may have been illegally handled and disposed of.

We are aware that the EPA requires that developments over an acre have a stormwater plan. The EPA also holds our local highway districts responsible for stormwater run-off. We ask that the same standards be applied to the Forest Service, the owners of a shooting range and a poorly constructed road that collectively contribute excessive and possibly contaminated sediment to Hayden Lake. The Association requests that the EPA hold the Forest Service accountable for its violations of the Clean Water Act, RCRA and potentially CERCLA.

If you have questions concerning our complaint, please contact our technical representative, Geoff Harvey, at 208-762-1246 or by email: [whitefish48@Yahoo.com](mailto:whitefish48@Yahoo.com).

Thank you in advance for your attention to our concerns.

Sincerely,

Jan G. Wilkins  
President, Hayden Lake Watershed Association  
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