



November 3, 2018

Chris French, Associate Deputy Chief
Objection Reviewing Officer
1400 Independence Ave. SW
EMC-LEAP, Mailstop 1104
Washington, DC 20250
Submitted via email to: objections-chief@fs.fed.us

Re: OBJECTION – Revised Colville Forest Plan

Dear Associate Deputy Chief French:

WildEarth Guardians respectfully submits the following objection to the Colville National Forest's Revised Land Management Plan (Forest Plan), as identified in the draft Record of Decision (Draft ROD) and analyzed in the final Environmental Impact Statement (FEIS) under the National Environmental Policy Act (NEPA). The Forest Service's Draft ROD selects the plan components identified in alternative P. *See* Draft ROD, page 7. This revised Forest Plan will replace the Colville's 1988 Forest Plan. The Forest Service states that it has elected to follow the 1982 Planning Rules because this Forest Plan revision was initiated before 2012, but that the monitoring plan is subject to the 2012 Planning Rule consistent with the transition rule requirements.

Guardians submitted timely comments on the Forest Service's DEIS for the Colville National Forest Plan Revision on July 5, 2016 (hereafter, DEIS Comment). We hereby incorporate by reference those DEIS comments and the related Attachments A through I. The responsible official is Glen Casamassa, Pacific Northwest Regional Forester.

Pursuant to 36 C.F.R. § 219.54(c), the objector's name, address, telephone number, and email:

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WildEarth Guardians is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West, with over 220,000 members and supporters. We have offices across the West, including Seattle, Washington. WildEarth Guardians has an organizational interest in the proper and lawful management of the Colville National Forest.

Our members, staff, and board members participate in a wide range of hiking, wildlife viewing, hunting, fishing and other recreational activities on the forest.

1. Statement of the issues or parts of the Forest Plan revision to which the objection applies.

As presented in part 2, below, we believe the Forest Service's decision, including the Draft ROD, revised Forest Plan, and FEIS, violate law, regulation, or policy in numerous ways, including that the Forest Service:

- a. Proposes plan components that are inconsistent with NFMA and the 1982 planning regulations;
- b. Fails to address the agency's duties to identify and implement a sustainable minimum road system;
- c. Does not demonstrate compliance with the Travel Management Rule minimization criteria;
- d. Fails to address winter travel planning;
- e. Fails to develop a Forest Plan that protects and promotes wildlife conservation;
- f. Lacks adequate mitigation, monitoring, or enforcement;
- g. Does not provide sufficient information for meaningful public comment;
- h. Fails to adequately address or respond to comments in a meaningful way;
- i. Does not ensure compliance with the Endangered Species Act; and
- j. Does not ensure compliance with the Clean Water Act.

2. WildEarth Guardians identifies the following parts of the decision for objection.

a. Plan components are inconsistent with NFMA and the 1982 planning regulations.

WildEarth Guardians submitted comments outlining how the proposed plan components fail to establish adequate desired conditions, objectives, or standards and guidelines related to road management. DEIS Comment, pages 1-11. Our comments urged the Forest Service to incorporate plan components that would direct the forest to (1) remove unneeded roads to improve habitat connectivity and improve watershed health; (2) implement national best management practices for water quality; (3) maintain needed roads, in light of increasing extreme weather events and other climate stressors; and (4) create a financially sustainable road system that can be adequately maintained under current fiscal limitations. *Id.* We urged the Forest Service to incorporate stronger plan components for road-related forest-wide standards and guidelines, including stronger plan components to improve watershed conditions.

The Colville has more than 4,000 system roads roads, and the agency recognizes that the cost of managing this system is a challenge. Draft ROD at 6-7. In light of the impacts from forest roads, our comments noted it is nearly impossible to achieve ecological goals without thoroughly addressing the impacts from forest roads (including system, unauthorized, and temporary roads). Under this Draft ROD, however, the revised plan components related to road management still do not comply with NFMA or the 1982 planning regulations because they fail to provide necessary resource protection from roads, contain inadequate objectives, set inadequate standards and guidelines, and lack a sufficient monitoring program.

Resource Protection

The 1982 planning regulations contain numerous management prescriptions requiring forest plans to provide for resource protection. 36 C.F.R. § 219.27. The road-related plan components in the Colville's revised Forest Plan fail to provide those resource protections in violation of the regulations. For example, the 1982 planning regulations require forest plans conserve water resources and protect streams, streambanks, shorelines, lakes, wetlands, and other bodies of water. 36 C.F.R. §§ 219.27(a)(1), 219.27(a)(4). The Colville Forest Plan includes forest-wide desired conditions for water resources to "contribute to habitat and ecological conditions that are capable of supporting self-sustaining populations of native aquatic and riparian-dependent plant and animal species," FW-DC-WR-03 (Revised Forest Plan at 52), and "contribute to water quality necessary to support healthy riparian, aquatic, and wetland ecosystems," FW-DC-WR-05 (Revised Forest Plan at 52). Yet the revised Forest Plan fails to include any road-related standards or guidelines for conserving water resources or protecting water quality, despite best available science demonstrating that forest roads are a primary cause of water quality degradation.

What's more, the road-related standards for water resources actually emphasize construction of new roads and trails. *See* Revised Forest Plan at 56 (FW-STD-WR-05, stating that new roads and trails will be designed to minimize disruption of natural hydrologic processes). This road management approach improperly prioritizes timber interests and motorized use above improving and maintaining watershed conditions, and is directly inconsistent with Forest Service policy and the agency's own rules directing it to work towards a minimum road system. In light of best available science showing the extensive adverse impacts of forest roads to water quality, these plan components fail to ensure water quality is maintained, contrary to the 1982 planning regulations.

Under its resource protection requirements, the 1982 planning regulations require forest plans include measures for preventing the destruction or adverse modification of critical habitat for threatened and endangered species. 36 C.F.R. § 219.27(a)(8). But the road-related land management plan standards and guidelines in the Colville's revised Forest Plan actually allows new roads in key watersheds with ESA critical habitat for aquatic species so long as there is no net increase in system roads that affect hydrologic function. Revised forest Plan at 56-57 (FW-STD-WR-06). There is no reason to allow *new* road construction within ESA critical habitat for aquatic species, especially in light of best available science showing forest roads are extremely detrimental to water quality. This plan component does nothing to contribute to the recovery of listed species or designated critical habitat and is contrary to the Forest Service's 1982 planning rules.

Finally, none of the plan components in the Colville's revised Forest Plan address the requirement that forest plans provide that all temporary roads be planned and designed to re-establish vegetative cover on the disturbed area within a reasonable period of time, not to exceed 10 years after the termination of a contract, lease or permit, unless the road is determined necessary as a permanent addition to the National Forest Transportation System. 36 C.F.R. § 219.27(a)(11).

Inadequate Objectives

The rules define "objective" as a "concise, time-specific statement of measurable planned results that respond to pre-established goals" and "forms the basis for further planning to define precise steps to be taken and the resources to be used in achieving identified goals." 36 C.F.R. § 219.3. Objectives set forth in the Colville's revised Forest Plan are inadequate because, *inter alia*, they lack

time-specific parameters, fail to achieve or even work towards desired conditions, or are completely missing. As just one example, under FW-OBJ-WR-04 the Forest Service commits to restoring aquatic organism passage for all life stages of native species at 45 road and stream crossings within 15 years. Revised Forest Plan at 54. Addressing only 45 road and stream crossings over the life of the Forest Plan is woefully inadequate to work towards the forest's desired conditions. Forest-wide objective FW-OBJ-WR-06, which sets out to treat just 116 miles of hydrologically connected road within 15 years of Forest Plan implementation, is likewise completely inadequate given there are 4,000 miles of system roads across the Colville National Forest. *Id.* Plus the length of measuring these objectives (15 years – the duration of the Forest Plan itself) is far too long to inform or allow for further planning to define precise steps to be taken and the resources to be used in achieving identified goals. Thus, these objectives are inconsistent with the agency's own rules defining objectives. Instead, the Forest Service should use annual numeric goals based on numbers that will reasonably work towards addressing deferred maintenance and issues with aquatic organism passage.

Objectives for some plan components are completely missing. For example, the revised Forest Plan lacks any objectives, standards, or guidelines to work towards FW-DC-AS-01, that the “access system of authorized roads, bridges, trails, and docks is safe and sustainable; responds to administrative and public needs to the extent practicable; meets obligations to public and private cooperators; and is actively managed and adjusted to respond to and balance changing social, ecological, and economic conditions . . . [and] is maintained commensurate with maintenance levels, levels of use, and available funding.” Revised Forest Plan at 72. There are no objectives, standards, or guidelines that address maintenance of the road system in light of maintenance levels, levels of use, or available funding.

Inadequate Standards and Guidelines

The 1982 planning regulations require the establishment of qualitative and quantitative standards and guidelines to attain a plan's stated goals and objectives. 36 C.F.R. § 219.1 to 219.3. Because guidelines have not been interpreted as mandatory, standards are the only planning component that can adequately insure the protection mandated in NFMA.

Glaringly absent from the Access System plan components (the authorized roads, bridges, trails, and docks) are standards for road density.¹ Road density is a critical factor for wildlife. Densities over 1 mile per square mile cause negative impacts to wildlife. Omitting any standards or guidelines to address road densities across the Colville National Forest is unreasonable, arbitrary and capricious, and contrary to the 1982 planning rules requiring forest plans provide for adequate fish and wildlife habitat to maintain viable populations of existing native vertebrate species and provide that habitat for species is maintained and improved to the degree consistent with multiple-use objectives. 36 C.F.R. § 219.27(a)(6).

Suggested Resolution: Revise the road-related plan components to comply with the 1982 planning regulation requirements by providing necessary resource protection from roads, modifying objectives to be consistent with the purpose of an objective and to achieve desired conditions,

¹ There is a forest-wide wildlife standard for road density, FW-STD-WL-07. Revised Forest Plan at 63-64. But this standard only prohibits a net reduction of grizzly bear core habitat below levels in Table 15; it does not apply to the Colville National Forest as a whole and it creates a major exception for “physically undrivable roads.”

revising standards and guidelines to include road density standards that apply to the Colville National Forest road system as a whole (not just within grizzly core habitat).

b. The Forest Service fails to address the agency's duties to identify and implement a sustainable minimum road system.

Planning criteria are meant to guide the forest planning process and may be derived from laws, Executive Orders, regulations, and agency policy as set forth in the Forest Service Manual. 36 C.F.R. § 219.12(c). Under subpart A of the agency's Travel Management Rules, the Forest Service has a duty to right-size its road system by considering road recommendations from travel analysis reports, identifying the minimum road system, and prioritizing unneeded roads for decommissioning. *See* 36 C.F.R. § 212, Subpart A (Administration of the Forest Transportation System).

WildEarth Guardians urged the Forest Service to address its duties to identify and implement a minimum road system in its revised Forest Plan components. DEIS Comment, pages 1-11. We recommended language for plan components, including desired conditions, objectives, standards, and guidelines, as well as annual monitoring questions to address those plan components. *Id.*

In its response to comments, the Forest Service states that all alternatives in the FEIS address the ecological, social, and economic sustainability of the road system and address the concerns with variations. FEIS, Appendix E – Response to Comments, page 1091. But as explained throughout this objection, the listed plan components do not address the ecological, social, and economic sustainability of the road system. The Forest Service further states that language was added to FW-DC-AS-01 “to clarify that excess system and unauthorized roads are assessed at the sub-watershed scale and decisions regarding their disposition are made at the project level.” FEIS, Appendix E – Response to Comments at 1091. This does nothing to address the concerns outlined in our comments related to creating a forward-looking framework for working towards an environmentally and economically sustainable minimum road system.

Contrary to the purpose and intent of subpart A regulations and Forest Service policy, the Colville's revised Forest Plan fails to meaningfully address the forest's oversized and under-funded road system. The plan components lack direction to work towards a minimum road system, consistent with subpart A of the agency's own rules. Instead, throughout the land management plans the Forest Service focuses road-related plan components that emphasize *new* road construction. *See, e.g.*, Revised Forest Plan at 56 (FW-STD-WR-05, stating new roads will be designed to minimize disruption of natural hydrologic processes at perennial and intermittent stream crossings, valley bottoms, valley approaches and other overland drainage features); *id.* at 56-57 (FW-STD-WR-06, allowing new system roads within key watersheds with ESA critical habitat for aquatic species so long as there is no net increase). Setting a “no net increase” of system roads does nothing to move towards a minimum road system, as required by the agency's own rules.

Ultimately the Forest Service's approach and focus on new roads runs contrary to the agency's own rules and policy. The lack of any objectives, standards or guidelines to address the over-sized and under-funded road system on Colville is inconsistent with existing conditions on the forest and desired conditions for a road system that “is safe and sustainable; responds to administrative and public needs to the extent practicable; meets obligations to public and private cooperators; and is actively managed and adjusted to respond to and balance changing social, ecological, and economic

conditions . . . [and] is maintained commensurate with maintenance levels, levels of use, and available funding.” Revised Forest Plan at 72 (FW-DC-AS-01).

The revised Forest Plan also fails to prioritize unneeded roads for decommissioning. With a total of 4,000 miles of system roads on the Colville National Forest, the lack of any plan components aimed at reducing the size of the road systems is unreasonable. It is also very disheartening, considering the plethora of harmful impacts forest roads cause to water quality, aquatic life including bull trout, wildlife like woodland caribou, grizzly bears, and Canada lynx, and wildlife habitat. It runs contrary to the Forest Service’s own rules under subpart A and Forest Service policy. 36 C.F.R. § 212.5(b); 66 Fed. Reg. 3206 (Jan. 12, 2001) (“The intended effect of this rule is to help ensure that additions to the National Forest System network of roads are those deemed essential for resource management and use; that, construction, reconstruction, and maintenance of roads minimize adverse environmental impacts; and finally that *unneeded roads are decommissioned and restoration of ecological processes are initiated.*”) (emphasis added).

Identifying a resilient future road network is one of the most important endeavors the Forest Service can undertake to restore aquatic systems, water quality, and wildlife habitat, facilitate adaptation to climate change, ensure reliable recreational access, and operate within budgetary constraints. And it is a win-win-win approach: (1) it’s a win for the Forest Service’s budget, closing the gap between large maintenance needs and drastically declining funding through congressional appropriations; (2) it’s a win for wildlife and natural resources because it reduces negative impacts from the forest road system; and (3) it’s a win for the public because removing unneeded roads from the landscape allows the agency to focus its limited resources on the roads we all use, *improving* public access across the forest and helping ensure roads withstand strong storms.

The Forest Service must comply with its own regulation and identify the minimum road system. By failing to address this duty in the revised plan components, and instead establishing road management direction that emphasizes construction of new roads, the Forest Service’s direction is inconsistent with its own rules. Although Forest Plans are meant to set out a 10 to 15 year-approach, reality is quite different. The Colville has been working from a 1988 Forest Plan, approved more than 30 years ago. *See* Draft ROD at 5-6. Recognizing this reality and the likelihood that this revised Forest Plan will be in place for much longer than the next 10 to 15 years, the Forest Service may not further delay addressing its subpart A duties under this revised Forest Plan. Continued delay is unreasonable, arbitrary, and capricious.

Suggested Resolution: Revise the road-related plan components to work towards a realistic desired road system that is economically and environmentally sustainable and can be managed along with plan components for ecological sustainability. Include plan components for achieving an ecologically and fiscally sustainable minimum road system, as required under the 2012 planning rule and subpart A of the Forest Service’s travel rules, 36 C.F.R. part 212.

- c. The agency’s analysis does not demonstrate compliance with the Travel Management Rule minimization criteria.**

Our comments urged the Forest Service to develop plan components that ensure compliance with the Forest Service's travel management rule², the 2015 over-snow vehicle (OSV) rule³, and Executive Orders 11644 and 11989⁴. We explained how Amendment #31 to the 1988 Colville Forest Plan did not establish compliance with Subpart B of the Travel Management Rule because it did not analyze whether the motorized designations it authorized complied with the Executive Order and Travel Management Rule minimization criteria. DEIS Comment at 12.

In response, the Forest Service explains that the revised Forest Plan designated management areas suitable for motorized access. *See, e.g.*, Draft ROD at 5. But it claims the revised Forest Plan “is strategic in nature, does not make a commitment to the selection of any specific project, and does not dictate day-to-day administrative activities needed to carry on the Forest Service’s internal operations such as personnel matters, law enforcement, or organizational changes.” Draft ROD at 5. Later, however, it also states that the revised Forest Plan will “[a]llow motorized access on designated routes over approximately 75 percent of the forest in suitable management areas.” Draft ROD at 8.

It is clear that the Forest Service is attempting to make motorized use designations in this revised Forest Plan. For example, FWS concludes in its 2017 BiOp that “[b]ecause the standard listed above restricts over-the-snow vehicle use to designated routes within the caribou recovery area, it provides stronger conservation for the caribou than the existing Forest Plan, and decreases likelihood of caribou harassment.” FWS 2017 BiOp, page 199. *See also id.* at 202 (“DCs and STDs manage and limit winter recreation so that most caribou habitat would still be available.”). Any route or area designations that are new or different from what is identified in Amendment 31 to the 1988 Colville Forest Plan must demonstrate compliance with the minimization criteria. The Forest Service must demonstrate, on a granular level, how these winter motorized use designations were made consistent and in light of the Executive Order and Travel Management Rule minimization criteria.

The record here fails to demonstrate compliance with the minimization criteria. Extensive scientific research demonstrates how OSV use harasses and disrupts wildlife, including harmful impacts to grizzly bear, Canada lynx, wolverine, gray wolves, woodland caribou, black bear, and big game species. For example, best available science shows that dispersed winter recreation activities have the potential to adversely impact wolverine by disrupting and limiting use of wolverine natal denning areas. Yet this revised Forest Plan appears to authorize motorized use based on suitability determinations, including allowing OSV use in areas important for grizzly bear, Canada lynx, grizzly bear, woodland caribou, and wolverine.

The Forest Service makes no attempt to demonstrate how it located those motorized determinations with the objective of minimizing harm to natural resources, harassment of wildlife, disturbance of wildlife habitat, or conflicts among uses. The revised plan lacks components to ensure motorized use designations comply with the minimization criteria, establish a monitoring strategy to assess the impacts of off-road vehicle use (including OSVs) on Forest Service lands, or provide a feedback loop to modify motorized designations immediately when considerable damage occurs.

² 36 C.F.R. §§ 212.50-212.57 (Subpart B—Designation of Roads, Trails and Areas for Motor Vehicle Use) (commonly referred to as the travel management rule).

³ 36 C.F.R. §§ 212.80-212.81 (Subpart C—Over-snow Vehicle Use).

⁴ Exec. Order No. 11,644, 37 Fed. Reg. 2877 (Feb. 8, 1972), *as amended by* Exec. Order No. 11,989, 42 Fed. Reg. 26,959 (May 24, 1977).

Suggested Resolution: Revise plan components and the analysis in the FEIS to demonstrate in the record how the Forest Service analyzed and located motorized use designations with the objective of minimizing harassment of wildlife, disruption of wildlife habitat, and damage to forest resources.

d. The Forest Service fails to address winter travel planning.

WildEarth Guardians commented that the Forest Service must address winter travel planning in the plan components, complete winter ROS, or in the very least make clear that ROS does not govern winter uses or otherwise constrain future subpart C designations. DEIS Comment at 12-14. With partners, we also submitted letters to the Forest Service that highlighted our concerns with the agency's approach under to winter travel planning under this revised Forest Plan.⁵ We explained the distinction between suitability determinations made through forest planning, and site-specific travel planning consistent with the forest plan suitability determinations.

But the Forest Service fails to clearly articulate its proposed action regarding winter motorized recreation. Reference to routes and designated areas implies that the ROS settings designate routes and areas for winter motorized use.

To the extent the agency seeks to establish compliance with subpart C through this revised Forest Plan, this is inconsistent with Forest Service policy. Decisions about suitability determinations in the Colville's forest plan revision are not a substitute for the area designations that result from site-specific, project level winter travel planning. *Compare* FSH 7709.55, 11.2(1) (Land Management Plans) ("Approval of a plan, plan amendment, or plan revision should not include a final decision designating roads, trails, or areas for motor vehicle use or OSV use or otherwise restricting those routes. Rather, the land management plans provide information and guidance for travel management decisions.") *with* FSH 7709.55, chs. 10 & 20; FSM 7703.11(1) (explaining that when designating roads, trails or areas for motorized use under subparts B or C, the Forest Service "shall . . . [u]se travel analysis . . . to consider and document application of the criteria in 36 CFR 212.55 in making the designation decision," and any decisions must be informed by "site-specific environmental analysis and public involvement."). Forest plans are programmatic in nature and do not meet National Environmental Policy Act (NEPA) obligations to take a hard look at the site-specific impacts of motorized area and trail designations.

For designations under Amendment 31 that the Forest Service seeks to carry forward in the revised Forest Plan, the Forest Service fails to demonstrate how these previous decisions comply with the minimization criteria, NEPA, or the ESA. Under the 2015 OSV rule, the agency may not grandfather past decisions without ensuring those decisions considered and applied the minimization criteria, as well as other relevant legal requirements. Prior motorized use designations do not account for significant new information (including increased speed, power, and other capabilities of current OSV technology allowing OSVs to travel further and higher) and more recent

⁵ See March 17, 2017, letter from WildEarth Guardians, Winter Wildlands Alliance, and The Wilderness Society to Craig Newman, Colville National Forest Recreation Engineering Lands & Minerals Staff Officer (Attachment A); July 28, 2017, letter from WildEarth Guardians, Winter Wildlands Alliance, and The Wilderness Society to Craig Newman, Colville National Forest Recreation Engineering Lands & Minerals Staff Officer (Attachment B).

protections for imperiled species (including Canada lynx and wolverine). The Forest Service fails to ensure these prior designations comply with NEPA or the ESA.⁶

Indeed, the Forest Service itself recognizes that “[o]ver the 29-year life of the 1988 forest plan, economic, social, and ecological conditions have changed.” FEIS at iii. *See also* Draft ROD at 6 (stating “legal requirements and significant changes that have occurred in conditions, demands, and scientific understanding since the 1988 land management plan went into effect” more than 30 years ago, and noting changes “to economic, social, and ecological conditions; new policies and priorities; and new information based on monitoring and scientific research”), *id.* at 6 (“Social changes include an increasing demand, largely due to population growth, for a variety of recreation opportunities on public lands.”), *id.* at 7 (“Climate change has altered, and will continue to alter disturbance regimes”). ESA species listings have been updated and new information based on monitoring and scientific research is available. Yet the Forest Service continues to issue new motor vehicle use maps (MVUMs).

Finally, to the extent the Forest Service interprets 36 C.F.R. § 212.81(b) as permitting adoption of OSV designation decisions that do not satisfy the minimization criteria, the agency’s interpretation violates Executive Orders 11644 and 11989.⁷

Suggestion: Clarify in the final ROD that forest-wide site-specific winter travel planning is required to designate OSV routes and discrete areas. Revise the final ROD and sustainable recreation plan components to commit to site-specific winter travel planning within areas deemed suitable for OSV use in the revised forest plan within one year of completion of the revised Forest Plan.

e. The revised Forest Plan does not protect and promote wildlife conservation.

Our comments urged the Forest Service to develop revised plan components to adequately protect wildlife, and we highlighted our concerns about bull trout, grizzly bear, Canada lynx, caribou, elk, deer, wolverine, moose and wolf, as well as the need for connected wildlife habitats. DEIS Comment at 14-19. In particular, we highlighted concerns about motorized use impacts (from roads as well as summer and winter OHV use) to wildlife and wildlife habitat. As noted throughout this objection, the Forest Service’s revised Forest Plan that emphasizes new road construction and continued OHV use without accounting for updates in science, demand, and ESA protections does not protect and promote wildlife conservation in light of motorized use impacts.

Decision Unsupported by Analysis

The Forest Service must articulate “a rational connection between the facts found and the conclusions made.” *Or. Natural Res. Council v. Lowe*, 109 F.3d 521, 526 (9th Cir. 1997). It fails to do so here for many of its management decisions regarding roads and recreational motorized use across the Colville. For example, our comments urged the Forest Service to establish enforceable

⁶ As explained below, the 2017 ESA consultation is flawed making the Forest Service’s reliance on that analysis arbitrary and capricious.

⁷ *See Winter Wildlands Alliance v. U.S. Forest Serv.*, No. 1:11-CV-586-REB, 2013 U.S. Dist. LEXIS 47728, at *32 (D. Idaho Mar. 29, 2013) (requiring the Forest Service to promulgate new OSV travel management rule that complies with the executive orders and making clear that the orders “require[] the Forest Service to ensure that *all* forest lands are designated for *all* off-road vehicles”).

standards, as opposed to merely relying on desired conditions, objectives, or guidelines, to ensure accountability and better environmental protection. The Forest Service fails to provide a rational explanation for the plan components that weaken wildlife protections (including INFISH) and lack standards to ensure the maintenance of viable wildlife populations.

Connectivity

Wildlife and natural ecosystem processes occur irrespective of political boundaries. For example, many geographic areas on the Colville provide vital habitat connectivity corridors for federally protected grizzly bears. The Forest Service must ensure habitat protections and conditions are in place to foster essential genetic connectivity between isolated grizzly bear populations, including the NCDE population.⁸ The Forest Service must incorporate appropriate management standards and guidelines into the Colville's revised Forest Plan to ensure wildlife habitat connectivity and recovery can rightfully occur throughout the Colville and beyond – including for grizzly bear, bull trout, Canada lynx, woodland caribou, and wolverine.

Suggested Resolution: Revise plan components to adequately protect wildlife (including bull trout, grizzly bear, Canada lynx, caribou, elk, deer, wolverine, moose and wolf), wildlife habitat, and connectivity between habitats.

f. Lacks adequate mitigation, monitoring, or enforcement;

The Forest Service states that pursuant to the transition rules, the revised Forest Plan's monitoring plan will comply with the 2012 Planning Rule. Draft ROD at 5. Under the 2012 Planning Rule, the Forest Service must develop a monitoring program that enables the responsible official to determine if a change in plan components is needed. 36 C.F.R. § 219.12(a). Monitoring is meant to increase knowledge and understanding of changing conditions, uncertainties, and risks identified in the best available scientific information as part of an adaptive management framework. *See* Revised Plan at 7. The requirement to consider best available science is meant to help identify indicators that address associated monitoring questions, and to further development of the monitoring program. FSH 1909.12, § 07.11.

The Forest Service's monitoring parameters fail to comply with these requirements. For example, FW-STD-WR-06 prohibits a net increase in system roads that affect hydrologic function in key watersheds and in subwatersheds with ESA critical habitat for aquatic species that are functioning properly with respect to roads. Revised Forest Plan at 56-57. But there is no related monitoring indicators to assess compliance with this standard or determine whether a change in the plan component is needed. Other plan components are equally unenforceable. For example, the forest-wide standard for wildlife, FW-STD-WL-03, limits the rate of change within the Kettle-Wedge Lynx Core Area to no more than 15 percent of lynx habitat within any single lynx analysis unit to an unsuitable condition in any 10-year period. Revised Forest Plan at 63. It is unclear which monitoring plan indicators will track compliance with this standard, which given the timeframe will be difficult to monitor and is likely unenforceable.

⁸ *See, e.g., Crow Indian Tribe v. United States of America*, No. 17-89 (Sept. 24, 2018) (holding that “[b]y delisting the Greater Yellowstone grizzly without analyzing how delisting would affect the remaining members of the lower-48 grizzly designation, the Service failed to consider how reduced protections in the Greater Yellowstone Ecosystem would impact the other grizzly populations” and “entirely failed to consider an important aspect of the problem”).

Many of the monitoring indicators related to roads and water quality are meaningless. To measure whether management actions are reducing road impacts to water quality, under MON-WTS-02 and MON-WTS-02-01 the Forest Service proposes to annually monitor the number of “[m]iles of road treated that are high risk to watershed and aquatic habitat function.” Revised Forest Plan at 162. The monitoring plan does not explain what “treated” refers to, nor how “treating” high risk roads without decommissioning them might improve water quality, rendering this monitoring indicator essentially meaningless. To measure whether BMPs are being implemented and their effectiveness, the monitoring plan states the Forest Service will annually record the number of BMP evaluations completed, identify BMPs that are implemented correctly or incorrectly, and “identification of BMP effectiveness.” Revised Forest Plan at 163 (MON-WTS-04, MON-WTR-04-01). But the Forest Service does not explain how it will determine BMP effectiveness, or how the Forest Service will respond if it determines that BMPs are ineffective at achieving desired conditions. Without a numeric objective, standard, or guideline to decommission a certain number of road miles annually, the parameters measuring miles of road “treated” or “effectiveness” of BMPs that are implemented (as opposed to whether BMPs are being implemented on a consistent basis) are meaningless.

Suggestion: Revise the monitoring plan questions and indicators to track whether forest roads and motorized use on the forest is sustainable, not causing or contributing to a violation of water quality standards, and furthering the recovery of ESA listed species and designated critical habitat. Require annual reporting of compliance on these plan components. Include meaningful timelines and parameters that enables the responsible official to determine if a change in plan components is needed.

g. Does not provide sufficient information for meaningful public comment;

The Forest Service must accurately disclose essential information regarding the revised Forest Plan and likely direct, indirect, and cumulative impacts, including the nature of its proposed actions related to summer and winter motorized recreation, roads, and protections for grizzly bear, Canada lynx, bull trout, woodland caribou, gray wolves, and wolverine. Failure to do so precludes meaningful public comment in violation of NEPA.

Suggested Resolution: Revise the analysis in the FEIS to accurately disclose essential information that allows for meaningful public comment, as required by NEPA.

h. Fails to adequately address or respond to comments in a meaningful way; and

The Forest Service fails to meaningfully respond to many of our comments in violation of NEPA’s implementing regulations. This concern was not raised in our comments because it relates to the Forest Service’s response to comments, after the close of the official comment period. As just one example, in response to our concerns regarding the lack of plan components related to the agency’s duties under Subpart A (identification of the minimum road system, working towards an economically and environmentally sustainable minimum road system, and decommissioning unneeded roads), the Forest Service merely states that it has addressed those concerns and lists all road-related plan components. As explained throughout this objection letter, however, those plan components fail to address the concerns identified in our comment letter and fail to demonstrate how the Forest Service will comply with Subpart A of its own Road Rules under this revised Forest Plan.

Suggested Resolution: Revise the analysis in the FEIS, Appendix E, to meaningfully respond to and address public comments.

i. Does not ensure compliance with the Endangered Species Act.

The Forest Service must also ensure that its actions comply with the Endangered Species Act (ESA). Best available science demonstrates that forest roads and OHV use (including winter OSV use) negatively impact bull trout, woodland caribou, Canada lynx, grizzly bear, gray wolves, and wolverine. Section 7 of the ESA imposes a substantive obligation on federal agencies to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of’ habitat that has been designated as critical for the species. 16 U.S.C. § 1536(a)(2); *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917, 924 (9th Cir. 2008). The Forest Service has an independent duty under the ESA to ensure the Colville Forest Plan’s direction, including any motorized use designations that will have direct, immediate impacts, will not harm listed wildlife or degrade designated critical habitat.

Here, the Forest Service states that it prepared a Biological Assessment (BA) to assess the revised Forest Plan’s effects on the identified terrestrial, aquatic, and plant species and their critical habitats. Draft ROD at 32. The BA determined the revised Forest Plan may affect and is likely to adversely affect woodland caribou, Canada lynx, grizzly bear, yellow billed cuckoo, and wolverine (proposed for listing). *Id.* It determined the revised Forest Plan may adversely affect designated critical habitat for woodland caribou. *Id.* And it determined the revised Forest Plan may affect and is likely to adversely affect bull trout and its designated critical habitat. *Id.* In turn, FWS prepared a Biological Opinion (BiOp) for the revised Forest Plan on Oct. 24, 2017 that determined the plan is not likely to jeopardize the continued existence of Canada lynx, woodland caribou, grizzly bear, yellow billed cuckoo, wolverine, or bull trout, and is not likely to destroy or adversely modify critical habitat for woodland caribou or bull trout. *Id.* FWS did not issue an incidental take statement. *Id.* Based on the BA and BiOp, the Forest Service concludes it is fully compliant with the ESA. *Id.*

But the analysis in the FEIS appears to not have been updated in light of the Forest Service’s BA or FWS’s 2017 BiOp. For example, the analysis in the FEIS states that potential effects to lynx will be addressed in more detail during future consultations on the selected alternative with USFWS. FEIS at 482. For grizzly bear, the Forest Service states that management of grizzly bear habitat does not vary between action alternatives, and is defined by the 1986 Interagency Grizzly Bear Guidelines, Colville National Forest Guidelines (1988), 1993 Grizzly Bear Recovery Plan, and 2001 Amended Biological Opinion for the Continued Implementation of the Colville National Forest and Idaho Panhandle National Forests Forest Plans. FEIS at 34. The agency also states that it will incorporate management guidance from these documents and future consultation “as appropriate.” *Id.* Given that the FWS completed its BiOp more than a year ago, it is confounding as to why the Forest Service released an outdated and inaccurate FEIS. For woodland caribou and Canada lynx, the Forest Service also states that management would not vary between action alternatives. FEIS at 35. It appears to rely on a 2001 Biological Opinion for woodland caribou. *See, e.g.*, FEIS at 547. The Colville National Forest did not amend its 1988 Forest Plan in response to the original 2000 Lynx Conservation Assessment and Strategy. FEIS at 460. Thus the analysis in the FEIS is inaccurate and fails to meaningfully inform the public in violation of NEPA.

What's more, FWS's 2017 BiOp assessing the impacts of the revised Forest Plan on fails to comply with the ESA. Given the Forest Service's independent legal duty to ensure the forest plan revision complies with the ESA, its reliance on the flawed BiOp is unreasonable. We were unable to comment on the veracity of the FWS's analysis in the 2017 BiOp because it was not available during the public notice and comment period.

Best available science demonstrates that forest roads and motorized use designations (both summer and winter) have direct, negative impacts on wildlife and disrupt wildlife habitat. The 2017 BiOp is flawed because it mischaracterizes or ignores best available science. For example, the revised plan components greatly reduce protections for bull trout and waters designated as bull trout critical habitat, particularly from forest roads and infrastructure, despite best available science demonstrating that forest roads have and continue to be a primary source of sediment impacts to developed watersheds.

The 2017 BiOp is also flawed because it relies on flawed assumptions and an inaccurate description of the proposed action, and fails to consider relevant factors. For example, the description of the proposed action inaccurately claims that the revised Forest Plan is only programmatic in nature, yet elsewhere in the BiOp notes that the plan components will have direct impacts that benefit species. *See, e.g.,* " FWS 2017 BiOp, page 199 (concluding that "[b]ecause the standard listed above restricts over-the-snow vehicle use to designated routes within the caribou recovery area, it provides stronger conservation for the caribou than the existing Forest Plan, and decreases likelihood of caribou harassment"). *See also id.* at 202 ("DCs and STDs manage and limit winter recreation so that most caribou habitat would still be available."). Finally, the Forest Service appears to have failed to complete any consultation or conference with regarding to gray wolves, in violation of the ESA.

Suggested Resolution: Refrain from any final decision related to the revised plan unless and until the flaws related to Section 7 consultation identified above have been addressed in a revised BiOp.

j. Does not ensure compliance with the Clean Water Act.

The Clean Water Act (CWA) establishes a comprehensive program "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" by reducing and eventually eliminating the discharge of pollutants into those waters. 33 U.S.C. § 1251(a). The CWA program includes a regulatory scheme of permits, technology controls, and water quality-based pollution controls. States are responsible for developing water quality standards to protect the desired conditions of each waterway within a state's regulatory jurisdiction. 33 U.S.C. § 1313(c). A water quality standard includes three elements: (1) one or more designated uses, such as fish propagation; (2) numeric and narrative criteria specifying the water quality condition necessary to protect the designated uses; and (3) an antidegradation policy that ensures that uses are protected and that high quality waters will be maintained and protected. 33 U.S.C. §§ 1313(c)(2), 1313(d)(4)(B); 40 C.F.R. §§ 131.6, 131.10-12. Waters that do not meet water quality standards are deemed "water quality-limited" and placed on the CWA's § 303(d) list. States must develop total maximum daily loads ("TMDLs") for all § 303(d)-listed waterbodies to bring them back into compliance with applicable water quality standards.

All federal agencies must comply with state water quality standards, including a state's antidegradation policy. 33 U.S.C. § 1323(a), *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146 (9th Cir. 1998). Here the Forest Service fails to ensure that the land management plans will comply with the

CWA by not causing or contributing to a violation of Washington’s water quality standards.

Our comments highlighted how roads are a primary cause of water quality degradation on national forests, and urged the Forest Service to incorporate road-related plan components to ensure protection of water quality. The Forest Service asserts, without providing plan components to justify or explain its assertion, that “[a]ll projects on NFS lands implemented in a manner consistent with meeting State surface water quality standards, and the programs established under the Clean Water Act.” Revised Forest Plan at 46.

Yet the road-related plan components in this revised Forest Plan create exceptions and allowances for road building activities that will cause or contribute to a violation of water quality standards. For example, FW-DC-WR-05 states a forest-wide desired condition that “National Forest System lands contribute to water quality necessary to support healthy riparian, aquatic, and wetland ecosystems” and that “[w]ater quality . . . meets appropriate Washington State water quality standards.” Revised Forest Plan at 52. But the plan includes no standards or guidelines to implement this desired condition as it relates to roads. In fact, as noted above, the road-related forest-wide standards for water resources emphasize construction of new roads. *See* Revised Forest Plan at 56 (FW-STD-WR-05, Construction of New Roads, Trails and Developed Recreation Sites), 56-57 (FW-STD-WR-06, Road Construction and Hydrologic Risk Reduction in Key Watersheds). These plan components do not even require the Forest Service to consider whether other feasible alternatives exist to constructing new roads that may negatively impact water quality. Ultimately the plan components improperly prioritize timber interests and motorized use above improving and maintaining watershed conditions.

In light of the best available science showing forest roads – both system and temporary roads - are the primary cause of water quality degradation on national forests, the Forest Service’s approach under these plan components is inconsistent with the science and fails to ensure water quality will be maintained

Suggested Resolution: Revise the road-related plan components in the revised land management plans to ensure the road-related plan components comply with the Clean Water Act.

Conclusion

The Forest Plan Revision process is an opportunity to create a future vision and guiding framework that will protect wildlands, wildlife, water, and other natural resources on the Colville National Forest.

Sincerely,



Marla Fox
Rewilding Attorney

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Attachments

Attachment A: March 17, 2017, letter from WildEarth Guardians, Winter Wildlands Alliance, and The Wilderness Society to Craig Newman, Colville National Forest Recreation Engineering Lands & Minerals Staff Officer.

Attachment B: July 28, 2017, letter from WildEarth Guardians, Winter Wildlands Alliance, and The Wilderness Society to Craig Newman, Colville National Forest Recreation Engineering Lands & Minerals Staff Officer.