



April 11, 2020

USDA Forest Service, Region 2

Rocky Mountain Region

Attn: Objection Reviewing Officer

P.O. Box 18980

Golden, CO 80402

Submitted electronically at: <https://cara.ecosystem-management.org/Public//CommentInput?Project=51255>

**RE: Objection - Medicine Bow National Forest Landscape Vegetation Analysis Project #51255 Modified Final Environmental Impact Statement and Reissued Draft Record of Decision**

Responsible Official: Russell Bacon, Supervisor, Medicine Bow-Routt National Forest

To the Objection Reviewing Officer,

On behalf of our members and supporters in Wyoming and throughout the United States, Sierra Club submits the following objection to United States Forest Service's (USFS) Modified Final Environmental Impact Statement (MFEIS) and Reissued Draft Record of Decision (RDRoD) for the Landscape Vegetation Analysis (LaVA) project on the Medicine Bow National Forest (MBNF), which was released for public review on April 10, 2020. The MFEIS and RDRoD were developed in response to numerous issues and concerns that were raised during public review of the 2018 Draft Environmental Impact Statement and in 2019 objections to the original Draft Environmental Impact Statement (DEIS) and Draft Record of Decision (DRoD).

Unfortunately, a comparison between the 2019 FEIS/DRoD and the 2020 MFEIS/RDRoD reveals only minimal changes and no substantive additional analyses in the newly released project documents, leaving the extensive and quite valid questions and concerns that were repeatedly raised during public comment and objection periods almost entirely unanswered and unaddressed. Not only did the USFS not include additional analyses or current science, in some cases they actually deleted references to research that didn't support the agency's preferred action. Instead of actually addressing the multitude of valid concerns that were raised, the USFS simply added more verbiage - unsupported opinions, in many cases - in an unconvincing attempt to bolster their previous assumptions, assertions, and decisions.

The LaVA project proposes to use a conditions-based analysis under which individual treatments would be authorized in pre-defined geographic segments of the forest over a 15-year period beginning in 2020. Specific projects would be selected and implemented using an adaptive implementation and monitoring framework, but would receive no site-specific analysis of environmental impacts. Specifically, the LaVA project would authorize:

- 95,000 acres of clear cutting;
- 165,000 acres of selective cutting;
- 100,000 acres of other vegetation treatments (including prescribed burning as well as cutting live trees that are diseased, are no longer growing quickly, or are judged to be "encroaching"); and
- Construction of 600 miles of temporary roads.

These listed project authorizations are identical to those that were contained in the 2019 FEIS and DRoD, other than the addition of a cap of 75 miles of new roads allowed open at one time. The MFEIS and RDRoD describe other modifications to the Modified Proposed Action that are almost completely superficial additional explanation without additional analyses or adequate supporting evidence of their purported efficacy. In comprehensive objection filed by Sierra Club, Wild Earth Guardians, and the Center for Biological Diversity, we reviewed continuing concerns with the revised proposal and identified new concerns that arose after the opportunity to comment closed in 2018 and since the last objection period in 2019, as allowed under 36 C.F.R. § 218.8(c). This additional objection by Sierra Club Wyoming Chapter provides or builds on additional objection points not explicitly included in the larger multi-group objection.

Sierra Club Wyoming Chapter has fully participated in and commented on the LaVA project since 2017, including during scoping in August 2017, comments on the Draft Environmental Impact Statement in August 2018, and an objection to the FEIS and DRoD May 2019. Since virtually none of the objections we raised a year ago have been adequately addressed, we hereby incorporate the entirety of our 2019 objection by reference.

### **Interests of Objector**

Sierra Club is a nonprofit environmental organization with more than 3.6 million members and supporters throughout the United States, including nearly 5,000 members and supporters who reside in Wyoming. Since 1892, Sierra Club has worked to help people enjoy, explore and protect the planet, while practicing and promoting responsible and sustainable use of the earth's resources. Sierra Club Wyoming Chapter members and supporters regularly use the

Medicine Bow National Forest for a wide variety of recreational activities, including camping, hiking, hunting, fishing, wildlife viewing, Nordic and backcountry skiing, snowshoeing, nature photography, bird watching, mountain biking, and enjoyment of solitude.

Maintaining the opportunity to enjoy these activities in a natural backcountry setting is very important to our constituency. We deeply value wild places and want significant areas of our national forests to ecologically function as they have for millennia, without highly visible and intrusive management by humans. We do not expect or require that our experiences in nature be risk free, and we accept that backcountry travel in remote areas may be physically challenging. Our constituency does not want the majority of our national forests to be commercially developed, crisscrossed with roads in high density, or managed to the point of no longer offering meaningful opportunities for remote experiences or providing high quality wildlife habitat.

## **OBJECTION ISSUES**

### **1. The Forest Service's systemic failure to encourage/allow robust public participation throughout the entire planning process, offering inadequate time for meaningful review and objection of the MFEIS and RDRoD, and providing inadequate opportunities for meaningful public engagement in the future, violate the National Environmental Policy Act (NEPA).**

Since project inception in 2017, the USFS has repeatedly taken actions that, intentionally or not, have resulted in inhibiting public participation, and this tendency has continued right up to and through the 2020 objection period. As a result, the USFS has effectively minimized public participation and has deeply undermined the public's trust in their motivations and actions. The following summary of missed opportunities to encourage full public participation that have plagued this project since it started demonstrates how the public voice has been minimized and continues to be minimized during the current objection period.

In 2017, during project scoping, proper public notice of the project was not published in local newspapers. Nor did the USFS notify significant interested individuals and non-governmental organizations, including Sierra Club, about the project, even though we had consistently and recently engaged in other public planning processes on the Medicine Bow-Routt National Forest. As a consequence, a large segment of the interested public didn't even know about the proposed project during the initial planning phases.

When these oversights were discovered, many local residents asked the USFS to reissue public notice, hold additional scoping meetings, and more adequately consult with the public during initial project planning. The USFS declined to take these steps. In the following months, the public asked the USFS to hold formal public hearings where people could offer verbal comments in a group setting. The agency declined these requests, instead offering carefully orchestrated informational meetings with no formal public comment allowed. While it may not have been the USFS's intention, the public perception was (and remains) that the agency was intentionally trying to inhibit robust public discussion of this project.

This topic was discussed at length during the May 2019 objection resolution meeting between objectors and Reviewing Officer Jacqueline Buchannan, and USFS personnel openly acknowledged that they had erred early in the process on public notice and engagement and explicitly stated they wished to regain the public's trust. Unfortunately, the USFS's failure to act in an open and transparent manner has continued. In July 2019, Sierra Club Wyoming Chapter asked local USFS staff and Medicine Bow-Routt National Forest Supervisor Russell Bacon directly for permission to attend cooperator meetings related to this project, in a strictly non-participatory role by simply sitting in the back of the room to listen to the discussions. Both local staff and Supervisor Bacon said they had no objection to our request, and committed to let us know about future cooperator meetings. That was the last we heard from any of them.

Now, in April and May 2020, at the very time when our country has the unfortunate distinction of being the epicenter of a global pandemic that threatens the health, safety, and well being of literally everyone, the USFS has chosen to release the MFEIS and RDRoD, with a 30 day comment period. This indisputably is a time when many residents are preoccupied with issues related to the health and safety of their families and loved ones, their employment (or lack thereof), and their ability to pay for essential needs including housing, food, medical access, and utilities. And this is the very moment when the USFS has chosen to release documents totaling over 650 pages, and give the public 30 days to sift through all this and provide substantive comments. It is nothing short of astonishing that the USFS would assert that it wishes to rebuild public trust in its actions, and then take this action.

In the MFEIS, the Forest Service improperly defers information gathering and assessments to the future, as described in the LaVA Adaptive Implementation and Monitoring Framework, and then will provide only non-NEPA public engagement opportunities. This undermines the purpose of NEPA to assess and disclose the impacts of a proposal to allow for meaningful public comment *before* approving a project, to ensure that the agency responds to such comments, to analyze alternative courses of action in the light of site-specific information, and to ensure that the public can hold the agency accountable when its actions violate the law. Even with the

modest revisions in the RDROD and MFEIS, the public engagement opportunities remain insufficient to comply with NEPA.

## **2. The Forest Service fails to comply with the National Forest Management Act (NFMA), basing this 15-year project need on an out-of-date forest plan**

Most of the justification for the LaVA project is to align forest structure with desired conditions as identified in the 2003 Medicine Bow Forest Plan, and to reduce risk of property damage from wildfire. If implemented as currently proposed, projects under the LaVA project will be authorized for implementation for 15 years (from 2020 to 2035), meaning that until the forest plan is updated, LaVA projects would be operating under forest plan that is further and further out of compliance with the NFMA. The NFMA states that forest plans should “...be revised from time to time when the secretary finds conditions in a unit have significantly changed, **but at least every fifteen years**” (emphasis added). Today, before the LaVA project has even been finalized, the Medicine Bow Forest Plan is two years past its revision deadline, and given various dramatic changes in conditions on the Medicine Bow National Forest, the current forest plan is out of compliance with the NFMA and is getting further from compliance with every passing year.

## **2. The Forest Service improperly uses the Healthy Forest Restoration Act (HFRA) to justify analyzing only a single action alternative**

As noted in earlier comments, much of the expressed need for the project is to reduce risk of property damage from wildfire. According to the MFEIS, only about 2% of the area authorized for treatment within the wildlife urban interface (WUI) contains homes. The MFEIS offers little detail as to which types of infrastructure and where critical areas within the WUI are located and how determinations for acreages were derived within each accounting unit. The HFRA statute only allows the agency to analyze a single action alternative for projects within the WUI. The great majority (98%, according to the MFEIS) of the LaVA project is outside the WUI, and cannot be authorized under HFRA.

Furthermore, the MFEIS offers little supporting evidence to justify the assumption that massive logging and other types of treatments miles from WUI areas are an effective way to reduce risk to private property. While we acknowledge the societal perception of need for treatments within the WUI to protect private property or for safety reasons, vegetation treatments designed to reduce risk to private property must be grounded in best available fire prevention practices and focused in buffer zones around private property in the WUI.

### **3. The 2020 Biological Assessment violates NEPA, ESA, and NFMA.**

As noted in the comprehensive objection filed by Sierra Club, Wild Earth Guardians, and the Center for Biological Diversity (pp. 14-27), the USFS failed to properly consider valid, peer reviewed science that doesn't support their preferred action, and at times misinterpreted the science they chose to include. For example, Stone (1995) found that abundance and diversity of most birds and small to medium sized mammals were higher in stands with moderate to severe tree mortality from drought- and bark beetle-killed trees, completely contrary to the assertions in the MFEIS that the Stone dissertation showed abundance of red squirrel and snowshoe hare declining as a function of heavy tree mortality (p. 50). The Stone data clearly shows that snowshoe hare numbers increase as a function of tree mortality and red squirrel numbers increase at tree mortality rates up to 50% and don't significantly decrease until nearly 90% mortality. Other similar research has found the snag forest habitat to particularly important for numerous bird species (Mosher et al. 2019). Overall, research consistently shows that most wildlife species increase in abundance where more snags exist, i.e. in areas with higher tree mortality. Additionally, the assertion throughout the MFEIS that intensive logging will reduce tree mortality from fire or bark beetles is not supported by scientific sources, while Bradley et al (2016) and Six et al. (2014) offer strong evidence that just the opposite is true. And finally, the MFEIS failed to account for tree mortality that would result from the proposed logging and other vegetation treatments in the LaVA project.

### **4. The Forest Service transportation analysis violates the Travel Management Rule and NEPA.**

As noted in the comprehensive objection filed by Sierra Club, Wild Earth Guardians, and the Center for Biological Diversity (pp. 9-14), the transportation analysis is deficient and in violation of the Travel Management Rule and NEPA in numerous areas. In addition to the many issues identified in that objection, here we highlight additional concerns related to temporary road construction authorized by the LaVA project proposal. The MFEIS does include some information showing where temporary roads will not be allowed, and purports to offer a hint about where temporary roads may more likely be located by providing existing miles of roads and road density for each accounting unit. Upon closer reading, this information turns out to be misleading, confusing, and ultimately not useful. Road density might be a useful measure (although its value as a comparison between units for insight into likely new road locations as suggested by the Forest Service is doubtful), but *only* if areas where roads cannot be built are removed from the calculation. Including areas where roads cannot be built artificially underestimates road density for a given unit. Unfortunately, manually deducting areas off limits to road construction is difficult to impossible to actually do with the information provided in the MFEIS, and one might argue that it is not really the responsibility of the general public to

try to ferret this information out of the planning documents. In any case, a few examples will serve to highlight the problem.

In the Rock Morgan accounting unit, Table 35 of the MFEIS (p. 114) shows that 17,540 acres are recommended for wilderness, yet the text below states that only 11,148 acres in this unit would be unavailable for road construction. No road construction of any kind, temporary or otherwise, can or should occur in Management Area 1.2, Recommended for Wilderness, to meet the requirement that such areas be managed to maintain their wilderness characteristics. Table 36 lists 8,263 acres of Inventoried Roadless Areas, 4,793 acres of old growth, and 6,774 acres of wildlife security habitat. Presumably there is at least some overlap between these categories, but nowhere is that information readily available. So it appears that the minimum acreage in this accounting unit where roads would not be allowed would be at least 17,540 acres, and it could well be higher, if some Inventoried Roadless Areas, old growth, or wildlife security areas are outside the areas recommended for wilderness. If one does the math and deducts the minimum of 17,540 acres from the total area acreage, one arrives at a road density of 1.9 miles per square mile within the area of the accounting unit **that is available for road construction**. That's substantially higher than the 1.3 miles per square mile suggested by the MFEIS, and as noted above, is likely still an underestimate of true existing road density within areas available for roads.

In the French Douglas accounting unit, road density across the entire area is 2.1 miles per square mile. However, if one deducts 10,118 acres of MA 1.13 Wilderness semi-primitive and recalculates road density, density jumps to 2.5 miles per square mile. And we again note the same troubling discrepancy between the number of acres identified for no road construction (3,809) and the number of acres in MA 1.13 (10,118) where certainly no roads can be considered.

And the Pelton Platte unit claims a road density of 1 mile per square mile, but after deducting 22,510 acres in MA 1.13 Wilderness semi-primitive, one arrives at a road density of 1.8 miles per square mile. Yet again, only 4,279 acres are identified as unavailable for new road construction.

The same calculations could be done on every single accounting unit, and would paint quite a different picture of the existing transportation system throughout the project area. Providing inaccurate and misleading data in the MFEIS about where additional roads may (or may not) be more or less likely to be built is yet another example of failure of the Forest Service to provide useful opportunities for meaningful public input, and clearly violate the intent and explicit requirements of the Travel Management Act and NEPA.

## **5. Sheep Mountain Federal Game Refuge should be withdrawn in its entirety from temporary road construction.**

The entire area of the Sheep Mountain Federal Game Refuge should be withdrawn from the possibility of any new road construction, including that portion of the Refuge that lies southwest of the Fox Creek Road. The same withdrawal should be applied to all wildlife security areas, old growth forest stands, designated wilderness areas, areas recommended for wilderness, and any other areas that are characterized as roadless. The Sheep Mountain Federal Game Refuge is supposed to be managed to benefit wildlife, and the Forest Service can produce no documented decision to manage different parts of the Refuge differently. Research has documented that without a doubt, one of the best management actions that can be taken to benefit wildlife is to keep motorized roads out of an area.

### **SUGGESTED RESOLUTIONS**

Resolving all the points of objection raised in this objection as well as the objection submitted by Sierra Club, Wild Earth Guardians, and the Center for Biological Diversity will require the Forest Service to appropriately comply with NEPA by vacating its proposed decision and issuing a revised Draft EIS that expands the project's purpose and need as we directed in previous comments, provides sufficient opportunity for meaningful public comment, includes a full discussion of all of the information and evidence in each specialist report, uses the best available science, specifies proposed treatments and their location, and specifies the location of temporary road construction and use of system roads. Such a revised DEIS will require a new biological assessment and biological evaluation to incorporate site-specific information, address flaws, and demonstrate how the project will comply with the 2003 Medicine Bow Forest Plan. A revised DEIS will also analyze in detail an alternative that precludes logging in old growth stands, IRAs, and does not propose clearcutting. A revised DEIS must also ensure compliance with the Roadless Rule and the ESA. The Forest Service must also appropriately demonstrate HFRA compliance, including maximizing old growth and large tree retention, as well as including additional alternatives.

The Forest Service should abandon the proposed clear cuts, which have proved scientifically contentious, fiscally irresponsible, and ecologically destructive. The Forest Service should also eliminate aspects of the project that propose logging in old growth IRAs. Instead, the agency should focus on actions that will restore the forest and watersheds, and that will benefit future resilient forests, ecological subsistence, hunting and fishing, scenic, and recreational values.

Ultimately, we urge the Forest Service to abandon the condition-based analysis approach that lacks sufficient detail to provide for meaningful public comment. Absent producing a revised DEIS, we urge the Forest Service to instead recognize the LaVA Project MFEIS is a programmatic EIS, and accordingly commit to conducting the requisite site-specific NEPA analysis for

individual treatment projects so as to allow for meaningful public comment at the point when site-specific information is available.

## **CONCLUSION**

Sierra Club Wyoming Chapter respectfully requests to meet with the reviewing officer to discuss the concerns and suggested resolutions outlined in our objections. Should you have any questions, please do not hesitate to contact us.

*Connie Wilbert*

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Director

Sierra Club Wyoming Chapter

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## **ATTACHMENTS**

Included below is a list of 3 attachments that we reference in our objection letter. These documents should become part of the administrative record.

Attachment 1: Bradley, C. M., C. T. Hanson, and D. A. DellaSala. 2016. Does increased forest protection correspond to higher fire severity in frequent fire forests of the western United States? *Ecosphere* 7(10):e01492. 10.1002/ecs2.1492

Attachment 2: Six, D.L., E. Biber, and E. Long. 2014. Management for Mountain Pine Beetle Outbreak Suppression: Does Relevant Science Support Current Policy? *Forests* 5: 103-133

Attachment 3: Stone, W.E. 1995. The impact of a mountain pine beetle epidemic on wildlife habitat and communities in post-epidemic stands of a lodgepole pine forest in northern Utah (Doctoral dissertation). Utah State University. Logan, UT. File too large to attach, see at: <https://digitalcommons.usu.edu/etd/799/>