

# Exhibit F



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Wednesday, March 18, 2015

Kathryn Nash  
Krassel Ranger District  
500 N. Mission St.  
McCall, ID 83638

### **Via U.S. Mail**

**and via Email:** [knash@fs.fed.us](mailto:knash@fs.fed.us)

RE: Crater Lake Access Road #46345 / Red Metals Mine Road

Dear Ms. Nash:

Please accept this letter as comments on the proposed project/action relative to Crater Lake Access Road #46345. A copy of the project documents are enclosed for reference purposes. These comments are submitted on behalf of the Idaho Recreation Council, Chris and Lois Schwarzhoff, and Steve Swann. This office represents the Idaho Recreation Council, and Chris and Lois Schwarzhoff, in a legal action pending before the Ninth Circuit Court of Appeals where prior management decisions closing the Crater Lake Access Road (also known as the Red Metals Mine Road) have been challenged, and in a parallel proceeding in the United States District Court for the District of Idaho similarly challenging the same. Presently, the District Court has ruled that those prior management decisions were reached in error, and as such it would be inappropriate to take further action on this road until a proper NEPA analysis is performed. Engaging in this proposed action at this time could prove to be a fruitless exercise and a waste of resources, of which your agency always complains to have little. We suggest delaying and deferring any road management decisions on this road, or any other road in the Krassel Ranger District for that matter, until a valid NEPA document is issued relative to travel management in the Krassel Ranger District. The current MVUM is not based on any valid and approved NEPA analysis, and therefore it is unreliable.

The subject road is a very popular road, two to three miles in length, used primarily for motorized recreation and for access to other recreational uses of the Forest. This road originates from the Warren-Profile Gap Road on Forest land, although that road is managed by Valley County under a FRTA easement. The subject road then crosses Forest land until it reaches a patented mineral survey, which it

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traverses through and then re-enters Forest land. It ends at or near a mining claim known as the "Red Metals Mine." For those pursuing motorized recreation, at this point the journey ends and one must return by the same route that entry was made. It has tremendous recreational appeal, however, because of the unique features of the route, and its ultimate destination – the Red Metals Mine. The Red Metals Mine was started in the early 1900s. It was an active mine and even had postal service. The ancestors of Steve Harshfield (his family has a long history in the area) delivered mail to the Red Metals Mine Post Office. Present-day visitors enjoy viewing the remnants of this historical operation.

The public, as well as Forest officials, have regularly used and traveled across this road since the early 1900s. While there appears to be no evidence of a formal, recorded public easement for travel across the patented mineral survey, it is highly likely that one exists by operation of law, or by implication. Alternatively, it is highly likely that easement rights could be obtained with very little effort. Road use ought not be restricted until the Forest Service can demonstrate reasonable efforts to validate or obtain an easement.

The proposed action is flawed inasmuch as it is based upon an assumption that the Red Metals Mine Road is currently closed. That is not truly the case. The only basis of closure would be based on the current MVUM. That MVUM is tiered to a 2007 Travel Management Plan and 2008 Record of Decision, which has been determined by the U.S. District Court for Idaho to have been done in error, and it is therefore invalid. A copy of that determination is enclosed for inclusion in the record on this proposed action. That ruling likewise makes the current MVUM both invalid, and more importantly unenforceable. The Red Metals Mine Road is not currently closed, and any analysis based on that assumption is fundamentally flawed. With no reliable and valid MVUM, the last valid travel management document would appear to be the 2007 Forest Visitor Map, which clearly indicates that the Red Metals Mine Road is open to public, motorized travel. The subject road has been openly used by the public for over 100 years and any change should be a last resort after all other options are exhausted.

We recognize that emergencies, such as forest fire and landslide, arise from time to time which may necessitate deviation from valid travel management decisions. However, that is not the case with respect to the Red Metals Mine Road. There has been no recent catastrophe upon which to base any deviation from its current status as a public, motorized road. Environmental dangers may also occur that necessitate a change in road management, but no such evidence has been presented on this proposed action, and the likelihood of the same is extremely low inasmuch as the proposed action will continue to allow motorized travel on the road, albeit limited to certain private parties.

Finally, this action ought to be delayed because of ongoing processes designed to reach mutually acceptable travel management decisions in the Krassel Ranger District. An existing collaborative group should be allowed time to study and make a recommendation on any action on this road. Any avoidance of that process by the Forest clouds the legitimacy of that process and undermines its utility. Additionally, the District Court for the District of Idaho has directed the Forest, Valley County and private litigants to work with one another to develop an appropriate remedy for the Forest's improper



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2007 TMP and 2008 ROD (upon which the MVUM is based). That process is in its early stages. Barring agreement there, the Court will fashion the appropriate remedy. Engaging in the proposed action in light of this reflects a lack of respect for the judicial process and the orders of the Court. If this project proceeds, we would likely have to bring this information before the Court to determine whether this conduct is deserving of sanctions.

It is our strong comment and suggestion that the Krassel Ranger District refrain from taking any road management and road control decisions based in whole, or in part, upon the 2007 TMP, 2008 ROD or the current MVUM until all of those documents are corrected through new NEPA analysis, or some other remedy is accepted by the involved parties or ordered by the Court. We understand that the Court's ruling places in flux the status of current road management designations, but that is a problem of the Forest's own making. The litigants in the Court action will soon be meeting to discuss options, including interim management issues. Engaging in action such as this simply frustrates the entire process and demonstrates a lack of regard for the judicial orders.

Thank you for the opportunity to comment. Please feel free to contact me with any questions, comments or concerns.

Very truly yours,



David P. Claiborne

Encl.

cc: Idaho Recreation Council, via email ([smitchel@alscott.com](mailto:smitchel@alscott.com))  
Chris and Lois Schwarzhoff, via email ([chrisschwarzhoff@cs.com](mailto:chrisschwarzhoff@cs.com))  
Steve Swann, via email ([scswann@clearwater-research.com](mailto:scswann@clearwater-research.com))  
David Lombardi, attorney for Valley County, via email ([drl@givenspursley.com](mailto:drl@givenspursley.com))  
Ken Paur, attorney for USFS, via email ([KENNETH.PAUR@OGC.USDA.GOV](mailto:KENNETH.PAUR@OGC.USDA.GOV))  
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Anthony Botello, Krassel District Ranger ([abbotello@fs.fed.us](mailto:abbotello@fs.fed.us))  
Keith Lannom, Forest Supervisor ([klannom@fs.fed.us](mailto:klannom@fs.fed.us))

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## PROJECT DOCUMENTS

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## Crater Lake Access Road CE Check Sheet

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### CATEGORICAL EXCLUSION REVIEW

#### Crater Lake Access Road Project Krassel Ranger District Payette National Forest

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##### PROPOSED ACTION

The proposed action would issue a special use authorization (SUA) to private landowners for use and maintenance of an access road crossing National Forest (NF) land to private land. The road is approximately ½ mile long. A parking and turn around area would also be included in the authorization.

The road is accessed from the Profile Gap road #50340, crosses NF land to non-federal property (Mineral Survey #2041), and back on to NF land to a parking and turn around area where the Vita's park and hike to their Crater Lake property. Motorized access would be authorized on the portion of the road crossing NF land for landowner ingress and egress purposes. The road also crosses private property and the Holder has attained permission for use of the road through the non-federal property.

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##### PROJECT LOCATION

The project is located on the Krassel Ranger District. This road is described as starting in Township 20 North, Range 9 East, section 30 and continuing through Township 20 North, Range 8 East, section 25; Boise Meridian, Valley County, Idaho. See project map.

Motorized access would be authorized on road 503408900 (aka Red Metal Mine Road) from the Profile Gap road 50340 to a parking – turn around area as shown on the attached map. From the parking area, access to the furthest private property is via the trail to Crater Lake which is non-motorized use.

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##### PURPOSE AND NEED FOR THE PROPOSED ACTION

The *need* for this project is to respond to a request from the Vita's for motorized access to private property. The Vita's own a 20 acre parcel that includes Crater Lake. The parcel is surrounded by National Forest land and the Vita's have built a small cabin near the lake. The project provides access to private property (20 acres) at Crater Lake. The access road would also provide access to additional private property in the area.

The existing road, identified as 503408900, is not open for motorized use under the current Forest Travel Plan; therefore, authorization is needed for motorized use on this route. The Vita's have used the route to access their property for many years. In 2008, they submitted a special use application requesting authorization for motorized use of the road for access to private property. From 2012 through 2015, a temporary permit has been issued to the Vita's for motorized access on the road. The Vita's have seen an increased use of the road by the public over the past several years. Even though the road is closed under the travel plan, there are no signs or barriers to prevent use. The Vita's would like the Forest Service to install a gate on road at the junction with the Profile Gap Road. They would also be willing to install the gate as part of their special use authorization.

The *purpose* of this project is to authorize motorized use and maintenance of a road crossing the Payette National Forest through the issuance of a special use authorization.

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##### MANAGEMENT DIRECTION

Chapter III of the Forest Plan describes management direction to guide Forest personnel to achieve desired outcomes and conditions for both land stewardship and public service. This direction is presented in two sections: (1) Forest-wide Management Direction, and (2) Management Area Description and Direction. The Forest-wide management direction provides general direction for all Forest resources and the foundation for more specific direction at the management area level.

Management Direction for Special Uses is generally addressed in Goal LSGO04:

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## Crater Lake Access Road CE Check Sheet

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*“Proposed special uses of National Forest System lands – such as hydroelectric development, communication sites, water developments, and utility corridors – are considered that meet public needs, are consistent with direction for other National Forest resources, and cannot be accommodated off the National Forest”.*

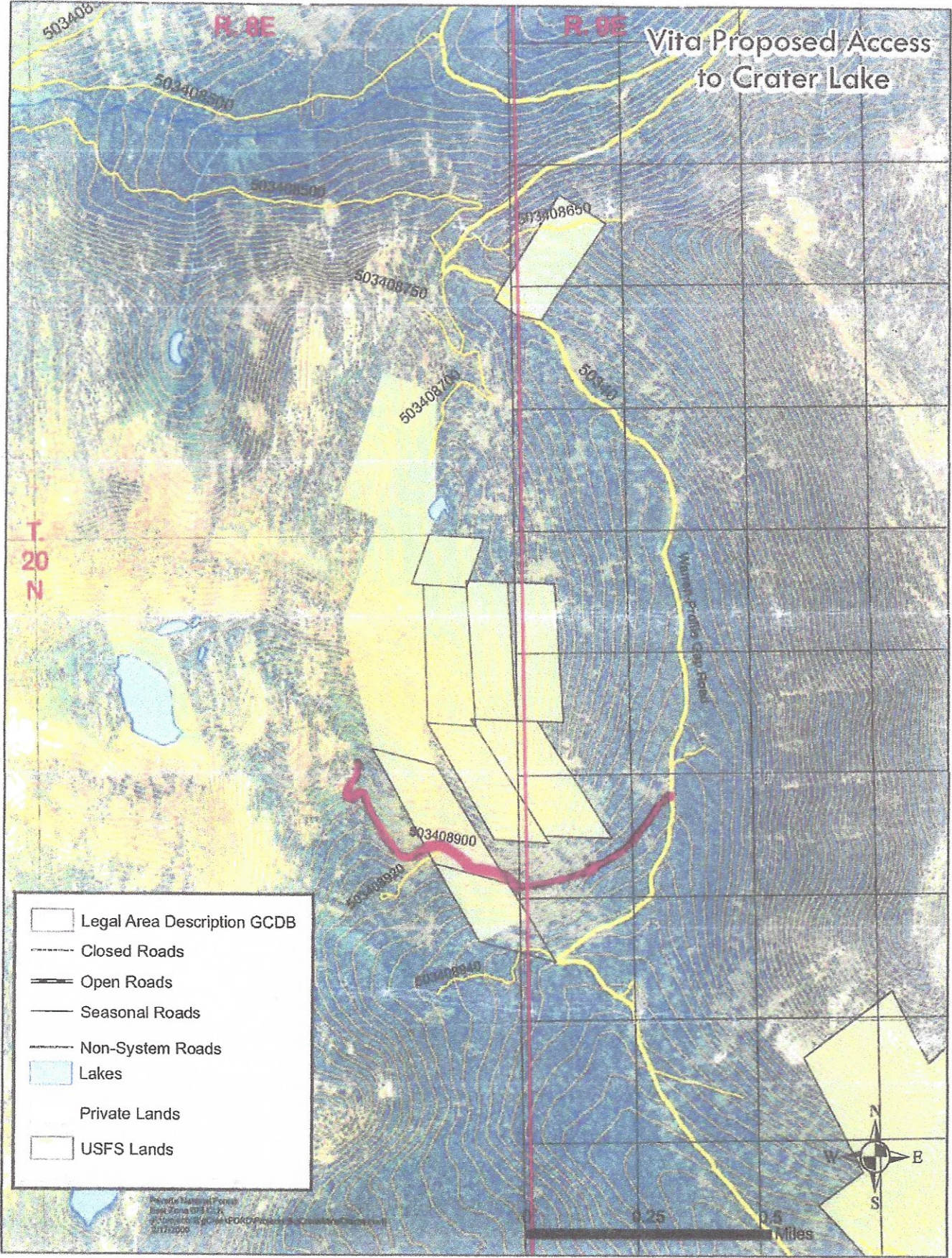
The project is located in the Big Creek - Stibnite Management Area (MA13) and within Management Prescription Category 3.2 with an active restoration and maintenance of aquatic, terrestrial and hydrology resources emphasis.

### LAWS

1. Clean Water Act, The Federal Water Pollution Control Act of 1972 (PL 92-500) as amended in 1977 (PL 95-217) and 1987 (PL 100-4),
2. Endangered Species,
3. National Forest Management Act (NFMA),
4. National Historic Preservation Act, The Clean Air Act, as amended in 1990,
5. American Indian Religious Freedom Act, Executive Order 12875, Executive Order 13007, Executive Order 13175, and Native American Graves Protection and Repatriation Act



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## Crater Lake Access Road #46345

### Commenting on This Project

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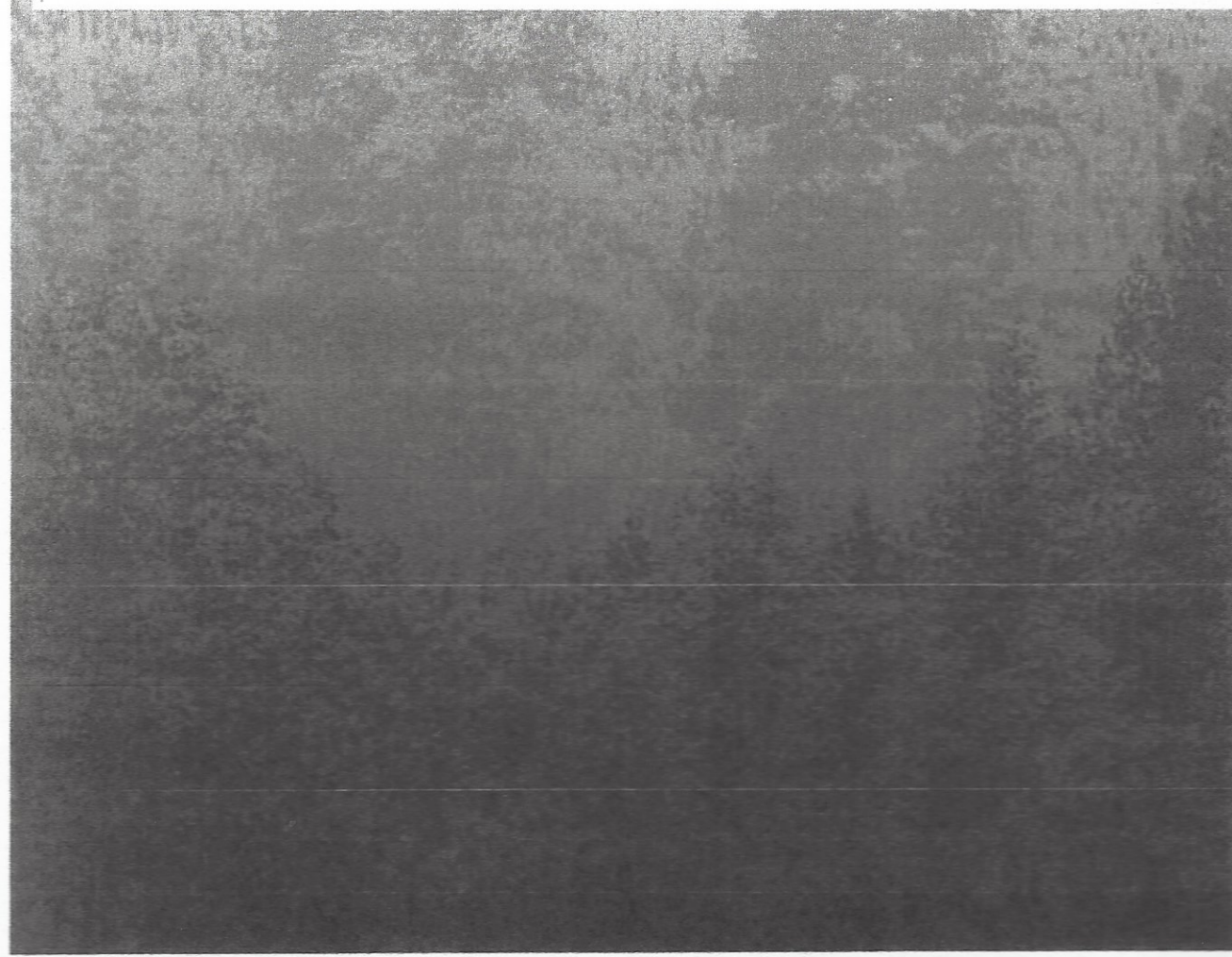
Comments, including anonymous comments, will be accepted at any time. However, comments posted after the close of a designated comment period may not be able to be given full consideration. Anonymous comments and comments submitted after the close of the final designated comment period will not provide the commenter standing for administrative review.

The Forest Service values public participation. Communications from the public regarding this project, including commenter's names and contact information, will become part of the public record.

#### Submitting Comments

If you wish to submit a comment, please send it to:

**Kathryn Nash**  
Krassel Ranger District  
500 North Mission Street , McCall, ID, 83638  
knash@fs.fed.us





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## Crater Lake Access Road

The proposed action would issue a special use authorization to private land owners for use and maintenance of a road crossing National Forest land. The road is approximately 1/2 mile. A parking area and turn around would be included.

### Project Information

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**Expected Analysis Type**

Decision Memo

**Categorical Exclusion**

Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land.

**Special Authority**

Not applicable / Other

**Lead Management Unit**

Krassel Ranger District

**Notice and Comment Regulation**

Not Subject to Regulations

**Project Purpose**

Special use management

**Project Activity**

Special use authorizations

### Project Status

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**Current Status**

Under Analysis

**Project Milestones**

**Last Completed Milestone:** Notice of Initiation (03/05/2015)

**Next Milestone:** NEPA or Forest Plan Amendment Decision Document Available (est. 09/01/2015)

*Last Updated: 03/13/2015*



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## COURT DECISION



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

VALLEY COUNTY, IDAHO

Plaintiff,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE, an agency of the United States; TOM VILSACK, in his capacity as Secretary of Agriculture of the United States; UNITED STATES FOREST SERVICE, an agency within the United States Forest Department of Agriculture; TOM TIDWELL, in his capacity as Chief of the United States Forest Service; HARVEY FORSGREN, in his capacity as Regional Forester for the Intermountain Region of the United States Forest Service; BRENT L. LARSON, in his capacity as Forest Supervisor of the Caribou-Targhee National Forest; and KEITH LANNOM, in his capacity as Forest Supervisor for the Payette National Forest,

Defendants.

IDAHO RECREATION COUNCIL, an Idaho non-profit corporation; CHRIS and LOIS SCHWARZHOFF, husband and wife;

Plaintiffs,

v.

UNITED STATES FOREST SERVICE, a federal agency within the Department of Agriculture; SUZANNE C. RAINVILLE, Forest Supervisor, Payette National Forest; and BRANT PETERSEN, District Ranger, Krassel Ranger District, Payette National Forest,

Defendants.

Civil Action No. 1:11-cv-233-BLW

**MEMORANDUM DECISION AND  
ORDER**

Consolidated Case: 1:09-cv-275-BLW

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## INTRODUCTION

The Court has before it a motion to reconsider filed by Valley County, and motions to intervene filed by Adams County, Idaho County, and Washington County. For the reasons explained below, the Court will (1) grant the motion to reconsider; (2) grant the motions to intervene filed by Adams County and Idaho County; and (3) deny the motion to intervene filed by Washington County.

## LITIGATION BACKGROUND

The Payette National Forest (PNF) issued a Final Environmental Impact Statement (2007 FEIS) and Record of Decision (2008 ROD) that purported to evaluate the environmental conditions of unauthorized roads without actually examining the roads themselves. These decisions affected all thirteen of the Management Areas within the PNF.

After receiving public criticism for this failure, the PNF conducted a focused Environmental Assessment (EA) of two of the thirteen Management Areas in 2010. In that 2010 EA – a study that was tiered to the 2007 FEIS – the PNF conducted the specific environmental evaluation of unauthorized roads that was missing from the 2007 FEIS.

In addressing a challenge to all of these agency actions, the Court held that the 2007 FEIS violated NEPA because it used an undisclosed proxy method to substitute for examining the roads themselves. *See Memorandum Decision (Dkt. No. 107)*. The 2010 EA, however, satisfied NEPA because it abandoned the proxy method and actually examined the roads at issue, at least in the two Management Areas it studied. *Id.*



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The Court's decision required the PNF to conduct a new study on all but two of the thirteen Management Areas – the two areas that had been properly evaluated by the 2010 EA were Management Areas 12 and 13. The Court's decision did not resolve the remedy issue, but urged the parties to reach some resolution. If the parties were unable to agree, the Court would resolve the remedy issue after receiving further briefing. But before the remedy issue can be resolved, the Court must first resolve the pending motions.

## ANALYSIS

### Motion to Reconsider

Valley County asks the Court to reconsider its earlier decision and hold that the 2010 EA violates NEPA. The effect of such a reconsideration would be to require that Management Areas 12 and 13 be reevaluated by the PNF along with the other eleven Management Areas.

In an argument not made in the prior briefing, Valley County cites *Kern v. BLM*, 284 F.3d 1062 (9th Cir.2002) for the proposition that an EA violates NEPA if it is tiered to a flawed EIS, even if the EA corrects the flaw in the EIS. In *Kern*, the Circuit reviewed an EIS and EA evaluating a timber sale in Oregon. The EIS failed to evaluate the possibility that new timber-hauling roads could allow a deadly root fungus to spread and kill Cedar trees. *Id.* at 1067-68. A subsequent EA did evaluate this threat, but only focused on part of the area that would be logged. The EA was tiered to the EIS, and both studies were tiered to Guidelines that discussed the fungus threat on a broad-scale basis but without NEPA review.

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The Circuit held that the EIS violated NEPA because (1) it failed to discuss the fungus threat, and (2) it was tiered to the Guidelines that had never been subjected to NEPA review. *Id.* at 1073. Turning next to the EA, the Circuit held that because it was tiered to both the EIS and the Guidelines, the EA would be struck down unless “standing alone” it satisfied NEPA. *Id.* at 1075. The Circuit held that the EA could not stand alone because it evaluated the fungus threat on only a portion of the area logged, and NEPA requires a stand-alone EA to conduct a cumulative impacts analysis: “If, as is the case here, there is no analysis in the EIS, the scope of the required analysis in the EA is correspondingly increased.” *Id.* at 1078. That “increased scope” required a cumulative impact analysis taking into account the impacts in the EA’s study area combined with planned logging in adjacent areas. *Id.* The EA did not conduct such a broad ranging analysis and hence could not “stand alone.”

*Kern* applies here and requires reconsideration of the Court’s earlier decision. Under *Kern*, the 2010 EA – tiered to the 2007 FEIS that violates NEPA – survives only if “standing alone” it satisfies NEPA. *Kern* requires that to stand alone, the 2010 EA must conduct a cumulative impacts analysis that evaluates impacts beyond Management Areas 12 and 13. The 2010 EA contains no such cumulative impact analysis. Accordingly, the 2010 EA cannot pass muster under NEPA. The Court will therefore grant Valley County’s motion to reconsider and add Management Areas 12 and 13 to the other eleven Management Areas that the PNF must re-evaluate.



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## Motion to Intervene

Three counties – Adams, Idaho, and Washington – seek to intervene in this case. Two of the counties – Adams and Idaho – have land within the area evaluated under the 2007 EIS. The Court finds that with respect to those two counties, they meet all the qualifications for permissive intervention. *Arakaki v. Cayetano*, 324 F.3d 1078 (9<sup>th</sup> Cir. 2003). As they recognize in their briefing, this allows them to comment only on the remedies for the established NEPA violations contained in the 2007 EIS, 2008 ROD, and 2010 EA – this does not open the door for them to challenge other environmental reviews that pertain to land within their boundaries. Moreover, the Court will not allow any repetitive briefing from these two counties – their briefing must be strictly limited to concerns unique to their counties and not already covered by Valley County. With those restrictions, the Court will grant permissive intervention to Adams County and Idaho County.

Washington County has no land within the area studied by the 2007 EIS and 2008 ROD. They allege that roads “illegally closed by the ROD may begin or terminate in Washington County” but are not sure. *See Reply Brief (Dkt. No. 123)* at p. 3. Such allegations are not sufficient for intervention and the Court will deny the motion filed by Washington County.

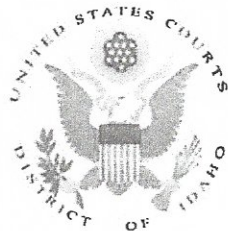
## ORDER

In accordance with the Memorandum Decision set forth above,

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NOW THEREFORE IT IS HEREBY ORDERED, that the motion to reconsider (docket no. 111) is GRANTED, and the Court finds that the 2010 EA and associated FONSI violate NEPA.

IT IS FURTHER ORDERED, that the motion to intervene (docket no. 119) is GRANTED IN PART AND DENIED IN PART. It is granted to the extent it seeks permissive intervention for Adams County and Idaho County, with the restrictions set forth in the Memorandum Decision. It is denied to the extent it seeks intervention for Washington County.



DATED: January 5, 2015

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill  
Chief Judge  
United States District Court