



August 17, 2017

Rob Robertson
Washakie District Office
Shoshone National Forest
333 East Main Street
Lander, WY 82520

submitted via email to: travel_management_comments@fs.fed.us

Re: Shoshone National Forest Notice of Intent to Develop an Environmental Impact Statement for Travel Management

Dear Mr. Robertson:

Please accept this supplement to our scoping comment letter originally submitted July 27, 2016. This supplemental scoping letter provides additional information regarding areas on the Shoshone National Forest (SNF) that are a priority to The Wilderness Society (TWS), with an emphasis on the High Lakes Wilderness Study Area (WSA), and information on the SNF's transportation system.

I. High Lakes WSA

The SNF's Revised Land and Resource Management Plan (LRMP) states that the High Lakes WSA will be managed to prevent long-term impairment of wilderness characteristics until released from wilderness study area status and that snowmobiling is authorized to the same manner and degree as was occurring prior to the Wyoming Wilderness Act of 1984.¹ This language comes almost directly from the Wyoming Wilderness Act:

"Subject to valid existing rights and reasonable access to exercise such rights, until Congress determines otherwise, the . . . High Lakes Wilderness Study Area shall be administered by the Secretary of Agriculture so as to maintain [its] presently existing wilderness character [W]ithin the . . . High Lakes . . . Wilderness Study Area, snowmobiling shall continue to be allowed in the same manner and degree as was occurring prior to the date of the enactment of this Act."²

¹ Shoshone 2015 Revised Forest Plan. Pages 17 and 122.

² Wyoming Wilderness Act of 1984.

Thus, while snowmobiling may be permitted in the High Lakes WSA, this travel plan must include management actions to ensure that snowmobiling occurs in the same manner and degree as occurred prior to October 30, 1984. As detailed in the scoping letter submitted by Winter Wildlands Alliance, dated June 24, 2016 (pp. 7-8), the High Lakes area had not received substantial snowfall by late October 1984. This means OSV use within the High Lakes WSA must be managed to ensure that it does not exceed the manner and degree of use that occurred in the winter of 1983.

There are two legal cases that should help the Forest Service determine how to manage snowmobile use within the High Lakes WSA in compliance with the Wyoming Wilderness Act. The first, *Greater Yellowstone Coalition vs. Timchak*, addressed the Forest Service's decision to permit increased helicopter use within the Palisades WSA.³ The court struck down this decision because it failed to preserve the "opportunities for solitude" that existed in the WSA at the time of designation (1984).⁴ The impact that the noise from motorized use – in this case helicopters – has on a backcountry skiers "opportunities for solitude" was a major determinant in the court's decision. The court held that the Forest Service must maintain the wilderness character that existed in 1984.⁵ The same is true here: the Forest Service must manage snowmobiling within the High Lakes WSA to protect the wilderness opportunities present in the early 1980s.

A more recent case out of Montana, *Montana Wilderness Association vs. McAllister*, is perhaps even more relevant as it pertains to travel planning decisions made for a WSA on the Gallatin National Forest.⁶ In this case the court ruled that the travel plan did not maintain the WSA's 1977 wilderness character or current user's ability to enjoy the 1977 wilderness character. The Montana Wilderness Study Act passed in 1977. As with the Palisades case, the court noted that noise impacts from snowmobiles would adversely impact backcountry skiers' opportunities for solitude. The court also recognized that technological advances in snowmobile technology have dramatically changed motorized use patterns within the WSA. The court held that the Forest Service must protect the area's wilderness characteristics, including opportunities for solitude, as existed when the WSA was designated. Likewise, the SNF must manage snowmobile use within the High Lakes WSA to protect the wilderness characteristics and opportunities for solitude within the High Lakes area as they existed in the winter prior to October 1984 (the winter of 1983).

The Bitterroot National Forest recently published a travel management plan that explicitly addressed management of motorized use, including OSVs, within WSAs. The Forest Supervisor decided to prohibit OSVs within the two WSAs on the Bitterroot National Forest because she determined that OSV use within these areas at the time of designation (1977) was extremely low and that to manage use

³ *Greater Yellowstone Coal. v. Timchak*, 2006 WL 3386731 (D. Idaho Nov. 21, 2006).

⁴ *Id.* at 8 ("According to Congress, the opportunities for solitude that existed in 1984 must be maintained.").

⁵ *Id.* at 6.

⁶ *Montana Wilderness Ass'n v. McAllister*, 666 F.3d 549 (9th Cir. 2011)

consistent with what was occurring in 1977 would be extremely challenging and not practical.⁷ While it is likely that OSV use within the High Lakes WSA in 1983 was higher than occurred within the Bitterroot's WSAs in 1977, it is undoubtable that OSV use within the High Lakes WSA in 2016 was much greater – both in terms of visitation and where users are going – than in 1983. To comply with the Forest Plan and the Wyoming Wilderness Act, the travel plan must include substantial changes to how OSV use is managed within the High Lakes WSA to protect the wilderness character present in October 1984, or more specifically, the winter of 1983. Closing the WSA to OSV use entirely is one management action the Forest Service could employ. Others include permitting to limit the amount of use, a more restrictive season (perhaps only allowing use on certain days), limits to what type of use is allowed (i.e. no high-marking), and/or limits on where use is allowed (designated routes only). Winter Wildlands Alliance proposed a boundary on August 14, 2017 to the SNF delineating where OSV use should be allowed to occur within the WSA. You will find this boundary attached. We request that the Forest Service analyze this boundary as an alternative in the DEIS.

Further, as discussed in our original scoping letter dated July 27, 2016, (pp. 1-6), the Forest Service must consider the requirements in Executive Order 11644 and Subpart C of the Travel Management in this planning process. It is critical that the SNF's travel plan satisfy the Forest Service's substantive legal duty to locate areas and trails designated as open to OSV use to *minimize* resource damage and conflicts with winter visitors enjoying nonmotorized, quiet forms of recreation. Specifically, the Forest Service must consider these substantive requirements as applied to any motorized designations proposed in the WSA.

When considering how it will manage the High Lakes WSA, all alternatives must be compliant with the requirements in the Wyoming Wilderness Act, the ORV Executive Orders, and Subpart C of the Travel Management Rule. The travel plan EIS must include a discussion of the High Lakes WSA that documents the manner and degree of use prior to October 30, 1984 and describes management actions that the Forest Service will be taking to ensure compliance with the Forest Plan and Wyoming Wilderness Act. For each alternative, the Forest Service must document in the travel plan EIS how its proposed management of the High Lakes WSA is compliant with the minimization criteria. For each action alternative, the Forest Service must consider management actions that would limit wintertime motorized use in the High Lakes WSA below its current levels; we offer suggestions above, including a boundary delineation.

II. Other Priority Places

In addition to the High Lakes WSA, there are four other areas that are a priority to TWS: 1) the Dunoir Special Management Unit, 2) Francs Peak, 3) Wood River, and 4) Trout Creek. We remind the agency that TWS advocated for the protection of these areas throughout the SNF's LRMP revision. The SNF LRMP

⁷ Bitterroot National Forest Travel Management Planning Project Record of Decision. May 2016. pp. 24 and 25. Available at <http://www.fs.usda.gov/project/?project=21183>

prohibits motorized travel in these areas. We fully expect the Forest Service to comply with this LRMP direction when making motorized designations in the travel planning process.

III. Subpart A of the Travel Management Rule

We are pleased that the SNF is making a concerted effort in this Subpart B process to consider the information from the recently completed travel analysis report and to identify the minimum road system. We have significant concerns, however, with elements of the SNF travel analysis report (TAR) and how this information will be used to identify the minimum road system and inform the Subpart B process. We request that the SNF consider the following as it integrates Subparts A and B of the Travel Management Rule.

First, it appears as though the SNF arbitrarily labeled roads as needed or not needed in the 2017 TAR. In the 2015 TAR, roads in the categories of Medium/High, Low/High, Low/Medium and Low/Low are all shown as Likely Not needed for Future Use. In the 2017 TAR, the roads have the same risk/benefit grade assigned previously, but now only a few of the M/H, L/H, L/M and L/L roads are identified as 'not needed' and most of the roads with the exact same score are now considered 'likely needed'. The TAR explains how they came up with the score, but not why they decided that some roads are needed and others are not. Page 25 of the 2017 TAR now explains that M/H roads should be a priority for mitigation and L/L roads are relatively low resource risk. The 2015 TAR identified 256 miles of road as likely not needed while the 2017 TAR identified 52 miles as likely not needed. The 2017 TAR does not provide a rationale for why the SNF now recommends keeping 204 miles of these roads. There is clearly a disconnect between the findings in the risk/benefit analysis and identification of which roads are likely needed/not needed in the 2017 TAR.

Second, the 2017 TAR found that 250 miles of its road system is low benefit. Yet, the TAR identified the vast majority of these roads as likely needed for future use, and the travel planning proposed action would retain the majority as system roads. There are a few things we request the SNF consider in this planning process regarding low benefit roads.

- The 2017 TAR found that nearly 50 miles of these low benefit roads pose a medium cumulative risk. These are ideal roads to decommission as they have little benefit and the risk to the environment from this road outweighs its value. We request that the SNF not retain these roads, but instead decommission them as part of the travel planning process.
- According to the TAR, most of the low benefit roads did not receive a cumulative high risk score. It is important to note that about 12 miles of these low benefit roads pose a high risk to a subset of resources. In situations like this, the SNF must not lose sight of the fact that these roads are posing a risk to some forest resource, and that it is important to address this risk and not let it continue unabated. We recommend that the SNF decommission, rather than store or downgrade these

roads, as we believe this is a reasonable solution for eliminating all risks that are associated with low benefit roads.

- In general, we recommend that the Forest Service refrain from storing low benefit roads unless the agency can point to a definitive reason why it needs the road in the foreseeable future. Retaining roads by closing and storing them can result in illegal incursions from motor vehicles. The Rio Grande National Forest RGNF) in Colorado raises this concern in their Roads Analysis Process (RAP) Report:

Although level 1 roads are technically considered closed by the Forest, many are still passable for motorists who disregard such closures.

RGNF RAP, p. 118. Illegal incursions can, in turn, can facilitate other types of unwanted activity like illegal dumping, poaching, the likelihood of human caused fires, and the spread of invasive species. Unless the SNF can point to a specific reason why it needs a particular low-benefit road, we request that the agency decommission the road removing it from the transportation system. While we acknowledge that some of these low benefit roads are likely needed for future use, we are dubious that the SNF needs 250 miles of low benefit roads.

Third, the fiscal analysis provided in the TAR is insufficient for several reasons. 1) It does not include any information about the deferred maintenance backlog. 2) The TAR does not calculate the annual budget shortfall between costs and revenues. 3) The TAR notes that maintenance level (ML) 1 roads do not cost anything, which isn't true. A few of the costs include: patrols for illegal use on closed roads, maintaining and replacing gates, monitoring to ensure aquatic mitigation is working, and implementation of best management practices for water quality (e.g., installation and maintenance of water bars, sloping, removal of culverts, (re)seeding to stabilize soils, addressing damage from unexpected events such as slides or slumps. We request that the fiscal analysis in the DEIS include these factors. This information is important for the public to understand the fiscal challenges facing the SNF in terms of managing its transportation system.

Recommendations: We request that you analyze an alternative in the DEIS that would decommission the 256 miles of road that are identified as likely not needed for future use in the 2015 TAR. Acknowledging that the SNF may likely need some of the roads identified as having low benefit in the 2017 TAR, we request that the agency analyze an alternative that would decommission most of these low benefit roads. We request that the DEIS include a proper fiscal analysis of the transportation system that includes the factors raised in this letter. We request that the SNF design its alternatives with an eye towards achieving a fiscally sustainable transportation system that brings costs more in line with revenues.

IV. Conclusion

Thank you for considering this supplement to our original scoping letter that was submitted on July 27, 2016. Please do not hesitate to contact me if you have any questions or require follow-up information.

Sincerely,

Dan Smitherman
Wyoming Representative
The Wilderness Society

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Josh Hicks
Assistant Director of Forest Planning and Policy
The Wilderness Society

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]