



BlueRibbon Coalition
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Ben Burr, Executive Director

April 13, 2023

BlueRibbon Coalition
P.O. Box 5449
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Objection Reviewing Officer
USDA Forest Service, Northern Region
26 Fort Missoula Road
Missoula, MT 59804

RE: Objections to BMU 4 Access

Dear Objection Reviewing Officer:

Please accept these objections to the Draft Record of Decision (“Draft DN and FONSI”) for the BMU 4 Access Project, as well as the associated Final Environmental Assessment (“FEA”). These objections are submitted on behalf of the BlueRibbon Coalition (“BRC”), including BRC’s individual and organizational members who have enjoyed, and plan in the future to enjoy, access to the Kootenai National Forest.

These objections are submitted in accordance with 36 C.F.R. part 218. BRC filed comments on the BMU 4 Access Draft Environmental Assessment (DEA) raising the stated issues or otherwise providing a basis for these objections. The point of contact for this objection is Simone Griffin and please direct all communication regarding these objections to Simone Griffin at PO Box 5449 Pocatello ID 83202. We formally request a resolution meeting in accordance with 36 C.F.R. § 218.11. We hereby authorize, indeed encourage, the Reviewing Officer to extend the time for a written response to objections, particularly if it will facilitate a thorough effort to explore opportunities to resolve objections. See, 36 C.F.R. § 218.26(b).

I. Interest of the Objector

BRC has a unique perspective and longstanding interest in motorized vehicle use. BRC is a nonprofit organization that champions responsible recreation and encourages individual environmental stewardship. BRC members use various motorized and nonmotorized means to access public lands, specifically including use of the Kootenai National Forest. BRC has a long-standing interest in the protection of the values and natural resources addressed in this process, and regularly works with land managers to provide recreation opportunities, preserve resources,

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and promote cooperation between public land visitors.

II. Objection Issues

We note at the outset that the agency has conducted a lengthy process. We want to express our appreciation for the agency's thoughtful effort, support of stakeholder involvement and collaboration, and patience in this lengthy process. Still, there remain concerns with the current approach, and we raise the following objections, which provide a legal basis for our requested changes to the Draft DN.

The objection process necessarily anticipates the possibility and potential likelihood of success in subsequent litigation brought by an objector. In such a challenge the Administrative Procedure Act (APA) waives the United States' sovereign immunity for those aggrieved by "final agency action." 5 U.S.C. §§ 702, 704; *Lujan v. National Wildlife Federation*, 497 U.S. 871, 882 (1990). APA section 706(2) provides the relevant standard of review: a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (C) short of statutory right; [or] (E) unsupported by substantial evidence...." This standard of review is "narrow" but the agency:

must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made....Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983) (citations omitted). This is considered a deferential standard of review. Still, there always exists some level of litigation risk, and we believe the decision can be improved.

A. The Agency Has Failed to Sufficiently Document Site-Specific Conclusions.

Some of the restrictions on such use go too far and some of the designations should be reconsidered.

The Draft RDN fails to sufficiently describe or document the basis for some of the site-specific designation choices presented. Under even "arbitrary and capricious" review the agency must articulate a "rational connection between the facts found and the choice made...." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. NEPA imposes various technical protocols including disclosure of methods, presentation of hard data, and disclosure of any "sources relied upon for conclusions" in an EIS. 40 C.F.R. § 1502.24. NEPA does not envision undocumented narrative exposition, but requires that "[a]gencies shall insure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements." *Id.*; *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006) ("NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data"). A "bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS." *Great Basin Resource Watch v. BLM*, 844 F.3d 1095, 1103 (9th Cir. 2016).

1020 Dry Creek

This motorcycle trail is currently marked in the project documents to be converted into a non-motorized road. This road features many recreationally valuable curves and turns and beautiful views. It also provides important access to hiking routes 1016, 1019, and 1035. As it runs fairly close to the main highway, its existence is very

unlikely to cause a measurable difference in motorized travel disturbance for the area. Due to its unique location and access points, this trail should not be closed or rerouted.

998 Big Eddy

This trail has historically been open to vehicles 50" or less; it is currently marked in the project documents to be converted into a non-motorized road. This trail leads to at least 2-3 sights with characteristics that lend themselves to high quality hunting opportunities. Changing this route into a non-motorized route would severely increase the difficulty of hauling out big game in this area during responsible hunting. As the trail is currently used, it also shortens the route to star peak when traversed via motorized vehicles, making the hike more accessible to those with disabilities, as well as to the average hiker. The current motorized permissions on this route do not extend far past these sites and intrude minimally into the broader area, extending less than two miles from the main highway. Due to its unique qualities and minimal intrusion, this trail should not be closed or rerouted.

Road 2272

This open, public road is currently marked in the project documents for public motorized use restrictions and a gate placement. We acknowledge that this trail's multiple crossings over water ways in a high density trail area is less than optimal and would benefit from management changes. We also recognize that this trail provides important access to Berray Mountain and hope to see this access preserved in management actions. We encourage management changes where motorized access is preserved. In order to decrease waterway erosion while preserving access, we recommend that motorized access to 1028 Berray Mountain West be rerouted.

2272 Berray Mtn

We strongly oppose the proposed closure of this route.

2290 Broken Hill, 2294 Fatman Saddle, 2702 Pilik West, 2721 Star Peak, 1118 Dry Creek, 14611 Dry Bench

These roads all have a purpose and need with a history of use. They provide unique recreational value in which the forest service needs to recognize and develop an alternative that explores maximizing recreational value while keeping these roads open to the public. Users should not be displaced through these proposed closures.

Administrative Roads

The project currently contains plans to change 25 miles of administratively gated roads to barrier roads. Although this does not in the strictest sense alter public access itself, we wish to express our concern that this may decrease active administrative practices in the area for wildfire prevention and wildlife management over time. We believe that the largest threat to wildlife is wildfire, as it can completely obliterate wildlife and habitat. BRC supports active management practices targeted to decrease ecological disasters and maximize appropriate access. Roads also act as firebreaks, and any closures of administrative roads should be analyzed for their potential to increase risk of uncontrollable, catastrophic wildfire.

Too many mileage of routes will be closed or restricted due to bear health. There is not concrete data that shows the decommissioning of these routes will significantly improve the habitat.

B. The cursory Socioeconomic Analysis is Deficient.

The analysis fails to properly evaluate the substantial adverse impacts to local communities that might be caused by the proposed reductions in motorized recreational opportunity. A valid NEPA analysis must include this consideration and disclosure of socioeconomic effects. NEPA embodies a Congressional desire "to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of future generations of Americans."

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42 U.S.C. § 4331(a). Thus, NEPA's operative EIS requirement is triggered by federal action which may "significantly affect[] the quality of the human environment..." *Id.* at § 4332(2)(C) (emphasis added). The "human environment" "shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment." 40 C.F.R. § 1508.14.

The socioeconomic impacts are only discussed and analyzed briefly mainly for timber harvest, but lacks meaningful data or analysis. The Forest must properly evaluate these interconnected motorized designation decisions on a broader scale, and the consequences of decisions in the Draft DN must be properly disclosed. A cumulative impact "is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions..." 40 C.F.R. § 1508.7. Cumulative impacts must be discussed in an EIS in a manner that allows for "meaningful analysis." *City of Carmel-by-the-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997). It is not enough to describe related projects "with generalities insufficient to permit adequate review of the cumulative impact." *Id.*; see also, *Humane Soc'y v. Dept. of Commerce*, 432 F.Supp.2d 4, 22 (D.D.C. 2006) (discussion must go beyond "conclusory remarks and statements"). These discussions are inadequate in the Final Forest Plan.

C. Users with Disabilities

President Biden's has issued an *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. Because this information constitutes new information based on *CFR § 218.8 C*, the USFS should update the plan and proposals to be consistent with the President Biden's *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* and the Department of Agriculture's Equity Action Plan. We recommend that the USFS use this planning process to finally begin to reverse its decades-long systematic discrimination against those with mobility impairment-related disabilities. This includes persons with disabilities and limited physical access. The USFS should develop a true recreation alternative that would be in stronger compliance with the Executive Order.

On his first day in office, President Joe Biden issued an "Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." This executive order established "an ambitious whole-of-government equity agenda" which focuses on addressing "entrenched disparities in our laws and public policies," and mandates a "comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."

Under this executive order, "The term 'equity' means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as ... persons with disabilities..." Historically, there has been no group more greatly marginalized and excluded by public land management policies, and motorized travel management policies in particular, than people with disabilities. Outdoor enthusiasts with ambulatory disabilities frequently rely on motorized travel as their sole means to enjoy recreating on public lands. Not everyone has the ability to hike into a remote wilderness area, but many such people are still able to drive Jeeps, side-by-sides, and ATVs, which are restricted to the designated motorized route network.

Management policies focused on "minimizing" the environmental impacts of motorized recreation have resulted in a dramatic decrease in motorized recreation opportunities on public lands over the last 20 years which has disproportionately impacted people with disabilities. Wilderness focused environmental groups with extreme ableist biases have pushed for more and more areas to be closed to motorized recreation and reserved exclusively for hikers, mountain bikers, and other "human powered" and "quiet use" forms of recreation in which many people with disabilities are unable to participate.

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Every time motorized routes or areas are closed, people with disabilities that require the use of motorized means to access public lands are barred from those areas forever. There has been little recourse for such people in the past because the Americans With Disabilities Act does not require public land management agencies to consider disproportionate effects on the disabled community, but only requires that they be given access to public lands on equal terms with everyone else. As a result, the USFS has historically failed to give any real consideration to the impacts of motorized route closures on the disabled community when developing travel management plans.

The Biden Administration's focus on equity, however, changes the equation. While the ADA focuses only on equality of opportunity, equity inherently focuses on equality of outcome. Any policy that is facially neutral but disproportionately harms a disadvantaged or marginalized group is considered inequitable. The USFS is therefore required by this executive order and others mandating that federal agencies consider "environmental justice" in NEPA proceedings to consider whether any route closures in the Kootenai Forest Management Plan would disproportionately harm disabled users' ability to access public lands.

Any approach to forest management that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized access on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large-scale closures of existing routes would unfairly and inequitably deprive people with disabilities of the ability to recreate in the area using the only means available to them. It is imperative that the USFS consider the access needs of disabled users in drafting the alternatives for this travel plan and ensure that people with disabilities who depend on motorized means do not lose access.

BRC appreciates this opportunity to submit objections to the Draft DN and FONSI. The proposed road closures are not based on best available science and we believe need to be reconsidered.

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Sincerely,

A handwritten signature in black ink, appearing to be 'B Burr', followed by a long horizontal line extending to the right.

Ben Burr
Executive Director
BlueRibbon Coalition