



Friends of the Clearwater

Keeping Idaho's Clearwater Basin Wild

P.O. Box 9241 Moscow, ID 83843 | (208) 882-9755 | friendsoftheclearwater.org

October 2, 2023

Andrew Skowlund, District Ranger
North Fork Ranger District
12740 Highway 12
Orofino, ID 83544

***Comments submitted via project webpage at
<https://cara.fs2c.usda.gov/Public/CommentInput?Project=17992>;
also emailed to: andrew.skowlund@usda.gov.***

These are comments on the Clearwater National Forest Travel Planning Draft Supplemental Environmental Impact Statement (DSEIS) on behalf of Friends of the Clearwater (FOC), Alliance for the Wild Rockies (AWR) and WildEarth Guardians.

FOC especially has been involved in travel planning on the Clearwater National Forest (CNF) over the life of the Forest Plan. Increasingly since 2015, the Forest Service has needlessly delayed and misled the public. This DSEIS demonstrates the agency is thumbing its nose at two federal court orders. These actions not only have failed to comply with the Executive Orders and the lawsuits, termed FOC I and FOC II, it damages the unique character of the backcountry of the Clearwater National Forest and is a huge disservice to the public, the owners of the national forests. Justice delayed is justice denied. We demand, at a minimum, that the Forest Service adhere to its current Forest Plan and comply with the Executive Orders by closing all trails and the 555 route within 100% Elk Habitat effectiveness as per the Forest Plan direction, including the 1993 Lawsuit Settlement agreement areas. A few other trails, located in crucial habitat, should also be closed and are referenced in our past comments and/or in our comments below.

FOC and others have submitted photos, letters, and other documentation that dates back over 20 years. These have documented the agency's inaction. This includes our past comments, appeal, objection, petitions, and court case filings. We also incorporate, by reference, our comments on the draft revised Forest Plan for the Nez Perce-Clearwater National Forests (NPCNF). These comments address issues related to motorized use on trails (and over the snow machine use) on wildlife species (aquatic and terrestrial, Roadless areas/RWAs, watersheds, and soils). Rather than repeat those comments and concerns, many of which are applicable in light of the direction in FOC I and FOC II, this comment only contains a few quotes from our past submissions, in order to highlight key points. We also refer you to the comments submitted by Harry Jageman, a PhD wildlife biologist and former Forest Service employee. We incorporate those comments into our comment.

Introduction and Background

The section in the DSEIS on the history of motorized use on the CNF omits crucial information. It does not state that the Forest Service delayed in implementing the executive orders on off-road vehicles and delayed coming up with a travel plan for over 20 years after completion of the Forest Plan. Citizens requested the agency to do a travel plan and provided monitoring reports years before the travel plan was done.

There is surprisingly little actual analysis or disclosure of environmental impacts in the DSEIS. It also fails to explain how the Forest Service is relying on best available scientific information and how it is complying with requirements of the 2012 Planning Rule.

Some specifics deserve further mention:

- Rather than the travel plan closing some motorized trails in sensitive areas, as the DSEIS alleges (for example, see pp. 3-4 and 3-5), it appears that the belief at the time the Forest Plan was completed was trails were *de facto* closed because they were almost exclusively used by stock and people on foot, especially in the roadless areas, and use was not great. The agency apparently saw no need to comply with the Executive Orders. This naissance and growth of motorized use is documented in both the DSEIS and the document the FS referred to as the OHV Guidelines from 1995. In other words, trails not used by motors were gradually motorized by Forest Service inaction and failure to proactively comply with the Executive Orders. In any case, the Forest Plan and its ROD have language that states motorized use in general, would be restricted in certain areas.
- The 2005 Forest Service Travel Guide (DSEIS page 3-1 and elsewhere) leads the reader to conclude this document had some official standing as per the agency decision-making process. First, there was no public involvement on this guide, no apparent formal decision, and no apparent effort was made to be consistent with the Forest Plan. Second, it was just the last iteration of these guides, none of which went through public input. Third, this guide (for example, see DSEIS page A-79) was incomplete and/or inconsistent with previous years' guides and other trail and road documents (the 1995 OHV Guidelines and various Trail guides). Indeed, the project record shows consistent concern by the public in pointing out how the agency has failed in its commitment to the public. The default position should have been closure of sensitive areas to motorized use even prior to the 2005 guide (see for example, letter to Supervisor Dawson dated June 26, 2002). Our past comments also demonstrate how the Forest Service violated its own promises to the public when it embarked on an effort to justify motorizing the backcountry.
- Thus the history and background in the DSEIS of what the FS has done in the original travel plan and 2017 decision is misleading (see DSEIS pages 3-4 and 3-5). It suggests all these trails and cross country travel were closed to use (summer and also winter) by an enlightened policy. The fact is, the number of places closed, especially in winter, pales in comparison to the areas open. Further, the DSEIS only looks at the 1987 B2

(recommended wilderness) on the referenced pages, rather than the B2 management area as per the Settlement Agreement.

The description of FOC I in the DSEIS—a lawsuit brought by Friends of the Clearwater, AWR and Sierra Club—fails to note that compliance must be done to meet 100% EHE. The court ruled, “The Forest Service’s reasoning ignores the more current guidelines used for calculating EHE and the Court finds it to be arbitrary and capricious.” The Forest Service failed to comply with its own forest plan.

This brief background is important because undergirding the Forest Service policy on travel planning is delay in compliance with the Forest Plan, Executive Orders, and more specific promises to the public on the Forest. This behavior continued, even in light of FOC I, until FOC II. That history of unreasonable delay is well documented in the project record, our decades of letters and reports, and in the court cases. That delay and/or a history of noncompliance with agency direction predates the travel plan and continues to the present. In addition, this current DSEIS tries to evade the courts' rulings by proposing an amendment to the Forest Plan to remove the 100% EHE requirement rather than minimize the harm being done by motor vehicles. We address this later in our comments. Suffice to say now, the ruling in FOC II clearly rejected this illegitimate approach.

For reasons alluded to in the above paragraph, we use the term EHE to refer to the requirements to protect elk habitat in the Forest Plan. The ruling in FOC II struck down agency attempts, repeated in the DSEIS (see DSEIS pages 3-6 and 3-7), to suggest that the latest science was not applicable to the Forest Plan/Forest Plan ROD requirements for elk habitat protection.¹

We also wish to address misleading statement by the Forest Service about the Fish Lake Trail. The North Fork District Ranger claimed the trail was a former road.² Our review of agency visitor maps show it has always been a trail. It was a dozer line that was built to fight fires. For better or worse, the Forest Service has built dozer lines into Wilderness recently in the Trinity Alps Wilderness (California) and the Bear Wallow Wilderness (Arizona).

Lastly, we assume the FS is operating under the assumption this DSEIS would comply with FOC I and FOC II. For reasons stated in this comment, it does not comply with that direction. Rather, the agency ignores the direction and proposes to amend the plan to weaken habitat standards rather than taking a second look at the direction.

100% EHE and the Lawsuit Settlement Agreement

The Forest Plan Settlement Agreement changed management direction for areas that have appeared in bills sponsored by members of the Idaho congressional delegation. These areas—including most of the Weitas Creek and Upper North Fork roadless areas – are to be managed as B2 or recommended wilderness.³ The Lawsuit Settlement Agreement is a legally binding

1 This is part and parcel of agency attempts at unilaterally alter the Settlement Agreement.

2 Even if it was a road, it begs the question of why the FS didn't close it earlier?

3 In our earlier comments on the DEIS we stated, “Clearly, C-1, C-6, C8S, B2, and A3 management areas must be closed to wheeled vehicles to meet the forest plan ROD Elk Habitat

commitment by the agency until the Forest Plan is revised. The agency cannot unilaterally amend that agreement by weakening or removing the standards in the B2 areas. If so, the agency could propose any amendment such as allowing for so-called restoration logging or other development incompatible with preservation of an area as B2 (Recommended Wilderness). Thus, the DSEIS proposes to illegally remove that portion of the Settlement Agreement.

The other problem is the FS refuses to acknowledge all the B2 settlement agreement areas. We have provided you with a map, from your own BHROWS document and other sources, that shows the lawsuit settlement agreement areas. They correspond roughly with the about 80% of the Weitas Roadless Area (Bighorn-Weitas, including but not limited to the 555 route beyond the bridge at the Guard Station, includes some C8S and inclusion of wildlife winter range now managed as B2 as per the Settlement Agreement), most of the Fish and Hungry Creek Roadless Area (North Lochsa Slope, also includes some C8S and inclusion of wildlife winter range now managed as B2 as per the Settlement Agreement), most of the Mallard-Larkins Roadless Area, most of the Upper North Fork Roadless Area (Meadow Creek-Upper North Fork), most of the Great Burn Roadless Area (AKA Kelly Creek or Hoodoo), and an expanded area north of Elk Summit, including Colt Killed Creek.⁴ This issue can be summed up as follows. In light of FOC I and FOC II and the Settlement Agreement, the DSEIS fails to recognize that the Settlement Agreement expanded the B2 (recommended wilderness). This is a major flaw.

The DSEIS also does not consider impacts to the roadless and wilderness character of areas where the agency would open up motorized trails via the proposed amendment. In fact, the agency is coming up with a catch-22 where decisions in the travel plan, in effect and contrary to agency direction, render roadless areas as no longer eligible for Wilderness when the Forest Plan is revised.

Failure to Come Up With an Alternative That Abides by the Requirements of FOC I, FOC II, the Settlement Agreement in Terms of Current EHE Requirements

The DSEIS fails to analyze an alternative that complies with the Settlement Agreement and FOC I and FOC II. The so-called No-Action Alternative would only keep the Fish Lake Trail closed to motorized use. It would not close areas that should have been closed to wheeled motorized use as per the Forest Plan many years ago. These include all of the B2 Settlement Agreement Areas, A3, C1, and C6 areas and trails. This violates the Settlement Agreement and the direction in those court cases. At the very least, an alternative that met the existing Forest Plan direction should have been analyzed in this DSEIS in light of those two court cases.

Effectiveness (EHE) standards and meet other Forest Plan wildlife protections objectives.” Also regarding MA C8S, our earlier comments, appeal, and petition point out the Forest Plan ROD and Forest Plan direction is for non-motorized recreation use.

4 Some of these areas were MA C8S in the Plan prior to the Settlement Agreement.

The Proposed Plan Amendment Would Allow More Damage

Connected to the previous two sections in this comment is the fact the proposed amendment would allow the agency to open up more trails to motorized use or other development (see DSEIS at 2-1). The EHE standard does not just apply to travel direction; it applies to any action or decision which may affect elk habitat. As such, weakening them is a significant decision that destroys the management standards that were developed to protect wildlife. The DSEIS fails to admit that the proposed 90% EHE, which is below current EHE for the areas, could result in even more damage. In addition, the agency had already rejected an alternative to weaken (by plan amendment) the Forest Plan standards in the Travel Plan FEIS. That path, which was never open in 2011, because of the Lawsuit Settlement Agreement, is not available now.

The Ruling in FOC II Rejected the Agency's Position that 100% EHE is Unattainable and Therefore it Doesn't Matter if Trails are Motorized in 100% EHE

The premise of the DSEIS is that the plan needs to be amended to weaken the EHE standards because they are unattainable. Again, the agency rejected that alternative in 2011. That door is now closed. The Settlement Agreement can't be abrogated by the Forest Service. Trying to evade the requirements of FOC I and FOC II through weakening the standards is the agency thumbing its nose at the rule of law. Furthermore, the DSEIS claim that it won't amend the 100% EHE for MA B1 (the Clearwater portion of the Selway-Bitterroot Wilderness) because that standard could be met ignores the agency's own protocol on adjacent roads in calculating the EHE.

Forest Plan Direction Limiting Motorized Use in Light of FOC I and FOC II

Given the requirement to look at trails on a case-by-case basis in the FOC I and FOC II, as well as follow Forest Plan direction, it is important to also consider other direction in the Forest Plan that limits and restricts motorized use. There are a few key factors the DSEIS fails to adequately consider:

- The emphasis in the Forest Plan on protecting wildlife and their habitat in MAs C1, C6, B2, and A3. Rather than comply with the Forest Plan and FOC I and FOC II, the DSEIS simply comes to the same conclusion as the first and second EISs and RODs, which the courts found deficient. That reflects a pre-determined decision to ignore the direction of the court and to ignore the requirements of NEPA. One concrete example is the Windy Ridge Trail 167, which the project record determined is crucial elk habitat (calving and licks, see Travel Plan DEIS at A-7). That trail is not closed in the proposed action even though that would be the way to minimize conflicts.
- The Forest Plan also has direction to use the ROS in coming up with allocations (see also past comments, appeal, and petition). All DSEIS alternatives fail to meet that Plan Direction, in light of FOC I and FOC II, and rely on post-hoc changes to the ROS to shoehorn into the agency's pre-determined decision.
- Appendix F in the Forest Plan restricts motorized use. In light of FOC I and FOC II, the DSEIS fails to minimize conflicts. See also our past comments, appeal, and petition.)

- The DSEIS recognizes that changes in technology and use have increased impacts from motorized use and increased the amount of motorized use. Yet, the FS proposes no changes to minimize impacts on any trails. Assuming these trends continue, impacts will be greater than the DSEIS anticipates.

TES Species

The DSEIS erroneously defers to the 2011 Biological Opinion (BiOp), over a decade old, regarding impacts to most TES species. This is done even though the DSEIS admits motorized use impacts are increasing, partly due to technological changes. Thus, the 2011 BiOp is outdated and re-consultation should occur. We address some species below.

Bull Trout: The 2011 BiOp states:

Fish Lake contains the only naturally adfluvial bull trout population in the North Fork Clearwater River basin. This core area contains one local population. Studies indicate that bull trout in Fish Lake do not spawn in Lake Creek (the outlet stream) but probably spawn in inlet streams instead (Fish and Wildlife Service 2002d, pp. 24-25).

The primary threat identified for this population is illegal angler harvest (fish and Wildlife Service 2002d, p. 75). Additionally, based on Idaho Fish and Game creel surveys estimates of incidental hooking mortality on caught and released bull trout in Fish Lake appear to be high. In August 2000, an estimated 227 bull trout were caught and released with 12 bull trout mortalities. Additional information regarding population size and structure is required to determine the impacts that hooking mortality is having on this bull trout local population (Fish and Wildlife Service 2002d. p. 75).

The Service's Five Year Status Review (Fish and Wildlife Service 2008. p. 34) concluded that the Fish Lake core area is at **high risk of extirpation** based on very limited and/or declining bull trout numbers, range, and/or habitat. We determined that threats to the viability of this core area are moderate and imminent (Fish and Wildlife Service 2008, p. 34).

Emphasis added.⁵ These facts themselves are reason enough to prohibit motorized and mechanized access on the Fish Lake Trail. This would minimize threats to this unique and vital population of bull trout. There is perhaps no worse route on the CNF to be opened than Fish Lake because of the threat to bull trout.

Grizzly Bear: We refer you to our comment letters on the NPCNF draft revised Forest Plan, which detail the importance of grizzly habitat in the CNF, including the Fish Lake Trail and the rest of the Project Area. We also refer you to our past submission in this travel planning record. The DSEIS downplays the threats to grizzlies in a couple of ways:

⁵ See also our Objection on the second travel plan ROD dealing with the Fish Lake trail in the project record.

- It considers confirmed grizzly sightings as unimportant transients rather than explorer bears leading to a population naturally recovering. It also fails to recognize confirmed denning of a grizzly nearby in the Little North Fork Clearwater drainage on the St. Joe National Forest portion of the Idaho Panhandle National Forests.
- It fails to emphasize that the BE is more than just the political recovery area. Indeed the 1996 Bitterroot Ecosystem Supplement from the US Fish and Wildlife Service shows that the North Fork of the Clearwater is important grizzly habitat.⁶

Wolverine: The programmatic Biological Assessment is being updated and Section 7 consultation may occur. The FS should also close crucial wolverine habitat to snowmobiles and motorized trail in summer (see DEIS A-9), as recommended in past submissions from the public.

Monitoring

Citizens have documented problems for over 25 years. Two recent efforts deserve more mention.

On August 21, 2018, FOC sent a letter to the Forest Service documenting illegal motorized use on trails in the Great Burn/Kelly Creek area. An initial response was received.

This year citizens have been monitoring the Fish Lake Trail. Earlier in the summer there was no signage or barrier at the trailhead indicating the trail was closed. A later visit showed the rock barrier, not present originally, had been altered—rendering it ineffective. It appears the agency has no sincere intent to enforce Judge Winmill’s order in FOC II.

Citizen monitoring has shown that the Travel Plan, with its loops, is virtually unenforceable. This has been presented in past submissions. Even inadvertent motorized use can occur on trails when motorized and non-motorized trails cross in the backcountry. Such a policy fails to minimize impacts, instead it amplifies them. The following section also looks at the enforcement issue.

ORV User Noncompliance

The Agency’s reliance on administrative remedies to address adverse ORV impacts—as opposed to route obliteration and recontouring—is unacceptable because it has been proven unworkable. Approximately 75% of ORV riders regularly ignore regulations such as speed limits and closures. *See, e.g.,* Testimony of Jack Gregory, Special Agent in Charge (Ret.) USFS Southern Region, Before Subcommittee on National Parks, Forests, and Public Lands, U.S. House of Representatives, March 13, 2008, (hereafter “Gregory Testimony”) included as Attachment A at 5. From the Gregory Testimony:

⁶ Though downplaying impacts to grizzlies recolonizing their former range, pages 3-11 and 3-12 point out that grizzlies will have increasing problems because of the travel plans as they expand their range. Section 7 consultation is forthcoming and not yet available to the public for review.

Even if agency ORV route planning makes sense in downtown offices and public meeting rooms, there must also be a well funded on-the-ground monitoring and enforcement component. This is where the FS has failed time after time. Once plans are drawn up and implemented, there is not adequate funding for field resources to police this activity where it's actually occurring. Throughout my years of working for the FS, I witnessed the development of many good plans, but a failure to provide the field resources to properly execute them. It is unfortunate that the FS is long on "plans" and seemingly good intentions, but very short on effective field implementation, particularly with providing necessary LE [law enforcement] resources for dealing with serious problems.

(Gregory Testimony at p. 8.) Similarly, another law enforcement officer has publicly testified "about the growing burden on local law enforcement caused by a growing minority of reckless OHV riders and the need for effective management." [Statement of Frank Adams, Executive Director of the Nevada Sheriffs' and Chiefs' Association, at the Senate Energy and Natural Resources Off-Highway Vehicle Management on Public Lands, Jun 2008 at http://energy.senate.gov/public/_files/FrankAdamsSenateTestimony.pdf (last visited July 13, 2009)] attached hereto as Attachment B at 2. Sheriff Anderson noted that "any kind of public lands law enforcement [is] challenging, but particularly with OHVs given the technology that allows users to cover vast distances in remote areas over a short period of time." *Id.* The Sheriff observed:

With such great land masses and so few enforcement officers, it does not take a large group of individuals disobeying federal and local laws to cause a problem. We have determined that a small number of individuals riding OHVs that use our outdoors for recreation are causing the problems. They are reckless in the operation of their vehicles; they disregard instructions to stay off of sensitive lands and are destructive to the facilities that are provided for their use. This is evident by the increase in the number of injuries that are being reported and the increase in the number of search and rescue mission that occur. We see blatant disregard for areas that are posted as "do not travel" as they have been designated sensitive areas. Part of the problem that encourages this reckless behavior stems from the feeling of anonymity that many of the OHV riders have because there is no way of identifying them or their vehicles. Most States do not require a license plate for such vehicles. Those States that do require tagging, the tags are not large enough to be seen without being in almost on top of the vehicle. If you are able to determine that there is a tag on the OHV, determining the tag number is almost impossible.

Id. at 3.

While assuredly many ORV riders have lawful intentions and "follow the rules," a disturbingly high percentage show a pronounced preference and practice among off-road vehicle recreationists to travel cross-country and ride off of legal routes. Indeed, this conclusion is derived from publically available data generated by the ORV community itself.

Monaghan and Associates, a marketing research firm, conducted a 2001 study at the behest of the Colorado Coalition for Responsible OHV Riding, a coalition of off-road vehicle representatives, environmentalists and public officials. *See* Status and Summary Report; OHV Responsible Riding Campaign, attached hereto as Attachment C. Researchers surveyed Colorado off-road vehicle riders through a series of three focus groups.

Monaghan and Associates found that the majority of off-roaders understand that staying on designated routes is “fundamental trail etiquette” and that going off trail is not “correct” off-road vehicle behavior. *Id.* at 11. The survey revealed, however, that regardless of this knowledge “as many as two-thirds of adult users go off the trail occasionally.” *Id.* A significant percentage of riders, 15-20%, admitted to frequently breaking the rules and riding off of legal routes often. *Id.* Survey participants also stated that “others” ride off-route and cause most of the damage. *Id.* at 7. “Many reluctantly admit to having gone off trail ‘a couple times’ but felt that it is permissible if rarely done ‘just this one time.’” *Id.* (emphasis in original). Tellingly, the report concluded: “In a ‘nutshell,’ it is our premise that further **information** and **education** per se - will not result in substantial behavioral change.” *Id.* at 1 (emphasis in original).

Similar results were found in Utah. In 2002, the Utah Division of Parks & Recreation commissioned Utah State University to survey riders to determine their “OHV uses and owner preferences.” The university conducted a telephone survey of 335 riders from a random sample of the 50,676 people who registered off-road vehicles with the state in 2000. *See* Fisher, Andrea L., Dale J. Blahna, and Rosalind Bahr, 2001; Off Highway Vehicle Uses and Owner Preferences in Utah. Logan, Utah. Utah State University, at iv, attached hereto as Attachment D at 6.

The Utah report reveals that an inordinate number of riders prefer to ride “off established trails.” Of the ATV riders surveyed, 49.4% prefer to ride off established trails, while 39% did so on their most recent excursion. Attachment D at 26-27. Of the dirt bike riders surveyed, 38.1% prefer to ride off established trails, while 50% rode off established trails on their most recent excursion. *Id.*

It should be noted that pro-ORV groups commissioned both of the studies cited above. Additionally, these data are ratified by two other recent reviews. In 2006, the Montana Fish, Wildlife and Parks received survey responses from 446 owners of registered off-road vehicles. *See* Lewis, M.S., and R. Paige. 2006: Selected Results From a 2006 Survey of Registered Off-Highway Vehicle (OHV) Owners in Montana. Responsive Management Unit Research Summary No. 21. Prepared for Montana Fish, Wildlife and Parks, attached hereto as Attachment E, at 1. Among the full sample of respondents, almost a quarter, 23%, “never” or “sometimes” comply with Montana’s law against cross-country driving even though off-route riding has been illegal there since 2001. *Id.* at 2. Over 28% “never” or “sometimes” avoid riparian areas and wetlands, in violation of rules for federal and state public lands in Montana. Sixty-four percent of those surveyed have used an off-road vehicle while hunting. *Id.* at 2. The majority of this hunting subset admits to illegally riding cross-country — over 58% have traveled off of legal routes to retrieve downed game. *Id.* In the context of the assumption that “education” will cure unlawful ORV behavior, this figure is notable to the extent that the survey found that “[t]wo-thirds of the respondents who have used an OHV when hunting reported they have seen written materials (e.g., brochures, posters, articles, etc.) that address the topic of hunting and responsible OHV use.” *Id.* The survey concluded, therefore, that “most OHV owners in Montana have been

exposed to a variety of safety and responsible use information.” *Id.* at 4. Regardless of this “education,” the survey noted:

OHV owners do not always follow important guidelines for responsible use when operating OHVs. For instance, about a third of the respondents who have used an OHV when hunting disagree or strongly disagree that “OHV users should NOT travel off legal routes to retrieve harvested game.” Only 42 percent of the respondents who have used an OHV when hunting reported they always follow this guideline. Nearly 7 percent reported they never follow this guideline. And, 52 percent reported they follow this guideline sometimes.

Id. (emphasis in original).

Echoing these findings are the results of a 2003 survey of Wisconsin ATV users. A study of “motivations and attitudes” by graduate student Robert A. Smail at the University of Wisconsin—Steven’s Point included a survey of user preferences for riding and found nearly two-thirds of respondents prefer to ride off maintained trails. Robert A. Smail, July 2007, WISCONSIN ALL TERRAIN VEHICLE OWNERS: RECREATIONAL MOTIVATIONS AND ATTITUDES TOWARD REGULATION, A Thesis Submitted in partial fulfillment of the requirements of the degree Master Of Science In Natural Resources Resource Policy And Planning College Of Natural Resources University Of Wisconsin, Stevens Point, Wisconsin, copy obtained from author attached hereto at Attachment F at 62-63. “[S]urvey respondents were asked to indicate where they prefer to ride their ATV. Of the five possible choices, ‘On maintained trails’ (28.5%) ranked third. The top choice was ‘On user created trails’ (33.3%) followed closely by ‘Cross country, off trails and roads’ (32.0%). In other words, 65.3% of all users prefer to ride off of maintained trails.” *Id.* Dr. Smail concluded that the survey results demonstrated that past orthodoxies premised on education and the assumed “positive peer-pressure” flowing from membership in established “rider clubs” are not adequate to generate trail-riding compliance, they had “no influence.” *Id.* at 69. Rather, “[t]hese results indicate that messages promoting responsible ATV riding or use will need to be reformulated *and law enforcement will need to be increased in order to prevent resource damage and user conflict.*” *Id.* (emphasis added).

Finally, the U.S. Fish and Wildlife Service (“FWS”) found a near universal disregard for motorized guidelines when the BLM experimented with a “voluntary off-road vehicle route system” in Nevada. The area in question serves as a refuge for the disappearing Sand Mountain Blue butterfly, a species proposed for listing under the Endangered Species Act. A 2006 monitoring report compiled over a three-year period found that “98 percent of all existing routes continued to be used and new routes were created, indicating an ongoing expansion of habitat degradation.” Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service. 2007. 12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (*Euphilotes pallescens ssp. arenamontana*) as Threatened or Endangered with Critical Habitat. Federal Register, Vol. 72, No. 84. See pages 24260-61, attached hereto as Attachment G, at 8-9. Incredibly, the study also found that “about 50 percent of all noncompliance points occurred *at or near red carsonite posts installed to alert riders that travel was discouraged in areas behind the posts*” to protect sensitive butterfly habitat. *Id.* at 24261, Attachment G at 9 (emphasis added). The cumulative

impacts of such “noncompliance points” were four-fold as each discouraged route experienced multiple incursions. *Id.* The FWS noted that “[h]igh levels of noncompliance occurred *from the onset of implementation* of the voluntary system, and the number of incursions into habitat outside of the encouraged routes *increased* in 2006. *Id.* at 24260-61, Attachment G at 8-9.

Providing a broader overview, in September 2007, the Izaak Walton League, one of the country’s oldest conservation groups, released a study of state game and fish managers revealing that 83% of wildlife managers have seen “resource damage to wildlife habitat” caused by ORVs and 72% cited “disruption of hunters during hunting season” as another impact from ORVs. [Off-Road Vehicle Impacts on Hunting and Fishing, The Izaak Walton League of America, 2007, attached hereto as Attachment H, at 15 (available from: <http://www.iwla.org/publications/wilderness/OHVreport.pdf> (last visited July 13, 2009))].

Similarly, fully 60% of fisheries managers deemed ORV use to generate adverse impacts on riparian resources. *Id.* at 16. Notably, 41% of wildlife and 50% of fisheries managers do not believe that current standards and protections adequately protect the resources they are responsible for with the perceived attitude of lawlessness playing a central role: “We have numerous rules and regulations, but many ORV riders have an attitude that they should not apply to them and many just ignore some rules because they want to ride someplace. It increases law enforcement effort and takes time from other areas.” *Id.* at 15. “There seems to be a misconception that just because you own a piece of equipment that can go almost anywhere, that you are entitled to go almost anywhere including public land dedicated to wildlife management. This needs to change.” *Id.* at 16. Further, “They go where they please, when they please, if they please. Not all do this, but many do. They cause significant upland erosion as well as stream side and in-stream damage.” *Id.* “Many ORV riders seemingly have no conservation ethic or appreciation for habitat management or understanding of the damage they cause.” *Id.* Another said: “While there is regulatory ability, there is insufficient enforcement response capability to adequately respond to illicit ORV use.” *Id.* at 15.

In a closely tracking review on federal land managers, in December 2007, the Public Employees for Environmental Responsibility (“PEER”) released the first-ever survey of federal rangers’ views on off-road vehicle issues. [Rangers for Responsible Recreation: Off-Road Vehicle Issues Survey of SW Law Enforcement Professionals - Bureau of Land Management (BLM) & Forest Service (FS), 2007, attached as Attachment I, available from: http://www.peer.org/docs/az/07_11_12_sw_le_orv_survey_results.pdf (last visited July 13, 2009)]. Strikingly:

- 91% of respondent rangers agree that “off-road vehicles present a significant law enforcement problem in my jurisdiction”;
- More than half (53%) feel “off-road vehicle problems in my jurisdiction are out of control”; and
- 74% say that off-road abuses “are worse than they were five years ago” while fewer than one in six (15.2%) believe the situation is improving.

Id. at 1. Moreover, the survey found that rangers believe their agencies are unequal to the task of controlling ORV abuse:

- 62% believe their agency is not “prepared to deal with the ORV problems we are experiencing”; and
- 78% do not think their department “devotes adequate resources to cope with ORV problems.”

Id. at 3.

Also attached as Attachment J, is copy of an article published in the Washington Post. The report, entitled “‘Off-Road Rage’ Climbs as Trails Get More Crowded,” was published on August 12, 2008 and appeared in section A at page 2. The report provides additional documentation of many ORV riders’ unlawful — even violent — disregard of the rules and regulations applicable to ORV use on public lands.

DSEIS Appendices

Appendix A:⁷ As a summary and introduction to the inadequacy of the purported trail-by-trail analysis which the DSEIS purports to demonstrate minimizing impacts from off-road vehicle use, the following examples illustrate two key major themes. First is Trail 167, which includes crucial elk habitat that is not mentioned the site-specific information. The maps in the original Travel plan FEIS and the travel plan record show evidence of the site-specific conflict not addressed in the appendices. Our notes below indicate some, but not all, of the conflicts missed in the DSEIS.

A second problem is the failure to abide by the Settlement Agreement. For example, the Weitas Creek Trail 20 is within B2 yet it is classed as a MA C4 or portion as C8S in appendix A. Further, the Forest Plan provides that inclusion like the C4 area be managed as per the larger surrounding area. These points have been made in past comments and submissions, but the errors persist.

A last and overriding conflict is that hikers and horseback riders have historically used these trails and still do, though many now avoid trails with motorized use and have been displaced. This conflict on all trails in the backcountry is given short shrift in the DSEIS. This is well documented in our past submissions.

The bullet points below address most of the specific trails which should be closed (see also our previous submissions for a complete list). One exception is trail 419, which is addressed in the comment above.

- Trail 1 is entirely within the Selway-Bitterroot Wilderness. Since it is statutorily protected against motorized and mechanized use, its inclusion in the DSEIS is rather odd. Other trails also fail into this category.

⁷ The 555 route, addressed in the comment, is not the only route or road that bounds or is within 100% EHE. These others, addressed in our previous comments, are close to or on the border of management areas with 100% EHE. They were erroneously omitted from this SEIS.

- Trail 20, see our discussion above. Also, this trail bisects elk calving ground in its upper reaches (FEIS A-7) where ATVs are permitted in the Travel Plan, and it crosses wolverine, lynx, and fisher habitat.
- Trail 117 accesses B2 Management Area as per the Settlement Agreement.⁸
- Trail 167, see comment above. Also within B2 Management Area as per the Settlement Agreement.
- Trail 169 is partially within A3, which is 100% EHE. Earlier comments addressed the fact the ROS SPM could be closed seasonally, as per the Forest Plan direction.⁹ It doesn't affect the fact the area would see motorized use outside of the critical seasons for elk. Thus, the analysis in the DEIS is flawed to suggest closure in some seasons conflicts with the FP goal.
- Trails 176 and 445 Trail 176 is partially and 445 wholly within A3. DSEIS Appendix A erroneously states that closing these to wheeled vehicles, as per the EHE requirement, would turn the area into a non-motorized area. The area would be open to motorized use in winter, to wheeled vehicles in lower elevations and snowmobiles in upper elevations. See also Trail 169 above.
- Trail 191 and 691 are wholly within B2 Settlement Agreement area. Damage has been documented on the 191 trail. These trails are in wolverine habitat.
- Trail 201 is partially within the Settlement Agreement B2 area.
- Trails 203, 204, and 231 are within A3, which is 100% EHE. See also trail 169. The trails cross critical elk habitat.
- Trails 524, 531, 532, and 534 are within the B2 Settlement Agreement Area. Trail 532 becomes non-motorized so enforcement is difficult. These trails either insect with, or provide access to non-motorized trails. This is a problem shared with Trails 191/691, 167, and 20.
- Trails 225, 229, and 2240 all within B2 Settlement Agreement areas. DSEIS Appendices alleges they are outside the scope of this DSEIS, yet they are part of FOC I and FOC II. Their omission is a serious flaw. Further, the junction of Trails 229 and 2240 would entail fording critical steelhead habitat across Fish Creek. There is no established ford.

⁸ Motorized and non-motorized trails in the backcountry that intersect make enforcement difficult. This issue is addressed in detail in previous comments.

⁹ Similarly, an area under the ROS is classified as SPM, even if seasonally closed as per 100% EHE.

- Trails 144 and 617 traverse C8S which the Forest Plan emphasizes non-motorized recreation use. This issue has been raised in past comments in detail. These trails also include critical elk habitat. Monitoring provided to the Forest Service shows damage from motorized use. These trails should be closed based on minimizing impact to other resources.
- Appendix B: This is essentially a rehash of what the agency presented in the FOC II case, which was rejected by the Court. There is also a bait-and-switch on EHE and elk vulnerability. The best available science demonstrates elk are negatively affected by motorized use. Areas the Forest Plan and Settlement Agreement dedicate to 100% EHE must preclude motorized use during the critical seasons (generally summer and fall).

Conclusion

Rather than comply with the rule of law, the Forest Service prefers to weaken protection for wildlife in the areas dedicated to wildlife in the CNF Forest Plan. Rather than minimize impacts, the DSEIS proposes to increase proliferation of motors in the backcountry and create even more conflicts. There is no question that elk and other wildlife will be harmed by the proposal, including the forest plan amendment.

Please keep each of our organizations on the list to receive all public communications concerning Clearwater National Forest Travel Planning.

Sincerely submitted,



Jeff Juel, Forest Policy Director
Friends of the Clearwater
509-688-5956
jeffjuel@wildrockies.org

Adam Rissien, ReWilding Manager
WildEarth Guardians
PO Box 7516
Missoula, MT 59807
arissien@wildearthguardians.org

Mike Garrity
Alliance for the Wild Rockies
P.O. Box 505
Helena, MT 59624
wildrockies@gmail.com