

Objection against the Crow Creek Pipeline Project LVE

To: Kelly Orr
Objection Reviewing Officer
Crow Creek Pipeline Project LVE
USFS Intermountain Regional Office
Room 4403
324 25th Street
Ogden, UT 84401.

Thank you for this opportunity to object to the Crow Creek Pipeline Project LVE. Please accept this objection in pdf format from me on behalf of the Alliance for the Wild Rockies, Native Ecosystem Council, Yellowstone to Uintas Connection, Council on Wildlife and Fish, and Center for Biological Diversity.

1. Objector's Name and Address:

Lead Objector Michael Garrity
Director
Alliance for the Wild Rockies
PO Box 505, Helena, MT 59624;
phone 406-459-5936

And for

Sara Johnson, Director,
Native Ecosystems Council
PO Box 125, Willow Creek, MT 59760; phone
406-459-3286

And for

Jason L. Christensen – Director Yellowstone to
Uintas Connection (Y2U)
jason@yellowstoneuintas.org
435-881-6917

And for

Steve Kelly,
Director, Council on Wildlife and Fish
P.O. Box 4641 Bozeman, MT 59772

And for

Kristine Akland
Center for Biological Diversity
P.O. Box 7274
Missoula, MT 59807
kakland@biologicaldiversity.org

Signed this 23rd day of August, 2024 for
Objectors

/s/
Michael Garrity

2. Name of the Proposed Project

Crow Creek Pipeline Restoration Project LVE

Description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project if applicable, how the objector believes the Final Supplemental Environmental Impact Statement , and Draft Record of Decision Notice (DROD) specifically violates law, regulation, or policy: The FSEIS and Draft Record of Decision are contained in the USFS webpage at: <https://www.fs.usda.gov/project/ctnf/?project=63218>

3. Location of Project, Name and Title of Responsible Official

The Crow Creek Pipeline Project (“Project”) is a 12-inch diameter natural gas pipeline proposed by Lower Valley Energy (LVE) from Montpelier, Idaho, to Afton, Wyoming, including 18.2 miles of National Forest System (NFS) lands in the Montpelier Ranger District.

The proposed pipeline route is approximately 49 miles long with approximately 18 miles on NFS lands administered by the CTNF. It would require the creation of a utility corridor and an amendment to the Caribou National Forest (CNF) Revised Forest Plan (RFP), as well as the issuance of a Forest Service special use authorization for a pipeline right-of-way (ROW) across NFS lands and construction, operation, and maintenance of the pipeline on NFS lands. During construction, the Project would result in a temporary ROW 25-feet in width in wetlands and aquatic influence zones and 50-feet in width in all other zones. The Project would result in a 20- foot-wide permanent ROW after construction.

The Project Area is in Caribou and Bear Lake counties, Idaho, and Lincoln County, Wyoming, between the towns of Montpelier, Idaho and Afton, Wyoming (Figure 1.2-1). The southern terminus of the Project is just south of Montpelier, Idaho, and the northern terminus of the Project Area is in Afton, Wyoming.

The responsible official is Mel Bolling, Forest Supervisor Caribou-Targhee National Forest,
1405 Hollipark Drive, Idaho Falls, Idaho 83401.

As a result of the Draft Record of Decision (DROD), individuals and members of the above mentioned groups, hereafter (Alliance) would be directly and significantly affected by the logging, building the pipeline and associated activities. Appellants are conservation organizations working to ensure protection of biological diversity and ecosystem integrity in the Wild Rockies bioregion including the Caribou-Targhee National Forest (CTNF). The individuals and members use the project area for recreation and other forest related activities. The selected alternative would also further degrade the water quality, wildlife and fish habitat. These activities, if implemented, would adversely impact and irreparably harm the natural qualities of the Project Area, the surrounding area, and would further degrade the watersheds and wildlife habitat.

The Forest Service proposes the following actions to meet the purpose and need and implement the Proposed Action in the FSEIS and authorize the issuance of a special use authorization to Lower Valley Energy (LVE) for the construction, operation, and maintenance of the pipeline on NFS lands.

LVE will construct the pipeline primarily along existing roads, resulting in approximately 60 percent of the Project being within existing ROWs. Where the Project deviates from existing ROWs, it typically follows or parallels existing all-terrain vehicle (ATV) trails or is in proximity (typically within 50 feet or less) to an existing road or ATV trail. Furthermore, where it deviates, it is usually for short

sections near existing roads due to terrain limitations, stream environments, or practicality (shorter route, less disturbance). For example, in several locations the Project deviates from the Crow Creek Road/ROW (USFS Road 111) by only short distances (less than 1/4-mile) to short-cut road switchbacks that would be difficult to follow with the pipeline.

Supervisor Bollings' DROD authorizing the programmatic amendment to the CNF RFP to change management prescription areas Prescription 2.7.1 (d) – Elk and Deer Winter Range, Critical; Prescription 2.7.2 (d) – Elk and Deer Winter Range; Prescription 2.8.3 – Aquatic Influence Zones; and Prescription 6.2 (b) – Rangeland Vegetation Management along the route to management prescription to 8.1(b) – Concentrated Development Areas, and create a 20-foot-wide utility corridor where the Project operation and maintenance ROW is located.

This amendment applies to all future projects for the life of the CNF RFP. However, any new proposals would require additional project-specific analysis pursuant to the National Environmental Policy Act (NEPA). In addition, the utility corridor established by this amendment is only 20-feet-wide, which will limit the type of infrastructure it can accommodate.

CNF RFP Transportation and Utility Corridors Standard 1 (RFP 3-10) requires all existing and proposed ROWs for pipelines 10 inches or larger in diameter to be designated as utility corridors. In addition, all utility corridors must be in management prescription 8.1(b) – Concentrated

Development Areas. Without this amendment, the Project would cross Prescription 2.7.1(d) – Elk and Deer Winter Range Critical, Prescription 2.7.2(d) – Elk and Deer Winter Range, Prescription 2.8.3 – Aquatic Influence Zone, Prescription 6.2(b) – Rangeland Vegetation Management. The scope of the amendment is a 20-foot-wide corridor covering approximately 44 acres on NFS lands (see Figure A-1a and A-1b).

4. Connection between previous comments and those raised in the Objection:

Alliance provided comments on the proposed project on October 9, 2023.

Alliance has also included a general narrative discussion on possible impacts of the Project, with accompanying citations to the relevant scientific literature.

5. Specific Issues Related to the Proposed Projects, including how Objectors believes the Environmental Analysis or Draft Record of Decision specifically violates Law, Regulation, or Policy: We included this under number 8 below.

6. Suggested Remedies that would Resolve the Objection:

We recommend that the “No Action Alternative” be selected. We have also made specific recommendations after each problem.

7. Supporting Reasons for the Reviewing Office to Consider:

This landscape has very high wildlife values, including for the threatened and wildlife dependent upon unlogged. The project area will be concentrated within some of the best wildlife habitat in this landscape which is an important travel corridor for wildlife such as Mexican Spotted Owl, Northern Goshawk, Monarch Butterfly and California Condors. The public interest is not being served by this project.

Suggested Remedies to Resolve the Objection:

We recommend that the “No Action Alternative” be selected. We have also made specific recommendations after each problem.

Thank you for the opportunity to object.

NOTICE IS HEREBY GIVEN that, pursuant to 36 CFR Part 218, Alliance objects to the Draft Decision Notice (DDN) and Finding of No Significant Impact (FONSI) with the legal notice published on May 16, 2024, including the Responsible Official’s adoption of proposed or selected Alternative.

Alliance is objecting to this project on the grounds that implementation of the Selected Alternative is not in accordance with the laws governing management of the national forests such as the ESA, NEPA, NFMA, the Dixie National Forest Forest Plan and the APA, including the implementing regulations of these and other laws, and will result in additional degradation in already degraded watersheds and mountain slopes, further upsetting the

wildlife habitat, ecosystem and human communities. Our objections are detailed below.

If the project is approved as proposed, individuals and members of the above-mentioned groups would be directly and significantly affected by the burning and associated activities. Objectors are conservation organizations working to ensure protection of biological diversity and ecosystem integrity in the Wild Rockies bioregion (including the DNF). The individuals and members use the project area for recreation and other forest related activities. The selected alternative would also further degrade the water quality, wildlife and fish habitat. These activities, if implemented, would adversely impact and irreparably harm the natural qualities of the Project Area, the surrounding area, and would further degrade the watersheds and wildlife habitat.

Statements that Demonstrates Connection between Prior Specific Written Comments on the Particular Proposed Project and the Content of the Objection

We wrote in our October 9, 2023 comments, starting with:

Please accept these comments for both the research permit and the temporary permit.

I. NECESSARY ELEMENTS FOR PROJECT EIS: A.

Disclose all Caribou-Targhee National Forest Plan requirements for special use projects and explain how the Project complies with them;

B. Disclose the acreages of past, current, and reasonably foreseeable logging, grazing, special use projects, and road-building activities within the Project area;

C. Solicit and disclose comments from the Idaho Department of Fish, and Game regarding the impact of the Project on wildlife habitat;

D. Solicit and disclose comments from the Idaho Department of Environmental Quality regarding the impact of the Project on water quality;

E. Disclose the biological assessment for the candidate, proposed, threatened, or endangered species with potential and/or actual habitat in the Project area;

F. Disclose the biological evaluation for the sensitive and management indicator species with potential and/or actual habitat in the Project area;

G. Disclose the snag densities in the Project area, and the method used to determine those densities and if any of these snags will be cut down for safety reasons;

H. Disclose the current, during-project, and post-project road densities in the Project area;

J. Disclose the Caribou-Targhee National Forest's record of compliance with its monitoring requirements as set forth in its Forest Plan;

K. Disclose the Caribou-Targhee National Forest's record of compliance with the additional monitoring requirements set forth in previous DN/FONSI and RODs on the Caribou-Targhee National Forest;

L. Disclose the results of the field surveys for proposed, threatened, endangered, sensitive, and rare plants in each of the proposed units;

M. Disclose the level of current noxious weed infestations in the Project area and the cause of those infestations;

N. Disclose the level of current noxious weed infestations in the Project area and the cause of those infestations;

O. Disclose the impact of the Project on noxious weed infestations and native plant communities;

P. Disclose the number of acres and location of Lynx Analysis Units (LAU)s that were removed from the CTNF without going through NEPA;

Q. Disclose the amount of detrimental soil disturbance that currently exists in the project area from previous logging and grazing activities;

R. Disclose the expected amount of detrimental soil disturbance in the project area after ground disturbance and prior to any proposed mitigation/remediation;

S. Disclose the expected amount of detrimental soil disturbance in the project area after proposed mitigation/remediation;

T. Disclose the analytical data that supports proposed soil mitigation/remediation measures;

U. Disclose the timeline for implementation;

V. Disclose the funding source for non-commercial activities proposed;

W. Disclose the current level of old growth forest in each third order drainage in the Project area;

X. Disclose the method used to quantify old growth forest acreages and its rate of error based upon field review of its predictions;

Y. Disclose the historic levels of mature and old growth forest in the Project area;

Z. Disclose the level of mature and old growth forest necessary to sustain viable populations of dependent wildlife species in the area;

AA. Disclose the amount of mature and old growth forest that will remain after implementation;

BB. Disclose the amount of current habitat for old growth and mature forest dependent species in the Project area;

CC. Disclose the amount of habitat for old growth and mature forest dependent species that will remain after Project implementation;

DD. Disclose the method used to model old growth and mature forest dependent wildlife habitat acreages and its rate of error based upon field review of its predictions;

EE. Disclose the amount of big game (moose and elk) hiding cover, winter range, and security currently available in the area;

FF. Please disclose what is the best available science for restoration of whitebark pine.

GG. Disclose the level of current noxious weed infestations in the Project area and the cause of those infestations

HH. Disclose the amount of big game (moose and elk) hiding cover, winter range, and security during Project implementation;

II. Disclose the amount of big game (moose and elk) hiding cover, winter range, and security after implementation;

JJ. Disclose the method used to determine big game hiding cover, winter range, and security, and its rate of error as determined by field review;

KK. Disclose and address the concerns expressed by the ID Team in the draft Five-Year Review of the Forest Plan regarding the failure to monitor population trends of MIS, the inadequacy of the Forest Plan old growth standard, and the failure to compile data to establish a reliable inventory of sensitive species on the Forest;

LL. Please disclose more fully how Project complies with the Roadless Rule;

MM. Disclose the impact of the proposed project on the global warming;

NN. Disclose the baseline condition, and expected sedimentation during and after activities, for all streams in the area;

OO. Disclose how will the project effect sage grouse;

PP. Please provide maps of the project area showing the following information;

- 1. Past, current, and reasonably foreseeable logging units in the Project area;***
- 2. Past, current, and reasonably foreseeable grazing allotments in the Project area;***

3. *Density of human residences within 1.5 miles from the Project unit boundaries;*
4. *Hiding cover in the Project area according to the Forest Plan definition;*
5. *Old growth forest in the Project area;*
6. *Big game security areas;*
7. *Moose winter range;*

The Forest Service responded:

Comment noted.

The Forest Service did not respond to our comments and questions in violation of NEPA, NFMA, the APA and the ESA.

The vague conclusions in the FSEIS and Draft Record of Decision do not include any of the supporting analysis data, so the public has no idea as to what these conclusions are based on. As such, the public cannot determine the validity of the conclusions, or as well, to make any specific comments on analysis procedures. This means that the requirements of the NEPA are being violated, as the agency is required to provide “high quality” information to the public on environmental analyses and conclusions, not just provide conclusions. The agency did not providing any meaningful response to public comments prior to a draft decision being made, as public comments are difficult to even make given the lack of actual analysis data on the project website. The detailed information that is required within an EIS is also important to the public, since an EIS

is to function as the agency's assessment as to whether all laws and regulations are being followed for a given project.

We also note that the FSEIS refers to a Biological Assessment that was not available to the public.

We believe the agency is required as per the NEPA to release a draft EA to the public for a 30-day comment period. This draft EA needs to include a reasonable level of analysis data, information that is currently lacking in the PA, including maps of wildlife habitat.

Despite the incalculable value of this wild place, the U.S. Forest Service's draft Record of Decision authorizes a fossil fuel company to clear-cut a 50-foot-wide corridor through publicly-owned National Forest lands—including six Inventoried Roadless Areas—for construction of a pipeline.

The Forest Service draft decision provides the private company with a 50-foot right-of-way during construction and a permanent 20-foot right-of-way to maintain the pipeline. The draft decision also allows above-ground facilities such as valves and staging areas that were not adequately evaluated in the DSEIS.

In addition to the harm to the climate, the pipeline would have increased illegal wildlife killings, invasive weeds, and illegal motorized use. Critically, lynx, grizzly bears, wolverines, greater sage grouse, Ute ladies' tresses orchid,

and yellow-billed cuckoo — all endangered — may be present in this area. Additionally, six Inventoried Roadless Areas would have been defiled by this pipeline.

REMEDY

Withdraw the Draft Record of Decision and the Final SEIS and write a new SEIS that fully complies with the law to choose the No Action Alternative including responding to the public's questions and makes data and maps of wildlife habitat available to the public

Sage grouse

We write in our Comments:

Sage grouse
The Forest Service did not adequately demonstrate compliance with the Forest Plan requirements for sage grouse from the 2003 Revised Forest Plan and 2015 Forest Plan Amendment, in the Project SEIS, violates NFMA, NEPA, and the APA.

Page 3-21, 3-22 of the SEIS states:

Based on data from the GRSG Final EIS (BLM and USFS 2015) and IFWIS (2022), there are no known leks or Priority Habitat Management Areas (PHMAs) on NFS land within the study area (Figure 3.3-1). However, there are known active leks on private land near Montpelier (less than one mile south of the study area) and the same area is designated as Important Habitat Management Areas (IHMAs) in BLM and USFS (2015) as shown on Figure 3.3-1. The closest occupied lek occurs less than one mile (approximately 0.8 mile) south of the Project on private land and six occupied leks occur within 6.2 miles of the Project in Idaho (Figure 3.3-1). Along the Wyoming portion of the Proposed Action, there are no occupied or historic leks within 10 miles of the Project. Regarding population viability, IDFG and CNF trend data indicates a declining trend for GRSG on the six leks closest to the CNF boundary (monitored annually) (IFWIS 2022); however, GRSG populations across Idaho were generally stable for the last decade until recently (around 2018- 2019), based primarily on habitat loss and fragmentation as a result of wildfires, drought, changes in land use, and spread of invasive species. However, habitat loss as a result of these factors has not occurred on USFS lands in and around the Project. Nonetheless, as of 2019, GRSG populations in southeastern Idaho (Southern Conservation Area) have declined (based on lek counts [number of males]) and triggers have been tripped and now habitat formerly classified as IHMA is now considered PHMA and managed accordingly, including portions of the Project located in PHMA

(approximately 22 acres) outside USFS lands (Figure 3.3-1). Approximately 3.7 miles and 22 acres of the Proposed Action would be within PHMA in this area. In addition, the Proposed Action would pass through approximately 2.4 miles and approximately 14 acres of WGFD's current range designation for GRSG but only crosses potential habitat (i.e., sagebrush vegetation) and developed habitat (not currently considered suitable for GRSG due primarily to human-caused changes in vegetation composition and features such as existing houses [e.g., Afton Subdivision, etc.], agricultural areas, and roads) (Figure 3.3-1).

The SEIS solution to sage grouse habitat that is not suitable because of human devilment is to clearcut and build a road through roadless areas that are sage grouse habitat. This makes no sense. Approximately 20 miles of the pipeline corridor will cut through National Forest lands, including five different Inventoried Roadless Areas. The pipeline corridor will also cut through and fragment habitat for species listed under the Endangered Species Act, as well as habitat for a precipitously declining population of greater sage grouse.

Under the 2015 Forest Plan Amendment, a "hard trigger" is defined as a "threshold indicating that immediate action is necessary to stop a severe deviation from greater sage-grouse conservation objectives set forth in the land and [resource management plan]." USFS Doc. 95:FS-004589. The 2015 Forest Plan Amendment

Standard GRSG-AM-ST-010 mandates: “If a hard trigger is identified, [1] management direction applying to priority habitat management areas [“PHMA”] will be applied to important habitat management areas [“IMHA”] within the Conservation Area in Idaho, and [2] the Sage-Grouse Implementation Task Force will evaluate available and pertinent data and recommend additional potential implementation level activities to the appropriate Forest Service line officer in both Idaho and Southwest Montana (Appendix C).”

A hard population trigger in Idaho is a 20% decline in the number of male sage grouse. USFS Doc. 95:FS-004750. As discussed above, the Project is located in the Important Southern Idaho Conservation Area. USFS Doc. 96:FS-004775. As also discussed above, the hard trigger has been reached in this Conservation Area. USFS Doc. 96:FS-004777. The Project SEIS does not disclose the fact that the hard trigger has been reached, which triggers application of Standard GRSG-AM-ST-010, which in turn requires application of all “priority” management direction to this area. USFS Doc. 95:FS-004573.

b. Guideline GRSG-LR-SUA-GL-020

The 2015 Forest Plan Amendment Guideline GRSG-LR-SUA-GL-020 requires: “The best available science and monitoring should be used to inform infrastructure siting in greater sage-grouse habitat.” The Project EIS does not acknowledge that Guideline GRSG-LR-SUA-GL-020 exists, much less demonstrate compliance with it. At a

*bare minimum, the Project SEIS needs to disclose (a) available information on current population numbers and hard triggers, (b) the recommended distance around leks that should be protected as sage grouse habitat (i.e. a 6.2 mile and/or a 10 mile radius), (c) the Connelly Guidelines for management of that sage grouse habitat, and (d) the fact that oil and gas development is a primary threat to sage grouse in order to demonstrate that the best available science was used for this Project. See e.g. Defs. of Wildlife v. USDI, 931 F.3d 339, 346 (4th Cir. 2019)(discussing “best available science” mandate under ESA in context of natural gas pipeline and finding that agency “is not free to disregard other ‘available biological information’” and instead “must seek out and consider all existing scientific data relevant to the decision it is tasked with making”); see also Greenpeace, Inc. v. Cole, 445 F. App'x 925, 927 (9th Cir. 2011) (remanding to Forest Service in part due to agency’s failure to apply best available science as mandated by NFMA planning regulations); Bark v. U.S. Forest Serv., 2007 WL 756746, at *6 (D. Or. 2007)(same).*

c. Desired Condition GRSG-GEN-DC-003

The 2015 Forest Plan Amendment Desired Condition GRSG-GEN-DC-003 requires specific habitat conditions that “[a]pply 6.2 miles from active leks.” USFS Doc. 95:FS-004571. As noted above, a significant portion of this Project is within 6.2 miles of an active lek. USFS Doc. 81:FS-003528. Nonetheless, the Project EIS does not acknowledge that Desired Condition GRSG-GEN-DC-003 exists, much less demonstrate compliance with it.

d. Management Indicator Species Standard 1

The 2003 Revised Forest Plan Management Indicator Species Standard 1 requires: “In project analyses affecting the habitats listed below, assess impacts to habitat and populations for the following management indicator species . . . Sagebrush habitats S Sage Grouse.”

This standard is intended to ensure sage grouse viability. The Record of Decision and EIS for the 2003 Revised Forest Plan explain: “While there is one lek documented on the Forest there are many within several miles of the Forest Boundary. Sagebrush habitats within twenty kilometers [12.4 miles] of active leks may provide nesting brood rearing and winter habitat for sage grouse.” USFS Doc. 4: FS-001587. Thus, “[w]hile leks (where populations are most easily monitored) are not on Forest, changes in populations could reflect changes in habitat conditions on the Forest.” Id. Accordingly: “A decline of 10 percent or more in the number of male grouse would initiate a further analysis in cooperation with [Idaho Fish and Game].” Id.

The Project EIS does not address the habitat conditions within 12.4 miles of active leks, nor does it analyze whether there is a 10% or greater decline in the number of male sage grouse, even though that analysis has been triggered by a population decline of 25% in male sage grouse. Without this basic analysis, the Forest Service is failing its Forest Plan mandate to ensure the viability of greater sage grouse.

Under the 2015 Forest Plan Amendment, a “hard trigger” is defined as a “threshold indicating that immediate action is necessary to stop a severe deviation from greater sage-grouse conservation objectives set forth in the land and [resource management plan].” USFS Doc.

95:FS-004589. The 2015 Forest Plan Amendment Standard GRSG-AM-ST-010 mandates: “If a hard trigger is identified, [1] management direction applying to priority habitat management areas [“PHMA”] will be applied to important habitat management areas [“IMHA”] within the Conservation Area in Idaho, and [2] the Sage-Grouse Implementation Task Force will evaluate available and pertinent data and recommend additional potential implementation level activities to the appropriate Forest Service line officer in both Idaho and Southwest Montana (Appendix C).” USFS Doc. 95:FS-004573.

A hard population trigger in Idaho is a 20% decline in the number of male sage grouse. USFS Doc. 95:FS-004750.

As discussed above, the Project is located in the Important Southern Idaho Conservation Area. USFS Doc.

96:FS-004775. As also discussed above, the hard trigger has been reached in this Conservation Area. USFS Doc.

96:FS-004777. The Project EIS does not disclose the fact that the hard trigger has been reached, which triggers application of Standard GRSG-AM-ST-010, which in turn requires application of all “priority” management direction to this area. USFS Doc. 95:FS-004573.

b. Guideline GRSG-LR-SUA-GL-020

The 2015 Forest Plan Amendment Guideline GRSG-LR-SUA-GL-020 requires: “The best available science and monitoring should be used to inform infrastructure siting in greater sage-grouse habitat.” USFS Doc.

95:FS-004575. The Project EIS does not acknowledge that Guideline GRSG-LR-SUA-GL-020 exists, much less demonstrate compliance with it. At a bare minimum, the Project EIS would need to disclose (a) available information on current population numbers and hard triggers, (b) the recommended distance around leks that should be protected as sage grouse habitat (i.e. a 6.2 mile and/or a 10 mile radius), (c) the Connelly Guidelines for management of that sage grouse habitat, and (d) the fact that oil and gas development is a primary threat to sage grouse in order to demonstrate that the best available science was used for this Project. See e.g. Defs. of Wildlife v. USDI, 931 F.3d 339, 346 (4th Cir. 2019)(discussing “best available science” mandate under ESA in context of natural gas pipeline and finding that agency “is not free to disregard other ‘available biological information’” and instead “must seek out and consider all existing scientific data relevant to the decision it is tasked with making”); see also Greenpeace, Inc. v. Cole, 445 F. App'x 925, 927 (9th Cir. 2011) (remanding to Forest Service in part due to agency’s failure to apply best available science as mandated by NFMA planning regulations); Bark v. U.S. Forest Serv., 2007 WL 756746, at *6 (D. Or. 2007)(same).

c. Desired Condition GRSG-GEN-DC-003

The 2015 Forest Plan Amendment Desired Condition GRSG-GEN-DC-003 requires specific habitat conditions that “[a]pply 6.2 miles from active leks.” USFS Doc. 95:FS-004571. As noted above, a significant portion of this Project is within 6.2 miles of an active lek. USFS Doc. 81:FS-003528. Nonetheless, the Project EIS does not acknowledge that Desired Condition GRSG-GEN-DC-003 exists, much less demonstrate compliance with it.

d. Management Indicator Species Standard 1

The 2003 Revised Forest Plan Management Indicator Species Standard 1 requires: “In project analyses affecting the habitats listed below, assess impacts to habitat and populations for the following management indicator species . . . Sagebrush habitats S Sage Grouse.” This standard is intended to ensure sage grouse viability. USFS Doc. 3:FS-000115; USFS Doc. 4:FS-000407. The Record of Decision and EIS for the 2003 Revised Forest Plan explain: “While there is one lek documented on the Forest there are many within several miles of the Forest Boundary. Sagebrush habitats within twenty kilometers [12.4 miles] of active leks may provide nesting brood rearing and winter habitat for sage grouse.” USFS Doc. 4: FS-001587. Thus, “[w]hile leks (where populations are most easily monitored) are not on Forest, changes in populations could reflect changes in habitat conditions on the Forest.” Id. Accordingly: “A decline of 10 percent or more in the number of male grouse would initiate a further analysis in cooperation with [Idaho Fish and Game].” Id.

The Project EIS does not address the habitat conditions within 12.4 miles of active leks, nor does it analyze whether there is a 10% or greater decline in the number of male sage grouse, even though that analysis has been triggered by a population decline of 25% in male sage grouse. See USFS Doc. 96:FS-004777. Without this basic analysis, the Forest Service is failing its Forest Plan mandate to ensure the viability of greater sage grouse.

e. Sage Grouse Guideline 1

The 2003 Revised Forest Plan Sage Grouse Guideline 1 requires: “Current guidelines for sage . . . grouse management, such as Connelly et al. (2000), should be used as a basis to develop site-specific recommendations for proposed sagebrush treatments.” USFS Doc. 3:FS-000147. The Record of Decision and EIS for the 2003 Revised Forest Plan explains: “Habitat management guidelines have recently been updated (Connelly et al, 2000). These guidelines (nesting, brood-rearing and winter habitat) would be incorporated at the site-specific level where appropriate.” USFS Doc. 4:FS-001587, 1696 (direction applies to “site-specific projects”).

The Project EIS does not acknowledge Sage Grouse Guideline 1, and it fails to apply the Connelly et al. (2000) guidelines to sage grouse habitat at the site-specific project level. See Tidwell, 599 F.3d at 935 (remanding in part because “[t]he record further suggests that in addition to failing to monitor and incorporate sage grouse

population data in its analysis, the Forest Service failed to adhere to the Connelly Guidelines in assessing the sagebrush habitat.”)

f. Sage Grouse Guideline 2

The 2003 Revised Forest Plan Sage Grouse Guideline 2 requires: “Management activities should consider proximity to active lek locations during site-specific project planning. Those within 10 miles of an active sage grouse lek . . . should be considered further for suitability as grouse habitat.” USFS Doc. 3:FS-000147. As the Forest Plan Record of Decision and EIS further explain: “The sagebrush habitats within ten miles of the leks are predicted to provide summer nesting and brood-rearing and winter habitat for sage grouse.” USFS Doc. 4:FS-001691.

A significant portion of the Project area occurs within 10 miles of an active lek. USFS Doc. 81:FS-003528 (Project lek map); USFS Doc. 4:FS-001692 (Forest Plan EIS lek map). Nonetheless, the Project EIS does not acknowledge Sage Grouse Guideline 2.

g. Sage Grouse Monitoring

The 2003 Revised Forest Plan requires the Forest Service to “[m]onitor changes in habitat conditions from vegetation treatments within 10 miles of leks.” USFS Doc. 3:FS-000260. The entire Project is within 10 miles of a lek, either “active” or “undetermined.” USFS Doc. 81:FS- 003528; Dkt 27 ¶52; Dkt 54 ¶52. Nonetheless, the

Project EIS fails to provide any monitoring data on the habitat conditions within 10 miles of these leks.

2. There is no analysis or disclosure of the 2003 and 2015 Forest Plan provisions for sage grouse in the Project EIS.

Forest Plan provisions are legally binding and the Forest Service must demonstrate compliance with Forest Plan provisions at the site-specific level. Nonetheless, the Project SEIS fails to analyze any of these sage grouse Forest Plan provisions in the Project EIS. Instead, the direct and indirect effects analysis for sage grouse in the Project EIS is a single paragraph with no analysis of any Forest Plan provisions.

Instead of disclosing and applying the binding Forest Plan provisions for sage grouse – an imperiled management indicator species – the Project EIS simply asserts: “Currently, Sage Grouse habitat is managed per the most recent guidance in the 2003 Revised Forest Plan and, where applicable, in accordance with the 2015 Land Management Plan Amendments. The project is in compliance with the direction contained in these two documents which specifically guide Forest Service management as it relates to sage grouse and their habitat within the project area.” USFS Doc. 81:FS-003916 (emphasis added). No supporting citations, evidence, or analysis is provided to substantiate this conclusory statement. Id. Accordingly, the Forest Service’s failure to disclose the binding Forest Plan provisions, and demonstrate compliance with them, violates both NFMA and the “hard look” requirement under NEPA.

Notably, a number of the relevant Forest Plan provisions discussed above require the Forest Service to analyze sage grouse habitat conditions within a 6.2-mile radius and a 10-mile radius of each sage grouse lek.

*This requirement is similar to one on the Payette National Forest, which was addressed by the Ninth Circuit in *Neighbors of Cuddy Mountain*. In *Neighbors*, the Ninth Circuit found that the Forest Service violated NFMA by failing to analyze the habitat conditions within individual pileated woodpecker home ranges. 137 F.3d at 1376. The Ninth Circuit noted that “each range is approximately 10 miles in diameter,” and it held:*

The Forest Service provides no information whatsoever regarding how many woodpecker home ranges there are within the sale area, or how many home ranges would be affected by the timber sale. [] Having failed to do so, it certainly could not have demonstrated that after the sale, a sufficient percentage of old growth would remain in each affected pileated woodpecker home range.

The Ninth Circuit thus held: “the Forest Service did not comply with the requirements of the [forest plan] in so far as the Forest Service evaluated the ‘analysis area’ rather than the ‘home range’ of the pileated woodpecker.” Id. at 1378. Accordingly, the Forest Service “did not demonstrate that the . . . project would be consistent with the Payette [forest plan], and thus it failed to comply with NFMA.” Id. Here too, by failing to conduct the required analyses for the habitat home ranges found in a 6.2-mile radius and a 10-mile radius from each sage grouse lek,

USFS Doc. 95:FS-004571, 4534, USFS Doc. 3:FS-000147, 260, the Forest Service has violated the Forest Plan and NFMA. Neighbors, 137 F.3d at 1376-1378.

D. The Forest Service's failure to take a hard look at potential cumulative effects on sage grouse and sage grouse habitat violates NEPA and the APA.

On a related issue, the Forest Service also failed to provide a lawful cumulative effects analysis under NEPA. The Council on Environmental Quality regulations, which implement NEPA, mandate that "agencies shall consider . . . 3 types of impacts" – direct, indirect, and cumulative. 40 C.F.R. §1508.25. Cumulative impacts "result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. §1508.7.

The Forest Service responded on page 142 of the FSEIS:

The HQT does not currently consider natural gas pipelines among the types of anthropogenic disturbance equipped to quantify impacts on Greater Sage-Grouse (hereafter sage-grouse) habitat. This is simply because there were no such known proposals while the HQT Science Team was developing the tool. Because this

natural gas pipeline will be buried and the right-of-way (ROW) reseeded with a mix of mostly perennial greases (R. Mickelson, personal communication), the IDFG sage-grouse team decided to treat this as a direct and permanent vegetation modification that would pose no indirect effects on sage- grouse habitat.

The Forest Service also responded on page D-12:

Appropriate impacts to greater sage-grouse are disclosed in Section 3.3.4 of this EIS. Further, the Project is not creating and/or resulting in any new roads.

The 2003 Revised Forest Plan requires the Forest Service to “[m]onitor changes in habitat conditions from vegetation treatments within 10 miles of leks.” USFS Doc. 3:FS-000260. The entire Project is within 10 miles of a lek, either “active” or “undetermined.” USFS Doc. 81:FS- 003528; Dkt 27 ¶52; Dkt 54 ¶52. Nonetheless, the Project EIS fails to provide any monitoring data on the habitat conditions within 10 miles of these leks.

2. There is no analysis or disclosure of the 2003 and 2015 Forest Plan provisions for sage grouse in the Project EIS.

As discussed above, Forest Plan provisions are legally binding and the Forest Service must demonstrate compliance with Forest Plan provisions at the site-specific level. See, e.g., Native Ecosystems Council, 418 F.3d at 961-965. Nonetheless, the Project EIS fails to analyze any of these sage grouse Forest Plan provisions in the Project EIS. Instead, the direct and indirect effects analysis for sage grouse in the Project EIS is a single paragraph with no analysis of any Forest Plan provisions. USFS Doc. 81:FS-003534.

Similarly, the four paragraphs in the Project EIS that are labeled as a cumulative effects analysis also contain no disclosure or application of the Forest Plan provisions. USFS Doc. 81:FS-003537-38.

Instead of disclosing and applying the binding Forest Plan provisions for sage grouse – an imperiled management indicator species – the Project EIS simply asserts: “Currently, Sage Grouse habitat is managed per the most recent guidance in the 2003 Revised Forest Plan and, where applicable, in accordance with the 2015 Land Management Plan Amendments. The project is in compliance with the direction contained in these two documents which specifically guide Forest Service management as it relates to sage grouse and their habitat within the project area.” USFS Doc. 81:FS-003916 (emphasis added). No supporting citations, evidence, or analysis is provided to substantiate this conclusory statement. *Id.* Accordingly, the Forest Service’s failure to disclose the binding Forest Plan provisions, and demonstrate compliance with them, violates both NFMA and the “hard look” requirement under NEPA. See, e.g., *Native Ecosystems Council*, 418 F.3d at 961-965.

Notably, a number of the relevant Forest Plan provisions discussed above require the Forest Service to analyze sage grouse habitat conditions within a 6.2-mile radius and a 10-mile radius of each sage grouse lek. USFS Doc. 95:FS-004571, 4534; USFS Doc. 3:FS-000147, 260. This requirement is similar to one on the Payette National Forest, which was addressed by the Ninth Circuit in *Neighbors of Cuddy Mountain*. In *Neighbors*, the Ninth Circuit found that the Forest Service violated NFMA by failing to analyze the habitat conditions within individual pileated woodpecker home ranges. 137 F.3d at 1376. The Ninth Circuit noted that “each range is approximately 10 miles in diameter,” and it held:

the Forest Service provides no information whatsoever regarding how many woodpecker home ranges there are within the sale area,

or how many home ranges would be affected by the timber sale. [] Having failed to do so, it certainly could not have demonstrated that after the sale, a sufficient percentage of old growth would remain in each affected pileated woodpecker home range.

Id at 1377-1378. The Ninth Circuit thus held: “the Forest Service did not comply with the requirements of the [forest plan] in so far as the Forest Service evaluated the ‘analysis area’ rather than the ‘home range’ of the pileated woodpecker.” Id. at 1378.

Accordingly, the Forest Service “did not demonstrate that the . . . project would be consistent with the Payette [forest plan], and thus it failed to comply with NFMA.” Id. Here too, by failing to conduct the required analyses for the habitat home ranges found in a 6.2-mile radius and a 10-mile radius from each sage grouse lek, USFS Doc. 95:FS-004571, 4534, USFS Doc. 3:FS-000147, 260, the Forest Service has violated the Forest Plan and NFMA. Neighbors, 137 F.3d at 1376-1378.

D. The Forest Service’s failure to take a hard look at potential cumulative effects on sage grouse and sage grouse habitat violates NEPA, NFMA, and the APA.

On a related issue, the Forest Service also failed to provide a lawful cumulative effects analysis under NEPA. The Council on Environmental Quality regulations, which implement NEPA, mandate that “agencies shall consider . . . 3 types of impacts” – direct, indirect, and cumulative. 40 C.F.R. §1508.25. Cumulative impacts “result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. §1508.7.

The Ninth Circuit holds: “To ‘consider’ cumulative effects, some quantified or detailed information is required. Without such

information, neither the courts nor the public, in reviewing the Forest Service's decisions, can be assured that the Forest Service provided the hard look that it is required to provide." *Neighbors*, 137 F.3d at 1379. "General statements about 'possible' effects and 'some risk' do not constitute a 'hard look' absent a justification regarding why more definitive information could not be provided." *Id* at 1380. In *Neighbors*, the Ninth Circuit rejected an inadequate cumulative effects analysis by the Forest Service:

Other than [general] statements, however, the Forest Service has provided no detail regarding the extent to which the proposed sales would cumulatively impact and reduce old growth habitat. Significantly, the Forest Service has failed to even mention the number or percentage of trees meeting the definition of old growth that would be destroyed by the three other proposed timber sales in the Cuddy Mountain Roadless area, and whether the sales would affect the same pileated woodpecker home ranges that would be affected by the Grade/Dukes sale.

Id at 1379.

In this case, the Forest Service has committed a similar violation of law. As noted above, the entire Project is within 10 miles of a sage grouse lek. USFS Doc. 81:FS-003528. Additionally, the Project will cut through five Inventoried Roadless Areas, all of which have been designated as "rated high for potential sage grouse habitat" under the Forest Plan. USFS Doc. 81:FS-003448; USFS Doc. 4:FS-001843, 1849, 1858, 1879, 1909. Nonetheless, the Project EIS does not disclose (1) the existing population status of sage grouse, (2) the existing habitat conditions of the 10-mile radius sage grouse home ranges that overlap the Project area, (3) whether these 10-mile radius sage grouse home ranges comply with the Connelly guidelines, as required by the Forest Plan, or (4) the impact of "past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions" on these 10-mile radius sage grouse home ranges.

Instead of taking a hard look at cumulative effects, the Project EIS provides two generalized paragraphs that purport to be a cumulative effects analysis for all affected wildlife species. USFS Doc. 81:FS-003537-3538. These generalized and conclusory statements fail to provide the cumulative effects analysis required under NEPA because they are impermissibly perfunctory and “do[] not provide any objective quantification of the impacts. . . . The reader is not told what data the conclusion was based on, or why objective data cannot be provided.” See *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994 (9th Cir. 2004).

Both this Idaho Federal District Court and the Ninth Circuit have rejected agency NEPA documents that fail to provide a lawful cumulative effects analysis for sage grouse. For example, in *Center for Biological Diversity v. BLM*, the Ninth Circuit found that the EIS for the Ruby Pipeline “does not provide sufficient ‘quantified or detailed data,’ [] about the cumulative loss of sagebrush steppe vegetation and habitat.” Ninth Circuit No. 10-72356, Dkt 164 at 6 (Oct. 22, 2012)(unpublished memorandum). Similarly, in *W. Watersheds Project v. Salazar*, this Court remanded a cumulative impacts analysis because “none of the five EAs at issue here contained a cumulative impact analysis that discussed the existing conditions of sage grouse habitat and populations throughout the Owyhee and Bruneau Field Offices. . . .” 843 F.Supp.2d 1105, 1127–28 (D. Id. 2012). Likewise, this Court also rejected an inadequate cumulative effects analysis for sage grouse in *W. Watersheds Project v. Bennett*, 392 F.Supp.2d 1217, 1225 (D. Id. 2005), modified in part, 803 F.Supp.2d 1175 (D. Id. 2011). Most recently, this Court found a cumulative effects analysis for sage grouse to be inadequate in *W. Watersheds Project v. Bernhardt*. 543 F. Supp. 3d at 992.

Here too, the agency’s cumulative effects analysis for sage grouse is perfunctory and lacking in quantified and detailed information;

therefore, it is unlawful under NEPA and must be remanded to the agency. *Neighbors*, 137 F.3d at 1379; *Klamath-Siskiyou*, 387 F.3d at 994.

Instead the Forest Service writes they will do “design analysis” if they find sensitive and proposed species such as sage grouse and pygmy rabbits. “Design features” is nothing more than a code word for failing to take a hard look at the impacts of the project as required by NEPA and ensure that the project is complying with NFMA, the Forest Plan and the APA.

REMEDY

Withdraw the Draft ROD FSEIS and write a new FSEIS that fully complies with the law or choose the No Action Alternative.

Mineral Leasing Act

The Project SEIS violates the Mineral Leasing Act because there is no finding that the use of existing rights-of-way is “impractical.”

The Mineral Leasing Act governs rights-of-way for pipelines across federal lands. 30 U.S.C. § 185 (q). The statute mandates: “In order to minimize adverse environmental impacts and the proliferation of separate

rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical” 30 U.S.C. § 185 (p) (emphasis added). This provision of the Mineral Leasing Act sets “a higher and more specific bar” than a normal NEPA alternatives analysis – the agency must make an express finding that the use of existing rights-of-way is in fact “impractical.” *Sierra Club, Inc. v. USFS.*, 897 F.3d 582, 604-605 (4th Cir. 2018). In *Sierra Club*, the Fourth Circuit held:

The agency entirely failed to consider an important aspect of the problem.” [I]. It never decided that the utilization of an existing right of way would be impractical. Indeed, it never even purported to do so. Had the BLM done so, its analysis -- rather than favoring the proposed route by rejecting alternatives unless they were substantially better -- would have favored routes utilizing existing rights of way unless those alternatives were impractical.

Although the BLM did not make a practicability finding, we are not authorized to step in and do so on behalf of the agency, nor may we predict how the agency might have made such a finding. [I] We thus vacate the BLM’s decision and remand for consideration of the MLA’s preference for utilizing existing rights of way.

Nowhere in the Project SEIS does the Forest Service even acknowledge that the Mineral Leasing Act requires a finding that the use of existing rights-of-way is “impractical.”

Forest Plan provisions also require that new pipeline corridors should be limited to existing rights-of-way.

All the Forest Service did was to work with the proponent, LVE, to alter the route to avoid lands managed by the BLM.

The Forest Service's failure to examine feasible alternatives in detail in the Project EIS violates NEPA and the APA.

REMEDY

Choose the No Action Alternative or write a new EIS that fully complies with the law.

National Historic Trails

We wrote in our comments:

The SEIS fails to adequately analyze impacts to National Historic Trails, in violation of NEPA and the National Trails System Act.

The Forest Service responded on page D-14 of the FSEIS:

As stated in Section 3.4.2, given that the historic trails do not occur on this portion of the CTNF where the Project is located and they would not be considered eligible/ contributing elements to the larger NHT systems, there would be a "no adverse effect" to these historic trail systems from implementing the Project and they will not be carried forward in the document.

The Project EIS fails to analyze impacts to National Historic Trails, in violation of NEPA and the National Trails System Act.

National Scenic and National Historic Trails are authorized and designated only by Act of Congress. 16 U.S.C. § 1244 (a). Congress designated the Oregon National Historic Trail and the California Historic Trail, and mandated for both: “The trail shall be administered by the Secretary of the Interior.” 16 U.S.C. § 1244 (3), (18). National Historic Trails “may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. . . . efforts shall be made to avoid activities incompatible with the purposes for which such trails were established.” 16 U.S.C. § 1246 (c).

During the planning process for this Project, the Department of Interior informed the Forest Service that the proposed pipeline corridor crosses two National Historic Trails: the Oregon National Historic Trail and the California National Historic Trail. USFS Doc. 74:FS-0033565. The Department of the Interior expressly stated: “in preparation for the FEIS, the Department recommends that the USFS analyze and evaluate potential impacts to the [National Historic Trails], [and] the [National Historic Trail] corridor . . . the DEIS still needs to address any

impacts to the [National Historic Trail] corridor under NEPA and the National Trails System Act.” Id.

Despite this express directive from the Department of Interior, the Project FSEIS does not address impacts to the Oregon National Historic Trail and the California National Historic Trail. In particular, the Forest Service failed to disclose the requirements of the National Trails Systems Act, which mandates an analysis of (1) whether a project will substantially interfere with a trail’s purpose, and (2) whether incompatible activities will be avoided. 16 U.S.C. § 1246 (c).

The Forest Service responded on page 1-11 of the FSEIS:

Comments from the National Park Service concerning locational clarification for the two National Historic Trail (NHT) corridors that the Project would intersect needed to be addressed.

The Forest Service also responded on page 3-49 of the FSEIS:

Additionally, two National Historic Trails (NHTs), the California NHT and the Oregon NHT, occur in the vicinity of the Project. The mapped location of the California and Oregon NHTs do not cross onto the Montpelier Ranger District or other CTNF lands. The Proposed Action, where located on CTNF lands, lies about 3 miles northeast of the historic trails as mapped within Bear Lake County (Figure 3.4-1). The two short segments of the NHTs where the Project would cross the NHT corridors have been highly disturbed and have

essentially been removed from the landscape due to road construction, farming, and other activities. In correspondence with SHPO, it was determined that these segments would not retain integrity and would therefore not be considered eligible/contributing elements to the larger NHT corridor systems. Given that the historic trails do not occur on this portion of the CTNF where the Project is located and they would not be considered eligible/contributing elements to the larger NHT systems, there would be a “no adverse effect” to these historic trail corridors from implementing the Project and they would not be carried forward in the analysis.

The Forest Service also responded on page D-14 of the FSEIS:

As stated in Section 3.4.2, given that the historic trails do not occur on this portion of the CTNF where the Project is located and they would not be considered eligible/contributing elements to the larger NHT systems, there would be a “no adverse effect” to these historic trail systems from implementing the Project and they will not be carried forward in the document.

The Forest Service is not complying with the National Historic Trails Act. The map on page 3-50 of the FSEIS clearly shows the pipeline would cross both the California and Oregon National Historic Trails.

REMEDY

Choose the No Action Alternative or write a new EIS that complies with NEPA and the National Trails System Act.

Weeds and Rare Plants

We wrote in our comments:

Native plants are the foundation upon which the ecosystems of the Forest are built, providing forage and shelter for all native wildlife, bird and insect species, supporting the natural processes of the landscape, and providing the context within which the public find recreational and spiritual opportunities. All these uses or values of land are hindered or lost by conversion of native vegetation to invasive and noxious plants. The ecological threats posed by noxious weed infestations are so great that a former chief of the Forest Service called the invasion of noxious weeds “devastating” and a “biological disaster.” Despite implementation of Forest Service “best management practices” (BMPs), noxious weed infestation on the Forest is getting worse and noxious weeds will likely overtake native plant populations if introduced into areas that are not yet infested. The Forest Service has recognized that the effects of noxious weed invasions may be irreversible. Even if weeds are eliminated with herbicide treatment, they may be replaced by other weeds, not by native plant species.

Invasive plant species, also called noxious weeds, are one of the greatest modern threats to biodiversity on earth. Noxious weeds cause harm because they displace native plants, resulting in a loss of diversity and a change in the structure of a plant community. By removing native vegetative cover, invasive plants like knapweed may increase sediment yield and surface runoff in an ecosystem. As well knapweed may alter organic matter distribution and nutrient through a greater ability to uptake phosphorus over some native species in grasslands. Weed colonization can alter fire behavior by increasing flammability: for example, cheatgrass, a widespread noxious weed on the Forest, cures early and leads to more frequent burning. Weed colonization can also deplete soil nutrients and change the physical structure of soils.

The Forest Service's own management activities are largely responsible for noxious weed infestations; in particular, logging, prescribed burns, and road construction and use create a risk of weed infestations. The introduction of logging equipment into the Forest creates and exacerbates noxious weed infestations. The removal of trees through logging can also facilitate the establishment of noxious weed infestations because of soil disturbance and the reduction of canopy closure In

general, noxious weeds occur in old clearcuts and forest openings, but are rare in mature and old growth forests. Roads are often the first place new invader weeds are introduced. Vehicle traffic and soil disturbances from road construction and maintenance create ideal establishment conditions for weeds. Roads also provide obvious dispersal corridors. Roadsides throughout the project area are infested with noxious weeds. Once established along roadsides, invasive plants will likely spread into adjacent grasslands and forest openings.

Logging activities within the analysis area would likely cumulatively contribute to increases to noxious weed distribution and populations. As a disturbance process, logging has the potential to greatly exacerbate infestations of certain noxious weed species. Please disclose the amount of detrimental soil disturbance that currently exists in each proposed unit from previous logging and grazing activities. Please disclose the expected amount of detrimental soil disturbance in each unit after ground disturbance and prior to any proposed mitigation/remediation. Please disclose the expected amount of detrimental soil disturbance in each unit after proposed mitigation/remediation. Please also disclose the analytical data that supports proposed soil mitigation/remediation measures.

Dry site vegetation types and road corridors are extremely vulnerable, especially where recent ground disturbance (timber management, road construction) has occurred. Units proposed for logging within project area may have closed forest service access roads (jammers) located within units. These units have the highest potential for noxious weed infestation and exacerbation through fire activities. Please provide an alternative that eliminates units that have noxious weeds present on roads within units from fire management proposals.

Please address the ecological, social and ascetic impact of current noxious weed infestations within the project area. Include an analysis of the impact of the actions proposed by this project on the long and short term spread of current and new noxious weed infestations. What treatment methods will be used to address growing noxious weed problems? What noxious weeds are currently and historically found within the project area? Please include a map of current noxious weed infestations which includes knapweed, Saint Johnswort, cheat grass, bull thistle, Canada thistle, hawkweed, hound's-tongue, oxeye daisy and all other Category 1, Category 2 and Category 3 weeds classified as noxious in the MONTANA COUNTY NOXIOUS WEED LIST. State-listed Category 2 noxious weed species yellow and orange hawkweeds are recently established (within the last 5 to 10 years) in Montana and are rapidly expanding in established areas. They can invade undisturbed areas where native plant communities are intact. These species

can persist in shaded conditions and often grow underneath shrubs making eradication very difficult. Their stoloniferous (growing at the surface or below ground) habit can create dense mats that can persist and spread to densities of 3500 plants per square mile (Thomas and Dale 1975). Are yellow and orange hawkweeds present within the project area? Please address the cumulative, direct and indirect effects of the proposed project on weed introduction, spread and persistence that includes how weed infestations have been and will be influenced by the following management actions: road construction including new permanent and temporary roads, and skid trails proposed within this project; opening and decommissioning of roads represented on forest service maps; ground disturbance and traffic on forest service template roads, mining access routes, and private roads; removal of trees through salvage logging. What open, gated, and decommissioned Forest Service roads within the project area proposed as haul routes have existent noxious weed populations and what methods will be used to assure that noxious weeds are not spread into the proposed action units?

Noxious weeds are not eradicated with single herbicide treatments. A onetime application may kill an individual plant but dormant seeds in the ground can still sprout

after herbicide treatment. Thus, herbicides must be used on consistent, repetitive schedules to be effective.

What commitment to a long-term, consistent strategy of application is being proposed for each weed infested area within the proposed action area? What long term monitoring of weed populations is proposed?

When areas treated with herbicides are reseeded on national forest land, they are usually reseeded with exotic grasses, not native plant species. What native plant restoration activities will be implemented in areas disturbed by the actions proposed in this project? Will disturbed areas including road corridors, skid trails, and burn units be planted or reseeded with native plant species?

The scientific and managerial consensus is that prevention is the most effective way to manage noxious weeds. The Forest Service concedes that preventing the introduction of weeds into uninfested areas is “the most critical component of a weed management program.” The Forest Service’s national management strategy for noxious weeds also recommends “develop[ing] and implement[ing] forest plan standards” and recognizes that the cheapest and most effective solution is

prevention. Which units within the project area currently have no noxious weed populations within their boundaries? What minimum standards are in the Caribou-Targhee National Forest Plan to address noxious weed infestations? Please include an alternative in the DEIS that includes land management standards that will prevent new weed infestations by addressing the causes of weed infestation. The failure to include preventive standards violates NFMA because the Forest Service is not ensuring the protection of soils and native plant communities. Additionally, the omission of an EIS alternative that includes preventive measures would violate NEPA because the Forest Service would fail to consider a reasonable alternative. Disclose the impact of the Project on noxious weed infestations and native plant communities;

Rare Plants

The ESA requires that the Forest Service conserve endangered and threatened species of plants as well as animals. In addition to plants protected under the ESA, the Forest Service identifies species for which population viability is a concern as “sensitive species” designated by the Regional Forester (FSM 2670.44). The response of

each of the sensitive plant species to management activity varies by species, and in some cases, is not fully known. Local native vegetation has evolved with and is adapted to the climate, soils, and natural processes such as fire, insect and disease infestations, and windthrow. Any management or lack of management that causes these natural processes to be altered may have impacts on native vegetation, including threatened and sensitive plants. Herbicide application – intended to eradicate invasive plants – also results in a loss of native plant diversity because herbicides kill native plants as well as invasive plants. Although native species have evolved and adapted to natural disturbance such as fire on the landscape, fires primarily occur in mid to late summer season, when annual plants have flowered and set seed. Following fall fires, perennial root-stocks remain underground and plants emerge in the spring. Spring and early summer burns could negatively impact emerging vegetation and destroy annual plant seed.

What threatened, endangered, rare and sensitive plant species and habitat are located within the proposed project area? What standards will be used to protect threatened, rare, sensitive and culturally important plant species and their habitats from the management actions proposed in this project? Describe the potential direct

and indirect effect of the proposed management actions on rare plants and their habitat.

The Forest Service responded on page 2-9:

In order to control and prevent the spread of noxious weeds, prior to construction, LVE would prepare a noxious weed control and prevention program to be implemented during construction as well as during the reclamation process. The USFS would approve this program which would be developed in consultation with the appropriate county weed and pest offices. In addition, all construction equipment would be pressure washed to ensure noxious weeds are not carried onto the construction site.

The Forest Service also responded on page D-15 of the FSEIS:

A discussion of noxious weeds in the Project Area is included in Sections 3.6.1.2 and 3.6.2.3 of the 2019 FEIS. The 0.50-mile reroute on private land would result in essentially the same type and extent of resource impacts previously analyzed in the 2019 FEIS and therefore, this resource was not carried forward for analysis in this EIS.

The Forest Service also responded on page D-10 of the FSEIS:

The results of surveys conducted for the Project are incorporated in the BA/BE as well as disclosed as appropriate in this EIS.

The BA/BE is not available for the public to read in violation of NEPA, NFMA, the APA and the ESA.

The Forest Service needs to have the noxious weed control plan in the FSEIS so the public can comment on it.

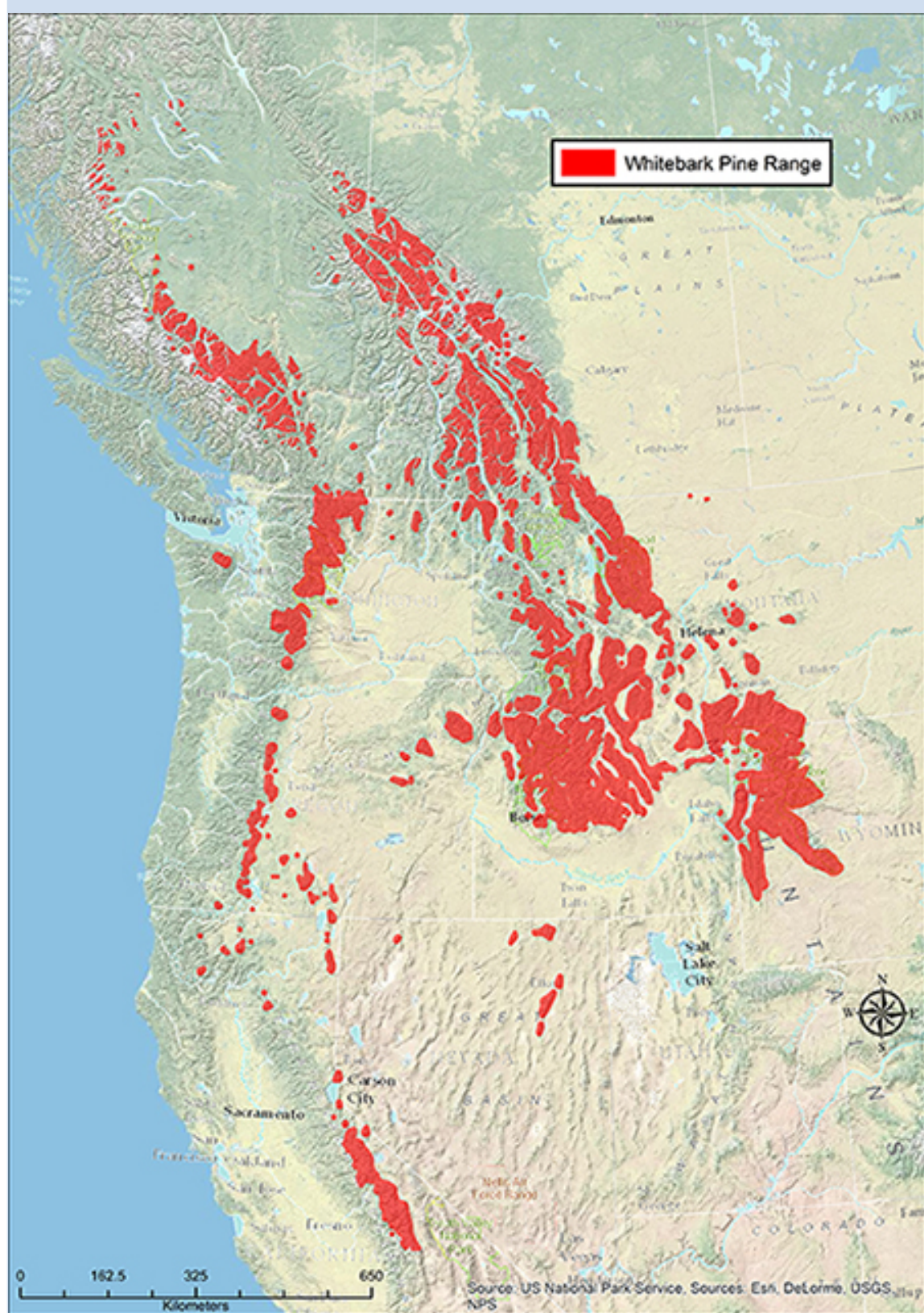
REMEDY

Choose the No Action Alternative or write a new EIS that fully complies with the law.

Whitebark Pine

We wrote in our comments:

Page 3-8 of the SEIS states that whitebark pine are not in the project area. The following Forest Service website disagrees: <https://www.fs.usda.gov/database/feis/plants/tree/pinalb/all.html>



Distribution of whitebark pine. Map courtesy of [Whitebark Pine Ecosystem Foundation](#), Whitebark pine range maps, 2014. [2018, November 28].

Not all ecosystems or all Rocky Mountain landscapes have experienced the impacts of fire exclusion. In some wilderness areas, where in recent decades natural fires have been allowed to burn, there have not been major shifts in vegetation composition and structure (Keane et al. 2002). In some alpine ecosystems, fire was never an important ecological factor. In some upper subalpine ecosystems, fires were important, but their rate of occurrence was too low to have been significantly altered by the relatively short period of fire suppression (Keane et al. 2002). For example, the last 70 to 80 years of fire suppression have not had much influence on subalpine landscapes with fire intervals of 200 to several hundred years (Romme and Despain). Consequently, it is unlikely that fire exclusion has yet to significantly alter stand conditions or forest health within Rocky Mountain subalpine ecosystems.

Whitebark pine seedlings, saplings and mature trees, present in the project area, would experience mortality

from project activity. White pine blister rust, an introduced disease, has caused rapid mortality of whitebark pine over the last 30 to 60 years. Keane and Arno (1993) reported that 42 percent of whitebark pine in western Montana had died in the previous 20 years with 89 percent of remaining trees being infected with blister rust. The ability of whitebark pine to reproduce naturally is strongly affected by blister rust infection; the rust kills branches in the upper cone bearing crown, effectively ending seed production.

Idaho and Wyoming are currently experiencing a mountain pine beetle epidemic. Mountain pine beetle prefer large, older whitebark pine, which are the major cone producers. In some areas the few remaining whitebark that show the potential for blister rust resistance are being attacked and killed by mountain pine beetles, thus accelerating the loss of key mature cone-bearing trees.

Are whitebark pine seedlings and saplings present in the subalpine forests proposed for burning and logging? In the absence of fire, this naturally occurring whitebark pine regeneration would continue to function as an important part of the subalpine ecosystem. Since 2005, rust resistant seed sources have been identified in the Northern Rockies (Mahalovich et al 2006). Due to the severity of blister rust infection within the region, natural

whitebark pine regeneration in the project area is prospective rust resistant stock.

What surveys have been conducted to determine presence and abundance of whitebark pine re-generation? If whitebark pine seedlings and saplings are present, what measures will be taken to protect them? Please include an alternative that excludes burning in the presence of whitebark pine regeneration (consider al regeneration of whitebark pine under these conditions.

How will this project will benefit whitebark pine when the Forest Service's own studies show that manual planting of whitebark pine is the only proven way to restore whitebark pine?

Please formally consult with the US FWS on the impact of the project on whitebark pine.

The BA did not address Ute Ladies' -tresses or Whitebark pine which are listed in DSEIS Table 3.2-1 as threatened.

The Forest Service responded on page D-7 of the FSEIS:

A discussion of noxious weeds in the Project Area is included in Sections 3.6.1.2 and 3.6.2.3 of the 2019 FEIS. The 0.50-mile reroute on private land would result in essentially the same type and extent of resource impacts

previously analyzed in the 2019 FEIS and therefore, this resource was not carried forward for analysis in this EIS.

The Forest Service did not provide the public with the BA/BE in violation of NEPA, NFMA, ESA, and the APA.

Remedy

Choose the No Action Alternative or write an EIS that fully complies with the law.

We wrote in our comments;

FAILURE TO REVIEW AND PROTECT CULTURAL AND HISTORICAL RESOURCES

Consultation with the State Historic Preservation Office (SHPO) must be completed prior to a decision being signed.

Any required protection measures provided from SHPO will be incorporated into my final decision.

Crucial to the preservation of the historical and cultural foundations of the nation, Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 C.F.R. Part 800 (PDF) (revised August 5,

2004) require Federal agencies to consider the effects of projects they carry out, approve, or fund on historic properties. Additionally, Federal agencies must provide the Advisory Council on Historic Preservation (ACHP) opportunity to comment on such projects prior to the agency's final decision.

A Federal project that requires review under Section 106 is defined as an "undertaking." An undertaking means a project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.

Section 110 of the NHPA

Added to the NHPA in 1992, Section 110 requires Federal agencies to emphasize the preservation and enhancement of cultural resources. Section 110 directs agencies to initiate measures necessary to direct their policies, plans, and programs in such a way that federally-owned sites, structures, and objects of historical architectural or archaeological significance are preserved, restored, and

maintained for the inspiration and benefit of the public. The agencies are also encouraged to institute (in consultation with the ACHP) procedures to assure Federal plans and programs contribute to the preservation and enhancement of non-Federally owned sites, structures, and objects of historical, architectural, and archaeological significance. Has the MT SHPO received this survey? Page 3-47 of the SEIS states: “All historic properties (i.e., NRHP-eligible cultural resource sites) would be avoided if practicable.”

The cultural surveys need to be done before the NEPA and NHPA process can be completed, which has not occurred. The project must be approved by the SHPO and the public needs to be given a chance to comment on this. Please include a copy of all historic surveys in the final EIS and indicate when they were surveyed.

The Forest Service responded on page 3-62 of the FSEIS:

In accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, the potential effects of the Project on historic properties listed on the NRHP or eligible for such listing have been evaluated.

The Forest Service has not demonstrated that they are complying with the National Historic Preservation Act.

REMEDY

Choose the No Action Alternative or write a new EIS that fully complies with the law.

We wrote in our comments

E. Disclose the biological assessment for the candidate, proposed, threatened, or endangered species with potential and/or actual habitat in the Project area;

F. Disclose the biological evaluation for the sensitive and management indicator species with potential and/or actual habitat in the Project area;

G. Disclose the snag densities in the Project area, and the method used to determine those densities and if any of these snags will be cut down for safety reasons;

H. Disclose the current, during-project, and post-project road densities in the Project area;

J. Disclose the Caribou-Targhee National Forest's record of compliance with its monitoring requirements as set forth in its Forest Plan;

K. Disclose the Caribou-Targhee National Forest's record of compliance with the additional monitoring requirements set forth in previous DN/FONSI and RODs on the Caribou-Targhee National Forest;

L. Disclose the results of the field surveys for proposed, threatened, endangered, sensitive, and rare plants in each of the proposed units;

What MIS did you find, how many and how did you look for these MIS?

Wolverines

Page 3-17 of the SEIS states:

However, multiple recent observations have occurred in southeast Idaho, including approximately eight miles to the north of the study area near the Smoky Canyon Mine (IFWIS 2022), and presence of wolverines within/ adjacent to the study area is possible. Any wolverines present in the study area would likely be dispersing through to adjacent areas of higher quality habitat.

Species are going extinct because of the lack of high quality habitat and roadless areas are very high quality habitat. Please formally consult on the impact of the project on wolverines.

How will the decreased elk security and thermal cover affect wolverines? Please formally consult with the US FWS on the impact of this project on wolverines. The U.S. District Court ordered the USFWS to reconsider if wolverines should be listed under ESA. Wolverines need secure habitat in big game winter range.

Please disclose whether you have conducted surveys in the Project area for this Project for whitebark pine, sage grouse,

Yellow-billed Cuckoo, wolverines, pine martins, northern goshawk, grizzly bears, monarch butterfly, and lynx, as required by the Forest Plan.

Please disclose the last time the Project area was surveyed for sagegrouse, Yellow-billed Cuckoo, whitebark pine, grizzly bears, wolverines, pine martins, monarch butterflies, northern goshawk, and lynx.

Please disclose how often the Project area has been surveyed for sagegrouse, Yellow-billed Cuckoo, whitebark pine, grizzly bears, monarch butterfly, wolverines, pine martins, northern goshawks, and lynx.

Would the habitat be better for grizzly bears, whitebark pine, sagegrouse, Yellow-billed Cuckoo, wolverines, pine martins, northern goshawks, monarch butterfly, and lynx if the proposal was denied?

Please provide us with the full BA for the whitebark pine, sagegrouse, wolverines, Yellow-billed Cuckoo, grizzly bears, monarch butterfly, pine martins, northern goshawks, and lynx.

Page 3-15 of the SEIS states:

The study area is outside the known distribution of the GYE population. The nearest observations have been near Salt Creek Summit (approximately 12 miles to the east of the study area), and near Palisades Reservoir (approximately 40 miles to the north of the study area). Although there have been no observations within the study area, it is recognized that the GYE population is expanding and permanently occupying new areas (USFWS 2021b). The study area (and the CNF in general) provides suitable habitat for grizzly bear. In addition, there is connectivity between the study area and known grizzly bear occurrences to the north and east of the study area. As a result, it is possible that grizzly bears may be present in the study area at some point during the life of the Project.

Roadless areas provide the best habitat for grizzlies so the project seems like it would adversely effect grizzlies. Please formally consult with the US FWS on the impact of the project on grizzlies.

Monarch Butterflies

Page 3016 of the SEIS states:

However, floral resources used by monarch butterflies for migration can occur in a broader range of habitats. As a result, although the probability is low, migratory monarchs may occur in the study area on a transient basis.

Please conference with the US FWS on the impact of the project on Monarch Butterflies.

The Forest Service responded: on page 2-14 of the FSEIS:

For federally listed species, the Project would result in a “may affect, not likely to adversely affect” determination for the Canada lynx, grizzly bear, wolverine, and yellow-billed cuckoo and in a “not likely to jeopardize” determination for the monarch butterfly.

For USFS sensitive species, the Project may impact individuals or habitat, but would not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species for the gray wolf, Townsend’s big-eared bat, bald eagle, boreal owl, Columbian sharp-tailed grouse, flammulated owl, great gray owl, greater sage-grouse, northern goshawk, peregrine falcon, three-toed woodpecker, and boreal toad.

Habitat for a variety of special status wildlife species would be temporarily impacted until disturbed areas are reclaimed.

The Forest Service also wrote on page 3-18 of the FSEIS:

However, floral resources used by monarch butterflies for migration can occur in a broader range of habitats. As a result, although the probability is low, migratory monarchs may occur in the study area on a transient basis.

The Forest Service also wrote on page 3-34 and 3-35 of the FSEIS:

Therefore, the Project would result in a “not likely to jeopardize” determination for the monarch butterfly.

Therefore, the Project would result in a “may affect, but not likely to adversely affect” determination for the wolverine.

Therefore, the Project would result in a “may affect, not likely to adversely affect” determination for the yellow-billed cuckoo.

Pygmy Rabbit

Under the Proposed Action, potential impacts to pygmy rabbits would occur primarily through the loss of suitable sagebrush shrubland habitat during construction and

avoidance due to construction activity. A total of approximately 52.7 acres (44.2 acres on NFS lands) of sagebrush shrubland within modeled habitat (Rush 2021) would be disturbed that the species may potentially use. However, given the Project's design features for protecting documented pygmy rabbit suitable and occupied habitat and the amount of similar habitat outside of the study area, particularly southeast of the study area, this impact would be short term and minor as the disturbed areas would be reclaimed and revegetation efforts (including reseeding/planting sagebrush and other desired vegetation species for wildlife habitat) following construction of the Project would be monitored to ensure successful reclamation. This would allow pygmy rabbits to use the disturbed areas in the future. Any temporary disturbance of pygmy rabbits due to noise associated with operation and maintenance would have negligible effects as individuals could disperse into nearby, undisturbed sagebrush shrubland habitat. Therefore, the Project may impact individuals or habitat, but would not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species.

The FSEIS also states on page 2-14 of the FSEIS:

For federally listed species, the Project would result in a “may affect, not likely to adversely affect” determination for the Canada lynx, grizzly bear, wolverine, and yellow-billed cuckoo and in a “not likely to jeopardize” determination for the monarch butterfly.

For USFS sensitive species, the Project may impact individuals or habitat, but would not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species for the gray wolf, Townsend's big-eared bat, bald eagle, boreal owl, Columbian sharp-tailed grouse, flammulated owl, great gray owl, greater sage-grouse, northern goshawk, peregrine falcon, three-toed woodpecker, and boreal toad.

Habitat for a variety of special status wildlife species would be temporarily impacted until disturbed areas are reclaimed.

The Forest Service also responded on pages D-15 -D-16 of the FSEIS:

The MIS species are the GRSG, Columbia sharp-tailed grouse, and northern goshawk. These species are discussed in Section 3.3 of this EIS and in the BE.

A revised BA was developed for the Project. The USFWS determined that the Project "may affect but is not likely to adversely affect" the wolverine. Concurrence from USFWS on these determinations was received on July 13, 2023, and informal consultation on the Project was concluded. A concurrence rollover letter was also received on December 15, 2023 regarding the change in listing for the North American wolverine.

This type of information is not relevant to this Project. A revised BA was developed for the Project. The USFWS determined that the Project "may affect but is not likely to adversely affect" the wolverine. Concurrence from

USFWS on these determinations was received on July 13, 2023, and informal consultation on the Project was concluded. A concurrence rollover letter was also received on December 15, 2023 regarding the change in listing for the North American wolverine.

Surveys were conducted for species that could potentially occur within the Project Area and are summarized in the wildlife resources technical report prepared for the 2019 FEIS and updated as applicable in this EIS.

The purpose of this EIS is to disclose the environmental impacts of this Project on the resources present.

The Crow Creek project FSEIS and DROD does not demonstrate that the project is complying with the Forest Plan, NEPA, NFMA, the ESA, and the APA.

Remedy

Choose the No action alternative or withdraw the draft Record of Decision and write a new EIS that fully complies with the law.

LYNX

We wrote in our comments:

Disclose the number of acres and location of Lynx Analysis Units (LAU)s that were removed from the CTNF without going through NEPA;

This project is in Canada lynx habitat and right next to lynx critical habitat. How can you conclude that the project will have no effect on lynx critical habitat when it practically adjoins lynx critical habitat? In order to meet the requirements of the FS/USFWS Conservation Agreement, the FS agreed to insure that all project activities are consistent with the Lynx Conservation Assessment and Strategy (LCAS) and the requirements of protecting lynx critical habitat. The FS did not do so with its project analysis. This project will adversely affect lynx habitat in violation of the Endangered Species Act. The BA/BE needs to be rewritten to reflect this information to determine if this project will adversely modify proposed critical habitat for lynx and if so conference with USFWS.

The Caribou-Targhee National Forest (HLCNF) is home to the Canada lynx, listed as a Threatened species under the Endangered Species Act (ESA). In December 1999, the Forest Service and Bureau of Land Management completed their “Biological Assessment Of The Effects Of National Forest Land And Resource Management Plans And Bureau Of Land Management Land Use Plans On Canada Lynx” (Programmatic Lynx BA). The Programmatic Lynx BA concluded that the cur- rent

programmatic land management plans “may affect, and are likely to adversely affect, the subject population of Canada lynx.”

The Lynx BA team recommended amending or revising Forest Plans to incorporate conservation measures that would reduce or eliminate the identified adverse effects on lynx. The Programmatic Lynx BA’s determination means that Forest Plan implementation is a “taking” of lynx, and makes Section 7 formal consultation on the Caribou-Targhee Forest Plan mandatory, before actions such as the proposed project are approved.

Continued implementation of the Forest Plan constitutes a “taking” of the lynx. Such taking can only be authorized with an incidental take statement, issued as part of a Biological Opinion (B.O.) during of Section 7 consultation. The Caribou-Targhee National Forest must incorporate terms and conditions from a programmatic

B.O. into a Forest Plan amendment or revision before projects affecting lynx habitat, such as this one, can be authorized.

The Programmatic Lynx BA's "likely to adversely affect" conclusion was based upon the following rationale. Plans within the Northern Rockies:

- *Generally direct an aggressive fire suppression strategy within developmental land allocations. ...this strategy may be contributing to a risk of adversely affecting the lynx by limiting the availability of foraging habitat within these areas.*

- *Allow levels of human access via forest roads that may present a risk of incidental trapping or shooting of lynx or access by other competing carnivores. The risk of road-related adverse effects is primarily a winter season issue.*

- *Are weak in providing guidance for new or existing recreation developments. Therefore, these activities may contribute to a risk of adverse effects to lynx.*

- *Allow both mechanized and non-mechanized recreation that may contribute to a risk of adverse effects to lynx.*

The potential effects occur by allowing compacted snow trails and plowed roads which may facilitate the movements of lynx competitors and predators.

- *Provide weak direction for maintaining habitat connectivity within naturally or artificially fragmented landscapes. Plans within all geographic areas lack direction for coordinating construction of highways and other movement barriers with other responsible agencies.*

These factors may be contributing to a risk of adverse effects to lynx.

- *Are weak in providing direction for coordinating management activities with adjacent landowners and other agencies to assure consistent management of lynx habitat across the landscape. This may contribute to a risk of adverse effects to lynx.*

- *Fail to provide direction for monitoring of lynx, snowshoe hares, and their habitats. While failure to monitor does not directly result in adverse effects, it makes the detection and assessment of adverse effects from other management activities difficult or impossible to attain.*

- *Forest management has resulted in a reduction of the area in which natural ecological processes were historically allowed to operate, thereby increasing the area potentially affected by known risk factors to lynx. The Plans have continued this trend. The Plans have also continued the process of fragmenting habitat and*

reducing its quality and quantity. Consequently, plans may risk adversely affecting lynx by potentially contributing to a reduction in the geographic range of the species.

- *The BA team recommends amending or revising the Plans to incorporate conservation measures that would reduce or eliminate the identified adverse effects to lynx. The programmatic conservation measures listed in the Canada Lynx Conservation Assessment and Strategy (LCAS) should be considered in this regard, once finalized. (Programmatic Lynx BA, at 4.)*

The Forest Service responded on page 3-15 of the FSEIS:

The Canada lynx is listed as a Threatened species under the ESA (FR 65(58) [March 24, 2000]: 16052-16086). On August 1, 2022, the USFWS initiated a 5-year review for the Canada lynx (87 FR 48037) and per a U.S. District Court of Montana settlement agreement in late-2021, is currently evaluating critical habitat, preparing a draft recovery plan (required to be completed by December 2023), and updating the Species Status Assessment.

Critical habitat for Canada lynx was designated by the USFWS on February 25, 2009 (74 FR 8616) and revised on September 12, 2014 (79 FR 54781). Critical habitat was designated in five core units: Unit 1 in Maine, Unit 2 in Minnesota, Unit 3 in Montana and Idaho, Unit 4 in Washington, and Unit 5 in Wyoming and Montana (74 Federal Register 8616). There is no designated critical habitat in the study area based on the 2014 critical habitat designation, however, a corner of designated critical habitat is directly adjacent (less than 500 feet) to the study area in lower Crow Creek but would not be impacted by the Project. This is due primarily to the study area directly paralleling the existing Crow Creek Road and the Project minimizing vegetation disturbance along the Project ROW (i.e., limiting temporary disturbance to 50 feet and permanent disturbance to 20 feet). Therefore, there would be no effect on designated critical habitat from implementing this Project and no further analysis is needed.

The Forest Service also responded on page A-10:

There are no LAUs on the CNF.

Overall management of the Canada lynx on the CNF is outside the scope of this EIS.

The FSEIS and Draft ROD do not demonstrate that the project is complying with the Forest Plan, NEPA, NFMA, the APA and the ESA.

The project is in violation of NEPA, NFMA, the APA and the ESA.

As the regulation states: “Effects of the action . . . may include consequences occurring outside the immediate area involved in the action.” 50 C.F.R. § 402.02. Likewise, “[a]ction area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” 50 C.F.R. § 402.02. In violation of this regulation, the Forest Service has not yet analyzed potential effects of pipeline construction, access, and maintenance on directly adjacent designated lynx critical habitat – which is approximately 500 yards away from the Project area; therefore, this analysis must be done prior to decision.

REMEDY

Withdraw the draft Record of Decision and write a new FSEIS that analyzes the effect of the project on lynx critical habitat.

Carbon

We wrote in our comments:

The Forest Service fails to quantify the Project's impacts on the loss of carbon storage and sequestration and the impact of building a natural gas pipeline on climate change.

The agency's decision declining to address the project's impacts because they are allegedly "negligible" in comparison to the role the world's (or nation's) forests play in climate change is thus not only misleading, it masks the fact that every additional bit of climate pollution, or elimination of carbon sequestration ability, makes the problem worse, and that every bit of sequestration and storage is critical to the solution.

The Forest Service's approach does not adequately consider the Project's impacts on climate change. NEPA requires federal agencies, including the Forest Service, to take a "hard look" at the direct, indirect, and cumulative impacts of proposed major federal actions. 42

U.S.C. § 4332(C)(i)-(ii); 40 C.F.R. §§ 1502.16 (1978), 1508.25(c) (1978). Among the impacts NEPA requires agencies to disclose are climate impacts.

The SEIS fails to adequately disclose the climate change impacts of the Project. Specifically, the Forest Service fails to disclose the Project's impacts on carbon storage, sequestration and impacts to global climate change of building a new natural gas pipeline which will encourage more use of natural gas.

Further, the Forest Service fails to disclose the climate pollution impacts of project implementation – the use of fossil fuel engines to build roads, build the pipes, bury the pipeline, cut trees, and remove and transport cut logs to mills – compared to the no action alternative. The Forest Service thus failed to take a “hard look” at the Crow Creek pipeline’s climate pollution impacts, in violation of NEPA.

The failure of the Forest Service to take the required “hard look” at the climate pollution impacts of the Crow Creek Pipeline project violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

The Federal District Court of Montana recently ruled against the Forest Service similar analysis on a case challenging the Kootenai National Forest Climate analysis for the Black Ram Project. Please find the order attached.

The Caribou-Targhee National Forest has not yet accepted that the effects of climate risk represent a significant issue, and eminent loss of forest resilience already, and a significant and growing risk into the “foreseeable future?”

Global warming and its consequences may also be effectively irreversible which implicates certain legal consequences under NEPA and NFMA and ESA (e.g., 40 CFR § 1502.16; 16 USC §1604(g); 36 CFR §219.12; ESA

Section 7; 50 CFR §§402.9, 402.14). All net carbon emissions from logging represent “irretrievable and irreversible commitments of resources.”

It is clear that the management of the planet’s forests is a nexus for addressing this largest crisis ever facing humanity. Yet the SEIS fails to even provide a minimal quantitative analysis of project- or agency-caused CO₂ emissions or consider the best available science on the topic. This is immensely unethical and immoral. The lack of detailed scientific discussions in the SEIS concerning climate change is far more troubling than the document’s failures on other topics, because the consequences of unchecked climate change will be disastrous for food production, sea level rise, and water supplies, resulting in complete turmoil for all human societies. This is an issue as serious as nuclear annihilation (although at least with the latter we’re not already pressing the button).

The SEIS provided a pittance of information on climate change effects of the pipeline on climate change. The Forest Plan does not provide meaningful direction on climate change. Nor does the SEIS acknowledge pertinent and highly relevant best available science on climate change. This project is in violation of NEPA.

The SEIS does not analyze or disclose the body of science that implicates natural gas and logging activities as a contributor to reduced carbon stocks in forests and increases in greenhouse gas emissions. The SEIS fails to provide estimates of the total amount of carbon dioxide

(CO₂) or other greenhouse gas emissions caused by FS management actions and policies—forest-wide, regionally, or nationally. Agency policy-makers seem comfortable maintaining a

position that they need not take any leadership on this issue, and obfuscate via this EA to justify

The Committee of Scientists, 1999 recognize the importance of forests for their contribution to global climate regulation. Also, the 2012 Planning Rule recognizes, in its definition of Ecosystem services, the “Benefits people obtain from ecosystems, including: (2) Regulating services, such as long term storage of carbon; climate regulation...”

We have no more time to prevaricate, and it’s not a battle we can afford to lose. We each have a choice: submit to status quo for the profits of the greediest 1%, or empower ourselves to limit greenhouse gas emissions so not just a couple more generations might survive.

The District Court of Montana ruled in Case 4:17-cv-00030- BMM that the Federal government did have to evaluate the climate change impacts of the federal government coal program.

In his 2022 decision, Judge Brian Morris of the Federal District Court of Montana cast his eye toward the future. Morris wrote that federal law required BLM to consider “long-term needs of future generations” that included “recreation, range, timber, minerals, watershed, wildlife

and fish, and natural scenic, scientific, and historical values.”

The judge also gave the federal agency an out: “Coal mining represents a potentially allowable use of public lands, but BLM is not required to lease public lands.”

The Forest Service here has a similar out. They can choose the No Action alternative.

Judge Morris’ words cleared the way for BLM to stop leasing, a decision that dovetails with a Colorado College poll that found most residents in eight Rocky Mountain states — including Wyoming and Montana — want Congress to prioritize conservation over energy development on public lands.

In March 2019, U.S. District Judge Rudolph Contreras in Washington, D.C., ruled that when the U.S. Bureau of Land Management (BLM) auctions public lands for oil and gas leasing, officials must consider emissions from past, present and foreseeable future oil and gas leases nationwide. The case was brought by WildEarth Guardians and Physicians for Social Responsibility.

In March of 2018 the Federal District Court of Montana found the Miles City (Montana) and Buffalo (Wyoming)

Field Office’s Resource Management Plans unlawfully overlooked climate impacts of coal mining and oil and gas drilling. The case was brought by Western Organization

of Resource Councils, Montana Environmental Information Center, Powder River Basin

Resource Council, Northern Plains Resource Council, the Sierra Club, and the Natural Resources Defense Council.

The project is in violation of NEPA, NFMA, the APA, the ESA for not examining the impacts of the project on climate change. The project will eliminate the forest in the project area. Forests absorb carbon. The project will destroy soils in the project area. Soils are carbon sinks.

The NFMA requires in the face of increasing climate risk, growing impacts of wildfire and insect activity, plus scientific research findings, the FS must disclose the significant trend in post-fire regeneration failure.

The Forest Service responded on pages 3-57, 3-58 of the Final SEIS:

The Project would not be anticipated to have any effects on climate change based on the anticipated negligible effects anticipated by the pipeline installation, and the offset between the reduced truck traffic and the loss of carbon sequestration as well as emissions from the regassification facility.

Over the life of the pipeline, the Proposed Action would have minor or negligible, beneficial cumulative effects from the reduction of GHGs emitted and these minor or

negligible beneficial cumulative effects may help offset other sources of climate change that occur in the region.

The Forest Service did not explain how building a natural gas pipeline made out of steel or plastic, with a percent loss of vegetation on the 20 foot wide right away of the pipeline, which make natural gas cheaper than propane and thus encourage more people to use methane otherwise knows as natural gas, is such a negligible effect that is should not be bothered with. The Final SEIS also did not analyze how making a percent clearcut through roadless areas for the pipeline would effect climate change even though unlogged forests and sagebrush habitat are carbon sinks. The Final SEIS did also not analyze the effect of building all of the steel pipe on climate change even though making steel produces lots of carbon.

Council on Environmental Quality (“CEQ”) guidance addressing climate change recognizes that logging and prescribed burning can impact carbon stores, and urges land management agencies to “include a comparison of estimated net GHG emissions and carbon stock changes that are projected to occur with and without implementation of proposed land or resource management actions.” CEQ, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews (Aug. 1, 2016) at 25-26, available at https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf

Numerous studies, including those by the Forest Service, have concluded that logging mature forests releases significant amounts of carbon stored in the trees by preventing such forests from continuing to sequester carbon in trees and roots. FS17007. When forest stands are cut down, the vast majority of the stored carbon in the forest is released over time as CO₂, thereby converting forests from a sink to a “source” or “emitter.” See FS7888 (study reporting “[i]ncreased harvest through proposed thinning practices in [Oregon] has been shown to elevate emissions for decades to centuries regardless of product end use”).

Both the CEQ and recent caselaw from this Court recognize that agencies must take a hard look at climate related impacts under NEPA. *Center for Biological Diversity v. United States Forest Serv.*, 2023 WL 5310633, *8 (D. Mont. 2023) (“Black Ram”).

As stated by CEQ, “[c]limate change is a fundamental environmental issue, and its effects fall squarely within NEPA’s purview.” FS39311. Similarly, the Ninth Circuit has held that “[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.” *Center for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008). The Forest Service’s analysis here does not satisfy NEPA’s requirements.

In *Black Ram*, the Forest Service asserted that a logging project would “affect only a tiny percentage of the forest carbon stocks of the Kootenai National Forest, and an

infinitesimal amount of the total forest carbon stocks of the United States.” Id., *10. This Court held that “merely discussing carbon impacts and concluding that they will be minor does not equate to a ‘hard look.’” Id., *8. “Under this logic, the USFS could always skirt the ‘hard look’ analysis when doing a carbon impacts review by breaking up a project into small pieces and comparing them to huge carbon stocks such as those contained within the over two million acres of land in the Kootenai National Forest.” Id., *10. The Forest Service must instead provide to the public “an accurate picture of what impacts a project may have, no matter how ‘infinitesimal’ they believe they may be.” Id.

Here, exactly like Black Ram, the Forest Service relies almost entirely on a cookie-cutter analysis to conclude that “short term release of carbon due to project activities is likely to be offset by improvements to forest conditions.” Compare FS38618 and 2023 WL 5310633, *10. Just like Black Ram, the Forest Service failed to quantify the Project’s greenhouse gas emissions, and failed to explain why it could not do so. Rather, it concluded that “the amount of carbon that might be removed through management is small relative to the approximately carbon stored in the forest ecosystem of the HLCNF.”

This provides no useful information, and fails to comply with NEPA. As recognized by CEQ, a statement that emissions from a proposed action “represent only a small fraction of global emissions is essentially a statement about the nature of the climate change challenge, and is not an

appropriate basis for deciding whether or to what extent to consider climate change impacts under NEPA.” FS39320.

The Forest Service states that it relied on CEQ’s 2016 guidance for considering climate impacts. FS4372. CEQ directs agencies to consider the potential effects of a proposed action on climate change by assessing greenhouse gas emissions and carbon sequestration. FS39313. Further, CEQ recommends that agencies quantify a proposed action’s projected greenhouse gas emissions (*id.*), noting that “[q]uantification tools are widely available” and “already in broad use.” FS39321. And where anticipated emissions are not quantified, agencies are to “explain the basis for determining that quantification is not reasonably available.” FS39313, 39321-22.

In addition to disclosing that the carbon emissions would be small relative to national and global scales, the Forest Service presents additional, qualitative statements that are equally unhelpful, and again similar to those the Court rejected in *Black Ram*. For instance, for both *Larabee Hat* and *Black Ram*, the Forest Service argued that in the long-term, the logging projects would actually help carbon storage and reduce emissions by moving towards more resilient forest conditions. FS4371-72; *Black Ram*, 2023 WL5310633, *9. However, this was expressly rejected by this Court. “[E]ven though the [Forest Service] posited that the short-term loss of carbon from logging would be outweighed by the net increase in carbon sequestration resulting from a healthier forest, this assertion is not backed up by a scientific explanation.” *Id.*, *10. Additionally, the

authorized logging would result in immediate carbon losses, “while re-sequestration happens slowly over time, time that the planet may not have.” Id., *11.

In sum, the Forest Service’s assessment of climate and carbon impacts for the Project is similar to the Agency’s assessment for a comparable project that was recently rejected in Black Ram, and therefore did not take a hard look and is in violation of NEPA.

The FSEIS did not analyze the impact of the Cow Creek pipeline leaking methane on climate change. Please see the attached letter dated July 15, 2024 from 40 members of Congress led by Sen. Martin Heinrich of New Mexico and Rep. Scott Peters of California, [the letter signed by 40 Democrats](#) asks the Pipeline and Hazardous Materials Safety Administration to finalize a draft rule that could aggressively go after methane leaks from the nation’s natural gas pipelines.

Remedy

Withdraw the Draft Record of Decision and FINAL SEIS and write a new SEIS that fully analyzes the impact of the project on climate change

Roadless areas

We wrote in our comments:

LL. Please disclose more fully how Project complies with the Roadless Rule;

The Forest Service responded in the FSEIS on pages 1-9 through 1-10:

1.6.2 Inventoried Roadless Areas

Six Inventoried Roadless Areas (IRAs) designated in the Idaho Roadless Rule are in the Project Area: Gannett-Spring Creek, Hell Hole, Meade Peak, Red Mountain, Sage Creek, and Telephone Draw. 36 CFR 294.29. No road building is proposed within IRAs or any other part of the Project. Only activities needed to construct the pipeline would occur and the construction areas would be fully reclaimed to original contour and native vegetation. Timber cutting within IRAs would be incidental because the vegetation communities are primarily sagebrush and mountain brush.

No motorized access to the corridor would be permitted following construction. Therefore, the Project complies with the Idaho Roadless Rule, 36 CFR 294, Subpart C. Potential effects to the IRAs from the Project were analyzed in the 2019 FEIS (USFS 2019) and no change in conditions has occurred since that time.

The Forest Service wrote on page 3-34 of the FSEIS:

Under the Proposed Action, the construction of the pipeline would disturb approximately 13 acres of forested habitat. This impact would limit the amount of suitable habitat available for use by the wolverine. Additionally, this impact would be long-term as the trees removed would not be reclaimed and any trees naturally returning to the area would be removed to preserve the integrity of the pipeline.

The FSEIS also states on page D-6:

The Project is not creating and/or resulting in any new roads, therefore this comment is not relevant or applicable and is out of scope for this Project.

But the FSEIS states on page 3-56:

In addition to the construction of the Project, maintenance activities such as patrolling the pipeline and vegetation removal would result in the use of fossil fuels. Maintenance activities would use a pick-up truck and/or an ATV. The truck emissions would account for 0.54 tons of CO₂e annually and the use of an ATV would emit 42 pounds (0.21 tons/year) of CO₂e annually. Over the life of the Project, this would account for approximately 38 tons of CO₂e. Surface disturbance required for construction

activities would also remove vegetation cover. The cutting of vegetation would cause the temporary loss of carbon sequestering until vegetation is restored. Although the cutting of trees within the Project corridor would be incidental because the vegetation communities are primarily sagebrush and mountain brush, the loss of carbon sequestration from cut trees would be long-term and permanent.

The Forest Service recognizes the value of forestland unencumbered by roads, timber harvest, and other development. Sometimes these areas are known as “inventoried roadless areas” if they have been inventoried through the agency’s various Roadless Area Review Evaluation processes, or “unroaded areas” if they have not been inventoried but are still of significant size and ecological significance such that they are eligible for congressional designation as a Wilderness Area.

Roadless areas provide clean drinking water and function as biological strongholds for populations of threatened and endangered species. Special Areas; Roadless Area Conservation; Final Rule, 66 Fed. Reg. 3,244, 3,245 (Jan. 12, 2001) (codified at 36 C.F.R. Part 294). They provide large, relatively undisturbed landscapes that are important

to biological diversity and the long- term survival of many at-risk species.

Roadless areas provide opportunities for dispersed outdoor recreation, opportunities that diminish as open space and natural settings are developed elsewhere. Id. They also serve as bulwarks against the spread of non-native invasive plant species and provide reference areas for study and research. Id.

Other values associated with roadless areas include: high quality or undisturbed soil, water, and air; sources of public drinking water; diversity of plant and animal communities; habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land; primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation; reference landscapes; natural appearing cultural properties and sacred sites; and other locally identified unique characteristics.

The Roadless Rule mandates:

Prohibition on timber cutting, sale, or removal in inventoried roadless areas.

(a) Timber may not be cut, sold, or removed in inventoried roadless areas of the National Forest System, except as provided in paragraph (b) of this section.

(b) Notwithstanding the prohibition in paragraph (a) of this section, timber may be cut, sold, or removed in inventoried roadless areas if the Responsible Official determines that one of the following circumstances exists. The cutting, sale, or removal of timber in these areas is expected to be infrequent.

(1) The cutting, sale, or removal of generally small diameter timber is needed for one of the following purposes and will maintain or improve one or more of the roadless area characteristics as defined in § 294.11.

(i) To improve threatened, endangered, proposed, or sensitive species habitat; or

(ii) To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period;

(2) The cutting, sale, or removal of timber is incidental to the implementation of a management activity not otherwise prohibited by this subpart;

... .

36 C.F.R. §294.13 (2005)(emphases added).

The Roadless Rule further explains the meaning of the phrase “incidental to” in subsection (b)(2) above as follows:

Paragraph (b)(2) allows timber cutting, sale, or removal in inventoried roadless areas when incidental to implementation of a management activity not otherwise prohibited by this rule. Examples of these activities include, but are not limited to trail construction or maintenance; removal of hazard trees adjacent to classified road for public health and safety reasons; fire line construction for wildland fire suppression or control of prescribed fire; survey and maintenance of property boundaries; other authorized activities such as ski runs and utility corridors; or for road construction and reconstruction where allowed by this rule.

66 Fed. Reg. 3258.

Are the roadless areas in the project area currently within the natural historic range of variability? Is the project area within natural range for wildfire conditions? The Crow Creek pipeline will substantially alter the Roadless characteristics in the inventoried roadless areas within the project area.

Page 1-10 of the FSEIS states:

Timber cutting within IRAs would be incidental because the vegetation communities are primarily sagebrush and mountain brush.

Page 3-34 of the FSEIS also states:

Under the Proposed Action, the construction of the pipeline would disturb approximately 13 acres of forested habitat. This impact would limit the amount of suitable habitat available for use by the wolverine. Additionally, this impact would be long-term as the trees removed would not be reclaimed and any trees naturally returning to the area would be removed to preserve the integrity of the pipeline.

The project will remove permanently vegetation from roadless areas is violation of the roadless rule

In relevant part, regarding the prohibition on tree cutting, the Roadless Rule mandates: Prohibition on timber cutting, sale, or removal in inventoried roadless areas. 1. Timber may not be cut, sold, or removed in inventoried roadless areas of the National Forest System, except as provided in paragraph (b) of this section. 2. Notwithstanding the prohibition in paragraph (a) of this section, timber may be cut, sold, or removed in inventoried roadless areas if the Responsible Official determines that one of the following circumstances exists. The cutting, sale, or removal of timber in these areas is expected to be infrequent. 1. The cutting, sale, or removal of generally small diameter timber is needed for one of the following purposes and will maintain or improve one or more of the roadless area characteristics as defined in § 294.11. 1. To improve

threatened, endangered, proposed, or sensitive species habitat; or 2. To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period;

2. The cutting, sale, or removal of timber is incidental to the implementation of a management activity not otherwise prohibited by this subpart; 36 C.F.R. §294.13 (2005).

The Roadless Rule further explains the meaning of the phrase "incidental to" in subsection (b)(2) above as follows:

Paragraph (b)(2) allows timber cutting, sale, or removal in inventoried roadless areas when incidental to implementation of a management activity not otherwise prohibited by this rule. Examples of these activities include but are not limited to trail construction or maintenance; removal of hazard trees adjacent to classified road for public health and safety reasons; fire line construction for wildland fire suppression or control of prescribed fire; survey and maintenance of property boundaries; other authorized activities such as ski runs and utility corridors; or for road construction and reconstruction where allowed by this rule. Page 4 of the scoping notice states: "Use of prescribed fire is proposed on the remaining national forest system lands within the Forest, which includes inventoried roadless areas." It appears that the Project authorizes tree cutting on in roadless areas, the Project EA is not clear how the Forest Service will access those units. It is unclear whether the Forest Service will be reconstructing old roads,

using illegal user-created roads, or using roads already closed by the Travel Plan in the Inventoried Roadless Area in order to conduct these activities. Please clarify what roads will be used. Every one of these examples shows that the management activity itself is not any form of vegetation management, i.e. tree-cutting - instead the management activities are things like trail management, road management, firefighting, land surveys, ski runs, utility corridors, or lawful road construction. In contrast, here the management activity itself is vegetation management, i.e. tree cutting. The Forest Service's interpretation of exemption (b)(2) is contrary to the explanation of "incidental to" in the Roadless Rule, and if adopted, would swallow the rule. The Forest Service could simply avoid the tree-cutting ban by labeling every tree-cutting activity in a Roadless Area as something other than tree-cutting - such as "restoration" - and thereby circumvent the ban with euphemisms. This is clearly not the intent of the Roadless Rule. 66 Fed. Reg. 3258. Accordingly, the (b)(2) exemption does not apply here.

The Crow Creek pipeline project is in violation of the Roadless Conservation Rule, NEPA, NFMA, and the APA.

The Crow Creek pipeline project violates the Roadless Rule because it did not consider the wilderness qualities of the roadless areas. The roadless areas in the project would be designated wilderness under S. 1531, the Northern Rockies Ecosystem Protection Act which currently has 12 sponsors in the U.S. Senate. Please find a copy of S. 1531 attached.

The proposed pipeline route is approximately 49 miles long with approximately 18 miles on NFS lands administered by the CTNF. It would require the creation of a utility corridor and an amendment to the Caribou National Forest (CNF) Revised Forest Plan (RFP), as well as the issuance of a Forest Service special use authorization for a pipeline right-of-way (ROW) across NFS lands and construction, operation, and maintenance of the pipeline on NFS lands. During construction, the Project would result in a temporary ROW 25-feet in width in wetlands and aquatic influence zones and 50-feet in width in all other zones. The Project would result in a 20- foot-wide permanent ROW after construction.

Having a permanent 20 foot wide permanent ROW with a road down the middle of it for rucks and ATVs to maintain a methane pipeline obviously would disqualify an area for wilderness.

We are also objecting to the amendment to the Forest Plan to create this ROW since it would destroy to wilderness potential of the roadless areas in the project area.

REMEDY

Choose the No Action Alternative or write a new EIS the fully complies with the law.

Mineral Leasing Act

We wrote in our comments:

The Project SEIS violates the Mineral Leasing Act because there is no finding that the use of existing rights-of-way is "impractical."

Nowhere in the Project SEIS does the Forest Service even acknowledge that the Mineral Leasing Act requires a finding that the use of existing rights-of-way is "impractical."

The Forest Service responded on page of the FSEIS:

The Mineral Leasing Act is not applicable to the Project as there are no BLM lands involved.

The Project EIS violates the Mineral Leasing Act because there is no finding that the use of existing rights-of-way is “impractical.”

The Mineral Leasing Act governs rights-of-way for pipelines across all federal lands. 30 U.S.C. § 185 (q), not just BLM lands as the response to comments incorrectly states in violation of NEPA. The statute mandates: “In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical” 30 U.S.C. § 185 (p) (emphasis added). This provision of the Mineral Leasing Act sets “a higher and more specific bar” than a normal NEPA alternatives analysis – the agency must make an express finding that the use of existing rights-of-way is in fact “impractical.” *Sierra Club, Inc. v. USFS.*, 897 F.3d 582,

604-605 (4th Cir. 2018). In *Sierra Club*, the Fourth Circuit held:

The agency “entirely failed to consider an important aspect of the problem.” []. It never decided that the utilization of an existing right of way would be impractical. Indeed, it never even purported to do so. Had the Forest Service done so, its analysis -- rather than favoring the proposed route by rejecting alternatives unless they were substantially better -- would have favored routes utilizing existing rights of way unless those alternatives were impractical.

Nowhere in the Project EIS does the Forest Service even acknowledge that the Mineral Leasing Act applies here. Instead it tells the public since they rerouted the pipeline onto private lands instead of BLM lands the Mineral Leasing Act no longer applies. Accordingly, as in *Sierra Club*, here too “[t]he agency ‘entirely failed to consider an important aspect of the problem’ because “[i]t never decided that the utilization of an existing right of way would be impractical.” 897 F.3d at 605. A remand is therefore required because the Court is “not authorized to step in and do so on behalf of the agency, nor may [it] predict how the agency might have made such a finding.”

2. The Project EIS violates NFMA and NEPA because there is no analysis of the Forest Plan provisions governing pipeline corridors.

As discussed above at length, the Forest Service’s failure to demonstrate compliance with a Forest Plan in a Project EIS violates NFMA and NEPA. There are a number of legally

binding Forest Plan provisions that govern pipeline rights-of-way on this National Forest, including but not limited to the following:

- Lands, Transportation and Utility Corridors, Standard 2: “Proponents of . . . new corridor routes, shall demonstrate that the proposal is in the public interest, and that no other reasonable alternative exists to public land routing.”
- Lands, Transportation and Utility Corridors, Guideline 4: “Where feasible, new facilities should be limited to existing rights-of-way having widening potential.”
- Lands, Transportation and Utility Corridors, Guideline 6: “Avoid parallel corridors. Consolidate facilities within existing corridors where feasible.
- Lands, Transportation and Utility Corridors, Guideline 7: “Pipelines and other related utilities should share utility corridors except as needed to meet other resource goals.”
- Thus, consistent with the Mineral Leasing Act, binding Forest Plan provisions also indicate that new pipeline corridors should be limited to existing rights-of-way. Furthermore, there is an express standard in the Forest Plan mandating that proponents of new pipeline corridors “shall demonstrate that the proposal is (1) in the public

interest, and (2) that no other reasonable alternative exists to public land routing.”

- The Project EIS fails to demonstrate compliance with these Forest Plan provisions, and therefore violates both NFMA and NEPA. The Project EIS simply does not disclose any of these binding Forest Plan provisions at all. Perhaps most significantly, there is no discussion, much less demonstration, anywhere in the Project EIS regarding the “no other reasonable alternative exists to public land routing” mandate from Forest Plan Lands, Transportation and Utility Corridors, Standard 2. USFS Doc. 3:FS-000125.

The “no other reasonable alternative exists to public land routing” requirement, *id.*, is particularly important here, and perhaps determinative if it had been addressed, because there are in fact reasonable, feasible alternatives to public land routing in this case. For example, the natural gas company could simply increase storage capacity and continue delivering natural gas by truck. The Project EIS concedes that this alternative is “feasible” although it would be more costly to the natural gas company. USFS Doc.81:FS-003431. Similarly, the Project EIS concedes that alternative pipeline routes that follow existing easements are also “feasible,” but they were dismissed because of higher cost and greater workload. USFS Doc.81:FS-003388. Thus, there is a significant discussion that is missing here and must occur on remand – instead of framing the discussion of alternatives in terms of which alternative will be easiest and least costly to the private

natural gas company, the discussion must be framed in terms of meeting the Forest Plan Standard, i.e. establishing that “no other reasonable alternative exists to public land routing.” USFS Doc. 3:FS-000125 from the first Crow Creek pipeline case.

At least one court has addressed a similar forest plan provision and found that the Forest Service’s failure to address the plain language of the forest plan in its analysis of alternatives for a pipeline violates NFMA. *Cow pasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 169 (4th Cir. 2018), overruled on other grounds by *USFS v. Cowpasture River Pres. Ass'n*, 140 S. Ct. 1837 (2020). In *Cowpasture*, the Fourth Circuit addressed forest plan provisions in the George Washington and Monongahela National Forests: one forest plan limits special use permits to “needs that cannot be reasonably met on non-[National Forest System] lands,” and the other forest plan limits special use permits to uses that “cannot be accommodated off the National Forest.” 911 F.3d at 168. In substance, the Caribou-Targhee National Forest Plan at issue in this case includes the same requirement. USFS Doc. 3:FS-000125.

In *Cowpasture*, the Fourth Circuit held: “We agree that the Forest Service violated its obligations under the NFMA and its own Forest Plans because it failed to demonstrate that the [pipeline] project’s needs could not be reasonably met on non-national forest lands. . . .the EIS applied a different standard than the one imposed on the Forest Service by the NFMA and its own Forest Plans.” 911 F.3d at 168. Accordingly, the Fourth Circuit “remand[ed] to the Forest

Service for proper analysis of whether the [pipeline] project's needs can be reasonably met on non-national forest lands, in compliance with the NFMA and the [Forest] Plans." Id. The same result is required here.

F. The Forest Service's failure to examine feasible alternatives in detail in the Project EIS violates NEPA and the APA.

In addition to the substantive and higher burdens imposed on the analysis of pipeline alternatives by the Mineral Leasing Act and the Caribou-Targhee National Forest Plan, NEPA also imposes procedural requirements on the analysis of alternatives in an EIS. The analysis of alternatives is "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. Thus, an EIS must "[r]igorously explore and objectively evaluate all reasonable alternatives" to a proposed action. 40 C.F.R. § 1502.14(a)(emphasis added). As part of this analysis, agencies shall "include reasonable alternatives not within the jurisdiction of the lead agency." 40 C.F.R. § 1502.14(c).

"[T]he touchstone for [a court's] inquiry is whether an EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation." *State of Cal. v. Block*, 690 F.2d 753, 767 (9th Cir. 1982). "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate." *Nat. Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813 (9th Cir. 2005). "Feasible alternatives should be considered in detail." *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1052 (9th Cir. 2013). If "the range

of alternatives considered by the EIS omits the viable alternative of allocating less unspoiled area to development . . . the EIS is inadequate, in violation of NEPA.” Nat. Res. Def. Council, 421 F.3d at 814. Additionally, an agency “cannot ignore [a programmatic management goal] when it determines the reasonable range of alternatives for NEPA review of site-specific actions.” Abbey, 719 F.3d at 1053.

For example, the Ninth Circuit has rejected a Forest Service EIS when it “failed to consider an alternative that was more consistent with its basic policy objectives than the alternatives that were the subject of final consideration.” Muckleshoot Indian Tribe v. U.S. Forest Serv., 177 F.3d 800, 813 (9th Cir. 1999). In Muckleshoot Tribe, the Ninth Circuit held: “the Forest Service failed to consider an adequate range of alternatives. The EIS considered only a no action alternative along with two virtually identical alternatives.” Id . In that case, the court held that the agency should have analyzed one of the alternatives that was eliminated from further study. Id.

As discussed above at length, in this case, the Mineral Leasing Act and a number of Forest Plan provisions govern the construction of new right-of-way corridors for natural gas pipelines, and collectively those provisions require the Forest Service to prioritize alternatives off National Forest lands or on existing rights-of way. The agency “cannot ignore” these legally-mandated priorities when determining the range of alternatives under NEPA, W. Watersheds Project, 719 F.3d at 1053, yet in this case these priorities

were never disclosed as a relevant factor to consider as part of the alternatives analysis in the EIS, see e.g. USFS Doc. 81:FS-003387-3388.

Instead of analyzing alternatives under the framework of the priorities and legal directives of the Mineral Leasing Act and governing Forest Plan provisions, the Project EIS analyzes only the proposed action, no action, and two alternatives (Alternative 1 and Alternative 2) that are described by the Project EIS as the same as the proposed action with some deviations. USFS Doc. 81:FS-003387. As noted by the U.S. Environmental Protection Agency (“EPA”) in its comments on the Project EIS, “[t]he three action alternatives proposed generally follow the same alignment, with Alternatives 1 and 2 providing minor deviations from the Proposed Action Alternative.” USFS Doc 60:FS-003050. Instead of analyzing “virtually identical” alternatives that do not meet the Mineral Leasing Act and Forest Plan priorities, the Forest Service must analyze a reasonable range of alternatives “more consistent with its basic policy objectives.” *Muckleshoot*, 177 F.3d at 813.

Furthermore, during the public comment phase, the EPA specifically requested that the Forest Service consider a more reasonable range of alternatives: we encourage that action alternatives previously considered but rejected be reexamined for their potential to meet the project need. . . . further analysis of these routes appears warranted to reduce development impacts in Inventoried Roadless Areas, as

well as impacts to aquatic and terrestrial resources and habitats. Specifically, we suggest further study of:

- The Highway 89 route alignment on private and other lands, outside the Wyoming DOT right-of-way, where there may be potential to avoid and minimize many of the aquatic resource impacts;
- The Georgetown-Wells Canyon Route, which is substantially shorter (37 miles), to determine whether further alignment adjustments could be made to avoid construction and ROW limitations. This route would enable beneficial re-use of a mine reclamation site, and reduce new disturbance needed for the pipeline corridor; and
- A route that could potentially co-locate with the Simplot slurry pipeline, which could also serve to minimize new ROW development within the IRAs. USFS Doc. 60:FS-003050. Similarly, the State of Idaho made the following request: “Expand analysis to alternatives that do not require forest plan amendment, including pipeline routes that would avoid roadless areas and routes that would not require new utility corridors.” USFS Doc. 34:FS-002167. Accordingly, several feasible alternatives that are more consistent with National Forest priorities could have and should have been considered in detail in the Project EIS. For example, the Project EIS concedes: “The routes that require use of portions of an existing

slurry line easement, although feasible, were eliminated because of substantial easement preparation, longer pipeline length, and prohibitive construction, inspection, and maintenance costs.” USFS Doc.81:FS-003388. Thus, it would be feasible for the pipeline to follow existing easements, but such alternatives were not considered in detail in the Project EIS because those routes would require more work and greater cost. *Id.* The Forest Service’s refusal to consider these feasible alternatives in detail in the Project EIS violates NEPA because “[f]easible alternatives should be considered in detail,” *Abbey*, 719 F.3d at 1052, and “[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate,” *Nat. Res. Def. Council*, 421 F.3d at 813.

Similarly, another reasonable alternative is for the natural gas company to increase storage rather than build a pipeline. The Project EIS also concedes this option is feasible: “Though the costs for such a large amount of storage would be feasible, the ongoing costs of holding and managing such a large inventory would be counterproductive. In contrast to the operating costs for LNG, which increase with increasing volumes, operating costs of a transmission pipeline system go down as volumes increase.” USFS Doc. 81:FS-003431 (emphasis added). Thus, again, the

Forest Service’s refusal to consider this feasible alternative in detail in the Project EIS violates NEPA because

“[f]easible alternatives should be considered in detail,” Abbey, 719 F.3d at 1052, and “[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate,” Nat. Res. Def. Council, 421 F.3d at 813.

Remedy

Choose the No Action Alternative or withdraw the Draft Record of Decision and write a new EIS that fully complies with the law.

Thank you for your time and consideration of our concerns.

Sincerely yours,

Alliance for the Wild Rockies

P.O. Box 505

Helena, Montana 59624

406-459-5936

And on behalf of:

Sara Johnson

Native Ecosystems Council

P.O. Box 125

Willow Creek, MT 59760

and for

Steve Kelly,
Director, Council on Wildlife and Fish

P.O. Box 4641 Bozeman, MT 59772

And for

Jason Christensen, Manager
Yellowstone to Uintas Connection
PO Box 280
Mendon, UT 84325

And for

Kristine Akland

Center for Biological Diversity

P.O. Box 7274

Missoula, MT 59807

kakland@biologicaldiversity.org