Data Submitted (UTC 11): 3/30/2017 11:00:00 AM
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Organization: Wild Earth Guardians
Title: Rewilding Attorney
Comments: WildEarth Guardians Comment on Rocks Restoration Project, Lassen NF

Hello,

Attached please finding scoping comments from WildEarth Guardians on the Rocks Restoration Project.

Thank you,

Marla Fox

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<https://twitter.com/wildearthguard>

March 30, 2017

Re: Scoping Comments on Proposed Rocks Restoration Project #49830

Dear District Ranger Nelson:

WildEarth Guardians respectfully submits these comments to the U.S. Forest Service concerning the agency's analysis under the National Environmental Policy Act (NEPA) of the Rocks Restoration Project. The Lassen National Forest is proposing fuels reduction, vegetation management, aspen and meadow habitat improvement, and reforestation of some areas burned in the Storrie fire (2000) and the Chips fire (2012).

WildEarth Guardians is a nonprofit conservation organization with offices in seven states. Guardians has more than 207,000 members and supporters across the United States. Guardians works to protect and restore wildlife, wild places, wild rivers, and the health of the American West. WildEarth Guardians and its members have specific interests in the management of our national forests. We believe that thoughtful management of the agency's road system and its associated impacts can improve the health of watersheds and wildlife on the Lassen National Forest. Please add our names and organizations to the contact list to receive any future public notices regarding this project.

We are very encouraged to see the Lassen National Forest taking efforts to trend the area toward a mosaic of healthy, diverse vegetation. We have several concerns with the Forest Service's analysis, outlined below.

1. The Forest Service should consider efforts to create a resilient future road system.

The Forest Service states the purpose of the Rocks project is to retain and restore ecological resilience of National Forest System lands within the project area. Identifying a resilient future road system is one of the most important endeavors the Forest Service can undertake to restore aquatic systems and wildlife habitat, facilitate adaptation to climate change, ensure reliable recreational access, and operate within budgetary constraints. And

it is a win-win-win approach: (1) it's a win for the Forest Service's budget, closing the gap between large maintenance needs and declining funding through congressional appropriations; (2) it's a win for wildlife and natural resources because it reduces negative impacts from the forest road system; and (3) it's a win for the public because removing unneeded roads from the landscape allows the agency to focus its limited resources on the roads we all use, improving public access across the forest and helping ensure roads withstand strong storms.

We are discouraged to see the Forest Service proposing additions to the road system (proposing to add both unauthorized roads and temporary roads to the official road system). We urge the agency to adopt a thoughtful, strategic approach to improving public access to the forest, reducing negative impacts from forest roads to water quality and aquatic habitats, and improving watersheds and forest resiliency that is in line with the Lassen's long-term funding expectations.

2. As part of its analysis of the Rocks Restoration Project under NEPA, the Forest Service must consider the Lassen's travel analysis report, identify the minimum road system, and identify unneeded roads to prioritize for decommissioning or other uses.

The Forest Service faces many challenges with its oversized, under-maintained, and unaffordable road system. The impacts from roads to water, fish, wildlife, and ecosystems are tremendous and well documented in scientific literature. The Lassen National Forest is no exception, with costs to maintain system roads exceeding its annual maintenance budget.

To address its unsustainable and deteriorating road system, the Forest Service promulgated the Roads Rule (referred to as "subpart A") in 2001. 66 Fed. Reg. 3206 (Jan. 12, 2001); 36 C.F.R. part 212, subpart A. Subpart A is meant to close the gap between the agency's limited resources and the maintenance required to keep up its oversized and deteriorating road system. It sets out two important obligations for the agency:

1. Identify unneeded roads to prioritize for decommissioning or to be considered for other uses; and
2. Identify the minimum road system needed for safe and efficient travel and for the protection, management, and use of National Forest system lands.

36 C.F.R. [sect] 212.5(b). We urge the Forest Service to carefully evaluate the proposed Rocks Restoration action and each of the alternatives through this lens.

Direction from the Forest Service's Washington Office required all forests to submit travel analysis reports by the end of FY 2015 and then begin implementing the recommendations and working towards full compliance with subpart A.1 The Lassen National Forest completed travel analysis reports in 2006 and 2008.2 These reports need to be updated and revised to accord with the Washington Office's direction.3

Even more important, however, is the next step under subpart A: Consider the recommendations from the travel analysis reports to identify the minimum road system4 and identify unneeded roads for decommissioning. Given that with this project you are considering changes to the transportation system, the project aim is to retain and restore ecological resilience, and given its large geographic scale, this is precisely the type of project to complete the next step.5

To identify the minimum road system, the Forest Service must consider whether each road segment the agency decides to maintain on the system is needed to meet certain factors outlined in the agency's own regulation.6 Here, the Forest Service should consider whether each segment of the road system within the project area is needed to:

1. Meet resource and other management objectives adopted in the relevant land and resource management

plan;
2. Meet applicable statutory and regulatory requirements;
3. Reflect long-term funding expectations; and
4. Ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

36 C.F.R. [sect] 212.5(b)(1). In assessing specific road segments, the Forest Service should also consider the risks and benefits of each road as analyzed in the travel analysis report, and whether the proposed road management measures are consistent with the recommendations from the travel analysis report. To the extent that the final decision in this project differs from what is recommended in the travel analysis report, the Forest Service must explain that inconsistency. See, e.g., Smiley v. Citibank, 517 U.S. 735 (1996) ("Sudden and unexplained change . . . or change that does not take account of legitimate reliance on prior interpretation . . . may be 'arbitrary, capricious [or] an abuse of discretion") (internal citations omitted).

Finally, the Forest Service must identify unneeded roads for decommissioning or other uses. 36 C.F.R. [sect] 212.5(b)(2).7 Here, the Forest Service proposes to improve designated motorized trails and roads, upgrade and add 0.3 miles of unauthorized routes to the road system, and construct or reconstruct 0.2 miles of temporary roads. See Proposal at 15-16.

Based on current natural resource conditions, assessed risks from the existing road network, the agency's limited resources, and long-term funding expectations, and the goal of retaining or improving ecological resilience, road decommissioning or closures are warranted. Road decommissioning can temporarily increase sediment to streams but has dramatic reductions in the long run. The Forest Service's Rocky Mountain Research Station has spent over a decade monitoring the effectiveness of road treatments. A 2012 report evaluating pre and post treatment of roads showed an 80% reduction in sediment delivery to streams when roads were decommissioned. Nelson N., Black T., Luce C. and R. Cissel, U.S. Forest Service Rocky Mountain Research Station, LRT Monitoring Project Update 2012. In addition, the 20-year monitoring report of the Northwest Forest Plan confirmed that watersheds that showed the most improvement in condition were those that completed road decommissioning.

3. The Forest Service should prepare a robust environmental analysis under NEPA.

The Forest Service should prepare a robust environmental analysis of the Rocks Restoration Project. The agency may not ignore topics if the information is uncertain or unknown. Where information is lacking or uncertain, the Forest Service must make clear that the information is lacking, the relevance of the information to the evaluation of foreseeable significant adverse effects, summarize the existing science, and provide its own evaluation based on theoretical approaches. 40 C.F.R. [sect] 1502.22.

a. The Forest Service should clearly articulate the statement of purpose to include its duty to identify the minimum road system and unneeded roads for decommissioning, and provide support for the claimed need.

Applicable statutory and regulatory requirements should shape a project's statement of purpose and need. When the agency takes an action "pursuant to a specific statute, the statutory objectives of the project serve as a guide by which to determine the reasonableness of objectives outlined in an EIS." Westlands Water Dist. v. U.S. Dept. of Interior, 376 F.3d 853, 866 (9th Cir. 2004). Under subpart A of its travel rule, the Forest Service has a substantive duty to address its over-sized road system. See 36 C.F.R. [sect] 212.5. This underlying substantive duty must inform the scope of, and be included in, the agency's NEPA analysis. After more than 15 years since finalizing the subpart A rules, the Forest Service can no longer delay in addressing this duty.

b. The Forest Service must consider a broad array of impacts related to forest roads in its NEPA analysis.

NEPA requires Forest Service to "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 C.F.R. [sect] 1500.2(d). A critical part of this obligation is presenting data and analysis in a manner that will enable the public to thoroughly review and understand the analysis of environmental consequences. NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most importantly, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. 40 C.F.R. [sect] 1500.1(b). The Data Quality Act expands on this obligation, requiring that influential scientific information use "best available science and supporting studies conducted in accordance with sound and objective scientific practices." Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub.L. No. 106-554, [sect] 515.

Impacts from Forest Roads

The best available science shows that roads cause significant adverse impacts to National Forest resources. A 2014 literature review from The Wilderness Society surveys the extensive and best available scientific literature[mdash]including the Forest Service's General Technical Report synthesizing the scientific information on forest roads (Gucinski 2001)[mdash]on a wide range of road-related impacts to ecosystem processes and integrity on National Forest lands. See The Wilderness Society, Transportation Infrastructure and Access on National Forests and Grasslands: A Literature Review (May 2014) (Attachment B). Erosion, compaction, and other alterations in forest geomorphology and hydrology associated with roads seriously impair water quality and aquatic species viability. Roads disturb and fragment wildlife habitat, altering species distribution, interfering with critical life functions such as feeding, breeding, and nesting, and resulting in loss of biodiversity. Roads facilitate increased human intrusion into sensitive areas, resulting in poaching of rare plants and animals, human-ignited wildfires, introduction of exotic species, and damage to archaeological resources.

Climate Change and Forest Roads

Climate change intensifies the impacts associated with roads. A robust analysis under NEPA of the forest road system and its environmental and social impacts is especially critical in the context of climate change. The Forest Service should consider the risk of increased disturbance when analyzing this proposed project. For example, as the warming climate alters species distribution and forces wildlife migration, landscape connectivity becomes even more critical to species survival and ecosystem resilience. Id. at 9-14. See also USDA, Forest Service, National Roadmap for Responding to Climate Change at 26 (2011), available at http://www.fs.fed.us/climatechange/pdf/Roadmapfinal.pdf (recognizing importance of reducing fragmentation and increasing connectivity to facilitate climate change adaptation).

Climate change is also expected to lead to more extreme weather events, resulting in increased flood severity, more frequent landslides, altered hydrographs, and changes in erosion and sedimentation rates and delivery processes. Many National Forest roads are poorly located and designed to be temporarily on the landscape, making them particularly vulnerable to these climate alterations. Even those designed for storms and water flows typical of past decades may fail under future weather scenarios, further exacerbating adverse ecological impacts, public safety concerns, and maintenance needs. The Forest Service should analyze in detail the impact of climate change on forest roads and forest resources.

The Forest Service should consider the impacts of climate change and the cumulative impacts resulting from the project and climate change. Pursuant to final guidance issued by the Council on Environmental Quality (CEQ) on August 1, 20168, all federal projects should consider:

1. The potential effects of a proposed action on climate change as indicated by assessing greenhouse gas (GHG) emissions (e.g., to include, where applicable, carbon sequestration); and

2. The effects of climate change on a proposed action and its environmental impacts.

CEQ's 2016 final guidance recommends agencies quantify a proposed agency action's projected direct and indirect GHG emissions, taking into account available data and GHG quantification tools suitable for the proposed agency action. It suggests agencies use projected GHG emissions as a proxy for assessing potential climate change effects. And it recommends that where an agency does not quantify an action's projected GHG emissions because tools, methodologies, or data inputs are not reasonably available to support calculations for a quantitative analysis, it should include a qualitative analysis in the NEPA document and explain the basis for determining that quantification is not reasonably available.

The Forest Service should include existing and reasonably foreseeable climate change impacts as part of the affected environment, assess them as part of the agency's hard look at impacts, and integrate them into each of the alternatives, including the no action alternative. The Forest Service has a substantive duty under its own Forest Service Manual to establish resilient ecosystems in the face of climate change.9 The Forest Service should analyze in detail the impact of climate change on forest roads and resources. The analysis here fails to address the cumulative impacts of climate change and forest roads on the landscape.

c. The Forest Service must consider a reasonable range of alternatives.

The alternatives analysis is the "heart" of NEPA, and therefore "an agency must on its own initiative study all alternatives that appear reasonable and appropriate for study at the time, and must also look into other significant alternatives that are called to its attention by other agencies, or by the public during the comment period afforded for that purpose." Dubois v. Dep't of Agriculture, 102 F.3d 1273, 1291 (1st Cir. 1996), quoting Seacoast Anti-Pollution League, v. Nuclear Reg. Comm'n, 598 F.2d 1221, 1231 (1st Cir. 1979) (emphasis from Dubois court) (internal citations omitted).

Conclusion

The Forest Service's current road system is over-sized and unaffordable. Identifying a sustainable future road system is one of the most important endeavors the Forest Service can undertake to restore aquatic systems and wildlife habitat, facilitate adaptation to climate change, enhance recreation, and lower operating expenses.

Sincerely,

Marla Fox, Rewilding Attorney

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Footnotes:

1 See Memorandum from Leslie Weldon to Regional Foresters et al. on Travel Management, Implementation of 36 CFR, Part 212, Subpart A (March 29, 2012) (hereafter 2012 Weldon Memo).

2 See, e.g., U.S. Forest Service, Lassen National Forest, Forest ObML 3-5 Roads Roads Analysis Process (July 28, 2006) (Attachment A). The Lassen's website also lists a Travel Analysis Process report for ML 1-2 roads, dated April 2008, but the link to that report was unavailable.

3 See, e.g., Attachment A at 8-9 (noting 739 miles of ML 3, 4, and 5 roads but omitting any analysis of long-term funding expectations to support future maintenance of those road miles).

4 36 C.F.R. [sect] 212.5(b)(1) ("In determining the minimum road system, the responsible official must incorporate a science-based road analysis at the appropriate scale").

5 2012 Weldon Memo at 2 ("The next step in identification of the [minimum road system] is to use the travel analysis report to develop proposed actions to identify the [minimum road system]. These proposed actions generally should be developed at the scale of a 6th code subwatershed or larger.").

6 Id. Weldon Memo at 2012 ("analyze the proposed action and alternatives in terms of whether, per 36 CFR 212.5(b)(1), the resulting [road] system is needed"); ("The resulting decision [in a site-specific project] identifies the [minimum road system] and unneeded roads for each subwatershed or larger scale").

7 36 C.F.R. [sect] 212.1 (defining a road as "[a] motor vehicle travelway over 50 inches wide, unless designated and managed as a trail.").

8 See Council on Environmental Quality, 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 (2016) (noting that "[a]nalyzing a proposed action's GHG emissions and the effects of climate change relevant to a proposed action[mdash]particularly how climate change may change an action's environmental effects[mdash]can provide useful information to decision makers and the public.").

9 See, e.g., FSM 2020.2(2) (directing forests to "[r]estore and maintain resilient ecosystems that will have greater capacity to withstand stressors and recover from disturbances, especially those under changing and uncertain environmental conditions and extreme weather events"); FSM 2020.3(4) ("[E]cological restoration should be integrated into resource management programs and projects . . . Primary elements of an integrated approach are identification and elimination or reduction of stressors that degrade or impair ecological integrity.").

Attachments - see attachments following text of letter, in pdf document.

* Forest Objective ML 3-5 Roads, Roads Analysis Process, Lassen NF. USDA Forest Service, July 28, 2006.
* Transportation Infrastructure and Access on National Forests and Grasslands, A Literature Review. The Wilderness Society, May 2014.
* Roads and Fire: A Proven Relationship. The Wilderness Society, no date.
* Using Road Density as a Metric for Ecological Health in National Forests: What Roads and Routes should be Included? Summary of Scientific Information. The Wilderness Society, Last Updated Nov. 22, 2012.