

USDA Forest Service, Region 2
Rocky Mountain Region
Attn: Objection Reviewing Officer
1617 Cole Blvd, Building 17
Golden, CO 80401

May 17, 2019

Submitted via email to r02admin_reveiw@fs.fed.us

RE: Objection - Landscape Vegetation Analysis Project, Medicine Bow National Forest

Responsible Official: Russell M. Bacon, Forest Supervisor, Medicine Bow-Routt National Forests and Thunder Basin National Grassland

To the Objection Reviewing Officer:

WildEarth Guardians submits the following objection to the U.S. Forest Service's decision to select the proposed action alternative analyzed in the Landscape Vegetation Analysis Project Final Environmental Impact Statement (FEIS). This project encompasses approximately 850,000 acres of National Forest System lands – the entirety of the Snowy Range and Sierra Madre portions of the Medicine Bow National Forest. The project is on the Brush Creek/Hayden and Laramie Ranger Districts. The draft Record of Decision (DROD) authorizes vegetation treatments in Treatment Opportunity Areas totaling 613,107 acres and up to 600 miles of new temporary road construction during a 15-year timeframe. The Forest Service identifies this project as a hazardous fuels reduction project under the Healthy Forests Restoration Act (HFRA). The responsible official is Medicine Bow-Routt National Forests and Thunder Basin National Grassland Forest Supervisor Russel M. Bacon.

As required by 36 C.F.R. § 218.8(d):

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WildEarth Guardians is a nonprofit conservation organization with offices in six states throughout the western United States. WildEarth Guardians has more than 230,000 members and supporters across the United States and the world. Guardians protects and restores wildlife, wild places, wild rivers, and the health of the American West. For many years, WildEarth Guardians has advocated that the Forest Service maintain a balance between access, risks, and costs when managing its road

system. We continue to advocate for that balance here, and are particularly concerned about the authorization of up to 600 miles of new temporary roads. We are also concerned that the Forest Service demonstrate compliance with all federal laws in analyzing and approving this project.

We submitted timely comments on the Forest Service's Notice of Intent (NOI) to prepare a draft environmental impact statement (DEIS) for the Landscape Vegetation Analysis (LaVA) project and the subsequent DEIS.¹ Our comments advocated for thoughtful management of the agency's road system, its associated impacts and the overall need to improve the health of watersheds and wildlife habitat on the Medicine Bow National Forest. We have organizational interests in the proper and lawful management of the forest's resources, especially its road system and associated impacts on the Medicine Bow National Forest's wildlife, waters, and wild places.

I. Failure to Comply with NEPA.

The National Environmental Policy Act (NEPA) requires agencies to “pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives.”² NEPA has twin aims: “First, it places upon an agency the obligation to consider every significant aspect of environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.”³ NEPA's requirements apply to hazardous fuel reduction projects.⁴

A. Failure to adequately or fully address and respond to comments in a meaningful way.

NEPA requires agencies preparing an EIS to “assess and consider comments both individually and collectively” and respond “by one or more of the means listed . . . stating its response in the final statement”: “(1) Modify alternatives including the proposed action[;] (2) Develop and evaluate alternatives not previously given serious consideration by the agency[;] (3) Supplement, improve, or modify its analyses[;] (4) Make factual corrections[;] (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.”⁵

¹ See our August 17, 2017 comments on the scope of the LaVA project (hereafter, “Scoping”), and our August 20, 2018 comments on the LaVA Draft Environmental Impact Statement (hereafter, “DEIS comments”).

² *N.M. ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 703 (10th Cir. 2008) (quoting *U.S. Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 756-57 (2004)).

³ *Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 692, 711 (10th Cir. 2010).

⁴ See 16 U.S.C. § 6514.

⁵ 40 C.F.R. § 1503.4.

We provide numerous other examples throughout our objection of where the Forest Service failed to adequately respond to our comments. This issue was not raised in previous comments because it arose after the close of the notice and comment period.

As just one example, our scoping and DEIS comments urged the Forest Service to consider the recommendations from the Medicine Bow National Forest's Travel Analysis Reports (submitted as attachments to our Scoping comments) during project analysis to identify a minimum road system and unneeded roads that could be decommissioned under the proposed action.⁶ In response, the Forest Service explains, "the 'Transportation' section of chapter 3 was revised to better reflect the potential direct, indirect, and cumulative effects of the alternatives on the existing road system."⁷ The analysis in the FEIS discusses general road conditions, and provides estimates for the cost of maintenance and reconstruction, but the analysis lacks any mention of a minimum road system, fails to identify unneeded roads and proposes no decommissioning of system roads.⁸ The Forest Service also fails to provide any explanation for why it is not considering the recommendations in forest-wide travel analysis report, identification of the minimum road system, or road decommissioning in either its analysis in the FEIS or response to comments in Appendix B. The Forest Service completely fails to address its duty to comply with the Travel Management Rule under Subpart A, and ignores the bulk of WildEarth Guardians comments and concerns.⁹

Suggested Remedy: Revise Appendix B, analysis in the FEIS, and conclusions in the DROD to meaningfully respond to and address public comments. We are particularly concerned about comment topics that we highlighted and spent considerable time addressing in our Scoping and DEIS comments.

B. Flawed statement of purpose and need.

NEPA directs federal agencies to "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."¹⁰ Our comments questioned the Forest Service's justification, or claimed need, for its stated purposes.¹¹ Specifically, it is not clear that the entirety of this project is appropriate under the Forest Service's HFRA authorities. HFRA was enacted in 2003 to "reduce wildfire risk to communities, municipal water supplies, and other at-risk federal land" by "[a]s soon as practicable" implementing "authorized

⁶ Scoping at 1-4, DEIS comments at 13-15.

⁷ FEIS Appendix B at 8.

⁸ FEIS at 286-89.

⁹ 36 C.F.R. 212.5(b)

¹⁰ 40 C.F.R. § 1502.13.

¹¹ DEIS comments at 2-4.

hazardous fuel reduction projects.”¹² Nothing in HFRA points to congressional intent to authorize projects on an expedited review process that aim to provide for recovery of forest products, enhance access for forest visitors and permittees, or provide for agency management adaptability and flexibility. These portions of the project do not “reduce the risk or extent of, or increase the resilience to, insect or disease infestation; or . . . reduce hazardous fuels.”¹³ The Forest Service is unreasonably attempting to apply its HFRA authorities to a project that, in its entirety, is not merely a HFRA project.

Our comments questioned the Forest Service’s assumption that logging will achieve desired conditions for a more resilient forest and greater public safety. We identified science refuting the Forest Service’s claims that logging will result in forests that are resilient to insect and disease infestation.¹⁴

And our comments urged the Forest Service to include identifying the minimum road system and unneeded system roads as a purpose of the LaVA project to address the agency’s overall need to make progress towards a more sustainable transportation system.¹⁵ Considering this as a purpose is especially important given the large geographic scope and lengthy duration of this project, and in light of the stated purpose to enhance access for forest visitors and permittees. In response the Forest Service merely reiterated the transportation analysis in the DEIS was revised to better address environmental effects of the alternatives on the road system.¹⁶ But as noted above, this wholly fails to address or meaningfully respond to our comment or recognize the (regulatory, financial, and environmental) need to reduce the miles in the overall transportation system.

Including compliance with Subpart A of the Travel Management Rule and decommissioning unneeded roads as a project purpose and need would have allowed the forest to improve ecological conditions across a substantial portion of the forest, one of the stated purposes. Though the Forest Service proposes several large-scale road management activities, the project’s purpose and need remains singularly focused on vegetative management: “[t]he purpose of and need for the LaVA Project is to respond to changed forest vegetation conditions caused by the bark beetle epidemics on the Medicine Bow National Forest.”¹⁷ The narrowness of the purpose and need precludes alternative actions that could result in a more ecologically and economically sustainable transportation system.

¹² 16 U.S.C. §§ 6501(1), 6512(a).

¹³ 16 U.S.C. § 6591a(d)(1).

¹⁴ See DEIS comments, Attachment 1 (study by Six *et al* (2018) that found during mountain pine beetle outbreaks, beetle choice may result in strong selection for trees with greater resistance to attack, and therefore retaining survivors after outbreaks (as opposed to logging them) to act as primary seed sources could act to promote adaptation).

¹⁵ Scoping at 4 and DEIS comments at 4.

¹⁶ FEIS Appendix B at 8.

¹⁷ FEIS at 3.

Suggested Remedy: Reconsider and revise the statement of purpose and need to ensure the proposed actions are consistent with the claimed needs, provide justification for the claimed needs, and address science refuting the claimed needs. Revise the statement of purpose and need to include identification of the minimum road system, or in the very least revise Appendix B of the FEIS to explain why the agency does not view this large scale project as the appropriate lens through which to consider progress towards the minimum road system.

C. The timing, nature and scope of the proposed action is inappropriate as a site-specific project.

Our comments emphasized the fact that the timing, nature and scope of the proposed action exceeds what is appropriate as a site-specific project under NEPA.¹⁸ The Forest Service explained the draft and final EISs utilized a large-scale, condition-based analysis where site-specific actions would be determined post-decision.¹⁹ This approach runs contrary to Forest Service policy and NEPA, as explained throughout this objection.

The depth of analysis (or lack thereof) in the LaVA FEIS is more akin to what one would expect in a forest plan or programmatic EIS. Forest Plans set out management area prescriptions with standards and guidelines for future decision-making and are adjustable through monitoring and evaluation, amendment and revision.²⁰ Similarly, this FEIS sets out treatment opportunity areas with project design criteria and an “adaptive Framework” in Appendix A with plans to adjust future actions through monitoring and evaluation. Like a Forest Plan that must be revised every 10 to 15 years,²¹ the Forest Service proposes to authorize this project for a period of 15 years. The Forest Service claims a need for flexibility and adaptability, but that is the Medicine Bow Forest Plan provides.²² The Forest Service cannot have both forgo site-specific analysis claiming the need for flexibility of a Forest Plan and claim this as a project-level decision under 36 C.F.R. Part 218.²³

¹⁸ DEIS comments at 2.

¹⁹ FEIS Appendix B at 12.

²⁰ 2002 Natural Resources Division, Overview of Forest Planning and Project Level Decisionmaking, page 4 (“The Forest Plan management area prescriptions and forest-wide direction are the “zoning ordinances” under which future decisions are made.”).

²¹ 16 U.S.C. § 1604(f)(5).

²² Final ROD for the 2003 Medicine Bow Forest Plan at 1-2 (“the Revised Plan provides overall system guidance and establishes management direction to govern future actions. The *flexibility and adaptability* of this Plan to changing conditions is an important factor in my decision.”) (emphasis added).

²³ *Id.* at 51 (“Unlike the programmatic decisions” of the Forest Plan, management activities “are site-specific and require analysis and disclosure of effects under NEPA”); 51-52 (As opposed to site-specific analysis of proposed activities that will determine what can be accomplished, the “outcomes specified in the Revised Plan are estimates and projections based on available information, inventory data, and assumptions”).

In contrast, project decisions are critical decisions that change the environment and require additional NEPA and environmental law compliance.²⁴ “The second level [of] planning involves the analysis and implementation of management practices designed to achieve the goals and objectives of the Forest Plan. This level involves site-specific analysis to meet NEPA requirements for decisionmaking.”²⁵ The Forest Service appears to ignore these distinctions. As a result, the analysis fails to provide the information and details necessary for an informed analysis of a project level decision under NEPA and to demonstrate compliance with all other environmental laws.

EPA Region 8’s comments suggested the Forest Service view this FEIS as programmatic, given the extensive amount of site-specific information, details, and studies that are missing from the analysis. In its final guidance for the use of programmatic NEPA reviews, the Council on Environmental Quality (CEQ) explained:

“A well-crafted programmatic NEPA review provides the basis for decisions to approve such broad or high-level decisions such as identifying geographically bounded areas within which future proposed activities can be taken or identifying broad mitigation or conservation measures that can be applied to subsequent tiered reviews....Using programmatic NEPA reviews allows an agency to subsequently tier to this analysis, and analyze narrower site- or proposal-specific issues.”²⁶

Again, the Forest Service appears to ignore the distinction between a programmatic FEIS (with future tiering of EAs) and a project level FEIS.

This FEIS provides a broad, high-level analysis that may appropriately support future analysis of site-specific actions in geographically discrete areas over a very long timeframe, so long as those future analyses are subject to NEPA. In describing the treatment opportunity areas, the Forest Service explains “. . . areas emphasize where different management actions would be prioritized during LaVA project implementation and include fuels treatment and safety emphasis, forest and rangeland resiliency and forest products emphasis, wildlife emphasis, recreation emphasis, scenic and aspen emphasis, and special emphasis areas (figure 16).”²⁷ Further, the Forest Service created 14 accounting units to describe generally the potential environmental consequences of the proposed action in the different treatment opportunity areas.”²⁸ The Forest Service also explains specific

²⁴ 2002 Natural Resources Division, Overview of Forest Planning and Project Level Decisionmaking at 3.

²⁵ 2002 Natural Resources Division, Overview of Forest Planning and Project Level Decisionmaking at 3 (citing FSM 1922, 53 Fed. Reg. 26807, 26809 (July 15, 1988)).

²⁶ Council on Environmental Quality. 2014. [Final Guidance for Effective Use of Programmatic NEPA Reviews](#) at 10. *See also* 79 FR 76986.

²⁷ FEIS at 37.

²⁸ *Id* at 80.

treatments in these areas would be “developed and authorized for implementation over a 15-year period beginning in 2019 and ending in 2034.”²⁹

However, the Forest Service does not describe its FEIS as a programmatic analysis.³⁰ In fact, the Forest Service makes it clear that future authorization for specific treatments will *not* be done under NEPA stating, “[s]ubsequent decisions authorizing individual treatments that tier to the LaVA analysis are not planned.”³¹

Given its large scope, time scale, lack of details or site-specific information, the proposed action is not a project level NEPA decision. The Forest Service’s plans to rely on post-decision implementation checklists to consider details and site-specific information undermines the purposes of NEPA to ensure agencies consider and disclose the impacts of their actions *before* making a decision.³² The implications are much greater than merely semantics. As explained in later sections, the Forest Service’s approach here improperly allows the agency to forgo public scrutiny of actual, site-specific actions, essentially creating a blank check for a range of future activities.

Suggested Remedy: To fully comply with the requirements of NEPA, we recommend the Forest Service abandon its condition-based analysis approach that lacks sufficient detail to provide for meaningful public comment. Instead, we recommend the Forest Service explicitly recognize the LaVA Project FEIS as a programmatic EIS, and commit to conducting the requisite site-specific analysis for individual treatment projects in the near future under EAs that tier to this higher-level programmatic EIS.

D. No NEPA for future site-specific activities improperly cuts the public voice out of future agency decisionmaking.

We commented that the Forest Service impermissibly plans to gather site-specific information and provide for informal public involvement for future decisions only after it makes a final decision on the project.³³ This violates NEPA.³⁴ The Forest Service improperly defers its information gathering

²⁹ *Id.*

³⁰ FEIS Summary at v and FEIS Appendix B at 12 (explaining, “...that while the range of treatments or activities authorized are described and analyzed in this environmental impact statement, treatment locations and methods would be determined during project implementation, as outlined in appendix A, the adaptive implementation and monitoring framework.”).

³¹ FEIS Appendix B at 12.

³² *See, e.g.*, Draft ROD at 14 (explaining how the agency will use implementation checklists to ensure the future, yet-to-be-determined vegetation treatment projects are consistent with this ROD and FEIS).

³³ *See, e.g.*, DEIS comments at 6 (noting how the reliance on the future implementation and monitoring framework to address the lack of site-specific information at this stage in the environmental analysis will occur well after the close of any notice and comment period in violation of NEPA).

³⁴ *See New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 703 (10th Cir. 2009) (citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989)) (“By focusing both agency and public attention on the environmental

and assessment to the future per the LaVA Adaptive Implementation and Monitoring Framework (hereafter, Framework), and then will provide only non-NEPA public engagement opportunities. This undermines the purpose of NEPA to, *inter alia*, assess and disclose the impacts of a proposal to allow for meaningful public comment *before* approving a project.³⁵

The agency's assertions that the Framework provides the public meaningful opportunities to provide input on individual treatment proposals is not an adequate substitute for the formal notice and comment process under NEPA. The Forest Service recognizes this fact by explaining, "[p]ublic feedback periods associated with individual treatment proposals will be considered informal in that there are no regulations requiring comment or objection periods associated with LaVA Project implementation (36 CFR 218)."³⁶ The Forest Service does not specify how it will notify the public, the time period people will be able to provide input, and requires people to consistently check the LaVA implementation website for updates.³⁷ After a field review, the "packaged project" will be sent to the district ranger for review and approval.³⁸ This is precisely the time when people would have the best opportunity to review and comment on specific project activities. In place of this, the Framework directs the public to check the LaVA website to stay informed.³⁹ In other words, the public has no opportunity to meaningfully comment or challenge a **packaged** project in violation of NEPA. While the Framework provides for public engagement, the opportunity is not on par with what NEPA requires.

It appears the Forest Service intends to avoid NEPA's implementing procedures and remove the public's ability to legally challenge site-specific actions following this decision, which is devoid of sufficient detail to assess its future actions.

Suggested Remedy: Provide the necessary site-specific details and information to make an informed decision and disclose that information to the public to allow for meaningful comment as required by NEPA. In the alternative, revise the FEIS and DROD to explicitly recognize the analysis as programmatic in nature, and expressly commit in the DROD to future site-specific NEPA analysis for individual treatment projects that tier to this higher-level programmatic FEIS.

E. Failure to articulate the proposed action with sufficient detail or information to allow for meaningful, informed public comment.

effects of proposed actions, NEPA facilitates informed decisionmaking by agencies and allows the political process to check those decisions.")

³⁵ See 36 C.F.R. § 220.4(c)(2) & (3).

³⁶ FEIS Appendix B at 59.

³⁷ FEIS Appendix A at 8-10.

³⁸ *Id.* at 10-12.

³⁹ *Id.*

“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.”⁴⁰ NEPA was intended to ensure that agencies “consider environmentally significant impacts of a proposed action, and, in so doing, let the public know that the agency’s decisionmaking process includes environmental concerns.”⁴¹ A Forest Service proposal is subject to NEPA when, *inter alia*, “the effects can be meaningfully evaluated (*see* 40 CFR 1508.23).”⁴² Here, the FEIS does not contain sufficient information to foster informed agency decision-making or informed public participation.

We commented on the lack of detail in the proposed action, noting the Forest Service leaves many of the crucial details to future implementation.⁴³ In response, the agency explains the FEIS provided further description of the modified proposed action “. . . to describe primary and secondary treatment objectives within different treatment opportunity areas.”⁴⁴ This response fails to address the systemic flaw with using a condition-based analysis and waiting until after a formal decision to specify specific actions within each of these treatment opportunity areas. In other words, project-level NEPA requires the proposed action to include enough detail to allow for public input *before* the responsible officials makes a decision. This includes treatment locations and methods with quantifiable measures such as the number of acres proposed for prescribed burning or shelterwood harvest, as well as the length and location of temporary roads and skids trails, and details about the system roads that will be used (i.e., used, opened, and/or reconstructed for log truck hauling). Absent this level of detail the public cannot provide meaningful, informed comment.

Further, the Forest Service provides conflicting descriptions of the proposed action. The draft decision explains it is “authorizing individual vegetation management treatments on up to 360,000 acres of National Forest System lands, including in some inventoried roadless areas, within the Sierra Madre and Snowy Range Mountain Ranges of the Medicine Bow National Forest.”⁴⁵ Yet the draft decision also states there are a total 613,107 acres when describing the authorization of vegetation treatments across all treatment opportunity areas.⁴⁶ This statement also conflicts with the analysis assumption that, “[n]o more than 360,000 acres would be treated over the life of the LaVA Project; treatments would occur only in the pre-established treatment opportunity areas.”⁴⁷ The

⁴⁰ 40 C.F.R. § 1500.1(b).

⁴¹ *Utahns for Better Transp. v. United States Dep’t of Transp.*, 305 F.3d 1152, 1162 (10th Cir. 2002).

⁴² 36 C.F.R. § 220.4(a)(1).

⁴³ DEIS comments at 2.

⁴⁴ FEIS Appendix B at 10.

⁴⁵ DROD at 3.

⁴⁶ *Id.* at 6, 7.

⁴⁷ FEIS at 140.

Forest Service needs to resolve this apparent conflicting description, but such clarification will not address the fundamental flaw of the condition-based analysis as we explained.

Suggested Remedy: Provide the necessary site-specific details and information to make an informed decision and disclose that information to the public to allow for meaningful comment as required by NEPA. An agency must support its conclusions with studies that the agency deems reliable, and such analyses must occur before the proposed action is approved, not afterward. In the alternative, revise the FEIS and DROD to explicitly recognize the analysis as programmatic in nature, and expressly commit in the DROD to future site-specific NEPA analysis for individual treatment projects that tier to this higher-level programmatic EIS.

F. Failure to take the required “hard look” at direct, indirect, and cumulative impacts.

NEPA regulations require federal agencies to discuss the direct, indirect, and cumulative effects of their action on the environment.⁴⁸ The EIS should provide a clear basis for choice among alternatives.⁴⁹ By failing to consider and analyze direct, indirect, and cumulative impacts (as outlined below), the Forest Service fails to comply with NEPA.

1. Lack of baseline information

While the FEIS includes expanded background descriptions and baseline information for some specific resources, overall the necessary information required to meet NEPA’s hard look requirements is deferred until the field verification phase in the Framework, well after the close of all NEPA processes and formal public involvement.⁵⁰ This is especially problematic when analyzing specific resource conditions and the potential environmental consequences under each alternative action. As just one example, in order to analyze potential changes to water quality, the FEIS should have included current water quality data and monitoring information. This information is important to guide management decisions and serve as baseline data for future monitoring and evaluation of potential influence on downstream water quality. In addition, given the proposed construction of approximately 600 miles of temporary roads and the use of an undisclosed number of system roads, the FEIS should have provided baseline information about current levels of road-related sedimentation. However, the FEIS fails to provide this baseline information.

Suggested Remedy: The Forest Service should revise its analysis to include sufficient baseline data to allow the agency and the public to meaningfully evaluate the impacts of the proposed action.

⁴⁸ 40 C.F.R. §§ 1502.16, 1508.7, 1508.8, 1508.25(c)(3), 1508.27(b)(7).

⁴⁹ *Id.* § 1502.14.

⁵⁰ Draft ROD at 14.

2. Lacks site-specific information about the project or its impacts.

Our comments explained that NEPA requires the hard look assessment take place at the site-specific level if there are no additional NEPA processes yet to occur in the future to fully implement the project and the environmental impacts are reasonably foreseeable.⁵¹ In response, the Forest Service explains the FEIS contains “augmented” information regarding baseline information, accounting unit descriptions, and cumulative effects.⁵² It also includes a “spatial depiction and detailed description of the treatment opportunity areas,” including, “a depiction of modeled canopy cover change in the treatment opportunity areas from existing tree mortality.”⁵³ To address any remaining flaws with the lack of site-specific analysis, the Forest Service appears to rely on the post-decision Framework referencing actions such as, “... completion of pre- and implementation checklists, field reviews, review of a decision-making trigger table, incorporation of specified project design features, cooperating agency involvement, and public engagement.”⁵⁴ The FEIS still fails to include site-specific information about the project and its impacts, and reliance on a future, post-decision framework with no future NEPA is insufficient to cure those remaining flaws.

NEPA requires site-specific analysis before government agencies make project-level decisions, and the Forest Service’s preference for “flexible management” does not alleviate its duty to comply with the law. Relying on the post-decision Framework is not sufficient, nor was the addition of “augmented” information in the FEIS.⁵⁵ As several examples, the FEIS does not disclose specific locations where logging will occur or the type of harvesting methods that will be used in those locations. It does not disclose the location of where up to 600 miles of temporary road construction will occur.⁵⁶ Because it relies on a post-decision framework to determine site-specific information, the FEIS does not adequately address the direct, indirect, or cumulative impacts of the project in violation of NEPA.

The vegetation treatment activities and associated road use (including truck hauling on both existing system forest roads as well as new temporary roads) will have foreseeable negative impacts to, *inter*

⁵¹ DEIS comments at 6-7.

⁵² FEIS Appendix B at 9-10.

⁵³ FEIS Appendix B at 11.

⁵⁴ *Id.*

⁵⁵ FEIS Appendix B at 11, (asserting “[t]he framework was designed to allow flexible management at a landscape-scale...”).

⁵⁶ See *Ohio Forestry Ass’n v. Sierra Club*, 118 S. Ct. 1665 (1998) (distinguishing a Forest Plan decision from a project level decision ripe for review by explaining that “Before the Forest Service can permit the logging, it must: (a) propose a specific area in which logging will take place and the harvesting methods to be used, . . . (b) ensure that the project is consistent with the plan, 16 U.S.C. § 1604(i); 36 CFR § 219.10(e) (1997); (c) provide those affected by proposed logging notice and an opportunity to be heard, . . . (d) conduct an environmental analysis pursuant to the National Environmental Policy Act of 1969 (NEPA), . . . to evaluate the effects of the specific project and to contemplate alternatives, . . . and (e) subsequently make a final decision to permit logging”).

alia, wildlife, wildlife habitat, and water quality. Disclosure of the actual location of the specific treatment sites and corresponding forest roads required to complete the treatment activities is necessary to understand the scope of those foreseeable negative impacts. This is especially problematic for showing consideration of indirect and cumulative impacts for a project decision that authorizes numerous, undefined treatments over the next 15 years. For example, there may be numerous vegetation treatment projects within close vicinity and overlapping in time within one or neighboring Canada lynx LAUs.⁵⁷ Any overlap in geography or timing will result in dramatically different direct, indirect, and cumulative impacts to lynx and its habitat as well as any water resources within that area. The Forest Service concludes the project is likely to adversely affect Canada lynx. *See* Biological Assessment at 5. The final ROD will authorize vegetation treatments and associated road use for the next 15 years, which is an irretrievable commitment of the Forest Service's resources. Because environmental impacts are reasonably foreseeable, and the final ROD makes an irretrievable commitment of resources, site-specific analysis is required in this EIS. Omission of these details is a violation of NEPA.

Suggested Remedy: Revise the analysis in the FEIS to incorporate site-specific analysis to ensure accurate and full disclosure of direct, indirect, and cumulative impacts, and to allow for meaningful and informed public comment. In the alternative, revise the FEIS and DROD to explicitly recognize the analysis as programmatic in nature, and expressly commit in the DROD to future site-specific NEPA analysis for individual treatment projects that tier to this higher-level programmatic EIS.

3. Failure to address controversy.

We commented about the inherent controversy arising from a substantial dispute about the effects of the proposed action due to a lack of baseline information, the reliance on faulty assumptions to ignore many direct, indirect, and cumulative impacts, and failure to consider the best available science that refutes those assumptions.⁵⁸ The Forest Service failed to adequately address these comments, and as such the controversy remains.

4. Wildlife, wildlife habitat, and habitat connectivity.

Failure to analyze impacts to wildlife, its associated habitat, and wildlife connectivity is an issue of particular concern in our comments.⁵⁹ Specifically, we are concerned about impacts to lynx, lynx critical habitat, and LAU linkage corridors. We are also concerned about the lack of impacts analysis

⁵⁷ The vagueness and amorphous nature of this hypothetical exemplifies why and how the lack of site-specific details make it close to impossible for the public to meaningfully comment on or object to the Forest Service's project at this point.

⁵⁸ DEIS comments at 7.

⁵⁹ *Id.*

to Preble's meadow jumping mouse, endangered Wyoming toad, threatened piping plover, endangered least tern, endangered whooping crane, endangered pallid sturgeon, endangered bonytail chub, endangered Colorado pikeminnow, endangered humpback chub, endangered razorback sucker, and threatened yellow-billed cuckoo. In response, the Forest Service explains, "[i]mpacts to wildlife and habitat are addressed in the biological evaluation and biological assessment. That information is summarized in the environmental impact statement documents."⁶⁰ The biological assessment improperly concludes the project will have no effect on Preble's meadow jumping mouse, endangered Wyoming toad, threatened piping plover, endangered least tern, endangered whooping crane, endangered pallid sturgeon, endangered bonytail chub, endangered Colorado pikeminnow, endangered humpback chub, endangered razorback sucker, and threatened yellow-billed cuckoo. Because the Forest Service fails to provide site-specific information about the location, timing, and extent of vegetation treatments and roads (system and temporary), the public is not able to discern how those actions relate to wildlife or its habitat, and are precluded from meaningful analysis on these impacts. Best available science shows that these actions will have harmful impacts to wildlife and wildlife habitat, regardless of the location. Overall, the FEIS fails to adequately analyze the potential environmental consequences to wildlife species, wildlife habitats, and especially wildlife habitat connectivity under each alternative.

The Forest Service provides a general description for wildlife species of management concern, and forest plan direction for wildlife security areas.⁶¹ Then for the proposed action, the FEIS lists the number of wildlife security area acres found within each accounting unit established in its condition-based analysis.⁶² Here the Forest Service explains, "[t]he primary objective of treatments in these areas would be to provide quality forage, cover, breeding habitat, and solitude for a variety of wildlife species and to improve wildlife habitat in general."⁶³ What follows is a series of tables listing wildlife species in each accounting unit and the resulting habitat quality and quantity from the proposed action described as "high, medium, low, negligible change or n/a."⁶⁴ Such generalized analysis cannot support the Forest Service determinations in the FEIS for wildlife of management concern.⁶⁵

For more detailed information, the Forest Service references information in the project file explaining, "[a] detailed analysis of direct, indirect, and cumulative effects of the project on species of local concern, management indicator species, and Rocky Mountain Region sensitive species is also provided in the biological evaluation, located in the project file."⁶⁶ This improperly incorporates

⁶⁰ FEIS Appendix B at 127.

⁶¹ *Id.* at 183-190.

⁶² *Id.* at 194, Table 128.

⁶³ FEIS at 194.

⁶⁴ *Id.* at 196-205.

⁶⁵ *Id.* at 206, Table 131.

⁶⁶ *Id.* at 194.

information by reference, rather than consider and take a hard, in its analysis, at the environmental consequences to wildlife under each alternative. The biological evaluation unreasonably determines the project will benefit bighorn sheep and other species of concern, ignoring the harmful impacts of building temporary roads and log truck hauling on system and temporary roads for the next 15 years.

Canada lynx

The analysis in the FEIS for lynx is inadequate under NEPA. As just one specific example, for lynx habitat connectivity, the summary referenced in the Forest Service response is apparently two sentences describing portions of the Owens Sheep and Pelton Platte accounting units as containing a lynx connectivity unit.⁶⁷ This ignores important lynx connectivity corridors. Even more concerning, the Forest Service concludes in its FEIS that the project may affect but is not likely to adversely affect Canada lynx. This is unsupported by the agency's own analysis in the biological assessment, which concludes the project may affect and is likely to adversely affect Canada lynx. As noted below, the Forest Service has requested formal consultation about impacts to Canada lynx and its habitat at the eleventh hour, and therefore the Biological Opinion has not been made available for review during public notice, comment, or objection periods. The public is unable to consider the Fish and Wildlife Service's expert opinion about how the project will harm lynx and its habitat.

The analysis in the FEIS and biological assessment fail to disclose and analyze the direct, indirect, and cumulative impacts of the action and its alternative on lynx winter habitat, lynx linkage areas, and lynx denning habitat. The analysis in the FEIS and biological assessment fail to quantify the cumulative effects of other activities within and near the project area on lynx habitat, lynx winter habitat, lynx linkage areas, and lynx denning habitat. The analysis in the FEIS and biological assessment fail to quantify the amount of lynx winter habitat, lynx linkage areas, and lynx denning habitat that will be removed or degraded by the proposed action and its alternatives.

Preble's meadow jumping mouse

The Forest Service's reliance on project design criteria to conclude that yet-to-be identified or determined logging activities will have no effect to Preble's meadow jumping mouse is arbitrary and capricious. The project design criteria direct the Forest Service to avoid actions within the mouse's habitat, but we are unable to find any documentation showing *where* the mouse's suitable habitat exists in relation to treatment opportunity areas.⁶⁸ Without this information the public is unable to meaningfully comment as to the impacts to the mouse, including direct, indirect, and cumulative

⁶⁷ FEIS at 103, 111.

⁶⁸ See FEIS Appendix A at 25 (providing a single design criteria that "[n]o treatment will occur in suitable habitat for the Preble's jumping mouse" and noting 614 acres of suitable habitat occurs along the Laramie River at 7,800 feet elevation, but failing to show how that location relates to the treatment opportunities identified elsewhere in the record).

(downstream flow) impacts from upstream logging and log truck hauling on forest roads. There is also no monitoring questions or triggers in the Framework to check for compliance with this project design criteria during project implementation. How the project design criteria are applied in specific instances is necessary to understanding and assessing the extent to which the project will affect Preble's meadow jumping mouse.

Because application of the specific project design features will occur later in time, once the agency has gathered site-specific information including existing conditions, only then will the Forest Service be able to determine the effects of the specific treatment project on wildlife species and their habitat. That point will come well after the close of the NEPA and this objection process.

5. Water quality

We commented on concerns regarding water quality, specifically the potential environmental consequences from road-related sedimentation, the need to better analyze this issue, followed with a request for a 300-ft buffer surrounding fen wetlands.⁶⁹ In response, the Forest Service clarified that “according to project design feature 1 for hydrology and wet areas, treatment will not occur in fens, and fens will be protected by a 300-foot limited-action buffer in which heavy equipment use will be prohibited.”⁷⁰ While we appreciate the response, our remaining concerns were not adequately addressed.

The Forest Service fails to disclose or analyze potential sedimentation from road construction, reconstruction, and use. The Forest Service response exemplifies our concern, “[w]hile site-specific impacts cannot be disclosed until specific treatment locations are identified, estimated overall impacts to water resources from the project as a whole are disclosed in the hydrology report and final environmental impact statement.”⁷¹ This demonstrates the failure of using a condition-based analysis for site-specific actions as their consequences cannot be disclosed. The analysis method utilized in the FEIS fails to adequately estimate potential road-related sedimentation or the resulting effects to aquatic habitats, it explains:

The conditional National Environmental Policy Act challenge under this scenario is to provide a site-specific effects analysis without actual treatments being delineated. The approach below was selected as one way to quantify likely proposed activity effects to water resources across the entire analysis area (for example, wetland impacts across the analysis area), but ***it does not address site-specific impacts to individual water resources within the analysis area.*** This will be done during the implementation phase.⁷²

⁶⁹ DEIS comments at 8.

⁷⁰ FEIS Appendix B at 88.

⁷¹ *Id* at 80.

⁷² Emphasis added, FEIS at 265.

The aforementioned approach is an inadequate proxy for site-specific analysis.

The FEIS explains the analysis utilizes current forest plan activities (2003 - 2008) as the timeframe to predict proposed and future actions.⁷³ The Forest Service asserts, “activities implemented under the current forest plan from 2003 to 2018 are a reasonable predictor of how and where future activities will be implemented.” Yet one purpose of the LaVA project is to implement activities on an accelerated program, precisely because, as the agency asserts, the current pace of projects under the no-action alternative is inadequate to meet the LaVA project’s purpose and need.⁷⁴ In other words, activities conducted since 2003 do not reflect an “accelerated program,” and therefore are not a good predictor of the proposed action. As such, the limited analysis in the FEIS includes an inherent flaw.

This is illustrated by the prediction of temporary road stream crossings. The FEIS estimates the proposed action would result in 534 crossings, but this number could be much higher under the accelerated program. Without site-specific analysis that actually identifies road construction locations, the FEIS cannot reasonably analyze the associated potential environmental consequences.

The lack of detail is also an inherent flaw in the agency’s use of the Watershed Condition Framework (WCF). The FEIS lists each Watershed Condition Class (WCC) indicator and their corresponding attributes. The road/trail indicator shows numerous watersheds impaired or functioning at risk.⁷⁵ Analysis of each alternative shows the proposed action would worsen the indicator score for each attribute, showing a 2 to 3 percent change. “The watershed condition scores are tracked to one decimal point and reported as Watershed Condition Classes 1, 2, or 3. Class 1 = scores of 1.0 to 1.6, Class 2 = scores from 1.7 to 2.2, and Class 3 = scores from 2.3 to 3.0.”⁷⁶ The percent change listed in the FEIS at Table 154 does little to illustrate the change in scores, and suggest that all watersheds will have an impaired function for the road/trail indicator under the proposed action. Further, in analyzing the open road, proximity to water, and the mass wasting attributes, the Forest Service only considered temporary road construction, omitting all currently closed roads that would be opened under the proposed action, along with the reconstruction of system roads and construction and use of all other linear features.⁷⁷

⁷³ FEIS at 266.

⁷⁴ FEIS at 7, (stating, “[t]he accelerated program would help to restore, recover, and mitigate the damage caused by fire, insects, invasive species, and damaging weather.”)

⁷⁵ FEIS at 259, (showing, “[w]ithin the LaVA analysis area, 16 sixth-level watersheds have an impaired rating; 46 sixth-level watersheds have a functioning-at-risk rating; and four sixth-level watersheds have a functioning properly rating.”)

⁷⁶ USDA Forest Service. 2011. Watershed Condition Class Technical Guide. FS-978.

https://www.fs.fed.us/biology/resources/pubs/watershed/maps/watershed_classification_guide2011FS978.pdf

⁷⁷ *Id.* at 26, (explaining, “...the term “road” is broadly defined to include roads and all lineal features on the landscape that typically influence watershed processes and conditions in a manner similar to roads.”)

The Forest Service also replied to our concern regarding its over-reliance on project design features to address potential water quality impacts by providing a summary in the FEIS of past best management practices implementation and effectiveness monitoring. Looking at this section, it is clear the Forest Service failed to adequately respond to our comment. The BMP monitoring lacks an assessment of the road-related design features listed in the analysis. It also fails to demonstrate their effectiveness in mitigating potential impacts from constructing and locating temporary roads, or controlling sedimentation from road use.⁷⁸ The BMP monitoring fails to evaluate previous temporary road removal to determine if the proposed design features will adequately protect water quality, or even if road removal treatments were effective.

6. Soils, Risk of Landslides

Our comments highlighted the importance of a robust soils analysis, which requires site-specific information that the Forest Service fails to provide in its condition-based analysis.⁷⁹ In response, the agency acknowledges this inadequacy, but does nothing to address it stating, “[d]evelopment of site-specific projects has not occurred at this time within the LaVA analysis area. At this scale, it is only possible to discuss soils in a broad context, acknowledging there are erosion possibilities and mass wasting hazards within each accounting unit.”⁸⁰ As such, the FEIS lacks the necessary site-specific information to provide meaningful and informed comments.

We also commented on the need to provide an assessment of landslide risks in the project area and how the proposed action would affect such risk.⁸¹ Again, the Forest Service responds that “[d]evelopment of site-specific projects has not occurred at this time within the LaVA analysis area. At this scale, it is only possible to discuss soils in a broad context, acknowledging there are erosion possibilities and mass wasting hazards within each accounting unit.”⁸² The response exemplifies the limitations of a condition-based analysis in supporting a site-specific project NEPA review.

7. Heritage resources

We commented that the Forest Service must analyze and disclose impacts to heritage resources in its FEIS analysis.⁸³ In response the Forest Service attempts to rely on its 2009 programmatic agreement

⁷⁸ FEIS at 264, (explaining, “[m]onitoring information for the eleven national forests in the Rocky Mountain Region of the Forest Service has been summarized for 2015 and 2016 and includes 17 ground-based skidding and harvesting evaluations, 18 mechanical site treatments evaluations, and seven evaluations of prescribed fire use (USDA Forest Service 2018a).”

⁷⁹ DEIS comments at 8.

⁸⁰ FEIS Appendix B at 107.

⁸¹ DEIS comments at 12.

⁸² FEIS Appendix B at 107.

⁸³ DEIS comments at 9.

with the state of Wyoming that allows it to forgo identification and evaluation of cultural resources “when analyzing large land areas where discrete vegetation management activities are not specifically defined,” but at the same time continues to propose this decision fits as a *site-specific project level* action subject to 36 C.F.R. Part 218. The Forest Service cannot have it both ways. If, as we have suggested above, the Forest Service revises its characterization of this EIS to be a *programmatic* EIS and expressly commits to future, site-specific EAs that will tier to this EIS, then we agree that reliance on the 2009 programmatic agreement to forgo a more in-depth analysis of cultural resources at this time may be appropriate. However, as proposed, the Forest Service is attempting to authorize specific projects today, with the promise that it will analyze the impact of those projects on heritage resources - outside of the public eye - at some point in the future. This is insufficient under NEPA.

8. Roads

We commented on the lack of analysis regarding the direct, indirect, and cumulative impacts of this project that will result from use of the forest road system and temporary roads.⁸⁴ Our comments provided best available science showing roads cause significant adverse impacts to National Forest Resources.⁸⁵ Specifically, we raised concerns with the associated mid and long term consequences that will occur on the existing system, especially in light of the fact that the Forest Service is unable to afford or maintain the existing road system.⁸⁶ The Forest Service response was to revise the analysis for the transportation and other resource sections in the FEIS.

The revised transportation analysis is now provided (see logical outgrowth section, below). However, it is still abysmal considering the scope and extent of impacts this project proposes. The Forest Service appears to ignore direct harmful impacts from log truck hauling on the existing forest system roads and up to 600 miles of temporary forest roads.⁸⁷ The agency’s analysis improperly downplays short and long term direct impacts from forest roads, contrary to the best available science we provided in our comments. It also unreasonably characterizes the direct impacts from the road system as short term, even though the agency proposes a project that will last 15 years. This is not short term.

The revised Transportation Report includes cost estimates for maintenance level 1-5 roads and temporary roads, but fails to consider, disclose or discuss long term funding expectations to support the road system. The transportation analysis also fails to specify the number of currently closed roads that would be opened or reconstructed under the proposed action.⁸⁸ Without this information,

⁸⁴ Scoping comments at 4-8, DEIS comments at 9.

⁸⁵ See DEIS comments at 9-12 and Attachment 3.

⁸⁶ FEIS Appendix B at 16.

⁸⁷ See FEIS Transportation Report at 9-11.

⁸⁸ FEIS at 288.

the analysis does not disclose, and the Forest Service cannot determine, the potential environmental consequences from reconstruction activities, from new and increased traffic, or assess the effectiveness of its proposed mitigation measures.

For example, the FEIS fails to disclose how much open road density would increase, or the resulting effect of log truck hauling on other forest resources such as wildlife and habitat fragmentation. While certain roads may receive long-delayed maintenance, the FEIS lacks the site-specific detail to disclose the overall benefit to the road maintenance backlog. The FEIS also fails to discuss how the Forest Service will effectively enforce public road closures on those open for only administrative use, or if newly opened system roads will be available for off-road vehicle use, which could result in further unauthorized use. This is especially important given the adverse environmental effects from illegal motorized activity that the Forest Service acknowledges, “[t]he modified proposed action could increase unauthorized off-road vehicle use in site-specific areas, with corresponding negative impacts to some resources,”⁸⁹ and given the lack of any discussion about long-term funding expectations to support these agency actions.

Invasive species

We explained in our comments that roads increase the spread of non-native invasive plant species, leading to significant ecological impacts.⁹⁰ The Forest Service improperly relies on design features to avoid discussing or disclosing these impacts. The agency doubles-down on its over-reliance stating, “[d]esign features included in the modified proposed action are not hypothetical, but rather clearly defined and applicable wherever the treatments they address are implemented.”⁹¹ Had the Forest Service provided evidence supporting the effectiveness of the design features in preventing the spread of non-native invasive plant species, (it did not), the agency would still need to analyze the potential environmental consequences from road construction, reconstruction and use over the span of the 15-year project.

In place of such analysis, the FEIS provides estimates of acres within each accounting unit that contain state-listed noxious weeds and invasive annual grasses. But it ultimately acknowledges that “[b]ecause this project has not yet defined specific treatment units and weed species and infestation acreages vary among the accounting units, we cannot effectively predict and compare the magnitude of likely changes in invasive species infestations among the accounting units.”⁹² The need for more detailed analysis is evident in the Forest Service’s conclusion that, “...it is likely the funds made available through timber sale receipts, combined with the regular annual district noxious weed

⁸⁹ *Id.* at 297.

⁹⁰ DEIS comments, Attachment 3 at 6, 11.

⁹¹ FEIS Appendix B at 99.

⁹² FEIS at 251 and 252, Table 151.

treatment program, would not be enough to fully inventory and treat all new or enlarged weed infestations from this large-scale vegetation management program as well as all the other sites where invasive weeds occur or may be introduced or spread.”⁹³ This is especially concerning given the proposed construction of approximately 600 miles of temporary roads, and the unspecified number of system roads that may be utilized under the proposed action.

Temporary roads

Our comments raised significant concerns regarding the proposed construction and use of approximately 600 miles of temporary roads.⁹⁴ Among those concerns was the Forest Service’s lack of specificity regarding the location of temporary roads.⁹⁵ In response, the agency explained it augmented the FEIS to display where temporary road constructed would not occur, and that coupled with road densities in each accounting unit, it could provide sufficient analysis of other forest resources, such as hydrology.⁹⁶ As we explained above in our discussion on water quality, the FEIS actually fails to provide the necessary analysis to determine potential environmental consequences as a result of temporary road construction. The flawed prediction of an additional 534 stream crossings under the proposed action fails to quantify potential increases in road-related sedimentation from temporary road construction and use.

Further, we raised concerns regarding the Forest Service’s ability to effectively track these roads and prevent unauthorized use in light of its limited resources. The agency responds that the Framework includes components to track temporary road construction and its effects. It lists the range of treatments for temporary road removal, and explains that timber sale contract administration provides assurances for their reclamation.⁹⁷ These responses fail to adequately respond to our comments, namely due to the lack of site-specific information regarding where the Forest Service will actually authorize temporary road construction, but also because the FEIS lacks any supporting evidence regarding the history of previous temporary road removal and how well timber sale purchasers met the reclamation requirements.

The Forest Service’s response that temporary roads will be closed to the public and reclaimed within three years of individual project completion does little to convey how long temporary roads will actually remain on the ground since the FEIS lacks information regarding the length of time individual projects may take to complete. It is also possible that certain temporary roads get used for in subsequent adjacent or overlapping projects, further extending the impact on the landscape,

⁹³ *Id.* at 253.

⁹⁴ Scoping at 7-8, DEIS comments at 10-11.

⁹⁵ *Id.*

⁹⁶ FEIS Appendix B at 14.

⁹⁷ FEIS Appendix B at 14, 16 and 60.

impacts to wildlife and wildlife habitat, and harms to water quality. The Forest Service response that projects typically last five years, including decommissioning temporary roads, lacks the necessary supporting evidence of their actual removal. It also does not alleviate the agency's responsibility to fully analyze the site-specific effects from temporary road construction and use.⁹⁸ Further, the Forest Service failed to consider the effects of its proposal to use temporary roads when combined with the effects of its existing, official road system.

Regarding our concerns about potential for illegal motorized, the Forest Service asserts, "Forest Service law enforcement officers and forest protection officers can and do write citations for violations of 36 CFR 261.13," and that, "unauthorized use of temporary roads and user-created trails in the vicinity of vegetation treatments is made impractical during active vegetation management operations because of the presence of logging or other activity and equipment."⁹⁹ While we support and applaud law enforcement efforts to prevent unauthorized use, the FEIS fails to address the increased cost of additional enforcement necessary to prevent illegal access on 600 miles of temporary roads for the next 15 years. As noted elsewhere, the Forest Service fails to consider its long-term funding expectations to afford its road network, system and new temporary roads combined. The Forest Service cannot afford to maintain its current road network on the Medicine Bow National Forest. The FEIS also lacks a discussion of previous patrols and citations issued for violations of the aforementioned regulation.¹⁰⁰ In addition, law-breakers may be dissuaded from accessing roads with active logging, but this response fails to address unauthorized use during times of inactivity, or the during the interim between project completion and rehabilitation.

Certainly we support the Forest Service's intent in the monitoring plan that directs, "[e]nsure temporary roads are decommissioned, temporary drainage structures are removed, sites are effectively rehabilitated, and motorized use has been curtailed." Yet, the monitoring plan directs site inspections to occur the first and third year after rehabilitation.¹⁰¹ This does little to address unauthorized use before temporary road removal. The result is that, "[t]emporary roads would be found and utilized by motorized enthusiasts, and some additional resource damage is likely to occur," and, "[n]egative impacts would continue to be added to already numerous areas negatively impacted by increased unwanted off-road and utility-terrain use."¹⁰² We agree. But beyond this acknowledgement the Forest Service failed to include those negative impacts in its wildlife, hydrology and aquatic species analysis.

⁹⁸ FEIS Appendix B at 61, ("Most timber sale and stewardship contracts have a contract length of five years, meaning the purchaser has a total of five years to build and decommission temporary roads within the treatment area.")

⁹⁹ *Id.*

¹⁰⁰ FEIS at 292, (discussing unauthorized use of roads and trails.)

¹⁰¹ FEIS Appendix B at 36, Table 5.

¹⁰² FEIS at 299.

The final ROD will authorize logging, associated road use, and construction and log hauling on up to 600 miles of temporary roads for the next 15 years. As this is the final decision from the Forest Service with no future NEPA process anticipated, it is an irretrievable commitment of the Forest Service's resources. Because harm to water quality, wildlife, wildlife habitat, and other resources is reasonably foreseeable from the use, reconstruction, and new temporary roads, site-specific analysis of the system roads and up to 600 miles of temporary roads is required in this EIS. This includes but is not limited to the location of the 600 miles of temporary roads and identification and location of system roads that may be reconstructed or opened for use in this project. The omission of these details is a violation of NEPA.

9. Unroaded Areas, including Inventoried Roadless Areas

Our comments urged the Forest Service to disclose all impacts to unroaded areas under each alternative, including impacts to roadless area characteristics.¹⁰³ The Forest Service fails to acknowledge, disclose or consider many impacts to unroaded areas, including inventoried roadless areas (IRAs).

The proposed action authorizes up to 123,000 acres of vegetation treatments across 25 IRAs and states that "heavy equipment (for example, feller-bunchers, skidders, and masticators) may be operated within the boundaries of these areas to attain resource objectives."¹⁰⁴ Treatments could affect 53 percent of the IRAs in the analysis area.¹⁰⁵

In response to comments, the Forest Service asserts the FEIS analyzed the nine IRA characteristics for potential impacts, and that no site-specific treatments are currently proposed.¹⁰⁶ However, should the agency include future treatments, any proposed actions, "...will be subject to further review and approval by the USDA Forest Service Rocky Mountain Regional Office prior to implementation."¹⁰⁷ As explained more fully in the section below, the Forest Service fails to disclose and analyze direct, indirect and cumulative impacts to unroaded areas including IRAs during this notice and comment period, in violation of NEPA. The limited assessment is further complicated by the lack of site-specific analysis, addressed above.

The FEIS fails to provide the necessary site-specific analysis of specific treatments to each of the nine roadless characteristics because, as the FEIS notes, none have been proposed. As such, the Forest Service fails to consider or disclose direct, indirect and cumulative effects on unroaded areas.

¹⁰³ Scoping at 8-9; DEIS comments at 15.

¹⁰⁴ Draft ROD at 3, 5.

¹⁰⁵ *Id.*

¹⁰⁶ FEIS Appendix B at 92.

¹⁰⁷ *Id.*

For example, the FEIS omits any detailed analysis of public drinking water sources and once again relies on BMPs to minimize effects while improperly incorporating by reference water quality analysis in a project file: “[b]est management practices are recommended to minimize effects. Detailed effects to water quality are discussed in the “Hydrology” section of this chapter and the specialist report located in the project file.”¹⁰⁸ Referencing BMPs and project files does not absolve the agency of its duty to provide site-specific analysis in the EIS, which the Forest Service is unable to complete due to its condition-based analysis approach.

10. Climate Change

Our comments explained the importance of a robust climate change analysis, especially in the context of roads since changing climate conditions intensifies their associated impacts.¹⁰⁹ We asked the agency to analyze the impacts of this project on climate change. But also, importantly, we urged the Forest Service to consider and disclose how climate change will impact the activities proposed herein, and to disclose and analyze the cumulative impacts of the project and climate change on the landscape. Specifically, we raised concerns about how changes in weather patterns due to climate change may exacerbate the impacts from the Forest Service’s existing road system, 600 miles of new temporary roads, and log truck hauling on those roads over the next 15 years. We identified direct, indirect, and cumulative impacts from climate change to the project area that the Forest Service failed to consider in its assessment of climate change and cumulative impacts.

The Forest Service failed to adequately respond to our comment, stating, “The final environmental impact statement incorporates by reference the “Climate Change Vulnerability Assessment of Aquatic and Terrestrial Ecosystems in the U.S. Forest Service Rocky Mountain Region,” produced by the Forest Service’s Rocky Mountain Region (Rice et al. 2018).”¹¹⁰ The response improperly incorporates information by reference without clearly synthesizing the report in the FEIS analysis. It also fails to discuss how the referenced report addresses roads in the context of climate change.

For example, the FEIS fails to address road impacts under changing climate conditions, particularly in regards to the increased need for reducing wildlife habitat fragmentation as a climate change adaptation strategy.¹¹¹ Rather, the FEIS simply lists 15,530 acres of wildlife security areas that would receive vegetative treatments, along with an unspecified amount of temporary road construction, without any discussion or analysis on the resulting increase in habitat fragmentation and the ability of individual species to respond to changing climate conditions. The Forest Service failed to properly address its the need to establish resilient ecosystems in the face of climate change.

¹⁰⁸ *Id.* at 311.

¹⁰⁹ DEIS comments at 11-12.

¹¹⁰ FEIS Appendix B at 65.

¹¹¹ DEIS comments, Attachment 3 at 9.

11. Indirect impacts

We commented on the indirect effects of the proposed action stemming from increased use of existing system roads and from the construction and use of 600 miles of new temporary roads.¹¹² This includes the effects on wildlife from increased noise and pollution from truck traffic.¹¹³ For Canada lynx, the Forest Service response was to explain, “[r]oad use is addressed in the biological assessment in the Southern Rockies Lynx Amendment consistency discussions for human uses guidelines and the effects sections under vegetation management, noise, commotion, or other disruption, roads, and connectivity.”¹¹⁴ We explained elsewhere the inadequacies of relying on the biological assessment to support the conclusions in the FEIS and DROD, which also apply to the lack of analysis for the indirect impacts to lynx from road use.

The FEIS fails to properly address noise and pollution on other wildlife, while only recognizing there would be short-term increases of noise and dust under the proposed action from road maintenance and reconstruction, but not actual use by logging trucks.¹¹⁵ The FEIS does recognize wildlife are negatively affected by the presence and noise of off-road vehicles and that, “[t]he modified proposed action could increase unauthorized off-road vehicle use in site-specific areas, with corresponding negative impacts to some resources.”¹¹⁶ As we noted above, the Forest Service recognizes the likelihood of increased unauthorized use on temporary roads, yet fails to include the resulting disturbance on wildlife and their associated habitats.

12. Cumulative impacts

Cumulative impacts are “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”¹¹⁷ Cumulative impacts can result from “individually minor but collectively significant actions taking place over a long period of time.”¹¹⁸

We commented that the Forest Service largely skips an analysis of cumulative impacts, instead relying on future adaptive implementation and monitoring rather than conduct a robust analysis required under NEPA.¹¹⁹ The agency’s responded by including in the FEIS, “[n]ew tables outlining

¹¹² DEIS comments at 9.

¹¹³ DEIS comments, Attachment 3 at 6.

¹¹⁴ FEIS Appendix B at 124.

¹¹⁵ FEIS at 288.

¹¹⁶ FEIS at 293 and 297.

¹¹⁷ 40 C.F.R. § 1508.7.

¹¹⁸ *Id.*

¹¹⁹ DEIS comments at 12-13.

past, present, and reasonably foreseeable activities in the LaVA Project area...”¹²⁰ The additional information listed in Tables 92-96 provide limited information, and the FEIS still fails to properly incorporate the referenced projects into the cumulative impacts analysis.¹²¹

For example, several treatment opportunities within close proximity to one another and overlapping in time are likely to have more intense impacts, then these are not considered in this FEIS due to the lack of details. Specifically, there may be numerous vegetation treatment projects within close vicinity and overlapping in time within one or neighboring Canada lynx LAUs or water resources.¹²² Any overlap in geography or timing will result in dramatically different direct, indirect, and cumulative impacts to lynx and its habitat as well as any water resources within that area. These harmful cumulative impacts are reasonably foreseeable. The Forest Service improperly defers analysis of cumulative impacts to the pre-implementation phase.¹²³ Failing to disclose these impacts in this FEIS when there will be no future NEPA analysis or public process violates NEPA.

The FEIS fails to address the cumulative impacts from increased road use and construction on water quality, even while acknowledging for the proposed action, “the incremental effects related to roads are up to a 20 percent increase over all past, present, and reasonably foreseeable activities.”¹²⁴ Yet the FEIS lacks any discussion or analysis on how future water quality may be affected, especially in relation to watersheds and streams already impaired or functioning at risk.

Suggested Remedy: Revise the analysis in the FEIS to exclude treatments in IRAs and ensure the Forest Service takes the requisite “hard look” regarding the direct, indirect, and cumulative impacts (beneficial and adverse) from this project. Based on a revised and accurate depiction of impacts, meaningfully reconsider and revise the proposal - including the Framework in Appendix A - to minimize harms to wildlife, wildlife habitat, connectivity, water quality, soils, landslide risk, and heritage resources; and to minimize harms from roads, climate change, indirect impacts, and cumulative impacts. What is planned to be studied in the framework as part of mitigation measures during execution of the project is not sufficient to meet NEPA’s requirements to determine extent of environmental harm *before* the project is approved.

G. Failure to consider a reasonable range of alternatives.

¹²⁰ FEIS Appendix B at 17.

¹²¹ FEIS at 141-142.

¹²² The vagueness and amorphous nature of this hypothetical exemplifies why and how the lack of site-specific details make it close to impossible for the public to meaningfully comment on or object to the Forest Service’s project at this point.

¹²³ See, e.g., Appendix A at 15, Table 1 (“Pre-treatment cumulative effects will be considered during the pre-implementation phase for all new proposed projects”).

¹²⁴ FEIS at 278.

Analysis of HFRA projects must study, develop and describe the proposed agency action, the no action alternative, and an additional action alternative if one is proposed during scoping or the collaborative process and it meets the purpose and need of the project. 16 U.S.C. § 6514(c).

Our comments provided several alternatives that would meet the stated purposes and needs, including, (1) a genuine forest health proposal that would decommission system roads and promote regeneration, consistent with subpart A; and (2) an alternative that requires no road construction or reconstruction (system or temporary roads); and (3) an alternative that excluded vegetation treatments in IRAs.¹²⁵ In response, the Forest Service claimed it analyzed four different alternatives, but eliminated them from study for reasons explained in the FEIS.¹²⁶ The Forest Service's elimination of all of these alternatives, despite each meeting at least part of the stated purposes and needs (and not detracting from the remaining purposes and needs) violates HFRA.

While the Forest Service removed the proposed 10 miles of system road construction, it kept the proposed action to build approximately 600 miles of temporary roads explaining it is necessary to achieve the purpose and need of the LaVA project.¹²⁷ Given the Forest Service response dismissing our call to include identifying the minimum road system and unneeded roads in the project's purpose and need, it is no surprise the agency failed to even consider our proposal to include an alternative that would decommission roads. Here again, the Forest Service asserts, "no alternatives were proposed during scoping or the collaborative process that fully met the purpose and need for the project (draft environmental impact statement, p. 26)."¹²⁸ Yet, the agency contradicts itself where the responsible official explains, "I further reduced the risk of permanent adverse effects by including specific actions to rehabilitate, decommission, and maintain roads to reduce the connection of disturbed areas to stream channels."¹²⁹ Though the FEIS failed to actually specify any miles proposed for decommissioning, this statement demonstrates including an alternative to identify and implement a minimum road system would meet the project's purpose and need. The lack of consideration violates NEPA.

Suggested Remedy: Revise the analysis to consider one of the reasonable alternatives we suggested in comments that will meet the stated purposes and needs. Either: (1) a genuine forest health proposal that would decommission system roads and promote regeneration, consistent with subpart A; (2) an alternative that requires no road construction or reconstruction (system or temporary roads); (3) an alternative to identify and implement a minimum road system would meet the project's purpose and need; or (4) an alternative that excludes vegetation treatments from IRAs.

¹²⁵ Scoping at 9, DEIS comments at 5.

¹²⁶ FEIS Appendix B at 22.

¹²⁷ FEIS at 63.

¹²⁸ FEIS Appendix B at 4.

¹²⁹ DROD at 36.

H. Not a logical outgrowth.

In response to comments, the Forest Service made major changes between the draft and final EIS, precluding our opportunity to provide meaningful comments on several issues. The FEIS provides a summary of changes, including adding Management Emphasis Areas that “describe and spatially depict where management actions and treatments,” cumulative effects tables, new analysis assumptions for IRAs and wildfires, substantial new information for each accounting unit, and a formal monitoring plan.¹³⁰ The Forest Service also populated its Transportation Report, which previously appeared to be an empty template. This last item is of particular concern to Guardians, given the focus of our previous comments on the forest road system and temporary roads.

When an agency relies on supplementary evidence without a showing of prejudice by an interested party, the procedural requirements of the Administrative Procedure Act are satisfied without further opportunity for comment, provided that the agency’s response constitutes a “logical outgrowth” of what was initially proposed.¹³¹ Here, however, the Forest Service performed a classic “bait-and-switch” by substituting at the last moment one set of data and analysis where previously there had been none, as shown by the examples cited above. The Forest Service thereby deprived the public of the notice and opportunity to comment guaranteed by NEPA. Because our comments demonstrated major concern about the topics for which were supplemented only after the close of notice and comment, Guardians was prejudiced by the Forest Service’s process here.

For example, our scoping and DEIS comments focused heavily on the transportation system impacts, the details of which were only provided (in limited fashion) in the FEIS and its associated specialist reports, well after the notice and comment period. Indeed, we believe that because system and temporary roads are a major aspect of the project and will be used for log truck hauling for 15 to 20 years, this topic deserves even more attention in the analysis than was provided at the eleventh hour in the FEIS. Providing a full disclosure of the best available science and details regarding the road system will inform an analysis of the direct, indirect and cumulative impacts to all other forest resources, including water quality, wildlife, and wildlife habitat.

Suggested Remedy: Provide a new round of notice and comment to allow for meaningful and informed public comment on the plethora of supplemental information that was added to the FEIS, well after the close of the last formal public notice and comment period on the DEIS.

I. Makes a final decision before analyzing the impacts.

¹³⁰ FEIS Summary at iii, Table 1.

¹³¹ See *Solite Corp. v. EPA*, 952 F.2d 473 (D.C. Cir. 1991); *Environmental Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005).

NEPA “requires federal agencies . . . to analyze environmental consequences before initiating actions that potentially affect the environment.”¹³² The Forest Service’s own NEPA regulations direct it to “coordinate and integrate NEPA review and relevant environmental documents with agency decisionmaking by (1) Completing the environmental document review before making a decision on the proposal; (2) Considering environmental documents, public and agency comments . . . , and agency responses to those comments; (3) including environmental document(s) before rendering a decision on the proposal; and (5) Making a decision encompassed within the range of alternatives analyzed in the environmental documents.”¹³³

Here, the Forest Service violates its own regulations implementing NEPA by deferring much of its environmental review - including gathering of necessary information from field surveys, consideration of site-specific details, and assessment of impacts - until after this final decision. The Forest Service improperly postpones the requisite environmental analysis until it picks the specific sites for treatment under the project. Our comments noted our concerns about this approach as violating NEPA.¹³⁴

Suggested Remedy: Refrain from making a final decision unless and until the Forest Service revises its analysis in the FEIS to assess the impacts of the project and provides that full assessment for a new round of public notice and comment. Wise decisionmaking requires consideration of the impacts *before* the agency acts. A full analysis must include the gathering and disclosure of necessary information from field surveys, consideration of site-specific details, and assessment of impacts based on this more complete set of information.

II. Inadequate mitigation.

The Forest Service improperly relies on project design features to forego the requisite NEPA analysis throughout the FEIS, and fails to provide sufficient evidence of their effectiveness. We commented on the agency’s over-reliance on design features, especially in regards to the construction of approximately 600 miles of temporary roads under the proposed action.¹³⁵ The Forest Service response was simply to reassert its previous conclusory and arbitrary remarks that project design features will minimize the effects from temporary road construction. We disagree. The project design features lack the necessary specificity to ensure their effectiveness.

For example, in regards to mitigating harmful effects to hydrology and wet areas, the design features states, “restrict temporary roads, landings, or main skid trails as recommended by project resource

¹³² *Utah Env’t Cong. v. Bosworth*, 443 F.3d 732, 735-36 (10th Cir. 2006).

¹³³ 36 C.F.R. § 220.4(c).

¹³⁴ DEIS comments at 6-7.

¹³⁵ DEIS comments at 15.

specialists and approved by the line office.”¹³⁶ This provision does not explain what restrictions will be put in place per those recommendations, if they are specific to only construction or actual use, and the FEIS fails to provide adequate discussion or evidence that the recommendations will effectively protect water resources and riparian habitats.

The lack of specificity contributes to the inherent flaw of relying on a condition-based analysis to support unknown, future site-specific actions, as the FEIS demonstrates explaining, “[d]uring planning and design of individual treatments, biologists would consult with timber staff to develop site-specific design features to protect amphibians and their breeding habitats and associated hibernacula...”¹³⁷ Here the Forest Service fails to explain what project-specific design features may be necessary to provide adequate protection and simply asserting they will be effective without supporting discussion or evidence is not enough to satisfy NEPA’s requirements.

The Forest Service also improperly relies on contractors to conduct road maintenance without providing any assurances, such as monitoring or triggers in the Framework in Appendix A.¹³⁸ The agency cites to “measured and visual monitoring” and site inspections without any detail as to the timing of those inspections, the specific factors or triggers that monitoring will be surveying for, or whom at the Forest Service will conduct this monitoring. The Forest Service has made no showing that its budget will support this monitoring, and therefore we question whether these plans will ever actually come to fruition. Without more, the Forest Service may not rely on this mitigation by third parties to conclude there will be no impacts from log truck hauling on system roads and temporary roads over the 15 year duration of the project.

Suggested Remedy: Revise the FEIS to compare the potential environmental consequences under the proposed action with and without the design features, and provide the necessary supporting evidence to demonstrate their effectiveness.

III. Faulty adaptive management and monitoring.

Our comments explained how the Forest Service relies too heavily on its adaptive management framework and fails to include the measures, triggers, and feedback verifications necessary to ensure changes will be implemented - not just considered - based on new information or more detailed information that is expected in the future.¹³⁹ The Forest Service responds that it clarified and revised its adaptive management and monitoring framework in Appendix A to the FEIS.¹⁴⁰ Looking closely,

¹³⁶ FEIS Appendix A at 21.

¹³⁷ FEIS at 220.

¹³⁸ See FEIS, Transportation Report at 8.

¹³⁹ DEIS comments at 16.

¹⁴⁰ FEIS Appendix B at 56.

however, the revised Framework lists the LaVA project's purposes as outcomes, and then provides only generalized statements for each phase of the five implementation cycles for future individual projects.¹⁴¹ At bottom, the Forest Service adaptive implementation and monitoring framework is woefully inadequate. Given the Forest Service's reliance on the Framework and Appendix A to avoid analyzing impacts and site-specific details at this stage, the faulty adaptive management plan, including inadequate monitoring plans, is even more problematic.

The Forest Service defines "adaptive management" as a "system of management practices based on clearly identified intended outcomes and monitoring to determine if management actions are meeting those outcomes; and, if not, to facilitate management changes that will best ensure that those outcomes are met or re-evaluated."¹⁴² The clear language of this definition requires (1) identification of intended outcomes, (2) monitoring that is tailored to determine if the actions are meeting those outcomes, (3) an assessment of whether the monitoring shows the intended outcomes are being met, and (4) if not, a process for either making changes to the actions to ensure the outcomes are met, or the outcomes are re-evaluated.

For identification of intended outcomes, as noted above the Forest Service merely lists its stated purposes and needs for the project. These are too amorphous and vague to serve as clearly identified intended outcomes. Plus it ignores the many statements throughout its own FEIS that claim the framework will ensure no effect or reduced effects to various resources, including water quality, wildlife, and habitat. Because the agency relies on the framework in claiming these effects will be reduced, these reduced impacts should be explicit intended outcomes the Forest Service tracks for during project implementation. The framework fails to identify important outcomes (including, e.g., maintaining water quality, avoiding impacts to Canada lynx and Preble's meadow jumping mouse as well as their habitat) that it expects the framework will produce.

The monitoring in the framework is not tailored to determine if the agency's actions are meeting those outcomes. We commented on the lack of a sufficient monitoring mechanism.¹⁴³ In response, the Forest Service added a new monitoring plan to the framework.¹⁴⁴ Yet the plan is as general as the overall framework and will not provide sufficient data to ensure the protection of forest resources. And the Forest Service even defers developing part of the framework (establishing monitoring protocols) to some future time. Without details about the monitoring protocols (i.e., how often monitoring will occur, who will conduct the monitoring, what specifically they will monitor for, how that information will be captured and reported back) it is impossible to meaningfully comment on

¹⁴¹ FEIS Appendix A at 3, and 8-13.

¹⁴² 36 C.F.R. § 220.3.

¹⁴³ DEIS comments at 16.

¹⁴⁴ FEIS Appendix B at 58.

this portion of the framework. This is unreasonable and fails to provide for meaningful public comment under NEPA.

As just a few specific examples, the Forest Service directs temporary road monitoring to occur after rehabilitation, which does little to prevent unauthorized use during individual project implementation. The plan is meant to ensure the effectiveness of closure devices on Maintenance Level 1 roads, yet it provides generalized timing of “during and after” for the actual monitoring.¹⁴⁵ In regards to monitoring for increased sedimentation and disturbance to riparian habitats, the monitoring plan contains no specific components. While it directs an assessment of design features for one treatment type in one treatment unit, this provision does little to ensure the protection of water resources and aquatic habitat.¹⁴⁶ At no point does the monitoring require actual instream water quality sampling. Lack of water quality monitoring to assess the success of individual project treatments limits the evaluation of potential downstream impairments. Temporary water crossings can sometimes have large water quality impacts. EPA recommended monitoring in areas with 303(d) impaired water bodies, high erosive potential and slope, and areas with high road and trail density. The Forest Service does not include this monitoring. Reliance on the framework to avoid impacts to water quality from roads and logging is unreasonable where the framework is not monitoring for these impacts.

To ensure there is a meaningful assessment of the monitoring results, there must be a process for a feedback loop. Under the framework the Forest Service anticipates monitoring will result in “[a] biennial LaVA implementation and monitoring report and increased knowledge when planning future projects.”¹⁴⁷ This misses the point of adaptive management. Simply producing a report and having increased knowledge is not a clear outcome that ensures actions or next steps (the adaptation portion of adaptive management), or what those actions and next steps should look like. Deferring this detail to some point in the future renders the framework too vague and amorphous to rely on.

Finally, a complete adaptive management approach must include a process for either making changes to the actions to ensure specific intended outcomes are met, or the intended outcomes are re-evaluated in light of the monitoring results. The Forest Service’s framework improperly limits possible future changes to just the Framework itself and not the actual LaVA ROD.¹⁴⁸ It also means that treatments will only be prohibited if and when harmful impacts occur egregious enough to convince the agency.¹⁴⁹ By collecting the information necessary to making wise, informed decisions

¹⁴⁵ FEIS Appendix A at 36.

¹⁴⁶ *Id.* (directing the timing for monitoring to be, “[a]nnually - A minimum of one treatment unit per treatment type.”)

¹⁴⁷ *See, e.g.*, FEIS Appendix A at 12.

¹⁴⁸ *Id.* at 12-13.

¹⁴⁹ *See, e.g.*, FEIS Appendix A at 15 (prohibiting treatment only once stream health field assessment results in a determination of high potential for a long-term change to a lower stream health class).

only after those decisions have been made, the Forest Service subverts the purpose of NEPA and risks causing major, significant impacts on this landscape that have not been assessed.

Suggested Remedy: Clarify the specific intended outcomes that will be in the monitoring report (Adaptive Implementation Reporting phase), explain how the monitoring and triggers identified are clearly tailored to those specific intended outcomes, and explain how the Forest Service will use the results to assess project implementation and adapt future projects. Direct the collection of field data and analysis to monitor for increased sedimentation, degradation of water quality, and disruption of aquatic and wildlife habitats. Include a provision triggering a re-evaluation of the analysis in the FEIS and final ROD (i.e., a trigger to complete supplemental NEPA) should conditions change significantly or monitoring shows unanticipated adverse environmental consequences occurring under individual projects, (such as from the ineffectiveness of design features).

IV. Failure to comply with HFRA and related Forest Service regulations.

The Forest Service states the project is within the boundaries of a designated priority landscape area for the treatment of insects and diseases, as defined by Section 602(d) of HFRA, and therefore the entire project “has been advanced” as a HFRA project.¹⁵⁰ From page 2 of the DROD:

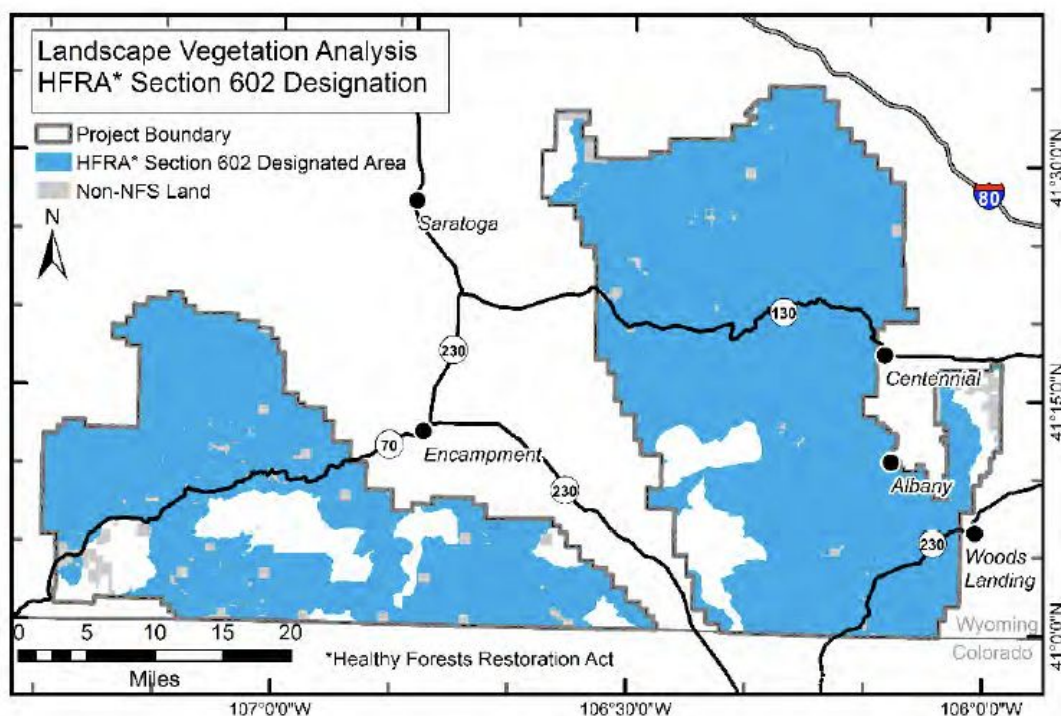


Figure 1. LaVA project area and the Healthy Forests Restoration Act, section 602, designation area

¹⁵⁰ DROD at 1.

But as noted in previous sections, the entirety of this project does not meet HFRA’s definition of an “authorized hazardous fuel reduction project.”

HFRA defines “authorized hazardous fuel reduction projects” as “the measures and methods described in the definition of ‘appropriate tools’ contained in the glossary of the Implementation Plan, on Federal land.”¹⁵¹ HFRA defines the Implementation Plan as “the Implementation Plan for the Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, dated May 2002, developed pursuant to the conference report to accompany the Department of the Interior and Related Agencies Appropriations Act, 2001 (House Report No. 106-64 and subsequent revisions).”¹⁵² Implementation Plan “appropriate tools” are defined as “Methods for reducing hazardous fuels including prescribed fire, wildland fire use, and various mechanical methods such as crushing, tractor and hand piling, tree removal (to produce commercial or per-commercial products), and pruning.” Hazardous fuels projects under HFRA thus must be squarely aimed at expediting tree removal, limbing, or burning as ways to reduce fuel loads. Yet the portions of the project designed to provide for recovery of forest products, restore wildlife habitat, enhance access for forest visitors and permittees, or provide for agency management adaptability and flexibility are not squarely aimed at expediting tree removal, limbing, or burning as ways to reduce fuel loads.

The portions of the project designed to provide for recovery of forest products, restore wildlife habitat, enhance access for forest visitors and permittees, or provide for agency management adaptability and flexibility also do not fit within the purposes of HFRA. The Forest Service cites to three of the purposes of HFRA in its draft ROD: (1) Reducing wildfire risk to communities, municipal water supplies, and other at-risk Federal land through hazardous fuel reduction projects; (3) Enhancing efforts to protect watersheds and address threats to forest and rangeland health including catastrophic fire across the landscape; and (6) Protecting, restoring, and enhancing forest ecosystem components.¹⁵³

What’s more, the Forest Service conveniently ignores a portion of the sixth listed purpose of HFRA: Protecting, restoring, and enhancing forest ecosystem components *(A) to promote the recovery of threatened and endangered species; (B) to improve biological diversity; and (C) to enhance productivity and carbon sequestration.*¹⁵⁴ In fact, in its biological assessment the Forest Service concludes the project is likely to adversely affect Canada lynx, not promote its recovery. And there are few if any aspects of the

¹⁵¹ 16 U.S.C. § 6511(2).

¹⁵² 16 U.S.C. § 6511.

¹⁵³ 16 U.S.C. § 6501 (1), (3) and (6).

¹⁵⁴ 16 U.S.C. § 6501(6) (emphasis added).

project focused on improving biological diversity or enhancing productivity and carbon sequestration.

The extended duration of the project, over the next 15 to 20 years, is also inconsistent with the plain language of HFRA to reduce the wildfire risk “as soon as practicable.” Claiming HFRA authorization - and the subsequent expedited administrative and judicial review - for the entirety of this *single* project decision that will authorize a multitude of actions over the next 15 to 20 years (the duration of a forest plan as contemplated by NFMA) stretches the scope of HFRA well beyond congressional intent.

For the portions of the project that do not fit under HFRA, the Forest Service must comply with the full administrative procedures described under 36 C.F.R. § 218 Subpart B, as opposed to the abbreviated procedures for HFRA projects under 36 C.F.R. § 218 Subpart C.¹⁵⁵

Under Section 102(e)(2) of HFRA, the Forest Service must “fully maintain, or contribute toward the restoration of, the structure and composition of old-growth stands according to the pre-fire suppression old-growth conditions characteristic of the forest type, taking into account the contribution of the stand to landscape fire adaptation and watershed health, and retaining the large trees contributing to old-growth structure.” The Forest Service claims that “[b]ecause areas of old growth were identified and will generally be avoided,” the project is consistent with HFRA. Yet according to the Framework in Appendix A, it is not clear where the old growth has been identified and how that compares to the proposed treatment opportunities.¹⁵⁶ What’s more, the Framework does not prohibit treatment in old growth.¹⁵⁷ Instead it seems to contemplate an offset approach. This is inconsistent with HFRA’s direction to maintain and contribute toward the restoration of the structure and composition of old-growth stands. And there is no monitoring or triggers to survey for old growth during implementation.

Suggested Remedy: Refrain from relying on HFRA for those portions of the project that do not fit within the purposes of HFRA or definition of “authorized hazardous fuel reduction project,” and instead analyze those aspects of the project under 36 CFR Part 218 Subpart B, non-abbreviated

¹⁵⁵ See 36 C.F.R. § 218.1(c) (explaining that “Subpart C of this part includes provisions that are specific to proposed hazardous fuel reduction projects authorized under the HFRA”); *id.* § 218.31(a) (“Only authorized hazardous fuel reduction projects as defined by the HFRA, section 101(2), occurring on National Forest System land that have been analyzed in an EA or EIS are subject to this subpart”).

¹⁵⁶ FEIS Appendix A at 26 (“*If treatment in old growth is planned...*”) (emphasis added).

¹⁵⁷ *Id.* (explaining that “[v]egetation management *can* be conducted within these stands as long as treatments maintain or promote characteristics of old growth stands, new stands are identified that meet the requirements of old growth and are incorporated into the Medicine Bow National Forest old-growth strategy”) (emphasis added). See also FEIS at 313 (“all designated old growth stands could be removed from the Little Sandstone (570 acres), Bridger (301 acres), Pennock (2,685 acres), and Sheep Mountain (2,185 acres) Inventoried Roadless Areas.”).

NEPA procedures. This would include, but is not limited to, analyzing a reasonable range of alternatives and providing more time for objection and response to objection.

V. Failure to demonstrate compliance with NFMA.

The National Forest Management Act (NFMA) requires that “[r]esource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.”¹⁵⁸ Here the Forest Service fails to demonstrate that the project is consistent with the 2003 Medicine Bow Forest Plan. Our previous comments asked the Forest Service to highlight applicable standards and guidelines from the 2003 Medicine Bow Forest Plan and explain how the proposed actions are consistent with those plan components.¹⁵⁹ In response, the agency listed each applicable forest plan component, reasserts that (future) application of the Framework would ensure forest plan compliance, and that deviations from plan guidelines are permissible thereby precluding the need for any forest plan amendments.¹⁶⁰ Reliance on future application of the Framework fails to demonstrate compliance with the 2003 Medicine Bow, in violation of NFMA.¹⁶¹ The Forest Service also improperly relies on future, yet-to-be determined application of project design features to ensure compliance with the Forest Plan.

As just one example, the Forest Service fails to demonstrate the project will comply with the Southern Rockies Lynx Amendment (SRLA) objectives, standards, and guidelines that have been incorporated into the Medicine Bow Forest Plan. Connectivity standard ALL S1 states “. . . vegetation management projects must maintain habitat connectivity in an LAU and/or linkage areas.” Without providing detail or explaining how, the Forest Service states that proposed actions will not preclude movement of lynx to other LAUs or within an LAU.¹⁶² It appears to rely on the threshold to maintain at least 70% suitable habitat for lynx. But this fails to explain how treatment areas within an LAU will maintain connectivity. As just one example, if several treatment actions are adjacent to one another such that the logging and truck hauling displaces lynx and prevents lynx movement through that portion of the LAU, it is possible that the proposed action will not comply with Connectivity standard ALL S1. The Forest Service’s explanation is insufficient to demonstrate compliance with the SRLA standard, in violation of NFMA.

¹⁵⁸ 16 U.S.C. § 1604(i).

¹⁵⁹ Scoping at 10, DEIS comments at 16.

¹⁶⁰ FEIS at 4-6,

¹⁶¹ *See, e.g.*, Draft ROD at 37 (explaining that “any deviations from forest plan guidelines will be addressed, documented, and disclosed during the design of individual treatments, in accordance with Appendix A, the adaptive implementation and monitoring framework”).

¹⁶² *See* Biological Assessment at 23.

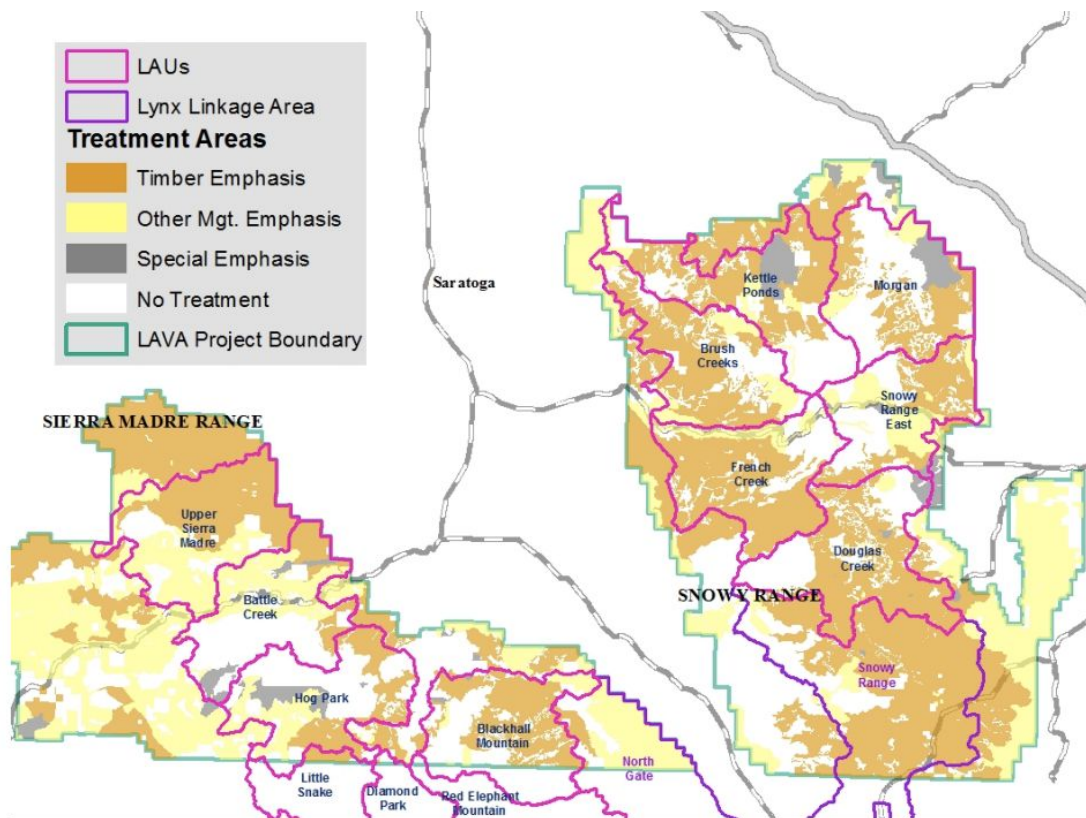


Figure 1. LAUs, Linkage Corridors and Treatment Opportunities in LAVA project.

The Forest Service notes that vegetation management will extensively rely on exemptions and exceptions to the SRLA standards. Reliance on the WUI exemption for VEG S1 is misplaced for this project. This exemption allows fuel treatment projects in WUI that do not meet VEG S1, S2, S5 or S6 so long as those projects “occur on no more than 3 percent (cumulatively) of lynx habitat on each administrative unit (a National Forest or administratively combined National Forest). In addition, fuel treatment projects may not result in more than three adjacent LAUs exceeding the standard.” The Forest Service proposes to use this exemption from VEG S1 for 13,214 acres to treat WUI in Blackhall Mountain, Little Snake, and Diamond Park LAUs, all of which already exceed the 30% unsuitable threshold. But it also proposes to use the exemption for treatments in Hog Park LAU, which will *cause* that LAU to exceed 30% unsuitable. This is not allowed under the exemption.

The Forest Service’s claimed use of the WUI exemption for VEG S2 is unclear: the agency states it will “use another 13,214 acres of this WUI exemption, 11,573 acres for S2.”¹⁶³ Does the agency anticipate using the WUI exemption for 13,214 acres under VEG S1, and 11,573 acres under VEG S2? Or does it intend to use the WUI exemption for 13,214 acres under VEG S1 and 13,214 acres

¹⁶³ Biological Assessment at 27.

under VEG S2? Elsewhere in the biological assessment, the agency states that 13,214 acres of vegetation management will require exemptions from the SRLA standards.¹⁶⁴ 3,978 acres of vegetation management will rely on precommercial thinning exceptions.¹⁶⁵ And 2,893 acres of vegetation management will rely on an exception for incidental damage to winter snowshoe hare habitat.¹⁶⁶ The lack of clarity fails to demonstrate compliance with the SRLA standard in violation of NFMA.

What's more, these numbers likely under-estimates of the actual acreage. The Forest Service assumes a worst-case scenario on state and private land to estimate acres affected, but for its own impact the Forest Service does not use a worst-case scenario. Instead, the Forest Service relies on its own assumptions about yet-to-be determined locations of vegetation management. Thus these estimated numbers are likely too low and an improper assumption that renders Forest Service's claimed compliance with the Forest Plan flawed.

The Forest Service is unable to demonstrate the proposed action will comply with the SRLA's VEG S5 standard governing precommercial thinning, because it does not specify the amount of precommercial thinning that would affect snowshoe-hare winter habitat.

Suggested Remedy: Revise the analysis in the FEIS to provide more site-specific details to permit demonstration of how the project will comply with the 2003 Medicine Bow Forest Plan. Re-assess, in light of site-specific information about the location and timing of various treatment projects, whether the project will comply with the SRLA standards, exemptions and exceptions. We suggest the Forest Service modify its proposed treatment opportunities to avoid over-reliance on exemptions and exceptions to the SRLA standards.

VI. Failure to ensure compliance with the Roadless Rule, and otherwise avoid unroaded areas

Our comments urged the Forest Service to avoid unroaded areas, including IRAs.¹⁶⁷ The Forest Service rejected our proposal to consider an alternative that excludes all unroaded areas.¹⁶⁸ Instead, the Forest Service DROD authorizes up to 123,000 acres of vegetative treatments across 25 IRAs during the 15-year treatment authorization period. It authorizes heavy equipment (feller-bunchers,

¹⁶⁴ Biological assessment at 5.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Scoping at 8-9; DEIS comments at 15.

¹⁶⁸ FEIS Appendix B at 25 (explaining that it “would not allow for a holistic, landscape approach to address the purpose and need for the project” and it would “undermine the collaborative relationships that have been strengthened throughout the planning process.”) As noted above, this is not a legitimate reason to not consider an alternative that excludes all unroaded areas. This proposal would meet at least a portion of the stated purposes and needs, including those that better fit within the HFRA definition, and therefore should have been considered.

skidders, and masticators) to be operated within the boundaries of IRAs.¹⁶⁹ Under the proposed action, treatments could affect 53 percent of the IRAs in the analysis area.¹⁷⁰

The Forest Service asserts it is necessary “to treat wildland-urban interface areas and to maintain or restore the characteristics of ecosystem composition and structure..., such as reducing the risk of uncharacteristic wildfire effects within the range of variability expected to occur under natural disturbance regimes of the current climatic period (36 CFR 294.13(b)(ii)).”¹⁷¹ The Forest Service states there is a need to treat IRAs “. . . to enhance forest and rangeland resiliency to future insect and disease infestations, provide for the protection of infrastructure and restoration of wildlife habitat, and mitigate hazardous fuel loading...”¹⁷² Yet the FEIS demonstrates the proposed action will likely *adversely affect* ecosystem composition and structure, more than addressing the results of any future wildfire.

The FEIS fails to provide the necessary site-specific analysis of specific treatments to each of the nine roadless characteristics because, as the FEIS notes, none have been proposed. The Forest Service’s analysis also fails to distinguish the amount of IRA acres within the wildland urban interface, and those proposed for treatment to maintain or restore ecosystem composition and structure (as distinguished from treatments proposed to address the other stated purposes and needs). Making this distinction is crucial, given several statements that demonstrate the current high ecological integrity of the IRAs.

For example, regarding the diversity of plant and animal communities, the FEIS explains where data is available, “[t]hese areas support a disproportionate number of rare plant species and uncommon vegetation communities in comparison to the adjacent roaded areas, and the abundance of rare plants and vegetation types increases the biodiversity of these inventoried roadless areas.”¹⁷³ The proposed action could adversely affect diversity in a number of ways, including destroying rare plants and vegetation, and spreading invasive species, including through increased unauthorized motorized use.¹⁷⁴ In addition, “all designated old growth stands could be removed from the Little Sandstone (570 acres), Bridger (301 acres), Pennock (2,685 acres), and Sheep Mountain (2,185 acres) Inventoried Roadless Areas.”¹⁷⁵ The proposed action could also adversely affect wildlife habitat, with 12,019 acres of security areas removed, up to 30% of lynx habitat would become unsuitable, along with as much as 35,000 of marten habitat.¹⁷⁶

¹⁶⁹ DROD at 5.

¹⁷⁰ FEIS at 308.

¹⁷¹ FEIS at 308.

¹⁷² *Id.* at 63.

¹⁷³ *Id.* at 312.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 313.

¹⁷⁶ *Id.* at 314-15.

The Forest Service's own analysis in the FEIS demonstrates that forest stands within the IRAs do not need treatment to, *inter alia*, maintain or restore the characteristics of ecosystem composition and structure, enhance forest and rangeland resiliency to future insect and disease infestations, provide for the protection of infrastructure and restoration of wildlife habitat, and or mitigate hazardous fuel loading. Under the no-action alternative, "[f]orested habitats and forested vegetation communities in this analysis are adapted to fire (Romme et al. 2007), and wildfire could have beneficial or adverse effects on diversity, depending on factors such as soil burn severity and post-fire invasive species invasion."¹⁷⁷ Further, the no-action alternative, "is not expected to affect sensitive plant species or habitats," and wildlife security areas would be maintained.¹⁷⁸

The Forest Service fails to recognize the disconnect between its asserted need to treat IRAs and the likely harmful effects on roadless characteristics from the proposed action in violation of the Roadless Rule. In other words, the supposed risk to ecosystem composition and structure from insects and disease or wildfire does not provide the agency a blank-check to adversely affect the diversity of plant and animal communities or habitat for species dependent on large, undisturbed areas of land.

Finally, the Forest Service fails to provide even an explanation for why it thinks the proposed actions will comply with the Roadless Rule, deferring that analysis to a future point well beyond the public notice and comment or objection phase.¹⁷⁹ Thus the Forest Service fails to demonstrate compliance with the Roadless Rule, and this omission of agency analysis violates NEPA.

Suggested Remedy: Exclude IRAs from the decision. In the very least, provide details about the proposed actions in the IRAs with sufficient information to demonstrate how the proposed action will comply with the Roadless Rule and its exceptions, and include the agency's analysis of how the actions fit those exceptions in a revised FEIS and DROD.

VII. Failure to comply with the CWA.

We commented that the Forest Service must demonstrate compliance with the Clean Water Act (CWA).¹⁸⁰ Our comments outlined concerns about harmful impacts to 303(d)-listed waters and the lack of sufficient information to demonstrate the project will not cause or contribute to a violation of Wyoming's state water quality standards. We highlighted particular concerns about the reasonably

¹⁷⁷ FEIS at 312.

¹⁷⁸ *Id.* at 314.

¹⁷⁹ DROD at 5 ("Prior to implementation, proposed treatments in inventoried roadless areas will require review by the Rocky Mountain Regional Office of the Forest Service for conformance to exceptions in the 2001 Roadless Area Conservation Rule.").

¹⁸⁰ DEIS comments at 17.

foreseeable harmful impacts that will result from logging and prescribed burns on up to 350,000 acres, log hauling and use of the forest system roads to conduct these activities for the next 15 to 20 years, and the construction and additional log hauling on up to 600 miles of temporary roads. EPA's Region 8 also submitted extensive comments identifying concerns about the reasonably foreseeable harmful impacts to water quality that will result from this project.

The CWA requires all federal agencies to comply with water quality standards, including a state's anti-degradation policy.¹⁸¹ The Forest Service improperly relies on project design features to ensure compliance with the CWA. As currently written, the Framework in Appendix A is insufficient to ensure compliance with the CWA. Specific omissions in the monitoring and adaptive framework are identified above. To the extent that the Forest Service claims design features will minimize or mitigate most adverse effects to water quality or riparian areas at the site-specific or localized scale and prevent adverse effects from creating permanent damage and at such a level as to be irreversible, that conclusion is not supported by the best available science, and is arbitrary and capricious. In our comments we submitted extensive best available science showing that roads - "temporary" forest roads as well as "system" forest roads - cause significant adverse impacts to National Forest Resources.¹⁸² The Forest Service improperly ignores this science in its analysis.¹⁸³

Of the subwatersheds analyzed, 54 are already classified as functioning at risk, while 16 are classified as functioning properly. Five stream segments in the project area are impaired or threatened due to heavy metals.¹⁸⁴ The Forest Service fails to disclose if any stream segments in the project area are listed on the 303(d) list of impaired waters for other contaminants, including turbidity. The analysis in the FEIS fails to assess whether the project could exacerbate the subwatersheds already classified as functioning at risk. And the Framework in Appendix A does not address 303(d) impaired waters. As noted elsewhere in this objection, the monitoring proposed in the Appendix A Framework is wholly inadequate to address water quality impacts.

Forest road networks are typically the largest source of sediment to streams on USFS lands. The proposal to construct up to 600 miles of temporary roads is particularly egregious. Even EPA noted that it "is one of the larger road construction proposals we have seen in a NEPA document." Given the large geographic scope and long time period of this project, there is a heightened need for the Forest Service to demonstrate its actions will comply with the CWA.

The Forest Service authorizes harvest up to 1,534 acres in wetlands, 534 temporary road-stream crossings, 0.8 miles of temporary road construction through wetlands, up to 12 miles of temporary

¹⁸¹ 33 U.S.C. § 1323(a).

¹⁸² See, e.g., DEIS comments at 9 and Attachment 3.

¹⁸³ See FEIS at 258 *et seq.*

¹⁸⁴ FEIS at 258.

road construction in the water influence zone, and up to 16,874 acres of harvest in the water influence zone. At this point, it appears the Forest Service has failed to coordinate with the U.S. Army Corps of Engineers to determine the applicability of CWA Section 404 permit requirements for these actions that will involve the discharge of dredge or fill into waters of the U.S.¹⁸⁵ This is a perfect example of where a future, site-specific EA that tiers to this analysis will be appropriate. Even when a CWA 404 permit is not required, the Forest Service should consider the mitigation rule to protect aquatic resources.

Suggested Remedy: Revise the analysis in the FEIS to disclose the very real, harmful long-term effects to water quality from the proposed action, and to incorporate the best available science. Expressly commit to completing future, site-specific EAs that tier to this programmatic EIS to account for undisclosed details such as the likely need for 404 permits to complete harvests in wetlands and the water influence zone, build stream crossings, and build temporary roads in wetlands. In the very least, revise the Framework in Appendix A to include more monitoring and triggers for treatments and road use in subwatersheds that are functioning at risk, in-water work, and road use adjacent to waterways that will ensure compliance with the CWA.

VIII. Failure to demonstrate compliance with the ESA.

Threatened Canada lynx, endangered Wyoming toad, threatened piping plover, endangered least tern, endangered whooping crane, endangered pallid sturgeon, endangered bonytail chub, endangered Colorado pikeminnow, endangered humpback chub, endangered razorback sucker, and threatened yellow-billed cuckoo all exist within the project area. Best available science demonstrates that these species will be negatively impacted by the proposed vegetation treatments, associated forest road use by trucks hauling logs, and temporary road construction and use for truck hauling. Our comments urged the Forest Service to ensure its actions comply with the ESA, and to affirmatively post all consultation documents, including documents prepared by the Fish and Wildlife Service.¹⁸⁶ In its DROD, the Forest Service explains it determined in its biological assessment that the project may affect and is likely to adversely affect the Canada lynx, would have no effect to Preble's meadow jumping mouse, and would have no effect to all other threatened and endangered species.¹⁸⁷

Under the Endangered Species Act (ESA) the Forest Service has an independent legal duty to “insure that any [agency action] is not likely to jeopardize the continued existence of any endangered

¹⁸⁵ See FEIS Appendix B at 82 (responding that “[p]ermitting needs and coordination with the U.S. Army Corps of Engineers *will be considered and addressed* during individual project implementation in accordance with Appendix A). However, the Framework in Appendix A makes no mention of future CWA permitting triggers or coordination with the U.S. Army Corps of Engineers.

¹⁸⁶ DEIS comments at 17-20.

¹⁸⁷ DROD at 39. See also Biological Assessment at 9-10.

species or threatened species or result in the destruction or adverse modification of habitat of such species.”¹⁸⁸ The agency’s claims that it has demonstrated compliance with the ESA are unfounded. Best available science demonstrates that the ESA-listed species in the project area will be harmed by the logging and truck hauling on forest roads over the next 15 years. The Forest Service’s conclusion that yet-to-be identified or determined logging activities will comply with the ESA based on various project design criteria, the application of which will be determined at the implementation stage, is unreasonable, without basis, and arbitrary and capricious. The Forest Service’s biological assessment does not comply with the ESA because, *inter alia*, it fails to consider relevant and key factors, mischaracterizes or ignores best available science¹⁸⁹, and relies on improper assumptions.

Preble’s meadow jumping mouse

The biological assessment is flawed in part because it fails to consider relevant and key factors, including the impacts of the project on suitable habitat for the Preble’s meadow jumping mouse. The biological assessment unreasonably concludes the project will have no effect to the mouse because no actions are proposed in the mouse’s suitable habitat and project design criteria prohibit treatment in the mouse’s habitat. There is suitable Preble’s meadow jumping mouse habitat in the project area.¹⁹⁰ As noted above, reliance on project design criteria and the Framework is insufficient to mitigate all impacts to the mouse or its habitat. The conclusion in the biological assessment is unreasonable.

Canada lynx

There are eight full lynx analysis units (LAUs), and portions of five additional LAUs within the project area for a total of 13 LAUs affected by the project. The Forest Service states there could be up to 47,420 acres of conversion of suitable habitat to unsuitable condition across 11 of the 13 LAUs.¹⁹¹ This includes the 3 percent WUI treatments in LAUs that would or already exceed the SRLA standards 1 or 2. It also includes the 2,893 acres of damage to winter showshoe hare habitat due to project implementation.

As noted above, the Forest Service fails to demonstrate the project will comply with the Southern Rockies Lynx Amendment (SRLA) objectives, standards, and guidelines. Vegetation management

¹⁸⁸ 16 U.S.C. § 1536(a)(2).

¹⁸⁹ The biological assessment claims the best available science was used for its analysis, citing to the 2008 FEIS for the SRLA, 2008 Biological Opinion for the SRLA, 2009 SRLA Implementation Guide, 1999 Lynx Science Report, and revised 2013 LCAS. This ignores a great wealth of more recent scientific information regarding the status of lynx and impacts of vegetation management projects to lynx and its critical habitat. *See, e.g.*, Guardians’ DEIS comments at 17-20.

¹⁹⁰ FEIS Appendix A at 25 (noting that 614 acres of suitable habitat occurs along the Laramie River at 7,800 feet elevation and lower).

¹⁹¹ FEIS at 207.

will rely on exemptions and exceptions to the SRLA standards. 13,214 acres of vegetation management will require exemptions from the SRLA standards.¹⁹² 3,978 acres of vegetation management will rely on precommercial thinning exceptions.¹⁹³ And 2,893 acres of vegetation management will rely on an exception for incidental damage to winter snowshoe hare habitat.¹⁹⁴ These number are not calculated based on a worst-case scenario, but rather on the Forest Service's own assumptions about yet-to-be determined locations of vegetation management. Tiering to the consultation conducted under the SRLA does not resolve the Forest Service's need to conduct site-specific analysis to consider and disclose the impacts of its proposed actions both for purposes of NEPA and the ESA. Because the Forest Service does not yet know precisely which of the acres of mapped lynx habitat will be treated, it should take the conservative approach of assuming that *all* lynx habitat in the project area will be treated. Without more detailed information, the Forest Service's estimated numbers for acreage of LAUs affected are likely too low and an improper assumption that renders the biological assessment flawed under the ESA.

In its response to comments, the Forest Service states that the biological assessment addresses the amount of habitat change likely to occur in each lynx analysis unit in the project area even though the exact location of a treatment is currently unknown. The Forest Service ignores that not only the location, but the timing and precise type of vegetation treatments at those locations are not currently known. It ignores the harmful impacts to Canada lynx, its habitat, and the linkage areas from truck hauling on up to 600 miles of temporary roads throughout the 15-year duration of the project. Ignoring these relevant and key factors renders the Forest Service's analysis under the ESA flawed. Without knowing the timing of activities in a project expected to last 15 years, it is impossible for the Forest Service to assess the direct, indirect, and cumulative impacts of this project on Canada lynx, its habitat, or habitat connectivity.

Formal Consultation Ongoing

For Canada lynx, the Forest Service explains it submitted a request for formal consultation to U.S. Fish and Wildlife Service (FWS) on March 11, 2019.¹⁹⁵ For a project that has been under development and subject to public scrutiny since at least as early as 2017, March of 2019 is extremely late to be submitting a request for consultation to FWS. The Forest Service must hold off on signing a final ROD for the project until the formal consultation is complete to ensure compliance with the ESA. Without the ability to review FWS's response (in a concurrence letter, biological opinion, or otherwise), we are unable to assess the agency's analysis of impacts to wildlife in light of FWS's expert opinion. Without this information, we were unable to meaningfully comment on the agency's

¹⁹² Biological assessment at 5.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ DROD at 39.

determination or analysis during the formal public notice or comment period, and we are unable to provide an informed assessment about the veracity of FWS's analysis here. For these reasons, we reserve the right to object or otherwise challenge the Forest Service's reliance on FWS's analysis.

Suggested Remedy: Refrain from any final decision related to the revised plan unless and until the flaws related to Section 7 consultation identified above have been addressed in a revised biological assessment and biological opinion.

Conclusion

WildEarth Guardians appreciates your consideration of the information and concerns addressed in this objection. Pursuant to 36 C.F.R. § 218.11, we respectfully request to meet with the reviewing officer to discuss these concerns and suggested resolutions. Should you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Rissien", is centered on a light beige rectangular background.

Adam Rissien
ReWilding Advocate
WildEarth Guardians
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