Data Submitted (UTC 11): 11/13/2016 11:00:00 AM
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Comments: Nov. 14, 2016

Keith Lannom, Forest Supervisor

Payette National Forest

500 N. Mission Street, Building 2

McCall, Idaho 83638

Submitted via email to: comments-intermtn-payette@fs.fed.us

Re: Huckleberry Landscape Restoration Project [ndash] Scoping

Dear Mr. Lannom:

WildEarth Guardians respectfully submits these comments to the U.S. Forest Service concerning the scope of the agency[rsquo]s analysis under the National Environmental Policy Act (NEPA) of the Huckleberry Landscape Restoration Project across 67,000 acres of the Council Ranger Districts on the Payette National Forest. The landscape restoration proposal includes timber harvest, thinning, prescribed burning, road treatment, road decommissioning, and recreation improvements. See 81 Fed. Reg. 67,289 (Sept. 30, 2016). Please add our name and organization to the contact list to receive any future public notices regarding this project.

We are very encouraged to see the Payette National Forest considering ecosystem restoration on a large scale to address many of the factors that continue to degrade ecosystems and to improve forest resiliency. In general, we support ecosystem restoration. This is especially true for the plan components that seek to restore and improve wildlife habitat for species of concern and Endangered Species Act (ESA)-listed species, based on the most recent science, to reduce overall road density by returning expensive and deteriorating forest roads to the wild, and to restore fish habitat connectivity across the project area. We strongly support the agency[rsquo]s approach to prepare an environmental impact statement (EIS). We do, however, have several concerns with the Forest

Service[rsquo]s analysis as outlined below.

I. The Forest Service should consider the Payette National Forest[rsquo]s travel analysis report, identify the minimum road system, and identify more unneeded roads to prioritize for decommissioning or other uses.

The Forest Service faces many challenges with its vastly oversized, under-maintained, and unaffordable road system. The impacts from roads to water, fish, wildlife, and ecosystems are tremendous and well documented in scientific literature. The Payette National Forest is no exception, with many miles of system roads, the required maintenance of which exceeds annual maintenance costs. To address its unsustainable and deteriorating road system, the Forest Service promulgated the Roads Rule (referred to as [ldquo]subpart A[rdquo]) in 2001. 66 Fed. Reg. 3206 (Jan. 12, 2001); 36 C.F.R. part 212, subpart A. The Roads Rule created two important obligations for the agency.

One obligation is to identify the minimum road system needed for safe and efficient travel and for the protection, management, and use of National Forest system lands. Id. [sect] 212.5(b)(1). Another obligation is to identify unneeded roads to prioritize for decommissioning or to be considered for other uses. 36 C.F.R. [sect] 212.5(b)(2).

a. We support the Forest Service[rsquo]s efforts to create a resilient future road network.

Guardians applauds the Payette National Forest[rsquo]s approach of using the travel analysis process to establish a minimum road system that will reduce overall road density and road-related impacts to water quality and fish habitat, improve wildlife and aquatic species habitat, and improve long-term soil productivity. See Council Ranger District, Payette National Forest, Description of the Proposed Action for the Huckleberry Landscape Restoration Project (Sept. 2016) (hereafter, [ldquo]Description[rdquo]), page 9. Identifying a resilient future road network is one of the most important endeavors the Forest Service can undertake to restore aquatic systems and wildlife habitat, facilitate adaptation to climate change, ensure reliable recreational access, and operate within budgetary constraints. And it is a win-win-win

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

We are very encouraged to see the Forest Service considering the Payette[rsquo]s road system in a large landscape restoration project like this. We strongly support a thoughtful, strategic approach to improving public access to the forest, reducing negative impacts from forest roads to water quality and aquatic habitats, and improving watersheds and forest resiliency by returning expensive, deteriorating, and seldom used forest roads to the wild.

b. Explain how the travel analysis report and list of unneeded roads informed identification of the minimum road system in the NEPA analysis.

Now that the Payette National Forest has completed its travel analysis report, the next step under subpart A is to consider the valid portions of the travel analysis report and begin to identify and implement the minimum road system.1 National guidance directs this to happen through analysis of site-specific projects of the appropriate geographic size under NEPA.2 Here, we support the Forest Service[rsquo]s reliance on the travel analysis process to develop the proposed road treatments. We recommend the agency also consider its forest-wide travel analysis report in its assessment of road treatments proposed under each of the alternatives. Given the Forest Service is considering changes to a large number of miles of roads, and given the large geographic scale of this project, this is the

1 See Memorandum from Leslie Weldon to Regional Foresters et al. on Travel Management, Implementation of 36 CFR,

Part 212, Subpart A (Mar. 29, 2012), page 2 ([ldquo]The next step in identification of the [minimum road system] is to use the

travel analysis report to develop proposed actions to identify the [minimum road system] . . . at the scale of a 6th code

subwatershed or larger.[rdquo]) (Attachment A).

2 Id. at 2 (directing forests to [ldquo]analyze the proposed action and alternatives in terms of whether, per 36 CFR 212.5(b)(1),

the resulting [road] system is needed[rdquo]); Memorandum from Leslie Weldon to Regional Foresters on Travel Analysis

Reports, Subpart A [ndash] Data Management (Sept. 19, 2016) (Attachment B).

3

perfect opportunity for the Forest Service to consider its travel analysis report and begin to identify

and implement the minimum road system. Attachment A at 2.

The Forest Service states that roads recommended to remain on the project landscape would be part

of the minimum road system. Description at 9. In assessing the road system under various

alternatives, the Forest Service should explain whether that system meets the factors that make up a

minimum road system, as defined by the Forest Service[rsquo]s own regulations. The rules define the

minimum road system as that needed to:

[bull] [ldquo]meet resource and other management objectives adopted in the relevant land and

resource management plan[rdquo];

[bull] [ldquo]meet applicable statutory and regulatory requirements[rdquo];

[bull] [ldquo]reflect long-term funding expectations[rdquo]; and

[bull] [ldquo]ensure that the identified system minimizes adverse environmental impacts associated

with road construction, reconstruction, decommissioning, and maintenance.[rdquo]

36 C.F.R. [sect]212.5(b)(1).

The Forest Service proposes maintenance or improvement of forest system roads [ldquo]where needed.[rdquo]

81 Fed. Reg. at 67290. It proposes to decommission approximately 57.7 miles of system roads. Id.

See also Description at 9. It also proposes to improve the Hoo Hoo Gulch 50144 road accessing the

#231 trail to accommodate the hauling of a stock trailer, which requires brushing the sides of the

road and major road maintenance. To reduce road densities, the Forest Service proposes targeting

road closures in areas where there is route redundancy. 81 Fed. Reg. at 67291.

The Forest Service should assess its proposed road actions in relation to the risks and benefits analysis in its forest-wide travel analysis report, as well as the factors for a minimum road system, with the goal of minimizing adverse environmental impacts. To the extent that the final decision in this project differs from what is recommended in the travel analysis report, the Forest Service should explain that inconsistency. See, e.g., Smiley v. Citibank, 517 U.S. 735 (1996) ([ldquo]Sudden and unexplained change . . . or change that does not take account of legitimate reliance on prior interpretation . . . may be [lsquo]arbitrary, capricious [or] an abuse of discretion[rdquo]) (internal citations omitted).

c. Consider closing or decommissioning more miles of roads.

Subpart A directs the agency to [ldquo]identify the roads on lands under Forest Service jurisdiction that are no longer needed,[rdquo] and therefore should be closed or decommissioned .3 We applaud and strongly support the Forest Service[rsquo]s proposal to decommission 57.7 miles of system roads. But based on current natural resource conditions, assessed risks from the existing road network, road densities across the landscape, the agency[rsquo]s limited resources, and long-term funding expectations, we believe additional decommissioning or closures are warranted.

3 36 C.F.R. [sect] 212.5(b)(2). The rule applies to all roads, not just National Forest System roads. See Center for Sierra Nevada v. U.S. Forest Service, 832 F. Supp. 2d 1138, 1155 (E.D. Cal. 2011) ([ldquo]The court agrees that during the Subpart A analysis the Forest Service will need to evaluate all roads, including any roads previously designated as open under subpart B, for decommissioning.[rdquo]).

The agency[rsquo]s description of existing conditions notes that Lick Creek is rated as impaired (Class 3), Bear Creek is functioning at risk, and Indian Creek is functioning at risk. Description, Appendix 1 at 19. Despite these conditions, the Forest Service proposes a net reduction of only 12% of the road

miles on its system:

Subwatershed Total Existing

Road Miles

(unauthorized,

system &

private roads)

Proposed

Decommissioning

Proposed Fish

Passage

Improvements

New Routes Total

Proposed

Road Miles

Indian Creek 154.4 miles4 12.6 miles 6 0.3 miles 142.1 miles

Bear Creek 114.4 15.5 1 - 98.9

Lick Creek 198 29.6 6 0.4 168.8

Project Area

Total

466.8 57.7 13 0.7 409.8

The Forest Service notes that road densities in the Lick Creek subwatershed would be reduced, but that it would likely remain in the [ldquo]impaired[rdquo] watershed category. Description at 10. Closing or decommissioning more road miles would advance the agency[rsquo]s statement of purpose and need to provide stream restoration and improve fish passage.

As forest road users and conservationists, we understand that a strategic reduction in road miles does not necessarily equate to a loss of access to the forest. Some roads are already functionally

closed due to lack of use, natural vegetation growth, etc. Other roads receive limited use and are costly to maintain. Resources can be better spent on roads providing significant access than to spread resources thinly to all roads. This is why we support the careful analysis and decision to decommission or close more road miles, to bring the project area closer to desired conditions in the 2003 Payette Forest Plan and 2011 Watershed Condition Framework.

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

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

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

The Forest Service states the purpose of this project is to, inter alia:

[bull] Move vegetation toward the desired conditions defined in the Forest Plan and the most recent science addressing restoration and management of wildlife habitat;

4 These numbers are taken from the Forest Service[rsquo]s proposal. See Description at 10.

[bull] Support the development of fire-adapted rural communities;

[bull] Move all subwatersheds within the project area toward the desired conditions for soil, water, riparian, and aquatic resources (SWRA) as described in the Forest Plan and the Watershed Condition Framework (WCF);

[bull] Manage recreation use with an emphasis on hardening (where needed) dispersed recreation

sites for resource improvement, and improving existing trail opportunities; and

[bull] Contribute to the economic vitality of the communities adjacent to the Payette National Forest.

81 Fed. Reg. at 67289. The agency explains a primary need for this project is to maintain and promote dry, lower elevation, large tree and old forest habitats, including reducing road densities and fragmentation that negatively affect elk and other species. 81 Fed. Reg. at 67291. It explains the proposed actions are needed to move the project towards recommended road density and elk security habitat guidelines. Id.

We applaud the Forest Service for expressly including the need to reduce road densities. Given the numerous harmful impacts from the oversized forest road system (identified below), a restoration project like this necessarily should address the road system.

In addition to achieving the desired conditions set forth in the 2003 Payette Forest Plan and the 2011 Watershed Condition Framework, the Forest Service should shape the project[rsquo]s purpose and need statement according to applicable statutory and regulatory requirements. When the agency takes an action [ldquo]pursuant to a specific statute, the statutory objectives of the project serve as a guide by which to determine the reasonableness of objectives outlined in an EIS.[rdquo] Westlands Water Dist. v. U.S. Dept. of Interior, 376 F.3d 853, 866 (9th Cir. 2004). Under the 2001 Roads Rule, the Forest Service has a substantive duty to address its over-sized road system. See 36 C.F.R. [sect] 212.5. This underlying substantive duty should inform the scope of the agency[rsquo]s NEPA analysis. After more than 15 years since finalizing the subpart A rules, the Forest Service can no longer delay in addressing its duty to create a fiscally and environmentally sustainable road system.

b. The Forest Service should accurately define the official road network as the baseline for the NEPA analysis.

The baseline and no-action alternative can, and sometimes do differ.5 Analysis of the road system in this project area should recognize and build on those distinctions. Current management direction

does not compel the Forest Service to recognize decommissioned roads and unauthorized roads as part of the official road system. But disclosure of the actual number and location of decommissioned routes and unauthorized routes on the landscape, as well as the impacts of those routes, is a necessary component of the no-action alternative that should be disclosed to inform meaningful public comment. An assessment of the no-action alternative should therefore be separate and distinct from the identification of the baseline (the official open road system).

5 See, e.g., FSH 1909.15, 14.2; Council on Environmental Quality[rsquo]s (CEQ) Forty Most Asked Questions (1981), #3

(explaining [ldquo][t]here are two distinct interpretations of [lsquo]no action[rsquo][rdquo]; one is [ldquo][lsquo]no change[rsquo] from current management

direction or level of management intensity,[rdquo] and the other is if [ldquo]the proposed activity would not take place[rdquo]).

6

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

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

Site-specific Analysis

We are pleased that the Forest Service intends to complete an EIS for this project. A project of this size and scope clearly contemplates significant effects that are best analyzed in an EIS. However, the Forest Service must conduct site-specific analysis as a part of the DEIS. This includes explicitly delineating where logging will occur, what type of logging will occur where, where roads activities will be conducted (including maintenance, construction of temporary or new roads, reconstruction of closed roads, etc.), and the resulting impacts of such activity on important forest resources.

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. Specifically, NEPA requires the Forest Service to disclose and analyze the direct, indirect, and cumulative impacts and consequences of its activities. 40 C.F.R. [sect][sect] 1502.16(a), 1502.16(b), 1508.25(c), 1508.27(b)(7).

Here, site-specific analysis is crucial. For example, the Forest Service states that all roads closed to the public would get [ldquo]implementation of effective closure to motorized use.[rdquo] 81 Fed. Reg. at 67290. For unauthorized routes not needed for future management, the Forest Service says it will evaluate them for [ldquo]some level[rdquo] of restoration treatments. 81 Fed. Reg. at 67290.

Impacts from Forest Roads

The best available science shows that forest roads have significant adverse impacts on forest resources. A 2014 literature review from The Wilderness Society surveys the extensive and best available scientific literature[mdash]including the Forest Service[rsquo]s General Technical Report synthesizing the scientific information on forest roads (Gucinski 2001)[mdash]on a wide range of road-related impacts to ecosystem processes and integrity on National Forest lands. See The Wilderness Society, Transportation Infrastructure and Access on National Forests and Grasslands: A Literature Review (May 2014) (Attachment C). Erosion, compaction, and other alterations in forest geomorphology and hydrology associated with roads seriously impair water quality and aquatic species viability. Roads disturb and fragment wildlife habitat, altering species distribution, interfering with critical life functions such as

feeding, breeding, and nesting, and resulting in loss of biodiversity. Roads facilitate increased human

7

intrusion into sensitive areas, resulting in poaching of rare plants and animals, human-ignited wildfires, introduction of exotic species, and damage to archaeological resources.

Roads often contribute to degraded baseline conditions in watersheds containing bull trout. Roads are a primary source of sediment impacts to developed watersheds. Accumulation of fine sediment is detrimental to bull trout habitat. Lee et al. (1997) found a pattern of decreasing strong populations of bull trout with increasing road density. Sediment delivered to streams is greatest in riparian areas where roads cross the streams. Fords and approaches to the crossings deliver sediment directly to streams. Culverts can produce a large amount of sediment if the culvert plugs and fails. Travel management decisions affecting roads and trails are most likely to effect substrate embeddedness6 and stream bank condition.7 Plus roads and trails paralleling streams can interfere with large wood reaching the stream and cause increased erosion and decreased stream bank condition.

The agency proposes to improve fish passage and hydrologic activity on 13 road-crossings. 81 Fed. Reg. at 67290. This would include all known man-made barriers on fish bearing streams in the Indian Creek subwatershed, the only known man-made barrier on a fish-bearing stream in the Bear Creek subwatershed that is part of the project area, and 6 crossings on tributaries of Lick Creek. Id. As noted above, site-specific information as to the actual number of crossings over fish-bearing streams will be essential to fully understanding the baseline conditions and likely impacts of the proposed action.

Temporary Roads

The Forest Service proposes to use planned an incidental temporary roads as part of the project. Description at 7. During the project, however, and for an additional 10 years after completion of the project, the temporary roads will continue to have very real impacts on the landscape. For example, temporary roads will continue to allow for harassment of wildlife, littering, fires, invasive plant

distribution, and negative impacts to aquatic and riparian habitat, as well as the fish that depend on that habitat.

[bull] What assurances does the Forest Service provide that these roads will be used for 1 year or less, and that all temporary roads are in fact decommissioned once logging activities are complete?

[bull] How will this information be tracked, and will it be available to the public?

The agency must consider the effects of its proposal to construct temporary roads when combined with the effects of its minimum road system. It must also consider how construction of the proposed temporary roads will detract from the purpose of subpart A of the agency[rsquo]s own rules, to [ldquo]identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of the National Forest System lands.[rdquo] 36 C.F.R. [sect] 212.5(b). This is especially true if the Forest Service fails to provide assurances that the proposed temporary roads will in fact be closed within 10 years of completion of the relevant project.

6 Which can be measured as change in total acreage open to motorized use, based on the assumption that embeddedness is related to the total area susceptible to erosion.

7 Which can be measured as an inverse of stream crossings.

8

Unauthorized Routes

We strongly support decommissioning or closing all unauthorized routes. Description at 9-10. The agency states it proposes to restore 60 to 80 miles of unauthorized routes in upper Bear Creek and Upper Indian Creeks. Description at 10. The continuing presence of user-created routes on the landscape, certainly known to those who created them, continues to allow harassment of wildlife, littering, fires and invasive plant distribution all while contributing to riparian harm downstream. The agency should consider the cumulative impacts suffered by the landscape.

Climate Change and Forest Roads

The Forest Service should consider the impacts of climate change and the cumulative impacts resulting from the project and climate change. Pursuant to final guidance issued by the Council on Environmental Quality (CEQ) on August 1, 2016,8 all federal projects should consider:

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

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

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

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

8 See Council on Environmental Quality, Final Guidance for Federal Departments and Agencies on Consideration of

Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews (2016)

(Attachment E) (noting that [ldquo][a]nalyzing a proposed action[rsquo]s GHG emissions and the effects of climate change relevant

to a proposed action[mdash]particularly how climate change may change an action[rsquo]s environmental effects[mdash]can provide useful

information to decision makers and the public.[rdquo]).

9 See, e.g., FSM 2020.2(2) (directing forests to [ldquo][r]estore and maintain resilient ecosystems that will have greater capacity

to withstand stressors and recover from disturbances, especially those under changing and uncertain environmental

conditions and extreme weather events[rdquo]); FSM 2020.3(4) ([ldquo][E]cological restoration should be integrated into resource

management programs and projects . . . Primary elements of an integrated approach are identification and elimination or

reduction of stressors that degrade or impair ecological integrity.[rdquo]).

Socio-economic Analysis & Social Cost of Carbon

Additionally, the Forest Service must analyze the ecosystem services provided by the natural

resources of the project area, how those ecosystem services have changed in recent years as a result

various factors including changing climate patterns and fire suppression, and how implementation of

the project would impact those ecosystem services. To properly assess this project with an integrated

and holistic approach, we recommend the Forest Service use a Total Economic Valuation

framework (Peterson and Sorg 1987) to prepare any benefit-cost analysis for Project.10 The Forest

Service should consider memorandum M-16-01 (October 7, 2015), directing federal agencies to

incorporate ecosystem services into their decision-making, including through [ldquo]monetization[rdquo] and

[ldquo]ecosystem-services assessment methods[rdquo] where [ldquo]an agency[rsquo]s analysis require consideration of

costs.[rdquo] M-16-01 at 2.

The Forest Service[rsquo]s socio-economic analysis should analyze the social cost of carbon to assess the

project area[rsquo]s existing carbon sequestration value and the predicted or foreseeable net changes to its

carbon sequestration capacity as a result of the cumulative impact of climate change and the specific

activities that would flow from the proposed action. Executive Order 12,866 directs federal agencies

to assess and quantify carbon costs and benefits of regulatory action, including the effects on factors such as the economy, environment, and public health and safety, among others. See Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Sept. 30, 1993).11The Ninth Circuit has also ruled that agencies must include the climate benefits of a significant regulatory action in federal cost-benefit analyses:

[T]he fact that climate change is largely a global phenomenon that includes actions that are outside of [the agency[rsquo]s] control ... does not release the agency from the duty of assessing the effects of its actions on global warming within the context of other actions that also affect global warming.

Ctr. for Biological Diversity v. Natl. Highway Traffic Safety Admin., 538 F.3d 1172, 1217 (9th Cir. 2008) (quotations and citations omitted); see also Border Power Plant Working Grp. v. U.S. Dep[rsquo]t of Energy, 260 F. Supp. 2d 997, 1028-29 (S.D. Cal. 2003) (finding agency failure to disclose project[rsquo]s indirect carbon dioxide emissions violates NEPA).

d. The Forest Service should consider a reasonable range of alternatives.

The alternatives analysis is the [ldquo]heart[rdquo] of NEPA, and therefore [ldquo]an agency must on its own initiative study all alternatives that appear reasonable and appropriate for study at the time, and must also look into other significant alternatives that are called to its attention by other agencies, or by the public during the comment period afforded for that purpose.[rdquo] Dubois v. Dep[rsquo]t of Agriculture, 102 F.3d 1273, 1291 (1st Cir. 1996), quoting Seacoast Anti-Pollution League, v. Nuclear Reg. Comm[rsquo]n, 598 F.2d 1221,

1231 (1st Cir. 1979) (emphasis from Dubois court) (internal citations omitted). Here, the agency should consider an alternative that would close or decommission more miles of roads. It should also consider whether the road system of each alternative analyzed in detail fits the regulatory definition of a minimum road system.

10 See June 2015 comments submitted by the Conservation Economics Institute to the U.S. Bureau of Land Management

regarding proposed oil and gas rules. See http://www.conservationecon.org/#!og/kl7ht

11 See also Executive Order 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011) (reaffirming the framework of EO 12866 and

directing federal agencies to conduct regulatory actions based on the best available science).

10

III. Adequately assess proposed forest plan amendments.

Site-specific amendments are meant to address unique characteristics of a particular forest area. For example, in League of Wilderness Defenders, et. al. v. Connaughton, et al., plaintiffs challenged that the Snow Basin project area did not have distinguishing characteristics, and therefore a site-specific amendment was not justified. No. 3:12-cv-02271-HZ (D. Or. Dec. 9 2014). The court agreed with the plaintiffs, holding the agency[rsquo]s decision to make site-specific amendments arbitrary and capricious because the Forest Service failed to explain what conditions within the project area supported selection of a site-specific amendment over a forest-wide amendment. Id. at 54-55. The court explained that a site-specific amendment [ldquo]must be based on unusual or unique aspects of the site itself when compared to the forest generally.[rdquo] Id.

The Forest Service notes that this project may require site-specific forest plan amendments. Action at 9-10. In its analysis, the agency must adequately assess and explain the unusual or unique aspects of the site itself, when compared to the forest generally, to justify the use of site-specific amendments to the Payette Forest Plan. The agency should also consider the cumulative effects of all of the proposed site-specific forest plan amendments.

IV. New designations for motorized use must satisfy the minimization criteria.

The Forest Service proposes various changes to its motorized trail system. See Description at 11. It proposes two motorized trail bridges on FS Trail 228 in the Bear Creek subwatershed where the trail crosses Mickey Creek and Wesley Creek, both of which are designated bull trout critical habitat. 81 Fed. Reg. at 67290. The agency proposes to bring 33 miles of motorized trails up to defined trail class standard, including new signage and trail reestablishment, and potential relocation. Id. And it proposes to relocate portions of the #231 trail above the current roadbed.

Because these changes are designating new motorized use routes, the Forest Service must demonstrate compliance with the minimization criteria in the record as required by the Executive Orders and Travel Management Rule. Comments at 16-19. 36 C.F.R. [sect] 212.55(b) (requiring the Forest Service to [ldquo]consider effects on [the listed criteria] with the objective of minimizing . . .[rdquo]). General, project-wide statements about OHV trail designations do not fulfill the agency[rsquo]s substantive duty to comply with the minimization criteria. WildEarth Guardians v. U.S. Forest Service, 790 F.3d 920, 931 (9th Cir. 2016) ([ldquo]What is required is that the Forest Service document how it evaluated and applied the data on an area-by-area basis with the objective of minimizing impacts as specified in the [Travel Management Rule].[rdquo]) (emphasis added). Rather, the agency should show how it locates the new OHV routes with the objective of minimizing damage to soil, watershed, vegetation, and other natural resources; harassment of wildlife and significant disruption of wildlife habitat; conflicts between different types of uses; and conflicts among different classes of motorized uses.12

12 The Wilderness Society, Achieving Compliance with the Executive Order [ldquo]Minimization Criteria[rdquo] for Off-Road Vehicle Use on Federal Public Lands: Background, Case Studies, and Recommendations (May 2016) (Attachment D) (recommending that when designating ORV trails and areas, an agency actually minimize impacts[mdash]not just identify or consider them[mdash]and show in the record how it did so, and apply a transparent and common-sense methodology for applying the minimization criteria).

V. Ensure compliance with the Clean Water Act and Endangered Species Act.

As part of the analysis in its draft EIS, the Forest Service should ensure compliance with the Clean Water Act (CWA) and the Endangered Species Act (ESA). The CWA requires all federal agencies to comply with water quality standards, including a state[rsquo]s anti-degradation policy. 33 U.S.C. [sect] 1323(a). The Forest Service must ensure that the project will not violate Idaho[rsquo]s water quality standards.

In its proposal, the Forest Service does not specifically identify listed or proposed ESA species or

critical habitat that exists in the project area. It does mention northern Idaho ground squirrel, bull trout, and bull trout critical habitat. As part of the site-specific information, the Forest Service should disclose these details in the DEIS.

Section 7 of the ESA imposes a substantive obligation on federal agencies to [ldquo]insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of[rdquo] habitat that has been designated as critical for the species. 16 U.S.C. [sect] 1536(a)(2); Nat[rsquo]l Wildlife Fed[rsquo]n v. Nat[rsquo]l Marine Fisheries Serv., 524 F.3d 917, 924 (9th Cir. 2008). The Forest Service must consult with the U.S. Fish and Wildlife Service (FWS) under section 7 of the ESA as to the impacts of the project on species listed under the ESA and designated critical habitat. The Forest Service must ensure its proposal to authorize logging that will require use of forest roads will not harm listed wildlife or degrade its critical habitat.

Where a species is proposed for listing, or critical habitat is proposed, the process is different. Section 7(a)(4) of the ESA requires a Federal action agency to conference with the Services if a proposed action is likely to jeopardize a proposed species, or destroy or adversely modify proposed critical habitat. 16 U.S.C. [sect] 1536(a)(4); 50 C.F.R. [sect] 402.10(a). See also 50 C.F.R. [sect] 402.02 (defining [ldquo][c]onference[rdquo] as [ldquo]a process which involves informal discussions between a Federal agency and the Service under section 7(a)(4) of the [ESA] regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.[rdquo]). The agencies must record any results of a conference. Id. at [sect] 401.10(e) ([ldquo]The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency[rdquo]).

We encourage the Forest Service to be transparent about any consultation process and affirmatively post all consultation documents, including any Forest Service Biological Evaluations or

Assessments, any letters seeking concurrence, and any responses or Biological Opinions from FWS. Without these records, we are unable to assess the agency[rsquo]s analysis of impacts to wildlife in light of FWS[rsquo]s expert opinion. Providing this information will allow the public to view these critical documents, and other documents in the project record, without the need to submit a formal Freedom of Information Act request. Without this information being publicly available during the notice and comment period, we are unable to meaningfully comment on the agencies[rsquo] determinations or analysis.

Conclusion

We look forward to reviewing the Forest Service[rsquo]s analysis in a draft EIS. The Payette[rsquo]s current road system is over-sized and unaffordable. Identifying a sustainable road network is one of the most important endeavors the Forest Service can undertake to restore aquatic systems and wildlife habitat,

facilitate adaptation to climate change, enhance recreation, and lower operating expenses. The proposed road-related activities in this project will significantly move the Payette towards its goal of improving forest resiliency and sustainability.

Sincerely,

Marla Fox

Rewilding Attorney

Attachments

Attachment A: Memorandum from Leslie Weldon to Regional Foresters et al. on Travel Management, Implementation of 36 CFR, Part 212, Subpart A (Mar. 29, 2012).

Attachment B: Memorandum from Leslie Weldon to Regional Foresters on Travel Analysis Reports, Subpart A [ndash] Data Management (Sept. 19, 2016).

Attachment C: The Wilderness Society, Transportation Infrastructure and Access on National Forests and Grasslands: A Literature Review (May 2014).

Attachment D: The Wilderness Society, Achieving Compliance with the Executive Order [ldquo]Minimization

Criteria[rdquo] for Off-Road Vehicle Use on Federal Public Lands: Background, Case Studies, and Recommendations

(May 2016).

Attachment E: Council on Environmental Quality, Final Guidance for Federal Departments and

Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in

National Environmental Policy Act Reviews (2016).