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May 11, 2009

VIA EMAIL AND FIRST CLASS MAIL

USDA Forest Service
Travel Management Team
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Comments-pacificnorthwest-rogueriver-siskiyou@fs.fed.us

Re: Motorized Vehicle Use on the Rogue River-Siskiyou National Forest

Dear Travel Management Team:

Thank you for the opportunity to comment on the Rogue River-Siskiyou Motorized Vehicle Use Draft Environmental Impact Statement (DEIS). Pacific Rivers Council (PRC) submitted comments at the scoping stage, and we have reviewed the DEIS and its responses to the issues we raised. PRC has a long history and considerable expertise on the science, legal, and policy fronts regarding the environmental impacts of forest roads. We are particularly concerned about the adverse impacts of forest roads upon watersheds, water quality, and aquatic habitat for native fish and other aquatic species.

Forest Service Commitment to Implementing the Travel Management Rule

As the DEIS explains, Chief Bosworth committed to implement the Travel Management Rule by the end of December 2009. Given this timeline, the DEIS explains that a tightly focused process was necessary and that accomplishment of all the requirements of the 2001 Roads Rule, set forth at 36 C.F.R § 212.5(b), would not be achieved through this process.

PRC recognizes the limitations regarding the amount of work that the Rogue River-Siskiyou Forest (the Forest) can do in a set time to both address the effects of off-highway vehicles and remedy the overbuilt, under-maintained road network across the Forest. Assessments of the road system must be thorough, systematic, and fully informed by the best available science in order to be effective.

The 2005 Travel Management Rule was designed to address the problem of increased off-road motor vehicle use on the National Forest System, which has caused adverse environmental impacts and conflict between user groups. 69 Fed. Reg. 42381, 42382-83 (July 15, 2004). The Rule was part of an effort by Chief Bosworth to restore and rehabilitate damaged areas. DEIS at S-2. As the Forest seeks to implement this rule, the Forest can accomplish this goal without proposing changes to the road system that limit future opportunities to reduce the deteriorating, under-funded road system and/or that increase use of the existing road system, and thereby create additional conflict, process gridlock, and analytical burden.

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Forest Roads and Adverse Impacts upon Aquatic Ecosystems

According to the DEIS, the Forest now manages a total of 5,914 miles of roads across the Forest. Scientific literature has established that roads have numerous widespread, pervasive and, if left untreated, long-lasting biological and physical impacts on aquatic ecosystems that continue long after completion of construction. (Angermeier et al. 2004). Roads increase surface water flow, alter runoff patterns, alter streamflow patterns and hydrology, and increase sedimentation and turbidity. Roads are the main source of sediment to water bodies from forestry operations in the United States. (US EPA 2002). Road construction can lead to slope failures, mass wasting and gully erosion. Road crossings can act as barriers to movement for fish and other aquatic organisms, disrupting migration and reducing population viability. (Schlosser and Angermeier 1995). Chemical pollutants that enter streams via runoff, such as salt and lead from road use and management, compound these impacts. Most of these adverse effects are persistent and will not recover or reverse without human intervention. The techniques for road remediation are well established, agreed upon and readily available. (Weaver et al. 2006).

As the DEIS itself explains, many of the roads on the Forest:

are located within proximity to occupied fish habitat. The overriding adverse effect of this motorized travel system on the fisheries resource is via sediment input to stream systems, and to a lesser degree fragmentation of aquatic habitats due to impassable road/stream crossings. These conditions have contributed to decreased distribution and abundance of native salmonid stocks, particularly anadromous salmon and steelhead.

DEIS at III-103.

Recognition of Goals to Reduce Environmental Degradation

PRC appreciates that the Forest is proposing to prohibit cross-country travel in two of the three action alternatives. This is a significant positive step for aquatic ecosystems given that cross-country travel is not currently prohibited. This is an appropriate decision for the Forest to make without a comprehensive analysis of the existing road system because it only serves to improve the environmental condition and does not change existing use of the current Forest road system. PRC encourages the Forest to also adopt the road and motorized trail closures proposed in Alternative 3,¹ in order to limit threats to aquatic ecosystems.

Need for More Clarity Regarding Proposals for Unauthorized Routes

The DEIS does not clearly describe exactly what is currently authorized in terms of cross-country travel and user-created routes. The DEIS explains that currently 274,670 acres of the Forest are open to cross-country travel. DEIS at S-3. Under the no-action alternative, cross country travel and “route proliferations would still occur in isolated areas on the Forest since it is not currently prohibited.” Id. “Unauthorized routes would continue to have no status or authorization as NFS roads or trails.” Id. “User created routes, trails and areas . . . are unauthorized. . . the public, as a result of cross-country travel, created them.” DEIS at II-13. But under Alternative 2, which would designate the current condition, and under which cross-country travel would be allowed, the “use of unauthorized routes would not be allowed.” DEIS at II-18. This explanation of what

¹ *Correction:* We sent a clarification to the Forest that PRC encourages the Forest to also adopt the road and motorized trail closures proposed in Alternatives 3 and 4.

is or isn't currently allowed in terms of use of unauthorized routes is confusing. If cross-country travel is currently allowed, and unauthorized routes result from that use, exactly which unauthorized routes will be closed to motorized use under Alternative 2? Is it those that are outside of areas open to cross-country travel?

Please also clarify exactly which unauthorized routes are proposed for use as NFS trails in Alternative 3. The DEIS indicates that Alternative 3 will allow currently existing unauthorized routes to be used as NFS trails. DEIS at III-2. However, the detailed description of Alternative 3 at pages II-22 to II-39 provides no indication that any currently unauthorized routes will be used as NFS trails. The proposals described include prohibiting motorized use or motorized mixed use on certain roads and trails, designating certain roads for motorized mixed use, constructing new motorized trails, converting maintenance level 1 roads to trails, amending the Siskiyou LRMP to make use of the Boundary Trail consistent with the plan, and developing an additional motorized play area. Please clearly explain which of the uses described are currently unauthorized. If the Boundary Trail is unauthorized, please explain whether its use is currently prohibited, or whether it is part of currently allowed cross-country travel.

Legal Obligations

Although the Forest clearly does not intend to use the current travel management process to effectively develop a complete and thorough assessment of the minimum road system for the Forest, the DEIS does not accurately describe its legal duties for this process. First, although accomplishment of all purposes of relevant environmental laws may not be required through this process alone, the Forest does not have the option to selectively determine with which laws it will "comply." (DEIS Abstract) Specifically, it is not within the Forest's discretion to state that it does not intend to "comply" with 36 C.F.R. § 212 Subpart A. The Forest must comply with the 2001 Roads Rule, even if this is not the vehicle for accomplishing all of the specific requirements set forth in the Rule. The Forest must clarify in the FEIS its intent to comply with all relevant laws, even if it does not intend to use this particular process to produce specific results required by those laws. Hopefully, this is only a problem with word choice, i.e., the word "comply."

More importantly, regardless of which portions of the 2001 Roads Rule and the 2005 Travel Management Rule the Forest seeks to accomplish through this travel management planning process, the Forest is obligated to comply with the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Endangered Species Act (ESA). Legal obligations to evaluate and address the road system managed by the Forest do not arise solely from travel management regulations, as set forth in 36 C.F.R. Part 212 and the directives that implement this part. The DEIS, in its attempt to narrowly tailor the process to particular regulatory provisions, overlooks its obligation to fully comply with underlying environmental protection statutes. If the Forest seeks to minimize the analyses and processes that are needed to comply with NEPA and ESA, then it should limit the alternatives it is considering to ones that only reduce environmental impacts and do not change the current National Forest transportation system in a manner that would create adverse environmental effects.

NEPA Obligations

The DEIS states that it is not required to reconsider decisions made prior to the Travel Management Rule and that it will not analyze all existing system roads as part of this process. The DEIS, however, fails to explain exactly what NEPA requires the Forest to consider and analyze in the context of the specific alternatives that it is considering.

The Forest must evaluate the cumulative impacts of its action in the DEIS. 40 C.F.R. § 1508.25(a)(2). Cumulative impacts are the impacts “on the environment which result[] from the incremental impact of the action *when added to other past, present, and reasonably foreseeable future actions.*” Id § 1508.7 (emphasis added). “Cumulative impacts can result from *individually minor* but collectively significant actions taking place over a period of time. Id. (emphasis added)

The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for agency action. Agencies then look for *present effects of past actions* that are, in the judgment of the agency, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for agency action and its alternatives.

36 C.F.R. § 220.4(f) (emphasis added).

The Forest’s proposed action includes conversion to motorized trails of 23 miles of NFS roads that are currently closed to vehicular traffic because they are maintenance level 1 roads (while roads are “being maintained at level 1, they are closed to vehicular traffic” DEIS Glossary at 3). A proposal to add 23 miles of motorized routes to a Forest with an already overbuilt road system necessitates that the Forest consider how the proposal will impact the Forest’s resources in light of the existing and future use of that road system. The Forest is not proposing to add those 23 miles in a vacuum, but on top of an already existing, under-maintained road system. NEPA requires that the Forest not only considers the direct and indirect effects of those 23 miles of motorized routes, but also considers the incremental impact of adding those routes to the past, present, and reasonably foreseeable impacts of the current road system, including the impacts of use, lack of maintenance, and failure to remedy problems of hydrological connections of forest roads to the stream system across the road system. It is more than reasonably foreseeable, but almost a near certainty that the Forest will not have enough financial and technical resources and personnel to thoroughly address the adverse impacts of the roads system across the Forest in the near future. As a matter of law, the Forest cannot determine the cumulative effects of the new motorized routes without a credible analysis of the past, present, and reasonably foreseeable impacts of the entire existing road system across the Forest.

The DEIS, however, never attempts to thoroughly analyze the existing road system. As explained above, the Forest attempts to relieve itself of this duty by relying on the 2005 Travel Management Rule and saving full implementation of the 2001 Roads Rule for later. But we remind the Forest that the duty to analyze the entire road system automatically stems from NEPA as a result of the alternatives that the Forest has chosen to propose.

While the DEIS explicitly admits that it does not analyze the existing road system, in other parts of the analysis, it ignores important direct, indirect, and cumulative effects of the analyzed alternative by using unfounded assumptions and flawed logic and by ignoring relevant scientific information.

Unfounded Assumptions and Flawed Logic

Assumption: “Maintaining the current level of use does not constitute a measurable change to the current condition and therefore does not constitute a new effect. This also applies to situations where roads may be technically closed due to their Maintenance Level 1 status, but are still physically open to motorized use and receive such use.” DEIS at III-2.

Response: This assumption is logically flawed. Even if the current level of use is maintained, the current condition will not remain static because ongoing use will cause ongoing and new adverse impacts. The current condition can only be caused by actions that have occurred up until now. Even then, those past actions will likely have legacy effects that will show up in the future. Furthermore, all prior analyses of the Maintenance Level 1 roads likely were done based upon the designated closed status of those roads. If the roads are nevertheless receiving motorized use, then those effects must be documented somewhere. If prior NEPA analyses did not consider those effects, then this analysis must now consider those effects. Those effects must either be considered now as direct and indirect effects, or they must be thoroughly considered as part of the cumulative effects analysis, which considers past, present, and future actions. Attempts to mask effects by considering them part of the current condition, without actually thoroughly evaluating them in a cumulative effects analysis, contravenes the purposes of NEPA.

Assumption: “NFS roads and trails are assumed to be in an acceptable condition, unless information is documented to the contrary. This is based on the fact that most NFS roads and trails were constructed to a high standard based on an engineered design.”

Response: This assumption is inconsistent with the 2004 Rogue River-Siskiyou National Forest Roads Analysis. For example, the maps of page VI-3 to VI-6 of the Roads Analysis show areas across the forest that face a “high concern” for subwatershed cumulative environmental risk, areas with high environmental concerns, high concern roads in riparian areas, high concern roads on erosion potential soils, and roads of high concern to terrestrial wildlife. If, in fact, the roads are in acceptable condition, it would have made no sense for the Forest to have conducted an analysis that developed various risk categories to assess the environmental threats posed by the road system on the Forest. The above assumption is an unfounded simplification that does not represent the information in the Roads Analysis.

These assumptions are also obviously false for any user-created roads and trails proposed to be included in the MVUM, and highly likely to be false even for many system roads.). Furthermore, the Pacific Watershed Associates Report: Erosion Assessment and Erosion Prevention Project for Forest Roads in the Biscuit Fire Area, Southern Oregon, April 2005 (attached to mailed letter, and available at <http://www.pacificrivers.org/science-research/resources-publications/watershed-restoration-plan-for-the-biscuit-burn-area>) demonstrates that this assumption is unfounded. For example, in this assessment of post-fire erosion potential and prioritized treatment plan commissioned by PRC for a stratified sample of

only 135 miles of roads in six of the Biscuit Fire area's planning watersheds, Pacific Watershed Associates identified 173 high-priority sites for treatment to address high-volume failure risk and/or chronic sediment delivery

Assumption: "NFS roads and trails designated for public wheeled motor vehicle use are and will continue to be maintained (brushing, ditch cleaning, etc.) as needed. Effects analysis assumes this ongoing maintenance." DEIS at III-3

Response: This assumption is rebutted by the fact that the Forest has been unable to maintain roads as needed due to lack of funding. Road maintenance obligations for maintaining the Forest's roads "exceed[] the funding capability by approximately 70 percent." Rogue River-Siskiyou Forest Roads Analysis at I-4. The Forest has millions of dollars in deferred road maintenance costs. Id. at Appx. C-6. Statements to the effect that "funding associated with administration of designated uses (or lack thereof) will not be a decision criterion for these use designations" (DEIS at I-19) do not allow the Forest to make unfounded assumptions about the maintenance that will occur.

Furthermore, the Forest proposes to maintain Level 1 roads that are converted to trails to maintain a certain width and to maintain drainage structures. This maintenance is not sufficient to address the adverse effects of maintaining the route as part of the Forest's Road and Trail System because it does not ensure that the trails will be hydrologically disconnected from the stream network. The Forest does not commit to ensuring that existing drainage features are adequate to minimize aquatic damage, or that chronic sediment delivery sources are identified and remediated, that potential crossing or other fill failures or landslide-initiation points are identified and corrected when they are not. For example, cross drains may be improperly sized and spaced, the trail may be incorrectly sloped, or the trail may cross unstable, landslide-prone soils and slopes. The Forest must therefore document the environmental effects of turning closed roads into a motorized trail that are unlikely to ever be decommissioned once reopened.

Assumption: "[A] concern about erosion and sedimentation of streams is primarily a facility issue, not a "use" issue." II-67

Response. This statement is directly contradicted by extensive empirical data and scientific literature (e.g., Wald, 1975; Reid et al., 1981; Reid and Dunne, 1984; Foltz, 1996; Luce and Black, 2000; Gucinski et al., 2001; Ziegler, 2001; Luce and Black, 2001, as reviewed and cited in Rhodes 2007, p. 19; <http://www.pacificrivers.org/science-research/resources-publications/the-watershed-impacts-of-forest-treatments-to-reduce-fuels-and-modify-fire-behavior>). For example,

The USFS's summary of scientific information on roads (Gucinski et al., 2001) concluded that "rates of sediment delivery from unpaved roads are...closely correlated to traffic volume." Reid et al. (1981) documented that roads used by more than four logging trucks per day generated more than seven times the sediment generated from roads with less use and more than 100 times the sediment from abandoned roads.

While motorized off-road vehicles are not logging trucks, they generally have erosion-exacerbating features such as aggressive, knobby tire tread and operation at high speeds applying strong and concentrated ground/soil-disturbing force that logging trucks do not.

Assumption: “Implementation of any alternative would result in negligible effects to aquatic biota and habitat across the forest. . . . Adverse impacts to aquatic biota and habitats related to the existing road system would continue to occur regardless of the alternative selected.” III-53

Response: This assumption does not do anything to further the public’s understanding of the environmental effects of the proposal. NEPA requires the Forest to explain how the different alternatives will affect aquatic biota and habitats. Furthermore, as the agency in charge of managing this lands, it is the Forest Service’s responsibility to address and remedy the ongoing adverse effects to aquatic biota and habitats.

Additional Ignored Scientific Information:

The DEIS itself claims to be relying on the Travel Analysis process. DEIS at S-4. As you know the Forest’s Roads Analysis is part of the Travel Analysis process (see e.g. FSM 7712(7)) and therefore the information from the Roads Analysis must be incorporated into the DEIS. It was not so included.

NFMA Obligations

The Forest must comply with the Northwest Forest Plan as part of the Travel Planning Process. The standard for compliance with the Aquatic Conservation Strategy (ACS) of the Northwest Forest Plan has been litigated and determined within the Ninth Circuit. “[N]ot only must the ACS objectives be met at the watershed scale . . . each *project* must also be consistent with ACS objectives, i.e. it must maintain the existing condition or move it within the range of natural variability.” *Pac. Coast Fed. of Fishermen’s Assoc. v. Nat’l Marine Fisheries Serv.*, 71 F.Supp. 2d 1063, 1069 (W.D. Wash 1999), *aff’d* 265 F. 3d 1028 (9th Cir. 2001). Attempts by the Forest Service to modify this standard such that the project need only contribute to maintaining or restoring the fifth-field watershed were held illegal. *Pac. Coast Fed. of Fishermen’s Assoc. v. Nat’l Marine Fisheries Serv.*, 482 F.Supp.2d 1248 (W.D. Wash. 2007).

Nevertheless, the Forest attempts to demonstrate compliance with the ACS by asserting that all alternatives would be consistent with the ACS objectives at the 5th field watershed scale. E.g. DEIS at S-9, II-72. As explained, this is not the standard for ACS, and therefore NFMA, compliance. The Forest must only offer alternatives that are consistent with the ACS objectives at the project scale. The ACS’s purpose of maintaining and restoring ecosystem health at watershed and landscape scales “does not prevent project site degradation and does nothing to restore habitat over broad landscapes if it ignores the cumulative effect of individual projects on small tributaries within watersheds.” *Pac. Coast Fed. of Fishermen’s Assoc. v. Nat’l Marine Fisheries Serv.*, 265 F. 3d 1028 (9th Cir. 2001). The DEIS, by ignoring away site-level degradation and failing to document the cumulative effects of the action, violates not only the ACS (and thus NFMA), but also NEPA and the ESA, which require the documentation and evaluation of the cumulative and aggregate impacts of site-level degradation.

ESA compliance

The DEIS does not disclose how the Forest will comply with the Endangered Species Act consultation requirements. The DEIS explains that the Forest prepared a Biological Evaluation to evaluate the effect of the alternatives on native fish and aquatic species. The DEIS documents that the conversion of maintenance level 1 roads to motorized trails will potentially cause localized sedimentation increases that can result in the loss of habitat for fish and aquatic macroinvertebrates. Has the Forest made a “may affect determination,” a “no effect determination,” or a “not likely to adversely affect determination” for which it is seeking the written concurrence of the National Marine Fisheries Service? Please clarify.

With regard to claims that localized adverse effects would not result in measurable adverse effects at the watershed scale (e.g. DEIS at II-73), this is not the standard for evaluating ESA compliance. The effects of individual projects must be aggregated “to ensure their effects are perceived and measured in future ESA consultations.” *Pac. Coast Fed. of Fishermen’s Assoc. v. Nat’l Marine Fisheries Serv.*, 265 F. 3d 1028, 1036 (9th Cir. 2001). “If the effects of individual projects are diluted to insignificance and not aggregated,” then the Forest’s evaluation of effects at the watershed scale “is tantamount to assuming that no project will ever lead to jeopardy of a listed species.” *Id.* at 1037.

Conclusion

While we appreciate that the Forest is intent on completing the Travel Management Planning process in time to meet Chief Bosworth’s deadline, the Forest cannot sacrifice thorough analyses to meet a deadline. The best way for the Forest to limit its analytical burden to meet the timeline is to only proposed alternatives that only improve the environmental condition of the Forest. Once the Travel Management Planning process is complete, the Forest can move on to the important task of reducing the road system, improving existing roads, and restoring watersheds. The 2001 Roads Rule, NFMA, the Clean Water Act, and the ESA all require that the Forest make road assessments, improvements, and decommissioning a top priority.

Sincerely,



Bronwen Wright
Policy Analyst and Attorney

Attachment (hard copy only)

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