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League and The Wilderness Society*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

IDAHO CONSERVATION LEAGUE and THE)	
WILDERNESS SOCIETY)	Civ. No. 10-26
)	
Plaintiffs,)	
)	COMPLAINT FOR DECLARATORY
v.)	AND INJUNCTIVE RELIEF
)	
LYLE POWERS, Acting Forest Supervisor of the)	
Salmon-Challis National Forest, in his official)	
capacity, and the U.S. FOREST SERVICE, an)	
agency of the Department of Agriculture,)	
)	
Defendants.)	
_____)	

INTRODUCTION

1. This case is about the Forest Service's failure to ensure that motor vehicle use is properly sited and managed in the Salmon-Challis National Forest ("SCNF") to avoid permanently diminishing the Forest's public legacy of natural resources. Specifically, this case seeks judicial review of the Record of Decision ("ROD") for the SCNF's Travel Management Plan ("Travel Plan") dated August 24, 2009, and the Final Environmental Impact Statement ("FEIS") which supports that ROD. The SCNF ROD and FEIS fail to properly apply Forest Service travel management regulations, executive orders and related statutes, fail to engage in an adequate environmental analysis, and ultimately fail to ensure that motor vehicle use does not cause unnecessary harm to, and degradation of, the SCNF's public resources.

JURISDICTION, VENUE, AND ADMINISTRATIVE REMEDIES

2. Plaintiffs bring this action pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 et seq., which waives the defendants' sovereign immunity. This Court has jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. § 1331 (federal question), and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02.

3. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(e) because: (1) the Forest Service official who issued the ROD for the SCNF Travel Plan resides in this District; (2) the lands at issue lie within the District; and, (3) plaintiffs reside within the District. Venue is proper in the Eastern Division of this District because: (1) defendants' decision, which constitutes the final agency action subject to judicial review in this case, was made in the SCNF Headquarters in Salmon, Idaho; (2) a substantial part of the lands at issue in the case lie within the Eastern Division; and (3) the events, acts, or omissions giving rise to plaintiffs' claims occurred in this Division.

4. Plaintiffs have attempted to resolve the claims in this complaint administratively.

Plaintiffs did so by, among other steps, attending meetings regarding the Travel Plan with Forest Service staff, participating in the scoping process for the Plan, and by submitting extensive, carefully considered, route-specific comments to the Forest Service on the September 2008 Draft Environmental Impact Statement. Plaintiffs also met with Forest Service representatives prior to issuance of the ROD for the Travel Plan in an effort to further ensure that the extensive data and recommendations plaintiffs collected and presented with their comments were understood by the agency. Following issuance of the ROD and FEIS, plaintiffs administratively appealed the Record of Decision for the Salmon-Challis National Forest Travel Planning and OHV Route Designation Project to the Forest Service pursuant to 36 C.F.R. § 215. The Forest Service, however, denied all aspects of plaintiffs' appeal on December 17, 2009. Plaintiffs have exhausted all available administrative remedies.

PARTIES

5. The Idaho Conservation League ("ICL") is a state-based conservation organization that has been Idaho's voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life—since 1973. The Idaho Conservation League works to protect these values through public education, outreach, advocacy, and policy development. As Idaho's largest state-based conservation organization, ICL represents over 9,500 members, almost all of whom reside in the State of Idaho and many of whom reside in the Eastern Division of the District. All of ICL's members have a deep personal interest in protecting human health and the environment. ICL's principal place of business is located in Boise, Idaho.

6. Founded in 1935, The Wilderness Society ("TWS") is a national non-profit conservation organization whose mission is to protect wilderness and inspire Americans to care for our wild places. TWS has more than 500,000 members and supporters nationwide, including

over 1,300 in Idaho, many of whom reside in the Eastern Division of this District. The Wilderness Society's principal place of business is in Washington, D.C. Through its field office in Boise, Idaho, The Wilderness Society has a long-standing involvement in the management of the Salmon-Challis National Forest, in order to protect its outstandingly remarkable wilderness, scenic, fisheries, and other values.

7. Defendant Lyle Powers is the acting Forest Supervisor for the Salmon-Challis National Forest, replacing William Wood who issued the ROD for the SCNF Travel Plan and under whose supervision the FEIS for the Travel Plan was prepared. Defendant Powers is sued in his official capacity.

8. Defendant United States Forest Service is a federal agency within the Department of Agriculture. The Forest Service is responsible for managing the Salmon-Challis National Forest, and for the Travel Plan that is the subject of this litigation.

9. Members of each of the plaintiff conservation groups use the Salmon-Challis National Forest, including the areas that are subject to the challenged aspects of the Travel Plan, for recreational pursuits, including wildlife watching, cross-country skiing, snowshoeing, hiking, camping, hunting, fishing, solitude, and aesthetic enjoyment. The designation of routes and areas open to motor vehicle use, and the management of such use, as set forth in the Travel Plan, will deprive those members and individuals of the opportunity to enjoy quiet solitude and serenity in the Salmon-Challis National Forest and impair their pursuit of recreational and aesthetic interests that are important to them. The legal violations alleged in this complaint cause direct injury to the aesthetic, conservation, recreational, scientific, educational, and wildlife preservation interests of members of the plaintiff organizations.

10. Plaintiffs' aesthetic, conservation, recreational, scientific, educational, and

wildlife preservation interests have been, are being, and, unless the relief prayed for herein is granted, will continue to be adversely and irreparably injured by defendants' failure to comply with federal law. These are actual, concrete injuries, traceable to defendants' conduct that would be redressed by the requested relief. Plaintiffs have no adequate remedy at law.

BACKGROUND

I. OVERVIEW.

A. Salmon Challis National Forest.

11. The Salmon-Challis National Forest covers over 4.3 million acres in east-central Idaho. Included within the boundaries of the Forest is 1.3 million acres of the Frank Church-River of No Return Wilderness Area, the largest wilderness area in the Continental United States. The Forest also contains Borah Peak, Idaho's tallest peak, the Wild and Scenic Salmon River, and the Middle Fork of the Salmon River. The area is a highly desired destination for hiking, camping, hunting, fishing and many other popular recreational pursuits. The bulk of the Forest is located in Custer County, and portions of the Forest are also located in Blaine County, Butte County, and Lemhi County.

12. For organizational reasons, the Salmon-Challis National Forest is divided into six Ranger Districts, which are organized around a combination of watershed and administrative boundaries. FEIS at 3.28. Those six Ranger Districts and the community in which the respective offices for the Ranger Districts are located are: Leadore Ranger District (Leadore, Idaho); Challis/Yankee Fork Ranger District (Challis, Idaho); Lost River Ranger District (Mackay, Idaho); Middle Fork Ranger District (Challis, Idaho); North Fork Ranger District (North Fork, Idaho); Salmon/Cobalt Ranger District (Salmon, Idaho). See <http://www.fs.fed.us/r4/sc/about/>. Portions of the Travel Plan, ROD, and FEIS contain discussion and analysis that is Ranger-District specific.

13. The Salmon-Challis National Forest contains a number of notable natural resources, including the increasingly rare and valuable resource of areas that have had little human impacts. In addition to the Frank Church-River of No Return Wilderness Area, there are a number of undeveloped and pristine roadless areas, which include Recommended Wilderness areas (i.e., areas that have been recommended by the Forest Service through the Challis National Forest Land and Resource Management Plan as suitable for designation as wilderness by Congress under the Wilderness Act, the character of which must be preserved until Congress acts), as well as formally inventoried roadless areas (i.e., areas that meet specific criteria regarding the existing level of human impacts, which are protected by the Idaho Roadless Rule, and which may be eligible for designation as Wilderness in the future). In terms of water resources, the Middle Fork Salmon and main stem Salmon Rivers are designated as Wild and Scenic Rivers pursuant to the Wild and Scenic Rivers Act of 1968. FEIS at 3-5. In addition, there are at least twenty-three streams that are eligible for designation as Wild and Scenic Rivers. See FEIS at Table 3-3. These land and water resources are especially susceptible to human disturbance, and particularly vulnerable to the impacts associated with motor vehicle use, including direct, indirect, and cumulative impacts.

B. Motor Vehicle and Off-Highway Vehicle Use in National Forests and Environmental Impacts.

14. Nationally, as of 2005, the Forest Service managed approximately 300,000 miles of roads open to motor vehicle use, and about 133,000 miles of trails on national forest lands. 70 Fed. Reg. 68264, 68264-65 (Nov. 9, 2005). Only a subset of the trails is open to motor vehicle use. This transportation system ranges from paved roads designed for passenger cars to single-track trails used by dirt bikes. Many roads designed for high-clearance vehicles (such as log trucks and sport utility vehicles) also allow use by all-terrain vehicles (“ATVs”) and other

off-highway vehicles (“OHVs”) not normally found on city streets.

15. In addition to this managed system of roads and trails, many National Forests contain user-created routes, i.e., routes that have not been identified, constructed, or maintained by the Forest Service but that are simply the result of repeated use. These routes are concentrated in areas where cross-country travel by motor vehicles has been allowed, and sometimes include dense, braided networks of criss-crossing routes. As of 2005 there had been no comprehensive national inventory of these user-created routes (and the continuing proliferation of such routes has made a definitive inventory difficult), but at that time they were estimated to number in the tens of thousands of miles. 70 Fed. Reg. 68264, 68264.

16. Designated Wilderness Areas are closed to motor vehicles by statute. Prior to the implementation of Forest Service’s 2005 Travel Management Rule, in some National Forests, and portions of others, motor vehicles were restricted by order to an established system of roads and trails. See 70 Fed. Reg. 68264, 68264. In others, cross-country travel was not restricted. Id. As discussed further, infra, the SCNF Travel Plan is a result of recent Forest Service regulations that attempt to comprehensively manage motor vehicle use in National Forests.

17. There are a number of significant environmental impacts associated with motor vehicle use, and with OHV use in particular. For example, motor vehicles impact soil, vegetation, and wildlife habitat from the physical impact of their tires. Motor vehicle emissions, and in particular those of OHVs, many of which use less efficient two-stroke engines, can degrade air and water quality. Motor vehicles can serve as a vector for invasive plant species by causing disturbances to native vegetation and transporting seeds of invasive species. The noise from motor vehicles, and OHVs in particular, can disrupt wildlife behavior as well as interfere with other non-motorized uses of National Forests, such as hiking, camping, birdwatching,

wildlife watching, and enjoyment of solitude. Motor vehicles can pose a danger to human health and safety, particularly in areas that are used by both motorized and non-motorized users, or by different classes of motor vehicles (e.g., motorcycles, ATVs, and four-wheel drive trucks). Motor vehicle use can permanently degrade the wilderness, roadless, and undeveloped character of an area and the values and qualities associated with such character. It can also bring about a number of indirect and cumulative impacts by, among other effects, increasing human use in areas that were not previously accessible to human presence.

18. In recent years, increasing prevalence of OHV use and capabilities has dramatically increased these impacts and ample evidence indicates that this trend will continue. As a consequence, in 2005, the Forest Service adopted national regulations, which have been and continue to be implemented in National Forests, including the Salmon-Challis National Forest, in order to address, manage, and minimize these impacts. Notwithstanding the acknowledged changes in motor vehicle use in the national forests, including the SCNF, the Forest Service did not take information about the trends in such use and their implications into account in developing and analyzing the SCNF Travel Plan.

II. LAWS, REGULATIONS, AND ORDERS.

A. Executive Orders and Forest Service Regulations Regarding Motor Vehicle and Off-Highway Vehicle Use.

19. In 1972, in response to increased OHV (also referred to as off-road vehicle, or “ORV”) use, President Nixon issued an executive order for the purpose of “establish[ing] policies and provid[ing] procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.” Exec. Order No. 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972). The stated reason for the

order was to further the purpose and policy of NEPA. Id. It established criteria by which federal agencies were to develop regulations and administrative instructions for the designation of areas and trails on which OHV use would be permitted. Id. § 3.

20. The executive order also required, in relevant part, that the designation of areas and trails for motorized use shall: (1) “minimize damage to soil, watershed, vegetation, or other resources of the public lands;” (2) “minimize harassment of wildlife or significant disruption of wildlife habitats;” and (3) “minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.” Id. The order also required agencies to “monitor the effects” of OHV use on the public lands and “[o]n the basis of the information gathered, they shall from time to time amend or rescind designations of areas or other actions taken pursuant to this order as necessary to further the [NEPA].” Id. § 8. This executive order remains in effect today and applies to the SCNF Travel Plan and ROD.

21. In 1977, President Carter issued Executive Order No. 11989, which amended Executive Order 11644 and strengthened it. See Exec. Order 11989, 42 Fed. Reg. 26959 (May 24, 1977); see also Utah Shared Access Alliance v. Carpenter, 463 F.3d 1125, 1130 (10th Cir. 2006) (noting that Executive Order 11989 strengthened Executive Order 11644 considerably). The amended order provides that notwithstanding OHV designations of public land use, an agency head “shall . . . immediately close” any area or route to OHVs whenever it determines that OHV use “will cause or is causing considerable adverse effects” to wildlife, wildlife habitat, and other natural resources. See id. § 2 (amending Exec. Order 11644; § 9(a)) see also Utah Shared Access Alliance, 463 F.3d at 1130 (same). Under the order, the closure

must remain in place until the adverse effects have been eliminated. Id. § 9(a). This executive order too remains in effect and applies to the SCNF Travel Plan.

22. Forest Service Regulations at 36 C.F.R. Part 212 (governing travel management) are intended to implement and expand on Executive Orders 11644 and 11989. 70 Fed. Reg. 68264, 68264. The Forest Service’s travel management rules also includes provisions in Part 251 (“Land Uses”) and Part 261 (“Prohibitions”). See 70 Fed. Reg. 68264, 68287.

23. The Forest Service’s travel management rules address the agency’s standards for motor vehicle use on national forest lands, including the use of off-highway vehicles. The rules state in relevant part, that “[m]otor vehicles are a legitimate and appropriate way for people to enjoy their National Forests—in the right places, and with proper management.” 70 Fed. Reg. 68264, 68264 (emphasis added). To ensure such appropriate use, travel management regulations require the Forest Service to identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest lands. 36 C.F.R. § 212.5(b). The regulations also require that the Forest Service restrict motor vehicle use in National Forests, including off-highway vehicle use, to designated routes, as opposed to cross-country travel (with some very limited exceptions). 36 C.F.R. § 212.51. They also set forth “[g]eneral criteria” that the Forest Service must employ in designating roads, trails, and areas for motor vehicle use in National Forests. 36 C.F.R. § 212.55(a). Further, there are “[s]pecific criteria” that the Forest Service must apply when designating trails and areas for motor vehicle use, with the stated objective of minimizing damage to forest resources and minimizing conflicts among various users and uses of Forest Service lands. 36 C.F.R. § 212.55(b).

24. Under 36 C.F.R. § 212.5(b)(1) the “responsible official” (in this case the Forest Supervisor) must “identify the minimum road system needed for safe and efficient travel and for

administration, utilization, and protection of National Forest System lands.” Id. (emphasis added). In determining the minimum road system, the responsible official must incorporate a “science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments.” Id. In addition, the “responsible official” must also identify roads under Forest Service jurisdiction that are “no longer needed to meet forest resource management objectives and that, therefore, should be decommissioned or considered for other uses, such as for trails.” Id. § 212.5(b)(2). “Decommissioning roads involves restoring roads to a more natural state.” Id.

25. Under Section 212.51(a), and subject to some limited exceptions, “[m]otor vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or Ranger Districts of the National Forest System. . . .” Id. This provision restricts motor vehicle use to specific designated roads, trails, and areas.

26. Under Section 212.51(b), a “responsible official” may allow some limited cross-country travel: “In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain forest roads or trails where motor vehicle use is allowed, and if appropriate, within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.” Id. But even these limited exceptions may be used only sparingly according to official agency guidance.

27. Together, these executive orders and regulations, along with other laws, including but not limited to, the Wilderness Act, 16 U.S.C. §§ 1131-1136, the Wild and Scenic Rivers Act,

16 U.S.C. §§ 1271-1287, and National Forest Management Act, 16 U.S.C. §§ 1600 et seq., and the regulations implementing these statutes, provide the legal standards that govern and guide the Forest Service in determining whether, where, when, and to what extent to allow motorized vehicle use on national forest lands.

B. The National Environmental Policy Act.

28. The National Environmental Policy Act (“NEPA”) “is our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA’s twin aims are to ensure that federal agencies consider significant aspects of the environmental impacts of their proposed actions, and to ensure that agencies inform the public that environmental concerns have been considered in agency decision-making.

29. NEPA requires federal agencies to prepare an environmental impact statement (“EIS”) in connection with all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The EIS must detail, inter alia, “the environmental impact of the proposed action” and “alternatives to the proposed action.” Id. § 4332(2)(C)(i), (iii). NEPA further provides that agencies must “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” Id. § 4332(2)(E).

30. NEPA’s implementing regulations flesh out these statutory requirements. The regulations provide that agencies must discuss “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity.” 40 C.F.R. § 1502.16.

31. The regulations further provide that “[a]gencies shall insure the professional

integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” Id. § 1502.24.

III. SALMON-CHALLIS NATIONAL FOREST TRAVEL PLANNING PROCESS.

32. In order to comply with Forest Service regulations, orders and guidance, as well as NEPA, and other applicable legal standards, the Supervisor of the Salmon-Challis National Forest undertook a process to designate which roads, trails, and other areas on the SCNF would be open for public motor vehicle use and under what circumstances, and which would be closed. ROD at 1. This process ultimately replaced two existing Travel Plans: a 1988 plan for the Salmon National Forest and a 1994 plan for the Challis National Forest. See id.

33. On August 3, 2007, the SCNF Supervisor published a Federal Register notice with the agency’s proposed action constituting “scoping” under the regulations implementing NEPA. 72 Fed. Reg. 43223-25 (Aug. 3, 2007). After discovering errors with mileage figures and inconsistencies in the proposed action with a separate Forest Plan, the Forest Service released a “revised proposed action” on May 30, 2008. 73 Fed. Reg. 31054-55 (May 30, 2008). Shortly thereafter, on September 26, 2008, the Forest Service published a notice in the Federal Register indicating the availability of the Draft Environmental Impact Statement (“DEIS”) for the SCNF Travel Plan. 73 Fed. Reg. 55842-43 (Sept. 26, 2008). The Forest Service requested the public’s comments on the travel management plan at each phase of this process and in particular, indicated that comments pertaining to specific roads, trails, or areas would be most useful to informing the agency’s decision-making process. See 72 Fed. Reg. 43224. The Forest Service also sent letters to interested parties that encouraged public participation and solicited further, specific comments about individual roads, trails, and areas.

34. In order to provide route-specific travel planning recommendations to the Forest Service, plaintiffs surveyed particular roads and trails during the summer of 2008 on all but one

ranger district of the SCNF to document and determine whether particular roads and trails contained in the agency's proposed action met the criteria for motorized use outlined in 36 C.F.R. § 212.55(a) and (b) and the Executive Orders. Plaintiffs employed a systematic protocol for inventorying roads and trails using photos, global positioning system ("GPS") waypoints, and written data forms.

35. All of this information, and the accompanying recommendations and basis for them, were provided to the Forest Service during the comment period for the DEIS for the agency's consideration in determining which roads, trails, or areas to designate for motor vehicle use. The package submitted by plaintiffs to the Forest Service included over 980 photos, covering 40 different roads and trails contained in the agency's proposed action.

36. Given the volume of data, plaintiffs also met with Forest Service representatives after the close of the comment period for the DEIS to highlight areas of concern discovered during its monitoring efforts. At a meeting on January 22, 2009, in Stanley, Idaho, ICL presented a slide show based on the data it had submitted depicting examples of places where there were adverse resource impacts from motor vehicle use in the Forest. This meeting occurred before the Forest Service issued its ROD and FEIS for the SCNF Travel Plan. ICL also provided this slideshow to the Forest Service in hardcopy and subsequently attached it to its administrative appeal.

37. All of these efforts provided the Forest Service with considerable, site-specific information as well as concrete, specific suggestions to minimize environmental impacts from motor vehicle use on the SCNF. This information included specific documentation (photographs, waypoint descriptions, and other data) of significant resource impacts that were actually occurring on the ground.

38. The preferred alternative (“Alternative 5”) in the FEIS that defendants ultimately selected in the ROD as the SCNF Travel Plan failed to address or implement the route-specific suggestions that plaintiffs provided to the Forest Service, notwithstanding the evidence plaintiffs provided, and the FEIS also failed to address or rationally consider this information or explain the decision to disregard it. In addition, the agency ignored plaintiffs’ written request, submitted in January of 2008 even before the agency released its DEIS, that the SCNF Travel Plan provide a scientific analysis to support a minimum road system determination as required by Forest Service regulations.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of NEPA 42 U.S.C. § 4332 and APA:

Failure to Adequately Consider Alternatives to Proposed Action

39. Plaintiffs hereby re-allege and incorporate all preceding paragraphs.

40. NEPA and its implementing regulations require completion of a valid Environmental Impact Statement for every major federal action significantly affecting the environment. NEPA requires that, in preparing an Environmental Impact Statement, agencies must “insure the professional integrity, including scientific integrity, of the discussions and analyses” in the document. The impact statement must present alternatives to the proposed action. 42 U.S.C. § 4332(C), (E). The Council for Environmental Quality (“CEQ”) regulations require the agency to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a). The analysis of alternatives is “the heart of the environmental impact statement,” and an EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” 40 C.F.R. § 1502.14. “The existence of a viable but

unexamined alternative renders an environmental impact statement inadequate.” Nat’l Res. Def. Council v. U.S. Forest Serv., 421 F.3d 797, 813 (9th Cir. 2005) (quoting Citizens for a Better Henderson v. Hodel, 768 F.2d 1051, 1057 (9th Cir.1985)).

41. For the reasons described above, the Forest Service has violated NEPA, and the ROD and FEIS are invalid, because they fail to rigorously explore and evaluate all reasonable alternatives for designating trails and roads for motorized use and managing that use in light of an analysis based on all of the available evidence and data. Plaintiffs proposed numerous route specific designations based on specific, reliable, and verifiable data and information, which would minimize impacts associated with motorized use, which were consistent with the purpose and need of the project, and which were required to comply with the governing legal standards, but the Forest Service failed to adequately evaluate any of them or explain its failure to do so. In addition, the alternatives the agency did consider in the FEIS for the Travel Plan consist of options that allow motorized vehicle use on all or almost all of the routes and trails that previously were open to such use, including but not limited to routes and trails in areas the agency has formally recommended for wilderness designation, inventoried and uninventoried roadless areas, and actual or eligible wild and scenic river corridors. Alternatives that would limit or close a significant percent of the trails that were open to motorized use before adoption of the SCNF Travel Plan, would close trails with resource concerns identified by the plaintiffs, or that would limit or eliminate such use in recommended wilderness areas, roadless areas, or other unique areas, were not considered but are reasonable, available, consistent with the purpose and need of the Travel Plan, and would reduce the environmental effects of the agency’s decision.

42. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. §§ 701-

706.

43. By issuing an FEIS that fails to meet the standards for considering a range of alternatives and for using the best available data as laid out in NEPA, its implementing regulations, and governing case law, the Forest Service has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. §§ 701-706.

SECOND CLAIM FOR RELIEF

Violation of NEPA 42 U.S.C. § 4332 and APA:
Failure to Adequately Engage in Public
Participation Regarding Minimum Road System Determination

44. Plaintiffs hereby re-allege and incorporate all preceding paragraphs.

45. Under federal regulations implementing NEPA, there must be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues and decisions related to a proposed action. 40 C.F.R. § 1501.7.

46. As a part of that process, an agency must invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds). 40 C.F.R. § 1501.7(a)(1).

47. After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency must request comments from the public on the significant decisions that will be made, affirmatively soliciting comments from those persons or organizations who may be interested in or affected by the action. 40 C.F.R. § 1503.1.

48. The Forest Service's August 3, 2007 publication in the Federal Register, "Notice of Intent to Prepare an Environmental Impact Statement," 72 Fed. Reg. 43223, did not provide adequate notice that a significant aspect of the agency action and decision in the SCNF Travel

Plan would be the identification and designation of a minimum road system.

49. Further, none of the alternatives listed in the DEIS stated that the alternatives included or provided the identification of the minimum road system, nor did the DEIS or FEIS contain a scientific analysis to support such a determination. Rather, the ROD accompanying the FEIS indicated, for the first time, that the “process revealed that the Selected Alternative is the ‘minimum road system’” ROD at 20.

50. The ROD for the Travel Management Plan was issued concurrently with the FEIS, thus it was not possible for the public to provide further comments on this or any other aspect of the FEIS before the decision was made. See 40 C.F.R. § 1503.1(b).

51. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. §§ 701-706.

52. By issuing an FEIS that fails to meet the standards laid out in NEPA, its implementing regulations, and governing case law, for both identifying and allowing public comment on all significant aspects of the agency action, the Forest Service has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. §§ 701-706.

THIRD CLAIM FOR RELIEF

Violation of NEPA 42 U.S.C. § 4332 and APA:
Failure to Adequately Consider Direct and Indirect Effects

53. Plaintiffs hereby re-allege and incorporate all preceding paragraphs.

54. NEPA’s implementing regulations require an agency preparing an Environmental Impact Statement to analyze both the “direct effects, which are caused by the action and occur at the same time and place” and the “indirect effects, which are caused by the action and are later in

time or farther removed in distance,” of its actions. 40 C.F.R. § 1508.8(a), (b).

55. For the reasons described above, the Forest Service has violated NEPA, and the ROD and FEIS for Travel Plan are invalid, because they fail to rationally and adequately assess or address all of the available evidence of the environmental consequences of the action, including, but not limited to, the direct and indirect effects on areas recommended for wilderness designation, inventoried and uninventoried roadless areas, designated and eligible Wild and Scenic River segments, or the roadless and undeveloped character of areas that are presently untouched.

56. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. §§ 701-706.

57. By issuing an FEIS that fails to meet the standards laid out in NEPA, its implementing regulations, and governing case law for identifying and considering the direct and indirect effects of an action, the Forest Service has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. §§ 701-706.

FOURTH CLAIM FOR RELIEF

Violation of NEPA 42 U.S.C. § 4332 and APA: Failure to Adequately Evaluate Cumulative Effects

58. Plaintiffs hereby re-allege and incorporate all preceding paragraphs.

59. NEPA and its implementing regulations require the Forest Service to analyze the cumulative effects of their actions. 40 C.F.R. §§ 1508.25(a)(2), (c), 1508.7, 1508.8. A cumulative impact is the “incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or

person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

60. For the reasons described above, the Forest Service has violated NEPA and the FEIS is invalid because it fails to adequately assess the cumulative effects of the action in conjunction with past, present, and reasonably foreseeable future actions by, among other things, failing to rationally or adequately address all of the available evidence regarding cumulative effects that the route designations in the Travel Plan have on areas recommended for wilderness designation, inventoried and uninventoried roadless areas, designated and eligible Wild and Scenic River segments, or the roadless and undeveloped character of areas that are presently untouched.

61. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. §§ 701-706.

62. By issuing an FEIS that fails to meet the standards laid out in NEPA, its implementing regulations, and governing case law, the Forest Service has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. §§ 701-706.

FIFTH CLAIM FOR RELIEF

Violation of NEPA 42 U.S.C. § 4332 and APA:
Failure to Adequately Consider Mitigation Measures

63. Plaintiffs hereby re-allege and incorporate all preceding paragraphs.

64. The regulations implementing NEPA define “mitigation” as including:
(a) avoiding environmental impacts “altogether by not taking a certain action or parts of an action;” (b) minimizing environmental impacts by “limiting the degree or magnitude of the

action and its implementation;” (c) rectifying environmental impacts by “repairing, rehabilitating, or restoring the affected environment;” (d) “[r]educing or eliminating the impact over time by preservation and maintenance operations during the life of the action;” and (e) compensating for the impact by replacing or providing substitute resources or environments. 40 C.F.R. § 1508.20(a)-(e).

65. In the analysis of alternatives in an environmental impact statement, an agency must “[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives.” 40 C.F.R. § 1502.14(f).

66. Further, in the analysis of environmental consequences in an environmental impact statement, an agency must include “[n]atural or depletable resource requirements and conservation potential of various alternatives and mitigation measures if not fully covered under § 1502.14(f).” 40 C.F.R. § 1502.16(h).

67. Further, in the record of decision in cases involving an environmental impact statement, an agency must “state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.” 40 C.F.R. § 1502(c).

68. Notwithstanding the fact that plaintiffs offered innumerable route specific and well-documented recommendations and design features as to how the Forest Service could avoid, minimize, and rectify environmental impacts and notwithstanding other evidence available to the agency regarding the impacts of motor vehicle use and trends in such use, defendants failed to rationally or adequately address such information in the FEIS and ROD and failed to avoid, minimize, and mitigate for the environmental effects of the agency action in violation of NEPA.

69. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. §§ 701-706.

70. By issuing an FEIS and ROD that fail to meet the standards laid out in NEPA, its implementing regulations, and governing case law, the Forest Service has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. §§ 701-706.

SIXTH CLAIM FOR RELIEF:

Violation of Regulations, Orders, and APA

71. Plaintiffs hereby re-allege and incorporate all preceding paragraphs.

72. In designating National Forest System roads, trails, and areas for motor vehicle use, the responsible official must consider general criteria: the effects on natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration. 36 C.F.R. § 212.55(a).

73. In designating National Forest System trails and areas for motor vehicle use the responsible official also must consider the following specific criteria, with the objective of minimizing: (a) damage to soil, watershed, vegetation, and other forest resources; (b) harassment of wildlife and significant disruption of wildlife habitats; (c) conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and (d) conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands. 36 C.F.R. § 212.55(b)(1)-(5).

74. Executive Order 11644 further requires that the designation of areas and trails

shall: (1) “minimize damage to soil, watershed, vegetation, or other resources of the public lands;” (2) “minimize harassment of wildlife or significant disruption of wildlife habitats;” (3) “minimize conflicts between off- road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.” Id.

75. Further, Executive Order No. 11989, which amended Executive Order 11644, provides that notwithstanding OHV designations of public land use, an agency head “shall . . . immediately close” any area or route to ORVs whenever it determines that ORV use “will cause or is causing considerable adverse effects” to wildlife, wildlife habitat, and other natural resources. See id. § 2 (amending Executive Order 11644 to add section 9). Executive Order 11989 also requires that the closure must remain in place until the adverse effects have been eliminated. Id. §§ 2, 9(a).

76. Notwithstanding the fact that plaintiffs identified specific and considerable reliable and verifiable evidence of adverse effects to wildlife habitat, natural resources, and other environmental values, defendants failed to rationally address, consider, or implement steps, including but not limited to the immediate closures of trails or areas with resource damage, in order to minimize resource impacts and comply with other requirements of the regulations and orders. Further, defendants’ ROD and FEIS fail to offer any analysis regarding the specific instances of adverse effects to wildlife habitat, natural resources, and other environmental values that the information provided by plaintiffs and other available evidence has identified.

Defendants’ ROD and FEIS also failed to carefully and strictly limit cross-country motorized vehicle use as required by the applicable regulations and orders because the SCNF Travel Plan inexplicably allows such use within 300 feet on either side of nearly all roads and trails on the

forest that are open to motorized use, including but not limited to roads and trails in Wild and Scenic River corridors, areas the agency has recommended for wilderness, and inventoried and uninventoried roadless areas; all areas where conflicts with other uses of national forest lands are not only likely but nearly certain.

77. By issuing a ROD that fails to meet the standards of the applicable regulations and orders, the Forest Service has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation the regulations, orders, and the APA. 5 U.S.C. §§ 701-706.

SEVENTH CLAIM FOR RELIEF

Violation of Forest Service Regulations and APA

78. Plaintiffs hereby re-allege and incorporate all preceding paragraphs.

79. Forest Service Regulations, in relevant part, require the “responsible official” to identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. 36 C.F.R. § 212.5(b).

80. In determining the minimum road system, the responsible official also must prepare, incorporate, and rely on a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. Id.

81. The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan for the forest, 36 C.F.R. part 219, to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance. Id.

82. Plaintiffs provided the Forest Service with extensive evidence relevant to these requirements and the agency had available additional relevant evidence but the agency did not address, discuss, or evaluate plaintiffs' information or other evidence, or explain its failure to do so, in simply announcing a minimum road system designation in the FEIS and ROD.

83. By issuing a ROD that fails to follow the requirements of the travel management regulations, including those discussed above, the Forest Service has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. §§ 701-706.

REQUEST FOR RELIEF

THEREFORE, plaintiffs respectfully request that this Court:

1. Declare that the ROD and FEIS violate NEPA and the APA by failing to adequately examine alternatives to the proposed action, failing to adequately engage public participation regarding identification of the minimum road system determination, failing to adequately examine direct and indirect effects of the proposed action, failing to adequately examine cumulative effects of the proposed action, and by failing to assess mitigation measures;
2. Declare that the ROD and FEIS violate Forest Service travel management regulations, the relevant executive orders, the statutes governing the agency, and the APA as described above;
3. Enjoin the Forest Service from allowing motor vehicle uses in the Salmon-Challis National Forest that are contrary to law as specifically requested by plaintiffs in the course of these proceedings;
4. Award plaintiffs their reasonable fees, costs, and expenses, including attorneys fees, associated with this litigation; and
5. Grant plaintiffs such further and additional relief as the Court may deem just and

proper.

Respectfully submitted this 22nd day of January, 2010.

/s/ Lauren M. Rule

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