Re: Categorical Exclusions for Soil and Water Restoration Activities

Please accept these comments to the Notice of Intent entitled National Environmental Policy Act: Categorical Exclusions for Soil and Water Restoration Activities (Fed. Reg., Vol. 77, No. 114, 35323-35326, Wednesday, June 13, 2012). These comments are submitted on behalf of the BlueRibbon Coalition, Inc.

A. Introduction
The BlueRibbon Coalition (BRC) is a national recreation group that champions responsible recreation and encourages individual environmental stewardship. With members in all 50 states, BRC is focused on building enthusiast involvement with organizational efforts through membership, outreach, education and collaboration among recreationists. We work with land managers to provide recreation opportunities, preserve resources and promote cooperation with other public land users. BRC's members use motorized and non-motorized means, including off-highway vehicles, snowmobiles, horses, mountain bikes and hiking to access state and federally-managed lands across the United States, including those throughout the National Forest System. BRC has a longstanding interest in the protection of the values and natural resources found on these lands, which it advances (1) by regularly working with land managers to provide recreation opportunities, preserve resources and promote cooperation between public land visitors; (2) by communicating with administrative officials, elected officials, policymakers, the media and the public, consistent with its non-profit status; and (3) by protecting and advancing its members’ interests in the courtroom in specific matters implicating public lands access issues.

B. Summary
BRC is not 'categorically opposed' to streamlining required environmental analysis for activities that require small, site specific impacts. We do, however, urge the agency to reconsider its current proposal to create three new categorical exclusions for broadly defined “restoration” activities. See 77 Fed.Reg. 35323-35326 (June 13, 2012).
We strongly encourage the agency to reevaluate the effort and incorporate a robust public involvement provision. In addition, the agency must identify ground disturbing activities that cannot be lawfully exempted from environmental analysis.

BRC has significant experience with law, policy and practical application of recreational road and trail management. BRC understands and would often support agency efforts to "streamline" or make more efficient agency management techniques. But in our experience many ground-disturbing route obliteration projects are improperly understood and poorly executed. There are substantial benefits associated with robust public disclosure and opportunity for input, even on the types of activities addressed by the proposed rule.

The agency must recognize that certain types of route obliteration simply cannot be lawfully exempted from environmental analysis. Environmental impacts don't magically disappear because the source of sediment is a restoration project. Many non-system roads and trails are located in or near riparian areas, meadows, critical wildlife habitat and adjacent to important cultural resources. If 40 years of NEPA has taught us anything it is that noble intentions don’t justify half-baked analysis.

C. Key comment
The proposal is based on an assumption we believe to be badly mistaken:

The Forest Service experience is that the majority of issues associated with road and trail decommissioning arise from the initial decision whether to close a road or trail to public use rather than from implementing individual restoration projects.

(77 Fed.Reg. 35324 (June 13, 2012). ) Our experience has been completely different. Our experience has also varied from Forest to Forest and even among Ranger Districts on the same Forest. Each travel plan we have been involved in reflected a complex dynamic on individual sites. Contrary to the assumption above, it is rare to find a travel planning process where the “majority of issues associated with road and trail decommissioning” were addressed.

Most USFS travel planning projects are scoped primarily as a recreational travel management plan that will primarily impact recreational users of the Forest. Other users are often assured their access and activities will continue under stipulations of their permit, lease or other authorization, no matter the outcome of the travel planning process. This does not create a problem unless and until major ground disturbing activities are proposed, such as restoring natural contours, loosening compacted soils, reestablishing natural drainage patterns, restoring natural contours, and in some cases, installing boulders, logs, and berms.

There are numerous examples we could give that prove the agency's assumption incorrect. We encourage the planning team to review one such example on Idaho's Payette National Forest.

As part of the agency's efforts to utilize collaborative working groups, the Payette National Forest agreed to take part in what came to be known as the Payette Forest Coalition (PFC). The Coalition members represent stakeholders who share an interest in landscape scale conservation on the Payette National Forest. The purpose of the Payette Forest Coalition is:

To advise the Payette National Forest's line officer(s) regarding the administration of stewardship contract projects in order to achieve landscape conservation goals.

The Coalition's Primary Goals are:

1. Improve wildlife habitat for white-headed woodpeckers, by restoring appropriate forested stands to Historical Range of Variability. Improve habitat for other wildlife species as appropriate
2. Contribute to the economic vitality of the communities adjacent to the Payette NF.
3. Reduce wildfire hazard in forest stands with conditions that depart from the Historical Range of Variability.
4. Encourage woody biomass utilization as a revenue source to support goals 1, 2 & 3.

Part of the habitat improvement (restoration) effort included decommissioning routes that had been closed via a previous travel planning process. Two problems with decommissioning proposals quickly emerged. One was the potential and existing use of non-system routes for non-motorized recreation opportunity, the other was the use of unauthorized roads by livestock grazing operations.

The first concern is fairly straightforward. Routes that had become “unauthorized” and “non-system” via the previous travel planning process were identified by Coalition members as potentially appropriate for non-motorized recreational uses. The second concern was a bit more complicated. Some of the routes proposed for decommissioning were being used by livestock grazing permitees. Indeed, the use of these specific routes had been recommended via a previous Bull Trout habitat closure.

None of the participants in the Coalition anticipated that a simple proposal to decommission 18.7 miles of routes would become so controversial.

The PFC decided that, in consultation with the USFS Interdisciplinary Team, the livestock permitees would provide recommendations to the PFC that 1) identify feasible alternative corridors, or 2) retain access to the existing (unauthorized) routes while mitigating the negative impacts that caused the road segment to be high priority for restoration. (Information, including meeting notes are available online: http://www.spatialinterest.info/PayetteForward.html ) (see also Appendix D).

How is this relevant to your CE Rule? Several things are noteworthy here. Prior to discussing the decommissioning efforts, livestock permitees were not identified as a stakeholder during the formation of the Coalition. Nobody knew that livestock permitees regularly used non-system routes. Also, the use of the non-system routes by permitees was not a consideration in the previous travel plan because this use is authorized via the permit, not the public travel planning process.

D. Travel planning rarely “gets it right” the first time.

Few, if any, USFS travel planning projects get it right the first time. Indeed, many travel planning projects we are aware of have been amended within one or two years after completion, and many have been amended even before the plan has been completely implemented on the ground. It is quite likely that routes proposed for decommissioning will be necessary additions in future travel planning.

Motorized recreationists were repeatedly reassured throughout the implementation of the Travel Management Rule that initial MVUMs were a “starting point” and that ultimately motorized trail systems on Forests would evolve over time, as MVUMs would be reviewed annually with opportunities for expansion of trails open to motorized use. In some cases Forest officials made it clear to off-highway vehicle (OHV) enthusiasts that some existing roads and trails would be left off of initial MVUMs but would receive further consideration as the trail system matured and annual revisions were considered. BRC took an active role in not only supporting the Travel Management Rule, but also in encouraging OHV enthusiasts across the country to be active in the travel management processes. We did this largely based on the repeated assurances from Forest Service staff that Travel Management would be an ongoing process that would allow for high levels of public involvement.

The proposed rule would essentially offer carte blanche for Forest managers to obliterate existing “non-system” roads and trails without meaningful public involvement, irrespective of historic use
patterns, historic origins of the creation of the road, or current need for the road. In cases where a formal public process has already determined that a particular road or trail should be decommissioned for specific reasons this is not likely to be an issue. Where serious concerns arise are over roads or trails that have never been specifically considered in a decision process that included meaningful public involvement.

Another situation we encounter often are routes that are not authorized for summer use are often utilized for winter recreation. The situation is very similar to the livestock grazing issue in that winter recreationists are not often affected by a summer recreational travel plan. That is, until major ground disturbing activities are proposed.

Further, while “non-system” roads and trails may be off limits to the motorized community as a result of the MVUM they may still be open to other recreational uses, including mountain bike and equestrian use. Yet the proposed rule would allow a CE to be used to obliterate these routes.

Finally, it should be noted that all of these issues are exacerbated by roads decommissioned under Subpart A of the Travel Management Rule as there are substantially less public involvement requirements under that section before the Forest Service can decommission a road.

E. Procedural Flaws in Proposed Rule
We will not attempt an exhaustive analysis of the proposed rule here. We wish to identify several of the most glaring flaws.

1. There has not been a decision to “close” non-system routes
As noted above, the proposed rule flows largely from the assumption that “non-system” roads/trails are a universally recognized blight which should be removed from the landscape. This assumption is incorrect. Procedurally, the agency has in many cases simply failed to analyze the value or continuing need for non-system routes. This is because the primary mechanism for addressing these routes, the 2005 Travel Management Rule, focuses on motorized recreation. So the agency has, with few exceptions, simply failed to analyze the potential demand for continuing use of even non-system routes for non-motorized use. Additionally, BRC has repeatedly heard during individual TMR processes that units are hoping to establish a “backbone” transportation network and that future planning and implementation will evaluate additional issues and look at possible modification of that initial network, to potentially include “non-system” routes that were not designated for motorized travel in the initial “backbone” effort. Contrary to the undercurrent of the proposed rule, there are a wide array of circumstances and potential management options for “non-system” routes which are best addressed through public disclosure and agency analysis.

2. The proposed activities present at least a potential for significant effects to the human environment
It is far from certain that the techniques addressed by the proposed categorical exclusions cannot present the potential for significant effects to the human environment. Indeed, BRC successfully brought an administrative appeal challenging implementation of route closures on the Targhee National Forest, in which the Region 4 appeal deciding officer reversed project elements including “ground disturbing actions, such as earthen berms and barriers, ripping the roadbed, or other actions which will have potential effects on soil and water resources, other beneficial uses and public safety, until further site specific analysis is completed.” Appeal Decision dated January 27, 2000 (attached as Appendix A).

It seems intuitively obvious that using heavy equipment to move culverts, trees, rocks and large quantities of soil presents at least the potential of “significant effects to the human environment.” Even
with the best of intentions the speed, limited input and lack of oversight associated with the proposed
categorical exclusions presents the risk of error that NEPA is designed to prevent. The proposed rule
notably attempts to downplay these risks by ostensibly focusing on “restoring natural contours” and
similar characterizations. 77 Fed.Reg. 35326 (June 13, 2012) (proposed § 220.6(20)(i). However,
when alteration of the “natural” environment has been complete and longstanding, it can hardly be
argued that alteration of the status quo through “restoration” cannot have dramatic effects.
Additionally, though camouflaged in the repeated references to “restoration” is the fact that the
proposed rule will include active “construction” including installation of water bars (id. at (ii)) and berms
(id. at (iii))).

Completely missing from the proposed rule is any acknowledgment or attempt to analyze displaced
use. Many “non-system” routes receive light use and their obliteration will hardly be noticed. Others
are fixtures for non-motorized recreation which will create controversy and alter use patterns through
closure. These are among the reasons why site-specific analysis is important in attempting the type of
changes described in the proposed rule.

3. The analysis is inadequate to support the proposed rule
The procedures undertaken by the agency are insufficient to support the changes offered in the
proposed rule. Specifically, the proposed rule outlines four (4) steps that ostensibly support
“establishment” of the new categorical exclusions: (1) reviewed unspecified EAs implementing actions
similar to the proposed new categories; (2) “consulted with professional staff and experts”; (3) studied
peer-reviewed scientific analyses, research papers and monitoring reports; and (4) reviewed eight
other agency categorical exclusions. 77 Fed.Reg. 35324 (June 13, 2012). This approach is flawed.

Based on our initial review of the appendices at http://www.fs.fed.us/emc/nepa/restorationCE/ there
appear to be significant issues with the validity of the proposed rule. Generally speaking, we believe
these issues are similar to those which ultimately doomed the State Petitions “roadless” Rule by
“taking substantive environmental protections off the books.” California ex rel. Lockyer v. U.S. Dept. of
Agric., 575 F.3d 999, 1015 (9th Cir. 2009).

In particular, we wish to question the use of Appendix G, the list of projects which ostensibly showed
“that these projects did not individually or cumulatively result in a significant effect on the human
environment.” 77 Fed.Reg. 35324 (June 13, 2012). See,
http://www.fs.fed.us/emc/nepa/restorationCE/includes/USFS_CE_Supporting_Statement_Appendix%2
0G.pdf. For one thing, the text of the Federal Register notice is incorrect, the list includes several
projects approved not through EAs and DN/FONSI but through EISs and RODs. Among these are the
Gallatin National Forest Travel Plan. That project is a good example of why the “project list” provides
questionable support for the proposition that no potential for significant effects was presented. The
Gallatin Travel Plan was hotly litigated to the point of a public Ninth Circuit decision and
preservationists eventually successfully challenged the ROD. Apparently the agency is taking some
minute aspect of the Travel Plan and contending, with the benefit of 20/20 hindsight, that those
elements could have been independently approved through a more streamlined categorical exclusion
process. This particular conclusion and this entire method is questionable. Indeed, the laundry list of
projects might arguably demonstrate precisely the opposite point attempted by the agency – that erring
on the side of procedural caution and analyzing ground-disturbing road closures is best performed
through at least an EA if not a broader EIS.

F. Examples
BRC has experienced many variations and combinations of the above-described challenges over the
years. We include a few examples as appendices:
Appendix A. Targhee Forest “tank traps”- see January, 2000 appeal decision.
Appendix B Six Rivers decommissioning- subject of pending litigation in Case No.
Appendix C Gunnison chainsaw overkill- See Letter to Forest Supervisor dated Sept. 2, 2011
Appendix D Payette Forest Coalition meeting notes 11/29/2010
Appendix E Gallatin National Forest Deer Creek Trails letter

G. Conclusion
Again, we strongly encourage the agency to reevaluate this effort. The agency must identify those ground disturbing activities that cannot be lawfully exempted from environmental analysis. In addition, a provision for a robust public involvement should be included.

As always, if you have any questions or require clarification of these comments please contact us at the number below. Thank you for considering the comments.

Brian Hawthorne
Public Lands Policy Director
BlueRibbon Coalition
Office: 208-237-1008 ext 102
Cell: 208-390-5770
Appendix A

Targhee NF January 2000 appeal decision
Paul A. Turcke, Esquire
Moore Smith Buxton & Turcke, Chartered
225 North 9th Street, Suite 420
Boise, ID 83702

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Mr. Turcke:

In accordance with 36 CFR §215.17, we have reviewed the appeal record for the Targhee Travel Plan and the Record of Decision (ROD) signed by Forest Supervisor Jerry Reese, on October 15, 1999. Our review focused on the decision, the project record, the objections raised in the appeal filed on behalf of the Blue Ribbon Coalition, and issues raised by other appellants.

I have also considered the recommendations of the Appeal Reviewing Officer regarding the disposition of this appeal. A copy of that recommendation is enclosed. There was one interested party to this appeal.

Background:

The travel and access management issue has been one of the most contentious issues that the Targhee Forest Supervisor has had to face in his efforts to implement the Revised Forest Plan for the Forest. This issue has surfaced through efforts to update the existing Forest Travel Management Plan to meet the direction established for specific geographic areas in the Targhee National Forest Revised Forest Plan, within timeframes established by the United States Fish and Wildlife Service in its Biological Opinion on the Revised Forest Plan.

The decision framework for Travel Management Planning is generally described as follows:

**Programmatic Planning:** Programmatic-level decisions are generally made in the Forest Planning process. The Forest Plan evaluates the potential effects of vehicular use on areas, roads, and trails and determines whether and where off-road vehicle use may be permitted. The Forest Plan identifies standards, guidelines, and other sideboards that define or clarify conditions that apply to travel management, such as road density standards. Travel Management Planning is part of the Forest Planning process. It identifies public need for access to National Forest System lands and identifies areas, roads, and trails that will remain open for public use or will be closed to meet resource concerns; i.e., specific road or trail construction and road closures. Orders may be issued to enforce the decisions made in the Forest Plan, i.e., to enforce an area closure.
Implementation Planning: The Forest Plan sets the direction for the management of National Forest System lands. Management of off-road vehicles and other modes of travel shall be in accordance with Forest Plan direction. Site-specific actions necessary to implement management direction in the Forest Plan should be identified and analyzed on an appropriate scale, i.e., watershed or other geographic area. Ground disturbing activity such as building a new road or obliteration of an existing road is analyzed during the implementation of specific projects. Amendments to the Forest Plan also may be considered during the project analysis.

Targhee Revised Forest Plan and Travel Plan

On April 15, 1997, the Intermountain Regional Forester issued a Record of Decision (ROD) for the 1997 Revised Forest Plan (RFP) for the Targhee National Forest. This Revised Forest Plan contained direction for travel management in the form of winter and summer transportation plans (open motorized roads and trails) and more specific direction in the management prescriptions for open road density and cross-country travel. During the summer of 1997, a travel plan map was prepared to represent this management direction and specifically to identify which roads and trails would be open for summer motorized use to meet the road density standard specified in the RFP. Targhee Forest Supervisor Jerry Reese's decision to adopt the 1997 travel plan map was made in a ROD signed August 15, 1997. The August 15, 1997 decision, was followed by approximately 1150 appeals to the Regional Forester. In an appeal decision dated January 14, 1998, the Regional Forester reversed the Travel Plan Map decision due to a lack of notice and comment opportunities and failure to disclose site-specific effects of ground disturbing closure actions.

The appeal decision contained specific direction as to how travel management activities would be performed while the Forest was in the process of correcting the deficiencies. The Regional Forester indicated some conditions might require emergency closures under 36 CFR 261. The Forest Supervisor regarded this direction as applying to the needs for closure in Grizzly Bear Management Units to meet the requirements of the U.S. Fish and Wildlife Service Biological Opinion dated March 31, 1997, which states, "The Forest will, by the end of calendar year 1999, have in place in each BMU or subunit a precise open motorized route standard not to exceed 0.6 mi./sq. mi. and a precise total route density standard not to exceed 1.0 mi./sq. mi.” He posted a closure order dated March 24, 1998, and issued a contract to undertake temporary closure of roads to meet the requirements of U.S. Fish and Wildlife Service for effective closures. This work was halted after a lawsuit was filed by the Citizens for a User Friendly Forest and The Blue Ribbon Coalition, alleging failure to meet the requirements of the National Environmental Policy Act (NEPA). Settlement was reached on plaintiffs' Request for a Preliminary Injunction when the Forest Service agreed it would modify the road closures on specific roads/trails; and committed to review and consider all Forest roads/trails during the ongoing NEPA analysis, regardless of activities undertaken during 1998 to alter the status of roads/trails. The lawsuit is pending, awaiting a decision of the court on plaintiffs’ motion for summary judgment.

Targhee Travel Plan II: The Forest prepared and circulated a Draft Environmental Impact Statement (DEIS), and considered and responded to comments received in a Final Environmental Impact Statement (FEIS) and ROD. On October 15, 1999, the Targhee National Forest Supervisor signed the ROD for the Targhee National Forest Motorized Road and Trail Travel Plan. Using the direction in the Revised Forest Plan, the Forest Supervisor evaluated which
roads and trails will be open or closed to motorized use to meet the requirements in the Revised Forest Plan and then how those closures will be implemented, i.e., through signing, gating, or various ground disturbing treatments such as earthen berms or ripping the road bed.

**Appeals Received:** A total of 19 timely filed administrative appeals were received from appellants who had standing under the provisions of Forest Service appeal regulations at 36 CFR 215. Of those appeals, 2 were filed on behalf of County Commissioners, 4 by organizations, and 13 by individuals. Generally, the appeal issues are that: 1) the decision failed to consider a reasonable range of alternatives; failed to analyze or disclose impacts; lacked any meaningful analysis comparing the effectiveness of site-specific road closure methods; did not approach procedural requirements for presentation of technical conclusions; failed to protect Yellowstone Cutthroat Trout populations and habitat; violated the Clean Water Act, Idaho Water Quality Standards, the National Forest Management Act (NFMA), and the Revised Forest Plan; allows motorized use on the Continental Divide National Scenic Trail in violation of the RFP; violated the law by attempting to regulate roads and trails which had been asserted under Revised Statute (RS) 2477; failed to disclose the effects of closing individual roads and trails; 2) that the Forest failed to conduct site specific NEPA analysis; and 3) that the Forest took action on the project prior to starting the NEPA analysis.

**APPEAL DECISION**

I will use the general decision framework described in this appeal decision to provide clarification as to the requirements and give my reasons for affirming in part and reversing in part Supervisor Reese's decision. After a careful review of the issues and requirements related to the decision made by Supervisor Reese, I have concluded that there is a considerable amount of confusion, both internally and externally. This is caused, in part, by a lack of clarity on exactly what decision was made in this ROD. Actions to implement travel plans through travel management control techniques, such as publishing user maps, posting signs on the ground, gating, and other more aggressive ground disturbing measures, such as road obliteration or decommissioning, also have different requirements for site specific analysis depending on the amount of ground disturbance and associated environmental impacts.

As I interpret the intent of Supervisor Reese in making this decision, it appears to be twofold. First, it was to identify a network of roads and trails that implements the multiple use management direction stated in the form of goals, objectives, and standards and guidelines contained in the prescriptions in the Revised Forest Plan of 1997, in accordance with requirements established in laws, regulations, and agency directives related to policy and procedure. Second, it was intended to approve and allow all necessary activities, including those site-specific actions requiring a significant amount of ground disturbance, such as road decommissioning, to proceed without further analysis and consideration of site specific actions and their effects. The Forest Supervisor viewed the FEIS as sufficient and containing the necessary consideration of alternatives and site-specific effects to provide a sound basis for taking the next steps to physically accomplish the closure actions on the ground.

I am affirming the part of Forest Supervisor Reese's decision pertaining to the programmatic planning for the Targhee National Forest. Supervisor Reese's decision regarding the Travel Management Plan was made after the completion of an Environmental Impact Statement disclosing the consideration of a reasonable range of alternatives, and their effects, to meet the
direction established in the Forest Plan. This action is viewed as an extension of the Revised Forest Plan direction. It provides further details in the form of a map of the roads and trails that are to be left open or to be closed to meet the Revised Forest Plan direction (36 CFR Part 219.21(g) and 36 CFR Part 295.2). As such, it provides focus for further actions to implement the Revised Forest Plan direction, including closure orders and visitor maps to be made available to the public users of the National Forest and is in compliance with the procedural requirements established for such plans.

I also agree with the ARO that the Forest is not required to maximize protection for water quality and the Yellowstone Cutthroat Trout. Instead, the decision must comply with the law and ensure that implementation of the decision does not move the species toward listing. I am affirming the Forest Supervisor on this issue.

Therefore, the Forest Supervisor’s decision is affirmed, with the following exceptions:

1. Site-specific analysis of the environmental impacts of closure methods that require surface disturbance is required before any further action is taken. However, the Forest Supervisor may proceed to implement the Travel Management Plan, but may only effect road closures by publishing closure orders and/or travel maps, and installing signs and gates.

2. Actions taken on the Continental Divide Trail shall be consistent with the standards of the National Trails System Act; and,

3. No road closure actions may be taken on roads for which Madison or Teton County has asserted rights-of-way under Revised Statute (R.S.) 2477 until there has been a formal meeting between the Forest Service and each County to seek concurrence with closure plans. If dispute as to road jurisdiction and Forest Service closure plans remains following this meeting, such disputes may be resolved in accordance with Forest Service policy as set out in Deputy Chief Robert C. Joslin's September 25, 1997 letter to Regional Foresters. Pending resolution of disputes that remain following the meetings with the Counties, the Forest may take road closure actions necessary for management and protection of National Forest System land and resources, in accordance with the requirements of this appeal decision to complete site-specific analysis.

I am reversing the Forest Supervisor on that part of the decision that implements the decision through initiating further ground disturbing actions, such as earthen berms and barriers, ripping the roadbed, or other actions which will have potential effects on soil and water resources, other beneficial uses and public safety, until further site specific analysis is completed. From my review, it is apparent that there are uncertainties about many aspects regarding implementation of this decision through additional ground disturbing activities. The required site-specific actions contemplated will require additional analysis and disclosure of effects for the alternative closure actions. Specifically, this pertains to effects relating to human safety, effects on Water Quality Limited Segments, and on Yellowstone Cutthroat Trout Habitat, as well as other sensitive resource concerns, to provide a sound basis for any final decision on how to achieve the effective road closures through ground disturbing or other appropriate actions. I did not find the necessary documentation of the site-specific effects of various closure methods and their potential effects.
on soil, water, and human safety in the documents contained in the record.

I want the Forest Supervisor to build upon the tremendous effort put forth to date and proceed with project-level site-specific decision making, including the disclosure of site specific environmental impacts. I am directing the Forest Supervisor to develop a list, by priority, of the areas on which site-specific analysis will be done and provide me with a schedule for completing the necessary work on logical geographic areas of the Forest. First priority must be placed on roads closed under the emergency actions and associated with the existing lawsuit. The schedule will be made available within two months from the date of this decision and shall be updated as necessary if conditions or needs arise for changing priorities. In developing the timelines, reasonable expectations need to be established to assure that the proposed actions are site specific and include sufficient analyses of alternatives as required, including appropriate mitigation measures and disclosure of environmental consequences. The "No Action" alternative for those roads that were closed under the emergency order will be to leave the road in the condition that existed prior to the emergency action taken. This will ensure full consideration of the effects that may result from the change in the condition of the road as it existed prior to those temporary closures. These decisions will be subject to established NEPA procedures and, as appropriate, appeal regulations at 36 CFR §215.

I believe this decision allows the agency to proceed with a travel management strategy within the laws, regulations, mission, and procedures given to us, while at the same time allowing us to incorporate additional information, including any new information, in future site-specific decisions.

This decision constitutes the final administrative determination of the U.S. Department of Agriculture [36 CFR §215.18(c)].

Sincerely,

[Signature]

CHRISTOPHER L. PYRON
Appeal Deciding Officer
Deputy Regional Forester

Enclosure

cc:
Mr. Marv Hoyt
Idaho Representative
Greater Yellowstone Coalition
162 North Woodruff Avenue
Idaho Falls, ID 83401-4335
Appendix B

Six Rivers Complaint.5-17-10
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEL NORTE COUNTY, CALIFORNIA; DEL
NORTE ROD AND GUN CLUB; LAKE EARL
GRANGE; NORTH COAST CLIFFHANGERS 4
WHEEL DRIVE CLUB; CALIFORNIA
ASSOCIATION OF 4 WHEEL DRIVE CLUBS;
BLUE RIBBON COALITION;

Plaintiffs,

v.

UNITED STATES FOREST SERVICE; an agency of
the United States Department of Agriculture; SIX
RIVERS NATIONAL FOREST; TYRONE
KELLEY, Forest Supervisor, Six Rivers National
Forest; MARY KAY VANDIVER, District Ranger,
Gasquet Ranger District/Smith River National
Recreation Area;

Defendants.

NATURE OF ACTION

1. This action seeks declaratory and injunctive relief requiring Defendants United
States Forest Service, Six Rivers National Forest, Tyrone Kelley and Mary Kay Vandiver (the

COMPLAINT – Page 1
to acknowledge and adhere to controlling law while managing the Six Rivers National Forest.

2. Plaintiffs specifically challenge the Forest’s recent and ongoing actions, under the guise of “road maintenance”, which have utilized heavy equipment to intentionally conduct ground-disturbing removal of culverts, installation of berms, “water bars and rolling dips” and decommissioning of road surfaces. These activities have been performed without any notice to or opportunity for comment by the public, without consultation with associated agencies concerning water quality or other possible impacts, and without meaningful internal analysis of such possible impacts.

3. An example of the challenged conduct includes actions taken in late 2009 along Forest Road 17N92, which is in the Smith River watershed. A contractor acting under the control and supervision of the Forest performed ground-disturbing activities which coincided with seasonal precipitation events to cause erosion and deposition of sediment-laden runoff to the watershed. These activities occurred in the absence of legally-required analysis of potential environmental impacts connected to such actions.

4. Plaintiffs additionally challenge the formal process, or lack thereof, by which the Forest recently designated roads, trails and areas for motorized use through publication of a Motor Vehicle Use Map (“MVUM”). Contrary to applicable law and regulation, as well as established practice throughout the National Forest System, the MVUM was published without opportunity for public review, comment, administrative appeal, or other meaningful public involvement.
5. This suit arises under the National Forest Management Act, 16 U.S.C. § 1600 et seq. ("NFMA"); the National Environmental Policy Act, 42 U.S.C. § 4331, et seq. ("NEPA"); the Administrative Procedure Act, 5 U.S.C. § 551, et seq. (the "APA"), and any implementing regulations for these statutes.

JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States. The conduct complained of creates an actual, justiciable controversy and is made reviewable under the APA.

7. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Forest’s office is located in Eureka, within the Northern District of California, a substantial number of the events or omissions giving rise to these claims occurred, or, a substantial part of the property that is the subject of these claims is situated, within the Northern District of California. Additionally, one or more plaintiffs reside in the Northern District of California.

PARTIES

8. Plaintiff Del Norte County (the "County") is a political subdivision of the State of California. The County is located at the north-westernmost corner of the State, bordered on the west by the Pacific Ocean and on the north by the State of Oregon. The County encompasses about 1,003 square miles with a human population of about 26,000. The County seat is Crescent City, which is located on Highway 101 approximately 20 miles south of the Oregon border, with a population of about 7,542. The Six Rivers National Forest is located within the borders of the County, and residents of the County have long relied upon the tangible and intangible resources of the Forest, both before and after its formal creation by Congress, for economic, real property.
contractual, recreational/aesthetic and other interests. The County acts by and through its duly-convened Board of Supervisors, who have attempted, in accordance with applicable law and regulation, to work collaboratively and cooperatively with the Forest regarding matters addressed within and beyond this Complaint.

9. Plaintiff Del Norte Rod and Gun Club ("RG Club") is a California unincorporated nonprofit association comprised of approximately 110 members. RG Club members are connected not through their interest in any particular activity or sociopolitical attribute, but through their common interest in outdoor sporting activities in the Forest, specifically including Del Norte County, California and the Smith River corridor within the Forest. RG Club members have enjoyed, and hope for themselves and future generations to enjoy, a variety of recreational, aesthetic, and commercial activities within the Forest. These activities include sightseeing, hunting, fishing, camping, wildlife and plant viewing, photography, and travel associated with and necessary to such activities via motorized vehicles, horseback and on foot.

10. Plaintiff Lake Earl Grange ("LEG") is a California unincorporated nonprofit association with approximately 150 members. LEG members access the Forest using both motorized and non-motorized means of transportation in pursuit of various outdoor recreational activities including equestrian use, hunting, fishing, wood gathering, driving for pleasure, camping, nature viewing and similar pursuits. LEG members have enjoyed in the past, and have concrete plans to enjoy in the future, such activities along or within areas accessible via the routes addressed herein.

11. Plaintiff North Coast Cliffhangers 4 Wheel Drive Club ("Cliffhangers") is a California unincorporated nonprofit association with approximately 25 members. Cliffhangers is
a member club in good standing of the California Association of 4 Wheel Drive Clubs. Cliffhangers members access the Forest using both motorized and non-motorized means of transportation in pursuit of various outdoor recreational activities including equestrian use, hunting, fishing, wood gathering driving for pleasure, camping, nature viewing and similar pursuits. Cliffhangers members have enjoyed in the past, and have concrete plans to enjoy in the future, such activities along or within areas accessible via the routes addressed herein.

12. Plaintiff California Association of 4 Wheel Drive Clubs ("Cal4") is a California mutual benefit corporation representing over 8,000 members and 160 clubs in the State of California. Cal4 members use motorized means to access and enjoy lands managed by the Forest Service throughout California. In particular, Cal4 members share a common interest in owning, maintaining, and operating customized 4-wheel drive vehicles such as Jeeps and Broncos on dirt roads and trails. Such vehicular access also facilitates Cal4 members’ various outdoor activities, such as picnicking, camping, sightseeing, wildlife and nature study, hunting and fishing, and similar activities. Many Cal4 members, due to age, physical condition, or other factors, would be unable to enjoy meaningful participation in their chosen activities without vehicular access to lands managed by the Forest Service. As an organization, Cal4 is dedicated to the protection of the values and natural resources in the Six Rivers and other National Forests and regularly works with land managers to provide recreation opportunities, preserve natural resources, and promote cooperation between public land visitors.

13. Plaintiff Blue Ribbon Coalition, Inc. ("BlueRibbon") is an Idaho nonprofit corporation representing over 10,000 individual members and 1,200 businesses and organizations with approximately 600,000 members nationwide. BlueRibbon members use motorized and
nonmotorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to access Forest Service and other public lands throughout the United States, including such lands in California. BlueRibbon has a long-standing interest in the protection of the values and natural resources addressed herein, and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors. BlueRibbon members have visited the Forest via the above-described means of access and intend to do so in the future.

14. Defendant United States Forest Service is a federal agency within the United States Department of Agriculture. The Forest Service is charged with administering and overseeing United States Forest System lands in accordance with applicable law.

15. Defendant Six Rivers National Forest is a subunit of the United States Forest Service comprised of approximately 957,590 National Forest acres and 133,410 acres of other ownership in California. The Forest's main office is located in Eureka.

16. Defendant Tyrone Kelley is the Forest Supervisor for the Six Rivers National Forest. As his title implies, he is the supervisor for the Forest and is the ultimate authority for the actions, procedures and decisions of the Forest and is charged with ensuring the Forest complies with applicable law. He is sued solely in his official capacity.

17. Defendant Mary Kay Vandiver is the District Ranger of the Gasquet Ranger District, Smith River Recreation Area. She retains ultimate authority and is charged with ensuring compliance with applicable law for actions taken within her Ranger District. She is sued solely in her official capacity.

LEGAL FRAMEWORK
18. The APA addresses and regulates the function of executive branch administrative agencies within our system of open government. Among such functions, the APA represents a waiver of sovereign immunity by the United States and outlines the circumstances in which "final agency action" may be subject to judicial review, as well as the standards of review to be applied in such challenges. Since many statutes and regulations do not provide for a private right of action, the APA provides the jurisdictional basis for judicial review of administrative decisions by federal land management agencies applying statutes like NEPA and NFMA to public lands like the Forest.

19. NEPA represents "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1. NEPA's protections of the "environment" refer to the "human environment" which "shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment." 40 C.F.R. § 1508.14. Among its numerous purposes, NEPA procedures are designed to foster informed agency decisionmaking based upon informed public participation.

20. NFMA establishes the statutory framework for management of the National Forest System. In NFMA and other statutes, "Congress has consistently acknowledged that the Forest Service must balance competing demands in managing National Forest System lands. Indeed, since Congress' early regulation of the national forests, it has never been the case that "the national forests were...to be 'set aside for non-use.'" The Lands Council v. McNair, 537 F.3d 981, 990 (9th Cir. 2008) (en banc) (citations omitted). Additional guidance, incorporated expressly within NFMA, is offered in the Multiple-Use Sustained Yield Act ("MUSYA"), which provides that the various surface resources be managed "so that they are utilized in the
combination that will best meet the needs of the American people" and to “achieve[ ] and
maintain[ ] in perpetuity [ ] a high-level annual or regular periodic output of the various
renewable resources of the national forests without impairment of the productivity of the land.”
16 U.S.C. § 531(a) (definition of “multiple use”) and (b) (definition of “sustained yield”); 16
U.S.C. § 1604(g) (incorporating MUSYA provisions in NFMA).

21. NFMA procedurally requires the Forest to prepare and revise a “forest plan.” 16
U.S.C. § 1604. A forest plan lays out broad guidelines to advance numerous goals and
objectives, including “insure consideration of the economic and environmental aspects of
various systems of renewable resource management, including the related systems of silviculture
and protection of forest resource, to provide for outdoor recreation (including wilderness), range,
timber, watershed, wildlife, and fish....” Id. at (g)(3)(A). These plans contain desired
conditions, objectives and guidance for project and activity decisionmaking, but do not approve
or execute projects and activities. 36 C.F.R. § 219.3 (2007). The guidance in the Forest Plan is
subject to change through plan amendment in site-specific or project-level planning, or through
are presented in activity-specific rules, such as the Travel Management Rule provides for
motorized access to the Forest System.

22. On November 9, 2005, the Forest Service published in the Federal Register a
Final Rule entitled “Travel Management; Designated Routes and Areas for Motor Vehicle Use.”
70 Fed.Reg. 68264-68291 (Nov. 9, 2005) (the “Travel Management Rule”). The Travel
Management Rule was issued following publication of, and receipt of public comment upon, a
proposed rule and was otherwise promulgated in accordance with notice-and-comment
rulemaking procedures of the APA. As such, the Travel Management Rule carries force and
effect of law and the procedures and provisions therein are binding upon the Forest Service.

23. The Travel Management Rule generally “requires designation of these roads, trails and areas that are open to motor vehicle use...and will prohibit the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that is not consistent with the designations.” 70 Fed.Reg. 68264 (Nov. 9, 2005).

24. The tangible outcome of the planning process required by the Travel Management Rule is publication of a Motor Vehicle Use Map (“MVUM”) which is “[a] map reflecting designated roads, trails and areas on an administrative unit or a Ranger District of the National Forest System.” Id. at 68288; 36 C.F.R. § 212.1 (2006).

25. The Travel Management Rule requires the agency to apply “general criteria” when designating roads, trails and areas for vehicle use, which include effects on natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails and areas, and the availability of resources for maintenance and administration. 36 C.F.R. § 212.55(a) (2006). The Travel Management Rule further includes “specific criteria” which must be considered, “with the objective of minimizing” effects on specified resources including soils, watersheds, wildlife and associated habitats and conflicts between vehicle and other uses and within vehicle use types. Id. at (b).

26. The Travel Management Rule further describes the process by which roads, trails and areas will be designated, specifically noting that “[t]he public shall be allowed to participate in the designation” process, and that “[a]dvance notice shall be given for public comment.
consistent with agency procedures under [NEPA], on proposed designations and revisions.” 36 C.F.R. § 212.52(a) (2006).

27. The Travel Management Rule does identify circumstances when public involvement consistent with NEPA is not required, indicating “[p]ublic notice with no further public involvement is sufficient if a National Forest or Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict motor vehicle use over the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations.” Id.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

28. The Six Rivers National Forest lies in northern California and encompasses portions of four California counties (Del Norte, Humboldt, Trinity, Siskiyou) in a long narrow pattern of ownership stretching in a narrow 140-mile band from the Oregon border southward to Mendocino County. The Forest includes grassy glades and extensive conifer stands, with elevation ranges from sea level to nearly 7,000 feet. About 1,500 miles of permanent streams are found on the Forest, supplying about 9% of California’s total runoff, and the major waterways draining or passing through the Forest are the Smith, Klamath, Trinity, Mad, Van Duzen and Eel Rivers.

29. The Forest has long included outstanding and diverse opportunities for both motorized and nonmotorized recreation. The Six Rivers is best known for its valued timber, dispersed recreation, and outstanding anadromous fishing. In particular, the Smith River represents the largest single undammed Wild and Scenic River system in the United States and provides habitat for Chinook and coho salmon, steelhead, and rainbow and cutthroat trout. The
The largest steelhead on record in California (27 lbs. 4 oz.) was landed on the Smith, as was the state's second-largest (86 lbs.) recorded Chinook salmon. These fisheries exist in part due to the unique habitat offered by the Smith, including its water quality.

30. The road and trail network has long been a foundation of human visitation and livelihood on the Forest. This network has included roughly 2,500 miles of roads and 250 miles of trails, serving varied needs over time created by or associated with 1930s Civilian Conservation Corps projects, historic and modern-day mining and logging, nationally-renowned redwood forests, other unique recreational destinations and features.

31. The road and trail network has been addressed through various planning efforts by the Forest. For example, "recreation" is generally addressed in the 1995 Land and Resource Management Plan (or "Forest Plan"), which states:

Developed recreation opportunities will be adequate to meet project demand. Approximately 50 percent of developed sites will be rehabilitated during the first decade to respond to changing user needs and accessibility requirements. Major facility construction will occur within the Smith River National Recreation Area according to the Smith River National Recreation Area Management Plan; minor site construction will occur elsewhere. Trails will be maintained on the average of every three years and expand to include management for equestrian and mountain bike use. About 16 miles of trail will be constructed or reconstructed during the first decade. Staging areas with facilities to accommodate OHV use will be constructed during the first decade.

Record of Decision at ROD-4 & 5; 1995 Six Rivers LRMP.

32. As is common throughout the National Forest System, "visitor use maps" were created and widely distributed to the public, generally depicting the roads and trails available for travel as well as seasonal or other restrictions on specific routes/areas.

COMPLAINT – Page 11
33. Notwithstanding the foregoing, a route/area status as "open", "closed" or "restricted" on the Forest's "visitor use maps" may or may not accurately reflect the outcome of a formal administrative decision.

34. Neither the Forest nor any entire Ranger District has ever formally designated roads, trails and areas for motorized (or other) access through a process involving advance notice and opportunity for public involvement and administrative appeal consistent with the NEPA.

35. Subsequent to promulgation of the Travel Management Rule the Forest evaluated how to generate an initial MVUM. The Forest did not conduct a formal planning process including public notice and involvement.

36. In September, 2009, the Forest published an MVUM.

37. The route/area designations on the September 2009 MVUM did not coincide with those on the preceding "forest visitor map." Nor did the September, 2009, MVUM designations coincide with those on any map distributed by the Forest or otherwise made available to forest visitors or the public.

38. According to media reports, the Forest intends to begin a collaborative process, as well as analysis through an Environmental Assessment under NEPA, that will consider modifications to the MVUM.

39. On information and belief, and in accordance with the Travel Management Rule, the September 2009 MVUM will reflect the formal status of routes and areas on the Forest. As a result, the MVUM will define and restrict public access to and within the Forest by motorized vehicle type. Those determined by agency or law enforcement officers to be in violation of the MVUM prescriptions will face criminal sanctions under applicable law and regulation.

COMPLAINT – Page 12
40. Plaintiffs and their members reside near (or within) the Forest, and enjoy the Forest in their livelihood as well as their recreational and aesthetic pursuits. Life in the area offers challenges, which are largely outweighed by the natural beauty and relatively unspoiled character of lands within and surrounding the Forest, and the relaxed pace of living still meaningfully connected to the outstanding natural and physical environment.

41. In mid-December 2009, members of Plaintiff organizations were visiting the Forest and noticed ground-disturbing activities underway, including what appeared to be removal of culverts; recontouring of road surfaces; grading; building or reconfiguration of berms; and related travel; all involving heavy equipment such as “caterpillar” tractors and large trucks.

42. The aforementioned activities were observed in several locations on the Forest, specifically including along Forest Road 17N92. Forest Road 17N92 is not designated for motorized travel under the MVUM and was in late 2009 (and is presently) physically obstructed by a locked gate.

43. On approximately December 22, 2009, Plaintiff members were in the vicinity of Forest Road 17N92, and observed numerous Forest Service vehicles at the locked gate and could hear what sounded like heavy equipment operating in the vicinity of Road 17N92 beyond the locked gate.

44. Plaintiff members revisited Road 17N92 on subsequent occasions and observed ground-disturbing activities and modifications to the roadbed and surrounding terrain. Coincident with seasonal rainfall common to the area, rivulets and small tributaries to the adjacent streams previously protected through functioning culverts and erosion-control devices
were depositing much greater than normal volume of chocolate-brown water to the adjacent waterways, which ultimately drain into the Smith River.

45. Upon observing the ground-disturbing activities on Road 17N92, Plaintiff members contacted Forest and County officials. Following these reports, Forest personnel appeared at public meeting before the Del Norte County Board of Supervisors on January 26, 2010. A presentation regarding various topics was presented to the Board of Supervisors, and questions were raised by the Board and addressed by Forest personnel specifically addressing Road 17N92. The proceedings of that meeting, including the entire Forest Service presentation, were recorded with video/audio recording equipment. See, e.g., proceedings of January 26, 2010, meeting beginning at approximately 1 hour, 33 minutes into recording, accessible via Del Norte County website at [http://www.dnco.org/agendas/bos/publishedmeetings.htm](http://www.dnco.org/agendas/bos/publishedmeetings.htm).

46. At approximately the same time Plaintiff members performed research through the Forest’s website and other means and learned that the Forest had solicited bids for a project entitled “Smith River NRA Storm Proofing” in August, 2009. A document entitled “Solicitation, Offer and Award” is dated August 24, 2009 for Requisition #302010, AAP #05NP100940996. The document is 69 pages long, and is hereinafter referred to as “the Contract.”

47. The Contract states “[t]he intent for this contract is to secure services for removing culverts on the Smith River National Recreation Area of Six Rivers National Forest. Work consists of excavation and embankment, disposal of existing culverts, and the installation of rolling dips and waterbars on approximately nine miles of roads.” Contract at p. 4; Section C-1.1 – Scope of Contract. The Contract further estimates the quantity of various “items” required of the contractor, including “removal of culverts” (25 items); “drainage excavation, water bar”
(28 items); “drainage excavation, rolling dip, Type 2” (4 items); and “roadway obliteration, method 2” (1 item). Contract at p. 3; Section B-1 Schedule of Items. The estimate of price range for the described services “is between $100,000 and $250,000.” Contract at p. 1.

48. The Forest did not perform analysis of the action(s) proposed by the Contract in accordance with NEPA.

49. The Forest did not consult with the U.S. Fish and Wildlife Service in accordance with the Endangered Species Act, or with state or federal agencies in accordance with state or federal water quality statutes such as the Clean Water Act.

50. The Forest did not notify the public of the Contract or associated actions. The public was not provided an opportunity to comment upon the Contract or associated actions. Nor was the public provided an opportunity to administratively appeal or otherwise challenge negotiation, letting or implementation of the Contract.

51. On information and belief, the Contract has not been fully implemented.

COUNT ONE: VIOLATION OF NFMA; Travel Management Rule (Adoption of MVUM)

52. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

53. The MVUM was not adopted through a public planning process. Specifically, the Forest did not, prior to publishing the MVUM, comply with the requirements of the Travel Management Rule that “[a]dvance notice shall be given for public comment, consistent with agency procedures under [NEPA], on proposed designations and revisions.” 36 C.F.R. § 212.52(a) (2006).
54. Neither the Forest nor any of its Ranger Districts has made previous administrative decisions, under other authorities and including public involvement, which restrict motor vehicle use over the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations. See, id.

55. Defendants’ actions described above, to specifically include adopting and publishing the MVUM, are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

56. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants’ actions addressed in this claim for relief. In particular, Defendants have conducted no public process, and have offered no opportunity for administrative participation, review, or “administrative remedies” to exhaust.

57. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT TWO: VIOLATION OF NEPA
(Adoption of MVUM)

58. Plaintiffs hereby incorporate by reference each statement and allegation previously made.
59. NEPA generally requires that federal agencies disclose and consider alternatives to proposals for action that may significantly affect the human environment. NEPA and related procedures "must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1.

60. The route- and area-specific designations in the MVUM presented at least the potential for significant effects to the human environment. Such effects might be associated with decision to not only designate a route/area as "open" or "closed" to motorized travel, but also whether to restrict such travel based upon site-specific resources, nature of use, seasonal factors, or similar conditions.

61. The Forest did not conduct site-specific analysis under NEPA for the designations formalized in the MVUM. Given the lack of public involvement, Plaintiffs are uncertain what, if any, analysis preceded publication of the MVUM.

62. Plaintiffs and other members of the public are constrained by the prescriptions of the MVUM. Thus, Plaintiffs, their members and citizens, are prohibited from visiting the Forest in any manner contrary to the MVUM, regardless of whether they have previously done so and regardless of whether such prior access was consistent with the applicable "forest visitor map" or other Forest direction.

63. Plaintiffs, their members and citizens, face criminal sanctions if they are found to be in violation of the provisions of the MVUM.

64. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations.
without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

65. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants’ actions addressed in this claim for relief. In particular, Defendants have conducted no public process, and have offered no opportunity for administrative participation, review, or “administrative remedies” to exhaust.

66. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT THREE: VIOLATION OF NEPA
(Failure to Analyze)

67. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

68. The actions described within and performed pursuant to the Contract presented at least the potential for significant effects to the human environment.

69. In fact, due to poor timing, project design/specifications (or lack thereof), contractor performance or other factors, the actions performed under the Contract caused erosion and deposition of soil and sediment to tributaries of the Smith River.

70. The Forest did not conduct site-specific analysis under NEPA for the actions outlined in and carried out under the Contract. The public was not provided an opportunity in

COMPLAINT – Page 18
accordance with NEPA or otherwise to review or comment upon the actions outlined in the
Contract.

71. Defendants' actions described above are made reviewable through the APA and
are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right,
power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations;
without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C.
§ 706(2), and should therefore be declared unlawful and set aside by this Court.

72. Plaintiffs have exhausted all administrative remedies required by law in order to
seek relief from Defendants' actions addressed in this claim for relief. In particular, Defendants
have conducted no public process, and have offered no opportunity for administrative
participation, review, or "administrative remedies" to exhaust.

73. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal
interests arising from and associated with their use and enjoyment of the Forest as a result of the
allegations contained in this claim for relief, and these injuries will go unredressed absent
judicial relief.

COUNT FOUR: VIOLATION OF NEPA
(Taking Action Involving Potential Significant Effects)

74. Plaintiffs hereby incorporate by reference each statement and allegation
previously made.

75. The actions taken under the Contract were performed within the direction and
control of the Forest.
76. The actions taken under the Contract not only presented a potential for significant effects to the human environment, but did in fact ultimately have such effects. Substantial ground-disturbance occurred which altered the slope and other aspects of the affected road prism and surrounding area. The location, timing and nature of culvert removal and associated activities caused significant amounts of erosion, soil loss and/or sediment loading of tributaries in the North Fork Smith River watershed.

77. These actions and resultant impacts represent violations of NEPA and other applicable law.

78. Defendants’ actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared unlawful and set aside by this Court.

79. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants’ actions addressed in this claim for relief. In particular, Defendants have conducted no public process, and have offered no opportunity for administrative participation, review, or “administrative remedies” to exhaust.

80. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COMPLAINT – Page 20
COUNT FIVE: VIOLATION OF NFMA
(Violation of Forest Plan)

81. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

82. A land and resource management plan, or "forest plan" must be designed for each unit of the National Forest System and must "use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences..." in analyzing and allocating specific uses of the applicable forest. 16 U.S.C. § 1604(a).

83. Following adoption of a Forest Plan, subsequent agency action, including project-level or other site-specific action, "must comply with NFMA and be consistent with the governing forest plan." McNair, 537 F.3d at 989.

84. Neither the MVUM nor the Contract are consistent with the Six Rivers Forest Plan. In fact, the Forest has taken actions, through both the MVUM and the Contract, that are not only not consistent with, but directly contradictory to, the Forest Plan.

85. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; short of statutory right; or otherwise in violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared unlawful and set aside by this Court.

86. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief. In particular, Defendants
have conducted no public process, and have offered no opportunity for administrative participation, review, or "administrative remedies" to exhaust.

87. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

REQUEST FOR RELIEF

Wherefore, having alleged the above-described violations of law, Plaintiffs respectfully request judgment in their favor on each and every claim alleged herein, and request that the Court rule, adjudge, and grant relief as follows:

1. Declare unlawful the above-described actions taken by the Forest through or in conjunction with the Contract and/or MVUM;

2. Remand the matters addressed in the Contract and similar matters in other portions of the Forest for further analysis and action in accordance with applicable law;

3. Issue appropriate preliminary and/or permanent injunctive relief as may be requested by Plaintiffs or determined through appropriate proceedings;

4. Award the Plaintiffs their reasonable fees, costs, and expenses of litigation as allowed by the Equal Access to Justice Act, 28 U.S.C. § 241 et seq. and other applicable law or rule of court; and

5. Grant such further and additional relief as the Court deems just and proper.
Respectfully submitted this 5th day of April, 2010.

DENNIS L. PORTER, ATTORNEY AT LAW

/s/ Dennis L. Porter

Dennis L. Porter
Of Attorneys for Plaintiffs
Appendix C

Letter to GMUG Supervisor 9-2-2012
Delivered Via U.S. Mail and  
E-mail to csrichmond@fs.fed.us

Charles S. Richmond  
Forest Supervisor – Gunnison National Forest  
2250 Highway 50  
Delta, CO 81416

RE: Immediate Cessation of Road/Trail Obliteration

Dear Supervisor Richmond:

The Gunnison National Forest is taking various actions under the guise of travel management that involve undisclosed and unanalyzed impacts to the human environment. It is imperative that the Forest immediately halt these activities and take necessary actions to restore public trust and refocus on effective travel management.

This letter is sent on behalf of our clients the Trails Preservation Alliance and Colorado Off Highway Vehicle Coalition. We submitted an appeal to the 2010 travel management project on behalf of these organizations. They have been actively involved in the travel management process on the Gunnison and other Colorado Forests.

We have limited information concerning the “implementation” actions underway. This information indicates that more than 200 live trees have been felled, numerous boulders moved, and several miles of route surface “ripped” with heavy equipment. The affected locations include a portion of Flag Creek trail (FS 422), a spur(s) off Matchless trail (FS 413), a spur(s) off Reno Divide road (FS 759) and a trail paralleling Rocky Brook road (FS 748). Enclosed please find photos of some of the actions taken at these locations.
We raised concerns about this type of activity in our part 215 administrative appeal, a copy of which is attached. We prefaced our concern as “err[ing] on the side of procedural caution” and noted the absence of discussion about decommissioning in the EIS or decision documents. See, Appeal at 12-13 (issue I). For whatever reason, the appeal decision does not even respond to this point. See, Appeal Decision (enclosed) and ARO recommendation at 12-13 (ending on appeal issue H). Our clients have remained in regular contact with Gunnison personnel, and have never been advised of the above-described actions or any plans regarding decommissioning.

Ground disturbing actions which present even the potential for significant effects to the human environment cannot be undertaken without NEPA review. No such review has occurred for the routes in question. We have repeatedly raised these concerns with the Gunnison. Again, we enclose a Region 4 appeal decision reflecting the Forest Service’s awareness of the intuitive reality that ground disturbing road closure actions require site specific NEPA analysis.

The Forest’s actions also reflect exceedingly poor judgment and threaten a breach of the public trust. The routes in question receive other than motorized use, the restriction of which has never been analyzed. When our clients implore the Gunnison to more active trail management and maintenance the Forest persistently complains of the lack of personnel and budget to perform on site work. A few years ago a district ranger similarly threw procedural compliance to the wind trying to close routes and our clients were assured by your office that it would never happen again. The Travel Management Rule recognizes the importance of effectively communicating and partnering with nonfederal entities, including user groups, to effectively designate, implement and enforce a recreational transportation system. See, 70 Fed.Reg. 68269, 68270 (Nov. 9, 2005). It is bad enough that the actions in question have occurred. Even more troubling is the fact they were taken without any effort at discussion with, or even notice to, engaged publics such as our clients.

The Colorado Off-Highway Vehicle Recreation Fund has been eagerly snapped up to supplement the lack of all trail maintenance on the Gunnison. My clients have relied on a good faith partnership in continuing to assist the agency. They gave the Forest the benefit of the doubt in the appeal process even though there were no viable appeals further requesting limitation of motorized opportunity. Actions like these make it hard to justify similar choices in the future.
The Forest must take immediate action to address these concerns. At a minimum, we expect on site “implementation” as described in this letter to cease. We request a meeting between our client and Forest Service representatives to be scheduled at the earliest opportunity. Please respond via email to me at pat@msbtlaw.com and to Don Riggle at info@coloradotpa.org. If we do not receive a suitable response before 5:00 o’clock p.m. MDT, Wednesday, September 7, 2011, we will take appropriate further action.

Sincerely,

MOORE, SMITH, BUXTON & TURCKE, CHTD

/s/ Paul A. Turcke

Paul A. Turcke

PAT/kmd
Enclosures

cc: info@coloradoTPA.org
ejrbongiovanni@gmail.com
etcsporl@fs.fed.us
jrmurphy@fs.fed.us.
Appendix D

Payette Forest Coalition Meeting-Notes-11-29-10
Updates/Overview

Adams County Power Plant Project

- The 2006 tornado near Bear, Idaho motivated an investigation of biomass utilization (see Bear Biomass Field Tour notes and photos).
- Four counties formed a partnership: Adams, Boise, Gem, and Valley.
- Partnership Goal: Increase biomass utilization and create jobs.
- Adams County plans to build a 10 megawatt biomass power plant.
  - Requires biomass supply of 140,000 green tons annually.
  - Will operate 24x7, 365 days a year.
  - Creates 20-25 jobs to operate the facility.
  - An additional 100 jobs are involved to harvest and deliver the biomass.
  - Construction will employ another 100 people.
- Project pro forma forecasts a profitable facility, given the revenue derived from electrical power rates.
- Biomass sources include Potlatch, Evergreen, BLM, IDL, the Boise and Payette National Forests.
- PFC’s advisory role to the Payette NF is an important part of the County’s planning for biomass supply.

NEPA

- The Council District ID Team scheduled a public meeting to review proposed alternatives to the Council Mountain-Mill Creek Landscape Restoration Project.
  - December 13, 2010 at 6:00 PM
  - Location: Council Ranger District Office

PFC Organization

- John McCarthy has accepted the invitation to join the Steering Team.
- The Basic Conditions of Collaboration were reviewed and adopted by consensus.

Road/Trails Follow-up from Oct. 21st

- The Road Trails Working Group reported on progress.
- The Working Group was formed last meeting following a review of the ID Team’s field data collected on the road system during 2010. The Working Group was formed to review road decommissioning factors:
• The ID Team identified 18.7 miles of non-system roads that are high priority for decommissioning (see Road Decommissioning objectives and photo examples).
• The roads are high priority due to their negative impact on the resource.
• The ID Team identified the roads segments by following PFC’s recommended priorities.
• The most likely treatment for these roads is elimination of the road bed, and restoring natural contours and slopes.
• The ID Team requested feedback from the User Groups regarding the impact of the planned treatment on User Group Access.
• The two primary User Groups relevant for the 18.7 miles are: Allotment Permittees and Recreation Trail Users.

• The Working Group held a meeting and reviewed recreational use.
  • Discussions with the ID Team concluded that roads identified as high priority for decommissioning are not appropriate for trails (see PowerPoint overview of trail program).
  • The Working Group identified two candidate sites for trail construction, and three potential dispersed recreation sites.
  • Recommending trail system improvements is an important task, but second priority.
  • First priority for the Working Group is to identify constraints on User Group Access by decommissioning 18.7 miles.
  • The Allotment Permittees need to have a similar review and discussion with the ID Team representatives, similar to Recreation Users.

• Action Item
  • The ID Team provided maps that identify high and medium priorities for decommissioning.
  • The Permittees will review the maps and discuss with the ID Team.
  • The review will identify overall livestock corridors within the landscape project area, and the required condition (trail vs. path).
  • With respect to the 18.7 miles identified, the Permittees will identify access constraints.
    • In consultation with the ID Team, the Permittees will provide recommendations to the entire PFC that 1) identify feasible alternative corridors, or 2) retain access while mitigating the negative impacts that caused the road segment to be high priority.
  • The Road/Trails Working Group will meet the afternoon of December 13th (prior to the scheduled public meeting in Council).
  • As the second priority, the Road/Trails Working Group will continue to discuss recommendations that address trail connectivity on non-system roads. The Working Group recommendations should address two aspects:
    • What is the appropriate plan for a trail system within the project area? The broader plan (beyond the 18.7 miles of decommissioning will likely involve other user groups).
    • What partnerships between user groups and the Payette NF will support construction and maintenance of new trails?
Key Issues from Scoping Process

Concerns of Allotment Permittees

- **Livelihood**
  - The primary concern is potential constraints on livelihood. The cattle business is completely dependent on the resource. Available options on private land are limited due to land use conversion and fragmentation of ownership into smaller parcels.
  - **Action Item:** The PFC will propose a goal statement that recognizes grazing as a sustainable resource use that contributes to the local economy; the Coalition’s recommendations to the Forest Service should strive to minimize negative impacts of proposed actions on the approved resource uses in the grazing allotments. Note: a draft goal statement will be posted on the Forum for comment.

- **Weed Control**
  - Weeds/invasives have a negative impact on the resource.
  - The Forest Service treatment options are limited, due to constraints on chemical application.
  - Although PFC members have discussed the issue in past meetings, a recommendation to the Forest Service is lacking. What control options are feasible?
  - **Action Item** Three sources of information will be posted on the Forum, and reviewed at the next meeting:
    - Lehmi County Forest Restoration Group’s statement on weed management.
    - Adams County Weed Management Program
    - Payette National Forest document on weeds

- **Burn Schedule**
  - The proposed action includes significant acres of prescribed burns.
  - Burning schedule impacts the use of grazing allotments.
  - The Permittees manage the grazing on a three year rotation which includes one year of rest.
  - The burning schedule should be coordinated with the rotation.
  - Risk management is also a topic of concern. There is a need for a protocol that addresses unintended consequences. For example, if a prescribed fire burns beyond the treatment area, who pays the cost to replace damaged fences? Also, do we need a contingency plan to temporarily provide a substitute for the burned range resource in an allotment?
  - **Recommendation:** PFC recommends an annual work plan review between the Council Ranger District and the Allotment Permittees. The meeting agenda should include the following topics: upcoming treatments for the year, potential impacts on Permittees, remedies to the impacts, protocol for addressing costs if actions go awry.
Forage/Grazing/Tall Brush

- Forage/Grazing/Tall Brush response to treatments is an issue raised in the scoping process, including the July 22nd field trip.
- On productive sites (wet PVG 6 and some PVG 5), post-treatment growth will include tall brush.
- In flat terrain, mechanized treatment of willow and maple is an option.
- The evaluation of the response (good or bad or indifferent) depends on the resource objective. From a timber management perspective, the tall brush competes with stand establishment. But from a wildlife restoration objective, acres in tall brush may provide a habitat benefit and provide conditions within the historical range.
- Further discussion of the topic is need prior to a recommendation. The discussion needs to include resource objectives/benefits and silvicultural options to achieve the objectives.

Bull Trout Habitat

- The question posed by PFC to the ID Team is the following: Does the recent USFWS decision on bull trout critical habitat impact the landscape restoration project?
- The tentative answer is: probably not.
  - The Payette NF has always consulted with USFWS on the East Fork of the Weiser River even when critical habitat was not identified.
  - Based on that consultation, spawning areas already have been fenced for protection, and acceptable crossing areas for livestock identified.
  - The critical habitat is defined as the stream channel, and high water mark to high water mark.
- Two areas of potential impact are:
  - Expansion of motorized access.
  - Treatments in RCA.
- However, from the Payette NF’s interaction with USFWS biologists to date, major issues are not anticipated.

Topics for Future Discussion

- Topics added to the “Landing”
  - Water rights/ditch rights
  - Firewood
Next Meeting

- Location: New Meadow Ranger District
- Date: January 25, 2011
- Time: 10:00 am – 3:00 pm
- Agenda topics
  - Roads/Trails Working Group Report
  - Weed Management
  - NEPA Project Alternatives
  - New Meadows Project
Appendix E

Gallatin NF Deer Creek Trail letter
Dear Friends of the Gallatin National Forest:

In December of 2006, the Forest Service (Gallatin National Forest) published a decision for a Forest Travel Management Plan. That decision prohibited motorcycles on segments of the Lower Deer Creek Trail #5, the Lodgepole Trail #124, and the Dry Fork Trail #13 in the Deer Creeks and East Boulder River drainages southeast of Big Timber, Montana. These motorcycle restrictions were made in part, because these trails cross over into the Meyers Creek drainage on the Custer National Forest, and they were proposing at the time to manage that drainage for non-motorized uses. In other words, the rationale for our decision was to ensure that routes adjacent to and connecting to the Custer National Forest were managed consistently across forests [GNF Travel Plan Record of Decision (ROD), page 45]. In June of 2008, the Custer National Forest released their ROD for the Beartooth Travel Management Plan and the selected alternative will manage the Lodgepole Trail #22 and the Meyers Creek Trail #27 for motorcycle use. Therefore, to be consistent with the management of those trails with the connecting Gallatin National Forest trail system, we are proposing to modify our Travel Management Plan as follows (see attached map):

- Open the section of the Dry Fork Trail #13, above Moccasin Lake (Sec. 16, T4S, R14E to its junction with Custer National Forest Trail #27) to motorcycles annually from June 16th to December 1st.
- Open the section of the Lodgepole Trail #124, east of Weppler Cabin (Sec. 26, T3S, R14E to its junction with Custer National Forest Trail #22) to motorcycles annually from June 16th to December 1st.
- Open the section of the Lower Deer Creek Trail #5, from the Deer Creek Cabin (Sec. 8, T3S, R14E to its junction with the Lodgepole Trail #124) to motorcycles annually from June 16th to December 1st.

To assist me in making my decision I am now soliciting public comment on these proposals.

**Providing Comments**

In addition to the public comments we receive, I will base my decision on the Gallatin National Forest Travel Management Plan FEIS (October 2006). This FEIS is posted on the Gallatin National Forest website at: [http://www.fs.fed.us/r1/gallatin/travel_planning](http://www.fs.fed.us/r1/gallatin/travel_planning).

Comments will be accepted until July 18, 2008. To be most helpful, comments should be substantive and specific to the proposal to allow motorcycles on the trails identified above. They should include: (1) name, address, telephone number, and organization represented, if any; (2) title of the action (i.e. “East Boulder/Deer Creeks Trails”); (3) specific facts and supporting reasons for me to consider; and (4) signatures.
Written comments should be sent to:

Gallatin National Forest
Attn: Steve Christiansen
P.O. Box 130
Bozeman, MT  59771

Electronic comments can be e-mailed to: rl_gallatin_comments@fs.fed.us. Enter the phrase “East Boulder/Deer Creeks Trails” in the subject line. Comments may also be faxed to (406) 587-6758. If you have questions please contact Bill Avey, District Ranger, Big Timber Ranger District at (406) 932-5155.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

Sincerely,

/s/ Mary C. Erickson
MARY C. ERICKSON
Forest Supervisor