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Reviewing Officer for
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Attn: EMC—Administrative Reviews
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Submitted electronically at: objections-chief@fs.fed.us

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Subject: Shoshone National Forest Land Management Plan, 2014 Revision

Responsible official: Daniel Jiron, Rocky Mountain Regional Forester

Introduction:

The Wyoming Outdoor Council, Wyoming Wilderness Association, Greater Yellowstone Coalition, The Wilderness Society and Sierra Club have members who value the Shoshone and appreciate the myriad opportunities in which they use and enjoy the forest. The nation's first, the Shoshone is still largely a wild, backcountry forest. The Forest Service identified this backcountry character as the Shoshone's niche in the larger forest system early on in the planning process. Our organizations have participated in this process with the goal of safeguarding and improving the backcountry character that makes the Shoshone unique.

On behalf of our members, we have participated in the Shoshone's plan revision process since 2005 and have submitted substantive comments at every opportunity, including in response to the July 2012 draft forest plan and draft EIS, which identified Alternative B as the proposed action/preferred alternative. On January 24, 2014, the Shoshone National Forest issued a final environmental impact statement, revised forest plan and draft record of decision in which the new Alternative G was selected. We appreciate the opportunity to submit this objection and respectfully ask for your consideration of the three issues we raise.

Summary of the Issues in the Objection:

I. <u>The Forest Service should have recommended the four highest quality potential wilderness areas as new wilderness</u>.

The final forest plan contains no new recommended wilderness areas, despite the fact that the Shoshone National Forest contains numerous potential wilderness areas that the Forest Service's own evaluation acknowledges have outstanding wilderness characteristics. The four areas that rank especially high in this evaluation are: 1) the Dunoir Special Management Unit, 2) Francs Peak, 3) Wood River, and 4) Trout Creek. Our organizations highlighted these four areas and asked the Forest Service to recommend them for wilderness designation. That none of these was recommended is the subject of our first objection.

II. <u>The Forest Service should not allow motorized recreational vehicle use in the Francs Peak and Wood River potential wilderness areas</u>.

Between the draft and the final forest plan, two of the four highest rated potential wilderness areas—Francs Peak and Wood River—experienced significant decreases in the amount of acreage proposed as MA 1.3, the backcountry, year-round non-motorized management prescription. The MA 1.3 prescription was proposed for Francs Peak, Wood River and Trout Creek in all other prior drafts during this nearly nine-year planning process and in Alternative B in the latest draft. Alternative G now significantly increases the areas in Francs Peak and Wood River where motorized travel by snow machines and/or off-highway vehicles would be allowed. This is the subject of our second objection.

III. The Forest Service should not allow mechanized recreational vehicles in the Dunoir Special Management Unit.

The Dunoir is a federally protected 28,879-acre Special Management Unit that requires management for non-vehicular access recreation. For decades, the Forest Service has chosen not to follow this direction. As a result, snow machine, off-highway vehicle and mountain bike use now occur in the Dunoir. The Forest Service was correct to identify the inconsistent management of the Dunoir as a problem that needed change. As such, all of the action alternatives, including Alternative B in the draft forest plan, prohibited motorized and mechanized vehicular use in the Dunoir. The final forest plan, however, makes concessions for mountain bike use on a 6.8-mile section of trail in the Dunoir. This is the subject of our third and final objection.

Requirements for Filing the Objection:

In our "prior substantive formal comments" we routinely advocated the merits of and need for new wilderness on the Shoshone, particularly for the Francs Peak, Wood River and Trout Creek potential wilderness areas, and for the Dunoir Special Management Unit.[1] See comments on Draft EIS by Wyoming Outdoor Council, Nov. 16, 2012 at 11; Greater Yellowstone Coalition, Nov. 26, 2012 at 49; Wyoming Wilderness Association, Nov. 23, 2012 at 9-22; The Wilderness Society, Nov. 26, 2012 at 2; and Sierra Club, Nov. 21, 2012 at 13. This is the required "link" to Objection I. The issues addressed in Objections II and III—regarding increases to motorized management prescriptions for Francs Peak and Wood River, and the allowance of mountain biking in the Dunoir—were ones "that arose after the opportunities for formal comment" appearing for the first time in the final EIS.[2] These two issues are ones the Forest Service confirmed were new, appearing for the first time in the final plan/Final EIS.[3] Even so, our documented support for wilderness recommendations for Francs Peak, Wood River and the Dunoir is also a valid link to Objections II and III, as motorized and mechanized use compromise wilderness character. In addition to providing these links between our comments and the issues on which we are objecting, we also provide in the text that follows specific links to specific issues.

[1] 36 C.F.R. § 219.54 (c)(7).
[2] Id.
[3] Supervisor Joe Alexander told attendees at Shoshone National Forest open houses that they did not need to have commented on increased motorized use in Francs Peak and Wood River or mountain biking in the Dunoir to have standing to submit objections, as these issues appear for the first time in the Final EIS. This message was conveyed to citizens in Dubois, WY on March 10, 2014, in Lander, WY on March 11, 2014 and in Cody, WY on March 13, 2014.

Detailed Discussion of the Issues:

I. The Forest Service should have recommended the four highest quality potential wilderness areas as new wilderness.

The Forest Service should have recommended the Shoshone's highest potential wilderness areas for wilderness designation. Of the 34 potential wilderness areas evaluated, many received "high" rankings in the Forest Service's own evaluation with respect to capability, availability and need. The Forest Service identified Francs Peak, Wood River, Trout Creek and the Dunoir Special Management Unit as top-rated and deserving candidates. As will be described in more detail below, the decision not to recommend any new areas was based on flawed analyses and assumptions. Specifically, there are deficiencies with respect to: 1) the treatment of "need" in the wilderness evaluation; 2) a failure to analyze required and critical information; and 3) a lack of evidence that the legally required "hard look" was taken regarding the environmental consequences of wilderness recommendations for each alternative.

1) Deficiencies in the wilderness evaluation resulted in a flawed decision not to recommend new wilderness.

In evaluating "need" as part of the wilderness evaluation process, the Forest Service inappropriately ignored the significant showing of public support for additional wilderness on the Shoshone National Forest and nationally.[4] The Forest Service Handbook requires that the Forest Service in its wilderness evaluation utilize information gathered through public engagement. Specifically, the Forest Service Handbook states:

> Determine the need for an area to be designated as wilderness through an analysis of the degree to which it contributes to the overall National Wilderness Preservation System. Demonstrate this need through the public involvement process, including public input to the evaluation report.[5]

The Handbook also requires the Forest Service to document its wilderness evaluation findings related to need: "Summarize the factors considered and the process used in assessing the need for each potential wilderness area. Include the public involvement process (both past and present), assumptions made, the social and economic factors considered, and interest expressed by proponents, including Congress…."[6]

The wilderness evaluation report is provided in Appendix C of the Final EIS. It documents the methods and results used to rank potential wilderness areas for

[4] Wyoming Wilderness Association comments on the Draft EIS, Nov. 23, 2012 at 3-8 addressed this.
[5] FSH 1909.12, 72.3 (emphasis added).
[6] FSH 1909.12, 74(4) (emphasis added).

wilderness recommendation. In evaluating "need" in the wilderness evaluation report, the Forest Service considered a 2008 survey conducted by Colorado State University and funded by the State of Wyoming's Governor's Planning Office.[7] In this survey, researchers investigated public values and preferences in the four counties bordering the Shoshone. However, the Forest Service relied heavily, if not exclusively, on one aspect of the survey to show "there was no clear consensus from the public" on the issue of new wilderness.[8]

Outright, 45 percent of those surveyed supported new wilderness on the Shoshone National Forest.[9] Although 40 percent of those surveyed (again, just in this four county region) wanted no new wilderness, 24 percent wanted "some" roadless areas to be wilderness and 21 percent wanted "all" of the Shoshone's roadless areas to be wilderness.[10] That is a split, but given the demographic—local residents in a politically conservative state—the 45 percent in favor is fairly astounding. Even more so because in the preface to the question, respondents were told that 55 percent of the Shoshone is already designated wilderness.

The Forest Service also erroneously omitted critical aspects of that same survey in its "need" analysis. The Forest Service considered the answer to only one question: the amount, i.e. "some, all or none," of the existing roadless areas respondents would like to see managed as wilderness.[11] But the survey also asked participants about the future uses of roadless areas, and found that 74 percent of the respondents favored wilderness as a future use of roadless areas, and 93 percent favored non-motorized recreation in roadless areas.[12] The Forest Service did not mention this finding. Contrary to the Forest Service's rationale to support its decision, this statistically sound social survey lends strong support for the "need" for more wilderness. The Forest Service erred in finding differently.

Further, if the Forest Service is going to rely on surveys, it should broaden its scope.[13] The residents of the four-county region surveyed in 2008 certainly have valid opinions—opinions the Forest Service arguably ignored by not recommending any new wilderness—but the Shoshone National Forest belongs to all Americans. The Forest Service should have considered the national public's sentiments more than it did. There are numerous relevant surveys that consistently show that Americans value wilderness and generally favor the designation of additional wilderness. For instance:

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[7] Clement, J., Cheng, A. 2008. Report: Study of preferences and values on the Shoshone National Forest. Department of Forest, Rangeland and Watershed Stewardship; Colorado State University.
[8] Final EIS, Appendix C at 1221.
[9] Clement, J., Cheng, A. 2008. Report: Study of preferences and values on the Shoshone National Forest. Department of Forest, Rangeland and Watershed Stewardship; Colorado State University.
[10] Id.
[11] Id.
[12] Id.
[13] This is something Wyoming Wilderness Association encouraged the Forest Service to do in its comments on the Draft EIS, Nov. 23, 2012 at 8.

- Survey results at the national, regional, and state levels show that: (a) overall there is consensus across groups within the American population that there is not enough wilderness, regardless of how the data are stratified; (b) residents support designating more wilderness in their state of residence; and (c) Americans are willing to make unspecified monetary tradeoffs to gain additional wilderness.[14]

- As of 2006-07, more than two-thirds of American citizens (67 percent) nationally support the designation of additional wilderness in their home state.[15]

- As of 2001, the majority of Americans feel that the current percentage of the National Forest System designated as wilderness is not enough.[16]

- Over half of Americans (almost 51 percent) indicated there is not enough wilderness. Only 4 percent expressed the opinion that there is too much.[17]

- Americans are willing to accept higher costs for electricity, gasoline, and other consumer products to have more wilderness lands designated and to have higher quality air over and near wilderness[18]

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[14] Scott, D. W. 2003. A comprehensive review of recent public opinion research: A mandate to protect America's wilderness. Washington, DC: Campaign for America's Wilderness. Available online at http://www.pewtrusts.org/our_work_report_detail.aspx?id=19224. Survey by Mellman Group, April 2001. Also cited in Schuster R. M., et al. Chapter 7: The Social Value of Wilderness in Cordell K. H., et al. (2005) in Cordell et al. The Multiple Values of Wilderness (2005).

[15] Cordell, K. H., Betz C. J., Fly, M. J., Mou, S., Green, G. T. 2008. How Do Americans View Wilderness: A Wilderness Research Report in the IRIS Series. Available online at http://warnell.forestry.uga.edu/nrrt/nsre/IRISWild/IrisWild1rptR.pdf. When asked how they felt about designating more of the federal lands as Wilderness in their home state, 67 percent of National Survey on Recreation and the Environment (NSRE) respondents indicated they somewhat or strongly favor more.

[16] Scott, D. W. 2003. A comprehensive review of recent public opinion research: A mandate to protect America's wilderness. Washington, DC: Campaign for America's Wilderness. Available online at http://www.pewtrusts.org/our_work_report_detail.aspx?id=19224. Survey by Mellman Group, April 2001. The question asked was: "Currently, 18% of the land in the United States' national forests is permanently protected from logging and other development. Do you think the U.S. has too much permanently protected areas in the national forests, not enough protected areas in the national forest, or the right amount of permanently protected areas in the national forests, or aren't you sure about that?" N=1,000 likely voters. This document was cited by The Wilderness Society in its comments on the Draft EIS dated November 26, 2012.

[17] Cordell, K. H., Betz C. J., Fly, M. J., Mou, S., Green, G. T. 2008. How Do Americans View Wilderness: A Wilderness Research Report in the IRIS Series. Available online at http://warnell.forestry.uga.edu/nrrt/nsre/IRISWild/IrisWild1rptR.pdf. NSRE respondents were asked their opinions about whether they saw the amount of federal land now designated as Wilderness as too little, about right, or too much. Over half in 2006-2007 (almost 51%) indicated there is not enough Wilderness, and 35% indicated the amount is about right. Only 4% expressed the opinion that there is already too much.

The Forest Service also failed to comply with its Handbook direction because it did not consider public comments when evaluating "need," nor did it document the public comments as required in the Handbook. The Forest Service mentions "public meetings, emails and letters," suggesting these echoed the "split" in the 2008 survey results.[19] It is incorrect, however, that there was "no clear consensus" from "public meetings, emails and letters." The overwhelming majority of public comments submitted in response to the Draft EIS were supportive of new wilderness recommendations, as explained below.[20]

- According to the Forest Service, it received 23,475 comments during the public comment period. By our count, 96 percent (22,585) of those comments supported additional wilderness recommendations.
- Of the 1065 letters the Forest Service considered "substantive and individual" (i.e., not form letters), more than half specifically commented on the topic of wilderness, and of those, 92 percent supported more wilderness on the Shoshone. In contrast, only a mere 4 percent opposed more wilderness.
- Out of the 410 letters submitted by Wyoming residents, 54 percent of the letters from Wyoming citizens addressed wilderness, with 90 percent of those wilderness-specific comments favoring more wilderness compared to 10 percent opposing additional wilderness.

There is no other way to assess these comments, but that there is significant support for more wilderness on the Shoshone.

In sum, the Forest Service failed to consider all relevant data, including national survey data in its evaluation of "need." Further, it misrepresented the information it did consider from the 2008 four-county survey and from the public comments. In doing so, the Forest Service reached flawed conclusions regarding "need" in its wilderness evaluation report. Thus, its decision not to recommend any new wilderness is based on incomplete and incorrect information.

2) <u>The Forest Service failed to document important information in its wilderness analysis as required in the Forest Service Handbook.</u>

The Forest Service failed to document required and critical information in the wilderness evaluation process, leading to flawed decision-making. The Forest

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[18] Scott, D. W. 2003. A comprehensive review of recent public opinion research: A mandate to protect America's wilderness. Washington, DC: Campaign for America's Wilderness. Available online at http://www.pewtrusts.org/our_work_report_detail.aspx?id=19224. Survey by Mellman Group, April 2001.

[19] Final EIS, Appendix C at 1221. As explained above, when more than the single question is considered, the 2008 four-county survey represents far less of a "split" that the Forest Service suggests.

[20] <u>Please</u> <u>see</u> Analysis of Individual Comments on the Draft EIS, Attachment 1.

Service Handbook requires that the Forest Service document the results of evaluating potential wilderness areas, including the following:

1. For each area evaluated, comprehensively assess and describe resource trade-offs and consequences associated with non-wilderness options.
2. Consider measures designed to avoid or minimize the impact to or loss of wilderness characteristics.
3. Develop and evaluate wilderness and non-wilderness options.[21]

The Handbook also requires the Forest Service to document its findings, including its findings related to the effects of the recommendations. The Handbook directs the Forest Service to: "Describe the potential effects of wilderness and non-wilderness recommendations for each potential wilderness area. (a.) Discuss the impact on the area if it were designated as wilderness and the impact on the area if it were managed as non-wilderness. Show the social and economic effects in each case."[22] Additionally, the Handbook instructs the Forest Service to describe: "Effects on wilderness characteristics and values, the effects on non-wilderness resources and uses, and the economic and social effects of recommended wilderness areas.[23] With respect to non-wilderness areas, it should also describe: "Effects on wilderness characteristics and values; mitigation, if any; effects on non-wilderness resources and uses; and economic and social effects.[24]

We cannot find in Appendix C or elsewhere in the Final EIS where the Forest Service, as required in the Handbook, does the following:

- Comprehensively assesses and describes resource trade-offs and consequences associated with non-wilderness options;
- Considers measures designed to avoid or minimize the impact to or loss of wilderness characteristics; or
- Describes the potential effects of wilderness and non-wilderness recommendations for each potential wilderness area.

The Forest Service failed to comply with the direction in its Handbook. This failure to assess and describe critical information renders the analysis deficient and resulted in the poorly informed decision in the draft record of decision not to recommend any acres for wilderness designation.

Issues related to the inadequacies of the wilderness evaluation process were raised on pages 11-13 of The Wilderness Society's scoping comments dated Nov. 19, 2010 related to the draft Wilderness Evaluation Report. They were also raised on pages 3-5 and 8 of the Wyoming Wilderness Association's comments on the Draft

[21] FSH 1909.12, 72.4 (emphasis added).
[22] FSH 1909.12, 72.5.
[23] Id.
[24] Id.

EIS dated Nov. 23, 2012 and pages 2-3 of the Wyoming Wilderness Association's comments submitted Feb. 2, 2012. They were also raised on pages 9-11 of the Wyoming Outdoor Council's comments on the Draft EIS dated Nov. 16, 2012.

3) The Forest Service failed to take the required "hard look" at the environmental consequences of wilderness recommendations for each alternative.

Forest Service policy and the National Environmental Policy Act, require the agency to take a "hard look" at the impacts of its proposed action by exploring direct, indirect, and cumulative impacts.[25] The Final EIS failed to thoroughly consider and analyze the environmental consequences of wilderness recommendations (or the lack thereof) under the alternatives, and hence failed to take the required "hard look."

First, the Final EIS fails to disclose, analyze, and compare the direct and indirect impacts of the wilderness recommendations and the impacts associated with no recommended wilderness in each alternative. The Final EIS includes a section entitled "Designated Wilderness and Recommended Wilderness."[26] Within this section is a subsection entitled "Environmental Consequences" in which the agency is supposed to disclose, analyze and compare the costs and benefits of the proposed management of wilderness quality lands for each alternative. This subsection is deficient as it lacks any discussion of the environmental costs and benefits resulting from the wilderness recommendations under each alternative. As written, it only: 1) describes the effect of recommending additional wilderness areas on designated wilderness, and 2) describes the effects on designated wilderness areas from five management activities: fire management, livestock grazing, minerals management, adjacent motorized use, and invasive species.[27] It fails to disclose, analyze, or compare the environmental effects of proposing—or not proposing—additional wilderness areas to key resources including aquatic systems, climate change adaptation, wildlife habitat and riparian areas, threatened and endangered species, recreational experiences and settings, economics, and scenery management.

For example, the Final EIS completely fails to disclose or analyze the effect of the wilderness recommendations under the alternatives on aquatic resources. It is well accepted in the scientific literature that areas without human interference produce cleaner water and have healthier aquatic habitats than areas with human interference. Because four of the alternatives recommend zero acres for wilderness designation and two alternatives recommend various amounts, the effect of the wilderness recommendation on aquatic resources will be different under the alternatives. Yet, there is no mention of aquatics in the subsection discussing the environmental effects of the wilderness recommendations, nor any mention of

[25] 1909.15 § 15, 42 U.S.C. § 4321 et seq.
[26] Final EIS at 523-35.
[27] Id. at 533-34.

wilderness or potential wilderness areas in the subsection discussing the environmental effects of aquatics management. This is a clear failure to take a hard look at all of the impacts of the proposed actions.

In another example, the Final EIS has a section intended to disclose and analyze the effects of the varying levels of wilderness recommendations on climate change. There is one paragraph that describes the anticipated effects of climate change on wilderness.[28] Beginning with the sentence, "Climate change has the potential to have widespread negative effects on wilderness and wilderness character…" the paragraph then goes on to describe the likely general effects of climate change forest-wide, such as a potential increase in summer tourism, and a potential decrease in recreational fishing opportunities.[29] It does not address the effects to potential or designated wilderness areas including effects to individual areas—especially the handful of highest quality potential areas as one might expect. The Final EIS also fails to disclose and analyze how managing areas as wilderness could potentially benefit climate change adaptation, e.g., by enabling wildlife and species migration and limiting disturbance stressors.

In contrast, the Coronado National Forest recently published a Draft EIS and a draft revised forest plan in which the effects of protecting potential wilderness areas on climate change adaptation are more adequately discussed. For example, in addressing the effects around climate change for each alternative, the Coronado discloses the effects of protecting potential wilderness areas in Alternative 1:

> Alternative 1 proposes the same direction for climate change as the proposed action. Because of its recommendation of 255,448 acres of new wilderness on the Coronado, it may further increase ecosystem resiliency in the face of climate change. This is because lands managed to retain wilderness values and characteristics are better protected from development, fragmentation, and human-caused disturbances than those that are not. Wilderness areas allow primarily low disturbance activities, which do not compromise migration of species and range shifts. Intact, unaltered habitat is extremely important to the retention of biodiversity and to provide a buffer to climate change, because plants and animals that are allowed to persist in slowly changing landscapes are much more likely to succeed that those in rapidly changing, altered environments.
>
> Although new wilderness recommendations may benefit resources in light of climate change, the positive effects of alternative 1 may be less evident in areas where resources are highly departed from reference conditions. In high elevation forests where this departure is characterized by overly dense conditions, the increase in wilderness

[28] Id. at 535
[29] Id.

areas under alternative 1 may inhibit resiliency if forests become overstocked and are unable to adapt to the added stressors of climate change.[30]

The Forest Service should have disclosed and analyzed in the Final EIS for the Shoshone's revised forest plan, the wide range of values associated with lands with wilderness characteristics. As The Wilderness Society's comments on the Draft EIS, starting on page 22, explained, these include:

(i) Scenic values – The unspoiled landscapes of wilderness-quality lands generally provide spectacular viewing experiences. The scenic values of these lands will be severely compromised if destructive activities or other visual impairments are permitted by failing to manage for wilderness.

(ii) Recreation – Lands with wilderness characteristics provide opportunities for primitive recreation, such as hiking, camping, hunting and wildlife viewing. Primitive recreation experiences will be foreclosed or severely impacted if the naturalness and quiet of these lands are not preserved.

(iii) Wildlife habitat – Due to their unspoiled state, lands with wilderness characteristics provide valuable habitat for wildlife. Wilderness quality lands support biodiversity, watershed protection and overall healthy ecosystems.

(iv) Aquatic systems – Lands without roads and disturbance produce the cleanest water and have the healthiest aquatic and riparian conditions including natural water flows.

(iv) Cultural resources – The lack of intensive human access and activity on lands with wilderness characteristics helps to protect cultural and historic resources. Managing lands to protect wilderness qualities will also help protect cultural and archaeological sites.

(v) Climate change adaptation – Protecting and connecting large blocks of unroaded lands is recognized as a primary strategy to facilitate climate change adaptation.

(vi) Economic benefits – The recreation opportunities provided by wilderness quality lands also yield direct economic benefits to local communities. According to the U.S. Fish & Wildlife Service, in 2011 State residents and non-residents spent $1.1 billion on wildlife recreation in Wyoming.[31] In addition, local communities that protect wildlands reap

[30] Coronado National Forest, Draft Programmatic EIS for Revision of the Coronado National Forest Land and Resource Management Plan, October 2012 at 212.
[31] USFWS 2011, National Survey of Hunting, Fishing and Wildlife-Associated Recreation - http://www.census.gov/prod/2013pubs/fhw11-wy.pdf.

measurable benefits in terms of employment and personal income.[32] In addition, other "non-market" economic values arise from the ability of wildlands to contribute to recreation and recreation-related jobs, scientific research, scenic viewsheds, biodiversity conservation, and watershed protection.

Second, the Final EIS fails to disclose, analyze, or compare the site-specific impacts of the wilderness recommendations—or lack thereof—under each alternative. The Final EIS does not disclose the specific characteristics of each of the proposed areas, and the site-specific consequences of recommending or not recommending each of the areas. This is not only required by NEPA, but also is a substantive requirement in the Forest Service Handbook 1909.12, 74(5) and 1909.12,72.4(1).

Third, the Final EIS fails to disclose the cumulative impacts related to the wilderness recommendations. The Forest Service is required to disclose in an EIS the cumulative impacts germane to each issue raised.[33] The Final EIS has a subsection within the section on "Designated Wilderness and Recommended Wilderness" entitled "Cumulative Effects."[34] Despite the title, the section simply does not disclose any cumulative effects relevant to the wilderness recommendations—or lack of recommendations—in the proposed alternative and in the other alternatives. The section should, but does not, address the effects of the wilderness recommendations (or, in the case of four of the alternatives, the absence of wilderness recommendations) in the proposed alternative in the context of other related actions in the past, the present, and the reasonable foreseeable future. These include, among other topics, past, present, or foreseeable protections of unroaded lands within the Greater Yellowstone region or conversely, past, present, or foreseeable decisions to diminish the wilderness characteristics of such lands. Similarly, the cumulative effects analysis should have, but did not, discuss the cumulative effects of the proposed action on species of concern and climate change adaptation.

By way of example, other national forest units have met this requirement. The Coronado National Forest discloses the cumulative effects related to climate change of protecting potential wilderness areas:

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[32] For instance, a report by the Sonoran Institute (Sonoran Institute 2004, Prosperity in the 21st Century West: The Role of Protected Public Lands, available at: *http://www.sonoraninstitute.org/component/docman/doc_details/1217-prosperity-in-the-21st-century-west-the-role-of-protected-public-lands-executive-summary-07102004.html?Itemid=3)* found that:

> Protected lands have the greatest influence on economic growth in rural isolated counties that lack easy access to larger markets. From 1970 to 2000, real per capita income in isolated rural counties with protected land grew more than 60 percent faster than isolated counties without any protected lands.

[33] FSH 1909.15, 23.3 (7).

[34] Final EIS at 534-35.

> Another positive cumulative effect may result from management of large land areas to accommodate low-disturbance activities by other agencies, including the National Park Service, Department of Defense, BLM, and the States of New Mexico and Arizona. Together their actions would contribute to broader scale ecosystem resiliency in the Southwest. This is especially true under alternative 1, which would manage the greatest area of wilderness of all alternatives. Areas with restricted activities like wilderness frequently influence the surrounding patterns of development (e.g., urban, energy sources), which, in turn, may reduce certain threats to native plant and animal species. In such areas, biodiversity is expected to be maintained and also to buffer the effects of climate change, because plants and animals that are allowed to persist in slowly changing landscapes are much more likely to persist than those in rapidly changing altered environments.[35]

"Hard look" issues were raised on pages 2, 3, 6, and 22 of The Wilderness Society's comments on the DEIS dated November 26, 2012. They were also raised on pages 5 and 9-25 of the Wyoming Wilderness Association's comments on the DEIS dated November 23, 2012.

In sum, the Forest Service failed to adequately disclose, analyze and compare the direct, indirect and cumulative effects of the wilderness recommendations—or lack thereof—under each alternative. It should also have considered and compared the specific characteristics of each of the potential wilderness areas, and the site-specific consequences of recommending or not recommending each of the areas.

Resolution sought for Objection I:

The Forest Service should recommend all of the highest-rated potential wilderness areas—Francs Peak, Wood River, Trout Creek and the Dunoir Special Management Unit—as wilderness.

II. <u>The Forest Service should not allow motorized recreational vehicle use in the Francs Peak and Wood River potential wilderness areas</u>.

The Wood River and Francs Peak potential wilderness areas are some of the wildest country on the Shoshone outside of currently designated wilderness areas. Both areas are adjacent to the Washakie Wilderness and bordered by BLM land. The Francs Peak and Wood River areas are unique, and their high open country and braiding watersheds have been likened to Alaska's backcountry. These areas are two of the very highest-ranking potential wilderness areas in the Forest Service's own evaluation. From the high peaks to the river bottoms, these areas are critically

[35] Coronado National Forest, Draft Programmatic EIS for Revision of the Coronado National Forest Land and Resource Management Plan, October 2012 at 213.

important to retaining the integrity of the Shoshone's backcountry character, safeguarding some of the finest big game wildlife habitat in Wyoming and providing unparalleled recreational experiences. That the final forest plan erroneously includes motorized management prescriptions within significant portions of these areas is the subject of our second objection.

There are five reasons on which we base our objection to the Forest Service's decision to allow motorized use in Francs Peak and Wood River. First, the Forest Service failed to disclose information about or adequately illustrate management area prescriptions per alternative on an individual potential wilderness area basis. It is impossible to ascertain from the Final EIS what management prescriptions are proposed within distinct potential wilderness areas for any given alternative, including Alternative G. Second, from our own best attempts to analyze the information provided, we believe there have been alterations to management prescriptions in Alternative G for Francs Peak and Wood River that are beyond what were considered in any other alternative. Third, the Forest Service failed to analyze the impacts motorized use would have on the numerous resources unique to individual potential wilderness areas—specifically Francs Peak and Wood River. The Forest Service cannot rely on generalities, particularly with respect to the highest-ranking potential wilderness areas on the forest. Fourth, the Forest Service failed to minimize impacts when designating winter motorized trails and areas as required by Executive Orders 11644 and 11989. Finally, the decision is arbitrary in that it disregards the long-standing and well-documented public support for safeguarding the backcountry non-motorized character of these two highest-rated potential wilderness areas.

1) <u>The Forest Service failed to disclose information about management area prescriptions on an individual potential wilderness area basis—Francs Peak and Wood River are two examples of this.</u>

As described above, the Forest Service's wholesale treatment of potential wilderness area acres in its analysis—treatment that fails to provide even the most basic information about how individual areas will be managed—represents a failure of the agency's responsibilities under the National Environmental Policy Act. NEPA's implementing regulations require the Forest Service to "present the . . . alternatives in comparative form, thus sharply defining the issue and providing a clear basis for choice among options by the decision maker and the public."[36] When determining "whether an agency's decisions regarding which alternatives to discuss and how extensively to discuss them were arbitrary," courts use a "rule of reason and practicality."[37] The question is whether an agency "gathered 'information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned.'"[38] In addition to being a violation of NEPA, the Forest Service's failure to

[36] 40 C.F.R. § 1502.14.
[37] <u>Greater Yellowstone v. Flowers</u>, 359 F.3d 1257, 1277 (10th Cir. 2004) (citations omitted).
[38] <u>Id</u>. (citations omitted).

disclose the fate of each potential wilderness areas is a violation of the direction in the Forest Service Handbook at FSH 1909.12, 72.4 & 72.5.

Francs Peak and Wood River are two of the most pristine backcountry areas on the Shoshone. The Forest Service erred in not disclosing or analyzing by alternative the comparison of management prescriptions for these and each individual potential wilderness area. Instead, the Forest Service opted to treat all potential wilderness area acreage as lump sums, with no acknowledgement that each area is unique and characterized by different resource values.

There are tables in the Final EIS delineating management prescriptions generally for the Shoshone's inventoried roadless areas (684,800 acres) and its potential wilderness areas (745,640 acres).[39] These tables, however, merely illustrate management allocations across alternatives for the general categories of roadless areas and potential wilderness areas. They do not show management allocations within each roadless area or within each potential wilderness area. By the Forest Service's own estimation, "Management of 2001 Roadless Area Conservation Rule lands and other undeveloped lands are one of the highest areas of pubic concern in the revision process."[40] This lack of basic information—regarding topics that garnered the most attention in the plan revision process—has made it nearly impossible for the public to discern what management allocations are proposed for specific areas they care about.

Although the Forest Service produced maps showing management prescriptions, none provides overlays of inventoried roadless/potential wilderness areas per alternative. None of the Forest Service maps provide the overlays for even the highest quality potential wilderness areas, e.g. Francs Peak and Wood River and others that were considered for wilderness recommendation in other alternatives and which were the priority for numerous stakeholders.

This is not the first time we have raised concerns about the Forest Service's omission of important information regarding roadless/potential wilderness areas in its analyses. In fact, this is information our organizations have asked for since the draft plan was released. For example, the Wyoming Outdoor Council sent an email to the Shoshone's forest planner more than two years ago, stating:

> Maybe I'm missing something in the draft plan, but I don't see any discussion of individual roadless areas and what percentage of each is now in specific proposed settings/management prescriptions. I have printed out the 8 maps and I see the various settings noted, but this doesn't tell the whole story. Is it possible to get a chart or table that breaks out management prescriptions per roadless area—so we can

[39] Table 153, Final EIS at 530: Wilderness evaluation acres by management area and alternative, and Table 157, Final EIS at 548: Inventoried roadless area management acre allocation by alternative
[40] Final EIS, Appendix C at 1220.

> see how much may be managed as backcountry and how much the FS is proposing to open to "active management"?[41]

Similarly, the Wyoming Wilderness Association inquired about the complete lack of any mention of "roadless areas" in the draft EIS and why there were no maps showing management prescriptions per roadless area.

> So, in my review of the Forest plan so far, I've had some trouble understanding why the inventoried roadless areas are not mentioned in this plan in relation to the management prescriptions for each area. I have all the maps but without any overlay of the roadless areas, it's up to a lot of guesswork (which is obviously not precise) in order for me (and the public) to understand what's going on with these management prescriptions in inventoried roadless areas.[42]

Part of Ms. Christman's response to this inquiry stated: "We can share a map showing roadless with the management areas if needed."[43] It is not clear whether this information was actually provided, and if it was, it was in the form of GIS shape files, which many of our organizations don't have the capacity to translate.

Even if this information had been shared upon request, it is wholly inadequate and a violation of NEPA not to have included it in the Draft EIS for the public at large to review, especially after the Forest Service asked the public in 2006—in a stand-along comment opportunity just on this topic—to comment on suitable uses within individual roadless areas. And certainly, after this information didn't appear in the Draft EIS and we specifically requested it, the Forest Service erred in not including these maps and tables in the Final EIS.[44]

We are concerned the omission of this information is another example of the generally improper way in which the Forest Service treated roadless areas throughout the Shoshone plan revision process. The Draft EIS included three alternatives (out of a total of six) that failed to comply with the Roadless Rule.[45] The Forest Service also created a full suite of management prescriptions (the MA 3.5 series) that target "areas some people feel should be removed from inventoried roadless designation because of past timber management activity, the existence of established roads, the proximity of infrastructure or overriding management need."[46] It is not clear to whom the Forest Service is referring when it says "some people." These stakeholders are not named, and yet tremendous concessions have

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[41] Email correspondence from Lisa McGee to Carrie Christman, Jan. 10, 2012. Attachment 2.
[42] Email correspondence from Sara Domek to Carrie Christman, January 13, 2012. Attachment 3.
[43] Id.
[44] The Wilderness Society also alerted the Forest Service to this omission in its comments on the Draft EIS, Nov. 26, 2012 at 6-7.
[45] Besides Alternative A (the no action alternative), Alternatives E and F did not comply with the 2001 Roadless Area Conservation Rule.
[46] Final EIS at 547.

been made for them. Within MA 3.5 prescriptions, roadless areas will be open to "active management within the bounds of the Roadless Rule."[47] Far more people—people who are actually documented in statically valid local and national surveys, as well as in written comments—want roadless areas not to be "actively managed" and not to be places where new motorized uses are permitted. In addition, many people want to see some of the highest quality roadless areas on the Shoshone recommended as wilderness.

The omission of critical roadless area-specific information is particularly troubling as the Forest Service has now finalized a plan that recommends no wilderness at all, makes a tremendous amount of roadless/potential wilderness acreage open to "active management" and sets motorized recreation prescriptions in many of the highest quality roadless/potential wilderness areas. Given the lack of any information in the Final EIS documenting and/or illustrating management prescriptions in each potential wilderness area, the public is unable to ascertain where and to what extent these special places on the Shoshone will be managed to actually retain backcountry qualities, and where allowances could ultimately degrade these qualities. This is unacceptable.

Concerns that the Forest Service did not thoroughly analyze the importance of potential wilderness areas or take the legally required "hard look" were raised on pages 3 and 6 of The Wilderness Society's comments on the DEIS dated November 26, 2012. They were also raised on pages 5 and 9-25 of the Wyoming Wilderness Association's comments on the DEIS dated November 23, 2012.

2) Alternative G's new motorized management prescriptions for Francs Peak and Wood River exceed the level of motorized use considered in other alternatives.

The Forest Service's decision to expand motorized use on both of these potential wilderness areas for the first time in the final plan occurred without adequate public notice or the legally required environmental analysis. There was not a single alternative within the Draft EIS that drew summer motorized boundaries as far west into the interior of the Francs Peak as Alternative G now does. Similarly, none of the action alternatives in the Draft EIS drew winter motorized boundaries as extensively across the entire Wood River area as Alternative G does.

The Forest Service acknowledges that Francs Peak and Wood River—in addition to Trout Creek and the Dunoir Special Management Unit—were the areas that "received the most support for wilderness recommendation, by people advocating for more wilderness." Draft ROD at 8. Despite this, the Forest Service has decided in the final plan to eviscerate tens of thousands of backcountry year-round non-motorized acres (MA 1.3) that were present in every iteration of the preferred

[47] Id.

alternative—including Alternative B in the Draft EIS—for Francs Peak and Wood River.

Francs Peak Analysis

In Alternative A in the Draft EIS, which represents the current 1986 Shoshone forest plan, 85 percent of the 68,000-acre Francs Peak area is demarcated by a 3A management area (MA) prescription, representing semi-primitive backcountry non-motorized management.

Little changed in the Draft EIS's preferred Alternative B as most of the Francs Peak area—83 percent—was proposed for MA 1.3 backcountry year-round non-motorized. A small area was slated for MA 3.5, which opens up this area for "restoration and recreation." The MA 3.5 extends as far west into Francs Peak as the headwaters of Trail Creek near Deer VABM 10448. From this landmark, the MA 3.5 boundary heads to the southeast to Dick Creek Lakes and then further southeast to the Forest Service eastern boundary line. Virtually the entire rest of the Francs Peak area is MA 1.3.

In Alternative F, which is the most motorized-permissive alternative in the Draft EIS, this same motorized boundary (MA 3.5) connecting Timber Creek trailhead to a point just east of Deer VABM 10448, continues to Dick Creek Lakes and then south to a line two miles west of Deer Creek trailhead (currently non-motorized) along the Kirwin Road.

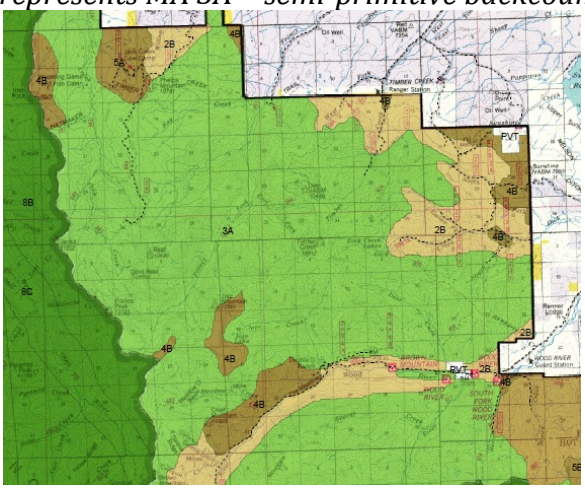
To the extent that we have been able to discern the changes that occurred to Francs Peak in Alternative G, it appears the final plan's motorized use prescriptions exceed all of the other alternatives presented in the Draft EIS, including Alternative F. Alternative G's MA 3.3A prescription, representing year-round motorized use, is drawn farther west into the interior of the Francs Peak potential wilderness area than in any alternative—from the divide of Jojo Creek and Deer Creek (on the south end) extending over Timber Peak to the trailhead of Francs Fork.

This motorized prescription overlaps grizzly bear secure habitat as marked by Map 11 "Grizzly Bear Secure Habitat" in the Draft EIS. Army cutworm moth sites—an important dietary source for grizzly bear sustenance—are in close proximity.[48] Elk and bighorn sheep herds utilize range within this newly proposed MA 3.3A (year round motorized) area for both winter and summer range.[49] From information we specifically requested from the Forest Service—information that

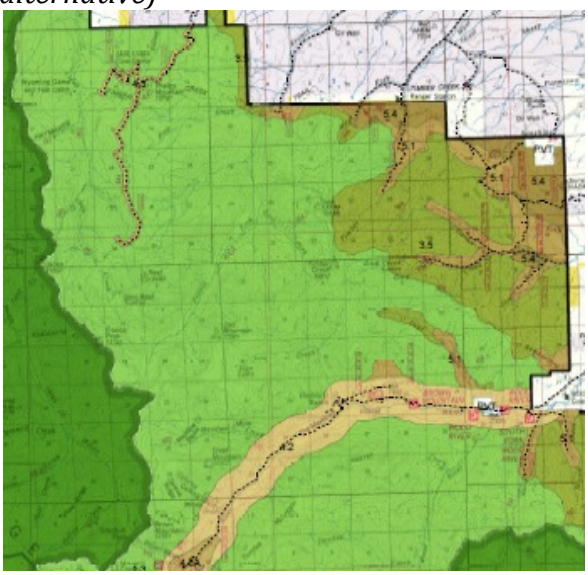
[48] Joe Harper, wildlife biologist, Shoshone National Forest. Personal communication. November 13, 2013. Confirmation that army cutworm moth sites exist on Jojo Mountain and surrounding talus ridgelines in the Francs Peak potential wilderness area.
[49] See Map of Big Game Winter Range, Shoshone National Forest, Attachment 4. Provided by lead wildlife biologist on the Shoshone National Forest, Joe Harper. Information also confirmed by Jerry Longbardi, retired game warden, Wyoming Game and Fish Department. Personal communication. February 25, 2014.

does not appear anywhere in the final EIS—the MA 1.3 backcountry year round non-motorized acreage in Francs Peak has been reduced from 85 percent and 83 percent in Alternatives A and B respectively, to 60 percent in Alternative G.[50] In addition, Alternative G's MA 3.3B (representing winter motorized use) prescription for Francs Peak does not appear on any other alternative within the Draft EIS. The MA 3.3B prescription is drawn across the Francs Fork watershed. This entire area is winter range for these two big game species.

Francs Peak potential wilderness area: Alternative A (1986 plan) Light green represents MA 3A—semi-primitive backcountry non-motorized.

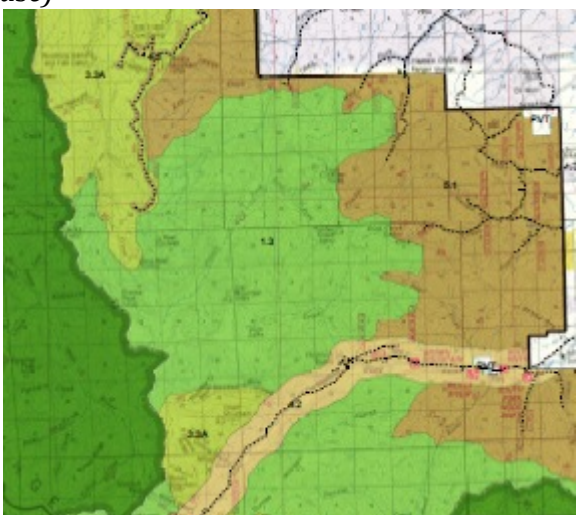


Francs Peak potential wilderness area: Alternative B (Forest Service's preferred alternative)

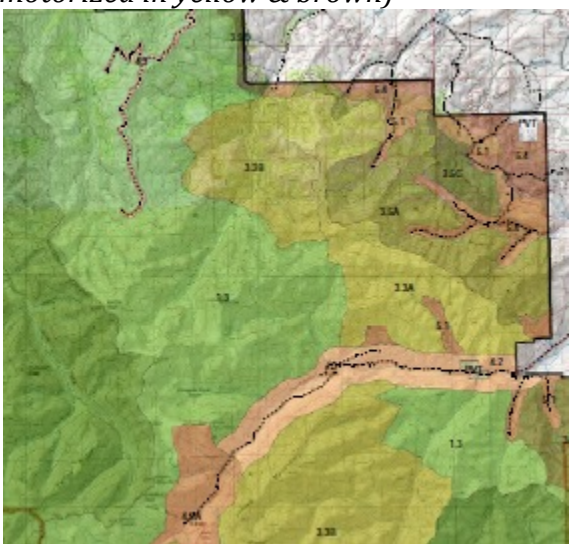


[50] Table entitled: Management Area Acres for Selected Areas in Alternatives A, B, G. Attachment 5. The Shoshone National Forest produced this Table at our request after we couldn't find this information anywhere in the Final EIS.

Francs Peak potential wilderness area: Alternative F (highly permissive of motorized use)



Francs Peak potential wilderness area: Alternative G (Final forest plan – expanded motorized in yellow & brown)



Wood River Analysis

Like Francs Peak, the Wood River potential wilderness area is managed as MA 3A, semi-primitive non-motorized in the 1986 forest plan, as reflected in Alternative A in the draft and final revised plans. The entire roadless area is winter range for elk and bighorn sheep and the lower country is crucial winter range for moose.[51] Consistent with this history and the high quality backcountry values of the Wood River area, during the entire length of the forest plan revision process and in the preferred Alternative B in the Draft EIS, the Forest Service proposed to manage 77 percent of the 57,000-acre Wood River as MA 1.3, backcountry year-round non-motorized.[52] In fact, every single action alternative in the Draft EIS proposed to manage this potential wilderness area for non-motorized use. It wasn't until the Forest Service released the final plan's Alternative G that the changes to Wood River's prescription occurred. Now, only 10 percent of Wood River is 1.3, backcountry year round non-motorized and the majority is open to winter motorized use.

When questioned about the changes in winter motorized prescriptions that occurred in Wood River between the draft and final forest plan, the Forest Service asserted that Alternative G is really no different than Alternative A because the 1986 forest plan "generally allowed over-snow motorized vehicle use in management areas allocated to non-motorized recreation…."[53] We disagree. Wood River is an area under the 1986 plan that is technically open to snow machine use, but as Shoshone staff members have said, it is "not a destination area" for snowmobiles and use there is "incidental."[54] Moreover, the acreage where winter motorized travel

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[51] See Map of Big Game Winter Range, Shoshone National Forest, Attachment 4. Provided by lead wildlife biologist on the Shoshone National Forest, Joe Harper.

[52] Table entitled: Management Area Acres for Selected Areas in Alternatives A, B, G. Attachment 4.

[53] Final EIS at 506.

[54] Email correspondence from Joe Alexander, Feb. 4, 2014 to Lisa McGee:

> As I understand there is existing incidental use in these areas (no developed trails). The use is consistent in roadless areas and we have no reason to think the use will increase but also no reason to eliminate it either. This is really no change from our existing management. I think Bryan can give you more details. Let me know if your understanding has improved after visiting with Bryan. Thanks, Joe.

Attachment 5.

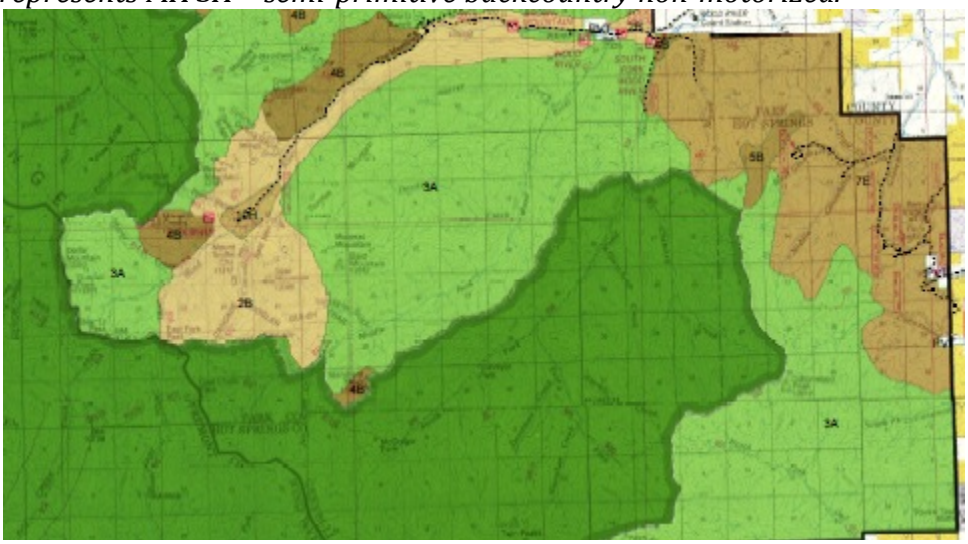
Email correspondence from Bryan Armel, Feb. 4, 2014 to Lisa McGee, which states:

> So, the new plan does not open up these areas to snowmobiling. They are already open and there is some level of use. There are no designated snowmobile trails in these areas. In addition the plan would not allow for the addition of new designated snowmobile trails in these areas, because they fall within Lynx habitat which does not allow for any new snowmobile trails. So what the new plan does allow in portions of these areas is the continuation of cross-country snowmobile use. Because of the lack of development, these areas tend to be used mostly by locals and are not destination areas. Alt G does close some of these areas to snowmobiling where there is crucial winter range. Many of these areas were open in the current plan.

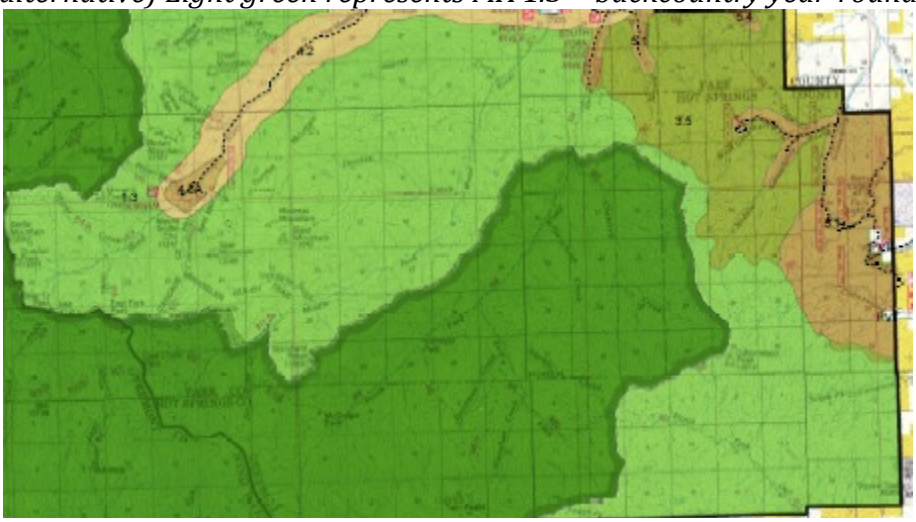
Attachment 6.

is allowed forest-wide under the 1986 plan is inflated and doesn't accurately depict the acreage actually used by snow machines. As the Final EIS states: "Over-snow vehicle use does not currently occur on all accessible acres in Alternative A. Use occurs on approximately the same number of acres that are accessible in Alternative B."[55] Table 144 illustrates that 887,600 acres are technically open for snow machine use in Alternative A. Alternative B's more accurate assessment is 481,200 acres. For this reason, Alternative G's proposal to open 592,400 acres to this use—37,027 acres of which is now explicitly open in the Wood River potential wilderness area—is a significant increase, and not analogous to the situation on the ground under the 1986 plan.

Wood River potential wilderness area: Alternative A (1986 Plan) Light green represents MA 3A—semi-primitive backcountry non-motorized.

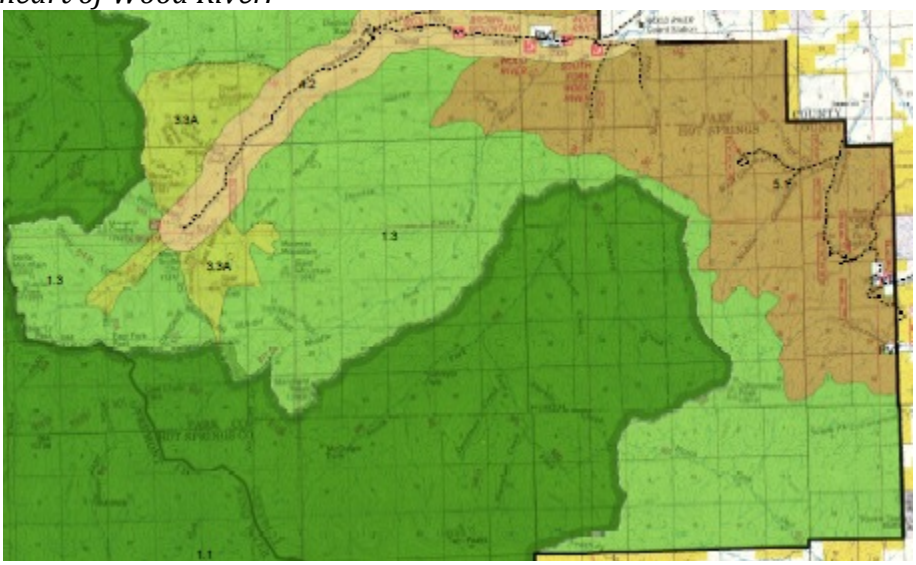


Wood River potential wilderness area Alternative B (Forest Service's preferred alternative) Light green represents MA 1.3—backcountry year-round non-motorized.

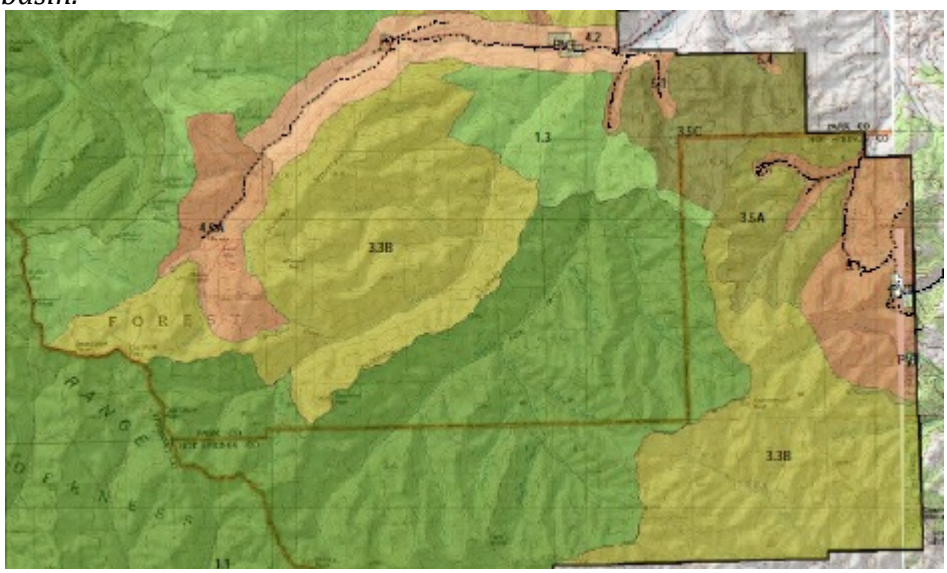


[55] Final EIS at 509, Table 144, note 1.

Wood River potential wilderness area: Alternative F. This alternative is highly permissive of motorized use forest-wide; however, no motorized use is proposed in the heart of Wood River.



Wood River potential wilderness area: Alternative G (final forest plan) MA 3.3B represents winter motorized use; extends all the way to headwaters of Wood River basin.



In conclusion, the Forest Service violated NEPA by failing to disclose and analyze the impacts motorized uses could have on resources specific to the Francs Peak and Wood River potential wilderness areas. By using forest-wide acreage (the only data provided in the Draft and Final EISs) rather than potential wilderness area-specific analyses (both quantitative and qualitative) to justify its decision to allow motorized use in two of the highest-quality potential wilderness areas on the Shoshone, the Forest Service erred. It is misleading to say that Alternative G

"increases the backcountry protection for the Shoshone."[56] The Forest Service is required to do more than simply show a "balanced" spreadsheet of forest-wide management allocations.

Management area allocation by acreage alone is not the only factor by which to assess whether the Shoshone's unique and irreplaceable backcountry characteristics will be properly managed under the new forest plan. The Forest Service failed to apply information from its own wilderness evaluation report that shows that not all of the 34 potential wilderness areas on the Shoshone are comparable in quality. Motorized use presents unique environmental impacts in places like Francs Peak and Wood River—impacts that would not occur in other, less coveted areas. As will be described in more detail in the next section below, the impacts of motorized use in these two specific areas jeopardize wintering big game, grizzly bear moth sites, adjacent high quality potential wilderness areas slated for non-motorized uses, some of the highest quality backcountry hunting opportunities in Wyoming, and significant archaeological resources. None of these impacts was analyzed in making the decision to allow motorized use in these remarkable places.

3) <u>The Forest Service did not take a "hard look" at the impacts to unique values in the Francs Peak and Wood River areas when it decided to allow motorized use in these areas.</u>

The Forest Service did not adequately analyze the impacts motorized use would have on the numerous resources unique in these two premiere backcountry areas. The agency is required to consider and discuss "the environmental effects of alternatives" and "means to mitigate adverse environmental impacts."[57] It failed in both regards. The Forest Service is required to base its decision—in this case its decision to allow summer and winter motorized use in Francs Peak and winter motorized use in Wood River—on evidence that it took a "hard look at the environmental impacts" of that decision.[58] As explained above, the Final EIS is devoid of any analysis whatsoever on a potential wilderness area-specific basis. The agency's failure to identify, let alone analyze, the impacts to important resources found in each of these highest-quality areas is contrary to its responsibilities under NEPA.

There are myriad impacts the Forest Service failed to address when it decided to permit motorized vehicle use on two of the most outstanding potential wilderness areas on the Shoshone. Some of these impacts, which are discussed in turn below, include: a) impacts to wildlife and wildlife habitat; b) impacts to soils and the physical environment; c) impacts from unauthorized OHV-use; d) impacts to high quality hunting opportunities and recreational horse travel; and e) impacts to archaeological resources.

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[56] Draft ROD at 8.
[57] 40 C.F.R. § 1502.16(d), (h).
[58] <u>Colorado Environmental Coalition v. Dombeck</u>, 185 F.3d 1162, 1174 (10th Cir. 1999).

a. The Forest Service failed to consider the adverse impacts on wildlife and wildlife habitat in Francs Peak and Wood River from motorized recreation.

The Forest Service has not adequately analyzed the effects motorized travel will have on wildlife summer range, winter range, parturition areas and migration corridors in Francs Peak and Wood River. The entire Francs Peak area includes elk summer range. This is the very area where new off-highway use is proposed. Off-highway vehicle travel can have profound effects on a multitude of wildlife species, including direct mortality, habitat fragmentation and reductions in habitat patch size, increases in the edge effect, and alteration of animal behavior.

In addition to serving as valuable summer habitat, both the Francs Peak and Wood River areas are important migration corridors, are entirely comprised of winter range and include a subset of crucial winter range for elk, bighorn sheep and moose. In fact, elk and bighorn sheep herds utilize range within this newly proposed 3.3A motorized management area for both winter and summer range. The entire Wood River area is winter range for elk and bighorn sheep and the lower country is crucial winter range for moose. These are irreplaceable resources that the Forest Service did not consider—or attempt to mitigate—in its decision to allow motorized use in these two backcountry areas.

The Forest Service's decision to allow winter motorized travel is also contrary to the expert opinion of the Wyoming Game and Fish Department that, "snowmobile use is suitable in the South Fork Shoshone portion, but not suitable in the Greybull River portion [Francs Peak and Wood River roadless areas], which functions as crucial winter range for bighorn sheep and hundreds of migratory elk."[59] The Wyoming Game and Fish Department recommends year-round non-motorized recreation management in both the Francs Peak and Wood River areas.[60]

Francs Peak and Wood River abound with occupied grizzly bear habitat and a dense availability of army cutworm moth sites that are extensively used by bears. The Final EIS makes no mention of the possible effects on grizzly bears of summer motorized use in the Francs Peak area. Francs Peak is home to one of the most heavily used army cutworm moth feeding sites for grizzly bears on the Forest; upwards of 30 grizzly and black bears visit a single site at a given time on Francs Peak proper.[61] Other peaks and ridgelines in the roadless area with confirmed army cutworm moth sites include: Dollar Mountain, Dunrud Peak, Mount Crosby and Jojo Peak. Given the sharp decline of other major food sources for grizzly bears in the Greater Yellowstone Ecosystem including whitebark pine, cutthroat trout and in

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[59] Suitable Uses for Roadless Areas. Wyoming Game and Fish Department. Letter to Shoshone National Forest. November 16, 2006 at 4. Attachment 8.
[60] Id. at 7.
[61] Joe Harper, forest wildlife biologist, Shoshone National Forest. Personal communication. November 13, 2013. Confirmation that army cutworm moth sites exist on Jojo Mountain and surrounding talus ridgelines in the Francs Peak area.

some areas, ungulates, moth sites are increasingly important as a prime source of protein-rich food for bears and should be protected.[62] Grizzly bears that utilize these sites travel from low elevation to high summits on a diurnal basis.[63] Motorized use in this backcountry could easily displace natural bear movements across the landscape.

The effects of roads and OHV travel on elk have been a focal point for researchers who have documented the species' aversion to motorized corridors. Five factors associated with motorized travel have been shown to negatively affect elk survival: hunting, poaching, collisions, displacement or avoidance, and disturbance at a specific site.[64] Ultimately, these five factors result in elk being displaced from suitable habitat. A decreased availability of effective habitat in turn leads to the potential for reduced populations at both the local and regional level. In contrast, as open road density (defined as "any road where motorized vehicles are allowed")[65] decreases, elk are less likely to be displaced from suitable habitat, and equally important, home range and daily movement decline.

b. The Forest Service didn't consider the adverse impacts motorized use would have on the soils, vegetation and water quality of Francs Peak and Wood River.

Off-highway vehicle use has significant impacts on the physical environment—impacts the Forest Service has not considered in this particular area. The soils of the Absaroka Range are comprised entirely of volcanic rock, which by nature are highly erosive. Motorized use will only exacerbate soil erosion and sedimentation into creeks that support native trout species. Off-highway vehicles—including all-terrain vehicles and motorcycles—quickly strip vegetation and rut the land, leading to erosion of soil at rates much higher than natural processes. Soil eroded into streams and rivers can dramatically reduce the quality of native fish habitat as well as that of most other aquatic life. Declining soil quality and quantity cannot support vegetation, thus harming wildlife and degrading the ecosystem.

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[62] Interagency Grizzly Bear Study Team. 2013. Response of Yellowstone grizzly bears to changes in food resources: a synthesis. Report to the Interagency Grizzly Bear Committee and Yellowstone Ecosystem Subcommittee. Interagency Grizzly Bear Study Team, U.S. Geological Survey, Northern Rocky Mountain Science Center, Bozeman, Montana, USA at 4 and 10. http://nrmsc.usgs.gov/files/norock/IGBST/IGBST_FoodSynReport120213.pdf
And see Arthur D. Middleton, Matthew J. Kauffman, Douglas E. McWhirter, John G. Cook, Rachel C. Cook, Abigail A. Nelson, Michael D. Jimenez, and Robert W. Klaver 2013. Animal migration amid shifting patterns of phenology and predation: lessons from a Yellowstone elk herd. Ecology 94:1245–1256 at 1249 addressing ungulates. http://www.esajournals.org/doi/abs/10.1890/11-2298.1

[63] Joe Harper, forest wildlife biologist, Shoshone National Forest. Personal communication. November 13, 2013. Confirmation that army cutworm moth sites exist on Jojo Mountain and surrounding talus ridgelines in the Francs Peak area.

[64] Greater Yellowstone Coalition comments on Draft EIS, Nov. 26, 2012 at 8.

[65] Id.

An extensive body of scientific literature highlights the detrimental effects that OHV use imposes upon natural resources.[66] None of these impacts was considered in any thorough way in the Draft or Final EIS. Off-highway vehicle use affects soil and hydrologic function primarily through soil compaction, increased soil strength, and removal of the forest litter layer in temperate environments.[67] Furthermore, soil compaction and the removal of the forest litter layer can reduce vegetation growth and is a primary factor in accelerated erosion rates.[68] Other research has found that just 40 passes over the soil surface by OHVs reduced the upper portion of the mineral soil by 30 to 50 percent.[69] Activities such as OHV travel reduce soil cover, strip vegetation and forest litter, alter natural drainage patterns and can lead to increased rates of surface and off-site erosion—erosion that moves soil particles and plant nutrients away from a localized area.[70] All of the citations included here were also included in the Nov. 26, 2012 comments of the Greater Yellowstone Coalition in response to the Draft EIS.

c. The Forest Service did not consider conflicts and resource damage that could result from unauthorized motorized use in Francs Peak and Wood River.

In addition to OHV impacts to wildlife and the physical environment, OHV use also presents a serious recreational management concern due to a long history of user violations. The Final EIS cites a 2009 Wyoming Statewide Comprehensive Outdoor Recreation Plan, which highlights motorized recreation as "the most challenging land management issue for the foreseeable future."[71] The Forest Service concedes that on the Shoshone, "increases in off-highway vehicle recreation in unauthorized areas are leading to increased wildlife disturbance, soil erosion, and sedimentation in streams."[72]

Unauthorized use has been documented on the Shoshone in Sunlight Basin, Carter Mountain, Dubois and on the Lander Front, both by private citizens and forest service employees. A Forest Service-sponsored field trip held on October 17, 2012 in the Wind River Ranger District toured several examples of these motorized violations, including in the Sheridan Creek and Warm Springs drainages. Mike Franchini, the sole law enforcement ranger of the Wind River District, spoke to the challenge of dealing with motorized users' explicit disregard for signs and barricades used to encourage motorized users to stay on authorized trails. Even the Wyoming Game and Fish Department, in a letter to the Shoshone National forest on recommended inventoried roadless area management, wrote, "even though it may

[66] Id. at 6.
[67] Id.
[68] Id.
[69] Id.
[70] Id.
[71] Final EIS at 497.
[72] Ibid. Pg. 7.

be outside the scope of the Forest plan revision, we recommend the Forest increase their enforcements efforts on travel management, particularly ATV use."[73]

To compound the problem, several of the motorized boundaries in these two areas as set forth in Alternative G are nearly impossible to enforce. Implementation of this plan will only exacerbate an already mired history of motorized violations. On the Wood River side, the 3.3B prescription drawn in the northern portion of this area contains no distinct geographical boundary preventing winter motorized users from intruding on an area to the east that is to be managed as MA 1.3 backcountry year-round non-motorized, a protection put in place for moose winter range in this area.

In another unfortunate example, the final plan management prescriptions draw the western end of the 3.3B prescription into the headwaters of the Wood River. It is only a shallow creek that separates winter motorized use on the south (Wood River) and non-motorized use on the north side (Francs Peak). Surely snowmobilers aren't going to be deterred by a shallow creek covered in deep snow and will likely travel into non-motorized territory on the north side of this basin. Such a proposal is unwise and does not consider the reality of the situation on the ground. With no clear geographic boundary on either side of this 3.3B area, this situation is impossible to monitor. Motorized users traveling across the entire northern Wood River potential wilderness area will impact elk and bighorn sheep winter range as well as moose crucial winter range. A history of winter motorized trespassing exists along the Absaroka-Beartooth Wilderness and High Lakes Wilderness Study Area in places where the boundary is not well defined by geographical lines such as mountains and creeks.

On the north side of the Francs Peak area, a similar problem exists. A management prescription, MA 3.3B representing winter motorized use, appears in the Francs Fork watershed. This should be eliminated from the final plan. Such a management area would encourage snowmobile users to climb the rugged terrain of the Francs Fork and then spill out on the Phelps Mountain plateau. The boundary between the Francs fork headwaters and the plateau above is not discernable on the ground and likely indistinguishable for any motorized recreationist. Only the wind-swept slopes of the plateau would truly stop motorized travel from continuing on snow. And, as described earlier, there is little capability for the Forest Service to patrol such a boundary. Phelps Mountain Plateau is an important area of bighorn sheep and elk winter range. Winter motorized use does not belong here.

The new MA 3.3A, the year-round motorized use prescription, and MA 3.5A, the year-round motorized prescription use with vegetation treatment allowed in roadless areas, occur within the eastern Francs Peak area. This also presents problems and future conflicts. With only one law enforcement ranger in the entire

[73] Suitable Uses for Roadless Areas. Wyoming Game and Fish Department. Letter to Shoshone National Forest. November 16, 2006 at 2. Attachment 8.

Greybull District, there is little capability of policing motorized use and keeping it to open trails. Too often, Shoshone staff and the general public have witnessed new user-created summer trails created to cut corners, head to vantage points, or make loops within the forest. In addition, geographic boundaries that separate these two management area prescriptions from adjacent crucial winter range are not discernable on the landscape. This creates a situation where winter motorized users, already traveling in documented winter range, could also be further stressing wildlife in crucial winter range. Motorized users may not understand the situation, and the Forest Service does not have the enforcement capacity to correct it.

These conflicts are entirely likely under the final forest plan's Alternative G. The Forest Service has not addressed these potential conflicts, nor has it explained how it intends to prevent and/or mitigate them. NEPA requires the Forest Service to consider these issues prior to finalizing management prescriptions. The agency has not met this requirement.

d. The Forest Service did not consider the impacts motorized use—particularly OHV use—in Francs Peak and Wood River would have on hunting opportunities and recreational horse travel.

Hunters revere the Greybull and Wood River drainages for their premier hunting opportunities. One of the most important and sought-after bighorn sheep hunt areas in Wyoming (Hunt Area #5) is located in the Francs Peak potential wilderness area. A Trout Unlimited report on the values roadless lands provide to wildlife, fish, hunting and angling in Wyoming states:

> [T]he longest general seasons for deer and elk, the highest bull harvests, and the best general-season success rates are found in hunt areas with abundant backcountry lands. Conversely, the loss of secure habitat to roads has been directly linked to declining herd condition and reduced hunting opportunities.[74]

This high hunt success rate demonstrates a continued need to protect the area's roadless and non-motorized qualities. In the Greybull-Wood River area, "For bighorn sheep hunters, the local hunting unit (Hunt Area #5) is one of the most coveted in all of Wyoming."[75] Once this area is open to motorized vehicles, the loss of quality big game habitat will be damaged. Protecting winter range, crucial winter range, parturition areas, and summer range with non-motorized management prescriptions will directly determine the quality of elk, moose and sheep hunting

[74] Where the Wildlands Are: Wyoming, The Importance of Backcountry Areas to Wyoming's Fish, Wildlife, Hunting & Angling. A Report Produced by Trout Unlimited. 2006 at 12. http://www.oursportingheritage.org/wp-content/uploads/2011/11/WY-Where-the-WIldlands-are.pdf
[75] Id. at 20.

opportunities. The Forest Service erred in not considering this in its decision to allow motorized use in Francs Peak and Wood River.

Non-motorized, intact roadless habitat is the present condition of Francs Peak and Wood River. These two potential wilderness areas exemplify the "best of the best" in terms of wildlife and non-motorized recreational assets outside of wilderness on the Shoshone. The landscape has been cherished as a wild, backcountry area since the Forest Service began managing the area in 1891. Hunters and backcountry horsemen and women have a long history of using the eastern Francs Peak area. Members of various Backcountry Horsemen of America local chapters maintain the trail that connects from Deer Creek to Timber Creek. Terrain is steep and narrow and OHV-use will only result in conflicts and jeopardize the safety of traditional, non-motorized users. Collectively, these two backcountry areas embody a horse packing and hunting heritage that should not be compromised by motorized use. The Forest Service failed to address the impacts motorized use would have to this rich heritage, and to the few, remaining areas—not only on the Shoshone, but also anywhere in the lower 48 states—that can support such a heritage.

e. The Forest Service did not consider the impacts motorized use in Francs Peak and Wood River would have on historic and prehistoric cultural resources.

One of the most unique aspects of the Francs Peak and Wood River area is its rich cultural history. Not only does it have the historic mining town of Kirwin and Amelia Earhart's historic connection, but also there are 19 heritage sites within these two potential wilderness areas. Evidence of prehistoric cultural artifacts such as tools, cores and debitage (sharp-edged waste material left over when someone creates a stone tool) are prevalent along the Upper Wood River above Kirwin and along Bear Creek as well as within the Upper Brown Basin, Meadow Creek and Cascade Creek. Archaeologists and geologists have also found evidence of prehistoric human and animal migration routes above Kirwin to East Fork Pass.[76] Lawrence Todd, a Meeteetse native and Colorado State University professor emeritus in archaeology, explains that in the Francs Peak and Wood River area:

> There's a rich heritage of people's lives preserved in these mountain landscapes. Unfortunately, this heritage is a fragile, non-renewable resource that's under immediate threat. Artifacts are stolen, archaeological sites are vandalized and the irreplaceable record of hundreds of generations is being destroyed at an alarming rate. Every management effort, every possible protection needs to be undertaken to insure that this complex, globally significant heritage is given thoughtful, immediate stewardship.

[76] Todd, Lawrence. Colorado State University, professor emeritus. Personal communication. July 28, 2012 at Double D Ranch – Francs Peak & Wood River boundary.

The Forest Service erred in not analyzing the impacts to the irreplaceable resources that could result from its decision to authorize motorized use in these backcountry areas.

4) The Forest Service failed to minimize impacts when designating winter motorized trails and areas as required by Executive Orders 11644 and 11989.

The Forest Service is required to minimize impacts to resources and other uses when designating trails and areas for off-road vehicles, including snowmobiles. The requirement flows from Section 3 of Executive Order 11644 as amended by Executive Order 11989, which requires that the designation of off-road[77] trails and areas be in accordance with the following:

> (1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.
> (2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.
> (3) Areas and trails shall be located to 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…

These criteria are often referred to as the "minimization criteria" in the "ORV Executive Orders."

The final forest plan (Alternative G) designates 592,400 acres or 57 percent of available (i.e., non-wilderness) acres as open to cross-country winter motorized use, and designates 276 miles of winter motorized trails.[78] Nowhere in the final EIS or the record of decision, however, does the Forest Service show how it applied the minimization criteria to arrive at the designations of the particular areas and trails. There is no discussion regarding how this particular set of designations at a site-specific level minimizes damage to resources, harassment or disruption of wildlife

[77] Section 2 of the Executive Order includes snowmobiles in the definition of off-road vehicles: "(3) "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract…"

[78] The forest plan addresses where winter motorized use will be allowed in areas and trails on the forest. Winter motorized use will occur in these areas and trails immediately upon approval of the record of decision. No separate travel plan is in process to address the impacts of winter motorized use.

habitat, or conflict with other recreational uses. Even more troubling, the FEIS does not mention the Executive Orders as part of the "Legal and Administrative Framework" used in making the decision.[79]

In the last few years, there have been a number of legal decisions affirming that the Forest Service has an obligation to show that it aimed to minimize damage and conflict when designating trails and areas for motorized use. Courts have been in general agreement that merely considering impacts is not sufficient. For example, an Idaho court concluded that the Forest Service must consider the "minimization" criteria set out in 36 C.F.R. § 212.55(b) and document how the agency applied the criteria in its designations on the record:

> The language "with the objective of minimizing" means that the whole goal or purpose of the exercise is to select routes in order to minimize impacts in light of the agency's other duties. Simply listing the criteria and noting that they were considered is not sufficient to meet this standard. Instead, the Forest Service must explain how the minimization criteria were applied in the route designation decisions.[80]

It is not adequate to rely on the fact that Alternative G reduces the designated snowmobile acreage from that allowed under the current plan as a proxy for minimization.[81] While an overall reduction in snowmobile usage to lessen environmental impacts is a worthy goal, it does not equate to a minimization of impacts of individual areas and trails that were designated. In referring to summertime route designations, the court explained:

> 'Minimize' as used in the regulation does not refer to the number of routes, nor their overall mileage. It refers to the effects of route designations, i.e. the [Forest Service] is required to place routes specifically to minimize 'damage' to public resources, 'harassment' and 'disruption' of wildlife and its habitat, and minimize 'conflicts' of uses."[82]

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[79] Final EIS at 489-91.

[80] Idaho Conservation League v. Guzman, 766 F. Supp. 2d 1056, 1074 (D. Idaho 2011).

[81] And as we note above: The acres that are technically open to snow machine use in the 1986 plan are inflated and don't accurately depict of the number of acres actually used by snow machines. Alternative G is arguably not a decrease in winter motorized acres forest-wide if Alternative B is the baseline. The Final EIS states: "Over-snow vehicle use does not currently occur on all accessible acres in Alternative A. Use occurs on approximately the same number of acres that are accessible in Alternative B." Final EIS at 509, Table 144, note 1. Table 144 illustrates that 887,600 acres are technically open for snow machine use in Alternative A. Alternative B's more accurate assessment is 481,200 acres. For this reason, Alternative G's proposal to open 592,400 acres to this use is actually a significant increase.

[82] Idaho Conservation League v. Guzman, 766 F. Supp. 2d 1056, 1074 (D. Idaho 2011).

It is also not adequate to rely on compliance with applicable laws and regulations as a proxy for compliance with the ORV Executive Orders. After all, every alternative with very limited exceptions should be compliant with applicable laws and regulations, but within this decision space clearly some alternatives minimize impacts more than others.[83]

We draw on two examples from the Shoshone's Final EIS to illustrate the absence of application of the minimization criteria, but this argument applies forest-wide. The first example addresses the criteria related to minimizing conflicts between snowmobiles and other recreational uses. In comments on the Draft EIS, the public expressed strong support for recommending the Wood River roadless/potential wilderness area for wilderness and designating it as non-motorized in order to protect the exceptional quiet backcountry experience it provides. In Alternative G, the Forest Service designates 5,719 acres in Wood River as non-motorized out of a total of 57,006 acres, while Alternative B designates 44,168 acres as non-motorized.[84] Logically, because snowmobiles will have considerably less access under Alternative B, this alternative will result in less conflict with wilderness compatible uses than Alternative G. Generalizing this example to all potential wilderness areas, Alternative G designates 185,175 acres or 25 percent of the potential wilderness acres open to winter motorized use, while Alternative B designates 86,372 acres (12 percent), Alternative C designates 3,157 acres (0.4 percent), Alternative D designates 71,555 acres (10 percent), Alternative E designates 43,430 acres (6 percent), and Alternative F designates zero (0) acres.[85] Without the benefit of a minimization analysis or additional information supporting why this is not the case, Alternative G will result in more conflicts between off-road vehicles and those seeking a wilderness experience in the wintertime than Alternatives B through F. Reaching any other conclusion, without an explanation as to how that conclusion was reached, is arbitrary and cannot be supported.

The second example addresses the criteria related to minimizing harassment of wildlife or significant disruption of wildlife habitats. We see no evidence in the Final EIS or record of decision that the Forest Service minimized impacts to wildlife from winter off-road vehicle designations. Relative to grizzly bears, the Final EIS states: "Within the primary conservation area, approximately 80 percent of the grizzly bear denning habitat would be closed to snow machine use in Alternatives A, B, E and G (Table 43). Alternatives C and D would increase the amount of denning habitat closed to snow machine use to 96 percent and 90 percent, respectively."[86] In the absence of a minimization analysis explaining to the contrary, we can only presume that Alternative G does not minimize impacts to grizzly bear habitat. In the

[83] We note again the troubling reality that two of the action alternatives as well as the no-action alternative do not comply with applicable laws and regulations, e.g. the 2001 Roadless Area Conservation Rule.
[84] We only know this because we asked the Forest Service for an area-specific acreage table per alternative after it was clear the Final EIS included no such information. Attachment 5.
[85] Final EIS, Table 153 at 530.
[86] Final EIS at 179.

case of wolverine, the FEIS makes it clear that Alternative G does not minimize impacts to wolverines and their habitat, stating:

> As displayed in Table 45, the action alternatives differ in the amount of solitude and undeveloped terrain potentially available for the wolverine. Of the action alternatives, alternative F offers the largest amount of acres available to winter motorized recreation. Alternatives C and D offer the least amount of acres available for motorized travel. Alternatives C and D, therefore, offer the highest probability of maintaining habitat options for species such as the wolverine that depend on solitude, little human disturbance, and undeveloped terrain. Alternatives B and E and alternative G offer a balance between the three other action alternatives, but also they provide more undisturbed habitat and less potential disturbances than no action.[87]

In sum, the decision to move forward with Alternative G as it relates to minimization of wildlife impacts violates the law. The issue of compliance with the ORV Executive Orders was raised on page 21 of The Wilderness Society's comments on the DEIS dated November 26, 2012.

5) <u>The Forest Service's decision to permit expanded motorized use in Francs Peak and Wood River is arbitrary and disregards public sentiment.</u>

Appearing for the first time in the final plan (Alternative G), the changes from a backcountry year-round non-motorized prescription (MA 1.3) for the Francs Peak and Wood River areas to a combination of extensive winter and year-round motorized use completely contradicts the Forest Service's written and spoken management intentions during the eight years the plan revision process has been underway. These changes permitting motorized use in Francs Peak and Wood River have been implemented at the last minute—after private meetings with OHV and snow machine advocates[88]—without regard for the widespread public support for and the agency's own acknowledgement of the fact that these are two of the highest quality potential wilderness areas on the Shoshone.

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[87] Id. at 187.

[88] "Forest spokeswoman Kristie Salzmann said [motorized use in Francs Peak] was one of the most discussed topics at the series of public meetings the Forest Service held in Dubois, Lander, Thermopolis, and Cody this month. She explained the change came after reviewing comments with off-highway vehicle clubs." Wyofile, March, 18, 2014 Fight brews over proposed motorized access to Franc's Peak. http://wyofile.com/kelsey-dayton/motorized-access-to-francs peak/?utm_source=WyoFile%20free%20weekly%20newsletter&utm_campaign=3580b6d398-3_17_2014&utm_medium=email&utm_term=0_3c2a045382-3580b6d398-225290029.

By all accounts—including the agency's own evaluation—Francs Peak and Wood River are outstanding candidates for wilderness. Nevertheless, and in contrast to significant public support for new wilderness, the Forest Service has consistently asserted that there is no need to recommend these areas as wilderness because they would be managed as MA 1.3 for backcountry year-round non-motorized use. This MA 1.3 prescription would ensure that the wilderness character of Francs Peak and Wood River would not be jeopardized in the revised forest plan. Members of the Shoshone Cooperating Agency Coalition were vocal in their hostility to new wilderness, but never raised public objection to these highest quality areas being managed as MA 1.3. As such, the public had no reason to anticipate the changes allowing the extensive motorized use in Francs Peak and Wood River that are now seen for the first time in the final plan. Had the agency early on proposed to manage the Francs Peak and Wood River areas for motorized use—areas that ranked highest of all the potential wilderness areas on the Shoshone—the public would have voiced resounding opposition. Even with the Draft EIS proposal to manage these areas as MA 1.3, the vast majority of the more than 20,000 comments received supported greater conservation of these and other areas via new wilderness recommendations.

The Forest Service decision to allow motorized use disregards these comments. Despite the outpouring of support for advancing the Shoshone's wild, backcountry character, the Forest Service routinely downplayed the value of the "form letters" it received from the public—often via conservation or sportsmen groups who encourage their members to participate in the process—as not indicative of public sentiment. This is inappropriate. American citizens care about their public lands and often choose to become members of organizations that they trust will advocate on their behalf. Few people have the time to review lengthy environmental analyses or participate in processes like this one that will last for upwards of a decade. Conservation organizations employ staff people who are able to do this work. We share with our members the information we know they care about and we encourage them to weigh in. Although we often suggest "individual, substantive comments" knowing the Forest Service holds these in higher regard, most often "form letters" or "form emails" are one of the only realistic means by which the majority of the busy public has the ability to participate. We urge the Forest Service to remember that behind every "form letter" there is a real person, who cares enough to participate to the best of his or her ability. Disparaging remarks about the manner in which people attempt to meaningfully participate does nothing to encourage the general public to feel ownership of and stewardship for their public lands.

Although we disagree with the agency's assessment of "form letters," our organizations accepted this reality and determined to undertake an analysis of the comments the Forest Service considered "individual" and "substantive." Upon our request, the Forest Service provided electronic copies of the 1,065 comments on the Draft EIS and forest plan. We then read the sentiments expressed in these comments and produced an analysis. The results showed 75 percent of the comments that

addressed recreational use opposed any additional motorized access on the forest.[89] Additionally, 90 percent of the comments from Wyoming residents regarding wilderness supported the Forest Service taking action to manage such places as Francs Peak and the Wood River for their wilderness character.[90]

In the 2008 survey referenced in the section that addresses Objection I, researchers investigated public values and preferences in the four counties bordering the Shoshone.[91] The scope of this survey is significant, as these are the counties from which local government cooperators have been participating in the plan revision process—ostensibly on behalf of their constituents. Although many anticipated that the results of this local survey would provide support for many of the cooperators' anti-wilderness, anti-roadless positions, the opposite proved true. If this decision to allow motorized use in Francs Peak and Wood River—two of the areas with the highest wilderness potential—is any indication, the Forest Service failed entirely to incorporate the results of this survey.

In the survey, which documented favorable public uses on the forest, the vast majority of respondents strongly supported wildlife health and non-motorized opportunities over off-highway vehicle recreation. The most favorable public preferences included: wildlife viewing (98 percent); fish and wildlife habitat (96 percent); non-motorized recreation (89 percent); horse packing (85 percent); wilderness (73 percent); compared to OHV recreation (39 percent). Further, respondents favoring OHV recreation (39 percent) nearly equaled those opposed to OHV recreation on the Shoshone (37 percent).[92] In comparison, non-motorized uses and wildlife preferences on the landscape received 1 percent (and in some cases fewer than 1 percent) opposition.[93]

This same survey also looked at preferences specific to inventoried roadless areas on the Shoshone. The results illustrate unequivocally that motorized recreation is not a favorable use of the Shoshone's roadless lands. Survey respondents overwhelmingly preferred non-motorized use of these landscapes to OHV use. Non-motorized recreation scored 93 percent favorable with 2 percent opposition, as compared to ATV recreation's 26 percent favorable with 56 percent opposition on roadless areas.[94] The preference for a "wilderness" use of roadless areas scored 74 percent favorable with 14 percent of respondents opposing.[95] The overwhelming support for non-motorized use, if not wilderness recommendation for the Shoshone's roadless lands, provides stark contrast to the Forest's new proposal to manage the majority of the Wood River area and a third of the Francs

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[89] Analysis of Individual Comments on Draft EIS. Attachment 1.
[90] Id.
[91] Clement, J., Cheng, A. 2008. Report: Study of preferences and values on the Shoshone National Forest. Department of Forest, Rangeland and Watershed Stewardship; Colorado State University.
[92] Id.
[93] Id.
[94] Id.
[95] Id.

Peak area for motorized use in the final forest plan. The decision even surprised OHV advocates. Dana Sanders, President of the NW Wyoming OHV Alliance said the Forest Service in the final plan "even opened up more area than [his group] requested."[96]

Given the significant local support shown in the four-county social survey, the overwhelming national support for new wilderness on our nation's first forest and the individual, substantive comments submitted on the draft EIS, the Forest Service's decision not to recommend Francs Peak and Wood River as wilderness is disappointing at best. Its decision to manage significant portions of these highest quality potential wilderness areas for motorized use, however, is nothing if not arbitrary. These last minute changes—appearing for the first time in the final plan and without any opportunity for public input save for an objection—are contrary to the findings of the Forest Service's own potential wilderness evaluation and are inconsistent with its statements for years assuring the public these areas' wilderness qualities would be safeguarded via the MA 1.3 prescription.

In conclusion, the Forest Service failed to provide the public with the basic information it sought to illustrate changes in management prescriptions for each of the 34 individual potential wilderness areas—and in particular the four highest rated areas. This omission has made it difficult to discern the differences among alternatives per particular area and the impacts to each areas. The Forest Service also did not consider in any of the alternatives (even the most motorized-permissive alternative) the extent of OHV-use the final plan now makes suitable in the Francs Peak potential wilderness area. Moreover, the Forest Service failed to consider the numerous unique resources found only in Wood River and Francs Peak that could be impacted by motorized recreation. Further, the Forest Service made no attempt to minimize the impacts of winter motorized travel as required by Executive Orders 11644 and 11989. Finally, the decision to allow motorized use in two of the highest quality potential wilderness areas—on top of the already controversial decision to not to recommended these or any areas as new wilderness—is arbitrary as it disregards public sentiment.

Resolution sought for Objection II:

We ask the Forest Service to withdraw the motorized use allocations found in Alternative G for the Francs Peak and Wood River potential wilderness areas. We ask that these areas be recommended for wilderness designation and managed accordingly. In regard to compliance with the minimization criteria in Executive Orders 11644 and 11989, we respectfully ask that the Forest Service clearly demonstrate that the winter motorized area and trail designations made in the final

[96] Wyofile, March, 18, 2014 Fight brews over proposed motorized access to Franc's Peak. http://wyofile.com/kelsey-dayton/motorized-access-to-francs-peak/?utm_source=WyoFile%20free%20weekly%20newsletter&utm_campaign=3580b6d398-3_17_2014&utm_medium=email&utm_term=0_3c2a045382-3580b6d398-225290029.

EIS and revised plan comply with the minimization criteria in Executive Orders 11644 and 11989, and demonstrate how it applied the minimization criteria in the administrative record. If the Forest Service cannot demonstrate how the designations made in the final EIS and revised plan fulfill this mandate, then it must modify the designations so that they do.

III. The Forest Service should not allow mechanized recreational vehicle use in the Dunoir Special Management Unit.

In the final forest plan (Alternative G), the Forest Service determined that mountain biking on a 6.8-mile trail section is expressly allowed in the Dunoir Special Management Unit.[97] The Forest Service's decision to allow mountain bike use in the Dunoir is the subject of our final objection.

Historical and Procedural Background

Located between the Teton and Washakie Wilderness areas, in the heart of the Greater Yellowstone Ecosystem, the 28,879-acre Dunoir Special Management Unit contains outstanding wildlife habitat and extraordinary backcountry character. These values are at the heart of the public's decades-long support for the Dunoir's inclusion in the National Wilderness Preservation System. After passage of the 1964 Wilderness Act, advocates for lands with wilderness character sought to include additions—including the Dunoir—in the National Wilderness Preservation System. In the late 1960s and early 1970s, Congress acknowledged the outstanding wilderness qualities of the Dunoir and considered it as a potential addition to the Shoshone National Forest's Washakie Wilderness. The statement of Wyoming Senator McGee provides helpful context:

> The DuNoir, unlike many wilderness areas in Wyoming, is not confined to the top of peaks or the very high ground, which no one else wants for commercial use. It is lower, enjoys a particular wealth of wildlife and represents a significant calving ground for the magnificent elk, which reside in our mountain regions. In the early 1920s, the DuNoir was visited by the old Wyoming Timber Company, which cut some wood, mostly for railroad ties. But the timber removed was skidded out by horses and floated. Never was mechanized equipment in there. The passage of half a century has largely covered the relatively minor incursions of man in this region.[98]

Wyoming's Senator Hansen said much the same thing: "The DuNoir is an unusually scenic area which deserves protection from additional encroachment."[99] An agreement to designate the Dunoir was not reached, but a compromise was struck

[97] Draft ROD at 11.
[98] Statement of Senator McGee, Congressional Record—Senate, May 3, 1971. Attachment 9.
[99] Statement of Senator Hansen, Congressional Record—Senate, October 14, 1970. Attachment 10.

that gave legislative protection to the Dunoir as a Special Management Unit. Wyoming Senator McGee described the legislation and its effect:

> In the bill before you, the DuNoir is not designated as Wilderness, but as a special management unit, which will be treated much as though it were inside the boundary of the Washakie Wilderness. In this way…we have moved to insure, for generations yet to come, the benefits to be derived from the magnificent DuNoir Valley…. America, I am confident, will be the richer for the preservation of these lands in their natural state.[100]

The Dunoir Special Management Unit's enabling legislation instructs:

> [T]he Secretary of Agriculture shall not permit harvesting of timber or public or private vehicular use of any existing road, and shall not construct or permit the construction or expansion of any road in said Management Unit. The Secretary shall administer said unit in accordance with the laws, rules, and regulations relating to the national forests especially to provide for non-vehicular access recreation … and take such measures as are necessary for the health and safety of visitors and to protect the resources of said unit.[101]

Congress also directed the Secretary of Agriculture to "initiate a continuing study" of the unit and "at the end of a five year period…recommend to the President and to Congress what he considers to be the area's highest and best public use."[102]

Six years later, Congress considered the Dunoir Special Management Unit for inclusion in the National Wilderness Preservation System. Wyoming's Representative Roncalio described the Dunoir as "the crown jewel of Wyoming's remaining nonwilderness roadless lands."[103] He went on to say: "I visited the Dunoir and determined that the entire DuNoir Basin was not only eligible for inclusion as wilderness, but was, in fact, probably the most desirable area in all of Wyoming to be in wilderness."[104] He explained that his proposal to designate the Dunoir as wilderness would "protect[] a diversive [sic], forested, and relatively low elevation drainage which is immeasurably important to wildlife and non-motorized recreation use year-round."[105] Representative Roncalio shared Wyoming Game and Fish Department's support for the Dunoir's inclusion as wilderness:

> The present DuNoir Special Management Unit contains important wildlife habitat for elk, moose, bighorn sheep, deer and trout fisheries,

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[100] Statement of Senator McGee. Attachment 9.
[101] Pub. Law 92-476 § 5(a), Oct. 9, 1972.
[102] Id. at § 5(b).
[103] Statement of Rep. Roncalio, Congressional Record—House, April 25, 1978. Attachment 11.
[104] Id.
[105] Id.

> which could substantially benefit from habitat protection provided by inclusion in wilderness status…. It is the recommendation of this Department that the entire DuNoir Special Management Unit be designated as wilderness to assure continuation of existing wildlife populations in these drainages.[106]

Despite these efforts, and support from the Forest Service, a wilderness designation for the Dunoir did not result in 1978.

Then, in 1984, the Wyoming Wilderness Act passed. The Act was a landmark effort in bipartisan collaboration protecting almost a million acres of some of Wyoming's most pristine and vulnerable lands and releasing thousands of other roadless areas to be managed for other uses. The legislation neither recommended nor released the Dunoir Special Management Unit, but reinforced that the Dunoir "shall continue to be managed pursuant to Public Law 92-476."[107] The Act made no changes to the Dunoir's enabling legislation.

Despite the prohibition in the Dunoir's enabling legislation of "vehicular use" and its specific direction "especially to provide for non-vehicular access recreation" the Forest Service has not enforced these prohibitions, and the current forest plan, published in 1986, offers no management direction with respect to mountain bikes in the Dunoir. As a result, motorized incursions by off-highway vehicles and snow machines, as well as mountain bike use occur with some frequency.

In 2005, the Forest Service correctly identified the problem and sought to remedy past mismanagement of the area through the Shoshone's upcoming forest plan revision process. As the Forest Service explained, if the revised plan didn't clarify this issue, "motorized use and mountain bike use in the Dunoir Special Management Unit would continue to be in conflict with the enabling legislation."[108] The Forest Service stated repeatedly, "Winter motorized use and mountain bike use in the Dunoir Special Management Unit needs to be consistent with the enabling legislation."[109]

The non-motorized and non-mechanized management direction the Forest Service proposed for the Dunoir was constant for the seven years between the beginning of the Shoshone's forest plan revision in 2005 and the most recent draft forest plan released in July 2012. Except for the no action alternative, which represents the current 1986 plan, all five action alternatives considered in the draft EIS—even the ones most permissible to extractive uses and/or motorized

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[106] Id. (quoting testimony from the Wyoming Game and Fish Department testimony at a Forest Service hearing in Dubois, Wyoming, April 1, 1978).
[107] Wyoming Wilderness Act of 1984, Pub. Law No. 98-550, § 401(e), 98 Stat. 2807, 2813 (1984).
[108] Analysis of the Management Situation, January 2012, at 21.
[109] Draft Forest Plan, July 2012 at 14.

recreation—prohibited both motorized and mechanized recreational vehicle use in the Dunoir.[110]

Although it was welcome news that after decades of allowing impermissible activities in the Dunoir, the Forest Service was finally going to clarify appropriate uses, this was the very least that many stakeholders expected. Numerous stakeholders—including the Wyoming Game and Fish Department and our organizations—urged the Forest Service to recommend the Dunoir as wilderness in this forest plan revision process.[111] And in fact, in one draft plan the Forest Service did identify the Dunoir in its preferred alternative as the single area it would recommend as wilderness.[112]

The Shoshone's plan revision process was delayed for a time while the 2005/2008 forest planning rules faced legal challenges. When revision of the Shoshone's forest plan resumed in 2009 under the 1982 regulations, a new proposal included no wilderness recommendations whatsoever. Nevertheless, our organizations and numerous other stakeholders continued to advocate for wilderness recommendations for the Dunoir and other deserving backcountry areas such as Francs Peak, Wood River and Trout Creek.

The Forest Service refuted the need for wilderness recommendations. With respect to the Dunoir, it cited its intention to manage the area consistently with its enabling legislation. "What does a wilderness recommendation get you," the Forest Service often asked wilderness proponents, "that you're not going to get with full enforcement of the Dunoir's Special Management Act?" Assuming the Act would be faithfully enforced—and this was questionable given past management of the area—many conceded there would be little on-the-ground difference. However, with a wilderness recommendation comes certainty. The public, we explained, knows what is and is not allowed in wilderness; there would be fewer incursions and fewer conflicts. It appeared the Forest Service would not recommend the Dunoir—or any other area—for wilderness in this forest plan revision, but that clarification and full enforcement of the Dunoir's enabling legislation would likely occur.

It was a surprise then, that between the draft plan and the final plan, the Forest Service proposed allowing mechanized vehicle use in the Dunoir. Our organizations sent letters outlining our concerns.[113] On June 24, 2013 representatives from our organizations accompanied by concerned citizens met

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[110] Draft Forest Plan, Summary at xvii.
[111] Comment letter to Susan Douglas from John Emmerich, WGFD, Nov. 16, 2006. Attachment 8. Comments re: Suitable uses of Roadless Areas on the Shoshone National Forest, Wyoming Outdoor Council and Greater Yellowstone Coalition, Nov 16, 2006 (stating that the Dunoir—as well as Francs Peak, Wood River and Trout Creek—should be recommended wilderness).
[112] 2007 Proposed Draft Shoshone Land Management Plan at 58.
[113] Letter to FS/USDA officials from Tim Preso, June 21, 2013, Attachment 12, and letter to FS/USDA officials from Lisa McGee, September 27, 2013 Attachment 13.

with Regional Forester Daniel Jiron, Regional Wilderness Manager Ralph Swain, new Deputy Regional Forester Kevin Riordan, Capitol City Coordinator Cheryl Chatham, and the Regional Landscape Architect in Denver. On June 25, 2013, we traveled to Washington, D.C. and met with Deputy Undersecretary for Natural Resources & the Environment Butch Blazer, Natural Resources & Environment Advisor Patrick Holmes, and Senior Advisor to the Secretary of Agriculture Robert Bonnie to discuss our concerns about the Dunoir. The Forest Service did not change course.

On January 24, 2014 the final forest plan and the draft record of decision were released. Mountain biking on a 6.8-mile trail section is allowed, but is prohibited on the remaining 21.6 miles of trail in the Dunoir.[114] The Forest Service claims its decision will allow it to "continu[e] to manage the Dunoir SMU consistent with the act."[115] We disagree. The Forest Service doesn't have the discretion to adhere only partially to federal law. Allowing only a percentage of the trails in the Dunoir to be managed consistently with the act is a fundamentally flawed interpretation of the law. The Forest Service's decision to permit mountain biking in the Dunoir is contrary to the plain language of the act, is not supported by legislative history and is an affront to the majority of the public who urged the Forest Service to recommend the Dunoir as wilderness.

Discussion

The decision to allow mountain biking in the Dunoir is contrary to the plain language of the Dunoir's enabling legislation. Further, the Forest Service's reliance on select references found within the legislative history and the statements of retired Senator Alan Simpson are not conclusive of the issue. Finally, it is not an accurate assessment that "public comment" supported this change, as it wasn't adequately put before the public in the draft plan, but even so, the vast majority of the public advocated for a wilderness recommendation for the Dunoir.

1) The plain language of the Dunoir's enabling legislation requires non-motorized and non-mechanized management prescriptions in the revised forest plan.

The Dunoir's enabling legislation broadly prohibits "public or private vehicular use…."[116] It also instructs the Forest Service to manage the area "especially for non-vehicular access recreation."[117] Between the draft and final forest plans, however, the Forest Service came to believe that Congress meant to prohibit only motor vehicles, not mechanized vehicles. As such, the final forest plan was modified to allow mountain biking on a 6.8-mile trail section in the Dunoir.[118]

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[114] Draft ROD at 11.
[115] Draft ROD at 11 (citing Pub. Law 92-476 § 5(a)).
[116] Pub. Law 92-476 § 5(a), Oct. 9, 1972.
[117] Id.
[118] Draft ROD at 11.

The word "vehicle" is unambiguous. By the Forest Service's own definition, a vehicle is "any device in, upon, or by which any person or property is or may be transported, including any frame, chassis, or body of any motor vehicle, except devices used exclusively upon stationary rails or tracks."[119] Although a motor vehicle is one type of vehicle in a broader category, it is not the only variety. Put simply, bicycles are vehicles and it is "vehicular use" the Dunoir's enabling legislation prohibits.

There is further support in the statute to prohibit mountain bike use in the Dunoir. Coupled with the statute's prohibition on "vehicular use" is an additional mandate that the Secretary of Agriculture "shall administer said unit . . . especially to provide for non-vehicular access recreation…." [120] Congress' intent was most certainly to curtail any use—vehicular or otherwise—that would conflict with the goal of fostering non-vehicular access (e.g. foot travel and pack horse use) to and within the Dunoir's remarkable backcountry. Congress didn't have to envision mountain bikes per se as the specific instrument of that future threat to non-vehicular recreation; however, today bikes are the source of conflict and threaten non-vehicular recreation.

In providing for that non-vehicular recreational experience, Congress instructed the Forest Service to take "measures as are necessary for the health and safety of visitors and to protect the resources of the Dunoir."[121] The Forest Service can and should find support within the statutory language to identify mountain bike use as inconsistent with and a conflict presenting safety concerns to traditional, non-vehicular users. There are multiple risks mountain bikes pose to non-vehicular users in the Dunoir. From a practical standpoint, the 6.8-mile section of trail at issue in this decision is visited by only a handful of intrepid mountain bikers each year. A portion of the 6.8-mile section known as the Pinnacles Trail is little more than notched footpath in scree with precipitous drops.[122] This is an exceptionally dangerous place for mountain bikers to encounter horseback riders or hikers.[123] Travel by foot and horseback is a non-vehicular mode of transportation. Mountain biking is a vehicular use that conflicts with and puts at risk these traditional, non-vehicular uses—the very uses the Dunoir's enabling legislation seeks to safeguard.

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[119] 36 CFR § 261.2.
[120] Pub. Law 92-476 § 5(a).
[121] Id.
[122] See photo of the Pinnacles Trail. Attachment 14.
[123] See letter from Al Sammons to Joe Alexander, Oct. 12, 2013 discussing the safety concerns with mountain bikes and horses sharing the Pinnacles Trail: "Mountain bikes travel fast and silent. Their riders are usually looking down at the trail tread and not ahead. Horses and mules are fight or flight animals and regardless of how well trained, an equine is prone to stampede if faced with a quiet speeding object which suddenly appears out of nowhere. If this were to happen on one of the above mentioned trails the danger is great and the consequences real." Attachment 15.

The Dunoir's enabling legislation also requires the Forest Service "to protect the resources of the Dunoir."[124] Those resources include the wildlife that resides there. The Forest Service should consider the likelihood of increased human-grizzly bear conflicts (often resulting in human-caused grizzly bear mortality) from increased mountain bike use in grizzly bear habitat. Mountain bikes by design are fast moving, quiet vehicles. They can and do surprise and displace ungulates and startle bears without adequate warning. The Dunoir's location within the grizzly bear Primary Conservation Area—an area where federal land managers are directed to minimize human-bear conflicts—cautions against allowing mountain bike use here. The Pinnacles Trail is an area where there is a high likelihood of a mountain biker surprising a grizzly bear. Bears frequent the area in the late summer and fall months, the same time period that mountain bicycles descend this steep, low visibility trail. In fact, a mountain biker did surprise a bear on this trail in 2004 and survived an attack.[125] Although no action was taken against the bear in that case, human-caused mortalities are the leading cause of grizzly bear mortality on the Shoshone National Forest.[126] As the legislation requires, providing for the safety of non-vehicular users and the long-term viability of the Dunoir's wildlife resources is the management priority for the Dunoir. The Forest Service's decision to allow mountain biking in the Dunoir Special Management Unit contradicts the plain language of its enabling legislation.

2) Neither the legislative history nor the opinion of former Senator Simpson supports the Forest Service's decision to allow mechanized vehicles in the Dunoir.

Despite the clear and unambiguous statutory language referencing "vehicular use," the Forest Service researched the act's accompanying legislative history to discern whether there was support for a less restrictive interpretation. The agency also spoke with and considered the comments of former Senator Alan Simpson, who contends that, "the intent of the enabling legislation for the Dunoir was to restrict motorized use in the SMU, but not to restrict bicycles."[127]

That the Forest Service relied on Senator Simpson's statements is unfortunate, as he was not a member of Congress in 1972. As such, he had no first-hand involvement in drafting the Dunoir's enabling legislation, nor would he have been present for or a party to discussions with the drafters about their intent. Senator Simpson co-sponsored the Wyoming Wilderness Act in 1984—the act that determined for a third time that the Dunoir would not become wilderness, but would instead continue to be managed under the 1972 enabling legislation as a

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[124] Pub. Law 92-476 § 5(a).
[125] See news article about bear attack. Theurmer, Angus M. Jackson Hole Skier Magazine. September 1, 2004. Ski Patrolman Wrestles Grizzly Bear. Accessed online at: http://www.focusproductions.com/HTML/skier_pages/bear_attack.htm.
[126] Final EIS at 165, Table 38.
[127] Draft ROD at 11.

Special Management Unit. The Wyoming Wilderness Act made no changes to the Dunoir's enabling legislation.

With respect to the legislative history, the Forest Service found this sentence persuasive: "The Dunoir is an unusually scenic region, but the committee decided it did not qualify for wilderness and spelled out special management provisions which preclude timber harvest, additional road building and motor vehicle use of the area…"[128] It is the mention of motor vehicle use and roads that helped convince the Forest Service that Congress only intended to prohibit motor vehicle use.

The reference to motor vehicle use in the legislative history actually supports the opposite conclusion the Forest Service reached. Although Congress used the word "motor" to refer to some vehicles use in its discussions on the merits of legislation, ultimately it chose to include broader language in the legislation itself. There is no basis to conclude that Congress intended to limit only "motor" vehicle use in the Dunoir when the language of the statute itself broadly encompasses not only motor vehicles, but instead all vehicles, including mountain bikes.

In construing the meaning of a statute, courts have advised: "The most persuasive evidence of . . . [Congressional] intent is the words selected by Congress.[129] Congress could have made "motor vehicle use" the subject of its prohibition in the Dunoir's enabling legislation. It did not. The plain language of the statute prohibits vehicular use more broadly. By definition, bicycles are mechanized vehicles. "Ordinarily, where the language of a statute is clear and unambiguous on its face, the thrust of that language should not be controverted by seeking to show an inconsistent legislative intent."[130] Moreover, where there is unambiguous language—as in the Dunoir's enabling legislation—and where "legislative history create[s] an ambiguity of purpose . . . [t]his in itself is not a sufficient basis for ignoring clear, statutory language."[131] There is no reason the Forest Service should seek to find a less restrictive intent within a statute where Congress could have, but ultimately did not, include any caveats to a general prohibition on vehicular use. To the contrary, by directing the Forest Service to manage the Dunoir to provide for non-vehicular recreation, Congress manifested a broad intent to subject the area to wilderness-like management provisions, consistent with Senator McGee's stated legislative purpose.

Whether Congress specifically intended to prohibit mountain bikes in 1972 is not the question that should determine management of the Dunoir today. It is widely acknowledged that mountain bikes were not marketed in the United States until the 1980s and did not become ubiquitous until many years later. What should determine the Dunoir's management today is the plain and unambiguous language

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[128] Id. (quoting Senate Report No. 92-80 (1972) (emphasis added)).
[129] Turner v. McMahona, 830 F.2d 1003, 1007 (9th Cir. 1987).
[130] Sea-Land Service, Inc. v. Federal Maritime Commission, 404 F.2d 824, 828 (D.C. Cir. 1968).
[131] Ciampa v. Sec't of Health and Human Services, 687 F.2d 518, 526 (1st Cir. 1982).

contained in the statute, which references—simply and without qualification as to variety—vehicular use.

As the legislative history illustrates, Congress was certainly aware that vehicles come in the form of both motorized and mechanized varieties. Congress had passed the Wilderness Act of 1964 just eight years prior, which explicitly references both motorized and mechanical transport.[132] Congress' decision, therefore, not to limit the prohibition only to motorized vehicles in the Dunoir's enabling legislation should be assumed to be purposeful. And now, some 40 years after passage of the Dunoir's enabling legislation, a type of vehicular use in the form of mountain bikes is posing management conflicts in an area where Congress intended the Forest Service to manage especially for non-vehicular use.

The Forest Service selected a single excerpt from the Senate Report, which it included in the draft record of decision.[133] At no time did the Forest Service provide the entirety of the Senate Report or any other congressional records to the public for review or comment. If it had, surely other relevant sections would have been found and highlighted. The same report includes the statement: "Until Congress has acted further on the matter, the area is to be administered under the provisions of Section 5, which are intended to preserve the area in its present condition and provide for necessary protection and public use."[134] There was no mountain bike use in the Dunoir—or anywhere for that matter—in 1972. To preserve the area today in the condition it would have been more than 40 years ago surely provides support for a determination that the Dunoir should remain an area without mountain bike use. Contrary to the Forest Service's understanding, the legislative history suggests Congress intentionally prohibited general vehicular use, rather than motorized recreation only.

3) The Forest Service failed to give the public adequate notice and the opportunity to comment on its decision to allow mountain biking in the Dunoir.

In addition to the enabling legislation itself, the legislative history and the comments of former Senator Simpson, the Forest Service also explained that its decision to allow mountain bikes was "supported by public comment."[135] In truth, only a small number of extreme mountain bikers have ever even ridden this trail. Considering its rugged condition, backcountry location and past and potential grizzly bear conflicts, few mountain bikers will seek out this trail in the future. That a handful of people have—under the mistaken assumption it was allowable—biked this trail and want to continue to do so despite the clear legislative prohibition, is

[132] 16 U.S.C. §§ 1131-1136."[T]here shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area." Id. at 4(c).
[133] Draft ROD at 11.
[134] Senate Report No. 92-80 (1972) (emphasis added).
[135] Draft ROD at 11.

not reason enough to permit this use to continue into the future. A far larger group favor and have long advocated wilderness for the Dunoir. It is unclear what, if any, consideration the Forest Service gave to these pro-wilderness comments. It is certain; however, that on balance, given the enormous support for a wilderness recommendation for the Dunoir, the vast majority of stakeholders do not support mountain bike use here.

In addition, the Forest Service can conclude little about "public comment" since the public was not given adequate notice and opportunity to review and comment on this change. At no time between the draft forest plan and the final forest plan did the Forest Service seek specific comment on its newfound interpretation of the Dunoir's enabling legislation. It never provided the public with any of the legislative history or other documents it relied on to inform its decision. It never even sought public comment on its proposal to allow mountain biking to continue in some parts of the Special Management Unit, but not in others.

At the time the draft plan was released, there was no reason to believe the Forest Service was considering allowing mountain bike use in the Dunoir. Throughout the entire forest planning process the only decision the public understood was pending for the Dunoir was whether it would be recommended wilderness or whether the Forest Service would strictly enforce the statutory prohibition on vehicle use as its enabling legislation directs. Although Alternative A (the no action alternative representing the 1986 forest plan) technically included mountain bike use in the Dunoir, the Forest Service had stated repeatedly that this was not a viable or legal alternative.

There are hundreds of miles of multi-use trails outside of wilderness and more than 1,200 miles of system roads on the Shoshone National Forest. There are also myriad mountain biking opportunities on the adjacent Bridger-Teton National Forest. Mountain bikers have access to all of these. From a practical and a legal standpoint, allowing mountain biking on this infrequently traveled, conflict-laden 6.8-mile trail section is simply the wrong decision. As a congressionally designated management unit set aside explicitly for non-vehicular recreation, one of the highest-ranking potential wilderness areas on the Shoshone, and an area the Wyoming Game and Fish Department has for decades urged the Forest Service to recommend for wilderness, the Dunoir is special. The Final EIS acknowledges the Dunoir's designation "requires that the wilderness characteristics of the area be protected."[136] Permitting mountain biking is contrary to this understanding.

To be sure, wilderness recommendations are discretionary and it is the Forest Service's decision whether to recommend new areas. In contrast, adhering to requirements clearly articulated in federal legislation is mandatory. The Forest Service's decision in this case is contrary to law and should be withdrawn.

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[136] Final EIS at 546.

Resolution Sought for Objection III:

We ask the Forest Service to comply with the Dunoir's enabling legislation and accordingly, to prohibit all vehicular uses, including mountain biking in the Special Management Unit. We also ask that this accompany a decision to recommend the Dunoir as wilderness.

Conclusion:

On behalf of the Wyoming Outdoor Council, Wyoming Wilderness Association, Greater Yellowstone Coalition, The Wilderness Society and Sierra Club, I respectfully submit this objection. Our organizations appreciate your careful consideration of our concerns and look forward to satisfactory resolutions to the three issues we have raised.

Sincerely,

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