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US Forest Service
Intermountain Region
Attn: Mr. Harv Forsgren, Regional Forester
324 25th Street
Ogden, UT 84401

March 24, 2009

E-mail: appeals-intermtn-regional-office@fs.fed.us

Re: Appeal of the DN/FONSI for the Ely Ranger District Travel Management Project

Dear Mr. Forsgren:

The Center for Biological Diversity ("Appellant") hereby submits this administrative appeal of the U.S. Forest Service's Decision Notice ("DN") and Finding of No Significant Impact ("FONSI") for the Ely Ranger District Travel Management Project.

This Notice of Appeal is filed pursuant to, and in compliance with, 36 CFR Part 215. Appellants provided timely substantive comments on the "preliminary environmental assessment, noticed to the public on July 17, 2008. The decision of the district ranger failed to adequately address, respond to or even acknowledge the comments filed by Appellants. In addition, the decision violates executive orders, laws, agency directives and state law, as our Statement of Reasons will outline.

As required by 36 CFR § 215.14(b), Appellants provide the following information:

1) The name, address and other contact information of the Appellant is as follows:
Center for Biological Diversity, Nevada Office
ATTN: Rob Mrowka
4261 Lily Glen Ct.
North Las Vegas, NV 89032
rmrowka@biologicaldiversity.org ; 702-249-5821.

2) The appellant objects to the decision by Ely District Ranger Jose Noriega to adopt Alternative 2 – Proposed Action (as described in the Environmental Assessment dated February 2009).

3) Attached to this cover letter, Appellant provides a Statement of Reasons that presents specific reasons for the appeal of the decision, the related evidence and rationale on why the decision violates applicable laws and regulations, and the specific relief requested in response to our concerns.

Respectfully submitted,

Rob Mrowka
Nevada Conservation Advocate

I. NOTICE OF APPEAL

Pursuant to 36 C.F.R. § 215.11, the Center for Biological Diversity ("Appellant") is filing an appeal regarding the Decision Notice ("DN") and Finding of No Significant Impact ("FONSI") signed on February 9, 2009 by Ely District Ranger Jose Noreiga ("Ranger"). The DN and FONSI were signed on the basis of a February 2009 Environmental Assessment ("EA"). Ranger Noreiga selected Alternative 2, "Proposed Action."

II. STATEMENT OF REASONS

A. THE FOREST SERVICE FAILED TO PROVIDE FOR MEANINGFUL PUBLIC INVOLVEMENT AND IMPROPERLY RESTRICTED THE PUBLIC'S APPEAL RIGHTS

The Ranger violated Executive Order 11644, the National Environmental Policy Act ("NEPA"), and NEPA's implementing regulations promulgated by the Council on Environmental Quality ("CEQ"), by depriving the Appellant – and, more broadly, the entire public – of their right, here, to review and officially comment upon the environmental analysis before it was finalized. Instead, the Ranger improperly limited public involvement to only the early pre-scoping, scoping, and proposed action stages. Even though a legally undefined "preliminary EA was issued in July 2008, the Ranger failed to consider or even note comments provided by the Appellant,[1] as witnessed by lack of documentation in the February 2009 EA and DN. Effectively, it is only through this Appeal that Appellants can provide input to the EA. It appears that the Ely Ranger District ("district") effectively arranged the decision-making process to shield critical stages of the decision-making process from meaningful public scrutiny.

Section 3(b) of Executive Order 11644, as amended, provides that the Forest Service – through its agency head – must "ensure adequate opportunity for public participation … in the designation of areas and trails …." Relative to NEPA and the CEQ regulations, there is not an automatic requirement compelling the Forest Service to circulate an EA for review and comment prior to its completion. Nonetheless, public review and comment on a draft EA is sometimes required before the EA is finalized. This is done to achieve NEPA's twin objectives: (1) ensure that a federal agency "consider[s] every significant aspect of the environmental impact of a proposed action;" and (2) "ensure[] that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983).

CEQ regulations provide that "NEPA procedures must ensure that environmental information is available to the public officials and citizens before decisions are made and before actions are taken," and, further, that "public scrutiny [is] essential to implementing NEPA." 40 C.F.R. § 1500.1(b). The CEQ regulations mandate that "Federal agencies shall to the fullest

[1] Comments submitted by the Center for Biological Diversity to Acting Ely District Ranger, Bill Gamble, dated September 17, 2008.

extent possible…encourage and facilitate public involvement in decisions which affect the quality of the human environment." *Id.* at § 1500.2(d) (emphasis added). CEQ regulations further require agencies to "involve…the public, to the maximum extent practicable," in the preparation of an EA. 40 C.F.R. § 1501.4(b). "Agencies shall (a) make diligent efforts to involve the public in preparing and implementing their NEPA procedures"; and "(d) solicit appropriate information from the public." 40 C.F.R. § 1506.6(a), (d).

As the Ninth Circuit Court of Appeals recently explained:

> An agency, when preparing an EA, must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process.

Bering Strait Citizens for Responsible Resource Devlpmt v. United States Corps of Engineers, 511 F.3d 1011, 1026 (9th Cir. 2008).

Notably, *Bering Strait* was premised, in significant part, on a previous decision – *Sierra Nevada Forest Protection Campaign. Bering Strait* explained that *Sierra Nevada* had "evaluated this issue soundly, and we commend its approach." *Bering Strait*, 511 F.3d at 1026.

In *Sierra Nevada,* the court held the Forest Service had failed to provide adequate information to the public and reasoned that:

> [A]lthough the CEQ regulations do not require circulation of a draft EA, they do require that the public be given as much environmental information as is practicable, prior to completion of the EA, so that the public has a sufficient basis to address those subject areas that the agency must consider in preparing the EA.

Sierra Nevada Forest Protection Campaign v. Weingardt, 376 F.Supp.2d 984, 991 (E.D. Cal. 2005) (internal citations omitted). *Sierra Nevada* explained that the primary question is whether adequate information was provided to the public so that citizens could provide informed comment:

> The way in which the information is provided is less important than that a sufficient amount of environmental information – as much as practicable – be provided so that a member of the public can weigh in on the significant decisions that the agency will make in preparing the EA.

Id. Sierra Nevada thus offered the following rule:

> the agency must offer significant pre-decisional opportunities for informed public involvement in the environmental review process by releasing sufficient environmental information about the various topics that the agency must address in the EA, such as cumulative impacts, before the EA is finalized.

Id. at 992. This rule is consistent with and illuminates the "totality of circumstances" rule established by the Ninth Circuit in *Bering Strait*.

Ultimately, the court in *Sierra Nevada* determined that "[i]n each of the projects under review here, the Forest Service failed to give the public an adequate pre-decisional opportunity for informed comment." *Id.* The court was persuaded by the fact that the Forest Service had only provided the public with 2, 3, and 13 page notices that provided "no environmental data concerning impacts to wildlife, cultural resources, watersheds, soils, fisheries, and aquatics," and "contained no discussion or analysis of potential cumulative impacts," while the resulting four EAs were 178-350 pages in length with multiple pages of analysis and expert reports. *Id.*

This case presents circumstances with marked similarity to those in *Sierra Nevada*. A short timeline summarizing the key points of public involvement provided for by the Forest Service in the decision-making process is helpful:

- **Summer and fall 2005** – Open houses conducted weekly to gather public comments.
- **Fall 2005** – Provided maps to Tonopah Ranger District Office for public review.
- **February 2007** – Provided information at Tri-County coordination meeting.
- **May 2007** – Mailed request for comment letters to 250 individuals and organizations.
- **May 2007** – Provided update at Tri-County coordination meeting.
- **June 2007** – Provided the proposed action and maps to the White Pine County Public Land Users Advisory Committee.
- **February 2008** - Provided update at Tri-County coordination meeting.
- **July 17, 2008** – Mailed letters providing notice of availability of a "preliminary Environmental Assessment that describes the Proposed Action and the effects of the Proposed Action in detail"[2] and requesting comments on same.
- **February 9, 2009:** The District Ranger signed the DNs and FONSI.
- **February 11, 2009:** The District Ranger completed the legal notices initiating the administrative appeals process.

Nowhere in either the EA or DN does the District mention the comments received during the preliminary EA ("PEA") comment period, or even that there was a PEA.[3] Further, comments on the PEA were also submitted by conservationists Karen Boeger and Dan Heinz, again not mentioned in the EA or DN.

While the Forest Service most likely did not expressly exclude anyone from the decision-making process at the scoping stages, by refusing to consider comments on the PEA submitted by the Appellant and the other conservationists mentioned above, the view points of the non-motorized conservation community were minimized.

[2] Interested Party letter dated 7/17/2008, file:1950-1

[3] Refer to EA pages 5-8 and DN pages3-4.

Before the PEA was completed, the public was not given the chance to see the full range of alternatives considered by the Forest Service. Rather, the public was only given the chance to see the Proposed Action and the legally-mandated no action alternative and, even then, only those alternatives' broad contours. Because the comments received on the PEA were apparently not considered by the Forest Service, the Appellants and the broader public were denied a meaningful official public review and comment period.

The Forest Service's actions are particularly problematic relative to cumulative impacts. In some instances, the direct impact caused by a route is apparent to the naked eye. But the cumulative impact of that route in conjunction with past, present, and reasonably foreseeable actions is far less apparent and generally requires the exercise of expertise that the Forest Service is typically entrusted with. Motorized routes on the Ely Ranger District total over a thousand miles in total length,[4] intruding into Inventoried Roadless Areas ("IRAs"), fragmenting habitat, degrading watersheds, and limiting opportunities for quiet-use recreation such as hunting, angling, and hiking.

Given the complexity intrinsic to understanding the cumulative impacts of this network across the landscape of the District, the public was entitled to provide its insight into how that cumulative impacts analysis should be prepared, and to provide the Forest Service with experiential or technical information that the Forest Service – given its limited staff and resources – simply does not have. Moreover, the public, through review and comment, could have identified errors, omissions, or faulty analysis to better ensure that Forest Service decisions could withstand scrutiny and the test of time. 40 C.F.R. § 1503.4(a). A properly vetted analysis of cumulative impacts could have demonstrated that certain routes should not have been designated for motorized recreation and should, instead, have been closed, decommissioned, or obliterated. By not subjecting the final EA and decision to official public review and comment that was considered in the Decision, the Forest Service shielded its decision-making process from the type of public scrutiny that NEPA was expressly designed to ensure.

The failure to involve the public is also problematic in the context of the Forest Service's duty to consider a reasonable range of alternatives. NEPA provides that the Forest Service must "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). This NEPA provision is critical even where impacts are insignificant, underscoring the point that NEPA is not merely intended to disclose impacts, but to resolve conflicts and thereby "create and maintain conditions under which man and nature can exist in productive harmony" (42 U.S.C. § 4331(a)), and "foster excellent action":

> Ultimately, of course, it is not better documents but better decisions that count. *NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action*. The NEPA process is intended to help public officials

[4] The EA (page 1) notes that there are approximately 830 miles of authorized roads and motorized trails on the district along with as many as 900 unauthorized, user-created routes.

> make decisions that are based on [an] understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

40 C.F.R. § 1500.1(c) (emphasis added); *see also* 40 C.F.R. § 1500.2(e).

As the CEQ regulations explain, the range of alternatives is essential to "sharply defining the issues and providing a clear basis for choice among options by the decision maker *and the public*." 40 C.F.R. § 1502.14 (emphasis added). Here, by excluding the public from the critical EA stage, the Ranger failed to acknowledge that public input on the range of alternatives – and the comparison of alternatives within the EA – is essential and involves a choice given not only to the Forest Service, but to the broader public. *Id*. The Forest Service's failure to allow (or consider comments submitted) the Appellant to review and comment on all of the alternatives considered in the EA cuts the public out of the process. The problem with this failure is demonstrated by the fact that the Forest Service's decision-making process was a one-way street, focused on the designation of routes to satisfy demand for motorized recreation interests, and lacking meaningful consideration of reasonable alternatives designed to protect the District's natural resources.

The NEPA analysis prepared for the travel planning process is one of the Forest Service's most – if not *the* most – critical decision-making documents. It is the EA that contains the Forest Service's analysis of environmental impacts resulting from the Proposed Action, details the range of alternatives considered by the Forest Service, allows for a comparison of alternatives, and reveals the agency's overall reasoning for its action. Without the ability to review and comment upon the EA, the public has no chance to "weigh in with their views and thus inform the agency decision-making process." *Bering Strait*, 511 F.3d at 1026.

What is perhaps most perplexing is the fact that the Forest Service's decision to limit public involvement is not justified by the record. By its failure to consider comments received in response to the PEA, the public was excluded from any official role once the official scoping comment period for the Proposed Action in May 2007 ended. Executive Order 11644, NEPA, and the CEQ regulations have been violated because the Forest Service has:

(1) Failed to provide any reasoned basis for its refusal to provide the public with an official public review and comment period on the EA, or at least consider and analyze comments received on the PEA, before it was finalized;

(2) Failed to explain how its actions comport with the agency's duty to "ensure adequate opportunity for public participation…in the designation of areas and trails" (Executive Order 11644, § 3(b)), as amended);

(3) Failed to explain how its actions comport with the agency's duty to "involve…the public, to the maximum extent practicable," in the preparation of an EA (40 C.F.R. § 1501.4(b));

(4) Failed to explain how its actions comport with the agency's duties to "(a) make diligent efforts to involve the public in preparing and implementing their NEPA procedures" and "(d) solicit appropriate information from the public" (40 C.F.R. § 1506.6(a), (d));

(5) Failed to explain how its actions provide the public with sufficient information to ensure informed public comment; and

(6) Failed to explain, given "the totality of circumstances," why public review and comment on the EA, before it was finalized, was not considered.

Given the lack of supporting evidence that the Forest Service considered comments received on the PEA, it is reasonable to conclude that the decision to not provide an official public review and comment period for the EA was intended to shield the Forest Service's decision-making process from public scrutiny. As Dinah Bear, the former General Counsel to the CEQ, wrote:

> While the EA and FONSI process is a valuable and even essential tool, it has been subjected, far too often, to two types of abuse. On the one hand, some compliance has reduced the EA analysis to a one-page form that is so cursory that it is questionable whether the underlying decision about whether to prepare an EIS is sound. On the other hand, an EA all too frequently takes on the look, feel, and form of an EIS, complete with the same qualitative contents and volume and weight. There can be several reasons for this, but certainly *one unfortunate rationale has been to avoid as much public involvement as an EIS would stimulate, while being prepared to turn the EA into an EIS rapidly if a court would so order. Agency officials thinking of that approach would be far better advised to simply proceed with circulation of the document as an EIS.*[5]

At a more basic level, there was no emergency or other compelling situation indicating that the Forest Service could not provide an official comment period, a fact which begs the question why the Forest Service prepared a PEA only to ignore the comments it generated.

Fundamentally, just as the public is obligated to properly structure their public participation before the Forest Service, so to must the Forest Service provide sufficient information and opportunities for public involvement. *Dept. of Transp. v. Pub. Citizen*, 541 U.S. 752, 764-65 (2004). Here, the District's actions present only the illusion of meaningful public participation. This illusion, however, is transparent, revealing that the Forest Service has created an untenable and unlawful "game or a forum" that violates Executive Order 11644, NEPA, and the CEQ regulations. *Vt. Yankee Nuclear Power Corp. v. Nat. Resources Def. Council*, 435 U.S 519, 553-54 (1978).

[5] *Dinah Bear, NEPA at 19: A Primer on an "Old" Law with Solutions to New Problems*, 19 Envtl. L. Rep. 10060 (1989)

B. THE FOREST SERVICE FAILED TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT (EIS)

The Forest Service violated NEPA and the CEQ regulations by issuing the DN and FONSI and thereby relying on the EA rather than preparing an EIS. Given the complexity of the route designation process and the long-term consequences of designating a huge network of routes across the District to forest users and the environment, an EIS should have been prepared. In fact, in our comments on the PEA, Appellants strongly asserted that an EIS should be prepared. As discussed above, we assert that the decision not to prepare an EIS was intended to circumvent public participation requirements imposed by Executive Order 11644, NEPA, and the CEQ regulations. Regardless, as demonstrated below, an EIS is required given the high probability of significant impacts.

As background, NEPA requires an EIS for all "major Federal actions significantly affecting the . . . human environment." 42 U.S.C. §4332(2)(C). Where an EIS is not categorically required, the agency may prepare an EA to determine whether the proposed action *may* have a significant environmental effect. *See Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001) (*citing* 40 C.F.R. § 1501.4). "If the EA establishes that the agency's action *may* have a significant effect upon the . . . environment, an EIS must be prepared." *Id.* Furthermore, an EIS must be prepared if "substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor." *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998) (quotation omitted). "To trigger this requirement a plaintiff need not show that significant effects will in fact occur, raising substantial questions whether a project may have a significant effect is sufficient." *Id*. at 1150. A decision not to prepare an EIS must be supported by a "convincing statement of reasons" demonstrating why the project's impacts are insignificant. *Blue Mtns Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

The term "significant" has two components: context and intensity. 40 C.F.R. § 1508.27. These components are considered by the Ninth Circuit in determining whether an EIS should have been prepared. *Anderson v. Evans*, 371 F.3d 475, 488 (9th Cir. 2004). Context refers to the setting in which the proposed action takes place, in this case a National Forest in Idaho and, in the case of user-created routes that the Forest Service wants to incorporate into the designated route system, the immediate environs, such as watershed, that the route is located within. *Id*. § 1508.27(a). Intensity means "the severity of the impact." *Id.* § 1508.27(b). The Ninth Circuit has held that if an agency's "action is environmentally 'significant' according to *any* of these criteria," then the agency violated NEPA if it failed to prepare an EIS. *Public Citizen v. Dept. of Transportation*, 316 F.3d 1002, 1023 (9th Cir. 2003) (emphasis original), *rev'd on other grounds*, 540 U.S. 1088, 124 S.Ct. 2204 (2004), *citing National Parks Conservation Assn. v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001).

An agency may not avoid the environmental analysis and public participation requirements simply by preparing a lengthy EA of 130 pages; NEPA and CEQ regulations do not allow it. As the Ninth Circuit has held:

> No matter how thorough, an EA can *never* substitute for preparation of an EIS, if the proposed action could significantly affect the environment. We stress in this regard that an EIS serves different purposes from an EA. An EA simply assesses whether there will be a significant impact on the environment. An EIS weighs any significant negative impacts of the proposed action against the positive objects of the proposal. Preparation of an EIS thus ensures that the decision-makers know there is a significant risk of environmental impact, and take that impact into consideration.[6]

It is difficult to understand how the designation of an extensive route network on the Ely Ranger District will *not* cause significant impacts to the environment; the very nature of the decision cries out for an EIS.

In the DN, the Ranger added 191 unauthorized, user-created routes to the motorized transportation system on the Ely Ranger District. These totaled over 233 miles in length. The Forest Service has used an EA to justify a 1,239 mile motorized route system. It is critical to note that the 233 miles of previously unauthorized routes were never properly authorized through the route designation process or NEPA and were never designed in light of proper engineering, environmental or safety standards. The unauthorized, non-system, user-created routes have not, of course, just disappeared. The agency-estimated 709[7] unauthorized user-created routes which were not incorporated into the designated system, were never designated or properly analyzed through NEPA, and have not been obliterated, are thus still on the landscape.

This designated route system constitutes an expansion of the pre-existing designated system. To therefore choose, as the Forest Service has done, to not only sanction the pre-existing designated route system but actually expand that pre-existing system by incorporating 233-miles of new user-created routes through an EA, given the site-specific impacts of those user-created routes and the cumulative impact caused by the entire route network, is implausible and unlawful. It is a fact that the designated system and the Forest Service's management of the designated system did not constrain motorized recreation use: the Ely Ranger District suffers from the impacts of approximately 900 user-created routes. This fact raises substantial questions and suggests that the impacts to the District are self-evidently significant.

The DN, by definition, rejects this conclusion. But the DN failed to properly consider NEPA's twin significance factors: context and intensity. 40 C.F.R. § 1508.27. The proper "context" within which to address the "intensity" of the route system's impacts to the environment – and thus the proper basis with which to determine whether an EIS is required – is the entire 1,239-mile authorized route system, and the significant but undetermined miles of non-authorized routes stretched across the District. 40 C.F.R. § 1508.27(a). The EA, however, swept this "context" and related "intensity" of impacts under the rug, and the DN failed to provide convincing reasons justifying the preparation of only an EA.

[6] *Anderson v. Evans*, 371 F.3d 475, 494 (9th Cir. 2004) (emphasis added).
[7] 900-191 miles.

The decision to designate a 1,239-mile motorized route system – including 233 miles of new routes – and to acquiesce to the continued presence of hundreds of unauthorized user-created routes – routes which do not comply with engineering or safety standards and were never analyzed through NEPA – simply does not constitute an insignificant level of change.

These user-created routes implicate CEQ regulations which explain that the "intensity" of an impact, and thus its significance, is determined, *inter alia*, by asking:

> Whether the action is related to other actions with individually insignificant by cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

40 C.F.R. § 1508.27(b)(7). As defined by the CEQ regulations:

> "Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R § 1508.7.

Here, the cumulative impacts of the Forest Service's actions must be viewed as a product of: (1) the baseline impact caused by the pre-existing 830-mile designated route system; (2) the added impact caused by the unauthorized creation of user-created routes, over time; (3) the short and long-term impacts caused by the persistence of all of these routes on the landscape now; (4) the impacts caused by lawful use of the 1,239-mile designated route system coupled with potential unlawful use of the undesignated route system; and (5) the impact caused by past, present, and reasonably foreseeable future actions. Simply because the Forest Service has changed its management policies does not thereby erase the past history of motorized recreation use on the District. Nor does it enable the Forest Service to proceed on the basis of an EA. The "cumulative impact" of motorized recreation to the landscape must, here, be addressed through an EIS. 40 C.F.R. § 1508.27(b)(7).

The Forest Service's failure to prepare an EIS to properly address cumulative impacts is particularly problematic given the fact that the District possesses numerous "[u]nique characteristics" that, in their own right, mandated preparation of an EIS. 40 C.F.R. § 1508.17(b)(3). For example:

- There are numerous Inventoried Roadless Areas ("IRAs") nested throughout the entire District, as well as formally designed Wilderness areas.
- The District provides critical wildlife habitats, including:

- Bonneville cutthroat trout habitat;
- Peregrine falcon nesting;
- Prairie falcon nesting;
- Golden eagle nesting and winter;
- Bald eagle winter;
- Sage grouse nesting, brooding and summer; and,
- Big horn sheep range.

- The District is home to rare and imperiled (G1/S1) plant species such as:
  - Nachlinger flycatcher;
  - Pennell draba;
  - Pennell beardtongue;
  - Rhizome beardtongue;
  - Mt. Moriah beardtongue;
  - Current Summit clover;
  - Broad-pod speckled milkvetch; and,
  - Maguire bitterroot.

Forest Service direction for management of IRAs is to provide lasting protection for the IRAs, through the implementation of the regulations at 36 CFR 294. In particular, the regulations are designed to maintain the roadless characteristics of the IRAs, as set forth in the regulations. These characteristics include: (1) high quality or undisturbed soil, water, and air; (2) sources of public drinking water; (3) diversity of plant and animal communities; (4) habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land; (5) primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation; (6) reference landscapes; (7) natural appearing landscapes with high scenic quality; (8) Traditional cultural properties and sacred sites; and (9) other locally identified unique characteristics. These IRAs also serve as bulwarks against the spread of non-native invasive plant species.

The District Ranger has designated roads and trails within IRAs without site- specific analysis. Without this analysis, the public can't know (nor can the Forest Service) how each route impacts the characteristics described above and in Forest Service Direction. Nor can we know how the value for motorized recreation was weighed against the value of the IRA as unfragmented wildlife habitat, for quiet recreation, for water quality, as a bulwark against the spread of noxious weeds, or the other values identified. Most notably, we can't know how a route was measured against "locally identified unique characteristics."

Our comments on the PEA included requests for closure of a number of routes in IRAs, for a variety of reasons. The FEIS fails to respond to those comments, in violation of NEPA.

The District Ranger's decision to designate routes in IRAs is arbitrary and capricious.

Particularly disturbing is, with regards to IRAs, the District violated existing Forest Service direction with respect to "classes of actions that would normally require the preparation

of an EIS. FSH 1909.5, Section 20.2, W.O. Amendment 1919.15-2008-1, effective July 24, 2008 identifies "proposals that would substantially alter the undeveloped character of an inventoried roadless area" as a class of actions, "which normally require preparation of an environmental impact statement…because they normally result in significant effects."[8] The selected alternative has over 65 miles of designated routes that would either bisect or enter and dead end in IRAs.[9]

The EA is also a result of several dubious, flawed assumptions that raise serious questions as to the true significance of environmental impacts. In particular, the EA seems to assume that cross-country motorized travel will not occur except in designated areas. It is a stretch of the imagination to conclude that administrative decisions to prohibit cross-country motorized travel or restrict routes to particular uses will actually cause motorized recreation users to forgo cross-country travel or respect route-specific use limits. There is a basic difference between a paper decision and reality. And the reality is that motorized recreationists have created around 900 user-created routes in the District without any legal authorization – a product of human behavior and ineffective Forest Service management that cannot be remedied by simply publishing a better map.

More fundamentally, the Forest Service has failed to provide evidence attesting to the Forest Service's ability to effectively constrain and enforce motorized recreation to the designated route system. The EA simply does not provide sufficient evidence to support the Forest Service's determination that it can properly implement and enforce the route designation decisions in the DN such that impacts are mitigated to insignificance. *See Natl. Parks and Conserv. Assn. v. Babbitt*, 241 F.3d 722, 734 (9th Cir. 2001) ("'perfunctory description'" or "'mere listing' of mitigation measures, without supporting analytical data,' is insufficient to support a finding of no significant impact") (citations omitted). This undercuts the Forest Service's ability to proceed with only an EA, raising substantial questions as to potentially significant impacts that must be addressed through an EIS.

The "effects" of the Forest Service's actions to the Ely Ranger District are also "likely to be highly controversial." 40 C.F.R. § 1508.27(b)(4). Controversy in this sense means that there is a substantial dispute about the size, nature, or effect of the major federal action, rather than merely opposition to it. *Anderson v. Evans*, 371 F.3d at 489. Here, there is a substantial dispute over the Forest Service's legal obligations relative to the user-created routes not added to the system and the interplay between these obligations and the Forest Service's obligations relative to the establishment of the 1,239-mile designated system. The agency has attempted to avoid controversy by adding a substantial amount of user-created routes to the system while minimizing and not analyzing the remaining unauthorized routes still on the land but supposedly closed due to the cross-country closure. Additionally, the quiet-use and biodiversity constituency have been "locked out" of the process as previously discussed.

[8] Also see 36 CFR Part 220 – National Environmental Policy Act Procedures Final Rule, §220.5.

[9] As computed by Appellants based on available information provided by the agency. This includes over 6 miles of existing system roads in IRAs identified by the Appellant in our September 17, 2008 comments that were not part of the agency's proposed action.

Critically, the DNs/FONSIs, do not commit the Forest Service to physically close and obliterate any of these user-created routes, in fact there is no mention of obliteration what-so-ever in the EA. This raises the specter that the Motor Vehicle Use Maps prepared for the District may constitute little more than a paper exercise that will not fundamentally alter the reality that an extensive and unplanned user-created "ghost" network of routes will continue to be used, cause resource damage and haunt the District.

The Humboldt-Toiyabe National Forest issued a "*Forest Scale Roads Analysis Process Report*" (RAP) in 2003. That report stated in its "Key Findings" section that, "High levels of off-road vehicles on the Forest are causing ***significant*** (emphasis added) degradation to soil, water, biological, cultural and visual resources." Further, it states, "Improved roads and new roads could increase use by off-highway vehicles and also increase off-road use. This could impact sensitive habitats and species, increase sedimentation, create additional soil compaction, result in the introduction of non-native species and diminish wilderness (sic) character."

The EA describes how the vast majority of the road maintenance, some done under an agreement with White Pine County, is accomplished on 15 roads, all designed for travel in a passenger vehicle. It goes on to say that the remaining 437 miles of existing system is managed for low speed, high clearance vehicles and receives little or no maintenance.[10]

Under the "Effects Common to All Alternatives" the EA explains that the roads budget is finite and increases are not expected. It further states that for the existing system of more than 800 miles (and since no increases are anticipated, for the selected system of more than 1200 miles) the District receives the services of the Forest road crew for only twelve working days annually.[11]

The 2003 RAP states, The RAP also states: "The Forest has a financial commitment to maintain the road system and to identify the link between maintenance and resource protection. If basic annual road maintenance (e.g., drainage maintenance) is not performed, roads have an increased potential for loss of function, loss of maintenance investment **and accelerated environmental damage**. (emphasis added) The same is true for deferred maintenance, such as replacing major culverts in perennial steams at the end of their design life. A catastrophic drainage failure will have a direct negative impact on the associated watershed and aquatic health."

As can be ascertained by the above agency comments found in its RAP, the envisioned transportation system can have significant impacts on the environment and the Ely Ranger District should have prepared an EIS.

Travel planning presented highly complex, highly controversial issues that demanded an EIS. If anything, the Forest Service, by preparing only an EA that failed to properly address and

[10] EA page 101.

[11] EA page 102.

respond to these issues, and by not soliciting official public review and comment as a means of ensuring that these issues were forthrightly addressed and responded to, has inflamed the controversy over motorized recreation on the Ely Ranger District.

C. THE FOREST SERVICE FAILED TO CONSIDER A REASONABLE RANGE OF ALTERNATIVES

The Forest Service failed to consider reasonable alternatives designed to meaningfully protect the Ely Ranger District's natural resources, in particular clean water, wildlife, and wildlife habitat, and therefore violated NEPA and the CEQ regulations. Instead, the Forest Service considered three management alternatives that, collectively, failed to "sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decision maker and the public." 40 C.F.R. § 1502.14. They also failed to acknowledge or act upon a request by the Appellants for a citizen's alternative submitted with our comments.

This is because the route designation process employed by the Forest Service – as attested to by the Forest Service's inadequate range of alternative – omits consideration of key travel planning elements implicated by the 2005 Travel Management Rule, most notably the restoration of lands scarred by high motorized route densities and the proliferation of user-created routes. These high route densities, and the proliferation of user-created routes, have operated to degrade the environment, incite user conflicts, and preclude a quiet-use recreation experience. The Forest Service has, however, turned a blind eye to this record of harm and capitulated to the interests of motorized recreationists. To ensure compliance with NEPA and the CEQ regulations, the Forest Service must therefore:

1) Consider alternatives that would aggressively reduce overall route densities within acceptable science-based ecological limits across the entire District;

2) Consider alternatives that would determine how best to physically close, decommission, and obliterate unnecessary or unacceptable routes, in particular unauthorized, user-created routes;

3) Consider alternatives that would not only reduce route densities, but entirely eliminate routes within key areas to protect environmentally sensitive watersheds and wildlife habitats, IRAs and minimize user conflicts by establishing quiet-use recreation areas;

4) Consider alternatives that consider the specific route closure recommendations as discussed in comments by the Appellants.

These recommended elements of the range of alternatives provide the Forest Service with the opportunity to forthrightly confront otherwise "unresolved conflicts" concerning the management and use of the Ely Ranger District. 42 U.S.C. § 4332(E). Regardless, because these elements are "reasonable" and "viable," the Forest Service's failure to consider them renders the

EA unlawful. *Muckleshoot Indian Tribe v. Forest Service*, 177 F.3d 800, 814 (9 Cir. 1999); *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9 Cir. 1998).

A significant problem is the 900 or more unauthorized user-created routes that are on the District. The EA states that most of the routes are less than .5 miles in length[12], which seems like an understatement of the situation upon review of the information found in Appendix A, which suggests the average length of routes proposed for addition was about 1.2 miles. From the information available, it is clear that the District has no good estimate of the extent of the unauthorized user-created motorized system. In the face of such uncertainty, it is a common practice to "bracket" the assumptions to create a range of likely reality. Taking an agency assumption of "less than .5 miles in length" and using .3 miles as a surrogate, and the Appellant's assumption of 1.2 miles, based on Appendix A, then the unauthorized system is between 270 and 1080 miles in length.

Even assuming that the elimination of cross-country travel and publication of the Motor Vehicle Use Map will prevent the further unauthorized expansion of user-created routes, this does not relieve the Forest Service of its duty to address, if not actually remedy, past damage. But at present, the Forest Service's decision-making process fails to properly address these critical issues. Cumulatively, under any of the EA's alternatives, the designated system route network, and non-system "ghost" route network would have remained with little to no change on the landscape, and thereby continued to fragment and degrade environmentally sensitive lands and waters and opportunities for quiet use recreation, a problem compounded by a nearly unenforceable exemption afforded cross-country travel only for purposes of dispersed camping. This is unacceptable.

These alternatives are all key management considerations that go to the heart of the route designation process. The Forest Service's decision to add approximately 156 miles of user-created routes and to not address the existing ghost-system of user-created routes, has turned the travel planning process into a one-way street that favors motorized recreation interests. Put another way, the Forest Service's decision-making process "creates a subtle, but nevertheless real, inertial presumption in favor of ORV use." *Natl. Wildlife Fedn. v. Morton*, 393 F.Supp. 1286, 1292 (D.D.C. 1975). The Forest Service cannot designate motorized routes that "minimize" harm to the environment, as mandated by Executive Order 11644, § 3, as amended, and 36 C.F.R. § 212.55, without considering alternatives that actually address past harm to the environment from motorized use.

Appellants, in our comments, addressed this concern and specifically asserted, "In our view, travel planning must evaluate and address the environmental, social, and cultural impacts associated with both user-created routes and currently designated roads, trails, and areas, as identified and informed by Travel Analysis."

Additionally, we submitted a table of specific routes, both user-created and existing system, that we felt would result in an alternative that would better address the intent of the

[12] EA page 1.

Executive Orders and the Travel Rule. The agency chose to ignore all of our comments as evidenced by the lack of recognition or acknowledgement of them in the EA or DN.

D. The Decision was not informed by travel analysis and did not consider the requirement of the Travel Management Rule to identify the "minimum system" per 36 CFR 212.5.

The EA and DN fail to designate a "minimum system." 36 CFR §212.5 (Road System Management) requires the Forest Service to "identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands." In determining the minimum road system, the responsible official must "incorporate a science-based roads analysis at the appropriate scale." The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect log-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance. [13] The District Ranger, in choosing Alternative 2 has selected the action alternative with the highest route mileage (1239 miles), providing no justification except to claim the decision "balances" motor vehicle access with resource protection.

The Travel Management rule also requires the responsible official to review the road system and identify the roads that are no longer needed to meet forest resource management objectives and that should be decommissioned or considered for other uses, such as trails, giving priority to decommissioning those unneeded roads that pose the greatest threat to public safety or to environmental degradation.[14]

The project purports to implement the Travel Management Rule (TMR) but does not fully address the requirements of the Rule. The project only considers whether unauthorized user-created routes should be added to the forest road system for off-road vehicle use. However, the TMR is not merely an off-road recreation rule; it applies to all public motor vehicle use on national forest system lands.

The Appellants requested that the Forest Service provide them with Travel Analysis Reports when completed and if possible at least 30 days prior to and NEPA scoping periods.[15] None were received in response to that request. During the comment period for the PEA, the Appellants once again questioned the Forest Service about travel analysis, and then were provided the Forest-scale analysis and an incomplete and obviously unfinished draft "Travel Analysis Report for the Ely Ranger District". This failed to include some key information we

[13] 36 CFR 212.5 (b)(1)

[14] 36 CFR §212.5 (b) (2)

[15] Letter to Deputy Forest Supervisor Jerry Ingersoll, dated May 16, 2008.

would expect to see in a travel analysis report, such as information concerning the fiscal sustainability of the current travel network (other Forests and Districts have expressed this as a percentage of the system they can afford to maintain), and a summary outlining the "minimum system" necessary to administer the District. In fact, the only reference to "minimum" we could find was on page iii (page 7 of the word file), and that was merely a goal statement: "This travel analysis is driven by a need to analyze management alternatives at the project scale and make recommendations for the minimum transportation system needed for the Ely Ranger District Travel Analysis project."

The District may point to Appendix C of the aforementioned Travel Analysis Report as its analysis and support for the minimum system, however this argument is severely flawed. Table 1 of this appendix lists the existing road and trail system on the Ely Ranger District. With very few exceptions, the rationale for keeping them as part of the system is "Forest Access" or "Access to Forest", with no substantiating logic or rationale provided. Similarly, Table 2 listing the proposed additions and changes to the system provide only statements of fact, such as "Dispersed Camping Access", not an analysis of the need or impacts. For many unauthorized user-created routes, no explanation what-so-ever is provided.

The EA is also silent as to an identification, description or rationale for a minimum system, merely mentioning it in one place – under the topic of "Decision Framework", and stating: "Based on this analysis, the Ely district Ranger will decide: … Which alternative best represents the minimum road system needed to be open and available for continued use for utilization, protection, and administration of the Forest."[16]

The DN and FONSI are completly void of any reference to the minimum system; nowhere was any project level site specific analysis of routes provided.

Finally, the Travel Management Rule requires the Forest Service, when designating roads, trails and areas for motor vehicle use, to consider the effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses, the need for maintenance and administration of roads, trails and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.[17] The EA describes how the vast majority of the road maintenance, some done under an agreement with White Pine County, is accomplished on 15 roads, all designed for travel in a passenger vehicle. It goes on to say that the remaining 437 miles of the existing system is managed for low speed, high clearance vehicles and receives little or no maintenance.[18]

Under the "Effects Common to All Alternatives" the EA explains that the roads budget is finite and increases are not expected. It further states that for the existing system of more than

[16] EA page 5.

[17] 36 CFR §212.55 (a

[18] EA page 101.

800 miles (and since no increases are anticipated, for the selected system of more than 1200 miles) the District receives the services of the Forest road crew for only twelve working days annually.[19] There is no further discussion of the capacity and ability of the District to provide for the administration and maintenance of the envisioned expanded motorized system in the selected alternative. This is sorely deficient in light of the requirements of the Travel Management Rule.

There is ample evidence to indicate the need to reduce road mileage, as well as the adverse impacts to the environment from excess roads, including habitat fragmentation, spread of noxious weeds, impacts to watersheds, impacts to non-motorized users and wildlife impacts. It is arbitrary and capricious and an abuse of discretion for the Forest Service to add additional routes and miles to the existing system without first doing a thorough and comprehensive travel analysis to clearly identify and evaluate the resource impacts and tradeoffs and to fail to conduct a careful analysis of the fiscal and safety ramifications of the additions as well.

E. The EA and DN lacks site specificity as to resource impacts, and by adding routes and mileage to the system and failing to analyze the impacts from the ghost system of user-created routes increases the magnitude of resource impacts.

Chapter 3 of the EA lacks the site-specific analysis required by NEPA at the project level. Apparently relying primarily on existing GIS data, it is clear that the level and specificity of the impacts and cumulative effects analysis is inadequate and at an inappropriate scale.

The EA's treatment of impacts is deficient for the principal reason that it is riddled with "generalized, conclusory" analysis that cannot support the route designation decisions. *Or. Nat. Resources Council Fund v. Goodman*, 505 F.3d 884, 893 (9th Cir. 2007).

The most egregious flaw pertains to the EA's treatment of non-system, user-created routes. This issue was raised by the Appellants in our comments on the PEA. This flaw has two principal facets.

First, the EA does not provide the requisite site-specific analysis of direct, indirect, and cumulative impacts to justify the designation and incorporation of the 233-miles of user-created routes into the designated system. Instead, the EA appears to merge these user-created routes with the system routes, addressing them collectively, and thereby failing to distinguish the different NEPA issues raised by the presence and continued use of these routes compared to existing system routes, such as the fact that they were never properly authorized, never before addressed through NEPA or screened through application of Executive Order 11644, § 3's designation criteria, and not built in light of proper engineering and safety design standards.

While taking a collective approach is of course an element of addressing cumulative impacts, it does not obviate the Forest Service's duty to also take a site-specific hard look at

[19] EA page 102.

these user-created routes individually. By failing to take a site-specific hard look at these user-created routes, the EA obscures the "intensity" of their direct, indirect, and cumulative impacts because these impacts are only understood in the context of the entire planning area and the entire route network rather than in the context of the specific location, e.g., watershed, where they exist. The Forest Service did not prepare the requisite site-specific hard look NEPA analysis until *after* these routes were created, without authorization, by motorized recreationists.

Second, the EA ignores the still-existent 270-1080-mile "ghost" route network. The EA states, "In addition to adding new routes to the current forest transportation system, this alternative (referring to Alternative 2) proposes to prohibit motorized travel off authorized routes. This action reduces future potential for erosion and loss of vegetation related to motor vehicle use. Over time, lack of use and/or restoration of unauthorized routes allow revegetation and stabilization, which results in restored hydrologic function and lower sediment erosion rates. Once traffic is removed, recovery of the watershed can take years to decades".[20]

There are several problems, not only with this watershed example, but with other similar assumptions made for other resources and values. First, it assumes that the mere publishing of the MVUM will elicit a change in behavior on the part of the motorized recreation community. The unauthorized user-created routes not added to the system have an established use pattern that will be difficult to change. Off-road trips to a favorite camping spot or scenic overlook will not be forsaken easily. Voluntary compliance is an untested hypothesis, and through self-admission the agency lacks the money or manpower to monitor and enforce the closures. Second, nowhere in the EA or DN does the District lay out a plan on how they will effectively close the unauthorized routes. No road obliteration or closure management plan or even strategy is provided. "Over time" and "Once traffic is removed" are merely fanciful hopes by the District; there is nothing analyzed or disclosed in the EA or DN to give support to this hope.

The Appellant has concerns with regards to impacts to certain specific resource values which will be expanded upon as follows:

Change of area in Semi-Primitive Non-Motorized Recreation designation. As noted in the EA, the existing Land and Resource Management Plan ("Forest Plan") for the Humboldt-Toiyabe National Forest directs managers to maintain the present amount of Recreation Opportunity Spectrum (ROS) Primitive and Semi-Primitive Non-Motorized (SPNM) areas and that no new permanent roads except for mineral production be allowed.[21]

In comparing the impacts of the selected Alternative 2 to the current, legally mandated situation, one must compare Alternative 2 (Proposed/Selected Action) to Alternative 3 (Current System). The District's Alternative 1 – No Action is only a symbolic straw-man, which could not legally be implemented under the EOs and Travel Management Rule.

[20] EA page 92.

[21] EA page 25.

When the comparison of Alternative 2 and 3 is made, it is clear that the amount of SPNM has declined by over 45,300 acres, while Semi-Primitive Motorized (SPM) areas increased by over 62,400 acres. From the information provided by the District, it is impossible to account for where acres gained or loss were derived from – apparently there were changes in other ROS categories. But the bottom-line is that SPNM lost area in contradiction to the direction contained in the Forest Plan. The miles of motorized trails in SPM increased by 156 miles.[22]

Additions of unauthorized user-created routes in IRAs. The selected alternative 2 would add almost 17 miles of user-created routes in IRAs.[23] As previously discussed, these additions would substantially alter the character and nature of the IRAs and would invite further intrusions of the IRAs by motorized recreationists. One has to only look at the maps provided by the District to discern that the unauthorized routes often stem from where authorized routes led to either a dead end or a convenient location for a new trail to be created. These additions directly lead to the loss of SPNM areas. They also disturb watersheds, devalue wildlife escape areas, and interfere with the pursuit of quiet recreational activities.

Increase risk to biodiversity and for wildfires due to the increase in miles of motorized routes in areas with high or medium risk of noxious weed infestations. Alternative 2 increases the amount of motorized routes in areas of high and medium risk for noxious weed infestation by 237 miles. As pointed out in the Appellant's comments on the PEA, "Federal and state laws direct the Forest to minimize the potential for spreading noxious weeds when planning projects", per the Federal Noxious Weed Act of 1974, the agency's National Strategy and Implementation Plan of Invasive Species System, 2004, the Executive Order 13122 on Invasive Species, Forest Service Manual 2080, Nevada Revised Statutes Section 555 and the Nevada Administrative Code Section 555. The Forest's own Road Analysis Report stated, "Roads are the primary vectors in the spread of invasive species…Typically invasive plants will follow a road system and then once established expand into the surrounding area".[24] Once established the noxious weeds and invasive plants compete with and threaten the composition and structure of native plant communities and the habitat they provide for wildlife. Invasive plants are a serious concern in special sites where they can out-compete and eliminate or reduce rare native plant species. Further, the invasive plants often alter the historic fire regimes leading to more frequent and more intense wildfires, which in turn result in degraded watershed conditions, plant communities and wildlife habitats.

Impacts to sensitive wildlife species. The District identified a number of wildlife species as "issues" to be tracked and analyzed in the EA.[25] One only has to glance at the EA's Table 15 to ascertain that the impacts from the selected alternative is greater for almost every species when compared to the current system. The EA presents a table listing routes that fit within criteria for each species, such as "miles within habitat". What is lacking is any substantive

[22] EA page 17.

[23] EA page 17.

[24] Roads Analysis Process Report page 70.

[25] EA pages 9-10.

discussion and analysis of what the actual impacts will be. The EA merely provides a listing of routes without any site/route specific determination of impacts or needed mitigation. Further, no clear rationale or scientific support is provided for why the selected criteria are appropriate and meaningful for the species. Nowhere in the EA or DN did the District address concerns raised by the Appellant in our comments on the PEA, among them the impacts to wildlife from increased fragmentation and noise from the expanded motorized system found in alternative 2.

Impacts to watershed values. Once again the EA is grossly deficient by using broad measures to document impacts rather than site specific ones. "Miles within 300 feet of perennial water", "Miles within 150 feet of intermittent water" and the other metrics found in Table 26 would make good cumulative effects measures, but cannot suffice for route specific impacts, particularly when the unauthorized routes added have never been evaluated in a NEPA process. That be as it may, the selected alternative's impacts are substantially greater than those found in the current system in terms of miles and crossings, but nowhere does the EA answer the question, "what are the impacts on the resource from this?" In terms of sediment and erosion, the EA provides tables of erosion rates for various soil textures, slopes and road designs. Missing is how these apply to specific routes and in turn to the resources at hand. Also missing is any mention and analysis of impacts to special features on the landscape such as impacts to springs, seeps, wet meadows, riparian zones and alpine areas. What would have been informative in leading to an educated and thoughtful decision on what routes to keep and add would be a route specific analysis of the above key watershed considerations as well as others that are appropriate.

F. Relief Requested.

Appellants seek the following relief:

1) Based on Sections II A. and B. of this appeal, the Forest Service should rescind the DN and re-initiate NEPA with a Notice of Intent to prepare an EIS, thereby ensuring that the public has the opportunity for an official review and comment period on the draft NEPA analysis before a decision is rendered.
2) Based on Section II C of this appeal, the Forest Service should rescind the DN/FONSI and develop alternatives in the requested EIS that:
    - ♦ Incorporate the recommendations included with the Appellant's comments to the PEA dated, September 17, 2008;
    - ♦ Analyze and determine how best to physically close, decommission, and obliterate unnecessary or unacceptable routes, particularly unauthorized user-created routes;
    - ♦ Reduce or eliminate routes:
        i. within Inventoried Roadless Areas;
        ii. on soils that are prone to erosion, puddling or movement;
        iii that impact riparian areas, springs, seeps wet meadows or alpine areas;
        iv. that impact critical habitats for wildlife, including sage grouse leks and nesting and brooding areas, Bonneville cutthroat trout habitat or

potential habitat, peregrine falcon, prairie falcon, golden eagle and goshawk nesting and fledging areas, big horn sheep range, and deer and elk fawning and calving areas;

v. that transverse areas with medium to high potential for the spread of noxious and invasive species; and,

vi. that threaten the habitats and sites of rare and imperiled plant species.

3) Based on Section II D of this appeal, conduct the required travel analysis on all maintenance levels of routes, not just maintenance levels 3-5. Through this process, identify the "minimum system" and the resources needed to administer and maintain it.

4) Based on Section II E of this appeal, conduct a thorough analysis of the impacts and cumulative effects through the previously requested EIS process, and:

- Conduct site specific analysis for all user-created routes that the agency wishes to designate into the motorized road and trail system;
- Ensure, regardless of whether the impacts are caused by system or user-created routes, that impacts to water quality, fisheries, aquatic and riparian resources, vegetation, wildlife and their habitats, and quiet recreation opportunities are properly analyzed and disclosed;
- Include an analysis and disclosure on how well the alternatives meet the agency's duties pursuant to Executive Orders 11644, 11989, and 13122, as well as those found in the Travel Management Rule, 36 CFR 294, FSH 1909.5 Section 20.2 as amended by W.O. 1919.15-2008-1 dated July 24, 2008, and other federal and state law.