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Sent via e-mail

Helena National Forest
Attn: Divide Travel Plan
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Re: Helena Hunters and Anglers Association's comments (supplemental) on the draft EIS for the Divide Travel Plan.

The Western Environmental Law Center (WELC) hereby provides these supplemental comments on the Forest Service's (the Service's) draft environmental impact statement (DEIS) for the Divide Travel Plan in the Helena Ranger District of the Helena National Forest (hereinafter "Divide travel plan" or "travel plan"). The Divide Travel Plan designates routes (roads and trails) for motorized use, authorizes car camping off-road, and opens areas for over-snow motorized vehicles in the analysis area (hereinafter "proposed action" or "proposed travel plan").

These comments are submitted by WELC on behalf of the Helena Hunters and Anglers Association (hereinafter "Helena Hunters"). These comments supplement and do not replace the comments already submitted by Helena Hunters (Gayle Joslin).

Helena Hunters' members live, work, and recreate on the Helena National Forest and several of the organization's members are intimately familiar with the Divide Travel Planning Area in particular. Helena Hunters' membership is made up of professionally trained natural resource managers. They are now or have previously worked in the fields of fish, wildlife, forestry, recreation management, water quality, and environmental assessment. Helena Hunters' mission statement is commensurate with stated management objectives for the Helena National Forest:

"The Helena Hunters and Anglers Association is dedicated to protecting and restoring fish and wildlife to all suitable habitats, and to conserving all natural resources as a public trust, vital to our general welfare. HHAA promotes the highest standards of

ethical conduct and sportsmanship, and promotes outdoor hunting and fishing opportunity for all citizens to share equally.”

The following discussion itemizes Helena Hunters’ comments on the DEIS for the Divide travel plan.

(1) Best available science.

NEPA and the Service’s planning regulations direct the responsible official to “use the best available scientific information to inform the planning process.” 36 C.F.R. § 219.3. The Service is to determine “what information is the most accurate, reliable, and relevant to the issues being considered” and document how the “best available scientific information was used to inform . . . the plan decision . . .” *Id.*

In this case, the Service must consult the latest and best science on how the proposed action, including the designation of motorized routes (roads and trails), authorization of car camping off-road, and opening areas for over snow motorized vehicles adversely impacts big game security, listed species (grizzlies and lynx) and critical habitat, habitat connectivity, and wolverines (especially habitat for denning and denning behavior) in the Divide analysis area.

The Service must also incorporate the best science when making changes to big game standard 4(a) in the Helena Forest Plan (“proposed amendment”). In this case, the Service is not using (or documenting how it is using) the best available science on big game security.

The existing Forest Plan Standard #4a includes standards for hiding cover and road-density in big game habitat and was based on extensive peer review and published science, including Lyon et al. (1985), Basile and Lonner (1979), Burbridge and Neff (1976), and Coggins (1976). For this reason, the Standard was incorporated into a number of Region One Forest Plans and has served as the applicable standard for the Helena National Forest for nearly 30 years. It is also why the Service is choosing to keep Standard #4a in place outside the analysis area and on the Helena National Forest, including in the Elkhorn Mountains.

The Service’s proposed amendment would replace Standard #4a with an untested standard based on maintaining a certain percentage of big game security areas based on two variables: (1) blocks of big game habitat of at least 250 acres or larger; and (2) distance from an open motorized route during the rifle big game hunting season (10/15 - 12/1). Maintaining sufficient hiding cover for big game within the “security areas” is no longer part of the standard. And, the new standard does not define “big game habitat.” Helena Hunters does not support the new standard.

The Service cannot logically define “security areas” in the absence of a hiding cover standard. As proposed, an area would be deemed “secure” based solely on the area’s distance from an open road and regardless of the amount (or lack of) forest cover. In other words, under

the Service's proposed amendment, a 1,000 acre clear cut – a non-secure area for elk – would qualify as “big game security” so long as it is a half mile from a motorized route open during the hunting season. Helena Hunters is not aware of any scientific support for this approach.

Both Hillis et al. (1991) and Christensen et al. (1993) require cover in elk security areas. Hillis et al. (1991) does not expressly include a standard for hiding cover but the paper does discuss the importance of cover (as do other papers) and does recognize that security areas may consist of a variety of cover types. Notably, in a April 12, 2013, letter to Greg Munther of Montana Backcountry Hunters and Anglers regarding the Service's proposed amendment for the neighboring Blackfoot Travel Plan (the letter was provided with Mr. Munther's comments on the DEIS) Hillis and Jack Lyon describe the 250 acre block size requirement as a “hiding cover” variable. Clearly, the amount of available hiding cover in security areas – and how it will be managed – is an important factor that must be considered and explained by the Service.

(2) Reasonable range of alternatives.

NEPA “mandates that agencies ‘study, develop, and describe appropriate alternatives to recommended course of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.’” *Pit River Tribe v. U.S. Forest Service*, 469 F. 3d 768, 785 (9th Cir. 2006) (*quoting* 42 U.S.C. § 4332 (E)); *see also* 42 U.S.C. § 4332 (2)(C)(iii) (must consider “alternatives to the proposed action”).

The alternatives analysis is “the heart” of the environmental analysis because it presents “impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options.” 40 C.F.R. § 1502.14. The alternatives analysis guarantees that “agency decisionmakers ‘[have] before [them] and take [] into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance.’” *Bob Marshall Alliance v. Hodel*, 852 F. 2d 1223, 1228 (9th Cir. 1988) (citations omitted). “Informed and meaningful consideration of alternatives . . . is thus an integral part of the statutory scheme” and “critical to the goals” of NEPA. *Id.* at 1228-29.

In the DEIS, the Service only considers four, closely related alternatives for the proposed action: (1) a “no action” alternatives which represents the existing baseline and authorizes motorized use on 286 miles of roads without seasonal restrictions (the existing baseline should only include routes designated for motorized use, not user-created two-tracks never authorized for motorized use); (2) the proposed action which authorizes motorized use on 284 miles roads without seasonal restrictions; (3) alternative three which authorizes motorized use on 262 miles roads without seasonal restrictions; and (4) alternative four which authorizes 265 miles of roads without seasonal restrictions. In the entire 155,500 acre planning area, therefore, the Service does not consider and analyze a single alternative that authorizes motorized use on less than 262 miles of roads. Most of the acreage open for over-snow motorized vehicle use in the alternatives is also very similar. Given the critical importance of the Divide area to wildlife (big

game, grizzlies, wolverine, lynx) and wildlife connectivity in the region, and the adverse impacts associated with roads and high road density and over-snow motorized use (especially for denning wolverines), analyzing an alternative that authorizes motorized use on less than 262 miles of roads and less acreage for over-snow motorize use is necessary and required by NEPA.

(3) Direct impacts.

Pursuant to NEPA, the Service is required to assess how the proposed amendment may directly impact the environment. Direct impacts are caused by the action and occur at the same time and place. *See* 40 C.F.R. §1508.8. The direct impacts of an action must be analyzed based on the affected interests, the affected region, and the locality in which they will occur. 40 C.F.R. § 1508.27 (a).

Here, the Service must carefully consider and analyze the direct impacts of authorizing motorized use on hundreds of miles of routes, car camping off-route, and over-snow motorized vehicle use on thousands of acres of National Forest land in the analysis area. This includes, but is not limited to impacts on big game security and numbers, MIS, sensitive, and listed species (lynx and grizzlies) or proposed to be listed species (wolverine) inhabiting the area, soil quality and productivity, habitat connectivity, Inventoried Roadless Areas (IRAs), and areas recommended for wilderness. In the DEIS, such an analysis is lacking.

In sum, the Service must take a hard look at how the proposed travel plan (winter and summer) will impact the environment, including but not limited to, soil quality and productivity, water quality (sediment from existing routes in the analysis area is currently a problem), wetlands, Inventoried Roadless Areas (IRAs), wilderness values, integrity and use of the area as a corridor or “linkage zone” for wildlife, and habitat and population numbers for threatened and endangered species (including lynx and grizzlies), sensitive species (fisher and wolverine), and various MIS on the forest, especially forest-dependent species. The Service must also consult with the U.S. Fish and Wildlife Service pursuant to Section 7 of the ESA, 16 U.S.C. § 1536, to determine whether and how the proposed travel plan may affect grizzlies, wolverine (once listed and conference with the agency now), lynx, and designated lynx critical habitat.

(4) Indirect impacts.

Pursuant to NEPA, the Service must take a hard look at the indirect effects of the proposed action. Indirect effects of a proposed action are effects that are caused by the action but occur later in time or are further removed in distance. 40 C.F.R. § 1508(b). Indirect effects “may include growth inducing effects or other effects related to induced changes in pattern of land use; population density or growth rate; and related effects on air, water, and other natural resources.” *Id.*

Here, the proposed action will designate hundreds of miles of routes for motorized use, off-route driving for car camping, and thousands of acres for over-snow motorized vehicle use.

Designating roads and motorized trails on National Forest lands, areas open to car camping, and over-snow motorized vehicle use and putting this information on a MVUM means more public access to remote areas in the Divide areas. These roads – which make it easier and faster for driving, walking, biking, and horseback riding – will funnel hunters, trappers, and recreationists into otherwise secure habitat. They will also push wildlife off public lands and onto private lands in the area. The Service must analyze these indirect effects. The Service should also analyze the indirect effects of winter motorized recreation on lynx and wolverine, in particular how snow compaction from winter motorized use indirectly affects wildlife movement and, in particular lynx and the species' competitive advantage in deep snow conditions over other species, such as bobcat, coyotes, and wolves.

(5) Cumulative impacts.

Pursuant to NEPA, the Service must analyze the cumulative impacts of the proposed action. Cumulative impacts are “the impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. Cumulative impacts can result from “individually minor but collectively significant actions taking place over a period of time.” *Id.*

The proper consideration of cumulative impacts under NEPA requires “some quantified or detailed information; general statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” *Great Basin Mine Watch v. Hankins*, 456 F. 3d 955, 971 (9th Cir. 2006). Moreover, the “analysis must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.” *Id.* The Service “must do more than just catalogue relevant past projects in the area.” *Id.* It must give a “sufficiently detailed catalogue of past, present, and future projects and provide adequate analysis about how these projects, and the difference between the projects, are thought to have impacted the environment.” *Id.* Some “quantified assessment of their combined environmental impact” is required. *Id.* at 972.

Here, the Service neglected to identify or properly consider and analyze how authorizing motorized use on hundreds of miles of routes, car camping off-road, and over-snow motorized vehicle use in the analysis area may cumulatively impact all big game species (not just elk but deer and moose as well), other forest dependent species (including MIS, sensitive (fisher and wolverine), and listed species like lynx), grizzlies and grizzly bear security, water quality, soil quality and productivity, cultural and historic property, wilderness values, IRAs, and wildlife connectivity and use of the area as a linkage or travel corridor along the Continental Divide.

At present, there are a number of Federal, State, and private actions that have occurred, are occurring, or are reasonably certain to occur in the Helena National Forest, the EHUs, and the proposed analysis area that may be having a cumulative impact on big game security and

other resources and must be analyzed by the Service in conjunction with the proposed action. These include, but are not limited to: forest management on public lands (thinning, salvage, regeneration harvests, hazardous tree removal, pre-commercial thins) and associated roads, skid trails, and disturbance; the R-1 and N-1 amendments for the neighboring Blackfoot Travel Plan; the new Blackfoot Travel Plan (including the 300 foot dispersed camping authorization); the big game amendment for the Divide planning area; private land development and forest management; motorized recreation and travel planning; beetle-kill, climate change, livestock grazing, highways, hunting, and superfund cleanup/storage. It is not enough to merely list various activities. The Service must engage in a quantified assessment of the various activities impacts of specific resources.

(6) The 300 foot dispersed vehicle camping allowance.

The proposed action in the DEIS authorizes wheeled motorized vehicle travel for dispersed camping or parking associated with dispersed camping within 300 feet of all designated system routes, including roads and trails (unless signed otherwise or specifically closed) as long as: (1) no new permanent routes are created by this activity; (2) no damage to existing vegetation, soil, or water resources occurs; (3) travel off-route does not cross streams, and (4) travel off-route does not traverse riparian or wet areas.

According to the Service, authorizing car camping within 300 feet of all designated system routes provides a reasonable level of access for recreational purposes. The DEIS further states that, with the implementation of the criteria for resource protection described in the actions common to all alternatives section of the DEIS, any off-route vehicle impacts resulting from such use would be minimized. The DEIS also concludes that the 300 foot provision would be consistent with the 2001 Tri-State OHV Decision, the 2005 Travel Planning Rule (Travel Rule), Executive Order 11644, and the Helena Forest Plan. The DEIS further states that the Helena National Forest would make a commitment to monitoring and enforcement of this provision, in order to ensure routes would not expand in these areas and any problems encountered would be dealt with as they arise.

Helena Hunters has a number of concerns about the Service's decision to authorize car camping within 300 foot (the length of a football field) off of all designated routes in the analysis area.

First, allowing vehicle travel for dispersed camping for up to 300 feet from a designated travel route (roads and trails) will potentially affect a large amount of land and essentially constitutes un-managed motorized recreation in the analysis area. The authorized distance – 300 feet on either side of a designated route – equals a 600 foot corridor (two football fields in length) for driving off-route (perhaps larger – more like 610 feet – if the corridor is measured from the edge of the system route instead of the center line). Multiplying this width times the number of motorized roads and trails in the proposed action means tens of thousands of acres of National Forest land could be negatively impacted by off-route motorized travel. This is a

significant decision for which resource impacts have not been specifically evaluated in the DEIS (see below).

Second, the premise of the 300 foot proposal seems to be that it will not be abused by the public and that no travel route to a camping site will ever be reused. This seems highly unlikely. Unmanaged off-route vehicle use has caused and will continue to cause uncontrolled proliferation of trails resulting from repeated use. Effects of off-route travel by vehicles on soil, water quality, vegetation, heritage and cultural sites, wildlife and the spread of invasive species are well documented in the scientific literature. Soil compaction and erosion contributes to sedimentation of streams, and damaged vegetation may create opportunities for establishment of invasive plant species.

Many wildlife species are affected by noise and disturbance associated with vehicles. While the decision states that such use will not be allowed to create permanent routes or to impact vegetation, soil, water resources, and riparian areas, it is reasonable to assume that such impacts will occur.

Indeed, the DEIS acknowledges that the Helena National Forest has never conducted a comprehensive survey of this use, but states that cursory monitoring and field checks by various Service resource crews have not resulted in any wide-spread violations or wide-spread resource concerns. Where site-specific issues have arisen, they state they have been able to address them via site-specific area closures or restrictions. Such general statements and anecdotal observations, however, do not constitute a reasonable assurance that the 300 foot provision will not result in significant and irreparable resource damage.

Third, the Service states that the highest priority for monitoring will be ensuring that wheeled, motorized vehicle travel within 300 feet of designated system routes is not creating any new permanent routes and damaging vegetation, soil, or water resources, or crossing streams, riparian or wet areas. However, it does not state how site-specific problems (which seem likely to occur at some frequency) will be addressed once they are discovered. This could be a huge task for which resources are extremely limited.

Enforcement of travel plans is difficult and Helena Hunters does not believe the Service has the resources to monitor for illegal travel activities (Amber Kamps, April 1, 2014 in comments to Helena Hunters). Surveys of travel restrictions in the neighboring Blackfoot Planning Area by Helena Hunters members in 2013-2014 have shown a high degree of violations and a readily apparent lack of monitoring and enforcement. This causes Helena Hunters to doubt the accuracy of the statements pertaining to intended comprehensive monitoring and enforcement of the 300 foot provision.

Finally, contrary to the Service's statement in the DEIS, a blanket authorization of dispersed vehicle camping within 300 feet of all system routes is not consistent with the language and spirit of Executive Order 11644, as amended, or the 2005 Travel Planning Rule

(and the 2001 Tri-State Decision was merely a one-size-fits all planning level decision that has no bearing on the designation of specific routes or areas for motorized use in the Helena National Forest).

The term “dispersed vehicle camping” refers generally to the ability to drive your motorized vehicle, i.e., OHV, motorcycle, or 4 x4 car, off designated roads and trails and car camp wherever you would like. When authorizing car camping off-road on National Forest lands, the Service explains it has four options:

- (1) Do not provide for any driving and car camping off-road and restrict all motorized use to designated roads and trails;
- (2) Individually map each short spur route to a designated, existing car camping site and then include the spur route in the travel system;
- (3) Issue individual permits authorizing the holder to car camp off-road; or
- (4) Use the authority in the Travel Rule (36 C.F.R. § 212.51 (b)) to authorize limited amounts of car camping off-road within a specific distance of designated routes.

According to the Service, option (4) is the least preferential option that, if used, should only be applied at the individual route level and not broadly across an entire forest.

The language in the Travel Rule authorizing car camping off-road “is written narrowly (‘limited use,’ ‘within a specified distance,’ ‘of certain designated routes,’ ‘solely for the purpose of’).” *Id.* The Service, therefore, is to apply the off-road car camping provision “sparingly, on a local or State-wide basis, to avoid undermining the purposes of the [Travel Rule] . . . and to promote consistency in implementation.” 70 Fed. Reg. 68264, 68285 (emphasis added); *see also* FSM § 7703.14(2). “Broad use of this provision could lead to corridors of cross-country motor vehicle use along many designated roads and trails, with attendant proliferation of unauthorized routes and environmental damage.” For this reason, authorizing car camping off-road in certain areas is to be “applied with caution” and only after carefully considering the impacts at the local, individual route level. 36 C.F.R. § 212.55 (a), (b).

In the DEIS, the Service chose option (4) for the proposed action but ignored its own directive to narrowly and cautiously apply the provision, choosing instead to authorize car camping off-road within 300 feet of every motorized route in the analysis area subject to some limitations that will be nearly impossible to enforce and monitor.

This means individuals in the Divide analysis area can drive their cars, OHVs, and motorcycles off-road and off-trail and car camp wherever they want so long as their motor vehicles are within 300 feet (a football field) of a designated road or trail. In effect, the Service’s allowance creates 600 foot-wide corridors open to driving and car camping throughout the

analysis area. The off-road car camping allowance is not allowed in a few areas but is otherwise not limited to pre-existing access or spur roads, not limited to designated or popular camp sites, and not prohibited or restricted in sensitive areas, including but not limited to secure elk habitat, lynx critical habitat, or some roadless areas.

Notably, the Helena National Forest's approach to off-road car camping differs significantly from the approach taken by the neighboring Lewis and Clark National Forest. In the Lewis and Clark National Forest, the Service chose to reduce the 300 foot dispersed vehicle camping prescription to "one vehicle (and attached trailer) length" in response to a barrage of public comments and concerns about how the Agency's decision in the DEIS would, in effect, "create a 600 foot swath down each and every road or trail for vehicles to travel." As explained by one organization:

From a management perspective, it will be virtually impossible to prove that someone is not looking for a parking or camping spot. Moreover, this decision will inevitably result in the creation of new roads and trails and result in an enormous amount of natural resource damage. In fact, [the Service's] decision translates into a 600 foot camping/off-road travel corridor for each road and trail in the analysis area. Under any alternative, this decision has the potential to affect over five hundred thousand acres of public land in the analysis area. . . .

Other members of the public raised similar concerns and requested that the size of the dispersed vehicle camping prescription be reduced or eliminated. After carefully considering these comments, the land-management implications of the 300 foot rule, and the resource damage issues associated with creating 600 foot swaths open to cross-country travel for dispersed vehicle camping, the Service modified the alternatives presented in the draft EIS by shortening the distance from 300 feet to approximately 70 feet (the size of a vehicle and attached trailer). In the Agency's own words:

In reaching my decision, I considered the comments on the [draft] EIS, the information contained in the analysis concerning user-created trails, how recreationists use areas to park or turn around, public safety, and the numbers and locations of dispersed camp sites . . . My decision will reduce the creation of new trails out of dispersed camp sites by prohibiting travel off designated routes to a campsite, while still allowing access to continue to the majority of the existing dispersed campsites.

The Helena National Forest should follow the Lewis and Clark's lead and adopt a similar approach, one that allows car camping within a reasonable distance of an open road and, in so doing, reins in natural resource damage.

If the Service decides to take a different approach than the Lewis and Clark National Forest and go with option (4) and authorize car camping within a 600 foot corridor along every road and trail in the analysis area, as proposed, then it must first carefully consider the impacts

(direct, indirect, and cumulative) of that decision pursuant to NEPA and the Travel Rule on the affected resources, including but not limited to soil quality and productivity (the Service, for example, should collect and analyze soil samples from the impacted area and consult and apply its Region One soil quality standards), native vegetation, special management or resource areas, wilderness characteristics, IRAs (including compliance with the Roadless Rule), cultural and historic properties, big game habitat and security (virtually all dead trees within the dispersed vehicle camping corridor will be removed), listed species (grizzlies and lynx, including lynx critical habitat), candidate species (wolverines), and sensitive and management indicator species (MIS) on the Helena National Forest. To date, no such analysis has occurred.

Nor has the Service complied with Section 106 of the National Historic Preservation Act (NHPA) to ensure cultural and historic properties within the 600 foot corridor (or on our near roads and trails designated for motorized use under the proposed action) are inventoried, identified and protected prior to authorizing car camping and off-route driving within the 600 foot corridor (or on designated roads and trails).

Section 106 of the NHPA is often described as the “stop, look, and listen” provision. *Te-Moak Tribe of Western Shoshone Nevada v. USDOl*, 608 F.3d 592, 607 (9th Cir. 2010) (citation omitted). Pursuant to Section 106, the Service is required to “take into account the effect of [an] undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.” 16 U.S.C. § 470f. Authorizing car camping off-road within 300 feet of a system route qualifies as an undertaking. So too does designating routes for motorized use pursuant to the Divide Travel Plan.

The process begins by defining the “area of potential effects,” which in this case includes the area open to dispersed vehicle camping. 36 C.F.R. § 800.16 (d). The Service is then directed to review all existing information on cultural and historic properties within this area (including data on possible yet-to-be identified properties) and seek out additional information from individuals with knowledge of the area, as well as information from local Indian tribes. 36 C.F.R. § 800.4 (a). Based on information gathered from this first, initial step, the Service must then take additional steps “necessary to identify historic properties within the area of potential effects.” 36 C.F.R. § 800.4 (b). The Service must make a “reasonable and good faith effort to carry out appropriate identification efforts.” 36 C.F.R. § 800.4 (b)(1). To date, no such “reasonable and good faith effort” to identify cultural and historic properties within the area open for car camping has occurred. Nor has such an effort be undertaken before designating routes (roads and trails) for motorized use.

In addition, the Service has not carefully considered and applied Executive Order 11644's and the Travel Rule's “minimization criteria” before designating routes for motorized use or authorizing widespread car camping within a 600 foot travel corridor along every route in the analysis area.

Executive Order 11644, as amended and strengthened by Executive Order 11989, directs that all areas designated for motorized use on public lands be located to minimize: (1) damage to soil, watershed, vegetation, or other resources of the public lands; (2) harassment of wildlife or significant disruption of wildlife habitats; and (3) conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring lands.

These criteria, “known as the ‘minimization criteria,’ require federal agencies to minimize motorized impacts on public lands.” *Wildlands CPR v. USFS*, – F.Supp. 2d –, 2012 WL 1072351 at *12-13 (D. Mont. 2012); *Center for Sierra Nevada Conservation v. U.S. Forest Service*, 832 F. Supp. 2d 1138, 1146 (E.D. Cal. 2011) (same).

The word “minimize” means to “reduce (something, especially something unwanted or unpleasant) to the smallest possible amount or degree.” THE NEW OXFORD AMERICAN DICTIONARY (2001) at 1087. It does not mean the Service must eliminate all impacts. Use of the word minimize in Executive Order 11644 also does not refer to the total number or overall mileage of routes but to the effects of route and area designations, i.e., the Service must designate areas for motorized use to minimize damage to natural resources and conflicts between uses. *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1073 (D. Idaho 2011) (citing *CBD v. BLM*, 746 F. Supp. 2d 1055, 1080 (N.D. Cal. 2009)).

The Service’s 2005 Travel Rule codifies Executive Order 11644’s minimization criteria by directing the Agency to consider, with the “objective of minimizing” damage to natural resources and conflicts among uses when designating trails and areas for motorized use. 36 C.F.R. § 212.55 (b). While the language may differ somewhat (minimize vs. the “objective of minimizing”) both Executive Order 11644 and the Travel Rule contemplate the “same result.” *Guzman*, 766 F. Supp. 2d at 1074; *Center for Sierra Nevada Conservation*, 832 F. Supp. 2d at 1146 (same).

Both directives, for example, require the Service to document and explain “how the minimization criteria were applied in the route designation decisions.” *Id.*; *Wildlands CPR*, 2012 WL 1072351 at *14 (same); *CBD*, 746 F. Supp. 2d at 1079-1080 (same). “Simply listing the criteria and noting that they were considered is not sufficient to meet this standard.” *Id.* Nor is it sufficient to rely on conclusory statements in the record from the Agency or excel spreadsheets and appendices that merely list various routes and why they were included in the system. *See CBD*, 746 F. Supp. 2d at 1079-1080.

Instead, the Service must carefully document and explain how the minimization criteria was applied when making specific route and area designations. *Id.* No such documentation or explanation is provided in the DEIS regarding the authorization of car camping within a 600 foot wide corridor along nearly every road and trail in the Divide analysis area. Nor is it sufficiently made during the route designation process.

The Service says it “minimizes” impacts to resources (and presumably complies with the Executive Order 11644's and Travel Rule’s minimization criteria) by complying with all Forest Plan standards and objectives. This may be true, but the Service must still connect the dots and explain how compliance with specific standards in the Forest Plan (especially new amendments) satisfies its legal obligation to minimize impacts and conflicts. This has yet to occur. In fact, nowhere in the DEIS does the Service adequately explain how it considered and applied the minimization criteria when authorizing a 600 foot travel corridor for car camping off of every designated route in the analysis area.

(7) Ensuring the viability of MIS.

Under NFMA, the implementing regulations, and the Helena Forest Plan, the Service is required to manage wildlife habitat on the Helena National Forest to ensure viable populations of existing native species are maintained.

To do so, the Service identified management indicator species (MIS) for various species groups within the Helena National Forest whose habitat is most likely to be changed by forest management activities. The MIS for the mature tree dependent group, for instance, is the marten. The old growth dependent group is represented by the piliated woodpecker and the goshawks; the snag dependent groups is represented by the hairy woodpecker; the threatened and endangered group includes the grizzly bear (and other species); and the commonly hunted MIS are elk, mule deer, and bighorn sheep.

These MIS represent a proxy or surrogate for the health and viability of many other species. While the Service retains some flexibility with respect to the appropriate methodology used to monitor population numbers (actual and trend) of MIS, i.e., using population data on MIS and/or habitat data as a proxy for MIS population data (commonly referred to as the “proxy-on-proxy” approach) the mandate to maintain viable populations of MIS like elk, mule deer, marten, grizzlies and woodpeckers, cannot be ignored. And the methodology employed must be reasonably reliable and accurate. *See Native Ecosystems Council v. Tidwell*, 599 F. 3d 926, 933 (9th Cir. 2010).

If, for example, the Service decides to use habitat as a proxy for population numbers for MIS, then the proxy results must mirror reality. Maintaining the acreage of habitat necessary to maintain viable populations of big game species (elk, deer, and moose) on the Helena National Forest must in fact ensure viable populations are maintained. At the very least, the Service must describe the quantity and quality of habitat that is necessary to sustain the viability of big game species and explain its methodology for measuring this habitat. *See Native Ecosystems Council v. Weldon*, 848 F. Supp.2d 1207, 1213 (D. Mont. 2012).

In the Helena National Forest, the Service uses the big game standards, including Standard #4a, as a means of ensuring compliance with NFMA’s viability requirement.

Compliance with Standard #4a's hiding cover and road-density standard, for instance, is used as a proxy for population numbers of elk and, as such, other big game species.

The proposed action, however, involves eliminating standard #4a and replaces it with an untested standard (never submitted for public review and comment) based solely on size and distance from an open route during the hunting season. Hiding cover for big game and other forest dependent species was eliminated from the big game standard. Because it is untested and eliminates the standard for hiding cover and road-density, there are no assurances that the new standard will work or that the approved Divide Travel Plan will ensure viable populations of MIS are retained on the Helena National Forest. There are no assurances, let alone reasonable assurances, that the new standard – designed to accommodate the travel plan -- is reliable and accurate and will ensure viable populations of elk and other big game species will be maintained. *See Weldon*, 848 F. Supp.2d at1214-1215. Indeed, under the proposed amendment, a 1,000 clear cut would qualify as “big game security” so long as it is a half mile from a motorized route open during the hunting season.

(8) Compliance with other forest plan standards.

Pursuant to NFMA, the Service must ensure that the proposed action is consistent with the Helena Forest Plan. 16 U.S.C. § 1604 (i). If not, then the responsible official must either change the proposed action to bring into compliance with the other standards in the Forest Plan or amend to the other Forest Plan standards.

Here, the Service has failed to ensure the proposed action (the new travel plan) and proposed amendment to standard 4(a) which eliminates the existing hiding cover standard for big game security is consistent with the following existing standards in the Helena Forest Plan:

- Big game Standard #1 requiring that important summer and winter range for big game species include adequate hiding and thermal cover to support habitat potential. The Service must (but has failed) to explain how the proposed amendment – which does away with the hiding cover standard – will ensure compliance with this important standard;
- Big game Standard #2 requiring that an environmental analysis for all project work include a cover analysis at the drainage or EHU level;
- Big game Standard #3 directing that elk summer range be maintained at 35% or greater hiding cover and areas of winter range maintained at 25% or greater thermal cover in drainages or EHUs. This standard incorporates all land (private, state, and federal) in the EHU;
- Big game Standard #4 directing the Service to implement an aggressive road management program to maintain or improve big game security. The Service

must explain how the proposed amendment qualifies as an “aggressive” program to maintain and improve big game security;

- Big game Standard #4b stating that elk calving grounds and nursery areas will be closed to motorized vehicles during peak use by elk;
- Big game Standard #4c directing that all winter range areas be closed to vehicles between December 1 and May 15;
- Big game Standard #5 dictating the minimum size areas for hiding and thermal cover;
- Big game Standard #6 stating that the Service will follow the Montana Cooperative Elk-Logging Study Recommendations (Appendix C in the Forest Plan);
- Big game Standard #10 stating that moose habitat will be managed to provide adequate browse species diversity and quantity to support current moose populations. Notably, Standard #4a is a big game standard designed to protect habitat for elk, deer, and moose. Mule deer and moose numbers are in decline in western Montana and eliminating standards for habitat cover may make a bad situation worse for these big game species;
- The standards, guidelines, and objectives included in the Northern Rockies Lynx Management Direction (“NRLMD”);
- The grizzly bear standards included in the Helena Forest Plan, including but not limited to the requirement, in occupied grizzly habitat, to minimize man-caused mortality by limiting the open road density to the 1980 density of 0.55 miles per square mile and the IGBC’s open road, total road, and core area standards for grizzly bear habitat;
- All standards and monitoring requirements of MIS, including but not limited to all forest (mature, old growth, snag) dependent species and sensitive, threatened and endangered species.

Thank you in advance for taking the time to consider the issues and concerns raised in these comments. If you have any questions or wish to discuss these issues, please do not hesitate to contact Helena Hunters (Gary Ingman or Steve Platt) or me at the number below.

Sincerely,

/s/ Matthew Bishop

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