



208.345.6933 • PO Box 844, Boise, ID 83702 • www.idahoconservation.org



Boise National Forest
1249 S. Vinnell Way, Suite 200
Boise, ID 83709
Attention: Joshua Newman and Rick Wells

November 4, 2024

INTRODUCTION

Pursuant to 36 C.F.R. Part 218, **Idaho Conservation League, Idaho Rivers United, and Golden Eagle Audubon Society** (collectively Objectors) file this Objection to the Draft Decision Notice and Finding of No Significant Impact (dated September 17, 2024) and Final Environmental Impact Statement (dated September 2024) issued by Brant Petersen, Forest Supervisor of the Boise National Forest for the 2023 CuMo Exploration Project proposed by Idaho Copper Corporation for mineral exploration drilling on National Forest System lands.

Pursuant to Part 218, **Idaho Conservation League is the lead objector**. Contact person:

John Robison, Public Lands Director
Idaho Conservation League
P.O. Box 844
Boise, ID 83701
208.345.6933 x 213
jrobison@idahoconservation.org

Objectors have fully participated in the Forest Service's review of the 2023 CuMo Exploration Project, including by filing scoping comments on November 2, 2023 and filing comments on Draft Environmental Assessment on June 27, 2024. Pursuant to 36 C.F.R. § 218.8, Objectors state that the following content of this Objection demonstrates the connections between their comments for issues raised herein unless the issue or statement in the Final Environmental Assessment ("Final EA") or Draft Decision Notice and Finding of Significant Impact ("Draft DN/FONSI") arose or was made after the opportunity for comments, as detailed herein. Pursuant to 36 C.F.R. § 218.8(b), our previous comments are hereby incorporated by reference.

Objectors' Names, Addresses, Telephone Numbers, and Email:



John Robison
Public Lands and Wildlife Director
Idaho Conservation League
PO Box 844
Boise, ID 83702
(208) 345-6933 x 213
jrobison@idahoconservation.org



Lisa Young
Director
Idaho Sierra Club
PO Box 552
Boise, Idaho 83701
(208) 384-1023
lisa.young@sierraclub.org



Sydney Anderson
Mining and Policy Manager
Idaho Rivers United
P.O. Box 633
Boise, ID 83701
(208) 343-7481
sydney@idahorivers.org



Cynthia Wallesz
Executive Director
Golden Eagle Audubon Society
P.O. Box 8261
Boise, ID 83707
(208) 995-7400
cwallesz@goldeneagleaudubon.org

OBJECTIONS

I. Legal Background

On National Forests, the Organic Act requires the Forest Service “to regulate their occupancy and use and to preserve the forests thereon from destruction.” 16 U.S.C. § 551. “[P]ersons entering the national forests for the purpose of exploiting mineral resources must comply with the rules and regulations covering such national forests.” *Clouser v. Espy*, 42 F.3d 1522, 1529 (9th Cir. 1994). Forest Service’s mining regulations require that “all [mining] operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest resources.” 36 C.F.R. 228.4(c)(3). “Although the Forest Service cannot categorically deny a reasonable plan of operations, it can reject an unreasonable plan and prohibit mining activity until it has evaluated the plan and imposed mitigation measures.” *Siskiyou Regional Education Project v. Rose*, 87 F.Supp.2d 1074, 1086 (D.Or. 1999) citing *Baker v. U.S. Dept. of Agriculture*, 928 F.Supp. 1513, 1518 (D. Idaho 1996).

The Forest Service must fulfill its duty under the National Forest Management Act (NFMA), 16 U.S.C. § 1601 *et seq.* to ensure that the project complies with the Boise Forest Plan. Congress enacted NFMA in 1976 to establish a new legal framework for managing natural resources on National Forest lands. Among other requirements, NFMA requires the Forest Service to prepare a land and resource management plan, or “forest plan,” for each National Forest. 16 U.S.C. § 1604(a). Each plan must include standards and guidelines for how the forest shall be managed. 16 U.S.C. §§ 1604(c), (g)(2) & (g)(3). Once a forest plan is adopted, all resource plans, permits, contracts, and other instruments for use of the lands must be consistent with the plan. 16 U.S.C. § 1604(i). “It is well-settled that the Forest Service’s failure to comply with the provisions of a Forest Plan is a violation of NFMA.” *Native Ecosystems*, 418 F.3d at 961. *See also Idaho Conservation League v. U.S. Forest Serv.*, No. 1:16-cv-0025-EJL, 2016 WL 3814021 at *17 (D. Idaho, Jul. 11, 2016) (Forest Service violated NFMA by approving mine exploration without following Boise Forest Plan standard and guideline to identify sensitive plant occurrences and habitat and conduct up-to-date surveys). Failing to follow, or to evaluate and document compliance with a Forest Plan provision can also be a NEPA violation. *See ONDA v. BLM*, 625 F.3d 1092, 1110–11 (9th Cir. 2010) (NEPA analysis must include “considerations made relevant by the substantive statute driving the proposed action”). *See also Westlands Water Dist. v. United States Dept. of Interior*, 376 F.3d 853, 866 (9th Cir. 2004) (“When an action is taken pursuant to a specific statute, the objectives of that statute serve as a guide by which to determine the reasonableness of alternatives”, examined under NEPA).

To comply with the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 (*et seq.*), the Forest Service must disclose project details and likely effects to the public, and take a “hard look” at those effects prior to approving any operations. NEPA is “intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process.” 40 C.F.R. § 1500.1(a). “NEPA’s purpose is . . . to provide for informed decision making and foster excellent action.” *Id.* “In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects.” 40 C.F.R. § 1501.3(b). The purpose of NEPA “is to obviate the need for speculation by insuring that available data is gathered and analyzed prior to implementation of the proposed action.” *LaFlamme v. FERC*, 852 F.2d 389, 400 (9th Cir. 1988).

In an EA, the agency must take “hard look” and disclose to the public that it “has adequately considered and elaborated the possible consequences of the proposed agency action.” *Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 872 (9th Cir. 2022) (citation omitted). NEPA’s hard-look mandate requires far more than “[s]uperficial analysis, vague generalities, and conclusory discussions.” *Friends of Wild Swan v. Kehr*, 321 F. Supp. 3d 1179, 1189–90 (D. Mont. 2018), *aff’d sub nom. Friends of the Wild Swan v. Kehr*, 770 F. App’x 351 (9th Cir. 2019) (quotation omitted). “The agency may not rely on conclusory statements unsupported by data,

authorities, or explanatory information.” *W. Watersheds Project v. Bureau of Land Mgmt.*, 552 F. Supp. 2d 1113, 1129 (D. Nev. 2008).

“Effects or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following: (1) Direct effects, which are caused by the action and occur at the same time and place. (2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. (3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. (4) Effects included ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.” 40 C.F.R. § 1508.1(g).

Whether an agency prepares an EIS or an EA, NEPA requires an agency to study, develop, and describe appropriate alternatives. *N. Idaho Cmty. Action Network v. U.S. Dep’t of Transp.*, 545 F.3d 1147, 1153 (9th Cir. 2008). While an agency’s obligation to discuss alternatives is less in an EA than in an EIS, the “agency must still give full and meaningful consideration to all reasonable alternatives in an environmental assessment.” *W. Watersheds Proj. v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (quotation omitted). “The existence of a valid but unexamined alternative renders an EA inadequate.” *Id.* (quotation omitted).

A finding of no significant impact (FONSI) is appropriate only if the Forest Service determines based on an EA that the proposed action “will not have significant effects.” 40 C.F.R. § 1501.6(a). An “EIS must be prepared if substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (quotation omitted). The Ninth Circuit Court of Appeals has regularly described the bar for whether significant effects may occur as a “low standard.” *See, e.g., League of Wilderness Defenders v. Connaughton*, 752 F.3d 755, 760 (9th Cir. 2014); *Cal. Wilderness Coal. v. U.S. Dep’t of Energy*, 631 F.3d 1072, 1097 (9th Cir. 2011); *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006).

II. The Forest Service Must Prepare an EIS to Comply with NEPA

The 2023 CuMo Exploration Project is for extensive operations which easily meet the threshold of “may” have significant environmental impacts requiring preparation of an Environmental Impact Statement (“EIS”) under NEPA and applicable Forest Service and Counsel on Environmental Quality NEPA regulations. Objectors raised this issue in their Draft EA Comments at page 9, citing applicable NEPA regulations and case law.

The short- and long-term direct, indirect, and cumulative adverse effects the Project will have on Sacajawea’s bitterroot, other “sensitive species”, “threatened” bull trout, and water quality from the Project meet the low threshold that the Project “may” have significant impacts on the environment. *See* 40 C.F.R. § 1501.3(b)(2). This is further supported by the “affected area and its resources” and the “setting of the proposed action,” which is in the Boise River watershed, upstream of Idaho’s largest communities, and on public lands containing the largest known populations of the rare Sacajawea’s bitterroot. *See* 40 C.F.R. § 1501.3(b)(1). Impacts to Sacajawea’s bitterroot in particular require preparing an EIS due to the unique ecological significance of the project site to this exceedingly rare and at-risk species, and the direct, indirect, and cumulative adverse effects of the project which have yet to be properly analyzed, as discussed more later in these objections.

In response to comments, the Forest Service simply points to the DN/FONSI. The Draft DN/FONSI asserts that the Project “will not significantly affect the quality of the human environment, considering the context and intensity of impacts” and “[t]hus, an environmental impacts statement will not be prepared.” Yet, in discussing the “context,” there is no mention of the specific species, habitats, and resources at the Project site, including: the importance of the Boise River watershed and fact that the Project site is upstream of Idaho’s largest population; the uniquely important and at-risk populations of Sacajawea’s bitterroot at the site, which are believed include 1/3 to ½ of all known individuals of this rare species; and the presence of threatened bull trout in Upper Grimes Creek, which appear to be the only bull trout hanging on in the Mores Creek watershed.

The Draft DN/FONSI similarly overlooks potentially significant impacts when it discusses the Project’s intensity. Nowhere does it mention Sacajawea’s bitterroot, even though the Botany Report found the Project could present a high risk of high impact to Sacajawea’s bitterroot, especially considering the many cumulative impacts to the species. Additionally, it is highly uncertain how the Project will affect the species, since the Forest Service has only surveys from 2017 for most of the known populations at the Project site, and since as the Botany Report states, much is unknown about the species genetics, recruitment, and other important biological factors. The Forest Service brushes all of this off in the DN/FONSI as not significant without offering any explanation.). “[C]onclusory statements, based on vague and uncertain analysis, . . . are

insufficient to satisfy NEPA’s requirements.” *Bark v. U.S. Forest Serv.*, 958 F.3d 865, 872 (9th Cir. 2020) (quotation omitted).

In addition to Sacajawea’s bitterroot, other impacts are potentially significant in intensity, including impacts to bull trout, goshawk, wolverine, elk, water quality, and landslide prone areas for many reasons discussed throughout these objections.

In response to our comments, the Forest Service has indicated that the CuMo Exploration Project is “results-driven,” meaning that specific locations for drill pads or water sources may not yet be determined. However, the lack of defined project components highlights the inadequacy of an Environmental Assessment (EA) for a project of this scope and nature. Given the uncertainty in critical project elements, an Environmental Impact Statement (EIS) is essential to comprehensively assess the full range of reasonable and potential impacts, ensuring a thorough evaluation of the environmental effects associated with all possible project outcomes. A project with such variable, results-dependent components necessitates the rigorous analysis and stakeholder engagement that only an EIS can provide.

Suggested Remedies

- Prepare an EIS to consider the 2023 CuMo Exploration Project.

III. The Forest Service Must Consider One or More Exploration Alternatives to Comply with NEPA

The Forest Service refused to consider any exploration alternatives to Idaho Copper’s proposal, in violation of its duty to consider a reasonable range of alternatives under NEPA. Objectors raised this issue in their Draft EA Comments at pages 10–15 citing applicable provisions of NEPA, NEPA regulations, and case law.

“NEPA requires agencies to give full and meaningful consideration to all viable alternatives in the environmental assessment.” *Envtl. Def. Ctr. v. Bureau of Ocean Energy Management*, 36 F.4th 850, 877 (9th Cir. 2022) (quotation omitted). When an agency fails to do so, courts will reverse. *Id.* at 878. *See also Citizens for Clean Energy v. U.S. Dep’t of the Interior*, 4:17-cv-00030-BMM, 2022 WL 3346373 (D. Montana Aug. 12, 2022) (limiting EA to two alternatives was arbitrary and capricious); *W. Watersheds Project v. Bernhardt*, 543 F. Supp. 3d 958 (D. Idaho 2021) (BLM violated NEPA by failing to explain refusal to consider alternatives offered by plaintiffs in EA); *WildEarth Guardians v. BLM*, 457 F. Supp. 3d 880 (D. Montana 2020) (BLM failed to sufficiently explain why alternatives were not considered); *Conservation Congress v. U.S. Forest Serv.*, 235 F. Supp. 3d 1189 (E.D. Cal. 2017) (Forest Service impermissibly refused to consider in detail alternative for timber sale); *Native Fish Soc. v. Nat’l*

Marine Fisheries Serv., 992 F. Supp. 2d 1095 (D. Oregon 2014) (agency unreasonably refused to consider middle alternatives).

In its response to comments, the Forest Service misunderstands its duty to consider a reasonable range of alternatives. First, the Forest Service hides behind the Mining Law 1872 and NEPA regulations as an excuse for refusing to consider any alternatives to Idaho Copper's proposal. But even if Idaho Copper has any rights under the Mining Law, and even if the Forest Service should try to satisfy the applicant's goals in considering alternatives, that is no excuse here. The many alternatives presented by Objectors and rejected by the Forest Service would allow Idaho Copper to move forward with exploration and, thus, cannot be rejected on these grounds. Second, the Forest Service dismisses many alternatives by simply making guesses about their environmental effects compared to the proposed action. However, under NEPA, alternatives are to be evaluated by carrying them through the full analysis in the EA and then comparing them to the proposed action, not by prejudging and dismissing them based on guesswork as the Forest Service did here. Third, the Forest Service claims that since it imposed various mitigation measures to reduce some Project impacts, there is no need to consider any alternatives that might be even more environmentally beneficial. But the mere fact that various measures are being taken to reduce adverse impacts does not mean there are no alternatives worthy of consideration that could entirely avoid or further reduce impacts.

When it refused to consider a helicopter-assisted alternative to reduce road construction and road use and thereby reduce many of the Project's adverse impacts, the Forest Service relied what the EA describes as a "comprehensive analysis of the environmental, safety, and economic risks" and which the EA says "suggests the overall impact of using helicopters exceeds the impact of the Proposed Action." But a true comprehensive analysis under NEPA should have been done by developing this alternative in the EA, subjecting it to public scrutiny, and actually determining the relative impacts of the alternatives.

When it refused to consider an alternative requiring more concurrent reclamation and setting a threshold of 25% for open roads at any given time while still allowing for exploration, the Forest Service claimed it "could cause unnecessary environmental harm" and "could lead to increased environmental impacts." Instead of speculating about what could happen, the Forest Service should actually consider these potentialities in an EIS. The Forest Service also cautioned that taking longer might not satisfy the mining company's aims; but without developing this alternative, it is unclear how much longer the exploration would take or why taking slightly longer would interfere with Idaho Copper's aims.

When it refused to consider an alternative requiring disposing of drill cuttings off-site to protect water quality, the Forest Service merely explains that the EA considered water quality risks and the Project includes measures to minimize potential impacts to water quality from disposing of

drill cuttings and other materials on site. The Forest Service never considered the feasibility and benefits of storing such materials off site.

When it refused to consider alternatives using 2 instead of 4 drill rigs, the Forest Service concluded that using less rigs will require longer drilling which in turn would prolong the environmental impacts. Had this alternative been fully developed, then the Forest Service could actually compare the environmental impacts of these different alternatives and assess which impacts would be lessened and which would be extended.

When it refused to consider limiting 4 drill rigs to one quadrant at a time, the Forest Service speculates that “potential effects on wildlife resources are not expected to be significantly reduced” by doing so. Again, the Forest Service should fully develop this alternative through the NEPA process as a way to rigorously evaluate the pros and cons of this alternative compared to Idaho Copper’s proposal.

When it refused to consider an alternative focused on Sacajawea’s bitterroot protection (discussed in detail on pages 16–18 of our Draft EA Comments) while still allowing exploration, the Forest Service claims the Project and added mitigation measures “already incorporate comprehensive actions to minimize impacts on Sacajawea’s bitterroot”, therefore a Sacajawea’s bitterroot protection alternative would be “redundant and incompatible with the proponent’s overarching goals at this phase of their operations.” This idea that there is simply nothing more that can be done to protect Sacajawea’s bitterroot is incorrect. For example, Idaho Copper could focus its initial exploration on areas outside of Sacajawea’s bitterroot habitat, using directional drilling where possible, and then evaluate whether and where it needs to conduct exploration in Sacajawea’s bitterroot habitat. This need not be two separate decisions but could be a Phase 1 (outside habitat) and a Phase 2 (inside habitat) if truly warranted and with additional mitigation measures.

Suggested Remedies

- In an EIS, or a Supplemental EA, fully develop and consider one or more exploration alternatives.

IV. Sacajawea’s Bitterroot (Failure to Take a Hard Look as Required by NEPA; Failure to Comply with Forest Plan as Required by NFMA; and Failure to Minimize Impacts as Required by Organic Act)

Sacajawea’s bitterroot (*Lewisia sacajawean* or LESA) is very rare and endemic to central Idaho. It is a Forest Service-designated “sensitive species,” which is defined in the Forest Plan as follows:

A Forest Service or BLM designation, sensitive plant and animal species are selected by the Regional Forester or the BLM State Director because population viability may be a concern, as evidenced by a current or predicted downward trend in population numbers or density, or a current or predicted downward trend in habitat capability that would reduce a species' existing distribution.¹

The largest known populations of the plant are found at the Project site, and this population consists of around 1/3 to 1/2 of all known occurrences of the plant, including in areas targeted for road and drill pad construction and drilling operations. But the Forest Service has failed to gather sufficient up-to-date baseline information about the species and failed to otherwise take a hard look at impacts as required by NEPA, failed to comply with Forest Plan requirements as required by NFMA, and failed to minimize the Project's impacts as required under the Organic Act. Objectors raised these issues in their Draft EA Comments at pages 4–6, 15–24.

In the 2016 decision in *Idaho Conservation League, et al. v. U.S. Forest Service*, 2016 WL 3814021 (D. Idaho July 11, 2016), the court vacated the Forest Service's EA and FONSI for violating NEPA and NFMA, finding “error in the Forest Service’s analysis which failed to take a ‘hard look’ at the Project’s impacts on the environment with regard to a known rare and at risk plant.” *Id.* at *16. “The Forest Service is directed to undertake the proposed re-evaluation of LESA’s baseline forthwith and analyze the results for purposes of determining whether its decisions and conclusions with regard to LESA as stated in the SEA and SDN/FONSI are different or remain the same.” *Id.* “Consistent with its ruling on the NEPA claim, however, the Court finds the Forest Service failed to re-evaluate the baseline data for LESA following the Grimes Fire prior to approving the Project. Without an accurate baseline, the Project's monitoring and mitigation measures will not be effective or accurate. Failing to obtain the necessary baseline is contrary to Guideline BTGU01 because the Forest Service did not determine the existing suitable habitat for and presence of LESA within or near the project area. [] For these reasons, the Court finds the Forest Service was arbitrary and capricious and in violation of NFMA.” *Id.* at 17.

To comply with the 2016 court decision, to take a hard look under NEPA, and to comply with Forest Plan Botany Guideline “BTGU01” (which requires that “suitable habitat should be determined for sensitive species within or near the project area” and directs the Forest Service to “[c]onduct surveys for those species with suitable habitat to determine presence”), the Forest Service needs up-to-date plant surveys. We understand that the Forest Service now has post-fire survey data from 2017, but that single snapshot from over 7 years ago does not provide an adequate baseline today or moving forward. Effects to plants and plant habitat from the fires and

¹ Boise National Forest Plan, Chapter 4 – 2003-2010 integration
https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5394056.pdf

dozer line may occur over years, such as opening up and drying of areas previously occupied by plants to a point where they are less habitable. Additionally, climate change, weed infestations, herbivory, disease, disturbance from off-highway vehicles, and other impacts could have affected plant populations at the site over the last 7 years. The Forest Service thus lacks up-to-date, accurate species presence/absence and population data for Sacajawea's bitterroot as required by law.

“[W]ithout [baseline] data, an agency cannot carefully consider information about significant environment impacts” and “the agency fail[s] to consider an important aspect of the problem, resulting in an arbitrary and capricious decision.” *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1085 (9th Cir. 2011) (quotation omitted). *See also Lands Council v. Powell*, 395 F.3d 1019, 1031 (9th Cir. 2005) (finding that six-year-old data, without updated habitat surveys, was too stale).

While the Forest Service has some additional Sacajawea's bitterroot information since 2017, none of it is a substitute for surveying plant occurrences in areas last surveyed in 2017. For example, the 2021 and 2022 Tetra Tech surveys occurred in other locations (not previously surveyed), representing a tiny fraction of the Project area; it did not verify the status of Sacajawea's bitterroot in the previously surveyed areas from 2017, and did not survey the as-of-yet never-before-surveyed areas of suitable habitat. As the Botany Report acknowledges these “[m]ore recent Sacajawea's bitterroot data sets focused on select locations and were not comprehensive surveys of the entire population.” And other post-2017 data and information mentioned in the Botany Report, EA, and DN/FONSI are all the result of mapping/GIS exercises, which may be useful for identifying areas of potential habitat, but which provide no further information about plant occurrences at the site. Thus, the Botany Report admits: “The 2017 baseline data sets are the most recent and complete population datasets available that reflect existing conditions.” As a result, the majority of previously surveyed areas with known plant occurrences have not been surveyed since 2017. This violates NEPA's hard look requirement and violates NFMA by failing to comply with BTGU01.

Furthermore, areas of potential habitat still have never been surveyed for plant occurrences. Without on the ground surveys in other areas of potential habitat at the Project site, the Forest Service has failed to take a hard look and failed to comply with BTGU01.

The Forest Plan also describes specific monitoring protocols for sensitive and other species with a 5-year reporting period:²

Activity, Practice, Or Effect To Be Measured	(tracking #) Monitoring Question	Indicator	Data Reliability	Measuring Frequency and Recommended Method	Report Period
Habitat for terrestrial Threatened, Endangered, Proposed, Candidate or Sensitive (TEPCS) species, both plant and animal	(28a) Are management actions providing for, or moving toward, the extent of vegetation components necessary to meet the needs of TEPCS species?	Changes in habitat acres	Moderate	Utilize existing databases to track habitat changes in known habitats and restored habitats	5 years

Instead of the 5 year reporting period, it has been over 7 years since the last field surveys of Sacajawea’s bitterroot were conducted. As such, the Forest Service cannot say whether management actions are meeting the needs of TEPCS species according to Forest Plan direction. However, we do know that the proposed action is likely to have adverse impacts to this species.

The Botany Report acknowledges that direct adverse impacts to Sacajawea’s bitterroot from Project road and drill pad construction is “high in probability and high in intensity,” based on estimating that without mitigation measures, the Project “may impact up to 1,059 individual or 7.7 percent of the population and up to 10 acres or 2.5 percent of modeled potential habitat that has yet to be surveyed.” While the Forest Service is requiring various mitigation measures intended to reduce the adverse impacts to Sacajawea’s bitterroot, the Forest Service asserts without any supporting evidence that these mitigation measures reduce the risk from high to moderate, dismissing these potentially significant impacts. There are no studies, data, or other information to support this assertion, as required to take a hard look and to avoid preparing an EIS under NEPA. Far from taking the requisite “hard look,” these are the type of “perfunctory and conclusory” assertions that violate NEPA. *Ocean Advocs. v. U.S. Army Corps of Engineers*, 402 F.3d 846, 870 (9th Cir. 2005).

² Boise National Forest Plan Chapter IV-2003-2010 integration, p. 4-10
https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5394177.pdf

The Forest Service also fails to consider the full suite of adverse effects of the Project together, by instead focusing on isolated effects from different aspects of the Project. Road and drill pad construction are not the only aspects of the Project that will harm Sacajawea's bitterroot. The Botany Report also considers the ways Sacajawea's bitterroot could be harmed by non-native plant infestations. In fact, the Botany Report found the "risk of exposure to non-native plant species infesting new areas and leading to a decrease in vegetation community integrity and resilience is high." The Botany Report also found a high risk of impacts to Sacajawea's bitterroot from vehicular traffic, citing a reference from 2010: "There is currently a surge taking place in the amount of ATV and Motorcycle use in the Grimes Pass area, which includes the Project Area." (2010 CuMo EA, p. 74). Both legal and illegal off highway vehicle (OHV) use have increased dramatically since 2010, leading the Forest Service to close particularly high use areas along the lower stretches of Grimes Creek to the public due to resource damage. While the CuMo Project area is farther away from population centers than Lower Grimes Creek, it is also farther away from Forest Service patrols and extensive resource damage may occur before the Forest Service can take corrective action. Additional risks are reported from tree felling, snowplowing, and water intake and transport.

We are particularly concerned that snowplowing could scrape soils and snow piles from plowing could saturate soils and delay the emergence of buried plants, particularly for Sacajawea's bitterroot that have recolonized roadbeds and adjacent road cuts:

The 2017 botanical surveyors notated Sacajawea's bitterroot individuals in roadbeds or road cuts. These individuals may be susceptible to injury during snowplowing operations. CuMo Botany Weeds Report p. 33.

The Forest Service developed Design Feature T-0 directing snowplow operations to leave 2-3 inches of snow on the roadbed to reduce the likelihood of soil disturbance or harming individual plants. However, the Forest Service also notes there may be issues with snow piles from plowing:

Indirect impacts may include the creation of snow piles or snow berms and localized compaction of snow that may alter snow melt timing. Another indirect impact may be the redirection of surface water flows away from natural drainages and towards occupied habitats. CuMo Botany Weeds Report p. 32.

Depending on the road design, snowfall and snow plow patterns and snow pile locations, snow piles could adversely affect Sacajawea's bitterroot individuals under or next to the snow piles. Oversaturated soils could occur directly underneath snow piles or along snow berm drainages and these wetter conditions could adversely affect individuals. In addition, individuals covered under deep, persistent snow piles could experience delayed emergence. Given the species' short

period of time above ground and time inflorescence, individuals with delayed emergence may miss pollinators and experience hotter, later season temperatures. There are no design features to address this issue. We recommend that the snow piles be plowed or end-hauled to recently surveyed areas with no *Sacajawea's* bitterroot or that snow piles be distributed in such a way that they do not more than double the amount of snow water equivalents.

We are also concerned that the aggregate effects of all of these activities were never considered. As the Botany Report states: "This analysis considered the probability and intensity of individual associated activities to individuals." The Report goes on to admit that: "When considered as a whole, the overall probabilities and intensities would reflect an aggregate of individuals that may experience one or more impacts for the duration of the associated activities." To take a hard look, the Forest Service must consider the aggregate adverse effects, and cannot blow off each category of effect in isolation.

Many statements in the Botany Report show that the Project's adverse effects are highly uncertain and potentially significant to this rare, sensitive, and highly at-risk species. The Report acknowledges: "Given the number of known occurrences and lack of connectivity, the species may persist but be unable to recover an occurrence lost during a catastrophic event."; "[A]t the species level, *Sacajawea's* bitterroot would be considered at risk of not withstanding or recovering from stochastic events."; "Little is known about *Sacajawea's* bitterroot reproductive biology and recruitment success."; "[W]e may infer recruitment success is low and very few seeds survive to reproductive maturity. We may also infer that the time required for an occurrence to recover from the loss of individuals may be slower than the time required for other herbaceous forbs."; "The species exhibits a low level of representation through low genetic diversity and may be unable to adapt as quickly to changing environments."; "As a species, *Sacajawea's* bitterroot has a low level of redundancy, given the number of occurrences and lack of connectivity."; "The species may persist but be unable to recover an occurrence lost during a catastrophic event."; and "Research has yet to determine a threshold of the number of individuals the occurrence [at the Project site] may withstand before eroding its ability to recover." Due to these statements showing the risks to *Sacajawea's* bitterroot are highly uncertain and potentially very severe, the Botany Report concludes its section on species-level effects with the very vague and meager claim that: "By reducing the loss to less than 1 percent [of plants at the Project site], the mitigation measures *improve the possibility of* long-term recovery of the occurrence and *reduce the loss of* redundancy, resiliency, and representation at the species level." (Emphases added). A loss in redundancy, resiliency, and representation at the species level, and only a possibility of occurrence recovery for such a rare species is the kind of potentially significant impact requiring an EIS and raises questions about whether the Forest Service is fulfilling its duty to maintain the viability of all sensitive species. *See Bark*, 958 F.3d at 871 (requiring EIS where potential impacts are highly uncertain).

Compounding these issues, the Forest Service also failed to take a hard look at the cumulative effects to Sacajawea's bitterroot. The Botany Report does identify numerous cumulative effects from "dispersed recreation, snowmobile grooming, noxious weeds treatments, Forest Products gathering, grazing, fire suppression, commercial timber harvests, vegetation management activities, and prescribed fire on NFS lands; minerals exploration; implementation of the 2007 CuMo Plan reclamation actions; and climate change." Despite acknowledging these effects, the Botany Report fails to include any quantified or detailed information necessary to take a hard look at cumulative impacts. Further, the Report admits climate change can affect Sacajawea's bitterroot by causing "declining snowpacks, greater evaporative demand from the atmosphere, and shorter effective growing seasons." The Report also admitted that: "For Sacajawea's bitterroot, given the species' autecology and the lower elevation range of the population in the project area compared to other species occurrences, the population may be vulnerable to stressors resulting from climate change." This too shows that the Project, considered together with climate change and other cumulative effects may have significant impacts requiring an EIS. *See Bark*, 958 F.3d at 873 (ordering EIS where Forest Service "analysis creates substantial questions about whether the action will have a cumulatively significant environmental impact").

Forest Plan standard BTST01 requires: "Management actions that occur within occupied sensitive plant species habitat must incorporate measures to ensure habitat is maintained where it is in desired conditioners, or restored where degraded." Given all the potential negative effects of project activities - and their cumulative effects, the Forest Service cannot claim to ensure habitat for Sacajawea bitterroot will be maintained or successfully restored following project activities. Furthermore, without adequate and recent baseline monitoring for population numbers and distribution, the Forest Service will not be able to ascertain if or how the population was affected by project activities and whether the post-project restoration was successful or not. Due to each of the errors identified above, the Forest Service will not comply with this standard, in violation of NFMA, if it approves the Project as set forth in the Draft DN/FONSI.

Suggested Remedies

- Develop a Sacajawea's bitterroot protection alternative in an EIS or Supplemental EA.
- Conduct comprehensive species presence surveys to use in an EIS or Supplemental EA.
- Ensure surveys meet best practices, including on-the-ground field surveys, done when the plants are green and flowering.
- Develop a additional design features to address potential impacts from snow piles from plowing activities
- Monitor the phenology for Sacajawea bitterroot appearance and flowering.

- Monitor for noxious weeds in and around Sacajawea bitterroot habitat and along transportation routes (baseline, during operations, and every year following reclamation for five years).
- Surveying for other activities likely to affect species population and distribution such as OHV use off designated routes and dispersed camping.
- Evaluate the effectiveness of mitigation measures in an EIS or Supplemental EA.
- Provide quantified and detailed information about cumulative impacts in an EIS or Supplemental EA.
- Provide qualified botanists to oversee exploration mitigation measures.
- Develop other measures to ensure avoidance of the rare plant populations is required, not optional, and is actually carried out.

V. Water Quality Impacts and Monitoring

We have both surface water and groundwater quality concerns regarding the project. Objectors raised these issues in their Draft EA Comments at pages 34–37. As noted above, in the 2012 decision in *Idaho Conservation League, et al. v. Forest Service*, the court held that the Forest Service violated NEPA when it failed to take a hard look at the potential effects of the project’s drilling to groundwater hydrology. Accordingly, all future project analysis must consider this decision.

Notwithstanding the 2012 court decision, a comprehensive analysis of surface and ground water characteristics, and their interaction will be critical to ensure proposed project impacts do not adversely affect water quality, or riparian and biological communities within the Project area, downstream of the project area, or along the transportation route. Furthermore, and as noted above, local communities, the City of Boise, and the greater Treasure Valley agriculture community all rely on clean water within Grimes Creek, Mores Creek and the Boise River. A surface and ground water characteristics analysis must also be broad and thorough enough to adequately understand potential Project impacts to these communities as well.

The baseline data set for groundwater and surface water quality in the Environmental Assessment (EA) is insufficient, with inconsistencies in sampling locations and data gaps that weaken its reliability. Sampling efforts were sparse, and water samples were not collected systematically across locations, leading to an uneven representation of baseline water conditions. Furthermore, many pollutant measurements were last taken in 2017, rendering the data outdated given current environmental conditions and potential changes in pollutant levels. The Groundwater Technical Report’s statement that "data were collected between 2012 and 2023 (11 years)" is misleading because samples were not collected each year, resulting in significant data gaps. These inconsistencies and the lack of up-to-date sampling compromise the EA's ability to establish an adequate baseline, which is essential for accurately assessing potential impacts on water quality over the project's duration.

The Quality Assurance Project Plan included within Project Documents states that sampling frequency will be quarterly before, during and after the drilling season (April 15 to December 15). Monthly monitoring would provide a more accurate understanding of water quality on site and ensure greater confidence that water quality on site is not being degraded. In addition, monitoring must continue after reclamation procedures have been completed to ensure their effectiveness. Finally, monitoring results and inspection reports should be posted on the project website for public transparency.

Grimes Creek is listed by the State of Idaho as impaired due to excess sediment and temperature and is not fully supporting beneficial uses. Due to effects from the proposed Project activities, the Pioneer Fire in and around the Project site, salvage activities and other cumulative effects, sediment loading could potentially be increased. We are concerned that water quality monitoring will not be adequate for this project. Notably, the Quality Assurance Project Plan (QAPP) included within the EA Appendix 6.1 appears to state that turbidity, dissolved oxygen (DO), oxidation reduction potential (ORP), total dissolved solids (TDS) and total suspended solids (TSS) are field parameters that are not required for collection (QAPP, Table 5). Given that Grimes Creek is impaired due to excess sediment it would appear that collection of turbidity, DO, ORP, TDS, and TSS are critical to ensure the proposed project will not contribute to additional water quality degradation. Monitoring requirements must be updated to include turbidity, DO, ORP, TDS and TSS.

The stretch of South Fork of the Payette River from Sweet Creek by Grimes Pass Road is an eligible river under the Wild and Scenic River Act (WSRA). It is appreciated that fuel will no longer be transported along the route that is adjacent to the South Fork. However, the analysis on the impacts to the South Fork of the Payette is inadequate. The South Fork is only evaluated in the event of a fuel spill, which narrows the scope on the kinds of impacts the Project could have. The Forest Service needs to thoroughly evaluate how any kind of traffic resulting from the Project could potentially impact the water quality of the river, such as an increase in sedimentation from vehicles.

Further specific concerns with the proposed list of analytes to be monitored exist. Per the QAPP, arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, copper, fluoride, and zinc are proposed for monitoring. However, several analytes for which Idaho has groundwater quality standards (IDAPA 58.01.11, Tables II and III) are not proposed for monitoring including: antimony, beryllium thallium, iron, manganese, aluminum. Accordingly, given the associated nature of these metals to the existing metals proposed for monitoring these additional metals must also be included for monitoring to ensure compliance with IDAPA 58.01.11.

The Forest Service should include additional details regarding specific water quality thresholds with respect to turbidity, metal concentrations, etc. and establish triggers for additional action. Below is a reference to thresholds associated with the Kilgore exploration Project. A similar detailed plan should be developed for the 2023 CuMo exploration project:

When water quality data over a period of three consecutive months indicates a substantial increased concentration of the water quality parameters listed in the EA and Otis' baseline water quality testing, the USFS will require Otis to investigate possible causes for the negative change in water quality (Kilgore, North Area (Otis Capital USA, Corp. Kilgore Gold Exploration Area Project-Mine Ridge North Area) Decision Notice, p. 70).

The Kilgore EA goes on to define a substantial increase and describe first and second actions to verify the monitoring results as well as steps to mitigate the impacts:

Within 45 days, Otis will confer with the USFS and other agencies to develop monitoring and best management plans consistent with Idaho rules to address the source of contamination. (Kilgore, North Area (Otis Capital USA, Corp. Kilgore Gold Exploration Area Project-Mine Ridge North Area) Decision Notice, p. 71).

In addition to metals contamination concerns, Project documents state, at various times, that all drilling fluids to be used are “non-toxic” and “biodegradable”. Promising that all drilling fluids are “non-toxic” and “biodegradable” is inappropriately vague and does not absolve the Forest Service and Idaho Copper from ensuring all applicable federal and state regulations are met.

Page 9 of the Plan of Operations states, “MSDS information will be available for these chemicals (see Attachment 4 - Spill Protection, Control & Countermeasure Plan, June 2011).” However, no MSDSs or SDSs were included in project documents (including for the proposed fluids of “Max Gel”, “Poly Plus 2000”, or “Rod Ease”).

While project documents do state that “All drill fluid additives pumped down hole are regulated and meet all State and federal safety and environmental standards”. (Plan of Operations, page 11 and Proposed Action Report, page 20). This statement is also vague and lacks appropriate analysis and detail.

Primary applicable regulations include Idaho Surface Water Quality Standards (IDAPA 58.01.02) and Idaho Ground Water Quality Rules (IDAPA 58.01.11). Both include a specific list of constituents for which surface water and ground water quality must be protected against as well as general duty clauses to protect overall surface water and ground water quality. The Forest Service and Idaho Copper must provide up to date SDSs for all proposed drilling fluids and comprehensively compare them to all applicable regulations for compliance.

In our comments during the scoping period and for the draft EA, we raised concerns about the use of fire-fighting chemicals associated with the Pioneer Fire may have impacted the site and proposed project activities may interact with these chemicals. We recommend that the Forest Service analyze whether fire-fighting chemicals were used within the project area and analyze if and how project activities may interact with these residual chemicals in an EIS.

Lastly, the Surface Water Hydrology Report did not analyze the potential effects on municipal water supply as it claims that no municipal watersheds occur within the project area. However, the Forest Service needs to include the potential impacts to any municipal water supplies downstream from the project. The Boise River provides 30% of Boise's drinking water supply.³ Contamination in the headwaters of the Boise River watershed could have drastic impacts on Boise's drinking water supply.

Suggested Remedies

- Require monthly testing for groundwater and surface water monitoring to gather adequate data to accurately analyze the Project's effects on water quality and
- Require turbidity, dissolved oxygen (DO), oxidation reduction potential (ORP), total dissolved solids (TDS) and total suspended solids (TSS) as necessary parameters to collect for water quality monitoring to ensure rivers and streams are fully supporting their beneficial uses.
- The Forest Service needs to conduct a thorough evaluation to determine how Project operations might affect water quality of the South Fork of the Payette River, including increased sedimentation from vehicles on proposed routes.
- Conduct an EIS that includes an analysis on the potential impacts to Boise's drinking water supply.
- Provide up to date SDSs for all proposed drilling fluids.
- Include additional details regarding specific water quality thresholds with respect to turbidity, metal concentrations, etc. and establish triggers for additional action.
- Implement a systematic water sampling program that ensures consistent baseline data collection across all relevant groundwater and surface water locations. Conduct sampling at regular intervals, ideally on an annual basis, to capture any temporal changes and reduce data gaps.
- Update pollutant measurements from 2017 (Table 1. In Groundwater Technical Report) and ensure that all current data meets the latest water quality standards.

VI. Drilling Impacts to Water Quality and Hydrology

In the 2012 decision in *Idaho Conservation League, et al. v. Forest Service*, 2012 WL 3758161 (D. Idaho Aug. 29, 2012), the court held that the Forest Service violated NEPA when it failed to

³ <https://mywater.veolia.us/idaho/water-in-my-area/about-my-water>

take a hard look at the potential effects of the project's drilling to groundwater hydrology. Objectors raised this issue in their Draft EA Comments at pages 4–5.

To comply with the 2012 decision (and with NEPA, the Organic Act, and other legal duties), and prior to approving the project, the Forest Service must: 1) conduct an adequate and up-to-date assessment of baseline hydrologic conditions at the site, 2) study and disclose the potential effects of drilling on water quality and quantity, and 3) develop appropriate monitoring and mitigation strategies for the Project. The water quality and hydrology baseline information relied upon in the EA is too limited and outdated to be sufficient under NEPA.

We also remain concerned that the Forest Service has not followed all recommendations in the Forest Service's July 2020 guidance, titled "Working Guide[:] Evaluating Groundwater Resources for Mineral Exploration Drilling", which were submitted with our scoping comments in 2023. That document warns of specific situations present here where "significant effects to groundwater might occur", including: drilling in municipal watersheds (here, Boise and other Treasure Valley communities); drilling in formations known to have "dissolved constituents of concern" (here, contaminants from mining that has already occurred in and near the Project area); and areas where "groundwater supporters Threatened or Endangered Species" (here, bull trout). Working Guide, p. 1. But these issues were not adequately considered in the EA.

We also believe that the Forest Service has not adequately accounted for the risk of contamination related to drilling within the vicinity of historical mining features, such as those identified in Idaho DEQ's 2008 Preliminary Assessment Report⁴ for the Enterprise Group of mines, which we also submitted with our scoping comments. Moreover, the Preliminary Assessment had identified high levels of arsenic in mine workings but concluded that the risk to receptors was low if the activities on that site remained the same. Since 2008, there has been extensive development on many private properties in Idaho County and it is unclear if the risk at this nearby site remains low. While management of these historic mine sites is independent of project activities, increases in any risk of arsenic contamination could have cumulative effects that should be analyzed.

The level of arsenic in all of the soil sample locations poses an excess cancer risk and a hazard for all residential receptors and a moderate risk for non-residential receptors. All of the soil/sediment samples showed elevated arsenic, cadmium at mill site, and lead concentration, particularly at the former millsite. Seepage from the lower adit contained elevated lead and zinc concentrations, though down gradient surface water samples indicate that the heavy metal constituent levels were below the permissible limit.⁵

⁴ <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/5673>,

⁵ Ibid, p. 39.

Potential Exposure for Humans: This site is infrequently visited by mountain bikers, hikers, hunters, snowmobile operators, off-road vehicles, or various other outdoor recreation enthusiasts. Humans may receive very small doses of heavy metals, especially arsenic and lead. Aerial dispersion of waste particulates from the tailings or waste dumps may occur. Direct contact with the wastes appears to be the most significant route of exposure to humans for elevated constituents. The exposure levels do not appear to pose a substantial 39 risk, based upon current property uses.⁶

As stated earlier in our objections, the water quality baseline data in the EA lacks consistency and reliability. Sampling was not conducted systematically across all testing locations, and many pollutant measurements are from 2017, making the data outdated. Additionally, while the report states that data were collected over 11 years, this is misleading, as there were large gaps between sampling years. These issues result in an incomplete baseline, limiting the EA's capacity to assess potential impacts on water quality accurately.

The EA acknowledges that “a small chance exists that the drilling operations could intersect underground workings, leading to an LCZ.” But the EA does not disclose how “small” this chance is. Earlier in the EA, the Forest Service estimates “at least 1.9 miles of underground workings” from historical mine sites are found within the cumulative effects area. The EA also fails to provide any detailed or quantified information or otherwise take a hard look at the cumulative risk added to this “small” risk from the Heart of Gold minerals project, beyond simply acknowledging that the Heart of Gold project is reasonably foreseeable and will overlap temporally and geographically with the CuMo Project.

To take the required “hard look” at a proposed project’s effects, an agency may not rely on incomplete or incorrect assumptions or data. Given that the exact drilling locations are not specified in this exploration plan, the Forest Service needs to require comprehensive groundwater sampling across the entire project area that accounts for seasonal variability prior to the commencement of drilling to ensure that a proper baseline is established.

Without sufficient baseline data, the impact to groundwater remains uncertain because there is no information as to the current conditions of the actual Project Area. Thus, it is impossible to know if the proposed exploration activities will impact water quality. “Without establishing the baseline conditions which exist ... before [a project] begins, there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA.” *Great Basin Resource Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016) (quoting *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988)).

ICL raised a similar objection to Newcrest Resources’ Jarbidge Exploration Project in northern Nevada when the Forest Service released a draft decision authorizing the project in 2020. ICL

⁶ *Ibid*, p. 39.

and the Forest Service agreed to an objection resolution that included the following condition regarding groundwater monitoring (see Newcrest Objection Number 20-04-17-0039-218, attached):

Newcrest will be required to collect information on the background conditions of groundwater, including the presence and elevation of ground water in each drill hole. Background data collection methods could include the use of grouted piezometers, and groundwater sampling from within strategically located exploration drill holes where the water table is encountered. After the collection of background data in the first two operating seasons, Newcrest will develop a groundwater monitoring program outlining the location of groundwater monitor wells for installation during the third operating season. Monitoring, groundwater sampling, and reporting will be coordinated with NDEP-BMRR and the Forest Service. If routine, scheduled monitoring detects abnormal deviation from background and the Forest Service determines that the deviation may be the result of project exploration activities, Newcrest will consult with NDEP-BMRR and the Forest Service to determine if and where additional groundwater monitoring and investigation is needed. - Newcrest Objection Number 20-04-17-0039-218.

Suggested Remedies

- Gather up-to-date and comprehensive groundwater hydrology information for Project site for use in an EIS or Supplemental EA.
- Gather up-to-date information about the current property uses at the Enterprise Group and associated historical mine workings in the Project effects area in an EIS or Supplemental EA.
- Evaluate and disclose direct, indirect, and cumulative impacts to water quality and quantity from drilling, including impacts to municipal watersheds and to bull trout and other species.
- Provide quantified or detailed information and analysis about the cumulative risk of intercepting historical underground workings and other cumulative effects to groundwater hydrology from the Heart of Gold project and other reasonably foreseeable projects in an EIS or Supplemental EA.
- Require water quality monitoring and reporting during drilling operations, including the presence, elevation and chemical composition of ground water in each drill hole.

VII. Transportation of Hazardous Materials

Objectors have raised the issue regarding potential impacts to the watershed and the City of Boise's municipal water supply if there is an accident during the transportation of hazardous

materials on riverside roads or a leak or spill on-site in their Draft EA Comments on pages 24–29. One of the most important ecological services the National Forest System provides is clean water.

In the published EA, the three primary transportation routes present traffic originating from Idaho City, Horseshoe Bend, or Garden Valley. Since all primary routes share overlapping access roads, these points of entry help differentiate proposed routes, however, it must be taken into account that traffic impacts and spill risks must assume additional mileage and at the very least assume all traffic originates from the Boise/Treasure Valley area. During the drilling season, many of these access routes are extremely busy with recreational traffic, particularly on weekends as individuals travel to and from the Treasure Valley.

When evaluating the Idaho City route and the above assumption, given the proximity to water intakes and the lack of dilution from reservoirs, this route from the Highway 21 bridge over the Boise River to Lucky Peak dam is of particular concern to the City of Boise's water supply and the route along Mores Creek is of particular concern to Wilderness Ranch.

Additionally, the road from Idaho City to New Centerville raises additional concerns. This 2-lane forested route, while not directly adjacent to large streams, is a very popular route with high volumes of traffic. We are concerned about potential public safety impacts along this route during busy summer months.

The stretch of South Fork of the Payette River from Sweet Creek by Grimes Pass Road is an eligible river under the Wild and Scenic River Act. While we appreciate the added design feature that this route will not be used for fuel haul under normal circumstances, we are concerned about potential exceptions. Even without fuel haul, we are concerned that this route could still be used to transport other materials for mining and that the estimated 30 trips per day threaten several of the Outstandingly Remarkable Values which include scenery, recreation, and ecology.⁷

Although sections of the Grimes Pass Road are under a FRTA (Federal Roads and Trails Act) easement with maintenance authority given to Boise County, this does not absolve the Forest Service of its NEPA duty to analyze the impacts of permitted activities on these roads on forest resources. For purposes of NEPA, it does not matter who maintains the road. The Forest Service must consider impacts. Furthermore, Grimes Pass road is under Forest Service authority, even if it is maintained by the county (*See Idaho Rivers United v. US Forest Service*, No. 11-cv-95-BLW, 2013 WL 474851 (D. Idaho Feb. 7, 2013 (holding USFS has authority over highway through National Forest under multiple authorities, including NFMA, even though the State of Idaho operates the highway pursuant to an easement with the Forest Service))).

⁷ http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5394050.pdf

While never explicitly referenced in the EA, attachment 7, the CuMo Exploration Project Fuel Transport Memorandum (Memorandum), outlines additional analysis, crash estimates, and risks associated with project-related fuel transport. While we appreciate the additional analysis and assessment, we feel that the Memorandum still falls short of fully evaluating all potential risks. We request that this report be updated for future reference.

The updated Fuel Transport Memorandum only evaluates crash data on roads classified as rural, which limits analysis to roads outside the limits of a city of 5,000 or more people. As emphasized above, transportation of hazardous fuel does not exist in a vacuum and only begins at Idaho City, Horseshoe Bend, or Garden Valley. Additionally, the scope of analysis is further narrowed to only assessing a single route. This method is stated in the memorandum to produce a “more conservative estimate for the anticipated traffic crashes from fuel transport vehicles.” While we understand that the Forest Service needs to focus its analysis on a reasonable area, not calculating the additional miles and traffic volumes that are associated with this project outside of these rural roads and the different possible routes significantly underrepresents the true picture and potential risks associated with transportation in general and the transportation of hazardous materials associated with this project.

We recommend that the Forest Service spend additional time analyzing the overall traffic volumes, types of traffic (car, truck, semi, commercial), potential hazards, availability and quantity of emergency turn outs, accident data on all potential access routes, not just those that are presented by IDCU as the three primary routes. Considering the high volume of traffic that will result from this project, we strongly encourage that hazardous materials specifically, and general project traffic when feasible, utilize whichever route that sees the lowest volume of traffic to avoid additional interactions or potential incidents involving the general public.

The Forest Service fails to develop alternatives that minimize risks to bull trout and risks to other resources, including public safety and surface water supplies. Specifically, the Forest Service should consult with the US Fish and Wildlife Service regarding the levels of risk for bull trout for different haul routes.

As objectors raised in previous comments on the draft EA, attachment 7 (Fuel Transportation Memorandum) in appendix 6.1 of the EA and appendix A of the BA seems to contain outdated information and should be updated. One of the assumptions listed in the memorandum states that “[t]here are no listed aquatic species within ten stream-miles downgradient of the Project access routes. The South Fork of the Payette River is designated as bull trout habitat; however, the river is not occupied by bull trout.” This assumption has been proven false by the findings in the EA’s Fisheries Report.

The Forest Service's response to this comment stated "The traffic data were updated but not other language in the original memo. However, fuel will not be transported along the South Fork Payette River." This response does not address our concerns. The assumptions made in the Fuel Transport Memorandum are outdated. While we appreciate that fuel will not be transported along the South Fork of the Payette River, there is still concern for increased sedimentation, which is addressed in the water quality section of these objections.

The Forest Service needs to update the attachments or communicate what information from those attachments is still relevant to the project and what is not. If the analysis is based on inaccurate assumptions, then the analysis does not conclude accurate results.

The Forest Service should review the previously completed risk assessment and determine if there are additional ways to avoid or minimize identified risks. The Forest Service should also evaluate the transportation route to locate particularly hazardous areas that could be improved through guardrails, lower speed limits, signage, pilot cars, or other road improvements.

We understand that IDCU and Boise County may have completed a road maintenance agreement and, while this will hopefully reduce accidents resulting from degraded road conditions, this agreement does not prevent accidents and does not abrogate the Forest Service from its responsibility under Forest Service Standard SWGU11 to take steps to reduce the risk of fuel spills:

Transport hazardous materials on the Forest in accordance with 49 CFR 171 in order to reduce the risk of spills of toxic materials and fuels during transport through RCAs (USDA 2010)

In attachment 5: Spill Protection, Control, and Countermeasure Plan (SPCC) states that there may be isolated instances in which it is "deemed necessary" to transport and store fuel or oil in 55-gallon containers or larger, drums would be stored within 95-gallon overpack drums or similar containers and fuel would be managed in accordance to the SPCC plan. First, it is unclear if the Forest Service or IDCU is the entity in charge of determining necessity. Second, we point out that at least 60 gallons of fuel would be transported normally per fuel transport vehicle, making the greater than 55-gallon-"isolated incident" appear irrelevant.

The EA notes that a standard marine-type fuel containment boom, spill prevention kit, and fire kit would be stored at the re-fueling site and that a spill prevention and cleanup kit would be carried in vehicles transporting fuel and at drill sites. These steps represent minimal measures and we also recommend that spill kits be placed along the fuel haul route at several strategic locations where stream access and stream morphology (fords, pools, etc) allow for quick and

easy set up in the event that there is a fuel spill upstream and vehicles with the spill kit are unable to deploy the kit far enough downstream to capture the spill.

The Forest Service states that various spill response and prevention measures would minimize the risk of contamination to water bodies from fuel storage, transportation and handling during refueling (SPCC - attachment 5) and provides an outline of these measures, but does not actually describe these measures in sufficient detail, discuss how they will be enforced, or disclose what the environmental impacts would be should these measures not be sufficient.

Suggested Remedies

- Analyze the overall traffic volumes, types of traffic (car, truck, semi, commercial), potential hazards, availability and quantity of emergency turn outs, accident data on all potential access routes, not just those that are presented by IDCU as the three primary routes. Considering the high volume of traffic that will result from this project, we strongly encourage that hazardous materials specifically, and general project traffic when feasible, utilize whichever route that sees the lowest volume of traffic to avoid additional interactions or potential incidents involving the general public.
- We recommend that the Forest Service review relevant information regarding the issue of fuel transportation for the Golden Meadows Project on the Payette National Forest. The Payette National Forest had completed a *Petroleum Risk Assessment and Risk Reduction Procedures* analysis (attached) which, while still not sufficient from our perspective, did provide a relative comparison of the miles of riparian areas within two transportation routes. Based on the information in this analysis, the Forest Service is directing the operator to use one route for one part of the year and the other route the remaining part of the year.
- One design feature to examine would be to avoid or limit fuel haul during certain road conditions such as spring breakup and during particularly busy times for other traffic, and to potentially haul larger amounts of fuel during periods of good road conditions and fewer numbers of other vehicles. Road and traffic conditions vary throughout the year and throughout the week. The analysis should factor in the pros and cons of storing fuel in suitable locations on site. These less-frequent, higher-volume fuel trips should be accompanied by pilot cars and spill cleanup vehicles.
- The Forest Service should allow for the minimal amount of chemicals necessary for that month's operations. If chemicals are transported and utilized as needed throughout the process, there will be a smaller stockpile on site if operations are suspended for some reason. If operations are suspended unexpectedly, there will also be a smaller stockpile to transport back out through the transportation

corridor for reclamation. IDCU should provide the Forest Service with monthly reports on fuel and chemical usage so that the allowable amounts of materials can be further refined for future operations. The Forest Service needs to further define the quantities of materials that can be transported on a monthly basis.

VIII. Temporary Roads

Objectors raised this issue in their Draft EA Comments at pages 30–31. Many Project impacts are underestimated based on the Forest Service’s unreasonable assumption that all temporary roads will be reclaimed during the Project’s lifetime. Because roads need not be reclaimed if planned for future minerals use, the Forest Service cannot assume they will all be reclaimed. In fact, experience tells us that this is not a reasonable assumption. Roads constructed by Idaho Copper’s predecessors in 2011 (from the 2007 CuMo exploration project) have yet to be reclaimed. Furthermore, the exploratory road network constructed by AmEx in the 1970s has yet to be decommissioned and some routes are being utilized for the proposed exploration. These undesignated routes should be decommissioned at the end of project activities along with the more recently constructed and proposed routes. Throughout the EA and the many sections where roads have adverse impacts, the Forest Service needs to consider the effects of exploration roads remaining longer than the life of the Project.

IDCU proposes to continue to use existing 5.5 miles of the 1970’s exploration program and construct 8.9 miles of new temporary roads. Depending on the reclamation sequencing, temporary roads may remain the landscape throughout the four year drilling period and up to two years post-drilling until they are reclaimed. (Proposed Action Report, p. 16). The presence of roads on the landscape can have adverse impacts on wildlife and vegetation, including from dust generation that can affect nearby plants and pollinators. Keeping unauthorized recreational use from occurring on these authorized-use only access roads is a continual challenge for land management agencies: “There is currently a surge taking place in the amount of ATV and Motorcycle use in the Grimes Pass area, which includes the Project Area.” (2010 CuMo EA, p. 74). Recreation use has increased significantly since then. We are concerned that these temporary roads may receive high recreational use before they are fully reclaimed. Since these roads are not engineered for recreational use and have multiple dead ends, we are concerned that this road system will lead to trail pioneering, spread of noxious weeds, human-caused wildfires and other resource damage. We note that over 80% of wildfires in the Boise area have been human-caused, including the Pioneer Fire. As mentioned before regarding a more comprehensive concurrent reclamation plan, we suggest that the Forest Service close these roads as soon as the drilling plan is complete for each plan. An alternative is to ensure that sufficient personnel are on site to sign, gate and enforce road closures.

In addition, the EA states that access roads will be constructed on ridges whenever feasible, using natural routes and topographic features. We note that Sacajawea's bitterroot often occurs on ridgetops and exposed areas. We recommend modifying this direction to state that access roads will be constructed on ridges whenever feasible, using natural routes and topographic features, and will be sited outside of Ring 1 (known population) and Ring 2 (20 m buffer) of Plant Conservation Areas. The maps in the May 2011 Proposed Temporary Drill Roads, included as an appendix of the current proposal, shows several routes that do not follow these features. Furthermore, at the public meeting hosted on June 18, 2024 by the Forest Service in Boise, Idaho, it was stated in the video that the locations of the proposed roads may change based on results from drilling operations. It is difficult to assess and provide substantive comments if all of the potential drill pads and temporary road locations are not fully disclosed. This is a key piece of information that should have been provided in the EA and should be included in an EIS.

Suggested Remedies

- Consider the impacts of Project roads remaining on the site longer than the stated duration of the Project. Evaluate these impacts in an EIS or a Supplemental EA.
- Ensure that undesignated and older exploratory roads, including those created in the 1970s and 2011, are fully decommissioned at the end of the project to prevent lasting environmental impacts and unauthorized use.
- Require a realistic timeline for reclamation, accounting for the potential that roads may remain in use post-project if intended for future mineral exploration.
- Modify construction plans to ensure that access roads avoid critical areas where sensitive plant species, like Sacajawea's bitterroot, are known to grow, particularly within Ring 1 (known population) and Ring 2 (20-meter buffer) of Plant Conservation Areas.

IX. Sediment Modeling

As stated in Objector's 2024 comments (pp. 31–32), The Idaho batholith is notoriously unstable and landslides and mass wasting events are common in the area, with roads constructed within the Idaho batholith increasing surface erosion by 220 times the natural rate per unit area. Because the underlying geology consists of biotite granodiorite which disaggregates easily on steep slopes due to the geologic tendency toward rapid surface erosion and mass wasting, we recommended that the Forest Service use appropriate methods to provide accurate predictions of sediment delivery under each alternative.

The Forest Service responded to our comment by stating that, "field verification procedures and Forest Service approval of all temporary road construction minimize landslide risk," (CuMo Comment Response, NGO-1185-IRU et al, line 99). The Soils Technical report makes reference

to the project adhering to Forest Plan standards and guidelines, specifically SWST02 (detrimental disturbance) and SWST03 (total soil resource commitment) and the fact that, “Some reclamation of existing temporary roads would occur as per the 2007 Plan. Where these reclamation activities occur, DD and TSRC will improve. Because DD from project activities would not exceed 15% of the project area, SWST02 would be met,” (Soils Technical Report, p. 1). However, neither the project proponent nor the Forest Service provide a timeline for the reclamation of the previously constructed temporary roads and our review of the Soils Technical report indicates that the Forest Service failed to perform even the most basic sediment modeling for this project, which violates NEPA and the Forest Plan by failing to disclose potential impacts from sediment delivery.

Suggested Remedies

- Conduct a GRAIP (Geomorphologic Road Analysis and Inventory Package) analysis in the areas of the proposed temporary roads and the existing temporary roads to determine actual sediment delivery ratios for the existing temporary routes and provide an accurate modeled sediment delivery for the proposed temporary roads.
- Use these results in the development of alternatives and design features to avoid, minimize and mitigate increased risk of sedimentation.

X. Detrimental Soil Disturbance and Total Soil Resource Commitment

As stated in Objector’s 2024 comments (pp. 32–33), we point out that the timing for conducting concurrent reclamation within the 5-year exploration plan is unclear given the “open ended nature” of the proposal, noting that some of the “temporary roads in the project area date back to AMAX and exploration in the 1960s-1980s and that the Connector road that was constructed in 2011 is still in use and has not been reclaimed as originally envisioned and having been on the landscape for 13 years, well beyond the Forest Service’s own definition of “temporary,” stated as “Effects lasting from 0 to 3 years in duration,” (Boise Forest Plan Glossary, p. 49). In fact, the entire project fails to fall within the Plan definition of “temporary”, and is most accurately described as “short-term,” a period of time lasting from 3 to 15 years in duration (Forest Plan Glossary, p. 44).

We also expressed our concern that drill pads have a disproportionate effect on the environment, detrimental soil disturbance and total soil resource commitment. While roads occupy much more surface area, roads have intermittent use limited to the change of crew shifts and occasional movement of large equipment from one drill site to another. In contrast, drill pads that are in use are occupied 24/7, have high noise levels and use powerful lights for night activity. Since trucks, equipment and fuel are parked on site, there are increased opportunities for spills and soil impacts are greater, particularly with sump pit construction. The large amount of equipment

stored on site for long periods of time greatly increases the chance of leaks and spills. Furthermore, the heavy equipment and vehicle parking within the pads increases soil compaction. In addition, the occupancy by drill crews increases the disturbance level and risk of fires from human sources. Because a comparison of miles of road, or even acres of surface disturbance between alternatives is not necessarily the best metric for certain impacts, we recommended that the analysis show the different locations of drill pads in each alternative.

The Forest Service provides no response to our comment, stating that the issue is addressed in the EA or Specialists Report (CuMo Comment Response, NGO-1185-IRU et al, lines 101-103). Regarding our recommendation that the analysis show the different drill pad locations and the impacts of each, the Forest Service states, “ Unless there is a site-specific soils concern (such as a spring or wetland soils), the location of these drill sites for DD calculations is irrelevant; the metric of DD is simply a percent of the total project area,” (Soils Technical Report, p. 11). Regarding temporary roads, the Forest Service says in the Comments Response:

The roads proposed for use in the 2023 CuMo exploration project would be reclaimed under this Plan of Operations if they are used for this project (emphasis added). However, most of those existing temporary roads overlap with roads currently bonded under the 2007 Plan of Operations as described in EA Table 9 Action Number 14. The 2007 Plan reclamation efforts will occur whether or not the 2023 Plan is implemented.

Yet, as we point out above, the 2011 Connector road and the 2007 temporary roads remain on the landscape, far beyond the definition of “temporary” discussed above, and though the 2007 Plan of Operations is long obsolete and the project proponent has changed, the Forest Service has failed to return those routes to a natural state through decommissioning and obliteration. Further, the DD and TSRC analysis indicates that the proposed actions were overlaid with known disturbances from existing or ongoing management activities but fails to clearly indicate if the Forest Service included unauthorized user-created roads in this analysis or if it only incorporates authorized and recognized system routes. We are concerned that the inclusion of unauthorized routes would raise the DD and TSRC percentages, perhaps beyond the levels prescribed in the Forest Plan (15% total activities for the former and 5% for the latter). Since project reclamation is described as being “concurrent” with exploration activities, the Forest Service should require IDCU to begin reclamation activities on the 2007 temporary roads at the start of the first field season.

Suggested Remedies

- Include all disturbances, including unauthorized/user-created routes in the DD and TSRC analysis

- Require reclamation of the 2007 temporary roads at the onset of the first field season in order to comply with the concurrent reclamation stipulation laid out in the 2023 CuMo proposal
- Identify unauthorized roads in the project area and decommission those routes as mitigation against the exploration activities.
- Consider other alternatives and design features to avoid, minimize and mitigate the impacts of exploration roads on the landscape.

XI. Landslide Prone Areas

Objectors raised this issue in their Draft EA Comments at pages 33–34. The EA notes that temporary roads could be built in areas of moderate and high landslide risk:

During field verification, soil creep and groundwater seeps were observed, indicating a moderate hazard. EA p. 56

Should there be a landslide in these locations, we are concerned that the debris could affect water quality and bull trout habitat in Grimes Creek.

If new roads are built in areas prone to hillslope failure, the Proposed Action could impact landslide potential in the northeast sector of the project area. Table 14 displays the proportion of new and existing temporary roads by landslide prone category. Draft EA p. 57.

Table 14. New and existing temporary roads by landslide prone category under Alternative B (Proposed Action)

Road Type	Temporary Roads Per Landslide Potential Category				
	Total Within Project Area (miles)	Low Hazard (miles)	Moderate Hazard (miles)	High Hazard (miles)	Stable Areas (miles)
Proposed New Temporary Roads	8.9	1.1	0.6	0.9	6.3
Existing Temporary Roads	5.5	0.9	0.6	0.6	3.4

From EA p. 59

The Forest Service responds that a review and approval process before construction will address this issue and mentions an option to reroute roads if necessary:

However, the project mandates a review and approval process for road designs before construction to assess landslide potential on a case-by-case basis (TR-G). Forest Service field verification procedures for landslide prone areas would help mitigate this risk, with the option to reroute roads if necessary. Draft EA p. 57.

This type of analysis is exactly what the NEPA process is supposed to cover and disclose to the public before a decision is made. This post-decision review process may reveal that certain portions of the road network are at higher risk than originally anticipated and the Forest Service notes that this might lead to the consideration of one or more different routes. We are concerned that discussions about the degree of acceptable risk, the design features to mitigate these risks, the potential negative effects of a landslide on access, water quality or bull trout, and the different route alternatives would all end up being evaluated without public involvement, disclosure or discussions. Instead, we recommend including the road design and landslide risk analysis as part of the pre-decisional NEPA process and developing additional alternatives based on these findings.

Suggested Remedies

- Conduct the road design and landslide risk analysis as part of the pre-decisional NEPA process in an EIS or Supplemental EA and develop additional alternatives based on these findings.

XII. Bull Trout and Other Fish

Objectors raised this issue in their Draft EA Comments at pages 38–41. Objectors highlighted that the EA contradicted other sections in the Fisheries Report that cite 2020 studies showing that juvenile bull trout were observed in Upper Grimes Creek and that bull trout appear to be utilizing spawning and rearing habitat in Upper Grimes Creek more widely previously understood. We appreciate the response to objector comments acknowledging that “recent fish survey results confirm bull trout presence in the upper Grimes Creek drainage.”

However, the Forest Service has not updated the analysis or modified the project to be sufficiently protective of bull trout. Bull trout in upper Grimes Creek and adjacent to the Project area are a very unique population and are likely highly at risk. The Fisheries Report found that bull trout are no longer believed to exist in Mores Creek (where they were living in years past), but that bull trout do reside in Grimes Creek (historic habitat where they previously suspected but not confirmed until recently). The bull trout in Upper Grimes Creek are the only known bull trout in the Mores Creek watershed above Lucky Peak, making them unique and important for maintaining bull trout presence in the watershed and reestablishing it in other reaches. They are also very likely highly at risk, as the population is extremely isolated and apparently small.

Furthermore, since there is no designated critical habitat, because Grimes Creek is functioning at unacceptable risk for many factors, and because of the effects of climate change and the cumulative effects of other ongoing and reasonably foreseeable actions, these bull trout are at high risk. As such, the Forest Service has to take particular care when permitting activities that may affect watershed condition indicators, water quality and fisheries.

But the EA downplays impacts to bull trout, and without acknowledging how uniquely important and highly at risk these bull trout are. The Forest Service asserts the Project and the litany of cumulative effects the Forest Service identified will not have any “measurable” effects to fisheries. And while the EA lists numerous cumulative effects, it fails to provide quantified or detailed information about this population. This analysis fails to take the required hard look at this issue and fails to consider cumulative effects from climate change (by increasing water temperature) and other actions like mining and logging (both green timber sales and salvage logging) on bull trout. The Fisheries Technical Report generally fails to adequately disclose the potential effects of the project activities on bull trout and their designated critical habitat in the Grimes/Mores Creek drainage.

The comment response stated that “Grimes Creek is listed as a category 4a stream for temperature, as it does not support cold water aquatic life and salmonid spawning and cites IDEQ 2020.” The response to comments also noted that “mean temperatures were at or below 59 °F (15 °C).” However, IDEQ⁸ indicates the Cold Water Aquatic Life temperature standard is 19 C or less daily average. This discrepancy should be addressed in a full EIS or Supplemental EA, based on temperature conditions that have recently been observed in Grimes Creek.

Objectors suggested that Charlotte Gulch be surveyed for bull trout occupancy. This request was rejected in the response to comment, citing low flow conditions. However, comments also indicated that “the stream can still sustain water withdrawal.” This seems to be inconsistent. We are reiterating our request in the DEIS comments that Charlotte Gulch be surveyed for the presence of bull trout. We note that bull trout, especially juveniles, may seasonally utilize small streams during periods of higher flows, particularly if these streams provide cooler and more oxygenated water, and then migrate to streams with higher flows during other times of the year.

Objectors continue to assert that the simple presence of brook trout within sections of the watershed, should not obviate the need to account for impacts to bull trout. Indeed, the presence of brook trout should be accounted for as an additional factor in the list of environmental and biological impacts that could be considered as cumulative.

Objectors still disagree with summarizations made in Table 4, concluding no long-term effects on local population size, growth and survival, life history diversity and isolation, and persistence

⁸ <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/11712>

and genetic integrity. Similar conclusions about no long term effects to integration of species and habitat conditions are also unfounded, based on new information of bull trout presence in the subwatershed. We continue to disagree with the completeness of the effects analysis, despite response comments stating that the Fisheries Technical Report disclosed all mechanisms that would contribute potential effects to local bull trout populations.

Suggested Remedies

- As part of the EIS or Supplemental EA, conduct eDNA sampling in Charlotte Creek during times of the year when bull trout are most likely to be present.
- Given the significance of bull trout, describe what management actions are needed to sustain and recover this population.
- To make sure these needed management actions actually occur, make the necessary amendments to the Forest Plan to prioritize the conservation of bull trout in Grimes Creek.
- As part of the EIS or Supplemental EA, analyze the potentially significant direct, indirect, and cumulative impacts the Project may have on bull trout in a EIS or Supplemental EA.
- Develop additional alternatives and design features as needed to avoid, minimize and mitigate these risks.

XIII. Riparian Conservation Areas

Objectors raised these issues in their Draft EA Comments at pages 41–48. As noted in the current EA, the Riparian Conservation Areas (RCAs) are already functioning at risk. Objectors requested that the Forest Service explore the necessity of each drill site as well as develop alternatives through an EIS that will eliminate unnecessary drill sites. Where an exploration road crosses an RCA, the Forest Service must consider an alternative that closes this route or, if necessary, provide an alternate (even if it is longer) route around the RCA instead of allowing this disturbance throughout the life of the project.

The Forest Service needs to further analyze the Riparian and Watershed Impact Reduction Alternative in an EIS as described below:

“This alternative is designed to safeguard sensitive environmental areas by prohibiting the construction of roads, drill sites, sumps, and other structures within RCAs; using alternative water sources to protect aquatic life; minimizing riparian vegetation removal to reduce stream temperature changes and sediment influx; and avoiding activities in moderate-to-high-risk landslide-prone areas that could trigger increased sedimentation.”

As stated in the objectors' previous comments on the draft EA, one of the most important Standards in the Boise Forest Plan concerns the protection of Riparian Conservation Areas. See Appendix B of the Boise Forest Plan. RCAs are directly relevant to the Project. As there are numerous small ephemeral, intermittent and perennial tributaries of Grimes Creek dissect the Project Area.

RCAs are designed to help protect streams from increased sediment and temperature, both of which have been identified by the State of Idaho as pollutants in this area. The width of RCAs vary depending on the type of stream (*e.g.*, forested vs. non-forested, perennial vs. intermittent). Based on the Forest Plan, the width of protected RCAs for the perennial reaches of Grimes Creek and its tributaries is 600 feet (300 feet on either side), and 300 feet (150 on either side) for intermittent streams (Boise Forest Plan at B-33).⁹ The reach of Grimes Creek within the project area is listed by EPA and the State of Idaho as water-quality impaired under Section 303(d) of the Clean Water Act because of higher-than-standard water temperature; and 303(d) listed for sediment farther downstream.

As the Forest Service evaluates the current POO, we emphasize the need to pay close attention to any activities that may cause an increase in erosion or sediment delivery to streams and RCAs within the project area and along proposed transport and haul routes, which in turn can lead to temperature pollution. Following major fires that burned within the area, this need is magnified by the likelihood that the surrounding area is more prone to erosion and sediment delivery than it was prior to burning. The Forest Service's response to these concerns did not address our comments. A thorough evaluation of the impacts outlined above needs to be conducted in an EIS.

The leading federal court decision dealing with RCAs and mining is Hells Canyon, *supra*. In that case, the court ruled that the Forest Service's approval of mining operations with Riparian Habitat Conservation Areas (RHCAs) under INFISH violated INFISH and the Forest Plan. The INFISH Standard at issue in that case (MM-2) is essentially the same as the MIST08 Standard in the revised Boise Forest Plan. The court described the legal issues in that case as follows:

Plaintiffs argue that the Forest Service did not comply with standard MM-2 and therefore acted inconsistently with the Forest Plan when it authorized road and settling pond construction within RHCAs. Standard MM-2 provides that structures, support facilities, and roads should be located outside of RHCAs unless no alternative exists, and where no alternative to road construction exists,

⁹ The 600 and 300 foot RCA widths are subject to slight variation based on local conditions, such as amending the width based on tree-heights. Boise Forest Plan at B-33.

such construction must be limited to the minimum necessary for the approved mineral activity. AR 02298. The Forest Service argues that the ROD does not “locate” any new roads, and that MM-2 does not apply to settling ponds.

Hells Canyon, *supra*, 2006 WL 2252554, *8 (emphasis added). Regarding the placement of roads in RHCAs, the court ruled that, if any roads will be constructed within the RHCA:

[T]he Forest Service is responsible for analyzing the necessity of these new roads, whether alternatives exist, and providing more specific assurances that new road construction will be limited to the minimum amount necessary to comply with MM-2. The Forest Service must provide a more thorough analysis on the issue of new road construction in RHCAs to satisfy the mandate of MM-2.

Hells Canyon, at *8.

The Hells Canyon decision, which applies under the Boise Forest Plan, confirms that the Forest Service must prohibit all roads in RCAs unless no viable alternatives exist. However, the Forest Service has not developed an alternative consistent with RHCA protections, presenting only one action alternative alongside the no-action option. In response to our comments, the Forest Service noted that “there is no temporary road construction within the RCAs of ESA-listed fish species.” This statement, however, does not exempt the Forest Service from considering an alternative that avoids project activities and road construction within RCAs. To meet the Forest Plan and Hells Canyon requirements, the Forest Service must develop an alternative that relocates all proposed roads outside of RCAs or provides clearer justification and analysis for any roads proposed within them. As it stands, the EA contains several proposed roads that encroach upon RCA boundaries, in violation of INFISH Standard MM-2 and MIST08 Standard in the revised Boise Forest Plan.

While road construction entails a significant amount of environmental impact, the continued existence of the road bed provides a continuous source of sediment that can bleed into perennial and intermittent streams. Every year the road bed remains open is one more year for noxious weeds to become established and one less year for the soils and vegetative community to become reestablished. The vegetative community within the RCAs is particularly important because it shades the creeks and maintains cool water temperatures, as mandated by the Mores Creek and Grimes Creek TMDL.

The longer that temporary roads are left on the landscape the longer the risk of increased chronic sedimentation. We are also cognizant that constructing, decommissioning, and then reconstructing roads may lead to short term increases in sedimentation compared to simply leaving these temporary roads intact until all operations are concluded. However, if these roads are not needed, the sooner they are removed from the landscape the better. The confirmed presence of bull trout in Grimes Creek and the risks proposed by the road network requires that

the Forest Service take a harder look at decommissioning and reclaiming roads following drilling activities. This would mean revisiting the need for drilling access with the project proponent and revising the environmental analysis accordingly and also having more frequent reviews of the drilling plans with the proponent during operations.

Regarding the prohibition against locating any “structures or support facilities” within a RCA, Hells Canyon is again controlling. The court first described the legal dispute:

Plaintiffs argue that the record contains no evidence that the Forest Service did the required analysis as to whether alternatives existed to locating settling ponds in RHCAs. The Forest Service argues that MM-2 applies only to structures, support facilities and roads, and that settling ponds are none of these such that MM-2 does not apply to the location of settling ponds.

Hells Canyon, at *8.

After rejecting the agency’s argument against applying the Standard to such structures in a RHCA, the court concluded:

This court finds that the settling ponds in this case are subject to INFISH standard MM-2. The Forest Service must perform the required analysis under MM-2 as to whether alternatives exist to locating settling ponds in RHCAs.

Hells Canyon, at *9.

In order to comply with this standard, the Forest Service must require that all pits, sumps, and any additional support structures/facilities be located outside of RCAs.

In addition, Boise Forest Plan Standard MIST09 applies here, and requires a series of strict limitations on the placement of mine waste (such as drilling muds and other materials resulting from the drilling operations). Similar to MIST08, it “prohibit[s] solid and sanitary waste facilities in RCAs.” Forest Plan at III-50. Also similar to MIST08, such prohibition is binding unless there is “no alternative” to locating these activities in a given RCA. *Id.* Even if there is no alternative, MIST09 requires an extensive analysis of the materials and strict technological limitations on the placement of the materials. *Id.*

The Idaho Department of Environmental Quality has prepared a Total Maximum Daily Load (TMDL) for Grimes Creek, which EPA has approved pursuant to the Clean Water Act. The Grime Creek TMDL is contained in the Project Record for the CuMo Exploration Project. *See* Project Record # 2212, Boise-Mores Creek Subbasin Assessment and TMDL.

The U.S. Forest Service is required by NFMA and Section 313(a) the Clean Water Act to adhere to the TMDL requirements. *See* 33 U.S.C. § 1323(a) (requiring federal agencies to conform to federal and state water quality standards and regulations); Marble Mountain Audubon v. Rice, 914 F.2d 179, 182 (9th Cir. 1990); ONRC v. US Forest Service, 834 F.2d 842, 848 (9th Cir. 1987); Northwest Indian Cemetery v. Block, 795 F.2d 688, 697 (9th Cir. 1986), rev'd on other grounds, 485 U.S. 439 (1988) (all holding that federal land management agencies must comply with state WQS under CWA § 313). This requirement extends to both "point source" and "non-point source" activities permitted by federal agencies which affect water quality standards. *Id.*; see also Citizens Interested in Bull Run v. Edrington, 781 F. Supp. 1502, 1510 (D. Or. 1991).

The Grimes Creek TMDL relies on the percentage of shade provided by Potential Natural Vegetation (PNV), *i.e.*, vegetation in an undisturbed state, as the main metric for controlling stream temperature. Because this TMDL is based on loading that does or would occur under PNV, which is equivalent to background load, the load allocation is essentially the desire to achieve background conditions. *See* Grimes Creek TMDL, *supra*, Project Record # 2212, p. 166.

Due to the nonpoint characteristics of this form of thermal pollution, the TMDL directs responsible parties to focus on management activities that may affect stream shading:

However, in order to reach that objective, load allocations are assigned to nonpoint source activities that have affected or may affect riparian vegetation and shade as a whole. Load allocations are therefore stream reach-specific and are dependent upon the target load for a given reach.

Id., p. 166.

Furthermore, the TMDL requires knowledge of baseline or background conditions, as well as current conditions:

Additionally, because this TMDL is dependent upon background conditions for achieving WQS, **all tributaries to the waters examined here need to be at natural background condition in order to prevent excess heat loads to the system.**

Id. (emphasis added).

The TMDL provides a map showing both existing conditions as well as target conditions for sections of both Grimes Creek and Charlotte Gulch (which is within the Project area, and tributary to Grimes Creek). We implore the Forest Service to focus their analysis on places where restoring riparian shade is most needed and other places where the shade is provided by Potential Natural Vegetation and meeting TMDL goals:

Although the following analysis dwells on total heat loads for streams in this

TMDL, it is important to note that differences between existing shade and target shade, as depicted in Figure 45, are the key to successfully restoring these waters to achieving WQS. Target shade levels for individual reaches should be the goals that managers strive for with future implementation plans. Managers should key in on the areas with the largest differences between existing and target shade as locations to prioritize implementation efforts.

Id.

The TMDL notes that this information is from a limited number of data points along the major streams, such as Grimes Creek, and that data gaps exist. To improve the accuracy of the TMDL, it directs that additional information regarding the shade structure along tributaries is needed:

Data Gaps for Temperature:

Vegetation and percent shade characterization **for tributary reaches** and shade curves developed using native subbasin vegetation.

Id., p. 108 (emphasis added).

Implicit in the TMDL is the assumption that vegetation adjacent to streams is not reduced through management activities:

The MOS (Margin of Safety) in the temperature TMDL is considered implicit in the design. Because the target is essentially background conditions, loads (shade levels) are allocated to lands adjacent to these streams **at natural background levels**.

Id., p. 168, emphasis added.

Moving forward, it is imperative that the Forest Service conduct the needed baseline studies to determine accurate background stream temperatures within the project area and immediately downstream. Site specific monitoring shows that there are temperature exceedances in the Project Area. The TMDL noted that water temperatures at Grimes Creek at the Golden Age Mine, which is adjacent to the Project Area, exceeded the 13 degree daily maximum water temperature for spawning redband trout for 14 days and the 9 degree daily average temperature for 23 days. Project Record # 2212, Boise-Mores Creek Subbasin Assessment and TMDL, p. 220.

Understanding the baseline conditions and of maintaining shade structure in riparian areas is critical because road construction and drill pad construction at stream crossings and in RCAs will certainly remove vegetation along Grimes Creek and its tributaries impacting stream temperatures.

In addition to our concerns focused on Grimes Creek, additional attention must be placed on smaller perennial and intermittent streams found within the project area that may be impacted by drill pads, temporary roads, and stream crossings:

Small streams are more affected by hillslope activities than are larger streams because there are more smaller than larger streams within watersheds (actual area and extent); smaller channels respond more quickly to changes in hydrologic and sediment regimes; and streamside vegetation is a more dominant factor in terms of woody debris inputs and leaf litter **and shading**. Small perennial and intermittent non-fish bearing streams are especially important in routing water, sediment, and nutrients to downstream fish habitats.

See Boise Forest Plan, Appendix B, p. 40 (emphasis added). The importance of understanding these effects is stressed in the Forest Plan:

Projects in watersheds with 303(d) listed water bodies should be supported by the appropriate scale and level of analysis sufficient to permit an understanding of the implications of the project within the larger watershed context.

Boise Forest Plan, SWGU07.

During any project related activities that may require the removal or thinning of riparian vegetation, the Forest Service must analyze and quantify what the impacts will be on stream temperatures and what the overall impact may be for temperature loading within the system.

Suggested Remedies

- We urge the Forest Service to thoroughly assess potential erosion, sediment delivery, and resulting temperature pollution in streams and RCAs within the project area and along haul routes, especially given increased erosion risk after recent fires, and to address these concerns in an EIS or Supplemental EA.
- The Forest Service must develop an alternative that moves all proposed roads and other project related activities outside of RCAs or provide additional rationale and analysis for any that will move forward within the current alternative.
- The Forest Service must require that all pits, sumps, and any additional support structures/facilities be located outside of RCAs for all alternatives.

XIV. Wildlife Generally

Objectors raised this issue in their Draft EA Comments at pages 48–51. Although the Forest Service previously noted the availability of other suitable habitat nearby the project site for use

as wildlife corridors and activities such as calving and fawning, the 2015 SIR reported that the Pioneer Fire will require a reassessment of that conclusion:

The modified Project area is likely used in the spring and summer for calving and fawning, which typically occurs within or near dense deciduous shrubs near water (Olson 1992). Willow/alder dominated, narrow (approximately 10 to 25 feet wide) riparian thickets, commonly present along intermittent and perennial drainages in the modified Project area, are more likely locations for calving and fawning, though such activities could occur almost anywhere within the modified Project area.

Vegetation conditions that contribute to habitat suitability, habitat quality, and effectiveness have changed across the direct, indirect, and cumulative effects analysis areas. The Pioneer Fire has killed or top-killed vegetation across the broad landscape. This may affect big game habitat and use within the Project area, and patterns of big game use and distribution are expected to change as a result of natural vegetation recovery over time. Baseline conditions discussed in the 2015 SEA should be updated to reflect the effects of the 2016 Pioneer Fire. Once the baseline is updated, the existing mitigation and design features for big game included in Chapter 2 of the SEA should be reviewed to insure they will continue to result in the effects as disclosed in the 2015 SEA.

The Forest Service must update this baseline first, before approving the Project. *See Idaho Conservation League, et al. v. U.S. Forest Service*, 2016 WL 3814021 (D. Idaho July 11, 2016) (requiring updated LESA baseline post fire). Neither the EA nor the reports it relies on includes adequate, up-to-date baseline information, and relatedly fails to take a hard look at the Project's potential impacts to wildlife and fails to adequately mitigate against those effects.

Other vulnerabilities arising from habitat fragmentation and worth analyzing are the established grounds for mule deer fawning and elk calving, habitually utilized routes often linked to meadow complexes or riparian communities and larger seasonal migration movement in and out of the project area. Depending on the level of habitat disturbances from new road construction, vegetative clearing, lighting effects, well drilling noise and vehicle noise, some routes and habitat locations may be abandoned. Current guidelines indicate habitat disturbance leads to alarm and avoidance behavior and the expenditure of unnecessary energy, which triggers physiological stress (Gill et al. 1996, Frid and Dill 2002).

As of 2005, Idaho Department of Fish & Game (IDFG), Game Management Unit (GMU) 39 had a stable mule deer population, before exploration activities commenced. GMU 39 has been home to one of Idaho's three largest herds of mule deer and hosts extensive winter range for wild ungulates. If the Forest Service moves forward with further analysis, updated population and migration data for mule deer and elk should be reviewed for potential impacts onto wild

ungulates living in the project area. This review should also occur in given significant alterations to adjacent wildlife habitat that resulted from the approximately 4,000-acre Flat Fire. A significant section of previously secure habitat has been lost between the Project area and the 8,000-acre Wilson Peak Roadless Area to the east. The likelihood is high that animals have been displaced from the relatively isolated Wilson Peak area and will be seeking feed and security in nearby areas. Recreational use and altered hunting pressure patterns as a result of the fire, may also be contributing additive stresses to animals within or moving into the Project area. In order for the biological assessment to be complete, it must also consider habitat requirements for other resident wildlife, including black bear, coyote, and bobcat.

Our comment letter also indicated that the SIR had noted that the Pioneer Fire likely affected a portion of the 700 acres of lynx source habitat that existed pre-fire and that baseline should be reviewed and updated as needed in the SEA. The 2017 North and South Pioneer Salvage and Reforestation Biological Assessments documented that several thousands of suitable acres within the Lynx Analysis Unit (LAU) were converted to an unsuitable condition following the 2016 Pioneer Fire, increasing acres of potential habitat to an unsuitable condition to over 30% of the total potential acres.

The Forest Service responded that “Effects of the Pioneer fire on lynx habitat, the amount of suitable lynx habitat in the Pilot Peak/Sunset LAU following the Pioneer Fire in 2016 and potential impacts of the proposed action on lynx and lynx habitat are discussed in detail on pages 30-41 of the biological assessment.” However, the Flat Fire burned almost 4,000 acres south and east of the Project area this past summer. Much of this habitat was located in the Pilot Peak/Sunset LAU for Canada lynx. Potential effects on available lynx habitat should now be updated in biological assessment, given its proximity to the Project.

It is recommended that the Forest Service also evaluate the potential impacts to Idaho’s Species of Greatest Conservation Need. The EA states that 311 wildlife species are modeled as occupying the Forest. Appendix E of the Boise National Forest Land and Resource Management Plan identified 57 of those birds, mammals or reptiles as species of conservation concern (now referred to as SGCN species). The Management Area 8 (Mores Creek) section of that document also indicates that “terrestrial habitat is functioning at risk due to past silvicultural management practices and changes in fire disturbance patterns” and that the “Upper Mores Creek watershed (5th code HUC 1705011207) has been identified as important to the recovery of Forest sensitive species and other native wildlife utilizing late-seral forests with low canopy conditions, and is identified as a short-term high-priority watershed for restoration.”

Because of the large amount of roadwork and site disturbance, the security cover will be dramatically reduced for elk and other wildlife. This area is already deficient in security cover for ungulates:

“... the existing distribution of roads and open trails across the Upper Grimes Creek and Clear Creek 6th Level HUCs is such that it results in a high degree of habitat suitability reduction (EA, p, 56).

As a mitigation measure, we recommend that the Forest Service close an equal number of roads and landings in adjacent areas such that there is not net increase in overall road densities, road densities in RCAs, Detrimental Disturbance, Total Soil Resource Commitment, or Equivalent Clearcut Area.

Since the original CuMo analyses, increased recreational pressure in the area may have also affected wildlife. This EA also indicates that additional stressors to resident wildlife could be contributed by recreational trappers (incentivized, in part, by State efforts to reduce wolf populations) accessing areas near the Project Area.

The cumulative effects analysis should factor in effects from this project and the Upper Mores vegetation management project and Highway 21 Recreation Corridor projects, all of which may affect wildlife movement in the larger area.

Suggested Remedies

- Gather up-to-date wildlife baseline information for the Project area and surrounding areas directly and indirectly affected by recent wildfires and incorporate this information in an EIS or Supplemental EA.
- Consider cumulative impacts to wildlife from other actions, and climate change, in an EIS or a Supplemental EA.
- Based on this analysis and the recommendations in this wildlife section, consider developing additional alternatives or design features to better avoid, minimize and mitigate impacts to wildlife

XV. Migratory Birds

Objectors raised this issue in their Draft EA Comments at pages 51–53. The Forest Service’s assumptions and rationale for the determinations made for each of the avian sensitive species (White-headed Woodpecker, Boreal Owl, Flammulated Owl, Great Gray Owl, Northern [*sic*] Goshawk, and Mountain Quail) that the proposed action is not likely to contribute to a trend toward federal listing were based on flawed assumptions and rationale. The conclusions for each of the avian MIS (White-headed Woodpecker, Black-backed Woodpecker, and Pileated Woodpecker) that the proposed action is not expected to affect the population trend of the species at the scale of the Forest are also flawed.

These determinations and conclusions rely heavily on the successful implementation of numerous mitigation measures by the proponent, including the proponent reporting observations of Northern Goshawk, now called American Goshawk,¹⁰ Great Gray Owl, White-headed Woodpecker and other species to the Forest Service. Mitigation Measure WL-2 indicates that the proponent will report any observations of Great Gray Owl to the Forest Service. However, the mitigation measures, design features and the Draft EA do not detail how the project proponent or its employees will gain the technical experience and/or training that will enable them to identify the species. Further, WL-7 states that if threatened, proposed, candidate and sensitive species are identified within the effects analysis area, protective measures will be implemented, including timing restrictions and buffers, but the Forest Service fails to clearly outline what those restrictions and buffers would entail. The Forest Service must not abdicate its responsibility for ensuring adequate protections of sensitive species to the proponent. It would be in the proponent's interest to ignore, rather than to report, such sightings. Further, a lack of sightings does not mean the species are not using the area or will not be adversely impacted by the proposed action. Thus, it is not reasonable to base effects determinations and conclusions on actions the proponent may or may not take without the Forest Service's knowledge.

It is also not reasonable for the Forest Service to determine that the disturbance to these species and their habitat from actions by the proponent will be temporary or short-term (drilling for four years, with an additional two years possible for reclamation) and not likely to contribute to a trend toward federal listing when there is not full disclosure of the details for the mitigation measures. NEPA, codified in 42 U.S.C. §§ 4321–4370h, requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.

Disturbance associated with the project began in 2005 and continued until at least 2012 (DEA Table 1., p. 10). The proponent already has enough information about the extent of mineral deposits in the project area to state its goal to establish itself as one of the world's largest producers of molybdenum with the potential to create 1000 direct jobs.¹¹

The only reasonable conclusion from the Draft EA and the proponent's own information is that disturbance will continue and become more intense as the mine is developed. Significant adverse impacts to migratory birds may result, including continued downward population trends for sensitive species that may lead to federal listing and similar downward population trends for MIS at the Forest scale and beyond.

¹⁰ Chesser, R. T., S. M. Billerman, K. J. Burns, C. Cicero, J. L. Dunn, B. E. Hernández-Baños, R. A. Jiménez, A. W. Kratter, N. A. Mason, P. C. Rasmussen, J. V. Remsen, Jr., and K. Winker. 2023. Check-list of North American Birds (online). American Ornithological Society. <https://checklist.americanornithology.org/taxa/>

¹¹ <https://cumoproject.com>; accessed June 17, 2024

Suggested Remedies

- Commit Forest Service resources and personnel to conduct necessary surveys for sensitive avian species in the Project area, and base the effects determinations for these species on Forest Service data, rather than data the proponent may or may not provide.
- Gather and disclose baseline information from surveys in an EIS or Supplemental EA, before approving the Project.
- Prepare an EIS to address the potentially significant direct, indirect, and cumulative impacts the Project may have on migratory birds, including sensitive avian species.
- Disclose the unique importance of and risks to Project area migratory birds and sensitive avian species in an EIS or Supplemental EA.
- Disclose and consider quantified and detailed information about the cumulative effects of the Project with climate change and other actions on migratory birds and sensitive avian species in an EIS or Supplemental EA.

XVI. Wolverine

Objectors raised this issue in their Draft EA Comments at pages 53–54. We appreciate that the 2024 BA includes several new considerations for potential impacts to wolverines that were not made in the earlier version, including: snow plowing, project boundaries, snow persistence, noise and lighting. However, many risks remain, particularly relating to direct and indirect effects associated with construction of new roads in and adjacent to the project area.

The 2024 BA acknowledges that the project area does have high elevation habitats and public use of the area is relatively low with minimal human disturbance on federal lands, including during the winter. It also describes other scientific understanding related to wolverine impacts, including: importance of low road densities, incidental capture from recreational trapping and the species requirements for isolation.

However, the effects analysis fails to adequately account for and offer appropriate minimization actions associated with the following project impacts:

- 1) Effects of incidental trapping as a result of increased access, particularly for motorized travel during winter months (December 15 – April 15) and year-round foot traffic. Even if drilling activities are not occurring, the temporary roads will facilitate access over the winter. Additional risks would be introduced by the project during periods of snow removal prior to seasonal closures going into effect. The section in the 2024 BA describing direct/indirect effects

of the project to Canada lynx also acknowledges that “effects of plowing could remain after December 15 depending on the amount of snowfall that occurs after plowing.”

- 2) 60-80% use of a new high density road network and potential add-on effects such as direct mortality from vehicle collisions, particularly with 24-hour operations.
- 3) How a high-density road system could contribute to roadkill of other species and subsequently attract wolverines seeking carrion as a food source, subjecting them to additional project-related disturbance.
- 4) Potential for project activities to overlap with denning female wolverines, forcing litters to be moved to an alternative den site.

Wolverine monitoring and effects minimization is insufficient. Additional measures should be taken to minimize the potential impacts listed above. This could include additional timing restrictions and buffers and other management actions to prevent disturbance and direct mortality, and minimize potential to attract wolverines to roadkill carrion. Certainly, preventing an increase in public use along temporary roads will help to preserve undisturbed habitat for wolverines. There should be no vehicle parking or cross-country OSV use allowed, either prior to or during gated closures, in order to prevent public access into this currently remote area.

Additionally, characterizations (listed below) of how the footprint of the project relates to modeled wolverine habitat are inconsistent within the 2024 BA and should be resolved:

- This project is expected to overlap some modeled wolverine general habitat and denning habitat (P. 47).
- The nearest modeled denning habitat is over two miles to the southeast (P. 50).
- Modeled source habitat has no overlap with the project area (P. 53)

Suggested Remedies

- Evaluate more systematically the direct and indirect effects associated with construction of new roads in and adjacent to the project area; this should include the effects of snow-plowing during and after operating seasons
- To make sure that human disturbance is within the range of analyzed effects, monitor public use of the project area with a pre-project baseline, throughout each operating season, and during the winter when operations are closed. This monitoring could be conducted with road counters and/or field cameras.
- Assess additional ways to minimize impacts to wolverines from anticipated increases to year-round industrial or recreational traffic, such as additional timing restrictions and buffers and other management actions to prevent disturbance and direct mortality

- Assess ways to minimize potential to attract wolverines that are seeking roadkill carrion and develop a management plan to remove any roadkill resulting from project vehicle traffic.
- Prohibit vehicle parking or use of cross-country OSVs on the temporary road network, either prior to or during gated closure seasons.

XVII. Drilling Techniques

As stated in Objector's 2024 comments (p. 55–57), we have concerns regarding the lack of detail in certain drilling techniques and abandonment procedures as well as the environmental impacts of drilling fluid loss due to Lost Circulation Zones (LCZs). In response, the Forest Service generally referred to existing documents (see 20240917_CuMo_CommentResponse, comment 1185-152 to 157). The Forest Service's response is inadequate and fails to address our concerns in several regards.

While the Final EA and supporting documents do present procedures for addressing LCZs they still do not address the potential environmental impacts of significant drilling fluid loss. In our above Water Quality comments, we note the lack of specificity around the use of certain drilling fluids and the need for the Forest Service to review proposed drilling fluids against Idaho surface and groundwater quality standards. Given the lack of review and oversight around drilling fluids, the possibility of surface or groundwater contamination from LCZs and the use of inappropriate drilling fluids is real. The Forest Service must provide additional detail on how drilling fluid loss could affect surface and groundwater quality and how any degradation would be addressed. In addition and as noted above, the Forest Service and Idaho Copper must provide up to date SDSs for all proposed drilling fluids and comprehensively compare them to all applicable regulations for compliance.

Suggested Remedies

- The Forest Service and Idaho Copper should submit up-to-date Safety Data Sheets (SDSs) for each proposed drilling fluid. These should be evaluated against all applicable environmental regulations to confirm compliance.
- Include a thorough assessment of the potential environmental impacts caused by drilling fluid loss in Lost Circulation Zones (LCZs), particularly regarding possible contamination of surface and groundwater in an EIS or a Supplemental EA.
- Specify how any degradation or contamination resulting from drilling fluid loss in LCZs will be mitigated, and outline monitoring and response protocols to prevent long-term water quality impacts.

XVIII. Reclamation

As stated in Objector's 2024 comments (pp. 58-59), because of the fragile nature of the project area bedrock and the steep slopes involved, we expressed concern that Idaho Copper will be unable to completely reclaim these roads to original hydrological and biotic function. We recommended that the Forest Service examine the feasibility and effectiveness of pulling fill slope material back up to the roadbed and recontouring the hillside to the original slope(s). We also recommended that the Forest Service examine the feasibility and effectiveness of pulling fill slope material back up to the roadbed and recontouring the hillside to the original slopes. The Forest Service failed to respond to our concern, and quoted Section 2.2.6.1 of the EA, "All temporary roads....;drill sites....;mud pits; and drill holes would be reclaimed by backfilling, recontouring as close as practical to their original topography, and revegetating with species suitable for soil stabilization projects on the Forest," (CuMo Comment Response, NGO-1185 IRU et al tab, line 58).

This does not address our concern that the friable bedrock and steep slopes inhibit reclamation activities. The Final EA fails to describe how Idaho Copper will stockpile materials for reclamation and prevent the materials from either eroding or "sloughing" further downslope and become irretrievable, nor does the Final EA define the parameters that will meet the standard of "as close as practical," which is an objective term with objective definitions.

We also recommended the Forest Service address the real possibility that stockpiled/stored topsoil would be insufficient for adequate reclamation and that the soil will still have viable populations of microbes and fungi for use as growth media. We recommended that the Forest Service describe how soil stockpiles will be managed, where additional materials would come from if on-site stores were insufficient, and what impacts were possible (and where) from removing the material from another site. The Forest Service response refers the Commenters to the Reclamation Plan, stating that topsoil will be carefully removed, stored in selected sites near the disturbed site, and actively managed to minimize its loss through erosion and stormwater runoff. This response fails to address the original comment and concern.

As stated in Objector's 2024 comments (p. 59), we expressed concern that, while leaving certain roads open for reasonable access during exploration activities, it appears that an unreasonable amount of roads will remain open longer than absolutely necessary and that this will increase habitat disturbance and soil impacts. An example of project-related roads remaining on the landscape for an undetermined amount of time are the 5.5 miles of temporary roads constructed under previous project approvals between 2005 and 2012. The Plan of Operations states that at any given time only 60 to 80% of the total length of exploration roads would be constructed and operational at any one time and that concurrent reclamation would prevent soil and water quality impacts. While the Forest Service did speak to our concern regarding the use of the term "only"

in respect to the percentage of roads open at one time by removing the term, the agency continues to inadequately address our comment and concern.

Furthermore, it is unclear how long it will take the remaining 40 to 20% of roads to be successfully reclaimed. As it stands, the previously constructed “temporary” roads have remained on the landscape for over a decade, with the oldest being present for nearly 20 years. As mentioned earlier, the 20-year soil commitment does not meet our, nor the Forest Service’s own definition of “temporary.” The Plan of Operations and Proposed Action Report state that reclamation could take an additional 2 years for final completion of all reclamation. It is unclear if this time period means the reclamation-related *work* (recontouring, seeding) will be completed by this time or if the actual *reclamation* (soil stabilization, successful revegetation with desired species, proper hydrological functioning, coarse woody debris requirements met). In our experience with timber contractors, once use on a road is concluded, decommissioning takes very little time. It is unclear why a 2 year window is necessary given the ongoing resource concerns for existing roads.

Suggested Remedies

- The Forest Service should complete feasibility and efficacy studies examining the practicality of pulling fill slope back to the roadbed to recontour the hillside to the original slope and grade.
- Provide detailed plans for achieving adequate topsoil quantities if the stored topsoil quantities are insufficient.
- Create a timeline showing the phases of road construction for each road segment. Time would be the x axis and each individual road would be represented by a horizontal bar extending out from the y axis. Each bar could be colored green (pending construction), red (in construction, in use, or awaiting reclamation), yellow (in the active process of road reclamation), brown (initial vegetative growth) and finally blue (reclamation successful and fully meeting ecological and hydrological goals). These colors are subjective. In this manner, the public could see how much cumulative disturbance was occurring at any one time (year 1, year 2, etc). It would also be possible to calculate the total acreage in each phase at any one time.

XIX. Air Quality

As stated in Objector’s 2024 comments (p. 59–60), draft EA documents discuss the use of dust abatement measures (including use of water sprays or chemical products on roads, speed limits, or seasonal limitations) as required and as directed by the Forest Service. However, draft EA documents provided no specifics or even a generic protocol specifying when the use of dust

abatement techniques will be triggered. In response to our comments the Forest Service simply stated the issue to be “Addressed by AQ-A (EA page 20)” (see 20240917_CuMo_CommentResponse, comment 1185-177). AQ-A in the Final EA remains unchanged from the draft EA and states, “Dust abatement, which may include water and/or palliative mixtures (magnesium chloride), will be done as required in consultation with the Forest Service.”

On page 5 of the Final EA Air Quality Specialist reports it is noted that, “Emissions of PM_{2.5} would occur from drilling equipment, project traffic, and activities associated with drilling. Based on vehicle emission rates, the impact of the anticipated project vehicle traffic could contribute an additional 0.6 to 3.0 grams of PM_{2.5} to the existing background levels (BTS.Gov). It is assumed that the addition of 30 vehicle trips a day will not substantially increase the PM_{2.5} levels to above the threshold of 35 µg/m³ in a 24-hour period.” However, the same report provides no supporting calculations or methodology for estimating such levels of impact. Furthermore the cited BTS.Gov emissions information is for vehicle exhaust emissions and does not include road dust generation. The lack of road dust emissions calculations is notable given the fact the EPA’s air emission factor database, AP-42, contains detailed calculations for PM generation from dirt roads.¹² Page 15 of the Final EA Access and Safety Report notes that, “Transportation to the site would be facilitated by contracted one-ton service and support vehicles. Approximately 30 one-way trips would occur daily, consisting of 4 water tenders, 4 fuel transport vehicles, and 8 employee or service pickup trucks.” This is not a trivial amount of dust generation potential.

In addressing road dust emissions the Final EA states, “ The dispersion of fugitive dust and vehicle emissions across the airshed was not modeled, as the direct project effects would be short-term and localized. The timeframe for analyzing effects is 6 years—4 years of exploratory drilling followed by 2 years of reclamation—because this is the timeframe when impacts to air quality could occur from project activities” (p. 114). This statement is wholly arbitrary given the federal Clean Air Act has 1-year as well as 24-hour standards for both PM₁₀ and PM_{2.5} that are applicable within all public ambient airspace. Both these standards will be impacted by the proposed project’s activities and are within the timeframe of the proposed project.

Incomplete and unsupported dust emissions estimates combined with vague dust abatement requirements presents a troubling scenario where effects to human health and the environment could be underestimated and under mitigated. Effects of dust on Sacajawea’s bitterroot and pollinators is another unresolved issue. The Forest Service must calculate and model road dust emissions from the Project’s vehicle traffic and compare its modeled impacts to the PM₁₀ and PM_{2.5} NAAQS standards. Furthermore, as stated within Objector’s 2024 comments, fugitive dust

¹² See AP-42 Chapter 13.2.2

https://www.epa.gov/sites/default/files/2020-10/documents/13.2.2_unpaved_roads.pdf

control plans are well established in the mining industry and various agencies provide guidance as to their development¹³. The Forest Service should require Idaho Copper to prepare a fugitive dust control management plan detailing fugitive dust monitoring procedures and associated control actions. Such a requirement is neither overly burdensome nor arbitrary and would be a reasonable design feature.

Suggested Remedies

- Provide supporting calculations and methodology for estimating PM2.5 emissions from project vehicle traffic.
- Incorporate road dust generation data into emissions assessments, referencing the EPA's AP-42 database for accurate modeling.
- Conduct modeling of road dust emissions from project vehicle traffic to assess potential impacts on air quality.
- Compare modeled impacts to PM10 and PM2.5 National Ambient Air Quality Standards (NAAQS).
- Reassess the timeframe for analyzing air quality effects, considering the federal Clean Air Act standards for both 1-year and 24-hour averages.
- Ensure project activities are evaluated for their potential impact on air quality throughout the entire operational period.
- The Forest Service should require Idaho Copper to prepare a fugitive dust control management plan detailing fugitive dust monitoring procedures and associated control actions.

XX. Noise & Visual Effects

We remain concerned, as noted in our previous Draft EA Comments at pages 60–61, about the noise from drilling operations on wildlife, and recreationists in the area. The noise analysis shows levels up to 94 dbA from exploration activities. The Wildlife Report states “Prolonged noise and lighting during the possible 24-hour operation period could affect essential behavioral adaptations, impair hearing, cause stress, and disrupt navigational abilities.” (pp. 18).

More alternatives should be developed to address this issue may include either dispersing or concentrating use of drill pads in certain areas, depending on how the noise is shielded or amplified across the surrounding topography. We suggest that water pumping and drilling should be limited to daylight hours to reduce impacts on recreationists and wildlife. We also point out that the Golden Meadows Project on the Payette National Forest required both mufflers on equipment and sound-dampening pads around drill rigs.

¹³ For example, [See Environmental Protection Agency's "Fugitive Dust Control Measures and Best Practices", January 2022](#)

We are concerned about visual effects for recreationists and wildlife in the area. Negative effects include exhaust, smoke, and dust during the day and lights at night. Clear views of the night sky are important for many campers and we are concerned that light pollution will impair visitor experiences.

The EA states that visual effects would be temporary to short-term until reclamation begins (EA, p. 95). However, in some places the visual effect rankings were due to the removal of medium and large-sized trees and the effects would be longer lasting. If mature trees are an important visual component, the Forest Service should reemphasize the retention of large trees and, where trees are removed, disclose the duration of the impacts based on site-specific tree growth rates.

Suggested Remedies

- Limit operations, especially water pumping and drilling, to daylight hours to minimize disruptions to both wildlife and recreationists.
- Mandate the use of mufflers on all equipment and sound-dampening pads around drill rigs, as seen in the Golden Meadows Project, to decrease noise levels and reduce stress on wildlife and visitors.
- Develop specific guidelines to reduce daytime exhaust, smoke, and dust emissions. Implement measures such as shielding lights and reducing light intensity during nighttime operations to preserve dark skies, enhancing visitor experience and minimizing impacts on nocturnal wildlife.
- Emphasize retaining medium and large-sized trees to preserve important visual components and reduce the time needed for reclamation to restore views impacted by tree removal. Where tree removal is unavoidable, provide detailed projections on the duration of visual impacts based on local tree growth rates, allowing for more accurate assessment of long-term landscape changes.

XXI. Noxious Weeds

As stated in Objector’s 2024 comments (pp. 61–62), one of the best ways to reduce potential noxious weed spread is by minimizing soil disturbance. To that end, we recommended the Forest Service consider an alternative that uses helicopters to transport drill rigs rather than allowing new road construction. The Forest Service response indicates that the agency did evaluate the feasibility of this proposal, and that the analysis suggested that the overall impact of using helicopters exceeds that of the Proposed Action. “Overall, this alternative for using helicopters for part or all mineral exploration was dismissed in favor of more conventional, safer, and economically feasible methods.” The EA (pp. 28-29) cites several reasons why this alternative wasn’t not considered further or incorporated into the project design, including

logistical challenges and safety risks, environmental impact, economic and efficiency considerations, and increased greenhouse gas emissions.

We find the last justification for not including this alternative as part of the project highly ironic as the Forest Service did not conduct any climate change analysis beyond the scope of air quality. The Forest Service writes, “Helicopters are expected to generate more greenhouse gas emissions than road-based operations. This anticipated increase in the carbon footprint, especially if the project duration extends, *would contradict the aim of reducing environmental impacts as required by numerous laws* (emphasis added),” (EA, p. 29).

First, the Forest Service provides no analysis data or documentation that shows the greenhouse gas emissions from helicopter operations (either for the whole project or in part) in comparison to the totality of greenhouse gas emissions from ground-based operations. Second, if the Forest Service did conduct analysis of greenhouse gas emissions, why weren’t these data reported as effects of climate change, or more significantly, why did the Forest Service choose not to fully analyze the impacts of climate change in relation to the proposed project, but was able to “cherry-pick” the analysis topic to suit apparently forgone conclusions. Including greenhouse gas emissions as a justification for not including a proposed alternative without fully analyzing or disclosing the full effects of greenhouse gas or climate change as it relates to the project is arbitrary and capricious and violates NEPA. If the agency were truly concerned with reducing environmental impacts as required by law, the effects of climate change on project area resources would have full consideration in the EA and project record.

We also offered several suggestions to avoid or reduce noxious weed infestations, some of which are included in the project Design Features. However, numerous elements remain unaddressed, including a requirement for drill site workers to clean boots and shoes prior to starting each work day and routinely inspect the project area, particularly disturbed areas and access routes within the project boundary for noxious weeds. The Forest Service responds by stating that the access routes outside the project area are publicly accessible and requiring Idaho Copper to control or eliminate all noxious weeds along all access roads is beyond the scope of this project. If this is indeed the case, then all routes and roads *within the project boundary* do fall within the project’s scope, regardless if they are primary access roads or open to the public.

Suggested Remedies

- Provide analysis and corresponding data for helicopter greenhouse gas emissions when compared to emissions from ground-based operations
- Add a Design Element requiring drill site workers to clean boots/shoes prior to the start of each operation day

- Establish a noxious weed/invasive plant program that identifies infestations along roads and routes within the project area boundaries and appropriately treat those infestations through physical removal or chemical/herbicide treatment.

XXII. Cumulative Effects, Including Mine Development

“Consideration of cumulative impacts requires some quantified or detailed information that results in useful analysis, even when the agency is preparing an EA and not an EIS.” *Ctr. for Env'tl. Law and Policy v. U.S. Bureau of Reclamation*, 655 F.3d 1000, 1007 (9th Cir. 2011) (cleaned up). The cumulative effects table in the EA identifies numerous actions that overlap in geographic and temporal scope with the Project and which will have cumulative impacts, but neither the EA nor the specialist reports provide quantified or detailed information that results in useful analysis. Objectors raised this issue in their Draft EA Comments at pages 63–64, and 67.

Suggested Remedies

- In EIS, or Supplemental EA, utilize quantified and detailed information to analyze cumulative impacts from activities identified in the EA and highlighted in this objection..

XXIII. Best Management Practices Effectiveness

As stated in Objector’s 2024 comments (pp. 64–65), we provided a specific example from the CuMo Project demonstrating how Best Management Practices lose effectiveness through noncompliance or altered conditions, providing the foundational argument that BMPs do not sufficiently safeguard resources without critically evaluating altered conditions and effectiveness. Reviewing monitoring reports and updating BMP protocols, including any potential consequences for not adhering to prescribed BMPs, should be standard practice for the Forest Service. The Forest Service responded by stating that the comment does not link to the proposed action, purpose and need, decision, or decision process, analyses, and that the comment was outside the project scope. After stating the comment is outside the project’s scope and process, the agency goes further to state that, “The Forest have mitigation (sic) measures to address the issues of the prior culvert removal so that they do not happen again. Further, there is not culvert removal being evaluated as part of the proposed action,” (CuMo Comment Response spreadsheet, NGO-1185-IRU et al, line 64).

Our comment is clearly directly tied to the project, proposed action, and process as the monitoring example comes directly from a previous iteration of the CuMo project and the Forest

Service directly responds by stating that steps are taken to ensure the issues related to the previous culvert removal *do not happen again*. To argue that the comment has no relevance because there aren't any culvert removals proposed for the current CuMo project fails to acknowledge the greater concern, of which we provide *an example*: Are BMPs effective; do altered conditions require revisiting BMPs and is there a need to redesign the BMPs to more closely reflect current needs; how will the Forest Service enforce prescribed BMPs; and what are the consequences for violating, willfully or unintentionally, prescribed BMPs. Failing to adequately consider BMP effectiveness represents a NEPA violation.

As part of the 2015 CuMo Project objection resolution meetings between the Forest Service and the same Objectors, the Boise National Forest agreed to host a forum on project implementation:

As an outcome of discussions that occurred during the objection resolution process in August and September 2015 with both objectors and the proponent, the objectors clearly identified a primary concern of the results-driven process and use of the BMP checklist process was how access to information supporting these processes would be made readily available. They specifically identify the standard Freedom of Information Act (FOIA) process, which requires a party to submit a request and allows the Agency up to 20 business days to respond to information requests, is not responsive, nor do parties necessarily know what and when applicable information is available.

To address this concern, I am committing to developing an open and transparent information sharing process, which I believe will be reasonable and practicable to support, with interested parties. The objective of this information sharing process will be to regularly provide the necessary level and type of information that will help keep parties informed (e.g., standard monthly posting and/or newsletter) as to (1) the progress of the exploration activities; (2) how the checklist process is used to inform the approval process of proposed temporary road and drill pad construction, and other associated activities; and (3) the results of ongoing implementation and effectiveness monitoring of BMPs. Determinations as to what information can be made available through this process will be based on document release requirements under FOIA.

-2015 Supplemental DN FONSI CuMo Exploration Project, pages 10-11.

As part of the mitigation and monitoring program, we recommend that the Forest Service reestablish this forum to report on completed, ongoing, and anticipated work at the site, including site inspections, monitoring and compliance reports, violations, remedies, etc. The Forest Service previously had hosted a website with this information. We are also open to other measures to better involve the public in implementation and effectiveness monitoring. Also, the Stibnite Gold FEIS notes that Perpetua would lead annual site visits for USACE, EPA, IDFG,

and other interested agency personnel as needed. In the Forest Service and BLM Record of Decision and FEIS for the Thompson Creek Mine, there is a provision that the mining company will host one public tour a year. Building on this precedent, and given the public interest in the CuMo Project, and the Forest Service's willingness to date to host tours of the project area, we request that the Forest Service allow for a minimum of four public tours per year. We recognize that certain days and locations may not be suitable for tours because of exploration activities and staffing limitations. However, we believe that such a provision, with sufficient advance notice to Idaho Copper and the Forest Service, is an important component of transparency and accountability.

Suggested Remedies

- Describe enforcement protocols and consequences for violating prescribed BMPs
- Evaluate current conditions and match BMPs with on-the-ground needs for resource protection
- Host an implementation forum (web-based would be preferred for ease of uploading documents) and allow public tours, as described above.

XXIV. Mitigation

As stated in Objector's 2024 comments (p. 65), after avoiding impacts and minimizing negative effects, the Forest Service has an obligation to mitigate the remaining impacts in a manner that is enforceable and durable. The mitigation measures referenced in these comments include offsetting Sacajawea bitterroot impacts with permanent protections, offsetting soil and vegetation disturbance from rehabilitation of nearby unauthorized roads, and mitigating for wildlife disturbances through beneficial projects in the larger area. The upcoming analysis should describe the feasibility and effectiveness of these various mitigation measures, propose triggers and subsequent steps if the mitigation measures are not effective and implement them as part of the project decision.

The Forest Service provides no response, stating that, "36 CFR 228.8 requires locatable operations to be conducted so as, where feasible, to minimize adverse environmental impacts on NFS surface resources," (CuMo Comment Response spreadsheet, NGO-1185-IRU et al, line 65). The agency further states that the Forest Service does not have a responsibility or obligation to mitigate the remaining impacts, and that the agency does not have the authority to require compensatory mitigation. The comment response also refers to an "in-depth assessment" of Effectiveness of Mitigation Measures and that, "Mitigation measures with a low likelihood of implementation were not carried forward to final analysis." Failing to analyze the impact of a mitigation measure because it has a *low likelihood of implementation* more accurately reflects the willingness (or lack thereof) of the Forest Service to require the mitigation measure than

describing the effectiveness of any given mitigation measure. Inventory surveys were assigned a moderate level of effectiveness, while avoidance was assigned the highest level of effectiveness, especially when associated with rare botanical resources like Sacajawea's bitterroot.

The FEIS fails to adequately consider mitigation measures for Sacajawea's bitterroot through adequate inventory surveys or avoidance. It is impossible to sufficiently avoid individual or subpopulations of Sacajawea's bitterroot without having a thorough assessment of the plant's known distribution throughout the project area, and especially in areas slated for disturbance, such as proposed temporary road templates and drilling pad locations.

It is fully within the Forest Service's authority and purview to consider compensatory mitigation measures. We note that, as part of the Stibnite Gold Project, the Payette National Forest has signed a draft Record of Decision with mitigation measures for the reductions in groomed snowmobile routes affected by mine traffic (see Stibnite Gold FEIS, attached). The Forest Service is prepared to authorize the construction of a 2-acre snowmobile parking area, designate an eight mile groomed OSV trail from the Trout Creek Campground to Landmark along the Johnson Creek Road, and designate an 11-mile long, 16-foot wide groomed snowmobile trail south of Warm Lake Road along the Cabin Creek Road to connect to the southern End of Johnson Creek Road. While we have raised concerns about the legality and additive environmental impacts of this particular proposal, we highlight it to demonstrate that the Forest Service certainly feels comfortable about considering mitigation for recreational activities for that particular project.

We feel it is well within the Forest Service's responsibility and duty to establish areas of permanent protection for Sacajawea's bitterroot, especially in an area determined to represent the "stronghold" for the species, which the CuMo project area is for Sacajawea's bitterroot. In the case of sensitive plant species and wildlife affected by the CuMo Project and under special protections under the Forest Plan, we believe that mitigation measures should be required. Failing to adequately protect and safeguard an endemic sensitive plant species represents a violation of NEPA and the Forest Plan. Further, the Forest Service should diligently work to decrease rather than increase the road density within the project area by offsetting soil and vegetation disturbance through the rehabilitation of nearby unauthorized roads.

Suggested Remedies

- Complete inventory surveys of all temporary road templates prior to project implementation and publish those results in a supplemental EA
- Identify, decommission, and fully obliterate an equal length of unauthorized and/or user-created routes within and immediately adjacent to the project area as the length of proposed and constructed project-associated temporary roads

- Analyze the feasibility and effectiveness of designating a permanently protected area outside the proposed project boundary for Sacajawea’s bitterroot
- Initiate a study of the impacts of disturbance on Sacajawea’s bitterroot; The Botany/Weeds Specialist Report states that little is known about the effects of disturbance on the plant and this provides an avenue for gaining understanding of the plant needs and requirements
- Designate three distinct Research Natural Areas with existing, verified, and healthy populations of Sacajawea bitterroot outside the project area to help secure the long term viability of this species. These RNAs should also be segregated from mineral entry for a period of 20 years. These measures would help ensure that future mining avoids impacting these populations and that avoidance ranks as one of the highest levels of protection. While the RNA designation process could require a Forest Plan amendment, we note that the Stibnite Gold project is requiring dozens of amendments to the Forest Plan that would allow for excessive degradation. We would like to see a Forest Plan amendment based on mitigation and conservation values instead of for unfettered development.

XXV. Climate Change

Objectors raised this issue in their Draft EA Comments at pages 67–68. As outlined in the Objectors’ Draft EA Comments (p. 68), the EA has not adequately addressed the impacts of climate change on revegetation success. A comprehensive evaluation of how climate change may affect revegetation efforts within proposed reclamation areas, as well as the potential for increased erosion from construction and exploration activities, is essential. Although the Forest Service’s response claims, “PART 2 and 3, we have analyzed climate change in the climate change report and the tech reports.” However, this issue remains unaddressed in the Final EA documents. Notably, no "climate change report" is accessible on the Project website, leaving this information gap unfilled.

The Greenhouse Gas and Carbon Technical Report mentions that vegetation is expected to regrow and contribute to carbon sequestration. However, it provides no assessment of how climate change may affect the success of these revegetation efforts. Without this analysis, the EA lacks critical information on the potential long-term viability of reclamation strategies under changing climate conditions.

If the Forest Service did conduct analysis of greenhouse gas emissions, why weren’t these data reported as effects of climate change, or more significantly, why did the Forest Service choose not to fully analyze the impacts of climate change in relation to the proposed project, but was able to “cherry-pick” the analysis topic to suit apparently forgone conclusions. Including greenhouse gas emissions as a justification for not including a proposed alternative without fully

analyzing or disclosing the full effects of greenhouse gas or climate change as it relates to the project is arbitrary and capricious and violates NEPA. If the agency were truly concerned with reducing environmental impacts as required by law, the effects of climate change on project area resources would have full consideration in the EA and project record.

Suggested Remedies

- Require an in-depth evaluation of how projected climate conditions, such as temperature changes and altered precipitation patterns, may affect the success of revegetation efforts in reclamation areas, particularly regarding long-term viability and carbon sequestration potential.
- Address how increased erosion due to climate-induced weather variability could impact soil stability and vegetation recovery in areas affected by construction and exploration, providing strategies to mitigate these risks.
- Implement and disclose reclamation strategies that consider projected climate scenarios, such as selecting native plant species adapted to potential future conditions, to improve the likelihood of successful revegetation under a changing climate.
- Make the referenced "climate change report" and any other relevant documents available on the project website, addressing information gaps and enabling full public review.
- Fulfill NEPA requirements by conducting a full analysis of climate change impacts on project area resources, rather than selectively analyzing greenhouse gas data to support certain outcomes, ensuring that a supplemental EA or an EIS offer a balanced and legally compliant assessment.

CONCLUSION

As detailed above and in the Scoping Comments and Draft EA Comments previously submitted by Objectors, the EA and Draft DN/FONSI fail to comply with federal laws, regulations, policies, and other requirements. The Forest Supervisor's Office must remand both documents and correct all errors noted herein. The Forest Service cannot approve any action alternative described in the EA and Draft DN/SONSI, or any other alternative, unless and until all laws, regulations, policies, and other requirements noted herein are satisfied.

###