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September 9, 2020

Dear Ms. Gardunio,

The following are the comments of the undersigned organizations and individuals, who represent various interests, on the proposed Baldy Mountain Landscape Resiliency and Habitat Improvement Project, as described in the Scoping Letter (SL) dated August 11, 2020 and the accompanying map.

The endorsers of this letter appreciate the need to reduce fuels in part of the project area for protection of nearby communities. In general, we support the goal of “reintroducing fire to the landscape through prescribed burning” (SL at 1). However, we have numerous concerns about the proposed project.

I. MORE INFORMATION NEEDED FOR PUBLIC REVIEW

The SL states that “[t]he absence of fire on the landscape has caused the unnatural buildup of brush and trees”, but there is no further information on which tree, wildlife, other species, or ecotypes have been affected. For knowledgeable commenting, more information about the condition of the project area is needed, including, but not necessarily limited to:

--a detailed description of the condition of the vegetation in the area;

--the tree, shrub, forb, and graminoid species that are present or were historically present;

--the historical range of variability for wildfire and vegetation composition and structure. This will vary considerably by elevation and aspect. Higher elevation areas, especially those on north- and east-facing slopes, may not need any treatment or only minimal treatment;

--If “[t]he primary purpose of this project is to begin to move the landscape toward a more natural state and thus improve wildlife habitat for multiple species” (SL at 1), then the agency needs to: a) define specifically what the natural or target state is, and b) state which wildlife species would benefit from proposed treatment and how;

--a description of treatments done in the area in the last 10-20 years or so and how the vegetation has responded;

--a more detailed description of what intensity of treatment, especially for mechanical treatment, is proposed in what areas;

--the wildlife species, especially any that are threatened, endangered, proposed, candidate or sensitive, that inhabit the area or have suitable habitat within it, and how might they be affected by the proposed action; and

--the soil types in the area, and how prone they may be to erosion and mass wasting. This is important because treatment is planned on steep slopes.

This information is important for determining the appropriate design of any project for achieving the purpose and need. It is also needed to determine the possible impacts from the project and how to avoid or minimize them. The public should have an opportunity to examine this information and comment on it and the associated design of any project. See further discussion in section IX below.

II. GENERAL CONCERNS

We are most concerned about impacts to the Baldy Roadless Area. See a detailed discussion in detail in section VII below.

Burning may be best done in spring, before green-up. Burns could be “whitelined”, i. e., burned up to snow, where the fires would stop. This might reduce the need for wide fire control lines, discussed below in sections IV and VII. The SL does not discuss the timing of burns; the EA must do so.

We see that all or parts of several units are on steep terrain. Treatment on such slopes runs the risk of creating or increasing soil erosion. In addition, burning on steep slopes may be difficult to control, as fires going uphill burn very rapidly. It also may not be easy to revegetate some areas treated on steep slopes. The EA must show how soils will be protected, and how compliance with the Soils Management Handbook (FSH 2509.18, including the R 2 Supplement) will be ensured.

It is our understanding that parts of the area are dominated by gambel oak. Cutting or burning such areas may lead to vigorous sprouting of oak, meaning that within a few decades, the fuel loading in the areas where oak is treated would be as high or even higher than it is now.

The SL states (p. 2) that winter habitat for mule deer and elk would be improved. This needs to be examined critically. Burning may improve, at least temporarily, the quantity and/or quality of forage, but it could also remove trees and shrubs that are needed for thermal and hiding cover. Also, treatment in oak may cause a very thick stand of oak to regenerate, reducing the ability of animals such as deer and elk to use it. There may be no net benefit to winter range.

To maintain fuel reductions, future treatments would have to be implemented, as the SL notes:

This project would take multiple years to fully implement and would require maintenance treatments such as periodic prescribed fire in the future.

SL at 4. If fire will be ignited regularly, would the same control lines be used each time in any specific area? If so, the control lines may stay in place and become an essentially permanent impact. Revegetating these lines may be difficult, as is discussed below in section IV. Permanent or semi-permanent fire lines would especially be a concern if it they were implemented in the roadless area. See section VII below.

III. WHAT ACCESS TO THE PROJECT AREA WOULD BE USED?

How would the proposed treatment units be accessed? The map provided on the project web pages does not show roads. Access is also not discussed in the SL except a mention that some “two-track roadbeds” would require improvement for access to one unit (SL at 2) and that 0.92 miles of “temporary access” would be needed on national forest and 0.90 miles on BLM land (id. at Table 1, p. 3).

Road access would very likely be needed to move heavy equipment into proposed mechanical treatment areas. Even hand crews would need reasonably close access to units, as crews could not be expected to carry in chainsaws and other hand-held equipment over a long distance (say more than about one mile).

Under the GMUG Forest Plan, the entire project area is assigned to management area 5A, non-forested big game winter range. Under this management area, new roads are allowed “only if needed to meet priority goals outside the management area or to meet big game goals on the management area”. Plan at III-128. Any temporary roads must be obliterated within one year after planned use ends. Ibid. Any new roads could be used for new public access, to the detriment of wintering big game and other wildlife species. Mountain bike use of any roads or trails in the area could be particularly problematic, as bikes traveling downhill make little noise and thus provide no warning, leading to a strong stress reaction in the wildlife affected.

Treatments accessed by any new or existing routes could remove barriers to off-route vehicle travel, such as by all-terrain vehicles. Treatment units need to be designed to avoid or minimize this.

The NEPA document for the project needs to describe what routes, including any new roads or trails, would be used for access to treatment units. It must also describe the impacts of any road construction or reconstruction, and the impacts of road use. We note that a U.S. District Court recently set aside a Forest Service restoration project in Montana because the agency failed to properly identify the transportation system that would be used to access treatments within inventoried roadless areas. See *Helena* *& Anglers Ass’n v. Marten*, 2020 U.S. Dist. LEXIS 115652 (D. Mont. July 1, 2020) at \*32-\*38, attached.

IV. FIRE CONTROL LINE CONSTRUCTION

The proposal calls for 100-foot wide fire control lines to be constructed down to mineral soil. SL at 2. However, a proposed design feature states: “Do not create fire lines to bare mineral soil that are greater than 50 inches in width.”. Id. at 4. This contradiction is not explained.

Control lines of 100 feet width are said to be necessary “to reduce the chance of fire escaping the unit boundaries.” SL at 2. This distance would not be sufficient to stop a crown fire from spreading, as trees aflame can send burning embers a half mile or more to start new “spot” fires. But for ground fires, 100 feet seems more than is needed.

The SL describes how these lines would be constructed:

Heavy machinery or hand crews would selectively remove vegetation in these areas and prepare a fire line down to mineral soil using hand tools, an ATV or small utility vehicle pulling a plow type device, or by a bull dozer ≤50 inches wide.

SL at 2.

Paths 100 feet wide may not be easy to rehabilitate, depending on the soil type and aspect. If these lines are constructed with machines, as the SL indicates they may be (id. at 2), soils would be compacted, and ripping may be necessary for revegetation to succeed. More coarse-textured soils probably wouldn’t be compacted much, but they could be displaced. All of this ground-disturbing activity increases the likelihood of weed introduction and spread. See section VIII below. These concerns are especially relevant to unit F9 in the RA. See section VII below.

The NEPA document for the project must examine the impacts from constructing fire lines of any width and assess the prospects for revegetating these areas based on site-specific data.

V. SLASH DISPOSAL

Under both mechanical and hand crew treatments, numerous trees would be cut. In hand treatment units.

The trees and brush cut by these crews would be scattered on the ground in some instances or piled in small piles for burning at a later time.

SL at 2. However, the SL does not say how the material cut or uprooted by mechanical means would be treated. The amount of material produced in mechanical treatment units could be considerable. Piling and burning this material would be detrimental to soils, as fires could burn long and hot. This would sterilize the soils beneath the piles by volatilizing nutrients and killing all micro-organisms.

We understand the desire to reintroduce fire to the landscape of the project area. But this should only be done where it is safe to do so. Pre-treatment by mechanical means or by hand may be necessary to reduce the fuels levels to the point where fires could be safely ignited. (See SL at 2, bullet point 2.) But the material cut would have to be removed or treated in place. The former would require an upgrade of existing roads and/or construction of new ones to allow material to be transported out of treatment units. Treating in situ by burning could cause damage to soils as described above.

The NEPA document needs to state how slash would be treated in all treatment areas, especially those slated for mechanical treatment followed by burning. The risks and impacts of slash treatment must be analyzed and disclosed.

VI. RETAIN SOME EXISTING TREES

Some existing trees in treatment units should be retained to help meet the future desired condition. For example, in units F6 and F7, part of the objective is to “promote multiple age-classes of trees and shrubs”. SL at 2. Regeneration in ponderosa pine is uncertain, as it depends on a good seed year and adequate growing season precipitation.

Some dead trees should be retained, especially where they are in clumps and/or mixed with live trees. Standing dead trees provide roosting and nesting habitat for avian and some other wildlife species. When they fall to the ground, they slowly decay into new soil and provide some wildlife habitat in the process.

VII. PROTECT THE ROADLESS AREA AND CONSIDER AN ALTERNATIVE THAT EXCLUDES THE ROADLESS AREA FROM TREATMENT.

The Baldy Roadless Area (RA) contains 2300 acres and is adjacent to the Uncompahgre Wilderness. It would make a logical and valuable addition to the Wilderness, as it includes lower elevation grassland/shrubland, a vegetation type not well represented in Colorado wilderness areas. As the Roadless Profiles for the GMUG National Forest states, for the Baldy RA: “[o]ver half the area is brush and grass land”. Id. at 5.

The RA likely has important habitat for various wildlife species, including deer, elk, and bighorn sheep, including some winter ranges and concentration areas. See Profiles, ibid. These species, as well as many others, function best in an environment that has no, or only minimal, human presence.

The Colorado Roadless Rule (CRR, 36 CFR 294) limits the type of activities that can occur in roadless areas. Generally, selling, cutting, and removing timber are prohibited, with some limited exceptions, chiefly to reduce the fire threat to an at-risk community or municipal water supply. See 294.42(c)[[1]](#footnote-1). This is mostly limited to the first one-half mile from the at-risk community, or an additional one mile if the area is covered by a community wildfire protection plan (CWPP). 294.42(c)(1)(i), (ii).

Under the CRR, treatment in these areas

will focus on cutting and removing generally small diameter trees to create fuel conditions that modify fire behavior while retaining large trees to the maximum extent practical as appropriate to the forest type.

294(c)(1)(iii) and (c)(2)(i).

The SL does not say which exception(s) to the prohibition on cutting trees in roadless areas would be invoked, nor does it assert that the area is covered by a CWPP. Rather it merely states that the proposal would be consistent with the CRR, but with no explanation. See SL at 1. The Forest Service must explicitly state which exception applies.

The CRR requires retention of large trees to the maximum extent possible. 36 CFR 294.42(c)(1)(iii), (c)(2)(i). But the only proposed design criterion in the proposed Baldy project for maintaining larger trees applies only to Gambel oak trees six inches or larger in diameter that are not near fire control lines. SL at 3. The proposed roadless units, with the possible exception of parts of H3 and H4, do not appear to be close to at-risk communities. The northern portion of unit F9 appears to be especially remote from such communities.

Trees in roadless areas can be cut “to maintain or restore the characteristics of ecosystem

composition, structure and processes”. 294.42(c)(3)[[2]](#footnote-2). But it is not clear what state the Forest Service wishes to restore the area to. See further discussion in section I above.

For any cutting, roadless area characteristics must be maintained. 294.42(c). These characteristics are:

(1) High quality or undisturbed soil, water, and air;

(2) Sources of public drinking water;

(3) Diversity of plant and animal communities;

(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species, and for those species dependent on large, undisturbed areas of land;

(5) Primitive, semi-primitive nonmotorized and semi-primitive motorized classes of dispersed recreation;

(6) Reference landscapes;

(7) Natural-appearing landscapes with high scenic quality;

(8) Traditional cultural properties and sacred sites; and

(9) Other locally identified unique characteristics.

294.41.

In the proposal, treatment would be implemented in several units in the RA. Unit M5/F5 would include mechanical treatment, and unit F3 would have a “mechanical option”, presumably meaning that mechanical equipment might be used prior to prescribed fire ignition. The use of mechanical equipment is likely to cause considerable impacts to the RA. The cutting of vegetation with such equipment would likely cover more area and be more intensive than any treatment done by hand crews. Heavy equipment, such as bulldozers, skidders, masticators, etc., could cause damage to soils by compacting or displacing them. Wildlife habitat for species needing forested habitat would be reduced, or even eliminated. Depending on the extent and intensity of treatment, scenic quality could be reduced.

We note with much concern the proposal to construct a 100-foot wide fire buffer around the entire perimeter of unit F9, the great of majority of which is in the RA. See map accompanying the SL. To construct this buffer, which amounts to about 5.5 linear miles, heavy equipment would likely be used.[[3]](#footnote-3) This would surely degrade roadless area characteristics. See further discussion above in section IV about impacts of fire line construction.

With mechanical treatment proposed in the RA, road access would likely be needed. Any road access could allow/encourage public motorized and/or mechanized use in the RA, which could have strongly adverse impacts on roadless characteristics, especially wildlife habitat effectiveness.

Noxious weeds could be introduced and spread in the RA. (See section VIII below.)

The northern end of proposed unit F9 is just east of the summit of Baldy Mountain and is over 10,000 feet elevation. This is likely the part of the RA covered by a “mix of grasslands, aspen, and spruce-fir”. Profiles at 5. The need for treatment, especially mechanical treatment, in this area is not clear, as areas at this elevation are less likely to have been significantly influenced by fire suppression.

The west side of unit F9 is adjacent or very close to part of the trail that ascends to the summit of Baldy Mountain. The southeastern border of unit F9 appears to be the Storm Mountain Trail. Would either of these trails have to be closed during treatment? This must be addressed in the EA.

The CRR generally prohibits road construction, including temporary roads, in roadless areas, with some exceptions. 36 CFR 294.43(c)(1). Even if a project qualifies for an exception, road construction must meet some additional criteria (294.43(c)(2)), including consistency with the land management plan (id. at (2)(iii)). With any new road construction, compliance with the forest plan would be questionable. See further discussion in section III above.

If treatment in the RA is still contemplated, the Forest Service needs to make clear which exception(s) to the prohibition on cutting timber will be used for the project, and if applicable, which exception to the prohibition on road construction would be invoked. It must also design and implement any treatment within the RA to minimize the impacts to roadless area characteristics.

We recommend that no mechanical treatment occur in the RA. The northern half or so of unit F9 should be deleted from the project. Any motorized access should be only via existing routes to avoid creating or improving public motorized access to the RA. Any fire control lines must be constructed only by use of hand tools and be completely rehabilitated after work is completed. See further discussion on fire control lines in section IV above.

At a minimum, the Forest Service must consider in detail, as a reasonable alternative in the EA, a proposal that includes each of the modifications to the proposed action described above, specifically, eliminating mechanical treatments in the RA. Such an alternative would likely still accomplish the project purpose and need while providing additional protection for the RA’s undisturbed character.

We note that the Rocky Mountain Region recently upheld an objection to the Landscape Vegetation Analysis (LaVA) project on the Medicine Bow National Forest in Wyoming where the EIS failed to consider an alternative that would have eliminated treatments in inventoried roadless areas.[[4]](#footnote-4) Further, as the GMUG National Forest is aware, this year the Tenth Circuit set

aside the North Fork coal mine exception to the Colorado Roadless Rule for failure to consider an alternative to protect key roadless values. *High Country Conservation Advocates v. United States Forest Serv*., 951 F.3d 1217 (10th Cir. 2020).

VIII. FIGHT NOXIOUS WEEDS AND PROTECT RARE PLANTS

We are glad to see the following proposed design feature: “Treat invasive species before and after project implementation”. Cheatgrass, Canada Thistle, and foxtail barley were observed by one of this letter’s endorsers along the Baldy Trail in August, 2020. At least some of this is likely in proposed unit F9.

Burning and any kind of ground disturbance provide an ideal environment for introduction and spread of noxious weeds. We recommend that before any activity occurs, the project area be surveyed for weeds. Any populations found should be eradicated to the greatest extent possible. Follow-up surveys should occur after work is completed for at least two full growing seasons, with eradication of any weeds then discovered.

The weed surveys could also be used to identify rare plant populations. Any such populations must be protected with a suitable buffer that allows expansion. All heavy equipment use and treatment must be prohibited in the buffer area unless fire would aid an expansion of a rare plant population.

X. PREPARE AN ENVIRONMENTAL ASSESSMENT AND DISTRIBUTE A DRAFT FOR PUBLIC COMMENT.

Given the importance of roadless areas, and the possible effects to the Baldy RA, the agency needs to prepare an EA for the proposed project. SL at 1. With the lack of important information needed for designing appropriate treatments (if any) for the various parts of the project area (see section II above), a draft EA should be distributed for at least a 30-day public comment period. Nothing in the 218 rule that governs comments and objections nor anything in the agency’s procedures prohibits this. Indeed, a draft EA was issued in 2019 for the Taylor Park Vegetation Management Project on the GMUG National Forest.

The EA should analyze in detail at least one alternative that would have no treatment in the RA. If treatment is still contemplated in the RA, then at least one alternative must have no mechanical treatment there.

CONCLUSION

A project in the Baldy area could be beneficial in restoring fire to the landscape. But it must be done carefully and safely while minimizing impacts, especially to the RA. New roads should not be built, especially in the RA or to access it. Any roads that are constructed must be promptly obliterated upon completion of work. Mechanical treatment should not occur in the RA.

A draft EA that includes all of the information described in sections I, III, IV, V, and VII and above should be issued for public comment.

Sincerely,

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1. This is for non-upper tier roadless areas, which Baldy is. [↑](#footnote-ref-1)
2. “[P]rojects [using this exception] are expected to be infrequent”. Ibid. [↑](#footnote-ref-2)
3. Though it would be physically possible, it is hard to imagine hand crews constructing this much fire line. It would take too long and be too labor intensive, and thus too expensive. [↑](#footnote-ref-3)
4. See Forest Service Rocky Mountain Region, Medicine Bow Landscape Vegetation Analysis Project (LaVA) Summary of Reviewing Officer’s Instructions (June 10, 2020) at page 4, available at <https://www.fs.usda.gov/nfs/11558/www/nepa/106251_FSPLT3_5334929.pdf> (last viewed Aug. 31, 2020). The Medicine Bow NF ultimately approved the project but “exclude[d] inventoried roadless areas from treatment.” Medicine Bow Routt National Forest, Medicine Bow Landscape Vegetation Analysis Project Record of Decision (Aug. 13, 2020) at 3, available at <https://www.fs.usda.gov/nfs/11558/www/nepa/106251_FSPLT3_5334953.pdf> (last viewed Aug. 21, 2020). [↑](#footnote-ref-4)