

### Early Notice of Importance of Public Participation in Subsequent Environmental Review

A DEIS will be prepared for comment. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a

submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and if the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 18, 2007.

**Nora B. Rasure,**

*Forest Supervisor, Coconino National Forest.*

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**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Beartooth Ranger District Travel Management Plan, Custer National Forest; Sweet Grass, Park, Stillwater, and Carbon Counties, MT**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the effects of designating National Forest System roads, trails, and areas available for public motorized use and changing pack and saddle stock use on certain non-motorized trails on the Beartooth Ranger District, Custer National Forest. The decision will be to determine whether to include routes that are not currently National Forest System roads, trails, and areas for public motorized use on the Beartooth Ranger District, establish a season of use and/or type of vehicle use for roads, trails, and areas designated for public motorized use, change dispersed vehicle camping designations, and restrict pack and saddle stock use on select non-motorized trails. A National Environmental Policy Act (NEPA) decision is not required to designate roads, trails, and areas for public motorized use that are currently part of the National Forest System of roads, trails and areas.

Once a decision is made, a Motor Vehicle Use Map (MVUM) will be

prepared, in compliance with the 2005 Forest Service Travel Management Rule (36 CFR Part 212). The MVUM will show all the routes that are designated for public motorized use on the Beartooth Ranger District. The MVUM will be the primary tool used to determine compliance and enforcement with motorized vehicle use designations on the ground. Those existing routes and other non-system routes not designated open on the MVUM will be legally closed to motorized travel. The decisions on motorized travel may include motorized over-the-snow travel.

**DATES:** The draft environmental impact statement is planned to be released in October 2007 and the final environmental impact statement is planned for release in June 2008. The project was initially released for public scoping January 30, 2004 through May 1, 2004. However, the scoping period was extended to September 1, 2004 due to great public interest and the many requests asking for an extension of the scoping period through the field season.

**ADDRESSES:** Send written comments to Beartooth Ranger District Travel Management Plan, Custer National Forest, 1310 Main Street, Billings, MT 59105 or call (406) 657-6205 extension 225.

If you prefer, you can submit comments on the internet at comments-northern-custer-beartooth@fs.fed.us by typing on the subject line "Beartooth RD Travel Management Plan."

**FOR FURTHER INFORMATION CONTACT:** Doug Epperly, Project Coordinator, at (406) 657-6205 ext. 225.

#### **SUPPLEMENTARY INFORMATION:**

##### **Purpose and Need for Action**

The purpose of the proposal is to designate a system of roads, trails, and areas for motor vehicle use, including over-the-snow travel and existing recreation use, on the Beartooth Ranger District, Custer National Forest. The system of roads, trails, and areas to be designated will be consistent with the laws, regulations, and policies governing the management of National Forest System lands. Specifically, this includes the Forest Service 2005 Travel Management Rule (36 CFR part 212), the January 2001 Off-Highway Vehicle Record of Decision and Plan Amendment for Montana, North Dakota, and Portions of South Dakota (hereafter Tri-state OHV Plan), the subsequent Forest Plan Amendment Number 39, the 1987 Beartooth Travel Plan, and the Custer National Forest and National Grasslands Land and Resource Management Plan (hereafter referred to

as the Forest Plan, 1986) (Forest Plan Record of Decision, 1987)).

There is a compelling need to address travel management on the Beartooth Ranger District as a result of the Forest Service 2005 Travel Management Rule, the Tri-state OHV decision, and confusion generated in trying to implement the 1987 Beartooth Travel Plan. Both the Travel Management Rule and the Tri-State OHV decision set timeframes within which to complete, and/or start (as in the case of the Tri-State decision), specific route designation decisions, as necessary. It is important to note, that identifying existing National Forest System Roads and Trails on a MVUM does not constitute a decision pursuant to the National Environment Policy Act.

Federal land managers are directed (Executive Order 11644, 36 CFR 212, and 43 CFR 8342.1) to ensure that the use of motorized vehicles and off-road vehicles will be controlled and directed so as to protect the resources of those lands, to promote the safety of users, minimize conflicts among the various uses of the federal lands, and to provide for public use of roads and trails designated as open.

#### **Proposed Action**

The proposed action is to designate selected roads, trails, and areas open to public motorized travel, designate dispersed vehicle camping, and implement changes in pack and saddle stock use on non-motorized trails on the Beartooth Ranger District, Custer National Forest (NFS lands). The designations will also set specific seasons of use, where appropriate, and specify the type of use (e.g., highway legal vehicle, ATV's, motorcycles) for roads, trails, and areas. The Forest Service will produce a Motor Vehicle Use Map (MVUM) depicting those routes which are open to the general public for wheeled motorized use. This alternative, as well as any other action alternative, will require a Forest Plan amendment to remove specific road management contained in the Forest Plan and provide for management of those roads in the travel plan decision.

#### **No Action Alternative**

The No Action alternative would be to designate the current Beartooth Ranger District system motorized roads and trails for public motorized use, but would not address existing routes that are identified as unauthorized (i.e. non-system) routes by the Forest Service. The existing condition would be to designate all of the system and non-system motorized routes identified during the 1999–2000 Custer National

Forest inventory of existing roads and trails. Alternatives to the Proposed Action and No Action will depict differing combinations of routes to remain open to motorized travel.

A consequence of designating routes open for public motorized travel is that those existing routes not designated as open would be not be available for public motorized travel. Decommissioning or obliterating these routes, which may involve ground disturbing activities, would not be a part of the Proposed Action or alternatives, and would generally require separate and distinct site-specific NEPA decisions regarding the implementation aspects of road closures. The environmental consequences of having routes closed to motorized travel will be evaluated in this environmental analysis.

Identification of new routes that would meet the goals and objectives for a motorized transportation system on NFS lands will be, as appropriate, a part of this travel management planning and identified as an opportunity, but would require separate, site-specific NEPA decisions to implement ground disturbing activities associated with new route construction.

#### **Responsible Official**

The Responsible Official is Steve E. Williams, Forest Supervisor, Custer National Forest, 1310 Main Street, Billings, MT 59105.

#### **Nature of Decision To Be Made**

Based on the purpose and need for the proposed action, the Forest Supervisor will evaluate the Proposed Action and other alternatives in order to make the following decisions for the specific National Forest System lands:

- Determine those non-system roads, trails, and areas that should be converted to system roads, trails and areas, and designate as open to the public for motorized travel; and,
- Determine the allowed season and/or type of use for those routes open to motorized travel
- Determine if any changes in the extent and nature of dispersed vehicle camping are warranted.
- Determined those non-motorized trails where pack and saddle stock use would be changed to day use or prohibited.

- Site-specifically amend the Forest Plan by removing standards and guidelines for specific roads and trails from the Forest Plan (for example, see Forest Plan pages 51, 89, and 91). Travel management direction for routes that will not have a change in travel management direction will be shown on

the Motor Vehicle Use Map (pursuant to 36 CFR 212). Routes, for which travel management direction is being changed, will be analyzed in the EIS for the Beartooth Ranger District Travel Management Plan.

#### **Scoping Process**

Public scoping was initiated January 30, 2004 and was planned to close by May 1, 2004. Several public meetings were conducted in local communities that could be affected by the decision. The scoping period was extended to September 1, 2004 due to high public interest. The Forest Service received over 5000 letters, postcards or other forms of commenting (i.e. electronically submitted comments). The project was delayed due to some key personnel changes, acts of nature (slides on Beartooth Highway and the Derby fire), and release of the 2005 Travel Management Rule. Hence, additional public meetings were conducted in July 2006 to update the public on the process and brief those involved in the process on the 2005 Travel Management Rule, and from January through March 2007 collaborative public meetings were conducted in an effort to find common ground.

The Forest Service will consider all public scoping comments and concerns that have been submitted, as well as resource related input from the interdisciplinary team and other agency resource specialists. This input will be used to identify issues to consider in the environmental analysis. A comprehensive list of issues will be determined before the full range of alternatives is developed and the environmental analysis is begun.

Persons and organizations commenting during the initial scoping will be maintained on the mailing list for future information about Beartooth Ranger District Travel Management Planning.

The Responsible Official has determined, at this time that it is in the best interest of the Forest Service to prepare an environmental impact statement.

#### **Comments Requested**

Given that scoping has been conducted and that numerous public meetings have been conducted, comments are not being requested at this time.

#### **Early Notice of Importance of Public Participation in Subsequent Environmental Review**

A draft environmental impact statement will be prepared for public comment. The comment period on the

draft environmental impact statement will be 45 days from the date that the Environmental Protection Agency (EPA) publishes the notice of availability in the **Federal Register**.

Written comments are preferred and should include the name and address of the commenter. Comments submitted for this proposed action will be considered part of the public record.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc. v. Harris*, 409 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternative formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: July 18, 2007.

**Nancy J. Rusho**,

*Acting Deputy Forest Supervisor.*

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**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### South Project; Hell Canyon Ranger District, Black Hills National Forest Custer, SD

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Hell Canyon Ranger District of the Black Hills National Forest intends to prepare an Environmental Impact Statement (EIS) for a proposal to implement multiple resource management actions within the South project area as directed by the Black Hills National Forest Land and Resource Management Plan. The South project area is approximately 52,082 acres in size, with 43,045 acres of National Forest lands, 1,197 acres of state land and 7,840 acres of private land. The project proposes to reduce the risk of large-scale wildfire effects on the At-Risks Communities (ARC) of Custer, Pringle and Argyle, South Dakota, provide for wildlife habitat needs, reduce risks of mountain pine beetle infestation, provide a sustainable supply of commercial timber, and provide management and public access.

**DATES:** Comments related to this project will be most useful to the planning team if received within 30 days after publication of this notice in the **Federal Register**. The draft environmental impact statement is expected to be available January 2008 and the final environmental impact statement is expected to be completed by June 2008.

**ADDRESSES:** Send written comments to Michael D. Lloyd, District Ranger, Black Hills National Forest, Hell Canyon Ranger District, 330 Mount Rushmore Road, Custer, South Dakota 57730. Telephone number: (605) 673-4853. Fax number: (605) 673-5461. Electronic comments must be readable in Word, RichText or pdf format and must contain "South" in the subject line. Electronic comments may be e-mailed to: [comments-rocky-mountain-black-hills-hell-canyon@fs.fed.us](mailto:comments-rocky-mountain-black-hills-hell-canyon@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:** Betsy Koncerak, Project Leader, at the address listed above or by phone at (605) 673-4853.

**SUPPLEMENTARY INFORMATION:** The actions proposed are in direct response to management direction provided by the Black Hills National Forest Land and Resource Management Plan, as amended (Forest Plan). The Project Area is located approximately four miles west of Custer, South Dakota and is within

Custer County. The northernmost point of the project area lies approximately four miles north of US Highway 16 along Lightning Creek road. The southernmost point of the project area is approximately 12 miles south of US Highway 16 along Pleasant Valley Road.

#### Purpose and Need for Action

The purpose and need for action in the South project area is to reduce the risk of large-scale wildfire on the At-Risk Communities (ARCs) of Custer, Pringle and Argyle, South Dakota (66 FR 43384), provide for wildlife habitat needs, enhance vegetative diversity, reduce the risk of mountain pine beetle infestation, and provide a sustainable supply of commercial timber consistent with direction in the Revised Forest Plan for the Black Hills National Forest, as amended (Forest Plan), while providing for management and public access needs. This project is focused on implementing management actions that move toward achieving desired conditions and objectives embodied in Goals 10 (establish and maintain a mosaic of vegetation conditions to reduce occurrences of large-scale fire, insect, and disease events), 2 (provide for biologically diverse ecosystems), and 3 (provide for sustained commodity uses) of the Forest Plan.

#### Proposed Action

The proposed action includes the following management actions:

- Commercial thinning to 40 basal area on approximately 9,621 acres to reduce fuels around private lands to reduce the risk of large-scale wildfire. In addition, approximately 9,400 acres of prescribed burning is proposed to reduce fuels in other portions of the project area to create fuel breaks for community protection.
- Commercial thinning to 60 basal area on approximately 2,628 acres to increase tree growth and vigor, reduce the potential for mountain pine beetle infestation and reduce the potential for spreading crown fires.
- Releasing approximately 11,428 acres of regenerated pine stands through overstory removal prescriptions.
- Restoration and maintenance of meadows by removing conifers from approximately 2,847 acres of these habitats.
- Reducing the density of the managed road system, which is currently 5.4 miles per square mile, by closing unneeded roads and by converting needed, unauthorized roads to system roads.