

To: Mary Erikson, Forest Supervisor
Cc: Virginia Kelly, Forest Plan Revision Team Leader

From: Sonia Tamez

June 3, 2019

Thank you for the opportunity to comment on the Draft Revised Forest Plan (Plan) for the Custer Gallatin National Forest (Forest) and the accompanying Draft Environmental Impact Statement (EIS). I have visited the Forest and am acquainted with its extraordinary cultural and natural resources. I hope that these comments are helpful.

The planning documents should be clear whether the draft Plan and EIS were prepared in collaboration, consultation, and coordination with tribal governments, tribal organizations, traditional practitioners, and others who have information, perspectives, and experience that could contribute to and better inform the Forest planning documents. There is some mention of several Tribes providing comments, but it isn't apparent what the process entailed. Were these consultation sessions? Collaborative meetings? Are there protocol or other types of agreements on how the Forest and tribal governments will work together?

The Forest's draft Plan and EIS are inconsistent regarding how many and which Tribes the Forest should be working with though there is an important table to key treaties. Some of these Tribes have resource plans and participate in multi-tribal agreements yet those plans and resource agreements aren't discussed when it comes to how they will influence the forest Plan. The Forest planning documents should examine areas of support, conflict, or neutral effects regarding these tribal planning efforts.

The Forest shares a boundary with the Crow Reservation. How does the Forest draft Plan articulate with the Crow Tribe's management plans and those of other neighboring governments?

Portions of the draft Plan and EIS state that the Forest will comply with relevant laws, regulations, policies, and other authorities regarding tribal treaties, reserved rights, and interests so that there are no differences in the alternatives, including the current land management plan. Yet, other sections reveal that there are substantial differences among alternatives regarding the potential effects of on tribal rights and interests.

Furthermore, the Forest planning documents do not indicate **how** the Forest would redeem its trust responsibilities in the context of other uses and values. It is not enough to say that the Forest would comply with relevant authorities. The Forest could indicate, for instance, that sacred sites and traditional cultural properties could be considered for withdrawal from mineral entry (with the caveat if needed that the actual decision to do so may not be at the plan level, but at a project level decision). Tribal

motorized access to ceremonial areas located in potential backcountry or wilderness study areas could be accommodated through special language, boundary adjustments, or other means as has been done in other areas in the West for a variety of activities, e.g., water infrastructure, fish and wildlife management, access to inholdings, and for tribal traditional activities. At least three wilderness statutes directed no diminution of tribal access to wilderness areas. At least one wilderness contains provisions for continued motorized access to implement treaty rights. Wilderness statutes have also authorized temporary closures of certain areas for tribal religious or cultural needs and activities. The Forest could look at supporting tribal needs in these areas in the Plan, subsequent recommendations for wilderness or other designations, and subsequent project planning documents.

The Forest has a critical trust responsibility for bison. Yet, there is no mention of consistency with or incorporation of the Interagency Bison Management Program (which includes the FS, and 3 tribal entities: the Confederated Salish and Kootenai Tribes, the Nez Perce Tribe, and the Intertribal Buffalo Council). It isn't clear how the Forest will redeem its trust responsibility to maintain the habitat and population of bison. There may be other trust responsibilities for other species as well. The Cooperative Conservation agreement for Yellowstone Cutthroat Trout with Montana between the Crow Tribe, various state and federal agencies might be relevant.

Tribes should be consulted on their plans and how their lands, programs, and resources might be affected by the Forest plan as well as how trust resources and rights might be affected on lands currently administered by the Forest.

There are several areas, cultural and natural resources that are mentioned as of particular importance to Tribes. Tribes have expressed concern over proper treatment of traditional cultural properties and burials located on the Sioux District. Specific mentioned as particularly revered is Ludlow Cave (in the North Cave Hills). Also brought forward were Slim Buttes as a whole and the Slim Buttes battlefield and eagle trapping lodges.

During "informational meetings" additional comments were expressed, including concern about plants in the Tongue River Breaks and spring developments. Other concerns were regarding access in the or Mountains, bison and bighorn sheep, and teepee pole availability, the need for interpretation that includes American Indian perspective, protection of North Cave Hills, Nez Perce Trail, and Bannock Trail, land exchanges, campground fees, larger landscape for and treatment of bison, honoring of reserved treaty rights, and hunting season closures for treaty Tribes. How are each one of these issues and opportunities dealt with in the draft Plan?

"Standard", as defined in the draft Plan "is a mandatory constraint on project and activity decision making, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal

requirements...” “Guideline” “is a constraint on project and activity decision-making that allows for departure from its terms, so long as the purpose of the guideline is met...”

Standards and guidelines in the draft Plan are often absent when it comes to tribal concerns and do not prioritize protection of significant areas, plant and animal resources, and access to and use of the area by Tribes commensurate with their importance to Tribes and the Forest’s trust responsibility. When present, the draft Plan standards often merely state to avoid, minimize or mitigate conflict. “Mitigation” means just lessen. Where are tribal rights and interests affirmatively supported and important resources enhanced and prioritized?

Selected Specific Comments on the draft Plan

Pg. 72 2.4.3, Areas of Tribal Importance (American Indian Rights and Interests)

Are these the only areas that are important to Tribes?

(There is a typo – statutes, not statues).

The draft Plan needs to include a more complete definition of sacred sites from EO 13007 and AIRFA. EO 13007 requires federal land management agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. In contrast to Section 106 of the NHPA, the Tribe or an appropriately authoritative representative of an Indian religion identifies sacred sites. Sacred sites are protected, not just managed.

AIRFA was enacted to return basic civil liberties and to protect and preserve for Native peoples their inherent right of freedom to believe, express, and exercise the traditional religious rights and cultural practices of Native Americans, Eskimos, Aleuts, and Native Hawaiians. These rights include, but are not limited to, access to and use of sacred sites, freedom to worship through traditional ceremonies, and use and possession of objects considered sacred. Furthermore, AIRFA requires that the policies of government agencies should eliminate interference with the free exercise of Native American religious and to accommodate access to and use of religious sites to the extent that the use is “practicable” and consistent with an agency’s “essential” functions.

Pg. 73

The standards are weak and ambiguous. The tribal government has treaty and other reserved rights. There are also individual, traditional practitioner rights (e.g., those affirmed in AIRFA). A treaty right or a right under AIRFA should take precedence over recreation use, permits, etc.

Pgs. 138-143, Sioux Geographic Area

This region contains “the highest concentration and most varied of precontact sites in the Northern Great Plains” (pg. 140, para 1). There is also mention of sacred sites, cultural landscapes, petroglyph sites, and other significant cultural resources.

Yet, the “vision” only references how important the North Cave Hills and the Chalk Buttes are to Tribes and how it “supports people economically through grazing, timber, hunting, and oil and gas production.” What about the other areas that are mentioned as important? How will these values and uses be reconciled?

Only the North Cave Hills are provided “desired conditions and guidelines” to protect their traditional values and uses. There is only a guideline (SX-GDL-TRIBAL) for Chalk Buttes. What about the other sacred sites, cultural landscapes, National Register district under review, the prehistoric Rock Art of South Dakota Multiple Listing Nomination, the battlefield at Slim Buttes, and other places, areas and sites that Tribes have said are important to them.

Pgs. 143-146, Ashland Geographic Area

This area contains the Tongue River Breaks, which has been mentioned as an area of concern by Tribes. It is noted that “it is currently under study as a traditional cultural landscape” and it has already been studied in the 2010 Northern Cheyenne Ethnogeography of the Tongue River and Powder River Plateau.

The draft plan “Vision”, repeats that it is important to the Northern Cheyenne Tribe. There is a Standard (AL-STD-ABCA) stating that new spring development should avoid springs. There are no other standards protecting the landscapes, sites, and values that are important to Tribes.

Pgs. 147-155, Pryor Mountain Geographic Area

There are traditional cultural landscapes, sacred sites and landscapes, ceremonial places, and other values in this area. Tribes expressed an issue over access to the Pryor (see above).

There is an “area of tribal interest” noted in this section of the plan with the desired condition that “the Pryor Mountains maintain the characteristics and values that qualify it as a traditional use area.”

How will this be done? There are no standards? How will tribal comments regarding access be addressed?

Pgs. 165-172, Bridger, Bangtail, and Crazy Mountains Geographic Area

The Crazy Mountains are a traditional cultural landscape that has been proposed by the Crow Tribe for nomination to the National Register of Historic Places. Yet there is no mention of how it will be protected or managed.

Pgs. 173-174, Madison, Henrys Lake and Gallatin Mountains Geographic Area

How will the Nez Perce Trail be managed? Concerns were expressed about this trail.

Selected Specific Comments – draft EIS

Pg. 541, para 2

Just because all the relevant laws, etc. will be followed, doesn't mean "related effects are the same across all alternatives."

Pg. 542, para 2

This section acknowledges that there are various effects.

Pg. 544, para 5

The draft plan can exempt traditional uses (they are not "recreational") from restrictions to motorized access.

Pg. 545, para 3

There are ways to provide essential motorized access for traditional uses through special direction, adjusting boundaries to allow a road, particularly an existing one.

Pg. 546, para 5

What about existing bison plans?

Pg. 547, para 3

Isn't vandalism also an issue?

para 5

The draft plan can also call for consideration of withdrawal from mineral entry to protect special areas (see R5 Sierra Nevada Framework). CF pg. 548, para 2

Pg. 552

AIRFA is also relevant here.