

September 20, 2019

Objection Reviewing Officer
USDA Forest Service
Northern Region
26 Fort Missoula Rd.
Missoula, Mt. 59804

Dear Objection Reviewing Officer,

Thank you for the opportunity to file Objections to the Draft decision Notice, Finding of No Significant Impact, and Response to Comments for the Taylor Hellroaring Project. Please enter my Objections into the official record and keep me advised of all future steps in the process. Also, please include by reference the comments of Swan View Coalition and Friends of the Wild Swan.

I have reviewed the above document as well as its specific responses to my previously filed comments and recommendations, and while the Draft Decision Notice (DDN) “responds” to my comments, it is largely “unresponsive” to the very real concerns I raised based upon science and law, and to potential solutions. A few exceptions include the removal of Trails C3, C4, and C5.

Because of the continuing deficiencies of the Environmental Assessment (EA) and the Draft Decision Notice in terms of science and law, I file the following Objections:

I. OBJECTION I: While the DDN does lay out project Purposes, it largely fails to demonstrate an ecological, recreational, or management “Need” for many project elements. Rather, the project is based largely on “manager preferences” for more logging; the recreational “Wants” of the mountain biking community; and inflated fire control “Wants” from local communities and businesses that are not based on sound fire science.

The DDN, P: 1 contains the following on Purpose and Need:

The selected alternative activities would meet the purpose and need for the project:

- To provide a range of trail experiences for hikers, mountain bikers and horse riders to connect the local community with the Flathead National Forest. Opportunities will vary from highly developed accessible trails, near trailheads and roads to more primitive and challenging trails in more remote backcountry while reducing user conflict as well as addressing potential human and wildlife conflicts through trail use designation, trail design and management;
- Increase forest resilience to insect infestation and disease infection and wildland fire disturbances while maintaining a natural-appearing forested setting viewed from the surrounding area;
- Reduce the risk and severity of large scale stand-replacing fires to protect values at risk within the wildland-urban interface, Whitefish Mountain Resort, and electronic sites

along the Whitefish Divide;

- To restore whitebark pine and western white pine where suitable habitat conditions exist; and
- Maintain and improve terrestrial wildlife species habitat and security.

In addition, DDN P: 2 adds that “The proposed trails would connect the Whitefish Trail System and existing NFS trails (GA-SM-MA7- Big Mtn-DC-06 and FW-DC-IFS-08). This would provide opportunities for users to disperse into more remote and challenging trails with greater opportunities for solitude.” (emphasis added).

Since my previous comments on the EA addressed each of these issues in detail with documented solutions that have been largely ignored or falsely discounted, I have attached those comments to my Objections. The above purpose and need statements fail to provide an actual need in the following specific ways:

(A) Purpose & Need #1; P: 1-4 of the EA made the following assertion: “Conflicts among user groups are increasing, in part due to the increase in use and the limited availability of trails adjacent to the city of Whitefish...”

Nowhere do we see any actual documentation to back up either of these claims. I presume they come from the mountain biking groups that were/are part of the collaborative group assembled by the Flathead National Forest (FNF), and although those groups consistently act as a “booster club” for more, longer, and steeper trails, rather than as objective observers, the Forest appears to have accepted the above statement as fact.

As I noted in my EA comments (See Attachment), I have hiked the Whitefish Trail system consistently over the past decade and have observed no such crowding or dramatic increase in use or conflicts beyond the first couple of years, as my EA comments noted below:

“I have used the Whitefish Mountain Resort (WMR) area for nearly 25 years, and the comparatively new Whitefish Trail (WT) for a decade, and I can tell you that the above statement is demonstrably false. The WT provides a large and expanding trail network virtually right out Whitefish’s back door, and on most days use levels are very moderate to sparse.

While there were conflicts in the first couple of years – largely caused by members of the Extreme Mountain Biker crowd (“Combat Bikers”) riding recklessly, and running hikers off trails – those have largely disappeared, as the extreme biker folks have largely moved to the extensive and well-maintained trails at Whitefish Mountain Resort that are built for their type of high-speed use with banked turns, wide open sight lines, and good signage.

I can think of no better way to dramatically increase user conflicts, accidents and injuries – for humans and wildlife – than to connect the Combat Biker crowd of WMR to the quieter, less crowded, less speed-oriented trails around Whitefish. The connections being pushed by this EA are literally “an accident waiting to happen”, and the fault will rest

squarely with the Flathead Forest... And as the EA readily admits, use levels on the envisioned trail system are likely to increase substantially.”

In the Flathead’s Response (Comment 83), they only make the gratuitous claim that they don’t know what I mean by “Combat Bikers” when it is spelled out above as extreme sports enthusiasts riding fast, recklessly, with disregard for other users, and running those users off the trail. These are adrenaline “junkies”, not the current users of the Whitefish Trail. Their goal is to ride faster, further, riskier, and to conquer the trail, the mountain, and wild nature on behalf of a personal thrill. As noted above, they already have excellent and extensive trails for that purpose at Whitefish Mountain Resort (WMR) as well as the Spencer Mountain section of the Whitefish Trail, and across the Flathead Forest’s extensive system roads. Connecting those users to the main Whitefish Trail complex will be like mixing gasoline and matches – more conflicts, accidents, injuries, and crowding – The Exact Opposite of the stated Purpose and Need.

Finally, it’s important for the Flathead Forest to remember that in 2016 one of its own staffers was killed by a grizzly while traveling quietly and at a high rate of speed on a trail, and colliding with a grizzly – as determined by a Board of Review that the Flathead Forest was a member of. In a May 26, 2019 article, the Kalispell Daily Interlake reported the following:

“In June 2016, after a grizzly bear killed mountain biker Brad Treat in the Flathead National Forest near West Glacier, a board of review concluded: “The incident appears to be a surprise encounter with a grizzly bear due to the high speed and the lack of noise of bike travel, combined with a blind curve on a trail.”

Investigation suggested Treat collided with the bear and that Treat and his bike flipped over the grizzly and landed on the trail. Evidence suggested the collision occurred so quickly that neither Treat nor the bear could avoid it.

The Board of Review described mountain biking “as a recreational activity that involves increased risk and danger of surprise encounters with bears.”

Chris Servheen served as chairman of the Board of Review that investigated the Treat fatality. He retired in April 2016 as Grizzly Bear Recovery Coordinator for the U.S. Fish and Wildlife Service after 35 years.

“Mountain bikers have the potential to compromise and diminish the value of grizzly bear habitat by displacing bears from bike trail areas,” Servheen said this week.

“Mountain bikers also put themselves at serious risk of surprise encounters with both black and grizzly bears because they travel quietly at high speed,” he said. “This is exactly what we tell people not to do when traveling in grizzly habitat.”

The Board of Review attributed the increased hazards associated with mountain biking in bear habitat to the tendency for the activity to be comparatively quiet and for bikers to

travel at a higher speed than hikers. In addition, the board observed that mountain bikers tend to focus on the trail close to the bike “instead of looking ahead for bears, especially on single-track trails.”

A February 2016 article at singletracks.com observes, “Mountain biking is perhaps the most dangerous of the forms of recreating in bear country.”

Outdoors retailer REI was even more blunt in one installment of the company’s online “Expert Advice” feature: “It is not advisable to ride mountain bikes in grizzly country. Bikes cover ground quickly and quietly, meaning you could encounter a grizzly in a swift and startling manner. Such a meeting is a grave error in grizzly bear country.”

And in a May 22, 2019 issue of Mountain Journal (See my submitted EA comments), former Grizzly Recovery Coordinator Chris Servheen said:

“Servheen says that despite assertions by mountain bikers, the scientific evidence on impact is pretty clear, based on human-bear incidents that have happened and thousands of hours of field observations and radio-tracking of grizzlies.... Mountain bikes are a grave threat to bears.”

Finally, in a recent report (Attached), well-known grizzly researcher and expert Dr. David Mattson (2019, P: 36-37) reported the following:

Effects of Mountain Bikers on Grizzly Bears

Mountain bikers occupy a conceptual middle-ground between pedestrians and people on or in motorized transport. They do not employ noisy mechanized equipment that potentially gives advance warning of their progress, but at the same time they move at potentially high speeds. Unlike people enclosed in hard-sided mechanized vehicles, but like people riding off-road-vehicles (OHV) or on foot, they are exposed to the risks of physical injury from an attacking grizzly bear. Given these provisos, mountain bikers qualify for extrapolation of the results in this report, primarily because of their comparative silence as well as vulnerability.

Apropos, Brad Treat was killed by a grizzly bear in June of 2016 after essentially colliding with the bear while he was travelling at high speed on a mountain bike along a trail with limited visibility (Servheen et al. 2017). This incident elevated the profile of risks for both people and bears posed by mountain biking, although a number of similar incidents had highlighted the hazards of mountain biking in Canada as much as 20 years earlier. Concern about risks were also magnified by the fact that mountain biking is becoming more popular in areas occupied by grizzly bears, reflective of the 28% increase nationwide in this activity during the last 10 years (Outdoor Foundation 2017).

The few investigations of encounters between bikers and grizzly bears paint a stark picture (Schmor 1999, Herrero & Herrero 2000, Honeyman 2007, Servheen et al. 2017). Data pooled from all of these reports show that 87% ($\pm 4.6\%$) of all documented encounters were at distances less than 50 m, and that 52% ($\pm 10\%$) involved females with young. Of these close encounters, 89% ($\pm 6\%$) resulted in the biker either being approached or charged by the involved bear. Not surprisingly, of the 41 encounters

described by bicyclists interviewed by Schmor (1999), bears were described as being “startled” during 66% of them.

These risk-related figures are far in excess of the averages I present in Sections 3 and 4 of this report. The percent of encounters that elicited some kind of aggressive response from involved bears is an astounding 14-times greater for mountain bikers compared to for pedestrians. Even if, compared to pedestrians, a greater number of “encounters” went undetected by mountain bikers, this alone would not account for the magnitude of this disparity. Moreover, the obvious heightened reactivity of bears to mountain bikers is not surprising given that average encounter distances were closer for bikers compared to the average 70-90 m involving pedestrians—and well within the Overt Reaction Distance (ORD) of most grizzly bears (Herrero et al. 2005).

These results are not unexpected. As Herrero & Herrero (2000) noted nearly 20 years ago, mountain biking is a perfect recipe for hazardous close encounters with grizzly bears given that bikers are often traveling silently at comparatively high speeds (11-30 km per hour; Schmor 1999), which increases the odds of rapid closure prior to detection along with amplified reactivity among even highly tolerant bears. This same point has subsequently been made in several assessments of hazards posed by mountain biking in grizzly bear habitat (Honeyman 2007, Quinn & Chernoff 2010, MacHutchon 2014).

The disproportionately large number of encounters between mountain bikers and female grizzly bears with young is also not surprising. If a person is approaching at high speed, solitary bears are plausibly better able to detect the approach and leave before being seen. By contrast, females with young are predictably challenged and delayed by marshalling their offspring before being able to depart, even if they detect an oncoming bicyclist at a distance. The plausible outcome is an encounter at close range with a highly reactive female grizzly bear mobilized in defense of her young.

The flip side of this dynamic between mountain bikers and grizzly bears is the likely short- and long-term impacts on involved bears. Greater immediate reactivity on the part of bears almost certainly translates into more rapid and sustained subsequent flight (Section 3.b.), along with longer-term energetic and physiological costs associated with impaired foraging, increased movements, and displacement of activity to suboptimal times of day (Sections 3.c., 3.d., and 5.b.).

The weight of evidence unambiguously supports concluding that mountain biking is far more hazardous for involved people and more impactful on affected bears compared to any other pedestrian activity with the exception of hunting. Given this perhaps self-evident verdict, it is not surprising that Parks Canada seasonally or permanently closed trails to mountain bikers several years ago in areas where chances of hazardous encounters were high (e.g., the Minnewonka, Mortaine Lake Highline and Bryant Creek trails [MacHutchon 2014]).”

(B) Purpose and Need #2 for the project is to, “Increase forest resilience to insect infestation and disease infection and wildfire disturbances...” However, since these are all natural process that have been part of developing healthy forests since the glaciers retreated 12,000 years ago, there is no ecological need to do any of these activities – merely a “Manager Preference” for a neat, tidy, orderly forest that looks and behaves like they want it to. This is a “Want”, not a “Need.”

(C) Purpose and Need #3 says, “Reduce the risk and severity of large scale stand-replacing fires to protect values at risk within the wildland-urban interface (WUI), Whitefish Mountain Resort, and electronic sites along the Whitefish Divide.”

While there is certainly a need to protect human lives and infrastructure, the manner in which this is justified by the project invalidates the way in which the project is implemented.

First, it is highly unlikely that this project will “Reduce the risk and severity of large scale stand-replacing fires...” In fact, it’s likely to do the opposite. As I noted in EA Comment 32:

“But in reality, fuels management of the type envisioned by the EA can dramatically influence on-site weather, and the factors that really drive stand-replacing fires – Heat, Drought, Low Humidity, and especially Wind. Converting much of the shady, cool, spruce/fir forest to open, sunny ponderosa pine, larch, and whitebark pine/western white pine will increase heat, increase drought, lower humidity, and increase wind/oxygen to the site – all the makings of a Mega-Fire.”

In its Response to Comment 32, the Flathead cites EA P: 3-33 and 3-34 – “...although future fire intensity will be reduced, rate of spread can increase in the post-treatment environment due to a reduction in shading from the sun and sheltering from the wind.”

In essence, the Flathead was agreeing with me, and modern fire science, that opening up these stands can/will increase fire danger – but then saying it’s OK because fuel reduction will lower it long-term. Unfortunately, as I noted above, and in my attached EA comments, modern fire science has concluded that fuels do not drive these large fires, rather heat, drought, low humidity, and wind do. Thus the project as designed, will not meet the stated Need of reducing large, stand-replacing fires, and may well increase that risk for several decades.

Second, my EA Comment 33 noted that the project’s claimed Wildland Urban Interface (WUI) was dramatically out of sync with what modern fire science has documented as effective “defensible space” around structures, as follows:

“In addition, the Flathead’s claim that “fuel management” of the type envisioned in the EA is a “Need”, is based upon its definition of the Wildland Urban Interface (WUI) and the need to take aggressive fire management actions there. The EA defines the WUI as follows: “The WUI is generally defined as an area or zone where structures and other human developments intermingle with undeveloped wildland or vegetative fuel.”

This entirely reasonable definition conjures up an image of this interface being one where human developments and wildlands exist in very close proximity. Yet a look at the project maps for Alternative 2 & 3, fuel and vegetation treatments proposed, shows these activities in many cases occurring miles from human developments and structures, not right next door where the fire danger would be the most imminent – and the most

preventable... As the Flathead is certainly aware, a good deal of fire science research in the last decade has shown that the most effective fire mitigation/hardening of homes, businesses, and infrastructure is that which occurs within 150 feet of those structures, and certainly within 100 yards as an extra precaution (See my EA Attachments). Unfortunately, nowhere in the EA do we find an Alternative based upon this latest fire science, which would certainly be far more defensible.”

In its Response to my Comment 32, The Flathead merely states that, “The Wildland Urban Interface area is designated by the Whitefish Area Community Wildfire Protection Plan (2009) in accordance with the Healthy Forest Restoration Act of 2003.”

Of course these are “political documents” created by “political bodies”, while the Forest Service is responsible for managing the public lands based on the best available forest science. A WUI drawn to allow logging miles away from structures in no way meets that test, and cannot be used to concoct a false “Need” where none exists.

(D) Purpose and Need #4 – “To restore whitebark pine and western white pine where suitable habitat conditions exist.” The DDN, in Response to my Comment 24 that there was no measurable plan to accomplish this, stated the following:

“ There is not a standard in the Forest Plan for restoring either whitebark pine or western white pine. However, there is a desired condition to retain and or promote whitebark pine habitat (FW-DC-Plant-03) with associated objectives of treating 8000-19,000 acres over the life of the plan (FW-OBJ-Plant-01).” (emphasis added).

Clearly, if there is no enforceable/binding Standard to restore either species, the Flathead Forest cannot claim with any credibility that Purpose and Need #4 is either real, or has any chance of being achieved – either by this project, or the broader Forest Plan. Compared to Standards, Desired Conditions are little more than an “aspirational wish list”, akin to people having a “desired condition” of world peace with no concrete plan to achieve it. Therefore, both in the EA and DDN, there is zero probability that this claimed Need is either a credible one, or an achievable purpose and need.

The failure of this project and the Forest Plan to create a real recovery plan for whitebark pine is a serious one because the species is vital to the survival and long-term recovery of both grizzly bears and Clark’s Nutcrackers, and its functional recovery on a broad scale would dramatically improve the prospects for both species, while lowering bear-human conflicts.

If the Flathead is serious about this Purpose and Need, it must change the above Desired Conditions to Standards; specify the number of acres and seedlings to be planted per year; raise the number of acres planted per year forest-wide to at least 5000; and develop, fund, and implement the program on a multi-decade level. Unless this is done, this purpose and need is totally unachievable.

(E) Purpose and Need #5 – “Maintain and improve terrestrial wildlife habitat and security.” Perhaps nowhere else does the Project so completely fail to achieve a claimed Purpose and Need. Among the projects significant shortcomings are the following:

- * Because the Flathead Forest has unwisely designated this area - and that of the Crystal Cedar Project - as MA-7 – a high intensity recreational sacrifice zone that includes 427 acres of regeneration harvest (functional clearcuts), wildlife habitat connectivity between the North Fork and Hungry Horse Geographic Areas has been placed in significant peril.

- * Not only will the project do nothing to reduce excessive road densities in the area, or reduce the 518-mile road closure/decommissioning backlog on the Forest, it adds to them with both permanent and “temporary” roads. Both the Forest Plan and this Project incorrectly say that this is all right because Amendment 19, lowering roads densities and increasing grizzly security, is no longer in force under the 2018 Forest Plan. However, this claim is incorrect, both legally and scientifically. Grizzlies remain a Threatened species; the ESA requires the use of the “best available science” regarding listed species; Amendment 19 remains the “best available science” – contrary to the Flathead’s Response to Comment 124; and the Forest is, therefore, required to continue road decommissioning. Additionally, the known security requirements of grizzly bears has not changed simply because the Flathead finds them inconvenient.

- * The extensive network of trails, roads, and commercial logging projects (45% functional clearcuts) lands squarely across the Lynx Connectivity Corridor identified by Squires (2013), and the EA admits that use levels on those trails will be high and increasing.

- * EA P: 2-20 says that, “On the ground implementation of projects should not exceed five years... Exceptions may be made in some situations.” (emphasis added). There is no scientific evidence that grizzlies – particularly females with cubs – will tolerate even one year of disruption and displacement, let alone five years (See my EA comments and Forest Plan Attachments). The EA P: 3-151 correctly states that, “Grizzly bears are highly dependent on learned habitat; disturbance or displacement into unknown territory may lead to sub-marginal nutrition, reduced reproduction, or greater exposure to adult predatory bears or human food sources, which can lead to human-caused mortality.

The Flathead’s efforts to discount their own admission above, in its Response to Comment 129 by falling back on the Forest Plan, NCDE Conservation Strategy, and support from the U.S. Fish and Wildlife Service do not suddenly wrap these unscientific documents in a cloak of scientific credibility.

- * Unlike grizzlies, lynx have had extensive “critical habitat” designated (93-94% of the Lynx Analysis Units), and the Forest Service cannot casually “harm” that habitat in violation of Section 9 of the ESA. Yet that appears to be exactly what this project proposes to do.

- The chosen alternative would reduce forest densities on 943 acres in cool moist potential vegetation type (PVT), and 521 acres in the cold PVT – both important to lynx – and do so for 20 years.

- EA P: 3-136: Road construction and use would have effects on lynx and lynx habitat in the Upper Big and Lakalaho LAU's and the Holbrook parcel.

- EA P: 3-136: Trail construction and use would also have effects on lynx and lynx habitat...Most newly constructed trails would pass through areas of potential lynx habitat." Specifically, 4.22 miles would pass through Stand Initiation forests, and 14.01 miles through Multi-story forests – both important foraging sites for lynx.

- EA P: 3-137 – "Vegetation management, road construction, trail construction, prescribed burns (including helicopter ignition), and other actions could cause temporary disturbance to lynx, with possible temporary displacement from the immediate area. These actions would not have measurable effects on this species beyond their potential to displace lynx to a minor degree." (emphasis added). Since the above claims show no references, I assume they have no scientific basis whatsoever, and are simply the Flathead blowing smoke to cover its cavalier attitude toward a host of disruptive activities in lynx critical habitat. Unless the Flathead Forest can back these claims up with accepted scientific research by John Squires and other lynx experts, it needs to stop making them.

In the DDN Response to this Comment 136, the Forest provides absolutely no backup scientific references to support its claim that these "temporary" (5 year) disturbances and displacement will, in fact, be "minor." In addition, the Forest says that, "Some of these actions will have lingering effects and the long-term or permanent nature of effects of use of the proposed trails was recognized in the project effects analysis for wildlife." The Forest seems to believe that by recognizing the "Harm" these trails will cause to lynx and their habitat, they are then allowed to go ahead with that "Harm." Section 9 of the Endangered Species Act says otherwise. The Flathead also fails to acknowledge that if trail effects are "long-term or permanent" they cannot also be "temporary and minor."

* In DDN Comment 130, I note that Kasworm and Manley (1990) found that in the Cabinet-Yaak recovery Area, grizzly bears underutilized habitat for 122m (400 ft.) on either side of trails. That means that every mile of trail displaced grizzlies from approximately 97 acres of habitat.

In its Response, the Flathead said, "Displacement and habitat change effects on grizzly bears from trail use and construction were disclosed in the Grizzly Bear Section of Chapter 3 in the EA." Here again, the Forest appears to believe that merely disclosing displacement makes it OK, or makes it go away.

The same Response also claims that, "Relative underutilization based on a study of three grizzly bears...does not translate to displacement across a calculated number of acres." The Forest is simply wrong here. Its dismissive comment about only "three grizzly bears"

ignores the fact that in 1990, and the study years preceding it, those 3 bears represented 20 percent of the entire Cabinet-Yaak population (Wayne Kasworm, pers. comm.). And the 122m displacement buffer along trails absolutely does “translate to displacement across a calculated number of acres”, just as it does for the 500m-displacement buffer along roads in the NCDE.

- In my EA comments on the severity of impacts to grizzly bears I noted the following:

“EA P: 3-151 and 3-152 report the following: ‘It is a different situation when considering the increased human activity in the project area that will be the result of proposed trail construction included in the project (Table 3-61). This displacement will be long-term and increasing over time (emphasis added).’

‘Alternative 2 has the greatest potential for disturbing or displacing grizzly bears both during implementation of proposed activities and into the future resulting from increased human activity in the project area due to the additional miles of trail proposed for construction, especially the trail immediately adjacent to the ski area and summer resort (Trail 2) and the two connector trails (C3 and C4).’

Clearly, in its zeal to “collaborate” in a “public-private partnership” with some in the Whitefish community, and folks from the extreme mountain biking special interest community, the Flathead Forest has created an artificial “need” for a trail system that has serious unintended consequences for people and grizzlies alike. I urge you to re-read the Board of Review report on the death of Brad Treat and comments by grizzly managers Chris Servheen and Tim Manley – all counseling against exactly the type of high-use, high-speed trails you are contemplating through prime habitat...

The severity of the conflicts the Flathead is proposing due to an unneeded trail system is brought into sharp focus by Table 3-61 on EA P: 3-152. Here we see that Alternative 2 trails would pass through 81,797 feet (15.5 miles) of huckleberry habitat – something bear managers have repeatedly warned against...”

In the Draft Decision Notice, Table A-3, P: A-6, I notice that the Forest has removed Trails C3, C4, C5, and L9 (16,426 feet) while adding trails L1 A, L1 B, and L1 C (12,250 feet) for a net reduction of 4176 feet, or 0.79 miles. This would appear to lower the trail miles through huckleberry areas from 15.3 miles to 14.51 miles. As noted above, however, each mile of trail displaces grizzlies from approximately 97 acres of potential habitat, and these 14.51 miles of trail risk displacement, or bear-human conflicts, on 1407 acres, with this displacement being “long-term and increasing over time” (EA P: 3-151).

In addition, EA P: 3-152, Table 3-61 reported that Alternative 2 would impact 3000+ feet of riparian habitat, and include 8 perennial stream crossings. From the DDN, it’s difficult to determine how much – if any – of these serious impacts has been removed. As admitted on EA P: 3-155, “However, many of these trails are proposed in areas known to receive seasonal use by bears due to high forage quality. The risk of a human-bear

conflict is greater along trails that pass through foraging areas such as huckleberry patches or riparian habitats, as well as trails that cross or run parallel to loud streams.”

II. OBJECTION 2: Both the Taylor-Hellroaring Project (THP), and the 2018 Flathead Forest Plan improperly, and illegally, act as though grizzly bears (and lynx) have been recovered; are no longer listed as Threatened under the Endangered Species Acts; no longer require adherence to the “Best Available Science”; and are no longer subject to ESA Section 9 protection from “Harm.” None of the above is true.

All of the above is based the following false assumptions:

(A) The Flathead (FNF) assumes that the Taylor-Hellroaring Project is valid because it is based upon the 2018 Flathead Forest Plan (FFP).

(B) The Flathead Forest Plan assumes that it is valid because it is based upon the NCDE Conservation Plan and associated Grizzly Bear Amendments.

(C) The NCDE Conservation Strategy and Grizzly Bear Amendments assume that they are valid based upon the arbitrary and capricious decision by the U.S. Fish and Wildlife Service (USFWS) that NCDE grizzlies were “recovered” in 2011; that 2011 would serve as a Baseline Year in terms of population and habitat protection; and that no further protections beyond the 2011 Baseline would be required.

(D) And the USFWS falsely assumes that NCDE grizzlies were recovered and no longer subject to ESA protection based upon grizzly population numbers, trend, and distribution.

Unfortunately for the Flathead Forest and the Taylor-Hellroaring Project, all of the above assumptions are demonstrably false and, therefore, have no basis in science or law. And, as I have repeatedly told the Flathead and USFWS, this is because in a 1997 federal court ruling, Judge Friedman found the following:

“The FWS has not explained how minimum bear population and grizzly distribution goals consider how much habitat and of what quality is necessary for recovery, or how the answers to these questions can be derived from the ‘females with cubs’ and ‘occupancy’ criteria. Nor does the Recovery Plan’s requirement that a Conservation Strategy (that will include minimum habitat values and additional monitoring methods) be implemented before any delisting process is commenced address this deficiency. The promise of habitat based recovery criteria sometime in the future is simply not good enough. The purpose of the habitat recovery criteria is to measure the effect of habitat quality and quantity on grizzly recovery See FWS Recovery Guidelines, A.R. Tab 78 at I-5. Such monitoring is not possible if there is no scale against which to gauge the status of the habitat.” (Fund for Animals v. Babbitt, Civil Act. No. 94-1021 (PLF) and National Audubon Society v. Babbitt, Civil Act No. 94-1106 (PLF) (Consolidated) 1997.)”

As part of the 1997 court settlement, the U.S. Fish and Wildlife Service agreed to develop the Habitat Based Recovery Criteria (HBRC) demanded by the federal court before claiming “recovery” and trying to delist the grizzlies in any ecosystem.

Unfortunately, USFWS and the NCDE Forests have chosen to build their claims for a 2011 “recovery” on the same house of cards – that because of an estimated population of 1029, a trend of 2.3%, and full occupancy of all BMU’s (Costello et al. 2016), the NCDE population is recovered. This is the exact claim the federal court tossed out 20+ years ago. And, since USFWS/USFS can’t claim recovery based on these false criteria, all of the above assumptions, A – D are demonstrably invalid under both science and law. This is especially true since USFWS has repeatedly refused to develop the “Habitat Based Recovery Criteria” required by Judge Friedman. And while the USFWS commitment to maintain motorized route density, new recreational developments, grazing allotments, mining and oil and gas permits at the invalid 2011 Baseline levels could address some security issues, they tell us little about the actual quantity, quality, or connectivity of key habitats or the priority foods on them – the exact qualities required by the federal court in 1997.

This means that the Flathead Forest Plan generally, and the Taylor Hellroaring Project specifically are in violation of federal law and cannot be implemented as currently written. In the Real World where science and law matter:

- * Grizzlies remain a Threatened Species under the ESA.
- * The USFWS 2011 Baseline is invalid.
- * The Flathead Forest must still follow the “Best Available Science” relating to grizzly bears.
- * That best available science is Amendment 19 to the Flathead Forest Plan, and ESA Section 9 prohibiting “Harm” to a listed species or its habitat. The latter of course applies even more forcefully to lynx critical habitat.
- * The Flathead must move immediately to close and decommission its backlog of 518 miles of roads under A19 – not add more roads under Taylor Hellroaring.

Therefore, the Flathead’s Response to my Comment 124 is without scientific or legal merit, since it repeats the false rationale for the 2011 Baseline; tries to hide behind the equally invalid Forest Plan FEIS (Sec. 3.7.5); and still uses the invalidated population and trend data. The Response even tries to claim that while A19 and its 19/19/68 standard was the best available science in 1995, it no longer is because “We now have a much more extensive data base about grizzly bear populations and habitat use in the NCDE.” While that’s true, none of that supplants A19 in any way.

Amendment 19 specifically looked at the relationship between road density and grizzly bear use of habitat, and did so in peer-reviewed research recognized across all recovery areas as the gold standard. And while we do know more about the NCDE population numbers and distribution, there has been no federal or state peer-reviewed research on grizzlies, roads and habitat use that improves upon or replaces Amendment 19.

The same Response to Comment 124 says, “In addition, it is not feasible to meet the standards of Amendment 19 in every subunit due to land ownership patterns.” While that is true, it certainly is possible to move in the direction of A19 compliance rather than farther away by building even more roads as Taylor Hellroaring proposes.

In addition, the Forest’s Response to Comment 124 says “A Federal Register notice published in December 2017 announced the availability and opportunity to comment on a draft supplement to the recovery plan to append habitat based recovery criteria for the NCDE. The supplement was finalized on May 16, 2018.”

The 1997 court agreement did not require a “drive by” comment period of several hours, but rather a full “Workshop” that independent grizzly scientists and the public would be invited to, to exchange ideas and research on how best to craft real HBRC based upon the court required “Quantity and Quality” of habitat needed to reach and sustain true recovery.

Two years later, the required workshop has never been held; there is still no grizzly habitat map for the NCDE; no ecosystem-wide habitat research has been conducted; and there are still no science-based Habitat Based Recovery Criteria, making the 2011 Baseline and claims of “recovery” little more than a hollow – and illegal – shell. Clearly, any Forest Plan, or Taylor Hellroaring claims based upon this 2011 Baseline, are similarly illegal.

(E) The Flathead’s Response to my Comment 126 notes that the EA (CH. 3) not only acknowledges that displacement and disturbance of grizzlies may occur, but then falsely claims that several design features will reduce those impacts by being consistent with Guideline FW-GDL-IFS-01.

First, Forest Plan “Guidelines” are little more than “suggestions” and lack any of the regulatory teeth of Standards, which have largely, and intentionally, been removed from the new Forest Plan. Thus, they can’t be relied upon to mitigate or protect anything. Second, both the Forest Plan and the TH Project provide for projects that “... should not exceed five years”, but then promptly notes that, “...exceptions may be made in some situations.”(emphasis added). As I noted in my comments on both the Flathead Forest Plan and the Taylor Hellroaring EA, there is no scientific evidence that grizzlies displaced for this length of time – particularly females with young – will not be permanently displaced and harmed. Third, there is nothing “temporary” about 5-year projects, or the roads that go with them. And finally, the Flathead’s disingenuous and illegal move to place roads in Intermittent Stored Service (ISS) post-project, and then not count them under Total Motorized Route Density (TMRD) further endangers bears and their habitat. The fully operational A19 makes it clear that to be dropped from TMRD calculations, roads must be decommissioned so that they no longer function as a road or trail.

As I noted in my EA Comments and DDN Objection above:

“EA P: 3-151 finds that ‘Grizzly bears are highly dependent upon learned habitat; disturbance or displacement into unknown territory may lead to sub-marginal nutrition, reduced reproduction, or greater exposure to adult predatory bears or human food sources, which can lead to human-caused mortality (R.D. Mace & J.S. Waller, 1997; USDA Forest Service, 2017a).’ These impacts can be especially serious for females with young, as reported by USFWS (2014), yet are shrugged off by the Forest Service despite the high likelihood that projects running 5 years with possible extensions will cause exactly the type of disturbance, displacement, and mortality reported here.”

In its Response to this Comment 129, the Flathead merely admits that these impacts were disclosed in the Grizzly Bear Section of Ch. 3, and then tries to claim they’re covered by the rationale for the Guideline in the Forest Plan FEIS, its Biological Assessment, and the NCDE Conservation Strategy. It further notes that, “The U.S. Fish and Wildlife Service used a maximum of five years of on-the-ground project work as a surrogate for take (Project File Exhibit Rt 30).” First, as noted in (D) above, all of the documents referenced above are based upon the same faulty/illegal reasoning used by the USFWS to claim recovery and establish the 2011 Baseline. Second, the USFWS conclusion that 5-year projects would avoid “take” is based upon zero actual, peer-reviewed, scientific research – the agency simply pulled it out of their hat.

(F) In its Response to my Comment 130, the Forest reports that the Taylor Hellroaring Project underwent USFWS consultation and they found “no activities likely to adversely affect grizzlies”...Consultation on the Flathead Forest Plan (Project File Rt. 30), provide an extensive summary of trail effects on grizzly bears and the lack of studies demonstrating the lack of population impacts associated with non-motorized trails.”

As noted above, research by Kasworm and Manley (1990); the finding by Dr. Servheen that mountain biking posed a “grave threat” to grizzlies; similar conclusions by the Board of Review in the Brad Treat incident; and now the recent finding by Mattson (2019), all clearly demonstrate that there are significant adverse affects to grizzlies from biking on non-motorized trails. And for similar reasons, the USFWS conclusion that there was a lack of studies showing population level impacts to grizzlies from non-motorized trails simply holds no scientific or legal water. USFWS in its flawed “analysis” would have us believe that because grizzlies weren’t dying in droves in the middle of trails, that there were/are no impacts.

(G) In my EA comments, and repeated above, I noted the following:

EA P: 3-137 – “Vegetation management, road construction, trail construction, prescribed burns (including helicopter ignition), and other actions could cause temporary disturbance to lynx, with possible temporary displacement from the immediate area. These actions would not have measurable effects on this species beyond their potential to displace lynx to a minor degree.” (emphasis added).

Since the above claims show no references, I assume they have no scientific basis whatsoever, and are simply the Flathead blowing smoke to cover its cavalier attitude

toward a host of disruptive activities in lynx critical habitat. Unless you can back these claims up with accepted scientific research by John Squires and other lynx experts, you need to stop making them.”

In its Response to my Comment 136, the Flathead Forest still comes back with no scientific references backing up its “don’t worry, be happy” claims of no harm to lynx or their habitat. It remains obvious that 5-year projects with extensions; prescribed burns; road construction; and trail construction, with use levels projected as “high and increasing”, will have significant impacts to lynx and their critical habitat – in violation of the ESA. The Forest admits as much when it says, “Some of these actions will have lingering effects and the long-term or permanent nature of effects of use of the proposed trails was recognized throughout the projects effects analysis for wildlife

REQUESTED REMEDIES:

(1) The Flathead Forest must withdraw this faulty EA and replace it with an Environmental Impact Statement (EIS) that recognizes the significant environmental consequences of this project, considers a full range of alternatives, and moves to bring the project into compliance with science and law.

(2) As noted in Objection I, virtually the entire Purpose and Need section is actually a “Purpose and Want Statement” filled with Manager Preferences based upon false assumptions and faulty science. It must be withdrawn in its entirety until it is grounded on solid, factual assumptions, peer-reviewed science, and adherence to law.

(3) Both here, and in the larger Forest Plan, the Flathead must acknowledge that grizzlies remain a Threatened species; that use of the “Best Available Science” is still required by the ESA; and that best science is still Amendment 19 to the Flathead Forest Plan. The Forest must then move this Project, and the larger Forest Plan, in the direction of compliance with A19. The alternative is to follow the U.S. Fish and Wildlife Service off another dead end legal and scientific cliff.

(4) Having failed to document an actual “Need” for the proposed trails system, the trail component of this plan must be removed – beginning with the connections between the quiet, low-speed Whitefish Trails and the high-speed, high-risk trails of Whitefish Mountain Resort. This includes all 28 miles of new trails, and the 14.85 miles on existing open roads.

(5) Since the 427 acres of Clearcut, Seedtree, and Shelterwood commercial harvest are all functional Clearcuts; would increase the risk of high-intensity fires; and run directly counter to a key Purpose and Need, the Flathead must thoroughly reexamine the wisdom of using these vegetation management techniques – especially since they represent 45% of all commercial logging. This should be accomplished in an EIS containing the full range of alternatives not included in the Environmental Assessment.

(6) As noted above, there is no scientific evidence that a project of 5 years duration, with possible extensions, is compatible with maintaining grizzly bear habitat security, or the integrity of lynx critical habitat. Project length, location, and “exception loopholes” must be dramatically reduced before this project is proposed again or approved.

(7) If the Forest is truly interested in helping protect homes and infrastructure in the Wildland Urban Interface, then it must develop a TH Project that works with property owners beginning at their structures and working outward for 150 feet (or 100 yards) to create a true defensible space. There is no scientific justification for cutting trees miles away from the true WUI – and certainly not employing regeneration harvests or the cutting of large trees.

(8) Both the new Taylor Hellroaring EIS and the 2018 Forest Plan must contain actual Standards and Objectives to restore Whitebark Pine as a fully functional species on the landscape. This must include a comprehensive restoration plan; a fully funded and staffed program to accomplish the forest-wide restoration; and propagation facilities capable of growing the hundreds of thousands of seedlings necessary to support recovery on thousands (not hundreds) of acres per year.

Sincerely,



R. Brian Peck
Independent Wildlife Consultant



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