



Sept. 23, 2019

Objection Reviewing Officer
USDA Forest Service, Northern Region
Chip Weber, Flathead Forest Supervisor
Tami MacKenzie, Project Leader
26 Fort Missoula Road
Missoula, MT 59804
Submitted via email to: appeals-northern-regional-office@usda.gov,
tamara.mackenzie@usda.gov

Re: Objection to Taylor Hellroaring Project

To the Objection Reviewing Officer, Forest Supervisor Chip Weber, and Project Leader Tami MacKenzie:

WildEarth Guardians submits this objection to the U.S. Forest Service's August 2019 draft decision notice ("Draft DN"), finding of no significant impact ("FONSI"), and updated 2019 environmental assessment ("EA" or "2019 EA") for the Taylor Hellroaring Project¹ on the Tally Lake Ranger District of the Flathead National Forest. In its draft DN and FONSI the Forest Service's selected alternative includes, *inter alia*, commercial logging on 954 acres, noncommercial logging on 859 acres, 0.8 miles of new road construction, 3.2 miles of road re-construction from old road templates, 0.5 miles of new temporary roads, and 28 miles of new non-motorized trail construction. *See* Draft DN, page 2, Table1. The project area is 7,808 acres. The responsible official is Flathead National Forest Supervisor, Chip Weber. As required by 36 C.F.R. § 218.8(d):

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WildEarth Guardians is a nonprofit conservation organization with offices in six states throughout the western United States. WildEarth Guardians has more than 230,000 members and supporters across the United States and the world. Guardians protects and

¹ Project website: <https://www.fs.usda.gov/project/?project=50518>, Environmental Assessment: https://www.fs.usda.gov/nfs/11558/www/nepa/105405_FSPLT3_4692157.pdf (chapters 1 & 2), https://www.fs.usda.gov/nfs/11558/www/nepa/105405_FSPLT3_4692158.pdf (chapter 3) (last accessed Sept. 23, 2019).

restores wildlife, wild places, wild rivers, and the health of the American West. For many years, WildEarth Guardians has advocated that the Forest Service emphasize wildlife protection, and that it establishes a balance between access, risks, impacts to wildlife, and costs when managing its road system. We continue to advocate for that balance here. We are also concerned that the Forest Service demonstrate compliance with all federal laws in analyzing and approving this project.

WildEarth Guardians submitted timely comments on the Forest Service's original proposal for this project in 2017 and 2018 under the 1986 Flathead Forest Plan.² The Forest Service withdrew the previous draft decision notice based on its 2018 EA citing concerns with whether the project level amendment for visuals met the requirements for amendments under the 2012 planning rule. The agency then released a 2019 EA under the 2018 Flathead Forest Plan. WildEarth Guardians submitted timely comments on the 2019 EA.³ Our comments advocated for thoughtful management of the agency's road and trail system, its associated impacts and the overall need to improve the health of watersheds and wildlife habitat on the Flathead National Forest. We have organizational interests in the proper and lawful management of the forest road system and its associated impacts on the Flathead National Forest's wildlife and wild places.

OBJECTIONS

1. Failure to prepare an environmental impact statement ("EIS").

Our comments urged the Forest Service to prepare an EIS because this project may have a significant impact on the environment. The Council for Environmental Quality's (CEQ) regulations define significance in terms of context and intensity, which includes *inter alia* the scope of beneficial and adverse impacts, unique characteristics of the geographic area, degree of controversy, degree of uncertainty, and degree to which an action may affect species listed or critical habitat designated under the Endangered Species Act. 40 C.F.R. § 1508.27 (defining "significantly"). We noted that this project may significantly affect the human environment because, *inter alia*, it:

² Along with Swan View Coalition, Friends of the Wild Swan, and Brian Peck, we submitted scoping comments on the Taylor Hellroaring Project on April 25, 2017 ("Scoping 1"), including Attachments A-F. We submitted a second set of comments with Swan View Coalition, Friends of the Wild Swan, and Brian Peck on April 28, 2017 ("Scoping 2"), including a bibliography of the best available science and copies of literature cited. We submitted a third scoping letter on April 20, 2017 about the inadequate regulation of mountain biking and use of "stored" roads ("Scoping 3"), including attachments listed in the appendix to those comments. We submitted a February 2, 2018 comment letter from WildEarth Guardians, Swan View Coalition, and Friends of the Wild Swan to Chip Weber, Forest Supervisor that included Attachment A: M.A. Moritz, *et al.*, Learning to coexist with wildfire, 515 Nature 7525 (2014), and Attachment B: J.L. Campbell, *et al.*, Can fuel-reduction treatments really increase forest carbon storage in the western US by reducing future fire emissions? Front Ecol Environ (2011), DOI 10.1890/110057. We submitted a February 8, 2018 comment letter from Friends of the Wild Swan, Swan View Coalition, and WildEarth Guardians to Deb Bond, Project Leader that included the following attachments: (1) Lorenz, T.J., *et al.*, The role of wood hardness in limiting nest site selection in avian cavity excavators, Ecological Applications 24(4), 2015; (2) Fisher, J.T., *et al.*, Wolverines (*Gulo gulo luscus*) on the Rocky Mountain slopes: natural heterogeneity and landscape alteration as predictors of distribution, www.nrcresearchpress.com/cjz (August 2013); (3) J.J. Rhodes and W.L. Baker, Fire Probability, Fuel Treatment Effectiveness and Ecological Tradeoffs in Western U.S. Public Forests, The Open Forest Science Journal (2008); (4) Scientific Literature Review (pages 1-54).

³ See May 20, 2019 comment letter from WildEarth Guardians to Chip Weber, Forest Supervisor.

- Will have a significant impact in context of the affected region, affected interests, and locality. This is one of the first projects proposed under the newly revised Flathead Forest Plan, which itself was controversial in its removal of many wildlife and ecosystem protections. *See, e.g.,* 2019 WildEarth Guardians and Western Watersheds Project legal challenge.
- Will have a severe impact in terms of intensity, in light of the impacts addressed in our comments.
- Will cause significant impacts, both beneficial and adverse.
- Increases public safety concerns, given the proposal to add new mountain bike trails where mountain bikers would move at high speed on trails and create opportunities for conflicts to occur with wildlife (grizzly bears) or different types of trail users (hikers, horseback riders).
- Involves a geographic area with unique characteristics.
- Will result in effects on the human environment that are likely to be highly controversial. This includes controversy regarding the impacts of mountain biking to wildlife, wildlife habitat, and other trail users. It includes controversy surrounding the intended outcomes of logging and road building, which competing science in our previous comments shows may exacerbate as opposed to address the wildfire, insect and disease risks identified in the purpose and need. It also includes controversy regarding the impacts of the project on climate change and the impacts from climate change when combined with the impacts from this project.
- Involves effects that are highly uncertain or involve unique or unknown risks. The concerns identified in the previous bullet equally apply here.
- May establish a precedent for future actions with significant effects, given that it is one of the first projects considered under the new forest direction in the 2018 Flathead Forest Plan.
- Is related to other actions with individually insignificant but cumulatively significant impacts.
- May significantly affect species listed or critical habitat designated under the Endangered Species Act, including grizzly bear, Canada lynx, bull trout, and wolverine.⁴

Suggested Resolution: Prepare an EIS because the Taylor Hellroaring Project may have a significant impact on the environment to ensure the Forest Service takes the required “hard look” at the impacts of its action.

2. Failure to comply with NEPA.

Flawed Statement of Purpose and Need

⁴ After a district court vacated the U.S. Fish and Wildlife Service’s 2014 withdrawal of its proposal to list the wolverine as threatened, in 2016 the Service reopened the public comment period on its proposal to list the distinct population segment of wolverine occurring in the contiguous United States as threatened under the Endangered Species Act. 81 Fed. Reg. 71670 (Oct. 18, 2016).

In our comments, WildEarth Guardians urged the Forest Service to provide support for the claimed needs for this project, and to clearly articulate the statement of purpose and need to include the Forest Service's duty to identify the minimum road system.

Failure to disclose direct, indirect, & cumulative impacts

We asked the Forest Service to assess and disclose the direct, indirect, and cumulative impacts from the project, including detailed, site-specific information. Our previous comments focused especially on the impacts from the forest road system (both system roads and temporary roads). We also asked the Forest Service to disclose and analyze whether the proposed road and trail construction will allow for new, unanalyzed impacts from winter motorized travel in the project area.

Our previous comments urged the Forest Service to consider the Flathead's travel analysis report, identify the minimum road system, and identify unneeded roads in the project area to prioritize for decommissioning or other uses. Subpart A of the Forest Service's own rules require it to address its unsustainable and deteriorating road system. 66 Fed. Reg. 3206 (Jan. 12, 2001); 36 C.F.R. part 212, subpart A. Subpart A is meant to close the gap between the agency's limited resources and maintenance required to keep up its oversized and deteriorating road system by (1) identifying the minimum road system (based on the Travel Analysis Report assessment of likely needed and unneeded roads), and (2) prioritize unneeded roads for decommissioning. 36 C.F.R. § 212.5(b).

We noted in our comments that identifying a sustainable future road system is one of the most important endeavors the Forest Service can undertake to restore aquatic systems and wildlife habitat, facilitate adaptation to climate change, enhance recreation, and lower operating expenses. Addressing the road system is crucial to demonstrating compliance with NFMA, the CWA, and ensuring the survival and recovery of species listed under the ESA and protection of their designated critical habitat. We also urged the Forest Service consider the cumulative impacts of its proposed road construction, reconstruction, use of temporary roads, and log hauling when added to the changes in weather patterns (i.e., more precipitation falling as rain instead of snow, more flood events, etc.) as a result of climate change.

The Forest Service's analysis in the 2019 EA for the Taylor Hellroaring Project fails to provide a robust environmental analysis under NEPA. The agency may not ignore topics if the information is uncertain or unknown. Where information is lacking or uncertain, the Forest Service must make clear that the information is lacking, the relevance of the information to the evaluation of foreseeable significant adverse effects, summarize the existing science, and provide its own evaluation based on theoretical approaches.

Failure to consider reasonable alternatives

Our comments urged the agency to consider a reasonable range of alternatives, including (1) an alternative that considers decommissioning system roads to maintain and improve terrestrial wildlife species habitat and security; (2) an alternative that does not rely on previously stored roads for creation of new bike trails; (3) an alternative that removes unlawful motorized uses that the Forest Service acknowledges exist in the project area; and

(4) an alternative that actually increases wildlife security by removing existing human uses on old road templates and other locations it was not planned for. Each of these would—in combination with other activities—achieve the statement of purpose and need. The Forest Service also improperly eliminated reasonable alternatives that would meet the purpose and need.

Suggested Resolution: Revise the analysis in the EA to fully disclose and analyze the very real, harmful impacts of forest roads (system, closed, and temporary) on water quality, aquatic life, and wildlife habitat that will result from the road construction, reconstruction, maintenance, log hauling, and use of heavy machinery proposed under this action. Revise the EA to disclose the cumulative impacts of climate change—including localized changes in precipitation patterns—on the forest road infrastructure and road use proposed here. In light of these impacts, re-consider the need for an EIS. Revise the Draft DN and FONSI to include road decommissioning, and to identify the minimum road system consistent with subpart A of the 2001 Roads Rule. Revise the analysis in the EA to consider in detail reasonable alternatives provided above that would meet the purpose and need, even in part.

3. Failure to meaningfully respond to comments.

The Forest Service fails to meaningfully respond to many of our comments in violation of NEPA's implementing regulations. We raised this concern in our May 2019 comments – especially as it relates to concerns about how the road and trail construction will allow for changes in impacts from winter motorized use in the project area. To the extent that the Forest Service fails to respond to our May 2019 comments, this concern was not raised previously because it relates to the Forest Service's failure to meaningfully respond after the close of the official comment period.

Suggested Resolution: Revise the EA and Draft DN to meaningfully respond to and address public comments.

4. Fails to demonstrate compliance with the National Forest Management Act.

Our comments outlined how the Forest Service fails to demonstrate how this project is consistent with the 2018 Forest Plan, as required by the National Forest Management Act ("NFMA"). 16 U.S.C. § 1604(i). We also explained the Forest Service fails to demonstrate how this project is consistent with the Forest Service's 2012 Planning Rules.

Our comments provide several specific examples. Highlighting just one of those here, the 2018 Forest Plan fails to provide ecological conditions necessary to contribute to the recovery of grizzly bears or to maintain a viable population of the species as required by the 2012 Planning Rules, 36 C.F.R. § 219.9(b). As applied here, the Forest Service improperly ignores impacts to grizzly bears by relying on a flawed Biological Opinion from the Fish and Wildlife Service (see below) that relies on an inaccurate baseline. Relying on that flawed Biological Opinion to ignore the impacts of the actions proposed under this project, here the Forest Service is allowing road construction and reconstruction that will not provide ecological conditions necessary to contribute to the recovery of grizzly bears or to maintain a viable population of the species. This is one of many projects to come on the Flathead. As applied here, the 2018 Forest Plan components allow the Forest Service to further fragment

grizzly bear habitat without a cumulative impact analysis or a hard look at the impacts of road use on grizzlies. The 2018 Forest Plan components do not provide adequate protection for the grizzly bear to ensure its continued survival and recovery.

The Forest Service also fails to demonstrate how it will maintain or restore the ecological integrity of aquatic ecosystems and watersheds consistent with its 2018 Forest Plan and the requirements of the 2012 Planning Rule. It fails to explain how the actions authorized under this project will maintain or restore the ecological integrity of riparian areas in the plan area. The Forest Service's claims that vegetation management, road construction and reconstruction (including road construction within riparian management zones), trail construction, log truck hauling and the use of other heavy equipment in upland areas will not affect the riparian features is unreasonable, arbitrary and capricious.

Suggested Resolution: Revise the analysis in the EA and conclusions in the Draft DN and FONSI to demonstrate compliance with the 2012 planning rule and 2018 Flathead Forest Plan.

5. Fails to demonstrate compliance with the Clean Water Act and Endangered Species Act.

As noted in our comments, the Forest Service fails to ensure all of the activities authorized under this Draft DN and FONSI, including the logging, road construction and reconstruction, maintenance, and ongoing log hauling and heavy machinery use in the project area will not cause or contribute to a violation of water quality standards as required by the Clean Water Act ("CWA"). 33 U.S.C. § 1323(a).

The Forest Service also fails to ensure all of the activities authorized under this Draft DN will not jeopardize the continued existence of grizzly bear, Canada lynx, wolverine, and numerous fish species in the project area, and that the project will not result in the destruction or adverse modification of designated critical habitat as required by the Endangered Species Act ("ESA"). 16 U.S.C. § 1536(a)(2). We were prevented from commenting on the content of the consultation or conference documents because the Forest Service failed to provide this documentation during the official notice and comment periods. The U.S. Fish and Wildlife Service's determinations, and Forest Service's reliance on those determinations, are arbitrary and capricious because they, *inter alia*, fail to consider relevant factors, rely on flawed baseline conditions, and ignore best available science.

As just one example, the Fish and Wildlife Service's determination that the Forest Service may rely on the 2018 Flathead Forest Plan Biological Opinion to assess effects on individual bears related to baseline access conditions is flawed. As noted in our comments on the 2018 Flathead Forest Plan revision and in a 2019 notice of intent to sue under the ESA, that Biological Opinion is deeply flawed. In turn, the Forest Service's reliance on FWS's determination here is likewise unreasonable, arbitrary and capricious.

Suggested Resolution: Revise the EA and Draft DN and FONSI to disclose the very real, harmful short-term and long-term impacts to water quality from the proposed action. Modify the project to ensure it will not cause or contribute to a violation of water quality standards and so that it protects beneficial uses. Refrain from signing any final DN unless

and until the flaws related to ESA Section 7 consultation and conferencing have been addressed.

CONCLUSION

WildEarth Guardians appreciates your consideration of the information and concerns raised in our comments and highlighted in this objection to the Taylor Hellroaring Project.

Sincerely,

A handwritten signature in black ink that reads "Marla Fox". The signature is fluid and cursive, with the first name "Marla" and the last name "Fox" clearly distinguishable.

Marla Fox
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