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KURT STEELE)
FLATHAD FOREST SUPERVISOR)
 Responsible Official)

V.

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October 22, 2021

Swan View Coalition (SVC) is a non-profit conservation organization dedicated to conserving water quality and quiet, secure habitats for fish, wildlife and people on the Flathead National Forest and greater Flathead River Basin. Our members use these areas, including the Project area, for recreation, employment, wildlife viewing, photography, research, education, aesthetic enjoyment, spiritual rejuvenation, and other activities.

On December 19, 2018, SVC submitted written comments on the MSP Scoping Document, on behalf of SVC and 11 others. (A DVD of pertinent documents was submitted along with these comments.) On December 21, 2018, SVC submitted supplemental scoping comments.

SVC participated in the September 2 and 23 Virtual Open Houses regarding the MSP DEIS and submitted comments on the DEIS on October 13, 2020, on behalf of SVC and 11 others. (A second DVD of pertinent documents was submitted along with these comments and was referred to as DEIS DVD.)

Executive Summary

The DROD and FEIS fail to respond adequately to public comment, fail to provide adequate substantive relief to those that commented, and are unlawfully and prematurely subject to this public review and Objection period. Significant repairs to the Flathead Forest Plan, its Biological Opinion and its Incidental Take Statement for grizzly bear are firstly necessary to satisfy an order issued by U.S. District Judge Donald Molloy and to provide a lawful basis for preparation and public review of the MSP.

The Response to Comments (RTC, FEIS Appendix C) fails to adequately address our comments and concerns. Moreover, it fails to clearly identify which of the Responses in its 105 pages respond to our comments, even though this was done for comments on the revised Flathead Forest Plan DEIS and virtually every project EA on the Forest. RTC page 1 describes how each comment letter was carefully coded for its content, yet then fails to provide the public a code keying the Responses to individual comment letters. It is as though the Forest Service is making this as difficult and time-consuming as possible for the people that took time out of their daily lives to review and comment on the DEIS.

Moreover, the RTC, DROD and FEIS fail to make adequate substantive changes to the proposed action to resolve the concerns expressed in our scoping and DEIS comments. We therefore incorporate by reference our 12/19/18, 12/21/18 and 10/13/20 comments, along with their referenced documents and the documents included on their respective DVDs as the core of this Objection. Those comment letters are included on the enclosed DROD DVD for your convenience. Those comments, issues and concerns will not be re-written here but must be read as a part of this Objection (see DROD DVD; Swan View et al on Mid-Swan 181219.pdf, SVC on Mid-Swan 181221.pdf, SVC et al on Mid-Swan DEIS 201013.pdf).

Equally important is that the Forest Service is asking the public to review and Object to the MSP DROD and FEIS (which are dependent upon and must be consistent with the Flathead Forest Plan, its Biological Opinion and its Incidental Take Statement) at a time when it has no lawful Forest Plan, no lawful BiOp on its Forest Plan, and no lawful ITS for grizzly bears. Significant portions of these documents and provisions were struck down by U.S. District Judge Donald Molloy on June 24, 2021 (see DROD DVD; Molloy 2021-06-24 Doc. 116 OPINION AND ORDER.pdf). But the FS and FWS have yet to issue a legally adequate Flathead Forest Plan, Plan BiOp or Plan ITS. Therefore, the public

and Objectors are unable to compare the MSP with the requirements of a legally adequate Plan, BiOp and ITS because none currently exist.

We incorporate by reference the Mid-Swan Objections being filed by Brian Peck, Friends of the Wild Swan and WildEarth Guardians.

Relief Sought

For the reasons summarized above, detailed below and detailed in our Scoping and DIES comments, we ask that you:

1. Declare the MSP DROD and FEIS inadequate because they are based on a legally deficient Flathead Forest Plan, its BiOp and its ITS, as detailed in Judge Molloy's Order.
2. Declare the MSP DROD and FEIS lawfully inadequate for the other reasons detailed in this Objection and withdraw them.
3. Replace the "Condition-Based Management" approach with one that provides the public the opportunity to review and formally Object to each management project after site-specific data has been gathered to demonstrate what the conditions are and how they will be impacted, before management actions are approved or taken.

Public Review and Objection Period is Premature and Unlawful

The Objection regulations, at 36 CFR 218.8(d)(5), require the Objector to describe how they believe "the environmental analysis or draft decision specifically violates law, regulation, or policy . . ." The purpose of the Objection process is to establish "a predecisional administrative review . . . process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans . . ." (36 CFR 218.1).

The MSP FEIS, at ii, states "This project is guided by the 2018 Flathead National Forest Land Management Plan (the Forest Plan) . . . (Emphasis in original). The Forest Planning Rule, at 36 CFR 219.2(b)(2), requires that "Projects and activities must be consistent with the plan . . ." - as do 36 CFR 219.15(b and d), requiring that "Every project and activity must be consistent with the applicable plan components."

Because Judge Molloy ruled parts of the Forest Plan, its BiOp and its ITS unlawful in June 2021, and those documents have not yet been remedied and reissued, the agencies and Objectors have no way to know whether the MSP DROD and FEIS are consistent with the pending Plan, BiOp and ITS revisions. Holding the MSP Objection period prior to issuance of the new documents (and prior to a showing that the MSP has been made consistent with them) violates the Objection regulations and the public right to file a fully informed Objection.

The DROD, at 21-24, deems the MSP consistent with the Forest Plan, the NFMA and its Forest Planning Rule other than the violation of "three plan components to address

actions in Canada lynx habitat and landing a helicopter (which includes sling loads) and the use of chainsaws in recommended wilderness areas,” which require project-specific amendments to make those violations allegedly lawful. Nowhere do the DROD, FEIS or their supporting documents mention that Judge Molloy ruled portions of the Plan, its BiOp and its ITS unlawful. Nowhere do they mention, let alone detail, how the Plan, BiOp and ITS will be revised to be made lawful and how that will affect the MSP’s reliance on and consistency with the Plan, BiOp and ITS.

Key Findings in Judge Molloy’s June 24, 2021, Opinion and Order

We present here a few of the key findings in Judge Molloy’s Order, followed by an explanation of how this affects public review and Objection to the MSP:

“Plaintiffs succeed on their ESA claims related to grizzly bears: that the Revised Plan is arbitrary and capricious to the extent it did not consider the impacts of its departure from Amendment 19’s road density and reclamation standards, did not consider the impact on the entire grizzly population, did not adequately explain the adoption of the 2011 access conditions, and adopted a flawed surrogate in its take statement concerning grizzly bears. Plaintiffs also succeed on the narrow argument that departing from Amendment 19’s culvert removal requirements violated the ESA as it relates to bull trout. Plaintiffs also succeed on their ESA claim that the Forest Service improperly relied on the flawed aspects of the 2017 BiOp.” (p 11-12, emphasis added)

“But, as Plaintiffs note, the baseline was established in 2011 while Amendment 19 was in effect. FS-052052. Consequently, though the Fish and Wildlife Service did not need to directly compare Amendment 19 with the Revised Plan, it did need to consider whether the Revised Plan would have an effect on the 2011 baseline, which was the product of the 1986 Forest Plan and its amendments, including Amendment 19.” (p 21)

“In other words, are ‘closure devices’ an ‘important aspect of the problem’ to be addressed by the Revised Plan? The answer is yes.” (p 22)

“This [A19] ‘reclaimed road’ standard is the standard underlying the 2011 baseline. See FS-052052. The Revised Plan replaced the ‘reclaimed road’ standard with an ‘impassable road’ standard . . . Thus, the science indicates that, even where ‘permanent barriers’ are used, road closures may be ineffective and use may occur or continue. Both the Swan View Coalition Study and the Forest Service Study support that argument . . . Fish and Wildlife Service’s failure to consider the effect of ineffective road closures was arbitrary and capricious . . . Fish and Wildlife Service violated the ESA by not considering the impact of ineffective road closures in its 2017 BiOp.” (p 22-25)

“The scientific evidence does not support the Revised Plan’s shift away from mandatory culvert removal, particularly since the Fish and Wildlife Service endorsed culvert removal as one of the most effective bull trout protection tools just two years prior to the 2017 BiOp.” (p 25-26)

“The Fish and Wildlife Service concluded that ‘[r]oad decommissioning reduces the long-term risk of sediment delivery to streams from roads and roadside ditches through

reducing culvert failures and landslides,' FWS- 001936-37, but road decommissioning under the Revised Plan does not include mandatory culvert removal, see FS-052079 (defining 'impassable' road) . . . it is inexplicable why, two years after the Recovery Plan, the Fish and Wildlife Service determined that culvert removal is no longer required." (p 27-28)

"For example, one of the Revised Plan's objectives is to decommission or place into storage 30 to 60 miles of road over roughly the next 15 years, which the Fish and Wildlife Service avers will have the effect of improving watershed conditions by decreasing road density. FWS-00 193 7 (citing Guideline FW-OBJ-IFS-01). This Guideline does not mention culverts." (page 28)

"Because the 2015 conclusion that road decommissioning, which included culvert removal, was an effective sedimentation reduction measure, the Fish and Wildlife Service has not explained its conclusion just two years later that culvert removal was not required on decommissioned roads . . . the record supports Plaintiffs' arguments that the Fish and Wildlife Service's abandonment of the culvert removal requirement was arbitrary and capricious." (p 29)

"While the Service did provide a thorough overview of the status of the grizzly bear species in the United States, it failed to analyze how the Revised Plan would affect grizzly bears outside of the NCDE." (p 31)

"Plaintiffs persuasively argue that the Service cannot arbitrarily pinpoint 2011 as the point in time at which to attach significance to the NCDE population. The mere fact that the population was increasing from 2004-2011 does not justify moving away from the existing management requirements of Amendment 19. In effect, by recognizing that Amendment 19 laid the foundation for recovery of the NCDE population and then using that recovery as justification for getting rid of the existing access conditions, the Fish and Wildlife Service eschews Amendment 19 precisely because it was working. This action is arbitrary and capricious. *C.f. Shelby Cty., Ala. v. Holder*, 510 U.S. 529, 590 (2013) ('Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.') (Ginsburg, J., dissenting). The Fish and Wildlife Service violated the ESA by arbitrarily adopting the 2011 access conditions as a target for protecting grizzly bears." (p 34-35)

"Plaintiffs successfully challenge all three deficiencies they identify concerning the road density and secure core habitat surrogate. The surrogate trigger is ambiguous, lacks a deadline, and the supposed requirement to maintain 2011 access conditions is not linked to a requirement in the Revised Plan." (p 41)

"Plaintiffs persuasively argue that the surrogate is inadequate because there is no requirement in the Revised Plan to return to 2011 access conditions. As explained above, the 2011 access conditions were the result of Amendment 19's road density requirements. The Revised Plan does not incorporate those requirements, so it is unclear how the 2011 access conditions ensure that 'temporary changes' will not be indefinite. (Cf. Doc. 91 at 36.) As a result, the road density and secure core habitat surrogate violates the ESA." (p 43)

“[Plaintiffs] allege that the Service violated the ESA by relying on the flawed 2017 BiOp without satisfying its independent obligation to consider how the Revised Plan could jeopardize grizzly bears, bull trout, and bull trout habitat. (Doc. 77 at 48 (citing *Save our Cabinets*, 255 F. Supp. 3d at 1063).) Plaintiffs are correct . . . insofar as the 2017 BiOp was invalid based on its determinations that the Revised Plan's shift away from Amendment 19's road closure requirements would not jeopardize grizzly bears, the non-mandatory culvert removal aspect of the Revised Plan would not jeopardize bull trout, the Revised Plan considered its effect on the nationwide grizzly population, the adoption of the 2011 access conditions was reasonable, and the road density and secure core surrogate for grizzly bears was adequate.

As discussed above, the 2017 BiOp did not consider the impact of ineffective road closures on the 2011 baseline population for grizzly bears, nor did it consider the effects of the Revised Plan on the grizzly species as a whole. The BiOp's road density and secure core surrogate concerning grizzly bears is also deficient, as described above. Such failures render the 2017 BiOp faulty in its conclusions concerning grizzly bears. See *All. for Wild Rockies*, 412 F. Supp. at 1204 (finding that biological opinion was flawed because the Service failed to consider temporary increases in motor route density as a result of ineffective road closures).

The BiOp also did not consider the effect on bull trout of withdrawing the mandatory culvert removal requirement. The problem with the Forest Service's reliance on the 2017 BiOp's conclusion that the less stringent culvert removal plan would not significantly adversely affect bull trout is magnified in light of the Recovery Plan, which identified culvert removal as an aspect of successful bull trout recovery just two years before the 2017 BiOp and three years before the Revised Plan . . .

In conclusion, the Forest Service violated the ESA to the extent it relied on the BiOp's flawed road reclamation determinations and road density surrogate.” (p 52-53)

As we have argued in our previous comment letters and here, the Forest Plan and MSP are similarly flawed for abandoning A19 management, adopting the notion of “impassable” roads that don’t count in TMRD and need not have their stream-aligned culverts removed, and by adopting a flawed 2011 baseline. This allows the permanent expansion of the road and culvert system in grizzly bear and bull trout habitat while not appearing to increase them over an arbitrarily defined 2011 baseline, the parameters of which contribute to the surrogates and triggers being ruled unlawful by Judge Molloy. We have no way to compare the MSP to a newly revised Plan, its BiOp and its ITS that remedy these problems because they do not yet exist.

We are not encouraged that the Flathead has failed to learn lessons from our numerous project Objections, Plan Objection and Judge Molloy’s Order. The DROD, on page 17 for example, simply dismisses our concern over the effectiveness of road closures: “While the illegal use of roads is an ongoing concern for the Flathead National Forest and Region 1, predicting the effects of these public activities is beyond the scope of the Mid-

Swan analysis.” Unchecked, this attitude dooms the MSP and its BiOp in the same way it doomed the Plan and its BiOp.

Phony Side Steps

Rather than make substantive changes in its MSP proposed action, the Forest Service instead attempts to side-step significant problems. As a result, the MSP, its DROD and its FEIS are made all the more confusing and opaque. They are incomprehensible.

No Adequate Alternative Presented for the DROD Split-Decision

The DROD, at 1, states that while the whole 15-year implementation schedule of Alternative B is analyzed in the FEIS, the DROD selects a “reduced alternative B.” It continues “If appropriate, a second record of decision and associated objection and USFWS consultation process will be made to implement actions that have been evaluated in the FEIS but not included in this record of decision.”

There is no Selected Alternative in the FEIS, leaving the public and decision-maker to embark on an impossible odyssey of subtracting actions and effects from Alt. B to theoretically arrive at the Selected Alternative. This approach (of presenting the worst-case / most-impact scenario and then claiming actions and impacts less than that are automatically covered in the FEIS) was squarely rejected by the U.S. District Court of Alaska in the Prince of Wales decision. (See DROD DVD; PoW 40 order granting msj 3-11-20.pdf and PoW order on remedy.pdf).

Nor does this unlawful and cheap side-step “respond to concerns that the implementation schedule [for Alt. B] was too long” (DROD at 1). DROD page 4 instead indicates that the Selected Alternative will implement activities through YEAR 11, based on the unlikely assumption that activities and contracts will not run long and be granted extensions. This is hardly a significant reduction in the implementation schedule from 15 years and creates more questions than it answers.

When must a second ROD be issued to “implement actions that have been evaluated in the FEIS but not included in this record of decision?” Neither the DROD nor FEIS say when - and it is difficult to impossible to determine this by adding and subtracting from the various DROD and FEIS table and maps. But it appears it would have to be before the activities authorized in the first ROD have run their course, which would create overlap in activities and impacts, requiring even more adding and subtracting to still arrive at nebulous results. This is a process that should have been conducted by the Forest Service and displayed clearly in a first-ROD alternative and second-ROD alternative in the FEIS.

Moreover, the DROD and FEIS are at odds with each other over when the first-ROD activities begin. The FEIS, at C-45, states “while the full suite of restoration activities is analyzed in the FEIS, only activities proposed to start in the first seven years of the project timeline will be authorized [by the first ROD].” The DROD at 4, however, shows

in Table 2 that Selected Alternative activities could start as late as years 9-11. As stated earlier in this Objection, the FEIS is incomprehensible.

Page 1 of the DROD implies that there will be no Objection period for the FEIS when a second DROD is issued, even though the FEIS will by then be quite stale but apparently nonetheless relied upon to support the second ROD. The FEIS provides no assessment of the effects of the first-Rod, nor does it provide an assessment of the effects of the second-ROD, period.

As we argued elsewhere in our prior comments, the DEIS did not provide an adequate assessment of cumulative effects. The FEIS cumulative effects analysis is not adequate either.

So we argue at this juncture, when we are allowed to Object to the FEIS, that it is wholly inadequate and in clear violation of NEPA. It fails to take the necessary hard and detailed look at site-specific environmental impacts, fails to disclose them in a clear manner to the public, and fails to provide for timely public comments on an assessment of those site-specific impacts.

Inadequate Site-Specific Detail and No Timely Objection Process

The problem remains that, rather than presenting the FEIS as a programmatic EIS that will later be tiered to by project-specific EISs or EAs, it is presented as a one-time FEIS that adequately informs the public and decision-maker of the environmental effects of some 15+ years of ground- and vegetation-disturbing projects - a proposition that was squarely rejected by the U.S. District Court of Alaska in the Prince of Wales decision (see DROD DVD; PoW 40 order granting msj 3-11-20.pdf and PoW order on remedy.pdf).

The MSP DROD and FEIS still fail to provide adequate project- and site-specific details and assessments of effects, leaving the collection of site-specific data until project implementation. Disclosure of that information to the public is also delayed until project implementation, long after the public has had the opportunity to review and file Objections to the implementation activities. This was also rejected by the Alaska Court.

The FEIS Appendix B maps only show areas where various ground- and vegetation-disturbing activities may occur. The FEIS maps and tables show only the years where various Implementation Units may be active in certain activity areas. They do not show specifically where and when implementation activities will actually occur.

The FEIS Appendix A IGOR, at A-24, makes it all too clear that “final treatments and activities within activity area[s] . . . will be made available to the public and represent the actions being implemented for that year.” By the year of actual project and activity implementation, however, there is no formal and meaningful opportunity for the public to review and Object to it. This is a clear violation of NEPA, as found by the Alaska Court. This starving and then spoon-feeding the public essential information is also morally repugnant.

An example of the necessity of the Objection process to secure changes to project activities is presented in detail on our DROD DVD. We include there several Objections to the Bug Creek project and the resulting Objection response in which the District Ranger finally “decided to limit the regeneration harvest openings to the forest plan maximum opening size” (see SVC Bug Creek Objection 210426.pdf, FOWS Bug Creek objection 4-30-21.pdf, WEG 2021 04 27 Bug Creek Objection with Attachments.pdf, and Bug Creek Objection Response.pdf).

Without timely recourse to the Objection process, the public would not have been able to secure compliance with the Forest Plan limits on regeneration opening size. Without project-level Objection opportunities in the MSP area, the public cannot use Objections to secure compliance with the Forest Plan limits on regeneration opening size, among other things.

At this MSP Objection juncture, the DROD and FEIS do not disclose where, when and in what combinations regeneration logging will result in regeneration openings of what size, let alone in sizes that exceed the NFMA limit of 40 acres or the Flathead Forest Plan’s larger limits of 80, 90 and 150 acres for various forest types. Nor can this information be gleaned from the FEIS Appendix B maps, which only depict where “even-aged regeneration/regeneration openings” and “regeneration openings/variable density thinning” may occur. By the time the public is notified of the actual size and combinations of regeneration openings in MSP, it will be too late to seek reductions or compliance with the Forest Plan via the essential Objection process.

Map Information Remains Inaccurate or Missing

Even a glance at FEIS Map B-39 shows it to be inaccurate. It shows only the locations of 4 culverts that “restrict fish passage,” all in the southern part of the project area. It shows no culvert that restricts fish passage in Spring Slide Creek, a tributary of North Lost Creek located upstream of important bull trout and westslope cutthroat trout habitats. We and fisheries biologist Beth Gardner know, however, that a 72” x 45” squash culvert is impassable to fish and was still in place on Road 5206 in Spring Slide Creek as late as 6/4/16, even though it was mistakenly marked as “pulled prior to 2010.” (See DROD DVD Folder Lost N 5206; 160308 Gardner to Hammer Springslide.pdf, Spring Slide Culvert Form 020812.pdf, and Spring Slide Culvert Photo 020812.pdf. See also therein Subfolder North Lost Road 160604 for our photo survey of that road in Spring Slide Creek, which shows in photo “4 6-foot Culvert 3.jpg” that this culvert still was in place. See also “5 Live Small Culvert 1.jpg” showing that a second smaller culvert was running a live stream just beyond the larger squash culvert).

FEIS maps B-41 and B-45, however, show MSP intends to remove several “road crossings” from the first portions of Road 5206, which would abandon/orphan in-place the two stream-bearing culverts described above! The fact that the FEIS map keys refer to “road crossings” and “road/stream crossings” speaks volumes about the accuracy of the maps and their failure to display where culverts and bridges are, let alone problem culverts and bridges. Simply put, the Forest Service either doesn’t know where all of its culverts and bridges are or is unwilling to share that information in the FEIS.

To make matters worse, FEIS Map B-45 designates the latter portion of Road 5206, where all stream-bearing culverts have been removed as a “No Action (haul route).” Nowhere does the FEIS or DROD explain what a “No Action (haul route)” is, but it appears the FS wants to retain this road for future mechanized harvest, according to the map’s depiction of where such harvest could occur. Even more disturbing is that the FS apparently intends to “store” the first stretch of this road by removing the first few “road crossings” but leave the huge culvert as an “orphan” per the ISS rules set forth in the FEIS page A-21 flow chart, even though it appears to provide less than a half-mile of access beyond it to the next stream (where subsequent culverts have been removed).

Road 5206 serves as an example of the lengths the FS is going to preserve road access, even where it has already removed stream-aligned culverts from steep avalanche country, just because it finds that 77% of the MSP landscape needs “restoration” treatments of one sort or other that require road access (FEIS at 29). Take a look at DROD DVD Folder “Lost N 5206,” North Lost Tributary Question.jpg and our photos of Road 5206 in Subfolder “North Lost Rd 160604” to see if it looks like this area needs more logging for “restoration” or instead needs all of the rest of the culverts removed to protect the downstream habitats of bull trout and westslope cutthroat!

This is also a clear example of why Judge Molloy found the Forest Plan and its BiOp unlawful for abandoning A19’s road “reclamation” standards, which require the removal of all stream-aligned culverts, in favor of “impassable” road standards that do not. Though the MSP FEIS may attempt to make clear that such culverts will be removed from “decommissioned” roads in the MSP, the Forest Plan definition of “decommission” does not require culvert removal (as noted by Judge Molloy). In this regard, the FEIS Response to Public Comments, at C-62 and C-63, provides little comfort in attempting to beef up the definition of a decommissioned road and claiming that leaving “up to 10 existing culverts” in an ISS/impassable road is “minor implementation flexibility” for where “economic/access needs are greater than the potential risk posed to the aquatic ecosystem.” Allowing the retention of risky culverts for economic reasons is not “landscape restoration.”

A similar situation is presented for Road 10503 in Goat Creek, where all stream-aligned culverts were recently removed using CFLRP money, including at least one culvert plugged with avalanche debris. (See DROD DVD Folder “Goat 10503,” 10503 Avalanche Chute.jpg, 10503 Avalanche Chute.pdf, 181024 Gardner to Hammer Goat Cr.pdf, and Beth Gardner Goat Cr 150506.pdf. A photo survey of the road and its surroundings prior to culvert removal is also included, in Subfolder “Goat Cr Rd 10503 160612”).

After all of the above collaborative effort and expense to locate and remove the culverts from Road 10503, MSP still wants to retain it as a road for future mechanized vegetation “restoration,” if that is indeed what “No Action (haul route)” means (FEIS Map B-27)! The undoing of true watershed restoration by rebuilding roads and reinstalling culverts creates more damage than any vegetative “restoration” that would be conducted using those roads. This is simply a matter of the FS making money fixing something, then making more money screwing it up, and then making more money by fixing it again - all at taxpayer expense!

The above examples of Spring Slide and Goat Creek roads serve as but two examples of the inadequacy of the MSP, FEIS and their associated Transportation Analysis Process. All three are unlawfully biased towards retaining road access for logging at inappropriate risks to aquatics, water quality, wildlife security, and other essential forest resources. If these are truly “No Action” roads, then perhaps the areas they access should be designated “no-action areas” as defined at FEIS page 100, meaning they “have no need for restoration activities.”

Supplemental Information: Logging Likely Increases Fire Intensity and Spread

We will here supplement the arguments made in our prior comments that logging and thinning likely increase fire intensity and spread due to allowing more sun and wind into the forest stand, drying out the understory and literally fanning the flames.

The DROD and FEIS fail to adequately address science finding that the proposed logging and vegetation treatments will likely make the fire risk situation worse instead of better. We included in our comments discussion of, and in many cases provided, research papers demonstrating that the effects of the MSP are highly controversial and uncertain. The Ninth Circuit opinion in *Bark v. USFS* found that such controversy and uncertainty requires the preparation of an EIS (see DROD DVD, CCR Published Opinion.PDF). We argue here that the MSP FEIS does not provide adequate site-specific detail to resolve this controversy and uncertainty at a meaningful, project-specific scale.

We summarize here the expert findings of Dr. Joseph Werne, extracted from his 4/4/21 Declaration regarding the inadequacy of current fire models and fuels management prescriptions (see DROD DVD, Werne Declaration.pdf):

- a. When ladder fuels are removed (by thinning), ground-level wind speed and turbulent mixing both increase, leading to faster fire spread and greater oxygen-transport efficiency; this, in turn, results in increased fire intensity.
- b. In many cases this aerodynamic effect is more important than the fire-dampening effects of the fuels reduction being evaluated.
- c. Two recent studies demonstrate just how consequential neglecting canopy wind-drag effects can be, leading to potentially disastrous results if aggressive ladder-fuel removal is applied. See Atchley et al. 2021, and Banerjee et al. 2020 (attached to declaration).
- d. Both papers demonstrate that the removal of ladder fuels reduces the sub-canopy wind drag, ultimately leading to increased fire spread.
- e. In other words, they both show how fuels-reduction treatments can increase fire spread, which is the opposite of what currently-used operational model studies predict.
- f. Furthermore, the Banerjee et al. 2020 paper goes further and also shows that aggressive ladder fuel removal increases the likelihood of overstory crown fires compared to more modest ladder fuel reductions, which is again opposite to operational model-run predictions.

g. Other recent studies also confirm these findings. Coen et al. 2018 (attached to declaration) demonstrate that drought and fuel load were secondary effects compared to fire-induced atmospheric motions, which operational fire-behavior models neglect.

h. Bradley et al. (2016) (attached to declaration) analyzed satellite data for 1500 fires from 1984 to 2014, affecting 23.5 million acres of forestland. Their results show that the more heavily forestland is managed, the more severely it burns, and the least-managed land (i.e., our National Parks and Wilderness Areas) are the most firesafe.

i. By omitting atmospheric dynamics and wind-drag effects associated with vegetation treatments, fuels reductions designed to reduce fire intensity and fire spread are undoubtedly producing the opposite effect.

Conclusion

The FEIS begins (page C-1) by insulting our intelligence, claiming that because commenters were able to make site-specific comments on the DEIS, that means the FEIS is adequately site-specific to satisfy the broader requirements of NEPA. Such evasive maneuvers continue by not providing commenters a key to quickly find the FEIS Response to their DEIS comments. And they continue in the manner described in the several side-step examples presented in this Objection, among others.

Perhaps the FS could put an end to this charade if it would only pay attention to what it has written and the facts at hand. One page 253, the FEIS addresses the spatial scale of the Mid-Swan Assessment upon which the FEIS is based: “The Mid-Swan Assessment was by necessity conducted at a spatial scale midway between the coarse scale planning of a Forest Plan and the typical fine-scale planning of a Forest Service project.”

In other words, the FEIS and its assessment do not contain the level of detail necessary to support the planning of a project implemented under the FEIS. Promising to provide the project-specific detail later, when project implementation is getting underway, denies the public the lawful right to review and comment on that information via a formal NEPA process, and to file a formal Objection to the project if adequate relief is not granted.

Yet the FS persists in its pursuit of flawed Condition-Based Management, calling the MSP FEIS adequate final NEPA for 15+ years of project implementation, rather than calling it a Programmatic FEIS to be followed by further NEPA documentation and public processes for project implementation. This approach was fully faulted by the U.S. District Court of Alaska, as described in this Objection and our prior comments.

So the Flathead NF rushes headlong into a similar legal dispute over MSP, while it has yet to remedy the legal deficiencies of its Forest Plan, its BiOp and its ITS described by Judge Molloy in June. We obviously remain concerned that the MSP will harm water quality, fish, wildlife, and our members’ interests.