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March 6, 2023

USDA Forest Service, Northern Region

Objection Reviewing Officer

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Missoula, MT 59804

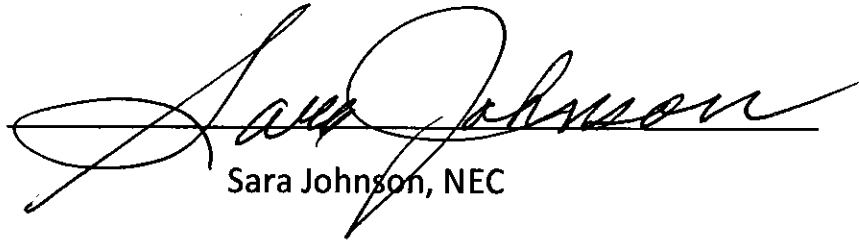
**Objection**  
**against the South Otter Landscape Restoration**  
**and Resiliency Project on the Ashland Ranger District of**  
**the Custer-Gallatin**  
**National Forest**

**1. Objectors Names and Addresses**

Lead Objector Sara Johnson, Director, Native Ecosystems Council, PO Box 125, Willow Creek, MT 59760; phone 406-579-3286; [sjohnsonkoa@yahoo.com](mailto:sjohnsonkoa@yahoo.com).

Mike Garrity, Director, Alliance for the Wild Rockies, PO Box 505, Helena, MT 59624; phone 406-459-5936; [wildrockies@gmail.com](mailto:wildrockies@gmail.com).

Signed for Objectors this <sup>th</sup> 16 day of March, 2023



Sara Johnson, NEC

**2. Name and Location of Proposed Project**

South Otter Landscape Restoration and Resiliency Project on the Ashland Ranger District of the Custer-Gallatin National Forest.

**3. Responsible Official**

Ashland District Ranger Ronald Hecker.

**4. Attachments**

This Objection includes 4 attached appendices. Appendix A includes information on Montana bird species of conservation concern that are potentially present in the South Otter Project Area, including the type of habitats they use. Appendix B includes a brief summary of legal violations that will be triggered by this project in regards to the management of elk habitat, including Forest Plan violations. Appendix C is a brief summary of the Ashland Deer Guidelines developed collaboratively between the Ashland Ranger District and the Montana Fish, Wildlife and Parks in 1990. Appendix contains references for literature and/or reports cited in this Objection.

## **5. Description of the Connection between the Objection and the Objector's Prior Comments.**

NEC and AWR provided joint scoping comments for the South Otter Project on February 9, 2021. NEC and AWR provided joint comments on the draft Environmental Assessment (EA) on November 25, 2022. These comments identified a host of issues regarding wildlife management, from nongame birds to mule deer and white-tailed deer to elk. Our major issues were that the Custer-Gallatin (CG) Revised Forest Plan (RFP) completely failed to ensure that a diversity of wildlife will be maintained on the CG, as is required by the National Forest Management Act (NFMA). Specifically, scoping issues raised the massive cumulative effects that will be triggered by the combination of 3 vegetation projects to be implemented across the Ashland Ranger District, including the Ash Creek, Three Mile and South Otter projects. A second scoping issue was the failure of the agency to provide even minimal descriptions to the public of where units and roads will occur, when these treatments will occur, where important wildlife habitats are, during the next 25 or more years. Trying to implement such a massive project is clearly a means of side-stepping public involvement. We asked how Forest Plan monitoring can be applied to a 25-year project. We asked about what the costs would be for the entire project. We asked for maps of all areas that contain sagebrush habitat and areas occupied by sage grouse. We asked for an analysis as to how the project would adhere to the Migratory Bird Treaty Act (NBTA). We noted that the CG is designing projects that will have significant adverse effects on wildlife, from migratory birds to mule and white-tailed deer and elk. We asked why the Ashland Deer Guidelines were not being applied to the South Otter Project. We questioned why the current best science for elk management regarding security were not being implemented in the project area, and requested that the elk analysis use this current best science in the project analysis, including Hillis et al. (1991). This analysis should include information provided in the 2013 collaborative recommendations developed between the Forest Service and the Montana Fish, Wildlife and Parks. We requested more information as to the purposed of thousands of acres of prescribed burning for wildlife. We requested specific information on the location and proposed management for wild turkeys. We requested a detailed description of specific

monitoring efforts that would be applied to each of the 9 Opportunity Areas; how would effects monitored in one area be applied to other areas? We challenged agency claims that the South Otter Project will improve wildlife habitat; no actual information was cited to define how this would be achieved for either nongame or game animals.

As per NEC and AWR's 30-day comments on the draft EA, we summarized our concerns for 3 separate documents: the draft EA, the silviculture report, and the wildlife report. We identified 85 questions regarding the draft EA, almost all which were never responded to by the agency in Response to Comments in the draft Decision Notice. We listed 34 comments and/or issues in regards to the project silviculture report, almost none which were responded to in the Response to Comments in the draft Decision Notice. Finally, we raised 73 concerns and/or questions in regards to the project wildlife report, almost none which were responded to by the agency in the draft Decision Notice and Response to Comments. As a result, there is no potential for NEC and AWR to address how the agency's Response to Comments have affected our concerns and issues. We will summarize these many comments and issues by what we provided as conclusions: Given that the South Otter Project will impact 226,196 acres of wildlife habitat, that the Three Mile Project will impact 7,175 acres of wildlife habitat, and the Ash Creek Fire Project will impact 110,066 acres of wildlife habitat, along with almost half of this landscape being already burned by wild fires, it is difficult to determine how the agency has concluded that these impacts on wildlife have not been significant; the agency needs to define how planned changes of wildlife habitat over 537 square miles will not affect any wildlife species in this landscape.

We also concluded that given that the CG LMP is in violation of the 2012 planning rule by failing to provide conservation strategies for at-risk wildlife, and a failure of this LMP to make a single connection between attaining RNV and desired conditions for vegetation with providing viable populations of any wildlife species, this LOMP cannot be legally implemented in any site-specific projects. Until this

LMP is amended to address these severe flaws, no site-specific projects can legally be implemented.

## **6. Remedy**

As noted above, the CG LMP (RFP) is a violation of the NFMA and the NEPA because there are no conservation strategies for at-risk wildlife species. Nor are there any habitat standards for nongame wildlife, or valid standards for big game species due to the use of invalid definitions, such as hiding cover and big game security. The South Otter Project is an example of how implementation of the RFP will affect wildlife, and it clearly shows severe, devastating impacts to wildlife will occur due to the almost complete lack of wildlife habitat management direction this RFP. The agency instead claimed that maintaining the Historic Ranger of Variation (HRV) ensures that all wildlife species will remain viable on the CG, without ever actually defining HRV habitat conditions for wildlife, or why these conditions ensure viability. Use of an undefined landscape condition (HRV) to claim it can somehow maintain viable populations of all wildlife species is a severe violation of the National Environmental Policy Act (NEPA) as well as the Administrative Procedures Act (APA) and the National Forest Management Act (NFMA), since claims of providing for wildlife viability require some type of evidence and analysis. As a result, the CF RFP cannot be legally implemented on this forest, as otherwise there will be a progressive elimination of habitat for most wildlife species. Implementation of the CF RFP on the Ashland Ranger District will allow the stripping away of habitat across the entire ranger district. Yet somehow the Ashland Ranger District has determined that none of this massive habitat loss, including within the South Otter Project Area, will significantly impact wildlife. When there are no standards of wildlife habitat, including nongame species, and invalid criteria for measuring project impacts on big game species, such as security and hiding cover, any analysis results cannot be valid. The CF RFP needs to develop valid habitat standards for all wildlife species so that project impacts can actually be measured, including on the Ashland Ranger District.

## **7. Legal Violations of the Proposed South Otter Project.**

**A. The Ashland Ranger District, due to the widespread disturbance to wildlife due to implementation of vegetation projects across the District without any effective mitigation criteria to ensure wildlife populations are not significantly displaced or reduced, is violating the National Environmental Policy Act (NEPA) by failing to evaluate the level of significant impacts that may be created; this failure in turn was used to justify a failure to measure the significance of environmental impacts on wildlife, impacts that would potentially have required completion of an Environmental Impact Statement (EIS).**

The South Otter Project will impact 226,196 acres within the 292,000 acre project area. Hiding cover and elk security, and old growth forests, will be essentially eliminated as a result. The adjacent Three Mile Project is currently being implemented. This project area covers 32,924 acres, with logging treatments planned on 7,175 acres. The Ash Creek Fire Project is directly north of the Three Mile Project, and covers 110,273 acres. Almost the entire project area will be logged and/or burned. This project is currently being implemented. All three projects covering the entire Ashland Ranger District of 343,437 acres, or 537 square miles, will be active at the same period for at least several decades. The South Otter Project alone could require 25 or more years to complete. None of these projects individually were evaluated with an EIS, even though activities are currently or will be overlapping. The South Otter Project conclusions were that no significant direct, indirect or cumulative impacts would be triggered by the project. None of these 3 projects identified what percentage of a given landscape must be protected from disturbance at any given time. The criteria for retention of adequate non-disturbance areas for wildlife were never defined for each project, individually or jointly. The percentage and location of undisturbed areas for wildlife, including big game, was never evaluated or incorporated into any of these 3 projects. Without this type of mitigation and analysis across a large,

connected landscape, the agency cannot demonstrate adequate non-disturbance habitats will be provided to wildlife in order to prevent significant displacements and/or population declines for wildlife, particularly big game. The issue of elk displacement to private lands is clearly a well-recognized issue to the Forest Service (e.g., Dickson 2015; Byron 2017; Lundquist 2014; USDA/MFWP 2013). Yet there was no cumulative effects analysis as to how the three projects will impact elk displacement in hunting district 704 in the South Otter Project Area, or adjacent hunting districts 701-705. All of these hunting districts have elk objectives that exceed MFWP objectives, which indicates a lack of security on public forest lands. This may not just be a hunting season displacement, but in many cases may be permanent (USFS/MFWP 2013).

There is no basis for the agency claims that the 3 proposed/ongoing projects on the Ashland Ranger District that will all overlap in time will have no significant adverse impacts on wildlife. This conclusion was never supported with any actual analysis or current science, in violation of the NEPA. This is also a NEPA violation because the agency is misrepresenting management impacts to the public. A valid analysis of cumulative disturbance impacts to wildlife is required before any of these 3 projects can legally be implemented or continue to be implemented.

**B. The proposed South Otter Landscape Restoration and Resiliency Project (hereafter “South Otter Project”) is a violation of the National Forest Management Act (NFMA) because the Custer-Gallatin (CG) Revised Forest Plan (RFP) under which this project is being implemented is invalid due to a host of legal violations of the National Environmental Policy Act (NEPA), the Administrative Procedures Act (APA), the diversity requirements of the NFMA, and 2012 Planning Rule, and the Migratory Bird Treaty Act (MBTA).**

In our appendices A-C, we have identified a host of NEPA violations that were triggered in the CG RFP Final Environmental Impact Statement (FEIS) including the following examples: (a) a failure to evaluate impacts (e.g., on forest, woodland and shrubland birds, wildlife dependent upon old growth forests, wildlife dependent upon forested snag habitat)' (b) a failure to include wildlife habitat guidelines developed for mule deer and white-tailed deer as RFP Direction; (c) providing invalid habitat criteria by which wildlife would be managed, including a false definition of elk security and hiding cover; (d) a failure to provide old growth habitat to maintain viable populations of associated species; almost no old growth is actually required (e.g., 1-6% ponderosa pine old growth while wildlife recommendations for wildlife include 20% for the goshawk (Reynolds et al. 1992) and forest birds of 20-25% (Montana Partners in Flight 2000); any old growth can also be logged down to a few large older trees; and (e) a failure to require valid management of a host of forest birds that require snags for nesting habitat; the snag management strategy is outdated by 30 years, and was carried over from the 1986 Gallatin and Custer Forest Plans without any actual validation of their past effectiveness.

It is clear that the CG RFP will not meet the requirements of the NFMA, which is to maintain a diversity of wildlife on the planning area. There are basically no habitat standards for any forest bird. Guidelines for elk security are invalid as the security definition is false. There are not actually any requirements for any level of either false or valid security. Possible requirements for hiding cover cannot actually be effective because of a false definition of hiding cover, or a 40% canopy cover. There are not actual requirements for any hiding or thermal cover levels on elk and deer winter ranges. Protections would require a demonstration that cover or security is lacking, but how this is defined is unknown.

The CG RFP also cannot meet the requirements of the 2012 Planning Rule, which requires a Forest Plan to have conservation strategies for wildlife species of conservation concern. In Appendix A of this objection, we identified a host of Montana Species of Concern (SOC) as well as U.S. Fish and Wildlife Birds of Conservation Concern (BCC) that occur on the CG as well as in the South Otter



Project area. There are no conservation strategies in the CG RFP for any of these species. The RFP FEIS does not define why all these species do not require habitat management. For example, the 3 projects planned on the Ashland Ranger District provide an example of planned forest management for this RFP. Even though there are 537 square miles of treatment planned on just this ranger district, the RFP does not require a single conservation strategy for any migratory birds, including many that are known species of conservation concern.

The CG RFP dodged the requirements of the NEPA and NFMA by developing conservation strategies for wildlife species of conservation concern, as is required by the 2012 Planning Rule, by claiming that managing for HRV ensures essentially every wildlife species on the forest will remain viable. There was no analysis to define how this was determined, in violation of both the NEPA and the APA.

The CG cannot legally implement any projects under the RFP until it is amended to meet the requirements of the NEPA, the NFMA, the APA, and the 2012 Planning Rule.

**C. The South Otter Project is a violation of the NEPA because the agency is not providing the high quality data/information to the public that the NEPA requires.**

There is almost no information provided to the public on how the South Otter Project will be implemented, or how it will impact wildlife. The maps and figures cover such a massive area (292,000 acres) that most of the details the maps or figures are designed to provide are illegible. Specific treatments and units are unknown. The project proposal is so complicated that the agency was unable to measure project level habitat effectiveness (summer active motorized route density) even though the USDA/MFWP 2013 collaborative recommendations identified this as a critical management concern for elk. These recommendations also identified elk security as a key feature in maintaining elk use on public lands

in the fall hunting season. Although the amount of security was shown for the 9 opportunity areas in the South Otter Project area, there was no map that showed how security would change in each of these areas with project implementation. There was also no information provided or mapped as to hiding cover, required for elk security, would change with project implementation in each of the 9 opportunity areas. The mule deer and white-tailed deer winter ranges were not mapped, or defined in any manner, including how the project treatments would impact hiding and thermal cover, even though there is a RFP direction to retain adequate hiding and thermal cover on big game winter ranges. It is known that juniper, an important feature of mule deer winter range (Ashland Deer Guidelines, Coe et al. 2019) will be burned and destroyed in the South Otter Project (Wildlife Report at 31, 33, draft EA at 55). This impact on deer was never evaluated in the South Otter Project. The sagebrush areas were not mapped, but are likely to be extensively burned to create “mosaics” of sagebrush. The burning of sagebrush will create adverse impacts to sage grouse, whose viability is strongly associated with the amount of tall sagebrush in a landscape (Johnson et al. 2011, Knick et al. 2011). Current populations of sage grouse, and their locations, are not provided for the project area, even though sage grouse is a Montana Species of Concern. It is possible that this species has already been extirpated from this area due to agency burning of sagebrush for cows, and wild fires. Similarly, burning of sagebrush areas and woody draws will adversely impact the sharp-tailed grouse, another Montana Species of Concern that occurs in this landscape. Burning of juniper and sagebrush will also impact a number of other Montana Species of Concern, as the Loggerhead Shrike and Pinyon Jay. This latter species has recently been petitioned for listing under the Endangered Species Act (ESA) (The Great Falls Tribune 2022).

There have been no inventories for over a dozen Montana birds that are Species of Concern, nor has any of their habitat been mapped, in the South Otter Project Area. The Wildlife Reports that impacts to birds are so minor that these will be insignificant! Without any inventories or mapping of their habitats, it is difficult to understand how impacts can be so easily dismissed. This unsupported contention that project impacts will be insignificant to landbirds is likely one of the contributing factors to the ongoing, significant decline of North American

landbirds (Rosenberg et al. 2020). Of the 67 species of western forest birds, many which would occur in the South Otter Project Area, 64% of them are currently in decline. *Id.* Due to the complete lack of management for any of these birds, or birds associated with woodlands and shrublands, such as juniper and sagebrush areas, almost all these birds will suffer habitat loss and have a reduced carrying capacity as a result.

There was no analysis of old growth habitat in the 292,000 acre project area, even though many birds that are Montana Species of Concern as associated with old growth forests (Objection Appendix A). The acres of old growth in the project area are not identified or mapped. One of the old growth species that was not evaluated was the goshawk, a Montana Species of Concern. This species requires extensive habitat management as per the Southwest goshawk guidelines by Reynolds and others (1992). Logging has significant impacts on this species by reducing or eliminating a key prey species in ponderosa pine forests, the red squirrel (Salafsky et al. 2005, Salafsky et al. 2007). Much of this landscape has already been burned in wildfire in recent years. What habitat that remains for the goshawk is probably already limited. Yet there is no analysis for how the South Otter Project will impact this Montana Species of Concern.

There was no analysis as to how the availability of conifer seeds will affect migratory birds that use conifer seeds as important forage resources (Benkman 1996, Smith and Aldous 1947, Smith and Balda 1979) (Objection Appendix A). The Targhee National Forest used a measure of mature, cone producing trees on the landscape as a measure of habitat levels for wildlife that depend upon them (USDA 1997). There was no such analysis in the South Otter Project as to how logging will impact conifer seed availability, including for Montana Species of Concern as the Clark's Nutcracker, Lewis Woodpecker, and Cassin's Finch, or many other seed-consuming forest birds.

As will be noted below, the agency also did not provide any analysis of how many birds, including those associated with ponderosa pine forests, junipers, woody draws, and sagebrush will be directly killed by logging and burning, as well as directly killed due to the high toxicity of smoke to birds. Treatment of either

logging and burning, slashing and burning, or just burning on 226,196 acres will clearly create significant mortality on birds, an impact that was never evaluated by the Forest Service for the South Otter Project, or as well in the CG RFP.

Overall, there is essentially no analysis for almost any species of wildlife in the massive South Otter Project Proposal. It remains unclear why the Forest Service proposes such a massive project when it is clear that they will be unable to do even the minimal amount of inventory work and subsequent analysis to define project impacts, or as well, to define to the public how this project will be implemented. At the same time, the agency did not make any attempt to explain to the public why such a large project is being proposed on 292,000 acres for a 25 year period. If a project cannot be clearly defined to the public, and a valid description of expected project impacts provided as well, then a project is clearly too large to meet the requirements of the NEPA. This is clearly the case with the South Otter Project.

#### **D. The South Otter Project is a violation of the monitoring requirements of the NFMA.**

The South Otter Project did not define how RFP monitoring will be applied to a 25-year project, which is longer than the planning period itself. If a single decision is made for a 25-year project, this means that forest plan monitoring reports, which are made on a 1-5 year basis, will have no application to the management of the 292,000 acres in the South Otter Project Area. The EA for this proposal did not define specifically how RFP monitoring can be applied to this decision, or be relevant to management of this forest landscape. Is there some NEPA exemption from forest plan monitoring that is being applied to this project?

#### **E. There were no Forest Plan amendments completed for the agency's failure to meet RFP direction.**

There are a number of RFP violations that are planned without a Forest Plan amendment. Retention of hiding and thermal cover on big game winter ranges is required if these habitats are determined to be lacking. It is clear that a current hiding cover level of 12%, when deer hiding cover levels are 40% or greater, depending on the species (Ashland Deer Guidelines, as per Appendix C). As well, agency acknowledges that even with the false definition of security used by the CG RFP, which does not require hiding cover, security will be reduced from an claimed 29% to 19%. This loss of security is due to roads, since hiding cover is not included in the CG RFP definition. So security is currently limiting as it is 29%, not the recommended 30%, and it is clearly severely deficient in many of the Opportunity Areas. Yet there is not proposal in the South Otter Project to not reduce agency security areas in any of the Opportunity Areas where it is severely deficient. Retain means to keep, not remove and replace at some later date. The proposed reductions in elk security for the South Otter Project are clearly a Forest Plan violation.

**F. The agency did not complete any amendments for the significant changes planned based on the 2009 Ashland Travel Plan.**

There are huge changes planned for roads and trails in the South Otter Project (e.g., changes of 291 miles motorized trails to logging roads). It is also not clear why the 2009 Travel Plan has not actually been implemented as per the planned decommission of over 20 miles of roads. If these roads were expected to be decommissioned in that travel plan, but are no going to be redeveloped for the South Otter Project, it seems like the 2009 Travel Plan EA is out-dated and needs to be amended. This amendment would also address the huge change of motorized trails to logging roads planned for the South Otter Project. The Project EA was silent on how this travel plan document is relevant to the South Otter EA. IF the travel plan actually has no meaning for road/trail management, this needs to be defined in the South Otter Project assessment, in order to provide information to the public on how the 2009 Travel Plan is being implemented.

## **G. The agency is violating the Migratory Bird Treaty Act (MBTA).**

As has already been addressed, there are no habitat standards for any migratory bird in the CG RFP, and as such, in the South Otter Project Area. Thus there can be no estimate of project impacts on all bird species, since a proxy for habitat effects is lacking. What was not addressed before is the agency's failure to identify the number of birds that are likely to be killed with the South Otter Project, with both logging, slashing and burning. The Wildlife Report states that prescribed burning will "possibly" be restricted during bird nesting, (5/15-7/31). There is no actual assurance, however, that this will occur. There were no such restrictions identified for logging. Thus birds may abandon their nests due to disturbance, eggs and nests in nests would be destroyed if trees are cut and/or slashed, and inexperienced juvenile birds may be unable to escape logging/slashing activities and be killed. The agency did not make any attempt to define how many birds could be killed due to these impacts. In addition, there is strong evidence regarding the highly toxic nature of smoke on birds (Defiance Canyon Raptor Rescue 2022). It is likely that there will be high mortality of many forest/woodland and sagebrush associated birds due to the massive amounts of treatments on 226,196 acres over 25 years. Yet the agency made no attempt to evaluate this issue. This analysis is required in order for the agency to obtain a "take" permit from the U.S. Fish and Wildlife Service for the killing of protected birds.

## **H. Various NEPA/NFMA/APA violations that will be triggered by the South Otter Project**

1. The agency falsely claims that wildlife habitat improvement is one purpose of the project, when in fact, vast acres of wildlife habitat are going to be destroyed either temporarily or permanently, including for many species of conservation concern.

2. The agency failed to consider an action alternative that would not construct any new roads. This alternative would reduce impacts to big game species, including security and hiding cover, and would thus reduce adverse impacts of the project. Modifying actions to reduce environmental impacts would be consistent with the NEPA requirements to address public concerns.
3. The agency claims that forage for big game is limiting, and then claims that the project will benefit big game by increasing forage in logged and burned area. The 2013 USDA/MFWP collaborative recommendations dispute this claim, as removing shade reduces the availability of late summer succulent forage for big game. Also, since 66% of the project area is open, one would not expect forage to have been reduced by too many trees. The agency did not address why cows are allowed on this landscape if forage for big game is limiting, as they generally use much of the same vegetation.
4. There is an ongoing study, including radio-telemetry use, on elk in the project area. However, no information on the results of this study are provided to the public in the South Otter analysis. For example, the CG RFP requires that elk calving areas be protected from disturbance. Yet there are no maps provided of the location of these elk calving areas for protection and management, even though these areas are apparently known.
5. The agency claims that retaining up to 5 large trees per acre will maintain old growth, but no actual analysis was provided as to what old growth-associated species will use this old growth habitat. This is like the Canfield (2011-2012) claims that a 40% canopy cover provides hiding cover for elk, when elk use was never actually measured. Wildlife use must be established to demonstrate habitat is functional. This claim in the South Otter Project is a carry-over of the CG RFP and associated FEIS claims that logging old growth down to a few large trees preserves its value to wildlife, without even completing a single species analysis of logging effects.