

October 9, 2023

ROBBERT MICKELSEN
CROW CREEK PIPELINE PROJECT

1405 HOLLIPARK DR.
IDAHO FALLS, ID, 83401

Re: Crow Creek Pipeline Draft SEIS comments

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Dear Mr. Mickelsen

,

Thank you for this opportunity to comment on the Crow Creek Pipeline Draft Supplement Environmental Impact Statement. The Alliance for the Wild Rockies, Council on Wildlife and Fish, Yellowstone to Uintas Connection and Native Ecosystems Council (collectively “Alliance”) submit the following comments to guide the development of the environmental analysis

for the proposal. Please accept these comments for both the research permit and the temporary permit.

I. NECESSARY ELEMENTS FOR PROJECT EIS: A. Disclose all Caribou-Targhee National Forest Plan requirements for special use projects and explain how the Project complies with them;

B. Disclose the acreages of past, current, and reasonably foreseeable logging, grazing, special use projects, and road-building activities within the Project area;

C. Solicit and disclose comments from the Idaho Department of Fish, and Game regarding the impact of the Project on wildlife habitat;

D. Solicit and disclose comments from the Idaho Department of Environmental Quality regarding the impact of the Project on water quality;

E. Disclose the biological assessment for the candidate, proposed, threatened, or endangered species with potential and/or actual habitat in the Project area;

F. Disclose the biological evaluation for the sensitive and management indicator species with potential and/or actual habitat in the Project area;

G. Disclose the snag densities in the Project area, and the method used to determine those densities and if any of these snags will be cut down for safety reasons;

H. Disclose the current, during-project, and post-project road densities in the Project area;

J. Disclose the Caribou-Targhee National Forest's record of compliance with its monitoring requirements as set forth in its Forest Plan;

K. Disclose the Caribou-Targhee National Forest's record of compliance with the additional monitoring requirements set forth in previous DN/FONSI and RODs on the Caribou-Targhee National Forest;

L. Disclose the results of the field surveys for proposed, threatened, endangered, sensitive, and rare plants in each of the proposed units;

M. Disclose the level of current noxious weed infestations in the Project area and the cause of those infestations;

N. Disclose the level of current noxious weed infestations in the Project area and the cause of those infestations;

O. Disclose the impact of the Project on noxious weed infestations and native plant communities;

P. Disclose the number of acres and location of Lynx Analysis Units (LAU)s that were removed from the CTNF without going through NEPA;

Q. Disclose the amount of detrimental soil disturbance that currently exists in the project area from previous logging and grazing activities;

R. Disclose the expected amount of detrimental soil disturbance in the project area after ground disturbance and prior to any proposed mitigation/remediation;

S. Disclose the expected amount of detrimental soil disturbance in the project area after proposed mitigation/remediation;

T. Disclose the analytical data that supports proposed soil mitigation/remediation measures;

U. Disclose the timeline for implementation;

V. Disclose the funding source for non-commercial activities proposed;

W. Disclose the current level of old growth forest in each third order drainage in the Project area;

X. Disclose the method used to quantify old growth forest acreages and its rate of error based upon field review of its predictions;

Y. Disclose the historic levels of mature and old growth forest in the Project area;

Z. Disclose the level of mature and old growth forest necessary to sustain viable populations of dependent wildlife species in the area;

AA. Disclose the amount of mature and old growth forest that will remain after implementation;

BB. Disclose the amount of current habitat for old growth and mature forest dependent species in the Project area;

CC. Disclose the amount of habitat for old growth and mature forest dependent species that will remain after Project implementation;

DD. Disclose the method used to model old growth and mature forest dependent wildlife habitat acreages and its rate of error based upon field review of its predictions;

EE. Disclose the amount of big game (moose and elk) hiding cover, winter range, and security currently available in the area;

FF. Please disclose what is the best available science for restoration of whitebark pine.

GG. Disclose the level of current noxious weed infestations in the Project area and the cause of those infestations

HH. Disclose the amount of big game (moose and elk) hiding cover, winter range, and security during Project implementation;

II. Disclose the amount of big game (moose and elk) hiding cover, winter range, and security after implementation;

JJ. Disclose the method used to determine big game hiding cover, winter range, and security, and its rate of error as determined by field review;

KK. Disclose and address the concerns expressed by the ID Team in the draft Five-Year Review of the Forest Plan regarding the failure to monitor population trends of MIS, the inadequacy of the Forest Plan old growth standard, and the failure to compile data to establish a reliable inventory of sensitive species on the Forest;

LL. Please disclose more fully how Project complies with the Roadless Rule;

MM. Disclose the impact of the proposed project on the global warming;

NN. Disclose the baseline condition, and expected sedimentation during and after activities, for all streams in the area;

OO. Disclose how will the project effect sage grouse;

PP. Please provide maps of the project area showing the following information;

1. Past, current, and reasonably foreseeable logging units in the Project area;
2. Past, current, and reasonably foreseeable grazing allotments in the Project area;
3. Density of human residences within 1.5 miles from the Project unit boundaries;
4. Hiding cover in the Project area according to the Forest Plan definition;
5. Old growth forest in the Project area;
6. Big game security areas;
7. Moose winter range;

Sage grouse

The Forest Service did not adequately demonstrate compliance with the Forest Plan requirements for sage grouse from the 2003 Revised Forest Plan and 2015 Forest Plan Amendment, in the Project SEIS, violates NFMA, NEPA, and the APA.

Page 3-21, 3-22 of the SEIS states:

Based on data from the GRSG Final EIS (BLM and USFS 2015) and IFWIS (2022), there are no known leks or Priority Habitat Management Areas (PHMAs) on NFS land within the study area (Figure 3.3-1). However, there are known active leks on private land near Montpelier (less than one mile south of the study area) and the same area is designated as Important Habitat Management Areas (IHMAs) in BLM and USFS (2015) as shown on Figure 3.3-1. The closest occupied lek occurs less than one mile (approximately 0.8 mile) south of the Project on private land and six occupied leks occur within 6.2 miles of the Project in Idaho (Figure 3.3-1). Along the Wyoming portion of the Proposed Action, there are no occupied or historic leks within 10 miles of the Project. Regarding population viability, IDFG and CNF trend data indicates a declining trend for GRSG on the six leks closest to the CNF boundary (monitored annually) (IFWIS 2022); however, GRSG populations across Idaho were generally stable for the last decade until recently (around 2018- 2019), based primarily on habitat loss and fragmentation as a result of wildfires, drought, changes in land use, and spread of invasive species. However, habitat loss as a result of these factors has not occurred on USFS lands in and around the Project. Nonetheless, as of 2019, GRSG populations in southeastern Idaho (Southern Conservation Area) have declined (based on lek counts [number of males]) and triggers have been tripped and now habitat formerly classified as IHMA is now considered PHMA and managed accordingly, including portions of the Project located in PHMA (approximately 22 acres) outside USFS lands (Figure 3.3-1). Approximately 3.7 miles and 22 acres of the Proposed Action would be within PHMA in this area. In addi-

tion, the Proposed Action would pass through approximately 2.4 miles and approximately 14 acres of WGFD's current range designation for GRSG but only crosses potential habitat (i.e., sagebrush vegetation) and developed habitat (not currently considered suitable for GRSG due primarily to human-caused changes in vegetation composition and features such as existing houses [e.g., Afton Subdivision, etc.], agricultural areas, and roads) (Figure 3.3-1).

The SEIS solution to sage grouse habitat that is not suitable because of human devilment is to clearcut and build a road through roadless areas that are sage grouse habitat. This makes no sense. Approximately 20 miles of the pipeline corridor will cut through National Forest lands, including five different Inventoried Roadless Areas. The pipeline corridor will also cut through and fragment habitat for species listed under the Endangered Species Act, as well as habitat for a precipitously declining population of greater sage grouse.

Under the 2015 Forest Plan Amendment, a “hard trigger” is defined as a “threshold indicating that immediate action is necessary to stop a severe deviation from greater sage-grouse conservation objectives set forth in the land and [resource management plan].” USFS Doc. 95:FS-004589. The 2015 Forest Plan Amendment Standard GRSG-AM-ST-010 mandates: “If a hard trigger is identified, [1] management direction applying to priority habitat management areas [“PHMA”] will be applied to important habitat management areas [“IMHA”] within the Conservation Area in Idaho, and [2] the Sage-Grouse Implementation Task Force will evaluate available and pertinent data and rec-

ommend additional potential implementation level activities to the appropriate Forest Service line officer in both Idaho and Southwest Montana (Appendix C).”

A hard population trigger in Idaho is a 20% decline in the number of male sage grouse. USFS Doc. 95:FS-004750. As discussed above, the Project is located in the Important Southern Idaho Conservation Area. USFS Doc. 96:FS-004775. As also discussed above, the hard trigger has been reached in this Conservation Area. USFS Doc. 96:FS-004777. The Project SEIS does not disclose the fact that the hard trigger has been reached, which triggers application of Standard GRSG-AM-ST-010, which in turn requires application of all “priority” management direction to this area. USFS Doc. 95:FS-004573.

b. Guideline GRSG-LR-SUA-GL-020

The 2015 Forest Plan Amendment Guideline GRSG-LR-SUA-GL-020 requires: “The best available science and monitoring should be used to inform infrastructure siting in greater sage-grouse habitat.” The Project EIS does not acknowledge that Guideline GRSG-LR-SUA-GL-020 exists, much less demonstrate compliance with it. At a bare minimum, the Project SEIS needs to disclose (a) available information on current population numbers and hard triggers, (b) the recommended distance around leks that should be protected as sage grouse habitat (i.e. a 6.2 mile and/or a 10 mile radius), (c) the Connelly Guidelines for management of that sage grouse habitat, and (d) the fact that oil and gas development is a primary threat to sage grouse in order to demonstrate that the best available science was used for this Project. See e.g. *Defs. of Wildlife v. USDI*, 931 F.3d 339, 346 (4th Cir. 2019)(discussing “best available science” mandate

under ESA in context of natural gas pipeline and finding that agency “is not free to disregard other ‘available biological information’” and instead “must seek out and consider all existing scientific data relevant to the decision it is tasked with making”); see also *Greenpeace, Inc. v. Cole*, 445 F. App'x 925, 927 (9th Cir. 2011) (remanding to Forest Service in part due to agency’s failure to apply best available science as mandated by NFMA planning regulations); *Bark v. U.S. Forest Serv.*, 2007 WL 756746, at *6 (D. Or. 2007)(same).

c. Desired Condition GRSG-GEN-DC-003

The 2015 Forest Plan Amendment Desired Condition GRSG-GEN-DC-003 requires specific habitat conditions that “[a]pply 6.2 miles from active leks.” USFS Doc. 95:FS-004571. As noted above, a significant portion of this Project is within 6.2 miles of an active lek. USFS Doc. 81:FS-003528. Nonetheless, the Project EIS does not acknowledge that Desired Condition GRSG-GEN-DC-003 exists, much less demonstrate compliance with it.

d. Management Indicator Species Standard 1

The 2003 Revised Forest Plan Management Indicator Species Standard 1 requires: “In project analyses affecting the habitats listed below, assess impacts to habitat and populations for the following management indicator species . . . Sagebrush habitats S Sage Grouse.”

This standard is intended to ensure sage grouse viability. The Record of Decision and EIS for the 2003 Revised Forest Plan explain: “While there is one lek documented on the Forest there are many within several miles of the Forest Boundary. Sage-

brush habitats within twenty kilometers [12.4 miles] of active leks may provide nesting brood rearing and winter habitat for sage grouse.” USFS Doc. 4: FS-001587. Thus, “[w]hile leks (where populations are most easily monitored) are not on Forest, changes in populations could reflect changes in habitat conditions on the Forest.” Id. Accordingly: “A decline of 10 percent or more in the number of male grouse would initiate a further analysis in cooperation with [Idaho Fish and Game].” Id.

The Project EIS does not address the habitat conditions within 12.4 miles of active leks, nor does it analyze whether there is a 10% or greater decline in the number of male sage grouse, even though that analysis has been triggered by a population decline of 25% in male sage grouse. Without this basic analysis, the Forest Service is failing its Forest Plan mandate to ensure the viability of greater sage grouse.

Under the 2015 Forest Plan Amendment, a “hard trigger” is defined as a “threshold indicating that immediate action is necessary to stop a severe deviation from greater sage-grouse conservation objectives set forth in the land and [resource management plan].” USFS Doc. 95:FS-004589. The 2015 Forest Plan Amendment Standard GRSG-AM-ST-010 mandates: “If a hard trigger is identified, [1] management direction applying to priority habitat management areas [“PHMA”] will be applied to important habitat management areas [“IMHA”] within the Conservation Area in Idaho, and [2] the Sage-Grouse Implementation Task Force will evaluate available and pertinent data and recommend additional potential implementation level activities to the appropriate Forest Service line officer in both Idaho and Southwest Montana (Appendix C).” USFS Doc. 95:FS-004573.

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out and consider all existing scientific data relevant to the decision it is tasked with making”); see also *Greenpeace, Inc. v. Cole*, 445 F. App'x 925, 927 (9th Cir. 2011) (remanding to Forest Service in part due to agency's failure to apply best available science as mandated by NFMA planning regulations); *Bark v. U.S. Forest Serv.*, 2007 WL 756746, at *6 (D. Or. 2007)(same).

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d. Management Indicator Species Standard 1

The 2003 Revised Forest Plan Management Indicator Species Standard 1 requires: “In project analyses affecting the habitats listed below, assess impacts to habitat and populations for the following management indicator species . . . Sagebrush habitats S Sage Grouse.” This standard is intended to ensure sage grouse viability. USFS Doc. 3:FS-000115; USFS Doc. 4:FS-000407. The Record of Decision and EIS for the 2003 Revised Forest Plan explain: “While there is one lek documented on the Forest there are many within several miles of the Forest Boundary. Sagebrush habitats within twenty kilometers [12.4 miles] of active leks may provide nesting brood rearing and winter habitat for sage grouse.” USFS Doc. 4: FS-001587. Thus, “[w]hile leks

(where populations are most easily monitored) are not on Forest, changes in populations could reflect changes in habitat conditions on the Forest.” Id. Accordingly: “A decline of 10 percent or more in the number of male grouse would initiate a further analysis in cooperation with [Idaho Fish and Game].” Id.

The Project EIS does not address the habitat conditions within 12.4 miles of active leks, nor does it analyze whether there is a 10% or greater decline in the number of male sage grouse, even though that analysis has been triggered by a population decline of 25% in male sage grouse. See USFS Doc. 96:FS-004777. Without this basic analysis, the Forest Service is failing its Forest Plan mandate to ensure the viability of greater sage grouse.

e. Sage Grouse Guideline 1

The 2003 Revised Forest Plan Sage Grouse Guideline 1 requires: “Current guidelines for sage . . . grouse management, such as Connelly et al. (2000), should be used as a basis to develop site-specific recommendations for proposed sagebrush treatments.” USFS Doc. 3:FS- 000147. The Record of Decision and EIS for the 2003 Revised Forest Plan explains: “Habitat management guidelines have recently been updated (Connelly et al, 2000). These guidelines (nesting, brood-rearing and winter habitat) would be incorporated at the site-specific level where appropriate.” USFS Doc. 4:FS-001587, 1696 (direction applies to “site-specific projects”).

The Project EIS does not acknowledge Sage Grouse Guideline 1, and it fails to apply the Connelly et al. (2000) guidelines to sage grouse habitat at the site-specific project level. See Tidwell,

599 F.3d at 935 (remanding in part because “[t]he record further suggests that in addition to failing to monitor and incorporate sage grouse population data in its analysis, the Forest Service failed to adhere to the Connelly Guidelines in assessing the sagebrush habitat.”)

f. Sage Grouse Guideline 2

The 2003 Revised Forest Plan Sage Grouse Guideline 2 requires: “Management activities should consider proximity to active lek locations during site-specific project planning. Those within 10 miles of an active sage grouse lek . . . should be considered further for suitability as grouse habitat.” USFS Doc. 3:FS-000147. As the Forest Plan Record of Decision and EIS further explain: “The sagebrush habitats within ten miles of the leks are predicted to provide summer nesting and brood-rearing and winter habitat for sage grouse.” USFS Doc. 4:FS-001691.

A significant portion of the Project area occurs within 10 miles of an active lek. USFS Doc. 81:FS-003528 (Project lek map); USFS Doc. 4:FS-001692 (Forest Plan EIS lek map). Nonetheless, the Project EIS does not acknowledge Sage Grouse Guideline 2.

g. Sage Grouse Monitoring

The 2003 Revised Forest Plan requires the Forest Service to “[m]onitor changes in habitat conditions from vegetation treatments within 10 miles of leks.” USFS Doc. 3:FS-000260. The entire Project is within 10 miles of a lek, either “active” or “undetermined.” USFS Doc. 81:FS-003528; Dkt 27 ¶52; Dkt 54 ¶52. Nonetheless, the Project EIS fails to provide any monitoring data on the habitat conditions within 10 miles of these leks.

2. There is no analysis or disclosure of the 2003 and 2015 Forest Plan provisions for sage grouse in the Project EIS.

Forest Plan provisions are legally binding and the Forest Service must demonstrate compliance with Forest Plan provisions at the site-specific level. Nonetheless, the Project SEIS fails to analyze any of these sage grouse Forest Plan provisions in the Project EIS. Instead, the direct and indirect effects analysis for sage grouse in the Project EIS is a single paragraph with no analysis of any Forest Plan provisions.

Instead of disclosing and applying the binding Forest Plan provisions for sage grouse – an imperiled management indicator species – the Project EIS simply asserts: “Currently, Sage Grouse habitat is managed per the most recent guidance in the 2003 Revised Forest Plan and, where applicable, in accordance with the 2015 Land Management Plan Amendments. The project is in compliance with the direction contained in these two documents which specifically guide Forest Service management as it relates to sage grouse and their habitat within the project area.” USFS Doc. 81:FS-003916 (emphasis added). No supporting citations, evidence, or analysis is provided to substantiate this conclusory statement. *Id.* Accordingly, the Forest Service’s failure to disclose the binding Forest Plan provisions, and demonstrate compliance with them, violates both NFMA and the “hard look” requirement under NEPA.

Notably, a number of the relevant Forest Plan provisions discussed above require the Forest Service to analyze sage grouse habitat conditions within a 6.2-mile radius and a 10-mile radius of each sage grouse lek.

This requirement is similar to one on the Payette National Forest, which was addressed by the Ninth Circuit in *Neighbors of Cuddy Mountain*. In *Neighbors*, the Ninth Circuit found that the Forest Service violated NFMA by failing to analyze the habitat conditions within individual pileated woodpecker home ranges. 137 F.3d at 1376. The Ninth Circuit noted that “each range is approximately 10 miles in diameter,” and it held:

The Forest Service provides no information whatsoever regarding how many woodpecker home ranges there are within the sale area, or how many home ranges would be affected by the timber sale. [] Having failed to do so, it certainly could not have demonstrated that after the sale, a sufficient percentage of old growth would remain in each affected pileated woodpecker home range.

The Ninth Circuit thus held: “the Forest Service did not comply with the requirements of the [forest plan] in so far as the Forest Service evaluated the ‘analysis area’ rather than the ‘home range’ of the pileated woodpecker.” *Id.* at 1378. Accordingly, the Forest Service “did not demonstrate that the . . . project would be consistent with the Payette [forest plan], and thus it failed to comply with NFMA.” *Id.* Here too, by failing to conduct the required analyses for the habitat home ranges found in a 6.2-mile radius and a 10-mile radius from each sage grouse lek, USFS Doc. 95:FS-004571, 4534, USFS Doc. 3:FS-000147, 260, the Forest Service has violated the Forest Plan and NFMA. *Neighbors*, 137 F.3d at 1376-1378.

D. The Forest Service’s failure to take a hard look at potential cumulative effects on sage grouse and sage grouse habitat violates NEPA and the APA.

On a related issue, the Forest Service also failed to provide a lawful cumulative effects analysis under NEPA. The Council on Environmental Quality regulations, which implement NEPA, mandate that “agencies shall consider . . . 3 types of impacts” – direct, indirect, and cumulative. 40 C.F.R. §1508.25. Cumulative impacts “result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. §1508.7.

The Project SEIS violates the Mineral Leasing Act because there is no finding that the use of existing rights-of-way is “impractical.”

The Mineral Leasing Act governs rights-of-way for pipelines across federal lands. 30 U.S.C. § 185 (q). The statute mandates: “In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical” 30 U.S.C. § 185 (p) (emphasis added). This provision of the Mineral Leasing Act sets “a higher and more specific bar” than a normal NEPA alternatives analysis – the agency must make an express finding that the use of existing rights-of-way is in fact “impractical.” *Sierra Club, Inc. v. USFS.*,

897 F.3d 582, 604-605 (4th Cir. 2018). In *Sierra Club*, the Fourth Circuit held:

The agency entirely failed to consider an important aspect of the problem.” [] It never decided that the utilization of an existing right of way would be impractical. Indeed, it never even purported to do so. Had the BLM done so, its analysis -- rather than favoring the proposed route by rejecting alternatives unless they were substantially better -- would have favored routes utilizing existing rights of way unless those alternatives were impractical.

Although the BLM did not make a practicability finding, we are not authorized to step in and do so on behalf of the agency, nor may we predict how the agency might have made such a finding. [] We thus vacate the BLM’s decision and remand for consideration of the MLA’s preference for utilizing existing rights of way.

Nowhere in the Project SEIS does the Forest Service even acknowledge that the Mineral Leasing Act requires a finding that the use of existing rights-of-way is “impractical.”

Forest Plan provisions also require that new pipeline corridors should be limited to existing rights-of-way.

All the Forest Service did was to work with the proponent, LVE, to alter the route to avoid lands managed by the BLM.

The Forest Service’s failure to examine feasible alternatives in detail in the Project EIS violates NEPA and the APA.

The SEIS fails to adequately analyze impacts to National Historic Trails, in violation of NEPA and the National Trails System Act.

The Project EIS violates NFMA and NEPA because there is no analysis of the Forest Plan provisions governing pipeline corridors.

As discussed above at length, the Forest Service's failure to demonstrate compliance with a Forest Plan in a Project EIS violates NFMA and NEPA. There are a number of legally binding Forest Plan provisions that govern pipeline rights-of-way on this National Forest, including but not limited to the following:

Weeds

Native plants are the foundation upon which the ecosystems of the Forest are built, providing forage and shelter for all native wildlife, bird and insect species, supporting the natural processes of the landscape, and providing the context within which the public find recreational and spiritual opportunities. All these uses or values of land are hindered or lost by conversion of na-

tive vegetation to invasive and noxious plants. The ecological threats posed by noxious weed infestations are so great that a former chief of the Forest Service called the invasion of noxious weeds “devastating” and a “biological disaster.” Despite implementation of Forest Service “best management practices” (BMPs), noxious weed infestation on the Forest is getting worse and noxious weeds will likely overtake native plant populations if introduced into areas that are not yet infested. The Forest Service has recognized that the effects of noxious weed invasions may be irreversible. Even if weeds are eliminated with herbicide treatment, they may be replaced by other weeds, not by native plant species.

Invasive plant species, also called noxious weeds, are one of the greatest modern threats to biodiversity on earth. Noxious weeds cause harm because they displace native plants, resulting in a loss of diversity and a change in the structure of a plant community. By removing native vegetative cover, invasive plants like knapweed may increase sediment yield and surface runoff in an ecosystem. As well knapweed may alter organic matter distribution and nutrient through a greater ability to uptake phosphorus over some native species in grasslands. Weed colonization can alter fire behavior by increasing flammability: for example, cheatgrass, a widespread noxious weed on the Forest, cures early and leads to more frequent burning. Weed colonization can

also deplete soil nutrients and change the physical structure of soils.

The Forest Service's own management activities are largely responsible for noxious weed infestations; in particular, logging, prescribed burns, and road construction and use create a risk of weed infestations. The introduction of logging equipment into the Forest creates and exacerbates noxious weed infestations. The removal of trees through logging can also facilitate the establishment of noxious weed infestations because of soil disturbance and the reduction of canopy closure. In general, noxious weeds occur in old clearcuts and forest openings, but are rare in mature and old growth forests. Roads are often the first place new invader weeds are introduced. Vehicle traffic and soil disturbances from road construction and maintenance create ideal establishment conditions for weeds. Roads also provide obvious dispersal corridors. Roadsides throughout the project area are infested with noxious weeds. Once established along roadsides, invasive plants will likely spread into adjacent grasslands and forest openings.

Logging activities within the analysis area would likely cumulatively contribute to increases to noxious weed distribution and populations. As a disturbance process, logging has the potential to greatly exacerbate infestations of certain noxious weed

species. Please disclose the amount of detrimental soil disturbance that currently exists in each proposed unit from previous logging and grazing activities. Please disclose the expected amount of detrimental soil disturbance in each unit after ground disturbance and prior to any proposed mitigation/remediation. Please disclose the expected amount of detrimental soil disturbance in each unit after proposed mitigation/remediation. Please also disclose the analytical data that supports proposed soil mitigation/remediation measures.

Dry site vegetation types and road corridors are extremely vulnerable, especially where recent ground disturbance (timber management, road construction) has occurred. Units proposed for logging within project area may have closed forest service access roads (jammers) located within units. These units have the highest potential for noxious weed infestation and exacerbation through fire activities. Please provide an alternative that eliminates units that have noxious weeds present on roads within units from fire management proposals.

Please address the ecological, social and ascetic impact of current noxious weed infestations within the project area. Include an analysis of the impact of the actions proposed by this project on the long and short term spread of current and new noxious weed infestations. What treatment methods will be used to address growing noxious weed problems? What noxious weeds are currently and historically found within the project area? Please include a map of current noxious weed infestations which includes knapweed, Saint Johnswort, cheat grass, bull thistle, Canada thistle, hawkweed, hound's-tongue, oxeye daisy and all

other Category 1, Category 2 and Category 3 weeds classified as noxious in the MONTANA COUNTY NOXIOUS WEED LIST. State-listed Category 2 noxious weed species yellow and orange hawkweeds are recently established (within the last 5 to 10 years) in Montana and are rapidly expanding in established areas. They can invade undisturbed areas where native plant communities are intact. These species can persist in shaded conditions and often grow underneath shrubs making eradication very difficult. Their stoloniferous (growing at the surface or below ground) habit can create dense mats that can persist and spread to densities of 3500 plants per square mile (Thomas and Dale 1975). Are yellow and orange hawkweeds present within the project area?

Please address the cumulative, direct and indirect effects of the proposed project on weed introduction, spread and persistence that includes how weed infestations have been and will be influenced by the following management actions: road construction including new permanent and temporary roads, and skid trails proposed within this project; opening and decommissioning of roads represented on forest service maps; ground disturbance and traffic on forest service template roads, mining access routes, and private roads; removal of trees through salvage logging. What open, gated, and decommissioned Forest Service roads within the project area proposed as haul routes have existent noxious weed populations and what methods will be used to assure that noxious weeds are not spread into the proposed action units?

Noxious weeds are not eradicated with single herbicide treatments. A onetime application may kill an individual plant but dormant seeds in the ground can still sprout after herbicide treatment. Thus, herbicides must be used on consistent, repetitive schedules to be effective.

What commitment to a long-term, consistent strategy of application is being proposed for each weed infested area within the proposed action area? What long term monitoring of weed populations is proposed?

When areas treated with herbicides are reseeded on national forest land, they are usually reseeded with exotic grasses, not native plant species. What native plant restoration activities will be implemented in areas disturbed by the actions proposed in this project? Will disturbed areas including road corridors, skid trails, and burn units be planted or reseeded with native plant species?

The scientific and managerial consensus is that prevention is the most effective way to manage noxious weeds. The Forest Service concedes that preventing the introduction of weeds into uninfested areas is “the most critical component of a weed management program.” The Forest Service’s national management strategy for noxious weeds also recommends “develop[ing] and implement[ing] forest plan standards” and recognizes that

the cheapest and most effective solution is prevention. Which units within the project area currently have no noxious weed populations within their boundaries? What minimum standards are in the Caribou-Targhee National Forest Plan to address noxious weed infestations? Please include an alternative in the DEIS that includes land management standards that will prevent new weed infestations by addressing the causes of weed infestation. The failure to include preventive standards violates NFMA because the Forest Service is not ensuring the protection of soils and native plant communities. Additionally, the omission of an EIS alternative that includes preventive measures would violate NEPA because the Forest Service would fail to consider a reasonable alternative. Disclose the impact of the Project on noxious weed infestations and native plant communities;

Rare Plants

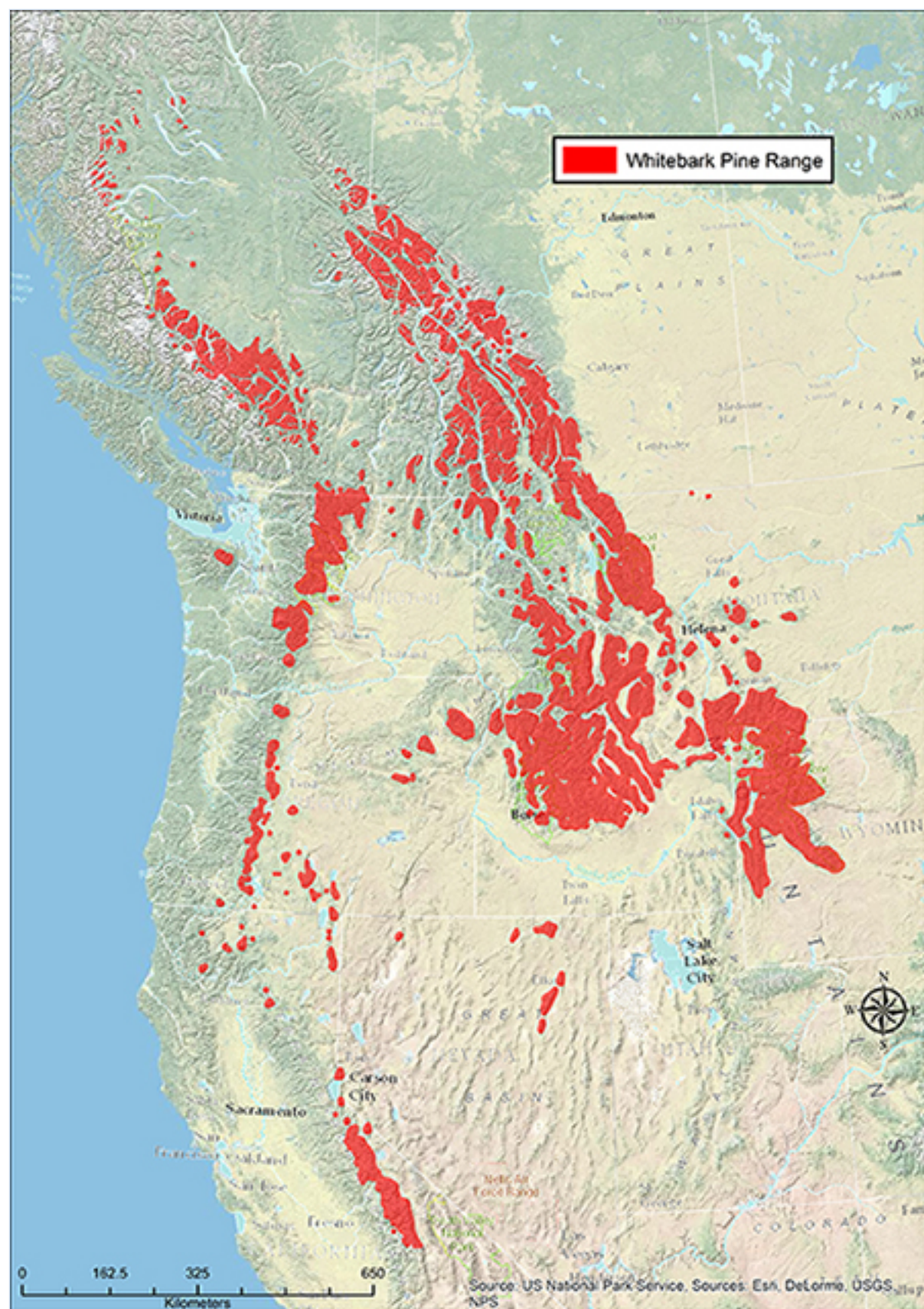
The ESA requires that the Forest Service conserve endangered and threatened species of plants as well as animals. In addition to plants protected under the ESA, the Forest Service identifies species for which population viability is a concern as “sensitive species” designated by the Regional Forester (FSM 2670.44). The response of each of the sensitive plant species to management activity varies by species, and in some cases, is not fully known. Local native vegetation has evolved with and is adapted

to the climate, soils, and natural processes such as fire, insect and disease infestations, and windthrow. Any management or lack of management that causes these natural processes to be altered may have impacts on native vegetation, including threatened and sensitive plants. Herbicide application – intended to eradicate invasive plants – also results in a loss of native plant diversity because herbicides kill native plants as well as invasive plants. Although native species have evolved and adapted to natural disturbance such as fire on the landscape, fires primarily occur in mid to late summer season, when annual plants have flowered and set seed. Following fall fires, perennial root-stocks remain underground and plants emerge in the spring. Spring and early summer burns could negatively impact emerging vegetation and destroy annual plant seed.

What threatened, endangered, rare and sensitive plant species and habitat are located within the proposed project area? What standards will be used to protect threatened, rare, sensitive and culturally important plant species and their habitats from the management actions proposed in this project? Describe the potential direct and indirect effect of the proposed management actions on rare plants and their habitat.

Whitebark Pine

Page 3-8 of the SEIS states that whitebark pine are not in the project area. The following Forest Service website disagrees: <https://www.fs.usda.gov/database/feis/plants/tree/pinalb/all.html>



Distribution of whitebark pine. Map courtesy of [Whitebark Pine Ecosystem Foundation](#), Whitebark pine range maps, 2014. [2018, November 28].

Not all ecosystems or all Rocky Mountain landscapes have experienced the impacts of fire exclusion. In some wilderness areas, where in recent decades natural fires have been allowed to burn, there have not been major shifts in vegetation composition and structure (Keane et al. 2002). In some alpine ecosystems, fire was never an important ecological factor. In some upper subalpine ecosystems, fires were important, but their rate of occurrence was too low to have been significantly altered by the relatively short period of fire suppression (Keane et al. 2002). For example, the last 70 to 80 years of fire suppression have not had much influence on subalpine landscapes with fire intervals of 200 to several hundred years (Romme and Despain). Consequently, it is unlikely that fire exclusion has yet to significantly alter stand conditions or forest health within Rocky Mountain subalpine ecosystems.

Whitebark pine seedlings, saplings and mature trees, present in the project area, would experience mortality from project activity. White pine blister rust, an introduced disease, has caused

rapid mortality of whitebark pine over the last 30 to 60 years. Keane and Arno (1993) reported that 42 percent of whitebark pine in western Montana had died in the previous 20 years with 89 percent of remaining trees being infected with blister rust. The ability of whitebark pine to reproduce naturally is strongly affected by blister rust infection; the rust kills branches in the upper cone bearing crown, effectively ending seed production.

Idaho and Wyoming are currently experiencing a mountain pine beetle epidemic. Mountain pine beetle prefer large, older whitebark pine, which are the major cone producers. In some areas the few remaining whitebark that show the potential for blister rust resistance are being attacked and killed by mountain pine beetles, thus accelerating the loss of key mature cone-bearing trees.

Are whitebark pine seedlings and saplings present in the sub-alpine forests proposed for burning and logging? In the absence of fire, this naturally occurring whitebark pine regeneration would continue to function as an important part of the subalpine ecosystem. Since 2005, rust resistant seed sources have been identified in the Northern Rockies (Mahalovich et al 2006). Due to the severity of blister rust infection within the region, natural whitebark pine regeneration in the project area is prospective rust resistant stock.

What surveys have been conducted to determine presence and abundance of whitebark pine re-generation? If whitebark pine

seedlings and saplings are present, what measures will be taken to protect them? Please include an alternative that excludes burning in the presence of whitebark pine regeneration (consider al regeneration of whitebark pine under these conditions.

How will this project will benefit whitebark pine when the Forest Service's own studies show that manual planting of whitebark pine is the only proven way to restore whitebark pine?

Please formally consult with the US FWS on the impact of the project on whitebark pine.

FAILURE TO REVIEW AND PROTECT CULTURAL AND HISTORICAL RESOURCES

Consultation with the State Historic Preservation Office (SHPO) must be completed prior to a decision being signed.

Any required protection measures provided from SHPO will be incorporated into my final decision.

Crucial to the preservation of the historical and cultural foundations of the nation, Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 C.F.R. Part 800 (PDF) (revised August 5, 2004) require Federal agencies to consider the effects of projects they carry out, approve, or

fund on historic properties. Additionally, Federal agencies must provide the Advisory Council on Historic Preservation (ACHP) opportunity to comment on such projects prior to the agency's final decision.

A Federal project that requires review under Section 106 is defined as an "undertaking." An undertaking means a project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.

Section 110 of the NHPA

Added to the NHPA in 1992, Section 110 requires Federal agencies to emphasize the preservation and enhancement of cultural resources. Section 110 directs agencies to initiate measures necessary to direct their policies, plans, and programs in such a way that federally-owned sites, structures, and objects of historical architectural or archaeological significance are preserved, restored, and maintained for the inspiration and benefit of the public. The agencies are also encouraged to institute (in consultation with the ACHP) procedures to assure Federal plans and programs contribute to the preservation and enhancement of

non-Federally owned sites, structures, and objects of historical, architectural, and archaeological significance. Has the MT SHPO received this survey? Page 3-47 of the SEIS states: “All historic properties (i.e., NRHP-eligible cultural resource sites) would be avoided if practicable.”

The cultural surveys need to be done before the NEPA and NHPA process can be completed, which has not occurred. The project must be approved by the SHPO and the public needs to be given a chance to comment on this. Please include a copy of all historic surveys in the final EIS and indicate when they were surveyed.

What MIS did you find, how many and how did you look for these MIS?

Wolverines

Page 3-17 of the SEIS states:

However, multiple recent observations have occurred in southeast Idaho, including approximately eight miles to the north of the study area near the Smoky Canyon Mine (IFWIS 2022), and presence of wolverines within/adjacent to the study area is possible. Any wolverines present in the study area would likely

be dispersing through to adjacent areas of higher quality habitat.

Species are going extinct because of the lack of high quality habitat and roadless areas are very high quality habitat. Please formally consult on the impact of the project on wolverines.

How will the decreased elk security and thermal cover affect wolverines? Please formally consult with the US FWS on the impact of this project on wolverines. The U.S. District Court ordered the USFWS to reconsider if wolverines should be listed under ESA. Wolverine need secure habitat in big game winter range.

Please disclose whether you have conducted surveys in the Project area for this Project for whitebark pine, sage grouse, Yellow-billed Cuckoo, wolverines, pine martins, northern goshawk, grizzly bears, monarch butterfly, and lynx, as required by the Forest Plan.

Please disclose the last time the Project area was surveyed for sagegrouse, Yellow-billed Cuckoo, whitebark pine, grizzly bears, wolverines, pine martins, monarch butterflies, northern goshawk, and lynx.

Please disclose how often the Project area has been surveyed for sagegrouse, Yellow-billed Cuckoo, whitebark pine, grizzly bears, monarch butterfly, wolverines, pine martins, northern goshawks, and lynx.

Would the habitat be better for grizzly bears, whitebark pine, sagegrouse, Yellow-billed Cuckoo, wolverines, pine martins, northern goshawks, monarch butterfly, and lynx if the proposal was denied?

Please provide us with the full BA for the whitebark pine, sagegrouse, wolverines, Yellow-billed Cuckoo, grizzly bears, monarch butterfly, pine martins, northern goshawks, and lynx.

Page 3-15 of the SEIS states:

The study area is outside the known distribution of the GYE population. The nearest observations have been near Salt Creek Summit (approximately 12 miles to the east of the study area), and near Palisades Reservoir (approximately 40 miles to the north of the study area). Although there have been no observations within the study area, it is recognized that the GYE population is expanding and permanently occupying new areas (USFWS 2021b). The study area (and the CNF in general) provides suitable habitat for grizzly bear. In addition, there is connectivity between the study area and known grizzly bear occurrences to the north and east of the study area. As a result, it is possible that grizzly bears may be present in the study area at some point during the life of the Project.

Roadless areas provide the best habitat for grizzlies so the project seems like it would adversely effect grizzlies. Please formally consult with the US FWS on the impact of the project on grizzlies.

Monarch Butterflies

Page 3016 of the SEIS states:

However, floral resources used by monarch butterflies for migration can occur in a broader range of habitats. As a result, although the probability is low, migratory monarchs may occur in the study area on a transient basis.

Please conference with the US FWS on the impact of the project on Monarch Butterflies.

Please address the cumulative, direct and in-direct effects of the proposed project on weed introduction, spread and persistence that includes how weed infestations have been and will be influenced by the proposal.

Idaho and Montana are currently experiencing a mountain pine beetle epidemic. Mountain pine beetle prefer large, older white-bark pine, which are the major cone producers. In some areas the few remaining whitebark that show the potential for blister rust resistance are being attacked and killed by mountain pine beetles, thus accelerating the loss of key mature cone-bearing trees.

Whitebark pine seedlings and saplings are very likely present in the subalpine forests proposed for burning and logging. In the absence of fire, this naturally occurring white-bark pine regen-

eration would continue to function as an important part of the subalpine ecosystem. Since 2005, rust resistant seed sources have been identified in the Northern Rockies (Mahalovich et al 2006). Due to the severity of blister rust infection within the region, natural whitebark pine regeneration in the project area is prospective rust resistant stock.

Does the Caribou-Targhee N.F. have any forest plan biological assessment, biological opinion, incidental take statement, and management direction amendment for whitebark pine?

What surveys have been conducted to determine presence and abundance of whitebark pine regeneration? If whitebark pine seedlings and saplings are present, what measures will be taken to protect them? Have white pine blister rust surveys been accomplished? What is the severity of white pine blister rust in proposed action areas?

On December 2, 2020, the U.S. Fish and Wildlife Service issued a rule proposing to list whitebark pine (*Pinus albicaulis*) under the Endangered Species Act. The Project area includes whitebark pine. The whitebark pine present in the project area represents a major source within the larger geographic area.

Please disclose if the project is meeting:

(1) Forest Plan Standard 3 - Hiding Cover,

- (2) Forest Plan Standard 3 - Thermal Cover,
- (3) Forest Plan Standard 4a - Open Road Density & Hiding Cover,
- (4) Habitat Effectiveness,
- (5) Hillis Elk Security at Elk Herd Unit level (i.e., including all lands), and
- (6) Hillis-derived Elk Security at Elk Analysis Unit level (i.e., lands within National Forest boundary).

Are you planning on issuing any amendments to the Forest Plan for this proposal. If so what?

This project is in Canada lynx habitat and right next to lynx critical habitat. How can you conclude that the project will have no effect on lynx critical habitat when it practically adjoins lynx critical habitat? In order to meet the requirements of the FS/USFWS Conservation Agreement, the FS agreed to insure that all project activities are consistent with the Lynx Conservation Assessment and Strategy (LCAS) and the requirements of protecting lynx critical habitat. The FS did not do so with its project analysis. This project will adversely affect lynx habitat in violation of the Endangered Species Act. The BA/BE needs to be rewritten to reflect this information to determine if this project will adversely modify proposed critical habitat for lynx and if so conference with USFWS.

The Caribou-Targhee National Forest (HLCNF) is home to the Canada lynx, listed as a Threatened species under the Endangered Species Act (ESA). In December 1999, the Forest Service and Bureau of Land Management completed their “Biological Assessment Of The Effects Of National Forest Land And Resource Management Plans And Bureau Of Land Management Land Use Plans On Canada Lynx” (Programmatic Lynx BA). The Programmatic Lynx BA concluded that the current programmatic land management plans “may affect, and are likely to adversely affect, the subject population of Canada lynx.”

The Lynx BA team recommended amending or revising Forest Plans to incorporate conservation measures that would reduce or eliminate the identified adverse effects on lynx. The Programmatic Lynx BA’s determination means that Forest Plan implementation is a “taking” of lynx, and makes Section 7 formal consultation on the Caribou-Targhee Forest Plan mandatory, before actions such as the proposed project are approved.

Continued implementation of the Forest Plan constitutes a “taking” of the lynx. Such taking can only be authorized with an incidental take statement, issued as part of a Biological Opinion (B.O.) during of Section 7 consultation. The Caribou-Targhee National Forest must incorporate terms and conditions from a programmatic B.O. into a Forest Plan amendment or revision before projects affecting lynx habitat, such as this one, can be authorized.

The Programmatic Lynx BA’s “likely to adversely affect” conclusion was based upon the following rationale. Plans within the Northern Rockies:

- Generally direct an aggressive fire suppression strategy within developmental land allocations. ...this strategy may be contributing to a risk of adversely affecting the lynx by limiting the availability of foraging habitat within these areas.

- Allow levels of human access via forest roads that may present a risk of incidental trapping or shooting of lynx or access by other competing carnivores. The risk of road-related adverse effects is primarily a winter season issue.
- Are weak in providing guidance for new or existing recreation developments. Therefore, these activities may contribute to a risk of adverse effects to lynx.
- Allow both mechanized and non-mechanized recreation that may contribute to a risk of adverse effects to lynx. The potential effects occur by allowing compacted snow trails and plowed roads which may facilitate the movements of lynx competitors and predators.
- Provide weak direction for maintaining habitat connectivity within naturally or artificially fragmented landscapes. Plans within all geographic areas lack direction for coordinating construction of highways and other movement barriers with other

responsible agencies. These factors may be contributing to a risk of adverse effects to lynx.

- Are weak in providing direction for coordinating management activities with adjacent landowners and other agencies to assure consistent management of lynx habitat across the landscape.

This may contribute to a risk of adverse effects to lynx.

- Fail to provide direction for monitoring of lynx, snowshoe hares, and their habitats. While failure to monitor does not directly result in adverse effects, it makes the detection and assessment of adverse effects from other management activities difficult or impossible to attain.

- Forest management has resulted in a reduction of the area in which natural ecological processes were historically allowed to operate, thereby increasing the area potentially affected by known risk factors to lynx. The Plans have continued this trend. The Plans have also continued the process of fragmenting habi-

tat and reducing its quality and quantity. Consequently, plans may risk adversely affecting lynx by potentially contributing to a reduction in the geographic range of the species.

- The BA team recommends amending or revising the Plans to incorporate conservation measures that would reduce or eliminate the identified adverse effects to lynx. The programmatic conservation measures listed in the Canada Lynx Conservation Assessment and Strategy (LCAS) should be considered in this regard, once finalized. (Programmatic Lynx BA, at 4.)

The Forest Service fails to quantify the Project's impacts on the loss of carbon storage and sequestration and the impact of building a natural gas pipeline on climate change.

The agency's decision declining to address the project's impacts because they are allegedly "negligible" in comparison to the role the world's (or nation's) forests play in climate change is thus not only misleading, it masks the fact that every additional bit of climate pollution, or elimination of carbon sequestration ability, makes the problem worse, and that every bit of sequestration and storage is critical to the solution.

The Forest Service's approach does not adequately consider the Project's impacts on climate change.

NEPA requires federal agencies, including the Forest Service, to take a "hard look" at the direct, indirect, and cumulative impacts of proposed major federal actions. 42

U.S.C. § 4332(C)(i)-(ii); 40 C.F.R. §§ 1502.16 (1978), 1508.25(c) (1978). Among the impacts NEPA requires agencies to disclose are climate impacts.

The SEIS fails to adequately disclose the climate change impacts of the Project. Specifically, the Forest Service fails to disclose the Project's impacts on carbon storage, sequestration and impacts to global climate change of building a new natural gas pipeline which will encourage more use of natural gas.

Further, the Forest Service fails to disclose the climate pollution impacts of project implementation – the use of fossil fuel engines to build roads, build the pipes, bury the pipeline, cut trees, and remove and transport cut logs to mills – compared to the no action alternative. The Forest Service thus failed to take a "hard look" at the Crow Creek pipeline's climate pollution impacts, in violation of NEPA.

The failure of the Forest Service to take the required "hard look" at the climate pollution impacts of the Crow Creek Pipeline project violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

The Federal District Court of Montana recently ruled against the Forest Service similar analysis on a case challenging the Kootenai National Forest Climate analysis for the Black Ram Project. Please find the order attached.

The Caribou-Targhee National Forest has not yet accepted that the effects of climate risk represent a significant issue, and eminent loss of forest resilience already, and a significant and growing risk into the “foreseeable future?”

Global warming and its consequences may also be effectively irreversible which implicates certain legal consequences under NEPA and NFMA and ESA (e.g., 40 CFR § 1502.16; 16 USC §1604(g); 36 CFR §219.12; ESA

Section 7; 50 CFR §§402.9, 402.14). All net carbon emissions from logging represent “irretrievable and irreversible commitments of resources.”

It is clear that the management of the planet’s forests is a nexus for addressing this largest crisis ever facing humanity. Yet the SEIS fails to

even provide a minimal quantitative analysis of project- or agency-caused CO₂ emissions or consider the best available science on the topic. This is immensely unethical and immoral. The lack of detailed scientific discussions in the SEIS concerning climate change is far more troubling than the document’s failures on other topics, because the consequences of unchecked climate change will be disastrous for food production, sea level rise, and water supplies, resulting in complete turmoil for all human societies. This is an issue as serious a nuclear annihilation (although at least with the latter we’re not already pressing the button).

The SEIS provided a pittance of information on climate change effects of the pipeline on climate change. The Forest Plan does not provide meaningful direction on climate change. Nor does the SEIS acknowledge pertinent and highly relevant best available science on climate change. This project is in violation of NEPA.

The SEIS does not analyze or disclose the body of science that implicates natural gas and logging activities as a contributor to reduced carbon stocks in forests and increases in greenhouse gas emissions. The SEIS fails to provide estimates of the total amount of carbon dioxide (CO₂) or other greenhouse gas emissions caused by FS management actions and policies—forest-wide, regionally, or nationally. Agency policy-makers seem comfortable maintaining a

position that they need not take any leadership on this issue, and obfuscate via this EA to justify

The Committee of Scientists, 1999 recognize the importance of forests for their contribution to global climate regulation. Also, the 2012 Planning Rule recognizes, in its definition of Ecosystem services, the “Benefits people obtain from ecosystems, including: (2) Regulating services, such as long term storage of carbon; climate regulation...”

We have no more time to prevaricate, and it's not a battle we can afford to lose. We each have a choice: submit to status quo for the profits of the greediest 1%, or empower ourselves to limit greenhouse gas emissions so not just a couple more generations might survive.

The District Court of Montana ruled in Case 4:17- cv-00030-BMM that the Federal government did have to evaluate the climate change impacts of the federal government coal program.

In March 2019, U.S. District Judge Rudolph Contreras in Washington, D.C., ruled that when the U.S. Bureau of Land Management (BLM) auctions public lands for oil and gas leasing, officials must consider emissions from past, present and foreseeable future oil and gas leases nationwide. The case was brought by WildEarth Guardians and Physicians for Social Responsibility.

In March of 2018 the Federal District Court of Montana found the Miles City (Montana) and Buffalo (Wyoming)

Field Office's Resource Management Plans unlawfully overlooked climate impacts of coal mining and oil and gas drilling. The case was brought by Western Organization of Resource Councils, Montana Environmental Information Center, Powder River Basin

Resource Council, Northern Plains Resource Council, the Sierra Club, and the Natural Resources Defense Council.

The project is in violation of NEPA, NFMA, the APA, the ESA for not examining the impacts of the project on climate change. The project will eliminate the forest in the project area. Forests absorb carbon. The project will destroy soils in the project area. Soils are carbon sinks.

The NFMA requires in the face of increasing climate risk, growing impacts of wildfire and insect activity, plus scientific re-

search findings, the FS must disclose the significant trend in post-fire regeneration failure.

Thank you for your attention to these concerns.

Sincerely yours,
Mike Garrity

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