

**SWAN VIEW COALITION** )  
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**TAMARA MACKENZIE - ACTING** )  
**FLATHAD FOREST SUPERVISOR** )  
 Responsible Official)

# NOTICE OF OBJECTION PURSUANT TO 36 CFR 218

Dry Riverside Project Draft Decision Notice/FONSI and Updated EA (Nov 2023)  
(hereafter DRP or Project, DDN and UEA)  
Tamara Mackenzie, Acting Flathead Forest Supervisor

Keith Johnson

December 20, 2023

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, 2022, SVC submitted written comments on the DRP Scoping Document/Proposed Action (PA), along with Attachments labeled A - G. On

September 30, 2023, SVC submitted comments on the initial Environmental Assessment (IEA), along with Attachments labeled 1 - 2. Those comments referenced “Road Hunt: A Survey of Road Closure Effectiveness,” (Hammer 2023), which we provided separately.

SVC also participated fully in the NEPA planning process and the formal Objection process for the Betty Baptiste Project, which is still being implemented in the same area as the DRP. We submitted initial scoping comments on the Betty Baptiste Project on 11/5/12. We reviewed the June 2018 Betty Baptiste EA and submitted comments on it on 7/19/18. On 10/2/18, we submitted a formal Objection to the Betty Baptiste Project.

As we will describe below, the DRP UEA and DDN do not adequately respond to nor resolve the issues raised in our comments made on both the DRP and the Betty Baptiste Project. Therefore, we incorporate by reference the above-described comment letters and Objection and ask that they be read as a part of this DRP Objection. Moreover, many of these issues are further described in our 2/9/18 Objection to the revised Forest Plan and our May 2016 “Roads to Ruin” report, which we also incorporate by reference as a part of this DRP Objection and ask that they be read as a part of it. All of the above documents will be uploaded along with this Objection so the Objection Reviewing Officer has them at hand.

We incorporate by reference the DRP Objections being filed by Friends of the Wild Swan, Alliance for the Wild Rockies and Native Ecosystems Council et al.

### **Executive Summary**

The UEA, DDN and Project File documents unreasonably and unlawfully discount the effects of the Project on the environment, rather than fully account for them. This becomes all the more apparent when the cumulative impacts of all past, current and future projects in the area and elsewhere on the Forest are considered together. These documents collectively attempt to dismiss negative effects as though the DRP is only one project in isolation and hence can be dismissed as some small percentage of carbon release or wildlife impact, when it in fact is part of a Forest-wide program to regain and develop a road network that allows for logging and thinning of the entire suitable timber base (if not elsewhere). The Project area serves as a good example of this because the Betty Baptiste Project has yet to be fully implemented and yet another Project (DRP) is being planned and executed right on top of it both spatially and temporally.

The “Updates to the September 2023 Environmental Assessment” (outline in the UEA at 1-2) and the “Response to Comments” (DDN Appendix B) fail to adequately address our comments and concerns. Moreover, the UEA and DDN fail to make adequate substantive changes to the proposed action in order to resolve the concerns expressed in our earlier comments. It is the failure of these two efforts in the UEA and DDN to adequately respond to our concerns that will be the focus of this Objection letter, with the companion documents mentioned above serving as further detail and substantiation of our continued concerns.

We find that the DRP and DDN violate the Administrative Procedures Act, Environmental Policy Act, Endangered Species Act, and National Forest Management Act.

## **Relief Sought**

For the reasons summarized above, detailed below and detailed in our companion documents, we ask that you:

1. Declare the DRP DDN and UEA inadequate because they are based on a legally deficient Flathead Forest Plan, its revised BiOp and its Incidental Take Statement.
2. Declare the DRP DDN and UEA lawfully inadequate for the other reasons detailed in this Objection and withdraw them.
3. Require that a DEIS be prepared and that it includes a wide range of alternatives, including an alternative that would comply with the 19/19/68 “research benchmarks” still utilized by FWS to determine the level of “take” of grizzly bears, while using the prior Forest Plan Amendment 19 definitions for Secure Core, TMRD, etc. Require that the DEIS then provide an adequate comparison of the relative effects of the “19/19/68” alternative and the road “system” it allows compared to the road “system” proposed in the DDN.
4. Require that the relevant biological assessments be redone and undergo formal consultation with FWS on the effects of the DRP to wolverine and other listed species.
5. Require that the DEIS fully account for environmental impacts. Do not allow the discounting of impacts as a means to essentially dismiss them, both in terms of direct effects and cumulative effects.

## **Updates to the September 2023 Environmental Assessment**

Neither the two-page outline of changes made to the IEA (UEA at 1-2) nor the specific pages or documents it refers to adequately address our concerns:

1. While we appreciate that the PA has been amended to include the removal of one culvert on Hoke Creek and “decommissioning on the southernmost 0.5 miles of [FS] Road 1625,” this does little to correct the underlying issue of rebuilding previously decommissioned roads and adding them to the road “system” without having their stream-aligned culverts removed and without them also being accounted for as an increase in TMRD. The slight-of-hand masking of these impacts without disclosure as an increase in TMRD continues. Please see our companion Roads to Ruin report and its Appendix A TMRD paper for a full discussion of why TMRD was developed to capture motorized trails as well as roads, not to exclude roads “impassable” to motor vehicles from calculations of TMRD. Roads to be excluded from TMRD under Amendment 19 must no longer function as either a road or trail, while “impassable” roads under the revised Forest Plan are fully intended to continue functioning as roads and trails, with greater impacts to wildlife and other resources.
2. We find the economics summary added to the UEA and the project file as M-1 to be opaque and “not intended to be a comprehensive benefit-cost or PNV analysis . . .”

3. The updates to the forest carbon cycling summary and project file exhibit R-29b do not adequately address the issues we raised in our comments – and they do nothing to remedy the shortcomings of the treatment of this issue in the Forest Plan. Instead, the updates attempt to discount the effects of the proposed fuels treatments by trying to make small percentages look like no impact at all and by denying cumulative impacts.

Below is a photo we took on 10/18/23 of logging recently conducted along Road 38 in the DRP area. Based on the GPS coordinates, it appears to be Betty Baptiste Commercial Thin Unit 4. Based on the DRP assessments, this type of thinning, which has placed a high percentage of the thinned trees into a massive slash pile to be burned, does not contribute appreciably to the release of CO<sub>2</sub> to the atmosphere. This logging/burning release of CO<sub>2</sub>, however, is assured and will release the carbon from the boles of the piled trees, whereas a wildfire is not assured and would most likely release carbon from the limbs and needles, but not from the boles which normally do not burn completely in a wildfire. Betty Baptiste, the DRP, other fuels reduction projects, and the Forest Plan are part of a massive logging and thinning program that has yet to have its release of CO<sub>2</sub> to the atmosphere adequately accounted for.



4. The Travel Analysis, while now referenced in the UEA and included in the project file as P001, was written in November 2023, two months following the IEA for the DRP and public comments on the IEA. Here's what the Travel Analysis says on page 4:

We chose not to evaluate all existing National Forest System roads under the project level travel analysis for the following reasons: (1) the forest wide science based travel analysis (2014) already analyzed all existing National Forest System roads in the project area and didn't identify any opportunities for change, (2) the 1999 Paint Emery and the 2018 Betty Baptiste decisions made travel management decisions within the project area to move towards or meet the 19-19-68 grizzly bear A19 objectives under the old Forest Plan, (3) all the BMU subunits within the analysis area meet the baseline identified in the 2018 Land and Resource Management Plan for open motorized route density, total motorized route density and secure core and the Riverside Paint BMU meets the 19-19-68 research benchmark. In order to meet the research benchmark for Logan Dry Park, additional seasonally open and open yearlong roads would need to be closed which is outside the purpose and need for the project.

a. If the 2014 Forest-wide Travel Analysis didn't identify any opportunities for change, why then does the DRP Travel Analysis add some 22.7 miles of road to the system?

b. If the Betty Baptiste and Paint Emery projects "made travel management decisions within the project area to move towards or meet the 19-19-68 grizzly bear A19 objectives under the old Forest Plan," why does the DRP now propose to move away from those 19-19-68 objectives by adding 22.7 miles of road to the system - while masking those additions by using revised definitions of TMRD that no longer counts all roads in TMRD, making TMRD appear to not increase?

c. Why doesn't the DRP Travel Analysis acknowledge that its statement "all the BMU subunits within the analysis area meet the baseline identified in the 2018 Land and Resource Management Plan for open motorized route density, total motorized route density and secure core" can remain true only because the definition of TMRD has been changed to no longer count all roads in TMRD as the number and miles of system roads are indeed increased?

d. The DRP Travel Analysis acknowledges that the Logan Dry Park BMU needs more roads closed to meet research benchmarks but that this won't happen because it doesn't meet the DRP purpose and need. Why does it not also acknowledge that increasing the road system is not a DRP purpose and need, but nonetheless will happen?

In short, the DRP Travel Analysis is wholly inadequate in conducting a fair benefit/concern analysis on what roads are necessary for the road system in the face of their risks to the environment. It talks big on page 12 about the impacts of roads to wildlife:

The impact of motorized travel routes on wildlife is mostly negative. Road construction temporarily or permanently destroys wildlife habitat and fragments the habitat that remains. Displacement, harm, or death to species increases on or

near motorized routes. Predators and scavengers are killed while they feed on road-killed wildlife, as are other species attracted to roads because of warmth or roadside vegetation, or because roads facilitate winter travel. Road-avoidance behavior is characteristic of large mammals such as elk, grizzly bears, and wolves. Motorized access also substantially increases snag and downed log habitat loss due to actions such as firewood cutting. This often results in a decrease in the habitat quality of important habitats such as old growth habitat or riparian habitat.

In Appendix C, however, the Analysis concludes that 36 of the 37 road segments analyzed are “needed” in spite of medium or high levels of environmental concern listed for 21 of them. Only one road segment is listed as not needed, the 0.45 miles of Road 1625 that apparently has been added to the PA for decommissioning.

Obviously, the DRP Travel Analysis is being used as an after-the-fact justification of the road building plans set forth in the IEA, rather than as an objective analysis of the harm and benefits of roads, their underfunded costs, and public violations of road closure devices. Nowhere does the Travel Analysis, the UEA or the DDN present an adequate and rational discussion of why the Flathead NF decommissioned some 14 roads in the Project area from 1999 through 2010 (DRP Travel Analysis Appendix B) and now proposes to rebuild those roads and leave them in the system as “impassable” with no more than road closure barriers in the first 50’ of the road required – all the while claiming this will maintain the 2011 on-the-ground grizzly bear habitat conditions.

This certainly does not retain the 2011 “on-the-ground” habitat conditions for grizzly bear, as required by the biological assessment and the revised BiOp for the revised Forest Plan. It instead plays a false numbers game. The Forest Service has not adequately and rationally explained how it got from the prior Forest Plan Amendment 19 and its reliance on road decommissioning to reduce TMRD to the revised Forest Plan and its allowance of “impassable” roads to not be counted in TMRD as the Forest increases the number and miles of road in its system. This is arbitrary, capricious and not in accordance with law or logic.

Moreover, the word “wolverine” does not appear anywhere in the DRP Travel Analysis even though wolverines are impacted by both roads and human winter travel, both of which are acknowledged to be increased by the DRP in its Travel Analysis. Wolverine were listed as a “threatened” species under the ESA on November 30, which should have come as no surprise to the Forest Service being as the determination date was court-ordered. The revised Flathead Forest Plan, the Flathead’s Forest-wide Travel Analysis, the DRP Travel Analysis, and the DRP must undergo formal consultation with FWS concerning the effects to listed species that now include wolverine.

5. While we appreciate the “update on the status of consultation with the” FWS, we note that the determination for wolverine is not an option for a listed species and we cannot find biological assessments for Spalding’s catchfly or Whitebark pine. Please see the above paragraph concerning the need to formally consult with FWS.

## DDN Appendix B Response to Comments

The Response to Comments (RTC) does not respond to all of the comments we submitted and/or fails to properly identify our comments, so we again resubmit those comments and further substantiation by reference and as companion documents to be read alongside this objection letter. We find that the RTCs that do address our identified comments nonetheless fail to adequately address them and/or fail to result in significant substantive changes to the PA, as follows:

RTC-2: The RTC merely restates the very circumstances which cause us concern about the unfunded need to remove culverts, rather than do something about it, identify other funding and assure it will be used for this task. Perhaps if 65% of the funding the Flathead NF receives for Operation and Maintenance of its roads weren't hijacked for "timber sale engineering support and planning," the Flathead could afford to remove culverts from roads other than those used as timber sale log haul routes! (Travel Analysis Report for Flathead National Forest at 18). Similarly, if the Flathead NF only receives "approximately 42 percent of the funds needed to maintain the road system to standard," maybe it should quit building and rebuilding roads that add to the system, problems and deferred maintenance! (Id at 20).

RTC-3: The RTC merely restates the very circumstances which cause us concern about the failure to remove culverts and downplays high environmental risks in favor of moderate benefits to logging access. See our response to RTC-2 and the late production of a biased DRP Travel Analysis, above.

RTC-4: The RTC does nothing to build confidence in the Flathead NF's resolve to not leave risky culverts in closed roads. The DRP Travel Analysis does not insure it has analyzed all roads in the Project area, in part by providing a spreadsheet for the decommissioning date for "historic" roads only, and by providing no such spreadsheet for "existing template" roads. Moreover, the "historic" road spreadsheet provides no information about the presence or absence of culverts.

RTC-5: The RTC simply claims once again that the Quintonkon Creek-Hungry Horse Reservoir HUC12 spans both sides of the Reservoir and includes parts of the DRP area, without providing a map to demonstrate this is so. On the contrary, Forest Plan Appendix B, Map B-02 Conservation Watershed Network, shows the Quintonkon Creek HUC12 staying well west of the east shore of the Reservoir and encompassing only Graves Bay along the western shore. The UEA appears to be inconsistent with the Forest Plan and provides no explanation or reconciliation of these facts.

RTC-12: The RTC essentially repeats the information provided in Updates to the UEA and project file R-29b, which we still find inadequate in Updates item 3, above. Moreover, the RTC EA states "in the absence of active management, forests thin naturally from mortality-induced natural disturbances and other processes resulting in dead trees that will decay over time, emitting carbon to the atmosphere." (Emphasis added).

Look again at the Betty Baptiste thinning photo we provide in Updates item 3, above. Active management, as the term implies, will release the carbon from the now-dead

trees all at once as they are burned in enormous slash piles! The carbon in these now-dead trees is not stored away in any wood products or in any other misleading manner as described in the UEA or Forest Plan FEIS. Neither the UEA or the Plan FEIS provide an adequate tracking and comparison of how carbon is released into the atmosphere via active management compared to natural processes.

RTC-22, 23: These RTCs make our case, which is that there is significant disagreement and uncertainty regarding the effects of the proposed action. This discussion must be conducted in an EIS, not an EA, according to NEPA and its implementing regulations. While the Forest Service would prefer to argue about it in an EA and a DDN's RTC, that is inadequate and unlawful.

RTC-30: This RTC demonstrates the agency's stubbornness rather than a willingness to use the NEPA process to engage in a meaningful public discussion and comparison of alternative ways to manage public land in the Project area. We have fully discussed our call for a broad range of NEPA alternatives above, where we have also disproved the agency's continued claims that the measurement of grizzly bear "research benchmarks" has not been unlawfully corrupted by the redefinition of TMRD and Secure Core. The RTC does nothing to resolve these issues.

RTC-60: The RTC points to the Terrestrial Wildlife BA, which relies primarily on the 2019-2020 road closure effectiveness data (92% effective) we argue is outdated. The BA does claim that "Based on monitoring information from 2019 through 2023, there are no known persistent ineffective closures within the analysis area." The BA ducks the issue of whether there are sporadic problems with road closure effectiveness in the area, by reporting only on "persistent" problems. So, where is the reporting on sporadic problems? Below is a photo, taken 10/18/23 in the Project area, of the locking mechanism on the gate on Road 2839 having been shot up,:



While a functioning lock had been replaced inside this lock box and was locked on the day we visited it, the UAE and BA provide no data to indicate when this damage was done, whether the gate lock itself was (likely) destroyed, whether the gate therefore remained unlocked and for how long, how long it took to repair the problem, and how often this type of reportedly “non-persistent” problem occurs. This is all important data because the Forest Service promised the FWS during formal consultation that it “corrects the situation as soon as they are able.” (See our companion Road Hunt document at 4). None of the documents referenced in the RTC get to the heart of the issue.

Instead, the RTC simply states that the “2021-2023 BMER [Biennial Monitoring and Effectiveness Report] is currently being drafted. So, is that a typo or is this a 3-year report? Regardless, the Forest is still sitting on its 2021 and 2022 data that we find problematic in our Road Hunt report because it shows the Flathead has shifted from monitoring whether road closures are “effective” to whether they are “functional,” contrary to promises made to FWS during formal consultation.

Moreover, the Forest’s 2021 data show 52 closure devices “breached” by motor vehicles but nonetheless listed as “found functional.” In 2022, 32 closure devices were found “breached” by motor vehicles but nonetheless listed as “found functional.” If we assume “functional” to be synonymous with “effective,” the FS’s percentage of closure effectiveness is 88% in 2021 and 82% in 2022, down from the 92% reported effective in 2020, used in consultation on the revised Forest Plan BiOp, and still being used in DRP analyses. If we count the “breached but functional” closures as “ineffective,” effectiveness drops to 83% and 77% for 2021 and 2022, respectively. (See our companion Road Hunt document at 13-14). The failure of the Project analyses to use updated Forest-wide road closure effectiveness data or our 2022 Swan Valley GA data, as though it has nothing to do with the Project area, is but one more case in which the FS fails to consider cumulative effects and the best available data.

How long does it take the Flathead to issue a biennial report? Apparently more than a year. The 2019-2020 BMER was not made public until 2/23/22. The 2021-2022 BMER is still being drafted in the waning months of 2023! How many of these ineffective road closures go unrepaired while the FS takes its time analyzing and reporting on its data - and why does it imply that it only need report on it as part of the biennial BMER? And how is the BMER, which monitors for whether closure devices are “effective,” going to be derived from monitoring data which measured for “functional” instead? The FS remains silent on this issue. (See our companion Road Hunt document).

RTC-61: The RTC entirely misses the point by focusing on the fact that the road closures inspected for the Road Hunt report were located in a different geographic area and used slightly different methods. Hence, this RTC fails to account for the “breached but functional” dilemma, bigger picture cumulative effects, and other matters that were similarly not addressed in RTC-60.

RTC-62: The RTC claims the Forest Plan and its revised BiOp “are outside the scope of the” Project, while simultaneously saying the Project “is consistent with” Forest Plan standards. What more needs to be said? Because the Project must comply with and relies upon the Plan and the BiOp, the Plan and BiOp are within the scope of the Project.

RTC-64: The RTC does not clarify the inconsistencies we describe in our comment letter. Instead, it simply refers back to the same documents, such as Q6, that present the inconsistencies we describe. Nor does the RTC reconcile the procedure used in exhibit Q6 and the Project analyses with the procedure described in Forest Plan C. Nor does it adequately explain why a “10-year running average” remains stuck on 2019. Nor, as noted above, does the RTC give any due to Forest-wide findings of ineffective road closures simply because it claims (without evidence) that there are no “persistent” ineffective road closures in the project area. (See RTC-60 and -61, above).

Let’s not overlook the real meat of RTC-64, however, which states:

The Dry Riverside Project is planned so that temporary access management changes are completed within 5 years in each subunit per FW-STD-IFS-03 (updated EA p. 57). There are exceptions to the standard which include timber sale contracts that allow for “actions where valid existing rights preclude or constrain agency discretion.”

In other words, if we read this correctly, the standard has a huge loophole which allows excessive motorized access to continue longer than 5 years by simply issuing a contract or extending a contract beyond the 5 years, so that the contractor can continue the excessive access under his or her valid existing rights. So, the standard really doesn’t mean anything and the 5-year limit and the 5-3-2 limits are not mandatory. A contract or its extension, which “include timber sale contracts,” can be issued which essentially exempts itself from the 5-year and 5/3/2 limits in a self-blessing, never-ending manner! This most certainly is not what Congress intended in passing the NFMA in order to develop Forest Plans that adequately control activities on the National Forests, nor in passing the ESA so that FWS could control impacts to listed species like grizzly bear through Forest Plan standards deemed non-discretionary terms and conditions necessary to limit incidental take.

## **Conclusion**

The UEA and RTCs fail to adequately address, answer and resolve the issues raised in our comments. Hence, we pursue those issues in this Objection through the above text and the further discussion and substantiation provided in these simultaneously provided companion documents:

01 SVC on Dry Riverside 221219  
02 SVC on Dry Riverside EA 230930  
03 Road Hunt Hammer 2023  
04 SVC on Betty Baptiste Scoping 121105  
05 SVC on Betty Baptiste  
06 SVC Betty Baptiste Objection  
07 SVC Forest Plan Objection  
08 Roads to Ruin