

March 29, 2025

Horsefly Project

Ranger Helen Smith

White Sulphur Ranger District

Helena-Lewis and Clark National Forest

204 West Folsom

White Sulphur Springs, MT 59644

Dear Ranger Smith,

Thank you for this opportunity to comment. Please accept these comments from me on behalf of the Alliance for the Wild Rockies, Council on Wildlife and Fish, and Native Ecosystems Council on the proposed Horsefly Supplemental EA (SEA).

NEPA requires that the public be allowed to comment before the Forest Service signs a decision. But in the Horsefly project, the Decision was signed and now you are asking for public comments. This violates NEPA.

The Helena-Lewis and Clark N.F. (HLCNF) is required to maintain the habitat for sensitive wildlife species. One of those species is the goshawk, which has been declining in population, and which the forest plan lists as an old-growth forest management indicator species. Due to the importance of this species, the Forest Plan that the decision was signed under requires 100% of goshawk nests to be monitored annually.”

In 2018, the entire Forest was surveyed for goshawks and the Forest Service found an alarming 47% decline in active goshawk nests, which the agency failed to disclose to the public in violation of the National Environmental Policy Act and the National Forest Management Act. The agency also ignored its

own Forest Plan requirement to issue an evaluation report if active nests decline by 10%.

The U.S. Federal District Court ruled that the Forest Service's failure to disclose and evaluate the decline in active goshawk nesting territories violated both NFMA and NEPA. . . . Federal Defendants all but concede that the Forest Service's failure to disclose the decrease in active goshawk nesting territories to the public in the EA and failure to comply with the Forest Plan requirement to conduct an evaluation report if active nests decline by 10% amounts to a violation of NFMA." Yet the decision which was already signed allows more logging the last remaining mature and old growth forests and goshawks are in trouble.

Page 5 of the SEA states:

***Between 2007 and 2020 the forest monitored a total of 716 territories out of 844 total territories<sup>3</sup>. Except for 2009, all known territories were monitored through 2016. Between 2017 and 2020 the number of territories monitored compared to known territories dropped each subsequent year. This was primarily due to the widespread tree mortality associated with***

***the mountain pine beetle epidemic that created hazardous survey conditions. These hazardous conditions are noted in the 2017 “Jefferson Division Goshawk Territory Hazard Risk Assessment” (AR 0042265-70). Hazardous survey conditions continued in subsequent years (e.g. continued widespread tree mortality creating unsafe survey conditions), which limited forest service personnel’s ability to safely monitor some territories. Hazardous conditions following widespread forest mortality include a tangle of downed timber and unstable, dead standing trees.***

There is no exception listed in the Forest Plan to the requirement that all goshawk nests be monitored every year. The Forest Service admits they did not survey all of the goshawk nests from 2017- 2020 as required by the Forest Plan and it does not show any evidence that any surveys for goshawks have occurred since 2020 - 2023. In 2024, the Forest Service surveyed a few nest but only in the project area. It is now 2025. The Forest Service has not surveyed every goshawks nests since 2016.

The Forest Service laid out the Horsefly project, which is much more labor intensive, in spite of the high tree mortality. Why was the Forest Service able to design and layout the timber sales but didn’t have time to comply with the Forest Plan?

Pages 6-7 of the SEA states:

***The Horsefly project analysis and decision was completed under the 1986 Lewis and Clark National Forest Plan. Since that Decision, a new Forest Plan has been completed that no***

*longer includes the requirement to monitor active nesting goshawk territories (Helena-Lewis and Clark Land Management Plan 2021). However, goshawks were monitored in the project area in 2024 as part of the Horsefly Decision design features to maintain nest stands within active goshawk territories and to seasonally restrict project activities within post fledging areas of active nests Horsefly Vegetation Project-SEA, Helena-Lewis and Clark National Forest`*

*The seven known territories in the project area were surveyed. The Newlan Creek territory was occupied although the nest was not located, and the Upper Spring Creek territory had at least 2 nestlings that fledged. There were no detections at the other 5 known territories. See Appendix B in this document for the 2024 survey results.*

There was no explanation of why the drastic decrease of active goshawk nest in the project area in violation of the Forest Plan.

Since the Horsefly decision was signed under the 1986 Forest Plan, the Forest Service is required to survey the entire Forest for goshawk nest and report to the public if there is a decline of more than 10% in active goshawk nest and report why the decline occurred. The Horsefly SEA and Decision are in violation of the 1986 Forest Plan, If the HLCNF does not want to comply with the 1986 Forest Plan then it should design a new project under the current Forest Plan like the HLCNF did when the Court ruled that the Castile Project was illegal so the HLCNF started over with a new project under the Revised Forest Plan called Bonanza.

Pages 3-4 of the Supplemental EA states:

*Environmental Impacts*

*Issues and Resource Impacts*

*Goshawk*

*Background*

*The 1986 Lewis and Clark Forest Plan (Forest Plan) required that populations of goshawks, a management indicator species, be monitored and evaluated to determine if management activities under the plan – specifically vegetation management - have affected the ability of goshawks to establish nests (i.e. active nests) (U.S. Department of Agriculture 1986), (p. 2-37). To that end, population levels would be evaluated by monitoring all active nesting territories (Ibid, page 5-11). Should there be a 10% decrease or more in active nest territories further evaluation was required under the plan.*

*The conclusions in the “Goshawk Effects Analysis, Horsefly Vegetation Project, Final Analysis” (original goshawk analysis, AR 0042093-94), completed April 18, 2020, for the Horsefly Vegetation Project Decision (AR 0003755 August 31, 2020) were based on the 2019 “C-8 Old Growth Habitat for Goshawk” monitoring report (2019 monitoring report, AR 0042288) that summarized goshawk active nest monitoring between 2007 and 2016. The original goshawk analysis concluded that adequate goshawk habitat would continue to be available at the project level and that adequate goshawk habitat would be maintained at the Forest level (G15c\_2; p. 18, AR 0042093-94). However, additional goshawk monitoring data collected between 2017 and 2019, prior to the Horsefly Decision was not included in the analysis.*

***This supplemental analysis evaluates the existing condition for goshawks and their habitat based on all available monitoring data, including data collected between 2017 and 2020, and evaluates the Horsefly project's effects to goshawks and their habitat at the project level and in the Forest-wide context. All reference to the forest plan refers to the Lewis and Clark National Forest Plan (1986) and all references to "forest-wide" refers to the land area within the proclaimed Lewis and Clark National Forest boundary (prior to administrative consolidation of the Helena National Forest and the Lewis and Clark National Forest) covered by the 1986 plan.***

An agency must prepare a supplement to either a draft or final EA if it makes substantial changes in the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. In this case, the Forest Service did not survey all goshawk annually and in has not surveyed at all since 2020 in violation of the 1986 Forest Plan. Since the HLCNF has not surveyed Goshawk nests since 2020 it can not tell the public how goshawks are doing and if there is decline in active goshawk nests.

The Lewis and Clark Forest Plan lists goshawk as an old-growth forest 'management indicator species' and requires 100% of goshawk nests to be monitored annually. Failing to disclose the decrease in active goshawk nesting territories to the public violates the National Environmental Policy Act and ignoring the requirement to conduct an evaluation report if active nests decline by 10% violates the Forest Plan. The Forest Service's failure to

disclose and evaluate the decline in active goshawk nesting territories violated NFMA, the APA and NEPA.

As the Horsefly Summary judgement order states NEPA: “has twin aims. First, it places upon [a federal] agency the obligation to consider every significant aspect of the environmental impact of a proposed action.

Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process.”

The Forest Service is still violating NEPA and NFMA for not surveying 100% of goshawk nests annually.

Forest Service has not meet its “obligation to consider every significant aspect of the environmental impact” nor “inform the public that it has indeed considered” concerns related to decline in goshawk nesting territory in its decision making process.

The Forest Service has not shown that the project will meet the desired vegetative conditions as outlined in the Forest Plan.

Because of this, the project is not meeting the purpose and need of the project.

Please explain how the project will meet the desired vegetative conditions as outlined in the Forest Plan.

Thank you for your attention to these concerns.

Sincerely yours, Mike Garrity

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