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Organization: Alliance For The Wild Rockies  
Title: Executive Director  
Comments: August 9, 2021

Matt Anderson

Forest Supervisor Bitterroot National Forest

1801 N First St

Hamilton, MT 59840

Dear Supervisor Anderson,

Thank you for this opportunity to comment on the Gold Butterfly Draft Supplemental Environmental Impact Statement. Please accept these comments on the Gold Butterfly Draft Supplemental Environmental Impact Statement (SEIS) on the Gold Butterfly Project in the Bitterroot National Forest (BNF) from me on behalf of the Alliance for the Wild Rockies, Friends of the Bitterroot, Stephen S. Goheen, Gail H. Goheen, Yellowstone to Uintas Connection, WildEarth Guardians, and Native Ecosystems Council.

We incorporate our Gold Butterfly DEIS Comments. We are also incorporating and attaching our Gold Butterfly Objection. Our objection to the Gold Butterfly project still stands and these DSEIS comments are meant to supplement our objection and become part of the public record.

Page I of the SEIS states:

The Bitterroot National Forest proposes a project-specific amendment to the 1987 Bitterroot Forest Plan for direction regarding old growth vegetation for the Gold Butterfly Project. The area affected by the proposal is the Gold Butterfly Project area. This action is needed to use the best available scientific information as presented in Green et al. (1992 errata 2011) for the Gold Butterfly Project.

A Site-Specific Amendment of Old Growth Standards is not appropriate for this project given that the BNF for the past 26 years have violated, and are continuing to violate, the Bitterroot Forest Plan old growth requirements.

Page ii of the DSEIS states:

The Forest Plan criteria for old growth is not easily measured and therefore is inappropriate as a monitoring tool; the Bitterroot has no way of knowing how much forest would qualify as old growth

using the 1987 Forest Plan criteria. Conversely, the Bitterroot has been using Green et al. criteria to inventory and monitor old growth since this best science became available. Monitoring informs us whether we are meeting Forest Plan goals and desired conditions.

Please see the following article from the September 1, 2020 Bitterroot Star.

<https://bitterrootstar.com/2020/09/forest-withdraws-approval-of-massive-gold-butterfly-project/>

#### Forest withdraws approval of massive Gold Butterfly project

Bitterroot National Forest Supervisor Matthew Anderson, on Friday, August 28, withdrew his Record of Decision approving the Gold Butterfly Project. The project area stretches over 10 miles in the Sapphire Mountains from Stevensville to Corvallis covering an area of 55,147 acres. The vegetative management component of the project included commercial logging on 5,461 acres, prescribed burning activities on 4,854 acres and non-commercial logging of smaller trees on 5,040 acres. It was approved on November 19, 2019, but on July 10, 2020, two conservation organizations, Friends of the Bitterroot and Alliance for the Wild Rockies, filed suit to stop the project, alleging several violations of the law, including that the project did not follow the Forest Plan.

"I have decided it is in the best interest of the public to withdraw the decision and direct my staff to conduct additional review and analysis," wrote Anderson. "Upon further review of the project analysis, we recognized some deficiencies regarding Forest Plan compliance." He said any new decision will proceed through the required NEPA and public involvement procedures.

Anderson said that the objectives of the project included improving forest resilience to natural disturbances, such as fire, insects, and diseases, reducing chronic sediment sources in Willow Creek watershed to improve water quality and bull trout habitat, restoring or improving key habitats including meadows, aspen, and whitebark pine, and managing timber to provide forest products, jobs, and income to local communities. The decision also included vegetation management activities, including commercial timber harvests, non-commercial thinning, and prescribed burning on approximately 7,376 acres to improve forest health. The selected alternative was modified to retain old growth status in all treatment units.

Anderson emphasized, "The Forest staff on the Bitterroot will be reviewing the procedural steps and analysis to date, and we will determine the best path to move the project forward. The Bitterroot National Forest is still committed to completing the important work in this project area."

Stevensville District Ranger Steve Brown said that the current Forest Plan was adopted in 1987 and defines old

growth by certain measurements such as a certain number per acre that are 20" dbh or more. He said the Plan talks about a canopy closure of 75% of site potential. He called that "a very undefined measure" and "not a set standard." He also noted that the Forest Plan doesn't even consider the age of a tree in determining its status as old growth.

According to Brown, a more "reasonable, repeatable way of measuring old growth" was developed in a document commonly referred to as "Green, et al[hellip]" after the lead author of the work, which "lays out very consistent repeatable measures of what constitutes old growth across the region by using habitat type. It's exhaustive, comprehensive, and tied closely to data that we can check. So it's simple to determine if it's old growth or not."

He also said that in the Forest's 1994 monitoring report, it states that the Forest Plan standards adopted in 1987 are not the best available science, making it difficult if not impossible to measure and that the Forest should be using 'Green, et al'.

"I believe the language used actually said that we should amend our Forest Plan to include Green, et al.," said Brown.

He said the Forest went on to use 'Green, et al' for the next 26 years but did not bother to amend the Forest Plan to say that Green, et al, would be used to define old growth.

"Then these groups sued us, complaining that we were not following the Forest Plan," said Brown. "We took a look at it and said, hey, they are right and I guess this is the long way of saying that we were doing our best, we were using the best available science, but our Forest Plan is not based on the best available science, so it's really a technicality."

The solution, according to Brown, will be to adopt a project specific amendment to the Forest Plan for the Gold Butterfly Project. That means doing a supplemental Environmental Impact Statement (EIS). He said it could take up to nine months to a year to go through that process.

"We recognize that this is important work that needs to be done and we are going to do our best to get it turned around so that we can continue the good work," he said.

Jim Miller, President of Friends of the Bitterroot, said, "Gold Butterfly would have been the largest, most destructive timber sale in decades on the Bitterroot National Forest. We are very glad they withdrew the decision because it was an illegal project." He said the project included old-growth logging, clearcutting, road building, destruction of wildlife habitat, and threatened spawning streams for endangered bull trout.

"Although it was broadly opposed by the public, the Forest Service ignored citizen input and a viable alternative that would have achieved the purpose of the project without seriously disrupting the ecological integrity of the area," said Miller.

Miller said that in the past Friends of the Bitterroot has been criticized by the timber industry and the U.S. Forest Service for stepping in at the last hour on their projects and making a legal issue of things.

"We have been expressing our concerns about these issues in public comment and at public meetings for two years now," said Miller. "In our comments at the meeting that the Forest Service held with objectors, we all but pleaded with them to change the project and protect these resources, but they refused to do so. So now here we are, two years into this project, and the Forest Service is finally admitting that they are violating their own Forest Plan and our environmental laws. They could have recognized this a long time ago and prevented a lawsuit and potentially had this project underway."

"We believe and I think most of the country believes that our environmental laws are here for a reason, to protect the national forests, the public's forests," said Miller. "When they do that, we expect the Forest Service to respect the laws and their own regulations, but when they don't, our only recourse is to go to court."

Miller said that there isn't much old growth left on the national forests or in the country due to massive cutting at the turn of the century.

"So it's really important to protect those big old trees because they are critical to the forest ecosystem, to the wildlife and are such a rare part of our forest. I think everybody loves those big old trees and the Forest Service has plans to overcut the old growth as per its own forest plans and to even clear-cut some areas. I don't think most people want that," said Miller.

He said there was an alternative in the EIS which was broadly supported by about 75% of the public comment and it included commercial logging.

"They had an opportunity to choose an alternative that had community support, and to build bridges with the conservation community," said Miller. "When they decided not to do that, it was a great lost opportunity."

Mike Garrity, Executive Director of the Alliance for the Wild Rockies, stated in a press release that it made absolutely no sense to go forward with this "enormously expensive and environmentally destructive project given the nation's current economic condition."

"We are thrilled that the Forest Service came to its senses," said Garrity. "As the Forest Service's own data indicates - federal taxpayers would have lost a stunning \$4.2 million on the project. Significantly, this information was buried in internal agency documents, and the agency did not honestly disclose this number to the public in the Environmental Impact Statement."

Garrity noted that 750 acres, more than one square mile of old-growth forest, has been saved by withdrawing this decision.

"The Forest Service claimed it was going to conduct this logging under the provisions of the Healthy Forest Restoration Act, but there's a real legal problem with that since that law actually prohibits logging old-growth forests - and this project was going to chop down 750 acres of increasingly rare old growth forests," he said.

Regarding their claims about the elk habitat violation, he said the Forest Service admitted that the project did not comply with the standard for elk habitat and it proposed a new standard for the project. But that new standard, he said, requires at least 30% of the project area be maintained in "elk security blocks." He said this project area is already woefully inadequate, with only 8.0% in elk security blocks and the extensive logging and roading from the project will further reduce that security. However, he said, the Forest Service chose not to disclose its non-compliance with the new standard to the public in the Environmental Impact Statement.

"It's no wonder the vast majority of the thousands of people who commented opposed the Gold Butterfly project, since it's estimated to run 6,000 to 7,000 loaded logging trucks down Willow Creek Road," Garrity concluded. "That's a dirt road with people's homes right next to it, which would significantly impact and endanger their lives and families. The Alliance for the Wild Rockies and Friends of the Bitterroot were honored to stand with the thousands of citizens opposing this project and will continue to exercise our first amendment rights to challenge illegal Forest Service decisions in court in the future."

Stevensville District Ranger Steve Brown admitted in the article that the BNF was not following the Forest Plan.

The solution is not to do repeated site specific amendments. The solution is to go through NEPA to amend the Forest Plan if the Forest Service no longer wants to follow the Forest Plan standard for old growth since all projects, monitoring reports, and other planning and analysis documents on the Bitterroot National Forest for the past 26 years have violated, and are continuing to violate, the Bitterroot Forest Plan old growth requirements.

The agency is not following the Forest Plan on other logging projects such as Mud Creek and in May 2020, the Forest Service signed a decision authorizing the Piquet Creek Project which allows approximately 3,000 acres of commercial logging. The agency's response to scoping comments states: "There is no proposal to remove any old growth stand from old growth status, as defined by Green et al. 1992 (amended 2005). Treatments may be proposed to reduce competition and ingrowth to create a more resilient and resistant stand to insects, disease and wildfire that would protect and aid in managing these stands for old growth into the future. Old growth data will be collected where appropriate to determine if stands qualify based on the Green et al. definition and ensure we're meeting the Forest Plan."

Similarly, in April 2020, the Forest Service signed a decision authorizing the Buckhorn Project. The project allows approximately 1,165 acres of commercial logging. The Forest Service states: "Most treatment units do not contain old growth stands as defined by Green et al. 1992 (amended 2005)." For example, in Unit 14, "trees >20" DBH in one stand did not meet age requirements based on Green et al. 1992 (amended 2005) for the habitat type. Age requirements are 170 years or older . . . ." In contrast to Green et al., however, the Forest Plan old growth definition does not have an age minimum; thus, this stand would likely have been protected as old growth under the Forest Plan.

Moreover, the Forest Service states: "Treatments within all units would retain large, old ponderosa pine and thus would not reduce the old growth percentage for this third order drainage." This statement is premised upon retention in accordance with the Green et al definition, which only requires retention of 8 large trees per acre, whereas the Forest Plan definition requires 15 large trees per acre and 75% canopy closure. Thus, existing Forest Plan old growth may be logged by this Project down to conditions that no longer constitute Forest Plan old growth.

Thus, the old growth analyses across the entire Forest - for every ongoing project, monitoring effort, and planning and analysis process - are fundamentally flawed because the Forest Service is using the wrong definition. The Forest Service's failure to use the Forest Plan definition of old growth, and consequent failures to demonstrate compliance with Forest Plan old growth standards for retention and viability, violate NFMA and the APA. If the Forest Service no longer wants to use the Forest Plan old growth standards and definition, then it must implement a formal Forest-wide Forest Plan amendment in a process that complies with NFMA and NEPA. See *Native Ecosystems Council*, 418 F.3d at 961.

In *Wildwest Inst. v. Seesholtz*, the Forest Service did not just withdraw a timber sale; instead, it agreed to produce an EIS for a forest-wide forest plan amendment on old growth.

The Forest Service's proposed solution to adopt a project specific amendment to the Forest Plan for the Gold Butterfly Project does not address the Forest-wide status of this legal violation, but rather continues to kick the can down the road, as the agency has been doing for the past 27 years.

To the Forest Service, "retain old growth status" means cut many large old trees from old growth, leaving some to meet the stale, technical definition their amendment would adopt. The spirit and intent of the original Forest Plan, on the other hand, was to maintain old growth by letting it be, recognizing nature can manage these ancient groves quite nicely without chainsaws.

The site-specific Forest Plan amendment issued for this Project and the Forest Service's practice of issuing successive site-specific Forest Plan amendments to evade analysis of a "significant" Forest Plan amendment

violate NFMA, NEPA, and the APA.

NFMA allows the Forest Service to amend Forest Plans. 16 U.S.C.[sect]1604(f)(4). The Ninth Circuit holds:

If the Forest Service thinks any provision of the 1986 [Helena National Forest] Plan is no longer relevant, the agency should propose amendments to the [Helena National Forest] Plan altering its standards, in a process complying with NEPA and NFMA, rather than discount its importance in environmental compliance documents. Native Ecosystems Council, 418 F.3d at 961.

Thus, any Forest Plan amendment must comply with both NEPA and NFMA. The Ninth Circuit's ruling on the Helena National Forest violating the Forest Plan equally applies to the BNF.

If a Forest Plan amendment constitutes a "significant change" in the Forest Plan, the Forest Service must prepare an EIS and analyze the amendment in the same procedure as it analyzed the Forest Plan. See *id.*; 36 C.F.R. [sect]219.10(f)(1982). The required procedure for analysis of a significant Forest Plan amendment is set forth in the NFMA regulations. 36 C.F.R. [sect]219.12 (1982). If the amendment does not constitute a significant change, it must still comply with NEPA procedures. 36 C.F.R. [sect]219.10(f) (1982).

The Forest Service's refusal to disclose reasonably foreseeable Forest Plan amendments violates NEPA. Finally, the Forest Service's practice of issuing successive site-specific Forest Plan amendments amounts to a de facto significant Forest Plan amendment that must be analyzed in a full stand alone EIS.

The 1982 NFMA regulations require:

habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.

36 C.F.R. [sect]219.19 (1982).

The regulations further require that "management planning for the fish and wildlife resource shall meet the requirements set forth in paragraphs (a)(1) through (a)(7) of this section." 36 C.F.R. [sect]219.19(a)(1982).

Section (a)(1) requires: "

On the basis of available scientific information, the interdisciplinary team shall estimate the effects of changes in vegetation type, timber age classes, community composition, rotation age, and year-long suitability of habitat related to mobility of management indicator species.

36 C.F.R. [sect]219.19(a)(1)(1982).

Section (a)(2) requires:

Planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat and of animal population trends of the management indicator species." 36 C.F.R. [sect]219.19(a)(2)(1982). Section (a)(3) requires: "Biologists from State fish and wildlife agencies and other Federal agencies shall be consulted in order to coordinate planning for fish and wildlife . . . .

36 C.F.R. [sect]219.19(a)(3)(1982).

Section (a)(4) requires: "Access and dispersal problems of hunting, fishing, and other visitor uses shall be considered." 36 C.F.R. [sect]219.19(a)(4)(1982).

Thus, any Forest Plan amendment under the 1982 regulations must ensure that habitat for a management indicator species is "well-distributed" as established by "available scientific information," "amount and quality of habitat," consultation with "State fish and wildlife agencies," and "[a]ccess and dispersal problems of hunting . . . ." 36 C.F.R. [sect]219.19. In other words, changing the old growth standard to come into compliance with past illegal practices is not sufficient in and of itself; the standard must adequately conserve secure habitat across the entire BNF.

A site specific amendment for old growth violates the NFMA planning regulations because it does not ensure well-distributed adequate habitat for old growth dependent species in the planning area.

The Forest Service cannot simply exempt each successive logging project from critical Forest Plan old growth standards. To do so would subvert one of NFMA's most fundamental mandates - the requirement that each project "shall be consistent with the land management plans." 16 U.S.C. [sect]1604(i). If the Forest Service wants to amend a Forest Plan, it must do so in a way that complies with NFMA. *Native Ecosystems Council*, 418 F.3d at 961.

In order to comply with NFMA, a Forest Plan amendment must ensure that habitat for old growth management indicator species will be "well-distributed." 36 C.F.R. [sect]219.19. The Forest Service's failure to do so in this case violates NFMA and renders proposed site specific amendment unlawful.

The Forest Service's failure to analyze any alternatives to the site specific amendment to the Forest Plan old growth standard violates NEPA.

The same applies to the site specific Forest Plan amendments to elk thermal over and habitat effectiveness. The Forest Service's failure to analyze any alternatives to the site specific amendment to the Forest Plan for elk thermal over and habitat effectiveness violates NEPA.

A Forest Plan amendment must comply with NEPA procedures. 36 C.F.R. [sect]219.10(f) (1982). A Record of Decision is issued after an EIS is completed. 40 C.F.R. [sect]1505.2 (2019).

In the Record of Decision, an agency must "[i]dentify all alternatives considered by the agency in reaching its decision . . . ." 40 C.F.R. [sect]1505.2(a)(2)(2019). In an EIS,

agencies shall . . . [r]igorously explore and objectively evaluate all reasonable alternatives. . . ." 40 C.F.R. [sect]1502.14(a)(2019); see also 40 C.F.R. [sect]1502.1 (2019) (an EIS "shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment.)

The analysis of alternatives "is the heart of the environmental impact statement." 40 C.F.R. [sect]1502.14(a)(2019). "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate." *Alaska Wilderness Recreation & Tourism Ass'n v. Morrison*, 67 F.3d 723, 729 (9th Cir.1995).

The Gold Butterfly SEIS is in violation of NEPA regulations, the SEIS fails to evaluate any reasonable alternatives to proposed site specific amendments to the old growth standard, elk habitat effectiveness and security cover. 40 C.F.R. [sect]1502.14(a)(2019).

"[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate." *Alaska Wilderness*, 67 F.3d at 729.

A viable alternative for Forest Plan Amendment to the old growth standard, big game habitat effectiveness and security cover does exist. Changing the big game security standard and habitat effectiveness to come into compliance is not sufficient in and of itself; the standard must adequately conserve secure habitat.

Viable and reasonable alternative to site specific amendments to the Forest Plan standards for old growth and big game security cover and habitat effectiveness would be an amendment that adequately conserves secure habitat, habitat effectiveness for big game and old growth dependent species in the planning area.

Such an amendment would comply with the 1982 NFMA regulations by using available science and consultation with State biologists to (a) ensure well-distributed habitat for elk throughout the planning area, and (b) address access and dispersal problems during the hunting season and (c) adequate habitat for old growth dependent species. See 36 C.F.R. [sect]219.19 (1982).

The Forest Service's failure to disclose and analyze the cumulative effects of reasonably foreseeable site-specific Forest Plan amendments to exempt other projects from the old growth, big game security and habitat effectiveness violates NEPA.

"NEPA always requires that an environmental analysis for a single project consider the cumulative impacts of that project together with 'past, present and reasonably foreseeable future actions.'" *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 895 (9th Cir. 2002)(citing 40 C.F.R. [sect]1508.7 (2019)). "Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. [sect]1508.7 (2019).

In *Dombeck*, the Ninth Circuit held that the Forest Service must analyze the cumulative effects of reasonably foreseeable Forest Plan amendments:

Here, the EA for the Darroch-Eagle sale does contain a section discussing the cumulative effects of some reasonably foreseeable future actions to be taken in the area around the sale. It does not, however, include the other Gallatin II road density amendments among these reasonably foreseeable future actions. As a result, the Forest Service does not analyze what, if any, environmental impacts the Darroch-Eagle road density amendment might have in combination with the contemplated road density amendments in the other Gallatin II sales. This omission violates NEPA.

*Dombeck*, 304 F.3d at 895-96.

The Ninth Circuit held that the reasonably foreseeable Forest Plan amendments "are proposed for the same national forest and will effect separate but additive changes to the density of roads within that geographic area." *Id.* Thus,

"[b]ecause the amendments are reasonably foreseeable and may have cumulative impacts within the Gallatin National Forest, the Forest Service has a duty to consider them in its analysis of impacts within the Darroch-Eagle EA."

Furthermore, the Ninth Circuit expressly rejected the Forest Service's argument that the agency need not disclose all reasonably foreseeable Forest Plan amendments across the same National Forest:



The national forest was the geographic unit within which the Forest Service chose to set forth binding road density standards in the Forest Plan. All of these sales are proposed within the Gallatin National Forest and will necessarily have additive effects within that management unit. Unless the cumulative impacts of these amendments are subject to analysis even though distantly spaced throughout the Forest, the Forest Service will be free to amend road density standards throughout the forest piecemeal, without ever having to evaluate the amendments' cumulative environmental impacts. NEPA does not permit this, but rather requires the assessment of the cumulative impact of "individually minor but collectively significant actions taking place over a period of time." 34 C.F.R. [sect]1508.7 (2001).

Dombeck, 304 F.3d at 896-97

The same concern is present in the Gold Butterfly SEIS.

The Forest Service's practice of issuing successive site-specific Forest Plan amendments amounts to a de facto significant Forest Plan amendment that must be fully analyzed as such in an EIS.

The agencies must reinitiate and complete reconsultation on the Bitterroot Forest Plan to address current grizzly bear distribution and suitable habitat; this has not yet been done.

ESA regulations mandate that "[r]einitiation of formal consultation is required .

. . (b) If new information reveals effects of the action that may affect listed species .

. . in a manner or to an extent not previously considered . . . ." 50 C.F.R.

[sect]402.16(b); see *Alliance for the Wild Rockies v. USDA*, 772 F.3d 592,601 (9th

Cir.2014).

Thank you for your time and consideration of our comments.