

**BEFORE THE OFFICE OF THE REGIONAL FORESTER
REGION ONE – USDA FOREST SERVICE
Objection Reviewing Officer**

SWAN VIEW COALITION)
)
) Objector)
)
v.)
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)
)
CHIP WEBER)
FLATHEAD FOREST SUPERVISOR)
) Responsible Official)

**NOTICE OF OBJECTION
PURSUANT TO
36 CFR 218**

DECISION OBJECTED TO:

Crystal Cedar Project Draft Decision Notice and Finding of No Significant Impact
(hereafter CC, Project, DN and FONSI)
Chip Weber, Flathead Forest Supervisor, November 13, 2019.

Objectors:



Keith J. Hammer
Lead Objector
Chair
Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901
406-755-1379
keith@swanview.org



Arlene Montgomery
Objector
Program Director
Friends of the Wild Swan
PO Box 103
Bigfork, MT 59911
406-886-2011
arlene@wildswan.org



R. Brian Peck
Objector
Independent Wildlife Consultant
96 Trap Lane
Columbia Falls, MT 59912-4801
406-892-3767
glocrbear@centurytel.net

December 26, 2019

Swan View Coalition (SVC) and Friends of the Wild Swan (FOWS) are non-profit conservation organizations dedicated to conserving water quality and quiet, secure habitats for fish, wildlife and people on the Flathead National Forest and greater Flathead River Basin. Brian Peck is an independent wildlife consultant. Our members and Brian Peck use these areas, including the Project area, for recreation, employment, wildlife viewing, photography, research, education, aesthetic enjoyment, spiritual rejuvenation, and other activities.

On 11/15/18 SVC submitted written comments on the Crystal Cedar Proposed Action scoping packet. On 7/5/19 SVC submitted written comments on the initial EA, along

with Attachments A-K, and incorporated by reference the comments submitted by Brian Peck and Friends of the Wild Swan. On 7/5/19 FOWS submitted written comments on the initial EA and incorporated by reference the comments submitted by SVC. On 11/9/18 Brian Peck submitted comments on the Crystal Cedar Proposed Action scoping packet and on 7/1/19 submitted comments on the initial EA.

The Response to Comments fails to adequately address our concerns. Even more importantly, it fails to result in the substantive changes in the Project necessary to comply with laws, regulations and a reasonable code of ethics. We remain concerned that the Crystal Cedar Project and DN/FONSI will harm water quality, fish, wildlife, and our members' interests.

We incorporate by reference our comment letters submitted previously for this Crystal Cedar Project.

ORGANIZATION OF THIS OBJECTION

The DN and EA are issued under the revised Forest Plan, which we find lacks adequate management standards. No substantive changes were made to the Project in response to our comment letters, so none of the relief sought in our comments has been granted. Therefore, the issues we have raised in SVC's Objection to the revised Forest Plan and the Project under the revised Forest Plan remain valid and unresolved. The Forest Service is essentially sidestepping compliance with Forest Plan standards via a piecemeal dismissal of Forest Plan standards, our comments, and our Objections to similar trail-building and logging projects.

We will focus this Objection on the failure of the Response to Comments (RTC) to adequately address or substantively resolve the issues we have raised. This Objection must be read alongside our 7/1/19 and 7/5/19 comments.

Companion to this Project Objection is a DVD containing documents we submitted along with SVC's Objection to the revised Forest Plan, SVC's comments on the NCDE Grizzly Bear Conservation Strategy and Habitat-Based Recovery Criteria upon which the Flathead often relies, as well as newer documents submitted with this Objection. The DVD includes SVC's Forest Plan Objection in Folder 00 and the documents referenced in that and subsequent project Objections in Folders 01 - 38. Our subsequent Notice of Intent to file suit over the revised Forest Plan and our Court Complaint have been added to Folder 00. This Crystal Cedar Project Objection is included in Folder 0, along with other relevant project Objections and comments. Finally, we have added a few more documents to the Folders on the DVD as referenced elsewhere in this Project Objection.

EXECUTIVE SUMMARY

This Objection finds that the Flathead National Forest is engaged in the expansion and promotion of recreation with no adequate prior assessment of the effects on human safety and the environment. It has instead purged its Forest Plan of quantifiable

methods and standards that measure and limit the displacement of wildlife by both motorized and non-motorized recreation (DVD Folder 00, SVC Forest Plan Objection.pdf). It has launched a number of projects, including Crystal Cedar, utilizing private “partners” to initially build some 79 miles of new recreational trails (DVD Folder 14, Bike Trails Flathead NF.pdf).

The Flathead is simultaneously rewarding its trail-building partners with Special Use Permits to conduct trail races that commercialize the promotion of the new trail systems and stand to raise up to \$30,000 in entrance fees for the first two trail-running competitions alone. It is ignoring grizzly bear experts’ advice that trail-running and fast mountain biking greatly increase the risk to both people and bears - and advice that issuing Special Use Permits for such activities will undermine interagency public education efforts aimed at reducing these risks (DVD Folders 38).

The Flathead has abandoned objectivity, fact and science in favor of the romanticized notion that people should take whatever risks they wish while recreating on public lands - as though they are the only ones that will suffer the consequences. It is purposefully ignoring the consequences to other people and wildlife of promoting an ever-expanding trail system - even though displacement of wildlife from both motorized and non-motorized trails has been well documented for decades (DVD Folder 36).

Crystal Cedar, Taylor Hellroaring, Hellroaring Basin Improvements, Hungry Lion, Bug Creek, and other projects renege on prior commitments to maintain wildlife habitat security, in part by using fraudulent accounting procedures that run afoul of the law (relevant Objections are in DVD Folder 0).

RELIEF REQUESTED

Rescind the DN and FONSI for the reasons stated in this Objection and prepare an adequate Environmental Impact Statement that addresses the deficiencies raised in this Objection and includes a full assessment of the cumulative effects of the Crystal Cedar, Taylor Hellroaring, Hellroaring Basin Improvement, Hungry Lion, Bug Creek, and other projects currently being contemplated or implemented on the Flathead to increase recreational opportunities and impacts.

Redo the Project area Travel Analysis as a larger scale analysis, to adequately assess the short- and long-term costs of building and maintaining a minimum road system that is truly sustainable in light of realistic budget expectations and all standards, goals and objectives for the maintenance of water quality, fish, wildlife, and other resources. Decommission any user-created bike trails and do not add any new bike trails to the Trail System.

We ask that the Flathead place a moratorium on trail construction and the issuance of SUPs for foot and bike races until it has developed a science- and fact-based program for minimizing risks to people and bears, for limiting and numerically accounting for the displacement of bears from trails, and has adequately incorporated that program into its Forest Plan and project NEPA analyses via enforceable, mandatory standards.

Reinstate Amendment 19 into the revised Forest Plan and fully implement A19 in the Grizzly Bear Subunits affected by the Crystal Cedar Project - after correcting A19 to include in calculations of TMRD all roads on Forest Service land, including roads built and maintained under Special Use Permits, and to quantifiably account for and limit the density of non-motorized trails and their displacement of grizzly bears.

STATEMENT OF REASONS

Grizzly Bear Security

RTC F-126 (DN at 101-103): Our comment dealt with the failure of the Flathead to substantively account for the effects of bear displacement from roads and trails - by not including those roads and trails in calculations of TMRD and Secure Core. The RTC discusses effects on Secure Core only, and this it does inadequately. The RTC does not address at all the omission of roads from calculations of TMRD.

Arguing that “high-use” non-motorized trails need no longer disqualify land from being included in calculations of Secure core only confirms that the actual displacement of bears from those trails will go unaccounted for as security levels in fact decrease below 2011 levels. Regardless of adjustments made in the 2011 baseline when switching from Security Core (wherein high-use trails disqualify / reduce Core) to Secure Core (wherein high-use trails do not disqualify / reduce Core), increasing high-use trails in the future will degrade 2011 security levels as the number and mileage of trails on-the-ground increases under such exemptions, decreasing actual bear security. This phony numbers accounting system is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

“High-use” non-motorized trails will be allowed in Secure Core under the revised Forest Plan, whereas they were not allowed in Security Core under the former Plan, artificially inflating the amount of Secure Core and failing to maintain 2011 levels of bear security. Similarly, roads had to be decommissioned, no longer function as roads and be removed from the road system in order to not be counted in Total Motorized Route Density under the former Plan. Under the revised Plan however, they can remain on the landscape as a road with minimal blockage of the entrance and not be counted in TMRD (see our Forest Plan Objection, NOI and Court Complaint in Folder 00). This phony numbers TMRD accounting system is also arbitrary, capricious, an abuse of discretion, and not in accordance with law.

The RTC simply punts to the Grizzly Bear Conservation Strategy, which inappropriately concludes that high-use non-motorized trails can be discounted because the initial research upon which the notion of high-use trail impacts were based did not document population level declines as a result. Neither the RTC or the Conservation Strategy acknowledge that: 1. population level declines is not an adequate measure for bear displacement and “taking” and 2. the literature review conducted by Fortin et al 2016 finds that bear displacement by non-motorized recreation can indeed have important consequences for bear populations (DVD Folder 24, Fortin et al 2016).

Moreover, rather than make corrects to Amendment 19 to better account for the adverse effects of non-motorized trails to account for the expected increase in both trail mileages and human uses, the Conservation Strategy and revised Forest Plan instead simply threw the baby out with the bathwater in abandoning Amendment 19 altogether. SVC's 7/30/13 comments on the Conservation Strategy explain further why this discounting of the impacts of non-motorized trails is flawed (DVD Folder 22).

The above serves as an example of how the revised Forest Plan and Project EAs intentionally fail to quantify reductions in habitat security and displacement from roads and trails. They then conclude the projects and activities will not change numeric access conditions, knowing full well that is true only because the reductions in habitat security and increases in human access have been intentionally omitted from calculations of the access conditions.

It is meaningless, arbitrary and capricious to measure impacts to wildlife via miles or densities of road and trail if the revised Forest Plan and Project EAs contain no enforceable standards limiting those miles or densities of road and trail - which they do not.

The RTC is unresponsive in simply claiming there is a "lack of studies demonstrating population-level impacts associated with non-motorized trails." That's not the point. The point is that neither the revised Forest Plan nor the EA account for, in a quantifiable fashion, the admitted displacement of bears from non-motorized trails. Nor do they contain adequate non-discretionary standards that limit those quantified impacts. Without a quantifiable accounting for that displacement, conclusions about the effects on bears is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

Amendment 19 at least tried to account for such high-use trails by buffering them out of Security Core, but the revised Plan and Project EA abandon A19 and replace it with no adequate accounting of displacement whatsoever - whether from trails in Core or trails outside Core. The new definition for Secure Core does not account for such displacement or dissection of habitat and allows for unlimited miles of high-use trails to exist without any measured effect to bears or buffering of those trails out of Core. By the time such nonsense results in documented population-level impacts, it will be far too late to prevent those impacts.

Put this in the context of the affected grizzly bear management subunits already failing to meet the 19/19/68 research benchmarks and the only rational conclusion is that levels of incidental take of grizzly bears will be excessive. FWS's BiOp on the revised Forest Plan is flawed and fails to rectify the flawed accounting of access conditions we describe above. The Forest Service cannot lawfully rely on that flawed BiOp. (For more detailed discussion, see 2019-04-15 Doc. 1 Complaint.pdf and Notice of Intent.pdf in DVD Folder 00).

RTC F-126 (DN at 81): The RTC fails to respond adequately to our comment and fails to describe what the Flathead's policy is concerning the issuance of permits for trail runs and mountain bike races when requested by trail-building partners. Simply stating permit requests "will continue to be evaluated on a case-by-case basis consistent with

law, regulation, and policy” is inadequate and unresponsive. The RTC neither describes what the policy is nor does it acknowledge that the Whitefish Legacy Partners’ 2019 Ultra-Marathon Special Use Permit was issued unlawfully, prior to any public scoping whatsoever. (See DVD Folder 38, WLP Ultra-Marathon SUP 190409.pdf for the Permit signed 4/8/19, and Special Use Permits Scoping June 12 2019.pdf for the Scoping Packet dated 6/12/19 - a full two months later).

Moreover, the Flathead has no clear policy regarding the issuance of Special Use Permits, as evidenced by its habitual and inadequate public scoping and public comment opportunities. See our email string in DVD Folder 38, Round Meadows Shuttle-Guide SUP email string.pdf and Round Meadows Scoping Doc 12162019.pdf, wherein Ranger Mulholland attempts to approve the Round Meadows shuttle and guiding Permit with no adequate description of the proposal and barely a week for public comment - with no press release about the proposal. Ranger Mulholland also claims that such proposals need not be listed in the Forest’s Schedule of Proposed Actions after conceding last summer that they must be listed.

Our email exchange with Ranger Mulholland speaks for itself and demonstrates that the RTC cannot simply claim that Permits will be issued according to some unstated policy. It is similarly unresponsive for the RTC to simply state the Flathead “has not received any inquiries from partner groups regarding recreation events in the project area” without adequately describing what policy will be applied should such a request be received.

Ignorance of the Board of Review Report and Recommendations Following the Death of Brad Treat

The DN and EA ignore the importance of the interagency Board of Review Report and Recommendations following the death of Brad Treat when he collided with a grizzly bear while mountain biking at high speed (DVD Folder 14). The Flathead Forest Supervisor has demonstrated a similar disregard for the BOR reports and additional expert advice from its lead author, Dr. Chris Servheen (DVD Folder 36).

RTC F-21 (DN at 81-82): The RTC made by Fish, Wildlife and Parks states that “Project design feature 74 . . . requires that information about avoiding and responding to bear encounters be posted at trailheads . . .”. Project design feature 74 in DN Appendix A, however, states that such information “should” be posted at trailheads, not that such posting is “required.” The design feature is not consistent with the recommendations of the BOR reports or the comments made by FWP.

RTC F-21 (DN at 82): The RTC similarly refused FWP’s request to relocate a bike trail located “within a wet riparian zone that is frequently used by grizzly bears.” It instead rationalizes that long sight distances in that area will somehow “provide a greater margin of safety” than relocating the trail “more upland.” Also, in defiance of recommendations from FWP and the BOR reports, the EA acknowledges that “many of the trails are proposed in areas known to receive seasonal use by bears due to high quality forage.” (EA page 58).

Page 58 of the EA also confirms that 2.2 miles of trail will remain located in Riparian Management Zones and that the design of the trails to minimize the potential for bear-human conflicts is controlled by an optional Guideline (FW-GDL-IFS-15), rather than non-discretionary management Standards. To conclude the Project will not harm bears without firstly applying mandatory trail design and location restrictions is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

The Flathead NF has blinders on both in terms of the Treat incident, the BOR reports and the many other instances of bears being killed after they have injured someone simply in defense of themselves or their cubs.

Supervisor Weber Ignorant of Recreational Risks and Their Differences

As Deciding Officer for this Project, Supervisor Weber has shown himself unfit to objectively evaluate the relative risks of recreation and their potential harm to people and wildlife. His staff responsible for this Project demonstrates this same intentional ignorance of facts and likely outcomes. Though Supervisor Weber is soon retiring, he has poisoned the well on the Flathead. What follows is directly applicable to demonstrating the inadequacy of the Project DN and EA.

In response to public criticism of permitting ultra-marathon trail running races in bear habitat when multiple agencies advise against its increased risks, Supervisor Weber issued a 6/17/19 guest opinion to news outlets and via the Flathead's Facebook page. In it he used non-comparative data to suggest mountain biking is safer than hiking when it comes to the risk of surprise bear encounters, going on to "suggest that we consider these different activities on an equal basis in the context of their relative risks when promoting recreation" (DVD Folder 36, OPINIONRisk and Recreation on Wildlands.pdf).

Supervisor Weber soon after issued a similarly misleading statement to the Interagency Grizzly Bear Committee (IGBC) on 6/25/19 (DVD Folder 36, Weber Statement to IGBC 190625.pdf). He then abandoned all objectivity by interjecting an emotional appeal from Brad Treat's widow, Somer Treat - into what should be a discussion based in fact and scientific research (DVD Folder 36, Somer Treat Letter FNF Facebook.pdf).

Supervisor Weber ignored and omitted the BOR's findings that negative encounters between bears and bikers are "disproportionately high" compared to those with hikers. He similarly ignored the source studies and data relied upon by the BOR. He also ignored the fact that, when someone drowns in a river, the government does not drain the river - but when someone runs into a bear and is hurt or killed, the government often kills the offending bear even if it was simply defending its cubs. All risks and their consequences are clearly not created equal.

SVC's responses to Supervisor Weber's pronouncements are located in DVD Folder 36, as SVC-Peck to IGBC on Risk.pdf and 190701 Response to Weber.pdf. The former of these two responses notes that Brad Treat is not the only mountain biker to broadside a grizzly bear. Rick Sinott found that 5 of the 18 bike-bear incidents he reviewed involved broadsiding the bear. What if these mountain bikers had broadsided a young hiker

instead of a grizzly bear? Would Supervisor Weber still be defending their irresponsible behavior as some sort of romanticized risk-taking that is appropriate for public trails?

Grizzly bear expert Dr. David Mattson looked at available data and concluded “The percent of encounters that elicited some kind of aggressive response from involved bears is an astounding 14-times greater for mountain bikers compared to for pedestrians.” (DVD Folder 35, Mattson_Effects of pedestrians on grizzly bears_GBRP-2019-3.pdf). Dr. Mattson continues, in this report largely focused on the displacement of and effects on bears from pedestrian activity: “The weight of evidence unambiguously supports concluding that mountain biking is far more hazardous for involved people and more impactful on affected bears compared to any other pedestrian activity with the exception of hunting. Given this perhaps self-evident verdict, it is not surprising that Parks Canada seasonally or permanently closed trails to mountain bikers several years ago in areas where chances of hazardous encounters were high . . .”

Dr. Mattson also notes “These results are not unexpected. As Herrero & Herrero (200) noted nearly 20 years ago, mountain biking is a perfect recipe for hazardous close encounters with grizzly bears given that bikers are often travelling silently at comparatively high speeds . . . which increases the odds of rapid closure prior to detection along with amplified reactivity among even highly tolerant bears.” Rather than take the advice of Dr. Servheen and others seriously, Supervisor Weber chooses to instead dismiss it and instead romanticize risk-taking on public lands.

(https://missoulian.com/news/local/bears-bikes-and-risk-how-much-is-ok/article_a1fa7031-98f9-5a57-8c47-2484d93ea0f5.html)

Supervisor Weber’s staff is following suit as indicated throughout the Project DN and EA. Just as Herrero and Herrero predicted that conflicts and encounters would occur between mountain bikers and bears, the available data and science predict such encounters will occur with the magnitude of mountain bike trail build-out being pursued in Crystal Cedar and other Flathead projects. To adopt Supervisor Weber’s espoused attitude of letting people take the risks they want on a rapidly expanding trail system in grizzly bear habitat, as though bears will not also suffer the consequences, is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

We want to underscore here, however, that non-mechanized human uses of trails and roads also displaces bears and other wildlife, as noted in the Mattson paper described above. While humans can reduce the risk to themselves and wildlife by practicing slow-paced recreation, the FS must assess and limit recreation in order to limit the displacement of bears and other wildlife. We’ve included in DVD Folder 14, Wisdom et al 2018.pdf, which finds:

Distances between elk and recreationists were highest during ATV riding, lowest and similar during hiking and horseback riding, and intermediate during mountain biking. Our results support the hypothesis that elk avoid trail-based recreation similarly to their avoidance of roads open to motorized traffic on public forests.

In Crystal Cedar and the other numerous projects we mention in this Objection, the Flathead is hell-bent on the expansion and promotion of recreation as though there will be no costs to human safety or the wellbeing of wildlife. It is not sufficient to

acknowledge that even non-motorized human recreation displaces bears, elk and other wildlife, then fail to adequately quantify both risk and displacement, and to then fail to limit those quantified risks and displacement via mandatory Forest Plan standards.

Failure to Adequately Assess Cumulative Effects

The RTC is essentially unresponsive to our comments on the initial EA. It responds to only four paragraphs of SVC's 7/5/19 6-page letter! Our requests for an adequate assessment of the cumulative effects of the Flathead's recreation expansion program and its component projects that include Crystal Cedar, Hungry Lion, Taylor Hellroaring, Bug Creek, and various Special Use Permits are ignored and not responded to in any form whatsoever.

Our comments make clear that the Flathead is using public-private partnerships to greatly increase its trail system and is rewarding those partners with Special Use Permits to raise funds via commercial and competitive trail-running races. The Flathead knows full well it has over 79 miles of trail proposed for construction or being constructed under the Hungry Lion, TH, Bug Creek, and Crystal Cedar projects alone. We provide a tally of these trail miles in DVD Folder 14, Bike Trails Flathead NF.pdf.

Nowhere has the Flathead conducted a cumulative effects analysis of the impacts of this trail system, the current awarding of Special Use Permits for trail-running races and resulting commercial promotion of the trail system, nor the reasonably foreseeable issuance of Special Use Permits for mountain bike races and resulting commercial promotion of the trail system as a reward to the Flathead's trail-building mountain bike partners.

We include pertinent documents from the 2019 issuance of such SUPs in DVD Folder 38. The Foy's to Blacktail permit decision authorizes up to 100 participants, which FTB intends to charge \$100 each. The Whitefish Legacy Partners permit authorizes up to 200 participants, which WLP intends to charge \$100 each. Hence, these permits are worth up to \$30,000 in fundraising for these trail-building partners via permits that allow for the commercial promotion of these trails. Neither permit requires race participants to even carry bear spray.

These permits are being issued over the objections of grizzly bear experts like Dr. Chris Servheen and over the objections of SVC, FOWS and Brian Peck, who see the permits as promoting risky behavior in bear habitat that undercuts public programs trying to educate people to not run or bike fast in bear habitats. Nowhere has the Flathead NF assessed the cumulative impacts of issuing permits that promote such risky behaviors in conjunction with the building and commercial promotion of an expanded trail system. 40 CFR 1508.7 clearly requires that the agency assess in a single EIS the incremental impacts of numerous actions that are cumulatively significant - which the Forest Plan EIS did not do. To conclude that the Flathead's trail building, permitting and promotional initiatives will not have significant cumulative impacts to bears and other aspects of the human environment is arbitrary, capricious, an abuse of discretion, and not in accordance with law.