

November 30, 2020

Objection Reviewing Officer
USDA Forest Service, Northern Region
26 Fort Missoula Rd.
Missoula, MT 59804

Submitted via email to: appeals-northern-regional-office@usda.gov

Re: Objection to Frozen Moose Project

To the Objection Reviewing Officer,

WildEarth Guardians submits this objection to the U.S. Forest Service's October 2020 draft decision notice ("Draft DN"), finding of no significant impact ("FONSI"), and updated 2020 environmental assessment ("Updated EA") for the Frozen Moose Project on the Hungry Horse-Glacier View Ranger District of the Flathead National Forest. In its Draft DN and FONSI the Forest Service's selected alternative includes, *inter alia*, commercial logging on 3,180 acres, noncommercial logging on 4,897 acres, adding 13 miles of unauthorized roads to the transportation system, and constructing 6.8 miles of temporary roads, 2.8 miles of which would be on existing road templates. See Draft DN, page 2, Table 1. The project area is 151,200 acres. The responsible official is Flathead National Forest Supervisor, Kurt Steele. As required by 36 C.F.R. § 218.8(d):

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WildEarth Guardians is a nonprofit conservation organization with offices in Montana and five other states. We have more than 188,000 members and supporters across the United States and the world. Guardians' mission is to protect and restore wildlife, wild places, wild rivers, and the health of the American West. WildEarth Guardians has organizational interests in the proper and lawful management of the forest road system and its associated impacts on the Flathead National Forest's wildlife and wild places.

WildEarth Guardians submitted timely comments on the July 2020 Frozen Moose Project Environmental Assessment ("July EA"). Our comments advocated for thoughtful management of the agency's road system, its associated impacts and the overall need to improve the health of watersheds and wildlife habitat on the Flathead National Forest. We have organizational interests in the proper and lawful management of the forest road system and its associated impacts on the Flathead National Forest's wildlife and wild places.

OBJECTIONS

I. Failure to prepare an environmental impact statement ("EIS").

Our comments urged the Forest Service to prepare an EIS because this project may have a significant impact on the environment. The Council for Environmental Quality's (CEQ) regulations define significance in terms of context and intensity, which includes *inter alia* the scope of beneficial and adverse impacts, unique characteristics of the geographic area, degree of controversy, degree of uncertainty, and degree to which an action may affect species listed or critical habitat designated under the Endangered Species Act. 40 C.F.R. § 1508.27 (defining "significantly"). We noted that this project may significantly affect the human environment because, *inter alia*, it:

- Will cause significant impacts, both beneficial and adverse. For example, as part of the Frozen Moose project the Forest Service proposes adding unauthorized roads to the system and commercially logging 3,377 acres of which 500 acres would receive regeneration harvest. Adding new roads to an already oversized, under-funded, and under-maintained road system may cause significant impacts to the landscape and nearby waters, especially given the best available science showing forest roads are major sources of sediment to receiving waters. Commercial logging may also have a significant impact due to the disruption of otherwise quiet forest landscapes. In particular, 500 acres of regeneration harvest will completely devastate those acres, resulting in changes to soil moisture, disruption of wildlife habitat, fragmentation of habitat, and changes to the aesthetics for people visiting the forest; these are significant impacts.
- Involves a geographic area with unique characteristics, specifically vegetation treatments within the Riparian Management Zone, the Mount Hefty Inventoried Roadless Area, and the designated scenic section of the North Fork of the Flathead River.
- Will result in effects on the human environment that are likely to be highly controversial. Recent scientific publications raise serious questions as to the efficacy of vegetation treatments in reducing uncharacteristic wildfire risk and increasing forest resilience. Our comments show that such "resistance" strategies that attempt to mimic historical conditions are inherently flawed, especially during changing climate conditions, because they fail to utilize reference conditions based on current and future ranges of variability. The Forest Service fails to address this scientific controversy.
- Involves effects that are highly uncertain or involve unique or unknown risks. The concerns identified in the previous bullet equally apply here.
- May affect species listed or critical habitat designated under the Endangered Species Act, including grizzly bear, Canada lynx, and bull trout.

Suggested Resolution: Prepare an EIS because the Frozen Moose Project may have a significant impact on the environment to ensure the Forest Service takes the required "hard look" at the impacts of its actions.

II. Failure to comply with NEPA.

- A. The FNF improperly relied on internal project files and failed to make them publicly available in a timely manner, thereby precluding opportunity to provide for meaningful comments.**

Our comments list several examples where the Forest Service cites internal project files to support conclusory statements or in place of providing the requisite analysis. The Forest Service fails to address these flaws in its Updated EA and repeats them in the Draft DN. In particular, the agency states that, “[t]he Forest continues to monitor barrier effectiveness and restore road barriers once breeches have been discovered (project file exhibit R- 15).” Draft DN, Appendix B at 64. Yet the agency fails to provide the referenced project file and fails to adequately disclose monitoring results within the Updated EA that demonstrates barrier effectiveness. Further, the Forest Service fails to provide the maps for potential vegetation types described under key ecosystem components, Updated EA at 28-31. As such, the agency fails to support its assertion that the no action alternative would fail to meet vegetation objectives, which is a fundamental flaw given its continued reliance on historical reference conditions. Here the Forest Service should have provided both the project file modeling results with a comparison to modeling that utilized current and future reference conditions. The Forest Service also failed to provide project file G-3 displaying Canada lynx analysis units or project file G-28 that supports the agency’s assertion that vegetation treatments would not sever areas of connectivity for Canada lynx. Finally, the Forest Service failed to provide the Frozen Moose Travel Analysis Report that should have shown the risks and benefit rankings for each unauthorized road the agency proposes to add to the system, along with the fiscal analysis necessary to demonstrate how the expanded road system reflects long-term funding expectations.

As we explained, the Forest Service’s use of project files to inform the analysis is certainly within its prerogative. Internal procedures for drafting an environmental assessment is not at question. However, the agency does not include sufficient discussion, analysis or evidence from these project files in the EA. Rather, the above examples exemplify instances where the Forest Service simply tiers to the project files themselves in place of providing the necessary scientific analysis NEPA requires in the EA, thereby precluding meaningful and informed public comment in violation of NEPA. The Forest Service response is that “[a]ll documents used to prepare the environmental assessment are available to the public by request.” Draft DN, Appendix B at 52. Such a response demonstrates a fundamental flaw in the agency’s rationale since regulations require the Forest Service to “[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” 40 CFR 1508.9(1). Simply referencing project files, which themselves are not NEPA documents, cannot replace the analysis that NEPA requires.

B. Flawed Statement of Purpose and Need

Our comments explain that the agency’s reliance on historic conditions to inform desired conditions is inherently flawed, and as such, the basis of the Frozen Moose EA purpose and need, along with the proposed actions, involves effects on the human environment that are likely to be highly controversial, and involves effects that are highly uncertain and involve unique or unknown risks, all of which necessitate promulgation of an EIS. The Forest Service fails to adequately address this controversy and uncertainty in the Updated EA and therefore fails to properly support the Frozen Moose statement of purpose and need. In addition, we urged the agency to carefully evaluate the Frozen Moose Project and each of the alternatives through the lens of the Travel Management Rule’s direction under subpart A and incorporate into an EIS the need to identify and implement a minimum road system. Yet, the Forest Service failed to adequately respond to this comment, instead explaining “vegetation management treatments would maintain and improve habitat for terrestrial wildlife species on pp. 48-90.” Draft DN, Appendix B at 54. Such a response demonstrates the agency’s failure to recognize its duty to identify an ecologically and fiscally sustainable road system in the

project area, which is all the more glaring considering the agency produced, but then failed to disclose, the Frozen Moose Travel Analysis Report.

C. Failure to disclose direct, indirect, & cumulative impacts

We asked the Forest Service to assess and disclose the direct, indirect, and cumulative impacts from the project, including detailed, site-specific information. Our comments explained the need to use an appropriate baseline of only official Forest Service system roads. This would be separate from the no action alternative that includes unauthorized roads under the existing condition. Here we explained the Forest Service may consider these roads “historic,” and decommissioned per past project decisions, yet it is clear many of these roads still retain their physical presence on the ground, and some need further treatments as evidenced by the proposed action:

Field review identified three historical roads (labeled as HIR on maps 1 and 2), totaling 3.3 miles, with four stream-aligned culverts that will be removed and road beds restored, to reduce the risk of road failures and sediment delivery to bull trout spawning streams (FW-OBJ-CWN-01 and 02) and to restore soil and water productivity. This work would be funded outside the timber sale through other funding sources.

Updated EA at 24.¹ Further, the Forest Service appears to consider only user-created roads as being unauthorized: “The roads identified as historical roads in the data layer the commenter used to prepare the map provided, are road templates that the Forest Service constructed for past resource management activities, they are not unauthorized roads created by the public.” Draft DN, Appendix B at 55. To be clear, regulations provide for a variety of road definitions including a forest road, NFS road, temporary road, a road, and unauthorized road defined as one which “is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.” 36 CFR § 212.1. The use of “historic” road in the Frozen Moose project and elsewhere by the agency has no definition and must be considered unauthorized.

As such, it is arbitrary and capricious, and a violation of NEPA for the Forest Service to omit from its no action alternative known unauthorized roads combined with system roads, while failing to compare it with the legal baseline of system roads. Further, reconstructing existing road templates provides further evidence of past failings to fully remove roads, and begs the question of their origins, which the Updated EA fails to properly disclose. It also demonstrates the inadequacy of past road restoration treatments, which in turn negates any conclusions that treatments leaving road beds or other road features in place will not pose harmful environmental consequences in the future. This is especially pertinent if revegetated unauthorized roads become exposed in the event of wildfires since they` will be subject to increased erosion and risk from unauthorized use. Ultimately, the Forest Service must better incorporate unauthorized roads in its analysis unless fully removed from the ground, and answer the crucial question of when a road is no longer a road. The question is especially pertinent given the fact that the Forest Service will retain unauthorized roads in the

¹ It is important to note the EA discloses that culverts on NFS roads in need of treatment outside of timber harvest units do not have dedicated funding: “The other culvert actions are not required under the timber sale and *are funding dependent* but would provide long-term benefit to aquatic resources.” Updated EA at 24. If the Forest Service lacks available funding to treat culverts on NFS roads, how can it fund treatments on unauthorized roads. Further, without demonstrating funding is available or is reasonably anticipated, the long term benefits from culvert removal or replacement cannot be assumed. The analysis fails to disclose the likely scenario where the funding is not available.

planning areas since they are not connected to other project activities: “[o]ther historical roadbeds displayed in the data layer are not connected to project activities; therefore, restoration activities are not proposed on those roadbeds.” Draft DN, Appendix B at 53-54. The Forest Service maintains that these unauthorized roads “are considered as part of this existing condition analysis and considered in the resource effects analyses.” *Id.* Yet, without differentiating the impacts between unauthorized and system roads, the Forest Service cannot properly consider their potential environmental consequences, which is why we urged the agency to compare the existing condition with a baseline of only system roads.

In addition, our previous comments urged the Forest Service to consider the Flathead’s travel analysis report, identify the minimum road system, and identify unneeded roads in the project area to prioritize for decommissioning or other uses. As noted above, the Forest Service explains it utilized the Frozen Moose Travel Analysis Report to inform the proposed action and the EA, yet the agency failed to provide the report or even summarize its findings. In assessing each of the specific road segments within the project area, the Forest Service should have disclosed the risks and benefits of each road per the travel analysis reports, and whether the proposed road management measures are consistent with the recommendations while noting changes and the supporting rationale between the 2014 forest wide TAR and the Frozen Moose project TAR. The Updated EA failed to provide any discussion in this regard and in its response, the Forest Service simply provides an excerpt from the Frozen Moose TAR that states future road construction will likely be necessary. *Id.* at 55. This hardly discloses the risks and benefits in the Frozen Moose TAR or how they were determined. Our comments further explain that adding miles to the road system runs contrary to Forest Service policy, especially where they hinder the recovery of threatened grizzly bears and bull trout, and where the agency has failed to demonstrate how expanding the road system will protect NFS lands or reflect long term funding expectations. On the whole, the Forest Service’s proposal to add forest roads to the official road system without disclosing or discussing its travel analysis reports or demonstrating whether the roads are needed based on factors from its own regulations runs contrary to Forest Service policy. In the very least, we asked that if the Forest Service chose not to identify the minimum road system for this project area, then at the very least it must explain its decision. The agency responded that including an alternative that identified a minimum road system would not meet the project’s purpose and need, which demonstrates how the agency prioritizes vegetation treatments over true ecological restoration.

Finally, we urged the Forest Service to consider the effects of climate change on the assumptions embedded in the use of historical reference conditions, and the cumulative impacts of its proposed road construction, reconstruction, use of temporary roads, and log hauling when added to the changes in weather patterns (i.e., more precipitation falling as rain instead of snow, more flood events, etc.). We also cautioned the agency not to rely wholly on the proposed design criteria to mitigate road-related impacts due to climate change. In response the Forest Service explains that climate change effects are not included in the Updated EA and the analysis is more appropriate at a forestwide scale: “the project tiers to the detailed analysis for climate change in the forest plan final EIS, alternative B modified (USDA FS 2018a).” Draft DN, Appendix B at 59. Both the Updated EA and response to comments fail to respond or acknowledge the site-specific impacts climate change will have within the project area or their effect on the effectiveness of specific design criteria such as those listed for aquatic resources and transportation. Draft DN at 36-37, 43.

Suggested Resolution: Revise the analysis in the EA to fully disclose and analyze the very real, harmful impacts of forest roads (system, closed, and temporary) on water quality, aquatic life, and wildlife habitat that

will result from the road construction, reconstruction, maintenance, log hauling, and use of heavy machinery proposed under modified proposed action. Revise the EA to disclose the cumulative impacts of climate change—including localized changes in precipitation patterns—on the forest road infrastructure and road use proposed here. In light of these impacts, re-consider the need for an EIS. Revise the Draft DN and FONSI to include road decommissioning, and to identify the minimum road system consistent with subpart A of the 2001 Roads Rule. Revise the analysis in the EA to consider in detail reasonable alternatives provided above that would meet the purpose and need, even in part.

III. Fails to demonstrate compliance with the National Forest Management Act.

Our comments outlined how the Forest Service fails to demonstrate how this project is consistent with the 2018 Forest Plan, as required by the National Forest Management Act (“NFMA”). 16 U.S.C. § 1604(i). We also explained the Forest Service fails to demonstrate how this project is consistent with the Forest Service’s 2012 Planning Rules. *See* July EA, Attachment A at 2.

A. Inconsistent with 2012 Planning Rules

NFMA and its regulations impose both procedural and substantive requirements for Forest Plans. 16 U.S.C. § 1604g(3)(B); 36 C.F.R. §§ 219.19; 219.20; 219.26. The 2018 Revised Flathead Forest Plan does not comply with the 2012 planning rules, 36 C.F.R. § 219 et seq., including but not limited to the following examples.

For example, the Forest Plan lacks plan components to provide the ecological conditions necessary to recover species listed under the federal ESA and to conserve species proposed for listing, including grizzly bears, Canada lynx and its critical habitat, bull trout and its critical habitat, and the plant species water howellia. The 2012 planning rules require a Forest Plan “provide for the diversity of plant and animal communities.” 36 C.F.R. § 219.9. The Forest Plan must include plan components “including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore their structure, function, composition, and connectivity.” *Id.* § 219.9(a)(1). Best available science shows that forest roads have numerous negative impacts on grizzly bears, bull trout, and Canada lynx, and can adversely impact water quality (see *infra*).

Yet under this project the Forest Service proposes to add 13 miles of unauthorized roads to the transportation system, and construct or reconstruct 6.8 miles of temporary roads all within secure grizzly bear core habitat. Further the agency asserts that the resulting increased road densities will comply with all applicable forest plan direction, which includes standards FW-STD-IFS-01, FW-STD-IFS-02, FW-STD-IFS-03, and FW-STD-WL-03. Draft DN at 4. Allowing for the construction of new forest roads and adding those that were previously decommissioned within grizzly bear secure core habitat, as proposed under the Frozen Moose Project is a major change from the previous Forest Plan, under which objectives and standards from Amendment 19 had proven beneficial to wildlife including grizzly bears. Especially so since decommissioned roads stayed off the system, a trend the Forest Service is reversing under this project. By eliminating Amendment 19 objectives and standards in the 2018 Forest Plan, the Forest Service rescinded its earlier commitment to decommission 518 miles of roads. The 2018 Forest Plan proposes to decommission only 30-60 miles of roads over the life of the plan, an abysmal reduction. And, based on this Frozen Moose Project, it is clear the Forest Plan intends to expand the forest road system. By adding forest roads within crucial grizzly bear habitat, the Forest Plan demonstrates its lacks standards and guidelines to maintain or

restore the ecological integrity of terrestrial ecosystems on the forest, including plan components that maintain or restore structure, function, composition, and connectivity to contribute to the recovery of grizzly bears in violation of the 2012 planning rules. The Forest Plan also lacks standards or guidelines to provide for connectivity of grizzly populations.

Additionally, the 2018 Forest Plan fails to provide ecological conditions necessary to contribute to the recovery of grizzly bears or to maintain a viable population of the species as required by the 2012 Planning Rules, 36 C.F.R. § 219.9(b). As applied here, the Forest Service improperly ignores impacts to grizzly bears by relying on a flawed Biological Opinion from the Fish and Wildlife Service (see below) that relies on an inaccurate baseline. Relying on that flawed Biological Opinion to ignore the impacts of the actions proposed under this project, here the Forest Service is allowing road construction and reconstruction that will not provide ecological conditions necessary to contribute to the recovery of grizzly bears or to maintain a viable population of the species. This is one of many projects to come on the Flathead. As applied here, the 2018 Forest Plan components allow the Forest Service to further fragment grizzly bear habitat without a cumulative impact analysis or a hard look at the impacts of road use on grizzlies. The 2018 Forest Plan components do not provide adequate protection for the grizzly bear to ensure its continued survival and recovery.

As another example, the monitoring under the 2018 Forest Plan is inadequate to ensure standards and guidelines are adhered to. A forest plan must include a monitoring program that enables the responsible official to determine if a change in plan components or other plan content that guide management of resources on the plan area may be needed. Id. § 219.12(a)(1). The monitoring program must include monitoring questions and associated indicators “designed to inform the management of resources on the plan area, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining the plan’s desired conditions or objectives.” Id. § 219.12(a)(2). The monitoring program must contain one or more monitoring questions and associated indicators addressing, inter alia, the “status of a select set of the ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern.” Id. § 219.12(a)(4)(iv).

Here, the Flathead Forest Plan monitoring program lacks questions and associated indicators to test relevant assumptions, track relevant changes, or measure management effectiveness and progress toward achieving or maintaining the ecological conditions required under § 219.9 to contribute to the recovery of the grizzly bear. In particular, MON-IFS-01 related to road closure efficacy is inadequate to ensure compliance on a site-specific level. It requires the agency to report every other year the number and percentage of road closure devices checked and percentages determined to be effective at restricting public motorized use. By giving the Forest Service complete discretion to determine how many road closure devices to check, and asking subjectively whether the agency thinks those closures have been effective, fails to ensure compliance with Desired Condition FW-DC-IFS-12 (“Road closure devices are maintained so that they are effective”). Specific to the infrastructure components affecting grizzly bear habitat, the monitoring components are insufficient to enable the responsible official to determine if a change in plan components or other plan content that guide management of resources on the plan area may be needed. 2018 Flathead Forest Plan at 158-159 (MON-NCDE-01 (OMRD, TMRD, secure core for each grizzly bear subunit in the PCA); MON-NCDE-05 (percent change in 10-year running average of OMRD, TMRD, secure core for each GBSU

with temporary increases in projects); MON-NCDE-06 (number of years to complete a project for each GBSU in the PCA)). These monitoring metrics are reported only every other year. The OMRD, TMRD, and secure core calculations are based on estimated annual numbers, and then calculated based on a 10-year running average to determine if the percent increase above OMRD, TMRD, or below secure core is exceeded. None of the standards require, and none of the monitoring metrics track, whether the numbers return to previous levels to ensure the projects and changes in OMRD, TMRD, and secure core are indeed temporary. These failings are particularly relevant given the Forest Service response to comments regarding the effectiveness of road closures: “the Forest has developed a new program to monitor closure barriers and their effectiveness and if not effective then taking actions to address the problems with these barriers (project file exhibit R-15).” Draft DN, Appendix B at 66.

Further, standard FW-STD-IFS-03 allows for “temporary changes” to OMRD, TMRD, and secure core for “projects” based on a 10-year running average. See 2018 Flathead Forest Plan at 65-66 (“In each bear management subunit within the NCDE primary conservation area, temporary changes in the open motorized route density, total motorized route density, and secure core shall be allowed for projects (as defined by “project (in grizzly bear habitat in the NCDE) in the glossary). The 10-year running average for open motorized route density, total motorized route density, and secure core numbers shall not exceed the following limits per bear management subunit: 5 percent temporary increase in open motorized route density in each subunit (i.e., open motorized route density baseline plus 5 percent); 3 percent temporary increase in total motorized route density in each subunit (i.e., total motorized route density baseline plus 3 percent); and 2 percent temporary decrease in secure core in each subunit (i.e., secure core baseline minus 2 percent).”). The Forest Plan states that to implement FW-STD-IFS-03, the agency should include calculations of the annual estimated changes in OMRD, TMRD, and secure core for the anticipated duration of the project in NEPA analyses of projects. 2018 Flathead Forest Plan, Appendix C at C-68 (directing the agency to “Incorporate the calculations for all projects under analysis in a grizzly bear subunit into the 10-year running average. Standard FW-STD-IFS-03 must be met, but there is some project-specific flexibility in how it is met.”). For the Frozen Moose Project, the agency provided a table showing the increased motorized route densities and reductions in secure core habitat under the modified proposed action. Updated EA at 72, Table 34. In comments raising concerns about the length of time the Forest Service uses to determine “temporary changes,” the agency explains “[t]he environmental assessment, forest plan, and NCDE Grizzly Bear Conservation Strategy use the term “temporary” in the sense that roads are opened for the specific objective of completing a project and closed at its conclusion.” Draft DN, Appendix B at 64. Yet, the agency also explains that “[c]ommercial treatments will take approximately 5 years to complete, but other project activities, which are funding dependent, could take up to 10 years to complete.” Draft DN at 36. At the same time, the Forest Service states “most of the activities in this decision being implemented within the next ten to fifteen years.” *Id.* at 4. As such it’s unclear what the agency deems “temporary” in the Frozen Moose project. To reiterate concerns with this approach stated in comments grizzly bear feeding, breeding, denning, and survival is determined on an annual basis – not on a 10-year running average. Second, the above 5%/3%/2% “standard” is based upon the same illegal determination by USFWS that NCDE grizzlies were recovered in 2011. Fundamentally, this is a flawed approach and fails to provide for grizzly bear recovery as required under the 2012 Planning Rule.

B. Inconsistent with 2018 Flathead Forest Plan

This project will cover all or part of six grizzly bear subunits (GBSUs) (Frozen Lake, Ketchikan, Lower Whale, Red Meadow Moose, Upper Trail, and Upper Whale Shorty). Updated EA at 64. All of these are within the Northern Continental Divide Ecosystem (“NCDE”) Primary Conservation Area. *Id.* The Forest Service points to design criteria and strategies to ensure temporal and spatial restrictions for the proposed actions are consistent with Forest Plan direction. Draft DN at 44-46. In particular, for grizzly bears the Forest Service provides the following directions:

47. To reduce the risk of disturbance to the grizzly bear population, project activities would not occur in spring habitat during the spring time period (April 1 to June 30). Management activities such as pre-commercial thinning, burning, weed spraying, and implementation of road best management practices may need to be completed during the spring time period in order to meet resource objectives. For any excepted activities, the duration of the activity and use of restricted roads may be limited (FW-GDL-TE&V-01). Project activities occurring along open roads would not be subject to this timing restriction.

Draft DN at 44. Also:

62. To implement the Frozen Moose Project within these limitations on temporary changes to access management conditions in the Lower Whale bear management subunit, some activities would occur during the denning period. This includes use of roads 5307, 10882, 10882B, 10914, E, F, L, G, and V which will be used to access units 62, 64, 67, 95, and 97.

Draft DN at 46.

The design criteria is contradictory. To state project activities would not occur in the spring time and then provide a whole host of actions that could occur during that time, as well as during the denning period fails to preclude grizzly bear disturbance during a time when bears need secure habitat conditions.

Nothing in the design criteria ensures that project activities will not impact open motorized route density, total motorized route density, or secure core in more than three adjacent subunits so as to reduce displacement impacts to grizzly bears. Nothing in the design criteria ensures that on-the-ground implementation of projects (defined as “activities” for GBSUs within the NCDE PCA) will be less than five years, or that roads will be reclaimed within one year of project implementation. This violates the 2018 Forest Plan and the terms and conditions in its corresponding Biological Opinion.

Just as problematic, if not more, is the direction that “[t]here would be no net decrease to the baseline for secure core and no net increase to the baseline open motorized route density or total motorized route density in the affected bear management subunits (FW-STD-IFS-02).” The Forest Plan itself measures “net change” as the difference in a measurement after on-the-ground changes are accounted for pre- and post- project and explicitly allows for changes during a project. Because the Frozen Moose Project is proposed for the next ten to fifteen years, *see* Draft DN at 4, direction for no net decrease to baseline secure core or net increase to baseline route densities on this long of a timeframe is essentially meaningless when “temporary changes” can occur throughout those ten to fifteen years. NFMA itself contemplates a Forest Plan lasting fifteen years. NFMA also defines “temporary road” as lasting on the landscape for less than ten years. The lack of

deadlines or schedules to ensure the temporal displacement impacts to grizzly bears resulting from the road and logging activities proposed under the Frozen Moose Project are unreasonable.

Compliance with the “no-net-change” direction is also flawed because it rests on the erroneous assumption that unauthorized roads added to the system will be impassable and therefore not contribute to the total motorized route density. To ensure roads are impassable the Forest Service provides the following design criteria:

43. All historical roads being returned to the National Forest System will be managed as impassable and have the first portion of the road (generally 50 – 300 ft) treated to make it inaccessible to wheeled motorized vehicles during the non-denning season. This may include, but is not limited to, recontouring the entrance, placement of rock barriers, berms, or natural debris.

We explained in previous comments how this direction is insufficient to effectively treat a road to ensure it is impassable to motorized vehicles, at a minimum by removing culverts and recontouring **200 - 600 ft** of any road entrance, and ultimately inadequate to ensure the survival and recovery of grizzly bears.

Failure to adequately reclaim roads and omitting unauthorized roads that the agency deems “historical” from TMRD calculations fails to “maintain the on-the-ground [2011] conditions that have contributed to the growth and expansion of the NCDE grizzly bear population” as required by the 2018 Forest Plan and its supporting Biological Opinion.. Those 2011 conditions were governed by Amendment 19, which required compliance with the definition of reclaimed road. To be deemed “reclaimed” under Amendment 19 and excluded from total motorized road density calculations, at a minimum the Forest Service was required to treat the beginning of the road (typically the first 200 to 600 feet) “to preclude its use as a motorized or non-motorized travel way”; revegetate and scatter natural debris on the remainder of the road; and remove all stream-aligned culverts under the road. Even though the 2018 Forest Plan eliminated Amendment 19 and weakened the road plan components for the Flathead, such reclamation action is still necessary for any road the agency proposes to omit from motorized route density calculations meant to ensure grizzly bear recovery.

The Forest Service has discretion to weaken its Forest Plan, but it may not ignore best available science. The Forest Service arbitrarily assumes placement of rock barriers, berms or natural debris will effectively render a road impassable without providing sufficient evidence or supporting analysis in the Updated EA. Further, revegetated unauthorized roads proposed for use and addition to the transportation system will not be returned to pre-project conditions as claimed, especially as they will not revegetate for 20 years or more. Updated EA at 64 (stating that “[h]iding cover in the form of dense shrubs and trees able to hide a bear should return in the most-intensively harvested units in approximately 20 years,” and as such this is a reasonable timeframe to expect stored roads to revegetate and provide habitat security). As we mentioned above, the Forest Service references past monitoring that it claims shows road barrier effectiveness, yet the agency fails to provide evidence or discussion of these results in its Updated EA. Draft DN, Appendix B at 64.

Where the Forest Service maintains a record of unauthorized roads, then such roads must be analyzed in an EIS as part of the existing condition, especially given the propensity of the Forest Service to continue using such roads. Frozen Moose follows other projects such as Hungry Lion, Trail Creek Salvage, Crystal Cedar,

Bug Creek, Mid-Swan, and Taylor Hellroaring as projects that have reconstructed or proposed to collectively reconstruct 37 miles of previously decommissioned roads and return them to the road system. Such actions taken together argue for the inclusion of “historic” roads in grizzly bear TMRD calculations.

Suggested Resolution: Revise the analysis in the EA and conclusions in the Draft DN and FONSI to demonstrate compliance with the 2012 planning rule and 2018 Flathead Forest Plan. Include all closed and unauthorized roads in total motorized route density calculations where the entrances have not been recontoured the requisite 200-600 ft and/or still remain hydrologically connected, this includes unauthorized roads the Forest Service proposes to add to the forest road system.

IV. Failure to demonstrate compliance with the ESA.

The Forest Service fails to ensure all of the activities authorized under this Draft DN will not jeopardize the continued existence of grizzly bear, Canada lynx, and bull trout, and that the project will not result in the destruction or adverse modification of designated critical habitat as required by the Endangered Species Act (“ESA”). 16 U.S.C. § 1536(a)(2). We were prevented from providing meaningful comments on the content of the consultation or conference documents because the Forest Service failed to provide this documentation during the official notice and comment periods. The project page still does not appear to provide the Forest Service’s Biological Assessment or Biological Evaluation for impacts to listed species, or the U.S. Fish and Wildlife Service’s response. *See* Draft DN at 66 (noting that consultation for lynx, lynx critical habitat, and grizzly bear will be completed on proposed activities before the decision is finalized, omitting any mention of consultation for bull trout).

Based on the limited information that is available, the Fish and Wildlife Service’s and Forest Service’s determinations regarding impacts from the Frozen Moose Project to listed species and designated critical habitat, are unreasonable because they, *inter alia*, fail to consider relevant factors, rely on flawed baseline conditions, lack sufficient information to support the conclusions, and ignore best available science. Specific examples for grizzly bear and Canada lynx are provided below, but due to the extremely limited information provided in the EA and Draft DN/FONSI we are unable to provide more specific examples for bull trout or its critical habitat.

Grizzly Bears

As just one example, the Fish and Wildlife Service’s determination that the Forest Service may rely on the 2018 Flathead Forest Plan Biological Opinion to assess effects on individual bears related to baseline access conditions is insufficient. As noted in our comments on the 2018 Flathead Forest Plan revision and in a 2019 notice of intent to sue under the ESA, that Biological Opinion is deeply flawed. In turn, the Forest Service’s reliance on FWS’s determination here is likewise unreasonable, arbitrary and capricious.

In addition, the Forest Service fails to consider impacts to grizzly bear population as a whole, not just the NCDE. In its response to comments that the agency’s analysis failed to properly demonstrate how expanding the road system would not hinder grizzly bear recovery, the Forest Service replied:

Additionally, this project does not hinder the continuing recovery of the grizzly bear by adhering to standards and guidelines that were developed in the recent forest planning process. The revised

forest plan incorporated the grizzly bear conservation strategy that was signed off by several federal, state, and tribal entities and is intended to maintain and enhance the recovered status of the grizzly bear in the Northern Continental Divide Ecosystem.

Draft DN Appendix B at 55.

To the extent the Forest Service relies on the Conservation Strategy for the NCDE to supplement or support its analysis here, that reliance is misplaced because the Conservation Strategy never went through a NEPA process. Reliance is therefore improper tiering. To the extent the Forest Service relies on the FEIS for the Forest Plan, that reliance is misplaced because those documents are extremely flawed—especially as related to impacts from roads and vegetation projects to grizzly bears and bull trout. Current litigation challenges the reasoning, lack of science, assumptions, and conclusions from those documents. See *WildEarth Guardians v. Steele*, Case 9:19-cv-00056-DWM. Neither the Conservation Strategy nor the FEIS for the Forest Plan considered impacts to the grizzly bear population as a whole, and the Forest Service again fails to do so in this DEIS for the Frozen Moose project. Instead, all of these documents focused on the NCDE population alone.

Canada lynx

The Forest Service states in response to comments that even though the proposed activities “may lead to adverse effects” to lynx critical habitat, it is not a violation of the ESA and “is not anticipated to have significant effects to the species.” Draft DN at 61. First, whether the impacts to critical habitat will be significant is not the crucial question for determining compliance with the ESA. The Forest Service must consult if the project “may” affect listed species or its critical habitat, and has not yet done so here. *See* Draft DN at 61 (explaining consultation “will be completed on the proposed activities before the decision is finalized”). Thus the Forest Service fails to demonstrate compliance with the ESA in this draft DN. Second, the Forest Service fails to support its conclusions regarding impacts to lynx in its analysis. Instead the agency refers to consideration of recent science in project file exhibit G-5. Draft DN at 61. The agency’s consideration and analysis must be disclosed in the NEPA documents themselves; referring to project files precludes meaningful public comment and fails to demonstrate the Forest Service took a hard look at impacts to lynx and its critical habitat, much less demonstrate compliance with the ESA.

Not only does the Forest Service fail to disclose its analysis of the new science, but it notes that the new science itself is uncertain and conflicts with the science relied on to support vegetation management standards for lynx in the 2018 Forest Plan. This further undercuts the Forest Service’s analysis of impacts to lynx and makes it even more disturbing that the full analysis is not disclosed in the NEPA documents. The failure to discuss and disclose the highly uncertain nature of impacts from vegetation management activities proposed herein is another reason why an EIS is necessary for this project.

Suggested Resolution: Refrain from signing any final DN unless and until the flaws related to ESA Section 7 consultation and conferencing have been addressed.

CONCLUSION

WildEarth Guardians appreciates your consideration of the information and concerns raised in our comments and highlighted in this objection to the Frozen Moose Project.

Cordially,

A handwritten signature in black ink, appearing to read "Adam Rissien", is displayed on a light beige rectangular background.

Adam Rissien