



February 5, 2018

Objection Reviewing Officer  
USDA Forest Service, Northern Region  
Building 26  
Fort Missoula Road  
Missoula, MT 59804

Submitted electronically to: [appeals-northern-regional-office@fs.fed.us](mailto:appeals-northern-regional-office@fs.fed.us)

Re: Flathead Forest Plan Draft ROD Objection

To whom it may concern,

Objector Winter Wildlands Alliance (WWA) files this objection to the Flathead Forest Plan revision Draft Record of Decision (draft ROD) and Final Environmental Impact Statement (FEIS), noticed December 14, 2017. Chip Weber, Flathead National Forest Supervisor, Responsible Official.

WWA filed timely comments on the Proposed Action and Draft Environmental Impact Statement (Draft EIS) for this Forest Plan revision on May 6, 2015 and September 29, 2016 respectively.

Overall we are supportive of the draft ROD. We feel that the Forest Service has done an admirable job of drafting a plan that will protect the unique character of the Flathead National Forest into the future, balance a variety of uses and forest activities, and manage recreation in a sustainable manner. Indeed, we feel that the Flathead is setting excellent precedent for sustainable recreation management in this revised forest plan. However, we believe there are a few specific pieces of the draft ROD related to winter recreation that should be improved. We offer objections and remedies to help improve the final document. These objections, as with our earlier comments, pertain to over-snow vehicle management on the forest.

### **Objections**

**I. THE DRAFT ROD IS INCORRECT IN STATING THAT THE FLATHEAD NATIONAL FOREST CURRENTLY COMPLIES WITH SUBPART C OF THE TRAVEL MANAGEMENT RULE.**

The draft ROD states that “The Forest also has completed subpart C through amendment 24 to the 1986 forest plan, and that is displayed in the Forest’s Over-Snow Vehicle Use Map as required by 36 CFR 212 subpart C.”<sup>1</sup> Likewise, in the FEIS, the Forest Service states that “Amendment 24 to the 1986 forest plan was implemented in 2006 to provide direction for over-snow winter motorized recreation, including when and where motorized over-snow vehicle use could occur. The amendment designated specific routes and play areas as well as seasons for

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<sup>1</sup> Draft ROD page 43



motorized over-snow vehicle use per §212.81 of the 2001 Travel Management Rule.”<sup>2</sup> Under the draft ROD the designated routes and OSV play areas identified in Amendment 24 are retained, with some proposed boundary changes for specific areas. In our previous comments to the Forest Service during the forest plan revision process we have consistently expressed concern that the Forest Service is conflating Amendment 24 OSV designations with compliance with Subpart C of the Travel Management Rule. We have expressed concern about this issue previously. Pages 7 through 9 of our comments on the DEIS as well as pages 2 through 11 of our scoping comments explain why we believe Amendment 24 does not comply with the Travel Management Rule. **We object to the Forest Service’s decision to rely on Amendment 24 as a substitute for winter travel planning across the forest.**

The Forest Service describes the programmatic nature of forest plans in the FEIS for the revised forest plan and we appreciate that the forest seems to have committed to undertake site-specific travel planning to formalize the new suitability decisions in this forest plan. However, the majority of OSV designation decisions – those that tier to Amendment 24 - are untouched by the revised plan, have not been subject to site-specific travel planning, and do not comply with the Travel Management Rule. To comply with the Travel Management Rule, the Flathead National Forest must undergo forest-wide site-specific winter travel planning.

The Travel Management Rule is predicated on Executive Orders 11644 and 11989. These Executive Orders require federal land management agencies to plan for off-road vehicle (including OSV) use based on protecting resources and other uses.<sup>3</sup> When designating areas or trails available for ORV use, agencies must locate them to:

- “1) minimize damage to soil, watershed, vegetation, or other resources of the public lands;
- 2) minimize harassment of wildlife or significant disruption of wildlife habitats; and
- 3) minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands.”<sup>4</sup>

The Forest Service codified these “minimization criteria” in subparts B and C (the OSV Rule) of its Travel Management Regulations<sup>5</sup> and the agency is required to comply with these criteria when designating routes or areas for OSV use. A string of federal court cases, invalidating prior Forest Service travel management decisions, is evidence that properly applying the minimization criteria is a difficult task for the agency.<sup>6</sup>

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<sup>2</sup> FEIS V1 page 10

<sup>3</sup> Exec. Order No. 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972), *as amended* by Exec. Order No. 11989, 42 Fed. Reg. 26959 (May 24, 1977).

<sup>4</sup> *Id.* § 3(a).

<sup>5</sup> 36 C.F.R. §§ 212.55, 212.81(d).

<sup>6</sup> *WildEarth Guardians v. U.S. Forest Serv.*, 790 F.3d 920, 929-32 (9th Cir. 2015); *Friends of the Clearwater v. U.S. Forest Service*, No. 3:13-CV-00515-EJL, 2015 U.S. Dist. LEXIS 30671, at \*37-52 (D. Idaho 2015); *The Wilderness Soc’y v. U.S. Forest Serv.*, No. CV08-363-E-EJL, 2013 U.S. Dist. LEXIS 153036, at \*22-32 (D. Idaho Oct. 22, 2013); *Cent. Sierra Env’tl. Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1094-98 (E.D. Cal. 2013); *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1071-74 (D. Idaho 2011).



Amendment 24 was enacted in response to a 1999 lawsuit by the Montana Wilderness Association that resulted in a settlement under which the parties created a temporary closure order for certain areas of the forest, and maps to be used as the proposed action in a public process to develop forest-wide winter direction. However, Amendment 24 only designates specific routes and areas for OSV use in the Whitefish Range. Indeed, the FEIS for Amendment 24 clearly states that:

“This programmatic Environmental Impact Statement (EIS) proposes to change the Flathead National Forest Land and Resource Management Plan (Forest Plan) by amending the objectives, standards, and guidelines that address winter motorized recreation, primarily snowmobile use...

Land use planning for National Forest System (NFS) lands involves two levels of decision-making. The first level, referred to as programmatic planning, is the development, revision or Amendment of Forest Plans that provide management direction for resource programs, uses, and protection measures. Forest Plans and associated Amendments are intended to set out Management Area prescriptions or decisions with goals, objectives, standards, and guidelines for future decisionmaking through site-specific planning. The environmental analysis accomplished at the Plan Amendment level guides resource management decisions and aids the next level of site-specific planning.

The Record of Decision, when issued, will identify and select a programmatic action which sets standards for implementation of site-specific proposals”<sup>7</sup>

Amendment 24 is programmatic in nature – it is a forest plan decision. Just as the OSV suitability decisions within this forest plan revision require additional site-specific analysis before any actual OSV *designation* decision is put into place, the Forest Service must still complete site-specific analyses to follow up on the direction given by Amendment 24. Although the Record of Decision for Amendment 24 was issued in 2006 this necessary second step – site-specific implementation – has not been completed and therefore the requirements of Subpart C of the Travel Management Rule have not been met.

Like the FEIS for the revised forest plan, the Amendment 24 FEIS does not examine the environmental effects of *specific* OSV routes or areas. Rather, both FEIS documents consider the environmental effects at a forest level. However, when designating routes and areas for OSV use the Forest Service must consider the environmental effects of its actions and apply the minimization criteria at a granular level. The court was very clear in this regard in *WildEarth Guardians*, stating there is “nothing . . . that allows the Forest Service to designate multiple areas for snowmobile use on the basis of a single forest-wide analysis and general decision making principles.”<sup>8</sup> Indeed, the Executive Orders direct the Forest Service to establish “rules requiring application of minimization criteria ‘for designation of the *specific areas* and trails on public lands on which the use of off-road vehicles may be permitted.’”<sup>9</sup> The Forest Service’s own rules define “areas” designated for ORV use as “discrete, specifically delineated space[s]

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<sup>7</sup> Amedment 24 FEIS, page 1-1

<sup>8</sup> *WildEarth Guardians*, 790 F.3d at 930

<sup>9</sup> Exec. Or. No. 11644, § 3 (emphasis added)



that [are] smaller, and, . . . in most cases much smaller, than a Ranger District.”<sup>10</sup> In *WildEarth Guardians* the Ninth Circuit explained that the Travel Management Rule “requires the Forest Service to apply the minimization criteria to *each area* it designated for snowmobile use” to “provide a more granular minimization analysis to fulfill the objectives of Executive Order 11644.”<sup>11</sup> While Amendment 24 and the revised forest plan both provide clear and detailed *programmatic* direction, neither can substitute for Subpart C *travel management* compliance.

We are concerned that the Flathead National Forest is relying on programmatic direction as a substitute for over-snow travel management decisions and concerned that the Forest Service does not clearly differentiate between these two types of analysis and direction. A thorough reading of the FEIS reveals many inconsistencies in how the Forest Service approaches winter travel management. For example, while the FEIS states that Amendment 24 designates specific routes and areas for OSV use (as described in the beginning of this section), later in the FEIS the Forest Service states that Amendment 24 determined which areas are *suitable* for OSV use rather than *designated*.<sup>12</sup> In the travel management and forest planning context there are important distinctions between motor vehicle suitability and designation decisions. This is clearly explained in the FEIS: “An area may be suitable for motorized use, but that does not mean motorized use is allowable everywhere in that setting...Travel management decisions are separate, project-level decisions that determine the specific areas and routes for motorized recreation consistent with the desired recreation opportunity spectrum as mapped.”<sup>13</sup>

#### **Remedies:**

- The final ROD should state that forest-wide site-specific winter travel planning is required to designate OSV routes and areas in compliance with Subpart C of the Travel Management Rule.
- The final ROD should clearly state that the Flathead National Forest is committed to site-specific winter travel planning within the areas deemed suitable for OSV use in the revised forest plan, including the programmatic decisions made in Amendment 24.

#### **II. THE FINAL ROD SHOULD PROVIDE A SPECIFIC TIMEFRAME FOR WHEN SITE-SPECIFIC ANALYSES, SUCH AS WINTER TRAVEL MANAGEMENT PLANNING, WILL OCCUR**

The revised forest plan contains many admirable and aspirational desired conditions. Without a plan for action, however, these desired conditions will not be achieved. We are particularly concerned about the timeframe in which the Forest will enact changes to over-snow vehicle management, including prohibiting over-snow vehicle use within new recommended Wilderness areas. The FEIS states that the time frame for when these types of site-specific analyses would occur is unknown. On page 7 of our DEIS comments we asked that the Forest Service clearly articulate a plan for winter travel planning following the forest plan revision. As part of such a plan, the final ROD should include a timeframe for when site-specific travel planning will begin.

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<sup>10</sup> 36 C.F.R. § 212.1

<sup>11</sup> 790 F.3d at 930 (emphasis in original)

<sup>12</sup> FEIS volume 2 page 12: “Areas suitable for motorized over-snow vehicle use on the Flathead National Forest were determined by the winter use provisions of the Flathead’s Winter Motorized Recreation Plan (USDA, 2006), which is amendment 24 to the 1986 forest plan.”

<sup>13</sup> FEIS volume 2, page 20.



We are pleased to see the Forest Service include a winter-specific Recreation Opportunity Spectrum in the revised Forest Plan. The winter ROS reflects desired conditions, but without a commitment to initiate and complete winter travel planning, there is no way to reach these desired conditions.

#### **Remedy**

- The Forest Service should commit to beginning site-specific winter travel management planning within one year of the completion of the Forest Plan revision. This commitment should be clearly articulated in the final ROD.

### **III. WE OBJECT TO THE DECISION TO ALLOW LATE-SEASON SNOWMOBILE USE IN THE LOST JOHNNY, SIX MILE, AND CHALLENGE/SKYLAND AREAS.**

In both our scoping and DEIS comments we raised concerns about late-season OSV activity within the Lost Johnny, Six Mile, and Challenge/Skyland areas. These concerns are outlined in pages 11 and 12 of our DEIS comments and page 11 of our scoping comments. The FEIS addresses this issue and explains in great detail why this late-season use will not unduly impact grizzly bears at the population level. However, the FEIS is misleading and flawed.

The FEIS separates bear populations within and outside the primary conservation area (PCA), as if there was no relationship or connectivity between animals living in these different areas and only really considering impacts to bears within the PCA. Outside of the PCA the Flathead is mostly open to OSV use through the entire den emergence period. Although there may not be as high of a density of bears outside of the PCA, *all* of the Flathead National Forest serves as grizzly bear habitat, and thus the assumption that late-season OSV use will only affect bears on three percent of denning habitat on the Forest is flawed. A much greater percentage of grizzly bear denning habitat is impacted by late-season use. In addition, three percent of the *most high quality* denning habitat on the forest is impacted by allowing late season use in Lost Johnny, Six Mile, and the Challenge/Skyland areas. Considering late-season OSV use in the context of the entire forest shows that forest-wide this activity, particularly within the Swan and Flathead ranges, has potentially a much greater impact to grizzly bear habitat than is disclosed in the FEIS. Therefore, allowing late-season use within high quality habitat - within the PCA -

#### **Remedy**

In the final ROD, designated routes and areas within Lost Johnny, Six Mile, and Challenge/Skyland should only be open for OSV use December 1-March 31.

### **CONCLUSION**

Overall, we think that the Flathead National Forest has done a commendable job of laying out a vision for sustainable recreation management in this forest plan revision. We believe that elements of the revised plan, such as the focused recreation areas, winter Recreation Opportunity Spectrum, and integration of OSV suitability determinations with lynx habitat concerns are groundbreaking improvements in forest planning in the national context. Our concerns center on how this forest plan revision relates to, supports, or discourages winter travel planning on the Flathead National Forest. The revised forest plan specifies areas that are suitable for OSV travel but there remain site-specific issues that must be analyzed and



addressed prior to designating specific play areas and trails. Unless the Flathead National Forest commits to completing winter travel management planning and follows through on this commitment the forest will not be in compliance with Subpart C of the Travel Management Rule.

Thank you very much for your consideration of the above objections. WWA would like to meet with the Reviewing Officer at a mutually convenient time to discuss the above concerns. Please inform us in writing of any responses to these objections or of any further opportunities to comment or decisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilary Eisen", is positioned below the word "Sincerely,".

Hilary Eisen, Lead Objector  
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