



August 25, 2026

Flat Tail Project
Cabinet Ranger District
2693 MT Hwy 200
Trout Creek, MT 59874

Re: Flat Tail Project EA

Submitted electronically via www.fs.usda.gov/r01/kootenai/projects/295448

Please accept these comments on behalf of Wild Montana and our members in response to the public comment period for the Flat Tail Project.

Since 1958, Wild Montana has been uniting and mobilizing people across Montana, creating and growing a conservation movement around a shared love of wild public lands and waters. We work at the local level, building trust, fostering collaboration, and forging agreements for protecting the wild, enhancing public land access, and helping communities thrive. Wild Montana routinely engages in public land-use planning processes, as well as local projects such as habitat restoration and timber harvest proposals, recreational infrastructure planning, oil and gas lease sales, and land acquisitions. Wild Montana and our more than 100,000 supporters are invested in the ecological integrity and quiet recreation opportunities on public lands across Montana, as well as the impact of climate change on Montana's wild places.

1. Emergency Situation Determination

The USDA Secretary's Emergency Situation Determination (ESD) is overly broad in nature, identifying large swaths of land at the national scale, and is unlikely to be enough to justify "emergency actions" under various statutes. Under section 40803 of the IIJA, an emergency situation exists only where "immediate implementation" of authorized emergency actions are necessary to provide "[r]elief from hazards threatening human health and safety" or mitigate "threats to natural resources on National Forest System land or adjacent land."¹ Pursuant to the IIJA, an emergency situation determination "shall be based on an examination of the relevant information."² Here, however, the ESD was based not on information relevant to "hazards

¹ 16 U.S.C. § 6592c(a)(2)(A) & (B).

² 16 U.S.C. § 6592c(b)(1)(C).



threatening human health and safety” or “threats to natural resources,” but on a desire to increase domestic timber production. This is further demonstrated by the Acting Associate Forest Service Chief’s Letter of April 3, 2025, “Implementation of Secretarial Memo 1078-006.” It instructs Regional Foresters to implement the Memo by immediately developing strategies “to increase their timber volume offered, leading to an agencywide increase of 25% over the next 4-5 years.” In other words, the ESD is more about increasing timber supply for economic reasons, instead of responding to ecological conditions.

Even when the Secretarial Memo 1078-006 addresses natural resource conditions, it fails to establish that an “emergency” exists sufficient to justify use of emergency authorities under statutes like the ESA. The Secretary declared that an emergency situation pertained on “112,646,000 acres ... which is 59 percent of all [Forest System] lands” based on their rating as “very high or high wildfire risk” or designation under the Healthy Forest Restoration Act (“HFRA”) as at risk from insect or disease.³ But these are not new or emergency conditions. HFRA has applied this designation to large areas of National Forest lands since 2003 without declaring an emergency. Wildfire risk ratings reflect the relative potential for a wildfire that may be difficult to manage combined with proximity to human development. Neither designation is enough to independently demonstrate the existence of an imminent threat to public safety or natural resources. Instead, the Forest Service has applied the ESD to expedite timber projects.

Whether fire risk is an imminent harm that justifies swift action by an agency has been contemplated by Courts when determining whether to grant preliminary injunctions. These cases are instructive in determining how a Court is likely to address projects within the ESD exercising emergency authorities. Courts have generally found that there needs to be an imminent danger of increased fire risk to justify allowing continued implementation of a project before the court that may violate NEPA, ESA, or other statutory requirements. “A claim of increased fire danger is given great weight when the claimed danger is imminent or the danger has begun. Without evidence of an imminent threat . . . the inability to mitigate such risks for a temporary period generally does not outweigh other public interests.”⁴

Statements that management can decrease risk, size, and severity of wildfires are not sufficient on their own to meet the imminent danger requirement. For example, the Court in *Western*

³ USDA, Secretary’s Memorandum 1078-006, Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands, 2 (April 3, 2025).

⁴ *W. Watersheds Project v. Bernhardt*, 382 F. Supp. 3d 1225, 1260 (D. Or. 2019) (internal citations omitted) (citing *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F. 3d 755, 766 (9th Cir. 2014)).



Watersheds Project was not persuaded by the agency's arguments around fire risk because it relied on general research about the fire risk reduction benefits of proper grazing, the fact that allowing fuels to accumulate over several years would increase risk, and there was competing evidence from the plaintiffs that grazing could introduce cheatgrass, which could increase fire risk instead of lowering it. The Court found that these facts as a whole did not meet the imminent danger requirement.

In contrast, the Court in *Earth Island Institute* found that the fire risk was imminent.⁵ In that case, there were several facts that helped show imminent risk, including but not limited to a previous recent fire burning over all three roads included in the project area, at least one of the Park's communities being evacuated every year, and the roads in the project were the only major features that could be used for managing wildfires in lower elevations. In general, it is likely courts will require more than a rating of "high wildfire risk" to justify use of emergency actions.

It is worth noting that the calculus about fire risk and imminent danger does change when ESA species are potentially impacted by the proposed project. "[I]n the context of alleged procedural violations of the ESA, the public interest and the balance of hardships weighs heavily in favor of a preliminary injunction due the emphasis placed by Congress on the protection of endangered and threatened species."⁶ In that case, the agency was not able to overcome the emphasis on protecting ESA species. The Court was also generally unpersuaded by the agency's fire risk argument, noting "Defendants argument [of imminent fire risk] is undercut by the fact that pine beetle infestations in this area 'peaked in 2008' and, presumably, the risk of severe fire danger has existed since then."⁷

In sum, to justify work that is expedited by the ESD, the agency will have to meet the same or similar imminent danger standard discussed here. Statements of general "high wildfire risk" are insufficient, particularly if that risk has existed for a long time or if there are possible impacts to ESA listed species. Therefore, the ESD alone is insufficient to justify projects using emergency authorities; each project will require an individualized assessment and determination of imminent fire risk, as illustrated in the cases above.

2. Project Specifics

With respect to this particular project, we have several questions:

⁵ *Earth Island Inst. v. Muldoon*, 630 F. Supp. 3d 1312, 1325-1330 (E.D. Cal. 2022).

⁶ *Alliance for the Wild Rockies v. Marten*, 253 F. Supp. 3d 1108, 1112 (D. Mont. 2017).

⁷ *Id.* at 1112-1113.



- What are the project design criteria? Table C.1 lists Best Management Practices and refers to design criteria, but it is unclear whether these Practices are required or how they are specifically in the Proposed Action.
- What monitoring plans and benchmarks are associated with this project? The EA briefly mentions that the agency will monitor for certain issues (illegal motorized use, noxious weeds, etc) but the EA provides no specifics in terms of specific monitoring plans, benchmarks for adaptive action, or how monitoring will inform future projects.
- What are the agency's restoration plans for the project area? The EA mentions vague restoration plans for soils and other resources, but provides no specifics that would permit the agency or public to ascertain whether restoration is successful or proceeding on a timely matter.
- How much will this project cost and are these costs expected to be covered by commercial receipts or is the Forest Service anticipating associated timber sales as deficit sales?

Thank you for your consideration of our comments. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilary Eisen", followed by a long horizontal line.

Hilary Eisen
Federal Policy Director
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