

Swan View Coalition Nature and Human Nature on the Same Path



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swanview.org & swanrange.org

ph/fax 406-755-1379

February 12, 2018

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

Re: Supplement to our 2/9/18:
Objection to the Revised Flathead Forest Plan and NCDE Forest Plan Amendments
Objection to the Regional Forester's Flathead Species of Conservation Concern
Submitted as PDF to appeals-northern-regional-office@fs.fed.us

Dear Objection Reviewing Officer;

Please accept this timely supplement to the Objection we filed on 2/9/18 in the above matter. It attaches documents not included in the DVD we mailed you and discusses briefly how those document are important to your review of our Objection.

Dr. Bruce McClellan's Review of Habitat Based Recovery Criteria

Attached (Attachment 1) are Dr. Bruce McClellan's 11/14/17 comments on FWS's draft Recovery Plan Supplement to incorporate Habitat Based Recovery Criteria (HBRC). We don't think that Dr. McClellan fully grasps the degree to which the HBRC will allow new roads to be built but not counted in Total Motorized Route Density (TMRD) when subsequently stored. Nonetheless, he cautions against the impacts of likely increases in human uses of open roads, closed roads and security core that will make it difficult if not impossible to maintain 2011 habitat security conditions as promised.

Firstly, Dr. McClellan cautions that the logic behind maintaining 2011 conditions "appears rational to me provided the important conditions do remain similar." Our Objection is largely devoted to demonstrating how the conditions will not remain similar, based on flawed logic in the HBRC, the Forest Plans and their definitions - as well as has already been demonstrated by Flathead Forest Plan behavior.

Dr. McClellan notes that, under the HBRC:

[I]t would be possible to end up with closed roads, that are relatively easy to walk or ride on, almost everywhere. This would not be like conditions in 2011 when many subunits have very few if any open or closed roads but are largely wilderness. The actual difference in human use of areas behind closed roads to

areas that have never been roaded should be measured and accommodated, if the goal is to maintain conditions similar to what was found in 2011.

This is our point exactly and Dr. McClellan is perhaps rephrasing the concerns that arose from Mace and Manley 1993 (DVD Folder 24), where they found that female grizzly bears needed large areas of unroaded habitat to successfully rear young and that simply slapping gates or berms on roads was not enough to limit human impacts to bears. Our Objection describes how the definition of “impassable” roads allows for roads to be built or decommissioned roads to be rebuilt, then stored/closed but not counted in TMRD.

Our Objection also describes how the Plans and HBRC would allow roads and trails, both open and closed to motorized use, to receive unlimited amounts of human use without accounting for the impacts to bears or what should be reductions in Security Core. Dr. McLellan finds:

The number of people on the road network in the future will also likely impact the amount of human use of secure core habitat areas. I think that the likelihood of a change in the amount of human use of the road network and secure core areas compared to the 2011 benchmark should be mentioned and suggestions made on how such changes will be accommodated.

Given Dr. McClellan’s opening premise that the HBRC can only be considered rational “provided the important [habitat] conditions do remain similar,” we think his use of the word “accommodated” must be interpreted to mean “accounted for” in the HBRC, not “allowed to occur on the ground.”

The Flathead’s Treatment of Two Categories of Impassable Roads

Attachment 2 is our 2/9/18 email reply to Flathead Forest Supervisor Chip Weber’s 2/6/18 response (Attachment 3) to our 1/11/18 request for his 2017 field survey of “impassable roads that are included in calculations of TMRD” (Attachment 4). In his response, Supervisor Weber essentially claims he has no inventory or category of impassable roads that are included in TMRD.

Attachment 2 details some of the instances where Supervisor Weber has previously provided us information on two categories of impassable roads: a) those that ARE included in TMRD and b) those that ARE NOT included in TMRD. The following attachments to this Supplemental Objection submit some of those documents into the Objection record. Moreover, we will attach to the email submitting this Supplemental Objection several KML/KMZ road files of both categories of impassable roads. These were previously provided us by Supervisor Weber and his staff so we could view them using Google Earth.

Folder 12 on our Objection DVD includes our 11/30/16 Notice of Intent to File Suit over the Flathead having left stream-aligned culverts in its Raghorn Road #10802 in critical bull trout habitat. This is a road the Flathead inventories/categorizes as impassable but not included in TMRD.

Attachment 5 is Supervisor Weber's 1/17/17 response to our Raghorn Road NOI. While it agrees to remove the remaining culverts, it admonishes us, writing: "we are first hearing about specific concerns regarding this road through a NOI to Sue rather than other communications." Attachment 6 is our 1/26/17 response, providing half-dozen examples of how we previously raised the Raghorn issues with Flathead staff. It also reiterates our concerns over whether the Raghorn Road will continue to be considered an impassable road following the culvert removals and whether it will or will not be counted in TMRD.

Attachment 7 is our 2/24/17 follow-up letter to Supervisor Weber where we detail our concerns that both categories of impassable roads must be included in TMRD. It also details how the revised Forest Plan DEIS does not square up with recent Flathead projects that rebuild previously decommissioned roads, then stores them as impassable while not including them in TMRD.

Attachment 8 is the ReadMe file provided by Kathy Ake in her 1/27/15 FOIA response to us. It details how to interpret the KML/KMZ files provided simultaneously for both categories of impassable road:

RoadsImpassable_FNFonly.kmz - contains FNF only roads that are impassable and not included in total route density calculations.

RoadsTMRD_FNFonly.kmz - contains FNF only roads that are impassable and are included in total route density calculations.

Both of these KMZ files are attached to the email submitting this Supplemental Objection. They cannot be converted to PDF in a meaningful way.

Attachment 9 is our 2/7/17 FOIA request that Supervisor provide us updated versions of the KMZ files provided previously (as listed above).

Attachment 10 is Supervisor Weber's 3/8/17 response to our FOIA request, in which he provided a single TMRDImpassableRoads2017Jan3.kmz file containing both categories of impassable roads. These categories he described in the ReadMe file he enclosed (Attachment 11). The KMZ file we attached to the email submitting this Supplemental Objection.

Supervisor Weber's 3/8/17 response also indicates his intention to undertake a field review "of the approximately 63 miles of impassable roads identified in the KMZ file that are not counted in Total Motorized Access Density." It is this field review and its results which caused us to ask in Attachment 4 for any similar survey that may have been conducted for impassable roads that are counted in TMRD.

Our Objection, on page 9, discusses how the Raghorn Road is being moved into and out of TMRD calculations as an impassable road. The attached documents, contrary to Supervisor Weber's 2/6/18 FOIA response (Attachment 3), demonstrate that the Flathead has two categories of impassable roads. If it appears that the Flathead's treatment of impassable roads is arbitrary and capricious, it is because it is arbitrary and capricious. So is the notion of carrying this nonsense into the revised Forest Plan, NCDE Plan Amendments, HBRC, and Conservation Strategy.

ATV Violations in Krause Basin Slop Onto Closed DNRC Lands

On page 8 of our Objection, we closed our discussion about ATV abuses in Krause Basin by mentioning MT DNRC's wish to not have Forest Service management "facilitate motorized trespass on adjacent state lands." Attachment 12 is a photo we took 1/10/18 at the Flathead National Forest boundary in Krause Basin of what remains of a DNRC sign indicating its lands are closed to ATV use. We'd provide a photo of the Forest Service sign at this location indicating ATVs are seasonally prohibited in Krause Basin on Forest Service land, but it was torn down decades ago and has been ignored ever since. The notion that the Flathead can mark ATV trails on the ground in Krause Basin and not have that ATV use continue during closed seasons and onto closed DNRC lands is arbitrary, capricious and not based in reality.

Sincerely,



Keith J. Hammer
Chair

A review of the Grizzly Bear Recovery Plan: draft Recovery Plan Supplement: Habitat-Based Recovery Criteria for the Northern Continental Divide Ecosystem.

November 14, 2017
Dr. Bruce McLellan
Wildlife Research Ecologist
BC Fish and Wildlife Branch
B.C. Ministry of Forests, Lands, and Natural Resource Operations
PO Box 1732
D'Arcy, B.C. Canada V0N 1L0

I have worked as a research ecologist on grizzly bears and mountain caribou in British Columbia for 40 years, I have studied grizzly bears using VHF and GPS telemetry plus DNA based sampling in 7 population units in this province. Most relevant to this review, I have studied grizzly bear population ecology on the northern boundary of the US Northern Continental Divide Ecosystem (NCDE) for 39 years. There, I have monitored the fates of almost 200 different individuals using radio-telemetry. Working so close to the NCDE, I am well aware of the progress of grizzly bear research and management south of the border. Over these decades, I have been impressed not only by the accumulation of knowledge on bear ecology and their requirements in the NCDE, but also how the information as resulted in science-based management actions, that in turn, has led to the recovery of this population.

The basis of the NCDE Habitat-based recovery criteria is to maintain conditions for bears as good or better as those in 2011 when the grizzly population was rapidly recovering with the logic that the situation that enabled the bear population to expand should be sufficient to maintain the population into the future. This logic appears rational to me provided the important conditions do remain similar.

I have one comment that is largely editorial in nature that I hope will increase clarity and a few others that are more functional that I think should be at least considered or mentioned.

The editorial comment:

1. Each habitat criterial measurement varied greatly among BMUs in 2011 (2014 in Appendix B). Although the plan suggests that criteria will be measured for each subunit, and changes and rate of changes will be limited for each subunit, this constraint is not clear in the italicized statements. For example, on Page 5, I think it should read (I've

Attachment 1

identified the addition by capitalizing, but change to lower case if you agree):

“The percent/amount of secure core habitat and open and total road densities on Federal lands WITHIN EACH SUB-BEAR MANAGEMENT UNIT AND within the recovery zone is maintained at or above baseline levels that existed in 2011”.

I think this is important because of the guideline that existing roads can be closed to accommodate building new roads, which could keep road densities and secure core habitat measures the same. But closed roads are usually much easier for people to walk, ride a horse or a bicycle on than if no road had ever been built. If road densities could be averaged over the entire recovery area, then it would be possible to end up with closed roads, that are relatively easy to walk or ride on, almost everywhere. This would not be like conditions in 2011 when many subunits have very few if any open or closed roads but are largely wilderness. The actual difference in human use of areas behind closed roads to areas that have never been roaded should be measured and accommodated, if the goal is to maintain conditions similar to what was found in 2011.

Ecological Comments:

1. (Page 5). As is stated on Page 2 (the first page of text), bear populations are primarily affected by the availability and quality of food sources and the levels and types of human activities, or more specifically the lethality of the human activities for bears. Road density, either OMRD or TMRD, can control the distribution of people in vehicles but may not affect the number of vehicles or people using the road network. The amount of use on the road network may affect bear populations as traffic volume has been shown to affect displacement and no doubt the chances that someone will kill a bear. The relationship between the amount of use a road network receives and the number of bears that people end up killing is unlikely linear but likely positive. The number of people on the road network in the future will also likely impact the amount of human use of secure core habitat areas. I think that the likelihood of a change in the amount of human use of the road network and secure core areas compared to the 2011 benchmark should be mentioned and suggestions made on how such changes will be accommodated.
2. Page 6. I do not follow the logic that it would be fine to add one campground per BMU per decade because that rate of increase (one per decade) occurred when the grizzly

Attachment 1

bear population was increasing. It's will not the rate that campground are added (number per decade) but the number of campgrounds (and camps/campground) that will affect bears. Just because the bear population grew when the number of campgrounds went from, for example, 1 to 2 in a decade, does not mean the bear population would be fine with 2 to 3 in the next decade or 12 to 13 a century from now. I'm not suggesting that more campgrounds cannot be added as the behaviour of people in the campgrounds is also very important (i.e garbage and firearm rules), but the logic behind the of rate of addition, I don't find correct. I agree with the suggestion to evaluate each development proposal.

3. Again, on Page 2 the plan states that bear populations are primarily affected by the availability and quality of food sources. The relationship between high-caloric foods (particularly salmon and berries) and grizzly bear density has been shown and this relationship was highlighted in the Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Ecosystem. In that strategy, 4 high caloric foods, whitebark pine, winter-killed ungulates, cutthroat trout, and army cutworm moths will be monitored. There is no mention of monitoring high-caloric foods in the NCDE plan. However, in Appendix A, Table 1, it states that bear body condition and stable isotope signatures will be used as a surrogate of habitat quality as well as any implications to changing climates. This methodology was discussed in the NCDE Draft Grizzly Bear Conservation Strategy of 2013.

There is little doubt that there will be some relationship between average body condition of individuals and a measure of habitat quality, but this relationship is complex, affected by many factors, and has yet been shown. Even in the Greater Yellowstone Ecosystem, where many bears were captured and measured (an average of about 30 bears/year not including management bears), an apparent decline in body fat (the suggested metric) of adult females to a level where they were unlikely to produce offspring was thought to be based on an insufficient sample size and additional research was required to determine if this downward trend was real or an artifact of small sample size. Relationships between changing diets, changing abundance of various foods, changes in both black and grizzly bear densities (i.e. inter and intra specific competition), and spatial and seasonal trends in body condition for each age, sex, and reproductive status of females is complex and monthly samples of bears captured and measured may need to be well distributed spatially resulting in a need to handle many bears. If this method is to be

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used, I think a table of body conditions for the benchmark, “2011 era” (not year, but group of years) by month, BMU (or groups of BMUs), sex, age class, and reproductive status of adult females should be available to judge the appropriateness of this measure, similar to the tables on road densities and levels of recreation sites. In the NCDE Draft Grizzly Bear Conservation Strategy of 2013, it is stated that “if mean annual projections of October female body fat are greater than one standard error below baseline values, we can conclude that the habitat and food base for the year was poor”. This statement may be fine, but we should see the baseline data or how many females were measured in October, and what was their age (lone adults will be fatter than subadults), reproductive status (lone adults will be fatter than those with nursing cubs), and area they were captured (females eating in cattle boneyards on the east front will be fatter than those in the alpine in the center of GNP). Such a table may provide insight to the appropriateness of using body fat as a surrogate for changes in habitat conditions.

I think changes in mean annual $\delta^{15}\text{N}$, as suggested in the Conservation Strategy, will be difficult to interpret without more research on what bears are actually feeding on and what these foods mean to their fitness and population size. The Conservation Strategy suggests correctly that a decline $\delta^{15}\text{N}$ means less meat in the bears' diet and insinuates, perhaps incorrectly, that this change is not good for the bears. A reduction in $\delta^{15}\text{N}$ may mean a great year for berries and bears focused their feeding on these fruits and got very fat and were doing well. After all, populations with an abundance of fruit (fruits don't run away) are found at much higher densities than those that must struggle to find a dead ungulate or catch and kill one themselves. The use of isotopes to infer changes in habitat quality may be misleading without knowledge of what the bears are actually feeding on.

If population trends are to be measured using Kaplan-Meier methods (needing lots of females captured and collared) as suggested in the Conservation Strategy, then why not use the bear locations to map and measure the actual high-caloric foods the bears are eating as well as measuring body condition and stable isotope ratios? Not only would these be direct measures of the important foods, but would lead to further understanding of the relationships between these foods and body condition, isotopes, and individual performance (cub production and survival) which would enable better predictions of the effects of changing climate. If bear body condition does deteriorate over the decades,

Attachment 1

future managers will be pleased if there are measurements that allow determining probable mechanisms of their declining condition – they will be frustrated if there are no measurements.

Finally, using the telemetry locations to build a reliable, habitat quality basemap (i.e. functional habitats that relate to animal fitness) could be used in combination OMRD, TMRD, human settlement and recreational use maps. A functional habitat map will enable road closures and security areas to be in areas most important to bears while not encumbering people with road closures where a high road density does not matter much to bears. Over time, with a good, representative sample of bears with GPS collars, such a map will become apparent using simply the raw GPS locations – they will be piled on top of each other in good habitats. A statistical analysis, however, may help separate the influence of human use from habitat quality, but it may not even be needed. Then, with an understanding of the relative importance of each season on bear numbers, the critical habitats to the population can be identified and increasingly isolated from people – helping both bears and human safety.

Attachment 2

Keith Hammer <keith@swanview.org> 

February 9, 2018 10:22 AM

To: Chip Weber <cweber@fs.fed.us>

Cc: Rob Carlin <rcarlin@fs.fed.us>, Kathy Ake <kake@fs.fed.us>, Michele -FS Draggoo <mdraggoo@fs.fed.us>

FOIA Clarification Regarding Culvert Data

2 Attachments, 80 KB

Chip;

Thank you for your February 6 responses to our requests for records and for getting them to us before the close of the Forest Plan Objection period.

We seek clarification, however, of what you provide in the response signed by Rob Carlin (attached) and its enclosed DVD. While we appreciate the stream-aligned culvert data you sent and will put it to good use, it appears to be for roads classified simply as ML-1 in bull trout watersheds and is not what we asked for.

We asked for, after confirming with Michele Draggoo that such a survey had been done in 2017, the "results of the survey of 'impassable' roads that ARE included in calculations of TMRD."

Your/Rob Carlin's response states: "Impassable roads by their definition are not included in TMRD calculations so an answer to your request would be there are no records. However, I believe what you meant was to request records related to roads surveyed last summer that are included in TMRD calculations. These records are attached on the enclosed DVD."

There are indeed two categories of impassable roads, those that ARE INCLUDED in TMRD and those that ARE NOT INCLUDED in TMRD. This was made clear to me by Kathy Ake, Trisha Kassner and Rob Carlin when I met with them on 12/4/14 to get clear on how to word our subsequent FOIA request for Google Earth KML files of those two categories of roads. So that's how we asked for them in our 12/12/14 FOIA request and that is how you referred to them in your 1/13/15 response. This is also how Kathy Ake describes them in the ReadMe file included on the DVD you provided along with the KML files (attached).

On 11/28/17 your provided us road and culvert survey results for your 2017 survey of impassable roads that ARE NOT INCLUDED in TMRD. Thank you for that.

This prompted me to ask Michele Draggoo and Rob Carlin via email on 11/30/17 whether a similar survey had been conducted in 2017 for impassable roads that ARE INCLUDED in TMRD. When no response came, I asked the question of them both again by email on 12/29/17. Michele responded "yes" on 1/11/18 so I requested the results of that survey the same day.

1. So I today ask the same question and ask for a response that includes acknowledgment that the Flathead has two categories of road that are considered impassable. If the answer is again "yes," then please provide those survey results. If the answer is "no," then perhaps this email will have at least help clear up communications between us for the future.

2. Concerning the 2017 survey results you did provide us: The data appear to be for stream-aligned culverts in ML-1 roads in bull trout watersheds, using a survey form and spreadsheet similar to that outlined in the Flathead's July 2016 Version 1.0 Culvert Monitoring Plan Appendix A. Are we correct in this regard and does the data reflect the Flathead's monitoring outlined in the new Culvert Monitoring Plan? Are we also correct to assume this is the whole of the Flathead's 2017 monitoring of culverts on closed

roads in bull trout habitat? Does this data and that provided us on 11/28/17 regarding culverts on impassable road that ARE NOT INCLUDED in TMRD constitute the whole of the Flathead's culvert monitoring surveys in 2017?

We'd greatly appreciate your response to our questions as soon as you are able and any clarifications you can provide.

We hope laying out the trail of this misunderstanding helps get us all back on the same page.

Thanks,

Keith



United States
Department of
Agriculture

Forest
Service

Flathead
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650 Wolfpack Way
Kalispell, MT 59901
(406) 758-5200
Fax (406) 758-5367

File Code: 6270
Date: February 6, 2018

Keith Hammer
Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901

Dear Mr. Hammer,

This letter is in response to your Freedom of Information Act (FOIA) email dated January 11, 2018. You requested the "results of the survey of "impassable" roads that are included in calculations of TMRD" in a similar fashion as "what was provided for the Not-in-TMRD roads, assuming the survey was done in a similar manner." Impassable roads by their definition are not included in TMRD calculations so an answer to your request would be there are no records. However, I believe what you meant was to request records related to roads surveyed last summer that are included TMRD calculations. These records are attached on the enclosed DVD.

Your request is identified by the following identification number: 2018-FS-R1-02100-F. If you have questions on this FOIA response, please contact Michele Draggoo at 406-758-5269.

You have the right to seek dispute resolution services from the Forest Service FOIA Public Liaison, Washington Office. You can reach them by phone at 202-205-1542, or by regular mail to Mail Stop 1143, 1400 Independence Avenue, SW, Washington, DC 20250-1143. You also have the right to seek dispute resolution services from the Office of Government Information Services at this web address <https://ogis.archives.gov>.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Carl".

FOR CHIP WEBER
Forest Supervisor

Enclosure



Caring for the Land and Serving People

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[ReadMe_FOI...docx \(14 KB\)](#)

Keith Hammer - Chair
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Fax (406) 758-5367

File Code: 6270

Date: February 6, 2018

Keith Hammer
Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901

Dear Mr. Hammer,

This letter is in response to your Freedom of Information Act (FOIA) email dated January 11, 2018. You requested the "results of the survey of "impassable" roads that are included in calculations of TMRD" in a similar fashion as "what was provided for the Not-in-TMRD roads, assuming the survey was done in a similar manner." Impassable roads by their definition are not included in TMRD calculations so an answer to your request would be there are no records. However, I believe what you meant was to request records related to roads surveyed last summer that are included TMRD calculations. These records are attached on the enclosed DVD.

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Sincerely,

FOR CHIP WEBER
Forest Supervisor

Enclosure



Attachment 4

Keith Hammer <keith@swanview.org>
To: Michele -FS Draggoo
Re: INTMRD FOIA response

January 11, 2018 7:11 PM

Michele;

Thanks for the reply. Would you please send us the results of the survey of "impassable" roads that are included in calculations of TMRD?

We would want the info and photos similar to what was provided for the Not-in-TMRD roads, assuming the survey was done in a similar manner.

Thanks,

Keith

Keith Hammer - Chair
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On Jan 11, 2018, at 6:21 PM, "Draggoo, Michele -FS" <mdraggoo@fs.fed.us> wrote:

Hi Keith,

The answer to your question below is yes. Hope you had a great holiday as well!

Michele

From: Keith Hammer [<mailto:keith@swanview.org>]
Sent: Friday, December 29, 2017 4:01 PM
To: Draggoo, Michele -FS <mdraggoo@fs.fed.us>; Carlin, Rob -FS <rcarlin@fs.fed.us>
Subject: Fwd: INTMRD FOIA response

Michele and Rob;

I wanted to remind you and re-ask my question of November 30, below and in this email thread.

Do you know if the Flathead conducted a similar or any other survey of the TMRD roads that ARE included in TMRD?

Please respond as soon as you are able.

Hope you had a good Christmas and have a Happy New Year!

Thanks,

Keith

Keith Hammer - Chair

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Begin forwarded message:

From: Keith Hammer <keith@swanview.org>

Subject: Fwd: INTMRD FOIA response

Date: November 30, 2017 3:22:53 PM MST

To: Rob Carlin <rcarlin@fs.fed.us>

Rob;

I thought I should pose the below questions to you also, since you signed the FOIA response and Michele may or not be in the office or responsible for this info.

Thanks,

Keith

Keith Hammer - Chair
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Begin forwarded message:

From: Keith Hammer <keith@swanview.org>
Subject: INTMRD FOIA response
Date: November 30, 2017 3:20:26 PM MST
To: Michele -FS Draggoo <mdraggoo@fs.fed.us>

Michele;

I am going through the Impassable Not in TMRD road inspection info you sent in response to our FOIA. It is greatly appreciated.

Do you know if the Flathead conducted a similar or any other

survey of the TMRD roads that ARE included in TMRD?

We assume the info you sent is only Not in TMRD roads since that is what the Flathead had said it intended to survey and is what we hence requested?

Thanks,

Keith

Keith Hammer - Chair

Swan View Coalition

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File Code: 6270

Date: January 17, 2017

Marla Fox, Rewilding Attorney
WildEarth Guardians
107 SE Washington, Suite 490
Portland, OR 97206

Dear Ms. Fox,

This letter is in response to your letter of November 30, 2016 identified as a "Sixty-Day Notice of Intent to Sue" (NOI) and received by the Flathead National Forest on December 5, 2016. Your letter contains 4 claims of violation of the Endangered Species Act (ESA):

1. Failure to complete adequate and lawful consultation in violation of section 7(d).
2. Failure to reinitiate consultation under the ESA due to change to the identified action and new information as a result of not completing the restoration project as proposed.
3. Failure to reinitiate consultation under the ESA due to new information about climate change and impacts to bull trout and its designated critical habitat.
4. Failure to reinitiate consultation despite designation of bull trout critical habitat.

Your letter asserts in order to avoid litigation the Forest Service should complete culvert removal on Raghorn Road #10802 or reinitiate and complete consultation with the U.S. Fish and Wildlife Service (FWS) over the impacts of its actions.

The culvert removal work on the Raghorn Road and three additional roads were authorized by the July 27, 2010 decision memo "Shorty and Coal Creeks Stream Restoration Project" where the purpose of the project was to restore stream channels to their proper widths at locations where culverts have previously failed and/or to remove culverts to prevent failures. You acknowledge this decision in your NOI on page 7. In 2012, some of the culverts were removed on the Raghorn Road with a call-when-needed contract; the final inspection report indicated 3 culverts were removed with streambank restoration in mind as well as installing rolling drain dips and waterbars (see attachments D and E to your NOI).

Upon review of the 2010 decision based on your NOI, I recognize we did indicate all culverts would be removed on the Raghorn Road. It is my intent to finish implementing the decision as specified for this road and do it as soon as we can safely and appropriately access the road. I intend to have all of the culverts removed from this road starting no earlier than July 2017 and finish before September 1, 2017 unless some unforeseen environmental conditions prevent us from completing the work during this timeframe. If this is the case, then we will remove the culverts the following year during the same time of the year. This operational window minimizes sediment for both bull trout and westslope cutthroat trout. We will likely use a call-when-needed contract to complete this work; this type of contract allows us to quickly mobilize equipment to remove all of the remaining culverts.

In the meantime, we will reinitiate consultation with the FWS on impacts of removing the remaining culverts on the Raghorn Road.



Attachment 5

It is unfortunate we are first hearing about specific concerns regarding this road through a NOI to Sue rather than through other communications. In the future, if there are concerns with a decision, please have your clients discuss their concerns with me or the other district rangers on the forest prior to filing a NOI to Sue.

Sincerely,



CHIP WEBER
Forest Supervisor

Attachment 6

WildEarth Guardians
107 SE Washington, Ste., 490
Portland, OR 972016

Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901

Friends of the Wild Swan
P.O. Box 103
Bigfork, MT 59911

January 26, 2017

Chip Weber
Forest Supervisor
Flathead National Forest
650 Wolfpack Way
Kalispell, MT 59901

Sent via U.S. mail and e-mail to cweber@fs.fed.us

Dear Forest Supervisor Weber,

Thank you very much for your January 17, 2017 response to our November 30, 2016 letter. We are very encouraged to see that the Forest Service intends to complete implementation of the 2010 “Shorty and Coal Creeks Stream Restoration Project” decision by removing all culverts on Raghorn Road. We understand that safe access and minimizing sediment impacts means the work will be completed between July 2017 and September 1, 2017. We are also very encouraged by your plans to reinitiate consultation with the U.S. Fish and Wildlife Service on impacts of removing the remaining culverts.

We are sorry that you felt taken aback by our notice letter. Swan View Coalition and Friends of the Wild Swan have, on numerous occasions, raised specific concerns about Raghorn Road to the Forest Service staff.

Specifically, Swan View Coalition submitted a Freedom of Information Act (FOIA) request on December 29, 2015 expressly identifying culverts remaining on Raghorn Road—and the Forest Service’s letter response to the FOIA request reiterated those details. Based on the results of the FOIA we highlighted concerns about Raghorn Road in the Swan View Coalition’s Roads to Ruin Report, sent to Flathead forest plan revision staff. Swan View Coalition and Friends of the Wild Swan also submitted objections¹ to the Regional Office that included an addendum to Keith Hammer’s Total Motorized Route Density report identifying outstanding concerns on Raghorn Road, and raised these concerns in personal discussions with Kathy Ake and Pat VanEimeren, among others.

Based on the lack of response to those attempts, we felt a notice letter was necessary to spur remedial action. The U.S. Supreme Court and other courts have noted that the purpose of a notice letter is to encourage discussion among parties and avoid potential litigation.

That said, we appreciate your proactive response to our letter and would like to continue to be engaged throughout the project implementation in any way possible. Please keep us

¹ *See, e.g.*, objections on Chilly James Restoration Project, Cold Jim Fuels Reduction and Forest Health Project, and Beaver Creek Landscape Restoration Project.

Attachment 6

posted on the progress of the consultation. To avoid confusion on the scope of the work, we request to review an accounting of how many culverts the Forest Service identifies and how many of those are removed. Would it be possible to attend any future site visit to Raghorn Road with the Forest Service, or compare notes once you have inspected the road?

Finally, we are concerned about how the Forest Service will treat this road both before and after project completion. Specifically, will the agency classify Raghorn Road as decommissioned or “impassable” after the culverts are removed? Will Raghorn Road count towards the total motorized road density (TMRD) before the project is complete? After?

Thank you for recommitting to completing this project. It is a crucial step to reducing harmful impacts to water quality and aquatic habitat and improving the watershed and forest resiliency.

Sincerely,

A handwritten signature in black ink that reads "Marla Fox". The signature is written in a cursive, flowing style.

Marla Fox
Rewilding Attorney, WildEarth Guardians
651.434.7737, mfox@wildearthguardians.org

Keith Hammer
Chair, Swan View Coalition
406.755.1379, keith@swanview.org

Arlene Montgomery
Program Director, Friends of the Wild Swan
406.886.2011, Arlene@wildswan.org

Attachment 7

WildEarth Guardians
107 SE Washington, Ste., 490
Portland, OR 972016

Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901

Friends of the Wild Swan
P.O. Box 103
Bigfork, MT 59911

February 24, 2017

Chip Weber
Forest Supervisor
Flathead National Forest
650 Wolfpack Way
Kalispell, MT 59901

Sent via U.S. mail and e-mail to cweber@fs.fed.us

Dear Forest Supervisor Weber,

This letter is a follow up to the letter we sent you on January 26, 2017 regarding implementation of the 2010 “Shorty and Coal Creeks Stream Restoration Project” decision. We also would like to highlight some overarching concerns we have about the Flathead National Forest’s approach to road issues. We are raising them now in light of your request to discuss our concerns with you or the other district rangers on the forest.

First are the concerns specific to Raghorn Road. As noted in our January 26 letter, we would like to be engaged as much as possible in the implementation of the decision. If possible, we would like to attend any future site visit to Raghorn Road with the Forest Service, or in the very least have the opportunity to compare notes once the agency has inspected the road. And we still have outstanding questions about how the Forest Service will treat this road both before and after project completion:

1. Will the Forest Service classify Raghorn Road as decommissioned or “impassable” after the culverts are removed?
2. Will Raghorn Road count towards the Total Motorized Route Density (TMRD) before the project is complete? After?

More broadly, we are concerned about the Flathead’s practice of designating roads as impassable so as to exclude the roads from TMRD calculations without fully reclaiming or decommissioning the roads as required by Amendment 19.¹ There are several problems with this approach.

First, the Flathead classifies roads as impassable or closed yearlong, even if culverts remain in place. We are especially concerned about the treatment of stream-aligned culverts. By

¹ See Amendment 19 Amended Environmental Assessment Appendix D (stating a reclaimed road must be treated to preclude future use as a road or trail, including “removal of culverts or other water passage structures that are aligned with stream channels,” and explaining roads treated for reclamation but not yet fully reclaimed must be included in the calculation of TMRD).

Attachment 7

definition, impassable roads are no longer passable with a motor vehicle. Thus it is highly unlikely that any culverts left in the road will be inspected, cleaned or maintained.

Second, the Flathead includes *some*, but *not all*, impassable roads and roads that are closed yearlong in the TMRD. The Flathead excludes impassable roads from TMRD if there is a signed decision designating the road as impassable—regardless of whether culverts remain.² This is inconsistent with Amendment 19, which requires a road to be reclaimed, obliterated or decommissioned and removed from the system before it is excluded from TMRD. Roads remaining on the system should be included in TMRD, even if classified as impassable.

To illustrate why the Flathead's approach is problematic, we identified over 80 "impassable" roads comprised of 110 road segments on the Flathead where there is often evidence of remaining culverts, some plugged. The Flathead improperly fails to count the 110 "impassable road" segments in the TMRD, even though they have not been reclaimed or decommissioned.

Similarly, the Flathead has 174 "impassable" road segments that are counted in TMRD. Keith Hammer's Roads to Ruin report discusses these roads in depth, particularly in Endnote 53 (http://www.swanview.org/reports/Roads_to_Ruin.pdf). The Flathead fails to insure that no culverts remain in the 174 "impassable" road segments that it does count in TMRD. This assessment is based on information available to us. We are awaiting the response to our February 7, 2017 Freedom of Information Act request for more recent documentation to verify and update this information.

Though not perfectly crafted, Amendment 19 and its evaluations of impacts to fish and wildlife made clear the importance of removing all stream-aligned culverts from roads before they could be omitted from TMRD. In an apparent compromise, while noting that culvert removal via full road reclamation is preferred, Amendment 19 allows culverts to remain in roads that are bermed shut to provide Grizzly Bear Security Core—provided the forest develops a monitoring plan to "detect any erosion or culvert blockage problems" on these bermed roads. The Flathead has not developed a monitoring plan for a single bermed road in Security Core habitat. *See* Roads to Ruin, Endnote 27.

Based on INFRA roads data the Flathead previously provided to us in KML format, we found a total of 321 roads physically closed to provide Security Core habitat. Of these, 228 were bermed ML-1 roads, 48 were "impassable" roads included in TMRD and 45 were "impassable" roads not included in TMRD. The Flathead has failed to ensure the removal or monitoring of culverts on these 321 roads. In comparison, the Flathead has reclaimed and decommissioned 435 roads to provide Security Core by removing stream-aligned culverts and re-vegetating the roads to meet Amendment 19 and National Forest Management Act requirements that the road no longer function as a road or trail and again provide wildlife security and other native resource benefits. *See* Roads to Ruin, Endnote 28. These

² *See, e.g.*, 2012 Annual Flathead National Forest, Forest Plan Amendment 19 Implementation Monitoring Report (June 2013), pages 2-3 ("If there was a signed decision stating the road was to be impassable (by natural vegetation, a bridge or large culvert removed, or the entrance obliterated), the road would not be included in TMRD calculations. However, if the road had become impassable over time and not through a specific management decision, the road will be included in TMRD calculations. From this point forward, any road that becomes impassable will be included unless a signed decision specifically states that the road is to be impassable.").

Attachment 7

circumstances heighten our concern over the Flathead's practice of not fully reclaiming and decommissioning all roads omitted from TMRD calculations to insure the removal of all culverts and adequate re-vegetation to provide quality habitat and protections for fish and wildlife.

Making things worse, the Flathead is proposing to continue this improper approach in the forest plan revision. We are encouraged that the draft environmental impact statement (DEIS) for the Revised Flathead Forest Plan appears to acknowledge that the existing forest plan, modified by Amendment 19, requires that a road be reclaimed with stream-aligned culverts removed before being omitted from TMRD calculations. But we are alarmed to see the Flathead misrepresent the no action alternative as not requiring the road also be decommissioned, removed from the road system, and re-vegetated prior to being omitted from TMRD calculations. The DEIS states that full implementation of Amendment 19 would likely require 518 miles of road to be reclaimed as decommissioned, and another 25 miles of roads to be reclaimed on the transportation system as impassable. *See* DEIS Volume 2: Revised Forest Plan (May 2016), pages 38-40.

This DEIS "simulation exercise" suggests only a small percentage of roads not counted in TMRD would be reclaimed but not fully decommissioned. We cannot square this with recent projects on the Flathead that would reconstruct previously decommissioned roads, retain them in the road system, not re-vegetate the roads, not insure that they no longer function as a road or trail, and nonetheless continue to omit them from TMRD. *See*, for example, our comments and objections on the Trail Creek Fire Salvage Project and the Hungry Lion Resource Management Project. We can only presume these projects are a preview of what will come under the selection of a Revised Forest Plan alternative derived from the DEIS, where all "action" alternatives discontinue implementation of Amendment 19.

We seek to ensure all roads are adequately accounted for. This means road segments not included in the TMRD must be fully decommissioned, removed from the system, re-vegetated, and safely stored with all culverts removed. All other road segments must be included in the TMRD calculation. If the Flathead decides to retain roads on the system in storage or as Intermittent Stored Service (ISS) roads, the Flathead must store those roads by removing culverts and eliminating risks to water quality and fish if not providing adequate monitoring and maintenance. In short, we remain ready to assist the Flathead in arriving at a minimum road system that is both ecologically and fiscally sustainable.

We would appreciate a written response to the questions and concerns identified here. We'd be glad to contact your office to set up a phone call to discuss whatever concerns remain.

Sincerely,



Marla Fox
Rewilding Attorney, WildEarth Guardians
651.434.7737, mfox@wildearthguardians.org

Attachment 7

Keith Hammer
Chair, Swan View Coalition
406.755.1379, keith@swanview.org

Arlene Montgomery
Program Director, Friends of the Wild Swan
406.886.2011, Arlene@wildswan.org

Attachment 8

RoadsImpassable_FNFonly.kmz contains FNF only roads that are impassable and not included in total route density calculations.

RoadsTMRD_FNFonly.kmz contains FNF only roads that are impassable and are included in total route density calculations.

Both KMZ files should have the linear event table fields.

The “admin_org” and “managing_org” fields indicate the district as follows:

011001 is Swan Lake (this includes the Swan Valley and Island Unit)
011004 is Spotted Bear
011006 is Hungry Horse
011007 is Glacier View
011008 is Tally Lake

The “a19code” indicates the road management as used for A19:

“CLOSED yrlng TMRD” indicates road is impassable and included in calculations of total route density

“CLOSED yrlng nat.rev” indicates road is impassable due to live vegetation, and not included in total route density

“CLOSED yrlng bdg.out” indicates road is impassable due to bridge or large culvert (>60” diameter) being removed, and not included in total route density

“CLOSED yrlng oblit” indicates road is impassable due to entrance being obliterated, and not included in total route density

Do not use the “seg_length” field for determining length of segments as the arc is often split as needed for attributing. BMP, EMP, and “seg_length” are in miles, but those segments are often split in order to assign road management. The field “GISmiles” has been added and calculated off the field “shape_length” (which apparently does not come through). Calculation was “shape_length” divided by 1609.344.

The data dictionary should explain nearly all the other remaining fields.

Swan View Coalition *Nature and Human Nature on the Same Path*



3165 Foothill Road, Kalispell, MT 59901

swanview.org & swanrange.org

ph/fax 406-755-1379

February 7, 2017

Chip Weber
Flathead Forest Supervisor
650 Wolfpack Way
Kalispell, MT 59901

Re: Information request and FOIA REQUEST via email to cweber@fs.fed.us

Dear Mr. Weber;

In response to our 12/12/14 FOIA request, you and Kathy Ake provided us with two KMZ files for “impassable/closed yearlong” roads that were at that time either included in A19 calculations of TMRD or were not. In reading your 2/6/17 response to Tom Woodbury regarding our 60-day notice of intent to file suit over the Cold Jim project, it appears those files previously provided may now be outdated and no longer represent the current roads database.

Pursuant to the provisions of the Freedom of Information Act:

1. Please provide us up-to-date (derived from the most current roads database) KMZ files that reflect the two categories of “impassable/closed yearlong” roads provided previously: 1) those included in calculations of TMRD and 2) those not included in calculations of TMRD.

Please include the linear events table depicting road attributes as you did before. Please also color code these roads so they are distinguishable from the several road and trail files already posted on the FNF web site’s Geospatial Data page and distinguishable from the TMRD and Not-TMRD KML files you previously provided (which were coded reddish-brown and blue, respectively).

2. Please provide us any and all documents indicating why the A19 status of any of the roads included in the initial KML files you provided us have been changed to the status indicated in the updated KML files you provide pursuant to this request or to any other status. These documents would include but not necessarily be limited to road inspection reports, reports to the roads database manager and criteria or directives indicating how roads are to be assigned A19 status and either included or not included in calculations of TMRD.

Attachment 9

Please feel free to contact me by phone at 755-1379 or by email at keith@swanview.org if you have any questions concerning this request or the scope of your response necessary to suit our needs.

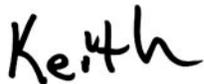
In closing, we request that any fees in connection with your furnishing this information be waived on the ground that disclosure of the documents requested primarily benefits the general public (Section 4(b)(1) of 7 CFR Subtitle A, Subpart A, Appendix A) and that, in requesting these documents, our non-profit corporation is engaged in a non-profit activity designed for the public safety, health and welfare (Section 4(a)(3) of same).

The information provided will be summarized and made available to other conservation organizations and to the general public. Public understanding will be increased significantly because the requested information will allow the public to see in summary form how the Flathead has and has not been categorizing its roads, how it has and has not been calculating motorized route densities and grizzly bear security core, and how it has and has not been dealing with the issue of stream-bearing culverts behind road closures.

We provide on our web site (at <http://www.swanview.org/home/info/foia>) supplemental information relative to the six factors the Forest Service considers when assessing fee waiver requests pursuant to its FOIA guidelines, a copy of our Certificate of Incorporation as a non-profit, a copy of our IRS letter of determination that we are a non-profit, tax-exempt corporation, and a description of past instances where we have used information provided pursuant to the FOIA to promote the public interest. This FOIA request and the supplemental information demonstrate the information we request herein "is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the Government and is not primarily in the commercial interest of the requester." Accordingly, we ask that our request for a waiver of fees be granted.

Your help in fulfilling this request is greatly appreciated.

Sincerely,



Keith J. Hammer
Chair

Cc by email to Michele Dragoo and Kathy Ake



United States
Department of
Agriculture

Forest
Service

Flathead
National
Forest

650 Wolfpack Way
Kalispell, MT 59901
(406) 758-5200
Fax (406) 758-5367

File Code: 6270

Date: March 8, 2017

Keith Hammer
Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901

Dear Mr. Hammer,

This letter is in response to your Freedom of Information Act (FOIA) letter dated February 7, 2017. In this letter, you requested the following:

- 1) Please provide us up-to-date (derived from the most current roads database) KMZ files that reflect the two categories of "impassable/closed yearlong" roads provided previously: 1) those included in calculations of TMRD and 2) those not included in calculations of TMRD.
- 2) Please provide us any and all documents indicating why the A19 status of any of the roads included in the initial KML files you provided us have been changed to the status indicated in the updated KML files you provide pursuant to this request or to any other status. These documents would include but not necessarily be limited to road inspection reports, reports to the roads database manager and criteria or directives indicating how roads are to be assigned A19 status and either included or not included in calculations of TMRD.

Enclosed is a DVD that includes a KMZ file that reflects the information as requested in item 1). However, after reading the concerns expressed in the February 23, 2017 letter from Wild Earth Guardians, which you are copied on, the Forest will be undertaking a review of the approximately 63 miles of impassable roads identified in the KMZ file that are not counted in Total Motorized Access Density (TMAD or TMRD) in order to assure consistency with Amendment 19. This review, as necessary, will include field review when on-the-ground conditions allow this spring and early summer. We intend to conduct this review prior to sending our annual report to the U.S. Fish and Wildlife Service. We will also inform Wild Earth Guardians of this review in responding to their letter of February 23, 2017.

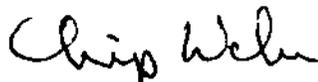
In response to item 2) we will need to do a comparison of the initial KMZ files (2013 KMZ files) previously provided to you and the KMZ files (2016 KMZ files) provided to you in this request in terms of A19 status changes. We will need about a month to compare the two file sets to see which roads changed and then search our records relative to these specific roads. Documents that explain how roads are assigned A19 status have already been provided to you in our December 19, 2014 letter.

If you have questions on this FOIA response, please contact Michele Draggoo at 406-758-5269.



You have the right to seek dispute resolution services from the Forest Service FOIA Public Liaison, Washington Office. You can reach them by phone at 202-205-1542, or by regular mail to Mail Stop 1143, 1400 Independence Avenue, SW, Washington, DC 20250-1143. You also have the right to seek dispute resolution services from the Office of Government Information Services at this web address <https://ogis.archives.gov>.

Sincerely,

A handwritten signature in black ink that reads "Chip Weber". The signature is written in a cursive, slightly slanted style.

CHIP WEBER
Forest Supervisor

Enclosure

Attachment 11

The TMRDImpassableRoads2017Jan3.kmz file has only those features that are attributed as impassable to motorized traffic, whether the road is included or not included in total route density. The 'a19code' is the item providing the road management, and has the following codes:

Value for 'a19code'	Display Color	Definition	Included in total route density
CLOSED yrIng TMRD	Red	Impassable, but included in total route density	YES
CLOSED yrIng bdg.out	Green	Impassable due to bridge or lg culvert (>60") removed	no
CLOSED yrIng nat.rev	Orange	Impassable due to natural revegetation	no
CLOSED yrIng oblit	Yellow	Impassable as entrance has been obliterated	no

The data for the __.kmz file was pulled from INFRA on January 3, 2017 for the 2016 calendar year.

As with the previous __.kmz files, do not use the BMP, EMP or SEG_LENGTH fields to determine length of the arcs. The field 'GISmiles' has been added and calculated for you.

