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October 4, 2017

OBJECTION to: Tenmile-South Helena Project

Ranger District: Helena
National Forest: Helena-Lewis & Clark
Responsible Official: Supervisor William Avey

Participants in this objection include:
Helena Hunters & Anglers Association
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Lead Objector: Gayle Joslin

Helena Hunters and Anglers (HHAA) members live, work, and recreate on the Helena National Forest and several of the organization's members are intimately familiar with the Helena Ranger District and Divide Travel Planning Area in particular. Helena Hunters' membership is made up of professionally trained natural resource managers. They are now or have previously worked in the fields of fish, wildlife, forestry, recreation management, water quality, archeology, and environmental assessment. Helena Hunters' mission statement is commensurate with stated management objectives for the Helena National Forest:

“The Helena Hunters & Anglers Association is dedicated to protecting and restoring fish and wildlife to all suitable habitats and to conserving natural resources as a public trust, vital to our general welfare. HHAA promotes the highest standards of ethical conduct and sportsmanship, and promotes outdoor recreation opportunity for all citizens to share equally.”

The Clancy-Unionville Citizens Task Force (CUCTF) was assimilated as a sub-entity of HHAA in August, 2017, so HHAA also reflects the concerns of CUCTF, who have been long-time

participants in Helena Ranger District land management proposals. CUCTF has joined with HHAA in commenting on previous planning processes that have a material bearing on this Objection to the Tenmile-South Helena Project. The Clancy-Unionville Citizens Task Force has been focused on the geographic area south of Helena, and for the last 19 years, CUCTF has actively engaged the Helena National Forest in productive discussion about travel planning for this area. A Record of Decision for the Clancy-Unionville area was signed in February 2003, and since that time CUCTF has been vigorously involved in trying to get it fully implemented.

Members of HHAA rely upon the citizen participation process provided through the National Environmental Policy Act and the National Forest Management Act, as well as laws and regulations that are part and parcel of assuring healthy, functional, intact public lands of the Helena-Lewis & Clark National Forest that sustain and nurture our way of life.

The following objection is submitted in response to the Helena-Lewis & Clark National Forest Tenmile-South Helena Project (TSH).

As per Legal Notice direction, each item listed in this objection reflects concerns raised previously (219.53(a) and 36 CFR 219.54(c)) in comment submitted on the Tenmile-South Helena Project. HHAA has submitted formal comment on this project on December 11, 2014 (scoping), March 30, 2016 (draft EIS), and December 5, 2016 (Alternative 4 release), as well as in comment submitted relative to the proposed programmatic amendment for big game security on September 26, 2014, October 4, 2014, and June 19, 2015.

OBJECTION POINTS

Objection A. NEPA Violations:

1. Site-specific amendment consequences to other standards were not adequately analyzed.
2. Purpose and Need of project is not being met by the trails proposal, supplemental NEPA documentation required.
3. Requirements for Scoping, Alternatives, Cumulative Effects regarding the trails proposal were not met.
4. Irreversible and irretrievable commitments of resources within the IRA were not considered for the trails proposal. Direct, indirect, and cumulative impact on the character of the IRA, existing human use, and wildlife needs in the area were not discussed.
5. Disregard of previous NEPA decision (CU ROD) specifying trail placement (Trail segment F). Previous Records of Decision must have a bearing on future management.
6. Tenmile-South Helena project and Telegraph project should be analyzed in a single EIS.

Objection B. NFMA Violations:

1. NFMA Violation—Use of Site-Specific Amendments to the Forest Plan – site-specific amendments have been chronically applied across the forest, effectively evading Forest Plan standards, thus they are not “site-specific.”
2. The cumulative effects of repeatedly applying site-specific amendments across the project area should have been analyzed.

3. Failure to acknowledge and then address the purpose and actual language of Forest-wide Big Game Standard 1 for habitat potential.
4. Failure to analyze direct, indirect, and cumulative impacts to deer as a wildlife indicator species.
5. Failure to apply and then analyze the project area based on Forest Plan definition for hiding cover from a “horizontal” perspective that specifically apply to big game security under dead tree conditions.
6. Arbitrary application of withdrawn Forest-wide big game security amendment and failure to revert to Forest Plan Standard 4a subsequent to withdrawal of the Forest-wide security amendment. Combining terminology from the withdrawn amendment with language from Forest Plan Standards obfuscates analysis and should have been removed.
7. Failure to comply with Forest Plan Standards for water quality that would meet State of Montana TMDLs due to nearly three-square miles (1,725 acres) of soil disturbance.

Objection C: Roadless Area Conservation Rule Violation

The Roadless Area Conservation Rule does not allow Emergency Access Route establishment in an IRA as is proposed in the Lazyman IRA for a non-system route between Nelson Gulch and Travis Creek.

SUGGESTED REMEDIES

Revise the TSH project to incorporate the following:

- Drop the trails proposal. If it could be designed to stay out of the IRA, Trail Segment C could be allowed because it closely parallels the county road. Trail Segment C would remove the safety hazard of automobile/bicycle proximity on this winding county road.
- Design project to meet all Forest Plan standards.
- Analyze the project based on the HNF Forest Plan Standard 3 definition of hiding cover that accommodates dead trees in providing cover; this definition specifically applies to the TSH Project and states:
COVER, HIDING Vegetation capable of hiding 90 percent of a standing adult deer or elk from the view of a human at a distance equal to or less than 200 feet, and having a minimum size of 40 acres. HFP VI/2
- Allow implementation of private land buffers to the extent possible without compromising standard 4a. In some cases, 4a may not be affected at all because private roads would be within ½ mile thus these areas likely do not currently constitute big game security – these buffers must immediately adjoin private lands.
- Address TMDL standards by implementing all proposed culvert installations, road decommissioning, bank stabilization, etc., but only those vegetation treatments where soil disturbance can be completely mitigated. TMDLs can not be met by disturbing nearly 3 square miles of soils associated with mechanical forest treatments, but they can be quickly and substantially improved and possibly met without vegetation treatments.
- Abandon the proposed Emergency Access Route between Nelson Gulch and Travis Creek through the Lazyman IRA.

- Prepare a new EIS in accordance with NEPA that analyzes neighboring Telegraph project in conjunction with TSH and includes any and all trail proposals (no last-minute additions).

Helena Hunters and Anglers Association values the opportunity to be involved in the public process that guides management of our nation's public lands and the biological resources that depend upon them.

A handwritten signature in black ink, appearing to read "Gayle Joslin". The signature is written in a cursive, flowing style.

Gayle Joslin, Lead Objector
Helena Hunters & Anglers Association

HHAA Board Members: Stan Frasier, President; Gary Ingman, Vice President; Steve Platt, Secretary; Thomas Baumeister, Treasurer; Bill Orsello; Rod Bullis; Charlie McCarthy; Steve McEvoy

DETAILED OBJECTION POINTS

The detailed points to which we object, and specific remedies aimed at promoting the “Remedy,” are provided below. Our Objection addresses failure to comply with NEPA, NFMA, and the Roadless Area Conservation Rule.

NEPA Violations

Objection A1: Site-specific amendment consequences to other standards were not adequately analyzed.

FEIS Vol I xxxiv: Forestwide Standard 6 requires that timber harvest openings should not exceed 100 acres (USDA 1986, p. II/19 and Appendix C, C/7)

Exemption of Forest-wide Standard 6 impacts other standards and creates a negative feedback loop that substantially contributes to denigration of Forest Standard 3 for wildlife hiding cover, thermal cover, and Standard 4a for security. The project’s solution is to exempt all standards that could not be met because of excessive clear-cut size rather than creatively designing the units to comply with Forest standards.

DROD-11: Furthermore, my draft decision includes six regeneration harvest units that exceed 100 acres - two of which are a conglomeration combination of separate units, hence the need to exempt the project from Forestwide Standard 6 (requires that timber harvest openings should not exceed 100 acres) is required. These clearcut treatments are primarily in lodgepole pine forests, a majority of which have been impacted by the mountain pine beetle, with a grass/forb understory. It is likely that the openings created as a result of clearcutting could lead to increase vulnerability to elk during the hunting season. And, the use of temporary roads and roads closed to the public for hauling could further exacerbate impacts to elk.

All of the units (FEIS I-663) over 100 acres in size do *not* occur in lodgepole pine habitat types, but rather in high elevation subalpine fire and Douglas fir types where lodgepole are a necessary seral species.

Table 220: Regeneration harvest units or groups of units that exceed 100 acres in size, by alternative states that for the selected Alternative 4, clearcuts exceeding 100 acres would extend across 1,284 acres (more than 2 square miles).

There is a circular rationale that goes on in the FEIS that says extensive areas must be clearcut to address the aftermath of pine beetle (although the FEIS also acknowledges that the forest is naturally opening itself), and it explains that because the openings would be large, the adjacent forest stands become important in providing hiding cover, but they wouldn’t be used by elk because the downfall is too deep. The rationale seems to become, ‘well this entire area isn’t important for wildlife anyway.’ The FEIS states that forage in the created openings “would not provide screening ... untreated areas surrounding the clearcuts are at risk of down timber levels in excess of 1.5 feet which could reduce the probability of elk use of these openings.”

In addition to big game, grizzly bear and lynx are also compromised and not sufficiently analyzed in the FEIS:

Threatened, endangered, and proposed species for the project area include grizzly bear (threatened), Canada lynx (threatened), and wolverine (proposed threatened). (FEIS 982)

Implementation of any of the action alternatives may affect and are likely to adversely affect grizzly bears. (FEIS 982)

Implementation of the action alternatives may affect and are likely to adversely affect lynx. (983)

The FEIS fails to adequately analyze the direct, indirect, and cumulative impacts of its decision to exempt the TSH project from important Forest Plan standards like 6 on big game and other native wildlife (including, but not limited to, grizzly bears and lynx)

The FEIS does not discuss that mountain pine beetles in forested habitats are a natural occurrence, and play an essential role in landscape evolution. And beetles do it without soil compaction and disturbance (road building, skid trails landing zones, jackpot burns) so that noxious weeds do not spread, nutrients are recycled on site, soil is fostered, and sedimentation into water courses is minimal because mechanical harvest/manipulation corridors are not present to channel soil run off into creeks. Mountain pine beetles are a component of naturally functioning ecosystems.

Remedy: Withdraw the site-specific amendment. Abide by Forest Plan standards. Redesign units to meet Forest Plan Standard 6

Objection A2: Purpose and Need of project not being met by trails proposal; supplemental NEPA document required.

Recreational trail proposals do not meet the clearly stated purpose and need of the TSH project:

Purpose and Need:

“The purpose and need for the Tenmile - South Helena Vegetation Project is ... to improve conditions for public and firefighter safety in the event of a wildfire and to maintain consistent quantity and quality of water within the municipal watershed.” V-III475

The Abstract discussion for Alternative 4 (FEIS Vol I-i & III-i) does not include the proposed trails, suggesting that it does not meet the Purpose and Need of the TSH project.

The trails proposal, which does not meet the purpose and need of the project and was not discussed or analyzed in the DEIS, represents a substantial change to the proposed action that is relevant to our environmental concerns. The trails proposal is not a minor variation to the alternatives discussed in the DEIS. Nor is the trails proposal qualitatively within the spectrum of alternatives that were discussed in the DEIS (this is because the trails proposal does not meet the purpose and need of the project). The trails proposal compromises wildlife habitat, displaces wildlife, diminishes other recreational uses including hunting opportunity, and undermines the wilderness qualities of the Inventoried Roadless Areas and future potential for these areas to be designed and managed as wilderness.

The TSH project alone is huge (99 square miles), and its wildlife impacts are far-reaching. The proposed trails project came into the mix late (after the DEIS was issued for the TSH project and well after the Divide Travel plan was issued), was not adequately analyzed, and does not meet the purpose and need of the TSH project.

Remedy: Withdraw the trails proposal and evaluate it as a separate project with the proper analysis when the Helena-Lewis and Clark Forest Plan is completed and Recreation Opportunity Spectrum analysis can be conducted for the area. In the alternative, and in accordance with 40 CFR 1502.9(c), prepare a new supplemental EIS for the TSH project with a new purpose and need section, new alternatives, and new analysis to address the trails proposal in accordance with NEPA.

Objection A3: NEPA requirements for Scoping, Alternatives, Cumulative Effects regarding the trails proposal were not met.

National Environmental Policy Act¹ compliance:

- Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS (220.6)
- a decision be made “within the range of alternatives analyzed in the environmental documents.” 220.4(c)(5)
 - An alternative should meet the purpose and need and address one or more significant issues related to the proposed action.

There was no scoping conducted. The extensive trails proposal was not part of the TSH project in October 2014, when scoping solicitations went out to the public.

The TSH project Alternative 4 provided only one option, and neither the DEIS nor FEIS provided reasonable alternatives for the trails proposal.

The trails proposal was not part of the project in February 2015, when the DEIS was issued, thus there was no opportunity for informed public review, comment, and involvement in developing alternatives for the trails proposal. As discussed above (see Objection A2) supplementation if the EIS pursuant to 40 CFR 1502.9(c) is thus required. The Forest Service has entirely failed to analyze the direct, indirect, and cumulative impacts of the trails proposal as required by NEPA.

Had the general public requested a trails proposal once the DEIS came out, they would have been told that it was not within the scope of the project and did not meet the project’s Purpose and Need. For some unknown reason, the HLCNF incorporated a previously un-vetted trails proposal into the TSH fuels mitigation project, subsequent to issuance of the DEIS. Then, in November 2016, the HLCNF issued a new “Alternative 4” that introduced the trails proposal, and the public was given two weeks to comment. Thus, the public was not involved in its development nor was analysis of its impacts conducted in the DEIS so that comment based on analysis of impacts could be offered.

The one-and-only trails alternative appeared in Alternative 4 subsequent to issuance of the DEIS.

It was disingenuous to sandwich proposed trails into an IRA between the Divide Travel Plan and the HLC Forest Plan through the Tenmile-South Helena project which has been in the works for more than three years, and then, only after the DEIS was issued.

Remedy: Withdraw the trails proposal. Develop a stand-alone trails proposal with at least one alternative that does not penetrate IRAs, and properly analyze all its direct, indirect, and cumulative consequences. In the alternative, prepare an entirely new supplemental EIS that addresses the trails proposal and TSH project in accordance with NEPA.

¹ eCFR—Code of Federal Regulations https://www.ecfr.gov/cgi-bin/text-idx?SID=04d72959e44394ac3a992b47bd370ae4&mc=true&node=pt36.2.220&rgn=div5#se36.2.220_14

Objection A4: Irreversible and irretrievable commitments of resources within the Inventoried Roadless Area were not considered for the trails proposal. Direct, indirect, and cumulative impact on: the character of the IRA, existing human use, and wildlife needs in the area, were not discussed or properly analyzed.

Inventoried Roadless Area (IRA) management under Alternative 4, compromises the area’s roadless character, future potential, and adequate functioning of current and exempted standards for wildlife that rely on the Jericho and Black Mountain-Lazyman IRAs. The direct, indirect, and cumulative effects of the known increase in human use that would be brought about with implementation of a trails system, was not analyzed with respect to wildlife impacts, potential future land designations, or displaced existing recreational uses including hunting opportunity.

Wildlife

With respect to Roadless Areas the DEIS notes:

... “projects on lands contiguous to roadless areas must analyze the environmental consequences, including irreversible and irretrievable commitment of resources on roadless area attributes, and the effects for potential designation as wilderness under the Wilderness Act of 1964. This analysis must consider the effects to the entire roadless expanse – that is both the roadless area and the unroaded lands contiguous to the roadless area.”

The FEIS acknowledges the importance of the IRAs to grizzly bears and lynx, but only for wolverine is there reference to the potential impact of the proposed Trails proposal:

Wolverine: Alternative 4 includes a proposal for a new recreational non-motorized trail. Part of the trail would run through the Lazyman Gulch IRA (and an elk security area corresponding with the IRA), from Colorado Mountain to Moose Creek. This area is one of two large blocks of habitat in the project area where human presence is generally minimal (the other being Jericho Mountain IRA), thus, the proposed trail would create the potential for effects on wolverine. This portion of the proposed non-motorized trail is currently on the landscape as a historic trail, and some use occurs, but it is not a system trail for the Forest. The proposal in Alternative 4 would bring this trail segment into the trail system, and use would most likely increase. (981) (emphasis added)

Grizzly Bear: The Tenmile South Helena project area encompasses ... one potential grizzly bear core area —the Lazyman Gulch Roadless Area (11,980 acres); but it also takes in most of the Jericho Mountain Roadless Area (9,819 acres). (980)

Lynx: The Tenmile South Helena project area, including IRAs, is ... considered occupied, and potential Lynx habitat exists within the project area, including portions of the IRAs. Lynx have been detected in the project area... (983)

The “Effects to Roadless Characteristics” table (976) does not analyze the Roadless expanse with respect to the belated trails proposal’s impacts upon existing human use or wildlife (except for wolverine). The importance of the undisturbed nature of the Lazyman IRA is recognized in the statement, “... human presence is generally minimal; thus, the proposed trail would create the potential for effects....” However, that “potential for effects” is not elaborated upon for most wildlife.

Montana Fish, Wildlife and Parks (MFWP), in comment of March 29, 2017, regarding the HELENA-LEWIS AND CLARK NATIONAL FOREST PLAN REVISION – PROPOSED ACTION (pg. 19) states:

FWP recommends that any new trails *be outside* IRAs and RWs, that any existing trails be reviewed for compatibility with wildlife needs, and that any official routes be placed in areas

already impacted or immediately adjacent to areas already impacted. Wildlife habitat is already fragmented in the Divide landscape. Conservation of remaining, intact (unfragmented) wildlife habitats and expansion of unfragmented habitat should be a priority here. This should include a review of non-motorized recreation, especially given the proximity to Helena and expected continued human population growth and subsequent increased use and pressure on the surrounding landscape. If trails proliferate, as has occurred in the South Hills of Helena (different from the HLCNF PA designation herein) in the Lazyman Gulch IRA or the Sweeney Creek area (a non-motorized area after the 2016 Travel Plan decision), this would be detrimental to wildlife. The only other unfragmented habitat in the vicinity is the Jericho Mountain IRA—there simply is no other good habitat on public land to which wildlife can redistribute.

Land Designation

The Black Mountain-Lazyman IRA, within the Tenmile-South Helena project area, was proposed for Wilderness designation, went through Congressional Review in 1988, and was endorsed as Wilderness, but was preempted by a pocket-veto by then President Regan. We believe this area deserves better than casual demotion of land status through add-on trail proposals in a recognized Inventoried Roadless Area.

The proposed new trail system within existing Inventoried Roadless Areas is objectionable because this action would, without NEPA or NFMA analysis, knowingly prevent the possibility of the area from ever receiving designated “Primitive” or “Wilderness” status and all the benefits that such designation would impart to wildlife, landscape function, and community benefit. Therefore, the following statement (939) is inaccurate:

there would be no irreversible or irretrievable effects on the recreation resource as a result of this alternative.

By proposing mountain bike (mechanized) use in the Black Mountain- Lazyman IRA, any opportunity for ecologically sensitive ROS designations: Primitive or Wilderness, would be preempted. We believe this area deserves such a designation due to its wild character, its rare old growth and mature forest wildlife habitats, its importance to the local community for its prized and proximate elk herd, as well as its juxtaposition between the Continental Divide and the Elkhorn Mountains, as linkage for wildlife including wolverine, wolves, grizzly bears, lynx and of course big game, and its solitude.

Existing Recreational Use

There was no analysis addressing ever-increasing bicycle use in the wildlife rich IRA that would ensue by creating trails and allowing mechanized use – particularly in a community that is attempting to achieve “platinum status” in vying for the title of Best Mountain Biking Destination.

There was no discussion addressing how increased human use alters the natural experience, denigrates solitude, and dramatically reduces hunting opportunity. With respect to the latter, the FEIS itself reveals that the only areas available to hunters where success might be possible, is within the IRAs which comprise the bulk of big game security. (FEIS I-329)

All or portions of Trails A, B, D, F either do not exist now or have been illegally created/expanded. A, B, D all compromise IRA status (8.7 mi). E and F do not currently exist and violate previous NEPA decisions to retain big game security (6.9 mi) in the Black Mountain-Brooklyn Bridge Elk Herd Unit (see Objection A5). Trails B and C would occur along portions of the historic Chessman Ditch (National Historic Preservation Act (Sec. 106) compliance required).

The DROD (12) makes the seriously misleading statement:

“Consolidating non-motorized trail use to designated routes and implementing the area restriction on mechanical travel will benefit wildlife by reducing displacement of wildlife into marginal habitat. Through

this non-motorized trail system the trail system will be taking proactive measures at reducing impacts to natural resources.”

Wildlife will not “benefit” from this proposal. The above statement suggests that impacts from the trails are already occurring, but most of the trails do not exist. This project should not be designed to solve a problem that does not exist.

The “Emergency Access Route” that would remain through the center of the Lazyman IRA between Nelson Gulch and Travis Creek would be a huge enticement to bicyclists who are known to create illegal trails. The Emergency Access Route would be cleared for heavy equipment use (3.3 miles) and then it would entice bicycle riders to illegally use it. Bicyclists have already illegally widened and straightened the foot trail from Colorado Mountain to Moose Creek, so it is likely they would attempt to do the same from Park City to Blackhall Meadows.

NEPA and NFMA are defied when one user group can drive permanent changes to landscape designations and physical alterations to the national forest without going through Draft EIS analysis. Not only were consequences to wildlife unanalyzed, but people have used this Roadless area for decades and are unlikely aware of this proposed change.

Furthermore, HHAA requested a Forest Service inquiry into the recent conversion of Trail A from a narrow hiking path into a chainsaw-cleared swath. Our request went unanswered. The NEPA/NFMA documentation that allowed such conversion does not exist but the DROD would simply declare that this illegally expanded trail become incorporated into the legal trail system. Such rogue behavior should not be rewarded with incorporation into the official trail system. HHAA has officially requested that this trail be restored to its former condition.

Remedy: Abandon the proposed trails project within the TSH project. A trails proposal should be brought under a separate NEPA/NFMA assessment that must analyze direct, indirect, and cumulative impacts to all native wildlife and potential growth of recreational use within this area.

NOTE: HHAA made an effort to cross-check the Decision map, comparing treatment units for which the map indicates there will be no mechanical treatments, with the Treatment Table (Vol. III). Units within the IRAs only were studied. The following units were inconsistent and did not match between the map and the table: 90bb, 178ba, 39q, 116a, 214, 97a, 116a, 239, 204. It is imperative that the maps and tables corroborate one another across the entire project.

Objection A5: The TSH project disregards previous NEPA decisions (CU ROD) regarding disposition of the Brooklyn Bridge road which was to have been a non-motorized trail.

Trails E and F do not currently exist and violate previous NEPA decisions to retain big game security (6.9 mi) within the Clancy-Unionville project area (now included within the TSH project).

Proposed placement of trail segment F on the designated non-motorized route in the CU ROD would have been consistent with past decisions. However, a new route through remaining hiding cover and parallel to the existing non-motorized route identified in the Clancy-Unionville decision is now proposed. This is not acceptable. Previous Records of Decision must have a bearing on future management.

The FEIS (III-594) response to HHAA’s recommendation regarding Trail F (no new construction. Move the proposed route ¼ mile SE back onto the existing Brooklyn Bridge non-motorized route (proposed trail F parallels the route)) was:

The final proposed designation of the Brooklyn Bridge road would be an emergency access route. A small segment of the emergency access route would also serve as a system trail however most of the trail would be new construction in a location more desirable for recreationists (per public comment). This trail would connect to the existing Old Shooting Range Trailhead and South Hills trail system.”

This response does not take into consideration the CU ROD which required the road to become a non-motorized trail. This original decision was made to minimize wildlife hiding cover deterioration.

Remedy: Abandon the trails proposal within the TSH project. Under separate NEPA review analyze a future trails proposal that conforms with past Records of Decision.

Objection A6: TSH project and Telegraph project should be analyzed in a single EIS.

In terms of defining the scope of a project, NEPA requires that all “connected actions,” “cumulative actions,” and “similar actions” as defined by 40 CFR 1508.25(a) be included and discussed in the same EIS. Cumulative actions are those that, when viewed with other proposed actions have cumulatively significant impacts, and should therefore be addressed in the same EIS. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities – like common timing or geography – that provide a basis for evaluating their environmental consequences together. The neighboring Telegraph project and TSH need to be discussed and analyzed in a single EIS because they are both cumulative and similar actions occurring concurrently that will impact the same resources (big game security, character of the IRA, lynx, grizzly bears, recreational opportunities, wolverine) at the same time and in the same area.

The Telegraph project shares a ten mile-long boundary with the Tenmile-South Helena project and exempts itself from all the same standards as are exempted for TSH. Together the Telegraph (8,100 acres) and TSH project (18,800 acres) would extend across 132 square miles (85,000 acres) from Interstate 15 near Clancy to Interstate 90 near Dear Lodge. Together these two massive projects would “treat” approximately 200 percent more acreage than has ever been “treated” to date on this landscape. This is a gigantic change.

Since the initiation of these two projects the definition of Wildland Urban Interface has changed, and the assumption that a forest-wide big game security amendment would be in place has not occurred because it was withdrawn, yet the Telegraph project was analyzed as if that amendment were in place.

Helena Hunters and Anglers Association objected to the proposed Helena Forest Plan amendment to the Big Game Security Standard and it was subsequently withdrawn. With past cover removal activities, these two mega-projects would catastrophically reduce essential security cover. And WHY -- when much of the combined project area occurs miles from the accepted definition of Urban Interface?

Remedy: Prepare a new, single EIS that analyzes direct, indirect, and cumulative impacts for both Telegraph and TSH and one that includes all aspects of both projects (including any new trails proposal).

NFMA Violations

Objection B1: NFMA Violation—Use of Site-Specific Amendments to the Forest Plan – site-specific amendments have been chronically applied across the Forest to evade Forest Plan standards, thus they are not “site-specific.”

My draft decision includes a site-specific, non-significant Forest Plan amendment which is applicable only to implementation of this decision for the Tenmile-South Helena Project. This is a one-time exemption and is not intended to replace the existing standards. (DROD-8)

Case law regarding Site-Specific Amendments to the Forest Plan on the Wallowa Whitman National Forest (WWNF) in northeastern Oregon (Case 3:12-cv-02271-HZ Document 140 Filed 12/09/14 Page 1 of 55) parallels circumstances on the HNF and specifically the TSH Project and provides the basis for HHAA’s argument.

The Project’s site-specific amendment involving exemption of eight Forest Plan Standards to the HLCNF Plan violate the National Forest Management Act (NFMA). HHAA argues that site-specific amendments are meant to address unique characteristics of a particular forest area, not conditions that are common throughout the HLCNF. By repeatedly using site-specific amendments instead of amending the whole Forest Plan, the Forest Service engages in a “piecemeal abandonment” of the Plan without having to undergo the rigor of public input and review of a new Plan. The Forest Service’s decision to adopt site-specific amendments is arbitrary and capricious because the ROD and final EIS do not adequately articulate a rational connection between the characteristics of the project area and the choice to adopt site-specific, rather than forest-wide, amendments.

The NFMA outlines a two-step process for forest planning. *Id.* at 897. First the Forest Service must develop a Land Resources Management Plan (also known as a Forest Plan). *Id.* The Forest Plan is then implemented at the site-specific level, and all activities in the forest, including timber sales, must be consistent with the governing plan. *Id.* Each Forest Plan must “form one integrated plan for each unit of the National Forest System.” 16 U.S.C. § 1604(f)(1). The Forest Service can amend a Forest Plan in “any manner whatsoever.” 16 U.S.C. § 1604(f)(4). However, the Forest Service must articulate a “rational connection between the facts found and the choice made” to enact a geographically-limited, site-specific amendment rather than a general amendment to the Forest Plan as a whole. *Lands Council v. Martin*, 529 F.3d 1219, 1228 (9th Cir. 2008). Any Forest Plan amendment that results in a “significant change” requires the Forest Service to prepare an EIS; non-significant amendments only require the simpler notice and comment process. *Lands Council v. Martin*, 529 F.3d at 1227.

HHAA argues that the Project’s site-specific amendments to the HNF Plan violate the NFMA because the agency improperly limited the geographic scope of the amendments to the Project area even though the purported need for the amendments is forest-wide, not site-specific. In other words, the decision to use a site-specific amendment to address a forest-wide problem is not rational.

Simply explaining the purpose of the Project, the desired conditions for the Forest, or stating that the amendment is site-specific because it was designed for a specific site, does not satisfy the rational connection between the facts found and the choice made. Because the Forest Service failed to explain why it chose a site-specific amendment, the decision to enact a site-specific amendment was arbitrary and capricious

Pine beetle induced forest changes occur at a forest wide level. All exemptions in the site-specific amendment are based on pine beetle infestations and therefore should be addressed through Forest Planning, not through site-specific amendments that have become chronic in their use.

The “Project-Specific Forest Plan Amendment” fails to site-specifically explain why it is being applied to this specific area of the HNF. (Project is operating under HNF Forest Plan)

Vol I-xxxii: Project-Specific Forest Plan Amendment: This exception is needed to fully implement the objectives and ensure the goals of the project area are met. Specifically, where implementation of treatment units are necessary to achieve the outcomes described in the purpose and need for the project. These include improving conditions for public and fire fighter safety, maintenance and/or enhancement of water quality, water quantity, soil resources, forage and wildlife habitat.

This explanation addresses conditions that nearly uniformly occur across the HNF. The rationale for the site-specific amendment, as stated in the Purpose and Need, is based on the existence of the Tenmile Municipal Watershed, and fear that fire-fighter safety will be compromised because of the proximity of potential fire to the city of Helena. Deep into the FEIS (655) one finds the list detailing the reasons for the site-specific amendment:

1. Project located within the municipal watershed for Helena
2. Wildland Urban Interface distribution
3. Pine beetle outbreaks
4. Water quality and quantity within MA H-1 and H-2.

Listed is the fact that there are beetle-killed trees within the project area (as there are across the landscape) and finally that Management Areas H-1 and H-2 (the Helena watershed) constitute 30% of the project area for which water quality and quantity must be supplied.

A site-specific amendment, as determined by the court, must be based on “unique characteristics of a particular forest area” (Use of Site-Specific Amendments to the Forest Plan [Wallowa Whitman National Forest (WWNF) in northeastern Oregon] (Case 3:12-cv-02271-HZ Document 140 Filed 12/09/14 Page 1 of 55)).

The first and fourth items are essentially the same. If the site-specific characteristic being used by the HLCNF to justify the site-specific amendment is the Helena Watershed, then it is important to note that more than 70% of all harvest units (not including private land buffers) within the TSH project occur OUTSIDE of the Helena city water supply watershed, and therefore these units would not qualify for site-specific exemption status on the basis of protecting the Municipal Watershed. These units largely occur within the Black Mountain-Brooklyn Bridge Elk Herd Unit which would drop below hiding cover standards because of the TSH project.

All of the treatment units will contribute to reduced water quality (see Objection B7), so exempting standards to facilitate harvest and burning are spurious.

The second justification for the site-specific amendment revolves around fire-fighter safety, which is contingent on fire occurrence and the definition of the Wildland Urban Interface (WUI). This definition seems to have changed between the TSH DEIS and FEIS, going from 250 to 28 people per square mile (Tri-County Regional Community Wildfire Protection Plan 2015 (updated 2017)). So, a huge percentage of the Helena portion of the HLCNF would fall within the newly expanded WUI and therefore would not meet case law criteria: “unique characteristics of a particular forest area.” Thus, all of the units within the TSH project would qualify under a Forest Plan amendment, but not under a site-specific amendment.

While the FEIS (Vol I-iv) states:

The Tri-County Community Wildfire Protection Plan defined the wildland urban interface boundary as the area within four miles from the boundary of an at-risk community, areas of population density greater than 28 people per square mile

The Tri-County Regional Community Wildfire Protection Plan (CWPP) 2015 Update uses and combines two definitions of WUI. The first defines WUI as areas of 250 people buffered by 1-mile intervals, up to 4 miles. The other defines WUI as areas extending the first ½ mile from communities at risk, areas of population density > 28 people per square mile, or major roads, and then extending up to an additional mile where there were sustained steep slopes. So, the final combined version uses 28 people per square mile and buffers them up to 4 miles, wherein the first mile outward is considered very high risk with a rating of 1, the second mile out is high risk with a rating of 2, the third mile is moderate with a rating of 3, and the fourth mile is low with a rating of 4. Under this new definition, a large percentage of the Helena National Forest would fall under WUI ratings of 1, 2, and 3.

These circumstances therefore are not unique to the Tenmile-South Helena project and should be addressed under Forest Plan revision. Fire management should not be using a site-specific amendment because fire is not limited to the TSH Project.

The second point, WUI distribution, is interlinked with the third point: dead trees from pine beetle occurrence. Pine-beetle killed trees occur throughout the entire HNF. So, this is not a unique situation to the project area.

Fire fighter safety is a concern across the forest and therefore the way in which the Forest Service addresses fire is not a site-specific issue, but rather a Forest-wide issue that must be addressed through Forest planning.

For these reasons, the eight exempted Forest Plan wildlife standards included in the site-specific amendment should not be applied to the TSH project

Remedy: Withdraw the site-specific amendment and address water quality and firefighter safety by applying existing Forest Plan Standards. Properly analyze the impacts of exempting the TSH project from important forest plan standards (including big game security standards) and the cumulative impact of doing the same for other projects in the same area (including, but not limited to, the Telegraph project).

Objection B2. The cumulative effects of repeatedly applying site-specific amendments across the project area should have been analyzed.

There is no analysis of the direct, indirect, or cumulative impact of multiple amendments to the HFP regarding hiding cover on summer range, thermal cover on winter range, or security on fall range as required by NFMA and NEPA. The question of whether these chronic amendments have resulted in significant impacts to big game and other wildlife, as well as taken the landscape in the opposite direction away from Forest Plan standard objectives has not been addressed.

DR0D-22: Site-Specific Forest Plan Amendment

My draft decision includes a site-specific, non-significant Forest Plan amendment which is applicable only to implementation of this decision for the Tenmile – South Helena Project. This is a one-time exemption and is not intended to replace the existing standards (See appendix E - Tenmile – South Helena Project Site-Specific Forest Plan Amendment Draft Decision). This site-specific amendment will exempt the project from the following standards: Table 4. Standards for which an exemption would be needed to implement the Tenmile South Helena project for the draft ROD

Standard

- Forestwide Standard 3 requires 50% hiding cover on each herd unit (USDA 1986, p. II/17) Yes (Only Black Mountain-Brooklyn Bridge herd unit)
- Forestwide Standard 3 requires 25% thermal cover on winter range for each herd unit (USDA 1986, p. II/17) Yes (All herd units)
- Forestwide Standard 4a requires open road densities and hiding cover ratios (USDA 1986, pp. II/17-18) Yes (Only Black Mountain-Brooklyn Bridge and Quartz Creek herd units)
- Forestwide Standard 4c requires that winter range be closed to vehicles during the winter (USDA 1986, p. II/18) Yes (All herd units)
- Forestwide Standard 6 requires that timber harvest openings should not exceed 100 acres (USDA 1986, p. II/19 and Appendix C, C/7) Yes (All herd units)
- Forestwide Standard 6 requires that logging on winter range be scheduled outside of winter (USDA 1986, p. II/19 and Appendix C, C/10) Yes (All herd units)
- Management Area H-1 requires that 25% thermal cover be provided on winter range (USDA 1986, p. III/18) Yes
- Management Area H-2 requires that 25% thermal cover be provided on winter range (USDA 1986, p. III/21) Yes

Although the DROD and FEIS state:

“the amendment is a site-specific amendment and is applicable only to implementation of the decision for the Tenmile South Helena project. This is a one-time exemption and is not intended to replace the existing standards.”

In fact, portions of this same amendment have been used previously for other projects that occurred within the Tenmile-South Helena proposed project, including the Hazardous Tree Removal and Fuels Reduction Project (2010)², and the Red Mountain Flume/Chessman Reservoir Project³ (2014), Telegraph Vegetation Project⁴ (2017), but for the Clancy-Unionville Salvage project (2012) there was no analysis of compliance with Forest Plan standards because it was classified as a salvage sale. Elsewhere on the HNF, the Cabin Gulch Vegetation Management Project⁵ utilized a site-specific amendment to exempt forest Plan wildlife standards 3 and 4a.

With respect to the Cumulative Effects Analysis, (Vol III FEIS Appx E), Figure E-1 does not display the TSH proposed activity – only past activity is displayed. But the FEIS states, “contributions of the project to cumulative effects are identified in the following tables.” But the tables do not reflect the TSH project. However, this should have been done in order to fully comprehend the Cumulative Effects of the TSH project itself. In fact, this huge proposed project would contribute more total disturbance than *all* activity ever conducted on this landscape, by adding another 18,877 acres of treatments.

The TSH site-specific amendment is *not* a one-time exemption, and in fact similar exemptions have been consistently replacing wildlife standards since 2010.

Remedy: Abandon the site-specific amendment and conduct an honest, comprehensive analysis based on Forest Plan standards. If commercial harvest is to be done, it should wait until completion of the revised Forest Plan.

Objection B3. Failure to acknowledge and then address the purpose and actual language of Forest-wide Big Game Standard 1: habitat potential.

² Red Mountain Flume/Chessman Reservoir Project www.fs.usda.gov/project/?=41571

³ http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/53487_FSPLT2_034234.pdf

⁴ Telegraph Vegetation Project <https://www.fs.usda.gov/project/?project=30353>

⁵ Cabin Gulch Vegetation Management Project www.fs.usda.gov/project/?project-12512

Big Game – 1. On important summer and winter range, adequate thermal and hiding cover will be maintained to support habitat potential. (FEIS 702)

ROD-10: All herd units within the project area currently meet the Forest Plan standard 3 requirement of 50% hiding cover. This draft decision will reduce these percentages to the extent that the Black Mountain-Brooklyn Bridge herd unit would not meet this Forest Plan thresholds. Both the Jericho and Quartz Creek herd units will continue to be consistent with the hiding cover portion of big game standard 3. However, this loss of cover is occurring naturally due to extensive tree mortality and natural tree fall associated with the mountain pine beetle infestation (Mitchell and Preisler 1998, Lewis and Hartley 2006, among others). Dead trees within treatment units comprised of lodgepole pine will continue to fall to the extent that these areas will no longer provide hiding cover. (emphasis added)

Amazingly, the FEIS and DROD go on to state:

In summary, the National Forest will likely retain habitat components necessary to maintain a viable and huntable elk population, and exempting this project from these standards should not affect the Forest's ability to realize the elk population potential established in the Forest Plan."

This summary statement ignores other big game indicator species and reinterprets wildlife standards from addressing habitat potential on National Forest land, to wildlife population levels that do not reflect current public land conditions if wildlife is displaced to private, un hunted lands as a result of detrimental management.

The consequences to adjacent private land owners, when elk in particular are displaced from public to private lands is not addressed in the FEIS/DROD even though the issue has been raised repeatedly. The ensuing growth of elk populations because elk are displaced due to cumulative public land projects, to private lands that are closed to hunting, is not addressed. The real issue is not population, it is maintenance of quality habitat that will hold big game on public land. This topic is not addressed in the FEIS or DROD, but was raised during scoping and at the DEIS.

It is unconscionable that the following statement is made when the cover standards have all been exempted:

DROD-16: "In the long term, implementation of this draft decision should provide the desired habitat conditions of adequate hiding cover to support desired levels of elk, improved forage on winter range, and adequate levels of habitat effectiveness and hunting season security. Cover should regenerate in a manner that mimics or approximates a natural range of variation. Cover will continue to be available in elk security areas; and through design criteria - cover will be retained in key areas important to elk." (emphasis added)

This statement obfuscates the truth that the landscape has been in decline so that standards will not be met. The FEIS sends the reader to an Appendix and then suggests that Forest Plan Standards are satisfied:

1604(g) (3) (B)]. Forest Plan Standards are in place to ensure that this requirement is satisfied. See Appendix B - Forest Plan Consistency Table which displays how Forestwide Standards and Management Area Standards are being met for each of the action alternatives.

And even when the reader goes to the Appendix, deciphering the truth through the double-speak is very difficult:

FEIS Appx B: STANDARD 1: On important summer and winter range, adequate thermal and hiding cover will be maintained to support the habitat potential. HOW STANDARD IS BEING MET: This standard is met. The analysis in

the site-specific amendment concludes that elk population potential established in the Forest Plan would continue to be realized. When the Forest Plan Record of Decision was signed in 1986, the selected alternative was E-1. Alternative E-1 established Forestwide elk population potential for summer and winter range.

Again, the FEIS deflects from “habitat potential” to “population” (Vol III, B-44). This approach does not meet the standard requiring that “adequate thermal and hiding cover will be maintained to support the habitat potential.” HHAA, in addition to MFWP, has repeatedly explained that if habitat potential is not maintained on public lands, that population objectives cannot be met through State of Montana hunting seasons, because without adequate hiding cover or security, big game move from public lands to publicly inaccessible private lands where populations cannot be managed. Clearly, Big Game Standard 1 is not being met and the TSH FEIS and ROD fail to honestly address the issue.

The discussion at FEIS-667 completely misses the point that MFWP strives to maintain elk numbers at a certain level. The FEIS rationale says that because there are more elk than desired, all is fine. In fact, HLCNF management is making it impossible for MFWP to meet their elk plan objectives because public lands are not being managed to allow for ethical legal harvest of elk, in part due to the cumulative effects of repeatedly applying site-specific amendment exemptions to projects.

In summary, it is clear that site-specific amendments are being used systemically across the HNF. In essence such application progressively denigrates wildlife habitat and undermines standards that have been based on peer reviewed science. We must wonder whether this effort has been purposefully designed to invalidate all wildlife Forest Plan standards in order to justify their elimination from the pending new forest plan. Indeed, the pending forest plan has NO standards for wildlife.

(https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd524852.pdf)

Remedy: Re-analyze compliance with Forest-wide Big Game Standard 1 to adequately address habitat potential as required by the standard.

Objection B4. Failure to analyze impacts to deer as a wildlife indicator species.

The DROD (22) “reduces thermal cover on 2,653 acres across the project area, and allow[s] treatments in winter range during the winter with the use of vehicles (Standards 4c and 6)”

FEIS (702): Forest-wide Wildlife Indicator Species Standard states, “commonly hunted indicator species are elk, mule deer, and bighorn sheep.”

FEIS III-597: Like elk, mule deer serve as a Forest Plan indicator for big game habitat. Aside from this designation, however, the Forest Plan provides little specific management direction for deer. The Plan assumes that management for elk will take care of the needs of deer. While mule deer exhibit behavior and habitat use patterns somewhat different from those of elk, many key habitat components (productive foraging areas, hiding cover, riparian sites, road density, and human-free areas) are important to both. Consequently, effects analyses for elk are assumed to be valid for elucidating potential effects of the project alternatives on mule deer as well.

FEIS-350: Wintering elk historically have made use of open forest environments on winter range when snow conditions allow. The proposed treatments in thermal cover on winter range should create conditions that are attractive to wintering ungulates once project activities subside (as per Thompson et al. 2005).

Thompson et al.⁶ did not suggest that “the proposed treatments in thermal cover on winter range should create conditions that are attractive to wintering ungulates.” What they actually said was:

“Let’s get over this notion that forage and cover are two distinct types of habitat on elk winter range. The forest IS forage. In cases we have observed in the Blackfoot-Clearwater WMA, the removal of forest cover did not result in more forage. Instead, it removed the arboreally produced forages that originally attracted elk and deer to these sites, and we no longer find elk in these places...”

The statement and justification that “thermal cover may be of little use to elk” (FEIS III-277) is not justified and does not take into account their smaller big game cousins, mule deer and white-tailed deer. Thermal (snow intercept) cover for both species of deer is crucial.

For deer, thermal cover is particularly important in ameliorating snow depth. Snow depth is reduced and sun-glazed snow (crusting) is substantially diminished beneath canopy cover, making movement much more energy efficient. Gilbert et al.⁷ notes where crusting is not a factor, maximum snow depth used by deer is 18 inches, and where crusting occurs, there must be less snow for deer to be present.

With respect to the value of thermal cover – particularly for deer – there was no analysis of climate change impacts on fall/winter/spring snow depths. As snow depth increases, energy use by deer increases disproportionately as compared to elk, therefore it is deer that must be specifically addressed when it comes to thermal cover.

The Clancy-Unionville Project, post-completion, barely met security and thermal cover standards. But when the Hazardous Tree Project came along in 2010, a site-specific amendment was used to exempt the project because post-project, neither standard would be met. It is no surprise that all subsequent projects have used site-specific amendments to exempt themselves from the standards.

Now the TSH FEIS and DROD propose to further manipulate the landscape so that thermal cover would be further diminished. Logic is lacking in stating that because thermal and hiding cover are diminished from what they once were, that they can be further reduced. What remains is all the more important, and for deer, what little thermal cover is left, is absolutely critical, particularly in a changing climate where snows are heavier, deeper, and occur more erratically than in the past.

Remedy: Avoid removing thermal cover on big game winter range and insure compliance with all standards designed to properly manage indicator species like deer

Objection B5. Failure to apply and then analyze the project area based on Forest Plan definition for hiding cover from a “horizontal” perspective that specifically apply to big game security under dead tree conditions.

Arbitrary use of only a portion of the Forest Plan big game standard definition leads to faulty conclusions.

The Big Game Security Standard would be exempted (DROD Appx D: 2) because the claim is made that inadequate security exists. However, adequate security may in fact exist.

⁶ Thompson, M.J., G.R. Baty, and C.L. Marcum. 2005. Elk Use of Forage and Cover in Response to Wildfire and Severe Snow Conditions. Abstract and PowerPoint from a presentation at the Annual Meeting of the Montana Chapter of the Wildlife Society, February 28 – March 3, 2005. Helena, MT.

⁷ Gilbert, P.F., O.C. Wallmo, and R.B. Gill. 1970. Effect of Snow Depth on Mule Deer in Middle Park, Colorado. JWM, Vol. 34. No. 1. pp.15-23.

The FEIS/DROD cherry-picks only a portion of the security definition to be applied so that it can be conclude that the standard must be exempted to move forward with the plan.

Field Validation, and Potential Cover Hiding Cover Methodology

The hiding cover analysis for the Tenmile/South Helena Project utilizes the Montana Department of Fish, Wildlife, and Parks (MFWP) definition included in the Forest Plan (USDA 1986, p. II/18): a stand of coniferous trees having a crown closure of greater than 40 percent. The 40% canopy cover metric is an acceptable ‘proxy’ for mapping hiding cover as it is generally assumed that stands with 40% canopy cover or greater would in turn provide adequate vertical structure that would hide 90% of an elk at 200 feet, the functional definition of hiding cover. (emphasis added) This relationship of canopy cover and stand structure is based on modeling done by Lonner and Cada (1982) and others (e.g., Leckenby et al. 1985, Thomas et al. 1988) who used canopy cover to predict the relationship between hiding cover (as estimated by canopy cover), road densities, and harvest rate the first week of the general hunting season.

The USFS definition of hiding cover in the Forest Plan allows for consideration of horizontal cover beneficial to big game (standing dead, and downed woody material). Yet this definition is not employed in the TSH project.

Instead, it adopts a “proxy” definition of hiding cover that is easier to measure, but which measures the landscape in an entirely different dimension – a dimension that is seen from above through a vertical view of canopy cover. This approach negates the value of dead and dying trees in providing hiding cover when viewed on the ground.

The Service, through the use of ‘cover-boards’ indicates that 40% canopy closure will suffice to hide 90% of an elk at 200 feet (III-604). Dead trees do not produce canopy cover, but they do provide horizontal hiding cover. Dead, dying, and downed trees provide such security without live tree overstory.

The FEIS (281) actually references the horizontal definition:

In Alternatives 3 and 4, precommercial thinning spacing will be between 10 and 12 feet which would retain hiding cover properties (i.e. ability to hide 90 percent of an elk at 200 feet)

but the FEIS does not apply the definition to the landscape in the analysis.

Although the FEIS (Appx E-604) determined that “standing dead trees still function as hiding cover in the absence of canopy cover,” the FEIS still goes on to use only the canopy cover definition. Contrary to multiple statements in the EIS, it is clear that the security standard is effective and valid, even when trees are dying.

While the FS found it more convenient to adopt a definition of hiding cover that Montana Fish & Game developed using aerial photography, the USFS definition (horizontal cover) was adopted in 1986 Forest Plan and is even more important now as some trees die and become hiding cover either in a standing or downed condition.

If the Forest Plan standard definition of horizontal hiding cover had been evaluated, results for all of the EHUs might be quite different. In fact, the security standard may still be relevant even with existing tree mortality. But, it was not evaluated, so we cannot tell. Instead the analysis concludes that the security standard must be suspended for this project.

The importance of dead trees in providing hiding cover has been demonstrated. However, the FEIS/DROD simply concludes that the hiding cover standard cannot be met with conditions on the ground, which is not true. The arbitrary use of a canopy cover definition based on a vertical/looking

down view, leads to the conclusion that the standard cannot be met and thus the standards should be thrown out and huge cuts (exceeding 100 acres) should be allowed.

Remedy: Analyze the project on the basis of horizontal hiding cover to determine if the TSH project may in fact meet Standard 3.

Objection B6: Arbitrary application of withdrawn Forest-wide big game security amendment and failure to revert to Forest Plan Standard 4a subsequent to withdrawal of the Forest-wide security amendment. Combining terminology from the withdrawn amendment with language from Forest Plan Standards obfuscates analysis and should have been removed.

Failure to revert to Forest Plan Standard 4a subsequent to withdrawal of the Forest-wide security amendment is arbitrary and capricious. In withdrawing the Forest Plan Amendment for Big Game Security as cited by HLCNF, Supervisor William Avey (December 2, 2016) states that it would be, “*Best to wait to address amending big game security in Forest Plan Revision*” and that the FS would “*Revert to existing Forest Plan big game security standard 4a till FP revision is completed.*” Neither statement has been honored in the TSH FEIS. Notably, HHAA, along with other hunting organizations, agreed to dismiss their legal challenge to the Forest Plan Amendment based on the Forest Service’s commitment to revert to Standard 4a for all projects pending completion of the Forest Plan revision process.

Language from both Big Game Security Standard 4a and the withdrawn Forest Plan Amendment for Big Game Security is combined and used throughout the FEIS and DROD. This is confusing, misleading, and arbitrary.

Withdrawn security amendment language cannot be used to define big game security. Continued use of language developed for the Big Game Security Amendment (intermittent cover, screening cover, and concealment cover), now that the amendment has been withdrawn, is confusing and misleading. MFWP also expressed concern with mixed usage of terminology between the Forest Plan Standard and the proposed amendment. Any use of terminology from the withdrawn amendment is unacceptable in the ROD. The Forest Service also failed to adequately explain why a site-specific amendment for Standard 4a is appropriate in this case. This is a violation of NFMA.

Entanglement of Big Game Security Standard – Standard 4a - with withdrawn Programmatic Forest Plan Amendment for big game occurs throughout the FEIS.

“Intermittent Refuge Areas” – This term was an integral part of the Programmatic Forest Plan Amendment that was withdrawn under challenge by five conservation groups (Case 9:16-cv-00110-DLC Document 1 Filed 08/25/16). Never-the-less it continues to be used throughout the FEIS and DROD. To justify its continued use, Wildlife Appendix G (Vol. III-673) incorporates 9 pages of the original language from the Amendment that was withdrawn, stating:

The following discussion is excerpted from the analysis included in the Big Game Security Forest Plan Amendment for the Divide Travel Plan Area Record of Decision. Although that Decision has since been withdrawn, the discussion of elk security and intermittent refuge areas contained therein is applicable to the Tenmile-South Helena Project since these concepts have been utilized in the FEIS analysis.

This is faulty circular reasoning. The language from the withdrawn amendment is used in the FEIS more than 100 times to inappropriately intimate that the existing security standard and the withdrawn amendment are analogous. Intermittent refuge areas are also cited in the DROD documents at least five times. This creates confusion relative to application of Standard 4a, under which this project is supposed

to have been analyzed. Also, specific to the withdrawn amendment are the terms “concealment cover” and “screening cover” yet they are used throughout the FEIS. The following is an example of inappropriately interwoven terminology (Vol I-331) in the title of an analysis table, wherein three terms from the withdrawn amendment (concealment cover, screening cover, and intermittent refuge areas) are combined with terms from Forest standard 4a:

“Concealment and screening cover in security and intermittent refuge areas by herd unit”

Concealment cover is referenced ten times in the FEIS while Screening Cover is discussed 37 times.

HHAA has expressed our concern regarding the inappropriate enmeshment of terminology from the amendment and the FP standard in our DEIS comment of March 30, 2016. The FEIS, in its response to HHAA DEIS comment, justifies continued use of amendment language, even though HHAA and MFWP expresses concern about confusion it creates (Vol III-275):

HHAA Comment: Table 87 (290) explains how hiding cover in security areas is allowed to be harvested, but miraculously the percentage of “security areas” remains the same no matter what silvicultural prescriptions occur within them. How does application of the 2016 security amendment more accurately reflect management of elk habitat on the ground when hiding cover is targeted for removal? The 2016 amendment is conveniently designed so that elk security never changes on the ground no matter what treatments occur, because the amendment only recognizes the *number* of “security areas”, not the acreage remaining.

HLCNF Response: There is no longer a Forest Plan amendment to Big Game standard 4a since that programmatic decision has been withdrawn. However, since the security area concept embodied in that amendment is used to analyze project effects to elk security (see the table ‘Assumptions, information used, and methodologies used to determine effects to wildlife’) additional information has been provided in the FEIS to further the security area concept (see Appendix G in the wildlife appendices in the FEIS – which is Appendix D)

The response to HHAA comment presented in the FEIS actually confirms the intent to intertwine (and thus confuse) the withdrawn amendment language with Forest Plan Big Game Standard 4A. “Elk security” as defined in the withdrawn amendment should not have again been published in the FEIS. (Vol III-272)

This is purposeful confusion brought about by inappropriate use of terminology in an amendment that has been withdrawn by the Forest Supervisor.

Remedy: Remove language from the FEIS and ROD that uses terms from the withdrawn Forest-wide security amendment, and analyze the project according to existing language in wildlife Standard 4a.

Objection B7. Failure to abide by Forest Plan Standards for water quality that would meet TMDLs.

Due to nearly three-square miles (1,725 acres) of direct soil disturbance (road work, landings, etc.) and at least another 27 square miles (17,000+ acres) of less direct disturbance through forest manipulation – water quality will not be improved.

“The purpose and need for the Tenmile - South Helena Vegetation Project is ... to maintain consistent quantity and quality of water within the municipal watershed.” (III-475)

The statement, “Significant or permanent impairment of the productivity of the land would be avoided” (FEIS III-452) clearly elucidates the fact that there is little intention of improving water quality, which is a main purpose of this project.

The Federal Water Pollution Control Act, as amended, is commonly referred to as the Clean Water Act. The Clean Water Act required each state to develop its own water quality standards, subject to the approval of the Environmental Protection Agency. Section 303(d) of the Clean Water Act (FEIS-xiii). Water quality throughout the project is substantially below standard and has been for quite some time and is not meeting Clean Water Act or Montana Water Quality standards for improvement within a given time frame.

The NEED statement is bogus since “*anthropogenic sediment to streams*” is not being addressed. Detrimental Soil Disturbance (DSD) that would occur in at least 101 harvest/treatment Units (FEIS 825). In fact, DSD would increase in all 101 units requiring mitigation, and yet from 5 to 25 percent more sediment would be produced by these units than prior to treatment. This does not meet the Purpose and Need. And if the mitigation did not occur, the percentage would range from a minimum of 15 percent to 33 percent.

About 40% of this project occurs within the municipal water supply. So, cutting and burning 60% of the project area that is *not* in the watershed, will not comply with the project’s Need to improve water quality. The site-specific amendment is not contributing to improved water quality by exempting standards for wildlife and cutting unit size limits. Water goes into the water supply from gates on Tenmile, Beaver, Minnehaha, Moose, and Walker creeks. If we assume that all units within the Tenmile drainage occur within the watershed for Helena, that leaves 207 units outside the watershed that do not meet the purpose and need regarding the watershed and therefore do not have a *specific* reason for a site-specific amendment. At the same time, all units within Tenmile and Lump Gulch drainages contribute to sediment deposition into streams which are not meeting TMDLs⁸ and thus are continuing to violate the Federal Water Pollution Control Act and NFMA.

Lewis and Clark County Water Quality Protection District’s recently completed watershed restoration plan for the Lake Helena Watershed states that a cumulative 38% reduction in sediment loading must be achieved to attain and maintain state water quality standards and meet TMDL cleanup goals. Disturbing 18,877 acres through cutting and manipulating and then burning fuels will contribute further to the sediment problems.

The Lake Helena Watershed Restoration Plan⁹ states that sediment loading to the Tenmile and Lump Gulch watersheds need to be reduced by 74 and 81 percent, respectively. HHAA contends that water quality cannot be improved by treating 452 forested units ranging in size up to several hundred acres over the life of this 20-year project. The Watershed Restoration Plan calls for sediment reductions within seven years. In the next seven years, this project will clearly exacerbate sediment problems, not solve them. This was not honestly addressed.

⁸ US EPA, 2006. Framework Water Quality Restoration Plan and Total Maximum Daily Loads (TMDLs) for the Lake Helena Watershed Planning Area: Volume II – Final Report. USEPA, Montana Operations Office, Helena. 69 pp. (<http://www.deq.state.mt.us/wqinfo/TMDL/finalReports.asp>)

⁹ **Lake Helena Watershed Restoration Plan 2016-2023**, December 2015, Lewis & Clark County Water Quality Protection District, Lake Helena Watershed Group. 131 pp.

“Grazing in riparian areas and cattle trailing along streams within grazing allotments would likely continue to contribute elevated sediment levels to streams in the project area. In the absence of other reductions to sediment delivery, streams in several of the watersheds where treatment is planned would continue to receive elevated levels of sediment due to impacts from cattle grazing.” (FEIS 855) It was not clear whether this impact would be addressed, but thousands of acres of treatment units will not improve the situation.

Water quality is a huge issue for the Divide landscape – as noted in the 2004 Roads Report by the Helena National Forest:

“Forest roads contribute from 14 to 22 tons of sediment in the Tenmile/Walker Creek municipal watersheds... [One of the top ten drainages with the] highest mileage [of roads] in highly erodible soils [is] N. Fk. Travis Cr. #137.”

And, as reported in the *Independent Record* (November 26, 2011):

“A new report shows that the Helena national Forest holds the dubious distinction of having the worst watershed conditions of all national forests and grasslands in Montana and portions of Idaho and the Dakotas. ...Upper Ten Mile Creek west of Helena, [is] rated Condition Class 3 ... CC3 is one in need of [the most] serious help.”

Given the magnitude of planned disturbance (18,877 acres), it is clear that Alternative 4 will not correct water quality conditions for this area. The level of timber harvest and manipulation, and road reconstruction (15 miles) and temporary roads (12 miles that will take up to 5 years to close), contribute sediment to watersheds. Alternative 4 does a reasonable job of decommissioning roads that should have been closed under previous projects, however timber removal and management aspects will contribute to water quality problems rather than correct them.

The FEIS failed to address HHAA’s previous inquiry:

Please specifically, provide detailed plans with supporting data indicating how Alternative 4’s vegetative treatment units would improve water quality and bring streams within the project area into compliance with water quality standards? Previous projects in this area have promised similar results but did not deliver, including: Red Mountain Flume/Chessman Reservoir Project, the Hazard Tree Project, the Clancy-Unionville project.

DROD 30: There will be a maximum of 1,725 acres of detrimental soil disturbance with this draft decision. The detrimental soil disturbance will be a short-term impact because there will be a long-term trend for soil recovery through reclamation measures and/or natural recovery processes.

This is double-speak. The FEIS (FEIS Vol II-787) defines a “long-term trend for soil recovery” as 50 years with scarification and seeding, and 100+ years where only natural recovery processes would occur. Clearly, disturbance of 1,725 acres of soil disturbance will not conform with the Lewis & Clark County’s Watershed Restoration Plan (2015) which calls for conformance with TMDLs within 7 years of the plan. Conformance would have to occur by 2022, however the Project would last until at least 2038. The DROD (23) states:

Detrimental soil disturbance associated with the Tenmile – South Helena project will be an irretrievable commitment of soil resource; however, soils will recover over the long-term following detrimental disturbance from proposed vegetation management actions.

FEIS Vol I-iv: Multiple 303(d) listed streams are located within the project area with impairments such as sedimentation and elevated heavy metals concentrations (MT DEQ 2016).

FEIS Vol III Appx B1-87: Fire suppression methods will be selected to minimize or eliminate soil disturbance of the watershed.

This statement cannot be met with mechanical treatment which disturbs at least 1,725 acres of soil.

FEIS VOL II-861: Sediment delivery from haul routes was estimated to be slightly greater under Alternative 4 as under Alternatives 2 and 3 as a result of using Forest Road 299 as a haul route, but overall reduction from existing condition (approximately 85 percent) would still be quite substantial Table 271.

Not only does Alt 4 produce more sediment than the other alternatives, this discussion is smoke and mirrors because it uses the closure of routes that should have been addressed years ago under previous NEPA decisions. It then goes on to state that sediment reduction from present condition is 85%. This is disingenuous. If roads had been closed as promised in previous decisions, the current baseline would be much lower. From the FEIS, it is clear that sediment would be created due to Alt 4.

Proposed forest manipulation, conducted ostensibly to improve water quality, if a fire should occur, is not adequately analyzed with respect to soil compaction, sedimentation, weed spread, and vegetation removal – all of which are known to increase runoff from manipulated areas. There was no discussion regarding the relationship of noxious weeds and runoff. Noxious weed expansion reduces the landscape's ability to hold water and contributes to sediment loads. Yet the FEIS (Vol I xli) states that there will be "2687 acres of Potential Weed Infestation Related to Treatment Implementation in Alt 4."

Comprehensive analysis is not provided relative to how such runoff would diminish water quality and alter the hydrologic cycle resulting in altered seasonal flows and contribution to increased xeric conditions across the landscape.

TMDLs could be quickly and substantially improved and possibly met without cutting a single stick of timber. Merely by implementing all proposed culvert installations, road decommissioning, bank stabilization, etc. TMDLs can not be met within the required 7 year time-frame by disturbing vast acreages of soils associated with mechanical forest treatments.

Remedy: Comply with all Forest Plan Standards for water quality in order to meet TMDLs. Implement all proposed non-forest treatments to address sedimentation including proposed culvert installations, road decommissioning, bank stabilization, etc.

Objection C: Roadless Area Conservation Rule Violation

The Roadless Area Conservation Rule does not allow Emergency Access Route establishment in an IRA as is proposed in the Lazyman IRA for a non-system route between Nelson Gulch and Travis Creek.

The Roadless Area Conservation Rule (RACR) provides definitions of roads taken from the National Forest System Road management regulations (36 CFR part 212), but does not provide a definition of "Emergency Access Route."

On DROD map, “Transportation Plan and Route Closure Methods” the Emergency Access Route between Nelson Gulch and Travis Creek shows up as a green route about 3 miles long and is obtusely marked as 4000-001. There is not a map or list of roads (system or otherwise) in the FEIS. In referencing *The HNF Road Report (2004)* we do not find any road or route, “system” or otherwise, with this number. We also note that in the FEIS, Figure 83, entitled “Existing roads in the Tenmile-South Helena Project Area” does not reflect any such road or route. Only Figure 86, “Haul Roads and Proposed Road Work, Alternative 4” identifies a black line that becomes the “Emergency Access Route” on the DROD map.

While the DROD (29) states: “No road construction or reconstruction, including no temporary road building will occur within the IRA,” it also says that heavy equipment will utilize this route to gain access to the Roadless Area where at least nine treatment units occur, including at least two intermediate harvest units, in which ground based Tractor methods would be used. In order to utilize the proposed Emergency Access Route to bring heavy equipment into the Lazyman IRA, substantial work and ground disturbance would be necessary to make this route usable for heavy equipment. So, although the DROD and FEIS does not call it a “road,” the Emergency Access Route between Nelson Gulch and Travis Creek would become a road, that would then be “closed” as indicated with the following language (DROD 5):

Road surface will be stabilized and blocked with downed trees and/or fencing, and drainage will be restored. Administrative motorized use will be restricted, with the exception of first-response vehicles responding to an emergency situation, such as a wildfire. Beyond the minimum work needed for implementation of this project, roads will not be improved for the purpose of providing emergency access.

The TSH project is creating or reconditioning a road and calling it an Emergency Access Route within the Lazyman Inventoried Roadless Area. This is a violation of the Roadless Area Conservation Rule.

Remedy: Do not create an Emergency Access Route between Nelson Gulch and Travis Creek within the Lazyman Inventoried Roadless Area.

SUGGESTED REMEDIES

Revise the TSH project to incorporate the following:

- Drop the trail proposal. If it could be designed to stay out of the IRA, Trail Segment C could be allowed because it closely parallels the county road. Trail Segment C would remove the safety hazard of automobile/bicycle proximity on this winding county road.
- Design project to meet all Forest Plan standards (no site-specific exemptions).
- Analyze the project based on the HNF Forest Plan Standard 3 definition of hiding cover that accommodates dead trees in providing cover; this definition specifically applies to the TSH Project and states:
COVER, HIDING Vegetation capable of hiding 90 percent of a standing adult deer or elk from the view of a human at a distance equal to or less than 200 feet, and having a minimum size of 40 acres. HFP VI/2
- Allow implementation of private land buffers to the extent possible without compromising standard 4a. In some cases, 4a may not be affected at all because private roads would be within ½ mile thus these areas likely do not currently constitute big game security – these buffers must immediately adjoin private lands.

- Address TMDL standards by implementing all proposed culvert installations, road decommissioning, bank stabilization, etc., but only vegetation treatments where soil disturbance can be completely mitigated. TMDLs can not be met by disturbing nearly 3 square miles of soils associated with mechanical forest treatments, but they can be quickly and substantially improved and possibly met without vegetation treatments.
- Abandon the proposed Emergency Access Route between Nelson Gulch and Travis Creek through the Lazyman IRA.
- Prepare a new EIS in accordance with NEPA that analyzes neighboring Telegraph project in conjunction with TSH and includes any and all trail proposals (no last-minute additions).