

**BEFORE THE OFFICE OF THE REGIONAL FORESTER
REGION ONE – USDA FOREST SERVICE
Objection Reviewing Officer**

SWAN VIEW COALITION	)	
	Objector)	
	)	
v.	)	NOTICE OF OBJECTION
	)	PURSUANT TO
	)	36 CFR 218
CHIP WEBER	)	
FLATHEAD FOREST SUPERVISOR	)	
	Responsible Official)	

DECISION OBJECTED TO

Draft Decision Notice and Finding of No Significant Impact (DN) for the Cold Jim Fuels Reduction and Forest Health Project, issued with cover letter dated April 12, 2018, and signed by Flathead Forest Supervisor Chip Weber.

OBJECTOR



Keith J. Hammer
Chair
Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901
406-755-1379

May 22, 2018

STANDING

Members of Swan View Coalition (and Friends of the Wild Swan) recreate in and otherwise visit the Project Area. We attended a Project field tour on 1/18/12 and SVC submitted written comments the following day. SVC then submitted supplemental comments in writing on 1/30/12. SVC and FOWS submitted written comments on the initial Project EA on 3/11/14, incorporating each others' comments by reference.

SVC and FOWS filed Objections to the July 2015 draft DN. These Objections were essentially dismissed and a final DN was issued on 9/14/16. On 11/29/16 Wildlands Defense filed a 60-day notice of intent to file suit against that decision on behalf of SVC, FOWS, Alliance for the Wild Rockies, and Native Ecosystems Defense Council. The

decision was subsequently withdrawn on 5/12/17. A Supplemental EA (SEA) was issued on 11/9/17 and SVC provided written comments on that SEA on 12/6/17.

We have reviewed the Forest Service's responses to those comments in the draft DN (hereafter DN). We find the following issues still unresolved and inadequately addressed in the DN and SEA.

ORGANIZATION OF THIS OBJECTION

We incorporate by reference the objections submitted by Friends of the Wild Swan, Alliance for the Wild Rockies and Native Ecosystem Council in this matter, as well as our comment letters and emails listed above.

We have an Objection to the revised Flathead Forest Plan pending before the Regional Forester. That Objection contends not only with inadequacies of the revised Plan, but inadequacies in how the Flathead is currently implementing the existing Forest Plan and its Amendment 19. The Cold Jim Project would improperly apply the existing Forest Plan and A19 in ways described in our Forest Plan Objection, so we incorporate it as a part of this Cold Jim Objection. For similar reasons we also incorporate our 5/17/18 Glacier Loon Objection as a part of this Cold Jim Objection.

Companion to this Project Objection is a DVD containing the documents we submitted along with our Forest Plan Objection. The DVD includes our Forest Plan Objection in Folder 00 and the documents referenced in that Objection in Folders 01 - 27. This Cold Jim Project Objection is included in Folder 0, as is our Glacier Loon Objection. We have added a few more documents to the Folders on the DVD, as referenced in this Cold Jim Objection and our Glacier Loon Objection.

After we state our Relief Requested, we will provide New Discussion on how the new DN does not address our concerns. This Objection will conclude with a restatement of our prior Cold Jim Objection because those Objection points remain valid and without remedy from the Forest Service. We incorporate by reference our prior Cold Jim Objection and all documents attached to it (and include it in DVD Folder 0).

RELIEF REQUESTED

Rescind the DN and FONSI for the reasons stated below and prepare an adequate Environmental Impact Statement that addresses the deficiencies raised in this Objection and in order to adequately assess the cumulative effects of the Cold Jim, Glacier Loon and Beaver Creek projects. Redo the Travel Analyses conducted for these three projects as a larger scale analysis, to adequately assess the short- and long-term costs of building and maintaining a minimum road system that is truly sustainable in light of realistic budget expectations and all standards, goals and objectives for the maintenance of water quality, fish, wildlife, and other resources.

NEW DISCUSSION

The new DN fails horribly to address our concerns and instead reflects an agency with heels dug in and abusing its discretion to reinterpret the plain language and historic implementation of Amendment 19 to suit its wishes. We here discuss the DN's failure to adequately address our concerns, by DN Response to Comments page number:

Page 5-29 top and middle: The response insists that the Cold Jim DN and BiOp need not commit to annual inspection of all stream-crossing structures on closed roads in bull trout watersheds since the Chilly James project and BiOp did so for the same watersheds. The response does not reveal that the Revised Flathead Forest Plan BA (Folder 13 on our DVD) inserted a new Culvert Monitoring Plan between pages 285 and 286, which would discontinue the annual stream-crossing requirements committed to in the Chilly James Project and BiOp.

According to DN page 5-75, commitments made in prior BiOps can be discontinued by simply dropping them from subsequent BiOps (e.g. in the case of the "3 and 7 rule"). Following this logic, it appears that the annual stream-crossing requirements committed to in the Chilly James Project and BiOp no longer apply to the project-area watersheds because they have been dropped/omitted from the Cold Jim BiOp. If the Flathead and FWS were sincere about the annual monitoring requirement, wouldn't it want to insure it is included in every NEPA document and BiOp pertaining to the project-area watersheds?

We provide more detail on the Flathead's attempts to renege on the annual stream-crossing monitoring requirements in our Forest Plan Objection in Folder 00 and in our 60-day notice to sue over the new Culvert Monitoring Plan in Folder 23 on our DVD. In Folder 26 on our DVD we include the Flathead's 2017 monitoring data and our summary of it; indicating 59% of the culverts inspected in closed roads in bull trout watersheds had inlets that were blocked, had a rust line >33% of the inlet height indicating the culvert is undersized to handle extreme flows, had ponding or overflow indicating the culvert is undersized or incorrectly positioned, or had a crushed inlet.

Page 5-29 top and middle: The response claims the "effects of culvert monitoring for the 2015 programmatic road maintenance BiOp or Forest Plan revision BiOp are not relevant to this project." If it weren't for the 2015 programmatic BiOp, annual culvert monitoring would not likely be required in the Chilly James BiOp for these project-area watersheds. And, if it weren't for the revised Forest Plan BiOp apparently refusing to discontinue the annual monitoring in the Chilly James area (as proposed in the Forest Plan BA) there would be no annual culvert monitoring in these project-area watersheds). These other BiOps and the results of their required monitoring are absolutely relevant to Cold Jim. The fact that the Flathead thinks they are irrelevant is precisely the problem; its shell game of bait and switch ends here. See the paragraphs immediately above.

Page 5-72: The fact that the Flathead does not think increasing grizzly bear security is a part of the need for the project is precisely the problem, given that the Forest relies largely on timber sale projects to implement grizzly bear security. The response also denies that progress must be made in all three of the 19/19/68 security parameters and fails to identify when and by what means those three objectives will eventually be met.

We appreciate the indication that only decommissioning in Cold Jim will decrease TRD/TMAD/TMRD. However, failing to require that decommissioned roads, including temporary roads, are revegetated prior to being omitted from TMRD calculations results in premature reductions in TMRD and for increases in TMRD to go unrecognized while temporary and other decommissioned roads revegetate. See the following paragraph in this regard.

Page 5-74 at top: The response simply continues to deny that A19 requires that reclaimed roads be adequately revegetated before being omitted from calculations of TRD/TMAD/TMRD - ignoring documents we attached to our prior Objection to Cold Jim. Please see our Glacier Loon Objection, particularly section F, in this regard and in regards to temporary roads (DVD Folder 0). This is more fully argued in our Beaver Creek complaint and summary judgment briefs (DVD Folder 02).

Page 5-74 bottom, 5-75: The response continues the same old argument that the “3 and 7 rule” no longer applies to grizzly bear subunits with Security Core less than the required 68% - simply because it was not discussed in all relevant BiOps. Omitting a requirement from subsequent BiOps is entirely different than making an informed and publicly reviewed decision to discontinue that requirement, which is what the law requires in order for it to be discontinued.

The response is also dead wrong in relying on FWS to claim that a new BiOp is not required to assess the effects of now applying A19’s 19/19/68 objectives to the seven Legacy Lands subunits they were not previously applied to. This is more fully argued in our Beaver Creek complaint and summary judgment briefs (DVD Folder 02). The response also provides no substantiation for its claim that the NCDE grizzly bear population has “more than doubled recovery goals,” nor does it describe how the NCDE has or has not met habitat-based recovery criteria.

PRIOR OBJECTION RESTATED

*Note: While Objections A and B contend with inadequate assessments and procedures on the part of both the Forest Service (FS) and Fish and Wildlife Service (FWS), it is ultimately the FS’s responsibility to insure its assessments, procedures and projects are in line with its Forest Plan and the law. The FS cannot simply rely on concurrence by FWS, either as a matter of law or as a practical matter - as evidenced by FS’s prior reliance on FWS that it need not apply the full force of Amendment 19 in the Glacier Loon or other projects in grizzly bear Subunits that are now greater than 75% FS ownership due to Legacy Land acquisitions. These Objections are intended in large part to avoid another misstep by the FS in its failure to apply the full force of Amendment 19, as ruled by the U.S. District Court in the Glacier Loon litigation, simply because FWS is complicit in the FS’s errors or misrepresentations.

Objection A: One of our 3/11/14 comments can be summarized as follows:

The Cold Jim EA [is] premised on . . . dishonest and unlawful claims [which include that] the Cold Jim Grizzly Bear Management Subunit is not subject to Amendment 19’s 19/19/68 standards for OMRD, TMRD and Security Core because it was less

than 75% in Forest Service ownership in 1995. With acquisition of Legacy Lands in 2010, some 94% of the Subunit is in Forest Service ownership. The plain language of Amendment 19 and its 19/19/68 standards now apply to Cold Jim, period . . . the EA . . . appears to attempt to exempt commercial logging during the non-denning period via springtime or salvage logging exemptions that simply don't apply to Cold Jim's major commercial logging and road building activities . . .

While the FS and FWS now acknowledge Amendment 19's 19/19/68 standards do apply, they fail to adequately respond to our comment and wholly fail to provide the grizzly bear security required by Amendment 19 as companion to the 19/19/68 standards until such time as the 68% Security Core standard is actually met. The agencies instead claim they need only make progress toward those numeric standards and otherwise continue to apply standards and logging loopholes provided in the Swan Valley Grizzly Bear Conservation Agreement (SVGBCA) rather than the "3 and 7" active/inactive Subunit rules that are companion to the 19/19/68 standards.

1. In its 5/15/85 Biological Opinion (BiOp) on the Flathead Forest Plan, FWS recommended that timber sale activities be restricted to "one entry per decade" with each entry restricted "to no longer than 3 consecutive years."
2. FWS further clarified the biological rational for the "3 and 7" rule in its 7/18/89 BiOp on various Forest Plan Amendments and premised its Incidental Take Statement (ITS) on "full compliance with both the Forest Plan standards and guidelines" (emphasis in original).
3. FWS's 1/6/95 BiOp on the proposed Amendment 19 referenced the earlier BiOps and noted:

In addition to new Forest objectives and standards related to open and total motorized access and core area, the proposed Amendment does not alter the existing Forest Plan Standards and Guidelines for timber . . . The proposed Amendment also retains the "3 and 7" . . . rules for entry/re-entry into compartments for major activities in MS-1 . . . until core areas are effective.

In other words, FWS found "core areas provide a suitable alternative to the [previous] displacement area standard by providing adequate amounts of relatively secure areas for grizzly bears during periods of timber extraction or other major Forest activities" - provided that a grizzly bear Subunit remains controlled by the "3 and 7" timber sale activity rules until the Subunit is brought up to the 68% Security Core standards required by Amendment 19.

4. The FS instead responds to our concerns by continuing to apply the SVGBCA's more lenient active/inactive guidelines that provide as little as 3 years inactivity instead of the 7 required by Amendment 19 as a companion along the path to reaching 68% Security Core in the affected Subunits. To add insult to injury, the Project utilizes the various loopholes provided by the SVGBCA to allow logging during the "inactive" period during which the Project is scheduled to occur!

5. In its 12/5/95 BiOp on the SVGBCA, FWS noted that Amendment 19's requirement that "Core area will comprise 68 percent of a Subunit" applied to the one Subunit of the

11 in the SVGBC area that was comprised of >75% FS ownership at that time (page 9). Yet it took a lawsuit and a court order against the Glacier Loon Project to get the agencies to admit Amendment 19's requirements indeed apply to all Subunits that now exceed 75% FS ownership due to Legacy Land acquisitions. It is entirely disingenuous for the agencies to now pretend the "3 and 7" activity/inactivity rule that is companion to the 68% Security Core standard does not apply as well.

6. At the outset, the SVGBCA requires that the "Forest Service will utilize existing definitions found in the LRMP, unless definitions in this Agreement are more conservative in regard to the Bear, in which case, definitions found in this Agreement will be utilized." The agencies and the Cold Jim Project must use the definition and requirements of "entry/re-entry" a.k.a. "active/inactive" defined in the Forest Plan and the various BiOps concerning it and Amendment 19. They most certainly cannot argue that allowing logging during a 3-year "inactive" period is more conservative of grizzly bear security than no major activity allowed during a 7-year "inactive" period. More importantly, and at risk of repeating ourselves, they cannot argue that the "3 and 7" rule does not go along with the 19/19/68 standards until such time as the 68% Security Core standard is met. They are simply using the wrong active/inactive standard in these now primarily FS-owned Subunits.

7. The EA, at 3-350 and elsewhere, acknowledges that Security Core in the Cold Jim Subunit is and would remain post-project at 43%, far short of the 68% standard. Until the 68% standard is met, adequate grizzly bear security and displacement habitat is not provided and the "3 and 7" rule must be applied to insure bears are not displaced by major activities for 7 consecutive years out of 10.

Laws Violated: The above violates the Administrative Procedures Act (APA), Endangered Species Act (ESA), National Forest Management Act (NFMA), and the National Environmental Policy Act (NEPA) in failing to comply with Forest Plan standards, failing to use appropriate standards and other measures to adequately disclose the effects of the action, and failure to properly consult on and adequately limit the Project's adverse affects to threatened grizzly bear.

Remedy: Recognize that the SVGBCA in largest part no longer applies to the Cold Jim and other Swan Valley Subunits that are now more than 75% in FS ownership and that Amendment 19's more conservative standards for such Subunits are the controlling standards - including the "3 and 7" active/inactive Subunit standard that is companion to the 68% Security Core standard. Apply these standards to the Cold Jim NEPA process to more adequately measure the effects of the agency action and reduce adverse effects to grizzly bear before approving the Cold Jim Project. Re-consult formally with FWS in this regard.

Objection B: Our related 3/11/14 comment can be summarized as follows: "

Moreover, both Open Road Density and Total Road Density would be increased during the life of the project, in violation of Amendment 19's and the SVGBCA's prohibition against increasing them without offsetting the increase nearby so there is no net increase. The EA is wrong in its attempt to define "net" as meaning before and after the project rather than during the project/at all times.

The FS and FWS claim their definition of “net” is correct, then proceed to use their definition as though it excuses them from accounting for the adverse effects to grizzly bears caused by displacement from logging activity and temporary increases in road densities. Even if we agreed with the agencies’ definition of “net,” they nonetheless violate the law by failing to account for impacts associated with impacts during the life of the Project, especially from logging and increased road densities.

1. The Updated EA, at Appendix 5-243, claims:

The Cold Jim Project . . . clearly explains effects of project activities on ORD and TRD in the context of no “net” increase . . . The USFWS reviewed this analysis, concurred with the determination . . . and found the project consistent with Amendment 19 direction including correct application of “net” for Amendment 19’s no net ORD or TRD increase standard.

2. FWS, in its 6/23/15 BiOp on Cold Jim, states:

Upon review of the amended biological assessment for the proposed action and the 1995 and 2014 programmatic biological opinions, it is our opinion that the existing access conditions and the road use associated with this project would not impart any adverse effects to grizzly bears in addition to those analyzed in the 1995 and 2014 programmatic biological opinions and that the proposed action is in compliance with the incidental take statements of these opinions.

3. FWS’s 1995 and 2014 BiOps and their Incidental Take Statements, however, account only for the continued impacts of the substandard baseline measured against the 19/19/68 standards. Neither BiOp mentions Cold Jim, let alone the “temporary” adverse effects to grizzly bears resulting from logging and increases in road densities during that logging. FWS is simply wrong to claim there are no adverse effects from the Cold Jim Project in addition to those analyzed in 1995 and 2014.

The 2014 BiOp does mention the Glacier Loon Project, concluding it “would cause temporary increases in OMAD and TMAD, resulting in displacement of individuals [bears] in areas where activity is occurring.” Moreover, FWS’s 10/25/05 BiOp on the implementation of Amendment 19 more generally concludes “displacement is expected in areas where active timber harvest and restricted roads are used for hauling.” Again, neither BiOp mentions Cold Jim or its additional adverse effects on bears.

4. Like Glacier Loon and other logging projects, Cold Jim will cause adverse impacts to grizzly bears through displacement by logging activities and increases in road densities. Yet both agencies refuse to include this admitted displacement in their determination of adverse effects and instead blame all adverse affects solely on the existing substandard baseline (e.g. Updated EA at Appendix 5-246).

5. Defining “net” as a before-and-after project comparison, rather than a during-project offset does not relieve either agency of the duty to truthfully account for during-project displacement and its adverse effects to grizzly bear.

6. The Updated EA, at 3-350, attempts to dismiss the effects of grizzly bear displacement by logging and hauling activities, in part by finding “No activities would occur in security core, providing a large area free from effects of displacement.” Neither agency, however, acknowledges that a Subunit with only 43% Security Core, such as Cold Jim, provides inadequate security to offset displacement and hence is not yet exempt from the Forest Plan requirement that major activities like logging projects can only occur for 3 consecutive years out of 10, with 7 years of no such activity required to allow female bears to teach their young to utilize their home range habitats during periods free of major displacement.

7. Both agencies have created an unlawful loophole by which logging and temporary increases in road densities can be increased by any degree and simply be dismissed because those impacts eventually cease - as though they have no adverse effects to grizzly bear. This is arbitrary, capricious, at odds with Forest Plan standards, various BiOps and the scientific literature, and is an abuse of both agencies’ discretion.

Laws Violated: The above violates the APA, ESA, the NFMA, and the NEPA in failing to comply with Forest Plan standards, failing to use appropriate standards and other measures to adequately disclose the effects of the action, and failure to properly consult on and adequately limit the Project’s adverse affects to threatened grizzly bear.

Remedy: Define “net” to disallow during-project increases in road densities or decreases in Security Core - as the agencies use in projects and consultations in the Greater Yellowstone Grizzly Bear Ecosystem - by providing increased security adjacent to projects to offset any temporary decreases in security in the project area. Fully account for displacement of grizzly bears by major activities such as logging and log hauling, recognizing them as adverse effects to bears above and beyond the background/baseline effects. Formally re-consult with FWS in this regard. Fully apply the “3 and 7” rule, as discussed in Objection A, as a partial means to more fully account and mitigate for grizzly bear displacement by major activities before approving the Cold Jim Project.

Objection C: Our comments regarding roads, culverts, travel management, fisheries, and hydrology are found throughout our 3/11/15 letter and can be summarized in part as follows:

a. Because the Cold Jim and Chilly James NEPA processes are intended to help complete the Travel Analysis, they must include NEPA alternatives that define and describe how to arrive at the “minimum road system” required by the Travel Planning regulations.

b. The Cold Jim, Chilly James and Chilly James/Cold Jim Travel Analysis all use the same analysis area. They are “cumulative and connected actions that must be assessed in an environmental impact statement (EIS) for Cold Jim and in subsequent analyses including Chilly James.”

c. “You must prepare environmental documents in which the layperson can clearly understand what the agency must do to arrive at a fiscally and environmentally

responsible minimum road system and what role Cold Jim and Chilly James would play in that.”

The FS response is to either refute needing to do the above or to claim it has done so adequately elsewhere. The Updated EA and Project File also provides conflicting information preventing us from understanding the extent and results of assessments that have been done. In the end, Cold Jim and Chilly James will leave the Project area without adequate BMPs applied to all roads that appear to remain a part of the minimum road system, without adequate inspections of all stream-crossing structures in the Project area, and without all problem stream-crossing structures identified and either removed or remedied.

1. The Chilly James Restoration Project EA, at 80, states that 248 road / stream crossings exist in the Chilly James Project Area, which is identical to the Cold Jim Project Area - and that 192 of those crossings are in the Cold and Jim Creek watersheds. Cold Jim Project File document N-8 provides inspection reports for 92 culverts under “2012 Culvert Inventories in Jim and Cold Creek.” We cannot discern from the sum of the Chilly James and Cold Jim documents how many stream-crossing structures were inspected, let alone how many of those were culverts, nor how many roads and stream-crossing structures were not inspected. Page 76 of the Chilly James EA simply concludes:

Roads were inventoried in 2011 and 2012 but some roads on the valley floor and headwater spurs were missed. Given that most roads inventoried were “functional” and to err on the side of caution, we assumed the skipped roads midway between “functional” and “at risk.”

Such incomplete inventories and uninformed assumptions hardly qualify as the “hard look” required by NEPA, especially in an area subject to two projects, one of which is specifically intended to address road-related watershed and fisheries problems.

2. We provided comments on the Chilly James EA that are relevant to this Objection to Cold Jim. Rather than repeat those comments here, our 6/9/15 and 6/15/15 comments are attached and incorporated in full into this Objection. In pertinent part, the FS has failed to respond substantively to our prior comments by failing to include in its EAs and Travel Analysis the identification of a minimum road system that would be environmentally and economically sustainable, let alone at least one NEPA alternative that would demonstrate what would be necessary to arrive at the minimum road system.

3. Instead, the Travel Analysis simply reflects the two Projects and their shortcomings as the FS continues to chase its tail in an endless pursuit of timber sales it says are necessary to fund road maintenance and BMP work - after robbing the majority of road maintenance appropriations to instead fund timber sale planning. A telling example of this tail chasing is the conclusion on page 3-381 of the Updated EA:

Based on the premise that timely completion of BMPs would maximize benefits to water quality, the alternatives with the most miles of haul routes would provide the greatest benefits.

4. In other words, the FS continues to pursue projects that pit one resource against another, rather than the coordinated pursuit of a sustainable minimum road system. The more log hauling routes in use to authorize the application of BMPs, the greater the displacement of grizzly bears and other wildlife and the greater risk of spreading noxious weeds. Even when its timber sale (Cold Jim) is essentially paired with a companion road restoration project (Chilly James), the FS comes up far short of what is necessary to arrive at a sustainable minimum road system - or to even identify that minimum road system and at least one alternative way to arrive at it during the NEPA process.

Laws Violated: The above violates the APA, ESA, the NFMA, the NEPA, and the Clean Water Act in failing to comply with Forest Plan standards, failing to use appropriate standards and other measures to adequately disclose the effects of the action, failure to properly consult on and adequately limit the Project's adverse affects to threatened grizzly bear and bull trout, and failure to adequately accomplish the application of BMPs to all roads.

Remedy: Identify an economically sustainable minimum road system on the Flathead National Forest that complies with full implementation of Amendment 19 and all other Forest Plan standards. Identify as an integral part of the Cold Jim Purpose and Need the identification of the minimum road system and steps to achieve it. Fully develop at least one NEPA alternative in Cold Jim, preferably in an EIS, that would fully accomplish the minimum road system and hence illuminate all other NEPA alternatives in relation to it.

Our 6/9/15 and 6/15/15 letters commenting on the Chilly James Restoration Project EA are hereby attached and incorporated by reference as a part of this Objection.