

Swan View Coalition

Nature and Human Nature on the Same Path



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December 29, 2015

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

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

Dear Mr. Weber;

As you are already aware, we have submitted several FOIA requests in the past 13 months to secure information about how Flathead National Forest has or has not been removing stream-aligned culverts from roads being reclaimed / decommissioned, rendered "impassable" or "waterproofed," prepared for Intermittent Stored Service (ISS), or otherwise considered to be in a condition where continued monitoring of culvert function is no longer necessary. These FOIA requests have similarly sought information about how the Forest has or has not been regularly monitoring stream-aligned culverts that have not been removed from roads.

We greatly appreciate the information provided thus far and have spent many hours going through it. We have discovered among other things, however, that the Forest has left some stream-aligned culverts in place in roads it considers decommissioned, "waterproofed" and/or "impassable" and not included in calculation of Amendment 19 Total Motorized Route Densities (TMRD). Hence, this FOIA requests information not provided in response to our prior FOIA requests.

Your prior responses, while they provided several documents concerning "impassable" roads that may or may not be included in the calculation of TMRD, provided no documents concerning detailed criteria for how those roads are selected, how or which stream-aligned culverts may remain in those roads, how such criteria were developed, how the public was invited to participate in the development and implementation of those criteria, how those criteria were determined to be consistent with Amendment 19, nor what National Environmental Policy Act (NEPA) process the agency and the public went through to adopt these criteria, implement these criteria and, in numerous cases, change decisions to decommission roads to apparent decisions to instead consider them "impassable and not included in calculations of TMRD" - some with stream-aligned culverts left in place.

Hence, this FOIA request will, among other things, request information of a Forest-wide or programmatic nature concerning the above and in some cases concerning specific

roads included in NEPA decisions to be decommissioned per Amendment 19 but subsequently treated as “impassable and not included in TMRD” instead of being decommissioned.

Please provide the following information to us pursuant to the provisions of the Freedom of Information Act. We prefer that, whenever possible, the information be provided in common electronic formats such as Word, Excel or PDF.

1. Any and all documents regarding what stream-aligned culverts may be left behind permanent/physical barriers on roads considered reclaimed/decommissioned, “waterproofed,” rendered “impassable and not included in TMRD,” placed into ISS, or otherwise left in a condition where annual inspection of those culverts is difficult and unlikely. Given the Forest has left such culverts in such roads, we’d expect your response to include but not necessarily be limited to some sort of culvert failure risk assessment, assessment forms and procedures, and detailed definitions of each of these road classifications/designations that include reference to the allowable status of culverts.
2. Any and all documents, as described above, for all Forest roads considered “impassable and not included in TMRD.” We’d expect this to include but not necessarily be limited to completed culvert risk assessments for Raghorn Road #10802, where the Forest left several stream-aligned culverts beyond where it removed three such culverts between mileposts 0.9 and 1.43. We could find none in the files we inspected under the supervision of Michele Dragoo on 12/18/15.
3. Any and all documents regarding how to interpret Amendment 19’s requirement that all stream-aligned culverts be removed from reclaimed/decommissioned roads. It would appear that some sort of direction or memoranda must have been issued since Implementation Note #13 was rescinded in 1999 as a failed/non-compliant attempt to leave stream-aligned culverts in reclaimed/decommissioned roads - especially given the Forest has since instead designated some roads “impassable” and left stream-aligned culverts in at least some of them.
4. Any and all documents regarding any NEPA and public involvement process that would change Amendment 19 or its interpretation to allow stream-aligned culverts to remain in reclaimed/decommissioned roads or roads otherwise intended to be hydrologically stable, “waterproofed,” placed into ISS, or considered no longer a risk in terms of stream-aligned culvert failures. This would include but not necessarily be limited to a Forest Plan amendment, public notice, interagency consultation, and public involvement in the development of criteria alternative to the clear requirement that all stream-aligned culverts be removed.
5. Any and all documents regarding the reclassification of roads as “impassable and not included in TMRD” that were previously included in NEPA decisions to reclaim/decommission those roads. These roads include but are not necessarily limited to Raghorn #10802, Coal Dust One #5279, Coal Dust Two #5277, Coal Dust Two A #5277A, Coal Creek Connector #1684, South Coal Ridge #1604, Coal Creek Hallowat Creek #317, North Fork Parker #10626, and Lower Stopher #9716. This information should include but not necessarily be limited to amendments to the initial NEPA

documents, Fish and Wildlife Service (FWS) or other interagency consultation on changes to the initial NEPA decision, public notice and involvement in changes to the initial NEPA decision, culvert inspection forms, and culvert risk assessment forms.

6. When we met with Michele Dragoo and Rob Carlin on 8/6/15, neither were aware of any culvert monitoring programs developed to comply with Don Hair's 2/4/95 Amendment 19 Fisheries Biological Evaluation requirement that such programs be developed for culverts left behind physical barriers on roads restricted to secure grizzly bear "security core" habitat (with the exception of the 2007-2009 post-fire culvert monitoring report already provided but not necessarily developed to comply with Don Hair's BE). We specifically requested these required culvert monitoring programs in our 7/15/15 FOIA request and again request them here. If indeed no such monitoring programs were developed and do not exist, please so state in your response to this request.

7. We verbally requested of Ranger Deb Mucklow on 12/2/15 the Burned Area Emergency Response (BAER) plan for her District's 2015 Bear Creek and Trail Creek fire areas. We hereby request pursuant to the FOIA this BAER plan, any documents indicating approval and/or funding for portions of it, and all documents regarding consultation with FWS over actions considered in the BAER plan.

Please feel free to contact me by phone at 253-6536 or by email at keith@swanview.org if you have any questions concerning this request.

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

The information provided will be summarized and made available to other conservation organizations and to the general public. Public understanding will be increased significantly because the requested information will allow the public to see in summary form how the Flathead has and has not been monitoring, maintaining, repairing, and replacing stream crossing structures and how well it has and has not been dealing with the issue of stream-bearing culverts and bridges behind road closures.

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

primarily in the commercial interest of the requester." Accordingly, we ask that our request for a waiver of fees be granted.

Your help in fulfilling this request is greatly appreciated.

Sincerely,

A handwritten signature in black ink that reads "Keith". The letters are cursive and slightly slanted to the right.

Keith J. Hammer
Chair

Cc by email to Rob Carlin, Michele Dragoo