

26 March 2014

SUBJECT: Formal Objection to Shoshone National Forest Plan Draft Record of Decision and Final Plan

I am submitting this objection as a private citizen, not as a member of an organized group.

Since leaving active military duty in 1992 and moving to Wyoming, I have spent the majority of my time in the Shoshone National Forest; I spend many months each year on the Forest. I have hunted, fished, hiked, backpacked, guided, and wrangled and packed horses in the Shoshone. I have studied wolves, grizzly bears, elk, bighorn sheep, whitebark pine, and climate change in the Shoshone. I have taken thousand of photographs to document the Forest's natural history over time. I know more about this Forest than most employees of the United States Forest Service.

Since 2005, when the plan revision began, I have been intimately involved in the process, with the goal of moving the Forest toward a more ecological perspective on forest management. I have attended almost all of the meetings, studied all the documents, and submitted formal and informal comments. To date, despite the extensive I've time spent on the process, I see little evidence that my involvement has had any positive impact. This objection is one more attempt to move the Forest in the right direction.

#### Summary of Objection Issues

De novo issue. Permitting mountain bikes in the Dunoir Special Management Unit (SMU), contrary to law. The decision to allow bikes was made after the formal comment period for the final draft plan, based upon a single letter from former Wyoming Senator Alan Simpson, written on behalf of his son in law, John Gallagher, a mountain biker interested in opening up the Shoshone NF to mountain biking. Simpson's letter asserted, incorrectly, that Congress had not intended to prohibit bikes from the Dunoir, implying that mountain biking was therefore legal. However, according to Congressional documents from 1972 (when Congress created the SMU) and 1982/3/4 (regarding the Wyoming Wilderness Act of 1984), Congress had in fact not considered mountain bikes at all, as mountain biking was not a sport in the early 1970s and hardly known in the 1980s. Indeed, the intent of the Wyoming Congressional Delegation (Simpson, Malcolm Wallop, and Dick Cheney) in the early 80s was to open the Dunoir up to logging, road building, and developed recreation, not to protect its wilderness characteristics, as Simpson also claimed in his letter. Further, making the decision to permit bikes in the Dunoir *after* the public review process had ceased and not informing the public of the decision until the release of final Forest Plan documents is a betrayal of the public trust, not to mention a violation of NEPA.

De novo issue. Improperly defining mountain biking as a form of non-motorized recreation equivalent to hiking and horseback riding with no factual, scientific, and legal basis in order to allow mountain bikes into Inventoried Roadless Areas/MA 1.3 (classification as "non-motorized backcountry recreation"). No clear notice in the Final Plan and EIS to the public that MA 1.3 is subject to mountain biking.

De novo issue. Failure to assess environmental impacts of salvage logging of beetle-killed trees for “biomass to fuel conversion” projects.

Old issue. Proposing to allow public access to selected high altitude moth sites used by grizzly bears. Ignores my earlier expressed concerns about the wisdom of opening any of the sites to the public and my recommendations to close all sites to public access.

### Details of Objections

#### *Allowing mountain biking in the Dunoir Special Management Unit*

This decision willfully and negligently violates the 1972 law that established the Dunoir SMU, PL 92-476, section five, that expressly prohibited vehicles from the SMU and required the USFS to encourage “non-vehicular access recreation” (i.e., foot and horse traffic). I consider this willful violation of unambiguous law to be a serious problem, which requires serious remedies.

In the Draft Record of Decision (DROD), at p. 11, Forest supervisor Joe Alexander attempts to justify his post-public comment decision to allow mountain bikes into the Dunoir SMU by saying:

“In the DEIS it was proposed that management of the Dunoir SMU would exclude mountain bike use. The proposal generated significant public comment both for and against allowing mountain bikes. Those against mountain bike use argue that it better protects wilderness values and better maintains the area for future wilderness designation. Those advocating for continued mountain bike access state that the law never intended to exclude mountain bikes. Support for this position included reference to a 2008 letter from USDA Forest Service Deputy Chief Joel Holtrop to the Regional Foresters stating, “...mountain biking is a non-motorized use of National Forest System trails, along with hiking and horseback riding.” In addition, retired Wyoming Senator Alan Simpson who co-sponsored the 1984 Wyoming Wilderness Bill submitted a comment on the Draft LMP stating that the intent of the enabling legislation for Dunoir was to restrict motorized use in the SMU, but not to restrict bicycles. After careful review of the enabling legislation and accompanying Senate Report, No. 92-80 (1972), I believe it is a reasonable interpretation that the focus of the law was on motorized vehicle use, given language referring to “motor vehicles” and “roads.”

This justification is full of errors and misinterpretation of law and Congressional intent.

Let's eliminate one justification quickly—the reference to the letter from USFS Deputy Chief Joel Holtrop (which by the way, the Forest has not released to the public) to USFS regional foresters that asserts mountain biking is a *non-motorized use of USFS trails equivalent to hiking and horseback riding*. Was this interpretation of mountain bikes based upon legal and practical analysis, including public comment, and published in the Federal Register as part of the Code of Federal Regulations? It clearly was not, or else Alexander would have made reference to the CFR. He did not. The assertion of equivalence between biking and hiking/horseback riding is merely a personal opinion of a Bush-era bureaucrat with no legal weight whatsoever.

Let us next address retired US Senator Alan Simpson's letter, which itself is full of errors.

Simpson, referring to the 1984 Wyoming Wilderness Act, wrote that "the Dunoir SMU was very specifically not granted Wilderness status in section 401(e) 'release of public lands for multiple use.' If we in congress had intended for the Dunoir SMU to be managed as wilderness, then we would have most certainly designated it as wilderness at the time. Now, by the banning of bicycles, you are very clearly creating a de facto wilderness."

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He later stated in the letter, apparently conflating the 1984 Act with the 1972 Act (PL 92-476), that established the Dunoir SMU, that "the clear intent of the Congressional delegation and our governor with regard to the Dunoir SMU was to preserve its wilderness characteristics, meaning no 'logging, drilling, mining, or use of motorized vehicles.' The term 'vehicle' did not and should not include bicycles. I can assure you that we never intended to ban bicycles from this gorgeous area. We were very specifically trying to keep out private cars and trucks. I honestly feel that the banning of bicycles is a very distorted reading of the law I helped to pass."

Simpson's memory and account of the 1984 Act are flawed. It is true that the Dunoir SMU was not designated as wilderness in the Act. However, his account of the purpose of section 401e seems to imply that the Dunoir was returned to multiple use status because it was not declared wilderness. That is incorrect.

Title IV of the Act bears the heading "Release of Lands for Multiple Use Management." Sections 401a-401d of the Act address how various roadless areas under the RARE II evaluation and normal Forest planning processes would be managed once the various processes were complete; areas not declared wilderness would be returned to multiple use status. However, section 401e expressly exempts the Dunoir from the "return to multiple use" provisions of sections 401a-401d. Section 401e states that "the provisions of this section [401] shall not apply to the area referred to in section 5 of Public Law 92-476 (86 Stat. 792) and generally known as the Dunoir Special Management Unit, which shall continue to be managed pursuant to Public Law 92-476."

I should also note as an aside that Congressional Reports from 1982 and 1983 indicate that the intent of the Wyoming Congressional Delegation—Simpson, Senator Malcolm Wallop, and Representative Dick Cheney—most certainly was not to protect the unique ecological features of the Dunoir, but to open half of it to logging, road construction, and developed campgrounds. For example, Senate Report 97-574, dated 23 September 1982, notes that the proposed Wyoming Wilderness Act of 1982 would designate approximately 11,100 acres of the Dunoir for inclusion in the Washakie Wilderness and repeal section five of PL 92-476; section five creates the SMU with approximately 28,800 acres. The following year, Senate Report 98-54, accompanying the proposed Wyoming Wilderness Act of 1983, makes the same recommendations for the Dunoir. In short, the 1982 and 1983 versions of the Wyoming Wilderness Act would cut the Dunoir SMU in half, designating part of it as wilderness, while the rest of it would revert to multiple use.

So how would Senator Simpson and his Wyoming colleagues have halved the Dunoir baby? We find the answer to that question in a USFS document, *The Wilderness Movement and the National Forests, 1964-1980*, FS History Series, FS 391, written by Dennis M. Roth.

On page 19 of Roth's report we discover that in the late 1970s, the Shoshone NF

recommended that only the high cliffs and plateaus of the Dunoir, covering about 11,100 acres, be included in wilderness. The lower elevations of the Dunoir, the forests, the rolling hills, and meadows large and small, would be released to multiple use. It is this USFS recommended division of the Dunoir by altitude that early versions of the Wyoming Wilderness Act adopted. High cliffs and plateaus = wilderness. The hills and valleys below = multiple use.

According to wilderness advocates in the 1980s, such as Bart Koehler of the Wilderness Society, were it not for the tenacity of Ohio Congressman and wilderness supporter John Seiberling, the Dunoir SMU would have been ripped apart and its most unique features opened to logging, roads, and developed campgrounds. It was Seiberling who forced the Senate to retain section five of PL 92-476 and maintain wilderness like protections for the Dunoir SMU. The Wyoming Congressional Delegation had little to do with it.

Finally, Senator Simpson had nothing to do with the 1972 law, as he was not in Congress at the time. He was instead representing a Cody area district in the Wyoming Legislature. That district did and does not include the Dunoir, which is in the Upper Wind River Basin near the small town of Dubois.

So much for Senator Simpson's flawed letter. Now we need to look at the controlling legislation for the Dunoir SMU, PL 92-476, passed in 1972. This act added what was known as the Stratified Primitive Area to the South Absaroka Wilderness, created in the original Wilderness Act of 1964. and renamed the expanded wilderness area the Washakie Wilderness. It also created the Dunoir SMU as a compromise between those who supported wilderness status for the Dunoir and those who opposed it—mainly the timber industry.

One way to look at the law of the Dunoir regarding mountain bikes is to ask how the courts would interpret it. The simplest and strongest argument for keeping mountain bikes out of the Dunoir is that the 1972 law that established it (Public Law 92-476) bans them. Specifically, the law bans “vehicular use.” The law also requires the Forest Service to promote “non-vehicular recreation access” to the Dunoir.

What do these words mean?

When writing and interpreting laws, the legal profession has rules of “statutory construction and interpretation.” Books have been written on these rules, but their core principle is that words matter. Courts assume that words legislators use are chosen with care to reflect what they intend for laws to achieve. (That legislators sometimes don't know what they're doing doesn't change the rules. You have to start somewhere).

Following these rules, when courts examine a law they will first look at the text of the law. If the words, clauses, sentences, and paragraphs are clear, there's nothing more to say (unless a constitutional issue arises). Case closed.

In the case of the Dunoir, I'd argue before a court that Congress, when it chose the words “vehicular use” and “non-vehicular access recreation,” intended to ban all vehicles, motorized or not, in favor of foot and horse traffic.

A court might reason that if Congress had instead banned “motorized vehicular use” and

promoted “non-motorized vehicular access recreation,” bike supporters would have a strong case for access to the Dunoir, as a bicycle is a non-motorized vehicle. Certainly, according to various Congressional documents, the terms were being used at the time in debate. But Congress used different, more inclusive words in PL 92-476. A court should therefore conclude that Congress meant no vehicles, period.

Words matter. Case closed?

Not really. There is another legal argument that might support bikes in the Dunoir. If you look further at the law of the Dunoir, the ban on “vehicular use” is made in the context of also banning the construction of new roads, primarily logging roads. Bike supporters have argued that Congress actually intended to ban only motorized vehicles, such as logging trucks and equipment, without being precise enough in its choice of words. (This is basically Simpson's argument). The words aren't clear but the context is. Congress intended to ban only motorized vehicles from the Dunoir. Therefore, bikes are OK.

I disagree. We now have a problem of interpretation. Consequently, we have to move to another aspect of statutory construction and interpretation—determining what Congress intended when the language of a statute isn't clear.

One place a court will look for evidence of Congressional intent is committee reports. Another source is associated laws—in this case, the Wilderness Act. Let me explain why these documents are important to understanding the law of the Dunoir.

In 1972 the House wanted to include the Dunoir in the Washakie Wilderness, but the Senate did not. Each house passed different versions of the bill. A conference committee was appointed from each house to work out differences between them. The committee agreed on a compromise—creation of the Dunoir SMU, which gave wilderness-like protections to the Dunoir.

When a judge reads the 1972 conference committee report, House Report 92-1435, I think he will get a clear idea of Congressional intent for the Dunoir. Here are the key parts of the report:

“Testimony given the House committee led to its conclusion that the Du Noir area is qualified and should be designated as wilderness ... Evidence of past human activity in the area is minor and superficial, and is of a transitory nature, rapidly fading under the restorative powers of nature ....[However,] the conferees were unable to reach agreement on whether the Du Noir area should be included within the Washakie Wilderness, [so we direct that] the Secretary of Agriculture conduct further studies of the Du Noir and surrounding area and provide recommendations ... on the highest and best use of this area. This action provides the Forest Service the opportunity to study in detail all options, including wilderness ... Until Congress has acted further on the matter, the area is to be administered under the provisions [of PL 92-476], which are intended to preserve the area in its present condition and provide for [its] necessary protection and public use.”

These statements of fact and intent in the Congressional conference committee report about the Dunoir seem clear. I think a judge would agree that Congress made the Dunoir what we now call a “wilderness study area” and explicitly gave it wilderness-like protections to remain

in place until Congress changes the law.

What are those wilderness-like protections? Well, for guidance a judge would look to the Wilderness Act itself, which states, among other restrictions, that “there shall be ... no ... form of mechanical transport” allowed in wilderness.

Mountain bikes are indisputably a form of mechanical transport. I would argue that Congress, in giving wilderness-like protections to the Dunoir, directing that it be maintained “in its present condition,” and banning “vehicular use,” did indeed intend to ban mountain bikes as mechanized vehicles/transport without expressly mentioning them. And that ban remains in place until Congress decides otherwise. To date, Congress has yet to decide.

In the Draft ROD, Alexander attempts to muddy the law of the Dunoir by referring only to Senate Report 92-80, which accompanied the Senate version of the bill that eventually became PL 92-476. As noted above, the Senate, for various reasons, did not think that the Dunoir qualified as wilderness. However, since a conference committee was held to iron out differences between the House and the Senate, and PL 92-476 came out of the conference committee, the conference committee report takes precedence in interpreting Congressional intent. Senate Report 92-80, which Alexander relies upon to justify his decision, has only historical interest as far as the courts are concerned.

In short, there is no legal justification for Alexander's interpretation of the law of the Dunoir and his decision to admit bicycles to the Dunoir SMU.

We also have the problem that Alexander made his decision after the public comment period on the final Draft Plan and EIS had closed, so that the public had no opportunity to consider the proposal to let bikes into the Dunoir and comment on it. Conservationists and members of the public only learned of the decision informally, by word of mouth from USFS personnel. This switcheroo completely undermines the public process as well as public confidence in the process. The decision was a serious breach of the public trust, and requires serious remedies.

*Remedies Sought:* Prohibit mountain biking in the Dunoir SMU, IAW the law. As a negative consequence to the Forest for an illegal, politically-driven decision that betrays the public trust, require the Forest to recommend the Dunoir for wilderness and reclassify it as MA 1.2, Recommended Wilderness. In the same vein of imposing negative consequences for making such an illegal, politically-driven decision, further require the Forest to recommend Francs Peak, Wood River, and Trout Creek IRAs for wilderness and reclassify them into MA 1.2. Also prohibit mountain biking in MA 1.2 while encouraging foot and horse traffic.

*Defining mountain biking as a form of non-motorized recreation equivalent to hiking and horseback riding with no legal justification or environmental analysis.*

The concern with mountain bikes as mechanized vehicles in the Dunoir SMU, where they are expressly prohibited, has raised the question of mountain biking throughout the Forest, particularly in Management Area 1.3, “backcountry non-motorized recreation.” MA 1.3 is how the Forest classifies Inventoried Roadless Areas (IRAs), most of which conservationists consider eligible for wilderness recommendation and designation. (The Plan, unfortunately, makes no wilderness recommendations). Consequently, as potential wilderness, we consider

mountain bikes inappropriate for use in these IRAs/MA 1.3. However their use in IRAs/MA1.3 as well as other MAs has been approved with scant notification to the public and no environmental analysis whatsoever.

The Plan at p.104 indirectly defines mountain biking as a non-motorized form of recreation equivalent to hiking and horseback riding by asserting: “New non-motorized trail opportunities focus on providing experiences that are under-represented, such as mountain biking,” thus justifying expansion on the Forest of mountain biking. This skimpy, wholly unsupported definition follows from the legally insufficient letter referred to above from Joel Holthrop.

The FEIS notes at p. 57, table 19, that “use [of mechanized bicycles] is allowed outside wilderness. Use is restricted to a single trail in Dunoir SMU.” Further, the FEIS notes at p. 58, table 19, that slightly over 1 million acres, or 43% of the Forest, are open to mechanized bicycle use under the chosen alternative G. However, this fact of opening up the Forest outside wilderness to mountain bikes is disclosed neither in the Final Plan nor the DROD.

So we have part of the puzzle in the Final Plan and the other part in the FEIS, but nowhere does the Forest put the pieces together to clearly inform the public that mountain bikes can be encountered anywhere on the Forest outside wilderness. Further, nowhere in the FEIS is the approval of the use analyzed for its environmental impacts. This violation of both NEPA and the public's trust is clearly a sleight of hand that needs rectification.

*Remedy Sought:* Prohibit mountain biking in all IRAs/MA 1.3 as well as those parts of IRAs that have been shaved off into MA 3.5) or at least conduct a Supplemental EIS to assess environmental impacts of allowing mountain biking in MA 1.3. This SEIS must clearly differentiate mountain bikes as mechanized vehicles with different impacts on the human environment from *non-mechanized* hikers and horses.

#### *Failure to assess the environmental impacts of salvage logging for biomass to fuel projects*

In November of last year, after the comment period on the final Draft Plan and EIS ended, USDA Secretary Tom Vilsack announced a five-year pilot project in the four Rocky Mountain states of Wyoming, Colorado, Montana, and Idaho to assess the feasibility of using a micro-refinery process to turn biomass—specifically, beetle-killed pine trees--into gasoline (<http://www.usda.gov/wps/portal/usda/usdahome?contentid=2013/11/0206.xml>). For a Wyoming perspective, see this story in Wyofile by Kelsey Dayton, <http://wyofile.com/kelsey-dayton/study-evaluates-turning-dead-trees-to-gasoline/>. The project has forestry, ecological, and social/economic components.

In various press releases and news stories on this pilot project, it is notable that Secretary Vilsack constantly referred to “42 million acres of beetlekill” in the Rocky Mountain West, as if the long-term intent is to log those millions of acres. In other words, the pilot project is just the beginning; it appears that the decision has already been made that the project will be successful and that as many acres as USDA can get away with will be logged for biomass.

It is the immense scale of potential “salvage logging” throughout the West, including the Shoshone NF, where the beetle kill has been extensive, to support biomass to fuel conversion that grounds my objection.

My comment on Kelsey Dayton's story in Wyofile summarizes my views and concerns on the subject:

“The concept of fighting mountain pine beetles is absurd. The concept of fighting the beetle through fuels reduction is even more absurd.

Over the last five years or so, I've been riding and hiking the high country of the southern Greater Yellowstone Ecosystem tracking the advance of the mountain pine beetle through whitebark pine forests. The purpose of my project was to assess the loss of whitebark pine seeds on the grizzly bear, for whom the seeds are a major food.

Using an assessment system devised by retired US Forest Service entomologist Dr Jesse Logan, with 1 being a healthy forest relatively unaffected by the beetle and 5 a forest dead from beetle infestation, I watched watershed after watershed advance from one whole number to the next higher number over the course of just one year.

Yes, the beetle kill has been severe throughout this part of the Rocky Mountains. However, one can reasonably ask whether it's been “devastating.”

One of the things I noticed during my high country travels is that regeneration of whitebark pine at high elevations and lodgepole pine at lower elevations is still a robust, ongoing process. I observed untold numbers of young trees of varying ages and sizes growing across the landscape in these supposedly dead, beetle killed forests. Consequently, I'm not convinced that the beetle kill, even though greatly enhanced by climate warming, is “unnatural” or even “unprecedented” and thus needs special measures to deal with it.

The whole argument about beetle kill being bad reminds me of the old arguments about fire being bad. We've finally moved to a more rational, ecologically sensible attitude toward fire. I think we need to do the same thing for beetle kill. At least we need to be patient and track what is happening on the land in response to climate change so that we can adapt to it while doing as little damage as possible.

I have no doubt that removal of large amounts of Rocky Mountain biomass for fuel production at the levels projected by Cool Planet, Inc., the US Department of Agriculture, and the timber industry is inherently damaging to forests. That is, it is inherently unsustainable. Further, I have no doubt that if this project goes forward and biomass fuel is eventually produced for national and even international markets, that eventually roadless areas and even wilderness will be at risk of biomass reduction “treatment” to fill the maw of Cool Planet's refineries. After all, that's where most of the beetle kill is.

The strategic question for me is not what we will do with all these dead trees. Indeed, we don't need to “do” anything. They're already being taken care of by natural processes that go back millions of years. Rather, the larger question is, will climate change allow these regenerating forests to come back? It might, or it might not. So how does biomass conversion

to fuel fit into that question? Will we so damage forests by removing large amounts of biomass that we lose what resilience remains after the impacts of climate change?

When the ecological future of western forests is so uncertain in the face of climate change, we don't need the added stress on forests of removing so much biomass that their recovery is stilted, stunted, or even stopped."

One looks in vain in the Final Plan and EIS for any discussion and analysis of the environmental impacts of widespread logging of beetle killed trees to produce biomass for fuel production. References to biomass that we do find are minimal. On p. 30 of the Plan, there is reference to the role of biomass in carbon storage, and on p. 259, we find reference to biomass as "renewable energy." We find the same reticence of disclosure in the FEIS. On p. 118, there is a reference to carbon sequestration in biomass, and on p. 147, there is a reference to "utilizing biomass for energy." That's it. There is no discussion and no analysis whatsoever regarding logging biomass for fuel production on the Forest.

Were one a cynic, one might think that this failure to address logging beetle killed trees biomass to support energy production was deliberate to hide from the public the enormity of what is coming down the road with salvage logging for fuel biomass. USDA's Biomass and Bioenergy website (<http://www.fs.fed.us/research/biomass-bioenergy/>) refers to the 2007 Energy Independence and Security Act. The website states that the Act mandates that "by 2022, the United States will replace 36 billion gallons/year (bg/yr) of transportation fuels with biofuels, with at least 16 bg/yr coming from cellulosic feedstocks." For cellulosic feedstocks, read trees and forests.

The USDA and USFS have known for years about this statutory biofuels production mandate, yet they made no effort to disclose to the public during the planning process what it means. I myself didn't know about it until the announcement of the pilot project in November of 2013.

This is intolerable. The pilot project is slated to last only 5 years, and there is no doubt in my mind that it will be found economically viable and extensive salvage logging for biofuels will become a general policy on the National Forests of the West. That means that extensive salvage logging on the Shoshone can be expected to occur during the life of the new plan—15 to 20 years. The risks and threats to the Forest from biomass fuel production must be assessed.

*Remedy Sought:* At a minimum, the Forest must produce a Supplemental EIS on the the risks associated with widespread salvage logging for biomass to fuel conversion, particularly in IRAs. The SEIS must focus on the impacts of massive clearcutting/salvage logging/removal of forest biomass on soils, naturally regenerating forests (lodgepole, douglas fir, and whitebark pine), and fragile and steep upstream watersheds that occur in IRAs. The SEIS must also look at the viability of using biochar to "restore" logged forests. For example, just how many tons of biochar are need to "restore" one acre of logged forest? Can a forest supply enough biochar to restore itself?

*Proposing to open selected army cutworm moth sites used by grizzly bears during the late summer/early fall hyperphagic phase to public access without environmental analysis.*

This issue first came up around three years ago. This quotation from now-retired Shoshone NF biologist Joe Harper in the Minutes of the Fall meeting of the Interagency Grizzly Bear Committee summarizes the issue well

([http://www.igbconline.org/images/pdf/Draft\\_Fall\\_2012\\_YES\\_Meeting\\_Minutes.pdf](http://www.igbconline.org/images/pdf/Draft_Fall_2012_YES_Meeting_Minutes.pdf)):

“**Joe Harper:** A year ago I made a presentation regarding our forest plan revision and standards and guidelines regarding moth sites. We do receive annual requests to film bears on moth sites. We proposed to have viewing sites for a few selected moth sites. Dan Tyers took this to the biologists to get their opinions. (Biologists thought this was a bad idea). With their input we have modified our proposed standards and guidelines and the Shoshone will not move forward with any proposals until individual moth site management plans are built for specific moth sites.”

The key words here are “biologists thought this was a bad idea.” I agree.

The Final Plan, at p 39, makes the following statement:

Restrict new permitted activities at moth sites, until a comprehensive site management plan is developed. **(TES-STAND-07)**

On p. 44 of the Final Plan, we read:

“Wildlife biologists and managers will cooperate with other agencies and interested parties to gain knowledge about grizzly bear/human interactions at army cutworm moth sites, the ecology of army cutworm moths, grizzly bear use at moth sites, and other aspects of grizzly bear/moth ecology where information is needed to facilitate management. Opportunities for promoting public understanding of and appreciation for moth sites will be identified.”

It is implied by these statements that the public will be allowed to visit moth sites under permit. This is, as quoted above, a really bad idea, especially for bears.

In my comments on an early version of the draft plan dated 2 February 2012, I wrote about this issue:

“This is the only new proposal in the Plan and it immediately struck me as just plain crazy. As a naturalist long involved in grizzly conservation, I am unequivocally opposed to the Forest's proposal to allow public access to selected but as yet unnamed moth sites used by grizzly bears in late summer . This may be the most ignorant proposal in the Draft Plan.

Contrary to claims of the federal and state wildlife agencies that are ostensibly responsible for grizzly conservation, the fact is that the grizzly bear is still in peril due to the disruption or loss of critical foods throughout The Yellowstone Country, especially whitebark pine. It makes no sense to allow the public to disrupt grizzlies as they seek out and use another critical food, the Army Cutworm Moth.

I understand that the Inter-Agency Grizzly Bear Committee has approved giving the public access to moth sites. My god, what the hell are you guys thinking?

Given the loss of whitebark pine in The Yellowstone Country, the Army Cutworm Moth is one of the few remaining high-value foods left to the grizzly. It is irresponsible to publicly reveal the location of any moth site, much less permit public access to them. Inevitably, once given access, some members of the public, or more likely commercial outfitters, would seek out and approach other sites, treating grizzlies feeding at the sites as profitable tourist attractions. The potential for disrupting grizzly feeding during this critical hyperphagic time as ignorant people get too close is too great. There is certainly a risk of injury or death for both grizzlies and people. Why extend the conflict problems of fall hunting season to late summer moth sites? It's insane.

Further, it is even more irresponsible to make public access to moth sites part of the Draft Plan's standards and guidelines for threatened and endangered species. That would *require* giving the public access to the sites.

If the Forest wants to educate people about grizzlies and their critical foods, information can be placed on kiosks at trailheads, in Forest Service offices, and in local visitor centers or museums without revealing the location of specific sites.

I have been told that this proposal came initially out of film companies' interest in filming grizzlies at moth sites. If that is the case, then it makes more sense to consider such requests through the special use permitting process, always asking the primary question, does filming serve the public interest—not to mention the grizzly's interest? In some cases, it might be in the public interest to issue film companies permits to film grizzlies at moth sites. However, such special use permits must set strict conditions regarding distance and human behavior *and* require a professional escort to enforce the terms of the permit.

*Allowing public access to moth sites must be removed from the Plan's standards and guidelines. Instead, access to moth sites must be dealt with through special use permits on a case by case basis. It does not need to be written into the plan as a requirement."*

I have not changed my opinion from two years ago. However, I would add that scientific and political conflict over the status of bear foods has increased over the last two years (e.g., see here <http://wyofile.com/kelsey-dayton/grizzly-bear-debate/> and here [http://www.jhnewsandguide.com/opinion/columnists/the\\_new\\_west\\_todd\\_wilkinson/for-griz-no-such-thing-as-a-guaranteed-lunch/article\\_51e43736-7ff4-5e80-87cd-c897ffafc790.html](http://www.jhnewsandguide.com/opinion/columnists/the_new_west_todd_wilkinson/for-griz-no-such-thing-as-a-guaranteed-lunch/article_51e43736-7ff4-5e80-87cd-c897ffafc790.html)). The disappearance of whitebark pine and cut-throat trout as major bear foods is creating additional stress for bears. In a sense, bears are more at risk now than they were two years ago.

Unfortunately, the Fish & Wildlife Service seems determined to delist the bear in the face of considerable evidence from independent sources that the major bear foods are in decline. (Delisting the bear is another very bad idea). From my own personal knowledge, derived from field surveys, it is clear that as whitebark pine declines, more bears are switching to moths to make up the loss of calories from whitebark pine. Given this added food stress, it makes no sense to artificially add to the stress by allowing members of the public to know the location of any of the sites, much less visit them. While I have no difficulty with the Forest taking action to educate the public about the importance of moth sites to grizzly bears, it can be done without allowing people to visit selected moth sites. The risk to people and bears is

simply too great. As I said above, if film crews wish access to moth sites, that can be dealt with on a case by case basis.

*Remedy Sought:* Rather than developing management plans for individual moth sites, which vary from year to year anyway, leaving open the possibility of public access, the Forest should write an absolute prohibition on public access to all moth sites, both known and developing. There is no need for individual site management plans. Let bears manage their own use of the sites. Requests from individuals for access, such as for film crews, should be dealt with on a case by case basis through limited special use permits.

### Summary & Conclusions

The planning process has gone on for nearly nine years, an intolerable time frame for something that should have been completed in half the time. Much of the responsibility for the delay lies with the USFS and the Bush-era planning rule that found no support among the public or the courts. Consequently the process had to be restarted.

The decision of the Shoshone National Forest to allow bikes into the Dunoir SMU, contrary to law and fifty years of local support for designating the Dunoir as wilderness, is a serious breach of the public trust. The decision was made without public input in response to a letter from former US Senator Alan Simpson on behalf of his son-in-law, a mountain biker. This is a clear example of illegitimate political influence on public policy contrary to the public interest. It has certainly damaged public trust in the Forest. The requested remedy would go a long way in restoring that public trust.

Thank you for your consideration.

Sincerely,  
Robert Hoskins  
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