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Dear Ms. Johnson:

This letter is in response to your objection, dated October 3, 2013, of the Red Mountain Flume Chessman Reservoir Project located on the Helena National Forests. I have read your objection on behalf of Native Ecosystems Council and Montana Ecosystems Defense Council. I have reviewed the Environmental Assessment (EA) and the analysis in the project record (as of the objection date), and I understand the disclosed environmental effects. I have also considered the comments submitted during the public scoping for this project. My review was conducted in accordance with 36 CFR 218.

On December 21, 2011, President Obama signed into law the Consolidated Appropriations Act of 2012, which directs the Secretary of Agriculture to provide for a pre-decisional objection process based on Section 105(a) of the Healthy Forest Restoration Act of 2003 (HFRA) (16 U.S.C. 6515(a)) for projects and activities implementing land management plans and documented with a Record of Decision or Decision Notice. The Act further directs that these procedures be applied in lieu of 36 CFR 215 that provided for a post-decisional administrative appeal process for projects and activities implementing land management plans. The Department has developed the final rule at 36 CFR 218 to: (1) Preserve the pre-decisional objection process already in place for proposed hazardous fuel reduction projects authorized under the HFRA; (2) expand the scope of that objection process to include other covered actions; and (3) establish a process for providing the notice and comment provisions of the Appeal Reform Act.

On August 19, 2013, then-acting Helena National Forest Supervisor Bill Avey released a draft Decision Notice and draft Finding of No Significant Impact for the Red Mountain Flume Chessman Reservoir Project on the Helena Ranger District. The purpose of the project is to reduce the likelihood of physical damage to the municipal watershed infrastructure (flume and reservoir) in the event of a wildfire or from falling dead trees. It had been determined through internal analysis and discussion with interest groups such as the city of Helena and the Ten Mile Watershed Collaborative Committee that concerns for the flume and reservoir should be addressed immediately. The project is needed to:

- Remove standing vegetation and high fuel loadings along the Red Mountain Flume in order to lower the risk of damage to infrastructure from wildfire effects, post-fire effects, and probable direct damage from falling trees.

- Remove dead and dying trees, and lower the surface fuel loading and density of live trees near Chessman Reservoir in order to reduce risk of a severe wildfire, which could lead to post-fire erosion, sedimentation, and ash-flow to the reservoir.

In addition to the above proposed treatments, analysis for the project indicated a need to do a site-specific, project-specific amendment to the 1986 Helena National Forest Plan for lands encompassed by the Red Mountain Flume Chessman Reservoir Project with regards to elk hiding cover and security.

The regulations at 36 CFR 218 provide for a pre-decisional administrative review process in which the objector provides sufficient narrative description of the project, specific issues related to the project, and suggested remedies that would resolve the objection (36 CFR 218.8). The regulations also allow for the parties to meet in order to resolve the issues. On November 5, 2013, the District Ranger, Forest Supervisor, representatives of the interdisciplinary team (IDT), and I, met with you, Montana Ecosystems Defense Council, members of the Ten Mile Watershed Collaborative Committee, and the City of Helena and discussed your concerns about the project and analysis. I believe we discussed the subjects that were most important to you, but we were unable to resolve your objection or any of the specific points contained within it.

The Responsible Official and I have reviewed the project in light of the issues presented in your objection letter. I have considered your issues in the following two categories: 1) violation of environmental laws, regulations, and policy; and 2) 36 CFR 218-specific concerns related to this project. I noted that you did provide a general remedy to your objections. You asked the Deciding Official to select the No Action Alternative, withdraw the Environmental Analysis, and prepare an Environmental Impact Statement for the project.

ISSUE REVIEW

Statement A: The Forest Service will violate the NFMA, the NEPA, and the APA by failing to provide an accurate assessment of impacts to big game species in regards to hiding cover, security cover, the proposed Forest Plan amendment, and cumulative effects.

Issue A1: ***The analysis of the hiding cover impacts of the project are illogical and conflicting because the methodology and conclusion provided by the agency on hiding cover are not interpretable.***

Issue A1, Contention a: ***The 40% canopy cover measure of hiding cover requires 50% to meet the Forest Plan standard (Helena Forest Plan at II/18; Wildlife Report at 92), while the Forest Service measure of hiding cover measures "horizontal cover" at the ground level, with full cover required to hide 90% of an elk at 200 feet, but requires 35% hiding cover as the Forest Plan standard (the accepted definition of hiding cover as per the current best science by Black et al. 1976). Since these two measures have different requirements as per the Forest Plan, they are not interchangeable.***

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: The relationship between the Montana Department of Fish, Wildlife and Parks (MDFWP) and Forest Service (FS) definitions of hiding cover is discussed in the Forest Plan Amendment (draft DN Appendix B, p. 2), the Wildlife Report (p. 78, 94), and Response to Comments (EA Appendix C, p. 164). [Please note: pages cited in specialist reports are as of the objection date. Potential editing of those reports, before the Decision is made, based on instruction in this letter and discussions during the objection resolution meeting may cause some page numbers to change.] The MDFWP definition (40% canopy closure = hiding cover) is based on research and modeling of elk habitat in the northern Rockies (Lonner and Cada 1982; Thomas et al. 1988) [see draft DN Appendix B, p. 2] that relates overhead canopy closure to understory hiding cover. Canopy closure thus provides an indirect means of measuring of hiding cover over large areas (such as Elk Hunting Units (EHU)) via R1-VMAP satellite imagery. The FS definition of hiding cover (cover that conceals 90% of a standing elk at 200 ft) requires direct measurement of hiding cover via ground surveys. This is impractical over large areas—which is why the Forest used the MDFWP methodology to measure hiding cover at herd unit level, so as to determine compliance with Forest Plan standards 3 and 4a.

While the two methodologies measure hiding cover in different ways, the results (to what degree a given herd unit complies or fails to comply with Forest Plan standards 3 and 4a) are comparable. The Forest used direct measurement of hiding cover (the FS definition) in the project area for purposes of deciphering local conditions available to elk, not for determining Forest Plan compliance. The two analyses are separate entities. Ground surveys have also been used as a mechanism to check the accuracy of canopy closure estimates [Wildlife Report, p. 16].

Canopy closure is an indirect measure of hiding cover. Since recent ground surveys (2013) at a number of sites indicate that most beetle-killed trees at this time remain standing and still provide hiding cover, it is logical to assume that the current level of hiding cover is equivalent to the pre-beetle kill level of hiding cover and thus of pre-beetle kill canopy closure (draft DN, Appendix B, p. 2). Pre-beetle kill canopy closure can, therefore, still serve as a measure of current levels of hiding cover over the extensive area encompassed by the three relevant EHUs. The Forest has done a complete job of discussing the difference in definitions of methods for determining hiding cover as stated in the Forest Plan. Forest provided field survey data to validate the method used.

Issue A1, Contention b: The analysis of hiding cover in the affected EHUs also seems invalid as it is exactly the same analysis that the agency provided over 3 years ago for the Forest-wide Hazard Tree Removal and Fuels Reduction Project HFRA Environmental Assessment released in March of 2010.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: Hiding cover in 2013 is virtually the same as in 2010 because few beetle-killed trees have fallen in the last 3 years and the hiding cover provided by standing tree trunks has thus remained intact (as indicated by ground surveys, 2013) [see Wildlife Report, p. 72 (figs. 12, 13), 78]. Where the trees still are alive, canopy cover, which is used to gauge the presence of hiding cover in the understory, would be virtually the same in 2013 as in 2010. That is why the Forest used R1-VMAP "pre-beetle kill" canopy conditions to estimate Forest Plan hiding cover [draft DN Appendix B, p. 2]. Once a substantial number of dead trees have fallen, the MDFWP canopy closure methodology will no longer be valid, but for now, it provides a reasonable estimate of hiding cover [Wildlife Report, p.78].

Issue A1, Contention c: There is no actual information provided in the current project record as to how hiding cover was measured for EHUs. Only results were provided, so the public has no means of assessing the reliability of the analysis methods (Objection page 5)

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: Hiding cover for elk herd units (EHUs) is determined by converting R1-VMAP estimates of forest canopy closure to hiding cover using the formula in the Forest Plan on page II/18 (the MDFWP definition of hiding cover), which is based on research in western Montana forests [draft DN Appendix B, p. 2]. The use of this methodology is discussed in the Wildlife Report (pp. 9, 15 to 16, 78). The indirect cover estimate via R1-VMAP is employed because direct on-ground measures of hiding cover are impractical to collect over an area as large as an EHU (in this case, 3 EHUs totaling more than 128,400 acres) [Wildlife Report, pp. 15 to 16, 85].

The treatment units (490 acres) and project area (4,760 acres) occupy a much smaller area than the EHUs, and it has been feasible to collect direct ground-based measurements of hiding cover in these area—both to provide a local picture of on-ground conditions and to help validate estimates derived from R1-VMAP [Wildlife Report, pp. 16, 19, 83].

The project area is located in a relatively continuously forested region of the Quartz Creek herd unit; however, much of the 36,754-acre herd unit covers areas of open grassland, recent clearcuts, and unforested agricultural land (in the 1.5 mile zone beyond the Forest boundary). Hiding cover will be roughly 45% as measured by the MDFWP method [Wildlife Report, p. 83 (table 6)], which, when graphed against open road density [Wildlife Report, p. 78 (fig. 14)] is insufficient to meet Forest Plan standard 4a. If it was possible to measure hiding cover throughout the herd unit via the FS method (requiring ground surveys), a different graph would be needed (derived from the table in the Forest Plan, p. II/18), but the conclusion would be the same. Due to the existing condition, the Forest needed a site-specific, project specific amendment in order to be in compliance with the Forest Plan. That is what the Forest did—they included a Forest Plan amendment in this project.

Issue A1, Contention d: The agency's inability to connect the 40% canopy cover measure of hiding cover to horizontal hiding cover is not surprising, since there is in fact no science that identifies a 40% canopy cover as elk hiding cover.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: The modeling efforts by Lonner and Cada (1982) and others are appropriate as an interface between measures of canopy closure and hiding cover. The work has been used by both the FS and MDFWP since the Northern Region Forest Plans were constructed in the 1980s. Since then, studies by Smith and Long (1987) and Russell et al. (2007) have further validated this relationship. Fieldwork on the Helena NF indicates that results of the two different methodologies provide cover estimates leading to the same conclusions with regard to Forest Plan compliance [see Tenmile Elk Hiding Cover Validation Surveys][draft DN Appendix B, p. 2].

Issue A1, Contention e: The correct application of canopy density as a proxy for hiding cover, based on the Montana Rule, appears to have been applied in part for the Project. The agency's choice of which hiding cover criteria to apply to the Project has a dramatic difference on the results provided, which means that their analysis procedures are entirely arbitrary.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: Recent survey work in and around the project area and elsewhere in the Tenmile drainage indicates that the Forest and the MDFWP definitions of hiding cover are both valid indicators of actual hiding cover on the ground as specified in the FS definition (hiding 90% of a standing elk at 200 ft) [see Tenmile Elk Hiding Cover Validation Surveys][draft DN Appendix B, p. 2].

The MDFWP definition of hiding cover was used in this project for Forest Plan standard 4a (fall elk security) and standard 3 (summer habitat capability) [Wildlife Report, p. 98].

Lonner and Cada's modeling (1982) showed that canopy closure tends to underestimate the percentage of horizontal hiding cover in the understory, but that it does so in a consistent and predicable way. This is why the percentage threshold for the MDFWP canopy closure definition is 50% rather than the 35% required for the FS on-ground survey definition [see Helena Forest Plan, p. II/18]. That is, the MDFWP 50% canopy closure = 35% FS on-the-ground hiding cover. It does not matter which method the Forest uses to determine hiding cover: both will reveal the same relationship of hiding cover in a given herd unit and can be used to determine whether or not a project area is meeting Forest Plan standards 3 and 4a.

Recent field surveys in the project area have measured hiding cover directly (using cover boards to determine the distribution of vegetation that can hide 90% of a standing elk at 200 ft.). These surveys indicate that 89% of the area currently supplies hiding cover because the dense stocking of the predominantly forested area [Wildlife Report, p. 83]. Most of the conifers in this area, though still standing, are now dead and devoid of needles—so that use of current canopy closure to indirectly measure hiding cover would dramatically underestimate actual hiding cover. For this reason, pre-beetle kill canopy closure is the correct way to apply the indirect measure.

The Forest applied the MDFWP method to the three herd units in order to gauge Forest Plan compliance over this extensive area (>128,400 acres). But the team did not report hiding cover acres derived from this method for the project area alone. For the project area, they used the on-the-ground, direct measurements—since it was a small enough area to cover with field surveys and Forest Plan compliance had already been displayed at the required EHU.

Issue A2: The agency makes an absurd claim, without any supporting data, that logging impacts to elk cover will be similar to non-logging impacts in 5 to 10 years; this claim was used as justification for a Forest Plan amendment for hiding cover. The Wildlife Report repeatedly claims that the impact of the project on big game hiding cover is irrelevant because hiding cover (horizontal cover as per the Forest Service standard) will be lost anyway (e.g., Report at 28, 40, 62, 63, 64, 80, 85, 89, 92, 103, 104).

Suggested Remedy: No specific remedy was suggested for this contention.

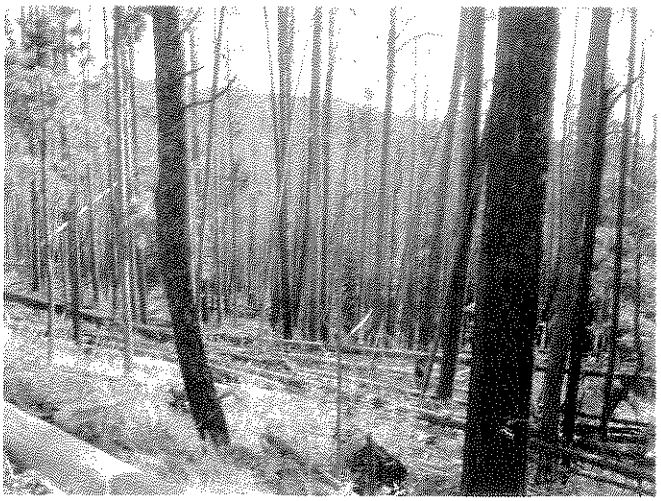
Resolution: No resolution was reached.

Response: The short-term impact of the loss of hiding cover in treatment areas would not be "irrelevant" because surrounding stands would retain hiding cover for only another 5 to 10 years and the contrast between treated and untreated areas would only last until the beetle-killed trees fall. However, after 5 to 10 years, enough beetle-killed trees will have fallen to eliminate hiding cover on most surrounding untreated areas [Wildlife Report, p. 7-8, 98-99]. Habitat structure would be different in treated and untreated areas because of the accumulation of coarse woody debris in the untreated sites, but hiding cover—or lack thereof—would be the same (since the deadfall would not stack up high enough to hide standing elk over 40 acre blocks) [Wildlife Report, pp. 7 to 8; EA, Appendix C, pp. 164 to165].

Green trees of many sizes will remain in both treated and untreated areas—particularly in riparian sites and in the western end of the project area where the flume runs across west-facing slopes that support numerous Douglas-fir. However, none of these residual tree groupings would be dense enough or extensive enough to provide effective hiding cover [Wildlife Report, pp. 5 to 6]. Eventually, regenerating conifers will re-establish hiding cover in many treated and untreated areas, but this is a long-term eventuality [Wildlife Report, p. 7].

Field surveys and Aerial Detection Surveys indicate that the bulk of the beetle-infested trees in the project area died in 2008 and 2009 (4 to 5 years ago). Research in beetle-killed lodgepole pine stands indicates that trees begin to fall 3 to 5 years after death, and most trees (90%) fall

within 14 years of death [Wildlife Report, p. 12; Forested Vegetation report p. 36]. While many dead trees are still standing today, snag fall has begun and thus far appears to be consistent with predictions, as evidenced by patches of blowdown observed in field diagnoses. As examples, the following photographs were taken in proposed project units in the summer of 2013; these photographs show the initial phases of blowdown occurring in beetle killed trees. More rapid "unraveling" of the stand is expected in the next few years based on the literature cited.



Based on these observations, it is reasonable to conclude that many trees will be down in roughly the next 10 years as predicted by the cited literature. Since hiding cover will begin to be lost well before 90% of the trees are down, 5 to 10 years is a reasonable estimate as to when most of the stands will no longer provide this cover. The observed pattern of relatively few trees falling in the first 4 to 5 years after their demise is typical of beetle-killed lodgepole stands [see Wildlife Report, p. 72 (figs. 12, 13)]. After this time, the rate of downfall accelerates.

From a Forest Plan standpoint, once enough trees have fallen so that standing elk can be seen at 200 feet throughout most of a stand, the stand no longer provides hiding cover. The Project does include design elements of leaving small diameter, surviving trees where they occur to provide cover to the extent possible in the units around Chessman reservoir. The abundance of these trees varies, but is generally patchy (Forested Vegetation Report, pp. 28 to 30). These remaining live trees may screen the animals to an extent in some areas, but the Forest Plan definition of hiding cover is no longer met—in the untreated stands as well as in the treatment units [EA Appendix C, pp. 164 to 165] due to the falling of the beetle-killed trees. Natural regeneration of new seedlings is expected as forests recover from the outbreak, but based on germination and growth rates these trees would not be expected to provide hiding cover before the dead trees fall.

Issue A3: The reliability of the analysis of big game security is unknown as the measurements for security areas and hiding cover employed in the analysis are both conflicting and implausible; the agency failed to demonstrate how security areas were delineated, and why only very large security areas of several thousand acres have been delineated, when the minimum requirement is only 250 acres as per the current best science.

It seems that the analysis of security cover for the Project does not employ the complete definition of security as per Hillis et al. 1991, which the agency defined as a widely accepted methodology (11/21/2011 Tenmile Flume Fuels Project Assessment for Helena Forest Plan Big Game Standards).

Suggested Remedy: No specific remedy was suggested in the objection document for this contention. However, Ms. Johnson did ask at the objection resolution meeting to allow NEC to submit new information (Proffitt et al. 2013) to the project record.

Resolution: No resolution was reached.

Response: The Wildlife Report (pp. 77 to 80) clearly differentiates between the Forest Plan approach to elk security (the hiding cover/open road density index) and the approach laid out in Hillis et al. (1991) (elk security areas). The Hillis methodology is not a Northern Region "protocol"; nor is it a standard or otherwise a requirement for Helena NF elk analysis. Rather, it is ***an*** approach to dealing with elk security that many biologists have found compelling: it is a way to provide for elk security during the hunting season apart from the hiding cover/road density formulas that have been employed in most Northern Region Forest Plans since the 1980s [see Christensen et al. (1993), pp. 7 to 9].

The Hillis method is not a cover-based analysis. It is based on the distribution of large blocks of fall elk habitat away from open roads. It assumes that on a National Forest, sufficient cover will be available and does not require that it be tallied and mapped [Hillis et al. 1991, p. 39]. The Forest Plan does not require elk habitat to be assessed by the Hillis method. The current Forest Plan index (big game standard 4a) is based on the amount of hiding cover and the density of open roads without regard to how they are distributed within an EHU.

The methodology used to delineate elk security areas for the Divide landscape and the rationale for doing so is provided in the Wildlife Report (Appendix A). The Hillis methodology was developed in a part western Montana where dense forest cover was the rule. As a result, Hillis did not employ a specific level of hiding cover as a parameter—assuming that it was ubiquitous. The primary parameters were distance from open roads (½ mile) and minimum size (250 acres) [Hillis et al. 1991, p. 39; Wildlife Report, p. 79]. Hillis is specific to the Lolo NF in Western Montana and the paper recommended that the parameters be adjusted to account for local conditions—particularly in more open elk habitats further east in Montana [Hillis et al. 1991, pp. 39 to 40]. This is the rationale for increasing the minimum security area size beyond 250 acres and sometimes pulling boundaries further back (than ½ mile) from open roads [Wildlife Report, Appendix A].

As noted in Appendix A (p. 2), elk in the Divide landscape are known to regularly make use of unroaded areas less than 250 acres to temporarily escape hunters. However, MDFWP feels that such areas do not provide long-term "security" and should not be classified as "security areas". The elk security analysis for different herd units does take into account the contribution of such "local refuges" to elk security, but they have not been added into the elk security area acreages shown in Table A-1 (Appendix A, p. 3).

Instructions: I am instructing the Forest to review and consider the research (Proffitt et al. 2013) provided by NEC as part of the conference call, in light of the project.

Issue A4: There is no valid analysis of the direct or cumulative impact of multiple amendments to the HFP regarding hiding cover on summer range; the question of whether these chronic amendments have resulted in significant impacts to big game, as well as a failure of the Forest Plan to meet stated objectives, remains unanswered. The proposed exemption is invalid because the methodologies used to define and measure hiding cover and security were conflicting and contradictory, as well as vague and not supported with analysis data or criteria.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: Cumulative effects associated with other Forest Plan amendments has been evaluated in the 'Cumulative Effects of Other Forest Plan Amendments' section of the Site-Specific Forest Plan Amendment Red Mountain Flume/Chessman Reservoir Project [Draft Decision Notice Appendix B, pp. 6 to 8].

The Site-Specific Amendment analysis concludes the "proposal to exempt this project from Standards 3 and 4(a) should not affect the Forest's ability to realize the elk population potential established in the Forest Plan. When the Forest Plan Record of Decision was signed in 1986, the selected alternative was E-1. Alternative E-1 established Forest-wide elk population potential for summer and winter range. In 1986, the Forest Plan summer range elk potential was 6,300 elk; the winter range elk potential was 4,000 elk. By decade 5, summer range elk potential in the Forest Plan was projected at approximately 6,200 elk and winter range elk potential at 3,200 elk (Forest Plan Record of Decision, p. 13, Forest Plan FEIS, pp. II/56-60). Based on aerial survey data collected by MDFWP staff, there are over 13,943 elk Forest-wide within those hunting districts that overlap with the Helena National Forest. This is well in excess of the number of elk estimated at the time the Forest Plan was crafted and also in excess of that predicted for decade 5. While some of the elk in these hunting districts spend all or part of their time on non-Helena National Forest land, a considerable number of them—well in excess of 6,400—are part of the Helena NF population" [Draft Decision Notice Appendix B, p. 6]. The Forest continues to meet the Plan objectives for elk number and management.

Furthermore, with respect to Forest-wide impacts to elk associated with multiple site-specific amendments, the Site-Specific Amendment analysis concluded that "[n]one of the past amendments has resulted in significant impacts to elk hiding cover and/or security... Cumulatively, effects to elk hiding cover from this and other site-specific Forest Plan amendments should not compromise the Forest's ability to provide habitat potential to meet Forest Plan elk population goals. Elk population viability would remain healthy and elk would continue to be well distributed throughout the Helena National Forest" [Draft Decision Notice Appendix B, p. 8].

The methodologies used to define hiding cover as well as the limitations and assumptions of those methods are described in the Wildlife Report and Biological Evaluation [pp. 10, 11, 13, Table 1 pp. 15 to 16]. The data used to validate the assumptions are derived from field surveys that measure hiding cover – i.e. the ability to hide 90% of an elk at 200 feet and are summarized

in the Elk Hiding Cover Validation Surveys for the Red Mountain Flume/Chessman Reservoir and the General Tenmile Vicinity: Methods and Results [TenmileElkHidingCoverValidation]. These data were also used to validate the assumption that beetle-killed trees, while standing, would continue to provide functional hiding cover as described in the Draft Decision Notice Appendix B, p. 2:

> "The mountain pine beetle outbreak in the project area—and those herd units within which the project occurs—has resulted in canopy cover losses in the lodgepole pine stands. However, while these trees remain upright, they will continue to screen elk. For this reason, the 2005/2006 version of R1-VMap is assumed to accurately reflect the structure associated with 40% canopy cover even though some of that canopy cover has been lost. In other words, it's not practical to remove those stands from consideration as hiding cover just because the canopy cover has been lost. The pre-disturbance condition remains applicable for describing the functional attributes of hiding cover. This has been validated by field data [See the Tenmile Elk Hiding Cover Validation Surveys in the project record] as well as other studies that have relied on pre-disturbance vegetation characteristics to predict post-disturbance wildlife habitat (e.g. Russell et al. 2007). Furthermore, Smith and Long (1987) observed a well-defined relationship between elk hiding cover and high densities of lodgepole pine boles, conditions similar to the project area."

Additional references have been included in the Project Record that provide rationale and support for the use of pre-disturbance vegetation conditions as a determinant of post-disturbance habitat. (See Saab and others 2002 and 2007, Vierling and others 2010, Nappie and Drapeau 2011, and Latif and others 2013). The methodologies used to define security are described in the Wildlife Report and Biological Evaluation [pp. 16, 79 and Appendix A, pp. 1 to 3].

You reference Hillis et al (1991) in terms of the role hiding cover plays in security and your objection contends that hiding cover is an 'essential ingredient'. However, this is not supported by Hillis et al. Rather they provide considerations to be used in areas that are 'less favorable' for elk in terms of forested blocks, including increasing the size of the security area [Hillis et al 1991, p. 6, 8]. Hillis and others also conclude that "[u]nquestioning adherence to these guidelines… should be avoided" [Hillis et al 1991, p. 10].

Your objection also contends that information on total elk populations is irrelevant and that only information on the bull segment of the population is noteworthy in terms of security and hiding cover. On the other hand, Proffitt et al. 2013 appear to be concerned with how to manage the distribution of elk cows on the landscape. The Wildlife Report and Biological Evaluation includes an analysis of project effects on the bull segment of the population [Table 5 and narrative pp. 82 and 85] as well as on the population as a whole [p. 76, Table 5 and narrative pp. 81 to 82]. Effects of project activities on overall elk numbers are central in determining Forest Plan consistency in terms of the goals, objectives, and anticipated outputs (See above paragraph).

Your objection includes reference to Lonner and Cada (1982) in terms of logging effects to elk security and impacts to hunting. The Site-specific amendment references Lonner and Cada (1982) in terms of the relationship of canopy cover and stand structure [Draft Decision Notice

Appendix B Site Specific Amendment, p. 2]. Impacts to hunting opportunity and elk survival are also described here as well as in the Wildlife Report and Biological Evaluation [pp. 82, 85].

Your objection cites Lyon et al. (1982) and the 'Montana Rule' for determining hiding cover. As described above, the hiding cover analysis was based on one of the two Helena National Forest Plan definitions and validated by field data. Lyon et al. 1982 provide an alternate method for calculating hiding cover not utilized in this analysis. The Forest did conduct a cumulative effects analysis of the amendment. They explained the elk security methodologies and supported them with references and data.

Statement B: The agency has failed to demonstrate they have taken a hard look at direct, indirect and cumulative impacts of the proposed project because not all foreseeable logging projects were considered in the analysis, and the impact of some foreseeable projects were not evaluated; in addition, the massive clearcutting/logging project that is being finalized immediately adjacent to the current project was never evaluated as per impacts on wildlife. Only the acres that have been treated were provided; since the agency acknowledged that the Clancy-Unionville Project required an environmental impact statement, it is not clear why a project immediately adjacent to this project area would also not have significant cumulative effects.

Issue B1, Contention a: Since NEC provided comments on the proposed project, we obtained additional information while on a field trip to the project area with the Forest Service on 9/18/2013 that expansive additional logging is planned for the Ten Mile Watershed. Helena District Ranger Heather DeGeest noted that the Ten Mile Watershed Collaborative Committee believed that 20-40% of the watershed should be treated to meet their objectives. NEC obtained a copy after the field trip of the Facilitator's Summary of this collaborative process dated June 17, 2009. And as Ranger DeGeest noted, this summary at page 7 states that the committee endorses Finney's 20-40% treatment of the landscape model for reducing wild fire effects. The Ten Mile watershed is 26,300 acres (Wildlife Report at 28). Treating 20-40% of this watershed, most likely with clearcuts as per the current projects, would result in 5,260 (20%) to 10,520 (40%) acres of additional clearcuts in the watershed. These additional logging projects are never identified as "reasonably foreseeable" project. Nor were they evaluated in the current project analysis, even though the District Ranger noted (9/18/2013) that the Forest Service Interdisciplinary Team (I.D. Team) will begin planning these additional treatments in the fall of 2013. The City of Helena noted in their responses to the Preliminary Environmental Analysis that they look forward to additional coordination with the Forest Service in the Ten Mile drainage.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: As the objection states, mention of this project was made by the District Ranger on a project field visit in September 2013. In response to recommendations made by the Ten Mile Watershed Collaborative Committee (see *Facilitator's Summary*, June 17, 2009), the Helena National Forest has been open about the potential for a future vegetation project in the Ten Mile

drainage. However, there has been no project proposal at this time. Therefore, there is no reasonably foreseeable project in the Tenmile drainage to consider in cumulative effects.

The Collaborative Committee endorsed the 20-40 % treatment model outlined in Finney et al, 2006, and used a community engagement process to determine their overall recommendations. It is important to note that Finney's treatment model percentages are simply a suggested method to potentially maximize effectiveness (reduced fire spread rate) over a number of decades. The study was used as informational background for the Collaborative Committee, and is not prescriptive for any project in the Ten Mile drainage. The collaborative committee clearly stated in their recommendations that "Final determination of the percentage to be treated should be left to specialists on the ED team." As such, any acreage figures or treatment types referenced in the objection (i.e. NEC, Notice of Objection, p. 15) are entirely speculative on NEC's part, and have no founding in any project plan.

Whatever future project, if any, that does occur in the Ten Mile drainage would require a cumulative effects analysis which would include the Red Mountain Flume Chessman Reservoir Project. The red Mountain Flume project analysis is in compliance with NEPA.

Issue B1, Contention b: NEC asserts a violation of NEPA occurred when the proposed Telegraph project was not considered within the project's cumulative effects adequately.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: The Telegraph Vegetation Project is included in the cumulative effects sections of the resources potentially affected by the Telegraph Project. Since "Telegraph" is only in the very early planning stage, analysis data is not yet available from the special. Therefore, the cumulative effects discussion can only consider potential impacts in general terms.

Issue B1, Contention c: NEC asserts that many of the Clancy-Unionville Project treatment units were clearcut but not scheduled for clearcut in the original project analysis and asks the question how did this project consider those treatment modifications in its cumulative effects analysis?

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: Prescriptions in the Clancy Unionville project were changed based on an analysis of new information for that project because by the time the Clancy Unionville project was implemented most of the trees had died due to bark beetles. All resources including wildlife, analyzed the actual, on-the-ground condition caused by the mountain pine beetle and the change in the prescriptions due to the death of most of the trees. These prescriptions were entered into

the activity database (FACTS) correctly as they occurred on the ground, including those that were changed to clearcuts. The FACTS database was queried to develop the cumulative effects analysis for the Red Mountain Flume chessman Reservoir Project. The Clancy Unionville project clearcuts, therefore, were included in the cumulative effects for this project in the past harvest category. The Clancy Unionville acres are included in the "regeneration harvest" acres displayed by decade in cumulative effects summary tables displayed in specialist reports. The detailed query used to build these summary tables is available in the project record.

The Wildlife Report and Biological Evaluation report discusses the cumulative effects of the Clancy Unionville Project on various species and habitats including riparian habitat, connectivity, snags, elk, lynx, and goshawks. Furthermore, the openings associated with the Clancy Unionville project were taken into consideration during unit layout for the Red Mountain Flume/Chessman Reservoir to limit opening size [Wildlife Report and Biological Evaluation p. 91, 105, 141]. Unit boundaries were modified through the addition of buffers to provide screening between proposed units and the Clancy Unionville units [Flume Chessman Field NotesSeptember3&5, pp. 1, 2, and 7].

Statement C: The Forest Service will violate NEPA, NFMA and APA by failing to manage snag habitat in the project area and the landscape to ensure a diversity of wildlife and persistence of management indicator species.

Issue C1: The Forest Plan standard for snag and associated species is a violation of NEPA, NFMA and APA because it is biologically impossible to ensure viability or diversity of associated wildlife, as well as to measure environmental impacts of site-specific projects; the monitoring program does not even cover the entire area of the HNF, so that even if it produced reliable results as per viability of cavity-nesting wildlife, it cannot provide cumulative effects results.

The Forest Plan standard for snags is to maintain an average of 2 snags per acre over a 3rd order watershed. Snags are not required to be left in harvest units, including clearcuts (Agency response to comments at 5-173). There are 2 such watersheds impacted by the proposed project, with most actions occurring in watershed 1001-1, which is 16,031 acres in size (Vegetation Report at 2, 33-34). The second watershed is #0814, which is 9,196 acres. Id. The current average number of snags per acre in this watershed is 40 per acre (Vegetation Report at 35-36, Table 10). Thus to provide an average of 2 snags per acre in the 16,031 acre watershed, there have to be 32,062 snags (2 x 16,031 = 32,062). With 40 snags per acre, the Forest Plan requirement can be met on only 800 acres, or 5% of the watershed (40 snags/acre divided into the required total of 32,062 snags comes to 800 acres). It is implausible that attainment of this Forest Plan standard, or managing only 5% of a 3rd order watershed, will provide a healthy population of snag-associated wildlife.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: The Forest Plan snag standard is met by having an average of at least two snags per acre across the third order drainage. The objection incorrectly interprets the math used to calculate the snags per acre. For example, an average of 38 snags per acre would remain in watershed 1001-1 post-treatment. This was calculated by dividing the total number of snags after project completion (611,152) by total acres (16,101). This is an average and does not indicate distribution; snags would occur across the area in varying densities averaging 38/acre, well in excess of the standard of 2 snags per acre. It does not indicate that snags would only be present on 800 acres.

In addition to the Forest Plan Standard, the Forest utilizes recommendations from Bollenbacher et al (2008) for snag management guidance rather than the Northern Region snag management protocol because it uses data specific to the Helena National Forest (EA, Appendix C., p. 5-174, response to comment #38). Estimates of Snag Densities for Eastside Forests in the Northern Region (Bollenbacher et al 2008) utilizing Eastern Montana snag data provides a replacement for the Northern Region Snag Protocol for eastside Montana forests in Region 1. The information provided does not set forth required direction but rather provides current snag data and analysis for consideration by Forests (Bollenbacher et al 2008). The information presented was used to describe snags at the Forest scale. This publication is the best available science to help guide snag management on the Forest. The information aids Forests in determining appropriate and realistic snag management targets, within the Forest Plan framework (Vegetation report, pp. 13-14). The project would remove most dead trees from 490 acres of the two local third-order drainages (Beaver Creek and Buffalo Creek). The most recent estimate of large-medium sized beetle-killed trees in these drainages is 877,815—an average of 32.5 snags/acre [Wildlife Report, p. 73 (table 3), 76]. The project would remove 26,605 large-medium sized snags, leaving 851,210—and reducing the average number of snags per acre to 32.0 [Wildlife Report, p. 73 (table 3)]. The Forest Plan standard is two snags per acre. The densities are also well in excess of the 9.2 average snags/acre larger than 10 inches dbh in lodgepole pine stands documented in "Estimates of Snag Densities for Eastside Forests in the Northern Region" (Bollenbacher et al. 2008) [Wildlife Report, p.73]. There will be no shortage of snags in these drainages as a result of the project (Wildlife Report, p. 75).

The proposed action would remove 3% of the standing snags from the Beaver and Buffalo drainages. This would reduce average snags/acre in the two combined drainages from 32.5 to 32.0 snags/acre. This is well above the minimum two snags per acres required by the Forest Plan and well in excess of the 9.2 snags/acre larger than 10 inches dbh in lodgepole pine stands documented in Estimates of Snag Densities for Eastside Forest Forests in the Northern Region (Bollenbacher et. al, 2008, p. 38). In terms of drainage-wide impact on snag dependent wildlife the effects of this proposal would be inconsequential. Snag dependent wildlife species would continue to prosper throughout these two third order drainages (EA, p. 83). The project and analysis are in compliance with NEPA and NFMA.

Issue C2: The agency failed to address the irretrievable impact of clearcutting on snag-associated wildlife, for either direct or cumulative impacts on the affected 3rd order watersheds. An important aspect of snag management was never addressed in the analysis for the Project. This is the basically "irretrievable" impact of clearcutting on snag-associated

wildlife. It will take at least 80-100 years for a mature forest to regrow and provide snags (Response to public comments at 5-173; Wildlife Report at 134). The failure of the agency to address the irretrievable impacts of clearcutting on critical ecological processes for woodpeckers, and hence 25% of forest songbirds (Bull et al. 1997 at 1), means that the decision to create a clearcut approximately 400 acres in size was made without taking a hard look at the impacts, and thus to consider other options that would be less destruction to wildlife.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: Given the magnitude of the mountain pine beetle outbreak—covering thousands of acres in the southern Divide landscape, including most of the 4,760-acre project area—the harvest of dead trees from 490 acres will not have any measurable effect on snag dependent wildlife populations. Dead trees are now the dominant feature of pine forests in the Divide landscape [Wildlife Report, pp. 71, 73 to 74, 75, and 76].

The harvest of dead trees in project treatment units (490 acres) would take place over a short period of time. The loss of the rest of standing dead trees in thousands of acres of surrounding habitat will occur more gradually. But research indicates that roughly 90% of the dead trees will have fallen after 14 years post-mortality [Wildlife Report, p. 12]. Given that most trees in the project area were dead by 2009, this eventuality should come to pass in about 10 years. The remaining 10% will fall over the next decade. Snag habitat will be widely available in the project area for the next decade and populations of snag dependent species will increase in turn (Wildlife Report, p. 12).

Pileated woodpeckers are uncommon across much of the Divide landscape, which is at the eastern fringe of their historic range in the Rocky Mountains. The size of the home range for pileated woodpeckers is estimated at 3,500 acres. The limiting factor for pileated woodpeckers is not foraging habitat, but ***large*** nesting and roosting trees (Wildlife report, p. 49).

Very few snags in proposed treatment areas are large enough to allow excavation of nesting and roosting cavities. This is due to environmental conditions east of the continental divide, not management actions. Field surveys along the flume and around Chessman reservoir revealed that very few beetle-killed trees are large enough to serve as potential nesting sites (Wildlife Report, p. 50). Any snags larger than 20 inches dbh will be left in the Chessman reservoir units. There will not be a change in the availability of nesting trees in the project area. The availability of foraging habitat would be reduced by 490 acres in the 4,760 area project area. This is not significant because foraging habitat is not limited (Wildlife Report, p. 50).

Hairy woodpecker nests in trees as small as 10 inches dbh (Wildlife Report, p. 50). They have always been relatively common throughout the Divide landscape, but recent field surveys show they are now substantially more abundant (Wildlife Report, p. 50). The proposed action would eliminate dead and dying trees from 490 acres of the 4,760 acre project area. Approximately 3,000 acres of suitable habitat would remain in the project area, after subtracting

marginal/unsuitable habitat. This would be sufficient to support approximately 25 hairy woodpecker pairs. The project would not have a significant effect on populations (Wildlife Report, p. 51).

Statement D: The agency will violate NEPA, NFMA, APA and ESA if the Project is implemented.

Issue D1: The agency claims that the Project will have no significant adverse impacts on the threatened lynx.

Issue D1, Contention a: The cumulative loss of former habitat (from past cutting, including Clancy-Unionville sale area) must be considered with the projected loss from this current project. There is no discussion about how past logging has affected lynx habitat.

There is no requirement in the Lynx Amendment to manage for recruitment of lynx winter habitat. As such, use of this amendment to measure project impacts on lynx is invalid, as is demonstrated in the current project. There will be 490 acres of developing lynx winter habitat that will be eliminated, basically for over 100 or more years. This is an irretrievable, highly significant adverse impact that was never noted in the Project analysis.

Finally, the agency failed to evaluate the impacts of habitat fragmentation on lynx. The clearcut around the reservoir will be 333 acres, which includes the 15-acre thinning of Unit 12, which will no longer be travel cover for lynx. However, these clearcuts occur immediately adjacent to a large meadow complex at the southern end of the reservoir. Also, there is an existing clearcut between units 14 and 15 (see aerial photo of project area in Objection appendix C). With these other existing openings, the combined opening created by the Project will be around 400 acres. This will obviously create a movement barrier for lynx, and make use of remaining unlogged habitat more difficult in the winter, or the most critical season for lynx as per Squires et al. 2010. It is implausible that this huge clearcut will not create an adverse impact to lynx.

Reliance on a flawed management guideline, which the Lynx Amendment clearly is, including guidance that conflicts with current science, is a violation of NEPA, NFMA and ESA.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: The Wildlife Report and Biological Evaluation Report includes an analysis of the effects of past logging activities on lynx habitat [pp. 120 to 121], including a consideration of the Clancy Unionville project [p. 122], as does Appendix B of that report [pp. 2, 3].

Lynx winter habitat is addressed in the Northern Rockies Lynx Management Direction (Amendment) via Objectives VEG 02 and VEG 04, Standards VEG S1 and VEG S5, and Guideline VEG G1 [usfs_2007b_lynx_mgmt_rod, Attachment 1, p. 2, 3, and 4]. The Wildlife Report and Biological Evaluation analyze effects to lynx winter habitat [pp. 109, 111, 112, 116-

119, and 124]. The project is in compliance with the lynx direction as amended into the Forest Plan.

The effects of habitat fragmentation on lynx have been evaluated in the Wildlife Report and Biological Evaluation in terms of fragmentation and linkage considerations associated with Standard ALL S1 [pp. 117, 119, 120, and 123]. Habitat fragmentation is analyzed (EA, pp. 31 to 32) and travel corridors/linkage zones are analyzed [pp. 60 to 69] including a discussion of local connectivity in and around Chessman Reservoir [p. 64]. The project will maintain habitat connectivity as required by the lynx amendment. The project and analysis is in compliance with NEPA, NFMA, and ESA.

Issue D2, Contention a: Application of the Lynx Amendment's 6% exemption standard allows perpetual long-term adverse impacts to lynx that essentially allow unlimited "take" of lynx, in violation of the ESA. NEC states that at the current rate of applying the NRLMD exemption standard it would take 224 years for the HNF to reach the 6% exemption limit, and as such, the BiOp for the lynx amendment allow unlimited take of lynx.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: The "6% exemption" refers to Standards VEG S1, S2, S5, and S6 of the Northern Rockies Lynx Management Direction (NRLMD) that allow fuels management projects in the wildland-urban interface (WUI) to modify suitable winter snowshoe hare habitat on up to 6% of the lynx habitat on a National Forest [NRLMD ROD, Attachment 1, pp. 3 to 4]. Otherwise, these standards prevent vegetation management projects from going forward in stand-initiation snowshoe hare habitat and multi-story mature or late successional forest. The project would modify 35 acres of multi-story mature forest and 1 acre of stand initiation hare habitat, but since these areas lie within a WUI and the project is fuel reduction, the action is allowed under the exceptions to standards VEG S5 and VEG S6 [Wildlife Report, p. 118; BA, pp. 40, 41].

Actually, I would think the Native Ecosystems Council would celebrate that the Helena NF rarely uses the exception to the VEG Standards and will take 224 years to reach the 6 % exemption. The standards and 6% exemption actually prevent taking lynx habitat unless absolutely necessary to protect human life and property. Clearly the forest is taking the Standards very seriously and applying the exemption very judiciously.

In reviewing the fuels treatment exceptions to the vegetation management standards, the U.S. Fish and Wildlife Service anticipated that the exceptions would have "few, if any…adverse effects on lynx" [NRLMD ROD, p. 18-21]. Given these conclusions and the fact that the standards have been in place since 2007 and used very little on the Forest, it is clear the 6% exemption is not adversely affecting lynx and does not allow for unlimited take.

Issue D3, Contention a: The agency will violate the Forest Plan, and trigger significant adverse impacts to lynx, impacts that will trigger formal consultation, by failing to meet the Lynx Amendment standard ALL S1 (Lynx Amendment ROD Attachment 1, page 1).

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: Systematic winter tracking surveys, coupled with DNA analysis of hair and scat samples, have demonstrated that lynx are resident along the Continental Divide just west of the project area and that they range widely throughout the area—including portions of the Tenmile drainage [Wildlife Report, pp. 114 to 115]. A majority of lynx locations south of U.S. Highway 12 have been in the greater Telegraph Creek drainage west of the Continental Divide—an area where timber harvest has proliferated since the 1960s and where early seral forest and non-forest openings are extensive and widespread. The Forest's monitoring has shown lynx are perfectly capable of navigating a landscape with abundant forest openings as long as the key habitat components on which they depend (mature forest cover, dense early-seral forest, sites with coarse woody debris, snowshoe hares) are abundant as well [Wildlife Report, pp. 114 to 115, 118 to 119].

NRLMD Standard ALL S1 requires that permanent development and vegetation management projects maintain habitat connectivity within a Lynx Analysis Unit (LAU) and/or a linkage area. The obligation is not to retain 100% forest connectivity, but to leave suitable linkage within an LAU to allow lynx to navigate an area. But, the primary concern of the USFWS and the FS with regard to linkage was not forest openings but, rather, highways [NRLMD ROD, pp. 27 to 28]. The Red Mountain Flume Chessman Reservoir project would create openings around which and through which lynx would be able to move in course of accessing pockets of suitable hare habitat [EA, Appendix C, pp. 169 to 171(responses 18, 28)]. Mature forest will remain abundant for a few more years until the overstory collapses, after which lynx habitat use patterns are likely to be altered throughout the landscape—as a result of natural phenomena, not fuels management. The project would allow lynx to continue to move through the landscape as it exists at present and is in compliance with Standard ALL S1 [Wildlife Report pp. 117 to 119 ; BA, pp. 39 to 41]. The project and analysis are in compliance with the Forest Plan as amended by the NRLMD, NFMA, and ESA.

Issue D4, Contention a: The agency failed to define lynx habitat by the current best science, and is managing for lynx conservation with management guidelines that violate ESA because they fail to protect key lynx habitat needed for persistence and recovery.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: The fact that lynx make use of both multi-storied mature forest and early seral (stand-initiation) habitat in winter is well-established by field research. This was considered and even

projected in the Northern Rockies Lynx Direction amended into the Forest Plan. Snowshoe hares are found in both types of habitat and lynx will opportunistically hunt for them wherever they are found [NRLMD ROD, pp. 8, 11; Wildlife Report, p. 108]. Winter tracking surveys in the Telegraph Creek region along and just west of the Continental Divide have located a majority of lynx in sapling-dominated clearcuts [Gehman and others 2006-2011]. NRLMD standards for vegetation management have been designed accordingly—restricting management activities in both dense young sapling stands and older multi-storied forests [NRLMD ROD, pp. 11 to 14]. Lynx spend much of their time foraging in hare habitat, and it is considered to be the key habitat component in determining whether lynx will be able to occupy an area in winter [NRLMD ROD, pp. 8, 11; Wildlife Report, p. 111]. The Wildlife Report (p. 108) and BA (pp. 28 to 29, 33, 37, 41) discuss the components of hare habitat and lynx habitat and the potential impact of the project on them.

Squires et al. (2006) did find that in the Seeley Lake region west of the Continental Divide, lynx showed a marked preference for foraging in mature multistoried forests in winter. But Squires et al. (2012, p. 1635) cautioned that lynx "exhibit substantial regional differences in resource selection across the contiguous United States" and that "appreciating these differences is fundamental to management and conservation of southern lynx populations." Thus, it is not surprising to find lynx frequently foraging for hares in young sapling dominated habitats in the drier, eastside forest environments of the Divide landscape.

Young clearcuts dominated by seedlings do not provide winter hare habitat. But once they reach the young sapling stage, trees are large enough to protrude above the snowline to provide browse for hares and feature low-lying boughs that provide shelter under the snow. At this point, the trees will support snowshoe hares—and foraging lynx—in winter [NRLMD ROD, pp. 8, 11].

Vegetation manipulation in lynx habitat follows and complies with the NRLMD. The Forest identified lynx habitat and hare habitat as per the guidance of that management direction, complying with all pertinent standards, guidelines, and objectives of that document [Wildlife Report, pp. 109, 117 to 118; BA, pp. 30, 39 to 40]. The analysis is in compliance with ESA.

Issue D5: The Forest is violating ESA by failing to have an incidental take statement for the taking of grizzly bears in the project area due to displacement of grizzly bears and impeding grizzly bear travel through a recognized linkage corridor.

Grizzly bear conservation measures (i.e. Forest Plan standards for open road densities in grizzly bear recovery areas, 2006 USFWS BiOp recommendations for core security habitat and road densities) have not been applied to the project landscape as per disturbance and mortality risk to grizzly bears.

There is current new science that demonstrates that open road densities outside of security areas has a huge effect on conservation of grizzly bears (Schwartz et al. 2009), and that the overall level of human activities in a landscape clearly affects occupancy and use by grizzly bears (Coleman et al. 2013). Thus it is implausible that the HNF can claim that the proposed project, in conjunction with other activities, such as the recent Clancy-Unionville project, and

the upcoming Rimini road project, will not have "substantial" impacts on grizzly bear use of this landscape. These impacts require completion of an EIS.

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: The BA (p. 28) concluded that, given (1) the minimal density of grizzly bears in the southern Divide landscape, (2) the localized and relatively small scope of the proposed habitat alteration and of project operations, (3) the fact that within the next 10-15 years surrounding forests will also be devoid of overstory cover as a result of the mountain pine beetle epidemic, (4) the projected establishment of a mature open-grown forest in the treatment area over the next several decades, (5) the contribution of the new openings to the local habitat mosaic (generally a positive habitat feature for grizzly bears), and (6) the addition of no new open roads or other features that would increase the potential for human-grizzly encounters, it is evident that the project would not generate adverse effects of any significance. Consequently, the BA (p. 28) determined that the project may affect, but is not likely to adversely affect the grizzly bear.

Instructions: The project area was not covered in the programmatic 2006 BO for grizzly bear. Before the decision is made, the Forest must complete programmatic consultation with USFWS on grizzly bear south of U.S. Highway 12.

Statement E: The Objection process employed by the HNF for the Chessman Reservoir Project is a violation of NEPA because the public is required to provide comments on the project without having access to complete information.

Objector states that critical information (primarily wildlife reports, biological assessments, and USFWS responses) was not available to the public during the comment period, thereby prohibiting full public involvement. "The Objection process also prevents the public from knowing whether or not the USFWS "concurs" with agency determinations in the case where no adverse impacts are claimed. If the USFWS does not concur, then there will be further actions required by the Forest Service to make the project compatible with threatened and endangered species. The additional processes will not have any public review, in violation of the NEPA. The public will not even know if the USFWS concurred or disagreed with agency conclusions."

Suggested Remedy: No specific remedy was suggested for this contention.

Resolution: No resolution was reached.

Response: The Forest Service posted to the Forest website the following documents during the 30 day comment period: Preliminary Environmental Document (PED) and Appendices, Draft Wildlife BE Specialist Report, Draft Forested Vegetation Specialist Report, Draft Hydrology Specialist Report, Draft Fire/Fuels Specialist Report, and the Legal Notice, in order to provide the public with easy access to supporting information contained in the PED. The legal notice

published in the Independent Record newspaper as well as the public letter sent to the project mailing list notified the public that additional supporting documents were available on the Forest's website. (See PED Public Letter dated 6/21, and PED Legal Notice dated 6/24 in draft project record).

The Forest received a FOIA request from Ms. Johnson on 7/30/2013 requesting "hard copies" of several different project related wildlife documents. The Forest responded to Ms. Johnson's request on 8/26/2013 and mailed to her hard copies of multiple documents (see 20130826_NEC_FOIA_Response.PDF in draft project record for a list of documents that were sent). On 9/16/2013 the Forest received the FOIA package back from the post office. Ms. Johnson had not picked up the package from the post office for several weeks (see 20130916_NEC_Returned_FOIA_Material.PDF).

Ranger Heather Degeest had a field trip to the project area scheduled with Ms. Johnson on 9/18/2013 so instead of sending the FOIA material in the mail again, she hand delivered it to Ms. Johnson on the 9/18/2013 field trip.

The Forest released the EA and draft DN/FONSI on 8/30/2013 (legal notice publish date). The Forest sent a public letter to the mailing list notifying them of the release of the EA and Draft DN/FONSI and the availability of supporting documents on the Forest's website. The Forest posted the EA, Draft DN/FONSI and all associated appendices (including response to comments) along with the Wildlife BE Specialist Report, Wildlife BA, Forested Vegetation Specialist Report, Hydrology Specialist Report, Fire/Fuels Specialist Report, and the Legal Notice on the Forest website at this time.

The Wildlife BA was not available during the 30 day comment period, but it was available during the objection period and was included as one of the documents that was sent to Ms. Johnson in the FOIA response package. The Forest has requested concurrence from the USFWS on the project, but as of the date of this letter has not received a response back. The project analysis and process are in compliance with NEPA.

SUMMARY

In conclusion, I have reviewed your assertions that the project violates various environmental laws and regulations and the Forest Plan. The project is in compliance with all laws; regulations; and the Forest Plan, as amended by the site-specific, project specific amendment for elk habitat. Based on my review, I am instructing the Forest to: 1) review the research by Proffitt et al. (2013) in light of the project; 2) complete programmatic consultation with USFWS on grizzly bear south of U.S. Highway12; 3) ensure the list of references and literature attached to this letter, which were used during the objection review, are included in the project record. I also have additional instructions to the Forest based on my review of another objection. Those instructions are to review the *Open Letter to Members of Congress from 250 Scientists Concerned about Post-fire Logging* in light of the project's purpose and need; add to the project record any further communication with DEQ concerning the Red Mountain Flume Chessman Reservoir Project; and add the Forest Plan Monitoring Report to the project record. Once these instructions are completed the Forest may sign the Decision Notice for the project. I hope you will continue to work with the Forest on projects and Forest Planning.

Sincerely,

Jane L Cottrell

JANE L. COTTRELL
Deputy Regional Forester

cc: William Avey, Jennifer J Woods, Jan Fauntleroy, Heather R Degeest, Ray G Smith, Allen Byrd

AGENCY LITERATURE AND REFERENCES
FOR
AGENCY OBJECTION RESPONSES
RED MOUNTAIN FLUME CHESSMAN RESERVOIR
DECEMBER 2013

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