IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CENTER FOR BIOLOGICAL DIVERSITY, *et al*. Plaintiffs, v. ERIN CAREY, in her official capacity as the Missoula Field Manager of the Bureau of Land Management, *et al*. Defendants.	CV 24–168–M–DLC

This matter comes before the Court on Plaintiffs Center for Biological Diversity, Alliance for the Wild Rockies, Native Ecosystem's Council, Council on Wildlife and Fish, and Yellowstone to Uintas Connection's ("Plaintiffs") Motion for a Preliminary Injunction. (Doc. 31.) The Court heard argument on the Motion on June 30, 2025. (Doc. 45.) For the reasons herein, the Motion will be denied.

BACKGROUND[1]

On April 18, 2024, the United States Bureau of Land Management ("BLM") Missoula Field Office authorized the Clark Fork Face Forest Health and Fuels Reduction Project (the "Clark Fork Face Project" or "Project") in the Clark Fork

[1] The administrative record is cited as "BLM[Bates No.]" for BLM documents and "FWS[Bates No.]" for FWS documents.

River sub-basin and Garnet Mountain Range east of Missoula, Montana. The Project seeks to (1) reduce forest fuel loading and break up homogenous stand conditions, (2) increase the acreage of forest communities moving towards the midpoint of Natural Range of Variability, (3) maintain and enhance limber pine populations where present, and (4) where feasible and appropriate, provide opportunities for timber harvest including salvage of dead timber while it remains salvageable. BLM000307. The Project entails fuel management efforts, limber pine enhancement, prescribed burning, thinning, timber harvest, and temporary road construction on 16,689 acres of BLM-managed lands. BLM000308–10.

Over its lifetime, the Project will remove an estimated four million board feet of timber per year over its 10 to 15-year lifespan. BLM000315, 56. The Project is further estimated to yield $70.6 million in local income, $8.8 million in local tax revenue, and 970 jobs per timber sale annually. (Doc. 38-2 ¶ 7.) The first timber sale, Wallyhood, was awarded in the fall of 2024 and involved the harvest of 3.25 million board feet of timber. (*Id.* ¶ 6.) The timber sale included fifteen miles of road maintenance and drainage improvement on roads that serve public recreational access and benefit approximately 23 private residences. (*Id.*) Planned activities for the upcoming summer include road maintenance and testing as well as non-commercial tree thinning. (Doc. 38-1 ¶ 13.)

Plaintiffs filed suit on December 3, 2024, (Doc. 1) and filed a First Amended

Complaint ("FAC") on February 6, 2025 (Doc. 14). The FAC alleges the Project: (1) violates the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA") because the BLM failed to take a "hard look" at the Project's impacts to the environment (Count I); (2) violates the Federal Land Policy and Management Act ("FLPMA") and the APA because the BLM failed to show that the Project complies with forest and wildlife standards in the Missoula Resource Management Plan ("RMP") (Count II); (3) violates NEPA, FLMPA, and the APA because the BLM failed to properly map lynx habitat and failed to adequately consider Project impacts to Canada lynx and their critical habitat (Count III); and (4) violates NEPA because the BLM failed to take a hard look at climate impacts (Count IV). (Doc. 14 ¶¶ 296–352.) The FAC further alleges (5) that the Missoula RMP Biological Assessment ("BA"), Biological Opinions ("BiOp"), and Incidental Take Statement violate the ESA and the APA (Count V); and (6) that the Project BA, BiOp, and Incidental Take Statements violate the ESA and APA (Count VI). (*Id.* ¶¶ 353–95.)

Plaintiffs filed a Motion for Summary Judgment and Motion to Supplement on April 10, 2025, (Docs. 20, 23), and Defendants filed a Cross-Motion for Summary Judgment on May 9, 2025 (Doc. 27). Plaintiffs filed the present Motion on May 16, 2025, seeking to enjoin the activities authorized by the Project's Environmental Assessment ("EA"), BiOp, Decision Record, and Finding of No

Significant Impact ("FONSI"). (Doc. 31 at 2.) The Court held oral argument on Plaintiffs' Motion for Preliminary Injunction on June 30, 2025. At oral argument, counsel clarified that Plaintiffs now seek to enjoin only the Big River thinning project, set to commence on July 15, 2025, as opposed to the Clark Fork Face Project as a whole.

LEGAL STANDARDS

I. Preliminary Injunction Standard

To obtain a preliminary injunction, a Plaintiff must establish "that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def Council, Inc.,* 555 U.S. 7, 20 (2008). The Ninth Circuit "has adopted the 'serious questions' test—a 'sliding scale' variant of the *Winter* test—under which a party is entitled to a preliminary injunction if it demonstrates (1) 'serious questions going to the merits,' (2) 'a likelihood of irreparable injury,' (3) 'a balance of hardships that tips sharply towards the plaintiff,' and (4) 'the injunction is in the public interest.'" *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)).

"As to the first factor, the serious questions standard is 'a lesser showing than likelihood of success on the merits.'" *Id.* (quoting *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017)). Serious questions are questions "that cannot be resolved one way or the other at the hearing on the injunction because they require more deliberative investigation." *Id.* at 1192 (internal quotations and citations omitted). Serious questions "need not promise a certainty of success, nor even present a probability of success, but must involve a fair chance of success on the merits." *Id.* (internal quotations and citations omitted).

II. Preliminary Injunction Standard in ESA Cases

The "traditional preliminary injunction analysis does not apply to injunctions issued pursuant to the ESA." *Nat. Wildlife Fed. v. NFMS*, 422 F.3d 782, 793 (9th Cir. 2005). The ESA "strips courts of at least some of their equitable discretion in determining whether injunctive relief is warranted." *Cottonwood Env't Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1091 (9th Cir. 2015); *see also Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 174 (1978). In this context, "the public interest and the balance of hardships weighs heavily in favor of a preliminary injunction due [to] the emphasis placed by Congress on the protection of endangered and threatened species." *All. for the Wild Rockies v. Marten*, 253 F. Supp. 3d 1108, 1112 (D. Mont. 2017) (citing *Cottonwood*, 789 F.3d at 1091) ("[W]hen evaluating a request for injunctive relief to remedy an ESA procedural violation, the equities and public

interest factors always tip in favor of the protected species.").

Yet despite this liberal standard for imposing injunctive relief, Plaintiffs "are still obligated to show an irreparable injury to support the issuance and scope of an injunction." *Salix v. U.S. Forest Serv.*, 944 F. Supp. 2d 984, 1001 (D. Mont. 2013). Indeed, ESA cases "do not stand for the proposition that courts no longer must look at the likelihood of future harm before deciding whether to grant an injunction under the ESA." *Id.* (quoting *Nat'l Wildlife Fed. v. Burlington N. R.R.*, 23 F.3d 1508, 1511 (9th Cir. 1994).

DISCUSSION

Plaintiffs argue they are likely to be irreparably harmed in the absence of preliminary relief, the public interest and balance of equities ship sharply in their favor, and they raise "serious questions" on the merits, particularly (1) that the BiOp fails to adequately consider important factors and discuss Project effects to grizzly bears in violation of the ESA and APA, (2) the Project will result in violations of the RMP BiOp Incidental Take Statement for grizzly bears in violation of the ESA, and (3) the Project EA and BiOp fail to adequately address cumulative effects of known timber projects in violation of NEPA, the ESA, and APA. (Doc. 23 at 23–33.) As discussed, Plaintiffs seek only to enjoin the Big River thinning project, and do not oppose implementation of the Wallyhood Timber Sale, limber pine-cone collection, Cave Gulch Road maintenance, Rattler-Mulkey Road

maintenance, or Garnet Range Road geotechnical testing. (Doc. 44 at 3.) And, as clarified in oral argument, Plaintiffs do not presently challenge the Cosmo Cramer timber sale, the Southern Cross GNA timber sale, nor the Fir Paso thinning sale.

All four *Winter* elements must be satisfied under the Ninth Circuit's "serious questions" test. *Cottrell*, 632 F.3d at 1135. Here, because Plaintiffs fail to show a likelihood of irreparable harm in the absence of an injunction, the Court will not address the remaining arguments at this time. *See e.g., Burlington N. R.R.*, 23 F.3d at 1512 (affirming denial of preliminary injunction due to failure to establish likelihood of irreparable injury); *Montana Env. Inf. Center v. Bernhardt*, 2021 WL 243140, at *2–3 (D. Mont. 2021) (denying preliminary injunction on ESA and NEPA claims for failure to show irreparable injury).

A. Preliminary, Not Mandatory, Injunction

Defendants first argue that because Plaintiffs seek to enjoin the Project mid-operation, they are requesting a mandatory, and not a preliminary, injunction. (Doc. 38 at 13.) The Court disagrees. Though the Big River thinning contract has been awarded, the project work has yet to begin. Therefore, because Plaintiffs' request is prohibitory in nature, they are not subject to the heightened standard for mandatory preliminary relief. *See Garcia v. Google*, 786 F.3d 733, 740 (9th Cir. 2015); *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979).

B. Irreparable Harm

Under *Winter*, "plaintiffs may not obtain a preliminary injunction unless they can show that irreparable harm is likely to result in the absence of the injunction." *Cottrell*, 632 F.3d at 1135. "Failure to show that an irreparable harm will result in the absence of a preliminary injunction is fatal to a request for such relief." *All. for the Wild Rockies v. Pena*, 2016 WL 6123236, at *2 (E.D. Wash. Oct. 19, 2016) (citing *Cottrell*, 632 F.3d at 1135). The standard requires "a definitive threat of future harm to protected species, not mere speculation." *Flathead-Lolo Bitterroot Citizen Task Force*, 98 F.4th at 1193.

Grizzly bear males, females, and females with cubs have been documented in the Project area, and five grizzly bear dens have been documented in the Garnet Range in the last 20 years. FWS000185. Montana Fish Wildlife and Parks ("Montana FWP") considers the Project area to be an important "stepping stone" area for linkage between grizzly bear population centers. *Id.* As acknowledged by U.S. Fish and Wildlife Service ("FWS"), "some grizzly bears using the action area may already be experiencing displacement effects in some areas due to the under-use of suitable habitat as a result of the existing condition and may experience some additional displacement effects associated with the proposed and/or permanent road construction." FWS000053.

However, as noted, the scope of relief has narrowed considerably since

Plaintiffs first filed their motion on May 16, 2025. The Big River thinning project involves noncommercial thinning across 309 acres in the Project area. (Doc. 47-1 ¶ 6); BLM010292. The project authorizes thinning of seedlings, saplings, and small pole sized trees that are greater than 4.5 feet in height and less than 8 inches in diameter. BLM010293. Absent from the project's statement of work is any discussion of roads or road construction.

Michael Garrity, Executive Director of Plaintiff Alliance for the Wild Rockies, submitted a declaration in support of the instant Motion describing his and Plaintiffs' members' interests in the Project area. (Doc. 32-1.) The declaration asserts that "the displacement of grizzly bears throughout the Project's duration may cause grizzlies to avoid the area for generations after since this type of avoidance behavior is a learned behavior that is passed onto cubs." (*Id.* ¶ 10.) The declaration further states that, should the activities proceed as planned, "the area will be irreversibly degraded because once tree cutting occurs, the BLM cannot put the trees back on the stumps or remove the roads from the landscape. Once operations begin, our interests in the area will be irreparably harmed" and the area will "no longer [be] adequate for our [a]esthetic, recreational, scientific, spiritual, vocational, and educational interests." (*Id.* ¶¶ 5–6, 13.)

Relying on this Court's decision in *Alliance for the Wild Rockies v. Gassman*, 604 F. Supp. 3d 1022 (D. Mont. 2022), Plaintiffs further argue the

pending actions will harm individual grizzly bears residing in and transiting through the Project area. (Docs. 32 at 14–15; 44 at 3–5.) In *Gassman*, this Court observed that "[a] district court need not find an extinction-level threat to a listed species before issuing an injunction under the ESA; the ESA accomplishes its purpose in incremental steps, which include protecting the remaining members of a species . . . Harm to those members is irreparable." 604 F. Supp. 3d at 1034 (citations omitted). Plaintiffs "are concerned with planned thinning because roads that will be used for these actions require reconstruction, BLM010292, and the agencies did not adequately consider the effects of this action on wildlife, including grizzly bears." (Doc. 44 at 3.)

Defendants dispute Plaintiffs' characterization of the roads and maintain that the Big River thinning project will involve no roadwork or road construction activities. In response to this Court's order, Defendants submitted a declaration by John Fothergill, Forester with the BLM Missoula Field Office, on July 7, 2025. (Doc. 47.) The declaration attests that Mr. Fothergill prepared the Big River thinning project and personally identified and drove the access roads, delineated the treatment units, and prepared the contract maps. (*Id.* ¶ 5.) The declaration further states that, upon learning of Plaintiffs' concerns regarding road construction, Mr. Fothergill returned to the Big River project area and found, as he had prior, all access roads to be open to the public and drivable with a 2-wheel

drive vehicle. (*Id.* ¶ 7.) Critical to the Court's analysis here, Mr. Fothergill's declaration concludes that "[n]o road improvements are necessary to access the units or conduct the thinning work," nor is any road work "authorized" to complete the contract. (*Id.* ¶¶ 7, 8.)

Plaintiffs' concerns with respect to grizzly bears are tethered to the roadwork allegedly required as part of the Big River thinning project. And this makes sense—it is well understood that roads harm grizzly bears. BLM006161; FWS000048. Plaintiffs' ESA and NEPA claims are also largely tethered to roads, specifically the BLM's alleged failure to adequately analyze the impacts and cumulative effects of road construction in the Project area and the 2011 baseline for current open motorized route density. (Doc. 32 at 25–32.) But in consideration of Mr. Fothergill's declaration, the Court is satisfied that no roadwork or road construction will occur as part of the Big River thinning project. In the absence of any planned roadwork or road construction, the Court finds it unlikely that any harm to grizzly bears—be it the species as a whole or its individual members—will result from the Big River thinning project.

With respect to the lynx, Plaintiffs briefly raised in oral argument that the Big River thinning project should be enjoined because it will take place in lynx critical habitat. The record identifies that the thinning contract is within lynx critical habitat and within a lynx analysis unit ("LAU"). BLM010294.

Accordingly, the contract specifications incorporate the Clark Fork Face EA's guidance with respect to Canada lynx habitat occurring in LAUs and lynx critical habitat. *Id.* The Big River contract permits cutting of any tree species greater than 4.5 feet with at least 75% defoliation "because they are not providing habitat for snowshoe hare or lynx." BLM010299. Without more from Plaintiffs, the Court cannot conclude that the challenged project is likely to adversely affect the Canada lynx or their critical habitat. *See Flathead-Lolo Bitterroot Citizen Task Force*, 89 F.4th at 1193 (definitive threat of future harm required).

The thinning work itself presents a closer question. The Ninth Circuit has, as Plaintiffs correctly observe, held "[t]he logging of mature trees, if indeed incorrect in law, cannot be remedied easily if at all. Neither the planting of new seedlings nor the paying of money damages can normally remedy such damage." *League of Wilderness Defenders v. Connaughton*, 752 F.3d 755, 764–65 (9th Cir. 2014); *see also Cottrell*, 632 F.3d at 1135 (finding that logging which interferes with the ability to "'view, experience, and utilize' the areas in their undisturbed state" constitutes irreparable harm). Logging, however, "is not per se an irreparable harm requiring an injunction," *Earth Island Inst. v. Muldoon*, 630 F. Supp. 3d 1312, 1325 (E.D. Cal. 2022), and thinning and logging are distinct forest management practices. *See* BLM000309–10. The Big River thinning project pertains only to pre-commercial thinning of seedlings, saplings, and small pole sized trees greater

than 4.5 feet in height and less than 8 inches in diameter; it does not contemplate the removal of mature trees. BLM010293–94, 010296, 010299–300. Therefore, albeit a close call, the Court finds it unlikely the thinning activity will irreparably harm Plaintiffs' interest in maintaining the area as it looks today. (*See* Doc. 32-1 ¶ 13.)

Therefore, because Plaintiffs have failed to show that the activities authorized by the Big River thinning project are likely to cause irreparable harm, the Court declines to issue an injunction at this time.

CONCLUSION

Accordingly, for the reasons stated above,

IT IS ORDERED that the Motion for Preliminary Injunction (Doc. 31) is DENIED.

IT IS FURTHER ORDERED that the Court shall hold oral argument on the pending Cross-Motions for Summary Judgment (Docs. 20, 27) and Motion to Supplement (Doc. 23) on September 3, 2025, at 1:30 p.m. at the Russell Smith Courthouse in Missoula, Montana. Each party shall have 45 minutes for argument, irrespective of time spent answering questions posed by the Court.

DATED this 15th day of July, 2025.

Dana L. Christensen, District Judge
United States District Court

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