United States Department of Agriculture | **Forest Service** | **Region One** | **200 East Broadway P.O. Box 7669 Missoula, MT 59807**

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Subject: ARO Letter - Keystone-Quartz Ecosystem Management ROD - Beaverhead-Deerlodge NF - Appeal #03-01-00-0058 - Native Ecosystems Council, et al.

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Sara Jane Johnson on behalf of Native Ecosystems Council and Skip Mathewson protesting the Keystone-Quartz Ecosystem Management Record of Decision (ROD) on the Beaverhead-Deerlodge National Forest.

The District Ranger's decision adopts Modified Alternative 6 as presented in the Keystone Quartz Ecosystem Management Final Supplement to the Environmental Impact Statement (FSEIS). The FSEIS was prepared to document additional soils analysis and disclose the environmental impacts to the soils resource of the selected alternative to manipulate forest and range vegetation on approximately 684 acres. The supplement also includes a revised wildlife biological evaluation (BE). Alternative 6 has been modified from the FEIS to the FSEIS by removing treatments on 22 acres in two units and reducing the number of acres needed for new landings from 11 acres to 2.75 acres.

The selected alternative, Modified Alternative 6, allows the following:

- Timber harvest on approximately 57 acres (Units A1, A3, A5, A6, and A7) to remove conifer competition from Aspen stands to encourage sprouting and clone health. Slash would be yarded to landings, piled and burned. Another 6 acres (Unit A9) are located on adjacent Bureau of Land Management (BLM) land. Treatment of these acres will be dependent on the BLM's decision to tier to this analysis and proceed with the treatment opportunity. Unit A9 is not part of the selected alternative.

- Slashing and girdling of conifer tree competition on approximately 1 acre (Unit A8) of Aspen stands to encourage sprouting and clone health. Conifers ≥6.6" dbh will be girdled with no timber product volume recovery. Conifers <6.6" dbh will be slashed. No slash treatment will be required.

- Slashing small conifers and ecosystem burning of fuel concentrations on approximately 280 acres (Units B2, B3, B6, and B7) to maintain and enhance open, Douglas-fir stands.

- Slashing small conifers <6.6" dbh and broadcast burning on approximately 67 acres (Units B10, B11, B12, and B13) to maintain and enhance open, grassland/sagebrush parks.

- Timber harvest removing small diameter trees on approximately 260 acres (Unit P1) to restore open, Douglas-fir forest habitat. Slash concentrations will be piled, followed by underburning. Scattered patches of dense sub-merchantable trees (≤5" dbh) would be left in clumps on approximately one-third of the treatment area to provide elk security cover.

- Timber harvest on approximately 19 acres (Units P2 and P3) to thin dense lodgepole pine stands. Slash will be hand piled and burned.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellants' objections and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Endangered Species Act (ESA). The appellants request a remand of the ROD. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. Forest Plan direction is being violated without the completion of site-specific Forest Plan Amendments.

Contention A. The Forest Plan requirement that activities within MA 1 lands protect existing resource values is being violated. No Forest Plan amendment was completed. Dense wildlife cover will be destroyed in Unit P1; elk calving, deer fawning habitat, and lynx travel cover will be altered in units B2, B3, B6; the existing value of old growth Douglas-fir forests will be altered with slashing and understory thinning in many treatment units, and old growth values will be eliminated with riparian-area logging. No data exists to demonstrate aspen enhancement will actually occur.

Response: Activities planned are consistent with the Forest Plan and do not require a Forest Plan Amendment. Unit P1 was designed as a special cut, which would cut trees and recover forest products for other than timber management objectives (2003 ROD, pp. 3 and 16; FSEIS, p. II-1). Timber harvest will remove small diameter trees on approximately 260 acres to restore open, Douglas-fir forest habitat. Slash concentrations will be piled, followed by underburning. Scattered patches of dense sub-merchantable trees would be left in clumps on approximately one-third of the treatment area to provide elk security cover. Activities on Units B2, B3 and B6 would be limited to slashing small conifers <6.6" dbh and ecosystem maintenance burning to maintain and enhance open, grassland/sagebrush parks.

The 2003 ROD (pp. 20 and 24) addresses the existing condition and effects to old growth from Modified Alternative 6. Table 2 in the 2003 ROD shows that under Modified Alternative 6, 59

acres of Douglas-fir old growth will be affected. The existing condition for old growth is found in the FEIS, pages III-12 and 13, with discussion of old growth standards and conditions. Figure III-5 (on p. III-36) shows the location of old growth forest and proposed treatments units. The effects of each alternative on old growth forests are discussed in the FEIS (pp. IV-10 to IV-17) and displayed in Table II-7. The effects of each alternative on old growth forests and dependent wildlife species are analyzed in the goshawk analysis (FEIS, pp. IV-28 to IV-34).

Data and rationale to support aspen enhancement projects are discussed in Response to Comments (FEIS, p. V-4).

Contention B. The Forest Plan direction that requires MA 1 lands to be managed in a custodial nature, with a low level of investment, is being violated. The cost/acre management cost on MA-1 lands appears to greatly exceed costs identified in the Forest Plan for custodial management. Aspen fencing costs will result in a $100/acre management cost.

Response: The Forest Plan direction that MA 1 lands be managed in a custodial role is not being violated. The management goal for MA-1 as described in the Beaverhead National Forest, Forest Plan, page III-2, states "Maintain the existing opportunities for utilization of the variety of resources found within the management area, manage in a custodial role with a low level of investment. Protect investments and, where necessary to maintain the existing resource values, allow for low-cost, low intensity additional improvements. Generally, allow resource use with minimal restrictions, designed only to protect the existing status of other resource values." The actions proposed are designed to maintain the resource values that are being lost in the project area.

The economic analysis is displayed in the Project File (Vol. A, Doc. 188) and the fencing costs are part of the PV Cost/Benefit figures. The fencing costs are reflected in the Net PNV of ($16,519) and the PNV/Ac of ($23.40). The $100/acre management cost stated by the appellant is incorrect.

Contention C. The Forest Plan direction that prohibits green timber harvest on MA 1 lands will be violated. No Forest Plan amendment was completed.

Response: Consistency with Forest Plan direction regarding timber harvest on MA 1 lands is addressed throughout the ROD (pp. 5-7, 18-21 and 26-28) and the FEIS (pp. I-1 to I-3, II-9, and III-1 to III-4). The selected alternative will utilize timber harvest to implement vegetative manipulation for the purpose of achieving non-timber resource goals and objectives in areas designated by the Beaverhead National Forest Plan as MA-1. These MA's are designated as "unsuitable for timber production." Direction found in the Forest Plan (p. III-3) allows for management activities that meet management area goals and objectives. The actions proposed in Modified Alternative 6 are not for the purposes of timber management. The proposed treatments

meet the purpose and need described in the FEIS (pp. I-1 and 2), while being sensitive to the desire for appropriate recovery of wood products expressed by the local community.

Contention D. Although the Forest Plan old growth standard is not currently being met, the agency proposes to log and eliminate Douglas-Fir old growth habitat in the analysis area.

Response: The 2003 ROD (pp. 20 and 24) addresses the existing condition and effects to old growth from Modified Alternative 6. Table 2 in the 2003 ROD shows that under Modified Alternative 6, 59 acres of Douglas-fir old growth will be affected. No lodgepole pine or subalpine fir/spruce old growth will be affected. Approximately 59 acres of Douglas-fir old growth in Unit B3 will be underburned. No adverse affects to old growth characteristics are anticipated. Fire will act to maintain old-growth characteristics by providing adequate snags, down woody debris, stocking levels and composition consistent with old growth for the area. The existing condition for old growth is found in the FEIS (pp. III-12 and 13), with discussion of old growth standards and conditions. Figure III-5 (p. III-36) shows the location of old growth forest and proposed treatments units. The effects of each alternative on old growth forests are discussed in the FEIS (pp. IV-10 to IV-17) and are displayed in Table II-7.

Contention E. Reduction of ecotone habitat without habitat planning for the lynx violates the Forest Plan implementation of the biological opinion rendered by the US Fish and Wildlife Service (USDI, 2000).

Response: The existing condition and direct, indirect, and cumulative impacts the project would have on Canada lynx are addressed in the Biological Assessment (FSEIS, Appendix B, pp. B-7 to 12). The BA discusses how the project meets the LCAS (pp. B-11 to B-12). The wildlife biologist determined the project "may affect the lynx but is not likely to adversely affect the lynx or its habitat" (FSEIS, Appendix B, p. 12). Supporting information for the lynx analysis is included in the project file (Vol. I, Docs. 178C, D, and E; Vol. III, Docs. 239, 259, 260, 276, 277, 291, 297, 299, 300-306, 310 and 312). The FEIS (p. IV-31) also displays the effects of Alternative 6 with regard to sagebrush communities. The FEIS shows an increase in the percentage of ecotone habitat. Sagebrush communities would increase from 5.6 percent to 6.6 percent in the analysis area.

In their biological opinion, the USFWS concluded, "the Keystone-Quartz Ecosystem Management Project as proposed is not likely to jeopardize the continued existence of the Canada lynx. No critical habitat has been designated for this species therefore none will be affected. The impact to habitat for Canada lynx would be insignificant or discountable." Regarding incidental take, they stated, "No incidental take is expected as a result of the proposed action" (PF, Vol. III, Doc. 276, p. 19). The EIS is in compliance with NEPA, NFMA, and ESA.

Issue 2. The management of roads within the Keystone-Quartz analysis area is unclear, as contradictory information has been provided in the FEIS. It is confusing as to how many,

if any roads will be reconstructed or re-routed, or if so, how the sedimentation impacts of reconstruction have been evaluated. Reconstruction within MA 1 lands for timber harvest will violate Forest Plan direction.

Response: Road management is clarified in the ROD (p. 17) and FSEIS (pp. 1-1, 2-1, and IV-1 to IV-6), which state that no specified road construction, reconstruction or road re-routing is included in this project. The DEIS contained maps that erroneously identified a segment of road to be re-routed in Keystone Gulch. This mapping error was corrected in the FSEIS.

Issue 3. The agency needs to do a "Forest-wide" Forest Plan Amendment to complete public involvement, evaluate and disclose environmental and economic impacts, and incorporate ecosystems management programs as Forest Plan direction before they are implemented across Beaverhead-Deerlodge forest landscapes.

Response: The Pioneer Mountains Landscape Assessment is not a decision document; it was developed to identify project opportunities. Any projects selected for implementation from the Landscape Assessment would be analyzed through the NEPA process, with full public participation, as this project had done. The use of non-NEPA documents in Environmental Assessments and Environmental Impact Statements is an acceptable practice (40 CFR 1502.21).

The 2003 ROD (pp. 4-5) provides an overview of the analysis and decision process where it explains that the Pioneer Mountains Landscape Assessment evaluated existing conditions in the area with the desired conditions relative to the Forest Plan goals and objectives. Where the existing conditions did not match the desired conditions in the Forest Plan, opportunities for potential actions were identified. The use of the Pioneer Mountains Landscape Assessment is not implementing new management direction and is in compliance with NFMA and NEPA.

Chapters III of the FSEIS and the FEIS address the existing condition in the project area and Chapter IV in both documents addresses the direct, indirect and cumulative effects, including big game habitat security, lynx habitat, and old growth (see Issue 1).

Issue 4. This project violates the NEPA and NFMA by failing to evaluate and disclose the changes in management costs and economic assumptions used for the original Forest Plan.

Response: Management costs and economic assumptions used for the original Forest Plan are outside the scope of this analysis. A site-specific economic analysis was done for the Keystone-Quartz project (Project File, Vol. III, Doc. 316).

Issue 5. The current Forest Plan is inadequate to protect elk vulnerability and wildlife species associated with sagebrush/forest ecotones. As a result, significant landscape and economic impacts will occur that were never disclosed in the Forest Plan FEIS.

Response: Adequacy of the Forest Plan is outside the scope of this site-specific project analysis and will be addressed during the Forest Plan revision process.

Issue 6. A Forest Plan amendment is needed to address the short comings of the current plan regarding management of old growth.

Response: Adequacy of the Forest Plan is outside the scope of this site-specific project analysis and will be addressed during the Forest Plan revision process.

Issue 7. The Forest has violated the Forest Plan and the NEPA by failing to complete an adequate economic analysis or to monitor the economic costs of programs during plan implementation.

Response: An adequate economic analysis was completed for the project (Project File, Vol. III, Doc. 316), which evaluated the management costs and economic assumptions used for this project analysis. Project-level economic analysis does not require that the economic values raised by the appellant be addressed. "Weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations" (40 CFR 1502.23). The NEPA process shall be used "…to emphasize real environmental issues and alternatives" [40 CFR 1500.2(b)]. The primary focus at the project level is to identify economic implications that are unique to the decisions made at this management level, as was done in the FEIS (pp. III-83 to 93). The economic analysis complies with all laws and the Forest Service Manual and Handbook.

The appellants contend the Forest Service only assessed costs from the perspective of the agency, not all other private and public interests, as is required in 36 CFR 219.12(g)3i. The CFR regulations cited by the appellant apply to the preparation, revision, or significant amendment of a Forest Plan, and not to project-specific analysis.

Issue 8. The agency's rationale for "restoring" wildlife habitat within this landscape was never supported with any monitoring data or research; the stated purpose to "restore" habitat is therefore arbitrary, and also violates the NEPA and the NFMA because agency actions are not clearly defined and supported to the public, and agency actions on public lands may threaten the viability of native wildlife species.

Response: The ROD (pp. 3, 10-11, 13-14, and 16), the FSEIS (Table II-7 and pp. IV-7 to IV-10) and the FEIS (pp. II-2, 4-5, 9-10, and 16; III-19 to 20, 38 to 39, and IV-17 to IV-28) discuss the project as related to elk habitat in detail. Forest Plan standards are addressed and the issue of bull elk vulnerability is addressed throughout the analysis. The Forest Plan Implementation Guides for Elk Security are used in the analysis (FEIS, p. IV-17).

The FEIS identifies the existing conditions (FEIS. pp. III-21 to 23) for goshawk. The direct, indirect, and cumulative impacts to goshawk are addressed in the FSEIS (pp. V-2 and V-10

through V-11), the FEIS (pp. IV-28 to IV-34) and the Biological Evaluation (FSEIS, Appendix B). Goshawk habitat in the analysis area (Echo Gulch and Swamp Creek HAUs) was evaluated according to the Southwestern Goshawk Guidelines (Reynolds, et al., 1992) (FEIS, pp. III-21 to 22).

Within the goshawk analysis area, the 6000-acre foraging territory circles of four goshawk pairs overlap, at least partially, and three pairs have nests located in the analysis area. The analysis area was surveyed for goshawks in 1990 (Swamp Creek HAU) and 1998 (both HAUs), and monitoring of known nests has been done from 1998-2002. Supporting documentation is in the project file (PF, Vol. 1, Docs. 178 A-K, 181B, and 183; Vol. III, Docs. 288, 288A, 290, 293, 294, 310 and 521).

The wildlife biologist found that habitat for goshawk is well distributed across the analysis area and the Beaverhead National Forest (FEIS, p. III-21). The Forest is maintaining a viable population by maintaining the habitat, in compliance with NFMA. The wildlife biologist determined that the project may impact individuals or habitat, but will not likely result in a trend toward federal listing or reduce viability for the population or species (FSEIS, Appendix B; Biological Evaluation).

The 2003 ROD (pp. 20 and 24) addresses the existing condition and effects to old growth from Modified Alternative 6. Table 2 in the 2003 ROD shows that under Modified Alternative 6, 59 acres of Douglas-fir old growth will be affected. The existing condition for old growth is found in the FEIS (pp. III-12 and 13) with discussion of old growth standards and conditions. Figure III-5 (p. III-36) shows the location of old growth forest and proposed treatments units. The effects of each alternative on old growth forests are discussed in the FEIS, pages IV-10 to IV-17, and displayed in Table II-7. The effects of each alternative on old growth forests and dependent wildlife species are analyzed in the goshawk analysis (FEIS, pp. IV-28 to IV-34).

Flammulated owls are addressed in the Biological Assessment (FSEIS, Appendix B) and may inhabit the project area, but have not been observed there. The restoration proposals are expected to benefit flammulated owls by increasing the amount of open foraging habitat in the Douglas-fir/sagebrush-grassland ecotone, maintaining nesting habitat, and by retaining large Douglas-fir trees, large snags, and dense understory thickets along ridge tops and upper slopes. Because of the lack of evidence of occupancy and that the proposed treatments would not negatively affect suitable habitat, the wildlife biologist determined that the Keystone-Quartz proposed actions will not impact the flammulated owl.

Issue 9. The Forest Service has no basis for managing wildlife habitat or measuring the impacts of logging and burning activities because no conservation strategies exist for almost all Forest wildlife; wildlife surveys are inadequate to protect sensitive species; population monitoring both in the project area and the Forest has not been adequate to either measure the impact of forest thinning and burning activities on wildlife, or to demonstrate the "health" of populations.

Response: The direct, indirect and cumulative impacts of the proposed activities to wildlife are addressed in the FSEIS (pp. IV-10 to 23), FEIS (pp. IV-28 to 50) and the Biological Assessment (FSEIS, Appendix B). Where possible, information about species records and quantity of habitat available was provided in the Biological Assessment (FSEIS, Appendix B). Based on known habitat requirements of MIS and sensitive wildlife, the existing condition of the project area and the description of the alternatives, the wildlife biologist identified the impact to MIS and Sensitive species.

The Forest Service is required to maintain population viability across the planning area by managing wildlife habitat (36 CFR 219.19). In order to determine the viability of Sensitive, Threatened, and Endangered species the wildlife biologist plotted and reviewed maps of the species' appropriate habitat, and together with other information, made a determination of viability for each species. The Forest is maintaining a viable population by maintaining the habitat, in compliance with NFMA.

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellants. I recommend the District Ranger's decision be affirmed and the appellants' requested relief be denied.

/s/ Ed Nesselroad
ED NESSELROAD
Appeal Reviewing Officer
Director of Public and Governmental Relations