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Subject: ARO Letter - Basin Creek Hazardous Fuels Reduction Project ROD - Beaverhead-Deerlodge NF - Appeal #04-01-00-0036 - The Ecology Center, Inc., et al.

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Jeff Juel on behalf of The Ecology Center, Inc. and Alliance for the Wild Rockies protesting the Basin Creek Hazardous Fuels Reduction Project Record of Decision (ROD) on the Beaverhead-Deerlodge National Forest.

The Forest Supervisor's decision adopts Alternative 3, which includes hazardous fuel reduction treatments on approximately 2,600 acres, construction of approximately 14 miles of temporary roads, and maintenance work on 2 miles of classified roads and 2 miles of unclassified roads.

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 appellant's 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), the Endangered Species Act (ESA), the Administrative Procedures Act (APA), the Deerlodge Forest Plan, and the Deerlodge Forest Settlement Agreement. The appellants request the FEIS and ROD be withdrawn or remanded. An informal meeting was held by conference call but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. The Purpose and Need is unjustified and illegally deviates from the Forest Plan. The wildland urban interface and "intermix zone" are concepts not disclosed, analyzed, or defined in the Forest Plan or Forest Plan EIS. The Forest Plan did not contemplate the need for fuel reduction or fire risk reduction to occur periodically in order to be effective. The Forest Plan EIS did not disclose the economic and ecological impacts of such repeated fuel reduction treatments. The Basin Creek FEIS does not disclose the cumulative ecological or economic effects of these obviously foreseeable repeated fuel reduction treatments.

Most of the logging will be in MA D2, which is classified as "unsuitable" for timber production in the Forest Plan.

Response: The impact of implementing the Deerlodge Forest Plan was analyzed in the Final Environmental Impact Statement, signed by Regional Forester James Overbay in September



1987. The Forest Plan includes Appendix I, Fire Management Direction. In that direction the Forest states, “Fire has been a (sic) integral part of all ecosystems on the Deerlodge National forest (sic) and the exclusion of fire from these ecosystems may cause undesirable effects. As a result of fire protection, natural fuels in some areas have increased in amount and continuity to a hazardous level” (p. I-1). Under the heading of *Direction to Ensure that Fire Use and Suppression Programs are Compatible with the Role of Fire in Forest Ecosystems*, the Plan states, “...c. Reduce the cost of presuppression and suppression activities by integrating the total fire management program. (1) Manage fuels by reducing activity fuels and natural fuels to acceptable levels, through the scheduling and placement of timber sales to ‘breakup’ large expanses of natural fuel accumulation” (p. I-2). The fire management direction also calls for the use of prescribed fire and “unplanned ignitions” (pp. I-2 and I-3). The impact of the fuels reduction program was part of the impacts considered in the Forest Plan EIS.

Reasonably foreseeable actions are those that are likely to occur. At this point, whether or not future fuel reduction actions would be repeated in the Basin Creek area, at what point in time any further action would occur, and what the economic and environmental impacts might be is mere speculation. If additional activities were warranted in the future, further economic and ecological analysis would be necessary at that time.

The Forest Plan allows for timber harvest on those lands identified as unsuitable for timber production in order to manage for resources other than timber. This includes wildlife habitat improvement and management of fire (Forest Plan, pp. IV-18 and IV-20, and Appendix I). The wildlife biologist analyzed the impact the project would have on TES and Management Indicator Species (MIS), including an analysis of the impact the project would have on their viability (EIS, pp. 3.76 to 3.150; PF, Docs. J-24 to J-29). These species will continue to be well distributed across the Forest, and the project is not expected to negatively impact the viability of them across the planning area. The project is in compliance with NFMA.

Issue 2. The Deerlodge National Forest has delayed indefinitely the implementation of the Federal Wildland Fire Policy on a Forest-wide, programmatic basis.

Response: The Basin Creek project is responsive to the 1995 Federal Wildland Fire Policy and the 1998 Wildland Fire Management Policy Implementation Procedures Reference Guide, as well as the National Fire Plan and the 10-Year Comprehensive Strategy (EIS, pp. 3.1 to 3.2). The Forest prepares the *Beaverhead-Deerlodge National Forest Fire Management Plan* annually to comply with the Federal Wildland Fire Management Policy and Program Review. The Forest anticipates that over time more areas of the Forest will have approved fire management plans that will allow for a wider range of fire management options.

Issue 3. The soil analysis, and the project’s impact on the soil resource are in violation of NFMA, the Forest Plan, and the Forest Service Manual.

Response: In order to meet NFMA direction and manage National Forest System lands without permanent impairment, the policy of the Northern Region is to “...not create detrimental soil conditions on more than 15 percent of an activity area” (FSM, 2554.03). Detrimental soil disturbance is not equal to permanent damage. At no point has the Forest Service determined

that projects may permanently damage 15 percent of the soil in an activity area. Arguments regarding the Regional supplement to the Forest Service Manual are beyond the scope of the Basin Creek Hazardous Fuels Reduction Project analysis.

The soil scientist performed soil testing in the field (EIS, pp. 3.215 to 3.218; PF, Docs. H-64, H-77, and H-78). From the field tests and other information (PF, Docs. H-73 to H-79E), the soil scientist determined the harvest units would be in compliance with the Regional Soils Standards (EIS, pp. 3.223 to 3.226). The project and its impacts to the soil resource are in compliance with NFMA, the Forest Plan, and the Forest Service Manual.

Issue 4. The implications of poorly-distributed old-growth habitat on population viability of the various wildlife species that depend upon old growth are not disclosed. The Forest Plan 5 percent standard is not based on sufficient science to insure that meeting the minimum standards would ensure old-growth wildlife species' population viability. The Forest has no answer to our DEIS comment that stated, "What is the Forest's natural historic range of Douglas-fir, lodgepole pine, and spruce/fir old-growth types, including total acres, block sizes, and dispersion patterns?"

Response: Old growth was analyzed in the EIS (pp. 3.71 to 3.75); however, no old growth will be harvested under this decision (EIS, p. 3.71). Table 3.38 shows amounts of lodgepole pine, Douglas fir, and spruce/subalpine fir old growth in the analysis area (EIS, p. 3.94). The Forest discusses old growth in the Response to Comments (EIS, pp. 4.30 to 4.36), including block size and distribution of old growth.

Issue 5. One of our comments on the DEIS comment was: "What data is the DEIS relying upon to assert that 'It is assumed that the proportion and juxtaposition of MIS habitats in the analysis area are within the historic range of natural variation' (3.88) for the most part? In other places, the DEIS states that the present forest pattern is not within the historic range of natural variation."

Response: The Response to Comments (EIS, p. 4.61) clearly responded to this question. The EIS states, "The proportion (total amount) and juxtaposition (placement on the landscape) of forested cover types are assumed to be within the historic range of natural variation (B. Hodge, pers. comm.). Exceptions, such as the extent and total amount of old-growth Douglas-fir (reduced from historic harvest) and the loss of habitat from roading and development were clearly stated in the FEIS on page 3.93 (DEIS 3.88). The statement was deleted in the FEIS to remove any confusion."

Issue 6. The FEIS did not answer our comment on the DEIS that asked, "The Lewis & Clark NF questions the utility of the northern goshawk as MIS for old growth on that Forest: 'The northern goshawk was a poor old-growth forest MIS on the LCNF' (Whitford, 1991). Does the Deerlodge NF consider the northern goshawk to be a sufficient old-growth forest MIS to represent viability of other old-growth wildlife species on the Forest?"

Response: The EIS discusses the latest information on habitat use by goshawks (pp. 3.88 to 3.89). The Beaverhead-Deerlodge National Forest is in the process of Forest Plan revision. Analyzing and deciding which MIS are best suited to what habitat is a Forest planning decision. Which MIS the Forest will use for which habitat types are being analyzed in the ongoing Forest Plan revision process.

Issue 7. The FEIS claims the project would not log old growth, but since old-growth surveys are incomplete, that is an unsupported claim.

Response: Old growth was verified for compartment 414 by on-the-ground walkthroughs. Possible old growth stands were identified from aerial photos and then checked by supervisors and crewmembers trained in old growth identification using Green, et al. (1992). For compartment 416, 86 acres of old growth was identified from stand exam data. The remaining acres were identified using the same process as for 414. An area at the northwest corner of the project area outside any proposed treatment units was not checked because compartment acres of old growth far exceeded Forest Plan standards (EIS, p. 4.31, Response to Comment #95). The survey supports the statements made in the EIS.

Issue 8. The FEIS discusses uninventoried, unroaded areas, yet there are no maps showing the location of such areas. Analyzing impacts on uninventoried roadless lands separate from inventoried roadless areas is illogical and violates NEPA. The possibility that the uninventoried roadless areas may be eligible for later inclusion as inventoried roadless under the upcoming revised Forest Plan or as eligible for wilderness designation is not discussed, and the FEIS does not address the effects of logging and roading would have on the designation. The FEIS failed to analyze an alternative that maintains the wilderness values of all inventoried roadless and uninventoried roadless lands in the project area and preserve the option for Congress to implement the Northern Rockies Ecosystem Protection Act in this area before any more activities degrading the wilderness values are allowed.

Response: The inventoried, unroaded areas analysis maps are found in the project file (PF, Doc. H-88, pp. 1 to 5).

Inventoried roadless areas (IRAs) are identified and designated in the Forest Plan (Forest Plan EIS, pp. III-13 to III-19, and Appendix C). Analyzing the direct and indirect impacts to the Basin Creek IRA is done separately from the non-developed lands in the National Forest to make clear what the impacts would be to the Basin Creek IRA. The cumulative effects area for the project is larger and includes the inventoried roadless area and the unroaded areas in and adjacent to the project area (EIS, p. 3.305). This is neither illogical, nor in violation of NEPA.

At the project level, the analysis looks at the direct, indirect, and cumulative effects implementation of the project would have on specific resources. These analyses do not weight all the factors involved with land allocation, which is a forest planning issue. Whether or not uninventoried undeveloped areas are eligible for inclusion as inventoried roadless areas and whether or not they are eligible for future wilderness is a planning issue, not a site-specific project issue.

Alternatives 1, 2, 3, and 5 proposed no treatment in the Basin Creek Inventoried Roadless Area (EIS, pp. 2.1 to 2.3). Under Alternative 1, no fuel reduction activities would take place in any undeveloped or unroaded areas. The range of alternatives is adequate.

Issue 9. The Basin Creek FEIS neglects to demonstrate the Forest's compliance with the Deerlodge Forest Settlement requirements for old growth and elk habitat.

Response: As discussed in Issue 3 (above), old growth would not be impacted by this project; therefore the Settlement requirements for old growth are not pertinent. The project analyzed the impact to elk using two methods: the elk security method in accordance with Regional policy (EIS, pp. 3.101 to 3.102 and 3.144 to 3.146), and the Forest Plan method as modified by the Settlement Agreement (EIS, pp. 3.102 to 3.103 and 3.146 to 3.148). The project is in compliance with the Deerlodge Forest Settlement.

Issue 10. Claims about the historic condition of the project area are insufficient to support the notion that the post-treatment forest would mimic the natural range of conditions.

Response: The Purpose and Need is not to maintain historic vegetative conditions, but to: 1) Increase firefighter and public safety; 2) Reduce the potential for wildfire to spread into the Basin Creek Municipal Watershed; and 3) Reduce the potential of damage to public and private property and structures within the project area from wildland fire (EIS, pp. 1.3 to 1.4). The FEIS does discuss historic conditions of the project area to give background information and to supply context to the existing condition discussion (EIS, pp. 1.3, 3.4 to 3.7, 3.54 to 3.59, and 3.80 to 3.82). Since the Purpose and Need and rationale for the project is not based on returning the project to some historic vegetative condition, the information in the EIS is sufficient.

Issue 11. The Forest Service and Bureau of Land Management completed a programmatic Biological Assessment (BA) for lynx in 1999. This BA concluded that current programmatic land management plans are likely to adversely affect lynx, and recommended amending or revising Forest Plans to incorporate mitigation measures that would reduce or eliminate adverse effects to lynx. The Basin Creek FEIS and BA fail to disclose that continued implementation of the Forest Plan constitutes a "taking" of the lynx. The Forest must incorporate terms and conditions from a programmatic BO into a Forest Plan amendment or revision before projects affecting lynx habitat, such as the Basin Creek project can be authorized. The Basin Creek FEIS does not demonstrate that the project and its analysis are consistent with all Standards contained in the Lynx Conservation and Assessment Strategy (LCAS). The U.S. Fish and Wildlife Service (USFWS) listing of the lynx as threatened, rather than endangered, and the failure to designate critical habitat, was recently held to be a violation of the ESA.

Response: The listing by USFWS of Canada lynx as threatened, rather than endangered, and the designation of critical habitat is not reviewable under 36 CFR 215. The Northern Region of the Forest Service is proceeding with an EIS in order to amend or revise the Forest Plans to include Canada lynx standards and guidelines.

The wildlife biologist analyzed the direct, indirect, and cumulative impacts the Basin Creek project would have on Canada lynx and lynx habitat (EIS, pp. 3.84 to 3.85, 3.111 to 3.119, and Appendix F, Wildlife BA), and mapped the project in relation to lynx analysis units and roads (PF, Docs. J-23 and J-29). She determined Alternative 3 may effect, but is not likely to adversely affect lynx or lynx habitat (EIS, p. 3.116). The Forest Supervisor sent the BA to the USFWS for formal consultation on lynx (PF, Docs. H-41 and H-42). The USFWS issued a Biological Opinion on March 24, 2004, which stated, "It is the Service's biological opinion that the Basin Creek Hazardous Fuels Reduction Project as proposed is not likely to jeopardize the continued existence of the Canada lynx. The impact to the lynx and its habitat would be insignificant and/or discountable" and "All aspects of the project are compatible with applicable standards in the LCAS, and the effects of the action are not anticipated to cause adverse impacts to the lynx. The following substantiate the conclusion: Less than 12 percent of lynx habitat within both LAUs is expected to be changed to an unsuitable condition as a result of this project" (PF, Doc. H-43, p. 15). The USFWS also stated, "Since no incidental take is anticipated, no Term and Conditions are necessary" (PF, Doc. H-43, p. 16). The project is in compliance with ESA.

Issue 12. The analysis for Sensitive Species and MIS is inadequate, in violation of NFMA, NEPA, and the Forest Service Manual.

Response: The wildlife biologist analyzed the direct, indirect, and cumulative effects to sensitive and MIS. The past, present, and reasonably foreseeable actions that were considered in the cumulative effects analysis are displayed in the EIS (pp 2.11 to 2.14 and Appendix B, Map 13). The Biological Evaluation (EIS, Appendix F, BE-Wildlife) discusses the existing condition for each sensitive and MIS (pp. 6 to 17), then discusses the impacts each alternative would have on the sensitive and MIS, and makes a viability determination (pp. 17 to 43). This analysis was also included in Chapter 3 of the EIS (pp. 3.76 to 3.150).

The analysis considered forest interior species (EIS, pp. 3.80 to 3.82, 3.110 to 3.133), fisher (EIS, pp. 2.7, 3.92, 3.121, 3.133 to 3.135; PF, Docs. F-26, F-29, F-41, F-42, J-2, J-10, J-24, 2007, 2057, 2069, 2084, 2115, 2116, 2124, and 2136), black-backed woodpecker (EIS, pp. 3.87, 3.127 to 3.130, Appendix F, pp. 9 to 11, 23 to 24, and 32 to 33; PF, Docs. F-56 to F-58, J-27, 2053, 2054, 2060, 2061, 2061A, 2062B, 2068B, 2068C 2070, 2077, 2080, 2081, 2087, 2091, 2111, 2117, and 2139), goshawk (FEIS, pp. 2.11 to 2.12, 3.88 to 3.89, 3.123 to 3.127, Appendix B, Map 13, Appendix F, pp. 7 to 9, 30 to 31, 36; PF, Docs. F-25, F-34 to F-36, and J-1, J-12, J-24, 2061A, 2064, 2068C, 2072, 2073, 2076, 2077, 2081B, 2082, 2086, 2093A, 2095, 2096, 2113, 2121, and 2133), wolverine (EIS, pp. 3.77 to 3.79, 3.105 to 3.108, 3.121, 3.131 to 3.133; PF, Doc J-28, 2058, and 2084A), structural habitat components for pileated woodpecker (EIS, p. 3.65 and PF, Doc. H-34), pine marten (EIS, pp. 2.11 to 2.12, 3.136, 3.80 to 3.81, 3.138 to 3.140, Appendix B, Map 13; PF, Doc. 2013A, 2068A, 2070A, 2071, 2077, 2081, 2097, and 2138). The same was done for aquatic species (EIS, Appendix F, BE-Aquatics; and pp 3.151 to 3.185), including boreal toad (EIS, pp 3.178, 3.184 to 3.185, Appendix F, BE-Aquatics, pp. 5 to 6, 8 to 9, PF, Doc, J-26). These analyses are based on monitoring, research, and literature (FEIS, Appendix B, Maps 23, 24, 26; PF, Docs. F-19, F-20, F-23 to F-26, F-29, F-30, F-39, F-41, F-42, F-46, F-50, F-52, F-58, F-71 H-49, H-50, H-53 to H-55, J-1, J-2, J-24 to J-29, 2077, 2086, 2087, 2058, 2084A, and 2116). The analysis of sensitive and MIS is in compliance with NEPA, NFMA, and the Forest Service Manual.

Issue 13. The FEIS makes no solid commitments towards the number of snags to be left in cutting units.

Response: The EIS (pp. 2.7 and 3.142) and the Response to Comments (EIS, p. 4.55) state that five snags per acre would be retained to supply habitat for three-toed woodpecker. This number of snags per acre is in excess of the Forest Plan requirement.

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 Forest Supervisor's decision be affirmed and the appellants' requested relief be denied.

/s/ Bob Castaneda
BOB CASTANEDA
Appeal Reviewing Officer