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Subject: 215 - ARO Letter - Sheep Creek Salvage Project ROD - Beaverhead-Deerlodge NF -  
Appeal #05-01-00-0023 - Native Ecosystems Council

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Sara Jane Johnson on behalf of Native Ecosystems Council protesting the Sheep Creek Salvage Project Record of Decision on the Beaverhead-Deerlodge National Forest.

The decision includes the following activities:

1. Salvage harvest approximately 776 acres of trees killed by the Sheep Creek Fire. Snags will be designated to leave. Submerchantable material will be slashed, piled, and burned to break up fuel continuity and decrease fuel loads in strategic locations. Douglas-fir infested with Douglas-fir bark beetles within harvest units will be harvested if mortality is evident or eminently predictable.
2. Harvest approximately 88 acres of dead trees and trees posing a public safety hazard along Forest Road 1085. This includes trees infested by Douglas-fir bark beetles.
3. Construct 2.6 miles of temporary roads, which will be obliterated after project completion. Obliteration will recontour the road prism and spread available debris over the road surface.
4. Site-specifically amend the Beaverhead Forest Plan standards for elk effective cover (EEC) within the project area.

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 appellant alleges violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Endangered Species Act (ESA), and the Administrative Procedures Act (APA). The appellant requests a reversal of the ROD. An informal meeting was held but no resolution of the issues was reached.

### **ISSUE REVIEW**

**Issue 1. The Agency's plan to create clearcuts over 40 acres in size has not gone through adequate public notification, has not received Regional Forester approval, and is not**



**supported by the environmental analysis completed in the Sheep Creek Salvage Project Final Environmental Impact Statement (FEIS) (NOA, p. 3).**

**Response:** With regard to even-aged management and clearcutting, the Region 1 supplement to FSM 2740 (2741.1) specifically states,

Even-aged Stands. The size of harvest openings created by even-aged silviculture in the Northern Region will be normally 40 acres or less. Creation of larger openings will require 60-day public review and Regional Forester approval, with the following exceptions:

1. Where natural catastrophic events such as fire, windstorms, or insect and disease attacks have occurred, 40 acres may be exceeded without 60-day public review and Regional Forester approval, provided the public is notified and the environmental analysis supports the decision.

The Forest Supervisor acknowledges this supplement (in part) in his ROD (p. 22) and provides his rationale as to why this supplement applies to this project (Id). The public was notified as to the size of the harvest units in the DEIS (April 23, 2004), along with various other public participation efforts (ROD, p. 3; PF, Vol. B, Document #'s 2 through 12). Environmental analysis for the species listed in your appeal (NOA, p. 4) shows support of this decision: Canada lynx determination of "not likely to adversely affect;" wolverine and black-backed woodpecker determination of "no impact;" and northern goshawk determination of "may impact individuals or habitat, but will not likely result in a trend in federal listing or reduced viability for the population or species" (FEIS, pp. 78 to 81 and 83 to 108).

I find that the Forest is in compliance with the Region 1 supplement allowing for harvest openings in excess of 40 acres without a 60-day public review and Regional Forester approval. The public was adequately notified of harvest unit sizes, and environmental analysis supports the decision.

**Issue 2. The Forest Service failed to complete an amendment for the planned violation of the Forest Plan direction for elk effective cover. The agency "deleted" the EEC standard. The EEC that is allowed for this project was never identified. The actual EEC that will occur during implementation of this project is unknown.**

**Response:** The Forest Service did authorize a site-specific amendment applicable to the Sheep Creek Fire burned area that pertained to Forest Plan standards for EEC (ROD, p. 10). The amendment allows the removal of dead trees one time, only for this project (ROD, p. 21). Due to loss of forest cover from the fire, the project area currently does not meet the Forest Plan standard for EEC (ROD, pp. 10 and 20). Any project proposed in the burned area, at inception, cannot meet the standard since cover was lost (ROD, p. 21; FEIS, p. 133). Hiding cover recovery is expected to take 20-30 years, depending on site potential (*Id.*). As outlined in the ROD, FSH 1909.12, 5.32 provides a process to amend the Forest Plan, and identifies four factors to consider in determining whether a change to the Plan is significant or non-significant. The ROD presents each of these four factors and adequate rationale to support the finding of a non-significant amendment (pp. 21 to 22). The EEC for Alternative 2 is displayed in Table 31 of the FEIS (p. 114) showing there is basically no change to EEC for the various HAU's with

implementation of Alternative 2 (HAU for South Fk. Tie Creek show a reduction from existing condition of 53.1 (post fire) to 51 (FEIS, pp. 111 and 114).

**Issue 3. The Forest Service will violate the Forest Plan direction for Management Area 20. The FEIS makes it clear that most wildlife species will be harmed by the project due to a direct loss of habitat by tree removal – Canada lynx, northern goshawk, pine marten, many cavity-nesting birds, and the black-backed woodpecker. Although the 2.6 miles of new roads will be closed during the hunting season, these roads will still be used by loggers. The Agency has yet to monitor the effects of salvage logging on wildlife (NOA, pp. 4 to 5).**

**Response:** The management goal for MA #20 is to “maintain high quality wildlife habitat while allowing cost efficient moderate intensity levels of timber harvest...and domestic livestock grazing. Meet Forest-wide standards that protect other resource values, including water quality, fisheries and wildlife habitat, and visual quality. Dispersed recreation opportunities in a roaded, modified environment will be provided” (Forest Plan, p. III-63; FEIS, p. 23). As stated in my response to Issue 1, environmental analysis for the species listed in your appeal (NOA, p. 4) shows support of this decision with the following determinations of impacts/effects (based on direct, indirect, and cumulative effects): Canada lynx determination of “not likely to adversely affect;” wolverine and black-backed woodpecker determination of “no impact;” northern goshawk determination of “may impact individuals or habitat, but will not likely result in a trend in federal listing or reduced viability for the population or species” (FEIS, pp. 78 to 81 and 83 to 108). Sensitive species viability was also evaluated at the Regional scale utilizing habitat models that were applied to FIA data to estimate habitat for those species on the Beaverhead-Deerlodge National Forest (FEIS, goshawk, pp. 84 to 87; black-backed woodpecker, pp. 89 to 93; wolverine, pp. 94 to 95; and marten, pp. 105 to 108). The Forest Supervisor provides the rationale for his decision (ROD, p. 10), describing that his decision is based on review of the FEIS, public comments, how well the selected alternative meets the purpose and need, protects resources, and addresses public concerns.

**Issue 4. The Forest Service will violate the Forest Plan direction for old growth if the proposed Sheep Creek project is implemented as planned (NOA, p. 5).**

**Response:** The Forest will not violate the Forest Plan direction for old growth with implementation of Alternative 2. The FEIS clearly displays and discusses old growth habitat (total and percent of area) prior to and after the fires (FEIS, pp. 125 to 129). The proposed action would not eliminate any current old growth stand (FEIS, p. 128) Analysis was completed using Forest Inventory and Analysis data to estimate old growth and large snags in the project area (PF, Vol. G. Doc #26). The biologist looked at the existing condition for old growth and took this information into account when making his final determination of impacts on old growth-dependent species (FEIS, Appendix A). Those old-growth Douglas-fir stands that have been thinned have fewer downed logs than those not harvested, but they retain minimum old-growth criteria. Those units proposed for harvest under Alternative 2 no longer meet or retain the old growth characteristics (FEIS, p. 125).

**Issue 5. A criteria for snag management that is not currently identified in Forest Plan direction was added to the project, without a Forest Plan amendment or an analysis of**

**projected impacts on the quality of snag habitat and hence viability of cavity-nesting birds. Page 18 of the FEIS notes that snags will be emphasized on slopes greater than 30%. The steeper slopes generally have lower productivity, smaller snags, and will likely have a higher fall. The direction to emphasize snags on steeper slopes represents a reduction of snag quality from that defined in the Beaverhead Forest Plan.**

**Response:** Mitigation for snag management is found in the FEIS, page 18. A Forest Plan amendment was not necessary. The Forest Supervisor acknowledges concerns from the public regarding snags and snag-dependent species, and the fact that Alternative 2 will harvest more snags than either of the other two alternatives. He considered this in the context of the 84,000+ acres that were burned in this part of the Wisdom District and the adjacent District to the north (ROD, p. 13):

“Analysis in the FEIS shows salvage on this scale will not significantly impede habitat for cavity nesting bird or fire-dependent birds like the black-backed woodpecker, which have more habitat on the District than at any other time in recorded history...Implementing Alternative 2 will not significantly diminish these species’ habitat opportunities (see FEIS Wildlife Analysis ...)”

He further states in his ROD (p. 17):

“I recognize that loss of newly created snag habitat could be a concern. However, considering that Sheep Creek is not the only sizeable fire to occur in the area in recent times, and that we will be retaining snags in our harvest units, I believe snag habitat will be plentiful for snag-dependent species. For these reason, I believe the selected alternative will not significantly affect snag habitat.”

This concern was adequately addressed in the Response to Comments (FEIS, pp. 286 to 287). The FEIS, Table 34 (p. 123), discloses that less than 5 percent of snags available within the analysis area would be harvested. This means that 95 percent of the snags available would be unharvested and left to natural processes (Id.). The Forest also responds that the three snags per acre in treatment units were not meant to fully supply snag needs in the analysis area, because at least 95 percent of the snags created by the fire would be available to do that (Id.). This project does mitigate against loss of snags by requiring snags be left in wet areas, or near the edges of harvest units to limit blowdown, where available (Id.). The limitations of the Forest Plan snag standards was recognized and addressed with the 3 snag/acre mitigation in treatment units (Id.).

**Issue 6. The agency failed to evaluate an adequate range of salvage opportunities, or actions that would address wildlife habitat needs. The two action alternatives were based on timber management and harvest goals, rather than management of wildlife habitat needs.**

**Response:** The purpose and need of the proposed action are to:

- ◆ Recover and utilize timber from the trees killed as a result of the Sheep Creek Fire providing a supply of wood products to the forest products industry and ultimately to the public.

- ◆ Break up fuel continuity and reduce future fuel loads to decrease risks that future fires will pose to human health and safety, improvements, and resources (FEIS, p. 3).

Key issue #3 (FEIS, p. 10) pertains to “effects to wildlife, including threatened and endangered species, management indicator species, and sensitive species.” The FEIS (Chapter 2, pp. 26 to 28) shows how the two action alternatives responded to this issue (Table 5, p. 27) that addresses wildlife habitat needs. The ROD specifically and adequately addresses how well Alternative 2 responded to issues and public comments (ROD, pp. 13 to 18). Three additional alternatives were considered but eliminated from detailed study because they did not meet the purpose and need (ROD, pp. 5 to 6). The Forest analyzed an adequate range of alternatives.

**Issue 7. The proposed Sheep Creek salvage threatens local productivity of the northern goshawk, and will contribute to potentially significant habitat losses and viability declines across the Beaverhead-Deerlodge Forest.**

**Response:** The biologist adequately discusses the existing condition of old growth and potential impacts to the goshawk and old-growth habitat under the three proposed alternatives (FEIS, pp. 83 to 88). Within the BE, the biologist provides an extensive discussion of cumulative effects for northern goshawk (FEIS, Appendix A, pp. 358 to 361). The biologist made a reasoned determination of “may impact individuals or habitat, but will not likely result in a trend in federal listing or reduced viability for the population or species” for the goshawk, utilizing current information and taking into account past, present and reasonably foreseeable future actions (FEIS, p. 359), and additional supporting data (PF, Vol. G, Doc. #'s 26, 70, and 88 to 93; FEIS, p. 281) within the cumulative effects analysis area. The biologist concluded that the Sheep Creek Fire Salvage project is not expected to increase risk to viability of the goshawk and provided adequate, reasoned, rationale (FEIS, p. 360).

**Issue 8. The proposed Sheep Creek salvage project threatens the viability of the black-backed woodpecker due to a lack of and/or inadequate Forest Plan habitat standards for this species; inadequate habitat planning at the site-specific level, as will occur in the Sheep Creek project, are occurring Forest-wide (NOA, p. 12).**

**Response:** The concern related to Forest Plan standards for black-backed woodpecker is beyond the scope of this project. Within the BE, the biologist provides an extensive discussion of cumulative effects for the black-backed woodpecker (FEIS, Appendix A, pp. 361 to 364). The biologist made a reasoned determination of “may impact individuals or habitat, but will not likely result in a trend in federal listing or reduced viability for the population or species” for the black-backed woodpecker, utilizing current information and taking into account past, present and reasonably foreseeable future actions (FEIS, p. 359), and additional supporting data (FEIS, Appendix A, pp. 361 to 364) within the cumulative effects analysis area. The biologist concluded that the Sheep Creek Fire Salvage project is not expected to increase risk to viability of the black-backed woodpecker and provided adequate, reasoned rationale (FEIS, p. 364).

**Issue 9. The Forest Service planned actions in the Sheep Creek Salvage Project will contribute to a Forest-wide failure to ensure viability and recovery of the threatened Canada Lynx due to timber management activities.**

**Response:** Concerns related to the Lynx Conservation and Assessment Strategy (LCAS) (validity and shortcomings) are beyond the scope of this project. As part of his Decision, the Forest Supervisor took into account the Lynx Conservation and Assessment Strategy and determined, based on supporting analysis in the document and project file that the Sheep Creek Salvage Project will comply with the conservation measures detailed in the strategy action plan (ROD, p. 26). Effects analysis show that the project would not cause a substantial reduction of lynx habitat (FEIS, p. 81) and that the project conforms to all LCAS standards for timber management and wildland fire management in lynx habitat (Id.). The BA for lynx specifically discusses how the project meets the LCAS standards (FEIS, Appendix B, pp. 392 to 393). The biologist provided adequate discussion and reasoned rationale to support his determination of “may affect the lynx but is not likely to adversely affect the lynx or its habitat” (FEIS, Appendix B, p. 394). The U. S. Fish and Wildlife Service concurred with this determination (PF, Vol. G, Doc. #11).

**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 appellant. I recommend the Forest Supervisor’s decision be affirmed and the appellant’s requested relief be denied.

/S/LARRY J. DAWSON  
LARRY J. DAWSON  
Appeal Reviewing Officer