



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, Clearwater Ecosystem Management and Timber Sale Project ROD, Appeal #01-01-00-0036, Lolo NF

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 Clearwater Ecosystem Management and Timber Sale Project Record of Decision (ROD) signed by the Lolo National Forest Supervisor, Seeley Lake Ranger District.

The Forest Supervisor's decision adopts alternative 7a which will obliterate approximately 12.8 miles of system road and 38 miles of non-system road, 13.4 miles of BMP work along with 12.1 miles of reconstruction, and 1.6 miles of short-term construction. In addition, 3.2 miles of road and trail will be closed to motorized use. Approximately 570 acres would be harvested resulting in commercial thinning and openings. Scenic vistas will be created through slashing and harvesting, and noxious weeds treated by spraying. Ecosystem maintenance burning and creating fire-killed trees are also planned.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision are 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), the Endangered Species Act (ESA), the Administrative Procedures Act (APA), and the Lolo National Forest Plan. 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. Grizzly Bear.

Contention 1. The Lolo NF fails to comply with the Terms and Conditions set out in the U.S. Fish & Wildlife Service's 1996 amended Biological Opinion.

Response: During preparation of the Clearwater Environmental Impact Statement (EIS), it became evident that the Clearwater project would not fully meet the road access standard within the allotted 5-year timeframe. A new Biological Opinion (BO) was issued by the USFWS (Project File #3, Doc. C-1) setting new timeframes. At that time, the Lolo National Forest



Statement of Incidental Take had not expired, consequently coverage of incidental take has been continuous. The Lolo National Forest met the requirements of the Statement of Incidental Take.

Although no alternative fully meets the Grizzly Bear Road Access Standards (1995 Interim Guidelines), the Clearwater project makes substantial progress towards meeting the road access standard for total roads and slight improvements for open roads and core habitat (DEIS, Table IV-3, p. IV-19). The ROD and Draft Environmental Impact Statement (DEIS) acknowledged the need to take further steps to fully meet the road access standards and conditions of the Statement of Incidental Take, including the need to recruit spring core habitat (DEIS, IV-19; ROD, pp. 1 and 17; and DEIS, IV-24). A separate analysis is being initiated to address these aspects of access.

Contention 2. Logging and burning in this grizzly bear linkage zone will result in fragmentation and increased exposure of grizzly bears to human encounters.

Response: The DEIS (IV-20 to IV-25) discusses the effects of the alternatives on grizzly bears. Cover will remain at 86.7 percent (DEIS, IV-24), and openings created by logging are designed to be at least 1/2-mile from open roads (ROD-8) to avoid exposing bears to human encounters (DEIS, IV-25). In the area where logging-created openings are planned, 12.8 miles of road will be obliterated to further avoid exposing bears to human encounters (DEIS, II-14). Winter logging is mandated (ROD-9; DEIS, II-15) to avoid exposing bears to human encounters during logging activity. The DEIS concludes that “the narrow configuration of (harvest) units ...is not expected to reduce the ability of a grizzly to cross the valley at this point” (IV-25). The BO (Project File #3, Doc. C-1) concludes that the project “is not likely to jeopardize the continued existence of the grizzly bear.”

Contention 3. The EIS fails to disclose the amount of core habitat that would be maintained at each stage of project implementation.

Response: None of the activities occur in core habitat. Therefore, the amount of core habitat remains the same during project implementation. The level of core available by alternative is disclosed in the DEIS (Table IV-7, p. IV-23).

Contention 4. Proposed temporary spring road closures lack specificity in terms of how they will be implemented and gate closures are often ineffective.

Response: The BO (Project File #3, Doc. C-1) discloses the need for the temporary spring road closures. These will be implemented in the spring of 2002 and 2003 under an “emergency closure order.” Most of the Clearwater projects that progress toward meeting the 1995 interim guidelines are in total roads (DEIS, Table IV-3, p. IV-19). 12.8 miles of system road and 38 miles of nonsystem road will be obliterated. Some vehicular trespass does occur; however, the 1995 Interim Guidelines recognize gates as an acceptable tool for meeting the open-road standard.

Contention 5. Even with winter logging some disturbance to grizzly bears is inevitable.



Response: The DEIS, Biological Assessment (BA) (Project File #3, Doc. C-3), and BO (Project File #3, Doc. C-1) assessed both major and minor activities and their potential to disturb bears, especially during the spring. The DEIS (p. IV-18) states “no major activities would occur in spring core habitat during the spring.” Burning is considered a minor activity (ROD-26; DEIS, II-27) and the effects of that are disclosed in the BA. The cumulative effects of other minor activities were also considered. Concerning culvert replacement, the DEIS (IV-25) states, “it is possible that these activities would occur concurrently with some of those of the Clearwater Timber Sale.” The USFWS BO (Project File #3, Doc. C-1) recognized those minor activities (MR6, p. 6) and considered them in their finding that the project would not jeopardize the continued existence of the grizzly bear in the lower 48 States.

Contention 6. The EIS fails to demonstrate that vegetative manipulation will maintain or improve grizzly bear habitat consistent with the forest plan.

Response: The DEIS documents in numerous places state that vegetation manipulation will maintain or improve grizzly bear habitat. The purpose and need includes, “improving wildlife habitat by reintroducing low or moderate intensity fires and ecosystem burns and to create large patch sizes and fire-killed stands in the landscape” (ROD-3; DEIS, S-2, I-3). The DEIS references “old clearcuts” as providing some of the preferred existing berry-foraging habitat in the project area (III-12), describes the risk of stands within the landscape to insects and large wildfires without treatment (IV-9), and states that the creation of forest openings “would promote regrowth of shrubs which are important to grizzly bears” (IV-20). In addition, the DEIS (IV-25) states, “grizzlies would use (logged) openings where grass, forbs and berries would provide good habitat in an area where security would be increased by removal of roads within the Clearwater Loop.”

Contention 7. The EIS fails to fully account for disturbance from snowmobiling.

Response: The relationship of grizzly bear spring use to snowmobiles is discussed in the DEIS (III-14). Snowmobile use after April 1 (after bears emerge from their dens) is considered the same as wheeled vehicle use on roads open during the spring grizzly bear use period (April 1 to June 30). The existing density of roads open during this period is disclosed in the DEIS, Table III-2 (p. III-14). Changes in roads open during the spring as a result of the alternatives are disclosed in the DEIS, Table IV-3 (p. IV-19).

It was recognized that additional road management would be needed to protect spring grizzly bear habitat from vehicular traffic disturbance including snowmobilers (DEIS, IV-19). A separate analysis is being initiated to address these aspects of access (ROD-1; DEIS, IV-24).

Issue 2. Range of Alternatives violates NEPA.

Response: The alternatives in the EIS cover a wide range of management activities to address the issues identified in Chapter II. These alternatives were designed to meet the issues described in the ROD (pp. 5, 6, and 7) and DEIS (II-3 to II-6). Chapter IV describes the effects by alternatives in terms of forest health, grizzly bear security, watershed health, and bull trout.



Road closures and obliterations are proposed for all of the action alternatives 2 through 7b. This rationale was disclosed in the ROD (p. 3) and DEIS (pp. S-2 and 5; II-3). Although no alternative fully meets the Grizzly Bear Road Access Standards (1995 Interim Guidelines), the Clearwater project makes substantial progress towards meeting the road access standard for total roads and slight improvements for open roads and core habitat (DEIS, Table IV-3, p. IV-19). The ROD and DEIS acknowledged the need to take further steps to fully meet the road access standards and conditions of the Statement of Incidental Take, including the need to recruit spring core habitat (DEIS, p. IV-19; ROD, p. 1 and 17; and DEIS, IV-24), and a separate analysis is being initiated to address these aspects of access.

Issue 3. Lynx: The DEIS fails to adequately analyze impacts on lynx in violation of the Forest Plan, the Lynx Conservation Agreement and Strategy (LCAS), NFMA, NEPA, and the ESA.

Response: The quality of lynx habitat was discussed at the Lynx Analysis Unit (LAU) and project scales. The DEIS (pp. III-16 to 19) and the BA (Project File #3, Doc. B-1) both discuss that lynx are present in the project area and that high quality lynx habitat exists within the project area. Denning and foraging habitat were included in the map of habitat components in the BA. Alternative squirrel foraging habitat was not mapped but the amount present in the LAU was disclosed (DEIS, III-16).

There is no activity planned in denning habitat (ROD-7; DEIS, II-6), and there is no suitable denning habitat in the project area (DEIS, IV-31). Habitat connectivity at the landscape scale is discussed (DEIS, III-16, III-18, and IV-35). Effects to the lynx are discussed on pages IV-31, 32, and 35-37. The DEIS and BA have numerous references to the effects of past logging on habitat connectivity. Cumulative effects are discussed in the DEIS in Chapter IV (pp. 31, 32, and 35) and the Response to Comments (pp. 6, 7, and 8).

The BA discussed the effects of winter logging on lynx (Project File #3, Doc. B-1). This was done to confirm that the affect was small (1 percent of the area) and limited in time (1 year for each of two roads). The LCAS direction is clear in that increases in over-the-snow compaction from recreation are not acceptable but that winter logging is allowable (LCAS, 7-10). Over-the-snow recreation routes or snowmobile play areas are outside the scope of the EIS.

The LCAS defines unsuitable habitat as stands “0-15 years of age.” The DEIS discussed the amounts and percentages of 0-15 year-old stands (Chapter III-9, 10, 11, and 16; Chapter IV-6, 31, 35, and 37). The current 6 percent unsuitable habitat is 12-15 years old and on the verge of becoming suitable foraging habitat. The project will increase unsuitable habitat by only .5 percent (BA, p. 5).

The Lynx Conservation Agreement directs managers to apply the LCAS in project planning. The Region is in the process of establishing a team to amend Forest Plans to incorporate the LCAS; however, amendment of the Forest Plan is outside the scope of this project.

The LCAS in both draft and final versions was used in the DEIS and BA. After federal listing of the lynx and release of the final LCAS, the project was reviewed to ensure that the needs of the



lynx were met. A significant acreage of proposed precommercial thinning was dropped from consideration (Project File #1, pp. 202, and 206-226).

The USFWS reviewed the lynx BA and their BO concurred with the “not likely to adversely affect determination” (Project File #3, Doc. C-1).

Determining species viability is generally inappropriate at the project scale, especially for species with a large geographic distribution like the lynx. At the project scale, managers ensure that actions meet recovery plans, conservation strategies, or other recovery strategies. For lynx, the LCAS provides the best source of information to determine if actions are compatible with recovery goals. The project is consistent with all management requirements in the LCAS. The issue of species viability is outside the scope of this project EIS.

Issue 4. Inadequate cumulative effects analysis for MIS and sensitive wildlife species.

The Clearwater EIS includes species-specific analysis, including a cumulative effects analysis (DEIS, IV-26 to IV- 38). Based on this analysis, the Forest Supervisor concluded that the effects of the project are slightly beneficial, or benign, for TES and MIS species that might use the area (ROD, p. 13). Monitoring population trends of specific species is outside the scope of this project (DEIS, 1-2 and 1-6).

Issue 5. Soils

Contention 1. The EIS is incomplete because it does not contain a cumulative analysis that addresses long-term soil productivity.

Response: The Clearwater DEIS addressed soil compaction and erosion concerns through project design (Chapters II-8 and IV-66), inclusion of specific mitigations that address erosion and compactions (Table 8, II-26, II-27) and by employing BMPs during project implementation (Project File #3, Doc. D-6). In addition, the watershed analysis (DEIS, IV 37-51) addressed the relationship between erosion and sedimentation in a cumulative analysis that considered past, present, and reasonably foreseeable actions.

Contention 2. The EIS fails to demonstrate that BMPs are effective.

Response: Best Management Practices are based upon and were developed from scientific literature or past experience. Monitoring of some BMPs to assess their effectiveness has occurred (Appendix D-8). Further, the DEIS requires that site-specific monitoring of the BMPs and mitigations occur during implementation and that implementation activities be suspended if specified standards are not being met (ROD-26; DEIS, IV-66; ES- 2 and 3; and DEIS, D-9).

Contention 3. The EIS does not meet NEPA and NFMA requirements to disclose a scientifically sound analysis that would assure the long-term maintenance of soil productivity in the areas to be logged and burned.

Response: The Clearwater Ecosystem Management and Timber Sale project DEIS and ROD



fully meet the requirements found in 40 CFR 1500-108 and Forest Service Handbook 1909.15. It tiers to the 1986 Lolo National Forest Plan as amended (DEIS, R-4).

Issue 6. Bull Trout.

Table II in the ROD (p. 10) shows the initial increase and the long-term reduction in sedimentation by alternatives. Alternative 7b shows a lower rate of reduced sedimentation in the long-term column. Because there is a variation between alternatives 2 and 7b, especially when compared to the no action alternative, the range of alternatives is adequate for the purpose and need of the project.

The DEIS in Chapter II (p. 21) supports these findings. It explains that the long-term reduction is greater for alternatives 4 through 7b because more miles of road are treated for sediment reduction. It was also pointed out that alternative 7b does not preclude additional treatment. The Interagency Team letter of February 11, 1999, to the Ecology Center, clarifies the role and responsibility the Interagency Team has to meet the terms and conditions of the Fish and Wildlife Service BO regarding Bull Trout (Project File #4, Doc. D2). The “no jeopardy” call is a determination made within the bull trout BO, by USDI, Fish and Wildlife Service, and is based on the effects of proposed activities.

Issue 7. Economics. The economics analysis in the DIES is grossly misleading.

Response: Economic concerns were identified and analyzed in the DEIS (DEIS, pp IV-61 to IV-63) and considered by the Forest Supervisor. The decision to approve the selected alternative was based, in part, on its ability to meet the goals, standards and objectives of the Forest Plan, and responsiveness to the purpose and need (ROD, pp. 9, 11, 14, and 17-18). As stated by the Forest in their transmittal letter, costs for alternative 2 could have been more clearly displayed; however, documentation to support the economic analysis is in Project File #3 (Part A).

RECOMMENDATION

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

/s/ Harlan Smid
HARLAN SMID
Director of Financial Resources

