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Subject: ARO Letter - Noxious Weed Control Project ROD - Beaverhead-Deerlodge NF - Appeal #02-01-00-0069 - Alliance for the Wild Rockies, et al.

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Ryan Shaffer, on behalf of Alliance for the Wild Rockies; The Ecology Center, Inc.; and Friends of the Bitterroot, protesting the Noxious Weed Control Project Record of Decision (ROD) on the Beaverhead-Deerlodge National Forest (BDNF).

The Acting Forest Supervisor's decision adopts Alternative 1, which will update the two Forest's existing weed control programs into one integrated program. The decision allows for the aerial treatment of 9,000 acres of weeds annually and the use of new herbicides. The decision also continues weed prevention and education programs, and continues treatment of weeds by mechanical means, ground spraying with herbicides, and biological agents.

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), the Endangered Species Act (ESA), the Clean Water Act (CWA), the Administrative Procedures Act (APA), the Forest Service Handbook, Executive Order #13112, the Beaverhead Forest Plan, and the Deerlodge 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. In violation of NEPA, the Forest Service Handbook, and Executive Order 13112, the EIS and ROD fail to develop and consider a reasonable range of alternatives that includes prevention of noxious weeds. The Forest has not addressed the primary causes of weed spread such as off-highway vehicles, road construction and use, grazing, and other soils disturbing activities. The Forest Service has taken the position that it is unreasonable to analyze an action alternative that eliminates weed vectors (such as cars, people, animals, or wind). It is perfectly reasonable to at least consider an alternative that directly addresses the chronic sources of noxious weed infestations.

Response: The Agency's Deciding Official has the discretion to determine the purpose and need for a project proposal. The NEPA implementing regulations state, the NEPA document shall



"briefly specify the underlying purpose and need to which the agency is responding..." (40 CFR 1502.13). As discussed in the Environmental Impact Statement (EIS) (pp. 1-3 to 4), "The proposed action combines aggressive education, *prevention* and detection programs, with biological, mechanical, cultural and herbicide control" (emphasis added), and (p. 1-6) "The scope of this action is limited to *prevention* and control actions on BDNF land infested with weeds..." (emphasis added). The purpose and need for this analysis is derived from the two Forest Plans (Deerlodge Forest Plan, p. II-24, and the Beaverhead Forest Plan, p. II-37), which require a noxious weed control program to treat existing weeds and prevent establishment of new infestations. The EIS points out the two Forests were combined into one administrative unit in 1996, but the weed plans have remained separate. "This EIS provides the opportunity to update and integrate the 1986 and 1989 weed control decisions to encompass both Forests..." (EIS, p. 1-2). In order to update and refine current weed control programs the Forests considered, among other things, more effective prevention requirements and mitigation measures (EIS, p. 1-3 and Appendix H).

The appellants correctly point out an EIS must "rigorously explore and objectively evaluate all reasonable alternatives" [40 CFR 1502.14(a)]. Reasonable alternatives are those that are practical or feasible from the technical and economic standpoint and are developed using common sense, rather than simply being desirable to a particular group. The courts have established that the regulations do not intend that every conceivable alternative must be considered, but the selection and discussion of alternatives must permit a reasoned choice, foster informed decision-making, and informed public participation. The ID team developed the alternatives to the proposed action based on the purpose and need, the scope of the project, and issues generated from internal review and public scoping comments (ROD, pp. 2 to 5 and EIS, pp. 2-1 to 2-6).

The EIS (p. 1-7) points out that other existing decisions are outside the scope of this analysis, including changes in land use and management made in the Forest Plans and their amendments (including the January 5, 2001, OHV Plan Amendment), changes in travel, road use and access, and wildland fire suppression strategies and tactics. It is reasonable to not revisit decisions made in the Forest Plan or in other NEPA documents. To develop an alternative that eliminates weed vectors such as people, cars, animals, wind or other legitimate uses identified in the Forests' Plans is unreasonable because it does not aid in making a reasoned choice or fostering informed decision-making.

The Forest recognizes the importance of weed prevention. They have incorporated into the project four existing strong and important prevention and education components: 1) Weed prevention and control effects at local, county, state, regional and national levels [listed in EIS, Appendix L]; 2) the Weed Seed Free Feed and Straw program; 3) Off highway vehicle amendment for the Northern Region of the Forest Service; and 4) the R1/R4 Best Management Practices for Weed Control [listed in EIS, Appendix H]. These items are already being implemented, and do not need to be part of this NEPA decision; therefore, they are considered a feature common to all action alternatives or as part of the reasonable foreseeable actions (EIS, pp. 2-8 to 2-10). The project is in compliance with NEPA, the Forest Service Handbook, and Executive Order #13112.

Issue 2. The methodology, content, and scientific accuracy of herbicide impacts analyses is inadequate and incomplete. The Forest Service neglected to disclose the dangers and impacts presented by EPA registered herbicides and simply deferred to EPA registration, assuming that if EPA has registered an herbicide the impacts will be negligible. While the recommendations of the EPA should be considered, the Forest Service has an obligation to gather and assess as much data as possible when assessing the ecological impacts of herbicides. The Forest Service cannot rely upon EPA to avoid addressing issues of toxicity and other ecological impacts in an EIS. As a result, the FEIS/ROD does not provide an accurate or complete assessment of the ecological impacts of herbicides. The Forest Service has failed to adequately disclose and assess impacts of herbicides to threatened, endangered, and sensitive species.

Response: The Forest Service did not simply defer to the EPA registration for the assessment of environmental impacts from the various herbicides the Forest wishes to use, as the appellants allege. The EIS discusses (p. 2-3) the use of the Risk Assessment for Herbicide Use in Forest Service Regions 1, 2, 3, 4, and 10 and on Bonneville Power Administration Sites (Bonneville Assessment) and the use of the Forest Service herbicide website which contains extensive ecological and human health risk assessments for each of the herbicides the project expects to use (<http://www.fs.fed.us/foresthealth/pesticide/risk>). The Bonneville Assessment has a human health hazard analysis, human health exposure analysis, and human health risk analysis. For wildlife and aquatic species the Bonneville Assessment has a non-target species hazard analysis, non-target species exposure analysis, and non-target species risk analysis. These analyses are based on extensive literature searches and relevant data supplied to EPA (Bonneville Assessment, p. ES-2). There are 41 pages of references in Chapter IV of the Bonneville Assessment. The Forest Service herbicide website contains extensive ecological and human health risk assessments submitted to the Animal and Plant Health Inspection Service by Syracuse Environmental Research Associates, Inc. (examples of selected executive summaries from the risk assessments can be found in the project file [Vol. III, Sec. 6, Docs. 315 to 321]). These assessments contain and are based on extensive literature searches.

The Forest used these analyses, applied them to the local conditions, and described the potential environmental consequences for the proposed action and alternatives (EIS, Chapter 4), including impacts to threatened, endangered, and sensitive species (EIS, pp. 4-11 to 4-25, and Appendix M; PF, Vol. 2, Sec. 6, Docs. 194 and 196; Sec. 8, Doc. 210). The EIS is in compliance with NEPA.

Issue 3. The EIS fails to adequately disclose and analyze the cumulative effects of past and present herbicide spraying activities on other federal, state, and private lands adjacent to B-D NF lands, including foreseeable coordinated and simultaneous applications.

Response: The Proposed Action includes coordination between public and private land managers for treatment, education, and prevention (EIS, p. 2-2, and Appendix L; PF, Vol. 1, Sec. 16, Docs. 112, 113, 114, 117, 118, and 119). The EIS adequately discloses and considers the cumulative effects of past, present, and reasonably foreseeable activities on the various resources (pp. 2-9, 3-21 to 22, 3-24, 3-34 to 36, 3-43, 4-1 to 2, 4-7 to 24, and 4-28 to 34; Appendix B, pp. 12 and 13). The cumulative effects analysis is in compliance with NEPA.

Issue 4. The EIS fails to demonstrate compliance with NFMA viability and Clean Water Act provisions.

Response: In order to comply with NFMA viability requirements, the project must estimate the effects of the project on the management indicator species (36 CFR 219.19). The Forest did this and displayed the results in the EIS (pp. 3-37 to 3-14, 4-26 to 4-27, and 4-30 to 4-33; Appendix M). In order to comply with the provisions of the Clean Water Act the Forest must meet State Water Quality Standards. As stated in the EIS (p. 4-22), “Beneficial uses in virtually all WQLS [Water Quality Limited Segments] watersheds are Aquatic Life Support and Cold Water Fisheries. Because water quality and aquatic habitat will be maintained at a level that fully supports and protects designated beneficial uses, requirements to meet State Water Quality Standards will be fulfilled.” The ROD (pp. 6 and 7) indicates the project will be in compliance with NFMA and the Clean Water Act.

Issue 5. Approval of a noxious weed plan without a Forest Plan amendment or revision is a violation of NEPA and NFMA.

Response: Both the Beaverhead National Forest Plan (BNFP) and Deerlodge National Forest Plan (DNFP) consider control of noxious weeds as an important objective (BNFP, p. II-9; DNFP, p. II-3). The Beaverhead National Forest established an aggressive noxious weed control program to be continued and expanded to reduce or eliminate weeds (Plan, p. II-37). The DNFP (p. II-24) states, “Implement [an] integrated weed control program...use chemical biological and physical methods...” This noxious weed control EIS is in compliance with both the Beaverhead and Deerlodge National Forest Plans as they exist. There is no need to amend or revise either Plan in order to implement this project. The approval of the noxious weed plan is in compliance with NEPA and NFMA.

Issue 6. The Weed Control project is programmatic in nature rather than site-specific in violation of NEPA.

Response: The EIS (p. 2-2) analysis is based on mapped, surveyed, and identified noxious weed populations shown in Appendix B of the EIS and in the project file (Vol. II, Section 6, Docs. 191 and 192). This information is from extensive noxious weed surveys done on each District and housed at the Ranger District offices (EIS, p. 2-2; PF, Vol. II, Sec. 1, Doc. 135 is an example). The analysis is in compliance with NEPA requirements for site-specificity.

Issue 7. The Forest Service failed to conduct an adequate economic analysis. The analysis does not include the monitoring costs and follow up treatments.

Response: An adequate economic analysis was completed for the project (EIS, pp. 2-6 to 2-8), which is based on information in the project file (Vol. II, Sec. 11). The EIS compared the cost per acre for the three alternatives, which provided the Deciding Official the information he needed to weigh the cost of each alternative. Based on an annual weed control appropriations of \$225,000.00 per year (EIS, p. 2-6), not an unlimited budget as the appellants allege, the Deciding Official estimated how far each alternative will go to control the noxious weeds on the Forest.

This is what is needed for an informed decision as required by NEPA.

The primary focus at the project level is to identify economic implications that are unique to the decision. Monitoring for noxious weeds is a Forest-level annual survey that would be done regardless of the alternative chosen. The monitoring is therefore not unique to the decision. If the costs of monitoring were included in the alternatives, the cost of each alternative would rise by the same amount. This would not help the Deciding Official in choosing among the alternatives. It is understood that follow up treatments may be required (EIS, pp. H-4 and H-13). The economic analysis is appropriate for the type of project being evaluated, and is in compliance with NEPA.

Issue 8. In violation of NEPA, the FEIS contain an inadequate monitoring plan. The FEIS contains only brief and vague references to the monitoring plan.

Response: Monitoring plans are in place on each District as part of the existing weed control programs incorporated by the preferred alternative as described in the ROD (p. 4) and the EIS (p. 2-2). The EIS (p. 2-15) also states, “Weed infestations and control actions are monitored and tracked in a forest level weed data base...Date of discovery, location, weed species, condition, and distribution are recorded for each infested site. Treatment method (herbicide type, brand, and applications rate if applicable), date, and results are also recorded. This information is available at each district and provides long-term information about the effectiveness of control measures under various conditions.” “Annual reports from the database that show treatment accomplishments (MAR reports) will be compared with targets in the EIS for compliance. When the reports show treatment levels above 16,019 acres, additional acres for treatment will be identified and reviewed under the NEPA process.” The monitoring plan is adequate and in compliance with NEPA.

/s/ Martin L. Prather
MARTIN L. PRATHER
Appeal Reviewing Officer
Director of Information Systems