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**Subject:** ARO Letter - West Lake TS and Road Decommissioning Project ROD - Gallatin NF - Appeal #02-01-00-0059 - American Wildlands

**To:** Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Deborah Kmon Davidson, on behalf of American Wildlands, protesting the West Lake Timber Sale and Road Decommissioning Project Record of Decision (ROD) on the Gallatin National Forest (Hebgen Lake Ranger District).

The Forest Supervisor's decision adopts Alternative 6, which includes timber harvest of an estimated 2.3 million board feet of timber from approximately 739 acres of National Forest land. The project also includes 78 acres of tree planting, 399 acres of under burning, 0.9 miles of temporary road construction, 2.1 miles of existing road reconditioning, and 6.7 miles of road decommissioning.

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), the Administrative Procedures Act (APA), Montana water quality standards, the Gallatin National Forest Plan, and the Gallatin II Land Exchange criteria. The appellant requests a remand of the ROD. An informal meeting was held but no resolution of the issues was reached.

#### ISSUE REVIEW

**Issue 1. The West Lake Timber Sale is not in compliance with the criteria the Gallatin II Land Exchange parties agreed to follow. The Forest is in violation of the grizzly bear, water quality, old growth, native fish, Forest Plan, and natural resource laws criteria.**

**Response:** The Gallatin II Land Exchange has 18 criteria the Forest Service must follow (EIS, pp. 3-8 to 13). Criterion 11 allows for harvest in grizzly bear habitat, and allows for changes in open-road density and core areas as long as the U.S. Fish and Wildlife Service (USFWS) is consulted (EIS, p. 3-11; PF, Doc. 1). Criterion 13 requires the Forest to carefully consider effects on wildlife. The ROD (p. 13) states, "Alternative 6 will not increase 'open' or 'total' motorized access route density, nor decrease 'core areas['] below current levels." Furthermore,



the Forest developed a Biological Assessment of the impacts this project would have on grizzly bears and other Federally listed species, and did consult USFWS on the impacts to those species (EIS, Appendix C).

Criterion 5 requires that the timber harvest project for the land exchange be located outside watersheds that do not currently meet Montana water quality standards. The criterion does allow for projects to occur if there are water quality limited segments (WQLS) within a watershed that otherwise meets water quality standards as long as sediment-generating activities do not result in a net increase in delivered sediment to the WQLS. The watershed as a whole does meet Montana water quality standards for the B1 classification, with only Watkins Creek as a 303d listed segment (EIS, pp. 3-95 to 96). Alternative 6 would not increase sediment to Watkins Creek (ROD, p. 12; EIS, pp. 3-92 and 93).

None of the land exchange criteria discuss the harvest of old growth to facilitate the land purchase.

Criteria 7 and 8 state that sediment increases may occur but are constrained by the Gallatin Forest Plan implementation guidelines which are designed to protect beneficial use, particularly trout spawning habitat. In streams supporting westslope and Yellowstone cutthroat trout the projects are to have no effect or a beneficial effect. The ROD (p. 12) states, "Alternative 6 will not increase sediment beyond the Forest Implementation Guidelines...[and] would help to reduce sediment by stabilizing the road surface [which] will help to reduce the amount of sediment in the West Fork Denny Creek faster than the no action alternative." "None of the streams in the West Lake analysis have westslope genetic purity of 90 percent or higher" (EIS, p. 3-13). The EIS (Appendix A, p. 12) states, "Based on the effects of the proposed harvest and road restoration activities..., the absence of pure westslope cutthroat trout..., and the presence of hybridizing and competitive non-native species, the proposed activities will have no impact on westslope cutthroat trout..."

Criterion 9 requires the Forest to meet Gallatin Forest Plan standards and guidelines for protection of soil, air, and water, and strive to meet other standards and guidelines. This criterion recognizes that due to the current checkerboard pattern of land ownership, these other standards and guidelines cannot be met at this time (ROD, p. 12). The project is following the Regional Soils guidelines (PF, Doc. 128, p. 6), which allow for less impact than the Forest Plan guidelines (Forest Plan, pp. II-23 and 24). The Forest Plan requires that projects meet the Montana Smoke Management Plan and the State Implementation Plan (Forest Plan, p. II-23). The EIS analyzed the impacts the project would have on air quality and concluded that all alternatives would be in compliance with State of Montana air quality rules (EIS, Appendix A, p. 71). As indicated above, the ROD (p. 12) states, "Alternative 6 will not increase sediment beyond the Forest Implementation Guidelines." The project did strive to meet all other Forest Plan Standards and Guidelines; however, due to the existing situation, or from implementing the project, a few of them would not be met. As required by, and in compliance with, NFMA the Forest adopted project- and site-specific Plan amendments (EIS, pp. 2-24 and 25; ROD, pp. 6 to 9 and 18).

Criterion 1 of the Gallatin land exchange requires that all sales comply with applicable federal and State natural resources laws. The ROD (pp. 19 to 22) and EIS (pp. 3-14 to 16, and 3-95 to

99; Appendix A-68; and Appendix C) demonstrate the project is in compliance with all natural resources laws that have a bearing on the project.

The West Lake Timber Sale is in compliance with all 18 of the criteria the Gallatin II Land Exchange parties agreed to follow.

**Issue 2. The 30 percent old growth per timber compartment should count all acres and not just forested acres. The FEIS failed to address whether any old growth ground truthing outside of the proposed units has been conducted. Therefore the project presents a substantial or unreasonable risk to the integrity of the analysis area.**

**Response:** The maps in the project file (PF) (Doc. 288, pp. 9 and 10) display those old growth stands in Compartments 709 and 710 that have been ground-truthed and those that have not been ground-truthed. The vast majority of both types are outside of the proposed harvest units.

The Forest Plan discusses the maintenance of old growth under the TIMBER heading in the Management Area 13 discussion in the Forest Plan (III-41). Therefore, it is reasonable to assume the 30 percent standard refers to those portions of a timber compartment that can be managed for timber, and not those areas unable to grow trees. This, however, is a moot point as it pertains to this project. The project work will be done in three compartments, 709, 710, and 711. The combined percentage of old growth in the three compartments of 28.1 percent (PF, Doc. 288, p. 3) is meaningless because the Plan calls for the standard in *each* compartment separately. Compartment 709, at 18.9 percent old growth, is well below the required standard for MA 13 (EIS, p. 3-70). The Forest recognized that regardless of what they do they cannot meet the standard at this time. They correctly put forward a site-specific Forest Plan amendment in compliance with NFMA and NEPA (ROD, pp. 7 to 8; EIS, 3-68). The project will not harvest old growth in this compartment. Compartment 710 presently has 40 percent old growth and after the project will have 37.8 percent old growth (PF, Doc. 288, p. 3; EIS, p. 3-70). This is in excess of the 30 percent standard for MA 13, regardless of whether non forest producing land is considered or not. Compartment 711 is in Management Area 4, where a 10-percent old growth standard applies. At this time there is 26.5 percent old growth in Compartment 711, and that will remain the same after the project (EIS, p. 3-70). The project is in compliance with the Forest Plan requirements for old growth and does not present a substantial or unreasonable risk to the integrity of the analysis area.

**Issue 3. Pre-marking of trees leads to biased decision making and violation of the Federal Administrative Procedure Act (APA).**

**Response:** The Forest explained why they found it expedient to do the fieldwork prior to making the decision in the Response to Comments (EIS, p. D-3). Markings and field designations of proposed activities during the planning phase of a project are not in violation of NEPA (see 40 CFR 1506.1 - Limitations on actions during the NEPA process) or APA. Identification in the field allows for accurate field measurements and also allows the interdisciplinary team members, interest groups, and the general public to better visualize and understand the proposed project before any action actually occurs, and will likely save time in the long run. The pre-decisional marking and cruising on the project did not have any adverse

environmental impact, did not limit the choice of reasonable alternatives, is not a major federal action which may significantly affect the quality of the human environments, and did not prejudice the ultimate decision on the project. These activities do not constitute any irreversible or irretrievable resource commitment (EIS, p. 3-98); they are not considered irreparable harm; and they are not arbitrary, capricious, or an abuse of discretion.

**Issue 4. The FEIS does not supply appropriate information pertaining to current levels of soil detriment or increased levels of detriment that may follow the proposed project. There is inadequate information to show compliance with the 1994 regional guidelines. The methods for designing the BMPs lack scientific integrity and proven effectiveness. The analysis needs to include cumulative effects.**

**Response:** All stands were reviewed for previous entries. Based on tree age, vegetation structure, and fuel loading there have been no significant entries in the stands within the last 100 years (EIS, p. D-34). The cumulative effects analysis in the project file states, “Since no proposed harvest units are in past cut-over areas, and Best Management Practices...are specified for those units, there are probably no significant long-term impact on soils productivity from past and present action for those units. Future harvest, if similar practices are used, will probably have similar, non-measurable effects” (PF, Doc. 128, p. 5). The BMPs prescribed by the Forest soil scientist and their effectiveness rating can be found in the EIS (Appendix B). The process to design, implement, and monitor effectiveness of the BMPs is described in Appendix B (pp. B-1 to B-3). Harvest impact and BMP effectiveness are based on monitoring done on the Gallatin National Forest and the Northern Region (PF, Doc. 128, pp. 7 and 8). As stated in the project file, “Regional Guidelines and standards for protection of long term soil productivity are applied. These are dated November 12, 1999, and are titled: FSM 2500 – Watershed and Air Management R-1 Supplement 2500-99-1, Chapter 2550 – Soil Management. These guidelines allow about 75 percent less disturbance than previous guidelines. This is due to an increased understanding of the scientific effects of soil disturbance on soil productivity” (PF Doc. 128, p. 6). The soils analysis and protection are in compliance with the Forest Plan (II-23 and 24), NEPA, and NFMA requirements.

**Issue 5. The site-specific amendments violate NEPA and the Forest Plan. The cumulative effects of making amendments to the Forest Plan were not addressed in the EIS. The site specific amendment to the habitat effectiveness index (HEI) may threaten the security of Elk and other species due to the cumulative effect of HEI amendments and violates GNF forest plan direction for grizzly bear security in MS-1 and MS-2 areas.**

**Response:** The Forest made five site-specific Forest Plan amendments in this EIS (ROD, pp. 7 to 9). The first three (visual quality, vegetative structure, and old growth) were made to address what presently exists on site that cannot be corrected by the Forest with this project, and the project will not make any worse.

The fourth amendment concerns the 75 percent perimeter cover surrounding existing openings. The rationale for deviating from the 75 percent perimeter cover is discussed in the ROD (p. 8). This percent cover is a guideline in grizzly bear management situation 2 (Forest Plan, p. G-11). Typically, deviations from a Forest Plan guideline (as opposed to a standard) do not trigger a

site-specific Forest Plan amendment; however, the Forest considered a site-specific amendment

appropriate in this situation. The analysis found that the benefits from the harvest would not have a detrimental impact on grizzly bear (EIS, Appendix C, pp. 14 to 16, and 22 to 23).

The last amendment concerns the 70 percent elk HEI (Forest Plan, p. II-18). The project file (Doc. 275) goes into great detail about the elk HEI, including what the index was supposed to do, how it is being implemented incorrectly, why it does not work the way it was envisioned to work, why a Forest-wide Plan amendment was not done, what past projects have had site-specific amendments, and why site-specific amendments of this index are not cumulative. The project file also displays the analysis for the elk security index (Docs. 273 and 274). The analysis points out that the present index for Compartment 709 is .50 and it will only drop .01 for the duration of the project. After the project is completed the index will return to .50. The analysis also acknowledges the need for a site-specific Plan amendment due to the existing low index and the project dropping it by .01 for the duration of the project.

None of these Forest Plan amendments will have a significant impact on the implementation of the Forest Plan as a whole, and the project documentation demonstrates the Forest is attempting to meet the intent of the Plan. Therefore, the site-specific amendments are consistent with NFMA and the Forest Plan. The impacts of the amendments on the environment are displayed in the EIS and project file, and therefore they are consistent with NEPA.

**Issue 6. By failing to appropriately consider projects on private land, the ROD fails to show compliance with the Gallatin Forest Plan standards for re-entry into grizzly bear habitat.**

**Response:** The project did consider impacts from private, federal, and State lands as part of the effects analysis and the Biological Assessment for grizzly bear (EIS, pp. 3-77 to 79, and Appendix C, pp. 8 to 23). The USFWS concurred with the biologist's determination of not likely to adversely affect grizzly bear (EIS, Appendix C, p. 44). The Biological Opinion for the Gallatin National Forest (Forest Plan, Appendix H) is for activities on lands administered by the Gallatin National Forest and guided by the Plan (p. H-4). The re-entry standards are specific to National Forest timber sales in MA 13, not private land entries (pp. H-7 and 8). The project is in compliance with the Forest Plan standards for re-entry into grizzly bear habitat.

**Issue 7. The FEIS fails to assess population viability of management indicator species (MIS) as required by NEPA and NFMA. Thus the public and agency decision makers have no tools to assess whether sufficient old-growth habitat exists to maintain population of species dependent on old growth.**

**Response:** MIS, including pine marten, were analyzed under various issues in the EIS (p. A-48). The analysis for pine marten discusses affected environment, direct, indirect, and cumulative effects (EIS, Appendix A, pp. 48 to 49). The analysis found "with the selection of action Alternatives 2, 3 or 6 effects to pine marten habitat would be minor" and under cumulative effects the analysis found "acquisition of Big Sky Lumber Company lands will result in a long-term gain of habitat important to management indicator species." Impacts to old growth were discussed in Issues 1 and 2 (above). The amount of old growth that would be cut is very minor

and only done in the compartment where the old growth is well above Forest Plan standards. The analysis is in compliance with NEPA and NFMA.

**Issue 8. The Forest Service failed to provide sufficient scientific information to support the claim the genetic purity of Westslope Cutthroat Trout is less than 90 percent in the West Lake analysis area.**

**Response:** The fisheries biologist's report (PF, Doc. 165) documents the findings of surveys conducted during the 1970s, 1980s, and 1990s that included the amount and size of pure and hybrid trout. That report also states, "Based on the extent of past stocking efforts, field surveys of the project area streams, current species assemblage information, population estimates, and competition from non-native species, the likelihood of pure westslope cutthroat trout existing in the project area is extremely low." These data are an adequate scientific basis on which to base a professional opinion as to the purity of the westslope cutthroat trout in the project area.

**Issue 9. The cumulative effects analysis is inadequate for several resources and for activities on private land in violation of NEPA.**

**Response:** The project did adequately consider impacts from private, federal, and State lands as part of the cumulative effects analysis in the EIS (EIS, pp. 3-1, 3-58, 3-72 to 73, 3-77 to 79, 3-84 to 85, 3-86, 3-89, 3-96, and under the various other issues in Appendix A, pp. A-1 to 77) and the project file (Docs. 141, 145, 152, 163, 183, 188, 272, and 293).

**Issue 10. The EIS fails to analyze whether the analysis area is meeting Forest Plan standards for down woody debris due to the cumulative effects of past harvest.**

**Response:** As stated in the Response to Comments (EIS, Appendix D, p. 24), snags are not a limiting resource in the project area and recruitment of more snags has been high in the area due to Douglas-fir beetle activity. The EIS (Appendix A, p. 23) and the Response to Comments (Appendix D, p. 16) indicate harvest prescriptions will maintain 30 to 50 percent of the existing stands, including the snags in them; areas adjacent to the harvest areas contain a moderate to high numbers of snags; and Forest Plan standards for snag density would be maintained in the project.

**Issue 11. The economic analysis is inadequate due to the failure to incorporate costs of future road maintenance, loss of ecosystem services, or loss of ecosystem integrity, and future timber value. Without an appropriate economic analysis the project purpose of generating revenue for land acquisition cannot be met. Since the timber program loses money, timber sales are not compatible with maximizing funding for land purchase.**

**Response:** Project-level economic analysis does not require that non-commodity economic values 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 Gallatin Land Consolidation Act (PF, Doc. 2) and the planning criteria (PF, Doc. 1) directed the sale to generate revenue for the land exchange and to be economically feasible. The Forest did an economic feasibility analysis (EIS, Appendix A, pp. 73 to 77), finding the sale was economically feasible and marketable, and the sale would generate revenue (ROD, p. 5). The Forest further explained the economics of the sale in the Response to Comments (EIS, Appendix D, pp. D-29 to 31). The economic analysis is appropriate for the project.

### 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/ Michael J. Burnside  
MICHAEL J. BURNSIDE  
Appeal Reviewing Officer  
Regional Mining Geologist