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**Subject:** ARO Letter - Lolo Post Burn ROD - Lolo NF - Appeal #02-01-00-0077 - The Ecology Center, et al.

**To:** Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Jeff Juel, on behalf of himself, The Ecology Center, Montana Chapter of the Sierra Club, Alliance for the Wild Rockies, The Lands Council, and Native Forest Network, protesting the Lolo Post Burn Record of Decision (ROD) on the Lolo National Forest (Plains/Thompson Falls Ranger District).

The Forest Supervisor's decision adopts Alternative 5-modified, which includes timber thinning and salvage on 4,600 acres, regeneration monitoring and planting on up to 12,916 acres, riparian planting on 38 acres, prescribed burning on 114 acres, weed treatments along 509 miles of road, soil stabilization on 762 acres, 1.7 miles of temporary road construction, 287 miles of road reconstruction, 224 miles of road decommissioning, travel restriction on 3 miles of road, removal of 108 culverts, rehabilitation of one dam site, reclamation of three mines, development of one gravel source, trail stabilization, and heritage interpretation.

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 Safe Drinking Water Act (SDWA), the Administrative Procedures Act (APA), and the Lolo National Forest Plan. The appellants request a remand of the portion of the ROD that authorizes logging on 4,600 acres, construction of the 1.7 miles of temporary road, reconstruction on existing road to facilitate logging, development of the gravel source, the 114 acres of prescribed burning and the weed treatments along 509 miles of road. The appellants do not wish to delay the implementation of the rest of the project. An informal meeting was held but no resolution of the issues was reached.

### ISSUE REVIEW

**Issue 1. The reasoning in the EIS is not logical, and so, is arbitrary and capricious. There is a pervasive lack of historical data on the vegetation condition of the forest within the project area. The project file also contains insufficient data to adequately define the historical range of conditions in the various forest types in the project area. The EIS simply assumes the beetles are deleterious to timber production, and that active**



**management of the vegetation must be used to improve forest health. The susceptibility of green trees to insect infestations is mere speculation. One would think that if “uncharacteristic soil damage” due to future fire is important on the 2,230 to-be-logged VRU 2 acres, it would also be the case on the rest of the analysis area, particularly in the tens of thousands of acres of burn where post-fire fuel build-up is alleged but not reduced. The EIS justifies the project by stating there is a need for funds from the timber harvesting to accomplish the watershed restoration. None of this is logical.**

**Response:** The Environmental Impact Statement (EIS) discusses the historic conditions of the area (pp. 3-146 to 152). The vegetation discussion is based on Losensky’s (1993) *Historical Vegetation in Region One by Climatic Area* (PF, Vol. 37, Doc. N-351). The historical fire conditions discussion uses numerous information sources (Karsian, 1995; Mehringer, et al., 1977; Hemphill, 1983; Williams, 2000a and 2000b; Barrett, 1980; Martinez, 1998; and Kay, 1994). The Response to Public Comments goes into detail on the historic range of variability (EIS, Appendix I, pp. 2 to 4 and 41 to 42).

The EIS (pp. 3-142 to 164, and Appendix A, Maps 3.15.3a and b, Maps 3.15.4a and b) provides specific discussion of insect populations, their role in succession, the risk rating, and existing locations of insect infestations. Additional information is available in the project file’s reference material (Vol. 21, Docs. M-350 and 351, N-2 and 10; Vol. 28, Doc. N-357). The EIS addresses “reducing risk” of bark beetle predation for those stands treated. The EIS (pp. 4-103 to 4-106) discloses that the proposed harvesting in Alternatives 4 and 5 actually reduces the risk of insect infestation. Mitigation measure VEG-M-2 (EIS, p. 2-39) refers to a routine timber sale contract clause that effectively minimizes damage to residual trees, which in turn minimizes post harvest insect and disease infestations. The EIS found the greatest threat of tree mortality is from bark beetles (EIS, pp. 3-142 to 164).

It is not illogical to identify that salvage logging, where it can be done without unacceptable impacts to other resources, has an additional potential benefit to soils in the event that a reburn occurs in VRU 2, group 2 and group 4 (EIS, pp. 3-155 to 156). The soils and fuels analysis describe the effects that high fire severity has on soils and the relationship of reburn after fuels accumulations over several years (EIS, pp. 4-8 to 9 and 83 to 85). The EIS clearly states that the reduction of the potential for reburns and its associated benefits are intended to be completed at a stand level and not at a landscape level.

The ROD (pp. 30 and 36) and the EIS (pp. 1-12, 13, 19, 20, 2-25 to 30, 3-137, 4-147, and Appendix G) display that not all watershed restoration work can be funded with dollars appropriated by the National Fire Plan. They also display that timber sale receipts will assist in the implementation of a large portion of road reconstruction, road decommissioning, and other watershed restoration work not funded by appropriated dollars. The effects analysis also shows that alternatives containing timber harvest result in a more timely completion of watershed restoration activities. Appendix G displays the magnitude of deficiency of appropriated funds.

The discussion of the historical conditions of the area, the range of variability, the risk of insect attack, the potential reburn effects, and funding the restoration in part with timber sale receipts is not illogical and is not arbitrary and capricious.

**Issue 2. The Forest Plan is out of date and no longer valid. The appellants maintain that a public dialogue and scientific analysis of the Lolo's fire strategy, roads policy, desired condition, and the goals and standards of the Forest Plan at the Forest-wide level must come before implementation of projects. Decisions made about the desired conditions of the Vegetative Response Units (VRUs) were done outside the Forest Plan, in violation of NEPA, NFMA, and ESA.**

**Response:** Regardless of its age the Forest Plan still provides a framework for managing the Forest as a whole, and the burned area (EIS, pp. 1-19 to 20). The framework includes providing for clean air, clean water, and diverse ecosystems (goal number 4), meeting or exceeding State water quality standards (goal number 8), managing to contribute to recovery of threatened and endangered species (goal number 7), and providing a sustainable yield of timber (goal number 1). The Forest has started the planning process to revise and update the Lolo Forest Plan. The salvaging of burned timber before it loses all value and restoration of the watersheds affected by the fires of 2000 cannot, and need not, wait until a new Forest Plan is in place.

As explained in the EIS (pp. 3-146 to 148), VRUs are combinations of habitat types with similar vegetative components and similar fire regimes that respond similarly to disturbances such as fire. This is based on the research of Pfister, et al. (1977) and Fischer and Bradley (1987). The VRUs do not describe a desired future condition, but predict how the existing vegetation will respond to disturbance. The EIS (p. 1-10) describes the desired future condition of various resources in the project area. The desired future condition for the vegetation is for stands in the project area to be resilient to future natural and human-caused wildfires. While the desired future condition is not articulated in this manner in the Lolo Forest Plan (Plan, pp. II-6 to 8), the project's desired future condition is not in contradiction to the Forest Plan. The EIS is in compliance with NEPA, NFMA, and ESA.

**Issue 3. The EIS and ROD do not contain the disclosures and analyses, nor cite adequate documentation, to assure the decision maker and public that the project would not harm old growth, old growth-associated species, ESA-listed species, the black-backed woodpecker and its snag habitat, sensitive species, pileated woodpecker, and goshawk in violation of NEPA and NFMA.**

**Response:** The ROD, EIS, and project file contain extensive amounts of information on all of these species and habitat types. Chapters 3 and 4 of the EIS discuss, disclose, and analyze the existing condition and the direct, indirect, and cumulative effects the project will have on these very important resources:

Old growth and associated species: EIS, pp. 2-40, 3-142, 3-156 to 160, 4-99 to 100; PF, Vol. 21, Docs. M-343, M-344, M-349, Vol. 28, Doc. N-14.

ESA-listed species: EIS, pp. 3-177 to 185, 4-108 to 4-115, Appendix A, Maps 3.18.4 to 3.18.11 and 4.13.4 to 4.13.15, Appendix I, pp. 130 to 131, 134 to 135, 139 to 148; PF, Vol. 23, Doc. M-399.

Black-backed woodpecker and its snag habitat: EIS, pp. 2-40, 3-187 to 3-189, 4-117 to 4-119, Appendix A, Maps 3.18.13a and 13b, Maps 4.13.16a to 4.13.17b, Appendix I, pp. 129, 132, 139 to 141, 143 to 144, and 148; PF, Vol. 23, Doc. M-409, Vol. 38, Doc. N-380 and Vol. 40, Doc. N-434.

Sensitive species: EIS, pp. 3-185 to 3-192, 4-115 to 4-123, Appendix A, Maps 3.18.12 to 3.18.14b, Appendix I, pp. 129 to 140, 143 to 144, and 148.

Management Indicator Species: EIS, pp. 3-192 to 3-197, 4-123 to 4-127, Appendix A, Maps 3.18.1a to 3.18.2b, 3.18.15a to 3.18.16, 4.13.1a to 4.13.3b, and 4.13.20a to 4.13.21b, Appendix I, pp. 134 to 139, and 141 to 142.

Habitat fragmentation: EIS, pp. 3-198 to 3-199, pp. 4-127 to 4-128, and Appendix I, pp. 145 to 147.

Pileated woodpecker: EIS, pp. 3-192, 4-123 to 4-125, Appendix A, Maps 3.18.15a to 15b and 4.13.20a to 4.13.21b, Appendix I, pp. 132, 134-136, PF, Vol. 23, Doc. M-409, Vol. 38, Doc. N-380, Vol. 40, Doc., N-434.

Goshawk: EIS, pp. 3-186 to 3-187, 4-115 to 4-117, Appendix A, Map 3.18.12, Appendix I, pp. 134 to 135, 138 to 140, and 143 to 144, PF, Vol. 38, Doc. 383, Vol. 39, Doc. N-404, Vol. 40, Doc. N-442.

The EIS and project file contains more than sufficient disclosure, analyses, and citations to make it clear the Deciding Official made an informed decision based on an understanding of the environmental consequences of the project and took actions that will protect, restore, and enhance the project area [40 CFR 1500.1(c)]. The discussion in section 8.0 of the ROD, *Principle Factors considered in My Decision* (pp. 23 to 39), makes it clear the Forest Supervisor made a reasoned decision based on sufficient information about the project and its consequences, and is in compliance with NEPA and NFMA.

**Issue 4. The appellant's comments on the Draft EIS expressed concern about the Lolo NF's tree mortality determination methodology. The Forest Service responded that the design criteria description for burn mortality is not a contract harvesting definition; it was one item in the filtering process used during field evaluation to identify potential harvest areas. However, the appellants point out the Final EIS (p. 2-19) still contains the same mortality guidelines, wherein green trees will be logged because of subjective levels of fire damage.**

**Response:** The EIS (p. 2-19) under Design Criteria for Economics states, "For *initial* salvage opportunity identification, burn mortality guidelines for lodgepole pine and Douglas-fir will be if ½ bole circumference is burned, consider the tree dead. *For harvest contracts, tree is dead only if crown is dead*" (emphases added). To help clarify the issue mitigation measure, VEG-M-3 was added (see Response to Comments PC #189, Appendix I, p. I-116). The mitigation measure further addresses recent insect mortality and provides the scientific references, and the stipulation that these trees would be marked for removal by the Forest Service prior to harvest.

The EIS clearly describes that "dead trees will be defined in timber sale contracts as those trees, other than western larch, *with no green needles*. If winter operation would include harvest of western larch, marking of larch by forest service will designate cut or leave trees" (emphasis added) (EIS, p. 2-39).

**Issue 5, Contention 1. The post burn project would damage soils and the EIS does not assure that soil productivity is protected because the document fails to demonstrate consistency with Regional soil quality standard requirements and underlying laws and regulations.**

**Response:** The EIS goes into great detail on the existing condition of the soils in the project area (pp. 3-23 to 48), and the direct, indirect, and cumulative impacts the project will have on soils in the project area (pp. 4-3 to 4-9). The discussion of existing conditions and effects in the EIS is based on surveys of the project area (PF, Vol. 15, Docs. M-60 to M-67). The surveys were conducted using standard survey methods (EIS, p. 4-3; PF, Vol. 1, Doc. A-3, Vol. 15, Doc. M-74, Vol. 32, Docs. N-178, N-181, N-182, N-183, and Box 3, Doc. N-192).

The EIS points out the project will follow, and is in compliance with, the Northern Region's soil guidelines (pp. 3-25 to 26, 3-48, 4-3, and 4-9). Severely burned soils are of the most concern to the soil scientist. The Alternative 5 effects analysis for soils focuses the discussion on those harvest units that are located within areas with high soil burn severity (pp. 4-4 to 5 and 4-8 to 9). In the discussion of Alternative 5 she points out none of the work in the harvest units would result in 15 percent detrimentally disturbed soils (EIS, p. 4-9). She then refers the reader to the Alternative 5 soil summary in the project file.

The Alternative 5 soil summary spreadsheets can be found in Vol. 15 of the project file (Docs. 49 to 56) and also on a compact disk (Vol. 15, Doc. 79). The spreadsheets in the file are longer than the paper they are printed on, so in order to see all the information the soil scientist used to determine that the project is still within the 15 percent detrimentally disturbed limit, the reader must view the compact disk. The full spreadsheet on the compact disk lists for every unit number (activity area) the percent compacted soil, the percent severely burned soils, the percent of the area that is rutted, the percent displaced soil, the percent eroded soil, and the percent of soil that has had mass movement. This document, in conjunction with the EIS and other documents on soils (Vol. 14, Docs. M-39 to M-46 and Vol. 15, Docs. M-47 to 79) demonstrates the project is consistent with the Regional soil quality standards and the underlying laws and regulations.

**Issue 5, Contention 2. The amount of error inherent in the Water Erosion Prediction Program (WEPP) model means its value for sediment analysis is very questionable.**

**Response:** The EIS (pp. 3-24 to 26 and 4-3) discusses the methodology used to collect data and the use of the WEPP model. In the post-burn analysis, the WEPP model was only one of many soil-hydrologic tools that were used. WEPP assisted in prioritizing areas for field data collection. WEPP was not the model used for sediment analysis for the post-burn project.

**Issue 5, Contention 3. The EIS does not demonstrate that past cutting units will have sufficient amounts of coarse woody debris (CWD) to maintain soil nutrients necessary to meet soil quality standards.**

**Response:** The ROD (p. 27), EIS (pp. 2-36, 41 and 4-4), and Project File (Vol. 15, Docs. M-75, and Vol. 32, Doc. N-180) demonstrates that sufficient levels of CWD will be retained to maintain long-term soil productivity as required in Regional soil quality standards.

**Issue 5, Contention 4. The EIS reliance on proposed mitigation to avoid cumulative detrimental soil conditions is not supported by specific monitoring evidence.**

**Response:** The soils monitoring data and mitigation effectiveness are discussed in the EIS (pp. 2-41 to 42) and the project file (Vol. 18, Docs. M-240, 241, 242, and Vol. 34, Doc. N-250).

**Issue 5, Contention 5. The Lolo NF is relying on the Regional soil quality standards that have not been validated. The Lolo National Forest merely assumes that it can irretrievably damage soils on 15 percent of every activity area.**

**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, irretrievable 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 Lolo Post Burn analysis. However, the Regional soil standards are based on research and the collective field experience of soil scientists (see FSM 2500-99-1 for listing of references the soil standards are based on). The Lolo Post Burn EIS is in compliance with NFMA requirements to maintain soil quality.

**Issue 6, Contention 1. In the absence of a Total Maximum Daily Load determination federal agencies have a duty to avoid further degradation of Water Quality Limited Segments. The Lolo Post Burn project, as embodied by Alternative 5-modified, violates this duty and thereby violates the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA).**

**Response:** The EIS goes to great length to analyze and display the impacts this project will have on aquatic resources (pp. 3-70 to 103, 3-201 to 237, 4-30 to 74, and 4-129 to 159), including consistency with the Clean Water Act, National Forest Management Act, and Endangered Species Act. The courts have found that water quality standards require instream beneficial uses, and the level of water quality necessary to protect those uses, shall not be impaired. As long as beneficial uses are maintained or made better over the long term, short-term increases in sediment are not in violation of the CWA [see *Idaho Sporting Congress v. Jemmet* 139 F.3d 905 (9<sup>th</sup> Cir. 1998)]. The EIS demonstrates that there will be short-term increases in sediment from project activities, but over the long term sediment production will decrease. The EIS discloses

the estimated relative changes in sediment production from each Alternative (EIS, pp. 4-32 to 65), including the extensive jammer road system and their potential for erosion and sediment delivery. The EIS shows that the decision complies fully with the State's rules concerning section 303 of CWA (pp. 4-58, 64, and 65). The decision will establish a trend that eliminates pollution sources that are affecting beneficial uses, as required by section 303 of the CWA (ROD, p. 37).

The SDWA does not apply here since the Forest Service does not own or maintain a public water system and is not engaged in any activities that may result in underground injection which endangers drinking water (42 U.S.C. 300j-6).

**Issue 6, Contention 2: The EIS fails to provide analysis of ongoing impacts of leaving Forest Road (FR) 5498, and there is no evidence in the project record that all roads not receiving treatment are in already at a closure level 3 and in a stable condition.**

**Response:** FR 5498, also known as the Foothills Road, was partially reconstructed in 2001 as part of BAER efforts. Further work will be done on it under this decision (EIS, pp. 3-78 to 79). The overall potential affects of the entire road system, including the Foothills Road and watershed treatments, were assessed in the EIS (pp. 4-140 to 159). The EIS documents, "the jammer roads are basically stabilized and have been coded with a Road Closure level 3 or better..." (p. 3-133). This is based on field checks in key watersheds and documented on maps in the project file (see road closure maps in map role 1 and 2).

**Issue 6, Contention 3: The EIS fails to cite the results of monitoring that shows BMPs have protected the resources as EISs say they will.**

**Response:** The project file contains extensive monitoring reports and analyses from ongoing BAER activities in the area and BMPs used effectively in Montana and Idaho (EIS, pp. 2-41 to 42; and PF, Vol. 18, Docs. M-240, 241, 242, and Vol. 34, Doc. N-250).

**Issue 7. The EIS does not protect fish habitat and water quality, fails to ensure population viability of bull and westslope cutthroat trout, and fails to show compliance with the Forest Plan as amended by INFISH in violation of NFMA.**

**Response:** The EIS documents that Alternative 5 will impact fish habitat and water quality from elevated sediment yields (p. 4-158), but this increase will be short term, and will not be irreversibly detrimental to fish habitat or fish populations. The Fisheries Biologist determined that the project would not likely contribute to a trend toward federal listing or reduce the viability of westslope cutthroat trout (EIS, p. 4-259). The effects on bull trout were documented in the Biological Assessment (BA). It concluded with a determination of "Likely to Adversely Affect" bull trout because of short term sediment increases that were largely from road reconstruction and closure. The short-term effects are not anticipated to further threatened or jeopardize bull trout populations, and the net effects will be positive for the species (EIS, p. 4-259; PF, Vol. 24, Doc. M-438). The BA and determination of impact were sent to the United States Department of Interior, Fish and Wildlife Service (USFWS) pursuant to the ESA. The USFWS issued a

Biological Opinion containing an incidental take statement (PF, Vol. 24, Doc. 439). The USFWS concluded, “some mortality of bull trout is likely [but] implementation is not anticipated to reduce the reproduction, number or distribution of bull trout within the action area to the degree that the likelihood of the subpopulation’s survival or recovery is appreciably reduced” (PF, Vol. 24, Doc. 439, p. 46).

Based on the Fisheries analysis in the EIS (pp. 3-201 to 237, and 4-129 to 159) and the Fisheries BA/BE (PF, Vol. 24, Doc. M-438), the ROD documents the project is in compliance with the Lolo Forest Plan as amended by INFISH (p. 24). The project is in compliance with NFMA viability and protection of habitat requirements.

**Issue 8, Contention 1: Monitoring and Evaluation Reports state the WATSED model is based upon Idaho Batholith landtypes, which is not similar enough to the geology in all project area watersheds.**

**Response:** According to Rick Patten, who developed the model, WATSED response functions were developed from watersheds made up primarily of granitics (associated with the Idaho Batholith) and related geologies (border zone), and Belts (quartz based) found in north and central Idaho and western Montana. The areas involved in the EIS contain similar lands. More importantly, the *coefficients* that affect the rates, timing, and magnitude in derivations of WATSED (like LOLOSED) are derived locally; in this case, on the Lolo National Forest.

**Issue 8, Contention 2. The EIS relies heavily on the LOLOSED model to compare alternatives, yet the model has not been validated. Given that LOLOSED is a very recent alteration of WATSED, we would expect that its outputs would be even less reliable than WATSED for the project area watersheds. The EIS fails to provide any sort of indication on how accurate the model is expected to be, and provides no quantitative analysis that uses quantified data to provide accurate effects comparisons between alternatives. The failure of the EIS to disclose the inaccuracies of its model means cumulative effects were not adequately analyzed or disclosed.**

**Response:** The EIS specifically notes that LOLOSED is a Geographical Information System (GIS) application of WATSED (pp. 4-32 to 34). Essentially, GIS is a computer data storage system where the data is stored, sorted, and displayed in ‘layers’ (i.e. a roads layer, a stream layer, an elk habitat layer). The difference between WATSED and LOLOSED is that GIS data ‘layers’ can be input directly into the LOLOSED model. Rather than manually inputting the data, as in the original WATSED program, the GIS data is directly linked to the LOLOSED computer program. Using the GIS technology *directly* saves time and actually improves data precision over entering the data by hand. In all other aspects, the functioning of the model remains the same as WATSED (PF, Vol. 18, Docs. M-256 and 257, Vol. 19, Docs. M-265, 266, and 279). The direct, indirect, and cumulative effects of each of the alternatives as they relate to project area watersheds have been adequately analyzed and disclosed (EIS, pp. 4-30 to 74).

**Issue 9. The Lolo NF has failed to adequately monitor native trout species' population trends. Thus the EIS is unable to cite the results of any monitoring that allow it to make valid, definitive conclusions about the Post Burn Project's impacts on population viability.**

**Response:** Native trout populations have been monitored by a number of researchers, including Hendrickson and Cikanek, 2000 (PF, Vol. 43, Doc. N-466), Leary, Allendorf, and Sage, 1996, (PF Vol. 43, Doc. N-471), and The Montana Bull Trout Scientific Group, 1996 (PF, Vol. 43, Doc. N-476). The fish population data presented in the EIS (pp. 3-207 to 237) and references in the project file (Vol. 23, Doc. M-412 and Vol. 43, Doc N-471) provide information on the existing conditions for native trout species population, communities, and the habitat in the project area. The effects of the alternatives on fish and aquatic resources are disclosed in the EIS (pp. 4-129 to 4-159). The USFWS concurred with the affects determination in the EIS for bull trout (PF, Vol. 24, Doc. M-439). There is sufficient information to make a viability determination for native trout species.

**Issue 10, Contention 1: The Post Burn project violates the ESA in regards to bull trout, because the EIS lacks information required to compare effects of alternatives on INFISH Riparian Management Objectives (RMOs) or to show that RMOs will not be adversely affected.**

**Response:** The effects on bull trout were documented, in the Biological Assessment (BA), which goes into considerable detail on the impacts to riparian conservation areas (RCAs) (PF, Vol. 24, Doc. 438). The BA clearly displays the impacts to the RCAs and INFISH compliance. The EIS (pp. 4-30 to 65, 4-66 to 74, and 4-140 to 159) compared the impacts that each of the alternatives would have on RMOs and RCAs. The BA and determination of impact were sent to the USFWS pursuant to the ESA. The USFWS issued a Biological Opinion containing an incidental take statement (PF, Vol. 24, Doc. 439). The project is in compliance with the ESA.

**Issue 10, Contention 2. The failure to develop and implement the Land and Resource Management Plan Biological Opinion (LRMP BO) terms and conditions (monitoring requirements) at the project level is a failure to insure adequacy of INFISH as a means to protect bull trout and a failure to meet the requirements of ESA.**

**Response:** The 1998 Programmatic LRMP BO monitoring terms and conditions for bull trout referenced by the appellants are a Regional-scale requirement. An Interagency Implementation Team (IIT) was formed to insure consistency in implementation and monitoring of BO requirement. There is also an INFISH effectiveness monitoring team that has been developed to take on the Regional responsibility of implementation effectiveness monitoring. This effort randomly selects and monitors watersheds that include unmanaged and managed streams on multiple forests in the area covered by the 1998 Programmatic LRMP. These compliance actions are being done at the Regional level and are beyond the project-level scale such as the Post Burn project. This project is in compliance with INFISH.

This project did go through formal consultation with the USFWS. They issued a Biological Opinion, which includes Terms and Conditions and Conservation Recommendations (PF, Vol. 24, Doc. 439). These have been incorporated into the decision (ROD, pp. 53 and 54). The project is in compliance with the ESA.

**Issue 10, Contention 3. The EIS does not disclose how the Lolo Post Burn Project was incorporated in the existing Watershed Biological Assessments as required by conditions in the 1998 Programmatic LRMP Biological Opinion.**

**Response:** The document entitled *Middle Clark Fork River Section 7 Consultation Watershed* was a watershed environmental baseline conducted by the Lolo National Forest as a result of bull trout being listed by the USFWS (PF, Vol. 41, Doc. N-466). After reviewing that environmental baseline and numerous other documents, the USFWS issued a Biological Opinion (PF, Vol. 44, Doc. N-507) on the impacts of management by the Bureau of Land Management and Forest Service. The Biological Opinion (p. 94, element 3 under *Continued LRMP Implementation*) states, "...update the environmental baseline at the section 7 watershed scale to include proposed actions once consultation is concluded." This process will occur for the Lolo Post Burn project when the appeals process is complete and it is clear that implementation will begin.

**Issue 11, Contention 1. The EIS fails to meet the requirements of NEPA for analysis and disclosure of adverse environmental impacts on unroaded areas, and failed to analyze significant resources the agency has repeatedly acknowledged are associated with those areas, including fisheries, watershed, elk, and the potential for noxious weed invasion. The failure to analyze contiguous unroaded area impacts violates NEPA, NFMA, and Forest Service policy and direction.**

**Response:** Design criteria were specifically developed to avoid impacts on Inventoried Roadless Areas and to minimize effects on unroaded areas (EIS, p. 2-16). Project-specific methodology was developed and documented to establish a protocol for identifying unroaded areas (PF, Vol. 16, Docs. M-142 and 143). Three alternatives were developed to protect or minimize disturbance to unroaded areas by having no development in these areas, by minimizing road construction and unit placement, or by closing and removing roads (ROD, pp. 28 to 29).

The EIS and project file discussion of the affected environment for roadless and unroaded resources includes the analysis methodology, issues, regulatory requirements, relevant analysis, and existing condition of unroaded and roadless resources in the project area (pp. 3-58 to 3-70; PF, Vol. 16, Doc. M-127). The EIS provides alternative design criteria that were specifically developed to minimize impacts of the alternatives on the inventoried roadless area resources (pp. 2-16). The EIS and project file disclose the effects of the alternatives on the roadless and unroaded resources (pp. 4-18 to 4-30; PF, Vol. 16, Doc. M-128). The ROD recognizes the value of currently unroaded areas as potential additions to the Inventoried Roadless base (pp. 28 to 29).

The EIS discussion of the affected environment, which includes all roaded and unroaded areas within the project area boundary, includes the analysis methodology, issues, regulatory

requirements, relevant analysis, and existing condition of fish and aquatic resources in the project area (pp. 3-201 to 3-237), noxious weeds (pp. 3-170 to 3-173), and elk (pp. 3-174 and 3-193 to 3-197). The EIS discloses the effects of the alternatives on fish and aquatic resources (pp. 4-129 to 4-159), the effects of the alternatives in regard to the spread and/or introduction of noxious weeds within the project area (pp. 4-106 to 4-107), and the EIS discloses the effects of the alternatives on elk (pp. 4-125 to 4-127). There is no reason to do a separate analysis for fish, watershed, elk, and noxious weeds in the roadless areas. The analysis of roadless and unroaded areas in the project area is in compliance with NEPA, NFMA, and Forest Service policy and direction.

**Issue 12. The Forest Service has based its decision not to initiate formal consultation, pursuant to § 7 of ESA, or perform an in depth analysis of impacts to grizzly bear habitat solely on the fact the project area is located outside the boundary of an official Recovery Area. Therefore, the project record fails to support the not likely to adversely affect determination, in violation of ESA.**

**Response:** The EIS recognizes the project area is outside of any grizzly bear recovery area. The impacts analysis, however, is not based on this fact, but instead the analysis uses elk security and open-road density to analyze the impact the project would have on grizzly bear (EIS, pp. 4-110 to 111; PF, Vol. 23, Doc. M-405, p. 4). The EIS points out the elk herd units are larger than the minimum acreage for a bear management analysis area (BMAA), so the elk herd units make an acceptable substitute where there are no assigned BMAAs. The analysis (performed in conjunction with the BA) concluded that the proposed action “may affect but is not likely to adversely affect the grizzly bear or its habitat” (PF, Vol. 23, Doc. M-405, p. 24). This determination was sent to the USFWS who concurred with this finding on June 17, 2002 (PF, Vol. 23, Doc. M-406). Formal consultation was not required (EIS, p. 3-176) and this project is in compliance with the ESA (ROD, p. 41).

**Issue 13. The EIS incorrectly attributes controversy of post-fire logging projects as a result of litigation rather than its own actions lack of attention to scientific information.**

**Response:** The ROD (p. 37) provides recognition of scientific disagreement over management of burned areas. The Interdisciplinary Team (IDT) and decision maker considered scientific information (literature) that was applicable to the project during project development (EIS, pp. 2-7 to 2-9; ROD, p. 8). Specifically, in the case of the Beschta paper, the resource protection principles contained in the Beschta paper were carefully considered by the IDT and decision maker and used to guide the development of design criteria, alternative actions, mitigation measures and monitoring requirements (EIS, pp. 2-7 to 2-8; EIS, Appendix J - *How the Lolo Post Burn EIS Addresses the Beschta, et al. (1995) Post Fire Principles and Recommendations*).

**Issue 14. We are deeply concerned because the Forest Service has shown a clear inability to lawfully implement post-fire timber sales in the past, i.e. the Foothill Fire timber sale on the Boise National Forest. The Forest Service has never responded to the issues of its**

**inability to correctly and legally implement its “National Fire Salvage Model.” The Forest Service has never explained how subsequent projects, such as the Lolo Post Burn Project, will not result in similar violations of law and the specifications described in the NEPA document.**

**Response:** Implementation of timber salvage sales between 1993 and 1994 following the 1992 Foothills Fire Complex on the Boise National Forest, and the implementation of other timber salvage sales on other Forests is beyond the scope of the analysis for this project. Appropriate procedures for timber sale appraisal, contract preparation, and contract implementation (including timber cruising, timber sale administration, and timber scaling) are outlined in Forest Service Manuals and Handbooks and will be used in implementing this project. The project is in compliance with NEPA.

### 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/ Maureen McBrien  
MAUREEN MCBRIEN  
Appeal Reviewing Officer  
Deputy Director, Recreations, Minerals, Lands, Heritage and Wilderness