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Subject: ARO Letter - Basin Creek Hazardous Fuels Reduction Project ROD - Beaverhead-Deerlodge NF - Appeal #04-01-00-0034 - 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 Basin Creek Hazardous Fuels Reduction Project Record of Decision (ROD) on the Beaverhead-Deerlodge National Forest.

The Forest Supervisor's decision adopts Alternative 3, which includes hazardous fuel reduction treatments on approximately 2,600 acres, construction of approximately 14 miles of temporary roads, and maintenance work on 2 miles of classified roads and 2 miles of unclassified roads.

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 full remand of the ROD. The appellant further requests, "this project should not go forward until the Forest Service develops effective Forest-wide standards to ensure viability of native wildlife species and designs and evaluates a Forest-wide program for fuels reduction projects that will ensure that local landscapes are not 'nuked'... Any actions in the Basin Creek area should be compatible with existing Forest Plan direction for unsuitable timber land, and if not, a site-specific Forest Plan amendment should be completed...any project should also ensure conservation of the threatened Canada lynx..." An informal meeting was held by conference call but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. The cumulative impacts of fuels reduction programs across the Beaverhead-Deerlodge National Forests have never been evaluated.

Response: The impact of implementing the Deerlodge Forest Plan was analyzed in the Final Environmental Impact Statement, signed by Regional Forester James Overbay in September 1987. The Forest Plan includes Appendix I, Fire Management Direction. In that direction the Forest states, "Fire has been a (sic) integral part of all ecosystems on the Deerlodge National forest (sic) and the exclusion of fire from these ecosystems may cause undesirable effects.



As a result of fire protection, natural fuels in some areas have increased in amount and continuity to a hazardous level” (p. I-1). Under the heading of *Direction to Ensure that Fire Use and Suppression Programs are Compatible with the Role of Fire in Forest Ecosystems*, the Plan states, “. . .c. Reduce the cost of presuppression and suppression activities by integrating the total fire management program. (1) Manage fuels by reducing activity fuels and natural fuels to acceptable levels, through the scheduling and placement of timber sales to ‘breakup’ large expanses of natural fuel accumulation” (p. I-2). The fire management direction also calls for the use of prescribed fire and “unplanned ignitions” (pp. I-2 and I-3). The impact of the fuels reduction program was part of the impacts considered in the Forest Plan EIS.

Issue 2. There was no information in the Basin Creek FEIS as to why the Basin Creek area should be sacrificed for a fuels program. The forest planning process needs to identify which portions of the landscape will not maintain breeding habitat for wildlife due to fuels management and give these areas a special management area designation.

Response: Basin Creek is not being sacrificed. As discussed in the wildlife portion of the EIS (pp. 3.76 to 3.150), Basin Creek will continue to support the wide variety of threatened, sensitive, and management indicator species (MIS) that presently exist there. In the Purpose and Need section, the EIS (pp. 1.3 to 1.4) identifies the reasons the Basin Creek area was chosen for a fuel reduction project. The project area is a municipal watershed for the City of Butte and Silver Bow County, and is in the wildland-urban interface. By treating the fuels in the area the project would reduce the impacts to the Basin Creek reservoir, and limit the damage to public and private property should a wildfire occur in the Basin Creek area.

The Forest is presently involved in the forest planning process. Special management area designations are something the appellant should more properly identify as a concern in that process, rather than in an appeal on a site-specific project.

Issue 3. The Forest Service failed to demonstrate that the current Forest Plan direction for management areas (MAs) will be met. MAs C3 and D2 require that activities maintain or improve wildlife habitat, including forage. The benefits of increased forage from logging and burning have never been documented in the FEIS, and no monitoring data was provided to show how this would be accomplished with the proposed logging and burning.

Response: The analysis in the vegetation section of the EIS (pp. 3.68 to 3.69) states, “Reducing the sapling component in the openings and in the understory would stimulate shrubs and grasses.” “Grass and shrub understories would increase in the area currently dominated by Douglas-fir saplings.” “The burn will reduce the dominance of seedling and sapling size conifers and non-sprouting shrubs, and will allow herbaceous vegetation (grasses and forbs) to increase production two to three times.” In the analysis on the impact to elk, the EIS (p. 3.146) states, “Overall, the foraging potential in summer/fall range would increase across the treated Douglas-fir and grassland parks as elk forage plants regenerate from the increased light and growing space. . . . In the absence of disturbance, untreated grassland parks and open Douglas-fir [stands] would continue to decline in forage quality and quantity through conifer succession.”

The EIS is clear that the project would enhance big game forage and habitat as required by the Plan for MAs C3 and D2 (Forest Plan, pp. IV-18 and IV-20).

Issue 4. The FEIS notes that sagebrush parks are valuable for the goshawk. No data was provided to demonstrate that burning sagebrush parks would benefit the goshawk.

Response: Patla, 1997 (PF, Doc. 2113), found that goshawk nesting productivity and occupancy were positively related to the proportion of grassland/shrub cover in the foraging area. The proposed treatments are designed to reduce the conifer colonization and loss of the grassland/shrub area due to secession (EIS, p. 3.125). As discussed above, the burning would reduce the dominance of the conifers, which would perpetuate the grassland/shrub habitat the goshawk use.

Issue 5. No science or monitoring data was provided to substantiate the claim that flammulated owl and goshawk foraging habitat will be improved by logging and clearcutting on unsuitable timberlands. Reynolds, et al. (1992), noted that any clearcuts over 4 acres in size are not goshawk habitat. The 1,158 acres of lodgepole pine clearcuts on unsuitable lands will be detrimental to goshawk foraging habitat since it will be eliminated for many decades.

Response: Given the lack of suitable flammulated owl nesting and foraging habitat in the project area, and the low probability that any flammulated owls are present in the project area, the impact to the owls is negligible (EIS, p. 3.122). The wildlife biologist determined the cumulative effects of this project, when combined with other past, present and reasonably foreseeable activities, may have a beneficial impact on nesting habitat at some time in the future (EIS, p. 3.123).

The EIS recognizes that the mountain pine beetle-killed lodgepole pine would continue to supply foraging habitat for goshawk until the trees begin to fall, approximately 28 years from now (pp. 3.124 and 3.126). Harvesting would likely reduce the nesting and foraging potential for two of the three known breeding pairs in the project area. Given the small percent of the habitat being affected and the good distribution of goshawk across the Beaverhead-Deerlodge National Forest, the project will not reduce the viability of the species across the planning area (EIS, pp. 3.125 to 3.127). The project is in compliance with NFMA.

Issue 6. A Forest Plan amendment should have been completed to allow for the violations that will occur from the logging of unsuitable lands.

Response: The Forest Supervisor determined the chosen alternative was consistent with the Deerlodge Forest Plan standards and guidelines for timber harvest of unsuitable lands. A site-specific Forest Plan amendment was not needed (ROD, pp. 4 and 17).

Issue 7. The change in emphasis for unsuitable timberlands on the Beaverhead-Deerlodge Forest needs to be evaluated in a Forest Plan amendment. The agency needs to define how

wildlife species will be maintained well distributed across the Forest, and what the impacts of massive fuels management programs such as Basin Creek will have on the landscape viability of these species.

Response: The project is not a change in emphasis for those lands identified as unsuitable. The Forest Plan allows for timber harvest on those areas for the management of resources other than timber. This includes wildlife habitat improvement and management of fire (Forest Plan, pp. IV-18 and IV-20, and Appendix I). The wildlife biologist analyzed the impact the project would have on TES and MIS, including an analysis of the impact the project would have on their viability (EIS, pp. 3.76 to 3.150; PF, Docs. J-24 to J-29). The analyzed species will continue to be well distributed across the Forest, and the project is not expected to negatively impact the viability of those species across the planning area. The project is in compliance with NFMA.

Issue 8. Implementation of the Basin Creek fuels project will violate ESA by adversely impacting threatened Canada lynx. The Forest failed to seek formal consultation with the U.S. Fish and Wildlife Service (USFWS) on project impacts on this species. There has never been any scientific peer review of the standards and guidelines in the Lynx Conservation Assessment and Strategy (LCAS). Given there is little data available to define how much habitat loss the lynx can tolerate, it is arbitrary to allow any habitat loss. No monitoring data from similar clearcuts on the Forest was conducted to support the claim that hare habitat will recover within 10 years after logging and will then provide improved habitat for hare and lynx. The burning of sagebrush ecotones will be a habitat loss for the lynx, for both travel cover and alternate foraging habitat. The impact of 14 miles of new road in unroaded lynx habitat was not addressed as an adverse impact. The impact of fuels management programs on long-term lynx habitat was ignored.

Response: The wildlife biologist analyzed the impact the Basin Creek project would have on Canada lynx and lynx habitat (EIS, pp. 3.84 to 3.85, 3.111 to 3.119, and Appendix F, Wildlife BA). She determined Alternative 3 may effect, but is not likely to adversely affect lynx or lynx habitat (EIS, p. 3.116). The Forest Supervisor sent the BA to the USFWS for formal consultation on lynx (PF, Docs. H-41 and H-42).

The USFWS issued a Biological Opinion on March 24, 2004, which stated, "it is the Service's biological opinion that the Basin Creek Hazardous Fuels Reduction Project, as proposed, is not likely to jeopardize the continued existence of the Canada lynx. The impact to the lynx and its habitat would be insignificant and/or discountable." The USFWS also stated, "All aspects of the project are compatible with applicable standards in the LCAS, and the effects of the action are not anticipated to cause adverse impacts to the lynx. The following substantiate the conclusion: 1) Less than 12 percent of lynx habitat within both LAUs is expected to be changed to an unsuitable condition as a result of this project..." (PF, Doc. H-43, p. 15).

The LCAS states on the acknowledgements page: "This document received extensive internal and external review. During the course of its development, the Lynx Biology Team arranged an independent scientific peer review; solicited review by the Science Team to ensure that their findings were properly and appropriately incorporated; conducted an internal review by agency

personnel; and offered a second opportunity for comment by state wildlife management agencies” (PF, Doc. 2126, p. 8).

Research by Bailey, et al., 1986 (PF, Doc. 2055); Sullivan and Sullivan, 1988 (PF, Doc. 2137); Koehler and Brittell, 1990 (PF, Doc. 2100); as well as other researches cited in Ruediger, et al. 2000 (PF, Doc. 2126, pp. 1-3 to 1-4) indicate that snowshoe hare habitat and potential foraging habitat for lynx would increase as grasses, forbs, shrubs, and young conifers grow in the openings created by timber harvest and burning (EIS, pp. 3.115 to 3.116).

As discussed in the effects analysis of the EIS, there are no proposed treatments or road construction/reconstruction in the Basin Creek Roadless Area (EIS, pp. 3.238 to 3.239). The impacts from Alternative 3 are concentrated in the lower elevation, roaded portion of the wildland/urban interface where lynx habitat appears in discontinuous blocks. Larger more suitable, untreated blocks of lynx habitat would remain available at higher elevations in the more remote section of the analysis area (EIS, p. 3.115). The effects of the temporary road construction were considered in the analysis. The project is in compliance with ESA.

Issue 9. There are no effective habitat standards in place to protect native wildlife species from significant losses of breeding habitat in the project area. As a result, this project threatens the local health of most forest wildlife populations. A decline in local species density will in turn affect Forest-wide viability. If the Forest Plan MIS are not present in the project area, substitute MIS need to be provided for habitat standards and monitoring.

Response: Instituting additional standards and changing MIS is done at the Forest Plan level during the forest planning process, not at the site-specific project level. The wildlife biologist analyzed the impact the project would have on threatened, sensitive, and MIS, as required by NFMA and the Forest Plan. The analysis area is 86 percent forested; the rest of the area is dry grass parklands, or riparian and other wetlands. There is not enough sage habitat in the project area to supply even the common and widespread sage thrasher with its habitat requirements (EIS, p. 3.97). In all likelihood, any other species that requires sage habitat would not be found in the project area either. The project is in compliance with NFMA and the Forest Plan.

Issue 10. The agency acknowledges that the Forest Plan snag standards will not mitigate logging impacts, yet these snag standards are still used as project mitigation. The agency acknowledges that logging will significantly impact snag habitat, and hence wildlife associated with snags (three-toed woodpeckers), as noted at page 3.143 in the FEIS. The agency acknowledges the current Forest Plan direction for retention of several snags per acre in harvest units will not maintain cavity-nesting populations, as noted in the FEIS on page 4.55. The agency failed to demonstrate the remaining habitat in the immediate project area is “sufficient” to provide local breeding habitat for this species.

Response: The appellant cites the effects determination for Alternative 4, the maximum proposed treatment, which was not the alternative chosen for implementation. However, even under Alternative 4 the EIS states the cumulative effects, in conjunction with the maximum proposed treatment under Alternative 4, would not be expected to adversely impact the sustainability of the local three-toed woodpecker population. Under Alternative 3, the alternative

the Forest Supervisor chose to implement, five snags per acre would be retained, which exceeds the Forest Plan requirement (pp. II-19). Beyond the cutting units, abundant snags would be maintained in riparian areas, in the research natural area, and the old growth areas (EIS, p. 3.142) in the analysis area.

The appellant is misconstruing the Response to Comment #143, which actually states, “The 5 snags per acre retained in treatment units was not meant to fully supply snag needs in the Analysis Area because long term snag recruitment will be allowed to continue in untreated areas (comprising 91 percent of the analysis area under the preferred alternative).” Response to Comment #143 also points out retaining five snags per acre falls within the range of 2.1 to 11 snags per acre recommended by various researchers, including Cunningham, et al, 1980; Raphael and White, 1984; Schreiber and de Calesta, 1992; and Bull, et al, 1997. NFMA requires maintenance of population viability across the planning area. Under NFMA the planning area is the National Forest. There is no requirement that the treatments units of a project, excluding the habitat surround them, must supply all the resources necessary to maintain a species’ population. The wildlife biologist determined there would be sufficient habitat for three-toed woodpeckers when taking into account the amount of snags in the analysis area, which includes the past wildfires, and insect and disease outbreaks (PF, Docs. J-24 and J-27).

Issue 11. There are no effective management standards to ensure breeding habitat will be provided within areas treated for fuels management. The old growth does not take into account goshawk nesting areas, or habitat types. The FEIS cites a 40-acre buffer around known goshawk nests. Reynolds, et al., 1992 recommends a 640-acre management area around nests. There is no population data for goshawks on the B-D. It is unclear how the agency knows that local losses of breeding territories would not affect Forest-wide viability and health. The lack of effective goshawk management standards in the Deerlodge Forest Plan will allow the loss of effective breeding goshawk habitat in the Basin Creek project area.

Response: Old growth was analyzed in the EIS (pp. 3.71 to 3.75); however, no old growth will be harvested under this decision (EIS, p. 3.71). The appellant’s contention that much of the old growth appears to be whitebark pine at high elevations is unfounded. Table 3.38 shows the amounts of lodgepole pine, Douglas fir, and spruce/subalpine fir old growth in the analysis area (EIS, p. 3.94).

Reynolds’ recommendations were developed for the southwestern US. Monitoring over 75 nest sites over the past 15 years on the Beaverhead-Deerlodge National Forest indicates that goshawks selected nest sites in mature and old growth stands that are, on average, 40 acres in size (EIS, Appendix F, Wildlife BE, p. 8). The 40-acre buffer is based on the behavior of the local goshawk population.

Based on the Forest’s 15 years of goshawk monitoring, their known use of habitat (EIS, Appendix F, Wildlife BE, pp. 6 to 9), the existing nest sites (EIS, Appendix B, Map 20), the existing habitat in the project, and the impact to the vegetation the project would have (EIS, pp. 3.61 to 3.75), the wildlife biologist made a determination of viability (EIS, Appendix F, Wildlife BE, p. 37). The issue of population viability was an argument presented in litigation regarding

the Upper Sunday Timber Sales on the Kootenai National Forest. The U.S. District Court of Montana ruled, “Neither is it plainly erroneous or inconsistent with regulation for the Forest Service to strive to maintain viable populations of species by focusing on the critical habitat requirements of Sensitive, Threatened, and Endangered species within and without the Decision Area.” On July 3, 1996, the 9th Circuit Court of Appeals affirmed the District Court Summary Judgment. The wildlife biologist appropriately used habitat requirements in her analysis of the project’s impact on goshawk.

Instituting additional standards and changing MIS is done at the Forest Plan level during the forest planning process, not at the site-specific project level. The analysis is in compliance with NFMA.

Issue 12. The Beaverhead Forest Plan has inadequate management direction for the pine marten, an indicator species, and as a result, breeding habitat for this and associated species will not be protected in the fuels management program.

Response: Adequacy of direction for the pine marten in the Beaverhead Forest Plan is outside the scope of this project. The Deerlodge Forest Plan, not the Beaverhead Forest Plan, provides direction for the Basin Creek area. Instituting additional standards and changing MIS is done at the Forest Plan level during the forest planning process, not at the site-specific project level. The wildlife biologist analyzed the impact the project would have on pine marten (EIS, pp. 3.138 to 3.140), and determined the treatments under the action alternative are not expected to contribute to a reduction in the viability of pine marten in the planning area.

Issue 13. The lack of habitat standards for MIS and sensitive wildlife species in the Deerlodge Forest Plan make assessment of project impacts on wildlife arbitrary and unreliable because the agency has generally limited the scope of the impacts to Forest Plan standards.

Response: The EIS (pp. 3.77 to 3.79) discusses how impacts to wildlife were analyzed and species viability determined. While the Deerlodge Forest Plan provides guidance for management of wildlife habitat, the Plan does not, and is not intended to direct the analyses of impacts and viability. The wildlife biologist used field surveys, monitoring data, research, habitat data, and other information (EIS, pp. 3.77 to 3.82) to determine the impacts a project would have on a species. The project is in compliance with NFMA and APA.

Issue 14. The analysis conclusions in the Basin Creek EIS are arbitrary due to a lack of monitoring of management impacts on MIS and sensitive wildlife species.

Response: The wildlife biologist used a variety of monitoring data in her analysis of the impacts this project would have on wildlife. This included goshawk surveys (EIS, Appendix F, Wildlife BE, p. 8; PF, Docs. F-25, F-34, F-35, F-36 and J-1), Landbird monitoring data (EIS, Appendix F, Wildlife BE, p. 10; PF, Doc. F-30), fisher trapping records and surveys (EIS, Appendix F, Wildlife BE, p. 12), and Wildlife Habitat Viability Analysis maps (PF, Docs. J-24 to J-29). The project is in compliance with NFMA and APA.

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/ Bob Castaneda
BOB CASTANEDA
Appeal Reviewing Officer