United States Department of Agriculture **Forest Service** **Region One** **200 East Broadway P.O. Box 7669 Missoula, MT 59807**

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Subject: ARO Letter - Rock Creek Fuels Hazard Reduction DN - Lolo NF - Appeal #03-01-00-0064 - Alliance for the Wild Rockies, et al.

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Michael T. Garrity, on behalf of Alliance for the Wild Rockies and The Ecology Center, protesting the Rock Creek Fuels Hazard Reduction Decision Notice (DN) on the Lolo National Forest. John Gatchell of the Montana Wilderness Association requested Interested Party status; his request was timely and was accepted on August 14, 2003.

The District Ranger's decision adopts the following actions, referred to as the Selected Alternative (DN, p. 1):

- Fuel Hazard Reduction and Mature Forest Management Alternative B
- Fuel Reduction and Winter Range Improvement
- Road Maintenance, Gravel Pit Development, and Trail Relocation Alternative E; and
- Recreation Alternative B, limiting off-road motorized travel on National Forest land to designated undeveloped sites and developed campgrounds.

These actions include 1,113 acres of timber harvest, 238 acres of non-commercial fuels treatment, 13,101 acres of ecosystem management burning, 343 acres of noxious weed spraying (2 miles of roadside), 6 miles on 21 specific areas of road narrowing and 1/3-mile of road widening. Drainage structures and gravel placement will occur on portions of Brewster Creek, Ranch Creek and Butte Cabin Creek roads. Fifteen culverts will be replaced and turnouts will be constructed at Rock Creek and Ranch Creek Road.

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), and the Administrative Procedures Act (APA). The appellants request a remand of the DN. An informal meeting was held on August 13th, but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. The Project violates NEPA's 5 year limit on project duration.

Response: There is no "5-year limitation on project duration." The appellant is probably referring to the response to Question 32 of the Council on Environmental Quality (CEQ) Forty (40) Most Asked Questions, where there is discussion regarding proposals not yet implemented, that are more than 5 years old:

> As a rule of thumb, if the proposal has not yet been implemented, or if the EIS[/EA] concerns an ongoing program, EISs[/EAs] that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS[/EA] supplement.
>
> If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS[/EA] must be prepared for an old EIS[/EA] so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal. Section 1502.9(c) (FSH 1909.15, 65.12).

Issue 2. The wildfire prevention analysis of tradeoffs between removing or retaining the large-diameter snags and logs is incomplete and violates NEPA. The EA…does not demonstrate how each of the action alternatives would efficiently and effectively reduce the risk to structures. Indeed, the kind of thinning proposed in some of the alternatives may actually augment wildfire susceptibility.

Response: In accordance with NEPA (40 CFR 1502.13), the District Ranger clearly identified a purpose and need for "fuel reduction and mature forest management" (EA, Ch. 1, p. 5) and "fuel reduction and winter range improvement" (*Id*.). The Ranger looked at three Fuels Hazard Reduction Action Alternatives: Alt. B – Harvest and remove fuels in all size classes (Proposed Action); Alt. C – Reduce all sizes of fuels and leave on site; and Alt D – remove fuels less than 6 inches in diameter (EA, Ch. 2, p. 8). Each action alternative was responsive to the issues related to fire hazard and severity, public safety and threat of loss of property, forest structure and composition, and water quality and fisheries. The Forest provided existing condition discussion related to fire hazard and severity in mature forests (EA, Ch. 3, p. 4). The Proposed Action states, "[l]adder fuels, generally Douglas-fir less than 12 inches DBH, would be removed except for what is needed to provide for visual screening or habitat for wildlife" (EA, Ch. 3, p. 5). The treatment proposed in Alternative B would not reduce the density of the dominant trees in the overstory (*Id*.).

According to Cohen's research the appellants referred to; "Reducing the fuel loadings, fuel continuity, and the availability of ladder fuels (on both national forest and private lands) would keep fire confined to the ground, reduce fire intensity, reduce firebrands, and afford a high probability of control through the use of engines, hand crews, and air tactical resources. To reduce threat of ignition from firebrands, fuels need to be reduced both near and at some distance from the structure. Firebrands that result in ignitions can originate from wildland fires that are a distance of 1 kilometer or more" (Cohen 1999) (Project Decision Notice, Appendix A, p. 2)

The EA disclosed the measure of change in fuel conditions on EA (pp. 2-9 and 3-6 through 3-8).

As the proposed action would remove a small fraction of the potential larger diameter stems available in the future ("only trees larger than 12" dbh that have crowns to the forest floor and/or are near large diameter ponderosa pine and Douglas-fir trees, which would sustain a crown fire, would be logged and hauled away." EA, p. 2-8, and "No trees greater than 21 in diameter would be removed." EA Supplement, p. 11), and requirements for coarse woody debris retention would be required if Alternative B is chosen, no effects would occur (Project Decision Notice, Appendix A, p. 2).

The treatments proposed include the treatment of slash and activity-generated fuels concurrently with the treatments, minimizing the time that this fuel would be available for wildfire. There are no regeneration harvests proposed in the Rock Creek Fuels Hazard Reduction Project (Project Decision Notice, Appendix A, p. 2).

The Forest is in compliance with NEPA. The EA effectively demonstrates how each action alternative would reduce the risk to structures.

Issue 3. The cumulative effects analysis is incomplete and violates NEPA.

Response: The Forest provided a comprehensive table (EA, Ch. 2, Table 2-J, pp. 19 and 20) that provides a list of the "…past, present, and reasonably foreseeable activities considered by each resource specialist to determine the important cumulative issues and interactions compared to the environmental baseline condition and the significance of cumulative effects of the proposed alternatives" (*Id.*).

Each resource provided adequate discussion on cumulative effects, in both the EA and specialist reports: Sensitive Plant cumulative effects analysis, EA, Ch. 3, pp. 9-10, PR, Sec. D, Doc. 8.2, pp. 6-8; Roads analysis, including short and long term (cumulative) effects, EA, Ch. 3, pp. 10-22, PR, Sec. D, Doc. 2.3, pp. 24-35; Soils, Hydrology, and Fisheries effects analysis, EA, Ch. 3, pp. 34-47, PR, Sec. D, Doc. 1.0, pp. 44-75; Wildlife effects analysis, EA, Ch. 3, pp. 49-56, PR, Sec. D, Doc. 6.1, pp. 17-24; Recreation effects analysis, EA, Ch. 3, pp. 59-61, PR, Sec. D. Doc. 5.1, pp. 15-21; Economics effects analysis, EA, Ch. 3, pp. 64-69, PR, Sec. D. Doc. 3.1, pp. 2-3; Weeds effects analysis, EA, Ch. 3, p. 73, PR, Sec. D. Doc. 5.1, pp. 21-27; Air Quality effects analysis, EA, Ch. 3, p. 76, PR, Sec. D. Doc. 7.1, pp. 22-29; and Scenery effects analysis, EA, Ch. 3, pp. 84-85, PR, Sec. D. Doc. 4.1, pp. 14-16.

The Forest is in compliance with NEPA in regard to cumulative effects analysis.

Issue 4. The cumulative effect of weed spraying is not adequately analyzed.

Response: The Forest correctly includes or tiers (40 CFR 1502.20) to the Lolo Weed Management FEIS and Forest Plan Amendment No. 11 (EA, Ch. 2, p. 3). The Weed Management FEIS provides a discussion of potential impacts to native and non-native plants:

> Non-target plant impacts from picloram rates of 1.5 pt./acre and higher would be offset by reduction of invasive weed competition and a general increase in the health and vigor of surviving species. Picloram can provide two to four growing seasons of control depending on the site. During this time, native species would

> gain vigor and may better resist reinvasion (Lolo NF Big Game Winter Range and Burned Area Weed Management Final EIS, p. IV-16).
>
> Although the composition of invasive weeds, grasses and forbs would change, the use of herbicides at the prescribed rates would not eliminate any native (or non-native) species from the plant community. Heavier rates (1.5 pt./acre and greater) of picloram would have the greatest impact on non-target vegetation, but would be used only on stands of very competitive, rhizomatous invasive weeds. If these particular infestations were left untreated, they would expand and would reduce non-target vegetation (see Ch. II, Table II-9) (*Id*.).

The Forest adequately analyzed the cumulative effects of weed spraying.

Issue 5. Roadless Area analysis is incomplete. The FS should look carefully to determine if conducting such activities is consistent with providing 'large, relatively undisturbed landscapes' and other roadless values. Effects on potential wilderness designation were not fully analyzed for all potential areas.

Response: In January of 2003, the Forest provided additional information prior to making a decision (Supplemental EA). This supplement disclosed additional analysis regarding inventoried roadless areas. Fuels reduction units 3, 4, 5, 9, 13, and 27 are in inventoried roadless 9 and were identified for treatment due to the proximity of private property and developments. Units 4 and 27 were dropped after additional analysis. Units 3, 5, 9 and 13 were included in the supplement (PR, Sec. C, #C.9). The Forest presented this new information to the Regional Forester, who found that the Rock Creek Fuels Hazard Reduction project falls under the exception described in FSM Interim Directive 1925.04a(2)(b) and 1925.04a(2)(b) (PR, Sec. D, #5.7).

The Roadless Area Evaluation Specialist's Report (PR, Sec. D, #5.3; Sec. C, #C.9) provided discussion of effects to the roadless area values, which included: 1) Characteristics and Wilderness Features (natural integrity, apparent naturalness, remoteness, solitude, special features, and manageability and boundaries); 2) Special Places or Special Values; and 3) Cumulative Effects on the Roadless Resource (*Id*.). This project requires no road construction or reconstruction in inventoried roadless areas. According to the interim direction, this project meets the criteria required to "maintain or restore ecosystem composition and structure, such as reducing the risk of uncharacteristic wildfire effects" (PR, Sec. D, #5.3, p. 17). As stated in the specialist's report,

> The Rock Creek Fuels Hazard Reduction Project was designed specifically to *maintain or restore ecosystem composition and structure, such as reducing the risk of uncharacteristic wildfire effects*. Purpose and Need items #1 and #2 in Chapter 1 of the EA specifically state that this project is needed to address the risk of losing mature ponderosa pine communities that are at extreme risk of loss to stand-replacing fires (P&N #1) and provide treatments that are widely beneficial to elk and bighorn sheep (P&N #2).

The Forest adequately analyzed impacts to roadless areas.

Issue 6. In the absence of a TMDL federal agencies have a duty to avoid further degradation of WQLS stream segments. The Rock Creek fuels Hazard Reduction Project violates this duty and thereby violates the CWA. Without a TMDL there is no assurance that BMP's will not adversely affect beneficial uses and comply with the Clean Water Act and the State of Montana water laws as the DN contends.

Response: In a letter dated February 25, 2003, the Montana Department of Environmental Quality provided comments/clarification regarding the Rock Creek Fuels Hazard Reduction project. They stated, "it is our assessment that the planned and accomplished watershed restoration activities combined with the BMPs described in the FEIS are reasonable land, soil and water conservation practices" (PR, Sec. D, #D1.32). Specific to TMDLs, the DEQ letter states, "The proper implementation and effectiveness monitoring of these reasonable land, soil and water conservation practices are consistent with the Montana Water Quality Standards and meet the requirements of the Montana Water Quality Act pending the completion of TMDLs for the 303(d) listed water bodies" (*Id*.). The selected actions will be conducted with reasonable land, soil, and water conservation practices (Section 75-5-702(10)(c) of the Montana Water Quality Act) as outlined by the Management Requirements in the EA (PR, Sec. D., #D1.28).

The Forest is in compliance with the Clean Water Act, and the Montana Water Quality Act.

Issue 7. The analysis on herbicide use is incomplete. The toxic effects of calcium chloride is incomplete and there is no assurance is there [sic] that the toxic effects of calcium chloride can be effectively mitigated.

Response: The use of road surface stabilizing materials (such as calcium chloride) is included as part of the road maintenance (EA, p. 3-10). The objective of the road BMP is to avoid deterioration of the roadway surface and minimize disturbance and damage to water quality and fish habitat (PR, Sec D, #D1.21, specifically PRACTICE 14.06 – Riparian Area and Streamside Designation and Protection). The BMPs were developed under the authority of the Clean Water Act to ensure that Montana's waters do not contain pollutants in concentrations that affect water quality or impair their beneficial uses. The use of BMPs is required under a Memorandum of Understanding between the Forest Service and the State of Montana. The Lolo Forest Plan (Standard #15, p. II-12) states, "the application of best management practices will assure that water quality is maintained at a level that is adequate for the protection and use of the National Forest and that meets or exceeds Federal and State standards." Regardless of whether the project analysis was contained in an EA or an EIS, the road maintenance BMP would have been included as one of the BMPs in order to meet our obligations under the Clean Water Act, the Memorandum of Understanding with the State of Montana, and the Forest Plan. The use of road surface stabilizing materials is in compliance with NEPA.

Issue 8. Sediment loading from logging activities will violate NFMA protections of fish habitat and water quality. The EA fails to ensure population viability of bull trout and westslope cutthroat trout in violation of NFMA, and fails to show compliance with the Forest Plan as amended by INFISH.

Response: The Forest provides adequate analysis and discussion to conclude that the amount of sediment produced from treatment units would not likely adversely affect bull trout and westslope cutthroat trout (PR, Sec. D, #1.0, #1.1, #1.2, #1.3, #1.25 and #1.25a). In addition, based on the analysis for sediment, the Proposed Action meets Forest Plan standards as modified by INFISH, with the addition of BMPs.

The District Ranger, in his DN, explained how his decision is consistent with all laws, regulations and agency policy. Specific to bull trout, he states,

> A biological assessment was completed for the Bull Trout, with a determination of **May Affect, Likely to Adversely Affect.** This finding is based on the impacts of sedimentation within occupied habitat from development of the Butte Cabin Creek gravel pit, and culvert replacement. The duration of effects is anticipated to be approximately 2 years. Long term benefits to the habitat would be realized after the Selected Alternative is implemented, as sediment production would be decreased, and fish passage would be improved. USFWS concurred with these findings on May 8, 2003. The biological assessment, USFWS Biological Opinion and Conference Opinion are filed in the project record [PR, Sec D, #1.31] and available upon request (DN, p. 16).

As stated in the Response to Comments (p. 23), "[t]he INFISH buffers will be laid out by the Fishery Biologist as required by Mitigation Measure, FS-44, page A-7 of Appendix A" of the EA.

The Forest is in compliance with NFMA protections for fish and water quality, and adequately shows it is in compliance with the Forest Plan, as amended by INFISH.

Issue 9. The Lolo NF has failed to adequately monitor native trout species' populations trends.

Response: The Fish, Wildlife, and Parks fish population estimates over the past 10 years have shown an increase in cutthroat populations, with densities varying depending on the area of stream surveyed (PR, Sec. D, #D1.0). The Forest provides adequate, reasoned discussion and rationale for their fish habitat and distribution, and environmental consequences to native trout species (including direct, indirect and cumulative effects) (*Id.*). Table 3.2.16 displays fish population estimates throughout Lower Rock Creek (the Lolo NF portion) and Table 3.2.17 displays bull trout redd count data in Ranch Creek, Butte Cabin Creek and Hogback Creek (PR, Sec. D., #D1.0, pp. 37 and 38, respectively).

In addition, see response to Issue 8, above.

Issue 10. The EA lacks substantive analysis of baseline conditions and—as discussed above, impacts of increased sediment from logging activities in terms of consequences to bull trout should the proposed action proceed. The ES [sic] lacks information absolutely required to make a determination as to whether or not the alternatives will retard

attainment of INFISH Riparian Management Objectives (RMOs). No valid and reliable comparison of current conditions with post-project anticipated conditions are present.

Response: See response to Issues 6 and 8, above.

Issue 11. The cumulative effects, Table 2 9EA p. 2-22) [sic] does not include the negative economic impact on hunting and fishing caused by the increased sediment in Rock Creek and the decrease in elk hiding cover. The EA does not analysis [sic] economic consequences of the loss of plant and animal communities due to logging and is therefore in violation of 36 CFR 219.27(a) (7) which requires the Forest Service prior to project implementation to access for potential physical, biological, aesthetic, cultural, engineering, and economic impacts and for consistency with multiple uses planned for the general area and 36 CFR 219.12(3) which requires documentation of costs associated with carrying out the planned management prescriptions as compared with costs estimated in the forest plan. Therefore the Rock Creek Fuels Hazard reduction Project does not satisfy the monitoring requirements of the Forest Plan or NFMA and the economic analysis in the EA is incomplete and inaccurate.

Response: With regard to Contentions A and B, the road and recreation alternatives for this project would have no negative effect on big game species in the area (EA, p. 3-52). The Forest provides adequate analysis and discussion to conclude that the amount of sediment produced from treatment units would not likely adversely affect bull trout and westslope cutthroat trout (PR, Sec. D, #1.0, #1.1, #1.2, #1.3, #1.25 and #1.25a).

The MUSY calls for management of the National Forests “with consideration being given to the relative values of the various resources.” There is no requirement for such values to be monetarily expressed.

The appellants cite extensively from RPA/NFMA and the implementing regulations. These regulations outline the economic analysis and criterion requirements for forest planning, but do not specify that they be applied at the project level.

The agency recognizes that many of the values associated with natural resource management are best handled apart from, but in conjunction with, a more limited benefit-cost framework. This concept is expressed in NFMA regulations [36 CFR 219] and is referred to as “cost-efficiency.” When discussing the evaluation of Forest Plan alternatives, the regulations state that the evaluation "shall compare present net value, social and economic impacts, outputs of goods and services, and overall protection and enhancement of environmental resources" [36 CFR 219.12(h)]. It is this process that results in a Forest Plan that "maximizes long term net public benefits in an environmentally sound manner" [36 CFR 219.1]. The project tiered to the Forest Plan, therefore, doing another analysis of net public benefits is superfluous.

The implementing regulations of NEPA expressly avoids a cost-benefit analysis as being a necessary basis for decisions: “For purposes of complying with the Act, the 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). A cost-benefit analysis, however, may be conducted if desired or required by other laws, regulations, or directives (See FS Manual and Handbook discussion). Economics was identified as a significant issue (Issue #5) for this project, based on public and internal scoping (EA, pp. 1-12 to 1-13). Economic effects are disclosed in Chapter 2 (pp. 12, 18, and 19) and in Chapter 3 (pp. 61 through 69). This information constitutes the economic analysis required under NEPA (DN, Appendix A, p. 35 – Response to Comments).

The analyses in the EA meet FS Manual and Handbook requirements. The Forest is in compliance with NEPA, NFMA, and Forest Plan standards with regard to economic analysis.

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 District Ranger's decision be affirmed and the appellants' requested relief be denied.

/s/ Harlan Smid
HARLAN SMID
Appeal Reviewing Officer
Director of Financial Resources