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**Subject:** ARO Letter - Darroch-Eagle Creek TS DN - Gallatin NF - Appeal #04-01-00-0029  
- Alliance for the Wild Rockies, et al.

**To:** Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Michael Garrity, on behalf of Alliance for the Wild Rockies and The Ecology Center, Inc., protesting the Darroch-Eagle Creek Timber Sale Decision Notice (DN) on the Gallatin National Forest (Gardiner Ranger District).

The Forest Supervisor's decision adopts Alternative D-Modified, which includes harvest of approximately 1.5 million board feet (MMBF) of live and insect-killed or damaged trees on an estimated 195 acres, construction of approximately 0.9 mile of new temporary road, reconstruction of approximately 3.6 miles of existing road, and conifer planting on approximately 26 acres. New seasonal road closures (October 15 – June 30) will be implemented on 3 miles of the Bear Fork Road #6961, and on 3.6 miles of the Bald Mountain Road #6945 beginning in the fall of 2004 in order to improve the Habitat Effective Index (HEI) ratings during the general hunting season. The decision also includes two project-specific amendments: one on Elk Effective Cover as measured by the HEI; and the other on Vegetative Diversity.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision are 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 Multiple Use Sustained Yield Act (MUSYA), the Forest and Rangeland Renewable Resources Planning Act (RPA), the Clean Water Act (CWA), the Administrative Procedures Act (APA), and the Forest Plan. The appellants request a remand of the DN. An informal meeting was held, but no resolution of the issues was reached.

## ISSUE REVIEW

### **Issue 1. An EIS should have been prepared for the Darroch-Eagle Creek Timber Sale.**

**Response:** The regulations at 40 CFR 1501.4(c) provide for the preparation of an Environmental Assessment (EA) to determine whether or not to prepare an Environmental Impact Statement (EIS). As documented in the DN and Finding of No Significant Impact (FONSI), the Forest Supervisor determined that this project is not a major federal action with significant effects on the quality of the human environment (DN, pp. 25 to 27). As discussed in



the FONSI (DN, p. 26), the project would not significantly impact any threatened or endangered species, including grizzly bear. The analysis considered impacts to Yellowstone National Park and the Absaroka-Beartooth Wilderness in cumulative effects, and as necessary in discussions of resources that cross the boundaries. The EA is in compliance with NEPA.

**Issues 2 and 3. The impacts of roads and logging on grizzly bear and their habitat were not adequately or correctly analyzed. The EA does not include discussion of the effects of other major activities within the drainages, which occur on private lands. The project is in violation of Grizzly Bear Management Situation 1 Guidelines and Forest Plan Standards. Formal consultation with the U.S. Fish and Wildlife Service under ESA § 7 should have been conducted. The DN and FONSI are in violation of the Endangered Species Act.**

**Response:** Grizzly bear was considered an issue in the decision and was analyzed and discussed in detail in the EA. Specifically, the project is located in Grizzly Bear Management Situation 1 habitat, and there is concern the project may affect the habitat and the use of the area by grizzly bear (EA, p. 2-3). The analysis considered loss of foraging habitat, changes in hiding and security cover, increased potential for mortality, changes in denning habitat, changes in prey base, and increased availability of human attractions.

The EA considered five alternatives in detail. Alternative A, the No Action Alternative; Alternative B, the Proposed Action; Alternative C, the 'higher value' alternative; Alternative D, the 'no large openings' alternative; and Alternative D-Modified, the Preferred Alternative. The EA discusses in detail features of each of these alternatives in Chapter 2, including the distance-to-hiding cover standard (EA, pp. 2-9 and 2-15), and grizzly bear mitigation measures (EA, p. 2-25). The EA also considered and discussed five other alternatives that were eliminated from detailed study (pp. 2-35 to 2-37). These were Alternative E, manage vegetation to avoid a vegetation diversity Forest Plan amendment; Alternative F, no harvest of old growth; Alternative G, maximize biodiversity and wildlife habitat; Alternative H, harvest of other timber stands; and Alternative I, no road construction. The reasons for not considering these alternatives in detail are discussed in the EA (Ibid).

Chapter 3 of the EA analyzes and displays the affected environment of the project area and the environmental consequences of the alternatives (EA, p. 3-1), including the cumulative impact of past, other present, and reasonably foreseeable future activities (EA, pp. 3-2 to 3-3). This chapter forms the scientific and analytical basis for comparing the alternatives. The first issue discussed in this chapter is grizzly bear (EA, pp. 3-3 to 3-12). The analysis displays the direct and indirect impact each alternative would have on foraging habitat, changes in hiding and security cover, potential for mortality, population viability, changes in denning habitat, changes in prey base, and increased availability of human attractions. The EA then discusses cumulative effects. The analysis of the effects of the alternatives is based on information and analysis found in the Biological Assessment (BA) of grizzly bear for the Darroch-Eagle project (EA, Appendix C, pp. C-3 to C-35).

The wildlife biologist, in consultation with the U.S. Fish and Wildlife Service (USFWS) (EA, Appendix C, p. C-42) determined the project would not likely adversely affect grizzly bear. The finding was commensurate with the constraints outlined for land on the Gallatin National Forest

designated as Management Area 13, which is available for timber harvest, provided grizzly bear habitat objectives are met. This finding is also appropriate in the context of the USFWS amended Biological Opinion (BO) for the Gallatin Forest Plan. The project was also determined to meet the constraints of the Interagency Grizzly Bear Committee (IGBC) access standards (EA, Appendix C, p. C-41). The BA also contained three stipulations from the Forest Plan and six provisions that would be put into the timber sale contract to help protect grizzly bear (EA, Appendix C, pp. 41 to 42).

The BA was submitted to the USFWS for their review and concurrence in accordance with 50 CFR 402.13 (PF, Vol. 6, Chapter 2, Doc. 2-29). After review of the BA, the USFWS concurred with the determination of ‘may affect, but not likely to adversely affect grizzly bear’ (PF, Vol. 6, Chapter 2, Doc. 2-30). The project will not jeopardize the continued existence of grizzly bear or result in destruction or adverse modification of critical habitat. The project analysis is in compliance with NEPA and ESA.

**Issue 4. Since this sale is still under contract, a decision has been made prior to the EA and the Decision Notice in violation of NEPA, NFMA, APA, and RPA. The economic disclosure is inadequate. The revenue identified for Alternative D-Modified should have been what was under contract. The project and economic analysis does not maximize long-term net public benefits [36 CFR 219.1(a)] and is in violation of NFMA and RPA. The DN and FONSI do not satisfy the monitoring requirements of the Forest Plan or NFMA.**

**Response:** The timber sale was advertised and awarded after the Federal District Court found in the favor of the Forest Service, well after the NEPA process was complete (EA, Appendix I, p. I-18). It was only after the District Court’s ruling was overturned in the 9<sup>th</sup> Circuit that the Forest had to revisit the NEPA process. The Appeals Court enjoined the implementation of the project until two procedural errors, concerning a site-specific road density amendment and the use of bear management units to analyze impacts, were corrected. The court did not require the Forest to break the contract and start the analysis over, but only to remedy the deficiencies (EA, p. 1-2).

Maximizing net public benefit refers to Regional or Forest-wide economic analysis, which is not within the scope of this decision. 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 socioeconomic implications that are unique to the decisions made at this management level, as was done in the EA (pp. 3-17 to 3-21, and Appendix I, pp. I-4 to I-14).

It should be pointed out that stated in the Gallatin Land Consolidation Act, the U.S. Congress found “it is in the interest of the United States to establish a logical and effective ownership pattern for the Gallatin National Forest, reducing long-term costs for taxpayers and increasing and improving public access to the forest...” This project is part of the action the Gallatin National Forest is taking to fulfill Congress’ intent to benefit the public through the Gallatin

Land Consolidation Act and the Appropriations Act of 2004, Section 333, entitled Implementation of Gallatin Land Consolidation Act.

Forest-wide Forest Plan monitoring is beyond the scope of this project. However, the DN (p. 9) does require the monitoring of a wide range of project-specific items that are discussed in the EA (pp. 2-29 to 2-30). These items are to be monitored to insure the project is in compliance with the Forest Plan and the analysis of effects found in the EA. The project and analysis are in compliance with NEPA, NFMA, APA, and RPA.

**Issue 5. The Forest Service has not demonstrated that adequate old-growth habitat exists on the Forest. The Forest Service cannot assure that viable populations of sensitive species are being maintained, as NFMA requires.**

**Response:** The EA analyzed the amount of old growth forest in Compartments 305 and 306 (EA, Appendix A, pp. A-10 to A-11). There are 20,255 acres of old growth in the analysis area. This is 38.5 percent of the total area of the compartments, and 58.4 percent of the forested land in the compartments. After implementation of Alternative D-Modified there would still be 38.2 percent of the compartments covered in old growth forest. Across the Forest there is approximately 40 percent old growth on the forested lands (EA, Appendix A, p. A-10). These amounts are well beyond the 10 percent old growth the Forest Plan says the Forest is supposed to “strive to develop” (Forest Plan, p. II-20).

The EA dedicates Appendix H to a viability assessment for species of special concern. The assessment discusses the applicable laws, regulations, and policy; the appropriate scale of analysis; and multiple scales of analyses before they discuss each species of concern individually. Grizzly bear, bald eagle, gray wolf, Canada lynx, black-backed woodpecker, boreal toad, northern leopard frog, Townsend’s big-eared bat, wolverine, northern goshawk, and pine marten are covered. Viability for threatened species is also analyzed in the BA (EA, Appendix C). Viability for sensitive species is also covered in the BE (Appendix B). The old growth and viability analyses are in compliance with NFMA requirements.

**Issue 6. The decision does not meet the purpose and need for the project which is to raise money to help balance the differences in land value that are of issue in the Gallatin Exchange. The Forest Service fails to provide a reasonable range of alternatives, in violation of NEPA. The pre-determined nature of this NEPA process has restricted the range of alternatives. Evidence of this is that none of the alternatives considered except the “No Action” alternative would cut less timber than the sale as contracted before the current NEPA process began.**

**Response:** The Agency’s Deciding Official has the discretion to determine the purpose and need for a project proposal. In this case, the purpose and need is sell timber to generate funds so the Forest can repay the Land and Water Conservation Fund that the Forest borrowed from in order to complete the Big Sky Lumber Company land purchase (EA, pp. 1-1 and 1-3; Appendix I, p. I-5). Alternatives must be responsive to the project purpose and need. The alternatives presented in the EA (pp. 2-5 to 2-35) respond to the purpose and need, are within the management direction identified in the EA, respond to the public scoping comments, and are reasonable for

this project. The Forest also considered other alternatives that were eliminated from detailed study (EA, pp. 2-35 to 2-37). The range of alternatives does not prematurely foreclose any option that might protect, restore, and enhance the environment. The project is in compliance with NEPA.

**Issue 7. In the absence of the development of a Total Maximum Daily Load (TMDL) federal agencies have a duty to avoid further degradation of water quality limited stream segments. The Darroch-Eagle project as embodied by Alternative D-Modified in the DN, violates this duty and thereby violates the CWA.**

**Response:** Bear Creek below the wilderness boundary is listed as slightly impaired due to flow and thermal modifications. These would not be affected by the timber sale or related activities (EA, Appendix A, p. A-12).

The hydrologist analyzed the impact the project would have on water quality (PF, Vol. 4, Chapter 8, Doc. 1-2, and Vol. 6, Chapter 2, Doc. 6-7). Based on the analyses, the water quality issue was eliminated from detailed study due to effective mitigation and minor effect to the watershed (Appendix A, pp. A-12 to A-16). The project is expected to meet the Gallatin sediment standards, State of Montana Water Quality standards, Montana Forestry BMPs and stream management zone provisions, and would maintain downstream beneficial uses. The project is in compliance with the CWA.

**Issue 8. The temporary increase in road density will cause the Rose Creek wolf pack and other wolves to leave the project area and will result in more conflicts with humans and livestock in violation of the ESA, APA, RPA, and NFMA. The EA did not consider scientific information (Mech, 1989) addressing the effects of high road density on wolves.**

**Response:** As discussed in the Response to Comments (EA, Appendix I, p. I-25) and the Decision Notice (p. DN-7), and displayed on the Selected Alternative map (DN, Map 3), the permanent and seasonal road closures will reduce, not increase, the open road density in the project area.

While the appellants did comment on the gray wolf analysis, they did not reference Mech (1989), or ask that Mech be considered. The EA and BA considered the impact the project would have on gray wolf and cited appropriate research and data (EA, Appendix A, p. A-2, Appendix C, pp. C-35 to C-37). The wildlife biologist determined the project would not likely jeopardize the continued existence of the non-essential experimental gray wolf population (EA, Appendix C, p. C-41). The Forest submitted the BA to the USFWS (PF, Vol. 6, Chapter 2, Doc. 2-29). The USFWS acknowledged our determination on gray wolf without further comment (PF, Vol. 6, Chapter 2, Doc. 2-31). The project and the wolf analysis are in compliance with ESA, APA, RPA, and NFMA.

**Issue 9. The cumulative impact of the Darroch Eagle project was not adequately considered.**

**Response:** At the beginning of the *Environmental Consequences* chapter, the EA discusses the past, present, and reasonably foreseeable future activities that may produce environmental effects that are relevant to the project (EA, pp. 3-2 to 3-3). The list includes nine timber sales in the past and present; harvest of firewood, house logs, posts and poles; precommercial thinning; and the Windmill Timber Sale in the future. The cumulative effects analyses also considered many other private and public activities, including the Mineral Hill Mine site, Yellowstone National Park, the Absaroka-Beartooth Wilderness, and recreational activities (EA, Appendix I, pp. I-5, I-6, I-22 and I-23). The past, present and reasonably foreseeable activities are then considered in the analysis for each resource. The analysis is in compliance with NEPA.

**Issue 10. The EA fails to consider the cumulative effects of both past and proposed soil disturbances to assure that soil productivity will be maintained.**

**Response:** The soil scientist conducted on-site field tests to determine past impacts to the soils in the project area. He found that Units 13 and 15, as they exist at this time, exceed the Regional Soils Standard of 15 percent detrimentally-disturbed soil from past activity in those units. He also found past impacts to Unit 8 did not reach the 15 percent level. The soil scientist produced a table indicating the cumulative effects of the past impacts and the impact the project would produce (EA, Appendix A, pp. A-19 to A-21; PF, Vol. 6, Chapter 2, Docs. 2-9 and 2-10). The soil analysis considered cumulative effects and is in compliance with NEPA and the Regional Soil Standards.

**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/ Lesley W. Thompson  
LESLEY W. THOMPSON  
Appeal Reviewing Officer  
Forest Supervisor - Lewis & Clark National Forest