



United States  
Department of  
Agriculture

Forest  
Service

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File Code: 1570-1

Date: June 28, 2001

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Subject: ARO Letter, Mill-Key-Wey ROD, Appeal #01-01-00-0039, Lolo NF

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Jeff Juel on behalf of The Ecology Center, Inc.; Alliance for the Wild Rockies; and American Wildlands protesting the Mill-Key-Wey Record of Decision (ROD) signed by the Lolo National Forest Supervisor, Superior Ranger District.

The Forest Supervisor's decision adopts Alternative 3/6, which authorizes the following activities within the 33,500-acre project area:

- Timber harvest from approximately 4,935 acres followed by underburning about 4,375 of those acres.
- Ecosystem burning of approximately 1,709 acres.
- Construction of approximately 5.5 miles of new long-term specified road and 4.8 miles of temporary or short-term specified road. Of the 5.5 miles of new long-term specified road construction, 2.6 miles will provide access to the Beacon Hill electronic site.
- Reconstruction of 22.7 miles of roads.
- Closure of 7.7 miles of system and non-system roads.

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 Administrative Procedures Act (APA) and the Lolo National Forest Plan. The appellants request a remand of the decision. An informal meeting was held but no resolution of the issues was reached.

## ISSUE REVIEW

**Issue 1: The Mill-Key-Wey FEIS and ROD represent the Forest Service's movement in a significantly different direction from its Forest Plan.**



**Response:** Consistency of this project with the Forest Plan is addressed in the ROD (pp. 4-8 and 17-22) and in numerous places in the FEIS and project file (see transmittal letter for references). Excellent documentation is provided as to how this project is consistent with the Forest Plan.

**Issue 2: Old growth, snag habitat, management indicator species, and management indicator species monitoring.**

**Response:** Detailed information regarding old growth, snag habitat and management indicator species was provided in the ROD, FEIS and project file. An old growth analysis was completed for the Superior North EMA that meets the Lolo National Forest Plan old growth strategy (FEIS, p. III-135; Doc. J-51, p. 23). The primary purpose of the timber harvest is to improve or maintain ecosystem health and productivity, including old growth forest communities (ROD, p. 6; FEIS, p. I-3). When applied to stands with old growth forest characteristics, these actions would restore structural conditions essential to those wildlife species that depend on old open-forest conditions, predominated by shade-intolerant conifer species.

Acres of old growth and potential old growth in the Superior North EMA are identified in the FEIS (pp. III-126 and III-135 through III-142) and in the project file (Doc. J-51 and J-54). Within old growth and potential old growth, snags and recruitment trees would be protected under all alternatives and there would be no change in total old growth acres in any alternative (FEIS, pp. II-4, II-23, and III-160; ROD, p. 18). Analysis of old growth-dependent management indicator and sensitive species, using the latest scientific findings, is presented in the FEIS (pp. III-14 to III-32) and project file (Doc. J-20). This included cumulative effects of past logging on national forest and other ownership.

Within the project area, all likely goshawk habitat was selected using the habitat model in Hayward, Holland and Escano (1990), aerial photo interpretation, and old growth information. There is limited suitable habitat in this project area because the area is mostly dry, lower-elevation timber types (FEIS, page III-129). The known goshawk nest sites on the Superior Ranger District have been found in moister, mid-elevation stands. None of the suitable goshawk habitat within the project area will be treated (FEIS, p. III-23).

Forest-wide amount and status of old growth and monitoring of old growth-dependent species at the Forest level is outside the scope of this project. However, habitat for pileated woodpeckers and goshawks are assessed at the project scale and were assessed for the Mill-Key-Wey project, as noted above.

**Issue 4: The failure of the FEIS to adequately analyze project impacts on Canada lynx violates the Forest Plan as amended by the Lynx Conservation Assessment and Strategy, NFMA, NEPA and the ESA.**

**Response:** The Lynx Conservation Assessment and Strategy was considered and applied as appropriate for this project. No activities are planned in the LAU within the project analysis area, therefore no further analysis of lynx habitat is necessary (FEIS, pp. III-11 to III-14). Lynx Analysis Units (LAUs) are intended to provide the fundamental or smallest scale with which to begin evaluation and monitoring of the effects of management actions on lynx habitat (Ruediger, 2000) (FEIS, Appendix A, p. A-3). About 1,000 acres of the Upper Ninemile LAU are within



the project area (Doc. J-20, Map #6). This is about 3 percent of the LAU. About 85 percent of the project area is in the Dry Forest Group (FEIS, P. III-129), which is predominantly ponderosa pine and Douglas-fir, which is not suitable habitat for lynx. In the DEIS, one harvest unit (unit 249) was proposed in lynx habitat but was dropped in the FEIS (FEIS, Appendix D, pp. 4, 14 and 21).

**Issue 5: The analysis of project impacts on wildlife is inadequate, in violation of NFMA, NEPA, and the Forest Plan.**

**Response:** Analysis of management indicator species and sensitive species is documented in the ROD (pp. 20 and 30-31), the FEIS (pp. III-15 through III-43) and in the Wildlife Report (Doc. J-20). Drafting conservation strategies for sensitive species is outside the scope of this project.

Analysis of fisher and its habitat is documented in the FEIS on pages III-20 and III-25 through III-26, and in the Wildlife Report (Doc. J-20). NEPA requires that when there is incomplete or unavailable information, the agency shall always make clear that such information is lacking (40 CFR 1502.22), which was done on page III-20. However, existing supporting information and the rationale for concluding that intermediate harvest is probably not detrimental to fisher habitat was also identified in the FEIS. Even if intermediate harvest was detrimental, the area treated is only a small percentage of the existing fisher habitat (FEIS, pp. III-25 through III-26).

Analysis of gray wolves and wolverines is included in the FEIS on pages III-10 through III-14, pages III-20 and III-21, and pages III-26 through III-28. The Wildlife Report (Doc. J-20) provides analysis of both wolves and their habitat (pp. 5-8) and wolverines and their habitat (pp. 22-25). The two main factors in wolf habitat management are maintaining prey populations and reducing human contact (FEIS, p. III-10). In discussions with USFWS personnel, elk security was considered a reasonable measure of wolf habitat factors because elk security considers open-road density and hiding cover, and indicates habitat quality for big game. With wolf populations steadily increasing on the Lolo National Forest and a new wolf pack established in spring 2001, these methods are probably sufficient. This method is also used for wolverines because elk security considers open-road density and hiding cover, and indicates habitat quality for big game, which are all factors in wolverine habitat (FEIS, p. III-21).

Analysis of elk and its habitat is found in the FEIS on pages III-32 through III-43. The selected action will increase elk security by 1 percent, lower open-road density and improve winter range. The analysis of impacts on elk meets the goals and objectives outlined in the Montana elk management plan (FEIS, p. III-32).

Analysis of boreal toads and leopard frogs and their habitat is found in the FEIS (pp. III-21 through III-22 and III-28 through III-29), and in the Wildlife Report (Doc. J-20). The Mill-Key-Wey project proposes no activities in riparian areas, which is the primary habitat for toads and frogs. These species can disperse out of riparian areas but approximately 85 percent of the project area is in the Dry Forest Group (FEIS, p. III-129), where the probability of encountering amphibians is very low.

The process for conducting biological evaluations is outlined in the Forest Service Manual, 2672.43. This process consists of pre-field review, field reconnaissance and surveys and analysis



of potential impacts. A review is conducted to determine if species or their habitat are present. If there is habitat but no activities are planned for the area, then the project will have no impact on that habitat and no further analysis is needed (FEIS, p. III-8; Doc. J-20, pp. 1-2).

**Issue 6: The Mill-Key-Wey FEIS failed to adequately analyze project impacts on biological corridors and fragmentation in violation of NEPA, NFMA and the ESA.**

**Response:** Analysis of corridors, linkages and fragmentation is in the FEIS (pp. III-45 to III-48) and Wildlife Report (Doc. J-20), with additional information in the Response to Comments (FEIS, Appendix B, pp. B16-B18 and B45-B46). The majority of vegetation treatments in the preferred alternative are intermediate harvests (FEIS, p. II-16, Table 8), which will retain cover and not contribute to habitat fragmentation. Approximately 68 acres are proposed for clearcutting in the roughly 24,900-acre (Forest Service lands) project analysis area. The preferred alternative also lowers the open-road density (FEIS, p. II-22, Table 14 and p. III-12, Table 26). With limited change in vegetation and a lower open-road density, the preferred alternative will make little change in any biological corridors or levels of fragmentation.

**Issue 7: Failure to meet NEPA, NFMA, and Regional soil quality standards and analysis requirements.**

**Response:** Description of existing soil condition and effects analysis are found in the FEIS (pp. III-90 to III-91 and III-97). The numerical amount of detrimental soil condition is disclosed on page III-91. In past harvest units where compaction occurred, it was present in 5 to 10 percent of the area, which meets Regional Soil Quality Standards. Documentation of field review of detrimental soil conditions, a description of soils for the project area, and maps of sensitive soils and Land System Inventory (LSI) are in the project file (Doc. J-1, J-1.1, J-5, J-6 and J-16.1). Soil was not a driving issue for this analysis (FEIS, pp. II-2 through II-4); therefore, most of the information pertaining to soils is in the project file and not in the FEIS.

The soils in the project area are generally stable. There are no areas where re-vegetation would be a problem after harvest or road construction. BMPs have been incorporated into the project design through the use of mitigation measures outlined in Table 19 (FEIS, pp. II-26 through II-29) to maintain soil productivity. Lolo National Forest Plan monitoring results have concluded that the soil resource is adequately protected when BMP requirements are met (FEIS, p. III-97). The Mill-Key-Wey project meets Forest Plan standards with regard to soils.

The LSI management considerations do not prohibit tractor logging on the landtype found in Unit 229C. Required mitigation measures in the FEIS (Table 19, pp. II-28 to II-29) and the ROD (p. 38) limit ground-based harvest activity to dry soil conditions. Within Unit 229C, skid trails will be minimized and operations limited to the dry summer months.

**Issue 8: The economic analysis is inadequate.**

**Response:** The economic analysis for this project is found on pages III-74 through III-77 of the FEIS, with supporting information in the project file (Doc. J-69 to J-76). The Timber Sale Planning and Analysis System (TSPAS) information is displayed for each alternative (FEIS, Table 33, p. III-77).



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 consideration” (40 CFR 1502.23). The NEPA process shall be used to emphasize real environmental issues and alternatives. The financial analysis complies with NEPA.

**Issue 9: The analysis of impacts on the Roadless Area is inadequate.**

**Response:** The Mill-Key-Wey project does not propose any activities in inventoried roadless areas. Pages III-182 through III-183 in the FEIS describe the existing condition of, and environmental consequences to, the roadless areas. A map in Appendix F shows the proximity of the project to the roadless areas and displays the project area boundary, proposed activity units (harvest and ecosystem burn units), existing roads, land ownership and inventoried roadless areas. Actions proposed adjacent to the roadless area were assessed for the effects to the roadless characteristic in relation to wildlife, hydrology and fisheries (FEIS, pp. III-48 and III-97). There would be no net gain in vehicle access to the roadless area under any alternative (FEIS, p. III-48).

**Issue 10: Analysis of impacts on water quality and fish populations is inadequate, in violation of NEPA, NFMA and the Forest Plan.**

**Response:** The FEIS (pp. III-90 through III-107) and the project file (Doc. J-4, J-7 and J-8) display information regarding the current status and potential impacts on westslope cutthroat trout and bull trout. A Fisheries Biological Evaluation and Assessment was prepared and sent to the U.S. Fish and Wildlife Service and they concurred with the biological determination of “Not Likely to Adversely Affect” for bull trout and “May Impact Individuals or Habitat, But Will Not Likely Contribute to a Trend Towards Federal Listing or Loss of Viability to the Population or Species” for westslope cutthroat trout.

None of the streams within the project area are listed as water quality limited by the State of Montana. The project area does not include any priority watersheds as designated by the 1995 Inland Native Fish Strategy (INFISH) Decision Notice (FEIS, p. III-90).

None of the alternatives in the Mill-Key-Wey project propose activity within Riparian Habitat Conservation Areas (FEIS, pp. III-101 through III-107). The Fisheries Biological Assessment and Evaluation (Doc. D-8) and Fisheries Affected Environment and Environmental Consequences report (Doc. J-4) contain tables that list effects to bull trout and westslope trout using habitat indicators that are listed as habitat features for determining Riparian Management Objectives in INFISH.

Based on the analysis documented in the FEIS and project file, the existing situation of the streams within the project area will be improved by long-term reductions in sediment. Implementation of the selected action will not result in any discernible adverse effects to water quality, but rather will show an improvement (ROD, p. ROD-31). The selected alternative meets Forest Plan and State water quality standards (ROD, pp. ROD-19 and ROD-31).



Analysis methods for the Hydrology, Soils and Fisheries section discusses the XDRAIN model, and predictions are within the range of observations (FEIS, p. III-89). Validation work has shown values predicted by the XDRAIN model generally fall within the range of observed values. Observed values typically vary by at least 30 percent from the mean (FEIS, p. III-98).

Water quality monitoring (FEIS, Chapter II, pp. 30 and 31) includes BMP Implementation and effectiveness reviews. Soil BMP measures have been monitored across the Lolo National Forest for compliance and effectiveness to meet the Memorandum of Understanding with the State of Montana and Forest Plan standards. Forest Plan monitoring for the last 6 years has shown no departures in soil productivity standards (Lolo National Forest Plan Monitoring Reports, 1994-1999). Findings concluded that BMPs were properly implemented 94 percent of the time and were effective in protecting soil and water resources at a 96-percent rate. Comparison of the 1998 audit with similar audits conducted previously shows an improving trend in BMP and SMZ application and effectiveness (FEIS, p. II-31). BMP audit results for 1999 showed that across all ownerships, BMPs were effective in protecting soil and water resources 98 percent of the time (DNRC, 2000).

Reconstruction of the Pardee Creek Road was added to the proposed action in the FEIS. Obliteration or relocation of this road is not possible because it is under county jurisdiction and accesses private land (FEIS, Appendix C, Figure C-4). The culvert that impedes upstream migration of fish is located at the mouth of Pardee Creek, beneath Interstate 90 and State Highway 10 on private land. The selected action, which includes reconstruction on the Pardee Creek Road #97, would result in a 97-percent reduction in sediment (FEIS, p. III-99). The selected action meets Forest Plan standards, and has short-term negative insignificant effects with associated long-term benefits to westslope cutthroat trout and bull trout.

**Issue 11: Inadequate range of alternatives, in violation of NEPA.**

**Response:** The FEIS (pp. II-11 through II-12) provides a discussion of funding for road work and why Alternative 4 (restoration) only proposes to fix roads that would be decommissioned and removed from the Forest road system. This was also discussed in the Response to Comments (pp. B-4 and B-30). NEPA requires a reasonable range of alternatives. Reasonable alternatives are those that are practical or feasible from the technical and economic standpoint and from using common sense, rather than simply desirable. While the IDT discussed each road in the project area to determine whether improvement or decommissioning was warranted, Alternative 4 (restoration alternative) includes only the roads where some sort of funding mechanism could be found to do the needed work. It was not reasonable to include road improvement activities that had little or no chance of being accomplished.

**Issue 12: The discussion regarding fire and insects in the FEIS lacks scientific integrity.**

**Response:** The FEIS (Chapter III) provides many discussions and supporting information regarding the analysis and environmental consequences of the project as related to insects, forest vegetation, fire and fuels, including supporting scientific documentation. In addition, supporting documentation is in the project file (Doc. J-51, F-55, J-62, J-63, K-20, K-21, K-22, K-23, and N-5). The scientific integrity of these discussions are well documented.



**Issue 13: Response to public comments.**

**Response:** CEQ regulations 1501.7 require that we determine the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The Ecology Center's March 23, 2000, letter does not offer project-specific or site-specific, meaningful comments to the Mill-Key-Wey project as required by 36 CFR 215.6 b(3). The Ecology Center's 47-page letter to the Lolo National Forest was not site-specific and was not in response to any specific project. The Lolo National Forest responded to the Ecology Center on May 12, 2000, informing them that many of their comments were beyond the scope of site-specific projects and that their letter was forwarded to the Western Montana Forest Planning Zone to keep in their files for Forest Plan revision. I find that the Forest was responsive to the site-specific comments provided on the Mill-Key-Wey project.

**RECOMMENDATION**

I recommend the Forest Supervisor's decision be affirmed and the appellants' requested relief be denied.

/s/ Galen B. Hall  
GALEN B. HALL  
Regional Budget Officer

