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Subject: ARO Letter - White/White TS DN - Clearwater NF - Appeal #03-01-00-0060 - Friends of the Clearwater, et al.

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Gary Macfarlane, on behalf of Friends of the Clearwater; Alliance for the Wild Rockies; The Lands Council; Idaho Conservation League; The Ecology Center, Inc.; and Idaho Sporting Congress, protesting the White/White Timber Sale Decision Notice (DN) on the Clearwater National Forest.

The District Ranger's decision adopts Alternative 4, which includes decommissioning 20.4 miles of road; placing 14.9 miles of road in long term storage; and regeneration harvest, commercial thinning, pre-commercial thinning, and prescribed burning on 2,954 acres.

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 Clean Water Act (CWA), the Forest Service Manual, and the Clearwater Forest Plan. The appellants request the Regional Forester rescind the DN, and an Environmental Impact Statement (EIS) be prepared to analyze the impacts of the project. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. The Forest violated NEPA and NFMA requirements by failing to prepare an EIS for such a large project of this nature occurring in a watershed that does not meet water quality standards.

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 EIS. As discussed in the Response to Comments (DN, Appendix D, pp. 25 to 26), there are four classes of actions where the Forest Service Handbook requires an EIS: 1) where and EIS is required by law; 2) aerial applications of chemical pesticides; 3) substantial alteration of inventoried roadless areas larger than 5,000 acre in size; and 4) large scale actions that may significantly affect the quality of the human environment. The first three classes do not apply to this project. As documented in the DN and FONSI, the District Ranger determined this project is not a major federal action with significant effects on the quality of the human environment (DN, pp. 18 to 20).



The project is located within the Lolo Creek watershed. There are no 303(d) listed streams within the project analysis area. However, outside the project area, Lolo Creek from Eldorado Creek to the Clearwater River is water quality limited (EA, Appendix P). Direct and indirect effects of the project to the watershed are discussed in the EA (pp. 93 to 103). The analysis found there would be no direct or indirect effects of harvesting timber on water quality, so there can be no downstream cumulative effects in Lolo Creek below Eldorado Creek from the project (DN, Appendix D, p. 9). The project is in compliance with NEPA and NFMA.

Issue 2. The Clearwater National Forest has not provided information that it is meeting the Forest Plan standard of 10 percent old growth for the Forest as a whole.

Response: No old growth would be cut in the White/White project (EA, pp. 14, 54, 55, and Appendix P, p. 7). The project area is in old growth analysis units 103, 104, and 105. Current amounts of old growth in those analysis units are 14 percent, 21 percent, and 11 percent respectively. Forest Plan standards for old growth are being met at the Forest and analysis unit levels (EA, Appendix P, p. 7). The analysis is in compliance with NEPA and NFMA.

Issue 3. The Clearwater National Forest has not fulfilled its obligations under the Forest Plan to monitor for management indicator species (MIS), threatened, endangered, and sensitive species (TES), or to maintain viable populations of these species.

Response: Monitoring of MIS is a Forest-level issue and outside the scope of this project. The Forest issues annual Monitoring and Evaluation Reports as required by the Forest Plan (PF, Vol. 6, Doc. 236A). This report addresses the monitoring done for threatened and endangered, management indicator, and sensitive species. NFMA imposes duties on the Forest Service that include providing for a diversity of plant and animal communities (36 CFR 219.26). Specifically the Forest Service is obligated to maintain sufficient habitat (36 CFR 219.19) and to monitor the population trends of MIS [36 CFR 219.19(a)(b)]. In *Inland Empire Public Lands v. United States Forest Service*, the U.S. Court of Appeals for the 9th Circuit deferred to the Forest Service interpretation of these regulations to find that the Forest Service can fulfill its population monitoring requirements by maintaining sufficient habitat. The project is in compliance with NFMA.

Issue 4. The DN and FONSI are completely unwarranted and unjustified. The Forest Service neglected to adequately analyze or address the potential impacts of the White/White project, along with the Brick Trout Timber Sale and the other past, present, and future development activities in the area including State, BLM, and private land which Lolo Creek flows through.

Response: The EA contains an analysis of the impacts to each resource (Chapter 3, pp. 35 to 140). Included in the analysis are the direct, indirect, and cumulative effects. Under cumulative effects, each specialist describes the geographic boundary of the cumulative effects area and the present and reasonably foreseeable activities within the boundary that may impact the resource being considered. Where the geographic boundary includes the entire Lolo Creek watershed the Brick Trout Timber Sale is included. For example, wide cumulative effects analysis areas are needed for threatened and endangered species, fisheries, watershed, cultural heritage, and

recreation. These resources consider the Brick Trout project (EA, pp. 101, 123, and 130; DN, Appendix B, pp. 6 to 9).

The cumulative effects to Aquatics and Fisheries are discussed in the EA, (pp. 99 to 105). Cumulative watershed effects were analyzed for each year from 1987 through 2010, covering the past, present, and reasonably foreseeable future activities (DN, Appendix D, pp. 11, 30, and 31). These activities are displayed in the EA (Appendix F). Other activities on other ownerships were considered in the cumulative effects (EA, Appendix P, pp. 3 to 4; PF, Vol. 1, Doc. 33, pp. 4 and 5). The analysis is in compliance with NEPA.

Issue 5. The Forest used the Clearwater Sub-basin Ecosystem Analysis at the Watershed Scale (EAWS) and the Lynx Conservation Assessment and Strategy, which are non-NEPA and non-decision documents, as programmatic decision documents.

Response: The use of non-NEPA documents in EAs and EISs is an acceptable practice (40 CFR 1502.21). The Clearwater Sub-basin EAWS and the Lynx Conservation Assessment and Strategy (LCAS) are not decision documents. The EAWS was developed to identify project opportunities. Any projects selected for implementation from the Clearwater Sub-basin EAWS would be analyzed through the NEPA process, with full public participation, as the White/White project EA has done.

The LCAS was authored by a team of scientists and researchers, is based on numerous publications, and is the best available science on lynx habitat and conservation. A review of the habitat needs by the wildlife biologist indicated there was no existing or potential habitat for lynx in the project area (DN, Appendix B, pp. 11 to 12; EA, p. 76; PF, Vol. 5, Doc. 181, pp. 20 to 22, Doc. 186, p. 1, and Doc. 216). The wildlife biologist determined the project would have no effect on lynx (DN, Appendix B, p. 12). The scoping and public comment period allowed the public to have input into the lynx analysis as required by NEPA. The use of the Clearwater Sub-basin EAWS and the LCAS is in compliance with NEPA.

Issue 6. The Forest Service violated NEPA by narrowly defining the Purpose and Need, which resulted in a limited range of alternatives.

Response: The Agency's Deciding Official has the discretion to determine the Purpose and Need for a project proposal. The NEPA implementing regulations state the NEPA document shall "briefly specify the underlying purpose and need to which the agency is responding..." (40 CFR 1502.13). The Forest has provided information on the project to support the stated Purpose and Need (EA, pp. 5 to 9). In addition, the Purpose and Need relates to the Forest-wide Management Direction. I find the Purpose and Need to be within the discretion of the Responsible Official and adequately linked to broader scale analyses.

Chapter II of the EA describes how comments received during public scoping were used to identify issues and develop alternatives (pp. 12 to 20). It gives detailed information about four alternatives considered in detail (Alternatives 1, 3, 4, and 5) (pp. 21 to 29). The EA also discusses the two alternatives (the Restoration-only Alternative and Alternative 2) not considered in detail (p. 21). The No Action Alternative (Alternative 1) and the Restoration-only Alternative

would not meet the Purpose and Need. Alternatives 2, 3, 4, and 5 would meet the Purpose and Need. The alternatives are within the management direction, respond to the issues raised during public scoping, and are reasonable for this project. I find this to be an adequate range of alternatives. The Purpose and Need and the range of alternatives are in compliance with NEPA.

Issue 7. The Forest Service failed to meet Clean Water Act requirements. This timber sale violates Forest Plan standards as it proposes activities that will increase sedimentation in streams that are not meeting Forest Plan standards. It fails to consider sediment increases from the actual logging activities, especially log hauling and heavy equipment use on roads. The accuracy of WATBAL models have been called into question, and Best Management Practices (BMPs) on the Clearwater NF have proven in a court of law, to be insufficient justification for sediment producing activities.

Response: There are no 303(d) listed streams in the project area; however, down stream from the Lolo's confluence with Eldorado Creek Lolo Creek is listed for bacteria, dissolved oxygen, flow and habitat alteration, nutrients, oil and grease, sediment, and temperature. The project was therefore designed to produce no measurable increases in sediment, temperature, oil, or grease, or decreases in dissolved oxygen (EA, p. 85). The direct, indirect, and cumulative effects of the project to the watershed and fisheries resources are described in the EA (pp. 93 to 105). The current existing condition modeled sediment production within Lolo and Chamook Creek watersheds does exceed the Forest Plan standard. However, the White/White Timber Sale will be a "no effect" or produce "no measurable increase in sediment" in Chamook, Yoosa, and Lolo Creeks (EA, p. 103) with the WATBAL model showing a 0 percent increase in sediment over natural sediment levels for the proposed action (EA, pp. 98-99). As such, the project meets the Forest Plan standards (EA, pp. 97-99) and meets the Forest Plan settlement agreement (PF, Vol. 2, Doc. 44, pp. 23 to 40 and 45).

As discussed in the EA (pp. 87 to 88), WATBAL was one of a number of tools used to assess potential effects from the project. The EA discusses the uses and limitation of the WATBAL model. The Forest conducts yearly BMP audits (PF, Vol. 2, Docs. 75 through 79). After completing the 2001 audit, the Forest hydrologist concluded the Clearwater National Forest is doing an excellent job of applying BMPs across the Forest and they are effective in preventing sediment from entering stream channels. He stated it is actually a rare event when sediment is delivered from timber harvest and road construction activities to Forest streams (PF, Vol. 2, Doc. 79, p. 4). The project is in compliance with CWA.

Issue 8. The Forest Service failed to adequately demonstrate compliance with the five soil standards contained in the Forest Plan. The EA references no actual on-the-ground soils surveys in activity areas, disregarded or downplayed the landslide risk involved with the logging and burning activities, and does not adequately consider the effects on soil productivity from logging, road building, and burning. The Regional Standards themselves have not been subject to any public or independent scientific review to demonstrate they reasonably comply with NFMA requirements.

Response: The soils scientist conducted on-the-ground surveys to determined past detrimental soils impacts (DN, Appendix D, p. 20). The project file contains the soils scientist's field notes

(PF, Vol. 6, Doc. 234, pp. 66 to 78). The treatment units were analyzed for erosion and landslide hazards (DN, Appendix D, p. 20; EA, pp. 106 to 110, Appendix G, p. 5, Appendix N, pp. 6, 9, 11, 14, and 15; PF, Vol. 6, Doc. 234, pp. 26 to 32). The soil analysis considered the effects the project would have on soil productivity, and concluded the project would contribute to protecting soil and site productivity by applying management practices that would reduce the risk of fire and subsequent erosion events (EA, p. 110). The soil analysis (PF, Vol. 6, Doc. 234; EA, pp. 105 to 110) is in compliance with Forest Plan standards, the Regional soils guidelines, and NFMA.

The Regional soil guidelines were developed to manage National Forest System lands without permanent impairment in order to meet NFMA direction (FSM 2554.02). They are based on Forest Service research done at the Intermountain and Rocky Mountain Research Stations, and in the Pacific Northwest (FSM 2500-99-1, p. 6).

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/ Ed Nesselroad
ED NESSELROAD
Appeal Reviewing Officer
Director of Public and Governmental Relations