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Subject: 215 - ARO Letter - McSutten TS ROD - Kootenai NF - Appeal #05-01-00-0037 -
The Ecology Center, Inc., et al.

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by The Ecology Center, Inc., The Lands Council, and Alliance for the Wild Rockies, protesting the McSutten Timber Sale Record of Decision (ROD) on the Kootenai National Forest (Rexford Ranger District).

The Forest Supervisor's decision adopts Alternative 1-modified. This decision includes:

- Removal of commercial timber products from 21 units on approximately 6,675 acres.
- Timber harvest totaling 54,871 CCF.
- Salvage of up to 200 acres of incidental mortality resulting from prescribed fire.
- Underburn of 6,675 acres of residual and harvest-generated fuels.
- Underburn (without harvest) of 1,033 acres of residual fuels.
- Hand plant western white pine, western larch, spruce and ponderosa pine in 13 units over 2,379 acres.
- Improve water drainage through road maintenance (ditch construction and cleaning and adding or replacing culverts) on portions of 193 miles of road.
- Decommission 5.6 miles of nine roads.
- Place Road #7998B (4.7 miles) into intermittent storage status.
- Realign 0.6 miles and decommission 0.6 miles of Forest Road #7998.
- Realign 0.4 miles and decommission 1.4 miles of Forest Road #7980G.
- Relocate the barrier on Forest Road #14099.
- Restrict 1.6 miles of road seasonally.
- Three site-specific amendments of the Kootenai Forest Plan to allow regeneration harvest in big game movement corridors, harvest adjacent to units that do not provide suitable cover and manage road density at a level above 0.75 mi/mi² during project activities.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision comply 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.

The appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Administrative Procedures Act (APA) and the Forest Plan. The appellants request the ROD be withdrawn or remanded and that an Environmental Impact Statement (EIS) be prepared that fully complies with all laws, regulations and policies. An informal meeting was held by conference call, but no resolution of the issues was reached.



ISSUE REVIEW

Issue 1. The EIS failed to fully analyze an action alternative that meets the purpose and need but does not require exceeding 40-acre openings. Nothing in the EIS shows that the larger unit sizes in the Selected Alternative would have “no additional effect” on big-game species, other management indicator species, or threatened, endangered and sensitive species.

Response: The record supports creation of forest openings greater than 40 acres (ROD, p. 26; and Project File {PF}, Doc. 2-31). Reference conditions and existing vegetation conditions described in the DEIS (pp. I-2 and III-20 to III-31) and the McSutten Ecosystem Analysis on the Watershed Scale (PF, Doc. 4-42) led to the purpose and need for action and the proposed action. The EIS analysis uses current scientific literature about the creation of large opening sizes benefiting edge effects and elk security (PF, Docs. 5-67 and 5-76). Site specific analysis regarding openings greater than 40 acres concluded that there would be little to no impact on the ability for big game species to utilize the area (DEIS, pp. III-100 to III-103). Potential negative effects on individual big game will be negligible (ROD, p. 26).

The Forest Plan allows for “(m)aintaining a variety of unit sizes of generally 40 acres or less. Where catastrophic conditions such as insects, disease or fire creates a condition whereby larger unit sizes will have no additional effect on the wildlife habitat, larger cutting units may be used” (Forest Plan, p. II-23). The selected action will improve resistance to insect and disease occurrence and wildfire and increase habitat for wildlife species that utilize early vegetative stages (ROD, pp. 19-20). The Regional Forester concurred that the action complies with FSM 2471.1 R1-2400-2001-2 Supplement (PF, Doc. 2-30). There is an adequate range of alternatives, and creation of larger openings is consistent with Forest and Regional policy.

Issue 2. A more focused watershed restoration alternative, without logging and road building, should have been developed and fully analyzed given the existing conditions including heavily altered or degraded water quality and wildlife habitat.

Response: The interdisciplinary (ID) team developed the alternatives based on the purpose and need, the scope of the project, and issues generated from internal review and public scoping comments (DEIS, pp. II-1, II-4 and II-9). The EIS fully analyzed three alternatives, one of which did not propose logging or road building, Alternative 2 - No Action (DEIS, p. II-15). The effects of large openings were addressed by developing Alternative 3, which reduced the size of regeneration harvest units in MA12 to 40 acres or less (DEIS, p. II-2). An alternative focusing on watershed restoration would not be consistent with the purpose and need of the McSutten project (FEIS, p. IV-67). The alternatives analyzed respond to the purpose and need, are within the management direction, and are reasonable for this project. The range of alternatives is sufficient and complies with NEPA.

Issue 3. Nothing in the McSutten EIS shows the Forest has completed or is committed to the monitoring that would help insure old-growth species’ viability. The Forest Service has not showed it has maintained 10 percent effective old growth. The Forest has not reliably surveyed all of the stands designated as old growth, and it does not specifically address the

potential problems with the data. The Forest generally leaves the public uninformed as to how many acres in the project areas are in old-growth condition (including those areas to be logged) not including those “designated.”

Response: An old growth analysis has been conducted and the most current inventory of old growth indicates the Forest is meeting Forest Plan direction for maintaining habitat capable of supporting viable populations of old-growth dependent species (DEIS, p. III-156). The DEIS includes an analysis of effects to mature forest habitat (undesignated old growth) on pages III-163 to III-168. Twelve percent, or 5,883 acres, of the decision area is in designated old growth (DEIS, p. III-156). An additional 2,422 acres of the decision area is in undesignated old growth (DEIS, p. III-163). In total, 13 percent of designated and undesignated old growth habitat meets Green’s criteria for old growth in the decision area, meeting Forest Plan standards (Forest Plan, p. II-22). The analysis of direct, indirect and cumulative effects to wildlife resources (DEIS, pp. III-100 to III-175) indicate that the project will maintain adequate habitat and species viability. Forest Plan Monitoring and Evaluation Reports provide data on monitoring item C-4, old growth-dependent species and item C-5, old growth habitat (PF, Doc. 5-201). The McSutten monitoring plan (DEIS, Appendix, p. 3-3) specifies that effects of commercial thinning treatment on the attributes of undesignated old growth will occur. The project is consistent with Forest Plan standards.

Issue 4. The Forest has not clearly explained, in plain language, what methods have been used to survey and to designate each stand as old growth—forest-wide as well as in the project area.

Response: The methodology for the old growth analysis is described on pages III-155 to III-156 of the DEIS. The project file includes an old growth review by compartment (PF, Doc. 5-88) and maps displaying effects on designated and undesignated old growth (PF, Doc. 5-89). No timber harvest or thinning is proposed within designated old growth (DEIS, p. III-157). The decision was modified to exclude approximately 30 acres located in undesignated old growth (ROD, pp. 2 and 22). The proposed action is consistent with Forest Plan direction for old growth habitat management (DEIS, p. III-162).

Issue 5. The geographic area used for old-growth analysis is by the entire “McSutten Decision Area”, not by Compartment as the Forest Plan requires, which obscures the habitat distribution issue. The EIS does not disclose how many blocks of old growth are sliced through by roads and are thereby fragmented into less than 50 acre parcels. Nor does the EIS disclose if discounting any of the 145 acres of “replacement” old growth would reduce the block size below 50 acres. The EIS fails to demonstrate the amount, and therefore distribution, of actual old growth minus any ineffective less than 50 acre blocks meets the Forest Plan 50 acre minimum size standard. In the total absence of population monitoring information, the decision to log any old growth or any forest that provides habitat for old-growth wildlife species is arbitrary and capricious.

Response: The project file maps display the old growth blocks and impacts the project would have on old growth habitat (PF, Docs. 5-89 and 5-93 to 5-101). The amount of designated replacement old growth proposed for management activities is shown in Table 46 (DEIS, pp.

164-165). The EIS includes analysis of effects to the old growth management indicator species (MIS) (pileated woodpecker) (DEIS, pp. III-157 to III-162), fisher (DEIS, pp. III-123 to III-124), flammulated owl (DEIS, pp. III-135 to III-136), and goshawks (DEIS, pp. III-128 to III-129 and FEIS, Addendum 1-7). The Forest Plan (p. II-23) states, “Provid[e] old growth habitat, both natural and managed, in various unit sizes from about 40 to 300 acres well distributed across the Forest.” The Old Growth Validation Process (PF, Doc. 5-88) describes the manner in which old growth was delineated. The analysis is consistent with Forest Service Manual (FSM) 2432.22 KNF SUPP.

No timber harvest or thinning is proposed within designated old growth (DEIS, p. III-157). Harvest prescriptions in undesignated old growth stands would maintain sufficient large-diameter trees and coarse woody debris to meet Green’s old growth criteria (DEIS, p. III-164). This project will have no effect on the existing level of old growth in the compartment, or Forest-wide. The proposed action is consistent with Forest Plan direction for old growth habitat management (DEIS, p. III-162).

Issue 6. The McSutten EIS does not disclose the significance of the effects on old-growth species’ populations of habitat degradation of old growth because of firewood cutting and illegal poaching of trees due to unrestricted access. The EIS simply did not present an analysis of the impacts of open roads through old growth. The Forest continues to ignore the Forest Plan Management Area (MA) 13 Standards relating to protection of designated old growth in the project area.

Response: All alternatives will continue to restrict motorized access on local roads in the decision area on a year-round basis, restrict off-highway vehicles from leaving established roads and trails, and prohibit firewood cutting and salvage in MA 13 (DEIS, pp. III-162 to III-163). This is consistent with Forest Plan direction (p. III-54). Loss of snags along open roads is addressed in the cavity habitat analysis (DEIS, pp. III-155 to III-163).

Issue 7. Since the Forest is not meeting species viability requirements, it is critical for the Forest to take steps to develop a multiple species conservation strategy.

Response: FSM 2621.2 states, “units must develop conservations strategies for those sensitive species whose continued existence may be negatively affected by the forest plan or a proposed project.” The EIS discloses the direct, indirect, and cumulative effects to MIS and sensitive species (DEIS, pp. III-120 to III-140; and PF Docs. 5-40 to 5-70 and 5-88 to 5-107). The wildlife biologist did not find that the project would negatively affect the continued existence of any MIS or sensitive species. A conservation strategy is outside the scope of this analysis.

Issue 8. The EIS lists ongoing and foreseeable activities that could disrupt and displace wildlife and adversely alter habitat conditions, but does not disclose how such actions would cumulatively affect old-growth wildlife species’ habitats.

Response: Cumulative effects for old growth MIS is found on pages III-159 to III-162 of the DEIS. Cumulative effects to other sensitive species, which might utilize old growth, are also analyzed (DEIS, pp. III-141 to III-143).

Issue 9. The Forest Plan's reliance on Thomas et al., 1979 was severely criticized in Bull et al. 1997. New scientific information seriously calls into question the Forest snag standards and guidelines. The paltry number of snags to be retained in logging units, and the failure to specify snags of adequate size, contrasts with scientifically-determined habitat needs acknowledged elsewhere by the Forest Service.

Response: The Forest Plan standard for snags was augmented by the Northern Region Snag Management Protocol and recent Forest monitoring reports (DEIS, p. III-155). The analysis of snags considered current scientific literature, including Bull, et al. (1997), to discuss and support the role of snags in forest stands, including contributions to old growth and assistance in maintaining species viability (PF, Doc. 5-140). The analysis of snags and habitat needs is supported by scientific literature and professional judgment of the wildlife biologist.

Issue 10. The EIS fails to disclose data from project area surveys for snags and replacements in old logging units, how many of the old logging units in the Decision area are deficient in snags, and consistency of project area compartments with the Forest Plan established minimum.

Response: The DEIS discloses both existing condition and trends for snags (pp. III-156 to III-157) and direct, indirect and cumulative effects on cavity habitat (pp. III-157 to III-163). Table 44 displays current snag inventory information for each vegetative response unit of snags per acre. The current snag level within the decision area is 75.8 percent, meaning more than three-quarters of the area should be able to naturally produce 100 percent of the snags necessary for associated species and these snags will be distributed across the landscape. This exceeds Forest Plan standards (Forest Plan, p. II-11). The decision is consistent with the Northern Region Snag Management Protocol.

Issue 11. The EIS does not adequately consider that snags may be cut down for safety reasons during logging operations. The EIS fails to disclose how much snag loss would be expected because of safety concern. The loss from skyline corridors and other methods of log removal could be more significant than disclosed.

Response: The project file includes a snag habitat analysis (PF, Docs. 5-104 to 5-107). The analysis of effects (DEIS, pp. III-157 to III-163) considers salvage of incidental mortality, snag loss from accidental knock down during harvest activities, felling due to human safety concerns, and anticipated snag habitat loss resulting from firewood cutting. The design criteria states that a minor number of trees would be cut to allow for safe logging practices and to remove hazard trees (DEIS, Appendix p. 1-1). Project design includes retention of green trees to provide for the loss of snags during harvest and post-harvest treatments (FEIS, p. IV-39). The design criteria specify snag retention guidelines to retain adequate levels of snags, replacement snags and coarse woody debris, which meet or exceed Forest Plan guidelines (DEIS, Appendix p. 1-5).

Issue 12. The EIS fails to disclose the degree to which edge effects on old growth species' habitat exist, and how much total edge effect would be increased, by Alternative 1-modified. The McSutten EIS falls far short of analyzing and disclosing these fragmentation effects on old-growth species' viability, caused by the current conditions and by the McSutten Timber Sale.

Response: The ID team analyzed the direct, indirect, and cumulative impact the project would have on old growth habitat and species that use old growth. The analysis included edge effect (DEIS, p. III-170). The analysis concluded that the project will assist in reducing the edge effect of the decision area by blending many existing openings into large patches, while maintaining the influx of early successional habitats (DEIS, p. III-172). The analysis of effects to old growth wildlife species also considered fragmentation (DEIS, pp. III-123 to III-124, III-128 to III-129, III-135 to III-136, III-141 to III-144, and III-157 to III-162). The wildlife resource process paper describes that patch size, fragmentation, and interior forest characteristics were assessed as part of field reviews (PF, Doc. 5-104, p. 8).

Issue 13. The EIS fails to deal with what are the quantitative effects of management activities on the productivity of the land. The EIS fails to link the current and cumulative soil disturbance to the impacts on water quantity and quality. The EIS also does not measure or provide scientifically sound estimates of detrimental soils disturbance from off-road vehicle use and livestock grazing. The EIS does not rely upon scientifically credible data or analysis, so the Decision to cause more soil disturbance, resulting in unknown losses in soil productivity, is arbitrary and capricious.

Response: The EIS includes site-specific analysis of direct, indirect, and cumulative effects to sensitive soils (DEIS, pp. III-10 to III-18). Cumulative soil disturbance resulting from management activities (including recreation and livestock grazing) is included in the detrimental disturbance analysis (DEIS, pp. III-14 to III-18) and presented in Table 11 on page III-16. The project file documents that the soils analysis included analysis of existing condition, cumulative disturbance and effects of geologic and soil characteristics, existing mass failure sites, detrimental disturbance from past activities, wetlands and riparian areas, soil burn severity, climatic factors, cattle grazing, monitoring results and field reviews (PF, Doc. 3-2). The analysis incorporated scientific literature and recent Forest monitoring (DEIS, p. III-19; and FEIS, pp. IV-50 to IV-51). The project file documents the use of applicable soil references (PF, Doc. 3-51). Analysis of sediment delivery and water quality was completed (DEIS, pp. III-79 to III-88). The water resource analysis included stream surveys, stream modeling, hydrologic modeling, geologic and soil characteristics, climatic data and analysis of roads (PF, Doc. 3-115). Cumulative effects to water quality, sediment delivery and water quality considered all past, proposed, current and reasonably foreseeable activities (DEIS, p. III-86). Reports indicate the Forest is meeting Regional soil quality standards; these monitoring results demonstrate the effectiveness of BMPs in achieving the objectives of soil and water conservation practices.

Issue 14. The Forest's determination that it may permanently damage the soil on 15 percent of an activity area and still meet NFMA and planning regulations is arbitrary. Neither the EIS, the Forest Plan nor FSM 500-99-1 cite adequate scientific basis for adopting 15 percent as the numerical limit.

Response: In order to meet NFMA direction and manage National Forest System lands without permanent impairment, the policy of the Northern Region is to "...not create detrimental soil conditions on more than 15 percent of an activity area" (FSM 2554.03). Detrimental soil disturbance is not equal to permanent damage. At no point has the Forest Service determined that projects may permanently damage 15 percent of the soil in an activity area. Arguments

regarding the Regional supplement to the Forest Service Manual are beyond the scope of the McSutten analysis.

The analysis followed Regional guidelines for soil analysis (DEIS, pp. III-9 to III-18). Regional guidance for maintaining soil productivity by limiting detrimental soil disturbance to less than 15 percent (FSM 2554, R1 Supplement 2500-99-1) was based on best professional judgment and was intended as early warnings, not as absolute limits (Powers, et al, 1998). Appropriate literature and site-specific data were used and cited as necessary in the analysis (PF, Docs. 3-3 and 3-51). The McSutten project is consistent with all Forest Service soil standards.

Issue 15. The EIS does not disclose how McSutten Timber Sale cutting units would be consistent with Graham, et al., 1994 recommendations for fine and coarse woody debris. The EIS also fails to disclose data from project area surveys for coarse woody debris in old logging units.

Response: Inventories conducted as part of the analysis document that current coarse woody debris exceed Graham, et al., 1994, recommendations of five to 15 tons per acre for all stand classes (DEIS, p. III-10). Coarse woody debris is a required monitoring item included in the monitoring plan (DEIS, Appendix 3-1).

Issue 16. Logging, roadbuilding and other disturbance associated with the McSutten Timber Sale and other cumulative impacts could affect northern goshawk nesting, post-fledging family habitat, alternative nesting, foraging, competitors, prey and potential habitat, including areas far from cutting units.

Response: The EIS discloses the direct, indirect, and cumulative effects to goshawks (DEIS, pp. III-127 to III-129 and III-141 to III-143; and FEIS, Addendum-1 to Addendum-4). The goshawk analysis in the EIS is consistent with the current Regional approach for the species. The Goshawk Habitat Criteria used for analysis considered nest area, post-fledging area, replacement nest sites, and foraging habitat (PF, Doc. 5-57).

Issue 17. The EIS failed to disclose and analyze the impacts to fisher, black-backed woodpecker, wolverines, flammulated owl, boreal owl, great gray owl and boreal toads.

Response: The wildlife biologist analyzed the impact the McSutten project would have on sensitive species (DEIS, pp. III-120 to III-144) including goshawk, fisher, black-backed woodpecker, wolverine, flammulated owl and boreal toad. After considering the regulatory framework, analysis area, measurement indicators, affected environment and the environmental consequences of the project, the analysis discusses the direct and indirect effects of the alternatives. The wildlife biologist considered past, other present, and reasonable foreseeable future activities in conjunction with the McSutten project to determine the cumulative effects of the various alternatives. The analysis of the impacts uses site-specific information, data, and scientific literature (PF, Docs. 5-46, 5-69, 5-51 and 5-64). The wildlife biologist determined the project may impact individual goshawk, fisher, black-backed woodpecker, wolverine, and boreal toad, but is not likely to cause a trend toward federal listing or a loss of viability for any of the those species (DEIS, pp. III-124, III-127, III-129, III-131, and III-138); and no impact on

flamulated owls (DEIS, p. III-136). Boreal and great gray owls are not on either the 1999 or the 2004 sensitive species lists, and were not analyzed in the EIS. The analysis complies with NEPA and NFMA.

Issue 18. The EIS is inadequate in its disclosure of present stream conditions and habitat conditions for aquatic species. The failure to provide high quality information based on up-to-date stream condition and aquatic species' habitat condition surveys fails to comply with NEPA and NFMA. The EIS also presents little or no data on baseline (prior to "management") conditions, preferring to use the presently-damaged status (following decades of cumulative management impacts) as baseline.

Response: The EIS includes a description of existing conditions for stream channel conditions (DEIS, pp. III-73 to III-79), fisheries (DEIS, pp. III-90 to III-92) and Resource Management Objectives (RMOs) attainment (DEIS, p. III-93). The project file includes recent stream surveys from 2003 (PF, Docs. III-116 and III-117). Fish habitat surveys completed in 1998 and 2003 were used in the analysis (PF, Doc. 3-170). The cumulative analysis considered activities that have occurred within the past 30 years (DEIS, p. III-97). No activities are proposed in riparian areas or wetlands. Application of RHCAs, BMPs and design criteria provide protection for riparian areas (DEIS, p. III-13). There would be no adverse actions within RHCAs and no retardation of RMOs. The decision is consistent with the Forest Plan.

Issue 19. The McSutten EIS fails to incorporate that WATSED model underestimates effects of logging and roads on peakflows, and underestimates monthly peakflow in its discussion of likely effects on flows within the project area and downstream. The EIS also ignores and fails to disclose the research (King, 1989) on the accuracy of a peakflow model, similar to the ECA method in estimating increases in peakflows from logging and roads in nearby northern Idaho. Nowhere does it state that WATSED is limited in evaluating in-channel and stream-bank erosion, sediment and water discharge from rain-on-snow events, or the effects of large destructive events.

Response: The water yield models used for this analysis (Equivalent Clearcut Acres Calculator and R1-WATSED) are described in the EIS (DEIS, p. III-80). The project file describes the methodology of the analysis and the rationale for using these tools and models to determine the peakflows (PF, Doc. 3-115). Recommended peak flow increases were determined based on Forest Plan direction (Forest Plan, p II-24). These figures were refined using stream monitoring data, channel survey data, field verification, monitoring and professional judgment. Existing channel conditions were compared to the modeled peak flows. Table 23 in the DEIS (p. III-81) displays by watershed, existing and recommended peak flow increase and effect of each alternative. This table provides one way to compare the impact of the alternatives.

WATSED is meant to model annual peak flows, not peak flows resulting from extreme events such as rain-on-snow. Rain-on-snow events are not a significant influence in the McSutten decision area (FEIS, p. Errata-1). The FEIS explains that King's (King, 1989) research was conducted in an area with different road densities, soils and parent materials and watershed size, all of which affect hillslope hydrologic functions and streamflow responses (FEIS, p. IV-13). The analysis of water quality complies with NEPA.

Issue 20. The EIS fails to disclose if all roads in the project area will be brought up to BMP standards. The EIS fails to disclose the risk of resulting chronic watershed impacts of continuing sub-standard roads and road/stream crossings.

Response: The EIS provides information on bringing roads up to BMP standards (ROD, p. 10 and DEIS, pp. II-9, II-25 and III-186). The ID team completed a road analysis evaluating conditions (PF, Doc. 4-20). The hydrologist evaluated road density, stream crossing, sensitive land type, soil erosion potential, and sediment delivery efficiency (PF, Doc. 3-144). The analysis included road inventories and watershed road surveys (PF, Doc. 3-147) and a roads analysis (PF, Docs. 3-146 and 4-24). The McSutten Roads Analysis includes a prioritized listing of BMPs (PF, Doc. 3-24, pp. 70-71).

Issue 21. The Forest has failed to obtain or maintain any past or current hard population or inventory or monitoring data for the TES and MIS/Sensitive fish species at issue in the project area or for the Forest as a whole. Distribution, status and population trends have not been determined.

Response: Population estimates for fish are displayed in the DEIS on page III-91. This includes sampling information for 1999 to 2003. Status, baseline information, existing condition and trends, and analysis of direct, indirect and cumulative effects were completed for the threatened bull trout, endangered white sturgeon, and sensitive species of torrent sculpin, westslope cutthroat, interior redband trout and burbot (DEIS, pp. III-94 to III-96). Sufficient analysis was completed to assure that the project will comply with all watershed policies and protecting measures, including riparian management guidelines and INFISH, and would not result in a significant effect on fish habitat. The biological assessment concluded that implementation of the McSutten project would have no effect on bull trout or white sturgeon (PF, Doc. 3-188). Therefore, the conclusion that the action will not affect existing fish populations is appropriate and adequately supported. I find the project complies with all guidelines required for the protection of fisheries habitat and that effects analysis is adequate.

Population trend data was provided for Sutton Creek (PF, Doc. 3-177), McGuire Creek (PF Doc. 3-180) and Tenmile Creek (PF, Doc. 3-183). Monitoring of species to develop population trends is a Forest-level issue and outside the scope of this project. The Annual Monitoring and Evaluation Report addresses the monitoring done for threatened and endangered, MIS, and sensitive species.

Issue 22. Since the September 1987 adoption of the Forest Plan, conditions on and around the Forest have changed “significantly” in both NFMA and NEPA terms. Additionally, the fifteen-year mandatory due date for Revision of the Forest Plan is past.

Response: The Consolidated Appropriations Act, 2005, H.R. 4818, Sec. 320, states, “Prior to October 1, 2005, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System. Nothing in this section exempts the Secretary from any other requirement of the Forest and Rangeland Renewable Resources

Planning Act (16 U.S.C. 1600 et seq.) or any other law: *Provided*, That if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise a plan for a unit of the National Forest System, this section shall be void with respect to such plan and a court of proper jurisdiction may order completion of the plan on an accelerated basis.” Appellants provide no evidence that the standards and guidelines from the existing plan are inadequate to protect Forest resources.

Issue 23. The EIS did not have a list of those actions creating all the roads and logging all those acres, nor does the EIS disclose the differential effects of those various projects on all resources of concern. Nor does the EIS disclose the results of all monitoring done in the project area as committed to in the NEPA documents of those past projects.

Response: The analysis considered the cumulative effects of past activities. The EIS includes tables and maps of the past, current, and reasonably foreseeable actions (DEIS, pp. I-8 to I-15). Appendix 4 of the DEIS details past timber harvesting actions by stand, type of treatment, and acreage. The interdisciplinary team considered past activities including prescribed burns, wildfires, regeneration harvest, commercial thinning, pre-commercial thinning and intermediate harvests over the past 30 years (PF, Doc. 84). The roads analysis includes specifics on road number, miles, description and condition surveys (PF, Docs. 144, 145, 146, and 147).

The analysis used past monitoring (DEIS, pp. III-19), as well as Forest monitoring reports from 1998 to 2002 (PF, Doc. 4-42). It is clear from the EIS and project file that past project-level and Forest Plan-level monitoring were utilized throughout the development of the EIS (FEIS, p. IV-68) and incorporated into the analysis.

Issue 24. The McSutten EIS does not demonstrate that the project and analysis are consistent with all Standards contained in the Lynx Conservation and Assessment Strategy (LCAS). Moreover, the EIS fails to disclose the expected level of cumulative impacts on lynx from the additional new roads, additional skid trails and other logging access routes to be constructed in the project area—roads/access routes that could be used by snowmobilers, snowshoers, and cross country skiers long after the logging activities have stopped.

Response: The wildlife biologist analyzed the impact the McSutten project would have on Canada lynx (DEIS, pp. III-16 to III-120 and PF, Docs. 5, 30, and 31). In the analysis, the wildlife biologist analyzes effects to applicable Canada Lynx Conservation Assessment and Strategy (LCAS) conservation measures (DEIS, pp. 114 to 115). The project complies with the LCAS programmatic planning standard #1 for recreation that there will be no net increase in groomed or designated over-the-snow routes and snowmobile areas by lynx analysis units.

Cumulative impacts were considered (DEIS, pp. 118 to 120; PF, Doc. 5-5, pp. 24 to 26). The Biological Assessment (PF, Doc. 5-5) assessed the impact of the project on Canada lynx and concluded that all lynx standards would be met (PF, Doc. 5-5, pp. 16 to 21). Based on these findings the wildlife biologist determined the project activities may affect, but are not likely to adversely affect Canada lynx or its habitat (PF, Doc. 5-5, p. 21). The U.S. Fish and Wildlife Service (USFWS) concurred with this determination (PF, Doc. 5-6). The analysis is in

accordance with the Canada Lynx Conservation Agreement between the Forest Service and the USFWS, and with the LCAS (DEIS, p. 120).

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/ Jane Kollmeyer
JANE KOLLMEYER
Appeal Reviewing Officer