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Subject: 1570 (215) - ARO Letter - Northeast Yaak TS ROD - Kootenai NF - WildWest Institute, et al. - #07-01-00-0146

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Jeff Juel, on behalf of the WildWest Institute, The Lands Council, and the Alliance for the Wild Rockies protesting the Northeast Yaak Timber Sale Record of Decision (ROD) on the Kootenai National Forest (Three Rivers Ranger District).

The Forest Supervisor's decision adopts Alternative C-Modified, which includes intermediate and regeneration timber harvest on approximately 1,777 acres, precommercial thinning on approximately 286 acres, various fuel reduction treatments on 350 acres, construction of less than 1 mile of temporary road, decommissioning approximately 22 miles of road, 12 miles of road placed in 'storage', and opening the Vinal Lake Road for public travel from mid June to mid September.

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), Clean Water Act (CWA), the Administrative Procedures Act (APA), the Forest Service Manual, and the Kootenai Forest Plan. The appellants request the Supplemental EIS and ROD be withdrawn or remanded back to the Forest to prepare an EIS that fully complies with all laws, regulations, and policies. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. Relying upon destructive, obsolete management paradigms.

Issue 1, Contention 1. If logging improves the "forest health" of the treated area, the SEIS fails to disclose the cumulative effects of not treating the remaining landscape.

Response: The DSEIS analyzes the impacts of not treating the landscapes (pp. 3-22 to 3-27), including disclosing the cumulative effects of not treating the landscape (p. 3-27). The cumulative effects analysis of the No Action Alternative indicates that it would continue a trend of replacing desirable shade-



intolerant species with less desirable shade-tolerant species. In the long term this would compromise habitat diversity, and tree health and vigor. The analysis adequately addressed cumulative effects across the entire analysis area, including the non-treatment areas, in compliance with NEPA.

Issue 1, Contention 2. In proposing to protect private property and human health and safety from wildland fire destruction, the KNF basically ignored the concept of Home Ignition Zone (HIZ).

Response: The DSEIS (pp. 3-183 to 3-184) addresses Cohen's research (Cohen 1995, 2000a, and 2000b) on home ignitability, the Structure Ignition Assessment Model, and HIZ. The Final Supplemental Environmental Impact Statement (FSEIS) describes why additional treatment beyond the HIZ is needed to reduce fuels in the wildland urban interface. The project analysis is in compliance with NEPA.

Issue 1, Contention 3. There is a fundamental problem with substituting National Fire Plan and Healthy Forests Restoration Act strategies for Forest Plan strategies. That is, these policies have not been subjected to programmatic NEPA analysis, and without first revising the Forest Plan, the new strategies are also not subjected to the kind of NEPA analysis that would disclose and analyze the potential Forest-wide impacts.

Response: The DSEIS (pp. 1-3 to 1-4) and ROD (pp. 4 and 26) reference the National Fire Plan as supporting the need for treatment; it is not substituting the Fire Plan for the programmatic Forest Plan. Likewise, the DSEIS and ROD indicate the Healthy Forests Restoration Act (HFRA) recognizes the need to provide for fire adapted ecosystems while reducing the risks to communities and the environment. This project, however, is not under HFRA. The ROD (p. 16) states that the purpose and need for action responds to Forest Plan goals, objectives, and standards. I find the analysis has adequately addressed these concerns; meets Forest Plan goals, objectives, and standards; and is in compliance with NEPA and NFMA requirements.

Issue 2. Inconsistency with the best scientific information.

Issue 2, Contention 1. The FS has still not developed a scientifically sound strategy for old growth-associated wildlife species viability in a properly-defined cumulative effects analysis area, so that committing vast areas of the Kootenai National Forest to logging would not threaten species associated with old growth conditions.

Response: Pileated woodpecker is the management indicator species (MIS) for old growth and snags on the Forest (Forest Plan, Vol. II, p. A-12-1). The DSEIS states the pileated woodpecker analysis area is the project area (p. 3-53). Cumulative effects on old growth are provided in the *Old Growth* section of the DSEIS (pp. 3-37 to 3-51), and specifically for the pileated woodpecker (DSEIS, pp. 3-53 to 3-57). The ROD (p. 2-2) includes design features and mitigation measures to protect old growth. The project is in compliance with NFMA.

Issue 2, Contention 2. The KNF ignores the fact that some types of old growth are maintained by low intensity disturbances (Arno, Smith & Krebs 1997; Habeck 1990; and Habeck 1988). The Forest Service's own studies disclose that mixed severity fires are also

key to the development of some old growth types (USDA Forest Service, 1998-1999). Thus, the development of mature forests to old growth is also being retarded by logging and fire suppression.

Response: Maintenance of old growth by low-intensity fire disturbance is part of the purpose and need for the project (DSEIS, pp. 1-4 and 1-5). The DSEIS (pp. 3-9 to 3-12 and 3-37 to 3-42) also discusses fire as a disturbance which can help to maintain old growth. The ROD (Appendix 1, pp. 2 to 7) provides treatment objectives to protect and maintain old growth. The references supplied by the appellants were considered in the analysis (DSEIS, Appendix H; and PF, Vols. 20 and 32).

Issue 3. 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. Alternative C-Modified would remove such habitat as well as adversely affect old growth habitat components under the guise of “improvement.” Unfortunately, the Forest Service has not shown its logging of old growth on the Kootenai National Forest has ever resulted in the old growth still meeting the applicable old growth criteria nor has the Forest Service done wildlife surveys in such areas to show the species really do benefit. There is no scientific support for the claim that mechanical treatments and prescribed fire can replace natural fire in maintaining or restoring ecosystems.

Response: I am reviewing this project in light of the recent reversal by the 9th Circuit Court of the Montana District Court’s denial of a preliminary injunction in *The Lands Council et al. v. Ranotta McNair et al* (Ninth Cir. No. 07-35000). One of the purposes of the project is to improve conditions in old growth habitat (ROD, p. 5; DSEIS, p. 1-4). The analysis recognizes that dry old growth habitats are maintained at least in part by fire (see Issue 2, above), but due to high fuel loads could also be destroyed by fire. Removal of the excess fuel load would have the effect of maintaining the old habitat and, therefore, have a positive effect on old growth wildlife species (DSEIS, p 3-71, for example). The 9th Circuit held the Forest Service does not have sufficient “observations” or “on the ground” analyses that prove this. Unfortunately, it does not appear the NE Yaak project has this type of information either.

Therefore, I recommend the old growth management units be dropped from the project.

Issue 4. Soil and land productivity.

Issue 4, Contention 1. The Northeast Yaak project did not follow the Forest Service Manual direction at FSM 2500-99-1 regarding the 15 percent detrimental soil disturbance across the project area, did not employ qualified soil scientists for inventory, failed to disclose cumulative effects on soils and landtypes, and failed to disclose coarse woody debris distribution.

Response: The DSEIS (p. 3-156) defines the analysis area for soil quality as the “proposed project activity areas: timber harvest units and landings, fuels treatment units, and temporary

roads” consistent with the R-1 Supplement. The Worksheet for Consideration of Cumulative Effects to Soil Resources (PF, Vol. 10, Doc. 10) describes the cumulative effects to the soil resource.

The District timber prep personnel visited all the proposed activity units to determine the extent of past activity. Any portions of past harvest units included in the Northeast Yaak units were surveyed as a part of this inventory. The District hydrologist, trained in soils analysis by the Forest soil scientist, visited units of concern (DSEIS, p. 3-157; PF, Vol. 14, Docs. 3 and 4). The DSEIS (p. 3-161) lists the landtypes associated with the activity units and states that they are all suitable for vegetation management. Mitigation measures for retaining coarse woody debris according to Graham, et al. (1994) will be applied to the activity units (DSEIS, p. 2-14).

The Northeast Yaak analysis analyzed and disclosed the effects to soils and landtypes. The analysis of existing (including past) soil impacts, impacts of the proposed activities, and the cumulative detrimental impacts or disturbance can be found in the DSEIS (pp. 3-165 to 3-166) and project file (Vol. 10). Past effects on soils were also looked at across the entire Northeast Yaak analysis area (PF, Vol. 14, Doc. 3). The DSEIS (pp. 3-163 to 3-164, Tables 3-86 and 3-87) displays existing soil disturbance, project disturbance, and cumulative disturbance by unit. The 15 percent level is not exceeded under any of these. The project is in compliance with the Forest Service Manual direction for soil impacts.

Issue 4, Contention 2. The Forest Service has not disclosed the results of weed treatments, probably since none have been proven to significantly reduce noxious weed populations over time, or prevent spread. This is an ongoing issue of land productivity.

Response: The DSEIS considers the impact the project would have on noxious weeds (pp. 3-175 to 3-182). The DSEIS (p. 3-182) indicates the proposed activities would increase the risk of weed spread due to associated soil disturbance, but design features (DSEIS, p. 2-15) would minimize the spread. The DSEIS (p. 3-181) incorporates by reference the FY 2004 Kootenai NF Monitoring and Evaluation Report, which discusses the effectiveness of weed treatments.

Issue 5. Population viability and habitat management of sensitive and management indicator species.

Issue 5, Contention 1. The logging, roadbuilding, and cumulative impacts associated with the Northeast Yaak Timber Sale could have an affect on northern goshawk. The analysis ignores important scientific information on goshawk habitat requirements found in Reynolds, et al. (1992).

Response: The DSEIS analyzed the impact the project would have on northern goshawk (pp. 3-77 to 3-80). The analysis considered goshawk population ecology, biology, and habitat requirements and relationships as described in McGrath, et al. (2003) and Reynolds, et al (1992). Goshawk habitat was modeled using vegetation data (PF, Vol. 19, Doc. 5) and the Potential Population Index was derived using Reynolds, et al., 1992 (DSEIS, pp. 3-78 to 3-79; PF, Vol. 19, Doc. 4).

The chosen alternative would modify 4 percent of the goshawk habitat in the project area (DSEIS, Table 3-36, p. 3-78). This equates to less than 1 percent of Forest-wide goshawk habitat. Table 3-36 also shows that the six existing project area pair territories would remain at six and the 139 existing Forest-wide pair territories would remain at 139 for all action alternatives. The analysis discloses that individual goshawk could be displaced during project activities but there are 30,000 acres of nesting habitat available for the displaced birds to move into. However, surveys conducted in the proposed units found no nests, and Forest Service personnel have not encountered goshawks in the project area (DSEIS, p. 3-79). Goshawk nesting density appears to be associated with dense overstories and open understories (Crocker-Bedford, 1990). Proposed project activities may contribute to goshawk habitat restoration by reducing the density of shrubs, saplings, and small pole timber (DSEIS, pp. 3-78 to 3-79).

The cumulative effects analysis concludes the project area would maintain adequate goshawk habitat to maintain viable populations, and based on a recent Regional assessment for goshawks (Samson, 2005), there is no evidence that populations are decreasing. The extent and connectivity of forested habitats are increasing, and suitable habitat is abundant and well distributed (DSEIS, pp. 3-78 to 3-79). The DSEIS (p. 3-80) concludes the action alternatives may impact individuals and/or their habitat but would not likely contribute to a trend toward federal listing or loss of species viability for the northern goshawk. The project is in compliance with NFMA and NEPA.

Issue 5, Contention 2. Movement, denning, resting areas, genetic diversity, and other aspects of fisher life cycles and fisher survival could be impacted by the project. The Forest Service does not fully consider these elements of the project or adequately mitigate their impacts.

Response: The document does disclose effects of alternatives on fisher and fisher habitat (DSEIS, pp. 3-68 to 3-70; PF, Vol. 19, Docs. 5 and 6). The chosen alternative would modify 3 percent of the fisher habitat. The project would affect less than 1 percent of fisher habitat Forest-wide. None of the alternatives harvest timber in riparian habitats, which are important for fisher movement. The Forest-wide potential population index would be maintained. The project area potential population index would decrease very slightly, which would be a very minor impact to the species (DSEIS, pp. 3-69 to 3-70). The fisher analysis adequately addresses the impacts to fisher. Alternative C-Modified may impact individuals or their habitat, but would not likely contribute to a trend towards federal listing or loss of viability (DSEIS, p. 3-70). The analysis and project are in compliance with NEPA and NFMA.

Issue 5, Contention 3. The fire suppression and “salvage” logging policies of the KNF are the biggest threat to black-backed woodpecker population viability on the Forest, unfortunately in failing to create a conservation strategy the cumulative impacts of the KNF’s ongoing fire suppression policy will remain unexamined. The Northeast Yaak Timber Sale continues an unspoken management-for-extinction policy.

Response: This project is not proposing salvage logging or fire suppression. However, the wildlife biologist analyzed the impact the project would have on black-backed woodpecker (DSEIS, pp. 3-80 to 3-82). Adequate nesting and foraging habitat is available to support resident

black-backed woodpecker populations since large areas of fire, insect, and disease mortality are available in the project area (DSEIS, p. 3-80). According to Thomas (1979), viable populations are sustained by maintaining at least 40 percent of their potential habitat as suitable habitat. At this time, 46 percent of the project area is suitable secondary habitat. All proposed project alternatives would modify a small amount of secondary feeding/cavity habitat resulting in 42 percent of the secondary habitat remaining following implementation of any proposed alternative. Primary habitat (i.e. recently burned) would not be affected by the project (DSEIS, pp. 3-80 to 3-82).

The wildlife biologist determined the project may impact individuals or their habitat, but would not lead to federal listing or loss of population viability for black-backed woodpecker. The decrease in Forest-wide habitat would result in less than a 1-percent change, and abundant distribution of habitat would remain across the landscape to maintain viable populations (DSEIS, p. 3-82). The black-backed woodpecker analysis adequately addresses the impacts to black-backed woodpecker and its habitat and is in compliance with NFMA and NEPA.

Issue 5, Contention 4. Lofroth (1997) in a British Columbia study found that wolverines use habitats as diverse as tundra and old growth forest. Wolverines are also known to use mid- to low-elevation Douglas-fir forests in the winter (USDA Forest Service, 1993). The cumulative impacts of logging and road building on a species that depends upon remote, wild areas are ignored in this EIS.

Response: The project analyzed the impact to wolverines (DSEIS, pp. 3-76 to 3-77). There is no tundra habitat on the District (FEIS, Letter #13, Response to Comment #47). The project analyzed the impact to wolverine denning habitat because, aside from the natal area, wolverines are habitat generalists. Harvest and fuel treatments would modify 78 acres of denning habitat in the project area, which is less than 1 percent of the available habitat. From a Forest-wide perspective, this amount of change would be negligible (SEIS, pp. 3-76 to 3-77).

The analysis acknowledges potential temporary displacement of wolverine as a result of proposed activities, but since the proposed project actions would potentially affect less than 1 percent of wolverine habitat in the project area, the wildlife biologists determined the project may impact individuals or their habitat, but would not lead to federal listing or loss of population viability for wolverine (DSEIS, p. 3-77). The wolverine analysis adequately addresses the impacts to wolverine and its habitat and is in compliance with NFMA and NEPA.

Issue 5, Contention 5. Flammulated, boreal, and great gray owls are species of concern that are sensitive to logging and other management activities. The KNF provides inadequate management strategies to insure their viability (see, for example, Hayward and Verner, 1994).

Response: Great gray and boreal owls are neither a Regional Forester's sensitive nor a Forest management indicator species. Pileated woodpecker is the management indicator species for both cavity habitat and old growth habitat. The DSEIS includes an analysis of pileated woodpecker (pp. 3-53 to 3-57).

The flammulated owl analysis does include Hayward and Verner (1994) (DSEIS, p. 3-70). Flammulated owl habitat would be decreased by 4 percent in the action alternatives. The effect at the Forest level would be negligible (<1%). The project area potential population index (PPI) is estimated at 221 flammulated owl pairs. The proposed alternatives would reduce the PPI to around 213 pairs. The Forest-wide PPI would not change from the existing 3,951 pairs for all proposed alternatives (DSEIS, p. 3-71). The project and analysis are in compliance with NEPA and NFMA.

Issue 5, Contention 6. The EIS does not adequately consider cumulative effects on upland habitat for boreal toad. This does not make sense, since such small populations that are likely to persist are especially susceptible to fragmentation and extirpation due to isolation. In fact, the EIS has no genuine analysis of cumulative impacts of logging activities on boreal toads at all.

Response: The DSEIS analyzes the impact the project would have on boreal (western) toad (pp. 3-62 to 3-65), including the consideration of upland habitat. The Forest has done an admirable job of surveying Forest-wide for western toad habitat and presence. There are no known western toad breeding sites in the project area (DSEIS, pp. 3-62 to 3-63). All action alternatives would include design criteria for down wood retention in harvest units (upland situations), protection of riparian areas and movement corridors, and protection of potential existing breeding and rearing habitat (DSEIS, p. 3-63). The project and analysis are in compliance with NEPA and NFMA.

Issue 6. Water Quality and Fisheries.

Issue 6, Contention 1. The SEIS fails to adequately consider the effects of weather-related events causing high discharge (peak flows), such as rain-on-snow events, on small headwater channels, and as they interact with the project area watersheds.

Response: Weather has an affect on peak flows; however, we have little ability to change the weather with a project. The analysis methods in the DSEIS (pp. 3-96 to 3-98) look at the impacts project activities would have on peak flows. That is why the Analysis Methods section has subsections entitled *Effects of Timber Harvest and Roads on Streamflows* and *Effects of Timber Harvest and Roads on Sediment Delivery*.

Issue 6, Contention 2. The peak flow discussions are meaningless and irrelevant because maximum equivalent clearcut acres (ECA) thresholds have not been disclosed. The SEIS fails to disclose that the methodology used with its ECA model is even less accurate than WATSED. The FSEIS fails to disclose the Agency's research (King, 1989) on accuracy of a peak flow model, similar to the ECA method, in estimating increases in peak flows from logging and roads in nearby Idaho.

Response: The Forest Plan requires consideration of the effects of water yield increases (DSEIS, p. 3-96). The Forest Plan guidelines are clarified in two letters (Johnson and Solem, PF, Vol. 31). The DSEIS (pp. 3-98 to 3-99) discussion of ECA cites and uses these more site-specific guidelines in the analysis. The DSEIS (p. 3-99) discloses guidelines for maximum ECA in watersheds. The DSEIS (pp. 3-96 to 3-97) also thoroughly discusses the use of ECA for

measuring the effects of the activities on water yield and provides references regarding the use of the model, including King (1989). I find that the DSEIS thoroughly discloses how ECA is used and has the supporting documentation in the project file.

Issue 6, Contention 3. The cumulative impacts on the watershed from logging and road building are not sufficiently disclosed.

Response: The environmental consequences section of the DSEIS (pp. 3-114 to 3-135) fully discusses and discloses the direct, indirect, and cumulative effects of all the activities associated with the Northeast Yaak project.

Issue 6, Contention 4. The SEIS fails to demonstrate that mitigation measures in Blacktail Creek will balance out the impacts of the proposed activities and whether all roads will be brought up to BMP standards, and if they are not, the subsequent chronic impacts to the watershed.

Response: The DSEIS (p. 3-114) states that approximately 70 miles of road will receive road maintenance and reconstruction Best Management Practices (BMP) work to bring them up to standards. The DSEIS (Chapter 3) also discusses the impacts and discloses direct, indirect, and cumulative effects for each stream. Specifically, the DSEIS discusses the effects of the activities on Blacktail Creek (pp. 3-125 to 3-126), and lists the Design Features and Mitigation Measures (ROD, Appendix 2) pertinent to Blacktail Creek (pp. 3-114 to 3-115). The ROD discusses BMP implementation (Appendix 2). The Kootenai Forest Plan Monitoring Report (PF, Vol. 31, Docs. 17 and 18) indicates the BMPs are 94 percent effective. Alternative C-modified was developed in response to an issue regarding Blacktail Creek, resulting in the decommissioning of the 5816 and 5816A Roads, which are located along Blacktail Creek. The ROD commits the Forest to funding this work (p. 15). I find that the analysis demonstrates the effectiveness of the mitigation measures.

Issue 6, Contention 5. There is inadequate analysis of stream and habitat conditions for aquatic species and inadequate disclosure of effects; specifically, water temperature in spawning and rearing tributaries.

Response: The DSEIS (pp. 3-136 to 3-155) provides an in-depth analysis of the existing habitat conditions of the streams in the project area. The direct, indirect, and cumulative effects on fish and their habitat are disclosed for all proposed activities. Stream temperature data are displayed for East Fork and North Fork of Yaak Creek and for Basin Creek. The DSEIS (p. 3-117) states that there would be no effect on stream temperatures because there will be no riparian harvest.

Issue 7. The Forest Plan is invalid because they have not analyzed the cumulative effects of the 70 Forest Plan amendments and because the Forest Plan assumptions do not take into account new and best new available science.

Response: The Forest has responded to this issue in the Response to Comments (FSEIS, p. 4-27, Comment #9). An analysis of the *Cumulative Effects of Forest Plan Amendments on Wildlife on the Kootenai NF* was written by Wayne J. Johnson, Forest wildlife biologist (PF, Vol. 32,

Doc. 22). A Forest Plan cannot be amended each time a new piece of data is published. However, as each new project is analyzed, site-specific analysis can and does take into account the latest best available science, just as the NE Yaak project has done (ROD, p. 4).

Issue 8. Cumulative Effects and Monitoring.

Issue 8, Contention 1. The analysis does not adequately address cumulative effects, and specifically, the SEIS fails to disclose the degree to which the newly logged openings will add to existing logged openings, and/or will create openings larger than 40 acres that are inconsistent with the Forest Plan and NFMA.

Response: The DSEIS (pp. 3-33 to 3-34) addresses the effects on forest vegetation in relation to past and proposed harvest, and specifically says the 264 acres of regeneration harvest would “minimally overlap” past harvest areas. The consistency with NFMA and the Forest Plan is addressed in both the DSEIS and ROD. The ROD (p. 23) states the project will not produce any openings that exceed 40 acres in size. I find the discussion of the various resources in Chapter 3 to be an adequate analysis and disclosure of the direct, indirect, and cumulative effects of implementing the alternatives analyzed. The analysis is further supported by cumulative effects worksheets found in the project file for each resource. The project and analysis are in compliance with NFMA and NEPA.

Issue 8, Contention 2. The KNF has not disclosed whether there has been past monitoring in the project area, nor what the results of the past monitoring are, if any has been done. The KNF is in violation of NFMA due to the fact that they have not monitored and reported the effects of implementing the Forest Plan.

Response: The monitoring and evaluation described in the Forest Plan is designed to provide the decision maker and the public information on the progress and results of implementing the Forest Plan. Not every project is monitored for Forest Planning purposes. Instead, a sample of each year’s projects is monitored in order to evaluate how well the Forest is succeeding in implementing the Forest Plan. The Forest is conducting the monitoring required in the Forest Plan and reporting the resulting in the yearly Forest Plan monitoring reports (PF, Vol. 20).

The Forest conducted monitoring of previous activities in the project area (e.g., Wood Rat Environmental Assessment), as required by the NEPA documents compiled for those sales. The results of that monitoring can be found in past monitoring reports (PF, Vol. 20). The Northeast Yaak project is in compliance with Forest Plan monitoring and evaluation requirements, and NFMA.

Issue 9. The analysis has failed to use the best available science.

Response: The use of best available science is well documented in the project file and specifically addressed in the ROD (pp. 4 and 19). Various forms of reference material (site-specific data, research papers, and informal consultations with private and other agency specialists) were cited throughout the analyses (DSEIS, Chapter 3 and Appendix H). Documentation of communications with other agency specialists, such as the USFWS;

Interagency Grizzly Bear Committee; Montana Fish, Wildlife, and Parks; and Montana DEQ, is provided in the administrative record. The NEPA analyses and documents identify methods used, reference scientific sources relied on, discuss responsible opposing views, and disclose incomplete or unavailable information. The project record includes references for all scientific information considered: papers, reports, literature reviews, review citations, peer reviews, science consistency reviews, results of ground-based observations, and among other citations (PF, Vols. 20 to 32). The specialists' report includes discussions substantiating that consideration of the aforementioned material was a consideration of the best available science.

This project identifies methodologies used in the analyses and fulfills the requirements to make "explicit reference... to the scientific and other sources relied upon for conclusions...." (40 CFR 1502.24). The project record clearly and specifically addresses "responsible opposing view" (40 CFR 1502.9(b)) (PF, Vol. 20, Doc. 2). The environmental analysis indicates that the Agency took a hard look at the opposing viewpoint and scientific publications and data sources relevant to the issue and circumstances of the project. In accordance with 40 CFR 1502.9, the Agency has disclosed and discussed all major points of view on the environmental impacts of the alternatives including the proposed action, responded to comments as required in part 40 CFR 1503, and discussed any responsible opposing views and indicated the Agency's response to the issues raised (40 CFR 1502.9) (FEIS, Response to Comments, Letter 13; and FSEIS, Response to Comments, Letter #9). The project analysis has used the best available science.

Issue 10. The Northeast Yaak EIS does not demonstrate that the project and its analysis are consistent with all standards contained in the Lynx Conservation and Assessment Strategy (LCAS).

Response: The LCAS is not Forest Plan direction. The conservation agreement between the USFWS and Forest Service says we would consider the LCAS when doing site-specific project analysis. Not all standards in the LCAS necessarily apply to the proposed project. The wildlife biologists considered the LCAS and determined the following items do apply to the NE Yaak project and they analyzed the impacts to lynx accordingly (DSEIS, pp. 3-91 to 3-93).

- 1) Management shall not change more than 15 percent of lynx habitat within an LAU to an unsuitable condition within a 10-year period;
- 2) Within an LAU, maintain denning habitat in patches generally larger than 5 acres, comprising at least 10 percent of the lynx habitat; and
- 3) If more than 30 percent of lynx habitat within an LAU is currently in an unsuitable condition, no further reduction of suitable conditions shall occur as a result of management activities.

The DSEIS analyzes the direct, indirect, and cumulative effects on lynx, discloses the project meets all applicable portions of the LCAS, and determines the project may affect, but is not likely to adversely affect Canada lynx or its habitat. The analysis is consistent with ESA, the lynx conservation agreement, and the LCAS.

Issue 11. Grizzly Bear and ESA.

Issue 11, Contention 1. The significance of withdrawing the 2004 Biological Opinion is that the Forest Service can no longer rely on the previous section 7 consultation on the Access Amendment or compliance with standards set forth in the Terms and Conditions in the 2004 Biological Opinion for legal coverage under the ESA. As pointed out above, everything the Forest Service relied upon for the determination is outdated and fails to rely on the best available science.

Response: The best available science was used in the analysis for grizzly bear (PF, Vol. 32, Doc. 24, and Vol. 33, Docs. 2, 4, and 5; DSEIS, pp. 3-82 to 3-88; FSEIS, Appendix 2, pp. 2-1 to 2-5).

On Dec 13, 2006, Judge Molloy set aside the 2002 FEIS and 2004 ROD for the Access Amendment. The FWS subsequently withdrew their 2004 Biological Opinion on the Access Amendment. Therefore, the grizzly bear standards and analyses in place prior to the Access Amendment once again set the required level for the effects analysis. Johnson 2006 (PF, Vol. 32, Doc. 23) describes the six recovery objectives that are to be addressed. The project is in compliance with these objectives (PF, Vol. 33, Doc. 4), and the project increases grizzly bear core from the existing 55 percent to 56 percent during and after the project through the closure of the East Blacktail and Fast Creek Road system (DSEIS, pp. 3-83 to 3-91). The project meets or exceeds all grizzly bear habitat requirements (ROD, pp. 19 to 20).

Issue 12, Contention 2. The Forest Service's determination that the project is 'not likely to adversely affect' grizzly bear and the FWS concurrence with that determination are in error; helicopter logging in grizzly bear core habitat constitutes an adverse effect.

Response: The 'not likely to affect' determination is based on the small amount of work that is being done in core habitat, and the fact that much of this work will be done during the winter or denning season when bears are hibernating (DSEIS, pp. 3-85 to 3-86). This project will also increase grizzly bear core area from the existing 55 percent to 56 percent during and after the project through closure of the East Blacktail and Fast Creek Road systems. The project complies with the ESA and meets or exceeds all grizzly bear habitat requirements (ROD pp. 19 to 20).

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and, except for old growth issues as discussed in Issue 3, have found that the analysis and decision adequately address the issues raised by the appellants. I recommend the old growth management units be

dropped from the project. I further recommend the rest of the Forest Supervisor's decision be affirmed and the appellants' requested relief be denied.

/s/ Cathy Barbouletos
CATHY BARBOULETOS
Appeal Reviewing Officer

cc:
Forest Coordinator
Responsible Official