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Appeal No:06-05-00-0009-A215 (LFPG)
06-05-00-0010-A215 (Preston)
06-05-00-0011-A215 (SNFPC)
Date:December 19, 2005

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Dear Appellants:

On October 28, 2005, Pete Harrison filed a Notice of Appeal (NOA) on behalf of Californians for Alternatives to Toxics (CATs), pursuant to 36 CFR 215, of the Lassen National Forest Supervisor's Record of Decision (ROD) approving Alternative 14 of the Creeks Forest Health Recovery Project Final Environmental Impact Statement (FEIS) that was signed on September 9, 2005. On November 3, 2005, Mr. Hanson filed an appeal on behalf of the John Muir Project of Earth Island Institute and the Center for

Biological Diversity (JMP). On November 4, 2005, Ms. Puterbaugh filed an appeal on behalf of the Lassen Forest Preservation Group and the Yahi Group Sierra Club (LFPG), Ms. Preston filed an appeal on her own behalf, and Mr. Edelson filed an appeal on behalf of the Sierra Nevada Forest Protection Campaign, the Sierra Club, the Lassen Forest Preservation Group, and the Butte Environmental Council (SNFPC).

I have reviewed the entire appeal record, including your written Notices of Appeal (NOA), the ROD, FEIS, and supporting documentation. I have weighed the recommendation from the Appeal Reviewing Officer and incorporated it into this decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeals and on the specific relief requested.

APPEAL DECISION SUMMARY

I affirm the Forest Supervisor's decision to implement Alternative 14. The Forest Supervisor may proceed to implement the decision 15 days following the date of this letter.

FOREST ACTION BEING APPEALED

The project implements management direction in the Lassen National Forest Land and Resource Management Plan (LRMP) as amended by the Herger-Feinstein Quincy Library Group (HFQLG) Forest Recovery Act FEIS ROD (1999), FSEIS ROD (2003) and the Sierra Nevada Forest Plan Amendment (SNFPA) ROD (February, 2004). The project will accomplish 9,190 acres of fuels treatments including 5,905 acres of defensible fuel profile zones (DFPZs) and 3,285 acres of individual tree selection (ITS) or area thinning, which would be accomplished by treating surface, ladder, and canopy fuels utilizing a combination of commercial timber sales, service contracts, and force account crews. Additionally, 1,186 acres would be treated through group selection, in groups smaller than 2 acres. The road system would be improved by the construction of 1.9 miles of system roads, 3.7 miles of temporary roads, upgrading of 5.0 miles of non-system routes to temporary roads, improving road surfaces at over 80% of the 179 stream crossings, and at the conclusion of the project, closing and obliterating 1.2 miles of system road and 8.7 miles of temporary roads. Within 612 acres of DFPZ, the project would maintain existing suitable spotted owl and marten foraging habitat in key areas by leaving 10% untreated islands and retaining minimum 40% canopy closure.

The project will continue implementation of the HFQLG Act direction to test the effectiveness of constructing a network of DFPZs, group selection timber harvest, and individual tree selection designed to meet ecologic, social, economic, and fuel-reduction objectives. The DFPZs will link to a larger strategic system to reduce the potential size of wildfires and to provide relatively safe locations from which to take action against wildfires. Treatments within DFPZs are designed to achieve desired future conditions by reducing surface fuels, ladder fuels, and crown fuels. The ITS treatments are designed to improve the health of forest stands and promote an uneven-age structure by reducing overstocked stands to desired densities, and reinforce DFPZs by strategically reducing

fuel concentrations to decrease fire severity and rates of spread. The group selection units will promote an adequate timber supply and local economic stability, to provide conditions for the regeneration and growth of more fire tolerant pine species and recruitment for future pine overstory, and provide structural diversity.

The project will implement HFQLG Act direction to implement economically efficient treatments and to contribute to community stability by providing employment and by providing a wood supply for the local manufacturers who rely on federal timber to keep plants operating. It will also provide access necessary to implement the project activities, while reducing the potential environmental impacts caused by these roads through upgrading, construction, obliteration and/or decommissioning.

APPEAL SUMMARY

See the enclosed Appeal Reviewing Officer letter for a complete discussion of your participation in the National Environmental Policy Act (NEPA) process and the results of informal disposition efforts. In summary, all appellants have established standing to appeal this decision. No issues were resolved during the informal resolution meetings.

RELIEF REQUESTED

You requested the following: rescind the ROD and re-evaluate the project in light of the appeal issues (CATS); withdraw the FEIS and ROD (JMP); overturn the decision (LFPG and SNFPC); reverse the decision and require the forest to comply with all applicable laws (Preston).

ISSUES AND RESPONSES

Issue 1: The forest failed to include necessary monitoring and maintenance plans for DFPZ, thinnings, GS, and other project fuels treatments. The Forest must disclose and commit to these connected actions. (CATS Appeal, pp. 2-4)

Response: Within Chapter 3 of the FEIS, Affected Environment and Environmental Consequences, DFPZ maintenance is identified and disclosed as a foreseeable future action (FEIS, pg. 112) for 5 to 30 years beyond project initiation. “A decision on what type of treatment would be made at the time that maintenance is required. The maintenance of the DFPZs would become part of the District’s fuels management program.” (FEIS, pg. 112).

Appendix A of the FEIS, discusses potential DFPZ monitoring and maintenance (pages A-5 to A-7). Table A-4, List of Reasonably Foreseeable Future Actions, states: “Expected DFPZ maintenance treatments are tiered to the Herger-Feinstein Quincy library Group Final Supplemental Environmental Impact Statement (HFQLG FSEIS, 2003) (USDA FS, 2003d). The proposed DFPZ treatment units were analyzed using GIS

to identify predicted post-treatment vegetation conditions and maintenance regimes identified under the SEIS. Approximately 72 acres of DFPZ maintenance using herbicides was [sic] identified through analysis using the 2003 HFQLG SEIS. Upon review, the strata of 52 of these acres were deemed incorrect based on local vegetation data. It was not considered cost efficient or reasonable to treat the remaining 20 acres using herbicides because they were small discontinuous areas. These areas were joined to adjacent larger areas of proposed hand and prescribed fire treatments.” (FEIS, pg. A-5). A combination of hand treatment, mechanical treatment, and prescribed fire may be used for future maintenance. There is no potential use of herbicides identified for maintenance of the project (FEIS, pp. A-5 to A-7).

According to Appendix A of the FEIS, post treatment evaluation and monitoring would be conducted to confirm and/or adjust proposed maintenance treatments based on local existing and projected fuel conditions (FEIS, pg. A-6). Prior to implementation of maintenance activities the Forest Service will conduct an additional project-level analysis for any DFPZ maintenance.

I find that the Forest Supervisor adequately disclosed and discussed monitoring of project treatments and potential maintenance treatments to the extent that the current decision would be affected.

Issue 2: The Forest failed to provide a clear, rational, easily or any understandable justification within the EIS for the proposed extreme Sporax application rates. (CATS Appeal, pp. 4-5)

Response: The FEIS explains the rates of application of Sporax on pages 63 and 64, where it states that the selected alternative would require application of an EPA registered borate compound (Sporax) on all cut stumps of true fir and pine trees greater than 14 inches in diameter to protect against the spread of annosus root disease. Alternative methods of annosus root disease control, including prescribed burning, timing of the harvest treatments, and application of the competitive fungus *Phlebiopsis gigantea* are discussed in the FEIS on pages 64 and 65. These treatment strategies were developed for forests in the southeastern United States and have not been proven to be effective in California.

I find that the Forest Supervisor adequately analyzed and documented the rationale for the application rates of Sporax.

Issue 3: The Creeks FEIS failed to adequately respond to comments on the DEIS. (JMP Appeal, page 1 and Preston Appeal, pp. 4-5)

Response: The FEIS addresses the comments to the DEIS in Appendix C, Response to Comments. Specifically, responses to comments from the John Muir Project are found on pages C-20, C-21, C-22, C-36, C-37, C-38, C-39, C-57, C-107, C-110, and C-120. Responses to comments from Preston are listed on pages C-69 through C-78 and C-107.

The responses often reference the location where information has been analyzed in the FEIS. All comments were responded to in Appendix C of the FEIS.

One significant issue was identified from the comments received on the DEIS. The issue is maintenance of habitat connectivity between areas of suitable habitat for the California spotted owl and American marten. The issue was used to develop Alternative 14 (FEIS, pp. 9-10 and 23-25).

While you may disagree with the Forest Supervisor's responses to your comments, I find that she adequately considered your comments.

Issue 4: The Science Consistency Check report pertaining to the Empire project pertains with equal force to the Creeks project and was not considered in the FEIS; therefore, significant new information was not analyzed as required. (JMP Appeal, pg. 1)

Response: The Plumas National Forest requested the Pacific Southwest Research Station lead a Science Consistency Review (SCR) of the Draft Environmental Impact Statement for the Empire project. The request specifically called for the SCR team to evaluate whether the DEIS and attending documents considered and correctly interpreted applicable and available scientific information. The final version of the Empire SCR was given to the Plumas National Forest on August 17, 2005. There was no expectation of distribution of the Empire SCR beyond the project Interdisciplinary Team. The ROD for Creeks Forest Health was signed September 9, 2005. The SCR was not available to be considered in the Creeks Forest Health FEIS. Neither did the appellant have the opportunity to raise this issue during the comment period; this is the first time the agency has had an opportunity to consider it.

The Science Consistency Review (SCR) for the Empire Project on the Plumas National Forest was written specifically for the Empire project and there is no direct tie to the Creeks project. Although some of the opinions contained in the Empire Science Consistency Check (SCR) may apply on a broader scale, the findings have not been formally evaluated by my staff for applicability to other projects.

I find that the Forest Supervisor could not have been reasonably expected to have considered the Empire SCR as specifically pertaining to the Creeks project.

Issue 5: The decision violates the Forest Management Act and the Clean Water Act by failing to support the finding that the project meets minimum management requirements regarding water quality and soil conservation for non-point sources of pollution. The cumulative watershed effects analysis is insufficient and flawed. (LFPG Appeal, pp. 3-8)

Response: The FEIS states that this project will be consistent with the Clean Water Act through implementation of Best Management Practices (BMPs), and adds that "the land

disturbing activities described in the proposed action would be dispersed in time and space so that the subwatersheds would not reach or exceed the threshold of concern for overall watershed disturbance” (FEIS, pg. 239). Integrated design features for all action alternatives, which ensure compliance with the BMPs, are listed on pages 27-31 of the FEIS, and all applicable BMPs are referenced in Appendix E of the FEIS.

The FEIS includes a cumulative watershed effects analysis (CWE) and monitoring strategy (FEIS, pp. 214-246 and CWE in project file). In Chapter 3 of the FEIS, Affected Environment and Environmental Consequences, watershed effects are discussed on pages 214-246. Both ERA and road density numbers in the Grizzly Creek and Lemm Hollow subwatersheds are currently high. The current project increases disturbance in these watersheds. The application of BMPs would minimize on-site impacts associated with the proposed action, while road surfacing and spot gravelling at road crossing sites would reduce delivery of sediment to project area streams (FEIS, pg. 242).

Within the response to comments section there is extensive discussion of both a programmatic and project specific monitoring process for water quality and BMP effectiveness (FEIS, pp. C-96 & C-97, comment 25-2). Monitoring of BMP implementation and effectiveness for HFQLG projects is conducted across the three-Forest HFQLG pilot project area. Roads, road crossings, timber skid trails, timber landings, and protection of streamside zones during timber harvest are all evaluated. A monitoring reach has been established in Rock Creek (located within the Creeks project area), and data collection has begun there.

The FEIS states: “It should be noted that range activities were considered but not included in the ERA analysis. The Soda Creek allotment covers 28,000 acres... Given the limited intensity of grazing in the allotment (40 head annually) watershed impacts from grazing...would not measurably increase the risk of cumulative effects.” (FEIS, pp. 239-240)

Based on disclosure in the FEIS as noted above, the ROD states that this project is in compliance with the Forest Land and Resource Management Plan (FLRMP), as amended (ROD, pg. 8). By following the FLRMP direction regarding cumulative watershed effects and soil quality, this project complies with the National Forest Management Act requirements.

I find that the Forest Supervisor’s decision is in compliance with the National Forest Management Act and with the Clean Water Act.

Issue 6: Best available science was not used in regards to migratory bird species. The project should follow “key recommendations” from the Plumas Lassen Administrative Study (PLAS). (LFPG Appeal, pp. 8-9)

Response: The appellant alleges that the best available science concerning migratory bird species is the Plumas Lassen Administrative Study (PLAS).

Information from the PLAS report was used in analyzing the treatment effects (FEIS pages 210-213 and C-66): “In that study, the pre-treatment data shows that the treatment areas within the Creeks Project have one of the highest species richness within the PLAS study units.” The impacts to migratory birds are summarized as follows: “The long-term effect would be positive for species that prefer edge habitats. There is likely to be a decrease in species that prefer dense canopied forest habitats however, the overall effect is likely to be a slight increase for species richness within the project area.” (FEIS, Appx. C, pp. C-66 to C-68) The FEIS used monitoring data from the Creeks project in the PLAS.

The FEIS does not address all of the recommendations in the 2005 PLAS report, because the document is an annual report (not a decision document) and the recommendations have not been adopted by the Forest.

I find that the Forest Supervisor has followed all applicable law, policy, and direction in regards to migratory birds.

Issue 7: The FEIS fire/fuels analysis is deficient in describing the beneficial effects of wildfire and misleads the public by grouping moderate and high intensity fires. You have not used the best available science in your alternative selection. (LFPG Appeal, pp. 9-10)

Response: The FEIS recognizes the beneficial effects of low and moderate severity fire: “Low and moderate severity fires consume patches of fuel and kill mostly seedlings and saplings in the understory and occasionally small groups of main canopy trees (Kilgore and Taylor, 1979). This fire regime is purported to create a multi-aged forest with open and closed canopy conditions and heterogeneous fuels, which impedes development of high severity fire and leads to a shifting mosaic of steady-state forest at the landscape level (Bonnicksen and Stone, 1982)” (FEIS, pg. 87). The Fire and Fuels portion of Chapter 3 (pp. 86-119) discusses different types of fire behavior and resultant fire severity. Prescribed fire would create a mosaic of conditions creating bare mineral soil in some areas and leaving vegetation intact in other areas (FEIS, pg. 99). In general, crown fires burn hotter and result in more severe effects than surface fires (FEIS, pg. 95).

In response to the concern about not using the best available science, the ROD states that the decision to implement Alternative 14 is based on consideration of the analysis presented in Chapter 3 of the FEIS, the best available science, public comments, and new information (ROD pg. 4). In comparing the no action and action alternatives, the decision maker decided to implement Alternative 14 (ROD pg. 6). The chosen alternative meets the purpose and need of implementing economically efficient treatments to reduce hazardous fuels and to contribute to community stability.

The rationale for the Forest Supervisor’s decision was documented in the ROD. She stated: “I am more concerned about the potential of having another fire similar to the Storrie Fire within the Creeks Project. The effects of the Storrie Fire on watersheds within the analysis area were devastating in the high intensity burn areas: ground cover

was removed by the fire, vegetation was killed and stream shade was completely removed, large and small organic material within and adjacent to streams was eliminated. As was shown in the No Action alternative, I think the risk of another fire may have a more significant impact on the watersheds than implementation of Alternative 14” (Creeks ROD, pg. 6).

I find that the Forest Supervisor acknowledged the beneficial effects of fire, and used the best available science as one criterion in her decision making process.

Issue 8: The record fails to adequately assess the effects of the project on USFS sensitive species in the Lassen National Forest (specifically the California Spotted Owl, American marten, Northern Goshawk, Pacific Fisher). (LFPG Appeal, pp. 10-14 and SNFPC Appeal, pp. 3-19)

Response: California Spotted Owl: The FEIS documents the management status of the California spotted owl, which is currently a Forest Service sensitive species. In June 2005, the US Fish and Wildlife Service found that there was sufficient new information that might warrant listing of the owl under the Endangered Species Act. A decision on the status of the owl is due within nine months from June 2005 (FEIS, pp. 134-136).

The FEIS discusses the California spotted owl on pages 134-162, and in the BE (pages 18-43). The FEIS discusses the impacts to habitat in terms of acres and percentages in lieu of population number data throughout the analysis. Project effects are as summarized on page 152 of the FEIS: “The project affects nearly 20% of the known owl territories on the forest and results in declines of up to 30% of the available suitable habitat within a given territory. The analysis presumed DFPZs to reduce suitable habitat to unsuitable. Area thins would retain the attributes considered necessary for suitability and likely provide for long-term improvements in the suitability of the stand due to an expected increased multi-layered structure. Because a number of factors that [sic] influence reproductive efforts, it is difficult to determine what direct role this project would have as the project does not eliminate habitat but rather reduces the habitat to some level that is not readily used by owls. It is likely however that the project would have an adverse affect on reproduction but the change is likely to be masked by annual variation in reproduction caused by weather, changes in prey, or other natural phenomenon. Although reproduction may decline, adverse impacts to individuals are unlikely. Nest sites would be protected through the PAC and limited operating periods. Owls would be able to readily move away from disturbance....The treatment is not likely to affect individuals other than disturbance.” (FEIS, pg.152)

The conclusion (determination) that the Creeks project is not likely to threaten owl viability or contribute to a trend towards listing is based on the entire occupied range of the spotted owl. The cumulative effects of fully implementing the HFQLG pilot project were modeled, analyzed and displayed in the 2004 SNFPA FEIS. This analysis documented cumulative effects to habitat across the entire Sierra Nevada range, including the HFQLG pilot project area. The analysis formed the basis for the determination on owl viability across the entire Sierra Nevada range. The Creeks project site-specific

cumulative effects were based on a 32,570 acre analysis area, of which approximately 29,727 acres are composed of National Forest. This analysis area is defined as the project treatment area plus an additional larger land base determined by potential direct, indirect and cumulative effects on spotted owls.

The FEIS states on page 143: “The home ranges that have had reproduction and are directly affected by the project would retain at least 1000 acres of suitable habitat (meeting requirements post-QLG) and are above 30% suitable habitat within the 4,500 acre home range, the minimum threshold recommended by Bart (1995).”

Goshawk: The proposed project effects on the Northern goshawk, a Forest Service sensitive species, are discussed in detail within the biological evaluation (BE). Surveys identified two new goshawk nest sites during project evaluation. “In addition to analyzing the selected alternative, this BE/BA will also assess the designation of two northern goshawk protected activity centers (PACs) as required in the 2004 SNFPA (USDA 2004a). During project surveys completed in 2005, two new goshawk nest sites were found within and adjacent to the project area as described in the Creeks FHRP (USDA 2005). Current direction requires that 200 acre PACs be designated for each new territory and analyzed within a biological evaluation. The territories will be analyzed for any potential impacts due to implementing the Creeks FRHP FEIS (USDA 2005a).” (Creeks BE, pg. 2)

The BE notes that “the literature does indicate that nest sites are strongly associated with stands greater than 60% canopy cover. Locally, 80% of the known nests are within stands exceeding 60% canopy cover and the majority of those exceed 80% canopy cover (Callas and Richter 1999).” (Creeks BE, pg. 44) There are studies that also indicate use of diverse habitats. “Outside of specific nesting needs, goshawks are best described as habitat generalists and most habitat models reflect a preference for a heterogeneous landscape, reflective of a highly diverse prey base. Management activities that change the landscape do not necessarily preclude a rich population of goshawks. For example, Woodbridge and Detrich (1994) state that even though their study area was fragmented due to extensive timber harvest there was a high density of goshawks. A full discussion of habitat and behavioral characteristics and preferences is provided in the biological evaluation prepared for the HFQLG FEIS (USDA FS, 1999).” (Creeks BE, pg. 44)

The biologist has concluded that, “Overall this alternative would have minor to moderate impacts to habitat through changes in structure with very little change in habitat suitability where habitat suitability is determined by CWHR values. The group selections are expected to generate the most change in habitat value but account for the lowest acres that are affected. All thinning would likely reduce habitat value, either through reduction in nesting habitat suitability or through simplification of the habitat. The affects to habitat can include a decline in the amount of decadence and loss of stand heterogeneity due to concentrating on the removal of the lower size classes within the treated areas.” (Creeks BE, pg. 48)

Marten: The FEIS identifies the American marten as a Forest Service sensitive species, and uses this status to complete the effects analysis (FEIS, Table 3-32, pg. 135). The proposed project effects on American marten are discussed in detail within the biological evaluation (BE, pp. 59-69). The FEIS states: “The project is likely to have three main impacts to marten within the project area; a reduction in the quality of habitat within the individual home ranges, increased potential for mortality due to predation, and a reduction in the quality of connective habitat for project area ingress and egress.” (FEIS, pg. 183). The 4D and 4M habitat that will be affected with the implementation of the Creeks project is identified on Table 3-51 (FEIS, pg. 180). Connectivity was addressed with the development of Alternative 14, which leaves ten percent of the treatment units as non-treatment leave islands which would emphasize maintaining small diameter tree canopies. Details of this treatment can be found in Chapter 2, in the Alternatives Considered in Detail. This issue is also addressed in Appendix C, Response to Comments for comments #32-12, 32-13, 32-14, 32-15, 32-16, 32-17, 32-18 and 32-19 (FEIS, pp. C-83 to C-87).

Fisher: According to the FEIS, “Fisher are widely considered to have been extirpated from the northern Sierras.” There are no verified sightings of fisher within the project area, and none on the Ranger District for the last 20 years. Additionally, the FEIS states that “Although some of the vegetative attributes may be present, based on habitat preferences shown in the southern Sierras and factors such as snow, the project area provides little or no habitat potential for this species therefore the project would have little or nor affect on the totality of habitat within its former range...the fisher is not further analyzed in this document.” (FEIS, pp. 172 and 173)

I find that the Forest Supervisor adequately acknowledged the potential effects to sensitive species, including the California spotted owl, American marten, Northern goshawk, and their habitat; and that the Forest Supervisor appropriately decided not to analyze potential impacts to Pacific fisher habitat components.

Issue 9: The forest failed to adequately assess cumulative effects to water quality and wildlife. (LFPG Appeal, page 15)

Response: Cumulative effects to wildlife are addressed in the Creeks BE (project file) and FEIS (pp. 125-213). The BE also addresses risk and uncertainty. According to the BE, the link between project actions and the risk to the species is uncertain. As Lee and Irwin (In Press), Blakesley (2003), and others have pointed out there appears to be a correlation between the amount of suitable habitat and long-term territorial fecundity. However that relationship is far from clear, especially in habitats that have a low degree of variation and where treatments result in habitat reductions such as with the area thinnings, rather than a complete loss of habitat as with a clearcut (Creeks BE, pg. 39). The biological evaluation is also very specific about the extent of the cumulative effects area. There are two levels considered for cumulative effects. The first consideration, the potential for declines in nesting success (the number of young produced annually), must be considered at the Forest level. The second area of risk is to owl territories, that is, the risk that the number of owl territories would decline (secondarily affecting nesting

attempts and the ability to maintain or increase the current population within the project area). The analysis area is limited to the area where direct and/or indirect effects are discernable. (Creeks BE, pg. 40)

The conclusion reached within the biological evaluation is that no new data was discovered that would indicate that the project would cause loss of viability for the species considered in this analysis at the project or Forest level, although reproductive efforts may be reduced temporarily (Creeks BE, pg. 71).

I find that the Creeks Forest Health Recovery Project FEIS followed all applicable law, policy, and direction in assessing cumulative effects to water quality and wildlife.

Issue 10: The FEIS provides an insufficient summary of the current condition. (Preston Appeal pg. 2)

Response: The current conditions are described in depth in numerous places in the FEIS. The affected environment section describes the current vegetative conditions, including cover types (pp. 44-45), stand structure (pg. 45), stand densities (pp. 45-48), fuel conditions (pp. 87-97), wildlife habitat conditions (pp. 122-124), vegetative decadence (pp. 130-134), watershed conditions (pp. 224-233), botanical resources (pp. 247-253 and 260-261), range values (pp. 274-281), and visual resources (pg. 291).

I find that the Forest Supervisor adequately described the current conditions.

Issue 11: The FEIS lacks monitoring and population data for the management indicator species (MIS) identified in the FEIS including mule deer and black bear and failed to analyze the gray squirrel . (Preston Appeal, pp. 2-22).

Response: The former part 219 of 36 CFR, under which the Lassen FLRMP was created and amended, relates to National Forest System Land and Resource Management Planning (the Forest Plan level); the requirements to monitor population trends of MIS and relate to habitat changes (219.19(a)(6)) and inventories that include quantitative data (219.26) relate to the Forest Plan level planning effort. Population survey information for MIS is generally not required at the project level as long as effects to MIS habitat are adequately analyzed and disclosed. Cumulative effects for the Management Indicator Species that were analyzed for this project are included at the end of each species' description within the wildlife portion of the FEIS (pp. 191-213).

Regional clarification for evaluating MIS at the project level says that "For each selected project-level MIS, identify and analyze habitat impacts from the project ..." (emphasis added). The Wildlife section in Chapter 3 of the FEIS (pp. 191-213), and referenced tables, discloses qualitative and quantitative impacts to habitat for all the project level MIS that were analyzed in the Creeks analysis. Regional direction states: if population trend information is known, it should be disclosed. The FEIS states that population information is not known for the deer.

For Mule deer, the FEIS states, “The current estimate ranges between 14,700 and 15,600 individuals based on CDF&G statistics for the East Tehama Deer Herd. The number of deer that utilize the project area is unknown.” (FEIS, pg. 193).

Black bear population estimates are given on page 198 of the FEIS, “The DFG estimates that within Plumas County bear populations average .5 to 1.0 bear per square mile. That would make the District estimate to be between 325 and 650 individuals and 25 to 50 individuals within the project area.”

For the gray squirrel, the Forest stated in the response to comment #31-19 that, “The area is dominated by red fir and red and white fir communities. Based on habitat suitability indices (CWHR program), less than 50% of the project area provides even medium habitat capability. Red fir is not considered to be suitable and oak woodlands are generally recognized as a preferred habitat attribute. Oak is largely absent in the project area as noted in the FEIS (FEIS, Chapter 3, Wildlife Section). To be considered an appropriate MIS, the habitat must be such that changes in habitat can be used to predict impacts to the species and the guild they may represent. Because the habitat is limited, the gray squirrel makes a very poor MIS species for the project area and, therefore, was not considered.” (FEIS, pg. C-75)

The Lassen National Forest LRMP includes monitoring requirements for MIS at the Forest level, and specifies how that will be done, such as using California Department of Fish and Game numbers for deer and bear, and pileated woodpecker numbers by transects, which are conducted by Point Reyes Bird Observatory (FLRMP, pp. 528-531). The data from this population monitoring is included in the MIS wildlife analysis portion of Chapter 3.

I find that the Forest Supervisor adequately analyzed and disclosed effects to Management Indicator Species. She included population information where known. I further find the Forest Supervisor had a reasonable explanation for not considering the gray squirrel in the MIS analysis for this project.

Issue 12: By not extending the Creeks MIS analysis past the project area the FEIS fails to address indirect and cumulative effects to these species, and thwarts the intended purpose of monitoring broad scale MIS on the forest. (Preston Appeal, pp. 17-18)

Response: The spatial boundaries used to analyze effects to MIS are explained in the Forest’s response to comment #31-8 (FEIS, pp. C-71 to C-72): “The cumulative effects consider habitat at both the District and Project Area level.” Within the FEIS for each MIS species analyzed, a description is given for population data, if available, or the amount of habitat available within the Almanor Ranger District and the amount of habitat available within the project area. Potential impacts from the project are carried through to analyze the direct, indirect and cumulative effects for each species.

I find that the Forest Supervisor analyzed effects to MIS species at the appropriate scale, both at the project and District level, and followed Regional direction for addressing MIS species.

Issue 13: Failure to consider reasonable alternatives and to take a hard look at alternative logging prescriptions; should have considered reasonable alternatives involving less intensive logging; should have included an alternative based upon the 2001 Framework; lack of ability to comment on alternative 14. (SNFPC Appeal, pp. 20-24).

Response: Fourteen alternatives were considered in the FEIS. Three of the alternatives were considered in detail: action Alternatives 1 and 14, and the no action Alternative 2 (FEIS, pp. 14-35). The remaining alternatives were discussed briefly in the FEIS (pp. 35-39); the discussion includes reasons the Forest Supervisor dismissed them from detailed study. Alternatives 3, 4, 5, 7, 10, 11, 13, and 14 consider alternative logging prescriptions to Alternative 1, the proposed action. Alternatives 3, 4, 5, and 13 speak to the diameter limits and were determined not to meet the purpose and need of the project. Alternative 3 is based upon the 2001 Framework (FEIS, pg. 35).

Mr. Edelson alleges that failure to recirculate the DEIS after adding Alternative 14 violates NEPA because the public never had the opportunity to comment on the new alternative. The National Environmental Policy Act 40 CFR 1503.4 (a)(2) states that one possible response of an agency to substantive comment on a draft EIS is to "...Develop and evaluate alternatives not previously given serious consideration by the agency." Alternative 14 was developed in response to comments the DEIS. Further, the alternative does not propose substantial changes to the amount, extent, or effects of the treatments, but restricts the treatments by creating leave islands and retaining more cover. Therefore the alternative is within the scope of the proposals developed for the DEIS, does not make substantial changes, and does not trigger further review.

I find that the Forest Supervisor appropriately considered a range of reasonable alternatives.

Issue 14: The EIS failed to consider, analyze and disclose the project's likely adverse impacts to the pileated woodpecker, fails to explain why the Creeks project will have 'no effect' on the pileated woodpecker, and fails to obtain monitoring data for the pileated woodpecker and other MIS species. (SNFPC Appeal, pp. 24-27).

Response: The Creeks FEIS states that because the treatments would retain suitable foraging habitat for pileated woodpecker use and the snag retention guidelines retain attributes most utilized by the species, particularly for nesting, "the overall project is not expected to affect this species or population trends on the Forest " (FEIS, pp. 206-208). This conclusion, as described in response to comment #32-47, was based on the acres of suitable habitat being impacted when compared to the project and the Almanor Ranger

District land base, the snag retention guidelines, and the impact resulting from the predicted changes in habitat based on the most recent research (FEIS, pp. C-93 to C-94). As outlined in the discussion, there are many ways of defining suitable habitat. The project snag retention guidelines would ensure that snags suitable for pileated woodpecker nesting would be retained within the project area, meeting Schroeder's (1983) description of habitat needs on a per acre basis (Habitat Suitability Index Model, US Fish and Wildlife Service). Bull and others have not defined a snag retention number for management on a per acre basis. Habitat suitability data is elaborated on in the FEIS (FEIS, pp. 204-208). The document states: "Bull et al. (2005) concluded that fuels reduction projects do not necessarily preclude use by pileated woodpecker, if sufficient down wood and snags are retained. In the study, Bull et al. looked at foraging within fuel treatments where logs greater than 4" dbh were part of the retention standards. The project would retain 10-15 tons/acre, preferably in logs greater than 12" dbh and retain snags (per Appendix D) sufficient to meet the foraging needs as described in the study" (FEIS, pg. 206).

The FEIS explains that the adaptive management strategy employed in both the 2001 SNFPA FEIS and the 2004 SNFPA FSEIS specifies a bio-regional monitoring strategy that includes a wide range of species. There is no direction in the 2004 SNFPA ROD that requires MIS monitoring at the project level (FEIS, pg. C-93).

I find that the Forest Supervisor adequately considered and disclosed the project's likely effects to the pileated woodpecker and its habitat.

Issue 15: Cumulative impacts analysis should not be just a listing of projects, but should detail how the projects impacted a specific resource. (SNFPC Appeal, pp. 27-28)

Response: Appendix A of the FEIS has information including a Lists of Past Vegetative Management Actions (Table A-1); a list of Ongoing Actions (Table A-2); a Detailed List of Ongoing Range Allotments (Table A-3); and a List of Reasonably Foreseeable Future Actions (Table A-4). These tables include acreages, timing and activity descriptions. Figures A-1 through A-12 display the activities and the cumulative effects analysis area for each resource. Cumulative effects are addressed in numerous places in the FEIS. Chapter 3 includes analyses of cumulative effects to Silvicultural Resources, Fire/Fuels/Air Quality, Wildlife, Economics, Range, Watershed/Fisheries/Soils, and Recreation/Visual Resources. The wildlife BE/BA, the sensitive plants BE, and the sensitive aquatic species BE also discuss cumulative effects for the selected alternative.

Appendix A, Cumulative Effects, states: "The cumulative effects area (CEA) would be at minimum the project area. In addition, some resources would use a larger CEA such as watersheds. The time period used for including past actions is 20 years before present (1985-2005), and 30 years for cumulative watershed effects analysis." (FEIS, pg. A-1) The past and future actions, the direct and indirect effects, and the level of impact are considered in the analysis as required by Regional Analysis of Cumulative Effects in NEPA direction (R5, 8/4/2005). The FEIS states: "Guidance on cumulative effects, in

particular, past actions, was considered, based on Connaughton (2005) here by incorporated by reference.” (FEIS, pg. A-1).

The discussions of the cumulative effects analysis in the FEIS address the effects as required by law and regulation (reference 40 CFR 1508.7 and 1508.8, and FSH 1909.15 Section 15.1).

I find that the Forest Supervisor completed an adequate cumulative effects analysis.

APPEAL REVIEWING OFFICER'S FINDINGS

The Appeal Reviewing Officer found that the Forest Supervisor’s decision was appropriate and complied with existing laws, policies, and regulations. The project is in compliance with the Lassen National Forest Land and Resource Management Plan (LRMP) as amended by the Herger-Feinstein Quincy Library Group (HFQLG) Forest Recovery Act FEIS ROD (1999), FSEIS ROD (2003) and the Sierra Nevada Forest Plan Amendment (SNFPA) ROD (February, 2004). The purpose and need for the project were clear. The project description was clear. The Forest Supervisor was responsive to public concerns.

DECISION

I have considered all of the appeal issues in making my decision. I have determined that all issues have been adequately addressed by the Responsible Official in the FEIS, ROD, and in the project record.

I affirm the Forest Supervisor’s decision to implement Alternative 14 and deny your requested relief.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/Thomas L. Tidwell

THOMAS L. TIDWELL
Appeal Deciding Officer Deputy Regional Forester

Enclosure

cc:
ritu.ahuja

Date: December 14, 2005

Subject: Creeks Forest Health Recovery Project, Appeal No. 06-05-00-0007-A215 (CATS), Appeal No. 06-05-00-0008-A215 (JMP), Appeal No. 06-05-00-0009-A215 (LFPG), Appeal No. 06-05-00-0010-A215 (Preston), Appeal No. 06-05-00-0011-A215 (SNFPC), Lassen National Forest

To: Appeal Deciding Officer

I am the designated Appeal Reviewing Officer for this appeal. This is my recommendation on disposition of the appeals filed by Pete Harrison on behalf of Californians for Alternatives to Toxics (CATS); Chad Hanson on behalf of the John Muir Project (JMP); Patricia Puterbaugh on behalf of the Lassen Forest Preservation Group (LFPG) and the Yahi Group Sierra Club; Terry Preston; and David Edelson on behalf of the Sierra Nevada Forest Protection Campaign (SNFPC), Sierra Club, Lassen Forest Preservation Group, and Butte Environmental Council; appealing Lassen National Forest Supervisor, Laurie Tippin's, Record of Decision (ROD) for the Creeks Forest Health Recovery Project Final Environmental Impact Statement (FEIS).

BACKGROUND

Decision – In comparing the desired conditions specified in the Lassen National Forest Land and Resource Management Plan as amended by the Herger-Feinstein Quincy Library Group (HFQLG) Forest Recovery Act FEIS ROD (1999), FSEIS ROD (2003) and the Sierra Nevada Forest Plan Amendment ROD (February, 2004), with the existing conditions within the Creeks Forest Health Recovery Project (Creeks Project) analysis area, the Forest Supervisor determined there is an immediate need to:

1. Continue implementation of the HFQLG Act direction to test the effectiveness of constructing a network of defensible fuel profile zones (DFPZs), group selection timber harvest, and individual tree selection designed to meet ecologic, social, economic, and fuel-reduction objectives. The HFQLG Act requires the construction of 40,000 to 60,000 acres of DFPZs, and group selection on 8,700 acres each year within the pilot project area.
2. Construct DFPZs which link to a larger strategic system to reduce the potential size of wildfires and to provide relatively safe locations from which to take action against wildfires. Treatments within DFPZs are designed to achieve desired future conditions by reducing surface fuels, ladder fuels, and crown fuels.
3. Improve the health of forest stands and promote an uneven-age structure through individual tree selection (ITS). Reduce overstocked stands to desired densities, and reinforce DFPZs by strategically reducing fuel concentrations to decrease fire severity and rates of spread.
4. Implement group selection as directed in the HFQLG Act to promote an adequate timber supply and local economic stability, to provide conditions for the regeneration and growth of more fire tolerant pine species and recruitment for future pine overstory, and provide structural diversity.

5. Implement HFQLG Act direction to implement economically efficient treatments and to contribute to community stability by providing employment and by providing a wood supply for the local manufacturers who rely on federal timber to keep plants operating.
6. Provide access necessary to implement the project activities, while reducing the potential environmental impacts caused by these roads through upgrading, construction, obliteration and/or decommissioning.

The Forest Supervisor selected Alternative 14. This decision will implement 9,190 acres of fuels treatments including 5,905 acres of DFPZs and 3,285 acres of ITS or area thinning, which would be accomplished by treating surface, ladder, and canopy fuels utilizing a combination of commercial timber sales, service contracts, and force account crews. Additionally, 1,186 acres would be treated through group selection, in groups smaller than 2 acres. The road system would be improved by the construction of 1.9 miles of system roads, 3.7 miles of temporary roads, upgrading of 5.0 miles of non-system routes to temporary roads, improving road surfaces at over 80% of the 179 stream crossings, and at the conclusion of the project, closing and obliterating 1.2 miles of system road and 8.7 miles of temporary roads. Within 612 acres of DFPZ, the project would maintain existing suitable spotted owl and marten foraging habitat in key areas by leaving 10% untreated islands and retains minimum 40% canopy closure.

Scoping - The Creeks Project was listed in the Lassen National Forest Schedule of Proposed Actions in February 2004 and in March 2005. The Notice of Intent (NOI) was published in the Federal Register on February 28, 2005. Scoping letters were mailed to local tribal organizations, other agencies, individuals, and groups potentially interested in or affected by the Proposed Action on June 4, 2004 and on February 24, 2005.

Comments to the DEIS - The Draft Environmental Impact Statement (DEIS) was published on May 18, 2005 . The Notice of Availability was published in the Federal Register on May 27, 2005 and a legal notice was published in the *Lassen County Times* on June 7, 2005 . Letters were sent to 37 individuals, organizations, tribes, and government agencies advising them of the availability of the DEIS; copies of the DEIS were sent to at least four individuals upon their request. There were 34 commenters, by the close of the comment period on July 11, 2005 . One additional response was received after the closing period. All of the appellants submitted timely and substantive comments on the DEIS.

APPEAL SUMMARY

The Notice of Availability of the FEIS was published in the Federal Register on September 30, 2005 . The legal notice of decision was published in the *Lassen County Times* on September 20, 2005 ; the deadline for filing appeals was November 4, 2005 . The current appeals were filed on October 28, November 3, and November 4, and are timely. Appeals on behalf of the Lassen Forest Preservation Group were filed by both Patricia Puterbaugh and David Edelson.

The following is a summary of the appellants issues:

- Failure to include DFPZ monitoring and maintenance plans (CATS).
- Failure to include non-pesticide annosus root disease prevention alternatives, failure to incorporate lesser borax applications and rates into the proposed actions, failure to disclose a detailed borax analysis (CATS).
- Failure to adequately address substantive comments (JMP, LFPG).
- Failure to evaluate new information from the Empire Science Consistency Review (JMP).
- The decision violates the Forest Management Act and the Clean Water Act by failing to support the finding that the project meets minimum management requirements regarding water quality and soil conservation for non-point sources of pollution (LFPG).
- Best available science was not used in regards to migratory bird species (LFPG).
- The fire/fuels analysis is deficit in describing the beneficial effects of wildfire and misleads the public by grouping moderate and high intensity fires. Current science was not the basis of the analysis's conclusions (LFPG).
- The decision violates NFMA by failing to assess the relationship between the project and its affect on USFS sensitive species and their habitat (California spotted owl, American marten, northern goshawk, Pacific fisher). The project contributes to the risk of viability for these species (LFPG, SNFPC).
- Failure to adequately assess cumulative effects to water quality and wildlife (LFPG).
- Failure to provide a summary of the current condition and completely lacks monitoring and population data for the management indicator species including mule deer, black bear, pileated woodpecker, hairy woodpecker, gray squirrel, bald eagle, osprey. Failure to consider, analyze and disclose likely adverse impacts to MIS (Preston, SNFPC).
- Truncating the Creeks MIS analysis to the project area fails to address indirect and cumulative effects to these species and thwarts the intended purpose of monitoring broad scale MIS on the forest level (Preston).
- Failure to analyze reasonable alternatives and to take a hard look at alternative logging prescriptions (SNFPC).
- Inadequate cumulative effects analysis (SNFPC).

District Ranger Alfred V. Vazquez, acting on behalf of Laurie Tippin, Forest Supervisor, held conference calls with appellants as shown below. In no case were any issues resolved.

11/15/2005 and 11/16/2005	Pete Harrison on behalf of Californians for Alternatives to Toxics (CATS)
11/15/2005 and 11/16/2005	Chad Hanson on behalf of the John Muir Project (JMP)
11/15/2005	Patricia Puterbaugh on behalf of the Lassen Forest Preservation Group (LFPG) and the Yahi Group Sierra Club
11/29/2005	Terry Preston, an individual

11/17/2005	David Edelson on behalf of the Sierra Nevada Forest Protection Campaign (SNFPC), Sierra Club, Lassen Forest Preservation Group, and Butte Environmental Council
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As relief, appellants requested the following: rescind the ROD and re-evaluate the project in light of the appeal issues (CATS); withdraw the FEIS and ROD (JMP); overturn the decision (LFPG and SNFPC); reverse the decision and require the forest to comply with all applicable laws (Preston).

RECOMMENDATION

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. I reviewed the appeal record, including the comments received during the comment period and how the Forest Supervisor used this information, the Appellant's objections and recommended changes. I found that the Forest Supervisor's decision was consistent with law, regulation and policy. She explained the need for the planned actions and provided a detailed proposed action to meet it, while providing for necessary resource protection.

Based on my review of the record, I recommend the Forest Supervisor's decision be affirmed on all issues. I recommend that the Appellants' requested relief be denied on all issues.

FINDINGS

Clarity of the Decision and Rationale

The Forest Supervisor's decision and supporting rationale are clearly presented in the Record of Decision. Her reasons for selecting Alternative 14 are logical and responsive to direction contained in the Lassen National Forest Land and Resource Management Plan as amended by the HFQLG Forest Recovery Act FEIS ROD (1999), FSEIS ROD (2003) and the Sierra Nevada Forest Plan Amendment ROD (February, 2004).

Comprehension of the Benefits and Purpose of the Proposal

The purpose of the proposal is to implement the Lassen National Forest Land and Resource Management Plan as amended by the HFQLG Forest Recovery Act FEIS ROD (1999), FSEIS ROD (2003) and the Sierra Nevada Forest Plan Amendment ROD (February, 2004), to implement and test the effectiveness of certain resource management activities designed to meet specific objectives through the completion of a strategic system of DFPZs, area thinnings and group selection, which will move the project area toward the desired future condition as described in those plans.

Consistency of the Decision with Policy, Direction, and Supporting Information

The decision is consistent with the Lassen National Forest Land and Resource Management Plan as amended by the HFQLG Forest Recovery Act FEIS ROD (1999), FSEIS ROD (2003) and the Sierra Nevada Forest Plan Amendment ROD (February, 2004).

Effectiveness of Public Participation Activities and Use of Comments

Public participation was adequate. A Notice of Intent to prepare an EIS and a Notice of Availability of the DEIS were published in the Federal Register. The project was added to the quarterly Schedule of Proposed Actions. The Forest mailed scoping letters, and distributed the DEIS to interested groups and individuals. Responses to the comments received are detailed and included as part of the EIS. The decision of the Forest Supervisor indicates she considered and responded to public input.

CONCLUSION

Based on the finding above, I recommend the requested relief be denied and that the Forest Supervisor's decision to implement Alternative 14 be affirmed.

/s/ Stanley G. Sylva

STANLEY G. SYLVA
Appeal Reviewing Officer
Forest Supervisor, Modoc National Forest