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File Code: 1570-1/5150

Date: September 23, 2005

Bryan Bird  
Forest Guardians  
312 Montezuma  
Santa Fe, NM 87501

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
NUMBER:**

RE: Objection Response #05-03-00-0001-O218, Perk-Grindstone HFRA project, Smokey Bear Ranger District, Lincoln National Forest

Dear Mr. Bird:

This is my response to the objection that you filed regarding the Environmental Analysis (EA) on the above-referenced project, which under proposed Alternative 2 provides for thinning 1,050 acres up to 9 inches in diameter, thinning 3,774 acres greater than 9 inches in diameter, prescribed burning on 4,339 acres, hand piling and burning on 38 acres, and machine piling and burning or broadcast burning on 934 acres. The alternative would also build and subsequently close 4.34 miles of temporary roads.

The project includes a site-specific plan amendment to allow treatment of trees greater than 9 inches in diameter within Mexican Spotted Owl (MSO) Protected Habitat and MSO Protected Activity Centers to reduce fire risk and improve stand health over a larger percent of the landscape. Alternative 2 would require the use of an aerial system to remove material from the inaccessible portions of the project area.

The project was planned under authorities outlined in the Healthy Forests Restoration Act of 2003. The Responsible Official who will issue a decision on this project is Jose Martinez, Lincoln National Forest Supervisor. This project is subject to predecisional administrative review under 36 CFR 218 interim regulations (as of January 9, 2004).

A meeting was requested in your objection which was received on August 26, 2005. Our acknowledgment letter to you included possible meeting dates. As of today, I have received no communication from you on these dates. I have determined that there is not adequate time remaining to meet before the due date of this response, pursuant to 36 CFR 218.10.

### **RESPONSE SUMMARY**

My response to your objection has been conducted in accordance with 36 CFR 218.10, after a detailed review of the record. This review indicates that the EA does not adequately evaluate and disclose the environmental effects of the project, and the project is not consistent with the Forest Plan direction for Mexican Spotted Owl. By copy of this letter, the Forest Supervisor is instructed to prepare a revised EA which discloses the environmental effects and provide another 30 day objection period.



There shall be no further review from any other Forest Service or USDA official of my written response to this objection (36 CFR 218.10). A copy of this letter will be posted on the internet on the Lincoln Forest appeals and objection listing by date (scroll to bottom of page) at [http://www.fs.fed.us/r3/appeals/forest\\_lincoln/forest\\_lincoln\\_index.htm](http://www.fs.fed.us/r3/appeals/forest_lincoln/forest_lincoln_index.htm)

Sincerely,

*/s/ Abel M. Camarena*  
ABEL M. CAMARENA  
Appeal Reviewing Officer, Deputy Regional Forester

Enclosure: Response to objections

cc: Jose M Martinez, Ron Hannan, Buck Sanchez, Constance J Smith, Mailroom R3 Lincoln, Mailroom R3, Roy A Hall

## Response to Forest Guardian's Objections

#05-03-00-0001-O218

### Perk-Grindstone Vegetation and Fuels Project

#### Smokey Bear Ranger District, Lincoln National Forest

#### **ISSUE 1: The Project violates the Healthy Forests Restoration Act (HFRA) and the 1996 Regional amendments to the Forest Plan (NFMA).**

**Objection A:** The project will violate the Mexican spotted owl recovery plan which is in violation of HFRA. Project fails to describe how the proposed activities will comply with the 1996 Plan amendment in regards to old growth, Mexican spotted owl standards and guidelines, and northern goshawk guidelines. All treatments that harvest trees over 24 inches dbh and create 1-2 acre canopy openings in VSS 4-6 will negatively impact old growth stands across the project area and violate the Plan.

**Response and Finding:** The Perk-Grindstone project is being implemented under Section 102(a)(1) of the HFRA, not under section 102(a)(5), which requires compliance with guidelines of the recovery plan, and does not violate the HFRA.

The project would incorporate a Forest Plan Amendment (EA, p. 14) to allow harvest of trees 9 inches in diameter or larger from within Mexican spotted owl Protected Activity Centers. This amendment would make the project consistent with the Lincoln National Forest Plan regarding removal of trees 9 inches in diameter or larger from protected habitat.

Project prescriptions will maintain old growth characteristics and over time will increase critical stand characteristics, such as diameter growth and overall stand vigor. Thinning will occur from below until an established stand density is attained. See Table 5 on pages 14-15 of EA and page 33.

The project is not consistent with MSO Forest Plan direction for restricted habitat and does not provide enough information to determine if the project is consistent with northern goshawk guidelines.

**Objection B:** The Lincoln National Forest has not mapped old growth and potential old growth in the planning area as required by HFRA and the Forest Plan. Plan standards require an allocation of 20 percent of the each forested ecosystem management area to old growth (1996 amendment ROD, p. 95).

**Response and Finding:** There is no requirement to map old growth or potential old growth in HFRA, the Lincoln National Forest Plan, or the 1996 amendment of forest plans. This issue was addressed in a letter from the Southwestern Region to the Center for Biological Diversity dated September 3, 2004 (Project Record document #40). With project-by-project allocation of old growth across the forest, greater coverage of the forest's allocation of old growth is accomplished, as in this project (EA, p. 33, Project Record document #93).

Allocation of old growth in accordance with Forest Plan direction is not synonymous with an inventory of old growth. The Forest Plan standard is that "allocations will consist of landscape percentages meeting old growth conditions and not specific areas."

**Objection C:** The applicable annual program of work, as mandated by HFRA section 103(a), is not found or referenced in the EA.

**Response and Finding:** This project fits within the definition of the Annual Program of Work as it provides for protection of an at-risk community and implements a Community Wildfire Protection Plan (PR #21). An annual program of work in hazardous fuels is distributed to the Regions in the form of targets and dollars from the Washington Office. There is no requirement for each National Forest to separately publish a program of work nor is there a requirement to publish one in a project EA.

**Objection D:** The EA does not document or analyze suitability under HFRA of every acre proposed for treatments in the Perk-Grindstone project as per HFRA section 102(a). The EA does not prescribe which category of WUI, as outlined in HFRA section 104 (d), that the acres of treatment fall into.

**Response and Finding:** HFRA Sec. 102 (a) lists the areas where authorized projects are to be implemented including federal land in wildland-urban interface areas. The documents in the project record such as the Community Wildlife Protection Plan (PR# 21) show that the Perk-Grindstone Analysis Area falls within a wildland-urban interface as defined by HFRA. Ruidoso is also included in the Federal Register (August 17, 2001) listing of “Urban Wildland Interface Communities within the Vicinity of Federal Lands That Are at High Risk from Wildfire” (PR# 10). However, the general background discussion in the EA does not clearly articulate how this particular project area meets HFRA nor does it summarize these project record documents.

The EA needs to state clearly that the project is within a WUI. Include a paragraph in the Chapter 1 – Purpose and Need section detailing why this particular project is an authorized HFRA project summarizing the project record references. A map in the EA showing the wildland urban interface area and the federal lands to be treated in this project would be helpful.

**Objection E:** All treatments in the project of trees over 9 inches dbh and trees over 24 inches dbh are in direct conflict with HFRA requirement in Section 102(f) to retain large trees.

**Response:** HFRA Section 102(f)(1)(B) states that projects should maximize the retention of large trees, as appropriate for the forest type, to the extent that the trees promote fire-resilient stands. The Perk-Grindstone project EA, on page 33, clearly states thinning will occur from below until an established stand density is attained. Large trees will only be cut when there are too many existing to meet the objective of attaining or maintaining old growth characteristics.

## **ISSUE 2: The Project violates NEPA**

**Objection A:** Site specific analysis is lacking and generic narratives are used. There is no supporting evidence for discussion on effects of thinning and salvage (EA PR#88, p. 35). The EA fails to use good information to address post-implementation fire risk (EA, p. 31).

**Response and Finding:** Long- and short-term effects analysis is necessary to determine the context of a given impact (40 CFR § 1508.27). The EA’s vegetation, air quality, landscape aesthetics, and hydrological effects analyses (PR# 88) are based on general narratives lacking site specificity. Discussion, data in tables, and direct EA references from recent technical papers and publications were used to support the silvicultural analysis and the preferred alternative. The EA does discuss activity fuel treatments but does not address if treatments are sufficient to reduce surface fuel loadings created as a result of treatments and pre-treatment fuel loadings.

The direct and indirect effects analysis needs to be revised to be site specific. Effects analysis should include estimates of fuel treatment efficacy at future intervals, such as at 5, 10, and 20 years, to show how the project meets the purpose and need.

**Objection B:** The Forest failed to adequately disclose and analyze direct and indirect effects of important aspects of the proposed action, such as effects on TES, MIS, protected migratory birds, soils, watershed, and aquatic habitat. Cumulative effects analysis is inadequate. Objector cites to *Lands Council v. Powell* case decision. EA fails to describe and evaluate cumulative effects of each of the other activities in a meaningful way.

**Response and Finding:** The EA does not disclose the effects or provide adequate alternative effects comparisons for the reader to draw meaningful conclusions about each alternative's impacts regarding soils and watershed. Cumulative effects are only considered for Hydrology and Wildlife. The EA addresses other resources with no mention of cumulative effects (PR# 88) in Fire, Vegetation, Air Quality, Soils and Landscape Aesthetics.

The wildlife report (EA, Appendix C) did define the cumulative effects analysis area for the wildlife analysis as the project area but did not explain why they picked such a restricted area when the analysis included species that would clearly move outside this area on a regular basis.

Cumulative effects analysis should be revised to show effects for all resources and to display additive effects of projects that relate to the issues raised in public scoping.

**Objection C:** The project fails to disclose the assumptions and weaknesses of its Forest Vegetation Simulator model as relied upon in the EA and Silvicultural prescription and fuels report. The citizen's alternative proposed that natural clumpiness be used to design the most efficient alternative, which could not be used in the Forest model.

**Response and Finding:** A review of the record (PR# 88, p. 25) reveals that the Fire and Fuels Extension to the Forest Vegetation Simulator (FVS-FFE) was run to analyze differences between proposed alternative treatments. The FVS-FFE model simulates fuel dynamics and potential fire behavior over time, in the context of stand development and management. The FVS-FFE is a peer-reviewed, scientifically based model that has been widely used throughout the interior West during the past five years. A full description of the model is found in the 2005 edition "Essential FVS: A User's Guide to the Forest Vegetation Simulator" (Dixon). Page 25 of the EA should be corrected which states that FVS cannot account for clumpiness.

**Objection D:** The response to comments is non-existent, which is a violation of NEPA. The Forest has failed to respond to comments during scoping and failed to respond to any comments on the proposed project.

**Response and Finding:** The Forest is not required to prepare a formal, written response to comments for HFRA fuel reduction environmental assessments. Furthermore, the notice and comment provisions of 36 CFR 215 do not apply to proposed hazardous fuel reduction projects conducted pursuant to the HFRA (See 36 CFR 215.3(a) and 215.4(f)). The Forest did respond to all scoping responses (PR# 51, 52, 53, 54, 57, and 80) through letters and/or face-to-face meetings. They conducted an adequate scoping effort that meets FSH requirements and documented the effort clearly in the project record (PR# 25, 37, 44, 48, 49, 59, 77; and PR# 88, pp. 8-9).

**Objection E:** The project will severely open the canopy leading to hot, dry conditions and greater exposure to wind; the very conditions most unfavorable to mycorrhizal fungi, thus offsetting the perceived benefits of reduced fire risk described in the Silvicultural Prescription and Fuels report (EA, Appendix B).

**Response and Finding:** Peer-reviewed references used in the EA Appendix B do not support the objection raised here (Friederici, and also see Brown, Reinhardt and Kramer references). This was not an issue raised in scoping by the public or internally in review.

**Objection F:** The project would violate NEPA, the Forest Plan and NFMA by failing to ensure soils will not be irreversibly damaged. Detrimental soil loss will cumulatively exceed the 15 percent Plan standard which is also a requirement in the FSM and NFMA (violating 1604(g)(3)E(i)). Soil modeling in the EA is inadequate because it was designed only to compare alternatives, more detailed and accurate soil modeling is needed to adequately disclose and analyze this issue.

**Response and Finding:** There are no 15 percent detrimental soil loss standards in the Forest Plan, FSM or NFMA. The 15 percent recommended guideline and example given in FSH 2509.18 is related to a percent reduction in inherent soil productivity potential. The Southwestern Region does not subscribe to this guideline. The purpose of modeling sediment yield was to establish a baseline (no action) and demonstrate the effects of the action alternatives. This is a standard practice for analyzing erosion potential when assessing cause-and-effect relationships. The EA did not address the maintenance of long-term soil productivity or adequately disclose effects of the action alternatives on soil and water resources.

Existing and potential soil productivity should be addressed to assess the effects of the alternatives on long term soil productivity. Modeling of soil and water resources should use appropriate technology and address the site specific effects of the treatments under each alternative.

**ISSUE 3: The Project will violate the Migratory Bird Treaty Act and Executive Order 13186.**

**Objection A:** The EA lacks an analysis of impacts on neotropical migratory birds and mitigations to avoid intentional or unintentional take. The EA considers only riparian vegetation as habitat, upland habitat and snags are not addressed. Since dead or dying trees are the focus of the project, there will be no way to avoid take of neotropical migratory birds.

**Response and Finding:** The Wildlife and Fish Report (EA Appendix D, pp. 25-26) discloses the effects of the project on riparian species, but does not disclose the effects to species found in the habitats most affected by the project (mixed-conifer and ponderosa pine). The EA fails to disclose impacts to migratory birds in upland habitats. The impacts to migratory birds in habitats other than riparian areas should be analyzed and disclosed.

**Objection B:** The Lincoln National Forest is not in compliance with E.O. 13186, because it has not developed or entered into a Memorandum of Understanding mandated by E.O 13186.

**Response and Finding:** E.O. 13186 requires federal *agencies* to develop Memorandums of Understanding (MOU) with the FWS to promote the conservation of migratory bird populations. At this date, the MOU has not been finalized. Should the proposed action not be completed

before the MOU is signed, actions specified in the MOU will be applied as determined by the Department of Agriculture. This contention is outside the scope of the decision for this project, as the MOU is to be developed by the agency and not the Lincoln National Forest.

**ISSUE 4: The project violates NFMA requirements to monitor MIS populations and maintain viable populations.**

**Objection:** The Perk-Grindstone wildlife report identifies five of the nine MIS as present in the planning area (Mexican vole, pygmy nuthatch, red squirrel, elk, and mule deer) however the Forest admits it does not have any population trend information for several of these MIS. Habitat information is used as the baseline for the pygmy nuthatch and data for the red squirrel is not available (EA Appendix C at page 14). The Forest has failed to meet its mandate under NFMA to collect required quantitative population trend data and determine relationships between management activities or habitat changes and population trend changes.

**Response and Finding:** The Wildlife and Fish Report (EA Appendix C) contains an analysis of Management Indicator Species (MIS). No population data were given for mule deer, despite the existence of population data from the New Mexico Department of Game and fish. The MIS analysis failed to use population information for mule deer that was readily accessible. The EA and supporting documents should incorporate this information and should cite and include the most recent Forest-wide MIS report in the project record.

**ISSUE 5: The HFRA violates the U.S. Constitution.**

**Objection:** The HFRA including its Section 106 restrictions on judicial review violate the U.S. Constitution.

**Response and Finding:** This objection is beyond the scope of the review which follows HFRA implementing regulations.

**ISSUE 6: The Project violates the Administrative Procedures Act.**

**Objection A:** The project fails to comply with the Forest Plan, NFMA, MBTA, E.O. 13186, HFRA, NEPA, and the US Constitution; therefore implementing the project would be in violation of APA.

**Response and Finding:** No decision has been issued and revision of the EA will follow this review.

**Objection B:** The determination made in 2002 not to analyze the DFS-only alternative that was carried into the 2005 EA is a violation of APA.

**Response and Finding:** The Citizen's Alternative was presented in the scoping input from Forest Guardians (PR#39) and discussed at a later meeting (PR #80). However the EA itself does not track the consideration of this input nor does it disclose how this alternative was incorporated or eliminated from further consideration as required in the CEQ regulations (40 CFR 1502.14). The required range of alternatives is adequate because HFRA § 104(d)(1) does not require more than analysis of a proposed agency action and one action alternative. However, the EA should discuss how the citizen's alternative was considered.