

Medicine Bow Landscape Vegetation Analysis Project (LaVA)

Reviewing Officer's Response to Eligible Objections

June 10, 2020

**USDA Forest Service
Rocky Mountain Region**



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Introduction

Objection Process Summary: The objection review is conducted at the Regional Forester's Office by the delegated Reviewing Officer: Deputy Regional Forester, Jacqueline Buchanan. This objection process follows Title 36, Code of Federal Regulations, Part 218 (36 CFR 218) regulatory requirements for project level predecisional administrative review. Specifically, the Medicine Bow Landscape Vegetation Analysis (LaVA) project falls under Subparts A and C, which include provisions that are explicit to proposed hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act (HFRA). The objection filing period began April 10, 2020, and ended May 11, 2020, and the Forest Service received 30 eligible objection letters.

The objection issues raised a broad range of project design, resource management, and public use concerns. However, many issues had similarities that warranted consolidation into specific topic areas. Issues have been grouped into general resource headings with one response provided for all objectors to facilitate review of and response to the concerns of the objectors. Therefore, below is the Reviewing Officer's collective written response to all objections, and it is an outcome of a deliberative and extensive review of concerns raised by objectors involving complex regulatory and management issues. Although some issues raised in objections are not specifically cited in the responses, all objectors' concerns have been considered.

This review resulted in instructions for Forest Supervisor Russell Bacon, as the responsible official for the LaVA project. Instructions are mandatory changes that the Reviewing Officer determined are required to be completed prior to signing of the Record of Decision (ROD). The instructions provided are summarized in Enclosure 1.

National Environmental Policy Act (NEPA)

Issue 1

Objectors assert that a supplemental EIS should have been prepared instead of a modified final EIS:

- *Neither NEPA, the Council on Environmental Quality (CEQ), nor the Forest Service's NEPA regulations define, describe, or envision a "modified" EIS.*
- *NEPA requires the preparation of a supplemental EIS when there is significant new information concerning the proposed action or its effects, and therefore the Forest Service should provide an additional public comment period.*

Response

The objectors are correct in that there is no standard in law, regulation, or policy for a "modified" EIS as different from a draft or final EIS. However, there is also no law, regulation, or policy that prohibits the Forest Service from describing the EIS this way. After receiving objections in 2019 on the original final EIS and as noted on page 15 of the modified final EIS, the Medicine Bow-Routt National Forests (Forest) withdrew the final EIS and draft ROD and then made a number of clarifications to improve these documents and address concerns raised in the 2019 objection letters. It is therefore logical to give this clarified document a different name to differentiate it from the original final EIS.

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The modified final EIS discloses locations where treatments would be specifically designed to enhance wildlife habitat (MFEIS, pp. 62-63). It discloses design criteria for invasive species management, native seed/plant material use, and road decommissioning (MFEIS, Appendix A, pp. 56, 59, 60). It discloses and defines road decommissioning techniques and temporary road rehabilitation, including blocking roads by creating physical barriers (MFEIS, pp. 69, 402).

Conclusion

Based on my review, I have determined that the modified final EIS clearly defines the projects' objectives and desired conditions, which has allowed for an adequate range and consideration of effective design features. Additionally, I find that the Responsible Official has appropriately analyzed and disclosed the effects of the project based on the application and effectiveness of the design features.

Range of Alternatives

Issue 1

Objectors assert that the projects fail to consider an acceptable reasonable range of alternatives. They contend that the issues should have been addressed in a wider range of alternatives than the single, all-or-nothing action alternative analyzed in the modified final EIS. Specifically, objectors contend that the Forest Service should have considered:

- *An alternative that would exclude treatments within inventoried roadless areas*
- *An alternative that identifies a minimum road system and unneeded roads that could be decommissioned under the modified proposed action.*
- *An alternative that would protect the qualities and values of the Continental Divide National Scenic Trail.*

Response

Section 104(c) of HFRA (Pub. L. 108-148, as amended) specifies the minimum number of alternatives that the Responsible Official must consider in an EIS prepared under HFRA: the proposed agency action; the alternative of no action; and an additional action alternative, if the additional alternative (i) is proposed during scoping or the collaborative process...; and (ii) meets the purpose and need of the project, in accordance with regulations promulgated by the CEQ (HFRA, Sec. 104(c)). The EIS discloses the agency's consistency with these requirements and explains why no additional action alternatives other than the proposed action, as modified, were analyzed in detail (MFEIS, p. 59).

If new issues are determined during the analysis process, the CEQ's implementing regulations for NEPA and the Forest Service's NEPA regulations allow the agency to address them by modifying alternatives (40 CFR §1503.4). In such cases, the responsible official may consider the incremental changes as alternatives considered (36 CFR §220.5(e)(1)). The modified final EIS and reissued draft ROD discloses the agency's incremental changes to the proposed action to respond to issues brought up in scoping, comments on the draft EIS, and objections during the 2019 pre-decisional administrative review process (reissued draft ROD, p. 9 footnote, pp. 13, 39-40; MFEIS, 61-62, 97-98).

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The modified final EIS (pp. 97-99) and its associated Appendix B – Response to Comments document (pp. 22 -26) disclose the agency's consideration of several alternatives not analyzed in detail and provides the reasons for not conducting detailed analyzes of these alternatives. Rational for not conducting detail analyzes on recommendations received this objection period is provided below.

An alternative that would exclude treatments within inventoried roadless areas:

The modified final EIS discloses the agency's consideration of an alternative similar to the modified proposed action with the exception that it would exclude inventoried roadless areas from treatment. However, the Forest Service explains this alternative was eliminated from the detailed study because it does not meet the purpose and need of the project, particularly as related to needs of LaVA cooperating agencies. Specifically, excluding inventoried roadless areas from the proposed action would forgo opportunities to enhance forest and rangeland resiliency to future insect and disease infestations, provide for the protection of infrastructure and restoration of wildlife habitat, and mitigate hazardous fuel loading on roughly 27 percent (230,240 acres) of the LaVA analysis area. Removing such a large land base from the proposed action would not allow a landscape-scale analysis of, and response to, changed forest vegetation conditions presented by insect and disease epidemics, which is the primary purpose of the project (MFEIS p. 98). The purpose and need for the LaVA project is stated on page 14 of the modified final EIS. The rationale to dismiss an alternative to exclude inventoried roadless areas from treatment because it doesn't meet the purpose and need is lacking. An alternative, similar to the modified proposed alternative, excluding inventoried roadless areas would still likely meet the purpose and need. This alternative was proposed during scoping and the modified final EIS considered effects of treatment in each roadless area in detail and imposed mitigation to protect roadless values based on Significant Issue 7.

An alternative that identifies a minimum road system and unneeded roads that could be decommissioned under the modified proposed action.

As objectors referenced in other objections points, the Forest Service responded to this recommendation on page 8 (issue 801.0103) of the modified final EIS, Appendix B. See the responses to Travel Management Rule, Issue #1 and NEPA, Issue #4 for the justification.

An alternative that would protect the qualities and values of the Continental Divide National Scenic Trail.

Mitigation measures were adopted to address the CDNST. The range of alternatives is consistent with HFRA and is adequate for addressing concerns about the CDNST (Recreation Report, pp. 15, 25-27; MFEIS, p. 341; MFEIS, Appendix A, pp. 56-57).

Conclusion

Based on my review of the project record, I find that the Responsible Official's rationale for eliminating the alternative which proposed to exclude treatments within inventoried roadless areas because it did not meet the purpose and intent was not adequately supported. Therefore, I instruct the Responsible Official to consider the alternative of excluding treatments within inventoried roadless areas.