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File Code: 1570-1/2400

Date: September 15, 2003

Sam Hitt  
Wild Watershed  
P.O. Box 1943  
Santa Fe, NM 87504

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED**

RE: Appeal #03-03-00-0035-A215, Jemez Wildland Urban Interface Hazardous Fuels  
Reduction Project, Jemez Ranger District, Santa Fe National Forest

Dear Mr. Hitt:

This is my review decision on the appeal you filed regarding the Decision Notice (DN), Environmental Analysis (EA), and Finding of No Significant Impact (FONSI) on the project noted above, which provide for thinning, creating fuelbreaks, and ladder fuels reduction on 5,855 acres. The proposed action also calls for piling, burning and broadcast burning on 9,253 acres.

### **BACKGROUND**

District Ranger John Peterson issued a decision on June 10, 2003, for the Jemez Wildland Urban Interface and Hazard Reduction Project. The District Ranger is identified as the Responsible Official whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.16, an attempt was made to seek informal resolution of your appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.17. I have reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

### **APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer (ARO) found that: (a) the decision logic and rationale were generally clearly disclosed; (b) the benefits of the proposal were identified; (c) the proposal and decision are consistent with agency policy, direction and supporting information; and (d) public participation and response to comments were adequate.

### **APPEAL DECISION**

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision on the Jemez Wildland Urban Interface and Hazard Reduction Project.

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



Sincerely,

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

Enclosure

cc: Daniel Crittenden, Leonard Lucero, Christina Gonzalez, Rita Skinner, Mailroom R3 Santa Fe, John F Peterson

## REVIEW AND FINDINGS

Of

**Bonnie Reider, John Horning, Gregory Pollak, and Sam Hitt's**

**Appeal #03-03-00-0035-A215**

**Jemez Wildland Urban Interface and Hazard Reduction Project**

**Issue 1:** The Jemez WUI Hazard Reduction Project violates the Forest Service Roads Policy.

**Contention A:** In this project, maintenance level 1 roads (closed roads) are to be upgraded to maintenance level 2 (roads open for use by high-clearance vehicles). Such improvements will increase access, and the environmental effects of these road improvements were not analyzed for this project. No roads analysis of maintenance level 1 and 2 roads was completed for this project. The Forest, in response to comments, declared that the Jemez WUI is not a roads management project, and, therefore, a roads analysis process was not required.

**Response:** See Jemez WUI EA, Chapter 1, p. 16, paragraph 5 (PR #99):

“No new road construction is proposed. Existing roads would be maintained to provide safe access to the project area; closed roads may be reopened to standard and closed following the project completion.

Also see Jemez WUI EA, Chapter 3, p. 39, paragraph 3 (PR #99):

“Road maintenance would be included in the contracts involving the use of heavy equipment, which would improve the road for recreationists. Improved scenic quality would be expected because sight distance from roads and trails adjacent to the treated areas would be increased and visual diversity would be enhanced, similar to the effects of Bench Timber Sale and East Fork Thinning which were implemented along Highway 4.”

The road maintenance descriptions are not articulated in the Jemez WUI Hazard Reduction Project Environmental Assessment (PR #99). However, closed roads are not automatically maintenance level 1 roads. There are many examples of closed roads that are not maintenance level 1. A common example is a road closed to the public, but used administratively; this road can remain a maintenance level 2-5 road. It is clear from the paragraphs above that the Forest has assessed the road condition(s) and concluded that only maintenance is required. If the road maintenance levels were to be actually changed, the project assessment of the roads would state that road construction and/or reconstruction would be necessary. The EA states that no new roads will be constructed and that maintenance is all that is required. Therefore, no changes in road management activities are proposed with the implementation of the proposed alternative.

**Finding:** A Roads Analysis is not required for the implementation of the proposed action in the Jemez WUI Hazard Reduction Project EA.

**Contention B:** The watershed impacts of opening such low-standard roads on unstable soils has not been analyzed or disclosed.

**Response:** The project record includes analysis of impacts associated with the entire project, including the short-term use of closed roads (PR #74, PR #99, Chapter 3, pp. 21-26). Mitigation measures are included which require road/stream crossing restrictions, rehabilitation, obliteration of any skid trails and ORV trails following treatment activities (PR #99, Chapter 2, pp. 11-17).

**Finding:** The watershed impacts of opening roads have been analyzed in context with the other watershed impacts of this project and appropriate mitigation measures developed.

**Contention C:** The impacts of ineffective road closures to wildlife have not been disclosed or analyzed.

**Response:** Mitigation measures are included which require rehabilitation and obliteration of off-road tracks following treatment activities (PR #99, Chap. 3, p. 30), and are detailed in Chapter 2, pp. 11-17 (PR #99). Effects of roads are also discussed in the WUI Minimization Measures (PR #37). Appellant's assertion that the road closures will be ineffective is not supported by the record.

**Finding:** Possible effects of roads on wildlife have been discussed, analyzed, and mitigation measures developed. Road closures will be implemented, monitored for effectiveness, and maintained.

**ISSUE 2:** The Jemez WUI Hazard Reduction Project violates the Clean Water Act.

**Contention:** The Jemez WUI Hazard Reduction Project proposes actions in watersheds affecting the Rio Cebolla, Calaveras Creek, San Antonio Creek, and Jemez River. The Forest Service's failure to quantify the amount of additional erosion constitutes an unsupported speculation that the project will comply with the standards established by the Total Maximum Daily Load (TMDL) report for the Rio Cebolla, San Antonio, and Jemez River. In addition, the project cannot proceed until a TMDL has been established for Calaveras Creek.

**Response:** TMDL planning has been completed by the New Mexico Environment Department (NMED) for San Antonio Creek, Rio Cebolla, and Jemez River as part of the Jemez River Watershed TMDL (PR #101). The implementation plan for this watershed calls for Best Management Practices (BMPs) to meet the TMDLs established for these streams and recognizes Forest Service timber thinning and prescribed fire activities to prevent catastrophic wildfires and to improve ground cover and watershed conditions as important contributions to prevention of non-point source pollution ([http://www.nmenv.state.nm.us/swqb/Jemez\\_Watershed\\_TMDLs](http://www.nmenv.state.nm.us/swqb/Jemez_Watershed_TMDLs)). BMPs for this project are well planned and described in PR #53 and PR #99. In addition, NMED was consulted during the scoping and planning phases of this project (PR #10, 47, 75, 98) and provided comments on this project (PR #101) stating that the Surface Water Quality Bureau "is supportive of efforts by the Santa Fe National Forest to improve watershed and forest health and to help prevent and/or control catastrophic fires which can be devastating to water quality." Since the BMPs prescribed for the entire project are adequate for the streams with TMDLs, they

will provide similar and adequate protection for Calaveras Creek in the absence of formal TMDL development.

**Finding:** Appropriate procedures were followed and adequate protection is planned to meet TMDL objectives. There will be no violation of the Clean Water Act.

**ISSUE 3:** The Jemez Ranger District WUI Hazard Reduction Project violates the National Environmental Policy Act.

**Contention A:** The Jemez WUI Hazard Reduction Project fails to disclose and evaluate the cumulative impacts of the fuelbreak maintenance, despite the fact that this maintenance is reasonably foreseeable.

**Response:** Prescribed fire is planned as a maintenance tool for fuelbreaks following treatment of the WUI on pp. 3-19, 3-20, and 3-26 of the EA (PR #99). Monitoring of prescribed fire activity is described on pp. 2-11 and 12 of the EA. Effects of prescribed fire are addressed throughout the EA.

**Finding:** Foreseeable effects of fuelbreak maintenance are described and analyzed in the EA as needed to make a decision on the project.

**Contention B:** The Jemez WUI Hazard Reduction Project fails to analyze impacts to breeding bird habitat.

**Response:** Effects on breeding birds and their habitat, including New Mexico Partners in Flight Species of Concern, is discussed in the Migratory Bird Assessment (PR #72).

**Finding:** Impacts to breeding birds have been analyzed.

**Contention C:** The Jemez WUI Hazard Reduction Project fails to disclose the cumulative effects of illegal firewood gathering.

**Response:** The Response to Comments (PR #105) responds to this comment. Firewood collection, whether legal or not, is noted as one effect to wildlife (p. 3-28 in EA, PR #99). Firewood collecting is described as part of the recreation experience (pp. 3-36 and 3-37) and would increase under the Proposed Action (p. 3-39).

**Finding:** Effects of firewood gathering, whether legal or illegal, are described in enough detail to make an informed decision.

**Contention D:** The Jemez WUI Hazard Reduction Project fails to disclose the effects of mechanical treatment in a roadless area.

**Response:** Roadless is identified as part of the analysis in the Decision Notice/FONSI (PR #106, p.5). The EA describes the inventoried roadless area on p. 1-18, and it is an issue that is analyzed on p. 1-25 (PR #99). Effects on the roadless area are described on pp. 3-37, 3-39, and particularly on 3-40 of the EA. The Interim Directive referred to (FSM 1925, expired June 14, 2003) was current on the date of the decision, which was June 10, 2003.

**Finding:** Current direction for management of the inventoried roadless area has been followed. Analysis of effects has been adequately disclosed.

**ISSUE 4.** The Jemez WUI Hazard Reduction Project violates the National Forest Management Act.

**Contention A:** The Jemez WUI Hazard Reduction Project fails to provide site-specific data to ensure conservation of soil and water resource. The effect of heavy equipment operating on soils at severe risk of erosion was not disclosed. Which roads will be reopened and what type of soil will be affected was not disclosed.

**Response:** The project record provides evidence that site-specific information was acquired in the Santa Fe National Forest Soils Inventory (Terrestrial Ecosystem Survey) and this information was utilized in determining environmental effects and appropriate mitigation measures (PR #74; PR #99, Chapter 3, p.22). The record also includes analysis of erosion and sedimentation impacts associated with the entire project, including the effects of road opening and equipment operation (PR #74; PR #99, Chapter 3, pp. 21-26). Mitigation measures are included which require road/stream crossing restrictions, rehabilitation, and obliteration of any skid trails and ORV trails following treatment activities (PR #99, Chapter 2, pp. 11-17 ) to ensure conservation of soil and water resources.

**Finding:** Soil and water resources are adequately protected to assure the prevention of significant impairment of soil productivity.

**Contention B:** The Santa Fe National Forest Plan requirements to monitor impacts to aquatic ecosystems have never been completed. The plan requires seven sites be monitored annually to provide baseline conditions on the health of aquatic ecosystems and five sites monitored annually to assure projects do not degrade ecosystems. In addition, a field review is required annually to assure that Best Management Practices are being implemented. In each case, the required monitoring has not been completed. Forest Service must complete that monitoring before this project can proceed.

**Response:** The appellant has not shown how the purported lack of Forest Plan monitoring affects the capability of this project to conserve soil and water resources. The project record provides ample evidence that the soil and water effects for the project were adequately analyzed and disclosed (PR #74; PR #99, Chapter 3, pp. 21-26), and found not to be significant (PR #106). Mitigation measures are required (PR #99, Chapter 2, pp. 11-17) to ensure conservation of soil and water resources.

**Finding:** Soil and water resources are adequately protected to assure the prevention of significant impairment of soil productivity.

**Contention C:** The Jemez WUI Hazard Reduction Project fails to leave the required number of snags, downed logs, and coarse woody debris.

**Response:** Under Riparian Area Protection in the EA (PR #99, Chapter 2, p. 12), all snags and downed logs over 12 inches diameter breast height (dbh) will be retained. Under Threatened and Endangered Species Protection (EA, page 15), as many snags of 9 inches dbh and larger will be retained as possible. The greatest chance of snag removal greater than 9 inches dbh will be within fuelbreak corridors. Under Jemez Mountain Salamander Protection (EA, p. 15), the boles of felled snags are to be retained where they can be isolated and not compromise the

effectiveness of the fuelbreak. Forest Plan standards and guidelines will be met for downed logs where an adequate number of downed logs are present.

**Finding:** Forest Plan standards and guidelines for snags and downed logs will be met when there are sufficient snags and downed logs. Mitigation measures have been developed to ensure this throughout the analysis area.

**Contention D:** The Jemez WUI Hazard Reduction Project fails to achieve the necessary VSS balance required by the LRMP.

**Response:** The Jemez EA under Old Growth Protection (PR #99, Chapter 2, p. 13) states that site-specific VSS will be determined at the group and clump spatial scale, as recommended by James Long (Long, 2000- *Journal of Forestry*) in each cutting or treatment unit. Under Northern Goshawk (EA, p. 14), within VSS 4, 5, and 6 in ponderosa pine forests, a canopy cover percent between 40-60 percent is to be retained. Within mixed conifer forests in VSS4, one-third of the VSS4 is to be retained in the 40-59 percent category and two-thirds in the over 60 percent category. In VSS5 and 6, canopy cover is to be retained at over 60 percent canopy cover. Based on Long's 2000 article in the *Journal of Forestry*, which has been accepted by the Northern Goshawk Scientific Committee, desired canopy cover percentages by VSS class is to exist at the group level and not necessarily stand-wide.

**Finding:** The Santa Fe National Forest amended Forest Plan does not specifically require that the ideal VSS distribution identified in the Goshawk Management Guidelines be achieved following initial treatment. As long as the VSS distribution is being moved in the right direction, goshawk management guidelines are being achieved. Proposed thinning treatments will increase growth in the excess VSS3 size class, moving portions of stands into the VSS4 and larger size classes faster than had there been no thinning. A main objective of the proposed project is to protect both humans and critical wildlife habitat such as old growth (VSS5 and 6).

**Contention E:** The EA does not disclose how the fuelbreaks were designed to meet the requirements to minimize the effects of wildfire on threatened and endangered species habitat in Management Area N.

**Response:** Management Area N is the same boundary as the Inventoried Roadless Area boundary, according to p. 1-22 of the EA (PR #99). Mitigation measures were developed to reduce impacts to wildlife, see pp. 2-12 through 15 of EA, and activities will not target habitat characteristics for threatened and endangered species (p. 6 of Decision Notice, PR #106). Effects to wildlife in general are described on EA, pp. 3-28 through 31; and it states that, generally, benefits to wildlife would occur because of the reduced fire risk. The Response to Comments on p. 6 (PR #105), says that fuelbreaks would protect and enhance wildlife habitat. The Decision Notice/FONSI (PR #106) adds that consultation for this project falls under a Biological Opinion issued for WUI Fuel Treatments in New Mexico and Arizona.

**Finding:** Fuelbreaks were analyzed in consideration of their impacts on threatened and endangered species habitat in the EA.

**Contention F:** The Jemez WUI Hazard Reduction Project fails to address the suppression strategies of maximum use of natural control features, while protecting key wildlife habitat. The

EA discusses suppression strategies only in terms of firefighter safety and protection of the human communities.

**Response:** The proposed action ties fuelbreaks to natural control features, as described on pp. 1-15, and 3-17 in the EA (PR #99). The locations of strategic fuelbreaks are directly related to the anticipated suppression strategies. These efforts are predicated upon values at risk and the time necessary to protect the reference values when threatened by wildfire. Time being of the essence during wildfire emergency guarantees that natural control features will be utilized, thereby insuring maximum protection capability. Effects to wildlife were addressed as spelled out in the earlier response.

**Finding:** The EA does an adequate job of addressing effects and activities for the decisionmaker to make an informed decision under NEPA.

**Contention G:** The Jemez WUI Hazard Reduction Project fails to disclose how unneeded roads will be closed, as required by Management Area N.

**Response:** Road “need” should be determined through a Roads Analysis Process. However, the purpose and need of this proposed project does not address which roads are needed versus unneeded roads. Without a “need” determination, there is no necessity to describe how a road will be closed.

**Finding:** No unnecessary roads were identified for closure in this project.

**Contention H:** The Jemez WUI Hazard Reduction Project fails to analyze how thinning, fuelbreaks, ladder fuel treatment, and prescribed fires are consistent with needs of threatened, endangered, and sensitive species.

**Response:** A Biological Assessment/Evaluation was prepared (PR #36) and concurrence received from the US Fish and Wildlife Service (PR #83) on the proposed action. Further documentation and evaluation (PR #58) will be conducted upon completion of the project and effects of the action and mitigation validated.

**Finding:** The needs of threatened, endangered, and sensitive species have been analyzed and concurred upon by the U.S. Fish and Wildlife Service.

**Contention I:** The Jemez WUI Hazard Reduction Project is not consistent with the endangered habitat improvement objectives of the management area. The proposed action calls for constructing a fuelbreak through a Mexican Spotted Owl Protected Activity Center in violation of the Mexican Spotted Owl Recovery Plan. These activities are clearly not designed to protect the owl or improve its habitat.

**Response:** Both the Forest Service and the U.S. Fish and Wildlife Service recognize that to protect communities and endangered species from wildfire, it may be necessary to design projects which do not emphasize optimal habitat conditions. However, all actions are designed with mitigation to ensure continued existence of the species in question (US Fish and Wildlife Service Programmatic Biological Opinion, April 10, 2001, included by reference). Concurrence from the U.S. Fish and Wildlife Service (PR #83) validates the process and assures conformance with the Mexican Spotted Owl Recovery Plan.

**Finding:** The project as proposed is consistent with the U.S. F&WS Biological Opinion (April 10, 2001) and therefore meets the requirements of the Mexican Spotted Owl Recovery Plan and is designed to protect owl habitat.

**Contention J:** The Jemez WUI and Hazardous Fuels Reduction Project fails to favor old growth forest condition vertical diversity. Felling snags and fragmenting habitat by constructing fuelbreaks is contrary to the Forest Plan's direction regarding the preservation and enhancement of old growth forests.

**Response:** The Jemez District Environmental Assessment (PR #99, Chapter 2, p. 13), under Old Growth Protection, states that no large trees, as defined in Chapter 1 of the EA, will be cut. Three specific conditions must occur before any live trees over 12 inches can be cut within the project area. Under Riparian Area Protection (EA, p. 12), all snags over 12 inches dbh will be retained. Under Threatened and Endangered Species Protection (EA, p. 15), as many snags 9 inches dbh and larger will be retained as possible. The greatest chance of live tree removal greater than 12 inches dbh and snag removal greater than 9 inches dbh will be within fuelbreak corridors. Failure to develop effective fuelbreaks within the analysis area would reduce meeting the objectives spelled out in the Purpose and Need.

Fuelbreak construction (945 acres in the project area) will consist of thinning trees to create an average distance of 20 feet between individual tree crowns (PR #106, Decision Notice, p. 1). Fuelbreak locations are strategically placed to provide a safe working environment for firefighters and safe access and egress into and out of communities.

**Finding:** The Santa Fe Forest Plan, as amended June 1996, requires that a minimum of 20 percent of the forested acreage be managed as old growth habitat. Less than 17 percent of the total analysis area in this project (5,855 acres) will be managed as fuelbreaks (945 acres). The management of 17 percent of the analysis area as fuelbreak does not violate the Forest Plan for old growth management.

**Contention K:** The Jemez WUI and Hazardous Fuels Reduction Project fails to address the recovery plan for the Jemez Mountain salamander and Management Area N.

**Response:** The Jemez Mountain salamander is discussed in the Biological Evaluation (PR #36), and EA (PR #99). Surveys were conducted in the proposed action area (PR #61), and mitigation developed (PR #99, Chapter 2, pp. 15-16). Coordination with the New Mexico Endemic Salamander Team was conducted (PR #35) and documented.

**Finding:** The effects of the project on the Jemez Mountain salamander have been analyzed and coordinated with the NM Endemic Salamander team. No further actions are warranted.

**Contention L:** The Jemez WUI Hazard Reduction Project allows logging on slopes greater than 40 percent, which is inconsistent with the Santa Fe Forest Plan.

**Response:** The Society of American Forester's *Dictionary of Forestry*, edited by John A. Helms (1998), p. 108, defines "logging" as the felling, skidding, on-site processing, and loading of trees or logs onto trucks. The SAF dictionary states that "logging" is synonymous with "harvesting."

The Jemez District Environmental Assessment (PR #99, Chapter 2, p. 13), under Protection of Mexican Spotted Owl Habitat, states that on slopes greater than 40 percent or at the bottoms of

steep canyons, no harvesting of trees greater than 9 inches dbh will occur. Minimum log size in the Southwestern Region of the USDA Forest Service is 9 inches. Therefore, no commercial log removal will occur within the project area on slopes greater than 40 percent.

**Finding:** The Jemez WUI Hazard Reduction Project is consistent with the LRMP for the Santa Fe National Forest as it relates to logging on slopes greater than 40 percent.

**Contention M:** The Jemez WUI Hazard Reduction Project is inconsistent with the Wood Lily Management Plan.

**Response:** The appellant provides no information as to how the project may be inconsistent with the Wood Lily Management Plan. The Wood Lily Management Plan (PR #2) is discussed in the EA (PR #99); mitigation is included in Chapter 1 on p. 24, and further discussed in Chapter 3, on p. 26.

**Finding:** Possible effects from the proposed action on the Wood Lily have been disclosed, discussed, and mitigated. Project is consistent with the Wood Lily Plan.

**Contention N:** The Jemez WUI Hazard Reduction Project is inconsistent with the Mexican Spotted Owl Recovery Plan.

**Response:** Both the Forest Service and the U.S. Fish and Wildlife Service recognize that to protect communities and endangered species from wildfire, it may be necessary to design projects which do not emphasize optimal habitat conditions. However, all actions are designed with mitigation to ensure continued existence of the species in question (U.S. Fish and Wildlife Service Programmatic Biological Opinion, April 10, 2001, included by reference). Concurrence from the US Fish and Wildlife Service (PR #83) validates the process and assures conformance with the Mexican Spotted Owl Recovery Plan.

**Finding:** The project as proposed is consistent with the U.S. F&WS Biological Opinion (April 10, 2001) and, therefore, meets the requirements of the Mexican Spotted Owl Recovery Plan.

**Contention O:** The Jemez WUI Hazard Reduction Project fails to provide for a diversity of plant and animal communities or insure the maintenance of viable wildlife populations.

**Response:** A Biological Evaluation and specialist report (PR #36), Migratory Bird Treaty Act (MBTA), assessment (PR #72), and Management Indicator Species Assessment (PR #70) were completed and discussed in the EA (PR #99). Viable and diverse communities and populations of wildlife will be maintained in the analysis area.

**Finding:** The project provides for diverse and viable populations of wildlife.

**ISSUE 5** The Jemez Ranger District WUI Hazard Reduction Project violates the Endangered Species Act.

**Contention A:** The Forest Service must reinitiate formal consultation, because the assumptions used in finding that the proposed actions would not jeopardize the Mexican Spotted Owl are no longer valid.

**Response:** A Biological Assessment/Evaluation was prepared (PR #36) and concurrence received from the U.S. Fish and Wildlife Service (PR #83) on the proposed action. Further documentation and evaluation (PR #58) will be conducted upon completion of the project, and the effects of the action and mitigation validated.

**Finding:** The needs of threatened, endangered, and sensitive species have been analyzed and concurred on by the U.S. Fish and Wildlife Service. The project is in compliance with the Endangered Species Act.

**Contention B:** The Forest Service has also failed to monitor the owl population, which points to a violation of NFMA requirements to monitor management indicator species.

**Response:** Survey results for the Mexican Spotted Owl and analysis of forest-wide population trends are discussed in the Management Indicator Species Assessment (PR #70).

**Finding:** NFMA requirements for the Mexican Spotted Owl as a Management Indicator Species have been met.

**Contention C:** The Forest Service is taking Mexican Spotted Owls in violation of the Endangered Species Act. The Forest Service has ignored its duty to monitor these hazardous fuels reduction projects to ensure that there are no negative impacts.

**Response:** A Biological Assessment/Evaluation was prepared (PR #36) and concurrence received from the U.S. Fish and Wildlife Service (PR #83) on the proposed action. Further documentation and evaluation (PR #58) will be conducted upon completion of the project and effects of the action and mitigation validated.

**Finding:** The effects of the proposed action on threatened, endangered, and sensitive species have been analyzed and concurred with by the U.S. Fish and Wildlife Service. All requirements of the Endangered Species Act have been met.

**ISSUE 6** The Jemez WUI Hazard Reduction Project violates the Migratory Bird Treaty Act.

**Contention:** The Jemez WUI Hazard Reduction Project will reduce canopy cover. This reduction of canopy cover is detrimental to species that are dependent on moderately closed and closed canopy stands.

**Response:** A discussion of the possible effects on migratory birds and compliance with the Migratory Bird Treaty Act as currently interpreted by the U.S. Department of Agriculture is included in the project record (PR #72).

**Finding:** The Jemez WUI project is in compliance with the Migratory Bird Treaty Act and Executive Order 13186, as currently defined by the U.S. Department of Agriculture.