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Office of the Attorney General

Governor
Dave Freudenthal

Water & Natural Resources Division
123 Capitol Building
Cheyenne, Wyoming 82002
307-777-6946 Telephone
307-777-3542 Fax

Chief Deputy Attorney General
Elizabeth C. Gagen

Attorney General
Patrick J. Crank

Deputy Attorney General
Jennifer A. Golden

October 20, 2004



Mr. Vernon Williams, Secretary
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, D.C. 20423

RE: STB Docket No. AB-307 (Sub. No. 5X)
Wyoming and Colorado Railroad Company, Inc.
Abandonment Exemption in Carbon County, Wyoming

VIA FACSIMILE (202-565-9016) and Federal Express

ENTERED
Office of Proceedings

OCT 21 2004

Part of
Public Record

Dear Mr. Secretary:

Pursuant to the Surface Transportation Board's rules and applicable statutes, enclosed are an original and eleven (11) copies of the State of Wyoming's Response to the Environmental Assessment. Please return a received-stamped copy to my office in the enclosed postage paid envelope. If you have any questions or need any additional information, please do not hesitate to call me.

Sincerely,

Thomas W. Rumpke

Enc: See above

I. INTRODUCTION

The State of Wyoming and Carbon County, Wyoming (Carbon County) oppose the abandonment proposed by Wyoming and Colorado Railroad Company, Inc. (WYCO) regarding the 23.71-mile line of railroad in Carbon County, Wyoming ("Carbon County Line" or "Line"). Wyoming and Carbon County have submitted proof that the abandonment of the WYCO rail line will not further the objectives of the United States rail transportation policy. 49 U.S.C. §10101a. In addition, abandonment of the line will not further the national policies of the Healthy Forests Restoration Act (HFRA) and the United States Forest Service's (FS) management plan for the Medicine Bow National Forest (Medicine Bow) and Routt National Forest (Routt).¹

Timber harvesting is an essential tool that must be utilized by the FS in implementing and achieving the objectives of the HFRA. Rail service is an essential element in reaching markets related to timber harvesting. This is especially true for stands of small diameter timber that cannot be utilized for finished lumber products and are generally converted into wood chips or other low value product.² Rail service is an important tool in allowing Intermountain Resources, LLC (IMR) to operate the sawmill and therefore, treat the forest.

If by products and small diameter biomass cannot be sold due to a lack of rail service, the FS will lose an essential tool in managing the Medicine Bow and the Routt. Both of these National Forests must have harvest activity to (a) maintain the proper mix of old and new growth necessary to fulfill the goals and objectives of the HFRA and the applicable forest management plans, and (b) to address the beetle infestation epidemic currently threatening the forests' continued health.

¹ The Healthy Forests Restoration Act (Pub.L. 108-148) is codified at 16 U.S.C. §6501 et seq. This bill was signed into law by President George W. Bush on December 3, 2003. Therefore, this sweeping legislative enactment was not in effect at the time WYCO solicited comments from various federal and state environmental agencies. *E.g.* Letter from WYCO to USDA Natural Resources Conservation Service of June 13, 2003.

² See WYCO's Reply to Protests dated September 27, 2004, p. 6, fn. 1.

II. FACTS

(A) *Forests Involved*

The Carbon County Line runs along non-federal land within the Medicine Bow National Forest. The Carbon County Line runs between the Snowy Range and Sierra Madre portions of the Medicine Bow. The Medicine Bow is just north of the Routt National Forest. *See Exhibit 1, Map of Routt and Medicine Bow National Forests. See Exhibit 1.*

In 2003, nearly 11, 000 acres of timber in the Medicine Bow were infested by spruce and mountain pine beetles. Almost all of the infestation areas are in the Snowy Range and Sierra Madre portions of the Medicine Bow (Forest Service 2003 Insect and Disease Aerial Survey Estimates, Forest Health Test Management Group). The FS estimates that in 2004, the number of acres infested by each of these beetles could double. In the Routt (just south of the Medicine Bow), the infestation is even more dramatic (Forest Service 2003 Insect and Disease Aerial Survey Estimates, Forest Health Test Management Group). In 2003, over 66,000 acres were infested by the spruce beetle and over 47,000 infested by the mountain pine beetle (Forest Service 2003 Insect and Disease Aerial Survey Estimates, Forest Health Test Management Group). The FS estimates that these numbers have dramatically increased during the course of 2004 (Forest Service Preliminary Estimates from the 2004 Insect and Disease Aerial Surveys). *See Exhibit 2, Map of Beetle Infestation in the Routt and Medicine Bow National Forests.*

The Saratoga mill is located between the Snowy Range and Sierra Madre portions of the Medicine Bow. As the crow flies, Saratoga is only about 32 miles from the Routt National Forest. *See Exhibit 1.*

(B) Applicable Federal Law

In the last decade, the prevalence and intensity of forest fires has risen dramatically. This increase has been attributed to a significant decline in forest health across much of the western United States. In December 2003, President Bush signed the HFRA into law. The HFRA is a sweeping environmental and land use planning statute that directs the FS to take measures to make America's forests healthy again. In particular, the HFRA mandates that the FS take measures to prevent catastrophic forest fires and disease/insect infestation.

Congress concluded that high levels of insect infestation result in increased fire risk, loss of old growth forests, and decreased timber values. Pub.L. 108-148, Title IV, §§401(b)(1)(A), (B), and (G). Congress further found that more than 70,000,000 acres of land are at risk from insect infestation over the next 15 years. Pub.L. 108-148, Title II, §201(2). More than 21,000,000 acres of forests are at high risk from beetle infestation. Pub.L. 108-148, Title IV, §401(b)(2). In enacting the HFRA, Congress specifically noted the dilemma that federal agencies may face in using timber harvesting to remove small diameter trees and brush:

The by-products of preventive treatment (wood, brush, thinnings, chips, slash, and other hazardous fuels) removed from the forest and rangelands represent an abundant supply of biomass for biomass-to-energy facilities and raw materials for business. There are currently few markets for the extraordinary large scale preventive treatment activities.

Pub.L. 108-148, Title II, §201(4).

(C) Medicine Bow Forest Management Plan

Timber harvesting is utilized by the FS as one of many tools to maintain forest health by (a) reducing the risk of loss due to catastrophic forest fires, (b) reducing the risk of loss due to insect infestation, and (c) meeting the nation's demands for wood products in ecologically sustainable ways. *Medicine Bow National Forest Revised Land and Resource Management Plan* (Med. Bow Resource Plan), p. 1-16 (December 2003). The FS utilizes annual timber harvesting

program in the Routt and the Medicine Bow to address its goals of minimizing forest fires and suppressing and preventing beetle infestation. “The [FS] utilizes a variety of tools, such as timber sales, stewardship contracts, service contracts, force account and volunteer labor, and prescribed fires to achieve desired [forest] conditions.” *Id.* At 1-19.

Proper forest management requires a mosaic of structural stages (new growth to old growth) to sustain a healthy forest. *See* Pub.L. 108-148, Title II, §201(3). Management does not just allow cutting old growth (large trees) usable for large finished lumber. It also requires thinning of dense young stands. To that end, the FS has set forth goals with regard to the percentage of structural stages necessary to sustain the Medicine Bow. *Medicine Bow Resource Plan*, p. 1-15. Timber management has occurred on 38% of the Medicine Bow and Routt. As the Med. Bow Resource Plan states:

The [FS] is implementing a consistent annual timber program between the Medicine Bow and Routt National Forests that address National Fire Plan project implementation, bark beetle suppression and prevention, salvage and sanitation, and other forest health needs.

Med. Bow Resource Plan, p. 1-22

III. ANALYSIS

In the environmental assessment, the Surface Transportation Board (STB) reached the conclusion that the abandonment of the Carbon County Line will not significantly impact the human environment (FONSI). While Wyoming and Carbon County do not take issue with this conclusion, the STB’s decision does not account for or reflect the important national policies regarding forest management which may be substantially impaired or hampered by abandonment of the Carbon County Line.

(A) Timber Harvesting as a Forest Management Tool

Timber harvesting is an important tool in forest management. The FS repeats throughout the Med. Bow Resource Plan that timber cutting is a necessary part of forest management. Not

only does timber harvesting minimize forest fires by removing fuels from the forest, it also acts to suppress insect infestation. This is of utmost importance in the Medicine Bow where beetle infestation is endangering several thousand acres of national forest. Without timber harvesting as a tool, the FS will not be able to meet its objectives of minimizing the spread of the mountain pine and spruce beetles throughout these national forests. Without timber harvesting, the Medicine Bow may soon face the same pandemic conditions of beetle infestation documented in the Routt. In addition, the Medicine Bow will continue to accumulate fuels that increase the risk of catastrophic forest fires.

The HFRA gives the FS additional authority (and direction) to utilize timber harvesting as a necessary tool to improve forest health conditions. This includes timber harvesting in the Medicine Bow to avoid in the Medicine Bow what has become a beetle epidemic in the Routt. By eliminating rail service to the Saratoga mill, the STB would limit the FS's ability to use timber harvesting in the Medicine Bow as a tool to address beetle infestation and forest fire risk. Without rail service, the Saratoga mill may not be available to economically process young, small-diameter trees and biomass into unfinished wood products. Without viable economic applications for the small-diameter trees and biomass, those timber sales may not be cut by commercial harvesters. Without timber harvesting, the FS will lose an important tool in managing forest fire risk and the continued spread of beetle infestation.

If rail service is abandoned and the Saratoga mill does not reopen, the important national environmental policy announced in the HFRA would be relegated behind WYCO's need to have a *more* profitable line.³ WYCO cites prior STB decisions in its response to protests to arguably

³ WYCO, in its response to protests, states that "Wyoming conveniently ignores the word 'marginally' and fails to recognize that the, while the operating costs were being covered, the take-or-pay contracts were not providing sufficient funds to enable WYCO to perform normalized maintenance." *WYCO's Response to Protests*, p. 6. It is WYCO that affirmatively represented to the STB that the line was marginally profitable in its initial application. *WYCO'S Application for Exemption*, p. 4. If WYCO now wants to claim that "profitable" means something else

support its abandonment petition. Each of these decisions arise under a different legal standard. In each case, the exemption had already been granted. No STB decision cited by WYCO supports the relegation of a national environmental priority (as evidenced by Congress' enactment of the HFRA), to the desire for *bigger* profits by a railroad.

(B) *Harvesting New-Growth and Old-Growth: The Need for the Saratoga Mill*

While some timber stands may still prove economical for industry to purchase, timber stands involving dense, small diameter trees between the Snowy Range and Sierra Madre portions of the Medicine Bow will simply be uneconomical for industry to purchase. The reopening of the Saratoga mill, and by extension the need for rail service to the Saratoga mill, are vital to the FS's Medicine Bow management plan.

The Medicine Bow Resource Plan complies with the HFRA. Medicine Bow N.F. Revised Land and Resource Management Plan, Record of Decision, p. 50. Under the HFRA and management plan, proper forest management requires that a healthy forest be managed to maintain a mosaic of different species **and** different age trees. The Medicine Bow Resource Plan clearly envisions that timber harvesting will play a vital role in reducing the risk of catastrophic forest fires, preventing the spread of beetle infestation, and otherwise maintaining the health of the Medicine Bow by maintaining a mosaic of old and new growth. *See* Medicine Bow Resource Plan, pp, 2-58 through 2-60; 2-62 through 2-63.

As argued by WYCO, the Saratoga mill is capable of handling small, new-growth timber to make wood chips and other non-finished lumber products. The FS concluded that the Saratoga mill, if reopened, would provide an end-place for a variety of diameter classes of trees and other biomass that may not otherwise be sold:

than covering *all* the costs of the operation, there is a disputed issue of fact which warrants a hearing so WYCO can explain whether the line is profitable or not.

The Saratoga mill can process a variety of log sizes and species to produce a wide variety and grades of lumber products. The Bighorn mill [Laramie, Wyoming] focuses on high quality lumber products.

Medicine Bow N.F. Revised Land and Resource Management Plan, Executive Summary, p. 5

Without the capacity of the Saratoga mill to handle smaller trees, the FS's overall goal of maintaining a "mosaic" of old and new growth may be impaired. As the FS noted in December 2003, the Saratoga mill, unlike the Laramie mill, can accommodate smaller trees in making unfinished lumber products. To implement the Medicine Bow Management Plan, the FS must be able to sell old *and* new growth stands of timber. The re-opening of the Saratoga mill plays an important role in the FS's overall plan to manage the Medicine Bow as a mosaic.

Proponents of the abandonment may respond that facilities in Montrose, Colorado, or Laramie, Wyoming can help the FS utilize timber harvesting to combat insect infestation and risk of forest fires in the Medicine Bow. The Montrose facility is hundreds of miles from the areas of the Medicine Bow where beetle infestation may still be preventable. *See* Exhibit 2. The Montrose facility cannot accommodate smaller trees to produce lower-grade, unfinished lumber products while incurring hundreds of miles of transportation costs. Similarly, the Laramie Facility is not set-up to handle smaller trees. The FS has already concluded that it could not rely on the Laramie facility to process different sizes of trees from the Medicine Bow. Since neither of these facilities can accommodate small diameter trees, the Saratoga facility is necessary for the FS to accomplish its goals of maintaining the proper mosaic of old and new growth throughout the Medicine Bow.⁴

Allowing rail service to the Saratoga mill will reduce the ability of the FS to utilize timber harvesting as a powerful tool in managing the Medicine Bow N.F. to reduce the risk of

⁴ It is worthwhile to note that the FS did not even consider IMR's Montrose, Colorado facility as a viable alternative for processing timber harvested from the Medicine Bow N.F. The Montrose, Colorado mill is the facility best-suited for handling timber harvested from the Routt N.F. to the south.

catastrophic forest fires and the spread of beetle infestation. The FS's ability to sell new growth timber stands for unfinished lumber products will be greatly diminished if the Saratoga mill cannot be reopened due to a lack of rail service.

IV. CONCLUSION

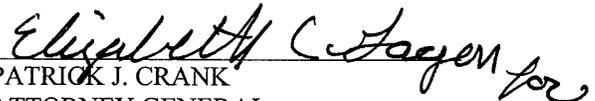
IMR is already a significant player in the timber harvesting market on the Routt. According to the FS, IMR currently has 8 timber contracts on the Routt. These contracts allow for timber harvesting on about 42,000 acres.⁵ There are already facilities in Colorado that allow IMR to process salvage and old growth, beetle-infested timber (as well as other healthy timber stands) from the Routt N.F.

When IMR purchased the Saratoga mill in September 2003, it publicly stated that reopening the mill depended upon timber harvesting in the Medicine Bow National Forest. *See Exhibit 4, Article from The Casper Star-Tribune, dated October 5, 2003.* In turn, the Saratoga mill reopening would assist the FS in fulfilling its goals for the Medicine Bow N.F. by providing a facility that would make timber harvesting, particularly in dense, small diameter forests, a viable management tool. Abandoning rail service and jeopardizing the reopening of the Saratoga mill puts the national environmental concerns and policies of the FS, as well as the economic future of Carbon County, Wyoming, at risk.

⁵ IMR currently has timber contracts with the FS in the following areas: Deadman's Gulch, Long Park, South Red Dirt, Two Bull Stewardship, Powerline South, Dinner Park, Toponas Creek, and Green Creek. All of these areas, with the exception of 5,014 acres in Dinner Park are within the Routt National Forest. The Dinner Park timber contract area straddles the Wyoming-Colorado state line with a very small portion of the area located in the southern tip of the Medicine Bow National Forest. *See Exhibit 2.*

Therefore, Wyoming and Carbon County respectfully request that the STB consider the impact on effectuating goals of the Healthy Forest Restoration Act before permitting the Carbon County Line to be abandoned.

Respectfully Submitted,


PATRICK J. CRANK
ATTORNEY GENERAL


THOMAS W. RUMPKE
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, Wyoming 82002
(307) 777-3442
(307) 777-3542 (FAX)

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing Protest of the State of Wyoming and Carbon County, Wyoming, was placed in the U.S. mail this 20th day of October, 2004, to the following:

Karl Morell
Ball Janik LLP
1455 F Street, NW, Ste 225
Washington, DC 20005
(202) 783-6947 (FAX)
Attorney for Applicant,
Wyoming and Colorado Railroad Co., Inc.

Larry Gildea
Attorney at Law
324 E. 12th Avenue, Suite 2
Eugene, OR 97401-3274
(541) 895-8787 (FAX)
Attorney for Protester,
Intermountain Resources, LLC

Michael S. Glode, Chairman
Saratoga-Carbon County Impact
Joint Powers Board
P.O. Box 486
Saratoga, WY 82331

Hank Jewell, Mayor
Town of Saratoga
P.O. Box 486
Saratoga, WY 82331


Kari Rayment, Paralegal

MAP 1 Vicinity Map, Medicine Bow National Forest

—LEGEND—

-  Medicine Bow Forest Boundary
-  Major Road
-  Interstate



Scale
Unknown

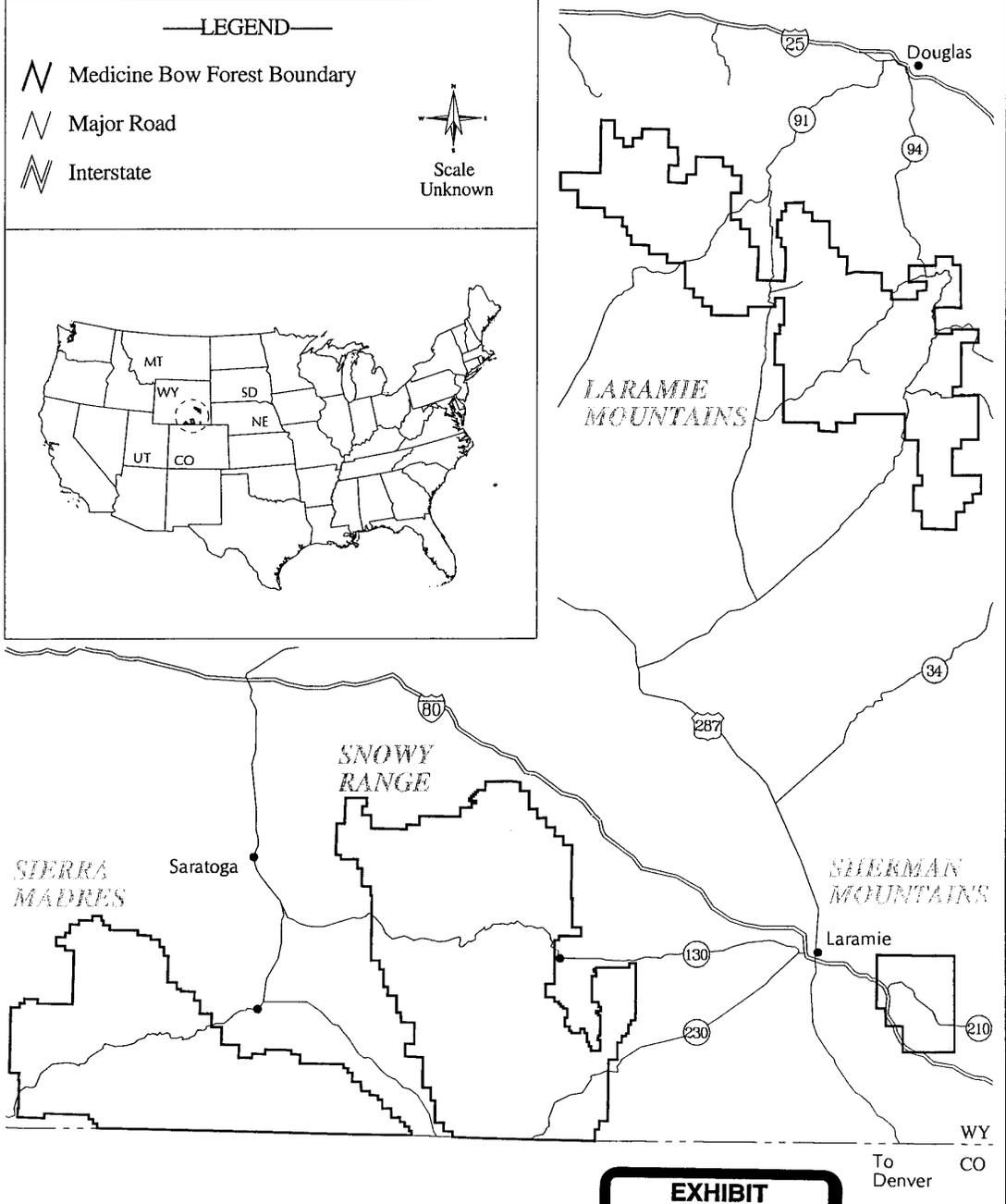
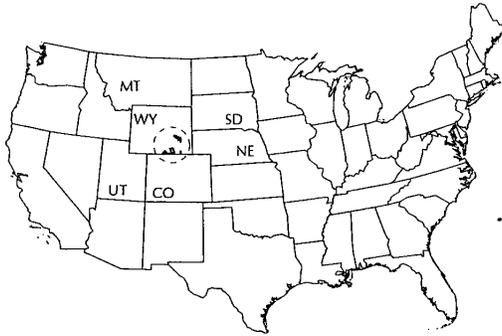
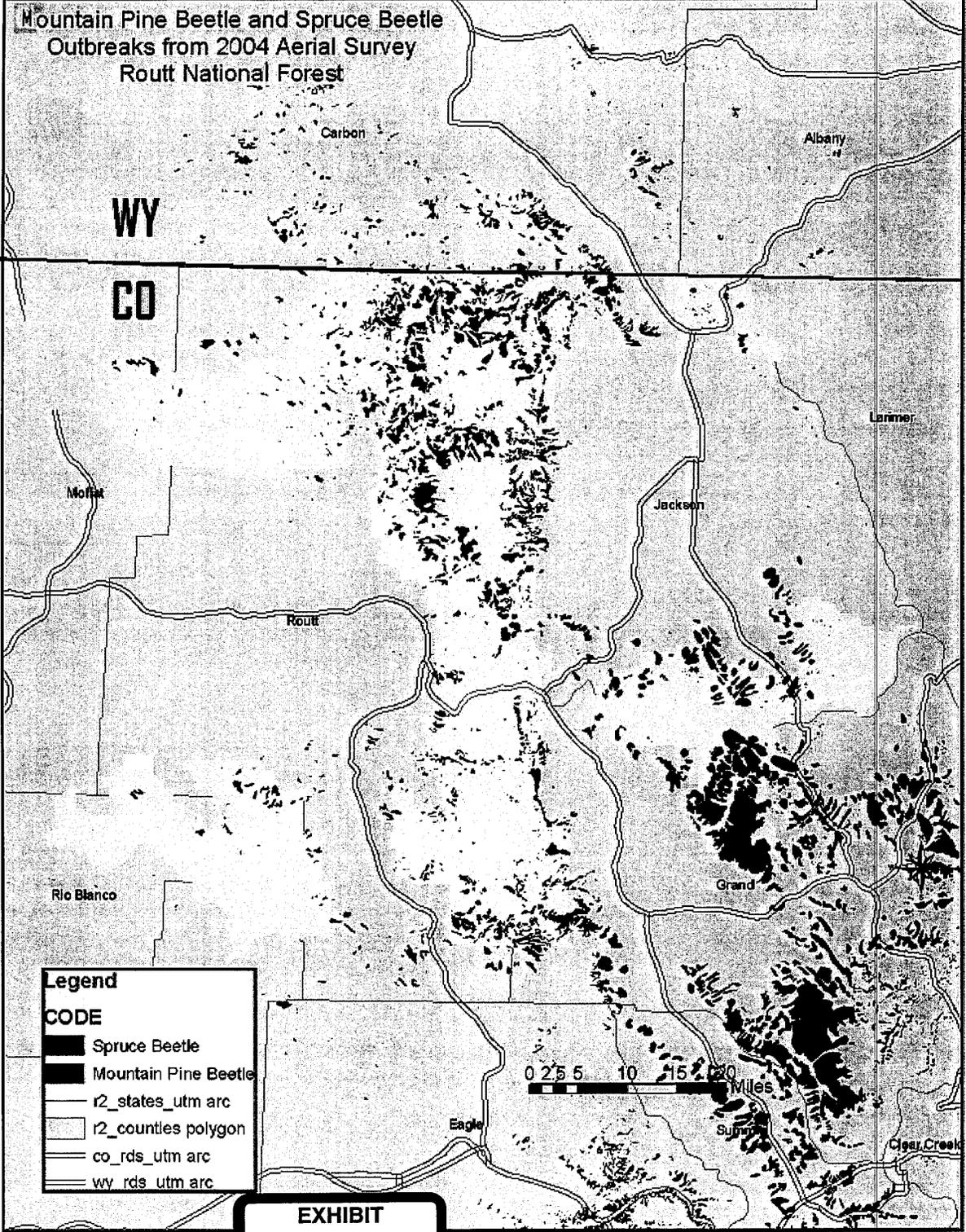


EXHIBIT
1

**Mountain Pine Beetle and Spruce Beetle
Outbreaks from 2004 Aerial Survey
Rout National Forest**



Legend

CODE

- Spruce Beetle
- Mountain Pine Beetle
- r2_states_utm arc
- r2_counties polygon
- co_rds_utm arc
- wy_rds_utm arc



EXHIBIT

2

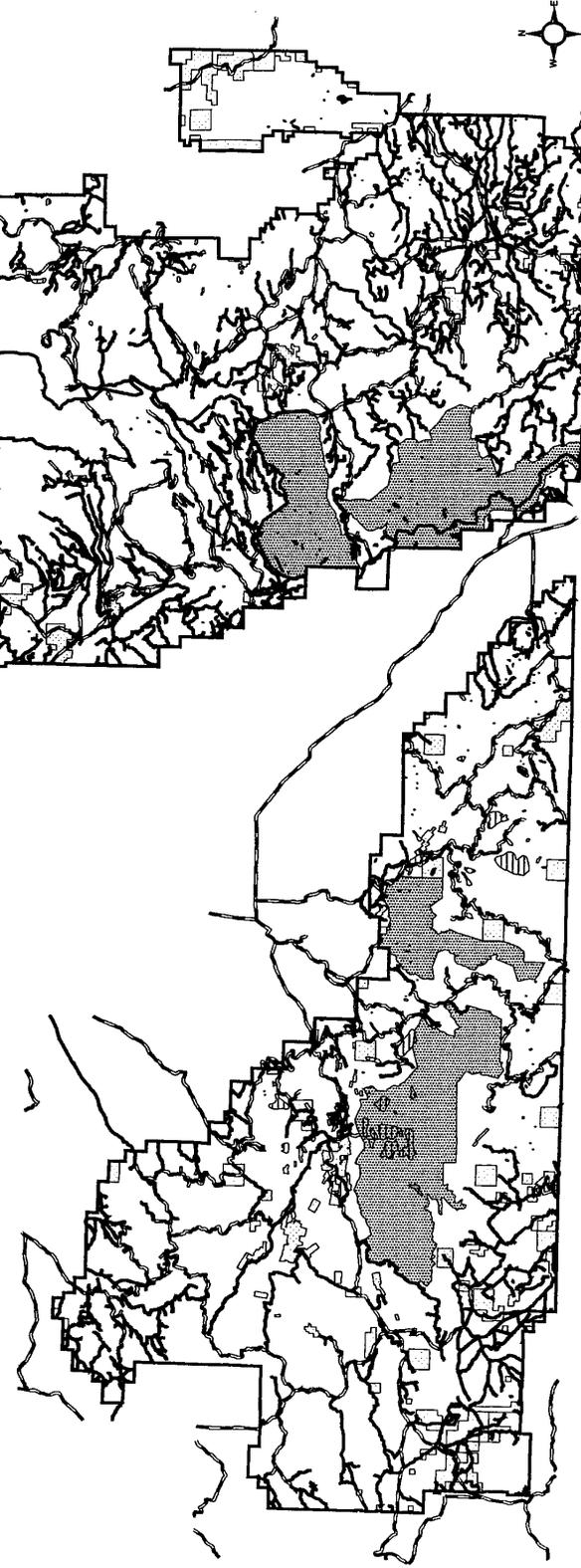
tabbler

2000 Insect and Disease Aerial Survey

LEGEND

- 2000 Damage
- Douglas-fir beetle
- Unknown
- aspen decline
- flooding/high water
- mistletoe
- mountain pine beetle
- western spruce budworm
- subalpine fir mortality
- wind-tornado
- Wilderness

The Forest Service uses the most current and complete data it has available to determine the extent of insect and disease damage. This information is used to develop management plans for the affected areas. The Forest Service makes no expressed or implied warranty, including warranty of fitness for a particular purpose, for the use of this information. The Forest Service reserves the right to correct, update, modify, or replace this information in the future. If you have any questions, comments, or requests for more information, contact the Information System, Forest National Operations, 2000 North Lincoln Street, Laramie, WY 82070, 307-746-5200.



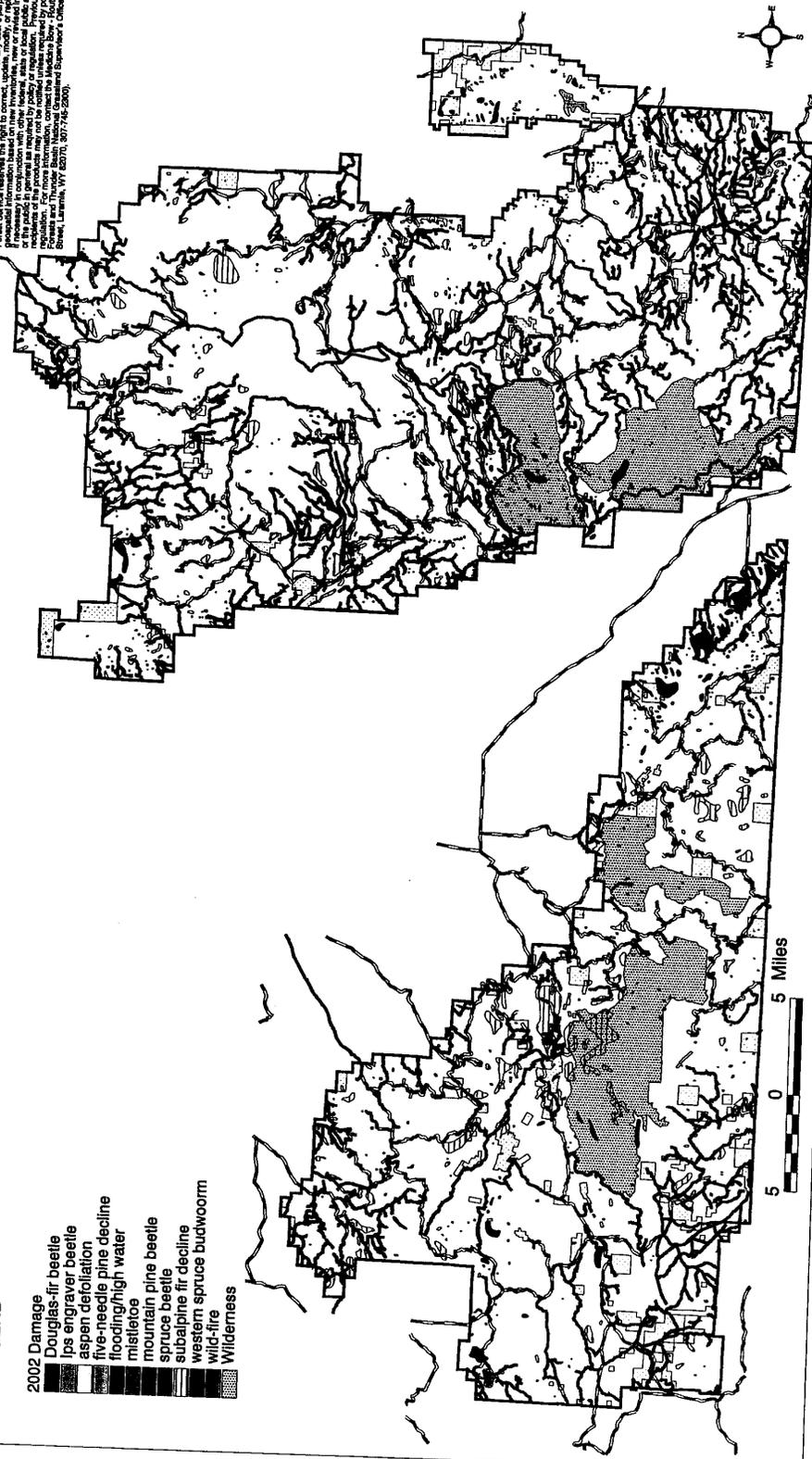
5 0 5 Miles

2002 Insect and Disease Aerial Survey

LEGEND

- 2002 Damage
- Douglas-fir beetle
- Ips engraver beetle
- aspen deterioration
- five-needle pine decline
- flooding/high water
- mistletoe
- mountain pine beetle
- spruce beetle
- subalpine fir decline
- western spruce budworm
- wild-fire
- Wilderness

Disclaimer:
 The Forest Service uses the most current and complete data it has available. GIS data and product accuracy may vary. They may be developed from aerial photography, topographic or cadastral maps, field or modeling or interpretation, information with only a certain number, based on a specific date, or other data. The Forest Service makes no warranty as to the accuracy, completeness, or suitability of the information for any purpose. The Forest Service reserves the right to correct, update, or delete information at any time. The Forest Service does not assume any liability for any use of the information. If necessary to conduct work, use of the information, or if necessary to provide an required by policy or regulation. For more information, contact the Manager of the Forest Service, Forest Management Division, 2025 North Lincoln Street, Lincoln, NE 68501, 402/476-2500.

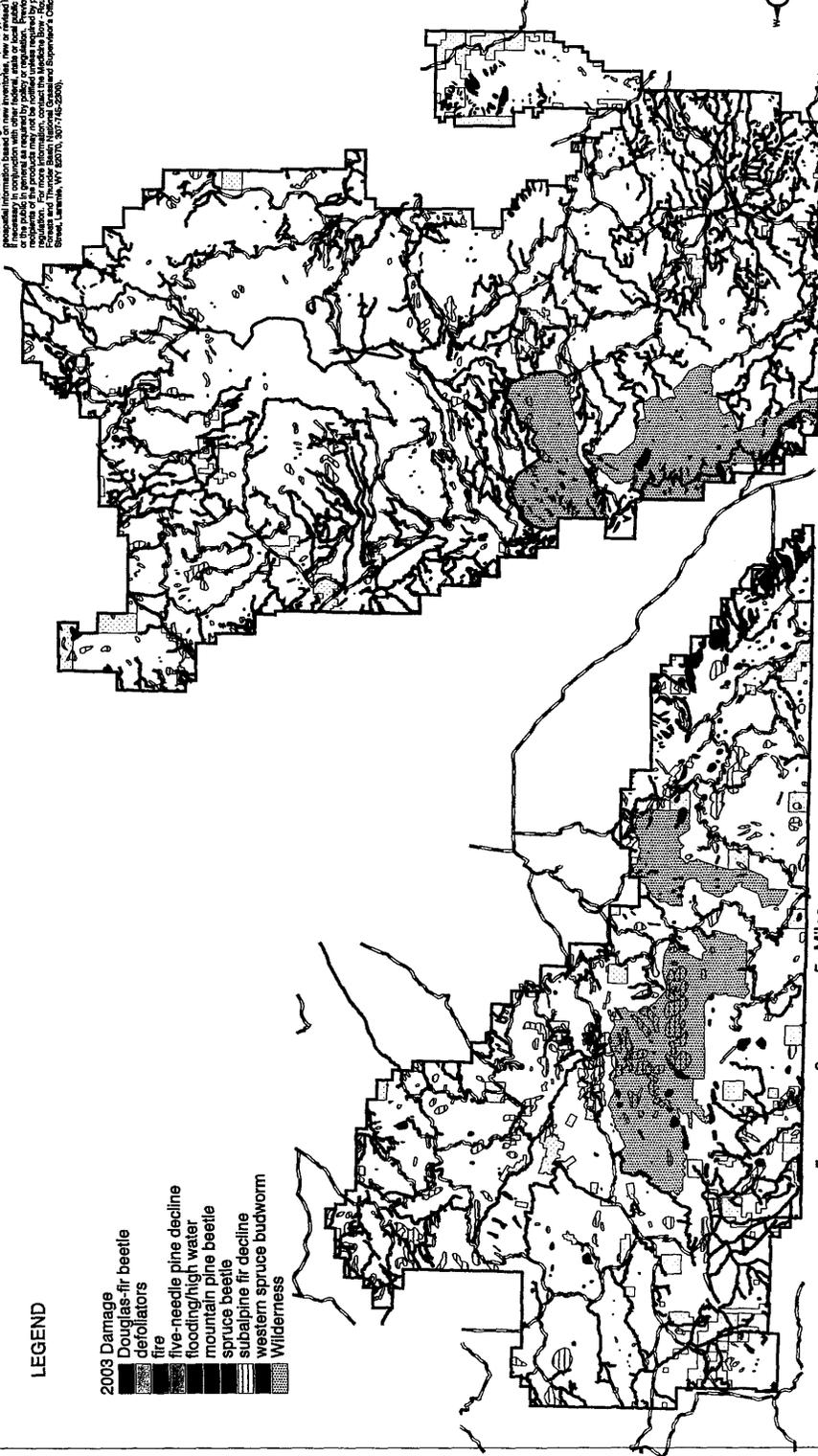


2003 Insect and Disease Aerial Survey

Disclaimer: Service users the most current and complete data is the available. GIS data and product accuracy may vary. They may be developed from aerial photography, satellite imagery, or other data sources. The data is provided for informational purposes only and is not intended for use in making decisions. The user assumes all liability for any use of the data. The Forest Service reserves the right to correct, update, modify, or replace this information at any time without notice. For more information, contact the Wildlife Division, Forest Service, 2000 N. Lincoln Ave., Fort Collins, CO 80526-3200.

LEGEND

- 2003 Damage
- Douglas-fir beetle
- derollators
- fire
- five-needle pine decline
- flooding/high water
- mountain pine beetle
- spruce beetle
- subalpine fir decline
- western spruce budworm
- Wilderness



5 0 5 Miles

