



United States
Department of
Agriculture

Forest
Service

Region 1

200 East Broadway
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File Code: 1570 (215)

Date: May 14, 1998

Subject: Molly Mud Salvage Timber Sale, Appeal #98-01-00-0045
Pierce Ranger District, Clearwater National Forest

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Blaine Davey on behalf of The Ecology Center and Alliance for the Wild Rockies protesting the Molly Mud Salvage Timber Sale Decision Memo (DM) signed by the Pierce District Ranger (Clearwater National Forest).

The Pierce District Ranger's DM proposes to salvage approximately 950 thousand board feet of dead, dying and high-risk trees from an area adjacent to existing system roads numbers 516, 516A, 518, 519, and 5119 in section 5, T33N., R6E. and sections 28, 29, 32 and 33, T34N., R6E., B.M.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the Appellant's objections and recommended changes, has been thoroughly reviewed.

FINDINGS

My recommendation is based upon the following evaluation:

Clarity of the Decision and Rationale

The DM is succinct, and well detailed in many areas. The decision rationale was clear but would have been strengthened by further reference to the Project File. Mitigation measures were specifically identified in the DM.

Purpose of the Proposal and Comprehension of Benefits

The Purpose and Need for the project is clearly stated and references the pertinent management area goals. Although not required in a categorical exclusion, a no-action alternative was discussed and compared to the purpose and need. The decision criteria were well identified and used for the selected alternative.

Consistency with Policy, Direction, and Supporting Information

Consistency with policy, direction and law was well demonstrated. The evaluation of effect on extraordinary circumstances could have been documented more effectively.

Effectiveness of Public Participation Activities and Use of Comments

Scoping was appropriate to the size of the project. Although the use of public comments was inferred in the decision, it would be helpful to individual commentors to be able to track their input more directly.

Appeal Review Findings

The Appellants allege violations of the Forest Service regulations as required in the Forest Service Handbook (FSH). They request a full remand of the DM to implement this project and further analysis documented in an EA or EIS.

Objection: The Forest has violated the Forest Service Handbook in using a Categorical Exclusion (CE).

Response: The appellants' primary contention is that the presence of extraordinary circumstances within the project area excludes the use of a CE and that an Environmental Assessment or Environmental Impact Statement should have been prepared. The Forest Service has interpreted the regulations at FSH 1909.15, Chapter 30.3(2), a proposed action may be categorically excluded from documentation if there is no negative effect on extraordinary circumstances. This interpretation has been upheld in the 9th Circuit Court in Southwest Center for Biological Diversity v. U.S. Forest Service [100 F.3d 1443 (9th Cir. 1996)]. In this project, the Forest has adequately looked at the potential for effect on extraordinary circumstances [as listed in FSH 1909.15, 30.3(2)] present and adequately documented that the project will have no effect.

The appellants expressed that the presence of a Water Quality Designated Segment (WQLS) stream should also be considered as an extraordinary circumstance. A WQLS is not listed as one of the extraordinary circumstances in FSH 1909.15, 30.3. In addition, the Forest has documented there will not be an effect on Lolo Creek, a WQLS, and the State Division of Environmental Quality has agreed with that conclusion in their letter dated February 9, 1998 (Project Record, Doc. 5).

The DM commits to a harvest of 950 thousand board feet of timber. This meets the requirement for a CE of one million board feet or less.

I find the Forest is in compliance with the FSH in categorically excluding this project from documentation.

RECOMMENDATION

I recommend the Pierce District Ranger's decision be affirmed and the Appellants' requested relief be denied.

/s/ Maureen McBrien

MAUREEN MCBRIEN
Appeal Reviewing Officer