United States Department of Agriculture | Forest Service | Region 1 | 200 East Broadway P. O. Box 7669 Missoula, MT 59807

File Code: 1570 (215) Date: October 27, 1999

Route To:

Subject: Yellow Pine Restoration Timber Sale DN, Appeal #99-01-00-0179

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Kristin Ruether on behalf of Friends of the Clearwater, The Ecology Center, The Lands Council, American Wildlands, Forest Guardians, and Forest Conservation Council protesting the Yellow Pine Restoration Timber Sale Decision Notice (DN) on the Palouse Ranger District (signed by the Clearwater National Forest Supervisor).

The Forest Supervisor's decision implements harvest of 2.4 million board feet of timber from 467 acres using various harvest methods, tree planting on 296 acres, and under burning on 310 acres. The decision also includes construction or reconstruction of 0.9 miles of road and obliteration or placing in long-term intermittent status of 4.4 miles of road.

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 Appellants' issues and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The Appellants allege violations of the National Forest Management Act, the Clean Water Act (CWA), the Clearwater National Forest Plan, and the Forest Plan Lawsuit Settlement Agreement. The Appellants request the Regional Forester to reverse the decision and implement Alternative C, the road obliteration-only alternative. If this sale is pursed, they request the Regional Forester to order the Clearwater National Forest to assess the cumulative impacts of the Yellow Pine Restoration Timber Sale and other projects in an EIS.

On October 5, 1999, a conference call was held between Kristin Ruether from the Friends of the Clearwater, who also represented the other appellants in this appeal, and the Forest Service. Dan Johnson, from the Resource Organization on Timber Supply (ROOTS), also participated as an Interested Party. The issues of concern were discussed, but the participants did not reach a resolution of any appeal points.

ISSUE REVIEW

ISSUE 1: The CWA clearly states in section 303(d) the EPA must approve delisting proposals by state agencies before the delisting becomes official. This has not occurred. This is a violation of Forest Plan Settlement Agreement and the CWA.

Response: In January 1999, the Idaho Division of Environmental Quality (IDEQ) proposed to the EPA that Little Sand and Bonami Creeks, among others, be removed from the 303(d) list (Project File [PF], Volume III, Document 67). As of September 30, 1999, the EPA has not approved the IDEQ 1998 303(d) list. However, the State's delisting of Little Sand and Bonami Creeks did not change the Yellow Pine Restoration proposed action. The Forest will continue to treat Little Sand and Bonami Creeks as

water quality limited streams (WQLS) until the State of Idaho advises them otherwise. The proposed action meets the requirements of WQLS designation (PF, Vol. III, Doc. 48, p. 4). This project is in compliance with the Forest Plan Settlement Agreement and the Clean Water Act.

ISSUE 2: Pairing unrelated projects together and leaning on the net sediment concept does not satisfy the intent of the Settlement Agreement. The proposed project violates the repair and correction section of the Agreement. According to the WATBAL model, the proposed project would cause 62.2 tons of sediment to be produced by logging, and the 3 year mean sediment to rise to 130 percent over the natural sediment rate. Furthermore, the calculations for sediment 'savings' from road obliteration are inconsistent with those for sediment production so that the sediment 'savings' are artificially inflated. The potential sediment 'savings' include figures for mass wasting which are purely speculative. WATBAL does not account for mass wasting so sediment is not assumed to be generated in the no action alternative.

Response: The Yellow Pine Restoration project includes three of the four objectives stated within the Forest Service's Natural Resource Agenda. These three objectives are watershed health and restoration, sustainable forest ecosystem management, and forest road system management (EA, pp. I-4 to I-5). Mixing any or all of these activities in one watershed restoration analysis is consistent with current management direction.

The Forest Plan Lawsuit Settlement Agreement (II.2.d) states that the Forest Service agrees to proceed only with those projects that would result in no measurable increase in sediment production. This is the case with the Yellow Pine Restoration Project. The project's ecosystem restoration and sediment reduction activities will be funded and accomplished through a timber sale contract (PF, Vol. I, Doc. 1, pp. 19 to 21; EA, pp. III-65 to III-67) and actually results in a lessening of sediment production. The WATBAL model takes into account a water yield model, a sediment yield procedure based on surface erosion, and a sediment yield procedure based on mass erosional processes (mass wasting) [Technical User Guide (Patten, 1989); EA, p. III-44]. WATBAL estimates that 62.2 tons of sediment will be produced by the Yellow Pine Project. This does not mean 62.2 tons of sediment will actually enter Little Sand Creek. Actual sedimentation is expected to be much less due to the implementation of Best Management Practices (BMPs) and INFISH buffers (EA, p. III-64). By obliterating one road, surfacing another, and placing a third in long-term intermittent status, the project will also prevent 99.1 tons of sediment from being produced. Therefore, the total sediment balance will be a reduction of sediment production by 36.9 tons (PF, Vol. I, Doc. 1, p. 21). These sediment saving calculations were made following an approved standard procedure that is consistent throughout the Clearwater Forest (EA, pp. III-64 to III-67). The proposed action meets the requirements of the Forest Plan Lawsuit Settlement Agreement.

ISSUE 3: The DN does not state when the road obliteration would occur in relation to the logging. Thus, the logging might very well occur before the obliteration, causing sediment to be delivered into the creeks for a period of time (a "spike") in violation of the Settlement Agreement.

Response: Road reconstruction (resurfacing) will be accomplished prior to or during the timber sale contract (DN, p. 21; EA, p. 63). Logging will occur prior to road obliteration activities, as roads are needed to complete the associated timber harvest. BMPs will be applied (DN, Appendix A; EA, Appendix B) to prevent sediment delivery to streams. The Clearwater National Forest has an overall BMP implementation and effectiveness rate of 99.4 percent (PF, Vol. I, Doc. 2). As observed in the BMP audits in 1998, only one out of 343 BMP observations were found to deliver sediment to a stream.

ISSUE 4: Even though the Palouse Ranger District is clearly failing to meet its old growth standards, the Yellow Pine Project will cut 57 acres of forest that have some old growth components. The DN/FONSI says that these stands are not old growth or good replacement

candidates but in the Response to Comments section, it is noted that these stands contain some older legacy or relic trees. It was thought that these stands would be replacement old growth stands, but upon field verification, the District biologist found they were not. It is not clear why these stands are not considered replacement old growth even though they have some old growth components. The DN/FONSI makes no case that these stands would not eventually turn into real old growth. Given the fact there is very little old growth on the District, the Forest Service should not cut anything that has any old growth component in it in order to comply with the Forest Plan old growth standards.

Response: The Forest-wide old growth standards are: 1) Maintain at least 10 percent of the Forest in old growth habitat; and 2) Select at least 5 percent of each approximately 10,000-acre watershed, within forested non-wilderness areas to manage as old growth habitat (EA, p. III-19). If sufficient old growth is not available within the unit to meet the 5 percent requirement, then additional stands are to be designated as "old growth replacement stands" to meet the 5 percent requirement.

A recent summary (October 27, 1998) of old growth conditions across the Clearwater National Forest confirms the 10 percent standard is being met Forest-wide. The results of the inventory show 11 percent of the Forest is old growth (EA, p. III-19). The Palouse old growth unit 2-3 contains 12,533 national forest acres. Eight hundred forty three of these acres are designated old growth so the designated stands comprise 6.7 percent of old growth in unit 2-3. Since 6.7 percent of the area is designated old growth, the 5 percent standard is currently being met.

An additional 1,076, acres or 8.6 percent of old growth unit 2-3, is tentatively identified as old growth. At a minimum, unit 2-3 is made up of 15.3 percent of 'tentatively identified old growth.' These stands have largely been identified from stand exam data and aerial photo interpretation (EA, p. III-19). During the Yellow Pine Restoration analysis the District biologist field-checked two of these 'tentatively identified old growth' stands. The District biologist determined these 57 acres would not be good old growth or replacement old growth (EA, pp. III-33 to III-35).

Field verified old growth will not be reduced as a result of this project. 'Tentatively identified old growth' will be reduced by 57 acres, because those acres were determined not to be suitable for old growth nor replacement old growth (PF, Vol. I, Doc. 1, p. 14; EA, pp. III-19 and III-33 to III-35). After project implementation this will still leave 843 acres of designated old growth and 1,019 acres of tentatively identified old growth in the unit. A total of 1,862 acres or 14.9 percent of unit 2-3 will be managed as old growth. This substantially exceeds Forest Plan requirements to retain 5 percent old growth per 10,000 acre watershed (Clearwater Forest Plan, Appendix H, p. H-1).

ISSUE 5: The Biological Evaluation notes that for several species of wildlife and fish, the project may impact individuals or habitat, but will not likely result in a trend toward federal listing or reduced viability for the population or species. There have been no surveys done by the Forest Service to determine if these species exist within the project area. If the populations of these species are unknown, then the impacts to them are unknown, too. This is a violation of the Clearwater Forest Plan and NFMA.

Response: Monitoring of MIS is done at the Forest level. The Forest issues an Annual Monitoring and Evaluation Report as required by the Forest Plan. This report addresses the monitoring done for these species. NFMA imposes duties on the Forest Service that include providing for a diversity of plant and animal communities (36 CFR 219.26). Specifically, the Forest Service is obligated to maintain sufficient habitat (36 CFR 219.19) and to monitor the population trends of management indicator species [36 CFR 219.19(a)(b)]. In *Inland Empire Public Lands v. United States Forest Service,* the U.S. Court of Appeals for the 9th Circuit deferred to the Forest Service interpretation of these regulations to

find that the Forest Service can fulfill its population monitoring requirements by maintenance of sufficient habitat.

For the sensitive species in question, habitat requirements and effects to existing habitat have been considered in the analysis (EA, pp. III-24 to III-32; DN, pp. 13 to 18). The Environmental Assessment does not rely on chance sightings. The District biologist visited the project site on a number of occasions to ascertain existing conditions, and has used researchers' data when available in the literature. In addition, a sensitive plant survey was conducted for this project by the Forest botanist and is included in the Project File (PF, Vol. III, Doc. 50). The EA determined that while some individuals may be impacted the species will not be negatively impacted, and the project will not have any affect on populations across the Clearwater National Forest or the range of species analyzed. This project is in compliance with the Clearwater National Forest Plan and NFMA.

RECOMMENDATION

I recommend the Forest Supervisor's decision be affirmed and the Appellants' requested relief be denied.

/s/ Gary A. Morrison

GARY A. MORRISON
Reviewing Officer
Director, Recreation, Minerals, Lands,
Heritage and Wilderness