



United States
Department of
Agriculture

Forest
Service

Region 1

200 East Broadway
P. O. Box 7669
Missoula, MT 59807

File Code: 1570 (215)

Date: September 20, 2000

Route To:

Subject: Dutchman Salvage TS DN, Appeal #00-01-00-0112, Clearwater NF

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, and Alliance for the Wild Rockies protesting the Dutchman Salvage Timber Sale Decision Notice (DN) signed by the Lochsa District Ranger, Clearwater National Forest.

The District Ranger's decision adopts Alternative 2, which would harvest approximately 900 MBF of dead, dying, blowdown and high risk trees which are affected with root rots, and being killed by white pine blister rust, Douglas-fir bark beetles, and fir-engraver beetles. The proposed harvest method is a combination of individual tree mark, seed tree harvest with reserves, and clearcut with reserves. Approximately 80 acres would be harvested from the existing road systems.

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' objections 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 Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Clean Water Act (CWA), and the Forest Plan Lawsuit Settlement Agreement. The appellants request a remand of the DN. No informal resolution meeting was held.

ISSUE REVIEW

Issue 1. The Forest Service violated NEPA by using the fact that a timber sale contract exists for the proposal to justify the selection of the preferred alternative.

The appellants contend that the Heartwood litigation instructed the Forest Service to cancel CE timber sale contracts. They believe the Forest misled the public by saying that taxpayers would be liable for damages resulting from cancellation of the contract if the no action alternative was selected.

Response: The Heartwood decision did not direct the Forest Service to cancel ongoing timber sale contracts; it nullified categorical exclusions used to satisfy the requirements for NEPA. The Washington Office directed that timber sale contracts resulting from projects approved with CEs be suspended according to contract provision C6.01(b) which states, "Purchaser agrees to interrupt or delay operations under this contract, in full or in part, upon the written request of Contracting Officer... to



comply with a court order, issued by a court of competent jurisdiction.” The Forest properly suspended the contract so that an Environmental Assessment (EA) could be prepared for the sale. The Forest is correct in stating that if the contract were cancelled (due to selection of the no action alternative) the provisions of CT8.2 – Termination and CT9.5 – Settlement would apply (Project File, Doc.3, pp. 34 and 41). The Forest Service would be liable for damages to the contractor.

Issue 2. The EA does not adequately disclose the effects on water quality.

The appellants contend that the EA fails to take a hard look at the environmental consequences of the proposed action and that it fails to make a convincing case that the impacts of the project are insignificant.

Response: The EA discusses the current conditions of the Lolo Creek and Dutchman Creek drainages on pages III-17 to III-20. The effects of the project on water quality are also discussed and supported by information in the project file (EA, pp. III-20 to III-23; Project File, Doc. 64). The EA (pp. III-17 to III-23), Watershed and Fisheries Report (Project File, Doc. 64, and the revised Biological Evaluation/Assessment (BE/BA) (Project File, Doc. 65a) document how the project meets Forest Plan standards for the watershed and fisheries resource. The EA (pp. III-3 to III-5), Soils Report (Project File, Doc. 61), Dutchman Salvage Landtype map (Project File, Doc. 62), and the Soils/Landtype Information for the Dutchman Study Area (Project File, Doc. 63) address the soil and landtypes, their characteristics, and the landslide hazard analysis that was conducted. The analysis concludes that the “risk of landslides is low for the treatment units within the project area” (Project File, Doc. 61, p. 3). The District Ranger, in her Finding of No Significant Impact, concluded “There are no anticipated effects to water quality” (DN, p. 9).

Issue 3. The EA fails to adequately address cumulative impacts.

The appellants contend that the EA merely lists other projects occurring in the area and does not analyze the effects of those projects in combination with the Dutchman project. In particular, the analysis does not disclose the effects of past landslides on watersheds or the potential for future landslides. The appellants contend that cumulative impacts for the Lolo Creek watershed must be considered. They also contend that there is no cumulative effects analysis for vegetation and that the analysis for sensitive species (black-backed woodpecker, fisher, and wolverine) is inadequate.

Response: The EA discusses planned and ongoing activities in the watershed and discloses the cumulative effects for each resource area in Chapter III. Cumulative effects relative to vegetation are addressed in the Watershed and Aquatic Wildlife section (EA, pp. III-22 to III-23), the Fire section (EA, p. III-8), and the Wildlife section (EA, pp. III-15 to III-17). Supporting documentation for the cumulative effects analysis is contained in the specialist reports (Project File, Docs. 49-86). The EA (pp. III-22 to III-23) and the Watershed and Fisheries Report (Project File, Doc. 64, pp. 5-6) discuss past activities in the Lolo Creek watershed and state that 47.7 percent of NFS lands (22,267 acres) have been harvested, as well as most of the 76,124 acres of State and private lands (EA, p. III-22). The EA states that the Dutchman project will increase the harvest level on NFS lands by 80 acres or 0.05 percent.

The EA (pp. III-3 to III-5) and Soils Report (Project File, Doc. 61) disclose the impacts of past landslides in project area watersheds and analyze the potential for future landslides. The analysis concludes that the “risk of landslides is low for the treatment units within the project area” (Project File, Doc. 61, p. 3).

Cumulative effects on sensitive species are disclosed in the EA (p. III-16) and in the revised Biological Evaluation/Assessment (BE/BA) (Project File, Doc. 65A). The EA acknowledges that other projects may occur in the area but no specific proposals have been initiated. Cumulative effects of these projects will be analyzed and disclosed in the NEPA documents prepared for them. The revised BE/BA indicates that the effects of the Dutchman project on black-backed woodpecker, fisher, and wolverine are not measurable and the project may impact individuals but will not likely result in a trend toward listing or reduced viability for the population or species. The estimated available habitat for these species is displayed in the wildlife section of the project file (Project File, Doc. 76, pp. 1, 5, 6, 10, and 12).

Issue 4. The EA does not consider an adequate range of alternatives.

Response: Chapter II of the EA describes how comments received in public scoping were used to identify issues and develop alternatives. The EA describes three alternatives considered but eliminated from detailed study, as well as the two alternatives considered in detail. The courts have established that the direction to “rigorously explore and objectively evaluate all reasonable alternatives” [40 CFR 1502.14(a)] does not mean that every conceivable alternative must be considered, but that selection and discussion of alternatives must permit a reasoned choice. The alternatives in the EA respond to the purpose and need for the project, are within the Forest Plan management area direction, respond to public comment, and are reasonable for this project.

Issue 5. The project violates the Forest Plan lawsuit settlement agreement.

The appellants contend that because Lolo and Dutchman Creeks are not meeting Forest Plan cobble embeddedness standards, have been damaged by logging and road building, and have had several landslides occur during 1995-96, the project violates the settlement agreement. The appellants also question the effectiveness of Best Management Practices (BMPs) and INFISH buffers in preventing sediment resulting from landslides from reaching the streams. Finally, the appellants object to the use of WATBAL to assess sediment impacts.

Response: The Forest acknowledges that Lolo and Dutchman Creeks do not meet Forest Plan standards for cobble embeddedness (EA, pp. III-18 and III-19; Project File, Doc. 64, p. 3). The EA and Watershed and Fisheries Report fully disclose the effects of the project on sediment delivery to streams and the analysis concludes that the “proposal will be a “no effect” timber sale to the watershed and fisheries resources in Dutchman and Lolo Creeks. [T]he terms and conditions of the agreement are met because no new sediment would be added to these streams” (EA, p. III-22).

Monitoring done in 1999 shows that BMPs on the Clearwater are 99.4 percent effective (Project File, Doc. 72, p. 3). BMP audits from 1996 through 1998 indicate that implementation and effectiveness was at 99 percent (Project File, Doc. 70, p. 1). The effectiveness of these BMPs assesses sediment delivery to streams due to erosion and do not look at landslide type events. The ruling in the TWS v. Bosworth

litigation states, “Because BMPs have not been assessed for their effectiveness against landslide events and because a *high risk of landslides* is acknowledged in the Fish Bate preferred alternative, the Court finds it is not reasonable for the Defendants to just summarily rely on BMPs to mitigate this environmental impact” (emphasis added). Two important points distinguish the Dutchman project from the Fish Bate project. First, the documentation for the Dutchman project does not claim that buffers prevent channelized landslides or debris flow; and second, as discussed in response to Issue 3, risk of landslides in the Dutchman project area is low. No landslides occurred within the project area during the 1995-96 floods (Project File, Doc. 64, p. 3). Based on the analysis documented in the project file and EA, the District Ranger concluded “There are no anticipated effects to water quality” (DN, p. 9).

The WATBAL model was not used to assess sediment impacts for the Dutchman project. It was only used to describe the historical conditions in the Lolo Creek watershed. The model was not run due to the small size of the proposal, the generally stable land types that occur in the project area, and the absence of any new permanent road construction in the proposal.

Issue 6. The project violates NFMA requirements to provide for viable populations of wildlife species and the NFMA requirement for monitoring.

The appellants contend that the project will violate both NFMA requirements through the Forest’s failure to conduct population trend monitoring of old growth-dependent wildlife species as required by the Forest Plan and the failure to maintain adequate old growth habitat.

Response: Monitoring of species to develop population trends is a Forest-level issue and beyond the scope of this project. Monitoring of threatened, endangered, sensitive, and management indicator species is reported in the Annual Monitoring and Evaluation Report as required by the Forest Plan. The wildlife analysis documented in the EA is a habitat-based analysis supported by scientific literature and professional judgment of the wildlife biologist. The EA (pp. III-8 to III-17), revised the Biological Evaluation/Assessment (BE/BA) (Project File, Doc. 65A), and the Wildlife and TES Plant Resources Status Report (Project File, Doc. 74) indicate that the project will maintain adequate habitat within the analysis area to provide for population viability. As found by the 9th Circuit Court of Appeals, it is not “inconsistent with regulation for the Forest Service to strive to maintain viable populations of species by focusing on the critical habitat requirements of Sensitive, Threatened, and Endangered species within and without the Decision Area.” No activities are proposed in old growth.

RECOMMENDATION

I recommend the District Ranger’s decision be affirmed and the appellants’ requested relief be denied.

/s/ Alexander G. Morigeau

ALEXANDER G. MORIGEAU
Reviewing Officer
Deputy Director, Engineering