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

File Code: 1570 (215) Date: December 14, 1999

Route To:

Subject: 514 Salvage Project, Appeal #00-01-00-0007, Clearwater NF

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Kristin Ruether on behalf of the Friends of the Clearwater, the Ecology Center, Alliance for the Wild Rockies, the Lands Council and American Wildlands, protesting the Clearwater National Forest Supervisor's Decision Notice (DN) for the 514 Salvage project.

The Forest Supervisor's decision adopts Alternative 2 which will harvest trees on 89 acres. The project also includes a small amount of road reconstruction and ditch work.

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 NEPA, NFMA, Administrative Procedures Act (APA), the Forest Plan Lawsuit Settlement Agreement (Stipulated Agreement), the Clean Water Act, and the Forest Plan. The Appellants request the Regional Forester to reverse the decision of the Forest Supervisor. If this sale is pursued, the Regional Forester should order the Clearwater National Forest to assess the cumulative impacts of the 514 Salvage project in an EIS.

The Forest contacted Kristin Ruether of the Friends of the Clearwater. She stated if the proposed action had not changed since the Decision was issued the Appellants did not wish to have an informal disposition meeting. Therefore, no resolution was reached.

ISSUE REVIEW

ISSUE 1. Violations of NEPA, NFMA, APA, Stipulated Agreement, the Clean Water Act, and the Forest Plan will affect water quality.

Contention 1A - The conclusion is inadequately supported because the WATBAL is a scientifically unsound model.

Response: The 514 Salvage Environmental Assessment (EA) used "[t]he Watershed Response Model for Forest Management (WATBAL)...to simulate the potential effects of timber harvest activities on stream flow and sediment regimes" (EA, p. 31). The EA continues with "WATBAL estimates have been used only to set historical trends and to compare alternatives. Any conclusions about watershed condition which have been drawn from WATBAL model estimates have been field reviewed through stream surveys, field verification, and professional judgement" (EA, p. 31). Documents in the Project

File support the conclusions presented in the EA (PF, Docs. 91, 93 through 100, 120, 121, and 131 through 134).

The WATBAL model was developed specifically for the Clearwater National Forest. "It was calibrated with extensive data derived on the Forest (and in a few cases on nearby Forests). This data consists of stream flow, precipitation, bed load, and suspended load from the Forest's intensive stream monitoring program" (D. Jones, Forest Hydrologist, personal communication with ID Team leader). The WATSED model referred to by the Appellants is actually the WATBAL model which has been "opened" so other Forests can use it by inserting their own variables instead of the Clearwater National Forest variables. The WATBAL model is constantly being updated as new technology becomes available and the Forest Hydrologist considers "it is a state-of-the-art model designed specifically for the Clearwater National Forest" (PF, Doc. 147). The WATBAL model is scientifically sound and is the appropriate tool to use to evaluate the impacts of the various alternatives in the 514 Salvage project EA.

Contention 1B - Watershed evaluation methods are not disclosed.

Response: Watershed evaluations methods are disclosed in the EA (p. 31). The WATBAL model was used to simulate the potential effects of the proposed timber sales. Conclusions reached through the use of the model were reviewed through stream surveys and field verification. The WATBAL runs and field data can be found in the Project File (Docs. 91, 93 through 100, 120, 121, and 131 through 134).

Contention 1C - The WATBAL model was not run on Fan Creek.

Response: The WATBAL model was not run for the 1,754-acre Fan Creek drainage because the model does not accurately portray small watersheds under 2,500 acres (EA, p. 31). Although Fan Creek was not modeled, it was still evaluated (EA, pp. 29 through 31, and 42 through 44).

Contention 1D - The proposed mitigation measures do not provide sufficient protection. PACFISH buffers are not perfect and should not be leaned on as the final solution to protect fish habitat.

Response: BMP implementation and effectiveness rates have been developed from BMP field audits and PACFISH/INFISH field reviews conducted on the Forest. There were 343 BMP observations in 1998 with an implementation and effectiveness rate of 99.4 percent (PF, Doc. 90). Over the past 3 years, 722 BMP checks have been made with an effectiveness rating of 99 percent (PF, Doc. 85). The Forest Hydrologist considers it a very rare event when sediment is delivered from timber harvest and road construction activities to a stream (PF, Doc. 91). Project BMPs are listed and their effectiveness discussed in Appendix C of the EA (pp. 54 through 69). The EA's conclusion that sediment will not be produced is based upon the observed implementation and effectiveness rate of BMPs across the Forest and the modeled results of the proposed timber harvest and sediment reduction activities (DN, pp. 1, 39, and 40; EA, pp. 2, 10, 11, 43, and 44). Past monitoring has insured BMPs, including PACFISH buffers, effectiveness and implementation rate is known and well documented (PF, Docs. 85 and 91).

The Forest Service is not leaning on PACFISH in this project as the final solution to ensuring bull trout viability. The project is using the PACFISH buffers in addition to the BMPs, seeding of exposed soil, and situating temporary roads on ridges at least 600 feet away from perennial streams to protect water quality and fish habitat.

Contention 1E - The project will add sediment to a drainage currently not meeting Forest Plan Standards in violation of the Stipulated Agreement.

Response: The Stipulated Agreement requires the Clearwater National Forest "to proceed only with those projects that would result in no measurable increase in sediment production in drainages currently not meeting Forest Plan Standards." The 514 Salvage project watershed analysis does not project any measurable sediment production within the analysis area from any of the project's activities (EA, pp. 43 through 44). As far as this project is concerned, it is immaterial whether Fan Creek currently meets Forest Plan Standards because no measurable sediment will be produced from the salvage operation. The 514 Salvage project meets the Stipulation of Dismissal requirement for water quality (DN, p. 9; PF, Doc. 139).

Contention 1F - The proposed project also violates the repair and correction section of the Stipulated Agreement.

Response: The Stipulation of Dismissal states "The Forest Service also agrees, as budget permits, to repair or correct known sediment sources on Forest Service system lands within these drainages if technically possible" (EA, p. 5; PF, Doc. 139). The 514 Salvage project evaluated potential sediment sources and proposed under all alternatives to provide road maintenance to fix a sediment source on the 514B Road (DN, p. 1; EA, pp. 2, 8, and 9). In addition, the EA discusses the Eldorado Watershed Assessment process which will evaluate the whole Eldorado Creek drainage for watershed rehabilitation needs (EA, p. 8; PF, Docs. 131 through 135). The 514 Salvage project meets the Stipulation of Dismissal requirement for watershed rehabilitation (DN, p. 9).

Contention 1G - The 514 Salvage project violates the Clean Water Act.

Response: The BMPs outlined for the 514 Salvage project were developed to address water quality degradation concerns (EA, pp. 54 through 69). There has been 722 individual BMP checks over the last 3 years with an effectiveness of implementation rate of 99.0 percent (PF, Docs. 85 and 90). The 514 Salvage project will not cause any water quality degradation (EA, pp. 36 through 37, 42 through 44; PF, Doc. 97). The project is in compliance with the Clean Water Act.

Contention 1H - The 514 Salvage project violates Forest Plan Standards for water quality.

Response: The 514 Salvage project does not violate the Forest Plan Water Standard. It will not produce any direct, indirect, or cumulative effects to peak flow, water yield, or sediment production, and it will not cause any delay to the recovery of Fan or Eldorado Creeks (DN, p. 36; EA, p. 43).

ISSUE 2. The EA and Decision Notice fail to adequately address cumulative impacts.

Contention 2A - The EA did not sufficiently analyze cumulative effects from past and proposed timber sales on water quality and wildlife habitat.

Response: The EA conducted a cumulative effects analysis for all resources within their respective analysis areas (DN, p. 8; EA, Chapter IV). The analysis included all foreseeable proposed activities including timber sales and road rehabilitation within the Eldorado drainage (EA pp. 2 and 34). All past projects, such as Fan Lunch, are included as part of the current condition (EA, pp. 2 and 20).

Contention 2B - The environmental analysis failed to evaluate cumulative effects to the Lolo Creek drainage.

Response: The analysis area for water quality cumulative effects from the 514 Salvage proposal is the Eldorado Drainage (EA, pp. 23 and 29). Portions of Lolo Creek and even the main Clearwater River, however, were included for migratory fish discussions (EA, pp. 23 through 25). The analysis area for fish was larger to insure that any potential effects from the proposed action was included (EA, p. 20).

The Lolo Creek drainage was not defined as the analysis area because it is a very large drainage in relation to the management actions proposed under the 514 Salvage project. Based on modeling, field surveys, and professional judgement, the proposed management actions will not have an affect on the Eldorado drainage, let alone the much larger Lolo Drainage (EA, pp. 37 and 43).

Contention 2C - The EA did not adequately consider cumulative impacts to wildlife habitat.

Response: The EA displays a cumulative impact evaluation for all wildlife habitat known and suspected to occur within the 514 Salvage project area (EA, pp. 44 through 48). The EA describes the process used to evaluate wildlife habitat (p. 45). Data on past impacts and current management was combined to exhibit the existing condition. This existing condition is displayed under the no action alternative, Alternative 1 (EA, pp. 44 through 47). The Wildlife Biologist then evaluated the 514 Salvage management actions to arrive at the direct and indirect impacts (EA, pp. 44 through 47). Following that, other projects within the analysis area were evaluated to determine any cumulative effect (EA, pp. 44 through 47). In the case of wildlife habitat, no cumulative effect was found in relation to past, present, or future management activities (DN, pp. 1 and 8; EA, pp. 44 through 47; PF, Doc. 123, pp. 4 through 11, and Doc. 124).

ISSUE 3. Impacts on Sensitive and Management Indicator Species of Wildlife and Plants, and Failure to monitor.

Contention 3A - The Forest Service has failed to monitor population trends for wildlife and plant Threatened, Endangered, Sensitive and Management Indicator Species (MIS).

Response: Monitoring of Threatened, Endangered, and Sensitive (TES) species and MIS to develop population trends is a Forest-level issue beyond the scope of this project. The Forest issues an Annual Monitoring and Evaluation Report as required by the Forest Plan. These yearly reports address the monitoring that was done for the TES species and MIS.

The Wildlife and Fisheries Biologists conducted a Biological Assessment and Biological Evaluation (BA/BE) for TES species (EA, pp. 24 through 26, 46 through 50; DN, pp. 5 and 8, and Appendix A, pp. 13 through 21). The Wildlife Biologist also analyzed the impact this project would have on big game and MIS species (DN, p. 5; EA, pp. 44 through 46). The BE/BA and the Wildlife and TES Plant Resources Status Report indicates that the project would maintain adequate habitat within the analysis area to provide for population viability (DN, pp. 8, 13 through 21, and 42 through 44; EA, pp. 24 through 26, and 44 through 50; PF, Docs. 123 and 124).

Contention 3B - The Forest failed to provide adequate explanation for the effect determinations for sensitive wildlife and plant species. The decision is therefore arbitrary and capricious, in violation of the Administrative Procedures Act.

Response: The BA/BE, EA, and specialist reports provide the effect determinations made for the whole range of sensitive species, and also the data used in the determination (DN, pp. 13 through 21; EA, pp. 46 through 50; PF, Doc. 123, pp. 3 through 13). The EA discusses potential impacts to sensitive species through an evaluation of the species' habitat (EA, pp. 26, and 31 through 33; PF, Docs. 123 and 124, pp. 13 through 25). As management alternatives were analyzed, changes in potential habitat acres were noted (EA, pp. 45 through 49). The Biologist then made the effect determination based on the impacted acres, if any, relative to the total potential habitat acres within the analysis area (DN, pp. 20 through 21, and 42 through 44; EA, pp. 46 through 49). In reference to sensitive plants, the EA (p. 48) also outlines the thought process used to determine the effects determinations and goes on to discuss the decision rationale based on native forest plant community development (EA, pp. 48 through 50; DN, pp. 14 and 21; PF, Doc. 123, pp. 11 through 13). The 514 Salvage project analysis has provided the decision

rationale for the effect determinations and, therefore, is in compliance with the Administrative Procedures Act.

ISSUE 4. The purpose and need does not allow for an adequate range of alternatives. The EA does not provide an adequate range of alternatives. There is no non-commercial restoration alternative.

Response: The proposal follows direction under 40 CFR, part 1502.13, and the Environmental Policy and Procedures Handbook (FSH 1909.15) which specifies that the purpose and need statement briefly outlines the underlying reason the Agency is responding in proposing the alternative, including the proposed action. The Forest Service Handbook directs the Interdisciplinary Team to "[c]onsider a full range of reasonable alternatives to the proposed action that address the significant issues and meet the purpose and need for the action" (FSH 1909.15, section 12.3c). "Based on public scoping and the determination of issues to be analyzed in detail, [the Team is to] develop and consider all reasonable alternatives to the proposed action" (FSH 1909.1,5, section 14). As the Appellants point out, but incorrectly cite, the alternatives must be developed fully and impartially and the Team must "[e]nsure that the range of alternatives does not prematurely foreclose options that might protect, restore, and enhance the environment" (FSH 1909.15, section 14.2). However, this section continues with "[a]lternatives must meet the purpose and need of the proposed action and specify any activities that may produce important environmental changes."

The Team has followed the FSH and federal regulations. In all, seven alternatives were considered. Three were considered but not evaluated in detail (DN, pp. 2, 5; EA, pp. 8 through 12). Alternative 1 was specifically viewed as addressing the public concern of a "non-commercial restoration alternative" identified during scoping. Alternative 1 only proposes to provide road maintenance on the 514B Road to repair a sediment source within the project area (DN p. 36; EA, 8-9). Although road maintenance is categorically excluded from documentation in a decision document (FSH 1909.15, 31.1b,4), the 514 Salvage Team determined it would be in the best interest of water quality to highlight the maintenance needs on the 514B Road in all alternatives including the "no action" Alternative 1. The range of alternatives meets NEPA requirements by addressing the issues which were raised and to meet the purpose and need for action (DN, p. 2).

ISSUE 5. Failure to provide accurate information to the public.

Contention 5A - "The EA did not disclose the numbers calculated by WATBAL for the amount of sediment predicted to be produced from the timber sale."

Response: The DN and the EA both discuss the WATBAL outputs from modeling the proposed management action (DN p. 8; EA pp. 15, 36, 39, and 43). The EA (p. 43) states, the "WATBAL model...indicate[s] no change from the existing condition for peak flows, water yield, or sediment production." The numbers calculated from a WATBAL run are too extensive to include in the text of an EA. The WATBAL calculations can be found in the Project Record (Docs. 93 through 96).

Contention 5B - The EA did not disclose whether Fan Creek is meeting Forest Plan Standards.

Response: The Fan Creek water standard is to meet 80 percent of the estimated biological function (EA, p. 26). The EA states that Fan Creek summer rearing habitat is 83 percent, which meets the Forest Plan Standard, but winter rearing, spawning, and riparian habitat are less than 8 percent, "which do not meet this objective" (p. 26). The proposed management activities will not have any effect on water quality (EA, pp. 36, 37, and 43). Therefore, the Fan Creek existing condition of not meeting the Forest Plan Standard will not change due to this project. The Forest responded to the Appellants' concern about Fan Creek not meeting Forest Plan Standards (DN, Appendix C, p. 39; PF, Doc. 15, p. 2).

Contention 5C - "The EA also failed to disclose the water quality standards for Eldorado and Lolo Creeks, which are also high fishable."

Response: The 514 Salvage EA refers readers to the Forest Plan for a complete listing of Standards and Guides (EA, p. 3). Standards for Lolo Creek were not shown in the EA because Lolo Creek is outside of the potential affected environment area (EA, pp. 20, 23, and 29). Eldorado Creek is partly within the potentially affected area. The Forest Plan Standard was inadvertently deleted from discussion in the EA where the creek was listed as one of the Water Quality Limited Streams in the project (EA, p. 31). However, the Forest Plan Standard for Eldorado Creek is discussed in the Project File and is available for consideration (PF, Doc. 98, pp. 1 through 2, and Doc. 121, pp. 4 through 5, and 12 through 15).

Contention 5D - The EA did not disclose specific information in the Desired Future Condition (DFC) Analysis section referred to as Habitat Function Summary Table 1.

Response: The table referred to in the EA as Habitat Function Summary Table 1 was intentionally not included in the EA because it duplicated the information presented in the EA on page 26 under (c) Forest Plan Standards and (d) DFC Analysis. The reference to Table 1 should have been deleted from the EA. This Table is available for review in the Project File (PF, Doc. 97, p. 8).

Contention 5E - "The Forest Service failed to provide any supporting documentation to the alleged insect and disease infestation, despite appellant's specific request for such information in their comments on the EA."

Response: The Forest Service responded to the Appellants' specific requests for information which was concerned with salvage impacts and potential effects to the 514 Salvage project area (DN, p. 37; PF, Doc. 41, p. 3, and Doc. 40, p. 3). Document 142 in the Project File is pictures of the infected trees and a map indicating the points from which those pictures were taken. The Stand Examination also discusses the insect and disease problems in the stands (PF, Doc. 71).

RECOMMENDATION

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

/s/ Maureen McBrien

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