

United States
Department of
Agriculture

Forest
Service

Region 1

Federal Building
P.O. Box 7669
Missoula, MT 59807

File Code: 1570 (215)
#97-01-00-0008

Date: January 27, 1997

Kimberly Davitt, Resource Specialist
American Wildlands
40 East Main Street, Suite #2
Bozeman, MT 598715

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Ms. Davitt:

This is my decision on disposition of the Appeal you filed on behalf of the American Wildlands and the Alliance for the Wild Rockies protesting the Lolo National Forest Supervisor's Decision Notice (DN) for the Cool Bear Forest Stand and Road Management Projects in the Upper Fishtrap Creek area.

The Forest Supervisor's decision adopts Alternative 6, which will treat an estimated 3,016 acres. Approximately 8,900 MBF of timber will be harvested using tractor, skyline and helicopter systems. The decision will also implement shelterwood regeneration harvest, commercial thinning, shelterwood preparation, eco-maintenance burning, and prescribed underburning. Approximately 12 miles of road will be reconditioned, 27 miles reconstructed, 1.9 miles constructed, 1.5 miles closed and rehabilitated, and 19 roads (which include 15 currently gated spur roads) will be obliterated at the entrance. Also several mapping errors in the Lolo National Forest Land and Resource Management Plan (Forest Plan) will be corrected.

DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the Forest Supervisor's decision to implement Alternative 6. Your requested relief is denied.

My review of your Appeal was conducted pursuant to, and in accordance with, 36 CFR 215.17 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. I have thoroughly reviewed the Appeal Record, including the recommendation of the Appeal Reviewing Officer (copy enclosed) regarding the formal disposition of your Appeal. My decision hereby incorporates by reference the entire Appeal Record.

APPEAL SUMMARY

You allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Clean Water Act (CWA), the Montana State Water Quality Standards, and the Forest Plan.

Central objections identified in your Appeal include failure to: (1) quantify or analyze the increase in sediment and failure to disclose this information, (2) develop "total maximum daily loads" control measures for Fish Creek, (3) meet Federal or State water quality requirements, (4) adequately consider cumulative impacts, (5) adequately assess impacts to fisheries, and (6) adequately address significant impacts in an environmental impact statement (EIS).

You request the Cool Bear Forest Stand and Road Management Projects DN be remanded and an EIS be developed demonstrating compliance with water quality standards, conducting a thorough cumulative effects analysis, and refraining from any actions having impacts to native trout habitat.

An Informal Meeting was held by conference call with you on December 30, 1996; but agreement was not reached. No Interested Party comments were received.

APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the Forest Supervisor's decision be affirmed and the Appellants' requested relief be denied.

FINDINGS

Following is my evaluation of the objections raised in your Appeal and your requested changes.

Scope of Decision

Decisions made in Forest Plans are subject to administrative review under 36 CFR 217 and are not subject to review in project or activity decisions [36 CFR 215.8(a)(1)]. These decisions are considered to be beyond the scope of the project-level decision, and the opportunity to challenge these decisions has been exhausted.

Similarly, Appellants may not request review of activities that are not "connected" to the project decision being challenged or ask that additional decisions be made that are not "ripe" for decision. Under NEPA, the Responsible Official has the discretion to propose actions and determine which actions warrant a decision and those that do not.

I have determined your objections are within the scope of the decision.

Scope of Decision Documentation

Appellants have an affirmative obligation under the NEPA to structure their comments and participation to allow the decisionmaker an opportunity to address and deal with concerns prior to making a decision. The Appeals Reform Act, 16 U.S.C. 1612 requires the Responsible Official to provide an opportunity for public comments prior to making a decision. A response to those comments becomes part of the decision documentation. Issues and comments raised during or before the comment period are to be considered and responded to by the Responsible Official prior to issuance of a decision [36 CFR 215.6(d)]. If the Appellants have not raised specific issues or concerns with the project or have withheld information until after a decision has been issued, they have effectively prevented the Responsible Official from being able to respond.

Requested changes or objections raised by Appellants not identified or brought to the Responsible Official's attention prior to the decision will either be referred to the Responsible Official as new information pursuant to Forest Service Handbook 1909.15, Section 18, or will be determined to be beyond the scope of the decision documentation and not reviewed.

Your objections correspond closely to comments you raised in scoping and during the comment period. Because of your early participation in the environmental analysis, the Forest Supervisor was able to analyze these concerns by incorporating them into the environmental analysis and consider them in making the decision. Therefore, your objections may be reviewed to determine if the Forest Supervisor has complied with all procedural requirements.

Procedural Determination

I have thoroughly reviewed your arguments and the information referenced in the

Forest Supervisor's December 30, 1996, Transmittal Letter (copy enclosed). The Transmittal Letter provides specific page references to discussions in the DN, the EA, and project file which bear upon your objections. The objections you raise in your Appeal are similar to the comments you made on the EA. The project file indicates your objections were either addressed as environmental issues in the EA or are discussed in the DN. I specifically incorporate in this decision the references and citations contained in the Transmittal Letter. Based upon a review of the references and citations provided by the Forest Supervisor, I find the objections you raised were adequately considered in the EA/DN and the Forest Supervisor made a reasoned decision concerning those issues. I find the Forest Supervisor has complied with all laws, regulations and policy.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Kathleen A. McAllister

KATHLEEN A. MCALLISTER
Appeal Deciding Officer
Deputy Regional Forester

Enclosures (2)