

United States
Department of
Agriculture

Forest
Service

Region 1

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

File Code: 1570 (215)
#97-01-00-0039

Date: May 1, 1997

Jeff Juel
The Ecology Center
1519 Cooper Street
Missoula, MT 59802

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Mr. Juel:

This is my decision on disposition of the appeal you filed on behalf of The Ecology Center, Clearwater Forest Watch Coalition, Inland Empire Public Lands Council, Clearwater Biodiversity Project, Idaho Conservation League, Friends of the Clearwater, and Alliance for the Wild Rockies protesting the Clearwater National Forest Supervisor's Record of Decision (ROD) for the Fish Bate Salvage Timber Sale and Forest Plan Amendment 15.

The Forest Supervisor's decision adopts Alternative 7 (modified) implementing harvest of an estimated 14.9 MMBF of sawlogs from 2,257 acres using helicopter and skyline yarding methods. Also, an estimated 12.7 MMBF of pulp will be available. Two helicopter landings will be constructed, 0.2 miles of new road will be constructed, and 0.6 miles of existing road will be reconstructed. Approximately 10 miles of road will be rehabilitated. Additional road restrictions described in the Final Environmental Impact Statement (EIS) will not be implemented. Approximately 1,256 acres will be prescribed burned, and 2,089 acres will require fuel treatment of large, dead white pine. Also two site-specific Forest Plan Amendments will be implemented. Amendment 14 will establish a water quality objective for Bates Creek, and Amendment 15 will change the designations of Sheep, Sneak, Fish, Owl, Martin and Bates Creeks from priority to non-priority categories.

DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the Forest Supervisor's decision to implement Alternative 7 (modified) and the two Forest Plan amendments. 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 Forest Plan, the National Forest Management Act, the National Environmental Policy Act (NEPA), the Endangered Species Act, the Forest Service Manual, Forest Service policy, and the Wilderness vs. Robertson settlement.

Central objections identified in your appeal concern water quality, fisheries, old growth, fire and landslide risks, soils, sensitive wildlife species, old

growth dependent management indicator species, elk, roading, sensitive plant species, roadless area, range of alternatives, cumulative effects, wild and scenic river/visual quality, forest opening size, and regeneration.

You request a full remand of the ROD including Amendment 15 and all identified deficiencies and violations of law, regulation and Forest Service policy be corrected before this project and the Forest Plan amendment go forward.

An Informal Meeting was held, but no resolution was reached. Interested Party comments were received from the Resource Organization on Timber Supply.

APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the Forest Supervisor's decision be affirmed and your 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.

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.

Procedural Determination

I have thoroughly reviewed your arguments and the information referenced in the Forest Supervisor's April 1, 1997, Transmittal Letter (copy enclosed). The Transmittal Letter provides specific page references to discussions in the EIS, the ROD, and project file which bear upon your objections. The objections you raise in your appeal are similar to the comments you made on the EIS. The

project file indicates your objections were either addressed as environmental issues in the EIS or are discussed in the ROD. 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 EIS/ROD 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)