



File 1570 (215)  
Code:  
Route  
To:  
Subject: Shoot Creek Timber Sale, Appeal #99-01-00-0066  
Clearwater National Forest  
To: Appeal Deciding Officer

Date: December 15, 1998

This is my recommendation on disposition of the appeal filed by Judith Brawer on behalf of American Wildlands, protesting the Clearwater National Forest Supervisor's Decision Notice (DN) for the Shoot Creek Timber Sale.

The Forest Supervisor's decision adopts Alternative 2, including regeneration harvest of 338 acres and watershed restoration.

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.

## FINDINGS

### Appeal Review Findings

The Appellants allege violations of the National Environmental Policy Act (NEPA), the Clean Water Act, and the National Forest Management Act (NFMA). The Appellants request the decision be withdrawn. No informal meeting was held, and interested party comments were received from Dan Johnson of ROOTS and John R. Swanson.

### **Objection 1. The Forest Service violated the National Environmental Policy Act (NEPA) by not preparing an Environmental Impact Statement (EIS).**

Response: Appellants contend that the Shoot Creek project requires preparation of an EIS because it has numerous controversial issues and may have significant environmental effects, particularly in regard to old growth habitat, wildlife habitat fragmentation, lynx, sensitive plant species, water quality limited segments, fisheries, and roadless areas. Upon review of the documentation in the project file, I find that these issues are adequately addressed in the Environmental Assessment (EA), Decision Notice (DN), and Finding of No Significant Impact (FONSI). In my opinion, the analysis documented in the record does a thorough job of disclosing the effects of the project on the resources listed above (EA, Ch. II and III; DN, Appendix D). Further, the mitigation measures listed in Appendix B of the DN and the monitoring requirements described on page II-16 of the EA will minimize any adverse effects associated with the project.

The regulations at 40 CFR 1508.27(b) set out 10 factors that must be considered in determining whether or not to prepare an EIS. One factor is: "The degree to which the effects on the quality of the human environment are likely to be highly controversial" [40 CFR 1508.27(b)(4)]. The Courts have been clear in stating that it is not public opposition to an activity that triggers the "highly controversial" factor, but whether there are substantial scientific questions regarding the environmental effects of the project. In



this case, the Forest prepared an EA to determine whether or not to prepare an EIS [40 CFR 1501.4(c)]. As documented in the DN and FONSI, the Forest Supervisor determined that "there are no significant beneficial or adverse impacts on the physical, biological, or social portions of the human environment" associated with the Shoot Creek project (DN, p. 24). I concur with his conclusion that an EIS is not necessary. There is no violation of NEPA.

**Objection 2. The Forest Service violated NEPA by not examining an adequate range of alternatives.**

Response: Appellants contend that the agency failed to consider a reasonably full range of alternatives and suggest consideration of alternatives with different levels of harvesting, burning, and rehabilitation; an alternative that considers only burning and rehabilitation; and an alternative that considers only rehabilitation.

Chapter II of the EA describes how comments received in public scoping were used to identify issues and develop alternatives. The EA describes alternatives considered but not evaluated in detail, as well as the alternatives considered in detail. The two action alternatives have different levels of timber harvest, different levels of road construction, different levels of sediment repair, and were designed to meet the purpose and need described in Chapter I of the EA. This issue is also addressed in the Response to Comments (DN, Appendix B, pp. 2,13). These responses further explain the rationale behind development of the action alternatives. The response on page 13 of Appendix B states in part:

In a small Planning Area such as Shoot Creek, the range of viable alternatives is limited by a few opportunities. Watershed restoration was included in both action alternatives. A watershed restoration only alternative was not considered because the Shoot Creek Drainage is not the District's highest priority for watershed restoration work.

I find the rationale behind the development of the alternatives to be reasonable and the range of alternatives to be adequate.

**Objection 3: The Forest Service failed to adequately analyze Management Indicator Species (MIS) in the project area.**

Response: Appellants contend that the analysis of the effects, including cumulative effects, of the timber harvest on MIS is inadequate. Appellants claim that there is no data on populations and that the habitat analysis does not provide high-quality, accurate scientific data.

The EA identifies the MIS for the Shoot Creek project in Chapter III, page 9, and discloses the effects on them in Chapter 4 in the discussions for Issues 2, 3, and 4. The EA discloses that the alternatives will have little or no effect on the habitat for MIS. Although the discussion of MIS could have been more specific and detailed in the EA, I find that the record supports the conclusions drawn in the EA. In my opinion, the effects of the project on MIS were adequately analyzed.

**Objection 4: The EA fails to discuss soil suitability and steepness of slope.**

Response: Appellants contend that more accurate scientific analysis is needed before lands designated as unsuitable can be harvested. The EA discloses that the east half of Unit 3 was mapped as being unsuitable for timber harvest. Upon field verification, it was determined that it was suitable for timber harvest (EA, Chapter II, pp. 8, 12). The project file contains documentation supporting this determination (Project File, Vol. 1, Doc. 17). The EA also discusses soils and landtypes in Chapter IV, p. 2, and in Appendix B-4. I find the discussion of soils in the Shoot Creek EA to be adequate.

**Objection 5: The Forest Service violated NEPA and the National Forest Management Act (NFMA) by not providing an adequate cumulative effects analysis.**

Response: Appellants contend that the cumulative effects analysis is lacking for wildlife, water quality, fisheries, soils, old growth, plants, and recreation. Particular concern is expressed regarding the cumulative effects analysis for a sensitive plant species (Oregon bluebells), and the boreal owl.

The cumulative effects of the Shoot Creek project in conjunction with other past, present, and reasonably foreseeable projects, including activities on adjacent Plum Creek Timber Company lands and upcoming Forest Service projects (Spruce Moose and Twin Basin) are discussed for each issue and resource (EA, pp. I-14, IV-2, 4, 5, 7-10, and 13). The EA and Biological Evaluation (BE) specifically discuss the cumulative effects of the project on Oregon bluebells and the boreal owl (EA, pp. III-10-13, IV-4-7, 9, and 10; DN, Appendix E). I find that the cumulative effects analysis for the Shoot Creek project is adequate.

**Objection 6: The Forest Service is not meeting State or Federal clean water standards, nor Forest Plan standards for water quality and failed to adequately provide for and consider native fish populations.**

Response: Appellants contend that the Forest Service violated the Clean Water Act (CWA) by failing to adequately address water quality in the project area, including a failure to discuss Water Quality Limited Segments (WQLS) and water quality monitoring. Appellants also contend that the Forest Service fails to provide for westslope cutthroat trout, Chinook salmon, steelhead, and bull trout by continuing to implement management practices throughout their habitat.

Both the EA and DN acknowledge that Spruce and Shoot Creek are listed as WQLS streams but have been through the Beneficial Use Reconnaissance Project (BURP) and have been found to fully support beneficial uses. It is expected that they will be delisted in the near future.

The effects of the Shoot Creek project on water quality and fish were an issue that was tracked throughout the planning process. The EA at Chapter II, p. 2, states:

Cumulative impacts to water temperature and sediment production from timber harvest and roads are of concern. The effect of these potential changes in water quality on habitat for westslope cutthroat trout, bull trout, steelhead and spring Chinook are of particular concern in this WQLS watershed.

The EA then describes the current watershed and fish habitat conditions in Chapter III, pp. 2-9, and discloses the direct, indirect, and cumulative effects on water quality and fish habitat in Chapter IV, pp. 1-3. Water quality monitoring, BMPs, and mitigation measures are also adequately discussed in the EA and DN (EA, p. II-15 and 16; Appendix B, DN, pp. 13 and 21). In my opinion, the effects of the project on water quality and fish habitat are adequately disclosed in the EA.

**Objection 7: The Forest Service tiered to a non-NEPA document.**

Response: Appellants contend that the Forest Service violated NEPA by tiering to decisions made in a document that did not undergo the NEPA public participation process.

The document the appellants refer to is an Integrated Resource Analysis (IRA) for the Shoot Creek watershed. The IRA is not a decision document. The IRA is an internal planning document not subject to NEPA [FSH 1909.15, 31.1a(2)(3)] designed to inventory and gather information about a project planning area. The information is then used to determine whether or not the Forest should proceed with the NEPA process and conduct an environmental analysis. The Desired Future Condition for the Shoot Creek planning area is described in the EA (p. I-9) and is based on the Clearwater Forest Plan, not the IRA. The DN for the Shoot Creek project describes the involvement of the public in the project (DN, pp. 3-7), and Appendix B contains the Response to Public Comments. I conclude the Forest provided the public ample opportunity to participate in the Shoot Creek project. There is no violation of NEPA.

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

/s/ Katherine Q. Solberg

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