



File 1570 (215) Date: April 21, 1999
Code:
Route
To:
Subject: Lime Kiln Timber Sale DN, Appeal #99-01-00-0101, Beaverhead-Deerlodge NFs
To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Sara Jane Johnson on behalf of the Native Ecosystems Council, protesting the Butte District Ranger (Beaverhead-Deerlodge NFs) Decision Notice (DN) for the Lime Kiln Timber Sale.

The District Ranger's decision adopts the proposed action to harvest approximately 366 acres of sawtimber and roundwood using 1/2 mile of temporary roads.

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 National Forest Management Act, and the Administrative Procedures Act (APA). The Appellants request the decision be remanded. No informal meeting was held.

Objection 1: The Forest Service has violated the National Forest Management Act (NFMA).

Contention A. The viability of the Northern Goshawk in the analysis area is not protected.

Response: The EA and project file include documentation which support that the viability of the Northern Goshawk was considered. This included goshawk mitigation measures; goshawk surveys; Forest Plan Management Indicator Species (MIS) and their role in the coarse-filter approach to effects analysis; goshawk as an indicator for old growth forests; the effects of thinning on goshawk, habitat and treatment by alternative; and the cumulative effects of implementing Alternative 6.

The goshawk survey information can be reviewed in the project file, Volume 2, pp. 76-82. It is unfortunate that the District did not follow-up and provide copies of the requested surveys. I expect Forests and Districts will meet such requests.

Contention B. Lands defined as unsuitable in the Forest Plan will be logged for commercial timber production.

Response: The DN discusses "Timber sale on lands not suited" on page DN-14. In this case, harvest within the MA will create wildlife forage opportunities. Increasing or improving shrubs for a variety of wildlife was identified as a purpose and need for this proposal.



In review of the DN, the EA and Project file, the Forest has adequately shown the harvest will maintain or enhance wildlife habitat. Based on this information, the decision is consistent with the Goals, Objectives, and Standards of the 1987 Deerlodge National Forest Plan.

Contention C. No conservation strategies for sensitive or management indicator species have been implemented to ensure habitat manipulations will not significantly impact these species.

Response: The Biological Evaluations and Assessments (BE/BA) which assess the effects of this project on threatened, endangered, and sensitive species are found in Appendix A and B of the DN. These documents, in addition to the analysis presented in the EA, clearly indicate that habitat manipulations will not significantly impact these species.

Contention D. No monitoring data was provided to demonstrate that Forest Plan standards for wildlife represent valid management tools to ensure viability. There was no analysis to demonstrate that the old growth strategy for the analysis will maintain viable populations of associated species within this analysis area.

Response: Determination of population viability for all species and Forest Plan monitoring are beyond the scope of this timber sale analysis and decision.

No old growth stands will be treated in this project.

Contention E. Habitat for the lynx, a species proposed for listing under the Endangered Species Act, will be degraded for at least 20+ years, and the ability of this area to provide for lynx recovery will be reduced as a result.

Response: The BE/BA assess the effects of projects on lynx and is found in Appendix A of the DN. This document, in addition to the analysis presented in the EA, clearly indicate that there will not be a significant impact on this species.

Contention F. The Forest has failed to complete and implement results of monitoring of MIS to ensure that populations are remaining viable in areas managed for timber.

Response: Determination of population viability for all species and Forest Plan monitoring are beyond the scope of this timber sale analysis and decision.

Objection 2: The Forest has violated the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA).

Contention A. The Forest Service did not provide information requested by the public on the project. On December 14, NEC requested the BE, surveys on wildlife, and coordination with Montana Department of Fish, Wildlife and Parks (MDFWP) that were completed for this project. None of this information was provided.

Response: It is unfortunate that the District did not follow-up and provide copies of the information the appellants requested. It is our expectation that they will meet such requests.

The BA/BE was mailed to the appellants as Appendix A and B to the DN. The wildlife surveys can be reviewed in the project file, Volume 2, pp. 76-82. Coordination with MFWP was ongoing throughout the analysis and MFWP Wildlife Biologist Craig Fager reviewed the EA and showed his support for the project in a letter dated November 9, 1998 (PF Vol. 1, p. 228). Consultation with MFWP Wildlife Biologist Mike Frisina is documented in the Project File, Vol. 2, pp. 67-69.

Contentions B and C. The Forest failed to define what the analysis areas were for various wildlife species. The EA did not define why analysis areas apparently varied by wildlife, or in some cases, what the analysis area even was.

Response: The MIS analysis area is defined on page III-7 of the EA as the project area. The boundary of the project area is displayed on Figures I-1, II-4, and III-2. Cumulative effects analysis areas are specified on page IV-19 for moose, elk, and forest-associated species. Security was discussed as an aspect of elk habitat.

Contentions D and E. The conclusions on big game security are contradictory and are not supported with any analysis information in the EA. Environmental impacts of open-road densities during logging are not disclosed.

Response: Elk security and MDFWP elk objectives for the project area are discussed at EA pages III-9 and 10. Page IV-14 discloses effects common to all action alternatives, "none of the treatment units lie in an identified elk security area, and no loss of hunting season security is expected." Big game security was also addressed in the scoping Content Analysis, PF, Vol. 1, p. 235, point 15, which leads the reader to a map of security areas that is attached to the back of Volume #2 of the Project File.

Road densities are discussed as an element of elk-effective cover. Elk-effective cover and road densities were addressed in Appendix C to the DN, Response to Public Comments, p. C-9, point 5; p. C-11, point 10; p. C-12, points 14 and 17; and p. C-13, points 18 and 20. The alternatives did not vary in effect on elk-effective cover (PF, Vol. 2, p. 96 is a comparison table by alternative). Forest Plan elk "standards" are discussed in the EA, pages III-9 and 10. Effects on elk are disclosed on page IV-14 of the EA. Page IV-19 concludes, "All Alternatives are consistent with Forest Plan wildlife standards..." The response to point 5, p. C-9 of the DN, states, "the existing condition is not meeting Forest Plan standards, largely as a result of high open-road densities. All alternatives do call for closing .6 miles of existing road to move towards this goal. Within the analysis area almost all roads are primary access routes or access private property, so there is limited flexibility to close roads."

Contention F. The impacts of habitat fragmentation on wildlife are not addressed.

Response: The naturally fragmented landscape is discussed in the EA, p. III-7. Fragmentation and its effects on forest-associated species is disclosed on pp. IV-14 and 15. Fragmentation was addressed in the Response to Public Comments at DN, p. C-11, point 11; and p. C-14, point 26. Fragmentation is also addressed in the scoping Content Analysis, PF, Vol. 1, p. 234, point 13; and p. 235, points 16 and 17.

Contention G. No analysis or data was provided to define how much cover quality for wildlife would be eliminated with commercial thinning. Our major objection to the interpretation in the EA that logging will not affect big game cover (EA at IV-14), and hence security, is that no monitoring or outside opinions were provided to support this claim.

Response: MFWP Wildlife Biologist Craig Fager reviewed the EA and showed his support for the project in a letter dated November 9, 1998 (PF, Vol. 1, p. 228). The Project File also contains correspondence with MDFWP Wildlife Biologist Mike Frisina (PF, Vol. 2, pp. 67-69) concerning bull elk harvest ratios.

Effects of thinning on wildlife are found throughout Chapter IV, Wildlife, in the BA/BE (Appendix A and B of the DN), and in the Response to Public Comments, Appendix C.

Contention H. There was no analysis of the barrier effect that will be created in the northern end of the analysis area due to extensive thinning and clearcutting within timber stands that lie within and adjacent to expansive areas of natural openings.

Response: Please see references on fragmentation, Issue II, Contention F. This issue was also addressed at DN, page C-11, point 11.

Contention J. There is no analysis of environmental impacts on mule deer.

Response: This concern was addressed at DN, p. C-13, point 21. "Effects on mule deer are expected to be similar to those on elk." Mule deer habitat is discussed in the EA on page III-10.

Contentions I and K. There was no analysis of the impact of logging on snag-associated wildlife or analysis to demonstrate that the old growth strategy for the analysis will maintain viable populations of associated species.

Response: Features common to all action alternatives include (EA II-8 and 9):

No old growth stands will be harvested;

....[in clearcuts] Douglas-fir trees will be left, to provide wildlife snags and perch trees;

In addition to retaining suitable existing snags within all harvest units, all action alternatives would incorporate wildlife snag replacement.

Green replacement snags would be left at a density of 5 trees per acre....

Chapter II, p.14, says snags will be signed, and off-limits for firewood collection. Page IV-15 reiterates "Existing snags and snag recruitment/replacement trees will be retained under all alternatives.

DN, p. C-8, point 2, discusses snag retention. The scoping content analysis addresses snags on PF, Vol. 1, p. 234, points 11 and 12. DN, p.6, calls for monitoring of snags after the sale.

Contention L. The Forest has misled the public as to the reasons for logging.

Response: The purpose and need is presented in the EA, pages I-2 and 3, which includes "provide timber to help satisfy local demands as well as contribute to the local economy." Page II-3 shows economics as a driving issue for the analysis. Alternatives were compared in terms of net sale value. A comparison of values for each alternative is presented on page II-22. The economic analysis is presented on pp. IV 11-IV 13.

The DN discusses how well the selected alternative meets the entire purpose and need on pages DN-2 and 3. Economics is just one factor considered. Page DN-7 stresses the Economic Analysis contains information by which to compare the relative economic effects of the alternatives.

How monies generated through the sale of timber are distributed is outside the scope of this timber sale analysis.

Contention M and N. An EIS was not completed to address the significant impacts that already exist in the project area or the significant impact identified in the EA that will occur to the north end of the analysis area.

Response: Chapter III did not identify any "significant" conditions in the existing environment. Some concerns were identified in Chapter III, and Chapter IV discloses the effects of the alternatives on these concerns.

Significance in NEPA refers to the action itself, not the existing condition (40 CFR 1508.27). The FONSI (DN-12) states, "Analysis of the environmental consequences indicates this is not a major federal action with significant effects on the quality of the human environment. Therefore, and environmental impact statement will not be prepared."

Contentions O and P. There is no cumulative effects analysis to address activities on private lands in the analysis area, or why these private lands are creating disturbances to wildlife. There was no cumulative effects analysis to address the total impact of past, ongoing and planned logging in this analysis area.

Response: The cumulative effects analysis for moose, elk, and forest-associated species presented in Chapter IV of the EA (page IV-19) took past actions into account, as well as conditions on private land. The effects of the alternatives on security, elk vulnerability, forest interior wildlife are disclosed on pages IV-13 through IV-19.

The documentation in Chapter III describes the existing condition of the project area, as a reflection of everything that has happened on the land up to the analysis. Some resources, like hydrology, specify actions on private land to a greater extent than others.

Past and planned logging in the project area is described on page IV-1. Figure III-2, Size Class map, displays old logging units as seedling/sapling. Past logging activities was addressed on DN page C-26, point 15. The Project File contains information on harvest year and date at which each stand was considered restocked with trees (PF, Vol. 2, page 163a through 163c).

RECOMMENDATION

On March 12, 1999, an Update of the Northern Region Sensitive Species List was sent to Forest Supervisors. This is new information that was not available to the Responsible Official at the time this decision was made. Pursuant to FSH 1909.15, Section 18.1, this new information must be reviewed to determine its importance to this decision. I recommend that the Responsible official conduct a review to consider this information within the context of the project, that the District Ranger's decision be affirmed and that the Appellants' requested relief be denied.

/s/ Maureen McBrien

MAUREEN MCBRIEN
Reviewing Officer
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