

United States
Department of
Agriculture

Forest
Service

Region 1

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

File Code: 1570 (215)
#97-01-00-0032

Date: April 15, 1997

James Olsen, President
Friends of the Bitterroot, Inc.
P.O. Box 442
Hamilton, MT 59840

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Mr. Olsen:

This is my decision on disposition of the Appeal you filed on behalf of the Friends of the Bitterroot, Inc. protesting the Stevensville District Ranger's Decision Memo (DM) for the Sawmill Timber Sale on the Bitterroot National Forest.

The District Ranger has selected Alternative C which will harvest an estimated 134 MBF of timber on about 54 acres. This alternative will harvest diseased green trees and trees that are susceptible to insects, disease, and wildfire or lack the characteristics necessary for a healthy ecosystem. Snags will be left to meet Forest Plan standards. Road drainage improvements will be completed on Road 710.

DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the District Ranger's decision. 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 Council on Environmental Quality (CEQ) regulations, and the Administrative Procedures Act.

Concerns central to your Appeal are the Stony Mountain Roadless Area, the Easthouse National Recreation Trail, range of alternatives, and elk habitat effectiveness.

You request the DM be remanded and an Environmental Impact Statement be prepared which complies with NEPA/CEQ regulations and the Forest Plan.

An Informal Meeting was held, but no resolution was reached. No Interested Party comments were received.

APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the District Ranger's decision be

affirmed and the Appellant's 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 District Ranger 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 District Ranger's March 21, 1997, Transmittal Letter (copy enclosed). The Transmittal Letter provides specific page references to discussions in the project file which bear upon your objections. 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 District Ranger, I find the objections you raised were adequately considered in the project file and the District Ranger made a reasoned decision concerning those issues. I find the District Ranger 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/ Richard M. Bacon (For)

KATHLEEN A. MCALLISTER

Appeal Deciding Officer
Deputy Regional Forester

Enclosures (2)