

United States
Department of
Agriculture

Forest
Service

Region 1

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

File Code: 1570 (215)
#97-01-00-0015

Date: February 11, 1997

Steve Paulson
Friends of the Clearwater
4510 Sunnyside Lane
Lenore, ID 83541

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Mr. Paulson:

This is my decision on disposition of the Appeal you filed on behalf of Friends of the Clearwater protesting the Clearwater National Forest Supervisor's Decision Notice (DN) for Mountain Gulch Timber Sale.

The Forest Supervisor's decision adopts Alternative 2 with modifications. This Alternative implements harvest of 2,000 MBF of timber from approximately 900 acres by skyline, tractor and horse logging. White pine will be planted on 200 acres. Approximately 2.5 miles of road will be reconstructed, 900 feet of temporary road constructed, and 3.5 miles of road obliterated.

DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the Forest Supervisor's decision to implement Alternative 2 (modified). 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 Administrative Procedures Act, the National Forest Management Act (NFMA), and USDA Regulations.

Central objections identified in your Appeal include failure to: (1) consider an adequate range of alternatives, (2) include a discussion of the affected environment, (3) adequately consider the cumulative impacts, (4) analyze the effects of the timber sale on road densities, (5) evaluate old-growth habitat prior to the decision, and (6) give good-faith consideration to environmental values.

You request the Clearwater National Forest be required to never again harm our public lands, or if not feasible, the decision be remanded. You also request the Strychnine Sale be halted, bought back from the bidder, and remanded.

An Informal Meeting was offered, but you declined. No Interested Party comments were received.

APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the Forest Supervisor's decision be affirmed and the Appellant's requested relief 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 remaining 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 January 21, 1997, Transmittal Letter (copy enclosed). The Transmittal Letter provides specific page references to discussions in the Environmental Assessment (EA), the DN, 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.

However, I would like to address the issue that you surfaced in your appeal regarding effects on elk and road density (NOA, p. 6). Although the Forest's transmittal letter states that this was not raised as a specific issue, you did bring these issues up in a general sense in your discussion of biodiversity and open/closed road density. There is a conflict in the documentation regarding effects on elk. EA, pp. 2-12, states that the proposed action would not change elk habitat or vulnerability; while on p. 3-42, it states the action alternative will "temporarily increase human access and disturbance." Even though it is clear that closing additional roads following proposed thinning and subsequent vegetative regrowth would decrease disturbance to pre-activity levels, it is not clearly tracked through the EA and the decision. In the record, it is clear that no new specified road construction will occur and additional planned road closures will provide a decrease in open-road density in the future. I conclude that although the documentation of effects was somewhat confusing, the record indicates there will not be a long-term adverse effect on elk resulting from this project. The Forest is not in violation of any law, policy, or regulation with regard to this issue.

The decision documentation demonstrates and supports the need for and the benefits of the proposed actions.

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)