

United States
Department of
Agriculture

Forest
Service

Region 1

Federal Building
P.O. Box 7669
Missoula, MT 59801

File Code: 1570 (215)
#97-01-00-0019

Date: February 28, 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 Friends of the Bitterroot, Inc. protesting the Stevensville District Ranger's Decision Notice (DN) for the Stevensville West Central Timber Sale on the Bitterroot National Forest.

The District Ranger's decision adopts Alternative 1 (modified). This Alternative will implement prescribed burning on approximately 5,464 acres, ecosystem management thinning on 1,159 acres, and harvest of 2 MMBF of timber on 1,111 acres. This decision will also implement a watershed and fisheries restoration program, recreation access improvements, obliteration of some roads, and road-use restrictions on approximately 38 miles of road.

DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the District Ranger's decision to implement Alternative 1 (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 Bitterroot National Forest Land and Resource Management Plan (Forest Plan), and the Administrative Procedures Act.

Central objections of your appeal are: (1) failure to complete an Environmental Impact Statement (EIS), (2) failure to comply with Forest Plan standards for elk habitat effectiveness, and (3) arbitrary and capricious decision making.

You request the decision be remanded until completion of an EIS and/or demonstration of full compliance with the NEPA/Council on Environmental Quality requirements and Forest Plan standards for open-road density year round.

An Informal Meeting was held with representatives from Friends of the Bitterroot on February 5, 1997; but agreement was not 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 Appellants' 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.

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 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. Therefore, your objections may be reviewed to determine if the District Ranger has complied with all procedural requirements.

Procedural Determination

I have thoroughly reviewed your arguments and the information referenced in the District Ranger's February 10, 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 District Ranger, I find the objections you raised were adequately considered in the EA/DN 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/ KATHLEEN A. MCALLISTER

KATHLEEN A. MCALLISTER
Appeal Deciding Officer
Deputy Regional Forester

Enclosures (2)