



United States
Department of
Agriculture

Forest
Service

Region 1

200 East Broadway
P. O. Box 7669
Missoula, MT 59807

File Code: 1570 (215)

Date: September 5, 2000

Route To:

Subject: 5201 Salvage TS DN, Appeal #00-01-00-0106, Clearwater NF

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Kristin Ruether on behalf of Friends of the Clearwater, The Ecology Center, The Lands Council, American Wildlands, and Alliance for the Wild Rockies protesting the 5201 Salvage Timber Sale Decision Notice (DN) signed by the North Fork District Ranger (Clearwater National Forest).

The District Ranger's decision adopts Alternative 3, which would harvest approximately 900 MBF of dead, dying, blowdown and high risk trees that are infected with root rot and being killed by white pine blister rust, Douglas-fir bark beetles, and fir engraver beetles. The proposed harvest method is a combination of individual tree mark and regeneration harvest with reserves. Approximately 126 acres would be harvested from existing road systems.

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. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The Appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Clean Water Act (CWA), and the Forest Plan Lawsuit Settlement Agreement. The Appellants request a remand of the DN. No informal resolution meeting was held.

ISSUE REVIEW

Issue 1. The Forest Service violated NEPA by using the fact that a timber sale contract exists for the proposal to justify the selection of the preferred alternative.

The appellants contend that the Heartwood litigation instructed the Forest Service to cancel CE timber sale contracts. They believe the Forest misled the public by saying that taxpayers would be liable for damages resulting from cancellation of the contract if the no action alternative was selected.

Response: The Heartwood decision did not direct the Forest Service to cancel ongoing timber sale contracts; it nullified categorical exclusions used to satisfy the requirements for NEPA. The Washington Office directed that timber sale contracts resulting from projects approved with CEs be suspended according to contract provision C6.01(b) which states, "Purchaser agrees to interrupt or delay operations under this contract, in full or in part, upon the written request of Contracting Officer... to



comply with a court order, issued by a court of competent jurisdiction.” The Forest properly suspended the contract so that an Environmental Assessment (EA) could be prepared for the sale. The Forest is correct in stating that if the contract were cancelled (due to selection of the no action alternative) the provisions of CT8.2 – Termination and CT9.5 – Settlement would apply (Project File, Doc. 77, pp. 68 and 77). The Forest Service would be liable for damages to the contractor.

Issue 2. The EA does not adequately disclose the effects on water quality.

The appellants contend that the EA fails to take a hard look at the environmental consequences of the proposed action and that it fails to make a convincing case that the impacts of the project are insignificant.

Response: The EA discusses the current conditions of the Sylvan Creek and Hem Creek drainages on pages 24 and 25. The effects of the project on water quality are also discussed and supported by information in the project file (EA, pp. 25-26; Project File, Doc. 16). The Watershed and Fisheries Report (Project File, Doc. 16) includes tables which indicate that Sylvan and Hem Creeks are meeting Forest Plan standards for channel stability, bank stability, and cobble embeddedness. Based on this information, the hydrologist concludes that the WQLS listing for sediment is not appropriate for Sylvan and Hem Creeks. The EA and Soils Report also discuss the landslide hazard analysis that was conducted (EA, pp. 26-27; Project File, Doc. 19). The analysis concludes that the “risk of landslides is primarily low to moderate for the treatment units associated with the two action alternatives...” (EA, p. 27).

Issue 3. The EA fails to adequately address cumulative impacts.

The appellants contend that the EA merely lists other projects occurring in the area and does not analyze the effects of those projects in combination with the 5201 project. In particular, the analysis does not disclose the effects of past landslides on watersheds or the potential for future landslides. The appellants contend that cumulative impacts for the Orogrande drainage must be considered, not just impacts to the Sylvan Creek drainage. They also contend that the cumulative effects analysis for goshawk is inadequate.

Response: The EA discusses past activities in the Orogrande Creek watershed and states that 28.3 percent of NFS lands have been harvested, as well as most of the 19,990 acres of State and private lands (EA, p. 25). The EA states that the 5201 project will increase the harvest level on NFS lands to 28.5 percent, a minor increase of 0.2 percent. The EA also discusses planned and ongoing activities in the watershed but defers a detailed cumulative effects analysis by stating that it will be done with the Clark Mountain EIS, currently planned for the year 2003.

The EA (pp. 26-28) and Soils Report (Project File, Doc. 19) disclose the impacts of past landslides in project area watersheds and analyze the potential for future landslides. The analysis concludes that the “risk of landslides is primarily low to moderate for the treatment units associated with the two action alternatives...” (EA, p. 27).

The Wildlife Report (Project File, Doc. 15) includes a table displaying affected goshawk habitat for the 5201, Tamarack Bugs, and Looky Here projects. The table indicates that cumulatively, habitat will be

reduced by 115 acres.

Issue 4. The EA does not consider an adequate range of alternatives.

Response: Chapter II of the EA describes how comments received in public scoping were used to identify issues and develop alternatives. The EA describes two alternatives considered but eliminated from detailed study, as well as the three alternatives considered in detail. The courts have established that the direction to “rigorously explore and objectively evaluate all reasonable alternatives” [40 CFR 1502.14(a)] does not mean that every conceivable alternative must be considered, but that selection and discussion of alternatives must permit a reasoned choice. The alternatives in the EA respond to the purpose and need for the project, are within the Forest Plan management area direction, respond to public comment, and are reasonable for this project.

Issue 5. The project violates the Forest Plan lawsuit settlement agreement.

The appellants contend that because Sylvan and Hem Creeks are both water quality-limited streams, have been damaged by logging and road building, and have had several landslides occur during 1995-96, the project violates the settlement agreement. The appellants also question the effectiveness of BMPs and INFISH buffers in preventing sediment resulting from landslides from reaching the streams. Finally, the appellants object to the use of WATBAL to assess sediment impacts.

Response: The EA acknowledges that intensive management in the Sylvan Creek watershed in the 1970's and early 1980's resulted in increased sediment levels but that hydrologic recovery has occurred since that time (EA, p. 25). Both Sylvan and Hem Creeks currently meet Forest Plan standards for water quality, and therefore, the settlement agreement does not apply.

In response to comments on the EA, the Forest points out that 1998 monitoring has shown that BMP practices on the Clearwater are 99.4 percent effective. BMP audits from 1996 through 1998 indicate that implementation and effectiveness was at 99 percent (DN, Appendix D, p. 3). The effectiveness of these BMPs assesses sediment delivery to streams due to erosion and do not look at landslide type events. The ruling in the TWS v. Bosworth litigation states, “Because BMPs have not been assessed for their effectiveness against landslide events and because a *high risk of landslides* is acknowledged in the Fish Bate preferred alternative, the Court finds it is not reasonable for the Defendants to just summarily rely on BMPs to mitigate this environmental impact” (emphasis added). Three important points distinguish the 5201 project from the Fish Bate project. First, both Sylvan and Hem Creeks currently meet Forest Plan standards for water quality; second, the documentation for the 5201 project does not claim that buffers prevent channelized landslides or debris flow; and third, as discussed in response to Issue 3, risk of landslides in the 5201 project area is primarily low to moderate. The EA and Soils Report state that during project layout, areas that may pose slope stability hazards should be avoided (EA, p. 28; Project File, Doc. 19, p. 4). Based on the analysis documented in the project file and EA, the District Ranger concluded “Water quality and fisheries would not be affected...” (DN, p. 3).

The WATBAL model was not used to assess sediment impacts for the 5201 project. It was only used to describe the historical conditions in the Sylvan Creek watershed. The model was not run due to the

small size of the proposal, the generally stable land types that occur in the project area, and the absence of any new permanent road construction in the proposal.

Issue 6. The project violates NFMA requirements to provide for viable populations of wildlife species and the NFMA requirement for monitoring.

The appellants contend that the project will violate both NFMA requirements through the Forest's failure to conduct population trend monitoring of old growth-dependent wildlife species as required by the Forest Plan and the failure to maintain adequate old growth habitat.

Response: Monitoring of species to develop population trends is a Forest-level issue and beyond the scope of this project. Monitoring of threatened, endangered, sensitive, and management indicator species is reported in the Annual Monitoring and Evaluation Report as required by the Forest Plan. The wildlife analysis documented in the EA is a habitat-based analysis supported by scientific literature and professional judgment of the District wildlife biologist. The EA (pp. 30-38), Biological Evaluation/Assessment (BE/BA) (Project File, Doc. 17), and the Wildlife Report (Project File, Doc. 15) indicate that the project will maintain adequate habitat within the analysis area to provide for population viability. As found by the 9th Circuit Court of Appeals, it is not "inconsistent with regulation for the Forest Service to strive to maintain viable populations of species by focusing on the critical habitat requirements of Sensitive, Threatened, and Endangered species within and without the Decision Area." No activities are proposed in old growth.

RECOMMENDATION

I recommend the District Ranger's decision be affirmed and the Appellants' requested relief be denied.

/s/ J. Doug Glevanik

J. DOUG GLEVANIK
Reviewing Officer
Interregional NEPA, Appeals and
Litigation Leader
Ecosystem, Assessment and Planning



United States
Department of
Agriculture

Forest
Service
North Fork
Ranger
District

12730 B Hwy. 12
Orofino, ID 83544
(208)476-4541

File Code: 1570

Date: August 15, 2000

Subject: Appeal #00-01-00-0106

To: Appeal Reviewing Officer

In accordance with 36 CFR 215.13 (f) (1), I am hereby submitting the decision documentation for the Friends of the Clearwater, The Ecology Center, American Wildlands, Alliance For The Wild Rockies, and The Lands Council, appeal of my decision on the 5201 Salvage Timber Sale Environmental Assessment (EA) and Decision Notice (DN) located on the North Fork Ranger District of the Clearwater National Forest.

The project file (PF) is included in one volume with individual documents numbered consecutively. References to the file are by document number and page number. An index is provided in the front of the project file for reference purposes.

I. Background

The 5201 Salvage project began May 29, 1998, with internal scoping and the issuance of the position statement document (PF doc. 60, 61). Public scoping began on June 12, 1998 with a mailing of the project description and map to the North Fork Ranger District NEPA mailing list (PF doc. 58, 59). A legal notice was published in the Lewiston Morning Tribune on June 12, 1998 for a 30-day comment period (PF doc. 56, 57). Douglas Gober, North Fork District Ranger, signed a Decision Memo on January 8, 1999 (PF doc. 2). An appeal was received on March 4, 1999 (PF doc. 1). The Regional Forester subsequently affirmed the appeal and the 5201 Salvage Timber Sale was sold July 13, 1999 for a total bid value of \$245,560.48. On September 28, 1999 a court ruling (Heartwood vs. United States Forest Service case #98-CV-4289-JTG (S.D.ILL)) suspended categorical exclusions that fell under FSH 1909.15, Chapter 30, 31.2(4) that were signed after September 16, 1998 (PF doc. 72). The 5201 Salvage Timber Sale Decision Memo fell under this suspension. All operations on the timber sale were suspended and an interdisciplinary team was convened and instructed by the Forest Supervisor to review and update the environmental analysis as needed and document the analysis in an environmental assessment. The EA was prepared and a 30 day public comment period was initiated on March 15, 2000 and was published in the Lewiston Morning Tribune PF doc. 69). The Decision Notice and Finding of No Significant Impact for the 5201 Salvage EA was published in the Lewiston Morning Tribune on June 9, 2000. This decision was appealed August 3, 2000 (PF doc. 78).

This proposal would harvest approximately 1800 CCF (900 MBF) of dead, dying, blowdown and high risk trees which are infected with root rot (*Armillaria spp.* and *Phaeolus schweinitzii*) and being

killed by white pine blister rust, Douglas-fir bark beetles, and fir engraver beetles. The proposed harvest method is a combination of individual tree mark and regeneration harvest with reserves. Approximately 126 acres would be harvested. This project would harvest this material from existing road systems. Logging systems would consist of conventional skyline.

The purpose and need of this project is:

To manage the vegetation with recognition of the natural disturbance pattern and processes such as wildfire, insect, disease, and blowdown.

To utilize dead, dying, blowdown and high risk trees in a timely manner to provide social and economic benefits before they further degrade, lose value, and merchantability.

To regenerate approximately 91 acres of suitable timber land which has been understocked due to insects, disease mortality, and previous harvesting.

II. Appellants Participation.

The appellants provided comments throughout the 5201 Salvage environmental analysis process. They submitted comments during the scoping period, they appealed the decision memo, they submitted comments during the thirty day request for comment period for the EA, and they appealed the Decision Notice.

III. Informal Disposition Meeting.

North Fork District Ranger, Douglas Gober, contacted Kristin Ruether of the Friends of the Clearwater on August 7, 2000 and offered to meet with the appellants in an attempt to resolve the appeal. Ms. Ruether declined to meet with the Forest Service, but asked Mr. Gober if he had any information for her that he felt she misrepresented in the appeal. Mr. Gober told Ms. Ruether that he thought she did not read or use the Watershed and Fisheries Report from the project file. She said she did not use the document and asked Mr. Gober to fax her a copy of this report. A copy of the report was faxed to Ms. Ruether on August 8, 2000 and she responded to Mr. Gober via a fax (PF doc. 81) that she wished to retract a statement in her appeal point on EA inadequacy that the bank stability index and current conditions were not discussed. She indicated in this fax that the remainder of her appeal was unchanged.

IV. Appellants Objections and The Forest Responses.

There are 6 main issues in the appeal, which are detailed below. All the issues were previously raised by the appellants.

Issue 1. The Forest Service violates NEPA by using the fact that a timber sale contract exists

for the proposal to justify the selection of the preferred alternative. A fair analysis on this sale was not conducted through this EA. The Heartwood litigation instructed the Forest Service to cancel the CE timber sale contracts. The contention that if the no action alternative were selected, the taxpayers would be liable for an unknown amount of damages is false.

Contention 1A – “This sale was previously prepared under Categorical Exclusion documentation. The Decision Memo was signed and the sale was sold. The sale is “currently under contract” (EA 10). The decision was pulled due to the Heartwood v. USFS (No. 98-CV-4289-JPG (S.D.III.)) lawsuit, but the contract was never remanded. The Heartwood litigation instructed the Forest Service to cancel the CE sales.”

Response – In one of a series of instructional memos (PF doc. 73-76), James R. Furnish, Deputy Chief of the National Forest System, sent a memo to Regional Foresters on February 9, 2000 to clarify the Heartwood v. USFS injunction (PF doc. 72). This memo clearly states “that Forests should initiate preparation of Environmental Assessments for enjoined activities.” The Heartwood decision did not cancel the timber sale contracts; it nullified the categorical exclusions utilized to satisfy the requirements of NEPA.

Contention 1B – “the preexistence of a contract for this timber sale and the threat of the taxpayer being liable for “damages” is used to coerce the reader into supporting the preferred action. This biases the decision.”

Response – The preexistence of a timber sale contract (PF doc. 77) for this project due to the Heartwood decision is a fact (EA p.1 and DN p.1). The possibility of the taxpayer being liable for damages in the event of a contract cancellation is a fact that is linked to one of the key issues in this analysis—economics (EA p.11, 16). These facts were disclosed to the public in full compliance with NEPA. Numerous factors were used by the responsible official to select an alternative (DN pg 1-3).

Contention 1C – “The contention that if the no action alternative is selected, the taxpayers would be liable for unknown amounts of damages, we believe is false. As the above contract provision (re CT6.01) indicates, the Forest Service will not be held liable for damages as alleged in the EA.”

Response – The appellants cited 2400-6t timber sale contract provision CT6.01-Interruption or Delay of Operations (PF doc.77, p. 53) as the provision that would be applied in the event of a unilateral contract cancellation by the Forest Service if the No Action alternative were selected. This provision is not the provision that would apply in the event of such a cancellation. CT6.01 gives the Forest Service the unilateral right to stop operations that are in compliance with the contract but are likely to cause environmental damage while an environmental modification is being prepared.

If the no action alternative were selected, a unilateral contract cancellation would be implemented. 2400-6t contract provisions CT8.2-Termination (PF doc.77, p.68) and CT9.5 –Settlement (PF doc. 77, p.74) would be applicable. Damages due the purchaser could include: a) the sum of the estimated

expenditures for specified road construction/reconstruction multiplied by the ratio of remaining volume to advertised volume; 2) the estimated expenditures for felling, bucking, lopping, skidding, and decking any products so processed, but not removed from the sale area because of termination action; 3) out of pocket expenses involved in acquiring and holding the contract such as maintaining performance bonds and cash deposits and; 4) the difference between current contract rates for the remaining uncut volume and the rates paid for comparable timber on the same National Forest during the preceding 6 month period for the remaining uncut volume.

The appellants raised this point previously in a phone call from Kristin Ruether of the Friends of the Clearwater to Stephen Petro, Forester on 7/7/00 (PF doc. 69, p. 12).

The Brushy Creek Timber Sale on the Clearwater National Forest was recently unilaterally cancelled for Threatened and Endangered Species protection. The Forest Service paid the purchaser \$162,802.36 in damages through the above provisions.

Issue 2. The EA does not fulfill the requirements of NEPA. The water quality/fisheries section is inadequate. There is insufficient evidence that Sylvan and Hem Creeks should be delisted as Water Quality Limited Segments. The EA contains insufficient analysis to support the decision.

Contention 2A – “The vast majority of Forest Plan standards concerning water quality are not disclosed in the EA. The only standards discussed in the Affected Environment section of the Water Quality/Fisheries section are for sediment/cobble embeddedness (EA 24). Sylvan and Hem are designated “high fish” which means only 10 yrs in 30 may exceed threshold. The EA does not disclose how many years of the past 30 have exceeded threshold. No fisheries standards are discussed including pool ratio, bank stability index, acting debris, percent fines, width/depth, pool quality index, instream cover index, and bank cover index. Turbidity and temperature are also not discussed.”

Response – The 5201 Salvage EA (EA p.3-4) lists the Clearwater Forest Plan as Management Direction for the project. The project was prepared in strict accordance with Forest Plan standards and guidelines for all resource areas, including water quality (DN p.11). The EA (EA p.24) refers to the Watershed and Fisheries Report (PF doc.16) and BE/BA (PF doc.17), both of which address and disclose how the project meets Forest Plan standards for the watershed and fisheries resource.

The Watershed and Fisheries Report (PF doc.16) did not specifically address the 10 yr/30yr threshold standard for high fish streams because the project was designed to be a “no effect” project from a watershed standpoint. The project has no potential to affect any of the criteria except for temperature and sediment and these were the criteria specifically addressed in the analysis. The Watershed and Fisheries Report (PF doc.16 p.3) addresses the potential for sediment delivery to streams and potential impacts to stream shade and water temperature as a result of the project.

Contention 2B – “(The EA) mentions one standard, the sediment/cobble embeddedness standard. All others are ignored. On the basis of this single standard, it concludes that the WQLS listing (for Sylvan and Hem creeks) is “inappropriate”.”

Response – The EA (EA p.24-26) refers to the Watershed and Fisheries Report (PF doc.16)

and BE/BA (PF doc.17), which address the Forest Plan standards for watershed, and fisheries. The recommendation to drop the WQLS listing for Sylvan and Hem creeks was made based on Forest Service data, BURP data, and the fact that these streams both meet Forest Plan sediment standards (PF doc. 16, p.1-2, 5) and are meeting their intended beneficial uses (EA p. 24).

Contention 2C – “The tools used are not mentioned in the (Water Quality/Fisheries) section, nor the history of the watersheds in any depth, nor the erosional processes, nor the peak flow increases, nor any landslide hazard analysis, nor the numbers derived from WATBAL concerning this sale. Evidently the District doesn’t feel this data is important for the public to know. Instead, we get an unsubstantiated claim that the timber sale will be a “no effect” timber sale (EA 26).”

Response – The EA (EA p.24-26) refers to the Watershed and Fisheries Report (PF doc.16) and BE/BA (PF doc. 17), which address the criteria used to determine the environmental consequences of the proposal from a watershed standpoint. The EA (EA p. 26-28) and the Soils Report (PF doc.19) address the soil and land types and their characteristics and the landslide hazard analysis that was conducted for the project area. The WATBAL model was not run for this project due to the small size of the proposal, the generally stable landtypes that occur in the project area, and the absence of any new permanent road construction associated with the proposal.

The history of the watersheds in and adjacent to the project area is detailed in the EA (EA p.25-26). Tools utilized in the watershed analysis were detailed in the Decision Notice (DN Appendix E).

Contention 2D – “The EA inadequately fulfills the responsibility under NEPA to analyze the effects of the action. It has not taken a hard look at the environmental consequences. It has not supported the agency’s decision to not prepare an EIS. The EA does not make a convincing case that the impacts of the project are insignificant. We do not feel the EA has met the burden of NEPA...”

Response – The EA conducted a direct, indirect, and cumulative effects analysis for all resources within their respective analysis areas (DN p.7-13, EA p.20-43). The EA and the specialists’ reports (PF docs. 15-19) fully disclose all environmental consequences. This project is not a major Federal action and there will be no significant effects on the quality of the human environment. An EIS is not necessary (DN p.9). This determination is consistent with 40 CFR 1508.27. This analysis was issue driven and is commensurate with the scope of the project.

Issue 3. The EA fails to adequately address cumulative impacts. This is a violation of NEPA.

Contention 3A – “No cumulative effects analysis was completed in this EA.”

Response – The EA conducted a cumulative effects analysis for all resources within their respective analysis areas (DN p.7-13, EA p. 20-43). Each of the specialists’ reports (PF docs. 15-19) addresses cumulative effects.

The appellants raised this issue during the 30 day EA comment period (DN, Appendix D, p. 2).

Contention 3B – “There is no documentation regarding specific analysis of past projects and how they’ve affected the Orogrande drainage. The EA fails to do a cumulative impact analysis for the Orogrande Creek watershed.”

Response – The Orogrande Creek watershed is 58,741 acres (all ownerships). Currently, 16,606 acres of National Forest System (NFS) lands have been intermediate or regeneration harvested, or 29.2 percent of the watershed. In addition, a total of 1,944 acres in the watershed are in private or State ownership, most of which has been harvested. The 5201 Salvage project proposal would increase the harvest level to 29.9 percent of the NFS watershed. The most intensive management in the watershed was in the early 1960’s through the 1980’s, with hydrologic recovery occurring since that time. Over 50 miles of road obliteration has also helped to recover the hydrologic and sediment characteristics of the watershed. Other planned and ongoing activities in the Orogrande Creek watershed include the Lookyhere, Tamarack Bug, Tama, Fuzzy Fir, and Clark Mountain timber sales. The Clark Mountain timber sale is planned for 2003. To date, there are no alternatives developed. The Clark Mountain EIS would include a detailed cumulative watershed analysis for the Orogrande watershed timber sales. To date, there are 436.5 miles of road (all ownerships) within the Orogrande Creek watershed. Road density is 4.8 miles/square mile (EA p. 25, PF doc. 16, p. 4-5).

The appellants raised this issue during the 30 day EA comment period (DN, Appendix D, p. 2).

Contention 3C – “The Forest Service failed to disclose the past impact of landslides on watersheds and the potential for future landslides.”

Response – The EA (EA p.26-28), the Landslide Map (EA Appendix I), and the Soils Report (PF doc. 19) provide a full disclosure of the past impact of landslides in the project area watersheds and also analyze the potential for future landslides. A portion of harvest unit 2 was dropped due to high landslide hazard above Hem Creek (EA p. 26).

The appellants raised this issue during the 30 day EA comment period (DN, Appendix D, p. 3, 4).

Contention 3D – “The EA concedes the project will remove several acres of habitat for species such as 50 acres of Northern Goshawk habitat (EA 38), but goes into no analysis of how many projects are doing the same, or what effect the sum of these projects will have on the species and their habitats.”

Response – The Wildlife Report (PF Doc. 15 p. 35, 38) contains a cumulative effects summary of the known projects in the area and their effects relative to goshawks. The combined effects of 5201 Salvage, Tamarack Bugs, and Lookyhere timber sales would reduce goshawk habitat by a total of 115 acres from 10,800 acres down to 10,685 acres in a 36,000 acre analysis area.

Issue 4. There is no real range of alternatives analyzed in this EA. This is a violation of NEPA.

Contention 4A – “There are three alternatives: No Action, and two very similar proposed actions. There is no action alternative that does not involve logging.”

Response – FSH 1909.15, Chapter 14, requires “based on the results of scoping and the determination of issues to be analyzed in detail, develop and consider all reasonable alternatives to the proposed action. As established in case law interpreting the National Environmental Policy Act, the phrase “all reasonable alternatives” has not been interpreted to require that an infinite or unreasonable number of alternatives be analyzed.”

Alternatives must be responsive to the project purpose and need as guided by programmatic direction. The responsible official established a focused purpose and need and set conservative design features and mitigation standards specifically to narrow the scope of the analysis so that larger issues covered by broader scale assessments would not have to be revisited. The EA (EA p. 15-19) lists the alternatives analyzed in detail and the alternatives considered but eliminated from further analysis. The alternatives depicted in the EA respond to the purpose and need statement, are within the management direction identified in the EA (EA p. 1-4), respond to the public scoping comments, and are reasonable for this project. An action alternative for the project that does not involve logging would not meet the purpose and need.

The appellants raised this issue during the 30 day EA comment period (DN, Appendix D, p. 1).

Issue 5. This project violates the Forest Plan lawsuit settlement agreement. If implemented, this project will not comply with the Forest Plan water quality standards or the antidegradations clauses of the Idaho State Code and Clean Water Act.

Contention 5A – “Sylvan and Hem Creeks are both designated Water Quality Limited Streams with sediment as the pollutant of concern (EA 24). Both watersheds have been damaged by the extensive logging road building: they had several landslides occur during 1995-96. The dismal degree of disclosure in the EA prevents this appeal from going into detail about the meeting of most Forest Plan standards in these watersheds, because they are simply not discussed.”

Response – Sylvan and Hem Creeks have recovered nicely over time and currently meet Forest Plan watershed standards. Joy Creek, a tributary of Hem Creek, does not meet the Forest Plan standard for sediment; however, there are no activities planned in the Joy Creek watershed (PF Doc. 15).

The 5201 project is located entirely within the Sylvan Creek watershed. The Sylvan Creek watershed is 8,246 acres. Currently, 1998 acres have been intermediate or regeneration harvested, or 24.2 percent of the watershed. The 5201 project proposes an additional 126 acres of harvest, or an increase to 25.8 percent of the watershed. The most intensive management in the watershed occurred in the late 1970’s and early 1980’s, with hydrologic recovery occurring since that time. To date, 38.3 miles of road have been constructed within the Sylvan Creek watershed. Road density is 3.0 miles per square mile. The 5201 project does not add any new roads to the watershed. Maximum sediment generated from roads and timber harvest was modeled at 75 percent over natural in 1984. Sediment production in the Sylvan Creek watershed has decreased to seven percent over natural in 2000. This is less than the geomorphic threshold of 223 percent sediment over natural. There are no other planned projects located within the Sylvan Creek watershed (PF Doc. 16 p. 4).

With the exception of Joy Creek, all reaches of Hem Creek are stable and have low to

moderate levels of cobble embeddedness. The substrate levels within Joy Creek are slightly higher than the DFC, but these levels are representative of the channel type and natural conditions (no development has occurred in the Joy Creek drainage). The moderate embeddedness levels in Hem Creek are considered mostly natural as the upper Hem Creek drainage has a relatively minimal development history. Overall, the survey data indicates good substrate conditions within the Hem Creek drainage. This information indicates the WQLS listing for sediment in Hem Creek is inappropriate. Hem Creek meets the Forest Plan sediment standards. Joy Creek does not meet the Forest Plan standard for sediment as cobble embeddedness is currently 40 to 41 percent and DFC is 30-35 percent. However, there are no activities planned in the Joy Creek watershed (PF Doc 16 p.2).

The landslide map (EA Appendix I) indicates that only 1 small landslide occurred in the 4700 acre study during the 1995-1996 storm events. This slide was on road 5216 and was repaired. Most of the units in this proposal are either on low relief rolling hill landforms or colluvial midslope landforms which generally have low to moderate landslide hazards (PF Doc 19).

Contention 5B – “In signing the TWS Settlement Agreement, the Forest Service committed to improving water quality in degraded streams throughout the Clearwater National Forest. The Settlement includes both substantive and procedural provisions with regards to water quality, stating:.....Predecisional monitoring and inventory according to the RASI, pool riffle ratio and cobble embeddedness methods will occur on the majority of 1994 projects and on all new roads and large timber sale projects in the years following.”

Response – The streams within the project area currently meet Forest Plan standards for water quality and therefore the TWS Settlement Agreement does not apply; however, predecisional monitoring was done and is depicted in the Watershed and Fisheries Report (PF Doc.16 p.1-2).

Contention 5C – “If implemented, this project will not comply with these water quality standards, or the antidegradation clauses of the Idaho State Code and Clean Water Act. The project has not proved that it will have a no measurable increase, it would delay recovery, and it reenters below-standard waterbodies.”

Response - Sylvan and Hem Creeks are not below standard water bodies (PF Doc. 16). Default INFISH riparian buffers (EA p.3), implementation of Best Management Practices (DN Appendix C) and Mitigation Measures (DN Appendix F) will prevent sediment from entering streams as a result of this project (PF Doc. 16 p.3).

Contention 5D – “The proposed alternative would, in violation of the Settlement Agreement, create sediment.”

Response - Applicable BMP's and default INFISH buffers assure that no sediment will be delivered to the streams within the project area. The Settlement Agreement does not apply because Sylvan Creek currently meets the Forest Plan standard for sediment (PF Doc. 16 p. 5).

Contention 5E – “Buffers will not prevent increased sedimentation. First, the project relies

almost entirely on no-harvest PACFISH (re INFISH) “buffers” to support the claim that logging will not result in increased sedimentation to area streams. But as Appellants have detailed in the ongoing TWS v Bosworth litigation, buffers do not prevent channelized landslides or debris flows – the type of landslides which regularly occur in the Clearwater country.”

Response – See our responses to Contentions 5C and 5D. The documentation for the 5201 project does not claim that buffers prevent channelized landslides or debris flows.

Contention 5F – “The agency’s contention that it can recover severely degraded watersheds and fish habitat by subjecting them to further damage is blatantly absurd.”

Response – See our response to Contentions 2B, 5A, and 5C. Sylvan and Hem Creeks are not severely degraded; they meet Forest Plan watershed standards. The 5201 Timber Sale is planned to be a no effect project to fish and water (PF Doc.16 p.5) so no further damage will result.

Contention 5G – “WATBAL was used in the watershed analysis for this project to assess sediment impacts.”

Response – The WATBAL model was only used to describe the historical conditions in the Sylvan Creek watershed. The WATBAL model was not run for this project due to the small size of the proposal, the generally stable landtypes that occur in the project area, and the absence of any new permanent road construction associated with the proposal.

Issue 6. This project will violate the NFMA requirement to provide for viable populations of wildlife species and the NFMA requirement for monitoring.

Contention 6A – “NFMA requires that the National Forests provide for viable populations of wildlife species; and NFMA’s consistency provision further requires the CNF to adhere to the monitoring requirements of its own Forest Plan, including the requirement to monitor population trends of old growth dependent wildlife species. This project will violate both NFMA requirements, through the CNF’s failure to conduct population trend monitoring as required by the Clearwater Forest Plan and failure to maintain adequate old growth habitat.”

Response - Monitoring of Threatened, Endangered, Sensitive, and MIS species to develop population trends, as the appellants discuss in their appeal, is a Forest level issue outside the scope of this project. The Forest issues an Annual Monitoring and Evaluation Report as required by the Forest Plan. This report addresses the monitoring that was done for old growth dependent wildlife species. (Clearwater N.F. Monitoring & Evaluation Report FY 98 and previous years (PF doc. 64) The 5201 Salvage BE/BA (PF doc. 17) and the Wildlife and TES Plant Resources Status Report (PF doc. 15) indicates that the project will maintain adequate habitat within the analysis area to provide for population viability (DN p.3, EA p. 21, 22). No old growth would be harvested with this project (PF doc. 47, p.14-15, EA p. 21, 22).

The appellants raised this issue during the 30 day EA comment period (DN, Appendix D, p. 4, 5).

Contention 6B – “The U.S. Court of Appeals for the Eleventh Circuit recently found several timber sales in the Chattahoochee and Oconee National Forests unlawful because of the Forest Service’s failure to adhere to applicable Forest Plan population monitoring requirements.....Here, the CNF simply has not even attempted to complete its own Forest Plan’s monitoring requirements. This failure to comply with Forest Plan monitoring requirements is an ongoing violation of NFMA and has led to an uninformed decision.”

Response – See our response to Contention 6A. This is a Forest level issue outside the scope of this project. Court rulings applicable to this project are covered by the U.S. Court of Appeals for the Ninth Circuit. Rulings from the Eleventh Circuit do not apply to this project. The Ninth Circuit has repeatedly affirmed that habitat information can be substituted for population information.

Contention 6C – “ In short, this project must be reversed for violating both the Clearwater Forest Plan and NFMA provisions regarding wildlife population viability and monitoring (as well as NEPA’s disclosure requirements. The Regional Forester must reverse the DN because CNF cannot have any clue how the proposed logging activities will affect population of sensitive species of the Forest. No data exists that might set a baseline population; no data exists that might indicate how populations are changing from the baseline.”

Response - The BE/BA, EA and specialist reports provide not only the effect determinations made for the whole range of sensitive species, but also the data used in the determination (DN p. 8-13, EA p. 30-39, PF doc. 15, 17). The EA discusses potential impacts to sensitive species through an evaluation of the species habitat (EA p. 30-40; PF doc. 15). As management alternatives were analyzed, changes in potential habitat acres were noted (EA p. 30-40, PF doc. 15 p. 6-29, 31-32, 34-57). The effect determination was made based on the impacted acres, if any, relative to the total potential habitat acres within the analysis area.

Contention 6D – “In the FY 98 report, no sensitive plants are mentioned. Two threatened plants are described, but no monitoring is mentioned.”

Response - The 5201 Salvage BE/BA (PF doc. 17) provides site specific information regarding TES and MIS species. This document describes 32 sensitive plants. A no impact determination was made for all listed species because the suitable habitat either was not present or the habitat was protected by INFISH buffers.

The appellants raised this issue during the 30 day EA comment period (DN, Appendix D, p. 5).

Please contact Douglas Gober, North Fork District Ranger, or Steve Bess, ID Team Leader, for any additional information.

Jennefer L. Sundberg (For)

DOUGLAS GOBER

Responsible Official
North Fork District Ranger

cc: Forest Coordinator