



File Code: 1570-1

Date: June 19, 2007

Route To: (1570 (215))

Subject: 1570 (215) - ARO Letter - White/White TS ROD - Clearwater NF - Friends of the Clearwater, et al. - #07-01-00-0144

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Gary Macfarlane, on behalf of Friends of the Clearwater, Alliance for the Wild Rockies, WildWest Institute, The Lands Council, and Idaho Sporting Congress, protesting the White/White Record of Decision (ROD) on the Clearwater National Forest (Lochsa Ranger District).

The Forest Supervisor's decision adopts Alternative 4, which includes 321 acres of regeneration harvest, 363 acres of commercial thinning, 362 acres of burning and then planting to western white pine and larch, precommercial thinning on 1,739 acres, constructing 6.45 miles of temporary road, 31.4 miles of road reconditioning, and various other road improvements and closures.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is 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 Endangered Species Act (ESA), and the Clean Water Act (CWA). The appellants request the ROD be rescinded, or if that is not done, then all restoration take place before logging, all units with lynx habitat be dropped, and all units that violate soil standards, even temporarily, be dropped. A series of informal meetings and discussions were held, but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. Use of non-NEPA and non-decision documents as programmatic decision documents.

Issue 1, Contention A. Programmatic recommendations in the Clearwater Subbasin Ecosystem Assessment at the Watershed Scale (EAWS) set up new desired future conditions. The EAWS has not gone through the NEPA analysis to look at a range of alternatives, to consider cumulative impacts, or to suggest alternatives to the adoption of new desired future conditions, standards, and goals in the Forest Plan.

Response: The White/White Final Environmental Impact Statement (FEIS) (p. 24) clearly describes how the EAWS was used. The EAWS is not used as a decision document nor as a programmatic decision to be tiered to; rather, the EAWS describes the historic and existing



conditions, identifies processes and conditions, identifies opportunities and makes recommendations for landscape structure and composition (FEIS, p. 24). Any projects selected for implementation from the EAWS still would need to be analyzed through the NEPA process, with full public participation, as this project had done. The use of non-NEPA documents in Environmental Assessments and EISs is an acceptable practice (40 CFR 1502.21). The use of the EAWS for the White/White project is in compliance with NEPA.

Issue 1, Contention B. Any use of the Lynx Conservation Assessment and Strategy (LCAS), and related mapping direction for development of lynx analysis units is unlawful. These direction documents constitute significant amendments of the Clearwater Forest Plan, yet were not prepared in compliance with the NFMA, NEPA, and related regulations to ensure public involvement. Furthermore, the “no effect” determination may well be in error regarding lynx since it is based upon the above strategy that has not gone through NEPA.

Response: In the appellants’ comments on the DEIS they indicated a desire to see the DEIS adequately demonstrate consistency with the LCAS. To now raise as unlawful, the relationship between LCAS and the White/White project, does not demonstrate a consistency in their concerns for this issue. In compliance with the Conservation Agreement on lynx between the Forest Service and Fish & Wildlife Service (http://www.fs.fed.us/r1/planning/lynx/reports/conagree/Lynx%20cons_agree_10-2006.pdf) we are to review and consider the LCAS when conducting site-specific project analysis. The District and Forest wildlife biologists appropriately used the LCAS in their analysis. The consideration of the LCAS for the White/White project is in compliance with NEPA.

Issue 2. The Purpose and Need for this project was too narrow and was designed to preclude a reasonable range of alternatives.

Response: The Agency’s Deciding Official has the discretion to determine the Purpose and Need for a project proposal. The NEPA implementing regulations state the NEPA document shall "briefly specify the underlying purpose and need to which the agency is responding..." (40 CFR 1502.13). The Forest has provided information on the project to support the stated Purpose and Need. In addition, the Purpose and Need relates to the Forest-wide Management Direction. I find the Purpose and Need to be within the discretion of the Responsible Official and that it appropriately considered broader scale analyses.

Issue 3. Clean Water Act requirements.

Issue 3, Contention A. This timber sale violates Forest Plan standards because it proposes activities that will increase sedimentation in streams that are not presently meeting Forest Plan standards.

Response: The selected alternative has been designed to produce “no measurable increase in sediment” (ROD, p. 13; FEIS, p. 70). Best Management Practices (BMPs) are included in the project designed to prevent sediment from reaching streams (FEIS, Appendix F). To ascertain the BMPs are doing what they are designed to do, BMP audit monitoring is included as part of

the project (ROD, p. 10). The selected alternative complies with Forest Plan standards (ROD, pp. 19 to 21), the Forest Plan Stipulation of Dismissal (ROD, p. 22), and all federal, State, Interstate, and local requirements (ROD, pp. 22 to 25).

Issue 3, Contention B. The EIS fails to consider sediment increases from the actual logging activities, especially log hauling and heavy equipment use on the roads. The agency presents no hard data that sediment would not be measurable.

Response: The water analysis is contained in the FEIS (pp. 58 to 78). WEPP and WATBAL models, stream surveys, water quality and quantity data, and information regarding roads and timber harvests were used to analyze direct, indirect, and cumulative effects, and effects of sediment on fish and fish habitat. WEPP is a site-specific model used to analyze the direct and indirect effects of individual road segments and harvest units. It analyzes how, and if, the delivery of sediment is routed to the stream.

The project was designed to remain below a 4 to 6 percent increase in modeled sediment, which is considered “not measurable” (Nez Perce Tribe vs. NOAA Fisheries et al. 2005). The water quality and fisheries sections include effects analysis of roads and the functionality of streamside buffers (FEIS, pp. 56 to 64; PF, Vol. L-08, Doc. 01, Watershed Report). An analysis of roads located within streamside buffers, adjacent to proposed harvest units was included (FEIS, pp. 65, and 160 to 161; PF, Vol. L0-8, Doc. 01, Watershed Report). The analysis and project are in compliance with NEPA and CWA.

Issue 3, Contention C. The accuracy of the WATBAL model has been called into question.

Response: The White/White project analysis goes into considerable detail to explain the use, accuracy, and limitations of the WATBAL model (DEIS, p. 9; FEIS, pp. 61 to 62, 71 to 74, 147, 167 to 169, and Appendix E; PF, Vol. A, Doc. 11, p. 19). The use of WATBAL is in compliance with NEPA and CWA.

Issue 3, Contention D. BMPs on the Clearwater NF have been proven, in a court of law, to be insufficient justification for sediment-producing activities.

Response: BMPs (FEIS, Appendix F) are used to minimize sediment delivery to streams (FEIS, p. 159), not to justify conducting sediment producing activities. The selected alternative has been designed using BMPs and mitigation measures (FEIS, p. 38) in order to produce “no measurable increase” in sediment. The Forest soil scientist developed appropriate design elements based on a detailed evaluation (FEIS, pp. 158 to 159). Some of the design features include reducing compaction and potential erosion on old skid trails and landings, using skyline or cable logging on steeper slopes, avoiding unstable landforms, revegetating reclaimed areas, reusing old skid trails where possible, decompacting all skid trails after use, and retaining at least 15 to 25 tons/acre of standing and down coarse woody material after burning in regeneration harvest units (FEIS, p. 37 to 38).

The proposed action includes restoration activities that would improve or maintain soil conditions and reduce the potential for erosion. These include road decommissioning, placing

roads into intermittent service, removing culverts, and replacing culverts. Impacts to streams from surface erosion would be nonmeasurable due to generally low slope angles and the application of PACFISH buffers (FEIS, p. 82). Forest Plan and Regional soils quality standards would be met by the proposed action (FEIS, p. 83). Forest Plan monitoring would be conducted on sample treatment units by the Forest soils scientist to determine compliance and effectiveness (FEIS, pp. 83 and 158). The use of BMPs is in compliance with NFMA and CWA.

Issue 4. The FEIS fails to adequately demonstrate compliance with soil standards.

Response: The Forest soil scientist conducted a detailed evaluation of erosional hazards and performed field monitoring of soil conditions within each proposed treatment unit (FEIS, pp. 80 to 88; Response to Comments, pp. 157 to 158). The project design elements were developed based on his evaluation. The methodology of how the detrimental soil impacts were determined is disclosed in the Soil Resource Project Report (PF, Vol. L-10, Doc. 01). The surveys and effects analysis indicate Units 2, 3, 28, and 36 would require restorative actions (i.e., decompaction of disturbed areas) in order to meet Regional Soil Quality Standards. The ROD states one of the required mitigation measures is to de-compact Units 2, 3, 23, and 36 (p. 10). By following the Regional Soil Quality Standards, and using the mitigation measures found in those standards, the Forest is complying with NFMA and Forest Plan direction.

Issue 5. Threatened, endangered, sensitive (TES), and management indicator species (MIS).

Issue 5, Contention A. The Forest Service's position that 10 percent old growth Forest-wide and a mere 5 percent old growth in each timber compartment is within the historic range and will support viable populations of old growth-dependent species is not supported by the best scientific information.

Response: The EIS (pp. 41 and 92) and ROD (p. 21) state no old growth would be harvested under any alternative, and areas within 20 years of meeting old growth criteria would be retained as recruitment old growth. While no old growth would be harvested, the wildlife biologist analyzed the impact the project would have on old growth and old growth species using the best available science (EIS, pp. 90 to 92, 95 to 99, and 109 to 118). The project will not affect the viability of any old growth species. The adequacy of the Forest Plan old growth standard is addressed in a Response to Comment (FEIS, p. 153). The project and the Forest are in compliance with ESA, NEPA, and NFMA.

Issue 5, Contention B. The FS has never satisfied Forest Plan requirements to monitor population trends of old growth-dependant wildlife, sensitive species, and MIS.

Response: Monitoring is required by the Forest Plan at the Forest-wide level, and is not required on every project. This monitoring is being conducted, and the results are reported in the Forest Plan Monitoring and Evaluation Reports, which are found in the project file (Vol. M, Docs. M-13, 14, 15, and 21). The reports indicate that the Forest is conducting the monitoring on all resources as required in the Forest Plan.

Issue 5, Contention C. The EIS provides inadequate information on the habitat status of sensitive and management indicator species Forest-wide. The ROD is not consistent with NFMA's provisions requiring adequate amounts and adequate distribution of habitat to insure species viability.

Response: The Biological Assessment (BA) determined that implementation of the selected alternative would have no effect, would not be likely to adversely affect, or would not be likely to jeopardize the continued existence of the species, or result in the destruction or adverse modification of proposed critical habitat of any threatened, endangered, or proposed species (FEIS, pp. 101 to 104, and Appendix D). The USFWS concurred with those findings (FEIS, Appendix D). The effects of the project on sensitive species is addressed in the Biological Evaluation (BE), which determined that the selected alternative would have no impact, or may impact individuals or habitat but would not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species (FEIS, pp. 105 to 121, and Appendix D). The wildlife analysis (FEIS, pp. 90 to 99) displays the direct, indirect, and cumulative impacts the project will have on TES and MIS that may be in and affected by the proposed project. The FEIS discusses the habitat requirements and habitat availability for the species in the project area. Habitat status, Forest-wide, can be found in the Forest Plan monitoring reports (PF, Vol. M, Docs. M-13, 14, 15, and 21). The FEIS, BA and BE make the required viability determination for each species across the planning area. The project is in compliance with NFMA and NEPA.

Issue 6. Impacts from grazing, road building, road reconditioning, and the like are considered small individually, and dismissed from meaningful analysis. The FS must consider the cumulative effects from activities that include logging, motorized vehicle use, off-road vehicle use, including 4-wheel drive vehicles, ORVs, and snowmobiles.

Response: I have reviewed the FEIS and ROD in reference to the appellants' contention that the cumulative effects analysis is inadequate. I find the discussion of the various resources in Chapter 3 to be an adequate analysis and disclosure of the direct, indirect, and cumulative effects of implementing the alternatives analyzed. This analysis is adequately supported by documentation in the Project File. Appendices A, C, and D of the FEIS provide additional cumulative effects analysis.

Water quality and fisheries were specifically mentioned by the appellant. The FEIS includes a water quality and fisheries analysis of cumulative effects from grazing, timber harvest, road construction, and reconstruction (FEIS, Appendix C-1, pp. 1 to 5, Appendix D, pp. 35 to 38, and 41 to 42). Further cumulative effects analysis for water quality and fisheries (including suction dredging) is addressed in a Response to Comment in the FEIS (pp. 166 to 170). Since the Lolo creek area has very little OHV use, the issue is addressed in a comment response in the FEIS (pp. 155). The cumulative effects analysis is in compliance with NEPA.

Issue 7. The ROD is based upon verbal concurrence with the agencies in charge of the ESA. It does not show compliance with the ESA.

Response: The project did receive verbal agreement on effects from the National Marine Fisheries Service and the Fish and Wildlife Service prior to the decision (ROD, p. 23). They subsequently received letters of concurrence (PF, Vol. L-08, Docs. 56 and 57). The project is in compliance with ESA.

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellants. I recommend the Forest Supervisor's decision be affirmed and the appellants' requested relief be denied.

/s/ Susan Skalski
SUSAN SKALSKI
Appeal Reviewing Officer

cc:
Forest Coordinator
Responsible Official