



United States
Department of
Agriculture

Forest
Service

Region 1

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File Code: 1570

Date: May 12, 2000

Route To:

Subject: Deer Creeks Prescribed Burn Project DN, Appeal #00-01-00-0076
Gallatin National Forest

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Sara Jane Johnson on behalf of the Native Ecosystems Council protesting the Deer Creeks Prescribed Burn Project Decision Notice (DN) signed by the Big Timber District Ranger, Gallatin National Forest.

The District Ranger's decision adopts Alternative 4 which provides for maintenance of grassland, shrub land and open timber stands by reducing conifer tree encroachment using mechanical means on approximately 1,800 acres, and various degrees of prescribe burning on up to 7,000 acres over a 6- to 11-year time period.

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), and the Administrative Procedures Act (APA). The appellants request a remand of the DN. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. The Forest Service has violated the NEPA by failing to evaluate the cumulative impact of connected, related, and/or associated actions that will occur within the same public lands during the same time period. The Forest has also violated the NEPA and the APA by failing to disclose the interrelationship of different actions planned on the same piece of ground.

Contention A: The agency failed to identify that an important purpose of the proposed burning program in the Deer Creeks is to enhance livestock grazing.

Response: The purpose and need for the project is to reintroduce fire to bring the area back to natural conditions. Specifically, the purpose and need is, "to increase the representation of native grasses and shrub communities by reducing conifer encroachment; to reduce the density of understory conifers within forested stands; and reduce natural fuels in forested stands" (EA, p. I-3; DN, p. 5). Enhancing livestock grazing is not identified as a purpose or need for the project; however, the EA acknowledges



that burning will result in “[m]aintenance of rangeland and forest habitat and reduction in young conifers. This will allow forest permits to remain at present levels rather than being gradually reduced over time (EA, p. III-3).

In determining the scope of an environmental analysis, the NEPA requires consideration of connected actions which are defined as actions that “automatically trigger other actions..., cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for their justification” (40 CFR 1508.25). The Forest completed an environmental analysis and authorized livestock grazing on the Deer Creek grazing allotment in 1998. Although the burning activities proposed in the current project will occur in the Deer Creek allotment, continued grazing is not connected to or dependent on implementing the prescribed burning. Therefore, the authorization of grazing and the actions of the prescribed burning project are not required to be considered in one NEPA document.

Contention B: The agency failed to evaluate the cumulative impacts of both livestock grazing and prescribed burning even though these are related or connected or associated activities.

Response: The effects of livestock grazing on wildlife and wildlife habitat were analyzed in the 1998 Deer Creek EA (Project File, Doc. 92). Cumulative effects of prescribed burning are addressed on page IV-10 of that document. The direct, indirect and cumulative effects of prescribed burning and livestock grazing to Neotropical bird, upland game bird, and elk/deer winter range habitat are disclosed in the Deer Creeks Prescribed Burn EA (EA, pp. III-8 through 17). Supporting documentation for the wildlife analysis is provided in the project file (Project File, Docs. 60-75, 89).

Contention C: The agency misled the public and violated the NEPA by failing to disclose that the February 29, 2000, decision to prescribe burn vast acreage of livestock grazing lands in the Deer Creek project area had essentially already been made.

Response: The DN documents the decision to implement Alternative 4 for prescribed burning in the Deer Creeks area (DN, pp. 5-8). As discussed in response to Issue 1A, the 1998 decision made to authorize grazing was not contingent on completing any proposed prescribed burning. Livestock grazing will continue in accordance with the 1998 allotment plan regardless of whether or not the prescribed burning currently proposed is implemented.

Issue 2. The agency has violated the NFMA by violating the current Forest Plan direction, and by implementing significant changes to the Forest Plan without completing the required public involvement and NEPA analysis process.

Contention A: The new direction for management of inventoried roadless lands has not been evaluated as per costs, wildlife or visual impacts in the Forest planning process.

Response: No changes to the Gallatin Forest Plan are proposed in this project. The project analysis area includes Forest Plan Management Areas (MA) 6, 12, 16, and 17. All of these MAs allow the use of prescribed fire to meet MA goals. The EA discloses the effects to visual quality on pages III-5 through 8, and the DN describes mitigation measures to minimize effects on page 10, items 8 and 9. The issue of visual impacts on roadless lands is also addressed in the response to comments (DN, pp. 34-35, #24).



The EA also discusses the effects of management-ignited fire on the North Absaroka inventoried roadless area (EA, pp. III-30 through 33). Neither the Chief's 18-month moratorium on new road construction within inventoried roadless areas nor the 1999 roadless initiative preclude the use of prescribed fire (EA, p. III-33).

Contention B: The Forest has failed to evaluate and do public involvement for the large increases they are planning in Forest Plan outputs for prescribed burning outlined for management areas, as well as the costs involved.

Response: No increases in Forest Plan outputs are proposed. As discussed in the EA and DN, the project is consistent with Forest Plan management objectives (EA, pp. III-7, 8, 17, 19, 20, 22, 29, 32, and 33; DN, p. 20). The table the appellants refer to in the Forest Plan (Table II-1, Projected Outputs and Activities by Time Period, p. II-8) does not describe management direction but does provide projected outputs on an annual basis for purposes of budgeting.

Contention C: The Forest has failed to evaluate and do public involvement for the large increases in wildlife habitat losses that will occur with the expanded prescribed burning program that are planned at the Forest-wide level.

Response: The direct, indirect and cumulative effects of this prescribed burning project to wildlife and wildlife habitat are disclosed in the Deer Creeks Prescribed Burn EA (EA, pp. III-8 through 17). Supporting documentation for the wildlife analysis is provided in the project file (Project File, Docs. 60-75, 88-91). Analysis of the effects of prescribed burning on a Forest-wide basis is beyond the scope of this site-specific project analysis.

On April 3, 1998, the Forest sent out a letter to the public and other agencies notifying them of upcoming prescribed burning projects and requesting comments and concerns regarding the prescribed burning program on the Forest (Project File, Doc. 9). The Deer Creeks Prescribed Burn Project DN describes the public involvement process used specifically for the project (DN, pp. 12-13). Three comment letters were received on the project and those concerns were addressed in the issues described in Chapter III of the EA.

Contention D: The Forest is violating current Forest Plan direction for management areas 6, 12, and 17.

Response: The purpose and need for prescribed burning is, "to increase the representation of native grasses and shrub communities by reducing conifer encroachment; to reduce the density of understory conifers within forested stands; and reduce natural fuels in forested stands" (EA, p. I-3; DN, p. 5). The response to comments describes how prescribed burning meets the Forest Plan direction for MAs 6, 12, and 17 (DN, pp. 27-28, #1). As discussed with regard to meeting MA 12 and 17 forage objectives, prescribed burning would increase foraging opportunities for various wildlife species, as well as livestock, by increasing the representation of grasses and shrubs, and improving the palatability of grasses and shrubs. Based on the analysis presented in the EA, the District Ranger determined that the project is "...consistent with applicable Gallatin Forest Plan goals, objectives and standards for fire and those related to vegetation and habitat diversity" (DN, p. 17).



Issue 3. The Forest has violated the NEPA by making site-specific decisions in programmatic, long-term manner.

Response: The NEPA does not establish time limits for implementation of a decision. However, FSH 1909.15, Section 18.1, provides direction for review of decisions awaiting implementation, as well as ongoing projects at least every 3 to 5 years. The purpose of this review is to determine if the environmental analysis and documentation should be corrected, supplemented or revised based on new information or changed circumstances relating to environmental impacts of the proposed action. This project will be reviewed by the Interdisciplinary Team (IDT) and if it is determined that a correction, supplementation, or revision of the EA is necessary, then the direction provided in FSH 1909.15, Sections 18.4, will be followed.

Issue 4. The agency has violated the NEPA by failing to evaluate the impact of all ongoing and planned activities on wildlife within the Deer Creeks area.

Contention A: The cumulative impacts of grazing and burning on wildlife were never evaluated in the Deer Creeks EA or any other EA that has been completed for this project area.

Response: No increase in livestock numbers is proposed for this project; livestock grazing will continue in accordance with the 1998 allotment plan. The direct, indirect and cumulative effects of prescribed burning and livestock grazing to various wildlife populations and habitat are adequately disclosed in the EA and Biological Evaluation (BE) (EA, pp. III-8 through 17; III 20 through 22; DN, Appendix A). Supporting documentation for the wildlife analysis is provided in the project file (Project File, Docs. 60-75, 89). Concerns regarding the effects of prescribed burning on wildlife were also addressed in the response to comments (DN, pp. 31-33).

Contention B: The cumulative adverse impacts of burning on wildlife due to invasions of exotic plants were not evaluated in the EA.

Response: This issue was raised in comments on the EA and responded to in the response to comments (DN, pp. 37-38, #38 and 39). The EA identifies noxious weed/exotic plant invasion in relation to the proposed action as an issue that was analyzed but found not to be a significant factor to the decision (EA, pp. 8-9). The decision includes mitigation and monitoring measures to help prevent the introduction of noxious weeds and other exotic plants (DN, pp. 10-12).

Issue 5. The agency has violated the NEPA, the APA, and the NFMA by the manner in which wildlife management is being planned within the Deer Creeks project area.

Contention A: No habitat plans have been developed for wildlife in the project area to ensure viable populations are maintained.

Response: Habitat plans are not required. As previously discussed, the EA and BE thoroughly disclose the effects to wildlife and wildlife habitat (please see my responses to Issues 1B, 2C, 4A and 4B). The wildlife biologist from Montana Fish, Wildlife and Parks was involved in the project development and expressed no concerns with maintenance of wildlife population viability.



Contention B: The stated purpose for burning wildlife habitat (improvement) will not be achieved with implementation of the project; the agency failed to provide any scientific rationale as to why this project should be completed to manage for wildlife habitat.

Response: Again, please see my responses to Issues 1B, 2C, 4A and 4B. References and scientific literature used to support the wildlife analyses are listed in the wildlife section of the project file (Project File, Doc. 76). The EA describes and identifies the percent representation of the various vegetative habitats (including big game hiding and thermal cover) in Table 2, page I-8. The DN clearly states that, "Forested areas currently identified as adequate thermal cover habitat for big game species will not be burned at this time" (DN, p. 8).

RECOMMENDATION

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

/s/ Richard F. Roberts

RICHARD F. ROBERTS
Reviewing Officer
Director, Ecosystem Assessment and Planning

