



File 1570 (215) Date: June 9, 1999
Code:
Route
To:
Subject: Musselshell Ecosystem Management Project ROD, Appeal #99-01-00-0122
To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Samuel Penney on behalf of the Nez Perce Tribe protesting the Musselshell Ecosystem Management Project Record of Decision (ROD) signed by the Clearwater National Forest Supervisor.

The Forest Supervisor's decision adopts Alternative E which allows for timber harvest, reforestation, underburning, road construction and reconstruction, road obliteration, and Off Highway Vehicle (ORV) trail construction and reconstruction in the Musselshell Creek watershed.

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) and the National Forest Management Act. The Appellants request the decision be remanded. No informal meeting was held, and no interested party comments were received.

ISSUE REVIEW

Objection 1: The Forest violated NEPA by failing to adequately consider the Nez Perce Tribe's treaty-secured right to take fish.

The Appellants contend that there is no discussion in the EIS regarding whether management under any of the alternatives is consistent with tribal objectives of rebuilding salmon populations. They contend that the Forest should design and adopt an alternative in the light of its obligation to maximize recovery of fish habitat to support exercise of the Tribe's right to take fish.

Response: The Nez Perce Tribe was involved throughout the development of the Musselshell project (Final EIS, V-12 and 13), yet this issue was not raised in previous correspondence. The comments received from the Nez Perce Tribe on the Draft EIS discussed fisheries habitat, riparian zones, native plants, and cultural and historic issues (Project File, Doc. 391). While not specifically addressing the Nez Perce Tribe's right to take fish, concerns regarding the project's effects on aquatic resources and soils were considered (Final EIS, IV-5 through 14). The Biological Assessment/Biological Evaluation (BA/BE) also addresses effects of the project on threatened and endangered fish species (Final EIS, Appendix J). In a letter dated August 28, 1998, the National Marine Fisheries Service (NMFS) concurred that Alternative E will not result in unacceptable risks to any listed threatened or endangered fish species (Final EIS, Appendix J). Because the Musselshell project was designed to have no measurable effect on water quality or fisheries habitat, there will be no effect on the Nez Perce Tribe's treaty-secured right to take fish.



Objection 2: The Forest violated NEPA by failing to conduct an adequate sediment analysis.

The Appellants contend that the sediment analysis is defective and understates the impacts of the action alternatives. In particular, they raise concerns regarding the model (WATBAL) used to analyze effects of the project on sediment in the watershed. They state the the model's assumption that sediment sources generated from roads and logging heal after 4 to 6 years is insupportable.

Response: Appendix C of the Final EIS describes the assumptions and methods used to conduct the watershed analysis for the Musselshell project. It appears that the Appellants have misinterpreted the information provided on the WATBAL model. As stated on page C-2, the model operates on several assumptions and has some limitations. One of the assumptions is that WATBAL assumes that sediment sources generated from roads and logging heal after 4 to 6 years. This assumption is qualified by the statement that, "in actuality, natural healing of erosion sources occurs faster on some landtypes and much slower on others." The WATAL model does not discount surface erosion from roads once they are more than 4 to 6 years old.

The WATBAL model was used as a base from which to determine the effects of the project. Appendix C explains that, "The WATBAL model is not intended to provide an accurate determination of actual sediment production... Outputs from the model are best estimates of the likely response of the watershed..." (Appendix C, p. 1). The Final EIS at IV-9 makes the following disclosure based on the watershed analysis:

Though WATBAL modelling indicates an increase in sediment production within the watershed, the model does not estimate how much of the sediment produced may actually be delivered to stream channels.

Due to the distance of new ridgetop road construction from any live water, and the intent of road reconstruction and obliteration activities..., professional judgement indicates that any soil disturbance as a result of any of the action alternatives could result in a small, short-term pulse of sediment, with long-term benefits of sediment abatement and resultant decreases in instream cobble embeddedness, contrary to the predictions of WATBAL and FISHSED.

I find this conclusion to be well supported by analysis documented in the Final EIS and project file (Project File, Vol. 6).

Objection 3: The Forest violated NFMA by not meeting Forest Plan standards for fish habitat.

The Appellants contend that the condition of fish habitat in the Musselshell watershed indicates that sediment is a severe problem and that there is no amount of additional sediment that is insignificant. They state that additional logging and road construction are not consistent with Forest Plan habitat protection obligations, obligations to listed species, or obligations to rebuild treaty-secured species.

Response: The effects on and risks to streams, water quality, fish habitat, and fish including TES fish was one of the decision criteria used by the Forest Supervisor in making his decision. The Final EIS discloses that sediment production in the Musselshell watershed, including Gold Creek, is currently within Forest Plan standards (Final EIS, III-7). However, the ROD and FEIS also disclose that some of the streams in the project area do not meet the Forest Plan Desired Future Condition (DFC) objectives for instream sediment levels (ROD, pp. 6, 15, 16; Final EIS, III-7, 8, 9, 12, 13, and IV-6). The analysis documented in the Final EIS (Ch. III and IV) and the project file (Vol. 3, Fisheries Habitat Section and Vol. 6, Watershed Analysis) support the conclusions in the ROD that the design of the project and the selected mitigation and monitoring requirements will ensure compliance with state water quality

requirements and Forest Plan requirements by producing no measurable effect on water quality (ROD, pp. 5, 6, 13, 19, 24 and 27). I conclude that the project is in compliance with Forest Plan standards for fish habitat.

Objection 4: The Forest violated NEPA by failing to adequately analyze effects on fish habitat.

The Appellants contend that the assertion that implementation of Alternative E will not result in any impact to fish habitat is unsupported.

Response: The effects of the project on fish habitat are thoroughly discussed in the Final EIS (Ch. III, pp. 3-14 and Ch. IV, pp. 5-14) and supported by documentation in the Project File (Vol. 3, Fisheries Habitat Section and Vol. 6, Watershed Analysis). The BA/BE also addresses effects of the project on threatened and endangered fish species (Final EIS, Appendix J). In a letter dated August 28, 1998, the NMFS concurred that Alternative E will not result in unacceptable risks to any listed threatened or endangered fish species (Final EIS, Appendix J). As stated in the ROD, "Proper road design, BMPs, default PACFISH stream buffers, and the stable character of the landforms themselves make the risk to aquatic systems minimal" (ROD, p. 13). I find the analysis of the effects of the Musselshell project on fish habitat to be adequate.

RECOMMENDATION

I recommend the Forest Supervisor's decision be affirmed and the Appellants' requested relief be denied.

/s/ Katherine Q. Solberg (For)

KATHERINE Q. SOLBERG
Reviewing Officer
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