

United States  
Department of  
Agriculture

Forest  
Service

Region 1

Federal Building  
P.O. Box 7669  
Missoula, MT 59807

File Code: 1570 (215)  
#97-01-00-0017

Date: March 17, 1997

Kimberly Davitt,  
American Wildlands  
40 East Main Street, Suite #2  
Bozeman, MT 59715

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Ms. Davitt:

This is my decision on disposition of the Appeal you filed on behalf of American Wildlands protesting the Lolo National Forest Supervisor's Decision Notice (DN) for the Petty Rock Project.

The Forest Supervisor's decision adopts Alternative 4. This Alternative will implement harvest of 6.8 MMBF of forest products from 2,865 acres, build and return to contour 1.7 miles of road, correct drainage on 18.8 miles of road, close 3.7 miles of existing road, and conduct ecosystem maintenance burning on 6,630 acres.

#### DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the Forest Supervisor's decision to implement Alternative 4. 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 Administrative Procedures Act, and the National Forest Management Act.

Central objections of your Appeal are failure to: (1) specifically disclose the impacts of sediment delivery or peak flow increase to Petty Creek, (2) analyze impacts to fisheries, (3) comply with State water quality standards and antidegradation regulations, (4) include a watershed analysis, (5) protect viable populations of westslope cutthroat trout, (6) provide an adequate cumulative effects analysis, and (7) obtain data concerning impacts on private land.

You request the decision be withdrawn until an Environmental Assessment (EA) is completed addressing the following: (1) a complete watershed analysis for Petty Creek, (2) an assessment of impacts to water quality and fisheries using the best science and most conservative methods available, and (3) a thorough cumulative effects analysis.

An Informal Meeting was offered but you declined. No Interested Party comments

were received.

#### APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the Forest Supervisor's decision be affirmed and the Appellant's 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 Forest Supervisor 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 Forest Supervisor has complied with all procedural requirements.

#### Procedural Determination

I have thoroughly reviewed your arguments and the information referenced in the Forest Supervisor's February 14, 1997, Transmittal Letter (copy enclosed). The Transmittal Letter provides specific page references to discussions in the 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 Forest Supervisor, I find the objections you raised were adequately considered in the EA/DN and the Forest Supervisor made a reasoned decision concerning those issues. I find the Forest Supervisor 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)