



File Code: 1570 (215)  
#99-01-00-0122

Date: June 14, 1999

Samuel Penney, Chairman  
Nez Perce Tribal Executive Committee  
P.O. Box 305  
Lapwai, ID 83540

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Mr. Penney:

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

#### 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 which do not. I have determined your objections are within the scope of the decision.

#### APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer has considered your arguments, the appeal record, and the transmittal letter and recommends the Forest Supervisor's decision be affirmed and your requested relief be denied.

#### DECISION

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, your arguments, the information referenced in the Forest Supervisor's transmittal letter (copy enclosed) and the Appeal Reviewing Officer's analysis and



recommendation (copy enclosed). The transmittal letter provides specific page references to discussions in the Environmental Impact Statement (EIS), the ROD and Project File which bear upon your objections. I specifically incorporate in this decision the appeal record, the references and citations contained in the transmittal letter, and the Appeal Reviewing Officer's analysis and recommendation.

Based upon a review of the references and citations provided by the Forest Supervisor, I find the objections were adequately considered in the EIS/ROD. I agree with the Appeal Reviewing Officer's analysis and conclusions in regard to your appeal objections.

I find the Forest Supervisor has made a reasoned decision and has complied with all laws, regulation, and policy. After careful consideration of the above factors, I affirm the Forest Supervisor's decision to implement Musselshell Ecosystem Management Project. Your requested relief is denied.

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)