



United States
Department of
Agriculture

Forest
Service

Region 1

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File Code: 1570 (215)

Date: June 29, 2000

Route To:

Subject: North Lochsa Face ROD, Appeals #00-01-00-0089/0090/0092, Clearwater National Forest

To: Appeal Deciding Officer

This is my consolidated recommendation on disposition of the appeals filed protesting the North Lochsa Face (NLF) Record of Decision for Recreation and Access Management signed by the Lochsa District Ranger (Clearwater National Forest).

Appellants:

#00-01-00-0089 - Gary Macfarlane on behalf of Friends of the Clearwater, Alliance for the Wild Rockies, American Wildlands, Bitterroot Mission Group Sierra Club, Clearwater Biodiversity Project, The Ecology Center, Idaho Conservation League, Idaho Rivers United, The Lands Council, Palouse Group Sierra Club, The Wilderness Society, and Wildlands Center for Preventing Roads.

#00-01-00-0090 - Samuel N. Penney on behalf of the Nez Perce Tribe.

#00-01-00-0092 - Laird J. Lucas, Land and Water Fund of the Rockies, on behalf of The Wilderness Society, Idaho Conservation League, Friends of the Clearwater, Ecology Center, The Lands Council, Idaho Rivers United, Clearwater Biodiversity Project and Wilderness Watch.

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 records, including the appellants' objections and recommended changes, have been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeals 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 Administrative Procedures Act (APA), the Clearwater Forest Plan and Settlement Agreement, and the Endangered Species Act (ESA). The appellants request a remand of the ROD; prohibition of all motorized/mechanized use within the B2 settlement agreement area; prohibition of snowmobile use on lynx and wolverine habitat; prohibition of all motorized road and trail construction/reconstruction in the North Lochsa Slope Roadless Area; and prohibition of motorized use in other management areas where Forest Plan regulations are not being met such as summer/fall motorized use in elk analysis areas in management area A-3. An informal meeting was held but no resolution of the issues was reached.



ISSUE REVIEW

Issue 1. The Forest Service violated the 1993 Forest Plan Lawsuit Settlement Agreement and Forest Plan standards for Management Area B2 by allowing motorized use in the Fish and Hungry Creek drainages.

Contention A: Appellants contend that allowing motorized use within the area included in H.R. 1570 (Idaho Wilderness, Sustainable Forest and Communities Act of 1993) violates the 1993 Clearwater Forest Plan Lawsuit Settlement Agreement.

Response: The Settlement Agreement states that lands covered by the proposed Idaho Wilderness, Sustainable Forest and Communities Act of 1993 (HR 1570) will be managed according to Forest Plan standards and guidelines for recommended wilderness (MA B2). The Settlement Agreement specifically prohibits timber sales and new road construction in these areas but does not address other types of project proposals such as trails. The Forest has interpreted the Settlement Agreement to mean that activities other than timber sales and new road construction are allowed as long as the activities comply with management area direction as allocated in the Forest Plan (Project File, Vol. 12, Docs. 733, 738, and 742).

Contention B: Appellants contend that allowing motorized use to occur within areas included in HR 1570 is a violation of Forest Plan standards for management area B2 as described in the Clearwater Forest Plan.

Response: The Forests' interpretation of the Settlement Agreement is that it did not change existing management area allocations delineated in the Forest Plan (FEIS, p. 198, #132; Project File, Vol. 12, Docs. 733, 738, and 742). The Forest Plan allocated the areas included in HR 1570 to management areas C3, C6, and C8S, none of which prohibit the use of motorized vehicles on trails (Project File, Vol. 29, Doc. F1). Furthermore, management direction for MA B2 does not preclude motorized use. In 1995, the Forest issued Interim Guidelines for OHV Management, which serves as the Forest's policy until the Forest Plan is revised. For MA B2 the guidelines state, "Motorized and Mountain Bike use at low levels can be permitted to continue in areas proposed for wilderness ... as long as this use does not cause changes in the areas' wilderness character. Trails constructed or reconstructed in B2 areas are to be closed to motorized vehicles until wilderness legislation addresses the issue" (Project File, Vol. 29, Doc. F4, p. 12). The North Lochsa Face project does not propose any trail reconstruction in the area included in HR 1570 (ROD, p. 7), and therefore, is also in compliance with management direction for MA B2.

The appellants also believe that the project is not in compliance with the Recreation Opportunity Spectrum (ROS) classification used in the Forest Plan. The ROS classification is not a Forest Plan standard or management prescription but is an inventory system used to "identify which areas are currently providing what kinds of recreation opportunities" (Project File, Vol. 29, Doc. F5, p. 22). The trail ROS designations in Matrix Table 1 that the appellants refer to (Project File, Vol. 12, Doc. 714, pp. 21-23) are from the Interior Columbia Basin Ecosystem Management Project (ICBEMP) assessment. The appellants are correct in stating that the matrix indicates the ROS designation for trails 223, 224, 225, and 229 is semi-primitive non-motorized. The ICBEMP assessment does not prescribe management direction at the Forest Plan or project level. The ROS inventory conducted for the Forest

Plan (Project File, Map 10) identified these trails as being in an area classified as semi-primitive motorized; therefore, there is no violation of the ROS designations.

Finally, the appellants contend that the Forest is violating the Settlement Agreement by not treating the Fish Creek area as a MA B2 area with respect to elk habitat potential. The summer habitat effectiveness objective for MA B2 is 100 percent. The FEIS acknowledges that the summer habitat effectiveness objective for Hungry Creek and middle Fish Creek is 100 percent (MA C6) and explains that because the roads and trail are on the edges of the EAA, they have minimal effect on summer habitat and the objective is being met (FEIS, p. 73). The Forest wildlife biologist made a site-specific analysis: in his professional judgment, motorized use of this area will have minimal effect on the effectiveness of the summer habitat. As previously explained, the Forests' interpretation of the Settlement Agreement is that it did not change existing management area direction in the Forest Plan. The Forest Plan allocated the remaining areas included in HR 1570 to management areas C3 and C8S, both of which have summer habitat effectiveness objectives of 75 percent. This objective is being met.

Issue 2. The Forest Service violates the Forest Plan ORV requirements and other law.

Response: Most of the appellants' argument in this issue relates to their contention that MA B2 direction should be applied to the lands included in HR 1570. They specifically refer to MA B2 direction found in the ORV Guidelines that states that because trail reconstruction or sometimes maintenance results in significant increases in motorized use, the work must either be deferred or motorized use prohibited. They then list several trails that they believe do not meet this direction.

Please see my response to Issue 1, Contention B for a discussion of the Forests' interpretation of the Settlement Agreement.

The FEIS describes the process used by the IDT used to review the existing condition of each trail and develop desired conditions based on Forest Plan management area direction (FEIS, pp. 14-15). The existing conditions are documented in the Lochsa Face Trail Matrix Table (Project File, Doc. 705, pp. 11-20), which includes information about whether the trails are passable, whether there are restrictions (open or closed) and the last time the trail was maintained. The appellants have misinterpreted the information in this table, probably because the columns are out of line. The last column displays the year the trail was last maintained, not the year the trail was opened. Many of the trails in the area have been open for years (prior to the Forest Plan) and not addressed in any NEPA document but included in the Forest Plan.

The Forest publishes an Access Guide (now called Travel Guide) on an annual basis. The guide lists the roads, trails and areas on the Forest that have some type of travel restriction. Trails not listed have no specific travel restrictions other than being closed to ATVs unless specifically designated open (Project File, Vol. 29, Doc. F4, pp. 27-28). The trails the appellants list in their appeal had no restrictions listed in the guides through 1999. The transmittal letter provides a table that shows information regarding each of the trails listed by the appellants. Based on the documentation referenced in the transmittal letter, I find that the access plan for the North Lochsa Face project complies with existing Forest Plan direction and the Interim OHV Guidelines.

Issue 3. The Forest Service violated the Forest Plan and the Code of Federal Regulations by failing to follow direction on the management of off road vehicles (Appellants issues 3 and 4).

Appellants again raise concerns related to Issues 1 and 2, as well as contentions related to the development of a Forest-wide travel plan and failure of the FEIS to analyze the effects of allowing ATVs and other vehicles greater than 40 inches on Forest trails.

Response: Please see my responses to Issues 1 and 2. Forest-wide travel planning is outside the scope of the North Lochsa Face project. The Clearwater National Forest Travel Map and Access Guide meet the requirements for Forest Plan travel planning.

Prior to 1990 the regulations at 36 CFR 261.12e prohibited the use of motor vehicles wider than 40 inches on all Forest trails. The regulations were revised and the width prohibition was removed, leaving decisions related to vehicle size limits to local land managers. The Clearwater Forest Plan prohibits use of motor vehicles with more than two wheels on all trails unless specifically open (Project File, Vol. 29, Doc. F1, pp. 16-17). As pointed out by the appellants, the Forest has acknowledged in the Interim OHV Guidelines that this restriction may be difficult to enforce. The guidelines provide recommendations on how best to administer the restrictions (Project File, Vol. 29, Doc. F4, p. 28). No further NEPA analysis is required because the decision to close all trails to ATVs (unless specifically designated) was made in the Forest Plan.

Issue 4. The Forest Service violated the Forest Plan and regulations by failing to monitor off road vehicle use.

Response: Monitoring of off-road vehicle use is included in the Forests' annual monitoring report (Project File, Doc. F2). The Interim Guidelines for OHV Management also include documentation of the existing OHV situation on the Forest (Project File, Doc. F4, pp. 30-32). The ROD includes a detailed monitoring plan to be implemented with the objectives of establishing baseline levels of existing use and keeping allowable motorized use at existing levels.

Issue 5. The Forest Service violated NEPA by failing to accurately describe the existing condition in the project area.

Response: Again, the appellants have misinterpreted the information provided in the Lochsa Face Trail Matrix Table (Project File, Doc. 705, pp. 11-20). The table displays the existing condition of trails in the project area, including whether travel restrictions are in place and the last year the trail was maintained. The FEIS adequately discloses the effects of the access options in Chapter 4.

Issue 6. The Forest Service violated NEPA, NFMA, and the ESA by failing to adequately protect the Canada lynx.

Response: The analysis completed on the lynx is documented in the project file (Doc. 569) and the FEIS (pp. 117-120). The analysis meets the intent of the Lynx Conservation Assessment and Strategy. The Biological Assessment (BA) completed for the project analyzed the direct, indirect, and cumulative effects of the selected alternatives and concludes that "... there will be a net "beneficial effect" to lynx habitat and future lynx recovery efforts" (Project File, Doc. 572, p. 25). The Forest is proceeding with

Section 7 consultation with the USFWS on North Lochsa Face as an ongoing project.

Issue 7. The Forest Service violated NEPA, NFMA, and the ESA by failing to adequately protect harlequin ducks.

Response: The BE for harlequin duck documents that the project “may impact individuals or habitat, but will not likely result in a trend toward federal listing or reduced viability for the population or species” (Project File, Doc. 571-A, P. 11). The FEIS states that allowing existing or reduced levels of motorized access on trail 224 could impact breeding, nesting, and brood rearing. It goes on to say that “current motorized access is probably having little affect, and the potential for disturbance to harlequin duck rearing would be the same as occurs now” (FEIS, p. 117). Supporting documentation for this conclusion can be found in the project file (Vol. 8, Doc. 554, pp. 41-47; Doc. 569, pp. 31 and 57).

Issue 8. The Forest Service violated NEPA, NFMA, and the ESA by failing to adequately protect the wolverine.

Response: Existing wolverine habitat is described in the Wildlife and TES Plant Resources Status Report (Project File, Doc. 569, pp. 34-35) and in the FEIS (p. 71, Table 3.16). The direct, indirect, and cumulative effects of Access Option 3 are disclosed in Chapter 4 (FEIS, pp. 117, and 119-120) and in the BE (Project File, Doc. 571A). The BE documents that the project “may impact individuals or habitat, but will not likely result in a trend toward federal listing or reduced viability for the population or species.” Supporting documentation for this conclusion can be found in the project file (Vol. 8, Doc. 554, pp. 39-40; Doc. 559; Doc. 569, pp. 54-56, 58-59, and 69; Doc. 573, pp. 9-10).

Issue 9. The Forest Service violated NEPA by failing to objectively evaluate all reasonable alternatives.

Response: The appellants contend that recommendations from the access management working group resulted in limiting the choices of reasonable alternatives. The ROD describes the formation of the working group and states “... information generated from working group meetings was used to further the range of alternatives...” (ROD, p. 3). The FEIS documents the analysis of four access options (FEIS, pp. 49, 88-90, and 100-159). The District Ranger provides her rationale for selecting Access Option 3 by stating that it “supports strong public comments from a variety of user groups that made recommendations through collaborative efforts and independent comments” (ROD, p. 5).

Issue 10. The Forest Service violated NEPA by failing to accurately evaluate the information in the social assessment.

Response: Focus interviews conducted as part of the social assessment document that some people were not in favor of motorized use, some were opposed to increases in motorized use, and others were opposed to additional closures (Project File, Vol. 14, Doc. 808). As discussed in response to Issue 9, the District Ranger considered recommendations and comments from a variety of user groups (ROD, p. 5).

RECOMMENDATION

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

/s/ Pamela J. Case
Reviewing Officer