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Subject: ARO Letter - Big Creek Watershed Restoration and Stimson Land Access DN - Lolo NF - Appeal #04-01-00-0047 - Mineral County Board of Commissioners

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Judy Stang, B. J. McComb, and James Warnken on behalf of the Mineral County Board of County Commissioners protesting the Big Creek Watershed Restoration and Stimson Land Access Decision Notice (DN) on the Lolo National Forest.

The Forest Supervisor's decision adopts Alternative 5, which will:

- Remove culverts that are fish passage barriers on Road 18703 and Trail 706 from Mile Post 2.1 upstream to the intersection of Trail 806 and Road 3822.
- Maintain conventional vehicle access to all dispersed campsites on National Forest System land.
- Change Travel Plan designation on Trail 706 from motorized to non-motorized.
- Complete necessary watershed restoration work as outlined in the Environmental Assessment (EA) and documented in the West Fork of Big Creek watershed reconnaissance report in the project record.
- Reconstruct the stream channel and stabilize stream banks at the culvert sites.
- Install proper travel management signing and revise Forest Travel Map for proper designation of the trail.
- Spray noxious weeds with herbicide along the trail system and roads accessing the private lands in this area.
- Remove or use the large rocks stockpiled along the existing road.
- Provide access to Stimson Lumber Company by allowing for the construction of approximately 1.5 miles of road and reconditioning and maintenance of approximately 17.4 miles of existing road.
- Exchange easements with Stimson Lumber Company on roads and Trail 706 to grant Stimson Lumber company legal access to their private lands and to grant the Forest Service legal access to the trailhead and Trail 706.
- Decommissioned Road 18642 to a level III status.

I would like to point out the appellants did not bring up the majority of the issues in the appeal when they had opportunity to comment on the project (PF, Sec. 4, Doc. 17). As discussed in a Congressional colloquy during enactment of the Appeals Reform Act and in the Federal Register notice announcing the revision to 36 CFR 215 (67 Federal Register 77451), the notice and comment period is intended to solicit information, concerns, and any issue specific to the proposed action, and to provide such comments to the Responsible Official *before* the decision is made. The intent in requiring substantive comments is to obtain meaningful and useful information about concerns and issues, and use the information to enhance project analysis and



project planning. Waiting until the appeal period to raise an issue or concern does not give the Responsible Official an opportunity to consider the impacts of the project in light of public concerns. Even so, I will review the appeals points.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is 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 appellants request the proposal be modified and a more realistic and practical decision be made. They support choosing Alternative 1 with the following modifications: 1) remove the dead and dying timber stands in the project area; 2) include biological agents in weed control activities; 3) Forest Service and Stimson Lumber exchange easements; 4) enhance the existing dispersed campsites in the project area; and 5) use the large boulders that are currently stockpiled on site. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. There is no evidence that the existing culverts are creating fish barriers. We believe the Forest Service is basing their decision on a false assumption that fish can travel upstream only during high water flows and that velocities adversely affect their ability to spawn.

Response: The appellants' comment letter on the Big Creek Watershed Restoration and Stimson Land Access project, dated February 25, 2004, did not raise the concern of culverts and fish barriers. However, the DN, EA, and project file do discuss and analyze culverts and fish barriers.

As discussed in the EA (p. 4), the West Fork of Big Creek is part of the St. Regis River Basin that has been identified as a priority bull trout stream and proposed critical habitat for bull trout. Road 18703 and Trail 706 have several culverts that are barriers to upstream fish migration. Approximately 5.6 miles of stream habitat is blocked (EA, p. 27). One of the culverts that are acting as a fish migration barrier is prominently displayed on the cover of the EA. It is clear from the EA that culverts are creating barriers to fish in the project area.

Issue 2. We did not observe any site that indicated excessive soil erosion. The Forest Service did not provide us with any data to indicate soil erosion, nor did they provide any water quality data to reflect stream health. Any reconstruction of the streambed would spike the sediment load for years to come and adversely affect the quality of the fishery. We believe the proposed actions will negate any efforts to improve Big Creek as a trout fishery. There is no need to jeopardize the health of this stream with a tremendous deposit of raw soil.

Response: The appellants' comment letter on the Big Creek Watershed Restoration and Stimson Land Access project, dated February 25, 2004 did not raise the concerns of sediment, stream health, or water quality. However, the DN, EA, and project file do discuss and analyze these issues.

Sediment, soil erosion, and water quality are a major concern of this project and its analysis (DN, pp. 2 and 11; EA, pp. 1 to 4 and 11 to 13). The project file contains photographic documentation of washouts along roads and near culverts (Sec. 5, Doc. 2 and Sec. 7, Doc 2). The photograph on the cover of the EA shows scouring at a culvert outlet. The analysis recognizes the existing condition is producing sediment and impacting water quality, and that any of the action alternatives would also produce sediment and impact water quality (EA, pp. 20 to 25; PF, Sec. 8, Doc. 3).

The analysis determined that under the No Action Alternative there would be 11.56 tons of sediment from the Stimson road construction in the first year. Under Alternative 5, the chosen alternative, there would be 5.75 tons of sediment from Stimson, 0.8 tons from road decommissioning, and 2.27 tons from culvert removal; for a total of 8.82 tons. In the long term, under the No Action Alternative, the sediment delivery would be 8.15 tons per year. Under the chosen alternative, sediment delivery would be 4.05 tons per year (EA, p. 22, Table 3.1). The No Action Alternative would produce more sediment both in the short and long term than Alternative 5, the chosen alternative.

The fisheries biologist used the information about sediment in his Biological Assessment (BA) (PF, Sec. 8, Doc. 5). He determined the project would have a short-term adverse effect on bull trout, but would have a long-term beneficial effect (PF, Sec. 8, Doc. 5, p. 17). Due to the short-term effect, the fisheries biologist determined the project would likely adversely affect bull trout (p. 27). The BA was submitted to the U.S. Fish and Wildlife Service (USFWS) as part of formal consultation on the project (PF, Sec. 8, Doc. 6). The USFWS realized the project had a potential to take bull trout due to the sediment (PF, Sec. 8, Doc. 9, p. 28); however, the cumulative effects of the project "would reduce sediment impact by reduce (sic) the risk of culvert failure and improve habitat access to 5.6 miles of stream for bull trout. Overall the proposed action would improve the fisheries resource and may alleviate some cumulative impacts that may occur in the future" (PF, Sec. 8, Doc. 9, pp. 29 to 30). They found the project would not jeopardize bull trout (PF, Sec. 8, Doc. 9, p. 30).

Issue 3. There is no evidence of erosion on Road 18642. Decommissioning it will most assuredly and needlessly spike the sediment level for years to come. Our consultants believe this would be a complete waste of tax dollars.

Response: The appellants' comment letter on the Big Creek Watershed Restoration and Stimson Land Access project, dated February 25, 2004, did not raise any concern about Road 18642. However, the EA and project file do discuss the road, and the reasons for and effects of decommissioning the road.

Forest Development Road 18642 is located on steep slopes and poorly drained soils. The road is currently a water quality and road maintenance issue (EA, p. 29), and will not be needed for the

next 20 years (EA, p. 36). The ID team recognized early in the process there was an opportunity to decommission Forest Development Road 18642, further reducing long-term sediment in the project area (EA, p. 7). The EA and project file displayed the effects of decommissioning Road 18642 (EA, pp. 42 to 43; PF, Sec. 8, Doc. 5, p. 12, and Sec. 14, Doc. 1), including the concern about short-term increased sediment production. After evaluating the issues, the environmental effects and the public comments, the Forest Supervisor determined that Alternative 5, which included the decommissioning of Road 18642, is the best balance between resource issues and uses of the project area (DN, p. 3).

Issue 4. We don't believe it is in the interest for the recreating public to change the designation of trail 706 from motorized to non-motorized. The claim by the Forest Service that they will be maintaining diverse recreational uses is completely contrary to the facts of their proposal. In every option presented, the recreational uses are diminished, changed, eliminated, or restricted.

Response: Maintaining diverse recreational uses in the project area, while not adversely affecting other resources, was one of four factors the Forest Supervisor considered in her decision (DN, pp. 2 to 3). As part of the scoping for this project, the recreating public that used the West Fork area were surveyed (EA, p. 32; PF, Sec. 4, Doc. 12). The survey indicated the dispersed campsites were of high value to the public. In recognition of the importance of those campsites, two alternatives were developed that maintained motorized access to the sites (EA, pp. 9 and 33 to 34).

There presently are washed out culverts on Trail 706. In order to fix the washouts the Forest Service needs to have legal access to the trail (EA, p. 36). Users of Trail 706 in the SW ¼ of Section 30 are actually trespassing on private land. It is definitely in the interest of the recreating public to rectify these problems. The owner of the land is willing to grant a right-of-way for non-motorized use (PF, Sec. 3, Doc. 12). While Alternative 5 would officially reduce the amount of motorized access by 5.6 miles, only 1.2 miles of the trail is usable by vehicles, so the actual loss of motorized trail is 1.2 miles. With these changes to motorized use in the area, Alternative 5 would have less impact on the watershed (See Table, EA, p. 22) and fisheries (EA, pp. 31 to 32). This will benefit the recreating public that uses those resources. The Forest Supervisor recognized that choosing any of the alternatives would require balancing uses and resources. After evaluating the issues, the environmental effects and the public comments, she determined that Alternative 5 offered the best balance (DN, p. 3).

Issue 5: As far as easements with Stimson Lumber Company are concerned, we consulted with Dwight Opp from Stimson Lumber Company and he indicated that travel across their land does not present a problem. As long as Stimson allows public access on their land, the formalized exchange of easements is not a critical issue. When Stimson learned that the Mineral County Commissioners were interested in keeping access to the whole of Trail 706 as is (the current status), they were quite willing to continue providing access without any formalized agreement.

Response: The appellants' comment letter on the Big Creek Watershed Restoration and Stimson Land Access project, dated February 25, 2004, did not raise any concern about exchanging

easements with Stimson Lumber Company. They did comment on keeping roads open for the benefit of Mineral County residents. However, the EA (pp. 1 to 9 and 34 to 38) and project file (Sec. 3, Doc. 12; Sec. 4, Docs. 18, 24, and 25; Sec. 5, Docs. 9 and 10) do discuss the easement exchange, and the reasons for and effects of the exchange.

In a letter written to the Mineral County Board of Commissioners after they appealed the project, Mr. Opp, Fee Land Manager for Stimson Lumber Company, states,

“I think paragraph 9 of the appeal letter does not correctly capture Stimson’s position and concerns on this situation... Stimson does have significant concerns about motorized recreational use and access across its land and generally does **not** encourage or permit such motorized use except on roads and trails where a public entity (such as County, State, or federal agency such as USFS) has obtained documented right-of-way and agrees to manage and be responsible for the public motorized access, safety, and use of such right-of-way; but such motorized recreational use must stay within documented right-of-ways. There are many reasons driving this concern, but the major ones are landowner liability, littering, fire protection, timber trespass, related resource damage, and wildlife security. Our preference is still for the alternative selected by the USFS...” (emphasis in original) (PF, Sec. 2, Doc. 4).

Issue 6. Mineral County residents found it impossible to obtain adequate information concerning the West Fork Big Creek project. Disclosure of all the information in a timely fashion is a critical element in the decision process. Any reports or studies prepared by the Forest Service and used in the decision were not made available to the Mineral County Resource Advisory Group. Members of the Resource Advisory Group have asked for budgets, water quality data, fish counts, soil erosion data, traffic counts, recreational users, and a host of other requests but they have fallen on deaf ears. This is clearly a violation of NEPA. We are interested in reviewing empirical evidence based on sound research that led to the current decision.

Response: Although the Mineral County Commissioners assert they requested information, I must rely on the project record. There are no documents in the project record to substantiate the claim there were any requests by Mineral County residents, the Mineral County Resource Advisory Group, or the County Board of Commissioners for information beyond copies of the EA, DN, and general mailings concerning the project. The project record indicates The Ecology Center requested copies of the Biological Assessment, Biological Evaluation, and documentation of the Section 7 consultation with the USFWS (PF, Sec. 4, Doc. 22, p. 2). This information was supplied to them.

In the transmittal letter the Forest Supervisor stated, “There were no phone messages or written messages left for either Rob Harper or Larry Svalberg requesting additional information. Rob Harper and Larry Svalberg have met with individuals and with the board during the planning process. At all times during the meetings the Project Record has been at that meeting (sic) and available for review (even while on a field trip). When meeting with the Board and individuals the District Ranger and IDT members have tried to articulate the information that was used in the analysis, but the attendees were skeptical as to its validity. The project record indicates the IDT used extensive data and displayed empirical evidence based on sound research throughout the

analysis. The same data and empirical evidence was presented in our informal resolution meeting with two of the Mineral County Commissioners.” I find nothing in the EA, DN, or project file to indicate otherwise. I am sure the Forest Supervisor would be more than happy to supply to the Board, the Advisory Group, or any County residents any documents that were used in the project analysis, if a written request is made. The project, analysis, and public scoping are in compliance with NEPA.

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellants. I recommend the Forest Supervisor’s decision be affirmed and the appellants’ requested relief be denied.

/s/Larry J. Dawson
LARRY J. DAWSON
Appeal Reviewing Officer