

United States  
Department of  
Agriculture

Forest  
Service

Region 1

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

File Code: 1570 (215)  
#97-01-00-0044

Date: May 9, 1997

Aaron Jones  
The Ecology Center  
1519 Cooper Street  
Missoula, MT 59802

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Mr. Jones:

This is my decision on disposition of the appeal you filed on behalf of The Ecology Center protesting the Plains/Thompson Falls District Ranger's Decision Notice (DN) for the Clear Creek Emergency Stream Stabilization Project on the Lolo National Forest.

The District Ranger's decision adopts Alternative 2 implementing emergency stream restoration work in Clear Creek. Activities authorized by this decision include increasing stream sinuosity by excavating approximately 3,000 feet of new channel and using the material to shape new streambanks, revegetating the disturbed areas in the riparian corridor, and buttressing vulnerable streambanks with rootwads.

#### DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the District Ranger's decision to implement Alternative 2. 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 INFISH.

Central objections identified in your appeal are related to cumulative effects, relocating Road #153, range of alternatives, stream linearity, and flooding. You request a full remand of the DN; and if the Forest continues this project, you request a reasonable range of alternatives be developed and analyzed and a complete analysis of cumulative effects be done.

An Informal Meeting was held, but no resolution was reached. No Interested Party comments were received.

#### APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the District Ranger's decision be affirmed and your 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

Your objections correspond closely to comments you raised in scoping and during the comment period. Because of your early participation in the pre-decisional process, the District Ranger was able to analyze these concerns by incorporating them into the environmental analysis and consider them in making the decision.

Appeal Regulations at 36 CFR 215 allow for expanded opportunities for public involvement in Forest Service decisionmaking. The public is best served by mutual efforts to resolve differences during the decisionmaking process rather than after a decision is made.

### Procedural Determination

I have thoroughly reviewed your arguments and the information referenced in the District Ranger's April 11, 1997, Transmittal Letter (copy enclosed). The Transmittal Letter provides specific page references to discussions in the Environmental Assessment (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 District Ranger, I find the objections you raised were adequately considered in the EA/DN and the District Ranger made a reasoned decision concerning those issues. I find the District Ranger 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,

Kathleen A. McAllister

KATHLEEN A. MCALLISTER  
Appeal Deciding Officer  
Deputy Regional Forester

Enclosures (2)