

United States
Department of
Agriculture

Forest
Service

Region 1

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

File Code: 1570 (215)
#97-01-00-0031

Date: April 23, 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 Beaverhead-Deerlodge National Forests Supervisor's Decision Notice (DN) for the Bloody Dick Salvage Sale.

The Forest Supervisor's decision adopts the salvage portion of Alternative B implementing harvest of an estimated volume of 1.8 to 3 MMBF of timber from 1,534 acres using individual tree or group selection methods. Up to 3 miles of temporary road could be constructed and will be obliterated, seeded and closed after the sale ends.

DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the Forest Supervisor's decision to implement Alternative B. Your requested relief is denied. By copy of this letter, I instruct the Forest Supervisor to provide a map in the project file clearly identifying the location of the required mitigation.

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, the National Forest Management Act, the Clean Water Act, and Montana State water quality laws.

Central objections identified in your Appeal concern water quality, cumulative effects, harvest methods, location of temporary roads, and lack of disclosure of information.

You request the decision be withdrawn until an Environmental Assessment (EA) is developed to address impacts to water quality, cumulative effects, and assessment and disclosure of impacts of the project.

An Informal Meeting was offered, but no response was received. No Interested Party comments were received.

APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the Forest Supervisor's decision be affirmed and your requested relief be denied. The Reviewing Officer also recommends a map be provided in the project file clearly identifying the location of the required mitigation measures.

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.

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.

Procedural Determination

I have thoroughly reviewed your arguments and the information referenced in the Forest Supervisor's March 31, 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)