



United States  
Department of  
Agriculture

Forest  
Service

Region 1

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File 1570 (215) Date: February 26, 1999  
Code:  
Route  
To:  
Subject: North Fork Rye Creek Fire Timber Sale DM, Appeal #99-01-00-0082  
Bitterroot National Forest  
To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Larry Campbell protesting the North Fork Rye Creek Fire Timber Sale Decision Memo signed by the Acting Darby District Ranger (Bitterroot National Forest).

The District Ranger's decision adopts the proposal to harvest fire-damaged and fire-killed trees on 722 acres, construct 1,200 feet of temporary road, and commercially thin 37 acres in the burn area.

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 record, including the Appellant's objections and recommended changes, has been thoroughly reviewed.

### FINDINGS

The Appellant alleges violations of the National Environmental Policy Act (NEPA), the National Forest Management Act, the Clean Water Act and State Best Management Practices (BMPs). The Appellant requests the decision be remanded. No informal meeting was held, and no interested party comments were received.

#### Appeal Review Findings

##### **Objection 1: The Decision Memo fails to identify specific haul roads.**

Response: The Appellant contends that the Rye Creek and North Rye Creek roads are in violation of Best Management Practices (BMPs). The Appellant also contends that no analysis of the environmental impacts of log hauling and other traffic associated with the project, including mitigation for increased dust, was disclosed in the DM.

This concern was identified in comments and the District provided a response in the Decision Memo, Appendix A-15, Issues #4 and #5. I have reviewed the response and determined that it adequately addresses this concern.

##### **Objection 2: A categorical exclusion (CE) cannot be used in the presence of extraordinary circumstances.**

Response: The Appellant contends that the regulations do not allow for categorically excluding this project from documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS) because of the presence of steep slopes, highly erosive soils, and bull trout in the project area.

The Forest Service has interpreted the regulations at FSH 1909.15, Chapter 30.3(2), a proposed action may be categorically excluded from documentation if it does not significantly impact, individually or cumulatively, the listed "extraordinary circumstances" or the environment. This position has been supported by a recent Ninth Circuit Court of Appeals decision which "...held that an agency may issue a categorical exclusion even where threatened or endangered species are present if the agency determines that the project will not impact negatively on the species." (Southwest Center for Biological Diversity v. U.S. Forest Service et al; #96-15756).

In addition, this issue has been argued in the District of Montana, Missoula Division, Paulson v. Schrenk; CV 95-52-M-CCL. In that decision, the Plaintiff argued that extraordinary circumstances existed by the presence of threatened and endangered species and critical habitat. The court found "Defendants fulfilled their obligation to consider potential extraordinary circumstances, which are generally features of the Forest that would militate against the categorical exclusion. Defendants examined the impacts of commercial mushroom harvesting on steep slopes and erosive soils, threatened and endangered species...." The court found that "because the agency interpretation of its own regulations does not appear plainly erroneous or any way inconsistent with the regulations....Defendants have not acted in an arbitrary and capricious manner or otherwise not in accordance with law."

Based on my review of the Decision Memo, pp. 10-18, and supporting documentation in the project file, I find that the District Ranger did consider the effects of the proposed action on extraordinary circumstances. I find that he appropriately determined that the proposed action would not significantly impact, individually or cumulatively, the listed "extraordinary circumstances" or the environment.

**Objection 3: The range of alternatives considered in the DM is inadequate.**

Response: The Appellant contends that an alternative that would avoid steep slopes and damaged soils should have been analyzed. The Appellant also contends that other alternatives suggested during scoping were dismissed but should have been thoroughly analyzed and presented in the DM.

The project avoids steep slopes that were intensely burned. These areas are the most sensitive to activities. Yarding activities have been restricted to skyline yarding on slopes over 35 percent and mitigation will be applied such as waterbars, mulching and grass seeding to minimize effects on the skyline corridors and will facilitate restoration of the soil surface from impacts from fire (DM, p. 16). The District Ranger did look at helicopter yarding or no harvest (DM, p. 11) and determined that there would be a negligible and short term effect to the soil resources while providing wood products and reducing fuel accumulations.

The Decision Memo outlines alternatives considered (DM, pp. 7-9). This includes alternatives considered in detail and those not considered in detail. Based on these discussions I find that the District Ranger appropriately considered and dismissed alternatives presented by the public.

**Objection 4: The analysis, disclosure, and consideration of cumulative effects is inadequate.**

Response: The Appellant contends that the cumulative effects of past, present, and reasonably foreseeable future logging, road building, wildfire and fire suppression, is important in evaluating this proposed project. The Appellant states that there is a risk of significant effects due to the existing severely degraded conditions and does not agree with the conclusion that there will be no measurable effects resulting from logging and hauling timber.

After careful review of the Decision Memo, Project File and transmittal letter, I have determined that the District completed an adequate review of cumulative effects. The record clearly shows the condition of the existing environment, but also clearly shows that this project will have negligible cumulative effects on the resources.

**Objection 5: The decision results in violations of Forest Plan standards.**

Response: The Appellant makes several allegations regarding violations of Forest Plan standards for sedimentation, soils, elk habitat effectiveness, thermal cover in elk winter range, and old growth.

Soils: Although there is a potential for there to be a minor effect to the soil resource from the cable corridors, I find that this effect is offset and reduced by the mitigation applied and the felling of trees on 360 acres of steep, intensely burned slopes where no harvest will occur (DM, p.11).

Water Quality/Fisheries Habitat: As noted in the Decision Memo, p. 13, "The analysis shows that all alternatives are consistent with Forest Plan Standards for water and fisheries". This reference is supported by the documentation in the project record (see transmittal letter).

Road Densities: The actual road density for North Fork Rye Creek is 5.46 miles per square mile (WAT 16A), which is within the preferred density level of 6.6 miles per square mile (FP III-13); therefore the project is consistent with the Forest Plan.

Old Growth: As noted in Decision Memo, p. 15, no old growth will be harvested; therefore the project does not violate the Forest Plan.

Elk Habitat Effectiveness: The Bitterroot Forest Plan, p. II-21, states that "Manage roads through the **Travel Plan process** (emphasis added) to attain or maintain 50 percent or higher elk habitat effectiveness." I find that the District Ranger appropriately determined that road management was outside the scope of this decision.

**Objection 6: The DM fails to disclose and analyze the effects of the project on soils.**

Response: The appellant contends that areas of steep slopes and/or highly erosive soils are not delineated, that there is no analysis of soil conditions in units 5, 9, 10 and 11, and that the analysis of hydrophobic soils is not adequately disclosed.

An inventory and a discussion of areas of steep slopes is documented on p. 4 of the Watershed Report. Steep slopes with high intensity burns were avoided by the project. Units 5, 9, 10, and 11 do not overlap high intensity burn areas (see map in PF, Fire-2 which outlines high intensity burn areas) and will be cable-yarded, thereby minimizing effects to soils.

**Objection 7: The DM fails to disclose the costs of the project.**

Response: The Appellant contends that although the economic impacts of the proposal was a concern in a list of primary issues, the economic analysis is incomplete and slanted.

An economic analysis was performed (PF, Economics Section). I find that the analysis is appropriate for the decision to be made.

**Objection 8: The decision violates the Clean Water Act.**

Response: The North Fork of Rye Creek is a Water Quality Limited Segment (WQLS). The Appellant contends that log hauling on the North Fork Rye road would contribute additional sediment to an already degraded source of domestic water supply.

My review of the record indicates the State found that the appropriate level of best management practices are proposed for the project (Project File, WAT-2). The Biological Assessment states "Minor (undetectable and immeasurable) sediment input to streams is possible but the probability is low. Any sediment would have to get there by overland flow through RHCAs. This salvage sale would not disturb the large areas of soil on steep slopes near RHCAs that would be needed to generate overland sediment pulses on streams." In addition, the District appropriately responded to the Appellant's comments regarding use of the roads in Rye Creek and North Creek roads (Response to Comments Issue #4 & 5, Appendix A-15).

I find that the project does not violate Montana state water quality standards. My finding is based on the consultation with the State Department of Environmental Quality (Project File WAT-1 and WAT-2), the analysis and findings in the Biological Assessments, the Water and Fish analysis, and the Response to Comments.

RECOMMENDATION

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

/s/ Martin L. Prather

MARTIN L. PRATHER  
Reviewing Officer  
Staff Assistant, Regional Forester