



File 1570 (215)
Code:
Route
To:
Subject: 5028 Salvage Timber Sale DM, Appeal #99-01-00-0110,
Clearwater National Forest
To: Appeal Deciding Officer

Date: April 19, 1999

This is my recommendation on disposition of the appeal filed by Gary Macfarlane on behalf of Friends of the Clearwater, The Ecology Center, and The Lands Council protesting the 5028 Salvage Timber Sale Decision Memo (DM) signed by the Lochsa District Ranger (Clearwater National Forest).

The District Ranger's decision authorizes a timber sale in the Mike White watershed that would harvest 306 MBF of dead, dying, blowdown, and high-risk trees which are infected with root rot, and being killed by white pine blister rust, Douglas-fir bark beetles, and fir engraver beetles. The project area is approximately 220 acres in size and located in areas adjacent to existing roads.

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 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

FINDINGS

Appeal Review Findings

The Appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Clean Water Act (CWA), the Forest Service Manual, and the Endangered Species Act (ESA). The Appellants request the decision be reversed and that an Environmental Assessment (EA) be prepared. An informal meeting was held but no resolution was reached.

Objection 1: Significant changes in the project since scoping mandate the scoping process be redone.

Response: Minor changes between scoping for the project and the proposed action in the DM occurred as a result of additional interdisciplinary team (IDT) review of the project. One change involves increasing timber harvest from 220 MBF over 16 acres to 306 MBF over 18 acres. Upon review of unit one, it was determined that the majority of the unit can be skyline-yarded rather than tractor-yarded. This change requires construction of an estimated 300 yards of temporary road which will be stabilized upon completion of use and will provide further protection of resources. I do not find these changes to be significant or unusual during the progression of project from scoping through the development of a proposed action.



Objection 2: The Clearwater National Forest is not meeting the forest-wide standard of 10 percent old growth as required in the CNF plan, and fails to address whether 5 percent has been met for the watershed.

Response: Information in the DM and project file indicates that the project does not enter old growth or replacement old growth stands (DM, p. 2; Project File, Doc. 8, p. 2). The timber stands in the project were reviewed by the wildlife biologist who found that they do not meet the criteria for old growth as described in the Forest Plan. The old growth analysis unit for the project area is Compartment 9; the percentage of old growth identified in the compartment is 10.4 percent (Project File, Doc. 21) which exceeds the Forest Plan standard of 5 percent old growth habitat in each old growth analysis unit.

A summary of old growth conditions across the Forest has been done annually through the Forest Plan Monitoring Reporting Process. The Forest Old Growth Status Report (Doc. 39) documents that the Forest is continuing to meet the Forest-wide standard of 10 percent old growth.

Objection 3: Steelhead and bull trout are threatened species that are present in the Lolo Creek drainage and constitute an extraordinary circumstance, which means that the proposed action may not be categorically excluded (FSH 1909.15, 30).

Response: The mere presence of a threatened species does not constitute an extraordinary circumstance. A categorical exclusion may be the appropriate NEPA document if the proposed action does not significantly impact the listed extraordinary circumstances (Project File, Doc. 32, p. 2; Docs. 33, 34). In this case, the determination made in the Biological Evaluation/Biological Assessment (BE/BA) was that the project would have no effect on bull trout or steelhead (Project File, Doc. 10). The Categorical Exclusion Checklist documents that no extraordinary circumstances were identified as well as the Responsible Official's determination that the proposed action is eligible to be categorically excluded from further NEPA documentation (Project File, Doc. 4). I concur with the District Ranger's determination that the project is eligible to be categorically excluded.

Objection 4: The project violates NEPA by failing to adequately address cumulative effects.

Response: Documentation of cumulative effects analysis is not required for categorical exclusions. As previously discussed, the Responsible Official determined that this project is eligible to be categorically excluded from further NEPA documentation. The project file contains documentation that the effects of past, present, and reasonably foreseeable actions occurring within the Lolo Creek drainage were considered (Project File, Doc. 23). The Transmittal Letter discusses the other projects mentioned by the Appellants and explains that they are in the Lolo Creek drainage but in separate watersheds tributary to Lolo Creek. These small sales are designed to avoid effects to water quality, fish or wildlife; thereby resulting in no cumulative effects on Lolo Creek. The DM documents that "[T]he project would have no direct, indirect or cumulative effects on water quality, fish or wildlife" (DM, p. 2).

Objection 5: The decision violates the ESA because it fails to adequately protect steelhead and bull trout. The Forest Service provides no documentation pertaining to consultation with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS).

Response: Formal consultation with NMFS and USFWS is not required on projects determined to have "no effect" (Project File, Docs. 40, 41). The BE/BA (Project File, Doc. 10) documents the determination that the project would have no effect on bull trout or steelhead. The Watershed and Fisheries Report (Project File, Doc. 9) provides further support for the "no effect" determination. I find no violation of the ESA.

Objection 6: The proposed action fails to meet the CWA and the stipulated agreement in the Clearwater Forest Plan lawsuit agreement.

The Appellants contend that Lolo Creek is a water quality limited stream segment (WQLS) and therefore does not meet Forest Plan standards. They also contend that the project will result in increased sediment being carried downstream due to increased water yield, detrimentally affecting the Lolo Creek fish populations and habitat.

Response: No violation of the stipulated agreement has occurred because this project has been categorically excluded. The Forest Plan Lawsuit Settlement (Project File, Doc. 42) states:

The Forest Service agrees to perform instream analysis, using techniques such as the Riffle Armor Stability Index (RASI), pool riffle ratios and cobble embeddedness. These interim measures shall apply to all new road construction and timber harvest projects that would normally be analyzed and documented by an environmental assessment or environmental impact statement, but would not include categorically excluded projects, which are excluded from these NEPA requirements.

The DM acknowledges that Lolo Creek is a WQLS (DM, p. 1). The Watershed and Fisheries Report discloses that the project could minimally increase water yield but that no sediment will be delivered to Mike White Creek or its tributaries (Project File, Doc. 9, p. 2). The DM and information in the project file support the conclusion that sediment delivery will be avoided by limiting the amount of activity, application of PACFISH buffers, avoidance of activities on high-risk landtypes, and application of Best Management Practices (BMPS) (DM, p. 2; Project File, Docs. 12, 10, and 11). I find no violation of the CWA or the Forest Plan lawsuit agreement.

RECOMMENDATION

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

/s/ Harlan Smid

HARLAN SMID
Reviewing Officer
Director, Financial Resources