



United States
Department of
Agriculture

Forest
Service

Region 1

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File Code: 1570 (215)

Date:

Route To:

Subject: 5028 Salvage TS DN, Appeal #00-01-00-0115, Clearwater NF

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Kristin Ruether on behalf of Friends of the Clearwater, The Ecology Center, The Lands Council, American Wildlands, and Alliance for the Wild Rockies protesting the 5028 Salvage Timber Sale Decision Notice (DN) signed by the Lochsa District Ranger, Clearwater National Forest.

The District Ranger's decision adopts Alternative 2, which will harvest approximately 430 CCF (258 MBF) of dead, dying, blowdown, and high-risk trees. The proposed harvest method is clearcut with reserves. Approximately 18 acres will be harvested, leaving 5 to 8 trees per acre of preferred seral species (western larch and Douglas-fir). The project will harvest the material from existing road systems. Logging systems will consist of conventional skyline and a small amount of tractor.

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.

The Appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Clean Water Act (CWA), and the Forest Plan Lawsuit Settlement Agreement. The Appellants request a reverse of the DN. No informal resolution meeting was held.

ISSUE REVIEW

Issue 1. The Forest Service violated NEPA by using the fact that a timber sale contract exists for the proposal to justify the selection of the preferred alternative.

The appellants contend that the Heartwood litigation instructed the Forest Service to cancel categorical exclusion (CE) timber sale contracts. They believe the Forest misled the public by saying that taxpayers would be liable for damages resulting from cancellation of the contract if the no action alternative was selected.

Response: The Heartwood decision did not direct the Forest Service to cancel ongoing timber sale contracts; it nullified categorical exclusions used to satisfy the requirements for NEPA. The Washington Office directed that timber sale contracts resulting from projects approved with CEs be suspended according to contract provision C6.01(b) which states, "Purchaser agrees to interrupt or delay



operations under this contract, in full or in part, upon the written request of Contracting Officer... to comply with a court order, issued by a court of competent jurisdiction.” The Forest properly suspended the contract so that an Environmental Assessment (EA) could be prepared for the sale. The Forest is correct in stating that if the contract were cancelled (due to selection of the no action alternative) the provisions of CT8.2 – Termination and CT9.5 – Settlement would apply (Project File, Doc. 3, pp. 81 and 91). The Forest Service would be liable for damages to the contractor. Displaying this information in the EA is appropriate as it provides full disclosure to both the public and the responsible official.

Issue 2. The EA does not adequately disclose the effects on water quality.

The appellants contend that the EA fails to take a hard look at the effects on water quality and does not use a model or data analysis to conclude the lack of effects.

Response: The EA discusses the current conditions of the Mike White Creek and Lolo Creek drainages on pages 34-37. The effects of the project on water quality are discussed in the EA (pp. 38-42). The Watershed and Fisheries Report (Project File, Doc. 48) and the BE/BA (Project File, Doc. 49) address the criteria used to determine the environmental consequences of the proposal from a watershed standpoint. Based on this information, the hydrologist concludes that the hydrologic recovery is occurring within the watershed and, most likely, there is a decrease in sediment in the channel. The 5028 Salvage project would not reverse that trend because no sediment will be added to the streams (EA, p. III-41).

The WATBAL model was not run for this project due to the small size of the proposal, the stable land types that occur in the project area, and the absence of any new permanent road construction associated with the proposal. The WATBAL model was run for the larger timber sales in the Lolo Creek drainage, and this information was used for the 5028 Salvage Timber Sale analysis to describe the historical condition in the Lolo Creek watershed.

Issue 3. The EA fails to adequately address cumulative impacts.

The appellants contend that the EA merely lists other projects occurring in the area and does not analyze the effects of those projects in combination with the 5028 project. In particular, the analysis is inadequate concerning landslides, vegetation and fire, and that the EA fails to adequately assess the impacts of the habitat destruction.

Response: The EA discusses past activities in the Mike White Creek watershed and states that a total of 80.6 percent of the watershed has had some form of harvest and that the 5028 Salvage Timber Sale harvests an additional 14 acres. The most intensive management in the watershed occurred between 1960 and 1980, with hydrologic recovery occurring since that time. There are no other planned activities in the Mike White Creek watershed. Document 51 in the project file identifies the projects within the Lolo Creek watershed considered in the cumulative effects analysis in the EA (pp. 14-42) and in specialists’ reports (Docs. 36, 44, and 48-54).

The EA (pp. 16-19) and Soils Report (Project File, Doc. 44) discuss the soil and land types, their characteristics, and the landslide hazard analysis. The analysis concludes that the “risk of landslides, debris torrents, and other forms of erosion for either alternative is low” (EA, p. 18).

Habitat destruction for Management Indicator Species (MIS) and Threatened, Endangered and Sensitive Species (TES) are discussed on pages III-22 to III-33 of the EA and in the BE/BA (Doc. 49) and the Wildlife Report (Docs. 59-68).

Issue 4. The EA does not consider an adequate range of alternatives.

Response: Chapter II of the EA describes how comments received in public scoping were used to identify issues and develop alternatives. The EA describes three alternatives considered but eliminated from detailed study, as well as the two alternatives considered in detail. The courts have established that the direction to “rigorously explore and objectively evaluate all reasonable alternatives” [40 CFR 1502.14(a)] does not mean that every conceivable alternative must be considered, but that selection and discussion of alternatives must permit a reasoned choice. The alternatives in the EA respond to the purpose and need for the project, are within the Forest Plan management area direction, respond to public comment, and are reasonable for this project.

Issue 5. The project violates the Forest Plan lawsuit settlement agreement.

The appellants contend that because Lolo creek is not meeting Forest Plan cobble embeddedness standards and is a designated Water Quality Limited Stream, that the project violates the settlement agreement. The appellants also question the effectiveness of BMPs and INFISH buffers in preventing sediment resulting from landslides from reaching the streams. Finally, the appellants object to the use of WATBAL to assess sediment impacts.

Response: The EA (pp. III 34-42) and Watershed and Fisheries Report (Project File, Doc. 48, pp. 1-9) identify that Lolo Creek exceeds the desired future condition for cobble embeddedness and therefore does not meet Forest Plan sediment standard. The EA also discloses that no new sediment will be added to the creek, and as a result the terms and conditions of the Forest Plan lawsuit settlement agreement are met (EA, p. III-40).

The documentation for the 5028 Salvage Timber Sale project does not claim that buffers prevent channelized landslides or debris flows. Anthropogenic channelized landslides or debris flows are prevented within the project area by careful avoidance of landtypes where risks of these events are high (Project File, Docs. 44 and 48). Hydrologic recovery is occurring within the Mike White watershed tributary to Lolo Creek, and most likely there is a decrease in sediment in the channel. The 5028 Salvage Timber Sale will not reverse that trend because no sediment will be added to the streams (EA, pp. II-38-41) (Project File, Doc. 48, p. 7) (DN, p.6).

The WATBAL model was run for the larger timber sales in the Lolo Creek drainage and this information was used for the 5028 Salvage Timber Sale analysis to describe the historical conditions in the Lolo Creek watershed. The WATBAL model was not run for this project due to the small size of the proposal, the stable landtypes that occur in the project area, and the absence of any new permanent road construction associated with the proposal (Project File, Doc. 48, pp. 7 and 8) (EA, p. III-41).

Issue 6. The project violates NFMA requirements to provide for viable populations of wildlife species and the NFMA requirement for monitoring.

The appellants contend that the project will violate both NFMA requirements through the Forest's failure to conduct population trend monitoring of old growth-dependent wildlife species as required by the Forest Plan and the failure to maintain adequate old growth habitat.

Response: Monitoring of Threatened, Endangered, Sensitive, and MIS species to develop population trends, as the appellants discuss in their appeal, is a Forest-level issue outside the scope of this project. The Forest issues an Annual Monitoring and Evaluation Report as required by the Forest Plan. This report addresses the monitoring that was done for old growth-dependent wildlife species (Project File, Docs. 79-81). The 5028 Salvage Timber Sale BA/BE (Project File, Doc. 49) and the Wildlife and TES Plant Resources Status Report (Project File, Doc. 59) indicate that the project will maintain adequate habitat within the analysis area to provide for population viability (DN, p.6; EA, pp. III-32 and 33). The 5028 Salvage Timber Sale BA/BE (Project File, Doc. 49) provides site-specific information regarding TES and MIS species. This document describes 32 sensitive species and 3 threatened species of plants. A no impact determination was made for all listed plant species because the suitable habitat either was not present or PACFISH buffers protected the habitat. As found by the 9th Circuit Court of Appeals, it is not "inconsistent with regulation for the Forest Service to strive to maintain viable populations of species by focusing on the critical habitat requirements of Sensitive, Threatened, and Endangered species within and without the Decision Area." No old growth will be harvested with this project (EA, p. III-33; Project File, Doc. 59, pp. 6 and 25).

RECOMMENDATION

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

/s/ Alexander G. Morigeau

ALEXANDER G. MORIGEAU
Reviewing Officer
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