

United States
Department of
Agriculture

Forest
Service

Region 1

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

File Code: 1570 (215)
#97-01-00-0011

Date: February 3, 1997

Jeff Juel, Ecosystem Resource Specialist
The Ecology Center
1519 Cooper Street
Missoula, MT 59802

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Mr. Juel:

This is my decision on disposition of the Appeal you filed on behalf of Teryl and Roger Parker; The Ecology Center, Inc.; Inland Empire Public Lands Council; and the Alliance for the Wild Rockies protesting the Fortine District Ranger's Decision Notice (DN) for the Trego Timber Sale on the Kootenai National Forest.

The District Ranger's decision adopts Alternative B2 with modifications. This Alternative implements harvest of 5,493 MBF of timber from 1,557 acres and prescribed burning on 1,260 acres. Approximately .8 miles of temporary roads will be constructed and obliterated after harvest and 7.14 miles of road will be closed year round. The decision will also implement rehabilitation of three stream crossings on Stewart Creek and incorporate stream channel and riparian area protection.

DECISION

After careful consideration of the Appeal Reviewing Officer's recommendation, I affirm the District Ranger's decision to implement Alternative B2 modified. 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 National Forest Management Act, the Kootenai National Forest Land and Resource Management Plan (Forest Plan), and Forest Service Handbook 2509.18.

Central objections identified in your Appeal include failure to: (1) adequately monitor and maintain sufficient old-growth habitat to sustain management indicator species, (2) follow NEPA procedures for the Finding of No Significant Impact, (3) adequately analysis cumulative effects on soils, and (4) adequately analyze the effects on sensitive species.

You request the decision be withdrawn and the following be completed before any further action is taken: (1) state the Forest Plan allowance for burning in Management Area (MA) 13; (2) rescind claims that Alternative B2 modified would improve old-growth habitat or significantly reduce the risk of wildfire; (3) make firm commitments to the specifications of logging in old growth; (4)

undertake a proper investigation of actual old growth in MA 13 areas in compartments adjacent to the Trego Analysis Area; (5) provide scientific rationale for why 10 percent is used as the minimum amount of old growth to be retained; (6) refrain from logging in any old-growth forests until commitments for monitoring the pileated woodpecker populations are fulfilled; (7) define the standards to be followed for allowable impacts to soils; (8) complete a proper cumulative effects analysis; (9) display specifications for a "conservation strategy"; (10) use only scientifically, peer-reviewed "conservation strategies" or base effects of management activities on geographically and numerically defined populations, metapopulations, or stocks of sensitive species; and (11) reconcile the contradiction between the August 17, 1995, letter that indicates loss of any individual of a candidate species represents a trend toward extinction and the claim in the Environmental Assessment (EA) that loss of individual lynx, wolverine, and fisher "will not adversely impact the population as a whole."

An Informal Meeting was held with you by conference call on January 10, 1997; but agreement was not reached. Interested Party comments were received from the Owens and Hurst Lumber Company.

APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer recommends the District Ranger's decision be affirmed and the Appellants' 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 objection regarding the Occupational Safety and Health Administration safety regulation for snag removal is a regulation with which we must comply and is, therefore, beyond the scope of this decision.

Also, your objection concerning the Forest Plan Standard for 10-percent retention of old growth is beyond the scope of this project. This is a decision made in the Forest Plan and is not subject to review in this decision.

I have determined your remaining 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.

Requested changes or objections raised by Appellants not identified or brought to the Responsible Official's attention prior to the decision will either be referred to the Responsible Official as new information pursuant to Forest Service Handbook 1909.15, Section 18, or will be determined to be beyond the scope of the decision documentation and not reviewed.

I have determined your objections regarding the Occupational Safety and Health Administration safety regulation for snag removal and the Forest Plan standard for 10-percent retention of old growth are also beyond the scope of this project documentation as you did not raise these objections prior to your appeal.

Your remaining objections correspond closely to comments you raised in scoping and during the comment period. Because of your early participation in the environmental analysis, the District Ranger was able to analyze these concerns by incorporating them into the environmental analysis and consider them in making the decision. Therefore, your remaining objections may be reviewed to determine if the District Ranger has complied with all procedural requirements.

Procedural Determination

I have thoroughly reviewed your arguments and the information referenced in the District Ranger's January 10, 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 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,

/s/ Kathleen A. McAllister

KATHLEEN A. MCALLISTER
Appeal Deciding Officer
Deputy Regional Forester

Enclosures (2)