Forest Service

Bitterroot National Forest

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Route To:

Subject: 1570 (215) A&L - ARO Letter - Little Slate ROD - Nez Perce NF - Dick Artley - #12-01-00-0070

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Dick Artley of the Little Slate ROD, signed by Rick Brazell, Forest Supervisor of the Nez Perce National Forest.

The Forest Supervisor's decision to implement Alternative B2 includes timber harvest and fuel reduction treatments on 2,598 acres, 49 miles of road decommissioning, 15 miles of road reconstruction, 63 miles of road improvement, 12 miles of temporary road construction, 100 to 150 acres of soil restoration, 0.73 miles of riparian restoration, 75 acres of gully stabilization, complete in-stream channel rehabilitation at 13 sites, treating 59 road and 73 trail stream crossings, expansion of an existing rock quarry, 6 miles of trail relocation, 32 miles of trail reconstruction, 4 miles of trail decommissioning, adding 1.2 miles of non-system trail to the trail system, decommissioning 2.7 miles of non-system trails, and instituting travel restriction on selected system roads and trails.

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. 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 appellant alleges violations of the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA). The appellant requests that the decision be vacated and the EIS be significantly modified to comply with NEPA. Furthermore, since modifications will not be trivial, the appellant requests that the Responsible Official deal with this as a new EIS and re-scope the project.

The opportunity for an informal resolution meeting was offered. The appellant declined to participate.

ISSUE REVIEW

Issue 1: The appellant submitted opposing views from scores of scientific documents, none of which appear in the References section. This violates the NEPA "hard look" doctrine because taking a "hard look" includes disclosing science that is both pro and con as it relates to the project at hand.

Response: Appendix F of the FEIS contains a "Consideration of Science and Literature Submitted by the Public" section that is 41 pages long. It is apparent the Interdisciplinary Team reviewed the literature submitted by the appellant (and other members of the public), identified how the literature was used and provided rationale on whether or not the literature was applicable to the Little Slate project. While not all submitted literature was found to be relevant to the scope of the analysis, some of the literature was used because it provided background information that was applicable to the project.

Based on my review of the FEIS, ROD and specialist reports, I find that the appropriate analysis was done to identify the direct, indirect and cumulative effects of the project. The Responsible Official thoroughly documented his rationale for the selected alternative and the concerns and issues that were considered when developing the selected alternative (ROD, pp. 14 to 23).

I find the analysis and the decision are in compliance with NEPA.

Issue 2: The EIS for the Little Slate project violates the Administrative Procedures Act because the literature and references submitted by the appellant are not listed in the references section. The Responsible Official did not "consider all the evidence" or "facts" when planning the project and "entirely failed to consider" some information relevant to the Little Slate project.

Response: Refer to responses for Issue 1.

Issue 3: The EIS does not comply with the 10/21/11 Roadless Reinstatement Opinion by the 10th Circuit Court of Appeals and the EIS divulges the Responsible Official's intention to road-up and log 2 IRAs.

Response: On October 21, 2011, the United States Court of Appeals for the Tenth Circuit reversed the Wyoming District Court's decision that had ruled the 2001 Roadless Area Conservation Rule invalid. The court's 120 page opinion orders the case remanded to the district court with instructions to vacate the nationwide injunction. The Tenth Circuit declared that "Wyoming failed to demonstrate that the Forest Service's promulgation of the Roadless Rule violated the Wilderness Act, NEPA, MUSYA, or NFMA. Thus, the district court abused its discretion in permanently enjoining the Roadless Rule on a nationwide basis because the court's action was based on the erroneous legal conclusion that Wyoming had succeeded on the merits of its claims."

The Idaho Roadless Conservation Rule (36 CFR 294) published in the Federal Register (Vol. 73, No. 201, Thursday, October 16, 2008, pp. 61456 to 61496) states, "This final rule supersedes the 2001 Roadless Area Conservation Rule (2001 Roadless Rule) for National Forest System Lands in the state of Idaho"; therefore, the Little Slate Project follows the Idaho Roadless Rule rather than the 2001 Roadless Rule.

The Little Slate Project proposes no harvest or road building activities in Idaho Roadless areas.

As discussed in the FEIS (pp. 179 to 180, Response to Comments 76 and 77), the Idaho Roadless Rule took effect in 2008 and supersedes RARE I, II, and the 2001 Roadless Conservation Rule. The Idaho Roadless Rule designated 250 roadless areas in Idaho, including the Little Slate Creek and John Day Roadless Areas, which are shown in the Alternative B2 Map (FEIS, Map A-12). No

logging or temporary road building will occur in either of these designated areas, or in the Gospel Hump Wilderness, as a result of the Little Slate ROD.

Contiguous unroaded areas adjacent to these designated Roadless Areas and the Gospel Hump Wilderness includes Boulder Creek and Little-Rubie unroaded areas. These unroaded areas are not included in the Idaho Roadless Rule. As noted in the FEIS (p. 139), both areas are classified as Management Area 12 under the Nez Perce Forest Plan (Plan, pp. III-37 to III-38). Forest Plan direction for these areas includes: Manage for timber production and other multiple uses; manage for roaded natural recreation; and construct and reconstruct roads primarily to achieve timber management objectives.

The potential effects to the Idaho Roadless Areas and unroaded areas are analyzed and described in the recreation section of the FEIS (pp. 138 to 143). The FEIS (pp. 142 to 143) states, "Effects to unroaded lands are also very minimal…would have no long term effects and not change the wilderness characteristics long term." Short term effects are discussed, including sounds associated with harvest and visual impacts from harvest until harvest units re-establish and blend into the existing background.

The project is in compliance with existing Forest Service Policy, Forest Plan, Idaho Roadless Rule and NEPA.

Issue 4: The EIS does not analyze "responsible alternatives to the Proposed Action" in spite of the fact they were suggested by the public early in the NEPA process. There are other "reasonable" alternatives that should have been analyzed in detail as required by 40 CFR 1500.2(e). The Responsible Official never uses the term "reasonable" or "unreasonable" when disposing of alternatives for watershed restoration only and helicopter yarding with no new road construction, violating 40 CFR 1506.6.

Response: 40 CFR 1506.6 addresses the public involvement process, not the development of alternatives. 40 CFR 1500.2(e) states, "Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment". While the Responsible Official must consider if alternatives are reasonable, he is not required to use the terms "reasonable" or "unreasonable" when discussing the rationale for alternatives that were considered, not considered or considered but not analyzed in detail.

The Little Slate project originally considered nine alternatives. Five were considered in detail, while four were not. A discussion of these alternatives and the rationale for detailed consideration is provided in the ROD (pp. 18 to 31) and the FEIS (pp. 12 to 39). The selected alternative (Alternative B2) was developed based on the Response to Comments for the DEIS (ROD, p. 32). Alternative B was modified and incorporated aspects of Alternative C, resulting in Alternative B2, which was presented as the new preferred alternative in the FEIS.

The Purpose and Need and the range of alternatives is in compliance with NEPA and 40 CFR 1500.2(e).

Issue 5: The Responsible Official worded the Purpose and Need (P&N) so narrowly that any alternatives to the selected alternative that did no harvest timber were rejected in the DEIS.

This appears to be biased towards timber harvest and P&N goal #4 and violates 40 CFR 1506.6.

NOTE: The appellant identifies P&N goal #4 as, "To improve soils impacted from past mining and timber harvest activities in the project area".

Response: 40 CFR 1506.6 addresses the public involvement process, not the development of alternatives.

The Little Slate project originally considered nine alternatives. Five were considered in detail, while four were not. A discussion of these alternatives and the rationale for detailed consideration is provided in the ROD (pp. 18 to 31) and the FEIS (pp. 12 to 39).

The majority of the Little Slate project lies in Management Area (MA) 12 of the Nez Perce Forest Plan. This MA prioritizes timber production on a sustained yield basis. Alternatives that include logging are in compliance with the Forest Plan.

The Purpose and Need for the project (EIS, pp. 1 to 2) is not overly narrow or inconsistent. Timber harvest was not a pre-determined action. The analysis and decision are in compliance with NEPA.

Issue 6: The Responsible Official consciously chooses to mislead and deceive the public in his attempts to garner support for Little Slate Creek timber sale. The Responsible Official repeatedly deceives the public by telling them that any and all degradation of the important natural resources in and downstream from the sale area is acceptable because the degradation is "short term" and "temporary". (This method is used for fisheries, rare plants, air quality, hydrology, wildlife, cultural resources and tribal treaty rights.)

The Responsible Official chooses not to give the public the credentials of the USFS employee that makes these conclusions, nor does he cite science or empirical evidence used to support the conclusions.

Response: I reviewed the FEIS for the resources areas you identified (FEIS: Rare Plants, Section 3.3, pp. 47 to 52; Air Quality, Section 3.4, pp. 53 to 58; Hydrology, Section 3.6, pp. 68 to 83; Fisheries, Section 3.7, pp. 83 to 92; Wildlife, Section 3.8, pp. 92 to 123; Cultural Resources, Section 3.13, pp. 153 to 155; Tribal Treaty Rights, Section 3.14, pp. 155 to 157). I compared the specialists' findings and conclusions in the FEIS with the ROD.

I find the Responsible Official, in his rationale for the decision (ROD, p. 14 to 26), has accurately articulated the effects (short and/or long-term) on these resource areas. Furthermore, he explained that while short-term impacts may occur for some resource areas, they are still within the thresholds and/or meet the goals and objectives identified in the Forest Plan. Project design and mitigation measures were also identified and will be implemented to alleviate impacts where needed. I found no instance where the Responsible Official simply dismisses impacts to a resource area by declaring that impacts are only short term or temporary.

Chapter 4 of the FEIS (Section 4.1, p. 158) contains a list of preparers, what they contributed, their education/professional background and years of experience.

Chapter 6 of the FEIS (pp. 201 to 208) contains a list of literature references. Also refer to response for Issue 1.

I find the Responsible Official is in compliance with NEPA and NFMA.

Issue 7: The EA does not identify the primary reason for proposing to spend taxpayer's money on the Little Slate Creek project at this time and the Purpose & Need identified multiple project goals with no priority.

The appellant realizes that all goals identified in the P&N are important to achieve. There was one goal that led the Responsible Official to initially contemplate the project. This is not identified.

The EIS does not tell the public why the Responsible Official believes it is necessary to ignore 40 CFR 1502.13 and why NEPA hasn't been followed.

Response: As stated in the ROD (pp. 3 to 4), the interdisciplinary team compared the existing condition of the project area with the desired condition to develop the Purpose and Need (P&N). The DEIS (pp. 112 to 115) contains a discussion, by alternative, on the economic resources associated with the project. My review of the economic analysis shows that costs were identified for actions that will help the Forest meet the P&N. Specifically, cost were categorized as "Costs associated with Watershed Restoration activities (Dollars)" and "Costs and Revenue associated with removal of forest materials or products (Dollars)". This project will generate over $9 million in revenue.

The Responsible Official is in compliance with 40 CFR 1502.13 and clearly articulated the need to take action at this time. There is no requirement to prioritize project goals.

The appellant does not state what he believes the one goal is that initially led the Responsible Official to contemplate the project. I see no evidence in the project file that the Responsible Official had any intended goals/outcomes other than those stated in the P&N.

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found the analysis and decision adequately address the issues raised by the appellant. I recommend the Forest Supervisor's decision be affirmed and the appellant's requested relief be denied.

Julie K. King

JULIE K. KING
Appeal Reviewing Official

cc: Rick Brazell, Ralph E Rau, Tammy Harding, Norma Staaf, Cynthia Lane, Ray G Smith