USDA United States Department of Agriculture | Forest Service | Intermountain Region | 324 25th Street Ogden, UT 84401 801-625-5605

File Code: 1570-1 **Date:** JUN 26 2012

Route To:

Subject: Reviewing Officer Recommendation, Mill Creek-Council Mountain Landscape Restoration Project, #12-04-00-0088-A215

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Dick Artley, protesting the Mill Creek-Council Mountain Landscape Restoration Project Decision Notice signed by Keith B. Lannom, Forest Supervisor on the Payette National Forest.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is 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 in the enclosed document.

RECOMMENDATION

I have reviewed the record and have found that 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.

Brent L. Larson
Appeal Reviewing Officer

Appeal #12-04-00-0088-A215
Dick Artley
Mill Creek-Council Landscape Restoration Project
Payette National Forest

Appeal Issues 1 and 2.

Appeal Issue #1: The Responsible Official did not take a "hard look" at the environmental consequences of implementing the Mill Creek Project.

Response:

The Responsible Official took a "hard look" at the environmental consequences of implementing the Mill Creek-Council Mountain (MCCM) Landscape Restoration Project. The project provided a thorough scientific and analytic basis for comparing the alternatives and disclosed the environmental effects (FEIS Chapter 3 pp. 1-251) in order for the Responsible Official to make an informed decision (ROD pp. 16-21).

The MCCM Landscape Restoration Project referenced numerous relevant scientific sources in the project record (FEIS Chapter 4.9 pp. 5-23) as part of its analysis. The Responsible Official used the best available science to analyze the project and disclose the expected environmental consequences to reach a decision.

The environmental consequences of the proposed actions were clearly disclosed in the EIS and Record of Decision. The Responsible Official made the decision based on how the actions met the purpose and need and the desired future conditions defined in the Forest Plan (ROD pp. 18-21). The decision was made in conformance with applicable law and regulation.

Appeal Issue #2: The EIS for the Mill Creek project violates the Administrative Procedures Act (APA).

Response:

The Administrative Procedures Act requires that agency actions have a rational foundation and not be arbitrary, capricious, or an abuse of discretion. The MCCM Landscape Restoration project implemented the procedural provisions of the National Environmental Policy Act of 1969 (CEQ Regulations, Parts 1500 through 1508) and the National Forest Management Act of 1976. The Record of Decision clearly explained the rationale for the decisions (ROD p.16-21). Therefore, the decision complies with the Administrative Procedures Act.

Appeal Issue #3: *The Responsible Official did not respond to the responsible opposing viewpoints submitted by the appellant. This violates 40 CFR 1502.9(a) and 1502.9(b).*

Response:

The Responsible Official considered and responded to responsible opposing viewpoints submitted by the appellant (and others) concerning the MCCM Landscape Restoration Project.

The Responsible Official specifically responded to responsible opposing viewpoints submitted

by both the appellant and by many other commenters. These responses are listed in the FEIS Appendix 10. In some cases, the Forest responded to comments by describing purposes of the project, e.g. to restore the historical range of variability (HRV) as described in Appendix A of the Forest Plan. In other cases the Forest Service responds to opposing viewpoints with scientific literature citations or site specific specialist reports that support the project purposes and actions.

The Responsible Official specifically responded to the comments submitted by the appellant representing opposing viewpoints. There are over 50 responses to the appellant's comments covering over 20 pages (FEIS Appendix 10 pp. 10-105, 10-145, and 10-152 – 10-173). Specialist reports prepared during site specific effects analyses also address appellant comment issues.

The appellant submitted a very large number of citations that were written by over 500 scientific authors. Internal Forest Service communication (S. Dixon email dated 1/23/2012) indicates that the Payette National Forest reviewed summaries of these citations watchful for "new science" that may "raise questions" about "existing [management] direction". The FEIS and Mr. Artley cite approximately 6 of the same articles and both the FEIS and Mr. Artley cite approximately 15 of the same authors.

The Responsible Official responded generally to the bulk of appellant citations on page 10-152 of the FEIS Appendix 10:

> The comment letter provided contains numerous excerpts from a variety of different authors in different locations and with different objectives. While we do not dispute disclosures in the cited documents, neither do we categorically agree with the findings or recommendations in the literature referenced. In the case of Forest Service prepared documents, it is assumed that the authors used the most recent and applicable literature given the location of their particular project area, the stand types and conditions at the time, and the direction and/or definitions in their Forest Plan(s). As highlighted by some of the excerpts you've provided, an abundance of literature and opinion are available on a variety of subjects, each with its own recommendations/findings depending upon the specific site characteristics, research methodology and/or objectives, and/or disturbance event. While general disagreement in the literature exists on many subjects, one common conclusion that can be drawn in almost all cases is that every site and every situation is different. This, in part, is why site-specific analyses are completed. As part of this site-specific analysis the resource experts assigned to the project have the responsibility to determine what the most appropriate scientific literature/information is that reflects the specific project area and situation. The EIS completed for this assessment lists cited references where appropriate and provides a list of references. Copies of literature referenced in the EIS are contained in the project's planning record and available upon request. The analysis presented in this document reflects management direction, findings, and conclusions in the Forest Plan and is based on the best available science.

This project was developed collaboratively with opportunities for public comment and review. Responsible opposing viewpoints were considered, disclosed, and responded to in the ROD and FEIS.

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File Code: 1570
Date: JUN 29 2012
#12-04-00-0088-A215

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dick Artley
415 NE 2nd Street
Grangeville, ID 83530

Dear Mr. Artley:

This is my decision on the appeal you filed regarding the Mill Creek-Council Mountain Landscape Restoration Project Decision Notice signed by Keith B. Lannom, the Forest Supervisor of the Payette National Forest.

My review of your appeal was conducted pursuant to, and in accordance with, 36 CFR 215.18. My review focused on the project documentation and the issues raised in your appeal. I specifically incorporate in this decision the project record, the references and citations in the project record transmittal documentation, as well as the Appeal Reviewing Officer (ARO) analysis and recommendation.

After considering your issues and the project documentation, the ARO recommends the Forest Supervisor decision be affirmed. A copy of the recommendation is enclosed.

Based upon a review of the project documentation provided, I find the issues were adequately considered. I agree with the ARO analysis and conclusions in regard to your appeal issues. I find the Forest Supervisor made a reasoned decision and has complied with all laws, regulations, and policy. After careful consideration of the above factors, I affirm the Forest Supervisor's decision to implement the Mill Creek-Council Mountain Landscape Restoration Project. Your requested relief is denied.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

KEVIN MARTIN
Appeals Deciding Officer

Enclosure

cc: Keith Lannom

USDA United States Department of Agriculture | Forest Service | Intermountain Region | 324 25th Street Ogden, UT 84401 801-625-5605

File Code: 1570-1

Date: JUN 25 2012

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