Forest Service

Bitterroot National Forest

1801 N. First
Hamilton, MT 59840
406 363-7100

File Code: 1570

Date: November 14, 2013

Route To: (1570)

Subject: 1570 (215) A&L - ARO Letter - Doc Denny Vegetation Management - Nez Perce Clearwater National Forests - FOCW - #14-01-00-0004

To: Appeal Reviewing Official

This is my recommendation on disposition of the appeal filed by Gary McFarlane of Friends of the Clearwater of the Doc Denny Decision Notice, signed by Rick Brazell, Forest Supervisor of the Nez Perce National Forest.

The Forest Supervisor's decision to implement Alternative 2 includes timber harvest on 925 acres, precommercially thin 40 acres, 1.2 miles of road decommissioning which will remove six culverts, 16 miles of road improvement which will replace two culverts, and 3.4 miles of temporary road construction followed by decommissioning after use.

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), the National Forest Management Act (NFMA), Clean Water Act (CWA) and the Administrative Procedures Act (APA). The appellant requests that the decision be rescinded or that restoration activities occur prior to road building and logging, and all temporary roads be dropped. They also ask that six years of fish habitat monitoring show an upward trend before the project is allowed to occur.

An informal resolution meeting with the appellant was held on October 30, 2013, but the appeal was not resolved.

ISSUE REVIEW

Issue 1: The appellant contends the Forest Service *"inappropriately used documents which set management direction under the deceptive auspices of analysis, and that are not allowed under NEPA and NFMA."* He asserts that *"Supervisor Brazell adopted new desired future conditions (DFCs), standards and goals without going through a forest plan revision process. The project's goals of certain forest types are examples of adopting a new DFC in the purpose and need."*

Response: The purpose and need of the project, apart from demands for timber, involves the maintenance of healthy forests that are resilient to insects, disease, and fire, and to improve forest health and tree vigor (Decision Notice (DN) p.1, Environmental Assessment (EA) p.2-3). These are not new DFCs or goals. The Forest Plan does not specify species composition. The project is meant to modify tree density in stands, vary the age class distribution of the project area, favor and retain large fire tolerant species and species less susceptible to insect and disease, and use prescribed fire to treat activity fuels. None of these require revising the Forest Plan. Management area 12 (PR, 11b-0001, p. III-37 to III-39) is meant to be managed for timber production and other multiple uses on a sustained yield basis (EA p. 2, DN p. 107). The project does not set new direction, or introduce tree species not native to the area.

The purpose and need, proposal, and analysis were guided by the goals, objectives, standards, guidelines, and management area direction of the Nez Perce Forest Plan (DN p. 8, 19-23). The silviculturist describes how the activities in Doc Denny will bring elements such as patch size, structure, and composition closer to their natural range in the area (EA p. 80-89; PF Doc. 10ba-0001). The Forest Plan allows the final determination of silvicultural systems to be based on an on-the ground site specific analysis (NPNF Forest Plan, p. III-38).

The Doc Denny Decision Notice does not set forest management direction. The project is consistent with the Forest Plan.

Issue 2: The appellant contends Supervisor Brazell has violated NEPA by setting "*an overly narrow purpose and need that led to a predetermined decision and constrained an objective analysis of alternatives*".

Response: The appellant raised this concern regarding the purpose and need and the range of alternatives in comments on the EA (DN pp. 107-109). The purpose and need is created by comparing existing conditions with desired future conditions (EA p. 1-3, DN p. 2). It is unclear how the appellant can interpret ecosystem health and productivity involving landscape level vegetation patterns, structure, patch size, fuel loading and species composition as an overly narrow purpose and need.

Issues were identified through public and agency comment (EA pp. 4-6; also see "Issue Sorting Table" PF Doc. 05d-0001). These issues were used to develop design criteria and alternatives to the proposed action, in accordance with 40 CFR 1501.2(c) (DN p. 7-9). An alternative suggested by the appellant was for "real restoration", removing roads and culverts and allowing fire to plays its natural role (PF Doc. 05c-0008). It is explained clearly why this alternative was considered but eliminated from detailed study (EA p. 7, DN p. 12-13). There were numerous reasons cited why this alternative was untenable, most of which did not involve the purpose and need.

I find a reasonable purpose and need as well as a reasonable range of alternatives was considered for the Doc Denny project.

<u>Issue 3:</u> The appellant contends Supervisor Brazell has "*not met the spirit and intent of NMFA and NEPA requirements*" because the EA does not have an "*adequate cumulative effects assessment of impacts in the area*" and "*an EIS is needed*".

<u>Issue 3, Contention A</u>: The appellants asks *"Why does the cumulative affects analysis for vegetation only include the analysis area and not the Mill Creek watershed? Also, what about other proposed projects in the area including Hungry Ridge and Adams Camp Fire Protection? Given these issues, how can the EA meet NEPA requirements for cumulative impacts analysis"?*

Response: Cumulative effects area will vary by resource and is greatly determined by the zone of influence the action may have on the resource. The effects of vegetation treatments on vegetation are fairly localized, i.e., regeneration harvest in a given stand is unlikely to influence vegetation far away yet still in the same watershed, unless the project was designed to influence fire behavior on the landscape.

According to the cumulative effects area map (PF Doc. 09a-0019), Adams Camp project area is outside the effects area for the vegetation resource. However, activities in the Adams Camp Fire Protection project were considered in the recreation, fisheries, watershed, and wildlife cumulative effects areas (EA pp. 31, 42-43, 54-56, 94; DN pp. 49-53, 79-80).

The Hungry Ridge project is currently being developed by the Forest. Without a proposed action, potential effects cannot be forecasted.

An environmental assessment determines the need for an environmental impact statement (40 CFR 1501.4(c)). A finding of no significant impact was prepared on the basis of the Doc Denny EA, which was made available to the public in the Doc Denny Decision Notice, in accordance with 40 CFR 1501.4(e)(1).

I find the spirit and intent of NFMA and NEPA have been met with the analysis and decision.

<u>Issue 3, Contention B</u>: The appellant contends" *the EA also fails to adequately look at the cumulative impacts of grazing along with this project."*

Response: The effects of past, present and reasonably foreseeable activities are considered in addition to impacts from the project action. Cumulative effects of grazing are recognized as a concern to be carried through the analysis (EA p. 5). Consequently, it is considered in numerous resource areas (EA pp. 33, 42-43, 48, 54-56, 61, 67, 80, 86, 94, 97, 108, 119, 124; PF Doc. 09a-0019). For example, the fisheries analysis discloses that a project EIS in 1996 identified grazing as a factor affecting fish habitat. Field data collected in 2011 indicate the Forest Plan objective for sediment is currently met, however. Stream width:depth ratio, bank angle, substrate and riparian condition in Mill Creek are recognized as being affected by grazing. Vegetation management for Doc Denny will only occurs outside riparian areas, so there is no additive effect to these factors. Sediment yield is expected to be minor (EA p. 43) and thus no significant cumulative effects are expected.

Grazing is adequately considered in cumulative effects analysis for the project and there is no NEPA violation.

Issue 3, Contention C: The appellant contends *"the fact that this project may last seven years raises a serious concern. An alternative that only made decisions on a five-year time frame should have been considered, as that is the normal timeframe for projects of this nature."*

Response: The NEPA handbook advises that the responsible official should review new information as it applies to an existing project to determine its importance. Changed circumstances may trigger further environmental review, but time by itself may not be relevant. The appellant asked about time frames in his comments on the EA, and was informed that "a specific timeframe or lifespan for NEPA decisions is not defined." See DN p. 110.

Issue 3, Contention D: The appellant asserts *"the sheer size of this project, cumulative impacts from other activities and the controversy over science involving vegetation management (raised in our comments) all indicate that an EIS is needed."*

Response: The Doc Denny project treats approximately 4.3% of the 23,584 acre combined watershed, and 6/10ths of one percent of the South Fork Clearwater subbasin. Context and intensity of the project are disclosed on pages 14-16 of the DN/FONSI. See the responses to Issue 3, contentions A and B, above, regarding cumulative effects. Scientific literature submitted by the appellant was found to be consistent with that applied to the analysis, or not applicable at the scale of this project (DN p. 123 Baker & Ehle 2001; p. 129 Pierce et al. 2004; p. 131; Williams & Baker 2012). There is no controversy.

Forest Plan Consistency and Regulatory Compliance are documented in the DN (pp. 9-11, 16-23) and in the EA (pp. 130, 131). There are no significant impacts (DN/FONSI pp. 14-16) and therefore no need for an EIS.

Issue 4: The appellant contends Supervisor Brazell's decision is in error because the EA and DN is *"not in accordance with legal requirements of NEPA, NFMA, ESA and Clean Water Act"*, regarding effect to water quality, fisheries, and soils.

Issue 4, Contention A: The appellant asserts *"the EA notes (EA pg.31) that the Big Canyon watershed is included in the analysis as it is the pour point into Mill Creek, although no activities are planned for that area. He asks "How does that affect the watershed analysis in the EA? Doesn't diluting the impact analysis by adding a watershed that won't be affected skew the direct impact analysis?"*

Response: Big Canyon is part of the overall Mill Creek watershed (see map at PF Doc. 10dd-0008). As described on DN page 114 in response to the same question, Big Canyon provides baseline data downstream from the project area. It is included in both the fisheries (EA pp. 31-43) and watershed (EA pp. 44-56) analyses.

Issue 4, Contention B: The appellant states *"the EA does not project much increase in sediment from logging activities, yet it also notes that many roads are found within RHCAs. As*

such, effect from logging, including hauling, can be amplified. Does the project area meet all water forest plan water quality standards, including fish and water standards found in Appendix A of the forest plan?"

Response: As stated in the response to the identical question posed by the appellant in comments on the EA, Appendix A of the Nez Perce Forest Plan contains sediment yield guidelines and fish/water quality objectives. It does not contain standards (DN p. 116). Compliance with the Forest Plan is included on page 134 of the EA, and DN page 16. Forest Plan Appendix A is found in the Project File at Doc. 11b-0007.

Issue 4, Contention C: **The appellant contends *"NEZSED does not consider mass wasting events nor does it take into account impacts from livestock grazing, and asks "Were any other types of analyses done to estimate impacts, such as sediment, in the EA?"***

Response: NEZSED does not include mass wasting events because they are not predictable. Grazing is included in analysis for sediment and water quality, as found in the EA on pages 46, 48, 54, 55. Stream survey data supported modeling conclusion.

Issue 4, Contention D: **The appellant asserts *"the EA notes (EA pg. 32) some surveys or inventories were done in 2010 and 2011, though it appears they looked at different fish habitat parameters. However, the EA then notes (EA pg. 32) that "Estimates of existing cobble embeddedness" were made. Does that mean there is no or little current monitoring data on cobble embeddedness? The EA later notes (EA pg. 33) data were collected in the 1990s and 2011. Were any data collected in 2010? Did the recent surveys use the same protocols as the earlier baseline surveys?"***

Response: The appellant contends no violation of law regulation or policy. These questions were asked verbatim in the appellant's comments on the EA, and were clearly answered in the DN (pp. 114-115). The forest has current data collected in 2011. The 2011 data used far more robust sampling than the visual estimates done in the 1990s.

Issue 4, Contention E: **The appellant states *"the EA claims fish habitat parameters related to stream and riparian conditions have improved over the past 2 decades (pg. 33). Has consistent monitoring data been collected that show this is the case? The EA is not clear on this point (see pages 33-35). We ask this question because the actual fish data show a decline in numbers for listed steelhead trout. There are no data for other species to make a comparison with the possible exception of bull trout in Mill Creek--one was observed in 1990-1991 and none in 2010 and 2011 (page 35).This creates a conundrum. The EA states the data suggest an upward trend in fish habitat parameters (pg. 33) but the fish numbers show a decline. The EA is very questionable in its analysis of cumulative impacts (see above) and that may have something to do with fish declines."***

Response: The appellant contends no violation of law regulation or policy. These questions were asked verbatim in the appellant's comments on the EA, and were clearly answered in the DN (p. 115). Further, the Lower Mill, Dry Gulch, and Big Canyon prescription watersheds were not included as "footnoted" watersheds in Appendix A of the 1987 Nez Perce Forest Plan and therefore have no specific direction related to an improving or upward trend.

Issue 4, Contention F: The appellant states ***" the DN (response to comments) admits survey protocol is different. Given this, it appears that the EA is inadequate from both perspectives of the NEPA and the forest plan regarding fish and water quality. Simply put, the condition of the watershed and whether it meets appendix A of the forest plan is in question."***

Response: Survey protocols for forest fishery/water quality do not appear to be described in the Nez Perce Forest Plan (PF Doc. 11b-0002, p. V-7). Regardless, the fish biologist reveals in the response to comment 25 (DN p. 115) that recent data gathered were physical measurements and therefore more robust than previous survey methods. This does not constitute a violation of NEPA or NFMA, or cause conclusions in the EA to be suspect. Substrate and fish population summaries from project area stream surveys are in the Project File at Doc. 10cd-0017 to 10cd-0024.

I find the Doc Denny to be adequate in applying survey and monitoring data to the EA.

Issue 4, Contention G: The appellant observes ***"the EA states (pg. 40) no lampreys are in the area yet the South Fork is traditional lamprey habitat. Furthermore, the Nez Perce Tribe has been implementing a recovery program in a tributary of the South Fork. Given this, how can a no effect determination be made?"***

Response: As divulged in the response (DN p. 116) to this identical comment received on the EA, the EA (pg. 40) indicates they are not found in Mill Creek. The response also describes that lampreys were reportedly introduced to Newsome Creek, and that tributary to the South Fork Clearwater is upstream of Mill Creek. Activities in Mill Creek will have no effect to lampreys upstream of its confluence with the South Fork. Also see the biological evaluation for Pacific lamprey in the DN at pages 38, 39, 57, and Cochnauer and Claire 2003 at PF Doc. 10cb-0008.

The no effect determination for Pacific lamprey is valid.

Issue 5, Contention A: The appellant asserts ***"the soil analysis admits problems with various analysis methods, and that honesty is refreshing. That does bring to light the question of whether the analysis methods are adequate to meet regional soil standards. Are they? Also, the EA states that soil standards would be exceeded on four or five units, prior to mitigation. All of these units are currently meeting the soil standard. How can these units go forth and still meet the regional soil direction?"***

Response: For any alternative, the percent Detrimental Soil Disturbance (DSD) percent in all units would not exceed the Forest Plan standard of 20 percent DSD or Regional Guideline of 15 percent. The analysis was completed in accordance with Regional Technical Guidance from 2011 (PF Doc. 10g-0044). Regional Soil Quality guidelines (PF Doc. 10g-0040) state: "In areas where less than 15 percent detrimental soil conditions exist from prior activities, the cumulative detrimental effect of the current activity following project implementation and restoration must not exceed 15 percent." The treatment units in Doc Denny do not exceed 15 percent DSD and are consistent with NFMA and soil quality guidelines (EA p. 56-68, 138-139; DN pp. 7-10, 19-20; PF Docs. 10g-0001, 10g-0009, 11b-0001).

The Doc Denny project meets regional soil standards and direction.

<u>Issue 5, Contention B:</u> The appellant observes *"soil stability, erosion hazard and irreversible soil loss are considered in the EA. Why wasn't an alternative developed that didn't affect areas with high erosion hazard (see page 65) or irreversibly affect ash-cap soils?"*

Response: Issues were identified through public and agency comment (EA pp. 4-6; also see "Issue Sorting Table" PF Doc. 05d-0001). These issues were used to develop design criteria and alternatives to the proposed action, in accordance with 40 CFR 1501.2(c) (DN p. 7-9). As described in the response to this identical comment on the EA, the insignificant effects to soil did not drive an alternative (DN p. 109). Effects to soil stability, erosion and landslide hazard are analyzed in the EA (pp. 20, 64-68, 155-157), and specific design criteria address the soil and water resource (EA p. 15).

I find a suitable and reasonable range of alternatives was considered for the Doc Denny project.

<u>Issue 6:</u> The appellant contends Supervisor Brazell "*violated NEPA and NFMA because of the lack of data.*" "*The wildlife analysis includes little site-specific information for some species as required by the forest plan*", including monitoring or trend data.

<u>Issue 6, Contention A:</u> The appellant contends *"there is no reliable trend data for fisher or pine marten. Rather habitat data was substituted on a larger scale. The lack of information violates NEPA and NFMA. The monitoring report provides no indication of population trends of these MIS."*

Response: The Forest Plan p. II-18 requires monitoring of management indicator species (MIS) at the Forest scale, and not at the project level. Population trends for MIS are to be reported every 3 – 5 years. Effects to individual MIS and their habitat were analyzed for Doc Denny. Both summer and winter fisher habitat was identified in the project area (EA p. 101, PF Doc. 10ja-0001) and it is recognized that percentages of both would be harvested. Winter track surveys confirm the presence of fisher and marten in and near the project area. 2013 Meso-carnivore surveys found evidence of fisher and marten in the Nez Perce National Forest (PF Doc. 10jb-0092). Other supporting documents, too numerous to list in this letter, are in the Project File folders 10ja and 10jb. American marten and its habitat is considered on pages 113-115 of the EA. Design criteria (p.17) include no harvest activities in old growth to protect associated species. Research by Samson (2006) indicates habitat is more than sufficient to contribute to viable populations of MIS and sensitive species (PF Doc 10jb-0068).

The Doc Denny project adequately considers effects to MIS and does not violate NEPA or NFMA.

<u>Issue 6, Contention B:</u> The appellant contends *"the statement in the EA that no analysis for lynx is needed is in error. The FWS has been successfully sued in its identification of lynx habitat and that case law supports a more thorough and liberal interpretation of lynx habitat. The EA and DN (including response to comments) try to evade analysis lynx because the agency states the Nez Perce National Forest not to be occupied habitat. This contradiction shows the agency has failed to meet NEPA, NFMA and ESA requirements for lynx."*

Response: Forest Supervisor Rick Brazell received a letter from the USFWS in December of 2012, stating that they have determined Canada lynx may be present on the Forest (PF Doc. 10jb-0043). Prior to the letter, the US Fish and Wildlife Service (FWS) did not require lynx consultation. The EA was published in August 2012, and Canada lynx was included in the initial analysis with the assumption that the Nez Perce NF was not occupied (EA pp. 90-94). However, after the December 2012 letter, a Biological Assessment (BA) for lynx using the "may be present" standard was prepared and sent to the USFWS for concurrence (PF Docs.08b-0008 and 08b-0011).

The Canada lynx was analyzed in detail for Doc Denny (PF Doc. 10ja-0001) and informal consultation with FWS was conducted. The Nez Perce-Clearwater NF received a letter of concurrence with the BA finding of "not likely to adversely affect" from the FWS for this project (PF Doc. 08b-0012). The BA and concurrence letter were published in the DN (pp. 60-93). Canada lynx are discussed in the DN on pages 17 and 18, and is stated in the response to the appellant's comments (EA p 118-119) that a BA was prepared and concurrence was received from the USFWS. The Forest has no designated critical habitat for lynx (PF Doc. 10jb-0079), and 2013 Meso-carnivore surveys found no evidence of lynx in the Nez Perce National Forest (PF Doc. 10jb-0092).

NFMA, NEPA and ESA requirements are met for consideration of the Canada lynx.

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above 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.

Julie K. King

JULIE K. KING
Forest Supervisor
cc: Norma Staaf, Rick Brazell, Jennie Fischer, Randall G Smith, Kim Smolt, Allen Byrd