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File Code: 1570
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Subject: 1570 (215) A&L - ARO Letter - Adams Camp Wildfire Protection Project (DN) - Nez Perce Clearwater National Forests - Artley - #13-01-00-0037

To: Appeal Deciding Official

This is my recommendation on disposition of the appeal filed by Dick Artley on the Adams Camp Wildfire Protection Project Decision Notice (DN) and Finding of No Significant Impact (FONSI) signed by Forest Supervisor Rick Brazell of the Nez Perce and Clearwater National Forest.

The Forest Supervisor selected Alternative 2, which includes conducting regeneration harvest on 72 acres to re-establish long-lived seral species, typically ponderosa pine and western larch; conducting variable density improvement harvest on 841 acres of heavily stocked stands; pre-commercial thinning, by mastication, 116 acres of young overstocked stands; and post-harvest burning and/or slashing 913 acres to reduce fuel hazards and prepare harvested openings for planting. The project also includes approximately 5 miles of temporary road construction, 5.4 miles of road reconstruction, 5.1 miles of road maintenance, and replacing one undersized culvert. Decommissioning of the temporary roads will occur directly following completion of harvest activities, typically within the same season of 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 Migratory Bird Treaty Act (MBTA), the Administrative Procedures Act (APA), Executive Orders 13186, and Title I, Section 102 [42 U.S.C. § 4332] (C). The appellant asks the Appeal Deciding Official (ADO) to direct the Responsible Official to withdraw the Decision and rewrite the pre-decisional EA with a new alternative analyzed in detail that does everything described in the selected alternative except logging and road construction. He also asks that the Responsible Official be instructed to include focused education (public meetings, workshops, and brochures) on Dr. Cohen's fire damage risk reduction actions that homeowners in the WUI can do themselves. He asks that the Responsible Official be instructed to reinitiate the 30-day comment period on the revised pre-decisional EA. An informal meeting was offered but the appellant declined to meet. Therefore, no resolution of the issues was reached.

ISSUE REVIEW

Issue 1: The appellant alleges Supervisor Brazell has violated 40 CFR 1502.9(b) because he did not respond to the responsible opposing viewpoints contained in the attachments #3 and #11 submitted by the appellant during the formal 30-day comment period on the EA.

Response: Even though 40 CFR 1502 applies to Environmental Impact Statements, not EAs, the DN and FONSI (Appendix D, pp. 211 to 227) list and respond to each of the responsible opposing viewpoints the appellant submitted in Attachments #3 and #11to his comments on the EA. The DN and FONSI (Appendix B-Response to Comments, pp. 178 to 202) also responds to the comments the public, including the appellant, submitted on the EA. The analysis is in compliance with NEPA and the regulations of 40 CFR 1502.9(b).

Issue 2: Supervisor Brazell has violated 40 CFR 1502.16 because he does not discuss "any irreversible or irretrievable commitments of resources in the EA.

Response: Even though 40 CFR 1502 applies to Environmental Impact Statements, not EAs, the Adams Camp project does discuss that best management practices and project design features assure there would be no irreversible damage to soils, slopes, watershed, or stream channels from timber harvest (EA, pp. 10 and 59), but some irreversible damage could still occur from the temporary road and/or skid trails (EA, p. 59). The EA also discusses short term and long term impacts to air quality (EA, p. 30), vegetation (EA, p. 35), water quality and fisheries (EA, pp. 44 to 47, 53, 55, and 56), wildlife (pp. 68, 70, 72 to 74, 77, 79, 81, 83, 85, 87, 89, 92, 93) which are not irreversible or irretrievable commitments of resources. The analysis is in compliance with NEPA and the regulations at 40 CFR 1502.16.

Issue 3: Supervisor Brazell has violated 40 CFR 1500.1(b) because the EA does not analyze how the project will affect Climate Change. This requirement is discussed at http://www.fs.fed.us/climatechange.

Response: The Forest responded to the appellants comments on climate. In all the comments from, and literature cited by the appellant the focus was on what climate change has done to the project area, environment, or fire behavior, **not** how the project would affect climate. The Forest analyzed the effect of the project and responded to appellant's concerns as he voiced them (DN, pp. 139, 188, 189, 190, 193, 222, 225, 226, and 227).

The notice and comment period is intended to solicit information, concerns, and any issues specific to the proposed action and to provide such comments to the Responsible Official before the decision is made. The intent in requiring comments is to obtain meaningful and useful information from individuals about their concerns and issues, and use it to enhance project analysis and project planning. Waiting until the appeal period to raise additional issues and arguments or submit literature they believe is relevant to the decision does not give the Responsible Official an opportunity to address these concerns in the decision.

Due to the fact the appellant did not bring these specific concerns to the attention of the Responsible Official at the appropriate time; I will not consider the contention further.

Issue 4: Supervisor Brazell has violated Title I, Section 102 [42 USC § 4332] (C) because the EA does not contain a "detailed statement by the responsible official on any adverse environmental effects which cannot be avoided should the proposal be implemented."

Response: The entire Chapter 3 of the EA (pp. 23 to 100) constitutes a detailed statement by the responsible official of the effects, both adverse and beneficial, of the project on the environment. More specifically the DN (pp. 14, 21, 22, 25, 26, 28, 55, 58, 60, 74, 99, 104, 106, and 109) discusses whether or not any potential adverse effects will occur from the project. The project is in compliance with Title I, Section 102 [42 USC § 4332] (C) of NEPA.

Issue 5: Supervisor Brazell has violated 40 CFR 1505.2 because the EA does not "state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted."

Response: Title 40 CFR 1505.2 applies to Records of Decision, not a DN and FONSI, as in the case of the Adams Camp Wildfire Protection Project. However, the EA (pp. 14 to 18) included numerous design features "developed to eliminate or reduce to acceptable levels the effects of the proposed activities." The DN (p. 3) states these design features will be implemented as part of my decision" and then lists them, and discusses their effectiveness where necessary (DN, pp. 3 to 8). The decision is in compliance with 40 CFR 1505.2.

Issue 6: Supervisor Brazell has violated 40 CFR 1507.2 because the EA does not "identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration."

Response: The EA, DN, and FONSI do not use the word "unquantified". Title 40 CFR 1507.2 addresses agency capability to comply with the regulations for implementing NEPA "in terms of personnel and other resources." The EA (pp. 101 to 102) documents the personnel assigned to the project, which cover all of the resource areas potentially affected by the project. The IDT meeting notes document numerous interdisciplinary meetings and field reviews (PF, Vol. 2).

Section 102(2)(B) of the National Environmental Policy Act is directed at Federal agencies. It states "all agencies of the Federal Government shall—(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality…" Those methods and procedures have been developed, and they include (for example) the development of EISs, RODs, EAs, Decision Notices, and FONSIs; consultation with other agencies; methods to document impacts; and procedures to inform and involve the public. This has been done by the Forest Service in consultation with CEQ in development of the Forest Service's NEPA procedures.

I find the EA is in compliance with 40 CFR 1507.2 because an interdisciplinary approach was

used to insure the integration of resources potentially affected by the project was analyzed. The project has followed Forest Service methods and procedures to insure that presently unquantified environmental amenities and values are given appropriate consideration in decision making.

Issue 7: Supervisor Brazell has violated the Administrative Procedures Act (APA). The Decision is arbitrary and capricious because the documents listed in the references and literature cited section of the EA do not discuss the adverse effects of logging and road construction, thus, the Responsible Official "failed to consider an important aspect of the problem and offered an explanation that ran counter to the evidence before the agency." By withholding this information concerning the project Supervisor Brazell has violated 40 CFR 1500.1(b) because environmental information is not available to public officials and citizens, the information provided to the public is not "high quality," and an "accurate scientific analysis" would not be possible without information describing the adverse impacts of logging and road construction.

Response: In fact, some of the literature in the References section (EA, Appendix E) discusses the effect of logging and road construction on the soils, fisheries, hydrology, vegetation, and wildlife resources. The public, too, has had opportunity to add to the literature section, and some, including the appellant, have taken the opportunity to advise the Responsible Official on the impacts of logging and road construction by submitting additional literature (DN, Appendix D).

As stated above (in Issue 1), the Response to Comments (DN, Appendix B, pp. 178 to 202) are dedicated to consideration of all of the public's comments, including Mr. Artley's, on the EA. Many of these comments and responses consider and discuss the effects of logging and road construction. Virtually all of the hydrology discussion (EA, pp. 37 to 47) is addressing the impact that logging and road construction have on that resource. The fisheries resource (EA, pp. 47 to 58) likewise discusses the impact timber harvest and road construction has on fisheries. The soils resource (EA, pp. 58 to 67) also discusses the impact timber harvest and roads have on soils. Each resource in turn analyzes the impact of timber harvest and roads on that resource. These analyses are based on the existing condition, monitoring, and the best available science. The analysis is in compliance with APA.

Issue 8: Supervisor Brazell has violated the Migratory Bird Treaty Act of 1918.

Issue 8, Contention A. Logging and slash/RX burning activities will not protect "migratory birds against pollution, detrimental alterations, and other environmental degradations" (16 USC Section 703) and will kill migratory bird chicks by "destroying their nests or eggs" (16 USC Section 703). The EA does not discuss how burning and logging activities have been modified for the birds to minimize habitat disruption.

Issue 8, Contention B. Supervisor Brazell does not comply with President Clinton's E.O. 13186 discussed in the Federal Register: February 13, 2009 (Volume 74, Number 29) that requires "each agency to develop and implement a Memorandum of Understanding with the

Fish and Wildlife Service that shall promote the conservation of migratory bird populations."
Source: *http://edocket.access.gpo.gov/2009/E9-3118.htm*

Response: In December 2008, the USFS entered into a MOU with USFWS on migratory birds, in compliance with E.O. 13186. The Wildlife Report (PF, Doc. 7fa-0001, pp. 63 to 66) analyzes the impact the project would have on migratory bird populations. The wildlife biologist concludes, "There are no Nez Perce Forest Plan standards specific to migratory birds. This project would meet regulations pertaining to neotropical migratory birds. At the project and watershed level, the cumulative effects of the proposed project may affect individuals or local populations of some bird species. At the Forest level and across the range of these species, effects would be expected to be small to negligible." The project is in compliance with MBTA and E.O. 13186.

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.

Mary C Erickson

MARY C. ERICKSON
Forest Supervisor

cc: Norma Staaf, Rick Brazell, Ray G Smith, Allen Byrd