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File Code: 1570
Route To: (1570)

Date: September 4, 2013

Subject: 1570 (215) A&L - ARO Letter - Iron Mountain Vegetation Restoration Decision - Nez Perce Clearwater National Forests - Artley - #13-01-00-0043

To: Appeal Deciding Official

This is my recommendation on disposition of the appeal filed by Dick Artley on the Iron Mountain Vegetation Restoration Decision Notice (DN) and Finding of No Significant Impact (FONSI) signed by Ralph Rau for Forest Supervisor Rick Brazell, Nez Perce and Clearwater National Forests.

The Forest Supervisor selected Alternative 2, which includes regeneration harvesting on 663 acres. The harvest units will then be prescribed burned and excavator piled in preparation for planting with whitebark pine and western larch. The project also includes 3.6 miles of temporarily road construction, maintenance work on 9 miles of existing road, reconditioning the surface and adding turnouts on an additional 3.6 miles of existing road, and replacing three water culverts.

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) implementing regulation at 36 CFR 220 et seq. and 40 CFR 1500 et seq. The appellant asks the Appeal Deciding Official 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 for the logging and road construction. He also asks the Responsible Official to rewrite the Purpose & Need to describe project goals to truly restore the forested ecosystem, to move the project's actions to the Alternatives section, and 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 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 Iron Mountain project does discuss irreversible and irretrievable commitment of resources where it is applicable to do so for specific resources. In the Soils section the EA (pp. 3-32 to 3-33) discusses that the loss of volcanic ash-influenced loess would be irretrievable. In the Hydrology section the EA (p. 3-83) points out there would be no irreversible or irretrievable impacts. In the Economics section the EA (p. 3-18) points out there would be no irreversible or irretrievable impacts.

Title 40 CFR 1502.16 is concerned with more than just the irreversible or irretrievable commitments of resources. The regulation is concerned with the environmental consequences of the decision. The entire Chapter 3 of the EA displays the affected environment and the environmental consequence of the alternatives, resource-by-resource. The analysis is in compliance with NEPA and the regulations at 40 CFR 1502.16.

Issue 2. The appellant alleges Supervisor Brazell violated 36 CFR 220.4(f) because the "assessment of the cumulative effects" is not documented in the final EA. Simply listing the past, present, and reasonable foreseeable future actions that could or might affect a natural resources is not enough. The appellant alleges that because the EA did not list the type, magnitude, location, and approximate year of implementation, the public was not given the opportunity to do their own analysis of the project's cumulative effects.

Response: The EA does **not** simply list past, present, and reasonable foreseeable future actions. Instead, each specialist (EA, pp. 3-8 to 3-9 (fisheries), 3-17 to 3-18 (economics), 3-24 to 3-25 (fuels), 3-30 to 3-32 (soils), 3-49 to 3-57 (wildlife), 3-75 (vegetation), 3-82 to 3-83 (hydrology), and 3-90 to 3-91 (roadless)) discusses and addresses those past, present, and reasonable foreseeable future projects or situations that cumulatively could impact the resource being discussed. The cumulative effects analysis is in compliance with NEPA and the regulations at 36 CFR 220.4(f).

Issue 3. The appellant alleges Supervisor Brazell violated 40 CFR 1502.9(b) because he concluded that the appellant's literature is "not applicable" or "not used" because it was not peer reviewed.

Response: Even though 40 CFR 1502 applies to Environmental Impact Statements, not EAs, the project lists and responds to each of the responsible opposing viewpoints the appellant submitted with his comments on the EA (Project File, Folder D, Doc. 20). In the Response to Comments the Forest notes where submitted literature is not peer reviewed, but the lack of peer review is not the reason why the literature was not used. In most cases where the literature was not used the reason was actually due to the fact the literature was a general opinion piece, did not have applicability to the analysis, or was not specific to the Iron Mountain project.

In the appeal, the appellant says he "included the opposing view statements to show Supervisor Brazell that the experts also believe that actions similar to those that will occur on the Iron

Mountain timber sale will harm the natural resources within and downstream from the sale area." Unlike the general, non-site specific comments submitted as attachments to the appellant's comments, the site-specific analysis in the EA and discussed in the DN and FONSI, indicates the project **will not** have a significant effect on the quality of the human environment (FONSI and DN, pp. 3 to 8).

Besides dealing with the cited literature, the DN and FONSI (pp. 11 to 50) also responds to the opposing viewpoints brought up by the public, including the appellant, on the EA. The analysis and Response to Comments are in compliance with NEPA and the regulations as 40 CFR 1502.9(b).

Issue 4. The appellant alleges Supervisor Brazell violated 40 CFR 1508.3 and 40 CFR 1502.16 because he plans to apply herbicides as part of this project that might cause Honeybee Colony Collapse Disorder (CCD).

Response: It is clear from the appellant's attachments #9a and #18, and the literature cited in this appeal point that the herbicide Mr. Artley is concerned about in conjunction with honey bee collapse disorder is glyphosate (Roundup, et cetera). In the Response to Comments (DN/FONSI, Appendix A, pp. 48 to 49, Comment 63) the Forest explains, "**Glyphosate will not be used to treat noxious weeds within the Iron Mountain project area** because Glyphosate is a non-selective herbicide used to control/eliminate vegetation and is most commonly used in agricultural situations as your attached letter indicates. Within the Iron Mountain project area, noxious weed control will likely use a selective broadleaf herbicide…" (emphasis added). Since the project will not be using a glyphosate-containing herbicide there is no reason to consider the effects of glyphosate. The analysis and project are in compliance with NEPA and the regulations at 40 CFR 1502.16 and 40 CFR 1508.3.

Issue 5. The appellant allege Supervisor Brazell has violated 40 CFR 1505.2(c) because the EA for the Iron Mountain timber sale 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 is the case with the Iron Mountain Project. However, the EA (pp. 2-7 to 2-9) included numerous design features "developed to eliminate or reduce to acceptable levels the effects of the proposed activities." The DN (p. 2) states the project "will conform to the design features and monitoring described in the EA." The decision is in compliance with NEPA and the regulations at 40 CFR 1505.2.

Issue 6. ***The appellant alleges Supervisor Brazell violated 40 CFR 1507.2 because the EA for the Iron Mountain timber sale 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: This was not brought up in scoping or comment. Therefore the Responsible Official

did not have the opportunity to address the appellant's concerns. 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 (p. 4-1) documents the personnel assigned to the project, which cover all of the resource areas potentially affected by the project.

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 EIS, RODs, EAs, Decision Notices, and FONSIs; consultation with other agencies; methods to document of impacts; 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. The appellant alleges Supervisor Brazell violated 40 CFR 1500.1(b) because he does not make "high quality" information "available to public officials and citizens before decision are made and before actions are taken." The appellant specifically alleges the EA does not contain modeling data or other information that shows sediment reduction activities (watershed restoration) will be greater than sediment generating activities (temporary roads and timber harvest).

Response: This was not requested in scoping, in comments, or under FOIA. Therefore the Responsible Official did not have the opportunity to supply the information to the appellant. The EA discusses the results of the equivalent clearcut area (ECA) calculations and the NEZSED model in the Water Quality section (EA, pp. 3-76 to 3-83). The analysis indicates the data and other information concerning ECA and NEZSED are in the project file. That information can be found in folder Q-Watershed of the project file. It was available to the Deciding Officer and is available to the public upon request. The analysis is in compliance with NEPA and the regulations at 40 CFR 1500.1(b).

Issue 8. The appellant alleges Supervisor Brazell violated 40 CFR 1506.6, and Executive Order 13274 because the EA contains an overly narrow Purpose & Need statement that renders <u>ALL</u> alternatives that do not include commercial logging nonresponsive to the P&N and ineligible to be analyzed in detail. The appellant alleges the project violates 40 CFR 1502.13 because providing timber is the overriding goal of the project.

Response: After review of 40 CFR 1506, Other Requirements of NEPA, Section 1506.6, I have determined this regulation applies to Public Involvement; it does not apply to the Purpose & Need. The public involvement process for the Iron Mountain project included listing in the Schedule of Proposed Actions, mailing out 192 scoping letters, a presentation and discussion

with the Nez Perce Tribe, a legal notice requesting public comments and responding to those comments in the DN (Appendix A), and updating the EA based on those comments (EA, pp. 1-4 to 1-5). I find the project and analysis are in compliance with 40 CFR 1506.6, which requires public involvement in the NEPA process.

The Purpose & Need for action and desired conditions for the project are based on Forest Plan goals, objectives, and standards, and issues identified through public involvement. The Purpose & Need for the Iron Mountain project are described in detail in the EA (pp. 1-1 to 1-3). The Purpose and Need includes four items: aquatic restoration, fuel reduction, vegetation improvement, and supplying goods & services. This is not an overly narrow Purpose and Need statement because there are various alternatives that could be developed and chosen which would meet the Purpose and Need. Moreover, the portion of the Purpose and Need concerned with goods and services is clearly keeping with the Nez Perce Forest Plan (p. II-1) which states, "The goals for the Nez Perce National Forest are to: 1. Provide a sustained yield of resource outputs at a level that will help support the economic structure of local communities and provide for regional and national needs." Basing the Purpose and Need in part on goals stated in the Forest Plan is in compliance with NEPA.

Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews, is primarily directed at the Department of Transportation, not the Department of Agriculture. The purpose of this executive order is to enhance environmental stewardship and streamline the environmental review and development of *high priority* transportation infrastructure projects, not deal with a few remote roads of the Nez Perce National Forest.

The analysis and project are in compliance with NEPA, the regulations at 40 CFR 1502.13 and 40 CFR 1506.6, and E.O. 13274.

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.

Pamela J Gardner

PAMELA J GARDNER
Deputy Forest Supervisor

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

United States Department of Agriculture
Forest Service
Region One
Northern Region
200 East Broadway
Missoula, MT 59802

File Code: 1570 (215)
#13-01-00-0043

Date: September 5, 2013

Dick Artley
415 NE 2nd Street
Grangeville, ID 83530

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
NUMBER: 7011 3500 0002 9934 3346

Dear Mr. Artley:

This is my decision on disposition of the appeal you filed regarding the Iron Mountain Vegetation Restoration Project Decision Notice (DN) on the Nez Perce Clearwater National Forests.

My review of your appeal was conducted pursuant to, and in accordance with, 36 CFR 215.18 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. I have reviewed the appeal record, including your arguments, the information referenced in the Forest Supervisor's August 2, 2013, transmittal letter, and the Appeal Reviewing Officer's analysis and recommendation (copy enclosed). The transmittal letter provides the specific page references to discussions in the DN and project file, which bear upon your objections. I specifically incorporate in this decision the appeal record, the references and citations contained in the transmittal letter, and the Appeal Reviewing Officer's analysis and recommendation.

The Appeal Reviewing Officer has considered your arguments, the appeal record, and the transmittal letter and recommends the Forest Supervisor's decision be affirmed and your requested relief be denied.

Based upon a review of the references and citations provided by the Forest Supervisor, I find the objections were adequately considered in the DN. I agree with the Appeal Reviewing Officer's analysis and conclusions in regard to your appeal objections. I find the Forest Supervisor has 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 Iron Mountain Vegetation 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,

Jane L Cottrell

JANE L. COTTRELL
Deputy Regional Forester

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