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Department of
Agriculture

Forest
Service

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File Code: 1570 (215)

Date: May 23, 2013

Subject: 1570 (215) A&L - ARO Letter - Glacier Loon Fuels Reduction and Forest Health Project DN - Flathead National Forest - Dick Artley - #13-01-00-0015

To: Appeal Deciding Official

This is my recommendation on disposition of the appeal filed by Dick Artley of the Glacier Loon Fuels Reduction and Forest Health Project Decision Notice signed by Flathead Forest Supervisor Chip Weber.

The Forest Supervisor's decision is to implement Alternative D, with modifications. The chosen alternative includes fuel reduction and forest health treatments on 1,405 acres, 1,159 acres of which are within the wildland urban interface (WUI) and 246 acres outside the WUI. There will be 5.9 miles of temporary road construction, which will be reclaimed following use, and 8.4 miles of additional road decommissioning. A site specific Forest Plan amendment would change 213 acres of land in Management Area 15 and 8 acres of land in MA 15C to MA 5 where the management emphasis is to maintain a pleasing natural appearing landscape in which management activities are not evident.

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, policies, and orders. The appeal record, including the appellant's appeal points 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 implementing regulations of the National Environmental Policy Act (NEPA) (40 CFR 1500 et seq.) and violation of the Noise Pollution and Abatement Act of 1970 (42 U.S.C. 7641). The appellant requests the Decision be withdrawn and a new alternative be added to the EA that obliterates the roads proposed to be decommissioned and applies the Cohen wildlife risk method in the WUI in lieu of fuels reduction logging. He also asks that only peer reviewed literature cited and listed in the EA's bibliography and a new 30-day comment period be held on the revised, pre-decisional EA. The Acting District Ranger offered to hold an informal meeting, but the appellant declined the offer. Therefore, no resolution of the issues was reached.



ISSUE REVIEW

Issue 1: The Responsible Official did not respond to any of the “opposing viewpoints submitted by the appellant during the formal 30 day comment period on the pre-decisional EA.” The Responsible Official responded to the appellant’s comments in Appendix 5. The appellant submitted Attachment #11. At pages 5-7 to 5-19 the Responsible Official quoted the opposing views contained in attachment #11 but did not respond. The Responsible Official gave no reason for not responding per 40 CFR 1502.9(b).

Response: The Responsible Official considered and used the research done by Dr. Cohen (EA, pp. 3-124 and 3-125, 3-129, 3-131 and 3-132). The Responsible Official did consider Mr. Artley’s Attachment 11. Attachment 11 states, “ANY NEPA Document that Analyzes Treatments to Reduce the Risk of Fire Damage to Homes Located in the WUI must analyze a Dr. Jack Cohen Alternative in Detail” (emphasis and capitals in original). Except for the concluding comments, the rest of Attachment 11 contains quotes from Dr. Cohen’s research. At the beginning of the Attachment 11 the Forest supervisor explains that the Forest Service does not have the authority to treat fuel on private property or determine appropriate construction materials as Cohen discusses in much of his research. Bottom line, the Forest Service could not legally implement such an alternative. At the end of Attachment 11 the Responsible Official responds to Mr. Artley’s request, stating, “In Chapter 3 of the EA on page 3-125, home ignitability as described by Cohen is discussed. The EA states from Cohen that ‘Because homeowner typically assert their authority for the home and its immediate surroundings the responsibility for effectively reducing home ignitability can only reside with the property owner rather than wildland agencies.’” The Forest Supervisor did respond to the appellant’s issue and his quoted responsible opposing view point, and in part used Dr. Cohen’s work and thoughts to design the project. The response to comments is in compliance with NEPA and 40 CFR 1502.9(b).

Issue 2: The bibliography section of the EA contains many documents that have not been peer-reviewed for “accuracy” and to “assure the information is ‘high quality.’” The documents do not represent “best science” as required by the 2012 Planning Rule. The 61 documents that appear in the bibliography section have not been peer reviewed.

Response: The Planning Rule 36 CFR 219 et seq. applies to developing, amending, and revising Land Management Plans (36 CFR 219.1), and clearly does not apply to analysis of projects (36 CFR 219.2(c)), except for the requirement that those projects to be in compliance with any newly developed, amended, or revised Plan (36 CFR 219.15). Therefore, the 2012 Planning Rule is not applicable to the Glacier Loon project. Beyond not being applicable to this project, the Planning Rule does not require peer reviewed documents (see 36 CFR 219.3, 219.6(a)(3)), and 219.14(a)(4)).

The NEPA regulations (40 CFR 1500 et seq.) do apply to this project. Title 40 CFR 1500.1(b) and 1502.24 does require the information used in environmental analyses be of high quality and the scientific analysis be accurate. However, there is no requirement that all cited literature be peer reviewed. The analysis is in compliance with NEPA.

Issue 3: The Responsible Official violates 40 CFR 1508.8 and 16 U.S.C. Sec. 1604(g)(3)(E)(iii) because the project increases sediment and stream temperature and inadequately considers their cumulative effect. The conclusion that sediment is “short term” is unsubstantiated. “Short-term” should be demonstrated with reasoning, historical empirical evidence, or monitoring data to support the claims.

Response: As discussed in the EA (pp. 3-157 to 3-177) and the DN (pp. 22 to 24 and Appendix 5, pp. 5-87 to 5-88) sedimentation due to the project is minor. Impacts to the native fish population are due to other fish species. The small amounts of sediment from the project are not expected to affect westslope cutthroat trout and bull trout, and the project does not impact any critical habitat in a negative manner. Since there would not be any harvest within INFISH buffers the amount of streamside shading would not change. Therefore, water temperature would not be impacted by the project (PF, Doc. N-10). As a result, there is no adverse effect to water conditions or fish habitat. With no effect from sediment and no change in temperature from the project there are no cumulative effects. The project is in compliance with NEPA and NFMA.

Issue 4: The Responsible Official has violated 40 CFR 1508.3 and 40 DFR 1502.16 because he plans to apply herbicides as part of the project. The NEPA document must analyze and disclose the effects of herbicides which might cause Honeybee Colony Collapse Disorder.

Response: The Responsible official does not make a decision to apply herbicides as part of the Glacier Loon project. As pointed out in the Decision Notice (p. 32), the application of herbicides is being done under the decision authority of the Flathead National Forest Noxious and Invasive Weed Control EA and DN (May, 2001).

I reviewed the references about honeybee colony collapse disorder the appellant supplied with this appeal point. With the exception of a few very questionable write-ups about the herbicide Round-up which have unsupported sources, the references point to insecticides, not herbicides, as a potential factor in honeybee colony collapse. The Forest is using herbicides, not insecticides to deal with the weed problem. I also find it interesting that the appellant asks the Forest Service to consider and use these references he supplied after also appealing the project because he claims the references the Forest use had “not been peer-reviewed for ‘accuracy’ and to ‘assure the information is ‘high quality,’ [and] The documents do not represent ‘best science’ as required by the 2012 Planning Rule”. For the most part, the documents he supplied are not peer-reviewed and many of them are of questionable veracity.

The appellant’s comment letter on the Glacier Loon project did not raise the concern of herbicides causing honeybee colony collapse disorder. He did not put the agency on notice of his concerns on this issue. 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 an issue or concern does not give the Responsible Official an opportunity to consider the impacts of the project in light of public concerns. Due to the fact the appellant did not bring his concern to the

attention of the Responsible Official at the appropriate time, I will not consider the appeal point on honeybee colony collapse disorder.

Issue 5: The Responsible Official has violated 40 CFR 1500.1(b) because the EA does not analyze how the project will affect climate change.

Response: The appellant's comment letter on the Glacier Loon project did not raise the concern of climate change. He did not put the agency on notice of his concerns on this issue. 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 an issue or concern does not give the Responsible Official an opportunity to consider the impacts of the project in light of public concerns. Due to the fact the appellant did not bring his concern to the attention of the Responsible Official at the appropriate time, I will not consider the appeal point on climate change. I will point out, however, the project did consider climate change (EA, p. 1-4 to 1-5, 3-95, and 3-186; DN, Appendix 5, pp. 5-115, 5-119, 5-126, 5-129, 5-130 and 5-144; PF, Docs. D-1, pp. 17 and 18, and T-16).

Issue 6: The Responsible Official has violated Title I, Section 102(C) [42 USC 4332] 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 EA (p. 3-412) does discuss probable environmental effects that cannot be avoided. The analysis is in compliance with NEPA.

Issue 7: The Responsible Official has violated 40 CFR 1505.2 because the EA for the Glacier Loon 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 specifically applies to the Record of Decision in cases requiring Environmental Impact Statements. The Glacier Loon project is documented in an EA and Decision Notice with a FONSI. Therefore 40 CFR 1505.2 does not apply to this project and its environmental documents. The analysis and documentation is in compliance with NEPA.

Issue 8: The Responsible Official has violated 40 CFR 1507.2 because the EA for the Glacier Loon 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: 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... It is incumbent upon a project analysis to identify methods and procedures. However, those methods and procedures have been developed, and they include (for example) the development of EAs, Decision Notices, and FONSI; consultation with other agencies; methods to document impacts; procedures to inform and involve the public. The project has followed the methods and procedures the agency, in consultation with CEQ has developed. The analysis and project is in compliance with NEPA.

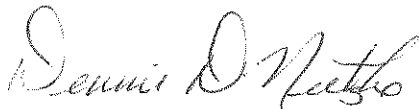
Issue 9: The Responsible Official has violated 42 USC 7641, because the noise and dust created by logging was not mentioned in Chapter 3 of the EA.

Response: Title 42 U.S.C. 7641(c) Abatement of Noise from Federal Activities states "In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the [EPA] Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise." There is no indication the EPA Administrator has made any determination about the Glacier Loon project. The project is in compliance with 42 USC 7641.

No one commented on noise impacts to humans, but the Glacier Loon project did analyze the impacts of logging to threatened and endangered species (DN, pp. 24 to 28, 34 to 38; EA, pp. 3-220 to 3-241, 3-247 to 3-264; PF, Doc. H-19, pp. 13 to 39). The analysis is in compliance with NEPA and ESA.

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.



DENNIS D. NEITZKE
Grasslands Supervisor

