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File Code: 1570
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Date: September 4, 2013

Subject: 1570 (215) A&L - ARO Letter - Roadside Hazard Tree Removal Project - Nez Perce National Forest - FOCW - #13-01-00-0046

To: Appeal Deciding Official

This is my recommendation on disposition of the appeal filed by Gary McFarlane of Friends of the Clearwater of the Nez Perce Roadside Hazard Tree Project Decision Notice signed by Nez Perce-Clearwater Forest Supervisor Rick Brazell. While Mr. McFarlane's appeal includes Alliance for the Wild Rockies, comments were only received through Mr. McFarlane's correspondence.

The Forest Supervisor's decision involves removal of fire-affected trees that pose a hazard along approximately 38 miles of forest road within the 2012 Sheep and McGuire Fire perimeters. Hazard trees would be removed up to 200 feet on either side of the road. The purpose and need is to allow forest visitors and workers safe passage in the area and eliminate repeated clearing of downed snags from roadways. The value of merchantable logs is meant to be applied to offset the cost of implementation.

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 below.

The appellant(s) allege(s) violations of the National Environmental Policy Act (NEPA), Multiple Use Sustained Yield Act (MUSYA), the Endangered Species Act (ESA) and the Clean Water Act (CWA). The appellant(s) request(s) a withdrawal of the Decision Notice, and prepare an EIS. If the Decision is not rescinded, the appellant requests avoiding roadless areas and roads closed to the public. An informal disposition meeting with the appellant was conducted August 13, 2013. No resolution to the appeal was reached.

ISSUE REVIEW

Issue 1: The Forest Service has violated NEPA by not preparing an EIS for this project.

Contention A: Logging in roadless areas is a significant federal action and an irreversible commitment of resources that requires the preparation of an EIS. In violation of NEPA and

the Idaho Roadless Rule, the EA does not adequately look at impacts to the roadless areas.

Response: The appellant asserts a violation of the NEPA. 40 CFR 1508.27 defines significance and how context and intensity of an action must be considered. Context and intensity of the 6.3 miles of road to be treated is revealed on pages 14 to 17 in the Nez Perce Roadside Hazard Tree Project Decision Notice (DN) and Finding of No Significant Impact (FONSI), with rationale stated for context and for the 10 factors of intensity. The Nez Perce-Clearwater Roadside Hazard Tree Project Environmental Assessment (EA, pp. 69 to 71) looks at impacts of hazard tree removal to three roadless areas on the Nez Perce National Forest. Natural integrity and undeveloped characteristics are considered for this activity that occurs along an existing roadway, as are the opportunities for experience, special features, and manageability. Consistency with the Idaho Roadless Rule is described on EA pp. 8 and 71, DN pp. 1 and 14 to 18, and in Appendix B Response to Comments pp. 7 to 9. The Idaho Roadless Commission considered this project and agreed that activities adhere to, and meet the intent of, the Idaho Roadless Rule. (See PF, Doc. 02_0016, p. 13, 14. Idaho Roadless Commission Meeting - Project Briefing Notes).

The EA supports the FONSI, and the action is in compliance with the Idaho Roadless Rule. An EIS is not required.

Contention B: Incrementally, logging roadless areas violate NEPA's requirements for cumulative impact analysis.

Response: The appellant contends the project is logging a roadless area and violates NEPA. The Decision being appealed allows for road maintenance activities that involve cutting hazard trees that present a risk to human safety (DN, p.1). This cutting, sale, or removal of timber is allowed in IRAs designated as Backcountry Restoration "where incidental to the implementation of a management activity not otherwise prohibited.." (36 CFR 294.24(c)).

Regardless, cumulative effects for roadside hazard tree removal are considered in multiple areas of the EA, DN and PF. Appendix C of the EA is the analysis for cumulative effects and includes consideration of past, present and reasonably foreseeable actions. Further, cumulative effects are considered in the EA for each resource, with a discussion specific to roadless on page 70. Project File Document 07a_0002 is the description of past, ongoing, and proposed management activities, and Document 07ha_0001 is the roadless and unroaded report.

Cumulative impact analysis was carried out for the project.

Issue 2: The EA inadequately analyzed roads.

Contention A: Before logging along roads, the agency needs to determine whether the roads are needed. Roads should be prioritized for retention before any decision.

Response: The appellant characterizes the project as logging and contends the agency should determine if the roads in the Decision are needed. The Nez Perce Forest completed a Forest-wide analysis to implement the Travel Management Rule (DN, p. 24) and determined the desired transportation system. As stated, the FEIS and ROD are expected to be released in 2014. Road decommissioning is outside the scope of the immediate purpose and need to provide for public

and employee safety (EA, pp. 6 to 7).

Contention B: There is no logical justification for logging along the roads that are closed to wheeled vehicles. The idea that roads restricted to snowmobile use need to be cleared is illogical given the fact that all of the surrounding terrain is also open to snowmobile use.

Response: The appellant contends only roads that are open to wheeled vehicles need to have hazard trees removed. As described in the response to the appellant's comment in DN Appendix B, pp. 9 to 10, certain roads are designated as administrative use, and the concern for safety from falling snags extends to agency employees as well as the motoring public.

Issue 3: The rejection of alternatives violates NEPA. There is no range of alternatives to meet concerns.

Response: The appellant contends there is an inadequate range of alternatives. Alternatives C and D were developed in response to concerns for roadless areas and to widths of treatment areas (EA, pp. 4, 5, 9, and 14). As described in the rationale on EA p. 14, these alternatives were analyzed and dropped from further consideration because road maintenance requires felling hazard trees where they occur on travelways, regardless of being in or out of a roadless area, and because OSHA dictates treatment widths. Also see Response to Comments (comment #6) in Appendix B of the DN.

An adequate range of alternatives were analyzed and there is no violation of NEPA.

Issue 4: In violation of NEPA, the EA failed to analyze the loss of old growth in the areas to be harvested.

Response: The appellant contends the "loss of old growth" was not analyzed. Effects of felling hazard trees were analyzed and this is displayed on pages 16 to 18 of the EA. Design features include that for any stand still retaining old growth stand characteristics post-fire, hazard trees would be felled and not removed (EA, pp. 11 and 13; DN, p. 6, and Appendix B at comment #43). Verified old growth stands in relation to hazard tree removal units were assessed (PF, Doc. 01b_0008). In the McGuire Fire area, units intersect 16 acres of pre-fire validated or replacement old growth (see map at PF Doc. 09a_0004). In the Sheep Fire, 41 acres are pre-fire validated or replacement old growth (see map at PF Doc. 09a_0005). Hazardous snags will be felled in a very small area in the context of the landscape, and the effect will be negligible in relation to available snag habitat across the burned area(s).

An old growth analysis is included in the silviculture report at PF, Doc. 07ba_0001, p. 8, 9, 15-19, 25. Consistency with the Nez Perce Forest Plan is addressed on page 11 of the DN.

There is no violation of NEPA.

Issue 5: In violation of NEPA, the EA does not analyze or disclose to the public the amount of detrimentally disturbed soils. The existing data show severe problems on some of the units

and clear violations of the regional soil standards.

Response: The appellant contends the EA does not analyze or disclose the amount of detrimentally disturbed soils, in violation of NEPA. On the contrary, Table 5 in the EA on pp. 23 and 24, entitled "Detrimental Soil Disturbance" (DSD) discloses existing DSD, DSD expected from the activity, and resulting DSD when mitigated. The Nez Perce Forest Plan allows felling but not removal in any unit with a field-verified DSD exceeding 20 percent (DN, pp. 8 and 11; Appendix B comment #26). However, field transects taken in early July in the Sheep and McGuire Fire areas confirmed no units exceed 20 percent, although mitigation measures will be taken in five units (PF, Doc. 01b_0009). Design features 18 through 29 will result in net decreases for any units between 15 and 20 percent (DN, pp. 5 to 6).

Issue 6: The EA has inadequate information on watersheds. Projections about recovery are speculative and not verified by on-the-ground data.

Response: The appellant asserts the watershed analysis is inadequate, and that recovery projections are speculative. It is discussed on EA page 27 that the rate of sediment yield recovery post-wildfire is highly variable and depends upon burn severity, exposed soils, percentage of vegetation killed by fire, proportion of basin burn, precipitation regime and rate of vegetative recovery. It is unclear to what projections the appellant is referring. The BAER hydrologist's report is based on numerous scientific references (PF, Doc. 07db_0017; also see Doc. 08_0027). The model NEZSED was used to estimate sediment yield. Regardless, in the McGuire and Sheep Fire project area, hazard trees are to be removed on a very small percentage of the two watersheds, respectively, creating nearly non-existent effects to the watershed (EA, pp. 25 to 32; also see discussion on context and intensity in response to Issue 1).

Issue 7: In violation of NEPA and the ESA, the EA inadequately addresses lynx. The EA notes lynx may be affected by this project. However, it does not evaluate the adequacy of the NRLMD and it does not discuss the recent federal court decision in Montana that affects lynx and how the agency is supposed to deal with lynx habitat.

Response: The appellant asserts the analysis for Canada lynx is inadequate because it does not address the designation of critical habitat and the adequacy of the Northern Rockies Lynx Management Direction.

A Biological Assessment was completed for Canada lynx for the project and is included in the DN as Appendix A. This was submitted to the US Fish and Wildlife Service, and a concurrence letter was received from USFWS, also included in Appendix A. As pointed out in the BA and the response to the appellant's comment on DN Appendix B (#40), the recent court decision in *Salix v. USFS* involved designated critical habitat. There is no designated critical habitat for Canada lynx on the Nez Perce National Forest (BA, p. 10). Standards in the NRMLD are completely applicable for any potential lynx, foraging, denning or travel habitat in the project area (BA, p. 20).

The decision is in compliance with NEPA, ESA, and NRLMD (EA, pp. 8, 41 to 46; DN, pp. 15 to 19).

Issue 8: The EA violates the ESA by dismissing grizzlies even though one was recently killed near the project area.

Response: The appellant contends a violation of ESA because effects to grizzly bear were not analyzed. The response to the appellant's comments #41 and #45 in DN Appendix B discloses that the Fish and Wildlife Service does not list Idaho County as occupied by grizzly bears. The wildlife report includes grizzly bear (PF, Doc. 07ia_0003, pp. 7, 9, 45, 47, and 49) and why an effects analysis for grizzly bear is not considered necessary.

The EA does not violate ESA.

Issue 9: This project, despite its name is a salvage logging project. The attached Forest Service document shows this to be clearly the case.

Response: The appellant is of the opinion the objective of the project is to salvage log. The appeal attachment referred to, under the heading FLT Decisions, states that only roadside salvage opportunities related to public and employee safety will be pursued. Page 3 of the EA clearly states the "Merchantable value of logs removed could be used to offset the service cost of mitigating the hazards in these areas". This is reaffirmed on page 1 of the DN. The primary purpose remains public and employee safety, obtained by removing roadside hazard trees.

Recovering value from some of the felled hazard trees/snags does not represent a violation.

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: Norma Staaf, Tammy Harding, Rick Brazell, Ray G Smith, Allen Byrd