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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 - Clearwater National Forest - FOCW - #13-01-00-0045

To: Appeal Deciding Official

This is my recommendation on disposition of the appeal filed by Gary McFarlane of Friends of the Clearwater of the Clearwater 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 6.3 miles of forest road within the 2012 Fern Fire perimeter. 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 If the Decision is not rescinded, the appellant requests avoiding roadless areas and roads closed to the public.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 14-17 in the Clearwater 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 Environmental Assessment (EA, pp. 70, 71) looks at impacts of hazard tree removal to the North Fork Spruce-White Sands Roadless Area on the Clearwater 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. 6 to 8. 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: The Clearwater National Forest Plan requires that adequate NEPA (meaning an EIS, given the level of analysis) be done prior to development of roadless areas. There are several requirements that must be met before developing roadless areas (forest plan II-20 and 21).

Response: The appellant asserts a violation of the Clearwater Forest Plan regarding roadless areas designated for development. This project does not involve developments in inventoried roadless areas. It involves road maintenance actions on an existing road in an IRA. Response to the appellants comment on page 8 of DN Appendix B describes how the action is incidental and permissible in Idaho Roadless Areas. The Forest Plan (p. II-33) calls for road maintenance with a priority of user safety, which is in alignment with this project. Therefore, there is no violation of Forest Plan.

Contention C: 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 Clearwater Forest completed a Forest-wide analysis to implement the Travel Management Rule (DN, p. 24). Road decommissioning is outside the scope of the immediate purpose and need to provide for public and employee safety (EA, p. 6).

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, p. 9, 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. 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 #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). Fern Unit 4 is displayed in EA Appendix A and appears to be the only previously mapped old growth stand to have burned with moderate severity, compared to Units 1, 2, and 5 in low severity. Unit 4 has a greater likelihood of needing more trees felled; however, at a small fraction of the 11 acre unit the effect is negligible across the Fern Fire area (see old growth map at PF, Doc. 09a_0003 and Doc. 01b_0008).

Forest Plan consistency for old growth is documented at PF, Doc. 07bb_0011, p. 1; and old growth analysis is included in the silviculture report at PF, Doc. 07ba_0001, p. 8, 9, 15-19, 25.

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 Clearwater Forest Plan allows activity in units over the 15 percent soil quality standard as long as an improvement in soil conditions can be achieved (DN, pp. 8 and 11). However, field transects taken in early July for Fern Unit 6 revealed 3.3 percent high burn severity, contrary to the satellite reflectance values modeled by the Burned Area Emergency Rehabilitation (BAER) team and reported in the EA (PF, Doc. 01b_0011). This 3.3 percent figure appears in hazard tree field verification summaries at PF Doc. 01b_0009 and 0010.

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). Regardless, in the Fern Fire project area, hazard trees are to be removed on 0.6 percent of the entire drainage area, 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 pages 19 to 20, the recent court decision in Salix v. USFS involved designated critical habitat. There is no designated critical

habitat for Canada lynx on the Clearwater National Forest.

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 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