



United States
Department of
Agriculture

Forest
Service

Region 1

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File Code: 1570 (215)

Date: February 26, 2001

Route To:

Subject: Foothills TS and Associated Activities DN, Appeal #01-01-00-0025,
Kootenai NF

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Jeff Juel on behalf of The Ecology Center, Inc.; The Lands Council; Alliance for the Wild Rockies; and Forest Conservation Council protesting the Foothills Timber Sale and Associated Activities Decision Notice (DN) signed by the Fortine District Ranger, Kootenai National Forest.

The District Ranger's decision adopts Alternative B1, with modifications. The selected action authorizes the harvest of approximately 2.1 million board feet of timber [5,190 hundred cubic feet (CCF)] from 1,064 acres using intermediate harvest techniques. Approximately 591 acres of the thinned areas will also be underburned following harvest to reduce fuel accumulations. Road reconstruction and re-alignment to meet Best Management Practice (BMP) standards and increase safety or protect resource values will take place along 4.6 miles of road.

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 appellants' 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 appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Administrative Procedures Act (APA), the Kootenai Forest Plan, and the Endangered Species Act (ESA). The appellants request a remand of the DN. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. Failure to consider impacts to soil resources, in violation of NEPA and NFMA.

Contention A: The Fortine District failed to undertake actual on-site soil surveys. The monitoring plan included in the EA fails to make any commitments to monitor the post-project cutting unit soils.

Response: The Environmental Assessment (EA) describes the landtype mapping that was conducted for the Kootenai National Forest, including the Foothills project area. The process used to assess existing soils condition is described in the project file (Vol. 3, Doc. 172), which also includes a unit-by-unit evaluation of existing and anticipated soil impacts (Vol. 3, Doc.



173). Appendix A of the EA describes the management features and design criteria (mitigation measures) that will be implemented for the project; these include meeting BMPs. The EA also discusses the soils monitoring that has occurred on the District since 1992 that indicates that no units of any harvest prescription have exceeded the Forest Plan 15 percent detrimental disturbance limit (EA, p. III/IV-5).

Contention B: The EA failed to adequately determine whether project mitigation measures applied to sensitive soils will be capable of allowing for compliance with the Forest Plan, NEPA, and NFMA.

Response: As disclosed in the EA (p. III/IV-5) and soils specialist report (Project File, Vol. 3, Doc. 167, p. 5), no activities will take place on landtypes with limitations on ground-based equipment. Appendices A and B of the EA describe the management features, design criteria, and BMPs to be implemented with the project.

Issue 2. The failure of the EA to adequately analyze impacts on lynx violates the Forest Plan as amended by the Lynx Conservation Agreement and Strategy (LCAS), NFMA, NEPA, and the ESA.

The appellants contend that the EA and Biological Assessment (BA) fail to adequately analyze potential impacts on lynx and also fail to consider habitat connectivity as required by the LCAS.

Response: The EA and BA disclose that the "...project area lies entirely below 4,000 feet in elevation and therefore does not support suitable habitat for the lynx" (EA, p. III/IV-40; BA, p. 7). Delineation of Lynx Analysis Units (LAUs) and connectivity between them followed LCAS direction. The U.S. Fish and Wildlife Service (USFWS) concurred with the conclusion that the project would have no effect on lynx (Project File, Vol. 5, Doc. 273).

Issue 3. The KNF's failure to incorporate scientific findings for snag guidelines and to meet Forest Plan snag guidelines are violations of the Forest Plan, NFMA, and NEPA.

The appellants contend that there is insufficient information on snag habitat in the project area and that the modeling used to assess snag habitat is unsound. They also believe the EA relies upon false premises by stating the logging will not result in any loss of snag habitat.

Response: The EA discusses snags and associated habitat on pages III/IV-36 through 39. Additional information on snags is contained in Volume 4 of the project file. This issue was also addressed in Appendix A, Response to Comments, which states that snag data was collected from 1991 to 1999 and applied to the Northern Region Snag Management Protocol. The response goes on to conclude that "... the snag levels estimated by VRU based on the Fortine District data, and the Northern Region Protocol are similar, and show that the District has more snags per acre than what was estimated when using Forest Plan Snag Standards and Guidelines" (DN, Appendix A, p. 6).

Available snag habitat (ASH) is discussed in the EA (p. III/IV-36) and the model used to calculate ASH is described in the project file (Vol. 4, Doc. 242). Documentation in the EA and project file indicate that the analysis considered the best scientific information available.

The District conducted random sampling of managed but not regenerated stands associated with the Swamp-Edna Timber Sale and identified snag levels in excess of 2.25 snags per acre (100 percent ASH level related to Forest Plan snag standard). Snag data (supplemental plots) have been collected since 1991 and show an average of 6.2 snags per acre in managed stands (Project File, Vol. 4, Doc. 255). Based on this information, it is reasonable to conclude that even though the proposed actions may cause the loss of some snags, overall snag habitat will be maintained.

Issue 4. The KNF's failure to meet Forest Plan old growth guidelines is a violation of the Forest Plan, NFMA, and NEPA.

The appellants contend that the EA failed to document and disclose criteria used to identify old growth in the Foothills project area. They believe that the Fortine District has allocated old growth to areas that are not really old growth.

Response: The methodology used to delineate old growth habitat is described in the project file (Vol. 4, Doc. 259). The EA discloses the amount and distribution of old growth habitat and states that the Forest Plan standards for old growth will be met. There are no management activities proposed in designated old growth habitat. Supporting documentation for the old growth analysis is contained in the project file (Vol. 4, Docs. 258-272).

Issue 5. The KNF's failure to monitor MIS species is a violation of the Forest Plan, NFMA, and NEPA.

The appellants object to the Forest Plan identifying pileated woodpecker as sole old growth-indicator species lacks scientific basis. They also contend that the Kootenai National Forest has failed to monitor population trends of its management indicator species (MIS).

Response: Identification of MIS is a Forest Plan issue beyond the scope of this project. The EA discloses the effects of the project on pileated woodpecker habitat in Chapter III/IV (pp. 85-87). The EA also identifies the northern goshawk and fisher as species closed related to late seral stands and discloses the effects to those species (EA, pp. III/IV-61 thru 65). Monitoring of cavity habitat and pileated woodpecker was adequately addressed in response to comments on the EA (DN, Appendix A, p. 7). As documented in the FY 1999 Forest Plan Monitoring Report with regard to old growth validation "...154 of the 255 compartments (60 percent) have been completely and partially reviewed and also shows that much of the unsurveyed areas are in wilderness, proposed wilderness, and areas with very little Forest Service ownership. Accordingly, we are confident that the Forest is meeting old growth direction" (Project File Vol. 16, Doc. 667).

The appellants challenged the Forest on the monitoring program in court in 1996. The Ninth Circuit Court of Appeals found that, "The record demonstrates that the Forest Service performed

extensive monitoring and provided detailed reports recounting its observations” (Project File, Vol. 16, Doc. 653).

Issue 6. The purpose and need has inadequate basis.

The appellants contend that the alternatives fully analyzed do not span a reasonable range, in violation of NEPA. They also state that there is no quantitative information in the EA to support the claims that the forested areas to be cut and burned are denser than the alleged historical range, and thus reflects a forest out of balance.

Response: An EA must “rigorously explore and objectively evaluate all reasonable alternatives” [40 CFR 1502.14(a)]. The courts have established that this direction does not mean that every conceivable alternative must be considered, but that selection and discussion of alternatives must permit a reasoned choice and foster informed decision making and informed public participation. Chapter II of the EA describes how comments received from the public were used to identify issues and develop alternatives. The EA describes four alternatives analyzed in detail. The appellants request for a restoration-only alternative was addressed in the response to comments (DN, Appendix A, p, 12).

The Responsible Official has the discretion to determine the purpose and need for a project proposal. The NEPA implementing regulations state the NEPA document shall “briefly specify the underlying purpose and need to which the agency is responding...” (40 CFR 1502.13). The Forest has provided information on the project to support the stated purpose and need. In addition, the purpose and need relates to Forest Plan management direction.

The vegetation section of the EA describes the existing and historic conditions of the project area. The discussion of historic conditions is based on extensive scientific literature referenced in the project file (Vol. 2, Docs. 137 and 148). Current conditions were compared to historic and desired conditions to help identify management strategies.

Issue 7. Economics

The appellants contend that in failing to disclose an accurate cost/benefit analysis based upon current market conditions, the EA provides extremely misleading economic information to the public, a violation of NEPA. They also contend that the KNF did not meet the substantive requirements regarding economic analysis set forth in NFMA.

Response: The EA discusses the basis for costs and revenues and explains how the economic analysis was conducted (EA, pp. III/IV-112 thru 114). The analysis used the most recent appraisal equation available in determining revenues, costs, present net value and benefit cost ratios. The project file contains all the supporting information and details for this analysis (Project File, Vol. 10, Docs. 592-599).

The Forest Plan included an analysis of the Forest's timber sale program, which will also be conducted during Forest Plan revision. Analysis of timber sales across the Region or on the National Forest System as a whole is beyond the scope of this project.

Issue 8. Analysis of the fire issue violates NEPA and NFMA.

The appellants make several allegations with regard to this issue but the underlying issue is that the EA and DN fail to address a growing body of scientific knowledge and practical experience on the part of the Forest Service, which demonstrate that logging does not help prevent wildfire and often actually increases wildfire risks, in violation of NEPA and NFMA requirements.

Response: The EA discusses in detail the ecological effects of fire suppression and incorporates those impacts into the purpose and need for the project (EA, pp. III/IV-11, 14-17, 34-35, 37, 39, 57-59, 79, 87; DN, p. 10). The analysis of harvest treatments and fire risk documented in the EA is supported by several scientific studies referenced in the project file (Project File, Vol. 3, Docs. 224, 217, and 213). The District Ranger acknowledges "... that some critics of forest management are skeptical that such harvest treatments actually reduce fire risk. Our experience and that of many forest scientists indicates that these risk reductions are real" (DN, p. 11). Additional supporting documentation is contained in the fire and air quality section of the project file (Vol. 3).

Issue 9. The cumulative effects analysis for water quality is inadequate.

The appellants contend that the water quality analysis is not adequate because the WATSED model was not used properly nor has it been validated. They contend that the KNF has failed to adequately monitor impacts on water quality and fisheries, as the Forest Plan requires. Finally, they state that there is no rational basis for the Fortine District's use of the "less than 20% canopy removal = no increase in water yield" assumption.

Response: As discussed in a memo from the Forest Hydrologist, WATSED is an analysis tool that is used to model existing and predicted channel response to Forest practices. Based on his experience with the model over the years, he has found that "...interpreted model information has pretty accurately reflected channel conditions" (Project File, Vol. 3, Doc. 200). Forest Plan monitoring of stream flow, channel morphology, and sediment levels at permanent monitoring sites throughout the District is also being done so that the model can be validated (FY 1999 Monitoring Report, Project File, Vol. 16, Doc. 667, p. 70). The EA explains that the WATSED model was used to estimate existing peak flow increase in the project area (EA, p. III/IV-26). The model was not used to show differences between the alternatives because all proposed activities are intermediate harvests removing less than 20 percent of the forest canopy. The EA discloses "Increases in peak flow would not be expected when crown removal in harvest units is limited to 20 percent of the original canopy" (EA, p. III/IV-28). Supporting information for this conclusion is found in the project file (Vol. 3, Docs. 195 and 199).

Issue 10. The analysis for native trout is in violation of NEPA, the ESA, NFMA, and the Forest Plan.

The appellants contend that the EA does not include analysis of riparian management objectives (RMOs) as required by the Forest Plan as amended by INFISH. Watershed impacts associated with roads in the project area are not adequately addressed and the EA fails to disclose the impacts of all roads that are not meeting BMP standards. They contend that the EA fails to

incorporate a transportation plan as required by INFISH. Finally, they contend that the Fortine District failed to complete adequate cumulative effects analysis for bull trout in Therriault Creek, the project area, and the Tobacco River.

Response: The BA describes Forest Plan standards as related to INFISH (Project File, Vol. 8, Doc. 492, p. 6) and the EA states that all alternatives follow INFISH direction (EA, p. III/IV-96). The EA discloses that no harvest activities will occur in Riparian Habitat Conservation Areas (RHCAs) (EA, III/IV-97) and that reconstruction of road 7113A to remove it from the Therriault Creek RCHA is expected to reduce sediment delivery in the long term (EA, pp. III/IV-29 to 30). Analysis of RMOs is not required when the project will not change or prevent the attainment of RMOs. The transportation plan is located in the project file (Vol. 9, Docs. 576-577).

The EA and BA adequately disclose the direct, indirect, and cumulative effects on bull trout (EA, pp. III/IV-95 to 97; BA, pp 15-21). The USFWS concurred that the project is not likely to adversely affect bull trout (Project File, Vol. 5, Doc. 273).

Issue 11. NFMA and NEPA violations regarding sensitive species.

The appellants contend that the combination of project impacts, inadequate EA analyses, and lack of conservation strategies means that the Kootenai National Forest cannot assure that viable populations of sensitive species are being maintained.

Response: Population viability is addressed in the EA by looking at key habitat components such as forage and cover, nesting, denning, feeding habitat, and predation risk (EA, pp. III/IV-54 through 78). Supporting documentation is in the sensitive species section of the project file (Vols. 7-8). The District conducted a thorough analysis of cumulative effects and population viability as required by regulations (36 CFR 219.19). The issue of population viability analysis was an argument presented in litigation regarding the Upper Sunday Timber Sales on the Kootenai National Forest, Montana. On July 6, 1995, Judges Charles C. Lovell of the U.S. District Court of Montana ruled "that the Forest Service did conduct a reasonably thorough analysis of the cumulative impacts of the project and an adequate analysis of population viability issues as required by regulation." The finding continues with, "Neither is it plainly erroneous or inconsistent with regulation for the Forest Service to strive to maintain viable populations of species by focusing on the critical habitat requirements of sensitive, threatened, and endangered species within and without the Decision Area." On July 3, 1996, the 9th Circuit Court of Appeals affirmed the District Court Summary Judgement. The viability analysis is adequately disclosed through the habitat analysis.

Issue 12. The Foothills EA and DN fail to comply with NEPA's requirements that cumulative effects from the adjacent Burma-Sinclair project be analyzed.

The appellants contend that the EA does not adequately consider cumulative effects from the Burma-Sinclair project or from past, present or foreseeable activities on private lands.

Response: The EA adequately discloses the cumulative effects of all activities in the project area, including the Burma-Sinclair project and activities on private lands (see the transmittal letter for specific page references). The analyses disclosed in the EA are supported by

information contained in the cumulative effects worksheets for each resource area (see the transmittal letter for specific page references).

RECOMMENDATION

I recommend the District Ranger's decision be affirmed and the appellants' requested relief be denied.

/s/ Galen B. Hall

GALEN B. HALL
Reviewing Officer
Regional Budget Officer