



File 1570 (215)  
Code:  
Route  
To:  
Subject: Clay-Beaver Timber Sale DN, Appeal #99-01-00-0168,  
Kootenai NF, Three Rivers Ranger District  
To: Appeal Deciding Officer

Date: September 17, 1999

This is my recommendation on disposition of the appeal filed by Mike Wood on behalf of Alliance for the Wild Rockies and The Ecology Center protesting the Clay-Beaver Timber Sale Decision Notice (DN) signed by the Kootenai National Forest Supervisor.

The Forest Supervisor's decision adopts commercial thinning and regeneration harvest on 1,483 acres producing about 7.4 million board feet of wood fiber and precommercial thinning on an additional 751 acres. Six temporary roads ranging from 0.2 to 0.4 miles will be built and then decommissioned following project completion. Some currently restricted roads will be opened and available for motorized public access during timber harvest. To meet grizzly bear standards, an equivalent number of road miles will be restricted during this time.

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 have not 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), Administrative Procedures Act (APA), and Endangered Species Act (ESA). The Appellants request the decision be withdrawn and the significant deficiencies corrected. The Kootenai National Forest must: 1) meet the requirement of NEPA regarding the Interim Grizzly Bear Access Management Rule Set; 2) revise the grizzly bear effects analysis; 3) expand the scope of the grizzly bear cumulative effects; 4) prepare an EIS; 5) bring the project into compliance with the 1995 grizzly bear Incidental Take Statement; 6) fulfill the requirements of Section 7 and 9 of ESA; and 7) demonstrate how the project will comply with NFMA viability requirements.

On August 17, 1999, Three Rivers District Ranger, Michael L. Balboni, contacted the Appellants by phone and extended an offer to meet in order to resolve the issues contained in the appeal. The Appellants declined to meet.

## ISSUE REVIEW

### **Issue 1: The Interim Grizzly Bear Access Management Rule Set should have undergone NEPA analysis and public review prior to adoption by the Forest.**

Response: The Selkirk/Cabinet-Yaak Grizzly Bear Ecosystem Interim Road Management Strategy (Project File [PF], Volume 33, page 3) states, "NEPA and Section 7 compliance will be achieved by preparing a NEPA document and biological evaluation/assessment and biological opinion, if required, on individual Forest projects which serve to implement the interim guidance for access management."



The Kootenai National Forest scoped the public on specific road closures required to implement the 70 percent grizzly bear habitat effectiveness in the bear management units (PF, Vol. 5, Doc. 65). In his December 3, 1998, scoping letter District Ranger Michael Balboni stated, "the proposal is consistent with the Kootenai Forest Plan overall objective for...grizzly bear habitat. However, a thorough examination of all standards and guidelines will be necessary to determine if modification to proposed actions, or other actions, are required." He requested that comments and questions about the project be submitted to the District. The Environmental Assessment (EA) displayed the direct, indirect, and cumulative effects of the project on grizzly bear (pp. 3-96 to 3-102). The Deciding Officer, Forest Supervisor Bob Casteneda, responded to comments on the EA's grizzly bear analysis (PF, Vol. 6, Doc. 122, pp. 47 to 52). The site-specific, project-specific adoption of the Interim Grizzly Bear Management Rule went through the necessary NEPA process to be implemented in the Clay-Beaver project area. The Deciding Officer found "the actions and activities contained in the selected alternative and its project-specific amendment is consistent with Forest Plan direction for the Clay-Beaver project area" (DN, p. 18).

**Issue 2: The cumulative effects analysis for the Grizzly Bear is inadequate and in violation of NEPA.**

Response: As discussed above, the EA displayed the direct, indirect, and cumulative effects of the project on grizzly bear (3-96 to 3-102). The grizzly bear analysis can be found in the Project File (Vol. 20, Doc. 279, pp. 1-72). The analysis is in compliance with NEPA.

**Issue 3: The potential for significant impacts to grizzly bear and other TES species as a result of the Clay-Beaver decision requires the preparation of an Environmental Impact Statement.**

Response: The analysis of threatened, endangered, and sensitive species (TES), including grizzly bear, did not find any significant impacts to any TES species (DN/ Finding of No Significant Impact (FONSI), p. 21; EA, pp. 3-84 to 3-122; PF, Vol. 20, Docs. 274, 275, 276, and 277). Because of the lack of significant impacts and based on the project's content and intensity, the Deciding Officer determined it is not necessary to prepare an environmental impact statement for the Clay-Beaver Project (DN/FONSI, p. 14).

**Issue 4: The decision to implement Alternative C-modified is in violation of sections 7 and 9 of the Endangered Species Act. The Forest Service failed to consult on a major federal action as required by Section 7. The conclusion that the proposed action is not likely to adversely affect the grizzly bear relies on an Access Management Rule Set that is not based on the best available science. The Clay-Beaver Decision violates the 7/27/95 Incidental Take Statement for the Kootenai Forest Plan. Therefore, Formal Section 7 ESA Consultation is required.**

Response: The Kootenai National Forest has complied with Section 7 of the Endangered Species Act. The Forest formally consulted with USDI Fish and Wildlife Service on the Forest Plan. They received a Biological Opinion (BO) in June 1985, and an amendment to that BO, with an Incidental Take Statement for grizzly bear, in July 1995 (PF, Vol. 33, pp. 152-166). The wildlife and fisheries biologists prepared a Biological Assessment for the Clay-Beaver project and made determinations of affects on each of the endangered, threatened, or proposed species as required under Section 7 (PF, Vol. 20, Docs. 277 and 278). This determination was sent to USDI Fish and Wildlife Service. The USDI Fish and Wildlife Service concurred with the findings and said this concluded the Section 7 consultation unless new information is found that changes the effects (PF, Vol. 6, Doc. 140). They did not find that Clay-Beaver violated the 1995 Incidental Take Statement. The Clay-Beaver project is in compliance with ESA.

**Issue 5: Since the grizzly bear analysis is conducted at the BMU scale, violations of ORD and Habitat Effectiveness standards in the context of the Project Area boundaries were not considered, in violation of NFMA.**

Response: Bear Management Units (BMU's) generally approximate a female grizzly bear's home range, include all local and available habitat types, and are generally bounded by 3rd and 4th order watersheds (PF, Vol. 33, p. 6). Determining impacts to grizzly bear at the BMU level, instead of using the smaller, artificial boundaries of the project area, is the appropriate scale to conduct the effects analysis. Using the appropriate scale to analyze effects is not a violation of NFMA.

**Issue 6: The Kootenai has not done an adequate job of 1) considering the impacts of past timber sale activities, 2) disclosing the impacts, or 3) assuring the continued viability of indigenous species as required by NFMA.**

Response: The EA lists current and reasonably foreseeable agency actions (p. 3-1 to 3-2). These were analyzed as part of the cumulative effects. This list includes 14 timber or salvage sales, some of which will be completed, or nearly so, by the time this project is implemented. These sales are also displayed on a map (Appendix M-6). The maps of Alternatives B and C (Appendix M) display past regeneration harvests. The 1998 timber stand data base report was used to determine past harvest activities. Aerial photos from 1947, 1985, 1992, and 1996 were used to identify past activities (EA, pp. 3-4). Impacts from past harvest activities were considered in the analyses. Past harvest is considered in the EA in the watershed (pp. 3-5, 3-6, and 3-11), economics (pp. 3-26 to 3-27), fire (p. 3-33), soils (p. 3-37), forest vegetation (pp. 3-45, 3-50, and 3-55), PTES plants (p. 3-61), noxious weeds (skid trails, p. 3-63), fisheries (pp. 3-67, 3-73 to 3-77), elk (pp. 3-91, 3-92), grizzly bear (p. 3-100), lynx (p. 3-106), and biological corridors (p. 3-121) analyses. The direct, indirect, and cumulative effects, which includes past timber sales, is disclosed for each resource.

The wildlife and fisheries biologists and the botanist have determined the Clay-Beaver Project will not affect or will not cause a trend toward loss of population viability for sensitive species (EA, pp. 3-107 to 3-118). Impacts on threatened and endangered species were analyzed in the Biological Assessment (PF, Vol. 20, Doc. 277). The assessment found that Clay-Beaver would "not jeopardize the continued existence" of Canada lynx, will have "no effect" on bald eagle, peregrine falcon, white sturgeon, bull trout, or water howellia, and "may effect, will not likely to adversely affect" grizzly bear and gray wolf. Volume 20 of the Project File contains the analysis and information on TES species.

Impacts to Management Indicator Species (MIS) species were used to model impact to all other species. Both action alternatives are designed to increase forage in the project area, thereby improving the cover to forage ratio for elk and other big game species (EA, p. 3-95). The pileated woodpecker is the MIS for cavity nesters. It is analyzed on pages 3-118 to 3-120 of the EA. The EA concludes that all alternatives will maintain adequate population levels of cavity-dependent birds and would not cause a trend toward loss of population viability (EA, p. 3-120). The Clay-Beaver EA is in compliance with NFMA.

**RECOMMENDATION**

I recommend the Forest Supervisor's decision be affirmed and the Appellants' requested relief be denied.

/s/ Martin L. Prather

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Reviewing Officer

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