



United States
Department of
Agriculture

Forest
Service

Region 1

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File Code: 1570 (215)

Date: September 11, 2000

Route To:

Subject: McSwede TS DN, Appeal #00-01-00-0111, 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.; Alliance for the Wild Rockies; The Lands Council; and American Wildlands protesting the McSwede Timber Sale Decision Notice (DN) signed by the Forest Supervisor on the Kootenai National Forest (Libby Ranger District).

The Forest Supervisor's decision adopts Alternative 2, which includes timber harvest on about 1,700 acres, prescribed burning on about 850 acres, and fuels treatments on about 30 acres. The project also includes construction of 0.5 miles of permanent roads, 1.2 miles of temporary roads, and the decommissioning of 12 miles of roads that are no longer needed.

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 transmittal letter and the appeal record, including the Appellants' objections and recommended changes, have been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues that were 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 Endangered Species Act (ESA), and the Kootenai Forest Plan. The Appellants request a remand of the DN. The Forest contacted Jeff Juel and Ryan Schafer in an effort to set up an informal disposition meeting. At the request of the Appellants, no meeting was held.

ISSUE REVIEW

Issue 1: Old growth, snags, and associated wildlife species.

Contention 1: The Kootenai refuses to acknowledge scientific evidence that refutes its inadequate Forest Plan guidelines. It is time that the Kootenai face this issue on a forest-wide basis and affirmatively respond to the best scientific information in the amount of snags and green tree replacements designated for areas to be logged.

Monitoring results of cavity habitat condition and amount has consistently shown that Forest Plan Standards and Guidelines have not been achieved. We believe that it is necessary to perform field surveys to determine the level of available snag and downed woody material in the cumulative effects area, since it is quite possible that excess snags in the proposed project area are needed to



offset the lack of snags in areas previously logged.

Response: Revision of the Kootenai Forest Plan and revising Forest Plan guidelines on a Forest-wide basis is beyond the scope of this project.

Field surveys and habitat condition reviews were conducted by the project biologist and qualified wildlife staff of the Libby Ranger District within the analysis area. Collected data was utilized in the wildlife specialist report (V5, F3, D1), which is summarized in the Environmental Assessment (EA) pp. 3-57 to 3-74). Supporting documentation can be found in the old growth analysis records (V5, F3, D7) and the cavity habitat analysis documents (V5, F3, D8).

Contention 2: The KNF has acknowledged, but will not employ the most current, relevant science and has failed to monitor both the MIS pileated woodpecker and its old growth habitat. This combination has resulted in a situation that facilitates continued Forest Service caused degradation of the pileated woodpecker and old growth habitat.

The Kootenai National Forest Monitoring and Evaluation Report FY 99 does not track snag numbers or population trends of the MIS pileated woodpecker as the Forest Plan requires, which violates the diversity and viability requirements of NFMA.

Response: Forest Plan monitoring and the content of the Monitoring Report is beyond the scope of this project. However, the Forest uses data collected during monitoring in project implementation. Monitoring results, reported in Forest Plan Monitoring reports (V4, F4, D4), indicate that pileated woodpeckers are widespread and relatively common on the Kootenai National Forest. The Forest continues to document observations and collect data through the Kootenai National Forest participation in the R-1 Landbird Monitoring Program. Additionally, as indicated in the Fiscal Year 97 Forest Plan Monitoring Report, monitoring has been conducted for old growth-dependent species (item C-4) and indicator species (item C-8).

The analysis conducted for the McSwede EA focused on key habitat thresholds that are considered necessary to support a viable population. The bounds of analysis were identified for each species addressed. Results of the analysis can be found in the wildlife section of the EA (pages 3-57 to 3-74) and in the wildlife report (V5, F3, D1). The analysis used the best available information that was applicable to the project area. This project is in compliance with NFMA.

Contention 3: The Monitoring and Evaluation Report for FY 1999 is very clear in its disclosure that the KNF is not achieving 10 percent forest-wide old growth. Of the required 186,500 acres (10 percent of KNF below 5,500 feet) the KNF has protected 115,670 acres of old growth. This is well short of the minimum standard validation to permit a timber sale of mixed conifer trees, yet mixed conifer areas have been approved for logging under the Selected Action.

Response: As discussed in the Response to Comments (DN, Appendix 1, p. 16, comments 5-5 and 5-7), “[i]mplementation of any action alternative would not impact existing old growth habitat in the McSwede analysis area. All existing old growth would be retained.” This reflects the wildlife cumulative effects analysis (V5, F3, D1, p. 20), which states, “[n]o alternative will have any effect on old growth habitat in the McSwede analysis area.” The analysis also points out there is a lack of ponderosa pine old growth and the result of the basal area reduction prescription will favor the

development of large diameter ponderosa pine in areas that presently are not considered old growth. This may help move the KNF toward eventually meeting its Forest-wide goal of 186,500 acres of old growth habitat.

Issue 2: Noxious weed populations are aggressively expanding throughout the KNF and attempts to “control and reduce” this infestation have been unsuccessful. This scenario will only be exacerbated by the McSwede action alternative. Considering this, how can the EA maintain that this project is consistent with the Forest Plan? Clearly, this project will further contribute to a problem that is already outside the range prescribed in the Forest Plan. The McSwede project file does not analyze (or mention) this potentially serious problem in any context. Without an analysis of this very real problem the Responsible Official had no way to make a fully informed decision, as NEPA requires.

Response: The EA (pp. 3-40 to 3-41) analyzes the impacts the project will have on noxious weeds. Regardless of alternative, including the No Action Alternative, noxious weeds are expected to spread. The TES Plant Assessment in the project file (V5, F4, D1) discusses concerns associated with potential noxious weed spread. The noxious weed report (V5, F4, D4) and the noxious weed mitigation plan (V5, F4, D5) describe measures to limit the spread of noxious weeds. The EA (p. 2-23) lists measures to “minimize the spread of noxious weeds.” In the EA, the Responsible Official was informed of the noxious weed situation on the Forest. This project is in compliance with NEPA.

Issue 3: Soil and water quality.

Contention 1: The KNF Forest Plan Monitoring and Evaluation Report for FY 1999 does not disclose any data regarding the effects of logging activities on KNF Forest Plan Monitoring item F-4, Soil. This is noteworthy because the EA (p. 34) and DN (App. 1, p. 20) conclude that the logging related soil disturbances will not exceed 10 percent of the project area. Without appropriate monitoring this is merely an assumption, not a conclusion based on field data.

The regional soil standards are clear. Neither the KNF Monitoring Report nor the McSwede EA disclose whether these standards are being met in the analysis area cutting units. Any project that stands to affect soil, McSwede included, must be delayed until this essential resource is monitored. Currently a sound and well informed decision that considers soil degradation cannot be made.

Response: The soil scientist and other specialists considered data collected through monitoring efforts and information presented in Monitoring Reports and in the scientific literature (V5, F5, D1; V5, F5, D12; V5, F5, D14; V5, F5, D15; V5, F5, D16; V5, F5, D17; V5, F5, D19; V5, F5, D20 and V5, F5, D21). The soils analysis, based on this information, can be found in the EA (pp. 3-28 to 3-29 and 3-34). Specifically, the Forest soils scientist monitors a cross-section of activities and sites on an annual basis. Forest Plan Monitoring reports for monitoring item F-4 (soil productivity) are incorporated into the project file by reference (V4, F4, D4). Soil monitoring conducted in 1992, 1993, and 1995 is also included in the project file (V5, F5, D16).

Best Management Practices (BMPs) constitute state-of-the-art practices to protect soil productivity. Site-specific BMPs applicable to this project are found in the EA (Appendix B) and the project file (V5, F5, D8). Monitoring information obtained from sites and soil types similar to sites and soil types

located within the analysis area, document the results of BMP protective measures and their effectiveness in protecting soil and water quality.

A letter from the Regional Forester to the Forest and Grasslands Supervisors, dated June 14, 2000, (V5, F5, D14) clarifies the Regional Soil Quality Standards. The soil scientist took this clarification into account in analyzing the potential impacts to soils from the McSwede project (EA, p. 3-29). The project will meet those standards (EA, p. 3-34). The Forest Supervisor knew the impacts this project would have on soils and made a well-informed decision.

Contention 2: The EA does not disclose the significance of the sediment inputs due to sensitive landtypes. The EA fails to disclose the ongoing and reasonably foreseeable cumulative effects of the existing stream and road crossings on these sensitive landtypes.

Response: Landtype information is disclosed in the EA (pp. 3-28 to 3-29) and the project file (V5, F1, D1, pp. 2 to 4; and V5, F5, D17). Sediment conditions are discussed throughout the watershed and fisheries analysis in the EA (pp. 3-20 to 3-41). Practices to reduce existing and potential sediment sources include road maintenance, reconstruction, and decommissioning; seeding; and implementation of BMPs. These measures are discussed in the EA (pp. 2-18, 2-19, 2-22 to 23, and Appendix B) and in the soils, watershed, and fisheries section of the project file (V5, F5).

The EA (p. 3-34) discusses measures designed to limit sedimentation associated with road construction and identifies landtypes where road construction would occur. Road building and road improvement activities (i.e., road decommissioning and culvert removal) are included in the analysis of direct, indirect, and cumulative effects for the selected alternative in the EA (pp. 3-29 to 3-31 and 3-35 to 3-36).

Contention 3: Although the EA indicates that no road building would occur on Landtype 381, it fails to disclose the amount of new logging approved by the DN on Landtype 381, and also fails to disclose the effects of such logging. We point out that the Forest Plan as amended by INFISH does not allow the FS this discretion. This is why the Forest Service cannot simply dismiss public comment on this issue without addressing the landslide issue.

Response: The EA (pp. 2-20 and 3-29) indicates that portions of a 70-acre prescribed burn would occur on landtype 381. The EA (p. 3-29) states, “[n]o detrimental disturbance is associated with broadcast or underburning.” No harvest activities would occur on landtype 381 (V5, F5, D17), so there are no effects to disclose.

Contention 4: In reading Appendix B it is clear that the EA fails to provide any discussion on the effectiveness of the site-specific BMPs. Since the Forest Service’s DN and Finding of No Significant Impact (FONSI) relies upon these BMPs to arrive at a determination that “road construction is not expected to result in a significant amount of sedimentation” the FONSI is not supported by the record.

The Forest Service relies upon BMPs to mitigate and prevent soil damage, and to comply with Forest Plan Standards. Such reliance must be as the Court stated, “reasonable”. However, the EA does not disclose sufficient information to make reliance on the BMPs a “reasonable” way to

mitigate soil damage, stream sedimentation, and be in compliance with Forest Plan standards.

Response: Forest Plan Monitoring reports are incorporated into the project file by reference (V4, F4, D4). As indicated in the FY 96 and 97 Forest Plan Monitoring Reports, the Forest continues to monitor items F-1 (soil and water conservation practices), F-2 (stream sedimentation), F-3 (water yield increases) and F-4 (soil productivity). The monitoring results are in these reports. Water quality monitoring includes BMP implementation and effectiveness reviews. The Libby Ranger District BMP process paper (V5, F5, D8, pp. 3 and 4) displays the Forest-wide monitoring results of BMP effectiveness, including those BMPs concerned with slope stabilization. Using BMPs to mitigate soil damage, stream sedimentation, and to comply with the Forest Plan Standards is reasonable.

Issue 4: The fact that the Forest Plan constitutes a “taking” of the Lynx was not disclosed in the McSwede EA. Such taking can only be authorized with an incidental take statement, issued as part of a Biological Opinion (B.O.) following Section 7 consultation. The KNF must incorporate terms and conditions from the programmatic B.O. into a Forest Plan Amendment or revision before projects affecting lynx habitat, such as McSwede, can be authorized. Failure to do so constitutes a violation of the Endangered Species Act.

Response: The KNF is presently in consultation with USFWS on their Forest Plan as it concerns lynx. During consultation, for those projects that are ongoing and in lynx habitat, the Forest can make a Section 7(d) determination. The DN (pp. 35 and 36) states that lynx and grizzly bear were not addressed in the biological assessment because their potential distribution does not include the area of influence of the selected alternative. The Response to Comments (p. 18, response 5-11) states the McSwede project is outside any Lynx Analysis Units, which were mapped in accordance with the guidelines in the Lynx Conservation Assessment Strategy. Without habitat in the project area, and being outside the animal's potential distribution, there will be no impact on lynx (DN, p. 35) and a Section 7(d) determination is not required. This project is in compliance with the Endangered Species Act. Whether or not the Forest Plan constitutes a ‘taking’ is for the USFWS to determine, and is beyond the scope of this project.

Issue 5: The KNF failed to respond to public comment.

Contention 1: The EA fails to disclose that the KNF has failed to monitor population trends of Black Bear and Mule Deer. This was not addressed in the DN. NEPA requires that agencies must assess and consider our comments on the matter, and shall respond. The appellants maintain, and are supported by case law, that sound, well informed decisions can not be made unless monitoring of forest resources is completed, and the information incorporated into decision-making. The Responsible Official did not have the necessary data to make a fully informed decision.

Response: Whether or not the KNF has conducted their Forest-wide Forest Plan monitoring is beyond the scope of the project. The results of Forest Plan monitoring, or the lack of monitoring, are contained in the Monitoring Reports, not in project-specific EAs. As indicated by the transmittal letter, the KNF has monitored big game species every year since adoption of the Forest Plan. The Forest Plan Monitoring Reports are incorporated into the project file by reference (V4, F4, D4). The 1997 report summarizes the most current information the Forest has on mule deer and black bears. The Responsible Official had the necessary information to make a fully informed decision.

Contention 2: The Ecology Center's June 8, 2000 comment on the McSwede EA regarding the Equivalent Clearcut Acres (ECA) model was not addressed. Not responding does not relieve the KNF of the NEPA requirement to employ accurate scientific analysis. A comment that questions the validity of such a vital measurement model simply must be addressed. The Responsible Official, the public, and the Appeals Officer must know if this model, that determines watershed degradation, is scientifically accurate. Our concern, regardless of the response, is that ignoring this comment not only neglects NEPA's requirements, but also signifies that a sound and informed decision is not assured.

Response: The EA (p. 3-21) and the project file (V5, F5, D6 and V5, F5, D7) describe how ECAs are used to gauge impacts to the watershed. The Forest Plan (Appendix 18) discusses guidelines for calculating water yield increases using ECAs. These guidelines are based on an extensive list of references (pp. 18-16 to 18-20). NEPA requirements were not ignored and the Responsible Official was well informed.

Contention 3: The Ecology Center's June 8, 2000 comment on the McSwede EA regarding generally higher stocking levels was not addressed in the DN. Not responding does not relieve the KNF of their obligation to properly inform the Responsible Official, the public, and the Appeals Officer of exactly which trees will be cut and why. Again, not only does this failure ignore NEPA's requirements, it means that a sound and well informed decision cannot be guaranteed.

Response: The Appellants' June 8, 2000, letter (p. 10) states, "[t]he EA claims that due to the suppression of fire, most forested stands in general have a higher stocking level than occurred naturally. However, it must disclose information on the number of trees on specific areas of land to support this supposition, including quantitative information based upon field measurements of present conditions."

The Forest's response to this comment is found in DN, Appendix 1, Response to Comments 5-1 (pp. 13-14), 5-16 (p. 19) and 6-10 (p. 25). Response to Comment 5-16 states that additional information is found in the EA (pp. 2-5, 3-3, and 3-9). Information supporting proposed treatments and stand data is found in the project file (V2, F1). NEPA requirements were not ignored and the Responsible Official was well informed.

Contention 4: Contentions 1 through 3 represent only a handful of comments that were not assessed, considered, and responded to from the Ecology Center's June 8, 2000 letter. The attachment to this appeal displays a record of the comments from that letter that were not even reprinted in the DN Appendix 1 Response to Comments.

We fully incorporate all appellants' previous comments on the McSwede project within the Statement of Reasons of this appeal. NEPA and NFMA implementing regulations regarding comments and appeals were written with the intent of the public's issues being dealt with in a fair, thorough, and timely manner. The public should not be burdened with raising issues multiple times in order for the Forest Service to finally consider them.

Response: The McSwede Interdisciplinary Team (IDT) and District Ranger reviewed the appellants' comment letter dated June 8, 2000, and all other comments from the public. It is not easy summarizing numerous long letters to everyone's satisfaction. ID teams make every effort to accurately reflect the

substance of each letter in their Response to Comments. The McSwede ID team's responses are in Appendix 1 of the DN. The Response to Comments is not in violation of NEPA and NFMA.

Issue 6: Because it leads to a "Finding of No Significant Impact" an EA must include sufficient information to determine what the full impact of the project will be. The McSwede EA fails in this regard because the best science has not been employed and the KNF has failed to monitor its Forest resources.

Response: The ID team conducted the appropriate analysis using the best available information. The specialists used monitoring results and scientific studies to support their work and conclusions. References utilized in the analyses are located in specialist reports in the project file (V5). This information provides support for the FONSI (DN, pp. 27 to 30). The Responsible Official took a hard look at the project and its impacts and, based on the analysis found in the EA and the project file, determined that an environmental impact statement is not required for the McSwede Timber Sale.

RECOMMENDATION

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

/s/ Martin L. Prather

MARTIN L. PRATHER
Reviewing Officer
Director, Information Systems