



United States
Department of
Agriculture

Forest
Service

Region 1

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File 1570 (215)
Code:
Route
To:
Subject: Pinkham Timber Sale ROD, Appeal #99-01-00-0167,
Kootenai NF, Rexford Ranger District
To: Appeal Deciding Officer

Date: August 30, 1999

This is my recommendation on disposition of the appeal filed by Michael Wood on behalf of Alliance for the Wild Rockies; The Ecology Center, Inc.; and The Lands Council protesting the Pinkham Timber Sale Record of Decision(ROD) signed by the Kootenai National Forest Supervisor.

The Forest Supervisor's decision selects a modified Alternative 2. The selected action includes commercial thinning on 4,470 acres, salvage on 240 acres, regeneration harvest on 1,650 acres, roadside salvage on 500 acres, salvage of burning mortality on 200 acres, and prescribed burning on 1,610 acres. The selected action also includes two amendments to the Kootenai Forest Plan. One is a programmatic Forest Plan amendment to MA 12 Facilities Standard #3 to change the open road density standard from 0.75 miles per square mile to 1.81 miles per square mile during project implementation and 1.51 miles per square mile after the project is completed. The second amendment concerns a project-specific change to MA 12 Wildlife Standard #7 which will allow regeneration harvest in big game movement corridors and a change to MA 12 Timber Standard #3 which will allow harvest adjacent to existing openings that do not provide suitable hiding cover.

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), and the Endangered Species Act (ESA). The Appellants request the decision be remanded to the Responsible Official to correct the deficiencies identified in the appeal and ask that all management activities in and around the project area be enjoined until such time as the Forest Service has complied with its legal obligations under NEPA, NFMA, and ESA.

On August 10, 1999, District Ranger Glen McNitt met with appellants' representative, Jeff Juel, in his office in Missoula, Montana, to discuss informal resolution of the appeal. While many of the appeal points were discussed, the parties were unable to resolve any appeal issues. Ranger McNitt placed a telephone call to Mike Wood of Alliance for the Wild Rockies on August 12, 1999. Mr. Wood returned the telephone call on August 17. He was going to speak with Mr. Juel and call back later in the afternoon on the August 17 to arrange a possible resolution meeting. Mr. Wood did not call back.

ISSUE REVIEW

Issue 1: We incorporate the comments of each government agency which had submitted comments on this project and all previous comments of each appellant group within the Statement of Reasons of this appeal.



Response: The appellants are attempting to incorporate by reference the comments presented in letters from U.S. Fish and Wildlife Service; USDI Department of Environmental Quality and Compliance; Montana Department of Fish, Wildlife, and Parks; Montana EPA; Montana Department of State Lands; Montana Department of Environmental Quality; and Idaho Department of Environmental Quality. They are also attempting to include all scoping comments each of the groups made so that all of these comments, in addition to all the government agency comments, are reviewed as appeal points. The appeal regulations state "[i]t is the appellant's responsibility to provide sufficient written evidence and rationale to show why the Responsible Official's decision should be remanded or reversed" [36 CFR 215.14(a)]. Incorporating by reference comments, or other material, in addition to that contained in the written appeal does not meet the requirement of the regulations and need not be addressed in the appeal decision.

Issue 2: The Kootenai National Forest's failure to comply with the Forest Plan monitoring plan is an ongoing violation of the National Forest Management Act.

Response: The Kootenai National Forest has published Forest Plan Monitoring Data since 1987. The data for the years 1988 to 1998 has been incorporated by reference into the EA (Project File [PF], Book 2, Document 340, p. 4). The Forest Supervisor's transmittal letter contains an extensive list of where monitoring data was used in the Pinkham EIS. The ID team used both Forest-wide monitoring data and monitoring data collected on the Rexford Ranger District and in the Pinkham Decision Area. They used Forest Plan reports and monitoring data in the transportation, range and noxious weeds, wildlife, soils, aquatic and fisheries, TES plants, air quality, and vegetation analyses to evaluate the effects of the proposed activities. The Kootenai National Forest is in compliance with NFMA monitoring regulations.

Issue 3: The Forest Plan amendments proposed for the project are arbitrary and not in accordance with other Forest Plan objectives.

Response: The Forest Supervisor determined that choosing a modified Alternative 2 would more fully implement the Kootenai Forest Plan than the other alternatives (ROD, p. 19). Choosing Alternative 2 required two Forest Plan amendments. The first is a project-specific amendment to MA 12 Wildlife and Fish standard #7 which states, "...maintain movement corridors of at least two sight distances between openings"; and MA 12 Timber standard #2 which states, "New units will not be harvested until adjacent units provide suitable hiding cover" (ROD, pp. 33 to 34; PF, Book 2, Doc. 342 and 343). The Kootenai Forest Plan allows for amendment in such a situation. "If it is determined during project design that the best way to meet the goals of the Forest Plan conflicts with a Forest Plan standard, the Forest Supervisor may approve an exception to that standard for the project..." (Forest Plan, II-20). In a letter to the Forest Supervisor, the Forest Planner documented the analysis of effects to the Forest Plan of the amendment (PF, Book 2, Doc. 341). The effects are well displayed in the DEIS (III-55 and 56, 64 to 72, and 97 to 99). The Forest Supervisor recognized this Forest Plan amendment would result in some forest openings greater than 40 acres. Following direction provided in the Northern Region Guide, the Forest Supervisor requested approval from the Regional Forester to exceed the 40-acre opening limitation. This request was submitted on March 17, 1999. The Regional Forester granted the request on June 16, 1999 (PF, Book 2, Doc. 343, pp. 1 to 15).

The second Forest Plan amendment recognizes the difficulty in changing the present road situation in MA 12. It is a programmatic amendment to modify open-road density requirements in MA 12 from 0.75 mi/mi² to 1.81 mi/mi² during project implementation and 1.51 mi/mi² after timber harvest is completed (ROD, p. 34; PF, Book 2, Doc. 341). Open-road densities in the Decision Area improved considerably with implementation of the 1998 decision to rehabilitate (obliterate) 47 miles of roads and restrict motorized access on an additional 25 miles. Alternative 2, as modified, will maintain these improved conditions. However, to move MA 12 from the *present* 1.51 mi/mi² to the Forest Plan

standard of 0.75 mi/mi² would require closing major through roads and would not provide the reasonable access to the area the public has come to expect. Analysis has shown that Alternative 2, as modified, will adequately sustain wildlife, wildlife habitat, and watersheds in the project area (FEIS, pp. 59-61).

The rationale for selecting a modified Alternative 2 (ROD, p. 32) is well reasoned and supported by documentation throughout the EIS and Project File. It is not arbitrary, and it is in accordance with other Forest Plan objectives.

Issue 4: The Pinkham project would increase the spread of noxious weeds, in violation of NEPA and NFMA.

Response: The DEIS identifies ongoing efforts to control noxious weeds as a reasonably foreseeable action (I-10). Design criterion 25 (DEIS, Appendix 1, p. 6; ROD, p. 45) lists the mitigation measures which will be taken to prevent noxious weed spread in the project area. The ROD (p. 61) identifies who is charged with detecting and treating noxious weeds. The noxious weed coordinator analyzed the impact that implementing the Pinkham EIS would have on noxious weeds (PF, Book 3, Doc. 433). He concluded "[o]ngoing treatment and prevention measure are expected to contain and control any spread of noxious weeds associated with proposed activities. No major spread of noxious weed is expected as a result of activities proposed in any alternative of the Pinkham EIS. Should any new infestations occur, they will be aggressively treated in accordance with the 1997 Herbicide Weed Control EA. It is expected that treatment will contain or eliminate new infestations." The EIS and ROD are in compliance with NFMA provisions for diversity and NEPA requirements for disclosure and mitigation.

Under the major heading of: "The failure to adequately analyze cumulative impacts to wildlife is a violation of NFMA, NEPA, and ESA" the appellants had the following issues:

Issue 5: The Forest Service failed to design conservations strategies for all species of concern.

Response: Units must develop conservation strategies for those sensitive species whose continued existence may be negatively affected by the Forest Plan or proposed project (Forest Service Manual 2621.2). Conservation strategies or recovery plans have been developed for some of the Forest's sensitive species and are being worked on for others (FEIS, p. 38). In lieu of conservation strategies, current management recommendations were used to analyze effects and protect sensitive species known or suspected to occur in the Pinkham area (PF, Book 5, Doc. 575). The existing condition, direct, indirect, and cumulative effects were analyzed for all sensitive species known or suspected of being in the project area. The analysis did not find the continued existence of any sensitive species to be negatively affected by the Pinkham EIS projects. The DEIS summarized the impacts to threatened, endangered, proposed and sensitive species (III-31, 32, 57, and 85 to 89). Conservation strategies are not absolutely necessary to analyze effects and protect rare species. The Deciding Officer had the kind, character, and quality of data, to the appropriate detail, necessary to make the management decision required by this project.

Issue 6: The Kootenai National Forest has failed to undertake genuine population viability analyses.

Response: Population viability is addressed in the EIS by looking at key habitat thresholds such as forage and cover, nesting, denning, feeding habitat and predation risk (FEIS, p. 38). These analyses are found in the PF, Book 5: Wildlife. The wildlife biologist conducted a thorough analysis of cumulative effects and population viability as required by regulations (36 CFR 219.19). As found by the 9th Circuit Court of Appeals, it is not "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."

Issue 7: The EIS failed to adequately consider cumulative impacts of roads, off road vehicles (ORVs), and snowmobiles.

Response: Open road densities in the Decision Area improved considerably with implementation of the 1998 decision to rehabilitate (obliterate) 47 miles of roads and restrict motorized access on an additional 25 miles (DEIS, III-7). Alternative 2, as modified, is essentially a 'no action' alternative on roads. It neither increases nor decreases the existing road density in the Pinkham area. Instead, it maintains the improved conditions established by the 1998 decision.

To move MA 12 from the *present* 1.51 mi/mi² to the Forest Plan standard of 0.75 mi/mi² would require closing major through roads. Closing them would not provide the reasonable access to the area the public has come to expect. Analysis of road system impacts can be found throughout the DEIS (Index, p. 4). The analysis shows that Alternative 2, as modified, will adequately sustain wildlife, wildlife habitat, and watersheds in the project area (FEIS, pp. 59 to 61, 66 to 67, and 78 to 80). The cumulative effects of roads was addressed during the effects analysis for wildlife species (DEIS, Appendix 3, pp. 8 to 10 for grizzly bear; pp. 11 to 15 for gray wolf; pp. 21, and 23 to 25 for lynx; and pp. 39 to 41 for wolverine).

Issue 8: The EIS presents inadequate cumulative effects analysis for proposed, indicator, and sensitive wildlife species. The Forest's data base does not provide enough information for them to make a reliable determination as to whether the stands really do contain habitat suitable for all the sensitive species and MIS, as the EIS analyses assume.

Response: Analysis of habitat suitability for most species was based on wildlife habitat models applied to the Forest's cumulative effects model remote sensing data (DEIS, Appendix 3, pp. 21). By doing so, the modeling included the cumulative effects of past harvest activities. The DEIS discusses the use of the model for each species it was used on (DEIS, Appendix 3, pp. 21, 34 to 35, 39, 48, 52, and 56; and FEIS, Appendix 3, p. 4). Suitable habitat for species without forest habitat models was determined through field surveys conducted by qualified biologists or trained technicians (DEIS, III-82, Appendix 3, pp. 42, 45, and 59).

The EIS adequately analyzes the cumulative effects on proposed, indicator, and sensitive wildlife species. Analyses and discussion of cumulative effects are presented throughout the EIS. They can be found in the DEIS (pp. I-8, III-1, 16, 18, 29, 39, 43, 44, 52, 54, 55, 62, 63, 68 to 72, 75, 77, 78, 80 to 85, 87 to 89, 91, 98, and 101); in the FEIS (Appendix 3, pp. 7, 10, and 12); in the Response to Public Comments on the Draft (FEIS, Comments 110 and 116 on pp. 38 and 41); in the Biological Evaluation (DEIS, Appendix 3); and in the Biological Assessment (PF, Book 5, Document 636). Further, the Decisionmaker determined that the level of analysis of effects was appropriate and adequate to make an informed decision to implement a management action (ROD, pp. 23-26 and 37-38).

Issue 9: The Kootenai National Forest has failed to adequately disclose its consideration of the cumulative impacts of this project on bull trout. The potential effects of the Pinkham sale on bull trout warrant consultation with the U.S. Fish and Wildlife Service.

Response: The cumulative effects analysis for bull trout considered 19 physical habitat parameters and four biological parameters to determine existing conditions and the effects of the selected action. (PF, Book 4, Doc. 519). Past, present, and reasonably foreseeable actions were also considered in the cumulative effects analysis (DEIS, III-54 through 57; PF, Book 4, Doc. 478, p. 12). The Forest consulted with U.S. Fish and Wildlife Service on the Pinkham project. They concurred with the

findings in the Biological Assessment of "Not Likely to Adversely Affect" the continued existence of bull trout conclusion in Pinkham Creek (PF, Book 5, Doc. 636, p. 50 and Doc. 637). The effects of the Pinkham project will have "No Effect" on bull trout in the Tobacco River (PF, Book 5, Doc. 636, p. 51, and Doc. 637).

The Kootenai National Forest adequately analyzed the cumulative effect to fish and wildlife. They are in compliance with NFMA, NEPA, and ESA.

RECOMMENDATION

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

/s/ J. Doug Glevanik

J. DOUG GLEVANIK
Reviewing Officer