



File 1570 (215)
Code:
Route
To:
Subject: Eagle Bird Project ROD, Appeal #99-01-00-0176
To: Appeal Deciding Officer

Date: October 13, 1999

This is my recommendation on disposition of the appeal filed by Jeff Juel on behalf of The Ecology Center, Inc.; The Lands Council; Kootenai Environmental Alliance; Alliance for the Wild Rockies; and Friends of the Clearwater protesting the Eagle Bird Project Record of Decision (ROD) signed by the Idaho Panhandle National Forests' Supervisor (St. Joe Ranger District).

The Forest Supervisor's decision adopts Alternative B, modified, which includes removal of 3.8 miles of road, fish habitat improvement, timber harvesting, new road construction, existing road reconstruction, road obliteration and storage, dry site management (burning and planting), developing a floating trailhead, creation of a fuel hazard reduction zone, noxious weed control and recommending expansion of an existing closure area.

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' issues 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 Forest Management Act (NFMA), the Endangered Species Act (ESA), the Clean Water Act (CWA), the Idaho Forest Practices Act, the Administrative Procedures Act, the Forest Service Manual, and the Idaho Panhandle National Forests' Forest Plan. The Appellants request the Eagle Bird ROD be withdrawn or remanded.

On September 17, 1999, the Forest contacted the Appellants to arrange a meeting on the appeal issues. Based on the discussions over the telephone, it appeared that there was no room for satisfactory negotiations to resolve appeal issues, so a meeting was not held.

ISSUE REVIEW

ISSUE 1: Illogical decision rationale.

Response: Forest Supervisor Wright identifies his rationale for his decision in a variety of places in the Record of Decision. On page 1 he notes, "With my decision to implement Alternative B Modified, I feel I am providing the net balance of those trade-offs (between the biological and social values associated with the various action) and best meeting the Purpose and Need, responding to the resource issues, and satisfying public concerns." Specific to Eagle Creek and Bird Creek Roads, he states on page 3, "My decision to remove the lower portion of the Eagle Creek Road and not portions of the Bird Creek Divide Road balances the trade-offs between resource and social values, and managing resource values where the greatest benefits can be obtained in the most cost-effective manner." Providing motorcycle use along Eagle Creek after the road is removed is addressed in How the Decision Meets the Purpose and Need on pages 6 and 7.



ISSUE 2: Narrow range of alternative violates NEPA.

Response: Chapter II of the EA describes the alternative development process which includes scoping and public involvement, issues identification, and development of alternatives. It gives detailed information and compares five alternatives. Four additional alternatives were considered but not given detailed study, including a watershed and fish habitat restoration alternative with no timber harvest. I find this to be an adequate range of alternatives.

ISSUE 3: The flawed soils analysis violates the Forest Plan, NFMA, and NEPA.

Response: The Forests' Updated Soil Guidelines procedure by Niehoff were used for the soils analysis (Project File [PF], Document W-3). The soils analysis in the EIS used the correct definition of activity area (PF, Doc. W-4, page 10). Detrimentially-disturbed soils were calculated and displayed by activity area for past and proposed activities, thereby addressing cumulative impacts (PF, Doc. W-8). A summary of that information is displayed in the EIS as the existing and cumulative acres of detrimentally disturbed soils (Table 4-8, pp. 4-10). Document W-8 also displays that many old activity areas will have reduced percentages of detrimentally-disturbed soil areas through the rehabilitation of old logging roads. As discussed in Niehoff's letter to Steve Flood, dated March 20, 1998, this rehabilitation can improve long-term soil productivity potential (PF, Doc. W-9). Soil productivity is further discussed in the Water and Soil Resource Assessment (PF, Doc. W-15). The EIS is in compliance with the Forest Plan, NFMA, and NEPA.

ISSUE 4: The IPNF continues to disregard and down play the issue of noxious weeds.

Response: Noxious weeds are addressed in numerous places in the EIS and ROD. In the ROD, the Noxious Weeds Design Criteria is stated on page 22. Chapter 3 of the EIS discusses the existing condition and includes a general discussion on noxious weeds (p. 3-22), as well as their role in relationship to threatened, endangered, and sensitive plants (pp. 3-28 to 32). Chapter 4 discusses the effectiveness of the proposed noxious weed controls (pp. 4-45 to 47), the effects of fuel treatment on sensitive plants from noxious weeds (pp. 4-55 to 57) and the effects of noxious weed treatments on air quality (p. 4-137). The economic analysis showing costs of noxious weed treatments is included on page 4-123. The Integrated Weed Management Program for the St. Joe Ranger District (PF, Doc. N-3) describes treatment methods used. Document N-6 in the Project File provides a summary of the noxious weed treatments related to this project, including a discussion on past mitigation effectiveness.

ISSUE 5 : The IPNFs' failure to comply with Forest Plan monitoring requirements is an ongoing violation of NFMA and has led to an uninformed decision with the Eagle Bird Project ROD.

Response: The adequacy of Forest Plan monitoring is outside the scope of this site-specific project. Monitoring results are gathered at the Forest level and a Forest Plan Monitoring Report is prepared each year. Some monitoring items are reported each year while others are reported for longer time periods.

However, Chapter 3 of the EIS discusses the existing condition of the physical, biological and social components of the environment based on past monitoring, field surveys, and other information for the resources that may be affected by the proposed activities. Specifically, on page 3-58 of the EIS is a discussion of ATV use in the project area. Page 3-47 of the EIS discusses grizzly bear habitat. The project area is outside of the Bitterroot Grizzly Bear Recovery Area, but a small portion is within the linkage corridor considered in one alternative in the Grizzly Bear Recovery in the Bitterroot Ecosystem DEIS. Pages 4-82 to 83 of the EIS discusses effects of the alternatives on the small portion of the habitat linkage corridor within the project area.

ISSUE 6: The EIS failed to adequately analyze cumulative impacts on proposed, indicator, and sensitive wildlife results in a violation of NFMA and NEPA.

Response: Cumulative impacts on proposed, indicator, and sensitive wildlife was adequately covered in the EIS (pp. 4-70 to 4-97), the Appendices (App. B, Wildlife BA, pp. 14 to 20, Fisheries BA, pp. 26 to 39; App. C, Wildlife BE, pp. 16 to 26, Fisheries BE, pp. 15 to 32). Impact of roads and road closures was considered in the EIS (pp. 4-62, to 4-65, 4-71, 4-83 to 4-86, 4-96, and 4-97; and App. C, Fisheries BE) with elk model runs in the Project File (Docs. WL-12, WL-13, and WL-14). Road closures are not assumed to be 100 percent effective in preventing all motorized use. The analysis is based on the conditions which exist on the ground. If a gate was known to be breached, the road was assigned the appropriate status for analysis purposes. The methodology used (PF, Doc. LC-73, Leege 1984) in determining elk habitat potential takes into account a certain amount of motorized use behind road closures. Therefore the "ineffectiveness" of road closures has been considered in the cumulative effects analysis on roads.

The IPNF is reconsidering the precommercial thinning program across the Forest in response to the lynx issue. As a result, no precommercial thinning in the Eagle Bird project area is considered reasonably foreseeable. Since precommercial thinning is an activity with potential to affect lynx habitat, consultation with the USFWS will occur before implementation. Therefore, any precommercial thinning project would be analyzed for effects on lynx, and any with the potential for adverse cumulative effects would be modified as needed before or during the consultation process to avoid negative cumulative effects.

Population viability was addressed by looking at key habitat components for management indicators, sensitive, threatened and endangered species. These analyses are found in the EIS (pp. 3-33, and 4-59 to 4-97; Appendices A, B, and C) and the Project File (Docs. F-6 to F-17, F-20 to F-26, WL-3 to WL-13). The wildlife and fisheries biologists conducted analyses 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." The analyses determined that the project will have no effect, or may impact individuals, but are not likely to trend the species toward federal listing, depending on the species.

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). The Forest has completed conservation strategies and conservation assessments for some species and is working on others (PF, Docs. LC-17, 18, 103, 134, 136, 138, 139, and 145). The existing condition, direct, indirect, and cumulative effects were analyzed for all threatened, endangered, MIS, and sensitive species known or suspected of being in the project area. The analysis did not find the continued existence of any to be negatively affected by the project (Appendix A, Summary of direct, indirect, and cumulative effects of the selected alternative; Appendix B, Biological Assessments for wildlife, fish, and plants; Appendix C, Biological Evaluation, p. 20). Completed conservations strategies are not required.

ISSUE 7: The FEIS never considers the significance of the direct impacts of increased noise from equipment, chain saws, and vehicles to wildlife species.

Response: Direct impacts of the timber harvest and road work is considered in the EIS (p. 4-60).

ISSUE 8: Monitoring wildlife species populations' responses to management.

Response: Monitoring is discussed in the EIS (pp. 2-23 to 2-26). Monitoring wildlife species populations' responses to management is a Forest-wide activity. Forest-level monitoring may or may not take place on any specific projects, but information gathered and lessons learned at the broader level are applied back to specific project-level design.

ISSUE 9: There is currently no management indicator species designated... to "indicate" populations and habitat trends for forest songbirds. This management concern, however, was completely ignored in the FEIS.

Response: Management indicator species are designated during Forest Planning, not project by project.

ISSUE 10: The FEIS is based upon an inadequate and destructive fire policy.

Response: Specific fire management direction for the Idaho Panhandle National Forests is contained in the Forest Plan. The development of a Fire Management Plan, as described in the Federal Wildland Fire Policy, is outside the scope of the Eagle Bird EIS.

The effects of past fire suppression are discussed on page 3-65 of the EIS, and continued fire suppression is discussed on pages 4-117 to 118 of the EIS. Page 4-118 discusses the effects common to all action alternatives, including the effects of canopy reductions, fuels treatment, and effective fuel breaks on fire suppression. Pages 4-118 to 122 discusses the effects of the action alternatives.

Promoting fire use and control strategies for safety and efficiency of suppression is stated as a purpose and need for the project on page 1-3 of the EIS. Effects to promote increased human safety are discussed on pages 4-118 to 122.

ISSUE 11: The FEIS fails to analyze cumulative impacts on watersheds, water quality, and fisheries using sound scientific methodology.

Response: Watershed, water quality, and fisheries are extensively analyzed in the EIS (pp. 3-1 to 3-13, and 4-1 to 4-34) and the Project File (Docs. W-1 to W-15, and F-1 to F-26). Vegetation maps in the Project File illustrate the location of past openings and those proposed with this project (Doc. V-24). The EIS discusses the hydrologic conditions of each of the watersheds in the project area. The impacts to each watershed from past timber harvest is clearly discussed (pp. 3-1 to 3-6). The EIS considered water yield in the Water and Soil Resources discussion of hydrologic responses to harvest (p. 3-2). The EIS took into account the potential of landslides during issue development. As a result, the Eagle Bird Project will not combine certain activities on failure-prone land types (p. 4-1) or will avoid failure-prone land types altogether (Response to Comments, p. 25). Design criteria for road maintenance and reconstruction were developed taking into account the landslide potential (p. 2-20). These mitigation measures were developed out of monitoring results from past timber sales and road projects (PF, Doc. W-1, p. 8) and information gleaned from the literature (EIS, p. 3-2).

ISSUE 12: The FEIS provides nothing but front-loaded "professional judgment" for its determination that logging will not significantly increase the risk of mass wasting events.

The team conducted an extensive literature review (PF, Literature Cited [LC], Volumes 1 and 2). The review includes Packer, 1971 (PF, Doc. LC-88) and Montgomery and Buffington, 1993 (PF, Doc. LC-79) which discusses regional cover-snowmelt relationships and channel responses to flow changes. The District hydrologist conducted objective field investigations to establish relationships between past

management actions and the current water quality, water quantity, and bedload movement. Professional judgement was appropriately used to bridge the gap between the available literature, monitoring, project specific site visits and the predicted impacts the Eagle Bird project would have on the watershed.

ISSUE 13: The FEIS does not comply with the Forest Plan fish standard of requiring fish bearing streams meet the 20% fry emergence success standard.

Response: The 1989 Forest Plan Evaluation and Monitoring Report documents changes from use of the 20 percent fry emergence standard, Item G-1 (Forest Plan, pp. C-1 and C-2). It was found not to be a good monitoring tool for reporting the health of streams. G-1 was combined with an expanded G-3 which includes a more comprehensive array of fisheries and hydrology parameters. Fry emergence is not an appropriate standard for the streams in the project area. "The District fisheries biologist for the St. Joe Ranger District and a fisheries biologist for the Idaho Department of Fish and Game have discussed the limiting factors to fish populations. Fine sediment detrimental to fish egg survival (Chapman and McLeod, 1987) (particle size <.6mm) was determined not to be the limiting factor for fish production in the project area" (PF, Doc. F-25, p. 4). Applicable limiting factors are discussed in the EIS (pp. 3-7 to 3-14).

ISSUE 14: The FEIS and ROD do not provide sufficient information to insure compliance with the Clean Water Act.

Response: Data was collected on the streams of the project area (PF, Docs. F-3 to F-23). This existing condition was compared to research conducted on habitat preferences of bull trout and westslope cutthroat trout [PF, Docs. LC-31 (Goetz, 1989), LC-82 (Meehan et al., 1977), LC-89 (Moore and Gregory, 1988), LC-101 (Rieman and Apperson, 1989), and LC-102 (Rieman and McIntyre, 1993)]. Stream channel types and response potentials based on Montgomery and Buffington, 1993 (PF, Doc. LC-79) were used to assess whether any predicted snowmelt-runoff changes would impact stream channels. The ROD displays the resulting effect on aquatic biota (Appendix B). Chapter 4 of the EIS discusses the effects of the proposed activities on water yield characteristics (snowmelt, runoff, routing, stream flows, and channel response) and pollutant sediment delivery and sedimentation (pp. 4-1 to 4-8). Channel integrity will be improved where restoration activities occur, and will not be further degraded outside of restoration segments as a result of the proposed activities. By maintaining or improving stream integrity, and abiding by State Antidegradation and Best Management Practices (p. 2-17, 2-24, and 2-26) to meet Water Quality Standards, the Eagle bird EIS complies with the Clean Water Act.

ISSUE 15: Eagle Bird FEIS and ROD violates NEPA, NFMA, and ESA in regards to bull trout.

Response: A Biological Assessment (BA) was prepared for bull trout (ROD, Appendix B). The BA determined that the Eagle bird project "may affect, but is not likely to adversely affect" the bull trout. The Forest Service informally consulted with the USDI Fish and Wildlife Service, and received a letter of concurrence on the determination (PF, Doc. A-21). With the USDI Fish and Wildlife Service concurrence, formal consultation is not necessary with a "may affect, but is not likely to adversely affect" determination. Eagle Bird does not violate NEPA, NFMA, or ESA in regards to bull trout.

ISSUE 16: The public has not been adequately informed as to the projected on-the-ground impacts of this project. Neither the project description included with the ROD nor the FEIS provides any indication of which roads would be obliterated under the chosen alternative other than the removal of 3.8 miles of Eagle Creek Road 1214.

Response: The ROD discusses the miles of road to be placed into long-term storage and obliterated (p. 15). The Selected Alternative Map in the ROD clearly shows what roads will be remaining in the project area and the type of access that will be allowed. Map 4 Roads and Culverts shows which roads would be managed in each prescription (ROD, Appendix C).

ISSUE 17: Failure to adequately analyze cumulative impacts on watersheds and fisheries results in a violation of NEPA and NFMA because westslope cutthroat trout viability is threatened.

Response: As stated above, cumulative impacts on watershed and fisheries has been adequately analyzed (EIS pp. 3-1 to 3-13, and 4-1 to 4-34; PF, Documents W-1 to W-15, and F-1 to F-26). A Biological Evaluation (BE) was prepared for westslope cutthroat trout (ROD, Appendix C). This BE describes the present condition of each creek and drainage in the project area, the direct and indirect effects the project will have on each creek or drainage, and the cumulative effects of the project. The BE determined the project may impact individuals or habitat, but will not likely contribute to a trend toward federal listing or loss of viability to the local populations of the species as a whole. The EIS is in compliance with NEPA and NFMA.

ISSUE 18: The economics analysis is inadequate. The FEIS did not consider non-market benefits and costs in the economic analysis and did not fully account for the impacts of proposed management alternative on non-commodity values.

Response: An adequate economic analysis was conducted (EIS, pp. 4-122 to 4-124; PF, Docs. E-1 to E-16). NEPA does not require a monetary cost-benefit analysis of the important qualitative aspects of a project when weighing the merits and drawbacks of the various alternatives (40 CFR 1502.23). The decision to approve the selected alternative was based, in part, on its ability to meet the goals, standards and objectives of the Forest Plan, and responsiveness of the alternative to the purpose and need.

RECOMMENDATION

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

/s/ J. Doug Glevanik

J. DOUG GLEVANIK
Appeal Reviewing Officer
Ecosystem, Assessment and Planning