

I have considered all the appeal issues raised in making my decision. I have determined that the Responsible Official has not adequately addressed all the appellants' issues in the FEIS, the ROD, or in the record. I concur with the Appeal Reviewing Officer that there was insufficient disclosure of cumulative effects in the FEIS. I reverse the Forest Supervisor's decision to implement Alternative D and deny all other requested relief.

FOREST ACTION BEING APPEALED

The decision will include approximately 6,636 acres of Defensible Fuels Profile Zone (DFPZ) treatment, 1,226 acres of group selection timber harvest, 2,370 acres of individual tree selection harvest and improvements to the transportation system. These activities will contribute to the implementation of the HFQLG Act including its fuels treatment, group selection and individual tree selection strategies and facilitate implementation of the strategies by improving the transportation system. The need for these actions is described in detail in the FEIS on pages 1-7 through 1-11.

APPEAL SUMMARY

See the enclosed Appeal Reviewing Officer letter for a complete discussion of your participation in the National Environmental Policy Act (NEPA) process and the results of informal disposition efforts. In summary all appellants have established standing to appeal this decision. Mr. Hanson, Mr. Preschutti, and Mr. Graf are the lead appellants for their respective appeals.

An informal resolution conference call was conducted on October 21, 2005 with Mr. Preschutti, Mr. Graf, and Craig Thomas. Also participating were Deputy Forest Supervisor Rob MacWhorter, District Ranger Maria Garcia, Forest Environmental Coordinator Jane Beaulieu, and District NEPA Coordinator Rich Bednarski. No issues were resolved.

Mr. Hanson declined the offer to meet that was extended by the Forest on October 12, 2005.

RELIEF REQUESTED

As relief, JMP requested that the ROD be withdrawn and a new or supplemental EIS be prepared. PFP wants the ROD withdrawn, the project's effects on forest fragmentation be reanalyzed, and the CASPO Interim Guidelines be applied to all alternatives. SNFPC requested that the Forest Supervisor's decision be reversed and that the Forest Service be required to comply with all applicable laws in completing review of this project.

APPEAL REVIEWING OFFICER'S FINDINGS

The Appeal Reviewing Officer found that the purpose and need were clear and the Forest Supervisor's reasons for selecting Alternative D were logical. The Forest hosted public meetings and conducted field trips. Responses to the comments received are detailed and

the decision of the Forest Supervisor indicates he considered and responded to public input. However, review of the Environmental Impact Statement shows that cumulative effects are not properly disclosed and the Appeal Reviewing Officer recommended reversing the decision.

DISCUSSION

Before cumulative effects can be determined, the scope of the cumulative effects analysis must be established by setting the geographic boundary; it is essential to provide a clear and logical rationale that explains why the boundary was selected for each affected resource.

The analysis area for the Forest Vegetation resource is not disclosed in the FEIS. The Fire/Fuels section states the analysis is "... based on the 103,000 [acre] Empire Project area analyzed in the *MountHough Landscape Assessment (2004)*" but does not explain why. The only explanations of analysis boundaries are found in the Wildlife section (FEIS, pg. 3-74 and 3-91).

The list of past, present and reasonably foreseeable future actions (Appendix G) is the most comprehensive I have ever seen and the Forest is to be commended for that. However, merely listing past, present, and reasonably foreseeable future actions does not constitute adequate cumulative effects analysis.

While there are several reasonably foreseeable projects listed in Appendix G of the FEIS (pg. G-9), the Forest Vegetation section in the main body of the FEIS neither discusses the expected effects nor explains why such discussion is not present. Further the Forest Vegetation "Cumulative Effects" (FEIS, pp. 3-27 through 3-29) appears to list effects by activity type rather than disclose effects in combination, that is cumulatively. The Fire/Fuels discussion in the body of the FEIS neither discusses future Forest Service harvest nor explains why such a discussion is absent.

I find that the cumulative effects disclosure in the FEIS does not comply with NEPA or existing management direction and policy.

DECISION

I reverse the Forest Supervisor's decision to implement Alternative D. My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Brent Handley

BRENT HANDLEY

Acting, Deputy Regional Forester
Appeal Deciding Officer

Enclosure

File Code: 1570-1

Date: November 16, 2005

Subject: Empire Vegetation Management Project

Appeals 06-05-00-0002 (JMP), 06-05-00-0004 (PFP), 06-05-00-0005 (SNFPC)

Plumas National Forest

To: Appeal Deciding Officer

I am the designated Appeal Reviewing Officer for these appeals. This is my recommendation on disposition of the appeals filed by Chad Hanson on behalf of the John Muir Project (JMP); John Preschutti on behalf of the Plumas Forest Project (PFP); and Michael Graf, Craig Thomas, and Pat Gallagher on behalf of the Sierra Nevada Forest Protection Campaign (SNFPC) appealing the Plumas National Forest Supervisor James M. Peña's Record of Decision (ROD) for the Empire Vegetation Management Project Final Environmental Impact Statement (FEIS).

BACKGROUND

Decision – The Forest Supervisor selected Alternative D. This decision authorizes approximately 6,636 acres of Defensible Fuels Profile Zone (DFPZ), 1,226 acres of group selection timber harvest, 2,370 acres of individual tree selection harvest and improvements to the transportation system. These activities will contribute to the implementation of the HFQLG Act including its fuels treatment, group selection and individual tree selection strategies and facilitate implementation of the strategies by improving the transportation system. It will also contribute to implementing the Plumas National Forest Plan as amended by the 2004 SNFPA Record of Decision. The need for these actions is described in detail in the FEIS (pp. 1-7 through 1-11).

Scoping - The Empire Vegetation Management Project was listed in the Schedule of Proposed Actions from April 2004 to June 2004. There were two scoping periods initiated for this project. The first occurred from June 30 to July 30, 2004 by publishing a notice in the Feather River Bulletin (Quincy) and mailing scoping letters to 635 agencies, organizations, federally recognized tribes, Native American communities, nonprofits and groups, adjacent landowners, and individuals who expressed an interest in the project. Two open houses and several field trips with members of the public were also conducted. After evaluating the responses to this initial scoping effort, the Forest Supervisor decided to proceed with the preparation of an EIS instead of an EA.

The Notice of Intent (NOI) was published in the Federal Register on February 9, 2005. The scoping letter was mailed on March 11, 2005 to local tribal organizations, other agencies, individuals, and groups potentially interested in or affected by the Proposed

Action. Fifty-three interested parties received a 31-page document describing the proposed action, purpose and need for action, and decision to be made. A total of 640 interested parties received a summary of the proposed action.

Comments to the DEIS – The Draft Environmental Impact Statement (DEIS) was published on May 20, 2005 . The Notice of Availability was also published in the Federal Register on May 20, 2005 . Copies of the DEIS were sent to 53 individuals, organizations, tribes, and government agencies. Fifteen comment letters were received by the close of the comment period on July 5, 2005 from 3 government agencies, 5 groups and 7 individuals. All appellants submitted substantive comments during the 45 day comment period.

APPEAL SUMMARY

The legal notice of decision was published in the Feather River Bulletin, Quincy , CA , on August 24, 2005 . The deadline for filing appeals was October 11, 2005 . Appeals were filed on 10/10/2005 (John Muir Project), and 10/11/2005 (Plumas Forest Project, Sierra Nevada Protection Campaign, Sierra Club and Plumas Forest Project).

The appellants' issues are summarized as follows:

- The Science Consistency Check report was not considered in the FEIS thus significant new information and adverse critical scientific opinion was not analyzed as required.
- Failure to respond to comments on the DEIS.
- Analysis of forest fragmentation and its effect on spotted owl and other old forest habitat dependent species is inadequate.
- The FEIS does not provide adequate discussion of cumulative impacts and locations of past, present, and planned projects in the vicinity of the Empire project that are likely to affect wildlife habitat.
- The Empire project will have significant adverse impacts on the California Spotted Owl.
- The Empire project will have significant adverse impacts on the American marten.
- The analysis of effects to fisher is inadequate.
- The FEIS has failed to provide an accurate analysis of what treatments are required to meet fuel reduction objectives.
- The Forest Service failed to consider alternatives in compliance with NEPA.
- The analysis of Management Indicator Species is inadequate.

INFORMAL DISPOSITION MEETINGS

On October 12, 2005 , Chad Hanson was contacted informing him of dates and times that the Forest Supervisor would be available for an informal appeal disposition meeting. Mr. Hanson declined to meet.

On October 21, 2005 , a telephone conference call was held with Craig Thomas (Sierra Nevada Forest Protection Campaign), John Preschutti (Plumas Forest Project) and Michael Graf (Sierra Nevada Forest Protection Campaign). A resolution on the issues of the appeals was not attained.

RELIEF REQUESTED

As relief the appellants requested that the ROD be rescinded or withdrawn and a new or supplemental EIS that addressed their concerns be prepared. They also requested that the project's effects on forest fragmentation be reanalyzed and CASPO IGs be applied to all alternatives.

RECOMMENDATION

My review was conducted pursuant to and in accordance with 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. I reviewed the appeal record, including the response to comments received during the comment period and how the Forest Supervisor used this information, the Appellants' objections and recommended changes.

Based on my review of the record, I recommend the Forest Supervisor's decision be reversed and all other requested relief be denied on all issues.

FINDINGS

Clarity of the Decision and Rationale - The Forest Supervisor's decision and supporting rationale are clearly presented in the Record of Decision. His reasons for selecting Alternative D are logical and responsive to direction contained in the Plumas National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment Record of Decision (February, 2004).

Comprehension of the Benefits and Purpose of the Proposal

The purpose of the proposal is to:

1. implement fuel treatment strategies to reduce fire potential in WUI zones, reduce the potential size and intensity of wildfires, and provide fire-suppression personnel with safe locations
2. implement group selection and individual tree selection as directed in the HFQLG Act and the HFQLG amendment to the Plumas National Forest Land and Resource Management Plan
3. test the effectiveness of an uneven-aged silvicultural system in achieving an uneven-aged, multistory, fire-resilient forest
4. provide an adequate timber supply that contributes to the economic stability of rural communities
5. improve and maintain the ecological health of the forest

6. reduce impacts of the transportation system on forest resources and provide the necessary access to fuel treatments and group selection and individual tree selection harvests

Consistency of the Decision with Policy, Direction, and Supporting Information -

The decision is consistent with the Plumas National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment ROD (February, 2004). However, review of the Environmental Impact Statement shows that cumulative effects are not properly disclosed.

Effectiveness of Public Participation Activities and Use of Comments - A Notice of Intent to prepare an Environmental Impact Statement and a Notice of Availability of the DEIS were published in the Federal Register. The project was added to the quarterly Schedule of Proposed Actions. The Forest mailed scoping letters, hosted public meetings, conducted field trips, and distributed draft and final EISs to interested groups and individuals. The Plumas National Forest has maintained current information on the restoration planning and activities on its web page. Responses to the comments received are detailed and included as part of the EIS. The decision of the Forest Supervisor indicates he considered and responded to public input.

CONCLUSION

Based on the finding above, I recommend that the Forest Supervisor's decision to implement Alternative D be reversed and all other requested relief be denied.

/s/ Janice Gauthier

Janice gauthier
Appeal Reviewing Officer
Deputy Forest Supervisor, Los Padres National Forest