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Forest Service
Pacific Southwest Region
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File Code: 1570-1
Appeal No.: 10-05-00-0054-A215
Date: June 9, 2010

Mr. Richard Kangas
Tehipite Chapter, Sierra Club
P. O. Box 187
Selma, CA 93662

CERTIFIED - RETURN RECEIPT REQUESTED

Dear Mr. Kangas:

On April 23, 2010 you filed a Notice of Appeal (NOA) on behalf of Tehipite Chapter, Sierra Club pursuant to 36 CFR 215. Sierra Forest Supervisor Edward C. Cole signed the Record of Decision (ROD) approving Alternative 3 of the Sugar Pine Adaptive Management Project Environmental Impact Statement (FEIS) on March 10, 2010.

I have reviewed the entire appeal record, including your written Notice of Appeal (NOA), the ROD, FEIS, DEIS, and supporting documentation. I have weighed the recommendation from the Appeal Reviewing Officer (ARO) and incorporated it into this decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

FOREST ACTION BEING APPEALED

The Sierra Forest Supervisor selected Alternative 3, as analyzed in the Final Environmental Impact Statement. Alternative 3 includes the following activities:

- Makes one non-significant Land and Resource Management Plan amendment.
- Commercial and biomass thin from below on an estimated 760 acres natural conifer stands.
- Commercial and biomass thin an estimated 65 acres of ponderosa pine plantations.
- Biomass thin an estimated 240 acres of conifer stands (4 to 10 inch dbh).
- Pre-commercial hand thin and remove fuel ladders, hand pile, and burn approximately 17 acres.
- Pre-commercial thin, tractor pile and burn approximately 30 acres of natural conifer stands.
- Masticate brush fields and masticate pre-commercial thin reproduction areas on approximately 245 acres.
- Masticate brush fields, fuel ladders, and pre-commercially thin reproduction areas on approximately 395 acres.
- Perform fuelbreak maintenance on approximately 40 acres.
- Pre-commercial thin/release plantations on approximately 115 acres.

- Plant and hand release of approximately 40 acres site prepared openings.
- Prescribed understory burn, as a primary fuels treatment, approximately 215 acres.
- Complete maintenance operations on approximately 28.2 miles of National Forest Transportation System (NFTS) roads.
- Complete reconstruction operations on approximately 9.8 miles of NTFS roads.
- Construct approximately 0.5 miles of temporary road.
- Construct approximately 0.2 miles of new NFTS road
- Prescribe burn and/or mechanically treat infestations of noxious weeds, where located within the project treatment areas.

APPEAL REVIEWING OFFICER'S FINDINGS and RECOMMENDATION

The ARO, John Exline, found that the project is an appropriate and reasonable response to direction in the Sierra National Forest Land and Resource Management Plan and is in compliance with the plan.

The purpose and need for the project were clear. The Forest Supervisor's decision logic and rationale were clear and well documented. The Forest Supervisor was responsive to public concerns.

ARO John Exline, recommended affirmation of the Forest Supervisor's decision on all issues and denial of all requested relief.

DECISION

I agree with the ARO's analysis as presented in the recommendation letter. The issues are similar to the comments made during the comment period. All appeal issues raised have been considered. I affirm the Forest Supervisor's decision to implement Alternative 3. I deny all requested relief.

The project may be implemented on, but not before, the 15th business day following the date of this letter (36 CFR 215.9(b)). My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Robert G. MacWhorter
Robert G. MacWhorter
Appeal Deciding Officer
Deputy Regional Forester

Enclosure

United States Department of Agriculture | **Forest Service** | **Pacific Southwest Region** | **Regional Office, R5**
1323 Club Drive
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File Code: 1570-1 **Date:** June 3, 2010

Subject: Sugar Pine Adaptive Management Project
Appeal No. #10-05-00-0054-A215
Sierra National Forest

To: Appeal Deciding Officer

I am the designated Appeal Reviewing Officer for this appeal. This is my recommendation on disposition of the appeal filed by Richard Kangas, Tehipite Chapter, Sierra Club, appealing the Sierra National Forest Supervisor, Edward C. Cole's Record of Decision (ROD) for the Sugar Pine Adaptive Managment Project Final Environmental Impact Statement (FEIS). The decision was signed on February 22, 2010 and the legal notice of the decision was published on March 10, 2010.

DECISION BEING APPEALED

The project area is located within the Bass Lake Ranger District located in Madera and Mariposa Counties, California. The project was developed to address the need for:

- fuel reduction that protects human communities from moderate/high intensity wildfires as well as minimizing the spread of wildfires that might originate in urban areas spreading onto National Forest System lands,
- conifer stands to be resilient to attack from insects, diseases, drought conditions, and wildfire.

The Sierra National Forest Land and Resource Management Plan (LRMP 1992, as amended in January 2004) provides direction for projects developed and planned utilizing an ecosystem approach that compares the current condition of key ecosystem elements to the desired conditions set by the 2004 Sierra Nevada Forest Plan Amendment Record of Descision (2004 SNFPA ROD). Under the auspices of the Plan, a landscape analysis for the Fresno River watershed was completed in July 2005. The Sugar Pine Adaptive Management Project brings forward opportunites provided in the Fresno River Landscape Analysis where management actions could bring key ecosystem elements closer to their desired condition by:

- strategically placing area treatments on the landscape to reduce the intensity and spread of wildfires across the landscape and near communities,
- providing a buffer between wildlands and communities at risk for safe and effective fire suppression activities to occur and,
- reducing inter-tree competition (stand density), within the lower and mid-canopy layers to improve tree vigor and growth.

The Sierra Forest Supervisor selected Alternative 3, as analyzed in the Final Environmental Impact Statement. Alternative 3 includes the following activities:

- Makes one non-significant Land and Resource Management Plan amendment.
- Commercial and biomass thin from below an estimated 760 acres in natural conifer stands.
- Commercial and biomass thin an estimated 65 acres of ponderosa pine plantations.
- Biomass thin an estimated 240 acres of conifer stands (4 to 10 inch dbh).
- Pre-commercial hand thin and remove fuel ladder, hand pile, and burn approximately 17 acres.
- Pre-commercial thin, tractor pile and burn approximately 30 acres of natural conifer stands.
- Masticate brush fields and masticate pre-commercial thin reproduction areas on approximately 245 acres.
- Masticate brush fields, fuel ladder, and pre-commercially thin reproduction areas on approximately 395 acres.
- Perform fuelbreak maintenance on approximately 40 acres.
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- Construct approximately 0.5 miles of temporary road.
- Construct approximately 0.2 miles of new NFTS road
- Prescribe burn and/or mechanically treat infestations of noxious weeds, where located within the project treatment areas.

APPEAL SUMMARY

The Sugar Pine Adaptive Management Project was listed in the Schedule of Proposed Actions from July 1, 2008 through April 1, 2010. The Notice of Intent (NOI) to prepare an EIS was published in the Federal Register on October 12, 2007. The scoping letter was mailed to approximately 33 local tribal organizations, other agencies, individuals, and groups potentially interested in or affected by the Proposed Action on August 29, 2007.

The Draft Environmental Impact Statement (DEIS) was published on June 26, 2009. The Notice of Availability was published in the Federal Register on July 17, 2009. Copies of the DEIS were sent to over 54 individuals, organizations, tribes, and government agencies. The DEIS was also placed on the Sierra National Forest web page. There were 13 comments received by the close of the comment period on August 31, 2009. An additional two comment letters were received after the close of the comment period. Richard Kangas, Tehipite Chapter, Sierra Club submitted timely comments and is eligible to appeal this decision.

The legal notice of decision was published on March 10, 2010; the deadline for filing appeals was April 26, 2010. The current appeal was filed on April 23, 2010 and is timely.

Appellant declined to meet for informal resolution.

Appellant lists many specific items/or relief in his appeal; all would require reversal or withdrawal of the decision.

ISSUES AND RESPONSES

<u>Issue 1:</u> The project did not utilize the "best available science"-prescribed burning and 100-foot clearance zones around homes as described in Jack Cohen's research work. (Appeal, pp. 5-6)

Jack Cohen's research is directly related to the home ignition zone (200 feet surrounding the home) and does not address the purpose and need to modify potential fire behavior that could enter the community from the surrounding forested landscape (FEIS, pp.3-4). The "Firewise" treatment of private lands is being advocated by county driven fire safe councils with varying level of success and is not within the scope of this project (FEIS, pg. 7).

The Record of Decision (pg. 5) and FEIS, (pp. 4 -5, 145 – 160, and pg. 200) utilized the "best science available" related to the treatment of the defense zone (0.25 mile wide) and threat zone (1.25 miles wide) of the Wildland Urban Interface (WUI) on National Forest System lands. It is explicitly stated that there are numerous objectives outlined in the Purpose and Need in Chapter 1 (pp. 3-4), and this project is in response to those needs.

I find the Forest Supervisor used the "best available science" for this project to treat fuels.

<u>Issue 2:</u> Massive logging of the pre-1850 forest must be included as part of the cumulative impact [analysis]. (Appeal, pp. 5-6)

The FEIS states that it is not necessary to enumerate and quantify every specific past action (FEIS, pp. 31 - 32), but would focus on the current conditions instead. Four reasons were given: 1) It is impractical and costly; 2) details of past events are no guarantee of predicting cumulative effects of future actions, and effects of natural events cannot be discounted when compared to human caused events; 3) the issue was not raised in scoping; and 4) Council on Environmental Quality (CEQ) states that it is not necessary to list individual effects based on past actions, but list current conditions instead that have resulted from past actions.

The FEIS describes that railroad logging had occurred during the early 1900's and lists other cumulative effects (FEIS, pp. 70 - 72). Existing vegetation conditions and proposed action conditions are given (FEIS, Appendix C, pg. 1). The silviculture report also describes existing vegetation conditions that are tied directly to railroad logging during the 1920's (Final Silviculture Report, pp. 3 - 5). Cumulative effects are analyzed in the Biological Evaluation/Assessment (BEBA, pp. 121 - 124), and are summarized in the FEIS.

I find the FEIS properly analyzed effects associated with past actives in the cumulative impact analysis.

<u>Issue 3:</u> With canopy cover down to 50% or less after implementation, fisher population might suffer disastrously from intentional implementation. (Appeal, pg. 6)

The FEIS includes design criteria for all the action alternatives to maintain fisher habitat: "Maintain highest canopy cover possible to meet the prescription within stands, aim for 50-60% immediately post-harvest" (FEIS, pg. 21). Design criteria have been included in all alternatives in the FEIS (pp. 19 – 23) to protect and maintain fisher habitat within the project area. These design criteria were included in the analysis on fisher (BEBA, 88 – 124). The effects of impacts from fuels treatments to fisher are analyzed in the Biological Evaluation/Assessment (BEBA, pp. 63-124) and summarized in the FEIS (pg. 66-68). The Biological Evaluation/Assessment outlines the habitat capability for the analysis area (pg. 66, Table 14). The analysis includes information (BEBA, Table 24, pg. 95, Appendix G, pp. 163-169, and Appendix H, pp. 170-174) which displays the summary of changes to those habitat criteria for each alternative. Within the rationale for the determination of effects to fisher is that canopy cover will be maintained at 50% but with a preference for 60%.

For Alternative 3, changes in weighted fisher habitat scores are predicted in seven of the project's 44 units. The weighted habitat scores include a measure of canopy cover based upon California Wildlife Habitat Relationship (CWHR) scoring. The changes are minor, however, with the percent of habitat suitability retained ranging from 98.57 to 99.75 percent in each of the affected seven units (BEBA, pg. 100). The project further includes fisher-specific measures to 1) limit the amount of behavioral disruption (BEBA, pp. 89-90), 2) maintain and enhance biological diversity, including retention of oak trees, large tree groups, snags and coarse woody material (BEBA, pg. 91) and 3) maintain habitat connectivity (BEBA, pp. 91-94). Given these minor temporary changes, especially as contrasted to the threat of large-scale loss of suitable habitat from uncharacteristically severe wildfire (BEBA, pp. 111-118), the contention that fisher populations might suffer disastrously from intentional implementation is difficult to conceptualize.

Based on a Memorandum of Understanding (MOU) entered into in February, 2005, by the Pacific Southwest Region and Pacific Southwest Research Station, Fish and Wildlife Service, and State of California Resource Agency, regarding projects of adaptive management nature, the FWS is interested in participating in the adaptive management process at both a technical and management level. Field discussions occurred with the FWS on September 17 and October 17, 2008. Four recommendations were included as design features common to all alternatives. These recommendations were based on previous consultation with the FWS on July 27, 2006 for the proposed Kings River Project (BEBA, pg. 12).

The Biological Evaluation/Assessment for this project determined that it may affect individuals; it is not likely to result in a trend toward Federal listing or loss of viability for the Pacific fisher (BEBA, pg. 124).

I find the project will maintain canopy cover at 50% or more after implementation, and fisher populations will not suffer disastrously from intentional implementation impacts.

<u>Issue 4:</u> There is a lack of social science research to support the decision, especially since there is a loss to the government. (Appeal, pg. 6)

The FEIS contains a section on Economics. This section is located on page 186 of the FEIS and the Response to Comments section includes a section on economics on pages 248 and 249.

The social science aspect of the report is limited to a cost analysis of the action alternatives. The assumption is made that despite the cost to government the more products and money moving from the Forest to the local community, the better benefit to society.

This document does not include extensive social science, but this is not required by law. CEQ Regulation 1502.23 states, "If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement and aid in evaluating the environmental consequences." Also the Forest Service Handbook (1970.45) states that it is up to the deciding officer to what standard the economic and social analysis needs to be completed.

I find the project record adequately covers the economic trade-offs of the project, and the Responsible Officer determined that an extensive look at social science is not a requirement for this project.

<u>Issue 5:</u> This plan should not go forward until litigation over the Sierra National Forest Land and Resource Management Plan 2004 Amendment is completed. (Appeal, pg. 6)

This decision is consistent with the SNF LRMP as amended by the 2004 SNFPA ROD. The project was designed in conformance with the intent of moving towards the management goals and objectives set forth in these documents to ensure that fuels treatments will effectively modify wildfire behavior while including other management objectives such as reducing stand density for forest health and restoring and maintaining ecosystem structure and composition (ROD 2004, pg.11). The 2004 SNFPA ROD replaced the 2001 decision in its entirety. It recommended an ecosystem approach whereby the development and planning of projects would be not only based on fuels reduction treatments, but it would create an overall approach by looking at all key elements within an ecosystem (FEIS, pg. 1). Furthermore, the 2004 SNFPA ROD was broadened to include the need to consider and provide for other important objectives to improve forest health by restoring and maintaining ecosystem structure and composition. Also, adaptive management and monitoring strategies are included in the 2004 SNFPA ROD to address high priority, key questions that relate to the uncertainties associated with management activities (FEIS, pg. 2). The Proposed Action and alternatives are guided by the Sierra National Forest Land and Resource Management Plan (SNF LRMP), as amended by the Sierra Nevada Forest Plan Amendment Record of Decision, 2004 (SNFPA ROD) [USDA-FS 2004b] (FEIS, pg. 4).

I find no reason to suggest the project should cease because of current litigation of the 2004 amendment. As the 2004 amendment has not been overturned, there is no legal requirement to cease using the current plan.

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 3, are logical and responsive and consistent with direction contained in the Sierra National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment Record of Decision (February, 2004).

The purpose of the proposal as stated above is clear and the benefits are displayed.

Effectiveness of Public Participation Activities and Use of Comments – Public participation was adequate and well documented. A Notice of Intent and 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, and distributed draft and final EISs to interested groups and individuals. The Sierra National Forest has maintained current information on 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.

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 comments received during the comment period and how the Forest Supervisor used this information, the appellant's objections and recommended changes.

Based on my review of the record, I recommend the Forest Supervisor's decision to implement Alternative 3 be affirmed on all issues in this appeal. I recommend that the Appellants' requested relief be denied on all issues.

/s/ John D. Exline

JOHN D. EXLINE
Appeal Reviewing Officer
Acting Forest Supervisor, Lassen National Forest