



United States
Department of
Agriculture

Forest
Service

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File Code: 1570-1/2200

Date: August 30, 2004

S. Elaine Sisler
Southwest Network for the Chemically Sensitive
P.O. Box 90
Paulden, AZ 86334

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
7000 2870 0000 1135 4042**

RE: Appeal #04-03-00-0015-A215, Management of Noxious Weeds and Hazardous Vegetation on Public Roads on the National Forest System Lands in Arizona

Dear Ms. Sisler:

This is my review decision on the appeal filed regarding the Decision Notice (DN), Environmental Analysis (EA), and Finding of No Significant Impact (FONSI) on the above-referenced project, which authorizes herbicide treatments along approximately 2,700 miles of Federal and State highways passing through National Forest System (NFS) lands. The potential treatment area is about 170,100 acres, which is based upon an estimated right-of-way width of 120 feet plus an additional 200 feet on each side of the highway.

BACKGROUND

Tonto National Forest Supervisor Karl Siderits made a decision on May 27, 2004, for the Arizona forests on this project. The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR § 215 appeal regulations.

Pursuant to 36 CFR § 215.17, an attempt was made to seek informal resolution of the appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR § 215.18. I have reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer found that: a) the decision logic and rationale were generally clearly disclosed; b) the benefits of the proposal were identified; c) the proposal and decision are consistent with agency policy, direction and supporting information; and d) public participation and response to comments were adequate.



APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision on the Management of Noxious Weeds and Hazardous Vegetation on Public Roads on the NFS Lands in Arizona Project.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR § 215.18(c)].

Sincerely,

/s/ Lucia M. Turner
LUCIA M. TURNER
Appeal Deciding Officer,
Deputy Regional Forester

Enclosures (2)

cc: Gene Onken, Constance J Smith, David M Stewart, Bill G Woodward, Paul M Stewart, Mailroom R3 Tonto, Arleen D Martinez, Charles F Ernst, Paul Mistretta

REVIEW AND FINDINGS

of

S. Elaine Sisler's**Appeal #04-03-00-0015-A215****ISSUE 1: The project is in violation of NEPA and an EIS should be prepared.**

Contention A: Studies submitted on the prevalence of chemical sensitivity have not been considered in the EA and FONSI. The EA is invalid since it underestimates the number of people in Arizona affected by chemical sensitivity and MCS.

Response: Articles presented were of a general nature. None specifically addressed any of the herbicides proposed for use in the subject EA. With respect to the herbicides evaluated in this EA, risk assessments (Book 2, Document C, pp. 13-14, list of items "Incorporated by Reference") contracted by the USDA Forest Service did not report any significant levels of hypersensitive reaction to the specific chemicals evaluated. A conservative low level of hypersensitivity to these herbicides is used in our analyses to recognize that hypersensitivity to these chemicals, alone or in combination, may be occurring but not being reported.

Data from the scientific (and other) literature presented does not support the claim that 15-22 percent of Arizona's population is hypersensitive to any or all of the chemicals in the list under study, just that adverse reactions to an unspecified, broad array of chemicals have been reported by that proportion of the population. No new scientific evidence is presented to support the specific claim of underreporting incidence of negative reactions to the 16 herbicides being evaluated.

Finding: The statistics cited by appellant are non-specific and cannot be related directly to the herbicides under discussion. No new science was disclosed. Information presented does not alter information presented in the EA on the conclusions reached based on that data.

Contention B: Comments submitted were completely ignored. A petition of 1100 names should have been included in the EA response information.

Response: The purpose of the 30-day comment period is to provide an opportunity for the public to comment on the proposed action prior to a decision by the Responsible Official and make the appeal process available to those who submit substantive comment during the comment period (36 CFR 215.1). For this project, there were two 30-day comment periods that overlapped. The comment periods began July 25, 2003, and again on August 20, 2003 (Book 2, Document B). The total comment period was from July 25, 2003, through September 18, 2003.

During the comment period, 67 letters were received and are part of the Project Record (Book 2, Document D). One additional letter was received after the Notice and Comment period closed (Book 2, Document D, #68). All substantive comments received during the comment period were reviewed and considered when the Responsible Official made his decision (Decision Notice at Book 3, Document K). The petition referenced above is included in the Response to

Comments (Book 2, Document D, #51) and is also referenced in the DN/FONSI (Book 3, Document K, p. 3).

Finding: Substantive comments received during the comment period were considered by the Responsible Official when making his decision. The petition is included in the Project Record and in the Decision Notice.

Contention C: Public health reactions to herbicides by sensitive individuals have been downplayed and ignored, and an EIS should be prepared to address the effects on individuals. The EA is deliberately biased because studies included in the appeal package were not considered in the preparation of the EA. This failure to consider data caused a false level of significance of the effects of hypersensitivity and MCS to be portrayed in the EA.

Response: Materials included in the appeal by appellant included:

- several summaries of the science relating to hypersensitivity or MCS;
- a couple of papers reporting research into population trends (all dependent on the accuracy of self-reporting for their conclusions) concerning hypersensitivity and MCS; and
- several anecdotal (doctor's letters) or popular press articles relating general information about hypersensitivity or MCS.

None of the materials provided disclose a clear linkage to the chemicals under study. Conversely, the results of Forest Service risk assessments (cited above) suggest that there are a negligible number of documented cases of hypersensitive responses to the 16 specific herbicides under discussion. While not discounting the existence of hypersensitivity or the very controversial science surrounding MCS, there is simply no generally accepted science supporting allegations that the chemicals under consideration in this EA are implicated as causal agents of either hypersensitive or MCS responses in humans or other animals.

Appellant specifically focuses on the paper by William Morton "*Porphyriopathy can explain symptoms of multiple chemical sensitivity*" (Appeal Appendix E). While this paper does indeed suggest a mechanism for symptom causality and expression in individuals genetically predisposed to this disease, it does not link chemicals designed to act on plant physiological pathways (herbicides) to this disease.

In summary, based on general papers that report non-specific causal information concerning a 'syndrome' not yet generally accepted by the scientific community as having been adequately described and circumscribed, appellant has presented a set of allegations specifically citing herbicides (reported by her as "toxic chemicals") as the primary cause of chemical hypersensitivity and MCS. This argument fails to present relevant new science or information generally accepted by the scientific community as required by NEPA at 40 CFR 1502.22(3). While of an informative nature, this information does not, and should not, influence the analysis presented in the EA and supported by rigorous Forest Service risk assessments.

Finding: No new science or information generally accepted by the scientific community was presented in the comments or in the appeal. The information in the EA and the studies used were adequate for the decision.



File Code: 1570-1/2200
Route To:

Date: August 27, 2004

Subject: ARO, Appeals #04-03-00-0015 and 0016-A215, Management of Noxious Weeds and Hazardous Vegetation on Public Roads on NFS Lands in Arizona, Sisler and Molloy

To: Deputy Regional Forester, Appeal Deciding Officer

This is my recommendation on the disposition of the two appeals filed in protest of the Decision Notice and Finding of No Significant Impact concerning the Management of Noxious Weeds and Hazardous Vegetation on Public Roads on National Forest System Lands in Arizona. This project authorizes herbicide treatments along approximately 2,700 miles of Federal and State highways passing through National Forest System (NFS) lands. The potential treatment area is about 170,100 acres, which is based upon an estimated right-of-way width of 120 feet plus an additional 200 feet on each side of the highway.

Tonto National Forest Supervisor Karl Siderits made a decision on May 27, 2004, for the Arizona forests on this project. The Forest Supervisor is herein termed the Responsible Official. S. Elaine Sisler of Southwest Network for the Chemically Sensitive and Susan Molloy filed appeals of this decision under the 36 CFR 215 appeal regulations.

Informal Disposition

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of these appeals. The record reflects that informal resolution was not reached.

Review and Findings

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, policies, and orders. The appeal records, including the appellants' issues and requests for relief, have been thoroughly reviewed. Having reviewed the Environmental Assessment (EA), decision notice, and the project record file, as required by 36 CFR 215.19(b), I conclude the following:

- 1) The decision clearly describes the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decision.
- 2) The selected alternative should accomplish the purpose and need established. The purpose and need stated in the EA reflect consistency with direction in the Forest Plans for the six National Forests in Arizona.
- 3) The decision is consistent with policy, direction, and supporting evidence. The record contains documentation regarding resource conditions, and the Responsible Official's decision documents are based on the record and reflect a reasonable conclusion.



- 4) The record reflects that the Responsible Official provided ample opportunity for public participation during the analysis and decision making process. The Responsible Official's efforts enabled interested publics the opportunity to comment and be involved in the site-specific proposal.

After considering the claims made by the appellants and reviewing the record, I found that the Responsible Official conducted a proper and public NEPA process that resulted in a decision that is consistent with the Forest Plans of the six National Forests in Arizona. I found no violations of law, regulations, or Forest Service policy.

Recommendation

I recommend that the Responsible Official's decisions relating to this appeal be affirmed with respect to all of the appellants' contentions.

/s/ Patrick L. Jackson
PATRICK L. JACKSON
Director, Appeals & Litigation

cc: David M Stewart, Constance J Smith, Arleen D Martinez, Gene Onken, Bill G Woodward,
Douglas L Parker, Mailroom R3