



File Code: 1300

Date: February 12, 2004

Mr. Rene Voss
John Muir Project/Earth Island Institute
P.O. Box 1236
Takoma Park, MD 20912

Dear Mr. Voss:

This letter provides our determination in response to your Request for Reconsideration filed under the United States Department of Agriculture (USDA) Information Quality Guidelines (IQG) and Data Quality Act (DQA) (Pub. L. No. 106-554 §515). You originally sought correction of information related to the initial data set for timber harvest effects monitoring.

We have given your Request for Reconsideration careful examination and thoroughly reviewed your concerns. According to USDA IQG, the review of your Request for Reconsideration was based on the explanation and evidence you provided. Because your Request for Reconsideration was one of the first submitted, USDA convened a panel to determine whether panels would be an effective method.

The panel was charged to determine whether the initial agency review of your Request for Correction was conducted with due diligence. The panel reviewed your request for conformity to both Office of Management and Budget (OMB) and USDA information quality guidance. Panelists examined the original request, the Forest Service response document, information provided by Forest Service and USDA websites, and the information you provided in your Request for Reconsideration. Panel members included USDA employees familiar with the Data Quality Act, and who assisted in development of Departmental guidance in this area. In order to formulate an independent review, the panel comprised two employees from other USDA agencies and a Forest Service representative.

The panel affirmed the Forest Service response dated July 29, 2003, and found no basis to support retraction or amendment of that original agency response. It determined that the initial agency response was conducted with a great deal of care and diligence. The panel carefully considered the information that was provided and concluded that the documented, on-site observations of Forest Service resource specialists provided sufficient precision to determine the individual and cumulative significance of the effects of limited timber harvest activities. The panel rejected your position regarding excluding the use of observation in support of the analysis and found no compelling reason that Forest Service should rely exclusively on the use of measurement.



Your position that the Forest Service did not use sound analytical methods for its scientific and economic analyses and that the Forest Service did not use reasonably reliable data and information are addressed by the Forest Service use of procedures developed under the National Environmental Policy Act and by agency procedures for field surveys that are found in the Forest Service Manual. You also contend that observation does not ensure transparency. However, the information was explained to the intended audience and also published in the Federal Register. Finally, you assert that the Forest Service failed to identify clearly sources of uncertainty that may affect data quality. The issue of uncertainty was treated adequately because the data provided had enough precision to determine whether Forest Plan standards were met and to determine whether there were significant environmental effects. The information you provided does not demonstrate that the challenged information is inconsistent with USDA IQG.

In conclusion, the information you provided was considered carefully. However, after full consideration and careful, thorough review, I conclude there is no substantive merit to your claims. The information you provided does not demonstrate that the information is inconsistent with USDA's Information Quality Guidelines. A copy of the panel's recommendation is enclosed for your information.

Sincerely,

/s/ Gloria Manning
TOM L. THOMPSON
Deputy Chief for National Forest System

**USDA Quality of Information
Request for Reconsideration Review Panel**

Review Panel Participants:

Gary S. Becker, Economist, Food Safety Inspection Service
Douglas J. McKalip, Director of Legislative Affairs,
USDA Natural Resources Conservation Service
David E. Sire, Ecosystem Management Coordination, USDA Forest Service

Subject of Review:

Response to Request for Correction File Code 1300/1900-1 July 29, 2003

“Request for Correction of Information Contained in the Initial Data Set for Timber Harvest Effects Monitoring” related to the Forest Service’s proposed limited timber harvest categorical exclusion. The request for reconsideration and original request for correction were submitted by:

Mr. Rene Voss
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Takoma Park, Maryland 20912

The original request pertained to certain information and data used in support of the proposed Categorical Exclusions published in the Federal Register on January 8, 2003, at pages 1-26-1030 titled “National Environmental Policy Act Determination Needed for Limited Timber Harvest.”

The request for correction asked that the Forest Service correct its reliance on “observation” as a monitoring technique and instead rely on the use of measurement on all parameters and data points for monitoring soils (compaction, displacement, and ground cover), fish and wildlife (population and trends), water quality (baseline and after implementation), and measurable data for other resources where appropriate. The requestor asked that the Forest Service present the specific measurement techniques used, present the entire data set, re-evaluate the conclusions based on this data set, and start the rulemaking over.

As far as identifying sources of uncertainty affecting data quality, the Reconsideration Panel, believes that there is some uncertainty in the data as it was presented and the commenters have made some valid points. But, the issue of uncertainty was handled adequately because the data provided sufficient precision to 1) determine if the applicable Forest Plan standards were met, and 2) whether or not there were significant environmental effects. Each project was originally analyzed and subsequently reviewed against the applicable Forest Plan. Significance of the resulting environmental effects was considered pursuant to the factors of significance provided in the Council on Environmental Quality regulations at 40 CFR 1508.27 as referenced by agency NEPA procedures at FSH 1909.15.

Recommended Agency Action:

The Reconsideration Panel affirms the Forest Service response of July 29, 2003 and denies the Request for Reconsideration. As alluded to earlier, the Reconsideration Panel believes that the Forest Service could have performed a better job of characterizing the uncertainty in the final estimates. For future projects, the FS should better identify project data, model, and methods constraints to the public and explain how the use of the data will affect the generality of the conclusions.



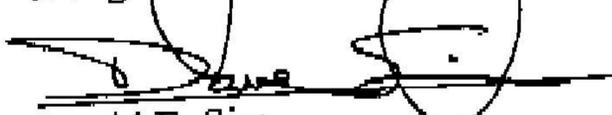
 Gary S. Becker

12/15/03
 Date



 Douglas J. McKalip

12/15/03
 Date



 David E. Sire

12/17/03
 Date

- Was the original petition frivolous, submitted in bad faith, the subject of prior complaints that have been resolved, or related to stale information?

The Reconsideration Panel determined that the petition was a valid request which had not received prior review. Panelists determined that information under Review met several other criteria under the USDA information guidelines, including:

1. support for a regulation, guidance, or other decision
2. Implications for a broad range of parties or have an intense impact

The Reconsideration Panel determined that the information in question was not "stale" under USDA information quality guidelines in that it is still an important component of USDA Forest Service policy development.

Findings:

The Reconsideration Panel found no compelling evidence to support retraction or amendment of the original agency response dated July 29, 2003.

Development of the initial agency response was conducted with a great deal of care and diligence. The Forest Service carefully considered the information that was provided. After consideration and review, the Forest Service concluded that the documented on-site observations of Forest Service resource specialists provided sufficient precision to determine the individual and cumulative significance of the effects of limited timber harvest activities on the human environment. They found no compelling reason to exclude the use of observation in support of their analysis or to rely exclusively on the use of measurement on all parameters and data points for monitoring soils, fish and wildlife, and water quality.

The Reconsideration Panel, charged with the task of determining whether the initial agency review of the Request for Correction was conducted with due diligence, notes that the FS used sound analytical methods in carrying out its analysis. The environmental analyses were conducted according to agency NEPA procedures codified in FSH 1909.15 (which have Council on Environmental Quality concurrence). The Reconsideration Panel notes that appropriate field surveys such as for threatened and endangered species and for heritage resources were conducted according to agency procedures (FSM 2670.31 and 36 CFR §800 respectively). The original analysis was developed by FS personnel and was available to interested and affected parties. The original environmental analysis predictions and findings were validated by subsequent interdisciplinary team field review.

The Reconsideration Panel also believes that the analyses were explained to the intended audiences in the original environmental documentation. The subsequent field review information, data sources, methodology, and analyses were made available to the interested public through Federal Register notices (68 FR 1026 and 68 FR 44598) and agency website (<http://www.fs.fed.us/emc/lth>).

- 1) "Use the best science and supporting studies conducted in accordance with sound and objective scientific practices, including peer-reviewed science and studies where available."
- 2) "Use data collected by accepted methods or best available methods."

Summary of Reconsideration Panel charge and deliberations:

The Reconsideration Panel on the Correction of Information Contained in the Initial Data Set for Timber Harvest Effects Monitoring began work on October 20, 2003, by collecting background on the request. The charge of the panel was to determine whether the initial agency review of the Request for Correction was conducted with due diligence. The Reconsideration Panel first convened on October 29, 2003. Extensive background was provided by Forest Service personnel. Panelists outside the original agency of request performed subsequent examination of the original request, response document, and additional background information provided by Forest Service staff and Forest Service and USDA websites. Panel Members included USDA employees intimately familiar with the Data Quality Act, and who assisted in development of Departmental guidance in this area. Consideration of the request included panelists outside the original agency of request in order to formulate an independent review.

Review of Potential Disqualification of Request

The Reconsideration Panel first examined whether the initial request adhered to the requirements for reconsideration under the Data Quality Act. In this case, the information contained in the initial data set for timber harvest effects monitoring was examined to determine whether the document was subject to review. The panel considered the following:

- **Was information intended exclusively for use by government employees, contractors, grantees?**

The Reconsideration Panel determined that the information was not intended exclusively for use by government employees, contractors, and grantees.

- **Was information intended exclusively for intra-agency or interagency use?**

The Request for Reconsideration Panel determined that since the information would be utilized in cases where public comment is solicited it was not exclusively for intra-agency or interagency use.

- **Did the requestor follow and include all required items?**

The Reconsideration Panel determined that all required components and documentation had been submitted by the requestor.

The requestor notes that "affected publics in adjacent communities would have little oversight and input in the outcome of these types of projects since..." projects that are categorically excluded from detailed environmental review under NEPA are no longer subject to notice, comment, or appeal pursuant to 36 CFR 215.

Legal Authority for Request:

The request was submitted under the Data Quality Act (Pub. L. No. 106-554, Sec. 515) and subsequent USDA Information Quality Guidelines.

Timeline of Requests:

March 10, 2003 - Original request for correction received by the USDA Forest Service.

July 29, 2003 - Agency response provided to requestor, indicating no compelling reason to exclude the use of observation in support of the FS analysis or to rely exclusively on the use of measurement on all parameters and data points for monitoring soils, fish and wildlife, and water quality.

September 10, 2003 - Request for reconsideration submitted to agency.

October 29, 2003 - Reconsideration Panel convened.

Summary of Request: The requestor asserts that in its original data collection request that the following list of allegations of non-compliance with the USDA's IQ Guidelines were left unanswered.

The requestor claims that for Regulatory Information the FS does not:

- 1) "Use sound analytical methods of carrying out scientific and economic analyses: since the method of "observation" is not verifiable;
- 2) "use reasonable reliable...data and information (e.g., collected data such as from surveys, compiled information, and/or expert opinion) since the method of "observation" is inherently unreliable;
- 3) The technique of "observation" and data presented does not "ensure transparency of the analysis, to the extent possible by ...Providing transparent documentation of data sources, methodology, assumptions, limitations, uncertainty, computations, and constraints" and "Explaining the rationale for using certain data over other data in the analysis," as well as "Presenting the model or analysis logically so that the conclusions and recommendations are well supported."
- 4) "Clearly identify sources of uncertainty affecting data quality."

The requestor claims that for Influential Regulatory Information the FS does not: