United States Department of Agriculture | **Forest Service** | **Eastern Region** | **626 East Wisconsin Ave. Suite 800 Milwaukee, WI 53202**

File Code: 1570-1
Date: February 23, 2004

Mr. Jim Bensman
Heartwood
585 Grove Avenue
Wood River, IL 62095-16151615

RE: Appeal of the Decision Notice and Finding of No Significant Impact for the Carman Springs Wildlife Enhancement Project Environmental Assessment, Ava/Cassville/Willow Springs Ranger District, Mark Twain National Forest, Appeal 04-09-0013 A215

Dear Appellants:

Pursuant to 36 CFR 215.17, I have reviewed the appeal record for District Ranger Janny Farenbaugh's Decision Notice and Finding of No Significant Impact for the Carman Springs Wildlife Enhancement Project signed on November 25, 2003. I have also considered the recommendation of the Appeal Reviewing Officer (ARO) John Romanowski, regarding the disposition of your appeal. In accordance with 36 CFR 215.19(b), the Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, District Ranger Jenny Farenbaugh, and the issues raised in your appeal filed on December 22, 2003. The Appeal Reviewing Officer's recommendation is enclosed with this decision for your information.

The Appeal Reviewing Officer found no evidence that the Responsible Official's decision violated law, regulation or policy. He found that the decision responded to comments raised during the analysis process and comment period, and adequately assessed the environmental effects of the selected action. In addition, he found that the issues raised in your appeal were addressed, where appropriate, in the decision documentation. Based on his review, the Appeal Reviewing Officer recommended that the decision be affirmed.

After careful review of the Project File and the appeal, I concur with the Appeal Reviewing Officer's analysis and findings regarding your specific appeal issues. To avoid repetition, I adopt his rationale as my own and refer you to the enclosed Appeal Reviewing Officer recommendation for further detail.

DECISION

It is my decision to affirm District Ranger Jenny Farenbaugh's Decision Notice for the Carman Springs Wildlife Enhancement Project Environmental Assessment, Mark Twain National Forest. Pursuant to 36 CFR 215.18(c) this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ M. Ruth Voltz
M. RUTH VOLTZ
Deputy Regional Forester

Enclosure

cc:
Mark Twain NF, Forest Supervisor
Responsible Official, Jenny Farenbaugh
NEPA Coordinator, Becky Bryan

United States Department of Agriculture | **Forest Service** | **Eastern Region** | **626 East Wisconsin Ave. Suite 800 Milwaukee, WI 53202**

File Code: 1570-1 **Date:** February 20, 2004
Route To:

Subject: Appeal of the Decision Notice and Finding of No Significant Impact for the Carman Springs Wildlife Enhancement Project Environmental Assessment, Ava/Cassville/Willow Springs Ranger District, Mark Twain National Forest, Appeal 04-09-0013 A215 (ARO))

To: Regional Forester

This letter constitutes my recommendation for the subject appeal filed by Heartwood, Missouri Forest Alliance, Jim Bensman and Jim Schcff for the Decision Notice and Finding of No Significant Impact of the Carman Springs Wildlife Habitat Enhancement Project Environmental Assessment, Ava/Cassville/Willow Springs Ranger District, Mark Twain National Forest. District Ranger Jenny Farenbaugh was the Responsible Official for this decision. Her Decision Notice was signed on November 25, 2003.

My review was conducted pursuant to 36 CFR 215.19 and the Chief's memorandum of December 15, 1993, that defines the role and scope of the Appeal Reviewing Officer review. To ensure the analysis and decision are in compliance with applicable laws, regulations, policies and orders, I have reviewed and considered each of the points raised by the Appellants and the decision documentation submitted by the Mark Twain National Forest (MTNF). My review recommendation is based upon review of the project file and appeal record, including but not limited to the scoping letter, public comments, Decision Notice and Finding of No Significant Impact (DN/FONSI) and the Environmental Assessment (EA).

The Appellants raised twelve issues in this appeal of the Carman Springs Project decision. These appeal points will be addressed in the order in which they were presented in the appeal and have been subdivided to address specific points.

Appeal Issues

II. SUPPLEMENTAL INFORMATION REPORTS

Appellants challenge the adequacy of the Supplemental Information Reports (SIRs) recently completed by the MTNF pursuant to a litigation settlement with one appellant, Missouri Heartwood. These SIRs documented the Forest's analysis and determination that the programmatic Environmental Impact Statement (EIS) prepared for the Mark Twain Forest Plan should not be supplemented as a result of alleged "significant new circumstances or information relevant to environmental concerns" regarding chip mills, salamander research, and the updated Regional Forester's sensitive species list, *see* 40 CFR 1502.09(c); FSH 1909.15, Section 18.

Heartwood's administrative appeal of the Carman Springs Project states:

> "Since the recent SIRS are plan level analysis, if they are not legally adequate, the Carmen Springs decision must be reversed as the Forest Service has not adequately addressed these issues."

Appellants allege a nexus between the Plan level SIRs and the Carman Springs Project, but fail to articulate the reasons substantiating their belief. Specifically, they fail to demonstrate how the alleged inadequacies of the Plan level SIRs render the Carman Springs Project illegal. Appellants merely assert that the SIRs are inadequate, and conclude that the project may not be implemented. Appellants also made this assertion in their administrative appeal of the Eastwood II Project on the Mark Twain National Forest. The decision in the Eastwood II appeal put the Appellants on notice that they provided no evidence or argument concerning any defect in the SIRs that related to the project. That same degree of evidence or lack thereof is present here.

Appellants' argument here, as in their Eastwood II appeal relies heavily upon the presumption that a legal defect in the SIRs, if there is one, invalidates the project NEPA document. Without citation or support, Appellants argue that the programmatic SIRs are defective, therefore, the project may not proceed. To the contrary, my review of the record indicates that the environmental analysis for the Carman Springs Project thoroughly considered the environmental consequences of the proposal (EA, Environmental Consequences, Pages 3-1 to 3-105). Lacking any specific evidence of a legal defect relating to the project on appeal, Appellants have failed to provide a basis for overturning the responsible official's decision. Mere assertions of illegality in programmatic documents without evidence of legal defect in the project decision on appeal do not constitute enough evidence to overturn a project decision.

Based upon my analysis of the appeal record, I recommend that the District Ranger's decision be affirmed.

III. COURT ORDER/SETTLEMENT AGREEMENT

The Appellants allege that approving the Carman Springs Project violates a court order/settlement agreement pertaining to the Pleasant Valley Timber Sale. In that settlement agreement, the Forest Service agreed to do SIRs to determine whether the Mark Twain Forest Plan and its accompanying EIS need to be changed as a result of new information on salamanders, chip mills, and Regional Forester Sensitive Species. Appellants allege that since the Forest Plan SIRs are inadequate, the Carman Springs Project violates the court order.

However, as set forth above, Appellants have failed to demonstrate how the alleged defects in the SIRs relate to the project level decision. Accordingly, I recommend the District Ranger's decision be affirmed.

IV. FOREST PLAN AMENDMENT

In March 2001, the Mark Twain National Forest issued its Threatened and Endangered Species (TES) Amendment to the MTNF Land and Resource Management Plan (LRMP). That amendment was subject to appeal pursuant to 36 CFR 217. The amendment was not appealed.

The Appellants allege that the Carman Springs Project needs to be reversed due to the Plan Amendment being legally inadequate. However, like their challenges to the Forest Plan SIRs, the Appellants do not explain how the legal inadequacies of the TES Plan Amendment render the Carman Springs Project illegal. Therefore, since the Appellants have not provided evidence that the Carman Springs Project is illegal, I recommend that the District Ranger's decision be affirmed.

V. FOREST PLAN AMENDMENT 2

Appellants state that they incorporate by reference Heartwood and Jim Bensman's appeal of the November 16, 2001 Decision by Randy Moore, Forest Supervisor to approve the Amendment to the Mark Twain Forest Plan Establishing Areas of Influence and Management Strategies for Indiana Bat Hibernacula. They argue that the Amendment should have provided more protection for the bats and had it done so, these "sales" would not have been approved.

The regulations at 36 CFR 215 do not allow for other appeals to be incorporated by reference. 36 CFR 215.2; 36 CFR 215.17(b). The regulation at 36 CFR 215.14 expressly states that for each appeal "[i]t is the appellant's responsibility to provide sufficient written evidence and rationale to show why the Responsible Official's decision should be remanded or reversed." The Appellants have filed dozens of appeals, and therefore should be very aware of this provision.

Appellants argue that the Amendment should have provided more protection for the bats, and had it done so, these sales would not have been approved. This Amendment to the Mark Twain Forest Plan established Management Area Prescription 3.5. (MA 3.5) This Management Area Prescription provides management to protect Indiana bats and their habitat in and around hibernacula and known sites of reproductively active females. No MA 3.5 lands fall in or around the Carman Springs Wildlife Habitat Enhancement Project Area (EA, p. 1-1; Decision Notice, p. 1). The Biological Evaluation for the project states the nearest Indiana bat hibernacula to the Carman Springs Wildlife Habitat Enhancement Project Area is 26 miles northwest, the nearest capture site of a reproductive female is 48 miles north, and the nearest maternity colony is 198 miles north (EA, Appendix C, p. C-6). Activities proposed in the Carman Springs Project would not have any effect on known hibernacula or habitats surrounding these caves (EA, Appendix C, p. C-11). The United States Fish and Wildlife Service (USFWS) concurred with this determination (Project File, H8, p. 5, 6).

Based on my analysis of the appeal record and project record, I recommend that the District Ranger's decision be affirmed.

VI. PLAN REVIEW

The Appellants are concerned that the Mark Twain has not revised its Forest Plan. They assert that conditions in Missouri have significantly changed and a revision needs to be done. They further assert that a revision of the Forest Plan would not allow these projects.

The MTNF Forest Plan was approved in June 1986. Since adoption, the Plan has been amended 29 times. The MTNF Forest Plan is a dynamic document that has been updated to reflect new

information and monitoring data. The Mark Twain National Forest is currently in the process of revising its Forest Plan. The Notice of Intent for the Plan Revision acknowledges that conditions on the Mark Twain National Forest have changed, and was published in the Federal Register on April 16, 2002. The DEIS for Plan Revision is anticipated to be available for public review in November 2004, with a final decision for the revised Forest Plan scheduled to be signed in 2005.

The Appellants' implication that a revision of the Plan would not allow "these projects" does not specifically state why "these projects" would not be allowed (to proceed). We are unaware as to what projects the Appellants are referring to. If they are referring to the Carman Springs Wildlife Habitat Enhancement Project, they did not specifically state their concerns with this project. They provide no evidence of a particular flaw in the existing Forest Plan to support their argument, nor how it would affect the Carman Springs Project.

VII. ECONOMIC ANALYSIS

The Appellants assert that because a General Accounting Report criticized the Forest Service for its accounting practices, the public cannot adequately consider and comment on the economic claims made in "these EAs."

I am unaware as to what EAs the Appellants are referring to. If they are referring to the Carman Springs EA, the EA includes an economic analysis as directed by Forest Service Handbook (FSH) 2409.18 Section 32. Specifically, the Handbook directs the responsible line officer to complete analyses that provide information on overall timber sale program financial and economic efficiency. The information is used to compare the cost efficiency of each alternative. An analysis of direct and indirect effects on economics by alternative was completed as part of the document (EA, p. 3-102 to 3-104). This analysis clearly states that it only includes costs associated with proposed alternatives and finite estimates of revenues associated with timber production. This analysis displayed both short and long term effects on employment, timber production and resulting revenues to counties, present net values and revenue/cost ratio where applicable. Table 3.19 (Economic Returns by Alternative, EA, p. 3-104) displays a comparison of priced activities in each alternative for a relative comparison. It should not be considered actual yield or losses, nor does it attempt to analyze all resource values (EA, p. 3-103). Appendix D of the EA clearly displays all costs and revenues used in the economic analysis for each alternative, with frequency, year, quantity, value, inflation rates, and base year.

The Appellants have failed to demonstrate specifically how the GAO report on Forest Service accounting practices relates to the project level decision. Accordingly, I recommend the District Ranger's decision be affirmed.

VII. CARMAN SPRINGS PROJECTS

The Appellants state that this section of their appeal deals with "the documentation for the Pine Bradley Projects." I assume since the section is entitled "Carman Springs Projects" that the Appellants meant to refer to the Carman Springs Projects.

A. CLEARCUTTING/EVENAGED MANAGEMENT

1. **Optimality Finding- EA Provides No Justification For Clearcutting.** The Appellants claim that the optimality analysis does not address the objectives and requirements of the relevant land management plan. They allege the Ranger fails to explain how the stands to be clearcut are any different from other stands and why no other cutting methods will work.

   One 40-acre stand is proposed for a clearcut harvest in the Carmon Springs project, and falls within Management Area 3.4 (MA 3.4). The MTNF Forest Plan desired future condition for this MA is a diverse natural appearing mosaic of stands, with various stages of vegetative communities featured. Trees within each stand will be about the same age and size, with stands ranging from seedlings to large trees. Another desired condition identified for the Carman Springs project area by the interdisciplinary team includes woodland habitats 0-9 Age Class (EA, p. 1-4). Page 3-60 of the EA states:

   > "stands selected for clearcutting and seed tree harvest would provide 0-9 habitat. Seed tree harvesting is chosen over clearcutting when there is enough pine scattered in the stand to provide an adequate seed source for pine regeneration. These stands would regenerate to oak and pine."

   It also notes that clearcutting and seed tree harvest is not planned for all stands that would benefit from this type of cutting.

   Page 3-67 of the EA addresses the optimality of clearcutting and states:

   > "The Forest and Rangeland Renewable (Resources) Planning Act of 1974 as amended by the National Forest Management Act of 1976 requires in Section 6(g)(3)(F)(i) 'for clearcutting, it is determined to be the optimum method'. Appendix D of the Forest Plan lists criteria for optimality of clearcutting. This specific stand that would be clearcut in Alternative 3 and the justification is as follows (C- compartment, S-stand):
   > C120, S119 – The year of origin for this stand is 1905. This stand is classified as high risk. The stand has far exceeded the culmination of its mean annual increment. Although 3/4 of the sawtimber trees in this stand are currently in an acceptable condition, over 30 percent are showing signs of damage from disease. These trees would be unable to fight off further damage from insects and diseases. Another factor is that half of the acceptable trees are black and scarlet oak, which have a relatively short lifespan. Even trees, that currently appear healthy, are highly susceptible to infestation. The west aspect would contribute to an increased possibility of windthrow to residual trees if a partial harvest were done. There are too few pine trees to make this stand suitable for a

seed tree harvest. Clearcutting would also help fulfill the need for early successional habitat."

High risk stands are described as those stands where the majority of the trees are not expected to live another 10 years, for a number of reasons including being over mature; biological damage; and/or physical damage (EA, p. 3-58). The EA provides further discussion on the physiological characteristics of black and scarlet oaks (EA, p. 3-57), which comprise half the acceptable stocking of this stand. As described in this section of the EA, black oaks reach physiological maturity at about 100 years, whereas scarlet oak reaches economic maturity between ages 46 and 58 (Silvics Manual, volume 2). The relatively short life span of black and scarlet oak is a contributing factor to the oak decline. The ability a tree has to reproduce both through seed, with the exception of black oak (Johnson, 1994) and stump sprouts declines (Sander, 1984), as they get older. The stand in question is currently 98 years old.

Appendix D (Harvest Methods) of the MTNF LRMP (p. D-9) lists conditions where clearcutting may be considered optimum. Among others, the conditions include:

- Residue trees left from partial cutting would be damaged or lost to windthrow because of soil conditions or location.

- There is a multiple use management objective that requires the continuance of shade-intolerant species to be regenerated on relatively short rotations (less than 80 years).

- Living, dead and declining tree species must be harvested at one time to obtain stump sprouting from the declining trees while this option is still viable (before starch reserves are depleted and while trees can still sprout).

The detailed description in the EA documenting the thought process for arriving at a clearcut prescription demonstrates that clearcutting is the optimal harvest method for this stand. Given a high risk stand, with mature short-lived trees that would be unable to fight off further damage from insects and disease, along with MA 3.4 desired future conditions and project-level desired conditions, an even-aged prescription is appropriate. A partial harvest and seed tree harvest were considered for this stand. However, given the western aspect with a higher risk of windthrow, and an inadequate number of pine trees for seed tree cutting, clearcutting was concluded to be the optimal method to regenerate this area. The DN/FONSI also includes documentation on the optimality of prescribing a clear cut for this stand (DN/FONSI, p. 8). The rationale for vegetation treatment

proposed for every stand, including the clearcut prescription for C120, S119, is also documented in the Project File, F18, page 48.

Based on my review of the Forest Plan, EA, and project record, I recommend that the District Ranger's decision be affirmed.

2. **Appropriateness Finding-** The Appellants allege the EA does not address the appropriateness of even-aged management systems.

The National Forest Management Act ("NFMA") allows for the use of even-aged management systems where they are determined to be appropriate to meet the objectives and requirements of the relevant land management plan (16 U.S.C. 1604 (g)(3)(f)).

A total of 123 acres are prescribed for even–aged regeneration treatments (EA, p. 2-26, Table 2.5). All even-aged regeneration treatments (seed tree, shelterwood, or clearcut) in the selected alternative (3) of the Carman Springs Wildlife Habitat Enhancement Project fall within MA 3.4 (EA, Table 2.8, pages 2-30 to 2-35). Management Area (MA) 3.4, which comprises the majority (5,886 acres, EA, p. 1-1) of the Carman Springs project area, emphasizes wildlife habitat diversity to maintain and enhance populations of native and naturalized vertebrates (MTNF LRMP, p. IV-115). As described in the Carman Springs EA, as well as the Forest Plan, the desired future condition for this MA is a diverse natural appearing mosaic of stands, with various stages of vegetative communities featured. Oaks will be the dominant species in this MA, with other hardwoods and conifers present. Trees within each stand will be about the same age and size, with stands ranging from seedlings to large trees (MTNF LRMP, p. IV-115).

Additionally, the interdisciplinary team further developed the desired condition specific to the Carman Springs project area (EA, p. 1-3) to include:

- Oak forest with dense under-story of woody species
- Forested stands with ground cover habitat (Open woodlands/savannas)
- Woodland habitats 0-9 age class
- Glades

The use of even-aged management versus uneven-aged management on the Mark Twain National Forest was addressed during development of the Forest Plan. Appendix D (Harvest Methods) of the LRMP considered various harvest methods, and states the primary harvest cutting methods for managing the timber types on the Forest are those used under the even-aged management system, namely clearcutting, shelterwood, and seed-tree. The uneven-aged management system is applied to some of these timber types

based on species composition, site productivity or multiple use objectives. When the uneven-aged management system is applied, the group selection system will normally be used. The decision on which harvest cutting method, i.e. clearcutting, shelterwood, seed tree, or selection, to use in any given stand is based on management objectives, stand conditions, and the silvical characteristics of the species present or desired (MTNF LRMP, Appendix D, p. D-4).

As stated on page 3-67 of the Carman Springs EA, "even-aged management (EAM) is appropriate to ensure regeneration of shade-intolerant species such as oak and pine. Clearcutting and shelterwood harvesting would be used to regenerate oak and pine. Seed tree harvests would be used to regenerate pine. Also EAM is appropriate to meet objectives of the Land and Resource Management Plan of the Mark Twain National Forest for MA 3.4. Objectives that would be met include emphasizing habitat diversity by providing early successional habitat and species diversity, and providing for production of timber products". The DN/FONSI also provides documentation on the appropriateness of even-aged management for stands with even-aged regeneration prescriptions (DN/FONSI, p. 8).

Alternatives 2 and 3 propose a combination of even-aged and uneven-aged methods. There is ample evidence that the silviculturist, the interdisciplinary team, and the decision maker did consider a variety of management techniques that include both even-aged management and uneven-aged management. The interdisciplinary team also fully developed and analyzed an alternative that strives to meet project objectives without the use of timber harvesting (Alternative 4). (See response to appeal point VII-A.3 for further discussion on alternatives considered relative to even-aged management).

Review of the EA demonstrates that the Forest has adequately considered the appropriateness of even-aged management in light of MA 3.4 Forest Plan direction, as well as specific desired conditions for the Carman Springs Project Area.

I recommend that the District Ranger's decision be affirmed on this point.

3. Range of Alternatives-The EA does not have an adequate range of alternatives in regard to the use of even-aged management.

The National Environmental Policy Act (NEPA) 42 U.S.C. 4321, requires federal agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts of alternative uses of available resources. The Council on Environmental Quality's (CEQ's) regulations (40 CFR 1502.14) implementing NEPA discuss alternative development. Agencies are to rigorously explore and

objectively evaluate all reasonable alternatives, and briefly discuss the reasons for eliminating alternatives from detailed study. 40 CFR 1502.14(A). While regulations require that a range of alternatives be analyzed, the no action alternative is the only alternative specifically required as an option to the proposed action. 40 CFR 1502.14(d). There are no set numbers of alternatives that are required in order to reflect a reasonable range. CEQ's 40 Questions (Question 1b) and Forest Service Direction (FSH 1909.15, Chapter 40, Section 14) only require that examples across the range of reasonable alternatives be analyzed in detail. The same Forest Service direction notes that reasonable alternatives are to be developed from the results of scoping and the issues raised. Agencies have discretion to determine appropriate alternatives based upon the purpose of the proposal.

Scoping completed for the Carmon Springs Wildlife Habitat Enhancement Project identified four key issues to be analyzed in detail. One of these issues centered on silvicultural treatment methods, which includes the use of even-aged management as opposed to uneven-aged management.

The project considered five alternatives. Four of these were carried forward for analysis, and one was dropped from further consideration. An "All Uneven-aged Management" alternative was considered, but eliminated from detailed consideration. It was determined that this alternative would not meet the goals and objectives of the project (EA, p. 2-21). Using strictly uneven-aged harvest methods would not address forest health issues or provide diverse wildlife habitats.

Four alternatives were carried forward for detailed analysis. Alternative 1 is the No Action alternative that does not include any harvest activities, including even-aged management. Alternative 2 is the proposed action, and responds to the need to enhance declining wildlife habitats, improve forest health and provide further dispersed recreational opportunities in the Carman Springs Wildlife Area. It proposes the use of traditional silviculture methods while using a balance of even-aged and uneven-aged management to improve wildlife habitats and forest health (EA, p. 2-15 and 2-16). Alternative 3 is the open-woodlands/savannah restoration alternative, and is designed to restore and enhance open woodlands and savannahs. It emphasizes forested habitat with a 20 to 30% ground cover component. This alternative uses various intensities of thinning, even-aged and uneven-aged harvest methods, and prescribed fire to restore the natural stand structure and species composition that developed under a higher fire frequency (EA. p. 2-18). Alternative 4 is the no commercial harvest/prescribed fire only alternative, and is designed to meet desired conditions by using only prescribed fire (EA, p. 2-19).

Table 2.5 of the EA (p. 2-26) displays how each alternative responds to the issues, including Issue 2, Silvicultural Treatment methods. Alternative 1 (No Action) proposes no even-aged or uneven-aged management. Alternative 2 (the

proposed action) proposes 582 acres of even-aged regeneration harvesting, 1,407 acres of uneven-aged management, and 1,276 acres of thinning. Alternative 3 (open-woodland/savannah restoration) proposes 123 acres of even-aged regeneration harvesting, 233 acres of uneven-aged management, and 3,435 acres of thinning. Alternative 4 (no commercial harvest/prescribed fire Only) proposes no even-aged or uneven-aged vegetation management through the use of commercial timber harvest.

The District Ranger and interdisciplinary team agreed that the alternatives considered represent the range of concerns of the Forest Service, local residents, other agencies, and most members of the public that responded to the Forest Service during the public involvement phase of the project (EA, p. 2-15).

Based on a review of the EA, I find the range of alternatives with regard to the use of even-aged management to be adequate.

B. **THREATENED AND ENDANGERED SPECIES**

In this section, the Appellants make numerous bare assertions of why the Carman Springs Project violates the Endangered Species Act and will harm the endangered Indiana bat. To support these assertions, Appellants state that their previous appeals explain the issue, but offer no evidence as it pertains to this project.

As set forth above, the regulations at 36 CFR 215 specifically state that "[i]t is the appellant's responsibility to provide sufficient written evidence and rationale to show why the Responsible Official's decision should be remanded or reversed." 36 CFR 215.14(a). Incorporation of other appeals by reference is not allowed. By stating that their previous appeals explain the issue, Appellants are in essence admitting that they have not adequately provided sufficient evidence in support of this appeal. In addition, Appellants have provided no evidence related to this project in support of their allegations.

An Appellant needs to show some rationale as to why he or she believes a decision should be reversed. A mere assertion with reference to an appeal on a totally different project is not enough to reverse the District Ranger's decision.

C. **NO VALID FOREST PLAN**

The Appellants contend that the Mark Twain Forest Plan expired in 1996 and therefore "these timber sales" cannot go forward until the Mark Twain has a "valid Forest Plan." They further allege that the Forest Plan EIS must be revised every 15 years, and the Mark Twain has not even issued a notice of intent to prepare an EIS. They also contend that the Forest Service is refusing to develop alternatives without logging because of the current Forest Plan.

NFMA states Forest Plans "shall be revised from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every 15 years…." 16 U.S.C. 1604(f)(5). The MTNF Forest Plan was approved in June 1986. Since adoption, the Plan has been amended 29 times. The MTNF published a notice of intent for the Plan revision in the Federal Register on April 16, 2002. The draft environmental impact statement for Plan Revision is anticipated to be available for public review in November 2004, with a final decision for the revised Forest Plan scheduled to be signed in 2005.

Appellants argue, without supporting citation to statute, regulation, or policy, that the Carman Springs Wildlife Habitat Enhancement Project may not be implemented until the MTNF Forest Plan revision is completed. Taken to its logical conclusion, the Appellants' argument would halt management and resource protection activities on the MTNF pending completion of an updated planning document. There is no express requirement in NFMA or its regulations to halt management activities if a Forest cannot meet the 15-year target in the statute.

Moreover, Congress did not intend management to cease if the 15-year target date for plan revision was not met. NFMA, Section 1604(c), illustrates this point. In the development of the original forest plans, Congress specifically allowed management of the forests to continue under existing resource plans pending approval of the first NFMA forest plan for each administrative unit. (See e.g. 16 U.S.C.A. 1604 note). This demonstrates Congress' intent that on-the-ground forest management continue while the agency developed programmatic planning documents. On other occasions, Congress halted funding for forest plan revisions. Appellants' arguments that resource management must be halted pending completion of plan revision are contrary to Congressional intent.

Appellants provide no evidence of a particular flaw in the existing Forest Plan to support their argument. As noted previously, the MTNF Forest Plan has been amended 29 times since its adoption. The Mark Twain Plan is a dynamic document that has been updated to reflect new information and monitoring data. Appellants provide no evidence that the standards and guidelines and other information used in the development of the Carmon Springs Wildlife Habitat Enhancement Project will fail to protect forest resources. To the contrary, the project record demonstrates that the standards and guidelines used in project development are effective in providing resource protection and mitigating potential adverse environmental effects. Not withstanding Appellants' desire for something new, they present no evidence that the existing plan direction used in the development of this project was inadequate.

The Appellants allege the Forest Service is refusing to develop alternatives without logging because of the current Forest Plan. In fact, two alternatives selected for analysis in the Carman Springs Wildlife Habitat Enhancement Project do not include any logging. The No Action alternative (Alternative 1) is an alternative that does not include logging. The no commercial harvest/prescribed fire only alternative (Alternative 4) proposes using only prescribed fire to meet desired conditions. It was

specifically developed to address project objectives without the use of timber harvesting and for people who would like to see management without timber harvesting (DN/FONSI, p. B-2, EA, p. 3-67). The effects of not logging in the project area are described in the EA. In addition, non-logging activities are proposed in all action alternatives. Specifically, Alternatives 2, 3, and 4 include prescribed burning, various wildlife habitat improvements, road maintenance activities, and dispersed recreation improvements.

I recommend that the District Ranger's decision be affirmed.

E. SENSITIVE SPECIES DATA

The Appellants contend that the 11th Circuit Court of Appeals held that the Forest Service was required to obtain population data for sensitive species, and that this data has not been gathered. This is not true. The 11th Circuit ruled that the Forest Service was required to obtain population data for sensitive species, where a Forest Plan requires the collection of such data. The MTNF LRMP does not require the collection of population data for sensitive species, therefore the 11th Circuit ruling does not apply to the MTNF. Additionally, the 11th Circuit Court ruling affects activities for national forest system lands located in the states of Florida, Georgia, and Alabama and, therefore, is not binding on national forest system lands in Missouri.

Page 3-76 of the EA discusses the site-specific effects of the Carman Springs Wildlife Habitat Enhancement Project on Regional Forester's Sensitive Species. Species presence or absence was determined using the Missouri Heritage Database. Of 127 species, 47 were found on or adjacent to the Ava/Cassville/Willow Springs Ranger District. Twenty-two were located in the oak pine breaks, oak pine hills, and oak pine plains landtype associations; two of these species were noted as being present in the project area (EA, page 3-76). Species found in these land type associations are identified in Table 3.13 of the EA (page 3-84 and 3-85). As stated on page 3-82 of the EA "Potential habitats for Eastern Regional Forester's Sensitive Species would be maintained in all four alternatives for those species that may exist in the Carman Springs project area. None of these activities would affect the short or long-term viability of any listed species." Pages 3-82 through 3-84 display determinations on the site-specific effects of the project on sensitive species. Proposed activities in the Carman Springs project were determined to have no impact on sensitive species or may impact, not likely to adversely impact sensitive species.

I, find that the EA adequately addresses sensitive species.

After reviewing the project file for the Carman Springs Project and considering each issue raised by the Appellants, I recommend that District Ranger Jenny Farenbaugh's Decision Notice of November 25, 2003 be affirmed.

/s/ John C. Romanowski
JOHN C. ROMANOWSKI
Regional Wilderness Program Manager

cc:
Mark Twain NF, Forest Supervisor
Responsible Official, Jenny Farenbaugh
NEPA Coordinator, Becky Bryan