



**File Code:** 1570-1

**Date:** March 4, 2008

Ms. Barbara Sachau  
15 Elm Street  
Florham Park, NJ 07932-1709

RE: Appeal of the Decision Notice and Finding of No Significant Impact for the Oriole Restoration Project Environmental Assessment, Tell City Ranger District, Hoosier National Forest, Appeal # 08-09-12-0023 A215

Dear Ms. Sachau:

On December 17, 2007, you filed a notice of appeal pursuant to 36 CFR 215.11. Forest Supervisor Kenneth Day signed the Decision Notice on November 30, 2007, and the legal notice was published in *The Hoosier Times* on December 9, 2007. I have reviewed the Appeal Record and have also considered the recommendation of the Appeal Reviewing Officer (ARO), Chequamegon-Nicolet National Forest Deputy Forest Supervisor Anthony E. Erba, regarding the disposition of your appeal. The ARO's review focused on the decision documentation developed by the Responsible Official, Forest Supervisor Kenneth Day, and the issues in your appeal. The ARO's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

### **FOREST ACTION BEING APPEALED**

This project proposes to restore hardwood forest ecosystems by moving toward the desired conditions based on ecological classification and Forest Plan direction. The project area includes approximately 9,075 acres of which 47 percent is private lands. All silvicultural treatments will occur on National Forest System lands. The Forest is proposing to conduct approximately 112 acres of stand improvement, an estimated 2,181 acres of timber harvest, and to apply prescribed fire to approximately 3,500 acres. The project would also use herbicides to treat known populations of non-native invasive species and reduce the potential for further spread.

### **APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The ARO found no evidence that the Responsible Official's decision violated law, regulation, or policy. He found the decision responded to comments raised during the analysis process and public comment period and adequately assessed the environmental effects of the selected action. In addition, he found the issues in your appeal (i.e., Purpose and need, Prescribed Burning/Particulate Matter, Non-Native Invasive Plants and Bibliography) were addressed, where appropriate, in the decision documentation. Based on this review, the ARO recommended that Forest Supervisor Kenneth Day's Oriole Decision Notice be affirmed.



**DECISION**

After careful review of the Project Record and the appeal, I concur with the ARO's analysis and findings regarding your appeal issues. To avoid repetition, I adopt the ARO's rationale as my own, and refer you to his enclosed recommendation letter, dated March 3, 2008, for further details. It is my decision to affirm Forest Supervisor Kenneth Day's Decision Notice and Finding of No Significant Impact for the Oriole Restoration Project on the Hoosier National Forest.

Pursuant to 36 CFR 215.18(c) this decision constitutes the final administrative determination of the Department of Agriculture. This decision may be implemented on, but not before, the 15<sup>th</sup> business day following the date of this letter (36 CFR 215.9(b)).

Sincerely,

*/s/ Forrest L. Starkey (for)*  
KENT CONNAUGHTON  
Appeal Deciding Officer  
Regional Forester

Enclosure

cc: Anthony E Erba, Ken Day, Ron Ellis, Judi Perez, Patricia R Rowell



United States  
Department of  
Agriculture

Forest  
Service

CHEQUAMEGON-NICOLET NATIONAL FOREST  
Park Falls Supervisor's Office  
1170 4<sup>TH</sup> Avenue South  
Park Falls, WI 54552  
715-762-2461  
715-762-5179 (Fax)  
TTY: 711 (National Relay System)

Rhineland Supervisor's Office  
68 S. Stevens St.  
Rhineland, WI 54501  
715-362-1300  
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Internet: [www.fs.fed.us/r9/cnnf](http://www.fs.fed.us/r9/cnnf)

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File Code: 1570-1

Date: March 3, 2008

Route To:

Subject: Appeal of the Decision Notice for the Oriole Restoration Project, Tell City Ranger District, Hoosier National Forest, Appeal #08-09-12-0023 A215 (Sachau)

To: Regional Forester, Appeal Deciding Officer

This letter constitutes my recommendation for the subject appeal filed by Barbara Sachau on the Oriole Restoration Project, Tell City Ranger District, Hoosier National Forest (HNF). Forest Supervisor Kenneth Day signed this Decision Notice on November 30, 2007. A legal notice of the decision was published in the *Hoosier Times* on December 9, 2007. A 30-day comment period for the project was initiated on March 22, 2007.

My review was conducted pursuant to 36 CFR 215, "Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities." To ensure the analysis and decision are in compliance with applicable laws, regulations, policies and orders, I have reviewed and considered the points raised by the Appellant and the decision documentation submitted by the HNF. My recommendation is based upon review of the Project Record (PR) including but not limited to the scoping letter, public comments, Environmental Assessment (EA), and the Decision Notice (DN).

The parties were not able to resolve this appeal informally.

### **APPEAL ISSUES:**

**Issue 1: Purpose and Need:** Ms. Sachau claims, "[H]ardwood forest is NOT degraded by lack of fire. [Y]ou set fires far too often. [T]here's no research showing that these fires happened so often naturally at all." (NOA, p. 1).

**Response:** The Responsible Official clearly indicates and supports with extensive research the history of fire in the analysis area (e.g., Parker and Ruffner, 2004; Olson, S. D., 1996; Guyette et al., 2003). This research shows that fire has always been part of the forest ecosystem, either being ignited by lightning or Native Americans to aid in agriculture or hunting. Fires occurred on the average of every 8.4 years between 1656 and 1992. Stem analysis in the Boone Creek area indicates that burning occurred nearly every year between 1896 and 1908 (EA, p. 55). In past decades, fire had all but been removed from the forest landscape due to the Forest Service's fire suppression policy.



This project fulfills the Forest Plan goal of maintaining and restoring sustainable ecosystems. In addition, it represents the best alternative to meeting strategic goals established in the *USDA Forest Service Strategic Plan, FY 2007-2012* (“To restore the health of the National Forests and Grasslands to be resilient to the effects of invasive insects, pathogens, plants, and pests.”) (DN, p. 4). “Much of the Hoosier, and forestland in Indiana, is in the need of more diversity in age class and structure. Many of the forests are converting to more shade-tolerant species due to the lack of disturbance [i.e., fire].” (EA, p. 3). Likewise, the acres of nonnative pine species need to be reduced. These pines do not present desirable habitat for many of the native wildlife that occur on the Forest. Returning to more characteristic forest conditions (i.e., diverse age classes and structure, less shade-tolerant species, less nonnative pine species) will provide areas needed to support viable populations of native plants and animals.

I find that Ms. Sachau is incorrect in her claim that research does not support the role of fire in the ecosystems of southern Indiana. The PR contains extensive documentation supporting the purpose and need for this project. The Responsible Official used the best available science in making his decision (DN, p. 5).

**Issue 2: Prescribed Burning/Particulate Matter:** Ms. Sachau contends, “[S]lash is in fact beneficial for birds and wildlife so burning it up causes fine particulate matter which kills [A]mericans. (NOA, p. 1). [Y]ou need to stop causing the deaths of fellow [A]mericans by all of this burning. (NOA, p. 1). [T]here seems to be a lack of recent scientific knowledge exhibited here.” (NOA, p. 1).

**Response:** The EA (Chapter 3, pp. 16-21) recognizes the impacts of prescribed burning particularly as it relates to carbon emissions, particulate matter, and air quality. Each alternative was appropriately modeled with results summarized. The PR contains a more detailed report describing the assumptions used in the model, the predicted results, and likely consequences of the prescribed burning treatments in the proposed action. (Electronic File, oriole\_restoration/spcist-rprts/2007l\_air.doc). Burning would not have an appreciable effect on air quality (EA, p. 20). An increase in particulate matter is an inherent byproduct of prescribed burns and was disclosed in the EA (Table, A-2; A-3, pp. 20-21). The project is consistent with the Clean Air Act, the Indiana Open Burning Law (326 IAC 4-1-0.5), and National Ambient Air Quality Standards (Electronic File, oriole\_restoration/spcist-rprts/2007l\_air.doc, p. 12). The Air Quality Specialist Report contains an extensive review of recent scientific knowledge related to expected impacts of prescribed burns, contrary to Ms. Sachau’s claim.

Likewise, the EA and Biological Evaluation (BE) discloses the potential impacts of prescribed burning on wildlife (EA, pp. 90-91; BE, Indiana bat, p. 33). Changes in habitat as a result of this prescribed burning would benefit many species with an increase in food supply and cover. The prescribed burning would also increase snags which are important to birds, mammals, reptiles and amphibians. It is important to note that fire rarely burns evenly across the landscape. Clumps of vegetation and open spaces usually remain (EA, p. 91).

I find the Responsible Official documented the potential impacts of prescribed burning to air quality and wildlife. Science was used to support the decision. Ms. Sachau's claims are not supported by documentation within the Record.

**Issue 3: NNIP (Non-Native Invasive Plants):** Ms. Sachau claims, "*NNIP are there because of lax, negligent and inefficient meretricious behavior of the [US] [D]ept of [A]griculture.*" (NOA, p. 2).

Ms. Sachau's allegation that the U.S. Department of Agriculture has encouraged the spread of nonnative invasive species (NNIS) because of policies encouraging nursery profiteering is beyond the scope of this project analysis. Nevertheless, the EA indicates (p. 26) that many of the species (i.e., Chinese lespedeza and tall fescue) were planted by previous land owners prior to Forest Service land acquisition (also see Electronic File, oriole\_restoration/spcist-rprts/2007i\_nnis.doc, p. 5). Most of the acreage of NNIS is from infestations introduced in pasture grasses (Ibid, p. 23). For many species, seeds may lie dormant and continue to be viable for 15 to 20 years. The fact remains that invasive species are in the project area and do pose a threat to forest health and biodiversity (EA, p. 23). Some of these species (i.e., Ibid, Table N-1) are not only found on National Forest land, but on adjacent private lands (Electronic File, oriole\_restoration/spcist-rprts/2007i\_nnis.doc, p. 14).

This project proposes a combination of plant control techniques using both mechanical and chemical means (Electronic File, oriole\_restoration/spcist-rprts/2007i\_nnis.doc, pp. 10-12). Analysis indicates that "[n]onnative invasive plant populations would likely increase in the project area regardless of the alternative selected, including no action. By properly implementing project-level design criteria and mitigation measures, the Hoosier anticipates a low to moderate risk for new introductions and possible spread of NNIS plants associated with the project activities." (Ibid, p. 26).

I find the Responsible Official has properly disclosed the potential effects of this project on NNIS. Measures have been incorporated into project design to reduce the risk of introducing and spreading these plants in the project area (Ibid, p. 32).

**Issue 4: Bibliography (References):** Ms. Sachau asserts, "[T]he bibliography used for research is ancient. [Y]ou cannot plan for the future by using such outdated and obsolete material for research." (NOA, p. 2).

**Response:** Ms. Sachau claims that the references used to support the decision are not current or up-to-date. My review of the PR finds the opposite. Each resource analysis clearly documents supporting literature, most of which was published over the last five years. For example:

- NNIS – The bibliography contains 29 referenced citations. Many were completed between 2000 and 2006.

- Vegetation – The bibliography contains 18 referenced citations. Those research papers dealing with oak regeneration and ecology of the area are very recent with published dates of 2004 and 2005.
- Wildlife – The bibliography contains 116 referenced citations. Although some research dates back to the late 1990's, many were completed over the last several years.
- Air – The bibliography contains 13 referenced citations with the majority of studies completed between 2004 and 2007.

Ms. Sachau provides no support for her allegations or specifics as to what research was not used or considered in the analysis. Each resource specialist used the best available science in making their analysis and documented this within the Project Record (e.g., Electronic Files, oriole\_restoration/spcist-rprts/2007l\_air.doc, p. 3; oriole\_restoration/spcist-rprts/2007e\_wildlife.doc., p. 5). The Responsible Official based his decision on this analysis and appropriately documented his rationale in the DN. He concluded, and I concur: “I have considered the best available science in making this decision. The project record demonstrates a thorough review of relevant scientific information, consideration of responsible opposing views, and, where appropriate, the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk.” (DN, p. 5).

Ms. Sachau's claims are not substantiated.

### **RECOMMENDATION:**

After reviewing the Project Record for the Oriole Restoration Project, and considering the issues raised by the Appellant, I recommend Forest Supervisor Kenneth Day's Decision Notice of November 30, 2007, be affirmed.

*/s/ Anthony E. Erba*  
ANTHONY E. ERBA  
Deputy Forest Supervisor

cc: Patricia R Rowell