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Date: December 17, 1999

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Mr. Brian Segee
Center for Biological Diversity
P.O. Box 710
Tucson, AZ 85702-0710

Re: Appeal #00-03-00-0008-A215, Baca Analysis Area, Chevelon-Heber Ranger Districts,
Apache-Sitgreaves National Forests.

Dear Mr. Segee:

This is my review decision on the appeal you filed, regarding the Decision Notice and Finding of No Significant Impact which provide for: a range of quality recreation experiences; adequate motorized access; obliteration of approximately 89 miles of road; mechanical tree cutting and prescribed burning to accomplish vegetation manipulation for desired future conditions; twenty-three percent of the analysis area allocated for old growth management; and reduction of wildfire hazard through the prescribed burning treatments.

BACKGROUND

On September 17, 1999, Forest Supervisor John Bedell issued a Decision on the Baca Analysis Area. 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 215.16, an attempt was made to seek informal resolution of the appeal. The record reflects that informal resolution of the appeal was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.17. I have thoroughly 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 recommended that the Responsible Official's decision on the Baca Analysis Area be affirmed.

APPEAL DECISION

After a detailed review of the record documented in the enclosed review and findings and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision on the Baca Analysis Area with the following instructions: by copy of this letter the Responsible Official is instructed to incorporate a map into the Biological Assessment and Evaluation which displays nest stands and nesting habitat for each goshawk Post Fledging Family Area.

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

Sincerely,

/s/ James T. Gladen
JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc:
Martos Hoffman
Executive Director
Southwest Alliance
P.O. Box 1948
Flagstaff, AZ 86002

Liz Wise
Board Member
White Mountain Conservation League
P.O. Box 595
Pinetop, AZ 85935

Forest Supervisor, Apache-Sitgreaves National Forests
District Ranger, Chevelon-Heber Ranger Districts
Forestry Staff, R3
Appeals/Litigation Staff, R3

REVIEW AND FINDINGS

of

Center for Biological Diversity, Southwest Alliance, and White Mountain Conservation League

Appeal #00-03-00-0008-A215

of the

The Baca Analysis Area

ISSUE 1A, 1B, 1C: Effects

Contention: Appellants allege that the Baca environmental assessment (EA) inadequately addresses effects (both direct and cumulative) of the action, with respect to soil and water, wildlife, and vegetation. Appellants further allege that lacking this analysis the EA and decision notice (DN) offer no evidence that the effects are not significant, and therefore, an environmental impact statement (EIS) is required.

Response: The EA discloses environmental effects on pages 18-45. The EA effects disclosure is supported by detailed specialists' reports in the project record. The environmental components at issue are discussed below:

Soil and Water - The EA summarizes the direct effects of the proposed action on soil and water in conjunction with other existing ground disturbing activities in the watershed, such as roads, grazing and recreation use. Previous disturbances (and recovery) of timber sales and fires were considered as well as future actions in grazing, recreation and road management (Record 73, 29). Effects on soil loss, soil compaction, and sediment are all described and evaluated. The information in the EA is supported by two watershed specialists' reports (Record 73, 29). One report (Record 73) also describes a recent field trip by the Forest soil scientist to verify vegetative and soil condition recovery on 2-5 year old timber sales.

Wildlife - The EA summarizes the direct and cumulative effects on wildlife resources (EA pp. 29-37). The wildlife report (Record 85) and biological assessment and evaluations for threatened and endangered species (Record 122) and sensitive species (Record 129) support the EA summary.

Vegetation - Direct and cumulative effects on vegetation are summarized in the EA on pages 21-29. Vegetation effects are also discussed in the EA as they relate to wildlife, riparian communities, and fire. The EA effects disclosure is supported by a silviculture report which documents direct and cumulative effects on vegetation (Record 86). The report projects the effects from expected subsequent vegetation treatments recommended to occur in about 20 years. The silviculture report includes an effects discussion related to cumulative effects on aspen regeneration and riparian vegetation and the direct effects of the proposal and alternatives on that vegetation.

The finding of no significant impact, based on the EA effects disclosure and supporting project file, states the Responsible Official's finding that the project is not a major Federal action having individually or cumulatively significant effects on the human environment.

Finding: The Responsible Official adequately analyzed and disclosed both direct and cumulative environmental impacts of the project, and appropriately found that an EIS was not required.

ISSUE 1D: Response to Comments

Contention: Appellants allege that the Forest Service violated NEPA implementing regulations at 40 CFR 1503.4 by inadequately responding to their comments. Specifically appellants claim that the Forest Service failed to provide requested information.

Response: The regulation at 40 CFR 1503.4 sets forth requirements for responding to comments on draft environmental impact statements when preparing final environmental impact statements. This regulation is irrelevant to the decision under appeal, as the analysis was documented in an environmental assessment, not an environmental impact statement.

The record indicates that appellants' comments were given responses in EA Appendix C. Comments are invited on proposals so that the responsible official might consider them in making a decision (36 CFR 215.6). As appellants suggest, comments provide information to the responsible official concerning public sentiment and knowledge and may contribute to the development of new alternatives. Requests for Forest Service information are not comments. While requests for information are legitimate and it is the agency's policy to honor such requests, they do not contribute to an environmental analysis.

Finding: The Responsible Official adequately responded to comments. There is no violation of NEPA regulation.

ISSUE 1E: Mitigation

Contention: Appellants assert that mitigation measures are inadequately described and that many measures described as mitigation are not. Appellants further assert that forest plan standards and guidelines are not mitigation, and that best management practices (BMP's) do not directly address mitigation.

Response: The regulation at 40 CFR 1508.20(b) states that mitigation includes minimizing impacts by limiting the degree or magnitude of the action and its implementation. Forest plans guide all natural resource management activities and establish management standards and guidelines for the National Forest System (36 CFR 219.1(b)). As such, they influence project design, and include standard mitigation measures to be applied forest-wide, or to a specific management area. The second, third, and fourth mitigation measures, cited by appellants, serve to limit the degree or magnitude of the action (EA p. 13). While a summary statement indicating that BMP's will be followed appears with the other mitigation measures, the project record

contains several pages detailing the practices (Record 73). The BMP's limit actions to minimize environmental impacts as described in the aforementioned regulation.

Finding: The Responsible Official adequately identified and described mitigation measures to be applied to the alternatives.

ISSUE 2A: "The Forest Service Failed To Ensure The Scientific Integrity And Accuracy Of the Baca EA and Biological Assessment and Evaluation (BA/E), related to the Northern goshawk. The decision violates the National Forest Management Act (NFMA)."

Contention: "As noted elsewhere, the EA fails to present any site-specific or substantive information concerning the goshawk, including the number of nest sites, the number of Paired Fledging Family Areas (PFA's) established, whether the mandatory nest sites have been established within the PFA's, whether canopy cover levels are being met within nest sites, PFA's, and foraging areas, and perhaps most importantly, what the relation of PFA's and nest sites are to the many logging units on Baca." The Baca decision fails to meet Northern goshawk standards and guidelines.

Response: The Biological Assessment and Evaluation for Sensitive Species (Record 129) provides a detailed analysis of the goshawk habitat conditions, number of PFA's, number of nest sites, and effects the proposed actions will have on goshawk habitat. It also provides a good analysis of current forest structure and canopy cover, as well as, what the expected conditions will be after the proposed treatments are completed. No map is provided identifying the location of the PFA's and nest stands.

Finding: The Forest meets northern goshawk standards and guides except no map is provided. Since the Forest established PFA's in accordance with the standards and guides, the Forest should amend their BA/E prior to implementing the proposed action and incorporate a map (as they did for the Mexican spotted owl) along with the sizes of nest stands and total nesting habitat being managed per PFA. The goshawk forest plan standards and guides applied to the Baca decision were taken from the Management Recommendations for the Northern goshawk which is the best scientific information available related to goshawk management (Refer to Issue 2D).

ISSUE 2B: The decision illegally logs in designated old growth.

Contention: Old growth was not properly designated on the Baca Analysis Area. The Baca decision violates the old growth guidelines by failing to explain how the designated stands meet minimum forest plan criteria, as outlined at page 96 of the record of decision (ROD).

Response: Alternative A provides for 23% of the analysis area allocated for old growth management (page 13, EA). Table 1 displays the old growth allocation by forest type and Map 8 in Appendix A displays the location of the old growth stands within the Baca analysis area.

Proposed Old Growth (Record 86) states all proposed old growth stands scheduled for commercial harvest are below the minimum threshold for large trees as described in the 6/96

ROD. The intent of the harvest is to thin from below 18" diameter at breast height & smaller) to increase growth on remaining trees. All treated proposed old growth stands are ponderosa pine forest type, no mixed conifer or pine-oak is scheduled for any harvest, thinnings, or burning.

On April 16, 1997, the interdisciplinary team (IDT) visited several stands to compare exam data printout vegetative structural stages (VSS) to actual on the ground VSS. The field visit, was to visit stands that had large trees, as possible old growth management stands (Record 15). Also, project record includes worksheets and maps for the allocation of old growth (Record 18).

The silvicultural report (Record 86) goes into some detail examining conditions related to stand density, dwarf mistletoe, vegetative structure, and stand composition in the context of the Baca Analysis Area. Old growth stands were chosen by the IDT as described in the Appendix to Silvicultural Report dated 2/9/99. The forest plan requires analysis of old growth in a hierarchy - one scale above and one scale below the project level. Stand level information was evaluated for old growth characteristics within the 28,000 acre Ecosystem Management Area. The record also indicates that old growth across the entire Heber District was considered. Old growth was analyzed at the required scales.

Finding: The chosen alternative is consistent with the Apache-Sitgreaves National Forests Land and Resource Management Plan. The project was designed in conformance with the Forest Plan standards and guidelines pages 119-153. The responsible official analyzed and allocated old growth at the appropriate scales, consistent with forest plan direction.

ISSUE 2C: "The Forest Service failed to conduct surveys for, or even consider, Management Indicator Species (MIS)."

Contention: "NFMA's fish and wildlife regulations create a substantive duty to maintain viable wildlife populations. In carrying out this mandate, the Forest Service is also required to designate and monitor management indicator species in order to 'estimate the effects of each [action] alternative on fish and wildlife populations.' The A-S has failed to meet this requirement on Baca."

Response: The Forest identified eleven species as being Management Indicator Species found within the Baca analysis area (Wildlife Report Record 85). Of these eleven species, they individually analyzed the effects the proposed action would have on six species (mule deer, turkey, goshawk, elk, Abert's squirrel, and hairy woodpecker) sufficient to determine there would be no reduction in each species viability since the proposed action would maintain or improve habitat conditions for these species. The remaining MIS species were considered in the Biological Assessment and Evaluation (Record 129) and the Wildlife Report (Record 85).

Finding: The Forest adequately considered the effects of the action on management indicator species (MIS).

ISSUE 2D: "Baca fails to ensure the viability of the Northern goshawk."

Contention: ``In a review of the Management Recommendations for the Northern Goshawk (MRNG), the USFWS stated that: `...we believe there are still shortcomings in the Recommendations, which if not corrected raise considerable doubt about the future of northern goshawks in the Southwest. We are not convinced your strategy will protect the viability of the goshawk in the Southwest, (1992 USFWS letter to Regional Forester."

Response: The US Fish and Wildlife Service has since determined, through a status review of the northern goshawk, that the species is viable throughout its range and thus listing is not warranted for any part of the species range. Further, the Forest determined the proposed action would not result in a trend toward Federal listing, although it may affect a few individuals for a short period of time.

Finding: The Forest is ensuring the viability of the northern goshawk.

ISSUE 3: Apache-Sitgreaves settlement agreement

Contention: Appellants contend that the final terms of the 1990 settlement agreement on the Apache-Sitgreaves Forests Plan have never been met and that the interim terms are therefore, still in effect. Appellants further contend that the Responsible Official's decision violates these interim terms.

Response: The agreement calls for a forest plan amendment which would specify standards and guidelines for old growth allocation and management. The agreement's interim terms call for mapping of old growth units and that these units will not be harvested until a forest plan amendment is in place. The 1996 amendment to the Apache-Sitgreaves Forests Plan includes standards and guidelines for allocation and management of old growth. The 1996 amendment satisfies terms of the settlement agreement related to old growth allocation and management, rendering the interim terms moot. As previously discussed in this review, old growth stands were allocated and treated consistently with forest plan standards and guidelines.

Finding: The Responsible Official's decision does not violate the Apache-Sitgreaves Forests Plan settlement agreement.

ISSUE 4: The decision violates the Administrative Procedures Act (APA).

Contention: Appellants allege that due to all the previously cited appeal points, the decision is arbitrary and capricious.

Response: Reference is made to all of the other responses and findings in this administrative review. For reasons stated to the appellants' contentions, the environmental analysis, documentation, and decision are complete.

Finding: The Responsible Official has conducted and documented a reasoned analysis of the Baca Analysis Area consistent with the Administrative Procedures Act.