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Agriculture

Forest
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Southwestern
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File Code: 1570-1 (FOR)

Date: July 20, 1998

Mr. Brian Segee
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Tucson, AZ 85702-0710

CERTIFIED MAIL---
RETURN RECEIPT REQUESTED

RE: Wiggins Analysis Area Appeal #98-03-00-0030-A215
Apache-Sitgreaves National Forests

Dear Mr. Segee:

This is my review decision on the appeal you filed (#98-03-00-0030-A215) regarding the Apache-Sitgreaves National Forests' Supervisor's decision to implement the management activities in the Wiggins Analysis Area project on the Chevelon-Heber Ranger District.

On April 17, 1998, Forest Supervisor John Bedell issued a decision notice concerning the vegetative treatments and associated activities for the Wiggins Analysis Area. The decision was subject to administrative review under the 36 CFR 215 appeal regulations.

My review of this appeal has been conducted pursuant to, and in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer regarding the disposition of this appeal.

As directed in 36 CFR 215.16, the Forest Supervisor contacted the appellant to arrange an informal disposition meeting on the appeal. The record reflects that the appellant declined to participate in such a meeting.

APPEAL ISSUES AND FINDINGS

Appellant contends that the project violates the National Forest Management Act (NFMA), the Apache-Sitgreaves Forest Plan (LRMP), the National Environmental Policy Act (NEPA), the Administrative Procedures Act (APA), the Endangered Species Act (ESA), and the Forest Service Manual (FSM). (Appeal p. 2). The appellant's issues are addressed as follows:

ISSUE I: Wiggins Analysis Area EA Violates National Forest Management Act

ISSUE I A: Wiggins EA fails to meet goshawk vegetation management guidelines

Contention: Appellant alleges that "The intent of the MRNG is to retain all existing old growth and to move 40% of forested ecosystems into VSS 5 and 6 classes." (Appeal p. 4). Appellant further states that "...the Forest Service claims that [it] is acceptable to actually reduce percentage



distributions of VSS classes." (Appeal p. 6). Specifically, appellant is concerned that the Wiggins project reduces vegetation structural stage 5 from 20% to 19% (Appeal p. 6).

Response: The Management Recommendations for the Northern Goshawk in the Southwestern United States (MRNG) (General Technical Report RM-217) recommended desired forest conditions for the northern goshawk and its prey by forest type based on diameter distribution, canopy closure, size of openings in the stands, etc. across the landscape (MRNG p. 7). "These [MRNG] recommendations offer a design that can be adapted for sustaining productive forests at the landscape level." (MRNG p. 8). The Amended Forest Plan guidelines for the northern goshawk were intended to manage for desired vegetation structural stages across the landscape rather than for each individual timber sale.

Desired forest conditions for the northern goshawk and its prey were designed to create "...an intermixture of openings, trees, stands and forests ranging in age from newly regenerated to old." (MRNG p. 9). Desired conditions for the ponderosa pine forest type are to create a range of vegetation growth and aging stages from grasses to old forests at recommended percentages of 10% grass/forb/shrub, 10% seedling-sapling, 20% young forest, 20% mid-aged forest, 20% mature forest, and 20% old forest (MRNG p. 7). The Forest Plan Amendment adopted these vegetation structural stage guidelines with a plus or minus variation of 3% (FLMP Amendment p. 92). The MRNG was not designed to retain all existing old growth as appellant contends.

The Wiggins project initiates desired conditions across the landscape by reducing the level and spread of mistletoe improving forest health, and creating openings and clumps of habitat from existing homogeneous areas for the northern goshawk and its prey species. There is a 1% reduction of VSS 5 from existing conditions immediately after the project, and a further 4% reduction approximately 20 years later because VSS 5 stands will grow into VSS 6 stands (AR 115 p. F-1). The MRNG vegetation structural stages are desired conditions across the landscape that can rarely be achieved in any one cutting entry. Reaching such conditions often requires several entries into the stands. The Wiggins proposed treatments are the first step in creating the desired vegetation structural changes in shifting to a more desired condition in VSS 1 (grass, forb and shrub) from 2% to 6%. Overall, the project achieves the purpose of improving the long term forest health, quality of northern goshawk habitat, and creating healthier old growth stands by thinning from below, sanitation salvage of mistletoe pockets to create openings, precommercial thinnings, and prescribed burning (AR 115 pp. 10-12, 20, 28-29). The Wiggins project is consistent with the VSS guidelines in the Forest Plan Amendment. The Forest Supervisor is affirmed on this issue.

ISSUE I B: Wiggins EA violates NFMA because Forest Service failed to survey sale area for all potential northern goshawk areas

Contention: Appellant states that "A partial inventory is not sufficient to meet the mandate of LRMP and is a questionable manner with which to fulfill NFMA viability requirements." (Appeal p. 7)

Response: The inventory requirements were established and approved in the 1996 Forest Plan Amendment (Record of Decision for Forest Plan Amendments pp. 91-92). This amendment outlines the standards and guidelines for managing the northern goshawk. Under these standards

and guidelines, at least one year of survey is to be completed. If nesting goshawks are found during the first inventory, a second year of inventory is not required.

Northern goshawk inventories were completed within the Wiggins Analysis Area according to Region 3 northern goshawk inventory protocol in 1991 and 1992, and one nesting pair was identified and a PFA was established (AR 76 p. 6, AR 115 Appendix G). These two inventories with the addition of the 1/2 mile inventory beyond the analysis area, which the Forest must complete prior to habitat modifying activities, will meet the 1996 Forest Plan Amendment inventory requirement standards and guidelines. The Forest Supervisor is affirmed on this issue with the direction that the 1/2 mile goshawk survey be completed before the Wiggins project is implemented.

ISSUE I C: Wiggins EA violates the Apache-Sitgreaves (A-S) LRMP with respect to road densities

Contention: Appellant "...challenges both the assertion that [road] densities in the Wiggins analysis area are only 2.8 miles per section and that roads closures will meet the A-S standards and guidelines." (Appeal p. 7).

Response: The A-S Forest Plan standard calls for an average total road density of 3.5 or less per square mile, and an average open road density of 2.0 miles or less per square mile (A-S Forest Plan p. 106). The EA states that the open road density in the project area will be reduced from 2.8 miles per square mile to approximately 1.2 miles per square mile (AR 115 p. 14). EA Appendix E shows the location of roads to remain open and those which will be closed or obliterated. EA Appendix G documents two comments from appellant related to this argument concerning road closures. It indicates that 25.78 miles of roads within the Wiggins area will be closed or obliterated and discusses various methods.

The project is consistent with forest plan standards concerning road densities. The Forest Supervisor is affirmed on this issue.

ISSUE II: Wiggins Analysis Area EA violates National Environmental Policy Act

ISSUE II A: Irreversible & irretrievable commitment of resources have been made on the project

Contention: Appellant alleges that "Many trees on the Wiggins Analysis Area are already marked, constituting an irreversible and irretrievable commitment of resources." (Appeal p. 8).

Response: Marking individual trees with paint for consideration of removal is not an irreversible and irretrievable commitment of resources. Such paint on trees does not cause permanent loss of a resource, and is not an environmental impact on a resource as detailed in NEPA (40 CFR 1502.16). The Forest Supervisor is affirmed on this issue.

ISSUE II B: Wiggins EA fails to provide scientific data that preferred alternative will meet the purpose and need for action

Contention: Appellant argues that underlying data upon which conclusions are based must be provided in the EA. Specifically, appellant asserts that the EA provides no information to support the "cutting of large trees" to meet the purpose and need for fuel reduction, or the forest plan old growth requirement, or why large tree cutting is necessary to control dwarf mistletoe. (Appeal p. 9).

Response: Regulation at 40 CFR 1508.9 states that an EA is a concise public document which briefly provides sufficient evidence for determining whether to prepare an environmental impact statement, or a finding of no significant impact. It shall include brief discussions of the need for the proposal, of alternatives, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. It is therefore reasonable that supporting data be compiled in a project record, which is available to the public.

The purpose and need for action has several parts: 1) reduce fuel loadings; 2) increase ground vegetation; 3) increase age and structural diversity in the ponderosa pine; and 4) improve forest health (tree vigor and susceptibility to insect, disease, and wildfire) (AR 115 p. 3). The proposed action and alternatives are also multi-faceted, with fuelbreak construction and various slash treatments to reduce fuel loadings and various tree harvest prescriptions to increase ground vegetation and age and structural diversity, and to improve tree vigor (AR 115 pp. 6-15). The tree cutting aspect of the proposed action is not aimed at fuel reductions, but is intended to address the other three components of the purpose and need. The effects of fuel reduction measures in each alternative are addressed in EA pages 18-20.

The EA Appendix D documents the treatments to be applied to each allocated old growth stand. The record, which is available to the public, includes a detailed disclosure of trees to be removed and those which will remain in each stand, by various diameter classes (AR 109).

The EA effects discussion on pages 22-29 explains that mistletoe will eventually diminish the large tree component in old growth stands, and with an infected layer below, there will be no replacement. The EA also explains mistletoe spreads more readily from upper layers of a forest canopy to lower layers and that cutting large infected trees is important in controlling this spread. The appeal record contains data supporting the effects discussion. FVS vegetation models estimate the effects of treatments over time (AR 37). VSS spreadsheets summarize the resulting stand conditions from treatments and no treatment (AR 44-51), and the level and distribution of dwarf mistletoe infection (AR 52).

Scientific data in support of conclusions documented in the EA are in the record and available to the public. The Forest Supervisor is affirmed on this issue.

ISSUE II C: Wiggins EA fails to consider a reasonable range of alternatives

Contention: Appellant contends, "The A-S's consideration of alternatives is inadequate because all of the alternatives, with the exception of the mandated 'no action' alternative, entail heavy cutting of large trees (trees greater than 16" D.B.H.)." (Appeal p. 11).

Response: "[A]n agency must look at every reasonable alternative, within the range dictated by the `nature and scope of the proposed action' and `sufficient to permit a reasoned choice.'" Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992).

The proposed action is to apply a mix of silvicultural treatments to move the analysis area closer to the desired condition, thus providing focus for the analysis of effects of this action and its alternatives. The purpose and need statement briefly specifies the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action [40CFR §1502.13], further defining the scope of the analysis. Without the requirement for "reasonable" alternatives, the range of alternatives would be boundless. Reasonable alternatives to the proposed action need to address one or more issues raised in the analysis, and need to address the purpose and need for action.

The Wiggins Analysis Area EA documents four issues and four alternatives, the no-action alternative and three action alternatives, all of which were studied in detail. The action alternatives address the purpose and need, and the issues raised. As appellant states, Peter Galvin suggested a 16-inch diameter cap alternative in his comments on the EA (AR 115 Appendix G p. 28). The response references the EA's old growth effects discussion in stating that the harvest of some "large" trees is needed. The EA discusses the spread of mistletoe from higher to lower forest canopy levels and how denser stocking and multiple tree layers has increased the presence of mistletoe and the potential for spread. The EA states that initially, mistletoe mortality might actually contribute to the old growth character of a stand by increasing the number of snags, but that eventually the large tree component will diminish, and with an infected layer below, there will be nothing to replace it. The alternative was dismissed as not meeting the forest health portion of the purpose and need.

The Forest Supervisor adequately examined a reasonable range of alternatives and is affirmed on this issue.

ISSUE II D: Wiggins EA fails to adequately analyze cumulative effects

Contention: Appellant alleges, "As the Neighbors of Cuddy Mountain case makes clear, general statements with respect to cumulative effects such as those found in the Wiggins EA do not meet the requirements of NEPA." (Appeal p. 13)

Response: The effects of past activities (26 timber sales and related activities, and 4 cattle allotments) as well as proposed Wiggins activities were evaluated in a cumulative effects analysis (AR 90-A). The forest disclosed in the EA that no other ground disturbing activities are proposed within the reasonably foreseeable future (AR 115 pp. 38-40). The forest completed an adequate cumulative effects analysis and appropriately summarized the analysis in the EA (AR 90-A, 115). The Forest Supervisor is affirmed on this issue.

ISSUE II E: Wiggins EA fails to adequately describe mitigation measures

Contention: Appellant argues that forest plan standards and guidelines and protecting range infrastructure, are not mitigation. Further, appellant suggests that mitigation in the form of reforestation should be included. (Appeal pp. 13-14).

Response: 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 necessarily include standard mitigation measures to be applied forest-wide, or to a specific management area. Mitigation measures #2, #6, and #7, cited by appellant, serve to limit the degree or magnitude of the action (AR 115 p. 13). Protection of range improvement structures also serves to minimize impacts. Two group selection treatments are prescribed in the selected alternative. These treatments are expected to result in natural regeneration pockets ranging from 1/4 to 2 acres in size over a total of 188 acres (AR 115 p. 11). These pockets of regeneration would be separated by uneven-aged forest stocked from 60 to 80 basal area. No other treatments are prescribed which would leave areas unstocked with trees. Therefore, there is no impact to rectify through reforestation.

The Forest Supervisor included appropriate mitigation in the EA and is affirmed on this issue.

ISSUE II F: Wiggins EA improperly concludes that livestock grazing is outside the scope of the NEPA analysis

Contention: Appellant challenges an A-S claim that livestock grazing is outside the scope of the Wiggins analysis. Appellant references EA Appendix G (p. 3) in arguing that the claim is arbitrary. (Appeal p. 14).

Response: In his comment letter on the EA, Peter Galvin states, " The cumulative effects of the project taken into consideration with domestic livestock grazing in the area are not adequately assessed, analyzed or addressed." (AR 105 p. 2). The forest response appears to have missed the point of the comment by replying in the context of livestock grazing decisions. The response states that allotment management plans are currently undergoing environmental analysis. Allotment management plans represent decisions concerning the conditions under which livestock grazing is authorized. Decisions concerning livestock grazing are outside the scope of this analysis. However, cumulative effects analysis must consider the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions (40 CFR 1508.7).

The effects of ongoing grazing were analyzed in the context of cumulative effects on the watershed (AR 90-A). The analysis references four allotments: Chevelon Canyon, Clear Creek, Limestone, and Wallace. The record does not show that any other effects from livestock grazing were found which would add to effects from the Wiggins projects. While critical of the adequacy of cumulative effects analysis, appellant does not suggest what other livestock effects might be additive with the effects of this project. The Forest Supervisor adequately analyzed cumulative effects where they were found, and is affirmed on this issue.

ISSUE II G: Wiggins EA fails to specify what the chosen action is

Contention: Appellant contends that NEPA mandates a chosen alternative be disclosed in an EA, and that the range of estimated harvest volume is not specific enough for a decision. Appellant also argues that the environmental effects of harvesting 2.8 million board feet and 4.6 million board feet are very different. (Appeal p. 15).

Response: NEPA and implementing regulations at 40 CFR 1500-1508 do not mandate that a decision be disclosed in an EA. Appellant quotes 40 CFR 1505.2, the title of which states, "Record of decision in cases requiring environmental impact statements." The Wiggins analysis was documented in an environmental assessment, for which NEPA does not mandate any type of decision document. The Forest Service does however require a decision notice in this case, which was prepared and circulated to potentially affected and interested parties (AR 114 and 117-119). The proposed action and alternatives considered are clearly described in terms of silvicultural prescriptions and acres to which each applies. The resulting timber volume is not an action upon which the Forest Supervisor made a decision. Timber volume is a function of tree height and diameter, defect, and the number of trees harvested. Environmental effects are a function of the silvicultural prescriptions and the extent to which the prescription is applied. Timber volume, by itself, is not an action and has no bearing on environmental effects. The Forest Supervisor is affirmed on this issue.

ISSUE III: Wiggins project violates the Administrative Procedures Act

Contention: Appellant contends that the Wiggins Analysis Area Decision Notice is arbitrary and capricious. Appellant cites the foregoing appeal issues as reasons for the contention. (Appeal p. 15).

Response: Reference is made to all of the other responses and findings in this administrative review. For reasons stated individually to each of appellant's contentions, the environmental analysis, documentation, and decision are neither arbitrary nor capricious. The analysis and documentation complies with NEPA, NFMA, and APA, and, therefore, the Forest Supervisor had adequate information on which to base his decision. The Forest Supervisor is affirmed on this issue.

OTHER ISSUES: Project does not comply with Endangered Species Act or Forest Service Manual

Contention: Appellant states that "...the Supervisor's decision is in error and not in accordance with the legal requirements of...the Endangered Species Act...and the Forest Service Manual..." (Appeal p. 2).

Response: Appellant provides no rationale how the Forest Supervisor's decision on Wiggins Analysis Area fails to comply with ESA or any specific section of the Forest Service Manual. As stated in the appeal regulations, 36 CFR 215.14(b)(5), appellant should state how he believes the decision violated law, regulation or policy. Therefore, I am unable to respond to such unsupported allegations.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer (ARO) has recommended that the Forest Supervisor's decision be affirmed and that your request for relief be denied. The ARO found that the decision was consistent with regional principles to support and maintain forest health, the Ranger was responsive overall to public comments, and the decision logic and rationale were clearly disclosed. I have enclosed a copy of the ARO's letter.

APPEAL DECISION

After a detailed review of the record, the notice of appeal, and the ARO recommendation, I affirm the Forest Supervisor's decision to implement the Wiggings Analysis Area project (Alternative 4) with the direction that the 1/2 mile goshawk survey be completed before the Wiggings project is implemented. I deny your request for relief. My decision constitutes the final administrative determination of the Department of Agriculture (36 CFR 215.18(c)).

Sincerely,

/s/John R. Kirkpatrick
JOHN R. KIRKPATRICK
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc:
A-S NFs
Appeals/Lit
Forestry