



United States
Department of
Agriculture

Forest
Service

Southwestern
Region

333 Broadway SE
Albuquerque, NM 87102-3498
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1/2400

Date: May 30, 2001

Bryan Bird
Member of the Board
National Forest Protection Alliance
Southeastern Regional Office
P.O. Box 276268
Boca Raton, FL 33427-6268

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

RE: Appeal #01-03-00-0027-A215, Kiowa Prospects Timber Sale, El Rito Ranger District, Carson National Forest

Dear Mr. Bird:

This is my review decision on the appeal you filed regarding the Decision Notice, Finding of No Significant Impact, and Environmental Assessment, which provide for silvicultural treatments covering 350 acres within the proposed Kiowa Prospects Timber Sale Analysis Area of approximately 700 acres. Approximately 225 thousand board feet will be harvested over 150 acres of the proposed 350-acre sale area, within the project analysis area.

BACKGROUND

On February 21, 2001, District Ranger Kurt Winchester issued a Decision Notice on the Kiowa Prospects Timber Sale. The District Ranger 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 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 Kiowa Prospects Timber Sale be affirmed.



APPEAL DECISION

After a detailed review of the records and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision on the Kiowa Prospects Timber Sale.

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,
Natural Resources

Enclosure

cc:
Forest Supervisor, Carson National Forest
District Ranger, El Rito Ranger District
Appeals & Litigation Staff, R3
FFH, R3

REVIEW OF FINDINGS

of the

National Forest Protection Alliance

Appeal #01-03-00-0027-A215

regarding

The Kiowa Prospects Timber Sale

ISSUE 1: Socio-Economic Analysis – The Forest Service’s decision to implement the Kiowa Prospects Timber Sale (TS) is the end result of inter-related planning decisions and analyses made at the national, forest, and project level, 36 CFR 219.4. The economic analysis fails to assign any economic value to existing uses of the area and fails to consider the externalized economic costs of logging. Failure to incorporate all natural resource benefits into timber sale planning decisions at the National Forest level and site-specific level is a violation of various Acts, and Forest Service Manual and Handbook requirements. Forest Service Manual and Handbook requirements include the Forest Service’s Economic and Social Analysis Handbook, Timber Sale Preparation Handbook, and the Forest Service Manual.

Contention 1a: The appellant alleges, "...the Forest Service has failed to complete an economic analysis of the Kiowa Prospects TS project that provides the public with a full and fair accounting of net economic benefits."

Response: There is a requirement for programmatic social and economic analysis driven by 36 CFR 219 that was met when Forest Plans were adopted for implementation. Projects such as the Kiowa Prospects TS are developed to be consistent with the direction described in the Forest Plan. Project level requirements for social and economic analyses are described in Forest Service Manual (FSM) 1970 and Forest Service Handbook (FSH) 1909.17. However, FSM 1970.3(6) states, "Select cost effective methods of conducting economic and social impact analyses to ensure that the degree of analysis is commensurate with the scope and complexity of the proposed action." Obviously not every project requires the same level of analysis. FSM 1970.6 adds, "The responsible line officer determines the scope, appropriate level, and complexity of economic and social analysis needed." An Environmental Assessment (EA) should briefly provide sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement (EIS) or a finding of no significant impact (40 CFR §1508.9). Economic effects are not intended by themselves to require preparation of an EIS (40 CFR §1508.14).

The purpose of the economic analysis in an EA is to assist in decision-making. The Forest has prepared an economic analysis that is included in the project record (PR). The economic analysis (PR 80) displays estimated costs and returns of the alternatives for the decision maker. A summary of this analysis is displayed on pages 25-26 of the EA. Also see PR 75, 76, and 77.

Finding: The economic analysis is consistent with regulation and manual and handbook direction for project-level analysis and is not in violation of applicable laws, regulation, or policy.

Contention 1b: The Kiowa Prospects TS violates the Global Climate Change Prevention Act. The adverse ecological and economic effects of increases in atmospheric carbon caused by National Forest Timber Sales was not disclosed in the decision-making by the Forest Service when the Kiowa Prospects TS was prepared and authorized.

Response: The ecological and economic effects of atmospheric carbon caused by National Forest Timber Sales are outside the scope of analysis for this project.

Finding: The economic analysis is consistent with law, regulation, FSM and FSH direction, and there is no violation of the Global Climate Change Prevention Act.

Contention 1c: The Kiowa Prospects TS decision violates the APA. Appellant alleges that due to all the previously cited appeal points, the decision is arbitrary, capricious and unreasonable.

Response and Finding: The Responsible Official has conducted and documented a reasoned analysis of the Kiowa Prospects TS and disclosed the effects in the public arena. The Kiowa Prospects Salvage TS decision is in compliance with the APA. (See PR 89 for rationale of decision).

ISSUE 2: The Kiowa Prospects TS violates the National Environmental Policy Act. “Hard look” at environmental consequences.

Contention: Appellant asserts the Forest Service has failed to meet its obligations to take a “hard look” at the scientific assumptions and environmental consequences of the Kiowa Prospects TS proposed actions.

Response: The appellant’s assertion does not suggest any specific environmental effects disclosure that is lacking. The EA discloses effects on soil, air, water, wildlife, and vegetation. It also includes social and economic effects and effects related to the significant issues. The effects disclosure is sufficient to reach a finding of no significant impact and to make a reasoned and informed decision.

Finding: The EA adequately discloses the environmental impacts of the proposed action and alternatives, consistent with policy, regulation, and law.

ISSUE 3: 1996 LRMP Amendments

Contention 3a: Appellant alleges the Kiowa Prospects TS is in violation of the requirements of the 6/5/96 Record of Decision (ROD) amending forest plans to adopt new standards and

guidelines related to management of the Mexican spotted owl, northern goshawk, riparian areas, old growth. Specifically, the appellant maintains that, “the El Rito Ranger District should have completed the Ecosystem Management Area (EMA) wide, old growth, [analysis?], before planning was undertaken on the Kiowa Prospects TS to prevent the loss of potential old growth reserves” and “until the 20% allocation in the EMA is completed and quantitative methods used to determine the adequacy of such allocation, the timber sale cannot proceed.”

Response: Under old-growth standards on page 95 of the ROD, it states, “...until the forest plan is revised, allocate no less than 20 percent of each forested ecosystem management area to old growth.” There is no requirement that this must all be allocated at one time or that the allocation is made prior to any activity within the EMA. As long as no action is taken that would preclude allocating 20 percent of an EMA to old growth, individual projects may proceed. It is the intent of this portion of the ROD that no existing old growth would be treated in any way that would cause it to no longer meet the standards for old growth unless an EMA-wide assessment is made that shows that there is an excess of old growth above the amount needed to insure sustainability of the ecosystem (assumed to be at least 20 percent in this case). No existing old growth will be treated in the Kiowa Prospects TS (PR 21; 22; 24; 28; 51; 52; 73; 80, pp. 30-33).

Reference is also made in the guidelines section to the use of the Forest Vegetation Simulator (FVS), BEHAVE, and FARSITE models for consideration of the importance of various factors. The FVS model is a growth model used to estimate the development of forested stands over time. BEHAVE is a model used to predict the behavior of fire under given circumstances. FARSITE is a model used to predict the spread of fires. None of these models would have application in the selection of areas to be allocated to old growth. They could be useful in developing prescriptions for areas that have been allocated to old growth to insure that the treatments would help to develop or maintain old growth conditions over time, or they could be used to predict which stands would develop into old growth more quickly or with better attributes, if a selection was to be made for stands where other factors considered in allocation were equal. That is the intent of this guideline in the ROD. Guidelines are intended to be flexible in their application. In this case, all potential old-growth stands identified were allocated to old growth, and no activities were planned for areas allocated to old growth, so no modeling was needed to help in the selection or development of treatments (PR 21; 22; 24; 28; 51; 52; 73; and 80, pp. 30-33).

It is clear from the appeal record that old growth was given careful consideration throughout the planning process for this project. PR documents 21 and 22 show that an intensive on-the-ground search was made for areas that could be suitable for allocation to old growth. The notes from the scoping meeting (PR 24) state that a portion of the area dropped from consideration for timber harvest could be designated to old growth. The interdisciplinary team’s (IDT) notes from their site visit (PR 28) state that old growth considerations were reviewed on the ground by the IDT. All stands considered for treatment are rated for old growth classification and all fail to meet the criteria (PR 28). The maps of possible future old growth allocation (PR 51) show that the areas considered in PR documents 21, 22, 24, and 28 were in fact, selected as old growth. The Kiowa Prospects maps at PR 52 also show that the areas selected as old growth were not included within the final cutting unit boundaries for this sale. Finally, the informal disposition of the

Kiowa Prospects appeal (PR 61), states that 23 to 27 percent of those areas within the EMA have been allocated to old growth. This exceeds the minimum requirements of the ROD.

Finding: The Forest exceeds the minimum requirements of the ROD and is therefore, consistent with Forest Plan standards and guidelines.

Contention 3b: The appellant maintains, "...in the context of the Kiowa Timber Sale environmental assessment, and EMA-wide or other landscape-scale analysis of vegetation structural stages (VSS) has not been completed. Such an analysis must disclose the acreage of forests within the EMA or landscape meeting various VSS and canopy closure requirements, and compare this existing distribution needed to protect goshawk viability."

Response: On page 15 of the El Rito Ecosystem Management Analysis (PR 21A) vegetation section concerning the Vallecitos Federal Sustained Yield Unit the VSS are displayed.

In addition, IDT site visit field notes, map, and table of site description (PR 28) show that all stands considered for treatment are ponderosa pine and currently in VSS 3, which is shown in the previous EMA analysis to be in excess of the desired condition. Also see (PR 80, Appendix - Vegetative Effects Report).

Finding: The Forest exceeds the minimum requirements of the ROD and EMA. The proposed action is in compliance with the Forest Plan.

Contention 3c: A goshawk territory is located near the analysis area (PR 78, and PR 80, p. 20). The Forest Service is required to designate six nest areas for each designated Post Fledgling Area (PFA). While the EA states that an occupied goshawk territory exists in the area, there is no indication that the requisite number of nest sites have been designated, that the nest sites are the proper size, or that the minimum acreage of nest sites per PFA has been met.

Response: A map location of the existing nest site, relative to the Kiowa Prospects Analysis Area, is located in PR 78. Goshawk surveys are found at PR 33. Analysis of the proposed activity determined that it would not affect the established territory or any nesting habitat within it. Since the proposed activity is outside of the territory, further information on the establishment of nest sites is not required.

Finding: Proper analysis of the proposed activity was done, and it was determined that there would be no effects to the established territory or any nesting habitat within. The proposed action is in compliance with the Forest Plan.

ISSUE 4: The Kiowa Prospects EA cumulative effects analysis is inadequate.

Contention: The appellant alleges the cumulative effects discussions in the EA and project record are devoid of the required analysis in most cases and that there are no cumulative effects analyses for many of the impacts sections, other than vegetation in the Kiowa Prospects TS EA. The appellant believes the discussions are too brief and should be quantified.

Response: Cumulative effects are discussed throughout the document (PR 80) including Chapter III, Affected Environment: and Environmental Effects (p. 13); Environmental Consequences, Soil and Water (pp. 13-14); Environmental Consequences, Vegetation Diversity (pp. 14-16); and Environmental Consequences, Wildlife (pp. 16-22). The cumulative effects discussions (pp. 23-27) describe the effects of the alternatives, including reference to quantified baselines. The discussion is adequate for the decision-maker to make an informed decision and finding of no significant effects. Also see (PR 46, 86, and 89).

Finding: The EA adequately discloses the cumulative effects for the proposed action and alternatives, consistent with policy, regulation, and law.

ISSUE 5: Viability

Contention: The appellant alleges the Kiowa Prospects TS will jeopardize the viability of species that find optimal habitat in naturally disturbed areas and old growth. Furthermore, there is no population or monitoring data in either the EA or Biological Assessment and Evaluation (BA&E) nor has the Forest Service determined what viable population is for the Management Indicator Species (MIS) and Threatened and Endangered Sensitive Species in the Analysis Area.

Response: There is no requirement [36 CFR 219.19 (a)(6)] in NFMA for monitoring of individual MIS or for an analysis of viability at the project level. Population trends and changes in MIS habitat are accomplished with the Forest-level monitoring program.

The BA&E (PR 78) has determined that the activity will have no effects on the bald eagle, black-footed ferret, whooping crane, Southwestern willow flycatcher, and Mexican spotted owl.

The effects of the activity on MIS species, including Northern goshawk, spotted bat, Merriam's turkey, Abert squirrel, and elk, are disclosed in the EA and project record. For these species, the activity will maintain or improve habitat therefore, viability of the populations will be maintained or enhanced.

Finding: The Responsible Official has met the intent of NFMA and the ESA.

ISSUE 6: Carson LRMP expires in October 2001, and the Carson LRMP Final Environmental Impact Statement (FEIS) is outdated.

Contention: The Kiowa Prospects TS must be suspended until the Carson National Forest revises its LRMP

Response: The LRMP will remain in effect until it is revised, consistent with the requirements of the NFMA. The Carson Forest Plan and EIS are not out of date. The Plan and EIS have been kept up-to-date through a series of amendments and environmental documentation.

The Carson National Forest is scheduled to initiate the Forest Plan Revision process in 2004 and is anticipated to complete the process in 2007. The current Forest Plan Revision schedule has been developed in response to the planning regulations adopted on November 9, 2000.

Finding: The current plan is in effect until the revision process is completed. There are no requirements to suspend activities until the process is completed.

ISSUE 7: Appropriate Expertise

Contention: The appellant alleges the Forest Service failed to utilize professionals with appropriate expertise for a project of such scale and uncertain consequences as the Kiowa Prospects TS and has not included dissenting opinion or the work of scientists outside the agency.

Response: FSH 1909.15, Sec. 12.1, directs that the disciplines and skills of the interdisciplinary team must be appropriate to the scope of the action and the issues identified. The teams will consist of whatever combination of Forest Service staff and other federal government personnel that would provide the necessary analytical skills. The Forest Service assembled an interdisciplinary team composed of journey-level professionals representing many different land management specialties. In addition, the Forest Service consulted with professionals from the U.S. Fish and Wildlife Service, New Mexico Department of Game and Fish and the New Mexico Environmental Department (Surface Water Quality Bureau) through the scoping process.

Finding: The interdisciplinary team is eminently qualified for this analysis.

ISSUE 8: Conservation of Forests

Contention: The appellant alleges, "...by contributing to a vast global waste of wood products the Forest Service has failed to meet substantive obligations to conserve forests and promote use of recycled materials."

Response: The objectives of the Kiowa Prospects TS are to harvest 230 thousand board feet of sawtimber from 150 acres within the 700-acre Kiowa Prospects Analysis Area. The sawtimber would fulfill in part, sawtimber volume in the Carson National Forest Plan for small operators. Other treatments would include group selection cuts, thinning from below between groups, precommercial thinnings, mistletoe thinning, and prescribed burning. Another objective is to minimize erosion and sediment by providing road maintenance and improvements to erosion control structures on existing roads. By not proceeding with the sale, the Forest Service would be contributing to a waste of wood and/or products.

Finding: The Kiowa Prospects TS does not forgo conservation of wood products or the use of recycled material.

ISSUE 9: The Forest Service has failed to analyze an adequate range of alternatives.

Contention: The appellant alleges, "...the Forest Service failed to analyze an adequate range of alternatives, dropping a non-commercial alternative from consideration. Until such action is taken, this NEPA analysis is considered incomplete."

Response: The formulation of alternatives is driven by significant issues identified in scoping (40 CFR §1501.2(c)). For an alternative to be reasonable, it must meet the stated purpose and need and address one or more issues. While the manual appropriately calls for a full range of alternatives, it goes on to state, "...it is not necessary to include harvest or non-harvest options that are not practical or feasible from a biological, social, or legal standpoint or those that do not meet forest plan objectives or standard and guideline requirements..."

Three other alternatives were considered but dropped from further study, because they were not practical or feasible. (PR 80, p. 10; and PR 89, p. 4)

Finding: The analysis appropriately considered a no-action, no-harvest alternative, consistent with NEPA and its implementing regulations and FSM direction.