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Forest  
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Southwestern  
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File Code: 1570-1 (FOR)

Date: September 30, 1998

Ms. Joanie Berde  
Carson Forest Watch  
P.O. Box 15  
Llano, NM 87543

CERTIFIED MAIL--RETURN RECEIPT  
REQUESTED

RE: Tio Timber Sale Appeal #98-03-00-0043-A215  
Tres Piedras Ranger District, Carson National Forest

Dear Ms. Berde:

This is my review decision on the appeal you filed (#98-03-00-0043-A215) regarding the Tres Piedras District Ranger's decision to implement management activities in the Tio Timber Sale project area.

On July 9, 1998, District Ranger Daniel Rael issued a decision memo concerning the vegetative treatments and associated activities for the Tio Timber Sale. The decision was subject to administrative appeal under the 36 CFR 215 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 District Ranger contacted the appellant to discuss informal disposition of the appeal. The record reflects that after several telephone conversations none of the appeal issues were resolved.

#### **APPEAL ISSUES AND FINDINGS**

Appellant's issues and my response to the issues are addressed as follows:

ISSUE I: The Decision Memo and Categorical Exclusion for the Tio Timber Sale Project violate the implementing regulations of N.E.P.A., 42 USC, Sec. 4231 found at 40 CFR 1500 et. seq.

Contention: "The Tio timber sale project clearly meets NEPA requirements for preparation of at least an Environmental Assessment." The appellant bases this contention on several items: 1) "The C.E. for the Tio timber sale fails to present sufficient information for the proposed decision to harvest over a quarter million board feet (200+MBF) (sic) of trees up to 24" DBH, and to allow timber harvest of larger trees within a Management Territory for the northern goshawk." 2) "Because this project area contains no stands meeting Region 3 old growth standards - and because it does contains (sic) scattered trees over 16 DBH (sic) (yellow-barked) - it is crucial that



these trees be retained for the goshawk and numerous other species. The C.E. and Decision Memo fail to disclose the effects of further cutting of old growth trees - both in this project area, in adjacent areas of National Forest, and on a landscape basis." 3) "Any timber harvest involving the cutting of mature and old growth (greater than 16" DBH) trees clearly is controversial and in direct contradiction with current Forest Service management in Region 3." 4) "The C.E. and Decision Memo for the Tio Timber Sale fails to disclose the effects of cutting old growth trees cumulatively."

Response to 1): Pages 4, 5 and 6 of the wildlife report (AR 64) contain a lengthy discussion on the effects of the project on the northern goshawk. The conclusion of this analysis is that the treatment prescriptions follow the Management Recommendations for the Northern Goshawk in the Southwestern United States (AR 7) and will improve foraging habitat within this portion of the territory.

Response to 2) and 3): Page 95 of the Record of Decision for Amendment of Forest Plans (AR 9) states "Forested sites should meet or exceed the structural attributes to be considered old growth in the five primary forest cover types in the southwest as depicted in the table on page 96." The variables that determine whether a site is old growth include live trees in the main canopy, variation in tree diameters, dead trees, tree decadence, number of tree canopies, total basal area, and total canopy cover. Since no individual tree can contain all these variables, it is clear that the term old growth refers to areas and not to individual trees. Since no area within the Tio Timber Sale meets the definition of old growth (Tio old growth analysis AR 71), it is not possible that this project will reduce the amount of old growth in the area, watershed or District. The silvicultural prescription (AR 41) states that one objective of the treatment is to "improve tree health, vigor and growth by reducing stand density." Improving health and growth of residual trees, including all trees over 24" DBH (AR 41) should help attain old growth conditions in the future.

Response to 4): The silvicultural prescription (AR 41) states that all harvesting will be either group selection or thinning from below. The wildlife cumulative effects report (AR 76) states that "The combination of thinning from below, group selection and prescribed burning is considered a positive action with regards to cumulative effects, as it will help reverse some of the conditions created in the past." The conditions referred to include over dense, uniform forests with high fire risks. This indicates that the cumulative effects of the project will be positive.

The Decision Memo (AR 47) states that the decision falls under the direction of the Environmental Policy and Procedures handbook, FSH 1909.15, chapter 30, section 31.2 and qualifies for exclusion under category 4 in that it "is limited in context and intensity and there are no extraordinary circumstances which will produce significant environmental effects; individually or cumulatively, to either the biological or physical components of the human environment." I concur with this judgement. The District Ranger is affirmed on this issue.

ISSUE II: The decision to allow significant timber harvest of trees up to 24" DBH in ponderosa pine fails to comply with NFMA, 16 USC 1600 et seq., and its' implementing regulations

Contention: Appellant contends that harvest of trees between 16 and 24 inches DBH threatens the viability of the northern goshawk and many neo-tropical migratory songbirds that depend upon old growth, closed canopy forests.

Response: The United States Fish and Wildlife decision not to list the northern goshawk, published in the Federal Register (AR 40) states that the USFWS has found no evidence to support the claim that the northern goshawk is dependant on large unbroken tracts of old growth and mature forest. The wildlife report (AR 64) discusses the effects of the project on both the goshawk and neotropical migratory birds. It concludes that the proposed treatments would "add diversity while maintaining the integrity of the treated stands for neotropical migrant bird occupancy and survival" and "ground nesting habitat will be improved with the increased amount of downed woody material which is currently lacking in the proposed treatment area." The wildlife report (AR 64) also states that foraging habitat for the goshawk within the project area would be improved. The record indicates that the project will have positive or no effects on neotropical migratory birds and northern goshawk. The District Ranger is affirmed on this issue.

#### ISSUE III: Project violates NFMA

Contention: Any project allowing timber harvest within a management territory for the northern goshawk contradicts the Region 3 guidelines and direction for the protection of this species and violates NFMA requirements to take actions that prevent a species from becoming federally listed.

Response: The Record of Decision for Amendment of Forest Plans (AR 9) and the Management Recommendation for the Northern Goshawk in the Southwestern United States (AR 7) provide that diverse forest conditions contribute to goshawk habitat and describe the desired state of the forest for good habitat. As long as management retains these conditions or moves toward them, the removal of trees of any size is permitted by regional direction and guidelines. In addition, the USFWS states "forest management practices, such as the use of controlled fire and selective thinning, also may make habitats more suitable to goshawks by opening up dense understory vegetation, creating snags, down logs, and woody debris, and creating other conditions conducive to goshawks and their prey" (AR 40, USFWS Decision Not to List Goshawk). Other information released by the USFWS along with the Federal Register (AR 40) includes the following. "Despite the fact that many areas have an extensive history of logging, grazing, wildfire, fire suppression and other habitat changes, goshawks continue to persist throughout their range." "The status review found that declines in old forests have occurred throughout the Review Area, but could not find clear evidence of a corresponding decline in goshawks." Neither Region 3 standards and direction nor USFWS findings preclude the cutting of trees of any size, including those over 24 inches DBH. The District Ranger is affirmed on this issue.

#### ISSUE IV: Project Violates Administrative Procedures Act

Contention: The decision to harvest trees up to 24" DBH in ponderosa pine and in a management territory for the northern goshawk is arbitrary and capricious and in violation of the Administrative Procedures Act.

Response: Based on the decision Memo and the Appeal Record, the decision does not appear to be arbitrary and capricious. The record indicates that the project objectives, issues and environmental consequences were addressed and used in explaining the rationale for the decision (AR 47, Decision Memo).

The District Ranger is affirmed on this issue.

**ISSUE V: Project Violates NEPA**

Contention: The Decision memo for the Tio Timber Sale fails to present a wide range of alternatives.

Response: The scoping letter (AR 12) states that three alternatives in addition to the no action alternative were considered. These include harvesting only firewood and vigas, a small timber sale and broadcast burning only. While every possible alternative was not evaluated, the range is adequate for this project. The District Ranger is affirmed on this issue.

**APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer (ARO) has recommended that the District Ranger'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 District Ranger's decision to implement the Tio Timber Sale and 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:  
Carson NF, Tres Piedras RD & SO  
C.Gonzalez  
Forestry  
OGC, RO & WO