United States Department of Agriculture

Forest Service

Southwestern Region

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File Code: 1570-1 (2400)

Date: February 24, 2000

Lally McMahon
Forest Guardians
1411 Second Street
Santa Fe, NM 87505

Certified Mail-Return Receipt Requested
P 556 954 735

Re: Appeal #00-03-00-0016-A215, Good Enough/Tule Butte, Long Valley Ranger District, Coconino National Forest

Dear Ms. McMahon:

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 prescribed thinnings from below on about 4971 acres, retain current firewood gathering from about April 15 to December 15, close or obliterate about 33 miles of forest roads, and broadcast burn about 8361 acres within the Good Enough/Tule Butte Ecosystem Project area of approximately 16,699 acres.

BACKGROUND

On November 19, 1999, Forest Supervisor Jim Golden issued a Decision on the Good Enough/Tule Butte Ecosystem Project. 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 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 Good Enough/Tule Butte Ecosystem Project be affirmed with instructions.

APPEAL DECISION

After a detailed review of the records and the Appeal Reviewing Officer's recommendations, I affirm the Responsible Official's decision on the Good Enough/Tule Butte Ecosystem Project with the following instructions:

1) Document in the process record the cumulative incremental effects related to any reasonably foreseeable future activities in the vicinity of the project area.

2) If there are no reasonably foreseeable future activities that have incremental effects, document that finding in the process record.

3) If there are reasonably foreseeable future activities with cumulative effects, document their effects in a supplement to the Environmental Assessment.

4) Determine if these effects, considered cumulatively with all other environmental effects are significant and document the finding in the process record. Circulate any supplement to the Environmental Assessment and FONSI conclusions to the appellants and to the mailing list for information.

5) If the cumulative effects are significant an EIS will be needed.

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

cc:
John Talberth
Lally McMahon
Long Valley RD
Coconino NF
FFH, R3
Appeals & Litigation Staff, R3

REVIEW AND FINDINGS

of the

Forest Conservation Council, National Forest Protection Alliance, and Forest Guardians

Appeal #00-03-00-0016-A215

regarding

The Good Enough/Tule Butte Ecosystem Project

ISSUE 1: Environmental Documentation

Contention: Appellants allege that the "projects are highly controversial, in a scientific sense, involve highly uncertain effects and involve unique or unknown risks related to fire and other actions (40 CFR § 1508.27 (b) 4, 5)" and therefore, are significant.

Response: The Decision Notice and Finding of No Significant Impact finds that the environmental effects of the selected action are typical of past actions in the vicinity. The environmental assessment (EA) adequately discloses the effects of the actions on fuels and fire behavior, and supports the finding of no significant impact. Reports from fire and fuels management specialists support the effects disclosure in the EA (Project Record (PR) at 16, 23, 49, 51).

Finding: The record contains an adequate effects analysis sufficient to support the conclusion that the effects of this action are not highly controversial, uncertain, unique, nor unknown. The analysis is appropriately documented in an EA.

ISSUE 2: The project's cumulative effects analysis is inadequate.

Contention: Appellants allege that the Forest Service did not complete an adequate cumulative effects analysis required by National Environmental Policy Act (NEPA). Appellants claim that regulation at 40 CFR 1502.22 requires consideration of a range of scenarios when essential information is incomplete or unavailable.

Response: Cumulative effects are the effects on the environment which result from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions, regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result in individually minor, but collectively significant actions taking place over a period of time. (40 CFR 1508.7)

The courts have implied that consideration of the impacts on the existing environment necessarily takes into account earlier and present actions and their effects. Therefore, an analysis of the existing environment is consideration of the effects of past and present actions. The EA (pp. 26-59) and effects reports (PR at 17, 18, 22, 23, 34a, 43b, 69, 83) adequately describe in

detail the existing environment and the past and present (ongoing) actions that shaped them. The record at 69 and 83 indicates that there are no state or private actions in the vicinity of the project area.

The cumulative effects analysis should also include consideration of reasonably foreseeable future activities in the project vicinity. The record includes an Annual Project List FY 2000 (PR at 86) for Long Valley/Blue Ridge Districts, however, there is no discussion as to whether these projects or those raised in appellants' appeal have potential incremental effects. The cumulative effects table (EA p. 88) lists past and present actions which were considered in the cumulative effects analysis leaving the reviewer to speculate as to foreseeable future actions in the vicinity of the project area. The overall effects disclosure for direct, indirect effects and past/present incremental effects is well thought out and displayed in the record. The conclusion that there are no significant effects and therefore, an EIS is not needed infers that effects including cumulative effects have been considered. However, documentation that reasonably foreseeable future activity effects were considered is absent.

Appellants claim that 40 CFR 1502.22 requires consideration of various scenarios. This requirement was replaced in April 1986 (15 FR 15625, Apr. 25 1986). Both the original regulation and the replacement apply to preparation of an environmental impact statement (EIS), not an EA.

Finding: The record includes consideration of cumulative effects on the components of the human environment. 40 CFR 1502.22 does not require consideration of scenarios as alleged. The cumulative effects analysis is adequate for an informed decision, however, documentation of incremental effects from reasonably foreseeable future activities is absent.

ISSUE 3: No-harvest alternative

Contention: The Forest Service is required to analyze a no-harvest alternative when proposing stewardship projects. Appellants quote Forest Service Manual (FSM) 2432.22c stating, "Where timber harvest is proposed primarily for the purpose of achieving forest stewardship purposes... a full range of alternatives, including practical and feasible non-harvest options, must be analyzed in the environmental process."

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..."

The record shows that a no-harvest and thinning alternative were considered under the No Action Alternative (PR at 36, page 13). Also the record shows at (PR at 36, page 12) two other alternatives were discussed but dropped from further study; 1) artificially create snags and, 2) prescribed natural fire.

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

ISSUE 4: Old growth allocation: The Forest Service has not allocated old growth in accordance with the 1996 plan amendments.

Contention: Appellants maintain that the EA and project record fail to establish that forest plan procedures for allocating old growth were followed. Appellants also state that there was no analysis of old growth distribution and function at multiple scales; no analysis of risks to sustaining old growth; no analysis that considered spatial arrangement of old growth areas and how that would benefit old growth related species.

Response: The Standards and Guidelines on page 95 of the Record of Decision (ROD) for the Amendment of Forest Plans, dated June 5, 1996, require that an analysis be conducted at one scale above and one scale below the ecosystem management area. This analysis has been done. The Forest Plan standards and guidelines include: definitions of old growth; requirements to maintain or develop old growth function on at least 20 percent of naturally forested areas in any landscape; consideration of spatial arrangement; consideration of risks; and analysis at multiple scales.

One scale above the ecosystem management area level is the Forest Plan Level. The Forest Plan standard requires that at least 20 percent of the forested ecosystem management area be managed for old growth. The proposed action allocates 20 percent of the Good Enough/Tule Butte landscape to old growth within each of the following vegetative types: ponderosa pine, oak woodland, and pine-juniper transition (PR at 9, 11, pg. 3, 36, pg. 5).

Analysis at one level below the ecosystem management area was conducted at the stand level. This was based on Terrestrial Surveys and current cover types from stand exams and multi-resource field data from the analysis area (PR at 5, 9).

The Forest has shown a reasonable approach to selection of old growth and replacement old growth. Old growth was analyzed spatially on several scales using Geographic Information System, considering the larger West Clear Creek Ecosystem Analysis Area, the Good Enough Tule/Butte Project Area and at the stand level (PR at 5, 9, 11, pg. 4, 36, pg. 2). Risks to old growth were analyzed. Analysis of spatial arrangement was appropriate to the existing conditions and the need to increase the amount of old growth as rapidly as possible. The use of treatments to protect old growth from fire and increase the longevity and growth of large trees is reasonable.

Finding: The responsible official analyzed old growth at the appropriate scales, consistent with forest plan direction.

ISSUE 5: Viability - "Good Enough/Tule Butte Timber Sale will jeopardize the viability of species that find optimal habitat in interior forests, natural disturbed areas, and old growth."

Contention: "Habitat fragmentation will result from logging and roadbuilding activities planned in the Good Enough/Tule Butte Timber Sale. As such, habitat fragmentation should have received a rigorous analysis in the final EA."

Response: The sources used to describe the predicted effects of fragmentation are from studies in Eastern Forests where the fragmentation described is a patch of forest within a sea of non-forested land, often surrounded by urban development or rural farms. This is not the case in the Good Enough/Tule Butte Project Area because the forest is continuous with treatments proposed within a portion of the Forest. Wilcove (1988), Finch (1999) and others have identified that the fragmentation effects are not found, or they are inconclusive, from studies of internal fragmentation of large forest tracts such as found at Good Enough/Tule Butte.

The effects of fragmentation in Eastern Forests that affect neotropical migrants are described; as high rates of nest predation, high rates of brood parasitism, high rates of interspecific competition, reductions in pairing success, and reduction in nesting success with patches less than 20 ha in size having few if any neotropical migrants present. Wilcove (1998) identified that while neotropical migrants were showing declines, permanent residents and short-distance migrants usually exhibit stable or even increasing populations within these same forests.

Several reasons were identified. First, the small patches in Eastern Forests are often surrounded by areas with high levels of nest predators, i.e. dogs, cats, crows, jays, etc. Several studies have shown essentially no difference in predation rates between edges and interior forests where these high levels of predators do not exist (Wilcove 1999). Second, the rural areas often have high levels of cowbirds present increasing nest parasitism. Third, the small patch size and large distances between patches of forest habitat in the East may not allow individuals to find a mate if the population is low and competition for the small amount of available habitat is high.

For most if not all of the species using ponderosa pine habitat, thinning and fragmentation are not equivalent to each other. The conditions described above for Eastern Forests where the effects of fragmentation are found to be high, do not exist in the Good Enough/Tule Butte Project Area. Thus any effects of fragmentation are not expected to be high and the effects may not be present at all.

The proposed treatments are in ponderosa pine, oak, and pinyon-juniper habitat types. These types are being brought toward more natural conditions with the proposed treatments. The treatments will thus improve habitat conditions for management indicator species (MIS) and other species using these habitat types. Old growth is being managed for under Forest Plan direction which will result in improved habitat conditions for old growth species over time.

Finding: Implementation of Good Enough Tule/Butte Project will maintain or improve the condition and/or amount of habitat for MIS. Thus, there will be no reduction in the viability of these species.

ISSUE 6: Socio-Economic Analysis - 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.

Contention: The appellants allege that "the Forest Service has failed to complete an economic analysis of the Good Enough/Tule Butte Timber Sale that provides the public with a full and fair accounting of net economic benefits."

Response: FSM 1970 and Forest Service Handbook (FSH) 1909.17 contain detailed guidelines for conducting economic and social analysis. 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 EA should briefly provide sufficient evidence and analysis for determining whether to prepare an 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). Economic effects of the project were not identified as an issue at any time prior to the decision. Therefore, economic effects were not needed as a basis for alternative development or comparison. The level of economic analysis is commensurate with the scope of the proposed action.

The purpose of the economic analysis in an EA is to assist in decision making. The Forest has prepared an economic analysis (PR 68) which displays estimated costs and returns of the alternatives for the decision maker.

FSH 2409.18 section 22 states that a financial analysis should be made to determine financial efficiency of timber sales. The analysis in PR at 68 is a financial analysis and meets this requirement. Also see PR at 71 regarding letter sent to Forest Guardians.

Finding: The economic analysis is consistent with regulation and manual and handbook direction.

ISSUE 7: Expertise - Forest Service failed to utilize professionals with appropriate expertise.

Contention: The expertise of the interdisciplinary analysis team is inadequate for a project of such scale and uncertain consequences as the Good Enough/Tule Butte Timber Sale, nor has it 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 is necessary to 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 analysis was done in consultation with professional biologists from the U.S. Fish and Wildlife Service and the Arizona Department of Game and Fish.

Finding: This team is eminently qualified for this analysis.

ISSUE 8: Conservation of Forests - Forest Service is contributing to a vast global waste of wood products.

Contention: The Forest Service has failed to meet substantive obligations to conserve forests and promote use of recycled materials.

Response: Although this project is to enhance wildlife habitat for the Mexican spotted owl, Northern goshawk and other threatened, endangered and sensitive species, timber harvesting will be done through a timber sale contract to meet the stated objectives in the EA. All commercial wood will be removed. Noncommercial wood may be made available to locals as fuelwood, fence posts, poles and/or special products all of which may or may not require a permits. It is also recognized that not all material will be utilized, such as thinning and logging slash debris. Most of this debris will be burned to reduce the fire hazard. What is not burned will be left to provide ground cover as required (PR at 62, pg. 12) and over time be recycled back into the ecosystem.

Finding: The Forest Service has met it's substantive obligations to conserve forests and promote use of recycled materials.