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File Code: 1570-1/2400

Date: September 5, 2001

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

**CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED**

Re: Appeal #01-03-00-0043-A215, Corner Mountain Fire Salvage Timber Sale, Reserve Ranger District, Gila National Forest

Dear Mr. Segee:

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 salvage harvesting of dead and dying trees on 340 acres.

### **BACKGROUND**

On June 8, 2001, Ms. Marcia Andre, Forest Supervisor of the Gila National Forest, issued a Decision on the Corner Mountain Fire Salvage Timber Sale. 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 Corner Mountain Salvage Timber Sale be affirmed.



**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 Corner Mountain Fire Salvage 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

cc:  
Forest Supervisor, Gila National Forest  
District Ranger, Reserve Ranger District  
Appeals & Litigation Staff, R3  
FFH, R3

**REVIEW AND FINDINGS**  
**of the**  
**Center for Biological Diversity**  
**Appeal #01-03-00-0043-A215**  
**regarding**  
**The Corner Mountain Fire Salvage Timber Sale**

**ISSUE 1:** Violations of NFMA.

**Contention 1a:** The Gila National Forest has failed to abide by Standards and Guidelines that prohibit harvest of trees of diameters at breast height of 24 inches or greater in restricted habitat for the Mexican spotted owl.

**Response:** The referenced Gila Forest Plan guideline was derived from the *Recovery Plan for the Mexican Spotted Owl*, December 1995, which requires that all trees >61cm (24in.) dbh be retained in restricted habitat (page 94). The intent of the Recovery Team was for that guideline to apply to live trees, not trees killed as a result of insects or fire. Additionally in Project Record (PR) 49, the USDI Fish and Wildlife Service concurs that the “project area rendered unsuitable for nest and roosting.”

The 24” maximum diameter breast height applies to living trees, not their corpses.

**Finding:** There is no violation of NFMA or amended Forest Plans.

**Contention 1b:** The appellant alleges that although the Forest Plan calls for retention of “snags greater than 18” or larger dbh and at least 30 feet in height, the Corner Mountain sale is a 340 acre clearcut, the Gila is obviously in violation of these important requirements.”

**Response:** On page II-14 of the Environmental Assessment (EA) (PR #55), mitigation measures for both action alternatives B and C state that Forest Plan habitat requirements for snags and down woody debris retention would be utilized. At least three (3) snags larger than 18” dbh per acre and five (5) down logs over 12” dbh per acre would be retained in areas treated.

**Finding:** There are no violations of NFMA with regard to snag retention.

**Contention 1c:** The appellant alleges, “It is very clear, however, that Corner Mountain is a clearcut. Whether it is a clearcut or not, however, this decision is subject to the five-year regeneration requirement, and no showing has been made that this mandate will be met.”

**Response:** *The Dictionary of Forestry*, edited by John A. Helms, Society of American Foresters, 1998, defines *salvage cutting* as the removal of dead trees or trees damaged or dying because of injurious agents other than competition, to recover economic value that would otherwise be lost.

By way of technical clarification, clear cutting is a regeneration cut under the even-age silviculture system. The above-referenced dictionary classifies clear cutting as a *regeneration cutting*. A regeneration cutting is defined as the removal of trees intended to assist regeneration already present or to make regeneration possible. The salvage treatment is not a regeneration cutting, although regeneration will be established on the site some time in the future.

With regard to the five-year regeneration requirement, no stands are receiving a final harvest (clear cut, seed tree removal, shelter wood final removal, or selection harvest) and, therefore, are not subject to the five-year regeneration requirement of 36 CFR 219.27(c)(3). This is not to say that stands will not be surveyed within the next few years for the presence of natural regeneration and/or the need for artificial regeneration.

**Finding:** There are no violations of the five-year regeneration requirement in NFMA.

**Contention 1d:** The appellant suggests that two units, Management Areas 4A and 6B “Each of these areas has set acreage limits – applicable for the life of the plan—on clear cutting.” (48acs and 89acs respectively) Additionally, 6B’s restrictions include no salvage logging on suitable lands. “Therefore, Corner Mountain also greatly exceeds salvage logging acreage under the Gila Forest Plan.”

**Response:** The salvage treatments proposed are not considered regeneration treatments. Limitations on unit size called for on clear cutting do not apply. The project EA (PR #55) on page I-8 states, “Salvaging and re-vegetating this area (project area) is consistent with the objectives of the Gila National Forest Land and Resource Management Plan 198[9]6, as amended. The proposed action would meet Forest Plan timber goals, standards, and guidelines by providing approximately 2.5 MMBF of timber and 850 cords of fuelwood (LMP pp. 11, 36, 38) and meet the Forest Plan for salvage harvesting from approximately 300 acres within Management Area 4A and 6B (LMP, pp. 120 and 179)”.

**Finding:** Timber harvesting and salvage logging is consistent with goals, objectives, standards, and guidelines of the Gila Forest Plan. The project area has been identified as land suitable for timber production and continued timber management activities. The proposed salvage treatment is consistent with management standards and guidelines in management areas 4A and 6B.

**Contention 1e:** “The Corner Mountain decision fails to manage road densities at the lowest level possible.” Additionally, road “re-construction” as described in the EA is really “road construction” which “violates the forest plan amendments as well as the Gila Forest Plan road density requirements.” There are additional contentions regarding erosion.

**Response:** There is no new road construction proposed for this project. Roads to be used for salvaging burned timber will be the existing roads on the forest transportation system (PR #50, p.4). The existing roads are part of the Forest transportation system. Current land management

direction, policy, regulation and law require that these roads be repaired and maintained on a routine basis with or without the timber sale project.

Using only existing roads is the lowest possible road density level for this project.

Over the past decade, our San Dimas Technology and Development Center and others have conducted extensive field studies on roadway erosion. These studies have resulted in changes to regulations, policy, construction specifications and design standards, 'Best Management Practice' recommendations and computer models for various surface types, drainage structure types, drainage spacing, maintenance frequencies, and what vegetation works best for revegetation of cut and fill slopes. Over 50,000 computer runs were made to correlate ground-based results with computer models. These studies and others, along with general field observations in the construction industry, have shown that there are factors that minimize water concentration on roads, existing erosion and potential erosion on roads. These are: general road design and location; design and type of drainage structure feature, including their location; and lastly, appropriate road maintenance.

The word "reconstruction" describes rehabilitation and improvement work on existing roads. The term "reconstruction" is correct, regardless of the intensity of the work, as long as the work does not add miles to the transportation system.

Although one of the appellant's sources, Amaranthus, et al. (1985), concluded that "soil erosion rates due to debris slides were many times higher on forests with roads, landings and logging activity than on undisturbed forests. Roads were found to cause 60% of the erosion volume." The percentage stated is for mass failures (slides). The percentage for total road erosion in the report was actually 40%. This report is based on a study conducted in the Pacific Northwest (Oregon). In the Southwest, where the Gila National Forest is located, there are very few mass failures, due to flatter terrain, different soil types and considerably less water.

References used for above responses: FSM 7700; FSH 2509.22, 7709.55, 7709.56, 7709.58 and 7709.59; Technical publications: 9977 1804 – SDTDC, August 1999; 9877 1801 – SDTDC, June 1998; 9777 1808 – SDTDC, October 1997; Riparian Road Guide – Terrene Institute, 1994; Highway Drainage Guidelines, AASHTO, 1982; A Policy on Geometric Design of Highways and Streets, AASHTO, 1994; Managing Roads for Wet Meadow Ecosystem Recovery, FHWA-FLP-96-016, 1996; Amaranthus et al., 1985.

**Finding:** The road systems utilized in this Project are consistent with the Forest Plan and relevant policy and direction. Quantification and description of the transportation of the project is extant in the project record.

**ISSUE 2:** "The Corner Mountain Salvage TS violates the National Forest Management Act (NFMA)." Management Indicator Species (MIS) were not properly considered.

**Contention:** "The Gila National Forest failed to conduct surveys for, or properly consider, MIS."

**Response:** The Forest analyzed the effects the proposed action would have on MIS within the analysis area (PR #45, #46, #55, #95). Based on this analysis, they do not anticipate there will be any reduction in habitat quantity and/or quality that would lead to loss of viability for any MIS.

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

**Finding:** The Forest did properly consider MIS in their analysis of this project.

**ISSUE 3:** “The Corner Mountain Fire Salvage violates the National Environmental Policy Act (NEPA).

**Contention 3a:** The appellant asserts the Forest Service has failed to take a “hard look” at the environmental consequences of the Corner Mountain Fire Salvage TS decision.

**Response:** The appellant’s assertion does not suggest any specific environmental effects disclosure that is lacking. The EA Project Record (PR #55) discloses direct, indirect, and cumulative 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. Other pertinent documents include: PR #22, Fuels Assessment; PR #20, Wildlife Assessment; PR #21, Biological Assessment; PR #19, Economic Analysis; and PR #1, Burned Area Report. All were used in preparation of the EA.

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

**Contention 3b:** The appellant asserts that mitigation measures are inadequately described and that many measures described as mitigation are not. The appellant further asserts that forest plan standards and guidelines are not mitigation, and that best management practices (BMPs) do not directly address mitigation.

**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 include standard mitigation measures to be applied forest-wide, or to a specific management area. The mitigation measures identified in the EA are identified as being part of Alternatives B and C. The environmental effects analysis is predicated on those measures being part of each action alternative.

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

**ISSUE 4:** Trees burned on the Corner Mountain Fire Salvage Timber Sale are now unmerchantable, the reason for the harvest is moot and therefore “the decision to approve the logging of unmerchantable trees is arbitrary and capricious.”

**Contention:** The appellant asserts that the Gila National Forest has made the argument that the trees must be harvested within two years in order for them to retain sufficient merchantability. They also assert that since the “two” years have passed, trees would be by now, unmerchantable.

**Response:** The record indicates a defect analysis was carried out in the project area on March 12, 2001. The analysis concluded that the material proposed for salvage is still merchantable (PR #76).

**Finding:** The material proposed for salvage is still merchantable. Therefore, the decision to salvage this material is not arbitrary and capricious with regard to merchantability.

**ISSUE 5:** Need for an EIS due to controversy with project and establishing a precedent for future salvage sales after escaped prescribed burns.

**Contention:** The appellant contends “an EIS must be prepared for federal actions if substantial questions are raised whether the proposed action may have a significant effect upon the environment.” This significance must be determined by “considerations of both context and intensity of proposed actions.” The appellant suggests that since the criteria for determining the intensity of the proposed federal action is; highly controversial, may establish a precedent, has cumulatively significant impacts, and adversely affects endangered or threatened species, the justification and rationale for the need for an EIS does in fact exist.

**Response:** The Record of Decision And Finding of No Significant Impact (PR #50) includes discussion of both the “context” and “intensity” of the proposed action. The context of the project is site-specific with no international, national, regional or statewide importance. The discussion of intensity addresses the ten significance criteria described in the NEPA regulations (40 CFR 1508.27). The discussion discloses that there is disagreement with the idea of cutting or salvaging dead trees. No one has provided evidence that the environmental effects of the project have been wrongly predicted. There is no evidence of issues that are “highly controversial.” The project is typical of other salvage operations of fire-killed timber and does not set a precedent. There is nothing to suggest adverse effects on threatened or endangered species. In fact, salvage operations are not planned within Mexican spotted owl habitat. The project has been planned to be in compliance with the requirements of federal, state and local laws.

**Finding:** The conclusion of no significant impact is appropriately documented, and the need for an environmental impact statement is not warranted.

**ISSUE 6:** “The Forest Service has failed to ensure the scientific integrity and accuracy of the Corner Mountain Salvage Timber Sale (TS) EA.”

**Contention:** The appellant asserts that the EA must meet the standard of regulation at 40 CFR 1502.24 and that the agency must ensure the scientific integrity and accuracy of its information.

**Response:** The cited regulation concerning methodology and scientific accuracy explicitly applies to environmental impact statements. The Corner Mountain Fire Salvage TS environmental analysis is documented in an EA. That fact aside, the Gila National Forest has assured scientific integrity and accuracy by relying upon experienced, qualified specialist input documented in the project record. In the supporting arguments, the appellant is more concerned with the brevity of the effects discussions than their accuracy or integrity. Regulation at 40 CFR 1508.9, states that EAs shall include brief discussions of the environmental impacts of the proposed action and alternatives.

The Interdisciplinary Team searched and located supporting information that is included in the project record, including the environmental assessment (PR #50 {November 7, 2000}, Appendix C – 55), the memo of Cumulative Effects for Watershed and Air (PR #14, #26), The U.S.F.S. Conservation Practices Handbook (PR #15), the 1986 Land and Resource Management Plan as amended references (PR #23), the Revised Watershed/Soils/Air Report (PR #91), and the Bibliography for Wildlife (PR #94). All indicate a good faith effort to search for and obtain current, relevant scientific data.

**Finding:** The Corner Mountain Fire Salvage TS EA meets the requirements of policy, regulation, and law with respect to scientific integrity and accuracy.

**ISSUE 7:** “The Forest Service has failed to consider a reasonable range of alternatives.”

**Contention:** The appellant alleges the Forest Service’s consideration of alternatives is inadequate because only one alternative, with the exception of the mandated “no-action” alternative, is analyzed. Such bias towards timber extraction fails to constitute the requisite “reasonable” range of alternatives. This failure is reinforced by judicial interpretation of NEPA.

**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 EA (PR #55) describes each alternative and its tie to the issues identified during scoping. One other alternative was considered but dropped from further study, because it only partially met the purpose and need of the proposal (PR #55, EA, p. II-12, 13).

**Finding:** The analysis appropriately considered a reasonable range of alternatives, given the issues identified, and is consistent with NEPA and its implementing regulations and Forest Service Manual direction.

**ISSUE 8:** The Forest Service's response to comments is not adequate.

**Contention:** The appellant alleges the Forest Service is required to respond to all comments, directly and in writing, pursuant to regulation at 40 CFR 1503.4. The appellant cites several comments made during scoping and in review of the EA that are alleged to have been ignored.

**Response:** The regulation cited by the appellant explicitly applies to preparation of a Final Environmental Impact Statement (FEIS), not an EA. The Responsible Official considered comments during scoping and identified one issue significant to the proposed action. The EA (PR #55, pp. 1-9, 10; Appendix B-52) describes the process undertaken to identify significant issues. Evaluation of scoping comments is documented in the record (PR #55). The Responsible Official considered comments on the EA and responded to them in Appendix B of the assessment.

**Finding:** The Responsible Official's consideration and response to comments is adequate and is consistent with policy, regulation, and law.

**ISSUE 9:** "The Corner Mountain Fire Salvage TS violates the Endangered Species Act (ESA)." The Forest Service has failed to conduct required consultation.

**Contention:** The Corner Mountain decision is not in conformance with the Mexican Spotted Owl Recovery Plan nor has the Forest Service consulted with the U.S. Fish and Wildlife Service in order to ensure that its activities do not jeopardize this species or adversely modify their designated critical habitat.

**Response:** The Biological Assessment prepared for the Corner Mountain Fire Salvage TS (PR #21 and #44) resulted in a determination of "may affect, but is not likely to adversely affect" for the Mexican spotted owl. They also determined the proposed action will not result in destruction or adverse modification of proposed critical habitat for the owl.

The US Fish and Wildlife Service concurred with these determinations. Their concurrence was based on the following reasons: "1) owl habitat in the project area was rendered unsuitable for nesting or roosting due to the stand replacing fire; 2) impacts to the potential foraging habitat within or adjacent to the known PACs and proposed critical habitat are expected to be insignificant or discountable based on the amount of the analysis area (less than 5 percent) that will be impacted; and 3) the project is consistent with the owl Recovery Plan."

Since this consultation was completed, the US Fish and Wildlife Service has withdrawn their proposal to designate Critical Habitat for the Mexican spotted owl on National Forest System lands in Region 3 (Southwestern Region).

**Finding:** The Forest did consult with the US Fish and Wildlife Service on the proposed action and the proposed action is in conformance with the Mexican Spotted Owl Recovery Plan.

**ISSUE 10:** The Corner Mountain Fire Salvage TS decision violates the Administrative Procedures Act (APA).

**Contention:** The appellant alleges 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 in response 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 Corner Mountain Fire Salvage TS and disclosed the effects in the public arena. The Corner Mountain Fire Salvage TS decision is in compliance with the APA.