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Forest  
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File Code: 1570-1 (FOR)

Date: March 1, 1999

Bryan Bird  
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CERTIFIED MAIL--RETURN RECEIPT  
REQUESTED  
P 556 955 285

RE: Leggett Fire Salvage Timber Sale Appeal 99-03-00-0022-A215  
Reserve Ranger District, Gila National Forest

Dear Mr. Bird:

This is my review decision on the appeal you filed (#99-03-00-0022-A215) regarding the Reserve District Ranger's decision to implement management activities in the Leggett Fire Salvage Timber Sale project area.

On December 1, 1998, District Ranger Michael Gardner issued a decision notice concerning the vegetative treatments and associated activities for the Leggett Fire Salvage 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 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 1:** "The Leggett Fire Salvage EA is devoid of any meaningful measure of the socio-economic value of unlogged forests and pays unquantified lip service to local economic effects..."

Contention: Appellant contends:

- "it addresses social and economic issues from the narrow perspective of the agency's own budget, not the broader kinds of analysis from society's perspective required by law,"
- "it flies in the face of extensive information we have presented as well as references in the EA to economically valuable non-timber uses of the area..."
- "There is no economic efficiency analysis nor any analysis of costs presented in the EA..."



- "...the analysis was not completed with appropriate expertise."

**Response:** Forest Service Manual (FSM) 1970 and Forest Service Handbook (FSH) 1909.17 contain detailed guidelines for conducting economic and social analysis. 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."

The District Ranger solicited comments from approximately 350 individuals, organizations, and agencies (record at A-07-23-98). Scoping comments consisted of ten comment letters, one personal contact, one phone call, and one newspaper editorial (EA page 1-10). Significant issues were identified using methodology described in the EA on page 1-11. There were no significant issues related to economics nor social issues. After completion of the environmental assessment (EA), Appellant commented that the analysis should include consideration of the economic value of standing, intact forest (record at A-09-27-98). The District Ranger responded that the project area consists of "blackened boles of dead trees or browning and red crowns of dying trees." The District Ranger further noted, "The area of the proposed action is not an intact, standing forest, and was not analyzed as such."

Economic and social issues were not identified during scoping for the proposed action, nor were they part of the purpose and need for action. The District Ranger appropriately used the significant issues to define the scope of environmental concern for the project. Absent any economic or social issues, the District Ranger limited the analysis to a brief discussion concerning life-style and employment in the local community. The District Ranger's analysis is consistent with Forest Service manual direction cited above, and is affirmed on this issue.

Contention: "Specifically, the Forest Service has failed entirely to conduct and include in the E.A. a financial efficiency analysis as required by law [FSH 2409.18.12 & FSM 2432.22(c)] or an economic efficiency analysis [FSM 2403.3]."

**Response:** The Forest Service Manual takes precedence over Forest Service handbooks. FSM 2432.22(c) says "Complete a financial and, if necessary, economic analysis, as guided by FSH 2409.18, for timber sales expected to exceed \$100,000 in advertised value (including road value) and evaluate unusual requirements on sales of lesser value." Since the anticipated value of this sale is well below \$100,000, and there are no unusual requirements, it is clear that no economic or financial analysis is required and the guidance in FSH 2409.18 does not apply.

The Appellant's reference to FSM 2403.3 apparently should have been 2430.3 since 2403.3 does not apply at all to this issue. FSM 2430.3 is a general statement of policy while FSM 2432.22(c) provides detailed instruction on the application of the policy. Therefore, the \$100,000 limit for economic and financial analyses would still apply and they would not be required in this instance.

**Issue 2:** "The Leggett Fire Salvage cannot proceed until the Forest Service completes an environmental impact statement for the national timber sale program as a whole."

Contention: Appellant asserts that the decision to avoid preparation of a program-wide EIS violates the National Environmental Policy Act (NEPA) because there are significant cumulative effects of the program which are hidden at the scale of an individual timber sale or forest, but visible only at the scale of an entire region or nationally. Appellant also asserts that "...the effects of the national forest system logging program on private timberland management must be considered at a national scale."

**Response:** The purpose of the Leggett Fire Salvage Timber Sale environmental analysis was to consider the effects of the proposed project and to determine if the project would have significant impacts as described in 40 CFR 1508.27. "Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole." (40 CFR 1508.27(a)). The action involves harvesting dead trees yielding approximately one million board feet of sawtimber and 135 thousand board feet of pulpwood over approximately 194 acres. In this site-specific case, the effects of the project are localized in nature. Therefore, it would not be appropriate for the District Ranger to consider the effects of the logging program for the entire U.S. Forest Service in this site-specific action. The District Ranger appropriately determined and documented that the effects of the action are localized in nature and do not significantly affect the human environment (record at A-12-01-98(2)).

The District Ranger identified the scope of the action and disclosed effects commensurate with that scope. Appellant's contention is outside the defined scope of the action analyzed. The District Ranger is affirmed on this issue.

**ISSUE 3:** The Leggett Fire Salvage violates the 6/5/96 Record of Decision.

Contention: The Appellant states: "The ROD, appendix C, Section C page 89 directs that in project design, stands meeting or exceeding minimum threshold values may not be reduced below the threshold values unless a district-wide or larger landscape analysis of restricted areas shows that there is a surplus, this applies to pine-oak forest types which are present in the project area. Because the "district-wide or larger" landscape analysis of restricted areas has not been completed on the Reserve Ranger District no reductions in minimum threshold values in pine-oak forest can occur."

**Response:** The Recovery Plan for the Mexican Spotted Owl, Volume I, Part II, page 56 defines restricted pine-oak forest for the purposes of the plan. A critical part of this definition states that in the Upper Gila Mountains Recovery Unit, where this project is located, habitat types must reflect *Quercus gambelii* or a *Quercus gambelii* phase of the habitat type to be considered as restricted pine-oak forest type. The Watershed and Air Cumulative Effects Memo (AR A-08-14-98(1)) states on page 14 "From a habitat typing standpoint, this would be called (sic) a ponderosa pine/gray oak forest." Gray oak is *Quercus grisea*, not *Quercus gambelii* and this habitat type has no *Quercus gambelii* phase. Therefore, this area is not a restricted pine/oak forest area as intended by the recovery plan. Even if this area was a pine/oak area, this requirement still would not apply because the area does not meet or exceed the minimum threshold values listed in Table III.B.1 on page 92 of the recovery plan. The prohibition in the ROD is to prevent reducing stands that do meet the minimum values from being treated in such a way that they would not meet the minimum values after treatment. Since the fire has already reduced these stands to well

below minimum threshold values, no treatment could possibly be said to reduce them below threshold values.

**Contention:** The Appellant states "the Leggett Fire Salvage as planned does not meet the guidance in the ROD, Appendix C, Section C, page 89 directing that management should be designed to create minimum threshold conditions on project areas where there is a deficit of stands meeting those conditions."

**Response:** Appendix C, section C of the ROD clearly refers to restricted areas. As shown above, this project is not in restricted habitat as defined by the Recovery Plan. Therefore, this guideline does not apply.

**Contention:** "The Leggett Fire Salvage is in further violation of the ROD because the direction [ROD, Appendix C, Section F, page 90] to "prepare an annual monitoring report covering all levels of monitoring done in the previous year" has not been met on the Gila National Forest nor the Reserve Ranger District."

**Response:** The overall habitat monitoring for the Reserve Ranger District is beyond the scope of this project and it would not be appropriate to address it in the environmental assessment. Only the monitoring requirements related to this project would be appropriate material for this assessment. The monitoring protocol for microhabitat in Region 3 states "These protocols for use in Region 3 address the microhabitat monitoring requirement where habitat altering activities occur in protected and restricted forest types as defined in the Recovery Plan (USDI 1995:84-95)." Since this area is not protected or restricted habitat, no microhabitat monitoring is required for this project.

**Contention:** Appellant states "Neither the Reserve Ranger District nor the Gila National Forest has completed the required analysis of old growth nor allocated 20% old growth in each forested Ecosystem Management Area (EMA) [ROD, Appendix C, page 95]."

**Response:** Under old growth standards on page 95 of the Record of Decision 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 be 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). In the case of the Leggett Area, the conditions are currently as far as they could possibly be from old growth. Essentially, the current stand age for this area is 0. See appeal record documents A-08-14-98(1) and A-08-28-98 for descriptions of the current conditions of the area. It would not be proper to use any part of this area as part of the 20% allocation to old growth at this time because other portions of the EMA are much closer to actual old growth conditions.

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 within the Leggett Burn to be allocated to old growth.

Contention: Appellant states "...it is apparent from the sale area cruise data that a significant volume would come from trees over 16" dbh and up to 28" dbh and greater. Notwithstanding the general trend in the Southwest Region to not cut trees over 24" and in most cases not over 16" dbh, the Forest Service is further violating the ROD standards and guidelines in doing so. The ROD states very clearly in appendix C, Section C, page 90 that all trees over 24" dbh will be saved in restricted areas which include pine-oak forest."

**Response:** Appendix C, Section C clearly refers to restricted areas. As has been demonstrated, the Leggett Area is not in restricted habitat for the Mexican spotted owl. Therefore, the restriction on trees over 24 inches dbh does not apply. There is no regional requirement to save trees over 24 inches or 16 inches dbh except as needed for TES species habitat. Individual units may choose to reserve any trees needed to meet management objectives. That decision would be subject to thorough analysis under NEPA.

The District Ranger is affirmed on this point.

#### **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 Leggett Fire Salvage 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

cc:

Appeals and Litigation Staff  
Gila NF  
Reserve RD  
Gulach, WO OGC