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Department of  
Agriculture

Forest  
Service

Southwestern  
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File Code: 1570-1 (FOR)

Date: March 1, 1999

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CERTIFIED MAIL--RETURN RECEIPT  
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RE: Leggett Fire Salvage Timber Sale Appeal 99-03-00-0025-A215  
Reserve Ranger District, Gila National Forest

Dear Mr. Segee:

This is my review decision on the appeal you filed (#99-03-00-0025-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 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 Project violates the National Environmental Policy Act (NEPA).

**Contention:** The Forest Service failed to take a hard look at erosion and sedimentation issues, and the accompanying loss of soil nutrients which will occur.

**Response:** The project record contains ample evidence that the Forest evaluated the environmental consequences of the alternatives proposed. The EA (A-08-28-98 (2)) identifies that early in the process, potential effects on nutrients and erosion were identified as significant issues. These two issues were closely tracked throughout the process and effects were



thoroughly described in narrative form in Chapter III. Effects from nutrient loss, erosion and potential sedimentation were also displayed in the effects comparison table in Chapter II.

The record shows (A- 08-14-98 (1)) that severe soil hydrophobic conditions in the Leggett Fire were discovered by the Forest soil scientist. A discussion of techniques to remediate these conditions through the mechanical means provided by skidding and slashing activities was described in the EA. In Appendix D of the EA (A-12-01-98 (2)), the Forest relates that positive results from harvesting on similarly impacted burned areas were obtained from three recent salvage sales on the Gila. The unpublished manuscript that the appellant repeatedly cited in his appeal does not constitute "substantial scientific literature " proving salvage operations are always harmful to soil recovery.

The Forest took a "hard look" at the environmental consequences related to nutrients, erosion and sedimentation. In addition, the documented site-specific information collected for this project and past results from similar activities provide a sound basis for describing these environmental effects. There is no violation of NEPA. The District Ranger is affirmed with respect to this issue.

Contention: The Forest Service failed to take a hard look at the issue of live trees being cut.

**Response:** The Decision Notice (Appeal Record A-12-01-98(2)) in the description of the selected alternative states, "Only the trees killed by the fire would be harvested." In addition, all of the silvicultural prescriptions for stands to be cut which were added to the appeal record by the memorandum of February 9, 1999, state that all live trees are to be marked as leave trees. Since no live trees are to be cut, this issue is moot.

The District Ranger is affirmed on this point.

Contention: The Forest Service failed to take a hard look at the ecological importance of snags, particularly large snags.

**Response:** As the appellant admits, the instructions to retain two large snags and three smaller snags per acre (Environmental Assessment, A-08-28-98(2); Decision Notice, A-12-01-98(2) and silvicultural prescriptions (memo of February 9, 1999), are in compliance with the standards and guidelines in the Forest Plan. The issue of snags was analyzed in the development of the Plan and the District Ranger has properly relied on this analysis. Publications like "Wildlife Habitats in Managed Forests - The Blue Mountains of Oregon and Washington", Agriculture Handbook No. 553 by Jack Ward Thomas, technical editor, indicate that the standards and guidelines in the Forest Plan are entirely adequate.

The District Ranger is affirmed on this point.

Contention: The Forest Service failed to take a hard look at reseeded and the introduction of exotic weeds.

**Response:** The merits of reseeded and possible introduction of exotic species were not raised as issues during initial project scoping, but did come up during the 30 day comment period. The Forest responded to the comment (A-12-01-98 (2)) based on local experience from past reseeded after three salvage sales and numerous reseeded efforts after fires which were not

logged. Indications are that introduction of persistent exotic species during broad-scale reseeded has not been a problem in the past. The Forest response also included local observations on the benefits of reseeded in similarly burned areas. The report cited by the appellant, an unpublished manuscript describing conditions in Oregon, provides recommendations that are not appropriate for the Gila's situation and were superseded by locally derived information.

The Forest considered the issue of reseeded at a level commensurate with the significance of the issue. There is no violation of NEPA. The District Ranger is affirmed with respect to this issue.

**ISSUE 2:** The Leggett Fire Salvage Sale violates the National Forest Management Act (NFMA).

Contention: The Reserve Ranger District has failed to designate old growth as required by the Gila LRMP.

**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 most of the rest of the EMA is much closer to an actual old growth condition.

The District Ranger is affirmed on this point.

Contention: The Leggett Sale illegally cuts trees larger than 24 inches.

**Response:** The appellant's contention is based on the guidelines in the Record of Decision for amendment of Forest Plans dated June 5, 1996. On page 90 of the ROD, under section C, Restricted Areas, it states "Save all trees greater than 24 inches dbh." Section C clearly refers to restricted areas as defined in the Mexican spotted owl recovery plan. 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. 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 and the guideline concerning trees over 24 inches dbh does not apply.

The District Ranger is affirmed on this point.

Contention: The Leggett Sale fails to manage road densities at the lowest level possible.

**Response:** Page 93 of the ROD states, "Manage road densities at the lowest level possible." The environmental analysis (A-08-28-98(2)) states on page I-5 under the heading "Proposed Action" "The proposal includes constructing short spurs from the existing roads where necessary to access suitable landing sites. Spurs are expected to be less than 100 yards in length. Following large tree removal, these temporary spur roads would be obliterated and seeded with a suitable grass or perennial seed mix." Since only necessary roads would be built, the District would be managing road densities at the lowest level possible. In addition, since these are temporary roads that will be obliterated after use, they will not be added to the permanent road density of the area. Long term management of road density would not be affected by these temporary roads.

The District Ranger is affirmed on this point.

**ISSUE 3:** The Leggett Fire Salvage Sale violates the Administrative Procedures Act (APA).

Contention: The District Ranger's decision is arbitrary and capricious.

**Response:** Based on the decision notice and the Appeal Record, I find that the decision is not arbitrary nor capricious. The record indicates that the project objectives, issues and environmental consequences were addressed and used in explaining the rationale for the decision (AR A-12-01-98(2)).

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 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  
Mulach, OGC WO