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Department of  
Agriculture**

**Forest  
Service**

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**File Code:** 1570-1 (2400)

**Date:** February 7, 2000

Sharon Galbreath  
Sierra Club, Grand Canyon Chapter  
P.O. Box 38  
Flagstaff, AZ 86002

Certified Mail-Return Receipt Requested  
P 556 954 725

Re: Appeal 00-03-00-0015-A215, Dry Park Vegetative Management Project, North Kaibab Ranger District, Kaibab National Forest

Dear Ms. Galbreath:

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 various silvicultural treatments covering 6,200 acres within the Dry Park project area of approximately 9,792 acres.

### **BACKGROUND**

On November 2, 1999, Forest Supervisor Conny Frisch issued a Decision on the Dry Park Vegetative Management 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 Dry Park Vegetative Management Project 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 Dry Park Vegetative Management Project.

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:  
Brian Segee  
Martos Hoffman  
North Kaibab RD  
Kaibab NF  
FFH, R3  
Appeals & Lit. Staff, R3

**REVIEW AND FINDINGS**

of the

Center for Biological Diversity, Sierra Club Grand Canyon Chapter, and SW Forest Alliance

Appeal #00-03-00-0015-A215

on the

Dry Park Vegetation Management Project

**ISSUE 1.** The Decision violates the National Environmental Policy Act (NEPA).

**Contention 1a:**

"Forest Service regulations at 36 CFR 215.6 require the public to be given opportunity to review and comment on proposed actions"

The new Dry Park Decision must be accompanied by an amended EA and additional 30 day comment period.

**Response:** The Responsible Official circulated the Dry Park Environmental Assessment (EA) for 30 day public review and comment in July 1998 (record at 90, 91 and 94). Comments were received from the public and documented in Appendix D of the Dry Park EA. The Forest Supervisor made a decision to implement Alternative 1 on June 10, 1999. The decision was appealed and subsequently remanded on September 27, 1999 for additional analysis and documentation of effects to Management Indicator Species (MIS).

In response to the remand instructions the Responsible Official re-evaluated and documented the effects of the proposed action on the MIS (record at 144,145,146,147). These documents were added to the process record along with a new decision and Finding Of No Significant Impact (FONSI) on November 2, 1999. The decision documented that the deficiencies identified in the remand had been corrected. In response to the Center for Biological Diversity's inquiry regarding another 30 day comment period on the EA, the Responsible Official indicated that the required analysis had been completed and placed in the process record because the conclusion of the effects analysis and the decision had not changed from that disclosed in the EA circulated for public review in July 1999.

**Finding:** Since the effects disclosure of MIS did not change the EA effects conclusions and the proposed action remained unchanged, there was no need to circulate the EA for a second public comment period under 36 CFR 215.5 and 215.6. Finally, the National Environmental Policy Act does not require public comments on EA.

**Contention 1b:** Appellants allege that an Environmental Impact Statement (EIS) must be prepared because the Forest Service never conducted an EIS on the impacts of the Management Recommendations for the Northern Goshawk (MRNG) as promised in the Federal Register.

**Response:** The Forest Service prepared an EIS which incorporated the Management Recommendations for the Northern Goshawk (MRNG) into the Region Wide Amendment of all Forest Plans in June 1996. This EIS disclosed the environmental effects of applying these management recommendations as Forest Plan direction. This Forest Plan Amendment provides direction to which the Dry Park Vegetative Management Project must conform. The Dry Park EA and Decision Notice evaluated and disclosed the effects of the proposed action on the Northern goshawk.

**Finding:** There is no requirement to conduct an EIS on the MRNG as part of the Dry Park analysis. The Dry Park Decision does not violate NEPA with regard to environmental effects related to Northern goshawk.

**Contention 1c:** The Dry Park Timber Sale violates the National Environmental Policy Act: The MRNG is the subject of significant public controversy. Proposed implementation of the MRNG in the Dry Park EA has not adequately assessed the effects of the project on Northern goshawks.

**Response:** Implementation of the MRNG through the standards and guidelines in the Forest Plan is the underlying foundation for the vegetative treatments in the proposed action. Analysis of the effects of implementing the proposed action on the goshawk support the finding in the Biological Assessment/Evaluation (BA/E) that the proposed action has a beneficial impact on the northern goshawk (AR 88, 92 and 120).

**Finding:** The Dry Park EA adequately assessed the affects of implementing the Northern Goshawk Standards and Guidelines on the goshawk.

**Contention 1d:** The cumulative effects analysis in the Dry Park EA is inadequate.

**Response:** The cumulative effects analysis conducted for the proposed action identified the benefits of implementing the MRNG for the goshawk and other wildlife species. Implementation of the MRNG in projects over the last several years and into the foreseeable future will enhance habitat for the Northern goshawk and a number of other wildlife species. (AR 92)

**Finding:** The Forest completed an adequate NEPA Cumulative Effects Analysis.

**Contention 1e:** Dry Park does not achieve the purpose and need of the proposed action. The project fails to reduce the stocking density of conifer trees in the understory and fails to reduce the quantity of other tree species where the overstory is or was ponderosa pine or Douglas-fir.

**Response:** The Purpose and Need for Action on page 4 of the EA (AR 92) discusses the fact that the current condition of the forest is outside the historic range of variability because past events have resulted in a great increase in the number of seedlings, saplings and young conifer trees; an increase in fire intolerant species like white fir, Engelmann spruce and subalpine fir and

a decrease in fire tolerant species like ponderosa pine and Douglas-fir. The objectives section on pages 4 and 5 of the EA (AR 92) lists the following objectives which apply to stocking density in the understory and tree species other than Douglas-fir and ponderosa pine.

"1) Decrease the stocking density of conifer trees in the understory " and

"10) Reduce the quantity of other conifer tree species in areas where the overstory is, or recently was, dominated by Douglas-fir, ponderosa pine or both."

Table 3 on page 18 of the EA displays the change in numbers of trees by size class since 1909. There are currently more trees in every size class except a slight reduction (0.2 trees per acre) in the number of trees over 24 inches in diameter. Table 6 on page 22 of the EA shows that under the selected alternative the number of trees less than 12 inches in diameter will be reduced from 2625 per acre to 143 per acre. Table 7 on page 23 of the EA shows that the number of small trees is expected to remain lower than it now is for at least 40 years. Table 10 on page 26 of the EA shows that the expected loss of trees over 18 inches diameter is so small that it does not even show up when reported to the nearest 0.1 tree per acre.

Table 12 on page 30 of the EA shows that other species will be removed or reduced in relation to ponderosa pine and Douglas-fir on 570 acres in the selected alternative.

**Finding:** The appeal record clearly demonstrates that small trees (understory) are substantially reduced while large trees (overstory) are reduced only at undetectable numbers. Fire intolerant species are reduced in proportion to fire tolerant species on 570 acres. It is clear that objectives 1 and 10, written in support of the purpose and need, will be met.

**Contention 1f:** "Direct effects to wildlife, soil, water, vegetation, and air quality are all presented in narrative form rather than in the scientific, quantitative manner which is required by NEPA and 9th Circuit interpretations of NEPA."

**Response:** NEPA does not establish any threshold for quantitative effects disclosure. Regulations implementing NEPA, at 40 CFR 1500-1508, call for high quality information and accurate scientific analysis, but do not set any standard for quantification.

The EA includes considerable quantitative analysis of resulting vegetation conditions for each alternative (EA pp. 18-30). The EA includes quantitative displays of trees per acre by size class and distribution of vegetation structural stages and projects these conditions into the future. The wildlife effects discussion relates resulting vegetation conditions to habitat requirements prescribed in the forest plan, in predicting effects on various wildlife species (EA pp. 30-39). Effects on watershed condition and soil productivity are discussed along with numbers of acres. Air quality is addressed in the EA in terms of smoke and dust from management activities and their impacts on Arizona Highway 67 and Grand Canyon National Park.

**Finding:** The EA effects analysis is sufficient to form a basis for determination of whether or not to prepare an EIS (40 CFR 1501.4)

**Contention 1g:** The Dry Park EA violates NEPA by merely listing mitigation measures.

**Response:** Appellants cite 40 CFR 1502.16 as requiring a certain level of detail in a discussion of mitigation measures in an EA. Section 1502 concerns itself with environmental impact

statements, not environmental assessments. Appellants cite the Neighbors of Cuddy Mountain case which also involved an environmental impact statement, not an environmental assessment. Even if one were to apply this direction to an EA, the regulation merely calls for a discussion of means to mitigate adverse environmental impacts not already included in the proposed action or alternatives. There is no threshold in the regulation for the level of detail required. The Dry Park EA includes a discussion of mitigation measures included in all action alternatives EA pp. 13-14). The EA states that these measures have been employed successfully on similar projects. The EA does not merely list the measures but includes their purpose. Other mitigation measures are included in each action alternative, such as road closures and diameter limits (EA pp. 9-11). The effects analysis is predicated on the mitigation measures being part of each alternative.

**Finding:** The EA adequately describes measures to mitigate adverse environmental impacts.

**ISSUE 2.** The Dry Park Timber Sale violates the National Forest Management Act.

**Contention 2a:** The Forest Service failed to conduct surveys for, or even consider, MIS.

**Response:** Analysis of the effects of implementing the proposed action on the MIS found within the Dry Park area supports the finding that the proposed action has a beneficial impact on these species and their habitat and will not reduce their viability (AR 147, 88, 92 and 120). The species with habitat within the project area include Northern goshawk, pygmy nuthatch, Merriam's turkey, red squirrel, Mexican spotted owl, tassel-eared squirrel (Kaibab subspecies), hairy woodpecker, yellow-bellied sapsucker and mule deer (AR 147).

**Finding:** The record shows that the effects on MIS have been analyzed.

**Contention 2b:** Dry Park fails to meet Northern Goshawk Standards and Guidelines. "Duty to establish six nesting areas per Post Fledging Family Area (PFA): The Forest Service is required to designate six nest areas for each designated PFA. The nest areas are required to be approximately 30 acres in size and each PFA must contain a minimum of 180 acres of nest sites."

**Response:** The Land and Resource Management Plan specifies that there should be at least 3 suitable nest sites and 3 replacement nest sites per home range with a minimum total of 180 acres of nest areas identified within each PFA. The Forest identified the following number and size of nest areas for the seven PFA's: (AR 146). Existing nest stands are around known nest sites. Replacement nest stands were designated in areas of suitable topography and have suitable habitat which can be managed towards nest stand conditions. Two nest stands in PFA 48 were combined into one large stand.

PFA Stands	No. Nests:	Total Acres of Nests	Existing Nest Stands	Replacement Nest
48	5	187.4	2	3
52	7	178.3	2	5

53	7	193.3	3	4
58	6	183.3	2	4
83	6	189.7	3	3
87	6	175.7	1	5
98	6	186.7	2	4

**Finding:** The record shows that the Management Guidelines for the Northern Goshawk have been met.

**Contention 2c:** Duty to identify and manage dispersal PFA and nest habitat at 2 to 2.5 mile spacing across the landscape.

**Response:** Exhibit C (AR C) displays the distribution of PFA's across the Kaibab Plateau. The distribution of these PFA's more than meets the 2 to 2.5 mile requirement.

**Finding:** Dispersal and nest habitat spacing were met in the project analysis.

**Contention 2d:** Treatments in nesting areas: "Preferred treatments" within goshawk nesting territories, whether existing or replacement, is to "thin from below with non-uniform spacing and use hand tools and fire to reduce fuel loads"... While the EA does not specifically address it, hand tools clearly will not be used.

**Response:** The EA identifies a number of fuels treatments for the Dry Park area, including lop and scatter and prescribed fire. Although no fuels treatments were specifically identified for the replacement nest areas, lop and scatter does use hand tools and prescribed fire is part of the preferred treatment. (AR 92) The reference to hand tools is to differentiate from machine piling with bulldozers. Under the intent of using hand tools as quoted from the management guidelines, chain saws are hand tools.

**Finding:** The proposed actions are in compliance with the management guidelines.

**Contention 2e:** Snags, downed logs and woody debris: The EA at page 28 admits that there are "very few" stands on Dry Park meet this mandate, yet thousands of old and large trees are proposed to be logged, thereby decreasing the creation of future snags. This violates the Forest Plan.

**Response:** The proposed action does not include the logging of thousands of old and large trees. The EA (AR 92, page 27) states that 300 to 500 trees over 18 inches DBH will be removed. To retain existing snags and provide for recruitment of new snags, the proposed action will retain all snags, retain spiked topped and dying trees, and retain a group of 3-5 trees greater than 18" diameter in all openings greater than 1 acre (AR 92). The BA/E identifies as mitigation the need to provide downed logs and woody debris as specified in the Record of Decision (ROD) (AR 120).

**Finding:** The proposed action is in compliance with the Forest Plan.

**Contention 2f:** Canopy Cover: Canopy cover will be less than required by the MRNG. The North Kaibab Ranger District has interpreted the forty plus and sixty plus percent canopy cover in the MRNG to be maximum numbers rather than minimums.

**Response:** Page 1 of Appendix B of the Implementation and Interpretation of MRNG (AR A) states "The MRNG recommends management of mid-aged and old-aged groups of trees at canopy cover percent (cc%) *minimums* (emphasis added) of 40 to 70 depending upon species and intended function." In addition, the silvicultural prescriptions contained in the letter to William Austin (AR 109) repeatedly contain the objective "Maintain total stocking at or near the lower limit recommended in the KNF I&I ---". Since this refers to conditions immediately after treatment, these densities would be the lowest densities expected.

The record indicates that it is clearly understood that these values are minimum values.

**Finding:** The North Kaibab Ranger District has correctly interpreted and implemented the management recommendations for canopy cover.

**Contention 2g:** Canopy cover: The desired forest conditions specified in the Dry Park EA violate the canopy percentages required in the MRNG.

**Response:** The canopy cover in Dry Park meets the MRNG percentages of 40% in forage area, 50% in ponderosa pine PFAs and 60% in mixed conifer PFAs (AR 92, page 34).

**Finding:** The North Kaibab Ranger District has correctly interpreted and implemented the management recommendations for canopy cover.

**Contention 2h:** "---the Dry Park EA contains no information or analysis on existing canopy densities in the various vegetative types in the Dry Park area.----Without this information the tables on existing and projected Vegetation Structural Stages (VSS) distribution are meaningless."

**Response:** The comparison which is meaningful is to compare anticipated and desired conditions, not anticipated and existing conditions (canopy cover). The Forest has made the correct analysis. Figure 1 in the EA (AR 92, page 35) shows that the canopy cover of the various VSS and forest types will meet or exceed the MRNG levels immediately following treatment.

**Finding:** The North Kaibab Ranger District has correctly interpreted and implemented the management recommendations for canopy cover.

**Contention 2i:** The Kaibab National Forest's development of a translation from basal area or stand density index (SDI) to crown cover percent has never received public review or analysis.

**Response:** The development of regression equations to convert basal area or SDI to canopy cover is not a management decision, it is a technical procedure which does not require public review.

**Finding:** Public review of the translation from basal area or SDI to crown cover is not required.

**Contention 2j:** The Kaibab National Forest has interpreted the MRNG so openings from past management are not "openings" if they do not produce forage in amounts comparable to what a productive local site is capable of yielding. This system allows the Kaibab National Forest to log to canopy cover percentages well below those specified as minimum in the MRNG.

**Response:** To implement the MRNG, any opening in the crown level of the forest must be evaluated. It must be decided whether the opening is simply a gap between tree crowns where the soil is fully occupied by the roots of surrounding trees or if it is an area where it is possible to establish new tree seedlings. Only areas capable of being regenerated to new seedlings can develop into future patches of the various VSS. If the area is occupied by tree roots, then the production of forage would be low and regeneration of tree seedlings would be unlikely, so low forage production is a way to make this determination. If the area has low forage production and is therefore just a canopy gap as opposed to a true opening, then it would be included with the adjoining areas covered by tree canopies in measurements to determine the average canopy cover of the group of trees where canopy cover is being determined. If it is a true opening where there is potential for forest regeneration, then it would be an area of VSS 1 and would not be included in the average canopy cover for the VSS 4, 5 or 6 areas which are the only places where the MRNG canopy cover recommendations apply. Therefore, using forage production is a valid method of determining forest openings. The proper test for meeting the MRNG canopy cover recommendations is to determine if the average canopy cover within the VSS 4, 5 or 6 groups is at or above the level desired. The Forest has made this determination. As long as the canopy cover is at or above the desired level within these VSS classes, the intent of the MRNG has been met.

**Finding:** The record indicates that openings and crown cover are being applied correctly.

**Contention 2k:** "VSS Distributions: As the EA states, 'overall, the planning area is short in trees larger than 18 inches and especially in trees larger than 24 inches in diameter.' However, in the small area of the sale marked along FR 206 by July 30, 1999, the mark included dozens of ponderosa pine larger than 18 inches marked for cut. Several trees larger than 24 inches and up to 32 inches were also marked for cut."

**Response:** The restrictions on cutting large trees comes from the MRNG, but the restrictions refer to vegetation structural stages, not to individual trees. The EA (AR 92, page 27) states that 300 to 500 trees over 18 inches DBH would be removed but that "Alternative 1 would remove trees in that size class only under particular circumstances (such as within a treatment area for dwarf mistletoe or a lone large tree within a small VSS 4 or VSS 3 group---". This would not reduce the amount of VSS 5 or VSS 6 which is where the shortages lie. Therefore, this would be allowed under the MRNG.

**Finding:** The record indicates that the amount of VSS 5 and VSS 6 will not be reduced.

**ISSUE 3.** The Dry Park timber sale violates the Endangered Species Act.

**Contention:** The decision is not in compliance with the Mexican Spotted Owl Recovery Plan.

**Response:** The District concluded they met the Mexican Spotted Owl Land and Resource Management Plan (LRMP) Standards and Guidelines for Mexican spotted owl, which were based on the Recovery Plan. The Fish and Wildlife Service concurred with the District's finding of May Affect not Likely to Adversely Affect for the Mexican spotted owl stating "the Service believes the proposed project complies with the Recovery Plan... (AR 119)"

**Finding:** The Forest is in compliance with the LRMP Standards and Guidelines and the Recovery Plan for the Mexican spotted owl.

**ISSUE 4.** The Dry Park timber sale fails to address the legal and ecological significance of the Grand Canyon Game Preserve. ...'activities' on the Preserve cannot be in conflict with its stated purpose, which is for the protection of game birds and animals.

**Contention:** The Kaibab National Forest has failed to explain how timber sales, especially sales such as Dry Park which log thousands of large and old growth trees, facilitates such protection.

**Response:** The proposed action does not include the logging of thousands of old and large trees. The EA (AR 92, page 27) states that 300 to 500 trees over 18 inches DBH will be removed. Forest Plan Standards and guidelines were developed to be in compliance with the preserve, which was designated to protect the game animals and be recognized as a breeding place for these game animals. The Dry Park project is consistent with the standards and guidelines in the Forest LRMP. Mule deer, Merriam's turkey and the Kaibab squirrel (the primary game animals inhabiting the area of the preserve within Dry Park) are also MIS and were addressed in Issue 2 (AR 92, 121, 145 and 147).

**Finding:** The Dry Park decision is in compliance with the purpose of the Grand Canyon Game Preserve.

**ISSUE 5.** The Dry Park timber sale fails to address the legal and ecological significance of the Kaibab Squirrel National Natural Landmark (NNL).

**Contention:** The Dry Park EA has failed to address legal significance of this designation, in violation of both NEPA and the act creating the landmark.

**Response:** The project is designed to begin restoring the ponderosa pine fire climax communities on the Kaibab Plateau and restore or enhance Kaibab squirrel habitat through implementation of the MRNG. Both of these activities would enhance the character of the Landmark. Approximately 640 acres of the Dry Park project are within the boundaries of the Landmark. In addition, the Forest has met with the National Park Service's NNL Coordinator on several occasions to discuss and review the status and management of the ponderosa pine habitat and the Kaibab squirrel.

**Finding:** The Forest is in compliance with the purpose of the Kaibab Squirrel National Natural Landmark.

**ISSUE 6.** The decision violates the Administrative Procedures Act (APA).

**Contention:** Appellants allege that due to all the previously cited appeal points, the decision is arbitrary and capricious.

**Response and Finding:** The Responsible Official has conducted and documented a reasoned analysis of the Dry Park Vegetative Management Project and disclosed the effects in the public arena. The Dry Park decision is in compliance with the APA.