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Department of
Agriculture

Forest
Service

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File Code: 1570-1/2400

Date: May 24, 2001

Brian Segee
Center for Biological Diversity
P.O. Box 710
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**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Re: Appeal #01-03-00-0023-A215, Stooge Salvage Analysis Area, North Kaibab Ranger District, Kaibab 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 150 acres, reforestation on 100 acres, and closure of 13 miles of roads. This will amount to salvaging approximately 26.3 percent of the project area (570 acres).

BACKGROUND

On February 20, 2001, North Kaibab District Ranger Jill Leonard issued a Decision on the Stooge Salvage Analysis Area. The District Ranger 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 Stooge Salvage Analysis Area be affirmed with instructions to protect the plantation area from ORVs and livestock use as required by the Forest Plan.



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 Stooze Salvage Analysis Area.

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,
Natural Resources

cc:
Forest Supervisor, Kaibab National Forest
District Ranger, North Kaibab Ranger District
Appeals & Litigation Staff, R3
FFH, R3

REVIEW OF FINDINGS

of the

Center for Biological Diversity

Appeal #01-03-00-0023-A215

regarding

The Stooze Salvage Analysis Area

ISSUE 1: “The Stooze Fire Salvage violates the National Environmental Policy Act (NEPA).”
“...‘Hard look’ at environmental consequences.”

Contention: Appellant asserts the Forest Service has failed to take a “hard look” at the environmental consequences of the Stooze Salvage decision.

Response: The appellant’s assertion does not suggest any specific environmental effects disclosure that is lacking. The environmental assessment (EA) Project Record (PR 23) discloses 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 3, a Fire Effects Database query results; PR 3b, literature search results; PR 20a, wildlife report; PR 34, mortality discussion; PR 35, vegetation report; PR 39, BA&E; and PR 40, BA&E (plants). All were used in preparation of the EA.

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

ISSUE 2: “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."

One other alternative was considered but dropped from further study, because it only partially met the purpose and need of the proposal (PR 23, EA, p. 5; and PR 41, pp. 2-3).

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 3: “The Forest Service has failed to ensure the scientific integrity and accuracy of the Stooze Salvage Timber Sale (TS) EA.”

Contention: 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 Stooze Salvage TS environmental analysis is documented in an EA. That fact aside, the North Kaibab District Ranger 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 rather than their accuracy or integrity. Regulation at (40 CFR 1508.9), states that environmental assessments shall include brief discussions of the environmental impacts of the proposed action and alternatives.

The Interdisciplinary team searched and located supporting information. Project record documents: Fire Effects Database Query results (PR 3a), Literature search results (PR 3b), and Salvage and fire-related research (PR 32). All indicate a search to obtain current and relevant scientific data.

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

ISSUE 4: The Forest Service’s response to comments is not adequate.

Contention: 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 23, p. 3) describes the process undertaken to identify significant issues. Evaluation of scoping comments is documented in the record (PR 18). The Responsible Official considered comments on the EA and responded to them in Appendix A of the assessment.

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

ISSUE 5: "The Stooage Salvage TS violates the National Forest Management Act (NFMA)." Management Indicator Species (MIS) not properly considered.

Contention: "The Kaibab National Forest and the North Kaibab Ranger District failed to conduct surveys for, or properly consider, MIS."

Response: The Forest provided analysis of MIS for the habitats found in the proposed activity area in the Wildlife report (PR 20a). MIS were further discussed in the EA (PR 23).

Reference 36 CFR 219.19(a)(6). There is no requirement in NFMA for monitoring of individual MIS or 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 analysis of effects on MIS within the proposed activity area is consistent with agency policy and NFMA.

ISSUE 6: The Stooage Fire Salvage Sale EA fails to meet several forest plan standards and guidelines.

Contention: The Stooage Salvage Analysis Area EA shows no indication that the Forest Service has addressed Forest Plan requirements to: 1) Restrict ORV use during stand establishment; and 2) Exclude domestic livestock from treated areas for not less than two growing seasons.

Response: Page 52-2 of the Kaibab Land and Resource Management Plan (LRMP), under work activity E04, Reforestation, refers to Table 45, which includes 320 acres of reforestation within Management Area 13. Guideline 5 under this work activity states: "...protect plantations until seedlings are established and assign no grazing capacity."

Finding: The Responsible Official decision is silent on ORV's and should be consistent with the Forest Plan direction on p. 52-2. The plantation area should be protected from ORV's and livestock use. Signing and area closure may be appropriate to exclude ORV's.

ISSUE 7: "The Stooage Salvage TS EA violates the Endangered Species Act (ESA)." The Forest Service has failed to conduct required consultation or to prepare a Biological Assessment for the Stooage Salvage TS.

Contention: The Forest Service has failed to consult with the U.S. Fish and Wildlife Service (USFWS) in order to ensure that its activities do not jeopardize threatened or endangered species or adversely modify their designated critical habitat.

Response: The Biological Assessment prepared for the Stooze Salvage TS (PR 39 and 40) concluded a determination of “No Effect” for the Southwestern willow flycatcher, California condor, Kaibab amber snail, bald eagle, Apache trout, Mexican spotted owl, mountain plover, Welsh’s milkweed, Brady pincushion cactus, and Siler pincushion cactus. No other listed species are known or expected to occur in the action area.

Since the action was determined to have “No Effect” on the USFWS listed species in the proposed action area, consultation with the USFWS is not required [50 CFR Part 402.14(a)].

Finding: The District is in compliance with the ESA, since consultation is not required for “No Effect” determinations.

ISSUE 8: The Stooze Fire Salvage EA 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 a timber sale, especially sales such as Stooze Fire Salvage TS, facilitates such protection.

Response: The Kaibab National Forest Plan EIS recognizes the Grand Canyon Game Preserve (EIS, pp. 119-120). The EIS notes that neither the law authorizing establishment of the preserve nor the Secretary's regulations applying to preserves guide wildlife habitat management or other resources on the area. Protection afforded by the game preserve designation prohibits hunting, trapping, killing, or capturing game animals and birds, except under such regulations as may be prescribed by the Secretary of Agriculture. The Kaibab National Forest Plan sets goals, objectives, standards, and guidelines for management of habitat for numerous wildlife species, including mule deer, consistent with the Preserve's purpose of protecting the mule deer herd. Since the activity was identified as being in compliance with the Forest Plan, the proposed action is in compliance with the purpose of the Preserve.

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

ISSUE 9: The Stooze Fire Salvage TS fails to address the legal and ecological significance of the Kaibab Squirrel National Natural Landmark (NNL).

Contention: The Stooze Salvage Analysis Area 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 approximately 150 acres within the 280-acre Stooze Complex fire by salvaging dead and dying ponderosa pine trees burned in the fire. The District also proposes to use tree planting (ponderosa pine) as a method to reforest areas where little or no seed source exists on approximately 100 hundred acres after the proposed salvaging harvesting (PR 23, pp. 3, and PR 41). The project will also help to begin restoring the ponderosa pine fire climax communities on the Kaibab Plateau and restore or enhance Kaibab Squirrel habitat through implementation of the Management Recommendations for the Northern Goshawk. These activities would enhance the character of the Landmark. The habitat within the areas proposed for salvage (moderate to high intensity fire) has been made unsuitable to the resident Kaibab Squirrels. There would be no short-term (3-to 5-year) effects of any of the alternatives to the Kaibab Squirrels (PR 23, p. 14, and PR 39, p. 17).

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

ISSUE 10: The Stooze Salvage TS decision violates the Administrative Procedures Act (APA).

Contention: Appellant alleges 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 Stooze Salvage TS and disclosed the effects in the public arena. The Stooze Salvage TS decision is in compliance with the APA.