



United States
Department of
Agriculture

Forest
Service

Southwestern
Region

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File Code: 1570-1

Date: December 23, 1997

Mr. Peter Galvin
Southwest Center for Biological Diversity
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Certified Mail - Return
Receipt Requested

Dear Mr. Galvin:

This is my review decision on the appeal you filed (#98-03-00-0064-A215) regarding the Kaibab National Forest Supervisor's decision to implement vegetation management activities in the Scott Ecosystem Management Area (EMA), on the Tusayan Ranger District.

On July 28, 1997, Conny J. Frisch, Forest Supervisor, issued a Decision Notice concerning the vegetative treatments and associated activities for the Scott EMA. The decision is subject to administrative review under the 36 CFR 215 appeal 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 (copy enclosed) regarding the disposition of this appeal.

APPEAL SUMMARY

As directed in 36 CFR 215.16, the Forest Supervisor contacted the appellant to discuss informal disposition of the appeal, and arranged a teleconference meeting. The record reflects that the teleconference meeting occurred and none of the appeal issues were resolved.

Appeal issues were organized into major issue subjects for this review and included the following: I.) purpose and need; II.A.) owl and goshawk surveys; II.B.) future snags; II.C.) sensitive and management indicator species; II.D.) road density; III.A.) range of alternatives; III.B.) cumulative effects; and IV.) arbitrary and capricious decision.



APPEAL ISSUES AND FINDINGS

Issue I.: Purpose and Need

Contention: "The Scott Timber Sale fails to conform to the stated purpose and need of this project." The appellant asserts that "none of the [logging objectives] can be remedied by cutting trees over 16" dbh."

Response: The discussion of environmental consequences in the Environmental Assessment (EA), Decision Notice (DN) and Appeal Record indicate that removing some large, infected trees under specific conditions will contribute to meeting the objective of reducing severe levels of dwarf mistletoe infection (Record #91- EA pp. 6, 29, 48, 53, 54, 102, and Appendix D; Record #101- DN p. 1-3; and other records). The record includes monitoring results from past mistletoe treatments (EA p. 48), dwarf mistletoe severity ratings, and the silviculturist's analysis.

The EA, DN, and Record describe how the project conforms to the purpose and need. The Forest Supervisor is affirmed on this issue.

Issues II A, B C and D are stated as National Forest Management Act violations.

Issue II.A.: Spotted Owl and Goshawk Surveys

Contention: "The Scott timber sale fails to follow standards and guidelines pertaining to surveying requirements for the Mexican spotted owl and northern goshawk."

Response: Mexican Spotted Owl surveys of all potential habitat near and within the Scott EMA were conducted in 1990, 1991, 1994 and 1995. The USFWS was "pleased with efforts to survey the "best available" MSO habitat within and proximate to the Scott Ecological Land Unit" (AR 38). The Forest determined that this project would have no impact on the MSO (AR 99). This project complies with the MSO Recovery Plan, Forest Service policy, and the Kaibab Forest Plan.

Region 3 guidelines and the Kaibab Forest Plan were followed (ROD for Amendment of Forest Plans, p.91). The area was properly surveyed prior to this activity. In 1992-1993, surveys were performed by District personnel (AR 99, Addition to Appeal Record, Northern Goshawk Surveys). Three Goshawk Management Territories were identified and are managed as such (AR 99). For the Grandview PFA, surveys will be conducted prior to any disturbance activities (AR 99). The USDA Forest Service General Technical Report RM-217 entitled "Management Recommendations for the Northern Goshawk in the Southwestern United States" was followed.

The Forest Supervisor is affirmed on this issue.

Issue II.B.: Future Snags

Contention: "The Scott EMA fails to meet requisite snag densities." The appellant asserts that "In order to meet mandated snag densities [averaging 2 snags/acre], the FS is implicitly required by the LRMP [Land and Resource Management Plan] to retain all large trees which will constitute the future snag component."

Response: The EA, DN and Record demonstrate consistency with the LRMP snag retention standards and guidelines. The project is designed to meet a desired future condition where "...every acre selected for regeneration will have 3-5 large old green trees left to eventually become large snags and large down logs" (EA p.5). The analysis indicates that 20 years after treatment, there will be an average of 5.5 large trees per acre compared to the existing 3.6 trees per acre (EA p.56, and Record #86), some of which will become future snags. The EA states that 40% of the EMA is to be managed for mature and old growth habitat, that snags will be well-distributed throughout the Scott area, that snags for cavity nesting species will be created in some of the large trees (pp. 5-7), and that "to provide for future snags, living spike-topped trees, cull trees, and recently dead or near dead trees will not be cut during harvest unless they pose a threat to safety, or a significant insect and disease risk exists to surrounding trees." (Record #91-EA, and #100, p.1).

The Forest Supervisor is affirmed on this issue.

Issue II.C.: Sensitive and Management Indicator Species

Contention: "The Scott EA/BE fails to provide for viable populations of sensitive species." The appellant cites direction in FSM 2670.22, stating that the BE fails to cover all sensitive species and management indicator species, and fails to maintain viable populations of turkey, abert squirrel, northern goshawk, and several bat species.

Response:

Effects to all MIS and sensitive species have been adequately analyzed and disclosed in the EA and/or the supporting documentation such as the Biological Assessment and Evaluation and Wildlife Report (AR 17, 99). Management objectives for MIS and sensitive species populations and/or habitat were addressed in these supporting documents. Therefore, direction from Forest Service Manual 2670.22 was followed.

The Forest Supervisor is affirmed on this issue.

Issue II.D.: Road Density

Contention: "The Scott EMA violates Kaibab road density standards and guidelines," and "the Scott EA fails to address the issue of road density." The appellant asserts that the 21 miles of road proposed for obliteration will not actually be accomplished, and the construction of 2.5 miles of new road in an area of high road density will violate the LRMP road density standard.

Response: The EA, DN and Record all indicate that road density will be reduced by obliterating or closing 21 miles of road, and that "Given a sufficient budget, the proposed activities are anticipated to be completed within the next 5 years" (Record 91- EA, pg. 16). There is no evidence to support the contentions that the proposed road closures and obliterations will not be implemented, or that Kaibab LRMP standards and guidelines would not be met. Road density is addressed throughout the EA (including but not limited to pages 2,3,11,20,27,31-34, 38, 45, 73).

The Forest Supervisor is affirmed on this issue.

Issues III A and B are stated as National Environmental Policy Act violations.Issue III.A.: Range of Alternatives

Contention: "The EA violates NEPA because the FS fails to consider a reasonable range of alternatives." "The consideration of alternatives is inadequate because only one alternative, with the exception of the mandated "no action" alternative, is analyzed."

Response:

The Forest Supervisor failed to develop and analyze a reasonable range of alternatives to the proposed action. Significant issues were addressed in part by the proposed action. However, other alternatives should have been developed and evaluated to more fully address one or more of the significant issues. For example, the issue: "Cutting of large yellow pine, healthy or diseased, is not acceptable...", could have been fully addressed in an alternative to the proposal. NEPA requires the agency to "Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources [40 CFR 1507.2(d)]."

The Forest Supervisor is reversed on this issue.

Issue III.B.: Cumulative Effects

Contention: "The Scott EA violates NEPA because the FS fails to consider the cumulative effects of this action." "The Scott EA fails to consider the cumulative impacts of both past logging activity and on-site grazing allotments."

Response:

Cumulative effects, including the impacts of past logging and on-site grazing were considered, including identification of past timber sales in and adjacent to the Scott EMA, and the effects of past logging and past grazing (EA, including but not limited to pages 57, 58, 70-72, 78).

The Forest Supervisor is affirmed on this issue.

Issue IV is stated as an Administrative Procedures Act violation.Issue IV: Arbitrary and Capricious Decision

Contention: "The EA and Decision Notice are arbitrary and capricious." The appellant asserts that the Forest Service did not provide an adequate explanation for the decision, and violated the LRMP, NFMA, and NEPA, thereby constituting an arbitrary and capricious act.

Response: Based on the EA, DN and Record, the decision does not appear to be arbitrary and capricious. The Record indicates that the project objectives, issues, and environmental consequences were addressed in the EA, and used in explaining the rationale for the decision (Record #101- Decision Notice).

The Forest supervisor is affirmed on this issue.

APPEAL REVIEWING OFFICER RECOMMENDATION

The Appeal Reviewing Officer (ARO) has recommended the Forest Supervisor's decision concerning the vegetation treatments and associated actions in the Scott EMA be reversed, because a reasonable range of alternatives was not considered. The ARO found that the: (a) decision logic and rationale were generally clearly disclosed; (b) the benefits of the proposal were identified; (c) the proposal and decision are generally consistent with agency policy, direction, and supporting information; (d) public participation and response to comments were adequate; and (e) appellant's issue concerning a reasonable range of alternatives was not adequately addressed in the record.

DECISION

After a detailed review of the records and the ARO recommendation, I am reversing the Forest Supervisor's decision to implement the Scott EMA project (Alternative B).

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18 (c)].

Sincerely,

/s/ Gilbert Vigil
GILBERT VIGIL
Appeal Deciding Officer
Acting Deputy Regional Forester

Enclosure

cc:
Kaibab National Forest
M.Larson
D.Sire