



United States
Department of
Agriculture

Forest
Service

Southwestern
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File Code: 1570-1 (FOR)

Date: July 17, 1998

Mr. Brian Segee
Southwest Center for Biological Diversity
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CERTIFIED MAIL--RETURN RECEIPT
REQUESTED

RE: Scott Ecosystem Management Area Appeal #98-03-00-0028-A215
Kaibab National Forest

Dear Mr. Segee:

This is my review decision on the appeal you filed (#98-03-00-0028-A215) regarding the Kaibab Forest Supervisor's decision to implement Modified Alternative C in the Scott Ecosystem Management Area (EMA) on the Tusayan Ranger District.

On April 14, 1998, Forest Supervisor Conny Frisch 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 regarding the disposition of this appeal.

As directed in 36 CFR 215.16, Kaibab Forest representative, Bruce Higgins, contacted appellants Brian Segee and Peter Galvin to discuss informal disposition of the appeal. The record reflects that the teleconference meetings occurred and the appeal issues were not resolved.

APPEAL ISSUES AND FINDINGS

Appellant contends that the project violates the National Forest Management Act (NFMA), the Kaibab Forest Plan (LRMP), and the Administrative Procedures Act (APA). The appellant's issues are addressed as follows:

ISSUE 1: Project Violates the National Forest Management Act's (NFMA) Mandate to Follow the Kaibab Land and Resource Management Plan (LRMP)



Contention: Appellant contends "Despite the extremely deficient representation of large trees across the EMA, the project as proposed would still log 5% of the existing yellow pine." (Appeal p. 4). Appellant goes on to state that "although the Forest Service attempts to justify the logging of large trees in VSS 5 and VSS 6 deficient areas by claiming that the existing groups of VSS 5 and VSS 6 will still be retained, this betrays the intent of the S & G's, which is to retain as much old growth as possible." (Appeal p. 4). Appellant also states "Despite the intent of the MRNG, the presence of three goshawk PFA's, and the assumptions contained in legal and biological documents interpreting the MRNG, the Forest Service continues to violate the letter and spirit of the 1996 regional amendments." (Appeal p. 5). Lastly, appellant states that "The intent of the MRNG is to retain all existing old growth and to move 60% of forested ecosystems into VSS 4, 5 and 6 classes." (Appeal p. 5).

Response: Appellant states that the project would log 5% of the existing yellow pine and cites the Environmental Assessment on p. 44. This reference was taken out of context. On page 44 of the EA, a wildlife mitigation measure is referenced to retain 95% existing yellow pine as a result of prescribed burning, not as a result of timber harvesting (AR 132 p. 44). Further clarification can also be found in the EA: "The goal is not to lose any yellow bark trees during prescribed fire activities, but some mortality is likely to occur due to the exclusion of fire from the ecosystem for so many years. A 5% loss of mature trees across the landscape is acceptable for bringing the ecosystem back in balance with fire." (AR 132 p. 61).

The intent of MRNG is to maintain vegetation structural stages which refer to stands and not individual trees (MRNG p. 90). The MRNG provides the basis for the goshawk management direction within the Kaibab LRMP. This particular project goes beyond the requirements of MRNG by not cutting trees 18" or larger diameter at breast height (AR 132 p. 60, AR 146 p. 3).

I found that after reviewing existing VSS, VSS immediately after treatment, and VSS 20 years after treatment, the proposed project moves the Scott EMA closer toward the desired VSS distribution for ponderosa pine forest type (AR 132, pp. 4, 7, 59). This project is consistent with the Kaibab LRMP. Therefore, appellant's claim that the project does not meet Kaibab LRMP is incorrect.

I affirm the Forest Supervisor on this issue.

ISSUE 2: Project Violates the Administrative Procedures Act (APA)

Contention: Appellant alleges that "The DN for the Scott timber sale is clearly arbitrary and capricious. It involves a clear violation of the Kaibab LRMP by logging large trees when the EMA is nowhere near meeting the applicable S & G's with relation to VSS classes." (Appeal p. 6).

Response: For reasons I stated in issue one, the Forest Supervisor's decision was not arbitrary and capricious. The Forest Supervisor had adequate information to base her decision. The project complies with the Kaibab LRMP and, therefore, with the National Forest Management Act.

I affirm the Forest Supervisor on this issue.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer (ARO) has recommended that the Forest Supervisor'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 Forest was responsive overall to public comments, and the decision logic and rationale were clearly disclosed.

APPEAL DECISION

After a detailed review of the records and the ARO recommendation, I affirm the Forest Supervisor's decision to implement the Scott EMA project (Modified Alternative C) 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/Louis Volk for
JOHN R. KIRKPATRICK
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc:
Kaibab NF
Appeals/Lit
Forestry