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Department of
Agriculture

Forest
Service

Southwestern
Region

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File Code: 1570-1 (2400)

Date: September 27, 1999

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Martos Hoffman
Southwest Forest Alliance
P.O. Box 1948
Flagstaff, AZ 86002

Re: Appeal #99-03-00-0107-A215, Dry Park Vegetative Management Project, North Kaibab Ranger District, Kaibab National Forest

Dear Mr. Hoffman:

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

BACKGROUND

On June 10, 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, you were contacted to discuss informal disposition of the appeal. The record reflects that informal resolution of the appeal 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 remanded. The Appeal Reviewing Officer concluded that effects on management indicator species have not been fully evaluated and documented.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I remand the Responsible Official's decision on the Dry Park Vegetative Management Project. By copy of this decision the Responsible Official is instructed to re-evaluate and document the

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effects on management indicator species. My review and findings concerning the issues raised in your appeal are attached.

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

Sincerely,

/s/ Louis Volk, Jr. for

JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc:
Forest Supervisor Kaibab National Forest
Forestry Staff, R3
Appeals/Litigation Staff, R3

REVIEW AND FINDINGS

of the

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

Regarding

The Dry Park Vegetative Management Project

Appeal #99-03-00-0107-A215

ISSUE 1A: "The Dry Park Timber sale violates the National Forest Management Act: Dry Park fails to meet Northern Goshawk Standards and Guidelines. "

Contention 1. "Duty to establish six nesting areas per 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 (Post Fledging Family Area) must contain a minimum of 180 acres of nest sites."

Response: The Record of Decision (ROD) for Amendment of Forest Plans identifies 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 within each PFA. The Forest identified the following number and size of nest areas for the seven PFA's: (ARB)

No. Nests:	Total Acres of Nests
4	174
5	156
6	161
5	140
4	145
6	156
5	165

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

Response: Exhibit C (ARC) 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.

Contention 3. "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 Environmental Assessment 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)

Contention 4: "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: To retain existing and provide for recruitment of new snags, the proposed action will retain; all snags, spiked topped and dying trees, and a group of 3-5 trees greater than 18" diameter in all openings greater than 1 acre (AR 92). The Biological Evaluation/Assessment identifies as mitigation the need to provide downed logs and woody debris as specified in the Forest Plan (AR 120).

Contention 5: "Canopy Cover: Canopy cover will be less than required by the Management Recommendations for the Northern Goshawk (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 Kaibab National Forest Implementation and Interpretation of Management Recommendations for the Northern Goshawk (KNF I&I; ARA) 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 these values are minimum values.

Contention 6: "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 areas, 50% in ponderosa pine PFA's, and 60% in mixed conifer PFA's (AR 92).

Contention 7: "---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 VSS distribution are meaningless."

Response: The appropriate comparison is between anticipated and desired VSS distribution, not between anticipated and existing distribution. The Forest has made the correct analysis.

Contention 8: The Kaibab National Forest's development of a translation from basal area or stand density index to crown cover percent has never received public review or analysis.

Response: The development of regression equations to convert basal area or stand density index is not a management decision, it is a technical procedure. Only management decisions require public review.

Contention 9: 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. If the area is occupied by tree roots, then the production of forage would be low, 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.

Contention 10: "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 EA identified between 300 and 500 trees greater than 18 inches diameter would be harvested. These trees are generally single trees of this size in VSS 3 and 4 being removed to release these VSS classes. As a result of the proposed action, all VSS classes would be trending toward desired levels after the treatment. In addition, there would be no reduction in the amount of VSS 5 and 6 in the Dry Park area after treatment, and a gradual increase as treated VSS 4 become VSS 5. A number of the trees being removed are spruce and true fir seed trees. It is necessary to remove them so other treatments in the Dry Park area, regeneration, irregular thinning, prescribed burning and release would not be undone in the near future by a new crop of these shade tolerant trees. These may well be 24 and 32 inch trees described above since they were not identified as being ponderosa pine. Other trees greater than 18 inches are being harvested to reduce dwarf-mistletoe in the Dry park area. (AR 92)

Finding Issue 1A: The Forest has not fully implemented the Standards and Guides for the northern goshawk by not identifying a minimum of 6 existing/replacement nest areas which should have at least 180 total acres for each PFA.

ISSUE 1B: "The Forest Service failed to conduct surveys for, or even consider, management indicator species (MIS)."

Contention: "The Kaibab Forest Plan, as amended in 1996, lists the Merriam's turkey, mule deer, Kaibab squirrel, goshawk, red squirrel, plain titmouse, hairy woodpecker, pygmy nuthatch and yellow-bellied sapsucker as MIS within EMA 13. The failure to even consider nearly every MIS on EMA 13 in conjunction with the Dry park timber sale is a clear violation of NFMA and its implementing regulations."

Response: With the exception of the northern goshawk and Kaibab squirrel, no analysis was conducted to determine the affects of implementing the Dry Park vegetation treatment on the other MIS species. Analysis could be inferred for the red squirrel, hairy woodpecker and yellow-bellied sapsucker through implementation of the goshawk guidelines, as these are prey species managed for under these guidelines. No evidence could be found in the record that an analysis was completed for Merriam's turkey, mule deer, plain titmouse and pygmy nuthatch. (AR 92)

Finding: The Forest failed to disclose the effects the proposed action would have on management indicator species.

ISSUE 2A: "The Dry park timber sale violates the Endangered Species Act."

Contention: "The Dry park decision is not in conformance with the Mexican spotted owl Recovery Plan."

Response: 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 Dry Park Decision is in compliance with the Mexican Spotted Owl Recovery Plan.

ISSUE 3: "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 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 Forest is in compliance with the purpose of the Grand Canyon Game Preserve.

ISSUE 4: "The Dry Park Timber Sale fails to address the legal and ecological significance of the Kaibab Squirrel National Natural Landmark."

Response: Although the Forest did not specifically address the effects of the proposed action on the Kaibab Squirrel National Natural Landmark, 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 Management Recommendations for the Northern Goshawk. Both of these activities would enhance the character of the Landmark. (AR 92, 120)

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

ISSUE 5: The decision violates the National Environmental Policy Act.

Contention A: Appellants allege that an 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 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 Management Recommendation for the Northern Goshawk 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 B: "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 on northern goshawks."

Response: Implementation of the MRNG through the standards and guides 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 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 Guides on the goshawk.

Contention C: "The cumulative effects analysis in the Dry Park EA is inadequate."

"...given that the North Kaibab Ranger District harbors the densest known population of goshawks in North America, careful monitoring of the sale's affects on the goshawk is necessary." "The cumulative impacts to canopy fragmentation, canopy distribution, large diameter tree numbers and distribution, and goshawk population dynamics must be assessed with each successive project."

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 D: "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.

"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 in significant numbers 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 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 the objectives written in support of the purpose and need will be met.

Contention E: Appellants allege that the Forest Service failed to respond to comments because it did not send responses to the Sierra Club and did not provide responses with the Decision Notice.

Response: The Forest completed written responses to comments on the EA, documented them in *Appendix D* to the EA, and notified commentors in the Decision Notice where they could obtain copies of the entire EA on the Kaibab National Forest website and by request from various Forest offices (AR #112a). The regulations regarding notice and comment on EAs [36 CFR 215.6 (d)] do not require sending the written response document to those who commented, nor is it required by NEPA regulations in 40 CFR 1506.6.

Finding: The Forest did not violate any NEPA or appeals process regulations related to responding to public comments. However, the Forest Supervisor is directed to send Appendix D to all those who commented on the EA, because it appends the EA with additional information intended to further shed light on the agency's decision making process conducted under NEPA.

ISSUE 6: The decision violates the Administrative Procedures Act.

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

Response: Reference is made to all of the other responses and findings in this administrative review. For reasons stated individually to each of the appellants' contentions, the environmental analysis, documentation, and decision are incomplete related to environmental effects to management indicator species.

Finding: The Responsible Official did not have sufficient information upon which to base a decision since environmental effects to management indicators species were not considered or documented.