

File Code: 1570-1 (2400)

Date: November 15, 1999

Certified Mail - Return Receipt Requested
P 556 954 853

Mr. Brian Segee
Center for Biological Diversity
P.O. Box 710
Tucson, AZ 85702-0710

Re: Appeal #00-03-00-0001-A215, Rio Penasco Wildland/Urban Interface Project, Sacramento Ranger District, Lincoln 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 various silviculture treatments covering 10,928 acres and prescribe burning of 3,104 acres within the Rio Penasco project area of approximately 120,824 acres.

BACKGROUND

On August 11, 1999 District Ranger Max Goodwin, issued a Decision on the Rio Penasco Wildland/Urban Interface Project. 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, 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 Rio Penasco Wildland/Urban Interface Project be affirmed.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision on the Rio Penasco Wildland/Urban Interface Project with instruction to complete Forest Plan goshawk survey requirements prior to implementing

activities in unsurveyed areas. 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/ James T. Gladen

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

Attachment

cc:
Forest Supervisor Lincoln National Forest
District Ranger, Sacramento Ranger District
Forestry Staff, R3
Appeals/Litigation Staff, R3

REVIEW AND FINDINGS

of the

Center for Biological Diversity Appeal

Regarding

The Rio Penasco Wildland/Urban Interface Project

Appeal #00-03-00-0001-A215

ISSUE 1A: The Rio Penasco decision violates the National Forest Management Act. Rio Penasco Project fails to meet the Northern Goshawk's 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 appendix to the Biological Assessment and Evaluation (BA/E) identifies 15 PFA's that were established in the Penasco project area between 1989 and 1998. Each PFA meets the 600 acre size identified in the Forest Plan Standards and Guides. Each PFA also contains at least 180 acres of identified nest stands

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

Response: The 15 PFA's identified in the Penasco area more than meet the 2 to 2.5 mile requirement when the 10,598 acres of unsurveyed suitable habitat is removed from consideration, (i.e. 71,961 acres minus 10,598 acres divided by 15 equals 4,090 acres). A 2.5 times 2.5 mile grid equals 4,250 acres. Thus, the existing average of 4,090 acres is less than the 4,250 maximum. If surveys in the remaining 10,598 acres find that now new goshawk PFA's should be established, then the Forest would need to evaluate whether dispersal PFA's would need to be added.

Contention 3: "The Penasco project EA contains no information on whether the project meets requisite canopy cover S & G's under the Regional amendments."

Response: The appendix to the BA/E identifies that all acres proposed for treatment in the 5 categories is suitable northern goshawk habitat, meaning it meets required canopy cover, tree size, etc. It further identifies that of 14,032 acres proposed for any treatment, only 60 acres would fall below suitable, and then only for a short period of time as tree size increases and the canopy closes. None of these 60 acres are proposed in nest habitat.

Contention 4: "Surveys: The BA acknowledges at page 11 that over 10,000 acres of suitable goshawk habitat on the Penasco project area have not been surveyed. This violates the Regional amendments."

Response: The BA/E states that 8,569 acres of suitable habitat have not been surveyed. It further states that 302 out of 8,346 Category 4 acres has not been surveyed. Category 4 is about half precommercial thin and burn and the other half is commercial thin and burn. It also states that 147 out of 3,104 Category 5 acres has not been surveyed. Category 5 is prescribed burning only.

Finding Issue 1A: The Forest has not completed goshawk survey of the planning area in accordance with the Forest Plan. Before implementing the project in these areas, goshawk survey requirements need to be met. VSS (1-3) areas do not need to be surveyed but must be managed as PFA habitat. VSS (4-6) unsurveyed areas must be surveyed according to Forest plan direction, 1 or more years prior to implementing activities in these unsurveyed areas. If possible the entire 8,569 acres should be surveyed.

ISSUE 1B: The Penasco project violates the Mexican spotted owl (MSO) Standards and Guidelines.

Contention: Basal Area: The Penasco project impermissibly lowers many areas currently meeting this threshold (the minimum values basal area is 150 in the Basin and Range-East Recovery Unit) far below the minimum values.

Response: The BA/E identifies at page 8 that there are 29,825 acres of restricted habitat of which 20 percent is to be managed as threshold, i.e. 5,965 acres. The Forest is managing 6,009 acres in the Penasco project area that either meet or nearly meet threshold habitat conditions of: i.e. 150 basal area and 20 trees per acre greater than 18 inches diameter at breast height (dbh). No areas meeting threshold conditions will be reduced below these conditions. Areas meeting the basal area threshold condition but not meeting number of trees greater than 20 inches dbh are not considered as meeting threshold conditions and may be receiving treatments as described by the appellant.

Finding Issue 1B: The Penasco area decision is in compliance with the MSO Standards and Guides.

ISSUE 2: The decision violates the National Environmental Policy Act (NEPA). The Decision memo or EA do not contain an adequate explanation for the Penasco decision.

Contention: Appellant contends that the NEPA was violated because the EA does not reflect a fair analysis of the alternatives which consider only cutting trees under 16 inches or under 9 inches. Appellant further contends that the "decision memo" violates NEPA by not explaining why the chosen alternative fulfills the purpose and need better than the other two action alternatives.

Response: The EA states that thinning of stands and removal of downed fuels has proven to be a strategic method of protecting infrastructure on both public and private lands. The EA also states that the Lincoln National Forest has had more success controlling fires in treated areas. In

describing the effects of each alternative, the EA states that the 16-inch limitation and the 9-inch limitation alternatives, would restrict treatment in stands with average diameters greater than the limit imposed (EA pp.46-48). EA Appendix B contains prescriptions which detail spacing between trees in order to reduce the possibility of fire entering and moving through the canopy. Actual spacing depends on diameter, height, and species of trees. Limiting the diameter of trees that may be treated would reduce the flexibility to create the spacing necessary to reduce the spread of crown fires in some stands.

The decision was documented in a decision notice, not a decision memo as stated by the appellant. The decision notice reiterates the comparison in the EA as a reason for not selecting Alternatives C and D (the 16-inch and 9-inch diameter limit alternatives). Neither NEPA nor implementing regulations at 40 CFR 1500-1508 apply to decision notices. Therefore, there can be no NEPA violation based upon the adequacy of a decision notice.

Finding Issue 2: The EA adequately describes the levels of flexibility afforded by each alternative in spacing trees for fire protection. The EA's fire effects disclosure is consistent with NEPA. The decision notice adequately explains the decision and reasons for the decision. NEPA does not apply to the decision notice.

ISSUE 3: The decision violates the Administrative Procedures Act.

Contention: Appellant alleges 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 to the appellant's contentions, the environmental analysis, documentation, and decision are complete.

Finding Issue 3: The Responsible Official has conducted and documented a reasoned analysis of the Rio Penasco Wildland/Urban Interface Project consistent with the Administrative Procedures Act.