



United States
Department of
Agriculture

Forest
Service

Southwestern
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File Code: 1570-1/2400

Date: May 17, 2001

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

Re: Appeal #01-03-00-0022-A215, Cree Fire Salvage Timber Sale, Smokey Bear 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 salvage harvesting of dead standing trees on 369 acres, reforestation on approximately 100 acres, and personal-use firewood harvesting of approximately 100 cords. This will amount to salvaging approximately 7.5 percent of the project area (4,900 acres).

BACKGROUND

On February 12, 2001, Forest Supervisor Jose M. Martinez issued a Decision on the Cree Fire Salvage Timber Sale. 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, 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 Cree Fire Salvage Timber Sale be affirmed.



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 Cree Fire Salvage Timber Sale.

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
Deputy Regional Forester,
Natural Resources

Attachment

cc:
Forest Supervisor, Lincoln National Forest
District Ranger, Smokey Bear Ranger District
Appeals & Litigation Staff, R3
FFH, R3

REVIEW OF FINDINGS

of the

Center for Biological Diversity

Appeal #01-03-00-0022-A215

regarding

The Cree Fire Salvage Timber Sale

ISSUE 1: “The Cree Fire Salvage Timber Sale (TS) violates the National Forest Management Act (NFMA).”

Contention: Logging is prohibited within management area 1J.

Response: Management direction for Management-Area 1J is described on Page 81 of the Lincoln National Forest Land and Resource Management Plan as:

“All resources are managed at moderately low levels, with emphasis on preserving soil productivity. Present range and wildlife habitat improvements will be maintained. A large amount of fuelwood will be produced.”

Forest Plans describe management direction for all areas of the forest. Unless an activity is specifically prohibited, then the activity may occur within the framework of applicable standards and guidelines.

Finding: The Cree Fire Salvage Timber Sale is an activity that may occur in Management-Area 1J of the Lincoln National Forest.

ISSUE 2: “The Cree Fire Salvage TS 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 Cree Fire Salvage TS decision.

Response: The appellant’s assertion does not suggest any environmental effects disclosure that is lacking. The EA 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.

Finding: The EA adequately discloses the environmental impacts of the proposed action and

alternatives, consistent with policy, regulation, and law.

ISSUE 3: “The Forest Service has failed to consider a reasonable range of alternatives.”

Contention: The appellant alleges, the Forest Service 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..."

Two other alternatives were considered but dropped from further study because they were not practical or feasible. (PR, 73, EA, pp. 4)

Finding: The analysis appropriately considered a no-action, no-harvest alternative, consistent with NEPA and its implementing regulations and Forest Service Manual direction.

ISSUE 4: “The Forest Service has failed to ensure the scientific integrity and accuracy of the Cree Fire Salvage 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 appellant overlooks the fact that the cited regulation concerning methodology and scientific accuracy explicitly applies to environmental impact statements. The Cree Fire Salvage TS environmental analysis is documented in an EA. That fact aside, the Lincoln Forest Supervisor 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.

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

ISSUE 5: “The Cree Fire Salvage TS violates the Endangered Species Act (ESA).” The Forest Service has failed to conduct required consultation.

Contention: The Forest Service has failed to consult with the U.S. Fish and Wildlife Service 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 Cree Fire Salvage (PR 58) resulted in a determination of “No Effect” for the Mexican spotted owl. Since the action was determined to have “No Effect” on the USF&WS listed species in the proposed action area, consultation with the USF&WS is not required [50 CFR Part 402.14(a)].

Designation of Critical Habitat on National Forests in Region 3 (Southwestern Region) for the Mexican spotted owl has been withdrawn by the USF&WS.

Finding: The Cree Fire Salvage TS decision meets the requirements of policy, regulation, and law with respect to the Endangered Species Act (ESA).

ISSUE 6: The Cree Fire 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 Cree Fire Salvage TS and disclosed the effects in the public arena. The Cree Fire Salvage TS decision is in compliance with the APA.