



File Code: 1570-1 (FOR)

Date: June 1, 1998

Mr. Brian Bird
Forest Guardians
1413 Second Street
Santa Fe, NM 87505

CERTIFIED MAIL--RETURN RECEIPT
REQUESTED

RE: Sacramento Rim Project Area Appeal #98-03-00-0022-A215
Lincoln National Forest

Dear Mr. Bird:

This is my review decision on the appeal you filed regarding the Sacramento District Ranger's decision to implement Alternative C in the Sacramento Rim Project Area.

On March 3, 1998 Sacramento District Ranger Max Goodwin issued a decision notice concerning the vegetative treatments and associated activities for the Sacramento Rim Project Area . 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, the District Ranger 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 AND FINDINGS

Appellant's issues and my response to his six issues are addressed as follows:

ISSUE 1: Project Will Not Maintain Species Viability

Contention: Appellant alleges that the project fails to provide for viability of northern goshawk, Mexican spotted owl, neotropical migrant birds & other native species.

Response: Appellant cites NFMA, law, and regulation which set forth a process for developing, adopting, and revising land and resource management plans (LRMP's). The Lincoln LRMP was developed under these regulations and is outside the scope of the Sacramento Rim Project environmental analysis. The LRMP contains standards and guidelines for project design which are intended to provide



for species viability. The District Ranger appropriately found that the Sacramento Rim Project design was consistent with the LRMP (AR A, 44).

Surveys have been conducted for all threatened, endangered and sensitive species. The Mexican Spotted Owl Recovery Plan and forest plan standards and guidelines will be implemented. The EA implements the standards and guidelines for the owl and goshawk as well as the Sacramento Mountain salamander working group recommendations in managing these three species. The U.S. Fish and Wildlife Service concurred with the Forest Service finding that the project may affect, but is not likely to adversely affect the Mexican spotted owl and the bald eagle, the only two federally listed species known to occur in or use the project area (AR B, 77). Nine Forest Service sensitive species were identified as occurring or using the project area. The biological evaluation and assessment documents the analysis of effects on these species and findings that the project will either have "no impact on the species", or that the project "may impact individuals, but is not likely to result in a trend toward federal listing, or loss of viability" (AR B, 72). The District Ranger addressed the issue of neotropical migratory birds in the environmental documentation. The Ranger concluded that the proposed project would not affect NTMB's because the primary habitat used by NTMB (i.e. wooded riparian) is outside the area proposed for treatment (AR A, 42 p. 27). The major modifications to habitat for forest dwelling NTMB is a result of the insect infestation. The proposed action does little to further modify this NTMB habitat.

The District Ranger is affirmed on this issue.

ISSUE 2: Project Fails to Protect & Restore Water Quality & Watershed Conditions in the Sacramento Watershed & Sacramento River

Contention: Appellants allege that the EA fails to analyze soil erosion and sedimentation with regard to the impacts of roads proposed by this project and that there is no disclosure of actual soil loss that will occur as a result of this project. Appellants also contend that there is no analysis of effects to water quality or water flow, thus resulting in an unsubstantiated conclusion that water quality would not be decreased. Appellants also cite an absence of cumulative effects analysis for water quality and water yield.

Response: The project does not have any new road construction or reconstruction associated with it (AR A, 42 p. 5), so there is no reason to analyze the soil and water impacts of roads proposed by this project. The existing analysis (AR A, 42 p. 22) does appropriately include the effects of road obliteration and road improvements that are proposed with this action. The Forest chose to look at soil erosion using a qualitative approach rather than a quantitative one. Actual soil loss was not predicted, but the effects of all the activities on soil stability, nutrient status, and compaction were evaluated (AR A, 42 p. 22 and AR B, 81). This is an appropriate and adequate effects analysis.

The record displays many pages of watershed analysis (AR B, 81). The water quality discussion was at an appropriate intensity considering there is no perennial surface water in the project area and the nearest perennial water is not designated as "non-attainment". Water yield was not identified as an issue in the scope of this project planning and, accordingly, was not evaluated. The record describes Best Management Practices (BMP's) (AR A, 42 p. 13-14 and AR B, 39) that will be initiated to protect water quality. The Forest's finding that there will be no negative impact to water quality is well supported.

The project record (AR B, 81) contains discussions of cumulative effects on soil condition, water and air. Consideration was given to livestock and recreation use, commercial timber and fuelwood activities, as well as fire, roads, and private land impacts.

The environmental effects analysis and mitigation measures connected with this project indicate that water quality and watershed conditions in the Sacramento watershed will be protected. The District Ranger is affirmed with respect to this issue.

ISSUE 3: Forest Service has Failed to Identify & Protect Traditional Cultural Properties in the Sale Areas

Contention: Appellant alleges that "the Forest Service is required to identify and protect traditional cultural properties (TCP's) important to Native American communities" and that this "must involve members of the affected tribe."

Response: Although the project record (AR A, 6-10) indicates that input was routinely requested from the Mescalero Apache Tribe regarding traditional cultural property concerns with respect to Forest activities, the record does not contain documentation that appropriate tribal officials were contacted for input regarding this project. I affirm the District Ranger with instruction to complete consultation with the Mescalero Apache Tribe and any other appropriate tribes regarding TCP's prior to project implementation in order to assure that all historic properties have been identified and addressed pursuant to the National Historic Preservation Act.

ISSUE 4: Forest Service Failed to Demonstrate Purpose & Need for Project

Contention: Appellant asserts that the Forest Service has failed to meet statutory requirements for establishing a compelling purpose and need.

Response: There is no statutory requirement for a compelling purpose and need as appellant suggests. Regulation at 40 CFR 1508.9 requires that an environmental assessment (EA) contain a brief discussion of the need for the proposal. The EA for the Sacramento Rim Project compares the existing condition of the area with a desired condition. Contrasting these two conditions reflects a need to reduce fuel loads along the rim between Sacramento Peak and Hornbuckle Canyon for the protection of astronomy and defense facilities located in the area.

The District Ranger adequately described the purpose and need for the action and is affirmed on this issue.

ISSUE 5: Project Fails To Meet the National Forest Management Act (NFMA) and the Forest and Rangeland Renewable Resources Planning Act (RPA) Regarding Managing Lands For Highest Net Public Benefits

Contention: "Economic considerations relevant to forest planning apply equally to the national forest system logging program as a whole, individual forest plans, and individual timber sales (36 CFR 219.27(b)(1))." Appellant also alleges that "If costs cannot reasonably be assessed on an individual timber sale basis, then the Forest Service must first complete the analysis on a national, regional, or

watershed scale and then assign a proportion of these costs to individual sales using established quantitative methods."

Response: The 36 CFR 219 regulations that appellant cites are relevant to overall forest planning and not site-specific project planning. Forest plans and their accompanying environmental impact statements (EIS's) document the results of RPA and NFMA planning requirements. Decisions concerning net public benefits pursuant to RPA and NFMA were made in the programmatic, forest planning process.

Management of forest lands for highest net public benefits was analyzed and decided upon in the preparation of the Lincoln Forest Plan. The Forest Plan documents that the Sacramento Rim Project Area is to be managed for wildlife habitat and timber (Lincoln Forest Plan p. 91). Net public benefits were analyzed appropriately at the forest plan level, and are outside the scope of this analysis. I affirm the District Ranger on this issue.

ISSUE 6: Project Cannot Proceed Until Forest Service Completes an EIS for the National Forest System Logging Program as a Whole

Contention: Appellant asserts that "The decision to avoid preparation of a program-wide EIS violates NEPA as well because there are significant cumulative effects of the program which are hidden at the scale of an individual timber sale or forest, but visible only at the scale of an entire region, or, nationally." Appellant also asserts that "...the effects of the national forest system logging program on private timberland management must be considered at a national scale."

Response: The purpose of the Sacramento Rim Project Area environmental analysis was to disclose the effects of the proposed project and to determine if the project would have significant impacts as described in 40 CFR 1508.27. Significance is evaluated in terms of context and intensity. The Responsible Official made a reasonable determination that the proposed project will not have a significant impact based on context and intensity (AR A, 44).

NEPA regulations clarify that "Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole." (40 CFR 1508.27(a)). The proposed actions include: salvaging approximately 4,071 CCF of sawtimber and fuelwood over approximately 538 acres, treating logging slash by combination of lopping, piling and burning approximately 538 acres, precommercial thinning approximately 363 acres, maintaining approximately 6 miles of existing roads, and closing approximately .75 miles of roads. In this site-specific case, the effects of the project are localized in nature. Therefore, it would not be appropriate for the District Ranger to consider the effects of the logging program for the entire U.S. Forest Service in this site-specific action.

I find that the Sacramento Rim Project Area Environmental Assessment and decision document disclose the appropriate level of site-specific information required by CEQ regulations for NEPA. I affirm the District Ranger on this issue.

Mr. Brian Bird

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer (ARO) has recommended that the Acting 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 Ranger was responsive overall to public comments, and the decision logic and rationale were clearly disclosed. I have enclosed a copy of the ARO's letter.

APPEAL DECISION

After a detailed review of the record, the ARO recommendation, and appeals submitted by Southwest Center for Biological Diversity and Forest Guardians, I am affirming the District Ranger's decision to implement the Sacramento Rim Project (Alternative C) with the following instruction. The District Ranger is directed to complete consultation with appropriate Indian tribes regarding TCP's prior to implementing the project. Your request for relief is denied. My decision constitutes the final administrative determination of the Department of Agriculture (36 CFR 215.18(c)).

Sincerely,

/s/John Kirkpatrick
JOHN R. KIRKPATRICK
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc:
Lincoln National Forest
C. Gonzalez
Forestry