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Department of
Agriculture

Forest
Service

Southwestern
Region

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File Code: 1570-1 (FOR)

Date: June 1, 1998

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

CERTIFIED MAIL--RETURN RECEIPT
REQUESTED

RE: Sacramento Rim Project Appeal #98-03-00-0023-A215
Lincoln National Forest

Dear Mr. Segee:

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 contends that the project violates the National Forest Management Act (NFMA), National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and Administrative Procedures Act (ARA). The appellant's issues are addressed as follows:

ISSUE 1: Project Violates National Forest Management Act (NFMA)

Contention: Appellant alleges that the project violates NFMA by failing to insure the viability of all species.



Mr. Brian Segee

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).

Contention: Appellant alleges that the project fails to insure the viability of Mexican spotted owl (MSO) because of hauling within 1/4 mile of some protected activity centers (PAC's).

Response: MSO Recovery Plan and Lincoln LRMP call for limiting human activity in PAC's during the breeding season. They do not restrict activities outside of PAC's. 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.

Contention: Appellant alleges that the project fails to insure the viability of the Sacramento Mountain salamander and flammulated owl.

Response: Surveys for the Sacramento Mountain salamander were conducted in the project area in 1996 contrary to appellant's statements. The project complies with the Sacramento Mountain salamander working group. Surveys for flammulated owls were conducted in conjunction with MSO surveys in 1994 and 1995, and in 1996 for the Danley unit. These surveys include an area 1/2 mile beyond the perimeter of the proposed activities. No flammulated owls were located closer than 1/2 mile to any treatment areas which is well outside the 100 acre average home range size of the flammulated owl.

Contention: Appellant also alleges that the project does not conform to the Lincoln LRMP standards and guidelines for snag size density.

Response: Appellant has mistakenly interpreted the EA's old growth chart for stand 447-16 as redefining the snag definition. The table on page 22 of the EA displays old growth attributes, which considers snags with a minimum dbh of 16 inches. The LRMP snag guideline for Mexican spotted owl restricted habitat is to retain substantive amounts of snags 18" in diameter and larger. The appellant's statement that the Forest Service is prohibited from removing dead trees greater than 18" is not correct.

I affirm the District Ranger on this issue.

ISSUE 2: Project Violates National Environmental Policy Act (NEPA) Because of a Failure to Consider a Reasonable Range of Alternatives

Contention: Appellant argues that the consideration of alternatives is inadequate because all of the alternatives, with the exception of no-action, entail heavy cutting of large trees (greater than 16" dbh).

Response: "[A]n agency must look at every reasonable alternative, within the range dictated by the nature and scope of the proposed action' and 'sufficient to permit a reasoned choice.'" Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992).

The purpose and need statement briefly specifies the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action (40 CFR 1502.13), thus defining the scope of the analysis. Reasonable alternatives to the proposed action need to address one or more issues raised in the analysis and address the purpose and need for action. Without the requirement for "reasonable" alternatives, the range of alternatives would be boundless.

Alternatives were developed to address the key issues identified through scoping. Appellant's issue, identified as Issue 4 (EA p. 10) centered around the retention of live trees over 16 inches dbh (AR A, 23 and 42). The EA indicates that, in addition to the no-action alternative, Alternative B would not change the number of live trees over 16 inches dbh. Appellant's issue was addressed.

The record documents four issues and three alternatives. The effects analysis documented in the EA Chapter 3 indicates the key issues are either addressed by one of the other action alternatives or the no-action alternative. Based upon the issues identified during scoping, the District Ranger analyzed a reasonable range of alternatives.

I affirm the District Ranger on this issue.

ISSUE 3: Project Violates NEPA by Failing to Adequately Analyze Cumulative Effects

Contention: Appellant contends that the following cumulative effects were not considered: wildlife populations, live tree and snag densities, tree age classes, soil, air, and water quality.

Response: The EA documents that two distinct areas of analysis were used in evaluating cumulative effects on wildlife. Species with small home ranges were analyzed within the bounds of their suitable habitat. Species with larger home ranges and species whose movements carry them beyond the project boundary were analyzed at the Sacramento Ecosystem Management Area level which encompasses approximately 47,000 acres (AR A, 42). The wildlife report includes cumulative effects on habitat conditions for threatened, endangered, sensitive, and management indicator species (AR B, 69).

The Sacramento River 6th Code Watershed Ecosystem Management Area (SREMA) report reviews the cumulative effects of historic insect outbreaks, past logging, and fire suppression on the forest (AR A, 3). The analysis concludes that forested areas are much more dense and there are more fuels on the ground than before the turn of the century. Live tree densities and age classes displayed as VSS classes in the SREMA report reflect the cumulative effects of historic processes.

The EA identifies snag densities across the SREMA as averaging 1.5 per acre and notes that this is below the desired minimum. The EA also indicates that under all alternatives, snag densities will increase as a result of beetle mortality across the SREMA. It goes on to say that the action alternatives would leave a minimum of five snags per acre in treated areas. As the action alternatives treat either 423 acres or 538 acres out of the 47,000 acre SREMA, it is obvious that the incremental effect of this project on snag densities across the SREMA is negligible.

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 map (AR A, 42 p. 70) and the activity list (AR A,

42 p. 17) of past impacts supplement this analysis. The evaluation of cumulative effects support the conclusions in the FONSI (AR A, 41).

Cumulative effects on soil, air, water, wildlife, and vegetation are adequately analyzed and NEPA was not violated. The District Ranger is affirmed with respect to this issue.

ISSUE 4: Forest Service Failed to Offer an Adequate Purpose & Need for the Project

Contention: Appellant asserts that the Forest Service has failed to meet NEPA 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: Projects Should be Analyzed Under Separate EA's

Contention: Appellant contends that the Sacramento Rim projects should have been addressed in separate EA's because the purpose and need for each project is different and they involve different habitat types.

Response: The proposed actions analyzed in the Sacramento Rim Project EA are similar in timing and geographic location. Actions are considered similar "when viewed with other reasonably foreseeable or proposed agency actions, [they] have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement" (40 CFR 1508.25(a)(3)). This rationale applies equally to analyses documented in environmental assessments.

It is within the responsible official's discretion whether or not to analyze the environmental consequences together or not. The District Ranger is affirmed on this issue.

ISSUE 6: Project Violates Endangered Species Act

Contention: Appellant alleges that "...the Forest Service must do more than simply ensure that its actions are not likely to jeopardize the existence of threatened and endangered species. The ESA requires t[he] Forest Service to use all methods necessary to recover those species."

Response: The Forest is implementing the MSO Recovery Plan. Thus, it is using all methods necessary to recover the species. The U.S. Fish and Wildlife Service concurred with the determination made by

the District Biologist (AR A, 40, AR B, 72 and 77). Therefore, the project complies with ESA. I affirm the District Ranger on this issue.

ISSUE 7: Project Violates Administrative Procedures Act

Contention: Appellant states that "An administrative agency may not merely cite its own expertise in defending a decision it has made. It must provide an adequate explanation of what it has done." Appellant alleges, therefore, "that this project is clearly arbitrary and capricious." In addition, the appellant feels that the proposed slash treatment is an example of the arbitrary and capricious nature of the District Ranger's decision.

Response: In response to the appellant's concern about fuel treatment, the proposed action will reduce fuel-loading from 20-25 tons/acre to 7-10 tons/acre via harvesting insect infested trees, and treating slash by lopping, hand and machine piling, and burning. This fuel reduction meets the purpose and need for the project. After reviewing the EA, DN and appeal record, the decision does not appear to be arbitrary and capricious. I find that the District Ranger had adequate information in the record to base his decision. The District Ranger is affirmed on this issue.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer (ARO) has recommended that the District Ranger'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.

Mr. Brian Segee

APPEAL DECISION

After a detailed review of the record, the ARO recommendation, and appeals submitted by Forest Guardians and the Southwest Center for Biological Diversity, 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