



United States
Department of
Agriculture

Forest
Service

Southwestern
Region

517 Gold Avenue, SW
Albuquerque, NM 87102-0084
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1 (FOR)

Date: October 8, 1998

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Prescott Basin Vegetation Management Project Appeal #98-03-00-0052-A215
Prescott National Forest

Dear Mr. Segee:

I have completed a review of your August 21, 1998, appeal of the Prescott Basin Vegetation Management Project Decision Notice. The review was conducted in accordance with 36 CFR 215.

BACKGROUND: On July 6, 1998 the District Ranger issued a Decision Notice approving the implementation of the proposed Prescott Basin Vegetation Management Project. The project is located on the Bradshaw Ranger District of the Prescott National Forest. The legal notice of this decision was published in the Prescott Daily Courier on July 10, 1998. I received your appeal on August 25, 1998. I received the appeal record from the Forest on September 4, 1998.

On September 3, 1998, I received a letter from District Ranger Ernest Del Rio which summarized the outcome of a September 3, 1998, conference call between you and representatives of the Forest.

The purpose of these negotiations was to attempt to resolve this appeal in an informal manner. The correspondence indicates that partial resolution of your appeal issues was agreed to. In your October 1, 1998, letter to this office you state the following:

"the Southwest Center for Biological Diversity, as a result of our appeal resolution conference with the Prescott National Forest, hereby agrees to strike the following argument and request for relief from our appeal of the Prescott Basin Vegetation Management Project:

- 1) Page 5, Appeal point II (A): "The Prescott Project Violates the Prescott LRMP VSS Standards and Guidelines (S&G's), Thus Violating NFMA.
- 2) Page 9, Appeal Point IV (A): "It involves a clear violation of the Prescott LRMP by logging large trees when the area is nowhere near meeting the applicable S&G's with relation to VSS classes.



- 3) Page 10, Request for Relief #3: Refrain from cutting any trees over 14" dbh in order to comply with the Prescott's LRMP's VSS standards and guidelines.

The above action is conditional on the Prescott's written assurance that no trees over 18" will be cut in this action."

Correspondence from District Ranger Ernest Del Rio to your office on September 30, 1998, states: "this memo confirms that no trees over 18 inches in diameter at breast height (DBH) will be cut and harvested with this project." A review of the Presale Cutting Unit Summaries indicates that all trees 18" dbh and greater are to be retained. (AR 73).

APPEAL ISSUES: Appellant alleges that the project violates legal requirements of the Endangered Species Act (ESA), National Environmental Policy Act (NEPA) and its implementing regulations, the Administrative Procedures Act (APA), and the Prescott National Forest Plan (LRMP) as amended. These issues are addressed herein. Appellant alleges the project fails to meet Forest Service Handbook (FSH) Chapter 20, Section 23. However, I am unable to respond to this allegation without a specific FSH citation.

Issue I: Prescott Project Violates The Endangered Species Act (ESA).

Contention: Appellant alleges that the Prescott Basin Vegetation Management Project violates ESA because the Forest Service failed to consult with the U.S. Fish and Wildlife Service on the Hualapai Mexican vole.

Response: The Forest did initiate consultation with the U.S. Fish & Wildlife Service (FWS) on the Hualapai Mexican vole. The Forest Service made a determination after discussions with the FWS that the voles on the Prescott are not a recognized listed species, and therefore, consultation was not necessary. Citing a letter from the Forest Service to the FWS, "The FWS does not recognize the voles on the Prescott NF as the listed subspecies. Therefore, we made the request for consultation in error. Consultation for the voles on the Prescott NF is not necessary." (AR 61). The FWS concurred with this determination by the Forest Service in their June 23, 1998 letter, "...the Service will carry out section 7 consultations on the Hualapai vole only in the Hualapai Mountains. Thus, pursuant to that direction from the Fish and Wildlife Service's Regional Office, further formal section 7 consultation regarding the vole is not required for the Prescott Basin Vegetation Management Project." (AR 63).

The District Ranger is affirmed on this issue.

Issue 2: The Prescott Project Violates The National Environmental Policy Act (NEPA).

Issue 2A: The Prescott Project fails to provide meaningful information in the EA.

Contention: Appellant alleges that the EA failed to analyze how much timber volume will be harvested and what size class of trees will be cut.

Response: Specifically, appellant cites 40 CFR 1500.1(b), which states "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made ..." (Appeal p. 8). However, sec 1500.1(b) also clearly states, "most

important, NEPA documents must concentrate on the issues that are truly significant to the action in question, ..." (40 CFR 1500.1(b), p. 3).

The Prescott Basin Project clearly identifies significant issues within the environmental assessment (EA p. 5) and devotes substantial discussion to the alternatives considered, the existing condition and the desired condition, as well as environmental impacts of the proposed action and alternatives as required under NEPA. (EA pp. 1-11).

Volume to be harvested is not considered an environmental effect. In any case, detailed supporting analysis more appropriately belongs in the appeal record. Documentation relating to volume is provided within the Prescott Basin Vegetation Management appeal record. (AR 68, 73).

The Forest complied with NEPA and the District Ranger had adequate information on which to base his decision. The District Ranger is affirmed on this issue.

Issue 2B: The Prescott Project EA fails to consider a reasonable range of alternatives.

Contention: The appellant states, "The Prescott Project, aside from the mandated 'no action' alternative, only analyzes two alternatives. But in fact these two alternatives are essentially the same, except that one would thin and log additional areas around private lands. Thus, no alternatives which consider realizing the goals of this sale without extensive logging are contemplated."

"[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).

Response: The proposed action is to apply a mix of vegetation management practices to move the Prescott Basin ecosystem analysis area closer to the desired condition, thus providing focus for the analysis of effects of this action and its alternatives. 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 (40CFR §1502.13), further defining the scope of the analysis. Without the requirement for "reasonable" alternatives, the range of alternatives would be boundless. Reasonable alternatives to the proposed action need to address key issues raised in the analysis, and need to address the purpose and need for action. The Prescott Basin Vegetation Management Project record documents one issue and four alternatives, the no-action alternative and three action alternatives. Three alternatives were studied in detail. The action alternatives considered in detail address the purpose and need and the issue raised. An alternative to re-treat areas treated in the last ten years was considered but was dropped from detailed analysis because these areas were not ready for re-treatment. (EA p. 7).

The District Ranger adequately examined a reasonable range of alternatives to address the purpose and need. Thus, he is affirmed on this issue.

Issue 3: Project Violates Administrative Procedures Act (APA).

Contention: Appellant alleges that the Prescott Project EA Decision Notice is arbitrary and capricious.

Response: Appellant argues the Prescott Basin Vegetation Management Project and Decision Notice violate ESA, NEPA, the Prescott LRMP and APA. Appellant references all of the other issues raised in the appeal as grounds for this conclusion. Reference is, therefore, made to all of the other responses and findings in this administrative review including points dropped by the appellant. For reasons stated individually to each of appellant's contentions, the environmental analysis, documentation, and decision are not biased nor arbitrary and capricious. The analysis and documentation complies with ESA, NEPA, the Prescott LRMP and APA. Therefore, the District Ranger had adequate information on which to base his decision. The District Ranger is affirmed on this issue.

RECOMMENDATION OF APPEAL REVIEWING OFFICER (ARO): The Appeal Reviewing Officer has reviewed the appeal record and forwarded his recommendations to me. I have attached a copy of the ARO's letter. The ARO found that the District Ranger's decision was supported by the appeal record and recommended that the decision of the District Ranger be affirmed.

APPEAL DECISION: After reviewing the appeal record and considering recommendations from the Appeal Reviewing Officer, I find the District Ranger complied with the Endangered Species Act, the National Environmental Policy Act, the Administrative Procedures Act, and the Prescott National Forest Plan as amended. I affirm the District Ranger's decision to implement the Prescott Basin Vegetation Management Project. Appellant's request for relief is denied.

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

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

Enclosure

cc:
Prescott NF
C. Gonzalez
Forestry