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Forest
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Date: December 5, 2003

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**CERTIFIED MAIL – RETURN
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RE: Appeal #04-03-00-0004-A215, Borrego Salvage Project, Española Ranger District, Santa Fe National Forest

Dear Mr. «Last_Name»:

This is my review decision on the appeal filed regarding the Decision Notice (DN), Environmental Analysis (EA), and Finding of No Significant Impact (FONSI) on the above-referenced project, which provides harvesting of 9.8 mmbf on 1,209 acres on the Española Ranger District, Santa Fe National Forest. No road construction or reconstruction is required to implement this project.

BACKGROUND

District Ranger John Miera made a decision on September 3, 2003, for the Borrego Salvage 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, an attempt was made to seek informal resolution of the appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR § 215.17. I have 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 found that: a) the decision logic and rationale were generally clearly disclosed; b) the benefits of the proposal were identified; c) the proposal and decision are consistent with agency policy, direction, and supporting information; and d) public participation and response to comments were adequate.



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 Borrego Salvage Project.

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

Sincerely,

/s/ Lucia M. Turner
LUCIA M. TURNER
Appeal Deciding Officer,
Deputy Regional Forester

cc: Christina Gonzalez, Daniel Crittenden, Leonard Lucero, Mailroom R3 Santa Fe, John Miera, Susan Bruin, Allen Fowler

REVIEW AND FINDINGS

of

(John Horning's, Gregory Pollak's, Sam Hitt's, John Talbert's)**Appeal #04-03-00-0004-A215****ISSUE 1:** The Borrego Salvage Project violates National Environmental Policy Act.

District Ranger Miera failed to prepare an Environmental Impact Statement (EIS) as required by 40 CFR § 1508.27(4)(2). The appeal makes a case that the threshold of significance is reached; therefore, an EIS is required.

Contention A: Forest Service failed to address environmental impacts likely to result from salvage logging (citing Beschta, 1995; and McIver and Starr, 2000). Forest Service speculates that site-specific impacts to wildlife, soils, water quality, and vegetation recovery of project are aloof from the ongoing debate. Project is likely to be “highly controversial;” and therefore, an EIS is required.

Response: The Environmental Analysis (EA) (PR #85) and corrected EA (PR #123) addressed public comments and effects as follows: Page 6 noted public comments that ecosystem benefits from salvage logging were debatable, based on Beschta and McIver and Starr reports; page 7 identified key issues of effects to soil and water; mitigation measures on pages 15, 18, and 19 were designed to protect soils by buffering in one alternative (D) and use of soil stabilization requirements. Page 20 spelled out wildlife snag and down log retention requirements and noxious weed prevention. A comparison of alternatives by effects is displayed on pages 23-24. Future tree planting is part of the vegetation reforestation planned in area (p. 27) and grazing was also reduced to minimize impacts on vegetation recovery (pp. 26-27). Also see pages 29-31 for vegetation effects, pages 40-41 for noxious weed prevention, pages 32-39 for wildlife effects, and pages 41-46 for soil and water effects. The Decision Notice (DN), (PR #126, p. 2), clarifies that over-the-snow logging will be used to protect soils in unit 12 of the selected alternative. It addresses the debate on salvage logging and relies on site-specific analysis to decide that the alternative has no highly uncertain or unknown risks (pp. 6-7). There is a separate report in the record addressing the 2000 McIver and Starr and Beschta 1995 reports (PR #108).

Finding: Site-specific effects of fire salvage on the resources were analyzed and disclosed in the environmental assessment and the record. The scientific references were specifically addressed. This project record raises no new controversial effects, and the effects disclosed are not significant; therefore, the use of an EA with Decision Notice and Finding of No Significant Impact (FONSI) is appropriate.

Contention B: The risk to public safety of logging trucks driving through the narrow streets of Cordova, New Mexico, is a key issue in the EA; and “the degree to which the project affects public health and safety” requires an EIS.

Response: The EA (PR #85) and corrected EA (PR #123) addressed comments received about safety concerns of log truck traffic through Cordova, New Mexico; and this became a key issue for alternative analysis (pp. 6-7). Public safety effects were addressed on pages 49-51 on use of

the same road system for log haul and recreation access. There will be minimal effects because of the mitigation measures (p. 20), including temporary closures, signing, and restricted haul times. The Decision Notice (PR #126, p. 6) reiterates that measures will be taken to ensure that conflicts between recreation users and salvage operations are avoided.

Finding: The analysis of safety concerns was adequate for this scale of project. Such overlapping use on Forest roads between recreationists and log haul is a common one that has been evaluated over many years and in this particular instance does not rise to the level of significance; and therefore, an EIS is not required to address public health and safety.

Contention C: Preferential treatment denies environmental justice to minority and low-income populations by putting their health and safety at risk and is contrary to Executive Order 12898.

Response: The EA (PR #85) and corrected EA (PR #123) addressed environmental justice (p. 59). The proposed alternatives would not result in demographic changes, such as displacement of minorities; there would be no geographic change in land use; and there would be no economic hardship, such as an increase in taxes. The historic social structure and land use in the surrounding area was disclosed in the social and economic analysis (pp. 1, 49-50, 56). There was active public participation in the scoping and review of the proposal (pp. 5-7), and tribal input was sought (p. 55).

Finding: There is no disproportionately high and adverse human health or environmental effects to any minority or low-income population as a result of this project; therefore, the Executive Order on Environmental Justice has been followed.

ISSUE 2: The Borrego Salvage Project violates National Forest Management Act (NFMA).

Contention A: The Borrego Salvage Project fails to provide for the diversity of plant and animal communities in the planning area or insure the maintenance of viable wildlife populations.

Response: The 36 CFR § 219 regulations for NFMA refer to Forest planning and measures of diversity in the evaluation of plan alternatives. NFMA does not include project-level analysis or mandate any monitoring requirements for Management Indicator Species (MIS). Trends for MIS are discussed in the Santa Fe National Forest MIS Assessment (PR #104), Wildlife Specialist report (PR #116), the EA (PR #85,123), and the response to comments (PR #124).

Although the McGaffey lawsuit (*Forest Guardians v. US Forest Service*, No. CV 00-714 JP/KPM-ACE) set the stage for MIS evaluations in the southwest. The more recent Corner Mountain lawsuit (*Center for Biological Diversity v. US Forest Service*, No. CV 01-1106 WJ/RLP ACE) decision has defined MIS requirements in New Mexico. “The Forest Service has the discretion regarding the identification of the geographic area within which the effects of the environmental impacts are measured.”

Finding: The proposed project as defined in the Decision Notice provides for a diversity of plant and animal communities and the maintenance of viable wildlife populations.

Contention B: The Borrego Salvage Project fails to disclose compliance with Santa Fe Land and Resource Management Plan conservation strategies for sensitive species.

Response: The Santa Fe Land and Resource Management Plan provides no direction related to conservation strategies for sensitive species. However, FSM 2621.2 states, “To preclude trends towards endangerment that would result in the need for Federal listing, units must develop conservation strategies for those sensitive species whose continued existence may be negatively affected by the forest plan or a proposed project. To devise conservation strategies, first conduct biological assessments of the identified species.”

A biological assessment (PR #115) was prepared and Southwestern Regional Forester sensitive species for the Santa Fe National Forest were considered. No trend towards federal listing was determined for any of the sensitive species as a result of the proposed action. Therefore, no conservation strategies need be developed.

Finding: The requirements of FSM 2621.2 have been met; there is no need for conservation strategies.

Contention C: The Borrego Salvage Project fails to collect information needed to protect soils.

Response: The project record contains information that confirms that the proposed action will not noticeably interfere with expected natural recovery from the effects of the Borrego fire. The record indicates that one of the key planning issues in this project was the potential damage to soil resources (PR #123, p. 7). The analysis included the use of information from soil surveys and assessments (PR #14), a comprehensive analysis of potential impacts to soil productivity, including specific components of compaction, erosion, nutrient cycling and soil temperature (PR #112, PR #123, pp. 24-25 and pp. 44-46), and site-specific mitigation measures to prevent irreversible damage (PR #123, p. 18-19). The decision notice (PR #126) mandates additional protective measures beyond the ample list proposed in the environmental analysis to respond to the soil damage issue and further insure the protection of long-term productivity.

Finding: The project is consistent with NFMA requirements to conserve soil and water resources and avoid significant or permanent impairment of the productivity of the land.

Contention D: The Borrego Salvage Project is inconsistent with the Santa Fe Land and Resource Management Plan. Appellant maintains “small sales will be the primary tool to accomplish salvage operations.”

Response: The Project Proposal Statement (PR #20) states that approximately 1,500-acres of the nearly 13,000-acre Borrego Fire are planned for salvage harvesting. This document clearly states that the primary purpose of the salvage harvesting is to recover as much economic value as possible. It states that the salvage treatment must be implemented quickly before the commercial value of the wood is significantly reduced. The document also states that the wood would be used by both local and regional communities.

The public scoping letter for the project (PR #26, p. 2) identifies an underlying need to support the economy and wood product needs of northern New Mexico (NM) communities. The scoping letter references the Santa Fe Land and Resource Management Plan goal (SFNF LRMP, p. 17) that involves “*contributions to the economic and social needs of the people of northern New Mexico, strengthening the rural economy of the region and encouraging the enrichment of traditional cultural values.*”

Project Record #74- Summary of Scoping Comments and Responses identifies the need to provide local communities with wood as a significant issue, based upon public comments. All three action alternatives (B, C, and D) provide sufficient wood products to the local communities based upon historic wood use.

The Borrego Salvage Project Environmental Assessment (PR #85, #123) under Purpose and Need states that the purpose and need for this proposal is to recover as much value as possible from fire-killed trees while protecting other resources. The proposed action would:

- 1) Make fire-killed wood products such as fuelwood, vigas, poles, etc., available to citizens of rural northern NM.
- 2) Support the economy of northern NM through the harvest of fire-killed sawtimber.

The EA (p. 5) identifies that many public comments supported the salvage project as long as the emphasis was placed on providing wood products for local use and economic benefit. The proposed action (Alternative B) is estimated to provide approximately 9.2 million board feet of dead sawtimber and 3,770 cords of firewood. Alternative C was designed to eliminate sawlog harvest and provide all the salvage material as firewood. Alternative C would provide approximately 12,324 cords of fuelwood. It was determined that this amount of firewood far exceeded historic firewood needs in the area. Alternative D would provide 8.1 million board feet of sawtimber and 400 cords of skidded firewood to road-side decks.

The EA (PR #85, #123) (Section 3.4.4- Economic) (p. 55) identified that the potential supply of wood products for citizens compared to historic demand is an important evaluation criteria. Table 10 of the EA (PR #123) compares the No Action alternative with the other 3 action alternatives. Alternative B was identified as the best alternative to generate revenue as well as provide wood products to the local communities above historic demand levels.

The FONSI (Borrego Salvage Project -PR #126, p. 2) states that Alternative B was selected because it best supports the Purpose and Need by providing a variety of products that include sawlogs, vigas, and fuelwood. Alternative B provides both commercial and personal-use wood products.

The FONSI also states that commercial opportunities will be designed to include small-scale operations typical of northern New Mexico, recognizing that providing material for the few remaining small sawmills in northern New Mexico is important.

Alternative B also recognizes that it is important to recover the salvage material quickly before the value and structural properties of the wood are substantially diminished.

Finding: The Santa Fe Land and Resource Management Plan recognizes the need to provide forest products to local communities of northern New Mexico; however, the Santa Fe Land and Resource Management Plan does not preclude contractors and operators from outside the immediate region being used to accomplish land management objectives.

Local economic needs were clearly identified throughout the analysis process and used in selecting the preferred action. Historic demand for fuelwood and other forest products was used in the evaluation criteria in selecting the alternative that would best achieve both economic recovery and personal-use product goals.

ISSUE 3: The Borrego Salvage Project violates the Migratory Bird Treaty Act (MBTA) and an Executive Order (EO) 13186 requiring agency action to protect migratory birds.

Contention: Under the MBTA, it is unlawful “at anytime, by any means or in any manner to... kill... any migratory birds” (16 USC § 703-711). In addition, Executive Order 13186 directs federal agencies to take specific actions to further implement the MBTA.

Response: The MBTA was designed to forestall hunting of migratory birds and the sale of their parts (*Mahler v. US Forest Service*, 927 F. Supp. 15598, S.D. Ind. 1996). It was not designed to regulate timber harvesting to prevent the killing of migratory birds (Id.; *Newton County Wildlife Association v. US Forest Service*, 113 F. 3d 110,115, 8th Cir. 1997). Therefore, the forest cannot violate MBTA by harvesting timber, regardless of whether migratory birds are potentially harmed.

Effects to migratory birds are discussed on pages 36-37 of the EA (PR #123), within the Wildlife Specialist report (PR #116), Biological Assessment (PR #115), and response to comments, pages B11-12 (PR # 124).

EO 13186 requires federal agencies to develop Memorandums of Understanding (MOUs) with the US Fish and Wildlife Service to promote the conservation of migratory bird populations. At this date, the MOU has not been finalized. Should the proposed action not be completed prior to the MOU's being signed, any new requirements specified in the MOU will be applied as determined by the US Department of Agriculture.

Finding: The Santa Fe National Forest has met the intent of the Migratory Bird Treaty Act and Executive Order 13186, as currently defined.

ISSUE 4: The Borrego Salvage Project fails to demonstrate consistency with the Forest Transportation system management policy.

Contention: The Borrego Salvage Project lacks the necessary analysis on level 1 and 2 roads. They further contend some maintenance level 1 roads have been upgraded without the necessary analysis.

Response: The Forest Service road policy is to identify needed and unneeded road systems through a scientific-based roads analysis process (RAP), determine if the unneeded roads will be decommissioned or converted to other uses, and place the needed road system in the transportation atlas (Infra Travel Routes database).

In PR #121, dated August 22, 2003, the Española Ranger District notes that the roads in the project area proposed for use by the selected alternatives have been open to vehicular traffic and will remain open. The roads are not closed to vehicular traffic and, consequently, have never been operated as maintenance level 1 roads. The letter notes that there have been no efforts to close roads. It further affirms that the “maintenance Level 1 roads” are incorrectly designated in INFRA and should be “classified as Level 2.”

Project record # 123, the Borrego Salvage Project Environmental Assessment, Section 2.2.2 Alternative B – Proposed Action, states, “The current road system would allow access to complete the proposed actions. No new road construction or re-construction would be needed.”

Project record # 125 is a Roads Analysis Finding for the Borrego Salvage Project. It accurately cites Forest Service Manual 7712.12b and 7712.13. It clearly states that the action alternatives propose no changes in current road standards, decommission, reconstruction, construction changes in traffic patterns, or in current or future use of the roads in the project area.

Finding: The Santa Fe National Forest has met the intent of Forest Transportation Policy, no additional analysis is required.