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File Code: 1570-1/2400
Date: January 27, 2005

Erik Ryberg
Center for Biological Diversity
P.O. Box 710
Tucson, AZ 85702-0710

CERTIFIED MAIL – RETURN RECEIPT REQUESTED NUMBER:

RE: Appeal #05-03-00-0002-A215, Ensenada Forest Health Project, El Rito Ranger District, Carson NF

Dear Mr. Ryberg:

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, on selected Alternative D, which provides for fuelwood/viga sales, sawtimber harvest and precommercial thinning on 1781 acres, road reconstruction on 2.58 miles, 5.1 miles of road closures, and broadcast burning on 1770 acres.

BACKGROUND

Forest Supervisor Martin D. Chavez made a decision on October 14, 2004, which was published on November 4, 2004, for the Ensenada Forest Health project. 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 § 215.17, 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 § 215.18. 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 Ensenada Forest Health Project with the following instruction:

The portion of the archaeological site form (AR-03-02-02-00745, dated May 11, 2004) that is publicly available, as referenced in the heritage resource inventory report, needs to be added to the project record.

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: Leonard Lucero, Constance J Smith, Audrey Kuykendall, Martin D Chavez, Mailroom R3 Carson

REVIEW AND FINDINGS

of

Center for Biological Diversity Erik Ryberg's

Appeal #05-03-00-0002-A215

Ensenada Forest Health Project, El Rito RD, Carson NF

ISSUE 1: The EA fails to include site specific information as required by NEPA.

Contention A: The FS does not know where it intends to log, where the group selection and sanitation salvage logging will occur that would affect large trees. Neither the District silviculturist nor the District Ranger could say where the logging would occur on the ground or how many large trees would be logged as a result. As a result, it is impossible to know whether the result will truly be a stand that is more favorable to wildlife than it is now.

Response: For each action alternative detailed in the Ensenada Environmental Assessment there are accompanying maps of the project area indicating where commercial saw timber, fuelwood, viga, thinning and burning treatments will occur (EA PR# 79, Figures 3-10, pp. 17-26). Each alternative gives narrative descriptions of the silvicultural prescription and approximate acreages of each prescription. The Comparison of Alternatives section in Chapter 2 of the EA (PR #79 p. 29) also displays in a chart form acreages and associated prescription for each alternative. The Decision Notice/FONSI (PR# 78) includes maps of the activities associated with the selected alternative.

Pre-decisional reconnaissance work is used to refine stand descriptions and identify where needed treatments should occur, but seldom if ever does it include on-the-ground designation of trees at this stage as appellants seem to be requesting. After a decision is signed the detailed prescriptions are written and then the tree designation work (marking) is done to identify specific trees, or groups of trees, designated for retention or removal. Only estimates of tree removal volume and size classes can be made before tree designation is completed.

The Ensenada Ecosystem Health Project Vegetation Report (PR# 59) includes the description of alternatives, location and site maps, stand summary tables, forest cover type maps, descriptions of vegetation treatments by alternative (table and maps) and canopy cover maps and tables. Field walk-through survey information describes the stands evaluated and summarizes possible treatments in the Vegetation Report. Increased detail on the prescriptions to be used in the stands (polygons) depicted on the project area maps is described in the environmental consequences section of EA (PR# 79, pp. 39-46).

Finding: The Ensenada Forest Health Project EA and supporting project record includes sufficient information to inform the decision maker and the public as to the location of ground-disturbing actions in accordance with 36 CFR 1502.1 and 1502.14.

Contention B: The Forest Service has not identified where meadow restoration or road relocation projects will occur. The plan is to move a road out of a meadow and to log around the meadow to remove tree encroachment, but where this road is currently, where it will be in the future, and where the meadows are that require enhancement, are not revealed.

Response: The NEPA requires that proposed actions are described in enough detail to adequately evaluate the environmental consequences of implementing the actions. The substantial detail given to each alternative, as described in 36 CFR 1502.14(b), requires that the alternatives are described such that a meaningful effects analysis can be accomplished.

The Ensenada EA established its purpose and need to decrease tree encroachment within meadows and relocate roads that bisect meadows to improve integrity and natural vegetation (PR# 79 p. 1). It continues by describing the existing condition, desired condition, and need for action within meadows and riparian areas (p. 6). The proposed action includes the removal of encroaching conifers on approximately 20 acres on the edge of meadows, to remove encroaching conifer trees and relocate 1.5 miles of Forest road that bisects meadows to move toward reestablishing the integrity and the natural vegetation of meadows (p. 10). The location of the meadow enhancement activities are displayed within maps of the project area (pp. 17, 21). Road maintenance, reconstruction, new construction, and closures are displayed within project area maps (PR #79 pp. 19, 23, 26).

Within the Soil and Water Environmental Consequences section of the EA there is a discussion of the Forest Road which is proposed to be relocated to improve meadow conditions (PR#79 p. 107). Table 27 of the EA (pp. 127-128) gives details of all the roads within the project area, including the road which will be relocated around the meadow. The Ensenada Transportation Existing and Desired Condition document describes details of all the roads within the project area, including a discussion of the location of the rerouting of the road within in the meadow (PR# 73, p. 3). The Roads Analysis Process (PR# 66) contains a map of the complete Ensenada road system, and repeats the Table 27 found in the EA.

Finding: The Ensenada Forest Health Project EA and supporting project record includes sufficient information to inform the decision maker and the public as to the location of ground disturbing actions in accordance with 36 CFR 1502.1 and 1502.14.

Contention C: The Forest Service does not reveal how it will manipulate the size classes of the forest stands. The simplicity of this scheme produces perverse results on which the Forest Service is basing its analysis, chief among which is that a stand can be transformed from a low VSS class to a higher VSS class by logging the smallest trees. The VSS rating is useless for determining impacts to wildlife habitat and appellant asks that a diameter limit on cutting be used instead. The Forest Service has not prepared an old growth analysis. Forest Service asserts that no old growth will be logged in this project (EA p. 49), but absent an analysis of old growth and understanding of where the logging is to occur, this statement is arbitrary and capricious.

Response: The Ensenada EA is clear about the existing and desired conditions, as well as the need for action for vegetation types in the project area to have a mosaic of age classes (PR# 79, pp. 4-6). A stated objective of several vegetative treatments is to emphasize large fire-resistant trees and move stands more quickly into the old age classes (p.10).

The Ensenada Forest Health Project does not propose a diameter cap on tree removal. Old growth was not identified as a significant (key) issue for the project in the EA (PR#79 pp. 11-13). Yet, the EA has an environmental effects discussion on old growth (pp. 48-49). The analysis team recognizes that old growth, as defined in the Carson's amended Forest Plan, is in short supply within the analysis area due to past harvest treatments. Table 6 in the Environmental Consequences section of the EA displays what the anticipated effect to older VSS (Vegetative Structural Stage(s)) would be following implementation of the Ensenada Forest Health Project (p.42). VSS5 and 6 (those structural stages most suitable to meet old growth requirements) are under-represented. A forest-wide old growth analysis is scheduled to take place in the future. The EA states that no treatments proposed in this analysis would preclude or delay stands from becoming old growth in the future. It goes on to state that no treatments are proposed to occur in old growth stands (p. 49).

Proposed treatments under any of the action alternatives will not result in a reduction in VSS5 or 6, and will in fact, increase the acres in these two structural stages (PR# 79 Table 6), though any increase immediately following treatment is a factor of reducing the basal area in smaller diameter trees. The real benefit to increased old growth acreage will come from increased growth on trees within VSS3 and 4 areas over the next several decades (PR# 79 p. 44). Nothing in the proposed treatments would indicate that treated stands are being moved away from an old growth-stand-structure trajectory.

The concern over not knowing where logging will occur (which trees will be removed by size class) has been previously addressed under Contention A.

The concern over wildlife effects is addressed under Issue 3 Contention B that follows later in this document.

Finding: The Ensenada Forest Health Project Environmental Assessment meets the requirements of the NEPA for disclosure of effects to old growth, a non-significant issue in its analysis. The use of the VSS model and effects are adequately disclosed for the decision maker and public in the EA.

Contention D: Forest Service has not revealed impacts to archaeological resources. An archeological site is a key issue but is not addressed after being brought up initially in the EA.

Response: The EA (PR#79 p 112) summarizes the effects on heritage resources, including a statement that, "Except for the sites that are not eligible to the National Register, the sites will be avoided by ground disturbing activity". Avoidance of impacts to cultural sites is also addressed in the EA mitigation measures (PR #79 p. 27) and in the Decision Notice (PR#78 p.7), which notes that, "Some road reconstruction is planned to avoid designated sites." The DN (PR#78 p.7) and the EA (PR #79 p. 113) also reference the concurrence of the State Historic Preservation Officer (SHPO).

The project record supports these findings. An inventory report (part of PR# 41) was submitted to the SHPO documenting several surveys within the project area and summarizing identified sites and recommended protection measures. Information that was submitted and attached to the inventory report includes a site form (AR-03-02-02-00745, May 11, 2004) stating that the road within which the archaeological site was found was rerouted to avoid the site. (The portion of this site form that is publicly available needs to be added to the project record.) Avoidance of

that site is specifically mentioned in the consultation form (part of PR# 41) attached to the inventory report. The SHPO signed the consultation form on June 15, 2004, concurring that the project will have no adverse effect on heritage resources.

Finding: The Ensenada Forest Health Project EA and supporting project record adequately discloses the impacts to heritage resources, including documentation that the archaeological site mentioned in the key issue was protected by rerouting the road to avoid the site. The SHPO concurred with a finding of no adverse effect for the project.

Contention E: EA refers the reader to documents that do not exist or cannot be reasonably found. Appellant lists a hairy woodpecker 2003 citation and Appendix B of EA for MSO threshold conditions as not being found. EA contains no bibliography.

Response: Without specific citations of concern, it is difficult to track each reference of concern by the appellant. A review of the project record and the specialists reports contained therein does indicate that the reference documents identified in the EA are included in the project record.

The hairy woodpecker document reference on page 70 in the EA (cited as USDA-Forest Service, 2003), refers to the Management Indicator Species Assessment for the Carson National Forest. This document is found in the project record (PR# 75).

The reference to Appendix B on page 66 of the EA (PR# 79) is a typographical error. The reference referred to in this section is an appendix to the 1996 Record of Decision for Amendments of Forest Plans and should be referenced as Appendix C, not Appendix B.

Finding: The project record for the Ensenada Forest Health Project is in conformance with 40 CFR 1502.21, incorporation by reference.

Contention F: EA contains virtually no site specific information at all. Appellant lists a variety of topics for this contention such as affected environment, water quality, stand exam information, and wildlife surveys. Appellant contends that no on-the-ground surveys or analysis was completed or incorporated into the document's analysis. Surveys for wildlife have not been completed though document says they will be done before logging occurs (EA p.65).

Response: The project record contains a number documents and references to on-the-ground, site-specific reviews of the project area and its resources. These include field trip notes (PR# 16 and 68), meeting notes (PR# 21), and specialists reports and notes (PR# 27 transportation, PR# 41 and 51 heritage, PR# 59 and 61 vegetation, PR# 62 soils, PR# 63 Biological Assessment, PR# 65 Biological Evaluation, and PR# 66 Roads Analysis Report). These project record documents verify that site-specific on-the-ground reviews were used to develop the analysis and conclusions summarized in the EA.

Site-specific data was appropriately incorporated into the modeling used for the Ensenada Forest Health Project. This site-specific, on-the-ground data was augmented with aerial photo interpretation, surveys, overflights, past analysis, research reports and historical data and incorporated into the EA.

Finding: The Ensenada Forest Health Project is appropriately supported by field reviews, contemporary on-the-ground data and analysis and meets the NEPA's requirements for site-specific analysis of effects.

Contention G: The Forest Service violated NEPA by failing to assess the cumulative effects of the action. The FS has not accumulated enough information to know what the direct and indirect effects are. The document only lists names of timber sales and then makes vague comments about general impacts. Cumulative effects under NEPA are not to be included generally into the existing environment discussion.

Response: As stated in the response to Contention F above, the Ensenada Forest Health Project is appropriately supported by field reviews, contemporary on-the-ground data and analysis and meets the NEPA's requirements for site-specific analysis of effects. It displays direct and indirect effects based on current conditions gathered through field reviews.

Cumulative effects result from the incremental impacts of the action when added to past, present, and reasonably foreseeable future actions (40 CFR 1508.7). Resource specialists considered the cumulative effects of a variety of past, present, and foreseeable future actions on their respective resources. Each resource includes a cumulative effects discussion within Chapter 3, Environmental Consequences.

Finding: The EA and supporting project record include consideration of past, present, and reasonably foreseeable actions and their cumulative effects on components of the human environment. The cumulative effects analysis is adequate for an informed decision and for the purpose of determining significance and whether or not an EIS is needed.

<u>ISSUE 2:</u> Project violates Migratory Bird Treaty Act.

Contention: Forest Service has not revealed impacts of the project on migratory birds. Migratory birds were a key issue. USFWS brought up this issue and FS gave a conclusory statement in response.

Response: Effects to migratory birds were analyzed in the Environmental Assessment (PR#79, pp. 78-81 and 91-94) and the Wildlife Specialist Report (PR#65, pp. 42-46). Additional information on migratory birds was found in the Carson NF Migratory Bird Assessment (PR#9). Effects to migratory bird species were analyzed and disclosed.

Finding: The project complies with Executive Order 13186.

<u>ISSUE 3:</u> The Decision violates the NFMA and Carson Forest Plan.

Contention A: The project does not comply with Forest Plan old growth requirements. The FOIA response (attached to appeal) indicates that the Carson NF does not know how much of its Forest is old growth or allocated as old growth.

Response: The analysis area is approximately 4,310 acres in size, or approximately 1.7 percent of the Rio Tusas/Rio Vallecitos Watershed (PR#79, p. 1). Approximately 1,706 acres (PR#79 Table1) are to be treated mechanically, or 0.7 percent of the watershed. The removal of trees over 9 inches is to occur on 1,363 acres (PR#79 Alternative B p. 9) or approximately 0.5 percent

of the watershed. Treatments are primarily designed to improve forest health conditions and increase tree growth toward old growth conditions. Also see the earlier discussion under NEPA Contention B on old growth issues. In summary, the nature of the proposed thinning treatments is primarily thinning-from-below. Only small areas, below the stand level, with cutting in groups or patches are being created for regeneration. A small percentage of the watershed is being treated in this project (0.5 percent). The EA discloses that no existing old growth stands will be treated (PR#79 p.49).

Finding: No violation of the amended Carson Forest Plan involving old growth allocations has occurred.

Contention B: Project does not comply with Forest Plan Mexican spotted owl requirements. The agency is required to manage to ensure a sustained level of owl nest/roost habitat well distributed across the landscape and create replacement owl nest/roost habitat. This is not addressed in the EA.

Response: The Environmental Assessment (PR#79), Biological Assessment (PR#63), Biological Evaluation (PR#64), and Wildlife Specialist Report (PR#65) clearly state that the analysis area does not currently meet standards for Mexican spotted owl nest/roost habitat. There are no existing stands in the analysis area and few existing stands in adjacent areas currently meeting threshold conditions for nest/roost habitat. The action alternatives will clearly move stands within the analysis area towards threshold conditions for nest/roost habitat, and no stands will be moved below threshold conditions.

Finding: The project complies with the Carson Forest Plan for attaining Mexican spotted owl nest/roost habitat conditions.

Contention C: Forage use exceeds what is prudent or acceptable and Forest Plan forage utilization standards in MSO habitat have not been met. These failures are also violations of the ESA.

Response: Allocations of forage use are outside the scope of this decision. Forage utilization is analyzed when authorizing livestock grazing. The Ensenada Decision Notice does not address forage use (PR# 78 p.2).

Finding: The contention is outside the scope of this decision.

Contention D: Openings should not come from the oldest size class trees. The EA fails to discuss or meet the goshawk snag and down woody debris requirements. There is no analysis whether the action complies with goshawk Forest Plan requirements.

Response: VSS or *Vegetative Structural Stage* was developed to describe even-aged stands or groups of trees within group, multi-stored stands. VSS was not designed to be a descriptor of an individual tree (e.g., a “VSS5 tree” label is not used). Because the VSS classification system was not intended to be used to classify individual trees, some trees that exceed 9-16” may be removed in areas with a VSS2, 3,or 4 designation, and in VSS5 and 6 areas where trees even larger than 16” are in sufficient numbers, some trees may be removed to meet management objectives. To determine where treatments needed to occur in the analysis area, a very extensive analysis of vegetative structural stages was undertaken and a VSS distribution matrix was developed for the analysis area based on individual plot data (PR# 79 Table 7). The VSS

analysis performed indicated shortages in VSS1, 2, 5, and 6 areas. VSS3 areas were identified as an over-represented condition (PR# 79 Tables 6 and 7). The analysis team estimated that treating stands would encourage VSS3 and 4 areas to move into VSS5 conditions at twice the rate compared to growth rates projected under the No Action Alternative (PR# 79 p. 43). Also, openings would be created in VSS3 areas to create VSS1 areas. The analysis of VSS clearly establishes a target VSS distribution recommended in the Goshawk Management Guidelines and the amended Carson Forest Plan (PR# 79 Table 7, pp. 43-44).

Snag mitigation measures are covered under "Mitigation Measures Common to All Alternatives" (PR# 79 p. 27). The project area lies within a Wildland-Urban Interface (PR#24). In WUI areas, typically more surface fuel cleanup is desired to better guarantee public safety. The fire prescription proposed on 1,770 acres state that an average of 8-10 tons/acre of fuels remain following burning (PR# 79 Table 10 p. 57). Broadcast burning typically removes the fine fuels and smaller fuels retaining the larger fuels such as down logs. Retaining 8-10 tons per acre meets or exceeds Forest Plan criteria. Fuel loading following prescribed burning will retain 8-10 tons/acre, which meets or exceeds down woody debris standards for goshawk habitat.

All 1,781 acres of mechanical treatment and prescribed burning will occur outside of known PFA's (post-fledging areas for goshawk) or dispersal PFAs (PR# 79 p. 87). The analysis team has determined that treated stands will not fall below the 40 percent canopy cover level in areas classified as VSS4-6. It has also been determined that the 1,328 acres of pre-commercial thinning will not change goshawk habitat suitability, and will reduce the risk of losing goshawk habitat to stand-replacement fires (PR# 79 p. 87). The analysis has sufficiently covered possible impacts to goshawk habitat and states that no goshawk post-fledging areas or dispersal areas will be impacted.

Finding: Forest Plan requirements for goshawk are met within the analysis.

Contention E: The Carson Forest Plan (Wildlife and Fish p.6) has numerous requirements concerning big game which are not discussed in the EA.

Response: The Carson Forest Plan (PR#2 Wildlife& Fish Forest-wide Prescriptions p.-7 Summer Big Game Cover) states that cover standards and guidelines will apply where threatened, endangered, and sensitive species habitat requirements do not conflict. The project will move the existing Forest conditions towards compliance with Forest Plan requirements for the Mexican spotted owl (Threatened) and the northern goshawk (Sensitive). The habitat requirements for these species take precedence over big game species.

Finding: The project complies with the Carson Forest Plan.

United States Department of Agriculture | **Forest Service** | **R3 Regional Office** | **333 Broadway SE**
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File Code: 1570-1/2400 **Date:** January 27, 2005
Route To:

Subject: ARO, Appeal #05-03-00-0002-A215, Ensenada Forest Health Project, El Riro RD, Carson NF, CBD (elritord)

To: Deputy Regional Forester

This is my recommendation on the disposition of the appeal filed in protest of Decision Notice and Finding of No Significant Impact concerning the Ensenada Forest Health Project on the El Rito Ranger District, Carson National Forest. The selected Alternative D provides for fuelwood/viga sales, sawtimber harvest and precommercial thinning on 1781 acres, road reconstruction on 2.58 miles, 5.1 miles of road closures, and broadcast burning on 1770 acres.

Forest Supervisor Martin D. Chavez made a decision on October 14, 2004, which was published on November 4, 2004, for the Ensenada Forest Health project. The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR § 215 appeal regulations.

Mr. Erik Ryberg of the Center for Biological Diversity filed an appeal of this decision under the 36 CFR 215 appeal regulations.

Informal Disposition

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of this appeal. The record reflects that informal resolution was not reached.

Review and Findings

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, polices, and orders. The appeal records, including the appellant's issues and requests for relief have been thoroughly reviewed. Having reviewed the Environmental Assessment (EA), decision, and the project record file, as required by 36 CFR 215.19(b), I conclude the following:

1) The decision clearly describes the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decision.

2) The selected alternative should accomplish the purpose and need established. The purpose and need stated in the EA reflect consistency with direction in the Forest Plan for the Carson National Forest as amended.

3) The decision is consistent with policy, direction, and supporting evidence. After reviewing the project record, it would be helpful to add a referenced heritage site form in regards to cultural resource site avoidance. The Responsible Official's decision documents are based on the record and reflect a reasonable conclusion.

4) The record reflects that the Responsible Official provided ample opportunity for public participation during the analysis and decision making process. The Responsible Official's efforts enabled interested publics the opportunity to comment and be involved in the site-specific proposal.

After considering the claims made by the appellant and reviewing the record, I found that the Responsible Official conducted a proper and public NEPA process that resulted in a decision that is consistent with the Carson National Forest Plan. I found no violations of law, regulations, or Forest Service policy.

Recommendation

I recommend that the Responsible Official's decision relating to this appeal be affirmed with respect to all of the appellant's contentions with the following information.

The portion of the heritage site form that is publicly available, regarding Forest Road 42I (AR-03-02-02-00745, dated May 11, 2004), as referenced in the heritage resource inventory report, should be added to the project record.

/s/ Abel M. Camarena
ABEL M. CAMARENA

Appeal Reviewing Officer, Deputy Regional
Forester

Hard copy of this letter to be attached to ADO letter sent to appellants.

cc: Constance J Smith, Audrey Kuykendall, Martin D Chavez