



United States
Department of
Agriculture

Forest
Service

R3 Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1/2400

Date: April 23, 2003

John Horning
Forest Guardians
318 Montezuma Street
Santa Fe, NM 87501

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeal #03-03-00-0023-A215, Sheep Basin Restoration Project, Gila National Forest

Dear Mr. Horning:

This is my review decision on the appeal you filed regarding the Decision Notice (DN), Environmental Analysis (EA), and Finding of No Significant Impact (FONSI) on the project noted above.

BACKGROUND

On January 29, 2003, Gila National Forest Supervisor Marcia R. Andre issued a decision for the Sheep Basin Restoration 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 215.16, an attempt was made to seek informal resolution of your 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 concluded that: 1) decision logic and rationale were disclosed; 2) the benefits of the proposal were identified; 3) public participation and response to comments were adequate; and 4) the project is in compliance with NEPA and other applicable federal laws and regulations.

The Appeal Reviewing Officer recommended that the Responsible Official's decision on the Sheep Basin Restoration Project be affirmed.



APPEAL DECISION

After a detailed review of the records and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision on the Sheep Basin Restoration 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

Enclosure

cc: Mailroom R3 Gila, Christina Gonzalez, Daniel Crittenden, Leonard Lucero

REVIEW AND FINDINGS**of the****Forest Guardians & Wild Watershed****Appeal #03-03-00-0023-A215****Sheep Basin Restoration Project**

ISSUE 1: The Sheep Basin Restoration Project violates the National Forest Management Act (NFMA).

Contention 1a: The project fails to provide for the diversity of plant and animal communities in the planning area or insure the maintenance of viable wildlife populations.

- Forest Service (FS) is required to acquire and analyze hard population data for its selected Management Indicator Species (MIS) and cannot rely solely on habitat trend data as a proxy for populations or population trends.
- Of the 15 MIS found in the project area, no population data is available.
- There are significant problems with the paucity of breeding bird survey (BBS) data for avian species.
- There is a lack of data supporting neutral or beneficial effects to some species on the project area, while there are negative trends at larger scales.
- Population data is extant for Sonora Sucker, Desert Sucker, Rocky Mountain Elk and Mule Deer, but these data are not cited in the project record. The Forest Service has acted in an arbitrary and capricious manner by assuming that viable populations on the Gila National Forest can be maintained without a systematic and continuing program to collect and inventory population data.

Response: Population data is discussed in the MIS section of the Biological Assessment (PR #99 and #118). The data used is consistent with the Corner Mountain decision (*Center for Biological Diversity v. USDA Forest Service, et al., CIV. 01-1106 WJ/RLP ACE*), which is the precedent for MIS population and habitat trend determination in the U.S. District Court of New Mexico.

Breeding bird surveys (BBS) are not by their very nature site specific. Data is collected at a large scale to determine possible trends for bird populations in general. BBS were never intended, nor designed, to evaluate the effects of projects on bird populations. The Forest used existing BBS data to determine large-scale trends, which is appropriate.

A thorough discussion of possible effects from the project and supporting data can be found in the Biological Assessments (PR #99 and #119) and in the Environmental Analysis (EA) (PR #127).

The Forest Service is not required to ferret out every possible bit of data regarding MIS species. Sufficient data has been gathered and relevant scientific literature has been reviewed to make an informed professional determination of the effects of the project on species found in the area. If the appellants have data and information relevant to the project, they are encouraged to provide it during the scoping and development phases of the EA.

Finding: The Sheep Basin Project analysis on the Gila NF adequately assesses the potential effects of the proposed project on wildlife, and insures that diversity and viable populations of affected species will be maintained.

Contention 1b: The project is inconsistent with the Gila Forest Plan. The Forest Service is required by NFMA to demonstrate that site-specific projects are consistent with Standards and Guidelines in the Forest Plan.

- The Forest Plan requires monitoring population and trends of MIS.
- The Forest Plan lists ponderosa pine forests as especially vulnerable to management actions and is a high priority for collection “base data” on population and habitat trends of MIS.
- Neither 1 nor 2 is available as stated in the Sheep Basin Restoration Project EA, ergo it is inconsistent with the Forest Plan.
- Since the project reduces canopy cover over large areas, it does not disclose or analyze any quantitative data on how a 40-percent canopy cover will be maintained for mid-aged and older ponderosa pine forests.

Response: A review of the monitoring section of the Gila Forest Plan (Gila LMRP, p. 289) finds that the Gila has monitored MIS population and habitat trends, and results of these efforts can be found in the MIS section of the Biological Evaluations (PR #99, pp. 52-84; and #118, pp. 61-144).

The following MIS represent one or more seral stages of ponderosa pine habitat: hairy woodpecker, elk, long-tailed vole, Merriam’s turkey, and Abert’s squirrel (PR #99, p. 53; and #127, pp. 40-41). Data concerning population and respective habitat trend can be found in the Biological Evaluations (PR #99, pp. 52-84; and #118, pp. 61-144) including discussion of numbers and habitat quality found at the time of the Forest Plan’s implementation to the present.

Finding: The Sheep Basin Restoration Project is consistent with Gila LRMP with regard to MIS population and habitat trend determination.

ISSUE 2: The Sheep Basin Restoration Project violates the National Environmental Protection Act (NEPA).

Contention 2a: An Environmental Impact Statement is required due to the fact that this project and others in the Negrito Ecosystem Project are reasonably foreseeable and cumulatively significant.

- Since the Sheep Basin Restoration Project is part of 15 planned and authorized timber sales in the Negrito Watershed, these are related and will have cumulatively significant impacts.
- These projects are well beyond the state of speculation, as names have been assigned; volumes and acres treated are estimated.
- Cumulative effects of the interrelated projects have not been analyzed nor disclosed.

Response: The Sheep Basin Project's EA lists past, present, and reasonably foreseeable projects within the Negrito Watershed (Table 5, pp. 70-72). The EA states that reasonably foreseeable projects within the watershed are those projects which are initiated under NEPA or are funded. This rationale for reasonably foreseeable projects is consistent with the Council on Environmental Quality's guidance differentiating between speculative and reasonably foreseeable actions.

Five projects (Eckleberger, Collins Park, Mulligan Apache Forest Health, and Six-shooter-Blackdeer Vegetation Management) are identified in the EA as proposed (Scoping and Proposed Action Completed) actions or ongoing projects (Table 5, pp. 70-72). These five projects are discussed at the watershed and project level.

While the appellants mention 10 other projects, there is no documentation in the project record that there are any other reasonably foreseeable projects within the Negrito Watershed. More detailed analysis on cumulative effects is found in the project record (#96, #121, #122 and #123). These documents describe the effects of the five reasonably foreseeable projects in some detail on the given resources. The record reflects that the cumulative effects analysis is at both the spatial (project and watershed level) and temporal scale as appropriate for each given resource. The record does not indicate any significant effects proposed by these actions or the implementation of the five reasonably foreseeable actions.

Finding: Quantifiable and detailed information on cumulative effects is displayed in the EA and its supporting record in accordance with 36 CFR 1508.25 and *Neighbors of Cuddy Mountain, March 1998, (9th Circuit)*. The project record and the FONSI do not support the need for development of an Environmental Impact Statement.

Contention 2b: The Forest has failed to analyze all the impacts within the project area by excluding the impacts of livestock grazing in conjunction with the other disclosed effects (logging, burning, roads, etc.).

Response: This contention is in the subset of Cumulative Effects analysis described in ISSUE 2, Contention 2a. Project Record 121 discusses the indirect and direct effects of Sheep Basin project on the Negrito Livestock Grazing Allotment. The Sheep Basin Project does not propose any new road construction. The DN mentions road reconditioning; however, the estimated effects on soil surface erosion are projected to be slight. This is confirmed in the Project Record #121.

Finding: The Sheep Basin Project's cumulative effects analysis considered the past, present, and reasonably foreseeable actions within the Negrito Watershed, in accordance with 36 CFR 1508.25 and *Neighbors of Cuddy Mountain, March 1998 (9th Circuit)*.

ISSUE 3: The Project EA fails to respond to public comments.

Contention 3a: The issue of the controversial proposal to cut 18-inch diameter breast height and larger trees was not responded to in the public comments section. Although two documents are referenced, they are not addressed in the responses.

Response: Appellants contend that the controversial proposal to cut 18" and larger non-yellow-bark trees is not responded to in the public comments. The EA contains a total of 6 alternatives analyzed in detail. Alternative 3 (PR #127, p. 8) specifically addresses the environmental impacts from only cutting trees less than 12 inches. Alternative 4 addresses the cutting of trees less than 16 inches. In the EA, under the section **Vegetation** (PR #127, pp. 10-18) the differences in structural stages for the 6 alternatives analyzed is discussed in detail. Table 3 (PR #127, p. 14) shows the different Vegetative Structural Stage percentages in ponderosa pine by alternative. This structural stage information was used in the analysis to evaluate the effects on wildlife habitat, including old growth. Alternatives 3 and 4 were developed to address the key issue (PR #127, ISSUE 2) centered on the removal of trees larger than 12 or 16 inches. These two alternatives take a more conservative approach than the concern over the removal of trees larger than 18" dbh.

Finding: A primary issue identified in the Sheep Basin Project analysis was the cutting of trees larger than 12 and 16 inches. Two separate alternatives were developed to address this key issue. Alternative 3 called for the removal of trees less than 12" dbh. Alternative 4 established a 16" diameter cap on all tree removal. These alternatives, along with the 4 other alternatives analyzed in detail, were analyzed in the context of achieving the stated purpose and need for the project and possible effects on wildlife habitat. Comparing the results between Alternatives 3 and 4 with the other alternatives, the controversy over the removal of "large" trees has been addressed, since limiting tree removal to 12" and 16" is more conservative than the 18" maximum tree size expressed by the appellants.

Contention 3b: There is no response to proposal to match the rate of thinning to the rate of thinning slash disposal. This is significant because of the increased fuels after thinning and prior to slash disposal.

Response: Appellants contend that no response was made to the recommendation that thinning only be undertaken as quickly as slash buildup can be eliminated. In the Sheep Basin Project's Fuels Management Specialist's Report (PR #56, p. 3), it states that live and dead fuels have accumulated to a dangerous level in many stands within the project area. The concern under present conditions is the intensity of fires that are likely under the dense conditions that now exist (PR #56, p. 3). The fuels component of the ecosystem consists of continuous canopies, dense ground and ladder fuels, which connect surface and aerial fuels (PR #119, p. 7). The specialist's report further states that recent crown fires have killed all the vegetation and reduced soil productivity over large areas. The project record correctly recognizes the increase in ground fuels from thinning. This spike in thinning slash will last for 3 – 5 years (PR #128, p. 22). The overall effect of treatments will substantially reduce live ladder fuels and open the stand canopy to reduce the risk of a crown fire spreading to surrounding ponderosa pine and mixed conifer stands (PR #156, p. 22). It is also stated that leaving areas untreated increases the total number of acres through which a fire can spread rapidly, generating fire behavior that is difficult to bring under control (PR #56, p. 3). The long-term benefits of thinning and reducing the fuels levels outweigh the short-term increase in ground fuels. Broadcast burning would occur after fuels have cured sufficiently to allow good consumption (PR #56, p. 2). In areas harvested in the past 20 years and then prescribed burned, fires burn with less intensity (PR #119, p. 8).

Finding: A primary concern addressed in the EA is that the current slash accumulation and crown density are such that severe fire behavior has occurred in untreated areas. To only consider thinning as quickly as slash buildup can be eliminated does not address the current problem. With treatments, the slash accumulation will cause a short-term increase in fire intensity, but a long-term decrease in devastating crown fires due to the thinning of the ladder fuels and reduction in density of the crown canopies.

Contention 3c: No response to alternative dwarf mistletoe disposal as opposed to cutting large trees.

Response: Appellants state that no response is made to suggest alternative mistletoe control methods that do not involve cutting large trees. Options to treat mistletoe generally involve tree cutting, prescribed burning, or some type of herbicide treatment to either kill infected trees in order to kill the parasitic dwarf mistletoe plants or to cause the aerial shoots of dwarf mistletoe to abort before seeds can be produced.

The Sheep Basin Project EA (PR #127, p. 80) states that the 915 acres of ponderosa pine with mistletoe in the Sheep Basin Area involves approximately 1% of the total ponderosa pine forest type infected with dwarf mistletoe in the Negrito Watershed. This is an insignificant amount of the total acreage within the watershed, and any treatment within the Sheep Basin Project Area to treat dwarf mistletoe would have an insignificant effect on the total mistletoe within the Negrito Watershed. The analysis team, under the Purpose and Need Section of the EA (PR #127, p. 5)

recognized that the dwarf mistletoe was native to the Negrito Watershed and would continue to be at native plant levels following treatments.

Burning to reduce mistletoe was discussed in the EA (PR #127, p. 80). It was determined that any prescribed burns in the watershed would need to be of low to moderate intensity. It was determined that this level of burn intensity was needed to avoid the possibility of escaped fire, due to existing stand conditions. The analysis team determined that low to moderate intensity burns would do little to reduce the overall mistletoe within the watershed. Mistletoe reduction through fire needs to either kill the infected tree or, as a minimum, kill the infected branches on the tree. Fire intensities sufficient to result in substantial crown scorch would most likely result in escaped fires.

Finding: Viable methods other than tree cutting to reduce dwarf mistletoe were addressed in the EA. Under *Cumulative Impacts-Dwarf Mistletoe* (PR #127, pp. 77-81) prescribed burning is specifically mentioned as a method of reducing dwarf mistletoe. The analysis team determined that the low- to moderate-intensity fires that could be used within the analysis area to reduce fuels would do little to reduce the presence of mistletoe. Even if mistletoe could be effectively controlled by fire in the acreage to be treated under the preferred alternative, less than 1% of the total mistletoe-infected acreage within the Negrito Watershed would be treated. The analysis team recognized that endemic levels of dwarf mistletoe would remain following any treatments (PR #127, *Purpose and Need*, p. 5).

The analysis team did not consider chemical methods of controlling dwarf mistletoe. This might have been due in part to the additional issues that would be raised and the fact that mistletoe control was not identified as a primary purpose and need for the project.

Contention 3d: There is no response to the comments about the inadequacies of the BBS, habitat estimates or hunter surveys meeting NFMA's population survey requirements.

Response: The project record (PR 151, p. 11) does to a degree respond to this comment. Response to Contention "1a" presents a complete explanation.

Finding: The project record does address the BBS, habitat estimates, or hunter surveys and meets the requirements of NFMA, as discussed in Response to Contention 1A

ISSUE 4: The project violates the Migratory Bird Treaty Act (MBTA) and an Executive Order (EO) requiring agency action to protect migratory birds.

Contention: The project, by reducing canopy densities, large yellow-barked pines and pines with mistletoe, will substantively reduce habitat for the following species:

1. Hermit Thrush
2. Red-faced Warbler *
3. Cordilleran Flycatcher *
4. Pygmy Nuthatch *

The * denotes either highest priority or high priority for the New Mexico Partners in Flight Conservation Plan. The action does not protect birds listed under the MBTA, nor does it respond to EO 13186, which requires agencies to protect listed species.

Response: A thorough discussion on migratory birds, including: the hermit thrush, red-faced warbler, Cordilleran flycatcher, and pygmy nuthatch, and the possible effects of the project may be found in the Biological Assessments (PR# 99, pp. 84-88; and #118, pp. 134-136).

The appellants refer to EO 13186. At the time of this appeal, how this EO will be implemented has yet to be determined. However, a Memorandum of Understanding is being developed in conjunction with the U.S. Fish and Wildlife Service and Bureau of Land Management. Once policy and direction has been developed for EO 13186, it will be implemented accordingly.

Finding: The Sheep Basin Project EA has met the intent of the MBTA and EO 13186, as they are currently defined.

ISSUE 5: The EA fails to demonstrate consistency with the Forest Transportation System Management Policy.

Contention: The project record does not state that the Gila NF is in compliance with the “Forest Roads Policy.” The Negrito watershed analysis fails to meet the sedimentation standard set forth in the “Forest Roads Policy.”

Response: The Roads Analysis Process (PR#102) for the Sheep Basin Project clearly outlines the following:

- Condition of roads in the analysis area
- Current maintenance levels and the levels that are needed
- Which roads and/or sections of roadways are creating or contributing to water quality and degradation and/or sedimentation.
- Roads needed for access by various user groups
- Roads needed for administration and other future uses

The sedimentation issue raised is for the Negrito watershed and, as cited, describes the current condition and as such is outside the scope of the Sheep Basin Restoration EA.

Finding: The Sheep Basin Restoration Project is in compliance with the Forest Service Road Policy. The EA does address the sedimentation yields from the roads system and the project and meets current direction and practices.