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Date: September 29, 2003

Brian Segee
Center for Biological Diversity
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Tucson, AZ 85702-0710

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeal #03-03-00-0036-A215, East Rim Vegetation Management Project, North Kaibab Ranger District, Kaibab National Forest

Dear Mr. Segee:

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 above-referenced project, which provides for thinning of approximately 7,500 acres of the coniferous forest, regeneration harvest of about 290 acres of forest, salvaging or sanitizing harvest on 50 acres, tree planting on 340 acres or less, maintenance of fuelbreaks and treatment of fuels using prescribed fire and machine piling. The decision will also open, use, and close 65 miles of existing roads.

BACKGROUND

Forest Supervisor Michael Williams made a decision on June 19, 2003, for the East Rim Vegetation Management 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 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 East Rim Vegetation Management Project.

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

Sincerely,

/s/ Abel M. Camarena
ABEL M. CAMARENA
Appeal Deciding Officer,
Deputy Regional Forester

Enclosure

cc: Charles F Ernst, Daniel Crittenden, Leonard Lucero, Christina Gonzalez, Jonathan M Beck, John Buehler

REVIEW AND FINDINGS

of

Brian Segee, Sharon Galbreath, Sandra Bahr, and Don Hoffman's**Appeal #03-03-00-0036-A215****East Rim Vegetation Project**

ISSUE 1: The Grand Canyon Game Preserve designation is being ignored in this project and in the Forest Plan.

Contention: The Kaibab National Forest continues to deny the importance of the Grand Canyon Game Preserve designation of 1906, saying that it is included in the Kaibab National Forest Plan. The continued logging of large and old-growth trees raise the question of how the District is fulfilling its mandate to protect the game animals and birds of the Kaibab Plateau.

Response: The Game Preserve issue is addressed on pages 53-54 of the Environmental Assessment (EA) (Project Record [PR] #211). The Game Preserve was set up for jurisdiction over wildlife, not habitat management. The project is not in violation of the original intent of the Preserve, which was to protect game animals. Also see Response to Comments #5.1 on p. 3 (PR #235). The Kaibab National Forest Plan was developed with the Game Preserve in mind. The Kaibab National Forest Plan of 1988 included the Game Preserve in Management Areas (MA) 11, 13, 16, 19, and 20. These MA have the same direction in both the 1988 and the 1996 amended Plan (where EMA [ecosystem management area] is used instead of MA). EMA direction is to improve habitat components and diversity through vegetative manipulation. Further discussion of the Game Preserve and the effects of the proposed action on game animals are found in the Wildlife Specialist report (PR #181).

Finding: The East Rim Vegetation Project is in line with the intent of the Grand Canyon Game Preserve designation.

ISSUE 2: The East Rim Vegetation Project Violates NFMA.

Contention A: The 1990 settlement reached on the appeal of the Forest Plan included term and condition #6 related to the management of old growth and conditions. Additionally, the Forest Service agreed to amend the Forest Plan to explicitly bar logging in the "803" old growth areas. However, the Forest Service has not revised the Kaibab National Forest Plan and states that the 1996 regional forest plan amendments have voided the 1990 settlement agreement. The appellant believes the settlement agreement has not been met.

Response: The 1990 settlement was signed by the parties to resolve an appeal of the 1988 Kaibab National Forest Plan. The settlement term and condition #6 refers to long-term maintenance of old-growth habitats and species endemic to these ecosystems and to notification and mapping of these stands. Exhibit A of the settlement agreement is a proposed amendment to this Plan. The designation of "803" stands refers to Timber Component Codes that were used in the Region in the 1980s, and "803" is defined as "*incompatible with multiple use- critical wildlife habitat – old growth*". In the 1990 settlement, there were descriptions of existing old-growth habitats in suitable forest timber stands to be allocated and management direction to develop potential old growth stands. The Kaibab National Forest Plan Amendment #2, signed April 5, 1990, implemented that settlement agreement with changes to this Plan. In 1996,

region-wide Mexican spotted owl, Northern goshawk, old growth, and grazing amendments were made in forest plans to meet new requirements for species management. Groups involved in the 1990 settlement agreement appealed the 1996 region-wide amendments. The Chief of the Forest Service rejected those appeals in May 1997. The appellant has exercised his opportunities to give input, participate in, and file appeals on forest planning, on amendments, and in project implementation.

The current project addresses old-growth management. All alternatives maintain the same acreage of old growth, which is about 6,500 acres (p. 23 in EA, PR #211). Action alternatives 2 and 3 remove surplus understory trees, retain larger trees, and reduce fuel ladders in stands (p. 27 of EA, PR #211). A listing of acres of old growth is in PR #113.

Finding: Old-growth stand management in the Kaibab National Forest Plan has been updated and the appellant has been part of the process. The East Rim Vegetation Project does not remove any old growth and implements management to reduce impacts of wildfire to current old-growth stands.

Contention B: Northern goshawk standards and guidelines are not met in this project. The EA fails to provide information about the location of goshawk Post Fledging Areas (PFA).

1. The East Rim project will thin in replacement goshawk nest areas, and hand tools will not be used. This is a failure to use the preferred treatment within nesting sites without justification.
2. Snags, downed logs, and woody debris standards will not be met, and logging will increase the loss of snags.
3. There is no information on existing canopy densities in the various vegetation types, so the tables on existing and projected Vegetative Structural Stage (VSS) distribution are meaningless. The analysis of VSS classes should not only be done at the PFA or audit level but also at the larger analysis area level.

Response:

1. Although the plan does indicate the use of hand tools as a preferred method (Kaibab National Forest Plan, amended 6/96) it is not a standard or required methodology. Mitigation (PR #152) included in the EA (PR #211) by reference, protects Northern goshawks by limiting disturbance during the critical periods.
2. Mitigation is incorporated (PR #152) in the EA (PR #211) for snags, down logs, and woody debris to meet Northern goshawk standards and guidelines.
3. Canopy density under the Goshawk Management Guidelines is a forest structure variable, designed to be measured at the group level (½ to 2 or 4-acre areas) not at the stand level, cover type level (vegetative types), or landscape level (Smith and Long, *Journal of Forestry*, August, 2000). Nevertheless, stand level resource data has been displayed in Table 2- Tree Competition at Varying Stand Density Indices (PR #211, p. 10) in order to crudely estimate canopy density at the project level. The Stand Density Index has been determined to be a somewhat more accurate method of estimating canopy cover percent than other stand variables, such as basal area or trees/acre.

Table 1 in the project EA (PR #211, p. 9) lists the desired and current VSS distribution in the six PFAs and the 7 audit units (AU) located within the project area. A more precise breakdown of VSS class by individual PFA and AU can be found in the East Rim Vegetative Report – PR #102. The 6 PFAs and 7 AUs account for 13,555 acres of the 17,216-acre East Rim Management Area (PR #102). Of the approximately 17,000 acres in the analysis area, a little more than 2,000 acres of grassland and nearly 5,000 acres of aspen and spruce-fir forest type exist (PR #102). Grasslands and much of the pure aspen and spruce-fir forest type is not considered suitable goshawk habitat.

Table 3 in the project EA (PR #211, p. 11) displays the existing VSS distribution for the 6 PFAs and 7 AUs within the analysis area. Existing percentages displayed in Table 3 are an average of the VSS distribution for the entire analysis area. Table 3 indicates VSS surplus acres in VSS3 (+15 percent) and VSS4 (+9 percent). All other VSS classes have shortages from the desired VSS distribution. This existing VSS distribution in the project area is typical of the VSS distribution found throughout the goshawk range on the North Kaibab Ranger District, based on previous assessments.

Finding: The East Rim Vegetation Project, as proposed, complies with the standards and guidelines of the Management Recommendations for the Northern Goshawk. Tools used in the project are appropriate and the timing of the action is mitigated to avoid the breeding/nesting critical period. Mitigation and guidelines are in place to insure that snags, downed logs, and woody debris standards will be met.

Canopy density determination under the Goshawk Management Guidelines is to be determined at the group level. Individual groups, each with a specific VSS class, are to achieve a size ranging of from ½ to 2 acres in PFAs, and ½ to 4 acres in goshawk foraging habitat. To determine canopy density levels by vegetative type (forest cover type) or at the smaller individual stand level is not required under the Goshawk Management Guidelines.

The VSS distribution determined for the 6 PFAs and 7 AUs within the analysis area totals approximately 13,555 acres of the approximately 17,000-acre analysis area. The 3,500 acres not included within the 6 PFAs and 7 AUs consist of non-goshawk habitat such as grasslands, dense aspen, and spruce-fir forest types.

Contention C: The Forest Service has failed to designate protected activity centers (PACs) at historic territories within the East Rim Vegetation Project. The amended plans of 1996 clearly require designations of PACs at historical owl sightings.

Response: A procedure for determining whether historical territories should have PACs designated was developed by the Mexican Spotted Owl Recovery Team (PR #207) and implemented by the Forest. Surveys by the Forest and various contractors were conducted across the project area and within historical locations from 1988 to 2000; no Mexican spotted owls were detected (PR #182, p. 10). The location of a Mexican spotted owl would have resulted in designation of a PAC. The United States Fish and Wildlife Service (USF&WS) endorsed this procedure and granted concurrence for the determination of effects for Mexican spotted owls (PR #180).

Finding: The process for evaluating historical territories developed by the Mexican Spotted Owl Recovery Team was followed. No owls were found and subsequently no PACs were designated.

Contention D: Management Indicator Species (MIS) are not properly considered. The Forest Service fails to provide the detailed and quantified population information for songbird MIS, including the pygmy nuthatch and yellow-bellied sapsucker. Population data and trend are also lacking for the Kaibab squirrel.

Response: The pygmy nuthatch, yellow-bellied sapsucker (aka red-napped sapsucker), Kaibab squirrel (included in the tassel-eared squirrel discussion), and other relevant MIS are discussed in the EA (PR #211), Wildlife Specialist Report (PR #154), and project (PR #198) and forest-level MIS analysis (PR #221). Population trend data is compiled from available sources in compliance with 36 CFR 219.19 and the recent “Corner Mountain” court decision (*Center for Biological Diversity v. USFS, CIV 01-1106 WJ/RLP*).

Finding: Data used in the analysis is consistent with recent court opinions, and appropriate to the decision level.

ISSUE 3: The East Rim Vegetation Project violates NEPA

Contention A: The analysis fails to provide supporting scientific evidence that the project, which includes logging of larger trees, meets the purpose and need of reducing fire risk. The Forest Service fails to address scientific literature suggesting that logging large trees can actually increase fire danger and has failed to respond to comments or provide information regarding the extent of such logging.

Response: The proposed action is to treat existing (live and dead) and activity-generated fuels using prescribed fire and mechanical methods (EA PR #211, p. 6). The proposed action would utilize lopping, machine piling, and jackpot and pile burning to move toward 5-7 tons per acre of down woody material in ponderosa pine stands and 10-15 tons per acre of down woody material in mixed conifer stands. Another objective is to reduce ladder fuels and other live and dead fuels, (PR #211 p. 9; and see p. 10 for fire risk situation in project area). Also see p. 23 of EA (PR #211), p. 6 Response to Comments #5.8 and 5.9 (PR #235), and Decision Notice and FONSI (PR #236).

The Environmental Consequences Report for Fire, Fuels, and Air Quality (PR #104, p. 5) explains that to continue to exclude fire in these old growth stands may have unexpected outcomes. These stands have higher than normal canopy closures when compared to pre-settlement times and are likely to be more susceptible to crown fires; low tree vigor; and mortality from drought, insects, and disease. This analysis report references the scientific paper by Covington and Moore, 1992.

Finding: The proposed action specifically addressed fuel treatment necessary to meet fuel treatment goals and objectives of the Forest, which would reduce fire risk and protect existing stands from loss to wildfire. Scientific papers referenced in the record, which have been published and which are applicable to the southwestern vegetation types, fire regimes, and condition classes, support the selected alternative. Although this scientific reference is brief, recent research (Final Report-Effect of Fuels Treatment on Wildfire Severity, by Omi and

Martinson, 4/25/2002; Effect of Thinning and Prescribed Burning on Crown Fire Severity in Ponderosa Pine Forests, by Pollet and Omi; and Influence of Forest Structure on Wildfire Behavior and the Severity of Its Effects, USDA Forest Service, May 29, 2003) regarding forest structure, thinning, fuel treatment, and prescribed burning effects on wildfire behavior, crown fire, and wildfire severity, further supports the proposed action and the selected alternative. Clearly, the activity generated and natural fuel loadings are targeted for prudent reduction in a concerted manner that reduces crown fire potential and protects residual forests from catastrophic loss to wildfire.

Contention B: The Forest Service failed to analyze or disclose the effects of the East Rim Timber Sale on the adjacent Saddle Mountain Wilderness Area. Impacts such as erosion in the Wilderness from logging operations, visual and auditory impacts to users in the Wilderness, and impacts to wildlife within the Wilderness were not addressed.

Response: Effects such as soil erosion and watershed condition in the Saddle Mountain Wilderness were addressed in the East Rim Environmental Assessment (PR #211) on pp. 54 and 55. Also see p. 10, Response to Comments #5.20, (PR #235), which addresses Best Management Practices and effects in the Wilderness. Visual impacts were addressed in the environmental consequences section on pp. 7–9 of the Visual Resources Report, (PR #111). Auditory impacts such as dust, noise, and smoke are addressed in the Environmental Assessment, p. 56. Impacts to wildlife in the Wilderness were addressed. Refer to previous response to Appeal Issue # 2, Contention D.

Finding: The effects of the East Rim Timber Sale in the adjacent Saddle Mountain Wilderness Area were properly analyzed.

Contention C: The Forest Service failed to analyze or disclose the effects of the East Rim Timber Sale on the listed Apache trout in the perennial stream North Creek. Neither the creek nor the trout are addressed in the analysis. The Forest Service has referred to concurrence by USF&WS on Apache trout as regards to the analysis; however, that does not answer the question of NEPA compliance.

Response: The Apache trout and potential effects of the proposed action were analyzed in the Wildlife Specialist Report (PR #154) and the Biological Evaluation (PR #182, pp. 5-6). Concurrence on the determination of effect was concurred with by the USF&WS (PR #179) on July 26, 2001. These analyses are summarized and referenced in the EA (PR #211, p. 52).

Finding: The potential effects of the proposed action on Apache trout have been disclosed in the EA, fulfilling NEPA requirements.

Contention D: The Forest Service failed to disclose or analyze the effects of logging on the Kaibab squirrel. No analysis of possible effects to the squirrel is provided.

Response: The Kaibab (aka tassel-eared) squirrel and potential effects of the proposed action were analyzed in the Wildlife Specialist Report (PR #154), MIS analyses (PR #198 and #221), and the Biological Evaluation (PR #182). These analyses are summarized and referenced in the EA (PR #211, pp. 37-43).

Finding: The potential effects of the proposed action on the Kaibab squirrel (aka tassel-eared squirrel) have been disclosed and analyzed.

Contention E: The Forest Service failed to disclose the historical occurrences of Mexican spotted owls in the East Rim analysis area or current occurrences of Apache trout in the North Canyon Watershed. The EA misleads the public by stating that no threatened or endangered species are known to occur in the East Rim planning area.

Response: A field review of the area, and subsequent surveys have found no evidence of current occupation by an endangered or threatened species (Wildlife Specialist report PR #154, and Biological Evaluation PR #182). The USF&WS concurred with this finding (PR #179 and #180). Discussion of both Mexican spotted owl and Apache trout are also found in the EA (PR #211, pp. 52-53).

Finding: The EA discloses the potential effects on Apache trout and Mexican spotted owl and discussion of their presence or lack thereof is further discussed in the Biological Evaluation.

Contention F: The Forest Service fails to adequately justify the purpose and need for logging within different habitat types. There are ponderosa pine, mixed-conifer and spruce-fir forests, but the rationale for cutting is the same among these different habitat types. This shows that there is no adequate effects analysis.

Response: The East Rim Vegetation Management Environmental Assessment (EA- PR #211, p. 5), under *Proposed Action*, states that the proposed action is to develop habitat for Mexican spotted owls, enhance habitat for Northern goshawks and allocate and manage old growth. Under *Purpose and Need* (EA- PR #211, pp. 9-11), 7 objectives are identified and include:

- Develop the size class (VSS) distribution called for under the Northern Goshawk Management Guidelines,
- Reduce ladder fuels and other live and dead fuels,
- Protect and maintain goshawk habitat,
- Maintain and enhance old growth characteristics,
- Maintain or slightly increase the number of acres of ponderosa pine and Douglas-fir,
- Reduce the number of infection centers for dwarf mistletoe,
- Maintain roads for public access and close unneeded roads.

Reasons for the proposed action are spelled out on pp. 10 and 11 of the EA. Shortages of trees over 24 inches and seedling/saplings are common throughout the assessment area. Dead fuel loading and dense understory vegetation is also identified as an undesirable condition throughout the assessment area in all forest cover types. Goshawk habitat generally covers ponderosa pine and mixed conifer forest types. Mexican spotted owl habitat generally involves the mixed conifer forest type. The need for road closures is not specific to any one-forest cover type.

Findings: The Purpose and Need section of the EA identifies seven reasons why treatments are needed within the analysis area. Treatments involve commercial thinning, non-commercial thinning, fuels treatments, and road closures. All of these activities are to occur in most of the forest cover types (ponderosa pine, mixed conifer, and spruce) found within the analysis area. Since the management objectives are similar in all of the forest cover types, there was no need to list treatment objectives for each cover type separately. The fact that treatment objectives were

not specific to a single forest cover type does not indicate a failure to perform an adequate analysis.

Contention G: An Environmental Impact Statement must be prepared, because many of the criteria for significance are possibly implicated by the proposed project.

Response: A Finding of No Significant Impact (FONSI) was included with the Decision Notice (pp. 12–13 of PR #236). This FONSI addressed all ten points of significance. This type of project (including fuels and vegetation treatments with road closures) has been done for many years and the types of impacts are fairly well known by the public and decision maker. Differences on this particular project include effects to Apache trout and the nearby Grand Canyon, which are addressed in the FONSI. These impacts have been avoided or mitigated to ensure protection of these unique features.

Finding: An Environmental Impact Statement is not required for this project. No significant effects were disclosed in the EA or project record that would void the finding of no significant impact.

Contention H: The cumulative effects analysis is inadequate. The discussions of cumulative effects are narrative and do not contain quantified discussion.

Response: The EA (PR #211) includes a list of past, present and foreseeable actions on pages 28 and 29. Possible cumulative activities were reviewed for the planning area and at the larger 5th level watershed scale. (The relevant 5th level watershed #53 includes over 191,947 acres, as shown in PR #210). Specific projects that could have cumulative effects were named and analyzed in the vegetation section, with Table 10 showing the history of past actions and tree density (pp. 31-33 of EA). Similar discussions are found under the management indicator species and soil and water analyses on pp. 43 and 56 of the EA. Project Record #210 includes a map of present and future activities in watershed #53, a list of past fire activities, a listing of the Telephone planning area, and a list of grazing allotments in the area.

Finding: The cumulative effects analysis is adequate for this project.

Contention I: The Forest Service failed to consider a reasonable range of alternatives. The East Rim Vegetation Project only considers the action alternative and alternative 3, which is identical but without logging in old growth stands.

Response: This EA has a long history starting in 1993, and many efforts were made to do a variety of projects during planning. Projects relating to recreation, visuals, range, and wildlife were removed from the proposal in 2001 (PR #143). The Purpose and Need statement in the EA (PR #211, p. 9) is narrow and focused on vegetation treatments, fuels treatment, and road closures. Alternatives 2 and 3 were designed to meet the Purpose and Need (PR #211, pp. 26-27). Several alternatives were considered but dropped from detailed analysis (PR #211, p. 15), including a prescribed fire alternative instead of logging and one that would retain a higher level of trees after treatment. Issues on the final proposed action were addressed through mitigation except for the old-growth issue (PR #211, pp. 11-14).

Finding: There were an adequate number of alternatives developed to address the issues raised and an adequate range of alternatives was provided to the decision maker. The Council of Environmental Quality regulations for NEPA (40 CFR 1500) do not require a certain number of

alternatives or have content requirements for alternatives to a proposed action. Alternatives are developed to address unresolved conflicts in a proposal (1501.2(c.)). This EA meets the Council of Environmental Quality's regulation requirements on development of alternatives.

ISSUE 4: The East Rim Vegetation Management Project violates the Administrative procedures Act.

Contention: The East Rim timber sale is an arbitrary and capricious decision under the APA.

Response: The alleged violations of NEPA, NFMA, and the Kaibab National Forest Plan have been reviewed for this appeal. The record does not confirm that the Responsible Official on the East Rim Vegetation Management Project made an arbitrary or capricious decision. There was a long analysis process and public participation over ten years to reach this decision. The project record is extensive, and the Decision Notice (PR #236) displays the rationale for the selection of the alternative.

Finding: The decision does not violate the Administrative Procedures Act; the decision was not made in an arbitrary or capricious manner.