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Forest
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File Code: 1570-1/2400

Date: November 4, 2002

Herbert G. Cohen
1907 Calle de Sebastian
Santa Fe, NM 87505

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

RE: Appeal #02-03-00-0032-A215, Viveash Fire Salvage, Pecos/Las Vegas Ranger District,
Santa Fe National Forest

Dear Mr. Cohen:

This is my review decision concerning the appeal you filed regarding the Final Environmental Impact Statement and Record of Decision (FEIS/ROD) on the project noted above, which provide for the salvage of fire-killed trees to provide saw logs, house logs, vigas, firewood, and other forest products through commercial timber sales, as well as personal use product permits and several independent road management actions.

BACKGROUND

District Ranger Reddan issued a decision on July 24, 2002, for the Viveash Fire Salvage. 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 your appeal. The record indicates that informal resolution was not reached.

The Responsible Official elected to focus this analysis and decision on two separate and independent actions within the project analysis area, the Viveash Fire Salvage and some road management actions. The discussion on page ES-3 of the FEIS states, "These road projects are not connected to the salvage proposal. They are considered similar actions that when viewed with the salvage actions, have similarities that provide the basis for evaluating their environmental consequences together. The proposed road projects and salvage harvest will be analyzed in this EIS in order to adequately assess the combined impact of these similar actions."

My review of this appeal has been conducted in accordance with 36 CFR 215.17. I have reviewed the appeal, the project record, interested party comments, and the recommendations of the Appeal Reviewing Officer. My review decision incorporates the project record.



APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer concluded that: 1) decision logic and rationale were clearly disclosed; 2) the benefits of the proposal were identified; 3) public participation and response to comments were adequate; and 4) the Viveash Fire Salvage is in compliance with NEPA and other applicable federal laws and regulations. However, the Appeal Reviewing Officer found that the scenic environmental effects analysis and disclosure related to the independent road actions were insufficient to allow those actions to proceed without further analysis.

The Appeal Reviewing Officer recommended that the Responsible Official's decision related to the Viveash Fire Salvage be affirmed and that the independent road management decision be reversed for an additional scenic effects analysis. 36 CFR §215.13(f)(3)

APPEAL DECISION

After a detailed review of the record, the interested parties' comments, and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision on the Viveash Fire Salvage and reverse the independent road management actions with the following instructions:

- 1) Proceed with the Viveash Fire Salvage, using the existing road system. Properly maintain the existing roads, in accordance with Forest Service Road Maintenance Standards.
- 2) Evaluate and disclose the scenic effects of the independent road management actions described on page 2-11 of the FEIS.
- 3) Upon completion of this analysis related to the independent road management actions, circulate the supplemental environmental document for review/comment and issue a new decision under 36 CFR §215.

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:

Santa Fe National Forest
Pecos/Las Vegas Ranger District
R3, FFH
R3, Appeals & Litigation Staff
Forest Guardians
Forest Conservation Council
Carson Forest Watch
Wild Watershed
Mr. Herbert Cohen
Mr. Michael Murphy, et al.
Mr. Larry Ortiz
Mr. Albino Bustamante
Ms. Patricia Murphy

REVIEW AND FINDINGS

of

Herbert G. Cohen's**Appeal #02-03-00-0032-A215****Viveash Fire Salvage FEIS**

ISSUE 1: The Viveash Fire Salvage FEIS failed to meet its obligation to take a “hard look” at environmental consequences, use accurate scientific analysis or disclose important information regarding impacts--violations of NEPA.

Contention (1a): For water quality the “computer model” used in the effects analysis is inadequate and cannot be applied to a unique event on Cow Creek. Additionally, the rising water temperatures are not considered in the “model”. I do not believe that only an 11% increase in sedimentation will occur, especially in flatter stream gradient sections.

Response (1a): In response to the project planning issues of erosion and water quality, a suitable computer model (WEPP) was used to predict the amount of soil erosion and potential sediment produced by the salvage activity. (FEIS, p. 4-4) The modeling result was just one of several indicators used to predict and analyze environmental effects on soil and water. In addition, road density, road crossings and sediment delivery were assessed and evaluated. (FEIS, p. 4-10 &11) The appellant's concern over the accuracy of the sediment prediction appears to be connected with where and when the sediment will be re-deposited. The watershed technical report contains a good discussion on geomorphology and stream valley gradient considerations that determine where deposition will occur. (Project Record (PR) #4.2, p. A-15) Water temperature was not an output of the erosion model, but was adequately evaluated separately. (FEIS, p. 4-10)

Contention (1b): I'm skeptical that the use of “best management practices” will be an appropriate substitute for adequate “depth of study and research”. BMP's are used to address the inadequate depth of study and research.

Response (1b): The FEIS contains over 12 pages of analysis, display and description of potential environmental effects. (FEIS, pp. 4-4 to 4-16) The use of Best Management Practices (BMPs) is offered as a means to mitigate or reduce the anticipated effects.

Finding: The Project Record contains ample evidence that the analysis took the requisite “hard look” at environmental consequences, used appropriate and accurate scientific analysis and disclosed essential information regarding soil and water environmental effects. There is no violation of NEPA on this issue.

ISSUE 2: NEPA violations with regard to failing to analyze cumulative effects on down stream watershed conditions outside the current analysis area.

Contention (2a): The Viveash Fire Salvage ROD and FEIS fail to account for the cumulative impacts for areas that are outside the “project” area, but are affected by that project. The scope of the cumulative effects analysis was arbitrarily truncated to exclude the effects on the lower Cow Creek drainage. Downstream effects must be considered.

Response (2a): The 6th code Upper Cow Creek watershed (approximately 31,000 acres) was chosen as the cumulative effects analysis area to analyze the effects on water, due to the various activities planned on 6,600 acres in the watershed, along with other past, present and future activities on land, on the other 24,400 acres. The watershed proposed by the appellant would be the 152,000-acre 5th code Pecos River-Cow Creek watershed that encompasses all of Cow Creek, including its lower tributaries, down to its confluence with the Pecos River. The watershed selected for the water cumulative effects, represents a balance between a watershed size that is large enough to incorporate other past, present and future activities and small enough that the effects connected directly or indirectly with the planned project, will not be ‘lost’ in the background. (FEIS, p. C-9) The downstream flooding effects due to the Viveash Fire are discussed in the FEIS (p. 3-11) and the watershed technical report (PR #4.2, p. A-15), along with a discussion of their likely continuance for many years, independent of any management activity. The analysis done for the upper part of the watershed confirms that the small amount of activity-produced sediment, that may reach the stream, will be indistinguishable from the fire-produced sediment and from sediment deposition events that will continue for many years and for many miles downstream from the project area, as a result of the Viveash Fire. (ROD, p. 6 and FEIS, p. 4-11)

Contention (2b): The downstream impact between Lower Colonias and North San Ysidro from the Roybal Fire was heavy with regard to soil and ash deposition in the watershed. However, neither mention of, nor analysis of this event is in the FEIS. This event is something that the FEIS should include as part of cumulative effects as required part of the “past, present and future” requirements in NEPA.

Response (2b): At the time of the Viveash Fire Salvage analysis, the Roybal Fire, which started on June 13, 2002, was not a “reasonably foreseeable” future activity. A subsequent analysis, Supplemental Information Report, by the forest confirms that this project will not measurably increase the peak flows from the Roybal and the Viveash fires. (PR #8.0)

Finding: The project record provides evidence that the cumulative effects of past, present and future activities were analyzed, evaluated and disclosed and that this information was considered in the decision. There is no violation of NEPA on this issue.

ISSUE 3: The response to comments is inadequate and therefore a violation of NEPA.

Contention: My detailed comments to the DEIS addressed Forest Service refusal to analyze effects below 7500 ft. elevation. The Forest Service response, via the FEIS and Scoping phase

hearings is inadequate. The Forest Service must study highly impacted areas and the EIS Appendix C confirms that downstream effects have been severe.

Response: The appellant's belief that the Forest Service 'must study highly impacted areas' only applies when the impact is or will be caused by the planned activity. As discussed above, the Forest recognized that the downstream effects due to the Viveash Fire have been pronounced, but the FEIS documents that the planned salvage activity itself will not produce measurable downstream effects. This explanation was provided in the response to comments. (FEIS, p. C-9)

Finding: The response to the appellant's specific comment was adequate and appropriate. There is no violation of NEPA on this issue.