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Forest
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Date: December 2, 2004

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**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER:**

RE: Appeal #05-03-00-0001-A215, Verde Wild and Scenic River Comprehensive River Management Plan

Dear Mr. Bishop:

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 amends three Forest Plans for Comprehensive River Management, road and trail management planning.

BACKGROUND

Coconino, Tonto and Prescott National Forest Supervisors (Rasure, Siderits, and King respectively) made a decision on the above-named project on June 14, 2004 and published the decision on September 3, 2004. The Forest Supervisors are identified as the Responsible Officials, whose combined decision is subject to administrative review under 36 CFR § 215 appeal regulations. This decision includes both plan and project level components.

Programmatic: The Verde Wild and Scenic River CRMP (Comprehensive River Management Plan) prescribes management standard direction for future Forest Service actions and will result in the amendment of each of the three Forest Plans. The amendment to the Prescott National Forest Plan includes designation of a new management area while the Coconino and Tonto National Forests have existing management areas designated for the VWSR. For the Cedar Bench, Red Creek and Skeleton Ridge Grazing Allotments, a site specific assessment will be completed in the future that incorporates CRMP direction into the grazing management plan. Along with the Brown Springs allotment (which has a current NEPA document), these allotments will be brought into consistency with the other five allotments along the Verde River by exclusion of grazing from the riparian area of the Verde Wild and Scenic River.

Project Site-Specific Road and Trail decisions: Coconino FR (Forest Road) 502 will be open to public access from Childs (APS gate) to terminus at Verde River flood plain after FERC decommissioning. Coconino FR 9206Y into existing Childs Campground will be closed to public access. The route will be used to provide motorized administrative access to day-use area and nonmotorized public access to FT (Forest Trail) 48. Coconino FR (Forest Road) 9242 (Cavates Road) will be converted to a nonmotorized trail. Coconino FR 9244 (Verde Falls Road) will be decommissioned for the last one-tenth mile and a new Verde Falls Trail constructed. Coconino FR 9245 will be decommissioned for one-tenth mile of road.



Prescott FR 9709R will be converted to a nonmotorized trail and added to FT (Forest Trail) 16 (Ladders Trail). Tonto FR 16 will be converted in the last one-quarter mile to a nonmotorized trail. For all three Forests, turnarounds and parking, barriers, and signing will be installed at the ends of all public access roads.

Additionally, the Decision Notice adds one public access point across the river from FR 57 to FR 502 between the Coconino and Tonto National Forests in the modified selected alternative (Alternative 3A). Supplemental analysis was done for this modification after the EA comment period.

Project Site-specific Grazing Allotment Management decisions: For the Brown Springs Allotment, permit administration will be modified to bring grazing operations into compliance with the objectives described in the current NEPA and Allotment Management Plan permit. The CRMP standard will be incorporated to exclude grazing in the riparian area. Three water lanes and new trail construction in Brown Springs Allotment will be authorized to bypass the riparian area. These three water lanes for livestock access points were analyzed in the EA and are an exception from the overall exclusion of riparian grazing as required along the rest of Verde Wild and Scenic River. The other exception to the exclusion of riparian grazing is an authorization to allow herding across the Verde River between FR 57 and FR 502 for the permittee who periodically moves livestock from one of their allotments to the other.

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 Officials' decision on the Verde Wild and Scenic River Comprehensive River Management Plan.

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

cc: Carl A Taylor, Katherine Farr, Joy Kimmel, Karl Siderits, Nora Rasure, Mike King,
Mailroom R3 Prescott, Mailroom R3 Coconino, Mailroom R3 Tonto, Constance J Smith, Deidre
S StLouis, Berwyn Brown, Genevieve Romero

Enclosures (2)

REVIEW AND FINDINGS

of

Matthew Bishop's Western Env'l Law Center**Appeal #05-03-00-0001-A215 of****Verde Wild and Scenic River Comprehensive River Management Plan****ISSUE 1: The decision violates National Environmental Policy Act (NEPA)**

Contention A: USFS proposed action- Alternative 3A, was never submitted for public scrutiny. It was not included in the scoping proposal or any of the alternatives in the draft EA.

Response: Discussions and public disclosure of motorized vehicular crossings across the Verde Wild and Scenic River (VWSR) are numerous. Levels of motorized access were identified as an issue by the public in November and December 2001 (PR# 175). The January 23, 2002 scoping letter for the Comprehensive River Management Plan (CRMP) addressed developed recreation facilities and river access points as part of the proposal. Preliminary issues and concerns from the public include designated authorized river access and controlling unauthorized river access (PR# 180).

Vehicular access continued to be identified as a public issue in the Scoping Report (PR# 232), Summary of Public Comments (PR# 241), Project Initiation Letter (PR# 247), and *VWSR Update* mailed to public (PR# 280). The final range of alternatives included actions taken on vehicular access, including Forest Roads #57 and #502, which sent out for public review in the Draft EA (PR #314). Both the No Action Alternative and Alternative #2 would allow Forest Roads #502 and #57 to remain open.

Analysis and disclosure of effects of the river crossing is included in the project record for Alternative #3A (PR# 338). Supplemental evaluations of Alternative #3A are also found in several other specialist reports (PR# 340, 343, 344). Table 2 in the Environmental Assessment clearly displays the actions, by alternative, related to Forest Roads 502 and 57 (PR #349).

Finding: The discussion of river access, including motorized river access, was in the public arena from the beginning and throughout the development of the CRMP. The public was informed of alternatives and management actions related to vehicular access, including roads #502 and 57, and had numerous opportunities for public comment in accordance with 40 CFR §1500.2. The CRMP decision does not violate the National Environmental Policy Act.

Contention B: FS failed to assess impacts of decision to allow a motorized vehicle river crossing between FR 57 and FR 502. Regarding fish and wildlife, the USFS spends a few sentences downplaying the impacts instead of taking a hard look at the issue. Impacts of public recreational access and illegal use were not considered.

Response: See Table 2 in the final EA (PR# 349) which displays the actions by alternative, related to Forest Roads 502 & 57. The alternatives display a combination of open, gated and closed options for these two roads.

Effects to fish: Between 25 and 30 head of livestock will be permitted to cross the river during April and September of each year at FR 57 and FR 502 crossing sites. Effects to T&E species are similar to vehicle river crossings, with effects limited to the crossing area and minimal effects to threatened and endangered (T&E) fish species and their critical habitat. The effects are described as slight impairment to riparian function. No significant effects to T&E species or water quality are noted (Fish Resource section, Livestock Grazing Issue, under Alternative 1 description EA (PR #349 p. 96).

Effects to wildlife: There would be an impact to riparian vegetation but effects would be limited to areas immediately adjacent to roads (EA PR #349 p. 105). Overall there would be beneficial effects to riparian-dependent wildlife because of the exclusion of livestock grazing from riparian habitat in the corridor.

Effects of public recreational access and illegal use: Illegal motor vehicle access including trespass locations are described under Alternative 1. Alternative 3 will prevent illegal cross-country travel and much of the illegal motor vehicle access to the Mazatzal Wilderness and Wild River (EA PR# 349 pp.123-125). Impacts of recreational use are described in the River Use/Capacities Issue (PR #349 pp. 125-130).

In addition to resource specialist reports for the original alternatives, the project record also includes resource specialist reports specific to Alternative 3A. See assessment of impacts to threatened, endangered and sensitive fish and aquatic MIS species (PR# 336). Also see a supplemental evaluation of Alternative 3A on scenery, recreation, and social resources which includes a public river crossing at the Forest Road 502 link with the FR 57 (PR# 338). Supplemental evaluations of the effects of other resources (archeology, transportation system, wildlife) from implementation of Alternative 3A are found in other specialist reports (PR# 334, 340, 343, and 344).

The Decision Notice (PR# 349) documents the rationale for the Alternative 3A and references the supplemental information in the project record to support this decision.

Finding: The conclusions documented in the Environmental Assessment are supported by resource specialist documentation in the project record. The Responsible Official evaluated the analysis and made an informed decision related to vehicular access in accordance with 40 CFR §1500.1 and 1502.1.

Contention C: Cumulative impacts of commercial rafters, private boaters, campers, motorized vehicle use, and livestock grazing were not considered. Past and reasonably foreseeable future activities not only in the River area but also in the watershed need to be included in the analysis.

Response: The direct, indirect and cumulative effects of commercial and noncommercial use (River Use and Capacity), as well as livestock grazing are displayed in detail in several resource specialist reports (PR# 305 – 313). In addition, several supplemental reports provide additional effects analysis (PR# 334, 336, 338, 340, 343, and 344). Included throughout these reports are discussions on the past and reasonably foreseeable activities expected to occur in the river area, including as appropriate, the watershed. These resource reports and corresponding analysis are summarized in the Draft and Final Environmental Assessments (PR# 314 and 348).

Cumulative effects of motorized vehicle use (see references in Contention B) are disclosed. Use at river launch sites and conflicts between campers and river boaters are described also in the Recreation Resource section. Livestock grazing effects to the various resources are included in the EA by section. The cumulative effects recreation analysis area includes the VWSR corridor with future events of expected population growth and increased numbers of recreationists (PR# 349 p. 131). For upland vegetation, the analysis area was all upland vegetation within a 2 mile zone on either side of the river centerline (PR #349 p.122). Cumulative effects analysis area for water resources includes the Verde River Watershed above the Wild and Scenic corridor (PR# 349 p.117). Appendix C of the EA lists known events and designations that are expected to have an impact (PR# 349).

Finding: The conclusions documented in the Environmental Assessment are supported by resource specialist documentation in the project record. The Responsible Official evaluated the analysis of direct, indirect and cumulative effects and made an informed decision related to livestock grazing activities in accordance with 40 CFR §1500.1 and 1502.1.

Contention D: There is no site-specific information on the decision to allow livestock grazing at three access points on the Brown Springs Allotment, such as the location etc. The direct, indirect and cumulative impacts of allowing cattle to water directly within the VWSR at the three access points, allowing grazing in the uplands and allowing cattle to be herded across the VWSR is not assessed in the EA. Effects from grazing on fish and wildlife and scenery are noted in a cursory, conclusory fashion. The cumulative effects analysis fails to establish the proper timeframe. They also feel it is inappropriate to put the analyses off to a future NEPA document for the allotment.

Response: The site-specific actions and commensurate effects of allowing livestock grazing at three access points on the Brown Springs Allotment are discussed within numerous documents in the project record, including the Biological Assessment and Evaluation, and the USFWS Concurrence Letter (PR# 331 and 341). The resource specialist report on livestock grazing (PR# 313) discusses the action of water lanes to access the river. Additional effects analysis from these access points on the resources are discussed in the Fisheries Resource Report (PR# 307), the Historic and Cultural Resources Report (PR# 308), Scenic Quality

Analysis Report (PR# 310), and the Wildlife Resources and Riparian Vegetation Report (PR# 311).

The EA (PR# 349 p.134) identifies the three river watering locations on the Brown Springs Allotment as being located upstream of the falls, upstream of Chasm Creek, and at the south end of Rodeo Pasture. The former access points would require some fencing, the latter is in a dry drainage and the river is too deep for cattle to cross, but a short section of fence across an existing stock trail would be needed to keep cattle in the drainage. The benefits gained by providing the three watering lanes on the river is the exclusion of the majority of the riparian area from grazing by eliminating grazing in the 885-acre Home Pasture (normally used for the permittee's horses), constructing 2 miles of fence in the Coldwater Pasture, and constructing another one and a half miles in the Rodeo Pasture. A trail would need to be constructed upslope of the fence in the Coldwater Pasture to allow livestock to be moved in the pasture without impacting the flood plain.

In terms of effects of the watering points the EA is clear that in terms of scenery (PR #349 p.92), fish (p.97), wildlife (p.105), and water resources (p.116), the effects would be minimal and localized. Positive effects identified include re-vegetation of the riparian area with native vegetation, protection from scouring flows, populations of riparian dependent wildlife, reptiles, mammals and birds, including MIS and migratory birds increasing toward optimum levels based on natural characteristics of the site.

The effects of cattle herding across the VWSR and effects to upland vegetation are displayed in several resource specialist reports (PR# 310, 311, and 344). Impacts to watershed from grazing in the uplands are increased erosion and sedimentation input in the river (EA PR# 349 Fish Resource p.96). Overall there would be beneficial effects to TE&S fish and fish critical habitat. Since grazing is removed from most riparian areas in this alternative, most of the wildlife habitat alteration and effects to wildlife populations would occur from upland grazing (EA PR #349 Wildlife Resource, p.105). Further impact analysis on upland and riparian resources will be done in new NEPA analysis on three allotments (EA PR#349 p.140, and Decision Notice PR #349 table on p.5).

Finding: The conclusions documented in the Environmental Assessment are supported by resource specialist documentation in the project record. The Responsible Official evaluated the analysis and made an informed decision related to livestock grazing on the Brown Springs allotment in accordance with 40 CFR §1500.1 and 1502.1.

ISSUE 2: The appellants feel that the decision violates the Wild and Scenic Rivers Act.

Contention A: The decision to allow access across the river between FR 57 and FR 502 for motorized vehicles does not protect and enhance the river's ORVs of scenery, fish and wildlife, and historic and cultural. This decision also does not comply with the Wild and Scenic Rivers Interagency Guidelines.

Response: Section 10(a) of the Wild and Scenic Rivers Act states that “Each component of the wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system....” This requires protection and enhancement of the outstandingly remarkable values for the river. Wild and Scenic Rivers Interagency Guidelines for the federal managing agencies were developed in 1970, and revised in 1982. These guidelines are not law, regulation, or policy, but provide advice to the agencies to assist with eligibility, classification, and management of wild and scenic rivers. The Interagency Guidelines interpret Section 10(a) of the Act as stating a nondegradation and enhancement policy.

While currently unauthorized, vehicles routinely ford the Verde River between FR 16 and FR 9206Y. This crossing is about a mile downstream from the FR 57 and FR502 crossing. Motorized vehicles illegally trespass into the Mazatzal Wilderness, and people illegally travel downstream cross-country along the Verde River (p.79, EA, PR#349). Cross-country travel along the river impacts riparian vegetation, streambank stability, wildlife habitat, and water quality (p.4, DN, PR#349). To resolve this illegal use and protect river values this decision converts portions of FR16 and FR9206Y to non-motorized access (p.21 EA, p.3 DN, PR#349).

During the public comment period on the EA, many comments were received that expressed concern that closing “cross-river access” would negatively affect recreational access to the river, limit use of historic and traditional off-highway vehicle routes, affect access in emergency situations, and favor permittees over public users (p.4, DN, PR#349). River access was one of the significant issues identified for this analysis. The interdisciplinary team reviewed the potential environmental and social impacts of allowing vehicular access across the river. They considered allowing the river crossing between FR 16 and FR 9206Y, but concluded that it was not reasonable due to the impacts associated with that crossing. They acknowledged that a crossing between FR 57 and FR 502 would cause only short term impacts to water quality, would discourage motorized trespass into the Mazatzal Wilderness, would yield less turbidity because the river bed in this location is more stable and, because of the topography, would make travel up and down the river infeasible (p.1, PR#333).

The public currently does not have access on FR 502 from the Arizona Public Service housing area to the Verde River (p.123, EA, PR#349), unless authorized by permit. The crossing between FR 57 and FR 502 is currently being used by a grazing permittee, Arizona Public Service personnel (p.1, PR#337), and persons with disabilities who obtain a permit (p.4, PR#309). A public crossing between FR 57 and FR 502 is expected to have a low to moderate level of use (p.1, PR #338). PR #338 goes on to explain the reasons people may or may not use the crossing, and anticipated use levels by different users. Mitigation measures are also identified.

Specialist reports were supplemented to identify the effects of the decision to allow the motorized river crossing between FR 57 and FR 502. Following are the findings of the reports related to the ORVs of scenery, fish and wildlife, and historic and cultural:

1. Scenery ORV

According to the Specialist Report for scenery (p.31, PR#310) and the supplemental evaluation that addressed the crossing between FR 57 and FR 502 (p.1, PR#338), scenery will be protected and enhanced over and above the existing situation. The crossing between FR 57 and FR 502 is expected to achieve the Scenic Integrity Objective of High for the Childs area (PR#338, p.1).

2. Fish ORV

Potential effects to fish and fish habitat as a result of this crossing are identified as follows:

Critical habitat exists for razorback sucker and spikedace, but not Colorado pikeminnow (p.13, PR#331). Existing threatened and endangered fish species are razorback sucker, and Colorado pikeminnow (p.17, PR#331).

Impacts associated with the river crossings include direct effects to threatened and endangered fish in the crossing zone through disturbance resulting in temporary displacement and/or disruption of normal behavior; and short-term turbidity extending downstream from the crossing that could temporarily reduce foraging by individuals. The effects to individuals of TE&S fish is minimal because of the low expected occurrence of individuals within the limited area of the crossing, any individuals in the crossing zone would be able to freely move out of the impacted areas, and these species have a high tolerance for turbidity.

There is not expected to be any impact to spawning habitat because the crossing zone does not occur in preferred riffle areas of cobble bars and the low amounts of fine sediments that are washed downstream into potential spawning sites would tend to be flushed out by high flows. Expected direct effects to critical habitat in the crossing zone would be through impacts to the floodplain and streambanks at the entry points, short-term turbidity affecting water quality, and fine sediment displacement that could impact macroinvertebrate populations in the riffle areas immediately downstream of the crossing. Impacts to critical habitat are limited in extent and are not expected to change the existing habitat conditions of the area. Fish ORVs are protected and enhanced similar to Alternative 3 (p.2, PR#337). Alternative 3 provides a greater level of protection and enhancement than the existing situation (pp.14-17, PR#307).

As a result of consultation on the impacts of this project on threatened and endangered species, the US Fish and Wildlife Service stated that the expected direct effects to threatened and endangered fish species which occur in the area would be “insignificant and discountable” for the following reasons: 1) low expected occurrence of adult individuals within the limited area of the crossing due to lack of preferred habitat; 2) low expected occurrence of young of the year due to lack of spawning and nursery habitat, and 3) vehicles will only be able to use the crossing during low flow periods (typically May through December), which does not correspond to the razorback sucker spawning period (January through April). They also concurred with the Forest Service conclusions regarding critical habitat (PR #341, p.4), and stated that effects would be insignificant and discountable.

3. Wildlife ORV

According to the Supplemental Specialist Report for Wildlife, the river crossing would affect vegetation and habitat suitability to some degree, but the effects would be confined to the immediate area of the road and crossing. Habitat potential for threatened, endangered, proposed and sensitive species is low or unsuitable at this road and crossing site and no terrestrial species have been observed. The river channel and vegetation characteristics at this proposed crossing prevents travel downstream or upstream and should not affect vegetation or habitat outside the immediate crossing site (PR#344, p.3).

4. Historic and Cultural

According to the supplemental specialist report for heritage resources, allowing the river crossing between FR 57 and FR 502, removes the only potentially adverse effect to historic and cultural resources identified in any of the original alternatives. It also facilitates access into the corridor for monitoring and law enforcement, thus providing an increased level of both protection and enhancement. Over, this alternative offers a distinct advantage over Alternative 3 (PR#340). Page 107 of the EA (PR#349) states that historic and cultural resources are best protected from vandalism and looting by active management, particularly observation and monitoring.

Finding: This decision improves the existing situation by converting portions of two roads (FR 16 and FR 9206Y), currently being used to access an illegal Verde River crossing, to non-motorized trails. This action eliminates negative impacts to riparian vegetation, streambank stability, wildlife habitat and water quality from the illegal use at this crossing and prevents motorized users from continuing downstream and into the Mazatzal Wilderness. The decision to allow a motorized public crossing between FR 57 and FR 502 is based on supplemental evaluations of the associated impacts. These analyses conclude that there will be only minimal effects to the ORVs due to the limited size of the crossing, anticipated low to moderate levels of use, current habitat conditions, and the likely timing of crossings. For the historic and cultural ORV, conditions would be improved. Therefore, this decision is consistent with the “protect and enhance” standard of Section 10(a) of the Wild and Scenic Rivers Act.

Contention B: The Forest Service is not pursuing a federal reserve water right quickly enough, thus not properly protecting and enhancing the river’s outstandingly remarkable values.

Response: The Forest Service filed a Statement of Claimant (SOC) in the Gila River adjudication for instream flows in the Verde River under both the state law and as a reserve right (EA PR# 349, p 63). In contrast with waiting an unknown period of time for the adjudication of a federal reserve right for instream flows in the Verde, the Forest Service invested in the flow measurements and reporting necessary to obtain a state Certificate of Water Right with a priority date approximately 16 months junior to the federal reserve priority date. Under Arizona state law, the SOC can be amended up to the finalization of the

state Hydrographic Survey Report (HSR) for the Verde River Watershed. There is no anticipated date for the start of the Verde HSR.

The Verde River is within the General Adjudication of All Rights to Use Water in the Gila River System and Source. In the May 30, 1986 Pre-Trial Order Number 1 Judge Goodfarb started the process to “set a general framework within which the adjudication of water rights in the Gila River System and Source may be determined” To date, the court has been working on that framework. Because of the McCarran Amendment, 43 U.S.C.A. § 666 and United States v. District Court in and for the County of Eagle, 401 U.S. 520, 91 S.Ct. 998, 28 L.Ed.2d. 278 (1971) the Forest Service is not treated differently than any other claimant in the adjudication and we cannot accelerate adjudication of our claims over those of others.

Finding: The Forest Service has filed a Statement of Claimant for a federal reserve water right, and while awaiting adjudication has obtained a state certificate for instream flows. Additional assessment to better support the SOC is planned for completion well before any anticipated deadlines to amend the SOC.

Contention C: The Comprehensive River Management Plan fails to properly address user capacities. FS is required to include specific measurable limits on use in the CRMP to protect the River’s ORVs. The FS has not described an actual level and type of visitor use that will not adversely impact the VWSR’s ORVS as required. This decision also does not comply with the Wild and Scenic Rivers Interagency Guidelines.

Response: Section 3(d)(1) (not Section 4 as stated by the appellants) of the Wild and Scenic Rivers Act requires that Comprehensive River Management Plans address user capacities. Wild and Scenic Rivers Interagency Guidelines for the federal managing agencies were developed in 1970, and revised in 1982. These guidelines are not law, regulation, or policy, but provide advice to the agencies to assist with eligibility, classification, and management of wild and scenic rivers. Relative to river carrying capacity, the Interagency Guidelines state that “Studies will be made...to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the area”.

The EA and CRMP document a number of decisions that address user capacities as required by the Act, and the quantity and mixture of recreation and public use, as suggested by the Interagency Guidelines. This includes:

Non-motorized Emphasis – a number of decisions were made to emphasis non-motorized recreation in the VWSR area:

- 1) Portions of a number of roads will be closed (pp.18-21, EA, PR#349), and no new roads shall be built (p.19, CRMP, PR#348)
- 2) Several new non-motorized trails will be created (p.22, EA, PR#349).
- 3) Motorized watercraft will be prohibited on the entire VWSR, in contrast to the current situation where it is allowed on the scenic river section (p.22, EA, PR#349)
- 4) Dispersed camping will be allowed to continue along the entire river corridor except in areas with seasonal closures and at developed sites (p.28, EA, PR#349).

Recreation Facility Capacities

- 1) Five new trailheads will be constructed, with identified parking capacities (p.22 EA, PR#349).
- 2) A day use only boat launch/take-out will be constructed (p.32, EA, PR#349).
- 3) Childs Campground facilities will be relocated out of the floodplain. The Childs Campground area will be converted to day use only (p.28, EA, PR#349). Other than this site no new developed campgrounds or picnic grounds shall be constructed (p.22, CRMP, PR#348).
- 4) The Verde Hot Springs area will be day use only with no campfires allowed (p.28 EA, PR#349), and improvements are allowed only under certain conditions (p.22, CRMP, PR#348).
- 5) The Beasley Flat and Childs areas are managed for higher levels of visitation and to provide river access (p.15, CRMP, PR#348).
- 6) The road and trail systems to be maintained in the VWSR corridor are identified (pp.22-23 CRMP, PR#348).

ROS and WOS Classifications, and Scenic Integrity Objectives

- 1) Facilities and capacities should be consistent with designated ROS, WOS, and Scenic Integrity Objectives (p.18, CRMP, PR#348). ROS classifications for the VWSR corridor identify the amount of interaction between users that could be expected, and range from very low to high. WOS classifications for the VWSR corridor identify the frequency of encounters that could be expected, and range from very infrequent to high frequency (pp. 45, 46, 49, CRMP, PR#348).
- 2) Contact levels between recreation parties shall meet ROS and WOS parameters (pp.39-40, CRMP, PR#348).

Restrictions on Visitor Use to Protect Resources

- 1) The VWSR corridor will continue to be closed to cross-country motorized travel (p.15, EA, PR#349)
- 2) Seasonal no-stopping areas on the river will continue to protect bald eagles (p.23, EA, PR#349).
- 3) Overnight river runners will be required to carry out their waste, and to remove ash from the river corridor (p.28, EA, PR#349).
- 4) Actions ... shall be implemented where alteration of riparian vegetation occurs beyond the boundaries of designated sites (p.18, CRMP, PR#349).
- 5) Camping and campfires may be restricted, as needed, depending on the results of resource monitoring (p.19, CRMP, PR#349).
- 6) Additional dispersed camping regulations may be implemented as needed to protect riparian and scenic values (p.19, CRMP, PR#349).
- 7) Any use that unacceptably alters a healthy aquatic ecosystem within the Wild section would be reduced and managed to an acceptable level (p.37, EA, PR#349).
- 8) Human waste and charcoal/fire pits are to remain at levels consistent with the Scenic Integrity Objectives (p.17, CRMP, PR#349).

- 9) LAC indicators and guidelines are to be established and monitored (pp.39, 40, CRMP, PR#348). Monitoring will be conducted in accordance with LAC standards (p.15, EA, PR#349).
- 10) Monitoring for impacts to scenery, streamside vegetation, bald eagles, archaeological resources, water quality, which could be related to visitor use impacts, are included in the Monitoring Program, along with associated management actions that could be implemented to correct unacceptable conditions (pp.36-39, CRMP, PR#348).

River Capacity

- 1) Opportunities for new commercial uses are very limited. The number of commercial use permits and user days allowed to be permitted is identified, maximum group sizes, and number of launchers per day (pp.29, 30, 40, 41, EA, PR#349). For non-commercial users, the number of persons per day allowed to launch is identified. Group size is also identified, and a mandatory registration system would be implemented (p.30, EA, PR#349).

Finding: A great deal of detail has been provided in the EA and CRMP that address user capacities as required by the Act, and the quantity and mixture of recreation and public use, as suggested by the Interagency Guidelines. The EA and CRMP thoroughly address user capacities.

Contention D: Insufficient funding is not a legitimate reason for not complying with the Wild and Scenic Rivers Act.

Response: The CRMP Implementation Schedule (CRMP, PR# 348, p.25) addresses the budget question saying if budget allocations are insufficient, activities may need to be rescheduled, and insufficient budgets over a period of years could cause an inability to implement proposed activities and achieve some of the desired conditions. The development of planning standards for the river management plan and amendment of the three National Forest Plans is not dependent on budget, it has been done with this project analysis (EA PR#349 p.3).

Finding: The CRMP provides direction to protect and enhance the river's values across the three Forests. The Wild and Scenic Rivers Act is being complied with.

Contention E: The decision to allow access across the river for cattle, 3 river access points for watering cattle, grazing in the uplands, and installation of fencing does not protect and enhance the river's ORVs of scenery, and fish and wildlife.

Response: Section 10(a) of the Wild and Scenic Rivers Act states that each component of the wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in the system. This requires protection and enhancement of the outstandingly remarkable values for the river.

Current Situation Relative to Grazing: Grazing is currently allowed on nine allotments, four of which allow grazing in the riparian areas along the Verde River. On the four allotments

allowing riparian access, cattle have already been removed or numbers have been limited on three of them, and reduced on the fourth, to meet requirements of the Endangered Species Act (p.5, DN, PR#349). Monitoring on all allotments documents general improvement in vegetative condition (p.80, EA, PR#349).

Livestock grazing has affected the ORVs of scenery, and fish and wildlife in the recent past and has been a continuing disturbance to wildlife and fish habitat since before VWSR designation. Currently, the most substantial impact to these ORVs from grazing, are in the riparian areas (p.5, DN, PR#349).

Grazing related actions included in the decision: Livestock will be excluded from grazing on almost 37 miles of riparian area where they are currently allowed, which is in addition to the four miles where they are already excluded. Livestock would be allowed to water at three river locations within the Brown Springs Allotment (p.27, EA, PR#349). Additional fencing would be built to keep livestock out of riparian areas and to create water lanes on the Brown Springs allotment (p.136, EA, PR#349). Livestock are allowed to cross the river twice a year between FR 57 and FR 502 (p.96, EA, PR#349). Cattle will continue to be allowed to graze in the uplands, consistent with protection and enhancement of water quality and ORVs. Only minimal range improvements would be developed and only when essential to management. Unsatisfactory rangelands in the uplands would be treated through improved grazing management and modification of existing allotment management plans (p.27, EA, PR#349).

Removal of the cattle from the riparian areas or development of new management prescriptions will provide a level of protection that will mitigate nearly all of the current impacts to ORVs (p.6, DN, PR#349). Where livestock grazing is allowed, improvement in ecological trend or condition would be maintained through intensive livestock management practices. Monitoring of resource uses would occur frequently enough to prevent exceeding these impact standards (p.35, EA, PR#349)

The following numbered sections summarize the anticipated effects to the ORVs from implementing the grazing actions.

1. Scenery ORV

Effects: The effects of these actions are documented on page 92 of the EA. Because of exclusion of cattle from the riparian area, most visitors would no longer encounter visual impacts of grazing, such as cattle waste, trampled ground, and trampled vegetation, except at the 3 watering sites. Cattle fencing at the watering sites would be visible from the river, although they would be located and constructed to minimize their visibility (p.24, CRMP, PR#348). Throughout the remainder of the corridor, range fences would be less visible. Alternative 3 will provide protection and enhancement over and above the existing condition, achieving a very high scenic integrity level within the VWSR (p.31, PR#310).

2. Fish and Wildlife ORV

FISH

Effects: The effects of these actions are documented on page 97 of the EA (PR#349), and page 2 of PR #337. Direct effects to TE&S fish and critical habitat would be reduced from current grazing along 37 miles of river to approximately ¼ mile of river. Streambank and riparian conditions would improve on almost 37 miles of river. There would be impacts to TE&S fish from water access on the Brown Springs allotment, and from the livestock river crossings, however, these impacts would be limited in extent and area, with minimal effects. Fish would be protected and enhanced to a greater degree than the existing situation.

WILDLIFE

Effects: The effects of these actions are identified on page 105 of the EA (PR#349). This alternative would result in beneficial effects to riparian-dependent wildlife species. Localized adverse impacts may occur in association with the three livestock watering points and the river crossing between FR 57 and FR 502. Most, if not all, of the habitat alteration and effects to wildlife populations due to livestock grazing would occur in upland areas in this alternative. Herbaceous riparian vegetation would recover under this alternative and herbaceous riparian species composition would change to native species over time. Areas capable of producing woody riparian species would recover. Banks in heavily grazed areas would revegetate.

The impacts of cowbird parasitism on nesting success of riparian bird species would be reduced. Parasitism would likely continue at some level.

Populations of riparian dependent animals would increase toward optimum levels. Habitat for MIS and migratory birds using pinyon-juniper woodlands and desert grasslands habitats are projected to remain stable. Habitat for MIS and migratory birds using desert scrub areas is projected to trend upward. Aquatic habitat is expected to show an upward trend on half the aquatic acres, while open water areas will remain stable.

Mitigation and Monitoring (all resources): The decision also identifies mitigation measures to reduce impacts of the actions, and a monitoring plan to ensure that implemented actions are achieving desired results (pp.33, 37, 94 of EA, PR#349 and pp.16-24, 35-40, CRMP, PR#348).

Finding: The various decisions relative to grazing result in substantial improvements to the Verde Wild and Scenic River's ORVs. As a result of implementing this decision, scenery, and fish and wildlife conditions are expected to improve. Through site selection and mitigation measures, the effects of twice yearly livestock crossing on an existing motorized crossing, livestock access to water at three locations on one allotment, grazing in the uplands, and anticipated fencing are minimal. Considered with appropriate livestock management throughout the river corridor, this decision is consistent with the "protect and enhance" standard of Section 10(a) of the Wild and Scenic Rivers Act.

ISSUE 3: The decision violates the National Forest Management Act and the LRMPS for the three Forests affected.

Contention: The Forest Service did not follow the NFMA regulations for the river vehicle crossing, water access and cattle herding decisions related to:

- 1) Adequate public participation,
- 2) MIS population and habitat data,
- 3) Off-road vehicle use to protect land and resources,
- 4) Suitability and capability of the Verde River corridor for grazing,
- 5) Compliance with the Clean Water Act and all State law requirements regarding use of surface waters in the National Forests,
- 6) Compliance with Executive Orders on floodplain and wetland protection,
- 7) Protection requirements for streamsidess and riparian areas.

Response:

- 1) An extensive public participation effort is in the project record. This effort included the publishing of a Notice of Intent in the Federal Register (PR #138), numerous public meetings, posting of notices at convenient locations along the affected river locations, mailing letters and updates to the public, interviews and other activities.
- 2) Effects to MIS are found in the EA (PR#349, pp.101-107) regarding livestock grazing on MIS habitat and populations. EA Appendix A (pp.177-179 and PR#239) lists MIS affected by the action and analyzed. The Biological Assessment and Evaluation (PR#311) provides a list of MIS from all three National Forests, with the amount of habitat within the project area that is affected. BAE Appendix 4, pages 1-4 states in tabular form whether this habitat trend is stable, increasing, or declining with a conclusion on viability. Specific impacts to MIS for the selected alternative were discussed in the Fish Resources specialist report (Macroinvertebrates, PR#307, pp.12, 20-21; and PR #337, p. 3) and the Wildlife and Riparian specialists report (Riparian-dependent species, PR #344). Effects of the project on habitats of other MIS were discussed in PR#311 (Appendix 4, p. 3).
- 3) Resource specialists evaluated the impacts of allowing vehicles to cross the river between FR 57 and FR 502 as an off-road use and identified effects that are short term in nature, minimal, and limited. See water resources at PR#334, fisheries report on minimal effects with no impacts to spawning habitat (PR#337) and limited impacts to critical habitat. USF&WS stated that effects to T&E fish species and critical habitat would be “insignificant and discountable” (p.4, PR#341). There would be increased recreation use at a low to moderate level. The crossing has many natural barriers to stop unauthorized cross-country travel. Effects to scenery would be from vehicle tracks and the road leading into the river, with a resulting Scenic Integrity level of high (PR#338). The effects to archeology are only positive (PR#340). For wildlife and riparian, effects to vegetation and habitat suitability would be confined to the immediate area of the crossing (PR #344).

- 4) NFMA does not require that a suitability analysis be conducted at the project level. The Forest Plan complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the three Forest Plans. The EISs for Prescott, Coconino, and Tonto Land and Resource Management Plans describe acres considered suitable for rangeland in Affected Environment and Environmental Consequences chapters.
- 5) The project record provides documentation and support that the decision complies with the Clean Water Act and Arizona Water Quality statutes and that appropriate protection and mitigation and monitoring is planned (DN, PR# 349, p.15, EA PR# 349 p. 112-114).
- 6) The project record shows that the decision makers considered Executive Orders 11988 and 11990 and confirmed full compliance (DN, PR# 349, p. 15).
- 7) Under the selected alternative, all livestock grazing will be excluded from the riparian habitat along the Verde River (DN, PR# 349/FONSI, p.4-6). Three minor access points for livestock watering and a small area for livestock crossing will be allowed. These planned actions and activities are entirely consistent with riparian area management prescriptions contained in the Tonto, Prescott and Coconino National Forest Plans.

Finding: NFMA has been complied with in this plan that amends the three Forest Plans and makes some site-specific decisions to protect resources. Effects to resources have been disclosed and are mainly beneficial to the resources with only limited impacts.

ISSUE 4: The decision violates Executive Orders 11644 and 11989, on Use of Off-Road Vehicles on Public Lands (February 8, 1972 and May 24, 1977).

Contention: Allowing a river crossing for motorized vehicles violates these Executive Orders.

Response: Executive Order 116-44 (EO), as amended by Executive Order 11989, establishes policies and procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of these lands (Section 1). Section 3 of the EO states that areas and trails for off-road vehicle use shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public land; and to minimize harassment of wildlife or significant disruption of wildlife habitats. Section 3 (4) (b) states that there will be adequate opportunity for public participation in the promulgation of regulations and in the designation of areas and trails. Finally, Section 9 states that the agency shall immediately close such areas or trails to the type of off road vehicle causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat, and cultural or historic resources of particular areas or trails of the public lands. Thus, the Executive Order states that the agency must minimize damage to natural and cultural resources.

A review of the Verde CRMP project record clearly demonstrates that the potential for adverse impacts were carefully analyzed, considered, and minimized when compared to the existing situation. The record also shows that there was public participation. Specialist

reports for water resources (PR #334), fisheries (PR #337), and cultural resources (PR #340) all analyze potential effects of the selected alternative and determine that this alternative will reduce adverse impacts to each of the above resources. The Environmental Assessment (PR #349) indicates there would be reduced effects to scenery (page 91). At pages 93 and 94, it concludes that the selected alternative would eliminate unauthorized river crossings, thus reducing adverse impacts to threatened and endangered fish and their critical habitat. At page 101 it concludes there would be reduced impacts to wildlife.

The Decision Notice (PR #349) discusses the decision not to construct a ford at the river crossing because such construction would significantly increase off road vehicle use and would affect the free-flowing character of the river (page 4).

Finding: The decision does not violate Executive Orders 11644 and 11989. Impacts to natural and cultural resources were analyzed; the selected alternative does minimize impacts to these resources; and public participation was adequate.

ISSUE 5: The decision violates sections 7 and 9 of the Endangered Species Act.

Contention: The Biological Assessment and Evaluation, and USF&WS concurrence is inadequate and incomplete. Effects of allowing motorized travel between FR 502 and FR 57 were never assessed. Allowing motorized vehicles will also result in “take” of razorback sucker, Colorado pikeminnow, spikedeace, loach minnow, bald eagle, and the southwestern willow flycatcher in violation of section 9 of ESA. Proposed action will also result in adverse impacts to critical habitat for razorback sucker, spikedeace, loach minnow and southwestern willow flycatcher.

Response: The effects of the river crossing between FR502 and FR57 were disclosed in PR#337 (listed fish and critical habitat) and PR#344 (listed wildlife). The effects of the crossing were incorporated in to an amended Biological Assessment provided to the U.S. Fish and Wildlife Service on March 15, 2004 (PR#331). The U.S. Fish and Wildlife Service clearly considered these impacts in their evaluation of the effects on listed and candidate species (PR#341, pp. 3, 4, and 10). The effects of the crossing were considered to be insignificant and discountable by the U.S. Fish and Wildlife Service, which concurred with the determinations of the Forest Service biologists.

The specific effects of livestock grazing on fish, wildlife, and riparian habitats are discussed in PR#331, PR#337 and PR#344. The number of livestock allowed to cross the Verde River from the Skeleton Ridge allotment to the Ike’s Backbone allotment is limited by an amendment to the Skeleton Ridge Allotment Management Plan (PR#194). The management of the Skeleton Ridge and Ike’s Backbone allotments are also summarized in PR#206. Annual operating instructions (PR#29, 66, 82, 90, 118, 140) show that authorized numbers crossing the Verde River to and from Ike’s Backbone allotment have not exceeded the number of livestock used to determine the impacts to listed species in the amended Biological Assessment, as well as other specific effects on listed species and critical habitat

(PR#331). The U.S. Fish and Wildlife Service concurrence clearly considered the impacts of the crossing on listed species and critical habitat, as well as other specific effects of livestock grazing within the project area (PR#341, pp. 2-7)

Finding: All legal requirements of the Endangered Species Act have been met.

ISSUE 6: The decision violates Forest Service policy and the WSR Interagency Guidelines.

Contention: Allowing motorized vehicle crossing between FR 57 and FR 502 violates the FSH, FSM and WSR Interagency Guidelines. The Forest Service did not follow policy found in FSM and FSH 2200, 2300, 2500, 2600, and 2700 pertaining to watershed, fish and wildlife, recreation, rights-of-way, and wilderness management. The Forest Service also did not follow guidance found in the Interagency Guidelines' general management principles.

Response and Finding: Forest Service Manual direction and Wild and Scenic River Interagency Guidelines were used in development and analysis of the project. Laws and regulations applicable to the decision are reviewed and displayed in the Decision Notice (PR #349). Refer to the earlier responses specifically on the Wild and Scenic River Act.



File Code: 1570-1/2300
Route To:

Date: December 2, 2004

Subject: ARO, Appeal #05-03-00-0001-A215 Verde Wild and Scenic River
Comprehensive River Management Plan

To: Deputy Regional Forester, Appeal Deciding Officer

This is my recommendation on the disposition of the appeal filed in protest of the above-named Decision Notice and Finding of No Significant Impact on the Prescott, Coconino and Tonto National Forests.

Forest Supervisors Rasure, Siderits, and King signed the decision on June 14, 2004 and published the decision on September 3, 2004. The Forest Supervisors are herein termed as Responsible Officials. Matthew Bishop filed an appeal of this decision representing several groups 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, policies, 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 understand what will occur as a result of the decision.
- 2) The selected alternative should accomplish the purpose and need established. The EA amends the three Forest Plans in order to establish protection of the Verde Wild and Scenic River values and also makes some site specific decisions on roads, trails and grazing activities.
- 3) The decision is consistent with policy, direction, and supporting evidence. The record contains documentation regarding resource conditions. The Responsible Officials' decision documents are based on the record and reflect a reasonable conclusion.



- 4) The record reflects that the three Responsible Officials provided ample opportunity for public participation during the analysis and decision making process. The Responsible Officials' 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 Officials conducted a proper and public NEPA process that resulted in a decision amending their plans consistent with national direction. I found no violations of law, regulations, or Forest Service policy.

Recommendation

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

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

cc: Constance J Smith, Deidre S StLouis, William M Larsen, Mailroom R3 Prescott, Mailroom R3 Coconino, Mailroom R3 Tonto, Mailroom R3

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