



File Code: 1570-1

Date: May 14, 2009

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**e-Certified Mail**

**91 7108 2133 3933 0585 1952**

Dear Mr. Lininger:

This is my review decision on the appeal you filed for Center for Biological Diversity (lead) and Grand Canyon Chapter of the Sierra Club on March 30, 2009, regarding the Decision Notice (DN), Environmental Assessment (EA), and Finding of No Significant Impact (FONSI) on the above-referenced project. The Jacob Ryan Project provides for vegetative management across the north central portion of the Kaibab Plateau on 26,000 acres in both even-aged and uneven-aged ponderosa pine stands on the North Kaibab Ranger District. The decision will also implement prescribed burning on the same acres following mechanical treatment to reduce fuel loading.

### **BACKGROUND**

District Ranger Tim Short made a decision on February 5, 2009 for the Jacob-Ryan Vegetation Management Project. 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 215.17, 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 215.18. 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 the actions to be taken and purpose and need are clearly described, and that the public involvement process was appropriate with ample opportunity for public participation.

However, the rationale for the selection of Alternative 2 versus Alternative 3 was not clearly supported by the record. The decision and analysis do not demonstrate compliance with direction in the Kaibab Forest Plan, agency policy, direction and supporting information regarding cumulative effects, and 1996 goshawk requirements. A copy of this recommendation letter is enclosed. Therefore the Appeal Reviewing Officer has recommended a reversal of the decision.

The Appeal Reviewing Officer has recommended a reversal of the decision, and a copy of his letter is enclosed.

**Recommendation**

Based on my review and findings, I recommend that the Responsible Official's decision relating to this appeal be reversed for additional work in several areas:

1. Preparation of a comprehensive and consistent cumulative effects, analysis and boundary, for all impacted resources.
2. Development of a clear description of the effects to VSS 4 under all action alternatives when compared to a no-action alternative.
3. Determination on the need to amend the KNF LMP if it is deemed that the proposed treatments will move the VSS 4 class away from the standards and guides under a selected alternative.
4. Sending out of a new Decision Notice for another comment period with decision rationale that is fully supported by the EA and project record documentation.

**APPEAL DECISION**

After a review of the record and the Appeal Reviewing Officer's recommendation, I am reversing the Responsible Official's decision on the Jacob-Ryan Vegetation Management Project. The enclosed technical review explains the points that need to be addressed before a new decision can be issued.

A proposed project with new analysis of effects must be made available for public notice and comment under provisions of 36 CFR 215 before a new decision is issued on the Jacob Ryan project. This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR §215.18(c)]. A copy of this letter will be posted on the national appeals web page at <http://www.fs.fed.us/appeals>.

Sincerely,

*/s/ David Mertz (for)*  
MICHAEL R. WILLIAMS  
Forest Supervisor

Enclosures (2)

cc: Constance J Smith  
Derek J Padilla  
Timothy Short

**REVIEW AND FINDINGS**  
**Center for Biological Diversity and Sierra Club's**  
**Appeal #09-03-07-0001-A215 of**  
**Jacob-Ryan Vegetation Project, North Kaibab District**

For the purposes of this review, contentions have been re-arranged from the original appeal order so that they are addressed in the context of applicable laws, regulation and directives.

**ISSUE 1: The Jacob-Ryan Vegetation Project violates NEPA**

**Contention A:** The Jacob Ryan EA fails to respond to substantive comments provided by appellants regarding conserving forest structure as recruitment for old growth forest (appeal p.2). The EA fails to address scientific information supplied by appellants that drought will inhibit forest growth. The appellant cites Savage et al. 1996 and Seager et al. 1997 (appeal p. 3).

**Response:** The regulations at 40 CFR 1503.4 (a) require that an agency preparing a final environmental impact statement shall assess and consider comments and shall respond by one or more of the means listed below, stating its response in the final statement: (1) modify alternatives including the proposed action. (2) Develop and evaluate alternatives not previously given serious consideration by the agency. (3) Supplement, improve or modify its analysis. (4) Make factual corrections. (5) Explain why the comments do not warrant further agency response, citing sources, authorities, or reasons which support the agency's position and, if appropriate; indicate those circumstances which would trigger agency reappraisal or further response.

While the Responsible Official must demonstrate consideration of comments when making a decision based on an Environmental Assessment, a detailed, formal response to comments is not required. For the Jacob Ryan EA, consideration of comments is demonstrated in a response to comments appendix (EA, PR #100 Appendix I). Responses to concerns related to conserving forest structure and the effects of drought on forest growth are located on pages 156-157 and 164-165 (PR #100).

Regarding the contention that the Forest Service failed to address scientific information supplied by the appellants: to be adequately considered and addressed in decision making, the articles cited would need to have been submitted prior to the decision. There is no evidence that the articles cited in the appeal (Savage et al. 1996 and Seager et al. 1997) were provided to the Forest Service prior to the decision. While the record indicates that a Seager et al. 2007 article was submitted to the Forest Service with the appeal, there is no evidence that this article was cited in, or submitted with, the comment letter submitted by Center for Biological Diversity.

Although the Savage et al. 1996 and Seager et al. 1997 articles were not submitted to the Forest Service, the record contains numerous other scientific articles that were considered in the analysis and decision making process. The Decision Notice/ Finding of No Significant Impact (PR #102, p. 4) notes that this project used the best available science from scientists like Richard Reynolds, Peter Fule and Wallace Covington and many others who are authorities in the fields of

goshawk habitat and ponderosa pine restoration. Opposing science material from authorities like Dana Backer, and R. Seager also informed the decision.

**Finding:** The Responsible Official appropriately considered comments submitted by the appellant and considered the best available science in making the decision on the Jacob-Ryan project.

**Contention B:** The Forest Service rejected Alternative 3 which would not cut trees greater than 12 inches dbh without rationale, relying on conjecture about tree growth rate and progress toward desired vegetation structure. Reasons for rejecting limits on tree cutting over 12 inches dbh run counter to information in the record and are arbitrary and capricious. Also refer to Issue 2C on the Contention which contains reasons for rejecting Alternative 3 (appeal pp. 2, 14).

**Response:** The decision maker selected Alternative 2, a proposal that would allow thinning of trees less than 18 inches in diameter at breast height (dbh). Alternative 3 would have allowed thinning of trees less than 12 inches dbh. The effects of both alternatives were examined in the EA (PR #100, Chapter 3). However, the effects description for both alternatives shows diameter breast height for both Alternatives 2 and 3 to be the same through 2048 (PR #100 table 20 p.35). The amount of area to remain in VSS 4 after treatment under either alternative is not clear. The only description shows existing VSS 4 at 20 percent which is the desired condition and so the maintenance of VSS 4 class at Forest Plan standards is uncertain.

**Finding:** The documentation in the EA and record does not support the rationale in the Decision Notice for selection of Alternative 2 (diameter limit of 18 inches) as compared to Alternative 3 (diameter limit of 12 inches).

**Contention C:** The quality and distribution of goshawk habitat after implementation of the proposed action is ignored (appeal p.3). The proposed action may cause significant environmental impacts to numerous sensitive, management indicator, and other wildlife species including northern goshawk and its prey as well as result in adverse impacts to recreation and other resource uses (appeal p.9). Canopy reductions caused by logging in VSS 4 groups will harm other sensitive wildlife in addition to goshawk such as the Kaibab squirrel (appeal p.13).

**Response:** Analyses of effects to wildlife are found in the Biological Evaluation/Wildlife Specialist Report (PR#54) and the EA (PR#100, pp. 59-82). Effects to sensitive and management indicator species, including the Kaibab squirrel are disclosed (PR#54, pp. 22-23, 31-32; PR#100, pp. 68-69, 76, 82) and Northern goshawk (PR#54, pp. 10-18, 26-27; PR#100, pp. 61-65, 71-72, 82). Analysis of effects to the Kaibab squirrel included disclosure of effects of reduced canopy closure.

**Finding:** Effects to threatened and sensitive wildlife species, in particular the Northern goshawk and Kaibab squirrel, were analyzed and adequately disclosed.

**Contention D:** An EIS is required for this project. The environmental effects of the project are highly controversial because the new goshawk guidelines will result in substantially more logging within goshawk habitat than was anticipated by the 1996 ROD. There is a substantial difference of opinion regarding the potential impacts of the KNF I&I guidelines as shown by

comments from the Arizona Dept of Game and Fish (appeal p.23). The overall impacts on the northern goshawk and other species is highly uncertain and unknown as highlighted by the Arizona Dept Game and Fish comments at EA page 158. The proposed action claim that trees would be growing into larger diameter classes at a faster rate from harvesting than taking no action is also highly uncertain and not supported by science (appeal pp.27-28).

**Response:** Agencies may initially prepare an environmental assessment (EA) and if the analysis supports a Finding of No Significant Impact (FONSI), the action is exempt from the requirements to prepare an EIS (40 CFR 1500.4 (q)). In preparing a FONSI, the agency considers both the context and intensity of effects related to several significance factors (40 CFR 1508.27). The following factors were raised by the appellants:

- The degree to which the effects on the quality of the human environment are likely to be highly controversial, and
- The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

Regarding controversy and uncertainty, the appellant notes that Arizona Department of Game and Fish expressed concern about recent “clarification” regarding measuring canopy cover at group level rather than stand level indicating this could have the potential to significantly reduce the amount of forest cover within treated areas (PRs #29 and 90). The comments are valid but the Jacob Ryan project will meet or move towards desired conditions as described in the Kaibab National Forest Land and Resource Management Plan (PR #1). Canopy cover requirements will be retained where they currently exist. Project treatments are designed to maintain and achieve forest plan standards and guidelines (PR #100, Tables 6, and PR #46 Tables 3 and 4).

Anticipated effects to northern goshawk from thinning projects such as Jacob Ryan are not highly uncertain or unknown. Ample research supports that northern goshawk is a forest habitat generalist that uses a variety of forest types, forest ages, structural conditions, and successional stages (PR # 2, p. 1). The Jacob Ryan project is designed, in part, to improve existing uneven-age stands as well as begin to convert existing even-age stands to uneven-age stands. One objective of the Jacob Ryan project (PR #100, p. 8) states “there is a need to reduce stand densities to promote a sustainable size-class distribution and an interspersed mosaic of vegetative structural stages in an uneven-aged forest structure.”

**Finding:** An EIS is not required for this project because of comments from Arizona Department of Game and Fish. An EIS is also not required for this project in following guidance from the 1996 Regional amendment where effects have been analyzed previously and effects on goshawk are not uncertain or unknown.

**Contention E:** An EIS is required for this project. The environmental effects of removing larger trees especially over 16 inches dbh are controversial because it has potential to further degrade ponderosa pine forests which are already threatened. There is a rarity of large-diameter trees, and removal of trees larger than 16 inches dbh cannot be justified on ecological grounds. Removal of large trees will cause irretrievable losses of future mature and old forest structure, therefore an EIS is required (appeal pp.3, 23-25).

**Response:** Table S2 in the EA (PR #100 p.114) clearly shows that there is not a rarity of large diameter trees. In fact there are more than the required minimum of VSS 5 and 6 classes. VSS 4 is at forest plan standards once the allowed plus/minus 3 percentage point range is applied. With a diameter cap of 18” no trees within the VSS 5 or 6 classes will be cut.

**Finding:** Removal of large trees does not trigger the need for an EIS, however as noted previously, the data as presented in the Jacob Ryan EA and project record does not support further removal of VSS 4. The EA and project record do not clearly indicate whether the project will reduce VSS 4 acreage, or simply implement thinning within VSS 4 stands while maintaining the current amount of VSS 4 acreage. A Forest Plan amendment should have been prepared if the intent is to allow reduction of VSS 4 below the Plan standard.

**Contention F:** An EIS is required because of cumulatively significant impacts with this project. The Jacob Ryan EA fails to address the overall cumulative impacts of other projects near the project area. Post-fire logging in the Warm Fire area is mentioned but the EA fails to provide the detailed quantified information or hard look required by NEPA (appeal p.28).

**Response:** NEPA requires that environmental documents estimate the cumulative environmental effects (40 CFR 1508.25 and FSH 1909.15, 15.1). Cumulative effects result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7). If the cumulative impacts are considered significant, preparation of an EIS is required.

In 2006, the Warm Fire burned approximately 59,000 acres immediately adjacent to the Jacob Ryan project (PR # 100, Figure 2, p. 7). The fire resulted in loss of vegetation, soil impacts, and loss of wildlife habitat and species. Recent and on-going projects related to the Warm Fire include removal of hazard and burnt trees along Highways 67 and 89A by Arizona Department of Transportation (ADOT), as well as hazard tree removal along Forest Service system roads and trails by the Forest Service. Additionally, ponderosa pine and Douglas fir seedlings were planted in severely burned areas of the Warm Fire. For the reasonably foreseeable future, a salvage sale and additional reforestation in a portion of the moderate to high severity burned area is proposed (PR # 100, Appendix E, pp. 136 and 137).

The cumulative effects area for soils and watershed includes Kanab Creek and Marble Canyon watersheds and fully encompasses the Warm Fire area, however, no discussion of the effects on soil and water resulting from the proposed salvage operation in Warm Fire is discussed.

There is no discussion in the vegetation section on the effect of the Warm Fire and the proposed salvage activity on VSS classes in the cumulative effects area.

With respect to fire, the cumulative effects discussion describes how the Warm Fire Recovery Project is designed to remove standing dead fuel and will be followed by replanting of seedling trees to help initiate and speed recovery of the burn area. The recovery project as well as several other projects would contribute to a much lower risk of stand-replacing wildfires for the analysis area (PR #100, p. 43).

The wildlife cumulative effects area includes the Warm Fire. The cumulative effects discussion by wildlife species acknowledges the effects of the Warm Fire on habitat, but fails to mention the reasonably foreseeable Warm Fire salvage sale and its potential effects on goshawk and other wildlife species other than the Hairy Woodpecker (PR # 100, p. 73). The summary on habitat and populations refers to foreseeable fuel reduction activities for some species in Table 39 (PR #100, pp. 81-82).

**Finding:** Post-fire logging in the Warm Fire area is identified in the cumulative effects table of the EA (PR # 100, p. 137). The Warm Fire is within the defined cumulative effects boundary for Vegetation, Soil and Water, Fire, and Wildlife. The EA and Decision Notice fail to adequately discuss the cumulative effects of salvage logging on these resources.

## **ISSUE 2: The Jacob-Ryan Vegetation Project Violates NFMA.**

**Contention A:** The standards and guidelines in the Kaibab Forest Plan for northern goshawk habitat have been misapplied (appeal pp.2-3). The Forest Service has failed to show that the J-R project will comply with the KNF Plan's mandatory standards and guidelines for the northern goshawk (see appeal list of 15 items) as referenced in the Plan pages 27-34 (appeal pp.10-11).

**Response:** The following respond to the numbered contentions provided by the appellant on pp. 10-11 of their appeal:

1. The entire North Kaibab (including the Jacob Ryan project area) has been monitored for Northern Goshawks every year since 1991 (Biological Evaluation/Wildlife Specialist Report, PR #54, p. 26).
2. Maps of Nest Areas, Post-Fledging Areas (PFAs), and all other areas (collectively known as "Foraging Areas"), are found in the EA (PR #100, p. 62), the BE (PR #54, p. 11), and a map (PR #5). Explanations of how Nest Areas and PFAs were delineated are clarified (PR #4 and PR #12).
3. The Vegetation Specialist report clearly states (PR#46, p. 19), "Our first entry is designed to move these [even-aged stands] towards uneven-aged condition." Additionally, "...we realize there will be...an abundance of acres in VSS 5-6." For uneven-aged stands, the report states on page 28, "No VSS 5 groups would be thinned with the implementation of vegetation management for Jacob-Ryan." Thus, even-aged stands will be moved toward uneven-aged, and older uneven-aged stands will not be treated.
4. The EA (PR#100, pp. 25-26) contains mitigation measures for retention of large trees, pre-settlement trees, snags, and downed logs.
- 5 and 6 The EA (PR#100, p. 13; cf. Appendix A), Vegetation Specialist Report (PR #46), Supplement to the Vegetation Specialist Report (PR #63), and BE (PR #54, pp. 12-14) show that a mix of VSS classes are present in the current condition and projected condition.

Effects will move the project area toward plan desired conditions and will provide cover for goshawk prey.

7. The proposed action prohibits project-related activities inside active PFAs from March 1 to September 30 (EA, PR #100, p. 26).

8. The effects to soils are discussed in the EA (PR #100, pp. 54-55). With the implementation of BMPs (EA, PR #100, Appendix H), vegetative ground cover would be maintained or improved, soil loss would be reduced, and long-term adverse effects would be prevented (PR#100, p. 55).

9. The EA (PR#100, Appendix A, p. 114) displays forest structural characteristics at scales above the project level. The Vegetation Specialist Report (PR#46) analyzes forest structural characteristics at the project level, above the project level, and several strata below the project level. There are mitigations (PR#100, pp. 25-26) that require retention of snags, downed logs, and woody debris at forest plan minimum levels.

10. The EA (PR #100, p. 13; cf. Appendix A), Vegetation Specialist Report (PR #46), Supplement to the Vegetation Specialist Report (PR #63), and BE (PR #54, pp. 12-14) shows that all VSS classes are present in the current condition. Effects will move the project area toward plan desired conditions.

11. Appellant provided the forest plan definition of snags, downed logs, and woody debris.

12 and 13. The Vegetation Specialist Report (PR#46, p. 14 and 29) and EA (PR#100, p. 114) shows that project stands do not currently meet Forest Plan standards for canopy closure. Canopy closure requirements (40 percent or greater) in even-aged stands will be met at the group level. The Supplement to the Vegetation Specialist Report (PR #63) states that the proposed action would increase canopy cover. Thus, the project is moving canopy closure toward forest plan desired conditions.

14. A memo (PR #12) explains that Nesting Areas were determined using all existing and historical nest sites, even if this meant more than the 6 required nesting areas per PFA. Each nest site was placed at the center of a 30-acre polygon, and the existing vegetation around that site was used regardless of VSS class. Since the location of Nesting Areas was determined by actual goshawk use (either current or recent), this more than meets the intent of the Forest Plan for Nesting Area designation.

15. There are no new or temporary roads associated with the project (EA, PR#100, p. 55).

**Finding:** The project complies with the Kaibab National Forest Land Management Plan.

**Contention B Canopy Cover:** The public cannot determine from the EA whether the proposed action will maintain the older VSS class and canopy cover required by the KNF Plan. As the Arizona Dept of Game and Fish commented (EA page 158), that targeting for 40-70 percent canopy cover in clumps/groups with no indication of how large or small the



clumps/groups are makes it difficult to envision forest cover overall. The EA statement at page 121 implies that canopy cover standards in VSS 4-6 will be met over time but not immediately after the proposed thinning treatments (also refers to Vegetation Report graphs and tables). The EA never quantifies existing canopy cover or effects of the proposed action (appeal pp.10-13).

**Response:** Existing canopy cover is quantified in the EA (PR #100 p. 9) across the project landscape for the mid-aged forest (VSS 4) as 32 percent and in the mature and old forest (VSS 5/6) as 57 percent, however based on the records; the correct canopy cover percent for these two VSS classes is closer to 28 percent.

Various tables (PR # 100, Table 6 p. 13 and PR # 46 tables 3, 4, and 15) display the number of trees per acre needed to meet desired characteristics for goshawks. By maintaining a minimum number of trees per acre by VSS class there is assurance that stands will not be opened up more than needed to meet goshawk guidelines. The desired forest after treatment is displayed in a picture at Figure 5 of EA (PR #100 p. 17). This picture shows small openings between groups of trees. The forest, post treatment, contains enough trees to keep the forested appearance, yet open enough to keep trees vigorously growing.

**Finding:** Project management is designed to increase growth rate and canopy cover within the VSS 4, 5, and 6 classes. Management described in the EA will move the forest toward conditions described in the forest plan. The analysis in the record of VSS has errors.

**Contention C Vegetation Structure and Effects on Structure:** The data in the EA (EA pages 13, 112-114 and tables S42, S2 and Table 5), do not agree with the statement that the VSS 4 structure is too abundant. No analysis or evidence supports the claim and the agency does not specify (see EA pp. 34-35), at what scale the VSS 4 exceeds KNF Plan standards. No data shows what VSS classes will increase or decrease and at what intensity (appeal pp. 18-19). The point that higher residual tree densities would cause more mortality from competition and vulnerability to disturbance is contradicted by the data in Figure 11 from the Vegetation Report (appeal p.26). The EA fails to quantify short- or long-term effects of logging on size class distributions, tree growth rates, basal area, canopy cover, snags, downed logs, or other aspects of habitat structure in any stratum. The ad hoc analysis at EA pages 112 and 114 fails to disclose effects of the proposed action on habitat structure, it only evaluates existing and desired conditions (appeal pp.15-17).

**Response:** The EA statement of abundant or excess VSS 4 class on the project area (PR #100, p. 34) is not consistent with tables and charts in the project record which show VSS 4 (size class of 12 to 18-inch trees) at the desired 20 percent. At the ad hoc scale, the EA (PR #100 p. 113) states that percentages of trees in the various VSS classes are averages and only excess trees in the VSS 4 class would be cut.

The general description in the EA (PR #100 p.113) is that stands which are densely stocked with small trees will have increased inter-tree competition, resulting in mortality. The EA specifically says that the Stand Density Index is presently at 55 percent of maximum and that competition-induced mortality usually starts to occur between 57 percent and 60 percent. This statement is consistent with silviculture as taught at the university level and found in published literature.

**Finding:** It is not clear in the project record what exactly will happen to the VSS 4 size class after treatment. There should be tables and/or description(s) to display effects to VSS 4 under the two action alternatives when compared to a no-action alternative.

**Contention D Scales of Analysis:** The 26,000-acre project scale and the 78,000-acre ad hoc scale are not recognized as valid scales in the KNF Plan or in the 2007 Region 3 Implementation Guide as the three spatial scales (appeal p.19). The strata level of analysis from 8,000 to 18,000 acres (EA at page 114 on Table S2), is considerably larger than the appropriate small site scale of evaluation for habitat structure in the KNF Plan (appeal pp.15-17). The ad hoc analysis area for 78,000 acres was used for both the large scale analysis for goshawk vegetation structure and the mid-scale analysis for the status of old growth at the same time. This blurs the distinct scales identified in the KNF Plan. The ecosystem management area scale should be about 250,000 acres (KNF Plan page 36). Use of this ad hoc analysis area is an arbitrary deviation from three distinct levels in the KNF Plan (appeal pp. 17-18).

**Response:** Three levels of analysis are described in the EA (PR #100 p. 109) and the first few pages of the Vegetation Specialist Report (PR #46). This included analysis at the strata level (even-aged and uneven-aged), the project level and at the larger ad hoc analysis area. Subsequent paragraphs within the EA go on to explain why the Kaibab NF plan was corrected to be consistent between the Forest Plan and the 1996 Amendment of Forest Plans. The rationale is laid out and described. The use of these three scales shows compliance with the Forest Plan as amended. The analysis also displays the different scales relative to analysis for old growth and other habitat parameters such as VSS, canopy cover, etc.

**Finding:** The analysis at different scales meets the intent of the Forest Plan.

**Contention E Nest habitat:** The project will not meet KNF Plan standards for vegetation structure in goshawk nest areas on 3,205 acres. (See EA page 16 Table 12 for VSS 5 and 6 classes). The EA fails to specify a target condition for basal area and canopy cover in nest stands. The Jacob Ryan EA fails to describe the effects of the proposed action on nest habitat structure. As appellants submitted in their comments to the EA, the Proposed Action does not show that it will maintain the required nest stand attributes or model the results for replacement nest stand (appeal pp.20-21). The EA at page 32 (Table 19) shows that current conditions across all goshawk nest stands in the project area do not meet KNFP standards for lack of large trees, high density and for low basal area and low average diameter values (appeal p.22).

**Response:** Goshawk nest areas were determined using actual nest sites and this could result more than the minimum number of 6 nest areas per PFA (PR #12). Although this meant that some Nest Areas contained younger vegetation classes, the BE (PR #54, p. 13) states that no trees over 9" dbh will be removed in Nesting Areas. Also, all known nest areas (BE, PR #54 p. 16) will be protected by buffer zones and seasonal restrictions.

The Vegetation Specialist Report shows that the vegetation in the project area was stratified by nesting areas and replacement nesting areas (PR #46 pp. 2, 10-11, 15-16), and this included projected post-treatment stand conditions. Target conditions for nest areas are available in the

EA as well as supporting documentation within the project record. There is no requirement within the KNF Land Management Plan for trees per acre, dbh, or basal area within goshawk nesting areas.

**Finding:** Location and protection of Northern goshawk nesting areas meets or exceeds Kaibab NF LMP requirements. The project does an adequate job of disclosing nest stand effects.

**Contention F:** No EA or EIS was prepared for updated goshawk guidelines and the KNF Plan was not amended to adopt the new guidelines. The new guidelines (Implementation and Interpretation of Management Recommendations for the Northern Goshawk, Version 2.1 December 2005, or KNF I&I- 2005), is relied upon for the Jacob Ryan project and will lead to significantly different outcomes. The new guidelines were used without any public input, notice or participation prior to their implementation. This is use of a *de facto* amendment which was ruled invalid in the Revised Lynx Conservation Strategy court case (Oregon Natural Resources Council 252 F.Supp.2d at 1099) (appeal pp.6-8).

**Response:** Referring to earlier responses on vegetation, the VSS analysis for this project did not clearly show the outcome of the action alternatives against standards; so a determination of the need for any Forest Plan amendment on the project could not be made.

**Finding:** A consistency check of the Jacob Ryan project as implementing the KNF I&I Guidelines under the Kaibab Forest Plan is difficult with the current analysis.



United States  
Department of  
Agriculture

Forest  
Service

Santa Fe National Forest

Cuba Ranger District  
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Cuba, New Mexico 87013  
505-289-3264

File Code: 1570-1

Date: May 14, 2009

Route To: ( )

**Subject:** ARO, Appeal #09-03-07-0001-A215, Jacob Ryan Vegetation Management Project, North Kaibab Ranger District, Kaibab NF, Center for Biological Diversity

**To:** Mike Williams, Forest Supervisor and Appeal Deciding Officer, Kaibab National Forest

This is my recommendation on the disposition of the appeal filed in protest of the Decision Notice for the Jacob Ryan Vegetation Management Project, North Kaibab Ranger District, Kaibab National Forest.

District Ranger Tim Short signed the decision on February 5, 2009. The District Ranger is herein termed as the Responsible Official. Mr. Jay Lininger, representative of the lead appellant, Center for Biological Diversity, filed an appeal of this decision under the 36 CFR 215 appeal regulations.

#### Informal Disposition

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

#### Review and Findings

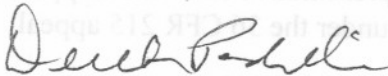
- 1) The documentation in the Environmental Assessment (EA) and record does not support the rationale in the Decision Notice for selection of Alternative 2 (diameter limit cap of 18 inches) as compared to Alternative 3 (diameter limit cap of 12 inches). Effects that were disclosed had little to no difference between the two alternatives.
- 2) The EA fails to adequately discuss the impacts of cumulative effects across all resources. The cumulative effects boundary was not consistent from resource to resource. One specific example is the Warm Fire and associated activities. In the Vegetation section salvaging logging is discussed but then is not mentioned at all for other resources (i.e. watershed, soils, etc.).
- 3) Lastly, it is not clear what will happen to Vegetation Structural Stage 4 (VSS4). Information within the project record indicates that VSS 4 is at or below the Kaibab National Forest land management plan (KNF LMP) standards and guidelines. There is no information that depicts how the proposed treatments will impact VSS 4. If the analysis indicates that VSS 4 will be reduced below the plan standards and guides this would be inconsistent with the KNF LMP and an amendment to the plan would be necessary, but it is not possible to determine this with the available information in the project record.



Recommendation

Based on my review and findings I recommend that the Responsible Official's decision relating to this appeal be reversed for additional work in several areas:

1. Preparation of a comprehensive and consistent cumulative effects, analysis and boundary, for all impacted resources.
2. Development of a clear description of the effects to VSS 4 under all action alternatives when compared to a no-action alternative.
3. Determination on the need to amend the KNF LMP if it is deemed that the proposed treatments will move the VSS 4 class away from the standards and guides under a selected alternative.
4. Sending out of a new Decision Notice for another comment period with decision rationale that is fully supported by the EA and project record documentation.



DEREK PADILLA  
District Ranger

*[Faint mirrored text from the reverse side of the page is visible throughout the document, including phrases like 'Review and Findings', 'Informational Disposition', and 'Pursuant to 36 CFR 212.17, an attempt was made to seek informal resolution of this appeal. The record reflects that informal disposition was not reached.']*