Analyzing USDA Forest Service Appeals: Phase I, the Database

Hanna J. Cortner Gretchen M. R. Teich Jacqueline Vaughn

March 2003

Ecological Restoration Institute

The Ecological Restoration Institute

The Ecological Restoration Institute at Northern Arizona University is a pioneer in researching, implementing, and monitoring ecological restoration of southwestern ponderosa pine forests. These forests have been significantly altered over the last century, with decreased ecological and recreational values, near-elimination of natural low-intensity fire regimes, and greatly increased risk of large-scale fires. The ERI is working with public agencies and other partners to restore these forests to a more ecologically healthy condition and trajectory—in the process helping to significantly reduce the threat of catastrophic wildfire and its effects on human, animal, and plant communities.

The Program in Restoration Policy at the ERI strives to connect the ecological aspects of restoration with wider social and policy issues. The Program conducts a variety of social science research and outreach activities guided by the explicit assumption that ecological restoration and ecological sustainability are intricately linked to human community, society, and democratic processes. For more information contact us at the address below.

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Forest Service appeals: the database -

Introduction

Over the past thirty-five years, the U.S. has adopted an extensive network of laws, administrative regulations, and public participation requirements to make federal agencies consider the environmental as well as economic and technical feasibility of their projects, and to hold them accountable for their decisions. Requirements of the National Environmental Policy Act of 1969 (NEPA), Endangered Species Act restrictions, the right to appeal projects, and provisions for citizen suits open agency decisions to extensive public review, and force agencies to revisit favored plans and projects. The USDA Forest Service (USFS) and President George W. Bush have argued that this plethora of laws and their misuse have resulted in a "process predicament" and "analysis by paralysis" (USDA Forest Service, 2002a; USDA Forest Service, 2002b; Bush, 2002). The legislatively-mandated appeals process of the Forest Service, which allows parties to appeal a Forest Service decision to proceed with a project, has been cited as a major impediment to moving fuels reduction and ecological restoration projects forward—projects that would reduce the potential for catastrophic wildfires, such as those the nation witnessed during the 2000 and 2002 fire seasons. Environmental groups are most often painted as the culprits, using procedural requirements to stall, delay, or cancel timber sales, fuels reduction activities, vegetation management, and restoration projects.

With Oregon's largest ever fire—the 499,570-acre Biscuit fire—as a backdrop, President Bush announced his Healthy Forests Initiative in August 2002, recommending expediting the environmental review of restoration projects, eliminating the Forest Service's statutorily-mandated project appeals process, and revising the criteria the judiciary could use in deciding whether to grant injunctive relief to appellants. Legislation to implement these policy recommendations was introduced into both the 107th and 108th Congresses. In December 2002, the Bush administration proposed rule changes to part 215 of Title 36 of the Code of Federal Regulations (CFR)—the section pertaining to projects subject to the NEPA planning process. The proposed rule would expand the definitions of "emergency situation" and "categorical exclusion" to limit the current right to administratively appeal project decisions (64 FR 77451). In addition, prior to announcing the Healthy Forests Initiative, the President had convened a White House task force to review NEPA and make further recommendations for regulatory revision. Not surprisingly, the Bush proposals have created a political firestorm among various stakeholder groups.

This paper reports on the first phase of a project being conducted by the Ecological Restoration Institute (ERI) at Northern Arizona University. This project is designed to systematically document and analyze the outcomes and impacts of administrative appeals and NEPA processes on the formulation and implementation of fuels reduction/ecological restoration projects using a variety of evaluative measures, both quantitative and qualitative. Such an analysis has not been previously conducted. This is indeed surprising given the political attention appeals are receiving from policymakers, the public, and the media in

relation to the nation's wildfire problems (as part of the larger picture of regulations for environmental planning and analysis). For such a politically contentious issue, there has been no comprehensive and systematic analysis of the outcomes of the appeals process, even though selected anecdotal evidence is being abundantly cited and used as the basis for policy changes.

The first phase of the ERI project consisted of outlining the overall appeals process. Before selecting individual cases for in-depth examination we wanted to know, for example, how many appeals are processed by the USFS each year, who the appellants are, whether project delays are created by the appeals process, and the types of projects being appealed. We discovered that answering these questions was not as simple as might have been expected, and found it necessary to construct our own database of Forest Service appeals. This report describes the process of constructing this database, the choices made, and the problems encountered in making those choices. It also presents the results of analysis derived nationally, for two Forest Service regions—Region 6 (Oregon and Washington) and Region 3 (Arizona and New Mexico)—and for four forests in Arizona: the Apache-Sitgreaves, Coconino, Kaibab, and Prescott¹.

Both the General Accounting Office (GAO; 2001) and the Forest Service (2002a, 2002b) prepared reports discussing the magnitude of the appeals "problem," but neither report was generated from a comprehensive database. Two reports laid out the problem from the Forest Service perspective. The first, *The Process Predicament*, provided largely anecdotal evidence to conclude that appeals can greatly delay a project, sometimes with "disastrous results" (USDA Forest Service 2002b, p. 29). The June 2002 report was followed by a July 2002 analysis, Factors Affecting Timely Mechanical Fuel Treatment Decisions, prepared in response to a request from a member of Congress. Using information supplied by its regional offices, the document examined 326 decisions to implement mechanical treatments for hazardous fuels reduction on National Forest System lands in FY 2001 and FY 2002 (as of June 27). Of the 326 projects it labeled as mechanical treatments of hazardous fuels, the document concluded that approximately one-half (155) of all decisions were appealed; Region 1 (Montana, Northern Idaho, North Dakota, and NW South Dakota) reported that 100 percent of its 53 projects involving mechanical treatments were appealed. Of the projects appealed, the document indicated that six percent (21) have been litigated (USDA Forest Service 2002a). On the basis of this data, the USFS concluded that "administrative appeals and litigation contribute significantly to the time it takes to plan for and decide on fuels projects prior to implementation" (USDA Forest Service 2002b, p. 4)². The Forest Service

¹Region 3, and the four forests in northern Arizona, are of particular interest because of the location of Northern Arizona University in Flagstaff, Arizona. Another phase of this project involved a workshop in Troutdale, Oregon, to discuss development of an evaluative framework to examine the impacts of appeals. Analysis of Region 6 is included in this report as it is of particular interest to workshop participants in the Pacific Northwest.

² The Forest Service subsequently revised the numbers in its *Factors* report. An agency spokesperson stated the initial report was "compiled as a 'speedy response' to a congressional inquiry" and the Forest Service has since rechecked its numbers. The revised numbers include 206 (rather than 326) mechanical thinning treatment projects, with 143 (or 69%) of them appealed (Stempeck 2002).

documents were prompted, in part, by an earlier General Accounting Office (2001) report that relied upon data supplied by Forest Service headquarters and regional offices. The GAO analysis found that of 1,671 hazardous fuels reduction projects (not just limited to mechanical treatments) identified for implementation during FY 2001, only 20 (one percent) had been appealed and none litigated.

Subsequent to release of these reports, environmental organizations prepared their own analyses to counter the Forest Service's data about the extent to which project appeals and litigation impede fuels reduction projects. Both the Forest Trust and the Wilderness Society contended that the agency's July 2002 report was characterized by biased sampling, unreliable data, and unsupported conclusions (Morton and McCarthy, 2002; Wilderness Society, 2002). Both organizations, for example, noted that the Forest Service's report did not include prescribed burn projects that were intended as fuels reduction projects, and included projects that were not fuels reduction projects. Of the 155 projects that were administratively appealed, the Forest Trust identified several that were incorrectly included in the USFS sample, as well as the lack of a consistent definition to identify mechanical treatments to reduce hazardous fuels. The Forest Trust also pointed out that the Forest Service included 37 projects in its analysis that it had not reported to investigators for the GAO study. The Wilderness Society noted that the USFS report also failed to include projects not subject to appeal, even though such projects are still subject to legal challenge.

The Forest Service and GAO reports focused primarily on the question of how many fuels reduction projects (that presumably would lessen the risk of large wildland crown fires) had been challenged by appeals and litigation, and not on the question of the overall impacts and outcomes of appeals. There was a presumption in the Forest Service reports, for example, that the filing of an appeal meant delay and that such delays were positively correlated with exacerbating the wildfire problem. There was no attempt to take a more expansive look at appeals to include their purpose and role in governance, or their costs and benefits arrayed along a variety of criteria and indicators—economic, social and institutional. That was not their purpose, but that is the overall intent of the ERI study.

ERI's database, of course, does not answer questions about the outcomes and impacts of the appeal process that the study ultimately wants to evaluate. During Phase II of the project, participants in a January 2003 workshop in Troutdale, Oregon, discussed development of an evaluative framework for determining the outcomes and impacts of appeals. Once this framework is finalized, case studies from the database will be drawn during a third phase of project work to ensure a representative sample. The database, however, does provide a departure point for answering questions about the numbers of appeals the agency has faced, and how they are distributed by year, region, CFR section, and types of appellants.

The Database

The data set includes 3,635 administrative appeals records of decisions reached between January 1, 1997, and September 30, 2002, and available on the Forest Service's website, www.fs.fed.us/forum/nepa. The Forest Service is required to post its appeal decisions online, as the result of a 1999 court settlement between the Wyoming Outdoor Council and the Forest Service:

The Forest Service agrees that...the Freedom of Information Act, as amended, requires the Forest Service to make available by computer telecommunications or other electronic means Forest Service administrative appeal final decisions issued on or after November 1, 1996. (Byrd 1999)

Because of the date stipulated in the agreement, as well as the 7-year file retention policy for appeals (Segovia 2002), it is unlikely many records would be available prior to 1996. Although some decisions from 1996 were available online, this was not consistently the case across National Forests or Regions. Consequently, we did not include 1996 records in the study and began our analysis with 1997 data. We chose September 30, 2002, as the ending point for the analysis to accommodate any lag time involved in posting appeal documents on the Internet. The time lag varies greatly across National Forests and Regions—in some instances, newly posted decisions were more than 18-months old. Several records that are more recent were available, but again this was not consistent across National Forests or Regions. In addition, some participants at the January 2003 workshop expressed concern that not all decisions related to their appeals had been posted online. Therefore, we can only say with confidence our data set includes all appeal records posted on the Forest Service website as of January 17, 2003.

Unlike the GAO report or the Forest Service's analyses of appeals filed in relation to mechanical fuel treatments, our database focuses only on recorded appeals. We did not attempt at this point, for example, to determine how many fuels reduction projects out of the total number of project decisions made by the agency were, in fact, appealed.

Our analysis is limited to decisions made at the Regional level, and does not include decisions made by the Washington, D.C. Office of the Forest Service. Washington Office decisions include appeals of Land and Resource Management Plans (Forest Plans), as well as discretionary reviews of regional decisions. This study concerns administrative appeals of National Forest projects only; as such, we did not include appeals of Forest Plans in the data set. However, Forest Plan *amendments* may be appealed as projects at the Regional level. Therefore, appeals of Forest Plan amendments decided at the Regional level are included in the database.

Decisions made by District Rangers, Forest Supervisors, or Regional Foresters under Title 36 of the CFR (sections 217 and 251) are subject to multiple levels of review. For instance, the Forest Service Chief, at his/her discretion, may review a dismissal or appeal

decision made by a Regional Forester. The Forest Service refers to this as discretionary review. Additionally, the Secretary of Agriculture may elect to review a dismissal or appeal decision made by the Forest Service Chief. Federal regulations explain discretionary review of appeals under 36 CFR 217.17(a):

Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review. In electing to exercise discretion, a Reviewing Officer should consider, but is not limited to, such factors as controversy surrounding the decision, the potential for litigation, whether the decision is precedential in nature, or whether the decision modifies existing or establishes new policy.

Section 251.100(a) of CFR Title 36 uses identical language to explain discretionary review of decisions related to permits and written authorizations. Regulations found under 36 CFR 215 do not mention discretionary review.

Discretionary reviews are made of the existing appeal record only. The Forest Service does not reopen the appeal record for either the appellant or the original reviewing officer to provide additional information. Consequently, including discretionary reviews conducted by the Washington Office would result in double counting some appeal files. For instance, if the Washington Office exercised discretionary review on an appeal filed by Appellant X and decided in Region 3, then including the discretionary review in the database would erroneously inflate the number of appeals filed by Appellant X because the appeal was actually filed only once (in Region 3).

As mentioned previously, the database includes only those appeals processed at the regional level. Discretionary review decisions have been included when exercised by a Forest Supervisor (reviewing a District Ranger's decision) or a Regional Forester (reviewing a Forest Supervisor's decision).

While not including Washington Office discretionary reviews, examination of data presented on the website does give a general idea of the kinds of cases brought up for discretionary review and their disposition. During the study period, for example, the Minerals and Geology Management staff of the Washington Office exercised discretionary review on 14 appeals. One decision was rescinded due to a procedural error and another was not decided within the designated time (letting the Regional Forester's decision stand). The Regional Foresters' decisions were reversed in three cases and affirmed in the remaining nine cases. Thirteen decisions were reviewed in the area of Wildlife, Fish and Rare plants—all of them addressing protection and recovery for the Mexican spotted owl and northern goshawk in Region 3 (Arizona and New Mexico). The Regional Forester's decision was affirmed in 12 of the 13 cases. One appeal was dismissed without review. The Lands and Realty Management staff considered 93 appeals during the study period. More than 60 percent (58 of 93) addressed land exchange decisions. During the study period, the Washington Office did not exercise discretionary review for any decisions in the following areas: engineering, forest

management, range management, and watershed and air management. We could not determine the number of appeals considered in the area of Recreation, Heritage, and Wilderness Resources because that link on the Forest Service website was not accessible.

Figure 1 provides an example of one appeal record developed as part of the ERI database. Variables include: the CFR section under which the appeal was filed, the identifying appeal number, Forest Service region, National Forest name, month and year of appeal, date of decision, project type, appellants, disposition of the appeal and federal statutes cited in the appeal.

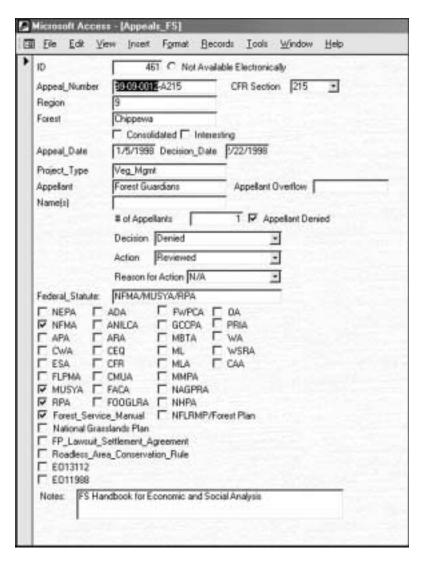


Figure 1. Sample appeal record from the ERI database.

Table 1. Forest Service decisions subject to appeal and governing regulations.

Decision	Rule Appealed Under	
Forest Plan Revisions & Amendments (NFMA)	36 CFR Part 217	
Projects or Activities documented in an EA, EIS or Decision Memo (NEPA)	36 CFR Part 215	
Permits or written authorizations	36 CFR Part 251 Subpart C	
Determinations, decisions, recommendations NOT in NEPA document/decision	Not Subject to Appeal	

www.fs.fed.us/forum/nepa/appealsoverview.htm

CFR Section

All administrative appeals of Forest Service decisions are reviewed in accordance with regulations promulgated by the Forest Service in the Code of Federal Regulations (see Table 1). Decisions related to the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA) are subject to Forest Service appeals regulations found in Title 36 of the CFR, Parts 215 and 217 respectively. Decisions related to occupancy and use of National Forest lands, such as rulings on special-use permits, are subject to appeal under 36 CFR 251, subpart C.

The CFR section under which the appeal was filed was explicitly mentioned in the vast majority of appeal decision letters sent to the appellants. Of the 3,635 records in the database, the CFR section was "undetermined" in only 121 cases. In these cases, the online record did not mention any CFR sections.

Given the proposed rule changes to 36 CFR 215 published in December 2002, and our particular interest in fuels reduction and ecological restoration projects, we paid particular attention to administrative appeals filed under Part 215 in this report. Throughout the report, appeals filed under 36 CFR 215 are referred to as "215 appeals." In each section of the report, we have compared the number of 215 appeals to the number of total appeals both by year of decision and by appellant.

Appeal Number

Each Forest Service region assigns distinct record numbers to appeals of its decisions, which are used as unique identifiers for each record. Some Regional Forester decisions referenced multiple appeal numbers. In these cases, each appeal number was given a unique record in the data set and marked as "consolidated." (The check box marked "Interesting" was used for internal ERI project notes on a record and contains no quantitative data.) Second level appeals (when Forest Service officials exercised discretionary review) were also recorded separately, as long as the appeal number was unique. The assumption was made if the Forest Service official assigned a new appeal number, then the appeal was being treated as a new file. Without knowing the Forest Service rationale for assigning new or keeping existing appeal numbers for the purposes of discretionary review, we followed the Forest Service's lead and only counted as new those files for which a new number was assigned.

Region and Forest

There are nine Forest Service regions: 1, 2, 3, 4, 5, 6, 8, 9, and 10 (see Figure 2). Each appeal was coded by Region and by the National Forest from which the appeal originated. Some appeals were filed with multiple National Forests (when projects crossed Forest boundaries), and they were documented accordingly by including both National Forest names in the appeal record. For example, the database includes records of appeals filed with the "Prescott"



Figure 2. Map of USFS Regions; www.fs.fed.us/contactus/regions.shtml

National Forest, "Coconino" National Forest, and the "Prescott/Coconino" National Forests. The records marked as "Prescott/Coconino" are unique records, i.e., they were not also recorded for each Forest separately.

Appeal Date

One of the frequently asked questions in the debate over administrative appeals is how long it takes to process an appeal, and therefore what degree of project delay can be attributed to the administrative appeals process. However, we are unable to determine the answer at this point. Because the filing dates of the original appeals were often not included in the publicly available electronic files, we could not address a key policy question—the average length of time from filing of an appeal to the final appeal decision. For instance, of the 3,635 appeals in the data set, original filing dates are not available for 2,265 records (or 62%). Consequently, we used the date of decision to link an appeal to a particular calendar year. However, we did include the filing data in the database when available.

Disposition of the Appeal

The analysis includes appeals either reviewed or dismissed by a Forest Service official, as well as appeals filed and eventually withdrawn by the appellants themselves. The reviewed appeals are categorized as one of four decision types: a) denied in full, b) granted in full, c) denied with instructions, or d) partially denied or granted. The Appeal Deciding Officer is responsible for either "denying" or "granting" the appeal. In some cases with multiple appeal issues, the Deciding Officer denies some issues and grants others. In other cases, the appeal is denied in full, but the Deciding Officer provides additional instructions to the Responsible Official to modify the project. These designations were clear-cut in the vast majority of appeal decision letters sent to the appellants.

Dismissals by Forest Service officials were generally the result of a choice not to exercise discretionary review, decisions not subject to the appeals process, or procedural errors (e.g., timeliness, content requirements, project scope, and lack of standing). For example, project appeals must meet content requirements outlined in 36 CFR 215.14, which require an appellant to:

- 1) State that the document is an appeal filed pursuant to 36 CFR part 215;
- 2) List the name and address of the appellant and, if possible, a telephone number;
- 3) Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;
- 4) Identify specific change(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects;
- 5) State how the Responsible Official's decision fails to consider comments previously provided...and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

Section 217.9 of CFR Title 36 outlines similar content requirements. Any failure to meet these criteria results in a dismissal. The Appeal Reviewing Officer determines an appellant's standing, or the right to file an administrative appeal, by whether the appellant submitted comments or otherwise expressed interest during the comment period on the proposed action or draft environmental impact statement (36 CFR 215.11(a)). Likewise, the appellant must file the appeal within the designated 45-day filing period once a decision has been issued (36 CFR 215.13(a)).

Dismissals also include cases in which the parties informally settle contested issues outside of the formal appeals process. Sections 215.16, 217.12, and 251.93 of CFR Title 36 provide for "informal disposition of appeals" or "resolution of issues." Informal resolution involves a meeting between the appellant and the Forest Service official responsible for the decision under appeal. If the issues are resolved, Section 215.16 states the appellant must withdraw the appeal within 15 days of the meeting, at which time the Appeal Deciding Officer closes the case. If the appeal is not then withdrawn, the formal appeal process resumes and the Appeal Deciding Officer issues a decision on the initial appeal. The original appeal number is retained throughout the process.

Appellants

Appellants were designated as either private citizens or organizations (names of organizations were included). The "private citizen" designation was used for individuals when there was no evidence that they were filing on behalf of a group, and where there was no group affiliation in the return address. In some records, it was not possible to determine whether individuals were members of an organization, but the assumption was made that they were not filing on behalf of an organization. The data set includes appeals filed by just one appellant, as well as appeals filed by multiple appellants.

Project Type

The Forest Service lacks a standard system for defining project type. Some online appeal files contained very clear descriptions of projects, while others did not mention the project at all. Likewise, some appeal records were more than 60 pages long, while some were barely one page. Forty-one of the 3,635 appeal records list "undetermined" as the project type. Figure 3 provides an example of a dismissed appeal for which the project type is "undetermined." This is the only information contained in this particular appeal file online.

Because of the discrepancies in project descriptions from one record to the next, project type designations are not consistent between Forests and/or Regions. For instance, a fuels reduction project on the Superior National Forest in Region 9 was described as follows:

The Gunflint Corridor Fuels Reduction project aims to reduce the fuel and fire hazard, provide and improve land-based infrastructure needs for fire suppression and/or public evacuation, increase the acreage and component of longer-lived species, improve long-term visual quality, and reforest the blowdown areas. As such, the objectives involve reducing hazards as well as looking beyond to future vegetative composition. [Appeal #00-09-0028-A215]

A fuels reduction project on the Lassen National Forest in Region 5 contained far more detail:

This alternative utilizes thinning to develop a fuels modification zone of 433 acres, improve 160 acres of habitat in a Goshawk Management Area (GMA), develop a late successional stand structure on 113 acres, and improve/maintain forest health and growth on 1,046 acres. A seed step method will be used to reforest high site areas understocked on 26 acres and group selection will be used to stimulate growth of aspen stands on 2 acres. Activity and existing fuels will be treated through piling and underburning; 400 acres of decadent brushfields will be burned. Approximately one mile of existing roads will be reconstructed or closed. [Appeal #98-05-00-0102-A215]

The Forest Service called both decisions fuels reduction projects. However, given the descriptions above, it is difficult to determine whether the two projects involve the same types of activities. Whenever possible, we deferred to the Forest Service label of the project to assign a project type designation. If the Forest Service label was unclear, then we used our best judgment to assign a project type designation, based on the appeal issues cited and other background in the records. Most records fall into one of the 24 primary categories listed in Table 2. Within the 24 primary categories identified, 64 subcategories provide more detail about the project. For instance, the "Permits" category includes seven subcategories: concessionaire, development, fees, mining, recreation, road-use, and special-use.



Figure 3. Sample appeal dismissal with "undetermined" project type.

Table 2. Categories of project types under appeal, nationwide (listed alphabetically).

	D : (T			
Project Types				
1	Access			
2	Dam Repair			
3	Demonstration Forest			
4	Development			
5	Dredging			
6	Easements			
7	Ecosystem			
8	Forest			
9	Fuels Reduction			
10	Grazing Allotments			
11	Land Exchange			
12	Mining			
13	Permits			
14	Plan			
15	Prescribed Burn			
16	Recreation			
17	Restoration			
18	Species			
19	Timber			
20	Trail Management			
21	Travel Management			
22	Undetermined			
23	Vegetation Management			
24	Wilderness			

Federal Statutes Cited

As seen in Figure 1, if a violation of a federal statute was cited in the appeal, it was then "checked" in the appeal record. Only federal statutes (and the other regulations shown in Figure 1) specifically cited by the appellants are included. The list of statutes was not developed a priori, but rather developed as the appeal files were reviewed. For instance, the Clean Water Act (CWA) was not added to the list of choices until the first time an appellant cited it in an appeal letter. The database software allowed us to adapt the form with ease throughout our initial review of cases. We also included a "Notes" section to capture references to regionally specific guidelines, agreements, and Forest Service manuals and handbooks.

Database Analysis

With the database constructed, we then sorted the data along several dimensions in order to provide an overview of administrative appeals nationwide, within Regions 6 and 3, and for four National Forests in Arizona: the Apache-Sitgreaves, Coconino, Kaibab, and Prescott.

National Overview

Between January 1, 1997, and September 30, 2002, a total of 3,635 appeals were processed servicewide. This number includes both reviewed appeals and those dismissed by a Regional Forester or withdrawn by the appellant.

When sorted by calendar year, the data show the highest number of decisions nationally were made in 1998 (857; see Table 3). Calendar year 1999 had the next highest number of decisions with 669; 580 appeals were decided in 2000 and 615 were decided in 2001. Nationally, approximately 42 percent of all administrative appeals within the database were decided in 1998 and 1999.

Decision Date	Number of Appeals Decided		
1997	516		
1998	857		
1999	669		
2000	580		
2001	615		
2002 (through 9/30/02)	398		
TOTAL	3635		

Table 3. Total appeals decided, by year (reviewed and dismissed/withdrawn).

Of the 2,694 appeals reviewed nationwide between January 1997 and September 2002, the appellants' requested relief was denied in full in 2015 (74.8%) cases and granted in full in 285 cases (10.6%; see Table 4). Of the appeals dismissed, 34 percent (319 of 929) were dismissed because the decision under appeal was withdrawn by a Forest Service Deciding Officer. The issues raised by the appellant(s) were resolved informally in approximately 15 percent (139 of 929) of the dismissed cases. Five cases were dismissed because there was no decision issued by the Forest Service within the legally-mandated period.

We were not able to determine the type of disposition in 12 cases. In these cases, project descriptions and appeal numbers were included on the Forest website, but the hyperlinks did not work correctly.

Table 4. Number of decisions nationwide, by type of decision. January 1, 1997, through September 30, 2002.

Type of Decision	Number of Decisions	% of Either Reviewed or Dismissed Appeals	
Reviewed	2694	100.0	
Denied	2015	74.8	
Denied w/Conditions	239	8.9	
Future Appeal Potential	35	1.3	
Granted	285	10.6	
Partially Denied/Granted	120	4.5	
Dismissed	929	100.0	
Appeal Withdrawn	47	5.1	
Content	33	3.6	
Decision Withdrawn	319	34.3	
Discretionary Review	21	2.3	
Issue Resolved	139	15.0	
Not Decided	5	0.54	
Not Subject to Appeal	69	7.4	
Scope	3	0.32	
Standing	164	17.7	
Timeliness	129	13.9	
Undetermined	12	100.0	

Table 5. Number of decisions nationwide, by CFR section. January 1, 1997, through September 30, 2002.

CFR Section	Number of Appeals Decided	% of Total Appeals
215	2763	76.0
217	189	5.2
251	562	15.5
Undetermined	121	3.3
TOTAL	3635	100.0

CFR Sections

Seventy-six percent of all appeals (2,763 of 3,635) nationwide were filed under 36 CFR 215 (see Table 5). Approximately 15 percent of appeals (562 of 3,635) were filed under 36 CFR 251, which pertains to decisions regarding special use permits and other authorizations for occupancy and use of National Forest lands. Five percent of appeals (189 of 3,635) were filed under 36 CFR 217. The appropriate CFR section was unidentified for 121 cases.

Table 6 shows the number of 215 appeals by Forest Service Region, compared to the total number of appeals in each Region. Region 6 has the highest proportion of 215 appeals, accounting for 93.6 percent (395 of 422) of all its processed appeals. Over 90 percent of all appeals processed in Region 9 were filed under 36 CFR 215. 42.6 percent of appeals (66 of 155) in Region 10 were 215 appeals. Region 1 processed the most 215 appeals—506—which accounts for 79 percent (506 of 642). Figure 4 provides a comparison of 215 appeals to the total number of appeals processed by each Region.

Table 6. Number of appeals filed under 36 CFR 215 compared to total number of appeals filed, by Region. January 1, 1997, through September 30, 2002.

Region	215 Appeals Reviewed	215 Appeals Dismissed	215 Appeals Undetermined	Total Number of 215 Appeals	% 215 Appeals of Total Appeals
1	453	53	_	506	78.8
2	210	80	_	290	89.0
3	284	39	_	323	65.0
4	159	64	1	224	57.6
5	268	232	_	500	73.3
6	315	80	_	395	93.6
8	163	17	2	182	84.7
9	201	76	_	277	90.2
10	60	6		66	42.6
TOTAL	2113	647	3	2763	76.0

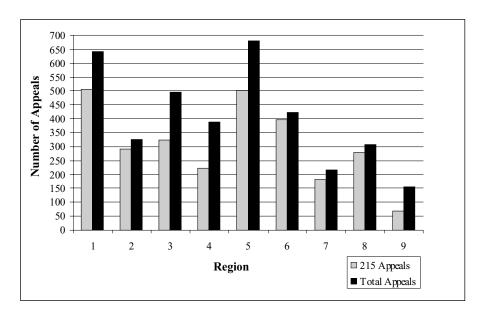


Figure 4. Number of 215 appeals compared to total number of appeals, by Region, January 1, 1997 through September 30, 2002.

Appellants

Seven hundred thirty eight different appellants (not including "private citizens") filed appeals during the study period. Private citizens filed or joined in the most appeals (1,277 of 3,635, or 35.1%) during the study period. Of the 1,277 appeals with a private citizen listed as an appellant, 1,085 (84.9%) were filed independently, i.e., not filed jointly with an organization or business—56.9 percent of those (618 of 1,085) were filed under 36 CFR 215. When all appeals filed under 36 CFR 215 are considered, private citizens filed or joined in 28.9 percent (800 of 2,763). Of all appeals with a private citizen appellant, 62.7 percent were filed under 36 CFR 215 (see Table 7). With the exception of private citizens, the most active appellants were non-profit environmental organizations.

The Forest Guardians and the Ecology Center filed the most appeals; the Forest Guardians filed 381 appeals, while the Ecology Center filed 236. The 18 most active appellants nationally (i.e., "private citizens" plus 17 organizations) account for nearly 50 percent of all appeals filed (including just those filed independently as an individual or an organization). When we consider the number of appeals joined by one or more appellants, the percentage grows beyond 50 percent. For example, the Ecology Center filed 29 appeals independently, but joined with at least one other organization in filing another 207 appeals. The Forest Guardians filed 294 appeals independently, but joined with at least one other group in another 87 appeals. With the exception of the Southern Appalachian Biodiversity Project, all of the most active non-profit organizations filed more than 90 percent of their appeals under 36 CFR 215 (see Table 7).

Table 7. Most active appellant groups nationwide, by number of appeals filed. Total number of appeals filed compared to number of 215 appeals filed.

January 1, 1997, through September 30, 2002.

Appellant	Total Appeals Filed	215 Appeals	% 215 Appeals of Total Appeals
Private Citizen	1277	800	62.7
Forest Guardians	381	377	99.0
Ecology Center	236	233	98.7
Forest Conservation Council	199	194	98.0
Alliance for the Wild Rockies	180	178	99.0
Sierra Club	159	149	93.7
Lands Council	149	149	100.0
National Forest Protection Alliance	108	106	98.1
Heartwood Forestwatch	99	94	95.0
Native Ecosystems Council	97	94	96.9
American Wildlands	96	93	96.9
Oregon Natural Resources Council	76	76	100.0
Friends of the Clearwater	64	64	100.0
Center for Biological Diversity	63	61	96.8
Southern Appalachian Biodiversity Project	56	50	89.3
Biodiversity Associates	54	54	100.0
Forest Watch	43	39	90.7
Idaho Sporting Congress	41	40	97.6

Project Types

Nearly 33 percent (1,190 of 3,635) of the appeals decided between January 1, 1997, and September 30, 2002, related to timber sales—either solely or in conjunction with another type of project (see Table 8). Almost fourteen percent of appeal decisions during this period were related to grazing allotments. "Restoration" was cited as at least part of the project objective in 139, or 3.8 percent, of decided appeals. As previously indicated, the project type could not be determined in 41 of the appeal files, or 1.13 percent.

³ The total does not equal 3,635 (the number of appeals nationwide). This is the result of multiple appellants filing some appeals jointly. Also, Table 7 does not include a comprehensive list of appellants nationwide (only the top 18).

Table 8. Overview of number of appeals by project type, nationwide.

Project Type	Number of Appeals
Timber	1190
Grazing Allotments	496
Permits	379
Plan	200
Development	192
Travel Management	192
Fuels Reduction	154
Species	140
Restoration	139
Recreation	118
Mining	116
Vegetation Management	99
Prescribed Burn	92
Forest	90
Ecosystem	51
Trail Management	51
Undetermined	41
Land Exchange	37
Wilderness	10
Access	7
Dredging	3
Easements	3
Dam Repair	2
Demonstration Forest	2

Regional Distribution

Comparing Forest Service Regions across the nation, the most appeals were decided in Region 5 during the study period, with a total of 682 appeals (see Table 9). Region 1 recorded the second most decisions, with a total of 642. Of the nine Forest Service regions, Regions 1 and 5 were responsible for 36 percent of appeals filed between January 1997 and September 2002. However, Region 1 actually reviewed the most appeals (564), dismissing only 78 appeals. Region 5 dismissed the most appeals, with 283 dismissals. The fewest number of appeals were decided in Region 10 (155), with the next fewest number of cases decided in Region 8 (215).

Table 9. Total appeals decided by Forest Service Region, both reviewed and dismissed.

	Region	Reviewed	Dismissed	Undetermined	Total
1	Northern	564	78	0	642
2	Rocky Mountain	224	102	0	326
3	Southwest	411	86	0	497
4	Intermountain	225	163	1	389
5	Pacific Southwest	399	283	0	682
6	Pacific Northwest	326	96	0	422
8	Southern	183	22	10	215
9	Eastern	225	81	1	307
10	Alaska	137	18	0	155
	TOTAL	2694	929	12	3635

Within this context of comparing Regions across the agency, the report now turns to examine Regions 6 and 3 in more detail.

Region 6 (Oregon and Washington)

Between January 1, 1997, and September 30, 2002, officials in Region 6 processed 422 administrative appeals (see Table 10). 326 appeals were reviewed, while 96 were either dismissed by the Forest Service or withdrawn by the appellant(s).

The most appeals—189—were decided in calendar year 1998 (Table 10). In calendar year 1999, 105 appeals were decided. Calendar years 1997, 2000, and 2001 each saw less than 35 appeal decisions. Fifty appeals were decided in Region 6 during the first nine months of calendar year 2002.

Table 10. Number of appeals decided in Region 6, by calendar year. January 1, 1997, through September 30, 2002.

Decision Date	Dismissed	Reviewed	Total
1997	6	12	18
1998	26	163	189
1999	43	62	105
2000	2	24	26
2001	0	34	34
2002 (through 9/30/02)	19	31	50
TOTAL	96	326	422

Table 11. Number of decisions in Region 6, by type of decision. January 1, 1997, through September 30, 2002.

	Type of Decision	Number of Decisions
Reviewed		326
	Denied	314
	Denied w/Conditions	3
	Granted	8
	Partially Denied/Granted	1
Dismissed		96
	Appeal Withdrawn	9
	Content	3
	Decision Withdrawn	28
	Discretionary Review	2
	Issue Resolved	9
	Not Decided	5
	Not Subject to Appeal	6
	Standing	1
	Timeliness	33
	TOTAL	422

Table 12. Number of decisions in Region 6, by type of decision. January 1, 1998, through December 31, 1998.

	Type of Decision	Number of Decisions
Reviewed		163
	Denied	159
	Denied w/Conditions	1
	Granted	2
	Partially Denied/Granted	1
Dismissed		26
	Appeal Withdrawn	6
	Content	1
	Decision Withdrawn	6
	Issue Resolved	4
	Not Subject to Appeal	3
	Timeliness	6
	TOTAL	189

Table 13. Number of decisions in Region 6, by type of decision. January 1, 1999, through December 31, 1999.

	Type of Decision	Number of Decisions
Reviewed		62
	Denied	61
	Denied w/Conditions	1
Dismissed		43
	Appeal Withdrawn	1
	Content	2
	Decision Withdrawn	10
	Discretionary Review	2
	Issue Resolved	2
	Not Subject to Appeal	3
	Standing	1
	Timeliness	22
	TOTAL	105

Of the 326 appeals reviewed in Region 6 between January 1997 and September 2002, the appellants' requested relief was denied in full in 314 cases and granted in full in eight cases (see Table 11). Approximately 34 percent (33 of 96) of dismissed appeals were dismissed as untimely, i.e., the appellant failed to file the appeal within the period allotted by law. Twenty-nine percent (28 of 96) of the dismissed appeals were dismissed because the decision under appeal was withdrawn by a Forest Service Deciding Officer.

CFR Section	Number of Appeals Decided	% of Total Appeals
215	395	93.6
217	1	0.24
251	25	5.9
Undetermined	1	0.24
TOTAL	422	100.0

Table 14. Number of appeals in Region 6, by CFR section.

By far, most appeals decided in Region 6 were during calendar years 1998 and 1999. Tables 12 and 13 provide an overview of the types of decisions (and reasons for dismissal) for each of these calendar years. In 1998, the appellants' requested relief was denied in full in 159 of 163 reviewed cases (see Table 12).

The appellants' requested relief was denied in all cases reviewed in calendar year 1999 (see Table 13). Relief was denied in full in 61 of the 62 reviewed appeals. One additional appeal was denied, although instructions were provided by the Forest Service Deciding Officer to modify the project under appeal.

CFR Sections

Approximately 93 percent (395 of 422) of all appeals in Region 6 were filed under 36 CFR 215 (see Table 14); nearly six percent (25 of 422) of the appeals in Region 6 were filed under Part 251. One appeal was filed under 36 CFR 217, and the CFR section was undetermined in one case.

Table 15 provides an overview of the 215 appeals in Region 6, organized by year of decision. By far, the most 215 appeals were processed in 1998, with 159 reviews and 22 dismissals. In 2001, 34 appeals filed under part 215 were reviewed, while none were dismissed.

Appellants

Eight-one different appellants (not including "private citizens") filed appeals in Region 6 during the study period (see Table 16). Nearly 76 percent (320 of 422) of the appeals were filed by single appellants. One hundred two appeals were filed jointly by two or more organizations, businesses, or individuals. Sixty-nine percent (59 of 85) of appeals listing a

Decision Date	Reviewed	Dismissed	Total
1997	11	5	16
1998	159	22	181
1999	58	34	92
2000	23	2	25
2001	34	0	34
2002	30	17	47
TOTAL	315	80	395

Table 15. Number of 215 appeal decisions in Region 6, by year.

private citizen among the appellants were filed independently (i.e., not joined with an organization or business). Seventy three of the 85 appeals (85.9%) listing a private citizen among the appellants were filed under 36 CFR 215.

During the period covered, the Forest Guardians was the only organization to file more than 100 appeals (either independently or jointly with another organization). After the Forest Guardians, the Oregon Natural Resources Council was the only organization to file more than 50 appeals. Including the Forest Guardians and the Oregon Natural Resources Council, only six organizations filed more than 20 appeals between January 1997 and September 2002. The other four organizations are Northwest Ecosystem Alliance, Northwest Environmental Defense Center, Cascadia Forest Alliance, and the Sierra Club. With the exception of the League of Wilderness Defenders and Western Radio Services, all of the most active appellant organizations in Region 6 filed 100 percent of their appeals under 36 CFR 215 (Table 16).

Project Type

Approximately 52 percent of the appeals decided between January 1997 and September 2002 related to a timber project, whether a sale, salvage, or thinning (see Table 17). Nationally, timber-related projects accounted for nearly 33 percent of all administrative appeals. It is not surprising that the percentage is much higher in Region 6, given the large amount of public lands available for timber harvest in the northwestern United States (see Figure 5).

Forty of the 422 regional appeal decisions (9.5%) explicitly mentioned "restoration" as one of the project objectives. We were unable to determine the project type for 11 cases (see Figure 3 for an example of an appeal with an "undetermined" project type).

Table 18 further breaks down timber-related appeals by year. The highest percentages (60.3% and 66.7%) of timber-related appeals correspond with the high numbers of total appeals filed in calendar years 1998 and 1999. In each of calendar years 1997, 2000, and 2001, more than 30 percent of appeal decisions concerned timber-related projects. During the first nine months of 2002, only 20 percent of appeal decisions in Region 6 were timber-related.

Table 16. Top 25 appellants in Region 6, by number of appeals filed either independently or jointly with at least one other organization. Total number of appeals filed compared to number of appeals filed under 36 CFR 215.

January 1, 1997, through September 30, 2002.

Appellant	Total Appeals Filed	215 Appeals Filed	% 215 Appeals of Total Appeals
Forest Guardians	102	102	100
Private Citizen	85	73	85.9
Oregon Natural Resources Council	71	71	100
Northwest Ecosystem Alliance	33	33	100
Northwest Environmental Defense Center	27	27	100
Cascadia Forest Alliance	25	25	100
Sierra Club	22	22	100
League of Wilderness Defenders	19	18	94.7
Klamath Siskiyou Wildlands Center	18	18	100
Lands Council	18	18	100
Forest Conservation Council	16	16	100
Kettle Range Conservation Group	16	16	100
Cascadia Wildlands Project	15	15	100
Umpqua Watersheds	12	12	100
Headwaters	10	10	100
Western Radio Services Co., Inc.	10	2	20.0
Santiam Watershed Guardians	9	9	100
American Lands Alliance	8	8	100
Hells Canyon Preservation Council	8	8	100
Klamath Tribes	6	6	100
Native Forest Council	6	6	100
Methow Forest Watch	5	5	100
National Forest Protection Alliance	5	5	100
Kalapooya Sacred Circle Alliance	4	4	100

National Forest Distribution

Table 19 shows the number of timber-related appeal decisions in Region 6, organized by National Forest. The Gifford Pinchot National Forest decided the most timber-related appeals (37) between January 1997 and September 2002, followed by the Willamette National Forest (31). Ten of the 19 National Forests decided at least 10 timber-related appeals during the study period. The Fremont National Forest decided the least timber-related appeals (one). One timber-related appeal was filed jointly with both the Mt. Baker-Snoqualmie and Mt. Hood National Forests.

Table 17. Appeal decisions in Region 6, by project type. January 1, 1997, through September 30, 2002.

Project Type	Number of Appeals
Timber	221
Sale 175	
Salvage 30	
Thinning 13	
Undetermined 2	
Restoration	40
Permits	27
Fuels Reduction	19
Vegetation Management	16
Mining	15
Ecosystem Management	14
Development	12
Undetermined	11
Species Management	9
Trail Management	8
Grazing Allotments	7
Land Exchange	7
Resource Management	7
Access	4
Recreation	3
Travel Management	1
TOTAL	422

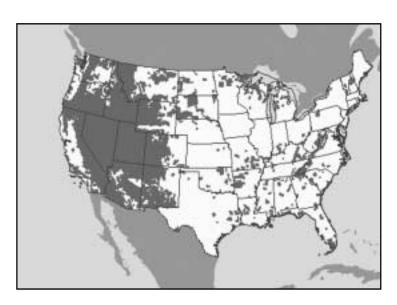


Figure 5. Distribution of public lands in the United States; www.nationalatlas.gov

Table 18. Number of appeals decided in Region 6, by calendar year—compared to percentage of appeals related to timber projects.

Decision Dates	Total Number of Appeals Decided	Number of Timber- Related Appeals Decided	Timber- Related Percentage
1997	18	6	33.3
1998	189	114	60.3
1999	105	70	66.7
2000	26	9	34.6
2001	34	12	35.3
2002 (through 9/30/02)	50	10	20.0
TOTAL	422	221	52.4

By forest in Region 6, the Gifford Pinchot and Willamette National Forests processed the most appeals (41 and 39, respectively) between January 1, 1997, and September 30, 2002 (see Table 20). The Willamette National Forest reviewed (rather than dismissed) 36 of its 39 appeals, while the Gifford Pinchot National Forest dismissed more appeals than it reviewed (22 vs. 19). Both the Deschutes and Siskiyou National Forests reviewed 28 appeals between January 1997 and September 2002. Three appeals were filed jointly with the Deschutes, Fremont, and Winema National Forests. One appeal was filed jointly with the Mt. Hood, Deschutes, Gifford Pinchot, and Ochoco National Forests. Eight of the 19 National Forests in Region 6 decided fewer than 15 appeals during the study period.

Table 19. Number of timber-related appeal decisions in Region 6, by National Forest. January 1, 1997, through September 30, 2002.

Forest	Number of Timber-Related Appeals
Gifford Pinchot	37
Willamette	31
Siskiyou	17
Rogue River	16
Umpqua	16
Wallowa-Whitman	15
Okanogan	14
Winema	13
Ochoco	11
Mt. Baker-Snoqualmie	10
Malheur	9
Deschutes	8
Olympic	8
Umatilla	6
Mt. Hood	2
Colville	2
Siuslaw	2
Wenatchee	2
Fremont	1
Mt. Baker-Snoqualmie/Mt. Hood	1
TOTAL	221

Table 20. Number of appeals in Region 6, by National Forest. January 1, 1997, through September 30, 2002.

Forest	Reviewed	Dismissed	Total
Colville	9	6	15
Deschutes	28	2	30
Deschutes, Fremont, Winema	2	1	3
Fremont	5	1	6
Gifford Pinchot	19	21	40
Malheur	11	7	18
Mt. Baker-Snoqualmie	19	4	23
Mt. Baker-Snoqualmie, Gifford Pinchot	0	1	1
Mt. Baker-Snoqualmie, Mt. Hood	1	0	1
Mt. Hood	15	0	15
Mt. Hood, Deschutes, Gifford Pinchot, Ochoco	1	0	1
Ochoco	10	6	16
Okanogan	13	13	26
Olympic	5	3	8
Rogue River	20	1	21
Siskiyou	28	4	32
Siuslaw	7	0	7
Umatilla	12	4	16
Umpqua	16	6	22
Wallowa-Whitman	33	4	37
Wenatchee	17	8	25
Willamette	36	3	39
Winema	19	1	20
TOTAL	326	96	422

Region 3 (Arizona and New Mexico)

Between January 1, 1997, and September 30, 2002, officials in Region 3 decided 497 administrative appeals (see Table 21). Four hundred and eleven appeals were reviewed, while 86 were either dismissed by the Forest Service or withdrawn by the appellant(s). The most appeals—143—were decided in calendar year 2000. Calendar years 1997, 1998, 1999, and 2001 each saw less than 100 appeal decisions. Only 26 appeals have been decided in Region 3 during the first nine months of calendar year 2002.

Table 21. Number of appeals decided in Region 3, by calendar year.

Decision Dates	Dismissed	Reviewed	Number of Appeals Decided
1997	18	55	73
1998	24	60	84
1999	13	80	93
2000	3	140	143
2001	21	57	78
2002 (through 9/30/02)	7	19	26
TOTAL	86	411	497

Table 22. Number of decisions in Region 3, by type of decision. January 1, 1997, through September 30, 2002.

	Type of Decision	Number of Decisions
Reviewed		411
	Denied	258
	Denied w/Conditions	67
	Future Appeal Potential	15
	Granted	66
	Partially Denied/Granted	5
Dismissed		86
	Appeal Withdrawn	9
	Content	3
	Decision Withdrawn	24
	Discretionary Review	11
	Issue Resolved	10
	Not Subject to Appeal	8
	Standing	4
	Timeliness	17
	TOTAL	497

Of the 411 appeals reviewed in Region 3 between January 1997 and September 2002, the appellants' requested relief was denied in full in 258 cases and granted in full in 66 cases (see Table 22). Nearly 28 percent (24 of 86) of dismissed appeals were dismissed because the decision under appeal was withdrawn by a Forest Service Deciding Officer. Seventeen of the 86 dismissed cases (19.8%) were dismissed as untimely, i.e., the appellant failed to file the appeal within the period allotted by law.

CFR Sections

Nearly 65 percent (323 of 497) of all appeals in Region 3 were filed under 36 CFR 215 (see Table 23). Approximately 26 percent (132 of 497) of the appeals in Region 3 were filed under Part 251. Thirty appeals (6%) were filed under 36 CFR 217, and the CFR section was undetermined in 12 cases (2.4%).

Table 23. Number of appeals in Region 3, by CFR section. January 1, 1997, through September 30, 2002.

CFR Section	Number of Appeals Decided	% of Total Appeals
215	323	65.0
217	30	6.0
251	132	26.6
Undetermined	12	2.4
TOTAL	497	100.0

Table 24 provides an overview of the 215 appeals in Region 3, organized by year of decision. The most 215 appeals were processed in 2000, with 81 reviews and one dismissal. The fewest 215 appeals (38) during a complete calendar year were decided in 1998. Fourteen 215 appeals were processed during the first nine months of 2002.

Table 24. Number of 215 appeal decisions in Region 3, by year.

Decision Date	Reviewed	Dismissed	Total
1997	50	12	62
1998	31	7	38
1999	59	7	66
2000	81	1	82
2001	50	11	61
2002 (through 9/30/02)	13	1	14
TOTAL	284	39	323

Appellants

Seventy-six different appellants filed appeals in Region 3 during the study period (see Table 25). Nearly 93 percent (461 of 497) of the appeals were filed by single appellants. Thirty-six appeals were filed jointly by two or more organizations, businesses, or individuals. Of the 188 appeals, 165 (87.7%) listing a private citizen among the appellants were filed independently (i.e., not joined with an organization or business). During the period covered, four organizations filed more than 10 appeals (either independently or jointly with another organization)—Forest Guardians, the Center for Biological Diversity, Gila Watch, and Catron County. Nine of the 14 most active organizations and businesses filed 100 percent of their appeals under 36 CFR 215.

Table 25. Top 15 appellants in Region 3, by number of appeals filed either independently or jointly with another organization(s). ⁴ Total number of appeals filed compared to number of appeals filed under 36 CFR 215.

January 1, 1997, through September 30, 2002.

Appellant	Total Appeals Filed	Number of 215 Appeals	% 215 Appeals of Total Appeals
Private Citizen	188	80	42.55
Forest Guardians	135	135	100
Center for Biological Diversity	47	47	100
Gila Watch	25	25	100
Catron County	15	14	93.33
Forest Conservation Council	8	8	100
National Forest Protection Alliance	7	7	100
Sierra Club	7	7	100
Johnson Cattle Company	5	1	20.00
Sacramento Grazing Association	5	_	
George T Cline Equity Trust	4	1	25.00
Southwest Forest Alliance	4	4	100
Arizona Wildlife Federation	3	3	100
Sanborn Land and Cattle Company	3	_	_
White Mountain Conservation League	3	3	100

⁴ The total does not equal 497 (the number of appeals in Region 3). This is the result of multiple appellants filing some appeals jointly. Also, Table 25 does not include a comprehensive list of appellants in Region 3 (only the top 15).

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Project Type

Approximately 58 percent of the appeals decided between January 1997 and September 2002 related to grazing allotments (see Table 26). Nationally, grazing allotments only accounted for 13.6 percent of all administrative appeals. It is not surprising that the percentage is much higher in Region 3, given the large amount of public lands available for grazing in the western United States (see Figure 5), and particularly in Southwestern forests. Of the 291 appeals related to grazing allotments in Region 3, private citizens filed 81 of them independently and joined with an organization in another 19. The Forest Guardians filed 108 grazing related appeals, all of them independently.

Table 26. Number of appeals in Region 3, organized by primary project type.

Project Type		Number of Appeals
Grazing Allotments		291
Timber		51
Plan		48
Mining		25
Development		18
Permits		17
Ecosystem		8
Restoration		8
Recreation		7
Undetermined		6
Fuels Reduction		5
Species		4
Land Exchange		3
Prescribed Burn		3
Trail Management		2
Vegetation Management		1
	TOTAL	49 7

Fifty-one of the 497 regional appeal decisions (10.3%) concerned a timber-related project, whether a sale, salvage effort, or thinning project (Table 26). Eight appeal decisions specifically mentioned "restoration" as one of the project objectives. We were unable to determine the project type for six cases—five on the Gila National Forest and one on the Tonto National Forest (see Figure 3 for an example of an "undetermined" project type).

Table 27. Number of appeals decided in Region 3, by calendar year. Compared to number of appeals related to grazing allotments.

Decision Dates	Number of Appeals Decided	Number of Grazing Allotment Appeals	Grazing Allotment Percentage
1997	73	17	23.3
1998	84	40	47.6
1999	93	67	72.0
2000	143	94	65.7
2001	78	60	76.9
2002 (through 9/30/02)	26	13	50.0

Table 27 further breaks down grazing allotment appeals by year. In each of calendar years 1999, 2000, and 2001, more than 65 percent of appeal decisions concerned grazing allotments. The data show the year 2001 with the highest number of grazing-related appeal decisions—76.9 percent. In 1997, only 23.3 percent of appeal decisions in Region 3 were related to grazing.

National Forest Distribution

By forest in Region 3, the majority of appeals (122) were processed by the Gila National Forest between January 1, 1997, and September 30, 2002 (see Table 28). The Santa Fe National Forest ranked second in terms of number of appeals decided, with 63 appeals—nearly 50 percent less than the Gila—decided during the same period. The Lincoln, Prescott, Kaibab, Cibola, and Carson National Forests each decided fewer than 30 appeals over the study period.

Table 28. Number of appeals decided (reviewed and/or dismissed) in Region 3, by National Forest.

Forest	Reviewed	Dismissed	Total
Gila	102	20	122
Santa Fe	60	3	63
Tonto	43	13	56
Apache-Sitgreaves	48	7	55
Coconino	33	7	40
Coronado	23	8	31
Lincoln	20	9	29
Prescott	18	9	27
Kaibab	21	5	26
Cibola	23	2	25
Carson	15	2	17
Prescott/Coconino	4	1	5
TOTAL	411	86	497

Northern Arizona Forests

To further break down the data for purposes of analysis (and to assist us in selecting a smaller set of appeal cases near our home base for subsequent in-depth analysis at the forest level), we selected four of Arizona's six national forests, the Apache-Sitgreaves, Coconino, Kaibab, and Prescott. (The two other Arizona forests, the Tonto near Phoenix, and the Coronado in southern Arizona, were not included in this analysis.) From this point on, references to "northern Arizona" refer to these four forests.

Decision Date	Number of Appeals Decided
1997	20
1998	38
1999	41
2000	21
2001	23
2002 (thru 9/30 0/2)	10
TOTAL	153

Table 29. Number of appeals decided in northern Arizona, by year-all project types.

Table 29 shows the number of appeals of all project types decided in northern Arizona, organized by calendar year. Almost 52 percent of all appeals decided in northern Arizona were decided during calendar years 1998 and 1999. Thirty-eight appeals were decided in 1998. The most appeals, 41, were decided in 1999. For five years (1997–2001), the northern Arizona forests decided at least 20 appeals per year among them.

When all project types are considered, nearly two-thirds of appeals (62.1%) in northern Arizona challenge decisions on the Apache-Sitgreaves and Coconino National Forests (Table 30). Four appeals were filed jointly with the Prescott and Coconino National Forests. The

Table 30. Number of appeals reviewed and dismissed in northern Arizona, by forest-all project types.

National Forest	Reviewed	Dismissed	Total
Apache-Sitgreaves	48	7	55
Coconino	33	7	40
Prescott	18	9	27
Kaibab	21	5	26
Prescott/Coconino	4	1	5
TOTAL	124	29	153

Table 31. Number of decisions in northern Arizona forests, by type of decision. January 1, 1997, through September 30, 2002.

	Type of Decision	Number of Decisions
Reviewed		124
	Denied	95
	Denied w/Conditions	16
	Future Appeal Potential	5
	Granted	7
	Partially Denied/Granted	1
Dismissed		29
	Appeal Withdrawn	5
	Decision Withdrawn	9
	Discretionary Review	1
	Issue Resolved	3
	Standing	2
	Timeliness	9
	TOTAL	153

Prescott National Forest processed 27 appeals from January 1, 1997, through September 30, 2002, and the Kaibab National Forest processed 26 appeals during the same period. Of the 124 appeals reviewed in northern Arizona between January 1997 and September 2002, the appellants' requested relief was denied in full in 95 cases and granted in full in seven cases (see Table 31). Nearly 31 percent (nine of 29) of dismissed appeals were dismissed because the decision under appeal was withdrawn by a Forest Service Deciding Officer. An equal number of cases (nine of 29) were dismissed as untimely, i.e., the appellant failed to file the appeal within the period allotted by law.

CFR Sections

Approximately 70 percent (107 of 153) of all appeals in northern Arizona were filed under 36 CFR 215 (see Table 32). Eighteen percent (28 of 153) of the appeals in northern Arizona were filed under Part 251. Sixteen appeals were filed under 36 CFR 217, and the CFR section was undetermined in two cases.

Table 33 provides an overview of the 215 appeals in northern Arizona, organized by year of decision. The most CFR 215 appeals were processed in 1999, with 24 reviews and six dismissals. During the first nine months of 2002, one 215 appeal was reviewed and one 215 appeal was dismissed.

100.0

Number of CFR Section % of Total Appeals Appeals Decided 215 107 69.9 217 16 10.5 251 28 18.3 2 Undetermined 1.3

Table 32. Number of appeals in northern Arizona, by CFR section.

Table 33. Number of 215 appeal decisions in northern Arizona, by year.

153

TOTAL

Decision Date	Reviewed	Dismissed	Total
1997	14	4	18
1998	13	2	15
1999	24	6	30
2000	20	0	20
2001	19	3	22
2002 (through 9/30/02)	1	1	2
TOTAL	91	16	107

Appellants

Twenty-five different appellants (not including "private citizens") filed appeals in northern Arizona during the study period (see Table 34). Similar to the situation in Region 3 as a whole, nearly 92 percent (140 of 153) of the appeals were filed by single appellants. Thirteen appeals were filed jointly by two or more organizations, businesses, or individuals. All of the 51 appeals listing a private citizen as the appellant were filed independently (i.e., not joined with an organization or business). Among organizations filing in northern Arizona, the Forest Guardians and Center for Biological Diversity were by far the most active, with 49 and 27 appeals filed respectively. The next highest number filed by an organization was four. With the exception of "private citizens," all appellants who filed 215 appeals filed 100 percent of their appeals under 36 CFR 215. Twelve of the 26 appellants filing in northern Arizona did not file any appeals under 36 CFR 215.

Table 35 compares all project types appealed in Region 3 to those appealed in northern Arizona. We compared the types of projects as well as the number of appeals filed for each project type. Thirty-one percent (149 of 482) of appeals in Region 3 were filed in northern Arizona. Nearly 100 percent of timber thinning projects, and 50 percent of timber sales, appealed in Region 3 were filed in northern Arizona. Given the forested landscape in northern Arizona compared to the rest of Region 3, these percentages are not surprising (see Figures 5 and 6).

Table 34. Appellants in northern Arizona, by number of appeals filed either independently or jointly with at least one other organization. Total number of appeals filed compared to number of appeals filed under 36 CFR 215. January 1, 1997, through September 30, 2002.⁵

Appellant	Total Number of Appeals Filed	Total 215 Appeals Filed	% 215 Appeals of Total Appeals
Private Citizen	51	22	43.1
Forest Guardians	49	49	100
Center for Biological Diversity	27	27	100
Forest Conservation Council	4	4	100
Sierra Club	4	4	100
Southwest Forest Alliance	4	4	100
National Forest Protection Alliance	3	3	100
White Mountain Conservation League	3	3	100
Arizona Wildlife Federation	2	2	100
Earth Wisdom Tours	2	_	_
Grand Canyon Buffalo Range, Inc.	2	_	_
Prescott National Forest Friends	2	2	100
Sedona Photo Tours	2	_	_
Arizona Game and Fish Department	1	1	100
Earnhardt Ranches	1	_	_
Flagstaff Activist Network	1	1	100
Flying Box Ranch	1	1	100
Geronimo Communications	1	_	_
Northern Lights Balloon Expeditions	1	_	_
Perkins Ranch, Inc.	1	_	_
Public Lands Interpretive Association	1	_	_
Roadrunner Prospector's Club	1	1	100
Sedona Airport Supporters Association	1	_	_
Shadow Estates Homeowners Association	1	_	_
Southwest Natural Cultural & Heritage Assoc.	1	_	_
Woods Canyon Lake Shore	1	_	_

⁵ The total does not equal 153 (the number of appeals in northern Arizona). This is the result of multiple appellants filing some appeals jointly.

Table 35. Number of appeals in northern Arizona compared to Region 3, by primary project type. January 1, 1997, through September 30, 2002.

Project Type	Region 3	(Appache-	n Arizona Sitgreaves, ibab, Prescott)
Grazing Allotments	291	68	23.4
Timber	51	28	54.9
Plan	48	16	33.3
Mining	25	4	16.0
Development	18	7	38.9
Permits	17	10	58.8
Ecosystem	8	6	75.0
Restoration	8	6	75.0
Recreation	7	2	28.6
Undetermined	6		
Fuels Reduction	5	2	40.0
Species	4	1	25.0
Land Exchange	3		
Prescribed Burn	3		
Trail Management	2	2	100.0
Vegetation Management	1	1	100.0
TOTAL	497	153	30.8

Projects related to grazing, mining, species management, and recreation (30% or less for each project type) were less prevalent in northern Arizona, compared to Region 3 as a whole. Nearly 55 percent (28 of 51) of appeals of timber-related projects were filed in Northern Arizona. This is not surprising given the relationship between forested land in Arizona and the boundaries of the four forests in northern Arizona (Figure 6).

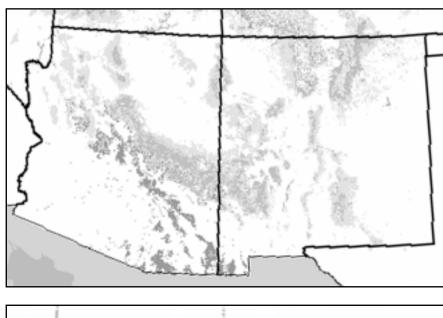




Figure 6. (top) Forest cover in Arizona and New Mexico; www.nationalatlas.gov (bottom) National Forests in Arizona and New Mexico; www.fs.fed.us/r3

Subset within Northern Arizona

Because of our particular interest in fuels reduction and ecological restoration projects, we took an extra step in analyzing the data for the four northern Arizona forests. We eventually want to examine any projects that might be considered as fuels reduction/forest restoration projects (or labeled as such by the Forest Service). However, because of the difficulties described above in discerning from the online appeal records the exact scope of many projects, we decided to draw a subset of projects to examine more closely to see if our initial judgments about project classification could be verified. For this first-cut analysis we decided to include projects listed in the following categories: ecosystem management, fuels reduction, restoration, prescribed burns, vegetation management, and timber sales, salvage, and thinning. We did not want to exclude prescribed burning projects that might have had a fuels reduction or restoration purpose. Nor did we want to exclude timber and salvage sales, not because we contend they are fuels reduction, but simply to make sure that those are straightforward issues of timber sales and that the appeals are in no way intertwined with issues of fuels reduction and restoration. Excluded project types are development, grazing, land exchanges, mining, permits, plan amendments, recreation, and species management. As a result of this winnowing down of cases, we were left with 43 appeal decisions to examine more closely. Forty-two of the 43 appeals were filed under 36 CFR 215; one appeal of a project described as "ecosystem management" was filed under 36 CFR 251.

Table 36. Number of appeals decided in northern Arizona, by year. Subset of 43 decisions.

Decision Date	Number of Appeals Decided
1997	17
1998	11
1999	6
2000	6
2001	2
2002 (thru 9/30/02)	1
TOTAL	43

When only projects in this subset of categories are examined, the majority of appeals were decided in 1997, at 17 (see Table 36). The number of appeal decisions decreased each year, with just two appeals decided in calendar year 2001. Nearly two-thirds (28 of 43) of these appeals challenged decisions on the Coconino and Kaibab National Forests (see Table 37). Overall, Forest Service officials reviewed 33 of these appeals and dismissed 10.

Of the 33 cases reviewed by the Forest Service, within our subset of 43, the appellants' requested relief was denied in full in 25 cases and granted in full in two cases (see Table 38). Five of the nine dismissed appeals (55.6%) were dismissed because the decision under appeal was withdrawn by a Forest Service Deciding Officer. Five other cases were dismissed—two due to appellants' lack of standing, two because the appeals were determined to be untimely, and one because the appeal issues were resolved informally.

Table 37. Number of appeals reviewed and dismissed in northern Arizona, by forest-subset of 43 decisions.

National Forest	Reviewed	Dismissed	Total
Apache-Sitgreaves	8	1	9
Coconino	11	0	11
Kaibab	12	5	17
Prescott	2	4	6
TOTAL	33	10	43

Table 38. Subset of 43 decisions in northern Arizona, by type of decision. January 1, 1997, through September 30, 2002.

	Type of Decision		Number of Decisions
Reviewed			33
	Denied		25
	Denied w/Conditions		5
	Future Appeal Potential		1
	Granted		2
Dismissed			10
	Decision Withdrawn		5
	Issue Resolved		1
	Standing		2
	Timeliness		2
		TOTAL	43

Table 39 compares appellants when all project types are considered to when only projects in the subset of 43 are considered. The Forest Guardians filed the most appeals overall of any organization, with 49. Private citizens filed 51 appeals—all 51 were filed independently (i.e., not jointly with an organization). Only two organizations filed or joined in more than 20 appeals—the Forest Guardians and the Center for Biological Diversity (formerly the Southwest Center for Biological Diversity). The next highest number of appeals filed or joined was four each by the Forest Conservation Council, the Sierra Club, and the Southwest Forest Alliance.

Table 39. Appellants in Northern Arizona—all projects—compared to appellants in the subset of 43 decisions. 6

	Nut	mber of Appeals	Filed
Appellant	No. AZ Total	Subset of 43 Appeals	%
Private Citizen	51	2	3.9
Forest Guardians	49	14	28.6
Center for Biological Diversity	27	25	92.6
Forest Conservation Council	4	4	100.0
Sierra Club	4	4	100.0
Southwest Forest Alliance	4	4	100.0
National Forest Protection Alliance	3	3	100.0
White Mountain Conservation League	3	1	33.3
Arizona Wildlife Federation	2		_
Earth Wisdom Tours	2	_	_
Grand Canyon Buffalo Range, Inc.	2		_
Prescott National Forest Friends	2	1	50.0
Sedona Photo Tours	2	<u> </u>	_
Arizona Game and Fish Department	1	<u> </u>	_
Earnhardt Ranches	1		_
Flagstaff Activist Network	1	1	100.0
Flying Box Ranch	1		—
Geronimo Communications	1		_
Northern Lights Balloon Expeditions	1		—
Perkins Ranch, Inc.	1		_
Public Lands Interpretive Association	1		_
Roadrunner Prospector's Club	1	<u> </u>	_
Sedona Airport Supporters Association	1	_	—
Shadow Estates Homeowners Association	1		_
Southwest Natural Cultural & Heritage Association	1		_
Woods Canyon Lake Shore	1	_	_

⁶ The totals in each column are larger than 153 (the number of appeals filed in northern Arizona forests). This is the result of multiple appellants filing some appeals jointly.

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The picture changes somewhat when project types limited to the subset are examined. Private citizens filed just two appeals of these project types (compared to 51 when all project types are included). The Forest Guardians filed or joined in 14 appeals, or 28.6 percent of all appeals filed or joined by the Forest Guardians in northern Arizona. Projects in this subset also account for nearly 93 percent of all appeals filed or joined in by the Center for Biological Diversity in northern Arizona. Four groups filed or joined in appeals exclusively in this subset: the Forest Conservation Council, Southwest Forest Alliance, Sierra Club, and Flagstaff Activist Network. Each of these four organizations participated in fewer than five appeals in northern Arizona. The high degree of environmental group activity here is not surprising, given the fact that the subset includes many types of projects that involve timber management objectives.

Table 40. Northern Arizona forests compared to all of Region 3. Subset of 43 appeal decisions.

Project Type	Region 3	Northern	n Arizona
Ecosystem Management	8	6	75.0 ⁷
Fuels Reduction	4	2	50.0
Fuels Reduction, Plan Amendment	1	_	_
Land Exchange, Restoration	1	_	_
Prescribed Burn	2	_	_
Prescribed Burn, Timber Thinning	1		_
Restoration	8	6	75.0
Timber Sale	19	10	52.6
Timber Sale, Fuels Reduction	1	1	100.0
Timber Salvage	13	3	15.4
Timber Salvage, Forest Health	2	_	_
Timber Thinning	7	5	71.4
Timber Thinning, Forest Health	1	1	100.0
Timber Thinning, Prescribed Burn	6	6	100.0
Timber Thinning, Prescribed Burn, Restoration	1	1	100.0
Timber Thinning, Species Management	1	1	100.0
Vegetation Management	1	1	100.0
TOTAL	77	43	55.8

⁷ Percentage of total appeals (e.g., 18) filed in Region 3 that were filed in northern Arizona forests (e.g., 7), by project type.

Table 40 provides information similar to Table 35, with a more focused look at our subset of 43 projects. These tables show that of the 497 appeals filed in Region 3, 77 of them (15.5%) were related to project types of particular interest in our subset. Of those 77 appeals, 43 (55.8%) were filed in northern Arizona.

Table 41 provides an overview of all appeals filed in northern Arizona in the subset of 43 projects, based on our initial classification of project type. The highest number of appeals—10—were filed against timber sale projects. All 10 were reviewed (none were dismissed or withdrawn). Six appeals challenging ecosystem management projects were filed, but only one of the six was reviewed. We cannot tell from the online appeal record whether the ecosystem management projects are directly related to fuels reduction or restoration. However, there is enough information in the records that we do not feel comfortable excluding these projects from our subset at this point. Four of the six ecosystem management appeals were dismissed by the Prescott National Forest. Forest Guardians filed two of the six ecosystem management appeals. Thinning and burning projects and restoration projects each had six appeals challenging them; only two of the 12 appeals were dismissed or withdrawn. The Forest Guardians, Center for Biological Diversity, and Prescott National Forest Friends were the only groups who filed appeals independently (with only one from Prescott National Forest Friends).

Table 41 also shows the only two appeals filed by private citizens challenged ecosystem management projects on the Prescott National Forest, and both were dismissed. Both of the appeals challenging projects that were clearly classified as fuels reduction projects by the Forest Service were filed with the Kaibab National Forest—one by Forest Guardians and one by the Center for Biological Diversity. The Flagstaff Activist Network appealed only one restoration project (joined with the National Forest Protection Alliance, Forest Conservation Council, and Forest Guardians).

The Center for Biological Diversity (Center) was the only organization to challenge the following projects: combined timber sale/fuels reduction, combined timber thinning/forest health project, combined timber thinning/species management project, and vegetation management. Six of the 10 timber sale appeals reviewed by the Forest Service involved the Center; the Center filed four of the six independently. The Forest Guardians filed the other four timber sale appeals independently. The Center also filed the only two timber salvage appeals reviewed by the Forest Service (one filed by the Forest Guardians was dismissed). Four of the five timber thinning appeals involved the Center—three were filed independently. The fifth was filed independently by the Forest Guardians. Only one appeal of timber thinning projects was filed jointly by two appellants.

Table 41. Appeals of fuels reduction and forest restoration projects in Northern Arizona, with forest, appellant, and action.

Project Type	Appeal Number	Forest	Appellant(s)	Action	Appeals Filed
Ecosystem Management					9
	97-03-00-0028-A215	Apache-Sitgreaves	Forest Guardians, Forest Conservation Council	Reviewed	
	97-03-00-0056-A215	Prescott	Forest Guardians	Dismissed	
	97-03-00-0054-A215	Prescott	Prescott National Forest Friends	Dismissed	
	97-03-00-0053-A215	Prescott	Private Citizen	Dismissed	
	97-03-00-0055-A251	Prescott	Private Citizen	Dismissed	
	03-03-00-0002-A215	Apache-Sitgreaves	Center for Biological Diversity	Dismissed	
Fuels Reduction					2
	99-03-00-0089-A215	Kaibab	Center for Biological Diversity	Dismissed	
	99-03-00-0072-A215	Kaibab	Forest Guardians	Reviewed	
Restoration					9
			Center for Biological Diversity,		
	00-03-00-0008	Apache-Sitgreaves	Southwest Forest Alliance,	Reviewed	
			White Mountain Conservation League		
			Center for Biological Diversity,		
	01-03-00-0007-A215	Coconino	Sierra Club,	Reviewed	
			Southwest Forest Alliance		
	01-03-00-0008-A215	Coconino	Forest Guardians	Reviewed	
	01-03-00-0005-A215	Coconino	National Forest Protection Alliance, Forest Conservation Council	Reviewed	
			National Forest Protection Alliance,		
	00 03 00 0005 4215		Forest Conservation Council,	Doxnon	
	0174-000-00-00-00	COCOUNING	Flagstaff Activist Network,	NCVICW CU	
			Forest Guardians		
	99-03-00-0086-A215	Kaibab	Center for Biological Diversity	Reviewed	

Table 41. — continued

Project Type	Appeal Number	Forest	Appellant(s)	Action	Appeals Filed
Timber Sale					10
	97-03-00-0040-A215	Apache-Sitgreaves	Center for Biological Diversity	Reviewed	
	98-03-00-0030-A215	Apache-Sitgreaves	Center for Biological Diversity	Reviewed	
	98-03-00-0029-A215	Apache-Sitgreaves	Forest Guardians	Reviewed	
	97-03-00-0052-A215	Coconino	Center for Biological Diversity	Reviewed	
	No Number	Coconino	Center for Biological Diversity	Reviewed	
	98-03-00-0017-A215	Coconino	Forest Guardians	Reviewed	
	98-03-00-0001-A215	Coconino	Forest Guardians	Reviewed	
			Center for Biological Diversity,		
	99-03-00-0107-A215	Kaibab	Sierra Club,	Reviewed	
			Southwest Forest Alliance		
	00-03-00-0014-A215	Kaibab	Forest Guardians	Reviewed	
	00-03-00-0015-A215	Kaibab	Center for Biological Diversity, Sierra Club, Southwest Forest Alliance	Reviewed	
Timber Sale, Fuels Reduction					1
	98-03-00-0010-A215	Coconino	Center for Biological Diversity	Reviewed	
Timber Salvage					3
	97-03-00-0031-A215	Kaibab	Center for Biological Diversity	Reviewed	
	98-03-00-0025-A215	Kaibab	Forest Guardians	Dismisse d	
	01-03-00-0023-A215	Kaibab	Center for Biological Diversity	Reviewed	

Table 41. — continued

Project Type	Appeal Number	Forest	Appellant(s)	Action	Appeals Filed
Timber Thinning					5
	97-03-00-0033-A215	Apache-Sitgreaves	Center for Biological Diversity	Reviewed	
	97-03-00-0029-A215	Apache-Sitgreaves	Sierra Club, Center for Biological Diversity	Reviewed	
	97-03-00-0050-A215	Kaibab	Center for Biological Diversity	Reviewed	
	97-03-00-0051-A215	Kaibab	Center for Biological Diversity	Reviewed	
	98-03-00-0056-A215	Kaibab	Forest Guardians	Reviewed	
Timber Thinning, Forest Health					1
	97-03-00-0032-A215	Coconino	Center for Biological Diversity	Reviewed	
Timber Thinning, Prescribed Burn					9
	98-03-00-0028-A215	Kaibab	Center for Biological Diversity	Reviewed	
	97-03-00-0064-A215	Kaibab	Center for Biological Diversity	Dismissed	
	98-03-00-0064-A215	Kaibab	Center for Biological Diversity	Reviewed	
	98-03-00-0027-A215	Kaibab	Forest Guardians	Dismissed	
	98-03-00-0052-A215	Prescott	Center for Biological Diversity	Reviewed	
	98-03-00-0053-A215	Prescott	Forest Guardians	Reviewed	
Timber Thinning, Prescribed Burn, Restoration					1
			Forest Guardians,		
	00-03-00-0016-A215	Coconino	Forest Conservation Council,	Reviewed	
			National Forest Protection Alliance		

Table 41. — continued

Project Type	Appeal Number	Forest	Appellant(s)	Action	Appeals Filed
Timber Thinning, Noxious Weed Species					1
	98-03-00-0011-A215	Apache-Sitgreaves	8-03-00-0011-A215 Apache-Sitgreaves Center for Biological Diversity Reviewed	Reviewed	
Vegetation Management					1
	02-03-00-0011-A215 Kaibab	Kaibab	Center for Biological Diversity Dismissed	Dismissed	

Conclusion

A full accounting of the current administrative appeals process would begin with some basic questions: who, what, where, and when. The database we have compiled begins to answer some of these questions, especially 1) who files appeals, 2) what types of projects are appealed, 3) where the most appeals are filed, and 4) when most appeals are decided. It is important to note there really was no easy way to answer these questions prior to construction of this database.

For instance, what did surprise us is the number of persons who filed administrative appeals individually (not in conjunction with any identified organization). Individuals filed 35 percent of all appeals nationally, 20 percent in Region 6, and 38 percent in Region 3. Nationally, a significant percentage (84.9%) of those appeals were not filed in conjunction with any organization.

In addition, the proposed rule changes to 36 CFR 215 have the potential to affect a significant percentage of appeals. Nationally, in Regions 6 and 3, and within northern Arizona, at least 65 percent of all appeals filed were filed under 36 CFR 215. In fact, in Region 6, 94 percent of all appeals filed were filed under 36 CFR 215. Both nationally and in Region 6, more than 60 percent of all appeals listing a private citizen among the appellants were filed under 36 CFR 215. In Region 3 and within northern Arizona, more than 40 percent of appeals involving private citizens were filed under 36 CFR 215. One could surmise from this data that there are significant public interests (and not all of them environmental) that are likely to be affected by proposals to change the current appeals process.

With the exception of private citizens, the most active appellants for all project types nationwide are non-profit environmental organizations. The Forest Guardians are the most active organized appellant group nationally, regionally and within northern Arizona. In fact, in Region 6, the Forest Guardians filed more appeals than did private citizens. Based in Santa Fe, New Mexico, the Forest Guardians focus on the forests of the southwestern United States, but only 135 of the group's 381 appeals were filed in Region 3 (Arizona and New Mexico). This could mean the organization has broadened its geographical reach to other parts of the country, or that it is filing appeals on behalf of or in conjunction with other groups outside Region 3. The Ecology Center, based in Missoula, Montana, filed 236 appeals: 204 in Region 1, none in Region 3, and three in Region 6.

Nationally, approximately 42 percent of all administrative appeals were decided in 1998 and 1999. Of the nine Forest Service regions, Regions 1 and 5 were responsible for approximately 36 percent of appeals filed between January 1997 and September 2002. While there is a decrease in overall appeal activity (since the high of 857 appeals in 1998), there could, however, also be an increase in the complexity of the appeal cases being brought forward, but we would hypothesize that this is not the case. In the discussion over appeals, concern over a rising number of appeals nationally would not seem to be warranted by the data.

In terms of the types of decisions made by the Forest Service, the database presents information about both reviewed cases and dismissed cases. Nationally, regionally, and in northern Arizona, more than 55 percent of all reviewed appeals were denied in full. In fact, with the exception of Region 3, at least 75 percent of reviewed cases were denied in full. In Region 3, 63 percent of all reviewed cases were denied in full. A significantly large number of cases were dismissed because the decision under appeal was withdrawn by a Forest Service Deciding Officer. Nationally, in Regions 3 and 6, and in northern Arizona, at least 28 percent of dismissed appeals fell within this category. This relationship merits further examination. Likewise, further examination is needed of the reasons why appeals were granted, and how the granted appeals affected the projects' eventual implementation.

The database has also provided some evidence of the types of projects being appealed. As could be expected, our analysis of northern Arizona forests shows projects that potentially involve the cutting of trees appear to be a lightning rod for environmental groups. Recall also, however, that for Region 3 nearly 59 percent of the appeals decided during the study period related to grazing permits, compared to nearly 14 percent nationwide. While the Forest Guardians did file approximately 37 percent of these, another 34 percent of the grazing appeals involved private individuals. We would hypothesize that further investigation would reveal most of the grazing allotment appeals involving individuals challenged agency decisions adverse to individual grazing permittees.

However, preliminary examination of project types has also led to more questions about how the Forest Service designates and defines activities within a project. For example, is there a consistent suite of activities included in all "fuels reduction" projects across Forest Service Regions or Forests? As the Forest Trust pointed out in its critique of the Forest Service's report on mechanical fuels treatment, the agency "lacks a consistent system for tracking and analyzing its projects" (Morton and McCarthy 2002). Since appeals have long been such a controversial element in Forest Service planning and management, it is surprising that the agency has not developed a better record-keeping system. This lack of consistency in reporting project types makes it difficult to discern the appeal issue from some of the records posted on the website. Inconsistencies in definition also limit the ability of non-Forest Service researchers to replicate agency results and the conclusions drawn from them.

While we found some projects relatively easy to classify, e.g., grazing allotment, mining and special-use permit decisions, we found the task of identifying fuels reduction/forest restoration projects more problematic. It is difficult to have complete confidence in the determination of what projects might actually be related to fuels reduction and/or forest restoration, given the intertwining of timber sales, thinning, and prescribed burning, and restoration and fuels reduction projects into the overall fuels reduction/restoration debate. After constructing the database, we could see why, for example, Forest Service personnel encounter difficulties when asked to provide hard, numeric data specific to "fuels reduction" or "mechanical treatment" projects. Because of the difficulties in discerning project type from the agency's online records, we therefore decided that we would need to make a closer examination of project case files. For northern Arizona, we identified 43 projects for further study. Not all of these projects ultimately will fall into the category of fuels reduction or restoration. Controversy surrounds the Forest Service's own reports about whether

projects can be considered fuels reduction. The agency has been accused of counting commercial timber sales as fuels reduction projects, which, environmental groups argue, is then used to inflate the number of fuels reduction projects the agency can claim are appealed. Thus, we again caution against using our subset of 43 projects as generalizations about fuels reduction/restoration projects. What we can and do say about this subset is only about the subset. Because many of the projects in this subset (thinning, salvage, timber sales) involve the cutting of trees, a high level of environmental group participation could be anticipated.

Another question the database has not been able to answer at this point includes how long an appeal takes from filing to decision. Policy makers and Forest Service officials have used this issue repeatedly as justification for changes in the NEPA appeals process. The Forest Service has argued that "administrative appeals and litigation contribute significantly to the time it takes to plan for and decide on fuels projects prior to implementation" (USDA Forest Service 2002a, p. 4). However, no data have been made available from the Forest Service to indicate just how long these delays are, and it is impossible to answer this question based on the data posted on the agency's website. Examination of primary source records to determine the time spans between initial filing and appeal decisions, as well as the actual number of projects with fuels reduction/forest restoration objectives (as opposed to the recollections of individual regional and forest personnel) is the only way to make this determination. This data will be collected as case studies are done during subsequent phases of the project.

In addition, it can be argued that fear of appeal also prolongs the analysis and predecision process and that this must also be considered. But this cuts both ways. It may indeed prolong the process, as many people feel that a contributing factor to the painfully slow process of document preparation ("bullet-proofing") is the fear of appeals and lawsuits. However, as has been argued elsewhere (Culhane 1981; Jones and Taylor 1995), this fear can also prompt the agency to build a stronger scientific justification for its decision and to be more sensitive to public objections to proposed projects. Obviously, the interplay of these factors is an exploration that goes beyond information contained in the database. This point is certainly an important and valid line of future inquiry.

Finally, as we stated at the outset, construction of the database alone does not allow any definitive conclusions to be made about the outcomes and impacts of appeals either ecologically, economically, socially, or politically. Such determinations will require further analysis, including a systematic examination of a representative sample of cases. Only then can questions about how appeals contribute to action or inaction on Forest Service lands, and with what consequences and for whom, be addressed more fully. Factors other than appeals, for example, may also contribute to project delay, such as slow or poor preparation of NEPA documentation, the reallocation of personnel during fire seasons from document preparation to fire fighting, or insufficient funding. To tell a more complete story about contributions of appeals to project outcomes and delays will require a much more detailed assessment of appeals records, project descriptions, and participants in the administrative appeals process.

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