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File Code: 1570-1/2230

Date: May 10, 2000

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CERTIFIED MAIL - RRR

RE: Appeal of Decision Notice and Finding of No Significant Impact for the Chevelon Canyon Allotment Management Plan, (Appeal #00-A/S-251-1), Black Mesa Ranger District, Apache-Sitgreaves National Forests

Dear Mr. Earnhardt:

This letter documents my first level review decision of the appeal you filed regarding a decision to implement Alternative #3 on the Chevelon Canyon grazing allotment. My review of your appeal is based on the existing project record. This appeal relates to a decision issued by District Ranger Kate Klein (Deciding Official), Black Mesa Ranger District, Apache-Sitgreaves National Forests on January 13, 2000 which would reduce authorized livestock numbers, change grazing season, and implement a grazing management system.

Background

A. A project initiation letter (Doc. 1d) stated that a NEPA analysis would begin for the Limestone, Clear Creek, and Wallace allotments as of Dec. 15, 1997.

B. An Environmental Assessment (EA) was prepared on April 24, 1998 for the Chevelon Canyon allotment. It stated on page 2 (Doc. 12) that the National Environmental Policy Act (NEPA) planning process had been initiated on this allotment as early as June 3, 1994. It went on to say that the 1998 EA was a precursor to a subsequent analysis that would be developed for the entire Game Management Unit 4A (GMU4A). There was never a decision issued for the 1998 Chevelon Canyon allotment EA (Doc. 60).

C. The scope of the analysis for GMU4A considered possible changes to the Chevelon Canyon AMP (page 3, Doc. 13).

D. Forage capacity for the Chevelon Canyon allotment was determined early in the process based on field data collected (Doc. 38, August 18, 1998). A framework for determining capacity was developed to arrive at an estimated capacity for the allotment (Doc. 39).

E. The Chevelon Canyon Allotment capacity had undergone several revisions as new information was obtained (Docs. 55a, 58,59,61).

F. The Deciding Official decided to re-analyze the Chevelon Canyon allotment under the same context as the other Chevelon District allotments (Doc. 60).

G. The appellant (Hal J. Earnhardt, III) met with the Deputy District Ranger on January 20, 1999, inquiring about the status of the NEPA analysis for Chevelon Canyon allotment (Docs. 86, 88) prior to becoming a permittee. Mr. Earnhardt asked, ***"what would your numbers be for the upcoming season upon transfer of the permit"***. In the same letter, the Deputy District Ranger stated and provided Mr. Earnhardt a copy of the proposed action for the allotment stating that 109 head of adult cattle were to graze the allotment with a 4 month season (June 15th through October 15th). There was consideration in the proposed action for an increase in capacity if water was provided in the Vigil-Durfee pasture. It was pointed at this time that the objective was to balance permitted use with capacity and according to scoping, there is indications that a reduction in permitted numbers would have to occur.

H. Mr. Earnhardt, and his representatives, communicated with District personnel on several occasions regarding the NEPA process, as to: 1) who makes the decision; 2) how reductions would occur; 3) how would range improvements be paid for; and 4) what would permit numbers be if Earnhardts' acquired the term grazing permit (Docs. 90, 94a).

I. A meeting between Mr. Earnhardt, accompanied by his staff, and the District Ranger and her staff , occurred on April 22, 1999. Mr. Earnhardt was issued a term grazing permit and the terms and conditions of the permit (Part 1, 2, and 3) were reviewed with the permittee at that time (Doc. 102a). The permittee was advised that his proposal would not likely meet the goals of the analysis.

J. The EA was completed on August 10, 1999 (Doc. 117). The 30 day comment period was initiated on August 11, 1999 (closes September 9, 1999, Doc. 145) following publication on August 10, 1999 (Doc. 118).

K. Mr. Earnhardt requested an extension of time to comment on the EA (Doc. 141). District Ranger Klein denied the request for extension of time (Doc. 145), as not being consistent with NEPA regulations. Mr. Earnhardt's comments to the EA were received late on October 1, 1999 (Doc. 146). District Ranger's response to comments were mailed to Mr. Earnhardt on January 14, 2000 (Doc. 161) notifying him that his comments were received late and not included in the Appendix of the EA. The District Ranger reiterated that several meetings were held with the permittee prior to becoming a permit holder and that he was kept informed of the potential changes that could occur on the allotment.

L. The 2210/2230 files were incorporated by reference on December 6, 1999 (Doc. 153).

M. The District Ranger (Deciding Official) issued the decision on the Chevelon Canyon allotment on January 13, 2000, selecting Alternative #3 (Doc. 159). The decision was published in the White Mountain Independent newspaper on January 14, 2000 (Doc. 158).

N. Earnhardt Ranches appealed the decision on Chevelon Canyon allotment on February 8, 2000 pursuant to 36 CFR 251, Subpart C regulations. The permit #05-015 was issued on April 26, 1999. An oral presentation was requested.

O. Earnhardt Ranches' appeal was accepted as timely and an oral presentation was granted on February 24, 2000 (Doc. 168). An oral presentation occurred on March 9, 2000 (Doc. 174).

P. The Deciding Officer submitted a Responsive Statement to Earnhardt Ranches' appeal on March 14, 2000 (Doc. 172). Earnhardt Ranches submitted a reply to the Responsive Statement on March 31, 2000 (Doc. 173).

Q. The first level Reviewing Officer closed the appeal record on April 10, 2000 (Doc. 175).

Points of Appeal

Issue #1. Permitted numbers on the allotment were to be set at 300 to 350 head.

Contention: Appellant alleges, according to conversations held with John Bedell over the course of several months, that the EA would set permitted numbers at 300-350 head of livestock with a season of use of May 15-October 15. Appellant states that nothing in the conversations led him to believe that the numbers would be set at 109 head.

Response: I had numerous conservations with you. Each time encouraging you to develop an alternative and directly give your input to the I.D. Team and the District Ranger. It is unfortunate that you believed that the numbers were to be set at 300 to 350 head.

The record clearly shows that prior to becoming a permittee, the appellant had several meetings and telephonic discussions with District Office personnel conducting the NEPA analysis for the Chevelon Canyon allotment. The first meeting (Doc. 86) with Deputy Ranger Seesholtz clearly stated that the proposed action for the allotment was to reduce permitted numbers down to 109 head and shorten the season of use to 4 months (June 15-October 15). The appellant was given a copy of the scoping report which indicated the proposed action for the Chevelon Canyon allotment (Doc. 75). In a telephone conversation with Deputy Ranger Seesholtz on January 25, 1999, the appellant was advised that the District Ranger would be making the decision on the stocking rate and management system for the Chevelon Canyon allotment (Doc. 90) according to the findings in the EA. Subsequent telephone conversations also indicated that the appellant was informed of the potential outcome of the NEPA analysis and that the District Ranger was the Deciding Official for the Chevelon Canyon allotment analysis (Doc. 94a). The appellant signed and accepted **all** (emphasis added) of the provisions of the Term Grazing Permit on April 22, 1999 which was approved on April 26, 1999 by District Ranger Klein (Docs. 102a and 153). Part 1, Paragraph 3 of the Term Grazing Permit (TGP) states: ***"It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or instructions of Forest Officers issued thereunder; ...".***
The TGP further states: ***"...This permit can be cancelled, in whole or in part, or otherwise modified, at any time during the term to conform with needed changes brought about by law, regulation, Executive order, allotment management plans, land management planning,***

numbers permitted or seasons of use necessary because of resource conditions, or the lands described otherwise being unavailable for grazing."

Pursuant to Section 402 of the Federal Land Policy and Management Act (1976), the agency has full discretion to adjust or modify grazing permits to meet resource conditions as deemed necessary by the agency. Case law has also upheld the agency's discretional authority to revoke or modify grazing permits as deemed necessary by the agency [Light v. United States (1911); Osborne v. United States (1944); Swim v. Bergland (1983); Diamond Bar Cattle Company v. United States (1999)].

There is clear authority for the agency to change permitted numbers on the permit issued. The appellant was informed from the onset that a change in permitted numbers was likely, given the resource conditions on the allotment and the desired conditions that were identified several months prior to the appellant accepting and signing the TGP.

Findings: The appellant was fully aware of the following: 1) the potential outcome of the NEPA analysis; 2) was informed of the proposed action and potential permit reductions; 3) was informed as to who would be making the decision regarding future management and permit numbers for the Chevelon Canyon; and 4) was informed of the terms and conditions of the TGP before freely accepting and signing the TGP. There is nothing in the record that suggests, or substantiates, any implied or explicit commitment from the Forest Service to approve a higher stocking rate outside the context of the alternatives considered through NEPA. The record reflects that the appellant's alternative was considered pursuant to NEPA and the Deciding Official made a clear, rational, and justifiable decision to select an alternative that would meet the desired conditions as considered in the EA. The Deciding Official acted within her authority as defined in laws and regulations. The Deciding Official is affirmed in regard to this issue.

Issue #2. Appellant alleges that the procedures used to estimate carrying capacity under the selected alternative are not sufficiently accurate to serve as the basis for establishing carrying capacity for specific allotments and/or pastures.

Contention: The appellant contends that the methods used are based on generalized relationships regarding soil productivity, effects of tree canopy on the understory production, effects of slope and water placement on livestock distribution, competition between livestock and wildlife for forage, and other assumptions that are not based on any site-specific information. The methods used are sensitive to scale of mapping which was not considered. Allowable use level based on range condition and on presumed cover requirements for certain wildlife are not based on scientific evidence showing a link between specific use levels and predicted effects of such use.

Response: The method for determining capacity was not uniquely applied to just the selected alternative. The method was applied to all alternatives considered in the EA (including the appellant's alternative), therefore, all alternatives were on an equal footing (Doc.159).

According to the Deciding Official's Responsive Statement (Doc. 172), site-specific data was collected and combined with other sources of information to arrive at an estimated capacity. Some existing data was used in determining grazing capacity, such as allotment planning and permit files (2210,2230), Terrestrial Ecosystem Survey (soils data), and electronic geographical

information (Doc. 128, 153). The forage production estimates derived from file data sources were field verified and the data was summarized into a spreadsheet used in arriving at a final capacity estimate (Doc. 55a). The procedures of how the estimated capacity was determined is contained in a document entitled Considerations Concerning Stocking Rates (Doc. 95). The procedures used in determining the estimated capacity using computer models and tempered with field verification coincides closely to those procedures outlined in Forest Service Handbook (FSH) 2209.21 (Range Analysis and Management Handbook, Region 3, Amendment #14, April 1988), Chapters 20 and 50.

Assignment of allowable use levels has been standard practice for the agency in determining an estimated capacity. Chapter 50, FSH 2209.21 states ***"To compensate for the poor production years, the proper use factor must be conservative when related to average annual precipitation. The proper use level may vary with differences in range condition class and season of use and intensity of management"***. FSH 2209.21 provides a list of forage species, as a guide to proper use for fair or better range condition rangelands. The Handbook also states that the species mix, terrain, distances, and palatability to livestock influences the pattern and degree of use under a given stocking level. Setting an allowable use must also consider the plant communities most preferred and accessible to livestock. Ultimately, setting allowable use levels must have clear objectives for resource management, derived from Forest Plans or resource concerns found on the ground. FSH 2209.21 (Chapter 50) states that the proper use levels contained in the handbook are guidelines that have been amended from nearly 50 years of field experience by the Forest Service in Region 3. It is further recognized that intensive management systems with varying periods of use will provide different levels of allowable use. The inference here is that the inverse is also true, that less intensive management can require differing allowable use levels as well.

The allowable use level was set at 25% to aid in the improvement of habitat conditions for wildlife, meet plant physiological needs, aid in the recovery of riparian systems, and improve range conditions. This is expected to be accomplished while still providing a moderate level of wild ungulate populations, providing some level of livestock grazing on the National Forest, and not adversely affect federally listed threatened and endangered species or their habitat (Doc. 159).

In the EA (Doc. 159), several references to research findings were made regarding wildlife habitat or species needs. The relationships discussed in the EA, implied or expressed, that less grazing intensity has more beneficial effects to wildlife species than does higher levels of grazing which is consistent with research findings (Docs. 142, 154). The effects of grazing on wildlife species were adequately analyzed in the EA. A reasonable conclusion was drawn from that analysis resulting in a need to lower allowable use levels which in turn leads to a lower estimated capacity in order to meet resource objectives.

Findings: The Deciding Official used an accepted practice of determining capacity and setting allowable use levels consistent with agency policy and standards. The Deciding Official incorporated information from research in the analysis that substantiated conclusions presented in the EA. The Deciding Official acted appropriately within her authority and provided a logical rational for arriving at an estimated capacity. The Deciding Official is affirmed in regard to this issue.

Issue #3. The procedures for determining soil stability are artificial and do not relate to actual management needs on the allotment.

Contention: The appellant contends that grazing management changes should only occur in areas where the soil instability is a direct result of the grazing impact and changes should not occur if other causes result in soil instability. The appellant contends that if soil instability does exist then grazing use is likely to occur more in "no capacity" range than in full capacity range therefore under estimating the allotment's grazing capacity.

Response: According to statutes (Organic Act, 1897; MUSYA, 1960; RPA, 1974; PRIA, 1978) the agency is required to manage lands in a manner that protects the land from degradation or otherwise improve and maintain satisfactory resource conditions that will provide the goods and services to the public without impairing the lands productive potential on a sustained yield basis.

Determining the condition of the soils and watersheds is fundamental to maintaining the land productivity potential, as well as being fully compliant with statutes. The procedures developed for assessing the soil conditions are contained in Forest Service directives which involves a correlation between vegetation, soils, climate, and the physical impacts caused by various land use practices. The Deciding Official's Responsive Statement (Doc. 172) succinctly describes the interrelationship of soil stability and grazing capability as per FSH 2209.21. In addition, a thorough watershed assessment had been completed on portions of the Chevelon District watersheds that identified grazing as one of the significant causative agents in destabilizing watersheds and riparian systems within a portion of the GMU4A analysis area (Doc. 151). That assessment clearly linked the reduction in ground cover to long-term overgrazing as one of the key elements contributing to accelerated runoff which eventually increased soil erosion and headcutting. Historical records referenced in the Watershed Assessment indicated that the majority of the livestock grazing occurred in the drainage bottoms throughout history.

The assignment of capacity and its relationship to soil stability does not justify allocations solely on the basis of **whose to blame for the problem** (emphasis added). Capacity and soil stability are determined according to the existing conditions on the landscape, regardless of the causative factors. Determining the proper use level, as well as defining the causative factors, is necessary to setting a course of action that is likely result in repeating the same mistakes that led to the existing degraded conditions. The course of action should be based on a comparison between existing and desired conditions to allow succession to occur in an effort to achieve stated objectives. Capacity determination, setting an allowable use, and determining where most of the livestock use is likely to occur through most of the grazing season (capability assessment) is key to achieving desired resource management objectives (FSH 2209.21, Chapter 20 and 50). Incidental grazing of "No Capacity (NC)" range may occur, but it is exactly that, minor and incidental. NC does not, and has not in the past, contributed to any surmountable amount of capacity in most allotment cases according to years of field experience.

Findings: The appellant's assertions are contrary to policy and basic resource management principles. The appellant has not provided any evidence to refute agency practices or the application of the logic derived from various research findings referenced in the EA. The Deciding Official followed agency policy and procedures to assess soil stability and determine the capability of the land for grazing purposes and is supported by the project record. The Deciding Official is affirmed in regard to this issue.

Issue #4. This issue is consolidated from several issue points into a single issue of determining estimated capacity.

Contention: This issue has been consolidated from various points raised by the appellant: slope/distance from water; estimated forage production; proper forage utilization; consumption of forage by wildlife and livestock; and map scale. The appellant contends that the use of these parameters are based on generalized assumptions and are not specific enough to on-the-ground conditions.

Response: The record indicates an in depth analysis and justification for utilizing the above stated factors to determine the estimated capacity (Doc. 95). Data determined in the office was field verified, summarized, and entered into the record (Docs. 55a, 103). The Deciding Official's Responsive Statement provides detailed explanations of the process and application of the parameters (Doc. 172), including substantial literature references that support the determination of the capacity based along the parameters previously stated. Response to Issue #2 is also incorporated here in response to Issue #4.

Agency procedures documented in FSH 2209.21, Chapter 50, coincides with the procedures adopted by the Deciding Official to arrive at an estimated capacity. Chapter 50 considers similar factors, as follows: 1) that livestock usually graze more gentle areas and use radiates from water sources, but may use rougher terrain to some limited extent (slope/distance from water); 2) data about existing forage production was collected and utilized in determining the estimated capacity; 3) an allowable use was determined to be appropriate given existing resource conditions and desired conditions; 4) the best information was utilized to arrive at an estimated consumption rate for both livestock and wild ungulates; 5) the scale at which the capacity was determined appears to be reasonable and refined enough for initial determinations of capacity.

Monitoring has been incorporated into the Decision Notice (Doc. 159) which should aid in verifying the estimated capacity, which is a standard practice for the agency. The mere fact that the estimated capacity was derived from computer modeling does not invalidate its usefulness or its reliability. Use of computer models and the concepts which it is based on, is comparable to FS established procedures.

Findings: The Deciding Official did conduct a logical assessment of the lands capability to support grazing use. The use of the parameters to arrive at an estimated capacity was reasonable and derived a reasonable stocking rate based on existing conditions. The Deciding Official has acted within her authority and has been consistent with law, regulation and policy. The Deciding Official is affirmed in regard to this issue.

Issue #5. The utilization standard of 25% combined use would actually result in less use overall by all ungulates.

Contention: The appellant contends that the total actual use between wild and domestic ungulates will be less due to the low allowable use set. There is no justification stated in the DN/FONSI that substantiates the application of such a low allowable use. There is no logical connection between setting a low allowable use level and providing residual cover for nongame wildlife species. There is no evidence that indicates that residual cover is presently a limiting

factor for any wildlife species or that reducing livestock use would result in an increase in populations. The appellant further contends that removing livestock from a pasture when the 25% use level is reached is a misuse/misunderstanding of the concept of utilization.

Response: Contrary to the appellants assertions, there is justification presented in the DN/FONSI (Chevelon Canyon allotment) for setting the allowable use level. On page 2 of the DN/FONSI states: ***"It establishes utilization standards and season of use that provide for plant physiological needs and the opportunity for range and watershed conditions to improve"***. It further states, ***"The reductions in livestock numbers, season of use and utilization standards provide the opportunity for riparian recovery by reducing the grazing pressure on riparian plant species and on the upland watersheds which influence the riparian areas"***. On page 3 of the DN/FONSI, states that the US Fish and Wildlife concurred with the Forest Service that the actions being taken as a result of the decision to implement Alternative #3 may not likely adversely affect several federally listed species and that it would not trend sensitive species toward listing (Doc. 159).

The EA (Doc. 159) discusses in more detail the cause and effect relationships between grazing impacts and wildlife species habitat needs. Pursuant to the Forest Plan (FP) for the Apache/Sitgreaves National Forests, direction is clearly given to manage for threatened or endangered species or their habitat, as well as sensitive species. In Amendment #6 to the FP, direction is given to move degraded riparian systems to good condition as soon as possible. The FP also states that forage utilization standards and guidelines will be implemented to maintain owl prey availability, maintain potential for beneficial fire, maintain and restore riparian ecosystems, and promote the development of owl habits, as well as, strive to attain good to excellent range condition. The development of FP Amendment #6 stemmed from various sources (Region 3 resource specialists) and it also included scientific data derived from the research/scientific community. According to the Record of Decision, June 5, 1996, to amend Region 3 Forest Plans, there were provisions for establishing utilization standards at a site-specific level to manage habitats for threatened and endangered species. Amendment #6 adopted the application of managing the grazing use through the key species and key area concept.

There is a body of literature cited in the EA (Doc. 159) and the Deciding Official's Responsive Statement (Doc. 172) that indicates that utilization at 25% is appropriate and desirable for plant health and rangeland recovery. The Purpose and Need (Section I, B) in the EA stated that ***"there is a need to modify grazing by both livestock and wild ungulates to improve range and wildlife conditions by increasing the composition, vigor and density of desirable vegetation."*** As stated in the EA, one of the desired conditions is to improve range condition to Fair or better for various habitat types. The EA also stated that under existing conditions, the majority of the Chevelon Canyon allotment is rated in Poor to Very Poor range condition.

The logic presented in the EA, along with the scientific evidence referenced, clearly indicates that setting the allowable use level at 25%, coupled with a grazing system, is the common sense thing to do and would likely help achieve the results desired.

Management on public lands is not driven by commodity output alone, it is driven by resource objectives, a land ethic of responsible management and sustainment of the biological resources, and ultimately the legal requirements to maintain/sustain the productivity of the land for future generations.

Findings: The application of utilization standards is consistent with policy and direction. The Deciding Official has reached a logical conclusion in selecting an appropriate level of use to achieve desired conditions as part of the implementation of the selected alternative. The effects analysis in the EA substantiates the selection of the allowable use level. The Deciding Official is affirmed in regard to this issue.

Issue #6. The range condition on the allotment has not been monitored at permanent transect locations since 1991.

Contention: The appellant contends that there is no current inventory of the range conditions on the allotment. There has been no determination as to the cause of the observed condition and trend. The appellant asserts that the main cause for poor range conditions on the allotment may be due to tree encroachment.

Response: Contrary to the appellants assertions, there is a current assessment of the resource conditions considered in the EA (Doc. 159) and other documents contained in the project record (Docs. 12, 38, 68a, 120, 153). The appellant is correct in the assessment that tree densities have an effect on range condition. The majority of the land area within the Chevelon Canyon allotment is covered in forest or woodland habitats. The land area has a propensity to be tree covered therefore forage resource conditions would not be expected to be very favorable. Ascertaining the cause is essential in determining the appropriate course of action to correct past effects. The Deciding Official has merely presented a current status of the resource conditions, as she should in accordance with NEPA.

The EA states that range conditions were field verified while confirming forage production. It is recognized within the agency that range conditions change very slowly over time, especially in the Southwest. A 10 year period since the last reading may not reflect significant change, but nevertheless, ocular field estimates is an agency approved method to determine range condition and trend by trained professionals (FSH 2209.21, Chapter 40). The EA identifies that two agency Range Conservationists (Specialists) were assigned to the Interdisciplinary Team for the analysis of the Chevelon allotments. Both members prepared documents for the analysis of the Chevelon Canyon allotment as indicated by the record, therefore, the range conditions stated in the EA were determined by trained professionals. The Responsive Statement (Doc. 172) describes the process used to field verify existing range conditions and trends.

Findings: The determination of the existing range conditions for the Chevelon Canyon allotment were developed by trained agency professionals. The use of ocular estimation is an agency accepted practice which was used to field verify range conditions, the determinations appear to be consistent with agency policy and procedures. The Deciding Official is affirmed in regard to this issue.

Issue #7. Riparian condition assessment on the allotment does not establish if the condition is due to livestock grazing or by other factors. Trampling damage caused by elk has not been assessed in the EA.

Contention: The appellant contends that without defining the causative factors that resulted in poor riparian conditions, a corrective action cannot be determined. If current livestock grazing is causing poor riparian conditions then simply reducing numbers would not solve the problem. The appellant's proposed alternative would afford more opportunities to control the timing and frequency of grazing on riparian areas. The appellant contends that elk have a significant impact on riparian areas and streambank stability and this has not been considered.

Response: Proper Function and Condition (PFC) assessments were conducted by an integrated team of Forest Service and Arizona Game and Fish trained professionals (Doc. 150). The inventory recorded most of the channels in a deteriorated condition. Past and present upland watershed conditions were determined to be contributing to degraded riparian conditions. Severe grazing (livestock and wild ungulate) was also recognized as contributing to the onsite degradation in non-riparian (bluegrass bottoms) and riparian areas. It was noted that in riparian areas that have been excluded from grazing (domestic and wild ungulates), recovery of the riparian system has been successful, therefore, confirming grazing as the causative agent in degraded riparian conditions.

A watershed assessment (Doc. 151) also indicated that grazing, past and present, has resulted in degraded riparian conditions (Response to Issue #3 also applies to Issue #7).

Through the NEPA analysis (EA, Doc. 159), it was determined that in comparison between alternatives, Alternative #3 (selected alternative) would improve riparian conditions better than Alternative #5 (appellant's alternative). The EA recognized that riparian and stream channel degradation is caused by all ungulate grazing, therefore, elk impacts were considered. Alternative #3 states, ***"Overuse of herbaceous production is likely to occur until wild ungulates are balanced with their estimated capacity."*** It was estimated that recovery of riparian areas would take about two to three decades, considering that wild ungulate use would continue.

Findings: The record does not substantiate the appellant's contentions. There has been field data collected on riparian conditions and as part of that field inventory, grazing (domestic and wild ungulates) has been determined to be contributing to resource degradation. The appellant's proposed alternative was analyzed in the EA and found not be more conducive to recovery of riparian areas than the selected alternative. The Deciding Official is affirmed in regard to this issue.

Issue #8. Economic Analysis.

Contention: The appellant contends that the cost/benefit ratio for Alternative #5 is twice the amount than Alternative #3. The appellant notes that the EA admits that Alternative 2 involves reductions in stocking that could place the operation at risk as opposed to Alternative 5 which could provide for self-sufficient operation. The appellant implies that the estimated capacity is not valid and there could have been sufficient capacity to sustain the appellant's proposed alternative. The economic analysis fails to consider the whole ranch operation of the appellant, which omits other private holdings and grazing allotments. No consideration was given to the effects on the deeded lands and other leases when the economic analysis was made. The appellant contends that the cost of Alternative 5 could have been less due to use of herding and installing gap fences rather than entire fences.

Response: The scope of the analysis, as defined in the EA, was limited to only the National Forest lands. Analyzing lands that were not part of the allotment would be outside the scope of the analysis. The EA assessed the economics for the Chevelon Canyon allotment in accordance with the scope of the analysis, therefore, it was inappropriate to analyze the economic effect upon any lands outside of the allotment itself. There was no proposal submitted to consolidate all land holdings (federal, state, and private) into a single management scheme which could have been a basis to assess the economic effect on the entire operation. Such an analysis would require full disclosure of all economic factors, something that most people do not care to divulge. Financial decisions are ultimately individual in nature and generally not specific to the allotment itself. Therefore, what may make economic sense to one permittee may not be so for another.

Response to Issue #1 also applies to this Issue #8. The Deciding Official's Responsive Statement (Doc. 172) describes the background leading up to the appellant becoming a permittee, therefore, the appellant had prior knowledge of the potential outcome of the NEPA analysis. The appellant had ample opportunity to 1) make adjustments to his operation before becoming a permittee to compensate for the economic effect that could occur by implementing the Proposed Action; 2) accept the Proposed Action at face value as well as the economic consequences that would ensue; or 3) not become a permittee.

Findings: The Deciding Official properly analyzed the economic effect according to the scope of the analysis. The Deciding Official is affirmed in regard to this issue.

Issue #9. Wildlife Populations.

Contention: The appellant contends that there is no evidence presented in the EA or supporting documents that Threatened or Endangered (T&E) species are in danger because of livestock grazing or they may increase by selection of an alternative. The statements made in the EA are based only on speculation. Also, there is no consideration of elk impacts on these species.

Response: Pursuant to Section 2 of the Endangered Species Act (ESA) of 1973, the mere fact that the species is federally listed places the species in danger or threat of extinction. Section 4(a)(1) of ESA describes the factors that has lead to listing which includes the destruction or modification of habitat, or by over utilization of any commercial activity. The agency is required by law (ESA) to take actions to protect and/or aid in the recovery of T&E species.

A Biological Assessment and Evaluation (Docs. 142, 154) was conducted by the agency that evaluated the species that occur, the habitat conditions, the activities occurring on the habitat, and the potential effects of the activities on the species or its habitat. Several T&E species had been identified as occurring, or may occur, on the allotment and that grazing by all ungulates (domestic and wild) was considered to be a threat to the habitat of listed T&E species. The US Fish and Wildlife Service, the federal agency responsible for enforcing the ESA, concurred with the findings of the Forest Service biologists that grazing may affect but not likely to adversely affect T&E species. The basis for concurrence with the FS findings was due to the actions to be taken, which were reduction in numbers, delayed season of use, and limiting overall grazing use to 25% and the likelihood of T&E habitat recovery. The concurrence would not have been obtained if the actions were less than those proposed in the selected alternative (Alternative #3).

Findings: The Deciding Official properly analyzed the habitat conditions and the effect of elk use in relation to ESA compliance. The Deciding Official provided data on species occurrence and the effects of various activities, reaching a logical conclusion from which to base a clearly objective decision to implement an appropriate course of action. The Deciding Official is affirmed in regard to this issue.

Issue #10. Water Quality.

Contention: The appellant contends that the water quality determinations existing off the National Forest, especially 30 miles away are irrelevant to the situation that exist on the allotment. There is no evidence that contamination arises from the allotment and is due to the current management being applied.

Response: NEPA is intended to provide disclosure of the physical, biological, social components of the environment. The agency utilizes various sources of information to describe the existing conditions and potential effects of a federal action. The EA (Doc. 159) states that the stream portions of Chevelon Creek adjacent to the allotment is in the same watershed as that portion of the creek located near Winslow, AZ (30 miles away). Arizona Department of Environmental Quality has defined the water quality for the entire watershed, in which that portion in proximity to the allotment is meeting water quality standards, but, the portion at or near Winslow is not. This is merely a statement of fact without making any judgement as to the causes.

The DN/FONSI (Doc. 159) states that the selected alternative will maintain or further improve the watersheds and water quality where they are currently unsatisfactory. It was noted that watershed condition was unsatisfactory in the pinyon/juniper area of the allotment. The reduction of tree canopy and grazing use is expected to improve conditions in that area. The pine vegetation zone was rated as having satisfactory watershed conditions.

Findings: The Deciding Official properly analyzed the watershed and water quality for the allotment. The analysis is consistent with law and policy, and contrary to the appellant's assertions. The Deciding Official has not acted in an unethical or unprofessional manner in carrying out her duties. The Deciding Official is affirmed in regard to this issue.

Decision

My first level review of this appeal was conducted in accordance with 36 CFR 251 Subpart C.

After review of the record, I find that the Deciding Official's decision with regard to selecting Alternative #3 was reasonable and justifiable based on the overwhelming documentation contained in the project record. The analysis was thorough and conducted in accordance with NEPA and other applicable laws, regulations, policy and procedures. The scope of the analysis was clear and the decision met the purpose and need for the project. I find no evidence to support the appellant's issues. Therefore, I affirm the Deciding Official's decision to implement Alternative #3 as described in the DN/FONSI dated January 13, 2000 for the Chevelon Canyon allotment.

In your response to the Responsive Statement dated, March 20, 2000 you proposed in conclusion that the Forest Services' methodologies will not produce reliable estimates of carrying capacity, and monitoring of the livestock use would be more useful. The implementation of Ranger Kleins' Alternative is a phased in process. In compliance with our Code of Federal Regulations you are given one year notification of the decision, and by policy we will reduce the grazing permit by 33% a year in order that you can modify your livestock operation and reduce that hardship on you.

This process will allow at least two years of 300 head of cattle on the allotment which is the number you claim is imperative for a successful operation. In this decision I am directing Ranger Klein to set forth a monitoring plan which will validate or invalidate the carry capacity set by this decision.

I encourage you to become involved in the development and the actual field monitoring the next two to three years. The parameters outlined in the Environmental Analysis will be used as standards for the monitoring.

The Deciding Official's decision is subject to second level review pursuant to 36 CFR 251.87(c)(2). You may submit a second level appeal to the Regional Forester within 15 days from the date this decision is received, by certified mail or facsimile. The Regional Forester will review your second level appeal on the existing record.

Sincerely,

/s/ John C. Bedell
JOHN C. BEDELL
Forest Supervisor

cc:
District Ranger, Black Mesa RD
Appeals and Litigation Staff, R3