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Department of
Agriculture

Forest
Service

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File Code: 1570-1

Date: April 10, 2000

Forest Guardians
c/o John Horning
1411 Second Street
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Certified Mail-Return Receipt Requested
P 556 954 748

Re: Appeal #00-03-00-0045-A215, Chevelon Canyon, Clear Creek, Limestone, and Wallace Allotments, Chevelon-Heber Ranger District, Apache-Sitgreaves National Forests.

Dear Mr. Horning:

This is my review decision concerning the appeal you filed on behalf of Forest Guardians, regarding the Decision Notices and Findings Of No Significant Impact which authorize grazing and implement the grazing management strategies on the above named allotments.

BACKGROUND

District Ranger Klein issued decisions on January 13, 1999, for the above named allotments. The decisions resulted in the selection of the following alternatives and authorizations:

Chevelon Canyon Allotment, Alternative 3, which authorizes 109 head of cattle (cow/calf) to graze from 6/15-10/15 annually. When the Dye pipeline is extended to the Vigil-Durfee Pasture, Alternative 3 authorizes 171 head of cattle (cow/calf) to graze from 6/15-10/15 annually.

Clear Creek Allotment, Alternative 5, which provides for complete rest over an indefinite period of time to restore plant vigor. After plant vigor is restored, Alternative 5 authorizes 125 head of cattle (cow/calf) to graze from 8/16-10/31 annually.

Limestone Allotment, Alternative 3, which authorizes 133 head of cattle (cow/calf or yearling equivalent) to graze from 6/15-9/15. After plant vigor is restored, Alternative 3 authorizes 156 head of cattle (cow/calf or yearling equivalent) to graze from 6/15-10/15.

Wallace Allotment, Alternative 5, which authorizes 425 head of cattle (yearlings) to graze from 6/1-10/15 annually.

The District Ranger is identified as the Responsible Official, whose decisions are subject to administrative review under 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.16, an attempt was made to seek informal resolution of your appeal. The record indicates that informal resolution was not reached.



My review of this appeal has been conducted in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal record and the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer recommended that the Responsible Official's decisions be affirmed and that your request for relief be denied. The evaluation concluded: (a) decision logic and rationale were generally clearly disclosed; (b) the benefits of the proposals were identified; (c) the proposals and decisions were consistent with agency policy, direction and supporting information; (d) public participation and response to comments were adequate; and (e) all of the major issues raised by the appellant were adequately addressed in the project record.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendations, I affirm the Responsible Official's decisions concerning the above named allotments, which authorize grazing and implementation of management actions.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ James T. Gladen
JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc:
Forest Supervisor, Apache-Sitgreaves NFs
District Ranger, Chevelon-Heber RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS**of the****Forest Guardians' Appeal #00-03-00-0045-A215****regarding the Decisions on the****Chevelon Canyon, Clear Creek, Limestone, and Wallace Allotments**

ISSUE 1: The Forest Service violated the National Forest Management Act (NFMA) consistency requirement by allowing grazing in excess of capacity.

Contention: The appellant contends the Forest Service is violating the Forest Plan and the NFMA by failing to ensure that grazing by domestic livestock and wild ungulates combined, does not exceed capacity. Appellant cites the Chevelon Canyon, Limestone, and Wallace Allotments as evidence that under the selected alternatives, over use of herbaceous production in riparian areas is likely to occur until wild ungulates are balanced with their estimated capacity.

Response: Game management Unit 4A (GMU 4A), as delineated by the Arizona Game and Fish Department (AGFD), encompasses the entire project area (Doc. 159). A review of the record disclosed that the Forest Service and AGFD conducted a joint analysis of forage production and grazing ungulate demands within GMU 4A. The analysis process included the opportunity for public comment and ultimately led to an agreed upon distribution of available forage between domestic livestock and wild ungulates.

In order to balance livestock grazing with the agreed upon distribution of available forage, the Forest Service is adjusting seasons of use and reducing permitted animal unit months by an average of 63 percent across all the allotments. Reductions on individual allotments range from 33 - 88 percent. In the case of the Limestone Allotment, the selected alternative provides for complete rest over an indefinite period of time to restore plant vigor. (Doc. 159). The AGFD will manage wild ungulate populations through annual big game hunts.

No amount of data is ever totally scientifically conclusive when applying analysis and decision making processes to biologically complex expanses of national forest system lands, consisting of thousands of acres. Therefore, a monitoring plan is in place to ensure resource objectives are being achieved. The Forest Service will monitor both domestic and wild ungulate use. Movement of livestock between pastures will begin when utilization is within 5 percent of the desired level. In addition, the AGFD will monitor key areas to assist them in setting big game population objectives (Doc. 159). Based on the analysis conducted by the interdisciplinary team, the Responsible Official concluded that reductions in livestock numbers, changes in season of use, and implementation and monitoring of utilization standards, will result in riparian recovery (Doc. 159).

Finding: The Monitoring Plan will provide continued validation of the decisions and current information on which to base adjustments in management, in order to ensure resource objectives are achieved.

ISSUE 2: The Forest Service violated NFMA by continuing to allow cattle grazing on the allotments without first evaluating the allotments' suitability for grazing. Therefore, the choice of any alternative is premature.

Contention: Appellant contends that NFMA was violated because the Responsible Official failed to evaluate the allotments' suitability for grazing, "...the Forest Service must determine in forest planning the suitability and potential capability of the National Forest System lands..., 36 CFR, Sec. [3]19.20". Absent a suitability analysis, the appellant contends that the Forest Service failed to discharge its obligation under NFMA to take a hard look at each alternative and therefore, the decision is premature.

Response: Contrary to the appellant's assertions, NFMA does not require that a suitability analysis be conducted at the project level. On August 24, 1999, the United States Court of Appeals for the Ninth Circuit, in Wilderness Society v. Thomas, 1999 U.S. App. LEXIS 20026 (9th Cir. 1999), concluded the Forest Service complied with NFMA in adopting the Prescott Forest Plan, including the Plan's allocation of acreage suitable for grazing. The Forest Plan complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the Forest Plan (Apache-Sitgreaves Forest Plan EIS Appendix B, Description of Analysis Process).

Finding: There is no requirement to conduct a suitability analysis when conducting a National Environmental Policy Act (NEPA) analysis at the project level concerning the management and permitting of livestock grazing. All requirements for suitability under the provisions of 36 CFR 219.20 were met upon completion of the Forest Plan. The 36 CFR 219 regulations are not applicable in this case, therefore, the decisions are not premature.

ISSUE 3: The decisions violate the NFMA by failing to comply with riparian standards and guidelines in the Forest Plan and to maintain viable numbers of all species. Implementation of the decisions will violate the Endangered Species Act.

Contention: Appellant contends that the Forest Service must provide protection and habitat for riparian obligate species. Appellant cites 36 CFR 219.19 planning regulations in supporting the assertion. The appellant further contends that "despite this direction" (i.e. Forest Plans), the Forest Service has failed to "protect riparian habitats and riparian obligate species", due to livestock grazing. The appellant also asserts that continuing to allow cattle grazing in the severely degraded watersheds (i.e. failing to make the health of riparian areas and watersheds a priority) violates the Endangered Species Act because habitat for threatened and endangered species will not be protected.

Response: Regulations at 36 CFR 219 Subpart A, which appellant cites, set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended [36 CFR 219.1(a)]. Forest Plans include goals, objectives, standards, and guidelines for the protection of threatened, endangered, Forest Service sensitive, and other species and their habitat. Site-specific projects are designed under the direction provided in Forest Plans. The Responsible Official found the selected alternatives to be consistent with the Forest Plan (Doc. 159).

Certain riparian areas, i.e. Leonard Canyon, Willow Canyon, and Gentry Canyon will be excluded from livestock grazing to provide protection of habitat for Little Colorado spinedace. Protection/recovery of other riparian areas and uplands will be ensured through implementation and monitoring of forage utilization standards, changes in season of use, reduced numbers of permitted livestock, and implementation and monitoring of Best Management Practices (BMPs) (Doc. 159). These actions will contribute to improved riparian functionality, wildlife and fish habitat, and water quality. Increases in hiding cover and available forage are expected to result in higher densities and wider distribution of insects, small mammals, and other wildlife species that depend on grasses and annuals for food and cover. Increases in these prey groups will benefit threatened, endangered, Forest Service sensitive, and other species (i.e. Mexican spotted owls, northern goshawks, flammulated owls, and occult little brown bats). Wildlife which are dependent on browse species for nesting habitat will benefit through improved vigor of browse under the selected alternatives. Implementing the selected alternatives will maintain and improve habitat which will ensure the viability of Federally listed Threatened, Endangered, Proposed, or Candidate Species, Region 3 sensitive species, and Apache-Sitgreaves Forests Plan Management Indicator Species (Docs. 111, 112, 113, 114, 159).

Finding: The decisions provide for adequate protection of riparian and upland habitats consistent with the Apache-Sitgreaves National Forests Plan. The conclusions reached were reasonable (based on the effects of the selected alternatives) that the projected habitat conditions would maintain viability of all wildlife species.

ISSUE 4: The Forest Service violated NEPA by failing to analyze a reasonable range of alternatives.

Contention: The appellant contends that a reasonable range of alternatives, as required by NEPA implementing regulations, was not considered.

Response: The formulation of alternatives is driven by significant issues identified in scoping 40 CFR §1501.2(c). For an alternative to be reasonable, it must meet the stated purpose and need, and address one or more issues. The minimum number of alternatives considered for each individual allotment included: Alternative 1, No Action (no grazing); Alternative 2, No Change (current management); Alternative 3, proposed action. In total, five alternatives were considered for the Chevelon, Clear Creek, and Wallace allotments, and four alternatives were considered for the Limestone allotment.

Finding: The scope of the analysis was appropriately defined and a reasonable range of alternatives was analyzed within that scope.

ISSUE 5: The Forest Service violated NEPA in failing to consider and disclose adequately the cumulative impacts of the proposed actions.

Contention: The appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering all past, present, and reasonably foreseeable activities as required by NEPA.

Response: Past, present, and reasonably foreseeable cumulative effects were analyzed at the fifth code watershed scale (Doc. 157). Past activities included fire, timber harvest and related treatments, grazing, and recreation use. Present and reasonably foreseeable activities include

timber harvest, grazing, dispersed and developed recreation use, off highway vehicle use, and road closures. Factors considered in the Cumulative Environmental Consequences section of the EA included social, economic, wildlife, soils, water quality, riparian habitat, range condition, vegetative treatments, heritage resources, timber harvest, fuelwood cutting, recreation activities, and air quality (Doc. 159). The cumulative effects analysis disclosed that there will be no long term negative effects to soil productivity or water quality (Docs. 157; 159).

Finding: Past, present, and reasonably foreseeable actions were considered in the analysis. The EA and record reflect an adequate analysis and disclosure of cumulative effects on the affected environment.

ISSUE 6: The EA violates the Clean Water Act (CWA).

Contention: The appellant failed to provide any specific actions pursuant to the alleged violation of the CWA.

Response: In the absence of specific allegations, the technical response to this issue is also limited. However, the project records shows that proper CWA procedures were followed and BMPs are planned.

Finding: There is no violation of the Clean Water Act.

ISSUE 7: The Decisions violate the Multiple Use and Sustained Yield Act.

Contention: The appellant alleges that the decisions violate the Multiple Use and Sustained Yield Act by failing to manage for the highest public benefit. The appellant further alleges that the decisions to authorize livestock grazing will permanently impair land productivity.

Response: Management of forest lands for highest net public benefits was analyzed and decided upon in the preparation of the Forest Plan. The Forest Plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately at the Forest Plan level, and are outside the scope of project level analysis.

The EA discloses that site productivity will be maintained through application of BMPs. Monitoring will be employed to ensure BMPs are effective in maintaining site productivity and to identify any necessary changes in management practices (Doc. 159, Appendix C and D).

Finding: Decisions concerning the highest public benefit are outside the scope of the analysis under review. The Responsible Official's decisions will not impair land productivity.

ISSUE 8: The environmental assessment violates the Administrative Procedures Act.

Contention: The appellant asserts, "There exists as yet no information which would indicate that the proposed alternatives will remedy the admitted problems on these allotments."

Response: The record indicates that the selected alternatives will remedy identified resource issues (Doc. 159). The EA displays the effects of implementing the proposed actions and alternatives. The Responsible Official's decision rationale reflects consideration of the effects as disclosed in the EA (Doc. 159). Further, the record reflects appropriate public involvement in the NEPA process. Public comments were evaluated and considered in the NEPA process.

Finding: The public was appropriately involved in the NEPA process, a reasoned and informed decision based on the analysis was made, and the Administrative Procedures Act was not violated.