

File Code: 1570-1

Date: December 7, 1999

Forest Guardians
c/o John Horning
1413 Second Street, Suite One
Santa Fe, NM 87505

Certified Mail-Return Receipt Requested
P 556 954 701

Re: Appeal #00-00-03-0007-A215, Granville and Dark Canyon Allotments, Clifton 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 strategy on the Granville and Dark Canyon allotments.

BACKGROUND

District Ranger Hayes issued decisions on August 26, 1999, for the Granville and Dark Canyon allotments. The decisions resulted in the selection of the following alternatives and authorizations: Granville allotment, Alternative B, which authorizes 200 head of cattle (yearlings) to graze 10/1 to 3/30 annually; Dark Canyon allotment, Alternative C, which authorizes 57 head of cattle (cow/calf) to graze yearlong.

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

Pursuant to 36 CFR 215.16, 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 215.7. 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 decision 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 records.

APPEAL DECISION

After a detailed review of the records and the Appeal Reviewing Officer's recommendations, I affirm the Responsible Official's decisions concerning the Granville and Dark Canyon 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, Clifton RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS

of the

Forest Guardians' Appeal #00-00-03-0007-A215

regarding the

Granville and Dark Canyon Allotment Decisions

ISSUE 1: The Forest Service violated the National Forest Management Act (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 suitability analyses, 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 decisions are 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 2: The decisions violated the NFMA by failing to maintain viable numbers of all species and by failing to ensure that riparian areas will recover to satisfactory conditions.

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, and that the decisions fail to ensure that riparian areas on the allotments will recover to satisfactory condition by the year 2015 as required by the Forest Plan and the Regional Guide.

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 (Dark Canyon Record (DC): Docs. 82; 87; Granville Record (G): Docs. 130; 131).

The Apache-Sitgreaves Forests Plan promotes healthy riparian ecosystems through Forest Plan riparian standards and guidelines. The records indicate that new term grazing permits will include clauses which insure compliance with the Forest Plan (DC Docs. 82; 87; G Docs. 130; 131). Livestock use on the Eagle Creek riparian pasture, Dark Canyon, will be limited to movement of livestock between pastures to provide protection of the loach minnow and spikedace. Protection/recovery of other riparian areas and uplands will be ensured through implementation and monitoring of forage utilization standards, changes in season of use and reduced animal unit months of grazing on Granville, and completion of a watershed analysis of the Eagle Creek and Middle Gila River watersheds (Docs. DC 81; 82; G 130). Neither of these actions is likely to jeopardize any federally listed or proposed species or critical habitats (DC Doc. 81).

The appellant inaccurately cites Forest Plan requirements. The Forest Plan does not contain a requirement that riparian areas be in satisfactory condition by the year 2015, or by any other year. The Regional Guide suggests that Forests, in developing their Forest Plans, "improve all terrestrial ecosystems and watersheds to satisfactory or better condition by 2020" (pg. 3-2). This is articulated as a watershed goal, not a hard and fast standard, in the Forest Plan. Regardless, the record clearly indicates that all riparian areas will be protected (DC Doc. 82; G Doc. 130).

Finding: The decisions provide for adequate protection of riparian and upland habitats consistent with the Apache-Sitgreaves National Forests Plan and Regional Guide. The Responsible Official reached a reasonable conclusion, based on the effects of the selected alternatives, that the projected habitat conditions would maintain viability of all wildlife species and protect and improve riparian areas.

ISSUE 3: Proposed livestock grazing levels do not balance permitted livestock grazing with capacity and do not adequately provide for native wildlife species in violation of the Apache-Sitgreaves Forests Plan.

Contention: The appellant argues that the Forest Service has made limited progress in balancing grazing capacity and permitted use as required by the Forest Plan. To support this argument the appellant cites the biological opinion, dated June 30, 1999, requiring the agency to determine the livestock capacity for each allotment using an agency approved method of capacity determination. The appellant also argues that the EAs do not provide any allocation of forage to wildlife.

Response: The requirement to determine the livestock capacity for each allotment has been met for both the Dark Canyon and Granville allotments (DC Doc. 83; G Doc. 128).

The Apache-Sitgreaves Forests Plan contemplates grazing that fulfills the multiple-use sustained yield philosophies that underlie National Forest System management, by requiring continued grazing with increased emphasis on recreation, wildlife, and fishery resources, while maintaining basic soil and water values, and by requiring that the needs of wildlife be considered when establishing livestock grazing capacity (DC Doc. 85; G Doc. 130). A review of the records

demonstrates that the Interdisciplinary team considered wildlife extensively. Utilization levels ensure sufficient residual vegetation for small animals and birds (DC Docs. 58; 82; G Docs. 100; 130), and the continued existence of threatened and endangered species (DC Docs. 24; 35; 58; 74; 77; 78; 81; G Docs. 56; 83; 84B; 95A; 98; 98A; 100). Sensitive species and management indicator species were considered in the analysis process as well (DC Docs. 58; 82; G Docs. 100; 130).

Finding: The Responsible Official's decisions comply with the requirements of the Forest Plan. The appellant's argument is moot.

ISSUE 4: The EA for the Granville allotment violates the Apache-Sitgreaves Forest Plan because it allows an HRM type grazing scheme.

Contention: The appellant contends the selected alternative significantly increases permitted numbers and relies on intensive short-duration livestock grazing.

Response: The appellant inaccurately cites the Granville decision. Total use under current management is 1124 animal unit months. Total use under Alternative B is 854 animal unit months, or a reduction of 270 animal unit months of use (G Doc. 130).

A review of the record clearly demonstrates that the change in animal unit months and season of use is designed to reduce grazing impacts associated with unmanaged yearlong use while improving soil conditions vegetation composition, density, and vigor, and reducing direct and indirect impacts to riparian areas (G Docs. 109; 130; 131). This is a reasonable management system which has nothing to do with HRM.

Finding: The Responsible Official reached a reasonable conclusion, based on the effects of the selected alternative.

ISSUE 5: 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 analyses considered the following alternatives: Dark Canyon, Alternative A, (no livestock grazing); Alternative B, No Action (current management); Alternative C, Proposed Action; Granville, Alternative A (cow/calf yearlong grazing); Alternative B, Proposed Action; Alternative C (mature goats yearlong); Alternative D, No Action (current management); Alternative E, (no livestock grazing). In addition, alternatives dropped from detailed study include two for Dark Canyon and five for Granville.

Finding: The Responsible Official appropriately defined the scope of the analyses and analyzed a reasonable range of alternatives within that scope.

ISSUE 6: The Forest Service violated NEPA in failing to consider and adequately disclose the cumulative impacts of the proposed action.

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: Cumulative effects considered in the analyses included fire, vegetation diversity, density, vigor, soil disturbance, hiding cover for wildlife, and upland and riparian range condition and trend (DC Doc. 82; G Doc. 130). The Responsible Official concluded cumulative impacts were insignificant (DC Doc. 87; G Doc. 131).

Finding: Past, present, and reasonably foreseeable actions were considered in the analyses. The EAs and records reflect adequate analyses and disclosure of cumulative effects on the affected environment.

ISSUE 7: The EAs violate the Clean Water Act.

Contention: The appellant argues that the Forest Service failed to require the grazing permittee to obtain water quality certification from the state of Arizona for both allotments as required under Section 401 of the Clean Water Act. Appellant also alleges that implementation of the decisions will continue to degrade water quality limited streams, in violation of State water quality standards, Forest Service regulations and the Clean Water Act.

Response: The State of Arizona does not require water quality certification for dispersed non-point activities such as livestock grazing. However, the record shows that the appropriate non-point source considerations were made during the planning process. The Arizona Department of Environmental Quality (ADEQ) was consulted throughout the scoping and document preparation periods (DC Docs. 6; 47; 91; G Docs. 30; 53; 136). ADEQ responded with comments and suggestions on Best Management Practices (BMP's) and monitoring (DC Docs. 23; 67; G Doc. 108). BMPs were prescribed (DC Docs. 82; 87; G Doc. 130) and stream health and/or riparian monitoring is planned (DC Doc. 84; G Doc. 138) to insure that water quality will not be negatively impacted. Contrary to appellants assertion, neither the Granville or Dark Canyon allotments contain any water quality limited stream segments (DC 23; 82; G Doc. 130).

ISSUE 8: 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 areas. Net public benefits were analyzed appropriately at the Forest Plan level, and are outside the scope of a project level analysis.

The EAs disclose that site productivity will be maintained through application of Best Management Practices (BMPs). Monitoring will be employed to ensure BMPs are effective in

maintaining site productivity and to identify any necessary changes in management practices (DC Docs. 82; 87; G Docs. 130; 131).

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

ISSUE 9: The EAs violate the Administrative Procedures Act.

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

Response: The records demonstrate that the selected alternatives will improve watershed protection, and that no watershed or riparian problems are foreseen (DC Docs. 82; 87; G Docs. 130;131). The EAs display the effects of implementing the proposed action and alternatives. The Responsible Official's decisions rationale reflect consideration of the effects as disclosed in the EAs (DC Doc. 87; G Doc. 131).

Finding: The Responsible Official made reasoned and informed decisions based on the analyses and has not violated the Administrative Procedures Act.