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Department of
Agriculture

Forest
Service

Southwestern
Region

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File Code: 1570-1

Date: January 4, 2000

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

Certified Mail-Return Receipt Requested
P 556 954 708

Re: Appeal #00-03-00-0006-A215, Hell's Hole Allotment, 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 Notice and Finding Of No Significant Impact that authorize grazing and implement the grazing management strategy on the Hell's Hole allotment.

BACKGROUND

District Ranger Hayes issued a decision on September 30, 1999, for the Hell's Hole allotment. The decision resulted in the selection of the following alternative and authorization: Hell's Hole allotment, Alternative E, which authorizes 117 head of cattle (yearlings) to graze 10/16 to 4/15 annually.

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 215.17. 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 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 proposal were identified; (c) the proposal and decision 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 recommendation, I affirm the Responsible Official's decision concerning the Hell's Hole allotment, 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 #00-03-00-0006-A215

Regarding the

Hell's Hole Allotment Decision

ISSUE 1: The Forest Service violated the National Forest Management Act (NFMA) by continuing to allow cattle grazing on the allotment without first evaluating the allotment's 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 allotment's 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 Forests 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 decision is not premature.

ISSUE 2: The decision 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 decision fails 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 alternative to be consistent with the Forest Plan (Docs. 119; 121).

The Apache-Sitgreaves Forests Plan promotes healthy riparian ecosystems through Forest Plan riparian standards and guidelines. The record indicates that the new term grazing permit will include clauses that insure compliance with the Forest Plan (Docs. 119; 121). Achieving satisfactory riparian conditions was one of the significant issues identified for analysis purposes. Protection/recovery of 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 (Doc. 119). In addition, the selected alternative is not likely to jeopardize any federally listed or proposed species or critical habitats (Docs. 114; 119; 121).

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 (Docs. 119; 121).

Finding: The decision provides 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 alternative, 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 contends that the EA does not provide any allocation of forage to wildlife and that the decision fails to comply with the Forest Plan standard to balance livestock permitted use with capacity.

Response: The Apache-Sitgreaves Forest 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 (Doc. 119). A review of the record demonstrates that the Interdisciplinary team considered wildlife extensively. Utilization levels ensure sufficient residual vegetation for small animals and birds (Docs. 72; 119), and the continued existence of threatened and endangered species (Docs. 72; 93; 114; 119). Sensitive species and management indicator species were considered in the analysis process as well (Docs. 72; 100; 119). The decision balances capacity with permitted use, while improving soil conditions, vegetation composition, density, and vigor (Docs. 81; 103; 119).

Finding: The Responsible Official's decision complies with the requirements of the Forest Plan.

ISSUE 4: The EA for the allotment violates the Apache-Sitgreaves Forests 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 decision. Total use under current management is 803 animal unit months. Total use under Alternative E is 497 animal unit months, or a reduction of 306 animal unit months of use (Doc. 119).

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 (Doc. 119). This is a reasonable management system that 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 analysis considered the following alternatives: Hell's Hole, Alternative A, (no livestock grazing); Alternative B, No Action (current management); Alternative C (50 cow/calf yearlong, deferred rotation); Alternative D (20 cow/calf yearlong, deferred rotation); Alternative E, Proposed Action. In addition, four alternatives were dropped from the detailed study.

Finding: The Responsible Official appropriately defined the scope of the analysis 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 analysis included fire, vegetation diversity, density, and vigor, soil disturbance, hiding cover for wildlife, and upland and riparian range condition and trend (Doc. 119). The Responsible Official concluded cumulative impacts were insignificant (Docs. 119; 121).

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 7: The EA violates 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 the allotment as required under Section 401 of the Clean Water Act. Appellant also alleges that implementation of the decision 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 (Doc. 6). ADEQ responded with comments and suggestions on Best Management Practices (BMPs) and monitoring (Doc. 11, Doc. 76). The alternative selected will have a positive affect on improving ground cover, reducing erosion, and protecting riparian areas (Doc.121). Finally, BMPs were prescribed (Doc. 119, Doc. 121) and BMP monitoring is planned as suggested by ADEQ (Doc. 119) to insure that water quality will not be negatively impacted. Contrary to appellant's assertion, the Hell's Hole allotment does not contain any water quality limited stream segments (Doc. 11, Doc. 119).

Finding: Appropriate procedures were followed and adequate mitigation is planned for this allotment management plan decision and there will be no violation of the Federal Clean Water Act, state water quality standards, or Forest Service policy.

ISSUE 8: The Decision violates the Multiple Use and Sustained Yield Act.

Contention: The appellant alleges that the decision violates the Multiple Use and Sustained Yield Act by failing to manage for the highest public benefit. The appellant further alleges that the decision 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 a project level analysis.

The EA discloses 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 (Docs. 119; 121).

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

ISSUE 9: The EA violates 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 record demonstrates that the selected alternative will improve watershed protection, and that no watershed or riparian problems are foreseen (Docs. 119; 121). The EA displays the effects of implementing the proposed action and alternative. The Responsible Official's decision rationale reflects consideration of the effects as disclosed in the EA (Doc 121).

Finding: The Responsible Official made a reasoned and informed decision based on the analysis and has not violated the Administrative Procedures Act.