

File Code: 1570-1/2230

Date: October 6, 1999

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CERTIFIED MAIL - RRR

RE: Appeal of Decision Notice and Finding Of No Significant Impact, Lake Mountain Allotment (Appeal #99-A/S-251-3), Lakeside Ranger District, Apache-Sitgreaves National Forests

Dear Mr. Flake:

This letter documents my first level review decision of the appeal you filed on behalf of Gaylan Flake and Marjory K. Flake, as the allotment permittee, regarding a decision to implement "Alternative 3" contained in the Decision Notice and Finding Of No Significant Impact (DN/FONSI) for the Lake Mountain grazing allotment. My review of your appeal is based on the existing project record. This appeal relates to a decision issued by District Ranger Edward W. Collins (Deciding Official), Lakeside Ranger District, Apache-Sitgreaves National Forests on June 25, 1999, which would implement a reduction in permitted numbers, combine 4 allotments into one, issue new term grazing permits, and implement structural and non-structural improvement projects.

Background

A. An environmental assessment (EA) was completed and mailed on February 26, 1999, which analyzed the effects of four alternatives. The EA underwent public review and comment prior to a decision being rendered (Doc. 126).

B. The DN/FONSI was issued by District Ranger Collins on June 25, 1999, in which "Alternative 3" was selected as the preferred alternative to be implemented (Docs. 150 and 151).

C. On August 3, 1999, you filed an appeal on behalf of Gaylan Flake and Marjory K. Flake, with my office (Doc. 155).

D. Informal resolution of the appeal was not attempted.

E. The Deciding Official submitted a written responsive statement to the appeal to my office on September 1, 1999, (Doc. 161), with a copy also mailed to you (Doc. 162).

F. A reply to the responsive statement was not submitted by you pursuant to 36 CFR 251.94(c).

G. No "Oral Presentation" was made by the appellant. As first level Reviewing Officer, I closed the record on this appeal on September 28, 1999 (Doc. 163).

Points of Appeal

Issue #1. Alternative #4 complies better with the agency's Multiple Use Policy than does Alternative #3.

Contention: You claim that Alternative #4 complies better with the multiple use policy of the agency because it results in a smaller permit reduction and a better grazing schedule that accommodates the needs of other resource values. The EA referenced in which you assert that the impacts between Alternatives #3 and #4 would be the same and that Alternative #4 provides more forage for wild ungulates. You also assert that the DN was based more on public comment, rather than the merits of the alternatives.

Response: The purpose and need for the analysis identified that balancing permitted use with capacity and resolving effects of overstocking were primary reasons for conducting the analysis. The "Decision Needed" would set the stocking levels, grazing season, and intensity of use on the allotment to be in conformance with the Forest Plan. The Decision is expected to bring permitted use in balance with capacity.

According to the EA (Doc. 152), Alternative #3 does balance use with capacity, whereas, Alternative #4 is not in balance with the capacity, at face value. The effectiveness of Alternative #4 meeting or achieving a balance between permitted use and capacity is predicated on annual monitoring throughout the grazing season to insure that grazing use is within acceptable levels. At page 20 of the EA, Alternative #4, states that livestock would move through pastures based on monitoring. It was also projected that under Alternative #4, that the livestock would graze through the pastures at a faster rate due to the higher stocking level and result in a shorter grazing season than identified on the grazing permit. The EA did state that the grazing schedule contained in Alternative #4 was better for wild ungulate foraging needs than that of Alternative #3 because it reduced the amount of conflict between livestock and wild ungulates in the Mineral Pasture, which is critical winter range. The rate of grazing conflict in Alternative #4 was 1 year out of 4, whereas Alternative #3's grazing schedule would have resulted in grazing conflict in 2 years out of 4.

Overall, the EA documents the conclusions that Alternative #3 is better than Alternative #4 at meeting Forage Distribution (pp. 16-22), Riparian (pg. 22), Vegetation (pg. 24), Watershed (pg. 26), Wildlife (pg. 29), and Heritage Resources (pg. 31).

Compliance with the Multiple Use Sustained Yield Act (MUSYA) does not require that the agency focus on one principle use and maximize that use. MUSYA recognizes that uses upon the National Forest lands will not occur on every acre and at equal amounts. An activity, such as grazing, needs to be evaluated against all of the other resource uses. A decision should be for an appropriate level of use that will not reduce the productivity of the land in concert with other uses.

The Deciding Official weighed the social, economic, physical and biological effects of the alternatives and arrived at a reasonable decision, in this case, Alternative # 3 was selected.

Findings: The Deciding Official conducted a proper and thorough analysis of the Lake Mountain allotment, consistent with the intent of MUSYA, and he arrived at a reasonable conclusion in selecting Alternative #3 as the preferred alternative. The Deciding Official is affirmed in regard to this issue.

Issue #2. Decision adopts Alternative #3 with inclusion of the grazing schedule from Alternative #4.

Contention: You contend that by combining parts of Alternative #3 and #4, results in a different alternative that you did not have an opportunity to analyze and comment. You further assert that the grazing schedule was intended to be used with the higher stocking rate as defined in Alternative #4.

Response: Both alternatives were analyzed appropriately according to the National Environmental Policy Act (NEPA). The effects of Alternative #3 and #4 were analyzed considering a deferred management grazing system. Alternative #4 proposed a staggered stocking rate at a level above the estimated capacity. Alternative #3 would implement a set stocking rate at the estimated capacity level.

The Deciding Official's selection to implement the grazing sequence in Alternative #4 is an expanded version of the rotation schedule presented in Alternative #3. Alternative #4's grazing schedule would have less adverse impacts than Alternative #3's original grazing schedule, on wild ungulates during the winter. The Decision Notice clearly states (Doc. 150) "it is my decision to implement all parts of Alternative #3 except that the grazing schedule from Alternative #4 will be used". The decision clearly intends to implement Alternative #3, and therefore, does not create a new alternative. Implementing Alternative #4's grazing schedule is within the scope of the grazing schedule contained in Alternative #3. The Deciding Official has the prerogative, under NEPA, to combine portions of already analyzed alternatives into a single decision.

Findings: The decision to implement the grazing schedule from Alternative #4 with Alternative #3 is within the authority of the Deciding Official and in accordance with law, regulation and policy. 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 respect to implementing "Alternative 3" is based on an evaluation of existing resource conditions, resulting in a reasonable conclusion. The Deciding Official's decision is in conformance with applicable laws, regulations, orders, and policies and procedures. 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 June 25, 1999.

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 BEDELL
Forest Supervisor

cc:
District Ranger, Lakeside RD
Appeals and Litigation Staff, R3