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Department of
Agriculture

Forest
Service

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File Code: 1570-1/2200

Date: March 16, 2001

Forest Guardians
c/o John Horning
1411 Second Street
Santa Fe, NM 87505

Certified Mail – Return Receipt Requested

Re: Appeal #01-03-00-0016-A215 Beehive/Sheep Springs Allotments Decision, Springerville Ranger District, Apache-Sitgreaves National Forests

Dear Mr. Horning:

This is my review decision concerning the appeal you filed regarding the Decision Notice and Finding Of No Significant Impact, which authorize grazing and implement the grazing management strategy on the above named allotments.

BACKGROUND

District Ranger MacIvor issued a decision on December 13, 2000, for the above named allotments. The decision resulted in the selection of the following alternative and authorization:

Beehive/Sheep Springs Allotments Alternative 2, which authorizes 2000 head of sheep (Band 1) to graze June 1 through August 18 annually; 2000 head of sheep (Band 2) to graze from June 2 through August 19 annually; 400 head of sheep (truck herd) to graze June 1 through September 25 annually; and 350 head of cattle (cow/calf) to graze July 1 through October 31 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 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 reversed because the Decision is outside the scope of effects analyzed and disclosed in the EA and record. The Decision documented in the Decision Notice included several modifications of the selected alternative (Alternative 2). One modification includes three pastures from the Greer Allotment in the Beehive/Sheep Springs grazing strategy. The effects of this action are not analyzed or disclosed in the EA or project record. In addition the environmental effects on several MIS and sensitive species were not disclosed in the EA.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I reverse the Responsible Official's decision concerning the above named allotments, which authorizes grazing and implementation of management actions with the following instructions:

- 1) Develop another alternative, which incorporates the season of use, class of livestock and pastures to be grazed in the selected alternative.
- 2) Evaluate and disclose the environmental effects of the selected alternative in a new EA.
- 3) Circulate the EA for a 30-day comment period 36 CFR 215.5.
- 4) Make a new decision subject to appeal under 36 CFR 215.7.

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

Sincerely,

JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester

cc:
Forest Supervisor, Apache-Sitgreaves NFs
District Ranger, Springerville RD
Director Rangeland Management, R3
Appeals and Litigation, R3

REVIEW AND FINDINGS

of the

Forest Guardians' Appeal

#01-03-00-0016-A215, Beehive/Sheep Springs Allotments Decision

ISSUE 1: The Forest Service violated the National Forest Management Act's (NFMA) consistency requirement by failing to comply with Standards and Guidelines for management of riparian areas listed in the Apache-Sitgreaves National Forests Plan.

Contention: The Appellant contends the decision fails to make the health of riparian areas and watersheds a priority and in doing so, violates both the Apache-Sitgreaves National Forests Plan and the Southwestern Regional Guide. The Appellant argues that the use of Proper Functioning Condition, as a standard of riparian health, is in itself a violation of the Forest Plan.

Response: Existing riparian ecosystem conditions are disclosed on pages 12 and 13, and Appendix B of the environmental analysis (EA, Doc. 64). Riparian ecosystem condition is identified as a key issue in the EA. The environmental effects on page 39 of the EA show that the chosen alternative moves the riparian condition from poor to good condition. Site-specific ungulate utilization levels were identified during this analysis to achieve desired conditions for riparian ecosystems. This is in accordance with the Forest Plan. The decision limits livestock watering and reduces utilization of herbaceous species in key riparian areas (Doc. 103, pg. 4). The decision provides the opportunity for rapid riparian recovery by reducing livestock grazing pressure on riparian plant species and on the upland watersheds, which influence the riparian areas (Doc. 103, pg.7). Proper Functioning Condition is only a method used to assess riparian conditions, not a standard. The Southwestern Regional Guide is incorporated in the Forest Plan.

Finding: Continued riparian improvement is ensured under this decision and there is no violation of the Apache-Sitgreaves National Forests Plan.

ISSUE 2: The Forest Service violated NFMA's consistency requirement by allowing grazing in excess of capacity.

Contention: The Appellant contends that scheduling reductions over a three-year period would continue grazing in excess of capacity which is a clear violation of Forest Plan requirements that grazing be balanced with capacity as soon as possible.

Response: The key wording in the Forest Plan requirement that requires grazing to be balanced with capacity is the provision of "as soon as possible". This is consistent with the Secretary of Agriculture Regulations at 36 CFR 222.4(2)(8) which require prior notification to the permittee of changes in season of use, and numbers, kind, and class of livestock because of resource conditions. Forest Service policy at FSM 2231.62 states "Ordinarily, schedule not more than a 20 percent reduction in numbers or season in any 1 year to give the permittee ample time to make changes in their livestock operation." Additionally, the record demonstrates that all

ungulates, wild and domestic were considered when determining stocking levels (Docs. 4; 64). Monitoring of forage use levels will ensure that overgrazing during the three-year phase in period does not occur (Doc. 64). When utilization levels are met livestock will be moved to the next pasture in the rotation or removed from the allotments as necessary.

Finding: Phasing in the reductions in stocking is consistent with the Secretary's regulations and Forest Service policy. During the phase in period, monitoring of forage use levels will ensure grazing does not exceed capacity.

ISSUE 3: The Forest Service violated 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: The 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: 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, 188 F.3d 1130 (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 (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 decision is not premature.

ISSUE 4: The decision violates the NFMA requirement to maintain viable numbers of all species.

Contention: The Appellant contends the Forest Service must provide protection and habitat for riparian obligate species. "Appellants believe that continued grazing along riparian habitats in particular, in addition to livestock grazings' detrimental effects on watershed health which have lead to increasingly unstable ecosystems threatens the viability of numerous riparian obligate species. In particular, we believe that domestic livestock production threatens the viability of Southwest willow flycatcher, the Bell's vireo, the Yellow-billed cuckoo, the Black hawk, the Mexican spotted owl, the Mexican garter snake, the Narrow-headed garter snake, the Chiricahua leopard frog, the Yavapai Leopard frog, the Arizona southwestern toad, the Lowland leopard

frog. Only the cessation of grazing in these watersheds, combined with active restoration work will adequately provide for the minimum habitat needs for these species.”

Response: The EA analyzed the effects to most Management Indicator Species, one Region 3 sensitive species, and seven Federally Listed species on the allotment, including some of the species listed by the appellant (AR 46, 47, 64). The Yavapai leopard frog and Arizona Southwestern toad are not found on the Apache-Sitgreaves National Forests. Habitat for the Southwestern willow flycatcher does not currently exist on the allotments, but occupied habitat exists within two miles of the allotments. The Decision Notice defers grazing within this zone, thus the selected action “may affect, but would not likely have and adverse effect” on this species. The yellow-billed cuckoo, Bell’s vireo, black hawk, and Mexican garter snake do not currently exist in the allotments and their habitat has little or no potential to develop in the allotments. The proposed action should have no effect on these species’ habitat. The proposed action “may affect” the Mexican spotted owl based on the guidance criteria, but this effect was found “not likely to be adverse”. No analysis was completed for the narrow-headed garter snake, Chiricahua leopard frog, and Lowland Leopard frog, nor was an analysis completed for ten other sensitive species and five other Management Indicator Species.

Finding: The EA and record do not include an analysis for thirteen sensitive species including three identified by the Appellant. In addition, no analysis was included for five Management Indicator Species that were identified in the EA as being present or potentially present within the allotment. Thus, it is not known whether the proposed action would affect the viability of species or their habitats.

ISSUE 5: The Forest Service violated NEPA by failing to analyze a reasonable range of alternatives.

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

Response: “[A]n agency must look at every reasonable alternative, within the range dictated by the `nature and scope of the proposed action’ and `sufficient to permit a reasoned choice.’” Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992). For an alternative to be reasonable, it must meet the stated purpose and need, and address one or more issues. The formulation of alternatives is driven by significant issues identified in scoping 40 CFR 1501.2(c).

The environmental assessment (EA) Appendix G discusses five alternatives that were considered and subsequently dropped from detailed study. The EA includes a ‘no-grazing’ alternative, and three action alternatives, which were studied in detail.

The EA includes brief discussions of alternatives as required by section 102(2)(E) of NEPA which states, “Study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” The EA indicates that there were four key issues identified as being significant to the proposed action (40 CFR 1501.7(a)(3)). The alternatives studied in detail meet the purpose and need for action and address the identified issues.

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

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

Contention: The Appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering past, present, and reasonably foreseeable activities as required by NEPA. Appellant states, “the EA contains virtually no analysis of cumulative effects...”

Response: EA Appendix E identifies six reasonably foreseeable future actions in or near the project area that have the potential to contribute cumulatively to the effects of the actions under study. The EA also notes that past and current actions have already shaped the affected environment (EA p. 40). The EA effects analysis includes consideration of these actions (EA p. 69). A cumulative effects analysis related to economic impacts encompasses Navajo, Apache, and Greenlee Counties with respect to predicted grazing permit reductions and their impact on the local economy.

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 for the alternatives considered in the EA, sufficient to make a finding of no significant impact.

Issue 7: The decision to approve this permit violates the Endangered Species Act (ESA).

Contention: The Appellant contends the ESA requires that habitat for listed species be maintained or improved to a condition that allows for the survival and eventual delisting of such species. The Appellant argues that by allowing grazing in areas that are already severely degraded is a clear violation of the ESA.

Response: The Beehive/Sheep Springs Allotments Management Plan Environmental Assessment does not identify severely degraded habitats for the Federally Listed species covered under the ESA that are found within the allotments (AR 46, 47, 64). Findings range from “No Effect” for six species, to “Not Likely to Adversely Affect” for four species, to “Not Likely to Jeopardize” for the experimental Mexican gray wolf population and the proposed mountain plover.

Finding: The proposed action will not violate the Endangered Species Act as the Appellant contends.

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 will continue to impair land productivity.

Response: Management of National Forest Lands for the 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 during Forest Plan preparation, and are outside the scope of project-level analysis.

Watershed condition of the two allotments is rated satisfactory except for two areas located on the south slopes of cinder cones where ground cover is inadequate (EA p. 9). The EA also indicates that these unsatisfactory conditions are unlikely to improve or decline with changes in grazing management. Soil conditions on the Beehive Allotment are characterized as generally fair with a static or downward trend. Soils conditions on the Sheep Springs Allotment are mostly fair or good with a downward or static trend (EA p. 11). The downward trends are attributed to decreases in ground cover. The EA effects analysis indicates that the selected alternative is predicted to increase ground cover (EA pp. 43-45).

Finding: The Responsible Official's decision does not violate the Multiple Use and Sustained Yield Act. Land productivity will be maintained and enhanced.

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 EA states the problems on these allotments as follows:

- Current utilization rates exceed allowable forage use standards in FSH 2209.21 R-3 and those in the forest plan.
- Current capacity estimates indicate over-stocking and over-utilization of vegetation on rangeland by livestock and wild ungulates. The amended Forest Plan (p. 77-1) directs balancing permitted use with allotment capacity.
- Current management practices are not adequate to provide for the physiological requirements of forage and browse plants, which precludes improving resource conditions.
- Current management practices are not adequate to return areas of unsatisfactory watershed and riparian condition to satisfactory condition.

The EA effects analysis indicates that the selected alternative addresses the identified problems (EA pp. 42-45). The Responsible Official's decision includes several modifications to the selected alternative (Alternative 2). One modification includes three pastures from the Greer Allotment in the Beehive/Sheep Springs grazing strategy. The effects of this action are not analyzed or disclosed in the EA or project record. The record includes a copy of the Greer Allotment EA, which discloses the effects of grazing cattle on these pastures under a different grazing strategy.

Finding: The Responsible Official's decision to modify the selected alternative is outside the scope of the analysis and disclosure and therefore, does not comply with NEPA or the Administrative Procedures Act.

