



United States  
Department of  
Agriculture

Forest  
Service

Southwestern  
Region

517 Gold Avenue, SW  
Albuquerque, NM 87102-0084  
FAX (505) 842-3800  
V/TTY (505) 842-3292

File Code: 1570-1

Date: December 13, 2000

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

**CERTIFIED MAIL –  
RETURN RECEIPT REQUESTED**

Re: Appeal #01-03-00-0003-A215 Cottonwood Allotment Decision, Lakeside 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 authorizes grazing and implements the grazing management strategy on the above-named allotment.

### **BACKGROUND**

District Ranger Collins issued a decision on September 13, 2000, for the above-named allotment. The decision resulted in the selection of the following alternative and authorization:

Cottonwood Allotment, Alternative 5, which authorizes 100 head of cattle, (Cow/Calf) to graze for a variable period annually. In addition, the decision authorizes the reconstruction of existing fences.

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 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 are 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 above-named allotment, which authorizes 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, Lakeside RD  
Director of Rangeland Management, R3  
Appeals and Litigation Staff, R3

## **REVIEW AND FINDINGS**

of the

### **Forest Guardians Appeal**

#### **#01-03-00-0003-A215, Cottonwood 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 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 2:** The decision violates the Apache-Sitgreaves National Forest Plan and the Regional Guide by failing to manage riparian areas to achieve recovery.

**Contention:** The Forest Service's decision fails to ensure that riparian areas on the allotment will recover to satisfactory condition by the year 2015, as required by the Forest Plan.

**Response:** The Apache-Sitgreaves Forest Plan (p. 16) states areas will be put in satisfactory watershed condition (including the protection of wetlands and flood plains) by year 2020. 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). The issue of

riparian condition was addressed (Docs. 3, 4) and thoroughly analyzed (Doc. 15). The environmental assessment (Doc. 72) estimates a change in condition from functioning at risk to proper functioning (satisfactory condition) in one or two decades indicating recovery is expected to occur through the implementation of the selected alternative.

**Finding:** Appropriate procedures were followed; and adequate mitigation is planned for the allotment decision, and there will be no violation of the Apache-Sitgreaves National Forest Plan or Regional Guide.

**ISSUE 3.** The decisions violate the National Forest Management Act's 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 grazing's detrimental effects on watershed health which have lead (sic) to increasingly unstable ecosystems threatens the viability of numerous riparian obligate species. In particular, we believe that domestic livestock production in the Little Colorado River watershed 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 Cottonwood Allotment contains the headwaters of the upper eight miles of Cottonwood Wash. This Wash then proceeds through eight miles of private land, including three sand and gravel operations, before it reaches Silver Creek, which is a tributary of the Little Colorado River. Cottonwood Wash is an intermittent stream with no permanent pools throughout all eight miles on the Allotment (Doc. 79).

There are about 156 acres of riparian habitats within the allotment, all in Cottonwood Wash. Proper Functioning Condition was identified as Functional at Risk – Trend Not Apparent (Static). The primary cause of this rating is poor condition of the uplands caused by past logging, road building, and grazing activities, especially outside of the allotment, resulting in degradation of the system (Doc. 82). Stream channel cutting appears to be stabilizing, but high flow events every 10 to 20 years appear to be preventing middle-aged riparian species from maturing (Doc. 15).

This dry riparian system contains very little mesic riparian vegetation, mostly old growth and seedling cottonwoods with scattered seep willows and indigo bush. The more xeric riparian vegetation includes Ponderosa pine, Arizona walnut, canyon grape vines, New Mexico olive, rabbitbrush, Apache plume, brickel bush, and little blue stem (Docs. 14, 15, 79). This Wash does not have the moisture regime to develop a lush riparian system with extensive willows and other mesic species (Docs. 14, 82).

Watershed condition in nearly 80 percent of the allotment is satisfactory, with the remaining

being unsatisfactory (Docs. 21, 79).

The watershed and riparian conditions are expected to improve under the proposed grazing system. “Using this grazing system, pastures on the Cottonwood allotment receive 12 months of rest before entering the grazing cycle again 3 years out of 10 for (the) 12-Mile (pasture) and 6 years out of 10 for (the) Ballard (pasture). Grazing during the growing period for riparian plants (April through June) occurs in the 12-Mile pasture only twice in 10 years and in the Ballard pasture three times in 10 years (Doc. 79).”

This dry riparian system does not provide habitat for riparian obligate species, particularly the Southwestern willow flycatcher, black hawk, Mexican spotted owl, Mexican garter snake, Chiricahua leopard frog, Northern Leopard frog, and Arizona southwestern toad. None of the other riparian obligate species identified by the appellant as having their viability threatened by the proposed action are present on Lakeside Ranger District, including Bell’s vireo, yellow-billed cuckoo, narrow-headed garter snake, Yavapai Leopard frog, and lowland leopard frog.

**Finding:** Contrary to the appellant’s contention, cattle grazing on the Cottonwood allotment *is not* going to contribute towards reducing the viability of riparian obligate species.

**ISSUE 4:** The Forest Service violated the National Environmental Policy Act (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) discusses two alternatives that were considered and subsequently dropped from detailed study in Appendix B (40 CFR 1502.14(a)). The EA includes a ‘no-grazing’ alternative, and four 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 no issues identified as being significant to the proposed action (40 CFR 1501.7(a)(3)). With no unresolved conflicts, there were no additional alternatives appropriate to study.

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

**ISSUE 5:** 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:** The EA includes discussion of cumulative effects of the proposed action and alternatives related to watershed, water quality, soils, riparian areas, vegetation, wildlife, economics, heritage resources, fuelwood availability, recreation, and air quality (EA pp. 20-24).

**Finding:** The record includes consideration of past, present, and reasonably foreseeable actions and their cumulative effects on the components of the human environment. The cumulative effects analysis is adequate for an informed decision and for the purpose of determining significance and whether an EIS is needed.

**Issue 6:** The EA violates the Clean Water Act.

**Contention:** The appellant argues that the Forest Service failed to require the permittee to obtain water quality certification from the state of Arizona for the Cottonwood Allotment, as required under Section 401 of the Clean Water Act; and streams on the allotment are listed in the Water Quality 305(b) Report as water quality limited streams.

**Response:** The State of Arizona does not require water quality certification for dispersed non-point activities such as livestock grazing activities. The record shows water quality was not an issue identified by the Interdisciplinary Team (Docs. 2, 3, 4) because Cottonwood Wash, the major drainage on the Cottonwood allotment, is a dry riparian channel (Doc. 15) and was dropped from listing in the 1996 Arizona Water Quality Assessment (Doc. 21). Silver Creek, which is connected to Cottonwood Wash, was not assessed for designated uses in the 1998 assessment (Doc. 21). The alternative selected provides best management practices that improve watershed conditions (Doc. 72).

**Finding:** Appropriate procedures were followed; adequate mitigation is planned for the allotment decision, and there will be no violation of the Clean Water Act.

**Issue 7:** 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. The EA indicates that watershed conditions will improve under the selected alternative (EA, p. 13).

**Finding:** The Responsible Official's decision does not violate the Multiple Use and Sustained Yield Act.

**Issue 8:** 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 the allotment in terms of need on page 2:

- Need for increased grass plant diversity, vigor, and residual material. More cool season grasses, forbs, and shrubs.
- Need to maintain forest openings.
- Need to maintain or improve riparian vegetation structure, composition, and density.
- Need additional water sources for greater wildlife and livestock distribution.
- Need to make fences wildlife friendly.
- 

The EA indicates that the selected alternative (5) would address these needs (EA, pp. 11, 13, 14).

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