



File Code: 1570-1/2200

Date: August 27, 2001

Kirsten Stade  
Forest Guardians  
1411 Second Street  
Santa Fe, NM 87505

**CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED**

Re: Appeal #01-03-00-0039-A215, Nutrioso Summer Allotment Decision, Alpine Ranger District, Apache-Sitgreaves National Forests

Dear Ms. Stade:

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 allotment.

### **BACKGROUND**

District Ranger Settles issued a decision on May 22, 2001, for the Nutrioso Summer Allotment. The decision resulted in the selection of the following alternative and authorization:

Nutrioso Summer Allotment, Alternative 4, which authorizes 91 head of cattle, (Cow/Calf) to graze July 15 through October 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 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.



**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, Alpine RD  
Director of Rangeland Management, R3  
Appeals and Litigation Staff, R3

## **REVIEW AND FINDINGS**

**of the**

**Forest Guardians' Appeal**

**#01-03-00-0039-A215, Nutrioso Summer Allotment Decision**

**ISSUE 1:** 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 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 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 appellant asserts that the decision fails to make the health of riparian areas a priority, and in so doing violates both the forest plan and regional guide.

**Response:** The regional guide facilitated forest plan development. Requirements in the regional guide are reflected in the forest plan. There is no requirement for project-level compliance with regional guides.

The selected alternative excludes livestock grazing from Nutrioso Creek and the Auger Canyon riparian area. The effects analysis for riparian vegetation indicates recovery similar to that of the no grazing alternative. The riparian areas are being managed for recovery.

**Finding:** Continued riparian improvement is ensured under this decision and there is no violation of the Apache-Sitgreaves National Forest Plan or the regional guide.

**ISSUE 3:** The decision violates the NFMA requirement to maintain viable numbers of all species.

**Contention:** The appellant contends the Forest Service must manage sensitive species to sustain viability and prevent the need for listing. In addition, the Forest Service must manage (fish and wildlife habitat) to maintain viable numbers. The appellant's point to the perceived lack of management for riparian habitat, and that the Forest Service must provide protection for riparian obligate species. In particular, the appellant believes that domestic livestock production threatens the viability of the Southwestern 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, and the lowland leopard frog.

**Response:** The effects of the preferred alternative on Regional Forester sensitive and Management Indicator Species (MIS) was analyzed and documented in the record (AR 97, 104.1). Although the preferred alternative may affect individuals of a species, it is not anticipated there would be any loss of viability or trend toward federal listing by implementing this alternative. Of the eleven riparian species, whose viability was identified by the appellant as being threatened by implementing the preferred alternative, eight of them have no suitable habitat within the allotment. These include southwestern willow flycatcher (potential habitat only is present), Bell's vireo, yellow-billed cuckoo, black hawk, Mexican garter snake, Yavapai leopard frog, Arizona southwestern toad, and lowland leopard frog (AR 97). The preferred alternative, as amended in the decision notice, removes essentially all riparian habitats from grazing by livestock (AR 104.2).

**Finding:** Review of the appeal record finds no evidence that the proposed action will reduce the viability of any of the species identified by the appellant, or any other MIS, game or ESA listed

species analyzed in the EA. The proposed action maintains or improves habitat quantity and/or quality for the species analyzed.

**ISSUE 4:** The decision violates NFMA consistency and viability provisions by failing to adequately protect the Northern goshawk.

**Contention:** The allotment provides nesting or potential habitat for the Northern goshawk, yet fails to establish key foraging areas that limit utilization to an average of 20% and a maximum of 40%.

**Response:** The allotment contains no habitat suitable for nesting by Northern goshawks, nor has potential goshawk nesting habitat been identified on this allotment (AR 97).

**Finding:** The decision is consistent with NFMA consistency and viability provisions for the Northern goshawk.

**ISSUE 5:** The Nutrioso Summer term permit issuance must be suspended until the Apache Sitgreaves National Forest revises its land and resource management plan and until the Forest Service develops a renewable resources program.

**Contention:** The appellant contends, "...there is no legally adequate RPA program or land and resource management plan to which the Nutrioso Summer grazing term permit reissuance project can be tiered."

**Response:** There are no statutes or regulations that describe an expiration date for the Forest Service Renewable Resource Program or Land and Resource Management Plans. The Apache-Sitgreaves Land and Resource Management Plan will remain in effect until it is revised, consistent with the requirements of the National Forest Management Act and implementing regulations.

**Finding:** The current plan is in effect until the revision process is completed. There are no requirements to suspend activities until the process is completed.

**ISSUE 6:** 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 documents three key issues that were identified during scoping. The analysis includes consideration of three action alternatives. The identified issues are addressed by the alternatives to the proposed action. As there are no unresolved issues, no additional alternatives are warranted.

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

**ISSUE 7:** 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 environmental assessment documents cumulative effects discussion for vegetation (p. 21); soil, water, and riparian vegetation (p. 26); air (p. 26); wildlife (p. 29); recreation (p. 30); heritage resources (p. 33-34); and people and the economy (pp. 32-33)

**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 or not an EIS is needed.

**ISSUE 8:** The EA violates the Clean Water Act.

**Contention:** The appellant argues that the Forest Service failed to obtain water quality certification from the state of Arizona as required under Section 401 of 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 pollution considerations, which include Best Management Practices (BMPs), were made during the planning process (AR 45, AR 104.1, AR 104.2). The project record also shows the Arizona Department of Environmental Quality (AR 7) was consulted during the project scoping and planning phases. Improvement of soil and riparian conditions were identified as project objectives (AR 104.1) and the alternative selected responds to these issues through management changes that will have a positive effect on improving ground cover, reducing erosion, and protecting riparian areas (AR 104.2).

**Finding:** Appropriate procedures were followed and adequate mitigation is planned for the project area. There will be no violation of the Clean Water Act.

**ISSUE 9:** 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 environmental assessment documents that soil condition in all key areas will meet forest plan standards by 2008 (pp. 23-24). The record indicates that soil productivity will be maintained (Doc. 45).

**Finding:** This decision will improve land productivity and is therefore, consistent with the Multiple Use and Sustained Yield Act.

**ISSUE 10:** 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 environmental assessment identifies forage over utilization as a problem (p. 4). The environmental effects discussion indicates that the selected alternative will remedy this problem (pp. 19-20).

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