



United States
Department of
Agriculture

Forest
Service

Southwestern
Region

333 Broadway SE
Albuquerque, NM 87102-3498
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1

Date: May 21, 2001

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

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Re: Appeal #01-03-00-0024-A215, South Escudilla 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 February 13, 2001, for the South Escudilla Allotment. The decision resulted in the selection of the following alternative and authorization:

South Escudilla Allotment, Alternative 4, which authorizes 64 head of cattle (cow/calf) to graze between July 15 and 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. 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
Deputy Regional Forester

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

REVIEW AND FINDINGS

of the

Forest Guardians' Appeal

#01-03-00-0024-A215, South Escudilla Allotment Decision

ISSUE 1: The Forest Service violated the National Forest Management Act (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 violates both the Apache-Sitgreaves Plan and the Southwestern Regional Guide. The appellant argues riparian areas and watershed health are not protected, due to continued livestock grazing. The appellant also contends that proper functioning condition, including its standards of riparian health, is a violation of the Forest Land Management Plan.

Response: Existing watershed and riparian ecosystem conditions are disclosed throughout the project record (Doc. 1; Doc. 6, pg. 3; Doc. 13; Doc. 14, pg. 5; Doc. 15, pg. 4-7; Doc. 48, pg. 5-6; Doc. 100, pg. 1-2; Doc. 103, pg 5-6). Soil and riparian ecosystem conditions are identified as major issues on page 2-3 of Doc. 21. The Forest Plan states, "riparian areas are to be managed to maintain or improve them to satisfactory riparian condition" (page 155, Management Area 3; Riparian Areas). The summary of environmental effects on page 15 of Doc. 103 shows that the selected alternative improves riparian and soil conditions, and predicts that it will bring the allotment into compliance with the Forest Plan. The Decision reduces stocking 66% (Doc. 103, pg. 14; Doc. 104, pg. 1), requires site-specific monitoring of ungulate forage utilization in pastures and riparian areas, and requires the removal of permitted livestock when utilization approaches a level at which improvement of range and riparian conditions may be impaired (Doc. 104, pg. 2).

Proper Functioning Condition (PFC) is an assessment method for determining riparian condition (Doc. 98, pg. 1); it is not a standard. The Decision Notice identifies specific management actions designed to provide compliance with all applicable laws, regulations, and policies (Doc. 104, pg 2-3).

Finding: The health of the watershed and riparian areas has been a priority throughout the planning process. Riparian improvement is anticipated with this decision; therefore, this decision is consistent with the Apache-Sitgreaves National Forests Land Management Plan.

ISSUE 2: The Forest Service violated NFMA's consistency requirement by allowing grazing which exceeded capacity.

Contention: The appellant contends that scheduling reductions over a three-year period would continue grazing exceeding 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 (Doc. 41). Monitoring of forage use levels will ensure that overgrazing during the three-year phase in period does not occur (Docs. 103; 104). When utilization levels are met, livestock will be moved to the next pasture in the rotation or removed from the allotment, as necessary. Furthermore, the Responsible Official's decision provides, "If the current permit holder waives the permit in favor of a purchaser of base property and/or livestock during the phased-in reduction period, the permit will be issued for the fully implemented livestock numbers of 64 adult cattle from July 15 to October 15." (Doc. 104).

Finding: Phasing in 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; 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 Forests 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 4: The decision violates 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 livestock grazing along riparian habitats in particular, in addition to livestock grazing's detrimental effects on watershed health which have led to increasingly unstable ecosystems threatens the viability of numerous riparian obligate species. In particular, we believe that domestic livestock production...threatens the viability of the 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 a cessation of grazing in these watersheds, combined with active restoration work will adequately provide for the minimum habitat needs of these species."

Response: The Biological Assessment (BA) and addendums (Docs. 26, 117, 118) analyzed the effects of the proposed action on listed species. Management Indicator Species (MIS) and Region 3 Sensitive Species are covered in the Wildlife Specialist's Report (Doc. 114). The Bell's vireo, yellow-billed cuckoo, black hawk, Mexican garter snake, Yavapi leopard frog, Arizona southwestern toad, and lowland leopard frog do not occur on this allotment.

The BA concluded the following determinations for ESA-listed species does not limit the recovery: bald eagle - MA-NLAA; MSO - MA-NLAA; Southwestern willow flycatcher - MA-NLAA; black footed ferret - NE; Jaguar - MA-NLAA; Mexican wolf - NE; Little Colorado spinedace - MA-NLAA; loach minnow - NE; Apache trout - NE; Chiricahua leopard frog - NLJ; loach minnow/ spikedace critical habitat. The above determinations of effect were processed through the Southwestern Consultation Streamlined process, and the findings were concurred with by the US Fish and Wildlife Service (**AR 43**).

Finding: Review of the Appeal Record finds no evidence that the proposed action will reduce viability for any species listed by the appellant, found on the allotment, or any other MIS, game, migratory birds or ESA listed species found on the allotment. The proposed action maintains habitat quantity and quality for the species.

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) (Doc. 48 pg. 12) discusses one alternative that was considered and subsequently dropped from detailed study in 40 CFR 1502.14(a). The EA includes a 'no-grazing' alternative, a current condition alternative and one action alternative, which were studied in detail (Docs. 48 and 103). The Decision Notice (Doc. 104) includes discussion of four considered alternatives. Interdisciplinary team meeting notes (Doc. 21) indicated consideration of five different alternatives. Alternative analysis documentation (Doc. 25) discusses four alternatives 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 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: The EA includes discussion of cumulative effects of the proposed action and other alternatives related to water quality, soils, riparian areas, vegetation, wildlife, economics, heritage resources, recreation, air quality, migratory birds, and social impacts (Doc. 48, pg 13-21, appendix B; Doc. 103, pg 23, 26, 28, 29). The allotment table supplement (Doc. 26, pg. 20, 23, 25, 31, 36, 39, 42, and 47) also discloses that cumulative effects were considered and documented. Report of Social Analysis (Doc. 21, pg 27), the cumulative effects report (Doc. 40), the decision notice (Doc. 104, page 6), the wildlife specialist's report (Doc. 114, pg 14), the BAE frog and MSO critical habitat (Doc. 117, pg. 6), and BAE Critical habitat (Doc. 118) all speak to cumulative effects.

Cumulative effects have been considered and disclosed throughout the analysis and documentation process.

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 7: The decision violates the Endangered Species Act (ESA).

Contention: The appellant contends that because the allotment is severely degraded, it is a clear violation of ESA by continuing to allow grazing.

Response: The Biological Analysis and Addendums (Docs. 26, 117, 118) concluded determinations of effect for all known and suspected ESA listed and proposed species. The South Escudilla Allotment was brought through the Southwestern Region Streamlined Consultation process and concurrence granted (Docs. 26, 120).

Finding: The appellant offers no evidence that the ESA was violated. Southwestern Regional policy and process was followed.

ISSUE 8: The EA violates the Clean Water Act.

Contention: Appellant provides no evidence to support this alleged violation.

Response: The State of New Mexico Environmental Department does not have jurisdiction for the Clean Water Act for lands outside New Mexico state boundaries.

Finding: Appropriate procedures were followed and adequate mitigation is planned for the allotment decision, and 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 benefit 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. In addition, the record indicates that the selected alternatives will improve ground cover, reduce erosion and protect riparian areas.

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 the allotments".

Response: The EA (Doc. 48 pg 4-5) states the problems on the allotment in terms of need:

- South Escudilla Allotment does not have a current AMP (allotment management plan) that is National Environmental Policy Act (NEPA) sufficient.
- Balance permitted livestock use with capacity.
- Establish allowable forage utilization standard for livestock.
- Where consistent with other multiple use goals and objectives, there is congressional intent to allow grazing on suitable lands.
- This allotment contains some lands identified as suitable for domestic livestock grazing in the Apache-Sitgreaves National Forests.
- There is a need to bring the Term Grazing Permit into compliance with Forest Plan Standards and Guidelines and with applicable environmental laws.

The EA (Doc. 48, pg. 13, 16-29) indicates that the selected alternative (4) would address these needs. The Environmental Assessment Allotment Management Plan (Doc. 103, pg 13-29) indicates that the selected alternative (4) would address these needs. The Decision Notice and Finding of No Significant Impact (Doc. 104) further indicate the selected alternative (4) would address the needs stated in the EA.

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