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Department of
Agriculture

Forest
Service

Southwestern
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File Code: 1570-1/2200

Date: March 8, 2001

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

Certified Mail – Return Receipt Requested
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Re: Appeal #01-03-00-0017-A215, Strayhorse Allotment Decision, Clifton 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 allotment.

BACKGROUND

District Ranger Hayes issued a decision on December 5, 2000, for the Strayhorse Allotment. The decision resulted in the selection of the following alternative and authorization:

Strayhorse Allotment, Alternative D, which authorizes 225 head of dry cattle or 320 head of medium size yearling cattle to graze November 1 through May 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 reversed. The Appeal Reviewing Officer concluded all the major issues raised by the appellant



were adequately addressed in the environmental assessment (EA) with the exception of the analysis of cumulative effects. The purpose of an EA is to disclose the environmental effects of the proposed action and provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or finding of no significant impact [40 CFR 1508.9(1)].

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I am reversing the Responsible Official's decision, with instructions to disclose the cumulative effects analysis in the EA and provide for notice and comment in accordance with 36 CFR 215.5 and 215.6. Following public notice and comment, I am instructing the Responsible Official to make a new decision.

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, Clifton RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS

of the

Forest Guardians Appeal

#01-03-00-0017-A215, Strayhorse Allotment 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 decision fails to make the health of riparian areas and watersheds a priority and violates both the Apache-Sitgreaves Forests Land Management Plan and the Southwestern Regional Guide. Riparian areas and watershed health are not protected due to continued livestock grazing. The appellant contends that Proper Functioning Condition, including its standards of riparian health, is a violation of the Forest Land Management Plan.

Response: Existing riparian ecosystem conditions are disclosed (Doc. #106, pages 4-6 and 27-28; and Doc. #25, pg. 2-3 plus transect data, riparian area inventories; Doc. #28, p. 2, 7-9; Doc. #31 p. 5-6, 10, 23, 25, 27, 29, 34; Doc. #28 p. 2, 7-9; Doc. #91, p. 4-7, 27). Riparian ecosystem condition was identified as a key issue during scoping, Interdisciplinary Team meetings, etc. (Doc. #26, p. 3; Doc. #40, p. 2, 3, Doc. #44 p. 5-6; Doc. #59, p.4; Doc. #118, p. 3). Summaries of environmental effects (Doc. #106, p. 27-28, 42-43; Doc. #91, p. 41) show that the chosen alternative moves the riparian condition from existing toward desired conditions and provides riparian maintenance and improvement in some areas. However, some riparian areas will remain at risk due to past management activities. 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 reduces utilization of herbaceous species in riparian areas to mostly dormant season use (Doc. #31; Doc. #118, p.3). The AZ Game and Fish Dept. expressed concern that the areas with cool-season grasses should be removed from grazing earlier, i.e., after April 1 (see Doc. #78, p. 14; Doc. #98, p. 2-3); however, a response was provided (Doc. #107B, Appendix C, p. 2-3). The decision changes the class of livestock to be grazed, shortens the duration of livestock use, decreases the AUMs, but increases the stock density on the allotment (Doc. #106, p. 31-32). The decision provides the opportunity for riparian recovery by reducing livestock grazing pressure on riparian plant species and on the upland watersheds, which influence the riparian areas (Doc. #106, p. 27-28 and 42-43). Mitigation measures to reduce impacts on riparian areas are described (Doc. #31, p. 35-36, 41, 46, 49, 51, 52, 55, 59). Proper Functioning Condition is one method used to assess riparian conditions, not a standard.

Finding: Continued riparian improvement is ensured under this decision. There is no violation of the Apache-Sitgreaves Forests Land Management Plan, which includes the Southwestern Regional Guide. Some riparian areas will remain at risk due to past management activities.

ISSUE 2: 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 Forests 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 3: The decision violates the NFMA requirement to maintain viable numbers of all species.

Contention: "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 in the watersheds contained in these allotments 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, the Lowland Leopard frog."

Response: The EA analyzed the effects to Management Indicator, Region 3 sensitive, and Federally Listed species on the allotment, including most of the species listed by the appellant (Docs. 91, 105, 106, 107a). The Yavapai leopard frog and Arizona southwestern toad are not found on the Apache-Sitgreaves National Forests. Habitat for the Southwestern willow flycatcher and yellow-billed cuckoo does not currently exist and has no or little potential (respectively) to develop in the allotment, due to the narrow canyons and steeper stream gradients within the allotment. 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". The proposed action should have a

beneficial effect on the habitat for the Bell's vireo, yellow-billed cuckoo, Mexican garter snake, narrow-headed garter snake, Chiricahua leopard frog, and Lowland Leopard frog. Because the proposed action maintains or improves habitat quantity or quality for any of the species analyzed, this action should not reduce the viability of these species.

Finding: After reviewing the appeal record, there is no evidence that the proposed action would reduce the viability of the riparian obligates identified by the appellant, or any other MIS, game, or TES species analyzed in the EA. The proposed action maintains or improves habitat quantity and/or quality for the species analyzed.

ISSUE 4: 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) 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 three 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 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 wildlife reports in the project record include discussions considering the effects of past thinning and fire management activities on the allotment, outside of the Blue Range

Primitive Area, and historic logging in Upper Eagle Creek (record at 71, 107A). None of the effects were identified as cumulative to the alternative actions under analysis.

The EA describes the Strayhorse Allotment as being primarily located within the Blue Range Primitive Area. Livestock and fire have been the dominant management actions for the past 60 years. The area is characterized as remote, with rough terrain (EA p. 1). While there are areas of historic timber harvest on both sides of Highway 191, there are no current timber or fuelwood activities within the allotment (EA p. 23). Recreation activities within the allotment consist of dispersed hiking, camping, and hunting utilizing seven developed trails. There is one campground, two picnic areas, and one overlook along the Highway 191 corridor (EA p. 24).

The EA discloses direct and indirect effects of the alternatives on resource attributes such as soil condition, watershed condition, riparian condition, range condition, and water quality. Effects on management indicator species, game species, sensitive species, threatened and endangered species, heritage resources, recreation, visual quality, local culture, and local economics. Out of all of these effects, only riparian condition and encounters between recreationists and livestock were identified as being measurably different from the no grazing alternative (EA Chapter 3).

The only opportunity for cumulative effects is in the area of riparian condition or interactions between recreationists and livestock. No other past, present, or reasonably foreseeable future actions were identified with the potential to contribute cumulatively to these two effects. Given the remote nature of the allotment and limited activities, it is reasonable to conclude that there would be no cumulative effects.

The appellant does not suggest any specific cumulative effects that were overlooked.

Finding: The EA does not identify any cumulative effects resulting from the alternatives analyzed or indicate that there are no cumulative effects. Absent any cumulative effects discussion in the EA, there is no way to be certain whether cumulative effects were considered or if there were any to disclose.

ISSUE 6: The decision to approve this permit violates the Endangered Species Act (ESA).

Contention: “The EA for these allotments reveals that habitat conditions are far from satisfactory... To continue to allow grazing in areas that are already so severely degraded is a clear violation of the Endangered Species Act, and for this reason the decision for all four allotments must be withdrawn.”

Response: The Strayhorse Allotment Management Plan’s Environmental Assessment concludes there are no severely degraded habitats for the Federally Listed species covered under the Endangered Species Act that are found within the allotment (Docs. 91, 105, 106). Findings range from “No Effect” for five species, to “Not Likely to Adversely Affect” for four species, to “Not Likely to Jeopardize” for the experimental Mexican gray wolf population. The habitat conditions for Gila trout were found to be good enough to warrant a reintroduction of this species, an action that would contribute to eventual down listing and/or delisting if successful.

Finding: After reviewing the appeal record, there is no evidence that the proposed action would violate the Endangered Species Act as the appellant contends.

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 effects analysis predicts improvements in soil and watershed condition based on annual growing season rest (EA pp. 36, 41). The decision will not impair land productivity.

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 stated that the problems on the allotment center on riparian conditions; threatened and endangered species habitat; and soil and watershed conditions in certain areas (EA p. 2). The effects analysis predicts improvement in soil, watershed, and riparian conditions under the selected alternative (EA pp. 36, 41, 42). The effects analysis also predicts improvement in habitats for most federally listed species (EA p. 50). However, the effects analysis does not include any discussion of cumulative effects.

Finding: The EA does not include a cumulative effects analysis. Therefore, the effects disclosure required under the National Environmental Policy Act is incomplete.