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Forest
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File Code: 1570-1/2200

Date: March 12, 2002

Kirsten Stade
Forest Guardians
312 Montezuma, Suite A
Santa Fe, NM 87501

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Re: Appeal #02-03-00-0010-A215, Pleasant Valley Allotment Decision, Clifton 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 Hayes issued a decision on December 6, 2001, for the Pleasant Valley Allotment. The decision resulted in the selection of the following alternative and authorization:

Pleasant Valley Allotment, Alternative D, which authorizes 210 head of dry cattle, to graze November 1 to April 30 annually and 154 head of cattle (cow/calf) to graze from May 1 to 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 concluded that: (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

cc:
Forest Supervisor, Apache-Sitgreaves NF's
District Ranger, Clifton RD
Director Rangeland Management, R3
Appeals and Litigation, R3

**REVIEW AND FINDINGS
of the**

Forest Guardians' Appeal

#02-03-00-0010-A215, Pleasant Valley 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.

Riparian condition was identified as one of the significant issues driving the analysis of this project (Docs. 7, 76, 244). Extensive assessment and characterization of the riparian areas were implemented (Docs. 206; 215; 235; 244, pp. 4-9). The effects analysis (Doc. 244, p. 61) predicted that condition trends under the selected alternative would be upward or significantly

upward for each riparian segment where trend was predictable. Finally, the decision contains rigorous requirements for riparian effects monitoring (Doc. 244, p. 163; Doc. 245).

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 believes that “[d]espite this direction, the Forest Service has failed dramatically in its efforts to protect riparian habitats and riparian obligate species, due primarily to continued livestock grazing.” “In particular, we believe that domestic livestock production in the watershed threatens the viability of the Southwest willow flycatcher, the Black hawk, the Mexican spotted owl, the Mexican garter snake, the Narrow-headed garter snake, the Chiricahua leopard frog, and the Arizona southwestern toad. Only a cessation of grazing in these watersheds, combined with active restoration work will adequately provide for the minimum habitat needs for these species.”

Response: The Forest Service has not failed in its efforts to protect riparian habitats. During 1995 and 1996 surveys for Southwestern willow flycatcher habitat, no suitable habitat was found on the four miles of the San Francisco River within the allotment; and it would be at least five years before potential habitat might begin developing. During proper functioning condition surveys in 2000, willows were developing in the riparian zone. During a flycatcher habitat survey conducted in 2001, riparian condition and age class succession had improved in this river corridor to the point that it now provides both suitable and potential habitat (Doc. 244).

The following summarizes the effects to viability for the species listed by the appellant:

Southwestern willow flycatcher: As identified above, both suitable and potential habitats for this species are found within the allotment. The proposed action continues the exclusion of cattle the Forest initiated in 1998, in the San Francisco River corridor (Doc. 244). Thus, the quality of suitable habitat will continue to increase and potential habitat will move towards becoming suitable. Implementation of the proposed action is expected to result in a significant upward trend in riparian condition, thus benefiting this species (Doc. 244). The US Fish and Wildlife Service determined in their biological opinion that the proposed action “will not jeopardize the continued existence” of this species (Doc. 241).

Common black hawk: Suitable habitat is found within the allotment along the San Francisco River corridor and in lower Dix Creek (Doc. 244). Implementation of the proposed action is expected to result in a significant upward trend in riparian condition, thus benefiting this species (Doc. 244). This project will not result in a reduction in the viability of this species within the allotment (Doc. 244).

Mexican spotted owl: No suitable habitat is found within the Pleasant Valley Allotment. There are about 200 acres of restricted riparian habitat along parts of the San Francisco River corridor and in the lower portions of Dix Creek (Doc.244). Implementation of the proposed action is expected to result in a significant upward trend in riparian condition, thus benefiting this species (Doc. 244). The US Fish and Wildlife Service determined in their biological opinion that the proposed action “will not jeopardize the continued existence” of this species (Doc. 241).

Mexican garter snake, narrow-headed garter snake and Arizona southwestern toad: Neither species of snake nor the toad has been documented within the allotment. Suitable habitat may occur in portions of the perennial flowing waters of the San Francisco River corridor; Dix Creek; small portions of Coal Creek and White Rock Canyon; and pools associated with Hamilton Spring, Blue Hole Spring, The Hole Spring, and two unnamed springs at the confluences of Lone Sycamore Gulch and Red Tank Canyon (Doc.244). Implementation of the proposed action is expected to result in a significant upward trend in riparian condition, thus benefiting these species (Doc. 244). This project will not result in a reduction in the viability of these species within the allotment (Doc. 244).

Chiricahua leopard frog: This frog has not been documented within the allotment. Suitable habitat may occur in portions of the perennial flowing waters of the San Francisco River corridor; Dix Creek; small portions of Coal Creek and White Rock Canyon, and pools associated with Hamilton Spring, Blue Hole Spring, The Hole Spring, and two unnamed springs at the confluences of Lone Sycamore Gulch and Red Tank Canyon (Doc. 244). Implementation of the proposed action is expected to result in a significant upward trend in riparian condition, thus benefiting this species (Doc. 244). The US Fish and Wildlife Service determined in their biological opinion that the proposed action “will not jeopardize the continued existence” of this species (Doc. 241).

Finding: The analysis and information in the project record on riparian obligate species support the conclusions in the Environmental Assessment and Decision Notice that the proposed action for the Pleasant Valley Allotment will not result in any negative consequences for the affected species (Doc. 244, 245). Habitat within the project area for all riparian obligates would be beneficially affected by implementing the proposed action (Doc. 244). Because the effects of the project on riparian obligate species are beneficial, the habitat and population information analyzed is sufficient to support the conclusion that viable wildlife populations will be maintained.

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: No goshawk nesting or potential habitat exists within the allotment (Doc. 244).

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

ISSUE 5: The Pleasant Valley term permit issuance must be suspended until the Apache-Sitgreaves National Forests 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 Pleasant Valley term grazing permit issuance 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).

Further, the appellant contends that the range of alternatives is inadequate. However, the appellant does not describe where inadequacies in the range exist, nor are alternatives offered that would better define the range. Review of the Project Record indicates that a range of alternatives responsive to the issues identified for the project has been developed based on the purpose and need for action. Other alternatives were considered but eliminated from detailed analysis. All alternatives and the process used to develop them are described in the Environmental Analysis (Doc. 244, Chapter 2, pp. 47-53).

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

ISSUE 7: The Forest Service violated NEPA, because the EA fails to consider and adequately disclose the location and protocol for monitoring key forage utilization areas within the allotment.

Contention: The appellant contends the EA must disclose the names, locations, forage utilization limits, and monitoring protocol for each and every key area within the allotment.

Response: Proper forage utilization standards are employed to sustain such things as plant health and vigor, long-term soil productivity, and protection for threatened, endangered, and sensitive species and their habitats. Forage utilization levels are determined based on guidelines set out in the R-3 Allotment Analysis Handbook (FSH 2209.21). This handbook specifically describes appropriate forage utilization levels recommended for the purpose of improving rangeland condition. Southwestern Region Rangeland Management Specialists, Ecologists, and other scientists have developed these guidelines over a period of 50 years.

Forage utilization is measured by key area on key forage species within various pastures encompassing a grazing allotment. Key areas are locations readily accessible to water and forage and are located on level to intermediate slopes. Key species are herbaceous and woody vegetation that domestic livestock prefer at any given time of the year. By monitoring key areas the Forest Service can ensure that an allotment, or pastures within an allotment, are not overused.

The record demonstrates that utilization standards for herbaceous forage will be 40 percent during the growing season and 45 percent during the dormant season. Utilization standards for browse will be 35 percent during the summer and 50 percent during the winter. The monitoring plan documents that two key areas will be established per pasture. Implementation of Alternative D will increase rest periods for all pastures, with deferment of grazing for summer and winter pastures. Additionally, overall stocking levels will be reduced by 61 percent. This will result in increased vigor and soil productivity. Areas currently rated as very poor to poor are expected to change one full condition class within the next 10 years (Doc. 244).

Finding: Utilization standards for the Pleasant Valley Allotment were developed in accordance with Forest Service Policy. There is nothing in federal statutes, regulations, or Forest Service Policy that requires the Responsible Official to disclose the names and locations of each and every key area within an allotment in an EA. As the selected alternative is implemented all monitoring information will be available to the public.

ISSUE 8: 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: Cumulative effects analysis must consider past, present, and reasonably foreseeable actions, as well as the proposed action, in order to determine whether these actions result in significant effects which would require the preparation of an environmental impact statement.

Cumulative effects are summarized for the resources in the environmental assessment (Doc. 244, pp. III-76, III-79, III-80, and summarized on III-90-92). Past and present activities are described in detail in the description of existing conditions (Doc. 244, pp. I-4 & 5, pp. I-28–29), including timber harvest, road construction, grazing, and irrigation. Historical activities including ‘snagging’ and ‘channelizing’ are also described, as well as other activities such as beaver, mining, and homesteading. These activities are included in the disclosure of environmental consequences. In addition, the project record includes a report describing cumulative effects in detail by 5th Code Watershed (Doc. 132). The report speaks specifically to soil productivity, water quality and riparian conditions.

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 9: The EA violates the Clean Water Act.

Contention: The appellant contends that the Forest Service failed to require the grazing permit applicant to obtain water quality certification from the State of Arizona.

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, including Best Management Practices, were made during the planning process (Doc. 244). The project record also shows the Arizona Department of Environmental Quality (Docs. 5, 76, 175, and 250) was consulted and provided input (Docs. 20 and 91) during the project scoping and planning phases. Improvement of watershed and riparian condition were identified as project objectives (Docs. 76, 164, 244). In addition, the alternative selected responds to the watershed issues through management changes that will have a positive effect on improving ground cover, reducing erosion, and protecting riparian areas (Doc. 245).

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 10: 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 Apache-Sitgreaves National Forest Plan. The forest plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately during the forest plan’s preparation, and are outside the scope of project-level analysis.

This project will be implemented in compliance with the standards and guidelines that are described for this area in the Forest Plan. The environmental assessment (Doc. 244, p. 58) discloses that conditions are expected to improve within the first five years after project implementation.

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

ISSUE 11: 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 includes a proposed action and alternatives that are responsive to the issues identified for the project. The action alternatives include management strategies that are expected to improve (over time) the resource conditions within the allotment. The environmental assessment (Doc. 244) has been developed within the framework of the law, regulations, and policy relevant to a project of this nature.

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