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Forest  
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File Code: 1570-1/2200

Date: September 24, 2002

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

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
7000 2870 0000 1172 6115**

Re: Appeal #02-03-00-0027-A215, Strayhorse 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 June 18, 2002, 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 cattle or 320 head of medium size yearling cattle to graze November 1 to 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 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/ Abel M. Camarena  
ABEL M. CAMARENA  
Appeal Deciding Officer,  
Deputy Regional Forester

Enclosure

cc: Christina Gonzalez, David M Stewart, Mailroom R3 Apache Sitgreaves

## **REVIEW AND FINDINGS**

**of the**

**Forest Guardians' Appeal**

**#02-03-00-0027-A215, Strayhorse 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 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 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. 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:** 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.

In addition, existing riparian ecosystem conditions are disclosed (Doc. 137, pp 4-6 and 30-31; and Doc. 25, pp 2-3) plus transect data, and riparian area inventories (Doc. 31, pp 5-6, 10, 23, 25, 27, 29, 34). Riparian ecosystem condition was identified as a key issue during scoping, interdisciplinary team meetings, etc. (Doc. 26, p 3; Doc. 40, pp 2-3; Doc. 44, pp 2-3; Doc. 59, p 22; Doc. 138, p 1). Summaries of environmental effects (Doc. 137, pp 30-31 and 46-47; 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. 138, p 3). The Arizona Game and Fish Department 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, pp 2-3); however, a response was provided (Doc 107B, Appendix C, pp 34-35).

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. 137, p 30-31 and 46-47). Mitigation measures to reduce impacts on riparian areas are described (Doc. 31, pp 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 National Forest Plan, which includes the Southwestern Regional Guide. Some riparian areas will remain at risk due to past management activities.

**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 there is a 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 black hawk, the Mexican spotted owl, the Mexican garter snake, the narrow-headed garter snake, the Chiricahua leopard frog, and the Arizona southwestern toad. The appellant contends that 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 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; 137; 107A). The Arizona southwestern toad is not found on the Apache-Sitgreaves National Forests. Habitat for the Southwestern willow flycatcher does not currently exist and has no or little potential (respectively) to develop on the allotment, due to the narrow canyons and steeper stream gradients within the allotment.

The proposed action should have no effect on this 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 Mexican garter snake, narrow-headed garter snake, and Chiricahua leopard frog.

**Finding:** Based on the review of the project record, the Forest did not violate the National Forest Management Act requirement to maintain viable numbers of all species.

**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:** It is true that the Strayhorse Allotment provides nesting and foraging habitat for the Northern goshawk. It is also noted that "lack of herbaceous under-story...does not appear to limit viability" (Doc. 107A, p.23; Doc. 91, p.15; Doc.137, p.17). Furthermore, the guidelines referred to by the appellant are management recommendations and were not part of the forest plan amendment. Site-specific grazing utilization guidelines for the Strayhorse Allotment are found in the Final EA (Doc. 137, p. 34) and are in compliance with the Forest Plan as amended.

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

**ISSUE 5:** The Strayhorse 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 Strayhorse 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)).

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 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 disclose adequately 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 overgrazed.

The record demonstrates that utilization standards for herbaceous forage will be 45% maximum allowable forage utilization by domestic livestock (Docs. 137; 138).

**Finding:** Utilization standards for the Strayhorse 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 require the preparation of an environmental impact statement.

Cumulative effects are summarized for each of the resources in Chapter 3 of the environmental assessment, and a combined cumulative effects discussion for all resources is found on pages 72-73. A review of the project record indicated that analyses of cumulative effects, including discussions on the past, present, and reasonably foreseeable future projects that contribute to cumulative effects, are displayed in resource specialists’ reports (Docs. 25 and 65).

**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 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 appropriate non-point source pollution considerations, which include Best Management Practices, were made during the planning process.

**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 Forests 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.

The EA effects analysis predicts improvements in soil and watershed condition based on annual growing season rest (Doc. 137, pp. 39, 44). The decision will not impair land productivity.

**Finding:** This decision will 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 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 (Doc. 137, p. 2). The effects analysis predicts improvement in soil, watershed, and riparian conditions under the selected alternative (Doc. 137, pp 39, 43, 46). The effects analysis also predicts improvement in habitats for most federally listed species (Doc. 137, p. 50).

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