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File Code: 1570-1/2200

Date: December 23, 2002

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CERTIFIED MAIL - RRR

RE: Appeal decision Notice and Finding of No Significant Impact for the Beehive and Sheep Springs Allotment Management Plan (Appeal #03-03-01-0001-A251), Springerville Ranger District, Apache-Sitgreaves National Forests (A-SNFs)

Dr. Mr. Shapiro:

This letter documents my first level review decision of the appeal you filed on behalf of Dobson & Dobson Livestock, Dobson Estate, and Sheep Springs Sheep Company (collectively the "Permittees") regarding a decision to implement Alternative #5 on the Beehive and Sheep Springs grazing allotments. My review of your appeal is based on the existing project record. This appeal relates to a decision issued by District Ranger John MacIvor (Deciding Official), Springerville Ranger District, A-SNFs on August 23, 2002, which would reduce authorized livestock numbers, change the grazing season and implement a grazing management system.

#### BACKGROUND

District Ranger MacIvor issued a decision on August 23, 2002, for the Beehive and Sheep Springs Allotments. The decision resulted in the selection of the following alternative and authorization:

Beehive and Sheep Springs Allotments, Alternative #5, which authorizes 2,000 head of sheep (Band 1) to graze June 1 through August 18 annually; 2,000 head of sheep (Band 2) to graze from June 2 through August 19 annually; 400 head of sheep (Truck band) to graze June 1 through September 25 annually; and 333 head of cattle (cow/calf) to graze July 1 through October 31 annually.

The District Ranger is identified as the Responsible Official whose decision is subject to administrative review under 36 CFR 251 appeal regulations. Pursuant to 36 CFR 251.93(b), an attempt was made to seek informal resolution of your appeal. The record indicates that informal resolution was not reached (Doc. #195).



## POINTS OF APPEAL

### ISSUE #1 - NO FACTUAL BASIS FOR A REDUCTION IN PERMITTED LEVELS OF USE

CONTENTION: You claim that the decision to reduce permitted levels is not supported by the analysis and that there is no rational basis to support such a decision. You base this assertion on: A) the amount of full capacity rangeland on the allotments, B) the existing allotment conditions are not a reflection of actual use, C) no assessment regarding the effects of wild versus domestic ungulates was used, D) that unsatisfactory conditions only exist on steep slopes, and E) the citing of statutory authority to administer grazing on public lands has no relevance to the decision made.

RESPONSE: Contrary to your assertion, there is justification presented in the EA, Decision Notice, and other documents contained in the Project Record that support the decision to reduce permitted levels.

A) You are correct in the assessment that the majority of the allotments' acres are classified as full capacity rangelands (EA p. 6). However, full capacity rangeland is defined (EA p. 110) as lands that are presently stable because effective ground cover is holding soil loss to an acceptable level, and are therefore, suited for grazing and can support livestock production. The term "full capacity" denotes a range capability class, which is the ability of the land to support grazing by domestic livestock. The term "full capacity rangeland" is only an indicator of the lands capability to support an activity; it says nothing concerning the level of that activity, and is only one factor used in the determination of capacity. The procedure for how the estimated capacity was determined is contained in a document entitled *Considerations Concerning Stocking Rates* (Project Record Doc. #4). According to the Deciding Officer's Responsive Statement (Project Record Doc. #196) site-specific data was collected and combined with other sources of information to arrive at an estimated grazing capacity (Project Record Docs. #9, 10, 16-18, 21-23, 26, 31, 39-41, 90, 96, 101, 130, 131, 135, 152 and others). One of the reasons (Decision Notice p. 5) the Deciding Official chose Alternative #5 was because it balanced permitted livestock numbers with capacity. Balancing permitted livestock numbers with capacity was also stated in the EA Purpose and Need (p. 2), and is A-SNFs Forest Plan direction (p. 77-1).

B) Livestock grazing has been the primary activity effecting herbaceous vegetation cover and composition, and to some extent production on these areas since the late 1800s. To think existing conditions within these allotments are not a reflection of actual use is erroneous. The proper functioning condition assessments (Project Record Docs. #38, 151 and 160, and EA p. 13 and 90) partially attributes the functional at risk conditions of Rosey and Fish Creeks to ungulate distribution problems, which has resulted in soil compaction and stream bank trampling damage (Responsive Statement p. 4). Other causal factors were identified as activities associated with road construction and use.

C) Grazing by ungulates (both wild and domestic) has been identified as causal factors in the attainment of and perpetuation of the conditions associated with the Beehive and Sheep Springs Allotments. An assessment of wild ungulate numbers, forage needs and seasons of use within the allotments was provided in the EA (p. 23-25). Each alternative within the EA was analyzed considering wildlife impacts. The selected alternative distributes the maximum amount of forage available to livestock while providing for the needs of wildlife. Considerations for slope, soils, and other resource protection in accordance with A-SNFs Forest Plan standards and guidelines and standard Forest Service protocol (FSH 2209.21) was used in the determination of available forage.

The District recognizes that wildlife have had an impact on the vegetation resources of the allotments. The District identified a need to improve the physiological condition and composition of forage and browse plants on portions of the allotments, as well as stating a need to return areas of unsatisfactory watershed and riparian conditions to a satisfactory state (EA p. 2). Disregarding proper livestock management because livestock grazing may not be the cause of current allotment conditions is not justifiable, is not good resource management, and is not in compliance with A-SNFs Forest Plan standards and guidelines.

D) According to the EA (p. 8), unsatisfactory conditions do not only exist on steep slopes. Unsatisfactory watershed conditions have been associated with Terrestrial Ecosystem Survey (TES) map units 503, 505, 536 and 550. These map units occur on slopes ranging from 0 to 40%. The area of unsatisfactory watershed condition in Fish Creek (referenced in the Reply to the Responsive Statement p. 2) is located on TES map unit 673. As a result of slope steepness (40 to 120%) and watershed condition within this area, it was not assigned any grazing capacity (EA p. 8).

E) Statutory authority to administer grazing on public lands was not being cited in the Responsive Statement (p. 7). What was being presented was a list of some of the statues that the Deciding Official must be in compliance with when authorizing permitted activities such as livestock grazing to occur on National Forest System Lands. According to statues, the agency is required to manage lands in a manner that protects them from degradation and/or otherwise improve or maintain satisfactory resource conditions that will provide the goods and services to the public without impairing the land's productive potential on a sustained yield basis.

FINDING: The Deciding Official conducted a proper and thorough analysis of the Beehive and Sheep Springs Allotments and the Decision Notice (p. 2-6) outlines the rationale for the decision. The selected alternative balances permitted livestock use with capacity as required by the A-SNFs Forest Plan (EA p. 68). The decision, as analyzed and disclosed within the EA and Project Record will help achieve the desired conditions (Project Record Doc. #61) of maintaining or improving existing allotment conditions and providing for improvement in riparian areas, water quality, and soil and watershed conditions. The Deciding Official is affirmed in regard to this issue.

ISSUE #2 - ECONOMIC ANALYSIS AND ACTUAL USE

CONTENTION: You contend that: A) the economic analysis is unsupported by any financial data, and B) use of the term “actual use” is a misnomer.

RESPONSE: A) The financial analysis presented in the EA (p. 74, 76 and 92-94) was conducted using the standard Region 3 economic investment analysis program, Quick-Silver (Project Record Doc. #14). Quick-Silver is a fast and flexible program for economic analysis of long-term, on-the-ground resource management projects, and is used where there is a need to compare the financial or economic performance of varying alternatives. Project Record Docs. #133, 144, 164 and 166 display the results of Quick-Silver analysis conducted on various alternative scenarios in preparation of the EA. Also included are the discount rates and other economic factors that make up the categories in the analysis.

B) The use of the term “actual use” is not a misnomer. The term “actual use” means the actual number (or animal unit months (AUMs) equivalent) of animals grazed on the allotments as opposed to the actual number (or AUMs equivalent) of animals permitted to graze on the allotments under the Term Grazing Permits. According to Project Record Document #154, actual use on the allotments ranged from a low of 3,351 AUMs in 1999 to a high of 5,865 AUMs in 1996. Over the ten-year period, from 1990 to 1999, actual use on the allotments averaged 4,736 AUMs while permitted AUMs were 5,776. As stated in the Responsive Statement (p. 1), current authorized permitted numbers exceeded the allotments’ capacity to support them without detrimental effects. The reduction in permitted numbers is necessary in order to balance permitted livestock use with capacity as required by the A-SNFs Forest Plan (p. 77-1). According to the EA, Decision Notice and Responsive Statement, the AUMs specified in the selected alternative approximate the actual use on the allotment over the last ten years.

You are correct in the opinion that stocking levels are a function of proactive assessment of yearly range conditions on the allotments. These assessments have been a joint partnership between the Permittees and the Forest Service, allowing for the flexibility in the permitted operations. However, the Forests fail to see how a loss of flexibility has resulted from the decision to implement Alternative #5. Alternative #4, presented by the Permittees, resulted in the same number of AUMs as Alternative #5 (EA p. 39).

FINDING: The economic analysis presented in the EA was conducted using the standard Region 3 economic investment analysis program. The EA and Project Record provide information concerning the economic analysis used in the examination of the five alternatives considered. The Decision Notice provides the rationale for selecting Alternative #5. A portion of that decision is based on the fact that allotment conditions are a reflection of actual use. There is no evidence that the Permittees have lost any flexibility in their operations as a result of the decision. The Deciding Official is affirmed in regard to this issue.

ISSUE #3 - THERE ARE NO FACTS SUPPORTING THE CONTENTION THAT CAPACITY OF THE RANGELAND WOULD BE NEGATIVELY IMPACTED IF GRAZING REMAINS AT PREVIOUSLY PERMITTED LEVELS

CONTENTION: You contend there are no facts supporting the argument that capacity of the rangeland would be negatively impacted if grazing remains at previously permitted levels. You base this assertion on: A) the amount of full capacity rangeland, and B) the long-term vegetation condition and trend scores on the allotments.

RESPONSE: A) See POINT 1, RESPONSE. Grazing has not been at permitted levels for the last 10 years. According to Document #154, actual use on the allotments ranged from a low of 58% of permitted numbers in 1999 to a high of 102% of permitted numbers in 1996. Over the ten-year period, from 1990 to 1999, actual use on the allotments averaged 82% of permitted numbers.

In addition, range condition and trend data, as collected by the Parker Three Step method, has generally been considered a process for determining vegetation condition relative to the lands value for grazing livestock. Vegetation condition is not an indicator of the capacity of the land to support grazing, it is an expression of the relative degree to which the kinds and amounts of plants in the vegetation community are valued or preferred by a particular grazing animal. The number of permitted livestock under Alternative #5 is based on the pounds of available forage produced on the allotments (Decision Notice p. 6). Project Record Docs. #9, 10, 21, 22, 31, 39, 40, 90, 96 and 135 displays the results of forage allocation (both wildlife and livestock) analysis conducted on various alternative scenarios in preparation of the EA.

B) According to the Responsive Statement (p. 4), the EA displays the long-term vegetative condition and trend for only cattle on upland range within the allotments. EA Table 3 (p. 4) indicates fair to excellent conditions with stable or upward trend as opposed to just good to excellent conditions with stable or upward trend. According to the Project Record (Doc. #158), range condition for sheep in the uplands is fair to good on the allotments. In addition, Proper Functioning Condition surveys in the Project Record indicate areas of concern in reaches of Fish Creek and Rosey Creek caused by compaction and trampling by ungulates. One hundred percent of Rosey Creek on the allotment is rated as functional at risk. Seven percent of Fish Creek on the allotment is also rated as functional at risk. (EA p. 13). Watershed condition is unsatisfactory on 10% of the Beehive Allotment and 8% of the Sheep Springs Allotment (Table 4, EA p. 9). It is clear that conditions on the allotment are not excellent in all respects and potential for improvement in range condition exists on the allotments in both riparian and upland areas.

FINDING: According to the analysis, existing upland and riparian conditions on the allotment are a reflection of actual use and not the permitted numbers. If under existing numbers and management there are areas of concern identified by the District then it is unreasonable to think that things would improve by increasing actual use. The Deciding Official has the responsibility to adhere to Forest Plan standards and guidelines and balances permitted livestock use with capacity as required by the A-SNFs Forest Plan (EA p. 68). The decision, as analyzed and disclosed within the EA and Project Record will help achieve the desired conditions (EA, Project Record Doc. #61) of maintaining or improving existing allotment conditions and providing for

improvement in riparian areas, water quality, and soil and watershed conditions. The Deciding Official is affirmed in regard to this issue.

#### ISSUE #4 - DELAYED ENTRY DATES

CONTENTION: You contend that the reasons provided for the delayed entry dates are speculative decision making because of the usage of such words as “should” and “would.”

RESPONSE: According to the EA (p. 2) and Responsive Statement (p. 4), there is a need to improve the physiological condition and composition of forage and browse plants on portions of the allotments. There is also an identified need to return areas of unsatisfactory watershed and riparian condition to satisfactory condition (EA p. 2). Moreover, according to the EA (p. 6), the change in entry dates for cattle to July 1 (30 days) and sheep to June 1 (4-5 days) along with changes in livestock management practices will provide for an increase in the frequency, density and vigor of woody riparian plant species and an increase in vigor and number of cool season grasses. Expected improvements in the forage resource as a result of selecting Alternative #5 are disclosed in the EA (p. 67-70).

FINDING: The Deciding Official conducted a proper and thorough analysis of the Beehive and Sheep Springs Allotments and the Decision Notice (p. 2-6) outlines the rationale for the decision. The words “should” and “would” are used in an auxiliary function to express what is a probable or expected outcome based on professional judgment as a result of the analysis that preceded the selection of Alternative #5. The selected alternative balances permitted livestock use with capacity as required by the A-SNFs Forest Plan (EA p. 68). The decision, as analyzed and disclosed within the EA and Project Record will help achieve the desired conditions (Project Record Doc. #61) of maintaining or improving existing allotment conditions and providing for improvement in riparian areas, water quality, and soil and watershed conditions. The Deciding Official is affirmed in regard to this issue.

#### DECISION:

My first level review of this appeal was conducted in accordance with 36 CFR 251 Subpart C.

After review of the record, we find that the Deciding Official’s decision with respect to implementing Alternative #5 is based on an evaluation of the existing resource conditions, resulting in a reasonable conclusion. The Deciding Official’s decision is in conformance with applicable laws, regulations, orders, and policies and procedures. We find no evidence to support your issues. Therefore, we affirm the Deciding Official’s decision to implement Alternative #5 as described in the Decision Notice and Finding of No Significant Impact dated August 23, 2002.

The Deciding Official's decision is subject to second level review pursuant to 36 CFR 251.87(c)(2). You may submit a second level appeal to the Regional Forester within 15 days from the date this decision is received, by certified mail or facsimile. The Regional Forester will review your second level appeal on the existing record.

Sincerely,

/s/ John C. Bedell  
JOHN C. BEDELL  
Forest Supervisor

cc: John MacIvor, Patrick L. Jackson, Christina Gonzalez