



United States  
Department of  
Agriculture

Forest  
Service

R3 Regional Office

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

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File Code: 1570-1/2200  
Date: July 21, 2003

Martin Taylor  
Center For Biological Diversity  
P.O. Box 710  
Tucson, AZ 85702

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED**

RE: Appeal #03-03-00-0027-A215, Town Tank Allotment Decision, Lakeside Ranger District,  
Apache-Sitgreaves National Forests

Dear Mr. Taylor:

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-referenced allotment.

### **BACKGROUND**

District Ranger Collins issued a decision on April 22, 2003, for the Town Tank Allotment. The decision resulted in the selection of the following alternative and authorization:

Town Tank Allotment, Alternative 3, which authorizes 20 animal months of grazing (6 – 9 head) between July 1 and 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; and 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 Town Tank 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: David M Stewart, Mailroom R3 Apache Sitgreaves, Edward Collins, Christina Gonzalez

**REVIEW AND FINDINGS**  
**of the**  
**Center for Biological Diversity's**  
**Appeal #03-03-00-0027-A215**  
**Town Tank Allotment**

**ISSUE 1:** The Endangered Species Act requires positive recovery of listed species.

**Contention:** The appellant contends the continuation of livestock grazing, when grazing is known to negatively impact prey species of the Mexican spotted owl, violates the obligation to assist recovery of this species.

**Response:** The proposed action was analyzed in a Biological Assessment (BA, Doc. 51) and a determination of “May Affect-Not Likely To Adversely Affect” was determined for the Mexican spotted owl and the bald eagle. A determination of “No Jeopardy” was concluded for the Chiricahua leopard frog. A letter from the US Fish and Wildlife Service was received on January 24, 2002, (Doc. 52) concurring with the biologist’s determinations.

**Finding:** The intent of the Endangered Species Act has been met.

**ISSUE 2:** The analysis did not consider impacts on Apache Trout.

**Contention:** The appellant contends the analysis failed to consider how soils on this allotment maybe impacting habitat for Apache trout and other listed species. The appellant says soil sediments could be affecting stream hydrology for trout streams in the same watershed.

**Response:** The Town Tank Allotment and affected watersheds do not currently contain Apache trout (Doc. 24); therefore, no analysis is necessary.

**Finding:** Since the Apache trout is not found on the allotment or within the affected watershed, no analysis is necessary. The Forest analysis has met the intent of the Endangered Species Act and NEPA.

**ISSUE 3:** The Decision Notice is not tiered to a valid Forest Plan.

**Contention:** The appellant contends that 15 years have passed without the mandatory revision of the forest plan required under NFMA; therefore, the forest plan is outdated with respect to grazing and no longer in compliance with NFMA.

**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 National Forests 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. A recent court decision in Wyoming upheld the use of the current

Plan until revised (Biodiversity Assoc. v. USFS, September 30, 2002). Regulations (36 CFR 219.35g) spell out that a revision schedule for each Forest Plan will be published.

**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 4:** There is no valid suitability analysis.

**Contention:** The appellant contends a suitability analysis must be done as part of this NEPA analysis.

**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.

**ISSUE 5:** Watershed conditions indicate no grazing.

**Contention:** The appellant contends the Regional Guide requires that watersheds be analyzed and scored as being in optimum, satisfactory, or unsatisfactory condition.

**Response:** The Regional Guide facilitated forest plan development. Requirements in the Regional Guide are reflected in the forest plan.

**Finding:** There is no requirement for project-level compliance with the Regional Guide.

**ISSUE 6:** The Forest Service failed to implement Forest Plan grazing utilization limits.

**Contention:** The appellant contends that if the utilization limits were applied, no grazing could be permitted on this allotment.

**Response:** The grazing guidelines in the 1996 Forest Plan Amendment are only applicable to site-specific allotment grazing decisions, in the event grazing utilization standards are not developed during the site-specific NEPA process. The record reflects that site-specific utilization standards were developed. Specifically, utilization will be limited to 25%. Once utilization standards are reached, livestock will be removed from the pasture and not allowed to re-graze a pasture during the grazing season.

**Finding:** The Responsible Official's decision is consistent with the Forest Plan.

**ISSUE 7:** The Decision Notice fails to quantify population trends for management indicator species (MIS).

**Contention:** The appellant contends population trends for MIS have not been quantified and that the forest plan fails to identify any management changes, in response to declines in MIS.

**Response:** MIS are discussed in several documents within the record (Docs. 24; 43; 54). Best available data was used in the determination of population trends for MIS associated with the proposed action area.

**Finding:** The Forest has analyzed and discussed impacts of the proposed alternative on MIS, and is in compliance with current direction and applicable court decisions.

**ISSUE 8:** The Forest Service failed to choose the optimal alternative.

**Contention:** The appellant contends, “The decisions do not meet the high standards of the Multiple Use Sustained Yield Act that the agency allow only that combination of uses that will best meet the needs of the American people...without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.” The appellant believes the Forest Service has not chosen the optimal alternative (i.e., to end grazing) based on special economic interests of the permittee.

**Response:** The EA proposed action would authorize grazing on the allotment consistent with the forest plan direction (Doc. 54, p. 3). There is a need to improve range condition and capacity by decreasing bare ground and by increasing desirable plant density; to improve watershed and soil conditions through increasing understory density and improving the amount and distribution of litter, to reduce overstory density in some of the mature stands and herbaceous understory, to increase diversity and improve vigor of grass species and other desirable species, and a need to improve key habitat components for wildlife (Doc. 54, pp. 3-6). The selected alternative best meets forest plan standards and guidelines to balance permitted livestock use with the estimated capacity (Doc. 56, p. 4). A determination of agency policy of grazing on National Forest System lands is outside the scope of this decision. The Apache-Sitgreaves Forests Plan allocated lands for grazing activity, balancing permitted livestock with grazing capacity (Record of Decision, Apache-Sitgreaves LRMP, 1987).

**Finding:** The selected alternative meets the purpose and need for action and is consistent with forest plan objectives and the Multiple Use Sustained Yield Act.

**ISSUE 9:** The range of alternatives is unreasonable

**Contention:** The appellant contends alternatives are not constructed in a reasonable way. Vegetation treatments and prescribed fire are only attached to the grazing alternative, not to the no-grazing alternative.

**Response:** The three alternatives; no grazing, current management, and the proposed alternative, are constructed in a reasonable way. The vegetation work is tied to the grazing activity and addresses the desired future condition (Doc. 54, pp. 5, 10). Fencing is attached to all alternatives to repair unserviceable fencing (Doc. 54, pp. 7-11).

**Finding:** Alternatives considered satisfy NEPA.

**ISSUE 10:** The Forest Service failed to take a hard look at the proposed action, as NEPA requires.

**Contention:** The appellant contends the analysis failed to consider the impacts of grazing to:

- 1) Archaeological resources,
- 2) Water quality,
- 3) Soils, vegetation, and rodents; and
- 4) Evidence presented on global warming.

**Response:** The EA included a heritage management area in the proposed action specifically to protect a property eligible for inclusion in the National Register of Historic Places (Doc. 54, p. 11). The record addressed effects of grazing to archaeological resources (Doc. 54, p. 22; Doc. 53 Cultural Resource Inventory Report).

Water quality impacts from grazing were addressed (Doc. 54, pp. 15, 30-31; Doc. 42, p. 14).

Effects of grazing to soils, vegetation, and rodents were also addressed (Doc. 54, pp. 14-15, 17; Doc. 42 pp. 13-14 [soils, vegetation]; Doc. 41 [vegetation]; Doc. 43 [prey species impacts]).

The evidence presented on global warming was addressed and dismissed in the Response to Comments, comment 5(g) (Doc. 54, p. 46). A consideration of global warming at the scope of this project would be infinitesimal in amount.

**Finding:** Impacts of grazing were adequately addressed in the NEPA document and record.

**ISSUE 11:** Analysis of costs and benefits is flawed.

**Contention:** The appellant contends the analysis fails to consider the economic benefits of ending grazing on these allotments. The appellant asserts the analysis only considers economic impacts to the permittee.

**Response:** Projects such as the Town Tank Grazing Allotment are developed to be consistent with the direction described in the Forest Plan. Project-level requirements for social and economic analyses are described in Forest Service Manual (FSM 1970) and Forest Service Economic and Social Analysis Handbook (FSH 1909.17). The responsible line officer determines the scope, appropriate level, and complexity of economic and social analysis needed (FSM 1970.6).

As stated on page 22 of the EA (Doc. 54) benefits such as vegetation treatments to improve habitat are qualitative, and there are no local studies that quantify them economically. The

project analyses on present net values, jobs affected, and costs such as grazing developments are displayed on EA pages 20 to 22 for all of the alternatives. Details of the analysis process are found in the economic analysis report (Doc. 40; also see p. 46, Item 5h response to comments, for a discussion on the economic analysis for range improvements.) The Town Tank Allotment EA discloses all required economic impacts.

**Finding:** The economic analysis is consistent with regulation and manual and handbook direction for project-level analysis and is not in violation of applicable laws, regulation, or policy.