



United States
Department of
Agriculture

Forest
Service

Southwestern
Region

517 Gold Avenue SW.
Albuquerque, NM 87102-0084
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1

Date: April 28, 1998

Mr. John Horning
Forest Guardians
1413 Second Street, Suite One
Santa Fe, NM 87505

Certified Mail - Return
Receipt Requested
P 293 931 354

Dear Mr. Horning:

This is my review decision on the appeal filed by yourself on behalf of Forest Guardians (#98-03-00-0019-A215) regarding the Clifton District Ranger's decision concerning the permitting of grazing and future management of the Baseline and Horsesprings Allotment.

On January 20, 1998, Clifton District Ranger Frank Hayes issued a decision notice (DN) concerning the grazing permit and allotment management plan for the above mentioned allotment. The decision was subject to administrative review under the 36 CFR 215 appeal regulations.

My review of this appeal has been conducted pursuant to, and in accordance with, 36 CFR 215.17. I have thoroughly reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer (copy enclosed) regarding the disposition of this appeal.

APPEAL SUMMARY

As directed in 36 CFR 215.16, an offer to meet for the purpose of seeking informal disposition of this appeal was made by the District Ranger. The record indicates the meeting took place via teleconference and no resolution of the issues was reached.

Appellant's issues were organized into four major issue subjects for this review and included the following: 1) National Forest Management Act (NFMA) and National Environmental Policy Act (NEPA), 2) Clean Water Act (CWA), 3) Multiple Use Sustained Yield Act (MUSA), 4) Administrative Procedures Act (APA).



APPEAL ISSUES AND FINDINGS

Issue 1 - Alleged violations of NEPA and NFMA

Appellant contends that NFMA and NEPA were violated because the District Ranger failed to evaluate the allotment's suitability for grazing. Appellant further contends that regulations in 36 CFR 219.3 require the project environmental assessment (EA) to address the economic and environmental consequences and the alternative uses forgone. Absent this suitability analysis, appellant argues that the Forest Service failed to discharge its obligation under NEPA to take a hard look at each alternative.

Although appellant claims NFMA requires suitability analyses be conducted at the project level, he is mistaken. The Forest Service operates within a two-tiered planning and decision making process. The first level is the programmatic forest plan level and the second is the site-specific project level, such as a grazing allotment. There is no requirement in Forest Service regulations or policies that a suitability determination be made at the allotment or project level of planning.

The purpose of the National Forest Management Act (NFMA) regulations (36 CFR 219) is to "... set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System..." Appellant references the NFMA regulations' suitability requirement which applies to forest plan level decisions, not project level decisions. The forest plan is the proper and only level at which suitability per the requirements of 36 CFR 219.20 is made.

The forest planning process inherently undertook a quantitative analysis fully incorporating economics into the process. The forest plan fully complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the Forest Plan (Forest Plan EIS appendix B, Description of Analysis Process).

There is no requirement to conduct a suitability analysis when conducting a NEPA analysis at the project level concerning the permitting of livestock grazing. As previously described, all requirements for suitability under the provisions of 36 CFR 219.20 were met in completion of the forest plan.

Appellant claims that the economic analysis is lacking and that the net public benefit of different alternatives was not adequately considered. The economic effects of the action alternatives are discussed and compared in the EA. The net public benefit of alternative uses forgone are appropriately discussed in the Forest Plan environmental impact statement (EIS).

Finding: The District Ranger is not required to conduct a suitability analysis at the project level of analysis and decision making and, therefore, is affirmed with respect to issues related to alleged failure to conduct a suitability analysis.

Issue 2 - Alleged violations of CWA:

Appellant contends that the decision violates the CWA because the EA fails to identify Best Management Practices (BMP's) to ensure compliance with state and federal water quality laws. Appellant further alleges that the Forest did not obtain certification from the State of Arizona under section 401 of the CWA.

The project record shows that appropriate BMP's are identified in the EA (EA p. 40). The record indicates that the Arizona Department of Environmental Quality (ADEQ) was given an opportunity to provide comment on the proposed BMP's (doc. 23). ADEQ agreed that surface water quality standards would not be violated by the proposed project (doc. 103). There is currently no requirement for obtaining 401 certification for activities other than those requiring dredge and fill permits.

Finding: The project record shows that BMP's are identified in the EA and that concurrence on non-point source water quality protection was obtained from ADEQ. The District Ranger is affirmed with respect to this appeal point.

Issue 3 - Alleged violations of MUSA:

Appellant asserts that the MUSA has been violated because the decision to approve the permit will impair the long-term productivity of lands on the Apache-Sitgreaves National Forests. Appellant cites past grazing practices in general as having "permanently degraded riparian zones, native fisheries, grasslands, and forests."

Appellant has provided no evidence that these decisions will impair the long term productivity of the allotment areas. The EA discloses that Alternative D (selected) will improve vegetation, riparian, soil and watershed conditions (EA pp. 31-40). Contrary to appellant's claims, the record indicates that productivity is not being impaired.

Finding: The District Ranger is affirmed with respect to appellant issues concerning alleged violations of the MUSA.

Issue 4 - Alleged violations of APA:

Appellant asserts that cattle grazing is detrimental to the land and that no information exists which would indicate that the proposed action will remedy problems on the allotment. Appellant further argues that the decision does not represent a reasoned and rational decision reflecting the highest and best use of the land.

The EA documents that a host of county, state, tribal, and federal officials, were consulted along with colleges and universities, and special interest groups. These people, along with Forest Service resource specialists contributed to identification of issues associated with the proposed action, alternatives to the proposed action, and the effects of each alternative. All of which is documented in the EA and supported in the project record.

The District Ranger did not make a decision concerning the highest and best use of the land. As argued previously, the highest and best use was contemplated during the preparation of the forest plan and is outside the scope of this decision. The District Ranger's decision was not an allocation of resources as the appellants assert in the term "highest and best use of the land". In this context, allocation of resources is a decision reserved for Forest Plan action. The Ranger's decision merely approved one of the already recognized uses identified in the Forest Plan for the affected area to occur at a specified intensity and duration.

Finding: The EA and associated project record provides a logical basis for reasoned choice among the alternatives. The District Ranger's decision is not arbitrary nor capricious. The District Ranger is affirmed on this issue.

APPEAL REVIEWING OFFICER RECOMMENDATION

The appeal reviewing officer (ARO) has recommended the District Ranger's decision concerning the Baseline and Horsesprings Allotment be affirmed. The evaluation concluded: (a) decision logic and rationale were generally clearly disclosed; (b) the benefit of the proposal was 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.

DECISION

After a detailed review of the records and the ARO recommendations, I find the District Ranger conducted a proper and public NEPA process that resulted in a decision concerning the Baseline and Horsesprings Allotment that is consistent with the Apache Sitgreaves National Forests' Plan. The District Ranger is affirmed with respect to all appellant contentions. My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ John R. Kirkpatrick

JOHN R. KIRKPATRICK
Appeal Deciding Officer
Deputy Regional Forester

Enclosure

cc:
Clifton RD
D.Stewart