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Agriculture

Forest  
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Southwestern  
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File Code: 1570-1

Date: August 9, 1999

Forest Guardians  
c/o John Horning  
1413 Second Street, Suite One  
Santa Fe, NM 87505

Certified Mail-Return Receipt Requested  
Z 506 822 040

Re: Appeal #99-03-00-0067-A215, Arab Allotment, Lakeside Ranger District, Apache-Sitgreaves National Forests

Dear Mr. Horning:

This is my review decision concerning the appeal you filed on behalf of Forest Guardians, regarding the Decision Notice and Finding Of No Significant Impact (DN/FONSI) which authorize grazing and implement a grazing management strategy on the Arab allotment.

### **BACKGROUND**

District Ranger Collins issued a decision on May 14, 1999, for the Arab allotment. The decision resulted in the selection of the following alternative and authorization: Arab allotment, Alternative 3, which authorizes 27 head of cattle (cow/calf) to graze from June 1 through October 31. The decision represents a reduction of 69 head of cattle, with one-third of the reduction occurring each year for three years.

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 215.7. I have thoroughly 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 recommended that the Responsible Official's decision be affirmed and that your request for relief be denied. The evaluation concluded: (a) decision logic and rationale were generally clearly disclosed; (b) the benefits of the proposal were identified; (c) the proposal and decision were consistent with agency policy, direction and supporting information; (d) public participation and response to comments were adequate; and (e) all of the major issues raised by the appellant were adequately addressed in the project record.



**APPEAL DECISION**

After a detailed review of the records and the Appeal Reviewing Officer's recommendations, I affirm the Responsible Official's decision concerning the Arab 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

Enclosure

cc:  
Forest Supervisor, Apache-Sitgreaves NFs  
District Ranger, Lakeside RD  
Director of Rangeland Management, R3  
Appeals and Litigation Staff, R3

## REVIEW AND FINDINGS

of the

**Forest Guardians' Appeal #99-03-00-0067-A215**

regarding the

**Arab Allotment Decision**

**ISSUE 1:** The Forest Service violated the National Forest Management Act (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:** 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:** Contrary to the appellant's assertions, NFMA does not require that a suitability analysis be conducted at the project level. 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.

The purpose of the 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 Apache-Sitgreaves National Forests Plan identified the Arab allotment as suitable for livestock grazing (Docs. 107; 108).

The Forest planning process undertook quantitative analysis incorporating economics into the process. 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 National Environmental Policy Act (NEPA) analysis at the project level concerning the management and permitting of livestock grazing. As previously described, 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 violated the NFMA by failing to maintain viable numbers of all species and protect riparian areas.

**Contention:** Appellant contends that the Forest Service must provide protection and habitat for riparian obligate species. Appellant cites 36 CFR 219.19 planning regulations in supporting the assertion. The appellant further contends that "despite this direction" (i.e. Forest Plans), the

Forest Service has failed to "protect riparian habitats and riparian obligate species", due to livestock grazing.

**Response:** Regulations at 36 CFR 219 Subpart A, which appellant cites, set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended [36 CFR 219.1(a)]. Forest Plans include goals, objectives, standards, and guidelines for the protection of threatened, endangered, Forest Service sensitive, and other species and their habitat. Site-specific projects are designed under the direction provided in Forest Plans. The Responsible Official found the selected alternative to be consistent with the Forests Plan (Docs. 107; 108).

The record indicates that riparian habitat is restricted to small wetlands around springs and wet meadows. Approximately 10 acres of wet meadow habitat in unsatisfactory condition will be fenced to protect and recover woody species. All other wet meadow habitat is in satisfactory condition. Forage utilization monitoring will be implemented immediately and livestock will be moved when desirable utilization levels are reached (Docs. 108; 112). The record indicates that habitat for proposed, candidate, sensitive and Forest Plan management indicator species will be protected through monitoring and forage utilization standards.

**Finding:** The decision provides for adequate protection of riparian and upland habitats consistent with the Apache-Sitgreaves National Forests Plan. The Responsible Official reached a reasonable conclusion, based on the effects of the selected alternative, that the projected habitat conditions would maintain viability of all wildlife species and satisfactory riparian conditions.

**ISSUE 3:** The Forest Service violated NEPA by failing to analyze a reasonable range of alternatives.

**Contention:** The appellant contends that a reasonable range of alternatives, as required by NEPA implementing regulations, was not considered.

**Response:** The formulation of alternatives is driven by significant issues identified in scoping 40 CFR §1501.2(c). For an alternative to be reasonable, it must meet the stated purpose and need, and address one or more issues. The Arab analysis considered six alternatives, two of which were dropped from detailed analysis and four which were analyzed in detail: Alternative 1, No Action (no grazing); Alternative 2, No Change (current management); Alternative 3, Proposed Action (selected alternative); Alternative 4 (permittee proposal).

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

**ISSUE 4:** The Forest Service violated NEPA in failing to consider and disclose adequately the cumulative impacts of the proposed action.

**Contention:** The appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering all past, present, and reasonably foreseeable activities as required by NEPA.

**Response:** The cumulative effects analysis was done at the 5th code watershed level considering activities across all ownerships. Past effects documented in the record include grazing, logging, and aggressive fire suppression. Current effects include fire, timber harvest

and associated activities, grazing, recreation and travelways (roads and trails). Cumulative effects are summarized in the EA and discussed in detail in the project record (Docs. 100; 108). The EA indicates that the proposed action will not result in adverse cumulative effects if forage utilization standards are met. The detailed discussion concludes that present and foreseeable land use activities within the Mineral Creek watershed are expected to reduce overall cumulative effects on soil and water resources.

**Finding:** Past, present, and reasonably foreseeable actions were considered in the analysis. The EA and record reflect an adequate analysis and disclosure of cumulative effects on the affected environment.

**ISSUE 5:** The EA violates the Clean Water Act.

**Contention:** The appellant alleges that the Forest Service failed to require the permittee to obtain a water quality certification from the State of Arizona for the Arab allotment as required under Section 401 of the Clean Water Act. Appellant also alleges that implementation of the decision will degrade water quality limited streams, in violation of State water quality standards.

**Response:** The State of Arizona does not require a water quality certification for dispersed non-point activities such as livestock grazing. However, the record shows that the appropriate non-point source considerations were made during the planning process. The Arizona Department of Environmental Quality (ADEQ) was consulted throughout the scoping and document preparation periods (Docs. 33; 87) and provided comments used in the analysis and decision (Doc. 99). As recommended by ADEQ, Best Management Practices were prescribed (Docs. 107; 108) to insure that water quality will not be negatively impacted.

**Finding:** Appropriate procedures were followed and adequate mitigation is planned for the proposed action. There is no violation of the Clean Water Act.

**ISSUE 6:** 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 to authorize livestock grazing will permanently impair land productivity.

**Response:** Management of forest lands for highest net public benefits was analyzed and decided upon in the preparation of the Forests Plan. The Forests Plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately at the Forest Plan level, and are outside the scope of a project level analysis.

The EA discloses that site productivity will be maintained through application of Best Management Practices (BMPs). Monitoring will be employed to ensure BMPs are effective in maintaining site productivity and to identify any necessary changes in management practices (Docs. 100; 107; 108).

**Finding:** A decision concerning the highest public benefit is outside the scope of the analysis under review. The Responsible Official's decision will not impair land productivity for the Arab Allotment.

**ISSUE 7:** 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 record indicates that the selected alternative will remedy identified resource issues (Docs. 100; 107; 108; 112). The EA displays the effects of implementing the proposed action and alternatives. The Responsible Official's decision rationale reflects consideration of the effects as disclosed in the EA (Doc. 107).

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

**ISSUE 8:** The Forest Service decision violates the Wilderness Act.

**Contention:** Appellant contends that allowing grazing of allotments that contain wilderness areas violates the mandate of the Wilderness Act. The appellant further asserts that all vacant allotments within wilderness areas should be devoted exclusively to wilderness values.

**Response:** There is no designated wilderness within the Arab allotment boundary.

**Finding:** Appellant's issue 9 is moot.