



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: March 1, 1999

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

Certified Mail - Return Receipt Requested
Z 095 964 191

Re: Forest Guardians' Appeals of Black Canyon/Wildcat Allotments (Appeal #99-03-00-0018-A215), Santos Allotment (Appeal #99-03-00-0019-A215), Big Rosa Allotment (Appeal #99-03-00-0017-A215), of Decisions Authorizing Livestock Grazing

Dear Mr. Horning:

This is my review decision on the appeals you filed regarding four decisions to authorize and manage livestock grazing on four grazing allotments as described below.

DECISION AND RESPONSIBLE OFFICIAL

The following decisions were issued by the Responsible Officials (ROs) and are subject to administrative review under 36 CFR 215 appeal regulations.

1. On November 20, 1998, District Ranger Kate Klein issued two Decision Notices concerning the implementation of "Alternative 4" that authorizes livestock grazing and rangeland management actions on the Black Canyon and Wildcat Allotments, Chevelon/Heber Ranger District (RD), Apache/Sitgreaves National Forests (NF).
2. On November 19, 1998, Forest Supervisor Gilbert Vigil issued a Decision Notice concerning the implementation of "Alternative C" that authorizes livestock grazing and rangeland management actions on the Santos Allotment, Tres Piedras RD, Carson NF.
3. On November 30, 1998, District Ranger Martin Chavez issued a Decision Notice concerning the implementation of the "Proposed Action with Modifications" that authorizes livestock grazing and rangeland management actions on the Big Rosa Allotment, Magdalena RD, Cibola NF.

Due to the identical nature of these appeals, I have chosen to consolidate my response into one decision document. My review of these appeals has been conducted pursuant to, and in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal records, including the recommendations of the Appeal Reviewing Officer regarding the disposition of these appeals. My review decision, hereby, incorporates by reference the appeal records.



Pursuant to 36 CFR 215.16, the following actions were taken by the ROs, or their staff, in an attempt to informally dispose of the appeals .

- 1) Black Canyon and Wildcat Allotments -- A telephone conference call was held on January 25, 1999, between yourself and staff persons from the Forest Supervisor's office (A/S NF), including the Forest Supervisor and personnel from the Chevelon/Heber Ranger District, including the project Interdisciplinary Team Leader. No informal resolution was achieved as a result of the conference call.
- 2) The record reflects that you declined to meet with the other ROs (Santos and Big Rosa appeals) for the purpose of seeking informal resolution of the appeals.

APPEAL ISSUES AND FINDINGS

Appellant contends that: 1) The Forest Service violated the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA) by continuing to graze cattle without evaluating grazing suitability and a decision is, therefore, premature; 2) the analyses do not meet the requirements of Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" for economic analysis; 3) The EAs violate the Clean Water Act by failing to require permittee certification from the State Department of Environmental Quality ; 4) The decisions violate the Multiple Use and Sustained Yield Act by failing to manage for the highest and best use, and without impairing land productivity; and 5) The EAs violate the Administrative Procedures Act.

The appellant's issues are addressed as follows:

ISSUE 1: The Forest Service violated NFMA and NEPA.

Contention: Appellant contends that NFMA and NEPA were violated because the ROs failed to evaluate the allotments' suitability for grazing. As the appellant stated on page 2 of each appeal, "...the Forest Service must determine in forest planning the suitability and potential capability of the National Forest System lands..., 36 CFR, Sec. 319.20". Appellant further contends that regulations at 36 CFR 219.3 require the project environmental assessments (EAs) to address the economic and environmental consequences and the alternative uses foregone. 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, and, therefore, the decisions are premature.

Response: Although appellant claims NFMA requires that 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. The appellant has failed to make the distinction between forest planning and project planning. The appellant argues that there are regulatory requirements that the agency must fulfill in regards to completing a suitability analysis, in which appellants cited 36 CFR 319.20 as the regulation. There is no regulatory requirement that compels the Forest Service to conduct a suitability analysis and determination at an allotment or project planning level.

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 forest planning process inherently undertook a quantitative analysis fully incorporating economics into the process. The forest plans fully comply 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).

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. As previously described, all requirements for suitability under the provisions of 36 CFR 219.20 were met in completion of the forest plans. The 36 CFR 219 regulations are not applicable in this case, therefore, the decisions are not premature. The ROs are affirmed with respect to the issues related to an alleged failure to conduct a suitability analysis.

ISSUE 2: Inadequate range project effectiveness analysis.

Contention: Appellant asserts that the analyses do not meet the requirements of Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" for economic analysis.

Response: Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" was removed from the Forest Service directives system April 1, 1998

Finding: With the removal of FSH 2209.11 from Forest Service directives, appellant's issue is moot. The RO's are affirmed on this issue.

ISSUE 3: The EA, DN, and FONSI violate the Clean Water Act (CWA).

Contention: The appellant argues that the Forest Service failed to obtain water quality certification from the state of Arizona for Black Canyon, Wildcat, Santos, and Big Rosa Allotments as required under Section 401 of the CWA.

Response: In regards to Black Canyon and Wildcat Allotments, the appropriate non-point source considerations were taken and have been well documented in the project record. The Arizona Department of Environmental Quality was consulted throughout the scoping and planning process (Doc 31, Doc 91A, Doc 116). Best Management Practices were prescribed for all alternatives (Doc 111, Appendix C) and the selected alternatives were chosen based on their ability to improve watershed and riparian conditions over the existing situation (Doc's 112, 113).

In regards to the Santos and Big Rosa Allotments, there is no requirement to obtain certification from the State of Arizona for activities occurring in New Mexico.

Finding: The environmental analysis and project decision documents for the four allotments do not violate the Clean Water Act. The ROs are affirmed on this issue.

ISSUE 4: The Decisions violate the Multiple Use and Sustained Yield Act.

Contention: The appellant alleges that the decisions violate the Multiple Use and Sustained Yield Act by failing to manage for highest and best use. Appellant further alleges that the decisions to authorize livestock grazing will permanently impair land productivity.

Response: The decisions concerning highest and best use were made during development of the Forest Plans for the Apache/Sitgreaves, Carson and Cibola NFs, respectively. The EAs reflect that range and vegetation conditions will generally improve under the selected management systems (Black Canyon/Wildcat EA pp 47-51; Santos EA Chap. 3; Big Rosa EA pp 13-20).

Finding: The records indicate that land productivity is not being impaired. The ROs are affirmed regarding this issue.

ISSUE 5: The EAs violate the Administrative Procedures Act.

Contention: Appellant asserts that the EAs contain no information which would indicate that the selected alternatives would remedy problems on the respective allotments. Appellant suggests there is little known about the effects of the selected actions and for those effects that are known, they are detrimental to the environment.

Response: The records contain adequate documentation addressing the effects of the selected alternatives identified in the EA. The EAs evaluated the effects, of those alternatives considered, on the physical, biological, and socio-economic attributes of the environment within the project area. The records reflect that Forest Service specialists, provided input into the analysis processes. The ROs considered the specialists reports, along with the entire project record, to arrive at a reasonable decision. Each effects analysis provides a clear basis for choice among the alternatives considered by the decision-maker.

Finding: The ROs did not violate the Administrative Procedures Act, and are affirmed on this issue.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer (ARO) has recommended that the Responsible Officials' decisions 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 proposals were identified; (c) the proposals and decisions are 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 records.

APPEAL DECISION

After a detailed review of the records and the ARO recommendations, I affirm the Responsible Officials' decisions concerning the Black Canyon/Wildcat Allotments (Apache/Sitgreaves NF), Santos Allotment (Carson NF), and the Big Rosa Allotment (Cibola NF) grazing management actions.

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, Resources

Enclosure

cc:
Forest Supervisor, Apache/Sitgreaves NF
Forest Supervisor, Carson NF
Forest Supervisor, Cibola NF
Director, Rangeland Management, R3
Director, EAP, R3
Appeals and Litigation, R3