



United States
Department of
Agriculture

Forest
Service

Southwestern
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File Code: 1570-1

Date: June 1, 1999

Forest Guardians
c/o John Horning
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Certified Mail-Return Receipt Requested
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Re: Appeal #99-03-00-0033-A215, Cow Flat, Foote Creek, PS and Stone Creek Allotments,
Apache-Sitgreaves National Forests

Dear Mr. Horning:

This is my review decision of the appeal you filed on behalf of Forest Guardians, regarding District Ranger Phillip R. Settles' Decision Notice and Finding Of No Significant Impact (DN/FONSI) which authorizes grazing and implements grazing management strategies on the Cow Flat, Foote Creek, PS and Stone Creek Allotments, Alpine Ranger District, Apache-Sitgreaves National Forests.

BACKGROUND

District Ranger Settles issued a decision notice on March 1, 1999, in which Alternative 6 was selected for implementation. The decision would authorize winter/spring (10/16-5/15) grazing on the Cow Flat Allotment and the Foote Creek winter pasture of the Foote Creek Allotment, and summer/fall (5/16-10/15) grazing on the PS Allotment, Stone Creek Allotment, and the remainder of Foote Creek Allotment. For purposes of this review decision, the District Ranger is identified as the Responsible Official (RO). The RO's decision is subject to administrative review under 36 CFR 215 appeal regulations.

As directed in 36 CFR 215.16, you were contacted on March 22, 1999, in an attempt to seek informal resolution of the appeal. The record reflects that no resolution was reached.

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 analysis does not meet the requirements of Forest Service Handbook 2209.11, "Range Project Effectiveness Handbook" for economic analysis; 3) the environmental assessment (EA) violates the Clean Water Act (CWA) by failing to require permittee certification from the State Department of Environmental Quality; 4) the decision violates the Multiple Use and Sustained Yield Act (MUSYA) by failing to manage for the highest and best use, and without impairing land productivity; and 5) the EA violates the Administrative Procedures Act (APA).



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 RO failed to evaluate the allotment's suitability for grazing. As the appellant stated in his 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 EA to address the economic and environmental consequences and the alternative uses foregone. Absent this suitability analysis, the appellant argues that the Forest Service failed to discharge its obligation under NEPA 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 appellant did not make the distinction between forest planning and project planning. The appellant states that there are regulatory requirements that the agency must fulfill in regard to completing a suitability analysis, in which the appellant cites 36 CFR 319.20 as the regulation. There is no regulation at 36 CFR 319.20 (perhaps the appellant intended to cite 36 CFR 219.20?). 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 decision is not premature.

ISSUE 2: Inadequate range project effectiveness analysis.

Contention: Appellant asserts that the analysis did 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 on April 1, 1998.

Finding: With the removal of FSH 2209.11 from Forest Service directives, the appellant's issue is moot.

ISSUE 3: The EA violates the CWA.

Contention: The appellant contends that the Forest Service failed to obtain water quality certification from the state of Arizona for the Cow Flat, Foote Creek, PS, and Stone Creek Allotments as required under Section 401 of the CWA. 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 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. Riparian and watershed were identified as key planning issues for this project (Doc. 64, 109). The Arizona Department of Environmental Quality was consulted throughout the scoping and document preparation periods (Doc. 30, 93, 103, 109). The alternative selected responds to the water quality issue through management changes that will have a positive affect on improving ground cover, reducing erosion, and protecting riparian areas (Doc 109). Finally, Best Management Practices were prescribed (Doc. 3, 109) to insure that water quality will not be negatively impacted.

Finding: Appropriate procedures were followed and adequate mitigation is planned for this allotment management plan decision and there will be no violation of the CWA.

ISSUE 4: The Decision violates the Multiple Use and Sustained Yield Act.

Contention: The appellant alleges that the decision violates the MUSYA by failing to manage for the highest public benefit. Appellant further alleges that the decision to authorize livestock grazing will permanently impair land productivity.

Response: The decision concerning highest and best use was made during development of the Forest Plan for the Apache-Sitgreaves National Forests. See response to Issue 1.

The EA discusses effects of the various alternatives on watershed and riparian conditions (EA, pp. 53-63). Improvement is expected under the selected alternative. Land productivity, therefore, will not be impaired.

Finding: The EA indicates that land productivity will not be impaired.

ISSUE 5: 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 the resource concerns on the allotments. The EA displays the environmental impacts of the proposed action and alternatives [40 CFR 1508.9(b)]. This effects disclosure is sufficient to provide a basis for a reasoned choice by the decisionmaker (40 CFR 1502.14).

Finding: The RO conducted an adequate analysis and rendered a rational decision based on that analysis. The RO has not violated the APA.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer (ARO) has 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 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 record.

APPEAL DECISION

After a detailed review of the records and the ARO recommendation, I affirm the RO's decision concerning the Cow Flat, Foote Creek, PS and Stone Creek Allotments, Apache-Sitgreaves National Forests, grazing authorization and 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 NFs
District Ranger, Alpine RD
Director of Rangeland Management, R3
Director of EAP, R3
Appeals and Litigation Staff, R3