



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

OEFile Code: 1570-1

Date: April 29, 1999

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

Certified Mail-Return Receipt Requested
Z 095 964 491

RE: Appeal #99-03-00-0031-A215, Grandfather and Red Hill Allotments, Apache-Sitgreaves
National Forests

Dear Mr. Horning:

This is my review decision on the appeal you filed regarding District Ranger Philip R. Settles' (Alpine Ranger District) decision to implement grazing management strategies and authorize grazing on the Grandfather and Red Hill allotments, Apache-Sitgreaves NFs.

DECISION AND RESPONSIBLE OFFICIAL

District Ranger Settles issued a decision on February 1, 1999, in which Alternative (Alt.) 5 was selected for implementation. The decision also included a provision to authorize grazing under a temporary permit up to the stocking rate identified in Alt. 4. The temporary permits may be issued starting on June 1, 2001. The District Ranger in this review, is identified as the Responsible Official (RO) whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

As directed in 36 CFR 215.16, the District Ranger or his staff, contacted you on March 22, 1999, in an attempt to seek informal resolution of the appeal. The record reflects that you did not want to seek informal resolution of the appeal unless it would result in the withdrawal of the decision. The RO would not withdraw the decision, consequently informal resolution could not be achieved.

On March 15, 1999, Duane L. Shroufe, Director of the Arizona Game and Fish Department (AGFD), requested "Interested Party" status regarding Forest Guardians' appeal. The AGFD was granted "Interested Party" status on March 25, 1999, by John R. Kirkpatrick (Deputy Regional Forester for Resources), as the Appeal Deciding Officer. A copy of this decision is being forwarded to the AGFD, pursuant to 36 CFR 215.17(b).



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 by failing to require permittee certification from the State Department of Environmental Quality; 4) the decision violates 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 EA violates 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 RO failed to evaluate the allotment's suitability for grazing. As the appellant stated on page 2 of the 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 decisions are 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 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 the appellant cites 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 decision is not premature. The RO is affirmed with respect to this issue.

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 April 1, 1998.

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

ISSUE 3: The EA violates the Clean Water Act (CWA).

Contention: The appellant argues that the Forest Service failed to require the permittee to obtain water quality certification from the state of Arizona for the allotments 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 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 was consulted throughout the scoping and document preparation periods (Doc 30, Doc 93, Doc 105). Best Management Practices were prescribed for all alternatives (Doc 3, Doc 105- Appendix C) to insure that water quality will not be negatively impacted.

Finding: Appropriate procedures were followed and adequate mitigation is planned for the allotment decision. There will be no violation of the Clean Water Act. The RO is affirmed on this issue.

ISSUE 4: 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. 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 Plans for the Apache-Sitgreaves National Forests.

The EA describes the scope of the analysis in the "purpose and need" as well as the "decision to be made" sections of the EA (Doc. 105). The scope of this analysis is related to analyzing the effects of livestock grazing only within the Grandfather and Red Hill allotments.

Wild ungulate forage needs as well as non-ungulate species were considered, and provided for, in the alternative selected (Alt. 5). Alt. 5 contains allowable use standards that are set at conservative levels to provide surplus forage, cover, and other resource needs for wildlife, plant health, and watershed improvement/stability. Monitoring is also recognized as a key component to meeting Forest Plan standards and guides. The EA (Doc. 105) states that the action selected is in conformance with the Forest Plan, therefore by implementing that action the alternative would also be consistent with MUSYA.

The EA and DN/FONSI depict that site productivity will be maintained, if not improved. The EA also describes that site productivity is affected by high tree densities and lack of fire in the ecosystems, which is not directly related to the effects of grazing. In addition, FS has recognized that competition between wild ungulates and livestock is likely to occur which may impede resource improvement. The FS and AGFD are consulting and cooperating to determine wild ungulate carrying capacity. The EA, Section V (Doc. 105), states that once the carrying capacity is determined that both wild ungulates and livestock numbers may need to change to be consistent with desired conditions and Forest Plan use standards.

Finding: The EA and DN/FONSI provides adequate information that allows the RO to determine the benefits of the alternatives to meet the intent of MUSYA and site productivity. The RO is affirmed on this issue.

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 displayed, and considered, a reasonable range of alternatives. FS policy requires that as a minimum, the agency consider the No Action (no grazing), No Change (current management), and a proposed action. The EA documents that two additional alternatives were considered in detail as well as three alternatives were considered and dropped from detailed analysis.

The EA, and the record, documents the effects of the alternatives considered.

Finding: The RO conducted an adequate analysis and rendered a rational decision based on that analysis. The RO is affirmed in regards to this issue.

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 recommendations, I affirm the RO's decision concerning the Grandfather and Red Hill Allotments, Apache-Sitgreaves National Forests grazing management action.

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, A/S NFs
District Ranger, Alpine RD
Director of Rangeland Mgt., R3
Director of EAP, R3
Appeals and Litigation Staff, R3
Director of Arizona Game and Fish Dept.