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File Code: 1570-1

Date: April 29, 1999

White Mountain Conservation League  
c/o Liz Wise  
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Certified Mail-Return Receipt Requested  
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RE: Appeal #99-03-00-0032-A215, Grandfather (PS) and Red Hill Allotments,  
Apache-Sitgreaves National Forests

Dear Ms. Wise:

This is my review decision on the appeal you filed on behalf of White Mountain Conservation League (WMCL) regarding District Ranger Philip R. Settles' (Alpine Ranger District) decision to implement grazing management strategies and authorize grazing on the Grandfather (PS) 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 are to 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 24, 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 30, 1999, Duane L. Shroufe, Director of the Arizona Game and Fish Department (AGFD), requested "Interested Party" status regarding WMCL's appeal. The AGFD was granted "Interested Party" status on April 1, 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 EA contains an inadequate range of alternatives as required under the National Environmental Policy Act (NEPA); 2) proposed livestock grazing levels under both Alternatives 4 and 5 do not reflect proper multiple use of rangelands on the Grandfather and Red Hill allotments, and violate the Forest Plan, Forest Service Manual (FSM) and Handbook (FSH), and Multiple Use Sustained Yield Act (MUSYA); 3) proposed livestock grazing levels under both Alternatives 4 and 5 do not balance permitted livestock with capacity on the Grandfather and Red Hill allotments and are not sustainable, violating the Forest Plan, FSM and FSH, National Forest Management Act (NFMA), and MUSYA; 4) the high cost to implement the selected alternative is not justified given the low economic return to the U.S. Treasury from livestock grazing coupled with the low rate of anticipated range recovery; and 5) the issuance of a temporary permit to graze cattle in excess of capacity and allowable use of available forage, ostensibly to further monitor grazing impact is unjustifiable, and will further degrade range conditions and foster political conflict.

The appellant's issues are addressed as follows:

**ISSUE 1:** The EA contains an inadequate range of alternatives as required under the NEPA.

**Contention:** The appellant contends that they had requested the District Ranger to consider an alternative which involves a rest-rotation grazing system, and that this was not done. Therefore, a reasonable range of alternatives was not considered in the analysis as required by NEPA.

**Response:** The RO considered the No Action alternative and four other action alternatives with stocking rates ranging from no livestock permitted to existing numbers. There were also three alternatives considered but dropped from detailed analysis.

The RO chose to design the alternatives around various stocking levels. Proper stocking was used because stocking has greater impact on improving resource conditions than grazing systems alone. The lessons from many studies show that the stocking rate and utilization are more important than grazing systems in improving rangelands (Holechek, 1995).

The effect of the decision and alternative selected essentially reduces the term grazing permit for the Grandfather allotment by 64%, and a permit reduction on the Red Hill of 83%. Annual permitted use will be constrained once utilization standards are reached.

**Finding:** I find that the RO adequately defined the scope of the analysis and considered a reasonable range of alternatives to meet the purpose and need. The RO is affirmed in regards to this issue.

**ISSUE 2:** Proposed livestock grazing levels under both Alternatives 4 and 5 do not reflect proper multiple use of rangelands on the Grandfather and Red Hill allotments, and violate the Forest Plan, FSM and FSH, and MUSYA.

**Contention:** The appellant raises several contentions associated with this issue, which are as follows: 1) the RO in selecting Alt. 5, has by default, actually selected Alt. 4 because Alt. 5 may allow the same stocking rate as in Alt. 4 through the use of annual temporary permits;

2) the appellant contends that it is not appropriate to select any alternative that allocates forage in excess of 100% of the available forage amount, alleging that this will not lead to expedient range recovery; 3) the appellant contends that it is a violation of the Forest Plan and FSM/FSH guidance to not provide a portion of the available forage to wild ungulates; 4) appellant contends that there is no other alternative, except Alt. 1 (No Action, no livestock grazing) that has been considered that will provide for the wildlife forage needs; 5) the analysis process for the Grandfather and Red Hill allotments is inconsistent with other processes used to determine an allocation of forage between livestock and wildlife.

**Response:** Regarding Contention #1, according to the EA (Doc. 105) and DN/FONSI (Doc. 105 and 129), the RO has selected Alt. 5 which will result in a new permit being issued by June 1, 2000, reducing the stocking rate from 90 head of cattle yearlong (1/1-12/31) to 32 head with a season of use from 6/1-10/31 on the Grandfather allotment and 15 head with a season of use from 11/1-5/31 on the Red Hill allotment. The DN/FONSI (Doc. 129, Correction #3) states that temporary permits for additional numbers "may" be issued. Temporary grazing permits are intended for temporary authorization of livestock numbers when, as one example, unusually high amounts of forage are produced during very wet years. Temporary permits have no priority for issuance beyond the year or grazing period they are issued for [36 CFR 222.3(c)(2)(i)]. The mere fact that the DN/FONSI states that temporary permits may be issued, does not obligate the RO to issue the permits if the annual resource conditions indicates insufficient forage to sustain additional numbers.

In response to Contentions #2 and #3, though no allocation for wild ungulates is provided for in Alt. 5, utilization standards are to be applied and enforced based on monitoring of annual forage use, therefore, livestock use periods may be shortened relative to the combined livestock and wild ungulate use on full and potential capacity range. In addition, the EA states: a) that wildlife carrying capacity would be determined in the future; b) an analysis will be completed to determine wild ungulate carrying capacity once all AMPs are completed within Game Management Units 1 and 27. AGFD desires to analyze big game populations on a broader scale rather than at the allotment scale (Doc. 70 and 105 at Appendix L, Response to Comment #7).

The DN/FONSI (Doc. 105) states under the "Rationale for the Decision", Item #7, that wild ungulate monitoring will be conducted for use in a future analysis of their populations. There is intent by both the FS and AGFD to re-analyze wild ungulate and livestock forage needs in a few years to achieve an overall balance with the estimated grazing capacity, since it cannot be logically accomplished at the allotment scale.

In response to Contention #4, Alt. 2 considered and allocated wildlife forage needs on both allotments. Alt. 5 provides 3% of the wildlife forage needs on the Grandfather and 96% on the Red Hill. The utilization standards applied on both allotments also provides for residual cover and forage needs for non-big game species resulting in 60 to 75% of the vegetation left standing within the full capacity range. The record reflects that wildlife forage needs have been considered. The record also indicates that both the FS and AGFD recognize that the time is not appropriate to make an overall allocation of forage between wild ungulates and livestock until the Game Management Units can be analyzed (response to Contention #2 and #3).

In response to Contention #5, the scope of this analysis and decision focused on livestock grazing only (EA, Doc. 105, Purpose and Need, and Decision to be Made). Responses to Contention #2, #3, and #4 are also relevant to this contention.

**Finding:** I find that the RO has conducted an analysis that is consistent with the Forest Plan, FSM and FSH, and MUSYA relative to the proper use of rangelands. The RO is affirmed in regards to this issue.

**ISSUE 3:** Proposed livestock grazing levels under both Alternatives 4 and 5 do not balance permitted livestock with capacity on the Grandfather and Red Hill allotments and are not sustainable, violating the Forest Plan, FSM and FSH, NFMA, and MUSYA.

**Contention:** Contention #1, is that since the Forest Plan does not balance permitted use with capacity at a forest-wide level, then it must be accomplished at the allotment management planning (AMP) level. Contention #2 under Alt. 5, "actual forage use would be within allowable forage utilization levels where livestock alone are considered, but not so where livestock and wild ungulates are considered". The appellant alleges that failure to comply with the Forest Plan standard of balancing permitted use with capacity results in the following: "1) retard or preclude expedient recovery of the degraded range resource on the allotments; 2) limit the ability to provide for equitable multiple use distributions of forage for wildlife; and 3) contribute to continued political conflict associated with wildlife use of available forage". Contention #3 is that the Alpine Ranger District has not adequately determined the suitability of the lands for grazing.

**Response:** In response to Contention #1 and #2, according to the EA and DN/FONSI (Doc. 105 and 129), Alt. 5 sets permit numbers equal to the estimated capacity, therefore, the alternative is consistent with the Forest Plan. Balancing forage allocation between wildlife and livestock is not within the scope of the Grandfather and Red Hill analysis (Doc. 105, EA). The RO has complied with the Forest Plan and intends to accelerate the range recovery process by implementing a permit reduction process for both allotments that is faster (33% per year) than recommended in FSM 2231.61 (20% per year). Furthermore, since no allocation for wild ungulates is provided for in Alt. 5, utilization standards are to be applied and enforced based on monitoring of annual forage use, therefore, livestock use periods may be shortened relative to the combined livestock and wild ungulate use on full and potential capacity range.

In response to Contention #3, the appellant's contention regarding suitability determination at the AMP level is erroneous. Suitability is a broadscale assessment process for determining land uses at the Forest Plan development level only (36 CFR 219.20), not at a site-specific level, such as in this analysis. The RO conducted a grazing capability evaluation as part of the planning process for the Grandfather and Red Hill allotments. This process considered various sources of information and research studies to arrive at a reasonable determination of the amount and locality of the land base that can support grazing ungulates (Doc. 26,27,78,83B,88,100). The capability evaluation apportioned the land into 3 categories, full, potential, and no capacity range. Forage needs of livestock were determined on the basis of the amount of forage produced on the full and potential capacity range and constrained by an allowable use figure to provide for the health of plants and other resource needs.

Wild ungulate forage needs also considered the no capacity range in addition to the full and potential capacity range (Doc. 105, Appendix F, Doc. 88). The RO has complied with the requirements contained in FSM, FSH, Forest Plan, and regulations (36 CFR 222.2).

**Finding:** I find that the RO's selected alternative does balance the permit obligation with capacity and has complied with the requirements contained in FSM, FSH, Forest Plan, and regulations (36 CFR 222.2). The RO is affirmed in regards to this issue.

ISSUE 4: The high cost to implement the selected alternative is not justified given the low economic return to the U.S. Treasury from livestock grazing coupled with the low rate of anticipated range recovery.

**Contention:** Appellant contends that the selected alternative does not justify the expenditures for range improvements due to the amount of time it will take for the grazing fees to pay for the projects. In addition, it is not justifiable to expend funds on improvements with the implementation of an alternative that does not assure expedient range recovery. The appellant alleges that this action indicates a bias toward livestock production rather than range resource improvement.

**Response:** It is FS policy that grazing permit holders cost share with the FS in the construction and installation of range improvements. The selected alternative, Alt. 5 (Doc. 105, DN/FONSI and EA) reflects that the bulk of the cost associated with the range improvements is to be borne by the permittee as their contribution towards range improvement construction. Actual FS cost for construction is estimated at approximately one-third of the permittee's contribution for range improvements (EA, pg. 32). In addition, analysis and approval of range improvements does not mandate the construction of the improvements. The RO can determine the actual need for implementation of the range improvements through monitoring and administration of the grazing permit.

The impact analysis contained in the EA, projects that Alt. 5 will move toward meeting desired conditions. Overall improvement in plant, soil and watershed conditions is expected to occur in 2 to 3 decades (Doc. 105, EA, pg. 39). It is expected that forage use levels would be less than Alt. 3 and 4, but higher than Alt. 1 and 2.

**Finding:** I find that the RO has made a reasonable decision given the circumstances as described in the EA. The RO is affirmed in regards to this issue.

ISSUE 5: The issuance of a temporary permit to graze cattle in excess of capacity and allowable use of available forage, ostensibly to further monitor grazing impact is unjustifiable, and will further degrade range conditions and foster political conflict.

**Contention:** The appellant contends that there is sufficient information in the EA to make a proper resource management decision. Issuing a temporary permit to collect monitoring data is not necessary, given the resource conditions stated in the EA, and it is not justifiable to allow grazing in excess of capacity. The appellant believes if the agency can't make a proper decision now, they can hardly expect the right decision to be made after monitoring data is collected. The appellant feels that stocking the allotments through use of a temporary permit at Alt. 4 levels, will further degrade resource conditions.

**Response:** Response to Issue 2, Contention #2 and #3 is relevant to this issue. Issuance of a temporary permit for additional numbers is at the discretion of the RO under any alternative if the annual production of forage is determined to be above normal levels [(36 CFR 222.3(c)(2)(i)(B)]. Considering the issuance of a temporary permit does not mean that a permit will be issued. The DN/FONSI (Doc. 105) displays the actual stocking rate on the allotment during the phase in period of the permit reductions. The allotment will still be stocked higher than the estimated capacity, and above Alt. 4 levels, only during the reduction phase-in period. Regardless of the alternative selected, monitoring of the allotments is expected to occur to maintain grazing use within the utilization standards.

Appendix "A" in the EA (Doc. 105, pg. 54) displays the permit clauses that are to be attached to the grazing permit for Alt. 2 through 5. Appendix "A" states under the heading of **Allowable Use**: "The permittee **will** (emphasis added) take action to insure proper livestock distribution occurs and that forage use levels are not exceeded. If forage use continues above the allowable forage utilization level, adjustments in the term grazing permit, allotment management plan, or other management actions will be necessary". The allowable use standard is set at a level that is applicable to both livestock and wild ungulate use combined.

Appendix "A", under the heading of **Management Practices** states: "The scheduled rotation, grazing season, and livestock numbers will be in the annual operating plan. Adjustments in livestock numbers, rotation schedule, or season of use will be made if allowable forage utilization levels are exceeded. **Livestock will be moved to the next scheduled pasture or off the allotment when forage utilization levels are met** (emphasis added)".

The EA also contains a monitoring protocol, as Appendix "H" (Doc. 105, page 67) which can be implemented by the RO through the grazing permit.

**Finding:** I find that the selected alternative (Alt. 5) when implemented, with all the safeguards stated in the EA, does provide a reasonable expectation in the improvement of resource conditions. The RO is affirmed in regards to this issue.

### **APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer (ARO) has recommended that the District Rangers' 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 recommendation, I affirm the RO's decision concerning the Grandfather and Red Hill allotments.

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

cc:  
Forest Supervisor, Apache/Sitgreaves NFs  
District Ranger, Alpine RD  
Director of AGFD  
Director of Rangeland Mgt., R3  
Director of EAP, R3  
Appeals and Litigation Staff, R3