

File Code: 1570-1

Date: September 23, 1999

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

Certified Mail-Return Receipt Requested
Z 506 822 057

Re: Appeal #99-03-00-0105-A215, Lake Mountain, Mineral, Doyle Mountain, and Porter Springs Allotments, 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 which authorize grazing and implement the grazing management strategy on the above named allotments.

BACKGROUND

District Ranger Ed Collins issued a decision on June 25, 1999, for the above named allotments. The decision resulted in the selection of the following alternative and authorization: Alternative 3, which authorizes 144 head of cattle (cow calf) to graze 6/1-10/31.

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 Lake Mountain, Mineral, Doyle Mountain, and Porter Springs allotments, 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 #99-03-00-0105-A215****regarding the****Lake Mountain, Mineral, Doyle Mountain, and Porter Springs Allotments Decision**

ISSUE 1: The Forest Service violated the National Forest Management Act (NFMA) by continuing to allow cattle grazing on the allotments without first evaluating the allotments' 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 allotments' 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 Forest Plan identified the Lake Mountain, Mineral, Doyle Mountain, and Porter Springs allotments as suitable for livestock grazing (Doc. 152).

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 Forest 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 by failing to ensure that riparian areas will recover to satisfactory conditions.

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, and that the decision fails to ensure that riparian areas on the allotments will recover to satisfactory condition by the year 2015, as required by the Forest Plan and the Regional Guide.

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 alternatives to be consistent with the Forest Plan (Doc. 152).

The Apache-Sitgreaves Forest Plan promotes healthy riparian ecosystems through Forest Plan riparian standards and guidelines. The record indicates that new term grazing permits will include clauses which insure compliance with the Forest Plan. Certain riparian areas will be excluded from livestock grazing to provide protection of Bebb's willow. Best Management Practices were prescribed to insure that water quality will not be negatively impacted. Protection/recovery of wet meadows and uplands will be ensured through implementation and monitoring of forage utilization standards, and reduced numbers of permitted livestock. Changes in plant composition, vigor, and density will be monitored to determine if movement toward desired conditions is occurring (Doc. 152). Threatened and endangered species, that are proposed for listing, Forest Service sensitive species, or their habitats, are not likely to be adversely affected (Docs. 146; 148; 152).

The appellant inaccurately cites Forest Plan requirements. The Forest Plan does not contain a requirement that "allotments will recover to satisfactory condition by the year 2015", or by any other year (Doc. 2). The Regional Guide suggests that Forests, in developing their Forest Plans, "improve all terrestrial ecosystems and watersheds to satisfactory or better condition by 2020" (pg. 3-2, item 8). The analysis contained in the record shows that the project will improve riparian conditions, and will adhere to the amended Apache-Sitgreaves Forest Plan and Regional Guide. The Environmental Assessment and Cumulative Effects Report describe how the selected alternative will improve riparian and watershed conditions due to fencing, reducing livestock numbers, and balancing ungulate numbers with available range capacity, along with applying best management practices (Docs. 152; 141). In addition, the EA includes monitoring requirements designed to determine whether watershed condition is improving in key areas (Doc. 150).

Finding: The decision provides for adequate protection of riparian and upland habitats consistent with the Apache-Sitgreaves National Forest Plan and Regional Guide. 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 achieve 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 analysis considered four alternatives: Alternative 1, No Action (no grazing); Alternative 2, No Change (current management); Alternative 3, proposed action; and Alternative 4. Three additional alternatives were considered but dropped from detailed study (Doc. 152).

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 record indicates the analysis area falls within portions of four 5th code watersheds. Past, present, and reasonably foreseeable cumulative watershed effects were analyzed at the 5th code watershed scale (Docs. 141; 152). Past activities included wildfire, timber sales and related treatments, grazing, and recreation use. Present and reasonably foreseeable activities included grazing, timber harvest, fuel reduction projects, hunting, hiking, mountain biking, horseback riding and motorized off highway vehicle use. The cumulative effects analysis concludes that there will be no long term negative effects to soil productivity or water quality (Doc. 141).

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 argues that the Forest Service failed 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 (ADEQ) was consulted throughout the scoping and document preparation periods (Doc. 56, Doc. 126). ADEQ responded with comments and suggestions on Best

Management Practices (BMP's) and monitoring (Doc 134). The alternative selected will have a positive affect on improving ground cover, reducing erosion, and protecting riparian areas (Doc 150). Finally, BMP's were prescribed and BMP monitoring is planned as suggested by ADEQ (Doc. 152, Appendix B) to insure that water quality will not be negatively impacted.

Finding: Appropriate procedures were followed and adequate mitigation is planned. There will be 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 Forest Plan. The Forest 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. 150; 152).

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.

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. 150; 152). 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. 150).

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