

File Code: 1570-1

Date: September 20, 1999

Richard G. Udall, President
Flying Box Ranch, Inc.
P.O. Box 69
Eagar, Arizona 85925

Certified Mail-Return Receipt Requested
Z 095 964 319

Re: Appeal #99-03-00-0088-A215, Murray Basin Allotment, Springerville Ranger District, Apache-Sitgreaves National Forests.

Dear Mr. Udall:

This is my review decision concerning the appeal you filed, regarding the Decision Notice and Finding Of No Significant Impact which authorize grazing and implement the grazing management strategy on the Murray Basin allotment.

BACKGROUND

District Ranger John MacIvor issued a decision on June 22, 1999, for the Murray Basin Allotment. The decision resulted in the selection of the following alternative and authorization: Murray Basin allotment, Alternative 2, which authorizes 89 head of yearlings to graze 07/1 to 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 Murray Basin allotment, 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, Springerville RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS

of

Richard Udall's Appeal #99-03-00-0088-A215

regarding the

Murray Basin Allotment Decision

ISSUE 1: The appellant asserts a decision contingent upon agreement of other parties is inappropriate and contrary to the Forest Service regulations governing permit issuance.

Contention: The appellant contends that the Murray Basin allotment decision is contingent upon the Saffel Springs permittee waiving his permit back to the Forest Service and acquisition of a portion of the Rudd Creek Winter allotment by the Saffel Springs permit holder, thus the agreement and transfer are not assured. The appellant asserts a decision contingent upon agreement of other parties is inappropriate and contrary to the Forest Service regulations which govern permit issuance.

Response: The appellant's assertion that a decision contingent upon agreement of the Saffel Springs permittee waiving his permit back to the Forest Service is correct. The decisions resulting from the analysis reconfigure allotment boundaries into more logical grazing units (Docs. 140; 147A; 147C). The Saffel Springs permit holder has agreed to waive his permit back to the Forest Service. In the event the permittee changes his mind, a new NEPA decision would be required.

The appellant's assertion that the decision is also contingent upon the "Saffel Springs permittee" acquiring a portion of the Rudd Creek Winter allotment is incorrect. The Arizona Game and Fish Department and the Rocky Mountain Elk Foundation waived the Rudd Creek Term grazing permit back to the Forest Service when they acquired the permit, based on purchase of the base property, in 1993. At this time the Forest Service also agreed to complete National Environmental Policy Act (NEPA) analysis for the Rudd Creek and other allotments in the Milligan Valley before allocating the forage on the vacant Rudd Creek allotment. The Milligan Valley NEPA analysis fulfills the aforementioned commitment by the Forest Service (Doc. 140). Through the NEPA decision a portion of the Rudd Creek Winter allotment will be used in the reconfiguration of allotment boundaries to replace the Saffel Springs allotment which will be waived back to the Forest Service.

Finding: The Milligan Valley allotment decisions do not violate Forest Service grazing regulations. The decisions relating to reconfiguration of allotment boundaries are appropriate and have been documented in the record. In the event the commitment made regarding waiver of the Saffel Springs term grazing permit does not occur, a new NEPA decision will be required.

ISSUE 2: The appellant contends that forage production estimates should have been made toward the end of the growing season rather than in the May-June time frame.

Contention: The appellant contends that forage production estimates based on May-June clippings do not give a true indication of capacity. The appellant also asserts that the estimates did not consider heavy elk use during winter and spring months, and the typical forage productivity throughout the summer.

Response: The record shows that watershed conditions are of concern and generally unsatisfactory throughout the Murray Basin allotment. Sixty percent of the full capacity range is in poor condition. Capacity estimates for grazing ungulates reflect a management strategy that is expected to maintain or improve watershed conditions (Doc. 140). The record indicates that a number of factors were taken into consideration when estimating capacity. Forage production, soil stability, distance from water, and steepness of slope were variables used to identify areas where vegetation is available for grazing. Forage production is influenced by crown closure in woodland vegetative types and estimates were based on scientific literature. Production estimates were ground checked as necessary. Proper utilization factors designed to ensure recovery and maintenance of satisfactory watershed conditions were assigned based on range condition and grazing management system for domestic livestock. Research information related to forage consumption by grazing ungulates was used to estimate forage needs for both wildlife and domestic livestock (Doc. 30; 140). Distribution and densities of wild ungulates were provided by the Arizona Game and Fish Department. Capacity estimates for grazing ungulates will be validated over time through monitoring (Doc. 140) .

Finding: The Responsible Official made a reasoned and informed decision based on the analysis.

ISSUE 3: Shortening the season of use will not improve the resource as long as elk are allowed to overgraze in winter and spring.

Contention: The appellant contends that although elk damage was discussed in the environmental assessment (EA) and decision notice (DN) the Apache-Sitgreaves Forests have failed to safeguard resources from elk.

Response: The record indicates elk densities are moderate on summer range. High elk densities on the winter range are attributed in part to an estimated 26 percent of the wintering herd being comprised of nonresident elk. Current population objectives are to stabilize the resident herd while emphasizing harvest of the nonresident herd. While it is noted in the record that elk overutilize some riparian areas in the spring and early summer, there is nothing in the record that indicates soil, water, and vegetative resources are at risk due to an over population of elk (Doc. 140). The record indicates that 10 percent of the forage resource on the Murray allotment is allocated to wild ungulates (elk, deer, antelope) while 21 percent of the forage resource is allocated to domestic livestock. Considering all of the Milligan Valley allotments, 9 percent of the forage resource is allocated to wild ungulates while 15 percent is allocated to domestic livestock (Doc. 140; 147A). Overall, watershed conditions are expected to improve under the proposed allocation of total herbaceous forage production (Doc. 140).

Finding: There is nothing in the record to substantiate the contention that the Apache-Sitgreaves Forests need to safeguard resources from elk.

ISSUE 4: The EA and DN indicate that the distribution of available forage was less than 100% of capacity.

Contention: The appellant asserts that because 242,294 pounds of forage were available for distribution to livestock, but only 229,887 pounds were actually distributed to livestock, this action disregards Forest Service policy and regulations.

Response: The National Forest Management Act planning regulations, 36 CFR 219.21, require the Forest Service to estimate the present and potential supply of forage for grazing and browsing animals. This subpart of the regulations further requires the Forest Service to identify lands in less than satisfactory condition and provide for their restoration. The EA documents that present livestock management is not resulting in improved resource conditions. Specifically, current capacity estimates indicate livestock overstocking is exceeding allowable forage use standards in the Forest Plan, and current management practices are not adequate to return areas of unsatisfactory watershed condition to satisfactory condition. Estimates in the record indicate 61 percent of the watershed within the Murray Basin allotment is in unsatisfactory condition. Overall, 36 percent of the watershed within the Milligan Valley allotments is in unsatisfactory condition. The record shows that the Responsible Official made a decision not to stock the Milligan Valley allotments to full capacity in order to accelerate watershed restoration (Doc. 140).

Finding: The Responsible Official followed Forest Service policy and regulations and made a reasoned and informed decision based on the analysis.

ISSUE 5: The guidance criteria for streamlined consultation are biased against livestock production.

Contention: The appellant asserts that the Forest Service sacrificed fairness and thoroughness by pre-empting the U. S. Fish and Wildlife Service (FWS) with overly conservative guidance criteria for the Little Colorado Spinedace and Mexican Spotted Owl, which do not have habitat on the Murray Basin Allotment. The appellant also contends that the guidance criteria for the Southwestern Willow Flycatcher is too strict and thereby results in exclusion of livestock from riparian areas while allowing elk to graze the riparian.

Response: The guidance criteria were developed in order to provide a streamlined and consistent approach to section 7 consultation with FWS (Appendix A, Biological Assessment, 2/9/98). The criteria were used to screen allotments for an initial effects determination. Biological Assessments resulting in a determination of "no effect" do not require further consultation. Biological Assessments that result in a "may affect, not likely to adversely affect" determination require concurrence from FWS. These criteria were developed in close collaboration and with the concurrence of FWS as documented in the letter from the Regional Director of the Fish and Wildlife Service to the Regional Forester (dated September 18, 1998, Doc. 127). Moreover, FWS continues to be involved through informal concurrence and review of allotment determinations for consistency with the guidance criteria. Therefore, the use of guidance criteria do not in any way preempt the role of the FWS.

In the case of the Murray Basin Allotment, a consistent and thorough application of the guidance criteria is evident within the record. The determination of "may affect" rather than "no effect"

was based upon the following criteria: The Little Colorado Spinedace occurs within the subwatershed downstream from the allotment, and grazing occurs within the allotment. There was a "not likely to adversely affect" rather than "adversely affect" determination made using the criteria, that in conjunction with proposed measures, the subwatershed is expected to recover and there will be no measurable ongoing effects to spinedace or their potential habitat (Biological Assessment for Murray Basin, Saffel Spring, and Rudd Creek Winter Allotment Management Plan Revision, 9/15/98, Doc. 123A). Measures to avoid downstream impacts were formulated. However, such measures were also required to meet other Forest Plan standards such as for allowable use and watershed conditions (Doc. 140).

The appellant is correct in stating that Mexican Spotted Owls are not known to be located within the Murray Basin Allotment. As discussed in the EA (Doc. 140), there are two occupied Mexican Spotted Owl sites within the larger complex of the Milligan Valley Grazing allotments. These sites are not within the reconfigured Murray Basin Allotment, however, and thus the determination of "no effect" for Mexican Spotted Owls within that particular allotment (BA, 9/15/98, Doc. 123). The appellants contention that application of the spotted owl guidance criteria are overly conservative and unfair would thus appear to be moot in this particular circumstance.

Likewise, Southwestern Willow Flycatchers or suitable habitat have not been identified within the Murray Basin Allotment. The determination was for "no effect" (BA, 9/15/98). The appellant's contention that application of the Willow Flycatcher guidance criteria are overly conservative and unfair would thus also appear to be moot in this particular circumstance.

As discussed in response to Issues 3 and 4, elk may overutilize some riparian areas in the spring (Doc. 140).

Finding: The record shows that the appellant's contention regarding the Little Colorado Spinedace, Mexican Spotted Owl, and the Southwestern Willow Flycatcher are moot.

ISSUE 6: The decision fails to implement Section 6-608 of Executive Order (E.O.) 12898.

Contention: The appellant asserts that the Forest Service must implement Section 6-608 of Executive Order 12898, to address environmental justice issues, because Apache County qualifies as a low-income population. The economic impacts of significant livestock reductions should have been weighed more heavily in the decision.

Response: Appropriate analysis and consideration were given to the environmental, economic, and social effects, including effects on low-income communities such as Apache County (Doc.140; 93; 147A). The EA and DN reveal that the phased-in reduction of permitted livestock grazing on the allotment will primarily affect the permittee and his family (Docs. 140; 147A). Although the EA and DN show that the project decision will result in a minor decline in the number of jobs and revenues in Apache County, the EA and DN do not indicate that this decision will result in any substantial or disproportionate economic effect on the low-income population in Apache County (Docs. 140; 147A). Furthermore, E.O. 12898 was not intended to apply to a situation where the decision maker has no choice in project location. The decision maker must

make decisions regarding the proper management of the Murray Basin Allotment on National Forest System Lands where it is located, within Apache County.

The DN provides sufficient rationale for the decision made and the relative "weight" given to the economic issue #1, and the environmental issues #2, 3, 4 and 5, related to balancing livestock use with allotment capacity, moving riparian areas toward proper functioning condition, meeting wildlife forage needs, and improving plant species composition (Doc. 147A).

Finding: Based on review of the record, the requirements of E.O. 12898 were not violated.

ISSUE 7: The FS should take into consideration the economic hardship that will be incurred.

Contention: The appellant contends that suffering a temporary 40 percent loss in numbers and a long term 36 percent loss, in addition to an 11 percent reduction in the grazing period, is clearly an economic hardship that the Forest Service should take into consideration.

Response: This issue is similar to the preceding issue, and addressed in the preceding response. The Forest Service did take into consideration the economic hardship that will be incurred by the permittee, which was issue #1 in the EA (Doc. 140; 93; 147A). The decision rationale provided in the DN is appropriately based on the issues identified and the purpose and need for the proposed action (Doc. 147A).

Finding: The Responsible Official took into consideration the economic hardship that will be incurred.