



United States
Department of
Agriculture

Forest
Service

Southwestern
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File Code: 1570-1

Date: June 4, 1999

Forest Guardians
c/o John Horning
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Certified Mail-Return Receipt Requested
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RE: Appeal #99-03-00-0040-A215, Verde, Pierce Wash, Willow Wash, and Sundown Allotments, Chevelon/Heber Ranger District, Apache-Sitgreaves National Forest

Dear Mr. Horning:

This is my review decision concerning the appeal you filed on behalf of Forest Guardians, regarding District Ranger Kate Klein's Decision Notice and Finding Of No Significant Impact which authorizes grazing and implements grazing management strategies on the Verde, Pierce Wash, Willow Wash, and Sundown allotments, Apache-Sitgreaves National Forests.

BACKGROUND

District Ranger Klein signed decisions on March 2, 1999, for the above named allotments. Ranger Klein selected Alternative 2 for the Verde allotment, Alternative 2 for the Pierce Wash allotment, and Alternative 4 for the Willow Wash and Sundown allotments. The District Ranger is identified as the Responsible Official whose decisions are subject to administrative review under 36 CFR 215 appeal regulations.

As directed in 36 CFR 215.16, you were contacted on May 3, 1999, in an attempt to seek informal resolution of the appeal. The record reflects that informal resolution of the appeal was not reached.

APPEAL ISSUES

You contend that: 1) the Forest Service violated the National Forest Management Act and the National Environmental Policy Act 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 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 environmental assessment violates the Administrative Procedures Act. My review and findings concerning these issues are attached.



APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer 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 Appeal Reviewing Officer's recommendations, I affirm the Responsible Official's decisions concerning the Verde, Pierce Wash, Willow Wash and Sundown, grazing authorizations 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 NF
District Ranger, Chevelon/Heber RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

Forest Guardians' Appeal #99-03-00-0040-A215
of
Verde, Pierce Wash, Willow Wash, and Sundown Allotment Decisions

ISSUE 1: The Forest Service violated the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA).

Contention: Appellant contends that NFMA and NEPA were violated because the Responsible Official (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 contends 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 contends 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 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 undertook a quantitative analysis fully incorporating economics into the process. The forest plan fully complies 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 with 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 Clean Water Act.

Contention: The appellant alleges 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. Watershed/riparian condition was identified as a key planning issue for these allotments (Doc 123, p25). The Arizona Department of Environmental Quality was consulted throughout the scoping and document preparation periods (Doc 130). 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 124, 125, 126). Finally, Best Management Practices were prescribed for all alternatives (Doc 123, p83-86) 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 is no violation of the Clean Water Act.

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: Decisions concerning highest and best use were made during development of the Forest Plan. 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 this analysis.

The environmental assessment (EA) depicts that site productivity will be maintained in some areas and improved in others (EA, pp. 55, 58, 59). Generally, upland watershed conditions will improve, with the greatest improvement realized in openings and areas with lower tree canopy cover. The amount and diversity of riparian vegetation is expected to improve also. The EA

notes that deeply incised channels on the Pierce Wash allotment would require additional actions to dissipate the force of flows before stream banks can be stabilized and vegetated.

Finding: Decisions concerning highest public benefit are outside the scope of the analysis under review. The RO's decision will not impair land productivity.

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 (EA Chapter III). The EA displays the effects of implementing the proposed action and alternatives. The RO's decision rationale reflects consideration of the effects as disclosed in the EA (decision notices, p. 2).

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