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Department of
Agriculture

Forest
Service

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National Forests

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File Code: 1570

Date: November 6, 1998

Mr. Tim Raban
P.O. Box 1071
St. Johns, AZ 85936

CERTIFIED MAIL - RRR

RE: Appeal of the Williams Valley Allotment Annual Operating Plan Decision, Mr. Tim Raban
(1998-A/S-251-1)

Dear Mr. Raban:

This is my review decision on the appeal you filed regarding the Alpine District Ranger's decision on the amended Annual Operating Plan (AOP) for the Williams Valley allotment located within the Alpine Ranger District. My review of this appeal has been conducted pursuant to and in accordance with 36 CFR 251.80.

On May 8, 1998, Alpine District Ranger Phil Settles issued an amended Annual Operating Plan for the Williams Valley allotment. This decision was subject to administrative review under CFR 251.82.

On June 12, 1998, you filed a motion of appeal and statement of reasons.

On July 14, 1998, I extended the date for the responsive statement to be sent to you.

On August 12, 1998, you were provided a copy of the responsive statement prepared by the Deciding Officer Phil Settles and given 20 days to respond to the responsive statement.

On September 1, 1998, you responded to the responsive statement, at which time the record was closed and the Forest Service would proceed in processing your administrative appeal.

Appeal Summary

Appellant's issues are being addressed as outlined in the Notice of Appeal. These consist of 6 issues.

Issue A

"Mr. Settles said his decision to change my annual operating plan was the result of a stipulation between the Forest Service and the Forest Guardians/Southwest Center for Biological Diversity. It is my understanding that the judge in that case did not agree to the terms of the stipulation because the interveners in the case opposed the stipulation."



Response:

The Forest Service had consulted with a team of wildlife biologists which included employees of the U. S. Fish and Wildlife Service prior to the signing of the stipulation agreement between the Forest Service and the environmental groups. The consultation took place on March 22, 1998, which is documented in the Species Effects Assessment. The actions on the Williams allotment that were modified in the Annual Operating Plan were a result of needed mitigation for Threatened and Endangered Species. These were upstream effects for Loach Minnow in the Three Forks area, and the location of cattle and the associated brownheaded cow bird during the nesting season of the Southwestern Willow Flycatcher. The Willow Flycatcher occupies a site within two miles of the Williams Valley allotment.

The stipulation agreement was merely a documentation of the actions the Forest Service had already agreed to take to protect the habitats for these species.

The District Ranger is affirmed on this issue.

Issue B

"Mr. Settles said my annual operating plan was modified based on the consultation with the Fish and Wildlife Service. At this time, my knowledge of the conditions on the Williams Valley allotment far exceeds that of either Buck McKinney or Mr. Settles. I do not believe there are any conditions on the allotment, particularly the Addition pasture, that would be likely to adversely affect the loach minnow."

Response:

You are correct in your statement, and as pointed out in the response to Issue A, your Annual Operating Plan was modified base on the assessment of effects to threatened and endangered species. The information used in the Species Effects Assessment (March 22, 1998) was the best current information that the Forest Service has. In your appeal you did not provide any on-the-ground vegetation data that was contrary to the data used by the Forest Service.

A portion of the allotment lies in the upper watershed of the San Francisco river which is occupied by Loach Minnow. The occupied site on the San Francisco river is 35 miles from the allotment. The Species Assessment recognized this distance and concluded that population of Loach Minnows were outside the action area of the Williams Valley allotment. However, the western portion of the allotment is in the headwaters of the North Fork of the East Fork of the Black river, which drains directly into occupied Loach Minnow habitat. The allotment is approximately seven-tenths of a mile from the Black river drainage.

The concern on the Loach Minnow, as stated in the Species Assessment, is the probability of sediments being generated by livestock removing forage to a point of which soil movement may occur into the drainages which feed the occupied habitats of the Loach Minnow. Loach Minnows require clean streambeds (no sediment between the gravel in the bottom of the stream) for spawning and laying their eggs. The embeddedness of fine sediments has been found to have an adverse effect on Loach Minnow (Britt 1982, Propst et al, 1988).

Current data and facts on the Williams Valley allotment and the Addition pasture are: The allotment has 2 miles of Coyote Creek which drains into occupied Loach Minnow habitat. This portion of Coyote Creek, according to the Species Effects Assessment, is an incised channel which runs through heavily impacted meadow types and does not function as an effective sediment buffer or filter. The incised channels are a direct source of sediments in the occupied habitat. The allotment, according to the validation table for the species assessment, indicates approximately 1,100 acres of the allotment are in unsatisfactory condition and the range condition is poor throughout the allotment. Continued livestock use on these above conditions will still have the effect of sediment production.

A large portion of the allotment is in satisfactory watershed condition due to the forested nature of the allotment. The issue for the Loach Minnow is the poor condition of Coyote Creek and meadow areas. The mitigation of 25% use by livestock would increase the capability of the forage to trap sediment before it entered into the drainage systems by leaving more cover on the ground.

I believe the Ranger used the best information available at the time and mitigated the effects to wildlife species by modification of the Williams Valley Annual Operating Plan, and still allowing the proper use of livestock on the allotment. "No affect" or a "not likely to adversely affect" due to the current conditions of the allotment would have dictated no cattle on the allotment.

The District Ranger is affirmed on this issue.

Issue C

"I believe that the change in the allowable use from 40% to 25% for the Addition pasture is a significant change in the terms of my annual operating plan. I consider it an arbitrary change, not based on the best available (current) information."

Response:

As stated in the response for Issue B, the change in allowable use is justified by the Species Assessment. The change was based on the current condition of the allotment by using the best available information.

The modified Annual Operating Plan which makes this change allows for monitoring of these utilization standards and invites you to participate in these checks. The Forest Service considers modification of utilization from year to year an administrative decision to best manage the resource. This would include the needs of wildlife species on the allotment. This authority is supported through the grazing permit clauses and conditions as well as Forest Service policy and directives.

It has long been recognized in range management that to improve cover and vigor for forage plants that time of grazing and amount of use are the factors which can change cover and sustainability. The 25% use directed by the District Ranger was for key species of grass and key areas. The key areas defined in the Annual Operating Plan are generally the meadow or bottom lands which was a concern from sedimentation into drainages which drain into Loach Minnow habitat.

I believe prudent management of livestock would dictate a lower use in key areas so those areas would recover and maintain cover and vigor. The use standard of 25% was for the problem areas and species of forage as an indicator. Distribution of livestock over the rest of the allotment and your ability to get even use of forage by livestock would alleviate your concerns of an utilization change from 40% to 25%.

The District Ranger is affirmed on this issue.

Issue D

"Given the above information (previous paragraph of appeal letter), it seems unjustifiable to have a finding that cattle grazing on the Addition pasture is likely to adversely affect the loach minnow. I ask that the District review its determination, and based on the evidence, recommend 'not likely to adversely effect' or no effect'."

Response:

The species effects analysis conducted by rare species coordinator Terry Myers and disclosed in the effects assessment dated March 22, 1998, is supported by the best current available range vegetation and soil condition information. The determination of effects is consistent with Forest Service guidance criteria. The existing determination identified in the species effects assessment dated March 22, 1998, will not change unless other relevant information is brought forward. Other relevant information may include, but not limited to, site specific measurements in upland and riparian areas. The discrepancy in the acreage calculations will be corrected during the environmental assessment process scheduled for 1998. The species effected assessment centered around existing conditions within the allotment. The acreage discrepancy will not alter the Species Effects Assessment. During the fall of 1998, September and October, permanent and pace monitoring sites for upland and riparian areas are scheduled for measurement. Currently, production-utilization surveys are being conducted to determine actual grazing utilization levels and patterns. An Allotment Management Plan and compliance with the National Environmental Policy Act will be conducted on the Williams Valley allotment. This new data will be reviewed and consultation with the U. S. Fish and Wildlife Service will be accomplished this winter. I encourage you to become involved in the allotment management planning process and consultation with the U. S. Fish and Wildlife Service.

The District Ranger is affirmed on this issue.

Issue E

"In the cumulative effects section of the allotment summary on the Williams Valley Allotment, it says, 'Sediments are likely to enter the Addition pasture in Coyote Creek from the Boneyard allotment upstream. How would cows in the Addition pasture have an adverse effect?'"

Please see the response to Issue B.

The District Ranger is affirmed on this issue.

Issue F

"In summary, I believe this decision to be a result of the Forest overreacting to litigation intended to exclude all livestock. I ask that you overturn the decision."

Please see the response to issue A.

The District Ranger is affirmed on this issue.

DECISION:

After a detailed review of the records, I find the District Ranger conducted a proper process that resulted in decisions that are consistent with Forest Service policy, regulations and laws.

The District Ranger is affirmed with respect to all appellant contentions.

I strongly urge you to work closely with the Alpine Ranger District in development of the 1999 Annual Operating Plan and the upcoming Allotment Plan. It is imperative that we mitigate effects to listed and sensitive wildlife species. Working together we can best manage the Williams Valley allotment.

My decision is appealable pursuant to 36 CFR 251.87(c) with the Regional Forester. A notice of appeal for a second level review must be submitted to Regional Forester, Federal Building, 517 Gold Avenue S.W., Albuquerque, New Mexico, 87102 within 15 days of this decision.

Sincerely,

/s/ John C. Bedell
JOHN C. BEDELL
Forest Supervisor

cc:
Phil Settles, Alpine District Ranger
Regional Office, R-3