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Department of
Agriculture

Forest
Service

Southwestern
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File Code: 1570-1

Date: December 13, 2000

Forest Guardians
c/o John Horning
1411 Second St.
Santa Fe, NM 87505

Certified Mail-Return Receipt Requested

Re: Appeal #01-03-00-0002-A215 Columbine Allotment Decision, Questa Ranger District,
Carson National Forest

Dear Mr. Horning:

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 above named allotment.

BACKGROUND

District Ranger Thibedeau issued a decision on September 15, 2000, for the above named allotment. The decision resulted in the selection of the following alternative and authorization:

Columbine Allotment, Alternative C, which authorizes 57 head of cattle (Cow/Calf) to graze July 15 through September 15 annually.

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 215.17. I have 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 reversed because the record does not contain an adequate cumulative effects analysis.



APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I am reversing the Responsible Official's decision concerning the above named allotment, which authorizes grazing and implementation of management actions. By this letter I am directing the Responsible Official to do a cumulative effects analysis and provide for notice and comment of a new EA within 60 days from the date of this decision and subsequently issue a new decision.

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, Carson NF
District Ranger, Questa RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS

of the

Forest Guardians Appeal**#01-03-00-0002-A215, Columbine Allotment Decision**

ISSUE 1: The Forest Service violated the National Forest Management Act (NFMA) by continuing to allow cattle grazing on the allotment without first evaluating the allotment's 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 allotment's 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. On August 24, 1999, the United States Court of Appeals for the Ninth Circuit, in Wilderness Society v. Thomas, 1999 U.S. App. LEXIS 20026 (9th Cir. 1999), concluded the Forest Service complied with NFMA in adopting the Prescott Forest Plan, including the Plan's allocation of acreage suitable for grazing. The Forest Plan complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the Forest Plan (Carson 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. 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 violates the Carson National Forest Plan and the Regional Guide by failing to manage riparian areas to achieve recovery.

Contention: The Forest Service's decision fails to ensure that riparian areas on the allotment will recover to satisfactory condition by the year 2015 as required by the Forest Plan.

Response: Existing riparian condition for streams within the allotment were determined to be good (satisfactory) with minimal or no stream bank instability (Doc. 34, 37). Furthermore, streams will be minimally affected by grazing (Doc. 43).

Finding: Appropriate procedures were followed and adequate mitigation is planned for the allotment decision and there will be no violation of the Carson National Forest Plan or Regional Guide

ISSUE 3. The decisions violate the national Forest Management Act's requirement to maintain viable numbers of all species.

Contention: The appellant contends the Forest Service must provide protection and habitat for riparian obligate species. "Appellants believe that continued grazing along riparian habitats in particular, in addition to livestock grazings' detrimental effects on watershed health which have lead to increasingly unstable ecosystems threatens the viability of numerous riparian obligate species. In particular, we believe that domestic livestock production threatens the viability of Southwest willow flycatcher, the Bell's vireo, the Yellow-billed cuckoo, the Black hawk, the Mexican spotted owl, the Mexican garter snake, the Narrow-headed garter snake, the Chiricahua leopard frog, the Yavapai Leopard frog, the Arizona southwestern toad, the Lowland leopard frog. Only the cessation of grazing in these watersheds, combined with active restoration work will adequately provide for the minimum habitat needs for these species."

Response: The Columbine allotment contains the headwaters of the upper 6.5 miles of Columbine Creek, 3 miles of Placer Fork Creek, and 1.2 miles of Willow Fork Creek. This Creek then proceeds downstream for .75 miles before it reaches the Red River. These creeks are characterized as densely forested, narrow riparian, high quality Rio Grande cutthroat trout streams. (Docs. 37; 43).

The riparian habitats along these creeks are in good condition. Stream channels are stable with little or no evidence of unstable banks. The excellent water quality in these creeks provides for very good coldwater fish habitat. Livestock grazing is generally away from these perennial creeks. There are several small wetlands ranging from under 1 to over 3 acres in size. These are receiving some use from elk and cattle, but this limited use is not affecting their ability to function as wetlands (Docs. 37; 43)

Watershed condition is satisfactory with range condition being fair to good and stable (Docs. 33; 34).

A drift fence will be installed with the preferred alternative to keep cattle from congregating in a small meadow on the lower portion of the allotment. This meadow was the only part of the allotment providing accelerated erosion that is currently releasing some sediment into Columbine Creek. (Doc. 37; 43)

This allotment does not provide habitat for Mexican spotted owls. The proposed action will have no affect on spotted owl habitat. Although southwestern willow flycatchers occur on the Carson National Forest, no occupied, suitable, or potential habitat occurs within 5 miles of this allotment. None of the other riparian obligate species identified by the appellant as having their viability threatened by the proposed action occur or have suitable or potential habitat occurring on the Carson National Forest, including Bell's vireo, yellow-billed cuckoo, black hawk, Mexican garter snake, narrow-headed garter snake, Chiricahua leopard frog, Yavapai Leopard frog, Arizona southwestern toad, and lowland leopard frog. (Doc. 37)

Finding: Contrary to the appellant's contention, cattle grazing on the Columbine allotment *is not* going to contribute towards reducing the viability of riparian obligate species.

ISSUE 4: The Forest Service violated the National Environmental Policy Act (NEPA) by failing to analyze a reasonable range of alternatives.

Contention: The appellant contends that a range of reasonable alternatives, as required by NEPA implementing regulations, was not analyzed.

Response: "[A]n agency must look at every reasonable alternative, within the range dictated by the 'nature and scope of the proposed action' and 'sufficient to permit a reasoned choice.'" Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992). For an alternative to be reasonable, it must meet the stated purpose and need, and address one or more issues. The formulation of alternatives is driven by significant issues identified in scoping 40 CFR 1501.2(c).

The environmental assessment (EA) discusses one alternative involving additional water developments that was considered and subsequently dropped from detailed study (40 CFR 1502.14(a)). The EA includes a 'no-grazing' alternative, a 'current management' alternative, and the proposed action, which were studied in detail.

The EA identifies one issue from scoping and then explains how it provides the basis for the proposed action. What the EA incorrectly identifies as an issue is actually part of the 'purpose and need for action'. No other issues were identified as being significant to the proposed action (40 CFR 1501.7(a)(3)).

The EA includes brief discussions of alternatives as required by section 102(2)(E) of NEPA which states, "Study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." With the conflicts essentially resolved by the proposed action, and after considering the alternative dropped from detailed study, the no-action alternative, and current management alternative, there were no other appropriate alternatives to study.

Finding: The Responsible Official appropriately defined the scope of the analyses and analyzed a range of reasonable alternatives within that scope.

ISSUE 5: The Forest Service violated NEPA by failing to consider and disclose the cumulative impacts of the proposed action.

Contention: The appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering past, present, and reasonably foreseeable activities as required by NEPA. Appellant states, "the EA contains virtually no analysis of cumulative effects..."

Response: The responsible official stated that cumulative effects were considered in the analysis and that there are no past, present, nor foreseeable future actions that would result in cumulatively significant environmental impacts (Decision Notice and Finding of No Significant

Impact, Doc. 45). The EA does not support this finding. The EA documents examination of some other actions with potential to contribute cumulatively to the effects of the proposed action and alternatives:

- Effects of recreation on water quality (p. 11);
- No other foreseeable activities affecting recreation opportunities (p. 36)

The fact that these activities and effects were examined indicates that the Interdisciplinary Team, considered activities with cumulative effects but did not document them. The reader is left to assume negative cumulative effects findings where none are documented.

Finding: The record does not clearly document consideration of past, present, and reasonably foreseeable actions and their cumulative effects on the components of the human environment.

Issue 6: 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 Columbine Allotment as required under Section 401 of the Clean Water Act.

Response: There is no requirement to obtain certification from the State of Arizona for activities occurring in New Mexico. The appropriate non-point source pollution considerations, which include Best Management Practices (BMP's) relevant to the perennial stream conditions in this allotment, are discussed in the Environmental Assessment (Doc. 43). The project record also shows New Mexico Environment Department (Doc. 17) was consulted at an earlier date regarding Range issues on water quality. None of the streams have been identified as impaired in "Water Quality and Water Pollution Control in New Mexico 1995", also known as the 305(b) report (Doc. 43).

Finding: Appropriate procedures were followed and adequate mitigation is planned for the allotment decision and there will be no violation of the Clean Water Act.

Issue 7: 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 will continue to impair land productivity.

Response: Management of National Forest Lands for the 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 during Forest Plan preparation, and are outside the scope of project-level analysis. The EA indicates that land productivity will be maintained (EA pp. 9-10).

Finding: The Responsible Official's decision does not violate the Multiple Use and Sustained Yield Act.

Issue 8: 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 only admitted problem on the allotment is a need for consistent range readiness when bringing livestock on the allotment. The selected alternative delays the season of use to July 15 to allow additional time for plant growth (EA p. 13).

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