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Date: November 10, 2003

Laurele Fulkerson
Forest Guardians
312 Montezuma Suite A
Santa Fe, NM 87501

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeal #04-03-00-0001-A215, Knob Allotment Decision, Camino Real Ranger District,
Carson National Forest

Dear Ms. Fulkerson:

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 Seesholtz issued a decision on August 18, 2003, for the Knob Allotment. The decision resulted in the selection of the following alternative and authorization:

Knob Allotment, Alternative D, which authorizes 40 head of cattle to graze June 27 to September 20, 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 concluded that: a) decision logic and rationale were generally clearly disclosed; b) the benefits of the proposal were identified; c) the proposal and decision are consistent with agency policy, direction, and supporting information; d) public participation and response to comments were adequate.



APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision concerning the Knob 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/ Abel M. Camarena
ABEL M. CAMARENA
Appeal Deciding Officer,
Deputy Regional Forester

cc: David M Stewart, Christina Gonzalez, Mailroom R3 Carson, Cecilia R Seesholtz, Rita Skinner

REVIEW AND FINDINGS

of

Forest Guardians'

Appeal #04-03-00-0001-A215

Knob Grazing Allotment

ISSUE 1: The Forest Service violated 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: The 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: 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, 188 F.3d 1130 (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 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 appellant asserts that the decision fails to make the health of riparian areas a priority, and in so doing violates both the forest plan and Regional Guide.

Response: The Regional Guide facilitated forest plan development. Requirements in the Regional Guide are reflected in the forest plan. There is no requirement for project-level compliance with Regional Guides.

Riparian health was considered during the planning of this project. Impacts to water quality and riparian conditions were identified as a significant issue (Project Record [PR] #85, p. 5). In addition, the alternative selected responds to the riparian health issue through management changes that will have a positive effect on improving ground cover, reducing erosion, and protecting riparian areas (PR #85).

Finding: Continued riparian improvement is ensured under this decision, and there is no violation of the Carson National Forest Plan or the Regional Guide.

ISSUE 3: The decision violates the NFMA requirement to maintain viable numbers of all species.

Contention: The appellant contends the Forest Service must manage sensitive species to sustain viability and prevent the need for listing. In addition, the Forest Service must manage (fish and wildlife habitat) to maintain viable numbers. The appellant believes there is a lack of management for riparian habitat and that the Forest Service must provide protection for riparian obligate species. The appellant contends that only a cessation of grazing in these watersheds combined with active restoration work will adequately provide for the minimum habitat needs for these species.

Response: The EA (PR #85), Wildlife Specialist Report (PR #66), and BA/E (PR #67) analyzed the effects to federally (ESA) listed species, Management Indicator Species (MIS), and Region 3 Regional Forester Sensitive Species known or expected to occur in the proposed action area. Discussions of the effect of the proposed action on the riparian areas are included in the wildlife and watershed and soil effects analysis reports (PR #66 and #65). The proposed action has “No Effect” on the Mexican spotted owl, as determined in the BA/E (PR #67).

A thorough analysis of the effects of the proposed action on indigenous wildlife was completed. No threat to the viability of any species was determined as a probable result of implementing the proposed action.

Finding: Based on the review of the project record, the Forest did not violate the NFMA requirement to maintain viable numbers of all species.

ISSUE 4: Population survey data of Management Indicator Species is needed to ensure the maintenance of minimum viable populations of wildlife.

Contention: The appellant asserts that since the Forest Service lacks quantitative inventory data on many, if not all, MIS in the planning area and the forest as a whole and the scant data that it does have indicates some species are declining, the agency’s decision is arbitrary and capricious.

Response: Data from which MIS trends are determined is found within the Forest-level MIS analysis (PR #66). In keeping with the recent Corner Mountain decision (*Center for Biological Diversity v. USDA Forest Service, No. CIV 01-1106 WJ/RLP ACE*), “The Forest has the discretion regarding the identification of the geographic area within which the effects of the environmental impacts are measured.”

Finding: The Forest completed an analysis of MIS that was sufficient to ensure that minimum viable populations would be maintained.

ISSUE 5: The decision violates NFMA consistency and viability provisions by failing to adequately protect the Northern goshawk.

Contention: The allotment provides nesting or potential habitat for the Northern goshawk, yet fails to establish key foraging areas that limit utilization to an average of 20%.

Response: The guidelines referred to by the appellant are management recommendations and were not part of the Forest Plan Amendment. Grazing utilization guidelines are found in the EA (PR #85). Analysis of effects from the proposed action on the Northern goshawk habitat are discussed in the Wildlife Specialist Report (PR #66) and summarized in the EA (PR #85) and are in compliance with the Forest Plan as amended.

Finding: The decision is consistent with NFMA consistency and viability provisions for the Northern goshawk.

ISSUE 6: The Knob Allotment term permit issuance must be suspended until the Carson National Forest revises its land and resource management plan and until the Forest Service develops a renewable resources program.

Contention: The appellant contends, "...there is no legally adequate RPA program or land and resource management plan to which the Knob term grazing permit issuance project can be tiered."

Response: There are no statutes or regulations that describe an expiration date for the Forest Service Renewable Resource Program or Land and Resource Management Plans. A recent court decision in Wyoming upheld the use of the current Plan until revised (Biodiversity Assoc. v. USFS, decision September 30, 2002). Regulations (36 CFR 219.35g) spell out that a revision schedule for each Forest Plan will be published. The Carson Land and Resource Management Plan will remain in effect until it is revised, consistent with the requirements of the National Forest Management Act and implementing regulations.

Finding: The current plan is in effect until the revision process is completed. There are no requirements to suspend activities until the process is completed.

ISSUE 7: The Forest Service violated 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: The range of alternatives should meet the stated purpose and need and address one or more issues. The formulation of alternatives is driven by significant issues identified in scoping of the proposed action (40 CFR 1501.2(c)).

The purpose and need for this project is to allow livestock grazing and improve range conditions on the Knob Allotment over the next ten years (PR #85, EA, p. 3). Issues identified include effects to Rio Grande cutthroat trout habitat and time for cool season grasses to develop (EA, p. 5). Alternative D responds to these issues. Alternative C is the proposed action, which would reduce the cattle numbers from the current management (Alternative B). No action/no grazing was considered in Alternative A. Four additional alternatives were identified but eliminated from detailed analysis. One of these alternatives addressed effects on Rio Grande cutthroat trout by fencing the upper meadow area but was eliminated because it would not be effective and would have other negative wildlife effects (EA, p. 6).

Finding: The Responsible Official appropriately defined the scope of analysis, identified issues, and analyzed a range of reasonable alternatives.

ISSUE 8: The Forest Service violated NEPA because the EA fails to consider and disclose adequately the location and protocol for monitoring key forage utilization areas within the allotment.

Contention: The appellant contends the EA must disclose the names, locations, forage utilization limits, and monitoring protocol for each and every key area within the allotment.

Response: Proper forage utilization standards are employed to sustain such things as plant health and vigor, long-term soil productivity, and protection for threatened, endangered, and sensitive species and their habitats. Forage utilization levels are determined based on guidelines set out in the R-3 Allotment Analysis Guidelines. These guidelines specifically describe appropriate forage utilization levels recommended for the purpose of improving rangeland condition. Southwestern Region Rangeland Management Specialists, Ecologists, and other scientists have developed these guidelines over a period of 50 years.

Forage utilization is measured by key area on key forage species within various pastures encompassing a grazing allotment. Key areas are locations readily accessible to water and forage and are located on level to intermediate slopes. Key species are herbaceous and woody vegetation that domestic livestock prefer at any given time of the year. By monitoring key areas, the Forest Service can ensure that an allotment or pastures within an allotment are not overgrazed.

The record demonstrates that utilization standards for herbaceous forage will be 40 percent by weight of annual available forage. Utilization standards in riparian areas will be 4 inches of stubble height for grasses and forbs. When utilization standards have been met, livestock will be moved from individual pastures or from the allotment, as appropriate.

Finding: Utilization standards for the Knob Allotment were developed in accordance with Forest Service policy. There is nothing in federal statutes, regulations, or Forest Service policy that requires the Responsible Official to disclose the names and locations of each and every key area within an allotment in an EA. As the selected alternative is implemented, all monitoring information will be available to the public (PR #85).

ISSUE 9: 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. The appellant states the EA contains virtually no analysis of cumulative effects.

Response: Cumulative effects result from the incremental impacts of the action, when added to past, present, and reasonably foreseeable future actions (40 CFR 1508.7). Resource specialists considered the cumulative effects of a variety of past, present, and foreseeable future actions on their respective resources. The EA (PR #85) presents a clear historic account of grazing over the past century, information on historic and current fire suppression activities, and subsequent changes in species composition (forest succession).

The cumulative affects of cattle grazing on adjacent allotments, traditional uses (including hunting and firewood gathering), possible future thinning projects related to wildland urban interface treatments, grazing use by other ungulates (elk, deer, big horn sheep), introduction and stocking of exotic trout species, and recreation use of trails within the allotment were also considered (EA, pp. 14-74). Supplementary information contained in the project record (PR #46, #49, #51, #64-69) supports the cumulative effects analysis present in the EA.

Finding: The EA and supporting project record include consideration of past, present, and reasonably foreseeable actions and their cumulative effects on components of the human environment. The cumulative effects analysis is adequate for an informed decision and for the purpose of determining significance and whether an EIS is needed.

ISSUE 10: The EA violates the Clean Water Act.

Contention: The appellant contends that the Forest Service failed to require the grazing permit applicant to obtain water quality certification from the State of Arizona.

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 (BMPs), were made during the planning process (PR #85, pp. 9-13). The project record also shows New Mexico Environment Department (PR #53) was consulted during the project scoping and planning phases. Impacts to water quality and riparian conditions were identified as a significant issue (PR #85, p. 5). In addition, the alternative selected responds to the water quality issue through management changes that will have a positive effect on improving ground cover, reducing erosion, and protecting riparian areas (PR #85).

Finding: Appropriate procedures were followed and adequate mitigation is planned for the project area. There will be no violation of the Clean Water Act.

ISSUE 11: 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 Carson National Forest Plan. The forest plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately during the forest plan's preparation, and are outside the scope of project-level analysis.

Finding: This decision will improve land productivity and is, therefore, consistent with the Multiple Use and Sustained Yield Act.

ISSUE 12: The EA violates the Administrative Procedures Act.

Contention: The appellant asserts, “As of yet no information exists that would indicate that the proposed alternative will remedy the admitted problems on this allotment.”

Response: The EA and documents in the record disclose the analysis done to evaluate resource conditions on the allotment and the effects of alternatives considered. In the DN/FONSI, the Responsible Official properly assessed the issues, public input, and impacts to resources in the decision rationale.

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