

File Code: 1570-1

Date: October 4, 1999

Forest Guardians
c/o John Horning
1413 Second Street, Suite One
Santa Fe, NM 87505

Certified Mail-Return Receipt Requested
Z 506 822 058

Re: Appeal #99-03-00-0111-A215, Crowder Low and Crowder Reid Allotments, Mount Taylor Ranger District, Cibola National Forest

Dear Mr. Horning:

This is my review decision concerning the appeal you filed on behalf of Forest Guardians, regarding the Decision Notice and Finding Of No Significant Impact which authorize grazing and implement the grazing management strategy on the Crowder allotments.

BACKGROUND

District Ranger Hagerdon issued a decision on July 7, 1999, for the Crowder allotments. The decision resulted in the selection of the following alternative and authorization: Crowder allotments, Alternative C, which authorizes 450 head of cattle (mixed class) to graze 11/15 to 4/15.

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 recommendation, I affirm the Responsible Official's decision concerning the Crowder allotments, 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

Attachment

cc:
Forest Supervisor, Cibola NF
District Ranger, Mount Taylor RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS
of the
Forest Guardians' Appeal #99-03-00-0111-A215
regarding the
Crowder 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 (Cibola 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 violated the NFMA by failing to maintain viable numbers of all species and by failing to ensure that riparian areas will recover to satisfactory conditions.

Contention: Appellant contends that the Forest Service must provide protection and habitat for riparian obligate species. Appellant cites 36 CFR 219.19 planning regulations in supporting the assertion. The appellant further contends that "despite this direction" (i.e. Forest Plans), the Forest Service has failed to "protect riparian habitats and riparian obligate species", due to livestock grazing, and that the decision fails to ensure that riparian areas on the allotments will recover to satisfactory condition by the year 2015 as required by the Forest Plan and the Regional Guide.

Response: Regulations at 36 CFR 219 Subpart A, which appellant cites, set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as

amended [36 CFR 219.1(a)]. Forest Plans include goals, objectives, standards, and guidelines for the protection of threatened, endangered, Forest Service sensitive, and other species and their habitat. Site-specific projects are designed under the direction provided in Forest Plans. The Responsible Official found the selected alternatives to be consistent with the Forest Plan (Docs. 19; 26).

The record indicates that in 1992, grazing seasons were changed, stocking was reduced 63 percent, and more intensive management was implemented. Since that time range conditions have improved from very poor to fair, with static or downward trends, to fair or better with an upward trend. Under the proposed action, forage species would receive complete rest during the growing season each year (Doc. 26).

Certain riparian areas have been fenced to exclude livestock and motorized vehicles. Protection of other riparian areas and uplands will be ensured through implementation and monitoring of forage utilization standards and Best Management Practices (BMPs) (Doc. 26).

Threatened and endangered species and Forest Service sensitive species are not likely to be adversely affected (Doc. 10).

The appellant inaccurately cites Forest Plan requirements. The Cibola Forest Plan does not contain a requirement that "allotments will recover to satisfactory condition by the year 2015", or by any other year (Cibola Forest Plan, pp. 10, 24). The Regional Guide suggests that Forests, in developing their Forest Plans, "improve all terrestrial ecosystems and watersheds to satisfactory or better condition by 2020" (pg. 3-2, item #8). There is nothing in the record to indicate a failure to adhere to the Regional Guide or the Cibola Forest Plan. The Environmental Assessment, Decision Notice, and Watershed Report indicate that the watershed and riparian areas are already in satisfactory condition, that the selected alternative will only improve watershed protection, and that no watershed or riparian problems are foreseen (Docs. 19; 16; 26).

Finding: The decision provides for adequate protection of riparian and upland habitats consistent with the Cibola National Forest Plan and Regional Guide. The Responsible Official reached a reasonable conclusion, based on the effects of the selected alternative, that the projected habitat conditions would maintain viability of all wildlife species and achieve satisfactory riparian conditions.

ISSUE 3: The Forest Service violated NEPA by failing to analyze a reasonable range of alternatives.

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

Response: The formulation of alternatives is driven by significant issues identified in scoping 40 CFR §1501.2(c). For an alternative to be reasonable, it must meet the stated purpose and need, and address one or more issues. The analysis considered three alternatives: Alternative A, No Action (no grazing); Alternative B, No Change (current management); Alternative C, Proposed Action.

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

ISSUE 4: The Forest Service violated NEPA in failing to consider and disclose adequately the cumulative impacts of the proposed action.

Contention: The appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering all past, present, and reasonably foreseeable activities as required by NEPA.

Response: The Crowder allotments are located in the North Plains and west Rio San Jose watersheds. Cumulative effects considered in the analysis included logging, firewood gathering, recreational activities and grazing on surrounding lands. The EA concluded that there are no past, present, or reasonably foreseeable activities that would result in significant cumulative environmental effects.

Finding: Past, present, and reasonably foreseeable actions were considered in the analysis. The EA and record reflect an adequate analysis and disclosure of cumulative effects on the affected environment.

ISSUE 5: 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 Crowder Allotments 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 New Mexico Environment Department, Surface Water Quality Bureau was contacted as part of scoping for this project. The project record contains a letter of support from the Bureau (Doc. 24), in which the Forest was congratulated on the management changes proposed in this project and for previous management decisions which resulted in noticeably improved water and riparian conditions.

Finding: Appropriate procedures were followed for this Allotment Management Plan decision and there will be no violation of the Clean Water Act.

ISSUE 6: 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 to authorize livestock grazing will permanently impair land productivity.

Response: 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 a project level analysis.

The EA discloses that site productivity will be maintained through application of Best Management Practices (BMPs). Monitoring will be employed to ensure BMPs are effective in maintaining site productivity and to identify any necessary changes in management practices (Doc. 19).

Finding: A decision concerning the highest public benefit is outside the scope of the analysis under review. The Responsible Official's decision will not impair land productivity.

ISSUE 7: 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 watershed and riparian areas are already in satisfactory condition, that the selected alternative will only improve watershed protection, and that no watershed or riparian problems are foreseen (Docs. 19; 16; 26). The EA displays the effects of implementing the proposed action and alternatives. The Responsible Official's decision rationale reflects consideration of the effects as disclosed in the EA (Doc. 26).

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