



United States  
Department of  
Agriculture

Forest  
Service

Southwestern  
Region

517 Gold Avenue, SW  
Albuquerque, NM 87102-0084  
FAX (505) 842-3800  
V/TTY (505) 842-3292

File Code: 1570-1

Date: December 7, 2000

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

Certified Mail-Return Receipt Requested

Re: Appeals #00-03-00-0088-A215 Dan Valley/Dent, and #00-03-00-0089-A215 Stinking Spring Allotment Decisions, Mount Taylor Ranger District, Cibola National Forest

Dear Mr. Horning:

This is my review decision concerning the appeals you filed regarding the Decision Notices and Finding Of No Significant Impact which authorize grazing and implement the grazing management strategies on the above named allotments. Due to the commonality between your appeals, I have chosen to consolidate my response into one decision document.

### **BACKGROUND**

District Ranger Hagerdon issued decisions on September 1, 2000, for the above named allotments. The decisions resulted in the selection of the following alternatives and authorizations:

Dan Valley/Dent Allotment, Alternative B, which authorizes 64 head of cattle (mixed/class) to graze 5/15–10/15 annually. Alternative B continues the current deferred rotation grazing system which was implemented in 1992 (Doc. 21).

Stinking Springs Allotment, Alternative B, which authorizes 39 head of cattle (mixed/class) to graze 5/15-11/15 annually. Alternative B continues the current deferred rotation grazing system which was implemented in 1962 (Doc. 21).

The District Ranger is identified as the Responsible Official, whose decisions are 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 appeals. The records indicate that informal resolution was not reached.

My review of these appeals has been conducted in accordance with 36 CFR 215.17. I have reviewed the appeal records and the recommendations of the Appeal Reviewing Officer. My review decision incorporates the appeal records.



**APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer recommended that the Responsible Official's decisions 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 records.

**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 above named allotments, which authorize 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

Enclosure

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 Appeals****#00-03-00-0088-A215, Dan Valley/Dent Allotment Decision****#00-03-00-0089-A215, Stinking Springs Allotment Decision**

**ISSUE 1:** The Forest Service violated the National Forest Management Act (NFMA) by continuing to allow cattle grazing on the allotments 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 decisions are not premature.

**ISSUE 2:** The decisions violate the Cibola National Forest Plan and the Regional Guide by failing to manage riparian areas to achieve recovery.

**Contention:** The Forest Service's decisions fail to ensure that riparian areas on the allotments will recover to satisfactory condition by the year 2015 as required by the Forest Plan.

**Response:** With exception of a 200 yard stretch on the Stinking Springs Allotment there are no riparian areas on the allotments. The record documents that livestock grazing is excluded from the small riparian area on the Stinking Springs Allotment (Doc. 21).

**Finding:** Continuation of grazing on the allotments will not have an adverse effect on riparian resources.

**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 grazing's 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 in the watershed 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:** Both the Dent/Dan Valley and Stinking Springs Allotments occur within the headwaters of the upper Rio Puerco and Zuni River Watersheds. All drainages within both allotments are classed as ephemeral or intermittent and contain no areas capable of supporting riparian vegetation (SS and D-DV Doc. 15). Riparian habitats within these two allotments are very sparse. A few seeps occur throughout the Dent/Dan Valley Allotment. "These are associated with minute riparian systems... With the light/moderate grazing on the rotation system, these minute riparian areas are in acceptable condition" (D-DV Docs. 17; 21). "Riparian areas are largely absent from this (Stinking Springs) allotment. There are two springs found on this allotment. One spring has a small riparian area associated with it. There are willows and other riparian species growing in the drainage for approximately 200 yards, and the area is in good condition. The other spring is located in a small, very narrow, rocky canyon. There is no riparian area associated with this spring because of the physical limitations of the site. The riparian area present on the one spring has been fenced to protect the area from livestock" (SS Doc. 21). Watershed condition on both allotments is generally good (SS and D-DV Doc. 21).

From the descriptions of the extent and condition of riparian habitat within these two allotments, it is apparent the Forest is doing everything possible to maintain the limited riparian vegetation in fair to good condition for use by riparian obligate species. Neither of these allotments contains suitable or potential Southwestern willow flycatcher habitat and the proposed grazing would have "No Effect" on the Mexican spotted owl. None of the other riparian obligate species identified by the appellant as having their viability threatened by the proposed action are present on and part of the Cibola 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.

**Finding:** Contrary to the appellants contention, the limited amount of riparian habitat present on

these allotments *is* being managed to contribute towards maintaining the viability of riparian obligate species.

**ISSUE 4:** The Forest Service has violated NFMA, the Cibola Forest Plan, and the Southwestern Regional Guide by utilizing proper functioning condition (PFC) as the standard for riparian ecosystem health.

**Contention:** The appellant contends that PFC is a standard that is much easier for the Forest Service to meet than is the Forest Plan standard for riparian health.

**Response:** Appellant's contention that PFC was used as the standard for riparian health is invalid. The record (Doc. 15) clearly describes the project area as one containing non-perennial drainages with no riparian areas. The Forest did not apply any riparian standards (PFC or other), since they are inappropriate in this situation.

**Finding:** There is no violation of NFMA, the Forest Plan or the Southwestern Regional Guide regarding riparian standards.

**ISSUE 5:** The selected alternatives do not balance livestock use with capacity.

**Contention:** The appellant asserts the stocking levels proposed in the decisions are not sustainable and will retard recovery of degraded range resources.

**Response:** The record documents that the majority of the Dan Valley/Dent Allotment was in poor condition 30 years ago as a result of overgrazing prior to that time. However, today grasslands on the allotment are in fair condition with an upward trend (Doc. 21). Likewise, the majority of the Stinking Springs Allotment was in poor condition 35 years ago as a result of overgrazing prior to that time. Additionally, stocking on the Stinking Springs Allotment was reduced to 39 head in the mid 1950's because of poor range conditions. Today, grasslands on the Stinking Springs Allotment are in fair condition with an upward trend (Doc. 21).

Both decisions set allowable use levels at 25 percent. Forage use at this level is considered to be light to moderate and will promote plant growth and vigor and continue the upward trend in range condition throughout both allotments (Docs. 21 for both allotment records).

**Finding:** The records indicate that degraded rangelands have recovered and that the continuation of current management at light to moderate stocking levels will maintain an upward trend in range condition throughout both allotments.

**ISSUE 6:** 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:** "[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 assessments (EA's) disclose that no significant issues were identified during scoping (40 CFR 1501.7(a)(3)). The EA's include 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 no unresolved conflicts identified within the scope of the proposed action, 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 7:** The Forest Service violated NEPA by failing to consider and disclose the cumulative impacts of the proposed actions.

**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 that "the EA's contain virtually no analysis of cumulative effects..."

**Response:** The EA's document that the effects of the grazing authorizations are localized in nature. No past, present, or reasonably foreseeable future activities were identified that would contribute cumulatively to the identified localized effects of the grazing authorization.

**Finding:** The Responsible Official appropriately considered past, present, and reasonably foreseeable actions in his review of cumulative effects.

**ISSUE 8:** The EAs violate the Clean Water Act.

**Contention:** The appellant argues that the Forest Service failed to obtain water quality certification from the state of Arizona for Dan Valley/Dent and Stinking Springs 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 appropriate non-point source pollution considerations, which include Best Management Practices (BMPs) relevant to the non-perennial stream conditions in these allotments, are discussed in the EA's (Doc 21 for both allotments). The project record also shows New Mexico Environment Department (Doc 4 for both allotments) was solicited for input during the project scoping and planning phases and chose not to respond.

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

**ISSUE 9:** The decision violates the Multiple Use-Sustained Yield Act.

**Contention:** The appellant alleges that the decisions violate the Multiple Use-Sustained Yield Act by failing to manage for the highest public benefit. The appellant further alleges that the decisions will continue to impair land productivity.

**Response:** Management of forest lands for highest net public benefit was analyzed and decided upon in the preparation of the Forest Plan. The Forest Plan provides direction for management emphasis within the project areas. Net public benefits were analyzed appropriately at the Forest Plan level, and are outside the scope of a project level analysis.

The EA's disclose that site productivity will be maintained through application of BMP's. The EA's indicate that under the selected alternatives range and watershed condition will continue to improve.

**Finding:** Decisions concerning management of lands for highest public benefit are outside the scope of the analyses under review. The Responsible Official's decisions will not impair land productivity.

**ISSUE 10:** The EA's violate the Administrative Procedures Act.

**Contention:** The appellant asserts, "There exists as yet no information which would indicate that the proposed alternatives will remedy the admitted problems on the allotments."

**Response:** The EA's indicate that there are no resource problems on the allotments. The EA's indicate that current management has resulted in improving trends in resource conditions. The only need to which the agency is responding is the upcoming expiration of the current grazing authorizations. The selected alternatives address this need.

**Finding:** The Responsible Official made reasoned and informed decisions based on the analyses, and has not violated the Administrative Procedures Act.

