



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: September 23, 1998

Forest Guardians  
c/o John Horning and Jeff Burgess  
1413 Second St., Suite One  
Santa Fe, New Mexico 87505

Certified Mail - Return Receipt  
Requested

RE: Llanito Frio and Agua Fria Grazing Allotment Appeals #98-03-00-0037-A215 and #98-03-00-0038-A215 Cibola National Forest

Dear Mr. Horning:

This is my review decision on the appeals you filed (#98-03-00-0037-A215 and #98-03-00-0038-A215) regarding the District Ranger's decisions to implement Alternative B in each of the Environmental Assessments (EA's) for the Llanito Frio and Agua Fria Grazing Allotments on the Mount Taylor Ranger District.

Llanito Frio and Agua Fria Grazing Allotments. The decisions are subject to administrative re-

Due to the identical nature of the appeals, I have consolidated my responses and decisions on the two appeals into one appeal decision letter. My review of these appeals has been conducted pursuant to, and in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal records, including the recommendations of the Appeal Reviewing Officer regarding the disposition of these appeals. My review decision, hereby, incorporates by reference both appeal records.

As directed in 36 CFR 215.16, the District Ranger contacted the appellants to discuss informal  
tract. The record shows that Mr. Burgess participated in a conference call with Ranger Hagerdon

### **APPEAL ISSUES AND FINDINGS**

Appellants contend that: 1) The Forest Service violated the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA) by continuing to graze cattle without evaluating grazing suitability and a decision is, therefore, premature; 2) the analysis does not meet the requirements of Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" for economic analysis; 3) The EA violates the Clean Water Act by failing to require permittee certification from the State of Arizona; 4) The decision violates the Multiple Use and Sustained Yield Act by failing to manage for the highest and best use, and without impairing land productivity; and 5) The EA violates the Administrative Procedures Act.

The appellant's issues are addressed as follows:



ISSUE 1: The Forest Service violated NFMA and NEPA.

**Contention:** Appellants contend that NFMA and NEPA were violated because the District Ranger failed to evaluate the allotments' suitability for grazing. As the appellants stated on page 2 of each appeal, "...the Forest Service must determine "in forest planning, the suitability and potential capability of the National Forest lands..., 36 CFR, Sec. 319.20". Appellants further contend that regulations at 36 CFR 219.3 require the project environmental assessments (EA's) to address the economic and environmental consequences and the alternative uses foregone. Absent this suitability analysis, appellants argue that the Forest Service failed to discharge its obligation under NEPA to take a hard look at each alternative and, therefore, the decisions are premature.

**Response:** Although appellants claim NFMA requires that suitability analyses be conducted at the project level, they are mistaken. The Forest Service operates within a two-tiered planning and decision making process. The first level is the programmatic forest plan level and the second is the site-specific project level, such as a grazing allotment. The appellants have failed to make the distinction between forest planning and project planning. The appellants argue that there are regulatory requirements that the agency must fulfill in regards to completing a suitability analysis, in which appellants cited 36 CFR 319.20 as the regulation. There is no regulatory requirement that compels the Forest Service to conduct a suitability analysis and determination at an allotment or project planning level.

The purpose of the NFMA regulations (36 CFR 219) is to "... set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System...". Appellants reference the NFMA regulations' suitability requirement which applies to forest plan level decisions, not project level decisions. The forest plan is the proper and only level at which suitability per the requirements of 36 CFR 219.20 is made.

The forest planning process inherently undertook a quantitative analysis fully incorporating economics into the process. The forest plan fully complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the Forest Plan (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. As previously described, all requirements for suitability under the provisions of 36 CFR 219.20 were met in completion of the forest plan. The 36 CFR 219 regulations are not applicable in this case, therefore, the decision is not premature. The District Ranger is affirmed with respect to issues related to the alleged failure to conduct a suitability analysis.

ISSUE 2: Inadequate range project effectiveness analysis.

**Contention:** Appellants assert that the analysis does not meet the requirements of Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" for economic analysis.

**Response:** Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" was removed from the Forest Service directives system April 1, 1998.

**Finding:** With the removal of FSH 2209.11 from Forest Service directives, appellants' issue is moot. The District Ranger is affirmed on this issue.

ISSUE 3: The EA violates the Clean Water Act (CWA).

**Contention:** The appellants argue that the Forest Service failed to obtain water quality certification from the state of Arizona as required under Section 401 of the Clean Water Act.

**Response/Finding:** There is no requirement to obtain certification from the state of Arizona for an activity occurring in New Mexico. The District Ranger is affirmed on this issue.

ISSUE 4: The Decision violates the Multiple Use and Sustained Yield Act.

**Contention:** The appellants allege that the decision violates the Multiple Use and Sustained Yield Act by failing to manage for highest and best use. Appellants further allege that the decision to authorize livestock grazing will permanently impair land productivity.

since 1979 and on the Agua Fria Allotment since 1965. Both EA's reflect that range conditions

is affirmed regarding this issue.

ISSUE 5: The EA violates the Administrative Procedures Act.

**Contention:** Appellants assert that the EA contains no information which would indicate that the selected alternative would remedy problems on the allotment. Appellants suggest that there is little known about the effects of the selected action and that what effects are known, are detrimental.

**Response:** The record contains documentation addressing effects of the selected action and alternatives on the human environment. The discussion under Issue 4 identifies effects which support the District Ranger's finding of no significant impact (FONSI). The effects analysis provides a clear basis for choice among the alternatives by the decisionmaker.

**Finding:** The District Ranger did not violate the Administrative Procedures Act, and is affirmed on this issue.

**APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer (ARO) has recommended that the District Ranger'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 appellants were adequately addressed in the project records.

**APPEAL DECISION**

After a detailed review of the records and the ARO recommendation, I affirm the District Ranger's decisions to authorize livestock grazing on the Llanito Frio and Agua Fria grazing allotments and deny your request for relief.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ John R. Kirkpatrick

JOHN R. KIRKPATRICK  
Appeal Deciding Officer  
Deputy Regional Forester, Resources

Enclosure

cc:  
Cibola NF