



United States
Department of
Agriculture

Forest
Service

Southwestern
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File Code: 1570-1

Date: June 5, 2000

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

Certified Mail-Return Receipt Requested
Z 506 822 115

Re: Appeals #00-03-00-0068-A215 Crater, and #00-03-00-0069-A215 Kendrick Allotment Decisions, Peaks Ranger District, Coconino National Forest

Dear Mr. Horning:

This is my review decision concerning the appeals you filed regarding the Decision Notices and Findings 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 Waldrip issued decisions on February 25, 2000, for the above named allotments. The decisions resulted in the selection of the following alternatives and authorizations:

Crater Allotment, Alternative A, which authorizes a range of authorized livestock numbers, 50 to 61 head of cattle, (Cow/Calf) to graze June 1 through October 31 annually.

Kendrick Allotment, Alternative E, which authorizes a range of authorized livestock numbers, 50 to 75 head of cattle, (Cow/Calf) to graze June 1 through October 31 annually.

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 Lloyd (for)
JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc:

Forest Supervisor, Coconino NF
District Ranger, Peaks RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS**of the****Forest Guardians' Appeals****#00-03-00-0068-A215, Crater Allotment Decision****#00-03-00-0069-A215, Kendrick Allotment Decision**

ISSUE 1: The Forest Service violated the National Forest Management Act (NFMA) consistency requirement by failing to comply with the 1996 Forest Plan amendment requirements to limit forage utilization in key areas.

Contention: The appellant contends the decisions allow grazing at a level in excess of capacity for each of these allotments and that there are no provisions for monitoring of grazing use.

Response: The grazing guidelines included in the 1996 amendment to the Forest Plans were established to ensure recovery and continued existence of threatened and endangered species. These guidelines are applicable in situations where more specific guidelines have not been established through site specific NEPA analysis for individual allotments. As NEPA analysis is initiated on individual allotments, site specific forage use levels are established in consultation with the U.S. Fish and Wildlife Service. The records reflect that this has been done (Kendrick Docs. 25, 32; Crater Docs. 38, 39, 42).

The records demonstrate that utilization levels of 35 percent include both elk and livestock use and will be adhered to on both allotments (Kendrick Doc. 32; Crater Doc. 42).

A review of the records also disclosed that monitoring of key areas is planned. Utilization monitoring will be conducted by the permittee and spot checked by Forest Service personnel in every grazed pasture.

Irrespective of the numbers authorized to graze in any given year, cattle will be removed from pastures or an allotment as utilization levels are reached.

Finding: The site specific utilization standards developed by the interdisciplinary team are consistent with the 1996 Record of Decision for the amended Forest Plans. Monitoring of key areas will ensure adherence to the established utilization rates and progression toward overall healthy watershed conditions.

ISSUE 2: The Forest Service violated the NFMA by continuing to allow cattle grazing on the allotments without first evaluating the allotments' 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 allotments' 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 (Coconino 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 decisions are not premature.

ISSUE 3: The decisions violate the Coconino 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: The proposed actions (Crater Doc. 6, Kendrick Doc. 12) allotment summary sheets (Crater Doc. 36, Kendrick Doc. 26) and environmental assessments (Crater Doc. 42, Kendrick Doc. 32) disclose there are no riparian areas on the Crater Allotment and the only riparian area on the Kendrick Allotment is Crater Lake which has been excluded from grazing since 1993.

Finding: Crater Lake, the single riparian area present, is managed to maintain or improve its condition to a satisfactory level. Cattle will continue to be excluded from the Crater Lake riparian area.

ISSUE 4: 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. 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 failed to protect riparian habitats and riparian obligate species.

Response: Regulations at 36 CFR 219 Subpart A, which the 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 Act of 1974, as

amended [36 CFR 219.1(a)]. The Forest Plan includes goals, objectives, standards, and guidelines for the protection of threatened, endangered, Forest Service sensitive, and other species and their habitats. These site-specific projects are designed under the direction provided in the Forest Plan. The Responsible Official found the selected alternatives to be consistent with the Forest Plan (Crater Docs. 42, 51; Kendrick Docs. 32, 39).

The records indicate that the effects of the alternatives on wildlife species were analyzed and that monitoring will be employed to ensure protection and recovery of listed species and continued viability of sensitive species (Crater Docs. 42, 59; Kendrick Docs. 25, 32).

Finding: The Responsible Official reached a reasonable conclusion, based on the effects of the selected alternatives, that the projected habitat conditions would maintain viability of all wildlife species.

ISSUE 5: The Forest Service violated the 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: Alternatives were developed through an interdisciplinary process that included an evaluation of internal and external issues and comments. The Crater EA presents five alternatives, with four considered in detail. The alternatives considered in detail include A) Proposed Action; B) No Action; C) Continue with Existing Grazing System and No Improvements; D) Four Pasture Grazing System (Crater Doc. 42).

The Kendrick EA presents six alternatives, with five considered in detail. The alternatives considered in detail include: A) Proposed Action; B) No Action; C) Continue with Existing Grazing System and No Improvements; D) Four Pasture Rest Rotation Grazing System; E) Four Pasture Deferred Rotation Grazing System (Kendrick Doc. 32).

Pursuant to 40 CFR Part 1501.2(c), formulation of alternatives is driven by significant issues identified during scoping. The records indicate that a review of internal issues (Crater Doc. 2; Kendrick Doc. 1) and issues identified during public scoping (Crater Docs. 27, 30; Kendrick Docs. 18, 28) was undertaken.

Though not listed distinctly, the EAs and their associated project records include discussions of significant issues brought out by the public and how the developed alternatives address these issues. All significant issues were addressed and all purpose and need objectives were met under one or more of the alternatives analyzed for each allotment. The analyses of environmental consequences for each developed alternative are detailed in Chapter 3 of the EAs.

Finding: Contrary to the appellant's assertion, and in accordance with 40 CFR Part 1502.14, the interdisciplinary team developed and analyzed a reasonable and appropriate range of alternatives based on the issues identified with the Proposed Action. The record indicates that the range of alternatives complies with NEPA.

ISSUE 6: 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: A detailed listing of past, present and future actions for the project analyses are included in the project records (Crater Doc. 33; Kendrick Doc. 29). Chapter I and Chapter III of the EAs include an extensive discussion on the existing conditions of the allotments. These discussions include watershed, soils, air quality, wildlife habitat, recreation, range conditions, and socio-economic conditions. The EA’s detail the current proposals and current conditions in Chapters II and III. The EAs include quantitative and qualitative descriptions of proposals and effects in considerable detail.

Chapter III of the EAs contains a thorough analysis of past, present and reasonably foreseeable actions and the their resulting cumulative effects. This includes timber activities, roads, livestock grazing and wildfire. The EAs specifically address past, current, proposed land uses and land management practices. The specialist reports located in the process records provide further evidence that the environmental effects of the alternatives were analyzed appropriately (Kendrick Docs. 3, 9, 22, 25, 30, 38; Crater Docs. 23, 24, 32, 34, 38, 39, 40, 50).

Finding: The EAs and process records contain extensive documentation, consideration and evaluation of cumulative effects at scales appropriate for issues pertinent to the analyses and decisions at hand. The EAs and records reflect full compliance with NEPA requirements to disclose environmental effects.

ISSUE 7: 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 as required under Section 401 of the Clean Water Act. Appellant also argues that implementation of the decisions will degrade water quality.

Response: The state of Arizona does not require water quality certification for dispersed non-point activities such as livestock grazing. The project records contain evidence of the incorporation of water quality mitigating measures (Best Management Practices).

Finding: Adequate mitigation is planned and there will be no violation of the Clean Water Act.

ISSUE 8: The decisions violate the Multiple Use and Sustained Yield Act.

Contention: The appellant alleges that the decisions violate the Multiple Use and 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 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 areas. Net public benefits were analyzed appropriately during Forest Plan preparation, and are outside the scope of project-level analysis.

The EAs clearly state the existing conditions in the watershed, and the past land management practices that have resulted in these conditions. Chapter III of the EAs displays the resulting soil and vegetative conditions and trends from implementation of the proposed action and its alternatives. Land management activities proposed within the action alternatives would begin to restore long-term soil, watershed and vegetative conditions within the allotments. Monitoring provisions and mitigation measures are identified in the EAs to ensure improved site productivity.

Finding: The Responsible Official appropriately considered the effects of the proposed action, and its alternatives, on the long-term productivity of the land and concluded that the inherent productivity of the land would be maintained and improved.

ISSUE 9: The EAs 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 project records clearly indicate that the selected alternatives are designed to and ultimately will improve watershed conditions. The EAs display the effects of implementing the proposed action and its alternatives (Crater Doc. 42; Kendrick Doc. 32). The Responsible Official’s decision rational reflects consideration of the effects as disclosed in the EAs (Crater Doc. 51; Kendrick Doc. 39). Furthermore, the records reflect appropriate public involvement in the NEPA process and indicate that public comments were evaluated and considered in the planning process.

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