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Date: August 1, 2002

Martin Taylor
Center for Biological Diversity
P.O. Box 710
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**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
7000 2870 0000 1135 5216**

Re: Appeal #02-03-00-0024-A215, Montana Allotment Decision, Nogales Ranger District,
Coronado National Forest

Dear Mr. Taylor:

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

Acting District Ranger Medlock issued a decision on April 23, 2002, for the Montana Allotment. The decision resulted in the selection of the following alternative and authorization:

Montana Allotment, Alternative C, which authorizes 400-500 head of cattle (cow/calf), to graze yearlong.

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 above-named 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
Appeals Deciding Officer
Deputy Regional Forester

Enclosure

cc:
Forest Supervisor, Coronado NF
District Ranger, Nogales RD
R3, Rangeland Management
R3, Appeals & Litigation

REVIEW AND FINDINGS**of the****Center for Biological Diversity Appeal****#02-03-00-0024-A215, Montana Allotment Decision**

ISSUE 1: The Land and Resource Management Plan (LRMP) does not comply with the National Forest Management Act (NFMA).

Contention: The appellant contends the deadline (2001) for revising the LRMP has passed. Therefore, “the LRMP and every other project conducted by the Coronado National Forest since that time is (sic) in violation of NFMA.”

Response: There are no statutes or regulations that describe an expiration date for a Land and Resource Management Plan. The Coronado 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 2: There is no quantitative monitoring of management indicator species (MIS) populations, contrary to NFMA.

Contention: The appellant contends the analysis of MIS presents no population trend data or future monitoring requirements for whitetail deer, Mearns’ quail, bell’s vereo, Elegant Trogons, Northern Beardless Tyrannuldt, and Sulphur bellied flycatchers, Thick billed kingbirds, five striped sparrows and Sonora chub. The appellant states this is a violation of 36 CFR 219.19(6).

Response: A review of the project record indicates the Forest’s analysis of the effects the project would have on MIS was sufficient to meet the standards of the National Forest Management Act (Doc. 76; 106; 107).

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

ISSUE 3: Mearns’ quail direction is ignored, contrary to the LRMP, Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), and NFMA.

Contention 3A: The appellant contends the Coronado National Forest has failed to designate high-density Mearns’ quail habitat, even though the Forest admits high-quality habitat exists along Ruby Road, Ruby Pasture, California Gulch, and Warsaw Canyons.

Response: The appellant’s contention is based on the Mearns’ quail habitat management guidelines that provide direction for livestock grazing standards and utilization in “high density” Mearns’ quail habitat. The key here is that this direction applies to identified “high-density”

habitat. “High density” habitat is defined in the Forest Service Manual Supplement as: “those areas identified and mapped as such in the LRMP data base.” Although the habitat in the Montana Allotment is within the historic and current range of the Mearns’ quail, and some of it is considered high-quality, none has been mapped as “high-density” (Doc. 63; 76; 106; 107). Thus, the habitat management guidelines in the Manual Supplement are not required.

Contention 3B: The appellant states that the selected alternative will reduce suitable habitat on the Montana Allotment from 67 percent to 48 percent. The contention is “[T]his is a clear violation of the LRMP’s management prescription for wildlife and fish (p. 31) that requires the Coronado National Forest to ‘Maintain or improve occupied habitat of commonly hunted species, listed threatened and endangered species, and management indicator species...’.”

Response: A review of the project record concerning the appellant’s contention that suitable Mearns’ quail habitat would be reduced by the selected alternative revealed that the assessment did, in fact, identify this reduction would take place (Doc. 63). However, the selected alternative would reduce utilization rates and allowable stocking rates over the entire allotment from the current management depicted in Alternative A. The selected alternative would also include a riparian pasture that would further reduce utilization rates within this pasture. The answer to this discrepancy is found in Table 1 (Doc. 63). Here, the Forest incorrectly identified utilization rates for Alternative A at 35 percent for the growing season and 45 percent for the dormant season. Based on the current allotment management plan, these figures should have been 45 and 55 percent respectively. Based on the definitions of suitable, marginally suitable, and unsuitable habitat in Table 2, these lower utilization rates were used to obtain the 63 percent identified as suitable quail habitat in Alternative A. Thus, using the 35 and 45 percent utilization rates in their analysis to determine suitable Mearns’ quail habitat would account for the determination that current management was better for Mearns’ quail than the selected alternative. The District Biologist, in his final report on MIS completed in April 2002, further confirmed this conclusion. In his report, he identified that the selected alternative would actually increase suitable Mearns’ quail habitat, rather than reduce it, as erroneously identified in the environmental analysis (Doc. 106).

Finding: The decision does comply with the Mearns’ quail habitat management guidelines found in Forest Service Manual Supplement #2600-94-1 and is consistent with the Land and Resource Management Plan standards and guides for management indicator species.

ISSUE 4: There is no range capability or suitability analysis, contrary to NFMA and NEPA.

Contention: The appellant contends the suitability analysis arising out of the 1986 Coronado National Forest LRMP is no longer a valid basis for assuming suitability of the Montana Allotment for grazing.

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 (Coronado Forest Plan EIS Appendix B, Description of Analysis Process).

Additionally, the Coronado 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 (see Issue 1).

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.

ISSUE 5: The range trend evidence is self-contradictory and unscientific.

Contention: The appellant contends Parker 3-step transect results are not consistent with the Imler report of 1996. The appellant says that management recommendations are being made on evidence that is arbitrary and internally inconsistent.

Response: The record indicates that prior to 1988 vegetative conditions on the Montana Allotment were poor to fair, based on low plant vigor, a high percentage of annual vegetation, and undesirable levels of bare ground. Management was yearlong grazing with no rest. In 1988, an allotment management plan was prepared implementing a four-pasture rotation. The Chiminea pasture would be grazed during the winter, providing growing season rest; the Ruby Pasture would be grazed during the spring, providing growing season rest; and the Schumacher/Bolsa and Warsaw Pastures would be grazed during the summer on alternate years, followed by 20 months of rest (Doc. 50). Substantive issues raised during the current NEPA process included channel stability and riparian conditions in California Gulch, and distribution problems in Schumacher Pasture. To address these issues, the selected alternative includes establishment of a separate riparian pasture in the Lower California Gulch area of Schumacher Pasture. Additionally, the selected alternative includes constructing exclosures around the Bill Ewing area and Mujeres Tank, development of Schumacher Spring, and maintenance of Hidden Tank (Doc. 63; 107).

Vegetative and soils information collected in 1997 and 1998 indicates a tremendous improvement in range conditions (Doc. 50). This conclusion is based on information from five long-term upland monitoring sites in the Arivaca Creek Watershed and ten sites in the Rio Altar Watershed (Doc. 10). Additionally, satisfactory soil conditions have changed from 67 percent previously to 80 percent currently; impaired soil conditions have changed from 23 percent previously to 18 percent currently; and unsatisfactory soil conditions have changed from 10 percent previously to 1 percent currently (Doc. 48; 50; 53). Without exception, resource experts agree that resource conditions on the allotment have improved since the 1998 allotment management plan was implemented. Additionally, with the proposed changes in management, continued resource improvement is expected to occur (Doc. 107).

Finding: The record indicates the Responsible Official made a reasoned decision based on the information available.

ISSUE 6: The proposed 45% utilization standard is contrary to the LRMP and contrary to science.

Contention: The appellant states that decisions postdating the 1996 Region-wide amendment to the LRMPS must be consistent with the grazing table in the 1996 amendment. The appellant contends that there is no site-specific analysis in the record to support any deviation from the grazing table.

Response: Under the 1996 Amendment, when new permits are issued, the Forest Service implements the standards for grazing management. The Forest Service implements the standards by conducting site-specific analysis to determine appropriate levels of forage utilization for an individual grazing allotment. If, through the NEPA process, the Forest Service is unable to determine appropriate site-specific utilization levels, the utilization table in Appendix C of the 1996 Record of Decision provides guidance on conservative estimates of appropriate utilization levels.

Site-specific utilization levels were developed in conjunction with the 1988 allotment management plan. These utilization levels were based on research conducted at the Santa Rita Experimental Range. Subsequent monitoring in 1997 and 1998 showed marked improvement in both vegetation and soil condition across the allotment. Under current utilization levels, resource specialists expect conditions to continue improving and reach desired conditions within the next ten-year grazing cycle (Doc. 50).

Rangeland management is an ongoing adaptive process in which monitoring provides continued validation of decisions and provides a higher level of information upon which future actions will be based. As part of the current analysis conducted on the Montana Allotment, baseline data was collected on resource conditions including, but not limited to, riparian condition, upland vegetation condition, soil condition, and stream channel function. In addition, the Responsible Official's decision requires the establishment of photo points in the Mujeres, Bill Ewing, and Lower California Gulch areas to document current conditions. After 5 years, data collection will be replicated for the aforementioned resource conditions, in addition to duplicating photos taken at the Mujeres, Bill Ewing, and Lower California Gulch photo points. An interdisciplinary team will evaluate the data and photos to determine whether resource conditions are still improving. The following parameters will be used to measure improvement in upland vegetation: a) Maintain or improve current grass species composition; and b) Improve current upland vegetative ground cover (plant basal area plus litter). For riparian areas, the following parameters will be used to measure improvement in riparian conditions: a) Where Bermuda grass does not currently dominate, the dominant species of grass along the channel is deergrass rather than upland species; b) Deergrass stands or individual plants are catching and holding fine sediments; and c) The number of woody stems per unit area are increasing. If resource conditions are improving, there will be no change in the number of cattle permitted to graze (400-500), and utilization standards will remain at 45 percent. If the monitoring results indicate resource conditions are not continuing to improve, then utilization standards will be reduced to 35 percent and the permitted numbers allowed to graze will be changed to 300-400 cow/calf pairs. The reduction in the range of permitted numbers reflects the adjustment needed to represent the reduced utilization level (Doc. 107).

Finding: The Responsible Official's decision regarding utilization levels is based on scientific research and monitoring and is consistent with the 1996 amendment to Region 3 Forest Plans.

ISSUE 7: Allowable use is likely to be chronically exceeded.

Contention: The appellant contends that based on past monitoring excessive heavy use of forage is chronic on the Montana Allotment.

Response: As discussed under Issue 5, proposed changes in management have been made to correct distribution problems and ensure continued improvement in resource conditions. Under the Responsible Official's decision, allowable use of upland species in all pastures will be limited to a maximum of 45 percent weight of the current year's growth to date. Utilization in the riparian pasture will be limited to a 14-inch stubble height on deer grass. Utilization in the riparian pasture will also include a maximum use limit of 30 percent of the apical meristems of riparian trees and shrubs. When any one of these levels is reached in any key area, or heavy use throughout a pasture is apparent, livestock will be moved to the next scheduled pasture (Docs. 83; 107).

Finding: The Responsible Official has taken appropriate steps to ensure there will not be excessive use on the Montana Allotment.

ISSUE 8: Endangered Species Act.

Contention: The appellant contends "The apparent decline of the Chiricahua leopard frog in California Gulch which is subjected to ongoing livestock grazing in the proposed action while the same species apparently remains at satisfactory levels in nearby ungrazed Sycamore Canyon, indicates that grazing on the Montana is limiting recovery of this listed species contrary to the requirement of the LRMP and ESA." Additionally, the appellant says no provisions have been made to remove or eliminate bullfrogs or other aquatic pest species from aquatic habitats, principally stock tanks.

Response: The Biological Opinion (PR 101) found the selected alternative would not jeopardize the continued existence of the Chiricahua leopard frog. It further identified that grazing was not limiting the recovery of this species. In fact, it identified that development of stock ponds throughout its range, which generally hold water longer than natural ponds, actually had increased habitat for this species. The Biological Opinion also identified a number of terms and conditions for the Chiricahua leopard frog, which were incorporated directly or by reference into the Decision Notice (PR 107). These include, surveying Schumaker spring and developing a plan to maintain the frog if found prior to any development occurring. Removal of bullfrogs from existing stock tanks is beyond the scope of this project as identified in the purpose and need for action.

Finding: The decision does not violate the Endangered Species Act concerning the Chiricahua leopard frog.

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

Contention: The appellant contends that the failure to consider recreational and hunting demands on the Montana Allotment violates the principle of the relative values of various resources under the definition of multiple-use.

Response: Management of National Forest Lands for the highest net public benefits was analyzed and decided upon in the preparation of the Coronado 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 10: The analysis failed to take a hard look at impacts, contrary to NEPA.

Contention 10A: The appellant contends that despite the release of both Forest Service and multi-agency reports on impacts of global warming, the EA fails to consider this context of the decision.

Response: The Council on Environmental Quality regulations implementing NEPA require an EA to include "brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), or the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted" (40 CFR §1508.9). The EA must "briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impacts statement or a finding of no significant impact" (40 CFR § 1508.9). "Impacts shall be discussed in proportion to their significance" (40 CFR §1502.2).

The appellant specifically mentions the issue of global warming. The effects upon global warming are outside the scope of this project level action and associated analysis. In addition, the Forest Service does not believe better decisions will result from including a discussion of global climate change at the project-level analysis.

Finding: The EA adequately discloses the environmental impacts of the proposed action and alternatives, consistent with policy, regulation, and law. There was no violation of NEPA by failing to consider the effects of global warming on this site-specific project action.

Contention 10B: The appellant contends the analysis failed to consider the effects of the proposed action on other Forest, private, and state lands, which form part of the livestock operations of the same permittee.

Response: The permittee for the Montana Allotment does hold other permits administered by the Coronado National Forest. A review of the project record indicates that the management strategy of the Montana Allotment does not overlap with any other Forest Service administered allotments (Docs. 7, 16). Merely holding more than one permit with the Forest Service does not imply or result in environmental effects due to connected actions. The appellant did not disclose what the environmental effects may be resulting from a single permittee operating on multiple allotments.

Finding: The EA adequately discloses the environmental impacts of the proposed action and alternatives, consistent with policy, regulation, and law. The management strategy for the Montana Allotment is in essence a "self-contained" strategy and does not overlap or contain "connected actions" to other allotments.

Contention 10C: The appellant contends the analysis failed to estimate the tangible or intangible benefits of the enhanced income to local economies from greater visitation by hunters and recreational users that would result from elimination of livestock production from these lands. The appellant states that the economic analysis did not factor in the opportunity cost of ecological services, habitat for listed species, and hunting/recreation jobs and revenue to local communities that are forgone under the grazing alternatives.

Response: A review of the project record indicates that socio-economic factors were discussed throughout the interdisciplinary process (Docs. 9, 18, 22, 23). Issues were addressed throughout that analysis process as appropriate to their significance. Appropriately defined significant socio-economic issues were brought forward into specialist's reports (Docs. 11, 13, 53, 55), and the environmental assessment (Doc. 63, pages 18 - 20).

Finding: The EA adequately discloses the environmental impacts of the proposed action and alternatives, consistent with policy, regulation, and law. There was no violation of NEPA by failing to consider the socio-economic effects of implementing this site-specific project action.

ISSUE 11: The decision is not objective and is contrary to NEPA and the Administrative Procedures Act (APA).

Contention: The appellant contends that failure to select the no-grazing alternative violates NEPA's requirement to objectively evaluate and the APA by making a decision contrary to the evidence before the Agency.

Response: The project record indicates that the allotment is in fair to good condition, and is improving (Docs. 50, 63, page 4). The appellant's assertion is not supported with site-specific references or conditions. The action alternatives include management strategies that are expected to continue to improve conditions over time. The environmental assessment and its subsequent decision were developed within the framework of the law, regulations, and policy.

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

ISSUE 12: The Finding Of No Significant Impact (FONSI) is contrary to NEPA.

Contention: The appellant contends the proposed action will have significant adverse environmental consequences, thus an Environmental Impact Statement must be prepared.

Response: The Council on Environmental Quality defines significance in terms of context and intensity (40 CFR § 1508.27). Context addresses an analysis of impacts at several scales, including society as a whole, the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. Intensity refers to the severity of the impacts and the Council on Environmental Quality outlined 10 factors to consider when evaluating intensity.

The Council on Environmental Quality continues to define a FONSI as a “document by a Federal Agency briefly presenting the reasons why an action not otherwise excluded (sec. 1508.4) will not have a significant effect on the human environment.”

The Decision Notice and Finding of No Significant Impact provides clear rationale for why the findings, including its finding of no significance, are appropriate. The FONSI is supported by analysis within the project record and the environmental assessment.

Finding: Based on the analysis presented in the environmental assessment and its accompanying project record, the Finding of No Significant impact is appropriate and the development of an environmental impact statement is not required.